

**“IT RUINED MY LIFE”:
FOSTA, MALE ESCORTS, AND THE CONSTRUCTION OF
SEXUAL VICTIMHOOD IN AMERICAN POLITICS**

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This article builds upon existing literature about the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) by examining how the law affected male sex workers. I begin by analyzing the narratives of victimhood advanced by lawmakers during Congressional debates, which demonstrate how gendered rhetoric about trafficking blocked consideration of other potential harms caused by the law. I then present the results of a qualitative study of 26 male escorts in the San Francisco Bay Area, concluding that (1) male sex workers were indeed harmed by FOSTA and (2) sex workers benefit from increased safety and autonomy when allowed to freely use the Internet. As such, the evidence provided in this paper supports calls to repeal FOSTA and decriminalize sex work generally.

INTRODUCTION

WHILE the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA)¹ was touted by some lawmakers as an easy and effective solution to the problem of online sex trafficking,² many others have demonstrated how the law failed its intended beneficiaries while simultaneously harming sex workers and chilling free speech online.³ This article adds to the debate about FOSTA by presenting the results of a qualitative study of male sex workers in the San Francisco Bay Area. While many articles and blog posts discuss FOSTA’s impact on female sex workers,⁴ this article is the first to specifically investigate how male

¹ Pub. L. No. 115-164, 132 Stat. 1253 (2018) (codified as amended at 18 U.S.C. §§ 1591, 1595, 2421A and 47 U.S.C. § 230). The Senate had a complementary bill, the Stop Enabling Sex Traffickers Act or SESTA, which was effectively subsumed into FOSTA. 164 CONG. REC. H1248 (daily ed. Feb. 26, 2018). See also Eric Goldman, *The Complicated Story of FOSTA and Section 230*, 17 FIRST AMEND. L. REV. 279, 282–84 (2018) (detailing the legislative history behind FOSTA and SESTA).

² See *infra* notes 49–56 and accompanying text. See also Alexandra Stasinopoulos, *Anti-Trafficking Law has Unexpected Consequences on Sex Work in Bay Area*, THE DAILY CALIFORNIAN (May 3, 2019), <https://www.dailycal.org/2019/05/03/anti-trafficking-law-has-unexpected-consequences-on-sex-work-in-bay-area/>.

³ See *infra* notes 11–37 and accompanying text. See generally Crystal A. Jackson & Jenny Heineman, *Repeal FOSTA and Decriminalize Sex Work*, 17 CONTEXTS 74 (2018).

⁴ See, e.g., Emily McCombs, *‘This Bill is Killing Us’: 9 Sex Workers on Their Lives in the Wake of FOSTA*, HUFFINGTON POST (May 17, 2018),

sex workers are affected by the law.⁵ I find that FOSTA indeed harms male sex workers, affecting every part of their daily lives and causing them significant psychological and financial suffering. These findings support calls for the repeal of FOSTA as well as the decriminalization of consensual adult sex work in the United States.

FOSTA was in large part conceived as a response to the continued existence of Backpage.com, an online classified website that many viewed as a safe haven for sex traffickers.⁶ Backpage had previously weathered several lawsuits thanks to arguments based on Section 230 of the Communications Decency Act of 1996 and the First Amendment.⁷ In response, Congress passed FOSTA in early 2018, creating a new federal crime meant to facilitate the prosecution of anyone who “owns, manages, or operates an interactive computer service” with “the intent to promote or facilitate” prostitution or sex trafficking.⁸ The bill also weakened Section 230 to allow website operators to be prosecuted for third-party content related to prostitution or sex trafficking.⁹ Many lawmakers and advocacy groups supported FOSTA, arguing that it would finally allow police and prosecutors to go after websites like Backpage that knowingly profit from online sex advertisements.¹⁰

In reality, FOSTA was completely unnecessary for shutting down Backpage, which was seized by federal enforcement agencies before the

https://www.huffpost.com/entry/sex-workers-sesta-fosta_n_5ad0d7d0e4b0edca2cb964d9; *FOSTA/SESTA Digital Stories*, BAY AREA WORKERS SUPPORT, <https://bayareaworkerssupport.org/digital-stories> (last visited Nov. 22, 2019).

⁵ This is of course not meant to downplay the very real problems faced by female sex workers: indeed, this article should not be understood in any way to be pitting the experiences of one group of sex workers against another. Rather, this article is one of many important pieces of evidence that should be considered by lawmakers and judges when considering the legacy of FOSTA. *See also* Nicola Smith et al., *Being, Thinking and Doing ‘Queer’ in Debates about Commercial Sex*, in *QUEER SEX WORK* 1, 1 (2015) (pointing out that academic writings about sex work focus heavily on the sale of sex by women to men, often ignoring non-normative identities and sexualities).

⁶ Lura Chamberlain, Note, *FOSTA: A Hostile Law with a Human Cost*, 87 *FORDHAM L. REV.* 2171, 2173–74 (2019).

⁷ U.S. CONST. amend. I; 47 U.S.C. § 230(e)(5)(A)–(C) (2018); Goldman, *supra* note 1, at 281; A. F. Levy, *The Virtues of Unvirtuous Spaces*, 52 *WAKE FOREST L. REV.* 403, 404–05 (2017); *See also* Chamberlain, *supra* note 6, at 2185–90.

⁸ 18 U.S.C. § 2421A(a) (2018). *See* Goldman, *supra* note 1; Chamberlain, *supra* note 6.

⁹ Goldman, *supra* note 1, at 284–85 (explaining the changes which FOSTA made to Section 230).

¹⁰ *See, e.g.*, H.R. REP. NO. 115-572, at 4 (2018). *See* Chamberlain, *supra* note 6, at 2173.

bill was signed into law.¹¹ Instead, the law's main effect has been to censor many websites and Internet-based tools that sex workers relied upon for personal protection.¹² As such, the law had a tremendously detrimental effect on sex workers in the United States.¹³ As Lura Chamberlain summarizes:

Within one month of FOSTA's enactment, thirteen sex workers were reported missing, and two were dead from suicide. Sex workers operating independently faced a tremendous and immediate uptick in unwanted solicitation from individuals offering or demanding to traffic them. Numerous others were raped, assaulted, and rendered homeless or unable to feed their children.¹⁴

As online platforms censored or banned sex workers from using their services, many female sex workers turned to recruiting clients on the street, exposing them to a dramatically higher risk of violence and exploitation.¹⁵ St. James Infirmary, a San Francisco-based health and

¹¹ See Goldman, *supra* note 1, at 286 (“Congress had passed . . . FOSTA as [an] anti-Backpage measure[.]. Nevertheless, the DOJ and state attorneys general shut down Backpage and obtained a guilty plea from its CEO without using either of the new crimes (§ 2421A or the modifications to § 1591) that Congress had specially designed to target Backpage. Instead, the successful seizure and prosecution was based on crimes that had been on the books from the beginning.”).

¹² Emily Yost, Note, *Queering the Landscape: Decriminalizing Consent and Remapping the Permissible Geographies of Intimacy*, 19 U. MD. L.J. OF RACE, RELIGION, GENDER & CLASS 201, 224–25 (2019) (“Despite its purportedly protectionist nature, by denying access to safe, virtual workspaces, the law disparately harms those individuals affirmatively choosing to engage in sex work . . .”). See also Amanda Arnold, *Here's What's Wrong With the So-Called Anti-Sex Trafficking Bill*, N.Y. MAGAZINE: THE CUT (Mar. 20, 2018), <https://www.thecut.com/2018/03/sesta-anti-sex-trafficking-bill-fosta.html>.

¹³ See *Platforms Which Discriminate Against Sex Workers*, #SURVIVORSAGAINSTSESTA, <https://survivorsagainstsesta.org/platforms-discriminate-against-sex-workers/> (last visited Nov. 22, 2019) (providing a comprehensive website listing all of the companies and online platforms which have banned sex workers or been shut down because of FOSTA).

¹⁴ Chamberlain, *supra* note 6, at 2174.

¹⁵ *Id.* at 2205; Alix Bruce, *Out of Sight, Underground, Dead, or in the Streets: The Failure of Woodhull Freedom Foundation v. United States and the Consequences of FOSTA*, AM. U. J. GENDER, SOC. POL'Y, & L. (Oct. 2, 2018), <http://www.jgspl.org/out-of-sight-underground-dead-or-in-the-streets-the-failure-of-woodhull-freedom-foundation-v-united-states-and-the-consequences-of-fosta/>; Laura LeMoon, *Why It's Not Okay to Kill Sex Workers: One Year of FOSTA/SESTA*, MEDIUM (Apr. 11, 2019), <https://medium.com/@lauralemoon/why-its-not-okay-to-kill-sex-workers-one-year-of-fosta-sesta-257ed73011c1>. See also Scott Cunningham et al., *Craigslist Reduced Violence Against Women* 9–10 (working paper, 2019) (discussing sta-

safety clinic for sex workers, reported a spike in street-based prostitution immediately following the passage of FOSTA, while advocates shared stories of pimps and other “managers” reaching out to newly-vulnerable sex workers.¹⁶ Sex workers also reported lower wages and reduced incomes because of website shutdowns, forcing many—especially those with children or dependent family members—to make riskier decisions in order to earn a living.¹⁷ Moreover, the law had a disproportionately harmful effect on transgender and gender non-conforming sex workers, robbing them of the ability to disclose their transgender status at a safe distance or to screen clients using the Internet.¹⁸

Other Internet-based tools were also taken down, further endangering the lives of many sex workers.¹⁹ Several community-generated lists of dangerous clients (often referred to as “bad date lists”),²⁰ as well as personal websites and other advocacy tools that sex workers used to improve conditions for the community, were taken offline following the

tistics about violence against street-based female sex workers, including data suggesting that sex workers are the frequent targets of serial killers, with female sex workers being 60 to 120 times more likely to be murdered than a female non-sex worker).

¹⁶ MOLLY SMITH & JUNO MAC, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS’ RIGHTS* 124 (Verso Books 2018); Ted Andersen, *Sex Workers Returned to SF Streets after Backpage.com Shut Down*, S.F. CHRONICLE (Oct. 17, 2018, 12:17 PM), <https://www.sfchronicle.com/bayarea/article/Sex-workers-returned-to-SF-streets-after-13315097.php>; COYOTE RHODE ISLAND, *COYOTE-RI Impact Survey Results – 2018*, <http://www.swop-seattle.org/wp-content/uploads/2018/11/COYOTE-Survey-Results-2018.pdf>; LeMoon, *supra* note 15.

¹⁷ Yost, *supra* note 12, at 225; COYOTE RHODE ISLAND, *supra* note 16 (reporting that 77% of sex workers participating in a survey were the sole providers for their families, with 89% claiming to be supporting at least one dependent family member). This was especially true of sex workers who lost access to bank accounts or payment processing platforms that they had relied upon for safer financial transactions with clients. PLATFORMS WHICH DISCRIMINATE AGAINST SEX WORKERS, *supra* note 13.

¹⁸ Yost, *supra* note 12, at 224–25; Suraj Patel, *We Must Repeal SESTA, a Deadly Law That Does Nothing to Help Trafficking Victims*, VICE (May 21, 2018, 11:20 AM), https://www.vice.com/en_us/article/xwmdkk/repeal-sesta-fosta-sex-work-suraj-patel. See generally Aimee Wodda & Vanessa R. Panfil, “Don’t Talk to Me about Deception”: *The Necessary Erosion of the Trans* Panic Defense*, 78 ALBANY L. REV. 927, 929–33 (2015); Natalie Wynn, “Are Traps Gay?”, YOUTUBE (Jan. 16, 2019), <https://www.youtube.com/watch?v=PbBzhqJK3bg> (discussing how transgender women of color engaged in sex work are often killed by johns who feel a need to reclaim their masculinity, from 6:19 to 8:23).

¹⁹ Kitty Stryker, *Voiceless Again: FOSTA/SESTA and Online Censorship in the Age of #MeToo*, BITCH MEDIA (Mar. 27, 2018, 3:47 PM), <https://www.bitchmedia.org/article/sesta-fosta-harms-sex-workers>.

²⁰ McCombs, *supra* note 4.

passage of FOSTA.²¹ In other words, FOSTA *increased* the power of clients and pimps, limited sex worker autonomy, and forced many sex workers into dangerous and risky situations to maintain their incomes.²²

FOSTA's passage also raised free speech concerns.²³ Notably, the law undermined Section 230 of the Communications Decency Act, which previously shielded online platforms from civil litigation for user-generated content hosted on their sites.²⁴ Many of today's Internet platforms, including Wikipedia and the Internet Archive, have directly benefited from Section 230.²⁵ Now, with FOSTA, online service providers are faced with a difficult choice: either take costly steps to ensure that no advertisements of a sexual nature are posted, or exit the industry entirely by shutting their services down.²⁶

The wording of FOSTA is also broad enough to potentially permit the prosecution of platform owners who are unaware that their sites are being used to facilitate prostitution or trafficking, which has compelled some sites, discussed below, to preemptively censor themselves in order to avoid lengthy and expensive litigation.²⁷ For instance, FOSTA does not define the difference between "sex trafficking" and "prostitution," nor does it explain what would qualify as the "promotion" or "facilita-

²¹ *Id.*; COYOTE-RI, *supra* note 16. See also *New Host, Domain, & Website!*, MASSACHUSETTS SEX WORKER ALLY NETWORK (May 14, 2018), <http://www.maswan.nl/2018/05/14/new-host-new-domain-new-site/> (showing how some sex workers and sex worker advocacy groups proactively changed their website hosts, domain names, and email addresses to avoid being shut down by platforms worried about FOSTA).

²² SMITH & MAC, *supra* note 16, at 124; McCombs, *supra* note 4; COYOTE Rhode Island, *supra* note 16 (finding a 28% drop in screening clients after FOSTA by sex workers in a survey).

²³ *E.g.*, Jamie J. Hagen, *Compounding Risk for Sex Workers in the United States*, 50 NACLA REP. ON THE AMS. 395, 395 (2018); Aja Romano, *A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet as We Know It*, VOX (JUL. 2, 2018, 1:08 PM), <https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>.

²⁴ See generally Chamberlain, *supra* note 6, at 2182–85. See also Levy, *supra* note 7, at 411–12; Cunningham, *supra* note 15, at 5–6; Elliot Harmon, *How Congress Censored the Internet*, ELECTRONIC FRONTIER FOUND. BLOG (Mar. 21, 2018), <https://www.eff.org/deeplinks/2018/03/how-congress-censored-internet>.

²⁵ Harmon, *supra* note 24.

²⁶ Goldman, *supra* note 1, at 288; Chamberlain, *supra* note 6, at 2189–90; Romano, *supra* note 23.

²⁷ Danielle Citron & Quinta Jurecic, *FOSTA: The New Anti-Sex-Trafficking Legislation May Not End the Internet, But It's Not Good Law Either*, LAWFARE BLOG (Mar. 28, 2018, 2:41 PM), <https://www.lawfareblog.com/fosta-new-anti-sex-trafficking-legislation-may-not-end-internet-its-not-good-law-either>; Harmon, *supra* note 24.

tion" of either act.²⁸ Moreover, since the law does not limit criminal liability to websites that allow advertisements or the sale of goods, any website that hosts information regarding prostitution or sex trafficking could be found to violate the law.²⁹ These broad strokes have raised legitimate concerns among non-profit organizations which work on issues of prostitution and trafficking that Internet platforms will preemptively censor their reports out of fear of prosecution.³⁰

One widely-known episode of self-censorship occurred a few months after the passage of FOSTA when the social media website Tumblr announced that it would be removing all adult content from its platform.³¹ The ensuing purges caused many users to lose access to community information meant to help sex workers avoid abusive clients, maintain their health, and do other sundry tasks like filing taxes.³² Moreover, Tumblr's faulty algorithms were wildly unsuited for distinguishing between adult content and "safe for work" content, often censoring non-sexual posts and providing little recourse to users wishing to appeal the algorithm's decisions.³³ Other platforms, including Reddit, Google, and Skype, also changed their terms of service in response to FOSTA, limiting the kinds of speech allowed online and shutting down some sex worker accounts.³⁴

²⁸ Chamberlain, *supra* note 6, at 2188; Romano, *supra* note 23.

