IN THE

United States House of Representatives

JAMES "JIM" OBERWEIS,

Contestant,

V.

LAUREN UNDERWOOD,

Contestee.

CONTESTANT'S RESPONSE TO CONTESTEE'S MOTION TO DISMISS CONTESTANT'S NOTICE OF CONTEST REGARDING THE ELECTION FOR REPRESENTATIVE IN THE ONE HUNDRED SEVENTEENTH CONGRESS FROM ILLINOIS' FOURTEENTH CONGRESSIONAL DISTRICT

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Contestant **JAMES "JIM" OBERWEIS** ("Contestant" or "Oberweis"), by counsel, **SHAW LAW LTD.**, responds to Contestee's **LAUREN UNDERWOOD** ("Contestee" or "Underwood") Motion to Dismiss ("Motion to Dismiss") as follows:

INTRODUCTION

After the November 3, 2020 General Election, the Illinois State Board of Elections proclaimed Contestee Underwood as the alleged winner of **ILLINOIS CONGRESSSIONAL DISTRICT 14** ("ILCD-14"). Out of 401,052 votes cast, Contestant Oberweis allegedly trailed by 5,374, or 2.6% of the vote. Pursuant to Illinois law, Contestant Oberweis filed petitions with the seven County Clerks in the seven counties comprising some portion of ILCD-14. This allowed Contestant Oberweis to recount precincts not exceeding 25% of the total number of precincts within the jurisdiction of each respective election authority.

As of this date, discovery recounts have been completed in only four of the seven counties comprising ILCD-14. One county started its recount, but abandoned it after Contestant Oberweis

filed his Notice of Contest. Two other counties never commenced the discovery recount, despite Illinois law requiring that they be commenced after three days' notice to Contestee Underwood, following the request for a discovery recount. ***See, generally, Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District ("Notice of Contest"), pp. 2-3.***

Neither the precedents of the U. S. House of Representatives, nor Illinois law, require Contestant Oberweis to request a state-law sanctioned discovery recount, let alone exhaust his state remedies before proceeding with his Notice of Contest. The fact that Contestant Oberweis diligently sought to timely canvas the vote by filing seven petitions with seven County Clerks, has been illegally ignored to this very day in three counties, and has, as of this filing, only been able to only review a miniscule number of the ballots and irregularities surrounding the ILCD-14 vote count, should concern this Committee, with its storied history of allowing "illegal and improper acts to be publicized and deterred". ***Dornan v. Sanchez, H. R. Rep. 105-416, 11-12 (1998).***

Contestee Underwood's attempt to take advantage of the illegal actions of three Illinois county clerks who would deny Contestant Oberweis his statutory right to examine a relatively tiny amount of ballots and elections materials is borne out by, among other things, the false standard of review she would have this Committee apply to Contestant Oberweis' Notice of Contest as discussed in ***Contestee's Motion to Dismiss Contestant's notice of contest Regarding the Election For Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District*** ("Motion to Dismiss"). Her untenable and unprecedented attempt to "try" this matter "on the pleadings" and on the credible evidence, but not all the evidence available, attached to Contestant Oberweis' Notice of Contest, ***without submitting any***

countervailing evidence whatsoever[1], flies in the face of settled House precedent and even squarely contradicts the standard urged by Contestee Underwood's own counsel in another proceeding currently pending in the House. ***See, Contestant's Response to Contestee's Motion to Dismiss Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Iowa's Second Congressional District, p. 7, wherein her counsel asserts the following:***

> **Under the standard of [F.R. Civ. P.] 12(b)(6), a Contestant "is not required to provide convincing evidence in the form of documents and/or affidavits"; instead, "every factual allegation and inference [] contended by the" Contestant is presumed true. Dornan, H.R. Rep. No. 105-416, at 8. While these "[f]actual allegations must be enough to raise a right to relief above the speculative level," Twombly, 550 U.S. at 555, they need not be "detailed" so long as they are not "devoid of 'further factual enhancement.'" Iqbal, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555, 557).**

If this House is serious about its mission to publicize and deter "illegal and improper" acts to "bolster the integrity of our electoral system" ***Dornan, supra at 11-12***, then it must then shred the pall of suspicion and mistrust circling the conduct of that election and allow Contestant Oberweis to pursue the discovery he and the voters in ILCD-14 deserve.

ARGUMENT

I. NOTICE WAS PROPERTY FILED AND SERVED: CONTESTANT OBERWEIS PROPERLY SERVED THE NOTICE ON CONTESTANT UNDERWOOD AND, IN THE ALTERNATIVE, ANY ALLEGED DEFECT IN SERVICE SHOULD BE WAIVED BY THE COMMITTEE

Contestee Underwood argues that Contestant Oberweis "did not timely serve his notice of contest" on Contestee Underwood, and that this alleged failure is, in itself, procedurally "irredeemable", a "dispositive procedural error" and "sufficient to warrant dismissal." ***Motion to Dismiss, p. 1, 5.*** Unfortunately, typical throughout her Motion to Dismiss, Contestee Underwood's

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[1] ***The only alleged evidence submitted with Contestee Underwood's Motion to Dismiss is alleged affidavit evidence purporting to support her contention that service of the Notice of Contest on her was defective. See, Argument, part 1.A., infra.***

overblown rhetoric, misleading statement of the facts, and/or this House's precedent, and general hyperbolic bloviation is neither helpful nor particularly interesting. Mostly, it is simply false, as is the case with her insistence that Contestant Oberweis' failure to serve Contestee Underwood occurred, or is fatal[2].

A. Contestant Oberweis Timely Served Contestee Underwood.

Service of an election contest must occur "within thirty days after the result of such election shall have been declared" ***Federal Contested Elections Act ("FCEA"), 2 U.S.C. § 382(a).*** It is undisputed that the Illinois State Board of Elections certified the results of the November 3, 2020 General Election for Illinois House Seat CD-14 on December 4, 2020 and that, therefore, filing and service of any Notice of Contest on Contestee Underwood would have to have been effected by January 4, 2021.

