TICK TOCK, TIKTOK: EXECUTIVE POWER OVERSTEPS THROUGH THE LENS OF *STEEL SEIZURE*

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I. INTRODUCTION

In a digital age, where scrolling has become as routine as breathing, one app has managed to capture an hour and thirty-five minutes of users' daily attention[1]—and with it, the anxious focus of all branches of the U.S. government. TikTok users spend this time, nearly 578 hours a year, to "watch, create, and share short videos," interacting with other app users all around the globe.[2] For many of its users, TikTok has become their primary search engine,[3] preferred news outlet,[4] and even a source of income.[5] TikTok has also become a predominant engagement tool for small businesses[6] and political campaigns conducting voter outreach.[7] With a highly sophisticated proprietary algorithm designed to curate a "For You Page" that's truly for

1. The average TikTok user spends approximately ninety-five minutes each day using the TikTok app. Dave Martin, *Question of the Day: How Long Does the Average User Spend on TikTok a Day?*, NEXT GEN PERS. FIN.: BLOG (May 12, 2025), https://www.ngpf.org/blog/question-of-the-day/question-of-the-day-how-long-does-the-average-user-spend-on-tiktok-a-day/ [https://perma.cc/K36H-YU6X].

2. Deborah D'Souza, *TikTok: What It Is, How It Works, and Why It's Popular*, INVESTOPEDIA (Jan. 20, 2025), https://www.investopedia.com/what-is-tiktok-4588933 [https://perma.cc/KY6P-YM23].

3. *See* Kalley Huang, *For Gen Z, TikTok Is the New Search Engine*, N.Y. TIMES (Sep. 17, 2022), https://www.nytimes.com/2022/09/16/technology/gen-z-tiktok-search-engine.html [https://perma.cc/G4PY-4WS5].

4. Rebecca Leppert & Katerina Eva Matsa, *More Americans – Especially Young Adults – Are Regularly Getting News on TikTok*, PEW RSCH. CTR.: SHORT READS (Sep. 17, 2024), https://www.pewresearch.org/short-reads/2024/09/17/more-americans-regularly-get-news-on-tiktok-especially-young-adults/ [https://perma.cc/S94R-UXVT] (reporting data that "39% of adults under 30" and "[a]round half of TikTok users (52%)" use TikTok to habitually get the news).

5. Clare Duffy, *They Built Careers on TikTok. Now They're Bracing for a Possible Ban*, CNN (Jan. 10, 2025, at 13:24 ET), https://www.cnn.com/2025/01/10/tech/tiktok-creators-influencers-ban/index.html [https://perma.cc/7SYH-4V2W] (documenting the concerns of TikTok influencers who feared losing their "six-figure income").

6. *See TikTok Small Business Marketing Guide: Organic Content + Paid Ad Campaigns*, TIKTOK (Aug. 22, 2024), https://ads.tiktok.com/business/en-US/blog/small-business-marketing-tiktok-ultimate-guide [https://perma.cc/VH2Z-7EUV] (providing statistics that "55% of TikTok users discover new brands and products on the platform," "66% of TikTok users say TikTok ads made them interested in the product or brand," "33% of TikTok users purchase a product because they saw it on TikTok," and "24% of TikTok users posted content showing off a product they bought").

7. *See* Colleen McClain, *About Half of TikTok Users Under 30 Say They Use It to Keep Up with Politics, News*, PEW RSCH. CTR.: SHORT READS (Aug. 20, 2024), https://www.pewresearch.org/short-reads/2024/08/20/about-half-of-tiktok-users-under-30-say-they-use-it-to-keep-up-with-politics-news/ [https://perma.cc/D4V6-LBXW] (providing statistics that "48% of TikTok users ages 18 to 29," "36% of those ages 30 to 49," "22% of those 50 to 64," and "24% of those 65 and older" use TikTok to "keep[] up with politics or political issues").

you,[8] TikTok is "edging into [Google's] domain"[9] and becoming an increasingly large part of the lives of Americans across nearly every demographic. With such a societal obsession with TikTok, it is easy to understand the wave of outrage and anxiety that swept through users when the app's ban seemed imminent.[10]

Proverbially, "with great power comes great responsibility."[11] But in the eyes of the United States Congress, the acknowledgment of the great power over Americans' data held by TikTok is coupled with great fear.[12] As TikTok has cemented itself as a dominant force in media consumption, its ties to China have made it an object of political contention throughout all three branches of the U.S. government.[13] Leaders of the U.S. government have long viewed foreign influence, especially by China, over American data and digital infrastructure as a national security risk.[14] TikTok's massive American user

8. *See* Kevin Roose, *Is TikTok a Good Buy? It Depends on What's Included*, N.Y. TIMES: THE SHIFT (Aug. 19, 2020), https://www.nytimes.com/2020/08/05/technology/tiktok-deal-algorithm.html [https://perma.cc/WRP5-WJTN] (describing the TikTok algorithm as "a 'rapid, hyper-efficient matchmaker' that analyzes users' behavior and places them into personalized niches, based on their interests" that is truly "addictive").

9. Huang, *supra* note 3.

10. *See* Wyatte Grantham-Philips & Mae Anderson, *For TikTok Users, Mourning, Frustration and Clinging to Hope as TikTok Ban Looms*, AP NEWS (Jan. 17, 2025, at 22:14 ET), https://apnews.com/article/tiktok-ban-creators-influencers-react-78a06f9d2a91541710f999cbe39a3290 [https://perma.cc/PE6Z-7GUT] (detailing reactions of TikTok content creators two days before the ban was to become effective).

11. SPIDER-MAN, Disney+, at 35:44–35:50 (Columbia Pictures 2002).

12. *See* Sapna Maheshwari & Amanda Holpuch, *Why TikTok Is Facing a U.S. Ban, and What Could Happen Next*, N.Y. TIMES (Jan. 17, 2025), https://www.nytimes.com/article/tiktok-ban.html [https://perma.cc/G5ZS-32CB] (discussing concerns of Congress including that TikTok "may put sensitive user data, like location information, into the hands of the Chinese government," and "China could use TikTok's content recommendations to fuel misinformation").

13. For the discussion regarding the imposition and dismantling of executive orders by President Trump and President Biden, see *infra* text accompanying notes 73–85. For the discussion on how Congress has reacted to TikTok, see *infra* text accompanying notes 86–98. For the discussion on how the Supreme Court has responded to lawsuits regarding Congress's legislative actions, see *infra* text accompanying notes 227–243.

14. PETER E. HARRELL, CARNEGIE ENDOWMENT FOR INT'L PEACE, MANAGING THE RISKS OF CHINA'S ACCESS TO U.S. DATA AND CONTROL OF SOFTWARE AND CONNECTED TECHNOLOGY 1 (2025), https://carnegie-production-assets.s3.amazonaws.com/static/files/Harrell_US-China%20Data%20Regulation.pdf [https://perma.cc/BN6Q-38X5] ("Over the past decade, the United States quietly has built an increasingly extensive set of regulatory tools to regulate U.S. data flows to China and the operation of Chinese software and connected technologies in the United States.").

base[15] has only validated and intensified those fears.[16] Lawmakers worry that the Chinese government could pressure ByteDance, TikTok's parent company, to hand over user data to the Chinese government[17] or manipulate the app's algorithm to spread propaganda or misinformation on the For You Pages of American users.[18]

This paper evaluates President Trump's executive orders deferring a ban on TikTok in the United States through the lens of the existing executive power framework provided in Justice Jackson's concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*, colloquially known as *The Steel Seizure Case*.[19] Part II provides an overview of the TikTok platform, its ownership, national security concerns, and the history of prior attempts to ban the application. Section II.C recounts the Supreme Court's opinion in *The Steel Seizure Case* and Justice Jackson's tri-partite framework that has consistently been used to evaluate the limits of executive power. Section II.D provides an overview of the D.C. Circuit Court of Appeals and the subsequent Supreme Court case decision in *TikTok Inc. v. Garland*.[20] Part III analyzes President Trump's executive orders "saving" TikTok and applies Justice Jackson's ebbs of executive power rationale from the *Steel Seizure* case. This analysis will show that President Trump's executive orders delaying the ban of TikTok in the United States were in direct contravention with congressional orders and a prior Supreme Court ruling—representing an even more significant overreach with less justification than President Truman's actions reprimanded in *Steel Seizure*. Part III also attempts to envision what President Trump's overreach of executive power means for corporate oversight and regulation by the U.S. government and the role of the executive moving forward.

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15. *See How Many Active Users on TikTok? Statistics & Facts (2025)*, SEO.AI: BLOG (Jan. 23, 2025), https://seo.ai/blog/how-many-users-on-tiktok [https://perma.cc/338R-9UF7]; *A Digital Safety & Privacy Guide for Safer Internet Day and Beyond*, TIKTOK (Feb. 11, 2025), https://newsroom.tiktok.com/en-us/tiktok-launches-a-digital-safety-and-privacy-campaign-for-safer-internet-day-and-beyond [https://perma.cc/K678-ZHA2] (stating that "TikTok is home to more than 170 million Americans").

16. *See* HARRELL, *supra* note 14, at 3–4.

17. *See id.* at 5 ("Chinese companies are subject to a set of legal regimes that could compel them to cooperate with Chinese defense and intelligence services.").

18. Maheshwari & Holpuch, *supra* note 12.

19. Youngstown Sheet & Tube Co. v. Sawyer (*The Steel Seizure Case*), 343 U.S. 579, 634–38 (1952) (Jackson, J., concurring).

20. 122 F.4th 930 (D.C. Cir. 2024), *aff'd*, 145 S. Ct. 57 (2025) (per curiam). As discussed below, both TikTok and ByteDance are petitioners in this litigation. *See* discussion *infra* Section II.D.

II. BACKGROUND

The United States has championed having an open and nearly unlimited exchange of information on the internet.[21] The country's leaders have historically recognized both the potential and the challenges of digital connectivity in shaping human rights and global progress.[22] Although the United States touts several of the world's largest social media technology companies,[23] China remains a fierce contender in the ongoing technology competition.[24] Notably, American social media conglomerate, Meta,[25] has a serious challenger in the short-form video arena: Chinese video-sharing app, TikTok.[26]

A. TikTok

ByteDance, the parent company of TikTok, was founded in 2012 by a team of Chinese college roommates and entrepreneurs.[27] Over time, global institutional investors acquired a significant stake, totaling beneficial ownership of 60% of the company today.[28] The remaining 40% is equally divided between one of the company's founders and the employees of TikTok

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21. Thomas Stackpole, *What TikTok's Fate Will Mean for Global Business*, HARV. BUS. REV. (Jan. 27, 2025), https://hbr.org/2025/01/what-tiktoks-fate-will-mean-for-global-business [https://perma.cc/K678-ZHA2].

22. *See, e.g.*, Hillary Rodham Clinton, U.S. Sec'y of State, Remarks on Internet Freedom, (Jan. 21, 2010) (transcript available at https://2009-2017.state.gov/secretary/20092013 clinton/rm/2010/01/135519.htm [https://perma.cc/55K2-QN2T]) (recognizing that digital networks expand access to information but also cautioning that such tools can be misused to restrict freedoms and promote violence).

23. Facebook, YouTube, Instagram, TikTok, Snapchat, X (formerly known as Twitter), Pinterest, Reddit, LinkedIn, and Threads are all headquartered not only in the United States, but all in California. Shelley Walsh, *The Top 10 Social Media Sites & Platforms*, SEARCH ENGINE J.: SOC. MEDIA (June 25, 2025), https://www.searchenginejournal.com/social-media/social-media-platforms/ [https://perma.cc/4K3G-9BHC].

24. Ismael Arciniegas Rueda, *Strategic Imperatives in the U.S.-China Technology Race: Power, Hardware, and Engineering Expertise*, RAND (Feb. 24, 2025), https://www.rand.org/pubs/commentary/2025/02/strategic-imperatives-in-the-us-china-technology-race.html [https://perma.cc/8AKT-KA4N].

25. Among other services, Meta owns the popular social media platforms Facebook, Instagram, and Threads. Walsh, *supra* note 23.

