UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION, Petitioner, v. **NATIONAL LABOR RELATIONS BOARD**, Respondent.	Case No. 12-1115

MOTION FOR LEAVE TO INTERVENE

The Chamber of Commerce of the United States of America (the "Chamber") and The Coalition for a Democratic Workplace ("CDW," together "Movants") request leave to intervene in the above captioned proceedings pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and Rule 15(b) of this Court. Petitioner Noel Canning, a Division of The Noel Corporation and a member of both the Chamber and CDW, filed the petition for review in this case to challenge the National Labor Relations Board's (the "Board") decision that it violated Section 8(a)(1) and Section 8(a)(5) of the National Labor Relations Act ("NLRA"). The petition for review was filed under 29 U.S.C. § 160(f) on February 24, 2012. The Chamber is the world's largest business federation and many of its members are directly affected by the Board's decisions. CDW represents a broad array of business interests, ranging from individual

companies to state, local, and national trade associations, who are directly affected by the operations of the Board.

The Board's ruling against Noel Canning, and this Court's review of that ruling, will directly affect Movants' members in at least three ways, each of which gives Movants a direct and substantial interest in this proceeding. *First*, the Board lacks a quorum of at least three members and thus did not have statutory authority to adjudicate the charges against Noel Canning. *See New Process Steel, L.P. v. Nat'l Labor Relations Bd.*, 130 S. Ct. 2635, 2644-45 (2010) (citing 29 U.S.C. § 153(b)). In nonetheless adjudicating those charges, the Board has set a precedent—applicable in all future Board proceedings—that it currently possesses a proper quorum. Many of Movants' members are under the Board's jurisdiction, face the imminent threat of being subjected to quorum-less adjudications by the Board, and have a direct interest in challenging the Board's decision that it has a quorum. *Second*, in reviewing the Board's decision, this Court will necessarily have to decide whether the Board had (and has) a quorum. That precedential ruling will resolve this important issue for the many future Board proceedings reviewed by this Court. *Finally*, the Board's decision is adjudicative rulemaking that established the precedential rule that verbal agreements will be deemed valid and enforceable notwithstanding the applicability of contrary state law. That Board precedent directly affects many of Movants' members.

Movants therefore respectfully request that they be granted leave to intervene in this proceeding.

BACKGROUND

1. On January 4, 2012, the President purported to recess appoint Sharon Block, Terence Flynn, and Richard Griffin to serve as Members of the National Labor Relations Board. Even

though the Senate was in session, the President attempted to make these appointments by invoking the recess appointment provision in U.S. Const. art. II, § 2, cl. 3. Set forth below is a summary of the facts and circumstances leading to the present situation generally, as well as the facts underlying this particular case.

a. Under the NLRA, the Board is to "consist of five . . . members, appointed by the President by and with the advice and consent of the Senate." 29 U.S.C. § 153(a). While vacancies in the Board generally do "not impair the right of the remaining members to exercise all of the powers of the Board," *id.* § 153(b), "three members of the Board shall, at all times, constitute a quorum of the Board," *id.* Thus, the Supreme Court recently held that the Board cannot exercise its statutory authority during any period in which it has less than three members. *See New Process Steel*, 130 S. Ct. at 2644-45.

Prior to January 3, 2012, the Board operated with three lawfully appointed members and therefore had a lawful quorum.[1] In particular, two of the Board's current members, Chairman Pearce and Member Hayes, were nominated by the President on July 9, 2009 and confirmed by the Senate on June 22, 2010.[2] And the third member, Craig Becker, was recess appointed by the President on March 27, 2010.[3] Pursuant to the Recess Appointments Clause, however, Mr.

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[1] Press Release, National Labor Relations Board, White House Announces Recess Appointments of Three to Fill Board Vacancies (Jan. 4, 2012), *available at* https://www.nlrb.gov/news/white-house-announces-recess-appointments-three-fill-board-vacancies; *see also* Melanie Trottman, *Obama Makes Recess Appointments to NLRB*, Wall St. J., Jan. 4, 2012, *available at* http://online.wsj.com/article/SB10001424052970203513604577141411919152318.html.

