No. 24A587

In The Supreme Court of the United States

TIKTOK, INC. AND BYTEDANCE LTD.,

Applicants,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

On Emergency Application for Injunction Pending Review

BRIEF OF *AMICI CURIAE* FOUNDATION FOR INDIVIDUAL RIGHTS AND EXPRESSION, INSTITUTE FOR JUSTICE, AND REASON FOUNDATION IN SUPPORT OF APPLICANTS

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INTEREST OF *AMICUS CURIAE*[1]

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan, nonprofit organization dedicated to defending the rights of all Americans to the freedoms of speech, expression, and conscience—the essential qualities of liberty. Through litigation and advocacy, FIRE seeks to vindicate First Amendment rights without regard to the speakers' views. These cases include matters involving state attempts to regulate the internet and social media platforms, both directly and indirectly. *See, e.g.*, *NetChoice, LLC v. Bonta*, No. 23-2969, 2024 WL 3838423 (9th Cir. Aug. 16, 2024); *Volokh v. James*, 656 F. Supp. 3d 431 (S.D.N.Y. 2023), *appeal argued*, No. 23-356 (2d Cir. Feb. 16, 2024). FIRE regularly acts to protect First Amendment rights by challenging laws that restrict access to protected speech online. *E.g.*, *Zoulek v. Hass*, No. 2:24-cv-00031-RJS-CMR (D. Utah); *Students Engaged in Advancing Texas v. Paxton*, No. 1:24-cv-949-RP (N.D. Texas). *Amicus* FIRE also has a particular interest in this case given its use of TikTok as an advocacy tool. FIRE regularly posts videos updating over 78,000 followers about threats to expressive rights nationwide. FIRE also uses TikTok to educate viewers on their own First Amendment rights.[2] Since 2022, FIRE has posted 323 videos garnering over 14 million views.

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[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part, and that no person other than *amici* or its counsel contributed money intended to fund preparing or submitting this brief. Pursuant to Rule 37.2, *amici* affirms that all parties received timely notice to the intent to file this brief.

[2] FIRE (@thefireorg), TIKTOK, https://www.tiktok.com/@thefireorg.

The Institute for Justice (IJ) is a nonprofit, public interest law firm that seeks to end widespread abuses of government power and secure the constitutional rights that allow all Americans to pursue their dreams. Its free-speech advocacy particularly focuses on governmental attempts to silence speech through economic regulations, *see Edwards v. District of Columbia*, 755 F.3d 996 (D.C. Cir. 2014), and on government officials' attempts to use their power to retaliate against individuals and businesses whose speech they dislike, *see Gonzalez v. Trevino*, No. 22-1025 (decided June 20, 2024). Both interests are implicated by this case, where the United States Congress has, in the guise of an economic regulation, prohibited an entire channel of communication and explicitly done so, at least in part, because of concern about what might be said through that channel. IJ also engages in public advocacy about constitutional rights, through which it has (for example) saved tens of thousands of homes and businesses from eminent-domain abuse. As an advocate, IJ constantly seeks new avenues to reach the American public to convey messages about important legal issues—and, in its direct experience, TikTok is one of those avenues.[3] It therefore has an interest in this case both as a defender of free speech and as a speaker in its own right.

Reason Foundation ("Reason") is a nonpartisan and nonprofit public policy think tank, founded in 1978. Reason's mission is to promote free markets, individual liberty, equality of rights, and the rule of law. Reason advances its mission by publishing the critically acclaimed *Reason* magazine, as well as commentary on its

[3] IJ (@instituteforjustice), TIKTOK, https://www.tiktok.com/@instituteforjustice.

websites, www.reason.com and www.reason.org. To further Reason's commitment to "Free Minds and Free Markets," Reason has participated as *amicus curiae* in numerous cases raising significant legal and constitutional issues, including cases implicating free expression and social media platforms. *See, e.g.*, Brief of Reason Foundation et al. as *Amici Curiae* in Support of Petitioners, *Moody v. NetChoice, LLC*, 144 S. Ct. 2383 (2024); Brief of Reason Foundation as *Amicus Curiae* Supporting Respondent, *Gonzalez v. Google*, 598 U.S. 617 (2023). Reason also has an interest in this case as a speaker because it uses TikTok to promote its messages to an audience of over 24,000 followers.[4]

[4] Reason Magazine (@reasonmagazine), TIKTOK, https://www.tiktok.com/@reasonmagazine.