26. *See* Abram Brown, *Facebook Knows It's Losing the Battle Against TikTok*, FORBES (Feb. 8, 2022, at 14:45 ET), https://www.forbes.com/sites/abrambrown/2022/02/04/facebook-meta-growth-zuckerberg-reels-tiktok-videos-creators-pay/ [https://perma.cc/5U22-VZ66].

27. Laura He, *Wait, Is TikTok Really Chinese?*, CNN: BUS. (Mar. 28, 2024, at 08:21 ET), https://www.cnn.com/2024/03/18/tech/tiktok-bytedance-china-ownership-intl-hnk/index.html [https://perma.cc/39HR-6Z5U].

28. *See id.* (listing examples of the large institutional investors including "the Carlyle Group, General Atlantic and Susquehanna International Group").

around the world as part of their compensation packages.[29] There are three American, one Singaporean, and one Chinese members composing the ByteDance board of directors.[30] TikTok's corporate structure shows that none of TikTok's entities or senior executives operate out of China.[31] Additionally, TikTok maintains two headquarters—one in Los Angeles and one Singapore—and other offices in New York, London, Dublin, Paris, Berlin, Dubai, Jakarta, Seoul, and Tokyo.[32]

TikTok is operated by over 1.9 billion users worldwide, with 170 million of those users residing in the United States.[33] Recent data shows that the heaviest concentration of TikTok users are eighteen to twenty-four-year-olds, making up 34.8% of the platform's user base.[34] The twenty-five to thirty-four age group follows closely behind and comprises 34.0% of users.[35] Those aged thirty-five to forty-four represent 15.7% of the platform's users.[36] The forty-five to fifty-four age group accounts for 8.1% of users.[37] Finally, users aged fifty-five and older make up 7.4% of TikTok's audience.[38] Current data available to the public does not include statistics on users under the age of eighteen,[39] which makes it difficult to interpret TikTok's impact on children and understand their interactions with the platform.

Previous data has shown that TikTok's user base includes a significant proportion of young users who may not fully comprehend or appreciate the potential dangers of their online activity.[40] According to internal company data released in 2020, "more than a third of TikTok's 49 million daily users in the United States [were classified] as being [fourteen] years old or younger," with evidence suggesting that some users might be even younger than the app's minimum age requirement of thirteen.[41] As TikTok's daily

29. *See id*.

30. *Myths vs Facts*, TIKTOK: U.S. DATA SEC., https://usds.tiktok.com/usds-myths-vs-facts/ [https://perma.cc/GP8P-9VN3] (last visited July 20, 2025).

31. *See* Curtis J. Milhaupt & Dan W. Puchniak, *TikTok's Identity Crisis: Corporate Personality in a De-Globalizing World*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 3, 2025), https://corpgov.law.harvard.edu/2025/01/03/tiktoks-identity-crisis-corporate-personality-in-a-de-globalizing-world/ [https://perma.cc/QB4C-77AM].

32. *About*, TIKTOK, https://www.tiktok.com/about [https://perma.cc/8GAA-D9EP] (last visited July 20, 2025).

33. *How Many Active Users on TikTok? Statistics & Facts (2025)*, *supra* note 15.

34. *Id*.

35. *Id*.

36. *Id*.

37. *Id*.

38. *Id.*

39. *See, e.g.*, *id.* (reporting data limited to users aged eighteen and older).

40. *See* Raymond Zhong & Sheera Frenkel, *A Third of TikTok's U.S. Users May Be 14 or Under, Raising Safety Questions*, N.Y. TIMES (Sep. 17, 2020), https://www.nytimes.com/2020/08/14/technology/tiktok-underage-users-ftc.html [https://perma.cc/US9W-E3C6].

41. *Id*.

users have grown more than threefold in the past four years,[42] it is probable that this statistic has also continued to increase exponentially. Despite the presence of age verification measures, many underage users can easily circumvent these restrictions by misrepresenting their age during registration.[43] These young users may be particularly vulnerable as they share personal information and videos without understanding the potential privacy, security, or well-being concerns that have prompted national scrutiny of the platform.[44] Although TikTok offers parental controls, questions loom about whether the company is doing enough to protect its youngest users, especially given past violations of children's privacy laws that resulted in a $5.7 million Federal Trade Commission fine in 2019.[45]

1. U.S. National Security Concerns Regarding TikTok's Chinese Ownership

For many of the 170 million TikTok users in the United States,[46] the proposed ban of the application prompted the important question: What is the problem with using a Chinese-owned social media platform? The controversy extends far beyond a single social media app and is evidence of broader technological and strategic tensions between the United States and China.[47]

The U.S. government's apprehension surrounding TikTok is primarily rooted in a sophisticated array of national security and strategic concerns. "A bipartisan consensus has emerged across both Congress and executive branch officials" that China's rivalry with America poses both national security and economic risks.[48] Both the first Trump Administration and the Biden Administration focused efforts on "develop[ing] policies to reduce Beijing's ability to conduct espionage and to establish leverage over the United States."[49]

With regard to U.S. national security, the fundamental concern of data security and espionage is rooted in the potential for data collection and

42. *How Many Active Users on TikTok? Statistics & Facts (2025)*, *supra* note 15.

43. Zhong & Frenkel, *supra* note 40.

44. *See* Associated Press, *TikTok Was Aware of Risks Kids and Teens Face on Its Platform, Legal Document Alleges*, U.S. NEWS (Oct. 11, 2024), https://www.usnews.com/news/business/articles/2024-10-11/tiktok-was-aware-of-risks-kids-and-teens-face-on-its-platform-legal-document-alleges [https://perma.cc/6ABX-Q9A9] (detailing a lawsuit filed by the Commonwealth of Kentucky against TikTok for alleged harms the app causes to children).

45. Zhong & Frenkel, *supra* note 40.

46. *How Many Active Users on TikTok? Statistics & Facts (2025)*, *supra* note 15.

47. *See* HARRELL, *supra* note 14 ("[R]estrictions on Chinese communications technologies, software, and internet-connected devices are becoming a major pillar of U.S. economic and technology policy toward Beijing, alongside tariffs and export controls.").

48. *Id.* at 3.

49. *Id*.

surveillance by China.[50] Chinese-owned technology platforms are particularly concerning because they operate within China's legal framework, which allows the Chinese government to compel domestic Chinese companies to cooperate with the government to gather intelligence.[51] For the U.S. government, this raises the important issue of the potential for mass data collection by China—including sensitive personal information, location data, and user behavior patterns of Americans on TikTok.[52]

Concerning the economic competition between China and the United States, the expansion and growth of Chinese technology companies represents a significant challenge to U.S. technological dominance.[53] For decades, the United States and China have engaged in a "business warfare battle in technology."[54] From artificial intelligence to social media platforms, China has demonstrated an aggressive strategy of global technological expansion.[55] TikTok exemplifies this trend, having achieved unprecedented global reach and user engagement in a remarkably short time.[56] And there is no indication of TikTok's growth stunting any time soon.

The risks that the U.S. government associates with Chinese-controlled digital platforms can be categorized into four primary domains. First, Chinese-controlled technologies can create comprehensive digital profiles of U.S. citizens by systematically collecting, tracking, and transmitting personal data across multiple platforms and devices as a form of espionage.[57] Second, through algorithmic manipulation, Chinese-controlled platforms can strategically shape public discourse, selectively amplifying or suppressing certain narratives to influence social and political perceptions.[58] Third, Chinese technological platforms and software could potentially serve as tactical entry points for coordinated cyberattacks, enabling systematic exploitation of critical national infrastructure and government operational systems.[59] Fourth, interconnected technologies controlled by Chinese entities could transform seemingly innocuous devices—such as vehicles, drones, or other devices connected to the internet—into surveillance tools capable of

50. *See id*. at 4.
51. *Id.* at 6.
52. *See id*. at 4.
53. *See id*. at 3.
54. Tom C.W. Lin, *Business Warfare*, 63 B.C. L. REV. 1, 36 (2022).
55. *See id.* at 36–37.
56. *How Many Active Users on TikTok? Statistics & Facts (2025)*, *supra* note 15 (reporting that TikTok has "grown exponentially" from 133 million users in 2018 to over 1.925 billion users in 2024).
57. *See* HARRELL, *supra* note 14, at 4.
58. *See id.* at 4–5.
59. *Id.* at 5.

tracking individual movements and gathering granular intelligence about U.S. citizens and government operations.[60]

The United States is not the first country to be at odds with TikTok. As of February 2025, TikTok is banned in nine countries for reasons varying from "a border clash between India and China" to crediting the app for "disturbing social harmony and good will."[61] And TikTok is not the first Chinese technology company to sound alarms in the U.S. intelligence community.[62]

Interestingly enough, TikTok does not operate in China whatsoever.[63] While TikTok is the international version of the ByteDance app, in China, the short-video app is called Douyin and is exclusively available to users in China.[64] Douyin is extremely popular "among Chinese people over 50 years old" and its content is limited to "educational and skill improvement videos" or videos that promote messages of the Chinese government.[65] While the U.S. government works to ban TikTok, due to the "Great Firewall," no American social media platforms are allowed to operate within China's borders.[66]

Although Congress has rendered its answer to the question "to ban or not to ban TikTok?" with a resounding "BAN,"[67] other experts pose the argument that "[l]egislation and executive branch authorities can minimize risk while allowing TikTok to continue to operate."[68] The proposed alternatives to an outright ban include "passing a national privacy law, expanding transparency

60. *See id*.

61. Nita Bhalla, *US TikTok Ban: Which Other Countries Have Banned the App?*, CONTEXT (Feb. 14, 2025), https://www.context.news/big-tech/us-tiktok-ban-which-other-countries-have-banned-the-app [https://perma.cc/P96K-76K3] (listing Afghanistan, Albania, India, Jordan, Kyrgyzstan, Nepal, Senegal, Somalia, South Sudan, and Uzbekistan as countries that have banned TikTok).

62. *See* Lin, *supra* note 54, at 34 (discussing the United States's contentions with and restrictions on Huawei—"one of the largest technology companies in the world" and a "leading manufacturer of telecommunications equipment and smartphones").

63. Claire Fu & Daisuke Wakabayashi, *There Is No TikTok in China, but There Is Douyin. Here's What It Is.*, N.Y. TIMES (Apr. 25, 2024), https://www.nytimes.com/2024/04/25/business/china-tiktok-douyin.html [https://perma.cc/RV2N-ZNGU].

64. *See id*.

65. *Id.*; Melody Wang, *What Is Douyin? The Chinese Version of TikTok*, SINORBIS: BLOG (July 31, 2024), https://blog.sinorbis.com/what-is-douyin [https://perma.cc/TB4J-QV5A].

66. *See* Nicholas Gisonna, *Great Firewall*, BRITANNICA (July 17, 2025), https://www.britannica.com/topic/Great-Firewall [https://perma.cc/JJ9D-7EV2] (detailing the Chinese government's policy that blocks social media, streaming, and news websites including Facebook, Instagram, Twitter, Discord, YouTube, Netflix, The New York Times, Thomson Reuters, The Washington Post, and The Economist).

67. *See* Scott Bomboy, *Updated: Supreme Court to Decide TikTok's Fate*, NAT'L CONST. CTR.: BLOG (Dec. 18, 2024), https://constitutioncenter.org/blog/tiktok-ban-heads-towards-the-supreme-court [https://perma.cc/MAW8-VXR4].

68. James Andrew Lewis, *TikTok and National Security*, CTR. FOR STRATEGIC & INT'L STUD. (Mar. 13, 2024), https://csis.org/analysis/tiktok-and-national-security [https://perma.cc/W5ZC-PMQN].

into software supply networks, and restricting cases where the use of Chinese technology creates risk."[69]

Despite the proffered government points as to why China and Chinese technology could be a threat to U.S. national security, alternatives have seemingly not been seriously entertained.[70] American users' question as to why TikTok specifically should be banned in the United States still begs to be answered.[71]

2. Two Presidential Orders to Ban TikTok and One to Save It

From the first Trump Administration through the Biden Administration, and up until the first day of the second Trump Administration, TikTok has remained a target of U.S. executive regulation, while the app itself has become increasingly popular.[72]

a. President Trump's Initial Ban

It seems to be infrequently discussed that, during President Trump's first term in the Oval Office, he was by no means trying to save TikTok. To the contrary, in fact. In May of 2019, President Trump declared a "national emergency with respect to [the] threat" of foreign adversaries' access to and use of data of United States users.[73] In August of 2020, President Trump targeted TikTok specifically by issuing an executive order that prohibited any

69. *Id*.

