SUPREME COURT

STATE OF LOUISIANA

NO. _____

COLLETTE JOSEY COVINGTON AND JADE COVINGTON
Plaintiffs - Applicants

Versus

McNEESE STATE UNIVERSITY AND THE BOARD OF SUPERVISORS
FOR THE UNIVERSITY OF LOUISIANA SYSTEM
Defendants – Respondents

CIVIL PROCEEDING

Application for a Writ of Certiorari and Review to the Third Circuit
Court of Appeal, State of Louisiana, Docket No. CA 11-1077 (9/5/2012);
Fourteenth Judicial District Court, Parish of Calcasieu, State of Louisiana,
Docket No. 2001-2355, Division "G," the Honorable
Michael Canaday, Judge Presiding

**APPLICATION FOR A WRIT ON BEHALF OF PLAINTIFFS,
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SUPREME COURT OF LOUISIANA
WRIT APPLICATION FILING SHEET

NO. _____
TO BE COMPLETED BY COUNSEL or PRO SE LITIGANT FILING APPLICATION

TITLE:

COLLETTE JOSEY COVINGTON, *ET AL.*

VS.

McNEESE STATE UNIVERSITY, *ET AL.*

Applicant: Collette Josey Covington and Jade Covington

Have there been any other filings in this Court in this matter? ☒ Yes ☐ No
Are you seeking a Stay Order? No
Priority Treatment? No
If so you MUST complete & attach a Priority Form

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Pleading being filed: ☐ In proper person, ☐ In Forma Pauperis

Attach a list of additional counsel/pro se litigants, their addresses, phone numbers and the parties they represent.

TYPE OF PLEADING

☒ Civil, ☐ Criminal, ☐ R.S. 46:1844 protection, ☐ Bar, ☐ Civil Juvenile, ☐ Criminal Juvenile, ☐ Other, ☐ CINC, ☐ Termination, ☐ Surrender, ☐ Adoption, ☐ Child Custody

ADMINISTRATIVE OR MUNICIPAL COURT INFORMATION

Tribunal/Court: N/A Docket No. N/A

Judge/Commissioner/Hearing Officer: N/A Ruling Date: N/A

DISTRICT COURT INFORMATION

Parish and Judicial District Court: Calcasieu Parish, 14th JDC Docket Number: 2001-2355

Judge and Section: Hon. Michael Canaday, Division "G" Date of Ruling/Judgment: February 24, 2011

APPELLATE COURT INFORMATION

Circuit: Third Circuit Docket No. CA-11-1077 Action: Affirmed in Part; Reversed in Part; Amended

Applicant in Appellate Court: McNeese State University, et al. Filing Date October 6, 2011

Ruling Date: Sept. 5, 2012 Panel of Judges: Hon. Judges Thibodeaux, Cooks, Pickett, Amy, Keaty En Banc: ☐

REHEARING INFORMATION

Applicant: N/A Date Filed: N/A Action on Rehearing: N/A
Ruling Date: N/A Panel of Judges: N/A En Banc: ☐

PRESENT STATUS

☐ Pre-Trial, Hearing/Trial Scheduled date:_____ ☐ Trial in Progress, ☐ Post Trial Is there a stay now in effect? No Has this pleading been filed simultaneously in any other court? No If so, explain briefly.

VERIFICATION

I certify that the above information and all of the information contained in this application is true and correct to the best of my knowledge and that all relevant pleadings and rulings, as required by Supreme Court Rule X, are attached to this filing. I further certify that a copy of this application has been mailed or delivered to the appropriate court of appeal (if required), to the respondent judge in the case of a remedial writ, and to all other counsel and unrepresented parties.

DATE: October 12, 2012 SIGNATURE: /s/ Seth Hopkins

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STATEMENT OF WRIT GRANT CONSIDERATIONS

This Court should grant a writ in this case because it is in the interest of law and the legal system to correct the following errors, which will deter future meritorious Civil Rights cases designed to protect Louisiana's citizens:

I. The lower courts improperly denied Covington's prevailing attorneys their full, earned fees based solely on the fact that the discriminator responsible for accumulating the fees is a government entity. This ruling violates numerous sources of law and improperly interprets:

   A. The United States Supreme Court's clear holdings in *Missouri v. Jenkins,* 491 U.S. 274, 281-82 (1989) and *Perdue v. Kenny A.*, 130 S. Ct. 1662 (2010) that it is of "no relevance whether the party against which fees are awarded is a State";

   B. Congress's clear intention in 42 U.S.C. § 12205 and 42 U.S.C. § 1988 to hold public discriminators liable, "the same as a private individual";

   C. The United States Constitution's clear instructions in Article VI, cl. 2 (The Supremacy Clause) for states to honor the requirements of federal law;

   D. The Louisiana Constitution's system in Article XII (C), in which courts are to award full earned judgments and the Legislature makes the policy decisions of whether to pay them; and

   E. This Court's clear holding that there is "no ceiling" on attorney's fees against the State. *Smith v. State Dept. of Tran. & Development,* 2003-1450, p. 10 (La. App. 3 Cir. 4/28/04); 872 So.2d 594, 601, *rev'd. on other grounds*, 2004-1317 (La. 3/11/05); 899 So.2d 516

II. In awarding Covington's fees, the lower courts improperly substituted their own concern for the taxpayer in lieu of the following overwhelming evidence that Covington's counsel earned at least $4.55 million, and more likely $5.1 million:

   A. The uncontroverted opinion of Jonathan Prejean, a Harvard Law graduate and national legal fee expert who has evaluated 2,500 legal bills from throughout the world, followed this case from its inception, reviewed the entire record, and opined that Covington's counsel objectively earned $5.48 million based upon the factors established by the United States Supreme Court in *Perdue*;

   B. The uncontroverted opinion of Thomas Lorenzi, the Louisiana Bar Association's Distinguished Attorney of 2007, who has handled many fee shifting cases in his 35 year practice, including "one of the few Title II ADA cases that I am award of in Southwest Louisiana," testified that $385 per hour is a reasonable rate in Lake Charles, and opined that Covington's counsel should be paid a 300% to 700% enhancement—resulting in a fee award between $5.17 million and $12 million for 6,500 hours of work over 11 ½ years;

   C. The uncontroverted opinion of Edward Fonti, an ADA expert who McNeese's own expert concedes is more qualified than he is to handle an ADA case, followed this case for six years and opined, "the *Lodestar* award should be adjusted upward" and raised no objection to the requested 300% enhancement to $5.1 million;

D. The testimony of Winfield Little, former Southwest Louisiana Bar Association President and current member of the Louisiana Bar Association Board of Governors, also supported the requested enhancement of 300%, opining that the "average rate" for specialized work in Lake Charles is $400 to $500 per hour, resulting in a minimum *unenhanced* reasonable award of $3.25 million for 6,500 hours of work;

E. The testimony of McNeese's own expert, who stated that he would offer nothing to dispute Covington's entitlement to an enhancement of 300%, testifying, "I'm not here to talk about the multiplier at all."; and

F. The uncontroverted opinions of the Louisiana Advocacy Center, the Governor's official agency for the protection of those with disabilities, pursuant to 42 U.S.C. 15041, *et seq*.

III. In awarding Covington's fees, the lower courts failed to consider *Perdue*'s "market value" analysis of Covington's counsel's work, including:

A. McNeese's own arguments that Covington's counsel's fees should be enhanced based on the exceptional results achieved in this case, notably, that McNeese will receive $2,128.97 for every hour Covington's counsel worked in this case, and that under a standard contingency, Covington's counsel's market value exceeds $4.55 million;

B. The common fund "cross check," which verifies that Covington's counsel earned more than $4.55 million in fees; and

C. Similar cases which further establish that Covington's counsel earned approximately $5.1 million in fees.

IV. In awarding Covington's fees, the lower courts failed to fully award an enhancement based on an objective measure of the "exceptional payment delay" factor in *Perdue* after an exceptional 12 year delay caused by the defendants' "shameful" misconduct and "abuse" in this case. Such an objective measure would mandate approximately $5.1 million in fees in lieu of interest from 2001.

V. In awarding Covington's fees, the lower courts failed to set an award high enough to "attract competent counsel" to serve as "private attorneys general" as required by *Perdue* and discounted the fact that McNeese's discrimination went openly unchecked by the Louisiana bar's 17,688 lawyers for more than 20 years and that at least $5.1 million would be required to correct this imbalance.

VI. In awarding Covington's fees, the lower courts failed to compensate Covington's counsel even their own standard rate in "simple" cases in which there is little risk of non-payment or payment delay.

VII. The lower courts failed to award adequate compensation under *State, Dept. of Transp. and Development v. Williamson*, 597 So.2d 439, 442 (La.1992); 91-2401, 91-2404 and *Corbello v. Iowa*

Production, 2001-567, p. 27-30 (La. App. 3 Cir. 12/26/01); 806 So. 2d 32, 51-52, *fees aff'd*, 2002-826, p. 34-36 (La. 2/25/03), 850 So.2d 686, 709-11. In these cases, this Court has held that even a "simple" case 20 years ago merited a $383 per hour award for a good result, and that it was an abuse of discretion to award any less than $805 per hour to Calcasieu Parish attorneys for a good result after only eight years of work ending in 2001.

APPLICATION FOR WRIT OF CERTIORARI AND REVIEW

MAY IT PLEASE THE COURT:

Plaintiffs-Appellants, COLLETTE JOSEY COVINGTON and JADE COVINGTON, ("Covington") respectfully submit, through undersigned counsel, their Application for a Writ of Certiorari and Review to the Third Circuit Court of Appeal, State of Louisiana, in accord with Rule X of this Honorable Court. Jurisdiction is proper under Article V § 5 of the Louisiana Constitution.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The issue before the Court is the appropriate compensation for six attorneys in the longest active Americans with Disabilities Act ("ADA") case in the nation, resulting in the largest single plaintiff ADA judgment in history.[1] For more than 20 years, the defendants (collectively, "McNeese") diverted millions of dollars in public funding designated for ADA compliance and concealed 15,000 violations in 1.35 million square feet of public buildings, often by placing signs falsely indicating that the buildings complied with the law. It justified these actions by defiantly arguing that it was not "fundamentally important" for disabled students to receive an education as it systematically excluded those in wheelchairs from its campus.