SUMMARY OF ARGUMENT

The nationwide ban on TikTok is the first time in history our government has proposed—or a court approved—prohibiting an entire medium of communications. Erwin Chemerinsky, *Opinion: The TikTok court case has staggering implications for free speech in America*, LOS ANGELES TIMES (Dec. 9, 2024), https://www.latimes.com/opinion/story/2024-12-09/tiktok-court-free-speech-first-amendment. The law imposes a prior restraint, and restricts speech based on both its content and viewpoint. As such, if not unconstitutional *per se*, it should be subject to the highest level of First Amendment scrutiny. Given the grave consequences, both for free speech doctrine and for the 170 million Americans who use TikTok to communicate with one another, this Court should at least hit the "pause button" before allowing such a drastic policy to go into effect.

The U.S. Court of Appeals for the District of Columbia Circuit correctly recognized the Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, Div. H (Apr. 24, 2024) ("the Act") as a direct regulation of speech. Exercising original and exclusive jurisdiction over TikTok's constitutional challenge, the court held the Act "implicates the First Amendment and is subject to heightened scrutiny," and assumed but did not decide strict scrutiny was warranted. *TikTok Inc. & ByteDance Ltd. v. Garland*, Nos. 24-1113, 24-1130, 24-1183, 2024 U.S. App. LEXIS 30916, at *28 (D.C. Cir. Dec. 6, 2024). However, the court held the Act "clears this high bar," granting deference to the government's characterization of alleged national security concerns to conclude the Act was "carefully crafted to deal

only with control by a foreign adversary, and it was part of a broader effort to counter a well-substantiated national security threat posed by the [People's Republic of China]." *Id.* at *39–40.

Although the appellate panel was correct that the Act should be subject to the highest level of First Amendment scrutiny, it failed to actually hold the government to its burden of proof, and deferred too readily to unsupported assertions of a national security threat.

Congress has not met the heavy constitutional burden the First Amendment demands when regulating speech, let alone banning an entire expressive platform. No published legislative findings or other official public records attempt to explain or substantiate why the Act's severe encroachment on millions of Americans' right to speak and to receive information is necessary to address a real and serious problem. Nor was there any showing the ban would effectively address the asserted risks.

The proffered evidence of the law's purpose reveals illegitimate intent to suppress disfavored speech and generalized concerns about data privacy and national security. These concerns fall far short of satisfying strict scrutiny, and the court's extreme deference to governmental conjecture is unwarranted, misguided, and dangerous. Nor is the Act narrowly tailored to any compelling or substantial government interest, as the First Amendment requires.

Constitutional intrusions of this unprecedented magnitude demand this Court's full consideration before they take effect. This Court should grant Petitioners' emergency application for an injunction pending review.

ARGUMENT

I. The Act Effectively Bans a Specified Platform for Communication.

In passing the Act, Congress effectively banned an important channel of communication and exposed other online platforms to onerous regulations, including potential bans. This unprecedented step did not trouble the appellate panel. *TikTok Inc.* at *60 ("Congress was entitled to address the threat posed by TikTok directly and create a generally applicable framework, however imperfect, for future use."). But the panel's deference cannot be squared with the First Amendment and this Court's longstanding precedent.

This Court has repeatedly "voiced particular concern with laws that foreclose an entire medium of expression." *City of Ladue v. Gilleo*, 512 U.S. 43, 55 (1994). The First Amendment protects the "process of expression through a medium" as well as "the expression itself." *Anderson v. City of Hermosa Beach*, 621 F.3d 1051, 1061–62 (9th Cir. 2010). And it is no answer to observe that other platforms exist, for "one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Reno v. ACLU*, 521 U.S. 844, 880 (1997) (citation omitted). Even when such prohibitions are "completely free of content or viewpoint discrimination," which this Act is not, "the danger they pose to the freedom of speech is readily apparent—by eliminating a common means of speaking, such measures can suppress too much speech." *City of Ladue*, 512 U.S. at 55. And if anything can be said to be a common means of speaking, it is a social media platform used by 170 million Americans.