[2] Press Release, National Labor Relations Board, Brian Hayes, Mark Pearce confirmed by Senate as Board members (June 22, 2010), *available at* http://www.nlrb.gov/news-media/news-releases/archive-news; 156 Cong. Rec. S5217 (daily ed. June 22, 2010).

[3] Press Release, White House, President Obama Announces Recess Appointments to Key Administrative Positions (Mar. 27, 2010), *available at* http://www.whitehouse.gov/the-press-office/president-obama-announces-recess-appointments-key-administration-positions. The Senate went into a two-week recess on March 26, 2010, before the President recess appointed Mr. Becker. *See* 156

Becker's term expired at the end of the First Session of the 112th Congress—at the latest, on January 3, 2012. *See* U.S. Const. art. II, § 2, cl. 3. Consequently, on January 3, 2012, the Board had only two members and, therefore, lacked the statutorily-required quorum to do business.

b. On December 17, 2011, the Senate voted by unanimous consent to remain in session for the period of December 20, 2011 through January 23, 2012. *See* 157 Cong. Rec. S8783-84 (daily ed. Dec. 17, 2011). This was necessary because, under Article I, Section 5, Clause 4 of the Constitution, "[n]either House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days[.]" And here, the U.S. House of Representatives did not consent to a Senate adjournment exceeding three days. (Indeed, the Senate never sought such consent.) Consequently, the Senate issued a resolution convening *pro forma* sessions every three business days. 157 Cong. Rec. S8783-84.[4]

c. During the December 17 to January 23 time period, the Senate proceeded to conduct two important pieces of business during its *pro forma* sessions. *First*, on December 23, the Senate passed a temporary extension to the payroll tax cut. *See* 157 Cong. Rec. S8789 (daily ed. Dec. 23, 2011). The bill as passed in that session was signed into law by the President on the same day. *Second*, on January 3, the Senate fulfilled its obligation, under the Twentieth

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(continued…)

Cong. Rec. S2180 (daily ed. Mar. 26, 2010) (adjourning until April 12, 2010 pursuant to H.R. Con. Res. 257). Thus, unlike the appointments at issue here, the constitutionality of Mr. Becker's appointment was never challenged.

[4] *See also* U.S. Senate, Daily Summary, Senate Floor Schedule for Pro Formas and Monday, January 23, 2012 (Dec. 17, 2011), http://democrats.senate.gov/2011/12/17/senate-floor-schedule-for-pro-formas-and-monday-january-23-2012/. This practice of convening *pro forma* sessions every three days to avoid a recess has been used by both parties since 2007. Henry B. Hogue, Cong. Research Serv., RS21308, Recess Appointments: Frequently Asked Questions 9 (2012), *available at* http://www.senate.gov/CRSReports/crs-publish.cfm?pid='0DP%2BP%5CW%3B%20P%20%20%0A. The Democratic-controlled Senate originally employed the procedure to prevent President Bush from making any recess appointments. *Id.* More recently, the Republican-controlled House of Representatives has prevented the Senate from adjourning for more than three days in order to prevent President Obama from making any recess appointments. *Id.*

Amendment to the Constitution, to "meet[] . . . on the 3d day of January." U.S. Const. amend. XX, § 2. To Movants' knowledge, neither the President, the Department of Justice, nor either house of Congress has called into question the validity of either the payroll tax cut extension or the Senate's constitutionally required January 3 meeting.

d. On January 4, 2012, the day after the Senate's January 3 meeting, the President purported to appoint Ms. Block, and Messrs. Flynn and Griffin pursuant to the Recess Appointments Clause of the Constitution, U.S. Const. art. II, § 2, cl. 3.[5] At that time, their nominations were quite recent. The President nominated the two Democratic nominees, Ms. Block and Mr. Griffin, on December 15, 2011, less than three weeks earlier and just two days before the Senate supposedly went into recess. Indeed, on January 4, neither nominee's required committee application and background check had been submitted to the Senate,[6] which is generally a prerequisite to any Senate action on a nomination. The President nevertheless sought to invoke the Recess Appointments Clause and thereby circumvent the Senate's constitutional power to provide advice and consent to the appointment of Executive Branch officers. *See id.*

The next week, on January 12, 2012, the Department of Justice's Office of Legal Counsel released an opinion, dated January 6, 2012, explaining the legal rationale underlying the President's action. The OLC Opinion first stated that "the President is [] vested with . . . discretion to determine when there is a real and genuine recess making it impossible for him to receive the advice and consent of the Senate." *Lawfulness of Recess Appointments During a Recess of the Senate Notwithstanding Periodic Pro Forma Sessions*, Memorandum Opinion For

[5] Press Release, The White House, President Obama Announces Recess Appointments (Jan. 4, 2012), *available at* http://www.whitehouse.gov/the-press-office/2012/01/04/president-obama-announces-recess-appointments-key-administration-posts.

