IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 24-413

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

LOGAN REGIONAL MEDICAL CENTER and REGINA BIAS,
Defendants Below, Petitioners,

v.

A.J., as mother of S.A., and L.A. and M.A., individually and as parents of S.A. and M.W.,
Plaintiffs Below, Respondents.

Appeal from the Circuit Court of Mingo County
The Honorable James Young
Civil Action No. 22-C-33

DISMISSED

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CHIEF JUSTICE BUNN delivered the Opinion of the Court.

JUSTICE TRUMP dissents and reserves the right to file a separate opinion.

SYLLABUS BY THE COURT

1. "Ordinarily the denial of a motion for failure to state a claim upon which relief can be granted made pursuant to *West Virginia Rules of Civil Procedure* 12(b)(6) is interlocutory and is, therefore, not immediately appealable." Syllabus Point 2, *State ex rel. Arrow Concrete Co. v. Hill*, 194 W. Va. 239, 460 S.E.2d 54 (1995).

2. "A court of limited appellate jurisdiction is obliged to examine its own power to hear a particular case. This Court's jurisdictional authority is either endowed by the West Virginia Constitution or conferred by the West Virginia Legislature. Therefore, this Court has a responsibility *sua sponte* to examine the basis of its own jurisdiction." Syllabus Point 1, *James M.B. v. Carolyn M.*, 193 W. Va. 289, 456 S.E.2d 16 (1995).

3. The Legislature's grant of statutory immunity from liability is insufficient to trigger application of the collateral order doctrine in the absence of some accompanying substantial public interest demanding immediate review or specific statutory language that the immunity afforded by the statute is an immunity from suit or a right not to be tried.

BUNN, Chief Justice:

Petitioners Regina Bias and Logan Regional Medical Center seek interlocutory review of the Circuit Court of Mingo County's order denying their motion to dismiss based on the "good faith" immunity provided by West Virginia Code § 49-2-810. However, our precedent permitting interlocutory review of governmental immunities under the collateral order doctrine does not extend to the statutory immunity under that provision. Independent review under the collateral order doctrine of the immunity at issue demonstrates that there is no substantial public interest at stake that would be lost if Petitioners, like all other litigants, are made to wait for a final order before exercising their right to appeal a judgment. Further, the statute itself provides no immunity from suit, a right not to be tried, or an entitlement from the Legislature to immediately appeal an adverse ruling. Accordingly, we are without appellate jurisdiction for lack of a final order as required by West Virginia Code § 58-5-1 and, therefore, dismiss Petitioners' appeal as interlocutory.

I.

FACTUAL AND PROCEDURAL HISTORY

Respondent A.J., the mother of S.A., and Respondents L.A. and M.A., S.A.'s father and stepmother, filed separate complaints in the Circuit Court of Mingo County against Regina Bias and her employer, Logan Regional Medical Center based on claims

arising out of a sexual abuse evaluation of S.A.[1] According to the complaints, A.J. had first taken S.A. for a sexual abuse evaluation at a different medical facility. Though that facility indicated its findings were "negative for sexual abuse" it nevertheless suggested a follow up examination. The Department of Human Services ("DHS") became involved and instituted a protection plan. Through the course of the DHS's involvement, Ms. Bias, a certified pediatric sexual assault nurse examiner, then evaluated S.A. for signs of sexual abuse. As alleged, the thrust of Respondents' claims is that Ms. Bias conducted an exam that deviated from appropriate standards of care and that she falsely reported positive indications of sexual abuse to the DHS, including a false report of a sexually transmitted disease. The complaints assert that the "false" report resulted in extended removal of S.A. and a half-sibling, M.W. from the homes of Respondents and perpetuated the underlying abuse and neglect proceedings. Respondents alleged that Petitioners financially benefited from repeat examinations. The complaints further aver that Ms. Bias later provided another false report, but ultimately "recanted" when testifying under oath about her examination. Finally, the complaints allege that the circuit court dismissed the abuse and neglect proceedings upon a finding that S.A. was not sexually abused.

[1] Respondents filed and refiled multiple amended complaints. The cases were consolidated for the purposes of discovery over A.J.'s objection, and the circuit court ruled on the underlying immunity determination as it pertains to A.J.'s second amended complaint filed May 9, 2024, and L.A. and M.A.'s refiled amended complaint dated February 22, 2024. The facts recited in this opinion are taken from these amended complaints.

Petitioners filed the underlying motion to dismiss both complaints for failure to state a claim,[2] contending that under West Virginia Code § 49-2-810, discussed below, they enjoy immunity for actions taken pursuant to the Child Welfare Act because they were "participating in good faith." And, while the complaints alleged a medical debate over whether the findings were consistent with abuse or had a less nefarious explanation, Petitioners argued that the Respondents had not sufficiently alleged that Ms. Bias had acted knowingly or in bad faith. More specifically, Petitioners cited that the complaints' conclusory allegations failed to meet pleading standards sufficient to overcome the statutory immunity afforded to them under West Virginia Code § 49-2-810 and likewise failed to satisfy the requirements of Rule 9(b) of the West Virginia Rules of Civil Procedure that fraud be pled with particularity.[3]

The circuit court denied the motion to dismiss, finding that Respondents had alleged Ms. Bias had made false reports, and that the issue of immunity under West Virginia Code § 49-2-810 was premature because whether Ms. Bias had acted in "good faith" was a factual issue requiring discovery. The circuit court then invited Petitioners to raise the issue again following discovery. Petitioners filed this interlocutory appeal to challenge the

[2] Petitioners also sought dismissal on other bases, including improper venue, discussed below.

