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**“They Were Simply Invisible”: Advocacy Groups’ Inequitable Impact
on the Passage of FOSTA/SESTA & the Role of Social Acceptability**

An honors thesis presented to the
Department of Political Science,
University at Albany, State University of New York
in partial fulfillment of the requirements
for graduation with Honors in Political Science
and
graduation from The Honors College

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Research Advisor: Meredith Weiss, Ph.D.

May 2021

Abstract

FOSTA/SESTA, a federal law passed in 2017, was intended to thwart sex trafficking on the internet by amending Section 230 of the Communications Decency Act of 1996. In practice, it has radically changed the ways internet service providers (ISPs) moderate user content, oftentimes impacting the livelihoods of sex workers. Considering FOSTA/SESTA's broad bipartisan support, this thesis examines the roles of different advocacy groups in FOSTA/SESTA's creation. By examining witness testimonies before Congress, public statements, and letters for/against FOSTA/SESTA, the author finds that, the more socially accepted an advocacy group's members are, the more influence that stakeholder group held over the creation of this strange and impactful law.

Keywords: *FOSTA/SESTA, Sex trafficking, Sex work, Section 230, Advocacy groups*

Acknowledgements

I believe that all our successes are interconnected. This thesis would not have been possible without the help of several faculty members, friends, family, and other extraordinary individuals. Thank you, Angela Hackstadt, for helping me to find the resources from which this thesis originated. Thank you, Dr. Weiss, for illuminating new directions towards which I could take my research. Thank you, Kate Tumarello, for taking the time to interview with some undergraduate student from New York, and for providing such valuable insight into FOSTA/SESTA.

From the time I first came to Albany three years ago, my friends have made every late night, every paper, and every moment ones I've cherished. Thank you Yely, Chrissy, Arielle, and Bri for always lifting me up. Thank you, Jules, for every time you've proofread my papers and offered a listening ear. Thank you to all my friends for inspiring me to do better for myself and for our community. I am so proud of all of us, and eager for what comes next.

And of course, thank you Mom and Dad for always encouraging me as I explored new paths on the way to the person I am today. Mom, you get an extra-special shoutout for helping me figure out how to fix these page numbers at the very last minute.

You all made this possible, and I can hardly express my gratitude.

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Introduction

After surviving trauma most people can barely fathom, Melanie Thompson is now the youth outreach coordinator at the Coalition against Trafficking in Women. When she was only 12 years old, she was kidnapped by a sex trafficker. The years she should have spent laughing and enjoying life with her friends, she spent being repeatedly raped, watching her trafficker list advertisements about her over and over again on backpage.com (Tung, 2020).

Activist and sex worker Phoenix Calida is witnessing lives crumble before her. Following a new piece of legislation in 2018, her community lost their ability to advertise their services, or sometimes even share tips to stay safe at work online. Phoenix has seen colleagues get evicted, preyed upon by pimps, and forced to take riskier jobs. One woman even sent Phoenix photos of her tattoos, in case Phoenix needed them to identify her body should she be murdered by a client (Siouxie, 2018).

These two women's lives were further complicated by the passage of FOSTA/SESTA: The Allow States and Victims to Fight Online Sex Trafficking Act (Wagner, 2017), and its Senate counterpart, the Stop Enabling Sex Traffickers Act (Portman, 2017b). This legislation was designed to stop sites like backpage.com from allowing traffickers to advertise on their platforms. In short, FOSTA makes "promotion or facilitation of prostitution and reckless disregard of sex trafficking" a crime (Wagner, 2017, p. 2). However, the law's implications have been much broader than that.

FOSTA/SESTA had no trouble passing Congress. It passed the House with a vote of 388 to 25 (Clerk.house.gov, 2018), and the Senate 97 to 2 (U.S. Senate, 2018). Supporters of FOSTA/SESTA included advocacy groups like the National Center for Missing and Exploited Children and FAIR Girls, as well as companies like IBM and Mastercard (Wagner, 2018). Yet,

plenty of organizations also pleaded to Congress against FOSTA/SESTA's passage, including the American Civil Liberties Union (ACLU), Freedom Network USA, and even the Department of Justice (#survivorsagainstsesta, n.d.).

