No. 11-5205

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

ELOUISE PEPION COBELL, *et al*.,
Plaintiffs-Appellees,

KIMBERLY CRAVEN,
Objector-Appellant,

v.

KENNETH LEE SALAZAR, *et al*.,
Defendants-Appellees.

PLAINTIFFS' OPPOSITION TO OBJECTOR-APPELLANT'S MOTION TO UNSEAL MATERIAL DESIGNATED IN THE APPENDIX

This motion is brought by Objector-Appellant Kimberly Craven, a single objector out of 500,000 class members, in this landmark class action settlement. Craven asks the Court to preemptively order the unsealing of any documents Plaintiffs include in the appendix on appeal. Craven does not make any showing that the district court abused its discretion in sealing documents in this litigation—indeed, she does not even identify the documents she believes should be unsealed. Rather, Craven asks this Court to unseal any documents that Plaintiffs *may* include in the appendix to be filed with their response brief (not due until December 16) without the Court even knowing what those documents are. That request is

meritless and should be denied. Indeed, the motion in essence seeks an advisory opinion from this Court given that this issue is not ripe for review.

Finally, the motion seeks the wrong relief. Craven makes clear that she only seeks to unseal records included in Plaintiffs' appendix so that she can review them in order to prepare her reply brief, not because she believes the records are improperly sealed. But the proper method to gain access to sealed records for the purpose of an appeal is for Craven to move to modify the district court's protective orders to permit her access to the sealed documents (subject to the restrictions in the protective orders), not to ask this Court to make those records public without *any* showing that the district court abused its discretion in sealing them. Accordingly, the Court should deny Craven's motion.

BACKGROUND

This is an Indian trust case. This action in equity began more than fifteen years ago when Plaintiffs, representing a class of individual Indians whose land and related natural resources are held in trust by the United States, sued the government to enforce trust duties owed by the United States to them. The relief sought included reform of the government's broken trust management system, an accounting of trust assets, and other relief. In December 2009, after years of protracted litigation, the parties reached a landmark settlement in which the United States agreed to pay an unprecedented $3.4 billion to remedy historical breaches of

its trust duties and to correct its gross mismanagement of the Individual Indian Trust. During the lengthy litigation—which included 250 days of trials and hearings, 10 interlocutory appeals, and over 80 published opinions of the district court and this Court—the district court entered a number of protective orders requiring certain trial records and evidence to be filed under seal. (*See, e.g.*, Exhibits A and B.)

After the parties signed the settlement agreement, Congress enacted and the President signed the Claims Resolution Act of 2010, Pub. L. No. 111-291, 124 Stat. 3064 (Dec. 8, 2010), which expressly "authorized, ratified, and confirmed" the settlement and payments to class members. The district court approved the settlement on June 20, 2011, entered a final approval order on July 27, 2011, and entered final judgment on August 4, 2011. On August 6, 2011, Craven, an absent objecting class member, appealed, seeking to set aside the landmark settlement. On September 13, 2011, the Court entered an order setting an expedited briefing and argument schedule and, at Craven's request, ordered the parties each to file a separate appendix with their respective opening or response brief. (Exhibit C.) Under that schedule, Plaintiffs' response brief and separate appendix are due December 16, 2011. (*Id.*)

ARGUMENT

Plaintiffs disagree with Craven's discussion of the merits of her appeal, which misstates materially both the facts in this case and the Supreme Court's holding in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011). (Mot. 2.) For example, contrary to Craven's representation to the Court, the Supreme Court's decision in *Dukes* did not address the *Cobell* settlement, let alone say that it "has the 'serious possibility' of violating the due process clause." (*Id*.) However, Plaintiffs will not burden the Court with argument on the merits of this issue, which is wholly irrelevant to the matter presented by Craven's motion.

Looking past Craven's rhetoric and misstatements on collateral issues not presently before this Court, the substance of the motion is a request for this Court to unseal preemptively any records "that the plaintiffs claim to be 'necessary' to the appeal" by including them in their appendix. (Mot. 5.) That request is meritless and should be denied.

I. Craven does not identify records that she seeks to unseal, let alone show that the district court abused its discretion in sealing them.

