



Transgender Legal Defense & Education Fund

Working for Transgender Equal Rights

VICTORY! Fourth Circuit Rules North Carolina Can Be Sued for Violating the Affordable Care Act Over Discriminatory Anti-Transgender State Employee Health Care Plan

Groundbreaking decision marks first time that a federal appellate court rules that ‘sovereign immunity’ does not protect state entities from liability under the Affordable Care Act if they receive federal funding.

Ruling comes in lawsuit filed by Lambda Legal and the Transgender Legal Defense & Education Fund after North Carolina state officials eliminated coverage for gender affirming health care in the state employee health plan.

ATLANTA, GA - Today, the U.S. Court of Appeals for the Fourth Circuit upheld a district court ruling determining that the North Carolina State Health Plan for Teachers and Employees, a state entity, could be sued under the nondiscrimination provision of the Affordable Care Act for denying comprehensive gender-affirming health care coverage.

Lambda Legal and Transgender Legal Defense & Education Fund (TLDEF) filed the case, [Kadel v. Folwell](#), in 2019 against North Carolina officials for discrimination in the state employee health care plan, which covers around 720,000 employees and retirees and has a categorical exclusion of treatment for gender dysphoria.

“No one should be denied access to lifesaving health care because they are transgender. We are very pleased that the Fourth Circuit affirmed that state governments are not entitled to discriminate. We are also grateful to the Court for reiterating the critical importance of ensuring transgender people are protected from discrimination in health care.” said **David Brown, TLDEF's Legal Director.**

“We are gratified that the Fourth Circuit has affirmed the ability of people to seek justice and assert their rights against discrimination in health care perpetuated by state entities receiving federal funding, in this case, the North Carolina State Health Plan for Teachers and State Employees.” said Omar Gonzalez-Pagan, said **Lambda Legal Senior Attorney and Health Care Strategist, Omar Gonzalez-Pagan.** “We sued the State Health Plan and North Carolina officials for their blatant discrimination against transgender state employees and their dependents, who like our plaintiffs dedicate their time and talent to improve the wellbeing of the state and its residents, but are deprived of medically necessary and often life-saving health care services,” he added.

Over a year ago, the U.S. District Court for the Middle District of North Carolina ruled that the North Carolina State Health Plan, a state entity, could be sued under claims that its actions violated the nondiscrimination provisions of the Affordable Care Act, finding that by accepting federal financial assistance the state entity had waived its sovereign immunity. Unsatisfied and determined to continue denying health care coverage for transgender state employees, the State Health Plan appealed to the Fourth Circuit claiming they could not be sued because the state is protected by “sovereign immunity,” and arguing the text of Section 1557 of the ACA is not clear. Today, the Fourth Circuit affirmed what the lower court ruled: that state health care entities receiving federal funding do so on the condition that they can be sued if they discriminate on the basis of sex, race, national origin, age, or disability.

This groundbreaking decision marks the first time that a federal appellate court in the United States has ruled that claims of ‘sovereign immunity’ do not protect state entities from liability under Affordable Care Act if they receive federal funding.

“We are pleased with this decision and hope the North Carolina State Health Plan for Teachers and Employees will begin providing equal health care coverage to all its employees by discontinuing their unlawful discrimination against transgender people.” Gonzalez-Pagan added.

Transgender Legal Defense & Education Fund is committed to ending discrimination based upon gender identity and expression and to achieving equality for transgender people through public education, test-case litigation, direct legal services, and public policy efforts. To learn more about TLDEF’s work, visit tldef.org.

Lambda Legal is a national organization committed to achieving full recognition of the civil rights of lesbians, gay men, bisexuals, transgender

people, and everyone living with HIV through impact litigation, education, and public policy work. www.lambdalegal.org

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Content last updated on Sep 1, 2021 - PDF generated from: <https://transgenderlegal.org/stay-informed/victory-fourth-circuit-rules-north-carolina-can-be-sued-for-violating-the-affordable-care-act-over-discriminatory-anti-transgender-state-employee-health-care-plan/> on Jan. 30, 2025.

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