

No. 16-15927

THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EROTIC SERVICE PROVIDER LEGAL, EDUCATION & RESEARCH
PROJECT; K.L.E.S.; C.V.; J.B.; AND JOHN DOE

PLAINTIFFS-APPELLANTS

V.

GEORGE GASCÓN, District Attorney of the City and County of San
Francisco; EDWARD S. BERBERIAN, JR., District Attorney of the
County of Marin; NANCY E. O'MALLEY, District Attorney of the
County of Alameda; JILL RAVITCH, District Attorney of the County of
Sonoma; and KAMALA D. HARRIS,
Attorney General of the State of California,

DEFENDANTS-APPELLEES

On Appeal from the United States District Court
for the Northern District of California
Honorable Jeffrey S. White, Case No.: C 15-01007 JSW

**BRIEF OF THE NATIONAL CENTER ON SEXUAL EXPLOITATION,
COVENANT HOUSE CALIFORNIA (CHC), FREEDOM FROM
EXPLOITATION (CALIFORNIA), COALITION AGAINST
TRAFFICKING IN WOMEN (CATW), SPACE INTERNATIONAL,
EQUALITY NOW, DEMAND ABOLITION, CHICAGO ALLIANCE
AGAINST SEXUAL EXPLOITATION (CAASE), WICHITA STATE
UNIVERSITY CENTER FOR COMBATING HUMAN TRAFFICKING,
GLOBAL CENTURION FOUNDATION, SURVIVORS FOR SOLUTIONS,
NATIONAL ORGANIZATION FOR WOMEN IN NEW YORK,
SANCTUARY FOR FAMILIES AS *AMICI CURIAE*, SUPPORTING
DEFENDANTS-APPELLEES AND SUPPORTING AFFIRMANCE**

By Consent of All Parties Through Their Respective Legal Representation

Savanah Lawrence, Esq.
NATIONAL CENTER ON
SEXUAL EXPLOITATION
1100 G. St. NW #1030
Washington, DC 20005
Tel: 202-393-7245
Fax: 202-393-1717
Email: savanah@ncose.com

Patrick A. Trueman, Esq.
NATIONAL CENTER ON
SEXUAL EXPLOITATION
1100 G. St. NW #1030
Washington, DC 20005
Tel: 202-393-7245
Fax: 202-393-1717
Email: patrick@ncose.com

Attorneys for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Pursuant to FRAP 26.1 and 29(c), Amici Curiae the National Center on Sexual Exploitation, Covenant House California (CHC), Freedom From Exploitation (California), Coalition Against Trafficking In Women (CATW), SPACE International, Equality Now, Demand Abolition, Chicago Alliance Against Sexual Exploitation (CAASE), Wichita State University Center For Combating Human Trafficking, Global Centurion Foundation, Survivors For Solutions, National Organization For Women In New York, Sanctuary For Families (hereinafter, "Amici") state that they are each non-profit organizations.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENT iii

TABLE OF CONTENTS iv

IDENTITY AND INTEREST OF THE AMICI CURIAE 1

INTRODUCTION 6

ARGUMENT 7

**I. APPELLANT’S ARGUMENT FAILS BECAUSE
PROSTITUTION IS NOT A FUNDAMENTAL RIGHT, AND THE
STATE MAINTAINS AN IMPORTANT GOVERNMENT
INTEREST IN PREVENTING THE HARMS ASSOCIATED
WITH PROSTITUTION 7**

**A. Appellant’s Fundamental Right Argument Fails Because
Lawrence Does Not Apply to Prostitution 7**

**B. Appellant’s Argument Fails Because the State of California
Maintains an Important Government Interest in Preventing the
Harms Associated with Prostitution 11**

**1. Prostitution is Sexual Coercion and Closely Associated
with Sex Trafficking, and the State Has an Important
Interest in Preventing These Crimes 12**

**a. Decriminalization of Prostitution Will Legitimize Sex
Trafficking 15**

**b. The Decriminalization of Prostitution Will Lead to an
Increase in Sex Trafficking 16**

**i. Legalization in the Netherlands Led to an
Increase in Sex Trafficking 17**

**ii. Legalization in Australia Led to an Increase in
Sex Trafficking 18**

**iii. Decriminalization in Rhode Island made it
Impossible for State Authorities to Regulate
Prostitution and Prevent Sex Trafficking 18**

**2. Prostitution is Associated with Illicit Drug Use, and the
State of California Maintians an Important Government
Interest in Preventing Drug Abuse 20**

**3. Prostitution is Inherently Violent, and the State Maintains
an Important Governmental Interest in Preventing Sexual
Violence 21**

a. Violence: Prostitution is Violent 22

b. Rape: Large Majorities of Prostitute Victims Have
Been or Will Be Raped..... 25

c. Death: Prostitution is the Deadliest “Occupation” in
the United States..... 27

CONCLUSION..... 28

TABLE OF AUTHORITIES

CASES

Lawrence v. Texas, 539 U.S. 558 (2003) 6, 7, 8, 9

Obergefell v. Hodges, 135 U.S. 2584 (2015) 8

IDK, Inc. v. Clark County, 836 F.2d 1185 (9th Cir. 1988)..... 7, 9

STATUTES

22 U.S.C.A. § 7101(West 2016)..... 12, 16

Cal. Penal Code § 261.5 (West 2016) 27

California Penal Code § 236.1(a) (West 2016) 13

California Penal Codes § 266 (West 2016) 13

California Penal Codes § 266h (West 2016) 13

California Penal Codes §266i (West 2016) 13

11 R.I Gen. Laws §§ 11-34.1-1 – 11-34.1-14 (West 2016)..... 20

11 R.I Gen. Laws §§ 11-34-8.3 – 11-34-11 (West 2016)..... 20

11 R.I. Gen. Laws Ann. § 11-34-8 (West) 18

FEDERAL AUTHORITIES

U.S. DEPT. OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND
LABOR, 1999 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES,
“AUSTRALIA.” SECTION 6F (2000)..... 18

U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT, JUNE 2007 1 (2007) 16

INTERNATIONAL AUTHORITIES

DUTCH MINISTRY OF FOREIGN AFFAIRS, DUTCH POLICY ON PROSTITUTION
5 (2012). 22

U.N. ESCOR, COMM’N ON HUMAN RIGHTS, *Integration of the Human Rights of Women and a Gender Perspective, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children*, ¶ 42 U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006) (Sigma Huda)..... 13

OTHER AUTHORITIES

Annitto, Megan, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL’Y REV 1 (2011) 26

Bindel, Julie & Liz Kelly, CHILD AND WOMAN ABUSE STUDIES UNIT, LONDON METROPOLITAN UNIVERSITY, *A CRITICAL EXAMINATION OF RESPONSES TO PROSTITUTION IN FOUR COUNTRIES: VICTORIA, AUSTRALIA; IRELAND; THE NETHERLANDS; AND SWEDEN* (2003) 23

Budapest Group, *The Relationship Between Organized Crime and Trafficking in Aliens*, AUSTRIA: INTERNATIONAL CENTRE FOR MIGRATION POLICY DEVELOPMENT (June 1999) 17

Burris, Autumn, *Stories*, WORLD WITHOUT EXPLOITATION,..... 11

Cho, Seo-Young et. al, *Does Legalized Prostitution Increase Human Trafficking?*, 41 WORLD DEVELOPMENT 67 (2013) 17

