IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

THEODORE JOHNSON,

Plaintiff - Appellee

v.

LOUISIANA DEPARTMENT OF EDUCATION; STATE OF LOUISIANA; PRESIDENT OF LOUISIANA STATE UNIVERSITY SYSTEM; BOARD OF REGENTS,

LYNN AUGUST,

Defendants - Appellants

Plaintiff - Appellee

v.

SUZANNE MITCHELL; MAE NELSON; ED BARRAS; DEPARTMENT OF SOCIAL SERVICES, for the State of Louisiana,

Defendants - Appellants

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

CONSOLIDATED BRIEF FOR THE UNITED STATES AS INTERVENOR

RALPH F. BOYD, JR.
Assistant Attorney General

JESSICA DUNSAY SILVER
SETH M. GALANTER
Attorneys
Civil Rights Division
Department of Justice
Appellate Section - PHB 5022
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 307-9994

TABLE OF CONTENTS

PAGE

STATEMENT REGARDING ORAL ARGUMENT

STATEMENT OF SUBJECT MATTER JURISDICTION 2

STATEMENT OF APPELLATE JURISDICTION 2

STATEMENT OF THE ISSUE 2

STATEMENT OF THE CASE 2

SUMMARY OF ARGUMENT 4

ARGUMENT:

I. CONGRESS CONDITITIONED RECEIPT OF FEDERAL FUNDS ON A WAIVER OF ELEVENTH AMENDMENT IMMUNITY FOR PRIVATE CLAIMS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973 5

A. *Section 2000d-7 Is A Clear Statement That Accepting Federal Financial Assistance Constitutes A Waiver Of Immunity From Private Suits Brought Under Section 504* 7

B. *Congress Has Authority To Condition The Receipt Of Federal Financial Assistance On A State's Waiver Of Its Eleventh Amendment Immunity* 12

C. *Defendants' Case-Specific Contentions Do Not Negate Their Waiver Of Immunity* 16

II. SECTION 504 MAY BE ENFORCED AGAINST STATE OFFICIALS IN THEIR OFFICIAL CAPACITIES FOR PROSPECTIVE RELIEF EVEN IF CONGRESS DID NOT VALIDLY CONDITION THE RECEIPT OF FEDERAL FINANCIAL ASSISTANCE ON A WAIVER OF IMMUNITY 22

CONCLUSION 25

STATEMENT OF RELATED CASES 26

TABLE OF AUTHORITIES

CASES: **PAGE**

Alden v. Maine, 527 U.S. 706 (1999) 5,12,24

Andrus v. Arkansas, 197 F.3d 953 (8th Cir. 1999) 23

Armstrong v. Wilson, 124 F.3d 1019 (9th Cir. 1997),
cert. denied, 524 U.S. 937 (1998) 25

AT&T Communications v. Bell South Communicatuinsm Inc.,
238 F.3d 636 (5th Cir. 2000) 10,14,16

Atascadero State Hosp. v. Scanlon, 473 U.S. 234 (1985) 4, 7

Barnes v. Gorman, 122 S. Ct. 2097 (2002) 3

Beasley v. Alabama State Univ., 3 F. Supp. 2d 1304 (M.D. Ala. 1998) 19

Brennan v. Stewart, 834 F.2d 1248 (5th Cir. 1988) 24

Carter v. Orleans Parish Pub. Schs., 725 F.2d 261, (5th Cir. 1984) 4

Cherry v. University of Wis. Sys. Bd of Regents,
265 F.3d 541 (7th Cir. 2001) 11

City of Cleburne Living Ctr., 473 U.S. 432 (1985), ... 14

Clark v. California, 123 F.3d 1267 (9th Cir. 1997),
cert. denied, 524 U.S. 937 (1998) 12, 19

Clay v. Texas Women's Univ., 728 F.2d 714 (5th Cir. 1984) 23

College Sav. Bank v. Florida Prepaid Postsec. Educ. Expense Bd., 527
U.S. 666 (1999 . . . . . *passim*

Doss v. South Central Bell Tel. Co., 834 F.2d 421 (5th Cir. 1987) 22

Douglas v. California Dep't of Youth Auth., 271 F.3d 812,
opinion amended, 271 F.3d 910,
cert. denied, 122 S.Ct. 2591 (2002) 11

CASES (continued): **PAGE**

Edelman v.Jordan, 415 U.S. 651 (1974) 11, 23

Ex Parte Young, 209 U.S. 123 (1908) 5, 23, 24

Federal Maritime Comm'n v. South Carolina State Ports Authority, 122 S. Ct. 1864 (2002) 15

Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945) 16-18

Frazier v. Simmons, 254 F.3d 1247 (10th Cir. 2001), ... 23

Garcia v. SUNY Health Scis. Ctr., 280 F. 3d 98 2d Cir 2001) 11, 20-21

Green v. Mansour, 474 U.S. 64 (1985) 24

Grove City Coll. v. Bell, 465 U.S. 555 (1984) 15

Helms v. McDaniel, 657 F.2d 800 (5th Cir. 1981), cert. denied, 455 U.S. 946 (1982) 24

J.B. ex rel. Hart v. Valdez, 186 F.3d 1284 10th Cir. 1999). 25

Jim C. v. Arkansas Dep't of Educ., 235 F.3d 1079 (8th Cir. 2000)(en banc), cert. denied, 533 U.S. 949 (2001) 11

Lapides v. Board of Regents, 122 S. Ct. 1640 (2002) 17-19

Lau v. Nichols, 414 U.S. 563 (1974), 384 U.S. 641 (1966) 15

Litman v. George Mason Univ., 5 F Supp. 2d 366 (E.D. Va. 1998) 19

Litman v. George Mason Univ., 186 F.3d 544 (1999), cert denied, 528 U.S. 1181 (2000) 9, 13

Magnolia Venture Capital Corp. v. Prudential Securities Inc., 151 F.3d 439 (5th Cir. 1998), cert. denied, 525 U.S. 1178 (1999) 16

