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The Smartphone Dilemma

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Recommended Citation

Cardillo, Craig W., "The Smartphone Dilemma" (2021). *Law School Student Scholarship*. 1086.
https://scholarship.shu.edu/student_scholarship/1086

participate in the lottery and horse racing.¹⁵⁶ The minimum age to enter a casino in New York is eighteen; and twenty-one in New Jersey.¹⁵⁷ These regulations on the minimum gambling age are valid state actions due to the compelling interest of protecting minors.

In *Latour v. State*, the Louisiana Supreme Court upheld a law that raised the gambling age in Louisiana to twenty-one.¹⁵⁸ The court stated that the legislation was “substantially related to the protection of the general welfare of the state.”¹⁵⁹ Based on this rationale, the court upheld the age increase as they believed it protected young adults and protected the general public health and welfare.¹⁶⁰

States have seen the harmful impacts that gambling can have on minors and implemented laws to protect them. While there have not been many court cases challenging the minimum age of gambling, the same constitutional analysis applies. Like the other three public health issues, there is a compelling state interest to protect minors from gambling. Even if the courts give special weight to the parents’ considerations, these types of laws are well within the states powers to regulate so long as they are narrowly tailored.

VI. Smartphones

Like the other four public health issues discussed above, smartphones are extremely popular in America. However, the popularity of something does not mean that it should be accessible to children of all ages. I posit that the negative health impact on minors provides a compelling state interest that would allow the states to regulate smartphones, even over parents’ objections.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Latour v. State*, 778 So. 2d 557, 557 (La. 2001).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 564.

i. Smartphone Health Issues

The use of a smartphone has many health implications. These health issues should be a major concern to all parents of children under the age of eighteen. One of the worries regarding smartphones is the addictive nature of device. Studies show that 54% of teens stated that they spent too much time on their cell phones, while 60% of U.S college students consider themselves to have a cell phone addiction.¹⁶¹ In a study conducted by Common Sense Media, teens averaged nine hours of screen time a day, with Snapchat and Instagram being the most popular sites.¹⁶²

Much of this screen time may be the fault of social media giants such as Facebook, Snapchat and Instagram. “Likes” on these sites lead to a surge in dopamine, the “feel good” hormone.¹⁶³ According to a report from Harvard University, this stimulation is as rewarding as hitting a small jackpot for gamblers and leads to the potential for addiction.¹⁶⁴ The more screen time on these sites, means more money for the companies and they will continue to try and keep people’s eyes on the screen.¹⁶⁵ A 60 Minutes interview discussed how Instagram takes advantage of minors’ dopamine-driven desire for social validation.¹⁶⁶ For example, Instagram notification algorithms withhold “likes” on minors’ photos and deliver them later in larger bursts.¹⁶⁷ This causes the mind to respond robustly to the sudden influx of “likes.” Minors crave

¹⁶¹ *Id.*

¹⁶² Chrisanna Mink, *How Growing Screen Time is Impacting Teen’s Mental Health*, (Sep. 22, 2019, 5:00 a.m.), <https://www.modbee.com/living/health-fitness/article234323582.html>.

¹⁶³ Trevor Haynes, *Dopamine, Smartphones and You*, (May 01, 2018), <http://sitn.hms.harvard.edu/flash/2018/dopamine-smartphones-battle-time/>.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Anderson Cooper, *What is “Brain Hacking?” Tech Insiders on Why You Should Care*, (Apr. 9, 2017), <https://www.cbsnews.com/news/brain-hacking-tech-insiders-60-minutes/>.

¹⁶⁷ *Id.*

feelings like this and they keep checking their smartphones which in-turn leads to more screen time.¹⁶⁸

This addiction has also led to arguments between parents and children regarding the minor's smartphone usage. Research has shown that 35% of parents and 32% of teens stated that they argue daily about the device use while 43% of parents and 38% of teens stated that they argued a few times a week.¹⁶⁹ This means that 78% of parents and 70% of teens believe that they argue over the minors use of their smartphone at least a few times a week.¹⁷⁰ This type of environment is not good for the family dynamic.

