

RECORD 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,

*Movant-Appellant,*

v.

KENNETH LEE SALAZAR,  
Secretary Of The Interior, *et al.*,

*Defendants-Appellees,*

HARVEST INSTITUTE  
FREEDMAN FEDERATION, LLC, *et al.*,

*Movants-Appellees.*

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**MOTION FOR LEAVE TO FILE BRIEF OF COMPETITIVE  
ENTERPRISE INSTITUTE AS *AMICUS CURIAE*  
IN SUPPORT OF PETITIONER**

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Pursuant to Federal Rule of Appellate Procedure 29(b) and D.C. Circuit Rule 29(b), the Competitive Enterprise Institute (CEI), by and through its undersigned counsel, hereby requests leave to participate as *amicus curiae* by submitting the attached brief in the above-captioned case in support of the Petition for Review filed by appellant Kimberly Craven. Appellant Kimberly

Craven has consented to the filing of this brief. Appellees Elouise Pepion Cobell, Penny Cleghorn, Thomas Maulson, James Louis Larose, Ken Salazar (as Secretary of the Interior), Larry Echohawk (as Assistant Secretary of Interior–Indian Affairs), and Timothy Geithner (as Secretary of Treasury) have not consented.

In support of this motion, CEI states as follows:

**I. Nature of the Case.**

The case below, *Cobell v. Salazar*, is a class action filed against the federal government. The named plaintiffs alleged that the federal government mismanaged land and royalties that had been placed in trust for various Native Americans. They sought an accounting of the royalties due to them, and payment of those royalties. After more than a decade of litigation, the parties reached a settlement, which the lower court approved in July 2011. To fund the settlement, the United States Congress passed the Claims Resolution Act in 2010. Among other things, the Claims Resolution Act stated that the lower court could certify a class for settlement notwithstanding the requirements of Federal Rule of Civil Procedure 23.

*Amicus* believes that the final settlement approval violates the dictates of Rule 23, and threatens the rule of law, and *Amicus* believes that its attached brief will assist the Court in its review.

As this matter was docketed on October 17, 2011, this motion is timely filed in accordance with D.C. Circuit Rule 29(b).

## **II. Interest of *Amicus Curiae*.**

As set forth in the accompanying brief, CEI is a nonprofit public interest organization dedicated to advancing the principles of individual liberty, limited government, and the rule of law. The proper administration of class actions is vital to the functioning of the free market and the rule of law. Large settlements—including large class-action settlements—are rarely isolated events; instead they signal to future litigants (or future class-action lawyers) that the rules underlying litigation have changed, and that they should continue to push the boundaries of the legal system. Ben Depoorter, *Law in the Shadow of Bargaining: The Feedback Effect of Civil Settlements*, 95 CORNELL L. REV. 957, 974 (2010). Moreover, while class-action settlements are designed to introduce finality to complex litigation, inadequate representation leads to frequent (and costly) challenges to the settlement after the fact. Accordingly, CEI has a strong interest in the proper administration of class-action settlements.

CEI is specifically concerned that the trial court's orders certifying a class and approving the classwide settlement did not take into account the dictates of the United States Supreme Court in *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011), and misunderstood the critical role that adequacy of representation plays in ensuring that class actions are properly conducted.

As a result, the Competitive Enterprise Institute respectfully requests leave to file the accompanying amicus curiae brief.

Pursuant to D.C. Circuit Rule 29(b), CEI has attached its Rule 26.1 Disclosure Statement to this Motion as Exhibit 1.

Respectfully submitted,

/s/ Amy Miller

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\*not admitted to this Court

## CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 24th day of October, 2011, I caused this Motion for Leave to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on this 24th day of October, 2011, I caused the required number of bound copies of this Motion for Leave to be hand-filed with the Clerk of the Court.

/s/ Amy Miller  
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