

**FOR IMMEDIATE RELEASE October 18, 2017**

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## **UPDATED PRESS CONFERENCE ANNOUNCEMENT**

### **Press Conference Following Oral Arguments In Ninth Circuit Challenge To California's Prostitution Law**

*Lawyers Representing Sex Workers Will Argue Prostitution Laws Infringe On Consenting Adults' Constitutional Right To Private Activity*

In March 2015, the Erotic Service Providers Legal, Education and Research Project (ESPLERP) filed a complaint in US District Court claiming that California's outdated anti-prostitution statute known as California Penal Code 647(b), unfairly deprives consenting adults of the right to private activity, criminalizes the discussion of such activity, and unconstitutionally places prohibitions on individuals' right to freely associate.

The court case, known as *ESPLERP v Gascon* [16-15927], will now be heard before the Ninth Circuit Court of Appeals, and formal Oral Arguments have been set for this Thursday October 19th at 9am, before Circuit Judges Callahan and Bea, and International Trade Judge Restani. Each side will be allotted 20 minutes to make its case.

Lawyers, amicus brief supporters, sex workers, allies and supporters will speak out after the conclusion of the morning's hearing.

The named plaintiffs in the case are three women who want the right to sell sex in California, and one male who wants to pay for sex. They are referred to with initials in court documents to maintain their privacy since the social stigma associated with prostitution is so severe. "It's almost suffering a social death to be associated with paid sex in anyway", said Maxine Doogan, President of ESPLERP, which is also named as a plaintiff. "Our hope is to see this bad law struck down, so that consenting adults who choose to be involved in prostitution are simply treated as private citizens again, and are afforded all the privacy and constitutional rights thereof".

The named defendants are San Francisco District Attorney George Gascon, Alameda County District Attorney Nancy O'Malley, Marin County District Attorney Edward S. Berberian, Jr. and Sonoma County District Attorney Jill Ravitch, together with newly appointed California Attorney General Xavier Becerra. Xavier Becerra's office will act as the primary defending litigant.

**WHAT:** Press Conference following Oral Arguments before the Ninth Circuit Court of Appeals challenge to California prostitution laws known as ESPLERP v Gascon [16-15927].

**WHO:** Renowned constitutional lawyer H. Louis Sirkin, Scott Schoettes of Lambda Legal, sex workers, allies and supporters - including the Erotic Service Providers Legal, Education and Research Project (ESPLERP) board members; Maxine Doogan, Domina Elle and Claire Alwyne. Also speaking out will be Rachel West of US PROStitutes Collective and Attorney Jerry Mosley representing Children of the Night, another amicus brief supporter.

**WHEN** Thursday, October 19th, 2017 at the conclusion of the hearing that starts at 9am; estimated 11:30-Noon.

**WHERE:** On 7th at Mission Street outside the entrance to the United States Court of Appeals for the Ninth Circuit, James R. Browning Courthouse, 95 7th St, San Francisco, CA 94103.

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## Lambda Legal Urges Ninth Circuit to Give California Sex Workers Their Day in Court

***LGBT legal rights organization argues criminalizing sex work undermines public health and that sexual intimacy between consenting adults, even where money is exchanged, is protected by the U.S. Constitution***

(San Francisco, CA, October 19, 2017) – Today, the U.S. Court of Appeals for the Ninth Circuit heard oral arguments in the case of *Erotic Service Provider Legal, Education and Research Project (ESPLERP) v. Gascón*, a case challenging California laws that criminalize sex work. Lambda Legal filed a friend-of-the-court brief in support of ESPLERP on behalf of entities with expertise and experience working with people living with HIV, laying out how these laws undermine public health.

“Criminalizing sex work does not reduce the transmission of HIV or other sexually transmitted infections: in fact, just the opposite is true,” said Scott Schoettes, HIV Project Director at Lambda Legal. “The evidence is clear that laws making it illegal for consenting adults to engage in private sexual activity in exchange for money hurt public health because they lead to fear of law enforcement and criminal prosecution, deter use of condoms—they are often used as evidence of intent to commit this crime—and create hurdles to health care for sex workers and their clients. The lower court ruling was ill-informed and misguided, and the Ninth Circuit should direct the lower court to reinstate the case and to consider the effects of these laws on public health.”

