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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE 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.

EMERGENCY MOTION
FOR STAY OF COMPLIANCE WITH SUBPOENA
AND FOR IMMEDIATE ADMINISTRATIVE STAY

RELIEF REQUESTED BY 12:00 PM ON AUGUST 31, 2026

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Under Rule 240(a), SCACR, the Office of the Governor moves to stay compliance with Respondents' deposition subpoena until this Court issues a final judgment or order in this case. Additionally, the Office moves for an immediate administrative stay until the Court decides this motion, given that the subpoena has noticed the Office's Rule 30(b)(6) deposition for September 1, 2026.

In considering whether to grant a stay, courts typically consider examines factors: (1) likelihood of success on the merits, (2) irreparable injury without a stay, (3) whether a stay will substantially injure another party, and (4) the public interest. *Nken v. Holder*, 556 U.S. 418, 434 (2009); *cf. Kuhn v. Elec. Mfg. & Power Co.*, 92 S.C. 488, 75 S.E. 791, 791 (1912) (staying a lower court injunction to prevent an "irreparable injury or the miscarriage of justice"). All the factors support a stay here.

The Office is likely to succeed on the merits. The Office has invoked executive privilege and the apex doctrine in objecting to the Rule 30(b)(6) deposition that Respondents noticed. Although this Court has not issued a published decision on either topic, the overwhelming majority of jurisdictions that have examined the question have recognized that executive privilege protects the internal workings of a governor's office, *see Republican Party of N.M. v. N.M. Tax'n & Rev. Dep't*, 283 P.3d 853, 865 (N.M. 2012) (Massachusetts is the only outlier); *Protect Fayetteville v. City of Fayetteville*, 566 S.W.3d 105, 110 (Ark. 2019) (collecting cases from other States recognizing executive privilege), and this Court has applied the apex doctrine to the Governor in an unpublished opinion, *see Crook v. S.C. Election Comm'n*, No. 2025-001777, 2025 WL 2630725 (S.C. Sept. 11, 2025). The Office therefore has not raised baseless objections. Rather, these objections are grounded in well-established concepts that this Court has not yet had occasion to consider fully.

The Office will be irreparably injured without a stay. Without a stay, the deposition will proceed before this Court can decide the Office’s claims, mooting them. The subpoena sets September 1, 2026, as the date for the Office’s Rule 30(b)(6) deposition. Even on the expedited schedule that the Office has proposed in the Petition for Original Jurisdiction, a final decision cannot reasonably come in less than ten days. Staying compliance with the subpoena simply gives this Court the opportunity to decide the merits of this case. *Cf. Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) (acting swiftly to review a discovery order because “[a]llowing the interviews w[ould] moot any claim petitioners could raise on appeal that the discovery was erroneously allowed” and the issue presented was “of significant public interest”).

Respondents will not be substantially harmed by a stay. If the Office prevails, Respondents are precluded from taking a deposition that they have no legal right to take. But if Respondents prevail, they will get to take the deposition they want to take, just a few months later than originally planned. *Cf. Araneta v. United States*, 478 U.S. 1301, 1305 (1986) (Burger, C.J., in chambers) (granting a stay where the injury to the respondent was “likely . . . no more than the inconvenience of delay”). Nothing else in the trial court’s scheduling order should be meaningfully affected, and the trial can proceed as scheduled in May 2027.

The public interest favors a stay. The public has an interest in government officials not being subjected to unlawful or unconstitutional discovery. *Cf. Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 382, 385 (2004) (“the public interest requires that [the courts] ‘afford Presidential confidentiality the greatest protection consistent with the fair administration of justice’” where a litigant directed discovery requests to “senior Government officials”). When the State “charges that there is an infringement in the separation-of-powers area,” it “speaks for all of its citizens.” *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 635 (S.C. 1982). The petition

raises serious constitutional questions about executive privilege and the apex doctrine. The People deserve this Court's decision on how their government functions and when a private litigant can force high-ranking government officials to sit for a deposition.

Respectfully submitted,
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