

THE STATE OF SOUTH CAROLINA
In The Supreme Court

IN ITS ORIGINAL JURISDICTION

Appellate Case No. 2026-001871

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S.C. SUPREME COURT

Office Of The Governor,

Petitioner,

v.

TikTok Inc.; TikTok LLC; TikTok Pte. Ltd.; TikTok
Ltd.; ByteDance Inc.; ByteDance Ltd.; and TikTok
USDS Joint Venture LLC,

Respondents.

RETURN IN OPPOSITION TO PETITION FOR ORIGINAL JURISDICTION

Respondents TikTok Inc., TikTok LLC, TikTok Pte. Ltd., TikTok Ltd., ByteDance Inc., ByteDance Ltd., and TikTok USDS Joint Venture LLC (collectively, “Respondents”) respectfully submit this return in opposition to the Petition for Original Jurisdiction (“Petition”) filed by Petitioner Office of the Governor (“The Office” or “Petitioner”).

INTRODUCTION

The Petition asks this Court to resolve a routine discovery dispute in the first instance, bypassing the trial court that has jurisdiction over the underlying action. The Court should decline the invitation.

The underlying action is a lawsuit commenced by the very party that now insists on extraordinary relief from the basic functions of litigation: the State. *See State of South Carolina ex rel. Alan Wilson, in his capacity as Attorney General v. TikTok Inc. et al.*, No. 2024-CP-40-

06018 (Ct. Common Pleas, Richland County). The Complaint alleges three counts under the South Carolina Unfair Trade Practices Act (“SCUTPA”), asserting that certain features on the TikTok platform are addictive, that the platform’s age ratings on the Apple, Google, and Microsoft app stores are deceptive, and that the platform’s Community Guidelines and safety tools are deceptive. The State seeks civil penalties and injunctive relief. Having chosen to haul Respondents into court, the State must accept the ordinary burdens that come along with that decision, including the obligation to respond to lawful discovery.

Respondents served a subpoena and notice of deposition on the Office pursuant to Rule 30(b)(6), SCRCF, on July 13, 2026. The Rule 30(b)(6) notice identifies fourteen topics, which seek “non-privileged, factual information.” The topics seek basic factual discovery, such as any research or analysis the Office conducted on or about the TikTok platform; any constituent complaints or inquiries it received; any public statements, advisories, and press communications it made about TikTok; any grants, programs, or expenditures it directed to youth social-media safety; any meetings and communications it had with social-media platforms, federal and state officials, schools, parent groups, and legislators; and whether and how the Office itself used the TikTok platform to engage the public. This is the kind of discovery that trial courts manage every day under Rules 30, 45, and 26(c) of the South Carolina Rules of Civil Procedure.

Rather than raise its objections in the circuit court or move for a protective order under Rule 26(c), the Office has leapfrogged the trial court and petitioned this Court for original jurisdiction. The Office argues that it raises “questions of great public interest” about executive privilege and the apex doctrine. However, the Office concedes that neither doctrine has been recognized in any published South Carolina opinion. It further acknowledges there is “nuance to each doctrine” that may require fact-intensive adjudication, which confirms that this dispute is

ill-suited for original jurisdiction and should be resolved where it belongs: in the trial court, on a developed record, through the ordinary discovery process.

SUMMARY OF ARGUMENT

The Petition should be denied for two independent reasons.

First, this Court should decline to exercise original jurisdiction. Original jurisdiction is narrow and disfavored. This Court’s “primary function is to act as an appellate court[,]” and it “will not entertain matters in its original jurisdiction where the matter can be entertained in the trial courts of this State.” *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991). The Petition presents no extraordinary reason justifying original jurisdiction. Since an adequate remedy exists, the Office should raise any privilege and apex objections in the circuit court via Rule 26(c) as with any similar discovery dispute. The Office’s claim that there are “no disputed facts” is wrong; each deposition topic raises distinct questions about what information the Office possesses, how it was generated, and whether any privilege applies, all of which require factual development. Further, the supposed emergency, that Governor McMaster’s term ends in January 2027, is manufactured. The subpoena is directed at the Office, not any particular administration; the Office concedes that it “will still exist” after the transition; and the trial court is fully capable of managing any time-sensitive scheduling issues.

