

**S. 1693, THE STOP ENABLING SEX  
TRAFFICKERS ACT OF 2017**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON COMMERCE,  
SCIENCE, AND TRANSPORTATION**  
**UNITED STATES SENATE**  
**ONE HUNDRED FIFTEENTH CONGRESS**  
FIRST SESSION

SEPTEMBER 19, 2017

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

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## **S. 1693, THE STOP ENABLING SEX TRAFFICKERS ACT OF 2017**

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**TUESDAY, SEPTEMBER 19, 2017**

U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
*Washington, DC.*

The Committee met, pursuant to notice, at 10:30 a.m. in room SR-253, Russell Senate Office Building, Hon. John Thune, Chairman of the Committee, presiding.

Present: Senators Thune [presiding], Nelson, Schatz, Wicker, Cantwell, Blunt, Cortez Masto, Inhofe, Klobuchar, Lee, Blumenthal, Cruz, Markey, Fischer, Booker, Udall, Sullivan, Heller, Peters, Gardner, Duckworth, Young, Hassan, Capito, and Johnson.

### **OPENING STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA**

The CHAIRMAN. Good morning. Thank you for joining us today for our hearing on S. 1693, the Stop Enabling Sex Traffickers Act of 2017, our second Committee hearing on human trafficking this year.

I'm particularly thankful that we will have the benefit of hearing from Yvonne Ambrose, who very courageously will share her heart-breaking family story with us.

We'll also hear from Senators Portman, Blumenthal, and Wyden, who will offer their perspectives about the current state of the law and the proposed changes.

We'll then have the opportunity to hear from our panel of expert witnesses, who will share their views on this legislation, which has garnered significant support, but also raised some questions.

Last month, Senators Portman and Blumenthal introduced the Stop Enabling Sex Traffickers Act of 2017 with a bipartisan group of more than 20 cosponsors, a number that has grown since then, and which includes eight members of this Committee.

As many already know, this bill would amend Section 230 of the Communications Decency Act to enable victims, as well as State and Federal law enforcement to bring to justice websites that knowingly facilitate sex trafficking.

Sex trafficking is an evil that affects every community across America. I think everyone agrees that more must be done to address this horrendous problem. That's why the conversation that we're having today is so important.

As I mentioned, earlier this year, this Committee held a hearing to examine ways that our Nation's transportation providers and

supply chains can fight the growth of sex trafficking in the United States and slave labor in the global economy. That same week, Senators Klobuchar, Nelson, and I introduced two bills to address human trafficking prevention and enforcement in transportation. I am proud that both bills passed the full Senate last week, and I'm hopeful that the House of Representatives will act soon to send these bills to the President's desk.

There is, however, more that can be done. And that brings us to the legislation before us today. I want to be clear: the website *Backpage.com* has been the impetus for much of the discussion around Section 230, and nearly everyone agrees that the website should be held accountable. But this is not the "Anti-Backpage.com Act of 2017." This legislation is intended to address a larger problem, not a specific website.

Backpage may have suspended its "adult services" section amid pressure from the Senate Permanent Subcommittee on Investigations, but what about the next online haven for such activity?

At the same time, some argue that because we frequently know exactly where this sort of activity is taking place online, that law enforcement can better monitor it and fight it. Such observers caution that if our legislative solution is too broad, it could have the opposite of its intended effect.

Given this challenge, I believe the cooperation of the tech industry will be critical to any effective solution this Committee and our Senate colleagues might hope to forge. There are many positive stories to be told about how Internet companies work with law enforcement and victim's rights organizations to fight sex trafficking, but I believe that these companies, like the rest of us, have an obligation to do more.

I look forward to hearing more from Ms. Abigail Slater, who is here today representing the Internet Association, and who will tell us more about the specific work the association's member companies do, and will do, to fight those who would use their platforms for evil.

We will also hear from California Attorney General Becerra, who will offer testimony from his perspective as the chief law enforcement officer of the State of California. Attorney General Becerra is currently prosecuting a case against *Backpage.com*, and can offer insight into the legal history of such cases. He can also speak to the recent request by 50 state and territorial attorneys general to be allowed to enforce their respective criminal laws pertaining to sex trafficking in this arena.

Ms. Souras is here today representing the National Center for Missing and Exploited Children, which serves as the national clearinghouse for reports relating to child sex trafficking, and as the coordinator of the national response to problems relating to missing and exploited children.

Finally, Mr. Goldman is a law professor at the Santa Clara University School of Law, who has devoted much of his professional life to analyzing laws and their impact on the Internet, and will be able to speak about the potential legal consequences of the proposed changes contemplated by this legislation.

I want to thank all of you for being here and for the advocacy and work that you're engaged in. These are issues that are often

difficult to discuss, but I believe that this Committee provides an appropriate venue for serious consideration of difficult matters, and I appreciate your participation in our discussion.

Finally, before I turn to Ranking Member Nelson for his opening statement, I just want to acknowledge that our colleague Senator McCain had also hoped to join us today, given his long leadership on efforts to combat human trafficking, but he had an unavoidable conflict at the Armed Services Committee, which he chairs. Without objection, Senator McCain's statement will be included in the record.

[The information referred to follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

I would like to thank Chairman Thune and Ranking Member Nelson for allowing this hearing to take place today and all my colleagues for their bipartisan support in standing up against human trafficking. I would also like to thank Senator Portman not only for his leadership on this important issue, but also for defending the vital role of Congress in addressing the victimization and exploitation of children through human trafficking.

Congress has a duty to defend the Constitution of the United States and to uphold the principles for which it stands. We also have a duty to eliminate all forms of modern-day slavery and human trafficking. These are appalling crimes that target the most vulnerable individuals in our society and undermine human dignity and the most basic of human rights. Sadly, the problem of trafficking is far more severe than most people realize as it is understated in law enforcement data. I commend the Committee for its leadership in proceeding with a hearing on the *Stop Enabling Sex Traffickers Act of 2017*.

The National Center for Missing and Exploited Children (NCMEC) recorded an 846 percent increase in reports of suspected child sex trafficking from 2010–2015, a spike the organization found to be “directly correlated to the increased use of the Internet to sell children for sex.” We are dealing with a \$150 billion illicit industry in the United States, one in which few perpetrators face appropriate punishment. According to attorneys general and judges across the country, it will take an act of Congress for victims to obtain justice for the crimes committed by sites like *Backpage.com*, which facilitate child exploitation with impunity due to the immunity Internet service providers (ISP) receive from Section 230 of the Communications Decency Act.

Last month, the Superior Court of Sacramento County granted a motion to dismiss pimping charges against *Backpage.com* in the *The People of the State of California vs. Carl Ferrer, Michael Lacey, and James Larkin*. Superior Court Judge Lawrence Brown dismissed these charges against *Backpage.com* executives Carl Ferrer and Michael Lacey, explaining that “If and until Congress sees fit to amend the immunity law, the broad reach of section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking.” It is clear that until Congress acts, we will continue to hear horrifying stories of children being bought and sold for sexual abuse on websites like *Backpage.com*.

I would like to thank Yvonne Ambrose for her courageous testimony. Her family's tragic story serves as a reminder that our work on this issue must continue. I would also like to thank my wife, Cindy McCain, for her tireless efforts in this field and to those organizations that have come forward to support the Stop Enabling Sex Trafficking Act of 2017. Your contribution is vitally important.

I am proud to cosponsor the Stop Enabling Sex Traffickers Act of 2017, which would amend Section 230 of the Communications Decency Act to allow victims of sex trafficking to seek justice against websites that knowingly or recklessly facilitate their victimization. The legislation would criminalize commercial activity that assists, supports, or facilitates a violation of Federal sex trafficking laws and enables state law enforcement officials—not just the Department of Justice—to take action against individuals or businesses that violate Federal sex trafficking laws.

We know that *Backpage.com* is a market leader in commercial sex advertising and that the website has been linked to hundreds of human trafficking cases. We cannot allow these heinous crimes to go unprosecuted. It is our duty as members of Congress to work tirelessly to combat human trafficking and aid the victims of this

monstrous crime. I will continue to work vigorously with my friends from both sides of the aisle on this very important issue. Thank you.

The CHAIRMAN. And I would note, however, that we're honored to have Mrs. Cindy McCain in our audience today, along with a number of distinguished guests, including Senator Heitkamp.

With that, I will now turn to Senator Nelson for his opening statement.

**STATEMENT OF HON. BILL NELSON,  
U.S. SENATOR FROM FLORIDA**

Senator NELSON. Thank you, Mr. Chairman.

As we have this hearing today, there is an untold number of women and children in the U.S. that are being sold at this moment, into sexual slavery via the Internet. In just using a few clicks, victims from all walks of life and all parts of the country are being forced to endure brutal and unspeakable crimes. Let me repeat: women and children are being forced into sex slavery in modern-day America, and it could very well happen to someone that you know.

Now, if that's not a wakeup call, then I don't know what is. And, sadly, it's the truth that my fellow Floridians tragically know all too well. According to the Human Trafficking Hotline, Florida ranks third in the country for the number of cases reported last year. The question before us today is simple: Why aren't we doing everything we can to stop this heinous practice? After all, we're talking about modern-day slavery, and our children are the ones that are at risk.

The bill we have before us today would help us shut down despicable websites that promote sexual trafficking. Don't kid ourselves, these shady and highly profitable website operators know full well how their sites are being used. What's more, they're hiding behind a decades-old legal shield in Federal communications law to immunize themselves from prosecution.

This bill, by the two Senators here and a host of others that the Chairman mentioned, would eliminate this safe harbor for sex traffickers and allow state attorneys general and other state and local prosecutors and victims to go after the websites that knowingly provide a platform for sex trafficking. It would not, as some claim, take a sledgehammer to the Internet.

We've got to take a stand. Rather, instead of a sledgehammer, it takes a common sense, responsible, and targeted approach, one that the courts tell us that we can take to limit the scope of the current law and help end the scourge of child sex trafficking on the Internet.

And while some stakeholders have concerns about this bill, I strongly believe that we cannot sit idly by any longer while the websites aid and abet child sex traffickers. The cost of inaction is way too high.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nelson.

As Senator Nelson mentioned, we're joined today by two of our colleagues in the Senate, and the lead sponsors of the SESTA legislation, and so we're very privileged to welcome Senators Portman and Blumenthal. Senator Blumenthal, of course, is a member of



this Committee. We look forward to hearing from each of you about your legislation. I'll start on my left, and your right, with Senator Portman and Senator Blumenthal.

Senator Portman, welcome.

**STATEMENT OF HON. ROB PORTMAN,  
U.S. SENATOR FROM OHIO**

Senator PORTMAN. Thank you, Senator Thune. I appreciate your holding this hearing and your personal commitment and Senator Nelson's personal commitment to combating this horrific crime of sex trafficking.

I want to thank my colleagues around the panel, many of you who have stepped up early on and cosponsored legislation and played a critical role in us getting to this point. You know, we have passed legislation. Senator Thune has been part of that over the years. This Congress has done more in the last few years on sex trafficking than we have in our history, but the reality is it's on the increase, and it's for one reason, according to all the experts, and that's online sale of girls, children, women. We've got to face that reality and deal with it.

And again I appreciate the fact that you're having the opportunity to hear not just from us—and I appreciate my colleague being here, Senator Blumenthal and I are cofounders of the Caucus on Trafficking, and we're partners in this effort—but you're going to hear from victims, too, as I understand it. I think Yvonne Ambrose is here, and Yvonne is going to talk about her tragic personal story, and it's heartbreaking. And as a father of three, and I see many parents around the panel here today and behind us, it's unimaginable this would be going on in the 21st century.

So again thank you to all the witnesses, but particularly Yvonne for showing the courage to come forward and talk about the horror that she has experienced and sharing that story with us.

This increase in sex trafficking is a stain on our national character. It is. The fact that it's going on in this country at this time. Based on the information we've received from law enforcement—and law enforcement, by the way, is strongly behind this legislation. As you know, they have endorsed it across the board, the district attorneys, U.S. attorneys, and the FOP, but they tell us the increase is real and that it's primarily based on this increase on the Internet.

By the way, the tech community does not deny that. For example, a Google executive wrote an op-ed earlier this spring saying, quote, "Technology's role in human trafficking cannot be ignored, as the example of backpage demonstrates. The sad reality is that three out of four child sex trafficking victims in the United States have been exploited online, and predators often make their first connections to victims on the Internet." This is a Google executive. I believe Google wants to fight back against trafficking, and I think she's right.

I see this reality myself as I visit with survivors, and I'm sure all of you have had this experience back home in talking to victims and survivors. Repeatedly, they tell you the same thing, the trafficking is on Backpage. Usually drugs are involved as well.

As traffickers have told me, or sex trafficking victims have told me, and, you know, this comes from probably a half dozen different victims, the same thing, which is that, "Senator, this has moved from the street corner or the street to the smart phone." That's where it's moved, and that's where there is this ruthless efficiency.

Last month, I spoke to some victims in Youngstown, Ohio, and, of course, Backpage came up because they said that's how they were trafficked. A young woman told me she was first sold on Backpage at age 9. She told me tearfully that her father would take her from city to city for major sporting events and sell her up to 20 times a day. Ruthlessly efficient.

With Ranking Member Claire McCaskill, the Permanent Subcommittee on Investigations, which I chair, has spent the last couple of years investigating Backpage. We took a deep dive. We found, unfortunately, that the website is far more complicit in these crimes than anyone previously thought. We were able to show Backpage was actively and knowingly involved in illegal sex trafficking, and it covered up evidence of its crimes in order to increase its profits.

Thank you, every member of this panel, for voting with us to hold them in contempt when they refused to testify. When they refused to provide information, we took it all the way to the Supreme Court. Thanks to the Senate, for the first time in 21 years, holding a private actor in contempt of Congress, and we were successful in getting a million documents that showed clearly that they were actively and knowingly involved in illegal sex trafficking.

Despite these facts, efforts by trafficking survivors and law enforcement to hold Backpage accountable have failed repeatedly. Why? Because courts around the country have ruled that Backpage has brought immunity under a Federal law, the Communications Decency Act. It's a 1996 law that has not kept up with the times. When Congress enacted the law, I do not believe it intended to shield anyone for responsibility for serious Federal crimes, much less sex trafficking. Looking at the legislative history, I believe the goal was to protect website operators who were acting in good faith, and that made sense, who lacked knowledge that third parties were posting harmful or illegal content on their sites.

We all believe in free speech. I think everyone on this panel believes that we ought to have Internet freedom, but the Communications Decency Act was never intended to protect those that engage in illegal conduct, and it was certainly never intended to protect online predators and sex traffickers. In fact, nothing in the original text of this law suggests that there should be an all-encompassing immunity for websites like Backpage that knowingly engage in sex trafficking.

Judges across the country, by the way, have made it clear that it is Congress' responsibility to fix this law. They have invited us to fix this law. Last year, the First Circuit Court of Appeals recognized Backpage's role in the horrific crime of sex trafficking, but the court ruled that its hands were tied stating the remedy is through legislation, not litigation.

And just last month, a court in Sacramento threw out pimping charges against Backpage because of the Communications Decency Act. That court made an even more obvious call to Congress stat-

ing, quote, "If and until Congress sees fit to amend the immunity law, the broad reach of Section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking."

It's up to us. Because of this interpretation of the law over the last 20 years, only the Congress can fix this injustice. That's why we've introduced this legislation. It's bipartisan. It's common sense. It's targeted. It's called the Stop Enabling Sex Traffickers Act. It would do just two things. First, it would allow sex trafficking victims to get the justice they deserve against websites that knowingly, knowingly, facilitate sex trafficking against them. Second, it would allow state and local law enforcement to prosecute such websites that violate Federal sex trafficking laws. I know Xavier Becerra, Attorney General of California, is going to talk about this.

This knowing standard, by the way, in our legislation is a high bar, as the lawyers around this panel know. They have to be proven to have knowingly facilitated, supported, or assisted in online sex trafficking to be liable in the first place. Because the standard is so high, our bill protects good tech actors and targets rogue online traffickers like Backpage.

Our bill also preserves the Good Samaritan provision in the law that protects good actors who proactively screen for offensive material. I believe Google, Facebook, and other legitimate websites do that, and they should have that Good Samaritan protection, and that's in the law.

Support is growing for the legislation. As I mentioned, we've got lots of support from the law enforcement community, also dozens of survivor groups, some are here today, anti-trafficking coalitions, faith-based groups.

We appreciate the encouragement from some prominent members of the tech community, by the way. Oracle has endorsed the legislation. 21st Century Fox endorsed it last week. Just yesterday, Hewlett Packard Enterprise endorsed the legislation, as did Walt Disney Company. They've all joined in this mission to stop this criminal sex trafficking online.

Fifty attorneys general from across the United States recently urged Congress to support this legislation. Again, we'll hear from California Attorney General, our former colleague, Xavier Becerra.

But let me say this, the fact that instances of human trafficking and sex trafficking are actually increasing in this country in this century is an outrage. It's a disgrace. And I believe history is going to judge us on how we respond to it.

Silicon Valley, Mr. Chairman, holds itself out as being more than just another industry, but, rather, a movement to make the world a better place. In so many ways the Internet has contributed positively to our world, but the selling of human beings online is the dark side of the Internet. It can't be the cost of doing business, and it doesn't make the world a better place.

And there's something we can do about it. This legislation will help. This Committee can act to stop criminal sex trafficking online.

Thank you for allowing me to testify today, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Portman.  
Senator Blumenthal.

**STATEMENT OF HON. RICHARD BLUMENTHAL,  
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thanks very much, Mr. Chairman. Thanks to you and the Ranking Member for bringing us together today on this very important subject. And I want to thank both of you for your personal commitment to action on this important topic.

And I also want to thank Senator McCain. I just left him at the Armed Services Committee, which he chairs, and there's a very important hearing going on there now, so I know he will try to be here if he can. But Cindy McCain is with us today, and she has been a tireless and tenacious advocate on this subject, so I want to thank her as well.

I particularly want to thank our colleagues, nearly a third of the Senate, many members of this Committee, who have cosponsored this bill. Senator Hassan and Senator Duckworth have just cosponsored it, joining Senator Nelson, Senators Klobuchar, Blunt, Sullivan, Cruz, Lee, and Capito. And I want to thank others who have not yet joined it. We are talking very diligently with Senator Harris, for example, as well as Senator Cortez Masto, Senator Booker, Senator Schatz, others who are helping us to clarify and make this legislation even more precise. And I look forward to continuing our work with this group to make sure that the language achieves our goal without any unintended or unforeseen consequences.

And I want to finally join the survivors who are with us today, Yvonne Ambrose. We are here in large part because of three incredibly courageous young women. These three women were each 15 years old when they were first sold for sex. They were sold invisibly, but in plain sight. The ads that sold them used coded language to indicate that they were, in fact, underage. Over the course of roughly 4 years, they were raped thousands of times.

In 2014, these three young women had the courage to go to court. They brought a lawsuit against Backpage for facilitating sex trafficking. The First Circuit reviewed their case, and as Senator Portman has said, they called this an outrage. They used that word, "outrage," but they said that there were no remedies, there were no legal claims that could be recognized in court because of this section in the law, Section 230 of the Communications Decency Act. Nothing could be done for them.

The court in effect said to us, the Congress of the United States, You made this mess, now fix it. These women are in a legal black hole without justice. Congress must fix it. That's why we're here.

This problem is hardly new or novel. My efforts against sex trafficking in fact began almost a decade ago, exactly this problem, when I led a coalition of 39 states investigating the online classified company Craigslist for facilitating and profiting from sex trafficking. In 2010, Craigslist voluntarily took down its adult services section. We won the battle, but the war was far from won.

As purchasers of sex moved away from Craigslist, they went to Backpage.com. In fact, the National Center for Missing and Exploited Children, which I should note is represented here today, reported an 846 percent increase in reports of suspected sex trafficking between 2010 and 2015. In other words, after Craigslist settled, there was an 846 percent increase in sex trafficking over those

5 years, and it was directly correlated to the increased use of the Internet to sell children for sex.

In 2016 alone, the National Human Trafficking Hotline received 5,551 reports of sex trafficking incidents. Shutting down one website is not enough. Shutting down Backpage, even if it would occur, is not enough. We need to pass this measure. If we fail to do so, if we fail to close this gap and fill this legal black hole, we become complicit.

And those numbers, by the way, underestimate this problem. Think of it for a moment. Those reports require the same courage that these young women demonstrated to come forward and brave the stigma and shame of acknowledging that they have been sold for sex.

So when the critics of this legislation say there will be a deluge of lawsuits, that there will be frivolous or unfounded claims, think of it for a moment. Survivors have to come forward and establish their standing under the law by making the case that they have been sold for sex. There will be no deluge of frivolous lawsuits as a result of this measure.

It's time to say, "No more." Congress must stop allowing websites to promote and profit from sex trafficking. Senator Portman has outlined the provisions of this bill. They are narrowly targeted and carefully crafted. We are working to make them even clearer and more precise to avoid unintended consequences.

I understand that some of the companies may wish to continue the shield from liability that they have. Companies rarely welcome additional legal accountability. I understand that point. But this is about social and moral responsibility as well as giving survivors and victims a day in court. It is time to open the courthouse doors to victims of sex trafficking who have been sold into slavery as a result of ads that right now can enjoy absolute immunity for sites that knowingly facilitate, support, or assist—knowingly facilitate, support, or assist. It's a high bar. These companies should be compelled to meet it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Blumenthal. And again thank you to both you and Senator Portman and the cosponsors of your legislation for your strong advocacy and for the conversations that you have entered into with members of this Committee and others in the Senate to try and make sure that we get this right. But certainly we all recognize the need to act, and we appreciate your leadership on this. Thank you for being here.

I will now recognize another colleague of ours, Senator Wyden, the great State of Oregon. And we appreciate you, Senator Wyden, being here and sharing your perspective.

**STATEMENT OF HON. RON WYDEN,  
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you very much, Mr. Chairman, and Senator Nelson. And I also come as an alum of this Committee, and as one of the coauthors of Section 230 of the Communications Decency Act.

Numerous experts obviously have pointed out that Section 230 was absolutely necessary to bring our legal system into the 21st

century. It has been the legal foundation for the growth of the Internet, particularly in areas like education, jobs, and a platform for free speech around the world, and I believe it ought to be kept intact.

Now, when I wrote Section 230 more than 20 years ago, it was in recognition of the fact that the Internet was just going to change everything, the way we interact with each other, the way we do business. It would change virtually every corner of our lives and our society. And we understood that no amount of legislation and political bloviating could stop the change, but we could influence how it came about.

And the key question, Mr. Chairman and colleagues, was, Would there be an Internet dominated by private networks with the worst impulses of human beings going on in impenetrable dark corners, or would the Internet be a platform open to the world where such impulses would be exposed to sunlight and the law? That's why we made it crystal clear that absolutely nothing in the 230 statute protects against violation of Federal criminal law, and, more importantly, nothing in the statute protects individuals from the full force of the law when they commit and leave evidence of their crimes online.

The Net has exposed much about human behavior that we might prefer to remain hidden. It's exposed much that many, particularly those in law enforcement, already knew about, but it's exposed them. And the question now is—and you've touched on this, Mr. Chairman—is, How do you respond? Do we react like politicians, mindlessly bludgeoning deep pockets, driving away innovation, and utterly failing to stop the worst behavior, but simply just drive it underground? Or does the Congress react with resolution and purpose, providing law enforcement with the resources to effectively attack this horrible scourge that is far older than the Internet and we end up actually aiding the victims of this horrendous crime?

So the issues to be addressed are not whether to eliminate the freedom that makes the Net a place of innovation and opportunity; the issue is how to address, how to identify, and lock up these horrible criminals who use the Net, as they've abused a thousand tools before them, to create victims and destroy lives. If law enforcement needs more resources, colleagues, or the tools to crack down in crime-laden Internet neighborhoods like Backpage, let's give them what they've got to have, and that includes a change in law to hold responsible those who might cynically design to profit from illegal behavior under the guise of providing a legal service.

And I have fought alongside many of you on this panel, in this Senate, to end sex trafficking at home and abroad and support survivors of trafficking by getting those resources to the key enforcement officials who are on the front lines to fight this modern-day slavery. And I'm going to continue to do whatever it takes to provide strong protections and bring support to survivors to stop this kind of exploitation.

Mr. Chairman and colleagues, I take a back seat to no one, no one, in this Senate in the fight against sex trafficking. That's a matter of public record. I just believe that the legislation being considered today is the wrong answer to an important question. It wasn't very long ago that Members of the Congress were calling

the Net a series of tubes. When it comes to legislation, we've had the most success when protecting Americans' rights and protecting incumbent industries from smothering the innovators.

Now, I don't think anybody on the Committee today says, "Hey, let's undermine this thing that created a trillion dollars' worth of economic value." That is part of the question being considered today. America may have played the biggest role in creating the Net, but important to the discussion today, the barriers to entry are very, very low.

The reason another nation with more people, including more computer users, like China or India, that had a functioning interactive network before us, like, say, France, have failed to dominate the Net is our foundation of Internet laws that kept lawyers and politicians and tax collectors from hobbling innovation and hobbling growth. Those forces never give up, and I'm sad to say they're at work right now.

When I helped author Section 230, I didn't know all the effects it would have, but I did know three things.

First—and I'll wrap up with this, Mr. Chairman—I wanted to help the gutsy startup by allowing them to hire engineers and developers and designers before they went out and hired a team of lawyers.

Second, I wanted to protect good actors by allowing them to take down some material without being liable for everything. I think we all can agree that's a better scenario than having websites hide their heads in the sand.

And, third, it was absolutely essential to me, my bottom line, is making sure that bad actors would still be subject to Federal law. People who commit crimes can and ought to be prosecuted, whether they're online or whether they're on a street corner. Protecting that startup from discriminatory state law is vital, but it is equally important to make sure criminals of all kinds are held accountable.

So as you consider making changes to Section 230, I hope you keep looking out for that person we were talking about 20 years ago, the little guy, the person who has taken a big risk. Technology has been important for the last 20 years, and we need to make sure that we have policies like Section 230 in place to make sure it stays that way.

And I think this Committee, in its tradition, has always been to pursue the regular order when it considers changes. And I look forward to having the opportunity to talk with you, our friend Senator Nelson, all of our colleagues, as this debate goes forward.

The CHAIRMAN. Thank you, Senator Wyden.

I want to thank our colleagues all for being here this morning and inform everybody that a vote has been called. And so we're going to keep rolling here, and we'll try and figure out a way to juggle the chairs so that we can continue to hear from the people that are here.

And I want to invite up now to share her very personal experience with this, Ms. Yvonne Ambrose. And she'll be next.

Ms. Ambrose, welcome to the Committee. Thank you for your willingness to share your personal story with us. We look forward to hearing from you.

**STATEMENT OF YVONNE AMBROSE,  
MOTHER OF DESIREE ROBINSON**

Ms. AMBROSE. Thank you so much, Senator Thune and Ranking Member Nelson and members of the Committee for holding this hearing today and inviting me to come and testify.

When you have your first child, it changes your life. You become a different person. Your whole world revolves around them. You get butterflies every time you kiss their little feet, every time you hold their hand. Their smile brightens your whole life. Your life revolves around this person, and you would give them the world if you could. You think you will have forever with them, so you start planning for their future.

My daughter, Desiree Robinson, was born March 29, 2000, at 2:52 p.m. She was the light of my life, my firstborn, my only daughter, my heart, my world. And Desiree made me a better person because she was a beautiful person. She had the brightest smile that could light up a room. And with your permission, I would like to share a photo of her with the Committee.

During her grammar school years, she made friends everywhere she went, whether it was on vacation, at school, at church, the Boys and Girls Club, or walking around the mall. Everyone wanted to be her friend. She was loved by all, and everyone she encountered, she loved as well. She was a bright student, great athlete, and took joy in helping others. Throughout grammar school, she won numerous awards for her academics, citizenship, athletics, and volunteered within the community.

Desiree had dreams of one day becoming a physician in the U.S. Air Force. She attended Air Force Academy High School on the South Side of Chicago with hopes of graduating and going to captains school in Colorado to help further her dream. Her future was very bright.

Desiree was a good person who just wanted to be loved and accepted by all. Desiree struggled in the last year of her life. She was bullied for her diverse racial background, and always tried to fit in with her friends, like a lot of other teenagers. She knew she was loved by her family and friends, but she looked for love and acceptance anywhere she could find it. She was only 16 years old and just wanted to make friends. We now know that adult men found Desiree on social media, reached out to her, pressured her, and used her to make money. She was preyed on and sold online by pimps who took advantage of her. Desiree didn't know what *Backpage.com* was or the harm that would come from this website.

On December 23, 2016, a 32-year-old man by the name of Antonio Rosales was looking through *Backpage.com* for a child to have sex with, just like countless others before him. They knew that this is a website that they could go to, to engage in sex with minors. He knew *Backpage.com* was a site to go to in order to find young underage girls to have sex with. During his search, he came upon a picture of my 16-year-old daughter under the posting, "New girl in town looking to have fun," which was posted by her pimp. Desiree was driven to Antonio's residence by the pimp with the intent of having sex with this 32-year-old man, a man twice her age.

This was the last night of my daughter's life, and her pictures were posted and moderated by *Backpage.com*, and this was the rea-



son for her demise. On Christmas Eve, December 24, 2016, Desiree, my baby, was brutally murdered, and now my life has changed forever. She had been beaten, raped, strangled, and if that wasn't bad enough, he slit her throat, all because she said, no, she didn't want to do this again. She screamed for help, and there was no one around to help her.

Desiree's death should have never happened. The sex trafficking of minors should not be happening in our country. Taking advantage of our children on the Internet has become such a common thing in this country that people turn the other cheek just because they don't want to believe it's actually happening right here in our backyards. This is not a race, gender, or economic problem; this is a people problem, a human problem.

If there were stricter rules in place for postings on these websites, my child would still be alive with me today. The truth is *Backpage.com* and other sites are making millions of dollars by exploiting our children and allowing them to be taken advantage of by predators. If we don't speak up now, these websites will continue to profit off trafficking our babies. It could be your child, your niece, your nephew, your cousins, your friends' children next if you don't stop this.

The tragic death of my baby girl made me take a step back and think about her life. She was a good person, a good student, and had a great personality. She gave her all to make sure that people were happy. She even had a tattoo on her arm that said, "Be the change that you would like to see in the world."

The day my baby was taken away from me was the worst day of my life. The hurt and pain that my family continues to endure is unimaginable. I struggle to believe that a loving and talented girl such as Desiree is gone from this earth because an Act such as 230 allowed the Internet to exploit her. And now, Section 230 is standing in the way of justice for my child and other Jane Does out there like her. *Backpage.com* and other companies like this must be held responsible for what they have created. I'm sure when this Act was put into place in 1996, the Internet was in its infancy, and it was not intended to allow companies to legally sell children on the Internet, but somehow a dollar has become more important than a human life. If you're going to fix this problem, fix it.

I was suppose to make this transition from this Earth before her. Parents are not supposed to bury their children. All of the plans that we made together for her life will never happen. I would not wish this pain and hurt on my worst enemy, and I pray that Desiree's life can make a difference so no one else has to ever endure this pain again.

I'm asking you, the U.S. Senate, to amend Section 230 and be the change you want to see in this world, not only for the justice for Desiree, but for all the countless Jane Does out here and the other little girls to come who don't have a voice. We have to be the change now to protect our babies from websites like *Backpage.com* that open the door for predators without any accountability.

My name is Yvonne Ambrose. I am the mother of the late Desiree Robinson, and I'm asking you, the U.S. Senate, to change Section 230, and support the bipartisan legislation, the Stop Ena-

bling Sex Traffickers Act, not only for my baby, but for the protection of yours and others to come.

The CHAIRMAN. Thank you, Ms. Ambrose, for sharing in a very compelling and powerful way and helping personalize the issue that we're dealing with for all of us here on this Committee this morning. Thank you for being here.

Ms. AMBROSE. Thank you.

The CHAIRMAN. I want to invite our next panel to come forward. We have the Attorney General of California, Mr. Xavier Becerra. Xavier, welcome.

Mr. Eric Goldman is Professor of Law at Santa Clara University School of Law. And Ms. Abigail Slater, who is General Counsel at the Internet Association. And Ms. Yiota Soros—Souras I should I say.

So we want to welcome all of you to the panel and thank you in advance for the testimony that you're going to share with us. And we will start on my left, and your right, with Attorney General Becerra, and we'll proceed from there. And if you can, as much as possible, confine your oral remarks to 5 minutes, we will ensure that your entire statement is included as part of the record, but it will enable members of the Committee to have time to ask questions.

So General Becerra, welcome back to Congress, and great to have you here.

