

Banning TikTok: A National Security or Freedom of Speech Issue

By Cate Bashore

TikTok has transformed American culture since its introduction in 2018. 170 million Americans currently use the platform, roughly half the nation's population. Between 2020 and 2022, TikTok was the most downloaded app in the United States and the world. TikTok's influence on American culture has spanned from promoting conspiracy theories to promoting shopping trends, becoming a critical cultural and marketing influence.¹

In 2024, Congress passed the Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACA). Primarily aimed at TikTok and its parent company, ByteDance, Ltd., the bill prohibits providing internet hosting services for "foreign adversary controlled applications."² The Act prevents companies like TikTok from surveilling or targeting Americans through popular applications. On December 16, TikTok, Inc. filed a complaint to challenge the constitutionality of the law, claiming the law violates the First Amendment. The Supreme Court's decision will ultimately determine whether TikTok can be constitutionally banned in the United States and whether the government can force ByteDance, Ltd. to sell the application to an American company. While there is evidence to support the U.S. government's claim that ByteDance's relationship with American data poses a national security risk, it does not address the cultural effects associated with banning a platform 170 million Americans use to communicate daily.

Congress passed the PAFACA after alleging that TikTok posed a national security threat to Americans. Rep. Cathy McMorris Rodgers, Chair of the House Energy and Commerce Committee, claimed that the Chinese Communist Party (CCP) weaponizes applications such as TikTok to exploit and weaponize American data.³ While TikTok is a privately owned company, separate from the Chinese government, the CCP holds a seat on the board of TikTok's parent company, ByteDance. Furthermore, Chinese national security regulations require Chinese companies to comply with CCP requests for data and other information.⁴ The Act emphasizes that it cannot be used to ban any app, but only when a

¹ Maheshwari, S. (2024, April 19). *Love, Hate or Fear It: TikTok Has Changed America*. The New York Times. <https://www.nytimes.com/interactive/2024/04/18/business/media/tiktok-ban-american-culture.html>

² U.S. Congress. (2023) *H.R.7521 - 118th Congress (2023-2024): Protecting Americans from Foreign Adversary Controlled Applications Act*. <https://www.congress.gov/bill/118th-congress/house-bill/7521>

³ House Committee on Energy and Commerce. (2024, March 7). *Chair Rodgers: "We Have Given TikTok a Choice: Divest or Face a Ban."* <https://energycommerce.house.gov/posts/chair-rodgers-we-have-given-tik-tok-a-choice-divest-or-face-a-ban>

⁴ Bermudez, K. (2024, March 18). *It's not just a theory. TikTok's ties to Chinese government are dangerous*. FDD.

“social media company is controlled by a foreign adversary and has been determined by the President to present a significant threat to national security.” Congress has additionally emphasized that the new act is not an outright ban on the application, giving TikTok the option to divest from its parent company in favor of an American company to operate in the United States.

TikTok, Inc., and Merrick Garland, the Attorney General of the United States, filed Supreme Court briefs before their oral arguments, demonstrating stark differences between how TikTok and the US government interpreted the Constitution, particularly the First Amendment. The petitioner’s brief argues that the act does not uphold the First Amendment because the act aims to protect Americans from a “disagreeable mix of ideas,” upholding the foreign interests of the government.⁵ Furthermore, the petitioners argue that TikTok’s ownership by a foreign adversary is irrelevant, as the Act violates the First Amendment rights of American creators on the platform. *Sorrell v. IMS Health, Inc.* establishes that a statute implicates the First Amendment when it either directly infringes on speech or infringes upon the practical application of speech.⁶ TikTok argues the PAFACA violates both.

Moreover, the United States government argues that the Act does not violate the First Amendment because instead of regulating the freedom of speech directly, it regulates foreign adversary control. The government defends that the Act does not intend to limit unfavorable speech but solely protects national security interests by limiting foreign adversary communications within the United States. While TikTok highlights the 170 million Americans whose First Amendment right will be violated, the government frames the issue as a security risk to those same users, labeling the company a “unique threat.”⁷ Furthermore, the government emphasizes that the Act is tailored specifically to address the need to protect against the collection, manipulation, and exploitation of data collected. The government argues that restricting “communication channels” of foreign adversaries has been frequent throughout US history and is established as a legal precedent. Therefore, rather than representing an issue of freedom of speech, the statute presents an issue of national security.

If the Supreme Court decides in favor of the respondent, or the United States government, the TikTok ban will undoubtedly have widespread implications on American culture and livelihoods. Small

<https://www.fdd.org/analysis/2024/03/18/its-not-just-a-theory-tiktoks-ties-to-chinese-government-are-dangerous/>

⁵ Firebaugh, B., et al. (2025). *Reply brief for petitioners: Firebaugh v. Garland*. Supreme Court of the United States.

⁶ Sorrell v. IMS Health Inc. (n.d.). *Oyez*. Retrieved January 7, 2025, from <https://www.oyez.org/cases/2010/10-779>

⁷ Prelogar, E. B. (2025). *Reply brief for the respondent: TikTok Inc. & ByteDance Ltd. v. Merrick B. Garland; Firebaugh v. Merrick B. Garland*. Supreme Court of the United States.

business owners, content creators, and artists depend on TikTok for their income. If the Supreme Court decides according to the lower court ruling, the government can force TikTok to shut down its US platform by January 19. This leaves individuals who depend on TikTok for their incomes with little time to plan accordingly. In addition to artists, online communities based on TikTok provide outlets for individuals to communicate. If restricted, these communities would be damaged. Additionally, a complete TikTok shutdown would also have economic consequences. According to a report from Goldman Sachs, the “creator-economy,” fueled largely by TikTok, could exceed \$480 billion by 2027.⁸

The Protecting Americans from Foreign Adversary Controlled Applications Act undoubtedly restricts the speech of users, content creators, and communities who use the app to communicate. However, the popularity of TikTok imposes a data security risk if the parent company of TikTok, ByteDance, shares users' information with the Chinese government. While the government cites precedent for restricting speech channels of foreign adversaries, the TikTok case differs in that it restricts the speech of Americans. While the app may have been developed and is controlled by a foreign adversary to the government, its platform is not used for those same foreign adversaries to communicate; it is used by the American people. The government's claim that the vast number of TikTok users on the app is entirely a national security issue ignores the unique economic and cultural effects the app has on the country. Communities, artists, and livelihoods would be disrupted by banning communication through the app. While the court may still decide favorably for the government, the case cannot ignore its implications on communication channels for Americans and consider the adverse economic effects in the resulting fallout.

⁸ Landrum, J., & Hadero, H. (2025, January 5). *As potential TikTok ban looms, content creators who rely on the platform wait in limbo*. PBS News. <https://www.pbs.org/newshour/politics/as-potential-tiktok-ban-looms-content-creators-who-rely-on-the-platform-wait-in-limbo>