Nelson v. Miller, 170 F.3d 641 (6th Cir. 1999) 25

New York v. United States, 505 U.S. 144 (1992) 15

CASES (continued): **PAGE**

Nihiser v. Ohio E.P.A., 269 F.3d 626 (6th Cir. 2001) 11
cert. denied, 122 S.Ct. 2588 (2002)

Pederson v. Louisiana State Univ., 201 F. Supp. 388 (5th Cir. 2000), ... 14
vacated on reh'g, 213 F.3d 858 (2001)

Pederson v. Louisiana State Univ., 213 F. Supp. 858 (5th Cir. 2000), ... *passim*

Pennhurst State Sch. and Hosp. v. Halderman, 451 U.S. 1 (1981) 15

Petty v. Tennessee-Missouri Bridge Comm'n, 359 U.S. 275 (1959) 12-13

Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.,
506 U.S. 139 (1993) 2

Reickenbacker v. Foster, 274 F.3d 974 (5th Cir. 2001), ... 5-6

Robinson v. Kansas, No. 00-3315, 2002 WL 1462856
(10th Cir. July 9, 2002) 11

Sandoval v. Hagan, 197 F.3d 484 (11th Cir. 1999),
rev'd on other grounds, 532 U.S. 275 (2001) 12

Sandoval v. Hagan, 7 F.Supp. 2d 1234 (M.D. Ala. 1998) 19

School Bd. of Nassau County v. Arline, 480 U.S. 273 (1987) , ... 2, 3,15

Seminole Tribe of Fla. v.Florida., 517 U.S. 44 (1996) 6, 16

South Dakota v. Dole, 483 U.S. 203 (1987) 12, 14-15

Stanley v. Litscher, 213 F.3d 340 (7th Cir. 2000). 11

Supreme Court of Va. v. Consumers Union, Inc.,, 446 U.S. 719 (1980) 11

United States Dep't of Transp. v. Paralyzed Veterans of Am.,
477 U.S. 597 (1986) 8, 10

University of Alabama v. Garrett, 531 U.S. 356 (2001), ... 9,24-25

Verizon Md., Inc. v. Public Serv. Comm'n of Md.,
122 S. Ct. 1753(2002) 23

CONSTITUTION & STATUTES: **PAGE**

United States Constitution:
Art. I, Sec. 8, Cl. 1 (Spending Clause) 12
Amend. XI . . . . . *passim*
Amend. XIV, Sec. 5 . . . . . 5, 14

Americans With Disabilities Act of 1990,
Title II, 42 U.S.C. 12131 et seq. 20, 21
42 U.S.C. 12201(a). 3
42 U.S.C. 12201(b). 21

Civil Rights Act of 1964, Title VI, 42 U.S.C. 2000d et 4

Education Amendments of 1972, Tit. IX, 20 U.S.C. 1681 et seq., ... 4,8,14

Rehabilitation Act of 1973,
29 U.S.C. 701(a)(2) 3
29 U.S.C. 701(a)(5) 3
29 U.S.C. 794 (Section 504) . . . . . *passim*
29 U.S.C. 794(a) 2, 5
29 U.S.C. 794(a)(2) 3
29 U.S.C. 794(a)(5) 3
29 U.S.C. 794(b) 3
Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, Tit. X,
42 U.S.C. 2000d-7. . . . . *passim*
42 U.S.C. 2000d-7(a)(1). 4,8,9,13

28 U.S.C. 1291 2

28 U.S.C. 1331 2

La. Rev. Stat. Ann. Sec. 17:24(C) 18

La. Rev. Stat. Ann. Sec. 17:3351(2) 18

La. Rev. Stat. Ann. Sec. 46:51(6) 18

LEGISLATIVE HISTORY (continued): **PAGE**

S. Rep. No. 388, 99th Cong., 2d Sess. 28 (1986) 8

131 Cong. Rec. 22,346 (1985) 8

STATEMENT REGARDING ORAL ARGUMENT

These appeals involve the straightforward application of settled circuit precedent regarding the proper application of 42 U.S.C. 2000d-7 to a state agency. The United States does not believe oral argument is necessary in these cases. If oral argument is held, however, the United States wishes to appear along with plaintiffs-appellees to address any questions the Court may have.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Nos. 02-30318, 02-30369

THEODORE JOHNSON,

Plaintiff - Appellee

v.

LOUISIANA DEPARTMENT OF EDUCATION; STATE OF LOUISIANA; PRESIDENT OF LOUISIANA STATE UNIVERSITY SYSTEM; BOARD OF REGENTS,

LYNN AUGUST,

Defendants - Appellants

Plaintiff - Appellee

v.

SUZANNE MITCHELL; MAE NELSON; ED BARRAS; DEPARTMENT OF SOCIAL SERVICES, for the State of Louisiana,

Defendants - Appellants

ON APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

CONSOLIDATED BRIEF FOR THE UNITED STATES AS INTERVENOR

STATEMENT OF SUBJECT MATTER JURISDICTION

The district court had jurisdiction over the claims on appeal pursuant to 28 U.S.C. 1331.

STATEMENT OF APPELLATE JURISDICTION

This Court has jurisdiction over interlocutory orders denying Eleventh Amendment immunity pursuant to 28 U.S.C. 1291 and the collateral-order doctrine. See *Puerto Rico Aqueduct & Sewer Auth.* v. *Metcalf & Eddy, Inc.*, 506 U.S. 139, 144-145 (1993).

STATEMENT OF THE ISSUE

Whether Congress validly conditioned the receipt of federal financial assistance on a waiver of States' Eleventh Amendment immunity for suits under Section 504 of the Rehabilitation Act, 29 U.S.C. 794.

STATEMENT OF THE CASE

1. Section 504 of the Rehabilitation Act of 1973 provides that "[n]o otherwise qualified individual with a disability in the United States * * * shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 29 U.S.C. 794(a). Section 504 contains an "antidiscrimination mandate" that was enacted to "enlist[] all programs receiving federal funds" in Congress's attempt to eliminate discrimination against individuals with disabilities. *School Bd. of Nassau County* v. *Arline*, 480 U.S. 273, 286 n.15, 277 (1987). Congress found that "individuals

with disabilities constitute one of the most disadvantaged groups in society," and that they "continually encounter various forms of discrimination in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and public services." 29 U.S.C. 701(a)(2) & (a)(5).

