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November 25, 2019

Scott S. Harris
Clerk of the Court
Supreme Court of the United States
One First Street NE
Washington, DC 20543

Re: *Facebook, Inc. v. Duguid*, No. 19-511

Dear Mr. Harris:

On behalf of petitioner, I write to waive the 14-day waiting period under rule 15.5 and respectfully request that this petition be set for distribution on November 26, 2019. The government has filed a response brief agreeing that the constitutional issue presented here merits plenary review, but suggesting its own petition in No. 19-631 provides a superior vehicle for review of that issue. Petitioner anticipates filing its reply brief explaining why the Court should grant review in both cases promptly, but in the event the Court does not receive the reply brief by November 26, petitioner requests that the petition be distributed without it.

I also write to apprise the Court of a pressing timing issue with respect to this petition and the government petition. As will be explained in more detail in petitioner's forthcoming reply, the petition here raises both a constitutional question and a logically anterior statutory question about the reach of the statute. As the government noted in its response brief, it has filed its own petition presenting only the constitutional question in *Barr v. American Association of Political Consultants, Inc.*, No. 19-631. We understand from counsel for AAPC (who overlap with counsel for petitioner here) that the petition in No. 19-631 will be briefed in time for this Court to consider that petition at its January 10 Conference, giving the Court the option of hearing the constitutional issue presented in both cases this Term. (*Charter Communications, Inc. v. Gallion*, No. 19-575, is also scheduled to be fully briefed by the cut-off date and likewise presents only the constitutional issue).

This Court would benefit from being able to consider both this petition and the government's petition at the same conference, as that would give the Court the option of deciding to resolve the related and logically anterior statutory question alongside the constitutional question should it decide to take up the latter. Indeed, both petitioner here and the respondent in No. 19-631 agree that the Court should grant review in both cases so that the Court can consider

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the logically anterior statutory question in this case while ensuring that the Court can still reach the constitutional question in No. 19-631 should it resolve the statutory issue in Facebook's favor. However, while the government filed its response brief in timely fashion, the private-party respondent in this case has waived its response despite the partial invalidation of an Act of Congress as unconstitutional and multiple amicus briefs supporting review of the statutory issue. Accordingly, if this Court is interested in hearing from the private-party respondent in this case before acting on the petitions, petitioner respectfully suggests that the Court call for a response with a shortened response time so that it may still consider these petitions in time to hear them this Term.

Sincerely,

A handwritten signature in black ink, appearing to read "P. D. Clement", with a stylized flourish at the end.

Paul D. Clement