[3] Rule 9(b) of the West Virginia Rules of Civil Procedure provides, "In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally."

circuit court's refusal to dismiss the complaints based on their assertion of statutory immunity.

II.

STANDARD OF REVIEW

Petitioners' appeal is interlocutory in nature because it arises from the denial of a motion to dismiss and not a final order. "Ordinarily the denial of a motion for failure to state a claim upon which relief can be granted made pursuant to *West Virginia Rules of Civil Procedure* 12(b)(6) is interlocutory and is, therefore, not immediately appealable." Syl. Pt. 2, *State ex rel. Arrow Concrete Co. v. Hill*, 194 W. Va. 239, 460 S.E.2d 54 (1995). Reaffirming our precedent, we recently emphasized that interlocutory orders are generally not subject to this Court's appellate jurisdiction because they run afoul of the rule of finality that bridles it. *See Hopkins v. Sutphin*, 253 W. Va. 372, --, 931 S.E.2d 772, 778-79, 2026 WL 1506336 (2026) ("[A]ppropriate exercise of appellate jurisdiction is contingent upon a final order[.]"); *State v. Hensley*, 253 W. Va. 235, --, 931 S.E.2d 635, 640-41 (2026) ("The final judgment rule is of early vintage, having been called 'an historic characteristic of . . . appellate procedure.'") (citation omitted). But there are recognized exceptions to the rule of finality where exercise of appellate jurisdiction is nevertheless appropriate even in the absence of a final order. This Court has explained that "[w]ith rare exception, the 'finality rule' is mandatory and jurisdictional. Thus, to be appealable, an order must be final, . . . must fall within a specific class of interlocutory orders which are made appealable by statute or by the West Virginia Rules of Civil Procedure, or must fall within a

jurisprudential exception." *James M.B. v. Carolyn M.*, 193 W. Va. 289, 292-93, 456 S.E.2d 16, 19-20 (1995) (footnotes omitted).

"A court of limited appellate jurisdiction is obliged to examine its own power to hear a particular case. This Court's jurisdictional authority is either endowed by the West Virginia Constitution or conferred by the West Virginia Legislature. Therefore, this Court has a responsibility *sua sponte* to examine the basis of its own jurisdiction." Syl. Pt. 1, *id.* Accordingly, before we may consider the merits of this appeal, we are obligated to first examine this threshold issue. This Court reviews our own appellate jurisdiction and the exceptions to the rule of finality de novo: "[a]s jurisdictional issues are questions of law, our review is de novo." *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 239 W. Va. 338, 343, 801 S.E.2d 216, 221 (2017) (citing Syl. Pt. 1, *Chrystal R.M. v. Charlie A.L.*, 194 W. Va. 138, 459 S.E.2d 415 (1995) ("Where the issue on an appeal from the circuit court is clearly a question of law or involving an interpretation of a statute, we apply a de novo standard of review.")).

III.

DISCUSSION

Petitioners contend that the order on appeal falls within the jurisprudential exception of orders immediately appealable under the collateral order doctrine and thus our review is an appropriate exercise of this Court's appellate jurisdiction. *See Adkins v.*

Capehart, 202 W. Va. 460, 463, 504 S.E.2d 923, 926 (1998) (recognizing collateral order doctrine as an exception to the rule of finality). We disagree that the collateral order doctrine applies to permit interlocutory review of orders of this nature because there is no substantial public policy at stake and the Legislature, in the plain language of West Virginia Code § 49-2-810, has only provided Petitioners with a right not to be held liable, not immunity from suit.

The collateral order doctrine was first professed in *Cohen v. Beneficial Industrial Loan Corp*., 337 U.S. 541 (1949), where the Supreme Court of the United States engaged with the federal jurisdiction-limiting finality rule, 28 U.S.C. § 1291, which provides for appellate jurisdiction from "all *final* decisions of the district courts." (emphasis added). Reasoning that it had always afforded the statute a practical construction, the *Cohen* Court recognized that, even in the absence of a final order, there is a "small class [of decisions] which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Cohen*, 337 U.S. at 546.

The Supreme Court has since refined the qualifying conditions for deploying the doctrine into three: (1) it conclusively determines the disputed question; (2) it resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment. *Puerto Rico Aqueduct and Sewer Authority*

v. Metcalf & Eddy, Inc., 506 U.S. 139, 144 (1993) (citing *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 468 (1978)). And, it has emphasized that the doctrine is "narrow and selective in its membership." *Will v. Hallock*, 546 U.S. 345, 350 (2006). "The conditions are 'stringent' . . . . Unless they are kept so, the underlying doctrine will overpower the substantial finality interests § 1291 is meant to further[.]" *Id.* at 349-50 (internal citation omitted).

