Nos. 24-656, 24-657

In the
Supreme Court of the United States

TIKTOK, INC., *et al.*,

Petitioners,

v.

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

Respondent.

BRIAN FIREBAUGH, *et al.*,

Petitioners,

v.

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

Respondent.

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

BRIEF OF PRESIDENT DONALD J. TRUMP AS *AMICUS CURIAE* SUPPORTING NEITHER PARTY

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QUESTION PRESENTED

Whether the Protecting Americans from Foreign Adversary Controlled Applications Act ("the Act"), as applied to petitioners, violates the First Amendment.

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE* PRESIDENT DONALD J. TRUMP[1]

Amicus curiae President Donald J. Trump ("President Trump") is the 45th and soon to be the 47th President of the United States of America. On January 20, 2025, President Trump will assume responsibility for the United States' national security, foreign policy, and other vital executive functions. This case presents an unprecedented, novel, and difficult tension between free-speech rights on one side, and foreign policy and national-security concerns on the other. As the incoming Chief Executive, President Trump has a particularly powerful interest in and responsibility for those national-security and foreign-policy questions, and he is the right constitutional actor to resolve the dispute through political means.

President Trump also has a unique interest in the First Amendment issues raised in this case. Through his historic victory on November 5, 2024, President Trump received a powerful electoral mandate from American voters to protect the free-speech rights of all Americans—including the 170 million Americans who use TikTok. President Trump is uniquely situated to vindicate these interests, because "the President and the Vice President of the United States are the only elected officials who represent all the voters in the Nation." *Anderson* v. *Celebrezze*, 460 U.S. 780, 795 (1983).

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[1] This brief was not authored in whole or in part by counsel for any party, and no party or party's counsel has made a monetary contribution toward the brief's preparation or submission.

Moreover, President Trump is one of the most powerful, prolific, and influential users of social media in history. Consistent with his commanding presence in this area, President Trump currently has 14.7 million followers on TikTok with whom he actively communicates, allowing him to evaluate TikTok's importance as a unique medium for freedom of expression, including core political speech. Indeed, President Trump and his rival both used TikTok to connect with voters during the recent Presidential election campaign, with President Trump doing so much more effectively. As this Court instructs, the First Amendment's "constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 162 (2014) (quoting *Monitor Patriot Co.* v. *Roy,* 401 U.S. 265, 272 (1971)).

Further, President Trump is the founder of another resoundingly successful social-media platform, Truth Social. This gives him an in-depth perspective on the extraordinary government power attempted to be exercised in this case—the power of the federal government to effectively shut down a social-media platform favored by tens of millions of Americans, based in large part on concerns about disfavored content on that platform. President Trump is keenly aware of the historic dangers presented by such a precedent. For example, shortly after the Act was passed, Brazil banned the social-media platform X (formerly known as Twitter) for more than a month, based in large part on that government's disfavor of political speech on X. *See, e.g., Brazil's Supreme Court*

Lifts Ban on Social Media Site X, CBS NEWS (Oct. 8, 2024).[2]

In light of these interests—including, most importantly, his overarching responsibility for the United States' national security and foreign policy—President Trump opposes banning TikTok in the United States at this juncture, and seeks the ability to resolve the issues at hand through political means once he takes office. On September 4, 2024, President Trump posted on Truth Social, "FOR ALL THOSE THAT WANT TO SAVE TIK TOK IN AMERICA, VOTE TRUMP!"[3]

Furthermore, President Trump alone possesses the consummate dealmaking expertise, the electoral mandate, and the political will to negotiate a resolution to save the platform while addressing the national security concerns expressed by the Government—concerns which President Trump himself has acknowledged. *See, e.g.,* Executive Order No. 13942, *Addressing the Threat Posed by TikTok*, 85 Fed. Reg. 48637, 48637 (Aug. 6, 2020); *Regarding the Acquisition of Musical.ly by ByteDance Ltd.*, 85 Fed. Reg. 51297, 51297 (Aug. 14, 2020). Indeed, President Trump's first Term was highlighted by a series of policy triumphs achieved through historic deals, and he has a great prospect of success in this latest national security and foreign policy endeavor.

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[2] *At* https://www.cbsnews.com/news/brazil-supreme-court-lifts-ban-social-media-site-x-elon-musk/.

