

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

NUMBER 055371 DIVISION 1

TROY BROWN, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE LOUISIANA SENATE

VERSUS

THE SENATE OF THE STATE OF LOUISIANA

PETITION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

The Petition of Troy Brown, individually and in his capacity as a Member of the Louisiana Senate, a resident of the full age of majority of Assumption Parish, Louisiana, respectfully represents:

1.

Made defendant herein is the Senate of the State of Louisiana, domiciled in East Baton Rouge Parish, Louisiana.

2.

In 2011, Petitioner was duly elected by a majority of citizens within State Senate District 2. State Senate District 2 is a majority minority district which received United States Justice Department approval upon its creation. No recall petition by the citizens of State Senate District 2 has commenced.

3.

Never in the history of Louisiana nor, upon information and belief and therefore Petitioner alleges, the history of the United States has any duly elected, sitting State Senator or Legislator been removed from his or her position as a result of a no contest plea to any misdemeanor.

4.

In fact, Petitioner shows, upon information and belief, other Louisiana Legislators, present and recent past, have been actually convicted and/or pled guilty to various misdemeanors, but have not been proposed for punishment or expulsion. Petitioner further shows that the crime of driving while under the influence is also a misdemeanor. In accordance with La. R.S. 13:3667.3, Petitioner would be required to file a motion with a court in order to obtain the records for all current legislators with misdemeanor convictions and/or guilty pleas

and to compel their attendance at his hearing. Yet, pursuant to Chapter 17 of the Senate Rules, no provision exists to provide Petitioner any avenue to comply with the applicable law and to present this highly relevant evidence at his hearing.

5.

On February 13, 2017, Louisiana Senators Claitor, Hewitt, and Mizell introduced Resolution No. 3, a copy of which is attached hereto, purporting to seek the expulsion of Senator Brown solely on the basis of Brown's pleas of nolo contendere (no contest) to a charge of simple battery (a misdemeanor) and to a charge of domestic abuse battery (a misdemeanor). On February 13, 2017, Louisiana Senator Colomb introduced Resolution No. 5, a copy of which is attached hereto, purporting to impose discipline on Senator Brown on the same basis as Resolution No. 3.

6.

The Resolutions, by their own terms, seek to involuntarily remove and/or punish/discipline Senator Brown as self-described "punishment" for the no contest pleas.

7.

The attempted removal/expulsion/disciplinary proceeding currently contemplated by the defendant is a "civil proceeding."

8.

Previously, however, the Louisiana Legislature expressly exempted itself from coverage under the Louisiana Administrative Procedure Act (hereinafter APA), La. R.S. 49:950, *et seq.* At La. R.S. 49:951(2), the Louisiana Legislature defined "Agency" to which the APA applies as:

- (2) "Agency" means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the . . . constitution and statutes of Louisiana, **except the legislature or any branch, committee, or officer thereof, . . .**

(Emphasis added)

9.

This means that the proposed civil proceeding, to-wit, any hearing to remove and/or otherwise punish Senator Brown is subject to the Louisiana Code of Evidence and DOES NOT enjoy any purportedly lax standards afforded "agencies" under the APA, i.e., La. R.S. 49:956.

10.

Pursuant to Louisiana Code of Evidence, Art. 410, a plea of nolo contendere is NOT admissible:

A. Except as otherwise provided in this Article, evidence of the following is not, **in any civil or criminal proceeding**, admissible against the party who made the plea . . .:

. . . (2) **In a civil case, a plea of nolo contendere.** . .
(emphasis added)

11.

While La. C.Evid. Art. 410 identifies two (2) exceptions, neither of the exceptions apply in this instance.

12.

Indeed, the law very clearly provides that Brown's nolo contendere pleas are not admissible in the anticipated hearing before the Louisiana Senate seeking to punish him and/or involuntarily expel him disenfranchising over 120,000 voters in the process. Unlike proceedings involving various Louisiana Boards and Commissions which are subject to the APA and thus may possibly seek to introduce a nolo contendere plea, because the Louisiana Senate specifically exempted itself from the APA, the Louisiana Rules of Evidence entirely preclude the Senate from introducing, much less relying upon, Brown's no contest pleas.

13.

Furthermore, if the Louisiana Senate contends that it actually would be subject to the APA in order to attempt to garner the relaxed evidence standard, Petitioner shows that the Louisiana Senate and several of its members have already violated Petitioner's rights to a fair and impartial hearing, to-wit, La. R.S. 49:960 (if the APA applies) forbids members or employees of an agency assigned to render a decision or to make findings of fact. . . **shall not communicate, directly or indirectly**, in connection with any issue of fact or law, with any. . . officer, employee, or agent engaged in the performance or investigative, prosecuting, or advocating functions. . ." (emphasis added).

14.

Petitioner shows that defendant's ex parte communications have occurred in public, during various press conferences, and as recently as the date of this filing, February 14, 2017, and are substantially likely to continue. Attached hereto and made part hereof are various press articles.

15.

Petitioner is absolutely entitled to represent the citizens of Senate District 2 pursuant to the United States Constitution and, more specifically, pursuant to the Louisiana Constitution. La. Const. Art. I, §10.

16.

Petitioner shows that defendant proposes his involuntary expulsion purportedly pursuant to La. Const. Art. I, §7 which provides, in pertinent part: “Each house shall be the judge of the qualifications and elections of its members; shall determine its rules of procedure, **not inconsistent with the provisions of this constitution**; may punish its members for disorderly conduct or contempt; and may expel a member with concurrence of two-thirds of its elected members. . .” (emphasis added). However, the Louisiana Senate has not adopted any rules of conduct, much less rules of qualification for any of its members, save and except the following Rules:

Senate Rule 5.1: Absence

No member of the Senate shall be absent from any session of the Senate unless he has been granted leave by the Senate or is unable to attend because of illness.

Senate Rules 6.1 and 6.2: Interruption of business prohibited; Discourteous language -each of which are subject to “punishments” outlined in Rule 6.3: Call to order for violation of rules; appeal; Rule 6.4: Clearing the chamber; Rule 6.8: Member not to be interrupted while speaking; Rule 6.10: Members to remain in seat; exceptions.

Senate Rule 13.59: Members; duty to attend meetings; attendance record

Senate Rule 13.60: Conflict of interest; recusal of members

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A committee or committee chairman may report instances of misconduct or indecorum by any committee member or other person to the Senate for its consideration and action.

Senate Rule 18.1 and 18.2: Statement of Policy Regarding Equal Employment Opportunities, Statement of Policy Against Sexual Harassment.

17.

The only guidance regarding what may or may not constitute grounds for involuntary removal of a duly elected Senator are found at La. Const. Art. I, §10 which specifically provides for the qualifications of a citizen to run for an hold office and La. Const. Art. X, §24. Art. I, §10 provides that a person “who has been convicted within this state of a **felony and who has exhausted all legal remedies**” shall not be permitted to qualify as a candidate or take public elective office. Art. X, §24 provides that a state official, whether elected or appointed, “shall be liable to impeachment for commission or conviction, during his term of office **of a felony or for**

malfeasance or gross misconduct while in such office.” See also: *Malone v. Shyne*, 937 So.2d 343, 353 (La. 2006): wherein a convicted felon, later pardoned, was allowed to serve in public office – citing Senate Bill 321 clearing the way for him to so do.

18.

Senator Brown did not commit any felony.

19.