Recently, the American Academy of Pediatrics has issued guidelines limiting screen time for children of all ages.¹⁷¹ The recommendation of the Academy pertained to all screen time and not just smartphones as the Academy recognized the impact screen time can have on minors.¹⁷²

In addition to being addictive, social media creates the perfect environment for cyberbullying. Nearly 60% of teens reported some sort of cyberbullying with name calling and spreading of false rumors being the most common offense.¹⁷³ A vast majority of teens, 90%, believe that online harassment is a problem that affects people their age and 63% believe it is a major problem.¹⁷⁴ The likelihood of teens facing harassment varies based upon the amount of time the teen goes online. Strikingly, 45% of teens said they are constantly online and those

¹⁶⁸ *Id.*

¹⁶⁹ Michael B. Robb, *The New Normal: Parents, Teens, Screens, and Sleep in the United States*, <https://www.common sense media.org/sites/default/files/uploads/research/2019-new-normal-parents-teens-screens-and-sleep-united-states.pdf>, (last updated 2019).

¹⁷⁰ *Id.*

¹⁷¹ AMERICAN ACADEMY OF PEDIATRICS, *Media and Children Communication Toolkit*, <https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/Pages/Media-and-Children.aspx>, (last visited Oct. 20, 2020).

¹⁷² *Id.*

¹⁷³ Monica Anderson, *A Majority of Teens Have Experience Some Form of Cyberbullying*, (Sep. 27, 2018), <https://www.pewresearch.org/internet/2018/09/27/a-majority-of-teens-have-experienced-some-form-of-cyberbullying/>.

¹⁷⁴ *Id.*

teens were more likely to be cyberbullied.¹⁷⁵ In addition to name calling and false rumors, 7% of teens have said that someone has shared an explicit picture of them without their consent.¹⁷⁶ On top of this, 20% of boys and 29% of girls have stated that they have received explicit pictures that they did not ask for.¹⁷⁷

The time spent on their phones has led teens to be more anxious, depressed, and even suicidal.¹⁷⁸ A study conducted between 2010-2015 found that teens who reported spending more time on social media and their phones were more likely to report mental health issues than those who spent time on non-screen activities.¹⁷⁹ In fact, this study showed that depressive symptoms and suicide among adolescents all increased during the 2010s.¹⁸⁰ The study showed a clear pattern, linking screen activities with higher levels of depression systems and suicide outcomes than non-screen activities.¹⁸¹ Surprisingly, this risk was seen after only two hours or more of electronic screen time.¹⁸² Another study conducted in 2019 stated that there is a relationship between cell phone usage and adolescent's mental or physical health.¹⁸³ Roughly 40% of adolescents said they felt anxious if they left home without their cellphones and 56% said that they associated absence of cellphones with at least one of these three emotions: loneliness, being upset, or feeling anxious.¹⁸⁴

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Jean M. Twenger, *Increases in Depressive Symptoms, Suicide-Related Outcomes, and Suicide Rates Among U.S. Adolescents After 2010 and Links to Increased New Media Screen Time*, (Nov. 14, 2017), <https://journals.sagepub.com/doi/full/10.1177/2167702617723376>.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ See Shoukat, *supra* note 3.

¹⁸⁴ Kari Paul, *This is What Happens When You Take Phones Away From Teenagers*, MARKETWATCH (Aug. 25, 2018, 10:22 p.m.), <https://www.marketwatch.com/story/this-is-what-happens-when-you-take-phones-a-way-from-teenagers-2018-08-22>.

