

SEX WORK IS REAL WORK: THE IMPLICATIONS OF U.S.  
STRIPPERS WINNING THE RIGHT TO UNIONIZE, AN  
INTERNATIONAL COMPARATIVE STUDY

*Katherine Fustich*<sup>†</sup>

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I. INTRODUCTION

Sex work is sometimes referred to as “the oldest profession.”<sup>1</sup> In an unfortunate twist of irony, many of the individuals who practice sex work around the world, including in its many legal forms, are rarely treated with the dignity befitting a professional.<sup>2</sup> In fact, many are not even considered employees of their workplaces, but instead are independent contractors or self-employed workers. This misclassification

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<sup>†</sup> Katherine Fustich is a writer and activist. She earned her Bachelor’s from New York University in 2016, and her J.D. from Cardozo School of Law in 2022. This paper is written in solidarity with all sex workers around the world.

<sup>1</sup> Dan Bilefsky, *World’s Oldest Profession, Too, Feels in Crisis*, N.Y. TIMES (Dec. 8, 2008), <https://www.nytimes.com/2008/12/08/world/europe/08iht-sex.4.18500177.html> [<https://perma.cc/H74X-7SRA>].

<sup>2</sup> See C. Gabrielle Salfati, Alison R. James & Lynn Ferguson, *Prostitute Homicides: A Descriptive Study*, 23 J. INTERPERSONAL VIOLENCE 505, 540 (2008).

has repeatedly been utilized by strip club owners, brothel owners, and other operators of sex work-related businesses to further exploit their already vulnerable workers.

In the United States, sex workers recently won a major in-court battle that allows them to begin taking legal action to remedy the consequences of this misclassification.<sup>3</sup> On July 31, 2020, the National Labor Relations Board (“NLRB”) handed down a decision in *Nolan Enterprises, Inc.*, which prevents strippers from being classified as “independent contractors.”<sup>4</sup> *Nolan Enterprises* held that strippers, being integral to the business in which they operate, should be classified as employees rather than independent contractors – as has long been the industry practice.<sup>5</sup> This nationwide shift follows years filled with state-level suits and on-the-ground activism from sex workers and their allies, seeking a more legitimate status for the legal-yet-marginalized.<sup>6</sup> While the effects of the decision have yet to be fully realized, they have potentially far-reaching implications. The outcome of the NLRB decision not only serves to harmonize the United States’ many varying sex work laws, but also offers some sex workers the ability to form unions and collectively bargain.

In Europe, countries such as Germany, the Netherlands, and Great Britain have even more longstanding histories of sex work and sex worker activism than the United States. Prostitutes in medieval Europe protested in response to “crackdowns, workplace closures, or unacceptable working conditions” and even formed guilds in some cases.<sup>7</sup> The work of the last fifty years has resulted in major steps toward various forms of legalization and decriminalization of stripping, prostitution, brothel-keeping, and more.<sup>8</sup> With these changes, attempts at unionization have followed—with some attempts being successful

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<sup>3</sup> *Nolan Enters., Inc.*, 370 N.L.R.B. No. 2 (July 31, 2020).

<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> See Samuel Braslow, *L.A.’s Exotic Dancers Are Launching a Labor Movement*, L.A. MAG. (Mar. 4, 2019), [www.lamag.com/citythinkblog/soldiers-of-pole-stripper-union](http://www.lamag.com/citythinkblog/soldiers-of-pole-stripper-union) [<https://perma.cc/YU4A-Q5GU>].

<sup>7</sup> JUNO MAC & MOLLY SMITH, *REVOLTING PROSTITUTES: THE FIGHT FOR SEX WORKERS’ RIGHTS* 23 (2018).

<sup>8</sup> See generally *United Sex Workers*, UNITED VOICES OF THE WORLD, <https://www.uvwunion.org.uk/strippers> [<https://perma.cc/CPW4-3MVB>] (last visited Feb. 22, 2022); *Hydra Treffpunkt & Beratungsstelle zu Sexarbeit und Prostitution*, HYDRA, <https://www.hydra-berlin.de> [<https://perma.cc/YL3G-PTXV>] (last visited Feb. 22, 2022); *Welkom bij Proud*, PROUD NEDERLAND, <https://www.wijzijnproud.nl> [<https://perma.cc/LX87-6446>] (last visited Feb. 22, 2022).

and others less so. Stateside, sex workers, their allies, and lawmakers can look to this history as a roadmap for navigating a just and equitable future. As strippers in the United States begin exploring the newfound possibility of unionization, and legal trends continue to point toward their autonomy, it will be necessary to understand how the United States fits into this emerging, global legal landscape.

This history-in-the-making is complicated by two factors: the effects of the COVID-19 pandemic commencing roughly in March of 2020, and the parallel labor movement currently happening in the gig work economy. The latter is being met with strong resistance, particularly from technology industry giants such as Uber and Seamless, as they work to turn a profit considering the pandemic ravaging the global economy. There is no doubting that sex work will continue to exist, regardless of how the world is re-shaped, leaving only the question of how much legal dignity is accredited to sex workers by the rest of society.

## II. SEX WORK IN THE UNITED STATES

Despite numerous restrictions and regulations, the United States is home to one of the largest sex work markets in the world.<sup>9</sup> While prostitution is illegal in all fifty states, save for parts of Nevada, many other forms of sex work have flourished. Researcher Gregor Gall attributes the country's sex work landscape to the United States' "population, economy, and particular culture."<sup>10</sup> Such a puritanical and "particular" culture has resulted in many elements of the sex trade being kept from the public eye. Yet, the United States is home to the world's largest pornography industry, in addition to nearly four thousand strip clubs.<sup>11</sup> Though exact numbers are not easy to collect, estimates suggest that there are anywhere from 35,000 to 250,000 women working as strippers in the United States.<sup>12</sup> While the COVID-19

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<sup>9</sup> See MEREDITH DANK, BILAL KHAN, P. MITCHELL DOWNEY, CYBELE KOTONIAS, DEBORAH MAYER, COLLEEN OWENS, LAURA PACIFICI & LILLY YU, ESTIMATING THE SIZE AND STRUCTURE OF THE UNDERGROUND COMMERCIAL SEX ECONOMY IN EIGHT MAJOR US CITIES 1–5 (2014).

<sup>10</sup> GREGOR GALL, SEX WORKER UNIONIZATION: GLOBAL DEVELOPMENTS, CHALLENGES AND POSSIBILITIES 25 (2016).

<sup>11</sup> *Id.*; *Strip Clubs in the US – Number of Businesses 2002–2027*, IBISWORLD, <https://www.ibisworld.com/industry-statistics/number-of-businesses/strip-clubs-united-states/> [https://perma.cc/QS2Y-FEYS] (Apr. 2, 2021).

<sup>12</sup> GALL, *supra* note 10, at 25; *Strip Clubs in the US – Employment Statistics 2002–2027*, IBISWORLD, <https://www.ibisworld.com/industry-statistics/employment/strip-clubs-united-states/> [https://perma.cc/9SNK-UDK3] (Apr. 2, 2021).

pandemic temporarily shuttered certain clubs and left many dancers out of work, numbers are already beginning their climb back to pre-pandemic levels.<sup>13</sup>

*A. The Role of Exotic Dancers in the United States*

Stripping, sometimes referred to as exotic dancing, is a type of sex work that has been recognized as a form of expression by the United States Supreme Court.<sup>14</sup> Stripping should not be misconstrued or used interchangeably with “prostitution.” While prostitution involves direct sexual services between the sex worker and the client, stripping typically involves dancers working at adult-only clubs, where they perform a variety of roles including dancing, hostessing, bartending, and more.<sup>15</sup> Both stripping and prostitution are considered forms of sex work.<sup>16</sup> Depending on the laws and culture of a country or region, certain forms of sex work may be common. In the United States, due to prohibitions on prostitution, stripping has long been one of the most common forms of sex work (only recently has it been in competition with online sex work).<sup>17</sup>

Stripping as an art form and strip clubs as social spaces have rich histories and have served to influence culture in many forms, including music, fashion, dance, and nightlife.<sup>18</sup> In the United States alone, strip clubs comprise a seven billion dollar per year industry.<sup>19</sup> According to one study, “Americans spend more money at strip clubs than at

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<sup>13</sup> See *Strip Clubs in the US – Employment Statistics 2002–2027*, *supra* note 12.

<sup>14</sup> See *City of Erie v. Pap’s A.M.*, 529 U.S. 277 (2000).

<sup>15</sup> Magaly Rodríguez García, Lex Heerma van Voss & Elise van Nederveen Meerkerk, *Introduction* to *SELLING SEX IN THE CITY: A GLOBAL HISTORY OF PROSTITUTION, 1600S–2000S*, at 1, 8 (Magaly Rodríguez García, Lex Heerma van Voss & Elise van Nederveen Meerkerk eds., 2017).

<sup>16</sup> *Id.*

<sup>17</sup> Ana Valens, *OnlyFans Dominated 2020. What Does That Mean for Sex Workers?*, DAILY DOT, <https://www.dailydot.com/irl/onlyfans-sex-work-sanctuary/> [<https://perma.cc/A492-DPQA>] (Dec. 31, 2020, 6:39 AM); see also *Loose Women in Tights: Images of Femininity in Early Burlesque Performance*, OHIO STATE UNIV., <https://library.osu.edu/site/burlesque> [<https://perma.cc/QG7M-CTVJ>] (last visited Feb. 26, 2022).

<sup>18</sup> Jane Helpern, *How Strip Culture Went Mainstream*, VICE (Mar. 8, 2016, 10:20 AM), [https://i-d.vice.com/en\\_uk/article/wj5y9y/how-strip-culture-went-mainstream](https://i-d.vice.com/en_uk/article/wj5y9y/how-strip-culture-went-mainstream) [<https://perma.cc/ST8X-ULCJ>].

<sup>19</sup> *Strip Clubs Industry in the US – Market Research Report*, IBISWORLD, <https://www.ibisworld.com/united-states/market-research-reports/strip-clubs-industry> [<https://perma.cc/X8UQ-V9GC>] (Apr. 2, 2021).

