

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
ALEXANDRIA DIVISION**

GREGORY GORMANOUS

CASE NO. 1:22-CV-01425

VERSUS

JUDGE TERRY A. DOUGHTY

**LOUISIANA STATE BOARD OF
EXAMINERS OF PSYCHOLOGISTS ET AL**

MAGISTRATE JUDGE PEREZ-MONTES

MEMORANDUM ORDER

Before this Court is a Motion for Preliminary Injunction [Doc. No. 6] filed by Dr. Gregory Gormanous (“Gormanous”). An Opposition [Doc. No. 11] has been filed by Defendants Louisiana State Board of Examiners of Psychologists (“LSBEP”) and Jaime T. Monic (“Monic”), in her official capacity as Executive Director of LSBEP. A Reply [Doc. No. 12] was filed by Gormanous on July 7, 2022.

For the reasons set forth herein, Gormanous’ Motion for Preliminary Injunction is DENIED.

I. INTRODUCTION

LSBEP is Louisiana’s licensing board for psychologists. The LSBEP was established pursuant to Louisiana Revised Statute § 37:2351. It was enacted to safeguard life, health, property, and the public welfare of the State of Louisiana in order to protect the people of Louisiana against unauthorized, unqualified, and improper application of psychology.

Gormanous has been one of the six members of LSBEP since 2018. The LSBEP normally conducts monthly board meetings at its office in Baton Rouge, Louisiana.

After Louisiana Governor John Bel Edwards declared a statewide public health emergency, LSBEP conducted its board meetings by Zoom (which was permitted by Governor Edwards' order). The COVID-19 emergency order expired on March 16, 2022.

After expiration of Governor Edward's COVID-19 order, LSBEP resumed in-person board meetings. On May 6, 2022, Gormanous sent an email¹ to LSBEP chair Dr. Gina Gibson ("Gibson"), requesting that he be allowed to attend the next board meeting set for May 20, 2022, remotely. Gormanous attached a note² from his cardiologist, Dr. Robert J. Freeman, Jr. ("Freeman"), which read as follows:

As his physician, I strongly recommend that he be allowed to use accommodations that allow him to participate by using teleconference in all activities of his profession. Specifically, Dr. Gormanous has cardiac and pulmonary issues for which he must minimize his potential contacts in person. Secondly, he should not be directly indoors with persons not properly masked or not fully vaccinated and boosted. Thirdly, he is capable of performing his board duties remotely, as well as he qualifies for accommodations under the Federal ADA statute.

On May 13, 2022, Amy Lowe ("Lowe"), counsel for LSBEP and Monic, sent an email to Gormanous³ and all board members⁴ to discuss the upcoming May 20, 2022, meeting. Lowe explained her decision on Gormanous' request to attend the upcoming meeting remotely. Lowe stated she had reviewed Gormanous' request and believed that Louisiana's Open Meetings Law and licensee's due process rights did not allow remote attendance at upcoming meetings.

Also on May 13, 2022, Gibson responded to Gormanous' request for accommodation.⁵ While denying the request for Gormanous to attend the May 2022 meeting remotely, Gibson conveyed to Gormanous the following accommodations:

¹ [Doc. No. 6-4]

² [Doc. No. 6-2]

³ [Doc. No. 6-6]

⁴ Gormanous had previously copied all LSBEP board members when making his request.

⁵ [Doc. No. 6-5]

1. Signage stating: “In consideration of possible high-risk individuals attending the meeting, it is requested that board members, staff and individual members of the public practice social distancing and wear a mask at all times unless speaking.”
2. A reserved table with a single seat, designated only for you, with restricted access that is 6ft. or more away from other persons.
3. LSBEP can offer one-way broadcasting at any meeting involving your participation as a Board Member, which may reduce the number of members in the public attending in person.

Additionally, if you would like to attend the May 20, 2022 meeting remotely, as a member of the general public, that request could be accommodated. However, you would not be able to participate in Board discussions held in executive session, vote, or be considered as part of the quorum for the meeting.

[Doc. No. 11 p. 8].

Thereafter, on May 17, 2022, Gormanous’ counsel Emily Westermeier (“Westermeier”) sent an email⁶ to LSBEP board members, again asking that Gormanous be allowed to attend board meetings by Zoom.

On June 6, 2022, the pending Motion for Preliminary Injunction was filed.

II. LAW AND ANALYSIS

A. Law

There are four prerequisites for the extraordinary relief of preliminary injunction or TRO.

A court may grant such relief only when the movant establishes that:

- (1) There is a substantial likelihood that the movant will prevail on the merits;
- (2) There is a substantial threat that irreparable harm will result if the injunction is not granted;

⁶ [Doc. No. 6-7]

(3) The threatened injury (to the movant) outweighs the threatened harm to the defendant; and

(4) The granting of a preliminary injunction will not disserve the public interest.

Clark v. Prichard, 812 F.2d 991, 993 (5th Cir. 1987).

All four of the above requirements must be met in order to grant the preliminary injunction. *Commerce Park at DFW Freeport v. Mardian Const. Co.*, 729 F.2d 334, 341 (5th Cir. 1984).

To show irreparable harm, the movant must show that (1) the harm is imminent; (2) the injury would be irreparable; and (3) the movant has no other adequate legal remedy. *Chacon v. Granata*, 515 F.2d 922, 925 (5th Cir. 1975). As a general rule, an injunction is not appropriate to secure post-judgment legal relief in the form of damages, *ITT Community Dev. Corp. v. Barton*, 569 F.2d 1351, 1360-61 (5th Cir. 1978).