Like § 1291, West Virginia Code § 58-5-1 limits this Court's appellate jurisdiction to final orders. West Virginia Code § 58-5-1, entitled "When appeal lies" provides in pertinent part, "A party to a civil action may appeal . . . from a final judgment". . . . "[t]he defendant in a criminal action may appeal . . . from a final judgment." In view of our jurisdiction-limiting finality rule, we have also adopted this theory of immediate review of certain interlocutory orders under the collateral order doctrine, permitting such review only when the class of orders may be said to meet the same three-factor *Cohen* test employed in the federal courts. *James M.B.*, 193 W Va. at 293 n.4, 456 S.E.2d at 20 n.4; *Durm v. Heck's, Inc.*, 184 W. Va. 562, 566 n.2, 401 S.E.2d 908, 912 n.2 (1991); *Robinson v. Pack*, 223 W. Va. 828, 679 S.E.2d 660 (2009). We have similarly noted that the collateral order doctrine's "principal characteristic is its narrow application." *State ex rel. W. Va. Univ. Hosp., Inc. v. Gaujot*, 248 W. Va. 11, 17, 886 S.E.2d 346, 352 (2023).

Immunity determinations in the governmental context have traditionally fallen under the collateral order doctrine, and Petitioners submit that immediate review is

justified under this theory. *See Nixon v. Fitzgerald*, 457 U.S. 731 (1982) (denial of absolute immunity immediately appealable under collateral order doctrine); *Mitchell v. Forsyth*, 472 U.S. 511 (1996) (denial of qualified immunity immediately appealable under collateral order doctrine). Indeed, this Court has recognized that the collateral order doctrine permits us to immediately review both denials of motions to dismiss and denials of summary judgment based on the State's immunity. *See, e.g.*, Syl. Pt. 1, *W. Va. Bd. of Educ. v. Marple*, 236 W. Va. 654, 783 S.E.2d 75 (2015) ("A circuit court's denial of a motion to dismiss that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the 'collateral order' doctrine."); Syl. Pt. 2, *Robinson v. Pack*, 233 W. Va. 828, 679 S.E.2d 660 (2009) ("A circuit court's denial of summary judgment that is predicated on qualified immunity is an interlocutory ruling which is subject to immediate appeal under the 'collateral order' doctrine."). This Court has also recognized that denial of statutory immunity under the Governmental Tort Claims and Insurance Reform Act (Tort Claims Act) is immediately appealable after applying the *Cohen* factors. Syl. Pt. 5, *State ex rel. Grant Cnty. Comm'n v. Nelson*, 244 W. Va. 649, 856 S.E.2d 608 (2021) ("Under Rule 12 of the West Virginia Rules of Civil Procedure, a circuit court's denial of a motion to dismiss a complaint that is predicated on the statutory immunity conferred by the Governmental Tort Claims and Insurance Reform Act is an interlocutory ruling that is subject to immediate appeal under the 'collateral order' doctrine.").

Petitioners suggest—or rather, assume—that because there is a statutory "immunity" involved, that these precedents apply to their own claim of immunity and seek

direct, immediate appeal of the circuit court's ruling. But Petitioners are neither the State nor other government actor. They do not enjoy sovereign immunity, nor do they have qualified immunity to protect their discretionary decisions. They claim statutory immunity, but they are not a political subdivision with immunity conferred under the Tort Claims Act. As explained more fully below, our precedent with respect to governmental immunity does not extend the right to immediate appeal pursuant to the collateral order doctrine to this class of interlocutory appeals. To the extent that the Court has previously utilized governmental immunity precedent to permit immediate review of interlocutory orders outside of those bounds and has done so without assessing the characteristics of the class of orders at issue for reviewability under *Cohen*, we decline to mechanically apply of this precedent to permit review of every defense that might be termed an "immunity."

A. "Immunities" must be categorized for appropriate treatment both substantively and under Cohen.

This Court has taken recent and significant steps to acknowledge that our immunities jurisprudence "has not been a model of clarity." *Kent v. Sullivan*, 249 W. Va. 747, 752 n.10, 901 S.E.2d 500, 505 n.10 (2024). In *Kent*, we observed that clarification was necessary in the context of the three types of governmental immunities because "[w]here . . . the analyses are conflated and the affected entities and individuals are not properly categorized, legal chaos ensues." *Id.* at 752, 901 S.E.2d at 505. Again, in *Mercer County Board of Education v. Shrewsbury*, the Court recognized that immunities jurisprudence had become imprecise insofar as the actor, the source and character of the

immunity, and the associated rights were often analyzed in the aggregate and thus applied *Kent*'s simplified framework to provide the measured categorization a substantive immunities analysis requires. 251 W. Va. 28, 32, 909 S.E.2d 63, 67 (2024) ("As far back as 2009, we acknowledged that 'there remain[ed] a great deal of confusion as to sovereign immunity, [and] qualified immunity.[]' . . . Because that confusion continued and there were instances in which analyses of immunity law were conflated, this Court issued the *Kent* opinion to provide a 'framework . . . which focuses on a method for determining which type of immunity is applicable in a particular case[.]'") (internal citation omitted).