**STATEMENT OF HON. XAVIER BECERRA, ATTORNEY GENERAL,  
STATE OF CALIFORNIA**

Mr. BECERRA. Mr. Chairman, thank you very much, and to Ranking Member Nelson and to all the members of the Committee, thank you for letting me join you today. It's always a pleasure to be back where I spent more than 24 years of my career.

I want to thank, first of all, Senator Portman and Senator Blumenthal, the sponsors of this legislation, 1693, for their hard work and their tenacity. To my Senator, Senator Kamala Harris, I want to thank her for all the work that she has done over the years, previously as the Attorney General for the State of California before she became now our U.S. Senator, joining Senator Feinstein here in Washington, D.C.

It's important to thank the tech industry. As all of you know, many in the tech industry have stepped up to be partners with law enforcement and child advocates to combat human trafficking. And certainly we have to thank our tireless advocates, who somehow give hope to so many women and children and help provide critical services to survivors of sex trafficking. But most of all, I want to thank the men and women of law enforcement, who stay in the ring even though we've got one hand, if not both hands, tied behind our back in this fight against child sex trafficking.

S. 1693 is a serious effort to balance the virtues of a free and open Internet with the bedrock American value that our children are our greatest asset, each one of them, and we must hold those who exploit them accountable.

Senate Bill 1693 recognizes and balances on one hand the Communications Decency Act success in promoting and propelling the Internet and its innovation, and on the other, the swift and lucra-

tive migration of sex trafficking from the pavement to the Internet. S. 1693 goes to the heart of one of the critical concerns 49 state generals and I expressed in a recent letter to Congress, the need to clarify the Communications Decency Act so there is no mistake about the authority of state and local prosecutors to prosecute those involved in online child sex trafficking.

Human trafficking is one of the fastest growing criminal enterprises worldwide. The Internet has made it so much easier, faster, and safer to make big bucks. Pimps use virtual brothels to sell vulnerable children online on a daily basis. As much as we've all tried to do our best, whether it's Congress, the tech community, law enforcement, we are losing the fight against sex trafficking, which means we're losing our children. Ask Yvonne Ambrose.

So here's my plea, Mr. Chairman: be thorough, but courageous, like the kids who overcome their trauma in crossing the finish line with S. 1693. We're all here ready to help however we can to get a bill that gets the votes.

Second, don't let sex trafficking or our children believe that we're going to allow people who traffic in sex with our kids hide in plain sight on the Internet. And let's not let ignorance of the law be anyone's excuse.

Three, don't be dissuaded. Regardless of what anyone says, prosecution for sex trafficking requires criminal intent. No one can be convicted for acting in good faith.

Four, amending the 21-year-old Communications Decency Act is not a sin. Even the Constitution was amended within 14 years of its adoption. And that's, of course, when we accepted the First Amendment and the remainder of the Bill of Rights to the Constitution. And I must also mention, having served in this body for 24 years, that here in the Senate and the House, you have the power of Congress' legislative record to buttress the underlying purpose of any changes that you choose to make to the CDA. Remember that the CDA is older than all of the children we're fighting to protect. So let's look at the CDA with fresh, but experienced eyes.

The First Amendment in the CDA will continue to stand the test of time. But you can't yell, "Fire!" in a theater, you can't sell kids on the street for sex, and you shouldn't be allowed to traffic children for sex on the Internet. It's time to clarify the Communications Decency Act so that we can prosecute those who would sell our children for sex. Senate Bill 1693 gives us a chance to save our children from the unspeakable exploitation we can only imagine, and for that reason, Mr. Chairman, I will work as hard as I can with you and all those who believe it's time that we finally amended the Communications Decency Act to protect our children.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Becerra follows:]

PREPARED STATEMENT OF HON. XAVIER BECERRA, ATTORNEY GENERAL,  
STATE OF CALIFORNIA

## **I. Introduction**

Thank you, Chairman Thune, Ranking Member Nelson and all the Members of the Committee for the opportunity to be here today. It is my privilege to testify before the Committee on Commerce, Science, and Transportation on Senators

McCaskill and Portman’s bipartisan S. 1693, The Stop Enabling Sex Traffickers Act of 2017.

As the Attorney General of California—our state’s top law-enforcement officer—I have a unique role to play in combating the heinous crime of human trafficking. Today, I am here to explain why the Communications Decency Act needs to be clarified so that we can more effectively do our jobs in enforcing laws that protect children and help us eradicate this crime for good.

Human trafficking is one of the fastest-growing criminal enterprises worldwide. All too often, criminals prey on women and children and profit from sex trafficking without fully facing the consequences of their crimes. California has more reported cases of human trafficking than any other state. As Attorney General, I am committed to doing everything in my power to prosecute traffickers and disrupt the criminal organizations that profit from the exploitation of human beings.

The Urban Institute examined the underground economy of sex trafficking in eight major U.S. Cities, including San Diego, and found that pimps and traffickers interviewed for the study took home between \$5,000 and \$32,833 a week. Notably, in this study, multiple pimp offenders reported, “no one actually gets locked up for pimping”.<sup>1</sup>

The perpetrators of human trafficking have become more sophisticated and organized, requiring an equally sophisticated response from law enforcement and its partners to disrupt and dismantle their networks.

## II. Amending the Communications Decency Act

Section 230 of the Communications Decency Act was passed in 1996.

Unfortunately, some courts have interpreted the Communications Decency Act as currently written to limit our ability to go after companies that actively profit from sex trafficking and crimes against children. We believe that those judicial decisions misconstrued what Congress intended when it originally enacted the Communications Decency Act. I therefore applaud the current efforts to make clear that the Communications Decency Act does not bar states from pursuing these important prosecutions.

The world was a different place in 1996, the last time this Congress passed a major telecommunications act—in particular, the Communications Decency Act—before most of today’s victims of sex trafficking, adults or children, were even born. The modes of trafficking children are different. The horrendous crime is the same, but the venue for it has changed. The Internet has caused an explosion of sex trafficking, where virtual brothels are used by pimps to exploit and sell vulnerable children on a daily basis.

Maggy Krell is a career prosecutor at the California Department of Justice who has taken the lead on sex trafficking cases for our office, including against the owners of Backpage.com. She said that, “virtually every human trafficking case now involves a website component. Law enforcement needs to be able to disrupt the criminal networks.” This point underscores the importance of amending the Communications Decency Act.

I therefore support passage of S. 1693 and its amendments to Section 230 of the Communications Decency Act. It’s an important step we should take to make clear the authority of state and local law enforcement to protect victims of trafficking from those who promote, facilitate and benefit from sex trafficking online.

I appreciate the work of Senators McCaskill and Portman and many of you on this Committee in leading the effort of the United States Senate on this bipartisan bill. I also want to thank Senator Harris for all that she has done to combat trafficking in California.

I know that the Internet Association and others have come out against this bill, but this bill is narrowly crafted to target sex trafficking. I appreciate the help of many of these companies that are helping California and other states more effectively target traffickers and pimps and encourage them to come to the table to work with us on this bill. I hope they will join us at the table on this bill to address this critical issue.

This bill is about protecting our most vulnerable. This is not a Republican or Democratic issue. This is an issue of justice, and ensuring that our Nation’s top cops—my fellow attorneys general across the country—are able to enforce the law. In fact, recently, 49 of my colleagues—representing nearly every U.S. state—signed a letter to this Committee urging Congress to act.<sup>2</sup>

<sup>1</sup> Urban Institute, <https://www.urban.org/research/publication/estimating-size-and-structure-underground-commercial-sex-economy-eight-major-us-cities>

<sup>2</sup> <https://www.oag.ca.gov/news/press-releases/attorney-general-becerra-urges-congress-amend-communications-decency-act-empower>

In fact, in that letter, my colleagues and I urged Congress to go broader than S. 1693, and encouraged amendments be applicable to not only sex trafficking but all criminal enforcement action. I believe that this action will make the bill even stronger, and protect against other crimes such as child pornography and other forms of cyber exploitation. I encourage the Congress to continue thinking about and working on this bill and issue. California welcomes the opportunity to be a part of the discussion.

### III. California's Experience and Perspective

According to the National Human Trafficking Hotline, 4,460 cases of human trafficking have already been reported for 2017, 705 of which were reported in California since the start of the year. In fact, over the past five years, California has consistently had the most human trafficking cases reported in the United States.<sup>3</sup>

In recent years, transnational criminal organizations and affiliated domestic gangs have expanded from drug and firearm trafficking to the trafficking of human beings. From cross-border tunnels for transporting victims to domestic recruiting of vulnerable populations in our local communities, these criminal organizations have set aside traditional rivalries to set up commercial sex rings that profit from the sale of human beings, in particular, young women and girls.

California has led the Nation in the fight against human trafficking—from increasing penalties against traffickers to providing resources to help survivors heal from the trauma of their experience and seek and find justice. Our state has passed legislation to finally treat sexually exploited children as victims, not criminals. We also have a law in California that requires large companies doing business here to provide information to consumers about their efforts to fight human trafficking. And we are continuing to push innovative legislation aimed at prevention to teach our children in the classroom how to recognize and avoid predators.

Further, my office runs a Human Trafficking Taskforce with local law enforcement in San Diego that disrupts and dismantles human trafficking and child exploitation organizations through a comprehensive, collaborative and regional law enforcement and prosecution response. The Taskforce works to identify victims and hold exploiters accountable; along with promoting community awareness, expanding the exchange of information, and enhancing law enforcement resources and training.

The State of California is committed to combatting all human trafficking and has demonstrated this consistently and will continue to work with partners across the country on this important issue.

### IV. Backpage.com Case

The California Department of Justice brought charges alleging that the owners of Backpage.com committed conspiracy, money laundering, and pimping by profiting financially from advertisements used to promote and solicit the sex-trafficking of teenagers, including victims under the age of 16.

However, the defendants argued in court that the Communications Decency Act gave them broad immunity from all of the charges. Ultimately, the judge allowed us to go forward on the conspiracy and money laundering charges, but as to the other charges, the Judge said: "If and until Congress sees fit to amend the immunity law, the broad reach of section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking."

We are pursuing our prosecution of the conspiracy and money laundering charges. But regardless of our success in California, the amendment is aimed to ensure that state and local law enforcement, across the board, have the unquestioned authority to enforce our laws and protect our most vulnerable citizens. This bill takes an important step forward in serving that goal and helping victims.

Although I support the bill as an important step, it is essential to note for the Committee that the bill can be made even stronger. The focus of this bill is narrow, in the sense that it specifically mentions only state prosecutions involving sex trafficking. We believe that the original intent of Congress in enacting the CDA was to preserve state prosecutorial authority more generally, just as the original CDA preserved Federal prosecutorial authority. I understand and respect that Congress is seeking to strike a balance here in narrowly crafting this bill. My team at the California Department of Justice and I would be happy work with Senators Portman, McCaskill and this Committee to make the bill even stronger.

### V. Conclusion

But let's be clear, this discussion today is not just about tweaking a statute. It's about real lives.

<sup>3</sup>National Human Trafficking Hotline, <https://humantraffickinghotline.org/states>

Flip through any newspaper. Countless instances of child sex trafficking—and its online promotion—occur every day in the United States. Federal and state law enforcement recently arrested a Chicago man accused of pimping a 16-year-old girl via an online website, leading to her murder. The man “shopped [the girl] around” online, delivered her to a customer, and then fell asleep in his car outside a parking garage. When he awoke, he discovered the girl’s body in the garage, “her throat slit and her body badly beaten.” We can, and we simply must, do better.

I am sure our panelists today will share the degree to which this crime is plaguing our country.

We can’t deny that the Internet plays a significant role in sex trafficking and has created virtual brothels where victims are bought and sold online. And we won’t turn a blind eye to the biggest beneficiaries of sex trafficking because they were owners of a website instead of pimps on a street corner.

Amending the Communications Decency Act is a critical step we can take in the fight against human trafficking and one that we must take. To that end, we look forward to working with Congress to on this very important issue for Americans across the country.

The CHAIRMAN. Thank you, General Becerra. Great to have you back and with us today.

Mr. Goldman is up next. I’m going to go vote, and Senator Inhofe will have the gavel here.

**STATEMENT OF ERIC GOLDMAN, PROFESSOR,  
SANTA CLARA UNIVERSITY SCHOOL OF LAW**

Mr. GOLDMAN. Chairman Thune, members of the Committee, I appreciate the opportunity to testify today about the Stop Enabling Sex Traffickers Act of 2017. As we’ve heard today, sex trafficking is a horrific crime, and I applaud Congress’ ongoing efforts to combat it. However, I’m concerned that SESTA is not the right solution to stop sex trafficking.

Specifically, SESTA will counterproductively lead to more socially harmful content and more online sex trafficking promotions. Instead of stopping bad actors, SESTA will help them proliferate. To understand why, it’s helpful to review why Section 230 has worked so well.

When I started practicing law, Internet law, in 1994, before Congress enacted Section 230, we advised online services to handle third-party content and activity in one of two ways. The service could either: one, accept that it will be fully liable for third-party content and manage that risk by exercising editorial control through content prescreening or other costly and cumbersome editorial procedures; or, two, take minimal steps to moderate third-party content, and thereby avoid any knowledge that might lead to liability.

Section 230 mooted that advice. Section 230 instead allows online services to safely adopt a wide range of moderation practices between those two extremes. By reducing online services’ moderation costs and liability exposure, Section 230 spurred new innovative services and fostered their growth, contributing to the Internet’s success. Virtually every waking hour of every day we use online services that owe their existence to Section 230’s protections.

SESTA would reinstate the moderation dilemma that Section 230 eliminated. Because of Section 230, online services today voluntarily take many steps to suppress socially harmful content; that could include false and malicious content, sexual material, and other lawful but unwanted content. And they can do so without fearing for liability for whatever they miss.

Post-SESTA, some services will conclude that they cannot achieve this high level of accuracy or that moderation procedures would make it impossible to serve their community. In those cases, the services will reduce or eliminate their current moderation efforts. As more services do less to moderate third-party content, we will see more socially harmful content online that would have been moderated today. Indeed, some online services that are actively suppressing sex trafficking promotions will stop those efforts, leading to the unintended consequence that SESTA will foster the expansion of online sex trafficking promotion.

SESTA tries to avoid this moderation dilemma by focusing on, quote, “bad actors” who promote sex trafficking. This doesn’t work because only some sex trafficking promotions clearly self-identify as such. Sex trafficking promotions can take less obvious forms, such as online prostitution ads, ads for adult services that are legal, and, indeed, every type of user content ranging from videos to dating profiles to message board comments to tweets, and they can do so using coded phrases and euphemisms to mask their promotional objective.

As a result, online services can’t magically find and eradicate only the online sex trafficking promotions. Automated filters are costly and suffer from high error rates. Furthermore, if the services decide to moderate their content, they will have to undertake the larger and harder effort to review their entire universe of third-party content, even content that lacks obvious red flags, to find every impermissible promotion. So SESTA doesn’t limit itself to bad actors; it applies to the entire Internet, and it forces services to do—that are doing moderation to comprehensively review all the content they receive.

Finally, SESTA isn’t necessary to fight online sex trafficking promotions. Section 230’s immunity expressly does not apply to Federal criminal prosecutions. Congress has enacted numerous crimes against sex trafficking and its promotion, including most recently the SAVE Act that this body passed just 2 years ago to target sex trafficking promotion on Backpage. If the Department of Justice prosecutes Backpage or any other sites for the crimes that they have committed, whether it’s the SAVE Act or based on other crimes, Section 230 will not shield them.

A Federal grand jury is currently investigating Backpage. Congress should wait for the results of that investigation, which I hope will come soon, to identify if any gaps exist in the law and how Congress should best respond.

SESTA is a complex law implicating important social issues. I’m grateful that this Committee is paying close attention to it. Thank you for the opportunity to testify.

[The prepared statement of Mr. Goldman follows:]

PREPARED STATEMENT OF ERIC GOLDMAN, PROFESSOR,  
SANTA CLARA UNIVERSITY SCHOOL OF LAW \*

Members of the Committee:

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Section 230 mooted that advice. Section 230 instead allows online services to safely adopt a wide range of moderation practices between those two extremes. By reducing online services' moderation costs and liability exposure, Section 230 spurred new innovative services and fostered their growth, contributing to the Internet's success. Virtually every waking hour of every day, we use online services that owe their existence to Section 230's protections.

SESTA would reinstate the moderation dilemma that Section 230 eliminated. Because of Section 230, online services today voluntarily take many steps to suppress socially harmful content (including false and malicious content, sexual material, and other lawful but unwanted content) without fearing liability for whatever they miss. Post-SESTA, some services will conclude that they cannot achieve this high level of accuracy, or that moderation procedures would make it impossible to serve their community. In those cases, the services will reduce or eliminate their current moderation efforts. As more services do less to moderate third party content, we will see more socially harmful content online that would have been moderated today. Indeed, some online services that are actively suppressing sex trafficking promotions will stop those efforts, leading to the unintended consequence that SESTA will foster the expansion of online sex trafficking promotion.

SESTA tries to avoid the moderation dilemma by focusing on "bad actors" who promote sex trafficking. This doesn't work because only some sex trafficking promotions clearly self-identify as such. Sex trafficking promotion can take less obvious forms, such as online prostitution ads, ads for adult services that are legal, and indeed every type of user content ranging from videos to dating profiles to message board comments to tweets (and use coded phrases and euphemisms to mask the promotional objective).

As a result, online services can't magically find and eradicate only the online sex trafficking promotions. Automated filters are costly and suffer from high error rates. Furthermore, if the services decide to moderate their content, they will have to undertake the larger and harder effort to review their entire universe of third party content—even content that lacks any obvious "red flags"—to find every impermissible promotion. So SESTA doesn't limit itself to bad actors; it applies to the entire Internet and force services doing moderation to comprehensively review all content they receive.

Finally, SESTA isn't necessary to fight online sex trafficking promotions. Section 230's immunity expressly doesn't apply to Federal criminal prosecutions. Congress has enacted numerous crimes against sex trafficking and its promotion, including most recently the SAVE Act passed just two years ago to target sex trafficking promotions on Backpage. If the Department of Justice prosecutes Backpage for any crimes Backpage may have committed (whether the SAVE Act or other crimes), Section 230 will not shield Backpage. A Federal grand jury is currently investigating Backpage. Congress should wait for the results of that investigation—which I hope will come soon—to help identify if any gaps exist in the law and how Congress should best respond.

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\* Professor of Law, Co-Director of the High Tech Law Institute, and Co-Supervisor of the Privacy Law Certificate, Santa Clara University School of Law. I'm testifying on own behalf, not on behalf of my employer or anyone else. I started practicing Internet Law in 1994, and I started teaching Internet Law in January 1996—in both cases, before Section 230 was enacted. E-mail: [egoldman@gmail.com](mailto:egoldman@gmail.com). Website: <http://www.ericgoldman.org>.



SESTA is a complex law implicating important social issues. I'm grateful that this committee is paying close attention to it. Thank you for the opportunity to testify.

\* \* \*

I supplement my oral remarks with two attachments:

- “Congress Is About to Ruin Its Online Free Speech Masterpiece,” an essay more fully outlining my concerns about the bill.
- “SESTA Would Eliminate the Good Samaritan Defense,” an essay rebutting Sen. Portman’s claims that SESTA would not modify Section 230s “Good Samaritan” defense.

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ATTACHMENT 1: CONGRESS IS ABOUT TO RUIN ITS ONLINE FREE SPEECH  
MASTERPIECE \*

In 1996, Congress became concerned that excessive liability would threaten the free flow of information over the Internet. To protect the Internet from this risk, Congress passed 47 USC § 230 (Section 230), which eliminates (with limited exceptions) the liability of online services for publishing third party content.

By any measure, Section 230 has been a remarkable success. Think about the Internet services you use daily, such as Google, Facebook, YouTube, Wikipedia, Twitter, eBay, Snapchat, LinkedIn, and Yelp. All of them publish third party content, and all of them have flourished because of Section 230s immunity. Section 230 also promotes competitive markets by reducing entry costs. New entrants can challenge the marketplace leaders without having to match the incumbents’ editorial investments or incurring fatal liability risks.

Section 230 is a globally unique policy; no other country has passed a law similar to it.<sup>1</sup> As a result, the United States has a global competitive advantage for online services that republish third party content. This has helped create trillions of dollars of social wealth in the U.S.<sup>2</sup>

\* \* \*

Section 230 has remained essentially unchanged since its passage,<sup>3</sup> but that could change imminently—in significant and troubling ways.

Backpage is an online classified service that publishes prostitution ads. Protected by Section 230s immunity, Backpage has defeated multiple legal challenges. Frustrated by Backpage’s continued existence, and fueled by anti-trafficking advocates who want Backpage gone, Congress is considering two bills to amend Section 230. The Senate bill is Stop Enabling Sex Traffickers Act of 2017 (SESTA), S. 1693,<sup>4</sup> and the House bill is Allow States and Victims to Fight Online Sex Trafficking Act of 2017, H.R. 1865.<sup>5</sup> Both bills have many co-sponsors.

For simplicity, I’ll focus on SESTA’s provisions. SESTA would make three major substantive changes to Section 230s immunity. It would:

- (1) Exclude state criminal prosecutions related to sex trafficking from Section 230s immunity. State attorneys general and other local prosecutors could prosecute online services for trafficking-related crimes without any Section 230 limits.

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\* A version of this was first published as Eric Goldman, *Congress Is About To Eviscerate Its Greatest Online Free Speech Achievement*, ACSblog, Sept. 11, 2017, <https://www.acslaw.org/acsblog/congress-is-about-to-eviscerate-its-greatest-online-free-speech-achievement>.

<sup>1</sup>ERIC GOLDMAN, INTERNET LAW: CASES & MATERIALS 330 (July 14, 2017 ed.).

<sup>2</sup>Christian M. Dippon, *Economic Value of Internet Intermediaries and the Role of Liability Protections*, NERA Consulting, June 5, 2017, <https://cdn1.internetassociation.org/wp-content/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf>.

<sup>3</sup>Eric Goldman, *WARNING: Draft “No Immunity for Sex Traffickers Online Act” Bill Poses Major Threat to Section 230*, Tech. & Marketing L. Blog, Mar. 25, 2017, <http://blog.ericgoldman.org/archives/2017/03/warning-draft-no-immunity-for-sex-traffickers-online-act-bill-poses-major-threat-to-section-230.htm>.

<sup>4</sup>For more discussion about SESTA, see Eric Goldman, *Senate’s “Stop Enabling Sex Traffickers Act of 2017” and Section 230s Imminent Evisceration*, Tech. & Marketing L. Blog, July 31, 2017, <http://blog.ericgoldman.org/archives/2017/07/senates-stop-enabling-sex-traffickers-act-of-2017-and-section-230s-imminent-evisceration.htm>.

<sup>5</sup>For more discussion about H.R. 1865, see Eric Goldman, *The “Allow States and Victims to Fight Online Sex Trafficking Act of 2017” Bill Would Be Bad News for Section 230*, Tech. & Marketing L. Blog, Apr. 10, 2017, <http://blog.ericgoldman.org/archives/2017/04/the-allow-states-and-victims-to-fight-online-sex-trafficking-act-of-2017-bill-would-be-bad-news-for-section-230.htm>.

- (2) Exclude Federal and state civil causes of action related to sex trafficking from Section 230s immunity. Sex trafficking victims (and others) could obtain money judgments and injunctions against online services.
- (3) Expand the scope of the existing Federal crime (and associated civil claims) of sex trafficking. Section 230 expressly does not restrict Federal criminal prosecutions, so the U.S. Department of Justice (DOJ) could pursue a wider range of prosecutions against online services.

I'm glad that Congress is combating sex trafficking, but SESTA is not the right policy solution for at least six reasons:

- (1) *SESTA may not help sex trafficking victims. It might hurt them.* Online prostitution ads are evidence of crimes being committed, providing a roadmap for law enforcement to find and prosecute criminals. That has occurred countless times. The ads also can help rescue sex trafficking victims.<sup>6</sup> By investigating the ads, law enforcement and victim advocates have found and rescued many victims.<sup>7</sup> SESTA might reduce the visibility of online prostitution ads; but sex trafficking will still occur, and so will the marketing of sex with trafficked victims via less visible means (such as “walking the streets”). SESTA will make it harder to find—and rescue—those victims.
- (2) *Congress is fighting sex trafficking on many fronts.* Congress is currently considering more than 30 bills referencing “sex trafficking,” and Congress’ prior two sessions each included over 50 bills referencing “sex trafficking.” (Note: an anti-sex trafficking bill may not reference the term, so the number of anti-sex trafficking bills may be higher). So SESTA is far from Congress’ only anti-sex trafficking policy option; and even if Congress doesn’t pursue SESTA, Congress can and will redress sex trafficking other ways.
- (3) *Congress already has statutorily targeted Backpage.* The 2015 SAVE Act<sup>8</sup> created a new Federal crime for publishing online ads that promote sex trafficking victims. A Federal grand jury in Phoenix is currently investigating Backpage,<sup>9</sup> and the SAVE Act may be part of that investigation (grand jury proceedings are secret). So the DOJ already may be using the new crime to achieve Congress’ goal without SESTA.
- (4) *Other crimes may already apply to Backpage.* Though Backpage has had significant success in court, recently a California state court ruled that Backpage executives must defend charges of violating state money laundering laws.<sup>10</sup> Also, in the past couple of years, the U.S. Department of Justice successfully prosecuted and shut down two sites publishing online prostitution ads (Rentboy<sup>11</sup> and MyRedbook<sup>12</sup>). The DOJ should be able to deploy similar legal theories against Backpage.
- (5) *No one knows how SESTA would change the law.* By reducing Section 230s immunity, SESTA would allow a range of laws to apply to Internet services for the first time. Which laws? Apparently, no one knows; I’m unaware of any attempt to inventory those laws. So what criminal prosecutions and civil claims will be brought post-SESTA, by whom, and against which services? Again, no one knows.

<sup>6</sup>Alex F. Levy, *How Section 230 Helps Sex Trafficking Victims (and SESTA Would Hurt Them)*, Tech. & Marketing L. Blog, Aug. 15, 2017, <http://blog.ericgoldman.org/archives/2017/08/how-section-230-helps-sex-trafficking-victims-and-sesta-would-hurt-them-guest-blog-post.htm>; Alexandra F. Levy, *The Virtues of Unvirtuous Spaces*, 50 WAKE FOREST L. REV. 403 (2017).

<sup>7</sup>For a recent example of a rescue, see *People v. Jones*, 2017 WL 3633962 (Cal. Ct. App. Aug. 24, 2017), a case involving Craigslist ads.

<sup>8</sup>Justice for Victims of Trafficking Act § 118 (2015); see also Eric Goldman, *Backpage Can’t Challenge the SAVE Act—Backpage v. Lynch*, Tech. & Marketing L. Blog, Nov. 10, 2016, <http://blog.ericgoldman.org/archives/2016/11/backpage-cant-challenge-the-save-act-backpage-v-lynch.htm>.

<sup>9</sup>E.g., Sarah Jarvis et al, *As Allegations Increase Against Backpage, Founders Have Become Big Political Donors In Arizona*, ARIZ. REPUBLIC, Apr. 14, 2017, <http://www.azcentral.com/story/news/local/phoenix/2017/04/14/allegations-increase-against-backpage-founders-have-become-big-political-donors-arizona/100421528/>.

<sup>10</sup>*People v. Ferrer*, 16FE024013 (Cal. Superior Ct. Aug. 23, 2017), <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=2543&context=historical>, see also Eric Goldman, *Backpage Executives Must Face Money Laundering Charges Despite Section 230—People v. Ferrer*, Tech. & Marketing L. Blog, Aug. 24, 2017, <http://blog.ericgoldman.org/archives/2017/08/backpage-executives-must-face-money-laundering-charges-despite-section-230-people-v-ferrer.htm>.

<sup>11</sup>E.g., *U.S. v. Easy Rent Systems, Inc.*, No. 1:16-cr-00045 (E.D.N.Y. Jan. 27, 2016); *USA v. Hurant*, No. 1:15-mj-00780 (E.D.N.Y. Aug. 18, 2015).

<sup>12</sup>E.g., *U.S. v. Omuro*, No. 3:14-cr-00336 (N.D. Cal. Jun 24, 2014).

- (6) *SESTA would damage the Internet, perhaps radically.* We can only speculate how SESTA might affect the Internet services we know and love. For example, Airbnb has had numerous issues with short-term rentals being used for prostitution,<sup>13</sup> likely including sex trafficking victims; and it's well-known that prostitution historically has been advertised on Facebook.<sup>14</sup> After SESTA, will Airbnb and Facebook look radically different as they try to avoid substantial criminal and civil liability exposure?

Even if we could figure out how SESTA changes the law today, we can't contemplate how future state laws will take advantage of the new regulatory zones enabled by SESTA. Imagine a new state law requires services to prescreen all third party content to find and block sex trafficking ads. How would Twitter work with prescreened tweets?

Finally, Section 230 does not distinguish between services that passively display third party content or actively manage that content: in both cases, publishers aren't liable for third party content. This policy allows online services to try to suppress illegal or socially harmful content without fearing legal exposure for whatever they miss. In response to SESTA's curtailed Section 230 immunity, many services probably will reduce their current suppression efforts to avoid having scienter that would create liability. If that happens, SESTA's attempt to suppress one type of illegal content will counter-productively cause the proliferation of illegal and socially harmful content—including, ironically, the proliferation of online prostitution ads if services dial back existing suppression efforts.

\* \* \*

The First Amendment is the foundation of free speech in our society. However, legislators can supplement the First Amendment's protections. Section 230 is a premier example of speech-enhancing legislation that enriches the free speech rights of speakers and their publishers. Undoubtedly, Section 230 has done more to advance free speech than anything else Congress has done in the past quarter-century; and Section 230 may be Congress' greatest pro-free-speech achievement ever. It's hard to believe that Congress would ruin its free speech masterpiece, but that's exactly what SESTA would do.

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#### ATTACHMENT 2: SESTA WOULD ELIMINATE THE GOOD SAMARITAN DEFENSE\*

When introducing the Stop Enabling Sex Traffickers Act of 2017 (S. 1693), Sen. Portman said (emphasis added):

There are some groups who have been critical of this effort to hold Backpage accountable and stop this online exploitation. They have suggested that this bipartisan bill could impact mainstream websites and service providers—the good actors out there. That is false. *Our bill does not amend, and thus preserves, the Communications Decency Act's Good Samaritan provision. This provision protects good actors who proactively block and screen for offensive material and thus shields them from any frivolous lawsuits.* That is in the legislation and needs to be in there.<sup>1</sup>

This positioning makes it sound like websites who object to SESTA are overreacting. Why should they complain if they still have immunity? Unfortunately, Sen. Portman's statement is wrong.

Section 230 has two main operative provisions. Section 230(c)(1) says websites aren't liable for third party content. Section 230(c)(2) says websites aren't liable for filtering content they consider offensive. Sen. Portman's statement indicates that he thinks SESTA would create new exclusions only to Section 230(c)(1) and would not

<sup>13</sup> 'My Airbnb Flat Was Turned into a Pop-up Brothel', BBC, Apr. 8, 2017, <http://www.bbc.com/news/magazine-39528479>.

<sup>14</sup> Rich Schapiro, *Facebook Friends Take on New Meaning as Hookers Are Said To Be Flocking To Social Networking Site*, N.Y. DAILY NEWS, Feb. 27, 2011, <http://www.nydailynews.com/news/crime/facebook-friends-new-meaning-hookers-flocking-social-networking-site-article-1.136789>. I understand that Facebook subsequently undertook additional efforts to suppress such advertising.

\*A version of this was first published as Eric Goldman, *Sen. Portman Says SESTA Doesn't Affect the Good Samaritan Defense. He's Wrong*, Tech. & Marketing L. Blog, Aug. 9, 2017, <http://blog.ericgoldman.org/archives/2017/08/senportmansestawrong.htm>.

<sup>1</sup> CONG. RECORD S4671 (Aug. 1, 2017), <https://www.gpo.gov/fdsys/pkg/CREC-2017-08-01/pdf/CREC-2017-08-01-pt1-PgS4669.pdf#page=3>.

amend 230(c)(2). However, the bill clearly changes both 230(c)(1) and 230(c)(2) equally.

Section 230(e) enumerates four modifications to the immunity, including Section 230(e)(1), which the bill would amend to read (new language bolded):<sup>2</sup>

Nothing in this section shall be construed to impair (A) the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, *Section 1591 (relating to sex trafficking) of that title*, or any other Federal criminal statute or (B) any State criminal prosecution or civil enforcement action targeting conduct that violates a Federal criminal law prohibiting (i) sex trafficking of children; or (ii) sex trafficking by force, threats of force, fraud, or coercion.

The bill also would create a new Section 230(e)(5):<sup>3</sup>

No effect on civil law relating to sex trafficking. Nothing in this section shall be construed to impair the enforcement or limit the application of section 1595 of title 18, United States Code.

