

Nos. 24-656, 24-657

IN THE
Supreme Court of the United States

TIKTOK, INC., *et al.*,

Petitioners,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

BRIAN FIREBAUGH, *et al.*,

Petitioners,

v.

MERRICK B. GARLAND, ATTORNEY GENERAL,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF OF AMICI CURIAE
ADVANCING AMERICAN FREEDOM;
[Additional List in Support of Respondent on Inside Cover]**

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PROPERTY, INC.; YANKEE INSTITUTE; AND
YOUNG AMERICA'S FOUNDATION**

QUESTIONS PRESENTED

1. Whether the Protecting Americans from Foreign Adversary Controlled Applications Act, as applied to Petitioners, Violates the First Amendment.

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STATEMENT OF INTEREST OF AMICI CURIAE

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including equal treatment before the law.¹ AAF “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,”² and believes that America’s system of constitutional government, unique in the world, must be preserved and restored for the sake of American freedom. As the Founders understood, liberty depends on the proper balance of power among the people, their local and state governments, and the federal government. AAF files this brief on behalf of its 131,317 members throughout the United States.

Amici Matt Pottinger, 32nd U.S. Principal Deputy National Security Advisor (2019-21), Chairman of the China Program at the Foundation for Defense of Democracies; Robert Wilkie; Secretary of Veterans Affairs, 2018-2021, Under Secretary of Defense, 2017-2018; AFA Action; American Association of Senior Citizens; American Hindu Coalition; American Values; Bob Carlstrom, Former President, AMAC Action; Catholics Count; Center for a Free Cuba; Center for Political Renewal (CPR); Center

1. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

2. Edwin J. Feulner, Jr., *Conservatives Stalk the House: The Story of the Republican Study Committee*, 212 (Green Hill Publishers, Inc. 1983).

for Urban Renewal and Education (CURE); Eagle Forum; Family Council in Arkansas; Frontline; Charlier Gerow; Allen J. Hebert, Chairman, American-Chinese Fellowship of Houston; International Conference of Evangelical Chaplain Endorsers; JCCWatch.org; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Barbara Lee; Men and Women for a Representative Democracy in America; Mountain States Policy Center; National Center for Public Policy Research; National Religious Broadcasters; National Review; North Carolina Values Coalition; Melissa Ortiz, Principal & Founder, Capability Consulting; Setting Things Right; 60 Plus Association; Paul Stam, Former Speaker Pro Tempore, North Carolina House; Stand for Georgia Values Action; The Concord Fund; Tradition, Family, Property, Inc.; Yankee Institute; and Young America's Foundation believe in preserving American freedom against foreign adversaries whose intention is to undermine American civilization.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

TikTok “is essentially digital fentanyl, a 21st century technological weapon. The app is so potent and addictive that TikTok is banned *within* China. The version of TikTok approved for use in China is watered down, free of an algorithm set for addiction, and focused on educational purposes.”³ The Founders, in their efforts to structure and

3. Mike Pence, *TikTok is digital fentanyl and Congress, Biden must act before it's too late*, Fox News (Mar. 12, 2024, 5:00 AM) <https://www.foxnews.com/opinion/tiktok-digital-fentanyl-congress-biden-act>.

limit the government so that it can effectively safeguard American liberty from threats foreign and domestic, did not inadvertently create a system in which the government is powerless to protect those freedoms from its foreign enemies. “[T]he founders recognized the darker side of human nature and attempted in the Constitution to forge a balance between liberty, for which they had fought a revolution, and order, which would protect the rights of all, not just the powerful.”⁴

President Donald Trump, President Joe Biden, and Congress, all with the benefit of classified briefings and information, concluded that the Chinese Communist Party’s (CCP) influence over TikTok was a national security threat so severe that it warranted action. The Constitution empowers Congress to defend our constitutional order, and it did so through the enactment of the Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACAA).

The CCP does not respect free speech, either in China or in America. The First Amendment is not, and should not be read as, a means of granting the Chinese government the power to do what the American government could not: manipulate what Americans can say and hear. The D.C. Circuit, thus, rightly found that the PAFACAA does not violate the First Amendment. America is the bulwark of freedom and Western Civilization in the world. The PAFACAA is an important element in its fulfilment of that roll. This Court should affirm the decision of the D.C. Circuit and rule for Respondents.