Last year, ESPLERP, representing California sex workers, filed a lawsuit challenging the constitutionality of the section of the state penal code that criminalizes prostitution and solicitation. The federal trial court dismissed the lawsuit at an initial stage, failing to examine the evidence of how these laws undermine public health goals. Lambda Legal filed a brief explaining how the statute in question impedes efforts to reduce transmission of HIV and other STIs.

“Lambda Legal’s landmark Supreme Court victory in *Lawrence v. Texas*, the case that struck down laws that criminalized sex between same-sex partners, underscored that our right to liberty protects our decisions about adult, consensual sexual intimacy,” said Kara Ingelhart, Lambda Legal Law Fellow. “It is merely logical that *Lawrence* extend to the adult, consensual sexual intimacy that occurs between sex workers and their clients; the fact that money is exchanged shouldn’t matter.”

The brief was filed on behalf of: AIDS United, APLA Health, The Center for HIV Law and Policy, GLBTQ Legal Advocates & Defenders, The HIV Prevention Justice Alliance, National Alliance of State and 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. Lambda Legal attorneys, Scott Schoettes, Kara Ingelhart, Hayley Gorenberg and Richard Saenz represent Lambda Legal and the partners on the brief.

Read Lambda Legal’s brief here: [https://www.lambdalegal.org/in-court/legal-docs/esplerp\\_ca\\_20161012\\_amicus](https://www.lambdalegal.org/in-court/legal-docs/esplerp_ca_20161012_amicus)

Also read Lambda Legal’s blog post, *The Constitution Should Protect Sex Work* here: [https://www.lambdalegal.org/blog/20161012\\_constitution-should-protect-sex-work](https://www.lambdalegal.org/blog/20161012_constitution-should-protect-sex-work)

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Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender people and everyone living with HIV through impact litigation, education and public policy work.

## **H. Louis Sirkin – Santen & Hughes**

H. Louis Sirkin is one of the nation’s preeminent First Amendment and criminal defense attorneys. Over more than 50 years of practice, Sirkin has consistently defended the free speech and constitutional rights of countless individuals and businesses, including adult entertainment establishments, museums, artists, activists, and ordinary citizens in all types of cases.



Born in Cincinnati in 1940, Sirkin obtained both his undergraduate and law degrees from the University of Cincinnati. He entered private practice and quickly earned a reputation as an effective civil rights lawyer. He achieved national prominence in 1990 when he successfully defended Dennis Barrie, the director of the Contemporary Arts Center in Cincinnati, against obscenity charges for displaying the nude artwork of Robert Mapplethorpe.

Sirkin has distinguished himself as a compassionate mentor, a sought-after lecturer, and a tireless advocate. Perhaps his most notable accomplishment was his 2002 victory before the United States Supreme Court in *Ashcroft v. Free Speech Coalition*, which declared the Child Pornography Prevention Act unconstitutional. In addition, Sirkin has also represented artists charged with crimes, including morgue photographer Thomas Condon, and has defended on appeal numerous individuals on Ohio's and Georgia's death rows. In total, he has handled more than 125 appeals in civil and criminal cases.

Sirkin frequently lectures to students at the country's top universities and has participated in panels at Harvard University, New York University, the University of Cincinnati, the University of Michigan, and Northern Kentucky University. For the past decade, he has served as an Adjunct Professor of Law at the University of Cincinnati, where he has taught habeas corpus law and a First Amendment seminar.

Sirkin has been selected by his peers as a fellow in the American College of Trial Lawyers and has received numerous awards for his professional endeavors, including most recently the Nicholas Longworth III Alumni Achievement Award for Distinguished Professional Service from the UC College of Law, the Southwestern Ohio Chapter of the American Civil Liberties Union Award for his commitment to the First Amendment, and the District Award from the Ohio State Bar Association for his outstanding contributions to the profession of law. He is a fellow of the American Board of Criminal Lawyers, and has also served as President of the First Amendment Lawyers Association and the Greater Cincinnati Criminal Defense Lawyers Association.