Dalla, Rochelle L. et. al, “*You Just Give Them What They Want and Pray They Don’t Kill You.*” *Street-Level Sex Workers’ Reports of Victimization, Personal Resources, and Coping Strategies*, 9 VIOLENCE AGAINST WOMEN 1367 (2003)..... 24

Durchslag, Ruth & Samir Goswami, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 12 (Ruth Durchslag et. al eds., Chicago Alliance Against Sexual Exploitation 2008)..... 10

El-Bassel, Nabila, D.S.W, et. al, *Correlates of Partner Violence Among Female Street-Based Sex Workers: Substance Abuse, History of Childhood Abuse, and HIV Risks*, 15 AIDS PATIENT CARE AND STDs 41 (2001) 20, 24

Fairstein, Linda, SEXUAL VIOLENCE: OUR WAR AGAINST RAPE 171 (1995) 22

Farley, Melissa et. al, *Comparing Sex Buyers With Men Who Do Not Buy Sex: New Data on Prostitution and Trafficking*, JOURNAL OF INTERPERSONAL VIOLENCE 1 (2015) 9, 10

Farley, Melissa et. al, *Prostitution in Vancouver: Violence and the
colonization of First Nations Women*, 42 *TRANSCULTURAL PSYCHIATRY*
242 (2005) 26

Farley, Melissa, *Myths and Facts about Trafficking for Legal and Illegal
Prostitution*, *PROSTITUTION RESEARCH & EDUCATION* 1 (March 2009), 16

Farley, Melissa, PhD & Howard Barkan, *Prostitution, Violence Against
Women, and Posttraumatic Stress Disorder*, 27 *WOMEN & HEALTH* 1
(1998) 15, 20, 26

Farley, Melissa, *Prostitution Harms Women Even if Indoors: Reply to
Weitzer. Violence Against Women*, 11 *VIOLENCE AGAINST WOMEN* 950
(2005); 28

Farley, Melissa, *Prostitution is Sexual Violence*, *PSYCHIATRIC TIMES*
(October 1, 2004) 14

Farley, Melissa, *Prostitution, Trafficking, and Cultural Amnesia: What We
Must Not Know in Order to Keep the Business of Sexual Exploitation
Running Smoothly*, 18 *YALE J.L. & FEMINISM* 109 (2006) 22

Farley, Melissa, *Very Inconvenient Truths: Sex Buyers, Sexual Coercion,
and Prostitution-Harm-Denial*, *THE HAMPTON INSTITUTE* (February 26,
2016) 14

Kennedy, M. Alexis et. al, *Routes of Recruitment: Pimp’s Techniques and
Other Circumstances That Lead to Street Prostitution*, 15 *JOURNAL OF
AGGRESSION, MALTREATMENT & TRAUMA* 1 (December 19, 2007)..... 13, 21

Leigholdt, Dorchen A., *Prostitution and Trafficking in Women: An Intimate
Relationship*, 2 *JOURNAL OF TRAUMA PRACTICE* 167 (2003)..... 12

Logan, T.K. et. al, *Understanding Human Trafficking in the United States*,
10 *TRAUMA, VIOLENCE, & ABUSE* 3 (2009) 14

MacKinnon, Catharine A., *Trafficking, Prostitution, and Inequality*, 46
HARV. C.R.-C.L. L. REV. 271 (2011). 14, 18, 23

McClanahan, Susan F., Ph.D et. al, *Pathways Into Prostitution Among
Female Jail Detainees and Their Implications for Mental Health Services*,
50 *PSYCHIATRIC SERVICES* 1606 (1999)..... 15

Mellul, Yael & Lise Bouvet, *Why France Is Adopting A New Law That
Criminalizes The Clients, Not Prostitutes*, *HUFF POST* (April 7, 2016) 14

Mester, Tiffany, *Stories*, *WORLD WITHOUT EXPLOITATION* 25

Miller, Jody & Martin D. Schwartz, <i>Rape Myths and Violence Against Street Prostitutes</i> , 16 DEVIANT BEHAVIOR: AN INTERDISCIPLINARY JOURNAL 1 (1995).....	23, 24, 26
Moran, Rachel, PAID FOR: MY JOURNEY THROUGH PROSTITUTION (2013).	25
Norton-Hawk, Maureen A., <i>The Counter-productivity of Incarcerating Female Street Prostitutes</i> , 22 DEVIANT BEHAVIOR: AN INTERDISCIPLINARY JOURNAL 403 (2005)	20
Overs, Cheryl & Andrew Hunter, MAKING SEX WORK SAFE (Global Network Of Sex Work Projects)	11
Plumridge, Libby & Gillian Abel, <i>A 'Segmented' Sex Industry in New Zealand: Sexual and Personal Safety of Female Sex Workers</i> , 25 AUSTRALIAN & NEW ZEALAND JOURNAL OF PUBLIC HEALTH 78 (2001).....	13, 26
Potterat, John J. et. al, <i>Mortality in a Long-Term Open Cohort of Prostitute Women</i> , 159 AMERICAN JOURNAL OF EPIDEMIOLOGY 778 (2004).	21, 22, 27
Raphael, Jody & Deborah L Shapiro, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO 13 (2002).....	13, 26, 27
Raymond, Janice G., <i>Ten Reasons for Not Legalizing Prostitution And a Legal Response to the Demand for Prostitution</i> , 2 JOURNAL OF TRAUMA PRACTICE 1 (2003)	17, 18
Roxburgh, Amanda et. al, <i>Posttraumatic Stress Disorder Among Female Street-Based Sex Workers in the Greater Sydney Area, Australia</i> , 6 BMC PSYCHIATRY 1 (May 24, 2006)	21
Sanders, Teela, <i>It's Just Acting': Sex Workers' Strategies for Capitalizing on Sexuality</i> , 12 GENDER, WORK AND ORGANIZATION 319 (2005).....	10, 11
Shapiro, Melanie, J.D. & Donna M. Hughes, Ph.D, <i>Brothel List by Senate District, Rhode Island</i> , CITIZENS AGAINST TRAFFICKING BULLETIN (May 31, 2009)	19
Shapiro, Melanie, J.D. & Donna M. Hughes, Ph.D., <i>Decriminalized Prostitution: Impunity for Violence and Exploitation</i> , WAKE FOREST LAW REVIEW 1 (Forthcoming)	19
Skodmin, Faith et. al, <i>Analysis of Human Trafficking Cases in Rhode Island, 2009-2013</i> , SGO.SAGEPUB.COM (April-June 2016)	20
ST. JAMES INFIRMARY, OCCUPATIONAL HEALTH AND SAFETY HANDBOOK (Naomi Akers & Cathryn Evans eds.,3rd ed. 2010)	24, 27, 28

Sullivan, Mary & Sheila Jeffreys, *Legalising Prostitution is Not the Answer: The Example of Victoria, Australia*, CATW INTERNATIONAL 1 16

Surratt, Hilary L. et. al, *Sex Work and Drug Use in a Subculture of Violence*, 50 CRIME & DELINQUENCY 43 (2004)..... 21