Why did this bill pass near unanimously, and what role did advocacy groups play in its creation and passage? Further yet, what characteristics allowed certain advocacy groups (and even government organizations) more influence over others? I argue that the more socially accepted an advocacy group's membership is, the more influence they held over FOSTA/SESTA, particularly when it came to being selected as witnesses during Congressional hearings. By examining the reasons different advocates supported or opposed FOSTA/SESTA, and evaluating their influence in Congressional hearings, we can better understand the roles advocacy groups play in legislation which deals with such weighty social issues.

Literature Review

Although sex work's safety is controversial, and sex trafficking is well accepted as abhorrent, most scholarly research on FOSTA/SESTA itself is focused on the unintentional negative impacts which came after FOSTA's passage.

Law enforcement's anti-sex trafficking efforts have been hampered in some cases because of FOSTA/SESTA. The law scrubbed the internet of much of the evidence which police used to use to catch traffickers, including photos which could help to identify trafficking victims (Chamberlain, 2019). The global impact of U.S. laws governing the internet, such as FOSTA/SESTA, is also worth noting. New Zealand decriminalized sex work in 2003, largely thanks to the activism of the New Zealand Prostitutes' Collective (NZPC). Still, the seizure of backpage.com forced sex workers in New Zealand to solicit clients in-person, decreasing their income and increasing the risk of violence that comes with meeting clients who they could not

vet as easily as they did online (Tichenor, 2020). This international dynamic around sex work is further complicated by what is sometimes called the “Nordic model” -- the idea that sex work is inherently exploitative and can be abolished by criminalizing clients until demand ceases to exist (Musto et al., 2021, p. 2). However, FOSTA/SESTA does not distinctly fit inside or outside of the Nordic model, because its focus is on third-party internet service providers.

There has been a great deal of scholarship into the dynamics between sex workers, and even some sex worker advocacy groups and Congress surrounding anti-trafficking legislation like FOSTA. However, more holistic examinations into the role of advocacy groups, be they anti-trafficking or law enforcement, are a bit more difficult to find. This paper aims to trace the origins of FOSTA/SESTA and shine a light on the many advocacy and stakeholder groups that influenced (or did not influence) FOSTA’s creation.

Origins of FOSTA/SESTA

A. Section 230

At its core, FOSTA/SESTA is a change to Section 230 of the Communications Decency Act of 1996. This law was created in response to the growing prevalence of illegal and objectionable content on the internet. Under Section 230, “interactive computer services” including websites and technology companies are not legally responsible for the content their users post, even when the content depicts or enables illegal activities. In short, these companies cannot be sued over the posts their users make on their platforms (Pietsch & Hamilton, 2021). This rule has allowed the internet to grow into the wild West of creativity and crime it is today. Professor Jeff Koseff, who served as a witness in a hearing on FOSTA, even dubbed Section 230 “the twenty-six words that created the internet” (Koseff, 2019, cover).

Although Section 230 does not apply to federal crimes (Walden, 2017), liberal application of Section 230 in courts has sometimes left victims of trafficking and other forms of exploitation without legal recourse against the companies which facilitated their harm. In order to hold an internet service provider legally accountable for the exploitative material, a plaintiff would need to prove that the internet service provider (ISP) created or edited the content, not just allowed it to be posted on their platform (Mixon, 2018). This has exacerbated legal tensions between internet service providers, law enforcement, and advocates from every perspective from sex workers to trafficking survivors.

B. Jane Doe No. 1 v. Backpage.com, LLC

Enter backpage.com - a now-defunct site that lives in infamy, and is at the center of FOSTA/SESTA, which would not exist if it were not for the 2016 court case *Jane Doe No. 1 v. Backpage.com, LLC*. The plaintiffs in this case were three women who were minors when they were trafficked through backpage.com. Their claim was through the Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, applicable to those who knowingly benefit from the trafficking of another person (Goldman, 2016). Professor Mary Leary would later mention the TVPRA in a hearing on FOSTA/SESTA as the reason for why new legislation would be redundant (Goodlatte, 2017). However, the TVPRA did not give the plaintiffs the recourse they sought, and the court ruled that backpage.com was only a publisher of third-party content, and so immune under Section 230 from criminal liability for the trafficking which their site enabled (Chamberlain, 2019).