The added language to Section 230(e)(1) and the new Section 230(e)(5) would expose Internet services to countless new enforcement actions by state law enforcement and civil plaintiffs.<sup>4</sup> Notice how both Section 230(e)(1) and the proposed Section 230(e)(5) start off with the statement: “Nothing in this section shall be construed to impair . . .” The only possible reading of “nothing in this section” is that it refers to all of Section 230, including both Section 230(c)(1) and (c)(2). I didn’t find any cases interpreting what “this section” means, but I found several cases implying that Section 230(c)(2) defenses are subject to Section 230(e)’s exceptions.<sup>5</sup> Applying standard methods of statutory construction, Section 230(c)(1) and (c)(2) are equally affected by the existing and proposed Section 230(e) exceptions. As a result, Section 230(c)(2) would not limit any new enforcement actions unleashed by the proposed amendments.

[Caveat 1: A 2001 district court opinion contains a sentence saying: “Immunizing Mindspring from Plaintiff’s claims, therefore, would “limit” the laws pertaining to intellectual property in contravention of § 230(c)(2).”<sup>6</sup> Although this language seemingly confirms my analysis, I believe the Section 230(c)(2) reference is a typo. The court meant to say 230(e)(2).<sup>7</sup>

[Caveat 2: a few cases, including the Seventh Circuit’s *Doe v. GTE*<sup>8</sup> and *Chicago Lawyers’ Committee for Civil Rights Under Law v. Craigslist*<sup>9</sup> cases, have suggested that Section 230(c)(1) acts as a definitional section for Section 230(c)(2). These cases make a strained reading of the statute, but they also would further undermine Sen. Portman’s statement because, under this reading, Section 230(c)(2) would be the only operational immunity the bill could amend.]

Because I don’t see any possible way of interpreting the statutory language to say that Section 230(c)(2) is subject to different exclusions than Section 230(c)(1), Sen. Portman’s claims to the contrary appear to be a misreading of the existing statute or a misunderstanding of how the bill fits into the existing statutory language. Either way, Congress could easily effectuate Sen. Portman’s claim through different drafting. Instead of preceding Section 230(e)(1) and (e)(5) with “Nothing in this section . . .” the amendment could say “Nothing in Section 230(c)(1) . . .” thereby making Section 230(c)(2) not subject to those exclusions.

<sup>2</sup> S. 1693 § 3(a).

<sup>3</sup> *Id.*

<sup>4</sup> Eric Goldman, *Senate’s “Stop Enabling Sex Traffickers Act of 2017” and Section 230s Imminent Evisceration*, Tech. & Marketing L. Blog, July 31, 2017, <http://blog.ericgoldman.org/archives/2017/07/senates-stop-enabling-sex-traffickers-act-of-2017-and-section-230s-imminent-evisceration.htm>.

<sup>5</sup> See, e.g., *e360Insight, LLC v. Comcast Corp.*, 546 F. Supp. 2d 605 (N.D. Ill. 2008); *Holomaxx Technologies v. Microsoft Corp.*, 783 F. Supp. 2d 1097 (N.D. Cal. 2011); *Milo v. Martin*, 311 S.W.3d 210 (Tex. Ct. App. 2010) (concurring opinion); *Davis v. Motiva Enterprises, L.L.C.*, 2015 WL 1535694 (Tex. Ct. App. Apr. 2, 2015).

<sup>6</sup> *Gucci America v. Hall & Associates*, 135 F. Supp. 2d 409 (S.D.N.Y. 2001).

<sup>7</sup> *Ford Motor v. GreatDomains.com*, 2001 WL 1176319 (E.D. Mich. Sept. 25, 2001) noted this error, and corrected it, when quoting the *Gucci* opinion’s language.

<sup>8</sup> *Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003).

<sup>9</sup> *Chicago Lawyers’ Committee For Civil Rights Under Law v. Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008); see also Eric Goldman, *Craigslist Gets Seventh Circuit 230 Win in Fair Housing Act Case—Chicago Lawyers’ Committee v. Craigslist*, Tech. & Marketing L. Blog, Mar. 14, 2008, [http://blog.ericgoldman.org/archives/2008/03/craigslist\\_gets.htm](http://blog.ericgoldman.org/archives/2008/03/craigslist_gets.htm).

There is another problem with Sen. Portman extolling Section 230(c)(2)'s protection: it's basically a defunct safe harbor<sup>10</sup> that does not provide much protection from "frivolous" lawsuit. Unlike Section 230(c)(1), Section 230(c)(2) has a good faith requirement, *i.e.*, to qualify for the safe harbor, the website's filtering decisions must be made in good faith. Plaintiffs can, and routinely will, allege that the defendant made a filtering decision in subjective bad faith, and courts routinely let those generic and unsupported allegations defeat a motion to dismiss. Thereafter, plaintiffs can do expensive and intrusive discovery into the website's subjective intent, raising defense costs substantially and extending the case to summary judgment or possibly a trial.<sup>11</sup> As a result, few if any websites actually rely on Section 230(c)(2)'s protection; everyone relies on Section 230(c)(1). Indeed, we've recently seen filtering cases—where Section 230(c)(2) clearly should have applied—decided on 230(c)(1) grounds instead.<sup>12</sup> It appears Sen. Portman may not appreciate how Section 230(c)(2) has effectively failed in the field.

I hope this essay helps explain why so many in the Internet community have expressed grave concerns about SESA's effects despite Sen. Portman's efforts to marginalize the concerns. The sponsors apparently think the bill wouldn't change Section 230 for "good actors" when, in fact, it would eviscerate the immunity.

Senator SULLIVAN [presiding]. Thank you, Professor Goldman.  
Ms. Souras.

**STATEMENT OF YIOTA G. SOURAS, SENIOR VICE PRESIDENT  
AND GENERAL COUNSEL, THE NATIONAL CENTER FOR  
MISSING AND EXPLOITED CHILDREN**

Ms. SOURAS. Thank you, Chairman Thune, Ranking Member Nelson, and members of the Committee. I am honored to be here today on behalf of the National Center for Missing and Exploited Children.

First, let me say how pleased I am to appear alongside NCMEC's valued partners representing law enforcement and the technology industry. NCMEC could not sustain its mission to protect children without the heroic efforts of law enforcement to remove children from danger and prosecute those who harm them, including the ongoing work of Attorney General Becerra to protect children and the prosecution of Backpage.com.

Just as important are the significant contributions of the technology industry to support child safety online. Technology companies such as Google, Facebook, Microsoft, and others have devoted tremendous resources to reduce child sexual exploitation on their platforms.

NCMEC has been designated by Congress as the national clearinghouse on issues relating to missing and exploited children, including victims of child sex trafficking. Based on our experience, NCMEC has endorsed the Stop Enabling Sex Traffickers Act, or SESA. SESA will ensure access to justice for child sex trafficking victims and hold online entities legally responsible when they knowingly assist trafficking a child.

<sup>10</sup> See generally Eric Goldman, *Online User Account Termination and 47 U.S.C. § 230(c)(2)*, 2 U.C. IRVINE L. REV. 659 (2012), <https://ssrn.com/abstract=1934310>.

<sup>11</sup> *E.g.*, *e-ventures Worldwide v. Google, Inc.*, 2:14-cv-00646-PAM-CM (M.D. Fla. Feb. 8, 2017); see also Eric Goldman, *First Amendment Protects Google's De-Indexing of "Pure Spam" Websites—e-ventures v. Google*, Tech. & Marketing L. Blog, Feb. 9, 2017, <http://blog.ericgoldman.org/archives/2017/02/first-amendment-protects-googles-de-indexing-of-pure-spam-websites-e-ventures-v-google.htm>.

<sup>12</sup> See, *e.g.*, *Sikhs for Justice "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088 (N.D. Cal. 2015), *aff'd*, No. 15–17441 (9th Cir. Sept. 13, 2017); see also Eric Goldman, *Facebook Can Legally Block Pages Without Any Explanation—Sikhs For Justice v. Facebook*, Tech. & Marketing L. Blog, Nov. 30, 2015, <http://blog.ericgoldman.org/archives/2015/11/facebook-can-legally-block-pages-without-any-explanation-sikhs-for-justice-v-facebook-forbes-cross-post.htm>.

At NCMEC, we are confronted daily with the reality that children are trafficked for sex, and this crime increasingly occurs on the Internet. So far this year, we have received more than 9,700 reports of suspected child sex trafficking to our CyberTipline. Over the past 5 years, 81 percent of NCMEC's child sex trafficking reports have related to the trafficking of a child for sex online. More than 73 percent of these reports from members of the public concern an advertisement on Backpage.com.

Under current law, websites can commit these crimes with virtual impunity even when knowingly facilitating the trafficking of a child. In case after case, child sex trafficking victims have been deprived of their day in court against every entity, including websites, that knowingly support their trafficking.

Congress has acted to protect children from sex trafficking through the Trafficking Victims Protection Reauthorization Act, or TVPRA, and every state has a corresponding trafficking statute. However, these laws have proven inadequate based on the courts' current interpretation of the Communications Decency Act.

Congress enacted the CDA over 21 years ago to protect online companies from liability when they host third-party content or engage in good-faith efforts to regulate explicit material. Courts have struggled and failed to reconcile the CDA's narrow immunity with the TVPRA's criminalization of sex trafficking.

Over the past 7 years, over 20 legal cases have been filed involving Backpage.com. Time and time again, courts have acknowledged the horror of the allegations made by child sex trafficking victims, but held themselves powerless to act under the CDA.

Courts across the country have called on Congress to clarify the intersection between valuable CDA immunities and the strong laws against human sex trafficking. NCMEC has worked closely with children victimized by online sex trafficking whose cases have been dismissed based on the CDA. We have witnessed the anguish of these children suffering and have heard their hopelessness when the courts dismiss their cases. We can't rely on a 1996 law to solve a 21st century problem. We need to be smarter and more sophisticated in protecting children, and this is the approach SESTA takes. It is also why SESTA is the first bill to amend the CDA that NCMEC has endorsed.

We believe SESTA strikes an important balance between providing victims their day in court while sustaining the underlying protections of the CDA. NCMEC supports SESTA because it clarifies: first, that child sex trafficking victims may seek civil remedies against online entities that knowingly supported their trafficking; second, that state attorneys general may protect children in their own communities by prosecuting online entities that knowingly supported trafficking; and, third, that online entities may be liable for trafficking if they knowingly support, assist, or facilitate the trafficking of a child for sex.

We are encouraged by the continuing dialogue, including at this hearing, to further understanding of the proposed legislation and ensure it fulfills its mission to protect children. We welcome the opportunity to provide additional support as SESTA moves through this process and look forward to continuing to work with you on these very important issues.

[The prepared statement of Ms. Souras follows:]

PREPARED STATEMENT OF YIOTA G. SOURAS, SENIOR VICE PRESIDENT AND GENERAL COUNSEL, THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

Chairman Thune, Ranking Member Nelson, and Members of the Committee, I am honored to be here today on behalf of The National Center for Missing and Exploited Children (“NCMEC”).

First, let me say how pleased I am to appear alongside NCMEC’s valued partners representing law enforcement and the technology industry. NCMEC could not sustain its mission to protect children without the heroic efforts of law enforcement to remove children from danger and prosecute those who harm them. Just as important are the significant contributions and voluntary efforts of the technology industry to support child safety online. For many years, technology companies such as Google, Facebook, Microsoft and many others have devoted tremendous resources to reduce online child sexual exploitation on their platforms. We share a collective interest in strengthening the laws and technical tools that can be used to further NCMEC’s work to save children from sexual exploitation and prevent children from being victimized by sex trafficking.

Based on NCMEC’s mission to reduce child sexual exploitation and prevent child victimization, we have endorsed the Stop Enabling Sex Traffickers Act of 2017 (“SESTA”). SESTA uniquely addresses a legal loophole that once closed will ensure justice for child sex trafficking victims and hold legally responsible entities that knowingly assist the trafficking of a child for sex online. NCMEC hopes that following this hearing we can work together to ensure this legislation moves quickly forward and our Nation’s most vulnerable victims have the legal protections they so urgently need.

#### **NCMEC History**

NCMEC was created in 1984 by John and Revé Walsh and other child advocates as a private, non-profit organization. It has been designated by Congress to serve as the national clearinghouse and to provide a coordinated, national response to problems relating to missing and exploited children. NCMEC works with families, victims, private industry, law enforcement, and the public to assist with preventing child abductions, recovering missing children, and providing services to deter and combat child sexual exploitation. More specifically to today’s hearing, NCMEC serves as a national clearinghouse for reports relating to child sex trafficking and assists law enforcement, first responders, and victim specialists relating to the identification, location, and recovery of child sex trafficking victims.

#### **Online Child Sex Trafficking**

Child sex trafficking is a pervasive and underreported crime. Every year, thousands of children from across the United States are trafficked, sold for sex, repeatedly raped, and suffer traumatic physical, sexual, and emotional abuse. Child sex trafficking involves the rape or other sexual abuse of a child in exchange for something of value. There is no legal protection for selling, facilitating the sale of, or benefiting financially from the sale of a child for rape or sexual abuse. There is no situation in which child sex trafficking could be considered legal or an activity between consenting adults.

Technology has fundamentally changed how children are victimized through sex trafficking in ways that would have been unimaginable just a few years ago. An adult can now shop from the privacy of his home or hotel room, often on a cell phone, to buy a child for rape. Traffickers lure and recruit children online. Websites can be used to create virtual marketplaces on which predatory offenders can peruse a variety of sexual experiences being offered for sale, including with children, and complete their purchase online.

As the national resource center on missing and exploited children issues, NCMEC has learned a great deal about child sex trafficking. NCMEC operates the CyberTipline to provide the public and electronic service providers with an efficient method of reporting incidents of suspected child sexual exploitation, including child sex trafficking. So far in 2017, NCMEC has received more than 9,700 reports of suspected child sex trafficking to the CyberTipline. Because there is no mandatory requirement for reporting child sex trafficking to NCMEC, we believe the reports NCMEC receives reflect only a small fraction of the large number of children trafficked online each year.

The crime of child sex trafficking has increasingly expanded to the internet. Traffickers have learned that by leveraging the power of the internet, they can more easily recruit, control and sell children for sex. Some website operators have also

recognized the enormous profitability of creating online platforms to facilitate the sale of adults and children for sex. Over the past five years, 81 percent of NCMEC's reports regarding child sex trafficking relate to the sex trafficking of a child *online*. More than 73 percent of reports relating to child sex trafficking made by members of the public to NCMEC concern a Backpage.com advertisement. This trend will continue so long as online classified ad websites are able to knowingly assist human sex traffickers market children for sale for sex to a range of online customers.

At NCMEC, we are confronted daily with the reality that children are being trafficked for sex online. Under current law, these crimes can be committed with virtual impunity for websites that knowingly facilitate the trafficking of a child. In case after case, child sex trafficking victims are failing to have their voices heard and are being deprived of their day in court against *every* entity that knowingly supported their trafficking, because of the legal protections provided to these entities under current law. SESTA narrowly addresses these judicial barriers and ensures that child victims have full rights to seek redress for the harm done to them.

### **The Courts' Struggles to Reconcile Trafficking Laws and the Communications Decency Act**

Congress has acted to protect children from being trafficked for sex by enacting the Trafficking Victims Protection Reauthorization Act ("TVPRA"). The TVPRA establishes human trafficking as a Federal crime and recognizes the unique vulnerability of children to trafficking by imposing severe penalties on anyone who knowingly recruits, harbors, transports, provides, advertises or obtains a child for a commercial sex act or who benefits financially from such an act. Every state has an equivalent statute available to state prosecutors to bring to justice those who traffic children for sex. These laws have been used effectively to prosecute traffickers who conduct their business on the streets, in hotels, casinos or at truck stops. However, these laws have proven inadequate when a website participates in a venture to traffic children due to the Communications Decency Act ("CDA"), a law that predates the TVPRA.

The CDA was enacted by Congress in 1996 to protect online companies from liability when they host third party content or engage in good faith efforts to regulate explicit material on their platforms. Unfortunately, courts have struggled, and failed, to reconcile the purpose of the immunity provided by the CDA with the mission of the TVPRA to criminalize the sex trafficking of children. This legal conflict has been building for years. The most frequent result is that children who have suffered undeniable and unimaginable harm, are completely barred from seeking judicial relief against a knowing online facilitator of their trafficking. As a further complication, courts have been uncertain regarding how to define what it means to benefit from "participation in a venture" of trafficking under the TVPRA, which is a significant element to prove in a trafficking case involving an online website.

Over the past seven years, over 20 legal cases have been initiated involving Backpage.com. The majority of these cases involve child victims who sought judicial damages against Backpage.com or state legislatures compelled to defend attempts to enact stronger laws to protect children from being trafficked for sex online. Time and time again in these cases, courts acknowledged the horror of the allegations made regarding the child victims' trafficking, but determined themselves powerless to act under the CDA.

The child sex trafficking victims who have been denied relief due to the CDA include:

- A 14-year old child who was trafficked online for two years and advertised with photos displaying her private body parts in sexually exploitive poses.
- A 15-year old child who estimates she was raped over 1,000 times while trafficked on Backpage.com for a year and a half.
- A 15-year old child who was trafficked for two years with ads posted on Backpage.com an average of six times a day with five to fifteen customers a day.

Unfortunately, these victims are not unique. NCMEC has managed tens of thousands of cases where children have been bought and sold by the commercialization of child sex trafficking online.

### **Courts Call on Congress to Clarify the CDA's Application in Child Sex Trafficking Cases**

The judicial system has become increasingly aware that children are inadequately protected, and state prosecutors limited, when an online website (rather than a brick-and-mortar operation) is participating in a trafficking venture. Even when dismissing victims' trafficking claims on legal grounds, both criminal and civil courts



have consistently called on Congress to clarify that there is no legal protection for those who facilitate the trafficking of children for sex online. Further, both criminal and civil courts have reluctantly dismissed online sex trafficking charges against Backpage.com, while bemoaning the lack of clarity in how they must apply the CDA.

For example, last year the Sacramento Superior Court dismissed criminal pimping charges against Backpage.com, while recognizing the vital issues at stake:

[T]he Court understands the importance and urgency in waging war against sexual exploitation. Regardless of the grave potential for harm that may result in the exercise of this article of faith, Congress has precluded liability for online publishers for the action of publishing third party speech and thus provided for both a foreclosure from prosecution and an affirmative defense at trial. *Congress has spoken on this matter and it is for Congress, not this Court, to revisit.*

Also last year, the First Circuit Court of Appeals dismissed trafficking charges in a civil case after recognizing the failure of the statutes to provide an adequate means to protect children and hold online sex traffickers liable because of the CDA:

“This is a hard case—hard not in the sense that the legal issues defy resolution, but hard in the sense that the law requires that we, like the court below, deny relief to plaintiffs whose circumstances evoke outrage . . . The appellants’ core argument is that Backpage has tailored its website to make sex trafficking easier. Aided by the amici, the appellants have made a persuasive case for that proposition. But Congress did not sound an uncertain trumpet when it enacted the CDA, and it chose to grant broad protections to Internet publishers. Showing that a website operates through a meretricious business model is not enough to strip away those protections. If the evils that the appellants have identified are deemed to outweigh the First Amendment values that drive the CDA, the remedy is through legislation, not through values that drive the CDA, the remedy is through legislation, not through litigation.

Most recently, less than a month ago, the Sacramento Superior Court again dismissed criminal pimping charges and bluntly assessed its view of the current state of CDA law to immunize a website from online sex trafficking:

If and until Congress sees fit to amend the immunity law, the broad reach of section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking.

#### **NCMEC’s Support of SESTA**

NCMEC has worked closely with children victimized by online sex trafficking, their families, attorneys and prosecutors in many of the cases where child sex trafficking claims have been dismissed under the courts’ interpretation of the CDA. Through our work, we have witnessed the anguish of their recovery and the long-lasting trauma their families suffer. We also have heard their hopelessness when their legal efforts to hold responsible websites that knowingly facilitated the crimes against them are dismissed by the court.

Congress has now heard these children’s voices as well. NCMEC applauds the introduction of SESTA by Senators Rob Portman and Richard Blumenthal, and their 26 bi-partisan co-sponsors, to address the legal roadblocks that child victims have faced. NCMEC’s support for SESTA is reflective of our mission to combat the sexual exploitation of children, including the pernicious monetization of children for sex trafficking on websites, such as Backpage.com.

NCMEC supports SESTA, the first such bill that NCMEC has supported proposing a clarification of the CDA, because the goals of the legislation are sufficiently narrow to help ensure justice for child sex trafficking victims and clarify remedies available to civil attorneys and state Attorneys General to assist victims in holding every entity that knowingly participated in their trafficking. We believe SESTA strikes an important balance between providing sex trafficking victims the opportunity to hold everyone actively participating in their victimization accountable with the need to continue encouraging innovation of technology on the internet.

NCMEC is fundamentally aware that combatting child sex trafficking is a multi-faceted problem. SESTA will not put an end to online child sex trafficking. No single solution can accomplish this. But it will provide an essential tool to providing legal rights to child sex trafficking victims and ensuring that online entities that participate in the trafficking of a child are not legally immune for their crimes.

Because Backpage has been for years one of the largest facilitators of online sex trafficking ads, it is not surprising that Backpage has been the focus of civil, criminal, and legislative efforts to curtail sex trafficking on the site. Backpage has shown that children can be trafficked for sex online through a functionally simple and wildly lucrative website, while both criminal and civil courts have demonstrated that a

loophole exists that enables this type of website to invoke the immunity under the CDA. NCMEC is aware that there are many other websites on which children are trafficked for sex. If Backpage ultimately closes because of any of the pending legal actions, another website or multiple websites will surely fill the marketplace that Backpage currently dominates. SESTA's narrow goals are intended to make certain that the CDA's ongoing protections enjoyed by a robust Internet industry will not extend to next generation platforms like Backpage.com that *knowingly* assist, support, or facilitate child sex trafficking.

SESTA narrowly focuses on criminal conduct—the sale of a child for sex—which does not implicate the First Amendment or the Good Samaritan exception under Section 230. The legislation will clarify that immunity under the CDA is not extended to actual criminal conduct—the *knowing* facilitation, assistance or support of trafficking—while maintaining the CDA's core publisher protections for the mere publication of third party content or the good faith removal of objectionable online material. The balancing of interests here involves the rights of child sex trafficking victims who are denied access to justice versus clarifications to the CDA twenty-one years after its enactment.

Additionally, given the volume of this criminal activity online and the impact on state and local communities, State Attorneys General should be able to prosecute websites that knowingly assist the sex trafficking of children within their state which SESTA provides.

We believe that SESTA provides essential clarifications to an important statute and are encouraged that well-intentioned dialogue is continuing in an effort to understand the proposed legislation and ensure it fulfills its mission to protect children, including today's hearing.

#### **Conclusion**

Thank you for the opportunity to provide the Committee with information on NCMEC's role in combating online child sex trafficking and our support for SESTA. As the Nation's clearinghouse on missing and exploited children issues, NCMEC's sole priority is to protect the interests of children victimized by sexual exploitation. SESTA would be a powerful tool to further the rights of child victims consistent with NCMEC's mission while protecting the provisions of the law that encourage a healthy and robust internet. We are aware that technology companies and other advocates have been meeting with sponsors of the bill to discuss this proposed legislation.

We welcome the opportunity to provide additional support as SESTA moves through the legislative process and look forward to continuing to work with you on these very important issues.

Senator SULLIVAN. Thank you, Ms. Souras.  
Ms. Slater.

#### **STATEMENT OF ABIGAIL SLATER, GENERAL COUNSEL, INTERNET ASSOCIATION**

Ms. SLATER. Chairman Thune, Ranking Member Nelson, and members of the Committee, thank you for inviting me to testify. My name is Abigail Slater, and I am General Counsel at Internet Association, which represents more than 40 of the world's leading Internet companies.

On a personal note, if I may, I would like to acknowledge the testimony of Mrs. Ambrose here today and to convey my sympathy to her on her loss of her daughter, Desiree. No family should have to suffer what Mrs. Ambrose's family suffered.

There are three overarching points I would like to make today. First, the legitimate Internet companies that Internet Association represents are 100 percent committed to the fight against sex trafficking. Our objective is to help stop these crimes from ever occurring in the first place so that there are no more victims. For this reason, we support targeted legislative changes, including changes to the Communications Decency Act, that would allow victims and

survivors to seek justice against bad actors that knowingly facilitate sex trafficking.

As one of the mothers interviewed in the “I am Jane Doe” documentary so pointedly stated, “I want my daughter to hold her head up high and know that none of this was her fault.” Everyone at this table should share this mother’s sentiment.

On this note, following the Senate’s groundbreaking PSI report from earlier this year, a grand jury was convened in Phoenix to look at Backpage.com’s conduct under existing Federal criminal law, and we agree that it’s time to bring Backpage to justice.

The second point I’d like to make today is that legitimate Internet companies are key partners in the fight to combat sex trafficking. They are part of any solution to this problem, and the partnership between law enforcement and companies is key to ending the underlying criminal behavior.

This partnership manifests in several ways.

First, legitimate Internet companies have robust community guidelines, internal policies, and proactive enforcement practices to remove content that promotes sex trafficking. After all, the power of good actors online is in many contexts often the most powerful tool against bad actors online.

Second, legitimate Internet companies have long since partnered with non-governmental organizations, such as NCMEC, to combat sex trafficking. These efforts harness both our companies’ financial resources as well as their engineering talent to help develop technological tools used to combat this heinous crime.

I elaborate on these tools in detail in my written testimony, but I did want to highlight one in particular. It’s the Spotlight tool developed by Thorn with support from several IA member companies. Spotlight is a web-based application used to detect and help rescue victims of sex trafficking. Today, Spotlight is used by 4,000 law enforcement officers at over 700 agencies nationwide. More importantly, it has been used to identify over 2,000 perpetrators of sex trafficking.

Understanding the positive role such as that developed at Thorn plays in providing solutions to sex trafficking brings me to my third, and final, point; namely, that legislation undermining the ability of legitimate Internet companies to do the right thing and invest in innovations and best practices that target criminal activity will only weaken our fight against this heinous crime.

SESTA is a well-intentioned response to a terrible situation. Unfortunately, as currently drafted, SESTA introduces overly broad concepts of criminal and civil liability that create legal uncertainty and risk for legitimate actors. My written testimony provides greater detail, but I will provide a few key concerns which SESTA has currently drafted and how it interfaces with Section 230 of the Communications Decency Act for your consideration.

First, we are concerned that SESTA creates a vague knowledge standard that will skew incentives for good online actors to keep in place their existing efforts to combat crimes, including sex trafficking, for fear of legal liability.

Second, we are concerned that SESTA creates overly broad and uncharted state jurisdiction over well-intentioned online actors, both large and small.

And, finally, we are concerned that SESTA opens up liability for frivolous lawsuits that do little for victims of sex trafficking.

While we acknowledge that reasonable minds can and do differ, I should add for the record that these concerns are the consensus position of many industry experts and legal scholars, as well as civil society groups, who share our concerns about SESTA.

Internet Association submits that a more tailored bill that truly targets actors such as Backpage.com without undermining the ability of legitimate actors to help combat sex trafficking is possible, and we stand ready to work with the Committee toward this goal.

In conclusion, I want to be clear, we do not have to choose between justice against Backpage.com and protecting legitimate online services. This is not a binary choice. There is also no single solution. The fight against sex trafficking requires a multipronged approach and a committed partnership between the government and private sector.

Again, thank you for allowing me to testify, and I look forward to your questions.

[The prepared statement of Ms. Slater follows:]

PREPARED STATEMENT OF ABIGAIL SLATER, GENERAL COUNSEL,  
INTERNET ASSOCIATION

Chairman Thune, Ranking Member Nelson, and members of the Committee, thank you for inviting me to testify. My name is Abigail Slater and I am the General Counsel of Internet Association, which represents more than 40 of the world's leading Internet companies.<sup>1</sup> Internet Association is the unified voice of the Internet economy. The Internet creates unprecedented benefits for society, and Internet Association is dedicated to empowering people through a free and open internet.

We appreciate the Committee holding this hearing on a topic that rightfully is at the top of mind for policymakers, our members, and the public. Sex trafficking is a horrific crime and must be stopped. We must end the crime of human trafficking in our country, and we must hold those that facilitate and take part in these crimes, like *Backpage.com*, fully responsible under our law. We also support targeted amendments to the Communications Decency Act that would allow victims of sex trafficking crimes to seek justice against perpetrators. The Internet industry stands ready to work with you on legislative approaches that ensure justice and contribute to the fight against trafficking.

We believe that our goals are shared and that this hearing can and should provide a roadmap to achieving those mutual goals. *Backpage.com* broke existing law and we agree that it must be fully and quickly brought to justice for its horrific crimes in the trafficking of persons for sex. We must work together to combat trafficking and stop these crimes from ever occurring in the first place. Internet Association is confident that by working as partners on this issue we can fully achieve both goals.

To be perfectly clear: our members are an integral part of the solution. They have a long track record of working with law enforcement, anti-trafficking groups, and victims to stop illegal activity.

The *Stop Enabling Sex Traffickers Act of 2017* (SESTA)<sup>2</sup> is a well-intentioned response to a terrible situation. The crimes committed through and facilitated by *Backpage.com* are despicable. Our companies work with law enforcement every single day to actively take down illegal content and in an effort to prevent and end trafficking. SESTA, as it is written, would make our companies liable for all their ongoing work with law enforcement.

As part of my testimony,

- First, I will outline just some of the ways that Internet industries are active partners in the fight to combat human trafficking.

<sup>1</sup>Member list available at <https://internetassociation.org/our-members/>.

<sup>2</sup>S. 1693 (115th Congress).

- Second, I will provide a short background on Section 230 of the Communications Decency Act (CDA230), its history and foundational role in supporting legitimate online actors, and its applicability to *Backpage.com*.
- Third, I will discuss SESTA and the unintended consequences of broad legislation in light of CDA230s history and the work of online services to operate as good actors.
- Fourth, I will discuss potential ways forward in crafting a targeted approach to allowing justice against rogue, illicit actors without upending legal principles vital to legitimate industries.

**Legitimate online services are committed, key actors in the fight against human trafficking.**

Internet industries are indispensable to the fight to combat trafficking. Technology is part of the solution, and the partnership between law enforcement and private sector technology companies is key to ending the underlying criminal behavior.

Internet companies that make up Internet Association have a zero-tolerance policy for facilitation of sex trafficking and exploitation of children. Our companies have robust policies and enforcement practices to remove all content that promotes sex trafficking. In addition, our companies partner with non-governmental organizations across the globe on the prevention of sexual violence and exploitation, including the National Center for Missing and Exploited Children; the International Center for Missing and Exploited Children; the International Women's Forum; End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes; Thorn; Polaris; and more.

Beyond significant financial support for organizations on the front lines of the global fight to end modern day slavery and human trafficking, technology companies are harnessing their technical expertise for innovative and groundbreaking technology that is used to great effect by other companies, law enforcement, and anti-trafficking groups.

Engineers at companies including Google have worked with Thorn and the Hovde Foundation to develop a tool called Spotlight, which harnesses artificial intelligence to comb through millions of ads online and flag potential child victims. This tool is now used by law enforcement in all 50 states, and agencies using it have seen a 60 percent reduction in their investigation time. In a single year, Spotlight helped identify over 6,000 victims and 2,000 traffickers. With advances in machine learning technology, we can continue to improve this technology and make it even more broadly available.

In May 2016, Facebook hosted over 75 engineers from across the industry, including Microsoft and Google, as well as from child safety NGOs, such as NCMEC, Thorn, and InHope, for the first-ever cross-industry child safety hackathon to develop tools and products that enhance child online safety.<sup>3</sup> The 2017 hackathon expanded in scope and reach, and one of the prototypes that came out of the hackathon is a tool that will enable people to match known photos of missing children against online trafficking ads.

The Thorn Technology Task Force, which includes 20 technology companies ranging from Microsoft to Snap, is creating networks of digital defenders to develop new strategies to fight their adaptive adversaries.<sup>4</sup>

Twilio and Salesforce Foundation partnered with Polaris and Thorn to develop the NHTRC SMS-based textline, which allows victims to text the shortcode "BeFree" for a discreet and time-efficient way to access the hotline.<sup>5</sup>

Amazon Web Services powers a number of tools, such as the Federation for Internet Alerts, which provide life-saving child abduction alerts as well as facial recognition technology that aids police in the fight against sex trafficking.<sup>6</sup>

Match Group is working with THORN to pilot new technology that would use THORN data to automatically detect users who attempt use Match Group sites to

<sup>3</sup>"Hackathon Creates Tech Solutions for Child Safety," Thorn (2017) available at [https://www.wearethorn.org/blog/hackathon-creates-tech-solutions-child-safety/?utm\\_campaign=coschedule&utm\\_source=facebook\\_page&utm\\_medium=Thorn&utm\\_content=Hackathon%20Creates%20Tech%20Solutions%20for%20Child%20Safety](https://www.wearethorn.org/blog/hackathon-creates-tech-solutions-child-safety/?utm_campaign=coschedule&utm_source=facebook_page&utm_medium=Thorn&utm_content=Hackathon%20Creates%20Tech%20Solutions%20for%20Child%20Safety).

