

1 NATIONAL CAPITOL CONTRACTING

2 RPTS AVERETT

3 HJU346000

4 MARKUP OF H.R. 1865;

5 AND H.R. 2595

6 Tuesday, December 12, 2017

7 House of Representatives,

8 Committee on the Judiciary,

9 Washington, D.C.

10 The committee met, pursuant to call, at 10:00 a.m., in
11 Room 2141, Rayburn House Office Building, Hon. Bob Goodlatte
12 [chairman of the committee] presiding.

13 Present: Representatives Goodlatte, Sensenbrenner,
14 Smith, Chabot, Issa, King, Jordan, Marino, Labrador,
15 DeSantis, Buck, Ratcliffe, Roby, Gaetz, Johnson, Biggs,
16 Handel, Nadler, Cicilline, Lieu, Raskin, Jayapal, and
17 Schneider.

18 Staff Present: Shelley Husband, Staff Director; Branden
19 Ritchie, Deputy Staff Director; Zach Somers, Parliamentarian
20 and General Counsel; Meg Barr, Counsel, Subcommittee on

21 Crime, Terrorism, Homeland Security, and Investigations;
22 Andrea Loving, Counsel, Subcommittee on Immigration and
23 Border Security; Alley Adcock, Clerk; Matthew Morgan,
24 Minority Counsel; Danielle Brown, Minority Legislative
25 Counsel; David Greengrass, Minority Counsel; Joe
26 Graupensperger, Minority Chief Counsel; Monalisa Dugue,
27 Minority Deputy Chief Counsel; Rachel Calanni, Minority
28 Professional Staff Member; and Perry Apelbaum, Minority
29 Chief Counsel and Staff Director.

30 Chairman Goodlatte. Good morning. The Judiciary
31 Committee will come to order. Without objection, the chair
32 is authorized to declare a recess at any time. Pursuant to
33 notice, I now call up H.R. 1865 for the purpose of markup
34 and move the committee report the bill favorably to the
35 House. The clerk will report the bill.

36 Ms. Adcock. H.R. 1865 to amend the Communications Act
37 of 1934 to clarify that section 230 of such Act does not
38 prohibit the enforcement against providers and users of
39 interactive computer services of Federal and State criminal
40 and civil law relating to sexual exploitation of children or
41 sex trafficking, and for other purposes.

42 [The bill follows:]

43 ***** INSERT 1 *****

44 Chairman Goodlatte. Without objection, the bill will
45 be considered as read and open for amendment at any point.
46 The amendment in the nature of a substitute, which the
47 members have before them will be considered as read,
48 considered as the original text for purposes of amendment,
49 and open for amendment at any point.

50 [The amendment of Chairman Goodlatte follows:]

51 ***** INSERT 2 *****

52 Chairman Goodlatte. I now recognize myself for an
53 opening statement.

54 Today I am pleased the committee is considering H.R.
55 1865: the Allow States and Victims to Fight Online Sex
56 Trafficking Act of 2017. This bill provides Federal, State,
57 and local prosecutors the tools needed to combat online sex
58 trafficking. In the past few years, we have seen online sex
59 trafficking continue to grow at an alarming rate. Despite
60 great efforts by law enforcement, young children and women
61 are being advertised online brazenly for sex trafficking.

62 Furthermore, despite the fact prostitution is nearly
63 universally illegal in the United States, online
64 prostitution markets operate with virtual impunity. These
65 markets provide an unregulated venue where sex trafficking
66 flourishes. It is no secret that gangs and organized crime
67 family members are using this platform to sell women and
68 children like chattel, to profit off of their misery, over
69 and over again. The websites providing these platforms,
70 without any regard for the victims being sold on it, must be
71 held accountable.

72 Backpage.com is the most recognized name among these
73 websites, and Backpage will certainly be held accountable.
74 We know there is currently a Federal grand jury convened in
75 Arizona hearing evidence on Backpage. There are also
76 numerous civil cases pending against Backpage, and while

77 initially, these claimants had been denied relief in the
78 First Circuit, facts that came to light through a thorough
79 Congressional investigation have now placed these claimants
80 in a strong position.