²⁹ Chamberlain, *supra* note 6, at 2188.

³⁰ See, e.g., Skye Wheeler, *Why We've Filed a Lawsuit Against a US Federal Law Targeting Sex Workers*, HUMAN RIGHTS WATCH (Jun. 29, 2018, 5:36 PM), <https://www.hrw.org/news/2018/06/29/why-weve-filed-lawsuit-against-us-federal-law-targeting-sex-workers> ("But fuzzy laws spread fuzzy fear. FOSTA says third parties can't post content that promotes or facilitates prostitution but doesn't define what it means by 'promote' or 'facilitate.' Fear of prosecution may prompt websites not to share our research findings, or individuals not to share our advocacy on social media. That gets in the way of our work, and the work of all who try to defend the rights of sex workers.").

³¹ Jessica Powell, *The Problem with Banning Pornography on Tumblr*, N.Y. TIMES (Dec. 6, 2018), <https://www.nytimes.com/2018/12/06/opinion/tumblr-adult-content-pornography-ban.html>; Mason Sands, *Tumblocalypse: Where Tumblr and its Users are Headed After the Ban*, FORBES (Dec. 20, 2018), <https://www.forbes.com/sites/masonsands/2018/12/20/tumblocalypse-where-tumblr-and-its-users-are-headed-after-the-ban>.

³² Mathew Olson, *Tumblr Moves to Ban All 'Adult Content' – Here's Why That Matters*, DIGG (Dec. 3, 2018, 9:14 PM), <http://digg.com/2018/tumblr-explicit-adult-content-policy-ban-december>.

³³ Cookie Cyboid, *Want to Know Why Tumblr is Cracking Down on Sex? Look to FOSTA/SESTA*, THE ESTABLISHMENT (Dec. 11, 2018), <https://theestablishment.co/want-to-know-why-tumblr-is-cracking-down-on-sex-look-to-fosta-sesta/index.html>.

³⁴ Chamberlain, *supra* note 6, at 2198; McCombs, *supra* note 4; Romano, *supra* note 23. See also Grace Marie, *The Death of the Dabbler and the Erasure of Sex Work from the Common Internet*, SLIXA (Feb. 4, 2019),

Finally, and perhaps most absurdly, there is little evidence that FOSTA actually helped trafficking victims.³⁵ With the loss of centralized websites like Backpage, law enforcement officials are now no longer able to easily search online for missing children, subpoena online advertisements, set up sting operations using the Internet, or analyze photographs to determine the identity and location of traffickers.³⁶ Some have also expressed concerns that online trafficking advertisements will move onto servers based in countries which are hostile to U.S. requests for assistance, making trafficking prosecutions even more difficult.³⁷

This article adds to this expanding body of evidence against FOSTA, focusing on how the needs of male sex workers were ignored during the passage of the law. First, I analyze how gendered ideas about victimhood and crime were central to legislative debates over FOSTA, demonstrating how the rhetoric of lawmakers ignored the existence and needs of male sex workers. I then present the results of my qualitative study on male escorts in the San Francisco Bay Area, finding that FOSTA indeed harmed male sex workers. I close the article with several final thoughts about FOSTA, trafficking prevention, and the future (de)regulation of sex work in the United States.

<https://www.slixa.com/blog/experience/the-death-of-the-dabbler-and-the-erasure-of-sex-work-from-the-common-internet/> (stating that due to the loss of access to Skype, some sex workers have been forced to use online webcam services that take a portion of the sex worker's earnings).

³⁵ See Glenn Kessler, *Has the Sex-Trafficking Law Eliminated 90 Percent of Sex-Trafficking Ads*, WASH. POST (Aug. 20, 2018, 3:00 AM), <https://www.washingtonpost.com/politics/2018/08/20/has-sex-trafficking-law-eliminated-percent-sex-trafficking-ads> (noting that Congressional announcements about the decline of sex trafficking business actually uses metrics which measure all online sex work advertisements; the actual effect of FOSTA on sex trafficking is unknown).

³⁶ Goldman, *supra* note 1, at 292; Chamberlain, *supra* note 6, at 2175, 2202–03; Cunningham, *supra* note 15, at 8. For examples of how FOSTA and the seizure of Backpage have weakened anti-trafficking policing, see Jordan Fischer, *Running Blind: IMPD Arrests First Suspected Pimp in 7 Months*, INDY CHANNEL (Dec. 12, 2018, 11:40 AM), <https://www.theindychannel.com/longform/running-blind-impd-arrests-first-suspected-pimp-in-7-months> (“‘With Backpage, we would subpoena the ads and it would tell a lot of the story,’ [Sgt.] Daggy said. ‘Also, with the ads we would catch our victim at a hotel room, which would give us a crime scene. There’s a ton of evidence at a crime scene. Now, since [Backpage] has gone down, we’re getting late reports of them and we don’t have much to go by.’”); Stassinopoulos, *supra* note 2 (“FOSTA-SESTA has made investigating sex trafficking cases more difficult, not less [I]n the past year, there’s been ‘less than a handful of’ human trafficking cases”).

³⁷ Stassinopoulos, *supra* note 2; Ryan Tarinelli, *Online Sex Ads Rebound, Months After Shutdown of Backpage*, AP (Nov. 29, 2018), <https://www.apnews.com/159434f052eb40dd87b9dd9b65da53f5>.

I. GENDERED VICTIMIZATION AND CRIME IN PRO-FOSTA ADVOCACY

While my goal in this article is not to conduct an in-depth assessment of the effect of FOSTA on sex trafficking in the United States,³⁸ the topic nevertheless needs to be addressed, given lawmakers' focus on sex trafficking when advocating for the passage of the law. In addition to confirming that lawmakers improperly conflated sex trafficking with consensual adult sex work, I find that discussions of victimization were narrowly constructed in such a way as to almost entirely exclude male victims. This section demonstrates how narratives about sex trafficking are used to overemphasize certain harms, effectively silencing individuals (such as male sex workers) who are constructed as less worthy or less needing of protection.

Sex worker advocates have repeatedly demonstrated how lawmakers either accidentally or purposefully used "sex trafficking" as shorthand for all forms of consensual and non-consensual sex work during discussions about FOSTA.³⁹ This is nothing new: panics about sex work in the United States have been frequently inspired by fears about sex trafficking, and many of the country's first anti-prostitution laws were inspired by concerns that white women were being forced into "white slavery" by racialized traffickers.⁴⁰ Today's anti-sex work activists use similar language about sex trafficking and sexual slavery to shift public perception about the realities of consensual sex work, employing misleading terminology meant to shock listeners into believing that all sex work is necessarily committed by traffickers.⁴¹

³⁸ For a much deeper analysis of FOSTA's effect on sex trafficking, see generally Chamberlain, *supra* note 6; Eric Goldman, *Who Benefited from FOSTA (Spoiler: Probably No One)*, TECH. & MARKETING L. BLOG (Jan. 29, 2019), <https://blog.ericgoldman.org/archives/2019/01/who-benefited-from-fosta-spoiler-probably-no-one.htm>.

³⁹ *E.g.*, Jackson & Heineman, *supra* note 3, at 75; Chamberlain, *supra* note 6, at 2176.

⁴⁰ Gayle Rubin, *Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality*, in DEVIATIONS: A GAYLE RUBIN READER 137, 139 (2012); Levy, *supra* note 7, at 430–33; Mary Ting Yi Lui, *Saving Young Girls from Chinatown: White Slavery and Woman Suffrage, 1910–1920*, 18 J. HIST. SEXUALITY 393, 395–96 (2009). See generally Jo Doezema, *Loose Women or Lost Women? The Re-emergence of the Myth of White Slavery in Contemporary Discourses of Trafficking in Women*, 18 GENDER ISSUES 23 (1999).

⁴¹ Elya M. Durisin, Emily van der Meulen, & Chris Bruckert, *Contextualizing Sex Work: Challenging Discourses and Confronting Narratives*, in RED LIGHT LABOUR: SEX WORK REGULATION, AGENCY, AND RESISTANCE 1, 7 (Elya M. Durisin, Emily van der Meulen, & Chris Bruckert, eds., 2018); Crystal A. Jackson, *Framing Sex Worker Rights: How U.S. Sex Worker Rights Activists Perceive and Respond to Mainstream Anti-Sex Trafficking Advocacy*, 59 SOC. PERSPECTIVES 27, 33–39 (2016); Maggie McNeill, *Lies, Damned Lies and Sex Work Statistics*, WASH. POST (Mar. 27, 2014),

FOSTA united two main groups of anti-sex work advocates who worked together to push the bill through Congress. On the one hand, the bill was attractive to many right-wing politicians who espouse policies which limit sexual expression and lifestyles that deviate from the hegemonic nuclear family.⁴² On the other hand, arguments for the abolition of sex work have been coming from the left for years, largely in the form of radical and abolitionist feminist activism.⁴³ For these groups, FOSTA was a key way to move sex work off of the Internet and further delegitimize it as a valid form of labor.⁴⁴

While the language in FOSTA distinguished between “prostitution” and “sex trafficking,” neither term was defined, with lawmakers advocating for the bill by focusing entirely on how FOSTA would supposedly end sex trafficking.⁴⁵ Moreover, many FOSTA supporters actually viewed the two activities as synonymous, with the House Judiciary Committee even announcing, without evidence, that the existence of prostitution always leads to “greater demand for human trafficking victims.”⁴⁶ Similarly, during the Congressional debates about FOSTA in February and March 2018, not a single lawmaker discussed consensual

<https://www.washingtonpost.com/news/the-watch/wp/2014/03/27/lies-damned-lies-and-sex-work-statistics/>; Jennifer Musto, *FOSTA, Sex Trafficking, and Automated Anti-Trafficking Interventions*, U. CAL. PRESS BLOG (Jun. 1, 2019), <https://www.ucpress.edu/blog/44576/fosta-sex-trafficking-interventions-2/>.

⁴² See e.g., DAVID T. COURTWRIGHT, *NO RIGHT TURN: CONSERVATIVE POLITICS IN A LIBERAL AMERICA* 10–14 (2010); Rubin, *supra* note 40, at 143–44; Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Anti-Trafficking Campaigns*, 36 SIGNS 45, 53 (2010); Susan R. Burgess, Marla Brettschneider, & Christine (Cricket) Keating, *Staying Tuned: LGBTQIA Politics in the Trump Era*, 14 POLITICS & GENDER 553, 554–55 (2018).

⁴³ SMITH & MAC, *supra* note 16, at 9–17; Sanja Milivojević & Sharon Pickering, *Trafficking in People, 20 Years On: Sex, Migration and Crime in the Global Anti-Trafficking Discourse and the Rise of the ‘Global Trafficking Complex’*, 25 CURRENT ISSUES IN CRIM. JUST. 585, 586–87 (2013); Chamberlain, *supra* note 6, at 2177–81. See also Durisin, van der Meulen, & Bruckert, *supra* note 41, at 7 (disputing the use of labels such as “abolitionist” and “feminist” for people who advocate for policies that have been proven to cause harm to sex-working women). See generally Bernstein, *supra* note 42 (demonstrating how carceral feminist organizations have partnered with evangelical and right-wing forces to advocate against trafficking and prostitution).

⁴⁴ E.g., HELP PREVENT SEX TRAFFICKING, https://www.equalitynow.org/fosta_defender_signup (last visited Nov. 22, 2019); Meghan Murphy, *INTERVIEW: Marian Hatcher Sets the Record Straight on the New U.S. Anti-Trafficking Bill, SESTA-FOSTA*, FEMINIST CURRENT (Apr. 5, 2018), <https://www.feministcurrent.com/2018/04/05/interview-marian-hatcher-sets-record-straight-new-u-s-anti-trafficking-bill-sesta-fosta/>.

⁴⁵ Chamberlain, *supra* note 6, at 2188.

⁴⁶ H.R. REP. NO. 115-572, at 5 (2018); Chamberlain, *supra* note 6, at 2188.

adult sex work, even though the law clearly considers consensual adult sex work to be a distinct crime.⁴⁷ Instead, during these debates lawmakers used gendered language to construct a narrow story about the victims and perpetrators of sex trafficking in the United States, reinforcing a restricted vision of sexual victimhood where only certain harms are intelligible to society.⁴⁸

Because male sex workers are so often excluded from debates about sex work and victimization, I wanted to better understand how PRO-FOSTA lawmakers used gender to construct the categories of victim and perpetrator.⁴⁹ I turned to the two Congressional debates about FOSTA: the first was held on February 27, 2018 in the House of Representatives, while the second was held on March 21, 2018 in the Senate. Every time a victim or perpetrator of sex trafficking was named or mentioned, I coded these rhetorical devices by gender and age. Thus, a "man" or "father" was different than a "boy" or "son," which were different than a genderless "child" or "teenager." I also excluded results where the use of keywords did not directly refer to an actual or theoretical victim/perpetrator of sex trafficking (such as the word "children" in the name of the National Center for Missing & Exploited Children). The results of my first analysis (the House of Representative debates about FOSTA) are displayed in the table below:

⁴⁷ 164 CONG. REC. H1277 (daily ed. Feb. 27, 2018); 164 CONG. REC. H1290 (daily ed. Feb. 27, 2018); 164 CONG. REC. H1319 (daily ed. Feb. 27, 2018) (statement of Rep. Erik Paulsen); 164 CONG. REC. S1849 (daily ed. Mar. 21, 2018).

⁴⁸ See *infra* notes 49–56 and accompanying text.

⁴⁹ The process of victimization is one in which a person is granted membership in the "victim" category because they fulfill a particular vision of what a victim does or does not look like. James A. Holstein & Gale Miller, *Rethinking Victimization: An Interactional Approach to Victimology*, 13 SYMBOLIC INTERACTION 103, 106 (1990). Perpetrators are also constructed in a similar fashion, often in opposition to a "victim" category, using familiar and intelligible characteristics to understand who is "innocen[t]" and who is "evil." *Id.* at 109–10. See also Heather Zaykowski, *Reconceptualizing Victimization and Victimization Responses*, 61 CRIME & DELINQUENCY 271, 274–75 (2015) ("Victim identity is constructed through cultural and legal discourses of victimization and how victimization intersects with the individual's existing identity, specific experiences, and the normative ideal of victimhood Victims who fit within the dominant cultural frameworks of victimhood are considered more legitimate under the law. That is, the ideal victims are more likely to be taken seriously by criminal justice agents").