Surratt, Hilary L. et. al, *The Connections of Mental Health Problems, Violent Life Experiences, and the Social Milieu of the "Stroll" with the HIV Risk Behaviors of Female Street Sex Workers*, 17 JOURNAL OF PSYCHOLOGY & HUMAN SEXUALITY 23 (2005); 15

Valera, Roberto J. et. al, *Perceived Health Needs of Inner-City Street Prostitutes: A Preliminary Study*, 25 AMERICAN JOURNAL HEALTH BEHAVIOR 50 (2001) 24, 27

Whittaker, Dawn & Graham Hart, *Managing risks: The social Organization of Indoor Sex Work*, 18 SOCIOLOGY OF HEALTH & ILLNESS 399 (1996)..... 28

Williamson, Ceilia & Gail Folaron, *Understanding the Experiences of Street Level Prostitutes*, 2 QUALITATIVE SOCIAL WORK 271 (2003) 15

Williamson, Ceilia & Gail Folaron, *Violence, Risk, and Survival Strategies of Street Prostitution*, 23 WESTERN JOURNAL OF NURSING RESEARCH 463 (2001)..... 22, 24

IDENTITY AND INTEREST OF THE AMICI CURIAE

The National Center on Sexual Exploitation (NCOSE) is the leading national organization exposing the links between all forms of sexual exploitation. NCOSE embraces a mission to defend human dignity and advocate for the universal right of sexual justice, which is freedom from sexual exploitation, objectification, and violence. To this end, NCOSE utilizes policy activism to combat corporate and government policies that foster exploitation, advances public education, and spurs united action through leading the international Coalition to End Sexual Exploitation.

Covenant House California (CHC)'s mission is to reach at-risk homeless youth living on the streets and offer them hope and opportunities to turn their lives around. We help abused, neglected, or sexually exploited youth who have no refuge.

The mission of Freedom From Exploitation (a San Diego-based nonprofit) is to serve those who have been victimized by the sex industry through prostitution, child victimization and human trafficking. We impact the systems that perpetuate the re-victimization and unequal treatment of men, women and children, and educate the community about the far-reaching, detrimental consequences of this crime on a person, family and the community.

The Coalition Against Trafficking in Women (CATW) is one of the oldest international human rights organizations working to end human trafficking and commercial sexual exploitation as severe violations of the human rights of women and girls. To reach those goals, CATW engages in advocacy, education, victim services and prevention programs for victims of trafficking and commercial sexual exploitation in Asia, Africa, Europe and the Americas, as it collaborates with grassroots and survivor leaders.

SPACE International is a sex trade survivors group, transatlantic in structure and pro Nordic Model in nature. We educate the general public and policy makers about the harm and damage of commercial sexual exploitation.

As an international human rights organization, Equality Now works to protect and promote the rights of women and girls worldwide with a membership network in over 190 countries. A holistic and comprehensive strategy to combating sex trafficking includes targeting the demand for commercial sexual acts, removing criminal sanctions from survivors/victims and providing them with access to services.

Demand Abolition is committed to ending the illegal sex trade in the US by confronting the demand for paid sex. Sex buyers are the principle drivers of this exploitative industry; without their money, the whole predatory system shuts

down. To stop commercial sexual exploitation, we must end the demand for prostitution.

Chicago Alliance Against Sexual Exploitation (CAASE) opposes sexual abuse and exploitation by directly addressing the culture, institutions and individuals that perpetrate, profit from, or support exploitation. CAASE provides direct legal services to survivors of sexual exploitation, including sexual assault and prostitution. We advocate for federal and state laws and precedent related to sexual exploitation and prostitution to be appropriately interpreted and applied so as to further—and not undermine—efforts to hold perpetrators of sexual assault and trafficking appropriately accountable.

The Wichita State University Center for Combating Human Trafficking aims to bridge the gap between direct practice, policy, and academic resources in order to effectively address human trafficking. Our mission is to empower our nation's capacity to provide effective prevention, assessment, identification, intervention, restoration, and aftercare/prosperity responses in efforts toward ending abuse and exploitation. With this in mind, our focus goes beyond rescuing victims to directly addressing the underlying issues that create a context in which human trafficking and sexual exploitation can occur.

Global Centurion Foundation fights human trafficking by focusing on demand—the perpetrators, exploiters, buyers, and end-users of human beings who

fuel the market for forced labor and commercial sex. In this way, we seek to prevent modern slavery at its source, since it is the buyers who create and fuel the market for sex and labor trafficking.

Survivors for Solutions offers over 20 years of experience in advocacy, administration and service delivery to disenfranchised populations including sexual exploitation and violence against women. It seeks to abolish all forms of sexual exploitation for all humans through awareness, education, demand reduction, Survivor development, and incorporating the Survivor voice into public and private policies.

The National Organization for Women in New York has a long history of fighting on the political, social and legal frontline to end gender-based violence. Prostitution is a form of violence and this case highlights the need to draw connections between gender-based violence, trafficking and cultural and legal barriers that help facilitate violence in our society.

Sanctuary for Families (“Sanctuary”) is New York’s largest dedicated service provider and advocate for survivors of domestic violence, human trafficking, and related forms of gender violence. Every year, Sanctuary provides legal, clinical, shelter, and economic empowerment services to over 15,000 survivors and their children. Sanctuary provides training on domestic violence and trafficking to community advocates, pro bono attorneys, law students, service

providers, and the judiciary. Sanctuary also provides legal representation to survivors.

INTRODUCTION

We offer this Amicus Brief in support of the state of California. The Attorney General has done a thorough job of addressing the legal arguments of this case. We add to their argument by addressing topics within our area of expertise. Our argument is especially relevant, considering that the Appellant claims that California's law "does not significantly further any important governmental interest." Pl.-Appellant's Br., R. at 40, August 30, 2016, Dkt: 11. However, prostitution is intrinsically connected to sex trafficking and violence against women—crimes that the government is tasked to prevent. Therefore, we offer our unique perspective to aid the Court as it considers the merits of this case.

The Appellant's entire argument hinges on two points: 1) whether the rationale of *Lawrence v. Texas*, 539 U.S. 558 (2003), should be applied to prostitution, qualifying it as an intimate association; and 2) whether the prohibition of prostitution constitutes an important governmental interest. However, Appellant's argument fails. Prostitution should not be classified as an intimate association protected as a fundamental right. The United States Supreme Court forbids the application of the *Lawrence* rationale to prostitution. Additionally, prostitution is inherently harmful and is integrally connected to sex trafficking, drugs, brutal physical violence, rape, and murder. The state of California clearly maintains an important governmental interest in preventing these harms.

ARGUMENT

I. APPELLANT'S ARGUMENT FAILS BECAUSE PROSTITUTION IS NOT A FUNDAMENTAL RIGHT, AND THE STATE MAINTAINS AN IMPORTANT GOVERNMENT INTEREST IN PREVENTING THE HARMS ASSOCIATED WITH PROSTITUTION

A. APPELLANT'S FUNDAMENTAL RIGHT ARGUMENT FAILS BECAUSE *LAWRENCE* DOES NOT APPLY TO PROSTITUTION

The Appellant, Erotic Service Providers Legal, Educational, Research and Project, hereinafter "ESPLERP," claims that *Lawrence v. Texas*, 539 U.S. 558 (2003), sets legal precedent to the effect that "the state cannot criminalize consensual adult, sexual activity that occurs in private, even if it occurs for compensation." Pl. Opp'n to the Att'y General's Mot. to Dismiss, R. at 48, August 30, 2016, Dkt 12-2. ESPLERP's argument relies heavily on the notion that consensual adult paid sex is a protected relationship. However, that notion is belied by the fact that the relationship is not intimate.

