

PRESS ADVISORY - FOR IMMEDIATE RELEASE

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August 7 Hearing and Subsequent Press Conference Cancelled but Sex Workers and Clients Challenging California's Prostitution Law Cautiously Optimistic
Recent Injunction in Backpage Case Heartens Erotic Services Community

San Francisco, CA — Supporters and practitioners of "the world's oldest profession" looking forward to their day in court will have to wait a little longer. The hearing on their opponents' bid to dismiss their lawsuit which was scheduled to be heard in federal court in Oakland on August 7 was cancelled by Judge Jeffrey White, who will instead issue a written ruling on the motion. Consequently, the press conference to have followed the hearing has too been canceled.

In March, the Erotic Service Providers Legal, Education and Research Project (ESPLER), a grassroots organization advancing sexual privacy rights through legal advocacy, brought suit on behalf of several women and a man in U.S. District Court on the grounds that California's anti-prostitution statute, Section 647(b) of the state Penal Code, violates fundamental Constitutional rights.

Retired California Deputy Supervising Attorney General Jerald Mosley is among those who support the lawsuit in which his former boss, California Attorney General Kamala Harris, is a defendant.

"The heart of the case rests on the liberty and privacy rights guaranteed by the 14th Amendment, basic rights the U.S. Supreme Court has been elaborating since the 1960s as it has upheld an individual's right to use contraceptives, to terminate a pregnancy, and to practice gay sex," Mosley said.

He cautioned however that persuading the court to apply that same reasoning to uphold a consenting adult's right to take money for private sex will not be easy. "Plaintiffs are standing up to deeply rooted animosity and dark stereotypes. But there is powerful language in the high court's decisions of the last 50 years that will prove very helpful. Especially helpful will be the court's 2003 acknowledgment that sex is 'the most private human conduct' and that '[L]iberty gives substantial protection to adult persons in deciding how to conduct their private lives in matters pertaining to sex.'"

The motion by defendants -- who along with Harris include the district attorneys of four California counties, Alameda, Marin, San Francisco and Sonoma -- relies in great part on interpretations of Supreme Court opinions, arguing that the court's decisions have not

established a fundamental sexual privacy right broad enough to include commercial sex. Plaintiffs counter that prostitution rights, like gay rights, abortion rights and contraception rights, do indeed follow from the more general privacy and sexual rights already laid down by the high court.

There is no fixed timetable for Judge White to rule on the motion. But it is unlikely that the court will dismiss the suit in its entirety, Mosley said. "Even if the right to prostitution is not (upheld), plaintiffs are entitled to prove that California's statute has no rational relationship to a legitimate governmental purpose. The court will likely allow the case to move on to allow the parties to develop their respective arguments and evidence on that rational-basis issue."

Mosley expects the litigation will evolve as a battle between those who want to sell a conventional image of prostitution and those who want to study the facts of prostitution. "Courts take pride in protecting individuals from stereotypes and insisting on the facts," the former litigator asserted. "It is the plaintiffs' mission to ensure that the courts do just that in this case."

While many in the sex work community still fear it's an uphill battle, another recent court action has given some reason to hope that the time is ripe for judicial movement on this issue.

Last month, the sheriff of Cook County, Illinois, sent threatening letters to credit card companies Visa and Mastercard "requesting" that they "cease and desist" allowing their credit cards to be used to place ads on websites like Backpage.com, which he claimed "promote prostitution" and facilitate "sex trafficking". Within 48 hours of receiving these letters, both companies buckled and terminated their 11-year relationships with the online classified site.

Backpage responded by filing suit in U.S. District Court in Illinois seeking an injunction against Sheriff Tom Dart for overstepping his authority, compensation for lost revenues, and punitive damages for causing Backpage 'irreparable harm'. On July 24, the court decided their argument was strong enough to grant the website a temporary injunction against the sheriff's "extra-judicial, extra-legal" efforts to shut it down, while the case is being litigated.

ESPLER Project president Maxine Doogan noted that plaintiffs in her group's filing are asking for comparatively little. "All we're seeking in this lawsuit is injunctive relief," she said. "If the courts grant our plea to stop the persecution, then we can start looking at how to rectify the harm that erotic service providers, clients, and other community members have suffered since this law was enacted in 1961."

If the judge does grant the defendants' motion to dismiss this case, ESPLER, the plaintiffs plans to appeal to the 9th Circuit Court of Appeals.

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