

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 GALE A. NORTON, Secretary of the)
 Interior, et al.,)
)
 Defendants.)
)

Case No. 1:96CV01285
(Judge Lamberth)

**DEFENDANTS' MOTION TO PLACE UNDER SEAL
PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION
TO REQUIRE PLAINTIFFS' COMPLIANCE
WITH ORDER REQUIRING REMOVAL FROM WEBSITE
OF REFERENCES TO "ATTACHMENT C"**

Defendants, pursuant to Local Civil Rule 5.1(j), respectfully move for an Order placing under seal Plaintiffs' Opposition to Defendants' Motion to Require Plaintiffs' Compliance with Order Requiring Removal from Website of References to "Attachment C" (July 2, 2004).¹

Plaintiffs' Opposition should be placed under seal because it discusses the content of and refers to Attachment C, which is itself under seal. Order at 1 (Oct. 18, 2002) ("counsel for the parties shall protect the seal on Attachment C and limit access to it and any communications about it"). More specifically, Plaintiffs' Opposition not only attaches material posted on Plaintiffs' website that the Court ordered stricken from the record, Order at 3-4 (April 11, 2003), and removed from Plaintiffs' website, www.indiantrust.com, Order at 2-3 (June 1, 2004), but describes the content of Attachment C, Plaintiffs' Opposition at 6-7 (purporting to explain what

¹ Defendants' counsel discussed this motion with Plaintiffs' counsel, who stated Plaintiffs would oppose it.

Attachment C "is about").

Plaintiffs unnecessarily and improperly attached to their Opposition the partially redacted sections IV(5) and IV.E., claiming that they provided the attachment "so that this Court may review the relevant sections." Plaintiffs' Opposition at 4. Yet Defendants had already filed the same material with the Court under seal as an exhibit to Defendants' Motion (June 22, 2004). Defendants filed Exhibit F to show the Court how Plaintiffs had failed to comply with the Court's June 1, 2004 Order. Thus, not only did the Court already have the offending text in its possession under seal, but Plaintiffs again violated the Court's multiple orders concerning Attachment C by including the same text as an attachment to their unsealed Opposition. Finally, the Court has already twice considered those sections, deciding that they should be stricken in their entirety from the record and should be fully redacted from Plaintiffs' website, so the Court has no need to review them again.

Similarly unnecessary and improper was Plaintiffs' attachment of the Special Report of the Court Monitor on Potential Evidence Regarding the Alleged Suppression by White House and Department of Justice Attorneys of the Written Testimony of the Special Trustee Prepared for the Senate Committee on Indian Affairs' July 25, 2002 Hearing Regarding the Department of the Interior's Historical Accounting (Aug. 8, 2002). Whether the Court has sealed the report is not dispositive to whether it violates the Court's Order that Plaintiffs' "make no further references to the contents of 'Attachment C' unless such references are made under seal." Order at 3 (June 1, 2004).²

² Plaintiffs also violated the Court's Order by posting their Opposition on www.indiantrust.com on July 2, 2004. Order at 3 (June 1, 2004) (ordering that "plaintiffs take all steps necessary to ensure . . . that there be no further displays on their website of any reference to 'Attachment C'").

The report references the content of Attachment C and belongs under seal as part of this filing.

Therefore, Defendants respectfully request that the Court enter an Order placing Plaintiffs' Opposition under seal.

July 6, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on July 6, 2004 the foregoing *Defendants' Motion to Place Under Seal Plaintiffs' Opposition to Defendants' Motion to Require Plaintiffs' Compliance with Order Requiring Removal from Website of References to "Attachment C"* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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)	
Defendants.)	
_____)	

ORDER

This matter comes before the Court on Defendants' Motion to Place Under Seal Plaintiffs' Opposition to Defendants' Motion to Require Plaintiffs' Compliance with Order Requiring Removal from Website of References to "Attachment C," and any responses thereto. The Court finds that the Motion should be GRANTED.

Therefore, it is hereby

ORDERED that Plaintiffs' Opposition to Defendants' Motion to Require Plaintiffs' Compliance with Order Requiring Removal from Website of References to "Attachment C" shall be placed under seal; and it is

FURTHER ORDERED that Plaintiffs' Opposition to Defendants' Motion to Require Plaintiffs' Compliance with Order Requiring Removal from Website of References to "Attachment C" shall be removed from Plaintiffs' website, www.indiantrust.com.

SO ORDERED this _____ day of _____, 2004.

ROYCE C. LAMBERTH
United States District Judge

cc:

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