Although the Act provides that TikTok can avoid a ban if sold within 270 days to an approved entity, Pub. L. 118-50, Div. H §§ 2(a)(2)(A), (c)(1), TikTok has stated the "divestiture of the TikTok U.S. business and its severance from the globally integrated platform of which it is an integral part is not commercially, technologically, or legally feasible." Pet'rs TikTok and ByteDance Ltd.'s Pet. Review 15. A forced divestiture to which TikTok cannot and will not submit is the functional equivalent of a ban.

A ban on a particular nationwide chain of bookstores would no doubt trigger strict First Amendment scrutiny. A nationwide prohibition on a specific social media platform is no different, as "regulation of a medium inevitably affects communication itself." *City of Ladue*, 512 U.S. at 48.

Despite the Act's unabashed and intentional targeting of a medium of communication, it contains no legislative findings, and Congress otherwise failed to create an official public record explaining the Act's purpose and rationale.[5] Some lawmakers raised concerns about national security related to U.S. TikTok users' data potentially falling into the hands of the Chinese government. But many other comments reveal the Act's purpose, at least in part, of suppressing disfavored speech on TikTok. The House Energy and Commerce Committee Report ("HECC Report"), for example, states the Act is in part intended to prevent TikTok and other regulated

[5] The D.C. Circuit pointedly declined to consider material that the government submitted under seal. [Decision at *65 ("Notwithstanding the significant effect the Act may have on the viability of the TikTok platform, we conclude the Act is valid based upon the public record.")].

communications platforms from "push[ing] misinformation, disinformation, and propaganda on the American public" (which foreign actors nevertheless remain free to do on other platforms).[6] Similarly, the Act's co-sponsor, Rep. Mike Gallagher, cited the "propaganda threat" as the "greater concern" about TikTok.[7]

Even if Congress characterized the Act as addressing only concerns like data collection, it would not change the fact that it explicitly targets a specific channel of communication and will potentially eliminate other platforms within the United States based in part on the content they host. This is most obvious insofar as the Act applies only to platforms that feature user-generated content and exempts those dedicated to product, business, or travel reviews. Pub. L. 118-50, Div. H §§ 2(g)(2)(A), (B).

It has been obvious from the beginning of internet regulation that laws targeting this medium inherently present serious First Amendment concerns. *See Reno*, 521 U.S. at 868–70. This is true even when the government attempts to evade First Amendment scrutiny by recharacterizing social media regulations as advancing some non-speech purpose. *See, e.g., NetChoice, LLC v. Yost*, No. 2:24-cv-00047, 2024 U.S. Dist. LEXIS 24129, at *19 (S.D. Ohio Feb. 12, 2024) (characterizing Ohio statute requiring social media platforms to obtain parental consent prior to use by minors as "an access law masquerading as a contract law" and preliminarily enjoining

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[6] H.R. Rep. No. 118-417 at 2 (2024).

[7] Jane Coaston, *What the TikTok Bill Is Really About, According to a Leading Republican*, N.Y. TIMES (Apr. 1, 2024), https://www.nytimes.com/2024/04/01/opinion/mike-gallagher-tiktok-sale-ban.html; *see also* Pet'rs Firebaugh et al.'s Pet. Review 20–23.

enforcement on First Amendment grounds). So too here. Simply invoking national security does not grant the government free rein to ban an expressive platform used by half the country.

The Act restricts the flow of information based on speaker- and content-based factors, including a *de facto* ban on an entire platform for expression. The Act's inexplicable exemption for platforms not used for specified expressive activity—even if they are "controlled by a foreign adversary" and collect user data—indicates its purpose is not simply to protect data privacy. These provisions—and comments by various members of Congress supporting the Act—reveal its purpose of regulating speech and the platform used to express it.

II. The Act Fails Any Level of First Amendment Scrutiny.

The Act is unconstitutional for two independent reasons. First, the Act's *de facto* ban of a specific platform for expression is an unprecedented prior restraint that will restrict the speech of tens of millions of Americans. Second, the ban is content-based and was adopted to purge disfavored viewpoints from public discourse—which is never a legitimate government interest. Either is grounds for the Court to invalidate the Act, under *any* level of scrutiny.

