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Trump Signs Bill to Hold Websites Accountable for Sex Trafficking

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WASHINGTON — In a victory for prosecutors and victims of sex trafficking, President Donald Trump signed new legislation April 11 aimed at holding companies accountable for facilitating the purchase of human beings for sex. The Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) had bipartisan support in Congress and passed both chambers by overwhelming margins.

“Human trafficking is a modern form of the oldest and most barbaric type of exploitation. It has no place in our world,” the president said, according to a White House statement.

The new legislation comes at a time when Pope Francis has been repeatedly calling on both Church and world leaders to take a strong stand against human trafficking. The Holy Father in March again encouraged young people to fight sex trafficking, telling youth delegates at a pre-synodal meeting that they must battle against a “sick mentality” that believes “women are to be exploited.”

Previous attempts to hold online platforms accountable for participating in sex trafficking had largely failed. Companies that hosted advertisements for sex had successfully argued in court that Section 230 of the Communications Decency Act, which protects a website from liability for content posted by its users, provided them immunity from lawsuits, even when minors were trafficked. FOSTA clarifies that civil or criminal cases can be brought against websites that are “knowingly assisting, supporting or facilitating a sex-trafficking violation.”

Advocates for the law hope it will have a significant effect in combating sex trafficking, particularly the trafficking of minors. Although precise figures on the extent of child sex trafficking in the United States are difficult to ascertain, the National Center for Missing and Exploited Children estimated that out of the 25,000 children reported missing to them in 2017, 1 in 7 were likely to be victims of trafficking.

Shortly after the Senate passed FOSTA March 21, several companies, including Craigslist and Reddit, shut down sections of their sites that had been used to sell sex.

“Any tool or service can be misused,” Craigslist announced. “We can’t take such risk without jeopardizing all of our other services.”

The week before the legislation was signed by Trump, the FBI seized the website of Backpage, a company notorious for both its involvement in facilitating sex trafficking as well as the inability of courts to hold it accountable. Several of its employees were charged April 9 with federal crimes, including facilitating prostitution.

A Significant Boost

Mary Leary, a law professor at The Catholic University of America, told the Register the law was very significant for victims of sex trafficking.

“For many years, victims have been denied access to courts every time they tried to exercise their rights against websites that knowingly facilitated their trafficking,” she said.

Now, Leary said, FOSTA allows companies that “knowingly partner with sex traffickers when they sell people online” to be held accountable in criminal and civil court.

The bill not only rectifies the injustice of consistently denying victims justice in civil courts, Leary said, but also “disrupts the business model” of sex trafficking.

Leary said the rapid closures of several websites, or sections of websites devoted to advertising sex, suggest the operators of these sites “knew they were partnering with sex traffickers, a position they have not taken in court.”

Before the Senate vote, the Department of Justice raised concerns about the constitutionality of FOSTA, suggesting it might retroactively criminalize behavior that was lawful at the time. Leary said that constitutional concerns “always have to be taken seriously,” but disagreed that FOSTA was unconstitutional.

“In terms of the statute itself, the conduct here is already illegal,” she said.

Legal Critics

After FOSTA passed the House, Sen. Ron Wyden, D-Oregon, said in a press release that the legislation “will make it harder to catch bad actors and protect victims by driving this vile crime to shadowy corners of society that are harder for law enforcement to reach.”

Julian Sanchez, a senior fellow at the Cato Institute, told the Register that while protecting minors was an important goal, FOSTA was “substantively a bad bill.” It would push sex traffickers to sites more difficult for law enforcement to reach, he said, and also could constrain the ways people could use the internet.

“The nature of companies past a certain size is to be risk-averse,” Sanchez said. “The predictable effect is to narrow what users do.”

But FOSTA also reflects an increased interest by the government to regulate the internet, Sanchez added. While the previous decade saw a general willingness to let internet companies alone, that tolerance has been “declining to a dramatic degree.”

FOSTA, he said, was a “wedge” to crack the liability protections of the Communications Decency Act and opened the internet to further interference by the government.

Changing Momentum

Linda Smith, a former Washington congresswoman and founder of Shared Hope International, told the Register that her organization was “excited” by the passage of FOSTA. The clear penalties in FOSTA for sex traffickers — fines or prison terms — would chill interest in profiting from the sale of children and adults. And the legislation would also reduce the availability of commercial sex at a time when pornography has driven an increase in demand for it.

The momentum has shifted in the legal fight against sex trafficking, Smith said, but she also emphasized that it was not the end of their fight.

“Nothing is a fatal blow when sin is rampant in the world,” she said, “but it will take them down for a while.”

While the conversation around sex trafficking often involved statistics and national perspectives, Smith said, it was important to remember the situation of each victim trafficked for sex.

“The heart of God is for each one of these children caught in this hell,” she said. “Even to save one person is worth it.”