Broadway, off-Broadway, regional, and nonprofit theaters, the opera, the ballet, and jazz and classical music performances combined.”<sup>20</sup>

Celebrity exotic dancers past and present, like Josephine Baker and Cardi B, are synonymous with wealth, talent, and mystery. However, the average strip club employee is unlikely to reflect the glamorous, fast-paced life such a booming industry might suggest. The average U.S.-based stripper makes roughly twenty dollars per hour, but this number can vary wildly based on factors such as age, race, location, experience, and more.<sup>21</sup> In a survey of professional strippers (those who dance as their primary means of income), researchers found that financial gain, while a core motivating factor of choosing stripping as a profession, was far from being the sole factor in an individual’s career choice.<sup>22</sup> The study even interviewed several women who, after marrying wealthy individuals and “retiring” from the business, returned to stripping because they missed the atmosphere and the camaraderie of the work.<sup>23</sup>

As with any line of work, there are bound to be highs and lows. Just as there are attorneys who practice because it is their passion, there are others who practice because they require a certain level of income to support themselves and their families. Regardless of motivations, however, those practicing the law are protected by a robust set of rules that act as guardrails for their conduct and working conditions, as is often the case with many other lines of work.<sup>24</sup> Due to the “taboo” nature of stripping, a similar baseline of protections for strippers has failed to develop. If anything, strippers and sex workers as a whole have had their rights rolled back significantly in the last fifty years through a combination of direct and indirect legislation.<sup>25</sup> Directly, states have passed laws meant to restrict sex work activity under the guise of “anti-trafficking” measures.<sup>26</sup> Indirectly, states have

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<sup>20</sup> Lisa Monchalin, *Motivations of Professional Strippers* 1, 1 (Mar. 15, 2006) (M.A. thesis, Eastern Michigan University) (on file with Eastern Michigan University Digital Commons) (citing Eric Schlosser, *The Business of Pornography*, U.S. NEWS & WORLD REP., Feb. 10, 1997, at 42).

<sup>21</sup> *Average Stripper/Exotic Dancer Hourly Pay*, PAYSACLE, [https://www.payscale.com/research/US/Job=Stripper%2FExotic\\_Dancer/Hourly\\_Rate](https://www.payscale.com/research/US/Job=Stripper%2FExotic_Dancer/Hourly_Rate) [https://perma.cc/6Y7T-X6JF] (Jan. 12, 2022).

<sup>22</sup> Monchalin, *supra* note 20, at 13, 39.

<sup>23</sup> *Id.* at 14.

<sup>24</sup> *See generally* MODEL RULES OF PRO. CONDUCT (AM. BAR ASS’N 1983).

<sup>25</sup> MELISSA HOPE DITMORE, PROSTITUTION AND SEX WORK 69 (2011).

<sup>26</sup> *See* Steve Patterson, *New Stripper Age Limit Challenged in Trial Over Jacksonville Anti-Sex Trafficking Law*, FLA. TIMES-UNION (Sept. 18, 2020, 6:56 PM),

turned a blind eye to the blatant exploitation that occurs in some sex work environments.<sup>27</sup> The result is a patchwork body of law where laws surrounding sex work remain highly jurisdiction-specific.

In Ohio, for example, state law forbids contact between a stripper and a patron: “[n]o employee who regularly appears nude or seminude on the premises of a sexually oriented business, while on the premises of that sexually oriented business and while nude or seminude, shall knowingly touch a patron who is not a member of the employee’s immediate family . . . .”<sup>28</sup> Elsewhere, such as in Arkansas, New Jersey, and West Virginia, strip clubs are forbidden from serving alcohol on the premises,<sup>29</sup> and federal courts routinely uphold such laws on the grounds that states have a valid interest in preserving the “public order” and preventing “societal ills.”<sup>30</sup>

At the same time, states like Oregon and Nevada have gained a reputation for their more relaxed sex work laws. In Oregon, fully-nude dancing is considered First Amendment protected speech under the rule announced in the landmark 1987 Oregon Supreme Court Case, *State v. Henry*.<sup>31</sup> The Court determined that adult entertainment “may not be punished in the interest of a uniform vision on how human sexuality should be regarded or portrayed.”<sup>32</sup> The *Henry* decision was reaffirmed as recently as 2005 in *City of Nyssa v. Dufloth*, where a

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<https://www.jacksonville.com/story/news/courts/2020/09/18/age-limit-jacksonville-strippers-focus-federal-trial/5815090002> [<https://perma.cc/4N8K-FVEG>].

<sup>27</sup> See Tess Riski, *A Labor Movement Demands Better Treatment for Portland’s Black Strippers*, WILLAMETTE WEEK (June 16, 2020, 6:49 PM), <https://www.wweek.com/news/2020/06/16/a-labor-movement-demands-better-treatment-for-portlands-black-strippers> [<https://perma.cc/5LB8-CY4T>].

<sup>28</sup> OHIO REV. CODE ANN. § 2907.40(C)(2) (West 2022).

<sup>29</sup> See ARK. CODE ANN. § 3-9-306 (2021); N.J. ADMIN. CODE § 13:2-23.6 (2022); W. VA. CODE § 60-7-12 (2022); see also Gregory S. Voshell, *Bachelor Parties Beware: The Third Circuit Grapples with Alcohol, Strip Clubs and the Constitutionality of Morality Legislation*, 52 VILL. L. REV. 1095 (2007).

<sup>30</sup> *Imaginary Images, Inc. v. Evans*, 612 F.3d 736, 747 (4th Cir. 2010); see *Flanigan’s Enters. Inc. v. Fulton Cnty.*, 596 F.3d 1265, 1278 (11th Cir. 2010); see also Katie Herzog, *Seattle Is One of the Most Difficult and Least Lucrative Cities to Be a Stripper*, THE STRANGER (June 5, 2019), [www.thestranger.com/features/2019/06/05/40390109/seattle-is-one-of-the-most-difficult-and-least-lucrative-cities-to-be-a-stripper](http://www.thestranger.com/features/2019/06/05/40390109/seattle-is-one-of-the-most-difficult-and-least-lucrative-cities-to-be-a-stripper) [<https://perma.cc/939F-4RVZ>].

<sup>31</sup> See *State v. Henry*, 732 P.2d 9, 18 (Or. 1987) (“In this state any person can write, print, read, say, show or sell anything to a consenting adult even though that expression may be generally or universally considered ‘obscene.’”).

<sup>32</sup> *Id.*

unanimous verdict upheld the state's unique laws.<sup>33</sup> Such views are not consistent throughout the rest of the country, however.

In 2000, the Supreme Court of the United States upheld a ruling, six-to-three, that allowed the city of Erie, Pennsylvania to establish an ordinance that would ban public nudity, including in strip clubs.<sup>34</sup> In 2017, the Ninth Circuit revisited the question of public nudity, ultimately finding that the ability to restrict public nudity falls within a state's "traditional police powers," indicating that any kind of uniform, nationwide law is still far from imminent.<sup>35</sup> Thus, the disparities in sex-work-related laws from jurisdiction to jurisdiction are indicative of the range of opinions and influences that shape this unique niche of the law, including the local culture and values of varying states. A glance at such a fragmented web of law makes it clear that nationwide rulings, such as the recent NLRB verdict in *Nolan Enterprises*, can have a significant impact in unifying an industry.

### B. Sex Worker Unionization Efforts in the United States

As one might expect, the sex work industry is plagued with unjust and immoral business practices.<sup>36</sup> While this is no different from many other areas of business, cultural taboos and a lack of legal protections leave workers particularly vulnerable to financial exploitation, blackmail, physical violence, and even death.<sup>37</sup> In order to raise awareness of their working conditions and challenge unfair business practices, United States-based sex workers have turned to methods of unionization and collective bargaining. Such challenges date back to the early twentieth century: in 1933, the Burlesque Artists' Association was founded in order to help dancers negotiate against low wages and

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<sup>33</sup> *City of Nyssa v. Dufloth*, 121 P.3d 639 (Or. 2005) (upholding the validity of Or. Const. art. I, § 8, which encompasses nude dancing and pornography in its definition of free expression).

<sup>34</sup> *City of Erie, v. Pap's A.M.*, 529 U.S. 277 (2000).

<sup>35</sup> *Taub v. City & County of San Francisco*, 696 F. App'x 181 (9th Cir. 2017).

<sup>36</sup> See Nathan Munn, *Inside PornHub*, THE VERGE (Feb. 23, 2022, 8:00 AM), <https://www.theverge.com/c/22925906/pornhub-mindgeek-content-moderation> [<https://perma.cc/LU5J-E75M>]; Aurora Snow, *A Famous Porn Star Claims She Was Raped on Set. Will She Receive Justice?*, DAILY BEAST, <https://www.thedailybeast.com/a-famous-porn-star-claims-she-was-raped-on-set-will-she-receive-justice> [<https://perma.cc/PC4T-NRT2>] (Apr. 13, 2017, 12:34 PM) (noting that Benz was one of many adult film actresses who spoke out about abuses suffered at the hands of male co-stars during the early days of the #MeToo movement).

<sup>37</sup> See Salfati, James & Ferguson, *supra* note 2.

eighty-hour workweeks.<sup>38</sup> In 1942, Honolulu, Hawaii-based prostitutes went on strike and picketed for three weeks in protest of brothel rules that limited their income and right to work.<sup>39</sup> In 1969, Playboy “bunny girls” won a collective bargaining contract covering five hundred employees across eight nationwide clubs.<sup>40</sup> In the latter half of the twentieth century, exotic dancers’ workplace struggles began to take shape around the issues that continue to plague the industry today.<sup>41</sup> Established in 1993 in San Francisco, the Exotic Dancers’ Alliance (“EDA”) was created in response to the introduction of stage fees and independent contractor status.<sup>42</sup>

As a “general rule” a person is an independent contractor “if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.”<sup>43</sup> This is in direct contrast to an employee’s status, which refers to someone who is “employed to perform services in the affairs of another and who with respect to the physical conduct in the performance of the services is subject to the other’s control or right to control.”<sup>44</sup> The distinction between independent contractor and employee status has been laid bare in the digital age, as the “gig economy” and “gig work” movement have seen dramatic increases in the usage (and exploitation) of the independent contractor classification.<sup>45</sup> Research indicates that at least 15.5 million individuals in the United States were classified as independent contractors as of 2018, up from 12.1 million in 1995.<sup>46</sup> Researchers attribute this growth, in part, to the explosion of gig work applications such as Uber, Lyft, Instacart, and Postmates.<sup>47</sup> Through these platforms, in theory, anyone can become a worker for said parent

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<sup>38</sup> GALL, *supra* note 10, at 20.