[6] Press Release, U.S. Senate Committee on Health, Education, Labor &Pensions, NLRB Recess Appointments Show Contempt for Small Businesses (Jan. 4, 2012), *available at* http://www.help.senate.gov/newsroom/press/release/?id=170c9d76-0002-4a7d-b9b3-20185d847bbb.

The Counsel To The President at 5 (Jan. 6, 2012), available at http://www.justice.gov/olc/2012/pro-forma-sessions-opinion.pdf (quoting *Executive Power—Recess Appointments*, 33 Op. Att'y Gen. 20, 25 (1921)) [hereinafter "*OLC Memo*"]. Then, it expressed the view that the Senate is in recess whenever the President determines that the Senate was "unavailable . . . to 'receive communications from the President or participate as a body in making appointments.'" *Id.*; *see also id.* at 1, 4, 9, 15. Key to this conclusion was the assertion that "Congress's provision for pro forma sessions . . . does not have the legal effect of interrupting the recess of the Senate for purposes of the Recess Appointments Clause and that the President may properly conclude that the Senate is unavailable for the overall duration of the recess." *Id.* at 9.

e. The Board's decision against Noel Canning issued on February 8, 2012 and therefore came subsequent to the appointments of Ms. Block, and Messrs. Flynn and Griffin. This action required a quorum of the Board, *see New Process Steel*, 130 S. Ct. at 2644-45, and both Ms. Block and Mr. Flynn participated in the decision as members. Thus, in issuing its decision, the Board has necessarily decided that these appointments were proper and that it possesses a proper quorum.

f. Finally, the Board's ruling ordered Noel Canning to cease and desist from its purported refusal to bargain, and from otherwise interfering with employee rights under Section 7 of the National Labor Relations Act. In its hearing before the Board, Noel Canning argued that Washington State law precluded legal enforcement of verbal contractual agreements like the one in question. *Noel Canning*, 358 NLRB No. 4, slip op. at 7 (Feb. 8, 2012) ("The Respondent maintains that Washington State law precludes legal enforcement of verbal contractual agreements."). In rejecting that claim, the Board found that the question of a contract's validity

in the context of labor disputes like the one at issue is not subject to state law. *Id.* ("[T]his matter is not subject to state law."). Instead, the Board held that, under Federal law, a verbal agreement should be deemed valid and enforceable. *Id.* Further, the Board held, "[o]nce a verbal agreement is reached by the parties, they are obligated to abide by the terms of the agreement even though those terms have not been reduced to writing." *Id.* While Board proceedings are not *per se* precedential, the Board routinely relies on its prior decisions as authority, *see, e.g.*, *id.* (citing *Young Women's Christian Association (YWCA)*, 349 NLRB 762, 771 (2007) and *Sunrise Nursing Home, Inc.*, 325 NLRB 380, 389 (1998) in support of its adopted rule regarding verbal agreements), and those decisions therefore regulate the conduct of non-party employers, including many members of both the Chamber and CDW.

2. The Movants in this matter—the Chamber and CDW—have a strong interest in the proper resolution of this issue.

a. The Chamber is the world's largest business federation. It represents 300,000 direct members and indirectly represents an underlying membership of more than three million businesses and organizations of every size, in every business sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in court on issues of national concern to the business community. The Chamber's membership includes businesses that are covered by the NLRA and appear before the Board, giving them a direct interest in the rules and decisions issued by the Board.

b. CDW consists of over 600 member organizations and employers, who in turn represent millions of additional employers, and gives its members a voice on a number of labor issues, including non-employee access, an employee's right to have access to organizing information from multiple sources, and unit determinations. The vast majority of CDW's

members are covered by the NLRA or represent organizations covered by the NLRA. Thus, like the Chamber's membership, CDW's members have a strong interest in how the Board interprets and applies the NLRA, including, among other things, preventing the Board from making legally binding decisions absent the statutorily required quorum.

