



4-2024

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Waters, Julia (2024) "The TikTok Dilemma: Regulating TikTok for Minors in the Age of Free Speech," *Brigham Young University Prelaw Review*. Vol. 38, Article 15.

Available at: <https://scholarsarchive.byu.edu/byuplr/vol38/iss1/15>

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THE TIKTOK DILEMMA: REGULATING TIKTOK FOR MINORS IN THE AGE OF FREE SPEECH

*Julia Waters*¹

I. INTRODUCTION

On February 28th, 2022, Chase Nasca, a 16-year-old American, took his own life. Chase was walking home from the gym when he sent one final message to his friend: “I can’t do this anymore.” The young teen proceeded to stand on the railroad tracks in downtown Long Island where he waited for his life to end. His parents tried to understand why he would take his own life as he did not have a history of depression, anxiety or other mental health issues. Chase had many friends, and his parents described him as a very social teenager. As his parents dove further into the reasons he chose to cut his life short, they stumbled across his TikTok account. Chase’s “For You Page” contained more than 1,000 videos about suicide, self-harm, violence, and depression. His parents did not know when their son opened his TikTok account, but he received his first cell phone in sixth grade.² After this discovery, Chase’s parents filed a wrongful death lawsuit against TikTok’s company owner, ByteDance, attempting to hold the company liable for their son’s death because of the depressive content that seemed to be force fed to their young

1 Julia is attending Brigham Young University, majoring in English with an emphasis in Professional Writing and Communication. She plans on attending law school after graduation.

2 Parents of LI Suicide Teen Break Down During TikTok Hearings on Capitol Hill,” New York Post, March 23, 2023, accessed November 7, 2023, <https://nypost.com/2023/03/23/parents-of-li-suicide-teen-break-down-during-tiktok-hearings-on-capitol-hill/>.

son. The lawsuit is currently underway, but a favorable outcome for Chase's parents does not seem likely.³

Many critics of the social media platform have highlighted its video content algorithms as harmful. As Chase's death reveals, TikTok has the power to push an agenda of self-harm and suicidal ideation with resounding effects on adolescents and children. Videos that are psychologically disturbing inhibit a higher dopamine reaction,⁴ making viewers more inclined to continue watching, which increases TikTok's ad revenue.⁵ Unfortunately, Chase's story is not a unique one. There has been an exponential increase of tragic stories concerning social media's influence on the thoughts and actions of young adolescents.⁶ One of the biggest culprits of this statistic is TikTok.⁷ While no lawsuit or legislation has been successful in

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- 3 Social Media Victims Law Center Sues ByteDance and TikTok in the Death of 16-Year-Old Chase Nasca; Parents Travel to Washington, D.C., to Hear Congressional Testimony of TikTok CEO," *Business Wire*, March 21, 2023, accessed November 7, 2023, <https://www.businesswire.com/news/home/20230321005908/en/Social-Media-Victims-Law-Center-Sues-ByteDance-and-TikTok-in-the-Death-of-16-Year-Old-Chase-Nasca-Parents-Travel-to-Washington-D.C.-to-Hear-Congressional-Testimony-of-TikTok-CEO>
 - 4 Julia Pugachevsky, "Why Some People Can't Stop Watching Gruesome, *Graphic War Videos*," *Business Insider*, October 2023, accessed October 28, 2023, <https://www.businessinsider.com/why-some-people-cant-stop-watching-gruesome-graphic-war-videos-2023-10>.
 - 5 Kalley Huang, Isabella Simonetti & Tiffany Hsu, "TikTok Ads and Their Impact on Social Media," *The New York Times*, November 14, 2022, accessed October 22, 2023, <https://www.nytimes.com/2022/11/14/technology/tiktok-ads-social-media.html>.
 - 6 Aksha M. Memon, Shiva G. Sharma, Satyajit S. Mohite, & Shailesh Jain, "The Role of Online Social Networking on Deliberate Self-Harm and Suicidality in Adolescents: A Systematized Review of Literature," 60 *Indian J. Psychiatry* 384, 384-392 (2018), https://doi.org/10.4103/psychiatry.IndianJPsychiatry_414_17.
 - 7 Olivia Carville, "TikTok's Algorithm Keeps Pushing Suicide to Vulnerable Teens," *Bloomberg Businessweek* (Apr. 20, 2023, 6:01 AM), updated Apr. 21, 2023, 12:27 AM, <https://www.bloomberg.com/news/features/2023-04-20/tiktok-effects-on-mental-health-in-focus-after-teen-suicide>

restricting the influence of TikTok on children's mental health, there is legislation with alternative goals in progress. Currently in the state of Montana, there is legislation underway to ban TikTok. The ban focuses on the data collection practices of the app. However, while using TikTok at a young age can be extremely harmful, this paper argues that Montana's complete ban would be unconstitutional. It would be a clear violation of citizens' first amendment rights even if the ban would succeed at preventing the harmful effects on adolescents and children.

The allegations regarding Montana's ban are based on the claim that the Chinese government is accessing American data and exploiting it for their own agenda,⁸ although there is little to no evidence to prove this is true. While lawmakers in Montana recognize there are many issues concerning TikTok, the premises for the ban are incorrect. As of May 2023, 70% of teenagers between the age of 13-18 interact with TikTok on a monthly basis.⁹ At some point, the revealed issues will demand restrictions. The only restrictions regarding content are located in Section 230 of the Communications Decency Act of 1996, which contains vague and nonspecific guidelines for content moderation. This leaves entities unregulated with no clear and defined outlines for what is required of platforms. Additionally, Section 230 protects entities from being liable for the content that is posted to their platform.

While this aspect of Section 230 protects entities from becoming bankrupt, this lack of accountability, which leaves social media designers with no incentive to vet content on their platforms, creates potential for harm. As seen in Chase Nasca's tragic story, TikTok contains content that influences vulnerable children in disastrous ways. In this context, this paper will argue:

1. The unconstitutional aspects of Montana's TikTok ban,
2. Propose legislation that will require age verification, and

8 Dan Milmo, TikTok's Ties to China: Why Concerns Over Your Data Are Here to Stay, *The Guardian* (Nov. 8, 2022), <https://www.theguardian.com/technology/2022/nov/07/tiktoks-china-bytedance-data-concerns>.

9 Laura Ceci, TikTok Usage in the U.S. 2023, by Age, *Statista* (Feb. 13, 2024), <https://www.statista.com/statistics/1095196/tiktok-us-age-gender-reach/>.

3. Amend Section 230 to create liability for entities.

II. BACKGROUND

In 2020, controversy emerged regarding TikTok's data collection practices and company ownership. Within all levels of the U.S. government, bans, restrictions, and bills were being proposed and put in place to protect citizens from the allegations surrounding TikTok, and its parent company ByteDance. Over three years later, government actions are still occurring even while valid evidence for the claims are lacking. The most recent and one of the more controversial actions currently developing is the banning of the entire app in the state of Montana.

A. Montana's TikTok Ban (2024)

This ban was set to go into effect in January of 2024, becoming the first of its kind to ban the entire social media app on both public and private devices. Through a culmination of two years of work, Montana's Attorney General, Austin Knudsen, drafted the law.¹⁰ Knudsen fought for this bill because of his strong belief the app posed a national security threat to the citizens of Montana. His claims piggybacked off of the so-called "fear" that Americans were being spied on by the Chinese government through the app. This fear originated from the claims that ByteDance, the parent company of TikTok, was stealing user information and individuals' location for international espionage.¹¹ This belief has been spread throughout the media based on the fact that the app is owned by a Chinese company and has Chinese-based employees.

If the Chinese government asked the app to turn over their collected data, then ByteDance would be legally obligated to do so.

10 Sapna Maheshwari, How Montana's Attorney General Made Banning TikTok a Top Priority, *N.Y. Times* (Sept. 2, 2023), <https://www.nytimes.com/2023/09/02/business/media/montana-tiktok-ban.html>.

11 CPI, Montana Appeals US Judge's Decision Blocking TikTok Ban, PYMNTS (Jan. 3, 2024), <https://www.pymnts.com/cpi-posts/montana-appeals-us-judges-decision-blocking-tiktok-ban/>.