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at 21.

<sup>41</sup> *Id.* at 28.

<sup>42</sup> *Id.*

<sup>43</sup> *Independent Contractor Defined*, INTERNAL REVENUE SERV. (Dec. 3, 2020), <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined> [<https://perma.cc/HPJ3-CNBF>].

<sup>44</sup> RESTATEMENT (SECOND) OF AGENCY § 220(1) (1958).

<sup>45</sup> Elka Torpey & Andrew Hogan, *Working in a Gig Economy*, U.S. BUREAU OF LAB. STAT. (May 2016), <https://www.bls.gov/careeroutlook/2016/article/what-is-the-gig-economy.htm> [<https://perma.cc/XAD4-2EJ8>].

<sup>46</sup> Jay Shambaugh, Ryan Nunn & Lauren Bauer, *Independent Workers and the Modern Labor Market*, BROOKINGS INST. (June 7, 2018), <https://www.brookings.edu/blog/up-front/2018/06/07/independent-workers-and-the-modern-labor-market> [<https://perma.cc/LS8T-NVZA>].

<sup>47</sup> *Id.*

company—all they need is a smartphone and perhaps a car or a bicycle. This “freedom” quickly paved the way for worker exploitation and resulted in the formation of worker alliances and attempts at unionization, such as the Independent Drivers Guild, which represents more than eighty thousand rideshare drivers.<sup>48</sup>

A parallel struggle, stemming from the same independent contractor (mis)classification, existed in the sex work industry long before Uber was even an idea. The emergence of the gig economy has shed new light on the ways these labor classifications impact sex workers, particularly strippers. When labeled as independent contractors rather than employees, strip club owners can legally charge dancers “house fees” or “stage fees”—money a dancer must pay either upfront or from her day’s earnings in order to “earn” her spot in the lineup of workers that day.<sup>49</sup> Many dancers have criticized the practice and report the ways such fees increase turnover, decrease morale, and dramatically affect the consistency of wages.<sup>50</sup> Yet club owners, faced with a mass decrease in clientele following the advent of digital and online pornography, saw club fees as a means of securing consistent revenue, albeit from the workers themselves.<sup>51</sup> The result has been an increase in dancer workplace organization efforts centered in part on house fees and independent contractor status, in addition to a myriad of other (not unrelated) issues.<sup>52</sup>

When the EDA was established, it sought to advocate for civil, human, and labor rights on behalf of exotic dancers and other sex industry workers locally, nationally, and internationally.<sup>53</sup> Notably, the group was committed to the ultimate goals of “promoting the

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<sup>48</sup> See INDEP. DRIVERS GUILD, <https://drivingguild.org> [<https://perma.cc/E2TC-SH2C>] (last visited Feb. 1, 2022).

<sup>49</sup> Susan Elizabeth Shepard, *It’s International Whores’ Day. Let’s Talk About Why Strippers Need Better Labor Laws*, VOX, <https://www.vox.com/first-person/2018/6/1/17416750/international-whores-day-nyc-stripper-strike> [<https://perma.cc/TE8J-PLZJ>] (June 2, 2018, 10:18 AM).

<sup>50</sup> Valeriya Safronova, *Strippers Are Doing It for Themselves*, N.Y. TIMES (July 24, 2019), <https://www.nytimes.com/2019/07/24/style/strip-clubs.html> [<https://perma.cc/RU26-8BZC>].

<sup>51</sup> *Id.*

<sup>52</sup> See generally Antonia Crane, *An Inside Look at the NYC Stripper Strike*, HUFFINGTON POST, [https://www.huffpost.com/entry/nyc-stripper-strike\\_n\\_5a73880fe4b01ce33eb11c88](https://www.huffpost.com/entry/nyc-stripper-strike_n_5a73880fe4b01ce33eb11c88) [<https://perma.cc/GH9R-XTVB>] (Feb. 11, 2018); *Your Rights: Legal Definitions & Basic FAQs*, WE ARE DANCERS, <https://wadusa.org/know-your-rights/your-rights/> [<https://perma.cc/9WW7-53QK>] (last visited Apr. 8, 2022).

<sup>53</sup> *About E.D.A.*, EXOTIC DANCERS ALL., <http://www.bayswan.org/eda-sf> [<https://perma.cc/DYX8-SW9S>] (last visited Feb. 1, 2022).

decriminalization of prostitution and de-stigmatization of all sex industry workers.”<sup>54</sup> The EDA, along with other local advocacy groups such as the Bay Area Sex Worker Advocacy Network (“BAYSWAN”), were instrumental in the formation of an employee union at the Lusty Lady peepshow in San Francisco,<sup>55</sup> which, until its closure in 2013, was the “only unionized sex club in the United States.”<sup>56</sup> In April of 1997, SEIU Local 790, a branch of the Service Employees International Union, signed a contract with the Lusty Lady.<sup>57</sup> Features of the collective bargaining contract reportedly included a formal grievance procedure, an improved wage scale, sick pay, one holiday per year, and anti-discrimination provisions.<sup>58</sup> Researcher Gregor Gall notes that the successful unionization effort was “immensely aided” by the dancers “having employed status.”<sup>59</sup>

Following this win, the EDA continued fighting for broader protections. The Alliance took its efforts to the state level, and in 2000 it was instrumental in the passage of Assembly Bill 2509, which made it a violation of California labor law for strip club owners to require “stage fees,” “commissions,” or “quotas” paid from dancers’ tips.<sup>60</sup> Additionally, the bill amended Section 350 of the California Labor Code, inserting language establishing that “[a]ny amounts paid directly by a patron to a dancer . . . shall be deemed a gratuity.”<sup>61</sup> Dancers around the country took note. In Anchorage, Alaska, dancers and club staff began the process of organizing the Alaskan Exotic Dancers’ Union.<sup>62</sup> Union-organizing drives were also held in Philadelphia and North Hollywood.<sup>63</sup> But this window of success was short-lived. By 2004, the EDA had ceased activity, and in 2013 the Lusty Lady

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<sup>54</sup> *Id.*

<sup>55</sup> *The Exotic Dancers Alliance Is Formed*, GLOB. NETWORK SEX WORK PROJECTS, <https://www.nswp.org/timeline/the-exotic-dancers-alliance-formed> [<https://perma.cc/9EHQ-RNWC>] (last visited Feb. 1, 2022).

<sup>56</sup> GALL, *supra* note 10, at 31.

<sup>57</sup> *The Lusty Lady Unionises*, GLOB. NETWORK SEX WORK PROJECTS, <https://www.nswp.org/timeline/the-lusty-lady-unionises> [<https://perma.cc/4Q26-2VFS>] (last visited Feb. 1, 2022).

<sup>58</sup> *See* GALL, *supra* note 10, at 33.

<sup>59</sup> *Id.*

<sup>60</sup> *See* 2000 Cal. Legis. Serv. ch. 876 (A.B. 2509) (West); *About E.D.A.*, *supra* note 53.

<sup>61</sup> CAL. LAB. CODE § 350 (West 2022).

<sup>62</sup> GALL, *supra* note 10, at 42–43.

<sup>63</sup> *Id.*

shuttered.<sup>64</sup> Club owners continued to find loopholes in statutory law, and stage fees and independent contractor status continued to flourish as the norms within the industry.<sup>65</sup>

Indeed these “norms” have caught on at establishments across the United States. A July 2019 *New York Times* article reported house fees ranging from \$140 to \$180 per shift at one Seattle location of the strip club chain *Déjà Vu*.<sup>66</sup> Dancers also lose wages from additional “fees” taken out in the form of payouts to other employees on duty, such as a D.J. or bartender.<sup>67</sup> Additionally, if a dancer becomes ill or has a sudden emergency, they may be forced to pay \$140 for missing a scheduled shift with less than a week’s notice.<sup>68</sup> These types of oppressive conditions have resulted in dancers putting their organizing efforts back into the community in new ways, such as creating mutual aid networks like Meals 4 Heels.<sup>69</sup>

At the same time, strippers are making themselves a known force within the United States labor movement and are boldly calling for destigmatization and decriminalization. There are many reasons for the urgency of this new movement; among them is that the aforementioned gig work economy has shined a harsh light on the realities of independent contractor status, and sex workers have wisely utilized the momentum to advocate for their neglected industry.<sup>70</sup> Factors such as racist wage discrimination have propelled movements in New York City and Portland, which have also been major sites of larger racial justice movements.<sup>71</sup> The COVID-19 pandemic has also left U.S.-based sex workers vulnerable in a variety of ways and in desperate

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<sup>64</sup> *The Exotic Dancers Alliance Is Formed*, *supra* note 55; *Lusty Lady, World’s Only Unionized Gentleman’s Club, Closing San Francisco Doors in 2 Weeks*, S.F. EXAMINER (Aug. 21, 2013), <https://www.sfexaminer.com/news/lusty-lady-worlds-only-unionized-gentlemans-club-closing-san-francisco-doors-in-2-weeks/> [<https://perma.cc/NMX9-8JZY>].

<sup>65</sup> See Safronova, *supra* note 50.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* Meals 4 Heels is a Portland, Oregon-based food delivery service that caters to sex workers. The project was created to provide sex workers, who typically work late at night when most restaurants and grocery stores are closed, with nutritious food delivery options.

<sup>70</sup> Aída Chávez, *California’s New Gig Economy Law Is Strengthening a Stripper-Led Labor Movement*, THE INTERCEPT (Jan. 24, 2020, 7:00 AM), <https://theintercept.com/2020/01/24/california-labor-law-independent-contractors-strippers> [<https://perma.cc/TVE5-AJXY>].

