

**FOSTA: A Transnational Disaster Especially for Marginalized Sex Workers**

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**Abstract**

The Fight Online Sex Trafficking Act (FOSTA) has caused immeasurable economic harm and compromises workers' safety and harm reduction practices. The law has had the most harmful effects on the most marginal sex workers—people of color, transgender and non-binary people, people with disabilities, and working-class sex workers. Further, while FOSTA is a U.S. law its harms reverberate worldwide. Empirical data already demonstrates the damages of FOSTA to sex workers. With draft bills proposing to study the law (S.3165 - SAFE SEX Workers Study Act), and pending legal challenges, scholars continuing to gather data can help demonstrate to the U.S. Congress that reliable evidence unequivocally shows that they should repeal FOSTA. There is a need for intersectional analysis that explores the uneven impact of FOSTA, especially its effects on transgender and non-binary sex workers, who, alongside Black, Indigenous, and Latinx, and disabled sex workers, are often at the highest levels of risk. In this article, drawing from 34 in-depth interviews with transmasculine and non-binary sex workers, expanding existing studies documenting the harms of FOSTA on sex workers, I provide empirical evidence showing how the law has adverse effects on the most marginal and that such results are not limited to the U.S.

**Keywords**

FOSTA; sex work; transgender; non-binary; harm reduction

**Introduction**

“My number one concern is the cops. And I don't know, I feel a little extra vulnerable too, being trans and disabled,” said Blake.

When I interviewed transgender and non-binary escorts about their workplace experiences, I asked respondents if they experienced issues or otherwise had negative experiences working in the sex industry. Like Blake, not one of my respondents answered that they were primarily

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concerned about violence from clients. Instead, the police, governmental agencies, and U.S. anti-trafficking laws such as the Fight Online Sex Trafficking Act (FOSTA) compromising their wages and safety concerned them. Their comments resonated with existing research findings. The violence sex workers face results from failed policies that encourage, not prevent, violence (for an extensive review of the literature see, Deering et al. 2014). In this article, I focus on FOSTA, as discussions of its harms was common across my interview data. Drawing from 34 in-depth interviews with transmasculine and non-binary sex workers, I examine how FOSTA has had deleterious transnational effects despite being a U.S. law. Applying an intersectional framework shows that the law has had the most damaging effects on socially marginalized workers like Blake, who is both transgender and disabled.

On April 11, 2018, the Fight Online Sex Trafficking Act (FOSTA) was signed into U.S. law. The final legislation combined elements from the original House of Representatives FOSTA Bill and the Senate's similar Bill called Stop Enabling Sex Traffickers Act (SESTA). The legislation was ostensibly an effort to take down websites that promote sex trafficking. Despite evidence to the contrary, including data from the U.S.'s own Department of Justice, adult website owners have been "reckless," according to the preamble of the Bill. According to the neo-abolitionist activists and religious organizations who seek to end all sexual commerce and who lobbied arduously for the legislation, websites have knowingly allowed labor traffickers to use their platforms, putting profits over victims (Mann 2020). To address this, FOSTA eliminated prior protections of Section 230 of the Communications Decency Act, which provided website owners with immunity from civil or state criminal prosecution lawsuits for illegal content posted on websites by individual users.

While the government and anti-sex work groups framed FOSTA as an anti-trafficking law, Section 3 of FOSTA enacted 18 U.S.C. § 2421A, building into the law a new crime, referred to in the Bill as, "Promotion or facilitation of prostitution and reckless disregard of sex trafficking." This section created sanctions, including fines and imprisonment up to 10 years for any party that "owns, manages, or operates an interactive computer service" and who "promote[s] or facilitate[s] the prostitution of another person." Further, the Bill characterized certain instances, including the "prostitution" of five or more people, as "aggravated violations," leading to fines and up to 25 years in prison. Finally, this section of FOSTA also opened the door for civil litigation by saying that any individual harmed by an aggravated violation can sue for damages.

Critically, 18 U.S.C. § 2421A covers all sex work, not just instances involving third-party coercion. As Kendra Albert (2021: 1-2), a lawyer at the Cyberlaw Clinic at Harvard Law

School, wrote, “FOSTA explicitly criminalizes the promotion/facilitation of prostitution that does not involve trafficking... You can have a criminal charge under FOSTA, including an aggravated criminal charge, without any trafficking taking place at all. Just promotion or facilitation of prostitution (aka consensual sex work).” Thus, as Albert and sex workers have argued, FOSTA did not unintentionally harm sex workers; it was designed to do so - aligning with expressed goals of many of its sponsors of de-platforming all sex workers. FOSTA, its governmental authors, and the anti-sex work lobby that influenced the law have all chosen to ignore all the research and writing by sex workers, social scientists, and legal scholars that sounded the alarm on the disastrous effects of the law in many cases before it was even passed (Grant 2018).