Prostitution does not fall within the type of intimate personal relationships protected by the Fourteenth Amendment. The United States Supreme Court and this Court have determined that the Fourteenth Amendment protects deep, personal relationships, not sexual conduct. See *Lawrence*, 539 U.S. 558 and *IDK, Inc. v. Clark County*, 836 F.2d 1185 (9th Cir. 1988). In *Lawrence v. Texas*, the Supreme Court found that the Fourteenth Amendment "afford[s] constitutional protection to personal decisions relating to marriage, procreation, contraception, family

relationships, child rearing, and education.” 539 U.S. at 574. *Lawrence* does not offer such sweeping protections for prostitution. *Id.* Instead, the Court declares: “[w]hen sexuality finds overt expression in intimate conduct with another person, the conduct can be but one element in a *personal bond that is more enduring.*” *Id.* at 567 (emphasis added). Thus, it is the personal bond that *Lawrence* is protecting. *Id.*

ESPLERP tries to discount the *Lawrence* language by claiming that *Obergefell v. Hodges*, 135 U.S. 2584 (2015), changed the ruling of *Lawrence*: “the Supreme Court [in *Obergefell*] has shifted the [*Lawrence*] definition... to comprise merely sexual or intimate conduct...” Pl.-Appellant’s Br., R. at 21, August 30, 2016, Dkt: 11. However, *Obergefell* was not merely about ‘sexual or intimate conduct’. See 135 U.S. 2584. *Obergefell* was about the right to marry:

Rising from the most basic human needs, marriage is essential to our most profound hopes and aspirations. 135 U.S. at 2594.
[T]he Court has long held the right to marry is protected by the Constitution. 135 U.S. at 2598.

Thus, *Obergefell* does not change *Lawrence*, but supports *Lawrence*’s ruling that “confirmed that the Due Process Clause protects personal decisions relating to marriage... [and] relationships.” *Lawrence*, 539 U.S. at 559.

This rationale is further supported in *IDK, Inc. v. Clark County*:

The relationships protected by the fourteenth amendment ‘are those that attend the creation and sustenance of a family and similar highly personal relationships.’ The individuals are deeply attached and

committed to each other as a result of their having shared each other's thoughts, beliefs, and experiences. By the very nature of such relationships, one is involved in relatively few intimate associations during his or her lifetime...

836 F.2d at 1193. *Lawrence*, *Obergefell*, and *IDK* show that the 14th Amendment protects “personal bonds” (*Lawrence*, 539 U.S. at 567) that “attend to the creation of highly personal relationships.” *IDK*, 836 F.2d at 1193.

Moreover, the descriptions of relationships in *Lawrence*, *Obergefell*, and *IDK* cannot be used to describe prostitution. Prostitution does not relate to “marriage, procreation, contraception, family relationships, child rearing, [or] education.” *Lawrence*, 539 U.S. at 574. Likewise, prostitution is not a “personal bond that is *more enduring*.” *Id.* at 567 (emphasis added). Indeed, by its nature prostitution is not enduring at all. It is momentary, without commitment and impersonal.

Prostitution does not “attend to the creation and sustenance of... highly personal relationships.” *IDK* at 1193. As the selection of statements below attests, sex buyers use persons in prostitution not to achieve intimacy but to *escape* it.

- “You are not paying a prostitute for sex, you are paying her to leave afterwards. No emotional connection.” Melissa Farley et. al, *Comparing Sex Buyers With Men Who Do Not Buy Sex: New Data on Prostitution and Trafficking*, JOURNAL OF INTERPERSONAL VIOLENCE 1 (2015).

- “You don’t care about this person - it’s a feeling of no strings.” Rachel Durchslag & Samir Goswami, DECONSTRUCTING THE DEMAND FOR PROSTITUTION: PRELIMINARY INSIGHTS FROM INTERVIEWS WITH CHICAGO MEN WHO PURCHASE SEX 12 (Ruth Durchslag, Ruth et. al eds., Chicago Alliance Against Sexual Exploitation 2008).
- “The relationship has to stay superficial because they are a person and you're capable of getting to know them. But once you know them, it's a problem, because you can't objectify them anymore.” Farley et. al, *Comparing Sex Buyers, supra* at 5.
- “Being with a prostitute is like having a cup of coffee, when you’re done, you throw it out.” *Id.*

It is also well documented that prostituted persons utilize mental and physical distancing strategies (e.g. body exclusion zones, refusing to kiss, requiring condoms, restricting which bed can be used for commercial sex, using pseudonyms, creating fictitious life stories) while prostituting, to aid in their dissociation from the immediate context of a commercial sex exchange. Teela Sanders, *It's Just Acting': Sex Workers' Strategies for Capitalizing on Sexuality*, 12 GENDER, WORK AND ORGANIZATION 319, 326 (2005) (“Certain body parts are similarly ‘off limits’. These parts of the body and specific sex acts are considered *too intimate* to be sold....”); Autumn Burris, *Stories*, WORLD WITHOUT

EXPLOITATION, <http://worldwithoutexploitation.org/survivor/autumn-burris> (“You create boundaries to make it more bearable. Transactions meant having someone I was repulsed by touch me, and enter my body. I coped by limiting the amount of time with each sex buyer and attempting to impose boundaries that were regularly violated.”); and Cheryl Overs & Andrew Hunter, MAKING SEX WORK SAFE 66 & 72 (Global Network Of Sex Work Projects). Researchers have described these techniques as “deep acting,” and noted that, “manufactured identity is a consistent occurrence” among those in the sex industry. Sanders, *supra* (internal quotations and citation omitted.). This is further evidence that the relationship between the sex purchaser and prostituted person is not one of intimacy because “acting” and disassociation are purposeful techniques for maintaining barriers to intimacy. *Id.* and Overs & Hunter, *supra*.

Prostitution is a dehumanized sexual exchange devoid of hallmarks of intimacy such as attachment, friendship, warmth and affection, and is not protected by the 14th Amendment.

The Supreme Court’s decision in *Lawrence* undermines ESPLERP’s arguments. This Court should apply *Lawrence* properly and reject ESPLERP’s claim.

B. APPELLANT’S ARGUMENT FAILS BECAUSE THE STATE OF CALIFORNIA MAINTAINS AN IMPORTANT

GOVERNMENT INTEREST IN PREVENTING THE HARMS ASSOCIATED WITH PROSTITUTION

ESPLERP claims that California's law "does not significantly further any important governmental interest." Pl.-Appellant's Br., R. at 40, August 30, 2016, Dkt: 11. However, prostitution is inherently an act of sexual coercion, is a form of sexual violence and is integrally connected to sex trafficking, drug abuse, brutality, rape, and murder. The state of California maintains an important government interest in preventing the crimes and health risks associated with prostitution.

