

February 27, 2023

**RE: Oppose Censorship and Protect Free Speech by Voting  
“NO” on HR 1153**

Rep. Michael McCaul  
Chairman, House Committee on Foreign Affairs  
2300 Rayburn House Office Building  
Washington, DC 20515

Rep. Gregory Meeks  
Ranking Member, House Committee on Foreign Affairs  
2310 Rayburn House Office Building  
Washington, DC 20515



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**Deirdre Schifeling**  
National Political Director

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Executive Director

**Deborah N. Archer**  
President

Dear Chairman McCaul and Ranking Member Meeks:

The American Civil Liberties Union strongly urges you to oppose HR 1153. This legislation is intended to ban TikTok in the U.S. — and would likely result in banning many other businesses and applications as well. This vague and overbroad legislation would violate the First Amendment rights of millions of Americans who use TikTok to communicate, gather information, and express themselves daily.

Before addressing substantive concerns, we have to raise the problem of the committee not following regular order on a bill that would violate the constitutional rights of all Americans. Despite this legislation’s sweeping First Amendment implications, it was scheduled for markup without first holding a hearing. Moreover, the bill text and notice of the markup was not available online until just two calendar days (not business days) before the scheduled markup. There was no meaningful opportunity for interested stakeholders to share the implications of this legislation with members of the committee. We urge the committee to reschedule this markup after it has held a hearing on the matter.

Should the bill move to a vote, we urge you to vote “no.” In a purported attempt to protect the data of U.S. persons from Chinese government acquisition, this legislation will instead limit Americans’ political discussion, artistic expression, free exchange of ideas — and even prevent people from posting [cute animal videos](#) and memes. While the ACLU’s opposition today rests on free speech harms, we note that with more time to review this legislation, we anticipate finding other sweeping implications.

As we noted when former President Trump first tried to ban TikTok nationally, selective bans of entire platforms “could cut off the flow of information, art, and communication that social media provides, interfering with communities and connections users in the United



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States have with each other and with people around the world. This interference with freedom of expression and association violates the First Amendment.”<sup>1</sup> Those problems with former President Trump’s attempted ban apply with even more force here, given that the provisions will pertain to even more apps and businesses.

Provisions of this bill are vague and overbroad. For example, Section 201 tasks the President with determining if a foreign entity deals in software that is “subject to the jurisdiction” of China “or otherwise subject to the influence of China,” and that “may be facilitating” a long list of activities by the Chinese government. If the president determines that the entity meets those criteria, the president is required to impose sanctions. Unfortunately, it would be impossible for the average person to know what the term “subject to the influence of China” means, and the term is not defined in the legislation. Would an entity be under the influence of China if the CEO’s sister had moved there, or married a Chinese person? Would an entity be under the influence of China if the CEO regularly travels there for leisure?

Likewise, Section 102 would result in the Secretary of the Treasury banning U.S. residents from engaging with any entity that “may” transfer sensitive personal data to an entity that is “subject to the jurisdiction” of, or “subject to the influence” of China. The phrase “may” is every bit as subjective as the term “subject to the influence of China.” How likely should a company be to transfer sensitive information in order to meet this criteria? One percent? Sixty percent? It’s worth noting that “sensitive personal information” includes “data relating to the physical, mental, or psychological health condition of an individual.”<sup>2</sup> Thus, sharing a video where a student explains their sadness at being the victim of bullying, or one where someone discusses their battle with an autoimmune disease could well be covered. Ultimately, this legislation is written in such a way that it will stifle speech otherwise protected by the First Amendment.

This legislation would also create an exception to the historic and invaluable Berman Amendment, which — for the past 35 years — has removed the president's authority to regulate or ban the import or export of “informational materials, including but not limited to, publications, films, posters, phonograph records, photographs ...

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<sup>1</sup> Hina Shamsi, Jennifer Stisa Granick and Daniel Kahn Gillmor, *Don't Ban TikTok and WeChat*, American Civil Liberties Union (August 14, 2020), available at <https://www.aclu.org/news/free-speech/dont-ban-tiktok-and-wechat>.

<sup>2</sup> 15 CFR 7.2



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artworks, and news wire feeds”<sup>3</sup> and later electronic media.<sup>4</sup> Congress enacted the Berman Amendment because it was concerned about how the International Emergency Economic Powers Act (IEEPA), which enables the president to impose sanctions on trade with hostile nations, could impact American access to works that would be protected if created in the United States, no matter where that speech originated.<sup>5</sup> This bill’s exemption creates a slippery slope for further carve outs of the Berman Amendment that could erode its protections, and leave U.S. residents without some of their favorite international books, movies, and artwork.

Having only had a few days to review this legislation, we have not included a comprehensive list of all of HR 1153’s potential problems in this letter. However, the immediately apparent First Amendment concerns are more than sufficient to justify a “no” vote. This legislation would not just, ban TikTok — an entire platform, used by millions of Americans daily — but would also erode the important free speech protections included within the Berman Amendment. Moreover, its vague and overbroad nature implicates due process and sweeps in otherwise protected speech.

Americans have a right to use TikTok and other platforms to exchange our thoughts, ideas, and opinions with people around the country and around the world. The ACLU strongly urges you to oppose the bill and support our constitutional right to express ourselves — both online and off. If you have any questions, please do not hesitate to contact Jenna Leventoff at [jleventoff@aclu.org](mailto:jleventoff@aclu.org). Thank you for your attention to these concerns.

Sincerely,

Christopher Anders  
Federal Policy Director

Jenna Leventoff  
Senior Policy Counsel

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<sup>3</sup> August 23, 1988, IEEPA amended to exclude informational materials (Berman Amendment, see elaboration below).(Omnibus Trade and Competitiveness Act of 1988; P.L. 100-418; 102 Stat. 1107, 1371).

<sup>4</sup> April 30, 1994, IEEPA amended to update the definition of informational materials.

(Foreign Relations Authorization Act for Fiscal Years 1994 and 1995; P.L. 103-236; 108 Stat. 382).

<sup>5</sup> Jarred O. Taylor III, *Information Wants to be Free (of Sanctions): Why the President Cannot Prohibit Foreign Access to Social Media Under the U.S. Export Regulations*, 54 William & Mary Law Review 297 at 308 (Nov 2012).