Before the passage of FOSTA, sex workers used the Internet in myriad ways as part of their ongoing harm reduction strategies (Jones 2015a). In the absence of much-needed socio-legal and social policy reform in the U.S., such as the decriminalization of prostitution and robust anti-poverty programs, sex workers develop harm reduction strategies to aid their safety. Harm reduction aims to minimize risk and improve safety instead of prevention (Rekart 2005; Cusick 2006; Ditmore 2013; Bakko 2019). The harms associated with sex work, such as violence, are not inherent to sexual labor but are born out of failed policies and broken social institutions that harm not help sex workers (Rekart 2005; Deering et al. 2014; Mac and Smith 2020; Dasgupta and Sinha 2021). Thus, full-service sex workers use the Internet to “screen” or vet clients before meeting and create online “bad date” sites where they provide and share reviews of clients. Once FOSTA passed, websites such as Craigslist, where full-service providers advertised for free and other online spaces for mutual aid like the bad date sites, were taken down out of pre-emptive fear of prosecution and civil litigation. The Internet created vast opportunities for harm reduction, which U.S. governmental stakeholders ignored.

Despite the value of the Internet for harm reduction outlined above, the passage of FOSTA/SESTA in the U.S. has adversely affected the benefits of online mediated sex work (McCombs 2018; Suprihmbé 2018, Jackson and Heineman 2018; Grant 2018; Petillo 2019; Chamberlian 2019; Peterson, Robinson, and Shih 2019; Peepshow Media 2019; 2021; Morgan 2020; Mann 2020; Blunt and Wolf 2020; Mia 2020; Eichert 2020; Musto et al. 2021; Albert 2021). Supporting existing findings, I show that FOSTA has had the most harmful effects on the most marginal sex workers—people of color, transgender and non-binary people, people with disabilities, and working-class sex workers (Suprihmbé 2018; Petillo 2019; Musto et al. 2021). Further, as my data suggests, while FOSTA is a U.S. law, its harms reverberate worldwide. The law has caused immeasurable economic precarity and

compromises workers' safety and harm reduction practices. FOSTA is a disaster for sex workers transnationally, especially for already marginalized ones.

In what follows, first, I provide background on existing research documenting FOSTA's harms. Then, I overview the methodologies used in this study. Using the data from my research on the labor experiences of transmasculine and non-binary escorts, I explore how FOSTA affected the wages and compromised the safety of research participants transnationally. Finally, building on existing evidence and my study's data, I make a case for the urgency of FOSTA's repeal and discuss current attempts to do so.

### **Background**

Research has already documented the devastating effects of FOSTA on sex workers, and there is no empirical evidence to suggest it has done anything to stop labor trafficking or help trafficking survivors (McCombs 2018; Suprihmbé 2018; Jackson and Heineman 2018; Grant 2018; Petillo 2019; Chamberlian 2019; Peterson, Robinson, and Shih 2019; Peepshow Media 2019; 2021; Morgan 2020; Mann 2020; Blunt and Wolf 2020; Mia 2020; Eichert, 20020; Musto et al. 2021; Albert 2021). As legal scholar Lura Chamberlain (2019: 2174-5) noted:

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. These egregious acts of violence and economic devastation are directly attributable to FOSTA's enactment. Meanwhile, law enforcement professionals have complained that their investigations into sex trafficking cases have been "blinded"—they no longer have advertisements to subpoena, digital records to produce for prosecutors, and leads that can bring them to live crime scenes full of evidence, like hotel rooms. This blindness is not for lack of anything to see: one report suggests that online sex trafficking is as prevalent as ever.

All available evidence shows that FOSTA has increased harm to sex workers and has not helped law enforcement identify, investigate, and capture labor traffickers. In fact, as Emily McCombs (2018) wrote bluntly in the Huffington Post, "FOSTA has created a playground for

predators.” As Musto et al. (2021: 8) too noted, “FOSTA/SESTA has done little to mitigate existing harms. Instead, the law has magnified extant vulnerabilities and created new ones.”

FOSTA has limited the benefits of the Internet to harm reduction and has caused financial distress for sex workers. In Blunt and Wolf’s (2020) community-based, sex worker-led survey, they talked directly with sex workers about FOSTA and how the closure of sites such as Backpage affected them. In their racially and gender diverse sample, for 78% of respondents, sex work was their primary source of income, and for 46%, it was their only source of income. Immediately following the passage of FOSTA, 72% of participants reported now facing economic instability. Further, 45% said they could not afford the cost of paid advertising since FOSTA took down free options. While some could afford such services, 80% of the sex workers still noted they now had much difficulty advertising online.

No policy or law enforcement activity has ever successfully eliminated the demand for consensual sex for monetary exchange, nor the desire of workers to sell sex. Thus, instead of prevention, policies, and services based on harm reduction focus on minimizing risks and improving safety (Rekart 2006; Cusick 2006; Ditmore 2013; Bakko 2019). In criminalized environments, in particular, legal systems and social service providers fail sex workers (Dewey and St. Germain 2016; Mac and Smith 2020; Jackson 2020). Under these conditions, sex workers craft strategies and work together to minimize harm, maximize their safety, and support one another (Dewey and St. Germain 2016; Jackson 2020; Blunt and Wolf 2020). After FOSTA, sex workers immediately reported that their ability to screen and vet clients was limited because “bad-date-sites,” platforms used to share reviews of clients, were shut down (Blunt and Wolf 2020). In a post-FOSTA world, workers are careful about how much detail they use in communication with clients online, which affects their ability to rigorously screen customers. Finally, sex workers create safe spaces online for political organizing and for community members to provide instrumental and emotional support, which aids in their safety and improves mental health. Thus, when many of these spaces shut down or workers feel unsafe communicating in online spaces, it further reduces the benefits of harm reduction. Further, the deleterious effects of FOSTA on sex workers have not been evenly felt. As Suprihmbé (2018) wrote:

Websites and companies shutting sex workers out is nothing new but it still sucks and it affects the most marginalized of us the worst — Black trans women, women of color, LGBTQ folks, and those who are dealing with homelessness and addiction due to poverty. These are groups that are

already highly vulnerable and already experience high rates of violence compared to white sex workers, particularly cisgender ones.

