

**HILLAR C. MOORE, III, IN HIS CAPACITY
AS DISTRICT ATTORNEY FOR THE
PARISH OF EAST BATON ROUGE**

DOCKET NO. _____ SEC. ____

19th JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

LOUISIANA BOARD OF PARDONS

STATE OF LOUISIANA

PETITION FOR PRELIMINARY AND PERMANENT INJUNCTION

NOW INTO COURT, through undersigned counsel, comes Petitioner, Hillar C. Moore, III, in his capacity as District Attorney for the Parish of East Baton Rouge (“Petitioner”), who respectfully requests a Preliminary and Permanent Injunction prohibiting the Louisiana Board of Pardons from violating Louisiana law, as well as the Board’s own policies, by considering and granting for hearing twenty (20) untimely and improperly submitted applications for clemency without any notice or public meeting and then setting them for expedited hearings on October 13, November 8, 13 and 27, 2023 without proper publication or adequate investigation. These applications relate to inmates with a death sentence, most of whom were convicted for heinous crimes that occurred in the 1980s and 1990s, and none of whom are scheduled for execution. Of the twenty (20) applications set for hearing, three (3) of the applications pertain to inmates who were convicted in East Baton Rouge Parish in cases handled by the Office of the District Attorney—Quincy Broaden, Henri Broadway, and Todd Wessinger.¹

DEFENDANT

1.

Named Defendant herein is the Louisiana Board of Pardons (“the Board”), also known as the Board of Pardons and Parole or the Board of Pardons and Committee on Parole, which is a state agency within the Department of Public Safety and Corrections. *See* La. R.S. 36:409(C).

VENUE

2.

Venue is proper in this court under La. R.S. 13:5104(A), as the Board is a state agency.

¹ Antoine Tate and Frank Ford Cosey, inmates convicted in East Baton Rouge Parish, also filed applications for clemency in June of 2023. Mr. Tate’s case has been set for hearing by the Board and Mr. Cosey’s case is on a waiting list. Both cases are being handled by the Office of the Attorney General due to a recusal by the Petitioner.

BACKGROUND

3.

The Board, members of which are appointed by the Governor,² has the following powers with respect to clemency applications:

1. To decide whether to grant or deny a hearing to an applicant for commutation/clemency for specified reasons or “any other factor determined by the board.” 22 LAC Pt V, § 105;
2. To recommend to the Governor a stay of execution, including conducting hearings or interviews on the matter. 22 LAC Pt V, § 213; and
3. To make recommendations of clemency to the Governor. 22 LAC Pt V, § 205; La. Const. art. IV, § 5(E)(1); La. R.S. 15:572(A).

4.

The Governor’s powers with respect to clemency are as follows:

1. To “grant reprieves to persons convicted of offenses against the state.” La. Const. art. IV, § 5(E)(1);
2. To “commute sentences” or grant pardons, but only “upon favorable recommendation of the Board of Pardons.” La. Const. art. IV, § 5(E)(1); La. R.S. 15:572(A);
3. To grant or deny the Board’s recommendation of clemency. 22 LAC Pt V, § 205;
4. To appoint five (5) members of the Board (all members except the warden, who serves as an *ex officio* member in certain circumstances) and designate the chairman. La. Const. art. IV, § 5(E)(2); La. R.S. 15:572.1;
5. To approve rules/regulations/procedures for clemency adopted by the Board. La. R.S. 15:572.4; and
6. To grant a stay of execution (when an execution date is impending), which does not require a recommendation by the Board. 22 LAC Pt V, § 213.

The Governor’s powers with respect to applications for clemency (as opposed to reprieves or stays of execution) are entirely dependent upon a recommendation by the Board.

5.

Louisiana law and the Board’s regulations and policies prescribe numerous requirements for the clemency application process:

1. “All applications must be submitted in accordance with [22 LAC Pt V, § 205].” 22 LAC Pt V, § 203(B). The regulations impose several formal and procedural requirements on clemency applications, including the following:
 - a. The application must be complete and on the Board’s form. 22 LAC Pt V, § 205(A);
 - b. Incarcerated applicants must attach their prison record, a conduct report, the signature of a corrections officer verifying the conduct report, and

² La. Const. art. IV, § 5(E)(2) and La. R.S. 15:572.1.

“[a]pplicants sentenced to death must attach proof of direct appeal denial.”
22 LAC Pt V, § 205(B)(1); and

c. For capital cases, the application must be submitted within one year of the denial of the prisoner’s direct appeal. 22 LAC Pt V, § 203(E).³

2. The Board is then required to vote to return, grant or deny each application for a clemency hearing, which would require the affirmative vote of at least four (4) Board members. *See* La. R.S. 15:572.1(E) and 22 LAC Pt V, § 211(J) (“all actions of the board shall require the favorable vote of at least four members of the board”). Granting or denying an application for clemency hearing is an action of the Board.⁴ La. R.S. 15:572.1(C) provides that “[t]he board shall meet on regularly scheduled dates...for the purpose of reviewing and taking action on applications for pardons pending before it...”

a. Under the Louisiana Open Meetings Law, La. R.S. 42:11, *et seq.* (“OML”), this vote must take place at a properly noticed public meeting. *See also* La. R.S. 15:572.1(D) (“All meetings of the board shall be open to the public”); La. R.S. 15:573 (“All sessions of the Board of Pardons shall be public”); La. R.S. 42:14(A); and La. R.S. 42:19 (providing public notice requirements).⁵

b. The primary purpose of the OML “is to protect citizens from secret decisions made without any opportunity for public input.”⁶ In accordance with this purpose, the OML provides:

A. Every meeting⁷ of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18.

B. Each public body shall be prohibited from utilizing any manner of proxy voting procedure, secret balloting, or any other means to circumvent the intent of this Chapter.

