COLLETTE JOSEY COVINGTON AND JADE COVINGTON	**:**	**14TH JUDICIAL DISTRICT COURT**
VS. NO. 2001-2355	**:**	
MCNEESE STATE UNIVERSITY AND THE BOARD OF SUPERVISORS FOR THE UNIVERSITY OF	**:**	**PARISH OF CALCASIEU**
LOUISIANA SYSTEM	**:**	**STATE OF LOUISIANA**
FILED _______________		**DIVISION "F" – JUDGE CARTER**

MEMORANDUM IN OPPOSITION TO ATTORNEY GENERAL CRIMINAL DIVISION'S MOTION AND INCORPORATED MEMORANDUM TO RECUSE THE TRIAL JUDGE

AND

MEMORANDUM IN OPPOSITION TO ATTORNEY GENERAL CRIMINAL DIVISION'S MOTION AND ORDER TO CONSOLIDATE THE ATTORNEY GENERAL'S MOTIONS TO RECUSE FOR THE SOLE PURPOSE OF THE HEARING

MAY IT PLEASE THE COURT:

Plaintiffs COLLETTE JOSEY COVINGTON and JADE COVINGTON, ("Plaintiffs" or "Covington") respectfully submit, through undersigned counsel, their Memorandum in Opposition to Attorney General Criminal Division's Motion and Incorporated Memorandum to Recuse the Trial Judge and their incorporated Memorandum in Opposition to Attorney General Criminal Division's Motion and Order to Consolidate the Attorney General's Motions to Recuse for the Sole Purpose of the Hearing (collectively, Plaintiffs' "Memorandum"). Plaintiffs submit their Memorandum pursuant to the Americans with Disabilities Act, the Louisiana Code of Civil Procedure, and related federal and state statutes.

I. INTRODUCTION

Preliminary Statement

In 2001, Plaintiff Collette Covington and Jade Covington filed a civil suit against the Defendants (collectively referred to as "McNeese") under the Americans with Disabilities Act ("ADA") and related state and federal statutes. It has been established by summary judgment and through McNeese's admissions that McNeese fails to comply with the ADA and related state statutes and that this failure to comply with these statutes as well as McNeese's failure to provide accessible restrooms, sidewalks, classrooms, and other facilities has prevented Covington and other disabled students similarly situated

from receiving an education.

Covington's goal for the last nine years has been to receive accommodations from McNeese for her disabilities so that she could complete her college education and become gainfully employed as a school teacher in Calcasieu Parish. She is entitled under the ADA to injunctive relief ordering McNeese to accommodate her and ordering McNeese to correct defects in several buildings on its campus to comply with various standards which have been in effect since 1967, 1973, and 1990.

Covington has been seeking her hearing on a preliminary injunction since 2005, but throughout this litigation, the Defendants have engaged in numerous delay tactics, including repeated motions to continue, false promises of accommodation in exchange for litigation delays, refusing to answer crucial discovery, some of which is now four years overdue[1], and unjustified appeals which even the Third Circuit has referred to, *sue sponte,* as frivolous.

Covington was finally scheduled to have her preliminary injunction heard on October 15, 2009 and expected, at long last, to get the basic relief that she has been entitled to under the ADA for years.[2] Yet only 48 hours before this hard-fought hearing date, attorneys with the Attorney General Criminal Division who are not involved in this litigation moved to recuse the trial judge of nine years, claiming that he made "disparaging comments" about the Attorney General's Office two years ago in a criminal case which has nothing to do with this matter and because of his and his sons' relationships with the Attorney General's Office Criminal Division.

The Attorney General Criminal Division's Motion to Recuse the Trial Judge should be denied in the *Covington* civil case because:

1. The Attorney General's Office is not making appearances in the *Covington* case;

2. The Criminal Division of the Attorney General's Office has never made an appearance in the *Covington* case;

3. The last time any assistant attorney general made an appearance in this case, Judge Carter referred to that assistant attorney general at the start of the hearing as the judge's "favorite" lawyer and made it clear that the judge and this assistant

[1] There were also six consolidated motions to compel pending in front of Judge Carter scheduled to be heard. Approximately 48 hours before these hearings, the Attorney General's Office filed their Motion to Recuse the Trial Judge.