Covington, a wheelchair-bound student, filed suit in 2001, seeking a single accessible restroom so that she would no longer be required to urinate on herself while on campus. McNeese refused to honor even this simple request, requiring that her unpaid counsel devote 11 ½ years and more than 6,500 hours to this case. Covington's counsel ultimately secured their client not only a restroom, but $400,000, a six year college scholarship, and an injunction valued at $13.8 million so that she could finally graduate and become a productive member of society. Ironically, McNeese has been the greatest beneficiary of this case, as it received a $13.8 million windfall to reconstruct its campus to comply with the law and open its doors to disabled students. Now, under federal and state law, it must pay the fees that it forced upon its victims.

On September 1, 2010, McNeese judicially admitted that Covington was not only entitled to attorney's fees, but that "the fees in this case are likely to be Plaintiffs' **single largest category of damages**" in this $16 million case and that Covington's attorneys' success would be the "most critical factor" in

[1] Covington received an injunction valued at $13.8 million, $400,000 cash, a six year scholarship, and attorney's fees (under appeal) of approximately $1.8 million. As a result of this case, McNeese will receive $13.8 million to update its campus, for a total case value of $16 million. The Equal Employment Commission's 2010 nationwide ADA analysis found the largest monetary relief provided to a single client in a Title I ADA case was $391,000. The largest class action judgment was $6.2 million with an average of $26,300 per plaintiff. *See* "The U.S. Equal Employment Opportunity Commission: Twenty Years of ADA Enforcement, Twenty Significant Cases", http://www.eeoc.gov/eeoc/history/45th/ada20/ada_cases.cfm. There has since been one larger class action, but the class members are not expected to receive a record-breaking amount. Covington has identified cases in which plaintiffs received more attorney's fees or injunctive relief than Covington but only nominal client benefits and one Title II case with a $400,000 judgment but no injunction or scholarship. Thus, upon information and belief, this is the largest single plaintiff ADA judgment in history.

awarding an enhancement to their fees. (2 R. 24:5813-15) [2]. McNeese's own expert raised no objection to Covington's request for a 300% enhancement. (2 R. 34:8256-58, 33:8098, 8238-39).

Yet McNeese has filed its third writ application in five years, contradicting its own admissions and demanding a reversal of the unanimous and strongly worded findings of four unpaid experts, the Louisiana Advocacy Center, two trial judges, and five appellate judges and complaining about the modest $265 rate and 6% interest enhancement awarded pursuant to *Perdue v. Kenny A.*, 130 S.Ct. 1662 (2010). This enhancement was awarded to compensate for McNeese's "shameful" misconduct, the exceptional payment delay caused by that misconduct, and the "superior" results Covington's counsel achieved in this case.

Instead of granting McNeese's writs, this Court should consider one narrow issue raised by the Third Circuit in its September 5, 2012 opinion—should Covington's "gallant attorneys willing to make years of personal sacrifice in the cause of justice" be compensated consistently with other attorneys for their 11 ½ years of work in this "rare and exceptional" case? Or should they be penalized and have their "extraordinary success," "superior performance," and "exceptional [payment] delays" disregarded solely because their opponent is a government entity? The Third Circuit denied approximately $3 million in fees—not because it was not earned—but because the discriminator responsible for escalating these costs was McNeese. Both the trial and appellate courts held that their own awards failed to adequately compensate Covington's attorneys. On page 24 of its ruling,[3] the Third Circuit asked this Court to clarify the law to award more:

> We have limited our enhancement to this ***minimal*** **remedy only** out of consideration that the awards will be borne by the taxpayers of this state, rather than exclusively by those who willfully and inexcusably practiced discrimination plainly and expressly forbidden by both Louisiana and federal law. **Were this not the case**, our ruling would surely be to accept young Hopkins' eloquent plea for greater compensation. Perhaps, if given the opportunity, our supreme court may be inclined to see differently, employing a greater enhancement method, which we would deem a welcome clarification of existing jurisprudence. [emphasis added]

Yet the jurisprudence the Third Circuit struggled with clearly mandates that Covington's counsel be fully compensated without regard to McNeese's status as a government entity. The U.S. Supreme Court has clearly held in *Missouri v. Jenkins,* 491 U.S. 274, 281-83 (1989) and *Perdue* that, in awarding fees, it must be of "**no relevance**" whether the discriminator cast in judgment is a government or private entity. This is in accordance with Congress's mandate in 42 U.S.C. 12205 that public discriminators under the ADA be held liable "the same as a private individual." Moreover, a state court's decision to exempt its taxpayers from the

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[2] There are three appellate records in this matter. Citations to CV-08-505 are prefaced by (1 R.) and citations to CV-11-1077 are prefaced by (2 R.). There are no citations to CW-10-114.

[3] The trial court's February 24, 2011 "Written Reasons for Judgment" is referred to as "Judgment." (Exhibit "B"). The Third Circuit's September 5, 2012 ruling is referred to as "Ruling." (Exhibit "A").

full effects of federal fee shifting law violates Article VI, cl. 2 of the U.S. Constitution, as explained in *Brinn v. Tidewater Transportation District Commission*, 242 F.3d 227, 232-33 (4th Cir. 2001).

Louisiana law also forbids exempting McNeese from paying Covington's full fees. The Legislature elected not to enact a "ceiling" on fees, and Article XII (C) of the Louisiana Constitution imposes a duty on the courts to award the full fees earned and vests only the Legislature with the authority to exempt the taxpayer from liability. Indeed, this Court has relied on the factors in *State, Dept. of Transp. and Development v. Williamson*, 597 So.2d 439, 442 (La.1992); 91-2401, 91-2404 to award fees against public bodies in less compelling cases at rates and amounts which eclipse Covington's modest $265 per hour.

The un-rebutted evidence, including the opinions of four unpaid experts, supports a reasonable award of $5.1 million based on the *Williamson* factors. It also supports an award of $5.1 million under *Perdue* based on the objective market value of Covington's counsel's services and the exceptional 11 ½ year (and counting) payment delay. This would be consistent with Covington's counsel's standard rates and is the minimum award required by *Perdue* to "attract competent counsel" to serve as "private attorneys general."

Denying full compensation based on a forbidden factor—McNeese's status as a government entity—disenfranchises Louisiana's 80,000 disabled citizens and breaks the sacred promise made by Congress and the Louisiana Legislature to members of the bar that they will be fully remunerated for serving as "private attorneys general" and vindicating our most vulnerable citizens' rights. Moreover, protecting the government from following its own rules emboldens rogue state entities to discriminate freely and "run up a claimant's attorneys' fees, without any concern for the consequences" and ultimately costs the taxpayers by rewarding scorched-earth litigation and discouraging meritorious cases which help Louisiana utilize its most valuable resource—its people. This Court would honor an important public mandate by correcting the lower courts' error, fully compensating attorneys who rely on fee-shifting statutes, and holding that public discriminators are just as accountable for their actions as private ones.

STATEMENT OF THE CASE

A history of discrimination. Covington's story typifies that of hundreds of disabled students, whose plights were documented by McNeese's student media for 20 years. (2 R. 23:5690-97). In 1995, Covington was a McNeese honor student and student senator and ambassador with 87 credits toward a degree in Early Elementary Education. She became confined to a wheelchair her senior year and could no longer access the classrooms on McNeese's non-compliant campus. This caused her 3.1 GPA to plunge to 2.07 and forced her to drop 92 of the 125 credit hours she attempted over the next four years. (2 R.2:358-84; 24:5751-54).

Covington witnessed other disabled students suffer the same fate and saw them forced to abandon their dream of a college education. Desperate to help herself and her peers, she started a student organization to raise money for McNeese to provide minimal accommodations for disabled students. McNeese simply took the students' money and demanded that they raise more. (2 R. 2:358-59; 22:5754-60).

Each semester, Covington pleaded with McNeese's Director of Services for Students with Disabilities Tim Delaney, whose own office was not handicapped-accessible, for modest accommodations such as first floor classes and unlocked doors at the only ramps into buildings. (2 R.358-84 at 361). He denied each request and later testified that while McNeese received $50,000 per disabled student in grant money, it would not accommodate those in wheelchairs,[4] thus forcing most of them to resign from school. He further admitted McNeese's systematic discrimination resulted in it having 75% fewer disabled students than comparable universities in the state. (1 R. 2:482). Not surprisingly, this university of 8,500 students never had a wheelchair-bound graduate prior to 2004. (2 R. 22:5389). McNeese's own officials urged Covington to sue, but there was no economic incentive for an attorney to represent an indigent woman in such a complex case against one of the largest employers in Southwest Louisiana. (2 R. 24:5757-58).

Because of her declining GPA, McNeese stripped Covington of financial aid and denied her six financial aid appeals, until McNeese's president instructed her to stop appealing. (2 R. 22:5376). Yet Covington soldiered on, hoping each day that she might have the strength to maneuver through obstacles such as sidewalks without curb cuts, buildings without ramps (or where the only ramp led to a locked door), narrow and heavy doors, and broken elevators with buttons too high for her to reach in her wheelchair. On lucky days, and with the kindness of strangers, she made it to her first class, but she could never make it between classes in the allotted 15 minutes. When she was strong enough to hobble from her wheelchair into a narrow stall, she could use the restroom. Otherwise, she was forced to urinate on herself and spend the rest of the day drenched, reeking, and humiliated on campus. (2 R. 2:358-84).

January 31, 2001 was not one of Covington's lucky days. As she waited for her transportation home after class, she unsuccessfully attempted to use the McNeese Student Union ("Old Ranch") women's restroom. Urine-soaked and degraded, she tried to exit the restroom when her wheelchair became trapped in the door, resulting in her falling and injuring her arm. McNeese admitted that this door was too narrow and three times too heavy for someone in a wheelchair to use. (1 R. 2:284-86, 343).

[4] Delaney admitted that McNeese's disabilities office would not accommodate students in wheelchairs. Instead, he accused them of purchasing their wheelchairs at "pawnshops" to fake their disabilities and pretended not to know where the student union was located when asked why he could not help Covington. (1 R. 2:465-66, 472-78, 482. 1 R. 5:1004-05; 2 R. 23:5695; 2 R. 24:5764-68).