Second, even if the Court reaches the merits of the Office’s objections, the Petition overstates the reach of the executive privilege and the apex doctrine. In fact, South Carolina has explicitly rejected the type of broad executive privilege that the Office claims, and the Office has not carried its burden of demonstrating that any specific topic calls for its protection. The apex doctrine is a case-management tool rooted in Rule 26(c) that calls for graduated, fact-specific

relief, not blanket immunity from testimony. The Office’s principal authority, *Rogers v. United States Department of Health & Human Services*, 2021 WL 11747920 (D.S.C. Nov. 4, 2021), is an unreported federal district court order that is non-binding on this Court and distinguishable on multiple grounds. The Court should deny the Petition and allow the ordinary discovery process to proceed.

ARGUMENT

I. The Court Should Decline to Exercise Original Jurisdiction Over this Discovery Dispute.

A. Original Jurisdiction Is Extraordinary and Unavailable Where an Adequate Remedy Exists in the Trial Court.

Rule 245(a), SCACR provides that this Court “will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties.” This Court has repeatedly emphasized that its “primary function is to act as an appellate court” and that it will not exercise original jurisdiction where a matter may be resolved in the trial courts. *Key*, 305 S.C. at 116, 406 S.E.2d at 357 (1991); *Mod. Fin. Co. v. Hicks*, 235 S.C. 212, 216, 110 S.E.2d 859, 861 (1959). The Court will exercise original jurisdiction “[o]nly when there is an extraordinary reason such as a question of significant public interest or an emergency. . . .” *Key*, 305 S.C. at 116, 406 S.E.2d at 357. No such extraordinary circumstance is present here.

The cases in which the Court has exercised original jurisdiction underscore the narrowness of the exception. Generally, those cases have fallen into two main categories. First, the Court has accepted original jurisdiction over direct constitutional challenges to legislative enactments or executive actions. *See State ex rel. McLeod v. McInnis*, 278 S.C. 307, 295 S.E.2d 633 (1982) (exercising original jurisdiction over a separation-of-powers challenge to provisions of a state appropriations act); *McConnell v. Haley*, 393 S.C. 136, 711 S.E.2d 886 (2011) (exercising original

jurisdiction over a challenge to the Governor’s executive order convening an extra legislative session); *League of Women Voters of S.C. v. Alexander*, 446 S.C. 591, 921 S.E.2d 660 (2025) (granting original jurisdiction for a constitutional challenge to partisan gerrymandering). Second, the Court has exercised original jurisdiction in emergencies requiring immediate resolution. See *Creswick v. Univ. of S.C.*, 434 S.C. 77, 862 S.E.2d 706 (2021) (accepting original jurisdiction and expedited review because a challenge to a statewide university mask-mandate policy presented “a question of significant public interest” that had to be resolved before classes resumed that same week); *Anderson v. S.C. Election Comm’n*, 397 S.C. 551, 725 S.E.2d 704 (2012) (exercising original jurisdiction for a ballot issue that needed to be resolved within two days).

This case does not fall into either category. This garden-variety discovery dispute involves no constitutional issues or the type of emergency that Rule 245 exists to address. The State’s only claim to an “emergency” appears to be that “the end of Governor McMaster’s administration is less than five months away.” Pet. at 1. But any discovery issues concerning the subpoena can be addressed in the circuit court, including via expedited proceedings if necessary. More fundamentally, the Office will continue to exist after the Governor’s departure, as will the records and communications from the current administration regarding the topics listed in the deposition notice. See S.C. Code § 1-3-30 (2025) (requiring that “all petitions, memorials, letters, and other official papers and documents addressed to or received by [the Governor] shall be methodically arranged and kept”). Therefore, the urgency claimed by the Office does not exist.

By contrast, the determinations regarding the scope of discovery and the availability of deposition testimony from the Office raised by the Petition fall squarely within the authority of the circuit court. Rules 26(c), 30, and 45, SCRCP, authorize the trial court to enter protective orders, limit discovery, condition discovery on specified terms, or prohibit discovery altogether

upon a showing of good cause. The precise relief the Office seeks is therefore available in the trial court.

