



Civics is all around us. The United States Supreme Court is the highest court in the land. Through its power of judicial review, its decisions have a lasting impact on "We the People". So what is the Court hearing this session and how might the justices rule? Let's help each other expand our civic literacy.

The Case of Banning TikTok: First Amendment vs. National Security

The Facts of TikTok v. Garland:

Over 170 million Americans use [TikTok](#), a social media platform where users can create and watch short video clips. Globally, TikTok has over 1 billion active monthly users. ByteDance, a China-based company, originally developed the platform's content. TikTok has created a U.S. subsidiary called TikTok U.S. Security (TTUSDS). A subsidiary is a company that is owned by another company, often to handle separate operations. TTUSDS partners with Oracle (TikTok Inc.) to handle domestic operations and data security, while ByteDance retains 21% control over global operations and development.

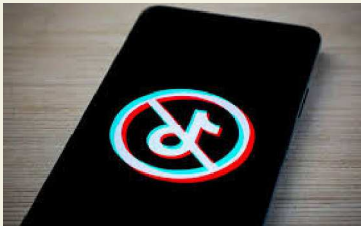


Lawmakers have raised [security concerns](#) over the potential influence ByteDance might have over 170 million Americans. To protect the United States, in 2024, Congress passed a law, and President Biden signed the [Protecting Americans from Foreign Adversary Controlled Applications Act](#). This Act requires any application controlled by an identified foreign adversary of the United States (China, Iran, North Korea, and Russia) to divest (sell) their ownership rights of the app to a U.S. company or risk U.S. hosting and distributing services discontinuing new user access and updates to the application for existing users. This law is set to go into effect on January 19, 2025. Through a series of legal challenges, [TikTok argues](#) that this Act infringes on the [First Amendment](#) rights of any American who publishes content, no matter the app, and that divestiture would be impossible by the January 19th deadline. The Petitioners have also offered alternative solutions, such as placing a user warning on the platform.

Now, before the U.S. Supreme Court, the justices are being asked to address one question:

1. Does the Protecting Americans from Foreign Adversary Controlled Applications Act, as applied to the petitioners, violate the First Amendment?

Despite TikTok's assertion that the First Amendment rights of its users will be violated if this law takes effect, the U.S. government argues that this case is not about free speech but national security. The government has a vested interest in protecting its people from the influence of its foreign adversaries. The government's contention is that there is a danger in having a foreign adversary in possession of American data, and it is wary of



these companies abusing or manipulating the content streamed to Americans. The government argues no First Amendment rights are being abused, and in fact, as ByteDance is a foreign corporation, it has no First Amendment rights at all under the U.S. Constitution.

Historically, [content-based speech regulations have proven to violate the First Amendment](#). The exceptions come from regulations tailored to achieve a compelling government interest. This test, called [strict scrutiny](#), is where most government regulations fail. The Respondents argue that this Act would pass a strict scrutiny test because simply divesting the app would allow the content (speech) within the app to remain unchanged. The

Petitioners argue that this Act fails a scrutiny test because the scope of this Act is based on content, not data security.

On January 17th, in a [per curiam opinion](#), the justices ruled that the Protecting Americans from Foreign Adversary Controlled Applications Act does not violate TikTok's First Amendment rights. In their opening, the justices reminded the public that 80 years ago, Justice Felix Frankfurter warned about applying established legal rules to the "totally new problems" of the radio and airplane, and like Justice Frankfurter, this Court finds itself in similar territory with this case. Consequently, as to not "embarrass the future," the Court emphasizes the importance that this decision is narrowly tailored to the circumstances before them. Despite TikTok offering "a distinctive and expansive outlet for expression, means of engagement, and source of community" for millions of Americans, "Congress has determined that divestiture is necessary to address its well-supported national security concerns regarding TikTok's data collection practices and relationship with a foreign adversary." Consequently, the parameters defined by the act will be allowed to take effect on January 19, 2025.

Federal Statute, Appellate Court and Supreme Court Precedent Used in this Case:

- [Moody v. NetChoice, LLC. \(2024\)](#): The Court established that the government cannot justify interfering with a private speaker's editorial choices merely by claiming an interest in improving or balancing the marketplace of ideas.
- [U.S. v. O'Brien \(1968\)](#): The Court established a test for determining when governmental regulation involving symbolic speech is justified. The regulation must be unrelated to content and narrowly tailored to achieve the government's interest.
- [Reed et al. v. Town of Gilbert, AZ et al. \(2015\)](#): The Court established that the First Amendment prohibits censorship of all speech on a whole topic.
- [Minneapolis Star & Tribune Company v. Minnesota Commissioner of Revenue \(1983\)](#): The Court established that the First Amendment does not prohibit regulation of the press. However, creating a special tax applied only to certain publications would violate the First Amendment.

To Think and To Do: With enforcement of the Protecting Americans from Foreign Adversary Controlled Applications Act expected to go into effect on January 19th, what options does the president of the United States have as chief executive when it comes to enforcement of the law? Explain your answer.

To [Learn MORE](#) about this case, view [the Brief for the Petitioner](#) TikTok Inc., ByteDance Ltd., et al., and the [Respondent Brief](#), Merrick B. Garland, U.S. Attorney General (Under Brian Firebaugh et al., TikTok creators filed their own writ of certiorari; however, on December 18, the U.S. Supreme Court consolidated the Firebaugh case as part of TikTok Inc. & ByteDance, Ltd.)

