UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

DR. RALPH SLAUGHTER **CIVIL ACTION**

VERSUS

HONORABLE KATHLEEN BLANCO, ET AL **NO. 07-379-C**

WRITTEN REASONS FOR RULING ON MOTION FOR A PRELIMINARY INJUNCTION

Before this Court is a Motion for Injunctive Relief filed by plaintiff, Dr. Ralph Slaughter ("Slaughter"), against the defendant, the Board of Supervisors of Southern University & Agricultural & Mechanical College ("the Board"). Slaughter seeks to enjoin the Board from infringing upon his rights under Federal and Louisiana law, specifically, the First Amendment to the United States Constitution, 42 U.S.C § 1985, Title IX, Title VII of the Civil Rights Act of 1964, and LSA-R.S. 23:967. Slaughter also asks that the board be restrained from further harassing or retaliating against him on account of his reporting, complaining, and protesting sexual harassment in the workplace and educational environment and on account of his testimony before a federal grand jury and response to a federal subpoena. The court issued a temporary restraining order on June 15, 2007, and assigned the matter for hearing on June 20, 2007.

Following hearing on June 20-22 and June 25, 2007, the court took the matter under advisement and allowed the parties to submit proposed findings of facts and

conclusions of law. After considering the parties' briefs and the evidence presented at the hearing, on July 5, 2007 the court issued the requested preliminary injunction. The court now assigns the following reasons for that action.

FINDINGS OF FACT

The Southern University System ("the System") is a public system of higher education.[1] The Louisiana Constitution and Revised Statutes vest the Board with the responsibility for the management and supervision of the institutions of higher education, statewide agricultural programs and other programs that comprise the System.[2] Under its vested authority, the Board supervises and manages the systems under its jurisdiction and such jurisdiction extends to all the colleges and universities, branches, centers of learning, or extensions of such systems.[3] The Board is composed of sixteen members with two members from each congressional district and one member from the state at large, all appointed by the governor with consent of the Senate.[4] The legislature may provide for the membership of one student on the board, and the student member shall have all the privileges and rights

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[1] See LSA-R.S. 17:3216.

[2] See Louisiana Constitution of 1974, Article VIII, Section 7(A); LSA-R.S. 17:3216.

[3] See Louisiana Constitution of 1974, Article VIII, Section 7(A); LSA-R.S. 17:3218.

[4] See Louisiana Constitution of 1974, Article VII, Section 7(B); LSA-R.S. 17:1851.

of other board members.[5] The "By-Laws and Regulations of the Board of Supervisors of Southern University and Agricultural and Mechanical College" set forth the governance, procedures and regulations for the Board.[6] At all times relevant to the matter at hand, the Board consisted of the following members: Johnny Anderson; Dale Atkins; Jesse Bilberry; Richard Caiton, Jr.; Tony Clayton; Warren Forstall, Jr.; Walter Guidry, Jr.; Worlita Jackson-Williams; John Joseph; Myron Lawson; Louis Miller; Lea Montgomery; Murphy Nash, Jr.; Elvin Pradia; and Achilles Williams. At all times relevant to the matter at hand, the student member of the Board was Chris Jackson.

Johnny Anderson ("Anderson") is the Chairman of the Board. Anderson also serves as Assistant Chief of Staff to Louisiana Governor Kathleen Blanco. Vice Chairman of the Board is Myron Lawson ("Lawson"). In April, 2007, both Anderson and Lawson temporarily stepped aside as chairman and vice chairman of the Board, respectively, to facilitate the investigation of sexual harassment allegations by Lester Pourciau, the Director of Human Resources for Southern University Baton Rouge. As a result, Dale Atkins is now the acting Chairperson of the Board, and John Joseph is the acting Vice Chairman of the Board.

Since 1997, Slaughter has been employed at Southern University. Slaughter was hired by Dr. Leon Tarver as Deputy Vice President of Finance. In 2006,

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[5] See Louisiana Constitution of 1974, Article VII, Section 8(B);

[6] See Board Exhibit 1, Certified copy of By-Las and Regulations of the Board.

Slaughter was promoted to the position of Vice President of Administration where he served until April of that year. Slaughter was appointed System President of Southern University on April 1, 2006.

The President is the Chief Executive Officer of the System. Within the System office there are approximately fifteen direct employees. As System President, Slaughter reported directly to the Board. The System consists of five institutions which are Southern University Baton Rouge, Southern University of New Orleans, Southern University at Shreveport, the Southern University Law Center, and the Southern University Agricultural Research Center. Each individual campus has its own executive officer and its own human resource officer. However, the Law Center and Agricultural Research Center share the human resource officer with the Southern University Baton Rouge campus. Until 2004-2005, the System directly employed a human resource officer. Until the events giving rise to this litigation, Slaughter had never been disciplined, counseled, or written up for anything relating to his employment with the System.