Service may be effected five ways under the Act: by personal delivery to the Contestee, by leaving a copy at the Contestee's home with a person not less than sixteen years of age, by "leaving a copy at [Contestee's] principal office or place of business with some person then in charge thereof", by delivering a copy to an agent authorized to receive service of such a Notice, and "by mailing a copy by registered or certified mail addressed to contestee at his residence or principal office or place of business". ***Id.***

Contestee Underwood asserts that Contestant Oberweis "did not effectuate any of these permissible methods of service in the time allotted." ***Motion to Dismiss, p. 6.*** This is not true.

First, Contestant Oberweis effected service by "leaving a copy at [Contestee's] principal office or place of business with some person then in charge thereof" when his agent, Jeff Davis,

[2] ***Contestant Oberweis does not waive, but will not address in this Response, the myriad of smaller classes of illegal votes and/or irregularities found in his limited discovery recount as stated in his Notice of Contest, and summarily denies Contestee Underwood's arguments and characterizations of them, opting instead to focus on the larger questions facing this Committee regarding this election contest.***

personally delivered the copies to the Clerk of the House of Representatives including a "Notice of Filing" addressed to "Lauren Underwood, Washington, D.C. Office, 1118 Longworth HOB, Washington, DC 20515" attaching the "Appearance" and Notice of Contest, on the morning of January 4, 2021. Davis also asked the Clerk of the House to sign for it, in addition to filling out an additional "Proof of Service". ***See Affidavit of Jeff Davis ("Davis Affidavit") with a copy of the Notice of Filing personally signed, dated and time-received by the Honorable Cheryl L. Johnson ("Clerk Johnson"), Clerk of the U.S. House of Representatives, and a Proof of Service prepared and signed by Jeff Davis acknowledging personal delivery of a copy of the Notice of Contest and accompanying documents to Lauren Underwood ("Underwood"), attached thereto to Davis Affidavit as Exhibits A, A-1 and A-2.*** Is Contestee Underwood seriously arguing the House of Representatives is not her "principal office or place of business" such that service of a copy of the Notice of Contest, ***addressed to her***, and delivered to the Clerk of the House of Representatives, a person "in charge thereof", is infirm?

Second, Contestant Oberweis also effected service on January 4, 2021 by "mailing a copy by registered or certified mail" addressed to Contestee Underwood at her House office, and Contestee Underwood admits her staff received the Notice of Contest by this service on January 25, 2021. ***Motion to Dismiss, Ex. 2 p, 7.*** Contestee Underwood alleges that the postmark "stamped on the parcel" is January 5, 2021, and argues this is ***ipso facto*** defective service, while citing case law that suggests the postmark is only "some evidence" or that the postmark date only "generally" determines the time of mailing. ***Id, p. 7.***

In fact, Glorisell Pomales ("Pomales"), Legal Assistant for Contestant's counsel, being fully aware of the importance of placing the Notice of Contest with the United States Post Office on January 4, 2021, did, in fact, place the parcel for mailing in a post-office collection box, in Waukegan, Illinois, on January 4, 2021. ***See Affidavit of Glorisell Pomales ("Pomales Affidavit")***

with copy of the Certified Mail, Return Receipt Requested Mailing Envelope to Honorable Cheryl L. Johnson ("Clerk Johnson"), Clerk of the U.S. House of Representatives, and U.S. Postal Service Certified Mail Receipt and Certified Mail Signature Card ("Green Card"), signed by Clerk Johnson, and/or a house agent on her behalf, attached thereto to Pomales Affidavit as Exhibits B, B-1 and B-2.

Also, on Monday, January 4, 2021, Pomales mailed a copy of the Notice of Contest to Lauren Underwood ("Underwood") at her Washington, D.C. business address via U.S. Certified Mail, Return Receipt Requested. ***See Pomales Affidavit with copy of the Certified Mail, Return Receipt Requested Mailing Envelope to Lauren Underwood ("Underwood"), and U.S. Postal Service Certified Mail Receipt and Certified Mail Signature Card ("Green Card"), signed by Underwood, and/or an agent on her behalf, attached thereto to Pomales Affidavit as Exhibits C-1 and C-2.***

The fact that the U. S. Postal Service's online tracking portal first allegedly shows the parcel in Carol Stream, Illinois, as January 5, 2021, at 11:38 p.m. as averred by one of Contestee Underwood's attorneys is interesting, but irrelevant. ***See Affidavit of Jonathan Hawley, attached to Motion to Dismiss as Exhibit 3***: not widely known outside Northern Illinois is the fact that mail deposited in the local post offices and post boxes of various cities, towns and villages in Northern Illinois is transported to Carol Stream, Illinois, for processing and stamped there. This Committee may take judicial notice that Carol Stream, Illinois, is over 57 miles from Waukegan, Illinois, the city where Ms. Pomales deposited the parcel for mailing on January 4, 2021. Thus, service by mail was within the statutory guideline.

Third, Contestant Oberweis also attempted service on January 4, 2021, when his agent, Jeff Davis, left a copy under Contestant Underwood's door, as no one answered the door when he knocked, due to the fact that House Offices were vacant, apparently due to the House's COVID-

19 protocols. ***Davis Affidavit, Exhibit A***. While this is admittedly not technical compliance with the purported requirement that service be effected "by delivering a copy to [her] personally"[3], nothing in the plain wording of the ***FCEA*** makes this service, effected by Contestee Underwood's own admission[4] a mere 48 hours later, "fatal and sufficient to warrant dismissal". If Contestee Underwood wants to deny the voters of ILCD-14 a full and transparent process to adjudicate Contestant Oberweis' claims by "hanging her hat" on a 48-hour technicality driven by COVID-19 protocols, she is welcome to do so and suffer her constituents' rightful reproach.

B. In The Alternative, Any Alleged Defect In Service of Notice Should Be Waived.

Notwithstanding ***FCEA § 394*** "Computation of Time" which states, in pertinent part that the Committee "shall not extend the time for serving and filing the notice of contest under section 382 of this title", the Committee has ignored this language as it applies both to the ***filing*** and ***service*** of the notice for "good cause shown" or no cause shown in the past. ***See, e.g., 2 Deschler's Precedent § 20.2:*** "The House may, by resolution, permit a contestant to initiate a contest within a certain period of time notwithstanding the expiration of the time permitted by law for the filing of such a contest." In ***McLean v. Bowman (62nd Cong., 1912), 6 Cannon's Precedents § 98***, this Committee found, pursuant to a contested elections statute in effect prior to the ***FCEA***, which similarly limited the time within which notice of the election contest was to be served, was "merely directory and may be disregarded for cause." This Committee has historically conformed to that early precedent. ***See, also***, ***Tataii v. Abercrombie (H. Rept. 111-68)*** (where the Committee expressly noted that a contestant's notice of contest was untimely, but decided to evaluate the contestant's claims on the merits anyway, acknowledging the contestant may have received inaccurate advice on the filing deadline).