Furthermore, there are also physical side effects from smartphone usage. Sleep duration and quality are disrupted from smartphone usage.¹⁸⁵ There is also mixed evidence, which requires further studies, on the impact of smartphones on physical activity and obesity. While some studies have found a correlation between increased smartphone usage and obesity, other studies have not.¹⁸⁶

In addition to these health effects, there has been concern over smartphones and cancer. Cell phones emit radio frequency which can target radiation to the brain when the cell phone is held to the ear. Both the World Health Organization review panel and the American Academy of Pediatrics concluded this is a “possible” risk for cancer but more studies were needed.¹⁸⁷

Lastly, motor vehicle accidents are the number one cause of death among adolescents.¹⁸⁸ Using a phone while driving has been shown to have a three to four fold increase in risk of crash or near crash.¹⁸⁹ Studies have shown that drivers aged sixteen to nineteen are most likely to die in distracted driving crashes.¹⁹⁰ Although this age group only accounts for 6% of total drivers, they have accounted for 10% of all drivers determined to be distracted at the time of crash and 11% of all drivers killed in crashes related to cell phone usage.¹⁹¹ In addition to motor vehicle accidents, the American Academy of Pediatrics has also seen a surge in distracted pedestrian injuries from smartphone usage, which may now be responsible for 10% of pedestrian injuries.¹⁹²

¹⁸⁵ Sara E. Domoff, *Excessive Use of Mobile Devices and Children's Physical Health*, (Apr. 16, 2019), <https://onlinelibrary.wiley.com/doi/full/10.1002/hbe2.145>.

¹⁸⁶ See Mink, *supra* note 162.

¹⁸⁷ *Id.*; Ruth. A. Etzel, *More Study Needed on Risk of Brain Tumors from Cell Phone Use*, (Oct. 2011), <https://www.aapublications.org/content/32/10/28>.

¹⁸⁸ M. Kit Delgado, *Adolescent Cellphone Use While Driving: An Overview of the Literature and Promising Future Directions for Prevention*, (June 16, 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5041591/>.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Dr. William Raszka, *Heads Up: Cell Phone Use and Pedestrian Injury.*, (Mar. 25, 2016), <https://www.aapublications.org/news/2016/03/25/Cell-Phone-Use-and-Pedestrian-Injury-pediatrics-0316>.

While smartphones are still relatively new, the research to determine the impact on minors is steadily growing. In a new report, two psychology professors examined forty reports on the impact between social media use and both depression and anxiety among adolescents.¹⁹³ They concluded that right now the link is small and inconsistent.¹⁹⁴ While they do not argue that intensive use of smartphones does not matter, they do challenge the belief that smartphones are responsible for broad societal problems among minors.¹⁹⁵

With that being said, those in Silicon Valley, have started to look at cell phones and their own adolescents differently.¹⁹⁶ Tim Cook, the CEO of Apple, stated that he would not let his nephew join social networks.¹⁹⁷ Bill Gates, the co-founder of Microsoft, banned cellphones for his children until they were teenagers and even then, his wife stated they wished they had waited longer.¹⁹⁸ Even the late Steve Jobs, the co-founder of Apple, would not let his young children near iPads.¹⁹⁹

In 2019, Senators and Representatives reintroduced a bill, the *Children and Media Research Advancement Act* (CAMRA), that would commission research on children's technology use and outcomes including addiction, bullying, and depression.²⁰⁰ While this bill has not yet made much movement within the House or Senate, there seems to be more elected officials who are beginning to recognize the dangers of smartphones.

¹⁹³ Nathaniel Popper, *Panicking About Taking Your Kids Smart Phone Away? New Research Says Don't*, NEW YORK TIMES (Jan. 1, 2020), <https://www.nytimes.com/2020/01/17/technology/kids-smartphones-depression.html>.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Nellie Bowles, *A Dark Consensus About Screens and Kids Begins to Emerge in Silicon Valley*, NEW YORK TIMES (Oct. 26, 2018), <https://www.nytimes.com/2018/10/26/style/phones-children-silicon-valley.html?action=click&module=RelatedLinks&pgtype=Article>.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Ed Markey, *Children and Media Research Advancement Act* (CAMRA), <https://www.markey.senate.gov/news/press-releases/senators-markey-sasse-blunt-schatz-bennet-and-collins-and-reps-ra-skin-and-budd-reintroduce-bipartisan-bicameral-legislation-to-study-impact-of-technology-and-media-on-children>, (last visited July 6, 2020).