Thus, in Valentina Mia's (2020: 238-9) words, FOSTA kicks marginalized people when they are already down. Mia, former sex worker, model, entrepreneur, and activist, noted:

Legislation like SESTA/FOSTA, which criminalizes the advertisement of sexual services online in an effort to combat human trafficking, is an attempt to further subjugate me by taking away a significant source of income for me. The definition of cruelty is hitting someone when they are already down, and this legislation does just that. We are not victims, but policies like this victimize us.

**Mia**

Research also supports what sex workers were saying before FOSTA passed regarding its impact on marginalized people. Musto et al. (2021: 9-10) noted:

Interviews and ethnographic observations with study participants revealed that because of FOSTA/SESTA, numerous transgender African American U.S. citizens and trans Latina migrant women participants had to resort to selling sex in the street or move to other venues, exacerbating fears about their safety, contributing to socioeconomic instability, and leading to a diminished sense of autonomy...What interviews with study participants, most of whom are transgender, further reveal are the distinctive ways that trans migrants and sex workers of color experience criminalization from anti-trafficking policies like FOSTA/SESTA alongside heightened economic and labor precarity resulting from anti-trafficking efforts centered on technology.

In this article, I expand on existing studies of the harms of FOSTA to provide empirical documentation showing how the law has adverse effects on the most marginal and that such results are not limited to the U.S. Evidence already shows that FOSTA's consequences are far-reaching and workers in countries like Australia are affected, as are workers in New Zealand (Smiley, Stephen, and Lavoipierre 2018; Tichenor 2020). While there is much empirical data already demonstrating the harms of FOSTA to sex workers, there is still a need for intersectional data analysis that explores the uneven impact of FOSTA, especially its impact on transgender and non-binary sex workers, who, alongside Black, Indigenous, and Latinx, and disabled sex workers, are often at the highest levels of risk. Given that nefarious

third parties often target economically and socially vulnerable people, these findings should interest policymakers who argued that the law was designed to combat labor trafficking. With draft bills proposing studying the law (S.3165 - SAFE SEX Workers Study Act), scholars must gather as much data as possible, demonstrating to the U.S. Congress that the evidence shows that they should repeal FOSTA.

### ***Theoretical Framing***

Painting all sex workers with a broad brush has significant limitations. Therefore, in examining FOSTA's harms, I argue an intersectional analysis is critical to understanding the uneven effects of the law. Further, for the government and agencies purporting to help sex workers, especially those experiencing coercion, it is vital to understand how overlapping systems of stratification and existing power arrangements affect sex workers' experiences of sexual labor differently. Thus, in this article, I argue that it is ideal for future research and actions related to FOSTA to employ an intersectional frame that captures the nuance and complexity of sex workers' labor experiences.

Black feminists have been thinking, practicing, and advocating for intersectional understandings of oppression and injustice for centuries (Nash 2019). Indebted to a long line of brilliant Black feminist thinkers, intersectionality is an analytical frame that examines power regimes and systems of domination. Scholars and activists often use intersectionality to analyze how social identities overlap and simultaneously work to shape our social experiences. However, intersectionality is not limited to understanding or examining individual identity. Intersectionality focuses on social location or positionality within various overlapping systems of oppression or stratification. One's social location across systems such as white supremacy, capitalism, cisgenderism, patriarchy, heterosexism, and ableism determine social positions and thus access to resources, institutions, and treatment by others in society.

In 1989, legal and critical race scholar Kimberle Crenshaw criticized legal conceptualizations of discrimination because they reduced subordination to one single axis, such as race-based or gender-based discrimination only. In her criticism of legal policies and discrimination lawsuits (Crenshaw 1989: 140), she argued:

This focus on the most privileged group members marginalizes those who are multiply burdened and obscures claims that cannot be understood as resulting from discrete sources of discrimination ... Black women are sometimes excluded from feminist theory and anti-racist policy discourse

because both are predicated on a discrete set of experiences that often does not accurately reflect the intersection of race and gender.

Later, Crenshaw (1991) used examples of violence against women, specifically immigrant women of color, to further her astute analysis of the deficiencies within both feminist and anti-racist discourses in addressing the continued marginalization of Black women.

Sociologist Patricia Hill Collins (1991), too, argued that domination is aptly understood as a matrix. Black women experience oppression along interlocking dimensions. Social factors such as race, class, and gender overlap and shape women's experiences differently in various contexts such as economic, political, and ideological spheres of social life. Unlike the core tenets of liberal or gynocentric feminisms, women do not inherently have a core or shared experience of oppression because other aspects of identity (e.g., race) also affect experiences of systemic gender discrimination and oppression under patriarchy. Black feminists have a strong track record of highlighting the importance of race, gender, class, and sexuality in conditioning individuals' experiences (Davis 1981; hooks 1981; Lorde 1984; Crenshaw 1991; Hull et al. 1993; Guy-Sheftall 1995; Nash 2019). Thus, in this study, I take my cue from Black feminism and aim to show how an intersectional frame aids in analyzing the effects of laws like FOSTA. Specifically, in applying an intersectional frame to my research, I show that the law has had the most adverse effects on socially marginalized workers.