The decision to seal or unseal records filed in the district court "is one best left to the sound discretion of the trial court, a discretion to be exercised in light of the relevant facts and circumstances of the particular case." *United States v. Hubbard*, 650 F.2d 293, 316–17 (D.C. Cir. 1980). In *Hubbard*, this Court outlined a six-factor test used to determine whether documents should be sealed:

> (1) The need for public access to the documents at issue;
>
> (2) The extent of previous public access to the documents at issue;
>
> (3) The fact that someone has objected to disclosure, and the identity of that person;
>
> (4) The strength of any property or privacy interests asserted;
>
> (5) The possibility of prejudice to those opposing disclosure; and
>
> (6) The purposes for which the documents were introduced during the judicial proceedings.

Id. at 317–22.

Craven cites *Hubbard* but make no argument for why the district court abused its discretion under that standard. Indeed, Craven does not even identify the documents that she believes should be unsealed. Of course, Craven *cannot* do so because the documents that will be cited in Plaintiffs' appendix are not yet known even to Plaintiffs. Instead of making any attempt to address the potentially catastrophic harm public disclosure would cause class members and otherwise provide argument as required by *Hubbard*, Craven asks the Court to preemptively unseal any records that Plaintiffs ultimately include in their separate appendix (due December 16) without even knowing what those documents are.[1] (Mot. 5.) Quite

[1] The predicament in which Craven apparently finds herself is one of her own making. She insisted on including in Plaintiffs' consent motion to expedite briefing and argument (filed Sept. 12, 2011) her *individual* request that the Court dispense with the requirements of FRAP 30(b)(1) and instead require the parties to file their own separate appendices at the same time as their briefs. This Court

obviously, Craven cannot meet her burden of showing that the district court abused its discretion in sealing certain documents if she does not identify a single document she seeks to unseal.

Craven also speculates that "perhaps the records in question are decades-old financial information of Ms. Cobell's ancestors; it is hard to see why that needs to remain under seal." (Mot. 5.) Had Craven actually reviewed the public record of these proceedings and the authorities relied upon to seal material in the trial record, including the Privacy Act, the Indian Mineral Development Act, the Trade Secrets Act, trust law, other authority relevant to her request, as well as each of the district court's protective orders in the case, she would have seen that the sealed documents fall squarely within the categories of documents that necessarily are sealed under the cases cited in her motion.

For example, the trial record contains personal, confidential financial information about named class members, including their IIM account information, Social Security numbers, and trust holdings. The district court, following briefing and oral argument, properly ordered that information filed under seal in order to, among other things, comply with the Privacy Act, 5 U.S.C. § 552a, and to protect

---

accommodated her request in an order dated September 13, 2011. However, had the parties followed the usual appendix procedures set forth in FRAP 30(b)(1) and used a single appendix, Plaintiffs would have been required to provide Craven with their appendix designations on September 26, 2011. Such designations would have permitted Craven to identify specifically the documents she seeks to unseal.

the confidentiality of that private trust information in accordance with trust duties the United States owes to each class member. (Ex. A.) Likewise, the district court sealed certain records concerning the Interior Department's and Treasury Department's computer systems used to manage and administer IIM Trust funds and other assets because disclosure "poses a risk to the security of Defendants' IT systems and may expose individual Indian trust data housed on these systems to unauthorized access, loss or harm." (Ex. B.) Finally, many of the documents subject to sealing orders in this case are also subject to restrictions imposed by the Trade Secrets Act, 18 U.S.C. § 1905, the Indian Mineral Development Act of 1982,[2] 25 U.S.C. § 2103, or Interior Department regulation, including 25 C.F.R. § 225.22; 30 C.F.R. §§ 206.52, 206.152, 206.462, 216.25, 216.50, and 228.104; and 43 C.F.R. §§ 4.31 and 3100.4. In short, Craven's remarkably uninformed claim that there is no information in this 15-year plus Indian trust litigation that could be properly filed under seal is patently wrong. Disclosure of the information that Craven seeks to unseal will have profound, unforeseen, and unquantifiable consequences for the privacy, security, and integrity of critical confidential individual Indian trust information.