On July 14, 2006, Slaughter had a conversation with Tony Clayton ("Clayton"), a Board member, while they were in Philadelphia, Pa., attending an alumni conference. This conversation took place in the presence of Cedric Upshaw ("Upshaw"), the Director of Alumni Affairs. As a result of this conversation. Slaughter learned that Anderson had allegedly sexually harassed T. A., the Director of Recruitment and Admissions for the System. Following the alumni conference, T.A.

reported the sexual harassment allegations to Upshaw who in turn reported the allegations to Slaughter, Lawson, and Clayton.

Thereafter, Slaughter had a conversation with Joseph Shelton ("Shelton"), assistant to the Director of Alumni Affairs, during the course of which Shelton gave Slaughter a tape recording of a conversation between Shelton and T.A. This recording allegedly contained statements by T.A. confirming that the sexual harassment had in fact occurred.

In mid-August, 2006, K.W. Assistant to the President for Public Relations, informed Slaughter that she too was being sexually harassed by Anderson.

Slaughter spoke with several members of the Board about the sexual harassment allegations including Lawson, Atkins, and Anderson. He was assured that the matter would be addressed with Anderson although, apparently, nothing was ever done.

In mid to late August, 2006, Slaughter met with Anderson at Anderson's office in the State Capitol. During the meeting, Slaughter informed Anderson that he had received sexual harassment allegations against Anderson. Anderson told Slaughter that he had learned that Shelton had a tape recording and Anderson said that he (Anderson) did not think that employees of the university should be taping. Anderson also made the statement that they should look at whether or not Joseph Shelton should be working for the university.

In August/September, 2006, Slaughter reported the sexual harassment

allegations against Anderson to Atkins on at least three occasions and provided her with the identities of three of the complainants. At the first meeting, Atkins was concerned and indicated she would look into the matter. At the second meeting, Atkins said she was going to meet with one of the complainants (T.A.), but the meeting never took place. At the third meeting, Atkins indicated that she was going to meet with Anderson and she was very angry.

Slaughter also reported the allegations to Lawson on at least three occasions. The first occasion was in July/early August, 2006. Slaughter informed Lawson of the identifies of the employees, told Lawson about Shelton's tape recording, and told Lawson about the sexual harassment allegations of T.A. Slaughter asked for advice on how to handle the situation, and Lawson stated that he would speak with some of the other board members and get back with Slaughter.

In addition, Slaughter reported the sexual harassment allegations to the following board members: Anita Gilmore, Sam Gillam, Anne Kiefer, Chris Jackson, Jesse Bilberry, and Clayton. Slaughter indicated that Anne Kiefer ("Kiefer") informed him that she was a member of the Louisiana Commission on Human Rights and she would check into it and get back with him. Kiefer did advise Slaughter that Anderson was the person in the governor's office who was responsible for oversight of the Louisiana Commission on Human Rights. Slaughter stated that Kiefer indicated that the allegations could not go to that commission because the commission reported to Anderson.

T.B., an employee in the Board's office, had a conversation with Slaughter wherein she related incidents of sexual harassment committed by Anderson. Slaughter also made Lawson aware of these complaints. Lawson said he would get with other board members and get back with Slaughter. Around this time, Slaughter also received a complaint of sexual harassment against Anderson from a student, T. Again, Slaughter informed Lawson, and Lawson indicated he would discuss it with board members and get back to Slaughter.

During October, 2006, Slaughter received additional complaints of sexual harassment from employees (Linda Carr and Cynthia Robinson). Slaughter thereafter met with Frances Smith ("Smith"), the legal counsel to the System President, and sought her advice with regard to handling the sexual harassment allegations. Smith provided him with a copy of a document entitled "Systemwide Policy/Procedures on Sexual Harassment – Southern University Policy Against Sexual Harassment." After speaking with Smith and reading the sexual harassment policy, Slaughter had the understanding that the university policy on sexual harassment did not cover harassment by the board chairman. Smith advised Slaughter to report the allegations of harassment to various Board members (the vice chair, the personnel affairs chair, and chair of the Governance Committee), to the state Ethics Commission, and/or the legislative committee which confirms the governor's board appointments, since they may have power to do something about the allegations.

Thereafter, Slaughter submitted a letter with a two page attachment to the Louisiana Senate and Governmental Affairs Committee, which oversees confirmations of appointments to the Board and the Louisiana Ethics Commission. Slaughter submitted the letter and attachment to the committee through its chair, Senator Charles Jones. In his letter, Slaughter requested the "committee to conduct a confidential investigation of [the sexual harassment] allegations and provide the employees with the protection they seek as well as protect the confidentiality of this letter..."[7] Attached to the letter was a two page document which set forth the sexual harassment allegations against Anderson.