C. All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document.

D. Except school boards, which shall be subject to R.S. 42:15, each public body conducting a meeting which is subject to the notice requirements of R.S. 42:19(A) shall allow a public comment period at any point in the meeting prior to action on an agenda item upon which a vote is to

³ 22 LAC Pt V, § 203(E) provides that “[a]ny offender sentenced to death may submit an application within one year from the date of the direct appeal denial.”

⁴ Granting or denying a request for hearing either moves the process forward or ends it and should be considered an “action” of the Board for purposes of La. R.S. 15:572.1(E), 22 LAC Pt V, § 211(J), and La. R.S. 42:13(B). *See Brown v. E. Baton Rouge Par. Sch. Bd.*, 405 So.2d 1148, 1153 (La. App. 1 Cir. 1981) (holding that a school board meeting narrowing down a pool of job applicants was a “decision” or “action” requiring compliance with the Open Meetings Law, despite that the action was not “final” in the sense that no candidate was selected). *See also* Board Policy 02-205-POL (“After review of the application for clemency by the Board, applicants shall be notified, in writing, of action taken by the Board. **Action can include granting a hearing before the Board or denial of a hearing**”) (emphasis supplied).

⁵ The Board’s meeting calendar also “shall be made available to the public” and dates for clemency hearings must be posted on the Board’s website. 22 LAC Pt V, § 211(A).

⁶ *Tubbs v. Louisiana Bd. of Pardons*, 2020-0892 (La.App. 1 Cir. 2/22/21, 5–6), *reh’g denied* (Mar. 29, 2021), *writ denied*, 2021-00561 (La. 10/12/21); 325 So.3d 1073, *citing* *Lewnau v. Board of Supervisors of Southern State University*, 2019-0943 (La. App. 1st Cir. 1/9/20), 295 So. 3d 419, 424.

⁷ For purposes of the OML, “meeting” is defined as “the convening of a quorum of a public body to deliberate or act on a matter over which the public body has supervision, control, jurisdiction, or advisory power” or to “receive information regarding” such a matter. La. R.S. 42:13(A)(2). “Public body” is defined to include “any . . . state, parish, municipal, or special district boards, commissions, or authorities, and those of any political subdivision thereof, where such body possesses policy making, advisory, or administrative functions, including any committee or subcommittee of any of these bodies enumerated in this paragraph.” *Id.* at § 13(A)(3). The First Circuit has previously determined that the Board of Pardons is a “public body” whose meetings must comply with the OML. *Hoffpauir v. State, Dep’t of Pub. Safety & Corr.*, 1999-1089, p. 4 (La.App. 1 Cir. 6/23/00); 762 So.2d 1219, 1221, *writ denied*, 2000-2230 (La. 10/27/00); 772 So.2d 652.

be taken. The governing body may adopt reasonable rules and restrictions regarding such comment period.⁸

- c. As the District Attorney for the 19th Judicial District, Petitioner is statutorily authorized to enforce the OML in this district. *See* La. R.S. 42:25(B).
 - d. The attached “Louisiana Board of Pardons Administrative Action Hearing Vote Sheet” evidences the Board’s usual documentation when deciding to grant an applicant for clemency’s request for a hearing, essentially determining whether the application complied with the Board’s regulations and policies, as described above, and complied with the one-year deadline set forth in 22 LAC Pt V, § 203(E) and Board Policy 02-203-POL.⁹
 - i. Typically, the Board attaches a sheet to the minutes of meetings at which administrative review was conducted, showing the applicants considered and the number of applications for which a hearing was returned, granted or denied and making available a record of how each Board member voted and the reasons therefor.¹⁰
3. Once the Board decides to ***grant*** a request for hearing, there are further requirements that must be met ***before*** the application may be ***set*** for hearing:
- a. After reviewing the application (and deciding to return, grant or deny a hearing), the Board must notify applicant of the action taken. *See* Board Policy 02-205-POL.
 - b. Within ninety (90) days of such notice to the applicant, the applicant must provide to the Board proof of advertisement—the advertisement must include the name of the applicant, that the applicant has applied for clemency for the conviction of the crime committed and that any comments may be directed to the Board. 22 LAC Pt V, § 209(A). The advertisement must be published in the official journal of the parish where the offense occurred ***on three (3) separate days in a thirty-day (30) period of time***. La. R.S. 15:572.4(C), 22 LAC Pt V, § 209(A); Board Policy 02-205(F)-POL;¹¹ and
 - c. All documents required by 22 LAC Pt V, § 203 must be received and the ***“clemency investigation from the appropriate probation and parole district”*** must be completed. 22 LAC Pt V, § 211(B).
4. Only after compliance with the above conditions, including the notice, publication, and investigation requirements, may the Board ***set*** an application for clemency for hearing.
5. Thereafter, the Board must provide notice of the hearing, at least sixty (60) days prior to the hearing, to the district attorney, sheriff, applicant, victim, Crime Victims Services Bureau of the Department of Public Safety and Corrections and any other interested party. 22 LAC Pt V, § 211(C). Additionally, the appropriate district attorney must be notified and given “ample opportunity to attend the session at which said application shall be considered” (La. R.S. 15:574(B)(1)); and the Board must make “reasonable efforts to contact the victim or the surviving family members of the victim” (La. R.S. 15:574(B)(2)).
- a. Importantly, Petitioner, as District Attorney, is typically provided with a wealth of information on each clemency applicant so that he may meaningfully participate in the process and represent the interest of the State and the

⁸ La. R.S. 42:14.

