

SUPREME COURT OF NORTH CAROLINA

STATE OF NORTH CAROLINA
ex rel. JEFFREY JACKSON,
ATTORNEY GENERAL

From N.C. Business Court
20CVS005612-250

v.

From Cumberland
20CVS005612-250

E.I. DU PONT DE NEMOURS
AND COMPANY; THE
CHEMOURS COMPANY; THE
CHEMOURS COMPANY FC,
LLC; CORTEVA, INC.; DUPONT
DE NEMOURS, INC.; and
BUSINESS ENTITIES 1-10

ORDER OF THE COURT

Upon consideration of the petition filed by Defendants (E.I. du Pont de Nemours and Company, The Chemours Company, and The Chemours Company FC, LLC) on the 26th day of September 2025 in this matter for a writ of certiorari to review the decision of the North Carolina Business Court, the following order was entered and is hereby certified to the North Carolina Business Court:

Petition allowed.

By order of the Court this the 18th day of March 2026.

Therefore the case is docketed as of the date of this order’s certification. Briefs of the respective parties shall be submitted to this Court within the times allowed and in the manner provided by Appellate Rule 15(g)(2).

STATE EX REL. JACKSON V. E.I. DU PONT DE NEMOURS AND CO.

No. 436A21-2

Order of the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this
the 20th day of March 2026.



s/ Grant E. Buckner
Clerk of the Supreme Court

M.C. Hackney
Assistant Clerk

Copy to:

Mr. Brian M. Rowson, Attorney at Law, For Corteva, Inc., et al. - (By Email)
Mr. Joel R. Rhine, Attorney at Law, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. Martin A. Ramey, Attorney at Law, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. Robert R. Marcus, Attorney at Law, For Corteva, Inc., et al. - (By Email)
Mr. C. Bailey King, Jr., Attorney at Law, For Corteva, Inc., et al. - (By Email)
Mr. Daniel Hirschman, Senior Deputy Attorney General, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. Marc Bernstein, Special Deputy Attorney General, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Ms. Ruth A. Sheehan, Attorney at Law, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. Jonathan D. Sasser, Attorney at Law, For E.I. du Pont de Nemours and Company, et al. - (By Email)
Mr. Thomas H. Segars, Attorney at Law, For E.I. du Pont de Nemours and Company, et al. - (By Email)
Mr. R. Steven DeGeorge, Attorney at Law, For The Chemours Company, et al. - (By Email)
Mr. Ryan Y. Park, Solicitor General, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. Samuel Magaram, Solicitor General Fellow, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. Troy D. Shelton, Attorney at Law, For North Carolina Chamber Legal Institute - (By Email)
Mr. Nicholas S. Brod, Solicitor General, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. James W. Doggett, Deputy Solicitor General, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Mr. Asher P. Spiller, Special Deputy Attorney General, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
Ms. Laura Schabinger Howard, Attorney at Law, For State of North Carolina ex rel. Joshua H. Stein, Attorney General - (By Email)
The Honorable Clerk of Superior Court, Cumberland County
West Publishing - (By Email)
Lexis-Nexis - (By Email)

No. 436A21-2 – State ex rel. Jackson v. E.I. Du Pont De Nemours and Co.

Justice DIETZ concurring.

There are two reasons why I support issuing a writ of certiorari here. The first is that this case is right on the cusp of an appeal by right. Although there is no existing case law authorizing an immediate appeal here, that is likely because the State has never tried something like this before. There can't be precedent if the issue is unprecedented.

Let me begin with some key background: Chemours is claiming that the same party sued it twice for the same thing. In 2017, the State, through the Department of Environmental Quality, sued Chemours. After years of legal battles, the trial court entered a consent judgment resolving that dispute. The court order includes twenty-five pages of mandatory compliance and remediation conditions and over ten million dollars in fines. *State ex rel. Regan v. The Chemours Company FC, LLC.*, No. 17 CVS 580 (N.C. Super. Ct. Feb. 25, 2019) (order).