[3] *At* https://truthsocial.com/@realDonaldTrump/posts/113081258242253706.

The 270-day deadline imposed by the Act expires on January 19, 2025—one day before President Trump will assume Office as the 47th President of the United States. This unfortunate timing interferes with President Trump's ability to manage the United States' foreign policy and to pursue a resolution to both protect national security and save a social-media platform that provides a popular vehicle for 170 million Americans to exercise their core First Amendment rights. The Act imposes the timing constraint, moreover, without specifying any compelling government interest in that particular deadline. In fact, the Act itself contemplates a 90-day extension to the deadline under certain specified circumstances. Pet.App.97a, § 2(a)(3)(A)-(C).

President Trump, therefore, has a compelling interest as the incoming embodiment of the Executive Branch in seeing the statutory deadline stayed to allow his incoming Administration the opportunity to seek a negotiated resolution of these questions. If successful, such a resolution would obviate the need for this Court to decide the historically challenging First Amendment question presented here on the current, highly expedited basis.

SUMMARY OF ARGUMENT

President Trump takes no position on the merits of the dispute. Instead, he urges the Court to stay the statute's effective date to allow his incoming Administration to pursue a negotiated resolution that could prevent a nationwide shutdown of TikTok, thus preserving the First Amendment rights of tens of millions of Americans, while also addressing the government's national security concerns. If achieved, such a resolution would obviate the need for this

Court to decide extremely difficult questions on the current, highly expedited schedule.

There is ample justification for the Court to stay the January 19 deadline—by which divestment for ByteDance must occur, or else TikTok will face an effective shut-down in the United States—while it considers the merits of the case. *First*, this Court has aptly cautioned against deciding "unprecedented" and "very significant constitutional questions" on a "highly expedited basis." *Trump* v. *United States*, 603 U.S. 593, 616 (2024). Due to the Act's deadline for divestment and the timing of the D.C. Circuit's decision, this Court now faces the prospect of deciding extremely difficult questions on exactly such a "highly expedited basis." Staying this deadline would provide breathing space for the Court to consider the questions on a more measured schedule, and it would provide President Trump's incoming Administration an opportunity to pursue a negotiated resolution of the conflict. Indeed, the Court recently pursued a similar course in *Zubik* v. *Burwell*, vacating lower-court decisions and pausing the enforcement of HHS's contraceptive mandate against religious organizations to "allow the parties sufficient time to resolve any outstanding issues between them." 578 U.S. 403, 408 (2016) (per curiam).

Second, three features of the Act raise concerns about possible legislative encroachment on prerogatives of the Executive Branch under Article II. First, the Act dictates that the President must make a particular national-security determination as to TikTok alone, while granting the President a greater "degree of discretion and freedom from statutory restriction" as to all other social-media platforms. *United States* v. *Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936). Second, the Act mandates that the

President must exercise his power over foreign affairs "through an interagency process" commanded by Congress, instead of exercising his sole discretion over the deliberative processes of the Executive Branch. Pet.App.19a. Third, the Act—due to its signing date—now imposes a deadline for divestment that falls one day before the incoming Administration takes power. Especially when viewed in combination, these unique features of the Act raise significant concerns about possible legislative encroachment upon the President's prerogative to manage the Nation's geopolitical, strategic relationships overall, and with one of our most significant counterparts, China, specifically. This is an area where the Nation must "speak ... with one voice," and "[t]hat voice must be the President's." *Zivotofsky ex rel. Zivotofsky* v. *Kerry,* 576 U.S. 1, 14 (2015) (citation omitted).

Third, the First Amendment implications of the federal government's effective shuttering of a social-media platform used by 170 million Americans are sweeping and troubling. There are valid concerns that the Act may set a dangerous global precedent by exercising the extraordinary power to shut down an entire social-media platform based, in large part, on concerns about disfavored speech on that platform. Perhaps not coincidentally, soon after the Act was passed, another major Western democracy—Brazil—shut down another entire social-media platform, X (formerly known as Twitter), for more than a month, apparently based on that government's desire to suppress disfavored political speech. Moreover, despite the Act's enormous impact on the speech of 170 million TikTok users, the D.C. Circuit's opinion grants only cursory consideration to the free-speech interests of Americans, while granting decisive weight and near-plenary deference to the views of national-

security officials. Yet the history of the past several years, and beyond, includes troubling, well-documented abuses by such federal officials in seeking the social-media censorship of ordinary Americans.

