

RECEIVED

Sep 17 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

IN ITS ORIGINAL JURISDICTION

Appellate Case No. 2026-001874

OFFICE OF THE GOVERNOR,Petitioner,

v.

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

REPLY IN SUPPORT OF
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

REPLY

TikTok claims that the Court should decline to hear this case in its original jurisdiction because this case is a mundane discovery dispute. That framing is wrong. This is anything but an ordinary discovery controversy. Rather, this case raises questions that go to the core of our constitutional structure.

TikTok begins by insisting original jurisdiction is improper here, but this is exactly the type of case in which the Court should grant original jurisdiction. There's a real timing concern with the end of the Governor's term approaching, and the questions that the case raises about executive privilege and the apex doctrine go to the core of how our government functions. Granting original jurisdiction allows the Court to answer those important questions while ensuring that the dispute between the State and TikTok can move forward timely.

TikTok then says that it has the better merits argument anyway. Yet once again, TikTok is mistaken (if the merits even matter at this point). TikTok's argument about deliberative process privilege is irrelevant. Executive privilege is distinct from the deliberative process privilege in many ways, and this Court has never taken up the former. As for the apex doctrine, it reaches beyond the Governor to his high-level staff—and TikTok hasn't tried to show that it has exhausted other options of obtaining its desired information. Nor has it shown that the desired information is necessary for its case.

The Court should therefore grant the petition and decide whether South Carolina law recognizes executive privilege and the apex doctrine.

I. Original jurisdiction is proper and warranted here.

A. TikTok tries to narrow Rule 245 to two buckets only: challenges to government action and urgent crises. *See* Resp. 4–5. But Rule 245 isn't *that* narrow. Its “clear and unambiguous” text,

Whitehead v. State, 310 S.C. 532, 534, 426 S.E.2d 315, 316 (1992), allows this Court to consider a case in its original jurisdiction when a case cannot be decided by a trial court first “without material prejudice to the rights of the parties” and either “the public interest is involved” or “other good reasons exist” to hear the case in this forum first. Rule 245(a), SCACR.

B. This case meets the requirements for original jurisdiction. *First*, it cannot be decided by the circuit court in the first instance without causing material prejudice. As the petition explained, the Office of Governor McMaster will soon cease to exist. TikTok makes much of the fact that the “Office will continue to exist after the Governor’s departure.” Resp. 5. But a Rule 30(b)(6) deposition does not test whether an entity exists on paper. It compels the entity to produce a live witness who can testify, from knowledge, about the noticed topics. And that is what a gubernatorial transition takes away. When Governor McMaster’s term ends at noon on January 13, 2027, *see* S.C. Const. art. IV, § 4, his senior staff—the officials who conducted the research, held the meetings, and advised the Governor on the subjects TikTok has noticed—will leave the Office. The Office of the Governor will endure, but it will belong to a new Governor leading a new administration, staffed by people with no firsthand knowledge of any of the 14 topics. There will be no one left who could meaningfully testify.

The records tell the same story. This administration’s papers do not remain in the State House. Instead, the Office’s permanently valuable records are transferred to the Department of Archives and History under the applicable records-retention schedule, *cf.* S.C. Code Ann. § 30-1-90(B), which is why the Office, when it receives FOIA requests for records of past administrations, responds that it no longer possesses them and refers the requester to the Department. But that only sharpens the point. Even if some records passed to the next administration, records are not witnesses. New staff handed a predecessor’s files could not testify from personal knowledge about

the research behind them, the meetings they memorialize, or the advice they reflect.

That’s why the Office brought this case here, rather than going to circuit court. The timing concern isn’t “manufactured.” Resp. 3. The circuit court has no binding law on this Court about executive privilege or the apex doctrine.¹ And it takes time for the circuit court to wrestle with these legal questions in the first instance and apply its legal conclusions to the facts—even in “expedited proceedings.” Resp. 5. (Of course, TikTok’s suggestion to expedite proceedings rings hollow after it sought and took the full 20 days to respond to the original jurisdiction petition.) If the Office lost that issue, it would then have to be held in contempt to appeal it because discovery orders are interlocutory. *See Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008). Or else the Office would have to seek an extraordinary writ, *see Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep’t of Health & Env’t Control*, 387 S.C. 380, 387, 692 S.E.2d 920, 924 (2010), which like original jurisdiction takes this Court out of its typical appellate posture. Either way, that’s a long road to this Court’s review, and there’s no guarantee that the matter could be resolved in time for a deposition to take place (if it had to). Put simply, the original jurisdiction petition is the Office’s good-faith effort to assert its arguments without hindering the underlying litigation between the State and TikTok.