<sup>4</sup>See Thorn Technology Task Force, available at <https://www.wearethorn.org/about-our-fight-against-sexual-exploitation-of-children/>.

<sup>5</sup>"7 Ways Technology is Fighting Trafficking," Forbes.com (Jan. 2016) available at <https://www.forbes.com/sites/rebeccasadwick/2016/01/11/tech-fighting-human-trafficking/#4cb245ce6cac>.

<sup>6</sup>"Police can use this facial recognition technology to fight sex-trafficking," Mashable (2017) available at [http://mashable.com/2017/06/28/facial-recognition-child-sex-trafficking/#o8\\_T3aMVCSq8](http://mashable.com/2017/06/28/facial-recognition-child-sex-trafficking/#o8_T3aMVCSq8).

disseminate information associated with known sex traffickers and remove them from the sites.

These are just a few of many examples that grow by the day. Recognizing the role technology plays in providing solutions is key to understanding why a narrow, targeted approach is the only way to truly achieve our goals: undermining companies' incentives to experiment and participate in the innovation that targets criminal activity will only undermine our fight against trafficking.

#### **Section 230 of the Communications Decency Act and *Backpage.com*.**

Congress passed CDA230 in 1996 as a bedrock legal protection for online services, ensuring that legitimate businesses can exist by providing that unknowing intermediaries including platforms, websites, ISPs, web-hosting providers, and online advertisers are not held liable for the actions of users. Without this crucial protection, these service providers would be forced to err on the side of removing their users' content or face unsustainable liability for their users' content that would harm the creation of legitimate and diverse online services. CDA230 remains as crucial today for startups as it was in 1996: the diversity of services and products today is greater than ever before, and CDA230s clarity provides a pathway for innovation for legitimate, responsible new entrants.<sup>7</sup>

Congress struck a key balance in CDA230. CDA230 is not a complete bar on liability—it allows the U.S. Department of Justice (DOJ) to prosecute rogue, illicit actors that conduct illegal activity. From its inception, there have been several clear exemptions to CDA230, including Federal criminal law, which ensures that the DOJ is empowered to prosecute online providers that take part in criminal activity.<sup>8</sup> Additionally, it does not apply to information that the platform operator has itself created or developed, “in whole or in part.”<sup>9</sup> CDA230 also encourages online services to moderate their services through the combined protections of 230(c)(1) and 230(c)(2)'s Good Samaritan clause, which provides an incentive to moderate offensive, lewd, and/or violent content without the danger of creating additional liability.

It is a Federal crime to sell, solicit, or advertise the sexual services of persons who have been coerced into commercial sex under 18 U.S.C. § 1591.<sup>10</sup> Congress has made clear that sex trafficking must be stopped and that law enforcement actions against perpetrators should be prioritized. In 2015, in great part due to strong desire to bring justice against *Backpage.com*, Congress supplemented an existing statute on trafficking by ensuring that the knowing advertisement of minors for commercial sex was a Federal crime.<sup>11</sup>

We also commend the Permanent Subcommittee on Investigations (PSI), which concluded a twenty-month investigation of *Backpage.com* and found that *Backpage.com* knowingly concealed evidence of criminality by systematically editing adult advertisements and that *Backpage.com* executives knew the website facilitated illegal activity including sex trafficking of minors.<sup>12</sup>

To date, the DOJ has not held *Backpage.com* accountable for its actions under anti-trafficking criminal law. Congress must ensure the DOJ has the resources and priorities necessary. *Backpage.com* is not immune from liability for Federal crimes, including those under 18 U.S.C. § 1591, and U.S. Attorneys must use these and other legal avenues to undertake immediate and vigorous justice against *Backpage.com* for its knowing facilitation of criminal sex trafficking. State exemptions would create the potential for unpredictable, inconsistent enforcement against law-abiding intermediaries that operate without borders.

#### **SESTA's broad approach will harm good actors and undermine our shared goal of combatting trafficking.**

We share the goals of the sponsors and are committed to working with them to find an effective way forward that provides a mechanism to hold criminals accountable.

At the outset, it is key to understand that SESTA does not require that an entity have knowledge of the illegal activity or a means to stop that activity. Section 4 of the legislation expands the scope of the term “participation in a venture” under current sex trafficking laws in Title 18 to “knowing conduct by an individual or entity, by any means, that assists, supports, or facilitates” sex trafficking. The term “know-

<sup>7</sup> See Letter by Copia Institute, Engine, and 30+ startups on S. 1693 (2017) available at <https://www.230matters.com/letter.html>.

<sup>8</sup> 47 U.S.C. § 230(e)(1)

<sup>9</sup> 47 U.S.C. § 230(f)(3)

<sup>10</sup> 18 U.S.C. § 1591

<sup>11</sup> P.L. 114–22.

<sup>12</sup> “Backpage.com’s Knowing Facilitation of Online Sex Trafficking,” Permanent Subcommittee on Investigations, United States Senate (2017).

ing conduct” is not a defined legal term—it could include the fact that a platform simply knows that users communicate on its site. The phrase “assists, supports, or facilitates” has no requirement that an entity know that conduct is taking place, has means to prevent it, or any other discernible limitation. The term “facilitate” is extremely broad; courts have defined it to mean “to make easier or less difficult.”<sup>13</sup> This means that a prosecutor could simply allege that the use of a platform for coded communication connected to trafficking, without knowledge by the platform, facilitated sex trafficking; because the platform knows that users communicate generally on the site, a prosecutor would have to go no further in introducing cause for liability.

SESTA would introduce new legal risk not just for Internet services that do not knowingly and intentionally facilitate illegal conduct, but also create risk for an incredibly broad number of innocent businesses by expanding the notion of contributory liability. SESTA would hold potentially liable any entity that can be said to benefit from its role in facilitating a sex trafficking violation, even if it has no knowledge that it is doing so or no practical way of terminating such assistance.

Under the regime of liability without knowledge or participation in the criminal activity, SESTA introduces new risks under CDA230 by creating state criminal and civil exemptions, as well as Federal civil exemptions. It is not hard to imagine that opportunistic lawyers will bring a deluge of frivolous litigation targeting legitimate, law-abiding intermediaries, as civil liability is unbounded by any actual knowledge or participation in trafficking.

Key to the discussion of state-level exemption is that (1) there is no data on the current criminal and civil laws that would be exempt to CDA230 under this bill and (2) there is no full understanding or limitation of the types of laws that may be passed to introduce liability on online services providers unconnected to the true, knowledgeable facilitation of sex trafficking.<sup>14</sup> CDA230s exclusion of state liability is appropriate. The Internet is a borderless medium, and the potential for inconsistent regulation and liability untethered to the fight against trafficking is counterproductive to the intended goals of the legislation.

SESTA will not only risk the development of innocent online services key to the fight against trafficking, but threatens to be counterproductive to the stated goals. The proposed legislation does not address the underlying criminal behavior and playing whack-a-mole with URLs/domains in civil courts is unlikely to stop bad actor websites that will simply move overseas and change their URLs to avoid being shut down. Undermining the balance struck in CDA230 encourages the opposite behavior desired. It will create the incentive for providers not to look for evidence of trafficking and to cease proactively eliminating illegal and unsavory content, including by chilling the development of technological measures to address such content, as any such action could implicate civil and criminal causes of action.

Introducing new ambiguity into CDA230 would send a dangerous signal to other countries that are seeking to require U.S. Internet services to filter dissenting political speech and allegations of corruption.

We encourage Congress to target underlying criminal behavior that will be effective in preventing trafficking and protecting victims. I return to the point made at the outset of my testimony: while we are deeply concerned about the broad nature of SESTA, we strongly support its intended purpose, and stand ready to work with the Committee and the sponsors of the legislation on achieving justice without risking the harms that would be realized under such a wide approach.

**A narrow approach tailored to the goal of ensuring justice for victims will best serve the goal of combatting trafficking.**

Ensuring justice against *Backpage.com* is possible without undermining all the work currently underway to stop online sex trafficking. We do not have to choose between justice against *Backpage.com* and protecting legitimate online services.

There is also no single solution. The fight against trafficking requires a multi-pronged approach and a committed partnership between the government and private sector. To start, we urge the DOJ to prioritize prosecutions of criminal actors in violation of Federal sex trafficking law, which is already exempt from CDA230.

<sup>13</sup> United States v. Rivera, 775 F.2d 1559, 1562 (11th Cir. 1985).

<sup>14</sup> See Goldman, Eric, “Senate’s ‘Stop Enabling Sex Traffickers Act of 2017’—and Section 230s Imminent Evisceration” (2017) available at <http://blog.ericgoldman.org/archives/2017/07/senates-stop-enabling-sex-traffickers-act-of-2017-and-section-230s-imminent-evisceration.htm> (discussing the potential for state laws not germane to the goal of combating trafficking under SESTA).

This includes immediate action based on the July 2017 referral of PSI's investigation to the DOJ.<sup>15</sup>

I would also like to highlight several areas we believe may be worth this Committee's attention for further exploration.

If clarification under Title 18's reference to "participation in a venture" is necessary to the Federal accountability for rogue actors, we welcome language that clarifies the definition offered in SESTA to include a knowledge standard for "assist[ing], facilitat[ing], or support[ing]" trafficking.

Lastly, we understand that exploring exemptions to CDA230 to allow for justice sought by victims is a key aspect of the reason we are here today. Under 18 U.S.C. 1595, victims are able to seek civil action against perpetrators of sex trafficking crimes.<sup>16</sup> A tailored amendment that ensures civil suits were brought against online actors that acted with knowledge and intent is worth consideration.

### Conclusion

The Internet community stands ready to work with this Committee and the sponsors of the legislation on targeted approaches that not only bring justice against *Backpage.com*, but also support the ongoing fight against sex trafficking.

Thank you for allowing me to testify on this critical matter.

Senator SULLIVAN. Thank you, Ms. Slater.

And we appreciate the testimony of all the witnesses on this critically important issue.

Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

General Becerra, let's just get right to the nub of the question. The opponents of the bill argue that it's not necessary to modify Section 230, which would allow state and local law enforcement and victims to pursue those who assist and facilitate online sex trafficking. The opponents argue that the existing statute already provides justice with adequate authority in order to go after those wrongdoers. Rebut that argument so we can pass this bill.

Mr. BECERRA. Senator, I would ask each and every one of you to come to Sacramento with me, where we are right now in prosecution of Backpage. We filed 36 counts against Backpage, 11 of them for pimping, the sex trafficking part, and 25 more based on money laundering and conspiracy.

You heard Senator Portman mention the ruling of the Sacramento judge recently in that case about a month ago, where he said, and I will quote it as well, speaking about Section 230 and its broad coverage shield against prosecution of those involved in sex trafficking. The judge said, "The broad reach of Section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking. Based on that, the judge dropped every single count relating to sex trafficking." And we are now left to prosecute based on the conspiracy charges and money laundering, which we will vigorously do, but Backpage has been spoken about over and over again, does more than just engage in conspiracy and money laundering, from our perspective.

If we don't have the tools, the only winners are those who go to the Internet. This is no longer the brick-and-mortar stuff, and it actually was never good business on brick-and-mortar because it was always on the run on the streets. But now the Internet has become

<sup>15</sup> See *Portman, Carper, McCaskill Send DOJ Criminal Referral for Backpage.com* available at <https://www.portman.senate.gov/public/index.cfm/press-releases?ID=6CF2AC67-EDB1-4F13-9372-C13D9C6E5D9F>.

<sup>16</sup> 18 U.S.C. 1595



an easy way to make money in this criminal enterprise, and we need the tools to go after these folks. We're fighting with two hands tied behind our back.

Senator NELSON. All right. Let me ask you and Ms. Souras, of course, the opponents to the bill are going to say this is going to end the Internet. They're going to say it's going to end the Internet economy. Give us the argument against that.

Ms. Souras.

Ms. SOURAS. Thank you, Senator. At NCMEC, we have over 3 decades of working closely with the technology companies within the purpose of our mission. They have provided tools and partnered with us in a very collaborative manner to participate in ridding the Internet of child sexual exploitation material. There are good actors on the Internet, and there are actors that will always make extra efforts and collaborate with others to make sure that, you know, there is not criminal activity or other harmful contact on the Internet. They do that for business purposes. They do that for altruistic purposes as well. There is simply nothing in this bill that will curtail that activity. The narrow scope of this bill is drawn to ferret out and shine a spotlight on those bad actors, those who are not screening, are not engaging with others—

Senator NELSON. All right, let me come back to you, General. So the argument is going to come, well, it's not going to allow websites to allow users to post restaurant reviews, family pictures, or comments because of the fears of liability. Rebut that.

Mr. BECERRA. I don't know what menus you're reading—

[Laughter.]

Mr. BECERRA.—but this is not what we're going after. Senator, I think everyone should realize here, at least from the perspective of attorney general or a district attorney, we have to prove criminal intent. We can't win a prosecution unless we can show that the individuals we're prosecuting, like Backpage, had the intent, the knowledge, to do what they're doing.

The legislation that you have before you is very narrowly tailored. It goes only after sex trafficking. The broad exemption from any type of lawsuit for those who provide online services remains. It's only if it's sex trafficking, and I've got to prove that it's sex trafficking and that the defendants intended to violate that law.

Senator NELSON. All right. Any one of you explain why this change in the law is so important in the larger fight against child sex trafficking?

Mr. BECERRA. I think you need Ms. Ambrose here to tell you the most important reason why.

Senator NELSON. I agree. That was fairly dramatic.

Mr. BECERRA. It's the rubber hitting the road, Senator, and we're facing it all the time. We've got another prosecution going on right now, and it's only because we've got evidence of the street pimping that occurred. But we've got another prosecution going on where there were young girls—most of them under the age of 16—who were being taken from the Central Valley of California and then marketed in Southern California and the Bay area of California. And we found out. And *Backpage* was part of this operation, and we're going after them, we've got evidence. But if you have to de-

pend on going after those based on the Internet, it's near impossible.

Senator NELSON. I thank all of you for coming forward, and especially to Ms. Ambrose.

Senator SULLIVAN. Thank you, Senator Nelson.  
Senator Blunt.

**STATEMENT OF HON. ROY BLUNT,  
U.S. SENATOR FROM MISSOURI**

Senator BLUNT. Thank you, Chairman.

Attorney General Becerra, it's good to see you again. We served together for a long time—

Mr. BECERRA. Yes, sir.

Senator BLUNT.—and it's fun to watch you take this responsibility, and it's a big one, and I know you're looking at this and lots of other areas. In our state, Attorney General Hawley has been investigating *Backstage* as well, and they've actually sued him and the office, taking them to court, using Section 230. Have you seen that same kind of response from *Backstage*?

Mr. BECERRA. We've seen that on a number of occasions. They affirmatively act because they feel empowered to use Section 230 to defend themselves, and use it as an offense.

Senator BLUNT. Do they use that to suggest that your prosecution is frivolous? How do they use their defense of 230?

Mr. BECERRA. For the most part, they're saying, "You can't touch us." And the court rulings unfortunately seem to imply that in many cases. We believe the courts have misconstrued what Section 230 was meant to say. I remember. I was here in 1996, like you, when we voted on the Telecommunications Act, which was—and the Communications Decency Act was part of the Telecom Act. I don't remember 1996 ever believing that my vote, my yes vote, meant that I was going to allow 21 years later for kids to be sold out there through the Internet for sex.

Senator BLUNT. Ms. Souras, do you have any records that would indicate of the victims of sex trafficking, how many of them in one way or another involve Backpage as a specific entry level to that world as it relates to victims?

Ms. SOURAS. We do, Senator. As the national clearinghouse, we are the recipient of reports relating to child sexual exploitation, including child sex trafficking. And over the past 5 years, approximately 73 percent of those reports that we receive from the public relating to child sex trafficking involve a Backpage.com advertisement.

Senator BLUNT. Seventy-three percent.

Ms. SOURAS. Yes, sir.

Senator BLUNT. And I think you covered this in your testimony, but if this legislation would pass, how do you specifically think it would help in your effort to save kids from sex trafficking and others from sex trafficking?

Ms. SOURAS. I think there would be two immediate benefits. I mean, in one way, NCMEC, you know, obviously is a victim advocate, speaks for and represents the voices of victims. And it will provide victims an incredibly powerful tool to come forward and seek civil remedies against a company that has actively partici-

pated in their trafficking. We believe in that right. It is a right that also exists for children who have been victimized through child pornography. It's a very powerful right to give victims, very empowering.

You know, on the second side, from a more operational perspective, I think it goes without saying, and it has been said previously in this hearing, this is not a Backpage bill, children are not sold for sex only on Backpage. We talk about Backpage because it is the largest website, it has captured the market share, but when it goes away, there will be others. But our hope is that with the change to the CDA, while there might be others with criminal intent, with the desire to earn money in this way, and create a similar website, that will realize that there now is a legal bar to entering that marketplace.

There is no such legal bar now. *Backpage* is the example for that. So our hope is that others coming up behind *Backpage* will not enter that market or will be more immediately prosecuted both at a Federal and state level.

Senator BLUNT. And, Ms. Slater, do you have a problem with us doing something that would reopen that legal pathway for people who have been victimized using—and the Internet becomes the pathway?

Ms. SLATER. Thank you for the question, Senator. At Internet Association, we stand behind the goals of SESTA. We want to see an end to sex trafficking online. And we would love to live in a world where there are no more victims of sex trafficking. So I wanted to say that up front.

Where we have difficulty with SESTA, as currently drafted, is that it is overly broad in several respects. However, we have stated publicly that we would support a specific amendment that would allow victims to sue for civil penalties in court, to seek some form of redress for the horrible things that have happened to them.

And we are in discussions with several members of the Committee. We heard those discussions referenced—

Senator BLUNT. On civil penalties?

Ms. SLATER. Yes, and other issues also.

Senator BLUNT. Let me go to Mr. Goldman. Mr. Goldman, do you want to respond to that same topic quickly?

Mr. GOLDMAN. As Ms. Slater said, I do think that it is important for the Committee to continue its work on sex trafficking promotion. But SESTA itself as a solution has some of the problems regarding when a site has knowledge. And knowledge doesn't come in a 0 or 1 format. Because of the different ways that sites might moderate, they might be exposed to different kinds of information that could lead to the knowledge. And that's the dilemma that creates the decision for them, are they going to take action or not?

Senator BLUNT. Thank you, Chairman.

Senator SULLIVAN. Senator Duckworth.

#### **STATEMENT OF HON. TAMMY DUCKWORTH, U.S. SENATOR FROM ILLINOIS**

Senator DUCKWORTH. Thank you, Mr. Chairman.

I want to take a moment again and thank Ms. Ambrose for her courage and willingness to share her family's tragic story. Without

a doubt, Desiree Robinson's story sharpens my personal resolve to find solutions that will move us forward.

It's difficult to fathom Ms. Ambrose's pain and anger or to know that thousands of other families across the Nation have shared her grief. As a mom of a two and a half year old girl, I am grateful to her for her willingness to speak with us today.

Every year, thousands of sex trafficking cases are reported across the U.S. According to the National Human Trafficking Hotline, 156 of those cases were in Illinois last year. This year, at least an additional 75 cases have been reported in Illinois, and that's just reported. These statistics are truly alarming, and worse yet, they reflect only a fraction of the problem.

Ms. Souras, you highlighted that NCMEC has received nearly 10,000 reports of suspected sex trafficking on its CyberTipline. You also emphasized the underreported nature of child sex trafficking crimes. Do you have any sense of the full scope of these crimes? And are there any existing mechanisms that could be leveraged to better understand the scope of these crimes?

In talking to Ms. Ambrose, for example, you know, she said, look, these kids are coming home at the end of the day, they're getting pimped out, they're going out there, they're coming back. The families don't know. Oftentimes the children, the victims, are being threatened with the safety of their families to keep quiet. So how do we even get our arms around what the full scope is?

Ms. SOURAS. Thank you, Senator. It is a very difficult problem. NCMEC takes the position that we will rely on our own numbers. There are quite a few numbers out there, quite a few call centers and hotlines that receive these types of reports. And currently, I think it's important to understand there's no requirement that incidents of child sex trafficking be reported to the National Center as a clearinghouse on those issues, so the reports we receive are voluntary. It is wonderful that we do receive the volume we have, but because it's not mandatory, that is another reason why we know it is not near the full number.

You know, the other complicating factors, as you mentioned, are many of these children are still in their homes. They may not necessarily have left, they may still be in school to some extent. So it is very difficult to identify. And, you know, also to have those adults who are in place, whether it's parents, communities, teachers, medical workers, be cognizant of the potential warning signs that a child might be being trafficked. It's an area that we focus on a great deal in our prevention and education work, as well as the operational work we do. We obviously would like to be able to intervene and help communities intervene before a child is lured into trafficking or, you know, before they end up on Backpage or another website.

Senator DUCKWORTH. Is there anything that health-related agencies and, as you mentioned, Federal law enforcement agencies can help us to paint a clearer picture since there's no national mandatory reporting clearinghouse?

Ms. SOURAS. You know, I think every law enforcement agency certainly keeps its own numbers and statistics that are very valuable, but again there is an issue with these victims reporting, or also communities identifying what they are suffering truly as traf-

ficking, and there is a bit of a disconnect. And, you know, I would go back again to the importance of education and the realization that this happens in every community. So when law enforcement sees or hears or a teacher feels like they are hearing or seeing a situation involving a child who might be trafficked, they need to acknowledge that could be what is happening. You know, again, I think there is a resistance often to accepting that this does happen in every large and small community here in the U.S. So I would say education and awareness again.

Senator DUCKWORTH. Thank you.

Attorney General Becerra, good to see you again. It was a pleasure to serve with you in leadership in the House. I don't think anyone is under the illusion that a silver bullet exists to eliminate sex trafficking altogether, but most stakeholders agree addressing the legal inconsistencies between sex trafficking laws and Section 230 would strengthen the hand of courts and of prosecutors. Aside from the legal inconsistencies that I hope SESTA will address, what additional barriers undermine or limit your ability to attack sex trafficking head on?

Mr. BECERRA. I will tell you that California has pretty decent law when it comes to this issue. Our biggest obstacle is SESTA because we can't move forward on the sex trafficking and pimping charges because of the court rulings that say that the Section 230 protection makes it impossible for us to move forward on some of those prosecutions. If we could get past that, we would be able to help so many of these kids so much quicker.

Senator DUCKWORTH. Do these websites actively help the people posting change the wording of the ads in order to skirt the law?

Mr. BECERRA. We've seen evidence of that, and that's the disturbing part, is that that's a knowing act, and that's where we could go after someone under a bill like 1693, but, again, without the authority to do so, we're constantly told by too many courts, "You don't have the authority."

Senator DUCKWORTH. Thank you.

I yield back.

The CHAIRMAN [presiding]. Thank you, Senator Duckworth.  
Senator Schatz.

**STATEMENT OF HON. BRIAN SCHATZ,  
U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Thank you, Mr. Chairman.

Thank you to all the testifiers and to the Members who testified before. The purpose of SESTA is to enable civil and criminal prosecution against bad actors, but we obviously want to provide space and not deter proactive actions by good actors that are doing the right thing to mitigate sex trafficking on the platforms.

I'd like to ask each of you, there's a conversation going on about whether report language clarifying that the law is intended to apply to those actors who enable sex trafficking and not to those who promptly act in good faith to address a violation. And I'm wondering if that would be sufficient, if you think that that would be enough for counsel to hang their hat on for some of these big platforms who want to do the right thing, but are, at least in this conversation, worried that their knowing at all triggers the knowing

part of the statute. And so wondering whether report language would suffice in your view?

And I'll start with the Attorney General.

Mr. BECERRA. Senator, that's an excellent question. I will tell you that it's always a roll of the dice when you try to rely on report language or legislative history. We see today that the language of the Communications Decency Act has been interpreted by many, many courts to preclude state and local law enforcement from moving forward on a prosecution. That's an interpretation of the law that I would disagree with. I believe we have the authority right now. So if we had report language, would that help? That would probably get tested quite frequently in court. I can't tell you I would have the confidence that that would be enough, and every day that we don't do something, there are more kids who are being exploited.

Senator SCHATZ. Mr. Goldman.

Mr. GOLDMAN. Yes, thank you. The report language, I agree with Attorney General Becerra, wouldn't override the expressed language in the statute. So if Congress wants to say something, it should say so as clearly as possible.

I want to reiterate that the knowledge standard, especially in the case of civil claims, is a new thing for Section 230. In general, Section 230 has not had a civil exception that has been predicated on knowledge. So the opening up of the door to looking at a site's knowledge will be something that we haven't seen before, and because of that, we're going to have a lot of questions. What exactly did the site know and when? And what—and how do we characterize that under the legal standards? Those are all new questions for us.

Senator SCHATZ. Just to probe a little deeper on that, on the knowing standard, when we imagine the knowing, we imagine the individual instance of sex trafficking, we imagine the instance that Senator Duckworth was talking about, where someone is being coached on what language to avoid. In other words, we're imaging Backpage or some similar enterprise or instance. The worry from some of these big platform companies, and I don't frankly know whether it's legitimate or not, is that they're saying, "Listen, we're so large that it would be accurate to say that we know as a general matter that bad stuff happens on our platforms because we have billions of users."

And so the question becomes, if we're not trying to create an affirmative obligation for an Internet platform to essentially police all of their platform, and we are really going after the people whose primary enterprise is to make money off of this criminal enterprise, then can we craft a statute that holds harmless—"holds harmless" is the wrong word, but that understands that there's a balance here?

Mr. GOLDMAN. Yes, thank you for the opportunity to clarify and follow up on that because I think the answer is we could create such a standard, but we would want to be extremely explicit about exactly when that knowledge occurred because otherwise there will be lots of discussion and debates over, well, you knew it based on you having taken this step or that step, or inferentially you should have known, or constructive knowledge, you should have been real-

izing what was taking place on your site. All of those will become the basis of which there will be plenty of disputes. Clarification from Congress about this exactly is what constitutes knowledge would be extremely helpful if you want to go down that route.

Mr. BECERRA. Senator, if I may? Oh, I'm sorry.

Senator SCHATZ. Let me just go down the line.

Mr. BECERRA. Sure.

Senator SCHATZ. I'm sorry.

Ms. Souras.

Ms. SOURAS. Yes. From our point of view, that provision within SESTA is already sufficiently narrowly drafted. And I know we're talking about knowledge, but the language in the actual statute is knowing conduct by an individual or entity that assists, supports, or facilitates basically an instance of human sex trafficking. So something more is required. And we could debate what is conduct, you know, in the context of an online platform. But I just want to make sure that, you know, we're clear that it is not just simply a blanket notice type standard.

You know, that being said, I certainly acknowledge there could be complex, very specific business practices that certain platforms might, you know, utilize where they fear they could fit within that definition. I think that's where the nuance of the discussion can come. And I would just again kind of applaud the continuation of those discussions with Senator Portman and Blumenthal and the cosponsors.

Senator SCHATZ. I'm over time, so, Mr. Chairman, should I take this one for the record?

The CHAIRMAN. Do you have another one?

Senator SCHATZ. No, no, just the last answer.

The CHAIRMAN. OK. No, go ahead, Ms. Slater.

Senator SCHATZ. So, Ms. Slater, go ahead.

Ms. SLATER. Thank you. So I would echo Mr. Goldman's sentiment. And I would also draw attention to the actual language in Section 4, which we've already heard about, which is knowing conduct that facilitates and assists. And to our members, having reviewed the text, this seems to be a more troubling standard, difficult standard to manage than the existing sex trafficking law standard.

And we heard Senators Blumenthal and Portman talk earlier about a tighter standard, and we, our members, would be willing to talk with Committee staff, with individual offices, about how we think we can improve that language in Section 4 in a way that meets our shared goal, which is to deal with this heinous crime.

Senator SCHATZ. Thank you.

The CHAIRMAN. Thank you, Senator Schatz.

Next up, Senator Hassan.

**STATEMENT OF HON. MAGGIE HASSAN,  
U.S. SENATOR FROM NEW HAMPSHIRE**

Senator HASSAN. Thank you very much, Mr. Chairman. And to you and the Ranking Member, thank you for holding this important hearing.

Thank you to all the witnesses for being here today. This is an issue I've been working on for some time, including working as

Governor of New Hampshire with both parties to strengthen our laws against human trafficking. And I also want to take a moment to recognize Yvonne Ambrose for her courage, which really reflects the courage of all victims and survivors who come forward to shed light on the evil of exploiting people for sex. Sadly, that includes children like Desiree Robinson.

My mom taught history at my local high school, and she always used to say that what kids need more than anything else is to have a grown-up in their corner. So I'm glad today that the U.S. Senate is working at doing that, being the grown-ups in the corner for our children. And I'm cosponsoring this legislation because I really support the goals of this bill, to ensure that justice for victims of sex trafficking is possible and to hold bad actors like Backpage accountable and liable.

Look, I know there are conversations, we're having some of them, that are going back and forth about ways we can improve the bill, and that's part of today's purpose, to hear different perspectives. I just want, as a cosponsor, to encourage these conversations to go forward, and perhaps with that, I think the attorney general was about to add to answer Senator Schatz's question, because I would really like to hear, I think we'd all like to hear, some specifics about how we can make this law as effective as possible without the unintended consequences that we've heard here today.

Mr. BECERRA. Senator, thank you for a moment to also respond to the question from Senator Schatz. Let's first acknowledge that there are so many stakeholders within the tech community who have stepped up and they're doing what they can, but you have to have a concerted effort by all because it's so easy to hide in the corners.

But let me see if I can give you some comfort about amending the CDA. If it's tough to have a knowing standard for a company or someone in the Internet space to know whether they are going to be found liable or not because they may be accused of knowing, think about what the standard then is for me and my prosecutors if I have to prove beyond a reasonable doubt that they knew. That's why I think that we can amend the Communications Decency Act and do it narrowly.

So what we're doing, at least on the criminal prosecution side, we make it very difficult for prosecutors to sort of shotgun this and go after people all over the place. You have to be able to prove beyond a reasonable doubt that these folks knew what they were doing. Otherwise, they can't prove criminal intent. And so for that reason, if it's tough—if you think you're concerned about that stakeholder in the online community not knowing whether he or she could be accused, think about the standard I then have to face if the doubt, the uncertainty, lies there in the evidence. I have to have strong evidence that I can prove beyond reasonable doubt.

Senator HASSAN. Thank you. And I would encourage Professor Goldman, and, Ms. Slater, I thank you for your comments. Because my time is running low, I would encourage you to be—you and your members to be very specific about what good language would actually look like rather than raising objections.

But before my time runs down, I did just want to turn to Ms. Souras because we know that online sex trafficking has affected



people all over the country, it certainly has in my state. One case that received national attention in the past few years was a girl named Emily, who ran away from home. She was being advertised on Backpage by a pimp for sex all across New England, including in New Hampshire. She was 15 years old. I am grateful that she was located, but my understanding is that under current law, neither she nor other teenage victims of online sex trafficking can seek justice against the companies that enabled their exploitation.

So, Ms. Souras, we've heard a lot today about how to change the laws and the impact that the changes would have on companies such as Backpage, but can you speak for a minute about the impact of being denied the ability to seek justice has on survivors such as Emily?

Ms. SOURAS. Thank you, Senator. It is something that we certainly witness as victims move through recovery and then decide to bring a legal action. It is an incredibly empowering and self-revitalizing in many ways aspect of their recovery. They're able to stand up and say, "This happened to me. It was wrong. And someone should pay for that in some way."

So the ability of victims to do that, as we see victims have the ability to do that in child pornography cases, you know, which certainly shares some victimology symptoms to child sex trafficking, is incredibly important and empowering for these victims. It also is an acknowledgement to them that society recognizes the harm that has been done to them, that it was not their fault, and also that they can move forward with their lives. So it's incredibly important.

Senator HASSAN. Well, thank you very much for your work and for your testimony today.

Thank you, Mr. Chair.

The CHAIRMAN. Thank you, Senator Hassan.

Senator Booker.

**STATEMENT OF HON. CORY BOOKER,  
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Thank you, Mr. Chairman.

You know, we call this sex trafficking, but clearly this is modern-day slavery, and it is at a scale that most don't understand, that this is a multibillion dollar industry with sophisticated individuals engaging in the most heinous actions of humanity, and it is something that I've been encouraged to see the kind of commitment in a bipartisan fashion, that we have to erase this scourge of slavery from our country that exists in every state and every type of community and has now grown far more sophisticated and enabled by the Internet.