Victim's Gender		Perpetrator's Gender	
Adult man	5	Male	18
Adult woman	28	Female	1
Boys	8		
Girls	30		
Genderless children	109		

Unsurprisingly, the overwhelming majority of victims were gendered either as female (32.2%) or classified as genderless children (60.6%).⁵⁰ While men were mentioned as victims five times, it was always as part of a rhetorical framing that included other victims (e.g., “girls and boys, men and women”).⁵¹ Similarly, while boys were constructed as victims more often than their adult counterparts, they were only mentioned when contrasted with their female counterparts: “girls and boys.”⁵²

Inversely, men were constructed as the main perpetrators of online sex trafficking.⁵³ According to lawmakers, men were almost entirely responsible for sex trafficking, acting as buyers, pimps, rapists, and facilitators transporting children between locations. One lawmaker even

⁵⁰ 164 CONG. REC. H1277 (daily ed. Feb. 27, 2018); 164 CONG. REC. H1290 (daily ed. Feb. 27, 2018); 164 CONG. REC. H1319 (daily ed. Feb. 27, 2018) (statement of Rep. Erik Paulsen).

⁵¹ 164 CONG. REC. H1290 (daily ed. Feb. 27, 2018) (statement of Rep. Sheila Jackson Lee). *See also* 164 CONG. REC. H1290 (2018) (statement of Rep. Joyce Beatty) (“Trafficking online is a well-documented problem, yet we have seen a few websites turn a blind eye, even as they profit on the buying and the selling of children, women, and men.”).

⁵² 164 CONG. REC. H1290 (daily ed. Feb. 27, 2018) (statement of Rep. Sheila Jackson Lee).

⁵³ Women are also very much involved in sex trafficking. *See infra* notes 60–64 and accompanying text. During the FOSTA debates, “women” were included as perpetrators of trafficking by one lawmaker, although as part of the conceptual unit “wicked men and women.” 164 CONG. REC. H1277 (daily ed. Feb. 27, 2018) (statement of Rep. Doug Collins). It is unclear if the statement about female traffickers was truly inspired by data about trafficking or merely a rhetorical device connecting women and men.

warned of men online who reach out to vulnerable girls on social media, seducing young women and then tricking them into sexual slavery.⁵⁴

The Senate debate about FOSTA a few weeks later used gendered narratives about victimhood and crime in a very similar way.⁵⁵ Victims of trafficking were women and girls (51.0%) or children (42.6%) who were exploited by men online.⁵⁶ While men were sometimes classified as victims, it was part of a rhetorical framework that also included “women and children.”⁵⁷

Victim’s Gender		Perpetrator’s Gender	
Adult man	7	Male	7
Adult woman	33	Female	0
Boys	3		
Girls	46		
Genderless children	66		

Themes about trafficking were also elicited during the signing of the bill, while consensual sex work was never mentioned.⁵⁸ President Trump in particular claimed that:

[T]rafficking in the world is more now than it ever has been ever in the history of the world. And you wouldn’t believe that with, you know, modern-day everything. But they use modern-day better than law enforcement can use modern-day, whether it’s the internet or any-

⁵⁴ 164 CONG. REC. H1290 (daily ed. Feb. 27, 2018) (statement of Rep. Sheila Jackson Lee).

⁵⁵ 164 CONG. REC. S1849 (daily ed. Mar. 21, 2018).

⁵⁶ 164 CONG. REC. S1849 (daily ed. Mar. 21, 2018).

⁵⁷ *E.g.*, 164 CONG. REC. S1849 (daily ed. Mar. 21, 2018) (statement of Sen. Dick Durbin); 164 CONG. REC. S1849 (daily ed. Mar. 21, 2018) (statement of Sen. Rob Portman).

⁵⁸ Remarks on Signing the Allow States and Victims To Fight Online Sex Trafficking Act of 2017, Daily Comp. Pres. Docs., 2018 DCPD No. 201800233 (Apr. 11, 2018), <https://www.govinfo.gov/content/pkg/DCPD-201800233/pdf/DCPD-201800233.pdf>.

thing else. And you wouldn't believe that. But trafficking is probably worse today than at any time in history.⁵⁹

Of course, very real violence is committed by male traffickers on women, girls, and children. However, by narrowly focusing on a certain kind of gendered harm, lawmakers and advocates reinforced flawed narratives of victimhood and crime which silence individuals who are not viewed as vulnerable or innocent enough to deserve protection.⁶⁰ For example, by constructing women as almost universally vulnerable, the FOSTA debates largely ignored the fact that women often act as traffickers and pimps: women frequently lead human trafficking rings, transport trafficked children across borders, and enact horrific violence on the bodies of their victims.⁶¹ This false dichotomy of male aggression and female passivity guides much of U.S. criminal law, creating categories of victims and perpetrators who are unintelligible to government agents tasked with eradicating human trafficking.⁶² This is partially due to a lack of reliable statistics about sex trafficking,⁶³ but even with existing data, lawmakers and anti-sex activists continue to draw gendered bina-

⁵⁹ Remarks on Signing the Allow States and Victims To Fight Online Sex Trafficking Act of 2017, Daily Comp. Pres. Docs., 2018 DCPD No. 201800233 (Apr. 11, 2018) (statement of President Donald Trump), <https://www.govinfo.gov/content/pkg/DCPD-201800233/pdf/DCPD-201800233.pdf>.

⁶⁰ See Carolyn Hoyle, Mary Bosworth, & Michelle Dempsey, *Labelling the Victims of Sex Trafficking: Exploring the Borderland Between Rhetoric and Reality*, 20 SOC. & LEGAL STUD. 313, 326 (arguing that while the language of victimhood, by making harms intelligible to a wider public, has useful benefits, this gendered rhetoric around victimization also serves to silence or discount the harms experienced by victims who do not appear to be "ideal" victims).

⁶¹ STEPHANIE A. LIMONCELLI, *THE POLITICS OF TRAFFICKING: THE FIRST INTERNATIONAL MOVEMENT TO COMBAT THE SEXUAL EXPLOITATION OF WOMEN* 29 (2010); Samuel Vincent Jones, *The Invisible Women: Have Conceptions About Femininity Led to the Global Dominance of the Female Human Trafficker?*, 7 ALB. GOV'T L. REV. 143, 156–60, 165 (2014); see also Julie Bindel, *Women Sex Trafficking Other Women: The Problem is Getting Worse*, THE GUARDIAN (Apr. 22, 2013, 2:00 PM), <https://www.theguardian.com/lifeandstyle/2013/apr/22/women-sex-trafficking-women-problem>.

⁶² Deborah Dinner, *Vulnerability as a Category of Historical Analysis: Initial Thoughts in Tribute to Martha Albertson Fineman*, 67 EMORY L.J. 1149, 1153 (2018). See also Rebecca MF Hewer, *A Gossamer Consensus: Discourses of Vulnerability in the Westminster Prostitution Policy Subsystem*, 28 SOC. & LEGAL STUD. 227, 237 (2019) (noting that even some abolitionists are uncomfortable using gender-essentializing language that reinforces associations of femininity with vulnerability); Jones, *supra* note 61, at 165.

⁶³ Jackson & Heineman, *supra* note 3, at 74 (citing a variety of statistics which assert that sex trafficking makes up somewhere between 19% and 79% of trafficking worldwide); Kessler, *supra* note 35.

ries which create impunity for female traffickers while disempowering male victims.⁶⁴

Additionally, the paternalistic rhetorical device of "vulnerable women and children" has been used many times throughout American history to justify vile restrictions on the rights of women,⁶⁵ children,⁶⁶ African-Americans,⁶⁷ interracial relationships,⁶⁸ drug users,⁶⁹ and LGBT individ-

⁶⁴ See generally Irma M. Barron & Colleen Frost, *Men, Boys, and LGBTQ: Invisible Victims of Human Trafficking*, in HANDBOOK OF SEX TRAFFICKING: FEMINIST TRANSNATIONAL PERSPECTIVES 73 (Lenore Walker, Giselle Gaviria, & Kalyani Gopal, eds., 2018); Steven Bittle, *Protecting Victims Sexually Exploited through Prostitution? Critically Examining Youth Legal and Policy Regimes*, in RED LIGHT LABOUR: SEX WORK REGULATION, AGENCY, AND RESISTANCE 134, 134–35 (Elya M. Durisin, Emily van der Meulen, & Chris Bruckert, eds., 2018); Dave Collins, *Case Reveals Shame, Trauma of Male Sex Trafficking Victims*, AP (Nov. 15, 2018), <https://www.apnews.com/a7d41311016c415390477750e369f8f9>.

⁶⁵ E.g., R. CHARLI CARPENTER, 'INNOCENT WOMEN AND CHILDREN': GENDER, NORMS AND THE PROTECTION OF CIVILIANS 20 (2006); ERICA R. MEINERS, FOR THE CHILDREN? PROTECTING INNOCENCE IN A CARCERAL STATE 3 (2016); Lila Abus-Lughod, *Do Muslim Women Really Need Saving? Anthropological Reflections on Cultural Relativism and Its Others*, 104 AM. ANTHROPOLOGIST 783, 784 (2002); Carol Mason, *Opposing Abortion to Protect Women: Transnational Strategy since the 1990s*, 44 SIGNS 665, 665–68 (2019).

⁶⁶ E.g., MEINERS, *supra* note 65, at 3, 31–55; Gayle Rubin, *Blood Under the Bridge: Reflections on "Thinking Sex,"* in GLQ: A JOURNAL OF LESBIAN AND GAY STUDIES 17 (2011); Andrew Gilden, *Punishing Sexual Fantasy*, 58 WM. & MARY L. REV. 419, 439–45 (2016). See generally Cynthia Godsoe, *Recasting Vagueness: The Case of Teen Sex Statutes*, 74 WASH. AND LEE L. REV. 173 (2017); Robyn Linde, *From Rapists to Superpredators: What the Practice of Capital Punishment Says about Race, Rights and the American Child*, 19 INT'L J. CHILD. RTS. 127, 145–46 (2011).

⁶⁷ E.g., LISA LINDQUIST DORR, WHITE WOMEN, RAPE, AND THE POWER OF RACE IN VIRGINIA, 1900-1960 5 (2004); Jael Silliman & Anannya Bhattacharjee, *Policing the National Body: Race, Gender, and Criminalization* (2002); Linde, *supra* note 66, at 145–46; Marian Meyers, *Crack Mothers in the News: A Narrative of Paternalistic Racism*, 28 J. COMM. INQUIRY 194, 196, 211 (2004). See generally Robin Bernstein, *Racial Innocence: Performing American Childhood from Slavery to Civil Rights* (2011).

⁶⁸ E.g., Lui, *supra* note 40, at 416–17; James Trosino, *American Wedding: Same-Sex Marriage and the Miscegenation Analogy*, 73 B.U. L. REV. 93, 101–04 (1993).

⁶⁹ E.g., Rubin, *supra* note 40, at 168–69. See generally Kathleen Kenny & Amy Druker, "Ants Facing an Elephant": Mothers' Grief, Loss, and Work for Change Following the Placement of a Child in the Care of Child Protection Authorities, in CHILDREN OF THE DRUG WAR 151 (Damon Barrett, ed., 2011); Sheigla Murphy & Paloma Sales, *Pregnant Drug Users: Scapegoats of Reagan/Bush and Clinton-Era Economics*, 28 SOC. JUST. 72, 76–85 (2001).

uals.⁷⁰ These kinds of appeals are “impossible to refuse,” demanding commitment to an intangible, unobservable, but seemingly-urgent political goal.⁷¹ While the rhetoric of saving women and children “might make for good politics, providing a convenient and easy target so that governments can *seem* to be doing something,” in reality such actions do very little to address the root causes of exploitation and violence.⁷² This is especially true of FOSTA: simply blocking advertisements online while professing to help an abstract category of victimized women and children does not actually resolve the complicated realities of sex trafficking.⁷³

These narratives also rely heavily on narrow ideas of innocence and vulnerability, creating a kind of voyeuristic rhetoric through the use of “melodramatic, episodic depictions of women and girls, typically of Caucasian descent, being horrifically enslaved and trafficked for sex, with the victim’s misery particularly highlighted for cinematic and emotional impact.”⁷⁴ While these stories are intended to shock listeners into supporting new policies meant to help victims,⁷⁵ such an overreliance on the idea of “innocence” is inherently problematic given how claims of innocence are often unavailable to LGBTQ people, racial minorities, and those in the working class.⁷⁶ Victims, as well as the political and legal

⁷⁰ *E.g.*, LEE EDELMAN, NO FUTURE: QUEER THEORY AND THE DEATH DRIVE 21–22; Rubin, *supra* note 40, at 141–42; Michael Graydon, “Kids Not Rights, is Their Craving”: Sex Education, Gay Rights, and the Threat of Gay Teachers, 48 CAN. REV. SOC. 313, 314 (2011); Patrick McCreery, *Save Our Children/Let Us Marry: Gay Activists Appropriate the Rhetoric of Child Protectionism*, 100 RADICAL HIST. REV. 186, 189–200 (2008); Trosino, *supra* note 68, at 108–111; Alex Berg, *Stop Using Women and Girls to Justify Transphobia*, HUFFINGTON POST (Feb. 23, 2017, 3:31 PM), https://www.huffpost.com/entry/stop-using-women-and-girls-to-justify-transphobia_n_58ae0c33e4b01406012f7e80.

⁷¹ EDELMAN, *supra* note 70, at 2; McCreery, *supra* note 70, at 201 (“That the child exists in this formulation only as an abstraction is typical of the discourse of child protectionism. To give the endangered child a name and a voice would destroy his or her supposed universality.”) *See also* MEINERS, *supra* note 65, at 26.

⁷² Bittle, *supra* note 64, at 150.

⁷³ Levy, *supra* note 7, at 422 (“The war on Internet platforms is pageantry: a kind of theater designed to satisfy people’s need to identify and fight bad guys without regard to nuance or long-term outcome.”). *See also infra* notes 189–193 and accompanying text (suggesting the many difficult but effective reforms which Congress could have enacted instead).

⁷⁴ Jones, *supra* note 61, at 148. *See also* Milivojević & Pickering, *supra* note 43, at 595–99 (discussing how moral panics around sex and immigration inspire much of the West’s anti-trafficking policies).

⁷⁵ Bittle, *supra* note 64, at 134–35; Durisin, van der Meulen, & Bruckert, *supra* note 41, at 7.

⁷⁶ MEINERS, *supra* note 65, at 63–66; SMITH & MAC, *supra* note 16, at 60–61; Rubin, *supra* note 40, at 168; Avi Boukli & Flora Renz, *Deconstructing the Lesbian, Gay, Bisexual, Transgender Victim of Sex Trafficking: Harm, Excep-*

narratives about them, do not exist in a vacuum; rather, victims are placed in a hierarchy of harm which silences the harms of those who are not recognized by authorities as important or vulnerable enough.⁷⁷ This is especially important in the trafficking debate, since the focus on salacious narratives of sexual violence against children signals to law enforcement whose security to prioritize, creating a kind of blindness towards harms that are less intelligible or recognizable.⁷⁸

Finally, and perhaps most importantly, sex trafficking is conceptually and practically distinct from consensual adult sex work. As such, the repeated references to child victims of sex trafficking have little to do with the adult sex workers who stood to lose so much with the passage of FOSTA. This is especially true for adult male sex workers, who, by virtue of their age, gender, and profession, were categorically excluded from consideration by lawmakers and anti-sex work advocates.

II. CASE STUDY: MALE SEX WORKERS AND THE INTERNET

Given the gendered nature of the debates around FOSTA, it is vital to investigate the voices of individuals who have been symbolically silenced by lawmakers’ rhetorical focus on certain kinds of victimhood.⁷⁹ Who, then, are these male sex workers, and how have they been affected?

