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January 20, 2006

VIA MESSENGER

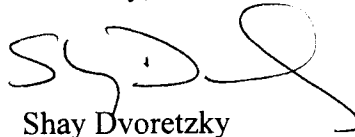
Mark J. Langer
Clerk of the Court
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, DC 20001

Re: *Garcia v. Johanss, Secretary, U.S. Department of Agriculture, Nos. 04-5448, 05-5002*

Dear Mr. Langer:

Enclosed please find five copies of a Motion for Leave to Participate in Oral Argument filed on behalf of the Chamber of Commerce of the United States as *amicus curiae* supporting appellee. Would you please date-stamp one copy and return it to the messenger.

Sincerely,



Shay Dvoretzky

Enclosures

**SCHEDULED FOR ORAL ARGUMENT
ON MONDAY, FEBRUARY 6, 2006**

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

Guadalupe L. GARCIA, Jr., et al.,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	Case No. 04-5448
)	
Michael JOHANNNS, Secretary of the)	
United States Department of)	
Agriculture,)	
)	
Defendant-Appellee.)	
)	

**MOTION FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE**

Pursuant to Federal Rule of Civil Procedure 29(g) and Circuit Rule 34(e), the Chamber of Commerce of the United States (“the Chamber”) hereby requests leave from this Court to participate in the oral argument of the above-captioned case as amicus curiae in support of the Government. The Chamber respectfully requests to be allocated five minutes of argument time. Concurrently with this motion, the Chamber is also requesting, in a separate motion, to be allocated five minutes in the oral argument of *Love v. Johanns*, No. 04-5449. Counsel for the Government has consented to the relief sought in this motion.

1. The Chamber is the world’s largest business federation, representing an underlying membership of over three million businesses and organizations. A principal function of the Chamber is to represent the interests of its members in cases involving issues of significant

concern to the nation's business community. This Court granted the Chamber leave to file an amicus brief in the above-captioned case, highlighting the significance of the instant appeal to employers (particularly private-sector employers) and the impact that the Court's decision may have beyond the immediate concerns of the parties to this case.

2. The instant appeal raises significant and recurring questions about the proper standards for class certification, an issue in which the Chamber has a vital interest and a perspective different from the Government's. While the Government's brief explores at length the facts in this case and ably demonstrates that, on this factual record, the District Court did not abuse its discretion in denying class certification, the Chamber's brief contains a broader and more detailed discussion of the governing legal principles that a court should apply in ruling on a motion for class certification.

Among the issues explored in greater depth in the Chamber's brief than in the Government's submission are: (1) the proper role played in a class-certification decision by the substantive theory of liability underlying a plaintiff's claims, *see* Chamber Br. at 9-10; (2) the propriety of the District Court's use of a "spectrum of subjectivity" to determine whether identifying subjectivity as the practice being challenged by a class satisfies the commonality and typicality requirements for class certification where the challenged selection practice combines subjective and objective elements, *see* Chamber Br. at 9-16; (3) whether plaintiffs raising ECOA disparate-impact claims can invoke the Title VII exception to the requirement of identifying the specific practice being challenged, *see* Chamber Br. at 12-13; (4) why the overwhelming weight of authority holds that commonality and typicality are not satisfied where the challenged determinations by the defendant are made by multiple decentralized decisionmakers applying varying criteria, *see* Chamber Br. at 17-20; and (5) whether this Court should adopt the Fifth

Circuit's standard for certification under Rule 23(b)(2) or the Second Circuit's *ad hoc* balancing approach to (b)(2) certification, and whether hybrid or provisional certification under Rules 23(b)(2) and (b)(3) is permissible, *see* Chamber Br. at 21-29. The Chamber's arguments on several of these points play a prominent role in the Appellants' reply brief. *See* Garcia Reply Br. at 3, 11-12, 19-24.

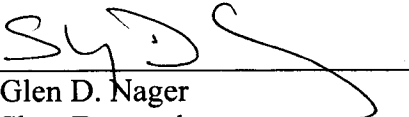
The Chamber respectfully submits that its participation in the oral argument would assist the Court in considering these important questions concerning the proper standards for class certification. As in its brief, the Chamber would also highlight the significance of the instant appeal beyond the immediate concerns of the parties to this case.

WHEREFORE, the Chamber respectfully requests that this Court allocate it five minutes to participate in the oral argument of the above-captioned case as *amicus curiae* in support of the Government.

Dated: January 20, 2006

Respectfully submitted,

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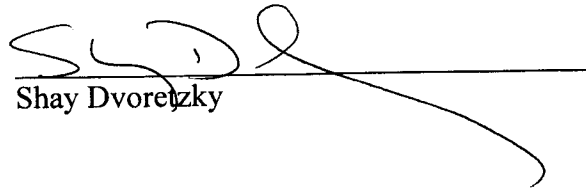
*Counsel for Amicus Curiae
Chamber of Commerce
of the United States of America*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of January, 2006, a copy of the foregoing Motion for Leave to Participate in Oral Argument as Amicus Curiae was sent by first-class mail to each of the following counsel:

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