After the court entered that order, the State turned around and sued Chemours again, this time through the Attorney General. Chemours claims that this second lawsuit covers the same alleged wrongs as the first, with the Attorney General acting “as a second environmental regulator.”

We have long recognized that certain issues concerning “repetitious lawsuits” are immediately appealable as affecting a substantial right. *Turner v. Hammocks Beach Corp.*, 363 N.C. 555, 558 (2009). These cases usually involve principles such as

res judicata, collateral estoppel, or the risk of inconsistent verdicts. *Bockweg v. Anderson*, 333 N.C. 486, 491 (1993). This one, by contrast, is about whether state actors are ultimately all one legal sovereign, or instead their own constituent litigants not bound by each other's actions. Still, "the particular facts of that case and the procedural context" always guide our substantial rights analysis. *Land v. Whitley*, 388 N.C. 296, 304 (2025). This peculiar case (which, as far as I can tell from case law, is the first time the State has ever tried to do this) seems to me sufficient to satisfy the substantial rights test.

Why, then, did Chemours and its co-defendants petition for a writ of certiorari instead? To their credit, they acknowledged the lack of any existing legal authority. In addition, the issue I just described is only one of *many* alternative legal theories they raised. And probably not the strongest one. So the challenge Chemours and its co-defendants faced is this: our court system "does not recognize pendent appellate jurisdiction." *State v. Carver*, 277 N.C. App. 89, 94 (2021). If they appealed the duplicative lawsuit issue by right, only that one tiny slice of the business court's ruling would make it to us, and all the meatier constitutional and jurisdictional issues would be left behind. *Id.* That doesn't make much sense.

This brings me to my second reason supporting the writ: This entire case meets the criteria for certiorari review. See *Cryan v. Nat'l Council of YMCAs*, 384 N.C. 569, 572–73 (2023). I'll make an observation about the dissent here, because the dissent is actually quite helpful in showing why the case needs review. The dissent only

references the State’s first lawsuit in a footnote responding to this concurrence. Were it not for this concurrence, a reader would walk away thinking the Attorney General is bravely rushing in to stop a chemical company who, in the dissent’s words, “allegedly perpetrated what is perhaps the most widespread contamination from an industrial facility in North Carolina history.”

But the Attorney General is not leading the charge; he is bringing up the rear. As I noted above, the State of North Carolina has been all over this for years. The State sued Chemours and the two sides fought a lengthy legal battle. Ultimately the trial court entered a consent judgment that included twenty-five pages of mandatory conditions. The court order requires Chemours to accept dozens of new oversight and compliance requirements, help impacted people remediate the contamination, and pay millions and millions of dollars. *See Chemours Company*, No. 17 CVS 580 ¶¶ 7–33 (order).

The core legal issue raised in this petition is whether the ability of state administrative agencies to do what happened here—sue in defense of the public interest—limits the ability of the Attorney General to do the same. After all, this Court has long enforced the “common law rule against claim-splitting.” *Bockweg*, 333 N.C. at 492. The rule “is based on the principle that all damages incurred as the result of a *single wrong* must be recovered in one lawsuit.” *Id.* The dissent embraces the State’s argument that its earlier lawsuit was focused on “civil penalties” and “injunctive relief” so the State should be allowed to sue a second time so long as it

asks for different relief. The law does not permit ordinary litigants to do this. *Id.* If a plaintiff sues on a claim asking for injunctive relief, that plaintiff cannot sue again for the same wrong and ask for damages or something else. *Id.* That is the key to the claim-splitting doctrine articulated in *Bockweg*. *Id.*

So the question here is whether this doctrine applies to *everyone*, or just to everyone *except* the State. Does this principle mean the State has an obligation to choose which agency or department pursues relief for a particular wrong? Likewise, does the General Assembly, when it creates a vast administrative state with the power to sue, limit the corresponding power of the Attorney General to also sue for the same harms? Or, instead, is the State the one litigant in our court system who truly gets multiple bites at the same apple?