A. *A Brief History of Male Sex Advertising Online*

Men have been purchasing sex from other men online for at least two decades.⁸⁰ The first major gay-focused website to facilitate sex work was Gaydar, a dating website which allowed escorts (men who provide in-person sexual services) to pay for a commercial membership to advertise their services.⁸¹ Other websites opened soon thereafter, providing

tionality and Religion-Sexuality Tensions, 25 INT’L REV. OF VICTIMOLOGY 71, 78 (2019); Mary Louise Fellows & Sherene Razack, *The Race to Innocence: Confronting Hierarchical Relations among Women*, 1 J. GENDER, RACE & JUST. 335, 346–49 (1998).

⁷⁷ Boukli & Renz, *supra* note 76, at 78.

⁷⁸ *Id.* See also Zaykowski, *supra* note 49, at 274–75.

⁷⁹ See Nathan Dawthorne, *Intelligible Variability: Narratives of Male Sex Work in London Ontario Canada 1-2* (2018) (unpublished Ph.D. dissertation, University of Western Ontario) (on file with the University of Western Ontario Electronic Thesis and Dissertation Repository), <https://ir.lib.uwo.ca/etd/5773/>.

⁸⁰ PAUL RYAN, *MALE SEX WORK IN THE DIGITAL AGE: CURATED LIVES* 63 (2019). For a more general analysis of how new technology, including the Internet, has transformed the sex trade, see Catherine MacPhail, John Scott, & Victor Minichiello, *Technology, Normalisation and Male Sex Work*, 17 CULTURE, HEALTH & SEXUALITY 483, 484–85, 490–92 (2015).

⁸¹ Ben Light, Gordon Fletcher, & Alison Adam, *Gay Men, Gaydar and the Commodification of Difference*, 21 INFO., TECH. & PEOPLE 300, 305–08 (2008). See also Allan Tyler, *M&M@Gaydar: Queering the Social Network*, in QUEER

advertisement space for sex workers of all genders.⁸² In many cases the growth of Internet-based escort advertising coincided with the disappearance of male street-based sex work and the gentrification of “gayborhoods,” increasing sex worker reliance on Internet platforms as the only way for many escorts to make ends meet.⁸³

A major early player in the online sex advertising market was Craigslist.⁸⁴ In addition to providing non-commercial dating services for users (“Personals”), the site had a dedicated section for escort advertisements until 2010, when legal pressure compelled the site to shut it down.⁸⁵ Despite the loss of the formal escort advertisement page, however, many male sex workers continued to use Craigslist Personals to find clients.⁸⁶ In particular, the website attracted poorer and less professional male sex workers, which gave the site a reputation for being a source of less expensive sex.⁸⁷ Sex workers continued to use Craigslist Personals until the passage of FOSTA, at which point Craigslist made the decision to shutter its Personals section completely to avoid prosecution.⁸⁸

Many other websites also provided advertising space for escorts before FOSTA, creating a diversified advertising ecosystem where clients could find male sex workers advertising a wide array of different sexual services. While many escorts used Backpage, a number of gay escorting sites also began to attract the business of male sex workers, including

SEX WORK 140, 140–46 (Mary Laing, Katy Pilcher, & Nicola Smith, eds., 2015). For a more in-depth discussion of what being an “escort” entails, see MICHAEL DAVID SMITH & CHRISTIAN GROV, *IN THE COMPANY OF MEN: INSIDE THE LIVES OF MALE PROSTITUTES* 16–17 (2011).

⁸² See Scott Cunningham & Todd D. Kendall, *Prostitution 2.0: The Changing Face of Sex Work*, 69 J. URB. ECON. 273, 275 (2011); Levy, *supra* note 7, at 408.

⁸³ See, e.g., Elena Argento, Matthew Taylor, Jody Jollimore, Chrissy Taylor, James Jennex, Andrea Krusi, & Kate Shannon, *The Loss of Boystown and Transition to Online Sex Work: Strategies and Barriers to Increase Safety Among Men Sex Workers and Clients of Men*, 12 AM. J. MEN’S HEALTH 1994, 1998–1999 (2018). See generally AMIN GHAZIANI, *THERE GOES THE GAYBORHOOD?* (2014).

⁸⁴ Levy, *supra* note 7, at 408.

⁸⁵ Cunningham & Kendall, *supra* note 82, at 273–75; Goldman, *supra* note 1, at 280–81; Levy, *supra* note 7, at 412–14; Claire Cain Miller, *Craigslist Says It Has Shut Its Section for Sex Ads*, N.Y. TIMES, Sep. 15, 2010, <https://www.nytimes.com/2010/09/16/business/16craigslist.html>.

⁸⁶ Christian Grov, Juline Koken, Martez Smith, & Jeffrey T. Parsons, *How Do Male Sex Workers on Craigslist Differ from Those on Rentboy? A Comparison of Two Samples*, 19 CULTURE, HEALTH & SEXUALITY 405, 410–17 (2017).

⁸⁷ *Id.*

⁸⁸ FOSTA, <https://www.craigslist.org/about/FOSTA> (last visited Nov. 24, 2019).

Rentboy, Rentmen, Squirt, myRedBook, and Hourboy.⁸⁹ Other sites such as RentMasseur, Masseurfinder, and MassageM4M catered to sex workers who offered sensual or erotic massage services, while sites like BarebackRT allowed escorts to advertise their willingness to engage in condomless anal sex with clients.⁹⁰ These sites revolutionized the sex industry, giving escorts significant freedom to describe themselves and the services they provide.⁹¹ Escorts began to construct tailored online personas, marketing themselves as BDSM experts, as being particularly flexible, or as being good at holding a conversation.⁹² Photographs also became an important part of this advertising process,⁹³ with Rentmen even allowing escorts to upload “secret” photos which would only be accessible to clients who reached out to ask for a special code.⁹⁴

Rentboy grew to be the most successful of these new male escorting sites, attracting a userbase of up to 500,000 unique visitors a day.⁹⁵ The site’s financial success was in part due to the fact that escorts paid premium prices to advertise on the site, with the most visible advertisements costing up to \$300 a month.⁹⁶ Rentboy also worked to market itself as a major player in the gay community, hosting extravagant parties

⁸⁹ Navin Kumar, Victor Minichiello, John Scott, & Taylor Harrington, *A Global Overview of Male Escort Websites*, 64 J. OF HOMOSEXUALITY 1731, 1735–36 (2017); Stephanie Clifford, *Raid of Rentboy, an Escort Website, Angers Gay Activists*, N.Y. TIMES (Aug. 26, 2015), <https://www.nytimes.com/2015/08/27/nyregion/raid-of-rentboy-an-escort-website-angers-gay-activists.html>.

⁹⁰ Based on participant interviews, detailed below.

⁹¹ Jennifer A. Lee-Gonyea, Tammy Castle, & Nathan E. Gonyea, *Laid to Order: Male Escorts Advertising on the Internet*, 30 DEVIANT BEHAV. 321, 331–32 (2009); Matthew V. Pruitt, “*Just a Gigolo*”: *Differences in Advertisements of Male-for-Female and Male-for-Male Online Escorts*, 39 DEVIANT BEHAV. 64, 65–71 (2018). *See also* David-SF, *Male Escorting: What It Takes to Make It Work*, ME, US & MALE ESCORTING BLOG (May 15, 2016), <https://research.qut.edu.au/aboutmaleescorting/2016/05/15/a-male-escorts-perspective/> (discussing how male escorts invest their money and energy into advertising online).

⁹² Lee-Gonyea, Castle, & Gonyea, *supra* note 91, at 336–37; Pruitt, *supra* note 91, at 67–70.

⁹³ Pruitt, *supra* note 91, at 66; Dawthorne, *supra* note 79, at 157.

⁹⁴ Go to rent.men and click on any escort’s profile. If he has a private album, there will be a tab called “Private Photos.” Clicking on that will take you to a page where you can unlock the photos with a code or request access by emailing the escort. *See also* Escort & Masseur Advertisement Pricing, <https://rent.men/about/prices> (last visited Nov. 23, 2019) (allowing clients to spend \$10 a month to have code-free access to any escorts’ private photos).

⁹⁵ Grov, Koken, Smith, & Parsons, *supra* note 86, at 410–17; Alan Feuer, *Owner of Rentboy.com is Sentenced to 6 Months in Prison*, N.Y. TIMES (Aug. 2, 2017), <https://www.nytimes.com/2017/08/02/nyregion/rentboy-jeffrey-hurant-sentence-sex-work.html>.

⁹⁶ Feuer, *supra* note 95.

and offering online educational resources to escorts about financial management and safe sex.⁹⁷ All this success was short-lived, however: in 2015 the site was raided and shut down by federal authorities, and in 2017 Rentboy founder Jeffrey Hurant was sentenced to six months in prison for promoting prostitution in violation of the Travel Act.⁹⁸

When Rentboy shut down, Rentmen took over as the Internet's premier site for male escort advertisements. The site is based in the Netherlands and offers many of the same services as other escort sites, including photographs, contact information, and various statistics about each escort (such as muscle size, height, and preferred sexual positions).⁹⁹ While Rentmen is governed by Dutch law and thus exempt from prosecution under FOSTA, the site nevertheless made several changes to their U.S. website in 2018, adding an anti-trafficking information section and rebranding escorts as "pornstar performers" to avoid prostitution-related censorship.¹⁰⁰ Rentmen also banned sex workers from openly advertising their rates, which means that escorts now have to spend more time fielding questions from potential clients.¹⁰¹ The removal of rates also made it difficult for individual sex workers to know the regular market rate of their services, leading some to lower their rates out of fear of becoming less competitive.¹⁰²

⁹⁷ *Id.* See also Clifford, *supra* note 89; David Levesley, *How Has the Male Escort Industry Changed Since its Biggest Website Was Shut Down?*, VICE (Oct 14, 2016, 3:27 PM), https://www.vice.com/en_us/article/kwk7ez/how-has-the-male-escort-industry-changed-since-its-biggest-website-was-shut-down.

⁹⁸ Clifford, *supra* note 89; Feuer, *supra* note 95; Levesley, *supra* note 97. HOOK-Online, one of the only online resources for male escorts, was also taken down in 2015 because it had worked closely with Rentboy. Before its removal, the site offered sex workers a wide array of lessons about safe sex, physical safety, marketing, mental health, and "know-your-rights" legal education. The loss of such a resource is incredibly unfortunate. Christian Grov, *Study Finds Escorts Don't Need to be "Saved From Themselves,"* ME, US & MALE ESCORTING BLOG (Jan. 7, 2017), <https://research.qut.edu.au/aboutmaleescorting/2017/01/07/study-finds-escorts-dont-need-to-be-saved-from-themselves-in-fact-they-want-to-learn-to-be-better-escorts/>.

⁹⁹ Go to rent.men and click on any escort's profile. Photographs and personal information are automatically displayed; contact information may be viewed by clicking on a tab above the escort's pictures.

¹⁰⁰ Based on participant interviews, detailed below. See also Anti-Trafficking, <https://rent.men/about/antitrafficking/> (last visited Nov. 23, 2019) (describing Rentmen's anti-trafficking policies).

¹⁰¹ Based on participant interviews, discussed below. See also Conner Habib (@ConnerHabib), TWITTER (Apr. 3, 2018, 10:11 PM), <https://twitter.com/connerhabib/status/981263042435473408?lang=en>.

¹⁰² Based on participant interviews, discussed below.

B. Methodology and Sample Population

In June and July 2019, I conducted qualitative semi-structured interviews with twenty-six male sex workers in the San Francisco Bay Area. While many kinds of sex work exist, my main interest was to see how escorts were affected by the law. I offered to either meet participants in person or talk over the phone, and all but two chose to conduct the interview over the phone.¹⁰³ Most phone calls took place via a mobile application offering end-to-end encryption, and all interviews were conducted in such a way as to prioritize participant anonymity. All of the men I spoke to were at least 18 years old at the time of the interview.

Recruiting participants was ironically simple thanks to online platforms like Rentmen.¹⁰⁴ While most participants were contacted through Rentmen, I was also able to contact individuals through sites like Mintboys, Tryst, Friendboy, Rentmasseur, Adam4Adam, and PlanetRomeo. These last two websites mainly function as dating websites but include a special section for male escorts (called "Pro" and "Hunqz" respectively).¹⁰⁵ I also recruited two participants through the online gay dating application Grindr.¹⁰⁶ In order to avoid false advertising, my profile picture was the Cornell University logo, with a picture of my face as a secondary picture that interested parties could view if they opened my profile. Despite Grindr's character limits I was able to describe my research and ask interested parties to contact me. I also provided the link to my personal Twitter profile, to further establish the reality of my existence and research.

¹⁰³ See Kevin Walby, *Interviews as Encounters: Issues of Sexuality and Reflexivity when Men Interview Men About Commercial Same Sex Relations*, 10 QUALITATIVE RES. 639, 643 (2010) (discussing the difference between interviews conducted face-to-face and over the phone).

¹⁰⁴ Recognizing that a recruitment strategy that focused entirely on online advertisements would likely miss a significant subsection of the male sex worker community, I asked participants about alternative ways of contacting male sex workers or if there was an area where street-based male sex workers could be found. Participants had no recommendations on this point, pointing out that men do not walk the streets of San Francisco like female sex workers. I address the methodological ramifications of this strategy at the end of this article.

¹⁰⁵ Of course, Adam4Adam (based in the United States) claims to prohibit advertisements offering sex for money, whereas PlanetRomeo (based in the Netherlands) openly allows users to advertise paid sexual services. See WHAT IS A PROAD?, <https://adam4adam.zendesk.com/hc/en-us/articles/115001832985-What-is-a-PROad-> (last visited Oct. 5, 2019); HUNQZ TERMS OF USE (FOR ADVERTISERS), <https://www.hunqz.com/terms-hunqz/> (last visited Oct. 5, 2019).

¹⁰⁶ For a thorough analysis of how some male sex workers use applications like Grindr to recruit clients, see RYAN, *supra* note 80, at 57–93. See also Dawthorne, *supra* note 79, at 45–48 (describing his experience of receiving sexual or suggestive messages while trying to recruit study participants on gay hook-up applications).

I began each interview by asking participants a variety of introductory questions about their lives and work, both to help them feel comfortable and to help me understand each person's individual situation. Following these general questions, I asked a series of more targeted questions about how FOSTA had affected their lives. My questions were open-ended, with the goal being to allow participants the flexibility to discuss problems or concerns that I may not have anticipated beforehand. Interviews ranged from ten to forty minutes in length depending on how talkative each participant was.¹⁰⁷

Participants had varied levels of knowledge about FOSTA. About one-third were very knowledgeable about the law and were eager to talk to me about how FOSTA had affected them and their community. The other two-thirds of participants were not directly familiar with FOSTA but, once I started explaining, were familiar with at least one consequence of the law (websites like Craigslist Personals shutting down, etc.). While most participants said that they had been affected in some way by the law, two participants argued that their lives had not been affected, especially when compared to female sex workers.

Most participants identified as gay, although two identified as bisexual, two as queer, one as pansexual, and one as straight.¹⁰⁸ In addition, all but two participants identified as cisgender, with one identifying as "non-binary but male-presenting" and the other as a transgender man. While I reached out to sex workers of many different races and ethnic groups, the majority of participants (85%) were white.

While all participants worked with male clients (who are all generally wealthy and sometimes married to women),¹⁰⁹ five participants also

¹⁰⁷ Although our studies differed in significant ways, much of my methodological approach to these interviews was informed by Nathan Dawthorne's own anthropological and ethnographic observations during his study of male sex workers in Ontario, Canada. Dawthorne, *supra* note 79, at 53–63. See also Walby, *supra* note 103, at 643–46 (discussing qualitative strategies for interviewing male sex workers).