Although Backpage.com was by no means the only site impacted by FOSTA/SESTA, it was one of the primary targets of the legislation. This makes sense put into the context that, according to the National Center for Missing and Exploited children, 73% of children who were

sex trafficked online from 2012 to 2017 were the subject of an advertisement on backpage.com (Thune, 2017). Backpage even allowed users to submit payments anonymously (Chung, 2017) increasing its appeal to those who used the site to commit crimes and victimize others. FOSTA/SESTA was not ultimately responsible for the removal of Backpage.com. In my interview with Kate Tumarello, I learned that a Senate investigation during the 114th Congress found that Backpage.com's moderators edited the language used in the majority of posts in their "Adult" section to mask advertisements for sex, including those which clearly involved victims of trafficking (Portman & McCatskill, 2017, pp. 26-28). It was this investigation, followed by action by the DOJ, which killed Backpage (Lynch & Lambert, 2018) - *not* FOSTA/SESTA, which was enacted less than a week after Backpage's seizure. This piece of context is important to remember, considering all the websites and users FOSTA/SESTA impacted other than backpage.com.

FOSTA/SESTA Itself: A Legislative History

A. Sponsors/Introduction

FOSTA was introduced in April 2017 by Representative Ann Wagner from Missouri, almost a year exactly before its passage (Wagner, 2017). FOSTA's Senate counterpart, SESTA, was introduced in August 2017 by Senator Rob Portman from Ohio (Portman, 2017b) Since FOSTA was voted on first and was the version which ultimately became law, many people often just refer to FOSTA/SESTA as FOSTA. Anti-trafficking efforts are a legislative focus of Rep. Wagner, who was also the author of the Stop Advertising Victims of Exploitation (SAVE) Act (Wagner, n.d.) which made it explicitly illegal to advertise or benefit from advertisements of sex trafficking (Chamberlain, 2019, p. 2179).

B. What the Legislation Does

The key phrase which made FOSTA/SESTA so consequential is, “intent to promote or facilitate the prostitution of another person.” (Wagner, 2017). No distinction is drawn here between trafficking and consensual sex work, which scholars and advocates at least partially blame for its censoring effects on regular consumers, and massive fallout on sex work communities (Musto et al., 2021; Tichenor, 2020). Penalties depend on a few factors, especially the number of people who an ISP was involved in the prostitution of. For just 1-4 people FOSTA imposes a fine and/or maximum 10-year prison sentence. For aggravated violations involving the prostitution of 5 or more people, the maximum sentence jumps to 25 years (Wagner, 2017, p. 2). Picking up where the TVPRA left off, FOSTA/SESTA increased internet service providers (ISPs)’ responsibility for the trafficking, as well as consensual prostitution, that can and has occurred using their websites and apps. Beyond applying just to those who knowingly benefitted from trafficking, FOSTA/SESTA also penalizes those who act in a “reckless disregard” of prostitution on their sites, opening companies to legal liability for user activity they did not even realize was happening on their sites. FOSTA took care to not kneecap existing anti-trafficking laws. Section 4 clarifies that FOSTA is not to be used to impair civil action suits or criminal prosecutions related to sex trafficking.

FOSTA endured five amendments before its passage (U.S. House of Representatives, 2017). One, by Senator Ron Wyden, clarifies that ISPs efforts to remove other objectionable content cannot be considered when determining whether they are liable for other content that stayed live on their sites and became the subject of a lawsuit (Wyden, 2018a). Another, by Representative Sheila Jackson Lee, required a GAO study of the civil damages claimed in suits resulting from FOSTA (Jackson Lee, 2018). None of the amendments were particularly shocking or out-of-place.

Also, to be clear -- FOSTA/SESTA did not strike Section 230 in its entirety. Section 230 still exists, however controversially (Pietsch & Hamilton, 2021). FOSTA/SESTA affects sexual content, but not hate speech, violent content, or most other illegal and/or objectionable subject matter online.

C. Enforcement

FOSTA/SESTA provides several avenues through which ISPs can be brought to court for promoting or facilitating prostitution - though, its conflation of sex trafficking and sex work as “prostitution” makes interpretation more difficult. It also provides support to sex trafficking victims who use the law in pursuit of justice. Under Section 3 of FOSTA, victims who sue ISPs for their facilitation of trafficking may collect money for damages and attorney’s fees, and ISPs must pay mandatory restitution to victims. Section 3 also provides a path towards affirmative defense if a defendant proves that they promoted or facilitated prostitution in a jurisdiction where it is legal. Section 6 authorizes states’ Attorneys General to bring civil action suits against ISPs on behalf of the people of their state if they believe a service is in violation of FOSTA (Wagner, 2017).