81 But Congress cannot be tasked with investigating every
82 website involved in operating these markets. We must ensure
83 law enforcement has the tools to investigate and prosecute
84 these websites, so that these bad-actor websites are
85 punished criminally, and victims receive restitution, and to
86 unearth facts which may be pled in civil suits.

87 In crafting this legislation, we consulted with local
88 prosecutors, and also with the Department of Justice. There
89 are significant difficulties in prosecuting websites like
90 Backpage for knowing facilitation of sex trafficking, since
91 these kinds of advertisements rarely, if ever, will say the
92 person advertised is a victim of sex trafficking. A more
93 effective approach in combating these websites is to charge
94 them with the facilitation and promotion of prostitution.

95 H.R. 1865, therefore, makes it a crime to use an
96 interstate facility with the intent to promote or facilitate
97 prostitution. The connection between prostitution and human
98 trafficking is undeniable. Studies show that countries with
99 legalized prostitution are associated with higher human
100 trafficking inflows than countries where prostitution is
101 prohibited.

102 A study from 2003 in the Journal of Trauma found that
103 89 percent of women involved in prostitution wanted to
104 escape. Prostitution is inherently harmful, and
105 dehumanizing, and fuels sex trafficking. Significantly,
106 H.R. 1865 provides an enhanced punishment for websites that
107 purposely promote prostitution, in reckless disregard of the
108 fact that people are being trafficked on their platforms.

109 We also must ensure that local and State governments
110 are able to use these tools, as many of the flourishing
111 websites are regional. These websites are also too numerous
112 to place these prosecutions solely in the hands of Federal
113 prosecutors.

114 To that end, H.R. 1865 makes explicit that State
115 criminal laws which punish the same conduct underlying this
116 new Federal crime may be enforced without running afoul of
117 the Communications Decency Act. The bill also explicitly
118 permits State criminal laws to be enforced which punish the
119 same conduct underlying the Federal sex trafficking statute,
120 in the event any local prosecutor may find it useful.

121 Finally, the bill creates a new civil recovery
122 provision under which victims may bring claims. Given that
123 it may be difficult for victims to show that a website
124 knowingly facilitated sex trafficking, this new provision
125 tracks the elements of the new crime where a claimant would
126 only have to show purposeful prostitution and that the

127 website's reckless disregard in promoting prostitution
128 contributed to the claimant's becoming a victim of sex
129 trafficking.

130 I commend Congresswoman Ann Wagner for introducing this
131 bill and for her steadfast leadership in combating sex
132 trafficking and protecting victims. I urge my colleagues to
133 support this important legislation.

134 It is now my pleasure to recognize the ranking member
135 of the Judiciary Committee, the gentleman from New York, Mr.
136 Nadler, for his opening statement.

137 [The prepared statement of Chairman Goodlatte follows:]

138 ***** COMMITTEE INSERT *****

139 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman, I
140 appreciate that you are bringing forward today legislation
141 to address the scourge of human trafficking. I strongly
142 support providing new mechanisms for Federal and State
143 prosecutors, as well as victims, to hold accountable
144 perpetrators of online sex trafficking.

145 I also recognize the need to balance these enforcement
146 tools with respect to free speech under the First Amendment
147 and protection from liability for truly innocent parties
148 that operate in the internet ecosystem.

149 I am concerned, however, that the substitute proposal,
150 no matter how well-intentioned, has not been fully vetted
151 and it does not have sufficient support from the vast
152 community of survivors and other advocates who have been
153 pressing for legislation over the last several years to
154 address this important issue. That is why I requested that
155 our committee postpone consideration of this bill to allow
156 for more thorough review by the stakeholder community, many
157 of whom have had little time to review the new text.

158 Unfortunately, the expansive scope of internet
159 communication and the proliferation of devices that allow us
160 to be connected online for many beneficial purposes also
161 have expanded avenues for criminal victimization. As
162 members heard during the recent hearing on this topic
163 conducted by the subcommittee on crime, research indicates

164 that 63 percent of human trafficking victims interviewed
165 were advertised online.

