



## Case study: Creating a space for those directly affected

The Electronic Freedom Foundation (EFF) is involved in a lawsuit challenging the US Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) on grounds that it silences online speech by muzzling internet users and forcing online platforms to censor their users. It punishes certain types of speech, including expressing certain viewpoints that advocate for the decriminalisation of sex work.

The practical consequences of FOSTA are that sex workers are removed from online spaces. As the Act prevents online communication between sex workers and their clients, it drives a lot of sex workers back onto the streets. They lose the ability to screen clients beforehand and to maintain their anonymity. The Act also impacts their ability to make sure they get paid. Consequently, the small safety benefit of FOSTA ultimately creates a huge safety deficit.

While the legal arguments are seeking to achieve a particular outcome in challenging FOSTA, this case has already led to other important outcomes. It has created a space for those directly affected by the law. It provides sex workers with a forum that would not have otherwise been accessible to them and where they can talk about how the law has affected them. The lawsuit has also become an opportunity for those who have been harmed by the law to talk about these harms, share their stories under oath, submit evidence, and reach an audience that would not have otherwise been reached.

## Setting out what you are trying to achieve

In consultation with your clients, develop your understandings early on about what you are trying to achieve, how litigation may contribute to that, and how you will use different elements of a case to advance your goals.

**Guideline 5:** Consider how you may want to use your case, what you are trying to achieve through your case, and when to use different moments within a case for maximum impact.

There are many different ways to do this. Drawing on César Rodríguez-Garavito's typology on the effects of judicial decisions can be a useful way to map out your outcomes in terms of success and impact.<sup>6</sup> Below are some examples:

<sup>6</sup>Rodríguez-Garavito, 'Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America' (2011) 89 Texas Law Review (accessible at <https://www.corteidh.or.cr/tablas/r27171.pdf>).