ARGUMENT

Movants satisfy this Court's standard for intervention in petition-for-review proceedings. Both the Chamber and CDW have interests that relate directly to the subject of this litigation, are likely to be imperiled if the Board prevails, and will not be adequately represented by the existing parties.

Federal Rule of Appellate Procedure 15(d) provides that a motion for leave to intervene "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." This Court has held that Rule 15(d) "simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Board of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991). Under the Federal Rules of Civil Procedure, "the 'interest' test [for intervention] is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967); *see also Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 133-35 (1967), *quoted in Nuesse*, 385 F.2d at 701.

This Court, like many others, has recognized that Federal Rule of Civil Procedure 24—which sets forth the standard for district court intervention—informs the intervention inquiry under Rule 15(d). *See, e.g.*, *Int'l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965); *Amalgamated Transit Union v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985) (per curiam).

The requirements for intervention as of right under Federal Rule of Civil Procedure 24(a)(2) are: (1) the motion is timely; (2) the applicant claims an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) existing parties may not adequately represent the applicant's interest. *See, e.g.*, *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). Movants satisfy each of these requirements, and thus necessarily also satisfy the more lenient standard for permissive intervention under Rule 24(b)(1)(B).

I. This Motion to Intervene is Timely and Granting It Would Not Disrupt the Proceedings.

Petitioners filed the petition for review in this case on February 24, 2012. This motion is timely because it is being filed within 30 days after the filing of that petition. Fed. R. App. P. 15(d).

As a practical matter, allowing Movants to intervene will not be disruptive. Noel Canning and Movants all seek this Court's review of the legitimacy of the Board's purported quorum, and Noel Canning is actually a member of both the Chamber and CDW. Further, Movants are seeking to intervene at the outset of this proceeding, before the Court has established a schedule and format for briefing, and will gladly abide by any briefing schedule this Court adopts. Finally, Noel Canning has consented to Movants' intervention.

II. Movants and Their Members Have Interests Relating to the Subject of This Proceeding That May be Impaired if Respondent Prevails.

Movants and their members have three distinct and direct interests in this proceeding, all of which would be adversely affected if respondent prevails.

First, the Board lacks a quorum of at least three members and thus did not have statutory authority to adjudicate the charges against Noel Canning. *See New Process Steel*, 130 S. Ct. at 2644-45. On January 4, 2012, the President purported to appoint Ms. Block and Messrs. Griffin

and Flynn to the Board. These three attempted "recess" appointments contravened constitutionally mandated procedures because the President failed to seek the advice and consent of the Senate as required by Article II, § 2, cl. 2, and instead claimed to exercise the recess appointment power conferred by Article II, § 2, cl. 3 to bypass the Senate confirmation process as to all three appointees. But the Recess Appointments Clause only allows the President to act when the Senate is in recess, and the Senate was not in recess at the time of these appointments. Indeed, the Senate *could not* constitutionally go into recess because Article I, § 5, cl. 4, prohibits the Senate from going into recess absent consent from the House of Representatives, and the House of Representatives did not give such consent here. The Senate conducted *pro forma* sessions twice weekly from December 20, 2011 until January 23, 2012—never going into recess—and the President thus lacked constitutional authority to issue appointments under the Recess Appointments Clause. The appointments of Ms. Block and Messrs. Flynn and Griffin were therefore not legally effective.

In issuing the ruling that Noel Canning challenges, the Board necessarily decided—in a decision that will govern all future Board proceedings[7]—that these appointments *were* legally effective and gave the Board a proper quorum. As noted above, many of the Chamber's members and the vast majority of CDW's members are covered by the NLRA, are subject to Board action, and some are currently undergoing Board proceedings. *See* Declaration of Randel K. Johnson, Ex. A; Declaration of Josh Ulman, Ex. B. The Board's decision that it has a quorum, and thus the statutory authority to issue binding decisions, directly affects those members. Movants thus have a direct interest in challenging the Board's current assertion of