166 And of the over 9,000 cyber tip line reports that the
167 National Center for Missing and Exploited Children receives
168 each year, 81 percent relate to child sex trafficking
169 online. In cracking down on this online criminal activity,
170 we must be careful to distinguish between innocent
171 intermediaries who merely operate platforms for hosting
172 third-party content online, from those who participate in
173 the commission of crimes that are advertised on their
174 platforms.

175 Out of an appropriate respect for the First Amendment
176 and based on the desire to safeguard the operation of the
177 internet, Congress has been cautious when attempting to set
178 rules distinguishing the two. While it may be difficult to
179 draw the line in the right place, particularly when we want
180 to incentivize providers of online platforms to be more, and
181 not less, actively engaged in preventing the posting of
182 harmful content by sex traffickers, we cannot turn a blind
183 eye to the appalling victimization that occurs every day.
184 And we must find a way to do more than allowed under current
185 law.

186 The Senate Commerce Committee recently reported out
187 bipartisan legislation that wants support from a wide array
188 of stakeholders, including survivors, law enforcement, state

189 attorneys general, and tech companies. A number of
190 organizations that represent victims of online sex
191 trafficking have written to us to state that the revised
192 Senate bill provides a greater voice to victims and better
193 tools to State prosecutors to hold accountable those who
194 engage in trafficking. They believe that the proposal we
195 are considering today does not adequately provide relief for
196 victims of trafficking and they argue that we continue to
197 shield websites that facilitate trafficking from liability.

198 They also have concerns that they were not properly
199 consulted in the development of this proposal. In light of
200 these concerns, I would hope that we would take the time to
201 fully compare and consider the merits of the different
202 bills. With input from all the relevant stakeholders, so
203 that we could develop legislation that has broad support,
204 particularly from the victims' community, and also provides
205 appropriate protection for civil liberties.

206 I do appreciate your effort to advance this discussion,
207 but for the foregoing reasons, I believe the bill we are
208 considering today should be considered a contribution to the
209 dialogue on this important issue and not the end of the
210 process. Unless the legislation is further improved and
211 vetted to a legislative process in the House and discussions
212 with the Senate, I may not be able to support final passage
213 into law. Thank you and yield back the balance of my time.

214

[The prepared statement of Mr. Nadler follows:]

215

***** COMMITTEE INSERT *****

216 Mr. Nadler. Mr. Chairman, I ask unanimous consent to
217 place in the record a letter from 31 survivors of
218 traffickers and antitrafficking organizations expressing
219 opposition to the substitute.

220 Chairman Goodlatte. Without objection, it will be made
221 a part of the record.

222 [The information follows:]

223 ***** COMMITTEE INSERT *****

224 Mr. Sensenbrenner. Mr. Chairman.

225 Mr. Nadler. Thank you.

226 Chairman Goodlatte. The chair now recognizes the
227 chairman of the Subcommittee on Crime, Terrorism, Homeland
228 Security, and Investigations, the gentleman from Wisconsin,
229 Mr. Sensenbrenner, for his opening statement.

230 Mr. Sensenbrenner. Mr. Chairman, the internet has been
231 one of the greatest innovations in history. It has brought
232 tremendous economic and social benefits to humankind. We
233 can now accomplish nearly any transactions with just a few
234 clicks of a mouse from the comfort of our own homes. It is
235 undeniable that for all of us it has made life easier.

236 Unfortunately, the internet has also made life easier
237 for criminals who can use the anonymity of web to mask their
238 illicit activities and avoid detection by law enforcement.
239 This is especially true in the realm of sex trafficking, one
240 of the most horrific crimes you can imagine --

241 Chairman Goodlatte. Would the gentleman suspend? I
242 think we have an issue with the microphone.

243 Mr. Sensenbrenner. Okay.

244 Chairman Goodlatte. You might want to switch to that
245 one.

246 Mr. Sensenbrenner. Thank you. Thanks to a group of
247 committed, passionate professionals and brave victims the
248 problem of sex trafficking on the internet is now receiving

249 the attention it merits. We are all now well aware of the
250 reprehensible and blatantly criminal conduct of the
251 executives at Backpage.com.