This Court has never answered these questions. They are squarely raised by the petition in this case and ripe to be addressed. I will reserve judgment because I see strong arguments on both sides. But at a minimum, I can say that the petition is not plainly meritless. Indeed, our most recent decision on the scope of the Attorney General's powers (which, again, the dissent chooses to ignore) cuts against the State. *Bailey v. State*, 353 N.C. 142, 152 (2000). In *Bailey*, we held that the Attorney General, even when he brings a lawsuit claiming to represent "the people," is still just "the State." Here, the State already brought a lawsuit for the wrongs associated with this environmental contamination. There are genuine questions about whether the State's choice to create a sweeping environmental regulatory regime limits the State's

ability to sue for old common law claims that cover the same ground. Thus, there is enough merit to the petition that the first prong of *Cryan* is satisfied. 384 N.C. at 572–73.

There are also extraordinary circumstances here. The State is on the verge of spending millions of taxpayer dollars on a case that it might have no legal or constitutional authority to pursue. To be fair, the Attorney General has enlisted the help of many private lawyers from huge out-of-state law firms to litigate this case. It isn't clear from the record how those private lawyers are being paid. But the State's response brief emphasizes that the Attorney General and his staff have "an active presence" in this lawsuit. Immediate review ensures that we do not waste all this public talent and accompanying taxpayer resources.

Moreover, there is no injustice in adding a few months of appellate review to this long-running case. Again, this is where the dissent omits information that a reader might want to know. From a review of the record in this case, there were (and, according to Chemours, still are) multiple lawsuits by thousands of litigants including counties, towns, impacted communities, and individuals seeking remedies from the defendants for this same alleged environmental contamination. *See, e.g., Nix v. The Chemours Co. FC, LLC*, No. 7:17-C V-0189-D (E.D.N.C.); *Cape Fear Pub. Util. Auth. v. The Chemours Co. FC, LLC*, No. 7:17-CV-00195-D (E.D.N.C.); *Morton v. The Chemours Co.*, No. 7:17-CV-00197-D (E.D.N.C.); *Brunswick Co. v. DowDuPont, Inc.*, No. 7:17-CV-00209-D (E.D.N.C.).

STATE EX REL. JACKSON V. E.I. DUPONT DE NEMOURS AND CO.

No. 436A21-2

Dietz, J., concurring

Thus, the dissent is wrong to claim “a denial of access to justice” here. The courthouse doors are wide open. All we are doing today is accepting review of the State’s novel approach in this one particular case—an approach that the State has never tried before—to avoid the possible waste of taxpayer funds. This is precisely the sort of extraordinary circumstance we identified in *Cryan*. See 384 N.C. at 573.

In sum, the two-prong test from *Cryan* is satisfied and I fully concur in the majority’s decision to issue a writ of certiorari so we can review these important legal issues. *Id.*

Justice EARLS dissenting.

Defendants allegedly perpetrated what is perhaps the most widespread contamination from an industrial facility in North Carolina history. At issue in this petition is defendants’ stunning proposition that the claims against them should be dismissed because the Attorney General lacks authority to hold defendants accountable for their actions and to recover money damages for injured communities. That is, defendants argue that the Attorney General lacks the authority to enforce state law.

Defendants concede they have no right to appeal this order, and they have not carried their burden to show “extraordinary circumstances” and likely error below meriting immediate, interlocutory review by this Court. *See Cryan v. Nat’l Council of YMCAs*, 384 N.C. 569, 572–73 (2023) (criteria for writ of certiorari). By taking the extraordinary step of allowing such review anyway, this Court interrupts factfinding proceedings below in the trial court, further delays justice for allegedly injured communities, and wrongly suggests support for defendants’ untenable position that the state’s Attorney General is powerless to enforce the law. The defendants’ arguments are all issues that should be decided in the normal course, if necessary, after trial. Allowing this petition at this stage is particularly egregious in light of the substantial public interests at stake in timely adjudicating these claims and the strong precedent that the Attorney General on behalf of “[t]he State is the proper

party to complain of wrongs done to its citizens by public nuisance.” *See McLean v. Townsend*, 227 N.C. 642, 643 (1947) (quoting *Pedrick v. Raleigh & Pamlico Sound R.R. Co.*, 143 N.C. 485, 498 (1906)). This case has already been before this Court on one pre-trial interlocutory appeal. *See State ex rel. Stein v. E.I. du Pont de Nemours & Co.*, 382 N.C. 549 (2022). Further delay with a second, piecemeal appeal is manifestly a denial of access to justice for the people of this state. The Court’s order allowing this petition is wrong as a matter of law, and I dissent.