4. Lee Edwards, *The Conservative Revolution* 322 (Free Press 1999).

ARGUMENT

I. The Chinese Communist Party Threatens, and is Threatened by, Free Speech.

The CCP is threatened by free speech and seeks to suppress it, even on American soil. In December 2024, Chen Jinping of New York City pled guilty to charges related to his operation of a secret CCP police station in the city.⁵ “Executive Assistant Director Robert Wells of the FBI’s National Security Branch said the case is a part of China’s larger efforts to ‘threaten, harass, and intimidate those who speak against their Communist Party.’”⁶

This opposition to free speech is not new. The year 1989, remembered in the free world as “the ‘Year of Miracles’ as the Berlin Wall fell and the façade of the Soviet Union began to crumble,” was a year that also showed “the true nature and brutality of the Chinese Communist Party.”⁷ The true nature of Communism⁸ was demonstrated

5. Kayla Jiminez, *A whole floor of a NYC building was a secret, ‘illegal police station’ for China: DOJ*, USA Today (Dec. 19, 2024) <https://www.msn.com/en-us/news/world/a-whole-floor-of-a-nyc-building-was-a-secret-illegal-police-station-for-china-doj/ar-AA1wb8BE?ocid=entnewsntp&pc=U531&cvid=40998d292cd84f669e1a07ef1b7cb134&ei=2>.

6. *Id.*

7. Andrew Bremberg, *Tiananmen Square, 34 Years Later*, Victims of Communism Memorial Foundation June 1, 2023) <https://victimsofcommunism.org/tiananmen-square-34-years-later/>.

8. “Yet there is one experience which most sincere ex-Communist share, whether or not they go only part way to the

by the CCP’s killing of peaceful protestors who were “[d]emanding a free press, government accountability, and genuine representation.”⁹ Even today, “the CCP censors any mention of its crimes on June 4 and oppresses its citizens who seek the truth.”¹⁰

More recently, the CCP has cracked down on Hong Kong protests after it took effective control of the city, violating its agreement to let it remain largely autonomous at least until the 2040s. This crackdown included the arrest of Jimmy Lai founder of Apple Daily, a “pro-democracy newspaper” in Hong Kong.¹¹ *The Hong Konger*, Acton Institute’s documentary on Jimmy Lai, is banned

end of the question it poses. The daughter of a former German diplomat in Moscow was trying to explain to me why her father, who, as an enlightened modern man, had been extremely pro-Communist, had become an implacable anti-Communist. It was hard for her because, as an enlightened modern girl, she shared the Communist vision without being a Communist. But she loved her father and the irrationality of his defection embarrassed her. ‘He was immensely pro-Soviet,’ she said, ‘and then—you will laugh at me — but you must not laugh at my father — and then — one night—in Moscow—he heard screams. That’s all. Simply one night he heard screams.’” Whittaker Chambers, *Witness* 13-14 (Regenery Publishing, Inc. 1978).

9. *Id.*

10. *Id.*

11. Kanis Leung, *Hong Kong ex publisher Jimmy Lai testifies he didn’t ask Pence, Pompeo to take action against city*, Associated Press (Nov. 20, 2024) <https://apnews.com/article/hong-kong-jimmy-lai-national-security-trial-4364ca9635ff2d6601cdbd172ff94fdb>.

by TikTok.¹² Lai's trial, which will determine whether he spends up to the rest of his life in prison, is ongoing.

Further, when Dr. Li Wenliang warned other doctors about COVID in December 2019, "he was summoned to the Public Security Bureau where he was told to sign a letter" accusing him of "making false comments" that had "severely disturbed the social order."¹³ After Dr. Li's death, one of the top trending hashtags on Chinese social media site Weibo was "We want freedom of speech."¹⁴ As the BBC reports, that hashtag was "quickly censored," with "hundreds of thousands of comments [having] already been wiped."¹⁵

The CCP is also imprisoning as many as two million Uyghurs in what the State Department has classified as a genocide.¹⁶ The CCP seeks to advance this mass persecution through speech controls, as Li Lin found out

12. Isaac Willour, *The Trial of Jimmy Lai*, Religion and Liberty Online, (December 18, 2023) <https://rlo.acton.org/archives/125181-the-trial-of-jimmy-lai.html>.

