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115TH CONGRESS, 2d Session | HOUSE OF REPRESENTATIVES | REPT. 115–572, Part 1

ALLOW STATES AND VICTIMS TO FIGHT ONLINE SEX TRAFFICKING ACT OF 2017

FEBRUARY 20, 2018.—Committed to the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1865]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1865) to amend the Communications Act of 1934 to clarify that section 230 of such Act does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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79–006

The Amendment

The amendment is as follows:

Strike all that follows after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017".

SEC. 2. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) section 230 of the Communications Act of 1934 (47 U.S.C. 230; commonly known as the "Communications Decency Act of 1996") was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and contribute to sex trafficking;

(2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done nothing to prevent the trafficking of children and victims of force, fraud, and coercion; and

(3) clarification of such section is warranted to ensure that such section does not provide such protection to such websites.

SEC. 3. PROMOTION OF PROSTITUTION AND RECKLESS DISREGARD OF SEX TRAFFICKING.

(a) PROMOTION OF PROSTITUTION.—Chapter 117 of title 18, United States Code, is amended by inserting after section 2421 the following:

"§ 2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking

"(a) IN GENERAL.—Whoever uses or operates a facility or means of interstate or foreign commerce or attempts to do so with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.

"(b) AGGRAVATED VIOLATION.—Whoever uses or operates a facility or means of interstate or foreign commerce with the intent to promote or facilitate the prostitution of another person and—

"(1) promotes or facilitates the prostitution of 5 or more persons; or

"(2) acts in reckless disregard of the fact that such conduct contributed to sex trafficking, in violation of 1591(a),

shall be fined under this title, imprisoned for not more than 25 years, or both.

"(c) CIVIL RECOVERY.—Any person injured by reason of a violation of section 2421A(b) may recover damages and reasonable attorneys' fees in an action before any appropriate United States district court. Consistent with section 230 of the Communications Act of 1934 (47 U.S.C. 230), a defendant may be held liable, under this subsection, where promotion or facilitation of prostitution activity includes responsibility for the creation or development of all or part of the information or content provided through any interactive computer service.

"(d) MANDATORY RESTITUTION.—Notwithstanding sections 3663 or 3663A and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this section.

"(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a) where the defendant proves, by a preponderance of the evidence, that the promotion or facilitation of prostitution is legal in the jurisdiction where the promotion or facilitation was targeted.".

(b) TABLE OF CONTENTS.—The table of contents for such chapter is amended by inserting after the item relating to section 2421 the following:

"2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking.".

SEC. 4. COMMUNICATIONS DECENCY ACT.

Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

"(5) NO EFFECT ON STATE LAWS CONFORMING TO 18 U.S.C. 1591(A) OR 2421A.—Nothing in this section shall be construed to impair or limit any charge in a criminal prosecution brought under State law—

"(A) if the conduct underlying the charge constitutes a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted; or

"(B) if the conduct underlying the charge constitutes a violation of section 1591(a) of title 18, United States Code.".

SEC. 5. SAVINGS CLAUSE.

Nothing in this Act or the amendments made by this Act shall be construed to limit or preempt any civil action or criminal prosecution under Federal law or State law (including State statutory law and State common law) filed before or after the day before the date of enactment of this Act that was not limited or preempted by section 230 of the Communications Act of 1934 (47 U.S.C. 230), as such section was in effect on the day before the date of enactment of this Act.

Purpose and Summary

H.R. 1865, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, is designed to combat online sex trafficking by providing new tools to law enforcement through a new federal criminal statute and by making it easier for states to prosecute criminal actor websites by amending section 230 of the Communications Decency Act, 47 U.S.C. § 230.

Background and Need for the Legislation

Since the expansion of the Internet, a number of classified advertising websites have developed and are now a popular and widely-used alternative to traditional print advertising in newspapers. Sites like Craigslist, Backpage.com, and eBay Classifieds provide users with a forum for buying and selling goods and services to a broader audience on the web. These websites group advertisements by location and category, similar to print advertisements. The use of these websites has grown exponentially as Internet use increases. Unfortunately these websites, including online classified sites like Backpage.com, Eros, Massage Troll, and cityxguide, have also become one of the primary channels of sex trafficking. This is in part due to technological advances on the Internet that make information easily accessible and provide a forum for anonymity, which allows traffickers to post advertisements of minors for a world of customers to see with ease and security. Some websites have gone beyond merely hosting advertisements, however, and have purposely created platforms designed to facilitate prostitution and sex trafficking.