## **Methods**

This article draws from a more extensive study of the labor experiences of transmasculine and non-binary escorts. I used a hybrid of non-random sampling techniques in the larger research project. I recruited 34 transmasculine and non-binary independent escorts for study participation from Australia, Belgium, Canada, Germany, Norway, Thailand, the United Kingdom, and the United States. While the broader study oversamples escorts from the USA, the findings are still helpful in pinpointing FOSTA-related issues for those outside the USA.

### *Recruitment and Interviews*

I used an Institutional Review Board-approved script recruiting respondents from escort advertising platforms online and social media sites like Twitter via direct messages. I sent messages to 109 full-service providers and had 34 respondents who responded and provided informed consent. Once I acquired their consent, often exchanging emails and answering

asynchronous questions about my project, I conducted all interviews using a semi-structured interview schedule. I asked respondents a wide range of questions regarding their workplace experiences, clients, motivations for doing sex work, what they saw as benefits of this labor, and issues they have faced. When we discussed problems they face, many discussed issues related to stigma and criminalization. In these conversations, sex workers, most often unprompted by me, talked about FOSTA and how the law affected them. I recorded all interviews, which ranged from thirty-one minutes to one hour and forty-eight minutes. Once I reached data saturation or saw that data was only replicating existing data and did not observe new themes emerging, I closed the study (Small 2009; Compton 2018). Finally, I ethically compensated all participants for their time and expertise with a \$100 incentive. To protect their anonymity, I used online payment processors linked to their work accounts, and in one case, I sent a \$100 gift card electronically at their request.

### *Interview Sample*

Transmasculine (N=17) and non-binary people (N=17) made up equal parts of the sample. While these variables are collapsed, among non-binary participants, two also identified as agender, one bigender, and another gender fluid. Among transmasculine people, seven identified as men, eight trans men, one transsexual man, and one trans and gender fluid. Thirty-five percent of the sample (n=12) are Black, Indigenous, and other people of color, and 65% (n=22) are white. Of the Black, Indigenous, and other people of color, one participant identified as Black, one Chicano, two Hispanic, one South Asian, one Asian, and six multiracial. Of the multiracial respondents, one person is Black, white, and Indigenous; two white and Native American (United States of America); one white and South Asian; one white and Indigenous (Yorta analysing, Australia); and another Indigenous (Algonquin Métis) and white (Canada). Respondents' ages ranged from 18-42 and averaged 27. Finally, regarding sexuality, one person identified as asexual, one homoflexible, seven bisexual, eleven pansexual, three queer, one other, and ten gay. In the proceeding sections, I use data from these interviews with transmasculine and non-binary escorts to discuss the transnational harms of FOSTA, emphasizing its effects on marginalized sex workers.

**Table 1: Participant Demographic Information**

Name	Gender	Nationality	Race	Sexual Identity	Age	Current Market
Alex	Trans Male	Chicano	Chicano	Queer *But I identify more as fag	38	USA (Northeast)
Avery	Non-Binary	American	White	Pansexual	29	USA (Northwest)
Bailey	Trans and Gender Fluid	German, American	White	Pansexual & Polyamorous	22	USA (Midwest)
Blake	Non-Binary	Ashkenazi	White	Bisexual	27	USA (Northwest)
Charlie	Male	British	White	Pansexual	33	United Kingdom
Coen	Non-Binary	Indigenous Australian (Yorta Yorta Peoples)	White	Pansexual	22	Australia
Dany	Trans Man	Belgian	White	Bisexual	24	Belgium
David	Non-binary	American	White	Pansexual	42	USA (Southeast)
Devon	Agender	African- American	Black	Queer	20	USA (Northeast)
Dylan	Non-Binary	German, American, Danish, Irish	White	Queer	33	USA (Southwest)
Francisco	Trans Male	Mexican	Hispanic *But I look white	Gay	18	USA (Southwest)
Henrik	Male	Norwegian	White	Gay	27	Norway
Ismat	Non-Binary	Pakistani	South- Asian	Queer	21	USA (Southwest)
Jack	Male	American	White	Homoflexible	28	USA (Southeast)
Jalen	Non-Binary	American	White	Queer	29	USA (Southwest)
James	Non-Binary *Bi- gender	American	White	Pansexual	34	USA (Midwest)
London	Non-Binary	American	White	Pansexual	26	USA (Southwest)

Luke	Trans man	Indigenous Algonquin	White *mixed race	Queer	30	Canada
Marlow	Non-Binary	American	White	Queer	27	Canada
Mason	Transmasculine	American	White	Queer	22	USA (Southeast)
Merritt	Non-Binary	Australian New Zealander	White	Bisexual	26	Australia
Micah	Non-Binary	Canadian	Black, White, Indigenous	Pansexual	22	Canada
Minh	Non-Binary	Vietnamese	Asian	Pansexual	28	USA (Southwest)
Noah	Transsexual man	South Asian- American	White and South Asian	Gay	25	USA (Northeast)
Oliver	Male or trans male	American	White, Native	Pansexual	26	USA (Northwest)
Parker	Trans man	British	White	Bisexual	26	United Kingdom
Reily	Trans man	American	White	Asexual, Pan- romantic	27	USA (Northwest)
Rich	Male	American	White	Bisexual	21	USA (Southwest)
Rick	Male	Italian, Greek, Native American	White and Native American	Bisexual	41	USA (Northeast)
Rio	Non-Binary	Hispanic	Person of color but read as white	Queer, but somewhere between panromantic and asexual	23	USA (Midwest)
River	Trans man	British	White	Bisexual	25	United Kingdom
Roger	Male	English British	White	Sexy *listed as other in tables	31	Thailand
Sascha	Trans	German	White	Queer	39	Germany

Voss	Agender	German	White	Pansexual	24	USA (Northwest)
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\*I report all demographic information using the language my respondents did to describe their identities.