70. *See id*.

71. Viral TikToker Chris Olsen pointed out this question as the source of irony in light of the national security scandal in which key members of the Trump Administration—including National Security Adviser Mike Waltz, Defense Secretary Pete Hegseth, Vice President JD Vance, CIA Director John Ratcliffe, Director of National Intelligence Tulsi Gabbard, Secretary of State Marco Rubio, and others—texted in a Signal "group chat about upcoming military strikes in Yemen." *See* Jeffrey Goldberg, *The Trump Administration Accidentally Texted Me Its War Plans*, ATLANTIC (Mar. 24, 2025), https://www.theatlantic.com/politics/archive/2025/03/trump-administration-accidentally-texted-me-its-war-plans/682151/ [https://perma.cc/9H96-JSAV]. Olsen posted a TikTok video stating: "So you're telling me TikTok might still get banned because it's an American security risk, but our government is accidentally adding random numbers into group chats about war?" Video posted by Chris Olsen (@chris), TIKTOK, *I'd say "make it make sense" but I don't think it ever will* (Mar. 26, 2025), https://www.tiktok.com/t/ZT27KXEAK/ [https://perma.cc/MM28-Q9LG].

72. *See* Jeffrey Gottfried, *Americans' Social Media Use*, PEW RSCH. CTR. (Jan. 31, 2024), https://www.pewresearch.org/internet/2024/01/31/americans-social-media-use/ [https://perma.cc/T2WQ-HLEL] ("A third of U.S. adults (33%) say they use the video-based platform, up 12 percentage points from 2021 (21%)."); Madison Minges, *National Security and the TikTok Ban*, AM. UNIV. (Jan. 23, 2025), https://www.american.edu/sis/news/20250123-national-security-and-the-tik-tok-ban.cf [https://perma.cc/9TEK-9XQQ].

73. Exec. Order No. 13,873, 84 Fed. Reg. 22689, 22689 (May 15, 2019).

U.S. entity from transacting with ByteDance: *Addressing the Threat Posed by TikTok, and Taking Additional Steps to Address the National Emergency with Respect to the Information and Communications Technology and Services Supply Chain*.[74] In addition to his executive power, President Trump cited his ability to issue such an order as authorized by the International Emergency Economic Powers Act (IEEPA),[75] the National Emergencies Act (NEA),[76] and 3 U.S.C. § 301[77] to protect national security in the United States.[78] The executive order was set to take effect within forty-five days,[79] but "[l]itigation ensued, and two courts enjoined the President's prohibitions under the IEEPA as exceeding his authority under that law."[80] The Trump administration was unable to find a buyer for TikTok to sell its business operations to by the end of its already extended deadline and the end of President Trump's first presidential term, so TikTok continued to thrive, unscathed, in the United States.[81]

b. President Biden's Ban

In the first six months of the Biden Administration, President Biden revoked President Trump's executive orders targeting TikTok and issued a similar yet more elaborate executive order: *Protecting Americans' Sensitive Data From Foreign Adversaries* (PASDFFA).[82] In addition to rescinding the Trump Administration executive orders, the PASDFFA directed the Secretary of Commerce to assess risks and provide recommendations for executive and legislative actions.[83] The order also provided broad definitions of "connected software application," "foreign adversary," and "information and

74. Exec. Order No. 13,942, 85 Fed. Reg. 48637, 48637–38 (Aug. 6, 2020), *revoked by*, Exec. Order No. 14,034, 86 Fed. Reg. 31424 (June 9, 2021).

75. 50 U.S.C. §§ 1701–1710.

76. 50 U.S.C. §§ 1601–1641.

77. 3 U.S.C. § 301 (stating that the President may authorize certain executive officials to perform presidential functions without requiring further approval but remains responsible for their actions, with such authorizations being written, published, subject to conditions, and revocable).

78. Exec. Order No. 13,942, 85 Fed. Reg. at 48637.

79. *Id.* at 48637–38.

80. TikTok Inc. v. Garland, 122 F.4th 930, 942 (D.C. Cir. 2024) (first citing TikTok Inc. v. Trump, 507 F. Supp. 3d 92, 102 (D.D.C. 2020); and then citing Maryland v. Trump, 498 F. Supp. 3d 624, 638, 641–45 (E.D. Pa. 2020)).

81. *See* Bobby Allyn, *U.S. Judge Halts Trump's TikTok Ban, the 2nd Court to Fully Block the Action*, NPR (Dec. 7, 2020, at 20:36 ET), https://www.npr.org/2020/12/07/944039053/u-s-judge-halts-trumps-tiktok-ban-the-2nd-court-to-fully-block-the-action [https://perma.cc/NHQ2-BPV8].

82. *See* Exec. Order No. 14,034, 86 Fed. Reg. 31423, 31423–24 (June 9, 2021).

83. *Id.* at 31424.

communications technology or services."[84] The PASDFFA order was notably a more systematic, process-oriented approach compared to the August 6, 2020 executive order by President Trump, as the PASDFFA created necessary factors and criteria for evaluating foreign applications.[85]

With parallel intentions to PASDFFA, the Protecting Americans from Foreign Adversary Controlled Applications Act (PAFACAA) passed the U.S. House of Representatives on March 13, 2024.[86] The stated purpose of the bill was to prohibit "providing internet hosting services to enable the distribution, maintenance, or updating of [a] foreign adversary controlled application"[87] and the bill explicitly referenced TikTok and ByteDance as subjects of the law.[88] Under the PAFACAA, a foreign adversary controlled-company can only be exempt from the prohibition if it "executes a qualified divestiture" as determined by the President.[89] An explicit exemption is also provided for "an application that is primarily used to post product reviews, business reviews, or travel information and reviews."[90]

If the Department of Justice determines a violation of the PAFACAA has occurred, it is tasked with investigating such breach and enforcing "civil penalties based on the number of [app] users."[91] Companies in violation "face penalties as high as $5,000 per user who is able to access the app."[92] The PAFACAA does require that affected applications "provide a user with all available account data . . . at the user's request before the prohibition takes effect," [93] allowing users to maintain a copy of created content, messages to

84. *See id.* at 31425.

85. *See id.* at 31423 (listing "potential indicators of risk" for foreign applications that included "ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities; use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data; ownership, control, or management of connected software applications by persons subject to coercion or cooption by a foreign adversary; ownership, control, or management of connected software applications by persons involved in malicious cyber activities; a lack of thorough and reliable third-party auditing of connected software applications; the scope and sensitivity of the data collected; the number and sensitivity of the users of the connected software application; and the extent to which identified risks have been or can be addressed by independently verifiable measures").

86. *See* Protecting Americans from Foreign Adversary Controlled Applications Act, H.R. 7521, 118th Cong. (2024).

87. *Id.* § 2(a).

88. *Id.* § 2(g)(3).

89. *See id.* § 2(e)(1)(A), (g)(6).

90. *Id.* § 2(g)(2)(B).

91. *See id.* § 2(d)(1)–(2).

92. David McCabe, *A Potential TikTok Ban: What to Know*, N.Y. TIMES (Jan. 17, 2025), https://www.nytimes.com/2025/01/17/us/politics/tiktok-ban-what-to-know.html [https://perma.cc/5NT4-JHTP].

93. *See* H.R. 7521 § 2(b).

and from other creators, lists of followers and following, and personal information.[94] President Biden signed the PAFACAA into law on April 24, 2024, with an effective date for prohibitions and fines to begin on January 19, 2025.[95]

More targeted bipartisan legislation has also been introduced in Congress attacking TikTok. For example, Senator Josh Hawley championed the No TikTok on Government Devices Act,[96] prohibiting the "download[] or us[e of] TikTok on any device issued by the United States."[97] Similarly, a bill has been introduced that "prohibit[s] Federal funds from being provided to an institution of higher education unless the institution has banned the use of TikTok on electronic devices."[98] Other private sector companies have followed the executives' and Congress's lead, banning TikTok on company devices.[99]

Once under a double envelopment attack from two presidential administrations and Congress, TikTok reacted. Throughout the first two years of the Biden Administration, "TikTok submitted multiple drafts of its proposed National Security Agreement (NSA) and Executive Branch officials held numerous meetings to consider TikTok's submissions."[100] The NSA had three key provisions in its August 2022 submission.[101] First, the proposal aimed to create an operationally independent entity (to be called TTUSDS) from ByteDance with government-approved management.[102] Second, a three-tier data system would be established and restrict ByteDance's access to TikTok users' protected data in the United States.[103] Third, Oracle would serve as a "'trusted third party' . . . to inspect [TikTok's] source code,"[104] and the government would retain authority to shut down the platform under certain

94. *See Requesting Your Data*, TIKTOK, https://support.tiktok.com/en/account-and-privacy/personalized-ads-and-data/requesting-your-data [https://perma.cc/4PDA-3BWL] (last visited July 31, 2025).

95. Protecting Americans from Foreign Adversary Controlled Applications Act, Pub. L. No. 118-50, div. H, 138 Stat. 955, 955–60 (2024) (codified as amended at 15 USC § 9901 note).

96. No TikTok on Government Devices Act, S. 1143, 117th Cong. (2022); Cong. Rsch. Serv., *S.1143 - No TikTok on Government Devices Act, Summary*, CONGRESS.GOV, https://www.congress.gov/bill/117th-congress/senate-bill/1143 [https://perma.cc/4LZT-P2PP] (last visited Oct. 3, 2025).

97. S. 1143.

98. Terminate TikTok on Campus Act of 2023, H.R. 231, 118th Cong. (2023).

99. *See, e.g.*, Max Mason, *Deloitte, EY, McKinsey and BCG Consultants Banned from Using TikTok*, AUSTRALIAN FIN. REV. (July 11, 2023, at 14:13 ET), https://www.afr.com/technology/deloitte-ey-and-mckinsey-consultants-banned-from-using-tiktok-20230706-p5dm4u [https://perma.cc/94TA-WMJ7].

100. TikTok Inc. v. Garland, 122 F.4th 930, 943 (D.C. Cir. 2024).

101. *Id*.

102. *Id*.

103. *Id*.

104. *Id*.

circumstances through a "kill switch" provision.[105] Maintaining that divestment was the only acceptable solution, the proposed NSA was nevertheless rejected.[106] The Biden Administration attributed its decision to the facts that, under the NSA, (1) Americans users' data would still end up in the hands of ByteDance and China, (2) President Biden "did not trust that ByteDance and TTUSDS would comply in good faith," and (3) the Biden Administration did not have "'sufficient visibility [into] and resources to monitor' compliance."[107]

c. President Trump "Saves" TikTok

On President Trump's first day in office for his second term, he signed twenty-six executive orders, on subjects ranging from "Ending the Weaponization of the Federal Government" to "Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government."[108] The hodgepodge of orders included the Application of Protecting Americans From Foreign Adversary Controlled Applications Act to TikTok, which implemented a seventy-five-day window of opportunity for the Trump Administration "to determine the appropriate course of action with respect to TikTok."[109] President Trump's delay on the enforcement of the ban of TikTok intended to provide time for the Trump Administration "to work out a deal by which TikTok's Chinese parent, ByteDance, could divest the app."[110]

Vice President Vance was tasked with overseeing the Trump Administration's negotiations regarding the sale of TikTok and expected "'a high-level agreement' by April 5[, 2025]," that addressed national security concerns yet "allow[ed] there to be a distinct American TikTok enterprise."[111] It appeared that Oracle—a computer software company headquartered in

105. *Id.*

106. *Id.* at 943–44.

107. *Id*.

108. Brian Duignan, *Major Executive Orders Issued by U.S. Pres. Donald Trump During His Second Term of Office (2025–)*, BRITANNICA (Sep. 5, 2025) https://www.britannica.com/topic/Major-Executive-Orders-Issued-by-U-S-Pres-Donald-Trump-During-His-Second-Term-of-Office [https://perma.cc/KG44-LVSK]; *see also 2025 Donald J. Trump Executive Orders*, FED. REG., https://www.federalregister.gov/presidential-documents/executive-orders/donald-trump/2025 [https://perma.cc/YC9Q-C3WY] (last visited July 21, 2025) (collecting executive orders).

109. Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).

110. HARRELL, *supra* note 14.

111. Alison Durkee, *What We Know About Trump's TikTok Deal—As Reports Suggest Oracle Could Take Lead Role*, FORBES (Mar. 16, 2025, at 17:06 ET), https://www.forbes.com/sites/alisondurkee/2025/03/16/what-we-know-about-trumps-tiktok-deal-as-reports-suggest-oracle-could-take-lead-role/[https://perma.cc/SG3G-7T84].

Austin, Texas[112]—was the "'leading contender' to run TikTok" out of a group of four contenders.[113] Even if the Trump Administration found a buyer, "the decision on whether ByteDance sells TikTok or licenses its use by a U.S. company ultimately rests with the Chinese government."[114] President Trump publicly stated that he would "make it worthwhile for China" to cede control of and sell TikTok.[115] President Trump also committed to extend the ban if a deal was not completed by the end of the initial executive order period.[116]

As promised, when the seventy-five-day executive order extension came and passed on April 4, 2025, President Trump granted TikTok a *second* extension of seventy-five days for the app to find an American buyer.[117] The legality of this additional extension was under scrutiny by "[t]he top Democrat on the Senate Intelligence Committee," Senator Mark Warner, for violating the law and that continued discussions "undermine[] confidence that the divested app can be trusted to protect national security and ensure compliance with the law."[118] After 150 days of an executive order-induced standstill of TikTok's fate, on June 19, 2025, President Trump extended the enforcement delay for a *third* period—this time for a full 90 days.[119] On September 16, 2025, President Trump ordered a *fourth* extension of 90 days,[120] which was promptly replaced on September 25, 2025 with a 120-day extension, setting the current deadline for January 23, 2026[121]—over a year since the initial executive order. Additionally, the Chinese government has still not made any

112. *Where is Oracle's Headquarters? Main Office Location and Global Offices*, CLAY (Nov. 29, 2024), https://www.clay.com/dossier/oracle-headquarters-office-locations [https://perma.cc/6VL4-57SQ].

113. Dasha Burns et al., *White House Seriously Considering Deal from Oracle to Run TikTok*, POLITICO (Mar. 16, 2025, at 11:30 ET), https://www.politico.com/news/2025/03/16/white-house-oracle-tiktok-00232302 [https://perma.cc/WDE6-FTH7].

114. *Id.*

115. Ali Bianco, *Trump Upbeat About a TikTok Deal as Deadline Ticks Down*, POLITICO (Feb. 13, 2025, at 17:22 ET), https://www.politico.com/news/2025/02/13/trump-upbeat-about-a-tik-tok-deal-as-deadline-ticks-down-00204210 [https://perma.cc/E394-63VH].

116. *See id.*

117. *See* Exec. Order No. 14,258, 90 Fed. Reg. 15209, 15209 (Apr. 4, 2025); Jessica Murphy, *Trump Extends Deadline to Keep TikTok Running in US*, BBC (Apr. 4, 2025), https://www.bbc.com/news/articles/cx256dd1znpo [https://perma.cc/6Z3Q-LFPB].

118. David Shepardson, *Senator Warner Says New Trump TikTok Extension May Violate Law*, REUTERS (Apr. 7, 2025, at 20:17 ET), https://www.reuters.com/world/us/senator-warner-says-new-trump-tiktok-extension-may-violates-law-2025-04-07/ [https://perma.cc/QK49-HZ5X].

119. *See* Exec. Order No. 14,310, 90 Fed. Reg. 26913, 26913 (June 19, 2025).

120. Exec. Order No. 14,350, 90 Fed. Reg. 45903, 45903 (Sep. 16, 2025).

121. Exec. Order No. 14,352, 90 Fed. Reg. 47219, 47219–21 (Sep. 25, 2025).

public showing that it will approve of a sale, which would completely terminate any deal.[122]

B. Executive Power and Separation of Powers

Article II of the U.S. Constitution establishes that "The executive Power shall be vested in a President of the United States of America,"[123] creating a distinct executive branch of government with specific powers and limitations. The Framers' carefully designed branch system created a balanced government where the President has significant authority to lead the nation while remaining accountable to the legislative and judicial branches and ultimately to the American people.[124] For example, the President serves as Commander in Chief and has the power to control the armed forces during wartime.[125] Yet, only Congress has the power to declare war.[126] The President can make treaties with foreign nations, though these require approval from two-thirds of the Senate to ensure diplomatic agreements align with national interests.[127] Even the President's appointment powers have limitations, as Cabinet members, Supreme Court Justices, and other high officials require Senate approval before taking office.[128] While Congress makes the laws,[129] the President has the power to enforce such laws.[130] The President's influence over the national budget is limited as Congress controls how federal money is spent.[131]

The President is implicitly given the constitutional authority to issue executive orders.[132] While the power is not explicitly enumerated in the Constitution, it is derived from Article II's vesting of executive power in the President and the duty to "take care that the laws be faithfully executed."[133] Executive orders are issued by the President of the United States with the

122. Meaghan Tobin, *Why Beijing Could Have the Last Say on Any TikTok Deal*, N.Y. TIMES (Jan. 17, 2025), https://www.nytimes.com/2025/01/17/us/politics/tiktok-ban-sale-china.html [https://perma.cc/J5US-QTHY].

123. U.S. CONST. art. II, § 1, cl. 1.

124. *See Branches of the U.S. Government*, USAGOV (Sep. 22, 2025), https://www.usa.gov/branches-of-government [https://perma.cc/3TPC-FHJV].

125. U.S. CONST. art. II, § 2, cl. 1.

126. *Id.* art. I, § 8, cl. 11.

127. *See id.* art. II, § 2, cl. 2.

128. *Id*.

129. *Id.* art. I, § 1.

130. *Id.* art. II, § 3.

131. *Id.* art. I, § 8, cl. 1 ("Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States . . . .").

132. *See id.* art. II, § 3.

133. *Id*.

"inten[tion] to have the force and effect of law."[134] To be legally enforceable, an executive order must be issued pursuant to one of the President's sources of power: "Article II of the Constitution or an express or implied delegation of power from Congress."[135] Although Article II directs the President to "take care that the laws be faithfully executed,"[136] it does not vest a legislative power in the executive that can take precedence over federal law.[137]

When presidents issue executive orders affecting business operations, technology platforms, or national security concerns related to foreign companies, they typically cite the IEEPA, NEA, or the general executive authority to enforce laws passed by Congress.[138] The IEEPA and the NEA work in tandem.[139] While the NEA establishes procedures for declaring national emergencies,[140] the IEEPA grants specific powers such as enacting sanctions, asset freezes, and blocking transactions with foreign entities.[141] The most frequently used and abused presidential emergency power is the IEEPA,[142] which has led to Congress imposing more stringent procedural invocation requirements through the NEA.[143] When a president wants to utilize IEEPA powers, they must first issue an executive order that declares a national emergency related to a specific threat as required by the NEA.[144] Upon declaring a national emergency, the President cannot exercise the powers without "specif[ying] the provisions of law under which he proposes that he, or other officers will act."[145]

While the President can issue executive orders until they are blue in the face, other articles of the Constitution provide checks and balances to

134. ABIGAIL A. GRABER, CONG. RSCH. SERV., R46738, EXECUTIVE ORDERS: AN INTRODUCTION 15 (2021).

135. *Id.* at 1.

136. U.S. CONST. art. II, § 3.

137. Christopher Anders, *What Is an Executive Order and How Does it Work?*, ACLU: NEWS & COMMENT. (Feb. 4, 2025), https://www.aclu.org/news/privacy-technology/what-is-an-executive-order-and-how-does-it-work [https://perma.cc/WCS6-6WC6].

138. CHRISTOPHER A. CASEY & JENNIFER K. ELSEA, CONG. RSCH. SERV., R45618, THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT: ORIGINS, EVOLUTION, AND USE 15 (2024).

139. *Id.* at 10.

140. The National Emergencies Act allows the president to declare a national emergency through mere proclamation, transmittal to Congress, and subsequent publication in the Federal Register. 50 U.S.C. § 1621(a).

141. *See* 50 U.S.C. §§ 1701–1707.

142. *See, e.g.*, CASEY & ELSEA, *supra* note 138, at 15–16.

143. *See* Andrew Boyle & Tim Lau, *The President's Extraordinary Sanctions Powers*, BRENNAN CTR. FOR JUST. (July 20, 2021), https://www.brennancenter.org/our-work/research-reports/presidents-extraordinary-sanctions-powers [https://perma.cc/489A-5LT7].

144. *See* 50 U.S.C. § 1701(a)–(b) ("[The presidential authorities] may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this title and may not be exercised for any other purpose.").

145. 50 U.S.C. § 1631.

invalidate any order that is not constitutional.[146] In addition to the judicial action in response to an executive order, which will primarily be discussed in this paper, Congress can legislatively reverse an executive order so long as they have the constitutional authority vested to do so.[147] Also, as exemplified by President Biden revoking President Trump's executive order banning TikTok and reissuing an revised version, "[a]ny future president can issue a new executive order that rescinds or amends" the prior president's order.[148] Courts have the power to review whether an executive order is legally permissible by evaluating the scope of the President's action.[149] Since 1952, the Supreme Court has used the tri-partite framework laid out by Justice Jackson in *Youngstown Sheet & Tube Co. v. Sawyer* to determine when the president has exceeded their executive power.[150]

C. The Seminal Executive Power Case: Youngstown Sheet & Tube Co. v. Sawyer

During the wake of the Korean War, President Truman resorted to issuing an executive order to end a labor dispute in the steel industry between industry employees and mill operators.[151] In 1951, steel mill workers were unable to reach an agreement with regard to the inclusion of terms in their collective bargaining agreements, resulting in the union notifying of their intention to strike.[152] Government intervention by the Federal Mediation and Conciliation Service failed.[153] Subsequently, the Federal Wage Stabilization Board also failed to bring the parties closer to a settlement.[154] With five days' notice of a nationwide strike, President Truman feared that the impending "work stoppage would immediately jeopardize . . . national defense and that governmental seizure of the steel mills was necessary in order to assure the

146. Anders, *supra* note 137.

147. *Id.*

148. *Id.* See *supra* Section II.A.2 for an analysis of President Trump's executive order—*Addressing the Threat Posed by TikTok and Taking Additional Steps To Address the National Emergency With Respect to the Information and Communications Technology and Services Supply Chain*—and President Biden's executive order—*Protecting Americans' Sensitive Data From Foreign Adversaries*.

149. GRABER, *supra* note 134, at 13.

150. *See infra* Section II.C.

151. Caroline Fredrickson & Ilan Wurman, Youngstown Sheet & Tube Co. v. Sawyer *(*Steel Seizure Case*) (1952)*, NAT'L CONST. CTR., https://constitutioncenter.org/the-constitution/supreme-court-case-library/youngstown-sheet-tube-co-v-sawyer-steel-seizure-case [https://perma.cc/A7RE-J5AU] (last visited July 21, 2025).

152. *The Steel Seizure Case*, 343 U.S. 579, 582 (1952).

153. *Id*.

154. *Id.* at 582–83.

continued availability of steel."[155] Specifically, President Truman fretted that the strike of over 600,000 steelworkers "would cripple production of weapons and endanger American troops overseas."[156] Mere hours before the strike was to occur, President Truman issued Executive Order 10340, "direct[ing] the Secretary of Commerce to take possession of most of the steel mills and keep them running."[157] The Secretary ordered the presidents of the "seized companies to serve as operating managers for the United States," continuing to carry out business at the direction of the government.[158] President Truman sent a letter to Congress notifying the legislature of his action the morning after the issuance of the executive order, and he sent a follow-up letter nearly two weeks later.[159] Congress neither responded to the letter nor took action.[160]

The seized steel companies sued the Secretary of Commerce, arguing that "the seizure was not authorized by an act of Congress or by any constitutional provisions" and requested that the district court invalidate the executive order and the Secretary's subsequent enforcement orders.[161] The district court ruled in favor of the steel companies and "issued a preliminary injunction restraining the Secretary from 'continuing the seizure and possession of the plants . . . and from acting under the purported authority of Executive Order No. 10340.'"[162] That same day, the D.C. Circuit Court of Appeals stayed the lower court's order.[163] The Supreme Court granted certiorari for prompt argument and resolution as to two issues: (1) "Should final determination of the constitutional validity of the President's order be made in this case which has proceeded no further than the preliminary injunction stage?" and (2) "If so, is the seizure order within the constitutional power of the President?"[164]

1. Majority Opinion

The Supreme Court began by establishing that if the President exerts power via executive order, it "must stem either from an act of Congress or from the Constitution itself."[165] The Court agreed that there was neither a

155. *Id.* at 583.

