



Court's reversal of Montana's TikTok ban should be a warning

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U.S. District Judge Donald Molloy blocked Montana's law banning the social media platform TikTok within the state on Friday, one month from when it was due to take effect.

While TikTok is nearly as controversial as it is popular, everyone from non-TikTok users to full-time TikTok influencers should applaud this decision as it relates to the freedom of speech online. Additionally, this should caution other states that might have considered similar proposals, as well as the federal government, that the constitutional concerns of such action are not merely theoretical.

In granting the preliminary injunction, Molloy largely focused on the constitutional grounds that the ban violates the First Amendment by limiting constitutionally protected speech.

"Without TikTok," Molloy writes, users "are deprived of communicating by their preferred means of speech," and therefore, the bill can be seen "as a restriction on the time, place, or manner that a person could speak in the public forum — that is, the internet."

Molloy acknowledges that the government claims the purpose of the bill may be to protect Montana consumers, but he asserts that the state has not provided convincing arguments on how SB 419 relates to that public interest.

These First Amendment concerns are not unique to Montana and should be carefully considered in any calls to ban TikTok. At the heart of this debate is the impact such a ban would have on the users who have chosen TikTok as their preferred platform for expression. A ban on TikTok by

the government limits the options available to citizens and sets a dangerous precedent. After all, we wouldn't say the government could ban the Wall Street Journal just because the New York Times is also available as a newspaper.

Many, however, say TikTok poses unique risks that render such extreme steps necessary. This is not the first time TikTok has faced the threat of a ban due to national security reasons, as the Trump administration attempted to undertake such a federal action through executive order. The courts struck down the ban when a U.S. district judge found insufficient evidence of national security risks, deeming the action "arbitrary and capricious."

As Molloy's ruling indicates, the state must prove how such measures are necessary to achieve a compelling government interest. At both a state and federal level, given the serious nature of allowing claims of national security, risks should not be merely hypothetical but thoroughly proven if such extreme steps are to be taken. In many cases, policymakers may be able to accomplish their proven policy goals through less restrictive options, such as bans on government-owned devices, that can address the harms the state is attempting to mitigate or eliminate.

While the First Amendment concerns would apply to other TikTok bans, some of the questions raised by Montana's TikTok ban are unique to state laws. For example, Molloy's injunction also argues that the ban explicitly targets a foreign nation when a state does not have the constitutional authority to do so. But there are other concerns that would make such laws being enacted at a state level even more problematic than a federal approach.

While any attempt at a federal ban is troublesome for many reasons, a complicated patchwork of state laws could pose even more problems. The rise of such state-level bans could lead to a splintering of the internet that could create confusion for both consumers and companies. Enforcement of such may be impracticable as many consumers may turn to VPNs to circumvent these restrictions if they desire to access popular products still available in other states.

Meanwhile, companies will be faced with further complications as to how they can tailor specific policies to specific states and whether such compliance is even technically possible. For example, many such proposals target app stores that offer products at a national level, meaning a

single state's law would have impact beyond its borders and affect far more products than TikTok.

Montana's TikTok ban was the first in the nation, but this court action shows it should also be the last.

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