[2] Injunctive relief and attorney fees are important and necessary steps under the ADA because our civil rights statutes only work if prevailing plaintiffs receive the ongoing protection and attorney's fees to which they are entitled under the law. Every day that Covington is denied the right to continue her education in accessible classrooms exacerbates the irreversible harm that she suffers.

attorney general are long-time friends;

4. The attorney who replaced that assistant attorney general and now represents McNeese in the *Covington* case was once Judge Carter's personal lawyer;

5. Judge Carter has made statements on the record in the *Covington* case which make it clear that he holds a favorable impression of McNeese, noting, for instance, that he attended McNeese and that he personally knows the President of McNeese and believes the President to be a "good" one;

6. Judge Carter's own daughter was an employee of McNeese until recently;

7. Judge Carter's rulings in Plaintiffs' favor have been extremely modest and limited, especially given the facts, the law, and the tone used by the appellate courts;

8. This case has been pending for nearly nine years, and the suit record is thousands of pages long. Any new judge assigned to this case would require months to review the extensive record and would cause additional, impermissible delays to the parties;

9. The facts and history in this case are complex and extensive, and Judge Carter's rulings have been reviewed and unanimously upheld by the appellate court and Supreme Court; and

10. The Plaintiffs are entitled to a summary hearing under La. C.C.P. 3602, which mandates that, "an application for a preliminary injunction shall be assigned for hearing not less than two nor more than ten days after service of the notice." The Defendants have already caused the Plaintiffs numerous delays, and the Plaintiffs have been waiting an additional six weeks since the expiration of their latest 10-day window for the Attorney General Criminal Division to resolve this motion.

None of the allegations in the Attorney General Criminal Division's Motion and Incorporated Memorandum to Recuse the Trial Judge (hereinafter referred to as the "State's Motion") have any relevance to the *Covington* case. Indeed, the circumstances suggest that the Plaintiffs would be the only party in the *Covington* case with grounds to request a recusal, but they chose not to because they trusted that the Court would be fair and impartial. The Plaintiffs were surprised by this unexpected and unprecedented delay in the *Covington* case, yet they initially did not oppose the State's Motion because they erroneously believed that this matter would be promptly decided so that their preliminary injunction hearing and motions to compel could proceed in a timely manner.[3]

However, more than six weeks have passed, and the Attorney General Criminal Division has filed another motion, this time attempting to consolidate the *Covington*

[3] The significant legal issues have already been determined and appealed in the *Covington* case, and whichever trial judge hears the injunctive relief will only be required to perform the administrative task of ordering McNeese to comply with the law as already strongly stated by the Third Circuit. The Plaintiffs oppose the State's Motion because it delays their ability to receive the remedies that they have already proven that they are entitled to receive.

recusal hearing into 12 others.[4] Because of the delays caused by these filings, the inopportune time in which they were filed (only two days before the State was to be placed under a significant order to expend funds to end its discrimination against the disabled at McNeese) and the probability that there will be continued delays and filings if Plaintiffs do not speak up and oppose these motions, the Plaintiffs now oppose the State's Motions and request that they be promptly denied to avoid any additional delays in this nine-year-old case.

II. STATEMENT OF FACTS

Early Case History[5]

In 2001, Collette Covington, a disabled McNeese student, was two semesters from graduating with a degree in early elementary education. At the time, McNeese subjected Covington to extreme acts of discrimination, which included penalizing Covington when she was unable to reach distant and inaccessible classrooms in her wheelchair and, in violation of state and federal law, telling her that no accommodation would be made for her so that she could attend classes. Covington began making accommodation requests on behalf of herself and others as far back as 1993, but Covington's complaints to university officials repeatedly fell on deaf ears, and McNeese steadfastly refused to engage in any sort of interactive process to determine what, if any, accommodations might be available to Covington. Realizing that McNeese officials would never take her complaints seriously, Covington finally contacted counsel after she was forced to urinate on herself and suffered a physical injury while attempting to utilize the women's restroom in the Old Ranch on January 31, 2001.