Finally, Craven's motion should be denied because it asks for the wrong

[2] The Indian Mineral Development Act of 1982 relates to the proprietary and privileged information of individual Indians and confidential geological information of tribes that are not parties to this litigation.

remedy. Although Craven references the general public interest in open access to court records, it is clear that the relief she seeks—unsealing every document that Plaintiffs include in their appendix—is aimed not at vindicating that public interest, but at providing Craven with access to those documents for use in her reply brief. But if Craven wants access to any sealed material contained in Plaintiffs' appendix, she should move to modify the district court's protective orders to permit her to access them (subject to the restrictions in the protective orders). If she can provide complete assurance that confidentiality will be preserved in accordance with the protective orders, if she can demonstrate her entitlement to that confidential information as an objector-appellant, and if the protective orders are so modified, Craven, a non-party objector, would have access to the same sealed records as the party litigants, *i.e.*, Plaintiffs and the government.

II. Craven wrongly contends that her appeal involves only questions of law for which any sealed information is irrelevant.

Craven also argues that "[h]er appeal is based almost entirely on questions of law. With rare exceptions, the only documents needed for the appendix are related to the terms of the settlement itself and the district court's orders related to the settlement." (Mot. 2.) As explained below, this assertion is both plainly wrong and, moreover, irrelevant.

First, contrary to her argument, Craven's amended statement of issues raises numerous fact issues. For example, Craven contends (1) that "the total value of the

class representatives' claims is approximately sixty dollars"; (2) that class members' payments are "unrelated to the value of the injunctive relief for individual class members"; and (3) that the class does not satisfy "the commonality and typicality requirements of Rule 23 and the Constitution." (Craven Amend. Stat. of Issues at 2.) Responding to these proposed issues will unquestionably require plaintiffs to reference substantial evidence in the district court record.

Craven further speculates that "there is no reason that plaintiffs cannot support their argument for affirmance by relying upon public portions of the record." (Mot. 6.) But Craven cites no legal authority that would allow her to dictate the categories of documents on which her adversaries in the case choose to rely. There is none. Plaintiffs will assess what documents should be included in their separate appendix after receiving Craven's brief and reviewing her arguments. They are fully entitled to rely on sealed documents to support their responsive arguments.

Finally, Craven's claim that her proposed issues on appeal involve only legal questions or facts contained in the public portion of the trial record, even if true—and it is not—is irrelevant to the question presented by this motion. Craven moves to unseal documents that have been placed under seal by order of the district court at the request of the parties to these proceedings. They remain under seal today. The only relevant question for this motion is whether the district court's decision to

seal those records is an abuse of discretion. *See Hubbard*, 650 F.2d at 316–17. Having failed to demonstrate that the district court abused its discretion, Craven is not entitled to the relief sought and her motion should be denied.

CONCLUSION

For the reasons discussed above, the Court should deny Objector-Appellant Kimberly Craven's Motion to Unseal Material Designated in the Appendix.

Respectfully submitted,

/s/ Adam H. Charnes
Adam H. Charnes
David C. Smith
Richard D. Dietz
KILPATRICK TOWNSEND & STOCKTON LLP
1001 W. Fourth Street
Winston-Salem, North Carolina 27101
Telephone: (336) 607-7300

Dennis M. Gingold
THE LAW OFFICE OF DENNIS M. GINGOLD
607 14th Street, N.W., 9th Floor
Washington, D.C. 20005
Telephone: (202) 824-1448

Keith M. Harper
KILPATRICK TOWNSEND & STOCKTON LLP
607 14th Street, N.W.
Washington, D.C. 20005
Telephone: (202) 508-5844

William E. Dorris
Elliott Levitas
KILPATRICK TOWNSEND &
STOCKTON LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 815-6500

DATED: September 26, 2011

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2011, I filed a copy of the foregoing PLAINTIFFS' OPPOSITION TO OBJECTOR-APPELLANT'S MOTION TO UNSEAL MATERIAL DESIGNATED IN THE APPENDIX with the clerk of court using the CM/ECF system and served a copy by first class mail on the following:

Theodore H. Frank
CENTER FOR CLASS ACTION FAIRNESS
1718 M Street NW, No. 236
Washington, D.C. 20036

Thomas M. Bondy
Michael S. Raab
UNITED STATES DEPARTMENT OF JUSTICE
Appellate Staff, Civil Division
950 Pennsylvania Ave., N.W.
Room 7535
Washington, D.C. 20530

Robert E. Kirschman, Jr.
John J. Siemietkowski
UNITED STATES DEPARTMENT OF JUSTICE
Commercial Litigation Branch, Civil Division
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044

/s/ Adam H. Charnes
Adam H. Charnes
KILPATRICK TOWNSEND & STOCKTON LLP
1001 W. Fourth Street
Winston-Salem, North Carolina 27101
Telephone: (336) 607-7300

EXHIBIT A

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

FILED

NOV 27 1996

Clerk, U.S. District Court
District of Columbia

ELOUISE PEPION COBELL et al., on their own behalf and on behalf of all persons similarly situated,

Plaintiffs,

v.