D. Overwhelming Support

It would be reasonable to assume that it is difficult to convince one’s constituents that protecting victims of sex trafficking is a bad thing. When FOSTA passed the house with roughly 93% of Members voting in favor, Representative Wagner issued a statement optimistic that FOSTA would, “produce more prosecutions of bad actor websites, more convictions, and put more predators behind bars (and) give victims a pathway to justice and provide a meaningful criminal deterrent” (Wagner, 2018, p. 1). Accordingly, only a handful of people in Congress voted against FOSTA/SESTA.

Of the 25 Representatives who voted against FOSTA, 11 were Democrats and 14 were Republicans, as well as 17 Members abstaining (Clerk.house.gov, 2018). One Democrat and one Republican each voted against the bill in the Senate, plus Senator McCain's abstention (Senate.gov, 2018). Among these dissenters were Representatives Ro Khanna (D) and Justin Amash (R), as well as Senators Ron Wyden and Rand Paul (R). Khanna and Wyden opposed out of concerns for sex workers (Dickson, 2019) and technology startups (Wyden, 2018b) respectively, while Amash and Paul's concerns surrounded free speech and use of flawed moderation algorithms (Strassner, 2018).

Of course, no law ever passed without some significant debate and information exchange inside committee rooms, and FOSTA/SESTA was no different. The three hearings on FOSTA/SESTA, and especially the people who testified as witnesses at them, provide valuable insight regarding advocacy groups' influence on the legislation.

E. Hearings

The selection of witnesses for Congressional hearings is a complicated (and not always transparent) matter. In analyst Christopher Davis' view, they are sometimes chosen with the express intent to represent "all reasonable points of view" on the legislation. Other times, they are strategically chosen to only include certain points of view (Davis, 2015). What constitutes a "reasonable" point of view is another question. However difficult it is to track down how exactly witnesses were selected for the three hearings on FOSTA/SESTA, it is clear that not all stakeholders in this legislation were represented amongst the witnesses.

SESTA received one hearing in September of 2017, by the Senate's Commerce, Science, Transportation Committee (Thune, 2017). FOSTA received two hearings in the House. The first was in October 2017, before the Judiciary Committee' subcommittee on Crime, Terrorism,

Homeland Security, and Investigations (Goodlatte, 2017). The second was in November 2017, before the Committee on Energy and Commerce subcommittee on Communications and Technology (Walden, 2017). If that seems like a wide array of issue areas to classify a roughly 4-page bill under, it is because it is. Though FOSTA/SESTA seems succinct and straightforward, its consequences were anything but -- as we will explore later.