B. The Office's Claim That There Are "No Disputed Facts" Is Wrong.

Original jurisdiction would be particularly improper in this case, due to the need to resolve disputed facts. The Petition's argument that there are "no disputed facts" and that this Court can therefore "focus on those legal issues without worrying about any disagreement over the facts" is incorrect. (Pet. for Orig. Jurisdiction, at 6.) The deposition notice contains fourteen separate topics, each related to different subject matter and different categories of information and communications. (**Exhibit 1**, 30(b)(6) Deposition Subpoena.) Those topics cover a range of information, including: research, testing, analysis, constituent complaints, public statements, public-safety initiatives, grants, and the Office's own use of TikTok. (**Exhibit 1**, 30(b)(6) Deposition Subpoena.) The topics also seek information about the Office's communication with social-media companies, legislators, schools, parent groups, and other third parties. (*Id.*)

While the Office asserts that "executive privilege" bars many of these topics, Pet., at 2, whether any privilege applies, and to what extent, cannot be determined in the abstract. It depends on the nature of the information sought, the circumstances surrounding the communications, the participants involved, and the purpose for which the information was created or exchanged. *Tucker v. Honda of S.C. Mfg., Inc.*, 354 S.C. 574, 578, 582 S.E.2d 405, 407 (2003); *State v. Doster*, 276 S.C. 647, 652, 284 S.E.2d 218, 220 (1981) ("Whether a communication is privileged is for the trial judge to decide in the light of a preliminary inquiry into all of the facts and circumstances") (internal quotations omitted). On the present record, this Court cannot conduct the fact-intensive, topic-by-topic analysis that these determinations require. Such a record can only be developed in the circuit court.

II. Executive Privilege Does Not Preclude the Deposition of the Office.

A. South Carolina Does Not Recognize the Deliberative Process Privilege.

The type of executive privilege that the Office seeks to invoke is the deliberative process privilege. (Pet. for Orig. Jurisdiction, at 1-2) (seeking to protect from discovery “internal decisionmaking processes” and “internal workings of the highest levels” of the executive branch).¹

“The deliberative process privilege, *sometimes called the executive privilege*, is an evidentiary privilege sometimes accorded to the government to protect documents from discovery that are involved in the government’s deliberative decision-making functions.” *Crosby v. United States*, No. CV 3:07-3668-JFA, 2009 WL 10678825, at *2 (D.S.C. Mar. 24, 2009) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149–50 (1975)) (emphasis added).

This Court has expressly declined to adopt that privilege. In *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 295, 692 S.E.2d 526, 530 (2010), this Court held: “South Carolina courts have not previously addressed whether that privilege is recognized in this state. We decline to adopt this privilege in South Carolina.” Therefore, the Court should deny the Office’s request for protection of a privilege that South Carolina does not recognize.

B. The State Has Waived any Executive Privilege by Initiating this Action.

Courts also recognize a “government-litigant exception” to executive privilege grounded in basic fairness: the government cannot seek affirmative relief while withholding information necessary to the opposing party’s defense. *See* 26A Fed. Prac. & Proc. Evid. § 5690 (1st ed.); *Brennan v. Automatic Toll Sys., Inc.*, 60 F.R.D. 195, 196 (S.D.N.Y. 1973). In other words, the

¹ In addition, a privilege log produced by the Office confirms that it seeks protection for “Executive & Deliberative Process Privilege.” (**Exhibit 2**, The Office’s Privilege Log).

government may not “have its cake and eat it too” by initiating civil litigation and then refusing to provide discovery necessary to the defendant’s defense by claiming executive privilege. *Id.* As one court explained, the “great weight of authority” holds that, once the government becomes a plaintiff, fairness requires disclosure of relevant information unless it implicates exceptionally sensitive matters such as military or diplomatic secrets. *Ghana Supply Comm’n v. New England Power Co.*, 83 F.R.D. 586, 593-94 (D. Mass. 1979). *See also F.D.I.C. v. Hatziyannis*, 180 F.R.D. 292, 293 (D. Md. 1998) (“[W]hen the Government seeks affirmative relief, it is fundamentally unfair to allow it to evade discovery of materials that a private plaintiff would have to turn over.”); *FDIC v. St. Paul Fire & Marine Ins. Co.*, 53 F.R.D. 260, 262 (W.D. Okla. 1971).

Those principles apply with particular force here. The Attorney General elected to file this action in the State’s sovereign capacity and placed at issue the alleged statewide effects of the TikTok platform on South Carolina youth, the factual basis for those allegations, and the State’s response to those purported harms. In doing so, the State necessarily placed at issue information possessed by various components of the State, including the Office of the Governor, which leads executive-branch policymaking and the implementation of statewide priorities through coordination with other state agencies.