Section 504 applies to a "program or activity," a term defined to include "all of the operations" of a state agency, university, or public system of higher education "any part of which is extended Federal financial assistance." 29 U.S.C. 794(b). Protections under Section 504 are limited to "otherwise qualified" individuals, that is those persons who can meet the "essential" eligibility requirements of the relevant program or activity with or without "reasonable accommodation[s]." *Arline*, 480 U.S. at 287 n.17. An accommodation is not reasonable if it either imposes "undue financial and administrative burdens" on the grantee or requires "a fundamental alteration in the nature of [the] program." *Ibid.*[1] Section 504 may be enforced through private suits against programs or activities receiving federal funds. See *Barnes* v. *Gorman*, 122 S. Ct. 2097 (2002);

---

[1] Defendants contend (Def. Br. 18-19) that Congress incorporated the substantive requirements of the Americans with Disabilities Act of 1990 (ADA) into Section 504. That assertion has it completely backwards. In enacting the ADA after 17 years experience with Section 504, Congress intended to extend the non-discrimination standards developed under Section 504 to numerous entities that did not receive federal funds. The ADA thus provides that "[e]xcept as otherwise provided in this [Act], nothing in [the ADA] shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.)." 42 U.S.C. 12201(a).

Carter v. *Orleans Parish Pub. Schs.*, 725 F.2d 261, 262 n.2 (5th Cir. 1984).

2. In 1985, the Supreme Court held that Section 504 was not clear enough to evidence Congress's intent to condition federal funding on a waiver of Eleventh Amendment immunity for private damage actions against state entities. See *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 245-246 (1985). In response to *Atascadero*, Congress enacted 42 U.S.C. 2000d-7 as part of the Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, Tit. X, § 1003, 100 Stat. 1845. Section 2000d-7(a)(1) provides in pertinent part:

> A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

SUMMARY OF ARGUMENT

The Eleventh Amendment is no bar to this action brought by a private plaintiff under Section 504 of the Rehabilitation Act to remedy discrimination on the basis of disability. Congress validly conditioned federal funding on a state agency's waiver of sovereign immunity. By enacting 42 U.S.C. 2000d-7, Congress put state agencies on clear notice that acceptance of federal financial assistance was conditioned on a waiver of their Eleventh Amendment immunity to discrimination suits under Section 504. By accepting the funds, a state agency agreed to the terms of the statute. Defendants' contention that they thought

Section 2000d-7 was intended to be a unilateral action by Congress is contrary to the text and structure of the statute and irrelevant to the effectiveness of their waiver of immunity upon acceptance of federal funds.

In any event, these actions may proceed against the named state officials in their official capacities for prospective injunctive relief under the doctrine of *Ex parte Young*.

ARGUMENT

I

CONGRESS CONDITIONED RECEIPT OF FEDERAL FUNDS ON A WAIVER OF ELEVENTH AMENDMENT IMMUNITY FOR PRIVATE CLAIMS UNDER SECTION 504 OF THE REHABILITATION ACT OF 1973

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), prohibits discrimination against persons with disabilities under "any program or activity receiving Federal financial assistance." Section 2000d-7 of Title 42 provides that a "State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 * * * [and] title VI of the Civil Rights Act of 1964."

The Eleventh Amendment bars private suits against a State, absent a valid abrogation by Congress or waiver by the State. See *Alden* v. *Maine*, 527 U.S. 706, 755-756 (1999). In *Reickenbacker* v. *Foster*, 274 F.3d 974 (5th Cir. 2001), this Court held that Congress did not have the power under Section 5 of the Fourteenth Amendment to abrogate States' Eleventh Amendment immunity to suits under

Section 504. While the United States disagrees with that decision, we recognize that it binds this panel. *Reickenbacker* reserved the question, at issue in these appeals, whether Congress validly conditioned the receipt of federal financial assistance on a recipient's waiver of its Eleventh Amendment immunity to Section 504 claims. See 274 F.3d at 984.

This Court should resolve that question in the affirmative. Section 2000d-7 may be upheld as a valid exercise of Congress's power under the Spending Clause, Art. I, § 8, Cl. 1, to prescribe conditions for state agencies that voluntarily accept federal financial assistance.[2] States are free to waive their Eleventh Amendment immunity. See *College Sav. Bank* v. *Florida Prepaid Postsec. Educ. Expense Bd.*, 527 U.S. 666, 674 (1999); *Seminole Tribe of Fla.* v. *Florida*, 517 U.S. 44, 64 (1996); *Pederson* v. *Louisiana State Univ.*, 213 F.3d 858, 876 (5th Cir. 2000). And "Congress may, in the exercise of its spending power, condition its grant of funds to the States upon their taking certain actions that Congress could not require them to take, and * * * acceptance of the funds entails an agreement to the actions." 527 U.S. at 686. Thus, Congress may, and has, conditioned the receipt of federal funds on defendants' waiver of Eleventh Amendment immunity to Section 504 claims.

Defendants contend, nonetheless, that they have not waived their immunity because Section 2000d-7 does not clearly condition the receipt of federal financial

---

[2] There is no dispute at this stage (Def. Br. 19-20) that defendants receive federal financial assistance.

assistance on a waiver of immunity and, even if it did, defendants' receipt of federal financial assistance during the relevant period was not an effective waiver. None of these contentions is correct.

A. *Section 2000d-7 Is A Clear Statement That Accepting Federal Financial Assistance Constitutes A Waiver Of Immunity From Private Suits Brought Under Section 504*

Section 2000d-7 was enacted in response to the Supreme Court's decision in *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985). In *Atascadero*, the Court held that Congress had not provided sufficiently clear statutory language to condition the receipt of federal financial assistance on a waiver of States' Eleventh Amendment immunity for Section 504 claims and reaffirmed that "mere receipt of federal funds" was insufficient to constitute a waiver. *Id*. at 246. But the Court stated that if a statute "manifest[ed] a clear intent to condition participation in the programs funded under the Act on a State's consent to waive its constitutional immunity," the federal courts would have jurisdiction over States that accepted federal funds. *Id*. at 247.