F. Witnesses

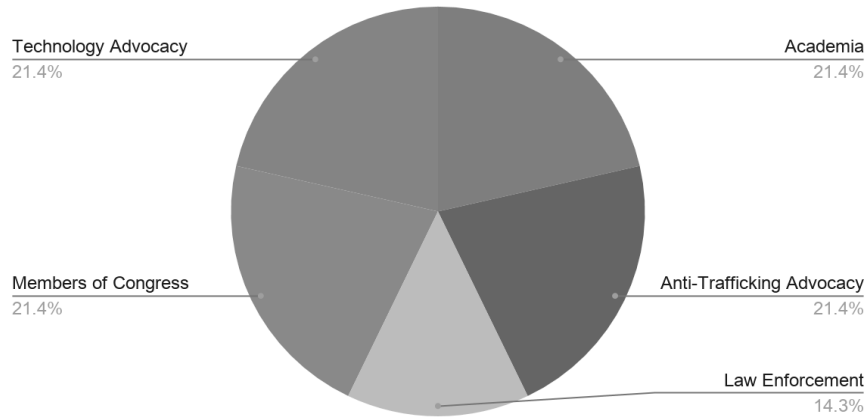


Figure 1 - Affiliations of Witnesses Who Testified on FOSTA/SESTA

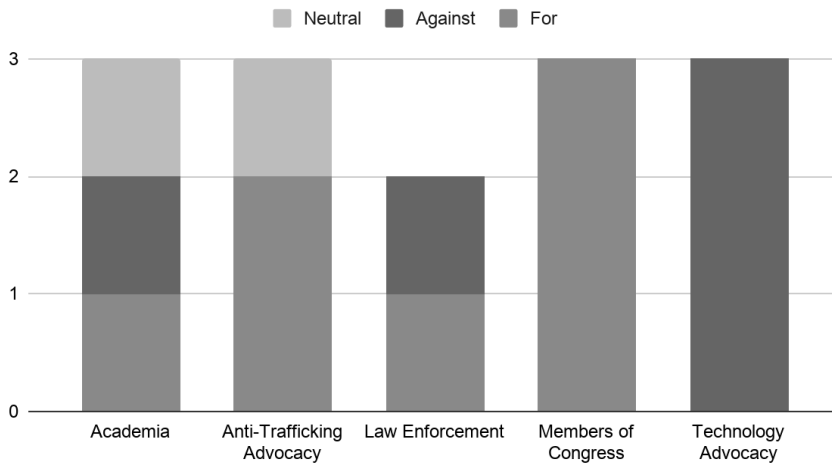


Figure 2 - Stances of Witnesses on FOSTA/SESTA

Across the three hearings, twelve individuals, as well as three members of Congress themselves, served as witnesses. Professor Eric Goldman from Santa Clarita School of Law and Yiota G. Souras from the National Center for Missing and Exploited Children were both called in to testify twice and are only counted once each in the charts.

Figure 1, a breakdown of the advocacy areas and/or occupations of each witness, illustrates that not a single sex work advocate testified. Figure 2 shows that of the 15 witnesses, including Members of Congress, seven supported FOSTA/SESTA, while five opposed the legislation and two, Jeff Kosseff from the United States Naval Academy (Goodlatte, 2017, p. 8) and Derri Smith from End Slavery Tennessee (Walden, 2017, p. 29), expressed no definitive opinions on the legislation.

Later, we will examine what influenced each stakeholder group's opinions of FOSTA/SESTA. As the table "Stances of Witnesses on FOSTA/SESTA" suggests, groups with the same interests were often, but not always, united in their support or opposition of the legislation. For now, we will focus on who was or was not included in these conversations with Congress about FOSTA/SESTA.

It would be nearly impossible to represent all groups of stakeholders in conversations about such a broad-reaching bill. Still, there is a massive group of stakeholders whose entire livelihoods were impacted by FOSTA/SESTA who received no representation among the witnesses - consensual sex workers.

It is not just that sex work advocates were excluded from the hearings, they were absent even in words. Across all three hearings, not a single testimony or question mentioned "sex work" or "sex workers" by name (Goodlatte, 2017; Thune, 2017; Walden, 2017). The closest sex workers got to consideration in these hearings was Prof. Goldman's citation of the Sacramento

Sex Workers Outreach Project, and Rep. Mike Doyle's submission of a letter from Prof. Alexandra Levy from Notre Dame Law School for the record, both in the November hearing (Walden, 2017, pp. 47 & 83). To reiterate, the process through which witnesses were chosen for these hearings isn't very transparent - but with all that sex worker groups (and adjacent groups including those for civil rights and even technology companies) had to say about FOSTA/SESTA during its creation, it's puzzling that these stakeholders were not *heard* at any of the Congressional hearings which would impact their sources of livelihood.

There are many ways outside of hearings which advocates can influence Congress's knowledge and opinions of issues and legislation. To paint a more complete picture of the advocacy scene around FOSTA/SESTA, we will examine that next, starting with FOSTA/SESTA's proponents before moving onto its opponents.

Supporters of FOSTA/SESTA

A. Anti-Trafficking Groups

"If there were stricter rules in place for postings on these websites, my child would still be alive with me today."

Yvonne Ambrose (Thune, 2017, p. 12)

This is perhaps the most influential stakeholder group which supported FOSTA/SESTA during its time in Congress. Members from groups as prominent as the National Center for Missing and Exploited Children (NCMES) were called in to serve as witnesses during hearings on FOSTA/SESTA. Derri Smith from End Slavery Tennessee didn't express a strong opinion on FOSTA itself, but noted the importance of fighting trafficking online because of its unique harms to victims: "There is no place for a survivor of human trafficking to hide, because their victimization is already on display for all to see" (Walden, 2017, p. 29). Even years after

someone escapes trafficking, digital remnants including photos of their exploitation can remain online, adding to their trauma and humiliation.

As a counter to claims made by sex worker advocacy groups, some anti-trafficking advocates also argue that consensual sex work does not and cannot exist. Melanie Thompson, a trafficking survivor and advocate for those who have experienced trauma like hers, said in an interview, “Sex is not work, and work is not sex. And although I recognize that there is a population of people who self-identify as sex workers, it’s really a term that’s used to mask the inherent harms that come with prostitution” (Tung, 2020). Though the difference between sex work and sex trafficking is better understood than it used to be, there are undeniably risks still existing even with consensual sex work. Women who are prostitutes are estimated to be 60 to 100 times more likely to be murdered when compared to women in general (Salfati et. al, 2008).