BRUCE BABBITT, Secretary of the Interior, et al.,

Defendants.

Civil Action
No. 1:96 CV 01285 (RCL)

PROTECTIVE ORDER

The parties having stipulated to the entry of this Order for the protection of certain data which is or may be subject to the Privacy Act, 5 U.S.C. § 552a, and which may be contained in material produced pursuant to the First Order for the Production of Information entered contemporaneously herewith, it is hereby ORDERED as follows:

1. All materials and information provided by Defendants to Plaintiffs or their experts pursuant to the First Order for the Production of Information, entered contemporaneously herewith, or pursuant to any subsequent Order in this action (hereinafter referred to as "Produced Material"), shall be subject to the terms of this Protective Order.

2. Any Produced Material which contains information that identifies, or is reasonably likely to lead to the

identification of, any individual, alive or dead, who currently has, or who has ever had, an Individual Indian Money ("IIM") account (hereinafter "Identifying Information"), may when produced to Plaintiffs or their representatives be designated by Defendants as Privacy Act Material and be marked with the following legend:

> PRIVACY ACT MATERIAL. This document [computer tape, etc.] contains material which is subject to a Protective Order entered by the United States District Court for the District of Columbia. It may be examined or used only pursuant to the terms of that Order.

If Plaintiffs believe that an item of Produced Material has been improperly so marked by Defendants, the matter may be submitted to the Court for determination. The same legend shall be placed on any document or other record prepared on behalf of any party which incorporates Identifying Information derived from any such Privacy Act Material.

3. Identifying Information obtained from any material properly so marked shall be used by Plaintiffs' counsel and experts (including but not limited to accountants), only for purposes of this litigation except as may hereafter be agreed to by the parties and approved by the Court pursuant to Paragraph 5 of this Protective Order. Plaintiffs' counsel and experts may disclose or make available such Identifying Information only to their employees who are currently engaged in work specifically related to this litigation and only to the extent that those employees need such Identifying Information in order to carry out that work; the Court and Court personnel and court reporters (in the manner provided by Paragraph below); and the named

plaintiffs. Before any Identifying Information so obtained shall be disclosed on behalf of Plaintiffs to any such person, Plaintiffs' counsel shall advise each such person of the terms of this Order; and each such person shall personally review the terms of this Order and shall execute the following acknowledgement on a copy thereof:

> I understand that I am being given access to Identifying Information within the terms of the foregoing Order. I have read the Order and agree to be bound by its terms. I further understand that violation of the terms of this Order may be punished as contempt of Court, and will preclude me from any further involvement in this matter unless the Court shall order otherwise.

Purposeful making or causing the unauthorized disclosure or use of Identifying Information covered by this Order may subject the person or persons committing the same to punishment for contempt of Court, and may preclude such person or persons from any further involvement in this matter unless the Court shall order otherwise. Plaintiffs' counsel shall maintain and furnish to Defendants' counsel a current list of all persons to whom Identifying Information covered by this Order has been disclosed pursuant to this Order, and will furnish to defendants' counsel a copy of the executed acknowledgement for each such person.

4. Any exhibits to be filed with the Court by any party containing Identifying Information obtained from any material properly marked as Privacy Act Material shall be filed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the title and number of this action, an identification of the contents, the words "Protected Materials," and an explanation that the materials contained therein are

subject to a protective order and are not to be disclosed by the Clerk or any other person except upon further order of the Court. If any party desires to provide to a court reporter in connection with this action any item containing Identifying Information obtained from any material properly marked as Privacy Act Material, such item shall be provided in a sealed envelope or other appropriate sealed container on which shall be endorsed the title and number of this action, an identification of the contents, the words "Protected Materials," and an explanation that the materials contained therein are subject to a protective order and are not to be disclosed by the reporter or any other person except upon further order of the Court. In the event that Identifying Information obtained from any material properly marked as Privacy Act Material shall be discussed at any deposition, the parties shall, upon receipt of the transcript of such deposition, promptly designate the pages containing that information and those pages shall be marked with the legend specified in Paragraph 2 hereof.