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[3] ***FCEA § 382(c)(1)***

[4] ***Contestee Underwood Motion, Harris Affidavit, Ex. 2 p.1***

In addition, since the drafters of the ***FCEA*** attempted to deploy the procedural paradigm of the ***Federal Rules of Civil Procedure*** to provide a process by which the Committee would weigh the merits of an election contest, dismissing Contestant Oberweis' Notice because of an alleged technical infirmity with service on Contestee is jarringly inappropriate: nothing in the ***Federal Rules of Civil Procedure*** or substantive federal law ties a statute of limitations, ***i.e., here, January 4, 2021***, to the date of ***service*** of any lawsuit, such that the service of any lawsuit must occur before the statute runs, or be forever barred.

Moreover, if a global pandemic, emptying House chambers of personnel who would ordinarily accept service is not "good cause" for a 48-hour delay in service, then nothing is.

Finally, and perhaps, most importantly, in the instant contest, no prejudice results to Contestee Underwood in defending Contestant Oberweis' Notice of Contest which she admittedly received, at worst, a mere 48 hours after filing.[5]

Contestee Underwood's unequivocal assertion that service on her was "irredeemable", a "dispositive procedural error" and "sufficient to warrant dismissal" (***Motion to Dismiss, p. 1, 5)***, therefore, is not a serious argument, but merely the opening salvo in a template for the continuing obfuscation and overstatement rife throughout the balance of her Motion to Dismiss. The Committee should reject this endemic hyperbole, "full of sound and fury, signifying nothing"[6] and evaluate the Motion and the Notice of Contest on the merits.

II. CONTESTEE UNDERWOOD FAILS TO STATE THE PROPER STANDARD FOR REVIEW

Contestee argues that the "'proper standard [of review] is a blend of [Federal Rules of Civil Procedure] 12(b) (6) and 56' " with the House "free to 'consider available evidence in deciding

[5] ***See Affidavit of Andrea Harris, attached to Motion to Dismiss as Exhibit 2, pars. 5-6.***

[6] ***The Tragedy of Macbeth, William Shakespeare, Act. 5, Scene 5.***

whether a contest deserve[s] further consideration []", citing ***Dornan v. Sanchez, H.R. Rep. No. 105-416, at 8-10 (1998). Motion to Dismiss, p. 4.***

In fact, the legislative history of the ***FCEA's*** language establishing the "Motion to Dismiss" indicates the drafters meant "to give the defending party [here, Contestee Underwood] a ***procedural*** right similar to the demurrer, the common law equivalent of [Federal Rule of Civil Procedure] 12 (b), noting it was only a "***procedural*** reform" which would not limit the Committee in considering "available evidence in deciding whether a contest deserved further consideration". ***Id., at 8-9, emphasis supplied.*** The purpose of the ***FCEA's*** intent to bring procedures under the Act "'into closer conformity with the Federal Rules of Civil Procedure' was because [h]istorical experience with the existing law [. . .] demonstrated its inadequacies, among which are the following: * * * There is no procedure for challenging the legal sufficiency of the notice of contest by a motion in the nature of a demurrer.'" ***Id at 9.***

Yet, inasmuch as a Court hearing a Rule 12(b) Motion typically simply examines the face of the pleadings for their sufficiency in stating a claim upon which relief can be granted, the Committee in ***Dornan*** examined why, in a contested elections contest under FCEA, the "Committee has and should demand more than mere allegations as a court would require at summary judgment", where it was noted:

> **Normally a claim in federal or state court would be dismissed on summary judgment only after the party against who dismissal was sought had an opportunity to gather evidence through the discovery process. However, under the FCEA, for a contestant to reach such discovery, a Motion to Dismiss must be rejected or postponed to a Hearing on the Merits. In order to keep frivolous cases from reaching discovery, the Committee standard incorporates the component of credibility into the review of a contestant's allegations similar to the standard a judge would utilize in viewing the evidence at issue in a rule 56 motion for summary judgment [footnote omitted]. Thus, because of the peculiarities of the contested election process and the important concern that only substantive challenges be permitted discovery, the proper standard is a blend of Rules 12(b)(6) and 56.**

Id at 9-10.

Dornan is indeed instructive, but hardly supports Contestee's Motion to Dismiss. ***Dornan*** marked the first time the House had moved forward with a hearing on the merits under the ***Federal Contested Elections Act ("FCEA"), 2 U.S.C. § 381, et seq.*** Mr. Dornan lost his race against Ms. Sanchez by 984 votes, obtained a recount, and lost again by 979 votes. He timely filed his Notice of Contest:

> **In his Notice, Mr. Dornan alleged the following grounds for contesting the election: (a) that there were approximately 1,985 more ballots counted than voters voting who were accounted for in county records; (b) that illegal votes were cast in that persons cast multiple votes or voted from business addresses; (c) that absentee ballots were cast improperly; (d) that under-age voters and non-citizens voted; (e) that convicted felons may have voted; (f) that the precinct board made errors sufficient to change the result of the election; and (g) that there was an error in the vote-counting programs or summation of ballot counts.**

Id., at 4.

