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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

SAMANTHA ALARIO, *et al.*,

Plaintiffs,

and,

TIKTOK INC.,

Consolidated Plaintiff,

v.

AUSTIN KNUDSEN, *in his official
capacity as Attorney General of the
State of Montana*

Defendant.

Lead Case No.
CV-23-56-M-DWM

Member Case No.
CV-23-61-M-DWM

**BRIEF OF AMICI CURIAE
COMMONWEALTH OF
VIRGINIA AND 17 OTHER
STATES IN SUPPORT OF
DEFENDANT**

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INTRODUCTION AND INTERESTS OF AMICI CURIAE

Amici curiae are the Commonwealth of Virginia and 17 other States (collectively, *Amici* States). *Amici* States have a compelling interest in this case. The States' police power has always included the power to protect their citizens from deceptive and harmful business practices. Montana's SB419 is just the latest in a storied tradition of consumer protection laws. SB419 is justified, and Plaintiffs' motions for a preliminary injunction should be denied, because TikTok intentionally engages in deceptive business practices which induce individuals to share sensitive personal information that can be easily accessed by the Chinese Communist Party and because TikTok's platform harms children in Montana and *Amici* States. Federal law does not prohibit the States from protecting their citizens from such conduct.

BACKGROUND

TikTok—a social media platform that hosts and promotes short videos created and uploaded by users—has changed the social media landscape. Last year, TikTok was the most downloaded mobile application worldwide, generating 672 million downloads over the course

of the year.¹ As of April, the United States had the world’s largest TikTok audience, with approximately 117 million users on the platform.² Significantly, TikTok has established itself as one of the top online platforms for U.S. teens aged thirteen to seventeen.³ About 67% of U.S. teens in that age range use the app, with 16% reportedly using it “almost constantly.”⁴ TikTok’s hold on users—particularly minor users—is palpable.

TikTok aggressively acquires the personal data of its users. Like other social media sites, TikTok’s service depends on learning users’ preferences and using that information to serve targeted content to further engage users.⁵ To do so, TikTok collects sensitive information on each user; as each user scrolls through TikTok, the app gathers that

¹ J. Koetsier, *10 Most Downloaded Apps of 2022: Facebook Down, Spotify Up, TikTok Stable, CapCut Keeps Growing*, Forbes (Jan. 4, 2023), <https://tinyurl.com/jsm9r595>.

² *Countries with the largest TikTok audience as of April 2023*, statista (May 11, 2023), <https://tinyurl.com/9xh2ujfz>.

³ A. Vogels, R. Gelles-Watnick, & N. Massarat, *Teens, Social Media and Technology 2022*, Pew Research Center (Aug. 10, 2022), <https://tinyurl.com/3nvsaaazw>.

⁴ *Ibid.*

⁵ *E.g.*, D. Nield, *All the Ways Facebook Tracks You—and How to Limit it*, Wired (Jan. 12, 2020), <https://tinyurl.com/yc7jfccb>.

user's interests, locations, type of phone used, apps downloaded, contacts, content created, facial features, voice prints, and even "where [their] eyes are looking on [their] phone[s]."⁶

Moreover, like other social media sites, TikTok is addictive. Public health studies have revealed the addicting nature of TikTok and outlined consequences of that addiction, "particularly in transitional-age youths and adolescents."⁷ Frequent social media site visits, for example, "have been associated with higher odds of depression among U.S. individuals between the ages of 19 and 32."⁸ A relationship exists "between increased use of social media and heightened levels of anxiety" as well as "[a]ssociations between social media use and poor sleep and unhealthy eating habits."⁹ Indeed, "it appears that structural and contextual

⁶ A. Thomas, *Cotton issues TikTok warning, cites national security concerns*, N.W. Ark. Democrat Gazette (Nov. 22, 2022), <https://bit.ly/3H2o2qu>; see also S. Perez, *TikTok just gave itself permission to collect biometric data on US users, including "faceprints and voiceprints,"* TechCrunch (June 3, 2021), <https://tinyurl.com/5n7y2mrw>.