Furthermore, the only published Court opinion regarding removal of a sitting State Senator is *Gerald v. Louisiana State Senate*, 408 So.2d 426 (La. App. 1st Cir. 1981). In *Gerald*, then reelected Senator Gaston Gerald had been **convicted** of a Federal crime, his conviction became final, and he was sentenced to and actually serving time in a Federal prison in Fort Worth, Texas at the time he was to take his seat in the state senate. After Gerald failed to appear for his duties in the Senate because he was serving his prison sentence in another state, the Louisiana Senate invoked La. Const. Art. III, §7 seeking to expel Gerald because of his numerous then accruing absences – NOT because he was a convicted FELON.

20.

In spite of his incarceration, Gerald filed an injunction to block the election of his successor claiming various due process violations. In its opinion, the Court rejected Gerald’s arguments primarily because his absences had been verified, his attorney had been present on his behalf and allowed to question and confront all witnesses, including the right to cross-examine, he received reasonable notice, a hearing, and, as reflected in the opinion, his Federal felony conviction was final. In footnote 1 of the opinion, the Court took great pains to recognize, as a determinative factor, that Gerald’s actual conviction of a felony (as opposed to a nolo contendere plea) was final and Gerald, through his attorney, had been afforded ample opportunity to contest the truth and accuracy of all of the evidence. In the words of the Court: “This testimony was competent evidence, properly received by the senate.”

21.

Contrary to Gerald, Petitioner has not been convicted of a felony and under Louisiana law, Brown’s nolo contendere plea is inadmissible in any Senate hearing for the purposes of discipline or expulsion.

22.

Petitioner shows that he is entitled to due process under the Federal and Louisiana Constitution prior to his removal from office. La. Const. Art. I, §2 provides that Petitioner cannot be deprived of his right to serve in his elected capacity, including receipt of his attendant salary, without due process of the laws. La. Const. Art. I, §19 further provides that Petitioner shall not be subjected to forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based.

23.

Petitioner shows that although the Senate adopted its Senate Rules Chapter 17, copies of which are attached, he has still not been served as required pursuant to Senate Rule 17.8B. Petitioner further shows that defendant intends to introduce evidence of his nolo contendere pleas in the civil proceeding directly violating his rights, including his right to confront competent evidence properly admissible.

24.

Additionally, Petitioner shows that Resolution 3 and Resolution 5, on their face, are being offered as punishment in violation of Petitioner's rights of double jeopardy, in violation of U.S. Const. Am. V, La. Const. Art. I, §15.

25.

Petitioner shows that the proposed punishment which may result from the civil proceeding subjects him twice to jeopardy for the same offenses and that the actions of the Senate will unnecessarily intrude upon the province of the judiciary regarding the sentencing and punishment for crimes in Louisiana. See: *Butler v. Department of Public Safety & Corrections*, 609 So.2d 790, 796-797 (La. 1992); *United States v. Halper*, 490 U.S. 435, 104 L.Ed.2d 487, 109 S.Ct. 1892, 1902 (1989): narrow exception exists where the civil sanction to the extent it is the second sanction has not been fairly characterized as remedial, but only as a deterrent or retribution.

26.

Petitioner shows that immediate and irreparable harm will result if a Temporary Restraining Order, and, in due course a preliminary and thereafter permanent injunction, is not issued. Specifically, although Petitioner has not been served as required under Senate Rule 17.8B, Petitioner shows that an alleged "hearing" seeking to expel him has been scheduled for

tomorrow, February 15, 2017, at 10:00 a.m. according to press reports. Petitioner shows that he has not and will not be afforded any reasonable opportunity to prepare for said hearing, no opportunity to call witnesses on his behalf, no opportunity to formulate his defense, no opportunity to subpoena records and documents. Petitioner further shows that if the “hearing” goes forward tomorrow, Petitioner will be denied any opportunity to review the evidence proposed to be introduced and contest any such evidence. Petitioner shows he will be denied any meaningful due process and opportunity to be heard prior to expulsion and his involuntary removal from public office.

27.

Attached hereto and made part hereof is the Affidavit of Irreparable Harm pursuant to La. C.C.P. Art. 3603.

28.

Attached hereto and made part hereof is the Certification of Counsel pursuant to La. C.C.P. Art. 3603 attesting to counsel’s notification of defendant Senate through its President, the Honorable John Alario, Jr. prior to the filing of this Petition.

29.

Attached hereto and made part hereof is the Verification of Petitioner pursuant to La. C.C.P. Art. 3603.

30.

Petitioner is entitled to and desires issuance of an immediate Temporary Restraining Order herein and, in due course preliminary and thereafter permanent injunctive relief, directed defendant Louisiana State Senate, its officers, agents, employees, and those persons in active concert or participation with them ordering the immediate cessation of any hearing regarding punishment, discipline, or expulsion of Senator Troy Brown arising from his nolo contendere pleas to two (2) misdemeanor charges. Petitioner further shows that no expenditure of public funds will be required in conjunction with the issuance of the requested Injunctive Relief. The irreparable injury that Petitioner sustained on behalf of Defendant’s actions will not require an expenditure of public funds or create a deficit.

31.

Petitioner is entitled to and desire issuance of a Preliminary and, in due course, Permanent Injunction directed to Defendant in the form and substance requested herein.

32.

Attached hereto and made part hereof is the Memorandum in Support of Petition for Injunctive Relief.

33.

Petitioner further requests all such other relief to which he is entitled by law or in equity.

WHEREFORE, Troy Brown, prays after due proceedings are had that a Temporary Restraining Order issue herein immediately and without bond directed to Defendant Louisiana State Senate, its officers, agents, employees, and those persons in active concert or participation with them ordering the immediate cessation of any hearing regarding punishment, discipline, or expulsion of Senator Troy Brown arising from his nolo contendere pleas to two (2) misdemeanor charges, and due course, issuance of a Preliminary and thereafter a Permanent Injunction in the form and substance requested herein, and such other relief the Court deems necessary and proper at law and in equity and that may be just and reasonable under the circumstances of this matter.

Respectfully submitted,

By: _____

Jill L. Craft, T.A., #20922
Crystal G. Bounds, #27490
Attorney at Law, LLC
509 Saint Louis Street
Baton Rouge, Louisiana 70802
(225) 663-2612

PLEASE SERVE:

Louisiana State Senate
Through its President,
John Alario, Jr.
Louisiana State Senate
900 N. Third Street
Baton Rouge, Louisiana

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

NUMBER _____ DIVISION “ _____ ”

TROY BROWN, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE LOUISIANA SENATE

VERSUS

THE SENATE OF THE STATE OF LOUISIANA

ORDER

Upon consideration of the Petition for Temporary Restraining Order and Injunctive Relief, the Affidavit of Irreparable Harm, Verification of Petitioner, the law, and the evidence;

IT IS ORDERED that a Temporary Restraining Order issue herein immediately and without bond directed to Defendant, the Senate of the State of Louisiana, its officers, agents, employees, and those persons in active concert or participation with them ordering the immediate cessation of any hearing regarding punishment, discipline, or expulsion of Senator Troy Brown arising from his nolo contendere pleas to two (2) misdemeanor charges, and due course, issuance of a Preliminary and thereafter a Permanent Injunction in the form and substance requested herein.

IT IS FURTHER ORDERED that defendant, the Senate of the State of Louisiana, appear to show cause on the ____ day of _____, 2017, at ____ .m. why a preliminary, and thereafter, permanent injunction should not be issued and Petitioner awarded of all such other relief to which Petitioner is entitled at law or in equity.