A. A content-based ban of an entire medium is an unprecedented prior restraint.

Banning a medium of communication cannot be characterized as anything but a classic prior restraint. Prior restraints that "deny use of a forum in advance of actual expression," *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975), are "the most

serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976). The Act's scheduled ban on TikTok will, in advance of actual expression, prevent anyone from using the platform to speak or receive information.

Prior restraints are "presumptively unconstitutional" and "generally call for strict scrutiny," *In re Sealed Case*, 77 F.4th 815, 829 (D.C. Cir. 2023). A prior restraint does not require that the government cut off access to *all* platforms of a particular category, but only that it block in advance whatever expression it restricts. *See Se. Promotions*, 420 U.S. at 547–48, 556 (municipal board's denial of use of city auditorium for theatrical production constituted prior restraint, regardless of whether another venue might have hosted production).

The Act has additional defects as it is also content-based. Speech regulation "is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Treating speakers differently can also be a form of content discrimination: "laws favoring some speakers over others demand strict scrutiny when the legislature's speaker preference reflects a content preference." *Id.* at 170 (citation omitted). Here, the Act is content based in multiple ways: it explicitly targets TikTok as a speech platform and as a speaker; it discriminates against the millions of speakers who use TikTok; it is justified in substantial part by disapproval of TikTok's content; and it exempts websites and apps that do not host user-generated content or that are primarily dedicated to product, business, or travel reviews.

"It is rare that a regulation restricting speech because of its content will ever be permissible." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799 (2011) (citation omitted). The government bears the burden to show the Act's restriction of speech "furthers a compelling interest and is narrowly tailored to achieve that interest." *Reed*, 576 U.S. at 171. "If a less restrictive alternative would serve the Government's purpose, the legislature must use that alternative," and the First Amendment forbids a "blanket ban if the [objective] can be accomplished by a less restrictive alternative." *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 813–14 (2000) (citation omitted). Congress has not met its heavy burden in these regards.

While the government has raised concerns about national security, which can be a compelling interest, it must provide evidence of a specific national security threat and prove the Act is necessary to address it. *See id.* at 819, 827 (content-based speech regulation violated First Amendment due to "little hard evidence of how widespread or how serious the problem" it sought to address was and government's failure to use "least restrictive means" to address it).

This Court has "never accepted mere conjecture as adequate to carry a First Amendment burden." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000). With respect to national security, the Court has observed: "The danger to political dissent is acute where the Government attempts to act under so vague a concept as the power to protect 'domestic security.' Given the difficulty of defining the domestic security interest, the danger of abuse in acting to protect that interest becomes apparent." *United States v. U.S. Dist. Court*, 407 U.S. 297, 314 (1972); *see also N.Y. Times Co. v.*

United States, 403 U.S. 713, 719 (1971) (Black, J., concurring) ("The word 'security' is a broad, vague generality whose contours should not be invoked to abrogate the fundamental law embodied in the First Amendment.").

With respect to the PRC's hypothetical manipulation of TikTok content, the government's argument is speculative twice over. First, the government "acknowledges that it lacks specific intelligence that shows the PRC has in the past or is now coercing TikTok into manipulating content in the United States." [Decision at 47.] Second, neither the government nor the court explain *how* the PRC's manipulation of TikTok content would pose a "grave threat to national security." [Decision at 54.] What exactly is the threat? Will the PRC's influence over a single social media platform in the U.S.—a democracy where citizens have free access to an overwhelming diversity of viewpoints and information sources—magically turn millions of Americans into Manchurian candidates? Despite the government's lack of evidence that the PRC is controlling TikTok content and inability to explain how such control would seriously threaten national security, the court blindly deferred to the government's judgment and unjustifiably dismissed an obvious, less-restrictive alternative: counterspeech. *See Kohls v. Bonta*, No. 2:24-CV-02527 JAM-CKD, 2024 WL 4374134, at *1 (E.D. Cal. Oct. 2, 2024) ("Especially as to political speech, counter speech is the tried and true buffer and elixir, not speech restriction.") (citation omitted).

