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The Constitution Should Protect Sex Work

By Lambda Legal
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As courts confront challenges to prostitution laws that pile fines and criminal records on people who get paid for consensual sex, we're making our position clear: we see no constitutionally adequate basis to criminalize sex solely because one consenting adult pays another.

In one such case, *Erotic Service Provider Legal, Education & Research Project v. Gascón*, pending in the 9th Circuit Court of Appeals, Lambda Legal recently filed a [friend-of-the court brief](#) challenging a decision that failed to examine the facts of whether a California prostitution law actually promotes public health. Representing our own organization, as well as 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

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Sears (Executive Director of The Williams Institute), Sero Project, and the Sex Workers Project at the Urban Justice Center, we laid out the real-world evidence that criminalizing sex work actually undermines public health.

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. And that result, as a prominent prosecutor admitted years ago, is “a public health disaster.” Yet more than three decades into the HIV epidemic, this is the public health impact our criminal laws have wrought—often affecting people for whom sex work makes the difference between having food and shelter or going hungry and homeless.

Sex workers are more likely to be targeted for violence, and less likely to get help if they are attacked, because telling the facts of what occurred will likely reveal their engagement in criminalized conduct. They are also 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.

At the heart of Lambda Legal's most groundbreaking victories and continuing mission is self-determination, including bodily autonomy. When the Supreme Court struck down laws criminalizing same-sex relationships and gay identity in [Lawrence v. Texas](#), it rightly rejected assertions against us that "public health" justified sodomy laws. The movement for reproductive justice, from which we draw key legal precedents, similarly fights for facts over fiction when government tries to limit the right to contraception, abortion, or other similar personal decision-making. *Lawrence* explained that the constitutional right to liberty protects all of us when we make our own decisions about adult, consensual sexual intimacy. In cases such as *Lawrence* and a long and venerable line of reproductive justice cases the Court has recognized values of dignity, privacy, and autonomy extending to each of us in our sexual choices, independent of whether encounters involve love or marriage and unimpeded by moral disapproval. Across connected movements, we are all in this together, in so many ways.

And so we have rejected facile assumptions about public health and sex work. We did so in [supporting Amnesty International's](#) deeply researched platform rejecting criminalization of sex work, and soon after in [critiquing the Rentboy.com prosecution](#). Throughout, we have driven home the truth about the devastating harms of arrests, fines, sentences, criminal records, injuries and violence that criminalizing sex work generates against LGBT people and many others. We will continue to do so in our legal and policy advocacy and in coalition with other organizations in support of our mutual goals: health, safety, and choice and self-determination about our relationships, our work and our bodies.

Money complicates sex. But a commercial exchange shouldn't negate these constitutional rights. And frankly, sometimes relationships are transactional. For just a few common examples, consider prenuptial agreements, surrogacy, and hook-up websites; the fact that money is involved does not obliterate constitutional protections for marriage, parenting or sexual intimacy. All of these truths animate Lambda Legal's position that the government may not constitutionally

criminalize consensual adult sex solely because it is bought and sold.

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