Baton Rouge, Louisiana, this ____ day of February, 2017, at _____ o'clock
____.m.

Judge, 19th Judicial District Court

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

NUMBER _____ DIVISION “ _____ ”

TROY BROWN, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE LOUISIANA SENATE

VERSUS

THE SENATE OF THE STATE OF LOUISIANA

AFFIDAVIT OF IRREPARABLE HARM

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, personally came and appeared:

Senator Troy Brown, individually and in his capacity as duly elected Senator

a resident of the full age of majority of Assumption Parish, Louisiana, who, upon being duly sworn did depose and state that:

-In 2011, I was duly elected to Senate District 2 which is a majority minority district;

-I entered a nolo contendere plea to a misdemeanor charge of simple battery and I entered a nolo contendere plea to a misdemeanor charge of domestic abuse battery;

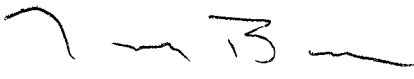
-As a result, the Courts imposed varying punishments and conditions. As to the first matter, all conditions imposed by the Court have been fulfilled. As to the second matter, nearly all of the conditions imposed by the Court have been fulfilled.

-I have never been convicted of any felony.

-I have faithfully served the citizens of Senate District 2 since my original election in 2011. No recall petition has been filed by any of the citizens of Senate District 2.

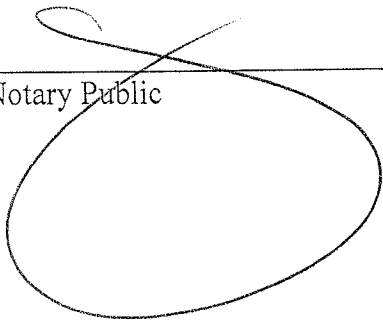
-Unless a Temporary Restraining Order is issued herein, I will suffer irreparable harm, loss, and damage. Specifically, I will be subjected to punishment, now for the second time, for the same misdemeanor offenses which have been handled and already decided by the courts. I am facing expulsion from my public service which is my lifelong dream even though I pled no contest voluntarily. The evidence to be offered against me will consist of the nolo contendere pleas in this civil proceeding. I am being denied and will be denied due process of the law prior to my proposed expulsion from office and the citizens of my district will be unserved during the special session and the upcoming fiscal only session. Specifically, as of the signing of this document, I have not been served as required by Senate Rule 17.8B. Yet, I am reading reports in the media that a hearing will be held tomorrow, February 15, 2017, in the morning before I have been afforded any reasonable opportunity to review and respond to the charges, the content of both Resolutions, 3 and 5, formulate my defense, subpoena witnesses and documents, and prepare for a fair and impartial hearing. Additionally, several of my colleagues, who will be deciding the issues presented, have already been making public statements about my proposed expulsion before any hearing has occurred much less my opportunity to be heard and present a defense. I also understand the Senate Rules do not provide for any rights of appeal should I disagree with or wish to contest the determination of the Louisiana Senate.

-This Affidavit is made upon my personal knowledge.



Troy Brown

SWORN TO AND SUBSCRIBED before me, Notary Public, this 14 day of February,
2017.

Notary Public


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

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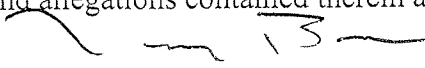
VERIFICATION

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned Notary Public, personally came and appeared:

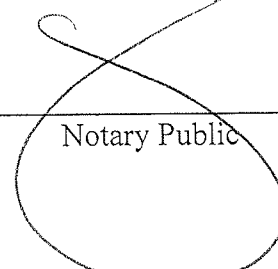
Troy Brown

a resident of the full age of majority of Assumption Parish, Louisiana, who upon being duly sworn did depose and state that he is the Petitioner in the above and foregoing Petition, that he has read same and all facts and allegations contained therein are true and correct.



Troy Brown

SWORN TO AND SUBSCRIBED before me, Notary Public, this 14 day of February,
2017.



Notary Public

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

NUMBER _____ DIVISION “ _____ ”

TROY BROWN, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE LOUISIANA SENATE

VERSUS

THE SENATE OF THE STATE OF LOUISIANA

MEMORANDUM IN SUPPORT OF
PETITION FOR TEMPORARY RESTRAINING ORDER AND INJUNCTIVE RELIEF

MAY IT PLEASE THE COURT:

FACTS:

In 2011, Petitioner was duly elected by a majority of citizens within State Senate District 2. State Senate District 2 is a majority minority district which received United States Justice Department approval upon its creation. No recall petition by the citizens of State Senate District 2 has commenced. Never in the history of Louisiana nor, upon information and belief and therefore Petitioner alleges, the history of the United States has any duly elected, sitting State Senator or Legislator been removed from his or her position as a result of a no contest plea to any misdemeanor. In fact, Petitioner shows, upon information and belief, other Louisiana Legislators have been actually convicted of various misdemeanors, but have not been proposed for punishment or expulsion. Petitioner further shows that the crime of driving while under the influence is also a misdemeanor.

On February 13, 2017, Louisiana Senators Claitor, Hewitt, and Mizell introduced Resolution No. 3, a copy of which is attached hereto, purporting to seek the expulsion of Senator Brown solely on the basis of Brown's pleas of nolo contendere (no contest) to a charge of simple battery (a misdemeanor) and to a charge of domestic abuse battery (a misdemeanor). On February 13, 2017, Louisiana Senator Colomb introduced Resolution No. 5, a copy of which is attached hereto, purporting to impose discipline on Senator Brown on the same basis as Resolution No. 3.

The Resolutions, by their own terms, seeks to involuntarily remove and/or punish/discipline Senator Brown as self-described “punishment” for the no contest pleas.

LAW AND ARGUMENT:

The attempted removal/expulsion/disciplinary proceeding currently contemplated by the defendant is a “civil proceeding.” At the outset, it is duly noted that Petitioner intends to seek subpoenas duces tecum for the criminal records of all sitting Legislators. Petitioner shows that he is informed and believes that currently serving, and from recent past, legislators have misdemeanor convictions and/or pled guilty to misdemeanors, yet were not punished, proposed for expulsion, nor disciplined by the Senate or House. Pursuant to La. R.S. 13:3667.3, Petitioner submits that a judge would be required, upon written motion, to determine the issuance of such discovery and, specifically subpoenas for any and all members of the Louisiana Legislature. Yet, in its Rules, namely, Chapter 17, the Senate makes no provision for said subpoenas in spite of the commands of Louisiana law. Although Petitioner has not yet been served pursuant to Senate Rule 17.8B, he submits that any hearing which would not afford him the opportunity to seek and obtain this crucial information prior to and in conjunction with said hearing violates his rights of due process.

