

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

WOODHULL FREEDOM FOUNDATION, HUMAN)
RIGHTS WATCH, ERIC KOSZYK, JESSE)
MALEY, aka ALEX ANDREWS, and)
THE INTERNET ARCHIVE,)

Plaintiffs,

v.

THE UNITED STATES)
OF AMERICA and JEFF)
SESSIONS, in his official)
capacity as ATTORNEY)
OF THE UNITED)
STATES,)

Defendants.

Case No. _____

**DECLARATION OF RICCI LEVY IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

I, Ricci Levy, swear or affirm, under the penalties of perjury pursuant to the laws of the United States, that the following is true and correct.

1. My name is Ricci Levy, I am competent to make this Declaration, and the statements made herein are based on my personal knowledge.

2. I am the President and Chief Executive Officer of the Woodhull Freedom Foundation, a charitable 501(c)(3) tax-exempt organization based in Washington, DC (“Woodhull”).

3. Woodhull was founded in February, 2003, and is the only national human rights organization working full time toward affirming and protecting the fundamental human right to sexual freedom.

4. Woodhull envisions sexual freedom as inclusive of the right to enjoy sexual pleasure, form relationships and families of our choosing, and protect our bodies from sexual violence.

5. Woodhull's mission includes support for the health, safety, and protection of sex workers, which include adult film performers, live webcam models, sexual wellness instructors, exotic dancers, escorts, and prostitutes. Woodhull believes that if every human being has a right to work and be paid to support themselves, and a right to autonomy over their body, then the rights of sex workers must be protected as well. Woodhull strongly opposes sex trafficking or sexual assault in any form, while advocating for the right to engage in consensual sexual activity.

6. Woodhull's work is conducted through education, advocacy, lobbying, and collaboration with other organizations.

7. For example, in 2005, Woodhull submitted testimony to the U.S. Senate, Judiciary Committee, Subcommittee on Constitution, Civil Rights, and Property, regarding the First Amendment protections associated with sexual explicit media. Woodhull also submitted testimony in opposition to Washington D.C.'s "Prostitution-Free Zone Amendment Act of 2011." In 2012, Woodhull successfully lobbied the State of Florida to pass legislation ending the practice of shackling and restraining pregnant female inmates. In addition, Woodhull participates as *amicus curiae* in cases impacting sexual freedom issues.

8. Woodhull operates a website containing information about the organization, its events, and donation instructions. See <https://www.woodhullfoundation.org/>.

9. Woodhull’s website also contains a blog called *Sex and Politics*, which contains posts written by various contributors. See <https://www.woodhullfoundation.org/news-blogs/>. The blog allows users to comment on the posts.

10. Woodhull uses a variety of other online technologies to conduct its business and organize its events, such as Google Docs, Formidable form generator, online databases and cloud storage services.

11. Woodhull also exchanges frequent emails with event organizers and volunteers along with website developers, promoters, and presenters.

12. Woodhull regularly uses social media such as Facebook, Twitter, and Instagram, along with a social media post scheduling tool called Hootsuite, and a link shortening service called Bitly to promote the organization and its events.

13. Woodhull uses an online ticketing service to register attendees for its events.

14. Woodhull uses a mobile event application called YAPP, which provides information to attendees about activities occurring at Woodhull events.

15. Woodhull intends to use Youtube.com to store and publish workshop presenter videos to provide information about the presenter.

16. Woodhull’s signature event is its annual multi-day Sexual Freedom Summit (“Summit”) held in the Washington, DC area during August, which brings together hundreds of educators, therapists, legal and medical professionals, and leaders of advocacy organizations to strategize, share information, and work collaboratively to protect the members of our communities

and their right to information, health, and pleasure. Woodhull publishes a separate website devoted to the Summit, at www.sexualfreedomsummit.org.

17. Historically, the Summit has included a variety of educations or informational workshops, organized into distinct tracks, each of which focus on specific aspects of sexual freedom. Recent years have included a “sex worker” track which involved workshops devoted to issues impacting sex workers, such as harm reductions, disability, age, health, and personal safety.

18. For example, in 2017, the Summit included workshops entitled: Sex Work, Human Trafficking and the Void Between; Making Pleasure Political: How To Be Politically Engaged While Repping Your Pleasure-based Business; The Unexpected Consequences of Age of Consent Laws; The New War on Sexual Expression; and Promoting HIV Education and Biomedical Prevention Tools: Lessons and Next Steps From the Field.