And so I'm appreciative of this hearing and I'm appreciative of the sense of urgency, and I just want to try to get to the root of what seems to be the balance that people are trying to achieve, which is to give great leaders and law enforcement, like General Becerra, the tools necessary to bring evil people to justice. But I hear a lot of, obviously, other arguments about not wanting to undermine good actors and what they're doing.

Ms. Souras, in response to Senator Schatz's inquiry, you seem to in some way—that knowledgeable standard, the knowledge stand-

ard—you seem to have some concerns that you could go too far, that you have to strike a balance. Is that correct?

Ms. SOURAS. Well, Senator, I think the knowledge standard, let's say, as drafted in SESTA, is already sufficiently narrow. Again, it targets very specific activity to knowingly assist, support, or facilitate the selling of a human being for sex. I do not think that is the sort of broad category of knowledge that could create an inadvertent violation.

Senator BOOKER. And it's a pretty high standard in the legal sense—

Ms. SOURAS. Absolutely.

Senator BOOKER.—to prove, as was said, beyond a reasonable doubt.

So, Ms. Slater, how do you respond to that? Because you clearly—and I appreciate you leading with your compassion and empathy and disgust at what's been going on and your belief that something needs to be done at the Federal level to address this. But do you disagree with Ms. Souras about that, that the knowledgeable standard, as written now in the legislation, is too low of a standard and good actors will be caught up?

Ms. SLATER. Thank you for the question, Senator. So as I mentioned previously, the standard in Section 4 of SESTA, as currently drafted, is different from existing Federal sex trafficking standard. And we did hear from Senator Portman and from Senator Blumenthal, that the standard they were talking about in their opening remarks was the higher standard. And so we're happy to have discussions about that and to seek that clarification with the drafters of the bill.

We do absolutely share the goals of this Committee and of the Senate that we should work together to seek to put an end to sex trafficking online.

Senator BOOKER. No, I understand. I'm really trying to get to the details now. What specifically would you want to see changed when it comes to the knowledge standard? What? Can you just be very granular for me?

Ms. SLATER. Yes.

Senator BOOKER. I understand your intentions and the nobility behind them, but I'm trying to understand what's wrong specifically with the knowledge standard, as stated in this legislation.

Ms. SLATER. And so today the bill, in Section 4, states knowing conduct that facilitates and assists, et cetera, et cetera. And the standard that we previously talked about and the standard that Senator Portman and Senator Blumenthal referred to is knowingly facilitates and assists sex trafficking. And the advice that I am getting from legal council at the companies is that those are two different things, and they're seeking to clarify that difference. And, again, we're happy to talk to any members of the Committee or their individual staffs.

Senator BOOKER. Thank you.

Mr. Goldman, can you give me something that's very specific in how this might put a chill on—and Ms. Slater represents large companies. Obviously there are lots of startups out there. Could you be very specific and help me understand how this would put

a chill on a small company, on an entrepreneur, a standard that for law enforcement is a very high standard to meet?

Mr. GOLDMAN. Right. And just to—thank you for the question. Just to clarify, there are both criminal and civil provisions. The civil provisions would not be subject to the same burden of proof that Attorney General Becerra talked about. So we already have two different things we're talking about simultaneously, and I think that's one of the confusions I have.

The knowing conduct is different than knowing that an ad was promoting the victim of a sex trafficking—of a sex trafficker. So by focusing on knowing conduct, it actually focuses on the conduct, not on knowing that there was an actual legal violation taking place. And so right there, there seems an opportunity for us to clarify. If we mean that the service writer has to know about the violation, we should make that more clear.

Otherwise, when we talk about knowledge generally, sites will take a number of steps to either reduce their knowledge, which means they'll turn off particular sections of their websites or they'll adopt filtering that will filter out more than the legal violation, or they will simply decide, "We will do nothing, and therefore we could not possibly have knowledge of anything."

Senator BOOKER. Out of respect for my colleagues, I need to stop. But you're saying that the civil standard, it will be lower and invites civil lawsuits, not—you're not concerned about state and Federal law enforcement.

Mr. GOLDMAN. I have other reasons to be concerned about state attorney general prosecutions here, but the civil standard here would not be subject to that high level of proof that we would expect from a criminal prosecution.

Senator BOOKER. Thank you.

Mr. Chairman, thank you.

The CHAIRMAN. Thank you, Senator Booker.

Next up is Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,  
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you.

Thank you for the conversation today. And let me just start off, because I think, like Senator Booker, I'm trying to really understand and get down to where we can come to agreement on this legislation, which I think is so important that we pass it.

So let me start here. Under Section 230, as it's written now, the Federal Government, Federal law enforcement, has the authority to go in and shut down a website for sex trafficking, correct? I'm going to open it up to anybody. Is that correct?

Mr. BECERRA. Yes. The Federal Government has the ability to criminally prosecute.

Senator CORTEZ MASTO. And so that's what they have now, and that has not impeded any freedom of speech or the evolvement of the Internet, correct? I'm going to open it up to anybody. Is that true?

Mr. BECERRA. I'm going to give you an affirmative to that, but I'll let somebody else—

Senator CORTEZ MASTO. OK. I haven't heard anything differently. So what we're doing right now and what I understand is because the sex trafficking of our kids and adults is so prevalent, like any other criminal law enforcement activity that occurs, we are looking for the allowance of state law enforcement to also pursue and shut down these sites when sex trafficking is occurring. Is that correct, General?

Mr. BECERRA. Senator, from my perspective, yes. I am looking for the authority to do what Federal prosecutors can do, which courts are denying me right now. I believe under the statute I should have the authority, but it has been construed differently.

Senator CORTEZ MASTO. So the only thing we're doing is opening the door to now allow local law enforcement and state law enforcement to also do the same thing that the Federal law enforcement has to do under this, which is to shut down those sex trafficking sites, correct?

Mr. BECERRA. That's the principal reason why I'm here.

Senator CORTEZ MASTO. OK. And that's why as Attorney General, I signed onto a letter in 2013 to change the 230 CDA, and that's why I continue to support it.

Now, I understand with your concern with respect to Section 4. I do think it is overly broad. And the knowledge piece that we're looking for is already in the U.S.C. itself, Section 1591. I mean, General Becerra couldn't have said it better. If we're going to prosecute, that mens rea of knowledge is already in the criminal statute.

And so that's what we're looking to do, and I think that's the only piece that we're trying to do here, is because under the case law that I have seen as attorney general when I was pursuing these sex trafficking cases, they're looking at 230, and the courts are interpreting that State law is preempted by Federal law, and we don't have this ability.

Now, there is so much sex trafficking going on, and let me just tell you, this is a crime that is so prevalent, and thank you, Ms. Ambrose, for being a voice, because it is not an easy thing for you to get up here and tell your daughter's story. And your story is one that I've heard too many times in my state as attorney general. And this is an issue that we have to stop. We have to stop it. And it is not just for Federal law enforcement to stop it, it is for all law enforcement, for state, local, to take action. And that's all we're asking, is that state law enforcement have that ability because it is so prevalent.

And so the goal we're trying to do is limit it to sex trafficking only so that there isn't the concern I hear in some unintended consequences that may occur with some of the agencies that I've talked to with respect to the websites.

So, Mr. Goldman, I've only got about a minute 26 left. I understand you have concerns with states having that authority. I ask, "Why?"

Mr. GOLDMAN. Correct. Thank you. So the question is, Why do I have reservations about state attorneys general enforcing the law? There are two different issues in the bill. One is the bill would authorize state crimes to be newly enforced in addition to the Federal crimes. There is some overlap between the two. But now we

open up the door to a whole bunch of new laws that have not been previously enforced against the Internet community. And those laws haven't been approved by the rest of the Internet. They've been approved by that state—those states' voters, and the attorney general has been approved by that state's voters. So the effort to impose these other crimes on the rest of the Internet creates the possibility that the state itself, the people who aren't in that state are having the laws of a state applied against them in ways that they may not have had a chance to vote on.

Senator CORTEZ MASTO. So if we were limiting it specifically that the state could pursue an action for sex trafficking pursuant to 1591, that's going to limit what they can do and the action that they can take, and so this would—would that satisfy your concerns?

Mr. GOLDMAN. That would certainly help make sure that we're now applying a single Federal standard as opposed to a much more heterogeneous set of laws.

Senator CORTEZ MASTO. I appreciate that. Thank you. I understand my time is up.

Mr. Chairman, let me just say thank you. This is such an important topic. I have worked as attorney general with my colleagues, and now General Becerra, trying to change this, and many advocates in this room, Mrs. McCain and NCMEC and so many others. I think it's such an important topic and I so appreciate you having the hearing today.

The CHAIRMAN. Thank you, Senator Cortez Masto. I appreciate your good questions.

And next up is Senator Cantwell. I felt like I was skipping over you.

**STATEMENT OF HON. MARIA CANTWELL,  
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman. No, that's OK. Thank you. I appreciate my colleague from Nevada's questioning and the issues.

And I wanted to ask you, Attorney General Becerra, about what else we need to be doing to address this problem. I have worked in the past with both tech companies and INTERPOL on trying to create better tools to use the Web as an investigation for a crime scene so that law enforcement know what to be looking for, the challenges they face. But what else do we need to do?

As someone who comes from a state where I know that there is trafficking, the I-5 corridor, the central part of our state, from sporting events to Vegas activity. Tell me what else that we need to do to give the tools to law enforcement beyond what we're talking about here today?

Mr. BECERRA. Certainly trying to provide the services and help that Ms. Souras and some of the other phenomenal advocacy organizations have been doing. They're doing it on a shoestring budget. They are saving lives. They are rehabilitating kids. The more we do for them, the greater the chance that someone with all this trauma will survive.

Second, remember how tough it is to file a lawsuit, a civil lawsuit. It is not easy to be a company that's making millions of dol-

lars on the Internet. When you're an average person who knows your child was taken advantage of and exploited through sex trafficking, it's going to be really tough to manage a case against a large company with lots of lawyers.

But, third, if we can't even prosecute—you could give the Federal Department of Justice a much larger budget so they wouldn't have to pass on trying to prosecute all the various cases throughout the 50 states and all the territories, but they can't go after everybody. That's why you've got 50 state attorneys general, the District of Columbia's attorney general. That's why we've got in California 58 district attorneys in our 58 counties. We can do some of that, but we can't unless we have the authority to do it under the Communications Decency Act.

And so probably the best thing to do if we want to sort of break the logjam here is give us the authority to descend on some of these folks because if we can prosecute—remember it's always better to prosecute criminally someone than try to go after them civilly and try to see if you can get monetary damages.

Senator CANTWELL. No, I'll—well, I'm not opposed to that, that's not what I was referring to, because I'm pretty sure this problem has existed sans this vehicle, and we want to make sure that we're fighting on every opportunity. And one thing that we want to do is enhance the communication so that law enforcement has the tools. As I said, we've been involved in other things where Interpol and tech companies were working together—

Mr. BECERRA. Yes. Yes.

Senator CANTWELL.—to try to help disseminate information so that we were stopping these—so that we were actually following the trail to actually find these people and stop them. But I'm also interested in the non-Internet side, too, because it's such a pervasive problem in very rural parts of our state, and I want to make sure that we're giving law enforcement all the tools necessary. So we don't always get you here to ask that question. So thank you for that.

Mr. BECERRA. Thank you.

Senator CANTWELL. And so on the identification side, are there things that we can be doing in the local communities to identify individuals and networks?

Mr. BECERRA. A lot is being done. I will tell you I'm amazed at the amount of work that's done. It's mostly because you've got very concerned parents who find out that their child was involved, and they're starting to work with organizations. I think there are a great number of individuals and companies within the tech community that have stepped to the plate to try to be supportive to help people understand how to do this. And a lot of local governments have formed task forces to work in a collaborative manner with every stakeholder.

So a lot is being done, but if you hit the roadblock every time of trying to prosecute or get civil taken, it's impossible.

Senator CANTWELL. Yes. No, I get your point there. I just want to make sure we're—now that we have this forum, I want to build all the opportunities that we have. That's the point.

Mr. BECERRA. Absolutely.

Senator CANTWELL. And you're mentioning this information flow. We've had former colleagues who have taken a pretty big role in this in my state, and we want to make sure that the work that's being done to help elevate the discussion is there. So if you think that there is something on like a help network line to identify more of these things so we can go in and—that would be helpful. So thank you.

Mr. BECERRA. Thank you.

Senator CANTWELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell.

Another vote has been called. I have Senators Blumenthal, Young, and Udall, and I think if we try, we can probably wrap things up and get everybody there in time for the vote.

So, Senator Blumenthal, you're up first.

Senator BLUMENTHAL. Thank you, Mr. Chairman. And in order to give my colleagues perhaps more of a chance to question, I'm not going to make any further remarks. I think I've said why I so strongly support this legislation, which I have helped to craft, and we've tried to do it carefully, and we tried to listen to the industry. We've tried to listen really closely to some of the concerns that have been raised this morning by Mr. Goldman, for example, the idea that this legislation will cause sex trafficking to—I'm using your word—proliferate. Hard to believe.

Mr. Becerra, what do you think? And will this measure cause sex trafficking to proliferate?

Mr. BECERRA. I can't agree with what Professor Goldman has said. I think it's just the opposite. If we have a standard in place, then I believe the stakeholders within the Internet community will come forward in ways that we've seen before, but even more vigorously because they'll understand what the standard is, and I think that's so very important to make it clear for folks.

The most important thing, Senator, I think Senator Booker sort of pointed this out, is we need to get the opponents of this measure to explain in detail what they would propose in place. Otherwise, it's always a moving target. It's Whack-A-Mole. Someone needs to give us what a better bill looks like.

Senator BLUMENTHAL. And we have urged and welcomed their participation, and only recently have they begun making suggestions. In one proposal, they would, in effect, either drastically curtail or eliminate the role of state attorneys general or other state law enforcement. I know what I think, as an attorney general who served for 20 years, maybe I can ask you on behalf of attorneys general, at least on behalf of yourself, why you think it's important for attorneys general to continue in the role that they have along with state law enforcement generally?

Mr. BECERRA. That's our responsibility, is to protect the people of our states, and as you know, as a former attorney general, it is not easy to get 50 attorneys general to sign onto the same letter, and that's how powerful this is, because we've seen how many lives are being impacted by not being able to move forward.

Senator BLUMENTHAL. And you've been very eloquent and powerful in your testimony today. Senator Harris, your predecessor, has been very helpful in clarifying some of the issues on this bill. You know, I'm going to be very blunt, there are times when the United

States Department of Justice fails to be as aggressive as it should be either because it doubts the legal merits of a potential prosecution or a civil claim, or it simply lacks the leadership to do so, and that's where state attorneys general are so very important. That's why we have a Federal system, because states have a responsibility to protect their people and enforce the law. And in this instance, as in the anti-trust area and other areas, the coordinated approach I think is tremendously important. But we do welcome suggestions from the industry.

And let me ask, Mr. Goldman, do you really believe that this law would cause sex trafficking to proliferate?

Mr. GOLDMAN. Thank you, Senator, for the opportunity to clarify that. Indeed, my concern is that we already see a number of efforts on the part of legitimate players to reduce the sex trafficking promotion. And to the extent that any of those companies decide, "I am better off turning off my efforts across the board to try to reduce the knowledge that I have," then actually it creates a larger number of zones where the sites will not be taking the legitimate efforts that we want them to take. It creates an environment where there are more places for that activity to occur.

Senator BLUMENTHAL. You know, I have a higher opinion of the industry than you do. I really believe that this law will raise the bar, will increase consciousness, and that far from trying to evade or, in effect, deny themselves knowledge so as to avoid any accountability, they will be more energetic. I absolutely really believe that most of these companies want to do the right thing, and that this law will give them an increased impetus and incentive to do so.

Mr. GOLDMAN. There's no doubt that the legitimate players will do everything they can to not only work with the law enforcement and other advocates to address sex trafficking, but will probably do even more than they do today. At the same time, the industry is not just the big players; it's a large number of smaller players who don't have the same kind of infrastructure, and for them, they have to make the choice, Can I afford to do the work that you are hoping they'll do?

Senator BLUMENTHAL. And I believe those outliers—and they are outliers—will be successfully prosecuted civilly or criminally under this law.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Blumenthal.  
Senator Young.

**STATEMENT OF HON. TODD YOUNG,  
U.S. SENATOR FROM INDIANA**

Senator YOUNG. Thank you, Chairman, for this important hearing.

And thanks so much to our panelists and the other stakeholders who are working so hard to help us find some common ground here.

I was touched and I was moved, as I think everyone was, by Ms. Ambrose's testimony, and it's clear we have to do everything possible to mitigate, end ultimately, human trafficking and sex trafficking. This hits home, as it does for all of my colleagues, but in the State of Indiana, tips to our human trafficking line went up



fourfold from 2014 to 2016, and law enforcement specifically cites one website, Backpage.com, as fueling some of that growth. So I feel an imperative for us to act, and I share the goals that those who put this legislation together have.

Details are really important. And so I have confidence that parties can come together, and if we're open on one hand to a careful reassessment of Section 230, that might provide greater power to our state AGs to go after the Backpage.com's of the world. But on the other hand, we have to be open to a careful reassessment of SESTA to take into account legitimate concerns, I think, that were expressed by Professor Goldman and Ms. Slater here today. Can we bridge that divide? I think we're pretty close here.

So I'm going to ask a question about this, what strikes me as a new standard, "knowing conduct," within SESTA. It's a new standard to the definition of participating in a venture in the Federal law.

I want to better understand the implications created by this "knowing conduct" standard. I spent a couple years practicing law. We have intent on one end, we have strict liability on the other end. You have gross negligence and negligence and recklessness. And so help me understand. Is this "knowing conduct" standard somewhere in between intent and negligence, Mr. Goldman?

Mr. GOLDMAN. Thank you for that question because I am, too, not clear what the "knowing conduct" standard refers to and where it would fit on that spectrum between intent and strict liability. To me, reading it on its face, it would only modify the conduct, not whether understanding that conduct caused any legal violation. So I don't know that I would call it strict liability, but in a sense, as long as you know the conduct you're taking, the consequence of that conduct may be unknown to you and still have great liability.

Senator YOUNG. Mr. Becerra.

Mr. BECERRA. Senator, because my focus has been on criminal prosecutions, for me, the standard will always have a clear sense of knowing. I can't prosecute someone and get a conviction unless they knew what they were doing. And so for me, the bar is as high as it gets, having to prove beyond a reasonable doubt. That's why I believe, in this particular case, we can make an amendment to SESTA and not damage those who are truly trying to grow and innovate based on that protection they get from lawsuits.

Senator YOUNG. Mr. Goldman, you invoke the possibility that a sort of constructive knowledge could be imputed to those who put up a website. "Constructive knowledge," I looked up the definition on the Web, a person is presumed by law—and that can always be dangerous—a person is presumed by law to have this knowledge, since the knowledge is obtainable by the exercise of reasonable care. Reasonable care is the sort of care that—and a person would ordinarily exercise if they were a prudent and rational person under similar circumstances.

This gets—it's pretty abstruse stuff after a period of time, but is there—do you believe is there a way to bridge this divide between the concerns of what I'll characterize as your side and those who are pushing for a more aggressive approach?

Mr. GOLDMAN. I actually think we're all talking about the same thing, but I'm not sure that we agree what language will get there.

If we are talking about knowing that there is a sex trafficking violation taking place, that knowledge to me would be something that would be consistent with Attorney General Becerra's standard, but would also, I think, be a much clearer standard for the services to act under.

Senator YOUNG. OK. My time is winding down. Count me in as someone who wants to constructively work toward a conclusion here and find that sweet spot so that we can protect our young men and women in this country and prevent this horrible predation that continues to grow in the State of Indiana and beyond.

The CHAIRMAN. Thank you, Senator Young.

Before I turn to Senator Markey, he has already voted, I'm going to have to go vote here. I think Senator Sullivan is coming back and also wants to ask questions, so I may have him take this out.

But I wanted to ask Ms. Slater, because I know this issue of civil liability has been discussed at some length. But could you provide some more clarity about what such an amendment would have to look like to receive your organization's support?

Ms. SLATER. Certainly, Senator. Thank you. So currently, under existing law—and I'll be specific here, it's 18 U.S.C. 1595—victims of sex trafficking can seek civil penalties against the perpetrators of the crimes against them. There is a carve-out for that, for Section 230, and we support an amendment to Section 230 that would make that path possible for victims.

The CHAIRMAN. Well, let me just say in kind of closing this out, that this has been really—I think the hearing has been very helpful, a lot of good testimony, and I would encourage you and the companies that you represent to continue to be at the table and to figure out if there's a way we can resolve the what some have acknowledged are perhaps unintended consequences in the current draft of the bill, but get to a place where we can move forward because I think everybody agrees this is an area in which we have to—we need to provide clarity.

It's up to us to clarify the issues that are constantly involved in litigation. And I happen to think there's a path forward to be able to do that based on what I've heard today, but I want to encourage you and your companies to be able to sit down with the sponsors of this bill and for us to be able to work with our colleagues to see if we can get to a result.

But I thank you all for being here. And I think this has been a great, like I said, a great hearing with very valuable input, and we'll look forward to taking all of it into consideration as we move forward.

And I'll flip it now to Senator Markey.

And then, Senator Sullivan, I think you can probably wrap it up.

**STATEMENT OF HON. EDWARD MARKEY,  
U.S. SENATOR FROM MASSACHUSETTS**

Senator MARKEY. Thank you, Chairman Thune, very much. Thank you for having this very important hearing.

There is a Dickensian quality to the Internet. It can simultaneously enable and enoble or degrade and debase. Obviously, sex trafficking is at the top of the list of degrading and debasing activity which occurs on the Web. And historically, what has happened

is that there has been an incentive for companies to take voluntary action to deal with these issues, to be empowered to be able to deal with the issues, and that self-incentivization is something that clearly is now being called into question. And the issue is, How do we now construct a balance that allows us to deal with this issue and to potentially give authority to attorneys general to be able to act?

So it's good to see you, Attorney General Becerra, my good friend. Can you talk a little bit about what that power is succinctly, that we can understand, and why it's necessary to put that on top of the already existing powers?

Mr. BECERRA. As has been stated earlier, Federal prosecutors have the authority right now to criminally prosecute those who violate Section 230, the Communications Decency Act, who go above and beyond and engage in criminal activity with regard to sex trafficking of children. The difficulty is Federal prosecutors have proven they're not going to go everywhere and do every case. That's why you've got the 50 state attorneys general, the District of Columbia's attorney general, and the other territories. You've got in California 58 district attorneys in our 58 counties. We're prepared to do that because there is no reason to let a case drop if the evidence is strong that you have criminals who are preying on our children.

And we would just simply like to have the authority that I believe we already have under the statute, but based on interpretations by various courts, they don't agree.

Senator MARKEY. OK. Ms. Slater, what's wrong with what the attorney general said?

Ms. SLATER. In terms of goals, we absolutely share the goals.

Senator MARKEY. Right.

Ms. SLATER. Perpetrators like Backpage.com should be brought to justice. However, I would note that there is currently in Phoenix a grand jury convened to do just that, and it's supported by evidence from the Senate's own PSI report, which issued earlier this year, which contained, I believe, over a million pages of documents from Backpage that outlined and documented and evidenced its criminal conduct in facilitating sex trafficking.

Senator MARKEY. OK. Ms. Souras, what's wrong with what Ms. Slater just said?

Ms. SOURAS. We certainly applaud the efforts of the Federal Government and the grand jury investigation, and then we will be following that closely, but as Attorney General Becerra noted, the problem is simply too large. These are large complicated cases. There is not one website. We know this at NCMEC. We talk about Backpage. There are dozens of websites. There will be dozens more in the future. These are complicated cases to put together. The victims do not come forward easily. They have lengthy periods of recovery. These are some of the issues that we've highlighted throughout this hearing.

The volume is simply too high. Perhaps in 1996, it was reasonable to assume that the activity on the Internet was, you know, much, much less, and of course, the criminal activity was much less significant. That simply isn't the case anymore. More criminal law enforcement resources are needed.

Senator MARKEY. Thank you.

And, Mr. Goldman, you're going to disagree with Ms. Souras. So where is your disagreement with her?

Mr. GOLDMAN. Thank you. The only thing I would add to what Ms. Slater said is that the DOJ has already gone after two other sites that have been promoting online prostitution, the Rentboy and MyRedBook sites, and successfully was able to shut down both under existing Federal law, no issues with Section 230. So I think we have to note that the DOJ is paying attention to this area and is taking action.

Senator MARKEY. OK. And you, coming back to you again, you're saying, Attorney General Becerra, it's just not adequate.

Mr. BECERRA. Senator, they're going to—that mole is going to pop in another hole, and we're going to whack it, and then it's going to pop up in another hole, and it's just Whack-A-Mole.

Senator MARKEY. So we need more hammers to be hitting those holes.

Mr. BECERRA. There's too much money. They're not going to stop. There's just too much money.

Senator MARKEY. OK. So we thank all of you. This is an issue we have to resolve, and we have to just find a way through it. You've all presented very compelling testimony here today. And I think you're giving us, I think, a good education on the problem and on where the potential avenues can be created in order to work together on a bipartisan basis.

And I want to thank the Chairman. And I offer my cooperation to the Chairman and to Senator Blumenthal to try to work this thing through so we can find a consensus resolution of it. So we thank each and every one of you for your compelling testimony today.

I yield back to the Chairman.

**STATEMENT OF HON. DAN SULLIVAN,  
U.S. SENATOR FROM ALASKA**

Senator SULLIVAN [presiding]. Thank you, Senator.

And I want to thank the witnesses. I will be your last questioner today. You've done a great job on this panel on a really important issue. You know, all of us deal with this heinous issue in different ways. In my State of Alaska, some of you may have seen this recent report sponsored by Covenant House that looked at 10 different cities for homeless youth. Almost one-third homeless youth in different cities across America have been trafficked. And it's an astounding statistic.

So I'm going to ask without objection that this report be placed in the record. And I believe that Covenant House is going to be submitting testimony for this hearing as well.

[The information referred to follows:]

# Labor and Sex Trafficking Among Homeless Youth

Anchorage, Alaska

Laura T. Murphy



As part of a ten-city study of labor and sex trafficking among homeless young people, this report provides a **detailed account of labor and sexual exploitation** experienced by homeless youth in Covenant House's care in Anchorage, Alaska.



## Mission Statements



### Loyola University New Orleans

Loyola University New Orleans, a Jesuit and Catholic institution of higher education, welcomes students of diverse backgrounds and prepares them to lead meaningful lives with and for others; to pursue truth, wisdom, and virtue; and to work for a more just world. Inspired by Ignatius of Loyola's vision of finding God in all things, the university is grounded in the liberal arts and sciences, while also offering opportunities for professional studies in undergraduate and selected graduate programs. Through teaching, research, creative activities, and service, the faculty, in cooperation with the staff, strives to educate the whole student and to benefit the larger community.



### Modern Slavery Research Project

Loyola University's Modern Slavery Research Project works to make escape possible for victims of human trafficking in Louisiana, the U.S., and internationally through survivor-centered, data-driven, community-based research that better serves survivors and supports advocates who are on the front lines of identifying and assisting those held in modern slavery.

## Executive Summary

**Covenant House International** is the largest, primarily privately-funded charity in the Americas offering housing, outreach, and support services to homeless youth. Each year, the organization helps nearly 47,000 youth in 30 cities in six countries.

Human trafficking — the exploitation of a person's labor through force, fraud, or coercion — is a crime whose victims tend to be society's most vulnerable. People who are homeless, lack a support system, or are desperate for work are susceptible to the promises of people who would exploit them for labor and for sex. Recently, homeless youth providers in the United States and Canada have become aware that their clients are particularly at risk of trafficking, and research has begun to uncover the extent and contours of the problem within that community.

Though there is increasing awareness of both sex and labor trafficking in the United States, research on the subject at the state and local levels is scant. In 2013, the State of Alaska Task Force on the Crimes of Human Trafficking, Promoting Prostitution, and Sex Trafficking released a report that surveyed known service providers that assist trafficking victims and found that eleven organizations had assisted at least one victim of trafficking. Their study indicates that these organizations estimate that they serve at least one or two victims of trafficking each year, but the report concluded that this is likely under-reported because most organizations did not have a protocol for identifying victims and were simply determining victim status through law enforcement officer referrals of clients. The report points to the fact that, like most U.S. states, Alaska lacks more comprehensive studies of trafficking across the state, in the cities, and among service providers. This study is a step toward a more nuanced portrait of human trafficking at the local and national levels.

Between February 2014 and June 2016, researchers from Loyola University New Orleans's Modern Slavery Research Project (MSRP) were invited by Covenant House International and ten of their individual sites in the United States and Canada to serve as external experts to study the prevalence and nature of human trafficking among homeless youth aged 17 to 25. MSRP researchers interviewed 641 homeless and runaway youth who access services through Covenant House's network of shelters, transitional living and apartment programs, and drop-in centers. Youth were invited to participate, on a voluntary basis, in a point-in-time study about work experience. Semi-structured interviews were conducted using the Human Trafficking Interview and Assessment Measure (HTIAM-14) to assess whether youth had been trafficked for sex or labor in their lifetimes.

## Key Findings

### Anchorage, Alaska

**In Anchorage, we interviewed 65 youth. 46 of them were residents of the Covenant House shelter, and 19 of them were utilizing their drop-in services.**

- 28% of respondents were identified as victims of some form of human trafficking, following the legal definition outlined by the U.S. Victims of Trafficking and Violence Protection Act.
- 20% of the total population had been trafficked for sex, 18% for other forced labor. (7 respondents were trafficked for both sex and labor.)

**28%**  
of youth  
interviewed in Anchorage  
were identified as victims of  
sex or labor trafficking.

#### Sex Trafficking

- 27% of women interviewed were trafficked for sex; 17% of men.
- 43% of LGBTQ youth interviewed were trafficked for sex. While LGBTQ youth constituted 22% of all respondents, 46% of all identified sex trafficking victims identified as LGBTQ.
- Of the people who were trafficked for sex, all but one would automatically be considered trafficking victims by law because they were trading sex (either individually or through a third-party controller) under the age of 18. Nonetheless, 3 of those youth also reported extreme situations of force, fraud, or coercion that compelled them to engage in commercial sex, so they would be considered trafficked regardless of their age.
- Of the cases of sex trafficking, 8 had engaged in survival sex as minors. They traded sex because they were unable to access basic necessities.
- Of the youth who were trafficked for sex, 77% were homeless at the time.
- Drop-in youth accounted for half of the cases of trafficking, though they only accounted for 29% of the interviews. This disproportionate representation is likely a circular situation: because these youth do not have a stable place to stay, they are more likely to engage in the sex trade. Because they are then engaged in the sex trade, they find it more difficult to remain in a stable residential environment.

#### Sex Trade and Survival Sex

- A total of 29% of the clients we interviewed indicated that they had engaged in the sex trade at some point in their lives.
- 36% of women had engaged in the sex trade, while 27% of men had. 43% of LGBTQ-identified youth had traded sex commercially, making up 43% of all those who reported trading sex.
- 68% of those who had engaged in any way in the sex trade were homeless or marginally housed (i.e. living in a hotel room) at the time.

#### Labor Trafficking

- 18% of respondents were found to have been trafficked for labor.
- Of those trafficked for labor, half were male and half were female.
- All of labor trafficking cases involved forced drug dealing or forced criminal activity such as working as muscle or a thief for a gang. These young people were forced to sell or deliver drugs or to engage in other illicit activities without their consent by family members and friends.
- 7 of the victims of labor trafficking had engaged in the sex trade when they were minors and therefore are considered both sex and labor trafficking victims.

#### Ten-City Study Findings

Homeless youth are vulnerable to both sex and labor trafficking because they tend to experience a higher rate of the primary risk factors to trafficking: poverty, unemployment, a history of sexual abuse, and a history of mental health issues. If they have families who are involved in the commercial sex trade or gangs, their risk is even higher. Homeless youth indicated that they struggled to find paid work, affordable housing, and support systems that would help them access basic necessities. They had experienced discrimination in their jobs and in housing. A confluence of factors made the homeless youth we interviewed vulnerable to both sex and labor traffickers who preyed on their need. It also made them more likely to turn to the sex trade for survival.



**Economics:** For the vast majority of youth, economic factors made them most vulnerable to traffickers and unwanted engagement in the sex trade. They reported that they often found themselves desperate for work and that people took advantage of their need. Ninety-one percent (91%) of respondents reported being approached by strangers or acquaintances who offered lucrative work opportunities that turned out to be fraudulent work situations, scams, pandering, or sex trafficking. While some were resilient and walked away from these offers, many of the youth who were trafficked for sex and labor were recruited in this way. Others felt forced to turn to trading sex because they could not find legitimate work. Eighty-four percent (84%) of youth who reported engaging in the sex trade without a third-party controller did so because of economic need.