156. Ken Gormley, *Foreword: President Truman and the* Steel Seizure Case*: A Symposium*, 41 DUQ. L. REV. 667, 667 (2003).

157. *The Steel Seizure Case*, 343 U.S. at 583.

158. *Id*.

159. *Id*.

160. *See id*.

161. *Id*.

162. *Id.* at 584 (alteration in original) (quoting Youngstown Sheet & Tube Co. v. Sawyer, 103 F. Supp. 569, 577 (D.D.C 1952)).

163. *Id*.

164. *Id*.

165. *Id.* at 585.

statutory provision nor an act of Congress that authorized President Truman's seizure of the steel mills.[166] Further, the Court resolved that Congress had previously rejected such a technique when it quashed a 1947 amendment to the Taft-Hartley Act, "which would have authorized such governmental seizures in cases of emergency."[167] In its rejection of the amendment, Congress cited its concern that such force by the federal government "would interfere with the process of collective bargaining."[168] The amendment to the Act that was adopted by Congress provided for parties to reach settlement through "the customary devices of mediation, conciliation, investigation by boards of inquiry, and public reports."[169] Additionally, under the amended Taft-Harley Act, unions maintained the right to strike.[170]

The Court next looked to whether a constitutional provision enabled President Truman to take such action, particularly under Article II.[171] The Court rejected the Government's assertion that Executive Order 10340 could be "sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces" or as "theater of war," despite President Truman's argument that his action was necessary to maintain critical operations during wartime.[172] The majority also rebuffed the Government's assertion that other provisions of the Constitution support the President exerting power to direct lawmaking and policy.[173] The Court asserted that President Truman's order established and directed the execution of a presidential policy rather than carrying out a congressional mandate.[174] Further, it argued that while Congress has unquestioned authority to legislate on matters such as labor relations and property rights, its lawmaking power is not deferable.[175] The Court stated that Congress retains its exclusive constitutional authority to enact laws "necessary and proper to carry out the powers vested by the Constitution 'in the Government of the United States, or any Department or Officer thereof.'"[176] In conclusion, the Court affirmed the district court's holding that the steel seizure executive order by President

166. *Id.* at 585–86.
167. *Id.* at 586.
168. *Id*.
169. *Id*.
170. *Id*.
171. *See id.* at 587–90.
172. *Id.* (recognizing that exerting authority to, for example, "take possession of private property in order to keep labor disputes from stopping production," should be "a job for the Nation's lawmakers, not for its military authorities").
173. *See id.* at 587–88.
174. *Id.* at 588.
175. *See id*.
176. *Id.* at 588–89.

Truman was unconstitutional and outside the scope of a president's executive power.[177]

2. *Justice Jackson's Three-Tiered Framework for Executive Power*[178]

Justice Jackson concurred with the majority in its judgment and opinion but wrote separately to stress that judicial decisions do not sufficiently narrow the scope of presidential powers.[179] Arguing that the powers of the executive "are not fixed but fluctuate," Justice Jackson rejected the notion that the constitutional division of power between the three branches of government should result in a lack of "interdependence" or "reciprocity."[180] Justice Jackson's concurrence reflects the judiciary's deference to executive power as determined by the relationships of the executive and legislative branches of government.[181]

First, Justice Jackson reasoned that "[w]hen the President acts pursuant to an express or implied authorization of Congress, [their] authority is at its maximum."[182] He argued that this joint power represented "the strongest of presumptions and the widest latitude of judicial interpretation," making it difficult for the judiciary to reject such power.[183]

Second, as was the situation in the *Steel Seizure* case, in direct contrast to executive and legislative agreement, Justice Jackson stated that "[w]hen the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb."[184] In such a situation, the President must "rely only upon his own constitutional powers minus any constitutional powers of Congress over the matter," thus creating a situation where it is the responsibility of the judiciary to determine if the action is within the constitutional scope of executive power.[185] Here, Congress's will was evidenced by it not amending the Taft-Harley Act to authorize such governmental seizures and President Truman acted in direct contravention to this express decision. Because there was no constitutional power authorizing

177. *See id.* at 589.

178. The concurrences of Justices Frankfurter, Douglas, and Burton and the dissent of Chief Justice Vinson and Justices Reed and Minton have been omitted from the analysis of this paper for purposes of relevance and conciseness.

179. *See The Steel Seizure Case*, 343 U.S. at 634 (Jackson, J., concurring).

180. *See id.* at 635.

181. *See id.* ("Presidential powers are not fixed but fluctuate, depending upon their disjunction or conjunction with those of Congress.").

182. *Id*.

183. *Id.* at 636–37.

184. *Id.* at 637.

185. *Id*.

the executive order seizing the steel mills, the Court had to rule that it exceeded the scope of executive power.[186]

Third, the absence of congressional authorization or prohibition places the President in the "zone of twilight in which [the President] and Congress may have concurrent authority, or in which its distribution is uncertain."[187] Justice Jackson stated that, in the zone of twilight, challenges to executive power "depend on the imperatives of events and contemporary imponderables rather than on abstract theories of law."[188]

Justice Jackson concluded his concurrence by stating that, in the case of President Truman's executive order seizing the steel mills and the government taking control of the industry, the lack of congressional authorization placed the President's authority in the lowest ebb of presidential power, and the Court properly rendered it unconstitutional.[189]

3. Steel Seizure's Implications for Evaluating Executive Power

President Truman addressed the Supreme Court's ruling just over a week later during a joint session to Congress.[190] In this speech, President Truman walked members of Congress through his decision-making process, acknowledged the Supreme Court's admonishment of his act of executive power, and urged Congress to take proper action by immediately "enacting fair and effective legislation."[191]

The Steel Seizure Case was one of the first times that the Supreme Court struck down an act of executive power and the Court's jurisprudence "has loomed in the shadows of every President since Harry Truman."[192] Since the U.S. Supreme Court decided the case in 1952, Justice Jackson's tripartite framework for assessing the extent of executive authority has been adopted as the constitutional analysis in situations where the President's actions conflict with the will of Congress.[193]

The Steel Seizure decision has been cited in numerous subsequent cases to evaluate the limits of executive power, particularly in contexts involving national security, foreign affairs, and domestic affairs.[194] For instance, the

186. *See id.* at 585–89 (majority opinion).
187. *Id.* at 637 (Jackson, J., concurring).
188. *Id*.
189. *Id.* at 655.
190. *See* Special Message to the Congress on the Steel Strike, 161 PUB. PAPERS 410, 410 (June 10, 1952).
191. *Id.* at 410–13.
192. Gormley, *supra* note 156.
193. *See id*.
194. *See id*.

case was prominently cited in *United States v. Nixon*,[195] providing justification that President Nixon must turn over the Watergate tapes.[196] Additionally, in *Hamdan v. Rumsfeld*,[197] the Supreme Court applied Justice Jackson's framework to assess the legality of executive actions of the Bush Administration related to trial by military commissions.[198] Similarly, in *Zivotofsky ex rel. Zivotofsky v. Kerry*,[199] the Court used the three-part framework to evaluate the President's recognition power in foreign relations and concluding that the head of the executive branch holds this power.[200] The framework has also been applied in cases involving domestic issues, such as *City and County of San Francisco v. Trump*,[201] where the Ninth Circuit evaluated and rejected President Trump's authority to withhold federal funds from sanctuary cities without authorization from Congress.[202] The ebbs of power framework continues to be exercised by the Supreme Court in executive power cases, including in those involving President Trump.[203] There is no indication that there is any desire to stray away from Justice Jackson's framework of analysis.

Although no party has yet brought to the Supreme Court the issue of whether the executive orders delaying the TikTok ban constitute an abuse of power if a divestiture agreement is not reached,[204] existing Supreme Court rulings concerning the app must be analyzed before applying Justice Jackson's *Steel Seizure* concurrence tripartite test.

195. 418 U.S. 683 (1974).

196. *See id.* at 707.

197. 548 U.S. 557 (2006).

198. *See id.* at 638 (stating that Justice Jackson's three-part test is "[t]he proper framework for assessing whether executive actions are authorized").

199. Zivotofsky *ex rel.* Zivotofsky v. Kerry, 576 U.S. 1 (2015).

200. *See id.* at 1–3.

201. *See* 897 F.3d 1225 (9th Cir. 2018).

202. *See id.* at 1233–34.

203. Justice Jackson's tripartite framework has consistently been used in recent cases evaluating the executive actions of President Trump. *See, e.g.*, Trump v. United States, 603 U.S. 593, 608–10 (2024) (holding that President Trump was "absolutely immune from criminal prosecution for conduct within his exclusive sphere of constitutional authority").

204. *See* Sarah Parvini & Mark Sherman, *Why No One Is Challenging Trump's Executive Order That Keeps TikTok Running*, AP NEWS (Apr. 2, 2025, at 07:05 ET), https://apnews.com/article/trump-tiktok-ban-china-supreme-court-37284ac35241b1822c9f5da7c9d719d2 [https://perma.cc/3HXV-RFRQ].

D. TikTok Inc. v. Garland

1. D.C. Circuit Court of Appeals Decision

In September 2024, the D.C. Circuit Court of Appeals heard arguments in *TikTok Inc. v. Garland* to determine whether the PAFACAA, as passed during the Biden Administration, violated the First Amendment, Fifth Amendment, or Takings Clause.[205] Additionally, the court evaluated whether the PAFACAA constituted an unlawful bill of attainder.[206] In response to the U.S. House of Representatives passing the PAFACAA, ByteDance, TikTok, Based Politics, and eight individual TikTok creators sought "declaratory judgment that the [PAFACAA] violates the Constitution and an order enjoining the Attorney General from enforcing it."[207]

The majority opinion began by addressing the constitutionality claims. First, the court determined that TikTok's claims could withstand the prerequisites of Article III standing and ripeness.[208] The court then turned to the plaintiffs' claim that their First Amendment rights would be violated by the enactment of PAFACAA.[209] In determining the level of scrutiny required for the evaluation, the court rejected the Government's argument that only rational basis scrutiny should apply and the petitioners' argument that strict scrutiny was most appropriate.[210] Rather, the court settled on "some level of heightened scrutiny."[211] The court stated that "the curation of content on TikTok is a form of speech" and that TikTok was effectively targeted by the issuance of the Act, limiting the opportunity for expressive activity.[212] The court rejected the Government's argument that, as a Chinese-owned company, ByteDance and therefore TikTok did not have First Amendment protections, citing that "at least some of the regulated speech involves TikTok's U.S. entities."[213]

Next, the court used settled precedent to conclude that the provisions of the PAFACAA were facially content neutral because the Act targets TikTok's divesture "as a precondition to operating in the United States," and does not target the content itself.[214] The Government presented two national security concerns regarding TikTok: China's mass data collection on Americans and

205. *See* 122 F.4th 930, 946–47 (D.C. Cir. 2024).
206. *See id*.
207. *Id.* at 946.
208. *Id.* at 947–48.
209. *See id.* at 948.
210. *See id.* at 948–49, 952.
211. *Id.* at 949.
212. *Id*.
213. *Id.* at 949–50.
214. *Id.* at 950–51.

its potential covert manipulation of content.[215] While the first concern was rendered content neutral, the court determined that the second concern directly related to TikTok's speech.[216] The Government argued and the court agreed that the Act does not suppress content, but instead targets, China's ability to manipulate American users' TikTok content covertly.[217] While users would still be free to access and share content, the Act aims to prevent foreign adversary control over a key communication platform in the United States, which aligns with First Amendment principles.[218] The court concluded that the PAFACAA satisfied strict scrutiny because it was narrowly tailored—"crafted to deal only with control by a foreign adversary"—to serve a compelling government interest—the aforementioned matters of national security.[219] The Government's fears about national security, data collection, and content manipulation were found by the court to be justified.[220] The court rejected TikTok's counterargument that its proposed NSA was a "less restrictive alternative."[221]

TikTok asserted a series of additional claims, which the court struck down one by one. The court dismissed TikTok's argument that the PAFACAA "violate[d] its right to the equal protection of the laws because it singles out TikTok for disfavored treatment relative to other similarly situated platforms."[222] It argued that "[m]erely singling a company out, however, does not amount to an equal protection violation if doing so furthers an appropriate governmental interest."[223] TikTok's claim that the PAFACAA was a bill of attainder—a law that "applies with specificity" and that "imposes punishment"—was also rejected.[224] Lastly, the court dismissed the idea that the PAFACAA "subjected [TikTok] to a complete deprivation of economic value" under the Takings Clause.[225] With no claims left disproved, the D.C. Circuit Court of Appeals upheld the PAFACAA in its entirety. With time running out before the PAFACAA was set to go into effect, TikTok and the other plaintiffs promptly appealed, and the Supreme Court granted certiorari less than two weeks later.[226]

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215. *Id.* at 951.
216. *Id*.
217. *Id.* at 952.
218. *Id*.
219. *Id.* at 952–53.
220. *Id.* at 953–61.
221. *See id.* at 963; *supra* text accompanying notes 100–07 (discussing development and function of TikTok's proposed NSA).
222. *TikTok, Inc.*, 122 F.4th at 965–66.
223. *Id.* at 966.
224. *Id.* at 967, 969.
225. *Id.* at 696.
226. *See* TikTok Inc. v. Garland, 145 S. Ct. 1001, 1001 (2024) (mem.).