Because of protections provided to "interactive computer services" by the Communications Decency Act (CDA), 47 U.S.C. § 230, it has been challenging to hold bad-actor websites accountable criminally (at the state level) and civilly. Congress passed the CDA in 1996, in an attempt to "remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material."[1] At the same time, Congress sought to "promote the continued development of the Internet and other interactive computer services and other interactive media."[2]

The CDA provides broad immunity for interactive computer services and states that no "provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."[3] An interactive computer service is "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service

[1] 47 U.S.C. § 230(b)(4).
[2] 47 U.S.C. § 230(b)(1).
[3] 47 U.S.C. § 230(c)(1).

or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions."[4] An information content provider is "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service."[5] Courts construing § 230(c)(1) frequently have employed a three-prong test that asks whether: (1) the online entity uses or provides an interactive computer service; (2) the entity is an information content provider with respect to the disputed activity or objectionable content; and (3) whether the plaintiff seeks to treat it as the "publisher or speaker" of information originating with a third party.[6] It has been uniformly held that Internet service providers are "interactive computer service" providers.[7] Courts have concluded that a Web site operator, search engine, or other entity was or was not a provider of an "interactive computer service" depending on whether there was a sufficient indication before the court that it "provided or enabled computer access by multiple users to a computer server" within the meaning of the definition found at § 230(f)(2).

The CDA further provides that:

> Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

47 U.S.C. § 230(e)(3). It thus places limits on when states may enforce both criminal and civil laws. It only allows state laws to be enforced in cases in which they are deemed "consistent" with the CDA.

With respect to combatting websites promoting prostitution and facilitating sex trafficking, § 230 has complicated enforcement. In civil litigation, bad-actor websites have been able to successfully invoke this immunity provision despite engaging in actions that go far beyond publisher functions. In 2014, three minor Jane Does filed a civil suit in the U.S. District Court in Massachusetts under the Trafficking Victims Protection Reauthorization Act, alleging that that Backpage's platform, categories, and filters "assist[ed] in the crafting, placement, and promotion of illegal advertisements offering plaintiffs for sale." The District Court dismissed their Complaint, holding that § 230 of the CDA barred the lawsuit. The Second Circuit affirmed, concluding that although the plaintiffs "ha[d] made a persuasive case" that "Backpage has tailored its website to make sex trafficking easier," it nevertheless upheld the dismissal of the suit under § 230 on the grounds that it had not gone beyond being a publisher. Notably, the plaintiffs in this case chose only to argue Backpage was not a publisher; they did not argue that Backpage was an information content provider and would therefore not be entitled to immunity.

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[4] 47 U.S.C. § 230(f)(2).

[5] 47 U.S.C. § 230(f)(3).

[6] *See* Ken S. Myers, *Wikimmunity: Fitting the Communications Decency Act to Wikipedia,* 20 Harvard Journal of Law & Technology 163 (2006).

[7] Noah v. AOL Time Warner, Inc., 261 F. Supp. 2d 532 (E.D. Va. 2003), *summarily aff'd,* 2004 WL 602711 (4th Cir. 2004).

Subsequently, the Senate Permanent Subcommittee on Investigations launched a 20-month investigation into Backpage. It found that Backpage had knowingly concealed evidence of criminality by systematically editing its "Adult" ads—that is, Backpage knew it facilitated prostitution and child sex trafficking—and that it had been sold to its CEO Carl Ferrer through foreign shell companies. Backpage would automatically delete incriminating words, such as "amber alert," from sex ads prior to publication, moderators then manually deleted incriminating language that filters missed, and the website coached its users on how to post "clean" ads to cover illegal transactions. Further, in July 2017, the *Washington Post* published a story revealing that a contractor for Backpage had been aggressively soliciting and creating sex-related ads, despite Backpage's repeated insistence that it had no role in the content of ads posted on its site. In sum, Backpage had engaged in a ruse, holding itself out to be a mere conduit, but in fact actively engaged in content creation and purposely concealing illegality in order to profit off of advertisements. There had been no criminal investigation up until the Senate investigation to uncover exactly what Backpage was doing, which is what this bill aims to remedy.