E.I. du Pont de Nemours and Company (DuPont), the Chemours Company, the Chemours Company FC, LLC, and other defendants allegedly released toxic chemicals into North Carolina’s public air and water for decades. The State contends that these “forever” chemicals polluted natural resources across our state’s southeastern region and severely threatened public health, dramatically changing living conditions for hundreds of thousands of North Carolinians who live along the Cape Fear River and impacting many more who visited this area.

By bringing these claims on behalf of the State, the Attorney General seeks to hold DuPont and other defendants accountable for their alleged actions. The Attorney General’s claims, if proven, would entitle the State to recover money damages to help communities still suffering the effects of defendants’ pollution—potentially hundreds of millions of dollars to clean up contamination across at least eight counties. There is obviously a substantial interest among the people of North Carolina in the swift

resolution of these claims. Justice requires that the facts in the case be determined by a trial court. This Court appears determined to prevent that from ever happening.¹

Further delay of likely another year will now ensue because five years into the litigation, defendants moved to dismiss the claims for lack of subject matter jurisdiction. The trial court denied that motion. That court concluded simply that the Attorney General *does* have common-law authority to bring this lawsuit—authority not disturbed by the particular legislative enactments to which defendants gesture.

Defendants do not have the immediate right to appeal this order. They admit as much, conceding that they “are aware of no authority holding that an order such as the trial court’s decision here is immediately appealable under the substantial-right doctrine or otherwise.” Yet this Court now allows review of that interlocutory order anyway. This is error.

It is black-letter law that an order denying a motion to dismiss for lack of subject matter jurisdiction is not immediately appealable. We said so as recently as last October. *Land v. Whitley*, 388 N.C. 296, 301 (2025) (“[T]he denial of a defendant’s

¹ The State’s response also explains why this appeal is not about defendants being “sued . . . twice for the same thing,” as the concurrence puts it. The 2019 consent judgment appears to only have resolved the Department of Environmental Quality’s claims for “civil penalties” and “injunctive relief” with respect to certain specified violations of environmental statutes and did not resolve causes of action belonging to other state agencies or release defendants from claims for damages.

It is worth underscoring that defendants’ petition is focused almost entirely on challenging the scope of the Attorney General’s authority, not on the alleged repetitious lawsuits issue the concurrence believes supports certiorari. The concurrence is making arguments for defendants that they did not make themselves.

motion to dismiss under 12(b)(1) for a lack of subject matter jurisdiction is not immediately appealable.”). This has been the rule for decades. *E.g., Teachy v. Coble Dairies, Inc.*, 306 N.C. 324, 327 (1982); *Byers v. N.C. Sav. Insts. Div.*, 123 N.C. App. 689, 692 (1996).

We generally forbid fragmentary, interlocutory appeals for good reason. The law cannot protect individual rights and freedoms if the process to vindicate them is ineffective. And “[t]here is no more effective way to procrastinate the administration of justice than that of bringing cases to an appellate court piecemeal through the medium of successive appeals from intermediate orders.” *Veazey v. City of Durham*, 231 N.C. 357, 363 (1950). Rules against “premature and unnecessary appeals,” *Waters v. Qualified Pers., Inc.*, 294 N.C. 200, 207 (1978), safeguard the fundamental legal principle, itself dating back to the Magna Carta, that “justice delayed is justice denied,” *Veazey*, 231 N.C. at 363.