1. Section 2000d-7 makes unambiguously clear that Congress intended to condition federal funding on States' waiver of Eleventh Amendment immunity to suit in federal court under Section 504 (and the other non-discrimination statutes tied to federal financial assistance).[3] Any state agency reading the U.S. Code

---

[3] Congress recognized that the holding of *Atascadero* had implications for not only Section 504, but also Title VI of the Civil Rights Act of 1964 and Title IX of

(continued...)

would have known that after the effective date of Section 2000d-7 it would not have immunity to suit in federal court for violations of Section 504 if it accepted federal funds. Section 2000d-7 thus embodies exactly the type of unambiguous condition discussed by the Court in *Atascadero*, putting States on express notice that part of the "contract" for receiving federal funds was the requirement that they consent to suit in federal court for alleged violations of Section 504 for those agencies that received any financial assistance.

This Court reached this very conclusion in *Pederson* v. *Louisiana State University*, 213 F.3d 858 (2000), which involved the application of Section 2000d-7 to Title IX of the Education Amendments (a statute prohibiting sex discrimination by educational programs that receive federal financial assistance). The Louisiana defendants in that case argued -- just as these Louisiana defendants do (Def. Br. 30-34) -- that "§ 2000d-7(a)(1) does not contain the word 'waiver,' and that the state may have logically disregarded the language of this statute as an attempt to abrogate its sovereign immunity." *Id*. at 876. This Court rejected that argument, holding that "in 42 U.S.C. § 2000d-7(a)(1) Congress has successfully codified a statute which clearly, unambiguously, and unequivocally conditions

---

[3](...continued)
the Education Amendments of 1972, which prohibit race and sex discrimination in "program[s] or activit[ies] receiving Federal financial assistance." See S. Rep. No. 388, 99th Cong., 2d Sess. 28 (1986); 131 Cong. Rec. 22,346 (1985) (Sen. Cranston); see also *United States Dep't of Transp.* v. *Paralyzed Veterans of Am.*, 477 U.S. 597, 605 (1986).

receipt of federal funds under Title IX on the State's waiver of Eleventh Amendment Immunity." *Ibid.* Relying on the Fourth Circuit's "careful analysis" in *Litman* v. *George Mason University*, 186 F.3d 544 (1999), cert. denied, 528 U.S. 1181 (2000), this Court explained:

> First, we will consider whether 42 U.S.C. § 2000d-7(a)(1), although it does not use the words "waiver" or "condition," unambiguously provides that a State by agreeing to receive federal educational funds under Title IX has waived sovereign immunity. A state may "waive its immunity by voluntarily participating in federal spending programs when Congress expresses 'a clear intent to condition participation in the programs . . . on a State's consent to waive its constitutional immunity.'" *Litman*, 186 F.3d at 550 (quoting *Atascadero State Hosp.*, 473 U.S. at 247). Title IX as a federal spending program "operates much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." *Id*. at 551. The Supreme Court has noted that Congress in enacting Title IX "condition[ed] an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds." *Gebser* v. *Lago Vista Indep. School Dist.*, 524 U.S. 274, 286 (1998); *Litman*, 186 F.3d at 551-552.

Pederson, 213 F.3d at 876 (some citations omitted).

2. Defendants concede (Def. Br. 25-26 & n.11) that the holding of *Pederson* applies with equal force to this case as a matter of statutory construction, but tersely argue (Def. Br. 26 n.11) that the Supreme Court "overruled" this holding in *University of Alabama* v. *Garrett*, 531 U.S. 356 (2001), when it described a similarly worded provision in the Americans with Disabilities Act as an "abrogation." But defendants' reliance on this description of the provision in the Americans with Disabilities Act misses the mark. The language of Section 2000d-7 serves a different function from similar language in the Disabilities Act because the statutes operate in a markedly different manner. The Americans with

Disabilities Act acts as a unilateral regulation of employers and public entities. Thus, the provision removing Eleventh Amendment immunity for such acts can only be viewed as a unilateral abrogation by Congress. Sections 504 and 2000d-7, by contrast, condition the receipt of federal funds on a State's waiver of its Eleventh Amendment immunity.

The obligations of Sections 504 and 2000d-7 are incurred only when a recipient elects to accept federal financial assistance. If a state agency does not wish to accept the conditions attached to the funds (non-discrimination and suits in federal court), it is free to decline the assistance. But if it does accept federal money, then it is clear that it has agreed to the conditions as well. Thus, by voluntary acceptance of funding, the state agency waives its right to assert immunity. "[A]cceptance of the funds entails an agreement to the actions." *College Sav. Bank*, 527 U.S. at 686; cf. *United States Dep't of Transp.* v. *Paralyzed Veterans of Am.*, 477 U.S. 597, 605 (1986) ("the recipient's acceptance of the funds triggers coverage under the nondiscrimination provision").[4] Whether

---

[4] At one point, defendants appear to suggest (Def. Br. 38) that in addition to accepting the federal funds, they also had to make a "clear declaration" that they were waiving their immunity. As they concede, however, (Def. Br. 39), this Court rejected that same argument made by another Louisiana agency in *AT&T Communications* v. *Bell South Communications, Inc.*, 238 F.3d 636, 645 (2001), when it held that "Congress may still obtain a non-verbal voluntary waiver of a state's Eleventh Amendment immunity, if the waiver can be inferred from the state's conduct in accepting a gratuity after being given clear and unambiguous statutory notice that [the gratuity] was conditioned on the waiver of immunity."

called abrogation or waiver,[5] Section 2000d-7 applies only if a state agency agrees to forfeit its immunity by accepting federal financial assistance.