In other words, in the past, the Court has used loose and broad language that failed to identify the specific character of the immunity at issue, instead using a broader, generic "immunities" label. In the same way, we have dropped *Cohen*'s thread when reviewing immunities under the collateral order doctrine. Once seeing that immunities are involved in an otherwise interlocutory appeal, we have simply presumed satisfaction of *Cohen*'s requirements without adequately examining the source and character of the immunity, and, more pointedly, have erroneously presumed that any type of immunity is of the sort demanding the same immediate attention as that immunity claimed by governmental bodies. Cited by the dissent as one such case establishing review of *all* statutory immunities under the collateral order doctrine, *Eldercare of Jackson Cnty., LLC v. Lambert* perhaps best demonstrates the robotic application we seek to correct going forward. 250 W. Va. 291, 902 S.E.2d 840 (2024). There, the Court was asked to review the circuit court's refusal to dismiss a complaint premised on statutory immunity conferred by

the COVID-19 Jobs Protection Act, an order the Court recognized as interlocutory. *Id.* at 299, 902 S.E.2d at 848. Without assessing the character of the immunity conferred by the statute actually at issue, the Court explained that, "an order denying a motion to dismiss that is predicated on statutory immunity is immediately appealable under the 'collateral order' doctrine[]" citing, "*See* Syl. Pt. 5, *State ex rel. Grant Cnty. Comm'n v. Nelson*, 244 W. Va. 649, 856 S.E.2d 608 (2021)." *Eldercare*, 250 W. Va. at 299, 902 S.E.2d at 848. But Syllabus Point 5 of *Grant County Commission* did not apply the collateral order doctrine to statutory immunities, writ large; it specifically limited its holding to the statutory immunity conferred by the Tort Claims Act:

> Under Rule 12 of the West Virginia Rules of Civil Procedure, a circuit court's denial of a motion to dismiss a complaint that is predicated on the statutory immunity *conferred by the Governmental Tort Claims and Insurance Reform Act* is an interlocutory ruling that is subject to immediate appeal under the "collateral order" doctrine.

(emphasis added).

The approach taken in *Eldercare* was not novel; as elicited in the dissent and as we recognize now, the Court has, on various occasions, summarily relied on governmental immunity precedent as a predicate to review non-governmental immunity determinations on an interlocutory basis. But entertaining immediate review of the denial of any statutory immunity under the auspices of our governmental immunity precedent simply because it has been done before does nothing but perpetuate the imprecision that we have just committed to correct in *Kent* and *Shrewsbury*.

We do not here revisit *Eldercare* or any other case where the Court has summarily applied the collateral order doctrine to a statutory immunity, especially given that those orders may be otherwise reviewable under *Cohen* independent from the application of governmental immunity precedent. Here, we merely observe that not all statutory immunities satisfy the requirements for interlocutory review under the collateral order doctrine and the Court should evaluate the statute at issue under *Cohen* to give effect to the Legislature's intent consistent with statutory construction principles (i.e., whether the immunity provided by the language of the statute demonstrates that the Legislature intended to create an exception to the finality rule). Rote application of the collateral order doctrine to permit immediate review of all "immunities"—governmental or otherwise—is certainly the easier course to chart, and yet it runs contrary to the very foundations of the collateral order doctrine and countenances this narrow exception to swallow the finality rule. Accordingly, we find it prudent to exercise more vigilant discernment in determining what immunities we anoint as "effectively unreviewable on appeal" by picking up *Cohen*'s thread once more and examining the nature of the immunity claimed and associated interests at stake before determining that its vindication justifies departure from the rule of finality.

B. Cohen *applies to permit immediate appeal of the denial of governmental immunities because their status and the interests at stake afford those entities immunity from suit.*

As stated above, *Cohen*, as applied by this Court permits immediate review of otherwise interlocutory orders that fit three criteria: (1) it conclusively determines the

disputed question; (2) it resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment.

While not discounting the need to conduct an appropriate analysis of the first two factors, we find the third most deserving of our attention in the immunity context and in this case, specifically. The third factor of *Cohen* contemplates why immediate review is necessary based on the interests at stake if forced to wait for a direct appeal. *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 878-79 (1994) ("[T]he third *Cohen* question, whether a right is 'adequately vindicable' or 'effectively reviewable,' simply cannot be answered without a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement."). Because the collateral order doctrine is derived from the common law, we start with this Court's initial analysis of the *Cohen* factors as applied to immunity determinations.

This Court, when applying the collateral order doctrine to the State's qualified immunity, has cited the "need for early resolution of immunity rulings" and "'agree[d] with the United States Supreme Court to the extent it has encouraged, if not mandated, that claims of immunities, where ripe for disposition, should be summarily decided before trial.'" *Robinson*, 223 W. Va. at 831, 679 S.E.2d at 663 (quoting *Hutchison v. Cty. of Huntington*, 198 W. Va. 139, 147, 479 S.E.2d 649, 657 (1995)). *Robinson* premised the need for early resolution of immunity determinations on *Mitchell*—a conclusion there reached in view of *governmental* immunity. *See Mitchell*, 472 U.S. 511

(1985) (extending collateral order doctrine to permit review of qualified immunity). *Hutchison*'s context, from which *Robinson* draws, makes this clear:

> We premise the remarks that follow with the concern that the need for early resolution in cases ripe for summary disposition is particularly acute when the defense is in the nature of an immunity. The United States Supreme Court has held that orders denying substantial claims of qualified immunity should be decided before trial, and these pretrial decisions are immediately appealable under the collateral order doctrine. *See Mitchell v. Forsyth,* 472 U.S. 511, 526, 105 S.Ct. 2806, 2815, 86 L.Ed.2d 411 (1985) ("the entitlement is an *immunity from suit* rather than a mere defense to liability; and like absolute immunity, it is effectively lost if the case is erroneously permitted to go to trial."). We agree with the United States Supreme Court to the extent it has encouraged, if not mandated, that claims of immunities, where ripe for disposition, should be summarily decided before trial.

