

EXHIBIT "A"

RULING FROM FEDERAL COURT

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

BENJAMIN STRATTON,

Plaintiff,

Case No. 1:17-cv-548

v.

COMMONWEALTH OF VIRGINIA,

Defendant,

ORDER

Plaintiff, acting *pro se*, has filed a complaint captioned "42 U.S.C. 1983." Plaintiff names the Commonwealth of Virginia as the sole defendant, but

his nearly-incomprehensible allegations appear to focus on the conduct of the Assistant Attorney General, Marc Birnbaum. Compl. At 17.¹ The thrust of plaintiff's § 1983 claim is that the Assistant Attorney General and the Commonwealth itself "through negligence and/or inadvertence...secur[ed] and present[ed]" plaintiff with an indictment "contrary to both State and Federal Constitutions." *Id.* Plaintiff argues that the indictment was unlawful because plaintiff is "governmentally created Fiction, existing for Commercial purposes only, existing in contemplation of Law, and non-existent." *Id.*

¹ Plaintiff has sued Mr. Birnbaum in his official capacity and mistakenly refers to him as a "District Attorney of the State of Virginia." See Compl. Ex. C.

Moreover, plaintiff contends that he is a debtor with higher priority than the state to some property, and also requests injunctive relief, namely, an Order discharging plaintiff's debts to the state. For the reasons that follow, this frivolous complaint must be dismissed.

Federal courts are courts of limited jurisdiction. Unless a complaint is brought under either the court's federal question jurisdiction, 28 U.S.C. § 1331, or its diversity jurisdiction, 28 U.S.C. § 1332, there is no judicial power to adjudicate the case. And precisely because a federal court is a court of limited jurisdiction, "[Q]uestions of subject-matter jurisdiction mat be raised at any point during the proceedings and may (or, more precisely, must) be

raised *sua sponte* by the court.” *Brickwood*

Contractors, Inc. v. Datanet eng’g, Inc., 369 F.3d

385, 390 (4th Cir. 2004)(enbanc).

Here, plaintiff’s claims regarding his apparent debt to the state and an unlawful indictment are so inscrutable as to defy almost all attempts to discern subject matter jurisdiction.² Thus, to the extent plaintiff argues that his debt must be discharged, the complaint is devoid of any factual allegations sufficient to determine whether subject matter jurisdiction exists. And insofar as plaintiff seeks an order enjoining an ongoing state prosecution

² The complaint includes a screed in which plaintiff, in availing himself of a federal court, simultaneously (and nonsensically) disavows the jurisdiction of the deferral courts. *See, e.g.*, Compl. At 3-5.

following his indictment, it is appropriate here to abstain and dismiss the complaint. *See Younger v. Harris*, 401 U.S. 37 (1971).

To be sure, there is one pellucid point that can be derived from the complaint's murky allegations: No jurisdiction exists here to adjudicate a § 1983 damages claim against the Commonwealth of Virginia or its Assistant Attorney General. It is well-settled that absent waiver, consent, or congressional abrogation, the Eleventh Amendment bars suits directly against a state or its agencies, divisions, departments, and officials in federal court. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89 (1984); *Bockes v. Fields*, 999 F.2d 788, 790 (4th Cir. 1993). There is no question that an action

filed against a state official in his official capacity is tantamount to a claim against the state. *Kentucky v. Graham*, 473 U.S. 159 (1985); *Cromer v. Brown*, 88 F.3d 1315, 1332 (4th Cir. 1996). Not surprisingly, then, the Supreme Court has squarely foreclosed plaintiff's § 1983 claim here. See *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71(1989)("[N]either a State nor its officials sued in their official capacity are 'persons' under § 1983.").³ This matter must therefore be dismissed for lack of jurisdiction.

Accordingly, and for good cause,

³ It is also worth noting that state prosecutors, such as the Assistant Attorney General, are absolutely immune from liability under § 1983 for their conduct in "initiating a prosecution and in presenting the State's case" where, as is apparent from the instant complaint's allegations, that conduct is "intimately associated with the judicial phase of the criminal process." *Imbler v. Pachtman*, 424 U.S. 409, 430-31(1976).

It is hereby **ORDERED** that the matter is
DISMISSED.

It should be further noted that *pro se* plaintiffs are subject to Rule 11, Fed. R. Civ. P., and may be sanctioned, monetarily or otherwise, for signing and filing frivolous pleadings such as the instant complaint.

To appeal this decision, plaintiff must file a written Notice of Appeal with the Clerk of Court within thirty (30) days of receipt of this Order. Failure to file a timely Notice of Appeal waives the right to appeal.

The Clerk is **DIRECTED** to send a copy of this Order to the plaintiff at his address of record and to place this matter among the ended causes.

May 31, 2017

Alexandria, Virginia

/s/ T.S. Ellis, III

United States District Judge

EXHIBIT "B"

RULING FROM APPEAL COURT

FILED: November 20, 2017

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 17-1772

(1:17-cv-00548-TSE-TCB)

BENJAMIN JACOB STRATTON

Plaintiff-Appellant

v.

COMMONWEALTH OF VIRGINIA, d/b/a Marc

Birnbaun

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. 17-1772

BENJAMIN JACOB STRATTON,

Plaintiff-Appellant,

v.

COMMONWEALTH OF VIRGINIA, d/b/a Marc

Birnbaun,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Virginia, at Alexandria. T.S.

Ellis, III, Senior District Judge. (1:17-cv-00548-TSE-
TCB)

Submitted: November 16, 2017 Decided: November
20, 2017

Before GREGORY, Chief Judge, and TRAXLER and
KEENAN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Benjamin Jacob Stratton, Appellant Pro Se.

Unpublished opinions are not binding precedent in
this circuit.

PER CURIAM:

Benjamin Jacob Stratton appeals the district
court's order denying relief on his 42 U.S.C. § 1983
(2012) complaint. We have reviewed the record and
find no reversible error. Accordingly, we affirm for
the reasons stated by the district court. *Stratton v.*
Commonwealth of Va., No. 1:17-cv-00548-TSE-TCB

(E.D. Va. May 31, 2017). 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

NO. _____

IN THE SUPREME COURT OF THE UNITED
STATES

Benjamin-Jacob:Stratton®- PETITIONER

Vs.

COMMON WEALTH OF VIRGINIA

D/B/A: Mar Birnbaum- RESPONDENT(S)

PROOF OF SERVICE

I, Benjamin-Jacob:Stratton®, do swear or declare that
on this date, March 15, 2018, 2018, as
required by the PETITION FOR WRIT OF
CERTIORARI on each party to the above proceeding
or that party's counsel, and on every other person

required to be served, by depositing an envelope containing the above documents in the United States mail properly address to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days. The names and addressed of those served are as follow:

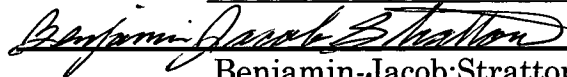
Marc Brinbaum

4110 Chain Bridge Rd. RM 114

Fairfax, Va. [22030]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 15, 2018


Benjamin-Jacob:Stratton®