<sup>71</sup> See Riski, *supra* note 27.

need of worker protections.<sup>72</sup> The efforts of recent years solidified in the July 2020 NLRB decision, *Nolan Enterprises*, which effectively established that, given the nature of the work, strippers should be classified as employees, so application of independent contractor status is a misclassification in violation of labor law.<sup>73</sup>

### *C. The NLRB's Nolan Enterprises Decision & its Impact*

Since its establishment in 1935, the NLRB has served to protect the rights of private sector employees who choose to organize themselves in union or collective bargaining models.<sup>74</sup> These groups, and the individuals within them, are statutorily protected by the National Labor Relations Act (“NLRA”). The NLRA defines an “employee” as “any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, . . . but shall not include . . . any individual having the status of independent contractor . . . .”<sup>75</sup> The Act declares it “the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce . . . by encouraging the practice and procedure of collective bargaining . . . .”<sup>76</sup>

The NLRA has been used by numerous industries to collectively bargain on small and large scales alike.<sup>77</sup> While union activity may have fallen out of vogue during the final act of the twentieth century (after years of being actively quashed), recent years have seen a resurgence in labor groups utilizing and fighting for the right to bargain collectively, with major victories being won in industries like digital media and education.<sup>78</sup> This is precisely the strategy that dancer

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<sup>72</sup> Luke Winkie, “*There’s No Way to Socially Distance in a Strip Club*”: *A Dancer on Working Through the Pandemic*, VOX (July 31, 2020, 7:00 AM), <https://www.vox.com/the-goods/2020/7/31/21328624/strip-club-dancer-pandemic-covid-19-live-nude> [<https://perma.cc/B54L-Z5HP>].

<sup>73</sup> See *Nolan Enters., Inc.*, 370 N.L.R.B. No. 2 (July 31, 2020).

<sup>74</sup> National Labor Relations Act, 29 U.S.C. §§ 151–69.

<sup>75</sup> 29 U.S.C. § 152(3).

<sup>76</sup> 29 U.S.C. § 151.

<sup>77</sup> See generally NELSON LICHTENSTEIN, *STATE OF THE UNION: A CENTURY OF AMERICAN LABOR* (2002).

<sup>78</sup> See Sarah Green Carmichael, *America’s New Labor Movement*, HARV. BUS. REV. (Aug. 29, 2014), <https://hbr.org/2014/08/americas-new-labor-movement> [<https://perma.cc/JET8-SKEG>]; Kerry Flynn, *Unions Are Becoming Ubiquitous in Digital Media. Medium Is the Latest*, CNN BUS., <https://www.cnn.com/2021/02/11/media/medium-union/index.html> [<https://perma.cc/P3KD-2BLZ>] (Feb. 11, 2021, 2:40 PM); Alia Wong, *America’s Teachers Are Furious*, THE ATLANTIC,

Brandi Campbell had in mind when she began performing at the Centerfold Club in Columbus, Ohio.

Campbell, an exotic dancer and labor activist, began performing at Centerfold Club in February of 2018.<sup>79</sup> Campbell was hired as an independent contractor, and her contract detailed that she was “leasing” stage space from Centerfold, among other provisions.<sup>80</sup> Around March 12th of that same year, after working regularly for several weeks, Campbell delivered a letter to club management, outlining the ways in which the club’s labor practices were violating the NLRA.<sup>81</sup> Campbell highlighted contradictions between the fact that the club classified its dancers as independent contractors, while failing to fulfill the working conditions afforded independent contractors under the NLRA.<sup>82</sup> These contradictions included management setting the prices that dancers charged for private dances, instructing dancers on what to wear and how to interact with patrons, requiring dancers to order drinks, requiring dancers to receive permission to use the restroom, prohibiting dancers from loitering in the dressing room, and requiring that dancers participate in “Up-Time,” a twice-hourly promotion in which all dancers must mingle with patrons and attempt to sell private dances.<sup>83</sup>

Around the time that Campbell submitted her complaints to club management, management became aware of Campbell’s prior labor activist work through her regularly updated blog.<sup>84</sup> Subsequently, management began monitoring Campbell’s communications with other dancers, either by breaking up any conversations they witnessed, or later asking the other dancer what was discussed during that conversation.<sup>85</sup> Concurrently, management also began plotting how they could “legally” terminate Campbell’s contract with the club.<sup>86</sup> Management decided to secretly record Campbell’s private dances with patrons in an attempt to catch her in violation of Ohio’s “no-touching”

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<https://www.theatlantic.com/education/archive/2019/01/teachers-are-launching-a-rebellion/580975> [<https://perma.cc/7CJ6-7PTD>] (Jan. 23, 2019, 4:45 PM).

<sup>79</sup> Nolan Enters., Inc., 370 N.L.R.B. No. 2, at 5 (July 31, 2020).

<sup>80</sup> *Id.* at 7.

<sup>81</sup> *Id.* at 10.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 6; see STRIPPER LAB. RTS., <http://stripperlaborrights.com> [<https://perma.cc/FV54-BV3L>] (last visited Feb. 4, 2022).

<sup>85</sup> Nolan Enters., 370 N.L.R.B. at 11.

<sup>86</sup> *Id.*

law.<sup>87</sup> These efforts included hiring a friend of the manager to come into the club and be “extra handsy” with Campbell in an attempt to catch her in the act.<sup>88</sup> Several videos were produced, one of which shows Campbell touching a patron’s shoulders, and management subsequently used the footage as basis for termination.<sup>89</sup> Further indication of the true motivation of the firing was established in the four-page letter from Centerfold management terminating Campbell’s contract.<sup>90</sup> Among other insults, club management fixated largely on Campbell’s blog and labor activism in the letter, as opposed to the actual “cause” of her termination: “We . . . read your web site that showed that your pattern and practice is to sue, destroy and lash out at people as I’m sure you will do to me and others when you read this letter. Please think before you act here . . . You show a lot of hatred.”<sup>91</sup>

As club management saliently predicted, Campbell did file a complaint with the NLRB. Upon hearing the case, the NLRB determined that the “threshold issue” at hand “is whether Campbell was a statutory employee entitled to the [National Labor Relations] Act’s protections.”<sup>92</sup> In such a determination, the burden of proof lies with the party arguing independent contractor status. Thus, it would be the responsibility of the strip club owners and operators to show that when it comes to factors including “the extent of control over the details, means, and manner of the work,” “the skill required,” “the method of payment, whether by the time or by the job,” and “whether the parties believe they are creating an employment or contract relationship,”<sup>93</sup> the role fulfilled by the dancer is one of independent contractor, not employee. In making this determination, “all the incidents of the relationship must be assessed and weighed with no one factor being decisive.”<sup>94</sup> The Board weighed nine distinct factors, including those mentioned above, and in each category found that Campbell’s working conditions and the Club’s operating conditions both strongly favored a finding of an employee-employer relationship.<sup>95</sup> Using this determination, the Board next determined that Brandi Campbell was a

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<sup>87</sup> *See id.* at 6, 11.

<sup>88</sup> *Id.* at 11.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* at 12.

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 14.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 14–15 (quoting *N.L.R.B. v. United Ins. Co. of Amer.*, 390 U.S. 254, 258 (1968)).

<sup>95</sup> *Id.* at 14–19.

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statutorily protected employee, and that in firing her for complaining about workplace conditions and for encouraging collective bargaining, Centerfold Club had violated those protections.<sup>96</sup>

In so few words, the NLRB's ruling boldly established that "[s]trippers [a]re [w]orkers [w]ith the [p]ower to [u]nionize."<sup>97</sup> Despite this case making significant alterations to longstanding business practices, the news of the ruling hardly made waves in the public eye. On her personal blog, Campbell claimed that despite some early press coverage of the decision, no reporters had reached out to her personally.<sup>98</sup> In a later interview with *Jacobin*, Campbell did not look to take credit for the victory, saying "[d]ancers have always had this power," and she encouraged dancers to continue working toward unionization.<sup>99</sup>

Given both the recent nature of the decision and the interference of the COVID-19 pandemic, the full range of possibilities stemming from the NLRB's holding has yet to fully come to fruition. Nevertheless, analyzing those possibilities now is critical. To understand how the industry should, and should not, proceed, one can look to Europe's recent history, which has been a battleground for sex worker activists.

### III. INTERNATIONAL PERSPECTIVES

While the recent NLRB decision only establishes employee protections for strippers, it carries implications for the future of the U.S. sex work industry. One can hope that with strippers classified as employees and a new layer of protections added to their work, sex work in the United States can begin a transition to a more normalized profession. This perspective may be naïve, as those in power have already begun to find loopholes and take advantage of employee status.<sup>100</sup> Ideally, greater dignity and respect for sex workers means their voices will be louder in courts, legislative drafting rooms, and the world of business.

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<sup>96</sup> *Id.* at 18.

<sup>97</sup> Alex N. Press, *Strippers Are Workers with the Power to Unionize*, JACOBIN (Aug. 31, 2020), <https://www.jacobinmag.com/2020/08/stripping-adult-dancing-unions-strike> [<https://perma.cc/5P2Y-ERFW>].

<sup>98</sup> Brandi Campbell, *BBHMM!*, STRIPPER LAB. RTS. (Aug. 17, 2020), <http://stripperlaborrights.com/news/2020/8/17/bbhmm> [<https://perma.cc/RP5E-8TVD>].

<sup>99</sup> Press, *supra* note 97.

<sup>100</sup> *Stop Wage Theft and Hold Employers Accountable*, DANCER LAWSUITS, <https://dancerlawsuits.com> [<https://perma.cc/94CA-LT7J>] (last visited Feb. 26, 2022).

Looking to Europe, one can see a range of possibilities for the future of sex work in the United States. To varying degrees, sex work has been legalized in the United Kingdom, Germany, and the Netherlands in forms including stripping and prostitution.<sup>101</sup> While many of these laws represent a far more relaxed approach than the United States, the legal and labor climates are worth examining in conjunction with the United States for several reasons. First, both in the United States and abroad, many types of sex work overlap with each other, and many sex workers engage in more than one type of sex work.<sup>102</sup> Looking at the statistics drawn from legal activity in Europe can help paint a more accurate picture of the largely unreported illegal market in the United States. Second, European countries that have legalized different forms of sex work have also enacted new regulations around brothel-keeping, solicitation, government registration, and more. The successes and failures of these measures can provide a clear road map for the United States moving forward.