[7] Any doubt on this score is dispelled by the fact that the Board has continued to issue rulings as though it has a proper quorum. *See* National Labor Relations Board, *Board Decisions* (available at https://www.nlrb.gov/cases-decisions/case-decisions/board-decisions) (last checked March 5, 2012) (listing at least sixteen Board decisions issued following the President's improper appointments).

authority to issue decisions and in avoiding the injury of being regulated by a quorum-less Board in direct contravention of the NLRA. *New Process Steel*, 130 S. Ct. at 2644-45; *see also, e.g.*, *Teva Pharms. USA , Inc. v. Sebelius*, 595 F.3d 1303, 1312 (D.C. Cir. 2010) ("It is clear what the FDA will do absent judicial intervention and what the effect of the agency's action will be."); *United States v. Philip Morris USA Inc.*, 566 F.3d 1095, 1146 (D.C. Cir. 2009) (per curiam); *Fund for Animals*, 322 F.3d at 733.

Second, in reviewing the Board's decision, this Court will necessarily have to decide whether the Board had a quorum. This Court is the principal reviewer of Board action and that precedential ruling will resolve this important issue for many future Board proceedings involving Movants' members. *See, e.g.*, *United States v. Carson*, 455 F.3d 336, 384 n.43 (D.C. Cir. 2006) (per curiam) ("[W]e are . . . bound to follow circuit precedent absent contrary authority from an en banc court or the Supreme Court."). Movants' members thus clearly have a direct, substantial, and enduring interest in this Court's decision. *See, e.g.*, *Fund for Animals*, 322 F.3d at 735 ("Regardless of whether the [the Intervener] could reverse an unfavorable ruling by bringing a separate lawsuit, there is no question that the task of reestablishing the status quo if the [opposing party] succeeds in this case will be difficult and burdensome."); *see also, e.g.*, *Flying J, Inc. v. Van Hollen*, 578 F.3d 569, 573 (7th Cir. 2009) ("[C]oncern with the stare decisis effect of a decision can be a ground for intervention . . . because courts are reluctant to overrule a precedent." (citations omitted)).

Finally, the Board's decision is an adjudicative rulemaking which established a rule that will affect a number of Movants' members. In the underlying adjudication, the Board held that, state law notwithstanding, "[o]nce a verbal agreement is reached by the parties, they are obligated to abide by the terms of the agreement even though those terms have not been reduced

to writing." *Noel Canning*, 358 NLRB No. 4, slip op. at 7. While NLRB proceedings are not per se precedential, they inform future agency decisions as indicated by the Board's own use of prior decisions as authority. *See, e.g.*, *id.* (citing *Young Women's Christian Association (YWCA)*, 349 NLRB 762, 771 (2007) and *Sunrise Nursing Home, Inc.*, 325 NLRB 380, 389 (1998) in support of this rule). As a result, the rules that the Board announces in its decisions shape the behavior of non-party employers, including many of Movants' members. The Board's announcement of this precedential rule thus directly affects Movants' members and gives them an additional direct and substantial interest in this proceeding. *See, e.g.*, *Teva Pharms.*, 595 F.3d at 1312.

III. The Existing Parties Cannot Adequately Represent Movants' Interests.

In considering whether Movants' interests are adequately represented by the parties, the burden of showing a difference in interests "should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). And "[t]he applicant need only show that representation of his interests 'may be' inadequate, not that representation will in fact be inadequate." *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986); *see also, e.g.*, *Fund for Animals*, 322 F.3d at 735 ("[W]e have described this requirement as 'not onerous.'" (quoting *Dimond*, 792 F.2d at 192)); *United States v. American Tel. & Tel. Co.*, 642 F.2d 1285, 1291-93 (D.C. Cir. 1980) (explaining that a movant "'ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee'" (quoting 7A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure*, § 1909 (1st ed. 1972))); *Nuesse*, 385 F.2d at 702 (noting "both the burden on those opposing intervention to show the adequacy of the existing representation and the need for a liberal application in favor of permitting intervention").

Noel Canning cannot adequately represent the interests of Movants or their multitudes of members. The key issue presented in this case is the constitutionality of the President's

purported appointments of Ms. Block and Messrs. Griffin and Flynn, and Noel Canning's petition for review squarely presents the issue of the Board's authority to resolve its many pending cases. But Noel Canning is a small, individual employer with limited resources and an entirely different incentive structure from Movants. Noel Canning's incentive is to prevail on any ground possible—including, for example, fact-specific grounds that are unrelated to the critical constitutional issue presented by this case—at the lowest possible cost.