Slaughter was informed by Senator Jones that he had discussed the letter with Kim Hunter Reed, the governor's Deputy Chief of Staff, and Terry Ryder, the governor's Executive Counsel. After being advised by the governor's executive counsel of the letter by a telephone call, Winston Decuir, legal counsel for the Board, met with Slaughter and was allowed to review a copy of the letter to Senator Jones and the attachment detailing the allegations. On November 5, 2006, Winston Decuir telephoned Slaughter again and told him of a second phone call from the governor's executive counsel. This led to a telephone conference between Slaughter, Decuir, Lawson and Atkins wherein they discussed the letter to Senator Jones and its contents. Lawson indicated that he would get with the board members about the allegations and get back with Slaughter.

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[7] Plaintiff's, Exhibit 3, Slaughter letter to Senator Charles Jones.

In November, 2006, Attorney Mark Falcon ("Falcon") was hired by the Governor's office to investigate the sexual harassment allegations. Falcon received the names of three complainants but testified that he never actually spoke with them. Falcon indicated he did call one complainant and she "blasted" him for contacting her. Falcon stated that he then left it up to the university procedure to contact complainants to meet with him. Falcon never personally talked to any of the complainants.

On November 29, 2006, Slaughter was served with a subpoena to testify before the federal grand jury and a subpoena duces tecum to produce a copy of a letter, with attachments, that Slaughter presented to Senator Jones and any and all documents or recordings. On December 7, 2006 Slaughter appeared and testified before the grand jury.

On January 3, 2007, Slaughter met with Falcon. Prior to and during the meeting Slaughter requested from Falcon evidence as to who Falcon was working for and/or his authority. Slaughter also requested assurances that the confidentiality of the victims would be protected and that the victims would not be retaliated against. Falcon did not respond to either one of these requests.[8] When Falcon attempted to question Slaughter about his grand jury testimony, Slaughter also asserted his right to invoke secrecy regarding his testimony and evidence provided to the federal

[8] At the hearing, Falcon testified that when Anderson's attorney made an identical request for evidence of his authority in this matter, Falcon provided her with a copy of his employment contract.

grand jury. Slaughter testified that Falcon appeared to become angry and left the meeting.

On April 13, 2007, Falcon issued a report to Governor Blanco, regarding his investigation of the allegations, noting that he has "unnecessarily been unable to determine the accuracy or existence of any complaints against Mr. Anderson."[9] Falcon concluded that he had "no evidence to suggest that Mr. Anderson has acted inappropriately, sexually, or otherwise, in his interactions with employees of the Southern University System."[10] Slaughter was not given an opportunity to review the report or provide any rebuttal to the report.

In late April, 2007, Warren Forstall, Jr. was appointed to the Board. Atkins was responsible for Forstall's appointment to the Board. Forstall stated that he is a dear friend of Atkins and served as her finance chair for her election campaign. A board meeting was held on April 21st and it was at this meeting that Anderson and Lawson stepped aside and Aktins and Joseph were elected acting chair and acting vice chair, respectively.

Thereafter, Slaughter received a letter dated May 2, 2007, from acting chair Atkins, indicating that the Board intended to discuss Slaughter's employment at their April 28, 2007, board meeting. The April 28th meeting did not take place. Subsequently, Slaughter received a second letter dated May 3, 2007, from Atkins

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[9] Plaintiff's Exhibit 4, p. 3.

[10] Id. at p. 6.

indicating that the Board intended to discuss Slaughter's employment at their May 5, 2007, board meeting.

On May 5, 2007, the Board met. The agenda included an item listed as follows: "5.b. Consideration of any appropriate action, including personnel actions relative to the Report of the Governor's Special Counsel." Once the Board convened in executive session, Slaughter gave the board a copy of his letter dated April 28 with an attachment that included the sexual harassment complaints.[11] Thereafter, in open session, the Board voted to require that Slaughter turn over the information regarding sexual harassment to Lester Pourciau, the Director of Human Resources. The Board went back into executive session with Slaughter and questioned Slaughter about "taking the matter outside the university". Slaughter informed the Board that he chose that course of action because the Board had failed to act on the allegations and Smith had advised him to handle the matter in that fashion. Smith was then called into the executive session and questioned on the matter as well. She confirmed Slaughter's statements about the advice which she had given him.

Slaughter and Smith then left the executive session and the Board continued to discuss Slaughter's employment. On returning from executive session, the Board voted to suspend Slaughter for 60 days with pay. Slaughter was never given a reason as to why he was suspended nor has the Board issued a reason(s) for the

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[11] See Plaintiff's Exhibit 9, Slaughter's April 28th letter to Aktins, the acting chair for the Board.

suspension.

