



## The Legal Battle in a Federal Appeals Court Over a Potential U.S. TikTok Ban

After being passed in both houses of Congress and signed by President Biden, a law that would ban TikTok in the United States unless it is sold has prompted the video platform to head to court to fight for its survival. The U.S. government's decision to force ByteDance, the owner of the social media app TikTok, to sell to a company that is not "under the control of a foreign adversary" or face a ban is understandably raising concerns about the First Amendment right to free speech. ByteDance, headquartered in Beijing, has stated that they won't sell, and it looks increasingly like the courts will decide the fate of TikTok – with the possibility that it could go all the way to the United States Supreme Court given the questions it poses over free speech, security, and the role of the government in social media. Earlier this week, the U.S. Court of Appeals for the District of Columbia began hearing arguments from the Justice Department and lawyers representing TikTok and ByteDance. The latter argued that "for the first time in history, Congress has expressly targeted a specific U.S. speaker, banning its speech and the speech of 170 million Americans." On the other side of this, the Justice Department contends that TikTok – under Chinese control – presents a national security threat, which TikTok rejects and says that the U.S. government has yet to provide evidence of.

TikTok and ByteDance argue that they are being unfairly targeted, and that the ban goes against the free speech rights of the company and all of its users. Additionally, they point out that if the law is allowed to be instituted, it will give precedent to ban Americans from other foreign-owned media sources. They also stress that separating TikTok from ByteDance is impossible, as technology from ByteDance is what makes TikTok unique from other social media platforms. When questioned about national security concerns, TikTok highlights that they have tried to reach an agreement over how U.S. user data is stored, including [Project Texas](#), which would have an American subsidiary called TikTok U.S. Data Security be tasked with handling user data stored on servers located in the United States. This would be done through the American cloud computing company Oracle and other third-party inspectors in order to review the data's safety, and that content on TikTok is free from any foreign government manipulation.

The Justice Department argues that it does not seek to ban TikTok, but only to force ByteDance to sell it to another company which is not under Chinese ownership. During this week's court proceedings, one judge asked if this differed from existing laws that ban broadcast licenses for foreign owners. Some within the U.S. government see the amount of data being gathered by ByteDance through TikTok as unacceptable, as they feel since ByteDance is a Chinese company, it cannot assuredly prevent the Chinese government from accessing the data given that it has broad powers over companies operating in the country to collect and surrender data to law enforcement. From the perspective of these individuals, the fear is that even if all TikTok data is stored in the United States, ByteDance will still retain the ability to force other entities to hand over American data. With around 170 million Americans on the app and the vast amount of data that it collects, the Justice Department views this as troubling for U.S. security. There is also concern that because ByteDance is based in China, it cannot prevent the Chinese government from influencing what is on the platform. In court, the Justice Department claims that ByteDance has links to Chinese state-owned media and provided [studies](#) that it sees as giving evidence that TikTok censors content critical of the Chinese government, including its human rights violations. For their part, TikTok and ByteDance strongly reject these accusations.

One of the main elements that is driving much of the freedom of speech concerns behind the potential ban is the fact that news consumption on TikTok since 2020 has skyrocketed, with more U.S. adults than ever before turning to the app for news and investigative journalism. The highest percent is among Americans between 18 and 29, with close to [40%](#) regularly getting this from TikTok and 35% saying that this is mostly a source of information that they would not have gotten elsewhere. Survey data from the [Pew Research Center](#) shows that these younger Americans are more likely to express concern with contemporary human rights-related issues, such as the Gaza War, and be more critical of Israel's actions during the conflict. This is not due to there being any type of skewing in the type of content that is shown on the platform, but on the contrary, because of the first-hand accounts and unbiased independent journalism that it provides access to.

With respect to whether or not the ban is likely to be instituted, [data](#) shows that support for it has been declining, with many also doubting that it will go through. The Pew Research Center findings show that support for the ban has fallen from 50% back in March of 2023 to only 32% as of August of 2024, with only around half of Americans thinking that the ban will ultimately take effect. Interestingly, both the Trump and Harris campaigns are active on TikTok; Harris, if elected, appears to favor the security argument and that ByteDance should sell to save the app, while Trump looks less clear but having made his tough position on China central to his campaign and having taken action to try and force a sale to an American company back when he was in office. Whatever the fate of TikTok is, it will certainly set a precedent regarding free speech and foreign ownership in the new age of social media and could also set a standard on the possible banning of other platforms, particularly ones tied to entities that the U.S. government might see as a threat to national security.