IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

September 2026 Term

No. 25-328

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

STATE OF WEST VIRGINIA ex rel. WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION,
Petitioner,

v.

THE HONORABLE TERA SALANGO, Judge, Circuit Court of Kanawha County, and MARY F. MYERS, individually and as the Administratrix of the ESTATE OF RONALD M. MYERS,
Respondents.

PETITION FOR WRIT OF PROHIBITION

WRIT OF PROHIBITION GRANTED

AND

No. 25-385

STATE OF WEST VIRGINIA ex rel. WEST VIRGINIA DIVISION OF CORRECTIONS AND REHABILITATION,
Petitioner,

v.

THE HONORABLE DAVID J. HARDY, Judge, Circuit Court of Kanawha County, and GREGORY PYLES, Administrator of the ESTATE OF JACQUELINE V. PYLES,
Respondents.

PETITION FOR WRIT OF PROHIBITION

WRIT OF PROHIBITION GRANTED

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JUSTICE KIRKPATRICK delivered the Opinion of the Court.

JUSTICE WOOTON and JUSTICE FLANIGAN dissent and reserve the right to file separate Opinions.

SYLLABUS BY THE COURT

1. "A writ of prohibition will not issue to prevent a simple abuse of discretion by a trial court. It will only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers. *W. Va. Code* 53–1–1." Syllabus Point 2, *State ex rel. Peacher v. Sencindiver*, 160 W. Va. 314, 233 S.E.2d 425 (1977).

2. "In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight." Syllabus Point 4, *State ex rel. Hoover v. Berger*, 199 W. Va. 12, 483 S.E.2d 12 (1996).

3. "Deliberate indifference to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain which is proscribed by the prohibition on cruel and unusual punishment in the Federal and State Constitutions." Syllabus Point 4, *Nobles v. Duncil*, 202 W. Va. 523, 505 S.E.2d 442 (1998).

4. A claim for damages for "deliberate indifference to clearly established law" is not a cognizable claim under the common law of West Virginia.

KIRKPATRICK, Justice:

The West Virginia Division of Corrections and Rehabilitation, petitioner and defendant below, requests extraordinary relief pursuant to this Court's original jurisdiction to prohibit enforcement of two orders of the Circuit Court of Kanawha County denying the petitioner's motions to dismiss claims of "deliberate indifference to clearly established law" in two separate lawsuits. The petitioner argues that the orders amount to clear legal error because such a claim does not exist under the West Virginia common law. Upon review of the pertinent law, we agree. In view of that conclusion and additional factors enumerated in Syllabus Point 4 of *State ex rel. Hoover v. Berger*, the petitioner is entitled to the requested writs. *Id*., 199 W. Va. 12, 483 S.E.2d 12 (1996), Syl. Pt. 4.[1]

I. Factual and Procedural Background

A. No. 25-385

In May 2023, Gregory Pyles, as administrator of the Estate of Jacqueline V. Pyles, filed a second amended complaint against PrimeCare Medical of West Virginia, Inc. ("PrimeCare"), and the West Virginia Division of Corrections and Rehabilitation ("DCR").[2] Mr. Pyles alleged that his daughter, Jacqueline, entered the North Central

[1] The Court acknowledges the contribution of the State of West Virginia, amicus curiae, for its brief in support of the petitioner and participation in oral argument.

[2] Mr. Pyles began this litigation in the Circuit Court of Kanawha County. The case was removed to the United States District Court for the Southern District of West Virginia. Mr. Pyles filed the second amended complaint in federal court. The case was
Continued . . .

Regional Jail ("NCRJ") on October 13, 2021, and that she underwent a screening process upon arriving at the facility.[3] Mr. Pyles alleged that Jacqueline had a documented history of severe mental illness and suicidal ideation, a history that he alleged should have triggered an urgent referral to a mental health provider; nonetheless, PrimeCare staff cleared Jacqueline for placement in NCRJ's general population. Mr. Pyles alleged that Jacqueline saw a family nurse practitioner on "sick call" on October 15, 2021, and that the care provided by the nurse practitioner amounted to a "gross deviation from the standard of care" in that she "asked no questions regarding [Jacqueline's] mental health," among other alleged omissions. Finally, Mr. Pyles alleged that on October 18, 2021, Jacqueline was "found with a torn bedsheet around her neck hanging from the cement table in her cell," and was determined to have died due to hanging.

The second amended complaint contains three counts naming DCR: negligent training (Count V), negligence (Count IV),[4] and "deliberate indifference in

later remanded to the Circuit Court of Kanawha County, where the briefing detailed above occurred.

[3] DCR's petitions for prohibition challenge the circuit courts' refusal to grant DCR's motions to dismiss, made pursuant to Rule 12(b)(6) of the West Virginia Rules of Civil Procedure. For that reason, we construe Mr. Pyles's second amended complaint and Mrs. Myers's complaint in the light most favorable to them and take the allegations in those pleadings as true. *See, e.g.*, *John W. Lodge Distrib. Co. v. Texaco, Inc.*, 161 W. Va. 603, 605, 245 S.E.2d 157, 158 (1978) ("For purposes of the motion to dismiss, the complaint is construed in the light most favorable to plaintiff, and its allegations are to be taken as true.").

[4] The negligence and negligent-training counts are not at issue in this petition.

violation of clearly established West Virginia law" (Count III). In Count III, Mr. Pyles alleged that unnamed corrections officers knew or should have known of Jacqueline's mental illness or recognized her "obvious," "urgent need for mental health care" based on her physical condition and behavior during her five-day incarceration. Mr. Pyles alleged that DCR's employees were deliberately indifferent to Jacqueline's mental health care needs and the substantial risk of serious harm to Jacqueline if those needs were not met, thereby violating her rights under article III, section 5,[5] and article III, section 10[6] of the West Virginia Constitution. Such deliberate indifference, Mr. Pyles alleged, caused Jacqueline's death. Finally, Mr. Pyles alleged that he sought damages from DCR up to but not exceeding the limits of any applicable insurance policy. In the second amended complaint, Mr. Pyles asserted that "[n]o federal law-based cause of action is presented and reliance upon 42 U.S.C. § 1983 is expressly disclaimed."