After the accident, Covington and her counsel spent several months attempting to get McNeese to acknowledge her request for accommodations, yet McNeese failed to respond, and Covington filed suit under the Americans with Disabilities Act (ADA) and other statutes on May 8, 2001. During discovery, McNeese admitted that its Old Ranch violated the ADA and that McNeese failed to provide a single accessible restroom for the

[4] The Attorney General Criminal Division requested that all 13 cases be consolidated into *State v. London,* because the Attorney General Criminal Division alleges that the *London* case was filed first, in 2004. However, the *Covington* case was actually filed first, in May, 2001, and if any consolidation were to take place, it should therefore be in *Covington* in Division H.

[5] In the interest of brevity, Covington has not included exhibits supporting the facts already established in her summary judgment and filed in the record. These facts have been judicially established, and Defendants have exhausted all appeals with respect to these findings. Plaintiffs will submit these exhibits upon the Court's request.

disabled despite posting signs indicating that the building was ADA compliant and despite the fact that this was the building designated by the State of Louisiana for use by the disabled to wait for their transportation. McNeese further admitted that much of its campus is inaccessible to the disabled and that McNeese had no intention of complying with the ADA, no intention of drafting a self-evaluation or transition plan as required by the ADA, and no intention of accommodating Covington.

McNeese further admitted that it has spent approximately **$1 billion** since the passage of the ADA and has made extensive renovations to its campus, yet refused to bring its facilities into compliance as required by the ADA because it did not consider it **"fundamentally important"** or a **"priority"** to allow those in wheelchairs to attend McNeese.[6] Indeed, since the passage of the ADA in 1990, McNeese has been routinely approving and constructing **new** buildings which fail to comply with the ADA, thus sending a clear message to those in wheelchairs that they are unwelcome.

McNeese Director of Services for Students with Disabilities Tim Delaney even admitted in his deposition that McNeese spent money that was supposed to help the disabled on things such as photo copiers for his office. Delaney further testified that McNeese's discrimination historically deterred 75 percent of prospective disabled students from attending McNeese.

Delaney testified that McNeese received an average of $50,000 in economic benefits for every student who "registers" as disabled with his office, yet he only provided services to those with academic disabilities and not those with physical disabilities such as Covington. Indeed, Delaney admitted that it would have been difficult for those with physical disabilities to even reach him, since McNeese knowingly placed the disabilities office in an inaccessible location with no ADA compliant restrooms, doors, ramps, or elevators.

When someone with physical disabilities managed to find Delaney to request accommodations, as Covington did several times before her accident, Delaney admitted that he required them to submit to an arduous "registration" process to prove to his satisfaction that they didn't purchase their wheelchair at a "pawnshop" and fake their

[6] During Plaintiffs' initial summary judgment hearing, this Honorable Court viewed very compelling video depositions of McNeese President Dr. Robert Hebert's testimony on this subject.

disabilities. Even after Covington supplied McNeese with hundreds of pages of medical records and made her physicians available for deposition, McNeese still refused to concede that she was disabled.

Delaney added further insult to injury when he testified that he did not even investigate Covington's accident because he did not know where the Old Ranch is located on campus and was unwilling to look for it.[7] Furthermore, Delaney testified that he believes the disabled complain too much at McNeese, particularly when the elevators fail and prevent them from attending classes.

After this suit was filed, McNeese President Dr. Robert Hebert made a mockery of the ADA by claiming in his deposition that the Old Ranch where Covington was injured did not belong to McNeese. Instead, he incredulously testified that it belongs to the "students" of McNeese and that Covington should ask the "students" to take up a collection and bring the Old Ranch into compliance with the ADA because McNeese would not do so. Hebert further implied in his deposition that he is not sure whether he even recognizes the authority of the federal government to pass laws affecting McNeese—a position which was commonly used by the racial segregationists of the 1950s as a means of keeping black students from having equal access to college campuses.

Covington Prevailed On Summary Judgment

Despite McNeese's egregious behavior, Covington still tried to compromise with McNeese through dozens of telephone calls, emails, and letters to McNeese's counsel. It was always Covington's desire to avoid having to escalate this litigation, but McNeese failed to even answer any of Covington's letters seeking accommodation or make any effort whatsoever to accommodate Covington.[8] Therefore, Covington was forced to

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[7] Delaney's claim not to know where the McNeese student union is located is particularly outrageous since at the time of his deposition he had been on the McNeese payroll for six years and had an office only a few hundred feet from the student union.