In light of the novelty and difficulty of this case, the Court should consider staying the statutory deadline to grant more breathing space to address these issues. The Act itself contemplates the possibility of a 90-day extension, indicating that the 270-day deadline lacks talismanic significance. Such a stay would vitally grant President Trump the opportunity to pursue a political resolution that could obviate the Court's need to decide these constitutionally significant questions.

ARGUMENT

This Court may grant a stay to preserve the status quo in a case that presents novel and difficult questions of great constitutional significance. The granting of such a stay does not necessarily forecast one party's likelihood of success on the merits.

A stay may be warranted where "[t]he underlying issue in th[e] case … has not heretofore been passed upon by this Court and is of continuing importance." *McLeod* v. *Gen. Elec. Co.*, 87 S. Ct. 5, 6 (1966) (Harlan, J.). "[T]he existence of an important question not previously passed on by the Court" is a factor that weighs in favor of a stay. *Shiffman* v. *Selective Serv. Bd. No.5*, 88 S. Ct. 1831, 1832 n.3 (1968) (Douglas, J., dissenting); *Certain Named and Unnamed Non-Citizen Children and Their Parents* v. *Texas*, 448 U.S. 1327, 1332 (1980) (Powell, J., in chambers) (holding that a case that "presents novel and important issues" warrants a stay). Where the appeal "raises a difficult question of constitutional significance" that "also

involves a pressing national problem," a stay may be warranted. *Texas*, 448 U.S. at 1331.

The moving party's likelihood of success on the merits is not an absolute prerequisite for such a stay. Instead, in extraordinary cases, a "fair prospect of reversal" may suffice. *Karcher* v. *Daggett*, 455 U.S. 1303, 1306 (1982) (Brennan, J., in chambers). Such a "fair prospect of reversal" may exist when "[t]he issues underlying this case are important and difficult," and the "fair prospect" standard does not require "anticipating [the Court's] views on the merits." *Times-Picayune Publ'g Corp.* v. *Schulingkamp*, 419 U.S. 1301, 1309 (1974) (Powell, J., in chambers). A stay may be warranted when the "petitioner's position … cannot be deemed insubstantial," *McLeod*, 87 S. Ct. at 6, and the Court need not "think it more probable than not that" reversal will occur, *Texas*, 448 U.S. at 1332.

I. The Case's Current Schedule Requires the Court To Address Unprecedented, Very Significant Constitutional Questions on a Highly Expedited Basis.

In *Trump* v. *United States*, this Court expressed the concern that "[d]espite the unprecedented nature of this case, and the very significant constitutional questions that it raises, the lower courts rendered their decisions on a highly expedited basis." 603 U.S. 593, 616 (2024). Due to the deadline imposed by the Act and the timing of the D.C. Circuit's decision below, this Court now faces the prospect of considering "unprecedented" and "very significant constitutional questions" on virtually the same "highly expedited basis" on which the D.C. Circuit acted in that historic case. *See* Briefing Scheduling *in United States* v. *Trump*, No. 23-3228 (D.C. Cir. Dec. 13, 2023) (adopting a briefing schedule on Presidential

immunity with opening briefs due on December 23 and oral argument on January 9).

In light of this Court's well-placed concerns about the "highly expedited" resolution of novel, difficult, and "very significant" constitutional questions, *Trump*, 603 U.S. at 616, the Court should consider staying the statutory deadline for divestment and taking time to consider the merits in the ordinary course. Such an approach would allow this Court more breathing space to consider the merits, and it would also allow President Trump's Administration the opportunity to pursue a negotiated resolution that, if successful, would obviate the need for this Court to decide these questions. *See Ashwander* v. *Tennessee Valley Auth.*, 297 U.S. 288, 341 (1936) (Brandeis, J., concurring).