### ***FOSTA Harms***

FOSTA was responsible for shutting down platforms such as Backpage and Craigslist personals. These were accessible and free sites that full-service providers used to advertise and screen clients. Thus, when free ad sites went down, it affected sex workers financially and adversely affected workers' ability to screen clients, which aids in harm reduction.

#### *Economic Harms*

Due to the passage of FOSTA/SESTA, low-income transmasculine and non-binary escorts reported that after free advertising sites pre-emptively shut down, what remained were high-cost subscription-based sites that were cost-prohibitive. As Jalen, a 29-year-old white non-binary companion from the U.S. remarked, "It's a lot harder. I mean, when I first started doing sex work, it was just get on Craigslist, you know, like there it is—there's people. So, when it [FOSTA] happened, I was like, Ok, I have to pay for this [advertising] now?" The advertising platforms that have remained after FOSTA use subscription-based models that are expensive and often gender exclusionary.

Using one of the largest escort advertising sites for women as an example, the location and duration of the ad determine the price plans. For instance, in New York City, at the time of my data collection in 2019, a basic ad was \$240 a month. A VIP subscription increases visibility by paying for a higher position on the webpage, and the price tag for the V.I.P. subscription is \$445 for the month. Given that escorts, especially "niche" service providers, often post ads on multiple advertising sites, the costs of advertising post-FOSTA are causing financial harm to sex workers. Minh is a non-binary 28-year-old Vietnamese-American sex worker laboring in the U.S. They have worked as a full-service provider off and on for ten years. Minh discussed what happened after FOSTA, and they lost access to the free Craigslist personals section:

I didn't want to pay too much for marketing, which is what held me back from listing on escort sites in the early days, too. I like opened up [website] a long time ago, and I was like \$120! I do not have that right now. I also have like, I

don't have professional photos. I have, and I use, you know, self-taken photos. I'm just like, all right, it's not worth paying that much for an ad, you know.

**Minh**

As Minh noted, not only are the monthly costs of the sites prohibitive, but to be competitive on them, you need professional photographs, which can also cost a lot. FOSTA led to a lack of free advertising sites with high traffic, adversely affecting working-class and poor sex workers who cannot access paid sites.

### *FOSTA's Economic Harms Through an Intersectional Lens*

FOSTA/SESTA has hit the most marginal the hardest. The adverse economic effects described above are especially salient for transgender, non-binary, and people of color who, as my research data revealed, often relied heavily on free ad sites. Many ad sites use a binary gender system and have no spaces for transgender people, and when they do, platforms have space for transfeminine people only (Jones 2020b). People of color, especially Black people, often find that racism and anti-Blackness put them at a disadvantage, often facing algorithmic discrimination on paid platforms - literally positioned on the bottom of the webpage (Jones 2020a, 2015b). Free sites like Craigslist and Backpage did not sort or organize pages in exclusionary ways. Thus, the disappearance of free platforms had a significantly adverse effect on poor, working-class, transgender, and marginalized sex workers of color.

London, a non-binary white 26-year-old escort from the United States, further highlighted how the economic harms of FOSTA are worsened for socially marginalized sex workers:

FOSTA-SESTA made things more difficult for me as a sex worker, a big reason because I'm trans... I also think that just where do transmasculine sex workers advertise has been a huge thing. It's like when things like FOSTA-SESTA get shut down, whenever anything in the market's regulated like that, in a way that harms sex workers' opportunities to advertise. For trans sex workers, when it's already hard enough to find and stake out areas that clients know to find you; it just makes things even more difficult when you have so much of a smaller client base and a lot more at stake as far as safety goes. Transfeminine folks, hell of a lot more as far as safety goes, but yeah...if it's not put in a framework that is absolutely intersectional, that's

recognizing the reasons why we have sex work criminalized, the reasons why FOSTA-SESTA happened, it's just like it impacts those that are most marginalized and multiply marginalized, and it's meant to do that.

**London**

Especially for trans men and non-binary sex workers, finding high-traffic ad sites that will even host them is difficult because many are gender exclusionary. Almost all platforms have no options for non-binary people. Thus, taking away Craigslist and Backpage had critical implications for these groups of trans people. Sex workers, like London, argue that in cissexist, transmisogynistic, and racist cultures and political environments that criminalize consensual sex work, these harmful effects are by design, not by accident.

London also discussed how while they initially retained regular clients they'd gotten from Craigslist and Backpage, finding new clients became challenging. Eventually, these regulars dwindled, leaving London in a precarious position:

I had worked on primarily Craigslist and Backpage before FOSTA-SESTA, and then kept a handful of regulars since then... I had three regulars that I got from Backpage and Craigslist, only one of which I still see. Recently, that just tapered off this past year. Yeah, it really affected the way that I see clients. I wasn't able to pick up more clients. Which actually got in the way in a huge way of starting on H.R.T. and wanting to switch gears. With escorting, from someone presenting as someone who's a cis woman to someone who is more fluid in gender or working as someone who's transmasculine. It really hindered that because it's like I felt really stuck with these clients...it really hindered things.