In September 2024, DCR moved to dismiss Count III of the second amended complaint. DCR asserted that the law does not recognize claims for monetary damages for a violation of article III, section 5 of the West Virginia Constitution, and that this Court's decision in *Stepp v. Cottrell* barred Mr. Pyles's claim for damages for the violation of

[5] Article III, section 5 of the Constitution of West Virginia provides in part that, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

[6] Article III, section 10 of the Constitution of West Virginia states, "[n]o person shall be deprived of life, liberty, or property, without due process of law, and the judgment of his peers."

article III, section 10. *See id.*, 246 W. Va. 588, 874 S.E.2d 700 (2022). DCR also argued that "deliberate indifference" was a legal term used in claims pursued via 42 U.S.C. § 1983 ("section 1983"),[7] in which damages for violations of the Eighth Amendment to the United States Constitution[8] were sought, and that Mr. Pyles "cited no law which establishes the legal term of art 'deliberate indifference' in the context of a state law claim separate and apart from a federal claim." Mr. Pyles responded that this Court "explicitly recognized" a deliberate indifference claim in Syllabus Point 4 of *Nobles v. Duncil*, 202 W. Va. 523, 505 S.E.2d 442 (1998),[9] and that the Intermediate Court of Appeals ("ICA") had done so, as well. *See W. Va. Div. of Corr. & Rehab. v. Iacovone*, No. 23-ICA-148, 2024 WL 3412261 (W. Va. Ct. App. July 15, 2024) (memorandum decision). Finally, Mr. Pyles asserted that "deliberate indifference" is "recognized by courts throughout the nation as a cause of action existing between negligence and intent . . . ." In reply, DCR countered that "deliberate

[7] Section 1983 is a federal statute that imposes liability on a person who, acting under color of state law, deprives another of a right guaranteed by the federal constitution. "Just as common-law tort actions provide redress for interference with protected personal or property interests, § 1983 provides relief for invasions of rights protected under federal law." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999).

[8] The Eighth Amendment to the United States Constitution states that, "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

[9] We held in Syllabus Point 4 of *Nobles v. Duncil* that, "[d]eliberate indifference to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain which is proscribed by the prohibition on cruel and unusual punishment in the Federal and State Constitutions." *Id.*, 202 W. Va. at 523, 505 S.E.2d at 442, Syl. Pt. 4.

indifference" is a legal standard employed in claims brought pursuant to section 1983, not a standalone cause of action recognized by the common law of West Virginia; distinguished *Nobles* and other cases cited by Mr. Pyles; and asserted that Mr. Pyles's claim necessarily failed because "deliberate indifference refers to a state of mind" and "such claim must be asserted against an individual."[10]

On May 8, 2025, the Circuit Court of Kanawha County entered an order denying DCR's motion to dismiss Count III of the second amended complaint. The circuit court initially observed that Mr. Pyles did not assert constitutional claims; instead, he "assert[ed] a cause of action for deliberate indifference, which entails violations of clearly established laws, including, but not limited to, the West Virginia Constitution." Pointing to *Nobles*, the circuit court concluded that "a cause of action under West Virginia law for deliberate indifference has been clearly recognized by" this Court, going on to cite the ICA's decision in *Iacovone*. The circuit court also reasoned that "[d]eliberate indifference is a valid legal claim recognized in many contexts other than claims under 42 U.S.C. § 1983 or the Eighth Amendment," then likened deliberate indifference to "recklessness," as it appears in the West Virginia Governmental Torts Claims and Insurance Reform Act (the

[10] In November 2024, DCR moved the circuit court to certify the following question: "Does an independent cause of action exist for 'deliberate indifference' under West Virginia law?" Mr. Pyles opposed the motion. In addition to his response in opposition to DCR's motion to certify a question, Mr. Pyles provided the circuit court with orders entered by other judges of the Circuit Court of Kanawha County denying motions by DCR to certify the same or a similar question. The circuit court later denied DCR's motion.

"Tort Claims Act"), *see* W. Va. Code § 29-12A-5(b)(2) (1986) (providing that "[a]n employee of a political subdivision is immune from liability unless . . . [h]is or her acts or omission were . . . in a wanton or reckless manner"), and the Medical Professional Liability Act (the "MPLA"). *See* W. Va. Code § 55-7B-9b (2003) (prohibiting third-party action for damages against health care provider "unless the health care provider rendered or failed to render health care services in willful and wanton or reckless disregard of a foreseeable risk of harm to third persons"). In June 2025, DCR filed the petition now before us, seeking a writ prohibiting enforcement of that part of the circuit court's May 8, 2025, order denying DCR's motion to dismiss Count III of Mr. Pyles's second amended complaint.

B. No. 25-328

In August 2024, Mary F. Myers filed a complaint against Wexford Health Sources, Inc. ("Wexford"), John/Jane Doe Corrections Officers, DCR, and Nilay B. Thaker, D.O., on her own behalf and as administratrix of the estate of her late husband, Ronald M. Myers. Mrs. Myers alleged that Mr. Myers entered the Eastern Regional Jail ("ERJ") on or about June 23, 2022, when he was 79 years old. Mrs. Myers alleged that Ronald "evidenced signs of cognitive impairment" when he arrived at the ERJ and could not recall the name of his physician or the medicines prescribed to him. Mrs. Myers also alleged that her husband told Wexford medical staff that she could provide that information, but she was not contacted. According to Mrs. Myers, her husband suffered from numerous chronic ailments, including cardiac conditions and kidney disease. Mrs.

Myers alleged that on or about July 9, 2022, Dr. Thaker ordered clopidogrel[11] and atorvastatin[12] for Ronald. She also alleged that Ronald's medical records contain a medical refusal dated July 10, 2022, but which Ronald did not sign.

Mrs. Myers next alleged that, "[a]ccording to John/Jane Doe Corrections Officer," Ronald was found on his bunk on the morning of July 11, 2022, "'presumably asleep . . . .'" Ronald allegedly did not leave the bunk all morning; in the afternoon he was "found to have an altered mental state . . . ." According to the allegations in the complaint, Ronald was transported to the emergency room at WVU Berkeley Medical Center. Mrs. Myers alleged that Wexford medical staff informed emergency room staff that Ronald "had not eaten for a week and that he had been off his Plavix and cholesterol medication." Finally, Mrs. Myers alleged that Ronald suffered a stroke and died on July 19, 2022.

Like the preceding case, Mrs. Myers's complaint included three counts against DCR: Count III, "deliberate indifference in violation of clearly established West Virginia law;" Count IV, negligence; and Count V, negligent training. Relevant here, in

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[11] *See* CLODIPOGREL (ORAL ROUTE), https://www.mayoclinic.org/drugs-supplements/clopidogrel-oral-route/description/drg-20063146 (last visited Oct. 15, 2026) ("Clopidogrel is used alone or together with aspirin to lessen the chance of a heart attack or stroke."). "Clodipogrel" is the generic form of the branded pharmaceutical Plavix. *Id*.

[12] *See* ATORVASTATIN (ORAL ROUTE), https://www.mayoclinic.org/drugs-supplements/atorvastatin-oral-route/description/drg-20067003 (last visited Oct. 15, 2026) ("Atorvastatin is used together with a proper diet to lower cholesterol and triglyceride (fats) levels in the blood.") "Atorvastatin" is the generic form of the branded pharmaceutical Lipitor. *Id*.

Count III, Mrs. Myers alleged that DCR and its employees knew of Ronald's precarious health, need for medications, and physical decline, yet remained "deliberately indifferent" to those medical needs during his incarceration at ERJ, causing him to "unduly suffer" injuries prior to being transported to the emergency room at WVU Berkeley Medical Center. This, Mrs. Myers alleged, "clearly violated" article III, sections 5 and 10 of the West Virginia Constitution and applicable policies and directives, entitling her to damages from DCR.[13] Mrs. Myers stated in the complaint that she sought "damages for violations of the common and statutory laws of the State of West Virginia," and that the complaint presented "[n]o question of federal law . . . ."