The Louisiana Legislature expressly exempted itself from coverage under the Louisiana Administrative Procedure Act (hereinafter APA), La. R.S. 49:950, *et seq.* At La. R.S. 49:951(2), the Louisiana Legislature defined “Agency” to which the APA applies as:

- (2) “Agency” means each state board, commission, department, agency, officer, or other entity which makes rules, regulations, or policy, or formulates, or issues decisions or orders pursuant to, or as directed by, or in implementation of the . . . constitution and statutes of Louisiana, **except the legislature or any branch, committee, or officer thereof, . . .**

(Emphasis added)

This means that the proposed civil proceeding, to-wit, any hearing to remove and/or otherwise punish Senator Brown is subject to the Louisiana Code of Evidence and DOES NOT enjoy any purportedly lax standards afforded “agencies” under the APA, i.e., La. R.S. 49:956. Pursuant to Louisiana Code of Evidence, Art. 410, a plea of nolo contendere is NOT admissible:

- B. Except as otherwise provided in this Article, evidence of the following is not, **in any civil or criminal proceeding**, admissible against the party who made³ the plea . . .:

. . . (2) **In a civil case, a plea of nolo contendere. . .**

(emphasis added)

While La. C.Evid. Art. 410 identifies two (2) exceptions, neither of the exceptions apply in this instance. Indeed, the law very clearly provides that Brown's nolo contendere pleas are not admissible in the anticipated hearing before the Louisiana Legislature seeking to involuntarily expel him from the Senate. Unlike proceedings involving various Louisiana Boards and Commissions which are subject to the APA and thus may possibly seek to introduce a nolo contendere plea, because the Louisiana Senate specifically exempted itself from the APA, the Louisiana Rules of Evidence entirely preclude the Senate from introducing, much less relying upon, Brown's no contest pleas.

Furthermore, if the Louisiana Senate contends that it actually would be subject to the APA in order to attempt to garner the relaxed evidence standard, Petitioner shows that the Louisiana Senate and several of its members have already violated Petitioner's rights to a fair and impartial hearing, to-wit, La. R.S. 49:960 (if the APA applies) forbids members or employees of an agency assigned to render a decision or to make findings of fact. . . **shall not communicate, directly or indirectly**, in connection with any issue of fact or law, with any. . . officer, employee, or agent engaged in the performance or investigative, prosecuting, or advocating functions. . .” (emphasis added). Petitioner shows that defendant's ex parte communications have occurred in public, during various press conferences, and as recently as the date of this filing, February 14, 2017, and are substantially likely to continue. Attached hereto and made part hereof are various press articles.

Petitioner is absolutely entitled to represent the citizens of Senate District 2 – 120,000+ of them - pursuant to the United States Constitution and, more specifically, pursuant to the Louisiana Constitution. La. Const. Art. I, §10. Petitioner shows that defendant proposes his involuntary expulsion purportedly pursuant to La. Const. Art. I, §7 which provides, in pertinent part: “Each house shall be the judge of the qualifications and elections of its members; shall determine its rules of procedure, **not inconsistent with the provisions of this constitution**; may punish its members for disorderly conduct or contempt; and may expel a member with concurrence of two-thirds of its elected members. . .” (emphasis added). However, the Louisiana Senate has not adopted any rules of conduct, much less rules of qualification for any of its members, save and except the following Rules:

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No member of the Senate shall be absent from any session of the Senate unless he has been granted leave by the Senate or is unable to attend because of illness.

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The only guidance regarding what may or may not constitute grounds for involuntary removal of a duly elected Senator are found at La. Const. Art. I, §10 which specifically provides for the qualifications of a citizen to run for an hold office and La. Const. Art. X, §24. Art. I, §10 provides that a person “who has been convicted within this state of a **felony and who has exhausted all legal remedies**” shall not be permitted to qualify as a candidate or take public elective office. Art. X, §24 provides that a state official, whether elected or appointed, “shall be liable to impeachment for commission or conviction, during his term of office **of a felony or for malfeasance or gross misconduct while in such office.**” See also: *Malone v. Shyne*, 937 So.2d 343, 353 (La. 2006): wherein a convicted felon, later pardoned, was allowed to serve in public office – citing Senate Bill 321 clearing the way for him to so do.

Senator Brown did not commit any felony. Furthermore, the only published Court opinion regarding removal of a sitting State Senator is *Gerald v. Louisiana State Senate*, 408 So.2d 426 (La. App. 1st Cir. 1981). In *Gerald*, then reelected Senator Gaston Gerald had been **convicted** of a Federal crime, his conviction became final, and he was sentenced to and actually serving time in a Federal prison in Fort Worth, Texas at the time he was to take his seat in the state senate. After Gerald failed to appear for his duties in the Senate because he was serving his prison sentence in another state, the Louisiana Senate invoked La. Const. Art. III, §7 seeking to expel Gerald because of his numerous then accruing absences – NOT because he was a convicted FELON.

In spite of his incarceration, Gerald filed a petition seeking to block the election of his successor claiming various due process violations. In its opinion, the Court rejected Gerald’s arguments primarily because his absences had been verified, his attorney had been present on his behalf and allowed to question and confront all witnesses, including the right to cross-examine,

he received reasonable notice, a hearing, and, as reflected in the opinion, his Federal felony conviction was final. In footnote 1 of the opinion, the Court took great pains to recognize, as a determinative factor, that Gerald's actual conviction of a felony (as opposed to a nolo contendere plea) was final and Gerald, through his attorney, had been afforded ample opportunity to contest the truth and accuracy of all of the evidence. In the words of the Court: "This testimony was competent evidence, properly received by the senate." Contrary to Gerald, Petitioner has not been convicted of a felony and under Louisiana law, Brown's nolo contendere plea is inadmissible in any Senate hearing for the purposes of discipline or expulsion.

Petitioner shows that he is entitled to due process under the Federal and Louisiana Constitution prior to his removal from office. La. Const. Art. I, §2 provides that Petitioner cannot be deprived of his right to serve in his elected capacity, including receipt of his attendant salary, without due process of the laws. La. Const. Art. I, §19 further provides that Petitioner shall not be subjected to forfeiture of rights or property without the right of judicial review based upon a complete record of all evidence upon which the judgment is based.

Petitioner shows that although the Senate adopted its Senate Rules Chapter 17, copies of which are attached, he has still not been served as required pursuant to Senate Rule 17.8B. Petitioner further shows that defendant intends to introduce evidence of his nolo contendere pleas in the civil proceeding directly violating his rights, including his right to confront competent evidence properly admissible. Additionally, Petitioner shows that Resolution 3 and 5, on their face, are being offered as punishment in violation of Petitioner's rights of double jeopardy, in violation of U.S. Const. Am. V, La. Const. Art. I, §15.

Petitioner shows that the proposed punishment which may result from the civil proceeding subjects him twice to jeopardy for the same offenses and that the actions of the Senate will unnecessarily intrude upon the province of the judiciary regarding the sentencing and punishment for crimes in Louisiana. See: *Butler v. Department of Public Safety & Corrections*, 609 So.2d 790, 796-797 (La. 1992); *United States v. Halper*, 490 U.S. 435, 104 L.Ed.2d 487, 109 S.Ct. 1892, 1902 (1989): narrow exception exists where the civil sanction to the extent it is the second sanction has not been fairly characterized as remedial, but only as a deterrent or retribution.

Petitioner shows that immediate and irreparable harm will result if a Temporary Restraining Order and, in due course, a preliminary and thereafter permanent injunction is not

issued. Specifically, although Petitioner has not been served as required under Senate Rule 17.8B, Petitioner shows that an alleged “hearing” seeking to expel him has been scheduled for tomorrow, February 15, 2017, at 10:00 a.m. according to press reports. Petitioner shows that he has not and will not be afforded any reasonable opportunity to prepare for said hearing, no opportunity to call witnesses on his behalf, no opportunity to formulate his defense, no opportunity to subpoena records and documents. Petitioner further shows that if the “hearing” goes forward tomorrow, Petitioner will be denied any opportunity to review the evidence proposed to be introduced and contest any such evidence. Petitioner shows he will be denied any meaningful due process and opportunity to be heard prior to expulsion and his involuntary removal from public office.