¹⁰⁸ For a better understanding of "gay-for-pay" male sex workers and how various male sex workers navigate masculinity and sexuality, see MICHEL DORAIS, RENT BOYS: THE WORLD OF MALE SEX WORKERS 20–21 (Peter Feldstein trans., 2005); Peter Aggleton & Richard Parker, *Male Sex Work: Current Characteristics and Recent Transformations*, in MEN WHO SELL SEX: GLOBAL PERSPECTIVES 1, 9–11 (Peter Aggleton & Richard Parker eds., 2015); Jeffrey Escoffier, *Gay-for-Pay: Straight Men and the Making of Gay Pornography*, 26 QUALITATIVE SOC. 531, 539 (2003).

¹⁰⁹ The fact that many heterosexual-identified men purchase sexual services from other men is not surprising. Many studies have confirmed that men who identify as heterosexual nevertheless engage in same-gender sexual intercourse. JANE WARD, NOT GAY: SEX BETWEEN STRAIGHT WHITE MEN 127–40, 208–09 (2015); Juline A. Koken, David S. Bimbi & Jeffrey T. Parsons, *Positive Marginality and Stigma Resistance Among Gay and Bisexual Male Escorts in the USA*, in MEN WHO SELL SEX: GLOBAL PERSPECTIVES 188, 192–93 (Peter Ag-

saw female clients. Alex,¹¹⁰ the one straight escort I spoke to, found all of his male clients through Rentmen and all of his female clients from working at a "cougar lounge" (a bar that attracts older women who are interested in dating younger men). Similarly, Billy, who identifies as bisexual, said that his new girlfriend was fine with him seeing male clients but not female clients, so he stopped working with women. Additionally, three gay-identified escorts told me that they currently meet with female clients, with one gay man (Cameron) saying that in "twenty-bi-teen," anything was possible.¹¹¹

Most participants only engaged in escorting, although two also danced in gay bars and seven performed in pornographic videos. This latter group of sex workers primarily viewed their pornographic careers as good advertising for their escorting careers: appearing in pornography allowed potential clients to learn more about the sex worker before making contact, helping them feel more comfortable before and during the encounter.¹¹² Four participants also had amateur pornography accounts on sites like OnlyFans or JustForFans, which allow sex workers to charge viewers a monthly fee in exchange for access to curated amateur films and photographs.¹¹³

About two-thirds of participants are full-time sex workers, with one escort (Davis) estimating that he saw around 60 different clients a month in addition to his work in pornography. The remaining one-third engaged in sex work part-time as a way to pay the bills, seeing as few as two clients a month. These part-time escorts either had a full-time job and did escorting on the side or had several jobs (driving for Uber, gardening, construction), of which escorting was one source of income.

All but two participants paid to advertise on Rentmen, acknowledging that it was "the only show in town." Because of this, they were willing to pay Rentmen's high advertising prices despite having several qualms with how the site functions. Some participants also used other

gleton & Richard Parker eds., 2015); Trevon D. Logan, *Personal Characteristics, Sexual Behaviors, and Male Sex Work: A Quantitative Approach*, 75 AM. SOC. REV. 679, 697 (2010).

¹¹⁰ All names have been changed in the interest of participant anonymity.

¹¹¹ See also River Redwood, *Myths and Realities of Male Sex Work: A Personal Perspective*, in RED LIGHT LABOUR: SEX WORK REGULATION, AGENCY, AND RESISTANCE 167, 178 (Elya M. Durisin, Emily van der Meulen & Chris Bruckert eds., 2018) (describing how gay male sex workers sometimes have sex with women for money).

¹¹² See also Jeffrey Escoffier, *Porn Star/Stripper/Escort: Economic and Sexual Dynamics in a Sex Work Career*, 53 J. HOMOSEXUALITY, June 1, 2007, at 173, 193–95 (discussing how the pornographic and escort careers of some male sex workers intertwine).

¹¹³ For a deeper discussion of amateur pornography sites, see RYAN, *supra* note 80, at 119–21, 127–29; Jacob Bernstein, *How OnlyFans Changed Sex Work Forever*, N.Y. TIMES (Feb. 9, 2019), <https://www.nytimes.com/2019/02/09/style/onlyfans-porn-stars.html>.

websites to advertise, although many acknowledged that they rarely if ever received new clients from these sites. Word of mouth was also a potential source of new clients for established sex workers, and one participant (Emery) even printed out professional business cards which he distributes to current and potential clients. Five participants also had accounts on Grindr that they would use to advertise their services.¹¹⁴

The reasons for engaging in sex work varied greatly among participants.¹¹⁵ A few were already having a lot of sex before becoming escorts and decided that they should get paid for it. Four participants were attending expensive university classes during the day and meeting with clients at night, using escorting as a way to avoid hefty student loan debts. Two participants began engaging in sex work as minors (at ages 14 and 16) as a way of surviving after being rejected by their families for being gay.¹¹⁶ On the other end of the spectrum, one older participant (George) took up sex work after retiring from his full-time job, offering erotic massage or niche intergenerational fantasies as a way of supplementing his retirement funds.

Unprompted by me, many sex workers were adamant in insisting that no one had forced them into their profession, listing off the many financial and personal benefits that encouraged them to become escorts. Similarly, many participants emphasized the fact that the work they do is essentially “victimless” and often ends up helping clients. Four participants even went so far as to describe sex work as their life mission or calling, viewing their work as a way of helping their clients heal from past trauma and embrace a heightened level of sexual expression. Three

¹¹⁴ Alex, who is straight, only uses Grindr to recruit clients, but the other four participants who advertise on Grindr use it for both work and pleasure. For example, one gay participant (Fred) said that he would only charge Grindr hookups for sex if he was not particularly attracted to them, engaging in unpaid sex with men he was interested in meeting. *See also* Max Morris, *Introducing Internet-based ‘Incidental Sex Work’ and its Implications*, ME, US & MALE ESCORTING BLOG (Feb. 14, 2017), <https://research.qut.edu.au/aboutmaleescorting/2017/02/14/introducing-internet-based-incident-sex-work-and-its-implications/> (presenting the results of a study of Grindr users in the United Kingdom where 14.6% of surveyed Grindr profiles had been paid for sex on at least one occasion, suggesting that there is a hidden sample of male sex workers who engage in sex work very casually).

¹¹⁵ For a deeper discussion of why men enter the commercial sex trade, see DORAIS, *supra* note 108, at 58–60; Redwood, *supra* note 111, at 168.

¹¹⁶ Under many definitions of trafficking, paying to have sex with someone under the age of 18 is automatically considered trafficking. *See, e.g.*, 22 U.S.C.A. § 7102. *See also* Ariel Wolf, *Stigma in the Sex Trades*, 34 SEXUAL AND RELATIONSHIP THERAPY 290, 292–93 (2019) (discussing rates of coercion among sex workers under the age of 18). The two participants who entered the sex trade as minors continued to engage in sex work after their 18th birthdays, although one is currently attending university classes with the goal of transitioning out of sex work after graduation.

of these sex workers had enrolled in some kind of professionalized training such as "sexological bodywork"¹¹⁷ and saw themselves as "sexual teachers." Sex work for these men is extremely rewarding on multiple levels: in addition to the financial and physical benefits, they see themselves as growing emotionally and mentally with their clients. Two participants also said that they view their work through the "archetype of the sacred prostitute," a spiritual term based in the idea that pre-Christian religious practice was sometimes facilitated by erotic rituals performed by professional sex workers in places of worship.¹¹⁸

Not everyone was so enthusiastic about their work.¹¹⁹ One sex worker I spoke to (Joshua) transitioned from go-go dancing to escorting in order to pay off his student loans and hoped to leave sex work altogether in one to two months after making enough money. Alex began escorting after being released from jail for drug trafficking, continuing to escort even after his ankle bracelet was removed because he saw sex work as a safer, more ethical profession than drug trafficking. Davis, a middle-aged gay man, enjoyed his recent transition into life as a sex worker but was realistic about the work, saying, "By and large things are pretty good. I don't love every aspect of my job, but I've never loved every aspect of any job."¹²⁰

Four participants had advanced university degrees (MA, JD, MD, PhD) and chose to engage in sex work because they enjoyed the freedom and lifestyle that it offered. Cameron said that sex work had helped him rebuild his mental health after the anxiety and stress of attending medical school. Another (Kevin) continues to work in higher education but relies upon sex work to pay for the high cost of living in the Bay Area.

¹¹⁷ Sexological bodywork is a type of sexual therapy developed by Joseph Kramer as a way to help gay men cope with the AIDS crisis in the 1980s. Telephone Interview with Joseph Kramer, Founder, Body Electric School (Jun. 8, 2019). Not all sexological bodyworkers identify as sex workers, but every participant interviewed for this study did.

¹¹⁸ While the idea of the "sacred prostitute" or "sacred intimate" was coined by Joseph Kramer and used heavily in his sexological bodywork training, many sex workers who view themselves as sacred prostitutes/intimates use other kinds of therapeutic techniques to help their clients engage in "sacred" sex. Loraine Hutchins, *Rethinking the Sacred 'Ho*, 11 J. BISEXUALITY 574, 574–77 (2011); Don Shewey, *SACRED INTIMATE – An Integrative Approach to Sexual Healing* (2003), https://www.donshewey.com/sex_articles/sacred_intimate_boulder_talk.html.

¹¹⁹ See SMITH & MAC, *supra* note 16, at 30–39 (discussing how it can be complicated to critique or complain about sex work for fear of having those narratives exploited by anti-sex work activists).

¹²⁰ For a greater perspective into the "work" element of sex work, see SMITH & MAC, *supra* note 16, at 40–55; KEVIN WALBY, *TOUCHING ENCOUNTERS: SEX, WORK, & MALE-FOR-MALE INTERNET ESCORTING* 81–86 (2012); Wolf, *supra* note 116, at 5–7.

Four participants regularly travel, having clients in various cities throughout the United States. Several others said that they mostly stay in the Bay Area but are occasionally paid to travel to other parts of the country if a client hires them for an extended period of time. While I did not ask participants about their income or hourly rates, the average male escort charges hundreds of dollars for an hour-long encounter, with “overnight” stays sometimes exceeding \$1000 or more.¹²¹

Most participants reported that clients enjoy spending time with them doing non-sexual activities such as going out to dinner or cuddling in bed. Often younger sex workers offer “the boyfriend experience” where they roleplay as a companion, talking about their clients’ lives or cooking food together.¹²² Alex even went so far as to estimate that 85 percent of his time with clients is spent engaging in non-sexual interactions, although sex almost always happens at some point during the encounter.¹²³

Most participants did not have a community of sex workers to whom they could turn for friendship or help. Many of these men independently manage their careers through sites like Rentmen, not wanting or needing the support of other men. One sex worker (Leon) said that he sometimes attends a monthly sex worker brunch in San Francisco but is often the only man in attendance. For participants who did know other sex workers, these networks had both personal and professional benefits: for example, Leon said that he had three or four close friends on whom he could rely to “elevate the session” if a client wanted to hire more than one escort for an encounter.

C. Findings

My interviews led to two main findings. First, FOSTA resulted in significant psychological and financial harm to the men who participated

¹²¹ Similarly, I reached out to one escort via Rentmen who said that he would only agree to be interviewed if I paid him his hourly rate of \$400, which was far outside my budget. *See also* Christian Grov, Tyrel J. Starks, Margaret Wolff, Michael D. Smith, Juline A. Koken & Jeffrey T. Parsons, *Patterns of Client Behavior with Their Most Recent Male Escort: An Application of Latent Class Analysis*, 44 ARCHIVES SEXUAL BEHAV. 1035, 1041–42 (2015); Lee-Gonyea, Castle & Gonyea, *supra* note 91, at 339.

¹²² *See* Richard Allan Tewksbury & David Lapsey, *Male Escorts’ Construction of the Boyfriend Experience: How Escorts Please Their Clients*, 29 INT’L J. SEXUAL HEALTH 292, 296–301 (2017) (“In providing a [boyfriend experience] to customers the sex worker is expected (and rewarded) for providing the client with companionship, authenticity, passion, and an overall feeling reminiscent of a genuine romantic relationship.”).

¹²³ *See also, id.* at 298; *see generally* Michael D. Smith, Christian Grov, David W. Seal, Nicholas Bernhardt, & Peter McCall, *Social-Emotional Aspects of Male Escorting: Experiences of Men Working for an Agency*, 44 ARCHIVES SEXUAL BEHAV. 1047 (2015).

in my study. Second, despite the very real harms that male sex workers faced following the passage of FOSTA, these effects were somewhat mitigated by the continued existence of Rentmen and other advertising platforms based outside the United States. As such, my study reemphasizes the importance of allowing sex workers to advertise online and further illustrates why FOSTA should be repealed.

1. “If They Wanted to Make Our Lives Worse, They Succeeded”

In the immediate aftermath of FOSTA, many male escorting websites, including MassageM4M and Men4RentNow, shut down entirely.¹²⁴ Other sites, like gay hookup website BarebackRT, shuttered their male escort sections and deleted the profiles of many escorts who had been using their services.¹²⁵ Many of the sex workers I spoke to were affected in some way by these shutdowns, often losing access to new clients while not being reimbursed for money spent on prepaid advertisements. For many participants the most significant consequence of FOSTA was loss of contact with regular clients, especially in cases where regular clients had not shared an alternative contact method (e.g. telephone number, email address) before websites were taken down. Several participants lost over half of their clients because of these website shutdowns, severely affecting their financial stability and well-being.¹²⁶

Escorts using the website MasseurFinder were perhaps hit the hardest.¹²⁷ Whereas MasseurFinder had once allowed sex workers to advertise and even post explicit photographs, after FOSTA the website cracked down on any kind of sexual advertisement. Under the site’s new

¹²⁴ See John Scott & Victor Minichiello, *Study Finds Male Escorts Online Increased while Laws Shut Down Websites*, ME, US & MALE ESCORTING BLOG (June 13, 2019), <https://research.qut.edu.au/aboutmaleescorting/2019/06/13/study-finds-male-escorts-online-increased-while-laws-shut-down-websites/>; Bill Cobb et al., *massage M4M.com*, COMPLAINTSBOARD (June 26, 2018), <https://www.complaintsboard.com/complaints/massage-m4mcom-website-c1016652.html#>; *Platforms Which Discriminate against Sex Workers*, *supra* note 13.

¹²⁵ *Platforms Which Discriminate against Sex Workers*, *supra* note 13.

¹²⁶ Of course, clients were also affected by website shutdowns, especially in situations where a client had created emotional or spiritual bonds with an escort. While the impact of FOSTA on clients is generally outside the scope of this article, one participant said that a significant number of his clients pre-FOSTA were disabled, which made dating difficult in a big city like San Francisco. He expressed anger at Congress for taking away the only outlet that many of his clients have for expressing themselves sexually. Cf. Tuppy Owens, *The Sex Workers Giving Disabled People a Chance to Live Out their Dreams*, THE GUARDIAN (Apr. 10, 2013, 11:01 AM), <https://www.theguardian.com/commentisfree/2013/apr/10/sex-workers-disabled-people> (describing how some disabled people benefit emotionally and physically from hiring sex workers).