This Court's recent precedent provides support for this approach. For example, in *Zubik*, facing novel and difficult questions of religious liberty, this Court vacated the judgments of several federal courts of appeals and directed the lower courts on remand to "allow" the federal government and private petitioners "sufficient time to resolve any outstanding issues between them." 578 U.S. at 408. Two factors influenced the Court's decision: (1) the "gravity of the dispute," and (2) the fact that a political resolution that could obviate the need for the federal courts to decide difficult constitutional questions seemed feasible. *Id.*

The Court should consider a similar approach here. Staying the statutory deadline for divestment would reflect "the gravity of the dispute," and it would give "the parties"—especially the Government, under the new leadership of President Trump—"an opportunity to arrive at an approach going forward

that accommodates" the free speech interests of the 170 million Americans who use TikTok, "while at the same time ensuring" that the Government's national security concerns are adequately protected. *Id.*

This approach also draws support from the fact that the January 19, 2025, deadline for divestment falls one day before President Trump takes office, and is unfortunately timed to bind the hands of the incoming Trump Administration on a significant issue of national security and foreign policy. As discussed below, this feature of the Act, combined with others, raises significant concerns under Article II of the Constitution.

II. Three Features of the Act, Considered in Combination, Raise Concerns of Possible Legislative Encroachment on Executive Authority Under Article II.

Three features of the Act, especially when considered in combination, raise concerns about possible legislative encroachment on Executive authority under Article II, including the Executive's power over national security and foreign affairs. These serious questions alone warrant staying the statutory deadline for more measured consideration.

First, while the Act defers to the Executive's determinations as to all other social-media platforms, when it comes to TikTok, the Act takes that determination out of the Executive's hands. Pet.App.99a-100a, § 2(g)(3)(A); *contrast id.* at 100a § 2(g)(3)(B)(ii). As to TikTok alone, the Act makes the determination for the Executive Branch—thus effectively binding the hands of the incoming Trump Administration on a significant point of foreign policy. *See, e.g.,* Pet.App.29a. But the Executive, not

Congress, is primarily charged with responsibility for the United States' national security, its foreign policy, and its strategic relationship with its geopolitical rivals. Whether Congress may dictate a particular *outcome* by the Executive Branch on such a significant, fact-intensive question of national security raises a significant question under Article II.

Second, the statute purports to dictate how the President must exercise his national security and foreign affairs authority in this sensitive area, by mandating that the President must make key determinations "through an interagency process." Pet.App.100a, § 2(g)(6)(A)-(B). Whether Congress has authority to dictate the specific intra-Executive procedures through which the President must exercise his foreign affairs power presents another significant constitutional question.

Third, as the Act was signed on April 24, 2024, the statutory deadline for divestment falls on the day before President Trump's inauguration, raising concerns that the Act effectively forestalls the incoming Administration's ability to address the question. At very least, this timing raises yet another significant question under Article II—a concern reinforced by the first two overlapping concerns.

"In foreign affairs, as in the domestic realm, the Constitution 'enjoins upon its branches separateness but interdependence, autonomy but reciprocity.'" *Zivotofsky,* 576 U.S. at 16 (quoting *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring)). Yet this Court has long recognized that there are certain areas within the domain of foreign affairs that constitute "exclusive power[s] of the President," such that "Congressional commands contrary to the President's …

determinations are thus invalid." *Trump*, 603 U.S. at 609 (citing *Zivotofsky*, 576 U.S. at 32).

Further, this Court has long emphasized the general primacy of Executive authority in this area. "In this vast external realm" of foreign affairs, "with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation." *Curtiss-Wright*, 299 U.S. at 319. When it comes to treaty negotiation, for example, "[i]nto the field of negotiation the Senate cannot intrude; and Congress itself is powerless to invade it." *Id.* Though this Court cautions that the President's foreign-affairs power is not "unbounded," *Zivotofsky*, 576 U.S. at 20, and Congress plays a significant role as well, *id.*, the primary authority of the Executive Branch in this area is long acknowledged.

In *Curtiss-Wright*, this Court observed that "[t]he President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success." 299 U.S. at 319 (quoting 8 U.S. Sen. Reports Comm. on Foreign Relations, at 24 (Feb. 15, 1816)). "[T]he very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations" is "a power which does not require as a basis for its exercise an act of Congress…." *Id.* at 320; *see also Zivotofsky*, 576 U.S. at 14 (recognizing that "functional considerations" dictate that "the Nation must have a single policy" regarding foreign-state recognition).

