

Upholding TikTok ban, Supreme Court attacks First Amendment ahead of Trump inauguration

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On Friday, the Supreme Court delivered a sweeping, unanimous broadside against the First Amendment of the Constitution, just days ahead of the coming to power of President-elect Donald Trump, who has pledged to rule as “dictator on day one.”

The attack took the form of a ruling upholding a federal ban on TikTok, the fourth most popular social media network in the United States. The court ruled that “national security” concerns take precedence over freedom of expression, which is a stock pseudo-legal mechanism used by every dictatorship for attacks on democratic rights.

The ban on TikTok is scheduled to go into effect on January 19, but the Biden administration has said that it will not enforce it, leaving the fate of the social media network to the next administration. Trump has said he has not decided how to proceed, leaving open a political arrangement to keep it available under greater state control.

The Supreme Court ruling, however, has sweeping implications far beyond the case of TikTok. As Jameel Jaffer, executive director of the Knight First Amendment Institute, explained:

TikTok’s future will turn on politics, not on today’s ruling by the Supreme Court. But make no mistake, by allowing the ban to go into effect, the Supreme Court has weakened the First Amendment and markedly expanded the government’s power to restrict speech in the name of national security. Its implications for TikTok may be limited, but the ruling creates the space for other repressive policies in the future.

The majority of the unsigned ruling is dedicated to the dishonest argument that there are no First Amendment issues raised in the banning of TikTok because the ban is not designed to limit any political or intellectual viewpoint. But having made this argument, the conclusion of the ruling counterposes the freedom of speech to “national security,” and categorically comes down on the side of the latter:

There is no doubt that, for more than 170 million

Americans, TikTok offers a distinctive and expansive outlet for expression, means of engagement, and source of community. But 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.

In other words, the conclusion of the ruling admits that the American public has a clear free speech interest in the availability of TikTok, but that “national security,” as defined by the American government, supersedes that interest.

Justifying its conclusion, the Supreme Court declares, citing an earlier court ruling, “We are mindful that this law arises in a context in which ‘national security and foreign policy concerns arise in connection with efforts to confront evolving threats in an area where information can be difficult to obtain and the impact of certain conduct difficult to assess.’... We thus afford the Government’s ‘informed judgment’ substantial respect here.”

The implications of these words are sweeping. The First Amendment of the Constitution declares, “Congress shall make no law ... abridging the freedom of speech, or of the press.” In the American system of government of checks and balances, it is the duty of the Supreme Court to prevent Congress from doing anything that would violate the Constitution.

But the ruling declares that the “substantial respect” granted to the “informed judgment” of the government regarding foreign policy can then be used as a lever to overturn the most fundamental of constitutional protections, the freedom of speech.

Using this logic, all domestic opposition to war could be banned on the grounds that it gives aid and comfort to “foreign adversaries.” In response to criticism that this is unconstitutional, the Court would then say that what denotes “foreign adversaries” is “difficult” to determine, and therefore the government’s opinion must be granted “substantial respect.”

The entire framework of the ruling is grounded on the doctrine of “great power conflict,” adopted in the Trump administration’s 2018 National Security Strategy, which requires “the seamless integration of multiple elements of national power—diplomacy, information, economics, finance, intelligence, law enforcement, and military.”

The campaign to ban TikTok, initiated under the first Trump administration and led by Republican arch-warmonger Michael Gallagher, a former Wisconsin congressman and Marine Corps intelligence officer, in Iraq flowed directly from this doctrine.

The Supreme Court ruling rests on the Biden administration's June 9, 2021, "Executive Order on Protecting Americans' Sensitive Data from Foreign Adversaries," which declares, "the term 'foreign adversary' means any foreign government or foreign non-government person engaged in a long-term pattern or serious instances of conduct significantly adverse to the national security of the United States."

Within this framework, the term "foreign adversary" is essentially limitless. Earlier this month, President-elect Donald Trump declared that "for purposes of National Security ... ownership and control of Greenland is an absolute necessity" for the United States. By the Biden administration's definition, Denmark could be construed by Trump as a threat to the national security of the United States by virtue of its possession of Greenland.

It is noteworthy that the Supreme Court prominently cites *Humanitarian Law Project v. Holder*, the 2010 case in which the court ruled in favor of the Obama administration. That ruling upheld a law making it a crime to "knowingly provide material support or resources to a foreign terrorist organization," even if the "support" consists only of "expert advice or assistance" for "lawful, non-violent purposes." In that case, the organization provided legal advice for peaceful conflict resolution to a Kurdish separatist organization.

The ruling sets up, on the basis of the definition by the American government of China as an "adversary," a total discontinuity between Chinese corporations and the Chinese government on the one hand, and American corporations on the other. Data collection by Chinese companies and the Chinese government on Americans is defined as fundamentally malign, while the same activities on the part of American corporations and the American government are defined as benign and to be encouraged.

This is despite the fact that the American government has a proven track record of illegally spying on the private communications of the American people, and of compelling American corporations to turn over the private communications of Americans for illegal surveillance.

In 2013, Edward Snowden revealed that the US government operates the world's largest illegal domestic surveillance program, by digitally copying, analyzing and storing private communications of individuals throughout the world, including US citizens. The US National Security Agency's explicit goal is "total information awareness," to "collect it all, know it all, process it all, exploit it all."

Friday's Supreme Court ruling is fundamentally dishonest in alleging that the banning of TikTok is not intended to target specific political viewpoints.

As the Knight Institute's *amicus* brief explained:

In November 2023, the bill's eventual lead sponsor, Representative Mike Gallagher, the chairman of the House

committee on the CCP, published an article calling for a TikTok ban and characterizing TikTok as "digital fentanyl" through which the CCP can "push its propaganda." Two days after introducing the bill in March 2024, Chairman Gallagher noted "privacy" and "espionage" concerns regarding TikTok but made clear that the "most important[]" reason for a ban was the possibility that "young Americans are getting all their news from Tik[T]ok."

It continued:

In the brief debate on the Senate floor, senators likewise cited viewpoint-based motivations for supporting the legislation. Senator Maria Cantwell expressed concern that "[f]oreign policy issues disfavored by China and Russian governments... had fewer hashtags on TikTok, such as pro-Ukraine or pro-Israeli hashtags." Senator Pete Ricketts supported the ban because the CCP allegedly uses TikTok "to skew public opinion on foreign events in their favor," including by promoting hashtags that align with its foreign policy perspectives such as... "[p]ro-Palestinian and pro-Hamas hashtags." Indeed, multiple lawmakers have cited the prevalence of pro-Palestinian content on TikTok as a reason for supporting the Act.

Friday's ruling follows the July 2024 ruling by the Supreme Court in *Trump v. United States* which, as the WSWS explained, "plac[ed] the president above the law and effectively transform[ed] the 'Commander-in-Chief' into a dictator, who can commit crimes with impunity."

Friday's sweeping attack on the First Amendment is another testament to the advanced state of decay of the constitutional order in the United States. As Trump moves toward the formation of a presidential dictatorship in the United States, no confidence can be placed in any institutions of the state to resist sweeping attacks on democratic rights. The defense of the social and political rights of the population requires the mobilization of the working class, both against Trump and the policies of war and dictatorship supported by both parties.



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