**London**

Critically, for London, not only did the consequences of FOSTA affect their ability to find new clients, but the financial losses they suffered affected their ability to begin taking testosterone. London described feeling trapped, working as a cis woman. If they could not find new clients, they were stuck servicing older clients who only knew them as a cis woman. Therefore, an intersectional analysis of FOSTA's harms shows additional and unique challenges for trans and non-binary sex workers.

*FOSTA Affects Sex Worker Safety*

FOSTA has harmed sex workers' economic livelihoods and their safety. Jalen told me, "I feel like they keep making it harder for us to screen clients or find them in the first place, but then screen them once we do find them." Like Jalen, Alex, a 38-year-old Chicano trans man from the U.S., stated how screening is more challenging when you are afraid to say much in advance in writing online. For Alex, he became concerned about advertising at all online for his safety. He said, "I have guys in other cities, like I have a guy in [major US city] that I go see, and...I found him before that FOSTA bullshit. So, when that happened, I emailed a bunch of my clients like, hi, I'm not posting ads anymore. So, hi, remember me. Pay me some money." Initially, Alex was deeply concerned about FOSTA and increased governmental surveillance and contacted regulars and said he was removing his online presence. Alex did get back online out of economic necessity and explained, "especially now, I keep the communication vaguer. I don't talk about what's going to go down ever, and always has to start with you're just paying me for my time and what we decide to do at that time is up to us."

Alex was not alone in his concerns about safety post-FOSTA. Jack is a 28-year-old white man from the U.S. He said:

It's definitely making us less safe. One hundred percent. Yeah, that's the biggest thing. Yes, there's economic sides to it that I would be making more money, and clients would have more of an industry that's accessible to them. But I think the biggest thing is just safety. You know I cannot talk to a client beforehand about what they're actually into or what they actually want to do with me.

**Alex**

When sex workers cannot communicate extensively and openly with clients beforehand, it compromises their safety. Further, while I did not interview clients, according to the sex workers I interviewed, clients, too, fear for their safety, especially from law enforcement. FOSTA placed website owners under more scrutiny, and in turn, escorts explained that platforms now surveil and monitor workers' profiles and internal messaging more closely. While the law focuses on website owners, respondents suggested that the law ushered in increased surveillance that has now come to govern and shape worker-client interactions.

Clients are already concerned about law enforcement activity and arrest in criminalized environments, and more research is needed to understand how FOSTA has affected client

behavior. Mason, a 22-year-old white transmasculine sex worker, and I discussed how FOSTA affected his interactions with clients. Mason explained:

I will say I think right immediately after SESTA and FOSTA came out, I definitely did not work as much because I think that it scared everyone on both ends so bad that all my clients or, well not honestly my regulars or anything, but like all the new clients I was having reach out to me, were so much more cagey about screening from their end that I don't even think that they were necessarily worried about like their privacy as much as they were just like, I really have a genuine concern that you are law enforcement that...I just think it scared so many people so bad.

**Mason**

If clients are skittish, this matters for sex workers' safety as well. If clients are afraid to undergo screening, especially procedures that require personal information such as a home address, phone numbers, and workplace information, clients may refuse to undergo rigorous screening. As I show in another study from the larger research project, for marginalized people getting clients to undergo thorough screening is already challenging (Jones 2021a). As I reported there, it was common for transmasculine and non-binary workers, especially those who were also people of color or disabled, to say they often loosen their screening and, in some cases, forgo screening and advance payment just to ensure they get hired as a so-called "niche" worker. If economically precarious workers are also forced to loosen their screening processes to accommodate nervous clients, it compromises worker safety. Further, if scared clients consume less to feel safer, it will adversely affect workers' wages.

### ***Transnational Impact of FOSTA***

FOSTA's detrimental effects are far-reaching, and sex workers outside the U.S. report feeling its impact in places such as Australia (Smiley, Stephen, and Lavoipierre 2018) and even in countries like New Zealand, where sex work is decriminalized (Tichenor 2020). My discussions with Luke from Canada and Coen from Australia, both Indigenous people, provided insights into the transnational impact of FOSTA, a subject that requires further empirical documentation. Luke, a 30-year-old Indigenous (Algonquin) and white trans man who escorts in Canada, said, "I feel like it's there has been like kind of a big impact outside of the U.S., even just in terms of sites shutting down like Backpage or in a place like if they're anything like an American company like Craigslist that got rid of their personal sections here." According to Luke and the sex workers I spoke with, it is critical to remember that a website owner may

reside in the U.S., but people use their sites internationally. Therefore, U.S. laws regulating the Internet affect jurisdictions outside of the U.S.