DCR moved to dismiss Count III of Mrs. Myers's complaint in December 2024.[14] As in the *Pyles* litigation, DCR argued that Mrs. Myers could not pursue a claim for damages under either article III, sections 5 or 10 of the West Virginia Constitution, and that a claim for "deliberate indifference" was not cognizable under West Virginia common law. Mrs. Myers responded that Count III of her complaint was not a constitutional claim. Instead, it was a "common law cause of action for deliberate indifference, which entails violations of clearly established laws, including, but not limited to, the West Virginia

[13] Mrs. Myers alleged that she sought damages up to, but not to exceed, the limits of DCR's insurance coverage.

[14] DCR also moved to dismiss Counts IV and V on grounds of qualified immunity. The circuit court denied that portion of the December 2024 motion, as well. DCR appealed that ruling, and it is before this Court in *West Virginia Division of Corrections and Rehabilitation v. Mary F. Myers, Individually and as Administratrix of the Estate of Ronald M. Myers*, No. 25-242.

Constitution,"[15] and that "[a] plaintiff must only identify some predicate body of law from which the alleged right at issue emanated."

Mrs. Myers went on to argue that deliberate indifference is a tort that "developed as a matter of course from common law," in a manner similar to negligence. As did Mr. Pyles, Mrs. Myers highlighted the ICA's decision in *Iacovone* to demonstrate the existence of the claim. *See Iacovone*, No. 23-ICA-148, 2024 WL 3412261. Mrs. Myers emphasized that "deliberate indifference" is not confined to claims brought under section 1983, stating that "it is also a standard for other actions that are not considered constitutional claims," including violations of 20 U.S.C. § 1681 et. seq. (i.e., Title IX of the Educational Amendments of 1972), among other federal statutes. Like Mr. Pyles, Mrs. Myers also cited the Tort Claims Act and the MPLA.

As in the *Pyles* litigation, DCR replied that deliberate indifference is not a standalone claim, but a "legal term of art describing the state of mind required to prove certain causes of action," including claims alleging violations of the Eighth or Fourteenth Amendment to the United State Constitution. DCR discounted Mrs. Myers's reference to federal statutes such as Title IX, stating that "each example relied upon by [Mrs. Myers] utilizes deliberate indifference as an element of proving some other, underlying cause of action." DCR also argued that Mrs. Myers used the phrase, "clearly established law,"

[15] Mrs. Myers stated that she "included a recitation to the West Virginia Constitution in order to address any qualified immunity claim by [DCR], not as a constitutional violation claim."

outside its proper context, that is, the discussion of the affirmative defense of qualified immunity. *See* Syl. Pt. 5, *W. Va. Reg'l Jail & Corr. Facility Auth. v. A.B.*, 234 W. Va. 492, 766 S.E.2d 751 (2014) ("'A public executive official who is acting within the scope of his authority and is not covered by the provisions of W. Va.Code 29–12A–1 *et seq.* [the Tort Claims Act], is entitled to qualified immunity from personal liability for official acts if the involved conduct did not violate clearly established laws of which a reasonable official would have known. There is no immunity for an executive official whose acts are fraudulent, malicious, or otherwise oppressive.' Syllabus, in part, *State v. Chase Securities, Inc.,* 188 W.Va. 356, 424 S.E.2d 591 (1992)."). Like in its reply in the *Pyles* litigation, DCR also challenged Mrs. Myers's ability to bring her putative deliberate indifference claim against a State agency, rather than an individual.

On March 19, 2025, the Circuit Court of Kanawha County entered an order denying DCR's motion to dismiss Mrs. Myers's complaint. As to Count III, the circuit court adopted the reasoning set forth in Mrs. Myers's brief: that a claim for deliberate indifference to clearly established laws is a recognized cause of action under the common law of West Virginia, *see Iacovone*, No. 23-ICA-148, 2024 WL 3412261, "as well as statutes that acknowledge claims for recklessness . . . ." The circuit court relied upon the federal statutes cited by Mrs. Myers to conclude that deliberate indifference "comes into play" in arenas other than claims for violations of the United States Constitution. The circuit court concluded that "there is no question that deliberate indifference is a recognized

and valid cause of action in West Virginia, and that it is not always a constitutional claim," and denied DCR's motion to dismiss Count III of Mrs. Myers's complaint.

On May 21, 2025, DCR filed the instant petition in this Court for a writ prohibiting enforcement of that portion of the circuit court's order of March 19, 2025, denying its motion to dismiss Count III of Mrs. Myers's complaint. On July 8, 2025, DCR moved this Court to consolidate petitions Nos. 25-328 and 25-385. We granted that motion on February 5, 2026, and consolidated these matters for purposes of oral argument, consideration, and decision.

II. Standard for Prohibition

DCR petitions this Court to exercise its original jurisdiction and issue writs prohibiting enforcement of portions of two orders of the Circuit Court of Kanawha County: one entered in Mrs. Myers's lawsuit on March 19, 2025 (the "*Myers* order") and one entered in Mr. Pyles's lawsuit on May 8, 2025 (the "*Pyles* order"). "A writ of prohibition will not issue to prevent a simple abuse of discretion by a trial court. It will only issue where the trial court has no jurisdiction or having such jurisdiction exceeds its legitimate powers. *W. Va. Code* 53–1–1." Syl. Pt. 2, *State ex rel. Peacher v. Sencindiver*, 160 W. Va. 314, 233 S.E.2d 425 (1977). Here, DCR asserts that the *Myers* and *Pyles* orders were entered in excess of the lower courts' legitimate powers, so the familiar factors of Syllabus Point 4 of *State ex rel. Hoover v. Berger* guide our consideration of DCR's petitions:

> [i]n determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction

> but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Id., 199 W. Va. 12, 483 S.E.2d 12 (1996), Syl. Pt. 4.

III. Discussion

We begin our analysis by considering the third *Hoover* factor because we are to give it the most substantial weight in determining whether to exercise our discretionary authority and grant extraordinary relief to DCR. We analyze DCR's petitions in the *Pyles* and *Myers* cases together because the arguments are nearly identical. Mr. Pyles and Mrs. Myers's responses are quite similar, so we consider the responses together, as well.

A. Factor 3, Clear Error of Law

The third *Hoover* factor asks whether the orders under review are clearly erroneous as a matter of law. "[A] court commits clear legal error when it incorrectly chooses, interprets, or applies the law." *State ex rel. W. Va. Reg'l Jail Auth. v. Webster*,

242 W. Va. 543, 551, 836 S.E.2d 510, 518 (2019) (internal quotation and citation omitted). "'In determining the third factor, the existence of clear error as a matter of law, we will employ a *de novo* standard of review, as in matters in which purely legal issues are at issue.'" *State ex rel. W. Va. Univ. Hosps., Inc. v. Scott*, 246 W. Va. 184, 190, 866 S.E.2d 350, 356 (2021) (quoting *State ex rel. Gessler v. Mazzone*, 212 W. Va. 368, 372, 572 S.E.2d 891, 895 (2002)). Further, this Court will grant writs of prohibition,

> to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance.