On May 15, 2007, Slaughter filed the instant suit in the 19th Judicial District Court, East Baton Rouge Parish, Louisiana, against the Board; the Honorable Kathleen Blanco, the governor of Louisiana, in her individual and in her official capacity; Dale Atkins, a member of the Board, individually and in her official capacity; John Joseph, a member of the Board, individually and in his official capacity. Part of the relief which Slaughter seeks is an injunction to prohibit the Board from infringing upon his rights under Federal and State law. Defendants removed the matter to this court on May 30, 2007.

In his suit, Slaughter contends that he was suspended for reporting, complaining about, and protesting unlawful sexual harassment in the workplace and educational environment and on account of his testimony before a Federal Grand Jury and his response to lawful Federal subpoenas issued to him. In answer to these allegations, the Board argues that Slaughter is merely an at-will employee who has engaged in duplicitous actions in direct contravention to directives from his superiors. The Board contends that Slaughter cannot establish the four factors required to prove entitlement to preliminary injunction.

The court issued a temporary restraining order on June 15, 2007, directed to the Board, enjoining and restraining it from taking any action affecting Slaughter's employment status pending further order of this court. After reviewing the evidence adduced at the hearing on the preliminary injunction, the court notes that Slaughter

limited the testimony at the hearing to evidence related to his claims based on the Louisiana Whistleblower Statute and Title IX. Thus, the court will limit the scope of this ruling to the Louisiana Whistleblower claim and the Title IX claim.

REQUIREMENTS FOR ISSUANCE OF A PRELIMINARY INJUNCTION

The Rule 65 of the Federal Rules of Civil Procedure authorizes the issuance of the requested preliminary injunction. Before such relief can be granted, however, the Court must determine whether Slaughter has satisfied the four jurisprudential requirements necessary for the issuance of a preliminary injunction. Preliminary injunctions are considered to be "extraordinary and drastic remedies, not to be granted routinely, but only when the movant, by clear showing, carries the burden of persuasion."[12] The Fifth Circuit cautions that "[a] preliminary injunction is an extraordinary remedy," and "[t]he decision to grant a preliminary injunction is to be treated as the exception rather than the rule."[13]

In order to justify the issuance of a preliminary injunction, a plaintiff must show the following four factors: 1) a likelihood of success on the merits; 2) that there is a threat of irreparable injury; 3) that the threatened injury outweighs any harm the injunction might cause the defendants; and 4) that the injunction will not impair the

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[12] **Bass v. Denny (In re Bass)**, 171 F.3d 1016, 1021 (5th Cir. 1999).

[13] **Mississippi Power & Light Co. v. United Gas Pipe Line Co.**, 760 F.2d 618, 621 (5th Cir. 1985).

public interest.[14] The movant must demonstrate by a clear showing the four factors.[15] If the movant does not succeed in carrying his burden on any one of the four prerequisites, preliminary relief may not be granted.[16]

Likelihood of Success on the Merits (Whistleblower/Retaliation Claim)

To determine the likelihood of success on the merits, we look to the standards provided by the substantive law.[17] Slaughter does not have to prove that he will succeed at trial on the merits but he does have to show a strong probability of success on the merits of his claims. In this case, the court finds that there is a strong probability that Slaughter will succeed on the merits based on the factual history before the court and the standards provided by the substantive law.

Louisiana Whistleblower Statute

In his complaint, Slaughter alleges that the Board's action of suspending him with pay was in retaliation for his reporting sexual harassment allegations and testifying before a grand jury. The Louisiana Whistleblower Statute, LSA-R.S. 23:967, provides, in pertinent part, as follows:

> A. An employer shall not take reprisal against an employee who in good faith, and after advising the employer of the violation of law:

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[14] **Younger v. Harris**, 401 U.S. 37, 44-45, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971).

[15] **Valley v. Rapides Parish School Board,** 118 F.3d 1047, 1051 (5th Cir. 1997).

[16] **Enterprise International, Inc. v. Corporacion Estatal Petrolera Ecuatoriana,** 762 F.2d 464, 472 (5th Cir. 1985).

[17] **Mississippi Power & Light Co. v. United Gas Pipe Line Co.,** 760 F.2d 618, 622 (5th Cir. 1985).

(1) Discloses or threatens to disclose a workplace act or practice that is in violation of state law.

(2) Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of law.

(3) objects to or refuses to participate in an employment act or practice that is in violation of law.