1. Prostitution is Sexual Coercion and Closely Associated with Sex Trafficking, and the State Has an Important Interest in Preventing These Crimes

Prostitution and sex trafficking are closely linked. There is no demand for sexually trafficked persons *per se*. Dorchen A. Leigholdt, *Prostitution and Trafficking in Women: An Intimate Relationship*, 2 JOURNAL OF TRAUMA PRACTICE 167, 167-168 (2003). Rather, it is the prostitution industry by which sexually trafficked persons are exploited. 22 U.S.C.A. § 7101 (West 2016), (Purpose and Findings" of the Trafficking Victims Protection Act) ("Many of these persons [sex trafficking victims] are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution..."). In fact, prostitution often satisfies the elements of trafficking. U.N. ESCOR, COMM'N ON HUMAN RIGHTS,

Integration of the Human Rights of Women and a Gender Perspective, Report of the Special Rapporteur on the Human Rights Aspects of the Victims of Trafficking in Persons, Especially Women and Children, ¶ 42 U.N. Doc. E/CN.4/2006/62 (Feb. 20, 2006) (Sigma Huda) (“For the most part, prostitution, as actually practiced in the world, usually does satisfy the elements of trafficking.”). *See also* California Penal Code § 236.1(a) (West 2016) (“Any person who deprives or violates the personal liberty of another, ‘through force, fear, fraud, deceit, coercion, violence, duress, menace or threat of unlawful injury (California Penal Code § 236.1(h)),’ with the intent to obtain forced labor or services, is guilty of human trafficking.”). Thus, the majority of prostituted persons should be classified as victims of sex trafficking,¹ and pimps should be classified as sex traffickers.²

¹ Under California Penal Codes, § 236.1§ 266, § 266h, and §266i (West 2016), minors are victims of sex trafficking, and the majority of prostituted persons began prostituting as children (*See* Jody Raphael & Deborah L Shapiro, *SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO* 13 (2002) (“61.7% of respondents first exchanged sex for money before the age of 18”); Libby Plumridge & Gillian Abel, *A 'Segmented' Sex Industry in New Zealand: Sexual and Personal Safety of Female Sex Workers*, 25 *AUSTRALIAN & NEW ZEALAND JOURNAL OF PUBLIC HEALTH* 78, 80 (2001) (“Nearly two-thirds (62%) of street workers had been under 18 years old when they started work.”)).

² The use of “force, fraud, duress, or coercion” are the hallmarks of a trafficker (California Penal Codes, §236.1). Pimps use many coercive tactics, including drugs, debt, and physical violence to physically and psychologically compel prostituted persons to perform commercial sex acts (M. Alexis Kennedy et. al, *Routes of Recruitment: Pimp's Techniques and Other Circumstances That Lead to Street Prostitution*, 15 *JOURNAL OF AGGRESSION, MALTREATMENT & TRAUMA* 1, 7-8 (December 19, 2007)). These are effective tactics as nearly all persons under pimp control, “believe they would be harmed if they stopped (Raphael & Shapiro,

Moreover, in most cases, the very act of prostitution should be considered sex trafficking since the exchange of money (or something of value) to obtain a sex act is an act of sexual coercion. See Melissa Farley, *Prostitution is Sexual Violence*, PSYCHIATRIC TIMES (October 1, 2004), <http://www.psychiatrictimes.com/sexual-offenses/prostitution-sexual-violence>; Melissa Farley, *Very Inconvenient Truths: Sex Buyers, Sexual Coercion, and Prostitution-Harm-Denial*, THE HAMPTON INSTITUTE (February 26, 2016), <http://www.hamptoninstitution.org/capitalism-coercion-and-prostitution.html#.WBCyzJMrIRE>; and Yael Mellul & Lise Bouvet, *Why France Is Adopting A New Law That Criminalizes The Clients, Not Prostitutes*, HUFF POST (April 7, 2016), http://www.huffingtonpost.com/yael-mellul/why-france-is-adopting-a-_b_9635988.html. “In these transactions, the money *coerces* the sex rather than guaranteeing consent to it, making prostitution a practice of serial rape.”³ Catharine A. MacKinnon, *Trafficking, Prostitution, and Inequality*, 46 HARV. C.R.-C.L. L. REV. 271 (2011).

Furthermore, it is hard to differentiate between a prostituted person and a sex trafficking victim. They share many key demographics, such as homelessness,

supra note 1 at 5),” and a majority of prostituted persons feel entrapped by “fear [97%], lack of knowledge about alternatives [88%], isolation [85%], and physical and psychological confinement [68%] (T.K. Logan et. al, *Understanding Human Trafficking in the United States*, 10 TRAUMA, VIOLENCE, & ABUSE 3, 13 & 27 (2009)).”

³ MacKinnon also notes that the only proper “consideration for sex is sex. Where sex is mutual, it is its own reward.” MacKinnon, *supra*.

poverty, histories of abuse, and minority status. *See* Melissa Farley, PhD & Howard Barkan, *Prostitution, Violence Against Women, and Posttraumatic Stress Disorder*, 27 *WOMEN & HEALTH* 1, 37 & 40 (1998) (84% reported homelessness); Ceilia Williamson & Gail Folaron, *Understanding the Experiences of Street Level Prostitutes*, 2 *QUALITATIVE SOCIAL WORK* 271 (2003) (girls entered prostitution as a means of survival); and Susan F. McClanahan, Ph.D et. al, *Pathways Into Prostitution Among Female Jail Detainees and Their Implications for Mental Health Services*, 50 *PSYCHIATRIC SERVICES* 1606 (1999) (“Childhood sexual victimization, by contrast, nearly doubled the odds of entry into prostitution throughout the lives of women”). They also experience the same harms during prostitution—physical injury from sexual assaults and beatings, acquisition of sexually transmitted infections, post-traumatic stress disorder, etc. *See* Hilary L. Surratt et. al, *The Connections of Mental Health Problems, Violent Life Experiences, and the Social Milieu of the “Stroll” with the HIV Risk Behaviors of Female Street Sex Workers*, 17 *JOURNAL OF PSYCHOLOGY & HUMAN SEXUALITY* 23 (2005); and Farley & Barkan, *supra*.

a. Decriminalization of Prostitution Will Legitimize Sex Trafficking

By decriminalizing prostitution, this Court would legitimize pimps and sex traffickers.

Some people believe that legalizing prostitution would offer dignity and professionalism to women in prostitution. But legitimizing prostitution by legalizing it does not change the actual experience of prostitution nor does it dignify prostituted women who still experience stigma and other harms in legal prostitution. Once prostitution is legalized, pimps become legitimate businessmen, and the predatory purchase of another person for sex is now a legitimate business transaction.