⁹ *See* Ex. A – Louisiana Board of Pardons Administrative Action Hearing Vote Sheet for DOC#310295.

¹⁰ *See* Ex. B – Louisiana Board of Pardons, Meeting Minutes (Feb. 14, 2022), available at <https://s32082.pcdn.co/wp-content/uploads/2022/02/FEB-14-Full-Docket-1.pdf>.

¹¹ *See* Ex. C – Louisiana Board of Pardons, Board Policies 02-203-POL, *Eligibility for Clemency Consideration* (March 20, 2021), available at <https://s32082.pcdn.co/wp-content/uploads/2023/02/02-203-POL-Eligibility-for-Clemency-Consideration.pdf> and 02-205-POL, *Application Filing Procedures* (March 20, 2021), available at <https://s32082.pcdn.co/wp-content/uploads/2023/02/02-205-POL-Application-Filing-Procedures.pdf>.

offenders' victims, including the applicant's disciplinary records, medical records for purposes of responding to claims that commutation is or is not warranted based on alleged mental and or medical deficiency, and other documents made available to the Board.

6.

The clemency procedure described above has been followed for many years, and typically takes one (1) – two (2) years between the application for clemency and the clemency hearing before the Board. While not all applications for clemency follow identical timelines, for a recent inmate (DOC#310295) in East Baton Rouge Parish, the entire process took six hundred sixty-four (664) days from the application being signed by the inmate on November 2, 2021 to the Board hearing on August 28, 2023. The timeline of this inmate's application is illustrative of a typical clemency application:

- **November 2, 2021** clemency application signed by offender
- **January 3, 2022** clemency application received by the Board of Pardons
- **February 14, 2022** administrative review hearing by the Board, Board vote, application granted.
- **February 15, 2022** written notification to offender that the application was granted and offender must advertise clemency application within 90 days.
- **March 7, 8 and 9, 2022** advertisement requirement satisfied by offender
- **May 19, 2022** clemency investigation requested by the Board
- **September 6, 2022** clemency investigation completed (one hundred ten (110) days after request)
- **June 5, 2023** notice of August 28, 2023 hearing date sent to district attorney and law enforcement
- **June 8, 2023** notice of August 28, 2023 hearing date sent to victims
- **June 19, 2023** notice of August 28, 2023 hearing date sent to offender
- **June 21, 2023** written acknowledgement of August 28, 2023 hearing date signed by offender
- **August 28, 2023** public hearing before the Board

FACTUAL ALLEGATIONS

7.

Earlier this year, Governor John Bel Edwards, whose term expires on January 8, 2024, made his stance on the death penalty publicly known for the first time, wherein he stated his support for the abolition of the death penalty in Louisiana.¹² Of note, only two (2) death sentences have been carried out in Louisiana since 2002, and zero (0) within the last thirteen (13) years.

¹² See Ex. D – James Finn, *After years of silence, John Bel Edwards says he opposes the death penalty*, NOLA.com (Mar. 22, 2023), https://www.nola.com/news/politics/legislature/john-bel-edwards-decries-death-penalty-after-long-silence/article_d2383af2-c9b4-11ed-8531-e7c9226dcf0d.html.

8.

Shortly after the Governor's announcement, in a well-orchestrated and funded effort, approximately fifty-six (56) death row inmates submitted applications for clemency on or around June 13, 2023, seeking commutation of their sentences to life in prison (hereinafter "June 2023 Applications"). Importantly, the applications were untimely, as none of them were submitted within one (1) year of the date of the applicants' direct appeal denial, as required by 22 LAC Pt V, § 203(E) and Board Policy 02-203-POL. Of the 56 applications, 11 were filed by inmates who were convicted in East Baton Rouge Parish: Anthony Bell, David Bowie, Quincy Broaden, Henri Broadway, Gregory Brown, Dacarius Holliday, Robert Miller, Allen Robertson, Antoine Tate, Frank Ford Cosey and Todd Wessinger.¹³ Of the twenty (20) applications set for hearing, three (3) of the applications pertain to inmates who were convicted in East Baton Rouge Parish in cases handled by the Office of the District Attorney—Quincy Broaden, Henri Broadway, and Todd Wessinger. An execution date has not been scheduled for any of the named individuals.

9.

The Board subsequently decided to set the June 2023 Applications for "administrative review" on a "staggered schedule . . . beginning in July [2023],"¹⁴ some of which would be addressed at the Board's July 24, 2023 meeting. This "administrative review" is the Board's usual process for deciding whether to return, grant or deny an application for a clemency hearing.

10.

On June 26, 2023, Loren Lampert, Executive Director of the Louisiana District Attorneys Association, wrote a letter to the Board expressing the concerns of "forty-two (42) Louisiana District Attorneys, their staff, and most importantly, the family members of victims throughout Louisiana whose loved ones suffered at the hands of our worst offenders."¹⁵ Mr. Lampert stated:

1. "We have since learned that the Pardon Board will be conducting 'administrative reviews' of [the June 2023 Applications] beginning on July 28, 2023 . . . This timeline is extremely troubling to District Attorneys and families of the victims in these cases."
2. Regarding the previously pending 440 applications for clemency, 197 of which had completed pardon investigations and 209 of which were awaiting investigations, "as you can see, it causes serious concern that [the June 2023 Applications] are being advanced to the front of the line ahead of the 440 pre-existing applications."