⁷ BUJPH, *What Makes TikTok so Addictive?: An Analysis of the Mechanisms Underlying the World's Latest Social Media Craze*, Brown Undergraduate J. of Pub. Health (Dec. 13, 2021), <https://tinyurl.com/4fp3ymkb>.

⁸ *Ibid.*

⁹ *Ibid.*

aspects of TikTok ... are greater contributors to addiction” than are the “dispositional attributes of users.”¹⁰

But TikTok does more than merely acquire user data in order to hook its users. As the Montana legislature found, “TikTok gathers significant information from its users, accessing data against their will to share with the People’s Republic of China.” See Dkt. 1-2 (SB419) at 1. This “stealing of information and data from users and [TikTok’s] ability to share that data with the Chinese Communist Party unacceptably infringes on” citizens’ right to privacy. *Id.* at 1-2. TikTok’s continued operation, therefore, “serves as a valuable tool to the People’s Republic of China to conduct corporate and international espionage [] and may allow the People’s Republic of China to track the real-time locations of public officials, journalists, and other individuals adverse to the Chinese Communist Party’s interests.” *Id.* at 2.

Further, TikTok “may even promote[] dangerous content that directs minors to engage in dangerous activities.” *Id.* at 1. These dangerous activities include, among others, “throwing objects at moving automobiles,” “pouring hot wax on a user’s face,” and “smearing human

¹⁰ *Ibid.*

feces on toddlers.” *Ibid.* TikTok’s “promotion of dangerous challenges threatens the health and safety” of Americans. *Id.* at 2.

Confronted with these grave privacy and public safety concerns, Montana enacted SB419 to prohibit the use of a dangerous product unless that product were altered to remedy the concerns animating the legislation. Plaintiffs ask this Court to disregard TikTok’s grave conduct and preliminarily enjoin SB419. This Court should deny their requests for an injunction.

ARGUMENT

I. SB419 fits comfortably within the States’ historic police powers

It is a principle of federalism that “each State may make its own reasoned judgment about what conduct is permitted or proscribed within its borders.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 422 (2003). Thus, consumer-protection laws “fall in an area that is traditionally within the state’s police powers to protect its own citizens.” *Aguayo v. U.S. Bank*, 653 F.3d 912, 917 (9th Cir. 2011); see also *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989) (describing unfair business practices as “an area traditionally regulated by the States”); *Sukumar v. Nautilus, Inc.*, 829 F. Supp. 2d 386, 392 (W.D. Va. 2011)

(consumer protection laws “have historically fallen into the purview of the states’ broad police powers, to which the courts have afforded special solemnity” (collecting cases)).

SB419 fits comfortably within this tradition. It is a law that, among other things, regulates TikTok’s operations in Montana to protect Montanans’ privacy from a foreign power and their health from a potentially dangerous product.

a. Montana is appropriately protecting its citizens’ privacy from TikTok and its troubling relationship with China

TikTok is no ordinary social media company. Its parent company—ByteDance Ltd.—is a Chinese company subject to Chinese law that has admitted to using data gathered through TikTok to surveil Americans. The Chinese Communist Party (CCP), the political party with unchallenged control of the government of the People’s Republic of China, exercises significant influence over ByteDance. Allowing TikTok to operate in Montana without severing its ties to the CCP exposes Montanan consumers to the risk of the CCP accessing and exploiting their data.

According to the United States Department of State, the CCP “poses *the* central threat of our times, undermining the stability of the

world to serve its own hegemonic ambitions.”¹¹ It “expand[s] its power and influence at the expense of others” in numerous ways, including “weaken[ing] the global order by ignoring its commitments and manipulating international organizations to advance its own unilateral strategic goals.”¹² And it uses its “CCP-controlled media [to] spread propaganda globally while manipulating foreign news and entertainment media to advance its orthodoxy.”¹³

TikTok is owned by ByteDance Ltd., a Chinese company subject to Chinese law, including laws that mandate secret cooperation with intelligence activities of the CCP.¹⁴ From that corporate relationship

¹¹ *The Chinese Communist Party: Threatening Global Peace and Security*, U.S. Dep’t of State (last visited Sept. 11, 2023), <https://tinyurl.com/2j3avzr7> (emphasis added).