The government's separate claim that the Act serves national security by countering the PRC's efforts to collect data from Americans also amounts to little

more than conjecture. The court's decision was based on a record devoid of evidence showing TikTok's parent company ByteDance has actually disclosed or will disclose TikTok user data to the PRC, what that data includes, what the PRC has done or would do with it, or how those actions will harm U.S. national security. Notably, last year, a federal district court preliminarily enjoined Montana's TikTok ban on First Amendment grounds, holding that the state's argument that China "can gain access to Montanan[s'] data without their consent" lacked supporting evidence. *Alario v. Knudsen*, 704 F. Supp. 3d 1061, 1082 (D. Mont. 2023).

Use of a prior restraint in these circumstances—the most intrusive of speech restrictions, and a content-based one at that—is particularly suspect where numerous less restrictive options were available to the government. For example, Congress could have enacted generally applicable legislation addressing the specific data practices that concern many of the Act's supporters. Moreover, TikTok reached a national security agreement through negotiations with the Committee on Foreign Investment in the United States, "including agreeing to a 'shut-down option' that would give the government the authority to suspend TikTok in the United States if [TikTok and ByteDance] violate certain obligations under the agreement." Pet'rs TikTok and ByteDance Ltd.'s Pet. Review 5. The court recognized that the agreement and TikTok's voluntary mitigation efforts "provide some protection" but again uncritically deferred to the government's unsupported assertion that these available less-restrictive means are inadequate. [Decision at 40.]

The Act's underinclusiveness further demonstrates its sloppy tailoring. "Underinclusiveness raises serious doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint." *Brown*, 564 U.S. at 802. If the Act's purpose is to prevent platforms that collect user data from disclosing it to foreign adversaries, it is not at all clear why the Act applies only to platforms that permit users to "generate or distribute content," Pub. L. 118-50, Div. H, § 2(g)(2)(A)(iii), or why it exempts platforms "whose primary purpose is to allow users to post product reviews, business reviews, or travel information and reviews." *Id.* § 2(g)(2)(B). The asserted interests in data privacy would seem to apply generally to *any* website or application that collects user data and is "controlled by a foreign adversary," regardless of whether its users generate content or whether its content centers on reviews rather than, say, political speech.

B. Disagreement with views expressed on TikTok is not a legitimate basis for regulating it.

A primary purpose of the Act is to banish disfavored viewpoints from the marketplace of ideas—a constitutionally infirm basis for regulating speech. Such a viewpoint-based purpose is not even a legitimate governmental interest, let alone a compelling one. "At the heart of the First Amendment's Free Speech Clause is the recognition that viewpoint discrimination is uniquely harmful to a free and democratic society." *NRA of Am. v. Vullo*, 602 U.S. 175, 187 (2024). The government "must abstain from regulating speech when the specific motivating ideology or the

opinion or perspective of the speaker is the rationale for the restriction." *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829 (1995).

Moreover, the First Amendment protects not only the right to express ideas but also the right to receive them, including alleged "propaganda" from abroad. *Lamont v. Postmaster General*, 381 U.S. 301, 306–07 (1965). The Circuit majority unconvincingly attempted to distinguish *Lamont* as a narrow decision dependent on "an affirmative obligation to out oneself to the government in order to receive communications from a foreign country that are otherwise permitted to be here." [Decision at 17.] *Lamont* concerned a requirement that anyone wishing to obtain foreign "communist political propaganda" through the mail affirmatively notify the Postal Service, but the Court established more broadly that the First Amendment prohibits the government from seeking "to control the flow of ideas to the public," including from foreign sources. *Id.* at 306. In context, the statement that the Court rested its holding on "the narrow ground that the addressee . . . must request in writing" the desired foreign content merely explained that the decision should not be read to mean the government may not "classify the mail," "fix the charges for its carriage," "inspect material from abroad for contraband," or take other similar speech-neutral actions. *Id.* at 306–07. There was no suggestion the government may pass laws even *more* restrictive than an affirmative-request requirement on Americans' access to information from abroad. If the government may not impose a notice requirement because it would likely cause recipients "to feel some inhibition in sending for literature" designated as propaganda, *id.* at 307, it follows

that it cannot—for relevant example—completely *ban* receipt of the information. That does more than risk chilling access to information—it *eliminates* access. The Court's subsequent decision in *Meese v. Keene*, 481 U.S. 465 (1987), confirms that *Lamont* governs any government attempt to "prohibit, edit, or restrain the distribution of advocacy materials in an ostensible effort to protect the public from conversion, confusion, or deceit." *Id.* at 480. And by preventing Americans from accessing information on TikTok, including—but not limited to—content from a foreign adversary, that is essentially what the Act does here.