Coen, a 22-year-old non-binary Indigenous Australian (Yorta Yorta Peoples) and white escort from Australia, unpacked the transnational effects of U.S. anti-trafficking policy on countries like Australia. Coen and I talked about how their wages dropped after they began to transition and stopped working as a cis woman. Coen explained how things got even worse after the U.S. passed FOSTA:

So I was charging three hundred. And then, as I started to work as a trans guy, my clients dropped massively because that's way less demand. So I went down to charging two hundred just so I could get bookings, especially with like disability stuff trying to afford all the costs related to being disabled. So easy preparation meals, air conditioning, cause I'm quite heat sensitive, transport. Because I wouldn't be able to walk to the bus. So, I need an uber to University and all those sorts of things, little things people don't realize. So I had to drop to be out to get any work...But it's been pretty bad all year here, actually. Not just for me. It's been pretty bad recently. Since FOSTA- SESTA. It's really impacted international sex work. So even where it's legal, it's had pretty strong impacts on us. Yeah. And yeah, I'm thinking about reducing my rights back to 200 again cause I've had one booking in the past fortnight, and he short-changed me.

**Coen**

I asked Coen to tell me more about how FOSTA has impacted international sex work. Like Luke, Coen began by explaining the global impact of a U.S. advertising platform shutting down:

So, I feel the site that we were advertising on was U.S. based; so, they've been shut down. Backpage was actually a pretty massive income for me as a transmasculine worker. It's kind of similar to Locanto; so you get one of the cheaper guys, the cheaper, more sleazy guys, and those were my main clients. [City in Australia] is known for having really cheap clients; so that's where I am—that's what you do. You work with what you got. So, it was a noticeable dip as soon as it went into place, and as soon as sites got taken down straight away, the clients dropped. International clients, too. Anyone from the U.S.

**Coen**

Coen and other transmasculine and non-binary escorts often already have difficulty finding clients (Jones 2002b). Free sites cater to working-class clients, who were Coen's bread and butter, and when such sites closed due to FOSTA, it caused financial harm to Coen. Further, Coen noted that they lost access to international clients as well. As Mason noted earlier, if clients are increasingly fearful and cannot use free sites, which require less anonymity, it affects international clients, who use free sites to arrange dates while traveling for work. Coen is trans, Indigenous, and disabled and underscored the critical point that FOSTA is a transnational disaster, especially for marginalized workers.

**Discussion**

Despite the empirical reality that laws aimed at prevention and ending demand do not work, activists and lobbyists in the religious and abolitionist feminist movements relentlessly try to do so (Jones 2021c). There is a long and well-documented history of religious and abolitionist feminist groups influencing policies related to sexual commerce, and FOSTA is no different (Mann 2020). Anti-sex work activists use trafficking as an in road to not help survivors but end all sexual industries. These activists hoped FOSTA would be a death blow to sex workers. As Blunt and Wolf (2020) noted:

There is no evidence that FOSTA-SESTA has curbed trafficking. Instead, our research suggests the opposite: that it has created an environment where marginalised populations are pushed into increased financial insecurity, which, in turn, makes them more vulnerable to labour exploitation and trafficking in the sex industry. Just as sex workers had warned, our research shows that FOSTA-SESTA and the removal of Backpage has increased sex workers' exposure to violence while doing nothing to combat trafficking.

As my respondents, too, noted, politicians often act under the influence of anti-sex work activists who use trafficking as a ruse to end all sexual commerce. Dylan, a white 33-year-old non-binary escort from the U.S. said:

One thing that I think is super important that we haven't talked about at all is the conflation of consensual sex work with trafficking and the rise that is not a coincidental connection between the rise of law enforcement activity and rescue organizations. I think that we have got to look at the sort of right-wing

organizations that are funding police departments and the charitable rescue organizations and often using the shell of Christianity to basically uphold toxic patriarchal capitalism.

### Dylan

Dylan and sex workers are aware of rescue organizations' influence over U.S. laws regarding sexual commerce. Rescue organizations are usually faith-based groups or anti-sex work feminist organizations that want to save or rescue all people from sex work, including the vast majority of workers who perform erotic labor voluntarily (Agustín 2007). If U.S. lawmakers listened to sex workers and science, not what Laura Agustín calls the rescue industry, they'd acknowledge that FOSTA was a mistake (ibid).

Currently, the U.S. is considering whether FOSTA was miscalculated. On January 8, 2020, Senator Elizabeth Warren sponsored and introduced Bill S.3165, SESTA/FOSTA Examination of Secondary Effects for Sex Workers Study Act or the SAFE SEX Workers Study Act. Senator Ron Wyden (one of only two senators to vote against FOSTA) and Senator Bernard Sanders also sponsored the Bill. The Bill would charge the Department of Health and Human Services (DHHS) with studying the harmful effects of FOSTA on sex workers already documented in existing research outlined in this article. Further, the Bill would require that the DHHS bring in sex worker advocacy and community-based non-profits, who are experts to assist in studying FOSTA harms.

At the time of this writing, the S.3165 study Bill is still pending in the Committee on Health, Education, Labor, and Pensions. In early 2021, Representative Ro Khanna announced he planned to reintroduce the Bill, telling media, "There's no politician who gains political currency for standing up for the voices of sex workers...They're not a voting bloc; they're not a donor bloc, lobbyists don't represent them on Capitol Hill. And they were just totally shut out. They were simply invisible" (Turner 2021). Aside from the few politicians introducing the study Bill, Khanna has his finger on Washington's pulse, and there is no evidence that on this issue, most U.S. politicians will follow the empirical evidence and support the repeal of FOSTA in the interest of justice.

