



Written by [C. Mitchell Shaw](#) on May 24, 2023

Montana Bans TikTok; Content Creators Sue to Block Law

Citing the “well-documented” fact of the “Chinese Communist Party using TikTok to spy on Americans, violate their privacy, and collect their personal, private, and sensitive information,” Montana Republican Governor Greg Gianforte has signed Senate Bill 419 into law, blocking mobile app stores from making the Chinese app available to users in Montana. A group of five TikTok content creators have filed a lawsuit claiming that the ban violates their right of “free speech.”

The official website of Montana [states](#):

To protect Montanans’ personal, private, and sensitive data and information from intelligence gathering by the Chinese Communist Party, Governor Greg Gianforte today banned TikTok from operating in Montana.

The governor today also directed the state’s chief information officer and executive agency directors to prohibit the use of all social media applications tied to foreign adversaries on state equipment and for state business in Montana.

“The Chinese Communist Party using TikTok to spy on Americans, violate their privacy, and collect their personal, private, and sensitive information is well-documented,” Gov. Gianforte said. “Today, Montana takes the most decisive action of any state to protect Montanans’ private data and sensitive personal information from being harvested by the Chinese Communist Party.”



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Immediately after signing the bill into law, Governor Gianforte tweeted that he had done so “to protect Montanans’ personal and private data from the Chinese Communist Party.”



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Given the nature of China's spying on the United States, TikTok — as a Chinese company — is naturally suspected of participation in that spying. Add to that the plethora of permissions the app requires to run on users' devices, and it becomes apparent that the popular video-sharing app is designed for surveillance. As a result of these well-founded concerns, there have already been moves at various levels to block it. As the Associated Press [reported](#):

More than half the U.S. states, including Montana, and the federal government have banned TikTok from government-owned devices. Dozens of colleges around the country have also banned the app from being used on their wireless networks, which has led students to find several workarounds.

And lest those actions appear to be stark overreactions to unfounded fears, it should be noted that Chinese companies — TikTok included — are required to cooperate with Beijing's efforts to spy on the world in general and the United States in specific. Again from the Associated Press:

China passed laws in 2014 and 2017 that compel companies to cooperate with the country's government for state intelligence work. TikTok says it has never been asked to hand over its data and it wouldn't do so if asked.

To put in the for-what-it's-worth column, it is not likely that TikTok would have the liberty to refuse "to hand over its data." For that matter, the Chinese Communist Party (CCP) wouldn't "ask." Finally, it is a certainty that TikTok would lie about providing users' data to their CCP masters. After all, their allegiance is not to American users, but to their own communist government.

Following the passage and signing of the bill — which takes effect January 1, 2024 — five TikTok content creators in Montana filed a lawsuit to block the ban. Defending their oppressors, the five argue that the law is an unconstitutional violation of free speech. In a move that seems to admit they accept at least the possibility that TikTok is used by the CCP to harvest American users' data — including their own — the five also argue in the lawsuit that Montana doesn't have any authority over national security matters.

As to the national security issue, it needs to be understood that national security deals with much more than state secrets. It is not as if all that matters is keeping military plans or government technological advances from falling into the wrong hands. Beijing has long been shown to take an active roll in attempting to sway American elections and policy through misinformation campaigns or by promoting American politicians who go along with policies favorable to Beijing. As the Associated Press [reports](#):

Some lawmakers, the FBI and officials at other agencies are concerned the video-sharing app, owned by ByteDance, could be used to allow the Chinese government to access information on U.S. citizens or push pro-Beijing misinformation that could influence the public. TikTok says none of this has ever happened.

Again, TikTok's denial is not persuasive. The Associated Press cited [a recent report from *The Wall Street Journal*](#) that included statements made by current and former TikTok employees who expressed concerns over how much data TikTok is able to gather about users. And while the *Journal* focused on the plight of LGBTQ users being outed and made it clear that those "current and former employees"



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“did not consider” the data gathered and categorized on non-LGBTQ users “to be sensitive,” the fact remains that TikTok is absolutely harvesting and analyzing users’ data.

As the Associated Press also reported, TikTok itself says the law is an infringement of free speech. Setting aside the lack of anything resembling credibility that a CCP-aligned company that harvests, categorizes, and analyzes users’ data cares one whit about free speech, it is obvious that this is a naked ploy to continue harvesting the data of Americans too addicted to social media to care that their actions threaten not only their own privacy, but also national security.

And it may well be that Beijing has a hand in the lawsuit brought by these five content creators. As the Associated Press report states:

The massively popular TikTok has argued the law infringes on people’s First Amendment rights. Other reports have indicated that members of the company’s legal team are not particularly concerned a full ban will come to fruition.

TikTok spokesperson Brooke Oberwetter declined to comment on the lawsuit Thursday. She also declined to say whether the company helped coordinate the complaint.

Oberwetter’s silence is not very reassuring. It seems a simple thing to deny that TikTok played a role in coordinating the lawsuit to block the law that blocks TikTok’s ability to spy on Montanans — unless that is exactly what happened. As the lawsuit moves forward, a spokeswoman for the state said, Montana will be prepared to defend the law. Time will tell if the ban is allowed to stand. Further, it is difficult to know how effective the ban will be, given that there are ways to make it appear that devices are connecting from outside Montana. At the very least, though, the ban calls out the Biden administration for not taking action to protect national security.



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