[8] McNeese recently hired new counsel. However, McNeese's counsel for the last eight years simply ignored Covington's accommodation requests. Nevertheless, Covington still attempted to register at McNeese in 2005 and 2006 during the pendency of this litigation. McNeese responded with open hostility toward her when she showed up on campus in a wheelchair. Even Tim Delaney admits in his affidavit that he offered **no accommodation** to Covington **five years** after she filed her suit and even after she filed a Motion for Summary Judgment with hundreds of pages of attachments explaining McNeese's legal obligations in great detail. On May 18, 2009, McNeese further admitted through Requests for Admissions that Delaney did not offer any

press forward and filed for summary judgment and a preliminary injunction.

McNeese delayed the summary judgment and preliminary injunction hearings a year by seeking continuances. Covington agreed not to oppose these continuances only because McNeese made the false promise that it might accommodate her so that she could return to school if McNeese was given more time to review the facts and law.

It became apparent that these delay tactics were yet another act of bad faith by McNeese and that McNeese never intended to accommodate Covington no matter how long she waited, so Covington pressed forward with her summary judgment but agreed, as a professional courtesy to the Attorney General's Office, to delay her preliminary injunction in exchange for the Defendants' promise not to oppose it if she prevailed on summary judgment.

In January, 2007, after three lengthy hearings, this Court entered summary judgment for Plaintiffs, declaring that McNeese must bring its facilities into compliance with the ADA and imploring McNeese to take the ADA seriously and correct its violations. Instead of acting upon this Court's suggestion that it fulfill its ADA obligations, McNeese directed its anger over this Court's decision toward Covington and her counsel and filed an appeal and a series of desperate and irrelevant motions[9] with the Third Circuit, all of which the Third Circuit denied.

McNeese also used the Third Circuit as a venue for publically attacking Covington. For instance, McNeese asserted—without evidence—that Covington is so mentally disturbed that she is unable to remember whether she had an accident or even needed a wheelchair.[10] McNeese's angry appellate tirade resulted in the Third Circuit

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accommodations to Covington when she sought them.

[9] For instance, McNeese attempted to silence Covington by filing a "Motion to Strike" her arguments. Absurdly, McNeese then attempted to strike Covington's response to McNeese's "Motion to Strike". McNeese also moved to supplement the record with a six-year-old psychiatric examination that it took of Covington that was inconclusive and irrelevant as to any aspect of this case. These frivolous motions had no legal basis and were solely designed to delay this litigation, slander Covington's reputation, and drive up Covington's attorney fees.

[10] McNeese has referred to Covington in its briefs as having, "a significant problem with accuracy and/or the truth" and claims that she is so mentally incompetent that she is unable to remember whether she can walk or needs a wheelchair (*See* McNeese Appellate brief, p. 13, among other references). McNeese's position is particularly outrageous since McNeese's own police department documented her injury and McNeese's own disabilities director, Tim Delaney, acknowledged her disability in his deposition. Furthermore, McNeese came within two semesters of awarding Covington a college degree. McNeese must concede that its comments are either malicious and unsupported distortions of the truth or that McNeese is an institution of such low caliber that those who are too mentally incompetent to remember whether they can walk are

publishing the longest civil opinion of the year, in which it compared McNeese's discrimination against Covington and other disabled students to the racial discrimination exhibited by the segregationists of the past.

The Third Circuit blasted McNeese for Discriminating against Covington

> We cannot fathom that McNeese felt no need, regardless of whether it was required by law, to upgrade a single women's restroom into ADA compliance in a building that houses, *inter alia*, the two main student cafeterias on campus, offices for student government and activities, and a state-of-the-art computer laboratory. **McNeese's decision to ignore a federal mandate is reminiscent of the intolerance of the past. We had hoped that the days where a court has to step in to ensure that people were treated equally under the laws of this country were gone. Yet, still, McNeese is emboldened enough to bring such a case to an appellate court where a published, written opinion will forever memorialize its discrimination against this country's disabled citizens.** It is hoped that McNeese will reassess its attitude toward its disabled students. It is also hoped that McNeese will prepare and publish a transition plan as required by the ADA. [emphasis added]. *Covington v. McNeese State Univ.,* 996 So. 2d 667 (La.App. 3 Cir. 2008); *rehearing denied,* 2008 La. App. LEXIS 1688 (La.App. 3 Cir. Dec. 10, 2008); *writ denied.*[11]