Syl. Pt. 1, in part, *Hinkle v. Black*, 164 W. Va. 112, 262 S.E.2d 744 (1979), *superseded by statute on other grounds as stated in State ex rel. Thornhill Grp., Inc. v. King*, 233 W. Va. 564, 570, 759 S.E.2d 795, 801 (2014).

1.

DCR argues that the *Pyles* and *Myers* orders are clearly erroneous as a matter of law because they recognize a common law cause of action of deliberate indifference to a clearly established law when such a claim does not exist. According to DCR, "deliberate indifference" is not a claim, but a term of art used in the context of alleged violations of the Eighth or Fourteenth Amendments to the United States Constitutions. Our 1998 decision in *Nobles v. Duncil* is irrelevant, DCR argues, because it arose from the context of a request for mandamus relief to correct conditions that violated inmates' federal

constitutional rights, not a claim for damages like those pled by respondents. DCR goes on to argue that cases such as *Hodgson v. West Virginia Division of Corrections*, relied upon in the *Pyles* order, do not demonstrate the existence of a standalone cause of action for deliberate indifference. *Id*., No. 16-0495, 2017 WL 1423167 (W. Va. Apr. 21, 2017) (memorandum decision). Rather, the phrase "deliberate indifference" appears in *Hodgson* and other cases decided by this Court because they involved claims for damages pled under section 1983 for the violation of inmates' Eighth Amendment rights—claims that utilize the deliberate indifference standard. DCR also discounts *Iacovone*, relied upon in both the *Pyles* and *Myers* orders. *Id*., No. 23-ICA-148, 2024 WL 3412261. According to DCR, *Iacovone* is beside the point because the ICA was not presented with the question of whether a claim for "deliberate indifference to clearly established law" is cognizable under the West Virginia common law.

Respondents answer that a claim under section 1983 alleging a violation of federal constitutional rights is not the only vehicle to pursue damages for a state actor's deliberate indifference to an inmate's serious medical needs. They argue that our decision in *Nobles*, and subsequent cases applying *Nobles*, settled that West Virginia recognizes a claim for deliberate indifference, and any reference to section 1983 in those decisions is coincidental, or "the result of an individual Plaintiff's phrasing of their cause of action in their complaint." Respondents argue that *Iacovone* could not be more on point because there the ICA affirmed a verdict against DCR for a claim of deliberate indifference.

Before addressing the parties' particular arguments, we highlight what respondents did *not* plead in the operative complaints. First, respondents explicitly disclaimed any reliance on federal law or a claim under section 1983. Second, while respondents both allege that DCR violated article III, sections 5 and 10 of the West Virginia Constitution by failing to monitor and/or failing to provide appropriate medical care to their decedents, respondents are also explicit that they are not pursuing claims for violations of the West Virginia Constitution; rather, they seek damages from DCR via a claim they style as, "deliberate indifference to a clearly established West Virginia law."

It is with those limitations in mind that we turn to the parties' first point of contention: whether in *Nobles*, 202 W. Va. at 523, 505 S.E.2d at 442, this Court "explicitly recognized the claim of 'deliberate indifference,'" in the words of respondents. *Nobles* was the culmination of more than a decade of judicial oversight at the Huttonsville Correctional Center ("Huttonsville"). *Id*. at 527, 505 S.E.2d at 446. In 1983, Huttonsville inmates petitioned this Court for mandamus relief, alleging that conditions at the facility fell below statutory and constitutional standards. *Id*. at 526, 505 S.E.2d at 445. This Court granted the inmates' petition and appointed a special judge to oversee operations at Huttonsville. *Id*. at 527, 505 S.E.2d at 446. The special judge entered a final order in 1996. *Id*. Relevant for our purposes, the final order directed the Division of Corrections to cease

incorporating a $5,000 "outside" medical expense obligation on medical providers with whom they contracted for services at Huttonsville. *Id*. at 527–28, 505 S.E.2d at 446–47.[16]

Mr. Duncil, then Warden of Huttonsville, appealed that portion of the special judge's order, asserting that "the circuit court's findings on this issue are wholly unsupported by facts and amount to nothing more than the beliefs of the circuit court." *Id*. at 532, 505 S.E.2d at 451. The warden argued, "there [was] no evidence showing that they or the medical providers [at Huttonsville] conducted themselves in an unconstitutional manner under the standards articulated in *Estelle v. Gamble*, [429 U.S. 97] (1976) and *Miltier v. Beorn*, 896 F.2d 848 (4th Cir.1990)." *Id*. at 532, 505 S.E.2d at 451.

To address the warden's argument, this Court first observed that "[t]here is no question that a governmental unit, such as the Huttonsville Correctional Center, has an 'obligation to provide medical care for those whom it is punishing by incarceration.'" *Id*. at 533, 505 S.E.2d at 452 (quoting *Estelle*, 429 U.S. at 103). It was in *Estelle*, an appeal arising from the dismissal of an inmate's claim brought pursuant to section 1983, that the United States Supreme Court first held that "deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment." *Id*., 429 U.S. at 104 (internal quotation and citation omitted); *see*

[16] Specifically, under past contracts, the medical provider paid "the first $5,000 of any outside medical service provided" to a Huttonsville inmate. *Nobles*, 202 W. Va. at 527, 505 S.E.2d at 446. The special judge viewed that threshold as "the Achilles heel of the [Huttonsville] medical program," as it created a fiscal incentive for the medical provider to discourage specialist care and delay rehabilitation services. *Id*.

also Norris v. Detrick, 918 F. Supp. 977, 984 (N.D.W. Va. 1996), *aff'd*, 108 F.3d 1373 (4th Cir. 1997) (applying *Estelle* to grant judgment as a matter of law to prison officials on inmate's section 1983 claim based on officials' alleged deliberate indifference to inmate's serious medical needs).

In *Nobles*, after acknowledging *Estelle*, we restated the Supreme Court's holding in that opinion and then assessed the evidence in support of the special judge's order regarding contracting for medical services at Huttonsville. *Nobles*, 202 W. Va. at 533, 505 S.E.2d at 452. Ultimately, we reversed that portion of the special judge's order, finding that it was not supported by sufficient evidence. *Id*. at 534, 505 S.E.2d at 453.