Each of the seven courts of appeals to address the issue has reached the same conclusion that this Court did in *Pederson*, 213 F.3d at 876: Section 2000d-7 "clearly, unambiguously, and unequivocally conditions receipt of federal funds * * * on the State's waiver of Eleventh Amendment immunity." See *Robinson* v. *Kansas,* No. 00-3315, 2002 WL 1462856 (10th Cir. July 9, 2002); *Garcia* v. *SUNY Health Scis. Ctr.*, 280 F.3d 98, 113 (2d Cir. 2001); *Cherry* v. *University of Wis. Sys. Bd. of Regents*, 265 F.3d 541, 554-555 (7th Cir. 2001); *Douglas* v. *California Dep't of Youth Auth.*, 271 F.3d 812, 820, opinion amended, 271 F.3d 910 (9th Cir. 2001), cert. denied, 122 S. Ct. 2591 (2002); *Nihiser* v. *Ohio E.P.A.*, 269 F.3d 626 (6th Cir. 2001), cert. denied, 122 S. Ct. 2588 (2002); *Jim C.* v. *Arkansas Dep't of Educ.*, 235 F.3d 1079, 1081-1082 (8th Cir. 2000) (en banc), cert. denied, 533 U.S. 949 (2001); *Stanley* v. *Litscher*, 213 F.3d 340, 344 (7th Cir.

---

[5] The Supreme Court has sometimes used the terms "abrogation" and "waiver" loosely and interchangeably. See also *Edelman* v. *Jordan*, 415 U.S. 651, 672 (1974) ("The question of waiver or consent under the Eleventh Amendment was found in those cases to turn on whether Congress had intended to abrogate the immunity in question, and whether the State by its participation in the program authorized by Congress had in effect consented to the abrogation of that immunity."); *Supreme Court of Va.* v. *Consumers Union, Inc.*, 446 U.S. 719, 738 (1980) ("We held * * * that Congress intended to waive whatever Eleventh Amendment immunity would otherwise bar an award of attorney's fees against state officers, but our holding was based on express legislative history indicating that Congress intended the Act to abrogate Eleventh Amendment immunity.").

2000); *Sandoval* v. *Hagan*, 197 F.3d 484, 493-494 (11th Cir. 1999), rev'd on other grounds, 532 U.S. 275 (2001); *Clark* v. *California*, 123 F.3d 1267, 1271 (9th Cir. 1997), cert. denied, 524 U.S. 937 (1998). Nothing warrants this Court overruling *Pederson* and creating a split in the circuits.

B. *Congress Has Authority To Condition The Receipt Of Federal Financial Assistance On A State's Waiver Of Its Eleventh Amendment Immunity*

Defendants also contend (Def. Br. 22-30) that Congress cannot condition the receipt of federal funds on a state agency's waiver of its Eleventh Amendment immunity to suit. That is not the law. To the contrary, it is clear that Congress may condition receipt of federal funding on a waiver of Eleventh Amendment immunity.

In *Alden* v. *Maine*, 527 U.S. 706, 755 (1999), the Court cited *South Dakota* v. *Dole*, 483 U.S. 203 (1987), a case involving Congress's Spending Clause authority, when it noted that "the Federal Government [does not] lack the authority or means to seek the States' voluntary consent to private suits." Similarly, in *College Savings Bank* v. *Florida Prepaid Postsecondary Educational Expense Board*, 527 U.S. 666 (1999), the Court reaffirmed the holding of *Petty* v. *Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959), that Congress could condition the exercise of one of its Article I powers (there, the approval of interstate compacts) on the States' agreement to waive their Eleventh Amendment immunity from suit. 527 U.S. at 686. At the same time, the Court suggested that Congress had the authority under the Spending Clause to condition the receipt of

federal funds on the waiver of immunity. *Ibid.*; see also *id.* at 678-679 n.2. The Court explained that, unlike Congress's power under the Commerce Clause to regulate "otherwise lawful activity," Congress's power to authorize interstate compacts and spend money was the grant of a "gift" on which Congress could place conditions that a State was free to accept or reject. *Id.* at 687.

Relying on these cases, this Court has twice upheld Congress's authority to condition the receipt of a federal gratuity authorized by an Article I power in exchange for a waiver of a State's Eleventh Amendment immunity. In *Pederson*, this Court rejected this very same argument made by other Louisiana defendants. Responding to those defendants' contention that "even if 42 U.S.C. § 2000d-7(a)(1) is intended to cause waiver of sovereign immunity, this type of 'conditional waiver' argument is at odds with the Supreme Court's decision in *Seminole Tribe*," this Court answered "[w]e do not find this argument persuasive." 213 F.3d at 876. Quoting from the Fourth Circuit's decision in *Litman*, this Court explained that "[w]e do not read *Seminole Tribe* and its progeny, including the Supreme Court's recent Eleventh Amendment decisions, to preclude Congress from conditioning federal grants on a state's consent to be sued in federal court to enforce the substantive conditions of the federal spending program." *Ibid.* (quoting *Litman*, 186 F.3d at 556). To hold otherwise, this Court explained, "would affront the Court's acknowledgment in *Seminole Tribe* of the 'unremarkable . . . proposition that States may waive their sovereign immunity.'" *Ibid.* It thus concluded "that in accepting federal funds" the Louisiana state

agency in that case "waived its Eleventh Amendment sovereign immunity." *Ibid.*; accord *AT&T Communications* v. *Bell South Communications, Inc.*, 238 F.3d 636, 639 (5th Cir. 2000) ("When Congress bestows a gift or gratuity upon a state of a benefit which cannot be obtained by the state's own power, Congress may attach to the gratuity the condition of a voluntary waiver by the state of its Eleventh Amendment immunity.").

Defendants attempt (Def. Br. 27-29) to distinguish *Pederson* on the grounds that the sex discrimination statute at issue in that case was a valid exercise of Congress's authority under Section 5 of the Fourteenth Amendment to enforce the Equal Protection Clause. But the Court in *Pederson* described Title IX as a "statute enacted under the Spending Clause," *id*. at 876, and expressly declined to address whether the statute could be upheld as valid Section 5 legislation, *id*. at 875 n.15. Compare *Pederson* v. *Louisiana State Univ.*, 201 F.3d 388, 404-407 (5th Cir. 2000), vacated on reh'g, 213 F.3d 858 (2000).

More generally, defendants' argument (Def. Br. 28-30) that Congress may not condition the receipt of federal funds on actions that it cannot unilaterally impose under another font of authority is simply not the law. While there are limits on Congress's authority under the Spending Clause,[6] the Spending Clause

---

[6] There is no dispute that Section 504 meets the four primary limitations on Congress's Spending Power identified in *South Dakota* v. *Dole*, 483 U.S. 203 (1987): (1) the general welfare is served by prohibiting discrimination against persons with disabilities, see *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S.