Third, this mosaic of European laws is worth examining to see the many ways in which the United States' path toward a greater level of worker autonomy can have profoundly positive consequences; but in many ways those consequences are insufficient to resolve the true sources of injustice against sex workers. Rather, by comparing the fledgling success of the U.S. sex worker labor movement with the more established history of European sex work frameworks, one can see that it is not government grants of autonomy, but workers' collective power, often in the form of unions, that holds the greatest potential for true change.

#### *A. The United Kingdom*

When it comes to the umbrella of sex work, the United Kingdom ("U.K.") has adopted an approach referred to as "partial criminalisation."<sup>103</sup> This legal model criminalizes only certain aspects of sex work and, often, those are the elements most visible to mainstream

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<sup>101</sup> Marion Pluskota, *Selling Sex in Amsterdam*, in *SELLING SEX IN THE CITY*, *supra* note 15, at 27, 33; Julia Laite, *A Global History of Prostitution: London*, in *SELLING SEX IN THE CITY*, *supra* note 15, at 111, 112.

<sup>102</sup> See Maja Mechant, *The Social Profiles of Prostitutes*, in *SELLING SEX IN THE CITY*, *supra* note 15, at 833.

<sup>103</sup> MAC & SMITH, *supra* note 7, at 146.

society.<sup>104</sup> The number of sex workers in the U.K. is estimated to be around 72,800, with about 32,000 working in London, England.<sup>105</sup>

In England, Scotland, and Wales, stripping is legal, as is paying for sex so long as the exchange is consensual, the parties are over eighteen, and the interaction is not solicited in a public place.<sup>106</sup> Northern Ireland has banned paying for sexual activities since 2014.<sup>107</sup> Such phrasing with regard to “paying for” and “receiving money for” are often used as loopholes meant to criminalize one party over another. For example, while “paying for” sexual activity may be legal, authorities will still criminalize prostitutes for working in groups indoors, claiming that one of the sex workers was “facilitating” sex work, as though she were a pimp.<sup>108</sup>

The U.K. is also operating in the shadow of the Anti-Social Behaviour Orders (“ASBOs”). This series of laws was enacted in 2000 and used intentionally broad and vague language in order to create a wedge with which law enforcement could restrict certain low-level offenses, such as vandalism, begging, suicide attempts, and general “aggressive” behavior.<sup>109</sup> While not a criminal offense in and of itself, ASBOs were a type of legal citation that created obligations—intended to be “remedial” in nature—for individuals that, if not followed, could lead to criminal charges.<sup>110</sup> As one U.K.-based sex worker put it, for sex workers, “ASBOs have reintroduced prison for an offence which is not imprisonable.”<sup>111</sup> England and Wales repealed the use of ASBOs in 2014, yet many remain critical of the way the

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<sup>104</sup> *Id.*

<sup>105</sup> HOME AFFAIRS COMMITTEE, PROSTITUTION, 2016–17, HC 26, at 3 (UK).

<sup>106</sup> Sexual Offences Act 2003, c. 42, §§ 4, 9, 51A (UK); Mavis Maclean, *Introduction. Sex Work in the UK: Stereotypes and Statistics in the 21st Century*, 8 OÑATI SOCIO-LEGAL SERIES 1123, 1125 (2018).

<sup>107</sup> Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, c. 2, § 15; Maclean, *supra* note 106, at 1125.

<sup>108</sup> MAC & SMITH, *supra* note 7, at 100.

<sup>109</sup> See Stuart Macdonald, *A Suicidal Woman, Roaming Pigs and a Noisy Trampolinist: Refining the ASBO's Definition of 'Anti-Social Behaviour'*, 69 MOD. L. REV. 183, 188 (2006).

<sup>110</sup> *Antisocial Behaviour Orders (ASBOs)*, SHELTER SCOT., [https://scotland.shelter.org.uk/get\\_advice/advice\\_topics/neighbourhood\\_issues/antisocial\\_behaviour/antisocial\\_behaviour\\_orders](https://scotland.shelter.org.uk/get_advice/advice_topics/neighbourhood_issues/antisocial_behaviour/antisocial_behaviour_orders) [<https://perma.cc/BC25-UBER>] (Dec. 29, 2014).

<sup>111</sup> MAC & SMITH, *supra* note 7, at 163.

laws have been fractured and remain effectively intact through alternate legal channels.<sup>112</sup> ASBOs are still utilized in Scotland.<sup>113</sup>

In the United States, similar morally oriented policies have been used to criminalize sex workers and others forced to the fringes of society. Following years of activism, in 2021, New York State finally repealed Section 240.37 of the state penal law, which made it a crime to loiter for the purpose of prostitution.<sup>114</sup> The law, which was used as the basis for thousands of arrests since its introduction in 1976, was often called the “Walking While Trans” law for the way it statistically criminalized transgender individuals for innocuous activity.<sup>115</sup> While many in New York celebrated the repeal of this law as a victory, it also represents the type of legislation that is deeply entrenched in more conservative regions.

Around the same time that the ASBOs program began in the U.K., the country’s sex workers formed the International Union of Sex Workers, launching their campaign on International Women’s Day 2000 with a march through London.<sup>116</sup> In 2002, the group partnered with the GMB Union, a general workers union with upward of 620,000 members.<sup>117</sup> The union actively made a point of recruiting sex workers across the board, including those working in prostitution, pornography, stripping and exotic dancing, and adult chat lines.<sup>118</sup> With this approach, the International Union of Sex Workers recognized that many sex workers are not restricted to one specificity. Their approach also recognized the marginalized nature of the work by including both legal and semi-legal business activities.<sup>119</sup>

The group began with a promise—it provided services such as self-defense classes and legal advice to all of its members—but researchers found that the experiences of union members were ones of

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<sup>112</sup> Sian Gibbon, *Anti-Social Behaviour, Crime and Policing Act 2014 – All Change?*, ASHFORDS (Oct. 13, 2014), <https://web.archive.org/web/20151208092746/http://www.ashfords.co.uk/anti-social-behaviour,-crime-and-policing-act-2014-all-change>.

<sup>113</sup> *Antisocial Behaviour Orders (ASBOs)*, *supra* note 110.

<sup>114</sup> *See* 2021 N.Y. Sess. Laws ch. 23 (S. 1351) (McKinney).

<sup>115</sup> Jaclyn Diaz, *New York Repeals ‘Walking While Trans’ Law*, NPR (Feb. 3, 2021, 2:45 AM), <https://www.npr.org/2021/02/03/963513022/new-york-repeals-walking-while-trans-law> [<https://perma.cc/DYD7-L8KH>].

<sup>116</sup> *What We Do*, GMB UNION, <https://www.gmb.org.uk/what-we-do> [<https://perma.cc/9R8E-HGLE>].

<sup>117</sup> *Id.*

<sup>118</sup> ANA LOPES & JENNIFER WEBBER, ORGANISING SEX WORKERS IN THE UK: WHAT’S IN IT FOR TRADE UNIONS? 1 (2013).

<sup>119</sup> *Id.*

bureaucracy and paternalism.<sup>120</sup> “[I]nterviews . . . showed that union officials are reluctant to allow sex workers to develop their organisation freely and publicly or to pursue non-traditional methods of organising,” said researchers.<sup>121</sup> As a result, members felt that officials simply wanted their money without offering meaningful representation in return.<sup>122</sup> Elsewhere in Europe, pre-existing unions subsumed other activist-based sex worker unions with similar results.<sup>123</sup>

While legalization has found root in some form, there seems to be a strong consensus among sex workers that without deeper de-stigmatization from society at large, the full effect of laws claiming to help sex workers can never truly be felt.<sup>124</sup> In 2016, the Chief of Police of Wiltshire, a county of nearly 750,000, openly told reporters that he would be less likely to believe the claims of a “drunken prostitute” than he would a six-year-old girl.<sup>125</sup> While the remarks were later clarified as “hypothetical,” they are indicative of a system whose authority figures continue to treat sex workers as lesser while claiming that they are free and equal workers.<sup>126</sup>

Today, one of the biggest fights facing U.K.-based strippers is parallel to that of U.S. dancers. In recent years, strip club owners have begun to introduce house fees as well as employee fine systems as a means of recovering licensing fees and other regulatory measures.<sup>127</sup> A new crop of union-oriented groups have emerged to challenge these systems. The East London Strippers Collective, Sex Worker Advocacy and Resistance Movement (“SWARM”), and United Sex Workers (“USW”) are among the groups working to challenge these fees through a model comparable to that employed by dancers in the United States.<sup>128</sup> USW, in particular, has used the union/collective bargaining model to fight house fees and related exploitation. USW established

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<sup>120</sup> *Id.* at 2–4.

<sup>121</sup> *Id.* at 4.

<sup>122</sup> *Id.*

<sup>123</sup> See discussion *infra* Section III.B.

<sup>124</sup> MAC & SMITH, *supra* note 7, at 194.

<sup>125</sup> Tom Seaward, *Wiltshire Police’s Mike Veale Criticised Over ‘Drunken Prostitute’ Comments*, SWINDON ADVERTISER (Jan. 16, 2018), <https://www.swindonadvertiser.co.uk/news/15843768.wiltshire-polices-mike-veale-criticised-drunken-prostitute-comments> [<https://perma.cc/7VJX-MYYY>].

<sup>126</sup> *Id.*

<sup>127</sup> MAC & SMITH, *supra* note 7, at 168.

<sup>128</sup> Patrick Smith, *A Strippers Collective Is Standing Up for Strippers’ Rights*, VICE (Nov. 2, 2014, 9:25 AM), <https://www.vice.com/en/article/4w78yp/east-london-strippers-collective-is-standing-up-for-strippers-rights-250> [<https://perma.cc/7CRB-CCLZ>].

itself as a branch of United Voices of the World, a U.K.-based trade union that defines itself as a “grassroots” network for “low paid, migrant [and] precarious workers.”<sup>129</sup> USW states that its mission is to fight for “worker status” for its members, like the recent fight in the United States.<sup>130</sup>

In March of 2020, a UWS member won a labor victory that predated the NLRB’s decision in *Nolan Enterprises*. The U.K. Employment Tribunal held in *Nowak v. Chandlers Bars Group Ltd.* that strippers must be held to the standards of “workers” and are therefore afforded certain labor protections.<sup>131</sup> While these U.K.-based dancers were able to use their collective power to win a new layer of rights, U.S.-based dancers first had to win that same in-court battle to even begin harnessing their collective power in such a formalized way. The fact that the decisions happened within months of each other suggests both an interconnection and larger strategy developing between members of the international sex worker community, as well as an even more comparable framework for Stateside sex workers to begin emphasizing the decriminalization of all forms of sex work.