Knudsen was willing to prohibit the app entirely because of the potential misuse of data. Shou Zi Chew, the CEO of TikTok, repeatedly denied allegations of ever sharing data to the Chinese Communist Party in March of 2023.¹²

Another reason why Montana is also enforcing the ban, is due to the fact that TikTok fails to remove dangerous content and even promotes risky behavior on their app. Coupled with the allegations surrounding the Chinese Communist Party's ability to access the data collection, Knudsen felt the app was dangerous enough to completely ban it within state lines. TikTok greatly opposes the ban as it will cut a portion of their user amount and net income as well as detrimentally impact those who receive their personal income from the app. TikTok owners believe the federal government will completely block the ban, claiming the ban is a violation of first amendment rights to free speech by silencing users' access to a public forum.¹³ Other opponents of this prohibition believe it "intrudes on the federal government's authority over foreign affairs and national security."¹⁴ In other words, they claim this is not within the state's jurisdiction, and if action were to be taken, it should be on a federal level. Conversely, Knudsen asserts it causes "unjustifiable harm"¹⁵ which leaves TikTok unprotected by the first amendment and allows states to regulate the app.

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- 12 David Shepardson & Rami Ayyub, TikTok Congressional Hearing: CEO Shou Zi Chew Grilled by US Lawmakers, *Reuters* (Mar. 24, 2023), <https://www.reuters.com/technology/tiktok-ceo-face-tough-questions-support-us-ban-grows-2023-03-23/>.
 - 13 Dani Anguiano & Kari Paul, TikTok Creators Sue to Block Montana's Ban on the Platform, *The Guardian* (May 19, 2023), <https://www.theguardian.com/technology/2023/may/18/tiktok-creators-sue-to-block-montanas-ban-on-the-platform>.
 - 14 Sapna Maheshwari, How Montana's Attorney General Made Banning TikTok a Top Priority, *N.Y. Times* (Sept. 2, 2023), <https://www.nytimes.com/2023/09/02/business/media/montana-tiktok-ban.html>
 - 15 Meghan Bobrowsky, TikTok Tells Montana Judge State Ban Is 'Completely Overboard', *Wall Street Journal*. (Oct. 12, 2023), <https://www.wsj.com/tech/tiktok-seeks-montana-lifeline-as-state-ban-looms-cec4bab5>.

The ban is filled with prohibition, penalties, and enforcement sections that specify how the ban will be applied. Essentially, the ban prohibits TikTok from being used within the jurisdiction of Montana. This includes government devices, employee devices, and personal devices of any kind. In sum, all residents of Montana will no longer be able to legally access TikTok in any way. This is achieved through removing TikTok from the App Store and Google Play Store, so it is unavailable for download within the state of Montana. If an individual already has TikTok downloaded on their phone when the ban is enacted, then it will no longer be accessible to them. Any entity that allows the use or download of TikTok is liable for a \$10,000 fine for every time the ban is violated and can continue to be fined \$10,000 for each day it continues. This means both TikTok and any app downloading entity can be held liable for allowing TikTok to be downloaded. The Department of Justice is responsible for enforcing penalties for any violation of this ban.¹⁶

As mentioned before, this ban was set to go into effect in January of 2024, however, a federal judge has temporarily halted the ban because of TikTok's lawsuit.¹⁷ Regardless of the outcome of this case, Montana's pending success has been because of the fear citizens have surrounding the allegations about TikTok's data collection practices. There has been extreme agitation caused by the conspiracies and claims actively being published in the media. As a practical example, a simple Google search will reveal hundreds of articles concerning the potential dangers of TikTok's data collection practices. An estimated 59% of Americans feel that TikTok is a national security threat.¹⁸ At every government level in the United States, the

16 Mont. S.B. 419, 68th Leg. (2023), <https://leg.mt.gov/bills/2023/billpdf/SB0419.pdf>.

17 Samantha Delouya & Brian Fung, Judge Blocks Montana's TikTok Ban from Taking Effect on January 1, *CNN Business* (Nov. 30, 2023), <https://edition.cnn.com/2023/11/30/business/judge-blocks-montana-tiktok-ban/index.html>.

18 Colleen McClain, Majority of Americans See TikTok as a National Security Threat, *Pew Research Center* (July 10, 2023), <https://www.pewresearch.org/short-reads/2023/07/10/majority-of-americans-say-tiktok-is-a-threat-to-national-security/>.

law lacks control over the app, which has concerned lawmakers and citizens alike. There have also been numerous previously attempted bans and restrictions in the past years that exemplify the fact that TikTok is becoming a growing concern in the country.

B. TikTok Inc v. Trump (2020)

TikTok Inc v. Trump occurred in 2020 when the CEO of TikTok brought action against the executive order Donald Trump implemented.¹⁹ Former United States President, Donald Trump, employed his executive powers to enact a nationwide ban of TikTok.²⁰ Trump deemed the app a “national emergency.” However, in the ruling of *TikTok Inc v. Trump*, Trump’s use of executive powers was ruled a violation of the first amendment, Due Process Clause of the Fifth Amendment, and the Administrative Procedure Act (APA). Other countries like Afghanistan and India have successfully banned the app on all devices like Trump intended. Trump’s lack of success could be attributed to the United States’ unique freedoms that set it apart from other countries. It is not in line with the government’s constitution to ban a platform where the public can freely speak and influence others. Moreover, without any solid evidence, laws, bans, and executive orders cannot be enacted on mere speculation and conspiracy. Additionally, Trump did not go through the court system and instead took immediate action, which contributed to the ban’s failure. The ban of a social media app was also ruled outside of the jurisdiction of an executive order.

Banning the app would have caused “irreparable harm”²¹ to TikTok’s platform. Specifically, the ban would be damaging to TikTok as users would be driven to different platforms, thus diminishing the popularity and monetary gain TikTok receives. The United States is the country with the most TikTok users as shown by a recent statistic

19 TikTok Inc. v. Trump, 507 F. Supp. 3d 92 (D.D.C. 2020).

20 Exec. Order No. 13942, 3 C.F.R. (2020), <https://trumpwhitehouse.archives.gov/presidential-actions/executive-order-addressing-threat-posed-tiktok/>.

21 *Id.*

with a staggering 143 million people currently using TikTok²² in the United States. If TikTok's largest audience could no longer interact with the app, the number of employees for the company would decrease. This would also affect the users who make a profit and a living from posting on their account as their source of income would be inaccessible to them. Trump's attempt to exercise his executive powers ultimately failed to meet the requirements demanded at the Supreme Court level.

C. Arkansas Social Media Safety Act (2023)

The Arkansas' Social Media Safety Act was another approach to restrict TikTok and other entities like Facebook, Instagram, and Snapchat.²³ It was set to go into effect on September 1st of 2023, but was blocked by a federal judge before it was enacted. Arkansas proposed this act to "address the dangers that minors face online." The act attempted to combat these dangers by furthering age verification account methods on social media platforms. This would protect minors who are below the age limit on social media apps from harmful and influencing content, keeping social media apps accountable to the age restrictions they have set for themselves.

Additionally, this would confirm all users' ages to prevent child predators from posing as younger accounts. The current lack of age verification has led to harassment, catfishing, sexual exploitation of children, grooming, and additional harmful contact between parties.²⁴ Within the proposed act, minors would have to receive parental permission to download the app and then submit age identifying documentation to a third-party verification company. Once the age is confirmed, the company would delete the documentation. The

22 Laura Ceci, TikTok Users by Country 2024, *Statista* (Feb. 1, 2024), <https://www.statista.com/statistics/1299807/number-of-monthly-unique-tiktok-users/>.

23 NetChoice, LLC v. Griffin, No. 5:23-cv-05105 (W.D. Ark. filed 2023).

24 Child Crime Prevention & Safety Center, Children and Grooming: Online Predators (2023), <https://childsafety.losangelescriminallawyer.pro/children-and-grooming-online-predators.html>

Arkansas Social Media Safety Act was blocked from being enacted because it was termed to be too vague to understand what was being prohibited. The court felt it “forbids or requires the doing of an act in terms so vague that [persons] of common intelligence must necessarily guess at its meaning and differ as to its application.”²⁵ A lack of specificity and distinct restrictions within the proposed act was what ultimately prevented this act from impacting change within the world of social media.

D. 52.204-27 Prohibition on a ByteDance Covered Application (2023)

The only successful ban of TikTok on a federal level is the 52.204-27 Prohibition on a ByteDance Covered Application which went into effect in June of 2023. This federal ban of TikTok on government devices forbids all federally contracted devices from having apps that are owned by the company ByteDance.²⁶ ByteDance owns several other prominent apps,²⁷ however, TikTok is the most popular out of all of them. This is the only complete ban that has successfully passed and been set in motion on a federal level regarding TikTok. This prohibition was put into place because of concerns regarding the app’s data collection practices and national security concerns within the federal government. The ban has not been deemed unconstitutional at this time because it is not an entire ban of the app, only access on specific devices. The prohibition is not an infringement of an individual’s freedom of speech because every individual can still access the app on a device. The United States is not the first country to ban the app on government devices. Currently, Australia, Canada, Denmark, France, and the Netherlands have similar bans that block government employees from accessing TikTok on their work devices.

