

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

MAXWELL KADEL, *et al.*,

*Appellees,*

v.

DALE FOLWELL, *in his official capacity as State Treasurer of North Carolina*; and THE EXECUTIVE ADMINISTRATOR OF THE NORTH CAROLINA STATE HEALTH PLAN FOR TEACHERS AND STATE EMPLOYEES,

*Appellants.*

No. 22-1721

**CITATION OF SUPPLEMENTAL AUTHORITIES  
PURSUANT TO RULE 28(j)**

Appellants respectfully submit the following additional authority pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure and Local Rule 28(e).

On December 30, 2022, the U.S. Court of Appeals for the Eleventh Circuit, sitting *en banc*, issued its published opinion in *Adams by & through Kasper v. Sch. Bd. of St. Johns Cnty.*, — F.4th —, 2022 WL 18003879 (11th Cir. 2022) (No. 18-13592).

In *Adams*, the Eleventh Circuit refused to hold that gender identity is “akin to biological sex” and therefore declined to apply intermediate scrutiny to the policy before it. *Id.* at \*10 (“Nor could the district court have made such a finding that would have legal significance [because to] do so would refute the Supreme Court’s longstanding recognition that sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth.” (citation omitted)).

The Eleventh Circuit also affirmed the applicability of *Geduldig v. Aiello*, 417 U.S. 484 (1974), specifically holding that “a ‘lack of identity’ exists between transgender status and a policy that divides [individuals] into biological male and biological female groups—both of which can inherently contain transgender students.” *Id.* at \*12.

The Eleventh Circuit’s conclusions in *Adams* present persuasive authority in support of Appellants’ arguments that the district court in this case improperly applied intermediate scrutiny to Appellees’ equal protection claims, in contravention of *Geduldig*. ECF No. 44 at 21–32.

Respectfully submitted this the 20<sup>th</sup> day of January, 2023.

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