Second, this case involves questions of great public interest. TikTok strains to characterize this case as a normal discovery dispute, *see* Resp. 5–6, but that’s not the case. 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,

¹ As TikTok is quick to point out, *Crook v. S.C. Election Comm’n*, No. 2025-001777, 2025 WL 2630725 (S.C. Sept. 11, 2025), is unpublished. *See* Resp. 9 n.2. True, but that only bolsters the argument for granting the petition: The State needs a published decision on the apex doctrine.

§ 15. TikTok ignores this aspect of the case, which goes to the core of constitutional responsibilities and separation of powers. Few questions can be of more public interest and importance than that. *See* Pet. 2–4. Ensuring that the State’s chief executive can engage in meaningful discussions with his closest advisors is essential to his ability to perform his duties and serve all South Carolinians.

C. TikTok insists that disputed facts should preclude original jurisdiction. That’s wrong for at least two reasons. For starters, there’s no dispute about the essential facts: There’s a lawsuit between the State and TikTok. TikTok seeks to take the Office’s deposition under Rule 30(b)(6). And the Office asserts that executive privilege and the apex doctrine bar that deposition here. For the primary questions that the Office’s complaint raises—whether South Carolina law recognizes executive privilege and the apex doctrine—there are no more facts needed.

Going further, TikTok jumps to the merits, suggesting that original jurisdiction is improper because the information it seeks is mere “factual information known to the Office” that executive privilege and the apex doctrine can’t protect. Resp. 14; *see also id.* 9–10. This fails three times over. First, TikTok undersells the Rule 30(b)(6) topics it served, which extend well beyond mere “factual information.” Many of those topics delve into the Office’s work on social media generally and TikTok specifically, which necessarily gets into thought processes and decisionmaking. Look no further than the first three topics, which ask about internal research and analysis. (Topics that don’t get into those issues involve already-public information, which is a separate problem.)

Second, there is no “factual information” exception to executive privilege or the apex doctrine. To the contrary, executive privilege includes “factual material,” *In re Sealed Case*, 121 F.3d 729, 745 (D.C. Cir. 1997), and the apex doctrine focuses on the significant burden caused by oral depositions of high-level officials, not the type of information the official is asked to provide,

In re U.S. Dep't of Educ., 25 F.4th 692, 701 (9th Cir. 2022).

Finally, *if* TikTok is correct that the deposition topics don't clearly invade executive privilege or implicate the apex doctrine, that could be left to the circuit court to resolve with—critically—the benefit of this Court's holding on the existence and scope of these doctrines. *See State ex rel. Condon v. Hodges*, 349 S.C. 232, 235, 241, 562 S.E.2d 623, 625, 628 (2002) (granting original jurisdiction to resolve “a novel issue in this State”). That “would serve the interests of judicial economy by eliminating numerous inevitable appeals raising these issues.” *In re Breast Implant Prod. Liab. Litig.*, 331 S.C. 540, 543 n.2, 503 S.E.2d 445, 447 n.2 (1998). There's no need to leave the circuit court wrestling with the threshold issues of constitutional significance while treating this case as some ordinary discovery dispute. Whether South Carolina law recognizes a privilege is a fundamentally different question than whether that privilege applies on certain facts. *See* Resp. 6 (citing *State v. Doster*, 276 S.C. 647, 652, 284 S.E.2d 218, 220 (1981)).²

II. TikTok's misguided merits arguments don't help its opposition to original jurisdiction.

TikTok creates a strawman, suggesting that the Office seeks “blanket immunity,” Resp. 4,

² TikTok suggests that because the Office previously acquiesced to similar discovery requests in a different case involving claims against Meta in federal court in California, the Office cannot be heard to object to TikTok's demands now. Resp. 10, 12 & n.4. That's incorrect.

At the outset, that the Office didn't assert a defense in one case does not preclude it from later asserting that defense in a different case. But even so, the California disclosure occurred in a unique posture: It came only after a federal magistrate judge threatened to hold the Governor and his counsel in contempt because of a since-reversed holding about who controlled the Office's documents. To moot the contempt threat, the Office made a FOIA production to the Attorney General's Office, which that office turned over to Meta. Those are the documents that the Office produced to TikTok here. So producing was neither a burden nor disclosing something confidential. As for the privilege log with that production, it doesn't show that the Office is here invoking only the deliberative process privilege. *See id.* at 7 n.1, 10. The log invokes two related, but distinct, privileges.