Hutchison, 198 W. Va. at 148, 479 S.E.2d at 658 (emphasis in original) (footnote omitted).[4] Consistent with this view that governmental immunities should be decided as early as practicable, we again drew from *Mitchell* to explain that the third factor of *Cohen* in the governmental immunity context is readily satisfied. In *Robinson*, the Court cited *Mitchell* for the proposition that "[p]ostponing review of a ruling denying immunity to the post-trial stage is fruitless, as the United States Supreme Court reasoned in *Mitchell*, because the underlying objective in any immunity determination (absolute or qualified) is immunity

[4] *Hutchison* was a direct appeal from a final order, and, accordingly, the Court had no need to apply the collateral order doctrine there, outlining *Mitchell* only in "observation" of the general state of governmental immunities being subject to early summary disposition as exposition to its substantive immunities analysis. *See Hutchison*, 198 W. Va. at 147 n.9, 479 S.E.2d 657 n.9. *Robinson* then borrowed from *Hutchison*'s use of *Mitchell* to apply the collateral order doctrine to permit immediate appeal of the denial of qualified immunity.

from suit." *Robinson*, 223 W. Va. at 833, 679 S.E.2d at 665. Again relying on federal qualified immunities law, the Court specifically contrasted an immunity from suit with an immunity from liability and cited that the right to be free from *suit* is "inherent" to a qualified immunity defense. *Id.* (citing *Gray–Hopkins v. Prince George's County, Md.,* 309 F.3d 224, 229 (4th Cir. 2002) ("Because qualified immunity is an immunity from having to litigate, as contrasted with an immunity from liability, it is effectively lost if a case is erroneously permitted to go to trial.") (omitting internal citation) and *Jenkins v. Medford,* 119 F.3d 1156, 1159 (4th Cir. 1997) (observing that denial of qualified immunity defense "subjects the [government] official to the burdens of pretrial matters" and opining that "some of the rights inherent in a qualified immunity defense are [consequently] lost")).

In turn, *Robinson* concluded that the third factor of *Cohen*—whether the order is effectively unreviewable if made to wait for appeal—is satisfied for the denial of *governmental* immunity because the nature of that immunity is not a mere defense to liability, but an immunity from suit.[5] In *West Virginia State Police, Department of Military Affairs and Public Safety v. J.H.*, citing United States Supreme Court precedent on governmental immunities, the Court further explained the distinction as encompassing not

[5]As discussed more generally above, later courts citing *Robinson* did not repeat the parenthetical "(absolute or qualified)," a direct signal that the Court's holding in *Robinson* was limited to governmental immunity. Given the repeated citation without the governmental qualifier attached, immunities outside the governmental context erroneously appear to meet the *Cohen* factors, but the interests-at-stake analysis is not the same for *all* immunities. We seek here to rectify that generalized "immunity" label.

only the right not to be tried, but the right to be free from discovery and participation in the litigation:

> As the United States Supreme Court has directed, "qualified immunity is an immunity from suit rather than a mere defense to liability[.]" *Pearson v. Callahan,* 555 U.S. 223, 231, 129 S. Ct. 808, 815, 172 L. Ed. 2d 565 (2009) (internal citation and quotations omitted). Furthermore, "[o]ne of the most salient benefits of qualified immunity is protection from pretrial discovery, which is costly, time-consuming, and intrusive[.]" *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012). *See also Yoak v. Marshall Univ. Bd. of Governors*, 223 W. Va. 55, 59, 672 S.E.2d 191, 195 (2008) (per curiam) (discussing qualified immunity and commenting that "[w]e are persuaded that 'sparing the defendant from having to go forward with an inquiry into the merits of the case' includes the burden of discovery. *See Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179, 1185 (10th Cir. 2001)").

244 W. Va. 720, 729, 856 S.E.2d 679, 688 (2021). It is the protection of those rights that permits the State to immediately appeal under the collateral order doctrine even where the circuit court has merely deferred its ruling on the governmental immunity pending discovery. *Id.* at 729-31, 856 S.E.2d at 688-690 (finding deferral of decision on qualified immunity immediately appealable under collateral order doctrine because objective of qualified immunity is to save governmental agencies from burdens of suit).

Collectively, these cases inform us that—whatever expanded utility it was given later—the initial application of the collateral order doctrine to immunities meets the third factor of *Cohen* because and *only because* of the governmental status of the State. That is, it is its *status* as the government and the immunity flowing therefrom that affords it the right to be free from suit, and the right not to participate in the litigation at all—even

for purposes of conducting discovery. An order denying the State its immunity is effectively unreviewable on appeal because those rights will be lost if the State is forced to wait for a final order, and it is for that reason that the State's immunity may be immediately reviewed as exception to the rule of finality. *See Hallock*, 546 U.S. at 346 ("[T]o accept the generalization that any order denying a claim of right to prevail without trial satisfies the third condition [of *Cohen*] would leave § 1291's final order requirement in tatters.").

