

# How 2023 became the year Congress forgot to ban TikTok

Publication Date: 2023-12-31

Author: Kari Paul

Section: Technology

Tags: TikTok, Politics and technology, US politics, US elections 2024, Joe Biden, Donald Trump, US Congress, news

Article URL: <https://www.theguardian.com/technology/2023/dec/31/us-tiktok-ban-federal>



Banning TikTok in the US seemed almost inevitable at the start of 2023. The previous year saw a trickle of legislative actions against the short-form video app, after dozens of individual states barred TikTok from government devices in late 2022 over security concerns. At the top of the new year, the US House followed suit, and four universities blocked TikTok from campus wifi. The movement to prohibit TikTok grew into a flash flood by spring. CEO Shou Zi Chew was called before Congress for brutal questioning in March. By April – with support from the White House (and Joe Biden’s predecessor) – it seemed a federal ban of the app was not just possible, but imminent. But now, as quickly as the deluge arrived, it has petered out – with the US Senate commerce committee confirming in December it would not be taking up TikTok-related legislation before the end of the year. With the final word from the Senate, 2023 became the year Congress forgot to ban TikTok. “A lot of the momentum that was gained after the initial flurry of attention has faded,” said David Greene, a civil liberties attorney with the Electronic Frontier Foundation (EFF). “It seems now like the idea of a ban was being pushed more so to make political points and less as a serious effort to legislate.” Lots of legislation, little action. The political war over TikTok centered on allegations that its China-based parent company, ByteDance, could collect sensitive user data and censor content that goes against the demands of the Chinese Communist party. TikTok, which has more than 150 million users in the United States, denies it improperly uses US data and has emphasized its billion-dollar efforts to store that information on servers outside its home country. Reports have cast doubt on the veracity of some of TikTok’s assertions about user data. The company declined to comment on a potential federal ban. With distress over the influence of social media giants mounting for years, and tensions with China high after the discovery of a Chinese spy balloon hovering over the US in February 2023, attacks on TikTok became more politically viable for lawmakers on both sides of the aisle. Legislative efforts ensued, and intensified. The House foreign affairs committee voted in March along party lines on a bill aimed at TikTok that Democrats said would require the administration to effectively ban the app and other subsidiaries of ByteDance. The US treasury-led Committee on Foreign Investment in the United States (CFIUS) in March demanded that TikTok’s Chinese owners sell off the app or face the possibility of a ban. Senator Mark Warner, a Democrat from Virginia, and more than two dozen other senators in April sponsored legislation – backed by the White House – that would give the administration new powers to ban TikTok and other foreign-based technologies if they pose national security threats. But none of these bills ever made it to a vote, and many have stalled entirely as lawmakers turned their attention to the boom in artificial intelligence. Warner told Reuters in December that the bill he authored had faced intensive lobbying from TikTok and had little chance of survival. “There is going to be pushback on both ends of the political spectrum,” he said. The Montana effect.

passed a total statewide ban on TikTok in May, to start on 1 January 2024, setting the stage for a federal one. That momentum for a nationwide prohibition ebbed, however, when a US judge last week blocked the legislation from going into effect – a move that TikTok applauded. “We are pleased the judge rejected this unconstitutional law and hundreds of thousands of Montanans can continue to express themselves, earn a living, and find community on TikTok,” the company’s statement reads. In a preliminary injunction blocking the ban, US district judge Donald Molloy said the law “oversteps state power and infringes on the constitutional rights of users”. The closely watched decision indicated that broader bans are unlikely to be successful. “The Montana court blocking the effort to ban TikTok not only threw a wet blanket on any federal efforts to do the same, but sent a clear message to every lawmaker that banning an app is a violation of the first amendment,” said Carl Szabo, general counsel at the freedom of speech advocacy group NetChoice, of which TikTok is a member. The EFF’s Greene, who also watched the Montana case closely, echoed that the results proved what many free speech advocates have long argued: a broad ban of an app is not viable under US law. “This confirmed what most people assumed, which is that what is being suggested is blatantly not possible,” he said. “Free speech regulation requires really, really precise tailoring to avoid banning more speech than necessary. And a total ban on an app simply does not do that.” Political discussions around the ban also exposed a need for comprehensive privacy legislation, Greene said. The same politicians raising concerns about the Chinese government collecting data had done little to address companies like Meta collecting similar reams of data in the US. “The ideas that were floated were legally problematic and belied a real, sincere interest in addressing privacy harms,” he said. “I think that can cause anyone to question whether they really cared about users.” Election year fears Meanwhile, some analysts think Congress and the White House are unlikely to even attempt to ban TikTok in 2024, an election year, given the app’s popularity with young voters. Joe Biden’s re-election campaign team has been reportedly debating whether to join TikTok, on which the president does not currently have an official page, to attempt to reach more young voters. Nearly half of people between 18 and 30 in the US use TikTok, and 32% of users in that age group say they regularly consume news there. To date, Vivek Ramaswamy is the only Republican candidate to join the app, a move which has elicited lashings from his opponents in multiple debates. “The same lawmakers calling for a ban are going to need to pivot to online platforms like TikTok for their upcoming get-out-the-vote efforts,” said Szabo. “To cut off a major avenue of reaching voters during an election year doesn’t make political sense.” Even as interest in banning TikTok wanes – politically and among voters – the efforts are not entirely dead. Senator Maria Cantwell, a Democrat from Washington, told Reuters she is still working on legislation and in talks with federal agencies, noting that the Senate held a secure briefing on concerns about foreign influence by way of social media last month. Even as the interest and political power to fuel a TikTok ban wanes, social networks are going to be under the magnifying glass in the coming year, said Szabo. “As we go into 2024, I will say that control of speech on the internet is going to be even more heated, as lawmakers try to control what people can say about their campaigns,” he said. “I would also expect to see those very same politicians using the platform to raise money and to get out the vote.” Reuters contributed reporting