The deposition was of a *fact* witness. It wasn't a Rule 30(b)(6) deposition. Although the Office might have objected to the deposition or certain questions, nothing in that deposition required such objections, particularly with the then-looming contempt threat from California.

or wants to be “categorically immune,” *id.* at 15. That’s not true. Neither executive privilege nor the apex doctrine is absolute. *See, e.g., United States v. Nixon*, 418 U.S. 683, 708 (1974) (executive privilege); *In re Off. of the Utah Att’y Gen.*, 56 F.4th 1254, 1260 (10th Cir. 2022) (apex doctrine). And the Office doesn’t plan to argue otherwise. With that out of the way, turn to the other arguments that TikTok raises. None is compelling.

A. TikTok’s executive privilege arguments fall flat.

1. TikTok begins by claiming that this Court has already rejected executive privilege. *See* Resp. 7. Not so. In *Tobaccoville USA, Inc. v. McMaster*, the Court—without any analysis—“decline[d] to adopt” the deliberative process privilege. 387 S.C. 287, 295, 692 S.E.2d 526, 530 (2010). That’s it.

Though executive privilege may share some similar rationales with the deliberative process privilege, there are plenty of differences. To start, the doctrines have different foundations: The former is a constitutional doctrine while the latter is a common-law one. *In re Sealed Case*, 121 F.3d at 745. So it’s unsurprising that these doctrines have distinct scopes. For instance, executive privilege, unlike the deliberative process privilege, “covers final and post-decisional materials as well as pre-deliberative ones.” *Id.*

Executive privilege’s “canonical form” is based on communications with the chief executive. *Trump v. Thompson*, 20 F.4th 10, 25 (D.C. Cir. 2021). Because a chief executive is “suprem[e] . . . within [his] assigned area of constitutional responsibilities,” *Nixon v. Adm’r of Gen. Servs.*, 433 U.S. 425, 447 (1977), this privilege ensures that the chief executive maintains his independence from improper intrusion from competing branches of government. It is thus limited to the chief executive and his closest advisors. *See, e.g., Protect Democracy Project, Inc. v. Nat’l Sec. Agency*, 10 F.4th 879, 885 (D.C. Cir. 2021) (contrasting these doctrines). In contrast, the

deliberative process privilege can apply throughout the executive branch.

Another difference is how easily a litigant may overcome the doctrines. Executive privilege, while narrower in who it protects, is “more difficult to surmount.” *In re Sealed Case*, 121 F.3d at 746.

Just that quick survey confirms that executive privilege is distinct from deliberative process privilege. And this Court has never addressed executive privilege—which is what this case raises.

2. TikTok’s waiver argument fares no better. TikTok insists that the Attorney General waived all the State’s privileges by bringing unfair trade practices claims against TikTok. *See Resp.* 7–9. That argument cannot work when it comes to executive privilege.

The Attorney General is “the chief law officer of the State.” *Condon*, 349 S.C. at 239, 562 S.E.2d at 627. In that capacity, he may seek injunctive relief and civil penalties for unfair trade practices. *See* S.C. Code Ann. §§ 39-5-50(a); 39-5-110(a). Neither the Governor nor his Office must approve the Attorney General’s decision to bring an unfair trade practice claim (or any other). That’s part of a constitutional system with multiple constitutional officers elected by the People. But the Attorney General’s decision cannot waive a privilege that the Governor and his Office hold. That would make the Governor subordinate to the Attorney General—which is incompatible with the Constitution. *See* S.C. Const. art. IV, § 1.

In any event, TikTok can’t point to a South Carolina case on point. Beyond being from other jurisdictions, none deals with a situation like this one, where separately elected officials are involved. For instance, *F.D.I.C. v. Hatziyannis* involved what the F.D.I.C. (the plaintiff) had to turn over in discovery. 180 F.R.D. 292, 293 (D. Md. 1998). The plaintiff in *Ghana Supply Comm’n v. New England Power Co.* was controlled by the sovereign whose privilege was at issue. 83 F.R.D. 586, 592 (D. Mass. 1979). Those are far different situations from this one.

Plus, TikTok ignores contrary federal caselaw. Other district courts have held that filing a lawsuit doesn't always waive the deliberative process privilege (a distinct but related privilege). *See, e.g., United States v. Malik*, No. 15-cv-9092-CM-TJJ, 2016 WL 3167307, at *8 (D. Kan. June 7, 2016); *SEC v. Nacchio*, No. 05-cv-00480-MSK-CBS, 2009 WL 211511, at *6 (D. Colo. Jan. 29, 2009).

B. TikTok's apex doctrine arguments lack merit.

1. TikTok says that prohibiting a Rule 30(b)(6) under the apex doctrine conflicts with the doctrine's purpose because the Office is "free to designate an appropriate witness." Resp. 10–12. This ignores reality.