Kate Tumarello recalls when Yvonne Ambrose, whose daughter was killed by sex traffickers, testified in September (Thune, 2017, p. 12). In a way that transcripts cannot capture, she remembers how the testimony changed the tone surrounding FOSTA. When faced with a mother who is grieving the loss of her daughter, who is saying that legislation could have saved her, Kate Tumarello says, “There's no fighting back against that. There's no counter to that narrative.”

B. Large Companies

Tech giants have the world’s eyes upon them in any discussion of updates to Section 230, including FOSTA/SESTA. Companies like IBM and Oracle (Google’s parent company) were among those cited by Senator Rob Portman in his compilation of parties which supported SESTA in September of 2017 (Portman, 2017a). In a Facebook post in November 2017, Sheryl Sandberg expressed support for FOSTA/SESTA as a piece of legislation that “allows platforms

to fight sex trafficking while giving victims the chance to seek justice against companies that don't" (Sandberg, 2017). No major corporations' representatives served as witnesses during FOSTA/SESTA's hearings. The aftermath of FOSTA/SESTA on large websites, particularly social media, was very complicated. Nonetheless, it is worth noting just how many large companies supported the legislation, as is illustrated in Table 1.

Opponents of FOSTA/SESTA

A. Technology Advocates

Whether their concerns surround consumer wants, freedom of speech, or even protecting small businesses, several technology lobbyist groups opposed FOSTA/SESTA.

As a lobbyist group of apparent digital libertarians, NetChoice believes in limited government intervention on the internet (Netchoice, n.d.). NetChoice lawyer Chris Cox recalled in his testimony before the House Judiciary Committee the creation of Section 230 in 1995-1996 when "wayward court decisions threatened the future of the internet." He opposed FOSTA out of fear that it may "sow chaos" since there were no corresponding policy changes at the State and Federal levels, leaving discrepancies between FOSTA and older laws (Goodlatte, 2017, pp. 6-7).

As an advocate for tech startups in Congress, Engine exists at the intersection of technology and small business advocacy. When Evan Engstrom was Engine's Executive Director back in October 2017, he testified before the House Judiciary Committee, and opposed FOSTA out of fear of its "unforeseen consequences" (Goodlatte, 2017, p. 11). As FOSTA/SESTA unfolds before us in real time, this is still a primary concern of Engine's. As Kate Tumarello, their current Executive Director, phrased it to me, "Every little change to 230 makes it easier to sue these companies...Google and Facebook will be fine, but if you're a smaller company?" The potential costs of a lawsuit are too much for some startups to risk (Tumarello, 2021). She noted

one instance to me where a woman was using an internet platform to provide advice on how to exit sex work, and her content was removed out of concerns of it being too closely linked to trafficking in a way that could become a liability for the platform.

Though most technology advocacy organizations hold discernable views, the Internet Association is harder to classify. Abigail Slater, IA's General Counsel in 2017, said in her testimony to Congress that she supported changes to Section 230 in order to prevent trafficking, but opposed SESTA for its "overly broad concepts of criminal and civil liability" (Thune, 2017, p. 31). To further complicate things, the Internet Association's membership includes most every large and famous website and app - from Reddit, to Facebook, to Airbnb (Internet Association, n.d.).

B. Sex Work Advocates

When fully protected by Section 230, the internet can be a powerful tool for sex workers to advertise services and collaborate with one another in safety efforts. Advertising sexual services is very difficult on the post-FOSTA internet. Under the threat of lawsuits, or even fines and jail time, few ISPs are willing to risk having any content that may be linked to prostitution on their websites. Since FOSTA penalizes any content that "promote(s) or facilitate(s) the prostitution of another person" (Wagner, 2017, p. 2), websites can even be sued for hosting consensual sex workers' posts. This troubling conflation of sex work with trafficking was one of the chief objections of sex work advocates (Chamberlain, 2019, p. 2175).