In contrast to common law qualified immunity for the State, *statutory* immunity does not necessarily meet *Cohen*'s test simply by virtue of raising an "immunity" defense. However, the Court has extended, through application of *Cohen*, an avenue of immediate appeal of the denial of immunity for political subdivisions and their employees under the Tort Claims Act. *See Nelson*, 244 W. Va. at 658, 856 S.E.2d at 617 ("This Court has previously determined that the denial of a motion to dismiss based on qualified immunity is immediately appealable. . . . However, we have not made this determination with respect to statutory immunity [under the Tort Claims Act].") (citation omitted). *Nelson* similarly invoked *Mitchell* to view immunity under the Tort Claims Act as an immunity from suit, and thus immediately appealable, but did so, again, on the basis that it implicated an important governmental interest which issues manifest both in the context of State *and* local governments, and which is effectively lost if made to wait for appeal. *Id.* at 659, 856 S.E.2d at 659 (reciting qualified immunity analysis from *Robinson* and finding the Tort Claims Act presents "similar immunity determinations."). The governmental immunity genre thus encompasses the State, its political subdivisions, and their respective officials,

employees, and agents despite their discrete character and sources of immunity. *See Kent*, 249 W. Va. at 752, 901 S.E.2d at 505 ("In this regard, there are three sources of immunity in our jurisprudence: constitutional or 'sovereign' immunity, common law 'qualified immunity,' and statutory immunity as set forth in the [Governmental] Tort Claims Act.") (footnotes omitted); *Hutchison*, 198 W. Va. at 148, 479 S.E.2d at 658 ("Immunities under West Virginia law are more than a defense to a suit in that they grant governmental bodies and public officials the right not to be subject to the burden of trial at all.").

C. Not all "immunity" is immunity from suit and must be distinguished from an immunity from liability.

Petitioners here are not governmental bodies. Yet they claim a statutory immunity imbued by the Legislature that grants them access to immediate review in circumvention of the rule of finality. As in *Nelson*, it does not suffice to say that statutory immunity of whatever sort is immediately appealable—*Cohen*'s narrow exception cannot be so broadly interpreted if it is to maintain its gatekeeping integrity, and various cases decided by the Supreme Court of the United States demonstrate that indiscriminate application of the collateral order doctrine—a court construct—thwarts the restraints on appellate jurisdiction as prescribed by the Legislature and the West Virginia Constitution.

Because immediate appeal is both limited in application and tempting for litigants, the Supreme Court has observed that the third *Cohen* factor (correctability on appeal) "admittedly raise[s] the lawyer's temptation to generalize[,]" specifically where

the claimant seeks immediate review based on a perceived right not to stand trial. *Hallock*, 546 U.S. at 350-51. The Court cautioned that "every right that could be enforced appropriately by pretrial dismissal might loosely be described as conferring a 'right not to stand trial,'" and "[a] fully litigated case can no more be untried than the law's proverbial bell can be unrung, and almost every pretrial or trial order might be called 'effectively unreviewable' in the sense that relief from error can never extend to rewriting history." *Digit. Equip.*, 511 U.S. at 872-73. Application of the collateral order doctrine to permit appellate review of every defense that might be characterized as a right not to stand trial or to participate in the litigation at all is unworkable and undermines the purpose of the final judgment rule. *See U.S. ex rel. Fiorce, LLC v. Colorado Tech. Univ., Inc.*, 130 F.4th 811 (10th Cir. 2025) (quoting *Digit. Equip.*, 511 U.S. at 872) ("'if immediate appellate review were available every such time [a litigant had to wait for final judgment to vindicate valuable rights], Congress's final decision rule would end up a pretty puny one.'"). That an erroneous ruling "may burden litigants in ways that are only imperfectly reparable by appellate reversal . . . . has never sufficed" and "courts . . . view claims of a 'right not to be tried' with skepticism, if not a jaundiced eye." *Digit. Equip.*, 511 U.S. at 872-73.

In *Digital Equipment* and again in *Hallock*, the Supreme Court thus rejected such a generalized approach to satisfying the third *Cohen* factor, explaining "only some orders denying an asserted right to avoid the burdens of trial qualify, then, as orders that cannot be reviewed 'effectively' after a conventional final judgment[.]" *Hallock*, 546 U.S. at 351. It went on, "the cases have to be combed for some further characteristic that merits

appealability under *Cohen*; and as *Digital Equipment* explained, that something further boils down to 'a judgment about the value of the interests that would be lost through rigorous application of a final judgment requirement.'" *Id.* at 351-52 (quoting *Digital Equip.*, 511 U.S. at 878-79).

In each type of order satisfying the third factor of *Cohen* because it implicated a "right not to be tried," the *Hallock* Court noted that "some particular value of a high order was marshaled in support of the interest in avoiding trial: honoring the separation of powers, preserving the efficiency of government and the initiative of its officials, respecting a State's dignitary interests, and mitigating the government's advantage over the individual." *Id.* at 352-53. "That is, it is not mere avoidance of a trial, but avoidance of a trial *that would imperil a substantial public interest*, that counts when asking whether an order is 'effectively unreviewable' if review is to be left until later." *Id.* (citation omitted) (emphasis added). *See also Mohawk Ind., Inc. v. Carpenter*, 558 U.S. 100, 108-09 (2009) ("The crucial question, however, is not whether an interest is important in the abstract; it is whether deferring review until final judgment so imperils the interest as to justify the cost of allowing immediate appeal of the entire class of relevant orders. We routinely require litigants to wait until after final judgment to vindicate valuable rights, including rights central to our adversarial system.").

Based on this precedent, we shift our analysis away from governmental immunity and refocus it to the statutory language and interests at stake to ask whether this

statutory immunity protects some substantial public interest or right of such import that immediate review is necessary to protect the right itself such that the rule of finality must give way to it.

D. There is no substantial public interest at stake in West Virginia Code § 49-2-810 that would be effectively unreviewable on direct appeal.