For starters, the apex doctrine protects more than just the Governor himself. For all TikTok's efforts to distinguish *Rogers v. U.S. Dep't of Health & Human Services*, No. 6:19-CV-01567-JD, 2021 WL 11747920 (D.S.C. Nov. 4, 2021), it can't dispute that the apex doctrine protected Governor McMaster's deputy chief of staff and communications director there. Other cases similarly apply the doctrine to senior staff. *See, e.g., Coleman v. Schwarzenegger*, No. CIV S-90-0520LKKJFMP, 2008 WL 4300437, at *4 (E.D. Cal. Sept. 15, 2008) (chief of staff).

With that in mind, consider the only two ways the Office could prepare for a Rule 30(b)(6) deposition. One way is to have a senior staff member—a high-ranking government official—sit as the designee. The burden on that designee would be the same (if not greater, because of the need to prepare for topics on which the witness lacks firsthand knowledge) as if the official had been named directly in a subpoena request. The other way is to designate some low-level staff member (a non-apex official) as the Office's designee. But even then, high-ranking officials would have to prepare that witness, providing detailed accounts of their discussions with and advice to the Governor. For example, knowledge about topics like internal research and analysis (topics 1–3),

and meetings and communications with platforms, other officials, schools, and legislators (topics 9–11 and 14) rests with the senior officials who did the work, held the meetings, and advised the Governor. *See* Compl. Ex. 1, at 8 (Instruction 3 about preparing a witness for the deposition). So the burden on those officials still exists. *See Cannon v. Correctional Med. Care, Inc.*, No. 9:15-CV-1417 (GLS/DJS), 2017 WL 2790531, at *5 (N.D.N.Y. June 27, 2017) (noting that “the time necessary to prepare for [the] deposition” of a 30(b)(6) witness would “be a significant burden on the Commission”). Of course, the burden may be lessened for depositions about public statements (such as topics 6 and 7), but that only raises the question of why TikTok needs to depose the Office on those subjects.

2. TikTok next insists (again leaping into the merits) that its subpoena would survive the apex doctrine’s application because it has exhausted less burdensome avenues of discovery. *See* Resp. 12–13. True, TikTok may have served a document subpoena on the Office, but it hasn’t shown any attempt to discover “factual information” about “research, public statements, constituent complaints, grants, [and] communications with third parties” from any other source. *Id.* at 9 (TikTok’s current description of the deposition topics). Has TikTok pulled the Office’s public statements or social media posts directly from the internet for topics 6, 7, and 12? Has it subpoenaed the “public or private school, school board, parent-teacher association, or other educational or parent group” in topic 11? Or the other social media companies in topic 9? Or the “legislators, agencies, or Third Parties” in topic 14? Without doing so, it cannot satisfy this element.

TikTok is quick to point out that a Rule 30(b)(6) deposition should often be used before deposing a high-ranking official. *See* Resp. 11 (citing *In re Musk*, 169 F.4th 445, 449 (4th Cir. 2026)). In many cases, that may be so, but this isn’t a mine-run case. As just discussed, in the

Governor’s Office, a Rule 30(b)(6) deposition will consume the time and efforts of senior staff, so the purpose of the doctrine is thwarted by a backdoor attempt to do what a litigant couldn’t do directly. And courts do not countenance litigants “doing indirectly what they cannot do directly.” *Rogers*, 2021 WL 11747920, at *5.

3. TikTok’s final argument on the apex doctrine is its multipronged effort to distinguish the District of South Carolina’s decision in *Rogers*. *See id.* 13–15. Those efforts lack merit. One, there’s no denying that *Rogers* applied the apex doctrine to protect senior staff, beyond the Governor himself. *See* 2021 WL 11747920, at *5. That undercuts TikTok’s opening salvo that the doctrine cannot protect anyone beyond the Governor. *See* Resp. 11. Two, it doesn’t matter that *Rogers* didn’t categorically bar all depositions. The Office isn’t asking for that. What *Rogers* *did* do was refuse to allow a plaintiff to depose a 30(b)(6) witness from the Office of the Governor where that deposition would violate the apex doctrine. 2021 WL 11747920, at *5. And three, TikTok has just recycled its misguided exhaustion and waiver arguments.

On top of all that, *Rogers* is just one case. It shows the apex doctrine in action, but the Office doesn’t need *Rogers* to prevail. Other courts, like *Coleman*, have also applied the apex doctrine to staff. *See* 2008 WL 4300437, at *4. *Rogers* just represents this rule in South Carolina with this Governor’s Office. It’s thus harder to brush aside than TikTok suggests.

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