### B. Germany

Germany takes the U.K. model of “partial criminalisation” a step further with its own set of laws falling under the umbrella of “regulationism.”<sup>132</sup> In this model, the sex industry as a whole is regulated by the government, leaving those who do not comply with government requirements vulnerable to prosecution.<sup>133</sup> Regulations can range from mandatory health testing and working in certain areas at certain times, to registering publicly as a sex worker—the latter of which has been a significant source of backlash from the community.<sup>134</sup>

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<sup>129</sup> *About UVW*, UNITED VOICES OF THE WORLD, <https://www.uvwunion.org.uk/en/about/#who-are-our-members> [https://perma.cc/K4ZY-8YRU] (last visited Feb. 22, 2022).

<sup>130</sup> *United Sex Workers*, *supra* note 8.

<sup>131</sup> *Nowak v. Chandlers Bars Grps. Ltd.* [2019] EAT 3200538, ¶¶ 86–88 (Eng.); Lydia Caradonna, *Strippers Have Finally Been Recognised as Workers*, INDEPENDENT (Mar. 8, 2020, 1:48 PM), <https://www.independent.co.uk/voices/strippers-sex-work-self-employed-international-women-s-day-a9385161.html> [https://perma.cc/6Hqw-SQBw].

<sup>132</sup> MAC & SMITH, *supra* note 7, at 288.

<sup>133</sup> *Id.*

<sup>134</sup> Sonja Dolinsek, *Sex Workers Fight Against Compulsory Registration and Identification in Germany*, OPENDEMOCRACY (July 7, 2016), <https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/sex-workers-fight-against-compulsory-registration-and-identification-in> [https://perma.cc/MV6T-FALT].

Germany's current stance toward sex work originated at the turn of the century. In 2000, the Berlin State Court held that "prostitution could no longer be classified as an offence against common decency and good morals (Sittenwidrigkeit)."<sup>135</sup> Following the ruling, the German government enacted the Prostitution Act in 2001.<sup>136</sup> The Prostitution Act created a contractual relationship between the seller and buyer of sex, explaining that agreements for the selling and buying of sexual services constitute a legally effective claim.<sup>137</sup> The law also promulgates that claims brought under the law must only be for contractual issues, thereby foreclosing objections of immorality.<sup>138</sup> Finally, the law made it so that sex workers are eligible to earn social security benefits.<sup>139</sup>

In response to the risks posed by gaps left in the law, unionization was introduced as a possible solution. Prior to the 2001 referendums, "no union had shown any interest in organizing sex workers in Germany."<sup>140</sup> Following the legalization of prostitution, however, Germany's Unified Service Sector Union, Ver.di, began one of the country's first attempts to organize sex workers in earnest.<sup>141</sup> Ver.di believed its infrastructure could assist the newly-ordained class of legal employees with issues such as establishing employment contracts and receiving social service benefits that come with being a tax-paying employee in Germany.<sup>142</sup> The Ver.di union succeeded in establishing the requisite internal structures for representation and developing standardized working contracts.<sup>143</sup> The group even successfully established a workers' council at one Hamburg brothel and threatened a strike in Cologne over a proposed pleasure tax.<sup>144</sup>

Unfortunately, these early successes would prove no more than "flashes in the pan."<sup>145</sup> By 2006, tax authorities reported that only an estimated twelve percent of the country's 400,000 sex workers had

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<sup>135</sup> Claudia Vorheyer, *What Does Changing the Law Change? Prostitution and the Law in Action: National Regulation and Local Practices of Public-Health Policy in Germany*, 8 Oñati Socio-Legal Series 1179, 1182 (2018).

<sup>136</sup> *Id.*

<sup>137</sup> Prostitutionsgesetz [ProstG] [Prostitution Act], Dec. 20, 2001, Bundesgesetzblatt [BGBl I] at 3983, § 1 (Ger.).

<sup>138</sup> *Id.* § 2.

<sup>139</sup> *Id.* § 3.

<sup>140</sup> GALL, *supra* note 10, at 97.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.* at 98.

<sup>143</sup> *Id.*

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

registered with the government.<sup>146</sup> This disconnect, Gall explains, grew out of Ver.di's "erroneous" (and arguably paternalistic) assumption that the legalization of prostitution would result in all sex workers immediately seeking written contracts of employment and club owners seeking to become employers, putting their business on "a conventional footing."<sup>147</sup>

Despite an entirely different landscape for sex work legalization, Germany's sex industry faces a similar major obstacle to unionization as in the United States: the appeal (both real and fabricated) of self-employed status. In both countries, the owners and operators of brothels, strip clubs, and other places of work have been all too happy to foster self-employment as the norm, as it allows them to avoid payment of taxes and social insurance.<sup>148</sup> Gall draws a direct comparison between brothel owners "renting out" their rooms and facilities to prostitutes and U.S. strip club owners charging stage fees to dancers.<sup>149</sup> In particular, he emphasizes the ways in which workers are made more "pliant" due to the constant competition with each other for work.<sup>150</sup> Club owners and operators have no motivation to improve the conditions for their workers so long as this competition exists.

Despite these very real risks, some sex workers continue to justifiably view self-employment as the more secure path. "Most prostitutes work for themselves, because they want to be flexible and, for example, stay home if their kids are sick," explained one sex work activist in 2013.<sup>151</sup> Even if there are employee-level protections and benefits for sex workers encoded in the national law, they arguably remain ineffective if the continued stigmatization of sex workers means a laissez-faire approach to the enforcement of those laws. Self-employed status also allows sex workers to avoid taxes and work primarily in cash.<sup>152</sup>

While balancing these factors may be a delicate and difficult task for any labor project, it is one that cannot be ignored. In Germany, the Ver.di project's unionization efforts ultimately failed because of its

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<sup>146</sup> *Id.* at 96, 98.

<sup>147</sup> *Id.* at 100.

<sup>148</sup> *Id.*

<sup>149</sup> *Id.* at 101.

<sup>150</sup> *Id.*

<sup>151</sup> Von Jan Guldner, *Germany Gets First Prostitution Lobby*, SPIEGEL INT'L (Oct. 30, 2013, 3:01 PM), <https://www.spiegel.de/international/germany/johanna-weber-founds-first-german-sex-worker-professional-association-a-930831.html> [<https://perma.cc/KD34-K79F>].

<sup>152</sup> GALL, *supra* note 10, at 101.

tendency to force the sex industry into a pre-existing model of labor. In this sense, “the extent to which sex workers value the current nature of their conditions (earnings, hours) and employment status was not anticipated or expected.”<sup>153</sup> The presumptiveness that led to the failure of the Ver.di project was re-emphasized at a 2009 German sex worker conference. Attendees pointed to a lack of educational and social capital, as well as a persistent overall stigmatization of sex work as a profession, as the primary struggles of those in their trade.<sup>154</sup>

In 2013, a new group was formed to address these specific failings: the Professional Association of Erotic and Sexual Services (“PAESS”, or “BeSD” in German). The group is open to sex workers, as well as brothel owners who are either working or have worked as a sex worker in the past.<sup>155</sup> The PAESS charter outlines its mission to improve the working and living conditions of sex workers via “advice and education opportunities; aiming to create high-profile work, promotions and publications; political and legal engagement; national and international networking; the advancement of education, research and culture; and the inclusion of and solidarity with minority groups involved in sex work,” among other related goals.<sup>156</sup>

Most recently, German sex workers have been grappling with the effects of the 2016 Prostitutes Protection Act. Effective July 1, 2017, the law requires all sex workers to register with the government and requires all operators of sex work businesses to obtain a special permit from the government.<sup>157</sup> The registration process is accompanied by an informational and advisory interview.<sup>158</sup> The German government enacted the law with the hopes that it would fill the gaps left by the 2001 ruling and bring more government benefits to the then-largely-unregistered sex worker population.<sup>159</sup> Many of the nation’s sex workers, however, ultimately viewed the registration requirement as a bad-faith invasion of privacy.<sup>160</sup>

While broad in its stride, the Prostitutes Protection Act has been criticized by the International Committee on the Rights of Sex Workers in Europe as “significantly undermin[ing] many . . . fundamental

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<sup>153</sup> *Id.* at 100.

<sup>154</sup> *Id.* at 102.

<sup>155</sup> *Id.* at 105.

<sup>156</sup> *Id.*

<sup>157</sup> Prostituiertenschutzgesetz [ProstSchG] [Prostitutes Protection Act], Oct. 21, 2016, Bundesgesetzblatt [BGBL I] at 2372 (Ger.).

<sup>158</sup> *Id.* § 7.

<sup>159</sup> See Dolinsek, *supra* note 134.

<sup>160</sup> *Id.*

rights.”<sup>161</sup> In particular, the Committee takes issue with the German government’s increasing focus on self-identification as a sex worker.<sup>162</sup> The Committee’s observations speak to a larger, recurring theme: regulation and interference with the lives of sex workers without governmental action taken to end the stigma against sex workers.<sup>163</sup> As one worker put it, “when the mandatory registration comes into force, I will stop working, because I don’t trust data security and I’m afraid of getting outed. I can’t afford to be outed as a sex worker in my social environment.”<sup>164</sup> So long as this inherent mistrust of the government exists, workers cannot be fully protected to the extent that the laws aim to reach.

In the United States, the NLRB’s decision in *Nolan Enterprises* opened the door for potential courting by labor organizations or further regulation by the government. In each of these scenarios, Germany provides a case study in attempting to aid sex workers with either unionization or government benefits, as Germany failed to respect the on-the-ground voices of the workers.

