

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

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

Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA)
and WILLIAM P. BARR, in his official)
capacity as ATTORNEY GENERAL)
OF THE UNITED STATES,)

Defendants.)

Case No. 1:18-cv-1552

PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, Plaintiffs Woodhull Freedom Foundation, Human Rights Watch, Eric Koszyk, Jesse Maley a/k/a Alex Andrews, and The Internet Archive, respectfully move the Court to enter summary judgment in their favor on their claims that the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018) (“FOSTA”), as codified at 18 U.S.C. §§ 1591(e), 1595(d)(4) & 2421A, and 47 U.S.C. § 230(e)(5), is unconstitutional under the First and Fifth Amendments and the Constitution’s *Ex Post Facto* Clause. FOSTA is unconstitutionally vague and overbroad, is a content-based statute that cannot satisfy strict scrutiny, and lacks the necessary scienter requirements to be constitutional, and it explicitly is meant to have retroactive reach in both its criminal and civil applications.

Plaintiffs request a declaratory ruling that FOSTA is unconstitutional and a permanent injunction against its enforcement and application. There is a substantial controversy between Plaintiffs and the government regarding whether the FOSTA violates the First Amendment, and

as to whether it can be constitutionally enforced by federal and state officials by seeking criminal penalties for asserted violations, and by litigants seeking to impose civil liability, such that there is a real and immediate need warranting a declaration of unconstitutionality. *United Gov't Sec. Officers of Am., Local 52 v. Chertoff*, 587 F. Supp. 2d 209, 222 (D.D.C. 2008). Injunctive relief is proper because given FOSTA's unconstitutionality, Plaintiffs (and others subject to FOSTA) are suffering irreparable injury in the absence of an injunction, and both the balance of interests and public interest favor relief. *E.g., Guffey v. Duff*, --- F. Supp. 3d ---, 2020 WL 2065274, at *9 (D.D.C. Apr. 29, 2020). *See also Mills v. D.C.*, 571 F.3d 1304, 1312 (D.C. Cir. 2009); *Pursuing America's Greatness v. FEC*, 831 F.3d 500, 511-12 (D.C. Cir. 2016); *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

In support of this Motion, Plaintiffs file the following accompanying documents: Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Summary Judgment, and Plaintiffs' Statement of Undisputed Material Facts and accompanying exhibits, including the Declarations of Kate D'Adamo, Dr. Jessica P. Ashooh, Dr. Alexandra Lutnick, Alexandra Frell Levy Yelderman, Jesse Maley, Brewster Kahle, Ricci Levy, Eric Koszyk, and Dinah PoKempner. Plaintiffs also rely on declarations by Ms. Levy and Dr. Kimberly Mehlman-Orozco, filed earlier in this case. ECF Nos. 5-2 & 5-9.

WHEREFORE, it is hereby respectfully requested that this Court grant summary judgment for Plaintiff's and enter an order enjoining FOSTA's enforcement and application.

DATED: August 31, 2020

Respectfully submitted,

/s/ Robert Corn-Revere

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