The Louisiana Third Circuit issued these strong words against McNeese in its 33-page affirmation of Judge Carter's summary judgment ruling in Covington's favor.[12] The Third Circuit's writing opinion referred to McNeese's defense of this case as "**frivolous**", a "**concoction**", "**completely irrational**", "**indefensible**", having "**audacity**", and "**absurd**".[13]

Yet even after such strong words from three appellate judges, McNeese continued to delay these proceedings, refused to acknowledge Covington's right to attend McNeese in a wheelchair,[14] and maintained that its discrimination was justified. McNeese even filed a motion for rehearing before the same three judges who had just chastised it for discrimination. When that request was unanimously denied, McNeese stubbornly filed writs with the Louisiana Supreme Court, which the seven justices unanimously denied.[15]

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nevertheless intelligent enough to become McNeese seniors.

[11] *See* Exhibit 1, *Covington vs. McNeese State Univ.,* 996 So.2d 667 (La.App. 3 Cir. 2008), *rehearing denied,* page 31.

[12] The *Covington vs. McNeese* opinion is the **longest of the Third Circuit's 503 civil opinions** written in 2008, and it is also among the most significant because it establishes not just Covington's right to attend McNeese, but the right of every other potential disabled student to attend college at Louisiana's public universities.

[13] *See* Exhibit 1, *Covington vs. McNeese State Univ.,* 996 So.2d 667 (La.App. 3 Cir. 2008), *rehearing denied,* page 29.

[14] *See* McNeese's Motion for Rehearing and Supreme Court writ application.

[15] McNeese has been sharply criticized outside the courtroom as well. Its actions have sparked

Most defendants would realize at this point that their interpretation of the law and facts were flawed. However, McNeese has only become more emboldened by its losses, and it has taken its egregious behavior to new levels, both inside and outside the courtroom.

McNeese Responded By Retaliating Against Covington

While the Third Circuit was upset enough with McNeese to publish one of the longest and most strongly worded opinions in its history, it would certainly have been more upset if it had been aware of the most appalling facts in this case. For instance, the Third Circuit did not know that McNeese has knowingly been dishonest in discovery in this case[16] and has refused to answer discovery dating back over four years.[17]

McNeese has pursued one unlawful option after another to avoid liability and avoid complying with the ADA. One method of intimidation employed by McNeese included using taxpayer money to hire private detectives to sit outside Covington's home with a video camera to spy on Covington and her then 15-year-old daughter.[18] Covington discovered this plot and suffered severe emotional distress and feared for her safety and the safety of her family during the pendency of this litigation.[19]

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an international outcry, and this case has been the subject of several national articles, including one by a prominent education journal. "Access Denied", *Inside Higher Ed.* August 6, 2008. http://www.insidehighered.com/news/2008/08/06/mcneese

[16] There are numerous examples of McNeese's dishonesty in answering discovery. For instance, McNeese Media Services Director Candace Townsend had to be deposed because McNeese falsely claimed in discovery that no public documents existed establishing that other students in wheelchairs had made complaints of discrimination against McNeese. Townsend was confronted with the fact that these documents not only existed, but that she was the McNeese faculty member responsible for supervising the students who published some of these documents in the campus media. Furthermore, Townsend, who is responsible for all public communication for McNeese, now refuses to produce discoverable emails, claiming that she sent and received only 250 emails during the last two years. This assertion is completely implausible, as someone in Townsend's position can reasonably be expected to receive as many emails in a day as she asserts she receives in a year.

[17] Covington has six motions to compel pending with the Court. McNeese will not even produce such basic documents as the U.S. Department of Justice report which was published months ago and lists ADA violations found at McNeese by the Federal Government in November, 2008. This, and other public documents such as McNeese's self evaluation and transition plan and basic budget documents, should be easy for McNeese to produce, but McNeese has chosen instead to obstruct this litigation as part of its pattern of discrimination.

