Transgender Legal Defense & Education Fund

Working for Transgender Equal Rights

Victory! U.S. Supreme Court Rejects North Carolina State Health Plan's Effort to Shield Itself from Health Care Discrimination Lawsuits

(WASHINGTON, DC -- January 18, 2022) Today, the U.S. Supreme Court denied the North Carolina State Health Plan's petition asking the Court to review a lower court ruling that the plan, a state entity, could be sued for denying comprehensive gender-affirming health care coverage to transgender state employees or their transgender dependents.

The Transgender Legal Defense & Education Fund (TLDEF) and Lambda Legal are suing the health plan, the North Carolina State Health Plan for Teachers and State Employees, for its blanket exclusion of coverage for gender-affirming health care services.

TLDEF Legal Director David Brown (they/he):

"The Fourth Circuit got it right with its carefully-considered September 2021 opinion deciding that states receiving federal funding can be sued if they discriminate. It's disappointing that the State of North Carolina is wasting resources on Hail Mary passes, having now spent years in court to defend its ongoing discrimination, but we are determined to win a favorable outcome for our clients along with all state employees and their families this year."

Lambda Legal Senior Attorney Omar Gonzalez-Pagan:

"We are pleased that the Supreme Court decided not to review this case and that we can now focus on holding North Carolina's State Health Plan accountable for its discriminatory and harmful refusal to provide comprehensive health care coverage – including for gender-affirming care – to all its state employees and their dependents. The Court's denial leaves in place a court of appeals decision strongly affirming that it is unlawful and dangerous for state entities receiving federal funding to engage in discrimination in health care and that they are not immune from accountability in court. Entities, like The State Health Plan, must be held accountable when they discriminate and violate people's rights. Today's decision protects the rights of marginalized people, including LGBTQ people and people living with HIV, to seek justice and obtain relief in court if they are subjected to health care discrimination."

Julia McKeown, assistant professor at North Carolina State University:

"I am pleased with today's decision, and I look forward for our case to prevail in court moving forward. Transgender state employees, like myself, deserve the same access to benefits and equal treatment as any other employee. We dedicate our time and talent to improve the wellbeing of the state and our neighbors, yet we are deprived of medically necessary and often life-saving health care services. This is an injustice."

In September 2021, the U.S. Court of Appeals for the Fourth Circuit upheld a lower court ruling in TLDEF and Lambda Legal's lawsuit, *Kadel v. Folwell,* rejecting the State's claims that a state entity – in this case the state employee health plan – is protected by sovereign immunity, the legal doctrine that precludes bringing a lawsuit against the state without its consent. Lambda Legal and TLDEF sued the state health plan for violating the health care nondiscrimination law, enacted as Section 1557 of the Affordable Care Act.

TLDEF and Lambda Legal filed *Kadel v. Folwell* in 2019 against North Carolina officials for discrimination in the state employee health care plan on behalf of several current and former state employees and their children who were denied coverage under the North Carolina State Health Plan (NCSHP) for medically necessary care.

In 2020, 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 health care nondiscrimination law that is part 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 it 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.

The Fourth Circuit decision from 2021 marked 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 the Affordable Care Act if they receive federal funding.

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