Thus, "congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President *a degree of discretion and freedom from statutory restriction* which would not be admissible were domestic affairs alone involved." *Curtiss-Wright*, 299 U.S. at 320 (emphasis added). Ultimately, the President, "not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries…." *Id.*

Under these principles, the three features of the statute noted above—especially considered in combination—raise concerns of possible legislative encroachment on Executive authority. First, as noted above, the statute defers to the Executive Branch's determinations of national security risks as to every other social-media platform, but when it comes to TikTok alone, the Act purports to make the determination *for* the Executive Branch. Pet.App. 99a-100a, § 2(g)(3)(A), (B). This singling out of TikTok raises a serious question whether the Act grants the President the requisite "degree of discretion and freedom from statutory restriction" in his conduct of foreign affairs, *Curtiss-Wright*, 299 U.S. at 320. This question is particularly significant in the context of the Nation's complex, ever-evolving relationship with one of its most challenging geopolitical rivals.

Second, the statute mandates that the President must make key foreign policy determinations through a specific, dictated procedure, *i.e.*, "through an interagency process." Pet.App.100a, § 2(g)(6)(A)-(B). Whether Congress has the authority to dictate that the President must use certain specific procedures to make sensitive national-security determinations presents a significant constitutional question. At the

very least, if the President's authority is bound by the recommendations or conclusions of such an "interagency process," the provision would raise grave Article II concerns. *Cf. Loper-Bright Enterprises* v. *Raimondo*, 144 S. Ct. 2244 (2024).

Third, the Act was signed on April 24, 2024, thus triggering a 270-day deadline for divestment by January 19, 2025—one day before President Biden's successor would take office. Pet.App.97a, § 2(a)(2). This timing binds the hands of the incoming Administration on a significant issue of national security and foreign policy, and thus it raises significant questions under Article II. When it comes to foreign policy regarding our geopolitical rivals, the Executive Branch must "speak ... with one voice," and "[t]hat voice must be the President's." *Zivotofsky*, 576 U.S. at 14 (quoting, in part, *American Ins. Ass'n* v. *Garamendi*, 539 U.S. 396, 424 (2003)). "Between the two political branches, only the Executive has the characteristic of unity at all times. And with unity comes the ability to exercise, to a greater degree, '[d]ecision, activity, secrecy, and dispatch.'" *Id.* (quoting THE FEDERALIST NO. 70, at 424 (A. Hamilton)). This principle applies not just to the outgoing, but also—and arguably with even more strength due to the fact that it is that President which will be left to handle the results of any such action—the incoming President of the United States.

III. The Case Presents Novel, Difficult, and Significant First Amendment Questions.

A stay of the statutory deadline is also justified on the basis that the case presents a novel, difficult, and significant tension between national security concerns and the free speech interests of over 170 million ordinary Americans.

To be sure, the national security concerns presented by ByteDance and TikTok appear to be significant and pressing. No one knows this better than President Trump, who has issued multiple orders expressing concerns similar to those that the Government cites to defend the Act. *See* Executive Order No. 13942, *Addressing the Threat Posed by TikTok*, 85 Fed. Reg. 48637 (Aug. 6, 2020); *Regarding the Acquisition of Musical.ly by ByteDance Ltd.*, 85 Fed. Reg. 51297 (Aug. 14, 2020).

On the other hand, neither the United States' relationship with the People's Republic of China, nor the federal government's involvement in social-media censorship, has remained static during the last four years. On the contrary, recent historical developments reinforce the significant First Amendment concerns raised by the petitioners here.

First, as discussed above, the President alone, not Congress or the federal courts, is charged with the primary responsibility for the United States' national security and foreign policy—a responsibility that President Trump will assume on January 20, 2025, one day after the Act's arbitrary deadline, which may be extended under the terms of the Act itself.