2. United States Supreme Court Per Curiam Opinion

The Supreme Court granted certiorari, reviewed the D.C. Circuit Court of Appeals' holding, and released a per curiam opinion a mere two days before President Trump's inauguration for his second presidential term.[227]

The Court first considered "whether the challenged provisions are subject to First Amendment scrutiny."[228] It determined that the PAFACAA does not "directly regulate[] expressive activity or conduct," as it primarily imposes a divestiture requirement on ByteDance and TikTok rather than restricting the creator petitioners.[229] The Court decided that no precedent supports treating corporate control regulations as direct restrictions on an individual's freedom of expression.[230]

Petitioners argued that it would be "commercially infeasible for TikTok to be divested within the Act's 270-day timeframe," which effectively constitutes a ban that burdens 170 million users' "First Amendment activities, including content moderation, content generation, access to a distinct medium for expression, association with another speaker or preferred editor, and receipt of information and ideas."[231] Although noting that "a law targeting a foreign adversary's control over a communications platform is . . . different in kind from the regulations of non-expressive activity [traditionally] subjected to First Amendment scrutiny," the Supreme Court applied strict scrutiny anyways.[232] The Court determined that, "[a]s applied to petitioners, the challenged provisions are facially content neutral and are justified by a content-neutral rationale."[233] The Court concluded that the provisions of the PAFACAA are content neutral, focusing on foreign adversary control rather than speech content.[234]

Next, the Court determined that "the Government's interest in preventing a foreign adversary from collecting . . . sensitive data" is sufficiently important.[235] Because the PAFACAA imposes a conditional ban instead of outright banning TikTok, it "prevent[s] China from gathering data from U.S. TikTok users unless and until a qualified divestiture severs China's control."[236] The Court rejected the petitioners' suggested lesser restrictions and argued that "the challenged provisions are 'not substantially broader than

227. *See* TikTok Inc. v. Garland, 145 S. Ct. 57, 62 (2025) (per curiam).
228. *Id.* at 65.
229. *See id.* at 65–66.
230. *See id*.
231. *Id.* at 66.
232. *Id*.
233. *Id.* at 67.
234. *See id*.
235. *Id.* at 69–70.
236. *Id.* at 71.

necessary'" in addressing the Government's national security concerns relating to data collection.[237]

The Court recognized TikTok's significance as a platform for expression, stating that "for more than 170 million Americans, TikTok offers a distinctive and expansive outlet for expression, means of engagement, and source of community."[238] It justified that this importance can nevertheless be restricted because "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."[239] The Court emphasized the narrowness of its holding, noting that the case involved "new technologies with transformative capabilities"[240] and that its analysis was "narrowly focused in light of these circumstances."[241]

Justice Sotomayor concurred in the judgment and in part, writing separately to assert that there was no need to "assume without deciding" that the PAFACAA implicates the First Amendment because the Supreme Court's "precedent leaves no doubt that it does."[242] Lastly, Justice Gorsuch concurred in the judgment only, stating that he had "serious reservations about whether the law before [the Court] is 'content neutral'" but was persuaded that the PAFACAA "seeks to serve a compelling interest" and "appears appropriately tailored."[243]

It is clear that Congress and the Supreme Court have spoken and determined that the PAFACAA should be enacted and enforced without delay, yet President Trump still issued the January 20, 2025, Executive Order in an attempt to keep TikTok functioning in the United States.[244] As will be further analyzed in Part III, the ban on TikTok had even more legislative and judicial support against the action than in *The Steel Seizure Case*, raising concerns about its implications on executive power and governmental regulation of foreign and domestic corporations operating in the United States.

III. ANALYSIS

As is precedent for examining acts of executive power, it is important to apply Justice Jackson's *Steel Seizure* framework to the executive order by President Trump delaying the ban of TikTok to show the drastic differences

237. *See id.* (listing alternatives including "disclosure requirements, data sharing restrictions, the proposed national security agreement, [and] the general designation provision").

238. *Id.* at 72.

239. *Id*.

240. *Id.* at 62.

241. *Id.* at 62–63.

242. *Id.* at 73 (Sotomayor, J., concurring).

243. *Id.* at 73–74 (Gorsuch, J., concurring).

244. Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).

in the use of executive orders as an act of executive power between President Truman and President Trump.[245]

A. Scope of Presidential Authority

As previously discussed, President Truman's exhibition of executive power at issue in *The Steel Seizure Case* involved a scenario where Congress had explicitly expressed its intent to not allow such seizures when it rejected an amendment to the Taft-Hartley Act.[246] In issuing the executive order directing the government to seize the steel mills, President Truman's actions placed his executive authority at its weakest and therefore exceeded his presidential power.[247] The Court determined that President Truman erroneously justified the government's direct seizure of the private steel mill operations on protecting national security during the Korean War when continued steel production was paramount for the U.S. military's success.[248] President Truman decided to issue the executive order despite Congress taking legislative action indicating its position on the matter, exceeding his executive power.[249]

1. Application of Steel Seizure Tripartite Framework to the Executive Orders Delaying the TikTok Ban

Justice Jackson's *Steel Seizure* framework remains relevant in evaluating President Trump's executive orders regarding TikTok. In application to the PAFACAA, if Congress explicitly authorized the President to take action delaying the TikTok ban, the President's authority would reach its maximum, significantly reducing the likelihood of successful legal challenges.[250] If Congress remained silent, the President would enter the zone of twilight, where judicial interpretation of national security concerns and free speech protections are critical in determining the legality of executive action.[251] However, if the President acted contrary to express congressional intent—such as by enforcing or delaying a ban without legislative approval—the

245. *See supra* text accompanying notes 192–203.

246. *The Steel Seizure Case*, 343 U.S. 579, 586 (1952).

247. *Id.* at 640 (Jackson, J., concurring).

248. *See supra* notes 143–144 and accompanying text (discussing President Truman's fears of not seizing the steel mills in avoidance of a strike during the Korean War).

249. *The Steel Seizure Case*, 343 U.S. at 640 (Jackson, J., concurring).

250. *Cf. id.* at 635–36 ("When the President acts pursuant to an express or implied authorization of Congress, his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate.").

251. *Cf. id.* at 637 (discussing the "zone of twilight" in which the President and Congress "may have concurrent authority" or in which the distribution of power is uncertain).

action would fall into the lowest ebb of authority, inviting rigorous judicial scrutiny and increasing the probability of invalidation by the courts.[252]

In comparison to President Truman's *Steel Seizure* executive order, President Trump's attempt to delay the ban of TikTok represents an even weaker claim to executive authority. President Trump's own actions during his first presidential term and President Biden's measures directly contradicted his January 20, 2025, executive order, undermining its legitimacy.[253] Congress had clearly established its position by passing the PAFACAA to regulate foreign-owned social media applications.[254] Additionally, both the D.C. Circuit Court of Appeals and Supreme Court issued rulings upholding the PAFACAA, further restricting executive action in this domain.[255] This scenario creates an unprecedented situation beyond the *Steel Seizure* framework's lowest ebb when Congress, the judiciary, and a previous administration (technically two, including President Trump during his first term) have all opposed such an executive order. The extreme lack of support for President Trump's executive order delaying the ban of TikTok underscores its tenuous legal footing.

President Trump's actions have directly contravened Congress and the judiciary's decision that the PAFACAA go into effect and be enforced by the U.S. government if TikTok did not find an American buyer and divest the company from Chinese stakeholders. He provided no justification for opposing congressional findings that continuing TikTok's current operation threatens national security by exposing U.S. users' data to the Chinese government.[256] Under Justice Jackson's framework, President Trump's power is at its lowest and his authority is limited to "any remainder of executive power after subtraction of such powers as Congress may have over the subject."[257]

Additionally, there are issues with the executive orders delaying the ban of TikTok in the United States themselves. President Trump did not cite his powers for the executive order delaying the ban of TikTok under the NEA or IEEPA.[258] He only stated that the executive order was made "by the authority vested in [him] as President by the Constitution and the laws of the United

252. *Cf. id.* ("When the President takes measures incompatible with the expressed or implied will of Congress, his power is at its lowest ebb . . . .").

253. *See* Exec. Order No. 13,942, 85 Fed. Reg. 48637, 48637–38 (Aug. 11, 2020).

254. *See* Protecting Americans from Foreign Adversary Controlled Applications Act, H.R. 7521, 118th Cong. (2024).

255. TikTok Inc. v. Garland, 122 F.4th 930, 970 (D.C. Cir. 2024); TikTok Inc. v. Garland, 145 S. Ct. 57, 72 (2025) (per curiam).

256. *See* Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).

257. *The Steel Seizure Case*, 343 U.S. at 640 (Jackson, J., concurring).

258. *See* Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).

States of America."[259] To ensure that there is no executive power vested in the January 20, 2025, executive order, each must be discounted one by one.[260] President Trump's executive order notably did not declare a national emergency as required by the NEA[261] or even explicitly cite the IEEPA as the legal basis for the action.[262] Further, President Trump's January 20, 2025, executive order failed to specify which particular IEEPA authorities were being invoked, with specific details of the sanctions or restrictions being implemented,[263] so that Congress could monitor mandated reporting on "the authorities to be exercised and the actions to be taken."[264]

President Trump claimed that his executive order delaying the TikTok ban was within his general executive authority under the Constitution and the laws of the United States.[265] This is ironic because President Trump's executive order was enacted in direct contravention of action by Congress, which is expressly tasked with making the laws of the United States.[266] As previously mentioned, the President cannot make or extend laws arbitrarily. There is no constitutional power for President Trump to delay the TikTok ban indefinitely. Because President Trump initially argued that TikTok posed an immediate threat to national security that required him to declare a national emergency, the postponement of the ban arbitrarily weakens the credibility of his earlier emergency order.

In both President Truman's executive order seizing the steel mills and in President Trump's executive order delaying the ban of TikTok, both presidents acted at their lowest ebb of power under Justice Jackson's *Steel Seizure* framework. The comparison between the executive orders issued by President Truman and President Trump underscores the importance of congressional and judicial oversight in executive actions, particularly those that impact constitutional rights and economic interests. As future presidential administrations could consider similar actions, the *Steel Seizure* framework should continue to serve as a crucial guide in determining the legitimacy and enforceability of executive orders within the scope of constitutionally authorized executive power.

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259. *Id*.

260. President Trump cited his ability to issue his 2020 executive order *banning* TikTok as authorized by the International Emergency Economic Powers Act (IEEPA), the National Emergencies Act, and section 301 of title 3 of the United States Code. Exec. Order No. 13,942, 85 Fed. Reg. 48637, 48637 (Aug. 11, 2020).

261. *See* 50 U.S.C. § 1621.

262. *See* Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).

263. *See id*.

264. 50 U.S.C. § 1703(b)(3).

265. Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).