Nobles resulted in the following syllabus point: "Deliberate indifference to the serious medical needs of prisoners constitutes unnecessary and wanton infliction of pain which is proscribed by the prohibition on cruel and unusual punishment in the Federal and State Constitutions." *Id*. at 525, 505 S.E.2d at 444, Syl. Pt. 4. But two other points in *Nobles* are equally clear upon reading the opinion. First, as DCR argues, the case arose from a mandamus action. No claims for damages were at issue. The *Pyles* order and now, both respondents,[17] plainly misinterpret Syllabus Point 4 of *Nobles* in that they read it to establish a claim for damages for deliberate indifference when *Nobles* did not involve a

[17] The *Pyles* order relies in large part upon *Nobles*; however, the *Myers* order does not refer to that case. Nevertheless, Mrs. Myers argues in response to DCR's petition that the *Myers* order is not clearly erroneous as a matter of law considering Syllabus Point 4 of *Nobles*.

claim for damages of any stripe. *See State ex rel. State Farm Mut. Auto. Ins. Co. v. Canady*, 197 W. Va. 107, 110, 475 S.E.2d 107, 110 (1996) (advising "[t]hat syllabus language cannot be viewed in a vacuum; it must be considered in the context of the entire opinion"); *see also Jones v. Jones*, 133 W. Va. 306, 310, 58 S.E.2d 857, 859 (1949) (cautioning that "the statement contained in a syllabus is to be read in the light of the opinion"); *Delapp v. Delapp*, 213 W. Va. 757, 761, 584 S.E.2d 899, 903 (2003) (same); *Farley v. Worley*, 215 W. Va. 412, 426, 599 S.E.2d 835, 849 (2004) (same).

Second, this Court took the opportunity presented by *Nobles* to recognize the standard to determine whether medical care provided (or not provided) to inmates fell below constitutional minimums. *See Crain v. Bordenkircher*, 176 W. Va. 338, 349, 342 S.E.2d 422, 434 (1986) ("The basic *standard* set by the United States Supreme Court in *Estelle v. Gamble* . . . is that deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment.") (internal citation and quotation omitted) (emphasis added); *see also Leonard v. St. Charles Cnty. Police Dep't*, 59 F.4th 355, 360 (8th Cir. 2023) ("Deliberate indifference is a difficult *standard* to meet. It requires an official to consciously disregard a known and 'objectively serious medical need.") (internal quotations omitted) (emphasis added); *Colwell v. Bannister*, 763 F.3d 1060, 1066 (9th Cir. 2014) ("In order to prevail on an Eighth Amendment claim for inadequate medical care, a plaintiff must show deliberate indifference to his serious medical needs. This includes both an objective standard—that the deprivation was serious enough to constitute cruel and unusual punishment—and a

subjective *standard*—deliberate indifference.") (internal quotations omitted) (emphasis added); *Hathaway v. Coughlin*, 37 F.3d 63, 66 (2d Cir. 1994) ("To establish an unconstitutional denial of medical care, a prisoner must prove deliberate indifference to [his] serious medical needs. The deliberate indifference *standard* embodies both an objective and a subjective prong.") (internal quotation omitted) (alteration in original) (emphasis added); *Wright v. Collins*, 766 F.2d 841, 849 (4th Cir. 1985) ("The *standard* for § 1983 liability is deliberate indifference to serious medical needs.") (emphasis added).

In doing so, this Court did not, as respondents urge, "explicitly recognize[] the *claim* in state law and that such a *claim* would be in violation of both the Federal and State constitutions." (Emphasis added.) Instead, we simply acknowledged what was already "[t]he basic standard set by the United States Supreme Court in *Estelle v. Gamble*," *Crain*, 176 W. Va. at 349, 342 S.E.2d at 434, to demonstrate a violation of an inmate's right to adequate medical care under the Eighth Amendment to the United States Constitution and carried that same standard over to article III, section 5 of the West Virginia Constitution—a new point of law. *See State v. McKinley*, 234 W. Va. 143, 149, 764 S.E.2d 303, 309 (2014) ("Original syllabus points announce an important new point of law decided in the case."). The *Pyles* order and the respondents misinterpret Syllabus Point 4 of *Nobles* to the extent they read it to do anything more, namely, to announce a new cause of action under the common law of West Virginia.

Nevertheless, the *Pyles* order and the respondents maintain that several decisions by this Court demonstrate that Syllabus Point 4 of *Nobles* "set the standard for

deliberate indifference." That is not so. Rather, this Court has cited Syllabus Point 4 of *Nobles* as a standard a plaintiff must meet to demonstrate a violation of constitutional rights, not as an element of a common law cause of action. For example, the *Pyles* order and the respondents cite *Hodgson v. West Virginia Division of Corrections*, an appeal arising from a former inmate's suit against the West Virginia Division of Corrections ("DOC"), the predecessor to DCR, and DOC employees. *Id*., No. 16-0495, 2017 WL 1423167 (W. Va. Apr. 21, 2017) (memorandum decision). In *Hodgson*, the inmate-plaintiff pursued a claim against DOC "under Title 42, section 1983 of the United States Code" on the theory that "DOC employees were deliberately indifferent to his harming himself while at Huttonsville." *Id*. at *1. Thus, the inmate-plaintiff's claim against DOC arose under section 1983, not the common law of West Virginia, and the "deliberate indifference" standard was a component of that federal claim. The circuit court granted summary judgment to DOC on the inmate-plaintiff's section 1983 claim, and this Court affirmed. Id. at *3; *see also Ratliff v. Tyson*, No. 15-0309, 2015 WL 8231393, at *3 (W. Va. Dec. 7, 2015) (affirming summary judgment to prison medical provider of inmate's section 1983 claim where the inmate "failed to sufficiently show that a genuine issue of material fact existed as to whether respondents were deliberately indifferent to his medical needs") (citing *Nobles*, 202 W. Va. at 526, 505 S.E.2d at 445, Syl. Pt. 5).[18]

[18] The *Pyles* order and the respondents cite two additional cases as evidence that this Court has "recognized" Syllabus Point 4 of *Nobles* as the standard for a common law "deliberate indifference" claim: *Taylor v. Hill*, No. 14-0567, 2014 WL 6607925, at *2 (W. Va. Nov. 21, 2014) (memorandum decision) (citing *Nobles* as the standard a plaintiff

Continued . . .

The *Pyles* order and the respondents also cite to *Ballard v. Delgado*, to support their position that a claim for "deliberate indifference to clearly established West Virginia law" exists under the common law of West Virginia. *Id*., 241 W. Va. 495, 826 S.E.2d 620 (2019). *Ballard* does not lend that support because we made clear throughout that opinion that the plaintiff sought damages for the violation of his Eighth Amendment rights pursuant to section 1983. *Id*. at 499, 501, 826 S.E.2d at 624, 626. In fact, the defendant in that case asserted a qualified immunity defense, which we analyzed under federal immunities law because "'federal law is controlling when public officials are sued in state court for violations of federal rights under 42 U.S.C. § 1983[.]'" *Id*. at 504, 826 S.E.2d at 629 (quoting *Robinson v. Pack*, 223 W. Va. 828, 834, 679 S.E.2d 660, 666 (2009)). Likewise, *Crawford v. McDonald* dealt with a plaintiff's section 1983 claim that

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must satisfy to show a violation of his constitutional rights); and *Williams v. McBride*, No. 14-0351, 2014 WL 4667266, at *2 (W. Va. Sept. 19, 2014) (memorandum decision) (noting that the Court "previously established a standard for judging whether a health care provider's actions constitute deliberate indifference to a prison inmate's serious medical need," and citing *Nobles*).