The provisions applicable to Slaughter's claims are A(1) and A(2), in that h disclosed allegations of sexual harassment in the workplace and testified before federal grand jury. In order for a claimant to prevail on the merits, however, th Louisiana Whistleblower Statute requires an employee to prove an actual violatio of state law.[18]

VIOLATION OF LAW

Slaughter contends that the state law prohibiting sexual harassment wa violated. Because Louisiana's anti-discrimination law is substantively similar to Titl VII, Louisiana courts routinely look to federal law for guidance in determinin whether a viable claim has been asserted.[19] The prohibition against sexua discrimination under Louisiana law is substantially similar to the federal statut prohibiting discrimination on the basis of sex. Therefore, in this case, the court wi evaluate the claim of sexual harassment under federal law.

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[18] **Accardo v. Louisiana Health Services and Indemnity Company**, 05-2377 (La. App 1st Cir. 6/21/06), 943, So.2d 381, 384.; **Price v. B & B Transport Services, Inc.**, 2007 WL 1300932 (La. App. 1st Cir.).

[19] See e.g., **Wyerick v. Bayou Steel Corp.**, 887 F.2d 1271, 1274 (5th Cir. 1989).

In defining "sexual harassment," the EEOC Guidelines first describe the kinds of workplace conduct that may be actionable under Title VII. These include "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.[20] If this case involved an employee/victim of such harassment, in order for the employee/victim to prevail, the court would first be required to determine whether the complaining employee/victim has or has not suffered a "tangible employment action."[21] A tangible employment action "constitutes a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits," and, in most case, "inflicts direct economic harm."[22]

In a case such as this, however, where the plaintiff claims the status of "whistleblower" rather than employee/victim, his burden is to prove that the law against sexual harassment was actually violated, that is, that an employee suffered unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Although, apparently, no Louisiana court has yet addressed this precise question, this court finds that, under Louisiana law, the

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[20] Title 29 CFR & 1604.11(a)(1985).

[21] See **Burlington Industries, Inc. v. Ellerth,** 524 U.S. 742, 761-62, 118 S.Ct. 2257, 141 L.Ed.2d 633 (1998)

[22] **Tyler v. Union Oil Co.,** 304 F.3d 379, 394 (5th Cir. 2002)(citing **Faruki v. Parsons S.I.P., Inc.,** 123 F.3d 315, 319 (5th Cir. 1997)).

whistleblower does not have to establish that a tangible employment action resulted from the sexual harassment of the victim in order for the whistleblower to prevail on his claim.

In this case, in order to establish an actual violation of sexual harassment law, Slaughter presented the testimony of Cynthia Robinson, who works as a secretary in the alumni office, and Linda Carr ("Carr") who is employed as an internal auditor at Southern University.

Robinson testified that, while at an alumni conference in Philadelphia, Anderson approached her, took her hands and complained that she had not been giving him "the attention he deserved". Robinson responded that they had both been busy and, apparently, no other statements were made by Anderson at that time. However, Robinson also testified that, on an occasion prior to the Philadelphia conference, Anderson grabbed her hands and tried to kiss her on her lips after a board meeting. She had to turn her head in order to avoid the attempted kiss.

Carr testified that in 2004 while employed at Southern, she was familiar with Anderson and knew he was a member of the board. Carr testified that, on one occasion, Anderson drove up in his vehicle while she was outside a building on the Baton Rouge campus and asked her "do you need a boyfriend like me." Carr testified that she responded "no." Anderson asked if she was "sure," and she replied that she was positive. Carr stated that this exchange made her feel uncomfortable. Carr further testified that, following this incident, she did not apply for a position in

the financial aid office because Anderson indicated that she did not have the skills or ability to perform the job.

In support of Carr's testimony, Slaughter also presented the testimony of Linda Catalon, Internal Auditor Director for the Southern University System who has been employed with Southern since 1995. Catalon testified that she recommended Carr for employment in a new position in her department, but Anderson told her that he did not want Carr for the new job because of Carr's previous employment with the financial aid office.

Considering this testimony, the court finds that Slaughter has met the requirement of showing actual proof of a violation of state law. The un-contradicted testimony of Cynthia Robinson, Linda Carr and Linda Catalon established that, on at least two occasions, Louisiana law prohibiting sexual harassment in the workplace was violated in that unwelcome sexual advances were made by Anderson to a university employee. Further, even though this court has concluded that such proof is not required in a "whistleblower" case, Slaughter has also presented evidence from which a jury could validly infer that "quid pro quo" sexual harassment was established in that a victim of the harassment, who rejected the advances, was later denied promotional opportunities.

