

No. 24-656

**In The Supreme Court Of The
United States**

TIKTOK, INC. and BYTEDANCE LTD.,
Petitioners,

v.

MERRICK B. GARLAND, in his official capacity as
Attorney General of the United States,
Respondent.

**On Petition for Writ of Certiorari to the United
States Court of Appeals for the District of
Columbia Circuit**

**BRIEF OF *AMICUS CURIAE* OF CHRIS
SANTOSPIRITO, MELISSA SANTOSPIRITO,
AND LAURA SANTOSPIRITO IN SUPPORT OF
PETITIONERS**

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TABLE OF CONTENTS

I. TABLE OF AUTHORITIES	ii
II. IDENTITY AND INTEREST OF <i>AMICI</i>	1
III. INTRODUCTION AND SUMMARY OF ARGUMENT	2
IV. ARGUMENT AND CITATIONS OF AUTHORITY.....	3
I. The Act Violates Santospirito’s First Amendment Right To Free Speech.....	3
V. CONCLUSION	7

TABLE OF AUTHORITIES

CASES	PAGE(S)
<i>Alexander v. United States</i> , 509 U.S. 544 (1993)	3
<i>Ashcroft v. ACLU</i> , 535 U.S. 564 (2002)	3
<i>Bantam Books, Inc. v. Sullivan</i> , 372 U.S. 58 (1963)	4
<i>Bolger v. Youngs Drug Prods. Corp.</i> , 463 U.S. 60 (1983)	3
<i>Cantwell v. Connecticut</i> , 310 U.S. 296 (1940)	3
<i>Carroll v. Princess Anne</i> , 393 U.S. 175 (1968)	4
<i>Cohen v. California</i> , 403 U.S. 15 (1971)	6
<i>Cruise-Gulyas v. Minard</i> , 918 F.3d 494 (6th Cir. 2019)	5-6
<i>De Jonge v. Oregon</i> , 299 U.S. 353 (1937)	6
<i>Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.</i> , 472 U.S. 749 (1985)	4
<i>Fed. Election Comm'n v. Mass. Citizens for Life, Inc.</i> , 479 U.S. 238 (1986)	5
<i>Lamont v. Postmaster Gen.</i> , 381 U.S. 301 (1965)	5

<i>Mahanoy Area Sch. Dist. v. B.L. by and through Levy,</i> 141 S. Ct. 2038 (2021)	6
<i>McCullen v. Coakley,</i> 573 U.S. 464 (2014)	4
<i>McDonald v. Smith,</i> 472 U.S. 479 (1985)	3
<i>Near v. Minnesota ex rel. Olson,</i> 283 U.S. 697	4, 6, 7
<i>Neb. Press Ass’n v. Stuart,</i> 427 U.S. 539 (1976)	3, 7
<i>N.Y. Times Co. v. United States,</i> 403 U.S. 713 (1971)	4, 6
<i>Org. for a Better Austin v. Keefe,</i> 402 U.S. 415 (1971)	4
<i>Police Dept. of Chicago v. Mosley,</i> 408 U.S. 92 (1972)	5
<i>Reno v. Flores,</i> 507 U.S. 292 (1995)	4
<i>Sandul v. Larion,</i> 119 F.3d 1250 (6th Cir. 1997)	6
<i>Se. Promotions, Ltd. v. Conrad,</i> 420 U.S. 546 (1975)	4
<i>TikTok Inc. v. Trump,</i> 507 F. Supp. 3d 92 (D.D.C. 2020)	4
<i>Turner Broad. Sys., Inc. v. FCC,</i> 512 U.S. 622 (1994)	5

<i>United States v. Cruikshank</i> , 92 U.S. 542 (1876)	3
<i>United States v. Playboy Entm't Grp.</i> , 529 U.S. 803 (2000)	4
<i>Virginia v. Black</i> , 538 U.S. 343 (2003)	3
<i>Walsh v. Brady</i> , 927 F.2d 1229 (D.C. Cir. 1991)	6
CONSTITUTIONAL PROVISION	
U.S. Const. amend. I	3

IDENTITY AND INTEREST OF *AMICI*¹

Chris Santospirito, Melissa Santospirito, and Laura Santospirito, (hereinafter referred to as “Santospirito”) submit this brief in support of Petitioner, TIKTOK, INC. and BYTEDANCE LTD. Santospirito are citizens of the United States of America that reside in Florida and California. Santospirito are individual users of TikTok that have been using TikTok on a daily basis since January 2019. Santospirito indirectly represent the interests of all individual users of TikTok from every region of the country. Chris Santospirito is an attorney licensed to practice law in the State of Florida (since April 2018) and a member of the Bar of this Court (since March 22, 2023).