Sirkin is admitted to practice before the United States Supreme Court; the United States Tax Court; the United States Courts of Appeals for the Third, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits; the United States District Courts for the Southern and Northern District of Ohio, the District of Colorado, the Eastern District of Kentucky, and the Eastern District of Michigan; and all courts in Ohio.

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BIO

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I am Jerald Mosley, counsel for Children of the Night one of the *amici curiae* who have submitted briefs in support of appellants.

As of August 2014, I am a retired Supervising Deputy Attorney General with the Office of the California Attorney General. Since my retirement, I have engaged in research, writing and speaking on constitutional privacy issues as they affect sex work. I have written for the *Congressional Quarterly Researcher* (April 15, 2016), the *Los Angeles Lawyer* (March 2016), the *Pasadena Star News* (December 17, 2015), and the *Daily Journal* (May 28, 2015, September 10, 2015, and April 7, 2016). Two of the *Daily Journal* pieces were discussions of this action by Erotic Service Provider and others. By invitation, on October 20, 2015, I appeared before the California Assembly Committee on Public Safety and spoke on legislative issues surrounding sex trafficking and prostitution, and I was a legal commentator on the July 23, 2015 online ReasonTV segment covering this action.

I served in the employment section of the Attorney General's Office as a deputy then as a supervisor for over 17 years from 1996 to 2014. I managed trials and appeals in state and federal courts. My work included writing and editing appellate briefs. Statutory and constitutional issues were a staple of my section's work. Recurring issues included privacy, discrimination, disability, free speech, and state sovereignty.

Prior to state practice I worked in private practice in Pasadena, California as an associate and then a name partner with Carter, Mosley & Carlson. Before law school at UCLA, I graduated with a Ph.D. in philosophy from UC Davis and published in professional philosophical journals.

I have lived all my professional life in California, but I spent eight years of my youth in Mexico and Colombia where my parents ran American elementary and high schools. I have enjoyed the life-long benefit of that early multi-cultural and multi-linguistic influence in my life. Today, my interests are in the legal recognition of a different form of diversity—diversity in sexual life style and work.





Maxine is a life long erotic service provider, trained the fine art of providing erotic services in the underground economies, politics and social justice expert for the #whorenation.

She has a background in adult advertising, media whoredom and has traveled for work across the US and internationally. Her organizations include the [Erotic Service Providers Union](#), a labor rights approach to prostitution rights group, [Erotic Service Providers Legal, Education and Research Project](#) which heads up the historic constitutional challenge known as ESPLERP v Gascon case No. [16-15927] to the anti prostitution law in California and [Community United For Safety and Protection](#), (CUSP)Alaska's current and former sex workers, sex trafficking victims and allies working towards the safety and protection working to improve all of the individuals lives Alaska's sex trade.

### **Political**

Maxine's group [Community United for Safety and Protection](#) saw several landmark legislation passed at the Alaska State and the Municipality of Anchorage level within the past year. Sex workers can now report when we're victims for witnesses of violent crime without the threat of being charged with prostitution, cannot be charged with sex trafficking ourselves and when sharing space and cannot be charged with sex trafficking each other unless there is fraud. Currently, Alaska HB112/SB73 proposed laws that would make it felony for police to have sex with victims while investigating prostitution or sex trafficking is awaiting hearings.

Maxine is the force behind the [landmark](#) constitutional challenge to the California's anti prostitution law now before the Ninth Circuit Court of Appeals.

Maxine Spearheaded the campaign that repealed California Victim Compensation Fund's discriminatory regulation that banned sex workers who have been sexually assaulted from accessing the fund.  
[http://usnews.nbcnews.com/\\_news/2013/12/12/21881431-california-prostitutes-win-right-to-victim-compensation](http://usnews.nbcnews.com/_news/2013/12/12/21881431-california-prostitutes-win-right-to-victim-compensation)

The Erotic Service Providers Legal, Education and Research Project founded in 2010 was the state registered opposition to California state 'anti trafficking' ballot measure Proposition 35 in 2012.

