

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

WOODHULL FREEDOM FOUNDATION, )  
HUMAN RIGHTS WATCH, ERIC KOSZYK, )  
JESSE MALEY, A/K/A ALEX ANDREWS, )  
AND THE INTERNET ARCHIVE, )

No. 18-5298

APPELLANTS, )

v. )

THE UNITED STATES OF AMERICA AND )  
JEFFERSON B. SESSIONS, IN HIS )  
OFFICIAL CAPACITY AS ATTORNEY )  
GENERAL OF THE UNITED STATES, )

APPELLEES. )

**STATEMENT OF ISSUES TO BE RAISED**

Appellants Woodhull Freedom Foundation, Human Rights Watch, Eric Koszyk, Jesse Maley, a/k/a Alex Andrews, and The Internet Archive state that the issues to be raised in this appeal, involving the constitutionality of the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018) (“FOSTA”), consist of the following:

Whether the District Court erred in holding Appellants lack standing to challenge FOSTA’s constitutionality where on its face and in its reach and ambiguity it presents a credible threat of prosecution, and thus has chilled their speech (and that of numerous non-parties), led them to refrain from online speech they engaged in freely pre-enactment, and deprived them of previously available online platforms whose service providers prohibit formerly allowable posts under FOSTA.

Whether FOSTA violates the First Amendment by unconstitutionally weakening constitutional scienter requirements for online speech relating to prostitution and trafficking.

Whether FOSTA violates the First Amendment as an overbroad enactment that prohibits a substantial amount of protected expression by targeting anyone who owns, manages, or operates an interactive computer service with intent to “pro-

mote” or “facilitate” prostitution, or recklessly disregards that they “contribut[e] to sex trafficking,” without defining or prescribing discernable limits for what qualifies as the promotion or facilitation of prostitution or trafficking.

Whether FOSTA enacts unconstitutionally vague restrictions on speaking or publishing online with “intent” to “promote” or “facilitate” prostitution or trafficking offenses, with increased punishment for those acting “in reckless disregard” of the fact that their conduct “contributed to sex trafficking,” without defining any of the operative quoted terms.

Whether FOSTA is an unconstitutionally content- and/or viewpoint-based statute that targets online publishers who “promote” or “facilitate” prostitution or act in “reckless disregard” that their actions “contributed to sex trafficking,” by restricting protected speech, including advocacy for decriminalization, provision of health and safety resources to sex workers, and other information that aids them.

Whether FOSTA’s selective elimination of publisher immunity for third-party posts relating to prostitution and sex trafficking, without defining what it means for online platforms to “promote” or “facilitate” prostitution or trafficking—or “prostitution” or “contributing to sex trafficking” for such purpose—facilitates a heckler’s veto and otherwise unconstitutionally impels service providers to censor protected speech and take down material that draws complaints.

Whether FOSTA violates the *Ex Post Facto* and Due Process Clauses of the Constitution by allowing states to prosecute pre-FOSTA conduct that they could not have prosecuted at the time it occurred, and exposing defendants to increased penalties unavailable prior to FOSTA for conduct predating its enactment.

Dated this 9th day of November, 2018.

Respectfully submitted,

/s/ Robert Corn-Revere

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 9, 2016, the foregoing Statement of Issues to be Raised was filed and served through the Court's electronic filing system.

/s/ Ronald G. London

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