¹² *Ibid.*

¹³ *Ibid.*; see, e.g., N. Gan & S. George, *Chinese tennis star Peng Shuai has finally appeared in public. But here’s why the worries aren’t going away*, CNN (Nov. 23, 2021), <https://tinyurl.com/3aj7dhnw>; Y. Talmazan, *Actor John Cena apologizes to Chinese audience after calling Taiwan a country*, NBC News (May 26, 2021), <https://tinyurl.com/2p95jnkx>; R. Stoltzfoos, *‘Top Gun’ Remake Edits Out Taiwanese, Japanese Flags In Apparent Concession To China*, Daily Caller (July 19, 2019), <https://tinyurl.com/yckdm68r>.

¹⁴ M. Rubio & M. Gallagher, Op-Ed: *TikTok, time’s up. The app should be banned in America*, The Wash. Post (Nov. 10, 2022), <https://tinyurl.com/mrx8295s>.

alone, the CCP can use TikTok user data to spy on, blackmail, and coerce TikTok users, serve them propaganda, further develop China's artificial intelligence capabilities, or for any number of other purposes that serve its national security and economic interests, at the expense of Montanan consumers.¹⁵ Under Chinese national security, cybersecurity, and data security laws and regulations, there are “no secrets”: “Any and all data will be available and open to the Chinese government.”¹⁶

Indeed, experts across a variety of fields agree that China's law requires individuals or entities in China, as well as those abroad subject to Chinese law, to cooperate with the CCP, and that there is no meaningful way to resist these requirements or the concomitant pressure from the CCP.¹⁷ U.S. officials from both sides of the aisle in Congress and the executive branch have expressed alarm that if the CCP asks for

¹⁵ *Ibid.*; see also Lee, et al., *TikTok, ByteDance, and their ties to the Chinese Communist Party*, at 23, Senate Select Committee on Foreign Interference Through Social Media (Mar. 14, 2023).

¹⁶ The China Law Blog, *China Cybersecurity: No Place to Hide*, Harris Bricken (Oct. 11, 2020), <https://bit.ly/3E2Gzkm>.

¹⁷ See, e.g., K. Kitchen, *The Chinese Threat to Privacy*, Am. Foreign Pol'y Council, Issue 30, at 23 (May 2021), <https://tinyurl.com/3ydkc74j>; K. Frederick, et al., *Beyond TikTok: Preparing for Future of Digital Threats*, War on the Rocks (Aug. 20, 2020), <https://tinyurl.com/yrnfuvhk>.

Americans' private data, companies subject to Chinese law will have no choice but to comply with that demand.¹⁸

This risk is not hypothetical for TikTok. The CCP has *already* exercised significant influence over ByteDance, including forcing ByteDance to shut down one of its platforms for “having violated ‘social morality.’”¹⁹ Further, ByteDance has admitted to using data gathered through TikTok to surveil Americans.²⁰ And recently, the former head of engineering for ByteDance in the United States publicly stated that ByteDance’s Beijing offices have a “special unit” of CCP members which “maintained supreme access to all the company data, even data stored in

¹⁸ Letter from The Hons. Tom Cotton and Charles Schumer, U.S. Senate to J. Maguire, Acting Director of National Intelligence, Office of the Director of National Intelligence (Oct. 23, 2019), <https://tinyurl.com/jrx27vnb>; L. Feiner, *FBI is ‘extremely concerned’ about China’s influence through TikTok on U.S. users*, CNBC (Nov. 15, 2022), <https://tinyurl.com/56xtzjx3>.