(continued...)

does not contain "a prohibition on the indirect achievement of objectives which Congress is not empowered to achieve directly." *South Dakota* v. *Dole*, 483 U.S. 203, 210 (1987). To the contrary, it is well-settled that "objectives not thought to be within Article I's 'enumerated legislative fields,' may nevertheless be attained through the use of the spending power and the conditional grant of federal funds." *Id*. at 207; see also *New York* v. *United States*, 505 U.S. 144, 167, 171-172 (1992) (relying on *Dole* for the proposition that "[w]here the recipient of federal funds is a State, as is not unusual today, the conditions attached to the funds by Congress may influence a State's legislative choices," and holding that a federal program that paid States that met certain congressional goals was a valid exercise of the Spending Clause even though Congress could not unilaterally impose those goals on the States under the Commerce Clause).

---

[6](...continued)
432, 443-444 (1985) (discussing Section 504 with approval); *Dole*, 483 U.S. at 207 n.2 (noting substantial judicial deference to Congress on this issue); (2) the language of Section 504 makes clear that the obligations it imposes are a condition on the receipt of federal financial assistance, see *School Bd. of Nassau County* v. *Arline*, 480 U.S. 273, 286 n.15 (1987) (contrasting "the antidiscrimination mandate of § 504" with the statute in *Pennhurst State School & Hospital v. Halderman*, 451 U.S. 1 (1981)); (3) the condition is related to the federal government's overarching interest in not supporting or subsidizing discrimination, cf. *Lau* v. *Nichols*, 414 U.S. 563, 569 (1974) (Title VI is valid Spending Clause legislation); *Grove City Coll.* v. *Bell*, 465 U.S. 555, 575 (1984) (same for Title IX); and (4) neither providing meaningful access to people with disabilities nor waiving sovereign immunity violates any constitutional rights or obligations.

Nor does the Supreme Court's recent decision in *Federal Maritime Commission* v. *South Carolina State Ports Authority*, 122 S. Ct. 1864 (2002), draw these cases into question. That case held that the States' federal sovereign immunity applies to privately prosecuted adjudications in "court-like administrative tribunals" established by Congress under its Article I authority. *Id.* at 1875. As defendants themselves acknowledge (Def. Br. 23), that case simply reaffirmed the holding of *Seminole Tribe* that Congress cannot *unilaterally* subject States to private suits pursuant to its Article I powers. It says nothing about Congress's authority -- recognized by the Supreme Court in *College Savings Bank* and *Alden* and this Court in *Pederson* and *AT&T Communications* -- to condition the receipt of a gratuity (such as federal funds) on a State's waiver of its immunity to private suits.

C. *Defendants' Case-Specific Contentions Do Not Negate Their Waiver Of Immunity*

Defendants further contend (Def. Br. 35-39) that even if Congress has the power to condition the receipt of federal funds on a recipient's waiver of Eleventh Amendment immunity, and even if Section 2000d-7 clearly does so, the waiver was ineffective in these cases. These contentions are also erroneous.

1. Relying on *Magnolia Venture Capital Corp.* v. *Prudential Securities Inc.*, 151 F.3d 439 (5th Cir. 1998), cert. denied, 525 U.S. 1178 (1999), defendants argue (Def. Br. 38-39) that the voluntary acceptance of federal financial assistance did not constitute an effective waiver because defendants were not authorized

under state law to waive Eleventh Amendment immunity. *Magnolia Venture*, however, based its holding (*id*. at 444) on the Supreme Court's decision in *Ford Motor Co*. v. *Department of Treasury*, 323 U.S. 459 (1945), and its progeny. The Supreme Court recently overruled the relevant part of *Ford Motor* in *Lapides* v. *Board of Regents*, 122 S. Ct. 1640 (2002).

In *Lapides*, Georgia had removed a case from state to federal court and then moved to dismiss on the grounds of Eleventh Amendment immunity. The Supreme Court, resolving a split in the circuits, held that removal of a case from state to federal court constituted a waiver of the State's immunity. *Id*. at 1643-1644. Georgia argued that even if removing a case to federal court constituted a waiver, and even though the state attorney general was authorized under state law to conduct litigation, the state attorney general was not authorized under state law to waive the State's Eleventh Amendment immunity and thus there was no effective waiver. *Id.* at 1644. Georgia relied on *Ford Motor*, in which the Court had held that a state attorney general's litigation conduct was not sufficient to waive immunity when he did not have the authority under state law to waive it. The Supreme Court rejected that argument and overruled *Ford Motor* "insofar as it would otherwise apply." *Id*. at 1646.

The Court held that "whether a particular set of state laws, rules, or activities amounts to a waiver of the State's Eleventh Amendment immunity is a question of federal law." *Id.* at 1645. The Court then established "[a] rule of federal law" designed to "avoid[] inconsistency and unfairness." *Ibid*. The Court

held that so long as state law authorized the state attorney general to engage in the relevant litigation conduct, such conduct would constitute an effective waiver regardless of whether the official had state law authority to waive immunity. *Ibid*.

In this case, there is no dispute that defendants are authorized under state law to accept federal funds. See La. Rev. Stat. Ann. §§ 17:24(C) (Department of Education), 17:3351(2) (state colleges and universities), 46:51(6) (Department of Social Services). Under *Lapides*, no further state law inquiry is required. Instead, whether the state activity of accepting federal funds constitutes a waiver is a question of federal law, one that Congress itself answered in the affirmative by the plain language and structure of Section 2000d-7. It would certainly be unfair to permit the States to benefit from the federal financial assistance, but then disclaim the authority to comply with the conditions imposed by federal law.