ii. Cell Phone Legislation

Recently, legislation has been introduced in states to limit and or ban smartphones from those under a certain age. In 2017, a Colorado parent, Timothy Farnum, led the charge for a ballot initiative that would ban the sale of smartphones for children under thirteen.²⁰¹ As written, the ban would require cellphone companies to ask the age of the primary user.²⁰² These companies could face fines if they sell phones to someone underage.²⁰³ Unfortunately, they were unable to get enough signatures to be on the 2018 ballot.²⁰⁴ Some opponents of the bill stated that the government should not be involved in telling a parent if their child should have a cell phone.²⁰⁵

In 2020, Vermont State Senator John Rodgers introduced Vermont Bill S.212 which would make it illegal for anyone under the age of twenty-one to use or possess a cellphone.²⁰⁶ The bill outlines the dangers of cell phones to include cyberbullying and use while driving (which causes automobile accidents) among others.²⁰⁷ Senator Rodgers himself stated, “I have no delusions that it’s going to pass. I wouldn’t probably vote for it myself.”²⁰⁸ His reasoning behind introducing this bill was that the legislature seemed intent on regulating gun use and based on the information,

²⁰¹ Alicia Stice, *Colorado Group Wants to Ban Sale of Smartphones for Kids Under 13*, USA TODAY (June 19, 2017), <https://www.usatoday.com/story/tech/nation-now/2017/06/19/colorado-group-wants-ban-sale-cellphones-smartphones-kids-under-13/407898001/>.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Colorado Ballot, *Colorado Prohibit Sale of Smartphones to Persons Under Age 13 Initiative (2018)*, [https://ballotpedia.org/Colorado_Prohibit_Sale_of_Smartphones_to_Persons_Under_Age_13_Initiative_\(2018\)](https://ballotpedia.org/Colorado_Prohibit_Sale_of_Smartphones_to_Persons_Under_Age_13_Initiative_(2018)), (last visited July 5, 2020).

²⁰⁵ Ashton & Price, *Proposed State Law Bans Use of Smart Phones for Children Under 13*, <http://ashtonandprice.com/proposed-state-law-bans-use-smart-phones-children-13/>, (last visited July 6, 2020).

²⁰⁶ VERMONT GENERAL ASSEMBLY, *S.212*, <https://legislature.vermont.gov/bill/status/2020/S.212>, (last visited July 6, 2020).

²⁰⁷ *Id.*

²⁰⁸ Eric Blaisdell, *Bill Would Ban Cellphone Use for Those Under 21*, (Jan. 08, 2020), https://www.timesargus.com/news/local/bill-would-ban-cellphone-use-for-those-under-21/article_2e4064f1-892f-5a83-95a2-d8a4272942d9.html.

cell phones are more dangerous than a gun.²⁰⁹ While Senator Rodgers may have used this bill for publicity, others took it more serious and debated the merits of such a ban.

In addition to attempting outright bans, schools have banned cell phones among students while in school. California recently passed legislation that allows schools to restrict or prohibit devices in class, although it is not required.²¹⁰ Studies have shown that students in schools where cell phones were banned performed better on exams.²¹¹

This is not an issue that is just affecting the United States. In July 2018, the French government was concerned over the use of cell phones among children which led them to pass a bill banning cell phones in school.²¹² In 2019, Victoria, Australia banned cell phones in school as well.²¹³ Dr. Neil Selwyn, a professor at Monash University, stated that in a survey of 2,000 adults, 75% supported the school ban and about 33% supported an outright ban.²¹⁴

While still a new technology, the debate will only continue to grow on whether there is such a thing as too much screen time for children. If research continues to support the negative impact on children, the support for bans on smartphones will likely continue to grow as well.

iii. Proposals

Although parents have a fundamental right to raise their children, this right can be infringed on by the state when there is a compelling state interest. Courts have found that health and safety are compelling interests for the state to intervene. While at first glance smartphone regulation may seem outlandish, the impacts on minors suggests that at least some regulation is warranted.