Further, courts have blocked states from enforcing state criminal laws on the grounds that the state laws were not consistent with the CDA. Backpage successfully invoked § 230 in federal-preemption challenges to state criminal laws in Washington, Tennessee, and New Jersey criminalizing the advertisement of minors for sex. A California state court also denied the government from proceeding against Backpage on pimping charges because it deemed the California statue "inconsistent" with the CDA.

Importantly, current federal criminal law, which is unaffected by the CDA, presently lacks proper prosecutorial tools to combat these websites. Though under 18 U.S.C. § 1591, a website may be held criminally liable for knowingly advertising sex trafficking, this knowledge standard is difficult to prove beyond a reasonable doubt. This is so because online advertisements rarely, if ever, indicate that sex trafficking is involved. The advertisements neither directly nor implicitly state that force, fraud, or coercion was used against the victim, nor do they say that the person depicted being prostituted is actually under the age of 18. Because these indicia of knowledge of criminality are typically lacking in the advertisements, federal prosecutors usually cannot demonstrate beyond a reasonable doubt that the website operators knew that the advertisements involved sex trafficking. Further, general knowledge that sex trafficking occurs on a website will not suffice as the knowledge element must be proven as to a specific victim. Moreover, sex trafficking cases are often difficult to prosecute because the victims are often uncooperative due to the traumatic effects of having been trafficked, may have issues with illegal substances, and may sometimes appear unsympathetic to juries. A new statute that instead targets promotion and facilitation of prostitution is far more useful to prosecutors. Prostitution and sex trafficking are inextricably linked, and where prostitution is legalized or tolerated, there is a greater demand for human trafficking victims and nearly always an increase in the number of women and children trafficked into commercial sex slavery.

H.R. 1865 will allow vigorous criminal enforcement against all bad-actor websites, not just Backpage.com, through the creation of a new federal law and by explicitly permitting states to enforce criminal laws that mirror this new federal law and current federal sex trafficking law. With this robust criminal enforcement, victims will have more opportunities to obtain restitution. Furthermore, this enforcement will also provide victims with information that will be sufficient to establish successful civil pleadings, by revealing the extent of content development in which these websites engage.

Hearings

The Committee on the Judiciary held a hearing on the intersection between the Communications Decency Act and online sex trafficking, the subject matter of H.R. 1865, on October 3, 2017. Testimony was received from the Honorable Chris Cox, Outside Counsel, NetChoice; Mr. Jeff Kosseff, Assistant Professor, United States Naval Academy; Ms. Mary Leary, Professor of Law, Catholic University Columbus School of Law; and, Mr. Evan Engstrom, Executive Director, Engine.

Committee Consideration

On December 12, 2017, the Committee met in open session and ordered the bill (H.R. 1865) favorably reported by voice vote, a quorum being present.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 1865.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2228, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 7, 2018.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1865, the Allow States and Victims to Fight Online Sex Trafficking Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

KEITH HALL.

Enclosure.
cc: Honorable Jerrold Nadler
Ranking Member

H.R. 1865—Allow States and Victims to Fight Online Sex Trafficking Act of 2017

As ordered reported by the House Committee on the Judiciary on December 12, 2017

H.R. 1865 would broaden the coverage of current laws against sex trafficking. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the bill would apply to a relatively small number of offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such spending would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 1865 could be subject to criminal fines, the federal government might collect additional fines under the bill. Criminal fines are recorded as revenues, deposited in the Crime Victims Fund, and later spent without further appropriation action. CBO expects that any additional revenues and associated direct spending would not be significant because the bill would probably affect only a small number of cases.

Because enacting H.R. 1865 would affect direct spending and revenues, pay-as-you-go procedures apply. However, CBO estimates that any such effects would be insignificant in any year.

CBO estimates that enacting H.R. 1865 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1865 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On January 10, 2018, CBO transmitted a cost estimate for S. 1693, the Stop Enabling Sex Traffickers Act of 2017, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 8, 2017. CBO's estimates of the budgetary effects of the two bills are identical.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 1865 establishes or reauthorizes a program of the Federal government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee finds that H.R. 1865 contains no directed rule making within the meaning of 5 U.S.C. § 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1865 combats online sex trafficking by providing new tools to law enforcement through a new federal criminal statute and by making it easier for states to prosecute criminal actor websites by amending section 230 of the Communications Decency Act.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1865 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short title. Section 1 sets forth the short title of the bill as the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017."