### C. *The Netherlands*

In the Netherlands, Amsterdam’s “Red Light District” has become a part of the country’s mythos and international reputation. The country legalized prostitution in 2000.<sup>165</sup> The change in law followed years of activism from sex worker mutual aid networks such as the Red Thread, which organized throughout the 1980s and 1990s with the goal of providing health support and education to sex workers and ending the social stigma surrounding prostitution as a legitimate form of work.<sup>166</sup>

Founded in 1984, the Red Thread (or Rode Draad) was formed as a self-help group for sex workers and was directly influenced by the work of Call Off Your Old Tired Ethics (“COYOTE”) in San

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<sup>161</sup> ANGELA HERTER & EMY FEM, INT’L COMM. ON THE RTS. OF SEX WORKERS IN EUR., *PROFESSED PROTECTION, POINTLESS PROVISIONS – OVERVIEW OF THE GERMAN PROSTITUTES PROTECTION ACT 4* (2017).

<sup>162</sup> *See id.* at 20; *see* ProstSchG § 3.

<sup>163</sup> HERTER & FEM, *supra* note 161, at 21.

<sup>164</sup> *Id.*

<sup>165</sup> *See Prostitution*, GOV’T OF THE NETH., <https://www.government.nl/topics/prostitution> [<https://perma.cc/VM6K-TDZL>] (last visited Feb. 22, 2022); *Besluit van 18 januari 2000*, Stb. 2000, 38 (Neth.).

<sup>166</sup> *See* DE RODE DRAAD, <https://web.archive.org/web/20120209100836/http://www.rodendraad.nl> (last visited Mar. 2, 2022).

Francisco, California.<sup>167</sup> Among the goals of the Red Thread were the “recognition of prostitution as a legitimate occupation” and “improvements in . . . working conditions and welfare.”<sup>168</sup> In the 1990s, the group began to emphasize the importance of labor organizing and felt that, after decriminalization, it was the primary means of “ameliorating poor working conditions.”<sup>169</sup> The Red Thread, and sex workers in general, achieved success in 2000, when the government of the Netherlands lifted a prohibition on brothels with the goal of “giv[ing] sex workers more autonomy over their profession, reduc[ing] criminal activity and improv[ing] their labor conditions.”<sup>170</sup> Indeed, one of the most fundamental successes of the Netherlands’ current law is the way it enables and encourages sex workers to work together.<sup>171</sup>

Unlike the seedy back alleys of the popular imagination, prostitutes in Amsterdam work in “secured surroundings” with alarm systems in every brothel, cameras in front of brothel windows, and both uniformed and undercover police officers patrolling the area.<sup>172</sup> Sex workers are also covered by a number of health and safety measures that require them to be provided with clean towels and linens, as well as free, unlimited sexually transmitted disease testing.<sup>173</sup> Furthermore, the Dutch government only recognizes prostitution as valid when it occurs between “consenting adults.”<sup>174</sup> This approach notably diverges from the much-debated Nordic model of sex work, which decriminalizes the selling of sex, yet criminalizes the purchaser in an overall effort to curb the sex trade.<sup>175</sup> The language recognizing prostitution between “consenting adults” imbues the profession with recognition that the work is legitimate and consensual. Agencies have made efforts to identify situations of “forced prostitution” and provide sex workers with resources for reporting unsafe working conditions.<sup>176</sup>

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<sup>167</sup> GALL, *supra* note 10, at 107.

<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> Joshua Cruz & Swaan van Iterson, *The Audacity of Tolerance: A Critical Analysis of Legalized Prostitution in Amsterdam’s Red Light District*, HUMAN IN ACTION NETH., [https://www.humanityinaction.org/knowledge\\_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district](https://www.humanityinaction.org/knowledge_detail/the-audacity-of-tolerance-a-critical-analysis-of-legalized-prostitution-in-amsterdams-red-light-district) [<https://perma.cc/JD98-TU5Y>] (last visited Feb. 22, 2022); see *Besluit van 18 januari 2000*, Stb. 2000, 38 (Neth.).

<sup>171</sup> See Cruz & van Iterson, *supra* note 170.

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Prostitution*, *supra* note 165.

<sup>175</sup> MAC & SMITH, *supra* note 7, at 230.

<sup>176</sup> See *Prostitution*, *supra* note 165.

While these government regulations aim to provide a level of protection for sex workers, major loopholes remain evident. In particular, Dutch sex workers are considered independent workers.<sup>177</sup> Brothels do not employ sex workers, but rather “rent” the space to prostitutes.<sup>178</sup> Similar to the “house fees” system that plagued strippers in the United States, Amsterdam-based prostitutes regularly pay 90 to 150 Euros per eight-hour shift, simply to have space to work.<sup>179</sup> For many, this results in extremely long working hours intended to recoup the house fees.<sup>180</sup> Some prostitutes work as long as sixteen-hour shifts—no small price on the body and mind.<sup>181</sup> Furthermore, the Dutch government requires that prostitutes register as such and pay income tax on their earnings.<sup>182</sup> This type of regulation hints at the complicated reality that “[w]ith legalisation, only some sex work, in only some contexts, is legal.”<sup>183</sup> As local researchers put it, “[n]o one can truly work independently within a system that requires people to work in specific areas of town, and in certain establishments like sex clubs and window brothels.”<sup>184</sup>

In response to these lingering issues, the Red Thread formalized its union, Vakwerk de Rode Draad [The Red Thread Union] (“RTu”) in 2002.<sup>185</sup> Not long after, the Federation of Netherlands Trade Unions (“FNV”) took note of the RTu and began offering material support in the form of office space, lobbying access and advice, and training for workplace representatives.<sup>186</sup> Notably, the FNV left the task of recruiting members to the union project solely to the RTu.<sup>187</sup> As elsewhere, divisions between the “employed” and “self-employed” camps proved to be a major hurdle to unionization success. Brothels continued to rent rooms to sex workers to avoid paying employment or social welfare tax.<sup>188</sup> In an attempt to reconcile this, the RTu began working with

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<sup>177</sup> Cruz & van Iterson, *supra* note 170.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> See *Am I Allowed to Work as a Prostitute in the Netherlands?*, GOV'T OF THE NETH., <https://www.government.nl/topics/prostitution/question-and-answer/work-as-a-prostitute-in-the-netherlands> [<https://perma.cc/A4K9-57LB>] (last visited Feb. 26, 2022).

<sup>183</sup> MAC & SMITH, *supra* note 7, at 288.

<sup>184</sup> Cruz & van Iterson, *supra* note 170.

<sup>185</sup> GALL, *supra* note 10, at 107.

<sup>186</sup> *Id.* at 107–08.

<sup>187</sup> *Id.* at 108.

<sup>188</sup> *Id.* at 111.

brothel owners to develop a draft contract for self-employed workers.<sup>189</sup> Ultimately, the tax office did not approve the contract and negotiations were halted,<sup>190</sup> and not all brothel owners were willing to work with the RTu. Many were in fact openly hostile, refusing to allow RTu supporters to work in their brothels.<sup>191</sup>

By 2014, after several failed campaigns, the FNV withdrew its support from the RTu, and the RTu, facing financial difficulties of its own, was forced to cease operations.<sup>192</sup> Many of the issues that the RTu emphasized still linger. Government registration has proved an unappealing reform for many sex workers, who say that government recognition of their work is ultimately meaningless without deeper social shifts. “Recognizing the profession in law is one thing,” an Amsterdam-based sex worker explained to researchers, “[i]t is a different task to accept prostitution in a social context. The policy counteracts this goal by focusing on de-criminalization . . . [W]e should not forget the rights of the people that choose to exercise this job out of free will.”<sup>193</sup>

Legalization also strained sex workers and gave brothel owners the upper hand in another way: by forcing the closure of numerous places of work.<sup>194</sup> In 2000, the Netherlands was home to 1,350 registered sex businesses; in 2021 that number is just 250. Many brothels either refused to conform to the health and safety standards set out by the government or failed to conform and subsequently had their licenses revoked.<sup>195</sup> Meanwhile, the country’s total number of prostitutes has hovered around roughly twenty thousand since its legalization.<sup>196</sup> The drastic reduction in the number of places of work available to prostitutes continues to play a role in stymying fledgling union organizing efforts.<sup>197</sup>

Ultimately, prostitution has been legal in the Netherlands for more than twenty years and plays a major role in the country’s economy. Still, similarly to Germany, unionization efforts have failed to

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<sup>189</sup> *Id.* at 109.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.* at 110.

<sup>192</sup> *Id.* at 111–12.

<sup>193</sup> Cruz & van Iterson, *supra* note 170.

<sup>194</sup> Caitlin Elston-Weidinger, *An Industry in Flux: Licensed Dutch Brothels and Sex Work on the Decline*, DUTCH REV. (Dec. 17, 2021), <https://dutchreview.com/news/dutch-sex-industry-in-decline/> [<https://perma.cc/8YSG-4G9T>].

<sup>195</sup> GALL, *supra* note 10, at 110.

<sup>196</sup> *See id.* at 107.

<sup>197</sup> *Id.*

flourish in part due to struggles surrounding self-employed status and unwanted governmental intervention.<sup>198</sup> While the Netherlands may be upheld as a model nation for sexual freedoms, it is also a model of stagnation regarding sex workers' rights.

#### IV. SYNTHESIS

In the United States, home of the largest adult entertainment industry in the world, strippers have won the right to unionize. While this type of news may not make headlines, it is a shift in the economy that will impact tens of thousands of workers and thousands of workplaces. The country's many exotic dancers are now considered employees of their workplaces as opposed to independent contractors. While strip club owners and operators have proven reluctant to comply with the new classification,<sup>199</sup> sex worker activists are beginning to take advantage of the change and create networks oriented toward unionization. In California, the organization Strippers United (formerly Soldiers of Pole) is supported by the Communication Workers of America ("CWA").<sup>200</sup> Strippers United states that its mission is to "create a safe and equitable work environment for strippers across the U.S." as it is actively working to do so from California to the East Coast.<sup>201</sup> As of May of 2022, dancers in Los Angeles are striking over unsafe working conditions and planning to form a union.<sup>202</sup> If they succeed, they will be the only unionized strip club in the United States.<sup>203</sup>

As organizations and movements like this continue to grow, and unionization becomes a more imminent priority, Europe's not-too-distant history can provide both a roadmap of goals to strive for and pitfalls to avoid. Strippers United is in some ways reminiscent of the Red Thread in the Netherlands: a sex worker-led organization that

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<sup>198</sup> See discussion *supra* Section III.B.