We turn to West Virginia Code § 49-2-810 which provides:

> Any person, official, or institution participating in good faith in any act permitted or required by this article is immune from any civil or criminal liability that otherwise might result by reason of those actions, 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.

We do not discount the importance of this immunity, particularly in view of the vital interests furthered in the Child Welfare Act. However, we are unable to find that an order denying a motion to dismiss predicated on the immunity conferred by this statute satisfies *Cohen*'s third factor. The fact that the Legislature, by statute, has set forth an additional defense to liability cannot, standing alone, render the denial of it immediately appealable. Any error in application of this statutory defense to liability is as capable of correction on appeal as is any other asserted defense that would, upon appellate review, result in a finding that a party is not liable. This is particularly true because the finality rule is likewise of legislative design: the Legislature has deemed a final order an important limitation of appellate jurisdiction, crucial to the efficient administration of the courts. *See Hopkins,* 253

W. Va. at --, 931 S.E.2d at 778-79 (quoting *James M.B.*, 193 W. Va. at 292, n.2, 456 S.E.2d at 19 n.2) ("The prudence of employing the [final judgment] rule is indisputable. We have explained that it 'preserves the autonomy of the trial court by minimizing appellate interference, ensuring that the role of the appellate court will be one of review rather than one of intervention[,]' that it is grounded in efficiency, 'by providing there will only be review where the record is complete and the judgment pronounced[,]' and that, in the civil context, the rule 'reduces the ability of litigants to wear down their opponents by repeated, expensive appellate proceedings.'"). Thus, if the Court is to find that this class of orders meets *Cohen*'s third factor, it must be based on a recognition that this statutory immunity protects a right of such substantial importance and benefit to the public that it outweighs the presumption *against* interlocutory review. Of course, any statute enacted by the Legislature is, in the abstract, important, but an indiscriminate rule that any statute imbuing a right labelled as an "immunity" qualifies as a "substantial public interest" for purposes of *Cohen*'s third factor would effectively subsume the rule of finality.

Moreover, we have implicitly rejected this line of thinking. In *Gaujot*, we were asked to review, on direct appeal, the denial of an "immunity" granted under West Virginia Code § 55-7b-9(g). 248 W. Va. at 15-16, 886 S.E.2d at 350-51. Defendant there contended that appellate review was appropriate under our collateral order jurisprudence when the circuit court refused to dismiss claims against it based on a defense derived from the Medical Professional Liability Act. *Id.* at 16, 886 S.E.2d at 351. In declining to apply the collateral order doctrine there, we explained that "a defense to liability . . . does not

become an 'immunity' simply by dubbing it so." *Id.* Undeniably, the Medical Professional Liability Act from which the defense arose is an important legislative agenda, and the defense to liability was preserved by the Legislature. However, it is insufficient to warrant application of the collateral order doctrine because the defense is not an issue of substantial public import that cannot be effectively reviewed on appeal. The MPLA provided a defense to liability, not an immunity from suit.

What then, of the fact that, in this statute, the Legislature specifies a grant of "immunity"? Specifically, West Virginia Code § 49-2-810 provides an "immunity from liability" for those who act in good faith. Does the Legislature's inclusion of the specific term "immunity" in a statute suffice to meet both substantial public import and an order effectively unreviewable on appeal vis a vis a right not to be tried or an immunity from suit? Observing the distinctions for purposes of the collateral order doctrine between an immunity from suit requiring immediate appellate attention and an immunity from liability that is correctable, albeit imperfectly, through traditional avenues of appeal from a final order, we find it does not.

E. The language of West Virginia Code § 49-2-810 does not provide immunity from suit or a right to immediate appeal.

The Supreme Court of the United States recently reiterated in *Geo Group, Inc. v. Menocal* that immunity from liability is "fundamentally different" than immunity from suit: "[w]hen, as here, an order denies a pretrial request to dismiss, appealability under

Cohen will generally turn on whether the defendant has asserted a defense to liability or instead an immunity from suit." 607 U.S. 438, 444 (2026).[6] Unlike a right not to be tried or, more extensively, an immunity from suit, "the right to a finding of non-liability stands on a different footing: It can be effectively vindicated after a trial has occurred, through the reversal of an adverse final judgment. And so the denial of a merits defense is generally appealable only once trial-court proceedings have ended." *Id.* at 447. A merits defense—more aptly called a right to a finding of non-liability—reasoned the Court, will ordinarily call for the defendant to answer for his conduct in court to justify that result, whereas a true immunity from suit is more: a true immunity from suit "ensures that the defendant need not 'answer for his conduct' in court at all—that he avoids, in addition to liability, all the usual 'burdens of litigation,' including a trial." *Id.* at 782 (quoting *Mitchell*, 472 U.S. at 525). The right to a finding of non-liability "offers something different, and of lesser value"

[6] *Geo Group* is the most recent iteration of the philosophy underlying the Supreme Court's approach to the third *Cohen* factor, as previously explained in *Midland Asphalt Corp. v. United States*, 489 U.S. 794 (1989). There, the Supreme Court took care to explain that the right not to be tried is considered a vindicable right under the collateral order doctrine, but "[o]ne must be careful, however, not to play word games with the concept of a 'right not to be tried.'" *Id.* at 800-801 (1989). *See also Van Cauwenberghe v. Biard*, 486 U.S. 517, 524-25 (1988) ("Because of the important interests furthered by the final-judgment rule . . . and the ease with which certain pretrial claims for dismissal may be alleged to entail the right not to stand trial, we should examine the nature of the right asserted with special care to determine whether an essential aspect of the claim is the right to be free of the burdens of a trial."). Noting the "'crucial distinction between a right not to be tried and a right whose remedy requires the dismissal of charges'[,]" "[a] right not to be tried in the sense relevant to the *Cohen* exception rests upon an explicit statutory or constitutional guarantee that trial will not occur." *Midland*, 489 U.S. at 801 (quoting *U.S. v. Hollywood Motor Car Co.*, 458 U.S. 263, 269 (1982)).

in that "it does not allow the defendant to escape the varied rigors and costs of legal proceedings[,] [i]ndeed it is in and through those proceedings that the asserted defense is addressed and liability finally determined." *Id.* at 782-83.