Next, the court must address the merits of Slaughter's claim that he was retaliated against because of his status as a whistleblower. The well-known **McDonnell Douglas** burden shifting framework applies to retaliation claims brought

under Louisiana's whistleblower statute.[23] To establish a *prima facie* case of retaliation, the plaintiff must show: (1) that he engaged in an activity protected by statute; (2) that he suffered an adverse employment action; and (3) that a causal connection existed between the protected activity in which he engaged and the adverse employment action.[24] If the plaintiff succeeds in establishing a prima facie case, the evidentiary burden shifts to the employer, who must then produce a legitimate, nondiscriminatory reason for the adverse employment decision.[25] The ultimate burden of proof, however, rests with the plaintiff. He must prove that the employer's articulated reasons for the employment action were merely a pretext for the retaliation; specifically, he must show that "but for" the protected activity, his employer would not have taken the adverse action.[26]

With regard to the initial element necessary to establish a prima facie case of retaliation, Slaughter contends that: he engaged in protected activity by reporting complaints of sexual harassment and by testifying before the federal grand jury. The court finds that the evidence regarding this contention is sufficient for a jury to come to the same conclusion.

Next, Slaughter must prove that he suffered an adverse employment action.

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[23] See **Smith v. AT&T Solutions, Inc.**, 90 F. Appx., 718, 723 (5th Cir. 1994).

[24] **Smith**, 90 F.Appx. at 723.

[25] **Id.**

[26] **Id.**

In this regard, he contends that the action of the board at the May 5, 2007 meeting which resulted in his suspension with pay for 60 days, constitutes satisfactory proof of this element.

In determining whether a defendant's action constitutes an adverse employment action in a retaliation claim, "[a] plaintiff must show a reasonable employee would have found the challenged action materially adverse, which ... means it might have dissuaded a reasonable worker from making or supporting a charge of discrimination."[27] The Supreme Court further explained that "material adversity" is distinct from "trivial harms"; "[a]n employee's decision to report discriminatory behavior cannot immunize that employee from those petty slights or minor annoyances that often take place at work and that all employees experience."[28] Again, the court finds that a jury could reasonably conclude that subjecting a president of a university to a 60 day suspension – even with pay – would constitute an adverse employment action since it would dissuade a reasonable person from reporting harassment as such a sanction may adversely affect his career opportunities as an administrator at other universities.

Finally, Slaughter must show that a causal link existed between his reporting sexual harassment and testifying before the grand jury and his suspension. As to

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[27] **Burlington Northern & Sante Fe Railway co. v. White,** 126 S.Ct. 2405, 2415, 165 L.Ed.2d 345 (2006).

[28] **Id.** at 2415.

this element, the court first notes the close proximity between Slaughter's reporting of the harassment (October - December, 2006) and his suspension with pay (May, 2007) – a total of 7 months. Slaughter also testified that prior to the suspension, he had never been subject to disciplinary action nor was he ever told that he had done anything wrong. Moreover, Slaughter testified that he was given no information as to why he was suspended for 60 days at the May 5, 2007 board meeting.

Assuming that Slaughter can establish a prima facie case of retaliation, the Board must carry its burden by articulating a legitimate, non-discriminatory reason for the employment action. The Board contends that Slaughter was suspended for 1) his failure to comply with the Board's By-Laws and policies; 2) his failure to cooperate with Mark Falcon's investigation; and 3) to foster a fair and impartial investigation of his allegations by the university.

At the hearing, however, the board only presented the testimony of two of the nine members who voted to suspend Slaughter. Board members Walter Guidry and Warren Forstall both testified that they did not vote to suspend Slaughter based on retaliation.

However, Chris Jackson, the student representative on the board who was called to testify by Slaughter, testified that he voted to suspend Slaughter at the May 5 meeting in order to save his job since other board members wanted to fire him.

Jackson also testified that, at the April 21 board meeting:

1. Board members Atkins, Clayton, and Montgomery admitted that they were aware

of the harassment allegations against Anderson;

2. Board member Atkins complained that if Slaughter had followed the procedure it would not be in the grand jury's hands;

3. The board was advised by Attorney Smith that there was no procedure for Slaughter to follow, and that she (Smith) had advised Slaughter on steps that he could take in order to report the allegations.

Jackson further testified that, during the executive session of the May 5 board meeting which resulted in Slaughter's suspension, board member Atkins speculated about ways in which the board members could attempt to question Slaughter about his grand jury testimony.

If a jury were to accept this testimony, they could validly conclude that the reasons given by the board for Slaughter's suspension were a pretext for that action and that the real reason was his reporting sexual harassment and testifying before the grand jury. Slaughter has also carried his burden of persuasion as to this element.

Threat of Irreparable Harm

Where monetary damages would adequately compensate a plaintiff, a showing of irreparable injury is precluded.[29] The irreparable harm element must be satisfied by independent proof, or no injunction may be issued.[30] "Speculative injury is not sufficient. There must be more than an unfounded fear on the part of the

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[29] See **DFW Metro Line Servs. V. Southwestern Bell Tel. Co.,** 901 F.2d 1267, 1269 (5th Cir. 1990).