5. Unless otherwise ordered by the Court or agreed to by the parties, within ninety (90) days of final termination of this action, Plaintiffs shall return to Defendants' counsel all Produced Material which has been properly marked by Defendants as Privacy Act Material, together with all copies thereof and all other materials containing Identifying Information obtained from any material properly marked as Privacy Act Material. Plaintiffs' counsel shall certify to Defendants' counsel in writing that to the best of their knowledge, information, and

belief all such material has been returned. ~~Defendants shall preserve such material for a period of five years after such return, and will finally dispose of it only as the Court may direct after notice to Plaintiffs and a reasonable opportunity for Plaintiffs to be heard.~~

This 27th day of November 1996.

Royce C. Lamberth
United States District Judge

NOTIFY:

For Plaintiffs:

DENNIS M. GINGOLD
Aukamp & Gingold
1201 Pennsylvania Avenue N.W.
Suite 821
Washington, D.C. 20004

THADDEUS HOLT
1201 Pennsylvania Avenue N.W.
Suite 821
Washington, D.C. 20004

ROBERT M. PEREGOY
Native American Rights Fund
1712 N Street N.W.
Washington, D.C. 20036-2976

For Defendants:

ANDREW M. ESCHEN
Environment and Natural Resources Division
Department of Justice
P.O. Box 663
Washington, D.C. 20044-0663

NOVEMBER 27, 1996 PROTECTIVE ORDER

I understand that I am being given access to Identifying information within the terms of the foregoing Order. I have read the Order and agree to be bound by its terms. I further understand that violation of the terms of this Order may be punished as contempt of Court, and will preclude me from any further involvement in this matter unless the Court shall order otherwise.

_____

Date:

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, et al., on their own behalf and on behalf of all those similarly situated,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 96-1285 (RCL)**
GALE NORTON, Secretary of the Interior, et al.,	)	
Defendants.	)	

ORDER

In accordance with the proceedings at the Status Conference held by the Court on April 20, 2005; and upon consideration of the defendants' Motion [2929] for a Protective Order Regarding Sensitive IT Security Information, the applicable law, and the entire record herein, it is hereby

ORDERED that the Defendants' Motion [2929] is GRANTED; and it is further

ORDERED that good cause exists to preserve the confidentiality of Information Technology ("IT") security information, the public disclosure of which poses a risk to the security of Defendants' IT systems and may expose individual Indian trust data housed on these systems to unauthorized access, loss or harm. Good cause also exists to preserve the confidentiality of trade secrets and proprietary information related to Defendants' IT systems; and it is further

ORDERED that any testimony, documents and other tangible things to be given or

otherwise produced to an opposing party or filed with or presented at any hearing before this Court that contain, in whole or in any part, IT security information or any confidential trade secrets or proprietary information related to Defendants' IT systems shall be deemed "Protected Material" and shall be accorded the following treatment to prevent its disclosure to anyone besides the actual named parties, their counsel, designated IT experts and certain support staff for the sole purpose of litigating issues in the above-captioned case.

1. If any information contained in any testimony, document or other tangible thing is determined by Defendants to contain Protected Material because its public disclosure (I) poses a risk to the security of Defendants' IT systems and/or may expose individual Indian trust data housed on these systems to unauthorized access, loss or harm, or (ii) poses a risk of disclosing confidential trade secrets or proprietary information related to Defendants' IT systems, Defendants shall designate each transcript, document or thing as containing Protected Material by one of the following methods:

   (a) designating the matter as Protected Material under this Order either at the time it is elicited on the record either in deposition or in open court, or by a notice to Plaintiffs (or, in case of a hearing, by notice to the Court and to Plaintiffs) citing the line and page numbers of the Protected Material after reviewing the transcript;

   (b) marking pleadings, transcripts, documents and other evidence containing Protected Material, to be filed with the Court, by filing one unredacted copy under seal pursuant to the leave which is granted by this Order along with a public redacted version of each item filed under seal pursuant to this Order; or

   (c) designating the matter as Protected Material for purposes of a document production, by legend placed upon all documents or other tangible things produced to Plaintiffs.