[18] McNeese has admitted this in its Requests for Admissions, dated May 18, 2009. Only after McNeese was confronted with the fact that Covington was aware that she was being spied on did McNeese produce one of these videos.

[19] Any disabled single mother would fear for her safety and the safety of her family upon learning that strangers were hiding outside her home, but Covington's fear is particularly justified given McNeese's history of retaliation against Covington.

When that intrusion failed to deter Covington from wanting to finish her degree, McNeese further informed her in 2006 that it would not honor the credits she had earned in her degree program, thus effectively demoting her from a senior to a freshman.[20] McNeese's discrimination will require that Covington retake most of her courses in the same inaccessible classrooms that she had so much trouble accessing in the past.[21] McNeese then advised Covington in 2006 that she would be "better off" finishing her degree at the University of Louisiana in Lafayette (ULL, formerly USL) because McNeese will not accommodate her in a wheelchair.

McNeese is Under Investigation by the U.S. Department of Justice Civil Rights Division for Discriminating Against the Disabled

While this case was on appeal, McNeese's discrimination against the disabled caught the attention of the U.S. Department of Justice Civil Rights Division, which flew a team of lawyers to Lake Charles in November, 2008, to initiate an independent site inspection and investigation of McNeese. Counsel for McNeese has admitted that the investigators found that McNeese's discrimination against the disabled is real, pervasive, and serious, and that McNeese fails to comply with the ADA even with respect to its new construction.

The Defendants have refused to produce the U.S. Department of Justice investigators' report; however, Plaintiffs believe that these documents will establish that the Defendants intentionally covered up numerous ADA violations in an effort to avoid liability, to avoid spending funds to comply with the law, and to further perpetuate its discrimination against students such as Collette Covington.

While the Defendants refuse to hand over the U.S. DOJ report, they have admitted that the U.S. Department of Justice considers McNeese's violations serious enough that the United States will likely follow-up with a demand that McNeese become ADA

[20] McNeese claims, perhaps accurately, that this is because of changing state requirements for teachers. Nevertheless, Covington has lost several years of credits due to McNeese's discrimination, and she will be forced to retake classes for years to come on an inaccessible campus in which she routinely cannot find restrooms and is forced to urinate on herself.

[21] Indeed, Covington attempted to enroll in the Fall, 2009. To the credit of Rock Palermo, one of the Defendants' new attorneys, Covington's previous scholarship was restored. However, the poor condition of the McNeese campus makes it impossible for Covington to complete her classes, as noted in the Third Affidavit of Collette Covington and attached photographs, previously filed in this case.

compliant or face a suit by the United States in federal court.[22] This separate federal ADA discrimination lawsuit or settlement demand is likely to cost the State tens, if not hundreds, of millions of dollars, because it will affect every institution in the University of Louisiana System.

The U.S. Department of Justice has not only investigated McNeese for its discrimination, but it has also admonished McNeese not to engage in any retaliation against the disabled. In November, 2008, the U.S. Department of Justice instructed McNeese to send a campus-wide email to each of its 8,095 students and 392 faculty members warning them that:

> . . . the ADA protects individuals from retaliation or coercion and that the Department will investigate allegations of such activity. Specifically the ADA states:
>
> **Sec. 12203. Prohibition against retaliation and coercion**
>
> **(a) Retaliation.** No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.
>
> **(b) Interference, coercion, or intimidation.** It shall be unlawful to coerce, intimidate, threaten, or interfere with an individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.[23]

It is a sad day when the federal government has to step in to protect the rights of Louisiana's disabled students. McNeese's recalcitrant behavior is extraordinary and, as the Third Circuit noted, is reminiscent of discrimination from past generations.

McNeese's campus alone requires at least $15 million in upgrades

In addition to the U.S. Department of Justice investigation, another set of documents have uncovered at least $15 million in ADA violations on the McNeese campus, much of which occurs in brand-new buildings that McNeese constructed within the last few years in violation of clearly established ADA and state codes.

As a prevailing party in her suit, Covington is now entitled to injunctive relief ordering McNeese to end its discriminatory practices against Covington and to begin to

[22] McNeese has admitted this in its Requests for Admissions, dated May 18, 2009, and informally through McNeese's counsel. However, McNeese refuses to turn over this report, which is the subject of one of six pending motions to compel filed by Plaintiffs.