Considering that FOSTA/SESTA was passed by predominantly male, white, and/or cisgender Congressmembers, it is important to recognize something: Sex work is a gender issue, a race issue, and a queer issue. Criminalization of sex work difficult to collect demographic data of sex workers as a population, since there are few to no reliable counts of how many sex

workers are even in each state or country. Some data that is available, though. Roughly 80% of sex workers are women (Lehmiller, 2018). Of 41 sex workers murdered in the United States in 2015, 17 were black and 12 were transgender women (Sankofa, 2016).

Compared to working or arranging work online, working exclusively in-person is riskier for this community. In cities where Craigslist started allowing ads for sex services, the female homicide rate (excluding cases where the victim knew their perpetrator) dropped 10-17% (Cunningham, 2017, p. 1). When asked what their understanding of FOSTA/SESTA was, one sex worker went as far as to say, “It was written to remind whores that our lives are dispensable.” (Blunt & Wolf, 2020, p. 118). Shut out from hearings, conflated with traffickers, and all but absent in hearing reports on FOSTA/SESTA, sex workers were silenced every step of the way on a piece of legislation which has put their lives in jeopardy.

C. A Divided Camp: Law Enforcement on FOSTA/SESTA

One might expect law enforcement officials to support FOSTA/SESTA for the strong incentives it provides to internet services providers to stop enabling traffickers -- and one might be wrong. In reality, police, investigators, and other law enforcement officials have been divided on FOSTA/SESTA since it was being written.

Law enforcement officials who supported FOSTA/SESTA did so because they saw it as a necessary improvement to Section 230. Xavier Beccera, who was the Attorney General of California in 2017, testified in favor of FOSTA/SESTA. He believed it could strike the delicate balance between fostering creativity and innovation on the internet, and protecting trafficking victims (Thune, 2017). Similarly, William Johnson of the National Association of Police Organizations issued a statement in support of SESTA, saying it, “narrowly amends section 230 to allow states and victims to bring cases against bad actors” (Portman, 2017a).

However, many law enforcement officials have found that FOSTA actually hinders their work. In a similar way to which the internet made it easier to buy and sell sex, it also made it easier for investigators to work on trafficking cases. Russ Winkler from the Tennessee Bureau of Investigation testified before Congress that, by posting fake advertisements and responding to real sex traffickers, his team was able to arrest sexual abusers and rescue trafficking victims (Walden, 2017). Just as sex workers were able to vet clients online, law enforcement officers were able to use the internet to track down traffickers.

While there is still not much data available on whether FOSTA did ultimately decrease trafficking in the long run, it is the subject of controversy among law enforcement officials. By removing websites and services that allowed police to collect evidence and catch traffickers, FOSTA has made it more difficult to rescue people who are still being trafficked.

Table 1 - Organizations' Stances on FOSTA/SESTA, Before Passage*

	Supporters**	Opponents***
Technology Advocates		<ul style="list-style-type: none"> ● <u>Netchoice</u> ● <u>Internet Association</u> ● <u>Engine</u> ● The Electronic Frontier Foundation
Large Companies	<ul style="list-style-type: none"> ● Mastercard ● IBM ● Facebook ● HP Enterprise ● Oracle 	
Law Enforcement Organizations	<ul style="list-style-type: none"> ● National Association of Police Organizations ● Tennessee Bureau of Investigation 	<ul style="list-style-type: none"> ● Department of Justice ● National Association of Criminal Defense Lawyers ● Federal and Public Community Defenders
Anti-trafficking Advocates	<ul style="list-style-type: none"> ● <u>National Center for Missing and Exploited Children</u> ● ECPAT-USA ● Rights4Girls ● <u>End Slavery Tennessee</u> ● FAIR Girls 	
Human/Civil Rights Advocates		<ul style="list-style-type: none"> ● National Center for Transgender Equality ● American Civil Liberties Union
Sex Work Advocates		<ul style="list-style-type: none"> ● Desiree Alliance ● Erotic Service Providers Legal Education and Research Project (ESPLERP) ● Hacking//Hustling

*Underlines indicate an organization had a member serve as a witness in a Congressional hearing

**Office of Congresswoman Ann Wagner. Press Release: "House Passes Wagner Bill, Takes Major Step Forward in Fight to End Online Sex Trafficking." February 27, 2018. <https://wagner.house.gov/media-center/press-releases/house-passes-wagner-bill-takes-major-step-forward-in-fight-to-end-0>

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The Internet, Post-FOSTA

The long-term effects of FOSTA/SESTA are still being determined. Kate Tumarello noted in our interview how there are several ongoing lawsuits surrounding FOSTA. To name one example, Reddit is currently being sued for failing to remove photos a woman's ex-boyfriend posted on the website, depicting her pornographically when she was only 16 years old. She is seeking a class action lawsuit against Reddit for other instances where the notoriously unfiltered site has failed to remove child sexual abuse material of other users (Robertson, 2021).