McNeese launches a "militant defense." Covington might have given up her dream of an education and a better life for herself and her daughter if she had not learned that Seth Hopkins, a former McNeese classmate, had completed law school. He agreed to help recover her medical expenses and seek to persuade McNeese to spend the $4,000 required for those in wheelchairs to have ***one*** accessible restroom on campus. McNeese refused, and this case soon revealed the magnitude of its violations.

McNeese had not made even a basic survey of its buildings or drafted a transition plan as required by law.[5] Moreover, it stated that it would ***not*** comply with these regulations and had no fear of litigation. Because McNeese would not identify its violations, it did not know how much ADA funding to request or what it would do if such funding were granted.[6] Instead, it spent its ADA money on "other things" and plastered signs falsely claiming that its buildings complied with the law despite the fact that not **a single restroom** on McNeese's 1.35 million square foot campus complied with the ADA or related statutes dating to the 1960s. McNeese's 15,000 violations were found even in public buildings which were brand new or still being planned for construction as recently as 2009 with a disregard for long-established building codes.[7]

Once Covington filed suit, McNeese accused her of fraud and claimed she was insane. It parked a black SUV outside her home for two years to film her 14-year-old daughter's ritual of loading her mother's wheelchair into the family car for grocery and medical appointments (2 R 1:208-214; 2:361) and sent her 400 miles round-trip to a "forensic psychiatrist" who refused to accept its hypothesis that she was crazy and faked her disabilities. McNeese claimed—with no evidence—an elaborate conspiracy between Covington, her physicians, and the Social Security Administration for Covington to endure painful and unnecessary surgeries so she could sue McNeese for a bathroom.[8] McNeese's unprovoked attacks were so vicious that the Third Circuit later held, *sua sponte*, that it would have sanctioned McNeese if Covington had requested.[9]

McNeese retaliated and made it clear that Covington was not welcome on campus. (2 R. 2:358-84). She lost her student loan deferments, and with no degree or ability to attend college, her loans defaulted.

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[5] These were required before 1992 and 1995, respectively, under 28 CFR 35.105 and 28 CFR 35.150(d).

[6] Prior to 2009, McNeese never asked for more than 20% of its ADA funding needs (2 R. 22:5343-48; 23:5695) even as it raised its administrators' salaries to the highest levels in Louisiana and accumulate massive surpluses. (2 R. 22:5377-83).

[7] This case resulted in a 5,600 page evaluation documenting these violations. (2 R. 2:347-19:4651 and 26:6292-31:7608). This report was filed together but is split into two sections in the record.

[8] Until 2009, McNeese concealed its ***own infirmary's*** diagnosis of Covington's disabilities, even as it argued to this Court that she was not disabled because her "credibility is lacking" and she has a "significant problem with accuracy or the truth." (2 R.1:42, 208-14).

[9] McNeese's "concoctions" were "completely unfathomable," "completely unsupported by any evidence in the record," and "[h]ad Covington brought an action for frivolous appeal . . . it would seem that this court would have granted such a request." (2 R. 1:141-42).

McNeese reported her to the credit bureaus and threatened to sue her for not paying the loans she accumulated while trying to take classes on its inaccessible campus. (2 R. 23:5745-50).

The taxpayers provided McNeese with money for ADA compliance, but McNeese President Dr. Robert Hebert vowed on February 2, 2005 to never use McNeese's **$1.1 million** in **surplus** ADA funds on compliance, refusing to spend even $4,000 to end this case.[10] He kept his word, and the idle fund doubled over the next five years as this litigation raged. Hebert justified this pointless war of attrition against Covington by testifying that McNeese did not consider it part of the "role of the institution" to allow disabled students access to the school cafeteria, student government, newspaper, yearbook, job placement services, or any other activities in the Old Ranch. In his own words:

> Whether or not it's fundamental for them [those with disabilities] to get into that student union annex or that it's fundamentally important for them to obtain an education, I would question that. I'm not sure I would regard it as a high priority.

(1 R. 3:501).

McNeese ridiculed the plight of those with disabilities and stated in court pleadings—without embarrassment or shame—that it did not need compliant bathrooms because the ADA did not protect the right to urinate. (2 R. 1:43-44; 35:8747). It blamed Covington, who now uses a catheter, for not learning to hold her bladder all day and stated on the record that it would simply not follow federal law despite receiving **$61,878,859** in federal funding in the last seven years alone (2 R. 22:5362-74).

Hopkins pleaded with McNeese to accommodate Covington, but McNeese refused and obstructed this case, seeking eight continuances and requiring Hopkins to document 54 letters, emails, and phone calls requesting that McNeese's counsel answer basic discovery and correct blatantly untruthful discovery responses. (2 R. 1:242-43, 260-63; 40:9821-23). Hopkins finally had to file six motions to compel and threaten sanctions. (2 R. 1:164-2:265). Incredibly, McNeese later blamed him for not asking for sanctions against it sooner and mocked him as a "pretty please" lawyer for extending professional courtesies and offering to settle this case rather than escalate it. (2 R. 42:10396-98).

Covington files summary judgment. In January, 2006, Covington filed for summary judgment, injunctive relief, and attorney's fees. After requiring a full year to research, McNeese responded and claimed that Covington made a "mountain out of a molehill" and accused her of an "all out ADA assault" by asking

[10] Louisiana taxpayers provided McNeese with a "Building Use Fund" to comply with codes such as the ADA. McNeese allowed this fund to accumulate multi-million dollar surpluses during this case, increasing from **$1,094,952.88** in 2005 to **$2,032,018** in 2010. Even as this fund earned **$62,546 per year in interest,** McNeese refused to use just $4,000 to upgrade a single restroom to end this litigation. Covington's case finally changed this policy, and McNeese withdrew $1.4 million in 2010 for ADA upgrades. (2 R. 23:5600-5612).

McNeese to correct **one** of its 15,000 ADA violations. (2 R. 1:35, 69). McNeese raised numerous outrageous defenses which perplexed both the trial and appellate courts.[11] After three days of oral argument, the trial court praised Covington for bringing this problem to McNeese's attention, granted her summary judgment, and ruled on January 24, 2007 that McNeese would be required to pay "substantial" attorney's fees.

The court warned McNeese of the costs of prolonging this case (2 R. 23:5562-63) and indicated it was prepared to award Hopkins **$270,052.74 in undisputed fees**. Hopkins sought no enhancement, omitted entire months of earned time from his records, agreed to work for a lower rate, and again even offered to ***sacrifice*** all of his six years of earned fees and expenses if McNeese would simply provide his client with a single accessible restroom, which he offered to help pay for. (2 R. 43:10515). He temporarily deferred his fee request in the hope of reaching a settlement.[12]

Rather than walk away with no liability, McNeese appealed. On November 5, 2008, the Third Circuit published its longest civil opinion of 2008, devoting 32 pages to this case and concluding that McNeese's basis for appeal was not only meritless, but its arguments: sanctionable, "frivolous," a "concoction," "completely irrational," "indefensible," having "audacity," and "absurd." It held:

> 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.

(2 R. 1:157).

This court denied McNeese's writ application.

McNeese retaliates and becomes the subject of a federal investigation. McNeese's actions attracted national attention. Under President Bush's Administration, the U.S. Department of Justice Civil Rights Division ("U.S. DOJ") reviewed Hopkins' evidence and declared McNeese's discrimination to be a matter of national significance. The U.S. DOJ flew three lawyers from Washington, D.C. to Lake Charles

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[11] For instance, McNeese first claimed that it could not find $4,000 in its $75 million budget to upgrade a bathroom. Then, it argued that it ***complied*** with the ADA after admitting that it did not. On Nov. 13, 2008, McNeese's counsel wrote the Third Circuit to apologize for making this misrepresentation during oral argument, yet maintained the claim in its first writ application to this Court.

[12] 1 R. Vol. 8, transcript pages 82 and 136. There are no appellate page numbers stamped in this volume.

and warned McNeese to cease retaliation against Covington and her counsel[13] and send an email to its 8,487 students and nearly 1,000 employees regarding the consequences of retaliation under 42 U.S.C. § 12203. (2 R. 1:215-16; 23:5688-89). The ensuing investigation resulted in a compliance decree against the entire University of Louisiana System's eight campuses[14] and a nationwide press release identifying McNeese's ***counsel's*** unreasonable positions in *Covington* as the basis for its enforcement action:

> The United States initiated an investigation of the university ***after the state attorney general's office took the position*** – in private ADA litigation against the campus – that it was not required to have an accessible toilet room in its primary student union building.

(2 R. 35:8706-17 at 8713 and http://justice.gov/opa/pr/2010/September/10-crt-1014.html).

Yet McNeese continued to retaliate against anyone associated with this case. For instance, McNeese Physics Professor Dr. Giovanni Santostasi became confined to a wheelchair in late 2009 and signed an affidavit for Covington describing the difficulties he encountered on campus. Soon after, his campus email account was purged and someone with after-hours access spray-painted "**DEGO DIE**" on his office door and sent an email from the McNeese server stating:

> **DEGO DIE !!!!!!!!!!!!!!!** No Degos or cripples at McNeese. You complain and talk too much. Shut up or you will die !!!!!!!!!!!! You have been warned. Your killer, Whiteboy

(2 R. 20:4967-71 at 4970).

McNeese responded by ***firing*** Dr. Santostasi because he might hurt himself on campus in a wheelchair. Dr. Santostasi was rated the best professor in the Physics Department and was affiliated with prestigious associations which brought enormous honor and grant money to McNeese. This talent is lost, as Santostasi has left Louisiana and filed suit against McNeese.[15]

McNeese vows to ignore Louisiana's court rulings. A year after this Court denied writs, McNeese repeatedly criticized the ADA and called Louisiana's courts "wrong" for ruling that Covington was disabled and entitled to attend McNeese.[16] On October 12, 2009, McNeese's counsel even brazenly told the trial court, "[d]efendants disagree that they discriminated against Covington in January 2001 or at any time thereafter" despite the appellate court's **six** references to McNeese's "unequivocal" discrimination against

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[13] On Sept. 30, 2008—the day before the first Third Circuit oral arguments—McNeese attempted to file a grievance against Hopkins, alleging he "ruined" its "good name" in this case. The complaint was refused and both the U.S. DOJ and trial court warned McNeese to cease retaliation against counsel. (2 R. 20:4950-57). As the Sept. 5, 2012 Ruling demonstrates, McNeese has flouted these orders.