¹³ Ex. E – Summary of Cases for nine inmates convicted in East Baton Rouge Parish handled by the Office of the District Attorney.

¹⁴ Ex. F – Letter from Loren Lampert, Executive Director, Louisiana District Attorneys Association to the Board, to Sheryl M. Ranatza, Chairman, Louisiana Board of Pardons and Committee on Parole (June 26, 2023).

¹⁵ *Id.*

3. “This concern is compounded by the fact that these proceedings are being rushed while asking the Board to evaluate offenders who are convicted of committing the most heinous, atrocious, and cruel criminal acts imaginable. All murders are horrible, these are the worst of the worst.”
4. For convicted murderers whose cases were litigated and tried over a number of years, with numerous motions and appeals, “[n]ow, it appears this Board will be given the task of considering all of this and the propriety of the imposed penalty, within a matter of weeks, while other less-complex cases are investigated and reviewed for months or even years before being considered.”
5. Finally, “[t]o force these cases to the front of the line, with the potential for error built into his rushed process, is without equal in my 37 years within the criminal justice system. It is also important to remember that while these offenders may continue to apply and reapply, the State has no recourse to an erroneously granted clemency application. The decisions of the Board are final in that regard.”¹⁶

11.

The Board responded to Mr. Lampert’s letter on July 5, 2023, and contrary to its historical practice and procedural requirements, stated that if any of the applications for clemency hearings were granted by the Board at the July 24, 2023 Board meeting, they would be set for hearing “as quickly as possible”—as early as October 9 and as late as December 18, 2023, all prior to the end of the Governor’s term.¹⁷

12.

Concerned by the number of applications and the unprecedented fashion that the applications were being considered and potentially heard, on July 12, 2023, Petitioner requested information from the Louisiana Department of Public Safety and Corrections (“DPSC”) under the Public Records Act regarding the June 2023 applicants who were convicted in East Baton Rouge Parish.¹⁸ Petitioner noted that:

1. “[t]he matters that are the primary focus of the instant request came about in an unexpected way- in some cases almost 30 years after conviction-and they are now proceeding in an accelerated, yet unfamiliar, manner[;]”
2. “[t]he effort to seek commutation has obviously been well planned, organized, and financed,” considering that “[e]xtensive media coverage was immediately published including details on inmates who had petitions filed as well as interviews with advocates against the death penalty[;]”

¹⁶ *Id.*

¹⁷ Ex. G – Letter from Sheryl M. Ranatza to Loren M. Lampert (Jul. 5, 2023).

¹⁸ Ex. H – Letter from Pet’r to La. Department of Public Safety and Corrections (Jul. 12, 2023). The letter specifically identified 10 offenders convicted in East Baton Rouge Parish as being within the scope of the request.

3. “[t]o several of the victims’ families, the news of the applications came as a shock and has caused significant confusion, particularly in light of the media exposure. Many family members of murdered victims had received letters from attorneys representing the inmates in advance of the disclosure of the news of the anticipated filing of the clemency applications. Based on the letters I have reviewed, they purport to offer communication and support, but they did not inform the victim’s family member recipient that they might expect that a clemency application was going to be filed on behalf of the inmate[;]”
4. the applications are “proceeding on an extremely accelerated basis and in a condensed time period that is prior to the end of the year and/or the expiration of this Governor’s term[;]”
5. “[A]lthough the Board believes it has access to sufficient information to proceed relative to the applications, several district attorneys and victim family members do not. Due to the number of applications, the expedited nature of the situation, and the corresponding insufficiency of necessary information, the state is unable to comprehensively respond to the applications for commutation[;]”¹⁹ and
6. “Society and my office as District Attorney, representative of the State of Louisiana, has a recognized interest in the fair administration of justice and in the enforcement of its criminal laws; thus, to act without regard for these considerations undermines the legitimate interests shared by the State and the victims of crime alike. The State should be afforded the ability to meaningfully respond to the application for commutation and/or participate in the proceedings”

13.

On July 17, 2023, Petitioner also objected to the clemency application of David Bowie, one (1) of the June 2023 applicants in East Baton Rouge Parish.²⁰ Petitioner argued in the letter that Mr. Bowie’s application should not be considered for multiple reasons, the first of which was that Mr. Bowie’s application was untimely, as it was filed over twenty (20) years after the denial of his direct appeal. Therefore, the Board’s consideration of Mr. Bowie’s application “would be in violation of this board’s own rules and the La. Admin Code.”²¹ Additionally, Petitioner informed the Board that the State had not been provided with sufficient information to meaningfully respond to Mr. Bowie’s application, including his medical and mental health records. Lastly, Petitioner pleaded to the Board that “[t]o force any review (procedural or substantive) of [Mr. Bowie’s application] in such a compressed timeframe, absent a complete investigation and review of all pertinent records, is without precedent and creates the potential for an injustice that is not subject to further review.”²²

¹⁹ See 22 LAC Pt V, § 205 (listing information and documentation that must be included in each application); La. R.S. 15:572.4(B) (requiring notice to the prosecuting district attorney and victim/family and requiring the district attorney and victim/family to be given an opportunity to be heard); 22 LAC Pt V, § 211(C)(1) (same); La. R.S. 15:572.5 (listing information and documentation that must be provided to the Board).