Ms. Sanchez moved to dismiss Dornan's Notice of Contest, and plead, in the alternative, for a more definite statement. At the hearing on her Motion, Mr. Dornan narrowed the allegations upon which his Notice was based to the voting irregularities such as the improper delivery of "absentee" ballots, double voting, and "phantom" voting, and submitted affidavits, witness statements, statistical charts, newspaper accounts and correspondence. ***Id. at 4.*** On this basis, the House moved forward with discovery "based on the substantial and credible allegations of fraud contained in Mr. Dornan's Notice." ***Id. at 5.***

Contestee Underwood completely ignores ***Dornan's*** facts and their close similarity with Contestant Oberweis' Notice of Contest, and mysteriously cites ***Ashcroft v. Iqbal, 556 U.S. 662 (2009)*** and ***Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)***, for the proposition that a "notice of contest" must not only allege sufficient facts" to state a plausible claim for relief, but "also provide sufficient evidence 'on which the [factfinder] could reasonably find' in favor of the

contestant, 'upon whom the onus of proof is imposed.'" ***Motion to Dismiss, p. 4.***

This argument is as twisted as a stale pretzel and equally unsatisfying: first, neither ***Iqbal*** nor ***Anderson*** addressed the "peculiarities of the contested election process" ***(Dornan, supra, at 9-10),*** but a federal civil rights claim and an action for defamation.

Iqbal addressed a ***Bivens***[7] action brought by a suspected Pakistani Muslim terrorist in the wake of 9/11 against certain federal officials. The Court found the plaintiff failed to plead "sufficient factual matter to show that petitioners adopted and implemented the detention policies at issue not for a neutral, investigative reason, but for the purpose of discriminating on account of race, religion, or national origin." The Court held:

> **Iqbal's pleadings do not comply with Rule 8 under Twombly. Several of his allegations—that petitioners agreed to subject him to harsh conditions as a matter of policy, solely on account of discriminatory factors and for no legitimate penological interest; that Ashcroft was that policy's "principal architect"; and that Mueller was "instrumental" in its adoption and execution—are conclusory and not entitled to be assumed true. Moreover, the factual allegations that the FBI, under Mueller, arrested and detained thousands of Arab Muslim men, and that he and Ashcroft approved the detention policy, do not plausibly suggest that petitioners purposefully discriminated on prohibited grounds. Given that the September 11 attacks were perpetrated by Arab Muslims, it is not surprising that a legitimate policy directing law enforcement to arrest and detain individuals because of their suspected link to the attacks would produce a disparate, incidental impact on Arab Muslims, even though the policy's purpose was to target neither Arabs nor Muslims. Even if the complaint's well-pleaded facts gave rise to a plausible inference that Iqbal's arrest was the result of unconstitutional discrimination, that inference alone would not entitle him to relief: His claims against petitioners rest solely on their ostensible policy of holding detainees categorized as "of high interest," but the complaint does not contain facts plausibly showing that their policy was based on discriminatory factors. Pp. 1950 – 1953.**

Id. 556 U.S. at 664, underline supplied.

[7] ***Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971).***

Successfully pleading a ***Bivens*** claim presents a more difficult hurdle than pleading a garden variety tort, given the substantive elements of such a claim, among them, namely, possessing, pre-filing, a good faith basis to state that an alleged official policy "was based on discriminatory factors". ***Iqbal's*** irrelevance to this Notice of Contest is clear: unlike the plaintiff in ***Iqbal,*** Oberweis need not allege discriminatory motivation for the myriad irregularities and/or illegalities that denied him his right to the seat Contestee Underwood purports to lawfully hold. Nor need Contestant Oberweis actually ***prove anything conclusively*** at this stage. Contestant Oberweis, to succeed at the "pleadings stage" of his Notice of Contest, and in a departure from ***F.R. Civ. P 8***[8] warranted by ***2 U.S.C. § 382(b)*** and House Reports interpreting same, has indeed alleged "with particularity the grounds upon which" he "contests the election", which is all he is required to do, and has attached Affidavits and other "credible evidence", similar to that attached by the contestant in ***Dornan, supra***, who earned his right to discovery in his contest.

In her continuing bid to deny Contestant Oberweis and the voters of ILCD-14 a full and fair right to the legitimate discovery on the allegations he has made in his Notice, Contestee Underwood also cites, ***Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986)*** for the false proposition that the "***onus*** of proof" on Contestee Underwood's Motion to Dismiss is on the Contestant to "provide sufficient evidence 'on which the [factfinder' could reasonably find' in favor of the contestant[. . .]". ***Contestee Motion, p. 4***. ***Anderson*** does not stand for this specious proposition as grounds to dismiss an election contest.

First, the Court in ***Anderson*** did not address an election contest, but rather a public figure's defamation complaint, and whether "the clear-and-convincing-evidence [of actual malice]

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[8] ***Rule 8. General Rules of Pleading: (a) Claim for Relief. A pleading that states a claim for relief must contain: (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.***

requirement must be considered by a court ruling on a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure in a case to which ***New York Times***[9] applies." ***Anderson, 477 U.S. at 242***. The Court of Appeals held that that requirement need not be considered in ruling on a Rule 56 summary judgment motion.

In ***Anderson***, the defendants below submitted an affidavit supporting their motion for summary judgment stating the author of the alleged defamation had spent a substantial amount of time researching, that his facts were obtained from a wide variety of sources, and that he believed the facts published in the articles were "truthful and accurate". Plaintiffs below opposed the motion for summary judgment, asserting that there were numerous inaccuracies in the articles and claiming that an issue of actual malice was presented by virtue of the fact that, in preparing the articles, defendant had relied on patently unreliable sources, that defendant had failed adequately to verify their information before publishing, and that one of the defendants had told another before publication that that the articles were "terrible" and "ridiculous."

The Court granted ***certiorari*** and reversed, finding:

> **Thus, in ruling on a motion for summary judgment, the judge must view the evidence presented through the prism of the substantive evidentiary burden. This conclusion is mandated by the nature of this determination. The question here is whether a jury could reasonably find either that the plaintiff proved his case by the quality and quantity of evidence required by the governing law or that he did not. Whether a jury could reasonably find for either party, however, cannot be defined except by the criteria governing what evidence would enable the jury to find for either the plaintiff or the defendant: It makes no sense to say that a jury could reasonably find for either party without some benchmark as to what standards govern its deliberations and within what boundaries its ultimate decision must fall, and these standards and boundaries are in fact provided by the applicable evidentiary standards.**
>
> * * *
>
> **In sum, we conclude that the determination of whether a given factual dispute requires submission to a jury must be guided by the substantive evidentiary standards that apply to the case. This is true at both the directed verdict and**

[9] *New York Times Co. v. Sullivan, 376 U.S. 254 (1964).*

summary judgment stages. Consequently, where the New York Times "clear and convincing" evidence requirement applies, the trial judge's summary judgment inquiry as to whether a genuine issue exists will be whether the evidence presented is such that a jury applying that evidentiary standard could reasonably find for either the plaintiff or the defendant. Thus, where the factual dispute concerns actual malice, clearly a material issue in a New York Times case, the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not.