These fundamental principles have special purchase here, where certain defendants have already availed themselves of their statutory right to appeal an interlocutory order denying a motion to dismiss for lack of personal jurisdiction. *See* N.C.G.S. § 1-277(b) (2025). In *State ex rel. Stein v. E.I. du Pont de Nemours & Co.*, 382 N.C. 549 (2022), we unanimously rejected out of state defendants’ arguments that the courts of this state lacked personal jurisdiction over them for their alleged pollution just because they engaged in corporate restructuring to avoid liability. *Id.* at 551–52, 560. That unsuccessful interlocutory appeal, while within those

defendants’ rights to take, came with a cost: further trial court proceedings were placed on hold for nearly a year and a half, and now more than five years have passed since the Attorney General first brought suit. Thus, the proceedings in this very case demonstrate why pretrial, piecemeal appeals work to effectively deny justice.

Notably too, on remand from this Court’s 2022 decision, the Business Court resolved the remaining grounds for dismissal and specifically rejected defendants’ arguments that environmental statutes and regulations displaced the Attorney General’s power to bring these claims. No defendant sought appellate review of that decision. These circumstances further counsel against permitting defendants to obtain review of this issue now—and they fall far short of demonstrating that “extraordinary circumstances” justify immediate review. *See Cryan*, 384 N.C. at 572. Basic principles of fairness do not permit parties to treat appellate review of an interlocutory order as a freewheeling opportunity to rehash all disfavored pretrial rulings.

In light of these circumstances, defendants fail to show that they will suffer “substantial harm” or that “considerable” judicial resources will be “waste[d]” absent immediate review, *id.* at 573, or that their petition involves “wide-reaching issues of justice and liberty,” *id.* (quoting *Doe v. City of Charlotte*, 273 N.C. App. 10, 23 (2020)). In fact, the petition and response show the opposite: *allowing* the petition risks wasting judicial resources through a second, pretrial trip to this Court to review issues decided in earlier proceedings by the Business Court and not timely appealed,

and there is a risk of substantial harm to the public by further delaying resolution of the Attorney General’s profoundly important claims. This alone is grounds to deny the petition. *See Cryan*, 384 N.C. at 572–73.

A further ground is that defendants fail to meet the other prerequisite for obtaining a writ of certiorari: likely error below. *See id.*; *Button v. Level Four Orthotics & Prosthetics, Inc.*, 380 N.C. 459, 465 (2022) (“A writ of certiorari is intended as an extraordinary remedial writ to correct errors of law.” (cleaned up)). As the trial court explained, “[t]he ultimate question to be answered [by its order] is whether the Attorney General has the authority to bring this lawsuit.” The trial court concluded simply that, yes, the Attorney General can bring traditional common law claims on behalf of the State like those at issue here. That straightforward conclusion appears to be consistent with longstanding precedent that, as a constitutional officeholder, “the Attorney General of this State has the common law duty to prosecute all actions necessary for the protection and defense of the property and revenue of the sovereign people of North Carolina.” *Martin v. Thornburg*, 320 N.C. 533, 546 (1987); *accord Tice v. Dep’t of Transp.*, 67 N.C. App. 48, 51–53 (1984).

Moreover, defendants offer no reason to believe that the Attorney General lacks authority to protect the public from a public nuisance. On the contrary, the Attorney General’s authority to bring such actions appears to be supported by a litany of longstanding precedent. *E.g.*, *McLean*, 227 N.C. at 643; *Frizzle v. Patrick*, 59 N.C. (6 Jones Eq.) 354, 357 (1863) (per curiam) (observing that, absent a particular

interest, public nuisance claims must be filed “in the name of the Attorney[]General,” not a private party); *Justices of Pitt Cnty. v. Cosby*, 58 N.C. 254, 256 (1859) (noting that an action for public nuisance must be made “in the name of the Attorney[]General, or a bill, to which he is made a party”). It suffices to say that defendants’ stunning proposition as to the Attorney General’s authority falls short of a strong showing of error necessary to entitle them to immediate appellate review under these circumstances. *See Cryan*, 384 N.C. at 573.

For these reasons, I would deny the petition and permit the trial court to continue adjudicating the merits of the Attorney General’s claims against defendants for alleged industrial contamination and widespread injuries to the people and the State, without further delay.

Justice RIGGS joins in this dissent.