Pursuant to La. C.C.P. Art. 3601, in pertinent part:

An injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant, or in other cases specifically provided by law. . . [D]uring the pendency of an action for an injunction the court may issue a temporary restraining order, a preliminary injunction, or both, except in cases where prohibited, in accordance with the provisions of this Chapter.

As a matter of black-letter law in Louisiana, a petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a Constitutional right. See *Jurisich v. Jenkins*, 1999 WL 955374 (La. 1999). Violation of law is irreparable harm. See *Camp et al., supra*. When there is a violation of due process or of Constitutional guarantees, a court may enjoin the Constitutional violation. *South Cent. Bell Tel. Co. v. La. Pub. Serv. Com.*, 555 So. 2d 1370, 1373 (La. 1990).

The Court in *Camp, Dresser & McKee, Inc. v. Steimle & Associates, Inc.*, 652 So.2d 44, 47, No. 94-547 (La. App. 5th Cir. 1995), upheld the issuance of a preliminary injunction in favor of an engineering firm and against a competing engineering firm, finding: It is not necessary to show irreparable injury, however, when the act complained of is unlawful. Indeed, the *Camp* Court, in upholding the issuance of the preliminary injunction to preserve the status quo pending a trial of the issues on the merits of the case concluded:

. . . for the purposes of the injunction, Sunbelt and Emmer were likely in violation of the Jefferson Code by removing solid waste from the disposal site and that

Steimle and Sunbelt probably violated the trespass laws as well. Thus, CDM **did not need to show irreparable injury to enjoin** defendants from entering the property and going through the trash belonging to plaintiffs.

... Since unfair trade practices are deemed unlawful conduct under the act, CDM is not required to show irreparable injury to enjoin Steimle and Sunbelt from future dissemination of the information gathered from its dumpster. **Thus, whether or not CDM showed irreparable injury is irrelevant in this case.**

Camp, at p. 47-48

(Emphasis added)

The Fourteenth Amendment to the United States Constitution provides, in pertinent part, "... nor shall any State deprive any person of life, liberty or property, without due process of law...." Likewise, Article I, § 2 of the Louisiana Constitution provides that no person shall be deprived of life, liberty, or property, except by due process of law. To claim the protections of due process, a petitioner must show the existence of some property or liberty interest, which has been harmfully affected by state action. *Acadian Ambulance Serv., Inc. v. Parish of E. Baton Rouge*, 722 So. 2d 317, 322 (La. Ct. App. 1998). Here, Petitioner shows the substantial likelihood of a deprivation of his rights without due process of law.

CONCLUSION:

Unless immediately restrained, Petitioner's rights and, derivatively, the rights of those who he was duly elected to represent will be violated. Hence, the TRO and, in due course, injunctive relief must be granted.

Respectfully submitted,

By: _____

Jill L. Craft, T.A., #20922

Crystal G. LaFleur, #27490

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Baton Rouge, Louisiana 70802

(225) 663-2612

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

NUMBER _____ DIVISION “ _____ ”

TROY BROWN, INDIVIDUALLY AND IN HIS CAPACITY AS A
MEMBER OF THE LOUISIANA SENATE

VERSUS

THE SENATE OF THE STATE OF LOUISIANA

CERTIFICATION OF COUNSEL PURSUANT TO La. C.C.P. ART. 3603

The undersigned counsel for Petitioner hereby certifies that I faxed a copy of the Petition to the Honorable John Alario, Jr. at 225/342-1140, prior to filing the Petition with the Court. Attached hereto and made part hereof is the fax confirmation sheet confirming the sending and receipt of said faxes prior to filing the Petition.

Faxed February 11, 2017, Baton Rouge, La.

SLS 171ES-5

ORIGINAL

2017 First Extraordinary Session

SENATE RESOLUTION NO. 3

BY SENATORS CLAITOR, HEWITT AND MIZELL

02/14/2017 TUE 18:59

FAX 2256632613

Jill L Craft

001

*** FAX TX REPORT ***

TX IMAGE SET NOT TO DISPLAY

TRANSMISSION OK

JOB NO.	0920
DESTINATION ADDRESS	2253421140
SUBADDRESS	
DESTINATION ID	
ST. TIME	02/14 18:45
TX/RX TIME	13' 46
PGS.	34
RESULT	OK

1 WHEREAS, the National Coalition Against Domestic Violence defines domestic
2 violence as the willful intimidation, physical assault, battery, sexual assault, and/or other
3 abusive behavior as part of a systematic pattern of power and control perpetrated by one
4 intimate partner against another. It includes physical violence, sexual violence, threats, and
5 emotional abuse; and

6 WHEREAS, according to the National Coalition Against Domestic Violence,
7 domestic violence is one of the most chronically underreported crimes. Only twenty-five
8 percent of all physical assaults, twenty percent of all rapes, and fifty percent of all stalking
9 incidents perpetrated against females by their partners are reported to the police. For the
10 small number of cases that do get reported, on average, a woman will be assaulted by her
11 partner or ex-partner thirty-five times before reporting it to the police; and

12 WHEREAS, Louisiana ranks fourth in the nation for the rate of women murdered by
13 men; and

14 WHEREAS, the 2010 Summary Report for the National Center for Injury Prevention
15 and Control indicated that over five thousand adult women per year living in Louisiana will
16 experience domestic violence; and

17 WHEREAS, according to information published by the Louisiana Coalition Against
18 Domestic Violence, Louisiana leads the nation in domestic homicides and has done so since
19 1997 with at least one domestic homicide in every parish of the state in 2009, and with a
20 total of seventy-one deaths statewide in 2011; and

21 WHEREAS, domestic violence assails an individual's right to dignity, security, and
22 humanity; inflicts physical, emotional, and financial injury on its victims; and exists in every
23 segment of our population; and

24 WHEREAS, in 2015, the Louisiana Legislature enacted a compendium of legislation
25 aimed at strengthening its laws against domestic violence; and

26 WHEREAS, the members of the Senate do not condone domestic abuse violence in
27 any form and wherever it may occur, and hereby determine that the commission of domestic
28 violence by a member of the Senate violates his sworn oath of office to "support the
29 constitution and laws of this state", represents disorderly conduct, and is misconduct in
30 office of the highest form; and

1 WHEREAS, all public officers have a duty to obey the law and Senator Brown's
2 actions have displayed a blatant disregard for the law which has breached the public's trust;
3 and

4 WHEREAS, Senator Brown's disregard for the law in committing domestic abuse
5 violence brings dishonor and disrepute to the Senate; and

6 WHEREAS, Article III, Section 7 of the Constitution of Louisiana provides that each
7 house of the legislature may punish its members for disorderly conduct or contempt, and
8 may expel a member with concurrence of two-thirds of its elected members; and

9 WHEREAS, Chapter 17 of the Senate Rules of Order provide for the manner in
10 which a member may be expelled or subjected to disciplinary action under the authority
11 granted by the Constitution of Louisiana.

12 THEREFORE, BE IT RESOLVED by the Senate of the Legislature of the state of
13 Louisiana, two-thirds of the members thereof concurring, that Senator Troy E. Brown be,
14 and is hereby expelled, from membership in the Senate and that the office of Senator for the
15 Second Senatorial District of Louisiana be and it is hereby declared, vacant.