Neither *Taylor* nor *William*s stands for the proposition that "deliberate indifference to a clearly established law" is a cognizable, common law claim for damages in West Virginia. In *Williams*, the plaintiff alleged that prison officials failed to provide him prescribed medication and thus failed to provide medical care that satisfied the standard set in *Nobles*. *Williams*, No. 14-0351, 2014 WL 4667266, at *2. However, the plaintiff did not seek damages; he sought court monitoring, an investigation of medical care in the prison, a "punitive assessment," fees and costs, and a declaratory judgment. *Id*. at *1. Moreover, this Court did not address the substance of the plaintiff's complaint because the plaintiff began to receive the prescribed medication at some point during the litigation and the matter became moot. *Id*. at *2. In *Taylor*, it appears that the plaintiff alleged that he was injured due to a prison official's negligence but also included the phrase "deliberate indifference" in his pleading. *See Taylor*, No. 14-0567, 2014 WL 6607925, at *1, *2. Our discussion of *Nobles* was incidental to the resolution of that appeal. *Id*.

officials were deliberately indifferent to his serious medical needs in violation of his Eighth Amendment rights, not a common law claim for damages for deliberate indifference to clearly established West Virginia law. *Id.*, No. 21-0732, 2023 WL 2729675, at *3 (W. Va. Mar. 31, 2023) (memorandum decision) (recounting that "[i]n his amended complaint, Mr. McDonald asserts a 42 U.S.C. § 1983 claim for excessive force and deliberate indifference to his safety against the individual defendants, and a variety of intentional torts and various claims of negligence against the individual defendants and the WVRJCFA"); *see also id.* at *6 ("'An inmate can bring suit under § 1983 for an Eighth Amendment violation whether the indifference is manifested by prison doctors in their response to the prisoner's needs or by prison guards in intentionally denying or delaying access to medical care or intentionally interfering with the treatment once prescribed.'") (internal quotation omitted) (quoting Estelle, 429 U.S. 104–05.

This brings us to *Iacovone*, a 2024 memorandum decision issued by the ICA and relied upon in both the *Pyles* and *Myers* orders, and now by respondents. *Id*., No. 23-ICA-148, 2024 WL 3412261. According to respondents, the decision "demonstrates that a claim of deliberate indifference exists under West Virginia law separate and apart from federal law." We concur with DCR that respondents' position is an overstatement of *Iacovone* for the simple fact that the ICA was not asked to pass upon the viability of the claim of deliberate indifference to clearly established West Virginia law.

In *Iacovone*, the plaintiff sued DCR on his own behalf and that of his deceased son. *Id.* at *1. The plaintiff's son had a history of cardiac issues, and he passed

away from endocarditis that developed after he contracted an infection while incarcerated at Huttonsville. *Id*. The plaintiff sued DCR for "deliberate indifference." *Id*. at *2. Among other trial issues, the plaintiff and DCR disagreed over the jury instruction on deliberate indifference. *Id*. at *3. The circuit court adopted the plaintiff's proposed instruction. *Id*. The jury returned a verdict against DCR, totaling more than $700,000. *Id*.

DCR raised several trial issues on appeal to the ICA. Relevant here, it asserted that the instruction to the jury on deliberate indifference was erroneous because it "failed to charge the jury with finding that [the plaintiff's decedent] suffered a 'serious' medical need." *Id*. at *7. The ICA disagreed, finding not only that the plaintiff's "proposed instructions, which were adopted by the circuit court and read to the jury, set forth the legal elements of a deliberate indifference claim," *id*., but also that other instructions in the jury charge required the jury to find that the plaintiff's decedent suffered a serious medical need. *Id*. The ICA found merit to DCR's challenge to the lower court's award of prejudgment interest and interest calculation and so affirmed, in part, and vacated, in part, the lower court's orders. *Id*. at *11. DCR did not appeal the decision of the ICA to this Court.

The position that *Iacovone* decisively "demonstrates that a claim of deliberate indifference exists under West Virginia law separate and apart from federal law" amounts to clear legal error. The ICA's review of the proceedings was limited to those

issues raised by the parties in circuit court. For reasons of its own,[19] DCR elected not to challenge the viability of the plaintiff's claim on appeal to the ICA, so that non-jurisdictional question was outside the ICA's purview on appeal. *See* Syl. Pt. 3, in part, *Dean v. W. Va. Dep't of Motor Vehicles*, 195 W. Va. 70, 464 S.E.2d 589 (1995) (appellate court "will not consider questions, nonjurisdictional in their nature, which have not been acted upon by the trial court") (internal quotation omitted). In addition, "[i]t is elementary that an opinion is not binding precedent on an issue it did not address." *Frazier v. Burcker*, 248 W. Va. 21, 27, 886 S.E.2d 356, 362 (2023) (internal quotation omitted). The ICA was not asked, nor was it able, to address the viability of a claim for deliberate indifference to West Virginia law, so it is incorrect to view *Iacovone* as precedent affirming the existence of such a claim. *See Frazier*, 248 W. Va. at 27, 886 S.E.2d at 362 ("'[I]t is beyond debate that "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."'") (quoting *Ret. Plans Committee v. Jander*, 589 U.S. 49, 56 (2020) (per curiam) (Gorsuch, J., concurring) (quoting *Webster v. Fall*, 266 U.S. 507, 511 (1925))).

In sum, this Court neither recognized nor created a common law cause of action for deliberate indifference to clearly established law in Syllabus Point 4 of *Nobles*,

[19] The appendix records in these petitions disclose that DCR has settled claims for deliberate indifference to clearly established laws in the past, or, as in the case of *Iacovone*, taken the claim to trial. DCR's past litigation decisions are its own; we cannot speculate as to why the agency's attorneys and administrators handled past litigation as they did. We can, however, clearly state that DCR's past litigation decisions are not relevant to this Court's legal analysis of the viability of the respondents' putative claim.

nor did we do so in the cases that followed *Nobles.* The ICA neither recognized nor created such a cause of action in *Iacovone*. Problematically, both the *Pyles* and *Myers* orders conclude that such a claim existed based on those authorities, among others. Therefore, the orders are clearly erroneous as a matter of law, and the third *Hoover* factor substantially weighs in favor of granting the writs requested by DCR.

2.

Additional authority cited in the *Pyles* and *Myers* orders and respondents' briefing to this Court does not alter that conclusion, nor does it persuade us to recognize a cause of action for deliberate indifference to clearly established law. For example, *Doe v. Charlotte Mecklenburg Board of Education*, cited in the *Myers* order and the respondents' briefing, concerns the use of the deliberate indifference standard when a Title IX plaintiff seeks to impute liability to an institution, rather than to an individual. *Id*., No. 3:18-CV-00586-RJC-DSC, 2023 WL 1074104, at *1 (W.D.N.C. Jan. 26, 2023). *Safeco Insurance Co. of America v. Burr*, again relied upon in the *Myers* order and cited by the respondents before this Court, relates to the meaning of "willfully fails" as used in the federal Fair Credit Reporting Act , 15 U.S.C. § 1681 et seq. *Id*., 551 U.S. 47, 56–57 (2007). In *Koon v. North Carolia*, again appearing in the *Myers* order and the respondents' briefing in opposition to DCR's petitions, the United States Court of Appeals, Fourth Circuit, utilized a deliberate-indifference standard to determine whether a prison administrator failed to reasonably accommodate an inmate's disability, in violation of the Americans with Disabilities Act. *Id*, 50 F.4th 398, 408 (4th Cir. 2022). This authority demonstrates that

the deliberate indifference standard is a component of various claims for the violation of federal rights. It does not demonstrate that a claim for deliberate indifference to clearly established law is a cause of action under the common law of West Virginia.