25 *Id.*

26 Dept. of Defense, 52.204-2 Security Requirements, 52 Fed. Reg. (2024), <https://www.acquisition.gov/far/52.204-2>.

27 Nitish Pahwa, TikTok’s Chinese Owner Has a Bunch of Other Popular Apps, *Slate* (Mar. 22, 2023), <https://slate.com/technology/2023/03/tiktok-bytedance-capcut-hypic-ban-marvel-snap.html>.

es.²⁸ Clearly, the potential threat to privacy is not only a growing concern in the United States, but it is also an issue recognized on a global level.

E. The Communications Decency Act of 1996, Section 230 (1996)

The Communications Decency Act originated in 1934 and created the Federal Communications Commission (FCC) to facilitate the telephone and radio industries. Since then, it has been amended and updated due the entrance of new and evolving technological challenges.²⁹ Section 230 is one of those amendments. It plays a large role in content moderation and liability within social media. Section 230 of the Act states “that [n]o provider or user of an interactive computer service shall be held liable on account of . . . any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”³⁰ Meaning, no computer service is held liable about the content posted on their platform regardless of its constitutionality. The term “good faith” is vague and undefined, so entities are not held to a defined standard in terms of content moderation and vetting. Additionally, Section 230 protects social media companies from being held liable from any offensive messages or ideas being posted. Practically, if an individual was offended or negatively affected by a post or message, they would not be able to sue the entity it was posted on. A challenging intersection is created because social media entities are protected

28 Kelvin Chan, Here are the Countries That Have Bans on TikTok, AP News (Apr. 4, 2023), <https://apnews.com/article/tiktok-ban-privacy-cyber-security-bytedance-china-2dce297f0aed056efe53309bbcd44a04>.

29 Federal Communications Commission, The FCC’s Authority to Interpret Section 230 of the Communications Act (Oct. 21, 2020), <https://www.fcc.gov/news-events/blog/2020/10/21/fccs-authority-interpret-section-230-communications-act>.

30 Bureau of Justice Assistance, The Communications Act of 1934, U.S. Department of Justice (2024), <https://bj.a.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1288>.

from being liable for individuals' personal agency to post what they want. It also does not hold entities accountable for the content found on their platforms. With all the attempted bans and restrictions of TikTok, it is inevitable this problem will come to a head with the hope that it is for the benefit of the app and its users alike.

Montana's TikTok ban, based on the uncertainty of the app's data practices, sparks an important conversation about the intersection between law and social media. Finding common ground on both sides of the ban can be done by focusing on the harmful effects surrounding underage users. This next section of the argument will discuss the unconstitutionality of Montana's TikTok ban, how TikTok needs to be limited by placing federal level restrictions on the app regarding their content moderation and the enforcement of the age requirement.

III. PROOF OF CLAIM

There are two claims this argument will make regarding TikTok. The first is that Montana's TikTok ban stands in violation of first amendment rights. The second is, rather than banning the app, federal restrictions should be put in place to combat the danger TikTok poses regarding children and adolescents. These federal restrictions would affect other social media apps like Facebook, YouTube, and Instagram. However, this paper's focus will spotlight TikTok because of the contention the app has caused at the state and federal level. The solution to this issue should be viable for the company, the app's users, and those who oppose the app. Its focus needs to be placed on the most vulnerable parties. If the action against TikTok continues in the manner that Montana's ban has been heading, then it will cause irreparable damage to the platform and its account holders.

A. Opposition to Montana's TikTok Ban

The first amendment states that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise

thereof; or abridging the freedom of speech...”³¹ Montana’s ban of a social media platform is an abridgement of citizen’s freedom of speech.

TikTok possesses a large scope of influence on citizens’ opinions and their ability to share those opinions. A ban on the app because of non-evidence-based fear is a silencing of numerous voices. Recent cases, specifically *Missouri v. Biden*, have set precedent regarding the censorship of social media and the first amendment implications that arise. When applied to Montana’s ban of TikTok, it is clear this ban is in violation of first amendment rights.

In the case of *Missouri v. Biden* of 2021, the Biden Administration was accused of wrongfully moderating content and promoting censorship on social media platforms.³² Evidence suggested that the administration was both suppressing and encouraging certain information regarding the COVID-19 pandemic and 2020 presidential election. The case was ruled a violation of the first amendment rights because of the significant evidence of citizens’ voices being silenced through the government’s encouragement of moderation by the social media companies. Most of the content that was removed was in line with social media’s policies and was protected speech under the constitution but was being labeled as “misinformation,” meaning that it was categorized as fake news. There were numerous claims that content being promoted on social media tended to endorse the agenda of the Biden Administration. As private entities, social media companies are personally responsible for the content moderation of their platform. Any outside forces attempting to moderate constitutionally protected content that is posted on a platform is violating an individual’s free speech.³³ In *Missouri v. Biden*, it is apparent that both the social media companies and the user’s right to

31 Library of Congress, First Amendment, U.S. Constitution, Constitution Annotated, <https://constitution.congress.gov/constitution/amendment-1/>

32 State of Missouri, et al. v. Joseph R. Biden, Jr., et al., No. 3:22-CV-01213 (W.D. La. Mar. 20, 2023).

33 Laurel Wamsley & Shannon Bond, What a Ruling Barring Federal Interaction with Social Media Means, NPR (July 5, 2023), <https://www.npr.org/2023/07/05/1186108696/social-media-us-judge-ruling-disinformation>.

speech was being infringed upon. The government's coercion had a heavy influence on the social media's ability to make their own decisions about what was being moderated on their platform. Likewise, users and content creators were struggling to be able to share their opinions and reach an audience if they were not in line with the Biden Administration's beliefs.

Similarly, Montana's TikTok ban is a violation of TikTok's first amendment right to create a platform fostering public speech. It is also a violation of a user's right to access the platform. A full ban of TikTok would be against the very ideals the country was built on, setting a dangerous precedent allowing government overreach with regard to free speech. Similar to how the Biden Administration is unable to remove content because they disagree with its message, Montana should not be able to ban an app because they do not agree with or feel comfortable with the data collection practices of TikTok. Without any real evidence, it is a speculative claim and should not hold weight in their state government.

For many, there is uncertainty regarding China's access to TikTok's data because of the struggle to find any evidence to support the claim. Due to this, the situation should be treated with caution. A few of the allegations regarding China collecting data can be mitigated by the placement of restrictions on the app for minors. Restrictions on minors' access to the app would significantly reduce the use of the app in the United States and therefore, reduce the data collection ability of ByteDance. If the allegations happened to be true, these restrictions would protect the most vulnerable population—children under 13—from having their data collected by a foreign entity. Additionally, TikTok has incorporated a new method of data collection to help ease the minds of American users because of the massive allegations about the data collection practices. As of March 23, 2023, they transitioned their data collection practice. They have been working with the Committee on Foreign Investment in the United States (CFIUS) and have transitioned their data collection to a new entity called the TikTok US data collection (USDS).³⁴

34 Tik Tok, About Project Texas, Tik Tok, <https://usds.tiktok.com/usds-about/> (last visited May 16, 2024).

This change minimizes data transfers across regions and limits employee access.³⁵ All the data collection practices for the United States are now overseen by a U.S.-based security team. The implementation of new data collection practices has cost TikTok around 1.5 billion dollars. However, even with this change, there is still public speculation about the validity of TikTok’s intentions. Montana’s main reasoning for the ban being based on the belief that TikTok is a national security threat is erroneous. The state government does not have jurisdictional rights of dealing with national security threats—that is the job for the federal government.³⁶ There is no definitive evidence that the Chinese Communist Party has seized the data that TikTok has gathered.³⁷ There is the claim of one former ByteDance employee, Yintao Yu, that the Chinese Communist Party (CCP) has been accessing the data through backdoors in the data collection for political purposes,³⁸ but they were unable to provide any verifiable evidence like paperwork or messages to substantiate the claim. Mere speculation and the claims of one individual cannot deem TikTok a national security threat. However, Montana was correct in their caution to the potential mental health threat that TikTok poses to adolescents.

B. Negative Effects of TikTok Use on Adolescents

TikTok’s targeted demographic is adolescents and young adults. Statistics have shown that about 25% of users are between the ages

35 Michael Beckerman, *Our Approach to Keeping U.S. Data Secure*, TikTok Newsroom (July 5, 2022), <https://newsroom.tiktok.com/en-us/our-approach-to-keeping-us-data-secure>

36 Objective 2.1: Protect National Security, U.S. Dep’t of Justice, *Strategic Plan (2024)*, <https://www.justice.gov/doj/doj-strategic-plan/objective-21-protect-national-security>

37 Yaqiu Wang, *The Problem with TikTok’s Claim of Independence from Beijing*, Human Rights Watch (Mar. 24, 2023), <https://www.hrw.org/news/2023/03/24/problem-tiktoks-claim-independence-beijing>.