¹⁹ Mem. from John K. Costello to the Sec’y, U.S. Dep’t of Commerce, Proposed Prohibited Transactions Related to TikTok Pursuant to Executive Order 13942, at 9 (Sept. 17, 2020), <https://tinyurl.com/53vv5adz>.

²⁰ C. Duffy, *TikTok confirms that journalists’ data was accessed by employees of its parent company*, CNN (Dec. 22, 2022), <https://tinyurl.com/4h7b8w5c>.

the United States” through a “‘superuser’ credential—also known as a god credential.”²¹

But TikTok does not inform its many millions of American users about any of this. It does not disclose to consumers that its parent company is located in China. Indeed, it has done quite the opposite. In 2019, TikTok eliminated *every* reference to China from its U.S. privacy policy.²² It has also made various misleading statements to the public, including that “none” of its data are “subject to Chinese law.”²³ If TikTok is not willing to protect its users from the CCP, Montana certainly can.

b. SB 419 is a garden variety consumer protection statute

Plaintiffs erroneously contend that SB 419’s “real purpose” is to “regulate U.S. relations with China.” Users Br. 20; see TikTok Br. 20. TikTok has made similar arguments in other fora too, and courts have

²¹ Thomas Fuller & Sapna Maheshwari, *Ex-ByteDance Executive Accuses Company of ‘Lawlessness,’* N.Y. Times (May 12, 2023), <https://tinyurl.com/y7ze5ydf>; Zen Soo, *Former exec at TikTok’s parent company says Communist Party members had a ‘god credential’ that let them access Americans’ data*, Business Insider (June 7, 2023), <https://tinyurl.com/yc6smsxa>.

²² D. Carroll, *Is TikTok a Chinese Cambridge Analytica data bomb waiting to explode?*, Quartz (May 7, 2019), <https://tinyurl.com/297vx72n>.

²³ *Statement on TikTok’s content moderation and data security practices*, TikTok (Oct. 24, 2019), <https://tinyurl.com/72kprpct>.

roundly rejected the argument. See *Indiana v. TikTok, Inc.*, 2023 WL 3596360 (N.D. Ind. May 23, 2023); *Arkansas ex rel. Griffin v. TikTok, Inc.*, 2023 WL 4744903 (W.D. Ark. July 25, 2023). SB 419’s purpose is clearly to protect Montanan consumers from the threat TikTok poses to their privacy.

Data harvesting is the most acute modern threat to citizens’ privacy. The practice of harvesting user data has become nearly ubiquitous, and with its ubiquity have also come corresponding risks of the misuse of data.²⁴ The more that any user’s data gets “passed around between countless third parties” the more possibilities there are for that user’s data to be “leaked or breached in a way that causes real harm” or to be “used in surprising ways . . . such as in targeting ads or adjusting interest rates based on race.”²⁵ Nearly six billion accounts were targeted in data breaches in 2022, and by August of this year firms reported more than thirty significant data breaches in 2023.²⁶ Large, sophisticated

²⁴ T. Klosowski, *The State of Consumer Data Privacy Laws in the US (And Why It Matters)*, N.Y. Times (Sept. 6, 2021), <https://tinyurl.com/ms6cv842>.

²⁵ *Ibid.*

²⁶ A. Drapkin, *Data Breaches That Have Happened in 2022 and 2023 So Far*, tech.co (Aug. 15, 2023), <https://tinyurl.com/yck6x5fv>.

businesses are not immune; data breaches affected DoorDash, Apple, Meta, Twitter, and even LastPass, a password manager used to secure users' passwords and data.²⁷

In the absence of action by Congress, States have stepped in to safeguard their citizens' personal data from these harms. Nearly a dozen States have enacted comprehensive privacy laws²⁸ and nearly half the States have pending privacy bills which would similarly protect citizens' personal data privacy.²⁹ These privacy laws typically prohibit businesses from “process[ing] personal data for purposes that are neither reasonably necessary to nor compatible with the disclosed purposes for which such personal data is processed, as disclosed to the consumer, unless the controller obtains the consumer's consent.” Va. Code §59.1-578(A)(2).

