

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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NORTH CAROLINA STATE HEALTH PLAN FOR  
TEACHERS AND STATE EMPLOYEES,  
*Petitioner,*

v.

MAXWELL KADEL; JASON FLECK; CONNOR  
THONEN-FLECK, BY HIS NEXT FRIENDS AND PARENTS;  
JULIA MCKEOWN; MICHAEL D. BUNTING, JR.; C.B., BY  
HIS NEXT FRIENDS AND PARENTS; SAM SILVAINE,  
*Respondents.*

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**On Petition for Writ of Certiorari  
to the United States Court of Appeals  
for the Fourth Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Section 1003 of the Rehabilitation Act Amendments of 1986 provides that a State “shall not be immune under the Eleventh Amendment . . . from suit in Federal court” for violations of Title VI, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act of 1975, or—in what this Court has referred to as the section’s residual clause—“the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.” 42 U.S.C. § 2000d-7(a).

The question presented is:

Whether the residual clause of Section 1003 provides an “unequivocal textual waiver” of sovereign immunity, permitting suits against States under subsequently enacted statutory provisions that refer to neither States nor sovereign immunity?

## PARTIES TO THE PROCEEDING

Petitioner, the North Carolina State Health Plan for Teachers and State Employees (“State Health Plan” or “Plan”), is an agency of the State of North Carolina. N.C. Gen. Stat. § 35.48.2(a). The State Health Plan is a Defendant in the district court below and was the appellant in the Fourth Circuit. The Plan seeks interlocutory review of the lower courts’ decisions that the State has waived its sovereign immunity.

Respondents Maxwell Kadel, Jason Fleck, Connor Thonen-Fleck, Julia McKeown, Michael D. Bunting, Jr., C.B., by his next friends and parents, and Sam Silvaine are Plaintiffs below. They are current and former state employees, and their dependents, who allege that the State Health Plan impermissibly discriminates in the diagnoses and medical procedures it covers. The Plaintiffs seek injunctive, declaratory and monetary relief against the Plan. They also seek injunctive and declaratory relief pursuant to *Ex Parte Young* against two Defendants not before this Court: Dale Folwell, Treasurer of the State of North Carolina, and Dee Jones, the Executive Administrator of the State Health Plan.

While the State Health Plan’s interlocutory appeal was pending, the magistrate judge allowed Plaintiffs to amend their Complaint and add an additional Plaintiff: Dana Caraway. In addition to joining the above claims against the State Health Plan and its officials, Caraway also asserts a claim under Title VII against the State Health Plan and against her

employer, the North Carolina Department of Public Safety. The case is scheduled for trial in July 2022.

### **STATEMENT OF RELATED PROCEEDINGS**

This Petition is an interlocutory appeal from the following decisions by the courts below:

- Maxwell Kadel, et al. v. North Carolina State Health Plan for Teachers and State Employees, et al., No. 20-1409 (4th Cir. Sept. 1, 2021) (opinion affirming district court);
- Maxwell Kadel, et al. v. Dale Folwell, et al., No. 1:19-cv-272 (M.D.N.C. Mar. 10, 2020) (order denying motion to dismiss).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of Rule 14.1(b)(iii).

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