38 Brian Fung, *Analysis: There is Now Some Public Evidence That China Viewed TikTok Data*, CNN Business (June 8, 2023), <https://www.cnn.com/2023/06/08/tech/tiktok-data-china/index.html>.

of 10-19.³⁹ With the United States having an estimated 73.7 million active monthly users, this puts TikTok users within the age range of 10-19 at about 18.4 million people.⁴⁰ This number is only expected to grow in the coming years. As the popularity of TikTok has increased, more studies are examining the effects on younger children and teenagers. The International Journal of Environmental Research and Public Health conducted a study in 2021 that revealed that adolescents who frequently watch TikTok are more susceptible to experience stress, anxiety, and depression.⁴¹ This study also revealed a mediating effect between TikTok use and memory loss in adolescents. The Italian Journal of Pediatrics conducted a more recent study in 2022 aimed at discerning if watching TikTok contributed to the promotion of eating disorders in young girls.⁴² They found that TikTok users between the ages of 12-16 felt more insecure about themselves, their body, and their weight when watching TikTok videos. “For 59.0%, using TikTok reduced self-esteem, while 26.9% reported TikTok-related significant changes in their daily lives, and 3.8% reported experiences of body-shaming.”⁴³ While the negative effects of TikTok are just being identified by the scientific world, there is already a correlation between using the app at a young age and certain outcomes.

39 Josh Howarth, *TikTok User Age, Gender, & Demographics* (2024), Exploding Topics (Jan. 12, 2024), <https://explodingtopics.com/blog/tiktok-demographics>.

40 Matthew Woodward, *TikTok User Statistics 2024: Everything You Need to Know* (2024), <https://www.searchlogistics.com/learn/statistics/tiktok-user-statistics/> (last visited June 4, 2024).

41 Peng Sha & Xiaoyu Dong, *Research on Adolescents Regarding the Indirect Effect of Depression, Anxiety, and Stress between TikTok Use Disorder and Memory Loss*, 18 *Int’l J. Environ. Res. Pub. Health* 8820 (2021), <https://doi.org/10.3390/ijerph18168820>.

42 Jacopo Pruccoli, Marta De Rosa, Lucia Chiasso, Annalisa Perrone & Antonia Parmeggiani, *The Use of TikTok Among Children and Adolescents with Eating Disorders: Experience in a Third-Level Public Italian Center During the SARS-CoV-2 Pandemic*, 48 *Ital. J. Pediatr.* 138 (2022), <https://doi.org/10.1186/s13052-022-01308->

43 *Id.*

The drastic negative effects of TikTok need to be addressed appropriately. The government regulates minors' access to other harmful things such as alcohol and drugs, so why should they not be allowed to regulate other harmful substances, including electronic ones? The Center for Countering Digital Hate did a report in 2022 regarding eating disorders, suicide, and violent content promotion on TikTok.⁴⁴ They found that TikTok hashtags that contained eating disorder content had over 13.2 billion views. They also found that suicide content was promoted within the first 2.6 minutes of downloading the app and eating disorder content was recommended in 8 minutes with accounts that were registered as 13-year-olds. In response to this, TikTok stated that it "was not representative of a real person." In order to challenge that, a CNN business reporter, Clare Duffy, posed as a 13-year-old to create a TikTok account to see what kind of videos would pop up on her feed.⁴⁵ She scrolled through the videos on the "For You Page," a page with suggested content driven by TikTok's algorithm, for 30 minutes each day for five days, watching through the entirety of each video and then scrolling past it. Within 17 minutes of Duffy's experiment, she found videos that had underlying themes of suicide and violence through a song being sung by a man playing the guitar. A couple minutes later, she watched a video that had a young woman who was wearing spandex shorts and shaking her body in sexually suggestive ways towards the screen.

After thirty minutes of scrolling, Duffy proceeded to use the suggested search feature on TikTok to see what suggestions TikTok created for the user. Duffy typed the letters, "ki," in the search bar, and the second suggestion for the user was "kintiktok" which guided Duffy to an array of videos about "kinks," which is a slang word for

44 Center for Countering Digital Hate, *Deadly by Design* (2022), <https://counterhate.com/research/deadly-by-design/>

45 Clare Duffy, *CNN Takes Over a 14-Year-Old's TikTok Account. 17 Minutes In, This Is What We Saw*, CNN Business (Apr. 18, 2023), <https://www.cnn.com/videos/business/2023/04/18/teen-tiktok-experiment-clare-duffy-zw-orig.cnn-business>.

“a particular sexual preference or behavior that is unconventional.”⁴⁶ The videos that she found were descriptions of this behavior or even a re-enactment of certain sexual preferences. Once Duffy clicked on this search suggestion, an “Others Searched For” section appeared and suggested similar content for the user. A user could happen upon those videos while searching for something entirely different.

Duffy then searched terms regarding self-harm and eating disorders and was able to easily watch dozens of videos. While some of those videos were in regard to recovering from those struggles, there were still some that sat in a gray area in terms of what the content was really promoting. On the fifth day, Duffy changed the user’s account settings to be on “restricted mode,” which TikTok defines as “limit[ing] the exposure of content that may not be suitable for everyone.”⁴⁷ Duffy proceeded to search the terms regarding sexual content, self-harm, suicide, and eating disorders that she had searched previously without the restricted mode in place and found that she could access almost all of the same videos. The restricted mode did not seem to restrict anything for the user. While there may be protest around this experiment because Clare Duffy intentionally sought out less appropriate content, the fact remains that she was still able to access content that was not within TikTok’s community guidelines.

C. TikTok’s Community Guidelines

TikTok’s guidelines have four goals for their platform: (1) remove violative content, (2) age restrict mature content so it is only viewed by adults, (3) maintain “For You” feed eligibility standards to help ensure any content that may be promoted by their recommendation system is appropriate for a broad audience, and (4) empower

46 “Kink,” Dictionary.com, <https://www.dictionary.com/browse/kink> (last visited June 4, 2024)

47 TikTok, Restricted Mode, TikTok Help Center (2024), available at <https://support.tiktok.com/en/safety-hc/account-and-user-safety/restricted-mode>

the community.⁴⁸ When users download this app, they enter into an agreement to follow TikTok's community guidelines, and TikTok agrees to strive to make the platform adhere to these guidelines. Previous evidence points to the fact that neither party has held up their end of the deal, ultimately harming the malleable minds of vulnerable children accessing the app.

TikTok has defined outlines for what are considered sensitive and mature themes that are not permitted on their platform. Within their guidelines they state, "We do not allow sexual activity or services. This includes sex, sexual arousal, fetish and kink behavior, and seeking or offering sexual services."⁴⁹ Within Duffy's mere five-day period she was able to locate a trending hashtag on TikTok that extensively discussed and represented "kink" behavior. It appears that this content is something TikTok does allow on their platform regardless of what they have stated. Additionally, TikTok's guidelines express that nudity is also not tolerated on the platform. While there are base outlines, the more ambiguous areas are based on the statement of not allowing, "significant body exposure," a vague and subjective statement. TikTok also states that they "do not allow seductive performances or allusions to sexual activity by young people, or the use of sexually explicit narratives by anyone."⁵⁰ Again, this content can be searched and viewed by any user in a matter of seconds as represented by Duffy's small-scale experiment. Any individual with a desire to access that content can easily do so on this platform.

Under the umbrella of community guidelines, there is a specific section regarding youth safety and well-being,⁵¹ specifically, for the age range between 13-16 years old. There are four aims within that section:

48 TikTok, Community Guidelines (2024), available at <https://www.tiktok.com/community-guidelines/en/>

49 Id at Sensitive and Mature Themes.

50 Id.

51 Id at Youth Safety and Well-Being.

1. Limiting access to certain product features

In the aim of limiting access to certain product features, TikTok does not allow 13-15-year-old users to get direct messages or have downloads or shares of their videos, automatically sets their account to private, only allows comments to be posted to their videos if the minor follows that person and restricts any user from stitching the minor's videos. While all of this does sound like a true effort by TikTok to protect child privacy and security, the user can be dishonest about their date of birth in their account settings to bypass all of this protection.⁵² TikTok does not have any age verification method in place to ensure that minors are accurately reporting their age. Implementing this would also protect minors from predators posing as young adolescents on the app.