[14] The investigation expanded after Hebert testified in this case that the other colleges in the University of Louisiana System—one of the 20 largest in the nation—also violated the ADA. (2 R. 36:8785; 23:5678-80).

[15] 2 R. 2:385-389 and 20:4967-71; *see also* 2 R. 2:386-89 and *Santostasi v. Board of Supervisors for the University of Louisiana System,* 2:10-CV-01799 (W.D. La. filed Dec. 3, 2010).

[16] For instance, McNeese counsel Michael Veron suggested during Edward Fonti's deposition that the appellate courts were "wrong" for finding wheelchair-bound Covington disabled. ("Have you ever criticized the Court for being wrong on the facts?" "Have you ever criticized the Court for being wrong on the law?") (2 R. 36:8851-52).

Covington. McNeese still refused to even acknowledge Covington was disabled, forcing her to seek a new injunction. Two days before McNeese was to be ordered into compliance and respond to six motions to compel and sanctions for false discovery, it forced the trial judge's recusal.

McNeese admits that it was wrong and credits Covington's counsel with providing it a $13.8 million windfall. After the recusal, the Honorable Michael Canaday was assigned this case, and McNeese unexpectedly agreed to a 14-point Consent Injunction on April 23, 2010. For the first time—***3,260 days after suit was filed***—McNeese acknowledged that Covington is disabled, has a right to attend college in a wheelchair, and is a prevailing party entitled to attorney's fees. The Injunction provides Covington and the U.S. DOJ with concurrent rights to enforce the $13.8 million ADA settlement. (2 R. 36:8773-85; U.S. DOJ#204-33-109). Moreover, Covington received $400,000, a six year scholarship for tuition, books and supplies, and accommodations so she could finally graduate, and McNeese judicially admitted:

> Defendants will expend a substantial sum of money to bring the McNeese campus into compliance with the ADA for the benefit of Covington and other disabled students. **The parties stipulate that Covington's actions have and will result in *substantial* changes both to the facilities at McNeese and McNeese's policies toward the disabled**.

(2 R. 20:4953-54).

As a result of this case, McNeese is being provided with $13.8 million to fully comply with the ADA. (Judgment, 2 R. 39:9665; 23:5590-5612). This is money McNeese would never have requested—much less received—had Covington's counsel not, in the words of Judge Canaday, "passionately pursued the interests of his clients" and "worked tirelessly in the face of aggressive opposition." Moreover, McNeese has used Hopkins' work as a springboard to file **its own** ADA lawsuit against its own architects and contractors to gain a **double recovery** from its discrimination. *See Cowboy Facilities, Inc. and McNeese State University v. Ambling Development Company,* 2011-2407 (14th JDC, Calcasieu Parish, La. filed 5/25/11).

PROCEEDINGS BELOW

On May 19, 2010, Covington served McNeese a 1,072 page Application for Attorney's Fees and Sanctions and exhibits. Hopkins offered to review with McNeese's counsel any time entries they questioned as he devoted months to self-auditing more than 6,000 hours of time records over 10 years by comparing them against 17,684 electronic files (requiring in an astonishing 21.9 gigabytes of data) (2 R. 34:8400) and 55 boxes of paper work product containing a quarter of a million pages of time-stamped notes, letters, photos, filings, drafts, transcripts, logs, receipts, emails, memos, and other documents. Stacked end-to-end, these paper documents alone would extend nearly 50 miles—more than half the distance between the

Supreme Court and the State Capitol. This audit confirmed each hour and even identified hundreds of work product items never billed. (2 R. 43:10616-19; 10727-29; 10671-77; 10740).

McNeese spent four months reviewing the Application, deposed Hopkins and his four unpaid experts, and then judicially admitted on September 10, 2010 that, "McNeese does not dispute that Plaintiffs are entitled to an award of at least some of their [$5.1 million] attorneys' fees" and that these fees would be "Plaintiffs' single largest category of damages" in this $16 million case (2 R. 24:5812, 15). Yet only five days later, McNeese demanded that the trial court "deny the plaintiff's fee application altogether" and has maintained this position, even over its own expert's objection. McNeese is judicially estopped from making this argument, was admonished for making it on appeal, yet continues to advance it in its writ application.[17]

In contrast, Hopkins exhibited the utmost of "good faith and fair dealing" and voluntarily eliminated every entry McNeese did not like—for any reason. (Ruling, p. 11-12). He sought **710 fewer hours** than the four unpaid experts opined he should have requested and far less than courts award in analogous cases.

Yet McNeese consumed six days for an attorney's fee trial, during which it presented **no witnesses**, **no expert reports**, and **no affidavits** and asked substantive questions about only **two entries** comprising 16.4 hours of Hopkins' time. Its lawyers' only strategy was to brutally and inexplicably personally attack Hopkins, calling him obsessive, incompetent, and dishonest, accusing him of fraud and committing a felony, and suggesting he should be disbarred. McNeese's lawyers harassed Hopkins' former employer until it was forced to file a protective order against McNeese, (2 R. 24:5902-14) and its lead counsel's conduct grew so outrageous that the trial court was forced to repeatedly admonish him for his "offensive" outbursts which disrupted the proceedings. (2 R. 44:10761-62). By closing, McNeese had made such a mockery of the proceedings that it resorted to showing the court a cartoon depicting Hopkins as a liar in a desperate attempt to persuade the judge not to award any fees. (2 R.45:11020-21).

The trial court found Hopkins' records credible and his hours "neither exaggerated nor unexpected" (Ruling, p. 6). Yet it arbitrarily reduced his rate and deducted 1,098 earned hours without identifying any that were improper, despite the four neutral, unpaid experts' unanimous opinion that Hopkins should have received **1,808 hours more** than the court awarded, in addition to a fee enhancement. This deprived Covington's counsel of $3.8 million in earned fees, which the trial court admitted was to protect McNeese.

[17] *See Jackson v. Host International,* 426 Fed.Appx. 215, 225-28 (5th Cir.2011). ("The district court calculated the lodestar amount using an hourly rate of $300. Not only did Host not object to this figure, in its supplemental response to the motion for attorney's fees, it abandoned its position that the rate should be $225 per hour and expressly stated that it did not object to the $300 per hour rate. Because Host now argues a position that is inconsistent with its position in the district court, it is foreclosed from arguing that the hourly rate was improper.")

Incredibly, McNeese—still unsatisfied with its own victory—appealed again.

McNeese used its appellate pleadings—most notably its Reply Brief—to make new arguments and to again launch "numerous offensive, insulting, abusive, discourteous, and irrelevant criticisms of Covington's counsel" which violated many Uniform Rules of Court. The appellate court declined to strike this brief only because it wanted the world to see "the vitriolic behavior engaged in by McNeese on appeal." Even the dissent held that, "McNeese and its agents acted deplorably towards Covington, its lawyers used every dilatory tactic in the book to avoid compensating her or addressing her grievances, and . . . the abuse continued into this litigation over the attorney fees." None of these attacks changed the fact that McNeese could not point to a single unreasonable time entry in over 6,500 hours of documented work. Likewise, neither the trial judge nor a single member of the five judge panel was critical of any of Hopkins' records.

Most significantly, McNeese **completely abandoned** any argument against a rate enhancement and failed to even address the issue in its "vitriolic" Reply Brief. McNeese's own paid expert refused to dispute Covington's enhancement request, acknowledged the enormous societal benefits provided by this case, and admitted that Hopkins had a right to be "really mad" at McNeese and its counsel for their misconduct. (2 R. 33:8098, 8238-42; 34:8256-58). Covington's four neutral, unpaid experts strongly urged that the court enhance Covington's fees to at least $5.1 million, and the Louisiana Advocacy Center—the Governor's officially designated agency under 42 U.S.C. 15041, *et seq.*—also endorsed the requested enhancement.

The Third Circuit published an eloquent, well-reasoned, and thorough opinion which reflects the fact that the five judge panel devoted **245 days** after oral argument to review an **11,000** page record—one of three in this case—"exhaust[ing] an exceptional number of judicial work hours." The panel concluded that, "Hopkins presented a well-orchestrated case worthy of emulation by the most seasoned attorneys" and held that McNeese's conduct "shocked the conscience" and turned the six day trial into a "lengthy proceeding full of personal venom, extending even on this appeal." (Ruling, pp. 10, 23). The Third Circuit restored the virtually uncontested hours, reinstated the modest $265 rate, and awarded a small 6% enhancement by increasing the judicial interest rate from 3.5% to 9.5%. This enhancement is approximately $3 million less than the experts urged, and it is the subject of this writ application.

ASSIGNMENT OF ERRORS

THE LOWER COURTS MISAPPLIED *PERDUE V. KENNY A., MISSOURI V. JENKINS,* THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION, 42 U.S.C. § 1988, 42 U.S.C. § 12205, ARTICLE XII (C) OF THE LOUISIANA CONSTITUTION, *STATE, DEPT. OF TRANS. AND DEV. V. WILLIAMSON*, AND RELATED AUTHORITY IN DENYING COVINGTON'S FULL FEES TO PROTECT McNEESE.

ARGUMENT

ASSIGNMENT OF ERROR NO. 1: THE LOWER COURTS MISAPPLIED *PERDUE V. KENNY A., MISSOURI V. JENKINS,* THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION, 42 U.S.C. § 1988, 42 U.S.C. § 12205, ARTICLE XII (C) OF THE LOUISIANA CONSTITUTION, *STATE, DEPT. OF TRANS. AND DEV. V. WILLIAMSON*, AND RELATED AUTHORITY IN DENYING COVINGTON'S FULL FEES TO PROTECT McNEESE

I. THIS COURT SHOULD GRANT WRITS UNDER RULE X

The Louisiana Supreme Court's grant of a civil writ is a matter of discretion. As noted in *Boudreaux v. State Dept. of Trans. and Dev.* 2001-1329, p. 2-3 (La. 2/26/02); 815 So.2d 7, 10, "any further review after the first appeal should be provided only in the interest of the law and the legal system." Further,

> The question involved in considering a petition for review is not whether a case is meritorious, or even when it arguably might have been decided the other way, but whether it is more important for decision than other cases competing for the attention of the court.

Id. at fn. 6*, citing* ABA Standards Relating to Appellate Courts § 3.10, 16-18 (1976).