FOSTA/SESTA has given some victims of trafficking and other forms of exploitation a new path towards recourse, but the long-term implications of this policy in court are still to be determined.

It would be a mistake (and a rather grim antagonization) to say that all Members of Congress voted for FOSTA/SESTA with the intention to harm sex workers. In fact, some Members who voted for FOSTA are now leading attempts to repair the damage FOSTA has done. Senator Warren, who voted in favor of FOSTA/SESTA, sponsored the SAFE SEX Workers Study Act in the Senate last Congress (Warren, 2019). Ro Khanna, who opposed FOSTA/SESTA even before its passage, is sponsoring this same bill's House version (Khanna, 2019). Though it wouldn't change FOSTA/SESTA, and it hasn't been re-introduced in the 117th Congress, this bill would mandate a DHHS study into FOSTA's effects on sex workers, and require this study to involve community-based non-profits as well as direct interviews with sex workers.

Seedy sites which knowingly enabled sex traffickers are not the only ones which have been impacted by FOSTA. Even some of the most popular platforms online have changed their terms of service in order to stay in compliance with the new law. In December 2018 Facebook updated its Community Guidelines in 2018 to prohibit sexual solicitations on Messenger, while

Tumblr prohibited most nudity after its algorithms proved ineffective at weeding out content which would certainly violate FOSTA/SESTA (Cyboid, 2018). Instagram, which is owned by Facebook, has also prohibited most sexual content, up to and including emojis which imply sex (Dawson, 2020). Kate Tumarello noted just how difficult it is for websites to moderate endless questionable posts, when the threat of legal action looms. When users post nudity, implied solicitations, or anything else which might just be linked to “prostitution” it is impossible for moderators to know what the true intentions behind a post are.

Consensual sex workers’ fears about FOSTA have come true. Maxine Doogan from the Erotic Service Providers Legal Education and Research Project (ESPLERP) recounts how, after FOSTA, sex workers have lost their housing and had to accept lower-paying clients in order to survive (Dickson, 2019). Danielle Blunt from Hackling//Hustling says that FOSTA has made it more difficult to screen clients before meeting in-person, making her job more dangerous. Additionally, forums and blacklists which sex workers used to compile for each other online are gone in the post-FOSTA internet (Tung, 2020). Although many of the long-term implications of FOSTA/SESTA are still to be determined, it has already proven catastrophic for sex work communities.

Conclusion and Implications

There’s no politician who gains political currency for standing up for the voices of sex workers. They’re not a voting bloc; they’re not a donor bloc; lobbyists don’t represent them on Capitol Hill... and they were just totally shut out. They were simply invisible.

Representative Ro Khanna (DeChiaro, 2021)

Even though FOSTA/SESTA’s effects have rippled through the internet, and even though advocates representing a wide breadth of interests issued statements and sent letters in opposition of FOSTA/SESTA, it still passed Congress overwhelmingly. Looking again at Figure 1, the

occupations of witnesses in hearings, and Table 1, the organizations which stood for or against FOSTA, a pattern is clear -- social acceptability. Particularly when it comes to anti-trafficking groups versus sex worker groups, anti-trafficking groups proved far more influential in FOSTA/SESTA's passage. This is far from the first time a bill with good intentions grew up to be a powerful law that hurt marginalized communities. 1994's Violent Crime Control and Law Enforcement Act led to mass incarceration, particularly in communities of color (Shannon, 2019). Like FOSTA/SESTA, this bill was popular among Democrats -- not just President Clinton, but the Congressional Black Caucus and 10 Black mayors across the U.S. (Eisen, 2019).

FOSTA/SESTA raises some concerning questions about whose voices are listened to in the policy-making process. The number and prominence of organizations which warned against FOSTA/SESTA's passage, from sex work advocates to the Department of Justice itself, does not reflect the final vote on this highly consequential law. As more lawsuits against ISPs are filed, as data is collected on trafficking after FOSTA, and as debate over Section 230 at large continues, FOSTA can serve as a cautionary tale about including all stakeholder voices when attempting to rectify an issue as broad as trafficking.

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