²⁰⁹ *Id.*

²¹⁰ Alyson Klein, *Schools Say No to Cellphones in Class. But Is It a Smart Move?*, (Sep. 6, 2019), <https://www.edweek.org/ew/articles/2019/09/11/schools-say-no-to-cellphones-in-class.html>.

²¹¹ *Id.*

²¹² *Id.*

²¹³ Henrietta Cook, *Mobile Phones to be Banned in State Primary and Secondary Schools*, <https://www.theage.com.au/national/victoria/mobile-phones-to-be-banned-in-state-primary-and-secondary-schools-20190625-p5217a.html>, (last visited July 3, 2020).

²¹⁴ *Id.*

Much like we have seen with smoking, alcohol, gambling, and pornography, the harms of smartphones to minors are significant and would rise to the level of a compelling interest. Moreover, as with distracted driving, minors can cause harm to others while on the smartphones and this legislation would be for the general public welfare.

As with many of the other public health issues, the state regulation on smartphones will infringe on the rights of the parents. In *Ginsberg*, the court acknowledged that while it is the parental right to raise a child, the state can also help with this obligation in order to protect children.²¹⁵ The damage that is caused by smartphones can be detrimental to a minor. Since smartphones are relatively new, more research may be needed to determine if this damage will be long lasting. However, steps can still be taken now in order to protect minors.

As some school districts have already done in America, outlawing smartphones in schools is a good first step. School is meant for learning and the more distractions that are in front of the students prevent or impede them from accomplishing this goal. As mentioned above, studies have already shown that banning cell phones in school has helped improve grades.²¹⁶

The next step would be to determine what age is appropriate for minors to get smartphones. After looking at the current research, banning the sale of smartphones for those under eighteen seems to be warranted. While the world is becoming more connected with technology, it does not mean that we should allow harm to minors if it can be avoided.

States should pass a bill like the one that was introduced in Colorado in 2017.²¹⁷ This bill would ban the sale of smartphones if the primary user is below the age of eighteen. Retailers would be required to inquire who would be the primary user of the smartphone. Retailers will be

²¹⁵ *Ginsberg*, 390 U.S. at 639.

²¹⁶ Klein, *supra* note 210.

²¹⁷ See Stice, *supra* note 201.

fined if they do not follow the regulations. This type of regulation is similar to the one in *Ginsberg*, which banned the sale of adult magazines to minors, however, the Court stated that parents could still buy the magazines for their children.²¹⁸ These types of regulations help parents understand the risks associated with buying a smartphone for the minor and ensure that minors cannot go into the store to buy the smartphones on their own accord. As research continues to mount, if the harm to minors is more akin to alcohol and smoking, then states should further regulate smartphones and ban the possession of smartphones for all minors under the age of eighteen. Both of these actions by the state would be within their police powers to regulate smartphones for minors.

Minors would still be allowed to have cell phones that do not have access to the internet. This would allow them to call and text their parents, friends, and emergency numbers if needed. However, they would not be allowed to access the more damaging applications like Snapchat, Instagram, TikTok, etc.

VII. Conclusion

Smartphone bans should be among the other age-based regulations that protect children. While the smartphone ban will undoubtedly receive public backlash, the precedent is there for the state to protect minors from harmful conduct. States have already banned minors from smoking, drinking alcohol, gambling, and viewing pornography because they are detrimental to minors. Smartphones should be next.

²¹⁸ *Ginsberg*, 390 U.S. at 639.