Louisiana Supreme Court Rule X provides that writs are granted within this Court's sound judicial discretion, but five factors weigh heavily in the Court's decision. These are: (1) the resolution of conflicting decisions; (2) significant unresolved issues of law; (3) overruling or modification of controlling precedents; (4) erroneous interpretation or application of Constitution or laws; and (5) gross departure from proper judicial proceedings. The fourth of these factors applies to this case and strongly merits the granting of writs.

II. THIS COURT SHOULD GRANT WRITS TO CORRECT THE LOWER COURTS' ERRONEOUS INTERPRETATION OF *MISSOURI*, *PERDUE* AND THEIR PROGENY

Covington has been awarded attorney's fees under 42 U.S.C. § 1988 and Louisiana law. Under § 1988, a court is required to set a fee high enough to "encourage qualified counsel to take on such complicated and time consuming cases"[18] and to "enable litigants to obtain competent counsel worthy of a contest with the caliber of counsel available to their opposition and to fairly place the economical burden" of litigation on the wrongdoer. *Johnson v. Georgia Highway Express,* 488 F.2d 714, 719-20. Moreover, the award must also be high enough "to ensure that the costs of violating civil rights laws were more fully borne by the violators, not the victims." *Newman v. Piggie Park Entertainment*, 390 U.S. 400, 402 (1968).

To accomplish this, the Supreme Court has long recognized that multiplying an attorney's hourly rate by the hours worked ("lodestar") is a good starting point. However, this does not end the inquiry. In nearly 11,000 cases since 1974, federal courts have addressed whether it is necessary to "enhance" or "multiply" the

[18] *McClain v. Lufkin Ind.,* 649 F.3d 374, 379-82 (5th Cir.2011), *affirming* 97-063, 2009 WL 921436 (E.D. Tex. Apr. 2, 2009).

lodestar to arrive at reasonable compensation in a given case using the 12 factors established in *Johnson*.[19] As the Supreme Court held in *Missouri,* 491 U.S. 274, 281-83 (1989), "compensation received several years after the services were rendered—as it frequently is in complex civil rights litigation—is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed." Under both Louisiana and federal law, multipliers of 150% to 700% are typically awarded in exceptional cases.

Covington sought fees for 6,500 hours of work at a modest base rate of $265 per hour, enhanced by 300% to $5,167,500. Both the trial and appellate courts were persuaded by this request in light of Covington's counsel's superior performance and the lost value of money resulting from the exceptional payment delay caused by McNeese's "shameful" behavior. However, the lower courts, while recognizing that their own awards failed to fully compensate Covington's counsel, declined to award this earned fee **solely** because McNeese is a government entity. This was a clear error of law.

A. Both *Perdue* and *Missouri* mandate a 300% enhancement in this case

The U.S. Supreme Court unequivocally forbids courts from limiting a fee enhancement based on a defendant's status as a government entity. In *Missouri*, 491 U.S. at 281-82, the Supreme Court considered this very issue and held that Congress intended to apply § 1988 equally to public and private discriminators and that it is of **"no relevance"** whether the taxpayer or a private entity pays an attorney's fee enhancement:

> Rather, the issue here—whether the 'reasonable attorney's fee' provided for in § 1988 should be calculated in such a manner as to include an enhancement, where appropriate, for delay in payment—is a straightforward matter of statutory interpretation. For this question, it is of ***no relevance whether the party against which fees are awarded is a State.*** [emphasis added]

Despite this clear precedent, the lower courts felt compelled to deny Covington's 300% enhancement after erroneously interpreting a single paragraph of non-binding *dicta* in *Perdue*, 130 S.Ct. at 1676, cautioning against "***unjustified***" enhancements that might be paid by a government entity. Importantly, this one paragraph neither overrules the U.S. Supreme Court's precedent in *Missouri* nor allows the lower courts to use McNeese's status as a government entity as a basis for limiting Covington's earned enhancement.

The *Perdue* lawyers worked for 3 ½ years and were awarded **30,000 hours** at top rates of **$495 enhanced** to **$866** per hour, resulting in their fee against the State of Georgia being enhanced from **$6 million** to **$10.5 million**. The Supreme Court affirmed the $6 million in base fees but understandably wanted the lower court to assure that the $4.5 million enhancement was "justified," particularly when the reason for

[19] The Americans with Disability Practice & Compliance Manual Section 4:206 notes, "[t]he court starts with a lodestar" and may increase it based on the factors identified in *Johnson v. Highway Express,* 488 F.2d 714 (5th Cir.1974). *See also Jankey v. Poop Deck,* 537 F.3d 1122, 1129 (9th Cir.2008) (applying these principles to the ADA).

the enhancement was ostensibly due to an "exceptional" payment delay in a case which lasted only 40 months.[20] Thus, it remanded with a caution against awarding "unjustified" enhancements.

None of the lower courts found Covington's modest $5.1 million request over 11 ½ years to be "unjustified." Covington's attorneys sought **half** of what the *Perdue* attorneys were awarded despite working three times as long as the attorneys worked on *Perdue.* Indeed, Covington's $5.1 million enhanced fee request is less than *Perdue*'s $6 million base fees alone. Yet the Third Circuit interpreted *Perdue* to limit Covington's enhancement because McNeese is a government discriminator, noting on page 24 of its ruling:

> We have limited our enhancement to this ***minimal remedy*** **only** out of consideration that the awards will be borne by the taxpayers of this state, rather than exclusively by those who willfully and inexcusably practiced discrimination plainly and expressly forbidden by both Louisiana and federal law. **Were this not the case,** our ruling would surely be to accept young Hopkins' eloquent plea for greater compensation. Perhaps, if given the opportunity, our supreme court may be inclined to see differently, employing a greater enhancement method, which we would deem a welcome clarification of existing jurisprudence. [emphasis added]

The lower courts candidly admit that they compensated Covington's counsel less than they earned only because the government—with all of its resources—rather than the hard-working owner of a private business, discriminated against their client. This ruling clearly conflicts with *Perdue*, 130 S.Ct. at 1674-75, which provides for full enhancements against government entities under any of three circumstances, two of which Covington has proven: (1) an attorney's true "market value" exceeds the lodestar; or (2) an attorney suffers an exceptional "payment delay," particularly if caused by the defense. Both lower courts held that Covington amply satisfied both factors, as did the Louisiana Advocacy Center and all five case experts.

B. Under *Perdue's* "market value" analysis, Covington's counsel's fee award should be between $4.55 million and $12 million

1. The lower courts, Louisiana Advocacy Center, and McNeese agree that Covington's counsel is entitled to an enhancement based on their success and superior performance

McNeese judicially admits that "the most critical factor" in enhancing Covington's fees is her counsel's success in this case. (2 R. 24:5813-15). As noted, Covington's counsel secured their client the largest known single-client ADA judgment in history, and the $13.8 million injunction alone is **345,000%** of Covington's original $4,000 request for a restroom. This is an unprecedented victory, considering that litigants seldom receive even 100% of what they seek.

The Louisiana Advocacy Center calls this is a "landmark" case, stating "[i]n our 33 years of advocating for those with disabilities, we find that the results achieved by the Plaintiffs in this case to be truly impressive." (Exhibit "G", p. 2). The Third Circuit eloquently ruled: "[w]e cannot imagine a more

[20] Suit was filed in *Perdue* on June 6, 2002 and a final consent judgment was entered on October 27, 2005. While the attorney's fee issue required five more years to resolve, the initial fee request covered only 40 months.

compelling case than the one before us in which Plaintiff's attorneys should be **fully compensated**" (Ruling, p. 9); "Hopkins presented a well-orchestrated case **worthy of emulation by the most seasoned attorneys**" (Ruling. p. 13); the results achieved are "ringing endorsements of Covington's attorneys' **superior performance**" (Ruling, p. 18); "we find that this is indeed the kind of 'rare' and 'exceptional' case in which an enhancement is **entirely** merited." (Ruling, p. 21); and on page 21 of the Ruling:

> Certainly the results achieved by counsel for Covington, as well as the hostile behavior engaged in by McNeese which served only to protract the litigation in these proceedings, are factors that **weigh heavily in favor of an enhancement** to the lodestar award. Additionally, the substantial financial benefit gained by McNeese in receiving nearly fourteen million dollars for improvements to its facilities by the action pursued by Hopkins as a 'private attorney general' is no small matter. [emphasis added]

These findings more than satisfy *Perdue's* criteria to enhance Covington's fee award based on the lodestar failing to adequately measure her counsel's true market value. Once this finding was made, *Perdue* required an analysis of the market value of Covington's attorneys' work to determine an enhancement "that is reasonable, objective, and capable of being reviewed on appeal." *Perdue,* 130 S.Ct. at 1673. Covington established that value to be at least $5.1 million using every known metric.

2. Four neutral, unpaid experts opined that Covington's counsel's market value exceeds the requested $5.1 million, and McNeese's expert refused to dispute that Covington's counsel earned an enhancement.

Four neutral, unpaid attorney expert witnesses opined that Covington's counsel earned at least the requested $5.1 million, and most urged the courts to award more.

Jonathan Prejean, a Harvard Law graduate and national legal fee expert who has evaluated 2,500 legal bills from firms throughout the world, followed this case from its inception, reviewed the entire record, and praised Hopkins' "lean staffing." As part of his ongoing duties to monitor federal law, he was familiar with *Perdue* the week it was released and opined that under the U.S. Supreme Court's objective standard for calculating an attorney's worth in a fee shifting case, Covington's counsel earned **$5.48 million**—$380,000 more than they now seek and $3.8 million more than they were awarded. (2 R. 20:4987-94; Exhibit "E").

Thomas Lorenzi, the Louisiana Bar Association's Distinguished Attorney of 2007, charges a base rate of **$385** per hour in Lake Charles and has handled many fee shifting cases in his 35 year practice, including "one of the few Title II ADA cases that I am award of in Southwest Louisiana." He opined that Covington's counsel should be paid a **300% to 700%** enhancement—resulting in a fee award between **$5.17 million** and **$12 million** for 6,500 hours of work over 11 ½ years**.** (2 R. 20:4977-83; Exhibit "F").

Winfield Little, former Southwest Louisiana Bar Association President and current member of the Louisiana Bar Association Board of Governors, also supported the requested enhancement of 300%, opining

that the "average rate" for specialized work in Lake Charles is **$400** to **$500** per hour, resulting in a minimum ***unenhanced*** reasonable award of **$3.25 million** for 6,500 hours of work. (2 R. 20:4958-60).