Movants have different incentives. As the world's largest business federation and a national coalition of employers and employer associations, the Chamber and CDW have a broad mission to advocate for balance and fairness toward employers with respect to the enforcement of labor laws, including the NLRA. Among other things, this mission involves analyzing the fitness of nominees to labor regulatory agencies, and defending employers against regulatory actions that hinder economic growth and job creation. Whether the Board has a constitutional quorum is a matter of extreme importance to the thousands of Movants' members who seek predictability and stability in federal labor regulation. Companies and their labor forces need to know whether or not the Board has a lawful quorum. The present uncertainty over the Board's authority makes planning impossible, with negative consequences for employers and employees alike. Further, the NLRA gives Movants' members with proceedings currently pending before the Board a legal right to adjudication by a quorum of properly appointed members—and Movants have a strong interest in protecting that legal right on their members' behalf. Consequently, Movants have a strong interest in resolving the legality of the President's recess appointments to the Board as expeditiously as possible.

Movants thus have multiple direct and substantial interests in participating in resolution of this novel constitutional issue. Further, Movants' participation in this case will not only

protect their own interests, but will also assist the Court in understanding and resolving the complex constitutional issues presented by the Board's decision. Thus, Movants' Motion for Intervention should be granted.[8]

CONCLUSION

For the reasons stated above, Movants respectfully request that the Court enter an order granting the Chamber and CDW leave to intervene as petitioners. Movants have consulted with counsel for the Board, which is reserving its right to determine its position after reviewing this Motion. Noel Canning consents to Movants' intervention.

Dated: March 15, 2012

Respectfully submitted:

/s/

G. Roger King
Noel J. Francisco
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939

Counsel for Movants Chamber of Commerce of the United States of America, and The Coalition for a Democratic Workplace

[8] Because Movants satisfy the requirements for intervention as of right, they necessarily satisfy the more lenient standard for the similarly analogous permissive intervention analysis. *See, e.g.*, *Fund for Animals*, 322 F.3d at 731 ("Because we conclude that the NRD is entitled to intervene as of right, we need not address the issue of permissive intervention." (citation omitted)).

Of Counsel:

Lily Fu Claffee
Chief Legal Officer and General Counsel
Chamber of Commerce of the United States of America
1615 H Street, NW
Washington, DC 20062
(202) 463-5576

Robin S. Conrad
Rachel L. Brand
Sheldon Gilbert
National Chamber Litigation Center, Inc.
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337

Counsel for the Chamber of Commerce of the United States of America

Joshua A. Ulman
Brown & Ulman, PLLC
20th F. Street, NW, 7th Floor
Washington, DC 20001
(202) 642-1970

Counsel for the Coalition for a Democratic Workplace

EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION, **Petitioner,** **v.** **NATIONAL LABOR RELATIONS BOARD,** **Respondent.**	**Case No. 12-1115**

DECLARATION OF RANDEL K. JOHNSON

I, Randel K. Johnson, hereby state and declare as follows:

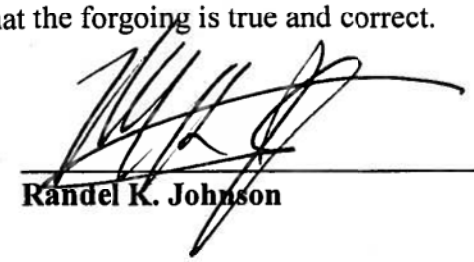
1. My name is Randel K. Johnson, and I currently serve as the Senior Vice President for Labor, Immigration, and Employee Benefits with the Chamber of Commerce of the United States of America (the "Chamber"). In that capacity, I am familiar with the Chamber's membership.

2. As of March 14, 2012, a number of the Chamber's members are engaged in proceedings before the Board (including the Petitioner here, Noel Canning), or awaiting a decision from the Board.

3. In addition, numerous members of the Chamber engage in collective bargaining and are thus affected by the Board's rulings, such as its ruling that verbal labor agreements are enforceable notwithstanding contrary state law.