²⁰ Ex. I – Letter from Pet’r to the Board (Jul. 17, 2023).

²¹ *Id.* at 4, 6.

²² *Id.* at 7-8.

14.

After objections were raised to the Board's consideration of clemency applications that were submitted later than one (1) year from the date of the applicants' direct appeal denials (the deadline established by 22 LAC Pt V, § 203(E) and Board Policy 02-203-POL), the Board sought an opinion from the Louisiana Attorney General as to whether it could disregard the requirements of § 203(E) and consider applications for clemency that were submitted after the one-year time period.

15.

On July 18, 2023, the Attorney General issued Opinion 23-0083, advising the Board that Louisiana law and the Board's regulations do not permit the Board to "waive the one-year eligibility period contained in Rule 203."²³

16.

At the public Board meeting conducted on July 24, 2023, the Board's agenda contained an item titled "consideration of waivers of Board rules and Board policies,"²⁴ which concerned the Board's question of whether it could waive the one-year time period contained in § 203(E).²⁵ The Board was previously advised of the Louisiana Attorney General's Opinion 23-0083, and, at the meeting, heard public comments from Mr. Lampert, Petitioner, Emily Andrews (of the Attorney General's office), and Grant Willis (the Board's attorney), all of whom agreed that the Board could not waive the one-year requirement. The Board entered executive session to discuss "confidential matters," and when it returned, unanimously voted to remove the "consideration of waivers" agenda item. The Board's meeting minutes also reflect that "[b]ack in regular session, motion was made . . . to remove the agenda item 'Consideration of Waivers' from the agenda based on recent legal opinion that the board has no authority to waive its rule."²⁶ In doing so, the Board's

²³ Ex. K – La. Atty. Gen. Op. No. 23-0083 (Jul. 18, 2023). The statute giving the Board rulemaking authority expressly requires the Board's rulemaking process to comply with the APA. See La. R.S. 15:572.4(E)(2).

²⁴ See Ex. K – Louisiana Board of Pardons, Meeting Minutes (Jul. 24, 2023), available at <https://s32082.pcdn.co/wp-content/uploads/2023/08/July-24.pdf>. See also Louisiana Board of Pardon and Parole, *July 24 - Pardon Hearing*, YouTube (last visited Sep. 5, 2023), <https://www.youtube.com/watch?v=D9Ux5KnSOok&t=1992s>. The Board's original agenda does not contain any mention of the new business concerning the Board's consideration of waiving any rules and policies; however, during the meeting, the Board's chairperson identified the first order of new business as "consideration of waivers of Board rules and Board policies." *Id.* at 23:39. The July 24, 2023 meeting minutes replaced the Board's agenda on the Board's website and contains the item "consideration of waivers" under new business. Regardless, neither of these descriptions was sufficient notice to the public, especially the victims and victim's families, concerning the importance of the waiver in question—that the Board was seeking to waive the one-year requirement in 22 LAC Pt V, § 203(E) and Board Policy 02-203-POL to permit over fifty (50) death row inmates the ability to seek clemency. In other words, the Board did not describe "with reasonable specificity" the agenda item for the public, thereby **violating** the OML. La. R.S. 42:19(A)(1)(ii)(bb).

²⁵ *Id.*

²⁶ See Ex. K – Louisiana Board of Pardons, Meeting Minutes (Jul. 24, 2023), available at <https://s32082.pcdn.co/wp-content/uploads/2023/08/July-24.pdf>.

chairperson stated: “so we will set the [June 2023] applications we have received aside pending further review of our rules”²⁷

17.

On July 26, 2023, Francis Abbott, the Board’s Executive Director, informed Petitioner that the Board “canceled the Administrative Review of Capital Applications on July 28, 2023. The applications have been returned as they are not eligible for consideration per Board Policy 02-203.”²⁸ A July 28, 2023 article stated that Mr. Abbott confirmed this decision to the Associated Press:

After nearly every death row inmate in Louisiana asked for clemency en masse, the state’s pardon board turned away all 56 petitions this week.

Francis Abbott, executive director of Louisiana’s Board of Pardons and Committee on Parole, confirmed to The Associated Press on Friday that none of the applicants are currently eligible. That decision was based on an opinion filed last week by Attorney General Jeff Landry . . . who found that the board can’t waive a policy requiring a clemency petition to be filed within a year of a judge ruling on an appeal, as reported by The Advocate.

Exceptions are allowed in some extenuating circumstances, notably if an execution date is near. However, Louisiana does not have any execution dates scheduled and the last lethal injection in the state occurred over a decade ago.²⁹

18.