19. Additionally, in 2016, the Summit included workshops entitled: Intuition & Technology: A Client Screening Workshop for Sex Workers; Sex Work is Work: Examining Ways to Legitimize Sex Industry Experience in the Business World; The Whore Singularity: When Everyone is Naked on the Internet, Is No One Naked on the Internet; The Road to Criminalization; The Gameshow on How Sex for Money Became Criminalized in the US; and Advocacy: Sexual Health for Sex Workers!

20. Previous years’ events included a day long institute entitled: Sex Work, Sex Trade, Prostitution & Human Rights, and workshops entitled: Breaking Ground: Understanding Criminalization of Sex Work as Violence; End Demand and How the Anti-Trafficking Movement is Hurting Sex Workers, LGBTQ Individuals, and the Sex-positive Community.

21. The 2018 Summit is scheduled to occur from August 2-5, 2018, at the Hilton Alexandria Mark Center in Alexandria, Virginia.

22. In early 2018, Woodhull began preparing for its annual Summit by selecting workshop topics and presenters. After a rigorous selection process, Woodhull identified fifty-four (54) workshop presentations, organized into six different tracks. One of the official tracks is entitled “Sex As Work” and includes workshops entitled: Sex Work and Disability: Shifting the Focus to Disabled Sex Workers; Capitalism is not Consensual: Sex Work and the Shaky Foundations of Consent; Criminalization of Sex Work is a Human Rights Violation and a Labor Rights Concern; Avoiding Harm When You Need An Ambulance; and Courting and Whoring: Balancing Work and Play. A copy of the descriptions of these workshops as they appear on the Summit site are attached as Exhibit 1. Woodhull historically promotes the titles of all workshops on its Summit website, *See* <https://www.sexualfreedomsummit.org/workshops/>. In past years, the workshop information appeared in a section of Woodhull’s primary website: <https://www.woodhullfoundation.org/sexual-freedom-summit/>.

23. Woodhull also publishes the biographies and contact information for workshop presenters on its Summit website. *See* <https://www.sexualfreedomsummit.org/presenters/>.

24. Woodhull also promotes most, if not all, of the workshops in advance of the Summit on social media such as Facebook, Instagram, and Twitter. The social media posts include links to the presenter’s workshop and biography.

25. Woodhull intends to livestream one of the sex worker track workshops on Facebook Live during its upcoming 2018 Summit, to make the content available to those who are not able to attend in person.

26. Woodhull also intends to “live tweet” the sex worker track workshops on Twitter, using the hashtag #SFS18, during the upcoming Summit.

27. Woodhull learned that a new bill, labeled SESTA / FOSTA, H.R. 1865 / S. 1693 (“FOSTA”) was passed by Congress, and signed into law on April 11, 2018. Woodhull understands that the law contains a new criminal prohibition on promoting or facilitating prostitution using an interactive computer service and expands liability associated with sex trafficking.

28. Woodhull’s mission would have included immediate efforts to publish information on its website designed to assist sex workers who were negatively impacted by FOSTA, in an effort to educate these individuals about their rights, risks, and options under the new legal environment, and promote their overall well-being. Woodhull would also have published resources available for sex workers on its site, and would have strongly opposed enforcement of the law against marginalized sex workers on its *Sex and Politics* blog and social media. Woodhull would have permitted third parties to post similar information about sex work on its blog. Instead, Woodhull has been forced to censor its own online advocacy efforts, and the speech of third parties on its blog out of fear that its activities could be deemed to promote or facilitate prostitution.

29. Near the time that FOSTA was signed into law, Woodhull learned that numerous websites that provided information about sex workers or sex work had closed, blocked United States users, or shut down channels associated with this category of information, such as: Craigslist.org (closed its adult personals ads), reddit.com (closed sub-reddits such as: r/escorts, r/maleescorts, r/sugardaddy, r/hookers, r/sexworkerblogs), yellowpages.com (closed adult boards), cityvibe.com (closed), men4rentnow.com (closed), theeroticreview.com (closed due to FOSTA), nightshift.co (closed due to FOSTA), myproviderguide.com (closed), and others.