Melissa Farley, *Myths and Facts about Trafficking for Legal and Illegal*

Prostitution, PROSTITUTION RESEARCH & EDUCATION 1 (March 2009),

<http://www.prostitutionresearch.com/Myths%20&%20Facts%20Legal%20&%20I>

[legal%20ProstitutionMelissaFarley3-09.pdf](http://www.prostitutionresearch.com/Myths%20&%20Facts%20Legal%20&%20I). Decriminalization of prostitution

allows pimps/sex traffickers to traffic in human beings with impunity. *Id.*

b. The Decriminalization of Prostitution Will Lead to an Increase in Sex Trafficking

There is a “Pretty Woman” fairytale that ESPLERP and others are attempting to perpetuate on society that legalizing or decriminalizing prostitution is the solution to eliminating the harms of prostitution. This is not true.⁴ Yet, these

⁴ See 22 U.S.C.A. § 7101 (West 2016), “Purpose and Findings” of the Trafficking Victims Protection Act, (“Many of these persons [sex trafficking victims] are trafficked into the international sex trade, often by force, fraud, or coercion. The sex industry has rapidly expanded over the past several decades. It involves sexual exploitation of persons, predominantly women and girls, involving activities related to prostitution....”); U.S. DEPT. OF STATE, TRAFFICKING IN PERSONS REPORT, JUNE 2007 1, 27 (2007) (“The U.S. Government adopted a strong position against prostitution in a December 2002 policy decision, which states that prostitution is inherently harmful and dehumanizing and fuels trafficking in persons”); Mary Sullivan & Sheila Jeffreys, *Legalising Prostitution is Not the Answer: The Example of Victoria, Australia*, CATW INTERNATIONAL 1,

myths have spurred on various countries to decriminalize prostitution. The results of some countries' experiments (including the state of Rhode Island in the United States) have shown that decriminalization of prostitution is harmful and leads to an increase in sex trafficking.

i. Legalization in the Netherlands Led to an Increase in Sex Trafficking

In the Netherlands, one argument for legalizing prostitution was that legalization would end sex trafficking, but that has not proven true. Janice G. Raymond, *Ten Reasons for Not Legalizing Prostitution And a Legal Response to the Demand for Prostitution*, 2 JOURNAL OF TRAUMA PRACTICE 1, 2 (2003). After legalization, estimates show that "80% of prostitutes are being trafficked," Budapest Group, *The Relationship Between Organized Crime and Trafficking in Aliens*, AUSTRIA: INTERNATIONAL CENTRE FOR MIGRATION POLICY DEVELOPMENT 17-18 (June 1999), and the number of trafficking victims has increased, with the number of children exploited in prostitution increasing from 4,000 to an estimated

<http://www.catwinternational.org/Content/Images/Article/95/attachment.pdf>; Mackinnon, *supra*; and Seo-Young Cho et. al, *Does Legalized Prostitution Increase Human Trafficking?*, 41 WORLD DEVELOPMENT 67, 75-76 (2013) ("Our quantitative empirical analysis... shows that the scale effect dominates the substitution effect. On average, countries with legalized prostitution experience a larger degree of reported human trafficking inflows. We have corroborated this quantitative evidence with three brief case studies of Sweden, Denmark, and Germany.").

15,000. Raymond, *supra* (citing to the Dutch National Rapporteur), Clearly, decriminalization did not end sex trafficking, but increased it.

ii. Legalization in Australia Led to an Increase in Sex Trafficking

In 1984, the state of Victoria in Australia legalized prostitution in brothels. *Id.* at 3. The state government believed that legalizing prostitution would allow for enforcement of occupational health and safety standards and would decrease trafficking. Sullivan & Jeffreys, *supra* note 4 at 5. However, these beliefs were later proven wrong. Mackinnon, *supra*. The U.S. Department of State found, in regard to Australia, that “[t]rafficking in East Asian women for the sex trade is a *growing* problem...[because] lax laws – including legalized prostitution in parts of the country – make [anti-trafficking] enforcement difficult at the working level.” U.S. DEPT. OF STATE, BUREAU OF DEMOCRACY, HUMAN RIGHTS AND LABOR, 1999 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES, “AUSTRALIA.” SECTION 6F (2000) (emphasis added). *See also* Sullivan & Jeffreys, *supra* note 4 at 12.

iii. Decriminalization in Rhode Island made it Impossible for State Authorities to Regulate Prostitution and Prevent Sex Trafficking

From 1980 until 2009, indoor prostitution was decriminalized in the state of Rhode Island.⁵ Melanie Shapiro, J.D. & Donna M. Hughes, Ph.D., *Decriminalized*

⁵ In 1980, 11 R.I. Gen. Laws Ann. § 11-34-8 (West) made “loitering for indecent purposes a misdemeanor.” However, it also “repealed the laws pertaining to

Prostitution: Impunity for Violence and Exploitation, WAKE FOREST LAW REVIEW 1, 4 (Forthcoming) (on file with the authors). Decriminalization of the Rhode Island sex industry led to such an expansion of prostitution that Providence was dubbed “the red-light district of New England.”⁶ *Id.* at 5-6. Decriminalization made it impossible for the State authorities to investigate, let alone prevent, sex trafficking; “because prostitution was a private, [legal] act,” police did not have probable cause to investigate for sex trafficking crimes. Shapiro & Hughes, *Decriminalized Prostitution*, *supra* at 16-17. These challenges led the President of National Center for Missing and Exploited Children to criticize the Rhode Island law:

Under current Rhode Island law, commercial sex between adults inside a building is considered a private activity and is thus protected. This deprives Rhode Island law enforcement of the ability to detect whether children are being victimized in this commercial sex trade, to rescue these child victims, and to provide them with the services they so desperately need. Your state’s efforts in the fight against child prostitution would be greatly enhanced if law enforcement were empowered to fully investigate the commercial sex trade.

Id. at 17 (internal citations omitted).

solicitation for or engaging in prostitution.” Thus, only street prostitution was illegal.

⁶ A study found that ‘massage parlor’ ads quadrupled over a six-year period, and the reviews from *The Erotic Review* “increased twelvefold,” with a “200 percent increase in the number of prostitutes being reviewed on [the] site” between the years 2003 and 2007. See also Melanie Shapiro, J.D. & Donna M. Hughes, Ph.D, *Brothel List by Senate District, Rhode Island*, CITIZENS AGAINST TRAFFICKING BULLETIN (May 31, 2009) (showing the number of brothels opening from the year 2000 until 2009, with a total of 31 brothels opened.).

Finally, in 2009, after years of criticism, the Rhode Island General Assembly passed laws removing the loophole of decriminalized indoor prostitution. *See* Prostitution and Lewdness, 11 R.I Gen. Laws §§ 11-34-8.3 – 11-34-11 (West 2016); and Commercial Sexual Activity, 11 R.I Gen. Laws §§ 11-34.1-1 – 11-34.1-14 (West 2016). Since that time, Rhode Island law enforcement has been able to investigate and prosecute sex trafficking crimes in the State. Faith Skodmin et. al, *Analysis of Human Trafficking Cases in Rhode Island, 2009-2013*, SGO.SAGEPUB.COM (April-June 2016), <http://sgo.sagepub.com/content/spsgo/6/2/2158244016655585.full.pdf>.

Decriminalization of prostitution prevents law enforcement from properly investigating and preventing sex trafficking.

