

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
ELOUISE PEPION COBELL, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:96CV01285
)	(Judge Lamberth)
GALE A. NORTON, Secretary of the Interior, <u>et al.</u> ,)	
)	
Defendants.)	
_____)	

DEFENDANTS' EMERGENCY MOTION TO STAY PRELIMINARY
INJUNCTION PENDING APPEAL AND FOR EXPEDITED CONSIDERATION

Pursuant to Rule 7(b) of the Federal Rules of Civil Procedure and Local Civil Rule 7, Defendants respectfully move this Court for an order staying the preliminary injunction entered by the Court on October 20, 2005 (Dkt. No. 3193) ("PI"), pending Defendants' appeal to the United States Court of Appeals for the District of Columbia. Further, because the preliminary injunction will cause great harm to the public's interests, including members of the plaintiffs' class, and the interests of the United States, Defendants respectfully request expedited consideration of this motion. Pursuant to Local Civil Rule 7(m), counsel for the Defendants conferred with Plaintiffs' counsel on October 21, 2005, regarding this motion, and Plaintiffs' counsel stated the motion would be opposed.

This Court is well-acquainted with the history of this litigation and the events leading to the issuance of the PI. For the sake of brevity, and because of the urgent need for an emergency stay, we will not repeat it here.

I. The Preliminary Injunction Substantially Harms Both the Public and Government

The PI will cause much greater harm to the public than either of the Court's previous preliminary injunctions, dated July 28, 2003, and March 15, 2004. In addition to a cut-off from the Internet, the PI orders that Interior IT systems to be disconnected from each other, except to the extent they affect life, property, or national security. PI § II. It is self-evident that even the "offline" bureaus, such as BIA and OST, will be gravely affected by such a cut-off. This will result in substantial harm to the general public, including members of the plaintiffs' class.

Given the urgency of this motion and the need to respond to the PI, the Government has not yet been able to compile declarations confirming the harms that will result from the PI issued yesterday. In the interim, we respectfully refer the Court to our Emergency Motion to Stay Preliminary Injunction Pending Appeal and for Expedited Consideration (Dkt. No. 2549), filed with respect to the March 2004 preliminary injunction. The impacts described in that motion confirmed harm to contracting and procurement activities, financial management, education programs, royalties distributions, IT security, hiring and recruiting, and public database access. The harmful impacts significantly are compounded by the wider breadth of the October 20, 2005 PI.

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court stay the preliminary injunction entered on October 20, 2005, and, further, because the preliminary injunction causes great harm to the public's and governmental interests, Defendants respectfully request expedited consideration of this motion. Because of the grave harm the PI poses, we

respectfully wish to advise the Court that, absent prompt action, relief will be sought in the D.C. Circuit Court of Appeals.

Dated: October 21, 2005

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that, on October 21, 2005 the foregoing *Defendants' Emergency Motion To Stay Preliminary Injunction Pending Appeal And For Expedited Consideration* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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(Judge Lamberth)

ORDER

This matter comes before the Court on Defendants' Emergency Motion to Stay Preliminary Injunction Pending Appeal and for Expedited Consideration in connection with this Court's Preliminary Injunction [Dckt 3193] and Memorandum Opinion [Dckt 3194] entered on October 20, 2005. After considering the motion, and the record of the case, the Court finds that the Defendants' motion is well taken, and should be, and hereby is, GRANTED; and it is hereby

ORDERED, that the Preliminary Injunction and Memorandum Opinion entered by the Court on October 20, 2005 [Dckt 3193 & 3194], should be and hereby are STAYED in order to permit Defendants to pursue review of said Preliminary Injunction and Memorandum Opinion on appeal.

SO ORDERED this ___ day of _____, 2005

ROYCE C. LAMBERTH
United States District Judge

cc:

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