**Housing:** Youth reported that their fear of sleeping on the streets left them vulnerable to sex and labor traffickers and to survival sex. Securing housing was a primary concern for the vast majority of the youth we interviewed. Sixty-eight percent (68%) of the youth who had either been trafficked or engaged in survival sex or commercial sex had done so while homeless. Nineteen percent (19%) of all youth interviewed had engaged in survival sex solely so that they could access housing or food. This problem is even starker among those who are not sheltered. The incidence of trafficking among drop-in youth—sometimes called “street youth”—was high relative to the sheltered cohort: 24% were trafficked for sex, 13% for labor. Forty-one percent (41%) of interviewed drop-in youth had engaged in the sex trade in some way at some point in their lives. One-third (33%) of them had engaged in survival sex as either adults or minors. Many of the trafficked youth who were accessing Covenant House’s shelter programs said they saw the shelters as safe havens from their traffickers.

**Work:** The youth we interviewed indicated that they encountered people who took advantage of them when they were searching for work. A lack of job opportunities converged with a lack of computer literacy and job skills to lead to vulnerability. Many youth pursued job advertisements that turned out to be fraudulent. They sought training on how to identify a safe job and additional job skills training programs to help them avoid labor traffickers, sex traffickers, and other exploitative labor situations.

**Gender:** One in five of all cisgender women and one in ten of all cisgender men had experienced a situation that was considered sex trafficking. While cisgender women were more likely to be trafficked and to engage in the sex trade, cisgender men were more likely to be trafficked than many people might expect. Eleven percent (11%) of cisgender men had been trafficked, and a total of 24% of them had engaged in at least one commercial sexual exchange at some

91% of youth across 10 cities reported being offered lucrative work opportunities that turned out to be fraudulent, scams, or sex trafficking.

point in their lives. Nearly one in ten men who identified as heterosexual had been trafficked, while more than one in five (21%) LGBTQ men had been trafficked. Despite this, heterosexual cisgender male youth reported that they typically had not been asked about engaging in the sex trade when interacting with social service providers and were not typically offered services for trafficking or sexual exploitation.

**Sexuality:** LGBTQ youth were disproportionately affected by sex trafficking and significantly more reported engaging in the sex trade. Though LGBTQ youth accounted for 19% of the respondents interviewed, they accounted for 36% of the sex trafficking victims and 36% of those who engaged in the sex trade. Half of the LGBTQ youth had engaged in the sex trade in some way during their lifetimes. LGBTQ youth were significantly more likely to be sex-trafficked than their straight counterparts.

**Aging Out:** Aging out of the foster care system made youth vulnerable to traffickers and to engagement in the sex trade. The median age of entry into trading sex for the youth we interviewed was 18 years old, and for those who were sex trafficked it was 16. Youth reported becoming homeless as a result of leaving foster care, and they indicated that homelessness resulted in vulnerability to the sex trade and sex trafficking. Though they constituted 21% (137) of the sample, youth who had a history of involvement in the foster system accounted for 29% (25) of all sex trafficking victims, 27% (49) of all youth engaged in the sex trade, and 26% (13) of all youth who were labor trafficked. Youth between the ages of 17 and 19 need special attention because of their unique vulnerabilities.

## Recommendations

### For Practice

Runaway and homeless youth shelters and programs should be equipped to meet the needs of trafficked youth because they are able to address the root economic and societal problems that make youth vulnerable to exploitation. With programs directly responsive to the heightened needs of trafficking victims, runaway and homeless youth shelters can effectively help trafficking survivors and prevent other homeless youth from being exploited. We recommend a four-pronged approach that includes prevention, outreach, confidential and inclusive identification, and specialized interventions.

**Prevention** efforts that focus on job search and job skills programs, housing opportunities, and healthy sexuality/relationships will increase youth resilience to traffickers and exploitation.

**Outreach** programs and advertising for services should target locations where youth are being approached by those who would exploit them: on social media and online job sites, at bus stops and transportation stations, and at government assistance offices.

**Confidential and inclusive identification** strategies should be employed by all youth-serving organizations to increase the likelihood that youth will disclose a situation of trafficking and, therefore, provide greater access to specialized services and care. Including men, LGBTQ, and foster care-related vulnerabilities in screening protocols should be standard practice.

**Specialized Interventions** might include anti-trafficking orientation and drop-in programs, trauma-informed counseling, harm reduction training, and victim relocation networks.

# 68%

Across 10 cities, 68% of the youth who had been trafficked or engaged in survival sex or commercial sex had done so while homeless.

### For Policy

Social service providers cannot protect young people from labor trafficking and commercial sexual exploitation or effectively help them overcome related traumas without significant support. Legislators must play a role in ensuring that our youth are protected from trafficking. The following legislative changes could assist us in identifying and helping more trafficking survivors.

#### At the national level:

- U.S. Congress should pass the Runaway and Homeless Youth and Trafficking Prevention Act, which provides much-needed funding for services to prevent and address trafficking among homeless and runaway youth populations.
- Dedicated funding should be allocated for additional shelters and shelter beds equipped with wraparound and specialized services to serve survivors of trafficking and exploitation in both the United States and Canada.
- Criminal justice reform in the United States and Canada should take into account the context in which youth engage in the drug trade and exclude victims of forced labor from prosecution.

**At the state level:**  
**Relevant Victim Protection Laws:**

Code	Statute	Description
§ 11.66.100(d)	Prostitution	Names as “trafficking” the inducement of a person to engage in prostitution, including minors

**All U.S. States should:**

- pass comprehensive “Safe Harbor” laws that allow young trafficking survivors to be treated as victims of a crime rather than as criminals.
- require specialized human trafficking training for law enforcement should be required and funded in every state and province and should include training on appropriate interview techniques as well as the variety of forms trafficking takes.
- address the housing and security crisis experienced by youth aging out of foster care.
- raise the age for aging out of foster care to 21.
- allow vacatur of convictions for those found guilty of crimes committed as a direct result of being trafficked.
- create alternatives to detention that provide specialized services for victims of human trafficking.
- require training for law enforcement to identify labor and sex trafficking victims and on how to use trauma-informed techniques to interview potential victims.
- require that law enforcement refer juveniles who are detained for engaging in commercial sex or other forced illicit behavior to child protective services agencies.
- remove the defense that a trafficker did not know the age of a minor victim of trafficking at the time of the exchange.
- remove the defense that a juvenile consented to a commercial sexual exchange.
- allow for civil damages to be sought by trafficking victims

**Alaska has very few laws regarding trafficking and few protections for victims. Alaska might consider some of the following legislation in order to better protect victims of trafficking:**

- clearly define forced labor as a form of trafficking and provide penalties and remedies for the crime of labor trafficking.
- create “Safe Harbor” protections that explicitly immunize minors from prosecution for engaging in commercial sex acts, regardless of the use of force, fraud, or coercion.

For questions about the content of this report, please contact **Dr. Laura Murphy**, Modern Slavery Research Project, Loyola University New Orleans, at [lmurphy@loyno.edu](mailto:lmurphy@loyno.edu).

For questions about Covenant House International's work, please contact **David Howard** at [dhoward@covenanthouse.org](mailto:dhoward@covenanthouse.org).

For questions about Covenant House Alaska's Programs, contact **Carlette Mack** at [CMack@covenanthouseak.org](mailto:CMack@covenanthouseak.org) or (907) 272-1255.

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#### Labor and Sex Trafficking Among Homeless Youth

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Anchorage, Alaska

Between February 2014 and June 2016, researchers from Loyola University New Orleans's Modern Slavery Research Project (MSRP) were invited by Covenant House International and ten of their individual sites to serve as external experts to conduct a study of trafficking among homeless youth aged 17 to 25 in ten cities.



# Labor and Sex Trafficking Among Homeless Youth

A Ten-City Study  
Executive Summary

Laura T. Murphy



This study provides a detailed account of **labor** and **sexual exploitation** experienced by homeless youth in Covenant House's care in ten cities.



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## Executive Summary

**Covenant House International** is the largest, primarily privately-funded charity in the Americas offering housing, outreach, and support services to homeless youth. Each year, the organization helps nearly 47,000 youth in 30 cities in six countries.

Human trafficking — the exploitation of a person's labor through force, fraud, or coercion — is a crime whose victims tend to be society's most vulnerable. People who are homeless, lack a support system, or are desperate for work are susceptible to the promises of people who would exploit them for labor and for sex. Recently, homeless youth providers in the United States and Canada have become aware that their clients are particularly at risk of trafficking, and research has begun to uncover the extent and contours of the problem within that community.

Between February 2014 and June 2016, researchers from Loyola University New Orleans's Modern Slavery Research Project (MSRP) were invited by Covenant House International and ten of their individual sites in the United States and Canada to serve as external experts to study the prevalence and nature of human trafficking among homeless youth aged 17 to 25. MSRP researchers interviewed 641 homeless and runaway youth who access services through Covenant House's network of shelters, transitional living and apartment programs, and drop-in centers. Youth were invited to participate, on a voluntary basis, in a point-in-time study about work experience. Semi-structured interviews were conducted using the Human Trafficking Interview and Assessment Measure (HTIAM-14) to assess whether youth had been trafficked for sex or labor in their lifetimes.

### Youth were interviewed in the following cities:

Anchorage, Alaska  
 Atlanta, Georgia  
 Detroit, Michigan  
 Fort Lauderdale, Florida  
 Los Angeles, California  
 New Orleans, Louisiana  
 Oakland, California  
 St. Louis, Missouri  
 Toronto, Ontario  
 Vancouver, British Columbia

## Key Findings

### Human Trafficking

- Of the 641 youth we interviewed at Covenant House sites around the United States and Canada, nearly one in five (19% or 124) were identified as victims of some form of human trafficking, following the legal definition outlined by the U.S. Victims of Trafficking and Violence Protection Act (later renamed the Trafficking Victims Protection Act (TVPA)).
- More than 14% (92) of the total population had been trafficked for sex, while 8% (52) had been trafficked for other forced labor. 3% (22) were trafficked for both sex and labor.
- Ninety-one percent (91%) of the respondents reported being approached by someone who was offering an opportunity for income that was too good to be true. This included situations that turned into trafficking as well as other offers for commercial sexual exchanges, fraudulent commission-based sales, credit card scams, stolen phone sales, and check fraud.

### Sex Trafficking and Commercial Sex

- 14% (92) were victims of sex trafficking, applying the U.S. federal definition of trafficking.
- Of the 92 youth who were identified as sex trafficking victims within the study, nearly 58% (53) were in situations of force, fraud, or coercion characteristic of human trafficking under the U.S. federal definition.
- 42% of youth who were identified as sex trafficking victims were minors involved in the sale of commercial sex and survival sex but were not forced by a third party to do so.
- 20% (49) of cisgender women interviewed reported experiences consistent with the definition of sex trafficking, as did 11% (40) of cisgender men.
- 24% (30) of LGBTQ youth were trafficked for sex, compared to 12% of non-LGBTQ youth.
- 19% (121) of the youth we interviewed turned to survival sex at some difficult point in their lives.
- 30% (193) of all youth interviewed had engaged in some way in the sex trade at some point in their lifetimes; 24% (93) of the young men, 38% (93) of the young women, whether that was through situations of force, survival sex, or commercial sexual work as adults. (7 transgender youth were engaged in the sex trade, but the sample size was not large enough to produce significant findings.)
- The median age of entry into trading sex was 18, while the median age for those who were considered trafficked was 16.

**Nearly  
1 in 5** 

**(19%) of interviewed youth were identified as victims of some form of human trafficking.**

### Labor Trafficking

- 8% of respondents were found to have been trafficked for labor.
- Situations of forced labor included youth who were forced to work in factories, domestic labor situations, agriculture, international drug smuggling, sex-trade-related labor, and commission-based sales.
- The vast majority (81%) of labor trafficking cases reported in this study were instances of forced drug dealing. Nearly 7% (42) of all youth interviewed had been forced into working in the drug trade.
- Forced drug dealing occurred through familial and cultural coercion as well as through the violence of suppliers and gangs.

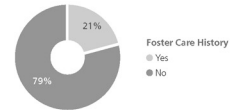
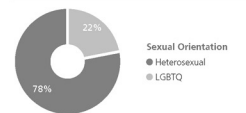
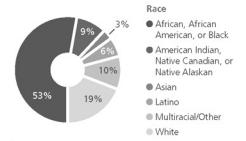
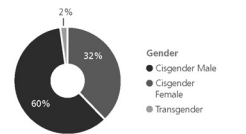
### How are homeless youth affected?

Homeless youth are vulnerable to both sex and labor trafficking because they tend to experience a higher rate of the primary risk factors to trafficking: poverty, unemployment, a history of sexual abuse, and a history of mental health issues. If they have families who are involved in the commercial sex trade or gangs, their risk is even higher. Homeless youth indicated that they struggled to find paid work, affordable housing, and support systems that would help them access basic necessities. They had experienced discrimination in their jobs and in housing. A confluence of factors made the homeless youth we interviewed vulnerable to both sex and labor traffickers who preyed on their need. It also made them more likely to turn to the sex trade for survival.



## Participant Characteristics and Prevalence

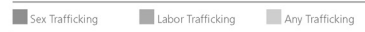
### Participant Characteristics Total Participants: 641



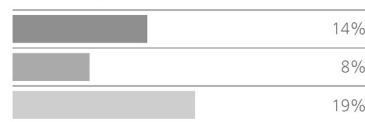
**Age**

17 year olds	1
18 year olds	79
19 year olds	134
20 year olds	125
21 year olds	117
22 year olds	85
23 year olds	58
24 year olds	25
25 year olds	3

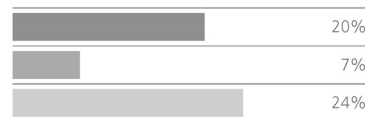
### Human Trafficking Prevalence Rates



#### All Participants (641)



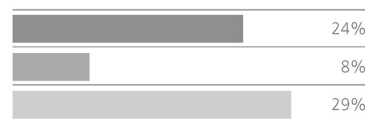
#### Young Women (243)



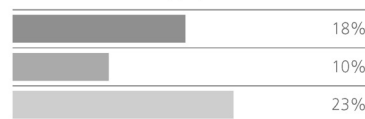
#### Young Men (383)



#### LGBTQ Youth (123)



#### Youth with Foster Care History (137)



**Economics:** For the vast majority of youth, economic factors made them most vulnerable to traffickers and unwanted engagement in the sex trade. They reported that they often found themselves desperate for work and that people took advantage of their need. Ninety-one percent (91%) of respondents reported being approached by strangers or acquaintances who offered lucrative work opportunities that turned out to be fraudulent work situations, scams, pandering, or sex trafficking. While some were resilient and walked away from these offers, many of the youth who were trafficked for sex and labor were recruited in this way. Others felt forced to turn to trading sex because they could not find legitimate work. Eighty-four percent (84%) of youth who reported engaging in the sex trade without a third-party controller did so because of economic need.

**Housing:** Youth reported that their fear of sleeping on the streets left them vulnerable to sex and labor traffickers and to survival sex. Securing housing was a primary concern for the vast majority of the youth we interviewed. Sixty-eight percent (68%) of the youth who had either been trafficked or engaged in survival sex or commercial sex had done so while homeless. Nineteen percent (19%) of all youth interviewed had engaged in survival sex solely so that they could access housing or food. This problem is even starker among those who are not sheltered. The incidence of trafficking among drop-in youth—sometimes called “street youth”—was high relative to the sheltered cohort: 24% were trafficked for sex, 13% for labor. Forty-one percent (41%) of interviewed drop-in youth had engaged in the sex trade in some way at some point in their lives. One-third (33%) of them had engaged in survival sex as either adults or minors. Many of the trafficked youth who were accessing Covenant House’s shelter programs said they saw the shelters as safe havens from their traffickers.

**Work:** The youth we interviewed indicated that they encountered people who took advantage of them when they were searching for work. A lack of job opportunities converged with a lack of computer literacy and job skills to lead to vulnerability. Many youth pursued job advertisements that turned out to be fraudulent. They sought training on how to identify a safe job and additional job skills training programs to help them avoid labor traffickers, sex traffickers, and other exploitative labor situations.

**Gender:** One in five of all cisgender women and one in ten of all cisgender men had experienced a situation that was considered sex trafficking. While cisgender women were more likely to be trafficked and to engage in the sex trade, cisgender men were more likely to

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be trafficked than many people might expect. Eleven percent (11%) of cisgender men had been trafficked, and a total of 24% of them had engaged in at least one commercial sexual exchange at some point in their lives. Nearly one in ten men who identified as heterosexual had been trafficked, while more than one in five (21%) LGBTQ men had been trafficked. Despite this, heterosexual cisgender male youth reported that they typically had not been asked about engaging in the sex trade when interacting with social service providers and were not typically offered services for trafficking or sexual exploitation.

**Sexuality:** LGBTQ youth were disproportionately affected by sex trafficking and significantly more reported engaging in the sex trade. Though LGBTQ youth accounted for 19% of the respondents interviewed, they accounted for 36% of the sex trafficking victims and 36% of those who engaged in the sex trade. Half of the LGBTQ youth had engaged in the sex trade in some way during their lifetimes. LGBTQ youth were significantly more likely to be sex-trafficked than their straight counterparts.

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## Recommendations

### For Practice

Runaway and homeless youth shelters and programs should be equipped to meet the needs of trafficked youth because they are able to address the root economic and societal problems that make youth vulnerable to exploitation. With programs directly responsive to the heightened needs of trafficking victims, runaway and homeless youth shelters can effectively help trafficking survivors and prevent other homeless youth from being exploited. We recommend a four-pronged approach that includes prevention, outreach, confidential and inclusive identification, and specialized interventions.

**Prevention** efforts that focus on job search and job skills programs, housing opportunities, and healthy sexuality/relationships will increase youth resilience to traffickers and exploitation.

**Outreach** programs and advertising for services should target locations where youth are being approached by those who would exploit them: on social media and online job sites, at bus stops and transportation stations, and at government assistance offices.

**Confidential and inclusive identification** strategies should be employed by all youth-serving organizations to increase the likelihood that youth will disclose a situation of trafficking and, therefore, provide greater access to specialized services and care. Including men, LGBTQ, and foster care-related vulnerabilities in screening protocols should be standard practice.

**Specialized Interventions** might include anti-trafficking orientation and drop-in programs, trauma-informed counseling, harm reduction training, and victim relocation networks.

# 91%

of youth reported being offered lucrative work opportunities that turned out to be fraudulent, scams, or sex trafficking.

### For Policy

Social service providers cannot protect young people from labor trafficking and commercial sexual exploitation or effectively help them overcome related traumas without significant support. Legislators must play a role in ensuring that our youth are protected from trafficking. The following legislative changes could assist us in identifying and helping more trafficking survivors.

- U.S. Congress should pass the Runaway and Homeless Youth and Trafficking Prevention Act, which provides much-needed funding for services to prevent and address trafficking among homeless and runaway youth populations.
- Dedicated funding should be allocated for additional shelters and shelter beds equipped with wraparound and specialized services to serve survivors of trafficking and exploitation in both the United States and Canada.
- All U.S. states should pass comprehensive "Safe Harbor" laws that allow young trafficking survivors to be treated as victims of a crime rather than as criminals.
- Criminal justice reform in the United States and Canada should take into account the context in which youth engage in the drug trade and exclude victims of forced labor from prosecution.
- Specialized human trafficking training for law enforcement should be required and funded in every state and province and should include training on appropriate interview techniques as well as the variety of forms trafficking takes.
- Legislators need to address the housing and security crisis experienced by youth aging out of foster care.
- Every U.S. state should raise the age for aging out of foster care to 21.

For questions about the content of this report, please contact **Dr. Laura Murphy**, Modern Slavery Research Project, Loyola University New Orleans, at [lmurphy@loyno.edu](mailto:lmurphy@loyno.edu).

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## Labor and Sex Trafficking Among Homeless Youth

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Senator SULLIVAN. Attorney General Becerra, I want to get back to this question, and I think it's a really important one that Senator Markey was talking about that's in the bill. I'm a cosponsor of the bill, so I'll put my cards on the table here.

On the issue of resources and prosecution, you know, in my experience as a former AG in Alaska, we had a couple cases with regard to sex trafficking relating to the Mann Act, and that's the Federal law that prevents or makes it a crime to conduct sex trafficking across state lines. And it was a frustration for me as the AG because we had cases where there was evidence, very clear evidence. The state prosecutors and the state investigators were ready to go, and for whatever reason, the Feds weren't.

So one of the first bills that I actually introduced in the Senate last Congress, and it got passed into law, signed by President Obama as part of the broader human trafficking bill that we got, was called the Mann Act Cooperation Act, and what it essentially said was that if there is evidence that a state AG brings to the Feds to be cross-designated to pursue a Mann Act violation, that the Attorney General of the United States shall cross-designate, for example, you for Mann Act violations. I'm trying to get the word out to AGs, so please help spread the word because that's a new power that you have.

Mr. BECERRA. Yes.

Senator SULLIVAN. And the Attorney General of the United States can only say no to that cross-designation if it would, quote, "undermine the administration of justice," and then the Attorney General would have to send you, if you were requesting that, a detailed explanation of that within 60 days. So it's an enormous power on sex trafficking for our AGs, which is why I think very strongly your point and the others here on this issue of allowing state officials to bring these prosecutions.

In my experience, particularly in Mann Act cases, there is so much of that going on, and the Feds only have so many resources. So I would again just welcome any of you to talk about that, whether it's Mann Act or that provision in this law, but I think it's absolutely essential. And it's not trying to usurp the Feds' power or to create a patchwork, it's trying to bring more resources to an enormously big problem in our country. And I think AGs like you who are motivated on this can do that. You can do it on the Mann Act right now. Please go use that new law. But you can do it here, and I think it's important.

So, again, I'd like to open this up to all the witnesses just on this question, the pros and cons of that provision in this bill. You see why I think it's important, and I'd love to hear from either side on this, why you think it's important or why you think it would be a problem.

Attorney General, why don't we begin with you, sir?

Mr. BECERRA. Senator, first if I can just say thank you for your service to the people of Alaska and to this country, both as the attorney general and now as a Senator, and for the good effort to try to help those of us who would like to have that authority to go out there and prosecute these cases.

Senator SULLIVAN. You have it on the Mann Act now, so—

Mr. BECERRA. Amen. We'll spread the word. We'll spread the word.

I will simply say what I've been saying. It's we're not interested in trying to—especially not in California, of trying to slow down just the innovative explosion that you see going on in the Internet. We want that to go on. California benefits from it. But we've got to do something to help our kids and people like Ms. Ambrose. And so simply allowing us to do what sometimes the Federal Government doesn't have the resources to do would be just plain smart.

Senator SULLIVAN. Yes.

Mr. BECERRA. And we're not trying to take a case from the Federal Government. If they want to go at it, great. But if they can't, we're ready to step in.

Senator SULLIVAN. Great.

Professor Goldman, try to rebut the—this is a resource issue, and if you think that we have the prosecutors that we need to go after all these crimes, I think the facts would dictate otherwise. So what's your rebuttal on that if, indeed, you have a rebuttal? Maybe you agree with that position.

Mr. GOLDMAN. Yes, thank you. I think that the Federal standard helps clear up some of the confusion about the existing bill. So right away, you've, I think, asked a different question than the bill has asked us. And so I think that's a helpful question to ask.

Senator SULLIVAN. Well, you like—you're OK with state prosecutor under a Federal standard? Are you OK with that?

Mr. GOLDMAN. That helps. That helps.

Senator SULLIVAN. That's what this Mann Act provision is.

Mr. GOLDMAN. Yes. And so—and I think that's a helpful direction to take the conversation because it cleans up one of the ambiguities that's in the bill.

We still have the question about what the legal standard is that the state AGs will be prosecuting, and to what extent they will be able—it will be clear enough to them that we are only targeting the, quote, "Backpages of the world," or are we targeting a larger universe? and what that larger universe looks like. So—

Senator SULLIVAN. But the standard is going to be dictated by the law, right?

Mr. GOLDMAN. As long as the standard is dictated by the law, and if we have a requisite showing of the knowledge that we've discussed earlier in this hearing, that will help restrict the ability of people to interpret that in different ways, but unless that's clear, there is different interpretations that could be possible.

I just want to come back to the idea that though the DOJ is strapped for resources, they have been putting resources on this topic. And so I just want to make sure that we haven't lost sight of the good work that they are doing. And that then leads to the question, Are they doing enough? And I think that's a question that I'd like to know more about.

Senator SULLIVAN. OK. Ms. Souras.

Ms. SOURAS. Senator, I would just very quickly cite back to the case numbers that we see at the National Center. This year so far, 9,700 reports of suspected child sex trafficking. That is a tremendous volume of children. They need the assistance and the support

of the state attorney generals in addition to the Federal Government.

Senator SULLIVAN. Thank you.

Ms. Slater, do you have a view on that one?

Ms. SLATER. I think that NCMEC should get all the resources it needs to do the good work that it does. It currently gets a lot of resources from our companies, whether that's through engineering talent, through financial resources, developing technology, that help track down perpetrators of sex trafficking and locate victims.

And if I may add a personal note, I spent 10 years doing investigations and litigation on behalf of the Federal Government, and I do firmly believe if there's one thing the Federal Government does very well, it's litigation. And so I would like to see more resources go to DOJ so they can prosecute these cases.

Senator SULLIVAN. Well, look, I think more resources is a common theme probably with every Senator here and all the witnesses. But this problem is growing, and it's so significant that more resources can mean not just Federal resources, but the good offices of state AGs. It's a very powerful resource and I think it's a key component of this bill. If the standard remains the same, which it does under this legislation, then I think having more prosecutors is actually quite an important development here.

Well, listen, you've done a very good job on a tough topic here. We appreciate you taking all the time.

The hearing record will remain open for two weeks. During this time, Senators are asked to submit any additional follow up questions for the record. Upon receipt, we would respectfully ask the witnesses to submit their written answers to the Committee as soon as possible. Thank you again for testifying today.

This hearing is adjourned.

[Whereupon, at 12:51 p.m., the hearing was adjourned.]





## A P P E N D I X

### PREPARED STATEMENT OF NACOLE S., MOTHER OF A CHILD SEX TRAFFICKING VICTIM ON BACKPAGE.COM

Good morning Chairman Thune, Ranking Member Nelson, and Members of the Committee,

My name is Nacole S., and I want to thank you for the opportunity to have my letter read today before you. I hope I can be a voice for the countless other families who are not present today, whose lives have been forever changed by websites that make their living hiding in the shadows of the law.

In 2010, we were a close, loving family. We were all realizing our American dream. We had built something for ourselves more valuable than money, more important to us than a big new house or better cars in the driveway. We had built 3 lives, our great kids, ready to come into their own and take on the world. Passionate about our children, we wanted and expected the best. I remember a conversation with a school guidance counselor who was chastising us on how we were going about our son's college applications. The counselor was convinced that our son, a first-generation college student, would be best served applying to only local schools. We, ever-reaching, were convinced that he was better than that. It felt like our stubborn optimism and belief was rewarded when our son was accepted into a prestigious private engineering school in New York. We weren't surprised at all. We were so proud of all 3 of our children, each national honor roll students, and at the top of their games. Little did we understand how dramatically our lives were about to change. In just a few months, our American dream would be exchanged for a third-world nightmare, and would lead us to question everything.

Our youngest, our baby Natalie<sup>1</sup>, was something special. She was always the most energetic of our 3 children, so full of life and promise. She participated in varsity soccer and wrestling, and played violin in the high school orchestra—all in her freshman year. That was Natalie, she tried to experience everything. She was taking high school by storm, in her light-hearted way. She was *one of those* kids. (Only a family with *one of those* kids knows what that means. Natalie wanted to do everything at once, with high energy, and nothing could contain her zest for life). Challenging as she was, she was exceeding every possible expectation a parent could have. It was amazing to be part of. None of us could've predicted that her innocent, care-free attitude was about to take her down a path what would shake our family to its very core. At the time, our family dynamic had changed as our son was off to college and our oldest daughter was distracted by her own concerns. Natalie was struggling to find her place in her new world.

Looking back, we understand that our daughter was burning the candle at both ends, struggling with all the sudden, but inevitable, changes that were occurring. While they were all good things to us; they were confusing and difficult to Natalie. All we saw was an exceptional young lady, doing exceptional things. But Natalie, in her own way, was sending out signals. It's easy to see now, because of all the painful retrospection that comes with a tragedy, but it was impossible to see then.

She made the implausible decision to leave the safety of her home. She wrote a letter, five pages long, telling us how wonderful her family is and how much she loved us. "Finding herself" was the gist of the letter, and of course not to worry. Not certain of her choice, Natalie had shared the letter with friends and like a sick game of telephone it circulated the school. Now it wasn't just a letter, but a dare. It was her reputation at stake. So, backed into a corner, she left.

Making her way to Seattle she found herself at a teen homeless shelter. A woman there, 22 and posing as a teen, must've immediately noticed Natalie as an easy target. As smart as Natalie was, she had no idea of the danger she was in. As a parent, it's hard to talk about what happened next. I can't imagine her fear and bewilderment at what was happening to her as she was repeatedly raped and beaten and

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<sup>1</sup>We use the pseudonym Natalie to protect our daughter's privacy.

threatened, and treated like a sexual object every single day. All while being posted on a Backpage online ad. I honestly try not to think about it. I can only tell you that when we finally got Natalie back for good, months later, the young girl we found wasn't the same Natalie who left our home months earlier. I literally didn't recognize her at first; her appearance had changed so much. Her hair was dyed and cut and she was wearing different clothes. She didn't even sound like Natalie. Everything she was saying was incomprehensible to me. Our Natalie's light was gone. That was the beginning of our 6-year odyssey to get here, to our new American dream.

Our new dream is simple: to live in an America that doesn't stand aside while little girls like our daughter, Natalie at age 15, are sold online like a commodity. This critical legislation would correct a legal loophole in the Communications Decency Act (CDA) that shields websites that knowingly facilitate sex trafficking.

A law originally drafted in 1996, the CDA simply cannot address the reality of violent crime on the Internet today. Every day, thousands of women and children are marketed online where buyers purchase them with ease, anonymity, and impunity. As survivors of sex trafficking and commercial sexual exploitation, we know the deep and profound harm caused by this crime. Many of us are survivor leaders of organizations working to provide safety and healing to others, including American children who were bought and sold online. For years, we have tried unsuccessfully to hold these websites accountable, but court after court has made it clear: Congress must correct the blanket immunity provided by CDA.

This legislation is vital. *Stop Enabling Sex Traffickers Act of 2017* represents an incredible bipartisan effort to seek justice for countless survivors who are sold on websites that shamelessly profit from our exploitation. As survivors of sexual exploitation and trafficking, we ask you to please prioritize the safety and rights of our Nation's most vulnerable women and children and pass SESTA to at long last, provide us a pathway to justice. As the father of a child sex trafficking survivor perfectly stated: "Children are not acceptable collateral damage. They are our hope, our future, America's conscience."

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#### STATEMENT OF LOVE146

Chairman Thune, Ranking Member Nelson, and members of the committee: thank you for the opportunity to present this written statement on behalf of our organization and the many children we work with.

Love146 is an international anti-trafficking organization, headquartered in New Haven, CT, with survivor care and prevention education programs in the United States, the United Kingdom and the Philippines. As an organization that has spent 15 years working exclusively on the issue of child trafficking and exploitation, we have seen first-hand the increasing role that the Internet is playing in abetting child sex traffickers. Many of the children in our care today, from the Philippines to the United States, have been bought and sold through various Internet platforms.

When platforms, such as Backpage.com *knowingly* advertise children—as if they are commodities—they are facilitating the exploitation and rape of our children. We have worked with many children whose traffickers have required them to pose for photos—images that would in many cases be considered child pornography—so that they could be bought and sold online. Sometimes these children were unaware that the photos they were taking were later going to be used to advertise their bodies for sale—sometimes these children thought they were exchanging photos with a romantic partner, sometimes they believed they were involved in a modeling project. In other cases, children were required to take “selfies” and coached through the process, how to look, what to wear, what parts of their bodies to display. If their initial photos did not elicit enough interest from “buyers” responding to their “advertisement” they were required to take more explicit photos.

Being bought and sold online, next to classifieds for used clothes, bikes, appliances, and cars can have a devastating impact on how these children perceive themselves and can forever change how they view their relationship with their body. Their bodies now hold a specific and public price tag. In addition to the rapes and the horrific sexual acts, we have now created a situation in which we have placed a monetary value on our children. This commodification tells them, *this is what you are worth*. It is completely contrary to the message we want to send to children: that they are precious, that they are invaluable, that they are our future.