Maxine qualified Proposition K, a San Francisco in 2008 ballot initiative that would have stop the enforcement of the prostitution laws and bring equal protect sex workers. [www.espu-ca.org/initiative.html](http://www.espu-ca.org/initiative.html)

### **Media**

Maxine's media feats includes two movies, *Who's The Boss* is a 2009 short personal film and *Legalization Sucks* features 4 legal erotic service providers. Maxine is a KPFA community programmer bringing erotic service providers' voices to a wider audience.

@sfmistress 415-233-2680 Youtube channel SEXWORKERNATION



Rachel West is a spokeswoman for the US PROStitutes Collective, a multiracial network of women who work or have worked in different areas of the sex industry. Founded in 1982, US PROS campaigns for the decriminalization of prostitution, and for justice, protection and resources so that no woman, young person or man is forced into prostitution through poverty.

Rachel has provided practical help and support to hundreds of sex workers, with a particular focus on women who are in the most dire situations and are the most vulnerable to violence: women who work the streets; young women; women of color and/or immigrant women; the majority of whom are mothers supporting families.

She was appointed to the 1996 SF Task Force on Prostitution and was instrumental in developing groundbreaking recommendations to decriminalize sex work and for the City to divert the millions of dollars (7.6 million at that time) spent on enforcing the laws against sex workers into resources for single mothers, young people and others. US PROS has written in support of the Erotic Service Providers Legal, Educational and Research Project's lawsuit on decriminalization.

With the Erotic Service Providers Union, US PROS spearheaded a successful campaign to overturn a discriminatory regulation which denied sex workers the right to compensation for rape and other violence. US PROS worked with prisoner rights groups to extend this victory to formerly incarcerated people.

Ms West is a co-founder of the In Defense of Prostitute Women's Safety Project which creates public awareness initiatives to end violence against sex workers and presses the City to prioritize safety over arrests and prosecutions. She works closely with the Black Coalition Fighting Back Serial Murders in Los Angeles which campaigns for police accountability in the murders of the over 200 Black women who are dead or missing, scandalously labeled by police as cases with "No Human Involved".

Contact info for US PROS

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## **Domina Elle**

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### **Erotic services as a therapeutic modality**

Domina Elle has been an erotic service provider for over 18 years facilitating thousands of professional bdsm sessions for couples and individuals as a Dominatrix. Elle approaches her work as a therapeutic modality, as a form of erotic creativity which enriches and liberates.

Prior to her career as a professional Dominatrix Elle worked in the field of Holistic medicine and was mentored in the therapeutic modalities of Rolfing, reflexology, acupressure, and deep tissue bodywork modalities. Elle believes that erotic services play an important role in a Holistic approach to wellness and overall health. Elle is also a graphics artist and a performer who is known for putting grownups inside of big balloons. She often refers to herself as 'an adult play facilitator'.

### **Erotic service provider rights Activism**

Elle got involved in the work to establish erotic service provider rights in 2009 after an assault incident that left her feeling helpless and violated. She did not feel safe to report due to criminalization and the stigma connected to erotic services. Finding support in the activist community empowered Elle to step forward.

Elle has participated in discussion panels throughout the various university campuses in Denver Colorado and has been a consistent featured lecturer at the denver university human trafficking center.

Elle seeks to raise awareness regarding the human rights violations perpetrated upon sex workers as well as to present lived experiences which differ from the more pervasive narratives around sex work.

Elle has participated with a variety of sex worker rights organizations and is a member of the erotic service provider union and a board member of the erotic service provider legal education and research project.

### **Quotes from Elle**

The eslerp case is a case rooted in the principles of liberty, we are arguing for sexual privacy rights not only for the benefit of erotic service providers and clients, but on behalf of everyone's sexual privacy and freedom.

In its last filing in the eslerp case, the state declares that sex is not a human right even within marriage which is acknowledged as a protected relationship. This is very concerning and every person who values sexual freedom, liberty and the pursuit of happiness should be paying attention to this case.