Id., 477 U.S. at 255-256, underline supplied.

One scours ***FCEA*** for the "substantive evidentiary standard" that applies to contests under the Act and finds only this:

§385. Default of contestee: The failure of contestee to answer the notice of contest or to otherwise defend as provided by this chapter shall not be deemed an admission of the truth of the averments in the notice of contest. Notwithstanding such failure, the burden is upon contestant to prove that the election results entitle him to contestee's seat.

2 U.S.C. §385, underline supplied.

Thus, notwithstanding the holding in ***Anderson, supra***, the only burden, and the ultimate burden, imposed on Contestant Oberweis is this: "to prove that the election results entitle him to contestee's seat" ***Id.*** and merely by "a fair preponderance of the evidence." ***2 Deschler's Precedents ch. 9, § 35.2.*** As the drafters of ***FCEA*** have placed no additional procedural or substantive burdens on Contestant, neither should this Committee.

Therefore, Contestee Underwood's attempt to impose an "exacting"[10] pleading/proof burden on Contestant Oberweis by demanding he adhere to the plaintiff's "analogous" ***pleading requirements*** under ***F.R.Civ. P. 8*** in a ***Bivens*** action, or to the "analogous" ***proof requirements*** of a defamed, plaintiff public figure opposing a ***F.R.Civ. P. 56*** motion under the ***New York Times v.***

[10] ***Contestee Underwood's Motion, p. 5.***

Sullivan standard, to arrive at such an "exacting standard" that "most House contested election cases"[11] do not survive (including, one assumes, Contestant Oberweis'), finds no support in the plain reading of the ***FCEA***, its legislative history, this Committee's earlier rulings, or the substantially less onerous standard urged by Contestee Underwood's counsel in another proceeding before this House. ***See, p. 2-3, supra.***

Arguing the applicability of this mythical standard to ensure "that the House does not undertake exhaustive hearings and investigations" that are "unnecessary and unwarranted" cynically elevates the taxpayers' purse over ensuring that "elections are decided only by legal votes" and speaks more to Contestee Underwood's effort to prevent "illegal and improper acts to be publicized and deterred" ***(Dornan, supra, at 11-12)***, than any alleged weakness in the merits of Contestant Oberweis' Notice of Contest.

To be sure: Contestant Oberweis does not shy away from the fact that the certified election results produced by the Illinois State Board of Elections carries a "presumption of regularity"; nor does he deny his burden of proof to persuade the House to reject those results. ***Tunno v. Veysey, H. Rept. 92-626.*** The Committee examined this very burden in ***Dornan, supra***, as follows:

> **The Republicans consistently rejected the Democratic standard which shifted the burden of proof to the contestant, even before the contestant had an opportunity for discovery. They remarked in Paul v. Gammage:**
>
> **The panel concluded that the mere filing of a motion to dismiss casts upon the respondent the burden of proving his case at the time the motion is heard.**
>
> **Such a unique shifting of the burden not only reverses completely the established burden cast upon the moving party in the analogous situation of a motion for summary judgment, but is particularly inappropriate under our contested election statute[footnote omitted].**

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[11] ***Contestee Underwood's Motion, p. 5***

The Committee then stated why the burden-shifting was inappropriate on a Motion to Dismiss, thusly:

> **The contestant should be allowed the opportunity to have access to the material he needs to present his case either through action of the courts or this Committee pursuant to the Federal Contested Election Act. To do otherwise renders the Procedures of the Federal Contested Election Act a mockery and establishes a veritable 'Catch 22' precedent [footnote omitted].**

Dornan, supra, at 10-11.

The Committee admitted there were times when the allegations in a notice of contest were "either vague, improbable on their face, or insufficient even if true to place the election result in doubt" (***Id.***), and noted Republicans supported dismissals in those cases. However, where there were "specific ballot errors in an amount sufficient to change the result of the election" which were "affirmatively alleged by the contestant", granting a contestee's motion to dismiss was unsupportable:

> **In conclusion, the standard for setting a hearing on the merits thus permitting discovery under the FCEA applied in this case is consistent with the language of the statute, the FCEA's legislative history, analogy to court practice, the House's precedents, and common sense. Just as importantly, it will bolster the integrity of our electoral system by allowing illegal and improper acts to be publicized and deterred, and by ensuring that elections are decided only by legal votes.**

Dornan, supra, at 11-12.

The "integrity of our electoral system" in 2020 was never more highly debated, especially given the unique circumstances presented by each State's response to COVID-19. In Illinois, "ensuring that elections are decided only by legal votes" was important even before 1960[12], and is increasingly "top-of-mind" with Illinois voters, given the anticipated and substantially disruptive

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[12] ***See, e.g., Election Fraud Chicago Style: Illinois' decades old notoriety for election corruption is legendary, at: www.salon.com/2016/02/14/ election_fraud_chicago_style_illinois_decades_old_ notoriety_for_election_corruption_is_legendary/. See, also, "Voter Fraud Charges Filed Against 5 in DuPage County" March 9, 2021, at: https://patch.com/illinois/wheaton/voter-fraud-charges-filed-against-5-dupage-county***

6-month delay in obtaining detailed 2020 census data in late 2021, data crucial to determine Illinois' redrawn legislative boundaries in light of population changes, and the resulting impact that delay will have on the primary and general elections in 2022, when Illinois voters will be casting votes for the constitutional offices of Governor, Attorney General and Secretary of State, in addition to other state and federal offices, including ILCD-14, or its replacement if Illinois loses a congressional district due to population shifts.