²⁷ *Ibid.*

²⁸ See Cal. Civ. Code §1798.100 *et seq.*; Colo. St. §6-1-1301 *et seq.*; Conn. Gen. Stat. Ann. §42-515 *et seq.* (effective Oct. 1, 2023); Ind. Code §24-15 *et seq.* (effective Jan. 1, 2026); Iowa Code Ann. §715D.1 *et seq.* (effective Jan. 1, 2025); Montana Laws Ch. 681 (S.B. 384) (effective Oct. 1, 2024); Or. Senate Bill No. 619 (effective July 1, 2024); Tenn. Information Protection Act, S.B. 73/ H.B. 1181 (effective Jul. 1, 2024); Texas Data Privacy & Security Act, H.B. 4 (effective July 1, 2024); Utah Consumer Privacy Act, S.B. 227 (effective Dec. 31, 2023); Va. Code §59.1-575.

²⁹ See A. Desai, *US State Privacy Legislation Tracker*, IAPP (last updated Aug. 4, 2023), <https://tinyurl.com/4z55dss4>.

Against this backdrop, it is hardly surprising that Montana would be concerned about the risk that TikTok may pose to its citizens' privacy. After all, TikTok not only collects large amounts of its users' personal data, but also retains close ties with the CCP. *Supra* pp.7-8. It therefore poses a unique threat to consumers' privacy and security. Indeed, TikTok's parent company ByteDance, as a Chinese company subject to Chinese laws, *must* share data with the CCP. *Supra* pp.8-9. Montana thus has a compelling interest in protecting its citizens' privacy rights and safeguarding their personal data from TikTok's harmful practice.

That the federal government also possesses the power to regulate TikTok's dangerous practices is of no moment. State and federal consumer protection legislation and regulation co-exist "to cope with perceived injustices in the marketplace." D. Pridgen & R. Alderman, *Introduction to Consumer Protection and the Law, 2022-2023 Edition* §1:7 (2022). Indeed, any argument that federal statutes preempt SB419, see, *e.g.*, Users Br. 22-25; TikTok Br. 17-23, must account for the fact that a preemption analysis "start[s] with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." *Rice v.*

Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947). Because consumer protection “is a field traditionally regulated by the states, compelling evidence of an intention to preempt is required in this area.” *General Motors Corp. v. Abrams*, 897 F.2d 34, 42-43 (2d Cir. 1990). Plaintiffs cannot make such a showing here.

II. The balance of the equities weighs in favor of Montana

A plaintiff seeking a preliminary injunction must establish, among other things, “that the balance of equities tips in his favor.” *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Plaintiffs contend that Montana has shown “no evidence of actual harm to any Montanan as a result of using TikTok.” TikTok Br. 29. Make no mistake: TikTok harms American citizens everywhere—including in Montana. In particular, children have *lost their lives* from TikTok’s promotion of harmful content on its platform.³⁰ TikTok’s continued resistance to reasonable regulation will almost certainly harm more children. The “balance of hardships between the parties” in this case thus “tips sharply in favor of” Montana. *Cottrell*, 632 F.3d at 1139.

³⁰ See, e.g., Olivia Carville, *TikTok’s Viral Challenges Keep Luring Young Kids to Their Deaths*, Bloomberg (Nov. 30, 2022), <https://tinyurl.com/yvxhany5>.

TikTok, like other social media sites, has negative psychological effects on its users. *Supra* pp.3-4. But TikTok poses unique danger to its users, especially the adolescent users with which it is so popular. For instance, TikTok is the origin of numerous extremely harmful trends and challenges in which adolescent users have engaged in a quest to “go viral.”³¹ These challenges or trends “are found using hashtag searches” and “challenge . . . the viewer to take some action and record it for sharing on TikTok.”³²

In March of 2020, for example, the Coronavirus Challenge—which encouraged users to “lick items in public” to either catch COVID-19 or to mock the pandemic—spread widely among teens on TikTok.³³ As SB419 notes, other viral challenges included “lighting a mirror on fire and then attempting to extinguish it using only one’s body parts,” “inducing

³¹ *E.g.*, S. Morris, *21 Dangerous TikTok Trends Every Parent Should Be Aware Of*, Newsweek (Mar. 6, 2021), <https://tinyurl.com/mmjkd234>.