Second, the Act exercises an extraordinary power—the power to effectively shut down an entire social-media platform with over 170 million domestic users based in large part on the government's concerns about disfavored speech on the platform. The exercise of this power risks inadvertently setting a troubling global precedent. A few months after the Act was passed, Brazil—a Western democracy of more than 216 million people—shut down the platform X (formerly Twitter) within its borders for more than a month. Brazil's action was reportedly linked to

government officials' demands that X censor specific speakers who were critical of the government: "On Aug. 31, tensions came to a head when [a Brazilian judge] dramatically blocked X for failing to deactivate the accounts of dozens of supporters of former far-right president Jair Bolsonaro…." *Brazil's Supreme Court Lifts Ban on Social Media Site X, supra*. Reportedly, Brazilian officials "had been feuding [with X] for months … over allegations that X was supporting a network of people known as digital militias who allegedly spread defamatory fake news and threats against Supreme Court justices." *Id.*

The close chronological sequence is startling—and troubling. This Court should be deeply concerned about setting a precedent that could create a slippery slope toward global government censorship of social-media speech. The power of a Western government to ban an entire social-media platform with more than 100 million users, at the very least, should be considered and exercised with the most extreme care—not reviewed on a "highly expedited basis." *Trump*, 603 U.S. at 616.

Third, the D.C. Circuit's majority opinion gives limited consideration and weight to the free-speech interests of the over 170 million Americans who use TikTok. After exhaustively analyzing the government's interest and concerns, the opinion belatedly acknowledges in its conclusion that "this decision has significant implications for TikTok and its users." Pet.App.65a. This recital "tests the limits of understatement." *Gonzales* v. *Oregon*, 546 U.S. 243, 286 (2006) (Scalia, J., dissenting). TikTok's over 170 million users include American content creators whose entire livelihood may rest on their use of the platform. Those users include political candidates employing TikTok to reach new audiences with core

political speech in their "campaigns for political office," during which the First Amendment's "constitutional guarantee has its fullest and most urgent application." *Susan B. Anthony List*, 573 U.S. at 162 (quoting *Monitor Patriot Co.,* 401 U.S. at 272). They include grandparents sharing videos of beloved grandchildren, teenagers connecting with friends, and people posting rather silly viral videos—in other words, the entire range of protected freedom of expression, from momentous to trivial, all of which faces a government-ordered shut-down.

By contrast, while purportedly applying strict scrutiny, the D.C. Circuit's opinion confers near-plenary deference to the say-so of national-security officials on matters of social-media censorship. *See, e.g.,* Pet.App.32a, 33a, 38a, 43a-44a, 47a-48a, 52a. Yet, in the last four years, federal officials—including national-security officials—have repeatedly procured social-media censorship of disfavored content and viewpoints through a combination of pressure, coercion, and deception. *See, e.g., Missouri* v. *Biden*, 680 F. Supp. 3d 630, 675-679, 693, 701-03 (W.D. La. 2023); *Missouri* v. *Biden*, 83 F.4th 350, 365, 388-92 (5th Cir. 2023), *both rev'd on other grounds sub nom. Murthy* v. *Missouri*, 603 U.S. 43 (2024). For example, in late 2020, federal national security officials "likely misled social-media companies into believing the Hunter Biden laptop story was Russian disinformation, which resulted in [wrongful] suppression of the story a few weeks prior to the 2020 Presidential election," and this deliberate campaign of "deception" was "just another form of coercion." *Missouri*, 680 F. Supp. 3d at 702. Likewise, "[f]or months in 2021 and 2022, a coterie of officials at the highest levels of the Federal Government continuously harried and implicitly threatened

Facebook with potentially crippling consequences if it did not comply with their wishes about the suppression of certain COVID–19-related speech. Not surprisingly, Facebook repeatedly yielded." *Murthy*, 603 U.S. at 79 (Alito, J., dissenting).

There is a jarring parallel between the D.C. Circuit's near-plenary deference to national security officials calling for social-media censorship, and the recent, well-documented history of federal officials' extensive involvement in social-media censorship efforts directed at the speech of tens of millions Americans. *See Murthy*, 603 U.S. at 78. This recent history of sheds new light on the Act's stark restriction—a restriction which impacts the free-speech interests of over 170 million Americans with "a blunderbuss" rather than "a scalpel." *Heckler* v. *Chaney*, 470 U.S. 821, 852 (1985) (Marshall, J., concurring in the judgment).

In short, there are compelling reasons to stay the Act's deadline and allow President Trump to seek a negotiated resolution once in office.

CONCLUSION

President Trump takes no position on the underlying merits of this dispute. Instead, he respectfully requests that the Court consider staying the Act's deadline for divestment of January 19, 2025, while it considers the merits of this case, thus permitting President Trump's incoming Administration the opportunity to pursue a political resolution of the questions at issue in the case.

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Respectfully submitted,

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