252 Because young victims who have come forward to share
253 their stories, we are aware of the harm caused by these
254 types of websites, which are not only a venue for sex
255 traffickers to sell young women, but also materially
256 contribute to this illicit conduct.

257 Backpage.com's conduct also sheds light on websites
258 that are using the Communications Decency Act to shield
259 themselves from liability for their illegal activities,
260 which is something Congress never intended. For these
261 reasons, I am pleased to be an original cosponsor of H.R.
262 1865, the Fight Online Sex Trafficking Act, also known as
263 FOSTA.

264 As amended, this legislation will provide law
265 enforcement additional tools to combat websites like
266 Backpage. The bill creates a new Federal statute
267 criminalizing the use or operation of an interstate facility
268 with the attempt to promote or facilitate prostitution or
269 sex trafficking.

270 The bill, specifically, amends section 230 of the
271 Communications Decency Act to make sure that State and local
272 prosecutors can enforce any State law if the conduct
273 underlying the charge constitutes a violation of the new

274 crime.

275 In addition, the bill amends section 230 to make sure
276 that State and local prosecutors can enforce sex trafficking
277 laws insofar as those charges would constitute a violation
278 of Federal sex trafficking laws.

279 Finally, FOSTA will provide new mechanisms for
280 financially compensating victims. Receiving compensation
281 can serve as an acknowledgment of the victimhood and help
282 victims on their road to recovery. I commend Ms. Wagner and
283 the committee staff for their thoughtful approach to this
284 issue.

285 The legislation is a combination of much months of hard
286 work and shows that we can take measures to prevent online
287 sex trafficking without undermining the foundations of
288 internet freedom. I urge my colleagues to support it. I
289 yield back.

290 [The prepared statement of Mr. Sensenbrenner follows:]

291 ***** COMMITTEE INSERT *****

292 Chairman Goodlatte. The chair thanks the gentleman.
293 Are there any amendments to H.R. 1865? A reporting quorum
294 being present, the question is on the motion to report the
295 bill H.R. 1865 as amended favorably to the House.

296 Those in favor will say aye.

297 Those opposed, no.

298 The ayes have it, and the bill is ordered reported
299 favorably.

300 Without objection, members will have 2 days to submit
301 views. Without objection, the bill will be reported as a
302 single amendment in the nature of a substitute,
303 incorporating all adopted amendments, and staff is
304 authorized to make technical and conforming changes.

305 Pursuant to notice, I now call up H.R. 2595 for
306 purposes of markup and move the committee report the bill
307 favorably to the House. The clerk will report the bill.

308 Ms. Adcock. H.R. 2595 to direct the Secretary of
309 Homeland Security to provide for an option under the Secure
310 Mail Initiative under which a person to whom a document is
311 sent under that initiative may elect to have the United
312 States Postal Service use the Hold for Pickup service or the
313 Signature Confirmation service in delivering the document,
314 and for other purposes.

315 [The bill follows:]

316

***** INSERT 3 *****

317 Chairman Goodlatte. Without objection, the bill is
318 considered as read and open for amendment at any time, and I
319 will begin by recognizing myself for an opening statement.

320 H.R. 2595, the Strengthening the Department of Homeland
321 Security Secure Mail Initiative Act, directs the Secretary
322 of Homeland Security to allow immigration benefits
323 recipients to elect to pay a fee to have their immigration
324 documents sent to them via U.S. mail, through the Hold for
325 Pickup or Signature Confirmation service. The bill is short
326 but will have a great impact in the lives of many foreign
327 nationals seeking to play by the rules and legally live and
328 work in the United States.

329 Currently, immigration documents are delivered via
330 Priority Mail through the U.S. Postal Service. And while
331 delivery can be monitored through the use of a tracking
332 number, there are numerous incidents of individuals not in
333 fact receiving the document that the U.S. Postal Service
334 notes as delivered.