The fact that sex with children can be openly advertised is something that we would expect no human being to find acceptable. The courts have been clear: there needs to be a legislative solution to the protections afforded to websites like Backpage.com through the original construction of Section 230 of the Communica-

tions Decency Act. In 2016, in the *State of California v. Carl Ferrer et al*, the court so clearly articulated this stating, “the Court understands the importance and urgency in waging war against sexual exploitation. Regardless of the grave potential for harm that may result in the exercise of this article of faith, Congress has precluded liability for online publishers for the action of publishing third party speech and thus provided for both a foreclosure from prosecution and an affirmative defense at trial. Congress has spoken on this matter and it is for Congress, not this Court, to revisit.”

This is exactly what S. 1693, The Stop Enabling Sex Traffickers Act of 2017, is attempting to rectify. Since the early days of the Internet, Congress has found appropriate and effective means to limit copyright and privacy infringement on the Internet. S. 1693 is narrowly focused, targeting only those digital publishers who “knowingly” allow offending material to be published. Only those who “knowingly” allow children to be bought and sold on their website can be found liable for this content. If passed, S. 1693 has the potential to greatly reduce the use of the Internet as a marketplace for the buying and selling of children. It will be a powerful tool with which organizations like ours, and law enforcement, will be able to help protect our children from exploiters and predators.

Thank you for the opportunity to provide you and the Committee with our perspective on this important piece of legislation. We look forward to continuing to work with you, the Committee and other Members of Congress on ways to safeguard children from child trafficking and exploitation.

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NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

July 27, 2017

Hon. RICHARD BLUMENTHAL,  
United States Senate,  
Washington, DC.

Dear Senator Blumenthal:

On behalf of the National Association of Police Organizations (NAPO), I am writing to you to express our full support for the Stop Enabling Sex Traffickers Act.

NAPO is a coalition of police units and associations from across the United States that serves to advance the interests of America’s law enforcement through legislative and legal advocacy, political action, and education. Founded in 1978, NAPO now represents more than 1,000 police units and associations, 241,000 sworn law enforcement officers, and more than 100,000 citizens who share a common dedication to fair and effective crime control and law enforcement.

Since its inception in 1998, the National Center for Missing and Exploited Children’s (NCMEC) CyberTipline has received more than 16.5 million reports of suspected child sexual exploitation. In 2016 alone, the CyberTipLine received 8.2 million reports of apparent child sexual abuse images, suspected “sextortion”, child sex trafficking and child sexual molestation. An increasing number of these victims are trafficked online. Unfortunately, due to numerous court rulings, survivors of online trafficking cannot sue their advertisers due to Section 230 of the Communications Decency Act (CDA), which inadvertently gives broad criminal immunity to websites that facilitate sex trafficking. This significantly hampers law enforcement’s ability to enforce state trafficking laws against such websites.

The Stop Enabling Sex Traffickers Act addresses this issue and narrowly amends Section 230 to allow states and victims to bring cases against bad actors that facilitate sex trafficking, while safeguarding the freedom of the internet. Therefore, NAPO stands ready to support with any efforts necessary to pass this important legislation. If you have any questions, or if we can be of further assistance, please feel free to contact me at: (703) 549-0775.

Sincerely,

WILLIAM J. JOHNSON, ESQ.  
*Executive Director.*

August 1, 2017

Senator PORTMAN,  
Russell Senate Office Building,  
Washington, DC.

Senator BLUMENTHAL,  
Hart Senate Office Building,  
Washington, DC.

Letter of Support for the *Stop Enabling Sex Traffickers Act of 2017*

Dear Senator Portman and Senator Blumenthal,

A couple of decades ago sex traffickers and buyers conducted their illegal transactions in dark alleys and back streets. Today these criminal transactions have moved online. Although the location has changed, the crime remains the same and so must our response to those who facilitate and enable it.

In recognition of the tragic nature of online facilitation of sex trafficking, we thank you and the broad, bi-partisan group of co-sponsors committed to protecting those who are bartered and sold for sex online—for introducing the *Stop Enabling Sex Traffickers Act of 2017*. The undersigned organizations believe this legislation is necessary to close a legal loophole in the Communications Decency Act (CDA) that allows websites to escape liability for knowingly facilitating sex trafficking.

The CDA was enacted in 1996 to govern the nascent Internet industry while promoting an open forum for commerce online. Section 230 of the CDA established immunity for “interactive computer service providers” (ICSPs) from civil and state criminal liability for third-party content in order to promote self-regulation by these online entities. However, over the past twenty years Section 230 has been broadly misinterpreted by Federal courts as extending blanket immunity to websites that host ads where trafficked individuals are bought and sold.

Websites that profit from creating marketplaces for the sale and purchase of trafficking victims enjoy a lucrative business model—one with high profits and low risk. When states and victims have tried to hold these companies accountable in the courts, the CDA has blocked their efforts. In 2014, child sex trafficking victims asserted civil claims under the Trafficking Victims Protection Act (TVPA) against Backpage.com—the most extensive online marketplace for sex trafficking victims and the platform where the young plaintiffs had been advertised for sex—but their claims were denied based on CDA immunity. At the same time, the Senate Permanent Subcommittee on Investigations was engaged in a two-year inquiry into Backpage’s business practices, culminating in a report on January 19, 2017 detailing how Backpage had knowingly facilitated child sex trafficking. Backpage has also avoided state criminal liability by attacking state laws in court and barring them from taking effect, also based on CDA immunity. Meanwhile, Backpage.com’s profits continued to rise from \$71 million in 2012 to over \$120 million in 2015.<sup>1</sup>

This is wholly inconsistent with the purpose and protections intended when the CDA was enacted in 1996. As the Communications Decency Act began to make its way through the Senate, Senator Exon stated upon introduction of the bill on February 1, 1995 that the purpose of the bill was indeed to protect children:

*Mr. President, the information superhighway should not become a red light district. This legislation will keep that from happening and extend the standards of decency which have protected telephone users to new telecommunications devices. Once passed, our children and families will be better protected from those who would electronically cruise the digital world to engage children in inappropriate communications and introductions.*<sup>2</sup>

The *Stop Enabling Sex Traffickers Act of 2017* clarifies that Section 230 was never meant to automatically shield websites that engage in the crime of human trafficking from a civil lawsuit or state criminal penalties. This bill targets the business model of companies like Backpage.com, by opening the door to civil liability and allowing states to enforce their trafficking laws when online entities choose to profit from the exploitation of sex trafficking victims.

Enacting this legislation is critical to restoring the promise of justice for victims and holding offending websites culpable for their crimes. As sex trafficking explodes on the internet, accountability for online entities that facilitate this exploitation is an essential tool in the international fight against sex trafficking. We, the undersigned organizations, support this critical legislation and urge Congress to restore the human rights protections of the Trafficking Victims Protection Act that have

<sup>1</sup> I AM JANE DOE (SO Eggs Films 2017).

<sup>2</sup> 141Cong. Rec. 51953 (daily ed. Feb. 1, 1995) (statement of Sen. Exon).

been eclipsed by this misinterpreted immunity for entities that value profits over the protection of vulnerable people.

Sincerely,

Shared Hope International  
PROTECT  
Rights4Girls  
National Children's Alliance  
50 Eggs Films  
Exodus Cry  
Coalition Against Trafficking in Women (CATW)

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL  
Washington, DC., August 16, 2017

Hon. ROGER WICKER,  
Chairman,  
Senate Subcommittee on Communications,  
Technology, Innovation and the Internet,  
Committee on Commerce, Science, and  
Transportation.

Hon. MARSHA BLACKBURN,  
Chairman,  
House of Representatives Subcommittee on  
Communications and Technology,  
Committee on Energy and Commerce.

Hon. BRIAN SCHATZ,  
Ranking Member,  
Senate Subcommittee on Communications,  
Technology, Innovation and the Internet,  
Committee on Commerce, Science, and  
Transportation.

Hon. MICHAEL DOYLE,  
Ranking Member,  
House of Representative Subcommittee on  
Communications and Technology,  
Committee on Energy and Commerce.

RE: Amendment of Communications Decency Act

Dear Chairman Wicker, Ranking Member Schatz, Chairman Blackburn, and Ranking Member Doyle:

In 2013, Attorneys General from 49 states and territories wrote to Congress, informing it that some courts have interpreted the Communications Decency Act of 1996 ("CDA") to render state and local authorities unable to take action against companies that actively profit from the promotion and facilitation of sex trafficking and crimes against children. Unfortunately, nearly four years later, this problem persists and these criminal profiteers often continue to operate with impunity. The recent news highlighting the potential complicity of online classified-ad company Backpage.com in soliciting sex traffickers' ads for its website once again underscores the need to expand, not limit, the ability of *all* law-enforcement agencies to fight sex trafficking.<sup>1</sup> The undersigned Attorneys General once again respectfully request that the United States Congress amend the CDA to affirm that state, territorial, and local authorities retain their traditional jurisdiction to investigate and prosecute those who facilitate illicit acts and endanger our most vulnerable citizens.

As noted in the 2013 letter, certain Federal courts have broadly interpreted the CDA.<sup>2</sup> One high-profile result is that some state and local law enforcement agencies have been left powerless to act against online classified ad services, such as Backpage.com, which have constructed their business models around advertising income gained from participants in the sex trade.<sup>3</sup> Just a few examples of the count-

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<sup>1</sup>Tom Jackman and Jonathan O'Connell, *Backpage has always claimed it doesn't control sex-related ads. New Documents show otherwise*, Washington Post, July 11, 2017, available at [https://www.washingtonpost.com/local/public-safety/backpage-has-always-claimed-it-doesnt-control-sex-related-ads-new-documents-show-otherwise/2017/07/10/b3158ef6-553c-11e7-b38e-35fd8e0c288f\\_story.html](https://www.washingtonpost.com/local/public-safety/backpage-has-always-claimed-it-doesnt-control-sex-related-ads-new-documents-show-otherwise/2017/07/10/b3158ef6-553c-11e7-b38e-35fd8e0c288f_story.html) (last visited July 12, 2017).

<sup>2</sup>*See, e.g.*, Senate Permanent Subcommittee v. Ferrer, 199 F. Supp. 3d 125, 136 (D.D.C. 2016), *vacated as moot*, 856 F.3d 1080 (D.C. Cir. 2017); Backpage.com, LLC v. McKenna, 881 F. Supp. 2d 1262, 1275 (W.D. Wash. 2012); M.A. v. Village Voice Media Holdings, LLC, 809 F. Supp. 2d 1041, 1048–56 (E.D. Mo. 2011); Dart v. Craigslist, 665 F. Supp. 2d 961, 965 & n.6 (N.D. Ill. 2009); Doe v. Bates, 2006 WL 3813758, at \*\*3–5 (E.D. Tex. Dec. 27, 2006); *see also* Google, Inc. v. Hood, 96 F. Supp. 3d 584, 596–98 (S.D. Miss. 2015), *vacated & remanded on other grounds*, 822 F.3d 212 (5th Cir. 2016).

<sup>3</sup>While Backpage.com claims to have shut down its prostitution/escort ads after a U.S. Senate hearing in January, there are reports of the ads merely moving to different sections. *See* Brian Rokos, *Backpage.com Removes 'Escort' Ads—Or Does It?*, Press-Enterprise, Jan. 11, 2017, available at <http://www.pe.com/articles/backpage-822842-ads-subcommittee.html> (last visited July 6, 2017); Kevin Litten, *New Orleans Backpage Prostitution Ads Now Listed as Dating Ads*, *Human Trafficking Experts Say*, Times-Picayne, Jan. 17, 2017, available at <http://>

Continued

less instances of child sex trafficking—and its online promotion—that occur every day in the United States include the following:

- Police in Stockton, California recently arrested more than 20 people in a human trafficking and prostitution ring. Eight girls between the ages of 14 and 17 were being trafficked for sex using advertisements on Backpage.com.<sup>4</sup>
- Federal and state law enforcement recently arrested a Chicago man accused of pimping a 16-year-old girl via Backpage.com, leading to her murder. The man “shopped [the girl] around on Backpage.com,” delivered her to a customer, and then fell asleep in his car outside a parking garage. When he awoke, he discovered the girl’s body in the garage, “her throat slit and her body badly beaten.”<sup>5</sup>
- Police in Georgia recently arrested three people who used Backpage.com to pimp a pregnant 17-year-old girl.<sup>6</sup>
- Police in Florida recently arrested a woman who used Backpage.com to prostitute a missing 16-year-old girl throughout Broward County.<sup>7</sup>

Clearly, in these instances, Backpage.com is facilitating—and profiting from—these illegal activities. However, certain interpretations of the CDA have resulted in companies like Backpage.com remaining outside the reach of state and local law enforcement in these kinds of cases. We do not believe that was Congress’s intent in passing the CDA, and we do not believe that is Congress’s intent now. It is both ironic and tragic that the CDA, which was intended to protect children from indecent material on the internet,<sup>8</sup> is now used as a shield by those who profit from prostitution and crimes against children.

Federal enforcement alone has proved insufficient to stem the growth in online promotion of child sex trafficking. Those on the front lines of the battle against the sexual exploitation of children—state and local law enforcement—must have the clear authority to investigate and prosecute facilitators of these and other horrible crimes. Thus, we recommend that 47 U.S.C. § 230(e)(1) be amended to the following (added language in *bold*):

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal, *State*, or *Territorial* criminal statute.

We are aware of efforts in Congress to preserve state criminal statutes that prohibit certain kinds of sexual exploitation and sex trafficking, and to preserve Federal and state statutes that provide causes of action, restitution, or other civil remedies to victims. We ask that, in addition to these efforts, Congress consider enacting our proposed change. We believe the CDA should be clear in preserving both state and territorial law to the same extent that it preserves Federal law—*i.e.*, the CDA should be clear that it preserves *all* state and territorial criminal statutes, just as it preserves *all* federal criminal statutes. The simple addition this letter proposes would do just that and will help to ensure that we are able to effectively protect

[www.nola.com/politics/index.ssf/2017/01/backpage\\_prostitution\\_new\\_orle.html](http://www.nola.com/politics/index.ssf/2017/01/backpage_prostitution_new_orle.html) (last visited July 6, 2017); Stephen Koff, *Backpage.com Still Appears to Be Running Ads for Prostitutes, Sexual Services*, Cleveland.com, Jan. 12, 2017, available at [http://www.cleveland.com/metro/index.ssf/2017/01/backpagecom\\_might\\_not\\_have\\_act.html](http://www.cleveland.com/metro/index.ssf/2017/01/backpagecom_might_not_have_act.html) (last visited July 6, 2017).

<sup>4</sup> Sarah Heise, *23 Arrested for Human Trafficking, Prostitution in San Joaquin County*, KCRA 3, May 5, 2017, available at <http://www.kcra.com/article/23-arrested-in-san-joaquin-county-human-trafficking/9588063> (last visited June 29, 2017).

<sup>5</sup> *Feds Charge Man for Prostituting 16-Year-Old Girl Before Her Murder*, ABC 7 Eyewitness News, June 21, 2017, available at <http://abc7chicago.com/news/feds-charge-man-for-prostituting-16-year-old-girl-before-her-murder/2128793/> (last visited June 29, 2017).

<sup>6</sup> Ross Cavitt, *Trio Accused of Pimping Pregnant Teen for Sex*, WSB-TV 2, June 23, 2017, available at <http://www.wsbtv.com/news/local/cobb-county/trio-accused-of-pimping-pregnant-teen-for-sex/539101607> (last visited June 29, 2017).

<sup>7</sup> Tonya Alanez, *Girl, 19, Accused of Pimping Out Missing 16-Year-Old*, Sun Sentinel, June 2, 2017, available at <http://www.sun-sentinel.com/local/broward/plantation/fl-teen-female-pimp-arrest-20170601-story.html> (last visited June 29, 2017).

<sup>8</sup> 104 Cong. Rec. S2308–01 (daily ed. June 14, 1995) (statement of Sen. Coats) (“Mr. President, all you have to do is pick up the telephone and call the FBI, ask their child exploitation task force about the volume of over—the-Internet attempts to seduce, abuse, and lure children into pornography and sexual exploitation.”); 104 Cong. Rec. H8470 (daily ed. Aug. 4, 1995) (statement of Rep. Cox) (“We want to encourage people like Prodigy, like CompuServ, like America Online, like the new Microsoft network, to do everything possible for us, the customer, to help us control, at the portals of our computers, at the front door of our house, what comes in and what our children see.”).

citizens and children throughout the entire country, in all courts. We thank you for your attention to this vital matter.

Respectfully,

Karl A. Racine  
District of Columbia Attorney General

Steve Marshall  
Alabama Attorney General

Mark Brnovich  
Arizona Attorney General

Xavier Becerra  
California Attorney General

Matthew Denn  
Delaware Attorney General

Douglas S. Chin  
Hawaii Attorney General

Lisa Madigan  
Illinois Attorney General

Tom Miller  
Iowa Attorney General

Andy Beshear  
Kentucky Attorney General

Janet T. Mills  
Maine Attorney General

Bill Schuette  
Michigan Attorney General

Jim Hood  
Mississippi Attorney General

Tim Fox  
Montana Attorney General

Adam Paul Laxalt  
Nevada Attorney General

Christopher S. Porrino  
New Jersey Attorney General

Eric T. Schneiderman  
New York Attorney General

Wayne Stenehjem  
North Dakota Attorney General

Mike Hunter  
Oklahoma Attorney General

Josh Shapiro  
Pennsylvania Attorney General

Peter Kilmartin  
Rhode Island Attorney General

Marty J. Jackley  
South Dakota Attorney General

Ken Paxton  
Texas Attorney General

T.J. Donovan  
Vermont Attorney General

Robert W. Ferguson  
Washington Attorney General

Brad Schimel  
Wisconsin Attorney General

Pamela Jo Bondi  
Florida Attorney General

Jahna Lindemuth  
Alaska Attorney General

Leslie Rutledge  
Arkansas Attorney General

Cynthia H. Coffman  
Colorado Attorney General

Chris Carr  
Georgia Attorney General

Lawrence Wasden  
Idaho Attorney General

Curtis T. Hill Jr.  
Indiana Attorney General

Derek Schmidt  
Kansas Attorney General

Jeff Landry  
Louisiana Attorney General

Brian Frosh  
Maryland Attorney General

Lori Swanson  
Minnesota Attorney General

Josh Hawley  
Missouri Attorney General

Douglas Peterson  
Nebraska Attorney General

Gordon MacDonald  
New Hampshire Attorney General

Hector Balderas  
New Mexico Attorney General

Josh Stein  
North Carolina Attorney General

Mike DeWine  
Ohio Attorney General

Ellen F. Rosenblum  
Oregon Attorney General

Wanda Vázquez Garced  
Puerto Rico Attorney General

Alan Wilson  
South Carolina Attorney General

Herbert H. Slatery, III  
Tennessee Attorney General

Sean Reyes  
Utah Attorney General

Mark R. Herring  
Virginia Attorney General

Patrick Morrisey  
West Virginia Attorney General

Peter K. Michael  
Wyoming Attorney General

Copy: The Honorable John Thune, Chairman, Senate Committee on Commerce, Science, and Transportation; The Honorable Bill Nelson, Ranking Member, Senate Committee on Commerce, Science, and Transportation; The Honorable Greg Walden, Chairman, House of Representatives Committee on Energy and Commerce; The Honorable Frank Pallone, Ranking Member, House of Representatives Committee on Energy and Commerce

CoSTAR GROUP  
 Washington, DC, August 30, 2017

United States Senate,  
 Washington, DC.

Dear Senators Portman, Blumenthal, and McCaskill:

CoStar Group, Inc., one of the leading real estate technology companies in the United States, is writing today to express our support for the Stop Enabling Sex Traffickers Act of 2017 ("SESTA"). We understand that many other technology companies and lobby groups are currently opposed to this legislation, but policing online content is important to us. We operate websites, including Apartments.com, that draw tens of millions of monthly users, and so are already attuned to the issue of online safety. Nevertheless, the issues addressed in SESTA have come into sharper focus for us as a company over the past few months.

It began in early spring this year when one of our senior executives was reviewing evidence we obtained pursuant to a court-ordered search and seizure warrant that had been issued by a Philippines court. We found ourselves in the Philippine courts because of another huge problem facing technology companies located in the U.S.-mass offshore theft of intellectual property. Specifically, our investigation of the theft of CoStar's intellectual property by Xceligent, Inc., a company based in Missouri, led us to Xceligent's offshore agent located in a remote town in the Philippines.

When we began reviewing the evidence seized from the Philippines, we expected to find evidence of infringement of our copyrighted commercial real estate photos and theft of CoStar content from our websites (and we did); but what we did not expect to find was what we believed to be child pornography and sex trafficking ads mixed in with that evidence. We called the FBI immediately, thinking we had uncovered a Filipino sex ring. The FBI advised us that we needed to segregate any image that could be child pornography. We then discovered the name "Backpage" occurring at a very high rate in the data, but we had no idea who or what Backpage was. When we Googled the company, up popped I AM JANE DOE and the U.S. Senate Investigation into online trafficking. We learned this was not a Filipino sex ring, but instead a U.S. company, Backpage, that was also using the same offshore agent in the Philippines as Xceligent.

We were subpoenaed by attorneys representing victims in civil cases against Backpage, as well as by various states' attorneys general. We were glad to provide whatever assistance that we could because we could not forget what we had seen.

As a technology company, we believe in, and have benefited from, the growth of the Internet. We understand that an unregulated Internet provides fertile ground for the development of important new and innovative business models, and we will continue to strongly defend that openness. But when we see those driven by greed take advantage of that freedom by facilitating underage sex trafficking, we cannot be silent.

The absolute immunity under section 230 of the CDA can no longer be justified at the expense of the exploitation of children. We believe that SESTA is a thoughtful, narrowly tailored remedy, and is long overdue.

Thank you for the work you are doing and your commitment to this issue. We at CoStar stand with you.

Kind regards,

ANDY FLORANCE,  
 CEO,  
 CoStar Group, Inc.

ORACLE  
 September 5, 2017

Hon. ROB PORTMAN,  
 U.S. Senate,  
 Washington, DC.

Hon. RICHARD BLUMENTHAL,  
 U.S. Senate,  
 Washington, DC.

Dear Senators Portman and Blumenthal,

I am writing to offer Oracle's strong endorsement of your bill, S. 1693, the Stop Enabling Sex Traffickers Act of 2017.

We commend your leadership on this issue. As your and other investigations have demonstrated, sex trafficking has exploded in large part due to nefarious Internet actors that knowingly facilitate and profit from it. We agree that congressional ac-



tion is necessary to put an end to this tragic exploitation of human beings and hold its online accomplices to account.

We appreciate that, in keeping with your respective strong track records of supporting the growth of the Internet and information technology industry, you have worked hard to craft a thoughtful bill to hold bad actors liable.

The fact is that technological capabilities that are available today are light years away from those that existed in 1996, when the commercial Internet was just beginning. Back then, Internet startups would be launched with little to no ability to review and monitor the content they hosted. More importantly, sex trafficking and other heinous crimes had not begun to proliferate on the Internet. Nonetheless, we are 100 percent confident that a Portman/Blumenthal amendment—identical to S. 1693—offered to the Communications Decency Act in 1996 would have passed the Senate overwhelmingly and the Internet would have enjoyed the same exponential growth and innovation over the past twenty one years. Frankly we are stunned you must even have this debate.

Today, the state of technology is far different than it was in 1996. Any start-up has access to low cost and virtually unlimited computing power and to advanced analytics, artificial intelligence and filtering software. That capability is also offered as a service in the cloud. The business success of Internet and mobile computing platforms depends on their ability to precisely analyze, arrange and segment applications, data and content, to accurately target them at their most relevant audiences—along with advertising, of course—not to blindly run platforms with no control of the content.

Your legislation does not, as suggested by the bill's opponents, usher the end of the Internet. If enacted, it will establish some measure of accountability for those that cynically sell advertising but are unprepared to help curtail sex trafficking.

We look forward to working with you to advance your bill.

Sincerely,

KENNETH GLUECK

*Senior Vice President, Office of the CEO.*

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NATIONAL ASSOCIATION OF PEDIATRIC NURSE PRACTITIONERS  
*New York, NY, September 14, 2017*

Hon. ROB PORTMAN,  
 United States Senate,  
 Washington, DC.

Hon. RICHARD BLUMENTHAL,  
 United States Senate,  
 Washington, DC.

Dear Senators Portman and Blumenthal:

On behalf of more than 8,500 pediatric nurse practitioners and fellow pediatric-focused advanced practice registered nurses committed to providing optimal health care to children, the National Association of Pediatric Nurse Practitioners (NAPNAP) applauds your leadership in introducing the “Stop Enabling Sex Traffickers Act of 2017” (S. 1693). NAPNAP and its members support this important legislation and your efforts to ensure that the websites that facilitate sex trafficking, particularly those targeting children, can be held liable for their actions under Section 230 of the Communications Decency Act and enable victims to seek justice against the website that aid the perpetrators of crimes against them.

As you know, advanced practice registered nurses (APRNs) who concentrate on children's care, including pediatric nurse practitioners (PNPs), are critically aware of the importance of stable, affordable health coverage in ensuring that families and their children receive the timely health care they need. Practicing in primary care, specialty, and acute care settings, APRNs dedicated to pediatric care have provided quality health care to children and families for more than 40 years in an extensive range of community practice settings such as pediatric offices, schools, and hospitals—reaching millions of patients each year.

NAPNAP and its members share your concern about the critical problem of human trafficking, particularly of children and adolescents. As you are aware, human trafficking is the third largest international crime industry (behind illegal drugs and arms trafficking), reportedly generating profits of \$32 billion every year, of which \$15.5 billion is made in industrialized countries. The U.S. State Department reports that 600,000 to 800,000 people are trafficked across international borders every year—of which 80 percent are female and half are children.

NAPNAP is committed to improving provider awareness of the trafficking of children, and we have been directly involved in educating our members to recognize and provide appropriate treatment and referral for victims. Based on discussions with the Department of Health and Human Services' Office of Trafficking in Persons in

the Administration for Children and Families, NAPNAP intends to initiate an on-line course to educate APRNs, registered nurses, physicians, physician assistants and other health care providers about the problem of child trafficking, including how to identify victims in emergency departments, primary care, and other practice settings. A planned second course will provide similar resources for a broad array of stakeholders including school administrators, teachers, social workers, law enforcement, faith-based, and transportation workers. NAPNAP will work in collaboration with other stakeholder groups to ensure comprehensive and appropriate content and consistent protocols for identification, response and referral. In addition, we plan to conduct train-the-trainer events for both the healthcare-focused course and multi-stakeholder course to enable NAPNAP members and other professionals to go back to their communities and chapters and train their peers.

Your legislation will help to ensure justice for children who are victims of sex trafficking and clarify the remedies available to state Attorneys General and civil attorneys to assist victims and their families in holding responsible everyone who participated in their trafficking. As you know, there is growing evidence that traffickers are expanding their online operations to take advantage of existing gaps in statutes by knowingly creating or hosting content and actively engaging in conduct that makes it easier for traffickers to facilitate the sale of minors and adults victimized by sex trafficking. The "Stop Enabling Sex Traffickers Act" will take important steps to close those loopholes and support the survivors of sex trafficking.

Again, NAPNAP is grateful to you for your leadership in taking action to address the critical problem of child sex trafficking and provide justice for children and their families who are victimized by sex traffickers. We are pleased to support the "Stop Enabling Sex Traffickers Act of 2017" (S. 1693) and look forward to working with you to see it enacted into law as quickly as possible.

Sincerely,

TRESA E. ZIELINSKI, DNP, RN, APN-NP, CPNP-PC,  
*President.*

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STATE OF CONNECTICUT, DIVISION OF CRIMINAL JUSTICE  
*September 15, 2017*

U.S. Senator RICHARD BLUMENTHAL,  
Members of the United States Senate and House of Representatives,  
Washington, DC.

Dear Senator Blumenthal and members of Congress,

I respectfully request that you take the necessary action to amend Section 230 of the Communications Act of 1934 (47 U.S.C. 230) by passing the "Stop Enabling Sex Traffickers Act of 2017." Various State and Federal Judicial authorities have upheld the protections afforded commercial advertisers under Section 230 of the Code as it relates to escort services, dating platforms and other locations where children and adults can be bought and sold for sexual purposes. The courts have repeatedly stated that, "*It is up to Congress to change the laws.*" The courts' strict Constitutional interpretation of Section 230 squarely puts the responsibility on lawmakers to fix the antiquated provisions of a law designed to promote free market business with a newly developed technology, such as the Internet and other advanced marketing forums. Recognizing that certain people cloaked in a constitutionally protected medium, routinely use modern electronic technology to exploit vulnerable members of our community, requires Congress to act to protect children and adults alike who are subjected to the horrors of human sex slavery.

I am a prosecutor with the New Haven, Connecticut State's Attorney's Office and the lead prosecutor with the joint Federal and State Human Trafficking Task Force. I coordinate joint prosecutions to hold offenders accountable for violations of human trafficking laws where groups and individuals use various websites to buy and sell children and adults for sexual purposes. Backpage.com is one such business and I have followed the legal battles involving them for a number of years. Inevitably the courts have upheld the protections afforded under Section 230 supporting Backpage's defense. My argument to you, members of Congress, is the following: Even if the courts were successful in prohibiting *ONE* company like Backpage.com from advertising, there are literally thousands of other companies already performing the same service. Millions of dollars have already been wasted on lawsuits going after the actions of one company. Piecemeal efforts are and will be ineffective in solving the problem of sex advertising. Amending the antiquated protections of the Section 230 law is a far better solution to tightening the loop hole these compa-

nies slip through to continue making record profits at the expense of an extremely vulnerable population.

Human trafficking businesses have flourished under the cover of darkness (using the internet), whether for labor purposes or sexual gratification. Technology has afforded those willing to exploit other human beings for profit without conscience at a record pace. The data suggests that a trafficker can make more money selling another person for sex than selling illegal drug or weapons without detection from law enforcement groups. The greatest tool traffickers have at their disposal is the online advertising capability. It is time to deprive traffickers and those that profit from the illegal sale of people by eliminating the protections which are presently afforded by the Constitutional guarantees under Section 230.

In closing, I genuinely thank you from a personal and professional perspective for taking the time to read this letter as you debate whether to take the courageous step in changing a law that has been in effect for decades. One need only see the irreparable damage to one human being, firsthand, to recognize that the proposed changes are far overdue to help children and young adults from a life of modern slavery. Please feel free to contact me if you have any questions related to this request at (203) 789-7801 or via e-mail, [brian.sibley@ct.gov](mailto:brian.sibley@ct.gov).

Respectfully submitted,

BRIAN K. SIBLEY, SR.,  
Senior Assistant State Attorney,  
New Haven State's Attorney's Office.

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AMERICAN HOTEL & LODGING ASSOCIATION  
September 18, 2017

Hon. RICHARD BLUMENTHAL,  
United States Senate,  
Washington, DC.

Dear Senator Blumenthal,

We write today to applaud your determined effort to fight human trafficking and to endorse your legislation, the Stop Enabling Sex Traffickers Act of 2017, which would go a long way toward cracking down on the use of the Internet by human traffickers to further their reprehensible crimes.

The American Hotel & Lodging Association (AHLA) is the singular voice representing every segment of the hotel industry including major chains, independent hotels, management companies, franchisees, REIT's, and bed and breakfasts. Our industry recognizes the vital role that hotels can play in the battle against human trafficking networks and are committed to fulfilling this responsibility. Our focus in confronting trafficking has been to raise awareness within the industry, train hotel employees, and support non-profit organizations, policymakers, and law enforcement in their efforts to combat these terrible crimes.

For example, AHLA funded and developed an online training program specifically geared toward hotel employees in partnership with ECPAT-USA and Polaris. The program teaches hotel workers to recognize signs of trafficking and report suspicious activities to law enforcement. AHLA also issued hotel industry principles on human trafficking to provide guideposts for our member companies and further raise awareness in the industry.

We are continually seeking more effective ways to contribute to society's campaign against trafficking, whether in coordination with organizations like the National District Attorneys Association, or government agencies like the Department of Homeland Security, or other entities within the travel and tourism sector. Your legislation is a crucial step forward in this campaign, and we are proud to support it. We cannot allow traffickers to conduct their operations on the Internet with impunity and your bill is an important step forward. Please let us know how we can be of assistance in your quest to eradicate human trafficking.

Sincerely,

VANESSA SINDERS,  
Senior Vice President.

UNION OF ORTHODOX JEWISH CONGREGATIONS OF AMERICA  
*Washington, DC, September 18, 2017*

Hon. ROB PORTMAN,  
 Hon. RICHARD BLUMENTHAL,  
 United States Senate,  
 Washington, DC.

Dear Senators Portman and Blumenthal:

We are writing on behalf of the Union of Orthodox Jewish Congregations of America ("Orthodox Union")—the nation's largest Orthodox Jewish umbrella organization—to express support for S. 1693, the "Stop Enabling Sex Traffickers Act of 2017."