2. Prostitution is Associated with Illicit Drug Use, and the State of California Maintains an Important Government Interest in Preventing Drug Abuse

Many prostituting persons have a drug habit,⁷ and prostitute to support their drug addiction.⁸ However, the research indicates that persons in prostitution

⁷ Nabila El-Bassel, D.S.W, et. al, *Correlates of Partner Violence Among Female Street-Based Sex Workers: Substance Abuse, History of Childhood Abuse, and HIV Risks*, 15 AIDS PATIENT CARE AND STDs 41, 68 (2001) (92.6% of prostituted women were “current, regular crack use[rs].”); Maureen A. Norton-Hawk, *The Counter-productivity of Incarcerating Female Street Prostitutes*, 22 DEVIANT BEHAVIOR: AN INTERDISCIPLINARY JOURNAL 403, 409 (2005) (“Ninety-two percent of the subjects report using one or more drugs on a daily basis. The most common addictions are to crack cocaine... followed by heroin”); and Farley & Barkan, *supra* (75% abused drugs).

frequently use drugs in order to engage in prostitution. Raphael & Shapiro, *supra* note 1 at 5 (“Over 90% of women in both street and off-street activities increased their drug or alcohol usage during those activities.”); and Amanda Roxburgh et. al, *Posttraumatic Stress Disorder Among Female Street-Based Sex Workers in the Greater Sydney Area, Australia*, 6 BMC PSYCHIATRY 1, 5-6 (May 24, 2006) (53% reported that they used drugs to facilitate their sex work.). Engaging in acts of prostitution is so difficult that prostituted persons take drugs in order to ‘numb’ themselves so they “‘did not have to think’ about what they were doing, and they didn’t ‘have to feel’ while working.” *Id.*

This close connection between prostitution and illicit drug use further justifies the state in preventing prostitution.

3. Prostitution is Inherently Violent, and the State Maintains an Important Governmental Interest in Preventing Sexual Violence

Prostitution is one of the most deadly “careers” an individual can have. John J. Potterat et. al, *Mortality in a Long-Term Open Cohort of Prostitute Women*, 159 AMERICAN JOURNAL OF EPIDEMIOLOGY 778, 784 (2004). This Court cannot assume

⁸ See Norton-Hawk, *supra* note 7 (“Over two-thirds state that the primary reason they continue to work as a prostitute is to pay for drugs.”); Kennedy et. al, *supra* note 2 at 10 (“16% of prostituted women stated that they began working on the streets to support a drug habit.”); and Hilary L. Surratt et. al, *Sex Work and Drug Use in a Subculture of Violence*, 50 CRIME & DELINQUENCY 43, 55 (2004) (“When you need the cracks [crack cocaine] and you need money for other things ’cause your rent money went on the boards [was used to buy crack], you got to survive, and you know, to do that, the pussy works!”).

that the relationship between a sex buyer and a prostitute is cordial or amicable. It is unlikely that any “lifestyle exposes a woman to the threat of assault and gratuitous violence as constantly and completely as prostitution.” Linda Fairstein (Manhattan Sex Crimes Prosecutor), *SEXUAL VIOLENCE: OUR WAR AGAINST RAPE* 171 (1995). Prostituted persons face rape, every conceivable manner of physical violence, and even death. These acts are most commonly perpetrated by sex buyers and pimps. Potterat et. al, *supra*. These abuses are so endemic to prostitution that even in the legal brothels of the Netherlands, brothel owners are required to install panic buttons in an effort to prevent violence. DUTCH MINISTRY OF FOREIGN AFFAIRS, *DUTCH POLICY ON PROSTITUTION* 5 (2012)., http://www.minbuza.nl/binaries/content/assets/minbuza/en/import/en/you_and_the_netherlands/about_the_netherlands/ethical_issues/faq-prostitutie-pdf--engels.pdf-2012.pdf.

a. Violence: Prostitution is Violent

Studies characterize the violence that animates prostitution as brutal, common, and frequent. See Ceilia Williamson & Gail Folaron, *Violence, Risk, and Survival Strategies of Street Prostitution*, 23 *WESTERN JOURNAL OF NURSING RESEARCH* 463 (2001); and Melissa Farley, *Prostitution, Trafficking, and Cultural Amnesia: What We Must Not Know in Order to Keep the Business of Sexual Exploitation Running Smoothly*, 18 *YALE J.L. & FEMINISM* 109 (2006). Indeed, physical and sexual violence across prostitution types is pervasive—whether

prostituting in indoors or outdoors, for drugs or to pay the rent, on a street corner, in a car, back alley, brothel, massage parlor, or strip club—both the threat of, as well as actual violence, permeate everyday existence in prostitution. Prostitution is also violent whether criminal or decriminalized.⁹

Nearly all prostituted persons have been “victimized by physical assaults.”

Raphael & Shapiro, *supra* note 1 at 18 (showing a table of “12 specific acts of violence [that] are those most frequently experienced by the respondents); and

Jody Miller & Martin D. Schwartz, *Rape Myths and Violence Against Street*

Prostitutes, 16 DEVIANT BEHAVIOR: AN INTERDISCIPLINARY JOURNAL 1, 8 (1995)

(“Most of the women (87.5%) were... victimized by physical assault, which ranged from being punched or kicked (31.3%) to being beaten up (61.2%), stabbed or slashed (31.3%) or being hit with an object like a baseball bat or brick (25%)”).

Victims are “incapable of answering questions on how often they [have] been

⁹ ESPLERP and other proponents of prostitution claim that prostitution is dangerous because it is categorized as criminal (Pl.-Appellant’s Br., R. at 41, August 30, 2016, Dkt: 11). However, that is simply wrong. See Julie Bindel & Liz Kelly, CHILD AND WOMAN ABUSE STUDIES UNIT, LONDON METROPOLITAN UNIVERSITY, *A CRITICAL EXAMINATION OF RESPONSES TO PROSTITUTION IN FOUR COUNTRIES: VICTORIA, AUSTRALIA; IRELAND; THE NETHERLANDS; AND SWEDEN* 12-13 (2003) (“In October 2003, Amsterdam City Council took the decision to close down the street tolerance zone; Mayor Job Cohen noted that...’it appeared impossible to create a safe and controllable zone for women that was not open to abuse...’); and MacKinnon, *supra* (“It is this [the sexual coercion], not its illegality, that largely accounts for prostitution’s stigma. People in prostitution, in this view, are wrongly saddled with a stigma that properly belongs to their exploiters.”).

beaten, kicked or raped.” Miller & Schwartz, *supra*. The violence is just so pervasive it is almost impossible for victims to quantify the amount of violence they have endured. *Id. See also* Williamson & Folaron, *supra* at 466-467 (“numbers cannot communicate the essence of the experience.”). However, victims report that it happens frequently, even weekly. Miller & Schwartz, *supra*; and Rochelle L. Dalla et. al, “*You Just Give Them What They Want and Pray They Don’t Kill You.*” *Street-Level Sex Workers’ Reports of Victimization, Personal Resources, and Coping Strategies*, 9 VIOLENCE AGAINST WOMEN 1367, 1380 (2003). Moreover, when prostituted persons are asked, “‘who was responsible for the assault?’ the most frequent response... was ‘customers.’” Roberto J. Valera et. al, *Perceived Health Needs of Inner-City Street Prostitutes: A Preliminary Study*, 25 AMERICAN JOURNAL HEALTH BEHAVIOR 50, 56-57 (2001).