However, according to one recent poll, emblematic of many others, only 65% of all Americans believed the 2020 elections were "free and fair".[13] This Committee can play its part to remedy that, not by "erring" on the side of Contestant or Contestee, but acting to "bolster the integrity of our electoral system by allowing illegal and improper acts to be publicized and deterred" (***Dornan, supra, at 11-12)***, and allowing the full, transparent access to discovery to which Contestant Oberweis is entitled in order to sustain his burden in this Contest. A dismissal at this time is neither warranted by the facts, the legal precedents, the precedents of this House nor the current ***zeitgeist*** and cynical distrust of fairness of elections in the United States today.[14]

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[13] ***See, How Voters' Trust in Elections Shifted in Response to Biden's Victory, https://morningconsult.com/form/tracking-voter-trust-in-elections/. According to this poll, only 33% of Republicans and 53% of Independents trust the United States election system "some" or "a lot" as of late January 2021. And see, e.g.:
https://www.politico.com/news/2020/11/09/republicans-free-fair-elections-435488;
https://www.npr.org/2020/12/09/944385798/poll-just-a-quarter-of-republicans-accept-election-outcome;
https://electionupdates.caltech.edu/2020/11/23/voter-confidence-and-perceptions-of-election-fraud-in-the-2020-presidential-election/***

[14] ***Indeed, this Congress, in introducing H.R. 1, "For the People Act 2021" on January 4, 2021, the very day Contestant Oberweis filed his Notice of Contest, appears concerned with many of the troubling inconsistencies, irregularities and avenues for fraud attendant with elections in the United States. https://www.congress.gov/bill/117th-congress/house-bill/1/text#toc-H0C72CA940E684A0986583236950CC71E. Contestant Oberweis makes no comment regarding the propriety or constitutionality of some or all parts of H.R. 1.***

III. CONTESTANT OBERWEIS HAS ALLEGED WITH PARTICULARITY FACTS, SUBSTANTIATED BY CREDIBLE EVIDENCE, WHICH, IF PROVED, WOULD CHANGE THE ELECTION RESULTS AND CONTESTEE UNDERWOOD AS COMPLETELY FAILED TO OFFER COUNTERVAILING EVIDENCE TO THE CONTRARY

A. A Motion to Dismiss is Not a Trial on the Merits.

The Motion to Dismiss "device" in the ***FCEA*** was not meant to result "in a trial on the merits" but, modeled after ***F.R. Civ. P. 12 (b)***, was meant to provide a "procedural framework for the prosecution, defense and disposition of contested-election cases." ***Anderson v. Rose, H. Rep.104-852 (1996).*** Indeed, the legislative history of ***FCEA***, cited in scores of contest proceedings, is clear: providing a contestee the opportunity to demur by filing a motion on the grounds that the notice of contest failed "to state grounds sufficient to change the result of an election" ***FCEA §383 (b)(3)*** was the ***sole reason for*** the ***FCEA's*** existence which was "strictly limited to prescribing a procedural framework" and "patterned upon the Federal rules of civil procedure [sic]". ***Id., at 9.***

Added to this framework, however, was the "credibility test" that allowed House Committees to also weigh evidence "confirming or refuting allegations of election errors or fraud, if such evidence is available":

> **The standard also recognizes, however, that the proof of election irregularities or fraud may not be obtainable by a contestant who has not had access to discovery. Nor does the test penalize contestants who cannot fully support their credible allegations because the proof of their claims is in the hands or minds of those who have committed the errors or violations at issue.**

Id., at 7.

Indeed, in the instant case, Contestant Oberweis, who timely filed seven petitions for discovery recounts in the seven counties comprising ILCD-14 to investigate election irregularities and/or fraud, was only able to complete those recounts in a handful of precincts in four of the counties, the three other county clerks ignoring his request. He should not be penalized because

the proof of his claims are "in the hands or minds of those who have committed the errors or violations at issue" or in the hands or minds of Illinois elections officials who, at the time of the filing of his Notice of Contest, had not accurately transmitted precinct by precinct vote totals, categorized by ballot-type and other characteristics to enable Contestant Oberweis to submit additional, credible evidence of his claims. Recourse to the subpoena powers and other discovery provisions of the ***FCEA*** is Contestant Oberweis' legitimate right in order to carry his ultimate burden of proof.

> **In judging whether a particular allegation is credible, a Task Force should consider not only the contestant's view and any supporting evidence, but any countervailing arguments and evidence available from the contestee or other sources. Thus the standard balances the need of the House to allow for meaningful discovery while recognizing that mere notice pleading is insufficient in the face of credible contrary evidence.**

Anderson, Id., at 7.

Contestee Underwood has utterly failed to submit "countervailing evidence" or "credible contrary evidence" in her bid to dismiss this Notice of Contest, other than alleged affidavits purportedly submitted to bolster her argument that service on her was fatally defective, addressed, and utterly rebuffed, in ***part I. A., supra***. Instead, Contestee Underwood has misleadingly chosen to argue that the pleading requirements in ***Bivens*** and the proof standards in ***New York Times v. Sullivan***, combined, are Contestant's burden ***at this stage***, an impossible and untenable position, as discussed in ***part II, supra.***

B. Contestant Oberweis Submitted Credible Evidence That Voters Not Residing in ILCD-14 on Election Day Illegally Voted In ILCD-14 Which Alone, or Combined With Other Irregularities, Would Change The Election Results

Contestant Oberweis alleged that 4,903 voters illegally cast ballots either by early voting, or voting-by-mail ("early voted ballots"), from addresses in ILCD-14 at which they no longer lived

and attached the ***Affidavit of Thomas J. Mannix***[15], giving credible testimony how he arrived at the number of illegally cast ballots based on residency requirements[16] ***Contestant Oberweis' Notice, p. 8 and Exhibit 1***[17]. Based on the number of illegally cast early voted ballots that were actually returned, (***i.e.*** counted in the vote total, that is, ***4,903)***, Contestant Oberweis alleged that because Contestee Underwood allegedly won approximately 60% of the early voted ballots District-wide, that her total early voted ballot total should be proportionately reduced, and Contestant Oberweis' early voted ballot total be proportionately reduced, too, as discussed, below.

Applying proportional reduction to the early voted ballots illegally cast by persons no longer residing in ILCD-14 results in chipping away approximately 20% of Contestee Underwood's alleged lead, from 5,374 to 4,393.4 out of 401,052 votes cast.

