

**UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT  
DOCKETING STATEMENT--CIVIL/AGENCY CASES**

**Directions:** Counsel must make a **docketing statement (civil/agency) filed** entry in CM/ECF within 14 days of docketing of the appeal, or within the due date set by the clerk's docketing notice, whichever is later. File with the entry the (1) docketing statement form with any extended answers and (2) any transcript order form. Parties proceeding pro se are not required to file a docketing statement. Opposing counsel who finds a docketing statement inaccurate or incomplete may file any objections within 10 days of service of the docketing statement using the ECF event-**docketing statement objection/correction filed**.

<b>Appeal No. &amp; Caption</b>	20-1409 - Kadel, et al. v. North Carolina State Health Plan ...
<b>Originating No. &amp; Caption</b>	1:19-cv-272-LCB - Kadel, et al. v. Folwell, et al.
<b>Originating Court/Agency</b>	U.S. District Court, Middle District of North Carolina

<b>Jurisdiction</b> (answer any that apply)	
Statute establishing jurisdiction in Court of Appeals	28 USC 1291
Time allowed for filing in Court of Appeals	30 Days
Date of entry of order or judgment appealed	March 11, 2020
Date notice of appeal or petition for review filed	April 9, 2020
If cross appeal, date first appeal filed	NA
Date of filing any post-judgment motion	NA
Date order entered disposing of any post-judgment motion	NA
Date of filing any motion to extend appeal period	NA
Time for filing appeal extended to	NA
Is appeal from final judgment or order?	<input type="radio"/> Yes <input checked="" type="radio"/> No
If appeal is not from final judgment, why is order appealable? The denial of state sovereign and 11th Amendment immunity is immediately appealable, per the U.S. Supreme Court, under the collateral order doctrine of 28 U.S.C. 1291.	

<b>Settlement</b> (The docketing statement is used by the circuit mediator in pre-briefing review and mediation conducted under Local Rule 33. Counsel may make a confidential request for mediation by calling the Office of the Circuit Mediator at 843-731-9099.)	
Is settlement being discussed?	<input type="radio"/> Yes <input checked="" type="radio"/> No

<b>Transcript</b> (transcript order must be attached if transcript is needed and not yet on file)		
Is transcript needed for this appeal?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Has transcript been filed in district court?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
Is transcript order attached?	<input type="radio"/> Yes	<input checked="" type="radio"/> No

<b>Case Handling Requirements</b> (answer any that apply)		
Case number of any prior appeal in same case	NA	
Case number of any pending appeal in same case	NA	
Identification of any case pending in this Court or Supreme Court raising similar issue	NA	
	If abeyance or consolidation is warranted, counsel must file an appropriate motion.	
Is expedited disposition necessary?	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, motion to expedite must be filed.	
Is oral argument necessary?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does case involve question of first impression?	<input checked="" type="radio"/> Yes	<input type="radio"/> No
Does appeal challenge constitutionality of federal or state statute in case to which federal or state government is not a party	<input type="radio"/> Yes	<input checked="" type="radio"/> No
	If yes, notice re: challenge to constitutionality of law must be filed.	

<b>Nature of Case</b> (Nature of case and disposition below. Attach additional page if necessary.)
<p>The North Carolina State Health Plan for Teachers and State Employees ("Plan") is a state entity established pursuant to N.C. Gen. Stat. § 135-48.2. Appellees are current or former enrollees in the Plan who assert that certain Plan coverage exclusions violate Section 1557 of the Affordable Care Act ("ACA"). Appellant moved in the district court to dismiss their claims on the basis of North Carolina's state sovereign and 11th Amendment immunity. The district court denied the Plan's assertion of sovereign immunity. (1:19-cv-272, Doc. No. 45).</p>

**Issues** (Non-binding statement of issues on appeal. Attach additional page if necessary)

Appellant moved to dismiss claims brought under the Affordable Care Act (ACA) on the basis of North Carolina's state sovereign and 11th Amendment immunity, where no waiver of that sovereign immunity allows federal court jurisdiction over such claims against the State of North Carolina. The district court correctly observed that "Section 1557 does not purport to condition a state's acceptance of federal funding on a waiver of sovereign immunity[, n]or does any other provision of the ACA." (1:19-cv-272, Doc. No. 45 at p. 17). The district court, however, then erroneously decided that the ACA "when read in conjunction with" a different federal statute -- also unmentioned by the ACA -- "effectuates a valid waiver of sovereign immunity." (1:19-cv-272, Doc. No. 45 at p. 20). This appeal -- of the denial of North Carolina's state sovereign and 11th Amendment immunity -- follows.

**Adverse Parties** (List adverse parties to this appeal and their attorneys; provide party's address if the party is not represented by counsel. Attach additional page if necessary.)

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