

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

\_\_\_\_\_  
ELOUISE PEPION COBELL, et al., )

Plaintiffs-Appellees, )

v. )

No. 03-5262

GALE A. NORTON, )  
Secretary of the Interior, et al., )

Defendants-Appellants. )  
\_\_\_\_\_ )

### REPLY IN SUPPORT OF SCHEDULING MOTION

Plaintiffs have moved for expedition in Cobell v. Norton, No. 03-5314. As explained in our response to that motion, while the government stands ready to proceed on an expedited schedule, the passage of Pub. L. No. 108-108 makes it unclear whether expedition is, in fact, appropriate. We further urged that if the Court determines to expedite No. 03-5314, it should also expedite the present appeal. Conversely, we suggested that if the Court determines that expedition in No. 03-5314 would be inappropriate, it should defer scheduling this appeal as well. The basis for this request is simple and is not disputed by plaintiffs in their opposition. The internet injunction at issue in this case and the structural injunction at issue in No. 03-5314 arise out of the same proceedings and, in the government's view, are premised on the same mistaken understanding of governing law and the scope of the court's jurisdiction. Indeed, as plaintiffs do not dispute, the internet injunction provisions could have been included among the disparate requirements of the structural injunction.

Plaintiffs offer no reason whatsoever why the two appeals should not be placed on the same schedule if practicable. Instead, they urge that the government's scheduling proposal is "nothing more than a backdoor attempt" to circumvent the Court's decision that the two appeals should not be consolidated. Appellees' Response at 2.

Plaintiffs are mistaken. Consolidated appeals are briefed and argued as a single appeal. The government has not renewed its request that the appeals be heard in this manner. Indeed, as

the government noted in its previous filings, submissions relating to the internet injunction are pending before the district court, and their disposition may necessitate expedition even if the Court determines that expedition of the structural injunction appeal is inappropriate in light of the recently enacted legislation. At the present time, however, there is every reason to set these two very closely related appeals on a similar schedule if practicable.

Respectfully submitted,

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FEBRUARY 2004

## CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2004, I am causing copies of the foregoing reply to be sent to the Court by hand delivery and to be served on the following counsel by first class mail and by fax:

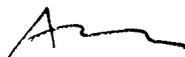
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