266. *See* U.S. CONST. art. I, § 1 ("All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.").

B. Legal Basis, Justification, and Supreme Court Response

President Truman justified his seizure of the steel mills as a response to a national emergency and war efforts.[267] Despite this substantive rationale, the Supreme Court rejected President Truman's reasoning, and Justice Jackson's concurrence in the *Steel Seizure* opinion established an important and enduring precedent about the limits of presidential authority.

In contrast, President Trump's stance on TikTok represents a markedly different approach to executive intervention. While President Truman provided a substantive, albeit ultimately unsuccessful, national security rationale for his actions, President Trump's justification for attempting to keep TikTok in the United States appears to have no clear constitutional or strategic foundation. His statement, "Frankly, we have no choice. We have to save it,"[268] suggests an improvisational approach to presidential power that diverges significantly from established constitutional and legal principles.

The potential motivations behind President Trump's TikTok intervention are particularly intriguing. Unlike President Truman's executive order, which was grounded in wartime economic concerns, President Trump's second term executive orders blatantly renege his own stance that TikTok was a national security concern, which he fervently maintained during his first term as President.[269] President Trump's motivations during his second term seem more likely driven by political opportunism. Some sources suggest a political calculus, alluding to the perceived role TikTok played in helping President Trump get reelected.[270] An unlikely coincidence may be found by looking at ByteDance investor and one of the largest donors to conservative causes and candidates during the 2024 election, Jeff Yass.[271] Yass, the co-founder of Philadelphia-based trading firm Susquehanna International Group has been publicly accused of "bankrolling an army of lobbyists and orchestrating a bare-knuckle pressure campaign to protect TikTok—including by leveraging

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267. *See The Steel Seizure Case*, 343 U.S. 579, 587 (1952).

268. David Shepardson, *TikTok Restores US Service After Trump Says "We Have to Save It",* REUTERS (Jan. 20, 2025, at 02:53 ET), https://www.reuters.com/technology/tiktok-goes-dark-us-users-trump-says-save-tiktok-2025-01-19/ [https://perma.cc/2JTP-5A42].

269. *See supra* Section II.A.2.a.

270. *See* Jill Colvin & Barbara Ortutay, *From Backing Ban to Being Hailed as a Savior: Inside Trump's TikTok Shift*, AP NEWS (Jan. 19, 2025, at 22:22 ET), https://apnews.com/article/trump-tiktok-ban-da11df6d59c17e2c17eea40c4042386d [https://perma.cc/C4XQ-H3KK] (stating that Trump's change in support for TikTok "after waging a successful campaign in which he made inroads with voters in part by harnessing the appeal of some social media platforms").

271. Ivana Saric, *ByteDance Investor Jeff Yass Tops 2024 Donor List with TikTok Under Fire*, AXIOS (Mar. 21, 2024), https://www.axios.com/2024/03/21/tiktok-jeff-yass-bytedance-donor-conservative [https://perma.cc/W3EK-ESTK].

his nascent relationship with former President Donald Trump."[272] Despite both President Trump and Yass's denial of discussions about TikTok, Yass's "$46 million [in donations] to conservative causes and PACs" has resounding weight.[273]

Where the Supreme Court was able to decisively reject President Truman's seizure of steel mills promptly after his executive order was invoked, it has not yet been tasked to rule on President Trump's executive order delaying the ban of TikTok. As it stands at the time of writing this paper, there have been no legal challenges to the executive order, perhaps because the "170 million Americans using the app . . . [are] pretty happy to see [TikTok] continue to be available to them."[274] Timing may also be part of the problem because "[i]t also might be hard for someone to establish the legal right, or standing, to sue," without yet having actual harm to show that was caused by TikTok's continuance in the United States.[275] If history endures and a plaintiff did sue, the Supreme Court would likely invalidate President Trump's executive orders delaying the ban of TikTok as exceeding the scope of the power vested in him as the President under the *Steel Seizure* framework jurisprudence.

C. Public and Political Reactions

President Truman was ridiculed for seizing the steel mills, especially by the media and private industry.[276] The public's reaction to the Supreme Court's decision in *The Steel Seizure Case* was overwhelmingly positive, celebrating the Court's restriction of President Truman's executive power.[277] The decision resonated with Americans concerned about executive overreach, as it firmly established that presidential authority has constitutional limitations, even during times of national tension. Congress similarly reacted, praising the Court for stopping President Truman's seizure of the steel mills

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272. Brian Schwartz & Kalhan Rosenblatt, *Who is Jeff Yass? The Billionaire Donor with Investments in TikTok's Parent Company*, NBC NEWS (Mar. 12, 2024, at 18:04 ET), https://www.nbcnews.com/tech/tech-news/jeff-yass-billionaire-donor-investments-tiktoks-parent-company-rcna142531 [https://perma.cc/G2KV-8AWH].

273. Saric, *supra* note 271.

274. Parvini & Sherman, *supra* note 204.

275. *Id*.

276. *See* Gormley, *supra* note 156, at 669 (quoting sources that characterized President Truman's action as "one of the most highhanded acts committed by an American President" and that he "transgressed his oath of office, so far abused the power which is temporarily his, that he must now stand and take it").

277. Arthur Krock, *Powers of a President After the Steel Case*, N.Y. TIMES, June 8, 1952, at E3 ("The decision was one of the most popular ever rendered by the court because in substance it could be explained to the people as a holding that 'no man, including the President, is above the law' and that private property rights are still sacred in the United States.").

and affirming that the "Constitution is not to be employed to serve the purposes and whims of individual men."[278] Labor unions, though initially supportive of President Truman's intervention to prevent disruption in steel production during the Korean War,[279] ultimately recognized the significance of the Court's decision in protecting democratic principles. Meanwhile, steel industry executives celebrated the ruling and "the workers went on strike right away [, which] lasted more than [fifty] days."[280]

In stark contrast, in response to President Trump "saving" TikTok, American app users flooded the platform with celebratory posts when the app returned online on January 20, 2025, only approximately twelve hours after service was terminated in the United States.[281] The reaction highlighted the app's deep cultural integration among younger Americans, many of whom viewed access to the platform as a First Amendment free speech issue rather than a national security concern.[282] President Trump himself marked his return to the app with a triumphant message to users: "To all of those young people of TikTok, I saved TikTok, so you owe me big."[283] Small businesses that relied on TikTok for marketing and sales expressed similar relief, demonstrating the app's significant economic footprint beyond entertainment.[284]

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278. 98 CONG. REC. 6289 (1952) (statement of Sen. Harry Cain).

279. *See Steel Strike of 1952*, TRUMAN LIBR., https://www.trumanlibrary.gov/education/presidential-inquiries/steel-strike-1952 [https://perma.cc/7BQ9-ZSK3] (last visited July 27, 2025) (recognizing that union workers "were some of [Truman's] biggest political supporters").

280. Joshua Waimberg, *Youngstown Steel: The Supreme Court Stands Up to the President*, NAT'L CONST. CTR. (Nov. 16, 2015), https://constitutioncenter.org/blog/youngstown-steel-the-supreme-court-stands-up-to-the-president [https://perma.cc/B9ZT-LCAC].

281. *See* Jorge Fitz-Gibbon, *TikTok Nation Goes Nuts as Social-Media App Returns: 'Back babyyyy!'*, N.Y. POST (Jan. 19, 2025, at 15:56 ET), https://nypost.com/2025/01/19/us-news/tiktok-nation-goes-nuts-as-social-media-app-returns-back-babyyyy/ [https://perma.cc/HHQ6-A5T9].

282. Ashley Gorski & Patrick Toomey, *Banning TikTok is Unconstitutional. The Supreme Court Must Step In.*, ACLU (Jan. 15, 2025), https://www.aclu.org/news/national-security/banning-tiktok-is-unconstitutional-the-supreme-court-must-step-in [https://perma.cc/7XCE-DMGT] ("The law at issue gives the president unprecedented power to shut down Americans' speech and access to information under the guise of protecting national security.").

283. Donald Trump (@realdonaldtrump), TIKTOK, *I SAVED TIKTOK!* (Oct. 6, 2025), https://www.tiktok.com/@realdonaldtrump/video/7558116309083475230?lang=en [https://perma.cc/2UCM-KFM2]. Vice President Vance also announced his return, expressing gratitude for President Trump's work to keep TikTok active. J.D. Vance (@jd), TIKTOK, *Glad to be back on TikTok Thanks to President Trump! Follow along here for more updates from the White House, and maybe even some sombrero memes* (Oct. 6, 2025), https://www.tiktok.com/@jd/video/7558163823199276319?lang=en [https://perma.cc/D5S4-4Z39].

284. *See, e.g.*, Abby Weiss & Jayden Nguyen, *CT Influencers, Small Businesses Say TikTok's Return After Less than 24-Hour Ban Is a 'Relief'*, CT INSIDER (Jan. 20, 2025), https://www.ctinsider.com/living/article/tiktok-app-ban-us-ct-delay-20044143.php

Conversely to the overwhelmingly supportive reaction from the public about the delay of the TikTok ban, Congress has been unusually quiet about the bipartisan issue since the executive order went into effect.[285] While the Trump Administration looks for a buyer and shows no intention to let the PAFACAA go into effect, "[f]ew of the 431 members of the House of Representatives and the Senate who voted for the law have complained."[286] Not a single congressperson has taken public action against the executive order delaying their ban.[287]

The TikTok company was unabashedly thrilled with President Trump's executive order "saving" it. When TikTok restored service in the United States after a half-day shutdown,[288] company executives engaged in an aggressive media campaign emphasizing their commitment to working with the Trump Administration while celebrating the preservation of their American user base.[289] As the app restored service, TikTok users were greeted by a message that read:

> We thank President Trump for providing the necessary clarity and assurance to our service providers that they will face no penalties providing TikTok to over 170 million Americans and allowing over 7 million small businesses to thrive. . . . It's a strong stand for the First Amendment and against arbitrary censorship. We will work with President Trump on a long-term solution that keeps TikTok in the United States.[290]

This response mirrored TikTok CEO Shou Zi Chew's statement just days before, after the Supreme Court's ruling upholding the PAFACAA.[291] Chew posted a video on the official TikTok account thanking President Trump "on

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[https://perma.cc/DJN9-DEHG] (using Sam's Barber Shop LLC as an example of a small business that used TikTok to "connect with a global audience and showcase [their] work to millions" and stated that "[a]n extension of the ban delay would give creators and businesses like [theirs] more stability to focus on building meaningful connections with [their] followers").

285. Parvini & Sherman, *supra* note 204.

286. *Id*.

287. *See id*.

288. *See* Clare Duffy & David Goldman, *TikTok Is Back Online After Trump Pledged to Restore It*, CNN (Jan. 20, 2025, at 11:13 ET), https://www.cnn.com/2025/01/19/tech/tiktok-ban/index.html [https://perma.cc/3Z5C-5ASG].

289. *See* Julia Reinstein & Max Zahn, *TikTok Thanks Trump After It Begins Restoring Service to US Users*, ABC News (Jan. 19, 2025, at 12:48 ET), https://abcnews.go.com/Business/tiktok-restoring-service/story?id=117857636 [https://perma.cc/RG37-8BTE].

290. *Id*.

291. *See* Video posted by TikTok (@tiktok), TIKTOK, *Our response to the Supreme Court decision* (Jan. 17, 2025), https://www.tiktok.com/@tiktok/video/7460937381265411370?_t=ZT-8vOPTyZC4ru&_r=1/ [https://perma.cc/24H8-9JBF].

behalf of everyone at TikTok and all . . . users across the country" for "his commitment to work with [TikTok] to find a solution that keeps [the app] available in the United States."[292]

D. Broader Implications for Executive Power

1. Redefining Constitutional Boundaries

President Trump's executive orders delaying the enactment and enforcement of the PAFACAA begs the question: What are the appropriate boundaries between government regulation, national security, and corporate independence? The TikTok controversy reveals concerning trends regarding the apparent expansion of presidential power, especially concerning economic regulation. While executive authority has historically been viewed more liberally during times of national emergency and war,[293] President Trump's intervention in the ban of TikTok operated without such justification.[294] The implications of the U.S. Supreme Court's ruling in *TikTok Inc. v. Garland* and President Trump's direct action in disobeying its opinion via executive order extend far beyond national security concerns of Congress and First Amendment rights of social media content creators. The Court's decision and President Trump's reactionary executive order in nonobservance delve into "the increasing entanglement of technology, geopolitics, and regulation."[295]

The January 20, 2025, executive order delaying the ban of TikTok and the subsequent extensions to the delay raise foundational questions about appropriate executive power checks and balances. Unlike President Truman's actions, which were at least grounded in wartime concerns, the delay of the TikTok divestiture order appears driven by political considerations rather than genuine national security imperatives.[296] The traditional rationale for vesting significant power in the executive is to enable decisive action during genuine national crises.[297] However, the TikTok executive order demonstrates how this authority can be expanded beyond its intended constitutional boundaries. This represents a troubling new precedent where executive power can evidently be wielded based on personal relationships and political calculations rather than constitutional principles.