[23] *See* Exhibit 4 to Plaintiffs' Motion to Compel, filed May 17, 2009.

upgrade its campus on behalf of all disabled students, potential students, visitors, guests, and members of the public. Covington's injunction will result in benefits to generations of disabled residents of Southwest Louisiana and will provide untold economic benefits through easier access to education and prevention of future injuries, discrimination, and litigation against McNeese.

Covington filed for a preliminary injunction which was to be heard on October 15, 2009, and she anticipated filing for attorney fees shortly thereafter. This injunction, which is mandatory for a prevailing party under federal and state law, was required to be heard within 10 days under La. C.C.P. Article 3602.

Instead, only 48 hours before this hearing, the Defendants, through the Attorney General Criminal Division, filed a Motion to Recuse the Trial Judge, thus preventing Covington from receiving her injunction within the time limits prescribed by the Code of Civil Procedure and preventing her from receiving her injunction in time to enroll at McNeese for the Spring semester. Covington did not initially respond to Defendants' Motion. However, the Defendants now move to consolidate the *Covington* case with 12 other cases, arguing that all 13 cases "involve the same set of facts and circumstances." Plaintiffs could not disagree more, as there is nothing about this case that even remotely resembles any of the other 12 cases.

III. PLAINTIFFS RESPONSE TO THE ATTORNEY GENERAL CRIMINAL DIVISION MOTION TO RECUSE THE TRIAL JUDGE AND MOTION TO CONSOLIDATE

There is no bias against the Defendants or their counsel in the *Covington* case

This detailed factual summary of the *Covington* case clearly shows that it is different from any of the 12 other cases subject to the Attorney General Criminal Division Motion to Recuse the Trial Judge. The long history of this case, the overwhelming evidence in favor of Plaintiffs, and the consistent rulings and findings from the trial court, appellate court, Supreme Court, and U.S. Department of Justice show no history of bias or favoritism toward the Plaintiffs or against the State in the last nine years. Indeed, if either party were to have grounds to recuse the trial judge, it would be the Plaintiffs, not the Defendants, for the following reasons:

1. **McNeese is being represented by outside counsel, not the Attorney General's Office.** The Attorney General's Motion and Incorporated Memorandum to Recuse the Trial Judge claims that Judge Carter should be recused because he, "hired attorney Rudie Soileau to handle legal matters for him" and that Rudie Soileau is appearing in a case adverse to the Attorney General's Office. Because of this relationship, the Attorney General's Office Criminal Division claims that, "a conflict of interest presents itself, and the judge cannot ethically or legally serve as the trial judge under the Louisiana Code of Civil Procedure."[24]

Rudie Soileau is not involved in the *Covington* case, and this argument has nothing to do with *Covington.* Interestingly, however, **the State has done to the Plaintiffs in the *Covington* case exactly what it complains about in its Motion.** After McNeese lost its appeal of Covington's summary judgment, and after the U.S. Department of Justice began investigating McNeese for discriminating against the disabled, McNeese sought out and hired Mike Veron to represent it against Ms. Covington. Significantly, Mike Veron once represented Judge Carter as the Judge's own personal lawyer.

While this may have presented the appearance of a conflict of interest, Plaintiffs did not respond by moving to recuse Judge Carter, because they inherently trust the integrity of Judge Carter and every other judge in the 14th Judicial District Court.

The Attorney General Criminal Division may have grounds to request a recusal hearing with respect to other cases, but in *Covington,* it would be absurd for the State to suggest that Judge Carter is biased against the lawyer that he hired for his own personal matters, illustrating why the *Covington* case should not be consolidated with the other cases and why the State's Motion should be denied with respect to the *Covington* case.