13. *Li Wenliang: Coronavirus kills Chinese whistleblower doctor*, British Broadcasting Company (Feb. 6, 2020) <https://www.bbc.com/news/world-asia-china-51403795>.

14. *Id.*

15. *Id.*

16. Jennifer Hansler, Zamira Rahim, Ben Westcott, *US accuses China of 'genocide' of Uyghurs and minority groups in Xinjiang*, CNN (Jan. 20, 2021) <https://www.cnn.com/2021/01/19/us/us-xinjiang-china-genocide-intl/index.html>.

the hard way.¹⁷ After visiting family in Xinjiang province, where the Uyghur roundup is happening, Li tweeted critically about the government abuse in the region and was arrested and ultimately sentenced to four years in prison for his statements.¹⁸

Finally, the CCP is also attempting to build out a social credit system that would enlist technology as well as “[f]ormal and informal informants of all kinds” to surveil and rate Chinese citizens on their behaviors and reward or punish them based on those scores.¹⁹

There is no reason to believe that when the CCP exercises influence over TikTok that it suddenly respects freedom. Yet the financial interests behind TikTok demand it to be shielded by the constitutional guarantees of that freedom. No one should be naïve about these pleas.²⁰

17. Alice Su, *How Beijing silences Chinese voices against oppression*, Los Angeles Time (Apr. 1, 2021 3:00 AM) <https://www.latimes.com/world-nation/story/2021-04-01/china-xinjiang-uyghur-han-censorship-nationalism>.

18. *Id.*

19. Minxin Pei, *Xi Jinping’s high-tech surveillance state*, Australian Financial Review (Mar. 1, 2024 5:00 AM) <https://www.afr.com/world/asia/in-china-a-poor-social-score-affects-where-you-can-sleep-dine-or-live-20240222-p5f6y9>.

20. “Wherever Communists are organized for power there is hostility, suspicion, insecurity, and disintegration.” Gerhart Niemeyer, *The Communist Mind* (1963) in William F. Buckley, Jr. and Charles R. Kesler, *Keeping the Tables: Modern American Conservative Thought*, 352 (2nd ed., Harper and Row Publishers 1988).

II. The First Amendment is Not an Open Door for the Enemies of Freedom.

The First Amendment, one of the many great achievements of the founding generation, prohibits Congress from, among other things, making any law that “abridge[es] the freedom of speech, or of the press.” U.S. Const. amend. I. Fundamentally, the First Amendment ensures that the government cannot silence speech that it does not like or push unsanctioned messages out of the marketplace of ideas.²¹ As this Court has said, “If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or other matters of opinion.” *West Virginia State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

Petitioners’ interpretation of the First Amendment would constitute sawing off the branch upon which that Amendment rests. If Petitioners’ argument were accepted, it would make it difficult if not impossible to prevent foreign governments from accomplishing such manipulation of Americans through noncoercive means.

As Senator Mitch McConnell explained in his amicus brief, “TikTok . . . is under the direct control of the [CCP]. “The TikTok platform has approximately 170 million monthly users in the United States,” App. at 38a, a little

21. *See, e.g.*, Brief of amici curiae Advancing American Freedom, et al., *Murthy v. Missouri*, 603 U.S. ___, No. 23-411 (2024) available at <https://advancingamericanfreedom.com/murthy-v-missouri/>.

over half of all Americans.²² Recent Pew research found that 52% of TikTok users “say they regularly get news there,” up from a mere 22% in 2020.²³ That suggests that over 88 million Americans every month are getting news from TikTok.

