No. 24-413– *Logan Regional Medical Center and Regina Bias v. A.J., as mother of S.A., and L.A. and M.A., individually and as parents of S.A. and M.W.*

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TRUMP, Justice, dissenting:

I respectfully dissent from the majority's opinion because I would adhere to this Court's prior practice of treating any order denying a private citizen's motion to dismiss that is predicated on statutory immunity as immediately appealable under the collateral order doctrine.[1]

Until now, this Court has never treated statutory language in the West Virginia Code conferring "immunity from liability" as carrying a different meaning than language conferring "immunity from suit," nor has this Court ever deemed a legislative grant of immunity from liability to be a mere statutory defense.[2] To the contrary, the West

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[1] *See e.g. Eldercare of Jackson Cnty., LLC v. Lambert*, 250 W. Va. 291, 902 S.E.2d 840 (2024) (permitting immediate appeal of 12(b)(6) ruling based on statutory immunity provided under COVID-19 Jobs Protection Act); *Edwards v. Stark*, 247 W. Va. 415, 880 S.E.2d 881 (2022) (permitting immediate appeal of 12(b)(6) ruling based on statutory immunity for employers under the Workers' Compensation Act); *Monongahela Power Co. v. Buzminsky*, 243 W. Va. 686, 850 S.E.2d 685 (2020) (permitting immediate appeal of order denying electric company's motion to dismiss predicated on statutory immunity for private emergency service workers performing certain public functions).

[2] The majority cites *State ex rel. West Virginia University Hospitals, Inc. v. Gaujot*, 248 W. Va. 11, 17, 886 S.E.2d 346, 352 (2023) for the proposition that a "defense to liability . . . does not become an 'immunity' simply by dubbing it so." However, in *Gaujot*, it was a *party* to the litigation that "dubbed" a statutory defense an immunity—the statute at issue did not itself use the word "immunity" or confer any form of "immunity" on the petitioners in that case.

Virginia Code refers to immunity of private employers with respect to workers' compensation coverage as "immunity from liability,"[3] and this Court has consistently reviewed the merits of interlocutory appeals asserting that statutory immunity under the collateral order doctrine. *See Edwards*, 247 W. Va. 415, 880 S.E.2d 881; *Precision Pipeline, LLC v. Weese*, 247 W. Va. 733, 885 S.E.2d 864 (2023). The language of the Government Tort Claims Act conferring immunity on local government actors also refers to immunity from "liability," not "suit,"[4] just like the statutory immunity at issue in this case, and this Court has consistently reviewed the merits of interlocutory appeals asserting that statutory immunity as well. *See State ex rel. Grant County Commission v. Nelson*, 244 W. Va. 649, 856 S.E.2d 608 (2021); *Monongalia Cnty. Comm'n v. Stewart*, 251 W. Va. 442, 914 S.E.2d 677 (2024); *Kent v. Sullivan,* 249 W. Va. 747, 901 S.E.2d 500 (2024).

Admittedly, the Legislature has used the term "immunity from suit" in some places in the West Virginia Code and "immunity from liability" in others. However, the statutory language that confers "immunity from liability" upon individuals is *also* markedly different from statutory language expressly creating "defenses" that parties may raise in the course of litigation. *See e.g.* W. Va. Code § 6-9A-11 (providing that good faith reliance on advisory opinion of the West Virginia Ethics Commission is "an absolute defense to any civil suit or criminal prosecution"); W. Va. Code § 8-12-5a (providing for "an absolute

[3] West Virginia Code § 23-2-6a.

[4] West Virginia Code § 29-12A-5.

defense to an action for an alleged violation of an ordinance authorized by this section"); W. Va. Code § 55-7-22 (providing person using justified force a "full and complete defense to any civil action" brought by residential intruder or attacker). In other words, if the majority's viewpoint is based on the presumption that a difference in terminology between related statutes necessarily denotes a difference in legislative intent,[5] it is unclear why the majority would then view the difference between statutory language conferring "immunity" and language expressly creating a litigation "defense" to be meaningless. I therefore disagree with the majority's conclusion that the term "immunity from liability" in West Virginia Code § 49-2-810 should be read as creating a mere statutory defense for good faith reporters of child abuse and neglect[6] to raise in the course of litigation, rather than a statutory immunity that insulates such individuals from the burdens of litigation itself. Consequently, I also disagree with the majority's determination that this Court lacks jurisdiction to review an interlocutory order denying a party's motion predicated on that form immunity.

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[5] *See e.g. Beasley v. Sorsaia*, 247 W. Va. 409, 414, 880 S.E.2d 875, 880 (2022).

[6] The statutory immunity at issue in this case extends to individuals engaged in "any act permitted or required" by the article of the West Virginia Code concerning reports of suspected child abuse and neglect, including individuals "making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation or legal intervention pursuant to a good faith report of child abuse or neglect." W. Va. Code § 49-2-810. For ease of reference, I refer to those collective individuals here as "good faith reporters of child abuse and neglect."

Finally, I am concerned that the majority's opinion will lead to significant uncertainty and confusion among future litigants.[7] Our previous practice of reviewing every interlocutory order denying a motion to dismiss that is predicated on statutory immunity was straightforward and gave litigants certainty as to when they could file an interlocutory appeal challenging such an order. Now, future litigants will be unsure of when they may appeal a circuit court's interlocutory ruling on any statutory immunity which this Court has not yet analyzed under the *Cohen* framework.[8] I appreciate that the majority's position is grounded in the laudable goal of keeping the collateral order "narrow and selective in its membership." *Will v. Hallock*, 546 U.S. 345, 350 (2006). But our dockets are not so overwhelmed that this mission can be served only by abandoning the Court's prior practice of immediately reviewing interlocutory rulings on statutory immunities that, until now, insulated citizens engaged in conduct serving vital public interests from the threat of prolonged litigation.

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[7] This Court has recognized the institutional value of setting clear, predictable, and easily applied standards in various legal contexts. *See e.g. Keesecker v. Bird*, 200 W. Va. 667, 680, 490 S.E.2d 754, 767 (1997) (recognizing that "certainty, predictability and uniformity of result and ease in the determination and application of the law" were important values served by *lex loci rei sitae* doctrine); *Paul v. Nat'l Life*, 177 W. Va. 427, 433, 352 S.E.2d 550, 555 (1986) (recognizing that "consistency, predictability, and ease of application provided by" *lex loci delicti* doctrine as values "not to be discarded lightly"); *Meadows v. Meadows*, 196 W. Va. 56, 64, 468 S.E.2d 309, 317 (1996) (recognizing that "when rules of evidence are clear parties are able to prepare better for trial and the judicial and legal systems are facilitated in many ways including reduced litigation and the overall ease of application").

[8] *See Cohen v. Beneficial Industrial Loan Corporation*, 337 U.S. 541 (1949).

For the foregoing reasons, I would have reviewed the merits of the appeal before us—an appeal of an order denying a 12(b)(6) motion to dismiss predicated on statutory immunity conferred by West Virginia Code § 49-2-810—pursuant to the collateral order doctrine in keeping with this Court's prior practice. Accordingly, I dissent.