

# The Supreme Court takes up the TikTok ban. Here's what to know.

*The justices will review a law that would effectively shut down TikTok in the United States this month unless the company divests from Chinese ownership.*

**By Ann E. Marimow and Cristiano Lima-Strong  
Washington Post**

The Supreme Court on Friday will take up TikTok's high-stakes challenge to a federal law that would effectively shut down the wildly popular video-sharing platform this month unless the company divests from Chinese ownership.

The justices agreed to quickly review the case before the Jan. 19 deadline that Congress set for TikTok's China-based parent company, ByteDance, to sell the platform.

Here's what to know:

## **What is the Supreme Court being asked to decide?**

The company and a group of TikTok creators say the sell-or-ban law is an unprecedented, sweeping violation of free-speech protections and are asking the Supreme Court to block the measure. Shuttering the platform, they say, would violate their First Amendment rights to share, view and engage with short video clips about politics, music, cooking, the arts and more.

The justices must weigh those claims against the national security concerns that prompted Congress to pass the law in April with bipartisan support. Proponents of the law say TikTok, which has more than 170 million users in the United States, could be pressured by the Chinese government to covertly manipulate public opinion in the United States or to provide access to Americans' data.

## **When would the TikTok ban go into effect?**

If the Supreme Court does not pause the law, the ban would start Jan. 19, but some of the real-world effects will probably take time to emerge.

Under the law, known as the Protecting Americans from Foreign Adversary Controlled Applications Act, app-store giants such as Google and Apple and internet-hosting services could face massive fines if they continue to carry TikTok on their products beyond Jan. 19. Infractions could cost companies \$5,000 for each user that continues to access TikTok, which could add up to billions of dollars in penalties.

Tech companies have often recoiled when faced with potential legal exposure from new regulations, at times threatening to pull their services out of regions entirely rather than complying with specific restrictions. Apple and Google, the two biggest app-store providers in the United States, have remained mum on how they plan to handle a potential ban.

## **How quickly will the Supreme Court issue a ruling?**

The high court moved with extraordinary speed to schedule a special session for at least two hours of oral argument on Friday. The justices put off a decision about whether to temporarily block the ban-or-sell law while the litigation continues. The truncated timeline suggests the justices could decide quickly after oral argument whether to temporarily put the measure on hold or allow it to take effect as planned. The court could then issue a more extensive written opinion at a later date.

The justices are reviewing a unanimous decision allowing the TikTok ban that was issued in December by the influential U.S. Court of Appeals for the D.C. Circuit. A three-judge panel sided with the Biden administration and said the law does not violate the First Amendment. The panel, made up of judges appointed by presidents in both parties, said the law does not take aim at a particular viewpoint and is a reasonable response to Congress's national security concerns.

## **Has Trump taken a position on the sell-or-ban law?**

The deadline for the company to divest is one day before President-elect Donald Trump's inauguration. In an unusual court filing, he asked the Supreme Court to delay implementation of the law to give him an opportunity to act.

Trump promised during the campaign to protect TikTok, but his filing did not take a position on the constitutionality of the law. Instead, Trump's attorneys told the court that "Trump alone possesses the consummate dealmaking expertise, the electoral mandate, and the political will to negotiate a resolution to save the platform while addressing the national security concerns expressed by the Government."

That request was criticized by court watchers, including the Wall Street Journal editorial page, which said Trump "wants the Supreme Court to treat him like a second president" before President Joe Biden has left the White House.

## **What are the key legal arguments for and against TikTok?**

The company's lawyers say the sell-or-ban law, signed by Biden, is a "massive, unprecedented restriction of protected speech" that infringes on the rights of millions of Americans to engage with the content of their choice. Congress could have chosen a narrower path, they argue, to address what the company says are unfounded concerns about China accessing the data of U.S. users or trying to manipulate public opinion.

In scores of legal briefs, civil liberties advocates also urged the court not to allow the U.S. government to limit free speech based on what they characterized as speculative harm.

Solicitor General Elizabeth B. Prelogar, who is defending the law, told the court that the ban is not a restriction on speech, but rather on control of the app by a nation Congress has deemed a foreign adversary. Lawmakers in both parties have expressed concerns about China's potential influence on the app based on briefings from senior intelligence officials.

“TikTok may continue operating in the United States and presenting the same content from the same users in the same manner,” she wrote, “if its current owner executes a divestiture that frees the platform” from control by the People’s Republic of China.

## **What do the Supreme Court’s earlier rulings tell us about the TikTok case?**

The court has recently reviewed other cases with implications for free speech online, but without issuing decisive opinions on the merits. Both sides in the TikTok case quote from the court’s ruling involving Texas and Florida social media laws that restrict how online platforms moderate users’ posts. A majority of justices said in the case *NetChoice LLC v. Paxton* that a social media site’s content moderation and curation decisions are protected by the First Amendment.

The owners of TikTok compare the platform to a traditional media outlet exercising editorial discretion over content and say the First Amendment prevents Congress from interfering with those decisions.

The Biden administration acknowledges that TikTok’s signature video-recommendation algorithm and its content-moderation policies are a form of speech. But the government says the company has no First Amendment right to be controlled by a foreign adversary or to use an algorithm that the government says is developed, maintained and controlled by a foreign adversary — assertions the company vigorously disputes.

There are indications from past rulings that national security concerns and the involvement of foreign companies or organizations could have implications for the court’s constitutional analysis.

In a 2010 decision written by Chief Justice John G. Roberts Jr., the court rejected a First Amendment challenge to a law prohibiting “material support” to foreign organizations the State Department says engage in terrorism. In the *NetChoice* case last term, Justice Amy Coney Barrett seemed to foreshadow the TikTok debate when she wrote that a social media platform’s “foreign ownership and control over its content moderation decisions might affect whether laws overriding those decisions trigger First Amendment scrutiny.”

## **Can Trump ignore the court’s ruling once he’s president?**

As president, Trump would not have the authority to overturn the ban outright. But he could push Congress to repeal the law or encourage his attorney general to refrain from enforcing it. Even then, however, app-store owners or web-hosting companies might be concerned about continuing to include TikTok in violation of the law.

In 2022, ByteDance offered the Biden administration an extensive proposal, known as Project Texas, that would grant the U.S. government enormous sway over its workforce and technical underpinnings in exchange for continued operation in the United States.

## **What does the case mean for TikTok’s future?**

TikTok has cast the dispute in existential terms, arguing that if the Supreme Court upholds the law, it will shutter the app across the United States. The company has also

said that even a temporary pause in operations would cause “irreparable” damage to its business.

TikTok could fade in relevance among the many users who might shift to another short-video platform, such as Instagram Reels or YouTube Shorts. ByteDance could still offer TikTok in other countries, but the company has said the platform benefits from the participation of Americans because they make interesting content and end up watching everyone else’s.

Some Republicans are advocating for Trump to facilitate TikTok’s transfer to an American company so it could continue to operate.

After Trump sought to ban the app during his first administration, ByteDance engaged with suitors including Microsoft and Oracle on potential deals to spin off TikTok’s U.S. operations. Negotiations languished and ultimately unraveled.

Last year Trump, whose presidential campaign relied on TikTok content, reversed his support for a ban. He said a TikTok prohibition could benefit U.S. tech giant Meta.

The Supreme Court could largely take the matter out of Trump’s hands by striking down the law. But if it does not, Trump could seek to broker a sale or negotiate an agreement aimed at satisfying U.S. national security concerns.

*Drew Harwell contributed to this report.*