Further, the *Pyles* and *Myers* orders, and respondents in their briefing to this Court, emphasize the appearance of the term "reckless" in both the Tort Claims Act and the MPLA. *See* W. Va. Code § 29-12A-5(b)(2) ("An employee of a political subdivision is immune from liability unless one of the following applies . . . (2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner . . . ."); *id*. § 55-7B-9b (no third-party claims against a health care provider who provided health care to a patient or failed to provide health care to a patient "whose subsequent act is a proximate cause of injury or death to the third party unless the health care provider rendered or failed to render health care services in willful and wanton or reckless disregard of a foreseeable risk of harm to third persons"). We concur with DCR that the fact that those statutes "may mention negligence" or recklessness "has no bearing on whether West Virginia recognizes a separate common law claim of 'deliberate indifference.'"

We have not affirmatively disclaimed deliberate indifference to a clearly established law as a cause of action. However, were we to adopt such a claim, we would be the outlier, and perhaps the lone state to recognize deliberate indifference as a standalone claim under state common law. As the State of West Virginia, amicus curiae, observes, courts that "addressed the viability of a common-law deliberate indifference claim . . . have either rejected the notion that deliberate indifference is a cause of action or simply

acknowledged it for what it is—a standard of proof." *See, e.g.*, *Shehan v. Barrone*, No. 3:22CV879 (OAW), 2023 WL 122039, at *7 (D. Conn. Jan. 6, 2023) ("[D]eliberate indifference constitutes a constitutional violation but is not stand-alone common law tort under Connecticut law."); *Luther v. Compton*, 5 S.W.3d 635, 641 (Tenn. 1999) (holding that intermediate appellate court erred in finding deliberate indifference to be "a claim *independent of* the plaintiff's negligence and 42 U.S.C. § 1983 claims against the defendants").

Nevertheless, the respondents' counsel represented during oral argument that several states recognize a common law claim for deliberate indifference. The respondents' counsel later filed a letter after these matters were submitted for the Court's consideration pursuant to Rule 10(i) of the West Virginia Rules of Appellate Procedure, highlighting a case decided by the Supreme Court of North Carolina in August 2026: *K.H. by & through Hartman v. Dixon*, 933 S.E.2d 719 (N.C. 2026).[20] In *K.H.*, the Supreme Court of North Carolina concluded that a public-school student "state[d] a colorable claim under Article I,

[20] The respondents also listed *Bosh v. Cherokee County Building Authority*, 305 P.3d 994 (Ok. 2013) and *Widgeon v. Eastern Shore Hospital*, 479 A.2d 921 (Md. 1984). Rule 10(i) ("Notice of additional authorities") provides that, "[w]henever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in time to have been included in the party's brief, the party may briefly inform the Court by letter, with copy provided to opposing parties." The Supreme Court of Oklahoma decided *Bosh* in 2013. The Court of Appeals of Maryland decided *Widgeon* in 1984. Plainly, those decisions "were . . . available in time to have been included in [the respondents'] brief[s]," but were not, so we will not consider them by way of a letter filed approximately two weeks after oral argument.

Section 15,[21] and Article IX, Section 2"[22] of the Constitution of North Carolina when she alleged that a school board was deliberately indifferent to a teacher's harassment of the student, thereby "den[ying the student] equal access to a sound basic education." *K.H.*, 933 S.E.2d at 728. The student's claim was made "directly under the North Carolina Constitution . . . ." *Id*. at 722. Here, the respondents disavow a constitutional violation claim,[23] so we find *K.H.* of little relevance to the particular issues before us.[24]

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[21] Article I, section 15 of the Constitution of North Carolina states, "The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right."

[22] Article IX, section 2 of the Constitution of North Carolina states in part that, "The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students."

[23] For example, the *Pyles* order recounts that Mr. Pyles "included a recitation to the West Virginia Constitution in order to address any qualified immunity claim by the Defendant, not as a constitutional violation claim." In her response brief before this Court, Mrs. Myers describes "deliberate indifference of clearly established laws" as "a state tort claim and not a constitutional violation claim . . . ."

[24] In *Fields v. Mellinger*, we agreed with those federal district courts that concluded that there is no implied cause of action for damages for a violation of Article III, Section 5 of the West Virginia Constitution. *Id.*, 244 W. Va. 126, 132, 851 S.E.2d 789, 795 (2020) (citing with approval *McMillion-Tolliver v. Kowalski*, No. 2:13-CV-29533, 2014 WL 1329790, at *2 (S.D.W. Va. Apr. 1, 2014) (stating that this Court, in *Harrah v. Leverette*, 165 W. Va. 665, 271 S.E.2d 322 (1980), "did not include a cause of action under the state constitution for money damages among the remedies it listed")).

The federal district court in *McMillion-Tolliver*, though, recognized the different outcome "an independent statute authorizing money damages for violations of the West Virginia Constitution" would yield. *Id.*, No. 2:13-CV-29533, 2014 WL 1329790, at *2 ("Without an independent statute authorizing money damages for violations of the West Virginia Constitution, the plaintiff's claim must fail."). Several states' legislatures have

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Placing the respondents' common law claim for deliberate indifference to clearly established laws to the side, we see that the law otherwise provides the respondents with avenues for relief. As the State, amicus curiae, observes, the respondents' own pleadings demonstrate this. For example, Mrs. Myers pled medical negligence claims against Wexford Health Sources, Inc., and Dr. Thaker. Mr. Pyles pled a medical negligence claim against PrimeCare, plus a claim for negligent training and supervision. Mrs. Myers pled a negligence claim against DCR and unnamed corrections officers, as well as a negligent training claim against DCR.[25] Mr. Pyles's second amended complaint

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enacted analogues to section 1983, thus enabling plaintiffs to pursue damages for violations of rights guaranteed by those states' constitutions. *See, e.g.*, Ark. Code Ann. § 16-123-105(a) (2003) ("Every person who, under color of any statute, ordinance, regulation, custom, or usage of this state or any of its political subdivisions subjects, or causes to be subjected, any person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Arkansas Constitution shall be liable to the party injured in an action in circuit court for legal and equitable relief or other proper redress."); Neb. Rev. Stat. § 20-148(1) (1977) ("Any person or company, as defined in section 49-801, except any political subdivision, who subjects or causes to be subjected any citizen of this state or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the United States Constitution or the Constitution and laws of the State of Nebraska, shall be liable to such injured person in a civil action or other proper proceeding for redress brought by such injured person."). Our Legislature is free to do the same.

