United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-5374 **September Term, 2002**

96cv01285

Filed On: July 18, 2003 [761430]

Elouise Pepion Cobell, et al.,
Appellees

v.

Gale A. Norton, Secretary of the Interior, et al.,
Appellants

BEFORE: GINSBURG, *Chief Judge*, and HENDERSON and RANDOLPH, *Circuit Judges*

ORDER

Upon consideration of plaintiffs-appellees' motion to dismiss for lack of jurisdiction, the opposition thereto, and the reply; Norton's motion in her individual capacity for leave to file an opposition to plaintiffs-appellees' motion to dismiss; Norton's motion in her individual capacity for leave to file a brief on the merits, the opposition thereto, which contains a request for damages and costs, and the reply; plaintiffs-appellees' motion to strike appellants' opposition to the motion to dismiss, the opposition thereto, and the reply; McCaleb's motion for leave to join brief of Norton in her individual capacity and to join motion of Norton in her individual capacity for leave to file brief; plaintiffs-appellees' motion to strike McCaleb's notice of adoption of Norton's brief in her individual capacity and inclusion of brief before the district court and for damages, and the opposition thereto; Norton's motion in her individual capacity for leave to file a reply brief, and the opposition thereto; Norton's motion in her individual capacity for leave to file a final brief, and the opposition thereto; Norton's motion in her individual capacity for leave to file a final reply brief, and the opposition thereto, it is

ORDERED that the motion to dismiss be denied in part and be granted in part for the reasons stated in the opinion issued today. There the court held it lacked jurisdiction to entertain the Government's interlocutory claims that the district court overstepped the bounds of judicial authority by assuming control of functions within the Department of the Interior; held it had jurisdiction to review the district court's entry of certain contempt citations, which we viewed as criminal in nature; and granted a writ of mandamus to compel the recusal of Joseph S. Kieffer, III as Court Monitor or as Special Master-Monitor. Plaintiffs-appellees' motion to dismiss is therefore denied insofar as it concerns

the contempt citations and the matters relating to Mr. Kieffer; in all other respects it is granted. It is

FURTHER ORDERED that Norton's motions for leave to file in her individual capacity be construed as motions for leave to file as an amicus curiae and as such be granted. Insofar as Norton, in her individual capacity, sought to present arguments as an appellant in this case, as she argued she could do by right, her appeal was untimely. Under Fed. R. App. P. 4(a)(3), the latest date any party was permitted to file a notice of appeal was December 2, 2002. Norton first moved to present arguments in her individual capacity on December 9, and we are therefore jurisdictionally barred from hearing her appeal. *United States v. Feuver*, 236 F.3d 725, 727 (D.C. Cir. 2001). Insofar as Norton sought to present additional arguments as an amicus, or as supplemental briefing in her status as a party, her motion is granted. It is

FURTHER ORDERED that McCaleb's motion for leave to join brief of Norton in her individual capacity and to join motion of Norton in her individual capacity for leave to file brief be construed as motions to participate as an amicus curiae and as such be granted. It is

FURTHER ORDERED that plaintiffs-appellees' motions to strike be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Dorothy E. Barrack
Deputy Clerk