¹²⁷ Based on participant interviews.

policies, a photo showing a man's bare nipples can get the person banned for life, as can any kind of text suggesting sexual services.¹²⁸ Moreover, MasseurFinder shut down their in-person support services, instead relying on an algorithm that has the power to permanently block advertisers for alleged infractions.¹²⁹ In Davis's opinion, MasseurFinder is now so over-regulated that "it's not even worth advertising on it anymore."¹³⁰

Another participant (Noah) similarly told me that his personal website was shut down because of FOSTA.¹³¹ Even though he had a good relationship with his web hosting provider, after FOSTA the company shut down his website and email server overnight without warning. Noah received no notice or reimbursement for the remaining time he had paid to use their service and has no idea how many client emails never reached him. He told me that losing the website was the "biggest disappointment" of his professional life: he had put so much work into the site that it had come to represent one of the only tangible proofs of his professional identity and qualifications. Noah said that the loss of his website was deeply distressing, going so far as to compare himself to a shop owner waking up one morning to find that his store had burned down.¹³²

Sex worker safety was also compromised by FOSTA. Issac and Leon told me that the bad date lists that they used to screen clients had been taken offline because of worries about prosecution.¹³³ Another sex worker (Owen), who maintains his own personal bad date list with a few friends, saw the number of phone numbers and names on the list drastically increase in the months following the passage of FOSTA.

A few participants told me that clients were more emboldened after FOSTA to insist that sex workers go outside of their comfort zones. This was partly due to the fact that clients from the Craigslist and Backpage

¹²⁸ Based on participant interviews. See also Danny Cruz (@adannyboy), Twitter (Mar. 22, 2018, 6:13 AM), <https://twitter.com/adannyboy/status/976688355323781120>.

¹²⁹ Based on participant interviews.

¹³⁰ *Id.*

¹³¹ Some sex workers have developed their own hosting platform – Red Umbrella Hosting – to support sex workers who lost their websites because of FOSTA. RED UMBRELLA HOSTING, <https://redumbrella.ch/about/> (last visited Nov. 23, 2019). For more context, see Arvind Dilawar, *The Web-Hosting Service for Sex Workers, by Sex Workers, Against SESTA/FOSTA*, THE NATION (Aug. 22, 2018), <https://www.thenation.com/article/the-webhosting-service-for-sex-workers-by-sex-workers-against-sesta-fosta/>.

¹³² Professionalization, or finding pride in one's work, is a key way in which male sex workers mitigate the psychological stress and societal stigmatization that comes from societal disapproval of male sex work. Thus, practices like creating professional websites are important for the mental health and well-being of male sex workers. Koken, Bimbi, & Parsons, *supra* note 109, at 189–90.

¹³³ See also Wolf, *supra* note 116, at 12 (discussing how FOSTA's unspecific language has censored sex worker safety tools).

ecosystems often expected different services from sex workers (including the use of hard drugs) for less money.¹³⁴ Now that Rentmen is the only major site left, escorts have to spend much more of their time screening out men who are unwilling or unable to hire a high-priced escort. Similarly, the number of emails from men who "get off" on emailing sex workers but who never commit to hiring one has drastically increased, further wasting participants' time.¹³⁵

Participants differed in their reactions to FOSTA's passage. George stopped engaging in sex work for several months, only offering non-sexual massage services until he felt comfortable returning to sex work. Conversely, Davis told me that a friend of his, who prior to FOSTA had only offered non-sexual massage services, was forced by decreased demand and website shutdowns to begin offering sexual massage as a way to maintain a steady income.¹³⁶ A few participants who are living paycheck-to-paycheck told me that reduced income from FOSTA forced them into alternative housing arrangements as they moved in with friends or partners until their incomes stabilized.

FOSTA also created psychological distress for many male escorts. For escorts like Alex who were not "out" about their work to family and friends, the lack of a support system meant greater stress as they had to navigate website shutdowns and an uncertain economic situation alone.¹³⁷ The pressure could also be debilitating for sex workers who were open about their work. For example, Owen lost many of his regular clients when websites went offline, sending him into what he described as a "depressive spiral." He went into debt for months and spent long periods of time without work. Even the clients he could still contact were less eager to meet with him or respond to his messages given the uncertain legal atmosphere post-FOSTA, causing him emotional and psychological distress at his perceived failure to live up to his "life mission" as a sex worker.

Participants also told me how FOSTA's impact on social media negatively affected their lives. The loss of Tumblr as a platform for adult content was especially difficult for three participants who had previously maintained professional blogs on the site. Michael in particular had carefully curated a sex work-related Tumblr account, investing time and money into hiring a professional photographer to take suggestive and pornographic pictures that he could upload to the site. When his Tumblr blog was deleted, Michael tried to make his own website but could not afford to pay for hosting and website development. His professional pho-

¹³⁴ Grov, Koken, Smith, & Parsons, *supra* note 86, at 410–17.

¹³⁵ See Walby, *supra* note 103, at 642–43.

¹³⁶ See also Chamberlain, *supra* note 6, at 2199 (describing a massage worker whose advertisements were censored post-FOSTA, despite the fact that "no rational interpretation of his post could construe it as advertising illegal activity").

¹³⁷ Koken, Bimbi, & Parsons, *supra* note 109, at 189–90.

tographs are now “gathering dust” on his hard drive, far from the eyes of potential clients.

A small number of participants also have sex work-related Instagram and Facebook accounts that have been affected by FOSTA-related policy changes.¹³⁸ Davis told me that although he knows not to post sexually explicit photos on Instagram, the site has nevertheless deleted his account twice, requiring him to start over from scratch.¹³⁹ He has also been unsuccessful in his attempts to be verified since creating a new account, even though some sex workers do have verified Instagram accounts.¹⁴⁰ Similarly, one participant (Perry) said that Facebook still allows him to post about his spiritual and erotic massage work as long as he uses the right language and avoids posting suggestive pictures, although he worries about arbitrarily losing his account in the near future.¹⁴¹

While Twitter is the last social media giant not to explicitly block sex workers from using their platform, multiple participants told me of their frustrations with the site.¹⁴² Notably, two participants told me that they had been “shadow banned” by the platform, meaning that their accounts and messages do not appear when other users try to find them via Twitter’s search feature.¹⁴³ Shadow banning allows users to feel like they

¹³⁸ While Instagram and Facebook both had restrictions on adult content before FOSTA was signed, both sites have become much more aggressive since the law’s passage. *Infra* notes 137–40.

¹³⁹ The arbitrary nature of Instagram profile terminations for adult film performers and other sex workers has been a particularly frustrating consequence of FOSTA for many, especially given the difficulty of contacting customer support to appeal the algorithm’s decision, and the site’s “opaque” and “inscrutable” policies. Kari Paul, *Adult Performers Picket Instagram HQ Over Company’s Nude Photo Rules*, GUARDIAN (June 19, 2019, 3:06 PM), <https://www.theguardian.com/technology/2019/jun/19/instagram-nude-photo-policy-protest>. See also Samantha Cole, *A Sex Workers Union Is Organizing Against Instagram Discrimination*, VICE (May 6, 2019, 3:50 PM), https://www.vice.com/en_us/article/3k3d45/apag-union-sex-workers-account-deleted-from-instagram.

¹⁴⁰ For more information about Instagram verification, see Tom Ward, *How to Get Verified on Instagram*, FORBES (Apr. 16, 2018), <https://www.forbes.com/sites/tomward/2018/04/16/how-to-get-verified-on-instagram/#54d766ad6b2b>.

¹⁴¹ Facebook has been among the most aggressive social media platforms to ban sexual language on their platform following the passage of FOSTA, even going as far as to add language banning non-obscene discussions of sex. Elliot Harmon, *Facebook’s Sexual Solicitation Policy is a Honeypot for Trolls*, ELECTRONIC FRONTIER FOUND.: DEEPLINKS BLOG (Dec. 7, 2018), <https://www.eff.org/deeplinks/2018/12/facebooks-sexual-solicitation-policy-honeypot-trolls>.

¹⁴² See also *Platforms Which Discriminate Against Sex Workers*, *supra* note 13 (listing the many ways in which sex workers have been censored by Twitter).

¹⁴³ Edgar Alvarez, *Why are Trump and Sex Workers Angry about Shadow Banning?*, ENGADGET (July 26, 2018),

are posting normally all while their posts may not be visible to followers or easily found by strangers.¹⁴⁴ Moreover, Issac had friends whose Twitter accounts had been arbitrarily deleted, even though other sex workers were allowed to use the site normally with seemingly no difference between the kinds of content each person posted. While a few participants continue to actively use Twitter to advertise their services, two participants told me that they do not invest a lot of energy into their Twitter accounts for fear that the platform will soon succumb to FOSTA-related pressure and remove all sex work-related content from the site.

Several participants told me about their battles with website algorithms since the passage of FOSTA. Because of the law, many websites have turned to overly-cautious algorithms as a way of protecting against prostitution-related speech, despite the fact that these algorithms sometimes also inadvertently censor non-sexual language and provide no easy way for users to appeal to human moderators.¹⁴⁵ For example, one escort (Quentin) told me that his account on Adam4Adam was banned after he included the word “generous” in his profile. He tried to appeal the decision to no avail, losing the \$30 he had paid to post his advertisement. Alex similarly said that his Grindr account gets deleted every few days, forcing him to play a cat-and-mouse game with the application’s algorithms by creating a new account with slightly different advertisement language. Other participants told me of gay dating websites that censor the word “escort” or arbitrarily delete sex worker profiles without providing any way to appeal the decision. By over-relying on algorithms to moderate the posts of third-party users, these websites have been

<https://www.engadget.com/2018/07/26/twitter-shadow-banning-trump-explainer>. Some sex workers have also reported being shadow banned on Instagram, in addition to having their accounts arbitrarily deleted by the site’s algorithm. Jesselyn Cook, *Instagram’s Shadow Ban On Vaguely ‘Inappropriate’ Content Is Plainly Sexist*, HUFFINGTON POST (Apr. 29, 2019, 7:04 PM), https://www.huffpost.com/entry/instagram-shadow-ban-sexist_n_5cc72935e4b0537911491a4f.

¹⁴⁴ Liam Stack, *What Is a ‘Shadow Ban,’ and Is Twitter Doing It to Republican Accounts?*, N.Y. TIMES (July 26, 2018),

<https://www.nytimes.com/2018/07/26/us/politics/twitter-shadowbanning.html>.

After our interviews I went to shadowban.eu, a website that tests if a particular Twitter user has been shadow banned, which confirmed that both participants had indeed been shadow banned to some extent.

¹⁴⁵ For a greater discussion about the dangers of relying on algorithms for content moderation, see SAFIYA UMOJA NOBLE, *ALGORITHMS OF OPPRESSION: HOW SEARCH ENGINES REINFORCE RACISM 2* (2018); Musto, *supra* note 41; Sarah Valentine, *Impoverished Algorithms: Misguided Governments, Flawed Technologies, and Social Control*, 46 *FORDHAM URB. L.J.* 364, 368 (2019); Zeynep Tufekci, *The Real Bias Built In at Facebook*, N.Y. TIMES (May 19, 2016), <https://www.nytimes.com/2016/05/19/opinion/the-real-bias-built-in-at-facebook.html>.

compelled to pre-emptively restrict speech that harms no one and would otherwise be tolerated by the site's community.¹⁴⁶

The loss of websites like Craigslist Personals and the censorship of sex work-related social media accounts has also affected how sex workers interact with each other. Michael told me that he found other sex workers on Craigslist as a teenager who helped him learn how to stay safe and negotiate with clients. In his opinion, such a connection would be nearly impossible today because of FOSTA. Other participants felt that FOSTA has reduced their drive to engage politically online for fear of drawing too much attention to themselves.¹⁴⁷

2. The Value of Internet-Based Sex Worker Advertisements

I also found that, despite these many harms, the continued existence of Europe-based escorting websites like Rentmen has been tremendously beneficial to male sex workers in the United States. While the passage of FOSTA had a significantly detrimental impact on the lives of male sex workers, these sites helped to mitigate some of that damage by allowing male escorts to retain an online presence. Given the important role of the Internet in protecting male sex workers from harm, this secondary finding supports calls to repeal FOSTA and open up the Internet to sex workers seeking to protect themselves.

First, none of the men I interviewed engaged in street-based client recruitment because of the Internet.¹⁴⁸ Whereas FOSTA-related website shutdowns forced many female sex workers to recruit clients on the streets,¹⁴⁹ male sex workers were mostly spared this increased danger (and lower paid work) due to Rentmen's existence.¹⁵⁰ Additionally, very few participants reported feeling unsafe with a client they met online. In fact, Perry, who has done indoor massage and sex work for over 30 years, told me that the only time he ever felt violated by a client was be-

¹⁴⁶ Musto, *supra* note 41. See also Lily Wakefield, *Instagram said these LGBT-inclusive ads were for escort services*, PINK NEWS (July 12, 2019), <https://www.pinknews.co.uk/2019/07/12/instagram-said-salty-lgbt-inclusive-ads-escort-services/> (describing how Instagram's algorithm censored pictures of transgender and non-binary people of color for violating the site's ban on escort advertisements, even though none of the individuals depicted are sex workers or were advertising sexual services).

¹⁴⁷ See also Angela Jones, *Sex Work in a Digital Era*, 9 SOC. COMPASS 558, 563 (2015) (discussing how sex workers use the Internet for political activism and community building).

¹⁴⁸ Even for men, working on the street can be dangerous, and male street workers have reported being robbed, raped, harassed by police, or used by violent clients who "try to hurt [them] on purpose." DORAIS, *supra* note 108, at 27.

¹⁴⁹ See *supra* notes 15–16 and accompanying text.

¹⁵⁰ One participant even told me that he gained a client from FOSTA. A European couple visiting the United States was looking to hire a female sex worker, however, because they had trouble finding one online, they instead turned to Rentmen and hired him for a sexual encounter.

fore moving his advertisements online. Quentin similarly told me a story about having his nose broken by a stranger's boot while walking the streets of San Francisco; now that he is able to find clients online, he feels much safer and has not had any violent experiences in the past decade. Another participant (Robert) told me that he feels safer seeing clients from Rentmen than working as a go-go dancer in a gay bar: whereas dancers at his bar frequently have their genitals grabbed and slapped by patrons, as an escort the extra screening and control provided by the Internet means that he has never once felt violated by a client.¹⁵¹

This increased safety is largely due to the fact that, even despite increased censorship following the passage of FOSTA, the Internet still allows male sex workers to screen dangerous clients.¹⁵² Most participants told me that they use the Internet to do research on potential new clients before meeting them. While two men also used "bad date lists," these men acknowledged that bad date lists for men are not frequently updated or used by the general male sex work population. Instead, most participants felt that a Google search or online social media check was sufficient to establish a client's trustworthiness.

Sex workers also identified potentially dangerous clients by communicating with them via text or over the phone before an encounter, with several participants telling me about the "red flags" they look for before meeting a potential client (e.g. clients who want to use illegal drugs, engage in feces-based sexual acts, or roleplay a particularly violent or dangerous scene).¹⁵³ Similarly, some participants who are not

¹⁵¹ This is not to say that escorting is not risky or dangerous for male sex workers. While the vast majority of participants told me that they had never been threatened or harmed by a client from the Internet, all of them had to screen out risky or dangerous clients to some extent. Moreover, Emery told me that he once met with a client who bolted the front door shut and began to threaten him, so he jumped out of the open living room window and fled the scene. Another participant (Steven) similarly had a friend in Southern California who was killed by a client after a combination drug deal/sexual encounter went wrong.