2. Developing content by levels of thematic comfort⁵³

The next aim of TikTok regarding content levels is a recently released feature where users can inform TikTok of certain hashtags or videos that they are not interested in seeing in their feed, and TikTok will filter the videos out. After viewing a video or hashtag that users don't want to see, they report the content to TikTok. This helps to individualize what a user sees on their feed and helps them to avoid things that may be personally offensive or harmful. Unfortunately, this feature can only be utilized after the user has viewed the content and is not a filter that can be placed before you scroll. Additionally, an adult account can also pair to a teen account to control the content filter for the teenager. However, there is a lack of publicity surrounding the parental accounts and the content feature filter. TikTok should make it a focus to share the tools they have created for parents and encourage them for minors with TikTok.

52 Sapna Maheshwari, *TikTok Claims It's Limiting Teen Screen Time. Teens Say It Isn't.*, N.Y. Times (Mar. 23, 2023), <https://www.nytimes.com/2023/03/23/business/tiktok-screen-time.html>

53 Cormac Keenan, *More Ways for Our Community to Enjoy What They Love*, TikTok Newsroom (July 13, 2022), <https://newsroom.tiktok.com/en-us/more-ways-for-our-community-to-enjoy-what-they-love>

3. Using restrictive default privacy settings⁵⁴

The third aim of TikTok means the platform automatically makes accounts of 13-15-year-olds private when they first create it. To change this, the 13-15-year-olds are able to click a button to switch their profile to public. Then, any TikTok user can see and interact with the content they are posting. While it protects underage users who are not aware of what public and private accounts are, it is not a difficult task for someone to switch to a public account if they desire. Default privacy settings should be the expectation for all accounts, not the exception for a small portion of underage users. TikTok should be keeping individuals' personal content and information private unless they choose to publicize it.

4. Making content created by anyone under 16 ineligible for the For You feed⁵⁵

The fourth step to protect underage users by TikTok has failed with no attempt to rectify the situation. There are hundreds of viral TikTok stars that are under the age of 16 with their videos being posted on the For You page as that is essentially the only way to gain virality on the app. TikTok claims that if they see accounts that they believe are underage, they will prevent it from being suggested on the For You page. However, there has not been any true attempt banning underage accounts, and because of that, it has detrimentally damaged children.

To illustrate, 13-year-old TikTok star, Ava Majury, gained one million followers in the span of a single year.⁵⁶ She posted dancing and lip-syncing videos on her public account. She gained followers because her videos were being suggested on other users' For You

54 Teen Privacy and Safety Settings, TikTok Help Center (2024), <https://support.tiktok.com/en/account-and-privacy/account-privacy-settings/privacy-and-safety-settings-for-users-under-age-18>

55 Community Guidelines, TikTok (Effective May 17, 2024), <https://www.tiktok.com/community-guidelines/en/youth-safety/>

56 TikTok Star Ava Majury Discovers the Dark Side of Fame, N.Y. Times (Feb. 17, 2022), <https://www.nytimes.com/2022/02/17/us/politics/tiktok-ava-majury.html>

page. She began to get many direct messages from an adult male follower for weeks on multiple social media platforms—direct messages that should have been disabled for a user between the ages of 13-15. The man began to stalk Ava and eventually showed up at her house with a gun. The stalker broke down the door and attempted to shoot his gun. However, Ava’s father, Rob Majury, shot and killed the stalker before he was able to harm anyone. This near tragic experience was an eye-opening facet into the danger of children posting publicly.

None of TikTok’s steps toward the safety and well-being of children was able to defend Ava because none of TikTok’s protections were in place for her account. TikTok never banned Ava’s account from showing up on the For You feed when it is explicitly stated in their community guidelines that accounts of users between 13-15 years of age would not be put on the suggested feed. Ava was able to receive direct messages from the predator, which is against TikTok’s aim of limiting access to certain product features. With Ava’s extreme popularity, these discrepancies should not have slipped under Tiktok’s radar. TikTok’s lack of incentive and focus on these aims has caused harm and will continue to cause harm to underage users.

D. Addiction and Mental Health

As TikTok has increased its user base over the years, more addiction in adolescents is being discovered. TikTok’s addictive nature stems from its algorithm and 15 second dopamine-inducing videos. The app’s algorithm collects data about how many times an individual watches a video, if they like, comment on, or share the video, how quickly they scroll past something, what they have been searching for, and what video made them stop watching and close the app. The culmination of this data helps TikTok create a customized “For You” page full of videos they think the user would most like. Because of this algorithm, it is not uncommon for users to spend hours scrolling through videos that are perfectly tailored to their interests. In 2022, TikTok had the highest average screen time for children out of all

social media apps, at an estimated 113 minutes per day.⁵⁷ That means the average adolescent is watching an estimated 452 videos everyday assuming that all of the videos they watched were 15 seconds long. That average has only grown since TikTok's release in 2016.⁵⁸

The second aspect of TikTok that entices individuals to increase their use of the app is video length. The strategically timed videos are the ideal length to keep the watcher's attention but not too short that nothing occurs within the video. When a user watches a TikTok video that they enjoy, their brain releases dopamine. Dopamine is a neurotransmitter that contributes to body functions like mood, motivation, attention, and memory.⁵⁹ Dopamine addiction is becoming an increasingly prevalent problem for TikTok. As users continue to watch more videos, they enforce the reward system that creates neural pathways that wire the brain.⁶⁰ Users then watch videos, expecting to receive a dopamine rush even if they cannot correctly identify they are feeling that rush. Dopamine addiction is also strongly tied with extremely addictive drugs like amphetamine and cocaine.⁶¹ While it is recognized that these drugs are different from TikTok, watching TikTok creates similar reward systems and neural pathways that make it difficult to resist indulging. As stated in the paper earlier, sad and psychologically disturbing videos inhibit a higher dopamine release, which in turn increases TikTok's ad revenue. TikTok is deliberately showing individuals content that is harmful

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- 57 Laura Ceci, *Time Spent by Children on Top Social Apps U.S. 2023*, Statista (Mar. 26, 2024), <https://www.statista.com/statistics/1301888/us-time-spent-by-children-on-social-media-apps>
- 58 Anisha Kohli, *Why TikTok's New Teen Time Limit May Not Do Much*, TIME (Mar. 2, 2023), <https://time.com/6259863/tiktok-time-limit-teens/>.
- 59 Ann Pietrangelo, *Dopamine Effects on the Body, Plus Drug and Hormone Interactions*, Healthline (Nov. 5, 2019), <https://www.healthline.com/health/dopamine-effects>.
- 60 Valentina Fernandez, *Social Media, Dopamine, and Stress: Converging Pathways*, Dartmouth Undergraduate Journal of Science. (Aug. 20, 2022), <https://sites.dartmouth.edu/dujs/2022/08/20/social-media-dopamine-and-stress-converging-pathways>
- 61 Roy A. Wise & Chloe J. Jordan, *Dopamine, Behavior, and Addiction*, 28 *J. Biomed. Sci.* 83 (2021), <https://doi.org/10.1186/s12929-021-00779-7>

because they care more about engagement rather than the safety of adolescents.⁶² TikTok's algorithm can nearly guarantee a video the user will enjoy, making the dopamine rush happen continuously. This, paired with a never-ending supply of videos to scroll through, can easily lead to an addiction for youth who are developing cognitively. TikTok's unique combination of tools to create such an enticing platform is what sets it apart from other social media apps and addictions.

1. Mental Integrity

TikTok is an infringement of users' mental integrity,⁶³ which is defined as an "individual's mastery of his mental states and his brain data so that, without his consent, no one can read, spread, or alter such states and data in order to condition the individual in any way."⁶⁴ TikTok's goal is to increase users and its users' watch time.⁶⁵ The reward system that is developed for individuals who spend time on the app, condition the individual to need to open and watch videos. This then can alter a person's mental state to be conditioned to use TikTok.

62 Sapna Maheshwari, *TikTok Appears to Push Harmful Posts to Young Users, Researchers Say*, N.Y. Times (Dec. 14, 2022), <https://www.nytimes.com/2022/12/14/business/tiktok-safety-teens-eating-disorders-self-harm.html>.

63 Thomas Douglas & Lisa Forsberg, *Three Rationales for a Legal Right to Mental Integrity*, in *Palgrave Studies in Law, Neuroscience, and Human Behavior*, (2021), https://doi.org/10.1007/978-3-030-69277-3_8.

64 Andrea Lavazza, *Freedom of Thought and Mental Integrity: The Moral Requirements for Any Neural Prosthesis*, 12 *Front. Neurosci.* 82 (2018), <https://doi.org/10.3389/fnins.2018.00082>.