16 BE IT FURTHER RESOLVED that the secretary of the Senate is hereby authorized
17 and directed and without delay, to officially notify Troy E. Brown in writing of his expulsion
18 from the Senate, accompanied by a certified copy of this Resolution.

19 BE IT FURTHER RESOLVED that the president of the Senate, in compliance with
20 the provisions of R.S. 18:601 shall, within ten days after the day and hour this Senate
21 Resolution is finally adopted by the Senate, issue a proclamation stating that a vacancy exists
22 in the Second Senatorial District and order a special election to fill the vacancy, and
23 immediately notify the secretary of state of such proclamation.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yolanda J. Dixon.

DIGEST

SR 3 Original

2017 First Extraordinary Session

Claitor

Expels Senator Troy E. Brown from the Senate of the state of Louisiana and declares a
vacancy in the Second Senatorial District.

2017 First Extraordinary Session

SENATE RESOLUTION NO. 5

BY SENATOR COLOMB

SENATE. Provides for discipline of a member of the Senate.

1 A RESOLUTION

2 To formally discipline and censure Senator Troy E. Brown for misconduct while serving as
3 a member of the Louisiana State Senate.

4 WHEREAS, Senator Troy E. Brown was arrested and booked in New Orleans,
5 Louisiana, on November 28, 2015, on suspicion of domestic abuse battery; and

6 WHEREAS, Senator Brown was accused of punching a girlfriend after an argument
7 in a New Orleans hotel; and

8 WHEREAS, on September 14, 2016, Senator Brown pled no contest to simple
9 battery to this charge; and

10 WHEREAS, a plea of *nolo contendere*, or no contest, has a similar effect as pleading
11 guilty to the crime; and

12 WHEREAS, Senator Brown was again arrested on July 17, 2016, and charged with
13 domestic abuse battery; and

14 WHEREAS, Senator Brown was accused of biting his spouse during an argument at
15 his Geismar home; and

16 WHEREAS, on January 11, 2017, Senator Brown again pled no contest to the
17 July 17, 2016, charge of domestic abuse battery, marking his second plea within a
18 four-month time period; and

1 WHEREAS, the National Coalition Against Domestic Violence defines domestic
2 violence as the willful intimidation, physical assault, battery, sexual assault, and/or other
3 abusive behavior as part of a systematic pattern of power and control perpetrated by one
4 intimate partner against another. It includes physical violence, sexual violence, threats, and
5 emotional abuse; and

6 WHEREAS, Louisiana ranks fourth in the nation for the rate of women murdered by
7 men; and

8 WHEREAS, the 2010 Summary Report for the National Center for Injury Prevention
9 and Control indicated that over five thousand adult women per year living in Louisiana will
10 experience domestic violence; and

11 WHEREAS, according to information published by the Louisiana Coalition Against
12 Domestic Violence, Louisiana leads the nation in domestic homicides and has done so since
13 1997 with at least one domestic homicide in every parish of the state in 2009, and with a
14 total of seventy-one deaths statewide in 2011; and

15 WHEREAS, domestic violence assails an individual's right to dignity, security, and
16 humanity; inflicts physical, emotional, and financial injury on its victims; and exists in every
17 segment of our population; and

18 WHEREAS, in 2015, the Louisiana Legislature enacted a compendium of legislation
19 aimed at strengthening its laws against domestic violence; and

20 WHEREAS, the members of the Senate of the Legislature do not condone domestic
21 abuse violence in any form and wherever it may occur, and hereby determine that the
22 commission of the crime of domestic violence by a member of the Senate violates his sworn
23 oath of office to "support the constitution and laws of this state", commits disorderly
24 conduct, and is misconduct in office in the highest form; and

25 WHEREAS, all public officers have a duty to obey the law and Senator Brown's
26 actions have displayed a blatant disregard for the law which has breached the public's trust;
27 and

28 WHEREAS, Senator Brown's disregard for the law in committing domestic abuse
29 violence brings dishonor and disrepute to the Senate as a body; and

30 WHEREAS, Article III, Section 7 of the Constitution of Louisiana provides that each

1 house of the legislature may punish its members for disorderly conduct or contempt; and

2 WHEREAS, Chapter 17 of the Senate Rules of Order provides for the manner in
3 which a member may be subjected to disciplinary action under the authority granted by the
4 Constitution of Louisiana.

5 THEREFORE, BE IT RESOLVED by the Senate of the Legislature of the state of
6 Louisiana, that Senator Troy E. Brown be disciplined and censured as follows:

7 (1) That Senator Troy E. Brown be fined in the amount of two thousand five hundred
8 dollars. The amount of the fine shall be paid personally by Senator Brown and shall be made
9 payable to the Louisiana Coalition for Domestic Violence immediately upon the effective
10 date of this Resolution.

11 (2) That Senator Troy E. Brown shall refrain from participation in each Senate
12 committee of which he is a member, shall refrain from voting on any question at any
13 meeting of the Senate or on any ballot of the Senate and shall refrain from exercising any
14 Senatorial function for six weeks from the payment of the fine provided in this Resolution,
15 or six weeks from the effective date of this Resolution, whichever is later.

16 (3) That Senator Troy E. Brown shall enroll in a domestic violence course sanctioned
17 or approved by the Twenty-third Judicial District Court for six months, beginning from the
18 effective date of this resolution. Upon completion of the course, written documentation shall
19 be provided to the president of the Senate.

20 BE IT FURTHER RESOLVED that the president of the Senate is hereby authorized
21 and directed and without delay, to officially notify Troy E. Brown in writing of the discipline
22 ordered by the Senate, accompanied by a certified copy of this Resolution.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Yolanda J. Dixon.

DIGEST

SR 5 Original

2017 First Extraordinary Session

Colomb

Provides for the discipline and censure of Senator Troy E. Brown.

CHAPTER 17. RULES APPLICABLE TO DISCIPLINE AND EXPULSION OF MEMBERS

Rule 17.1. Applicability

This Chapter shall apply whenever a resolution is introduced in the Senate to take disciplinary action against or to expel a senator, but shall not apply to any action by the President under the provisions of Chapter 6 or any other provision of the rules.

Rule 17.2. Select Committee on Discipline and Expulsion

A. Notwithstanding any other rule to the contrary, a resolution covered by this Chapter shall be referred to and be reported by a select committee, which is hereby created and which shall be designated the Select Committee on Discipline and Expulsion. The members of the select committee shall be composed of all members of the Senate; however, any senator who is the subject of a resolution to be considered by the committee is recused and shall not participate as a member thereof. Except as otherwise provided in this Chapter, Chapter 13 shall govern the procedure to be used and the actions to be taken by the select committee. No such resolution shall be referred at any time to a standing committee.

B. The President shall be the chairman of the committee and the President Pro Tempore shall be the vice chairman.

C. The Secretary of the Senate shall serve as secretary of the committee and shall be its chief administrative officer. He shall be responsible for taking, preserving, and certifying testimony, verbatim proceedings, and minutes of the meetings of the committee. He shall be the custodian of all its records and documents and shall perform such other duties in connection with its work as are directed by the committee or its chairman or by the Senate.

Rule 17.3. Sergeant at Arms; duties

The Sergeant at Arms of the Senate shall serve as Sergeant at Arms of the select committee and shall perform services for the committee in accordance with his powers, duties, and functions otherwise set forth in these rules or as directed by the committee, its chairman, or the Senate.