Edward Fonti, an ADA expert who McNeese's own expert concedes is more qualified than he is to handle an ADA case (2 R. 33:8186-88) followed this case for six years and opined, "the *Lodestar* award should be adjusted upward" (2 R. 20:4984-86). He raised no objection to the requested 300% enhancement to **$5.1 million** and testified that Hopkins was too generous in reducing 710 earned hours.

McNeese ***stipulated*** that the trial court should consider Covington's experts' affidavits and depositions, subject to its objections. On January 10, 2011, it objected to only one passage in Winfield Little's deposition and expressly waived all other objections. (2 R. 45:11663-64; 39:9620). Even McNeese's own paid expert, **Allen Smith**, offered no opposition to a rate of $200 enhanced by the requested 300% to **$600** per hour. ("I'm not here to talk about the multiplier at all.") (2 R. 33:8238-39).

3. McNeese's own arguments mandate an award of at least $4.55 million based upon the windfall it received in this case

McNeese itself urges that Covington's counsel's fees be enhanced relative to the case's success. (2 R. 24:5813-15). It initially suggested using Covington's $400,000 "cash" recovery as such a model, but the U.S. Supreme Court expressly forbids using this as a benchmark in a civil rights case because civil rights litigation seeks the vindication of rights, whose value is far greater than their nominal monetary results indicate.[21]

However, McNeese's argument can be better applied by referencing its own significant "cash recovery" in this case. McNeese publically stated in 1998 that it ***wanted*** to be sued so that it would receive the mere $2.3 million it was requesting for ADA compliance. (2 R. 23:5695). Covington's attorneys have accomplished ***five times*** McNeese's own objective, and their market value can be quantified by the fact that **McNeese will receive $2,128.97 for every hour Covington's attorneys worked in this case.**[22] ($13,800,000 divided by 6,482 hours). Stated another way, had McNeese hired Covington's counsel on a standard 33% contingency to lobby for—rather than oppose—ADA funding, McNeese would have gladly paid them **$4.55 million** ($702.56 per hour) for their results in a case that would have been far less protracted and required far fewer hours. How can McNeese possibly oppose any award less than $4.55 million to attorneys who recovered the same windfall for it but were required to work much harder?

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[21] *Blanchard v. Bergeron,* 489 U.S. 87, 95-96 (1989) ("Congress has elected to encourage meritorious civil rights claims because of the benefits of such litigation for the named plaintiff and for society at large, irrespective of whether the action seeks monetary damages.")

[22] This does not count the $4,400 per year in tuition revenue from each disabled student or the benefits McNeese will receive from recruiting gifted professors with disabilities. It also does not include the money McNeese will likely receive from using this case to file **its own ADA lawsuit** against its architects and contractors. *See Cowboy Facilities, Inc. and McNeese State University v. Ambling Development Company,* 2011-2407 (14th JDC, Calcasieu Parish, La. filed 5/25/11).

4. A common fund cross-check verifies Covington's counsel's market value is at least $4.55 million

This case shares many characteristics with class action litigation, as the $13.8 million upgrades serve every disabled, elderly, or frail person who will benefit from increased accessibility and safety. This class will only grow during the 50 year lifespan of these public buildings. Federal courts commonly cross-check the lodestar against the total benefits received by class members to determine whether attorney compensation should be increased based on superior performance, with typical awards between 25%-33% of the class benefit. In January, the Louisiana Eastern District found 5,452 hours to be on the "low side" for one year of work and awarded Louisiana counsel **$400** per hour, which it enhanced by **217%** to **$868** per hour to bring the lodestar in line with the customary 25-33% of class benefits awarded to prevailing counsel in federal cases in Louisiana and because the results were "better than the amounts received in typical FLSA collective actions." What might the court have awarded in the largest victory of its kind in history? *Altier v. Worley Catastrophe Response*, Civ. Nos. 11–241 & 11–242, 2012 WL 161824 at * 19-25 (E.D. La. Jan. 18, 2012).

Even these calculations do not consider the immense societal benefits of liberating an entire class of citizen from their dependence on welfare and public assistance by allowing them the opportunity to receive an education and make a meaningful contribution to society. (2 R.23:8256-58). McNeese's expert strongly agreed with this, and McNeese's own 2009 Economic Study establishes that each $1 spent to educate our citizens provides a $7 return to the Louisiana economy. (2 R. 23:5617-60). McNeese's discrimination caused a corresponding economic loss, which this case ended. When these effects are multiplied by hundreds of citizens, the positive benefit to our state is staggering. Likewise, the value of Covington's counsel's work to Louisiana and its citizens is staggering and is certainly more than the requested $5.1 million.

C. The "exceptional payment delay" mandates an award of $5.1 million under *Perdue*

Even if Covington's counsel had not achieved such success or shown "superior performance," the exceptional and unjustified 11 ½ year delay also supports an award of $5.1 million under the second enhancement factor in *Perdue*. The U.S. Supreme Court recognized that attorneys must often wait for compensation, and the "normal" remedy for this delay in an "ordinary" case is to award prevailing counsel their ending—rather than starting—hourly rate. *See Missouri v. Jenkins,* 491 U.S. 274, 281-83 (1989).

However, when a delay is "extraordinary and unwarranted" or "unanticipated, particularly when the delay is unjustifiably caused by the defense" then both the ending rate and an enhancement are required to fully compensate counsel. *Perdue,* 130 S.Ct. at 1675-76. As noted, *Perdue* considered whether a $4.5 million enhancement was appropriate based on an "exceptional" delay of only 3 ½ years.

In contrast, *Covington* is the longest known ADA case in history, spanning nearly 12 of the 20 years the ADA has existed. This case has lasted longer than World War I, World War II, the Civil War, the Persian Gulf War, the Spanish-American War, and the Mexican-American Wars **combined**.[23] Moreover, this delay was clearly and unjustifiably caused by the defense. The Advocacy Center described McNeese's conduct as, "for want of a better word, ugly" and noted on page 8 of its Amicus Brief (Exhibit "G"):

> [i]t could not possibly have been anticipated, when counsel undertook to represent a student who could not find an accessible restroom in the student union of a public university, that the case would occupy over 5,000 hours of attorney time and take ten years to resolve. It could not be anticipated that counsel would have to face attacks on his personal integrity and honesty in connection with records of the employment he took to support his ability to represent this client.

The appellate court quantified McNeese's intentional and inexcusable delays,[24] finding that it took 5,000 days to accommodate Covington with a single restroom, including 3,300 days after suit was filed, 1,200 days from the summary judgment ruling ordering relief, and 395 days from the day the appeal was final. (Ruling, p. 21). The lower courts held McNeese mounted an "unyielding defense" which "substantially contributed to the voluminous record now before us" (Ruling, p. 14); made "constant attempts to prolong this litigation" (Judgment, p. 5) showed "hostile behavior . . . to protract the litigation" (Ruling, p. 20); waged "a war of attrition against Covington and her attorneys" (Ruling, p. 21); was "'disdainfully defensive' of the unacceptable condition of its campus and adopted a 'militant defense' throughout the litigation in 'the face of its obvious error'" (Ruling, p. 22, quoting Judgment); took "extreme" and "untenable" positions "throughout the proceedings" (Ruling, p. 22); engaged in "burdensome and over-reaching discovery," and "persisted in its attempt to avoid full legal responsibility for its shameful past behavior." (Ruling, p. 23).

McNeese's goal was always to use the public fisc to obstruct this case under the theory that "justice delayed is justice denied" as it anticipated that Covington's fragile health would prevent her from returning to school or that it would bankrupt Hopkins through its "war of attrition." The lower courts documented the enormous personal, professional, and financial toll this took on Hopkins, whose every decision in the last 11 ½ years was motivated by providing his client "with the most effective representation he possibly could . . to the preclusion of more lucrative work he could have been performing." (Judgment, p. 3).

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[23] Litigation is often compared to war, and these wars lasted 11.9 years. Covington's case will reach this milestone shortly after the parties submit their writ applications. *See* http://en.wikipedia.org/wiki/Length_of_U.S._participation_in_major_wars

[24] The Third Circuit's dissent in *Covington* misinterpreted *Perdue* to allow ***either*** the ending hourly rate ***or*** an enhancement. Without providing an explanation or comparison with other cases, the dissent felt that this case—the largest and longest of its kind in history—was not "rare and exceptional." However, Judge Pickett joined the majority in holding that the trial judge abused his discretion in reducing Hopkins' time. Judge Amy was later added to the panel and not present during oral argument to hear either Covington's presentation or the "common sense" questions presented to McNeese's counsel by the appellate court. Moreover, page and time limits imposed by having to defend against McNeese's many "tenuous" arguments and vicious personal attacks prevented Covington from more fully presenting the enhancement argument to the lower courts.

For that sacrifice, the lower courts compensated him at rates similar to those his opponents have been paid every month for 11 ½ years and a modest 6% interest enhancement—from 3.5% to 9.5%. Given the extraordinary and intentional delays orchestrated by McNeese, 42 U.S.C. § 1988 and *Perdue* mandates the 300% delay enhancement advocated by all of the case experts.

D. The lower courts' award fails to "attract competent counsel" as required by *Perdue*

As noted, the U.S. Supreme Court requires that fees be set high enough to "encourage qualified counsel to take on such complicated and time consuming cases"[25] and to "enable litigants to obtain competent counsel worthy of a contest with the caliber of counsel available to their opposition and to fairly place the economical burden" of litigation on the wrongdoer. *Johnson,* 488 F.2d at 719-20. *see also Jankey v. Poop Deck,* 537 F.3d 1122, 1129 (9th Cir.2008) (applying these principles to the ADA).

Thus, the award must be high enough that private lawyers such as McNeese's own counsel, who was awarded **$4 million** for 4,970 hours of work over only eight years, at a rate of **$805** per hour, would give up his practice and suffer the "abuse" that he and his cohorts "heaped" upon Covington's counsel for 11 ½ years. *Corbello v. Iowa Prod.,* 2001-567, p. 27-30 (La. App. 3 Cir. 12/26/01); 806 So.2d 32, 51-52, *fees aff'd*, 2002-826, p. 34-36 (La. 2/25/03), 850 So.2d 686, 709-11. This clearly requires more than $4 million.

