



## Statement for the Record by Chamber of Progress

December 1, 2021 Hearing:

### “Holding Big Tech Accountable: Targeted Reforms to Tech’s Legal Immunity”

The Honorable Michael F. Doyle  
Chair, Subcommittee on  
Communications and Technology  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Robert E. Latta  
Ranking Member, Subcommittee on  
Communications and Technology  
House Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Doyle and Ranking Member Latta:

Thank you for your ongoing efforts to foster safer, healthier online communities. Congress has an important role to play in stopping the spread of hate speech, misinformation, violent extremism, and human trafficking online. However, **before attempting to amend Section 230, Congress must investigate the impact of its most recent changes to the law** -- the Stop Enabling Sex Traffickers Act (SESTA) and the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA).

We urge you to consider the **SAFE SEX Workers Study Act**, a bill that would require the Department of Health and Human Services to conduct the first federal study on the health and safety of sex workers, and which would examine the unintended consequences of SESTA/FOSTA (Public Law 115-164).<sup>1</sup>

SESTA/FOSTA was the only change to Section 230 in the last few decades. The amendment to Section 230 was motivated by a desire to allow trafficking victims to recover damages from bad actors who knowingly facilitate sex trafficking. The language of the new exception to Section 230 originated in the Senate where it was crafted to respond to concerns about the dangers of applying a constructive knowledge standard to online providers. Senators and endorsers of the bill touted it as a narrow change and a “high bar.”<sup>2</sup> However, despite the intention of the bills’ authors, **we continue to hear about the negative impact this law has had on working conditions for sex workers.**

Anecdotal evidence suggests that SESTA/FOSTA’s impact has been far broader than intended while doing little to crack down on sex traffickers. Numerous groups that promote safety for sex workers have reported that sex workers are now less safe, because they can no longer use online services

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<sup>1</sup> <https://www.congress.gov/bill/116th-congress/house-bill/5448>

<sup>2</sup> See, e.g. S. Rept. 115-199 - Stop Enabling Sex Traffickers Act Of 2017, p. 2, 4; Senate Hrg. 115-590, S. 1693, The Stop Enabling Sex Traffickers Act Of 2017, Statement of Senator Blumenthal, p. 8, Statement of Senator Portman, p. 5, Testimony of Y. Souras, NCMEC, p. 25.

that allowed them more control and protection.<sup>3</sup> Diverse voices seeking spaces to discuss issues related to sexuality have had access to their communities removed.

Passing the SAFE SEX Workers Study Act is an important first step, but **Congress must also examine how a seemingly narrow change to Section 230 created disastrous results for a platform's ability to moderate dangerous and harmful content.**

Online service providers who take proactive steps to address child sexual abuse imagery and trafficking content are finding that **their efforts are being used against them to support arguments by plaintiffs that they have constructive knowledge of trafficking activity.** This is a broadening of the "narrow" FOSTA exception that allows civil recovery in cases where the requirements of the criminal statute are met. In the meantime, differing opinions by courts who must interpret the FOSTA 230 exception are holding up the ability of victims to recover damages from bad actors.<sup>4</sup> And online service providers risk potential liability when they take action against trafficking content.

Having a comprehensive understanding of Congress's last change to Section 230, including whether its narrow intention has created widespread consequences, will help Congress better understand the impacts that any new legislation focused on amending Section 230 would have. The SAFE SEX Workers Study Act is key to this understanding.

Sincerely,



Adam Kovacevich  
Founder and CEO

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<sup>3</sup> See, e.g., D Blunt and A Wolf, 'Erased: The impact of FOSTA-SESTA and the removal of Backpage on sex workers', *Anti-Trafficking Review*, issue 14, 2020, pp. 117-121, <https://doi.org/10.14197/atr.201220148>; Tripp, Heidi (2019) "All Sex Workers Deserve Protection: How FOSTA/SESTA Overlooks Consensual Sex Workers in an Attempt to Protect Sex Trafficking Victims," *Penn State Law Review*: Vol. 124 : Iss. 1 , Article 6. Available at: <https://elibrary.law.psu.edu/pslr/vol124/iss1/6>

<sup>4</sup> Compare *Doe v. Twitter, Inc.*, 2021 WL 3675207 (N.D. Cal. August 19, 2021) with *J.B. v. G6 Hospitality, LLC*, 2021 WL 4079207 (N.D. Cal. Sept. 8, 2021).