Rule 17.4. Meetings; notice; quorum; vote; oath

A. All meetings of the Select Committee on Discipline and Expulsion shall be held in the Senate Chamber; Notice of meetings, insofar as practicable, shall be given in accordance with applicable rules of the Senate governing notice of meetings of standing committees during legislative sessions.

B. A majority of the total members of the committee shall constitute a quorum. The affirmative vote of majority of those present and voting, assuming a quorum, shall be required for actions of the committee.

C. Prior to consideration of any resolution referred to it or undertaking any business in connection therewith, except establishing a quorum, the members of the select committee shall subscribe to the following oath, which shall be administered by the secretary or, in his absence, by a person qualified to administer oaths selected by the chairman:

"I do solemnly swear (affirm) that in all things appertaining to the matters referred to this Select Committee and contained in Senate Resolution No. _____ of _____, I will do impartial justice according to the Constitution and laws. I do solemnly swear that I will support the Constitution and

laws of the United States and of this State, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as a member of the Senate Select Committee on Discipline and Expulsion in the aforesaid matter, according to the best of my ability and understanding, so help me God."

Rule 17.5. Employees

A. The chairman of the committee shall have authority to assign any employees of the Senate and, in necessary cases, to employ additional personnel, including but not limited to court reporters, to assist the committee in carrying out its functions and duties. He shall fix the terms and conditions and the compensation of personnel employed to assist the committee, and such employees shall be deemed to be employees of the Senate.

B. The chairman also shall have authority to direct the use of any facilities, equipment, and supplies of the Senate for use in connection with the work of the committee.

Rule 17.6. Records

A verbatim record shall be made of all of the proceedings of the committee at each meeting, including all testimony of witnesses, shall be transcribed without delay, and shall be a public record. Written evidence presented shall be made a part of the record. Copies shall be made available, as prepared, to the members of the committee and its staff and to the senator involved in the proceeding and his legal counsel.

Rule 17.7. Initiation of action; Senate resolution required

A. An action to expel or to discipline a senator shall be initiated only by a Senate resolution, which shall be in the form used by the Senate for such resolutions and shall bear a brief title indicative of its subject and purpose; shall set forth the causes and grounds for which expulsion or disciplinary action by the Senate is sought; and shall state the action sought to be taken by the Senate.

B. Each such resolution shall be introduced and, except as otherwise specifically provided in this Chapter, shall be subject to the processes established by these rules for Senate resolutions, particularly as set forth in Chapter 10 hereof.

Rule 17.8. Procedure in the Senate

A. When a resolution seeking the expulsion of or disciplinary action against a senator is introduced, a motion to indefinitely postpone shall be in order. The motion shall require the favorable vote of a majority of the elected members for adoption. If no such motion is adopted, the Secretary shall direct the attention of the presiding officer to the fact of its introduction. The presiding officer then shall announce to the Senate the day and hour when the select committee shall commence its hearings on the resolution.

B. If the senator who is the subject of the resolution is present in the chamber when the resolution is introduced, the presiding officer shall cause the Sergeant at Arms to deliver to him a copy of the resolution and a copy of these rules, together with written notice of the day and hour when the committee will meet to commence its hearings.

C. If the senator is not present in the chamber, the presiding officer shall inquire of the Secretary whether or not he has answered roll call or cast any vote on that legislative day. If the Secretary informs him and the Senate that the senator has not answered roll call or cast any vote, the presiding officer shall (1) appoint legal counsel to represent the absent senator before the committee at all of its proceedings and (2) direct the Sergeant at Arms to locate the senator and deliver to him, and also to the attorney appointed by the presiding officer, a copy of the resolution, a copy of these rules, a

written notice of the day and hour when the select committee will commence its hearings on the resolution, and the name, address, and telephone number of the legal counsel appointed to represent him unless and until he designates legal counsel of his own choice.

D. If, after reasonable effort, the Sergeant at Arms is unable to locate the absent senator or for any reason is unable to deliver to him the documents herein stipulated, delivery to the attorney appointed by the presiding officer shall be deemed sufficient notification to the senator. If at any time during the proceedings in the committee the absent senator selects legal counsel to represent him or if he appears in person and notifies the committee that he does not desire to be represented, the attorney appointed by the presiding officer shall be discharged.

E. An attorney appointed to represent an absent senator shall be compensated in accordance with the terms and conditions and in the amount determined by the President as chairman of the committee. Such compensation shall be an expense of the committee, payable out of funds available to the Senate for expenses of the Senate and committees.

Rule 17.9. Procedure in committee

The Select Committee on Discipline and Expulsion shall provide to the senator who is the subject of the resolution under consideration all of the rights of a person to due process of law and, accordingly, shall:

- (1) Conduct all hearings as public hearings, and only after informing the member in writing of the date and time of each meeting held for the purpose.
- (2) Invite the member who is the subject of the hearing to attend all meetings of the committee in person and to be accompanied by legal counsel, or to be represented at the hearings by legal counsel of his choice if he is unable to be present.
- (3) Afford the member full opportunity to be heard and to present witnesses on his behalf and extend to him the right to confront and to cross examine witnesses called by the committee.
- (4) Advise the member immediately of the date and time of each meeting, in cases where the committee adjourns prior to completing its work and submitting its report to the Senate.

Rule 17.10. When meetings may be held; report privileged; Senate action

A. Notwithstanding any provisions of this Chapter or of these rules, meetings of and hearings conducted by the select committee may be called and held on any day and at any time when the Senate is not in session.

B. The report of the select committee shall be privileged and may be received and acted upon at any time.

Rule 17.11. Subpoena power; punishment for contempt

A. The select committee is hereby specifically and expressly granted the power and authority, with the written approval of the chairman of the committee, to hold hearings, subpoena witnesses, administer oaths, require the production of books and records, and to do all other things necessary to accomplish the purpose of its hearings and deliberations.

B. In the event a subpoena or subpoena duces tecum is not honored, the select committee also shall have the power to punish for contempt and to provide for the prosecution of any individual for

refusal to testify, false swearing, or perjury before the select committee in accordance with law.

Rule 17.12. Receipt of resignation; authority of presiding officer

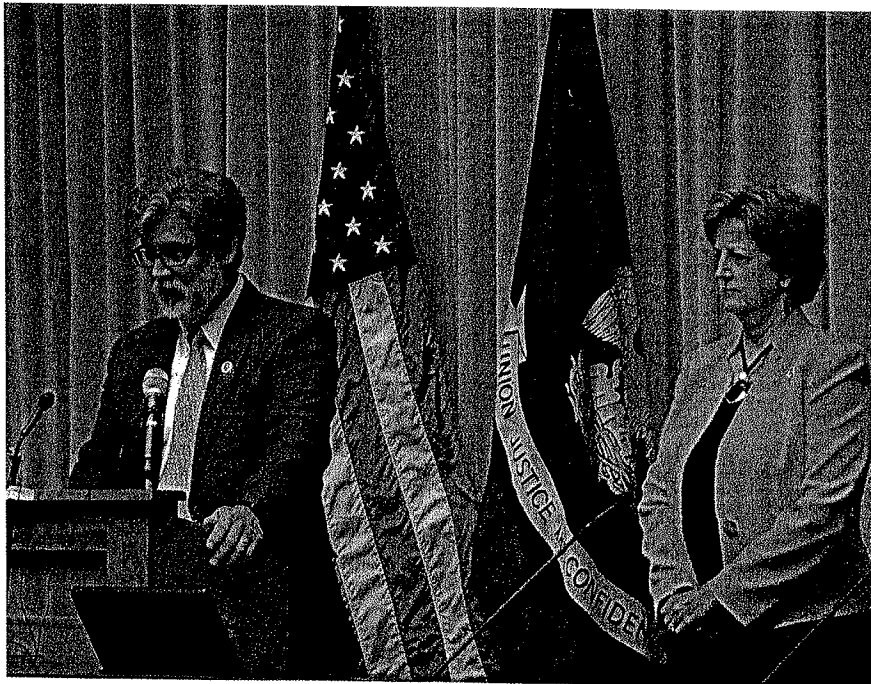
Notwithstanding any provisions of this Chapter, if, at the time a resolution covered by the provisions hereof is introduced, a written resignation signed by the senator who is the subject of the resolution has been received by the President, he may determine that no meeting of the select committee shall be held. If such a resignation is received by him after hearings by the committee have commenced, he shall have authority to terminate the meetings of the committee.

