

Carl Szabo
Vice President & General Counsel
NetChoice
1401 K Street NW, Ste 502
Washington, DC 20005

NetChoice

Defending Free Speech and Free Enterprise
Online

Montana SB 419—TikTok Ban

OPPOSITION LETTER

March 2, 2023

NetChoice respectfully asks you to **oppose** SB 419.

The bill not only violates the First Amendment, it also sets a dangerous precedent of lawmakers banning access to constitutionally protected speech without substantiated evidence of national security risks. And while national security concerns are of paramount importance, they must not be weaponized against politically disfavored businesses and individuals. Indeed, it is one thing for the government to ban access to applications on *government*-issued devices. But banning access on privately bought and privately owned devices is an extraordinary exercise of government power—and it's an unjustified and unconstitutional means to protecting national security.

1. Creates a very dangerous precedent that government can start banning our freedom to visit websites we want to access;
2. Sets a precedent that other states will weaponize to ban access to conservative websites and apps under the guise of "security";
3. Violates conservative principles of limited government and free markets, and;
4. Violates the First Amendment's protection against government censorship and regulation of speech.

NetChoice fully agrees with Montana's elected officials that the *Chinese Communist Party* is a national security threat that Americans must take seriously. In fact, NetChoice has long argued that the United States must take seriously the CCP's goal of displacing American leadership in technology and innovation precisely because it's a national security threat.

But we part ways on means. Rather than target businesses based on their country of origin, as SB 419 does, NetChoice supports efforts to hold the CCP—the true threat—accountable. Banning TikTok on privately owned devices—and punishing private third parties like ISPs—does nothing to weaken the CCP. Instead, it punishes Montanans who enjoy TikTok and American businesses lawfully engaged in commerce and speech dissemination.

Our concerns are not theoretical. When President Trump tried to ban TikTok and end its business arrangements by executive order, a Trump-appointed judge enjoined the government from executing the order because the government had no authority to ban Americans from accessing “informational materials.”¹ If the President lacks the authority to ban TikTok on unsubstantiated national security grounds, so too do state legislatures.

Just as Montana might ban TikTok for national security reasons, New York and California could use similar reasoning to ban President Trump’s Truth Social and conservative apps like Parler and GETTR because they might lead to another January 6th.

Legal arguments aside, it’s simply bad practice to ban access to information. Just as Montana might ban TikTok for national security reasons, New York and California could use similar reasoning to ban President Trump’s Truth Social and conservative apps like Parler and GETTR because they might lead to another January 6th. And one can easily imagine the European Union—bitter over American industry’s success—banning those apps and others under the same pretext. Even worse, the precedent could be weaponized to punish websites and apps for *promoting* free speech. California could use it to target and destroy Twitter over Elon Musk’s new content-moderation policies on the grounds that Saudi Arabian-based firms invested in Twitter.

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NetChoice understands and shares lawmakers’ concerns about the CCP. But we urge Montana lawmakers to think twice before passing this unlawful and dangerous bill. TikTok’s security infrastructure is still under review by intelligence agencies in the federal government. States should not intrude on that process. Nor should they trample on the First Amendment.

For these reasons, we respectfully ask that you oppose SB 419.

Sincerely,

Carl Szabo
Vice President & General Counsel
NetChoice

¹ *TikTok Inc. v. Trump*, 507 F. Supp. 3d 92 (D.D.C. 2020).