Santospirito have a strong interest in this case. The Foreign Adversary Controlled Applications Act (the “Act”) effectively bans TikTok for all users in the United States of America beginning on January 19, 2025. The Act, passed by Congress, expressly violates the First Amendment rights of Santospirito.

Under the Act, TikTok will cease to exist, under the guise of Congress’ claim that national security is at risk. The First Amendment requires this Court to use strict scrutiny to determine

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amici* certify that no party’s counsel authored this brief in whole or in part; no party or party’s counsel contributed money that was intended to fund the preparation or submission of the brief; and no person other than *amici*, its members, or its counsel contributed money intended to fund the preparation or submission of the brief.

whether the Act violates the hundreds of millions of active users of TikTok.

If allowed to stand, the Act will have a chilling effect impact on Santospirito, no less all individual users of TikTok. Santospirito will not be able to view, record, upload, repost, send, or download videos from TikTok. Additionally, Santospirito will not be able to purchase items from small business owners through TikTok shop. The only way to avoid this excessive overreach by Congress is to strike the Act down as unconstitutional.

Due to the significant impact the Act will have on the individual users of TikTok, *amici* believes that their perspective will assist the Court in resolving this case. *See* Fed. R. App. P. 29(a)(3).

INTRODUCTION AND SUMMARY OF ARGUMENT

The merits issue presented by this case is whether the Act violates Santospirito's First Amendment rights guaranteed by the United States Constitution. The answer is an unequivocal yes.

First, as mentioned above, Santospirito have been using TikTok on a daily basis since at least January 2019, almost six years. Santospirito have viewed, downloaded, uploaded, recorded, sent, and/or reposted more than 10,000 videos since first using the application. Santospirito use TikTok as a means to seek happiness and pleasure with the rigors of daily life. Banning and singling out TikTok, will prevent Santospirito from viewing videos and expressing their views on TikTok. The effects of the Act are a clear violation of the First Amendment.

Therefore, this Court should strike the Act and declare it unconstitutional.

ARGUMENT AND CITATIONS OF AUTHORITY

I. The Act Violates Santospirito's First Amendment Right To Free Speech.

This case presents an issue that goes to the foundation of our country—freedom of expression under the First Amendment of the U.S. Constitution. The First Amendment guarantees “the freedom of speech ... [and] the right of the people ... to petition the Government for a redress of grievances.” U.S. Const. amend. I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). These rights are “implicit in ‘[t]he very idea of government, republican in form.’” *McDonald v. Smith*, 472 U.S. 479, 482 (1985) (quoting *United States v. Cruikshank*, 92 U.S. 542, 552 (1876)). Government agencies prohibited from “abridging the freedom of speech.” See U.S. Const. amend. I; see also *Virginia v. Black*, 538 U.S. 343, 358 (2003). The First Amendment requires courts to scrutinize restrictions on “expression because of its message, its ideas, its subject matter, or its content.” *Ashcroft v. ACLU*, 535 U.S. 564, 573 (2002) (quoting *Bolger v. Youngs Drug Prods. Corp.*, 463 U.S. 60, 65 (1983)).

Prior restraints on speech and publication are the most serious and least tolerable infringement on first amendment right. *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976); *Alexander v. United States*, 509 U.S. 544, 550 (1993). The United States Supreme Court has admonished “any form of prior restraint of expression comes to a reviewing court bearing a heavy presumption against its

constitutional validity; therefore, the party who seeks to have such a restraint upheld carries a heavy burden of showing justification for the imposition of such a restraint.” *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1971). Furthermore, prior restraints on speech are presumed unconstitutional. *See Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546 (1975); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963); *Org. for a Better Austin v. Keefe*, 402 U.S. 415, 419 (1971); *Carroll v. Princess Anne*, 393 U.S. 175, 181 (1968); *Near v. Minnesota ex rel. Olson*, 283 U.S. 697, 716 (1931).