Sec. 2. Section 2 states that it is the sense of Congress that:

(1) Section 230 of the Communications Act of 1934 was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims;

(2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done nothing to prevent the trafficking of children and victims of force, fraud, and coercion; and

(3) Clarification is warranted to ensure Section 230 does not provide liability protection to such websites described in (2)

Sec. 3. Promotion of Prostitution and Reckless Disregard of Sex Trafficking

Adds a new statute within the Mann Act, 18 U.S.C. § 2421A, to create a statutory maximum of 10 years imprisonment for the use or operation of an interstate facility with the intent to promote or facilitate the prostitution of another person. This promotion or facilitation must be deliberate; thus, the operator of a facility or

means of interstate or foreign commerce shall not be deemed to have the "intent to promote or facilitate the unlawful prostitution of another person," as that phrase is used in sections 2421A(a) and 2421A(b), based on the appearance of material promoting unlawful prostitution of another person, where the material appears despite the operator's good faith efforts to moderate, remove, or restrict such material from appearing on or through the facility.

Creates as an aggravating factor: (1) the intent to promote or facilitate the trafficking of five or more persons; or (2) acting in reckless disregard of the fact that the conduct of using or operating a commercial facility contributed to sex trafficking (a violation of 18 U.S.C. § 1591(a)).

- These aggravating circumstances carry a fine and/or statutory maximum sentence of 25 years imprisonment. A website that promotes or facilitates prostitution will be liable under subsection (b)(2) where it operates in reckless disregard of the fact that its promotion or facilitation of prostitution is a factor, even if not the primary cause, that plays a part in producing sex trafficking.
- Creates a civil recovery mechanism by which injured persons may recover damages if they were a victim of a violation of subsection (b)(2).
- Provides for mandatory restitution for an offense under this section.
- States that it is an affirmative defense to a prosecution under subsection (a) and (b)(1) for the defendant to prove, by a preponderance of the evidence, that the promotion or facilitation of prostitution is legal in the jurisdiction where the promotion or facilitation was targeted. Many websites promoting prostitution are targeted to specific geographic areas, though the website itself may be accessible nationwide. Mere accessibility to a website with targeted advertisements from another locality where promotion or facilitation of prostitution is illegal, alone, will not undermine a defendant's successfully established affirmative defense.

Sec. 4. Communications Decency Act

Amends § 230(e) of the Communications Decency Act (47 U.S.C. § 230(3)) to allow states to enforce certain criminal laws without litigating the application of § 230. States that nothing in this section shall be construed to impair or limit any charge in a criminal prosecution brought under state law if:

(1) The conduct underlying the charge violates 18 U.S.C. § 2421A and prostitution is illegal where the defendant's promotion or facilitation of prostitution was targeted; or

(2) The conduct underlying the charge violates 18 U.S.C. § 1591(a).

Under § 230, a state criminal law may be enforced against an interactive computer service (i.e., a website) as long as it is "consistent" with § 230. This provision, however, has been problematic in cases in which states have sought to enforce certain state criminal laws against websites. While the newly created law, and the federal sex trafficking law, should both be considered consistent with § 230, as applied to certain bad-actor websites, in order to allow immediate and unfettered use of this provision, included is an explicit carve out to permit state criminal prosecutions. The lan-

guage used in the carve out is designed to ensure that interactive computer services are subject to one set of criminal laws, rather than a patchwork of various state laws. In order to qualify for this carve out, a state law's elements should mirror those in 2421A and 1591(a).

Sec. 5. Savings Clause

Clarifies that nothing in this Act shall be construed to limit or preempt any civil action or criminal prosecution under federal or state law that was not limited or preempted by § 230 of the Communications Decency Act.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 117—TRANSPORTATION FOR ILLEGAL SEXUAL ACTIVITY AND RELATED CRIMES

Sec.
2421. Transportation generally.
2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking.

* * * * * * *

§ 2421A. Promotion or facilitation of prostitution and reckless disregard of sex trafficking

(a) IN GENERAL.—Whoever uses or operates a facility or means of interstate or foreign commerce or attempts to do so with the intent to promote or facilitate the prostitution of another person shall be fined under this title, imprisoned for not more than 10 years, or both.

(b) AGGRAVATED VIOLATION.—Whoever uses or operates a facility or means of interstate or foreign commerce with the intent to promote or facilitate the prostitution of another person and—

(1) promotes or facilitates the prostitution of 5 or more persons; or

(2) acts in reckless disregard of the fact that such conduct contributed to sex trafficking, in violation of 1591(a),

shall be fined under this title, imprisoned for not more than 25 years, or both.