<sup>199</sup> Anthony McAuley, *Exotic Dancers Sue New Orleans Club Owners Over Employment Status, Wages and Tips*, NOLA.COM (Nov. 6, 2020, 10:24 AM), [https://www.nola.com/news/business/article\\_6892a7f0-1f83-11eb-b7ed-c7a7938fdc86.html](https://www.nola.com/news/business/article_6892a7f0-1f83-11eb-b7ed-c7a7938fdc86.html) [<https://perma.cc/VTW9-THSM>].

<sup>200</sup> See *Soldiers of Pole*, COMM'NS WORKERS OF AM. 9003 (Feb. 21, 2020), <http://www.cwa9003.org/?p=4475> [<https://perma.cc/9YNS-QP82>].

<sup>201</sup> *Who We Are*, STRIPPERS UNITED, <https://www.strippersunited.org/#who-we-are> [<https://perma.cc/2TJR-SWPP>] (last visited Feb. 22, 2022).

<sup>202</sup> Otilia Steadman, *These Strippers Are Planning to Unionize*, BUZZFEEDNEWS, <https://www.buzzfeednews.com/article/otilliesteadman/strippers-star-garden-unionizing> [<https://perma.cc/TQ5W-Y399>] (May 6, 2022).

<sup>203</sup> *Id.*

establishes unionization as its main emphasis, and which partners with a major pre-existing union to do so. Unlike workers in the Netherlands, however, U.S.-based workers have the power of employee classification on their side from the beginning, something that may prove to make a powerful difference. Conversely, the newfound employee status for strippers in the United States may serve to influence further labor action in Europe.

As explored in both the United States and three European countries, a lack of legal protections combined with independent contractor norms—among other issues—have resulted in unhealthy competition between workers for managerial favoritism and in lower wages for workers due to house fees and other illegal costs skimmed from earnings. The inverse of this system, featuring over-regulation and employee-based work structures, shows just as clearly that the involvement of government agencies and non-governmental organizations do not dispositively resolve the more fundamental issues within the sex work industry. In Germany, for example, the Ver.di project brought unionization tools and infrastructure to sex workers, yet ultimately failed due to its paternalistic tendencies.<sup>204</sup> In the German context, regulation has also often meant government registration and/or police monitoring.<sup>205</sup> This level of regulation not only actively endangers certain classes of sex workers (such as migrants), it also prevents many sex workers from registering or complying with legal regimes entirely. While some have argued that government registration is necessary for sex worker security, it ironically removes them from eligibility for many of the government benefits that regulatory projects have historically hoped to achieve, such as health coverage, disability insurance, retirement benefits, and more.

From an analysis of the United States, the United Kingdom, the Netherlands, and Germany, the greatest barrier to the overall safety and wellbeing of sex workers is that of societal acceptance. As it stands, more sex workers will say they want “destigmatization” over tax incentives.<sup>206</sup> Consistently, across borders, across research groups, and across socio-economic levels, sex workers are asking their governments for respect and recognition, rather than paternalism and

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<sup>204</sup> See discussion *supra* Section III.B.

<sup>205</sup> See discussion *supra* Section III.B.

<sup>206</sup> See *Juno Mac: How Does Stigma Compromise the Safety of Sex Workers?*, NAT’L PUB. RADIO (Feb. 23, 2018, 10:04 AM), <https://www.npr.org/transcripts/587937751> [<https://perma.cc/6RXZ-2FEA>].

protection.<sup>207</sup> When it comes to sex work, the legal disparities between countries like the United States and the Netherlands may seem vast, but the culture and societal treatment experienced by the workers themselves remains similar. This treatment remains the deeper root of ongoing problems experienced within the sex work industry and affirms that legalization is meaningless unless it is accompanied by a deeper shift in the attitudes of governments, and society generally, toward sex worker populations.

## V. COVID-19

The cross-border nature of this issue has been further emphasized by the COVID-19 crisis. Since March of 2020, the global COVID pandemic has laid bare the ways in which sex workers continue to be disregarded by their governments and often fall outside of the “social safety nets,” even when they are working within the law.<sup>208</sup> In July of 2020, the *Miami Herald* reported on Florida dancers returning to work after COVID restrictions were lifted.<sup>209</sup> Safety precautions included clubs being restricted to fifty percent capacity, temperature checks and mandatory masks for patrons, as well as face shields for dancers.<sup>210</sup> These restrictions, as well as the overall economic downturn leading to a decrease in disposable income, have caused the average dancer’s earnings to fall dramatically. One dancer reported that her earnings have fallen to, “at best,” half of what they used to be.<sup>211</sup> Continued employment in these stifled conditions makes dancers ineligible for unemployment and other emergency benefits that have sustained (albeit meagerly) workers in industries such as foodservice.<sup>212</sup> Not all

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<sup>207</sup> See *Why Sex Work Should Be Decriminalized: Questions and Answers*, HUM. RTS. WATCH (Aug. 7, 2019, 3:31 AM), <https://www.hrw.org/news/2019/08/07/why-sex-work-should-be-decriminalized> [<https://perma.cc/8UVE-PU3T>].

<sup>208</sup> Elene Lam, *Pandemic Sex Workers’ Resilience: COVID-19 Crisis Met with Rapid Responses by Sex Worker Communities*, 63 INT’L SOC. WORK 777, 777 (2020).

<sup>209</sup> Madeleine Marr, *A Lap Dance with a Masked Stripper? What Strip Clubs Are Like in the Coronavirus Age*, MIA. HERALD, <https://www.miamiherald.com/entertainment/article243761987.html> (June 30, 2020, 1:16 PM).

<sup>210</sup> *Id.*

<sup>211</sup> Winkie, *supra* note 72.

<sup>212</sup> See Leah LaGrone, *Excluding Those in the Sex Industry from Covid-19 Relief Is a Mistake*, WASH. POST (Apr. 23, 2020), <https://www.washingtonpost.com/outlook/2020/04/23/excluding-those-sex-industry-covid-19-relief-is-mistake/> [<https://perma.cc/X49Y-T9YW>]; see also Miriam Berger, *Sex Workers Are Falling Through the Cracks in Coronavirus Assistance Programs Around the World*, WASH. POST. (Apr. 28, 2020), <https://www.washingtonpost.com/world/2020/04/28/sex->

clubs have reopened, even with COVID precautions, leading to increased competition between dancers for work in an already highly competitive industry.<sup>213</sup>

The taboo nature of sex work also leaves these individuals out of many mainstream COVID relief efforts, both those organized within the community and those planned by cities and states.<sup>214</sup> This has led many sex workers to create their own “rapid-response” networks of mutual aid.<sup>215</sup> These networks have taken such a foothold within the community that there is a recurring joke among the sex worker community that the only ones purchasing sex work during the pandemic are sex workers themselves.<sup>216</sup> It remains to be seen how these networks will continue to develop, and what they may continue to look like in the “post-pandemic” future. With conscious effort, they have potential to develop into more permanent structures to support a campaign for unionization that goes beyond placing sex workers into pre-existing bureaucratic frameworks.

In the past, stigmatization and failure to focus on the short-term needs of sex workers’ wellbeing have resulted in major barriers to the unionization of those in the industry. Despite widespread recognition that unionization could provide a major solution to lingering welfare issues within the sex work industries, workers will continue to remain hesitant to participate if they are not being listened to on the most basic levels.

The future of sex workers’ labor conditions is important for many layers of the global economy. Sex workers, their clientele, and their families are far from being the only ones affected. The labor conversations happening in the world of sex work are distinctly parallel to those happening in the world of gig work. Companies including Uber,

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workers-are-falling-through-cracks-coronavirus-assistance-programs-around-world/ [https://perma.cc/EF5G-UDFU].

<sup>213</sup> See Marr, *supra* note 209.

<sup>214</sup> Denton Callander, Étienne Meunier, Ryan DeVeau, Christian Grov, Basil Donovan, Victor Minichiello, Jules Kim & Dustin Duncan, *Investigating the Effects of COVID-19 on Global Male Sex Work Populations: A Longitudinal Study of Digital Data*, 97 SEXUALLY TRANSMITTED INFECTIONS 93, 96 (2021).

<sup>215</sup> Lam, *supra* note 208, at 778.

<sup>216</sup> See Alexis Okeowo, *The Fragile Existence of Sex Workers During the Pandemic*, NEW YORKER (May 21, 2020), <https://www.newyorker.com/news/news-desk/the-fragile-existence-of-sex-workers-during-the-pandemic> [https://perma.cc/QPY6-VQ7L]; Nastia Voynovskaya, *Sex Workers Are Moving Online, Supporting Each Other During Coronavirus*, KQED (Mar. 25, 2020), <https://www.kqed.org/arts/13877250/sex-workers-are-moving-online-supporting-each-other-during-coronavirus> [https://perma.cc/V6DV-W9FZ].

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Lyft, and Instacart were instrumental in lobbying for the Passage of Proposition 22 in California—a measure that cements gig workers as independent contractors and thus denies them a host of benefits, including the opportunity to unionize.<sup>217</sup> While the bill was declared unconstitutional by a lower court, it remains in effect while on appeal, and many are confident the bill will stand.<sup>218</sup> Regardless, a fight for the rights of sex workers is increasingly a fight for rideshare drivers, delivery workers, programmers, domestic workers, and hundreds of thousands of others.

Ultimately, successful unionization efforts in the sex work industry are revolutionary. Indeed, perhaps they need an element of revolution to succeed in the first place. If sex workers are allowed to form unions and collective bargain on their own terms, they can revolutionize the future of labor as we know it.

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<sup>217</sup> See CAL. BUS. & PROF. CODE §§ 7748 *et seq.* (West 2021).

<sup>218</sup> Roland Li, *Prop. 22, the Gig Worker Exemption for Uber and Lyft, Is Ruled Unconstitutional*, S.F. CHRON. (Aug. 20, 2021), <https://www.sfchronicle.com/tech/amp/Prop-22-the-gig-worker-exemption-for-Uber-and-16401915.php> [<https://perma.cc/YBT9-9DTP>].