Questions and comments may be directed to websen@legis.la.gov
Baton Rouge, Louisiana.

http://www.theadvocate.com/baton_rouge/news/politics/legislature/article_8af26e58-f227-11e6-ba50-97ba5efb9709.html

Key date set to consider disciplining, possibly expelling, Louisiana state Sen. Troy Brown

BY MARK BALLARD | MBALLARD@THEADVOCATE.COM PUBLISHED FEB 13, 2017 AT 3:36 PM | UPDATED FEB 13, 2017 AT 8:46 PM



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Advocate Photo by Mark Ballard

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Republican State Senators Dan Claitor, of Baton Rouge, and Sharon Hewitt, of Slidell, announced Monday afternoon, Feb. 13, 2017, that they would file a resolution seeking to expel their colleague, Sen. Troy Brown, D-Napoleonville, by Feb. 22. Brown twice pleaded no contest in two different domestic violence prosecutions.

Mark Ballard

The state Senate will begin considering on Wednesday two competing resolutions – one to suspend, the other to expel – Sen. Troy Brown, who had pleaded no contest in two different cases involving domestic violence.

Senators will meet at 10 a.m. Wednesday to officially authorize issuing subpoenas and collecting documents for the start of the first disciplinary action against a sitting senator in 35 years. The Senate then will meet Monday, Feb. 20, to decide whether kick out the Napoleonville Democrat or to fine him and suspend for six weeks.

Brown said his lawyer, Jill Craft, would respond to the resolutions on Tuesday.

"I take no pleasure in doing this, but I believe that expulsion from the Senate is the best course of action in the case of Sen. Brown," said Slidell Republican Sen. Sharon Hewitt, who joined Baton Rouge Republican Sen. Dan Claitor and Sen. Beth Mizell, R-Franklinton, to co-sponsor Senate Resolution 3, which would expel Brown. Hewitt said she is committed to pursuing legal protections for the victims of domestic violence.

Baton Rouge Democratic Sen. Yvonne Dorsey Colomb filed Senate Resolution 5 seeking a less harsh punishment. The special session convened at 6:30 p.m. Monday and must adjourn before midnight on Tuesday, Feb. 22.

RELATED

State Sen. Troy Brown could face suspension or expulsion during special session

State Sen. Troy Brown could face suspension or expulsion during special session

Both resolutions were challenged and both motions to "postpone indefinitely" failed. The expulsion resolution overcame the challenge on a vote of 3-31. The suspension alternative moved forward on a vote of 17-18.

Under Senate Rule 17, the resolution seeking to discipline a colleague has to be accepted by the body, which was done late Monday night. Then, the chamber convenes as a Select Committee on Discipline and Expulsion. In such hearings, a targeted senator is allowed to bring a lawyer and present rebuttal testimony.

Rather than operating in the style of a trial, such a hearing in the Senate Chamber would operate more like a committee hearing with Senate President John Alario, R-Westwego, acting as chairman. Senators may ask questions and submit amendments to the wording of the resolution. Twenty-six of the 39 members would have to agree on the final resolution, which dictate Brown's ultimate discipline, if any.

The hearings would be open to the public.

Brown could seek a temporary restraining order, asking the 19th Judicial District Court in Baton Rouge to stop the proceeding. Claitor said he would expect the court to rule quickly and "get out of the way" of what essentially is an internal Senate matter. If the court drags out the issue, however, Claitor said the resolution can be refiled and taken up during the regular legislative session, which begins April 10.

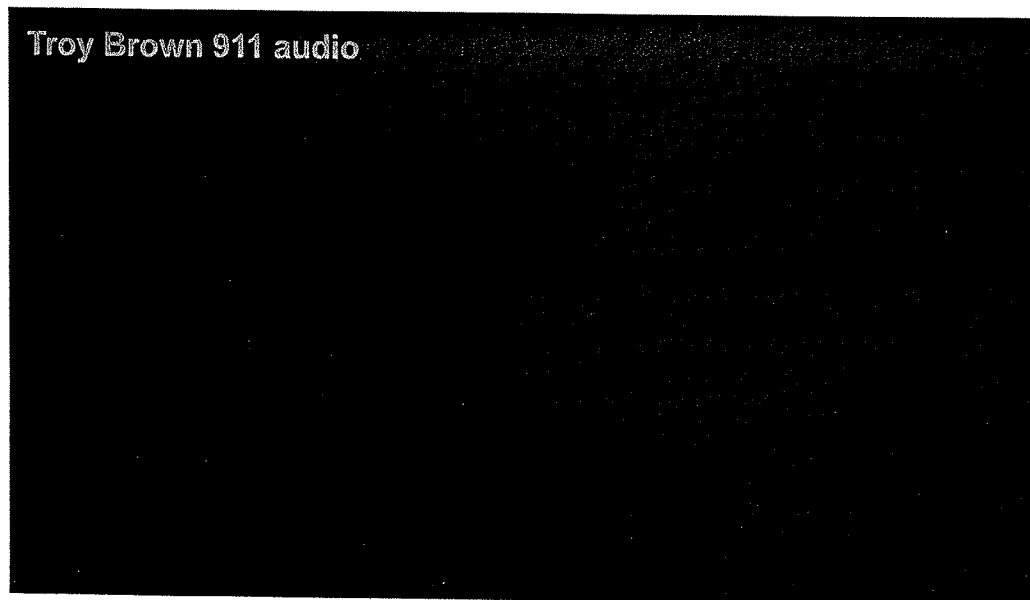
The rules were established in 1981 after three-term Baton Rouge Sen. Gaston Gerald was convicted in 1979 of attempting to extort \$25,000 from a contractor and was sentenced to federal prison in Fort Worth. The Senate voted 33-3 to expel him for not attending the legislative session.

Alario said in an interview after the Senate adjourned that times have changed. "There ought to be some consequences for" crimes involving domestic abuse, he said.

Brown last month pleaded no contest to a domestic abuse charge arising from an incident involving his wife. He was fined \$300, sentenced to 30 days in jail — all but 48 hours were suspended — and he was ordered to do 64 hours of community service as well as participate in a domestic violence program. Brown also got three months of probation and was assessed other costs.

He previously had pleaded no contest, meaning he accepts the validity of the accusations, in a separate incident in which he was accused of punching his girlfriend in the eye hours after the 2015 Bayou Classic football game in New Orleans in 2015.

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