Many lawyers cannot afford to take contingency cases, even with the potential for a large recovery. But almost no lawyer will accept a case requiring thousands of unpaid hours of work where the objective is the vindication of rights rather than monetary recovery. No lawyer would choose to work for 11 ½ years without pay when he could be paid monthly, and no lawyer would ask that his entire career's worth of labor be paid in a lump sum so that he could be charged a millionaire's 39.6% income tax rate.[26] No lawyer would ask to be saddled with interest to finance a case since 2001 as the government used infinite public money to destroy his character and reputation. No lawyer would give up the lost value of his income to accept half of its real worth and risk being paid nothing if the Legislature elects not to honor the hard-fought judgment he devoted his career to receive. Thus, federal and state law requires an enhancement to "encourage qualified counsel" to take similar cases in the future. As the Third Circuit recognized on pages 24-25 of its ruling:

> Our courts must always remain mindful that there are a limited number of attorneys willing to bear the personal costs and sacrifices inherent in most civil rights litigation. We cannot underestimate the chilling effect this type of militant and pernicious behavior heaped upon Plaintiff and her counsel for ten years, and even now on appeal, has upon other attorneys, young and old, as well as potential plaintiffs. It is the court's duty to likewise send a message to the bar, experienced as well as eager young lawyers, that they may rely on the precepts of law as well as fundamental fairness and fair-play, to protect and safeguard them against the personal and

[25] *McClain v. Lufkin Ind.* 649 F.3d 374, 379-82 (5th Cir.2011), *aff'g* No. 97-063, 2009 WL 921436 (E.D. Tex. Apr. 2, 2009).

[26] This rate assumes that the current tax cuts expire at the end of 2012. Otherwise, the rate will be 35%.

> financial costs of truly devoted representation of their clients. These attorneys' representation spanned a decade of hard work and sacrifice in the face of obstinate resistance to laws guaranteeing basic human and civil rights and public attacks on their character and worth. To do anything less is a disservice to the citizens which these laws are designed to protect and to the gallant attorneys willing to make years of personal sacrifice in the cause of justice.

Every expert attorney and the Louisiana Advocacy Center opined that in this case, the lodestar fails to honor Congress's objective of creating a market system where the private bar is willing to accept the risk of representing victims as "private attorneys general." McNeese's 20 years of unchecked discrimination against our disabled citizens was no secret, and it occurred on the watch of our state's 17,688 practicing attorneys. Only one of them did anything about it, and only at tremendous personal cost. This alone is *prima facie* proof that Louisiana's courts have failed to award high enough fees to attract competent counsel to represent discrimination victims and is a compelling reason to grant writs and correct this imbalance by awarding the enhancement advocated by this case's experts. This would clearly be "in the interest of law and the legal system." As the Louisiana Advocacy Center stated on page 6 of its Amicus Brief (Exhibit "G"):

> If Plaintiffs' counsel is not adequately compensated for the results they achieved in this case, individuals with disabilities in this State have little hope that they can escape the type of humiliating and degrading experience that Ms. Covington received from a Louisiana state institution.

E. The lower courts failed to compensate Hopkins his standard rate

The lower courts even failed to compensate Hopkins his standard rate of $325 per hour for "ordinary" work, despite *Perdue*'s instructions to, at the very least, compensate an attorney "at the rate that the attorney would receive in cases not governed by the federal fee-shifting statutes." *Perdue,* 130 S.Ct. at 1674. *See also, Carson v. Billings Police Dept.,* 470 F.3d 889, 892 (9th Cir.2006). Hopkins testified that his personal clients include professional baseball players Prince Fielder, Joseph Crede, and Bruce Chen, who pay him $325 per hour for transactional work. (2 R. 44:10807; 34:8434-36). This rate is lower than three of the five experts in this case, including McNeese's own expert, and assumes straightforward work with no payment delay. It is certainly error to deny an attorney his usual contract rate in a highly successful and contingent case in which he is forced to wait more than a decade for payment.

F. *Purdue's* progeny further establish Covington's counsel earned $5.1 million

In the two years since *Perdue,* our federal courts have spoken loudly and frequently about the need for enhancements. Last year, the federal Fifth Circuit, citing *Perdue,* affirmed an enhancement to a rural Texas attorney's rate to **$400** per hour and remanded to increase an out-of-state attorney's rate to **$650** per hour based upon a 12 year payment delay in a civil rights case. This **$4,740,195** award has become the Fifth Circuit's seminal post-*Perdue* fee shifting case. *McClain v. Lufkin Industries*, 649 F.3d 374, 379, 381, 382 (5th Cir. 2011), *affirming* Civ. No. 97-063, 2009 WL 921436 (E.D. Tex. Apr. 2, 2009).

This case is not an exception—rather it is the rule since *Perdue.* The federal Sixth Circuit affirmed an enhancement of 120% in an ADA case this year, explaining, "ADA cases are notoriously difficult to win." *Baker v. Windsor Republic Doors,* 414 Fed. Appx. 764, 769, 781 (6th Cir. 2011). The federal Fifth Circuit affirmed a 150% enhancement from **$300** to **$450** per hour in a simple employment discrimination case last year, relying in part on state law. *Jackson v. Host International,* 426 Fed. Appx. 215, 225-28 (5th Cir. 2011). As noted, the Eastern District of Louisiana enhanced a fee by 217% in January based on superior performance in a one year case in which Louisiana lead counsel's rate was already **$400** per hour and was presumably increased to **$868** per hour. *Altier*, 2012 WL 161824 at *19-25. Certainly, if all of these cases are "rare and exceptional" in the two short years since *Perdue* and merit enhancements of $400 rates by another 120% to 217%, why would the largest single client ADA judgment in history, spanning an extraordinary 12 years, not merit a 300% enhancement to a modest $265 rate?

Thirty years of attorney's fee precedent prior to *Perdue* also supports an enhancement. In *Thompson v. Harry Connick, et al.,* 553 F.3d 836, 867-70 (5th Cir.La. 2008), *rev'd on other grounds*, the Fifth Circuit affirmed a Louisiana court's award of **$1,166,177.45** in fees, costs, and expenses, including a **150%** enhancement, against the Orleans Parish District Attorney in a case lasting only four years because the district attorney lodged a "militant defense in the face of a statute allowing attorney's fees."

In *Rohrer v. Astrue*, Civ. No. 06-1242, 2009 WL 173829 at *5 and fn. 4 (W.D. La. Dec. 7, 2009), the Lake Charles federal court enhanced a **$265** per hour award by 200% in a routine Social Security case because the prevailing counsel was located in a larger community. The Lake Charles judge noted that even local courts have awarded base rates greater than **$450** and *de facto* rates greater than **$1,400** per hour.

Attorneys in thousands of cases have been awarded enhancements of rates much higher than Covington's counsel under far less extraordinary circumstances. In this case, the lower courts ruled that a greater enhancement is not only "justified," but "**entirely**" deserved yet limited Covington's award based only on a misapplication of *Perdue.* It would be in the interest of law and the legal system for this Court to grant writs to correct this error and award the $5.1 million Covington's counsel has earned.

III. THIS COURT SHOULD GRANT WRITS TO CORRECT THE LOWER COURTS' ERRONEOUS INTEPRETATION OF THE SUPREMACY CLAUSE IN ARTICLE VI OF THE U.S. CONSTITUTION AND 42 U.S.C. § 12205

Both the Supremacy Clause of the U.S. Constitution and the ADA itself forbid courts from denying Covington's fee enhancement based on McNeese's status as a government entity. 42 U.S.C. § 12205 clearly provides that "the United States **shall** be liable for the foregoing [attorney's fees in an ADA case] **the same**

as a private individual." By extension, state and local governments must be held liable for attorney's fees "the same as a private individual." Using a similar argument, Virginia attempted to avoid paying full attorney's fees in a Title II ADA case in *Brinn v. Tidewater Transportation District Commission*, 242 F.3d 227, 232-33 (4th Cir. 2001). The federal Fourth Circuit held that Virginia had relinquished 11th Amendment immunity and was obligated under the Supremacy Clause to pay all fees awarded under federal statutes:

> But there is yet another, even more compelling, reason why we decline to hold that the VDA does not limit the award of attorneys' fees in actions like this one, brought exclusively under federal law—to do so would violate the Constitution.[27]

The ADA does allow an extremely limited "hardship" defense to a public entity.[28] However, McNeese's "hardship" defense was rejected after Covington presented evidence of astonishing excess at McNeese, such as its idle $2 million Building Use fund (2 R. 23:5609-10), the highest administrative salaries among comparable Louisiana universities (2 R. 22:5382-83), $2 million per year in discretionary casino funds, and massive construction projects which used taxpayer money to build new structures that failed to comply with the ADA—all as citizens donated $55 million to the McNeese foundation. (2 R.22:5377-81). And, of course, McNeese elected to receive **$61,878,859** in federal dollars in the last seven years. Thus, it must comply with federal law.

IV. THIS COURT SHOULD GRANT WRITS TO CORRECT THE LOWER COURTS' ERRONEOUS INTERPRETATION OF ARTICLE XII (C) OF THE LOUISIANA CONSTITUTION AND LA. R.S. 13:5109(B)

Under Louisiana law, a different constitutional imperative forbids courts from reducing Covington's fees based on McNeese's status as a government entity. As recognized in *Smith v. State Dept. of Tran. & Development,* 2003-1450, p. 10 (La.App. 3 Cir. 4/28/04), 872 So.2d 594, 601, *rev'd on other grounds*, 2004-1317 (La. 3/11/05); 899 So.2d 516, the Legislature has elected not to limit or place any ceiling upon a court's award of attorney's fees against public entities. Instead, the policy decision of whether to pay such a judgment is vested exclusively in the Legislature. Article XII 10(C) of the Louisiana Constitution provides:

> [n]o judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated therefor by the legislature or by the political subdivision against which the judgment is rendered.

In *Batson v. South Louisiana Med. Ctr.*, 2006-1988, p. 12 (La. App. 1 Cir. 6/13/07); 965 So.2d 890, 897, *writ denied,* 2007-1479 (La. 10/5/07); 964 So.2d 945, the First Circuit held that article XII § C "is

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[27] *See also Riddell v. Ntl. Democratic Party*, 624 F.2d 539, 545 (5th Cir.1980) (whether taxpayer pays fees is irrelevant.)