TikTok, of course, does not force its users to accept certain beliefs or positions.²⁴ However, to say that it, and its ultimate authority, the CCP, are therefore not “prescribing what shall be orthodox in politics, nationalism, religion or other matters of opinion,” *Barnette*, 319 U.S. at 642, is tantamount to burying one’s head in the sand. If a quarter of Americans are getting news from TikTok, what that platform chooses to show, and how it chooses to show it, has the potential to massively impact how Americans think

22. Brief of Amicus Curiae of Senator Mitch McConnell at 1, *TikTok v. Garland*, No. 24A587 (2024).

23. Rebecca Leppert and Katarina Eva Matsa, *More young Americans – especially young adults – are regularly getting news on TikTok*, Pew Research (Sept. 17, 2024) <https://www.pewresearch.org/short-reads/2024/09/17/more-americans-regularly-get-news-on-tiktok-especially-young-adults/>.

24. “On the other hand, destructive and irresponsible freedom has been granted boundless space. Society has turned out to have scarce defense against the abyss of human decadence, for example against the misuse of liberty for moral violence against young people, such as motion pictures full of pornography, crime, and horror. This is all considered to be part of freedom and to be counterbalanced, in theory, by the young people’s right not to look and not to accept. Life organized legalistically has thus shown its inability to defend itself against the corrosion of evil.” Aleksandr Solzhenitsyn, *A World Split Apart: Solzhenitsyn’s Commencement Address*, Harvard University (June 8, 1978) <https://www.solzhenitsyncenter.org/a-world-split-apart>.

about the world.²⁵ “We would never have let Russia run the nightly news during the Cold War, and we certainly can’t let China do the same now.”²⁶

Acquiescing to the CCP’s manipulation of young minds would destroy the freedoms the Constitution guarantees. Yet advocates for the status quo claim those same guarantees shield TikTok from government action to cut TikTok’s CCP puppet strings. China cynically claims the First Amendment for itself while it works to rob Americans of their First Amendments inheritance.

For obvious reasons, TikTok’s argument that the First Amendment’s protections of speech shield it from the enforcement of the PAFACAA turns the First Amendment on its head. Congress cannot restrict the freedom of speech. That prohibition extends to forcing a social media company to censor speech. *See Nat’l Rifle Ass’n v. Vullo*, 602 U.S. 175, 190 (2024) (“[A] government official cannot do indirectly what she is barred from doing directly.”); *Murthy v. Missouri*, No 603 U.S. ___, 23-411 at 24 (Alito, J., dissenting) (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)) (“[T]he government may not coerce or intimidate a third-party into suppressing someone else’s speech.”). Yet TikTok’s asserted First Amendment

25. “Because instant and credible information is required, it becomes necessary to resort to guesswork, rumors, and suppositions to fill in the voids, and none of them will ever be refuted; they settle into the readers’ memory. How many hasty, immature, superficial, and misleading judgments are expressed every day, confusing readers, and are then left hanging?” Solzhenitsyn, *supra* note 24.

26. Pence, *supra* note 3.

meaning would privilege the Chinese government or the government of any other nation to do what the American government cannot: censor Americans' speech or manipulate the information they see.²⁷

III. The D.C. Circuit Rightly Found that the PAFACAA Would Meet Even Strict Scrutiny.

While Respondent correctly argues that the PAFACAA does not trigger strict scrutiny, the D.C. Circuit was also correct to determine that it meets even that higher standard of review. Strict scrutiny requires that the government show that a law is “narrowly tailored to serve a compelling state interest.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015) (citing *R.A.V. v. St. Paul*, 505 U.S. 377, 395 (1992)).

The PAFACAA serves the compelling state interest of national security.²⁸ As the D.C. Circuit explained, the

27. See, e.g., Rep. Mike Gallagher, *Why Do Young Americans Support Hamas? Look at TikTok*, The Free Press (Nov. 1, 2023) <https://www.thefp.com/p/tik-tok-young-americans-hamas-mike-gallag>; Olga Robinson, Adam Robinson, Shayan Sardarizadeh, Ukraine war: How TikTok fakes pushed Russian lies to millions, BBC (Dec. 14, 2023) <https://www.bbc.com/news/world-europe-67687449>.

