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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

IN ITS ORIGINAL JURISDICTION

Appellate Case No. 2026-_____

OFFICE OF THE GOVERNOR, Petitioner,

v.

TIKTOK INC.; TIKTOK LLC; TIKTOK PTE. LTD.; TIKTOK, LTD.; BYTEDANCE INC.; and
BYTEDANCE LTD., Respondents.

PETITION FOR ORIGINAL JURISDICTION

Wm. Grayson Lambert
Chief Legal Counsel
Erica W. Shedd
Deputy Legal Counsel
Tyra S. McBride
Deputy Legal Counsel
OFFICE OF THE GOVERNOR
South Carolina State House
1100 Gervais Street
Columbia, South Carolina 29201
(803) 734-2100
glambert@governor.sc.gov
eshedd@governor.sc.gov
tmcbride@governor.sc.gov

Counsel for the Office of the Governor

The Office of the Governor petitions under Rule 245, SCACR, for original jurisdiction in this case.

INTRODUCTION

This case raises questions of first impression in this State about executive privilege and the apex doctrine that go to the Governor’s ability, as the “supreme executive authority of this State,” S.C. Const. art. IV, § 1, to fulfill his constitutional duty to “take care that the laws be faithfully executed,” *id.* art. IV, § 15. These questions arise from TikTok’s attempt to depose the Office of the Governor under Rule 30(b)(6) in litigation to which the Governor is not a party.

The State of South Carolina, through Attorney General Alan Wilson, has sued TikTok in state court, alleging that TikTok has engaged in unfair and deceptive trade practices that are harming children. *See State ex rel. Wilson v. TikTok Inc.*, No. 2024-CP-40-06018 (S.C. Comm. Pls.). In discovery, TikTok subpoenaed the Governor’s Office, demanding to take the Office’s deposition under Rule 30(b)(6) on 14 topics, ranging from the Office’s internal decisionmaking to its public statements to meetings with third parties.

TikTok’s attempt to depose the Office fails for two reasons. First, inquiring about any internal decisionmaking processes would violate executive privilege. And second, requiring the Office to answer any deposition questions would violate the apex doctrine. This Court has not yet recognized either doctrine in a published opinion, despite both being well established in other jurisdictions. And given that the end of Governor McMaster’s administration is less than five months away, taking this case in the Court’s original jurisdiction is the only way to ensure that these issues can be decided timely.

REASONS FOR GRANTING THE PETITION

The Supreme Court has both constitutional and statutory authority to consider matters in

its original jurisdiction. S.C. Const. art. V, § 5; S.C. Code Ann. § 14-3-310. The Court exercises this authority in matters involving “the public interest” or when there are “special grounds of emergency or other good reasons exist” to expedite a case directly to the Supreme Court. Rule 245(a), SCACR.

I. This case involves questions of great public interest.

This case involves how officials at the highest levels of state government perform their jobs. Both executive privilege and the apex doctrine ensure that high-level officials can do those jobs effectively.

A. Executive privilege allows the Governor to carry out his constitutional duties well, and it has at least two bases. The first is separation of powers. The Governor is “vested” with “[t]he supreme executive authority of this State.” S.C. Const. art. IV, § 1. No one can infringe that authority. *Id.* art. I, § 8. Protecting the internal workings of the highest levels of this branch of government ensures that the Governor can exercise his constitutional prerogatives.

The second is the “valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties.” *United States v. Nixon*, 418 U.S. 683, 705 (1974). This protection safeguards the “complete candor and objectivity” that the chief executive needs. *Id.* at 706. This need is clear from “[h]uman experience.” *Id.* at 705. Since the Republic began, no chief executive has performed his duties without assistance, so executive privilege applies to both the Governor and “his immediate advisers.” *United States v. Navarro*, 182 F.4th 1005, 1021 (D.C. Cir. 2026); *see also In re Sealed Case*, 121 F.3d 729, 757 (D.C. Cir. 1997).

Gubernatorial executive privilege is broadly recognized to be an issue of immense public interest. The New Mexico Supreme Court described “the scope of the Governor’s executive

privilege” to be “an issue of substantial public interest.” *Republican Party of N.M. v. N.M. Tax’n & Rev. Dep’t*, 283 P.3d 853, 858 (N.M. 2012). And the New Jersey Supreme Court recognized the “vital public interest” implicated by gubernatorial executive privilege. *Nero v. Hyland*, 386 A.2d 846, 853 (N.J. 1978). The issue is just as important for the Palmetto State.

B. The apex doctrine serves similar purposes, though it finds its roots in Rule 26(c), SCRCF, which allows a court to protect a “person from annoyance, embarrassment, oppression, or undue burden by expense” by precluding certain discovery. One type of annoyance, embarrassment, oppression, or undue burden by expense is attempting to depose high-level officials unnecessarily. *See Est. of Valentine by & through Grate v. South Carolina*, No. CV 3:18-00895-JFA, 2020 WL 12783948, at *2 (D.S.C. Aug. 13, 2020).

Though often applied in the corporate context, the doctrine protects high-ranking government officials too. *See Rogers v. United States Dep’t of Health & Hum. Servs.*, No. 6:19-CV-01567-JD, 2021 WL 11747920, at *5 (D.S.C. Nov. 4, 2021) (applying the doctrine to the Governor’s deputy chief of staff and communications director). Depositions of such officials “implicate[] serious separation of powers concerns.” *In re Musk*, 169 F.4th 445, 448 (4th Cir. 2026). Thus, the doctrine protects government officials even more robustly than their corporate counterparts. *See Derbes v. Louisiana*, No. CV 24-488-JWD-RLB, 2026 WL 105015, at *6 (M.D. La. Jan. 14, 2026).