2. **Judge Carter is a personal friend of the last assistant attorney general to appear in the *Covington* case and referred to this assistant attorney general as his "favorite lawyer" immediately prior to Covington's summary judgment hearing.** Even if the Louisiana Attorney General's Office were actively representing the Defendants in the *Covington* case, there is no evidence that this representation biases Judge Carter in any way in the instant case. Indeed, before the Plaintiffs even began their

[24] Motion and Incorporated Memorandum to Recuse the Trial Judge, page 4.

summary judgment presentation in December, 2006, Judge Carter light-heartedly stated to the parties at the hearing that he regarded Assistant Attorney General Adam Ortego as a lifelong friend and called him his "favorite lawyer". He then stated on the record, before the Plaintiffs were even allowed to speak, that he was inclined to rule in favor of McNeese. Regardless of what may have transpired in other cases, there is nothing to suggest that Judge Carter harbors any bias against the assistant attorney general assigned to the *Covington* case.

3. **Judge Carter attended McNeese and stated on the record that he personally knows the McNeese president to be a "good" one.** Judge Carter stated on the record that he has personal affiliations with McNeese and that he graduated from McNeese. Furthermore, he personally knows the president of McNeese and considers him to be a "good" president.[25] Just as Judge Carter shows no apparent bias against any of the attorneys representing McNeese (one of them is his "favorite" lawyer and he hired the other to represent him), Judge Carter also shows no apparent bias against any of the individuals at McNeese.

4. Judge Carter's daughter was employed by McNeese. Judge Carter's daughter taught at McNeese until recently. This fact alone is significant, as it tends to show that Judge Carter has no reason or motive to rule in a manner detrimental to McNeese.

5. Judge Carter hesitated to rule against McNeese despite overwhelming evidence. When it was clear in late 2006 that the evidence overwhelmingly supported the Plaintiffs' position, Judge Carter delayed ruling three times and expressly told the Defendants that he wanted them to take the time to find additional evidence so that he did not have to rule against McNeese. After three lengthy hearings, it was clear that the evidence was so overwhelming that Judge Carter had no choice but to rule for the Plaintiffs on their summary judgment, despite giving McNeese every opportunity to provide additional evidence.

Instead of referring to the Attorney General's Office arguments as "absurd", "unfathomable", a "concoction", and showing "audacity", as the Third Circuit panel understandably did, Judge Carter showed great restraint in his words and gave the

[25] Transcript of summary judgment oral arguments, page 172.

defendants every benefit of the doubt, even when presented with brazen discrimination in which anger would clearly have been justified.

Plaintiffs were entitled to have their preliminary injunction heard over six weeks ago under La. C.C.P. Article 3602.

Covington has sought special relief under La. C.C.P. Article 3602, and she was entitled to have her preliminary injunction heard more than six weeks ago so that she could enroll at McNeese in January, 2010 with this court's protection and the guarantee of a timeline by which the buildings that she needs to complete her degree will finally be accessible. The Attorney General Criminal Division's motion has resulted in further delay in this important civil case in clear violation of La. C.C.P. Article 3602. Furthermore, the grounds for recusal provided by the State's motion are inapplicable to the *Covington* case.

Because the trial judge has nine years of familiarity with this case, he is in the best position to rule on this expedited preliminary injunction and the subsequent attorney fees. Any new judge assigned to this case would be forced to become familiar with a suit record that is several thousand pages long and would have great difficulty assigning fair attorney fees having not had the opportunity to follow the various motions and oral arguments for the last nine years. This would create further delay, would be unduly burdensome to the new court as well as to the parties and would certainly cause Collette Covington further irreparable harm.

IV. CONCLUSION

Plaintiffs support the State's right to address any concerns that it has with any venue in which it appears. However, these concerns have nothing to do with the *Covington* case and only serve to further delay these proceedings in this unique and ancient civil suit. If the Attorney General Criminal Division's Motion to Recuse the Trial Judge is granted, it would prevent Covington from exercising her right to receive a preliminary injunction and attorney fees in a timely manner and would cause undue prejudice.

Therefore, Plaintiffs oppose this Motion to Recuse the Trial Judge and oppose any motion to consolidate this matter with any other cases. If any judge grants a hearing on the State's Motion to Consolidate, Plaintiffs respectfully request that the hearing occur in the first-numbered case, *Covington vs. McNeese,* and heard in Division H as soon as

notice can be provided to all parties.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I CERTIFY I have requested service of process on all counsel and have further served all counsel, by depositing copies in the U.S. mail, each properly addressed and with proper postage prepaid.

Houston, Texas, this _____ day of December, 2009.

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SETH HOPKINS