Having affirmatively invoked the Court’s jurisdiction and placed those matters in controversy, the State should not be permitted to invoke a deliberative-process privilege to prevent Respondents from obtaining discovery necessary to defend itself. *See Ghana Supply Comm’n*, 83 F.R.D. at 595 (“If the government sues through one of its agencies and another agency possesses the information that must be disclosed, it is only fair that the government or other agency decide whether secrecy of the materials is worth dismissal of the lawsuit.”).

Accordingly, even if this Court were to recognize a deliberative-process privilege under South Carolina law, the Court should decline to apply it in this case.²

C. The Rule 30(b)(6) Topics Do Not Invade Executive Privilege.

Even if this Court recognized the privilege that the Office seeks to invoke, the privilege would not protect information sought in the deposition notice. For the deliberative process privilege to apply, “(1) the document must be predecisional; and (2) it must be deliberative in nature.” *S.C. Coastal Conservation League v. Ross*, 431 F. Supp. 3d 719, 723 (D.S.C. 2020) (internal citation omitted). Deliberative material includes “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.* at 723 (quoting *City of Virginia Beach v. U.S. Dep’t of Com.*, 995 F.2d 1247, 1253 (4th Cir. 1993)). The privilege also reaches only internal deliberations: “all materials received from outside the agency or shared outside the agency, including to other governmental agencies, are not covered by the privilege,” and factual material must still be produced. *Id.* at 723–24.

In this case, the deposition topics explicitly seek factual information concerning the Governor’s Office’s knowledge, research, public statements, constituent complaints, grants, communications with third parties, and use of TikTok, as well as its activities relating to youth social-media use and the harms alleged in the State’s lawsuit. (**Exhibit 1**, 30(b)(6) Deposition Subpoena.) Instead of probing the Governor’s personal reasoning or confidential internal decision-making, the topics concern objective facts, external communications, public-facing

² For this reason, the Office’s reliance on *Crook v. S.C. Election Commission*, No. 2025-001777, 2025 WL 2630725 (S.C. Sept. 11, 2025) is misplaced. Unlike the subpoena at issue here, the subpoena in *Crook* sought testimony *from the Governor himself*. Moreover, the Office’s citation to *Crook* violates Rule 268(d)(2) of the South Carolina Appellate Court Rules, which bars citation to unpublished decisions and states that such opinions have no precedential value.

actions, and information underlying the State’s allegations. (*Id.*) The topics are not directed to the Governor’s internal deliberations or mental processes, and any legitimately deliberative communications can be addressed through topic-specific objections, privilege assertions, or a privilege log, rather than a blanket prohibition on the deposition.

The Office’s own conduct demonstrates that ordinary discovery procedures adequately protect any genuinely privileged materials. (**Exhibit 2**, The Office’s Privilege Log.) When responding to prior discovery requests from Respondents and other social media companies, the Office produced documents and served a privilege log identifying specific communications withheld under the “Executive & Deliberative Process Privilege” and/or “Attorney-Client Privilege.” (*Id.*) The privilege log thus confirms that genuinely deliberative communications can be protected through ordinary discovery mechanisms without imposing a blanket prohibition on testimony concerning all topics identified in TikTok’s Rule 30(b)(6) notice.³

III. The Apex Doctrine Does Not Exempt the Office from Providing Rule 30(b)(6) Testimony.

A. Preventing Rule 30(b)(6) Testimony Under the Apex Doctrine Conflicts With the Doctrine’s Intended Purpose.

The apex doctrine is a case-management doctrine developed to address the unique risk of “abuse or harassment” that can arise when litigants seek to depose officials at the highest levels of government or corporate management. *In re Lipitor (Atorvastatin Calcium) Mktg.*, No. 2:14-mn-02502-RMG, 2014 WL 12621613, at *2 (D.S.C. Nov. 13, 2014). Accordingly, courts generally require the party seeking to depose a high-ranking executive to demonstrate that the executive possesses “unique or special knowledge of the facts at issue” and that “other less burdensome avenues for obtaining the information sought have been exhausted.” *Id.*; *Est. of*

³ To the extent the Office believes that specific testimony implicates a valid privilege, it may assert such privilege during the deposition, just like every other litigant does in this state.