65 Ben Smith, *How TikTok Reads Your Mind*, N.Y. Times (Dec. 5, 2021), <https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html>

More reports of depression, anxiety, and violent thoughts are being correlated with TikTok use.⁶⁶ While the United States does not have any clear legal defining outlines on what mental integrity is, they do have outlines regarding bodily integrity. The Fourteenth Amendment states, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”⁶⁷ Essentially, the right to bodily integrity is protection of outside sources from violating the life, liberty, and property of your body. Right to your bodily integrity should be linked to mental integrity—your brain is part of your body. The human brain controls both voluntary and involuntary functions in the body including physical movements, thinking and planning, blood pressure and heartbeat, to name a few.⁶⁸ The brain and body are inseparably linked. The health of the brain is then linked to the health of the body. Therefore, the right to liberty includes the right to freedom of thought.⁶⁹ TikTok infringes on adolescents’ right to freedom of thought because of the negative effects on mental health.⁷⁰ The addictiveness of the app takes away children’s freedom.

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- 66 Peng Sha & Xiaoyu Dong, Research on Adolescents Regarding the Indirect Effect of Depression, Anxiety, and Stress between TikTok Use Disorder and Memory Loss, 18 Int J Environ Res Public Health 8820 (2021), <https://doi.org/10.3390/ijerph1816882>
- 67 The House Joint Resolution Proposing the 14th Amendment to the Constitution, June 16, 1866; Enrolled Acts and Resolutions of Congress, 1789-1999; General Records of the United States Government; Record Group 11; National Archives.
- 68 Tamara Bhandari, Mind-Body Connection is Built into Brain, Study Suggests, Washington University School of Medicine in St. Louis (April 19, 2023), <https://medicine.wustl.edu/news/mind-body-connection-is-built-into-brain-study-suggests>
- 69 Liberty, Legal Information Institute, <https://www.law.cornell.edu/wex/liberty> (last visited June 6, 2024).
- 70 Rachel Ehmke, Social Media Effects on Teens | Impact of Social Media on Self-Esteem, Child Mind Institute, <https://childmind.org/article/how-using-social-media-affects-teenagers> (last visited June 6, 2024).

In *McFall v. Shimp* (1978),⁷¹ Robert McFall, the plaintiff of the case, contracted a rare bone marrow disease and needed a life-saving bone marrow transplant. David Shimp was a close match for the transplant but did not want to donate to the plaintiff. McFall argued that Shimp should be required to donate since it would be a lifesaving transplant. The Pennsylvania judge, John Flaherty, denied the plaintiff's request because he stated, "society and government exist to protect the individual from being invaded and hurt by another."⁷² This case more narrowly defined bodily integrity. Shimp was not obligated to alter his physical state for the benefit of another. Even though it is a choice to download TikTok, adolescents and children are being hurt by TikTok for the app's personal monetary gain. TikTok is an infringement on children's freedom of thought because they are unable to learn important skills in their mental development. There is a lack of socialization, direct communication, and self-esteem. Without these skills, children and adolescents' success in the real world will be damaged.⁷³

2. Federal Child Protection

The United States federal law has built-in protections for individuals under 18 because of the vulnerability of children. The Child Abuse Prevention and Treatment Act (CAPTA) protects children from abuse, neglect, and all forms of maltreatment.⁷⁴ Created in 1974, it established national definitions for child abuse and neglect. It is continually amended as new forms of mistreatment in children are identified and new forms of assistance are discovered. CAPTA is

71 Robert McFall v. David Shimp, No. GD78-17711, 10 Pa. D. & C. 3d 90 (C.P. Allegheny Co. 1978)

72 McFall v. Shimp, 10 Pa. D. & C. 3d 90

73 "Why Is Social Development Important In Early Childhood?" The Amazing Explorers Academy, October 20, 2023, <https://www.aexplorers.com/why-is-social-development-important-in-early-childhood>

74 The Child Abuse Prevention and Treatment Act (CAPTA), Administration for Children and Families, U.S. Department of Health & Human Services, February 6, 2019, current as of August 1, 2023, <https://www.acf.hhs.gov/cb/law-regulation/child-abuse-prevention-and-treatment-act-capta>

a great representation of actively identifying problems and adjusting solutions to protect children from this changing world. Ultimately, adolescents must be specifically advocated for in the law in order to be protected. There is too much scientific evidence that points to TikTok having a negative effect on children for it to be coincidental. There is a real problem, and the federal government has the power to intercede in a fair and constitutional way.

Protecting children from harmful substances is evident throughout the United States' legal history. In *South Dakota v. Dole* the Minimum Legal Drinking Age laws were established in 1984.⁷⁵ The Secretary of Transportation withheld federal funds from states who did not implement the legal drinking age to be 21. This was in response to the increase of drinking and driving from young people. South Dakota felt that the withholding of funds was a violation of Congressional power and the twenty-first amendment. However, the Supreme Court determined that this was legal for Congress to provide incentive because the restrictions were “in pursuit of the general welfare.”⁷⁶ This prohibited people under the age of 21 from drinking, possessing, or buying alcoholic beverages. This decreased the prevalence of young drunk drivers, which in turn protected the young adults, drinkers, other drivers on the road, and pedestrians. Additionally, harmful effects that were found in adolescents who drank alcohol included changes in brain development, addiction, school performance problems, suicide, and violence. Whereas adults are developed enough to responsibly drink, adolescents are susceptible to irresponsibility because of their underdeveloped brains. The federal government was able to recognize the harm that alcohol caused for young adults and implement restrictions that did not ban the substance entirely, but protected vulnerable individuals from accessing it until they were ready for that influence. This argument intends to propose the same thing for TikTok and other social media sites alike.

75 The 1984 National Minimum Drinking Age Act, Alcohol Policy Information System, National Institute on Alcohol Abuse and Alcoholism, <https://alcoholpolicy.niaaa.nih.gov/the-1984-national-minimum-drinking-age-act>

76 *South Dakota v. Dole*, 483 U.S. 203 (1987)

E. Proposed Legislation

As established previously, an entire ban of TikTok would be unconstitutional. The solution to this issue requires a middle ground that benefits both sides of the argument. TikTok should have federal level guidelines regarding required age verification and content moderation. This proposal of a federal bill entails required age verification paired with a reformation of Section 230 to provide incentive for content moderation. This would prevent future bans of the entire app because it would resolve many of the concerns surrounding the entity and create it as a safer place for all users. Required age verification would ensure that the platform is only accessed by the individuals that it was intended for. This prevents harm for children under 13 accessing potentially addictive and self-deprecating content. This change would help repair the negatively affected mental health of adolescents and decrease their access to harmful and influential content with potentially permanent consequences. This would not be the first time that the federal government has taken action against TikTok as they successfully banned TikTok from certain devices with its *52.204-27 Prohibition on a ByteDance Covered Application* in 2023. This issue is significant enough to be brought to a federal level as it has been brought up multiple times and will continue to be brought up until a resolution can be met.

1. Required Age Verification

TikTok's minimum age requirement for the app is 13 years old. However, there are many underage accounts since individuals can be untruthful about their date of birth when registering for the account. Having a required age verification in this proposed legislation would (1) ensure that children under 13 are not accessing TikTok, (2) guarantee that underage users that have different restrictions as outlined by TikTok in their community guidelines would be held to those standards, and (3) ensure that predators cannot pose as young adolescents on the app. Overall, this would help make TikTok a safer place for all minors without affecting any adult users negatively.

While the Arkansas Social Media Safety Act failed due to its vagueness, its general outline to put in age verification processes

should be integrated into a federal restriction for this app. The proposed idea will pull from the outline that Arkansas attempted to set in place.

Additionally, Meta, the company that owns social media apps like Facebook and Instagram, is attempting to put in required age verification on a trial-run basis.⁷⁷ Their ideas surrounding verification processes will also be incorporated into this section of the proposal.

Once the user has created the account, they will need to send in either (1) official age-identifying documentation along with a selfie that matches the identifying documentation, (2) a video of the account holder speaking based on video prompts, or (3) have three verified accounts over the age of 18 socially vouch for a user's age. Age-identifying documentation should be determined as valid identification with the individual's name and picture on it, i.e., a driver's license, student ID, state-issued photo ID, or passport. If an individual does not have any of this documentation or does not feel comfortable sharing it, they can choose to send in the video of themselves where biometric scanning and AI technology can estimate a user's age. When the user takes the video, they will be prompted to make certain poses or say certain things to confirm that the video is being taken in real time and by the account holder. As a third option for the account holder, they can opt to be socially vouched for by three others. Socially vouching is a process where the user selects three other mutual profiles that are verified to be over the age of 18 who are sent a request to confirm the account holder's age.