³² P. Rutledge Ph.D, *Why Kids Love TikTok Challenges*, Psychology Today (Feb. 12, 2021), <https://tinyurl.com/54dubysx>.

³³ B. Tierney, *Social media challenge has teens trying to get COVID-19*, WSAZ (Mar. 25, 2020), <https://tinyurl.com/3hf3c5da>.

unconsciousness through oxygen deprivation,” and “cooking chicken in NyQuil.” SB419 at 1.³⁴

In the process of completing these challenges, children as young as nine years old have harmed themselves, harmed others, faced criminal penalties, and even died. For instance, a nine-year-old child died in February of 2021 after participating in TikTok’s “blackout challenge” in which children attempt to induce unconsciousness by holding their breath.³⁵ At least one teenager has died from the “Benadryl challenge,” a trend that calls for “the excessive consumption of Benadryl to induce a hallucinogenic high,” and more than twenty children have been hospitalized due to “skin burns, stomach aches and food poisoning” for “eating candy coated in liquid nitrogen—a snack that became popular on

³⁴ See also, *e.g.*, L. Veljanovski, *What is the TikTok ‘Fire Challenge’? Teen Hospitalized in New Online Craze*, Newsweek (June 1, 2021), <https://tinyurl.com/22bh4zsf>; S. Felbin, S. Talbert, & A. Aloian, *The ‘Blackout Challenge’ Has Resurfaced On TikTok, And It’s Still Just As Dangerous As It Was 17 Years Ago*, Women’s Health (Jan. 17, 2023), <https://tinyurl.com/3u3e7vh4>; B.A. Mayer, *How to Handle Risky Internet Trends Like TikTok’s NyQuil Chicken Challenge*, healthline (Sept. 30, 2022), <https://tinyurl.com/mvbuunun>.

³⁵ Felbin, *et al.*, *supra*.

TikTok due to the vapor fumes it emits when eaten.”³⁶ A thirteen-year-old girl landed in the intensive care unit with third-degree burns while filming a video in the bathroom “to recreate a viral TikTok challenge that involves setting fire to symbols drawn on a mirror using flammable liquid.”³⁷ And six adolescent boys in New York were ticketed for criminal mischief after taking part in the “Kool-Aid Man” challenge, in which children “run[] into and destroy[] random walls and fences like the drink mascot.”³⁸

Adolescents are particularly drawn to TikTok challenges and are thus susceptible to the associated harms. “Tween[s] and teens are more susceptible to social pressures, which makes it harder to assess risk, in such life-threatening challenges.”³⁹ Adolescent brains are “vulnerable to . . . pitfalls of social influence” such as “[a]ttention, likes, and shares” as

³⁶ K. Colah, *7 dangerous TikTok challenges for kids that parents must know about: ‘Extreme and risky’*, Fox10 Phoenix (Mar. 19, 2023), <https://tinyurl.com/ycks5urb>.

³⁷ S. Sharma, *‘TikTok fire challenge’ video lands teenage girl in intensive care with severe burns*, Independent (May 31, 2021), <https://tinyurl.com/yt7v6892>.

³⁸ P-S Cheng & J. Millman, *‘Kool-Aid Man’ Challenge Hits Long Island Fences as Part of Supposed TikTok Trend*, NBC New York (Feb. 22, 2023), <https://tinyurl.com/yad2bt4d>.