28. The dangers of TikTok are evident to America's allies, many of which have banned TikTok from government-issued devices, citing threats to privacy and national security. NATO nations like Belgium, Denmark, France, the Netherlands, and NATO itself restricted TikTok to frustrate China's subversive data mining and influence efforts. Additionally, all members of Five Eyes (the Anglosphere intelligence alliance of Australia, Canada, New Zealand, the United Kingdom, and the United States) placed

CCP is a major cyber security threat to the United States. App. at 34a. This threat includes its intent to gather information about Americans including “by penetrating the U.S. Government Office of Personnel Management’s system and taking ‘reams’ of personal data, stealing data on 147 million Americans from a credit-reporting agency, and ‘almost certainly’ extracting health data on nearly 80 million Americans for a health insurance provider.” *Id.* The CCP also accomplishes this “by investing in firms that have or have access to” sensitive information. *Id.* at 35. The Chinese government, in turn, through Chinese law, has access to data held by Chinese companies. *Id.* The U.S. Government has found that “ByteDance and TikTok Global have taken action in response to PRC demands to censor content *outside* of China.” App. at 36a (emphasis in original) (internal quotation marks omitted).

Further, as the D.C. Circuit concludes, “[i]n this case, a foreign government threatens to distort free speech on an important medium of communication. Using its hybrid commercial strategy, the PRC has positioned itself to manipulate public discourse on TikTok in order to serve its own ends.” *Id.* at 43a. These dangers show that preventing TikTok from continuing to operate in the United States while under CCP control advances Respondent’s compelling interest in national security.

The PAFACAA is also narrowly tailored to achieve the government’s national security objective. By applying the

some level of prohibition of TikTok use by government employees. Kelvin Chan, *These are the countries where TikTok is already banned*, AP News (Apr. 26, 2024 9:47 AM) <https://apnews.com/article/tiktok-bytedance-ban-china-india-376f32d78861e14e65ec4bc78e808a0d>.

law only to foreign-adversary controlled, substantial media of communication and including a divestiture exemption, “Congress addressed precisely the harms it seeks to counter and only those harms.” *Id.* at 48a. First, the PAFACAA is not overinclusive because it only addresses those applications that directly impair the national security interest described above. Second, the PAFACAA is not underinclusive because it requires divestiture which would allow TikTok to continue to operate without CCP control that is the basis of the law’s enactment. In fact, upon divestiture, “people in the United States would remain free to read and share as much PRC propaganda (or any other content) as they desire on TikTok or any other platform of their choosing. What the Act targets is the PRC’s ability to manipulate that content covertly. Understood in that way, the Government’s justification is wholly consonant with the First Amendment.” App. at 30-31a. TikTok, owned and operated by a company not under the jurisdiction of the Peoples’ Republic of China, Russia, Iran, North Korea or some other foreign adversary, would resolve that danger. Anything less than divestiture would undermine the Federal Government’s national security interest.²⁹

Short-form video apps, and TikTok specifically, were cited as key instruments for achieving Beijing’s propaganda aims. In 2021, Xi Jinping held a study session with top Communist Party leaders in which he called

29. Rachel Lee, et al, *TikTok, ByteDance, and their ties to the Chinese Communist Party*, Submission to the Australian Senate Select Committee on Foreign Interference through Social Media (14 March 2023) available at <https://www.aph.gov.au/DocumentStore.ashx?id=a7e2a076-1112-4414-ba0f-f129e0cd39fe&subId=735418>.

for using “external discourse mechanisms” to “target different regions, different countries, and different groups of audiences” with “precise communication methods” in order to “make friends, unite and win the majority, and constantly expand our circle of friends who know China and are China-friendly.”