All documentation and videos that are sent in would not be directed through or accessible by TikTok. They would be sent to a third-party company that verifies age documentation and utilizes technology to estimate age based on facial features and structures.⁷⁸ These third-party companies would delete the video or picture as soon as they verify the account holder's age.

77 "Introducing New Ways to Verify Age on Instagram," Meta, June 23, 2022, <https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram>

78 "Age Verification for Social Media," Yoti, accessed June 6, 2024, <https://www.yoti.com/social-media>

Examples of these companies are LastPass, Yoti, Google Authenticator, and Duo Security.⁷⁹ They are currently being used by a plethora of entities for this very purpose. If the company detects an underage account, the account will be banned for 30 days and then deleted if the user is not able to successfully repeal the ban. If the account is verified to be between the ages of 13-18, then TikTok's specific restrictions for those ages will be set in place. While the second two methods for verifying age will not give the exact age of the user, it will be a promising estimate that will help to remedy the dangers of unrestricted underage accounts. It may be imperfect, but it will at least be a greater protection than what is currently in place.

These three methods of identifying age would all be fast, reliable, and would not impede on the app's ability to function. The verification process would not be extensive or difficult for the account holder, ensuring that it would not drive users away from TikTok's platform and to another. Individuals under the age of 13 would not be able to access the app as outlined by TikTok and users between the ages of 13-18 would have different restrictions that contribute to their wellbeing and safety. For current users of TikTok, the change in age verification would minimally affect them. Once the legislation is in place, they would need to sign in to their account and submit one of the types of age-verifying documentation to access their account.

Account holders who are under 13 will be banned from the app if they are unable to verify that their age is over 13. This process is safe and secure. Reliable third-party companies that verify ages are audited and certified. Similar to the way that clubs, concerts, and other social events ask for ID in order to enter, TikTok is able to enforce that as a requirement in their guidelines. In fact, TikTok does require a photo ID and a picture of the individual if a user's account is banned to verify the account and repeal the ban to be

79 Top 10 Yoti Authentication Alternatives & Competitors in 2024," G2, accessed June 6, 2024, <https://www.g2.com/products/yoti-authentication/competitors/alternatives>

removed. If this is a procedure that TikTok is already familiar with, then it should be enforced for all account creation.⁸⁰

Enforcing account verification is not uncommon. Popular dating apps like Hinge, Bumble, and Tinder all use verification that confirms that the user matches with the pictures posted to their account.⁸¹ Their purpose for this is to guarantee a secure, safe and reliable platform.⁸² It only requires users to pose a specific way in a photo or send in a video of themselves, similar to the proposed legislation. Other benefits of this change would be to protect children against child predators who may be posing as different people in their accounts. If an account is raising suspicion in terms of an adult posing as a child, then TikTok can investigate the age of the account holder. This can be used as evidence for TikTok to ban an account that is targeting children. Enforcing the age verification is a safeguard against the exploitation of minors. Currently, TikTok can become a platform for sexual exploitation through direct messaging and comments on posts. Verifying an account holder's age can help TikTok to categorize and restrict certain features like direct messaging and commenting on minors' accounts in order to protect them from unwanted predatorial attention.

While this aspect of the federal restrictions may not need to be exactly as outlined, TikTok needs to make an effort to reasonably verify ages for all account holders that is beyond the user putting in their own date of birth. All the suggestions above have been tried and successful for other apps that verify similar aspects of a user's account. There also needs to be an understanding that an adjustment like this may take a great deal of trial and error. Because restrictions in the digital world are relatively new, there quite frankly is not a lot of experience with how some of the specific aspects may end up

80 Underage Appeals on TikTok," TikTok Help Center, accessed June 6, 2024, <https://support.tiktok.com/en/safety-hc/account-and-user-safety/underage-appeals-on-tiktok>

81 Online Dating Identity Verification," Safe Dating Verification, accessed June 6, 2024, <https://www.incognia.com/use-case/online-dating-identity-verification>

82 Id.

working. However, in the age-verification processes that have been tested, the above three have been the most successful.⁸³

2. Content Moderation and Liability

Creating federal restrictions on content moderation and liability would be included in this act by the reforming of Section 230, creating more incentive for the entity. The only outline regarding moderating content in Section 230 is based on an entity's "good faith." Blind trust in a platform that influences millions of American children is alarming. Section 230 is severely in need of reform, as it was created in 1996. As our modern-day progresses, our legislation needs to grow with the advances of the internet.

Social media companies can be considered common carriers, which gives them the right to vet through videos, set community guidelines, ban accounts, take down posts, and remove comments. Where public carriers are open to the general public and speech cannot be restricted there, common carriers have the right to moderate content and interactions since users agree to the app's terms and conditions before downloading.⁸⁴ As a common carrier, TikTok has a lack of any incentive and it leaves the entity unaccountable. TikTok should be held responsible by reforming Section 230 to have entities liable for posts that are not constitutionally protected, namely child pornography, defamatory speech, false advertising, true threats, and obscenities.⁸⁵ Additionally, TikTok should be held liable for not attempting to maintain its community guidelines. Similar to Montana's ban, there should be monetary charges for videos whose content is not constitutionally protected. If TikTok is being held liable, then they will make vetting through videos a higher priority.

83 "Introducing New Ways to Verify Age on Instagram," Meta, June 23, 2022, accessed June 6, 2024, <https://about.fb.com/news/2022/06/new-ways-to-verify-age-on-instagram>

84 John Villasenor, *Social Media Companies and Common Carrier Status: A Primer*, Brookings (October 27, 2022), <https://www.brookings.edu/articles/social-media-companies-and-common-carrier-status-a-primer/>

85 "First Amendment and Censorship," American Library Association, accessed June 6, 2024, <https://www.ala.org/advocacy/intfreedom/censorship>

The Supreme Court case *Gonzalez v. Google* is a currently active case about ISIS attacks in Paris, France in 2015.⁸⁶ Nohemi Gonzalez, a 23-year-old, was killed during one of these series of attacks. The Gonzalez family claimed that YouTube, which is owned by Google, aided and abetted the popular terrorist group.⁸⁷ Before, during, and after these attacks, ISIS released YouTube videos taking responsibility. There was also evidence that Google recommended ISIS content on YouTube based on the user's previous search history. Additional claims include that ISIS was able to threaten and intimidate civilians as well as gain monetary donations on YouTube through its videos. Currently, the two main claims that are being decided on by the Supreme Court are (1) if Section 230 protects the platform from liability of the content that they recommended and (2) if social media could provide enough assistance to truly aid and abet a terrorist group.⁸⁸

While the decision is still a pending one, its outcome will change the implications of Section 230. Regardless of what is decided, there is undeniable evidence that YouTube hosts a platform that allows an agenda of violence and harm to influence its users. There is enough influence on individuals from social media that a terrorist group was able to increase their following and threaten people across the world. The impact of ISIS's single account speaks to the dangerously influential nature of social media. TikTok has a similar influence as YouTube does, however, it may be even larger because there are more users and more time is spent on that app by account holders. Platforms can effectively take down harmful content, and even if they do not post it, they host the entity that does. As social media can be considered a type of common carrier, the public can access the

86 *Gonzalez v. Google LLC*, 2 F.4th 871 (9th Cir. 2021)

87 Deborah Fisher, *Gonzalez v. Google* (2023), The Free Speech Center, published May 23, 2023, last updated February 18, 2024, <https://firstamendment.mtsu.edu/article/gonzalez-v-google/>

88 Deborah Fisher, *Gonzalez v. Google, Taamneh v. Twitter* (9th Circuit) (2021), The Free Speech Center, published August 12, 2023, last updated February 18, 2024, <https://firstamendment.mtsu.edu/article/gonzalez-v-google-taamneh-v-twitter-9th-circuit/>

private company. The public is told what type of app they are signing up for in the community guidelines, but then they are able to access content they are told should not be accessible there.

That being said, there are an estimated 34 million videos posted per day.⁸⁹ It is impossible to moderate every video that is being posted on TikTok. However, if content that is not in line with the community guidelines is linked to a trending hashtag on TikTok, as observed by Clare Duffy, that is confirmation that TikTok is not moderating content in good faith. John Thune, a U.S. Senator from South Dakota proposed a bill regarding content moderation on TikTok. The bill was called the PACT Act or the Internet Platform Accountability and Consumer Transparency Act.⁹⁰ It was recently introduced and at this point is merely a proposal, but there are helpful ideas regarding content moderation. Thune proposed bipartisan legislation with the goal of “protecting online consumers by giving them more control of their online experience.”⁹¹ A similar bill is also in the works and was proposed by Mark Warner, a Senator from Virginia.⁹² Neither proposal has made any significant progress currently. This proposal is based on the ideas that John Thune and Mark Warner have outlined in their legislation.