³⁹ Colah, *supra* (quotation marks omitted).

well as “[p]opularity [which] tells our primitive brains that something is of value unless we stop and question it.”⁴⁰

TikTok has failed utterly to regulate its users and reduce the harm it imposes on adolescent users. Despite the lengthy public record on TikTok’s negative effects on adolescent users, TikTok only recently put in place safeguards for child users. For those younger than thirteen years old, TikTok requires parents to enter a passcode every thirty minutes to give their child additional screen time, but for children between the ages of thirteen to seventeen, the age range in which the app is most used, TikTok gives each child-user the option to continue scrolling by entering their own passcode after the default sixty-minute time limit passes.⁴¹

TikTok in fact demonstrates its *willingness* to continue harming American children; TikTok continues to, for example, represent that the app is safe for teenagers and children. Its CEO Shou Chew testified before Congress that TikTok “automatically remove[s] or escalate[s] for human review” *all* content that “potentially” “violates our Youth Safety

⁴⁰ Rutledge, *supra*.

⁴¹ S. Morrison, *TikTok isn’t really limiting kids’ time on its app*, Vox (Mar. 2, 2023), <https://tinyurl.com/3rkfbn6t>.

and Wellbeing Policy.”⁴² Whether true or not, whatever TikTok is doing is not working. The challenges and trends most harmful to adolescents remain on TikTok even after multiple teens have died from attempting to complete them.⁴³ Indeed, TikTok operates special content moderation queues for users with more than 5 million followers—if a lucrative influencer engages in one of these challenges, their content will likely not be removed.⁴⁴ Tellingly, however, the CCP imposes safeguards for its teenage users on the parallel application which ByteDance operates in China.⁴⁵

TikTok’s content does not just harm children; it often shows children *being* harmed. Recent reporting by Forbes Magazine

⁴² *Written Testimony of Shou Chew, Chief Executive Officer, TikTok, Inc., Before the U.S. House Committee on Energy and Commerce, 118th Cong., 1st session (Mar. 23, 2023), available at <https://tinyurl.com/52whp84z>.*

⁴³ See, e.g., A. Gomez, *Experts warn parents, children of lethal ‘Benadryl Challenge’ on TikTok that killed Ohio teen*, abc7 (Apr. 19, 2023), <https://tinyurl.com/22usbnv4> (13-year-old boy died from participating in Benadryl Challenge three years after the challenge had resulted in a 15-year-old girl dying).

⁴⁴ Emily Baker-White, *How TikTok Has Bent Its Rules for Its Top Creators*, Forbes (Sept. 20, 2022), <https://tinyurl.com/3cz3wyrx>.

⁴⁵ Ashley Nash, *Is TikTok different in China compared to the U.S.? A social media analyst compares it to opium and spinach*, DeseretNews (Jul. 14, 2023), <https://tinyurl.com/474mwyh6>.

demonstrates that child sexual abuse material is available and promoted on TikTok.⁴⁶ An investigation by the Wall Street Journal further found that TikTok's algorithm force fed to certain users videos sexualizing minors.⁴⁷

TikTok harms children in Montana. This Court should not enjoin a law that is crucial for protecting some of Montana's most vulnerable citizens.⁴⁸

CONCLUSION

This Court should deny Plaintiffs' motions for a preliminary injunction.

⁴⁶ Alexandra S. Levine, *These TikTok Accounts Are Hiding Child Sexual Abuse Material In Plain Sight*, Forbes (Nov. 14, 2022), <https://tinyurl.com/yc265ay5>.

⁴⁷ WSJ Staff, *Inside TikTok's Algorithm: A WSJ Video Investigation*, Wall Street Journal (July 21, 2021), <https://tinyurl.com/5texfvsh>.

⁴⁸ Montana, of course, has shown another harm to Montanans: TikTok is known for flouting existing state laws with its unauthorized sharing of personal user data with the CCP. *Supra* p.12. By misrepresenting the manner in which it shares personal user data and by using that data in an unauthorized manner, TikTok increases the chance that bad actors, not just the CCP, will access and misuse sensitive user data. *Supra* pp.11-12.

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I hereby certify that on September 18, 2023, an accurate copy of the foregoing document was served electronically through the Court's CM/ECF system on registered counsel.

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