[25] We have held that,

> "[i]n the absence of an insurance contract waiving the defense, the doctrine of qualified . . . immunity bars a claim of mere negligence against a State agency . . . and against an officer of that department acting within the scope of his or her employment, with respect to the discretionary judgments, decisions, and actions of the officer." Syl. Pt. 6, *Clark v. Dunn,* 195 W.Va. 272, 465 S.E.2d 374 (1995).

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contains similar claims. Furthermore, plaintiffs such as Mr. Pyles and Mrs. Myers may pursue damages from state actors for alleged violations of federal, constitutional rights via a section 1983 claim. While Mr. Pyles and Mrs. Meyers elected not to plead that claim, we cannot ignore that such "reasonable alternative remedies" nonetheless remain available to them. *Fields*, 244 W. Va. at 136, 851 S.E.2d at 799 (declining to recognize a private cause of action for money damages for a violation of article III, section 6 of the West Virginia Constitution "because alternate remedies are available"); *see also A.B.*, 234 W. Va. at 516 n.32, 766 S.E.2d at 775 n.32 ("To whatever extent respondent's failure to plead [a claim under section 1983] against any other employees or officials whom she claims were deliberately indifferent to the alleged actions of [a corrections officer] was a tactical or calculated choice, she made that choice at her own peril.").

If taken as true, the allegations in Mr. Pyles's and Mrs. Myers's pleadings "narrate a dismal series of events," and we sympathize with the respondents' tragic losses. *W. Va. Dep't of Hum. Servs. v. A.R.*, 249 W. Va. 590, 600, 900 S.E.2d 16, 26 (2024).

A.B., 234 W. Va. at 492, 766 S.E.2d at 751, Syl. Pt. 7. But we have also recognized that qualified immunity "is not an impenetrable shield . . . ." *Hutchison v. City of Huntington*, 198 W. Va. 139, 148, 479 S.E.2d 649, 658 (1996). In certain circumstances, a state agency may be vicariously liable for an agency employee's acts or omissions that violated a clearly established law or right and of which a reasonable state official would have known, or which were fraudulent, malicious, or oppressive. *See A.B.*, 234 W. Va. at 507, 766 S.E.2d at 766, Syl. Pt. 12; *see, e.g.*, *W. Va. Div. of Corr. & Rehab. v. Robbins*, 248 W. Va. 515, 530–31, 889 S.E.2d 88, 103–104 (2023) (affirming circuit court's order denying DCR's motion to dismiss plaintiff's vicarious liability claim against DCR where the allegations permitted the inference that corrections officers' alleged acts and omissions occurred within the scope of their employment with DCR).

However, the "objective tragedy of the allegations," *id*., cannot determine this Court's answer to the pure, legal question presented by DCR's petitions: whether a common law cause of action for deliberate indifference to a clearly established law is a cognizable claim. Based upon the preceding discussion, we now hold that a claim for damages for deliberate indifference to clearly established law is not a cognizable claim under the common law of West Virginia. Both the *Pyles* and *Myers* orders erroneously conclude that such a claim exists. Therefore, the orders are clearly erroneous as a matter of law, and the third *Hoover* factor weighs in substantial favor of granting the writs requested by DCR.[26]

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[26] In their briefing to this Court, the respondents suggest that a claim for deliberate indifference to a clearly established law is an available remedy pursuant to Syllabus Point 4 of *Harrah v. Leverette*. *Id*., 165 W. Va. at 665, 271 S.E.2d at 322. There, we held that,

> A person brutalized by state agents while in jail or prison may be entitled to:
>
> (a) A reduction in the extent of his confinement or his time of confinement;
>
> (b) Injunctive relief, and subsequent enforcement by contempt proceedings, including but not limited to, prohibiting the use of physical force as punishment, requiring psychological testing of guards, and ordering guards discharged if at a hearing they are proved to have abused inmates;
>
> (c) A federal cause of action authorized by 42 U.S.C. s 1983; and
>
> (d) A civil action in tort.

The respondents reason that they opted to proceed under (d), "[a] civil action in tort," and mean to do so via a claim for deliberate indifference to a clearly established law. That reasoning presumes the existence of such a tort claim. As discussed in the body

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A. Remaining *Hoover* factors

Several *Hoover* factors weigh in favor of granting DCR extraordinary relief in addition to the third. The respondents assert that this Court ought to deny extraordinary relief to DCR because a direct appeal is available, the first factor. That assertion would be more persuasive if the respondents argued convincingly that "disputed facts" prevented this Court from addressing the question presented by DCR's petitions. *Hinkle*, 164 W. Va. at 121, 262 S.E.2d at 750. The respondents are correct that DCR could present this argument at summary judgment "after factual developments regarding all claims and relief that might be available," and then, assuming the respondents prevail at trial, on appeal to the ICA. The question is, to what end? While the respondents suggest that factual development is necessary "regarding all claims," they do not identify what facts must be developed to assess the validity of Count III of their complaints. Further, considering the weight of the authority discussed above, there is a "high probability" that a jury verdict on Count III of the respondents' complaints "will be completely reversed if the error is not corrected in advance." *Id*; *see, e.g.*, *State ex rel. Am. Elec. Power Co. v. Nibert*, 237 W. Va. 14, 19, 784 S.E.2d 713, 718 (2016) (because "cases involving venue determinations entail a high probability of reversal if errors are not corrected at the outset," they "are

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of this opinion, a common law claim for damages for deliberate indifference to a clearly established law is not cognizable under West Virginia common law, so the respondents' reliance on Syllabus Point 4 of *Harrah* is misplaced.

appropriate for extraordinary relief"). All this cuts against the notion that our consideration of the question presented by DCR is premature.

The fourth and fifth factors also weigh in favor of granting DCR extraordinary relief and deciding this pure question of law now. The appendix record supplied by Mr. Pyles demonstrates that claims for deliberate indifference to clearly established laws appear frequently in the circuit courts, and that DCR's motions to certify questions regarding the viability of the claim or to dismiss the claim are being denied. While we recognize that DCR has settled such claims, or, as in *Iacovone*, failed to contest the viability of the claim on appeal, DCR's litigation decisions do not negate the legal analysis set forth above.

Finally, DCR's petitions bring important problems and an issue of first impression to this Court. This Court frequently considers claims involving jail conditions. *See, e.g.*, *Crawford*, No. 21-0732, 2023 WL 2729675, at *1; *Robbins*, 248 W. Va. at 520, 889 S.E.2d at 93. And, as noted in the parties' briefing and through the appendix records, claims involving jail conditions are sadly ubiquitous in the circuit courts. Considering the apparent numerosity of such suits, the existence or non-existence of a common law claim for damages for deliberate indifference to a clearly established law is an important question to pretrial detainees, inmates, their families, DCR, its officers and agents, the Bar, and lower tribunals. We would be remiss in our duty as the attendant of the common law of West Virginia if we did not consider this legal question at the earliest opportunity. In sum, *Hoover* factors one, four, and five weigh in favor of granting DCR extraordinary relief, as

does factor three, to which we must give substantial weight. Accordingly, we grant the writs of prohibition prayed for by DCR.

IV. Conclusion

For the foregoing reasons, the requested writs of prohibition are granted.

Writs granted.