335 One obvious concern in such a case is that the document
336 was intercepted by an unscrupulous individual who will
337 attempt to fraudulently use it. Another concern is the cost
338 and time it takes for the individual to reapply for the
339 document, which at this point is typically the only recourse
340 if a document has gone missing.

341 The U.S. Citizenship and Immigration Services Ombudsman

342 discussed this problem in its fiscal year 2016 report,
343 noting that delays in receipt of immigration documents can
344 adversely affect the ability of individuals to work or prove
345 lawful immigration status.

346 H.R. 2595 imposes no cost to the U.S. taxpayer, since
347 if an individual elects for his or her document to be
348 delivered via Hold for Pickup or Signature Required, the
349 immigrant must first pay a fee set by USCIS that covers the
350 cost of such delivery as well as any administrative costs
351 for the agency.

352 H.R. 2595, alone, is not the sole remedy necessary to
353 fix the issue of immigration documents not being delivered
354 to the intended recipient. USCIS has noted that it is
355 working to ensure that applicants or petitioners ensure
356 their mailing addresses are up to date throughout the
357 adjudication process.

358 The USCIS Director Cissna has just announced that he
359 will form a working group to address the problem and
360 implement changes. I am pleased that he is taking this so
361 seriously and I look forward to working with him on this
362 issue.

363 This bill is one possible fix for the problem. This
364 committee continues to work in its oversight capacity with
365 USCIS to ensure that other remedies are put into place as
366 well. H.R. 2595 is a good antifraud and good government

367 measure and I urge my colleagues to support it.

368 At this time, it is my pleasure to recognize the
369 ranking member of the Judiciary Committee, the gentlemen
370 from New York, Mr. Nadler, for his opening statement.

371 [The prepared statement of Chairman Goodlatte follows:]

372 ***** COMMITTEE INSERT *****

373 Mr. Nadler. Thank you, Mr. Chairman. Mr. Chairman,
374 many immigration bills that come before our committee break
375 along partisan lines. I am pleased that H.R. 2595,
376 championed by Representative Jackie Speier, is not one of
377 them. This is a practical, straightforward measure that
378 will make delivery of U.S. Citizenship and Immigration
379 Services documents more secure and more dependable. That is
380 something that all of us can support.

381 In fiscal year 2016, the U.S. Postal Service reported
382 as undeliverable almost 60,000 USCIS documents. That is
383 60,000 too many. Compounding the problem, numerous other
384 documents checked off by USCIS as delivered, in fact, got
385 shipped to incorrect destinations. The end result is a host
386 of green cards, work permits, and other sensitive documents
387 getting returned to the USCIS, or worse, passing into the
388 wrong hands.

389 The security implications of these missed deliveries
390 are troubling. Last year, the DHS Office of Inspector
391 General noted that in the previous 3 years the number of
392 green cards sent to wrong addresses grew consistently.
393 Unscrupulous actors can and will exploit these unaccounted-
394 for documents.

395 Making matters worse are the often-devastating impacts
396 of failed deliveries on the intended recipients. No less
397 than the livelihoods of immigrants may depend on timely and

398 secure receipt of immigration documents.

399 When USCIS or Postal Service error causes nonreceipt,
400 noncitizens may face termination from their jobs, loss of
401 legal status, and even the prospect of deportation. I
402 recognize that missed delivery sometimes results are the
403 failure of applicants and petitioners to update the CIS on
404 address changes. And I appreciate the agency's ongoing
405 efforts to minimize its own mailing errors, but more changes
406 are needed.

407 H.R. 2595 represents a key part of the solution. The
408 bill requires USCIS offer customers two optional document
409 delivery services: signature confirmation and hold for
410 pickup. The former obligates the Postal Service to get a
411 signature from the intended recipient before handing off the
412 document. The latter secures the parcel at the post office
413 until the customer picks it up directly.

414 Both options come at no cost to the agency. Customers
415 themselves bear the extra shipping fees. And both options
416 will enhance the rates of successful delivery by building in
417 safeguards against USCIS and Postal Service error. That
418 means less fraud and fewer catastrophic consequences for
419 hardworking responsible noncitizens.