A preliminary injunction is an extraordinary remedy which should not be granted unless the party seeking it has clearly carried the burden of persuasion on all four requirements.⁷

B. Analysis

Gormanous alleges he was denied reasonable accommodations under the Americans with Disabilities Act (“ADA”). No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subject to discrimination by any such entity.⁸

To prevail on a claim for relief under Title II, a plaintiff must prove that: (1) he has a qualifying disability; (2) he is being denied the benefits of services, programs, or activities for

⁷ *Bluefield Water Ass’n. Inc. v. City of Starkville, Miss.* 577 F.3d 250, 253 (5th Cir. 2009).

⁸ 42 U.S.C. Sec. 12132, Title II ADA

which the public entity is responsible, or is otherwise discriminated against by the public entity; and (3) such discrimination is by reason of his disability.⁹

Title II requires public entities to make reasonable modifications in policies, practices, or procedures for disabled individuals, unless the entity can show that a modification would fundamentally alter the nature of the service or program it offers.¹⁰ A plaintiff bears the burden of proving his requested modification is reasonable.¹¹ The ADA requires equal access and provides a cause of action when meaningful access is not provided.¹²

In this case, Gormanous maintains he has a disability under the ADA, and the LSBEP is discriminating against him based on his disability by not allowing him to attend its meetings remotely. LSBEP and Monic maintain that to allow Gormanous to attend the meetings remotely would violate the Louisiana Open Meetings Law¹³ and the due process rights of the persons appearing before the board.

Gormanous cites *Silver v. City of Alexandria*, 470 F.Supp. 3d 616 (W.D. La. July 6, 2020), which is factually similar to the case at bar. A city council member of the City of Alexandria filed suit under the ADA to require the City of Alexandria to allow him to participate in meetings virtually. *Silver* was 98 years old and suffered from aortic valve disease, systolic heart failure and had a permanent pacemaker. *Silver's* physician recommended he avoid contact with the public during COVID-19. The most noticeable difference is that this took place during Governor Edward's COVID-19 emergency order.

⁹ *Hale v. King*, 642 F.3d 492, 499 (5th Cir. 2011).

¹⁰ *Block v. Texas Bd. Of Law Examiners*, 952 F.3d 613, 618 (5th Cir. 2020).

¹¹ *Id.*

¹² *Frame v. City of Arlington*, 657 F.3d 215, 242 (5th Cir. 2011).

¹³ La. R.S. 42:11 et seq.

Like LSBEP, the City of Alexandria argued that the Louisiana Open Meetings Law prohibited *Silver's* attendance at meetings virtually. In finding *Silver* was entitled to a preliminary injunction, Judge Dee Drell found the ADA, due to the preeminence of federal law over state law to the contrary, entitled *Silver* to be allowed to attend the city council meetings virtually. Judge Drell granted *Silver's* preliminary injunction through the time period covered by Governor Edwards' emergency COVID-19 order.¹⁴

This Court agrees with Judge Drell that the ADA would supersede Louisiana's Open Meetings Law but denies Gormanous' request for preliminary injunction in this case for other reasons. This Court finds that the accommodations offered by LSBEP to Gormanous were reasonable. The Governor's emergency COVID-19 order expired on March 16, 2022. LSBEP offered accommodations recommending social distancing and masks, a reserved table with a single seat at least six feet away from others only for Gormanous, and/or one-way broadcasting of meetings. These are reasonable accommodations that would protect Gormanous and allow him to attend the meetings in a manner that would not impede on his health issues. This is especially true based upon the evidence submitted¹⁵ that Gormanous attended the Midyear Meeting of the Association of State and Provincial Psychology Boards held at the Astor Crowne Plaza in New Orleans from April 21 to April 24, 2022.

Additionally, LSBEP has valid due process concerns with respect to applicants and/or persons undergoing disciplinary procedures. LSBEP's powers include the power to examine for, deny, approve, revoke, suspend, and renew the licenses of applicants, candidates, and psychologists. Conducting hearings by Zoom raises due process concerns for applicants,

¹⁴ Also of note in this case was the fact that Governor Edwards' COVID-19 emergency order and Louisiana subsequent legislation allowed city councils to hold meetings virtually. 470 F.Supp. 3d at 623.

¹⁵ [Doc. No. 11-1], [Doc. No. 11-2] and [Doc. No. 11-3].

candidates, and psychologists.¹⁶ These important due process protections of applicants, candidates, and psychologists appearing before LSBEP shows a very valid concern by LSBEP of Gormanous' request.

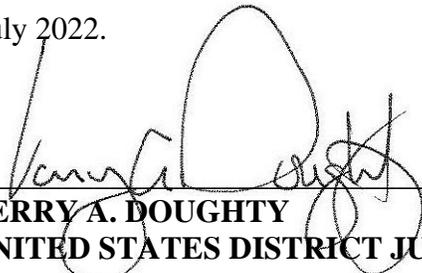
Therefore, this Court concludes that Gormanous will not prevail on the merits and there is no need to examine the other three factors for a preliminary injunction.

III. CONCLUSION

For the reasons set forth in the Memorandum Order,

IT IS ORDERED that Gormanous' Motion for Preliminary Injunction [Doc. No. 6] is **DENIED**.

MONROE, LOUISIANA, this 14th day of July 2022.



TERRY A. DOUGHTY
UNITED STATES DISTRICT JUDGE

¹⁶ In the matter of *Dr. Eric R. Cerwonka*, 249 So.3d 30 (La. App. 1st Cir. 2018), writ denied; *K.D.H. v. Cabinet for Health & Family Servs.*, 630 S.W. 3d 729 (Ky. Ct. App. 2021); and *T.H. v. State*, 2022 WL 815047 (Fla. App. 2022).