CREATIVE CONSULTANT / FREELANCE WRITER. M. DANTE is a respected critical and creative writer, qualitative researcher, and photographer. Publicly active since 2003 in discussion on survival sex, sex work, and sex trafficking, she has been writing on the topic since the early 1990s, supporting programs and legislation essential to empowerment, community health and human rights. She was first exposed to the sex trade in 1986 at age 16.





M. Dante explains why she supports ESPLERP v Gascon: People like me who are defined as “victim/survivors and workers” have been left vulnerable and exposed as result of all the new efforts to “end demand”, along with newly implemented trafficking legislation, yet – as our discreet and safe channels of adult entertainment have been shut down, we have not been offered any services or support.

Thanks to the dedication, inclusion, mentoring and support of The ESPLER Project, COYOTERi, USPROS Collective, CUSP and SWOP Behind Bars, since 2012 I have traveled thousands of miles across our nation, contributing to many academic and non-profit research projects and legislative efforts.

However - We have truly had to beg and fight to our right to be equally included in the legislative, political and academic discussions. For those of us who have basically spent our entire adult lives in the industry we are fighting now for our 14th amendment right to have our sexual privacy back, along with our safe and discreet channels of work, along with equal protection under the law.

My name is M. Dante. I am federally defined as a former victim of U.S. domestic minor sex trafficking, a sex trade survivor, a consensual adult worker, and ally. I have found that though I am part of the population of vocal survivors, we have the weakest voice in our home states, and in Washington, D.C. In fact, we are often completely ignored. This is why I support this precedent challenge.

In the effort to combat actual trafficking, we are all new to learning the best ways to meet each other at a shared point of understanding to work together. Without YOUR voice working with us OUR voice – as survivors – simply is not heard. Without OUR voice YOUR efforts are not authentic social justice.

Before speaking about sex workers or former sex trafficking victims – before passing permanent laws on all our behalf – please consider: someone you know, or one of your constituents, may be – without you realizing it – defined as a former or current victim of sex or labor trafficking, and/or a sex worker. We are affected by laws and legislation in ways you do not consider. Include us in policy process even when our narratives differ from your expectation.

Our voice is here for you to hear.

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Best - Melanie Dante Sent from iPhone  
www.dec17philly.com 267.800.3363  
Community Working Together Works!  
Bio & Creative List: www.BDC-Lancaster.net

### **Claire Alwyne – Erotic Service Providers Legal, Education, and Research Project**



Claire Alwyne is a trans woman, professional dominatrix and activist, and Chair of the Board of the Erotic Service Providers Legal, Education, and Research Project (ESPLERP).

The Erotic Service Providers Legal, Education, and Research Project, founded in 2010, was the state registered opposition to California state ballot measure Proposition 35 in 2012. In March 2015, ESPLERP filed a groundbreaking lawsuit (ESPLERP v Gascon #16-15927) in US Federal Court challenging California's current anti-prostitution law, Penal Code 647(b), on the grounds that it unconstitutionally deprives consenting adults of the right to engage in private sexual activity. The case is currently on appeal in the Ninth Circuit.

As a trans sex worker, Claire has a particular motivation to be involved in sex worker activism - the harms of the current legislation are very close to home.

For example, the 2015 US Transgender Survey - [www.transequality.org](http://www.transequality.org) – reports that transgender people face pervasive discrimination and violence in society at large, in employment, in housing and healthcare. And then when transgender people do sex work (the same study shows that one in five (20%) of transgender people have participated in the underground economy for income at some point in their lives), which is often one of the few things available to them that can generate income, they are further stigmatized by society, and harassed and criminalized by law enforcement. Claire is originally from London, but has lived in San Francisco since 2000, loves its diversity and openness, and considers it very much her home. Claire is also a musician, keen gardener and committed partner to her wife.

[esplerp.org](http://esplerp.org)

[decriminalizesexwork.com](http://decriminalizesexwork.com) <http://www.decriminalizesexwork.com>

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# ESPLER PROJECT INC.