89 Ch Daniel, *TikTok Users and Growth Statistics* (2024), SignHouse, last updated December 29, 2023, <https://www.usesignhouse.com/blog/tiktok-stats>

90 Makena Kelly, *The PACT Act Would Force Platforms to Disclose Shadowbans and Demonetizations*, *The Verge* (June 24, 2020), <https://www.theverge.com/2020/6/24/21302170/facebook-google-brian-schatz-john-thune-section-230-content-moderation>

91 U.S. Senator Brian Schatz, *Schatz, Thune Reintroduce Legislation To Strengthen Rules, Transparency For Online Content Moderation, Hold Internet Companies Accountable*, U.S. Senate (February 16, 2023), <https://www.schatz.senate.gov/news/press-releases/schatz-thune-reintroduce-legislation-to-strengthen-rules-transparency-for-online-content-moderation-hold-internet-companies-accountable>

92 U.S. Senator Mark R. Warner, *Legislation to Reform Section 230 Reintroduced in the Senate, House*, U.S. Senate (February 28, 2023), <https://www.warner.senate.gov/public/index.cfm/2023/2/legislation-to-reform-section-230-reintroduced-in-the-senate-house>

The amending of Section 230 should include two adjustments. The first is it should be mandatory that TikTok disclose its content moderation methods and practices to the Federal Trade Commission (FTC). They would be required to send a quarterly report, specifically outlining what kind of content has been removed or demonetized. This includes sharing statistics about the hashtags, video sounds, and illegal content that has been removed. This report will also include all the content removed that was not in line with the community guidelines. There will be information such as how many videos are being posted, how many videos they remove a day, how long it is before a video with inappropriate content has been removed, and other specific information that will be informative about their moderation. The hope would be that because TikTok will be mandated to send in a report, then they will make a greater effort to moderate content. The FTC will then be able to witness and report that TikTok is indeed making an effort to moderate content. In addition to this, the FTC will be able to publicize these statistics in order to confirm to concerned users or adolescents' parental guardians that something is being done besides merely the spoken word of the platform. This will serve as an incentive because if they are not doing significant work, it will be publicized, which may drive away account holders.

The second amendment would reform the section so that unconstitutional content would not be protected by Section 230 after a certain period of time. The time should range between 48-72 hours of being posted publicly before becoming liable. This is the range that is seen in most proposed bills regarding social media. However, as emphasized previously, because there is a lack of information regarding how restrictions on content moderation would be applied, it would have to be more specifically researched by lawmakers before setting a specific time range. If lawmakers are first able to access the statistics concerning their content moderation, this would help to set a designated time for the app to remove that content. Once they know what the typical time range that TikTok is able to locate and remove content that is not in line with their policies, they can set a deadline that is backed with evidence and is not unreasonable for the app to meet. The main idea is that a set time period would need to

be determined to give TikTok a hard and fast deadline that works as an incentive to moderate content, while still leaving enough time for TikTok to locate and remove the content. Users would also have the opportunity to report the video and draw the entities' attention to the inappropriate content. A reasonable amount of time would ensure that it would not redirect all of TikTok's resources and employees to focus on this aspect but also enforce a strong enough deadline that they would have a renewed focus on moderating content. If illegal content is not removed from their platform in the designated time period, monetary charges would be enforced by the FTC per video. In turn, the charges would contribute to the FTC's effort in locating illegal and unconstitutional content. A suggested amount within the Arkansas Social Media Safety Act and in *TikTok INC v. Trump* is \$10,000 per video. This would be a moderate amount of money but not significant enough that it would cause TikTok to go bankrupt or affect their ability to maintain employees as TikTok made an estimated 9.4-billion-dollar revenue in 2022.⁹³ This amendment should serve as a collaborative experience with TikTok and the FTC.

3. Implications

With the proposal of this legislation and the amendment of Section 230, there are implications that will likely occur. It is important to discuss and analyze any impact stemming from the proposal. The first is that TikTok is not currently utilizing a third-party company for ban repeal verification, and any transition over to this model could demand a high monetary cost. The cost for age verification is an estimated 12 cents per account.⁹⁴ Using the estimated 143 billion American users, this puts the overall estimated cost to be at about 17 million dollars. However, compared to the 9.4-billion-dollar revenue

93 Mansoor Iqbal, TikTok Revenue and Usage Statistics (2024), Business of Apps (April 18, 2024), <https://www.businessofapps.com/data/tik-tok-statistics>.

94 Worth Sparkman, Arkansas Judge Considers Blocking Social Media Law Before Sept. 1, Axios NW Arkansas (Aug. 16, 2023), <https://www.axios.com/local/nw-arkansas/2023/08/16/arkansas-social-media-law-hearing-judge>

they received last year, it would not be a large enough amount to detrimentally affect the company (the cost would be about .0018% of their revenue from last year). In addition, Meta has been implementing age verification from third-party companies and still successfully running their business at similar efficiency. Meta has apps like Instagram and Facebook which have a similar user amount and revenue per year, proving that this is a reasonable possibility for TikTok. Additionally, there is a likelihood that more people would create accounts because the stricter requirement makes them feel more secure. This would increase TikTok's revenue, possibly making it a positive change for their net value in the long run.

Another implication is that TikTok will pay the FTC after being held liable, which will add an additional cost on top of the cost required to remove unconstitutional content. Furthermore, individuals may be wary of third-party verification systems. As an outside company, it may make people uneasy about sending in their identification, pictures, or videos of themselves. Yet, there will truly be no way to satisfy users who find uneasiness in this aspect of the proposal because if they were sent directly to TikTok, they most likely would still be wary of them accessing that information, especially after the controversy about data collection practices. That is why there would be three options for the account holder, so they choose whichever they feel most comfortable with. Additionally, the majority of these third party companies are verifiable and frequently authenticated by government officials around the world.

A third implication is that users could potentially create verified accounts and then sell or give them away to underage users. With the proposed legislation, there will still be ways that individuals can get around the age restrictions. There will likely never be a fool-proof method to verify the ages of accounts, nonetheless, age verification will help to rectify most of the accounts that are not being age restricted.

TikTok is very controversial in both state and federal governments. It is similar to other social media platforms like Instagram, Facebook, and YouTube. All three of those popular apps have attempted to replicate something similar to TikTok's videos with Instagram Reels, Facebook Reels, and YouTube Shorts, and they

each use some variation of an algorithm to recommend videos to a user. Ideally, the reformation of Section 230 would apply to all social media platforms. It would be unlawful to just reform the act with one app in mind. However, this would be a positive change for all of social media, and if they are already succeeding in their content moderation, it will not be a large change for them. Other social media apps have had fewer issues, meaning that their ability to moderate content is already on a higher level than TikTok. This will be a change, but a much needed one for all platforms that have the ability to influence individuals to such a high degree. This paper's specific focus on TikTok is because of the increasing disputes at both state and federal levels. TikTok has more harmful effects than other apps as seen in Clare Duffy's experiment, Chase Nasca's death, and Ava Majury's near death experience. Many of these dangers can be remedied by the legislative changes that this argument proposes.

IV. CONCLUSION

In modern times, children and adolescents of America are born into a time enveloped in unchecked social media. This content affects their right to liberty and creates addictive tendencies, and as lawmakers and citizens, it is vital to take responsibility for protecting the vulnerable. Countless restrictions and bans of TikTok have been attempted with no success. While none of them has been successful, the continued efforts are indicative of an up-and-coming problem that will have to be addressed. The end solution needs to be beneficial for all parties involved and be carried out in a constitutional and fair way.

Montana's TikTok ban is a representation of how misguided legal action can damage citizens, companies, and their right to free speech. No matter how upset or unsure lawmakers are about TikTok's data collection practices, the claims are based on hearsay. The successful enactment of this ban by the state government raises the question of what other actions lawmakers might be capable of undertaking. Section 230, an outdated and insufficient outline for present day social media, is in desperate need of reform. The legislation proposed in this paper provides both a fair and responsible way to

hold social media platforms accountable and protect children from its negative effects. By requiring valid age verification and reforming Section 230 to make social media platforms liable, the world of social media will become a safer place. This proposal comes with the understanding that it will not be perfect, and it will not be an easy change. However, attempting to rectify the consequences that TikTok and social media have on children after they have grown up in a world of this constant harmful influence will be a much greater task.