Contestant Oberweis should be allowed to prove what this credible evidence suggests: that the thousands of voters who no longer lived in the ILCD-14 when they cast their ballots were, in fact, not entitled to vote from ILCD-14. Yet, Contestee Underwood claims ***his failure to provide conclusive proof in his Notice,*** that is, his failure to verify "such crucial details" or nail down whether each, none, or some other number of these thousands of voters had "multiple mailing addresses or even multiple domiciles", and determine exactly which one was their "permanent abode", ***all within the thirty days between the time the Illinois election authority certified the***

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[15] ***Contestee Underwood deems the Mannix Affidavit and Zahm Affidavit submitted by Contestant Oberweis in support of his Notice of Contest as "self-serving" and thus "suffering from a distinct lack of credibility". Contestee Underwood offers no countervailing testimony, whether "self-serving" or not, but offers only references to governmental and other websites, charts, and legal analysis overkill in an attempt to cover up the very simple fact that she has not offered a scintilla of countervailing, competent evidence. See, e.g. Motion to Dismiss, pp.38-42. Both the Mannix and Zahm Affidavits are unopposed and credible, whether or not Contestee Underwood approves of their content, and all the legal argument in Contestee's Motion to Dismiss will not change that. Contestant Oberweis has more than satisfied the FCEA's pleading standard.***

[16] ***The tabulation about which Contestee Underwood appears confused, Contestee Motion, p. 13, fn 4, is this: 5,373 votes-by-mail or early vote discovered. 2,299 vote-by-mail ballots were requested, but only 1834 were returned. Vote-by-mail ballots: 1834, plus early votes of 2,838, plus 85 overseas, 5 nursing home, 4 military, 128 "grace period" and 9 "unknown", equals 4,903 ballots cast by voters not actually residing at any address in ILCD-14.***

[17] ***According to published reports March 9, 2021, five people face felony charges in DuPage County after being accused of trying to cast a ballot for someone else or using a false address in the 2020 general election. See, footnote 12, infra.***

election results on December 4, 2020 and the filing of his Notice of Contest--- should nevertheless result in the outright dismissal of his Notice.

The DuPage County State's Attorney, with its substantial legal and investigatory resources, only filed its first felony charges against people trying to cast a ballot for someone else, or using a false address in the 2020 general election on March 9, 2021[18]. Contestant Oberweis' recount team is good, but not that good: Contestee Underwood's relentless insistence that he, nevertheless, should have provided "***conclusive proof***" of these matters on January 4, 2021, including, presumably, conclusive proof of what the DuPage County State's Attorney has only recently charged, should be seen for what it is: preposterous.

Simulating a one-sided trial on the merits, ***but producing no countervailing evidence or other contrary, competent testimony***, Contestee Underwood again deploys her "sound and fury, signifying nothing" campaign and argues the merits and demerits of the National Change of Address Act ("NCOA") database and Contestant Oberweis' proffer: that Contestant Oberweis has not provided information regarding how the names were culled, that the affidavits of his paid campaign staff are "self-serving", how the absence of unique identifiers provides "no safeguard against false matches", argues that NCOA is "notoriously unreliable" according to the "U.S. Postal Service", and that Contestant Oberweis should have, but did not, prove "***why*** a voter utilized" the service. In short, Contestee Underwood demands Contestant Oberweis prove his case, on the merits, in his Notice with the same ***quantum*** of proof necessary to win a ***F. R. Civ. P. 56*** Motion, while she's entitled to pick at it from the "cheap seats" on the sidelines, but produce no countervailing evidence nor support for the hearsay and speculation running rife through her argument. ***See, generally, Motion to Dismiss, pp.37-39***. This might make good theater, but it is

[18] ***See footnote 12, infra.***

not the standard by which this Committee should judge the Notice.

C. Contestant Oberweis Submitted Credible Evidence of a Substantial Over-Vote in DuPage County Which, Combined with Other Irregularities or Fraud, Would Change the Election Results

Based on an official canvas and list of registered voters in DuPage County, a candidate for DuPage County Auditor filed a ***Verified Petition for Election Contest*** which Contestant Oberweis attached to his Notice of Contest ***Contestant Oberweis' Notice, Exhibit 4***. That verified pleading, incorporated in Contestant Oberweis' Notice, alleged that ***1,626 more ballots were cast in DuPage County than voters recorded by the County Clerk*** as actually having voted in the November 3, 2020 General Election. Contestee Underwood's response to what is, at best, an "irregularity" or at worst "fraud" is this: "[t]he burden is on Mr. Oberweis. . . to provide an explanation" why 1,626 more cast ballots than voters at the polls is irregular or fraudulent! ***Motion to Dismiss, p. 27***. Incredibly, in Contestee Underwood's world, over 1,626 more ballots cast than voters casting them is of no moment, indicating neither "irregularity" nor "fraud" but, perhaps, merely "business as usual" in her Illinois. In fact, the illegality of those double votes speaks for itself, whether or not they were cast with actual intent to defraud.[19]

In addition, the ***motive(s)*** behind the casting of 1,626 more ballots than voters is simply not an element Contestant Oberweis need prove in any event as his burden is merely "to prove that the election results entitle him to contestee's seat"[20] and not to prove the intent behind the casting of any or all these illegal ballots.

According to the DuPage County election authority, Contestee Underwood received 5,366 or 62.27% of the DuPage County vote and Contestant Oberweis received 3,236 or 37.55% of the

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[19] ***House precedents are clear that it is not Contestant Oberweis' burden to prove his claim at this stage, based, as it is, on what is in the "hands or minds of those who have committed the errors or violations at issue". Anderson, supra, at 7. This is especially true in light of Contestee Underwood's failure to submit any countervailing evidence.***

[20] ***2 U.S.C. §385***

DuPage county vote.[21] Therefore, the 1,626 illegally cast over-vote should be proportionately reduced: Contestee Underwood's total should be reduced by 1,012.51 and Contestant Oberweis' vote total reduced by 610.56. The net result is an additional 401.95 votes for Contestant Oberweis, bringing the purported margin of victory down from the original 5,374 to 4,393.40 (***Part B, above***) to 3,991.40, with the balance of votes closing that gap awarded to him as set forth, below.