Like so many Americans, we are deeply concerned about the scourge of human sex trafficking. We also support a justice system that protects the most basic human rights, including the ability of victims to seek justice against those who have wronged them. S. 1693 will allow victims of sex trafficking on the Internet to seek justice against those that promote and facilitate such trafficking. This legislation is narrowly tailored to correct the loopholes inadvertently contained in the Communications Decency Act of 1996 that provide a safe harbor for Internet traffickers.

The Orthodox Union supports your legislation to amend the Communications Decency Act of 1996 to ensure that victims of human sex trafficking are included in this protection and able to seek the justice they deserve.

Sincerely,

NATHAN DIAMENT,  
*Executive Director.*  
 JERRY WOLASKY,  
*Chairman, Advocacy.*

---

HEWLETT PACKARD ENTERPRISE  
*St. Palo Alto, CA, 18 September 2017*

Hon. ROB PORTMAN,  
 United States Senate,  
 Washington, DC.

Hon. RICHARD BLUMENTHAL,  
 United States Senate,  
 Washington, DC.

Dear Senators Portman and Blumenthal:

On behalf of Hewlett Packard Enterprise, I am writing to express our support for S. 1693, the *Stop Enabling Sex Traffickers Act of 2017*. Your legislation will help bring justice to victims and their families and protect vulnerable women and children.

As an industry-leading, global technology company that has long taken a stand against forced labor and human trafficking, and has made it a priority to protect and elevate vulnerable worker groups, we believe the technology sector has a responsibility to help policymakers and law enforcement combat illicit and criminal activity on the internet, especially sex trafficking.

Hewlett Packard Enterprise views engagement with stakeholders and public advocacy as integral aspects of its overall strategy to address the risks of forced labor and human trafficking. We often share our experiences and the challenges associated with combatting these issues in our supply chain at conferences and other public forums. The goal is to raise awareness, help other companies build an internal business case for action on trafficking, and advance wider stakeholder dialogue about how we can collaborate on meaningful actions.

To that end, please let me know how my team and I can be of assistance as you seek consensus to move this important legislation forward.

Thank you for your leadership, and we stand ready to work with you and your colleagues to enact this important bill.

Sincerely,

JOHN F. SCHULTZ,  
*Executive Vice President, General Counsel  
 and Corporate Secretary.*

THE WALT DISNEY COMPANY  
 Washington, DC, September 18, 2017

Hon. ROB PORTMAN,  
 United States Senate,  
 Washington, DC.

Hon. RICHARD BLUMENTHAL,  
 United States Senate,  
 Washington, DC.

Dear Senator Portman and Senator Blumenthal:

I am writing to express the strong support of The Walt Disney Company for S. 1693, the Stop Enabling Sex Traffickers Act of 2017 (SESTA).

Disney is a diversified entertainment company and one of the most prominent faces of the American content industry. We are a company whose business is firmly rooted in creativity, expression and innovation. As technology has evolved, so too has our business, with each of our segments invested in a significant online and interactive media presence. As such, we are steadfast defenders of the principles of freedom of speech and of the press, and we are both beneficiaries of and advocates for the liability protections afforded by the Communications Decency Act (CDA). But we also recognize that the public has a strong interest in an Internet that is open, secure, and protective of the rights of individuals. In the end, the public's legitimate expectation of responsible stewardship and accountability by those who make the Internet their business is no less appropriate in the online space than it is in the offline world.

Recognizing the importance of the CDA's protection to online platforms, including Disney, it is hard to imagine that the Congress that crafted this protection intended it to operate as a shield against liability for the kind of horrific acts that are the target of your legislation. The CDA's objective to "promote the continued development of the Internet and other interactive computer services and other interactive media" was and remains an important one to promote investment and innovation in online platforms. But that objective cannot be so overriding as to require that we shield from liability those who knowingly engage in unlawful activity, particularly those who knowingly participate in the business of human trafficking. To the extent some are claiming that holding such actors accountable "jeopardizes bedrock principles of a free and open internet," Disney rejects that view.

Thank for your efforts to pursue a sensible policy in this area—one that is protective of both the Internet and its continued development while providing redress for those who are the victims of unimaginably harmful and unlawful conduct. We will be happy to work with you as this bill moves forward to ensure the legislation meets its targeted objectives and becomes law.

Sincerely,

RICHARD M. BATES,  
 Senior Vice President Government Relations.

September 18, 2017

Hon. JOHN THUNE,  
 Chairman,  
 U.S. Senate Committee on Commerce,  
 Science, and Transportation,  
 Washington, DC.

Hon. BILL NELSON,  
 Ranking Member,  
 U.S. Senate Committee on Commerce,  
 Science, and Transportation,  
 Washington, DC.

Dear Chairman Thune, Ranking Member Nelson, and Members of the Committee,

We are an alliance of survivors of sex trafficking and commercial sexual exploitation from all across the country writing to express our strong support for S.1693, *Stop Enabling Sex Traffickers Act of 2017* (SESTA). This critical legislation would correct a legal loophole in the Communications Decency Act (CDA) that shields websites that knowingly facilitate sex trafficking.

A law originally drafted in 1996, the CDA simply cannot address the reality of violent crime on the Internet today. Every day, thousands of women and children are marketed online where buyers purchase them with ease, anonymity, and impunity. As survivors of sex trafficking and commercial sexual exploitation, we know the deep and profound harm caused by this crime. Many of us are survivor leaders of organizations working to provide safety and healing to others, including American children who were bought and sold online. For years, we have tried unsuccessfully to hold these websites accountable, but court after court has made it clear: Congress must correct the blanket immunity provided by CDA.

This legislation is vital. *Stop Enabling Sex Traffickers Act of 2017* represents an incredible bipartisan effort to seek justice for countless survivors who are sold on

websites that shamelessly profit from our exploitation. As survivors of sexual exploitation and trafficking, we ask you to please prioritize the safety and rights of our Nation's most vulnerable women and children and pass SESTA to at long last, provide us a pathway to justice. As the father of a child sex trafficking survivor perfectly stated: "Children are not acceptable collateral damage. They are our hope, our future, America's conscience."

Sincerely,

- |   |  |
|---|--|
| 1. Trudee E. Able<br>SEY and Youth Outreach Specialist<br>Minneapolis, MN   | 2. Nikolaos Al-Khadra<br>Survivor Leader, National Survivor Network (NSN)<br>Los Angeles, CA                                     |
| 3. Kimmi Alona<br>Rebecca Bender Initiative<br>Denver, CO   | 4. Jason Alva* Advocate<br>San Diego, CA   |
| 5. Barbara Amaya, PhD<br>Author, Advocate, and Senior Technical Advisor, EPIC (Education Prevention and Intervention Center)<br>Arlington, VA | 6. Brooke Axtell<br>Founder/Director, She is Rising<br>Austin, Texas   |
| 7. Ann Marie Babb<br>VP Business Operations, WCWT Center<br>Middletown, OH  | 8. Heidi Balogh<br>Milwaukie, OR   |
| 9. Trisha Baptie<br>Community Engagement Coordinator, EVE<br>Vancouver, BC  | 10. Jewell Mikaela Baraka<br>Kansas City, MO   |
| 11. Cathy Bauer<br>Phoenix, AZ  | 12. Alyssa Beck<br>Advocacy Specialist, Delores Barr Weaver Policy Center<br>Jacksonville, FL                                    |
| 13. Nicole Bell<br>Executive Director, Living In Freedom Together Inc.<br>Worcester, MA   | 14. Rebecca Bender<br>CEO & Founder, Rebecca Bender Initiative<br>Grants Pass, OR  |
| 15. Alisa Bernard<br>Survivor Advocacy Coordinator, The Organization for Prostitution Survivors (OPS)<br>Seattle, WA                          | 16. Wendy Berry<br>Survivor/Advocate<br>Fruitland, ID  |
| 17. Tammy Bitanga<br>Peer Support Specialist/Community Outreach manager, Ho'ola Na Pua<br>Honolulu, HI  | 18. Ellen Blair<br>Knoxville, TN   |
| 19. Jennifer Brooks-Hardy<br>Peer Support Coordinator, Healing Action<br>St. Louis, MO  | 20. Kathy Bryan<br>Director of Elevate Academy, National Trainer, Author, Mentor, Rebecca Bender Initiative<br>Heber Springs, AR |
| 21. Autumn Burris<br>Founding Director, Survivors for Solutions<br>Denver, CO   | 22. Kathleen Campbell<br>Puxico, MO  |
| 23. Vednita Carter<br>Founder, Breaking Free and Vednita Carter Ministries<br>St. Paul, MN  | 24. Christine Cesa<br>Survivor Leader/Advocate<br>Los Angeles, CA  |
| 25. Maui Chacon<br>Survivor Advocate<br>Anaheim, CA   | 26. Penny Christopoulos<br>Norfolk, VA   |
| 27. Angie Conn<br>Survivor Leader<br>Buffalo, WV  | 28. Amber Copeland<br>Morgantown, WV   |
| 29. Laurin Crosson<br>Founder/Director, Rockstarr.org<br>Salt Lake City, UT   | 30. Jeanine Daley<br>Worcester, MA   |

31. Ne'cole Daniels  
Founding Co-Chair, World Without  
Exploitation  
Olympia, WA
32. Delores Day  
Executive Director, Restore Innocence Ranch  
Waukesha, WI
33. Emily Dickson  
Empowerment Advocate, Family Assistance  
Program  
San Bernardino, CA
34. Kelly Dore  
Executive Director, Colorado Human Traf-  
ficking Survivor Coalition  
Denver, CO
35. Eva Eakins  
Hesperia, CA
36. Jerome Elam  
President and CEO, Trafficking in America  
Task Force  
Gainesville, FL
37. Amy Engle  
Marriage and Family Therapist, Phoenix  
Dream Center  
Phoenix, AZ
38. Telisia Espinosa  
Be A Voice  
Tampa, FL
39. Natasha Falle  
Co-founder/Director, Sex Trade 101  
Toronto, ON
40. Hazel Fasthorse  
Case Manager/Advocate, Beloved Atlanta  
Atlanta, GA
41. Kailee Favaro  
East Nassau, NY
42. Danielle Trinity Foreman  
Attleboro, MA
43. Allison Franklin  
Houston, TX
44. Freitag  
LADC, Director of Action169  
Fairmont, MN
45. Jessika Fuhrmanek  
Writer/Speaker/Advocate, Treasures Ministry  
Nashville, TN
46. Noel Gomez  
Advocate, The Organization for Prostitution  
Survivors (OPS)  
Seattle, WA
47. Danielle Goodwin  
Survivor Leader  
Seattle, WA
48. Jessica Groghan  
Fort Collins, CO
49. Jennifer H.  
Group Facilitator, Prevent Child Abuse NJ  
New Brunswick, NJ
50. Athena Haddon  
Port Huron, MI
51. Kathi Hardy  
Freedom From Exploitation  
San Diego, CA
52. Denise Harris  
HSTSI Facilitator And Survivor Advocate,  
Convergence Resource Center  
Milwaukee WI
53. Marian Hatcher  
Senior Project Manager/Human Trafficking  
Coordinator, Cook County Sheriffs Office  
Chicago, IL
54. Keisha Head  
Lead Case Manager, Salvation Army  
Conyers, GA
55. Hollerbach  
Monroe, WA
56. Jolene Hollis  
Mentor, Trainer, Case Manager  
Long Beach, CA
57. Margaret Howard  
LCSW  
Saint Louis, MO
58. Corina Hernandez  
Hemet, CA
59. Jeanet T. Ingalls  
Survivor Advocate, Shout Out Loud  
Productions, Inc.  
Lenox, MA
60. Beth Jacobs  
Field Instructor, Truckers Against Trafficking  
St. Cloud, MN
61. Cherie Jimenez  
Director, EVA Center  
Boston, MA
62. Jeri Jimenez\*\*  
Co-founder, Survivor 2 Survivor  
Portland, OR
63. Ann Marie Jones  
Peer Mentor, Dawns Place  
Philadelphia, PA
64. Judith  
Beverly Hills, CA
65. Kristine  
Tacoma, WA
66. Kathleen Kruger  
Mount Olive Lutheran Church  
Minneapolis, MN

67. Jessica Lamb  
Founder and Director, Atlanta Redemption Ink, Inc.  
Atlanta, GA
69. Maryann Lennon  
Survivor, Rebecca Bender Initiative  
Palm Bay, FL
71. Jacquelyn Loos  
Peer Support Specialist, REST  
Seattle, WA
73. Megan Lundstrom  
Executive Director, Free Our Girls  
Greeley, CO
75. Jasmine Grace  
Marino Director, Bags of Hope  
Boston, MA
77. Jennifer Martin  
Social Media and Events Coordinator,  
Rethreaded  
Jacksonville, FL
79. McKinley  
Austin, TX
81. Robin Miller  
Vancouver, BC
83. Jeri Moomaw  
Executive Director, Innovations HTC  
Olympia, WA
85. Emmy Myers  
CEO & Founder, Lacey's Hope Project  
Slinger, WI
87. Alexandra (Sandi) Pierce  
President, Othayonih Research  
Saint Paul, MN
89. Sharon Robbins  
Jubilee Havens  
Ocean Springs, MS
91. Rosseland  
Survivor Mentor, Delores Barr Weaver Policy  
Center  
Jacksonville, FL
93. Andrea Shields  
Marceline, MO
95. Tina Smithee  
Caseworker, Catholic Charities  
Macon, GA
97. Joli Sparkman  
RIA house  
Millis, MA
99. Jen Spry  
RN, Being A Voice LLC  
Douglassville, PA
101. Brittani Stugart  
Los Angeles, CA
68. Judith Latner\*  
Buckeye, AZ
70. Marcela Loaiza  
Survivor and Writer, Marcela Loaiza Founda-  
tion  
Las Vegas, NV
72. Shawnee Love HHD, PhD\*\*  
Doctor/Advocate/Survivor/Warrior/Movements  
Maker, Purple Hearts Missions Possible &  
Healthy Horizons; Native American Warriors  
Task Force  
The Americas
74. Marti MacGibbon  
Speaker, Author, Survivor Leader  
Sacramento, CA
76. Emily Martin  
Mission 21  
Rochester, MN
78. Courtney Mattinson  
Marietta, GA
80. Manon Michaud  
Activist  
Montréal, QC
82. Kathleen Mitchell  
Founder, DIGNITY Programs  
Phoenix, AZ
84. Audrey Morrissey  
Associate Director, My Life My Choice  
Boston, MA
86. Darlene Pawlik  
Speaker, The Darling Princess  
Raymond, NH
88. John Price  
Reverend  
Kansas City, MO
90. Dr. Katariina Rosenblatt, PhD  
Founder, There Is Hope For Me, Inc.  
Orlando, FL
92. Marjorie Saylor  
Founder/Executive Director, The Well Path  
Escondido, CA
94. Carrie Smals  
Supervisor of a non-profit organization for sur-  
vivors of human trafficking  
Jacksonville, FL
96. Elle Snow  
Founder & Board President/Public Speaker,  
Game Over  
Eureka, CA
98. Lorena Spencer  
Owosso, MI
100. Cassandra Strom  
Public Relations Director, New Life Refuge  
Ministries  
Trophy Club, TX
102. Carolyn Sunseri  
McKinleyville, CA



103. Shelley Sylvester  
Madison Heights, MI

105. Melanie Thompson  
Survivor Advocate  
Queens, NY

107. Rosalyn Vasquez  
Survivor Advocate  
Seattle, WA

109. Pamela A. White  
Shared Hope International  
Washington, DC

111. Shandra Woworuntu  
Director, Mentari  
New York, NY

113. Sarah Zalonis  
Consultant, Polaris Project  
Washington, DC

104. Kristen Tebow  
CEO, Founder, Youth Trust Project  
Lawrence, KS

106. Tori Thompson  
Free Our Girls  
Greeley, CO

108. Jeanette Westbrook, MSSW  
Speaker and Advocate, SPACE International  
Louisville, KY

110. Pamela Willisaa  
Survivor Leader/Expert  
Atlanta, GA

112. Erin Wright  
Carson City, NV

*\*Parent of a child sex trafficking survivor*

*\*\*Survivor and parent of a child sex trafficking survivor*

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO ABIGAIL SLATER

*Question.* We want to be sure Internet platforms are held liable when they *knowingly* assist, support, or facilitate a human trafficking. Could you describe your concerns with the amended “participating in a venture” language and explain what mens rea standard you believe is used? How can we clarify that the knowledge standard for secondary liability in Section 1591 so that it applies to specific instances of illegal conduct?

*Answer.* As currently drafted, SESTA would amend the Federal human trafficking laws to impose criminal liability on any entity that engages in knowing conduct that assists, supports, or facilitates a violation of a human-trafficking crime. (Section 4(2)). This standard does not work for Internet companies, whose very functions assist, support, or facilitate both good and bad activities on the Internet. For example, a company that provides access to the Internet knows that such access facilitates every activity on the Internet—whether lawful or not. To address this concern, SESTA should modify the criminal liability standard to tighten the nexus between an Internet company and a violation of § 1591. This can be done by limiting liability to an entity that has actual knowledge of the conduct in question and materially assists in furthering such conduct.

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RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO ERIC GOLDMAN

*Question.* Do you interpret the current provisions in SESTA as wiping out Good Samaritan protections? If so, how can we amend the legislation to ensure the proposed changes to the CDA do not override Section 230 (c)(2)(A) protections?

*Answer.* I appreciate the opportunity to explain Section 230s Good Samaritan mechanisms and how SESTA undermines them. The Manager’s Amendment dated November 3, 2017 attempted to address this issue, but I don’t think it accomplished its goal.

**How Section 230 Currently Protects Good Samaritan Efforts**

I believe Congress wants online services to voluntarily undertake efforts to block or remove third party promotions for sex trafficking and other illegal or objectionable third party content. I’ll call these efforts “content moderation.”

Content moderation takes a nearly infinite variety of forms. Content moderation includes initial decisions to publish or not, as well as post-publication decisions to remove or not remove the content. Content moderation can be manual or automated, and post-publication decisions may be prompted by third party notifications (such as takedown requests) or the online service’s own diligence or monitoring efforts.

47 U.S.C. § 230(c) is captioned “Protection for ‘Good Samaritan’ blocking and screening of offensive material.” Both parts of Section 230(c) support this goal. Section 230(c)(1) provides an immunity for publishing third party content, including

both its initial decision to publish and any subsequent decision not to remove content. I'll call these "Publication" decisions. Section 230(c)(2) provides a safe harbor for refusing to publish third party content or subsequently removing third party content. I'll call these "Removal" decisions. Between the two subsections, Section 230(c) currently protects the full range of content moderation efforts.

#### **How SESTA Undermines Section 230's Good Samaritan Protection**

SESTA enables online services to be sued or prosecuted for sex trafficking promotions that third parties publish through their service. Online services will be reluctant to undertake content moderation efforts if they face liability for any sex trafficking promotions that slip through, *i.e.*, if they miss a promotion, review a promotion but make a mistake, or take too long to find or remove a promotion.

The Manager's Amendment preserves Section 230(c)(2)'s protection for Removal decisions. However, this won't encourage Good Samaritan efforts because: (1) online services don't fear being sued or prosecuted for what they remove (and such risks usually can be ameliorated by the online service's contract with the third party users-publishers); (2) Section 230(c)(2)'s "good faith" requirement undercuts the safe harbor's availability, and it substantially increases defense costs because judges may enable wide-ranging discovery into defendants' "good faith"; and (3) online services may abandon their content moderation efforts entirely rather than risk being charged with knowledge of content they didn't catch.

Instead, SESTA effectively exposes online services to liability only for third party content that they publish online or don't remove quickly enough. This means online services principally need immunity for their Publication decisions, not their Removal decisions. Section 230(c)(1)—not (c)(2)—provides the applicable immunity for content Publication. Thus, by curtailing Section 230(c)(1), SESTA removes the primary protection that online services rely upon when doing Good Samaritan content moderation against sex trafficking promotions (and all other objectionable content).

#### **Proposed Language to Incorporate Good Samaritan Protections into SESTA**

If Congress wants to ensure that online services continue to combat sex trafficking promotions, I recommend saying so explicitly. To do this, I propose SESTA add a new Section 230(g) to make it clear that Good Samaritan efforts should not be punished:

The fact that a provider or user of an interactive computer service has undertaken any efforts (including monitoring and filtering) to identify, restrict access to, or remove, material it considers objectionable shall not be considered in determining its liability for any material that it has not removed or restricted access to.

Alternatively, with some wording changes, this language could be incorporated into Section 230(c)(2)(A).

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO HON. XAVIER BECERRA

*Question 1.* Mr. Goldman and Ms. Slater argue that creating these exemptions to the CDAs will have a chilling effect on the web platforms that are monitoring their websites and pulling down these ads, because they argue they could be held liable for knowing the content is there. What is your response to this and how would law enforcement respond if these platforms stopped monitoring their sites altogether?

Answer. There is undoubtedly a vigorous societal interest in free speech. But that does not require States to turn a blind eye to commercial entities that intentionally and knowingly facilitate and profit from egregious criminal conduct. It is also important to protect Internet platforms, which are important both to the economy and in the lives of everyday Americans, from the sort of private litigation that Congress feared in passing the original Communications Decency Act (CDA). But the more expansive judicial decisions that we are concerned with have gone further than that, and I believe that legislation will help to restore the balance that Congress intended.

As to whether Internet companies will reduce their cooperation with law enforcement due to such legislation, I would find it surprising if responsible American companies would knowingly place children at risk by turning a blind eye towards the sex trafficking of vulnerable minors. A few irresponsible companies already do so, of course—and that is the problem this legislation aims to give us tools to fight. Human trafficking cannot be the cost of doing business.

*Question 2.* As a former Member of Congress and now as Attorney General, you have seen this issue from both sides. As we know, there was no way of predicting in 1996 that sites could serve at the hub for soliciting and facilitating human trafficking. Do you believe Congress intended with Section 230 to provide vast protections to those who knowingly facilitate human trafficking? Under what circumstances do you believe it is appropriate for Congress to revisit the laws it has passed?

Answer. In my 24 years in Congress, there were instances where we revisited laws for one good reason or another—sometimes because a law was dated or because the underlying statute as written resulted in some conflict or unintended consequence. Indeed, to keep our policies current with the times, numerous major laws require reauthorization every few years.

These admonitions are apt in this instance involving the Communications Decency Act. No one in Congress (and I was a member of the House of Representatives at the time) intended the CDA to be used as a shield by human traffickers, nor do I believe that Congress intended under the CDA to interfere with Federal or state criminal prosecutions of child sex trafficking.

Nevertheless, there is now a court ruling that speaks directly to the conflicts/unintended consequences in the application of the CDA and the need for Congress to amend it to make it clear:

*“If and until Congress sees fit to amend the immunity law, the broad reach of section 230 of the Communications Decency Act even applies to those alleged to support the exploitation of others by human trafficking.”<sup>1</sup>*

The original CDA clearly exempts any Federal criminal prosecution from its prohibitions. I believe the law also intended to exempt state criminal prosecutions, but many lower courts, unfortunately, have not agreed. The CDA is about protecting Internet service providers from a proliferation of private civil actions; it should be limited to that and not interfere with state or Federal criminal prosecutions.

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO  
TO YIOTA G. SOURAS

*Question 1.* Some of the tech companies have argued that there is already a Federal law, the SAVE Act, that can be used to prosecute pimps who post sex trafficking ads and the online platforms who host the ads. However, there has yet to be any Federal prosecution of Backpage. I understand the SAVE Act assigned the higher “knowledge” standard to advertising sex trafficking. What impediments do you think Federal prosecutors might face in bringing these cases?

Answer. **Background to SAVE Act**

Based on NCMEC’s years of experience as the Nation’s clearinghouse on issues relating to missing and exploited children, we are aware that child sex trafficking is a multi-faceted issue that requires an array of legal tools to prevent and combat this horrible crime. The SAVE Act, which was enacted as part of the Justice for Victims of Trafficking Act of 2015, amended 18 U.S.C. §1591(a)(1) (the “TVPPRA”) which addresses sex trafficking violations and added advertising as a type of conduct that is criminal. Specifically, the SAVE Act criminalizes the knowing advertising of a person where the advertiser knew the person was under the age of 18 years old or force, threats of force, fraud, or coercion were utilized in trafficking the person.

On December 11, 2015, almost immediately after the SAVE Act was enacted, Backpage.com, LLC (“Backpage”) sued the Department of Justice in the District Court for the District of Columbia challenging the constitutionality of the SAVE Act. This litigation was dismissed on October 24, 2016, with the court ruling that Backpage lacked standing and the court lacked subject matter jurisdiction to decide the case on its merits.

Given that the litigation challenging the constitutionality of the SAVE Act was resolved just over a year ago, it is not surprising that there have been no Federal prosecutions of Backpage utilizing this new legal option to date. Complex Federal prosecutions, especially of large scale sex trafficking operations, take substantial time and resources to develop and initiate. It simply is too soon to determine whether the SAVE Act, as some have argued, provides a more viable means for Federal prosecutors to bring suit against online facilitators of sex trafficking, such as Backpage.

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<sup>1</sup>*People v. Ferrer*, 16FE024013 (Cal. Superior Ct. Aug. 23, 2017)

While the SAVE Act did add advertising as a predicate act for sex trafficking within the confines of the TVPRA, Federal prosecutors have always been exempt from the barriers of the Communications Decency Act (“CDA”) that apply to other forms of legal actions against online companies such as Backpage. This fact highlights that the SAVE Act, while potentially providing an additional legal avenue for Federal prosecutors, is insufficient, standing alone, to combat online sex trafficking.

Additionally, Backpage has disclosed that it faces an ongoing Federal investigation, and there have been various public accounts since then referring to this Federal investigation. Any prosecution that arises from this investigation may rely on the SAVE Act, but it is simply too early to know if, or how, Federal prosecutors will seek to utilize the SAVE Act against a website like Backpage.

#### **Potential Impediments for Federal Prosecutors Regarding the SAVE Act**

One potential impediment that Federal prosecutors face in any trafficking case involving the TVPRA is the “knowing” mens rea standard embedded throughout the statute. The impact of this standard is not unique to the SAVE Act, however it is likely a consideration for Federal prosecutors as they evaluate potential legal options to utilize against facilitators of online sex trafficking. As noted by California Attorney General Becerra in his testimony before the Senate Commerce Committee, fulfilling the “knowing” mens rea standard is a high barrier for prosecutors to establish in any trafficking case.

#### **SAVE Act Alone is Insufficient to Combat Online Sex Trafficking**

While the SAVE Act potentially provides another legal tool for Federal prosecutors to use against websites like Backpage, it does not address the most significant impediment they face, namely the lack of state criminal and civil legal support in the fight against online sex trafficking. The volume of websites currently facilitating sex trafficking requires that a wide range of legal resources, in addition to Federal prosecution, be used to combat this crime.

As noted above, Federal prosecutors have always faced lower barriers to pursuing criminal cases against websites like Backpage because Federal criminal laws are specifically exempted from the CDA. While it might have been reasonable in 1996, when Congress passed the CDA, to anticipate that the Department of Justice could manage all crime on the Internet, that is an unrealistic expectation in today’s world. Twenty-one years later, the volume and complexity of online commercial transactions (and the corresponding rise in online criminal activity) makes it unrealistic to assume that a single Federal agency can manage all prosecutions of online crimes.

The problem, even as it relates solely to child sex trafficking, is simply too big to address only from a Federal criminal perspective. Over the past five years, NCMEC has received an average of 9,800 reports relating to child sex trafficking annually. Of these reports, 81 percent are related to the trafficking of a child on the Internet. This problem afflicts every city and state across the country. While these numbers are substantial, because there is no statutory requirement to report the trafficking of a child to NCMEC and due to the complexities in defining these crimes, we believe our report numbers are just a small representation of the number of children being trafficked online.

Given the pervasive, national scope of child sex trafficking online, Federal prosecutors cannot be expected to combat this issue alone. States and civil attorneys must be part of the solution. The impact of online trafficking at a state and local level is well-known, and it is not feasible to continue to deprive state attorneys general of the ability to prosecute trafficking crimes affecting their communities simply because perpetrators are online entities. The joining of state prosecutorial resources from across the country to combatting online sex trafficking will ease one of the more substantive impediments that currently exists in fighting this crime.

Additionally, the rights of trafficking survivors to work with civil attorneys in exercising their private right of action against those who trafficked them in violation of the TVPRA (18 U.S.C. § 1595), also provides an essential tool in combatting online sex trafficking. In 2003, Congress took the step of providing a private right of action in the criminal code for sex trafficking victims to pursue recourse in a civil action against those who participated in their trafficking<sup>2</sup>. This private right of action is significant because Congress does not always provide crime victims with such a right as part of the criminal code. At the present time, this statutory private right

<sup>2</sup>A private right of action arising from criminal violations has been granted by Congress in certain instances both to strengthen the impact of criminal laws and to provide civil recourse for victim compensation (e.g., the Anti-Terrorism Act (18 U.S.C. § 2333(a); Child Pornography Prevention Act (18 U.S.C. § 2252A; Computer Fraud and Abuse Act (18 U.S.C. § 1836(b)(1)).

of action has been held to be barred by the CDA by a recent appellate court decision, and therefore civil recourse by trafficking survivors is all but thwarted when their trafficker is an online entity. Legislative clarity regarding the ability of trafficking survivors to pursue their civil private right of action should enable civil attorneys to pursue legal actions against online traffickers, develop valuable factual discovery, isolate trends in websites facilitating online sex trafficking, and identify and support trafficking victims. These actions also provide valuable underlying support for Federal prosecutors.

As noted above, NCMEC's experience has shown that combatting child sex trafficking requires the marshalling of numerous resources, legal tools, and avenues of recovery support for trafficking survivors. Recent case law has shown that courts are narrowly interpreting the CDA to preclude state attorneys general and civil attorneys from joining efforts to combat online sex trafficking. While the enactment of the SAVE Act provides another tool for Federal prosecutors, which may prove valuable in future Federal prosecutions, it does not address a crucial underlying impediment for Federal prosecutors, namely the preclusion of state criminal and civil legal remedies to provide additional resources to combat the volume of websites facilitating and supporting online sex trafficking.

SESTA is a crucial step in the multifaceted approach needed to combat this horrible crime online. Not only will it provide additional resources to support the efforts of Federal prosecutors by enabling state attorneys general and civil attorneys to join this fight against online sex trafficking, but it also provides renewed support for survivors in their access to justice.

*Question 2.* Much of the discussion around this issue has focused on one website, Backpage.com. We know there are other bad actors online that also knowingly facilitate sex trafficking. To what extent do you believe this legislation will address the universe of Internet Service Providers that knowingly engage and profit of these crimes?

*Answer.* The investigation of Backpage, undertaken in 2015 by the Senate Permanent Subcommittee on Investigations ("PSI"), was the catalyst for the introduction of the *Stop Enabling Sex Traffickers Act of 2017* ("SESTA"). However, SESTA is not a "Backpage bill," and it will have an impact, far beyond Backpage, in helping to deter, hinder, and enable prosecution against other websites that seek to facilitate the trafficking of children online.

Backpage has been recognized as one of the largest facilitators of sex trafficking ads online. Based on NCMEC's experience, it also is the focus of activity relating to child sex trafficking ads. Of child sex trafficking reports submitted to NCMEC by members of the public, 73 percent relate to ads on Backpage.

While NCMEC handles large volumes of child sex trafficking reports relating to Backpage, we are aware that there are many other websites on which children are trafficked for sex. Because Backpage occupies such an outsized portion of the online market for sex trafficking, it is not surprising that it is the focus of discussion relating to this crime or that the secondary marketplace below Backpage is occupied by numerous smaller websites, most of which are not currently part of the active public dialogue around sex trafficking websites. It is anticipated that this will alter quickly if Backpage is removed from the active marketplace for online sex trafficking.

Backpage has established that online sex trafficking is a wildly lucrative criminal enterprise and, thus far, legally protected. In other words, Backpage has shown other criminal elements online that facilitating online sex trafficking is a "low risk and high profit" operation. Given the commercial potential of this activity, if Backpage is removed, children will continue to be trafficked online because other companies will compete to fill the void Backpage would leave behind.

SESTA is designed to address these other sites that will fill the void after Backpage and sites that will develop in the future by enabling increased prosecutorial options and civil access to justice and strengthening existing deterrence mechanisms and barriers to entry into this illegal marketplace. SESTA's clarification regarding the CDA and the TVPRA provides prosecutors and civil attorneys with a mechanism to establish liability for any website that knowingly assists, supports or facilitates sex trafficking. SESTA may be known as a "Backpage bill" out of semantic convenience—because Backpage is the website that crystallized our awareness of this crime and the courts' lack of direction regarding how to deal with this crime—however, NCMEC is aware that the clarifications and structure of SESTA can be equally well-applied to many other websites that are facilitating the trafficking of children for sex online.