Written by **Steve Byas** on February 19, 2023

Hawley Bill on Social-media Age Minimum Raises Constitutional Questions

The introduction by Senator Josh Hawley (R-Mo.) on Thursday of last week of a bill ordering social-media companies to prohibit children under the age of 16 from using their platforms raises serious constitutional questions. A similar bill has been introduced by Representative Chris Stewart (R-Utah).

AP Images
Josh Hawley

Hawley's proposed law, the Making Age-Verification Technology Uniform, Robust and Effective (MATURE) Act also allows for "private right to action." This would allow any individual to sue a social-media company for damages based on the law. The Federal Trade Commission (FTC) would be directed to conduct regular audits of social-media companies to ensure that companies are obeying the law.

Under the law, a person who wishes to create an account would have to submit his or her full legal name and age, *as well as a government-issued ID*, so that information can be verified.

Hawley explained why he is pushing for such a limitation: "Children suffer every day from the effects of social media. At best, Big Tech companies are neglecting our children's health and monetizing their personal information. At worst, they are complicit in their exploitation and manipulation. It's time to give parents the weapons they need to strike back."

Representative Steward of Utah even described social media an "emotional heroin" for the nation's youth. In a statement to the *Deseret News* of Utah, Stewart explained the justification for government to intervene in private activities involving youth. "The government is involved with regulating when my children can drink, when they can smoke, when they can drive," Stewart noted. "We think society has a responsibility to protect young people and government should help in protecting them."

The last remark by Stewart brings to mind former President Ronald Reagan's famous joke that among the most dangerous statements is, "I'm from the government, and I'm here to help."

While one can certainly sympathize with the efforts of Senator Hawley and Representative Stewart to protect children from the harmful effects of social-media use, neither Hawley nor Stewart explained how it is within the constitutional authority of the *federal* government to pass such a law. The argument that government already regulates at what age people can drive, smoke, and drink falls short when one considers that all of those regulations are — at least for now — left to the *state* governments. The 10th Amendment explicitly leaves all powers not delegated to the federal government by the U.S. Constitution to the state governments (or to the people themselves), in what is commonly known as the "reserved" powers of the states.

James Madison, often referred to as the "Father of the Constitution," once objected to certain federal

spending by declaring, “I cannot undertake to lay my finger on that article of the Constitution which granted a right to Congress of expending, on objects of benevolence, the money of their constituents.” Certainly, neither Madison, Hawley, nor Stewart can honestly say that they can likewise lay a finger on any provision in the Constitution that authorizes regulating the age at which children can access social media.

Yet, in none of the articles that I have read on this proposal was the question of constitutionality even raised. Republicans rightly objected when former House Speaker Nancy Pelosi (D-Calif.) laughed at the idea that the Affordable Care Act (ObamaCare) had no constitutional basis. Although Hawley, Stewart, and Pelosi all took an oath to follow the Constitution, they apparently think nothing of ignoring it when they can get a *federal* law enacted advancing their agenda.

For example, consider the abortion debate. After the Supreme Court rightly held that the issue of abortion was a state issue, most proponents of abortion have called for a *federal* law to make it a “right” to end a pregnancy through abortion, while some opponents of that grisly practice have advocated passing a national ban on abortion.

In his Farewell Address, given to newspapers across the country during his last year as president, George Washington spoke to this idea that it is good to violate the Constitution if one’s cause is good. “If, in the opinion of the people,” Washington wrote, “the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit, which the use can at any time yield.”

What Hawley and Stewart are proposing with their federalization of this issue is that the solution to a problem can be handled by Congress, even if the Constitution gives them absolutely no authority to do so. Where does this end? Murder, after all, is a pretty serious matter, and each state handles that problem under the “reserved powers” of the states. Should the definition and regulation of murder be taken over by the federal government, instead of being left to the states?

As President Calvin Coolidge once said, “It is better to kill a bad bill, than to pass a good one.” This is a bad bill — and it should be killed.