To that end, as this Court observed just last year, “absent extraordinary circumstances, top-level executive officials should not be called to testify or deposed regarding their reasons for taking official action.” *Crook v. S.C. Election Comm’n*, No. 2025-001777, 2025 WL 2630725, at *3 (S.C. Sept. 11, 2025). Nor should those officials be called to testify or deposed unless the deposing party can show the officials have “unique knowledge or information about th[e] matter that cannot be

obtained elsewhere.” *Id.*

And as with executive privilege, the apex doctrine has been widely recognized as vital to the public interest. *See, e.g., In re United States*, 197 F.3d 310, 316 (8th Cir. 1999) (recognizing that the doctrine triggered “significant policy issues requiring immediate attention”); *accord Monti v. Vermont*, 563 A.2d 629, 631 (Vt. 1989); *Community Fed. Sav. & Loan Ass’n v. Fed. Home Loan Bank Bd.*, 96 F.R.D. 619, 621 (D.D.C. 1983).

Litigants cannot use a Rule 30(b)(6) deposition to “do[] indirectly what they cannot do directly.” *Rogers*, 2021 WL 11747920, at *5. Anyone in the Office of the Governor who could be designated as a 30(b)(6) witness or would be needed to prepare a witness is a high-ranking government employee protected by the apex doctrine.

* * *

Both doctrines are widely recognized, but this Court has not yet had occasion to consider them in a merits case. The only time “executive privilege” appears in South Carolina caselaw is an unreported Court of Appeals case about a nonprofit corporation. *See Advocaat v. Cmty. Servs. Assocs., Inc.*, No. 2020-001500, 2024 WL 2319673, at *1–2 (S.C. Ct. App. May 22, 2024). And although this Court has applied the apex doctrine to protect the Governor from being deposed, it did so in an unpublished opinion. *See Crook*, 2025 WL 2630725, at *3. This case therefore presents the Court with what amount to critical questions of first impression under South Carolina law.

To be sure, there’s nuance to each doctrine, and the Office is not asking the Court to declare that either doctrine is absolute or explain all their counters. But recognizing both under South Carolina law and holding that Respondents are nowhere close to overcoming them with their July 13, 2026 subpoena will provide an important precedent for South Carolina.

II. Special grounds warrant this Court’s original jurisdiction.

Rule 245 allows for cases that demand “prompt resolution” to be resolved “by this Court in the first instance.” *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 80, 753 S.E.2d 846, 853 (2014); *see, e.g., Creswick v. Univ. of S.C.*, 434 S.C. 77, 79–80, 862 S.E.2d 706, 707 (S.C. 2021) (per curiam) (noting that timing considerations can support original jurisdiction). This case demands that speed.

The important questions that this case raises need an answer, but that answer must come sufficiently before noon on January 13, 2027, such that a deposition could be held before then (if the Court rules against the Office on the merits). On that day, Governor McMaster’s term will end, and a new governor will be inaugurated. *See* S.C. Const. art. IV, § 4. By that time, all Governor McMaster’s records will have been transferred to the Department of Archives and History, and all his staff will have left their service in his Office. To be sure, the Office of the Governor will still exist, but that Office will belong to a new governor leading a new administration. There will, in other words, be no Office of Governor McMaster left to depose, and the new Office of the Governor will have no records or knowledge of any of the 14 topics in the deposition subpoena.

The only way therefore to ensure that this Court can decide the questions here is for the Court to grant the Petition. The questions here are important, and there is no reason to expect either side would not appeal from an adverse ruling in the circuit court, were the questions to be litigated there first. (Certainly the Office would.) Accepting this case in its original jurisdiction maximizes the Court’s time to decide the questions before the Governor’s term ends. *Cf. Davis v. Leatherman*, 419 S.C. 44, 46, 796 S.E.2d 137, 137 (2017) (per curiam) (granting an original jurisdiction petition for a declaratory judgment regarding gubernatorial succession shortly before Governor Nikki Haley’s resignation). There is, in other words, no way that this “matter can be determined by a

lower court in the first instance” via a Rule 45 motion to quash the subpoena without “material[ly] prejudic[ing]” the Office’s right to have this Court decide questions of constitutional import.

Plus, there are no disputed facts here. The State sued TikTok, and TikTok has subpoenaed the Office. No one can dispute those facts, and no other facts are needed to decide the legal questions that this case raises. That means the Court can focus on those legal issues without worrying about any disagreement over the facts.

CONCLUSION

The Court should grant the Petition; dispense with responsive pleadings; order expedited briefing of 15 days for the Office’s opening brief, 15 days for Respondents’ brief, and seven days for the reply brief; and schedule oral argument as promptly as possible.

Respectfully submitted,
s/Wm. Grayson Lambert
Wm. Grayson Lambert
Chief Legal Counsel
S.C. Bar No. 101282
Erica W. Shedd
Deputy Legal Counsel
S.C. Bar No. 104287
Tyra S. McBride
Deputy Legal Counsel
S.C. Bar No. 103750
OFFICE OF THE GOVERNOR
South Carolina State House
1100 Gervais Street
Columbia, South Carolina 29201
(803) 734-2100
glambert@governor.sc.gov
eshedd@governor.sc.gov
tmcbride@governor.sc.gov

Counsel for the Office of the Governor