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292. *Id*.

293. *See, e.g.*, National Emergencies Act, 50 U.S.C. §§ 1601–1651.

294. *See* Shepardson, *supra* note 118 and accompanying text.

295. Stackpole, *supra* note 21.

296. *See* Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).

297. *Emergency Powers*, BRENNAN CTR. FOR JUST., https://www.brennancenter.org/issues/bolster-checks-balances/executive-power/emergency-powers [https://perma.cc/76WX-RXS4] (last visited Sep. 7, 2025).

2. Government-Business Relationship Dynamics

President Trump's executive orders delaying the enactment of the PAFACAA exemplifies the entangled relationships between Trump Administration officials and business leaders. By preventing TikTok's ban and having the executive branch facilitate its potential sale to only an American parent corporation, the Trump Administration demonstrates a fundamental shift in traditional government-business relations. The President and high-ranking officials are directly inserting themselves into conventional corporate governance decisions of business operations and acquisitions.[298] Actions such as these executive orders delaying the PAFACAA bypass established regulatory channels and dangerously intervene in corporate ownership structures.[299]

Another muddled line is the one between government regulation and intervention. When President Trump stated that he would "make it worthwhile for China" to sell TikTok and suggested he could indefinitely extend deadlines,[300] he effectively positioned himself as the ultimate arbiter of a foreign company's fate in the U.S. market—a role traditionally reserved for Congress or regulatory agencies operating under clear statutory frameworks.[301] Like the boy who cried "wolf," it is dangerous for national security to be used as an expansive justification for executive actions. It is even more dangerous to have no justification at all. This precedent threatens the constitutional separation of powers and risks subordinating established legal processes to an individual president's discretion based on shifting political priorities rather than consistent legal principles.

On the other side of the argument, if the PAFACAA were to go into effect, TikTok and other similarly situated companies would face $5,000 fines that arguably allow the U.S. government to censor the kinds of content that can be accessed by its citizens.[302] These financial penalties would provide a powerful lever for controlling digital content access and circulation. The enforcement of the PAFACAA would demonstrate how national security rationales can quickly transform into tools for content regulation—raising serious First Amendment concerns in the process.

The Trump Administration's expansion of executive power is particularly significant given its simultaneous push for privatization and deregulation in

298. *See* Rachel Ledbetter, *Overregulation Is Crippling Business, Getting Regulations Right Is the Key to Growth*, U.S. CHAMBER OF COM. (Jan. 16, 2025), https://www.uschamber.com/improving-government/overregulation-is-crippling-business-getting-regulations-right-is-the-key-to-growth [https://perma.cc/YT4H-FAM7].

299. *See id*.

300. Bianco, *supra* note 115.

301. *See id*.

302. *See* McCabe, *supra* note 92.

other sectors.[303] This contradiction between advocating for government withdrawal in some areas while dramatically expanding executive intervention in others suggests motivations rooted in political expediency more than coherent policy. As the Trump Administration pursues both approaches,[304] boundaries between executive authority and corporate autonomy become increasingly blurred and even adversarial, particularly within the technology and social media sectors.[305] If the pattern continues, the traditional separation between government oversight and corporate independence will continue to become increasingly porous.[306]

It is an even less reassuring quality that there are also conflicts of interest and corporate governance permeating throughout the Trump Administration as the cabinet itself is filled with billionaires and mega-millionaires.[307] These individuals are leading key government departments including "the treasury, commerce, interior and education departments, NASA and the Small Business Administration, and fill key foreign posts."[308] With each extremely affluent appointee comes "an abnormally long list of potential conflicts of interest."[309] And the President himself is no exception to the conflicts as he "refus[es] to step away from his own extensive business entanglements while in office,"

303. *See* Tim Balk, *Postal Service Reaches Deal With Musk's Department of Government Efficiency*, N.Y. TIMES (Mar. 13, 2025), https://www.nytimes.com/2025/03/13/us/politics/postal-service-musk-doge.html [https://perma.cc/AS8M-B2A9] (quoting Elon Musk's statement that "We should privatize anything that can reasonably be privatized" when discussing whether the U.S. Postal Service should be privatized).

304. *See Tracking Regulatory Changes in the Second Trump Administration*, BROOKINGS (June 25, 2025), https://www.brookings.edu/articles/tracking-regulatory-changes-in-the-second-trump-administration/ [https://perma.cc/HS5D-3RJM] (listing the regulatory actions of President Trump, some of which push for deregulation and others increase regulations).

305. *See* Jack Queen, *Which Media Companies Has Donald Trump Sued?*, REUTERS (Dec. 20, 2024, at 15:39 UTC), https://www.reuters.com/world/us/donald-trumps-lawsuits-against-media-companies-2024-12-20/ [https://perma.cc/2GMK-F6RV] (listing media companies that Donald Trump has sued).

306. *See* Tom Hals, *Delaware Lawmakers Approve Corporate Bill That Critics Call Giveaway to Billionaires*, REUTERS (Mar. 26, 2025, at 00:39 UTC), https://www.reuters.com/world/us/delaware-lawmakers-vote-corporate-bill-critics-call-giveaway-billionaires-2025-03-25/ [https://perma.cc/PAD8-3XLU] (discussing the implications of Senate Bill 21 in Delaware, which effectively prevents corporate shareholders from challenging the corporation's actions).

307. Bill Barrow, *Trump Fills His Government with Billionaires After Running on a Working-Class Message*, AP NEWS (Jan. 31, 2025, at 15:08 ET), https://apnews.com/article/donald-trumps-cabinet-wealth-billionaires-0d5147df74c7f0a851df296aeab2e164 [https://perma.cc/H9TK-U3XN].

308. *Id.* (listing Elon Musk—the world's richest man—alongside Linda McMahon, Doug Burgum, Scott Bessent, Howard Lutnik, Kelly Loeffler, and Jared Isaacman as appointees).

309. Eric Petry, *Uncovering Conflicts of Interest and Self-Dealing in the Executive Branch*, BRENNAN CTR. FOR JUST. (Feb. 21, 2025), https://www.brennancenter.org/our-work/research-reports/uncovering-conflicts-interest-and-self-dealing-executive-branch [https://perma.cc/3A6X-5J6D].

which raises concerns about self-enrichment and favoritism, especially as his administration curtailed anti-corruption efforts.[310]

3. Global Technology Governance Concerns

The executive orders delaying the ban of TikTok are the tip of an iceberg of implications for global business and technology governance. For global businesses, especially in the technology sector, President Trump's approach to the potential TikTok ban creates unprecedented regulatory uncertainty. Companies must now monitor not only formal legislation and regulation but also the personal preferences and relationships of key executive branch figures, as these factors may override established policy frameworks.[311] "A closed, non-global internet is a fragmented internet."[312] With such stringent and unpredictable government regulation causing uncertainty of the global technology, companies may not have the opportunity to expand past their home borders.[313] This fragmentation threatens not only large technology platforms but also small businesses utilizing these platforms for international commerce.[314] The arbitrary nature of executive intervention—as evidenced by the three consecutive delays of the TikTok ban after both President Trump and President Biden issued executive orders, Congress passed the PAFACAA, and the judiciary explicitly upheld the law—undermines the predictability that businesses require for long-term planning and investment.

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310. *Id*.

311. *See* Beth Kowitt, *CEOs Just Got a Lesson in How to Influence the White House*, BLOOMBERG OP. (Apr. 11, 2025, at 05:00 ET), https://www.bloomberg.com/opinion/articles/2025-04-11/tariffs-gave-ceos-a-lesson-in-how-to-influence-trump [https://perma.cc/WBF7-V528] (discussing how CEOs responded to President Trump's tariffs hurting their companies by "offer[ing] a way out, and let[ting President Trump] take the credit" while providing extra support for President Trump by stating that the "country is 100% behind the president on fixing a global system of tariffs").

312. Stackpole, *supra* note 21.

313. *See* Camino Kavanagh, *New Tech, New Threats, and New Governance Challenges: An Opportunity to Craft Smarter Responses?*, CARNEGIE ENDOWMENT FOR INT'L PEACE (Aug. 28, 2019), https://carnegieendowment.org/research/2019/08/new-tech-new-threats-and-new-governance-challenges-an-opportunity-to-craft-smarter-responses?lang=en [https://perma.cc/43CT-FDYV].

314. *See TikTok Shop Available Countries in 2025: Where You Can Sell and How to Join*, DIGIT. PROD. LABS, https://dpl.company/countries-with-access-to-tiktok-shop-seller-center/ [https://perma.cc/VX3E-49US] (last visited July 27, 2025) (listing United States, United Kingdom, Indonesia, Malaysia, Thailand, Vietnam, Philippines, Singapore, Spain, Ireland, Germany, France, Italy, and Mexico as "countries where the TikTok Shop Seller Center is available and accessible").

4. Challenges to the Separation of Powers

The Supreme Court's ruling in *TikTok Inc. v. Garland*, followed by President Trump's countermanding executive orders, also raise profound questions about the effectiveness of judicial review as a check on executive power. When presidents can effectively nullify court decisions through executive orders without immediate pushback from the judiciary, the constitutional separation of powers is fundamentally threatened. This sort of executive action may eventually force a reconsideration of the boundaries established in *The Steel Seizure Case*[315] in subsequent cases concerning such extreme executive authority. Lower courts and the Supreme Court now face the challenge of reasserting their role in determining constitutional limitations on presidential power, particularly when that power extends into areas of economic regulation and technological governance and falls far below the lowest ebb of executive power. It is imperative that courts maintain the authority for their interpretation of laws to be respected once an opinion is rendered.

Despite its continued silence in opposition to executive power overreach regarding President Trump's actions involving TikTok,[316] Congress will one day need to face the increasing pressure to clarify the limits of executive authority in technological regulation. The TikTok controversy demonstrates the need for more precise legislative frameworks that can withstand executive reinterpretation or even deliberate disobedience while addressing legitimate national security concerns. Congress will not be able to do its constitutionally assigned job if each piece of legislation passed with extensive time and research invested can be overruled with the stroke of the President's Sharpie.

Without maintaining effective judicial and legislative checks, the United States risks normalizing a system where presidential preferences—rather than constitutional principles—determine the fate of businesses operating within American markets. The resulting uncertainty would undermine both economic stability and constitutional governance, stunting further growth.

IV. CONCLUSION

Although the clock is ticking on the extension of President Trump's executive order for TikTok to find a buyer in the United States, a resolution is still not in sight. The saga of TikTok's existence in the United States represents a test of constitutional boundaries on executive power. President Trump's executive orders delaying the ban of TikTok—despite explicit congressional, judicial, and prior executive opposition—have created a

315. *See* Exec. Order No. 14,166, 90 Fed. Reg. 8611, 8611 (Jan. 20, 2025).
316. Parvini & Sherman, *supra* note 204.

dangerous precedent seemingly driven by political calculations rather than legitimate national security imperatives. The silence from Congress and the judiciary's inability to enforce its rulings against executive defiance reveal critical vulnerabilities in the enforcement of limits on executive power.

The implications of these actions extend far beyond TikTok itself, introducing dangerous uncertainty into global technology governance while blurring the lines between government regulation and corporate independence. As the United States navigates these uncharted constitutional waters, it becomes increasingly clear that Justice Jackson's *Steel Seizure* framework requires reinforcement through clearer legislative boundaries and more effective judicial enforcement mechanisms. Without such action, we risk normalizing a system where presidential preferences override constitutional principles, undermining both democratic governance and the rule of law.