2. Defendants also contend (Def. Br. 36-37) that they did not waive their immunity to suit in these cases because "they could not have known" that Section 2000d-7 did not function as a valid abrogation at the time it took the federal funds and thus did not "know" that they had any immunity to waive. But it does not matter whether defendants thought that Section 2000d-7 was a valid abrogation or simply a clear notice that acceptance of funds would constitute waiver. Either way, the obligation was incurred only when defendants elected to accept federal financial assistance. Each defendant was faced with the same clear choice then as it is now: if a defendant did not wish to accept the conditions attached to the funds (non-discrimination and suits in federal court), it was free to decline the

assistance. But by taking the assistance, it knew that it would not be entitled to raise its Eleventh Amendment immunity as a defense to private suits under Section 504.

In *Lapides*, the Supreme Court held that a State waived its Eleventh Amendment immunity through voluntary litigation in federal court done at a time when the State had much more reason to think that its conduct would not constitute a waiver. *Lapides* resolved a split in the circuits by holding, for the first time, that a state waived its immunity from suit when it removed a case from state to federal court and by overruling, at least in part, a prior precedent that the State was relying on to argue that it did not waive its immunity. Yet the Court applied the holding of the case to Georgia because of its voluntary invocation of federal jurisdiction, concluding that "the State's action joining the removing of *this case* to federal court waived its Eleventh Amendment immunity." 122 S. Ct. at 1646 (emphasis added).

Even if defendants' knowledge of the state of the law were relevant, it could not succeed in negating the waiver. By the time defendants accepted federal funds in 1999 (when the earliest alleged disability discrimination began), a number of courts had held that Section 2000d-7 validly conditioned the receipt of federal funds on the state agency's waiver of immunity. See, *e.g.*, *Clark* v. *California*, 123 F.3d 1267, 1271 (9th Cir. 1997), cert. denied, 524 U.S. 937 (1998); *Sandoval* v. *Hagan*, 7 F. Supp. 2d 1234, 1269, 1271-1272 (M.D. Ala. 1998); *Litman* v. *George Mason Univ.*, 5 F. Supp. 2d 366, 375-376 (E.D. Va. 1998); *Beasley* v. *Alabama*

State Univ., 3 F. Supp. 2d 1304, 1311-1312 (M.D. Ala. 1998). Indeed, this Court so held in *Pederson* on June 1, 2000, a time when the complaints allege (Def. Br. 36 n.14) that defendants were accepting federal financial assistance and violating Section 504. Defendants have no colorable basis for now arguing that their waiver of immunity was unknowing because of their alleged misapprehension about the function of Section 2000d-7.

Finally, it is useful to note what defendants are *not* arguing in this case. Although defendants cite (Def. Br. 14) to *Garcia* v. *SUNY Health Sciences Center*, 280 F.3d 98 (2d Cir. 2001), they do not urge this Court to adopt the holding of *Garcia*. *Garcia* agreed with the other courts of appeals that Section 2000d-7 "constitutes a clear expression of Congress's intent to condition acceptance of federal funds on a state's waiver of its Eleventh Amendment immunity." *Id*. at 113. And it further agreed that, under normal circumstances, "the acceptance of funds conditioned on the waiver might properly reveal a knowing relinquishment of sovereign immunity." *Id*. at 114 n.4. However, *Garcia* also held that Title II of the ADA did not validly abrogate the States' immunity and that the Section 504 waiver was not knowing because the state agency did not "know" in 1995 (the latest point the alleged discrimination in *Garcia* had occurred) that the abrogation in Title II of the ADA was not effective and thus would have thought (wrongly, in the view of the Second Circuit) that Title II's abrogation for Title II claims made the waiver for Section 504 redundant. *Id*. at 114. According to the court, since "by all reasonable appearances state sovereign immunity [to claims of disability

discrimination under the ADA] had already been lost" by virtue of the Title II abrogation, the State "could not have understood that in [accepting federal funds] it was actually abandoning its sovereign immunity from private damages suits" for the same disability discrimination under Section 504. *Ibid.*

Defendants do not argue that the validity of the ADA's abrogation for suits under Title II is relevant to whether Section 2000d-7 put them on notice that they had waived their immunity to suits under Section 504 by accepting federal funds. Nonetheless, in order to provide a complete legal analysis, it is appropriate to explain why *Garcia*'s reasoning on this point was clearly incorrect. It is wrong because every state agency did know from the plain text of Section 2000d-7, from the time it was enacted in 1986, that acceptance of federal funds constituted a waiver of immunity to suit for violations of Section 504. Section 504 was not amended or altered by the enactment of Title II of the ADA in 1990, and it was clear that plaintiffs could sue under either statute. See 42 U.S.C. 12201(b) (preserving existing causes of action). It is thus untenable to suggest that abrogation for suits under one statute is relevant to whether an entity waived its immunity to suits brought to enforce a distinct, albeit substantively similar, statute. *Garcia*'s holding -- that the waiver for Section 504 claims was effective until Title II went into effect and then lost its effectiveness until some point in the late 1990's, when a "colorable basis [developed] for the state to suspect" that the abrogation was unconstitutional, see 280 F.3d at 114 n.4, and has now regained its full effectiveness -- creates an unworkable and unprecedented patchwork of

coverage.

As this Court held in *Pederson* v. *Louisiana State University*, 213 F.3d 858, 876 (2000), Section 2000d-7 "clearly, unambiguously, and unequivocally conditions receipt of federal funds * * * on the State's waiver of Eleventh Amendment Immunity." This clear statement in the text of the statute about the Eleventh Amendment assured that defendants knew as a matter of law that they were waiving their immunity for Section 504 claims when it applied for and took federal financial assistance. Defendants' attempts to create ambiguity where none exists should be rejected.