[28] As explained by the U.S. Supreme Court in *Olmstead v. L.C.,* 527 U.S. 581, 595 (1999), "Congress wanted to permit a cost defense ***only in the most limited of circumstances.***" *See also, Kinney v. Yerausalim,* 9 F.3d 1067, 1074 (3rd Cir. 1993) ("There is no general undue burden defense in the ADA"); *Matthews v. Jefferson,* 29 F.Supp.2d 525, 534 (W.D.Ark.1998).

aimed at protecting the public fisc and seeks to avoid upsetting governmental priorities by the payment of substantial money judgments." In *Newman Marchive Partnership v. Shreveport,* 2007-1890 (La. 4/8/08), 979 So.2d 1262, this Court held that any effort by the judicial branch to interfere in the policy decisions inherent in paying judgments would have grave constitutional consequences.

It is, thus, the courts' duty to award a full judgment and the Legislature's duty to determine whether public policy allows it to be paid. If the Legislature is concerned about the public fisc, it will simply not pay, but in making that decision, it must rely upon an independent judiciary to render a judgment without regard to any political implications alleged by the very discriminator who accumulated these fees.

V. THIS COURT SHOULD GRANT WRITS TO INCREASE COVINGTON'S COUNSEL'S AWARD TO $5.1 MILLION UNDER LOUISIANA LAW

Covington also prevailed under La. R.S. 49:148.1, La. R.S. 46:2254(A),(F), and (J), La. R.S. 51:2231 and the Louisiana Commission on Human Rights. This year, the federal Fifth Circuit held that where federal and state claims intersect, attorney's fee factors can be "stacked" and awarded under either *Perdue* or the 10 factors that this Court established in *State, DOTD v. Williamson*, 597 So.2d 439, 442 (La.1992); 91-2401, 91-2404. Covington detailed her basis for a Louisiana enhancement at trial (2 R. 21:5624-5710 at 5663-65) and again as her third assignment of error on appeal. Neither of the lower courts addressed this argument.

The attorneys in *Williamson* sought $450,000 in fees for 456.75 hours of work at nearly **$1,000** per hour. This Court noted that the case was "simple" and awarded $175,000, or **$383** per hour. Significantly, these rates were awarded ***20 years ago*** and were ***paid by this state's taxpayers***. A decade after *Williamson,* in *Corbello*, 806 So.2d at 51-52, **McNeese's own counsel** demanded **$12 million** in fees, or **$2,414** per hour for 4,970 hours of work over eight years in a case which originated only a few miles from McNeese. This Court affirmed the Third Circuit's award of **$4 million,** or **$805** per hour based on *Williamson*.

The following year, in *Vela v. Plaquemines Parish Gov't*, 2000-2221, p. 24-25, 28 (La. App. 4 Cir. 3/13/02); 811 So.2d 1263, 1279-81, Louisiana attorneys were awarded **$1.5 million** for 3,800 hours at a rate of $200, enhanced by 300% to $600 per hour precisely **because** they received a judgment forcing the taxpayers to spend money for the public good. The Louisiana Fourth Circuit held in *Vela,* 811 So.2d at 1281:

> In our view, the dual nature of this litigation as a class action also justifies an award that is higher than what would be considered reasonable in a more typical appropriation case. **The PPG argues that the trial judge should not have applied a multiplier, as is commonly done in class actions under a lodestar analysis,** because the court ordered the defendants to pay the attorney fees directly, rather than having the amount deducted from the fund available to the class. The PPG asserts that plaintiffs cannot have it both ways. This argument is not persuasive. **The instant lawsuit has all the attributes of a class action** that justifies an award of attorney fees. Moreover, the fund is not typical, nor is the defendant.

> The judgment ultimately will not be paid by the PPG, as is provided by law, **it will be paid by all the citizens of Plaquemines Parish, including the claimants herein, by means of a tax levied for that purpose, which citizens presumably have already received the benefit of increased flood protection from the levee project.** The compensation awarded herein is something to which the plaintiffs are entitled as a matter of law, and we cannot say that the trial court erred by ordering the attorney fees to be paid directly rather than out of the compensation fund.

Just last month, the Louisiana Attorney General's Office demanded, and was awarded, **$70 million** in fees, and even sought interest from date of judicial demand. *"Buddy" Caldwell, Attorney General v. Janssen Pharmaceutical,* 11-1184 & 11-1185 (La.App. 3 Cir. 8/31/12), -- So.3d --. Had Covington received interest from judicial demand at the established rate, her fees would be worth $5.3 million today—more than she even seeks. Amazingly, the Attorney General itself failed to justify its demand with a reasonable rate or documented timesheets and simply relied on the *Williamson* factors.

Each of these awards—$383 per hour in 1992; $4 million at $805 per hour in 2001; $1.5 million at $600 per hour in 2002; and $70 million in 2012, were awarded based on the *Williamson* factors. *Covington* has lasted longer than these cases, and it would clearly be detrimental to the public administration of justice not to increase her counsel's compensation in accordance with the factors as follows:

> **(1) The ultimate result obtained**. Covington obtained the largest known single-client ADA judgment in history and received 345,000% of her original request for a $4,000 restroom. McNeese is receiving $13.8 million for ADA compliance—seven times more than it requested in the last 20 years—and is using this case to pursue its own ADA case against its architects and contractors. This has resulted in 15,000 violations being corrected in 1.35 million square feet of public buildings.
>
> **(2) The responsibility incurred.** Covington's counsel had enormous burdens under complex and ever-changing federal and state law. Her lead attorney defeated 12 lawyers representing the state—most of them 30 years his senior. One of his opponents is a former federal magistrate judge and three are "Super Lawyers" and "The Best Lawyers in America." He worked on this case for 11 ½ years, including three appeals, and helped to spur a successful federal investigation and enforcement action.
>
> **(3) The importance of the litigation.** This "landmark" case affects not only Covington, but every disabled citizen who will use the McNeese campus for the next 50 years. It has set a new precedent for the University of Louisiana System's treatment of those with disabilities and will have profound long-term positive economic benefits for the state and its citizens. The U.S. DOJ regarded this case as a national priority, the national media has covered it for the last five years, and Louisiana's higher courts have published 75 pages of opinions in this case.
>
> **(4) Amount of money involved.** As noted, this case involved a $13.8 million injunction, $400,000 cash, six years of tuition, and substantial policy changes throughout the University of Louisiana System which will economically benefit thousands of citizens.
>
> **(5) Extent and character of the work performed.** Covington's counsel was extremely hands-on, with significant unbilled time for things such as extensive client support. He monitored and applied the nuances of the voluminous ADA and Louisiana cases, laws, and regulations as they developed over 11 ½ years in this novel hybrid state/federal civil rights case, as well as Covington's medical conditions and accommodation needs, the state's budgetary practices and policies, and the architectural details of McNeese's 1.35 million square foot campus.

(6) Legal knowledge, attainment, and skill of the attorneys. All five experts noted Covington's counsel's skill, and the Third Circuit held that Hopkins provided "superior performance" and constructed a "well-orchestrated case worthy of emulation by the most seasoned attorneys."

(7) Number of appearances made. Covington's counsel appeared at 14 days of trial and hearings, nearly 20 depositions, one mediation, 21 campus inspections, and frequent conferences. This is at least 55 days of discovery or court appearances.

(8) Intricacies of the facts involved. McNeese disputed every fact, requiring Covington's counsel to marshal hundreds of thousands of pages of medical records, budget documents, expert reports detailing 15,000 minute architectural details about items such as door handles, sink faucets, foot-pound measurements, and ramp inclines. This was made much more difficult by McNeese's refusal to concede even the most obvious arguments, as is evident by McNeese's current writ application.

(9) Diligence and skill of counsel. As noted, all five experts and the Third Circuit found Covington's counsel's skill to be "superior." *See* 2 R. 21:5624-5710 at 5663-65.

(10) The court's own knowledge. This is well-documented in the lower courts' opinions.

CONCLUSION

If our state is to remain competitive, it must encourage citizens like Covington to take the difficult path of receiving an education and joining the workforce rather than become a ward of the state. This benefits all of society, and it was Congress's stated objective in passing the ADA.[29] To assure that our disabled citizens were treated with dignity, the public provided McNeese with millions of dollars for ADA compliance, which it squandered. When challenged to provide a single restroom for Covington, it unleashed 12 government lawyers who used the unlimited public fisc to intimidate she and her counsel for 11 ½ years.

Covington's counsel served as unpaid "private attorneys general" to force McNeese to honor federal and state law when Louisiana's own attorney general's office chose to ignore it. McNeese escalated this case and then benefitted by tens of millions of dollars because of Covington's counsel's work while offering no defense to Covington's enhancement request. Now these private attorneys must be paid based on the value of services they provided to the State and the exceptional payment delay endured because of the State's actions.

This Court would serve an important public objective by granting writs to increase Covington's fees and encourage public institutions to treat our citizens with dignity and become better stewards of the public trust. As noted in *Copper Liquor v. Adolph Coors.,* 624 F.2d 575, 583 (5th Cir. 1980), there, "will be little brake upon deliberate wrongdoing" when defendants feel that there are no consequences to their actions. For these reasons, Covington respectfully requests that this Court grant writs to consider these important issues and properly create a market incentive so that the public is never faced with a case like this again.

[29] *See* Senate Report No. 872, 88th Cong., 2d Session, pt. 1 at 11, 24 (1964); H.R. Rep. No. 914, 88th Cong., 1st Sess., pt. 1 at 18 (1963); H.R. Rep. No. 914, 88th Cong., 1st Sess. Pt. 2, at 1-2 (1963).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing Writ Application has been served upon (or filed with) the following counsel of record and lower courts by electronic mail and/or personal delivery and/or depositing same, postage prepaid, in the United States Mail, this 12th day of October, 2012:

Appellate Court:
Louisiana Third Circuit Court of Appeal
P.O. Box 16577
1000 Main Street
Lake Charles, LA 70616

District Court Judge:
The Honorable Michael Canaday
14th Judicial District Court, Calcasieu Parish, Louisiana
1001 Lakeshore Drive
Lake Charles, LA 70601

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On this, the 12th day of October, 2012

_____/s/ Seth Hopkins_____
SETH HOPKINS