¹⁵² Of course, these screening practices also help protect sex workers from police entrapment. For example, Billy told me that a stranger reached out to him on Rentmen but refused to send pictures, instead asking if he would be willing to sleep with a 13-year-old boy. He immediately blocked the number, assuming it to be a police sting.

¹⁵³ While I did not ask about drug use in my interviews, many participants brought up the fact that they do not use hard drugs and actively avoid clients who do. Some sex workers also signal on their online profiles if they are "sober" or opposed to "PNP" (an acronym for "Party 'n' Play", meaning using methamphetamines or other drugs to alter a sexual experience). Kane Race, 'Party and Play': *Online hook-up devices and the emergence of PNP practices among gay men*, 18 *SEXUALITIES* 253, 256 (2015). See also Redwood, *supra* note 111, at 175–77 (describing stigma around male sex workers being drug users and vectors for sexually-transmitted diseases).

comfortable with condomless anal sex told me how they screen clients to make sure that safe sex practices are clearly defined before the encounter.¹⁵⁴ Joshua frequently shares the address of a new client with a friend before an encounter, telling the friend to call the police if Joshua does not send a text message after a predetermined length of time. Another participant (Thomas) went so far as to pay for a full background check on all new clients before meeting them for the first time, considering it an “investment” in his peace of mind and safety. Such screening is not available to sex workers who work on the street or in bars, further establishing the importance of the Internet as an important tool for sex workers, even despite FOSTA-related censorship problems.

The Internet also continues to offer male sex workers a variety of ways to stay safe and grow their business. For example, despite the constant threat of shadow banning, Twitter remains an important tool for those who use it, providing a space for male escorts to gain a certain level of celebrity and advertise their services.¹⁵⁵ Not all sex workers use Twitter: roughly one in four participants in my study had a sex work-related Twitter account, although not everyone used their accounts regularly.¹⁵⁶ Having access to Twitter’s broad userbase is not useful for many escorts whose work is mostly local, but for escorts who want to travel or build a strong personal brand, Twitter provides an important platform for reaching large numbers of potential clients.¹⁵⁷

Participants in my study with sex work-related Twitter accounts used the platform to inform followers about open timeslots in their schedules, to communicate upcoming trips to different cities, and to drive traffic towards their amateur pornography on sites like OnlyFans. For example, Owen travels regularly to cities in Texas and New York, using his Twitter to inform clients about his travel plans a week or two before leaving California. Similarly, Issac excitedly told me that he had been recently contacted by a Twitter follower who liked his amateur pornography and wanted to hire him for an in-person encounter.

Robert has a bifurcated social media presence: on Instagram he does not post explicit content, restricting his posts to shirtless pictures of him-

¹⁵⁴ See also Dawthorne, *supra* note 79, at 165–66 (describing how some male sex workers respond to requests to engage in condomless anal sex).

¹⁵⁵ Sex workers on Twitter and other social media platforms must carefully construct a public persona that followers will be interested in following, with the potential benefit being a measured level of celebrity that can attract clients willing to pay higher rates for someone that they “know.” RYAN, *supra* note 80, at 98–103, 104–05. See also Escoffier, *supra* note 112, at 176–82 (discussing the role of celebrity in creating the persona of a pornstar).

¹⁵⁶ This is similar to the result reported by Stewart Cunningham et al. when they found that roughly 30% of sex workers use Twitter. Stewart Cunningham et al., *Behind the Screen: Commercial Sex, Digital Spaces and Working Online*, 53 *TECH. IN SOC’Y*. 47, 52 (2018).

¹⁵⁷ See *id.*

self and political messages about recent events (in his words, "combining 'thotiness'¹⁵⁸ with thoughtfulness"). He does however have a hyperlink in his Instagram which pushes viewers to his Twitter feed, where he posts explicit videos and encourages viewers to subscribe to his Onlyfans page. Robert is thus able to navigate the Internet's varied online regulations and grow his follower base, thanks in large part to his education and technological know-how.¹⁵⁹

In addition to social media accounts, some of the sex workers I spoke to maintained personal websites to better control their public image and advertise their services.¹⁶⁰ For example, four participants who offer spiritual and erotic massage services use their websites to describe their therapeutic approaches and to advertise upcoming workshops or one-on-one services. Owen even pays a Europe-based web hosting company to maintain two websites: one for advertising his spiritual and erotic massage skills, and the other for advertising his pornographic videos and traditional escorting services.

Creating a personal website after the passage of FOSTA also provided peace of mind for two participants who were concerned about Rentmen shutting down in the future: even if Rentmen somehow disappeared overnight, regular clients could still reach out via the contact information that the participants had posted online. Owen also maintains an email list for clients who wanted to receive regular newsletters; while he admitted that most clients choose not to add their names, for him the email list helps him manage his anxiety after losing so many clients because of FOSTA.

¹⁵⁸ Meaning "slutiness." Mehak Anwar, *What Does "Thot" Mean And When, If Ever, Is It OK To Use It? Or, How To Reclaim A Derogatory Term*, BUSTLE (May 26, 2015), <https://www.bustle.com/articles/85756-what-does-thot-mean-and-when-if-ever-is-it-ok-to-use-it-or-how>.

¹⁵⁹ Quentin was also the only participant to use Patreon, a service that enables online content creators to gather donations from fans. While he has not had any problems with the platform, post-FOSTA policy changes on Patreon (emphasizing "zero tolerance" for content related to "forced transformation and sexual slavery") have forced many sex workers and content creators off the site and onto riskier payment websites. Samantha Cole, *Patreon Is Suspending Adult Content Creators Because of Its Payment Partners*, VICE (June 28, 2018), https://www.vice.com/en_us/article/vbqwwj/patreon-suspension-of-adult-content-creators; Cara Curtis, *Patreon Continues to Crack Down on NSFW Content Creators*, THE NEXT WEB (June 27, 2019), <https://thenextweb.com/tech/2019/06/27/patreon-continues-to-crack-down-on-nsfw-content-creators/>; Jenavieve Hatch, *Anti-Sex Work Law May be Hitting Artists Who Rely On Crowdfunding*, HUFFINGTON POST (July 4, 2018, 5:46 AM), https://www.huffpost.com/entry/patreon-artists-sex-work-crowdfunding_n_5b3bf03fe4b05127cced65b1.

¹⁶⁰ For a greater analysis of sex worker personal websites, see Cunningham et al., *supra* note 156, at 51–52.

Personal websites also legitimized participants' professional status and helped to assuage client concerns by presenting clear details about the services each escort offers. For example, Thomas had a very detailed website with contract-like terms spelling out exactly what services he would offer and exactly what the client would and would not agree to do before and during the encounter. His site also included a clear breakdown of how much each service would cost, reducing haggling and discouraging clients who are not willing to pay the posted price from reaching out and wasting Thomas's time.

Finally, sex workers also benefit from third-party review sites which further legitimize their skills and often encourage new clients to reach out. The main review site for male escorts in the United States is DaddysReviews, although Rentmen and several smaller forums also allow clients to leave Yelp-like reviews of escorts they have hired.¹⁶¹ Getting recommended by a client on DaddysReviews was the gold standard for several participants since the site's reviewers were often very detailed and could drive new clients if the review was positive.

III. CONCLUSIONS

This article has demonstrated that FOSTA had a decidedly negative impact on the daily lives of male sex workers, due in part to the fact that their needs were not considered when the law was being drafted. Instead, by conflating consensual sex work with narratives about women and children victims of sex trafficking, lawmakers and anti-sex work advocates failed to consider the many other harms caused by FOSTA. As such, I conclude this article by offering several key take-aways regarding FOSTA and the future of sex work (de)regulation in the United States.

A. FOSTA is an Ineffective and Harmful Law

As many others have previously argued, FOSTA is (1) ineffective at actually addressing the phenomenon of sex trafficking in the United States and (2) harmful to the thousands of male, female, and non-binary sex workers who rely/relied upon Internet-based tools for safety and increased autonomy. In the words of Lura Chamberlain:

The concerns that anti-trafficking advocates have about what happens to victims... are real. Stopping sex trafficking is a legitimate government aim, but a law so poorly drafted that it fails to achieve its chief objective, while also causing significant and unnecessary collateral harm, offers little merit to society or to populations im-

¹⁶¹ Clifford, *supra* note 89. For a greater analysis of how clients use DaddysReviews to review escorts, see generally Richard Tewksbury & David Lapsey, *It's More than Just a Big Dick: Desires, Experiences, and How Male Escorts Satisfy Their Customers*, 39 *DEVIANT BEHAV.* 126 (2018).

periled by sex trafficking. FOSTA makes it more dangerous to be a [website] operator. It makes it more dangerous to be a sex worker. It may even make it more dangerous to be a trafficked person. But it does not, in any discernible way, increase the risk involved in being a sex trafficker.¹⁶²

Or in the words of Eric Goldman:

Sex trafficking is a horrific crime, and we should all support legislative efforts to combat it. FOSTA, however, was not that solution. Instead, the in-the-field outcomes of FOSTA include increased physical violence against sex workers, fewer prosecutions against sex trafficking criminals, and lower odds that law enforcement will rescue sex trafficking victims. Especially in light of the fact that FOSTA was not needed to "take down" Backpage.com (assuming that was a good policy goal in the first place), FOSTA appears to have caused more misery for sex workers and sex trafficking victims with zero offsetting policy benefits. Accordingly, FOSTA may be one of Congress' worst achievements in Internet regulatory policy.¹⁶³

People will continue to advertise consensual and non-consensual sexual services online, regardless of what politicians in Washington D.C. want.¹⁶⁴ While FOSTA and the seizure of Backpage temporarily reduced the number of online sex ads, new online platforms (often based outside the United States) have sprung up, competing for the lucrative advertising money that Backpage was once earning.¹⁶⁵ Escorts are also finding ways around website restrictions: Quentin, for example, told me that he even has turned to a thesaurus to find words that do not violate anti-sex work algorithms while still being intelligible to potential clients.¹⁶⁶

Moreover, the idea that Congress could abolish online prostitution simply by criminalizing online advertising is misguided and ill-

¹⁶² Chamberlain, *supra* note 6, at 2208–09.

¹⁶³ Goldman, *supra* note 1, at 292.

¹⁶⁴ See, e.g., Kessler, *supra* note 35 (noting that sex work advertisements online have begun to rebound despite the passage of FOSTA); Scott & Minichiello, *supra* note 124 (demonstrating how the number of online male escort advertisements grew throughout most of the world between 2017 and 2018).

¹⁶⁵ Tarinelli, *supra* note 37. See also Scott & Minichiello, *supra* note 124 (noting that many of the most profitable male escorting advertising sites are now based outside the United States).

¹⁶⁶ See also Kristie R. Blevins & Thomas J. Holt, *Examining the Virtual Subculture of Johns*, 38 J. CONTEMP. ETHNOGRAPHY 619, 621–22, 639–44 (2009) (examining how clients online use a unique vocabulary to talk about sex work and sex workers).

informed. The Internet is a transnational network of websites drawing in information from all over the world, and lawmakers in the United States can do little to prevent the propagation of new escort advertising sites in Europe and Asia.¹⁶⁷ If nothing else, it seems that FOSTA's main achievement has been to simply drive online sex advertisements off of U.S. servers.¹⁶⁸

Anecdotally, one participant (Michael) had a particularly powerful story that does a good job of illustrating the misguided reasoning behind FOSTA. This young escort told me about being involved in an anti-trafficking sting in 2016, before Backpage was taken down. At the time he was new to the escort world and had a female friend who would accompany him to meet clients.¹⁶⁹ He was contacted on Backpage by undercover officers who mistakenly thought that his friend was a trafficker; after being arrested and questioned, both Michael and his friend were released without charges being filed. Two years later when he learned that Backpage had been taken down in the name of trafficking prevention, he was incredulous, having seen firsthand how Backpage could be used to find and arrest traffickers.

Additionally, the U.S. government has done very little to actually implement solutions that would decrease vulnerability or help victims of trafficking.¹⁷⁰ For example, just two months after the passage of FOSTA, the Trump administration defunded legal services for trafficking victims, a service which many trafficking victims had used to expunge their criminal records and start a new life.¹⁷¹ The number of federal prosecutions

¹⁶⁷ However, FOSTA did negatively affect sex workers outside of the United States who benefitted from US-based sites. SMITH & MAC, *supra* note 16, at 125; *Think: Digital Futures: Backpage and Moral Outrage* (May 7, 2018), <https://2ser.com/backpage-and-moral-outrage/> (last visited Jul. 31, 2018).

¹⁶⁸ Chamberlain, *supra* note 6, at 2202.

¹⁶⁹ Many young LGBTQ sex workers report receiving aid from a friend or mentor who is often a sex worker themselves. Importantly, these mentors are distinct from pimps in that their advice and support is often rendered voluntarily and is meant to help the young sex worker by providing increased safety and market connections. Wolf, *supra* note 116, at 293–94. *See also* Lucy Khan, *Against FOSTA/SESTA: One Canary's Cry from Inside the Coal Mine*, SLIXA (Feb. 4, 2019), <https://www.slix.com/blog/experience/against-fosta-sesta-one-canarys-cry-from-inside-the-coal-mine/> (recounting how one sex worker met a mentor through Backpage who helped her “gain confidence, practice how to assert myself, and finish my graduate degree debt-free”).

¹⁷⁰ Bittle, *supra* note 64, at 144–46 (discussing the ways in which a proper response to addressing compelled sex work would necessarily involve a much more robust state welfare system, flying in the face of much of today's neoliberal discourse around welfare dismantlement).

¹⁷¹ Jenavieve Hatch, *The Trump Administration Quietly Defunded Legal Services for Trafficking Victims*, HUFFINGTON POST (Jul. 6, 2018), https://www.huffpost.com/entry/trump-defunded-legal-services-trafficking_n_5b3fbeade4b07b827cc0517c; Jenna Krajeski, *Trump's Human*

for trafficking has decreased under President Trump, as have the number of visas being granted to trafficking victims.¹⁷² Moreover, and perhaps most egregiously, the Trump administration has also lost track of thousands of refugee children who were forcefully separated from their families at the U.S.-Mexico border, with some being found working in forced labor situations throughout the United States.¹⁷³ These policies all make trafficking worse by weakening systems meant to protect victims and prevent men, women, and children from being forced into unfair labor conditions.¹⁷⁴

The phenomenon of sex trafficking is complex and requires much more serious investment on the part of lawmakers than simply censoring sexual language online.¹⁷⁵ By passing FOSTA and pushing trafficking victims underground, Congress both failed in its professed goals and seriously harmed many vulnerable individuals who relied upon the Internet for continued visibility and safety.

B. Sex Workers Are Distinct from Trafficking Victims and Deserve Legal Protection

Part of my goal in telling these stories has been to emphasize the fact that the male sex workers who participated in my study are not being compelled by traffickers or pimps to continue in the sex trade. Consensual adult sex work is significantly different from sex trafficking, and

Trafficking Record is Fake News, FOREIGN POLICY (Jun. 20, 2019, 3:28 PM), <https://foreignpolicy.com/2019/06/20/trumps-human-trafficking-record-is-fake-news/>.

¹⁷² Igor Derysh, *Prosecutions for Child Sex Trafficking Plummet under Trump: Maybe it’s a Coincidence*, SALON (Jul. 18, 2019, 10:00 AM), <https://www.salon.com/2019/07/18/prosecutions-for-child-sex-trafficking-plummet-under-trump-maybe-its-a-coincidence/>; Jenna Krajeski, *The Hypocrisy of Trump’s Anti-Trafficking Argument for a Border Wall*, THE NEW YORKER, Feb. 5, 2019, <https://www.newyorker.com/news/news-desk/the-hypocrisy-of-trumps-anti-trafficking-argument-for-a-border-wall>.