II

SECTION 504 MAY BE ENFORCED AGAINST STATE OFFICIALS IN THEIR OFFICIAL CAPACITIES FOR PROSPECTIVE RELIEF EVEN IF CONGRESS DID NOT VALIDLY CONDITION THE RECEIPT OF FEDERAL FINANCIAL ASSISTANCE ON A WAIVER OF IMMUNITY

Both district court opinions acknowledged that the Eleventh Amendment was no bar to plaintiffs maintaining suits under Section 504 for prospective injunctive relief against named state officials in their official capacities. See *Johnson* R. 73; *August* R. 174. But because plaintiffs had not sought such relief at the time defendants initially moved to dismiss, the district courts did not sustain plaintiffs' claims on that basis. In *Johnson*, the *pro se* plaintiff then filed an amended complaint that added a claim for injunctive relief. R. 48 (amended complaint seeks "all general, necessary and equitable relief"); cf. *Doss* v. *South Central Bell Tel. Co.*, 834 F.2d 421, 425 (5th Cir. 1987) (holding that plaintiff

need not specifically identify in complaint equitable relief that is being sought). Defendants are thus incorrect when they assert (Def. Br. 27 n.12) that plaintiff Johnson's complaint "only seek[s] money damages."[7]

Thus, as defendants acknowledge (Def. Br. 27 n.12), regardless of the validity of Section 2000d-7, the *Johnson* case will be able to proceed against the named state officials in their official capacities under the *Ex parte Young* doctrine. *Ex parte Young*, 209 U.S. 123 (1908), held that when a state official acts in violation of the Constitution or federal law (which the Constitution's Supremacy Clause makes the "supreme Law of the Land"), he is acting *ultra vires* and is no longer entitled to the State's immunity from suit. The doctrine permits only prospective relief against officials in their official capacities. See *Edelman* v. *Jordan*, 415 U.S. 651, 664, 667-668 (1974); *Verizon Md., Inc.* v. *Public Serv. Comm'n of Md.*, 122 S. Ct. 1753, 1760 (2002); see also *Clay* v. *Texas Women's Univ.*, 728 F.2d 714 (5th Cir. 1984) (reinstatement of student to school is a form of prospective injunctive relief permitted under *Ex parte Young*). By limiting relief to prospective injunctions of officials, the Court avoided a judgment directly

---

[7] The amended complaint in *August* stated that "[t]his is a civil action seeking damages and injunctive relief" and requested that the court grant damages and "other and further relief that this Court may deem just and proper," *August* R. 118, 122, language that can be read to encompass a request for injunctive relief, see, *e.g.*, *Andrus* v. *Arkansas*, 197 F.3d 953, 955-956 (8th Cir. 1999); *Frazier* v. *Simmons*, 254 F.3d 1247, 1254-1255 (10th Cir. 2001). We are informed by plaintiff's counsel, however, that August is not pursuing her claims for injunctive relief.

against the State but, at the same time, prevented the State (through its officials) from continuing illegal action.

The *Ex parte Young* doctrine has been described as a legal fiction, but it was adopted by the Supreme Court almost a century ago to serve a critical function in permitting federal courts to bring state policies and practices into compliance with federal law. "[T]he availability of prospective relief of the sort awarded in *Ex parte Young* gives life to the Supremacy Clause. Remedies designed to end a continuing violation of federal law are necessary to vindicate the federal interest in assuring the supremacy of that law." *Green* v. *Mansour*, 474 U.S. 64, 68 (1985); see also *Alden* v. *Maine*, 527 U.S. 706, 757 (1999). The Supreme Court reaffirmed in *University of Alabama* v. *Garrett*, 531 U.S. 356 (2001), that Eleventh Amendment immunity does not authorize States to violate federal law. For a holding that "Congress did not validly abrogate the States' sovereign immunity from suit by private individuals for money damages * * * does not mean that persons with disabilities have no federal recourse against discrimination." *Id.* at 374 n.9; see also *Alden*, 527 U.S. at 754-755 ("The constitutional privilege of a State to assert its sovereign immunity * * * does not confer upon the State a concomitant right to disregard the Constitution or valid federal law.").

This Court recognized the applicability of *Ex parte Young* to Section 504 claims in *Brennan* v. *Stewart*, 834 F.2d 1248, 1255, 1260 (5th Cir. 1988). In *Brennan*, this Court held that before the effective date of Section 2000d-7, a plaintiff could proceed "with respect to his claim for equitable relief" under *Ex*

parte Young. *Id*. at 1260; accord *Helms* v. *McDaniel*, 657 F.2d 800, 806 n.10 (5th Cir. 1981), cert. denied, 455 U.S. 946 (1982). In *Garrett*, the Supreme Court similarly noted that Title I of the ADA's "standards can be enforced * * * by private individuals in actions for injunctive relief under *Ex parte Young*." 531 U.S. at 374 n.9. Thus, regardless of this Court's holding regarding Section 2000d-7, the Eleventh Amendment is no bar to the *Johnson* suit proceeding against state officials in their official capacities for prospective injunctive relief. See *J.B. ex rel. Hart* v. *Valdez*, 186 F.3d 1280, 1287 (10th Cir. 1999); *Nelson* v. *Miller*, 170 F.3d 641, 646-647 (6th Cir. 1999); *Armstrong* v. *Wilson*, 124 F.3d 1019, 1025-1026 (9th Cir. 1997), cert. denied, 524 U.S. 937 (1998);.

CONCLUSION

The Eleventh Amendment was no bar to the district courts' jurisdiction over these actions. The district courts' judgments should be affirmed.

Respectfully submitted,

RALPH F. BOYD, JR.
Assistant Attorney General

JESSICA DUNSAY SILVER
SETH M. GALANTER
Attorneys
Civil Rights Division
Department of Justice
Appellate Section - PHB 5022
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 307-9994

STATEMENT OF RELATED CASES

The validity of 42 U.S.C. 2000d-7 is also being challenged in *Miller* v. *Texas Tech University Health Sciences Center*, No. 02-10190 (5th Cir.).

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2002, two copies of the Consolidated Brief For The United As Intervenor were served by first-class mail, postage prepaid, on the following counsel:

Theodore Johnson
516 Superior
Bogalusa, LA 70427

Richard A. Curry
McGlinchey Stafford
1 American Place, 9th Floor
Baton Rouge, LA 70825

Rebecca L. Clausen
Office of the Attorney General
for the State of Louisiana
601 Poydras Street, Suite 1725
Pan American Life Center
New Orleans, LA 70130

Sanford A. Kutner
6 Tera Place
Metairie, LA 70002

Reva E. Lupin
3140 Garden Oaks Drive
New Orleans, LA 70114

_____
SETH M. GALANTER
Attorney
Department of Justice
Appellate Section-PHB
950 Pennsylvania Avenue, N.W.
(202) 307-9994