To be sure, Beijing pushes its propaganda on other platforms besides TikTok. But what makes TikTok qualitatively different, and so problematic from a national security and free-speech perspective, is that Beijing controls and regulates TikTok’s algorithms that determine which content reaches a broad audience in the United States, and which content barely reaches anyone at all. U.S. media have reported on TikTok “heating” certain content to promote it on the platform. Subsequent studies by third-party watchdogs and a 2023 hearing by a congressional committee showed that content on TikTok that aligns with the Chinese Communist Party’s policy objectives went “viral” to a far higher degree than similar content on U.S.-based platforms such as X and Instagram. Similarly, content that the Chinese Communist Party finds harmful to its image barely gained traction on TikTok, in sharp contrast with U.S. platforms. This despite the fact that TikTok’s user demographic in the United States is comparable to that of other platforms, and despite the fact that “neutral” content (such as celebrity news) trended in roughly equal proportion on TikTok as on U.S. platforms.³⁰

30. *Select Committee on CCP Holds Hearing on Chinese Influence Operations, Propaganda* (December 1, 2023), available at <https://selectcommitteeontheccp.house.gov/media/press-releases/media-package-select-committee-ccp-holds-hearing-chinese-influence-operations>.

This is to say that, according to TikTok's own data (which it stopped making available after the House Select Committee on the Chinese Communist Party hearing on the subject), it is clear beyond a reasonable doubt that TikTok or its Communist Party minders and regulators in Beijing exercised the power to amplify or suppress content on TikTok in line with Beijing's wishes.³¹

The potential -- and rationale -- for Beijing to use this powerful tool to influence democratic elections in the United States and beyond is obvious. The European Union is investigating the role of TikTok in its recent presidential election, after a pro-Russian politician with no discernable public profile -- except on TikTok -- finished in first place.³²

It is well-known that China's government exploits Chinese companies to access Americans' data, including for purposes of espionage. Even more important in the case of TikTok, however, is how China's government exploits Chinese Internet companies for overseas political interference through propaganda, misinformation, and censorship. The biggest risks involve TikTok serving as an unprecedentedly powerful instrument by which Beijing can shape narratives and influence public opinion beyond China's borders -- and inside our own.

31. Sapna Maheshwari, *TikTok Quietly Curtails Data Tool Used by Critics*, New York Times (Jan. 8, 2024) <https://www.nytimes.com/2024/01/08/business/media/tiktok-data-tool-israel-amas-war.html>.

32. *EU investigates TikTok over alleged Russian meddling in Romanian vote*, BBC (Dec. 16, 2024) available at <https://www.bbc.com/news/articles/cm2v13nz202o>

The Chinese dictator Xi Jinping’s intention to use Internet applications to influence foreign audiences are well documented. In 2013, speaking to a Communist Party National Propaganda Work Conference, Xi identified the Internet as the “main battlefield,” calling for a “strong Internet army” to contend with “Western anti-China forces.”³³

An authoritative 2018 Chinese military textbook on “Xi Jinping Thought,” as Beijing’s official ideology is now called, states the following: “The battle for ‘mind control’ happens on a smokeless battlefield. It happens inside the domain of ideology. Whoever controls this battlefield can win hearts. They will have the initiative throughout the competition and combat. . . . When it comes to combat in the ideology domain, we don’t have any room for compromise or retreat. We must achieve total victory.” The textbook goes on to state the following: “The crumbling of a regime always starts in the realm of ideas. Political upheaval and the toppling of a regime could occur in a single night. But changing the way people think is a long-term process. Once the front lines of human thought have been broken through, other defensive lines also become hard to defend.”³⁴

33. Rachel Lee, et al, *TikTok, ByteDance, and their ties to the Chinese Communist Party*, Submission to the Australian Senate Select Committee on Foreign Interference through Social Media (14 March 2023) available at <https://www.aph.gov.au/DocumentStore.ashx?id=a7e2a076-1112-4414-ba0f-f129e0cd39fe&subId=735418>.

34. Matt Pottinger and Mike Gallagher, *No Substitute for Victory: America’s Competition With China Must Be Won, Not Managed*, Foreign Affairs, (Apr. 10, 2024), available at <https://www.foreignaffairs.com/united-states/no-substitute-victory-pottinger-gallagher>.