¹⁷³ Garance Burke, *Federal Agency Says It Lost Track of 1,488 Migrant Children*, AP (Sept. 20, 2018), <https://www.apnews.com/aad956b7281f4057aac1ef4b5732f12>; Melissa Gira Grant & Debbie Nathan, *Trump has Turned the War on Trafficking into a War on Immigrants*, THE APPEAL (Jan. 9, 2019), <https://theappeal.org/trump-has-turned-the-war-on-trafficking-into-a-war-on-immigrants/>. See also Jonathan Landay, *U.S. Human Trafficking Report Drops Child Separation Warning*, REUTERS (Jun. 20, 2019), <https://www.reuters.com/article/us-usa-humantrafficking/u-s-human-trafficking-report-drops-child-separation-warning-idUSKCN1TL2IV>.

¹⁷⁴ Krajeski, *supra* note 171.

¹⁷⁵ See also Levy, *supra* note 7, at 433 (“[T]he fight against trafficking—real trafficking—is won by making victims *more* visible. To the extent that websites bring abuses to light, their existence is a tremendous help.”).

political discourse that conflates the two is either mistakenly ignorant or purposefully hostile to sex workers' rights.

Instead, lawmakers and anti-trafficking advocates should listen to sex workers from all genders and minority groups in order to better craft policy that addresses their needs and validates their humanity.¹⁷⁶ Repealing FOSTA would be an important first step towards this goal, and since appeals to the judicial system have thus far proven unsuccessful,¹⁷⁷ Congress should assume responsibility by drafting and passing legislation which would reverse the law. It is absolutely vital that sex workers have unfettered access to the many Internet-based tools which keep them safe.¹⁷⁸

In addition, lawmakers around the country should work towards decriminalizing consensual adult sex work. Abolitionist efforts to outlaw the commercial sex trade have ignored a wide range of economic, personal, and colonial influences which compel individuals to engage in sex work.¹⁷⁹ The reality is that it is nearly impossible for lawmakers to prevent anyone from selling sex through the use of criminal punishment; rather, criminalization only makes the sale of sex more dangerous, increasing violence against sex workers and further harming some of the most vulnerable members of society.¹⁸⁰ Anti-prostitution enforcement

¹⁷⁶ Wolf, *supra* note 116, at 291 (“Often, the voices of those who trade sex are overshadowed by policy makers and members of the sex trafficking rescue industry, who, purportedly motivated by saving those in the most vulnerable and abusive situations, do not fully understand the circumstances of those within the sex industry.”). See also Juno Mac, *The Laws that Sex Workers Really Want*, Presentation at TEDxEastEnd (January 2016), https://www.ted.com/talks/juno_mac_the_laws_that_sex_workers_really_want/up-next.

¹⁷⁷ In September 2018, five plaintiffs challenged FOSTA in the U.S. District Court for the District of Columbia in *Woodhull Freedom Foundation v. United States*, alleging that FOSTA violated First Amendment protections regarding protected speech. 334 F. Supp. 3d 185, 189 (D.D.C. 2018), *appeal docketed*, No. 18-5298 (D.C. Cir. Oct. 12, 2018). However, the court declined to rule on the constitutional merits of the claim, asserting that the plaintiffs lacked standing. *Id.* at 189, 203. An appeal was filed and argued in September 2019. *Woodhull Freedom Foundation v. United States*, No. 18-5298 (D.C. Cir. *argued* Sept. 20, 2019). See also Chamberlain, *supra* note 6, at 2192–200 (discussing *Woodhull Freedom Foundation*).

¹⁷⁸ One study estimates that Craigslist’s escort services section saved the lives of 1400 sex workers over an eight-year period, reducing the female homicide rate by 10–17%. A similar reduction in female homicide rates using police forces would have cost an additional \$12 billion per year in police investment. Cunningham, *supra* note 15, at 26–28.

¹⁷⁹ Bittle, *supra* note 64, at 143–44; Mac, *supra* note 176. See also Meghan Peterson, *Global Implications of FOSTA*, SLIXA (Feb. 4, 2019), <https://www.slix.com/blog/experience/global-implications-of-fosta/>.

¹⁸⁰ SMITH & MAC, *supra* note 16, at 50–51, 125 (“Criminalisation forces workers to compromise on some or all of their safety strategies in the hope of avoiding the police. At the same time, it signals to violent people that sex work-

also costs money, diverting resources away from projects that actually contribute to lower rates of trafficking and abuse.¹⁸¹

Instead, decriminalizing consensual adult sex work would allow sex workers to access labor law, occupational health and safety provisions, and other state protections in a way which is currently unavailable.¹⁸² Instead of the current policy of censoring resources meant to improve the health and safety of sex workers, decriminalization would allow sex workers to come out of the shadows, enabling them to obtain the same rights as workers in other industries.¹⁸³ Moreover, decriminalization would allow sex workers greater autonomy, freeing them from the constant threat of police surveillance and putting them at lower risk of rape, murder, physical violence from clients, intimate partner violence, and HIV infection.¹⁸⁴ When coupled with efforts to stop incarceration of sex workers and destigmatize social factors which impede sex workers from getting the support they need, decriminalization has the potential to reduce violence and improve the lives of some of the most vulnerable people in the United States.¹⁸⁵ Everyone has the right to live a life free from

ers are in some sense ‘legitimate’ targets at the periphery of society.”); Lucy Platt, Pippa Grenfell, Rebecca Meiksin, Jocelyn Elmes, Susan G. Sherman, Teela Sanders, Peninah Mwangi & Anna-Louise Crago, *Associations Between Sex Work Laws and Sex Workers’ Health: A Systematic Review and Meta-Analysis of Quantitative and Qualitative Studies*, 15 PLOS MED. 1, 45–46 (2018).

¹⁸¹ Alison Bass, *Why Jimmy Carter is Just Plain Wrong When It Comes to Sex Work*, HUFFINGTON POST, Jun. 6, 2016, https://www.huffpost.com/entry/why-jimmy-carter-is-just_b_10319368.

¹⁸² Durisin, van der Meulen & Bruckert, *supra* note 41, at 9; Mac, *supra* note 176. *See also* Lynzi Armstrong, *Decriminalising Sex Work is the Only Way to Protect Women – and New Zealand has Proved that it Works*, THE INDEPENDENT (May 29, 2017, 12:15 AM), <https://www.independent.co.uk/voices/sex-workers-decriminalisation-of-prostitution-new-zealand-new-law-works-research-proves-sex-workers-a7761426.html> (describing a sex worker who successfully sued a brothel owner for sexual harassment in New Zealand, where sex work has been decriminalized).

¹⁸³ Cameron Cox, *The Decriminalisation of Sex Work*, ME, US & MALE ESCORTING BLOG (Aug. 16, 2016), <https://research.qut.edu.au/aboutmaleescorting/2016/08/16/the-decriminalisation-of-sex-work/>; Grov, *supra* note 98 (concluding that male escorts are not being exploited and benefit from online resources meant to help them stay safe and improve business).

¹⁸⁴ Cunningham, *supra* note 15, at 26–28; Platt, Grenfell, Meiksin, Elmes, Sherman, Sanders, Mwangi & Crago, *supra* note 180, at 42, 45 (“We estimate that, collectively, lawful or unlawful repressive policing practices linked to sex work criminalisation (partial or full) are associated with increased risk of infection with HIV or STIs, sexual or physical violence from clients or intimate partners, and condomless sex.”).

¹⁸⁵ *See* DECRIMNY, <https://www.decrimny.org/> (last visited Nov. 24, 2019).

violence, to work in safe conditions, and to have the agency to make informed choices about their labor and their own bodies.¹⁸⁶

Efforts to decriminalize sex work stand to benefit sex workers of all genders. Male sex workers face many of the same risks as female sex workers but often lack the same support networks that some female sex workers have.¹⁸⁷ This is especially true when male sex workers attempt to access social services which are gendered towards female victims.¹⁸⁸ Moreover, male sex workers are harmed by social stigmas regarding homosexuality and prostitution that are reinforced by the continued criminalization of sex work and the rhetorical conflation of trafficking with consensual sex.¹⁸⁹ Decriminalizing is thus necessary to free male sex workers of this stigma and allow them to more openly live their lives.

Finally, Congress should enact a wide array of policies which address the economic and societal forces which make the lives of sex workers more dangerous.¹⁹⁰ By ensuring that adequate housing and financial support is available to vulnerable populations, Congress can ensure that sex workers are not compelled to take risks in order to avoid homelessness and starvation.¹⁹¹ By abolishing sex offender registries, Congress can remove many of the barriers which deprive sex workers and other Americans of benefits like proper housing, employment, and social services.¹⁹² By reforming police practices and the criminal justice

¹⁸⁶ See also OPEN SOCIETIES FOUNDATION, 10 REASONS TO DECRIMINALIZE SEX WORK 1–7 (2015), https://www.opensocietyfoundations.org/uploads/cc072baf-14b2-48f8-8c5f-30d7e9a6ec14/10-reasons-decriminalize-sex-work-20150410_0.pdf.

¹⁸⁷ Dawthorne, *supra* note 79, at 195–96 (recounting the experiences of two male sex workers who had been raped by clients, including one who was raped by a female client).

¹⁸⁸ Redwood, *supra* note 111, at 174–75 (discussing rape crisis centers that are not meant to address the needs of sex workers, let alone male sex workers).

¹⁸⁹ See Koken, Bimbi, & Parsons, *supra* note 109, at 188–90; Navin Kumar, John Scott, and Victor Minichiello, *Masculinity and the Occupational Experience of Male Independent Escorts Who Seek Male Clients*, 6 SOC. SCI. 1, 2 (2017). See also Morris, *supra* note 114 (quoting male sex workers who feel that they are not exploited, but rather that they are the ones “exploiting” clients).

¹⁹⁰ See Chamberlain, *supra* note 6, at 2177 (“[U]nilateral lawmaking that focuses on the sexual transaction as a de facto evil, rather than identifying coercive circumstances as the event that creates a victim, fundamentally misunderstands both the unique horror of trafficking and the legitimate agency inherent in sex work.”). See also Platt, Grenfell, Meiksin, Elmes, Sherman, Sanders, Mwangi, & Crago, *supra* note 180, at 45–46.

¹⁹¹ SMITH & MAC, *supra* note 16, at 127–29; Chamberlain, *supra* note 6, at 2210–11.

¹⁹² SMITH & MAC, *supra* note 16, at 122–23; MEINERS, *supra* note 65, at 169–81. See also Susan Dewey & Tonia P. St. Germain, *Sex Workers/Sex Offenders: Exclusionary Criminal Justice Practices in New Orleans*, 10 FEMINIST CRIMINOLOGY 211, 228–29 (2015).

system, Congress can work towards preventing police violence and the disproportionate impact of the American penal state on racial and gender minorities.¹⁹³ By passing comprehensive immigration reform, Congress can remove many of the barriers which force migrant sex workers into dangerous or deadly working situations just to make ends meet.¹⁹⁴

C. *Limitations and Opportunity for Future Study*

Finally, I wish to conclude by pointing out several opportunities for future study regarding the impact of FOSTA on sex worker populations. In particular, my study was limited by the fact that I only recruited sex workers from escorting websites, thereby excluding harder-to-contact male sex workers who recruit clients offline. As a result, the sample population of my survey was likely skewed towards more wealthy and privileged male escorts. This is especially true given the fact that the start-up costs of becoming an escort are fairly high: not only does a person have to pay a significant fee to advertise on sites like Rentmen, but there are also costs associated with gaining access to the Internet and developing the kind of physique that attracts enough clients to make escorting profitable. While I tried to diversify my sample by contacting sex workers on low cost or free platforms like Adam4Adam and Grindr, these sites still assume that a person is able to own a computer or smartphone since free community resources like computers in public libraries often do not allow users to access adult websites. I predict that more disadvantaged male sex workers experienced even greater harm because of FOSTA, especially considering that many free sites (like Craigslist Personals) shut down completely while expensive sites (like Rentmen) remained online.

Similarly, I may have only reached the most active escorts on Rentmen and other escorting websites.¹⁹⁵ Even now, after having finished my interviews, some of my messages on Rentmen remain unread, suggesting that those escorts have not logged into their accounts in over a month. Moreover, the lack of racial diversity in my sample meant that my study was not fully representative of all male escorts in the United States, and future studies of male sex workers would be benefited by recruiting as many non-white participants as possible.¹⁹⁶

¹⁹³ Platt, Grenfell, Meiksin, Elmes, Sherman, Sanders, Mwangi, & Crago, *supra* note 180, at 42, 45 ("[L]aw reform needs to be accompanied by policies and political commitment to reducing structural inequalities, stigma, and exclusion—including introducing anti-discrimination and hate crime laws that protect sex workers and sexual, gender, racial, and ethnic minorities."). *See also* SMITH & MAC, *supra* note 16, at 120–26.

¹⁹⁴ *See* SMITH & MAC, *supra* note 16, at 62–64, 70–72; Mac, *supra* note 176.

¹⁹⁵ *See* Walby, *supra* note 103, at 655.

¹⁹⁶ *See* Jessica D. Moorman & Kristen Harrison, *Gender, Race, and Risk: Intersectional Risk Management in the Sale of Sex Online*, 53 J. SEX RES. 816–

Notably, the men who chose to participate in my survey were relatively more privileged than many other sex workers.¹⁹⁷ Many of them chose to enter the profession on their own, using their education and benefitting from all of the societal opportunities that are afforded to (predominately white) muscular men in the United States.¹⁹⁸ This of course does not mean that their voices or experiences should not be discounted as unrepresentative; rather, it is worth noting that even some of the most privileged sex workers also experienced significant harm because of FOSTA-related censorship.¹⁹⁹

Finally, gender is not binary, and many non-binary and genderqueer sex workers live and work in the United States.²⁰⁰ Little is known about their experiences, especially regarding FOSTA and criminalization, so greater research into their lives is needed to enable lawmakers and advocates to make better policy decisions regarding all sex workers.²⁰¹

17 (2016) (explaining how sex workers of color are “unequally burdened by structural disparities and institutional racism” which “expos[e] them to more opportunities to experience risk.”).

¹⁹⁷ See also Dawthorne, *supra* note 79, at 40–44 (discussing the methodological challenges inherent in the fact that “it takes a considerable amount of privilege to be able to self-identify as someone who has sold sex”).

¹⁹⁸ See Koken, Bimbi, & Parsons, *supra* note 109, at 197–98 (explaining how certain male sex workers are able to take advantage of societal privileges like education and race to mitigate stigma and avoid harm).

¹⁹⁹ See also SMITH & MAC, *supra* note 16, at 33; Mac, *supra* note 176.

²⁰⁰ Jones, *supra* note 147, at 565.

²⁰¹ For more context about transgender, gender non-conforming, and non-binary sex workers, see generally Judith Van Schuylenbergh, Joz Motmans, & Gily Goene, *Transgender and Non-Binary Persons and Sexual Risk: A Critical Review of 10 Years of Research from a Feminist Intersectional Perspective*, 38 CRITICAL SOC. POL’Y 121 (2018); Jane Way & Allison Tierney, *What It’s Like to Be a Gender-Fluid Sex Worker*, VICE (Apr. 13, 2017, 2:45 PM), https://www.vice.com/en_us/article/mgyax8/what-its-like-to-be-a-genderfluid-sex-worker.