[30] **White v. Carlucci,** 862 F.2d 1209, 1211 (5th Cir. 1989).

applicant."[31] Clearly demonstrating irreparable harm is a heavy burden to overcome.[32]

In **United States v. Hayes International Corporation**, 415 F.2d 1038, (5th Cir. 1969), the Fifth Circuit held that in cases involving a violation of a civil rights statute, where an injunction is authorized by the statute, and the statutory conditions are satisfied, the usual prerequisite of irreparable injury need not be established, but should be presumed by the violation of the statute itself. The case before the court involves a claim under Title IX, a civil rights statute. The provisions of Title IX contain no express remedies however the United States Supreme Court has interpreted Congress' silence regarding the type of relief available under Title IX to allow for the availability of all equitable relief, including injunction.[33] Thus the court finds that the elements necessary to establish a violation of Title IX have also been satisfied. Further, although Title IX cases are generally analyzed under the same framework as cases arising under Title VII, an administrative finding of discrimination, which is required by Title VII, is not a prerequisite to a finding of discrimination under Title IX.[34] Accordingly, the court finds that the factor of irreparable harm in this case may

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[31] **Holland Am. Ins. Co. v. Succession of Roy,** 777 F.2d 992, 997 (5th Cir. 1985).

[32] See **Enterprise Int'l, Inc. v. Corporaction Estatal Petrolear Ecuatoriana,** 762 F.2d 464, 472 (5th Cir. 1985).

[33] **Franklin v. Gwinnett County Public Schools**, 503 U.S. 60, 112 S.Ct. 1028, 117 L.Ed.2d 208. (U.S. 1992), **Barnes v. Gorman**, 536 U.S. 181, 122 S.Ct. 2097, 153 L.Ed 2d. 230 (U.S. 2002).

[34] **Lakosi v. James**, 66 F.3d 751, 757 (5th Cir. 1995).

be presumed by the defendants' alleged violation of Title IX.

Moreover, in addition to the presumption of irreparable harm which arises from a violation of Title IX, additional evidence was presented during the hearing to support an independent finding of irreparable harm to the plaintiff. In **Valley v. Rapides Parish School Board,** 118 F.3d 1047 (5th Cir. 1997), the Fifth Circuit held that the threat of injury to a school superintendent's reputation and ability to procure comparable employment is sufficient to satisfy irreparable injury. Financial hardship alone does not as general rule warrant the issuance of a preliminary injunction.[35]

Slaughter testified that he has been harmed by the defendant's actions because his reputation, personally and professionally, has been damaged since this incident has been all over the news both locally and nationally. His testimony, again unrefuted was that since the suspension, he has not been back on the university campus and he was unable to participate in activities which he enjoyed in his capacity as president, such as participating in the Spring, 2007 commencement activities, or in the 2007 Louisiana legislative session where his activities usually involved seeking funds for the university. The court finds that this is also evidence from which a jury could reasonably conclude that the defendants' actions have irreparably harmed the plaintiff.

The Threatened Injury Outweighs any Harm to Defendants

The third element which must be established to warrant the injunctive relief

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[35] **Sam pson v. Murray,** 94 S.Ct. 937, 953, n. 68 (1974).

requested by Slaughter requires that the court determine whether the threatened injury to Slaughter outweighs any potential harm to the board.

In deciding whether to grant a preliminary injunction, courts balance the harm that would be suffered by the plaintiff if the preliminary injunction were denied, against the possible harm that would result to the defendant if the injunction were granted. The threatened injury to the plaintiff must outweigh the threatened injury to the defendant.[36] The Fifth Circuit has stated that "although a showing that plaintiff will be more severely prejudiced by a denial of the injunction than defendant would be by its grant does not remove the need to show some probability of winning on the merits, it does lower the standard that must be met. Conversely, if there is only slight evidence that plaintiff will be injured in the absence of interlocutory relief, the showing that he is likely to prevail on the merits is particularly important."[37]

The court finds that plaintiff has shown that he likely will be harmed if the injunction is not granted. On the other hand, the court finds that the Board will be unlikely to suffer a great deal of harm if the preliminary injunction is maintained. The evidence presented during the course of the hearing shows that Slaughter was never previously reprimanded nor had any adverse employment action been taken against him by the Board, except for the matters which are the subject of this lawsuit. Had

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[36] **Harris County, Texas v. CarMax Auto Superstores, Inc.**, 177 F.3d 306, 313 (5th Cir. 1999).

[37] **Canal Authority of State of Florida v. Callaway**, 489 F.2d 567, 576 (5th Cir. 1974).

plaintiff been derelict in his job performance, the balancing of harm might have weighed in the defendants' favor; however, this is not the case.