After the Board decided to set aside the June 2023 Applications at its July 24, 2023 meeting, on August 9, 2023, Governor Edwards “ask[ed] the Board to set [the June 2023 Applications] for hearing”³⁰ The Governor further stated that “I do not take the duties and obligations of the Board lightly. Nor do I take this request, or the effort required to timely and thoroughly hear the applications, lightly. However, given the importance of this issue, I ask the Board to set these cases for hearing”³¹

²⁷ Louisiana Board of Pardon and Parole, *July 24 - Pardon Hearing*, YouTube (last visited Sep. 5, 2023), <https://www.youtube.com/watch?v=D9Ux5KnSOok&t=1992s>, at 53:20-35. The OML provides an exception to the general requirement of open meetings for executive sessions, at which a public body may discuss certain, limited matters in a session closed to the public (provided that certain requirements are met, including that the public body must vote during an open meeting to enter executive session and that “the reason for holding such an executive session shall be recorded and entered into the minutes of the meeting”). La. R.S. 42:16. La. R.S. 42:17 lists the circumstances in which an executive session can be held, which are exclusive. *Brown*, 405 So.2d at 1153; La. R.S. 42:16 (“[a]n executive session shall be limited to matters allowed to be exempted from discussion at open meetings by R.S. 42:17”). However, executive session is only allowed for the *discussion* of certain topics and does not allow for the public body to vote in executive session, which is required to be in an open meeting. La. R.S. 42:14, 17.

²⁸ Ex. L – Email from Francis Abbott to Pet’r (Jul. 26, 2023).

²⁹ Ex. M – Sarah Cline, *All 56 Louisiana death row clemency petitions turned away for being ineligible*, Associated Press (Jul. 28, 2023), available at <https://apnews.com/article/death-row-clemency-louisiana-f4ce63ebdc199487e943675ef3fbf57f>.

³⁰ See Ex. N – Letter from John Bel Edwards, Governor, State of Louisiana, to Sheryl M. Ranatza, Chairman, Louisiana Board of Pardons and Committee on Parole (Aug. 9, 2023), at 1.

³¹ Ex. N at 3.

19.

Within twenty-four (24) hours of Governor Edwards' letter, the Board reversed its prior decision to return the applications as not meeting the Board's requirements and complied with the Governor's directive by granting AND scheduling twenty (20) of the June 2023 Applications for hearing in October and November 2023. The actions of granting an application for hearing and scheduling an application for a clemency hearing before the Board are historically two (2) separate and distinct actions by the Board performed months and sometimes over a year apart after certain notification requirements, publication of the request by the applicant, and an investigation is performed. However, for twenty (20) of the June 2023 Applications, these separate actions were performed simultaneously with no notification, no publication by the applicant and no investigation being requested, much less conducted.

20.

Three (3) of the applications set for clemency hearing pertain to inmates who were convicted in East Baton Rouge Parish in cases handled by the Office of the District Attorney, none of whose applications for clemency were timely submitted.³²

Name	Date of Crime	Date of Conviction	Date of Direct Appeal Denial	Crime
Quincy Broaden	01/13/1996	06/27/1998	02/25/02	2 counts of first-degree murder
Henri Broadway	01/07/1993	11/03/1995	04/03/00	1 count of first-degree murder for killing off-duty police officer
Todd Wessinger	11/19/1995	06/24/1997	01/24/00	2 counts of first-degree murder

21.

On August 10, 2023, the Board began issuing letters to applicants, district attorneys and judges informing them of the hearing dates.³³ One such letter to Antoinette Frank candidly admitted that the hearing was being set at the Governor's direction:

On August 9, 2023, Governor John Bel Edwards requested that the Louisiana Board of Pardons set the above referenced application for clemency for hearing.

In response to the Governor's request, this letter serves as the official notice to your office that the Board of Pardons has scheduled a clemency hearing

³² See Ex. O – Staff Report, *These 20 Louisiana death row inmates will get clemency hearings from the Board of Pardons*, NOLA.com (Aug. 13, 2023), https://www.nola.com/news/politics/20-death-row-inmates-seek-louisiana-pardons-board-clemency/article_7a8dbb84-392f-11ee-9011-ef4f6fe30430.html.

³³ Ex. P – Letter from the Board to the victims of Antoinette Frank (Aug. 10, 2023).

for the above referenced application. The hearing has been set for 10/13/2023.³⁴

For this same application, the Board sent a corresponding letter to the applicant stating that her clemency application was “[r]eviewed on 08/10/2023” and that her request for a hearing had been granted.³⁵

22.

There are numerous legal and procedural violations concerning the Board’s decision to not just **grant** twenty (20) of the June 2023 Applications on or around August 10, 2023, but also to **set** them for hearing in October and November of 2023, including the following:

1. The Governor has no authority to consider, grant or deny applications for a clemency hearing, much less set them for hearing. La. Const. art. IV, § 5; La. R.S. 15:572. However, despite lacking such authority, Governor Edwards intervened in the Board’s decision-making process, directing the Board to set the June 2023 Applications for hearing, after the Board had previously determined that none of the applications were eligible for clemency. The Board then **disregarded** Louisiana law and its own regulations and policies by reconsidering the applications, granting the applications for hearing and then setting them for hearing, all within 24 hours of the Governor’s instruction.
2. The Board’s consideration of the June 2023 Applications **violated** 22 LAC Pt V, § 203(E), which gives applicants a one-year period in which to submit their application for clemency from the date of the inmates’ direct appeal denial.
3. The Board’s consideration of the June 2023 Applications **violated** 22 LAC Pt V, § 205(B), as several of the applications were missing required documentation.
4. The Board **violated** 22 LAC Pt V, § 211(B) by setting twenty (20) of the June 2023 Applications for hearing without having received completed clemency investigations and all documents required by 22 LAC Pt V, § 203. No such investigation was even requested, which is unfathomable considering the nature of the crimes committed and death penalty verdicts rendered. Investigations are routinely requested and performed for applications for clemency for less serious crimes with milder sentences.
5. The Board **violated** La. R.S. 15:572.4(C), 22 LAC Pt V, § 209(A) and Board Policy 02-205(F)-POL by setting twenty (20) of the June 2023 Applications for hearing without having received proof of the three-day publication. None of the applicants even had the opportunity to advertise their application for clemency on three (3) separate days prior to the Board setting the application for a clemency hearing as the Board granted the applications for hearing and scheduled the clemency hearings simultaneously.
6. The Board **violated** the OML, several provisions of Title 15 of the Revised Statutes, and its own regulations and procedures, by granting and scheduling twenty (20) requests for hearing without a vote conducted at a properly noticed public meeting. See La. R.S. 15:572.1(C) and (E); La. R.S. 42:14(A) and 42:19, (C); 22 LAC Pt V, § 211(J); *Brown v. E. Baton Rouge Par. Sch. Bd.*, *supra*.