2. For any deposition or hearing where Defendants declare on the record that testimony elicited or evidence used at the deposition or hearing contains Protected Material because its public disclosure (i) poses a risk to the security of Defendants' IT systems and/or may expose individual Indian trust data housed on these systems to unauthorized access, loss or harm, or (ii) poses a risk of disclosing confidential trade secrets or proprietary information related to Defendants' IT systems, all testimony and exhibits from said deposition or hearing shall be placed under seal and may not be publicly disseminated or disclosed to anyone other than as set forth expressly below. During a hearing when Protected Material is discussed in open court, the hearing shall be closed and persons not authorized to have access to Protected Material shall be excluded from the proceeding while such Protected Material is discussed or considered.

3. Within ten (10) business days after a transcript becomes available, Defendants shall designate the testimony, by page and line number, and the specific matter within the exhibits that shall remain under seal as Protected Material. Defendants shall serve a copy of these designations on Plaintiffs, and any participating non-parties or their counsel, and to the Court in case of a hearing. Defendants shall file a redacted public version of all exhibits filed in open Court that are to remain under seal. Except for materials designated pursuant to this paragraph, testimony and exhibits from the deposition that are designated as Protected Material by Defendants shall not remain under seal upon expiration of the ten (10) business day period.

4. If Plaintiffs believe that any Protected Material should not be designated as such or should otherwise not remain under seal, they may file a motion with the Court, under seal, requesting that the seal be lifted with regard to any identified testimony or exhibits and set forth the reasons that the matter is either not Protected Material or that is should be unsealed regardless of its status. The requirement to file this motion to unseal does not alter the fact that it is the defendants' burden to establish the basis for the sealing of any documents or testimony.

5. All individuals gaining access to Protected Material shall use the information solely for purposes of this litigation and for no other purpose. Protected Material may be disclosed by counsel for Plaintiffs to attorneys and employees of Plaintiffs' counsel, as well as any IT experts retained by Plaintiffs, provided the disclosure of the information is necessary for the representation of Plaintiffs in this matter. Individuals shall be provided such access only after being provided a copy of this Order and his or her agreement to comply with its terms. Plaintiffs' counsel shall retain the original signed statements of all recipients. Each person to whom Protected Material is disclosed shall make no disclosure of such Protected Material, other than to persons to whom disclosure is permitted and only for the purposes of this litigation. Except upon further Order from this Court, Protected Material shall not be disclosed to any other individual or entity and shall not be publicly disclosed in any form, including oral, written, or electronic disclosures.

6. Within six months of the conclusion of this case, Plaintiffs, their counsel, experts

and employees shall destroy all copies of transcripts and other documents that contain Protected Material, regardless of the form in which such material may be stored or recorded, and shall certify the completion of such destruction in writing to Defendants' counsel.

SO ORDERED.

Signed by Royce C. Lamberth, United States District Judge, April 22, 2005.

EXHIBIT C

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 11-5205 **September Term 2011**

1:96-cv-01285-TFH

Filed On: September 13, 2011

Elouise Pepion Cobell, et al.,

Appellees

Kimberly Craven,

Appellant

v.

Kenneth Lee Salazar, Secretary of the Interior, et al.,

Appellees

O R D E R

Upon consideration of the consent motion to expedite and unopposed motion for separate appendices, it is

ORDERED that the motion for separate appendices be granted. It is

FURTHER ORDERED that the following briefing schedule apply in this case:

Brief and Appendix for Appellant	10/17/11
Briefs and Appendices for Appellees	12/16/11
Reply Brief for Appellant	01/06/12

Appellees are encouraged to consult while preparing their briefs to limit any duplication in their submissions. The Clerk is directed to calendar this case for argument on an appropriate date following the completion of briefing.

Parties are strongly encouraged to hand deliver the paper copies of their briefs to the Clerk's office on the date due. Filing by mail may delay the processing of the brief. Additionally, counsel are reminded that if filing by mail, they must use a class of mail that is at least as expeditious as first-class mail. See Fed. R. App. P. 25(a). All briefs and appendices must contain the date that the case is scheduled for oral argument at the top of the cover. See D.C. Cir. Rule 28(a)(8).

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Lynda M. Flippin
Deputy Clerk