

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

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IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
RICHARD STOGSDILL AND NANCY STOGSDILL - PETITIONERS

vs.

SOUTH CAROLINA DEPARTMENT OF HEALTH  
AND HUMAN SERVICES - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO  
THE SUPREME COURT OF SOUTH CAROLINA

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APPLICATION FOR EXTENSION OF TIME TO FILE  
PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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APPLICATION FOR EXTENSION OF TIME  
TO FILE PETITION FOR WRIT OF CERTIORARI

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*Attorney for Petitioners*

**To the Honorable John Roberts, as Circuit Judge for the United States Court of Appeals for the Fourth Circuit:**

The Petitioners RICHARD AND NANCY STOGSDILL respectfully request a 60-day extension to petition for a writ of certiorari. This request, if granted, would extend the deadline from September 4, 2023 to November 3, 2023.

The Petitioners will ask this Court to review a judgment of the United States Court of Appeals for the Fourth Circuit, issued on June 6, 2023 (annexed hereto as **Exhibit 1**), which affirmed the decision of the district court in an action containing claims alleging violations of the Medicaid Act under Section 1983, the Americans with Disabilities Act and the Rehabilitation Act. The Court has jurisdiction to review the Fourth Circuit's decision under 28 U.S.C. § 1254.

The Petitioners respectfully request this extension of time for the following reasons:

1. This case presents substantial and essential questions of law affecting the rights of persons with disabilities who depend upon Medicaid services to avoid institutionalization, including the future application of Section 1983 to enforce due process rights of Medicaid participants and violations of 42 U.S.C. 1396a(a)(3), 42 U.S.C. 1396a(a)(8) and 42 U.S.C. 1396n(c)(2) of the Medicaid Act.
2. This case also presents substantial and essential questions of law related to ongoing violations of Title II of the ADA and Section 504 of the Rehabilitation Act by the State Medicaid Agency.
3. Counsel for Petitioner suffered a back injury in May, 2023 and continues to receive therapy and treatment from the MUSC Spine Clinic and has been ordered by her treating physician to reduce her work schedule.
4. Counsel for Petitioner has experienced a continuing refusal by the South Carolina Department of Health and Human Services (SCDHHS) to provide compliant notices and fair hearings required by 42 U.S.C. 1396a(a)(3) and to provide decisions and services with reasonable promptness, as required by 42 U.S.C. 1396a(a)(8).

5. This federal action was initiated in 2012 and was twice remanded by the Fourth Circuit, and the record in the district court alone contains 475 filings, requiring extensive time to review and to summarize in the Petition.

For these reasons, the Petitioners respectfully request a 60-day extension of time to petition for a writ of certiorari to November 3, 2023.

Respectfully submitted,

s/ Patricia Logan Harrison

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Attorney for Petitioners

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

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**No. 22-1069**

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RICHARD STOGSDILL; NANCY STOGSDILL, Parent of Richard Stogsdill, on behalf of themselves and other similarly situated persons,

Plaintiffs - Appellants,

and

ROBERT LEVIN; MARY SELF, Parent of Robert Levin, on behalf of themselves and other similarly situated persons,

Plaintiffs,

v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Defendant - Appellee,

and

KATHLEEN SEBELIUS; CYNTHIA MANN; JOHN DOES 1-20; CMS;  
ANTHONY KECK,

Defendants.

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Appeal from the United States District Court for the District of South Carolina, at Columbia. Joseph F. Anderson, Jr., Senior District Judge. (3:12-cv-00007-JFA)

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Submitted: February 22, 2023

Decided: June 6, 2023

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Before AGEE, HARRIS, and QUATTLEBAUM, Circuit Judges.

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Affirmed by unpublished per curiam opinion.

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Patricia Logan Harrison, Cleveland, South Carolina, for Appellants. Damon C. Wlodarczyk, RILEY, POPE & LANEY, LLC, Columbia, South Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

In 2012, Richard Stogsdill, Robert Levin and their parent caregivers sued the South Carolina Department of Health and Human Services and related individual defendants (collectively, the “SCDHHS”) in the District of South Carolina seeking declaratory and injunctive relief. On multiple grounds, they challenged South Carolina’s Medicaid waiver program, established under 42 U.S.C. § 1396n(c), which provides home and community-based services to certain individuals with severe disabilities and allows individuals to avoid institutionalization. Stogsdill and Levin, two severely disabled individuals, receive such medical equipment and services. Following a bench trial and extensive motions practice, the district court entered judgment granting the plaintiffs’ request for declaratory relief as to a determination about the provision of a single piece of medical equipment, a water walker, and denied all other requested relief. Stogsdill, Levin and their parent caregivers appealed. Considering the entire record and applicable law, we affirm.

In 2010, the SCDHHS implemented amendments to the waiver program that capped certain community-based services and eliminated others. As a result, Stogsdill and Levin experienced a reduction in the services they received. Stogsdill moved for the reconsideration of the reduction of services provided to him and, after the denial of that motion, appealed administratively and to the South Carolina Court of Appeals. Levin did not request such reconsideration.