³⁴ Ex. Q – Letter from Francis Abbott, Executive Director, Louisiana Board of Pardons and Parole, to Hon. Kimya Holmes, District Judge, Section D, Orleans Criminal District Court (Aug. 11, 2023).

³⁵ See Ex. R – Letter from Whitney Troxclair, Administrative Program Manager, Louisiana Board of Pardons and Parole, to Antoinette Frank, DOC # 3548331 (Aug. 11, 2023).

- a. No advanced public notice was provided concerning any “meeting” that took place where the June 2023 Applications were considered, in **violation** of the OML, La R.S. 42:19.
- b. No vote on the applications was conducted at a public meeting, in **violation** of La. R.S. 42:11, *et seq.*, La. R.S. 15:572 and 573. (“All meetings of the board shall be open to the public” La. R.S. 15:572.1(D)); (“All sessions of the Board of Pardons shall be public” La. R.S. 15:573); (“Every meeting of any public body shall be open to the public unless closed pursuant to R.S. 42:16, 17, or 18” La. R.S. 42:14(A)), and (“All votes made by members of a public body shall be viva voce and shall be recorded in the minutes, journal, or other official, written proceedings of the body, which shall be a public document” La. R.S. 42:14(C));
 - i. To be clear, the Board’s decision to grant or deny an application for clemency hearing is an action by the Board that must be voted on at a public meeting. *See* La. R.S. 15:572.1(E); 22 LAC Pt V, § 211(J) (“all actions of the board shall require the favorable vote of at least four members of the board”). Granting or denying a request for hearing either moves the process forward or ends it and should be considered an “action” of the Board for purposes of La. R.S. 15:572.1(E), 22 LAC Pt V, § 211(J), and La. R.S. 42:13(B).³⁶ *See* Board Policy 02-205-POL (“After review of the application for clemency by the Board, applicants shall be notified, in writing, of **action taken by the Board. Action can include granting a hearing before the Board or denial of a hearing**”) (emphasis supplied).
 - ii. Contrary to its historical practice, no “Louisiana Board of Pardons Administrative Action Hearing Vote Sheet” evidencing the Board’s vote on each of the June 2023 Applications has been produced.
 - iii. Any action by a public body in violation of the OML is “voidable by a court of competent jurisdiction.” La. R.S. 42:24.

23.

Additionally, the Board appears to have been placed in a very difficult position at Governor Edward’s request by proceeding with consideration of these applications on an extremely expedited basis to ensure that the applications are heard prior to the expiration of the Governor’s term. Over four hundred forty (440) clemency applications were currently pending before the Board in July 2023, many of which have already been fully investigated and are merely awaiting a hearing date. The clemency process generally takes at least a year, and frequently as long as two (2) years. Yet, the Board apparently decided to grant and set twenty (20) of the June 2023 Applications for hearing in a matter of months, ahead of all others, despite investigations not having been completed and procedural prerequisites not having been met. In fact, the Board removed previously scheduled parole hearings for at least twenty-one (21) incarcerated individuals from its docket to accommodate the hearings on the June 2023 Applications. These actions are unusual, unprecedented, and concerning considering the serious nature of the crimes committed

³⁶ *See Brown v. E. Baton Rouge Par. Sch. Bd.*, 405 So.2d 1148, 1153 (La. App. 1 Cir. 1981) (holding that a school board meeting narrowing down a pool of job applicants was a “decision” or “action” requiring compliance with the Open Meetings Law, despite that the action was not “final” in the sense that no candidate was selected).

by the offenders requesting clemency and the length of time the clemency process takes to ensure a proper investigation is conducted and decision is made by the Board.

24.

The expedited procedure utilized by the Board for the aforementioned twenty (20) June 2023 Applications simply does not allow for adequate investigation and consideration of the issues necessary to properly determine whether to grant clemency in these extremely old, voluminous, and gruesome cases. The compressed time frame also hinders the preparation and response by district attorneys across the state who have historically had ample time to request and obtain information and documentation pertaining to the applicant; but now, for the most severe convicts in Louisiana, are afforded merely two (2) months to represent the interests of the victims, victims' families, and the citizens of Louisiana. The Board has put more time and resources into considering and investigating applications for clemency concerning armed robbery cases than it has in the twenty (20) recently filed and scheduled June 2023 Applications, which involve much more heinous crimes.

25.

The Board's actions violated numerous provisions of the Louisiana Constitution, OML, Louisiana's Revised Statutes and the Board's regulations and policies. Petitioner therefore seeks an injunction from this Court to prohibit the Board from taking further actions in violation of the law and from conducting hearings on the June 2023 Applications until all legal requirements have been satisfied.