Despite acknowledging the "Government justifies the Act in substantial part by reference to a foreign adversary's ability to manipulate content seen by Americans," [Decision at 28] the Circuit majority paradoxically determined the government is not motivated by concerns about the ideas or messages Americans encounter on TikTok. This perplexing conclusion is directly contradicted by the court's own characterization of the government's concerns about "the risk that the PRC might shape the content that American users receive, interfere with our political discourse, and promote content based upon its alignment with the PRC's interests," [Decision at 30.] even noting the risk of the PRC promoting its views on a specific topic: "Taiwan's relationship to the PRC." *Id.* And numerous legislators who supported the Act expressed concerns about "propaganda" and specific viewpoints being promoted on TikTok.[8] The government is plainly targeting PRC's influence over

[8] The HECC report's and Rep. Gallagher's comments about "propaganda" noted above are just the tip of the iceberg. *See* H.R. Rep. No. 118-417, *supra* note 10, at 2;

TikTok content because of how that could affect what messages and ideas Americans encounter on the platform, taking the Act into forbidden constitutional territory.

Notwithstanding the "central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas," *FCC v. Pacifica Found.*, 438 U.S. 726, 745–46 (1978), the court upheld the Act even after applying strict scrutiny—"the most demanding test known to constitutional law." *City of Boerne v. Flores*, 521 U.S. 507, 534 (1997).

The court's analysis flips the First Amendment on its head, proclaiming the Act, which eliminates millions of Americans' access to a platform for communication for the purpose of shielding them from disfavored ideas, "actually vindicates the values that undergird the First Amendment." [Decision at 43.] Ironically, the court cites *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), for the proposition that the First Amendment prohibits "the government from tilting public debate in a preferred direction." [Decision at 43.] Yet that is exactly what the government is doing here—regulating a private speech platform "in order to achieve its own conception of speech

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Coaston, *supra* note 11. When the Act was introduced, Rep. Mikie Sherrill claimed the Chinese Communist Party uses TikTok to "promote propaganda." *Bill to Protect Americans From Foreign Adversary Controlled Applications, Including TikTok,* SELECT COMM. ON THE CCP (Mar. 5, 2024), https://selectcommitteeontheccp.house.gov/media/bills/bill-protectamericans-foreign-adversary-controlled-applications-including-tiktok. Rep. John Moolenaar said, "we cannot allow the CCP to indoctrinate our children." *Id.* Rep. Ashley Hinson claimed China uses TikTok to "push harmful propaganda, including content showing migrants how to illegally cross our Southern Border, supporting Hamas terrorists, and whitewashing 9/11." *Id.* And Rep. Elise Stefanik accused TikTok of "proliferating videos on how to cross our border illegally" and "supporting Osama Bin Laden's Letter to America." *Id.* That is only a sampling of lawmakers' remarks betraying the Act's clear viewpoint-discriminatory purpose.

nirvana." *Moody*, 603 U.S. at 742. The remedy for the government's fear that TikTok will tilt public debate in an unfavorable direction is "more speech," *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring), not regulation that seeks "to orchestrate public discussion through content-based mandates." *United States v. Alvarez*, 567 U.S. 709, 728 (2012).

CONCLUSION

Never before has Congress taken the extraordinary step of effectively banning a platform for communication, let alone one used by half the country. Congress might be expected to furnish a legislative record that explains why such a dramatic restriction of the right to speak and receive information is necessary, and provide compelling evidence in support, but it failed to do so here. What little Congress did place on the public record includes statements from lawmakers raising diffuse concerns about national security and, more disturbingly, their desire to control the American public's information diet in a way that strikes at the heart of the First Amendment.

This case demands full consideration by this Court in advance of allowing such world-changing consequences to occur. This Court should grant Petitioners' emergency application for an injunction pending review.

December 17, 2024

Respectfully Submitted,

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