Stogsdill, Levin and their parent caregivers also brought this action in federal court with a lengthy list of claims against the SCDHHS for alleged violations of the Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act, 42 U.S.C. § 1983,

the Medicaid Act, the Administrative and Procedures Act of the State of South Carolina and the Supremacy and Due Process Clauses of the United States Constitution. In the following years, the parties have engaged in significant motions practice and the district court has conducted several bench trials. The court issued multiple orders that have narrowed the issues, claims, and parties in the case. And we have considered two prior appeals of the district court's decisions.

The last time the case was before us, in March 2019, we affirmed the careful and thoughtful judgments of the district court in nearly all respects but remanded Stogsdill's claims against the state defendants which the district court declined to consider based on abstention principles in light of parallel proceedings taking place in state court. *Stogsdill v. Azar*, 765 F. App'x 873, 877 (4th Cir. 2019).

After we remanded on that limited issue, the district court considered the remaining claims. It dismissed most of those claims based on a combination of preclusion, the outcome of state court litigation and a consent order. But as to the remaining claims, it conducted another bench trial. Following the trial, the district court denied all requested relief except for Stogsdill's request for declaratory relief as to the reasonable promptness provision of the Medicaid Act set forth at 42 U.S.C. § 1396a(a)(8) with respect to Stogsdill's specific request for a water walker, which it granted.

The district court also determined that the SCDHHS provided notice and an opportunity for a fair hearing with respect to the requested medical equipment in accordance with 42 U.S.C. § 1396a(a)(3) and the regulations. In sum, other than as to the provision of the water walker, the district court concluded that Stogsdill, Levin and their

parent caregivers failed to carry their burden of proof showing entitlement to any relief as to any remaining claims. The district court also denied their motion to alter or amend the judgment. Stogsdill, Levin and their parent caregivers appealed that order as well as any other appealable orders below. JA8559; JA8570.

On appeal, Stogsdill, Levin and their parent caregivers argue that the SCDHHS violated the integration mandate of the ADA and the Rehabilitation Act by failing to make reasonable modifications in the State's programs, and that the district court erred in its rulings concerning these provisions. They also argue that the SCDHHS violated their constitutional and statutory rights under 42 U.S.C. § 1983, including rights guaranteed under the Constitution of the United States and the Medicaid Act, particularly the reasonable promptness mandates at 42 U.S.C. § 1396a(a)(3) and 42 U.S.C. § 1396a(a)(8) and the requirements of 42 U.S.C. § 1396n(c)(2) to assure the financial accountability.

But in their opening brief, Stogsdill, Levin and their parent caregivers advance only conclusory arguments and fail to dispute the district court's reasoning or to articulate any meritorious basis for reversal of the court's judgment. This constitutes waiver under our precedent. *See Grayson O. Co. v. Agadir Int'l LLC*, 856 F.3d 307, 316 (4th Cir. 2017) ("A party waives an argument by failing to present it in its opening brief or by failing to develop its argument—even if its brief takes a passing shot at the issue.") (cleaned up); *see also Timpson ex rel. Timpson v. Anderson Cnty. Disabilities & Special Needs Bd.*, 31 F.4th 238, 256–57 (4th Cir. 2022) (finding appellants' argument waived where they "presented no basis for reversing the judgment below."). And to the extent not waived, upon review of the record, we affirm the district court and find no reversible error.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

*AFFIRMED*

FILED: June 6, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 22-1069  
(3:12-cv-00007-JFA)

---

RICHARD STOGSDILL; NANCY STOGSDILL, Parent of Richard Stogsdill, on  
behalf of themselves and other similarly situated persons

Plaintiffs - Appellants

and

ROBERT LEVIN; MARY SELF, Parent of Robert Levin, on behalf of themselves  
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Plaintiffs

v.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES

Defendant - Appellee

and

KATHLEEN SEBELIUS; CYNTHIA MANN; JOHN DOES 1-20; CMS;  
ANTHONY KECK

Defendants

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J U D G M E N T

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In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

FILED: June 6, 2023

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUITNo. 22-1069, Richard Stogsdill v. South Carolina Dept of Health  
3:12-cv-00007-JFA

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NOTICE OF JUDGMENT

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Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

**PETITION FOR WRIT OF CERTIORARI:** The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; [www.supremecourt.gov](http://www.supremecourt.gov).

**VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:** Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, [www.ca4.uscourts.gov](http://www.ca4.uscourts.gov), or from the clerk's office.

**BILL OF COSTS:** A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

**PETITION FOR REHEARING AND PETITION FOR REHEARING EN**

**BANC:** A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

**MANDATE:** In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

**U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM**  
(Civil Cases)

**Directions:** Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
  - Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
  - Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).
- Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: \_\_\_\_\_

Prevailing Party Requesting Taxation of Costs: \_\_\_\_\_

Appellate Docketing Fee (prevailing appellants):			Amount Requested: _____			Amount Allowed: _____	
Document	No. of Pages		No. of Copies		Page Cost (≤\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)		Requested	Allowed (court use only)
<b>TOTAL BILL OF COSTS:</b>						\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Certificate of Service**

I certify that on this date I served this document as follows:

Signature: \_\_\_\_\_ Date: \_\_\_\_\_