420 I urge all of my colleagues to support this bipartisan
421 legislation to reduce fraud and to improve the lives of
422 immigrants. I yield back the balance of my time.

423

[The prepared statement of Mr. Nadler follows:]

424

***** COMMITTEE INSERT *****

425 Chairman Goodlatte. Thank you, Mr. Nadler. I would
426 now like to recognize the chairman of the Subcommittee on
427 Immigration and Border Security, Mr. Labrador, for his
428 opening statement.

429 Mr. Labrador. Thank you, Mr. Chairman. I support H.R.
430 2595, the Strengthening the Department of Homeland Security
431 Secure Mail Initiative Act and thank the chairman for moving
432 the bill through committee. The bill aims to prevent
433 immigration documents mailed by US Citizenship and
434 Immigration Services, USCIS, from being delivered or
435 otherwise obtained by an unintended recipient.

436 Unfortunately, this is not an uncommon occurrence. In
437 fact, I am sure that my colleagues have all heard from
438 individuals in their districts to whom this has happened.
439 As the Department of Homeland Security inspector general
440 stated in November 2016 report regarding green card
441 issuance, over the last 3 years USCIS received over 200,000
442 reports from approved applicants about missing cards. And
443 the IG went on to correctly note that such errors can result
444 in approved applicants being unable to obtain benefits,
445 maintain employment, or prove lawful immigration status.

446 In the wrong hands, green cards may enable terrorists,
447 criminals, and illegal aliens, to remain in the United
448 States and access immigrant benefits. Unfortunately, the
449 previous administration seems to have done little to address

450 the situation. Committee staff has had discussions with new
451 leadership at USCIS with whom this issue is of grave
452 concern. And I fully expect newly confirmed Director Cissna
453 to direct his staff to come up with solutions.

454 In the meantime, Representative Speier has introduced
455 H.R. 2595 which directs the Secretary of Homeland Security
456 to allow immigration benefit recipients to elect to pay a
457 fee to have their immigration documents sent to them via US
458 Mail through the hold for pickup or signature confirmation
459 service. It is a commonsense piece of legislation that will
460 not fully solve the problem, but will certainly help.

461 I appreciate her work on this legislation and look
462 forward to moving it on the House floor. I yield back the
463 balance of my time.

464 [The prepared statement of Mr. Labrador follows:]

465 ***** COMMITTEE INSERT *****

466 Chairman Goodlatte. The chair thanks the gentleman and
467 recognizes the gentlewoman from California, the ranking
468 member of the Subcommittee on Immigration and Border
469 Security, Ms. Lofgren, for her opening statement.

470 Ms. Lofgren. Thank you, Mr. Chairman. Many years ago,
471 there was a congressman from Arizona, Mo Udall, who made a
472 famous statement. He said, "Everything has been said, but
473 not everyone has said it." So, I think the comments made
474 already cover the bill.

475 I would add simply this: that this is optional on the
476 part of the person seeking the immigrant documents. It is a
477 security measure. It is uncontroversial. I would like to
478 thank Representative Speier for the bill. And I would like
479 also to thank Jason Boyd who has been a detailee over to the
480 committee for this past year from the Department of Homeland
481 Security. He is going back to the Department on December
482 22nd. His service has been exemplary. This is his last
483 hearing.

484 So, we thank you, Jason, for your service to the
485 committee and for working on this bill. I recommend its
486 passage and yield back.

487 [The prepared statement of Ms. Lofgren follows:]

488 ***** COMMITTEE INSERT *****

489 Chairman Goodlatte. Thank you, Ms. Lofgren. Are there
490 any amendments to H.R. 2595? A reporting quorum being
491 present, the question is on the motion to report the bill
492 H.R. 2595 favorably to the House.

493 Those in favor respond by saying aye.

494 Those opposed, no.

495 The ayes have it.

496 The bill is ordered reported favorably. Members will
497 have 2 days to submit views. And this concludes our
498 business for today. Thanks to all our members for
499 attending. The markup is adjourned.

500 [Whereupon, at 10:50 a.m., the committee was
501 adjourned.]