30. The widespread response to the law by the online community suggested to Woodhull that the law could be broadly construed to criminalize a wide swath of online speech relating to human sexual activity.

31. After the enactment of FOSTA Woodhull became concerned that the operation of its websites, and use of various interactive computer services to organize and promote the sex worker track workshops, including publication of the biographical information for the presenters, could violate FOSTA given the broad, vague and uncertain scope of the new law.

32. Immediately upon passage of FOSTA, Woodhull ceased all online promotion of the sex work track workshops for the Summit, and blocked all information associated with these workshops from its Summit website.

33. Woodhull also restrained publication of the titles of the sex work track workshops, along with the biographies and contact information for the presenters.

34. This decision prevented Woodhull from fully publicizing and promoting its Summit activities, and singled out sex worker content for disparate treatment, in advance of the Summit.

35. As a result of its effort to comply with FOSTA by not promoting or publishing online information about its sex worker track, Woodhull faced a social media backlash and threats to boycott the Summit. At least one sex work track presenter cancelled her planned presentation due to Woodhull's efforts to comply with the law. These developments threatened the success and reputation of the Summit.

36. While Woodhull remains uncertain whether online publication and promotion of its sex worker track workshops and presenter information is prohibited by FOSTA, it has chosen to engage in some of these activities due to the adverse consequences it endured in attempting to comply with the law through self-censorship. In June, 2018, in conjunction with its decision to initiate a legal challenge to FOSTA, Woodhull decided to publish and promote all information about the sex worker track workshops, including biographical and contact information about the presenters. It also decided to promote the workshops on social media such as Twitter and Facebook.

Woodhull has struggled to understand its legal obligations and remains uncertain as to its potential liability under FOSTA, in connection with its past and future activities.

37. As a result of its activities and decisions regarding the upcoming Summit, Woodhull has a well-founded fear that its efforts to promote information about sex workers on the Internet could be construed by an ambitious prosecutor or enterprising plaintiff's attorney as promoting or facilitating prostitution in violation of FOSTA.

38. Woodhull is further concerned about its potential liability under FOSTA for the content of Facebook Live streams or live tweets, as it cannot review or moderate the content of such communications before they are published online.

39. Woodhull has learned, upon information and belief, that in response to FOSTA, the Desiree Alliance, a national coalition of current and former sex workers, working for an improved understanding of sexual policies and its human, social and political impacts of criminalization surrounding global policies in sex work, cancelled its July 2019 conference: *Transcending Borders: Immigration, Migration, and Sex Work*. In an online post the Director of Desiree Alliance, Cris Sardina, announced that because of FOSTA, "our leadership made the decision that we cannot put our organization and our attendees at risk." See <http://desireealliance.org/conference/>.

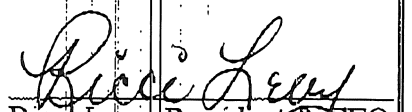
40. After the Desiree Alliance cancelled its July conference in response to FOSTA, Woodhull considered offering the group an opportunity to conduct its institute during Woodhull's 2018 Summit, described above. However, Woodhull concluded it would be too risky under FOSTA to promote the institute in conjunction with the Summit.

41. FOSTA's passage substantially inhibits Woodhull's mission which includes advocacy for harm reduction, health, and safety of sex workers, by restricting the use of its online resources for these purposes.

42. Woodhull staunchly opposes sex trafficking and all forms of sexual abuse and coercion. However, Woodhull is uncertain regarding its liability for aggravated violations of Section 2421A, which impose substantial additional penalties for anyone who operates an interactive computer service and is "recklessly indifferent" to sex trafficking activities. Due to the efforts of lawmakers and the proponents of FOSTA to conflate consensual sex work with sex trafficking, along with the potential liability imposed for actions of third parties imposed by FOSTA, Woodhull has a credible fear of prosecution under these broad, vague, and undefined provisions.

43. The FOSTA amendments that create state, criminal, and civil liability for platforms by carving out significant exceptions to Section 230 immunity have exposed Woodhull to potential liability for speech of third parties on its blog or social media accounts.

44. The passage of FOSTA further inhibits Woodhull's mission, which includes advocacy for harm reduction, health, and safety of sex workers, by preventing the use of online resources for these purposes.


Ricci Levy, President & CEO
Woodhull Freedom Foundation