

**19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA**

PROFESSOR KEN M. LEVY

Plaintiff,

v.

**BOARD OF SUPERVISORS OF
LOUSIANA STATE UNIVERSITY AND
A&M COLLEGE**

Defendants.

Civil Action No. C-758,368

Division 23

Judge Tarvald A. Smith

**EXPEDITED MOTION FOR STAY OR DISSOLUTION OF MANDATORY
TEMPORARY RESTRAINING ORDER, OR ALTERNATIVE NOTICE OF INTENT TO
APPLY FOR EMERGENCY SUPERVISORY WRITS**

COMES NOW, Defendant, Board of Supervisors of Louisiana State University and A&M College (LSU), who moves the Court for an expedited order staying or, alternatively, dissolving the Temporary Restraining Order (TRO) entered January 30, 2024, that mandates LSU's "immediate reinstatement [of] Petitioner [Ken Levy] to his position and teaching responsibilities." Ex. A (TRO).

Summary and Request for Relief

The TRO was wrongly issued and this case is wildly premature and without merit. As widely publicized, LSU placed Petitioner Levy on paid administrative leave pending an investigation of student complaints about inappropriate, vulgar, and potentially harassing conduct in the classroom. Levy sued, and the duty judge granted the TRO. Levy's next class is Tuesday, **February 4.**

The basis for dissolution is black letter law: That a mandatory injunction issued by TRO is unlawful in form because it moots the underlying case in full. *See* La. C.C.P. art 3603. More fundamentally, this matter is simply an employment dispute in the early stage of an administrative process where the employee's rights are fully protected. Tenure ensures due process prior to termination. It does not create a right to seek judicial relief prior to a final administrative decision,¹

¹ The First Circuit has repeatedly upheld the constitutionality of LSU's authority to issue administrative leave. *See Delahoussaye v. Bd. of Sup'rs of Cmty. & Tech. Colleges*, 2004-0515 (La. App. 1 Cir. 3/24/05), 906 So. 2d 646, 648 ("removal policy section is not violative of due process merely because it authorizes the imposition of leave without pay"); *Jackson v. Bd. of Supervisors for S. Univ. & Agric. & Mech. Coll.*, 2021-0241 (La. App. 1 Cir. 3/11/22), 372 So. 3d 336, 349 (professor not entitled to "any process with respect to loss of [teaching] responsibilities ... while she was on administrative leave"); *Hicks v. Stone*, 425 So. 2d 807, 811 (La. Ct. App. 1982), *writ denied*, 429 So. 2d 129 (La. 1983) (no cognizable "property interest" in deanship

nor create a right to perform certain job duties, such as lecturing students.

The TRO, if it stands, invites misguided litigation disrupting traditional employment proceedings before final decisions are even made. The Court should stay the TRO to diffuse the public fiasco, let the administrative procedure run its course, and issue a ruling at the appropriate time. If stay of the TRO is denied, Defendant alternatively requests leave to seek writs. *See Cave v. Cave*, 2020-0240 (La. App. 1 Cir. 3/25/21), 2021 WL 1134946.

Under these extraordinary circumstances, LSU respectfully requests a decision on this motion before **Monday, February 3 at 10 A.M.**, to allow LSU the opportunity, if necessary, to seek a supervisory writ from the First Circuit prior to the **February 4** class Levy plans to attend.

Grounds for Relief

1.

The Louisiana Supreme Court and the First Circuit have firmly held that a TRO “may not be issued” to compel a party to “take a specific action.” *City of New Orleans v. Board of Directors of Louisiana State Museum*, 98-1170 (La. 3/2/99), 739 So.2d 748, 756. (“A mandatory injunction **may not be issued** on a merely prima facie showing that the party seeking the injunction can prove the necessary elements; instead, the party must show by a preponderance of the evidence at a hearing that he is entitled to a preliminary injunction.”) (emphasis added)); *Louisiana Convenience v. Legier*, 2024-0730 (La. App. 1 Cir. 12/27/24), ___ So.3d ___, 2024 WL 5233193 (Guidry, J.) (“mandatory injunctive relief, which commands the doing of some action, cannot be issued without a hearing on the merits”).

2.

On January 17, 2024, Petitioner Levy, a professor at LSU Paul M. Hebert School of Law, was suspended administratively with full pay and released from teaching responsibilities (on Tuesdays and Thursdays) during an investigation into student complaints of inappropriate, vulgar, and harassing statements made in class during the first day of the 2025 spring semester.² LSU informed Professor Levy in writing that he would have an opportunity to respond to all allegations.

responsibilities when tenured professor retained "appointment as Professor of the College of Education and his salary of \$24,082.00 was not reduced").

² The Affidavit by Professor Levy attached to the Petition is inaccurate. An audio recording of the lecture reveals that his statements were far more inappropriate than his sterilized version. LSU has an obligation to respond swiftly to student complaints about inappropriate statements confirmed by indisputable evidence.

Substantively, the suspension merely allows Professor Levy to receive full salary without his teaching obligation during the investigation. Due to winter weather, LSU then cancelled classes for all students the following week through January 27.

3.

The first Tuesday students returned to classes—on January 28—Professor Levy filed a “Petition for Temporary Restraining Order and Injunctive Relief” seeking, *inter alia*, a mandatory injunction ordering LSU to reinstate him to his responsibility to teach. After filing, Levy’s counsel provided LSU a courtesy copy of the Petition by email. The next day, counsel for LSU sent a letter to the Honorable Tarvald Smith objecting to the entry of a TRO. *See* Ex. B. Nevertheless, a duty judge entered the TRO *ex parte* on January 30.

4.

The *ex parte* TRO is wrong in form, substance, and its underlying legal basis. Further, it has interrupted the orderly transition of faculty to accommodate students. Not only will a stay restore the status quo, but also it will avoid the public spectacle of Professor Levy’s classroom appearances before a decision on the request for a preliminary injunction. That common sense option is far better than supervisory appellate correction of a plainly erroneous *ex parte* order. *See, e.g., Girouard v. Summit Fin. Wealth Advisors, LLC*, 2020-261 (La. App. 3 Cir. 3/24/21), 318 So. 3d 231, 246–47.

5.

LSU respectfully requests a stay of proceedings or a stay of the TRO, as proposed in the attached Order. This remedy will effectively defer a decision on the TRO’s validity, maintain the status quo, and allow the matter to proceed to hearing on the preliminary injunction without disruption.

6.

Alternatively, LSU provides notice of its intent to seek an emergency writ to Louisiana First Circuit Court of Appeal from the TRO and requests, in the alternative, that this Court set a return date as proposed in the alternative attached Order.

7.

Finally, LSU requests expedited consideration of this motion, preferably before the end of today, Friday, January 31, to allow LSU, if necessary, the opportunity to seek emergency relief at the First Circuit before Professor Levy’s next scheduled class on Tuesday, February 4, 2025, at

1:30 p.m.

Wherefore, Defendant, LSU, respectfully prays for an order staying the TRO or, alternatively, for an order setting a return for seeking writs.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been forwarded to all counsel of record by electronic mail and/or by placing same in the United States mail, postage prepaid and properly addressed, this 31st day of January, 2025.

/s/ Jimmy R. Faircloth, Jr.

Jimmy R. Faircloth, Jr.