(c) CIVIL RECOVERY.—Any person injured by reason of a violation of section 2421A(b) may recover damages and reasonable attorneys' fees in an action before any appropriate United States district court.

Consistent with section 230 of the Communications Act of 1934 (47 U.S.C. 230), a defendant may be held liable, under this subsection, where promotion or facilitation of prostitution activity includes responsibility for the creation or development of all or part of the information or content provided through any interactive computer service.

(d) MANDATORY RESTITUTION.—Notwithstanding sections 3663 or 3663A and in addition to any other civil or criminal penalties authorized by law, the court shall order restitution for any offense under this section.

(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a) where the defendant proves, by a preponderance of the evidence, that the promotion or facilitation of prostitution is legal in the jurisdiction where the promotion or facilitation was targeted.

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COMMUNICATIONS ACT OF 1934

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TITLE II—COMMON CARRIERS

PART I—COMMON CARRIER REGULATION

* * * * * * *

SEC. 230. PROTECTION FOR PRIVATE BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.

(a) FINDINGS.—The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) POLICY.—It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) PROTECTION FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL.—

(1) TREATMENT OF PUBLISHER OR SPEAKER.—No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) CIVIL LIABILITY.—No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

(d) OBLIGATIONS OF INTERACTIVE COMPUTER SERVICE.—A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) EFFECT ON OTHER LAWS.—

(1) NO EFFECT ON CRIMINAL LAW.—Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this Act, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, United States Code, or any other Federal criminal statute.

(2) NO EFFECT ON INTELLECTUAL PROPERTY LAW.—Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) STATE LAW.—Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) NO EFFECT ON COMMUNICATIONS PRIVACY LAW.—Nothing in this section shall be construed to limit the application of the

Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) NO EFFECT ON STATE LAWS CONFORMING TO 18 U.S.C. 1591(A) OR 2421A.—Nothing in this section shall be construed to impair or limit any charge in a criminal prosecution brought under State law—

(A) if the conduct underlying the charge constitutes a violation of section 2421A of title 18, United States Code, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted; or

(B) if the conduct underlying the charge constitutes a violation of section 1591(a) of title 18, United States Code.

(f) DEFINITIONS.—As used in this section:

(1) INTERNET.—The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) INTERACTIVE COMPUTER SERVICE.—The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) INFORMATION CONTENT PROVIDER.—The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) ACCESS SOFTWARE PROVIDER.—The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

* * * * * * *

Committee Jurisdiction Letters

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115
Majority (202) 225-2927
Minority (202) 225-3641

February 16, 2018

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
2138 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Goodlatte:

I am writing to notify you that the Committee on Energy and Commerce will forgo action on H.R. 1865, Allow States and Victims to Fight Online Sex Trafficking Act of 2017, so that it may proceed expeditiously to the House floor for consideration. This is done with the understanding that the Committee's jurisdictional interests over this and similar legislation are in no way diminished or altered. In addition, the Committee reserves the right to seek conferees on H.R. 1865 and expects your support when such a request is made.

Please include a copy of this letter outlining our mutual understanding with respect to H.R. 1865 in the Congressional Record during consideration of the bill on the House floor.

Sincerely,

Greg Walden
Chairman

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February 20, 2018

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Walden,

Thank you for consulting with the Committee on the Judiciary and agreeing to be discharged from further consideration of H.R. 1865, the "Allow States and Victims to Fight Online Sex Trafficking Act of 2017," so that the bill may proceed expeditiously to the House floor.

I agree that your foregoing further action on this measure does not in any way diminish or alter the jurisdiction of your committee or prejudice its jurisdictional prerogatives on this bill or similar legislation in the future. I would support your effort to seek appointment of an appropriate number of conferees from your committee to any House-Senate conference on this legislation.

I will seek to place our letters on H.R. 1865 into the *Congressional Record* during floor consideration of the bill. I appreciate your cooperation regarding this legislation and look forward to continuing to work together as this measure moves through the legislative process.

Sincerely,

Bob Goodlatte

Bob Goodlatte
Chairman

cc: The Honorable Jerrold Nadler
The Honorable Frank Pallone, Jr.
The Honorable Paul Ryan, Speaker
The Honorable Thomas Wickham, Jr., Parliamentarian

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