

TikTok still seems headed for a ban after its Supreme Court arguments

After the Supreme Court heard oral arguments over a law that could ban TikTok, it looks like one of its last possible lifelines is unlikely to save it from the impending ouster.

TikTok will be banned from the US unless either the Supreme Court blocks the law from taking effect before the January 19th deadline or its China-based parent company, ByteDance, finally agrees to sell it. A sale – and return – of TikTok could happen after the deadline, and President-elect Donald Trump may get creative in trying not to enforce the law once he's sworn in the next day. But the longer it takes, the shakier things look for TikTok.

Bloomberg Intelligence senior litigation analyst Matthew Schettenhelm gave TikTok a 30 percent chance of winning at the Supreme Court before oral arguments, but he lowered that prediction to just 20 percent after hearing the justices' questioning. TikTok made a last-ditch plea for the court to issue an administrative stay without signaling a ruling on the law's merits, something Trump has suggested so he can attempt to broker a TikTok sale. Schettenhelm says that's unlikely – the court does not tend to issue that kind of pause just because of a change in administration, he adds, and it's unlikely to want to set that precedent.

A short order on the case could come as soon as Friday afternoon, after the justices are scheduled to meet. The court is also scheduled to release orders on Monday morning, though Schettenhelm warns not to read into it if nothing is released

by then – it may just mean they're fleshing out their reasoning in a longer written order.

Trump has said he'd like to save the app, and in theory, he could declare he won't enforce the divest-or-ban law. But Justice Sonia Sotomayor pointed out that even if he chooses not to enforce the law, that may not provide sufficient protection for companies like Apple and Google – which could be fined \$5,000 per user that accesses TikTok if they maintain it in their app stores. US Solicitor General Elizabeth Prelogar said the statute of limitations is five years; those companies would still be violating the law as long as it remains on the books, and they could face penalties even after Trump leaves office, should the next administration choose to enforce it.

"I think those companies would be undertaking enormous risk to not comply with the law on the hope that President Trump doesn't enforce it against them," Schettenhelm says. "You get into the hundreds of billions of dollars of potential liability. And even if President Trump is saying, 'don't worry about it, I'm not going to enforce it against you,' do you really want to take the chance that he's not going to change his mind on that? Do you really want to give him that level of leverage over your company? I doubt it."

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Schettenhelm doesn't believe a ruling against TikTok would create a precedent that threatens US-based social media companies. "I don't see another social media company that is similarly situated to TikTok," he says, pointing out that the arguments largely centered around ownership. Foreign-owned e-commerce companies like Shein and Temu that came up might be another story. But, he says, "none of that really jumped out as an imminent risk just because of this argument."

By contrast, Cornell University law professor and First Amendment expert Gautam Hans agrees the justices are unlikely to strike down the law, but he worries that such a ruling could have broader implications for other companies. During arguments, the justices and attorneys for TikTok and its users discussed hypotheticals about whether allowing a ban on certain types of corporate structure (like ownership by a Chinese parent company) would allow for backdoor speech regulations – including demanding a company’s owner sell it off to punish it for protected speech. But these concerns didn’t appear to be deal-breakers for the court.

“What remains unfortunate is the credulity with which many of the justices treated this law, which clearly implicates free speech rights on underspecified national security grounds,” Hans said in a statement. “I don’t think the distinction on foreign and domestic ownership is sufficiently stable to allay my concerns that a ruling upholding the TikTok ban creates a very slippery slope.”

<https://www.theverge.com/2025/1/10/24340859/supreme-court-tiktok-divest-ban-oral-arguments>