Recently, in *California v. Meta Platforms, Inc.*, the Ninth Circuit Court of Appeals pulled that distinction into the statutory context, examining the application of *Cohen*'s third factor to immunity conferred under the Communications Decency Act, 47 U.S.C. § 230, which provides, in relevant part "*[n]o cause of action may be brought and no liability* may be imposed under any State or local law that is inconsistent with this section." 186 F.4th 663, 673 (9th Cir. 2026) (emphasis in original). Immunity from suit, Meta argued, was implicit in the statute, but the Ninth Circuit disagreed. Drawing from *Menocal* and its predecessor, *Midland Asphalt*, the Ninth Circuit found that the statute's grant of immunity lent itself to a merits-defense, not an immunity from suit. *Id.* at 674. Emphasizing that "[s]tatutory immunity from suit is a 'rare form of protection,'" it concluded that Congress must unequivocally create an immunity from suit when working against a presumption against an immediate appeal. *Id.* at 674-76 (quoting *Digit. Equip.*, 511 U.S. at 879). *See also General Steel Domestic Sales, LLC v. Chumley*, 840 F.3d 1178, 1182 (10th Cir. 2016) (In 47 U.S.C. § 230 Congress had not explicitly provided the defendant with an immunity from suit and "[i]mmunity from suit is a benefit typically only reserved for governmental officials.").

Consistent with this view, and in accordance with the presumption against

interlocutory appeals, we agree and now hold that the Legislature's grant of statutory immunity from liability is insufficient to trigger application of the collateral order doctrine in the absence of some accompanying substantial public interest demanding immediate review or specific statutory language that the immunity afforded by the statute is an immunity from suit or a right not to be tried.[7]

Here, the Legislature afforded individuals such as Petitioners an "immunity from liability" based on good faith conduct. This language not only fails to provide immunity from suit or a right not to be tried in explicit, or even implicit terms, it expressly limits its application to a liability finding. As such, it imperils no substantial public policy to require this class of orders to wait for a final order any more so than any other statutorily delineated defense. In addition, the statute's good faith standard does not lend itself to a pre-suit bar but instead requires the "individual, official, or institution" to defend their conduct as being in good faith, often requiring discovery before summary disposition would even be appropriate.[8] This is the very merits-defense analysis addressed in *Menocal* that marks this "immunity" as a right to a finding of non-liability rather than true immunity

[7]The Tort Claims Act similarly provides an "immun[ity] from liability" but, as discussed above, this Court has found that substantial public policies are furthered by immediate review of those orders under *Cohen* similar to other types of governmental immunities.

[8] While the collateral order doctrine examines a class of orders as opposed to making an "individualized jurisdictional inquiry," we observe that here, the circuit court did just that: denied the motion to dismiss pending discovery on whether there was evidence of bad faith with an eye toward revisiting it later in the proceedings. *Mohawk*, 558 U.S. at 107.

from suit. Taken together with the statutory language, we conclude that West Virginia Code § 49-2-810 does not afford Petitioners a right not to be tried or an immunity from suit, and, therefore, the immunity claimed fails to meet the third *Cohen* factor for purposes of exercising appellate review over this interlocutory appeal.[9] Accordingly, we dismiss the appeal for want of appellate jurisdiction and in deference to the rule of finality.

IV.

CONCLUSION

For the foregoing reasons, we dismiss the appeal for lack of appellate jurisdiction as presenting an unreviewable interlocutory issue.

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[9] Petitioners also raise issues of venue, citing in its notice of appeal that correction of that error is appropriate on an interlocutory basis because venue issues cannot be adequately corrected on appeal. However, we have specified that challenges to venue are addressed through writ of prohibition rather than direct interlocutory appeal. *State ex rel. Thornhill Group v. King*, states

> That the issue of venue may properly be addressed through a writ of prohibition is well-settled. In *State ex rel. Riffle v. Ranson*, 195 W. Va. 121, 464 S.E.2d 763 (1995), we explained our preference for "resolving this issue [venue] in an original action" given the "inadequacy of the relief permitted by appeal." *Id.* at 124, 464 S.E.2d at 766; *accord State ex rel. Huffman v. Stephens*, 206 W.Va. 501, 503, 526 S.E.2d 23, 25 (1999) (recognizing that concerns regarding litigants being placed at unwarranted disadvantage and inadequate appellate relief compel exercise of original jurisdiction in venue matters).

233 W. Va. 564, 567, 759 S.E.2d 795, 798 (2014). *See also Adkins*, 202 W. Va. at 463, 504 S.E.2d at 926 (recognizing matters in prohibition as an exception to the rule of finality).

Dismissed.