

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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CHAMBER OF COMMERCE OF THE UNITED		)	
STATES OF AMERICA, and		)	
		)	
COALITION FOR A DEMOCRATIC		)	
WORKPLACE,		)	Case No. 11-cv-02262
		)	Judge James E. Boasberg
	Plaintiffs,	)	
v.		)	
		)	
NATIONAL LABOR RELATIONS BOARD,		)	
		)	
	Defendant	)	
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**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND ALTERNATIVE  
MOTION TO DISMISS COUNTS I AND III OF PLAINTIFFS’ FIRST AMENDED  
COMPLAINT**

Defendant the National Labor Relations Board, by and through undersigned counsel, respectfully submit this Motion for Summary Judgment and Alternative Motion to Dismiss Counts I and III of Plaintiffs’ First Amended Complaint (Docket # 17). In support, the Board relies on the accompanying Memorandum, and the Administrative Record (which will be filed soon). As explained more fully in these materials, the Board is entitled to summary judgment as a matter of law on all counts. Count I concerns the amendments to the Board’s representation case procedure, and the Board is entitled to summary judgment because the procedure is consistent with the National Labor Relations Act and the U.S. Constitution. Alternatively, the Court should dismiss Count I because it is unripe until the amended election procedure is applied in a particular case. Count II concerns the Board’s rulemaking procedure, and the Board is entitled to summary judgment because the procedure used was consistent with applicable law and regulation. Count III concerns the Board’s certification of its proposed rule under the

Regulatory Flexibility Act, and should be dismissed for two reasons: 1) the RFA does not apply to this rulemaking, and/or 2) the Court lacks jurisdiction to review the compliance of proposed rules with the RFA. Alternatively, the Board is entitled to summary judgment on Count III because the Board's certification was valid.

Accordingly, the Board respectfully requests that the Court deny Plaintiffs' Motion for Summary Judgment, and grant the Board's Motion for Summary Judgment in its entirety and/or dismiss Counts I and III of Plaintiff's First Amended Complaint.

RESPECTFULLY SUBMITTED,

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Dated: February 3, 2012  
Washington, D.C.

**CERTIFICATE OF SERVICE**

This is to certify that the Board's Motion for Summary Judgment, Memorandum In Support and Proposed Order were filed electronically on the 3rd day of February, 2012 in accordance with the Court's Electronic Filing Guidelines. Notice of this filing will be sent to all parties by operation of the Court's Electronic Filing System. Parties may access this filing through the Court's Filing System.

/s/ Abby Propis Simms  
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