The “chief editor” of TikTok’s parent company, ByteDance, was simultaneously listed as the company’s Communist Party Secretary, according to Chinese state media. In 2018 he declared that ByteDance should “transmit the correct political direction, public opinion guidance and value orientation into every business and product line.” The deputy chief editor is deputy Communist Party Secretary. ByteDance works directly with China’s paramilitary People’s Armed Police (PAP) and its Ministry of Public Security (MPS) -- key state organs for enforcing single-party rule in China.³⁵

As such, arguments that favor Beijing’s right to control TikTok in the United States are not truly “pro-free-speech.” These arguments -- wittingly or otherwise -- actually promote control of American speech: not by the United States government, but by a hostile dictatorship in Beijing.

Thus, because the PAFACAA meets the requirements of strict scrutiny, it does not violate the First Amendment and should be upheld.

IV. America is the Bulwark of Freedom and Western Civilization.

America, on the cusp of celebrating the 250th anniversary of winning its independence by the force of

35. Rachel Lee, et al, *TikTok, ByteDance, and their ties to the Chinese Communist Party*, Submission to the Australian Senate Select Committee on Foreign Interference through Social Media (14 March 2023) available at <https://www.aph.gov.au/DocumentStore.ashx?id=a7e2a076-1112-4414-ba0f-f129e0cd39fe&subId=735418>.

arms, cannot allow itself to be confused by an adversary that demands its own hostile actions beshielded from the law while not respecting the law or the civilization on which the law rests.

Western Civilization grows out of the ideas cultivated by “The Great Conversation,” a millennia-long dialogue among the great minds of the West.³⁶ As Russel Kirk explained, the West is built on the ideas of Jerusalem, Athens, Rome, London, and the civilizations those cities represent.³⁷ These ideas are the “roots of order” that ensure that people as individuals and as a society can flourish.

The roots of order twist back to the Hebrew perceptions of a purposeful moral existence under God. They extend to the philosophical

36. Robert M. Hutchins, *The Great Conversation: The Substance of a Liberal Education* 1 (1st ed., Mortimer Adler ed. 1952) (“The tradition of the West is embodied in the Great Conversation that began in the dawn of history and that continues to the present day. Whatever the merits of other civilizations in other respects, no civilization is like that of the West in this respect. No other civilization can claim that its defining characteristics is a dialogue of this sort. The goal toward which Western society moves is the Civilization of Dialogue.”).

37. Russell Kirk, *The Roots of American Order* 6 (1st ed. 1977) (“Seeking for the roots of order, we are led to four cities: Jerusalem, Athens, Rome, and London. In Washington or New York or Chicago or Los Angeles today, the order which Americans experience is derived from the experience of those four old cities. If our souls are disordered, we fall into abnormality, unable to control our impulses. If our commonwealth is disordered, we fall into anarchy, every man’s hand against every other man’s.”).

and political self-awareness of the old Greeks. They are nurtured by the Roman experience of law and social organization. They are entwined with the Christian understanding of human duties and human hopes, of man redeemed. They are quickened by medieval custom, learning, and valor. They grip the religious ferment of the sixteenth century. They come from the ground of English liberty under law, so painfully achieved. They are secured by a century and a half of community in colonial America. They benefit from the debates of the eighteenth century. They approach the surface through Declaration and Constitution. They emerge full of life from the ordeal of the Civil War.³⁸

One of the many things that makes the Great Conversation a common grace is that any individual from any background from any part of the world can listen in and grow in his or her “Pursuit of happiness.” The Declaration of Independence para. 2 (U.S. 1776). Thus, Pericles was able to say of Athens, “We throw open our city to the world, and never by alien acts exclude foreigners from any opportunity of learning or observing.”³⁹

If this great conversation and the historic social order it has created are to continue to be the basis of civilization and not merely a relic of history, that conversation must not be allowed to be corrupted by foreign adversaries

38. *Id.* at 472.

39. *The Complete Writings of Thucydides: The Peloponnesian War* 104 (Random House, Inc. 1951).

whose only objective is to confuse and destroy. The CCP, like communism in general, is antithetical to the West. The CCP's opaque predations will only be held off by an America awakened to the dangers they pose. Congress and the President have exercised their legitimate power to defend America and Americans from that danger. This Court should rule for Respondents and uphold that stewardship of vigilance.

CONCLUSION

For the forgoing reasons, the Court should grant certiorari and rule for Respondent.

Respectfully submitted,

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