While the study Bill collects dust, sex workers and their advocates still fight and advocate for FOSTA's repeal. Shortly after FOSTA was signed into law, the Woodhull Freedom Foundation, Human Rights Watch, Eric Koszyk, Alex Andrews, and the Internet Archive in June 2018 filed a complaint for declaratory and injunctive relief against the United States and then-Attorney General, Jefferson Sessions. The plaintiffs are represented by

Electronic Frontier Foundation, Davis, Wright Tremaine L.L.P., Walters Law Group, and Daphne Keller. In the lawsuit, *Woodhull Freedom Foundation v. the United States*, 334 F. Supp. 3d 185 (D.D.C. 2018), the plaintiffs ask the courts to hear evidence and evaluate the constitutionality of FOSTA. The motion for an injunction would have prevented the enforcement of the law while in litigation. At the July 2018 hearing, the complaint and injunction were initially dismissed on the grounds that the plaintiffs lacked standing to challenge FOSTA's constitutionality. Given this outcome, in July 2019, the plaintiffs filed a complaint with the D.C. Circuit Court, filing many amicus briefs supporting the plaintiffs. On January 24, 2020, the D.C. Circuit Court of Appeals sided in favor of the plaintiffs and ordered that the case challenging FOSTA be sent back to the district court for a ruling on the law's merits. At this time, more than a year and a half later, nothing has happened with the constitutional challenge to the statute. The plaintiffs and lawyers are waiting on a decision on fully briefed summary judgment motions, which is not too unusual in D.C. district court, but sex workers continue to face harm while the case is pending. In the meantime, there are also state courts considering how to interpret FOSTA, and it is unclear how such state-level cases will affect the law, although the prospects for sex workers do not look good (Goldman 2021, 2022).

While the outcomes of the study Bill, the Woodhull constitutional case, and state-level cases are pending, sex workers are still reeling from FOSTA's effects. Further, there is no indication that any of these actions will resolve quickly, especially during a global pandemic. In the interim, social scientists and sex worker community-based researchers publish studies like this one that continue to document the harms of FOSTA on sex workers. From existing research, it is already clear that FOSTA does not resolve the issues related to trafficking it was ostensibly designed to mitigate. Closing spaces that a small number of labor traffickers may have used makes catching them more difficult. Most critically, the law harms the vast majority of sex workers who are not forced by a third party and do sex work voluntarily. Thus, as Jackson and Heineman (2018: 75) wrote:

Scholars, activists, and policymakers should rethink the assumption that all sex work is coercive and that all human trafficking is about sexual exploitation. Sex work should be treated as a form of labor (distinct from sex trafficking), complete with safety measures. We argue that repealing FOSTA and other End Demand policies at the state, federal, and international levels will promote the well-being and safety of sex workers.

FOSTA causes transnational harm to workers, especially marginalized ones. If U.S. laws on sexual commerce are data-driven, the evidence and resolve are clear. The U.S. government must repeal FOSTA.

### **Conclusion**

Many U.S. politicians and anti-trafficking, anti-sex work organizations believe that sex work is inherently exploitative, violent, economically coercive, and as a result, often leads people into labor trafficking situations (Albert 2021). Thus, many in these groups believe policies such as FOSTA were born out of a benevolent spirit and genuine concern for people they see as victims. However, the sex worker as a victim in need of rescuing trope is not grounded in the empirical realities of the experiences of the vast majority of sex workers. Instead, the idea that all sex workers need saving and protection is rooted in patriarchy, paternalism, and whorephobia (Agustín 2007; Grant 2014).

Even if one believes FOSTA's goals and implementation was rooted in wanting justice for trafficking survivors, how do we ignore its consequences and effects on all sex workers? Research and the voices of sex workers unequivocally show FOSTA harms and has not decreased labor trafficking or achieved any of its purported aims (McCombs 2018; Suprihmbé 2018, Jackson and Heineman 2018; Grant 2018; Petillo 2019; Chamberlian 2019; Peterson, Robinson, and Shih 2019; Peepshow Media 2019; 2021; Morgan 2020; Mann 2020; Blunt and Wolf 2020; Mia 2020; Eichert 2020; Musto et al. 2021; Albert 2021). My research confirms what others have found; FOSTA has caused immeasurable economic harm and compromises workers' safety and harm reduction practices. FOSTA has ushered in new surveillance practices on platforms that have shifted worker-client interactions, making both parties feel unsafe. This is the exact opposite of what the law's supporters said it aimed to do.

Additionally, the findings in this study expand our knowledge of the transnational effects of FOSTA. Previous research showed that even sex workers in countries such as Australia, where sex work is legal (to varying degrees by state and territory laws) and New Zealand, where sex work is decriminalized (although still criminalized for migrant workers), FOSTA has made it harder for workers to advertise and screen clients online (Smiley and Lavoipierre 2018; Tichenor 2020). Here, I spoke to sex workers from Australia, Belgium, Canada, Germany, Norway, Thailand, the United Kingdom, and the United States, many of whom also noted the harms of FOSTA.

In using an intersectional frame, this study supports existing writing that the law has had the most adverse effects on socially marginalized workers (Suprihmbé 2018; Petillo 2019; Musto et al. 2021). FOSTA exacerbates risks for the industry's most vulnerable, exemplified by the stories of transgender, non-binary, and disabled sex workers in this study. The Internet created vast opportunities for harm reduction, especially for marginalized workers, which U.S. governmental stakeholders continue to ignore outright. The failures and harms of FOSTA are now well documented, and if U.S. lawmakers continue to ignore these harms and realities, it exposes the myth that this law had anything to do with making people safer.

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