

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

MAXWELL KADEL, *et al.*,

Plaintiffs,

v.

NORTH CAROLINA
STATE HEALTH PLAN FOR
TEACHERS AND STATE
EMPLOYEES,

Defendant.

No. 1:19-cv-272-LCB

**STATE HEALTH PLAN DEFENDANT’S MEMORANDUM IN SUPPORT
OF MOTION TO CORRECT MEMORANDUM OPINION AND ORDER**

Pursuant to Federal Rule of Civil Procedure 60(a), Defendant North Carolina State Health Plan for Teachers and State Employees (“State Health Plan”) has respectfully moved this Court to correct portions of its Memorandum Opinion and Order. (Doc. No. 234, entered June 10, 2022). Specifically, Defendant State Health Plan has requested corrections to the clerical errors in the Memorandum Opinion and Order suggesting that it (as opposed to Dale Folwell (*in his official capacity as State Treasurer of North Carolina*) and Dee Jones (*in her official capacity as Executive Administrator of the State Health Plan*)) is subject to the

injunction, issued pursuant to Title 42, United States Code, Section 1983, *et seq.*, against the state official co-defendants.

Defendant State Health Plan, an agency of the State of North Carolina, is not subject to suit under Section 1 of the Fourteenth Amendment to the United States Constitution, as enforceable pursuant to 42 U.S.C. § 1983. A State “is not a person within the meaning of § 1983.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 64 (1989). Moreover, under the Eleventh Amendment, “[a]bsent waiver, neither a State nor agencies acting under its control may be subject to suit in federal court.” *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 144 (1993) (quoting *Welch v. Texas Dept. of Highways and Public Transportation*, 483 U.S. 468, 480 (1987) (plurality opinion)) (internal punctuation omitted). *See also Doyle v. Hogan*, 1 F.4th 249, 254 (4th Cir. 2021) (“In general, States may not be haled into federal court without their consent[,]” though “suits may, at least sometimes, be brought in federal court to enjoin a state officer from enforcing an unconstitutional act”). Given North Carolina’s constitutional and 11th Amendment sovereign immunity—and the Supreme Court’s decisions in

Ex parte Young and its progeny—this Court can only issue injunctive relief issue against the appropriate state officials.

For these reasons, presumably, Defendant State Health Plan is not a party to Plaintiffs’ Count 1 claim for injunctive relief pursuant to 42 U.S.C. § 1983, *et seq.* (Doc. No. 75, p.34-37). Rather, Plaintiffs only sued Dale Folwell and Dee Jones (*in their official capacities*) for injunctive relief in Count 1 of their Amended Complaint. *Id.* As this Court has previously acknowledged, in Count 1, “Plaintiffs bring an Equal Protection claim against Defendants Folwell and Jones in their official capacities.” (Doc. No. 45 p.20)

Given North Carolina’s sovereign immunity, this Court can only issue injunctive relief under the claim in Count 1 against the state officials named pursuant to *Ex Parte Young*. Suits under *Ex Parte Young* “are deemed to be against officials and not the States or their agencies, which retain their immunity against all suits in federal court.” *Puerto Rico Aqueduct*, 506 U.S. at 146.

Because (1) the Plaintiffs have not sought injunctive relief against the State Health Plan pursuant to Count 1 of their Complaint, (2) the Court has no authority to issue an injunction against the State Health

Plan under Count 1, and (3) the Court has deferred judgment on the only remaining claim against the State Health Plan, the Court should clarify its current Order.

Wherefore, this Court should promptly enter an Order correcting its Memorandum Opinion and Order as follows: On page 67, “NCSHP” in lines 18-19 should be replaced with “state official Defendants.” And on page 72, “Defendants” in line 18 should be replaced with “state official Defendants.”

Respectfully submitted this the 7th day of July, 2022.

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CERTIFICATE OF WORD COUNT

Pursuant to L.R. 7.3(d)(1), the undersigned certifies that this Memorandum complies with the Court's word limit as calculated using the word count feature of the word processing software. Specifically, this Brief contains less than 600 words. This count includes the body of the brief and headings, but does not include the caption, signature lines, this certificate, or the certificate of service.

This the 7th day of July, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will provide electronic notification to all counsel of record in this matter.

This the 7th day of July, 2022.

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