When restricting a person’s fundamental rights, courts must use strict scrutiny to determine the validity of the restraint. *United States v. Playboy Entm’t Grp.*, 529 U.S. 803, 813, (2000). Strict scrutiny is applicable here because a fundamental right (freedom of speech) is implicated by the Act. *Reno v. Flores*, 507 U.S. 292 (1995) (holding a fundamental right is one which has its source in and is explicitly guaranteed by the United States Constitution). Under strict scrutiny, the government must adopt “the least restrictive means of achieving a compelling state interest.” *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). In fact, speech is a matter of public concern and is at the heart of the first amendment protection. *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 758–59 (1985).

Here, and importantly, this is not the first time the Government has sought to ban TikTok and violate Santospirito’s first amendment rights. *See TikTok Inc. v. Trump*, 507 F. Supp. 3d 92, 97 (D.D.C. 2020). The government has “concerns” about the

possibility of propaganda being spread by foreign adversaries to the users located in the United States. *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 255 (1986) (“A statute’s “practical effect” on protected speech is “sufficient to characterize [it] as an infringement on First Amendment activities.”).

First, as users since January 2019, Santospirito have not seen or personally witnessed any foreign adversary propaganda that the government is “concerned” about.

Second, even if propaganda or misinformation was being spread throughout the TikTok platform², it is Santospirito’s first amendment right to view and interpret the alleged propaganda as they deem fit not what the government prefers Santospirito view. *See Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 658 (1994) (“speaker-based restrictions ‘demand strict scrutiny when they reflect the Government’s preference for the substance of what the favored speakers have to say (or aversion to what the disfavored speakers have to say)’”); *Lamont v. Postmaster Gen.*, 381 U.S. 301, 307 (1965) (holding the First Amendment barred efforts to ban receipt of communist political propaganda); *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). The United States Supreme Court and federal courts have routinely held even profane speech is protected speech. *See Cruise-Gulyas v. Minard*, 918 F.3d 494, 497 (6th Cir. 2019) (ruling a person who raises their

² Importantly, Facebook and X (formerly Twitter) have been plagued by misinformation since 2016. Congress has not sought to ban those platforms.

middle finger engages in free speech protected by the First Amendment); *Sandul v. Larion*, 119 F.3d 1250, 1255 (6th Cir. 1997); *Cohen v. California*, 403 U.S. 15 (1971) (ruling profanity such as “Fuck the Draft” is protected free speech); *Mahanoy Area Sch. Dist. v. B.L. by and through Levy*, 141 S. Ct. 2038 (2021) (ruling a person with their middle finger raised and stating “Fuck school fuck softball fuck cheer fuck everything” is protected free speech).

Third, Santospirito have the right to receive information and ideas abroad, not just from what the government see is in their best interest or contains a “threat to national security.” *Walsh v. Brady*, 927 F.2d 1229, 1235 (D.C. Cir. 1991); *De Jonge v. Oregon*, 299 U.S. 353, 365 (1937) (holding when the government invokes national security to burden speech, it is all “the more imperative” to “preserve inviolate the constitutional rights of free speech, free press and free assembly.”). Even under the Nixon administration, which sought to enjoin the New York Times from publishing articles concerning the Pentagon Papers, this Court struck down the order barring publication as a prior restraint. *N.Y. Times Co.*, 403 U.S. at 729–30. However, this Act is far more reaching than the statute that was struck down in *Near*. The Act bans Santospirito’s access to the TikTok application altogether.

And fourth, the Act in and of itself, functions as a prior restraint on Santospirito’s free speech. It bars Santospirito from speaking and receiving speech through the application before the speech is uttered or published. A restraint of this magnitude is akin to the scenario under *Near*, wherein a statute barring publication of a newspaper was determined

to an unconstitutional prior restraint. *Near*, 283 U.S. at 723.

All in all, the government has not satisfied the requirement under the strict scrutiny standard to sustain their argument that the Act is constitutional. Simply put, the Act is a blatant violation of the Santospirito's First Amendment right and does not withstand strict scrutiny and should be reversed. If the Act is not deemed unconstitutional and if a permanent injunction is not entered preventing the Act from taking effect, the Act will impermissibly enjoin and punished Santospirito from engaging in constitutionally protected activity. *See Neb. Press Ass'n*, 427 U.S. at 559.

CONCLUSION

This Court should grant certiorari, declare the Act unconstitutional and issue a permanent injunction preventing the Act from taking effect in January 2025.

Respectfully submitted this 27th day of December 2024.

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