4. I hereby declare under penalty of perjury that the forgoing is true and correct.

Signed this 14th day of March, 2012.



Randel K. Johnson

EXHIBIT B

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION, **Petitioner,** **v.** **NATIONAL LABOR RELATIONS BOARD,** **Respondent.**	**Case No. 12-1115**

DECLARATION OF JOSH ULMAN

I, Joshua A. Ulman, hereby state and declare as follows:

1. My name is Joshua A. Ulman, and I currently serve as counsel to the Coalition for a Democratic Workplace ("CDW"). In that capacity, I am familiar with CDW's membership.

2. I have reviewed the membership list of CDW and have also reviewed the National Labor Relations Board's (the "Board") docket of currently pending cases.

3. In doing so, I have identified members of CDW (including the petitioner here, Noel Canning) and members of CDW's association members (*e.g.*, members of the Chamber of Commerce of the United States of America) that are currently engaged in proceedings before the Board, or awaiting a decision from the Board, as of March 13, 2012.

4. I have also identified members of CDW and members of CDW's association members who engage in collective bargaining and are thus affected by the Board's rulings, including its ruling that verbal labor agreements are enforceable notwithstanding contrary state law.

5. I hereby declare under penalty of perjury that the forgoing is true and correct.

Signed this 13th day of March, 2012.

Joshua A. Ulman

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION, Petitioner, v. **NATIONAL LABOR RELATIONS BOARD**, Respondent.	Case No. 12-1115

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1 of the Rules of this Court, Movants seeking leave to intervene submit the following statement:

1. The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents an underlying membership of more than three million businesses and organizations of every size, in every business sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in court on issues of national concern to the business community. The Chamber has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in the Chamber.

2. The Coalition for a Democratic Workplace ("CDW") consists of over 600 member organizations and employers, who in turn represent millions of additional employers, and gives its members a voice on a number of labor issues, including non-employee access, an employee's right to have access to organizing information from multiple sources, and unit determinations. CDW has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in CDW.

Dated: March 15, 2012

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(202) 879-3939

Counsel for Movants Chamber of Commerce of the United States of America, and The Coalition for a Democratic Workplace

UNITED STATES COURT OF APPEALS
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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Rule 27(a)(4) and Rule 28(a)(1) of this Court, Movants for leave to intereven state the following:

1. Parties and Amici. Because this case concerns direct review of final agency action, the requirement in Circuit Rule 28(a)(1)(A) to list the parties, intervenors, and amici that appeared before the district court does not apply. The petitioner that appears in this case is Noel Canning, a division of the Noel Corporation. The respondent is the National Labor Relations Board. At this time, to the knowledge of undersigned counsel, there are no intervenors or amici in this case.

2. Ruling Under Review. The petition seeks review of the NLRB's February 8, 2012 Decision and Order in Case 19-CA-32872.

3. Related Cases. Movants are not aware of any related cases.

Dated: March 15, 2012

Respectfully submitted,

/s/

G. Roger King
Noel J. Francisco
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939

Counsel for Movants Chamber of Commerce of the United States of America, and The Coalition for a Democratic Workplace

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NOEL CANNING, A DIVISION OF THE NOEL CORPORATION, Petitioner, v. **NATIONAL LABOR RELATIONS BOARD**, Respondent.	Case No. 12-1115

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 2012, on behalf of Movants the Chamber of Commerce of the United States of America and the Coalition for a Democratic Workplace, one copy each of the Motion for Leave To Intervene, Certificate as to Parties and Amici, and Rule 26.1 Disclosure Statement was served by first-class mail, postage prepaid on each of the following:

Gary E. Lofland
Lofland and Associates
9 North 11th Avenue
Yakima, WA 98902
(509) 452-2828

Counsel for Petitioner Noel Canning, a division of The Noel Corporation

Linda Dreeben
National Labor Relations Board
1099 14th Street, NW
Suite 8100
Washington, DC 20570

Counsel for Respondent The National Labor Relations Board

Dated: March 15, 2012

Respectfully submitted,

/s/

G. Roger King
Noel J. Francisco
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
(202) 879-3939

Counsel for Movants Chamber of Commerce of the United States of America, and The Coalition for a Democratic Workplace