Federal courts, including the Fifth Circuit, have also looked to whether granting the preliminary injunction will provide the plaintiff with practically all of the relief sought on the merits, and where such is the case, the grant of a preliminary injunction has been found to be improper.[38] The court finds that granting a preliminary injunction in the present case will not grant plaintiff all of the relief which is sought. Plaintiff seeks monetary damages, which are not addressed by the preliminary injunction. Furthermore, the preliminary injunction is not a guarantee that plaintiff will retain his position as President into the indefinite future, but merely allows him to retain his position pending the outcome of this litigation. Thus, as to this element, the court finds that the requested injunctive relief will not occasion any substantial harm to the board. The injunction will maintain the status quo until the merits of Slaughter's claims can be determined at trial on the merits, and the only restriction which the injunction will impose upon the board is the requirement that the board seek and obtain court approval before any action is taken regarding Slaughter's employment status. In all other respects, the board is free to conduct its business as usual.

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[38] See, e.g., **Miami Beach Federal Savings and Loan Association, v. Callander,** 256 F.2d 410, 415 (5th Cir. 1958), **Knapp v. Walden,** 367 F.Supp. 385, 388 (S.D.N.Y. 1973),

The Injunction will not Impair the Public Interest

The final factor to be considered in evaluating whether a preliminary injunction should be granted is whether the movant has established that the preliminary injunction will not disserve the public interest. In this case there has been no evidence presented to show that preventing the Board from taking action affecting Slaughter's employment pending the final outcome of this lawsuit will be detrimental to the public. Rather, by granting the preliminary injunction, the court "freezes the status quo" and "preserve[s] the relative positions of the parties until a trial on the merits can be held".[39]

The court does not believe, and defendants have not shown, that the public interest will be harmed by allowing Slaughter to continue serving in his position as president of the university. There is no evidence that, prior to the filing of this lawsuit, there were any problems between Slaughter and the board, nor is there any evidence that Slaughter's job performance was otherwise deficient. Indeed, it would appear that the public interest would be served, rather than harmed, by an injunction that allows the business and scholastic affairs of this public university to be conducted in a normal manner until the resolution of this litigation.[40]

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[39] **Healthpoint, Ltd. v. Ethex Corporation**, 273 F.Supp.2d 817, 867-68 (W.D. Tex. 2001), citing **Wenner v. Texas Lottery Commission**, 123 F.3d 321, 326 (5th Cir. 1997).

[40] It is important to remember that the court retains the authority to allow the board to make decisions regarding Slaughter's employment if necessitated on other grounds.

Title IX Claims

Slaughter also asserted that any employment action by the Board would violate his rights under Title IX.

Title IX prohibits sex discrimination by recipients of federal education funding. Title IX provides that "[n]o person in the United States shall on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."[41] Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX's private cause of action.[42] The Supreme Court explained, as follows:

> Retaliation is, by definition, an intentional act. It is a form of "discrimination" because the complainant is being subjected to differential treatment.... Moreover, retaliation is discrimination "on the basis of sex" because it is an intentional response to the nature of the complaint: an allegation of sex discrimination.

The Fifth Circuit has held that "Title IX affords a right of action for retaliation against employees of federally funded educational institutions." In Title IX employment discrimination cases, courts have applied the three-part burden shifting framework of **McDonnell Douglas** that is used in Title VII employment

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[41] 20 U.S.C. § 1681.

[42] **Jackson v. Birmingham Board of Education,** 544 U.S. 167, 125 S.Ct. 1497, 161 L.Ed.2d 361 (2005).

discrimination cases.[43] Therefore, this court applies the **McDonnell Douglas** burden shifting framework to Slaughter's Title IX claim.

Having previously considered Slaughter's Louisiana Whistleblower claim under the **McDonnell Douglas** burden shifting framework and determining that Slaughter has a substantial likelihood of success on merits, for the same reasons, the court now finds a likelihood of success on the merits of Slaughter's Title IX claim.

Conclusion

For the above and foregoing reasons, the court issued the requested preliminary injunction on July 5, 2007. However, because of the substantial issues involved in this litigation, the substantial public interest in those issues and the potential effect of this litigation upon an institution of higher education, this matter should be resolved as soon as possible. Accordingly, the court has ordered an expedited discovery schedule and intends to set the matter for trial within the next 120 days.

Baton Rouge, Louisiana this 6th day of July, 2007.

RALPH E. TYSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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[43] **Weinstock v. Columbia Univ.**, 224 F.3d 33, 42 n. 1 (2nd Cir. 2000), cert. denied, 540 U.S. 811, 124 S.Ct. 53, 157 L.Ed.2d 24 (2003).