



“The Constitution Should Protect Sex Work”

Lambda Legal spells out how keeping sex work illegal undermines public health.

October 17, 2016

“We see no constitutionally adequate basis to criminalize sex solely because one consenting adult pays another,” states a blog post by Lambda Legal, a national organization that fights for the rights of LGBT people and people living with HIV.

Titled “[The Constitution Should Protect Sex Work](#)” and written by Hayley Gorenberg, deputy legal director, and Richard Saenz, staff attorney and the criminal justice and police misconduct program strategist, the blog post explains why criminalizing sex work undermines public health. The writers also clarify the difference between sex work and human trafficking.

The authors write:

When the government criminalizes sex work, people involved in the sex trade fear law enforcement, arrests and penalties. Criminalization deters people frequently targeted by police (often poor, often people of color, often transgender women) from carrying and using condoms, a cheap and effective method of preventing HIV and other sexually transmitted infections—because those condoms may be used as evidence of intent to commit a crime.

[snip]

Sex workers are...less likely to go to doctors and clinics or to be forthcoming about their activities when the work they do can lead to being charged with a crime. For all of these reasons, criminalizing sex worsens public health—for both sellers and buyers—rather than protecting or improving it.

These impacts can make workers vulnerable to the force and coercion that are the hallmarks of trafficking. In turn, people who are trafficked have reduced control over their work and their choices, leading to worsened health, including added vulnerability to HIV and disease progression.

To be clear, human trafficking is not sex work, and confusing the two leads to legal and public health chaos when we try to find our way to sound results. Clearing out the clamor: the key is consent. People who are coerced or forced into sex or domestic labor (the most common form of human trafficking) are not sex workers—they are trafficking victims. Nothing about our position blocks prosecuting their tormentors.

The authors bolster their argument with examples of court cases, including *Erotic Service Provider Legal, Education & Research Project v. Gascón*, pending in the 9th U.S. Circuit Court of Appeals and for which Lambda Legal filed a friend-of-the-court brief that further challenges the idea that criminalizing sex work promotes public health.

Other groups represented in the brief include AIDS United, APLA Health, The Center for HIV Law and Policy, GLBTQ Legal Advocates & Defenders, The HIV Prevention Justice Alliance, National Alliance of State & Territorial AIDS Directors, National Center for Lesbian Rights, Positively Trans, Positive Women’s Network-USA, San Francisco AIDS Foundation, Brad Sears (executive director of The Williams Institute), Sero Project and the Sex Workers Project at the Urban Justice Center.

© 2026 Smart + Strong All Rights Reserved.

<http://beta.docker.poz.com/article/constitution-protect-sex-work>