

EXHIBIT A

FILED: September 28, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1213
(1:21-cv-00704-CCE-JLW)

WILLIAM H. WYTTENBACH, M.D.

Plaintiff - Appellant

v.

N.C. GOVERNOR ROY A. COOPER, III

Defendant - Appellee

M A N D A T E

The judgment of this court, entered August 08, 2022, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

EXHIBIT B

FILED: August 31, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1213
(1:21-cv-00704-CCE-JLW)

WILLIAM H. WYTTENBACH, M.D.

Plaintiff - Appellant

v.

N.C. GOVERNOR ROY A. COOPER, III

Defendant - Appellee

TEMPORARY STAY OF MANDATE

Under Fed. R. App. P. 41(b), the filing of a timely petition for rehearing or rehearing en banc stays the mandate until the court has ruled on the petition. In accordance with Rule 41(b), the mandate is stayed pending further order of this court.

/s/Patricia S. Connor, Clerk

EXHIBIT C

FILED: August 22, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1213
(1:21-cv-00704-CCE-JLW)

WILLIAM H. WYTTENBACH, M.D.

Plaintiff - Appellant

v.

N.C. GOVERNOR ROY A. COOPER, III

Defendant - Appellee

JUDGMENT

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

UNPUBLISHED

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

No. 22-1213

WILLIAM H. WYTTENBACH, M.D.,

Plaintiff - Appellant,

v.

N.C. GOVERNOR ROY A. COOPER, III,

Defendant - Appellee.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:21-cv-00704-CCE-JLW)

Submitted: August 18, 2022

Decided: August 22, 2022

Before WYNN, THACKER, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

William H. Wyttenbach, Appellant Pro Se. Orlando Luis Rodriguez, Assistant Attorney General, Stephanie A. Brennan, NORTH CAROLINA DEPARTMENT OF JUSTICE, Raleigh, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

William H. Wyttenbach, M.D., appeals the district court's order granting the North Carolina Governor's motion to dismiss Wyttenbach's complaint asserting Wyttenbach's constitutional rights were being violated by various requirements imposed during the COVID-19 pandemic. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *See Wyttenbach v. Cooper*, No. 1:21-cv-00704-CCE-JLW (M.D.N.C. Feb. 24, 2022). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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

WILLIAM H. WYTTENBACH, M.D.,)
)
)
Plaintiff,)
)
)
v.) 1:21-CV-704
)
)
GOVERNOR ROY COOPER, III,)
)
)
Defendant.)

ORDER

The defendant, Governor Roy Cooper, moves to dismiss the complaint filed by the plaintiff, William Wyttenbach. In the complaint, Dr. Wyttenbach contends that his constitutional rights are being violated by various requirements imposed to manage the COVID-19 pandemic. *See generally* Doc. 1.

“[A]ny person invoking the power of a federal court must demonstrate standing to do so.” *Hollingsworth v. Perry*, 570 U.S. 693, 704 (2013). A litigant must prove that he has (1) suffered a concrete and particularized injury, that (2) is fairly traceable to the challenged conduct, and (3) is likely to be redressed by a favorable decision. *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). Once a defendant has made such a challenge, the plaintiff bears the burden of showing that federal jurisdiction is appropriate. *United States ex rel. Vuyyuru v. Jadhav*, 555 F.3d 337, 347 (4th Cir. 2009).

Here, the plaintiff does not identify any specific executive order containing restrictions in effect when his complaint was filed, nor has he presented any evidence in

response to the motion to dismiss, despite the defendant's challenge to the plaintiff's standing. He has not shown either a concrete injury or an injury likely to be redressed by a favorable decision. His claims will be dismissed for lack of subject matter jurisdiction because he does not have standing.

A "court that lacks jurisdiction has no power to . . . dispose of a claim on the merits." *S. Walk at Broadlands Homeowner's Ass'n, Inc. v. OpenBand at Broadlands, LLC*, 713 F.3d 175, 185 (4th Cir. 2013) (holding that "[a] dismissal for lack of standing—or any other defect in subject matter jurisdiction—must be one without prejudice"). Thus, the dismissal must be without prejudice even though his claims are also subject to dismissal for failure to state a claim on which relief may be granted, as they do not pass the plausibility test, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and, to the extent he seeks money damages, because of Eleventh Amendment immunity. *Huang v. Bd. of Governors of Univ. of N.C.*, 902 F.2d 1134, 1138 (4th Cir. 1990).

It is **ORDERED AND ADJUDGED** that the defendant's motion to dismiss, Doc. 18, is **GRANTED** and the complaint is **DISMISSED without prejudice**.

This the 24th day of February, 2022.



UNITED STATES DISTRICT JUDGE

**Additional material
from this filing is
available in the
Clerk's Office.**