Valentine ex rel. Grate v. South Carolina, No. CV 3:18-00895-JFA, 2020 WL 12783948, at *2 (D.S.C. Aug. 13, 2020). Even when the doctrine applies, courts typically employ graduated remedies, such as interrogatories, topic limitations, or protective orders as an initial step to see whether depositions are warranted. *Valentine*, 2020 WL 12783948, at *2-3.

The subpoena at issue is directed to the Office of the Governor pursuant to Rule 30(b)(6), not to Governor McMaster himself. While the apex doctrine may extend to the Governor, it should not cover the Office of the Governor and the lower-ranking officials within it. *See In re Musk*, 169 F.4th 445, 449 (4th Cir. 2026) (finding that the deposition of high-ranking officials was not yet warranted because less intrusive remedies, such as conducting a 30(b)(6) deposition of their offices, had not yet occurred). The apex doctrine does not immunize governmental entities from providing testimony, particularly when the State itself is a party, has elected to bring the suit, and seeks affirmative relief based on the very issues about which discovery is sought. The Office is free to designate any witness with knowledge; the subpoena does not require Governor McMaster to testify or otherwise burden the Governor himself.

Furthermore, applying the apex doctrine to bar a Rule 30(b)(6) deposition would conflict with the express language and purpose of Rule 30(b)(6), SCRCF. The rule expressly provides that “[a] party may in his notice and in a subpoena name as the deponent . . . [a] *governmental agency*” and requires the agency to designate one or more persons to testify on its behalf. *Id.* (emphasis added). Federal courts interpreting the nearly identical federal rule have recognized that there is “no express or implied exception to Rule 30(b)(6) for government agencies.” *S.E.C. v. Merkin*, 283 F.R.D. 689, 693 (S.D. Fla. 2012). Thus, while the apex doctrine may limit a Governor’s personal deposition, it does not exempt the Governor’s Office from providing testimony.

Accordingly, even if the apex doctrine generally applies to the Governor, it provides no basis to quash the subpoena here. The subpoena seeks testimony from the Office as an institution, not from Governor McMaster personally, and the Office remains free to designate an appropriate witness and assert privilege objections to specific questions as they arise.⁴

B. TikTok Has Already Sought Less Burdensome Means of Discovery.

Even if the Court were to conclude that the apex doctrine applies in the Rule 30(b)(6) context, the doctrine would not warrant the blanket relief sought by the Office. Courts applying the doctrine generally require a showing that (1) the official possesses “unique or special knowledge of the facts at issue” and (2) “other less burdensome avenues for obtaining the information sought have been exhausted.” *In re Lipitor*, 2014 WL 12621613, at *2; *Valentine*, 2020 WL 12783948, at *2. Respondents have already pursued those less burdensome means. Before noticing the Rule 30(b)(6) deposition, Respondents served a document subpoena seeking information on the same subject matter covered by the deposition topics, including research concerning TikTok and youth social-media use, constituent complaints, public-safety initiatives, grants, communications with third parties, and the Office’s own use of TikTok. (**Exhibit 3**, Requests for Production.) The Office responded to that subpoena, produced documents, and served a privilege log identifying materials withheld under claims of “Executive & Deliberative Process Privilege” and “Attorney-Client Privilege.” (**Exhibit 2**, The Office’s Privilege Log). Having completed document discovery and received the Office’s written production,

⁴ In fact, the State’s assertion that organizational testimony necessarily burdens the Governor or other high-ranking officials personally is inconsistent with its own prior production of a senior Office official for sworn testimony in June 2025 concerning matters involving education policy and youth technology issues in the related social media MDL against Meta. *In re: Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, Case No. 4:22-md-03047-YGR (N.D. Cal.).

Respondents now seek the ordinary next step in the discovery process: testimony from the Office concerning the information produced, the information withheld, and the factual basis for the State's allegations.

This sequence of discovery is precisely the opposite of the circumstances that typically justify apex protection. Respondents do not seek a first-resort deposition of a high-ranking official. Nor have they bypassed less intrusive methods. Rather, Respondents pursued document discovery first, received the Office's production, and now seeks a Rule 30(b)(6) examination to test, clarify, and complete the factual record. Indeed, the Office's prior participation in discovery demonstrates that organizational knowledge relevant to the Action exists and is discoverable. To the extent certain topics may implicate privileged communications or deliberative matters, those concerns can be addressed through specific objections, instructions not to answer, or targeted protective-order relief. They do not justify foreclosing altogether the organizational deposition that follows the Office's own document production.