26.

Additionally, the OML expressly provides that injunctive relief is available to enforce its provisions. *See* La. R.S. 42:26(A)(2). Further, since the Board violated the OML when considering, granting and scheduling the twenty (20) June 2023 Applications for hearing on or around August 10, 2023, the Board's decisions in this regard must be voided—the hearings on the June 2023 Applications must be canceled and the clemency application process restarted in compliance with Louisiana law and the Board's regulations and policies. *See* La. R.S. 42:26(4) (“A. In any enforcement proceeding the plaintiff may seek and the court may grant any or all of the following forms of relief: . . . (4) Judgment rendering the action void as provided in R.S. 42:24) and La. R.S. 42:24 (“Any action taken in violation of [OML] shall be voidable by a court of competent jurisdiction.”)

27.

Petitioner is not asking that the June 2023 Applications be denied; rather, Petitioner simply requests that the Board follow Louisiana law and its own regulations and policies when considering them. To allow the Board to proceed with the hearings in violation of the law could result in grave, irreversible injustice, in that it could result in offenders improperly being granted clemency, a decision which would not be subject to any appeal or further review. La. R.S. 15:572.6.

28.

Because the conduct sought to be enjoined is unlawful, no showing of irreparable injury is required for Petitioner to be granted injunctive relief. *See South Central Bell Telephone Co. v. Louisiana Public Service Commission*, 555 So.2d 1370 (La.1990); *Maynard Batture Venture v. Par. of Jefferson*, 96-649, p. 4 (La.App. 5 Cir. 12/30/96); 694 So.2d 391, 392; *Constr. Diva, L.L.C. v. New Orleans Aviation Bd.*, 2016-0566 (La.App. 4 Cir. 12/14/16, 7-9); 206 So.3d 1029, 1034-35, *writ denied*, 2017-0083 (La. 2/24/17).

29.

Petitioner respectfully requests that the court set this matter for a hearing within two (2) – ten (10) days to determine whether to issue a preliminary injunction pending a trial on the merits herein, as required by La. C.C.P. art. 3602.

30.

Petitioner is exempt from La. C.C.P. art. 3610's requirement of posting security under La. R.S. 13:4581.

PRAYER

WHEREFORE, Petitioner, Hillar C. Moore, III, in his capacity as District Attorney for the Parish of East Baton Rouge, prays that this court void the Board's actions that violated its own statutes, rules and policies, and the Open Meetings Laws by canceling the hearings currently scheduled for the June 2023 Applications until such time that the Board complies with Louisiana law and its regulations and policies in regard to said applications, and enter a preliminary and permanent injunction at a hearing **set between two (2) and ten (10) days after service**, as follows:

1. Prohibiting the Board from taking any action outside of the context of a properly noticed meeting open to the public, including, but not limited to:
 - a. Conducting administrative review of any clemency applications;

- b. Granting or denying hearings to any clemency applicants;
 - c. Setting any clemency applications for hearing; or
 - d. Deciding to recommend, or not to recommend, clemency for any applicant;
2. Prohibiting the Board from holding hearings on any clemency applications that are untimely and/or not in compliance with the formal requirements established by Louisiana law and the Board's regulations and policies;
 3. Prohibiting the Board from holding hearings on any of the June 2023 Applications, including those currently scheduled for October 13 and November 8, 13 and 27 of this year, until such time as all requirements established by Louisiana law and the Board's regulations and policies have been satisfied.

Respectfully submitted:

THE OFFICE OF THE DISTRICT ATTORNEY
FOR EAST BATON ROUGE PARISH
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PLEASE SERVE:

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HILLAR C. MOORE, III, IN HIS CAPACITY
AS DISTRICT ATTORNEY FOR THE
PARISH OF EAST BATON ROUGE

DOCKET NO. _____ SEC. _____

19th JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

LOUISIANA BOARD OF PARDONS

STATE OF LOUISIANA

VERIFICATION

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, Notary Public, in and for the State and Parish
aforesaid, personally came and appeared:

HILLAR C. MOORE, III

who, being duly sworn by me, does depose and say that to the best of his knowledge, information
and belief, the facts and circumstances as pled in the foregoing Petition for Preliminary and
Permanent Injunction are true and correct.



HILLAR C. MOORE, III

SWORN TO AND SUBSCRIBED before me, this 12 day of September, 2023, in Baton
Rouge, Louisiana.



NOTARY PUBLIC

**HILLAR C. MOORE, III, IN HIS CAPACITY
AS DISTRICT ATTORNEY FOR THE
PARISH OF EAST BATON ROUGE**

DOCKET NO. _____ SEC. _____

19th JUDICIAL DISTRICT COURT

VERSUS

PARISH OF EAST BATON ROUGE

LOUISIANA BOARD OF PARDONS

STATE OF LOUISIANA

ORDER

HAVING CONSIDERED the foregoing *Petition for Preliminary and Permanent Injunction*;

IT IS HEREBY ORDERED that the Louisiana Board of Pardons appear and show cause on the _____ day of _____, 2023, at _____ a.m./p.m., why a preliminary and ultimately a permanent injunction should not be issued as prayed for herein.

Baton Rouge, Louisiana, this _____ day of September, 2023.

**JUDGE, 19TH JUDICIAL DISTRICT COURT
STATE OF LOUISIANA**

PLEASE SERVE:

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