This level of violence, especially from the hands of sex buyers, “speaks to the inherent danger of being a prostitute, with the most violent aspect of the job being the job itself, interacting with the customer.” *Id. See also* ST. JAMES INFIRMARY, OCCUPATIONAL HEALTH AND SAFETY HANDBOOK 89-91 (Naomi Akers & Cathryn Evans eds., 3rd ed. 2010) (Customers seem to be the primary source of danger and attack.). “The more often the woman exchanged sex for money or drugs, the more likely she was to be physically abused by commercial partners.” El-Bassel et. al, *supra* note 7 at 47. *See also* Tiffany Mester, *Stories*, WORLD

WITHOUT EXPLOITATION, <http://worldwithoutexploitation.org/survivor/tiffany-mester> (“Violence isn’t the exception in the sex trade. It’s the rule. One john in Arizona trapped me in the car, held a knife to my throat, and raped me. Another john held a gun to my head. Another tried to kidnap me and chased me for half a mile. My nails were broken and my face was covered in blood when I got to a gas station.”). How can the Court possibly consider this relationship between victims and criminals to be a fundamental right.

b. Rape: Large Majorities of Prostitute Victims Have Been or Will Be Raped

Prostitution and rape are commonly distinguished by the logical fact that to buy something and to steal something are two different things; but when we consider that the sex bought in prostitution is the same type of sex stolen in rape, sex that is... disembodied, enacted on the bodies of women who, for the men, do not exist as human beings, and the men are always in control’—it is then that we understand how deeply traumatizing it is for the woman whose body is so used. When we understand that the sex paid for in prostitution shares so many of its characteristics with the sex stolen in rape, it makes sense that so many prostituted women make clear parallels between the two experiences.

Rachel Moran, PAID FOR: MY JOURNEY THROUGH PROSTITUTION 112-113 (2013).

Survivors have described their experiences of prostitution as “paid rape,” “pay-as-you-go rape,” and “being raped for a living.” *Id.* at 113. Indeed, rape is the defining experience of prostitution: the fear of it, the daily hypervigilance required to prevent it, the crushing physical and psychological trauma experienced by victims when it inevitably occurs.

Nearly all prostituted victims have experienced rape during prostitution. Miller & Schwartz, *supra*; Farley & Barkan, *supra*; and Melissa Farley et. al, *Prostitution in Vancouver: Violence and the colonization of First Nations Women*, 42 *TRANSCULTURAL PSYCHIATRY* 242, 254 (2005) (One prostitute victim stated: “what rape is to others, is normal to us.”). Yet, this cannot be said of any other “profession.” Studies show that sixty-eight to seventy five percent of prostituted persons have been raped since entering prostitution, Farley & Barkan, *supra* (68%); and Miller & Schwartz, *supra* (75%), with at least forty-eight percent having “been raped more than five times.” Farley & Barkan, *supra*.

These statistics are harrowing. Yet, they are likely under representative because it is unlikely these studies considered juvenile prostitution as *per se* rape.¹⁰ The average age of entry into prostitution is between the ages of 12 and 14, Megan Anitto, *Consent, Coercion, and Compassion: Crafting a Commonsense Approach to Commercial Sexual Exploitation of Minors*, 30 *YALE L. & POL’Y REV* 1 (2011), and approximately 60% of prostitute victims began as juveniles. Raphael & Shapiro, *supra* note 1 at 13 (“61.7% of respondents first exchanged sex for money before the age of 18”); Plumridge & Abel, *supra* note 1 at 80 (“Nearly two-thirds (62%) of street workers had been under 18 years old when they started work.”).

¹⁰ Under California law, it is unlawful for an adult to “engage in an act of unlawful sexual intercourse with a minor.” Cal. Penal Code § 261.5 (West 2016). Moreover, there are added penalties when a sex buyer purchases a prostitute victim and that victim is a minor (*See* Cal. Penal Code § 247(b) &(m)).

Juveniles in prostitution are *de facto* victims of rape. Cal. Penal Code § 261.5 (West 2016). Thus, the rape statistics mentioned above do not convey the full extent of rape in prostitution. The realities of rape in prostitution justify the State in maintaining an important government interest in preventing prostitution.

c. Death: Prostitution is the Deadliest “Occupation” in the United States

More prostitutes are murdered than in the deadliest occupations in the United States. Potterat et. al, *supra*. “[A]ctive prostitutes [are] almost 18 times more likely to be murdered than women of similar age and race.” *Id.* at 782. Homicides largely occur at the hands of sex buyers. *Id.* at 784; Raphael & Shapiro, *supra* note 1 at 19; and Valera et. al, *supra* at 55. This “speaks to the inherent danger of being a prostitute, with the most violent aspect of the job being the job itself, interacting with the customer.” Valera et. al, *supra* at 55. Prostitute victims are in danger with every interaction with a sex buyer. *Id.*

The industry, itself, recognizes the inherent dangers of prostitution. In an occupational health and safety manual, prostituted persons are given several guidelines to protect themselves. ST. JAMES INFIRMARY *supra*. Sadly, the first instruction is not, “Do not engage in prostitution.” Instead, some of the guidelines are:

- Before you get in, make sure the passenger-side door can open *from the inside*—if not, DON’T get into the car!

- Act in control and keep your eyes on him, and his hands, at all times.
- Don't let him get between you and the exit.
- Avoid necklaces, scarves, across-the-body shoulder bags, or anything else that can accidentally or intentionally be tightened around your throat.
- Clothing should be "straitjacket-proof." A half-zipped or buttoned jacket can be pulled over shoulders to trap arms. *Id.*

There is no mitigating the danger prostituted persons face. Melissa Farley, *Prostitution Harms Women Even if Indoors: Reply to Weitzer. Violence Against Women*, 11 VIOLENCE AGAINST WOMEN 950 (2005); Dawn Whittaker & Graham Hart, *Managing risks: The social Organization of Indoor Sex Work*, 18 SOCIOLOGY OF HEALTH & ILLNESS 399, 408 (1996) ("Male client violence mainly seems to occur as a result of conflicting notions of the commercial sexual encounter, and who is in control... [A] commonly described incident was for a man to become violent because the woman refused to accede to his extra demands made during the commercial sexual encounter."). No regulation, besides its criminalization of sex buyers (and pimps), can ensure the safety of prostituted persons.

Decriminalization of prostitution does not prevent the violence in prostitution, it assents to it. The State has an important government interest in preventing such violence. Thus, it has an important government interest in preventing prostitution.

CONCLUSION

ESPLERP's arguments fail. The Supreme Court, in *Lawrence*, does not support ESPLERP's arguments, and neither *Lawrence* nor *Obergefell* create a fundamental right for prostitution. Moreover, the state of California is justified in criminalizing prostitution. Prostitution is closely connected to sex trafficking, illicit drug use, brutality, rape, and murder. This Court should reject ESPLERP's claims and find that the state of California is justified in preventing the harms of prostitution.

CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(a)(7)(c), FRAP 32-1, and FRAP 29(c)(7)(d) I certify that Amicus Curiae Brief in Support of Defendants-Appellees is proportionately spaced, has a typeface of 14 points or more, and contains 6,461 words.

Dated: December 7, 2017

Respectfully submitted,

/s/ Savannah R. Lawrence
SAVANAH LAWRENCE, Esq.
Counsel for Amici
The National Center on
Sexual Exploitation

CERTIFICATE OF SERVICE

I hereby certify that on December 7, 2016, I caused to be electronically filed the foregoing Amicus Curiae Brief in Support of Defendants-Appellees, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and the service will be accomplished by the appellate CM/ECF system.

Dated: December 7, 2017

Respectfully submitted,

/s/ Savannah R. Lawrence
SAVANAH LAWRENCE, Esq.
Counsel for Amici
The National Center on
Sexual Exploitation