C. The Office's Principal Authority is Easily Distinguishable.

Critically, the Office's principal authority, *Rogers v. U.S. Department of Health & Human Services*, 2021 WL 11747920 (D.S.C. Nov. 4, 2021), does not support the extraordinary relief that it requests. At the outset, *Rogers* is an unpublished federal district court order and therefore is not binding on this Court. More importantly, *Rogers* arose in a fundamentally different context and addressed concerns that are absent in this case..

First, *Rogers* involved an effort to probe the Governor's decision-making itself. The plaintiffs sought discovery concerning the Governor's mental processes and policy rationales underlying a particular executive order. *Rogers*, 2021 WL 11747920 at *4. The court's analysis therefore rested on the intersection of the apex doctrine and the deliberative decision-making

privilege, which, as previously stated, is not recognized in South Carolina. *Id.* In this case, by contrast, Respondents do not seek testimony concerning why the Governor made any particular policy decision. (**Exhibit 1**, 30(b)(6) Deposition Subpoena.) The noticed topics instead seek factual information known to the Office, including research conducted or reviewed, constituent complaints received, public statements made, grants distributed, communications with third parties, and the Office’s own use of TikTok. (*Id.*) There is no effort to inquire into the Governor’s “mental processes in reaching a decision, including the manner and extent of his study of the record and his consultations with subordinates.” *Rogers*, 2021 WL 11747920, at *5 (internal citations omitted).

Second, the status of discovery in this case is much different than *Rogers*, in which the court concluded that the requested deposition was premature because the plaintiffs had not exhausted less burdensome avenues of discovery. *Rogers*, 2021 WL 11747920, at *4-5 (concluding that both the proposed Rule 30(b)(6) deposition and deposition of the Governor were premature because “other less burdensome avenues for obtaining the information sought have not been exhausted”). In contrast, Respondents have already done precisely what *Rogers* contemplated. As discussed above, before serving its Rule 30(b)(6) notice, Respondents served a document subpoena seeking information on the same subjects addressed in the deposition topics, and the Office responded, produced documents, and served a privilege log. (**Exhibit 2**, The Office’s Privilege Log; **Exhibit 3**, Requests for Production.) Having completed document discovery, Respondents now seek the ordinary next step in the discovery process, a Rule 30(b)(6) deposition to test, clarify, and complete the factual record. This is not a “first resort” deposition; it follows substantial written discovery and document production.

Third, the Office attempts to take *Rogers* too far. *Rogers* did not hold that the Office of the Governor is categorically immune from discovery or that Rule 30(b)(6) depositions of governmental entities are prohibited. Rather, the court entered topic-specific protections based on its conclusion that certain topics were protected by the deliberative decision-making privilege, which South Carolina explicitly rejects, and that less burdensome discovery options had not been conducted. *Rogers*, 2021 WL 11747920, at *4-5. Nothing in *Rogers* suggests that every employee of the Governor’s Office is insulated from testimony or that a governmental entity may invoke executive privilege and the apex doctrine as a blanket bar to organizational discovery.

Finally, *Rogers* involved private plaintiffs seeking discovery from a non-party Governor’s Office in litigation brought against other governmental actors. *Rogers*, 2021 WL 11747920, at *1. In this case, the State itself elected to initiate this action and placed the alleged harms underlying its claims squarely at issue. Having chosen to invoke the judicial process, the State cannot rely on *Rogers* to transform the apex doctrine into a shield against discovery relevant to the factual basis of its own claims. As discussed above, a governmental entity that voluntarily initiates litigation “must be prepared to follow the same discovery rules that govern private parties” and “is not entitled to special consideration concerning the scope of discovery.” *Merkin*, 283 F.R.D. at 693-94.

Accordingly, *Rogers* does not support the blanket relief sought by the Office. At most, it confirms that specific privileged or deliberative communications may be protected through ordinary discovery mechanisms. It does not justify prohibiting a Rule 30(b)(6) deposition directed to factual matters known by the Office or foreclosing discovery altogether.

CONCLUSION

For the reasons stated above, this Court should dismiss the Petition. In the alternative, the Court should find that neither executive privilege nor the apex doctrine preclude the Rule 30(b)(6) deposition of the Office from going forward.

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Dated: September 14, 2026

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