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The Honorable Marsha Blackburn
Chairman
Subcommittee on Communications and
Technology
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Mike Doyle
Ranking Member
Subcommittee on Communications and
Technology
U.S. House of Representatives
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Blackburn and Ranking Member Doyle:

Thank you for holding a House Energy and Commerce Subcommittee on Communications and Technology hearing to address the critical issue of combating online sex trafficking. As an anti-trafficking attorney and adjunct professor at Notre Dame Law School, I have focused my research on the question of how regulating intermediaries (or interactive computer services) is likely to affect anti-trafficking and anti-exploitation efforts. I have worked closely with organizations in the Freedom Network, the largest domestic network of anti-trafficking advocates and service providers, to develop and implement effective policies to combat this atrocious crime. My expertise and experience lead me to believe that the Allow States and Victims to Fight Online Sex Trafficking Act of 2017 (FOSTA) will not reduce commercial sexual exploitation, and may, to the contrary, exacerbate the problem.

There is No Evidence that Internet Intermediaries Cause Sex Trafficking

Reports of sex trafficking have increased as the Internet has grown in size. While this correlation is often marshaled as evidence that the Internet has caused a rise in sex trafficking, it actually proves nothing of the sort. It may simply be the case that the Internet makes it easier to detect the crime. There is likewise no basis for the idea that the proliferation of intermediaries that host advertisements has prompted an increase in sex trafficking, and, conversely, no reason to believe that limiting them will reduce commercial sexual exploitation. FOSTA (and similar measures) may *appear* to target sex trafficking, but the reality is that they seek to suppress mechanisms through which sex trafficking is readily detected and reported. This is the exact opposite of what we need.

Intermediaries Should be Encouraged to Screen Material, Not Punished for It

Both law enforcement and non-profit advocates rely heavily on intermediaries to flag suspicious posts and potential trafficking activity. Unfortunately, intermediaries' ability to filter content is not flawless, and some sex trafficking advertisements do slip through the cracks. But thanks to Section 230 of the Communications Decency Act, the perfect is not the enemy of the good, and platforms do not have to worry that they will be held liable simply for making an effort. FOSTA would change this: by creating accountability for merely *knowing* about trafficking, FOSTA would punish platforms for their attentiveness.

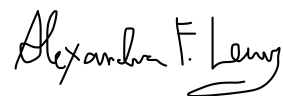
Countless victims are recovered, and traffickers apprehended, because of platforms' efforts (however imperfect) to filter the content they host. It would be counterproductive to encourage platforms to turn a blind eye. Intermediaries have an important role to play in combatting sex trafficking -- but their power to stop these horrific acts is only as strong as their immunity from liability for their inevitable failures.

The Safety of Sex Works Depends on Online Platforms

A recent study suggests that the availability of certain online forums may be correlated with a lower murder rate among sex workers.¹ This echoes what sex workers and trafficking survivors have been saying for years: access to online platforms makes sex workers less dependent on pimps and violent third parties. Views can and do differ as to whether sex work should be legal, but there is hardly room for disagreement as to whether we should take measures to reduce violence – including fatal violence – in vulnerable populations.

I join the many anti-trafficking organizations, advocates, and survivors who have expressed reservations about efforts which, like FOSTA, confuse imposing liability on intermediaries with holding traffickers accountable.² While I applaud Congress's effort to contend with this serious issue, I am confident that FOSTA is not the solution.

Sincerely,



Alexandra F. Levy

¹ Cunningham et al, "Craigslist's Effect on Violence Against Women," available at <http://scunning.com/craigslist70.pdf>.

² The Freedom Network USA, for instance, issued an official statement urging caution when considering amendments to the CDA, and encouraging Congress to avoid "misguided legal reforms" (<https://freedomnetworkusa.org/buddydrive/file/fnusargescapcautioncdareform/>). The Sex Workers Outreach Project USA has also voiced strong opposition to similar measures (<http://www.new.swopusa.org/2017/08/11/call-to-actionpress-release-swop-usa-stands-in-direct-opposition-of-disguised-internet-censorship-bill-sesta-s-1963-call-your-state-representatives-and-tell-them-to-fight/>). Many other coalitions, organizations, advocates, and experts have expressed the same views.