A 501-(c)3 Non-Profit | [esplerp.org](http://esplerp.org)

## History

The Erotic Service Providers Legal Education and Research Project (ESPLERP) coalesced in 2008, when Proposition K — which would have decriminalized prostitution in San Francisco — narrowly failed to pass. In the aftermath, Margot St. James, who led COYOTE (Call Off Your Old Tired Ethics) in filing the court case that forced the decriminalization of prostitution in Rhode Island in 1980, and Maxine Doogan, realized that the way forward was through the courts, rather than the electoral or legislative process, and that it would take a legal threat to overturn anti-prostitution laws.

## ESPLERP v Gascon

Current California law and the law in most other US States criminalizes the fundamental right for adults to engage in consensual, private sexual activity. Essentially these laws deny individuals the right to choose for themselves how to earn a living, who to enter into a contract with, and limit how and with whom an individual can associate in private.

**“It is time to revisit the criminalization of prostitution. The State can no longer say that morality is sufficient reason for regulating private sexual relationships”**

In addition to infringing on those rights, the laws are enforced in a blatantly discriminatory manner, and disproportionately impact women of color, trans women, and poor people. And dramatically impacts their safety.

In March 2015, ESPLERP filed a groundbreaking court case in US Federal District Court, *ESPLERP v Gascon* [16-15927], asking the court to declare that California’s prostitution statute, Section 647(b) of the California Penal Code, is unconstitutional and remove the government from restricting basic fundamental and

widely recognized civil and human rights.

All of the plaintiffs are listed anonymously. Three are women who want to work as sex workers in California. The fourth plaintiff is a disabled man who wants to hire prostitutes.

Together, the plaintiffs claim that these laws violate their constitutional rights to privacy, free speech, substantive due process right to earn a living, and freedom of association.

The case is currently on appeal in the Ninth Circuit Court of Appeals (which includes Alaska, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington state) and may very likely go on to a decision in the Supreme Court.

## **Policy Agenda**

The movement to decriminalize sex work is gaining traction nationwide. For example, in the last year, in New Hampshire, two Democrats and one Republican introduced House Bill 1614 to decriminalize prostitution. Similarly, in Hawaii, HB 1532 and HB 1533 seek to overturn Hawaii's anti-prostitution laws. But even if such efforts succeed, there is still a huge gulf between recognizing the fundamental right to sexual privacy and untangling the morass of decades of bad laws that negatively impact sex workers and public safety.

ESPLERP has produced and maintains a Policy Agenda ([esplerp.org/esplerp-2017-policy-agenda/](http://esplerp.org/esplerp-2017-policy-agenda/)) that provides a roadmap for legislators with practical legislative steps towards enfranchising all aspects of sex work - in tandem with, or independently of, the decriminalization of sex work. For example, it recommends repealing moral turpitude laws that impact legal workers like exotic dancers, adult film performers, massage parlour staff, and phone sex operators. And it also recommends that legislatures repeal laws that criminalize HIV positive status.

ESPLERP's Policy Agenda incorporates widespread consultation with supporters, and reflects the positions of civil rights organizations like the ACLU and Free Speech Coalition, as well as the views of LGBTQ organizations like Lambda Legal and the Transgender Law Center. As such, it provides a framework for advocates to advance sex worker issues when talking to legislators.

## **Mission**

The Erotic Service Provider Legal, Educational and Research Project (ESPLERP) is a not for profit 501(c) community-based coalition advancing sexual privacy rights through impact legislation, advocacy, education, and research. ESPLERP is a diverse community-based erotic service provider led group which seeks to empower the erotic community and advance sexual privacy rights through legal advocacy, education, and research. In our legal advocacy, we seek to create change through a combination of impact litigation, policy statements, and voicing our concerns for our community in political arenas. Through educational trainings and outreach, we will empower and capacity build to address discrimination of erotic service providers and the greater erotic community. Lastly, we strive to archive and rate much of the research which has been done by and of the sex worker community, and build on this history with research which seeks to be increasingly inclusive, respectful, and ultimately, relevant to the erotic service providers and the larger erotic community.