D. Contestant Oberweis Submitted Credible Evidence of Illegal Vote-By-Mail Votes, Unconstitutionally Diluting Legitimate Votes Which Alone, or Combined With Other Irregularities or Fraud, Would Change The Election Results

Contestee Underwood claims Contestant Oberweis' argument that certain election authorities violated the Equal Protection Clause when: (1) county clerks counted vote-by-mail ballots which were uninitialed by election judges in the official vote totals, in contravention of Illinois statute; and (2) county clerks mailed more vote-by-mail applications than the law permitted to some voters but not all voters, is "fatally flawed" ***Motion to Dismiss, p. 9.*** This is untrue.

1. Uninitialed Ballots, Rejected in Some Counties, but Not in All Counties Create an Unconstitutional Standard and Effect, and Should Not Be Counted.

The District Court in ***Moore v. Circosta, et al., 2020WL 6063332 (M.D. N.C. 2020),*** relying on ***Bush v. Gore, 531 U.S. 98 at 104-105 (2000)*** and ***Reynolds v. Sims and Reynolds v. Sims, 377 U.S. 533 at 555 (1964)***, noted: "A change in election rules that results in disparate treatment shifts from constitutional to unconstitutional when these rules are also arbitrary. . .This [] aligns with the Supreme Court's holding in ***Reynolds*** and ***Bush*** that ***the State must ensure equal treatment of voters both at the time it grants citizens the right to vote and throughout the election***." ***Moore, supra, at ¶ 36, emphasis supplied.***

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[21] ***See: https://www.dupageresults.com/IL/DuPage/106122/web.264614/#/summary***

Gray v. Sanders, 372 U.S. 368 (1963), is particularly instructive here: "The concept of 'we the people' under the Constitution visualizes ***no preferred class of voters*** but equality among those who meet the basic qualifications. ***Id., at 379-380, underline supplied.*** Specifically,

> **Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment.**

Id., underline supplied.

The ***Moore*** Court further analyzed ***Gray*** in light of North Carolina's enactment of rules to combat fraud in the "absentee ballot" context:

> **The requirement that a state "grant [ ] the right to vote on equal terms," Bush, 531 U.S. at 104,121 S. Ct. 525, includes protecting the public "from the diluting effect of illegal ballots," Gray, 372 U.S. at 380. . .To fulfill this requirement, a state legislature must define the manner in which voting should occur and the minimum requirements for a valid, qualifying ballot.**
>
> ***
>
> **A state cannot uphold its obligation to ensure equal treatment of all voters at every stage of the election if another body...is permitted to contravene the duly enacted laws of the general Assembly and to permit ballots to be counted that do not satisfy the fixed rules or procedures the state legislature has deemed necessary to prevent illegal voting.**
>
> ***
>
> **Thus, following this precedent, and the ordinary definition of the word "arbitrary" this court finds that [the North Carolina State Board of Elections] engages in arbitrary behavior when it acts in ways that contravene the fixed rules or procedures the state legislature has established for voting and that fundamentally alter the definition of a validly voted ballot, creating a "preferred class[es] of voters." Gray 372 U.S. at 380, 83 S. Ct. 801.**

Id., Moore at ¶37, underline added.

Like the "other body" in ***Moore, supra***, the Kane County Clerk, decided to "act in ways that contravene the fixed rules or procedures the state legislature has established for voting." More specifically, the Kane County Clerk ". . . creat[ed] a 'preferred class[ ] of voters" (***Moore, supra***,

quoting ***Gray***) among the other vote-by-mail voters whose counties comprise ILCD-14, (***i.e.***, those "in the same geographical unit."). ***Gray, supra***. This unconstitutional "change in the rules" expanded access to the ballot box "throughout the election" for a "preferred class of voters" (***i.e.***, Kane County voters, whose uninitialed vote-by-mail ballots ***were not*** rejected), ***but not others*** (***i.e.***, the other counties' voters, whose uninitialed vote-by-mail ballots ***were*** rejected[22]) based merely upon in which county the voter resided in the ILCD-14 "geographical unit."

Nevertheless, Contestee Underwood argues the Kane County Clerk's wholesale disregard of Illinois law, his failure to reject all uninitialed vote-by-mail ballots, and the resultant "patch-work quilt" of arbitrariness in the counting of vote-by-mail ballots is of no moment, because where the voter's intent can be gathered, ***all votes*** should be counted. ***Motion to Dismiss, pp. 10-11***.

This is not the law: ***only lawful votes count***. Like the legislature in North Carolina, the Illinois legislature "define[d] the manner in which voting should occur and the minimum requirements for a valid, qualifying ballot" (***Moore, supra at ¶ 37***) and, when it passed its COVID-19 provisions, could have changed, ***but did not change***, the requirement that a ballot be initialed to be counted. Thus, the Kane County Clerk's failure to reject illegal, uninitialed vote-by-mail ballots from the vote count created two unconstitutional effects: they created an ***unconstitutional standard*** for the acceptance or rejection of vote-by-mail votes in ILCD-14, making their validity wholly dependent upon the ***county of residence*** of the voter within the seven counties comprising ILCD-14 and, second, by illegally counting uninitialed, vote-by-mail votes, the Kane County clerk ***impermissibly diluted*** the legal votes of vote-by-mail voters in the other counties comprising ILCD-14, as further discussed below.

Even if, for the sake of argument only, Contestee Underwood's assertion that Illinois law

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[22] ***Other counties in ILCD-14 did not count uninitialed vote-by-mail ballots and, indeed, allegedly calibrate their voting tabulation machines to automatically reject uninitialed ballots (See, Notice of Contest, Zahm Affidavit, par. 9).***

should be interpreted to not require initials on "absentee" or "vote-by-mail" ballots were appropriate[23], it is undisputed that some clerks in ILCD-14 counted uninitialed ballots, and some did not[24], regardless of whether they acted within the law or not, resulting in a completely impermissible, unconstitutional result, regardless of Contestee Underwood's or Contestant Oberweis' interpretation of Illinois law.

2. Vote-by-Mail Ballot Opportunities Were Impermissibly Enhanced for Some Voters, But Not for Other Voters, Based On Arbitrary Standards, and Vote Totals Were Unconstitutionally Skewed as a Result.

In ***Reynolds v. Sims, 377 U.S. 533 (1964)***, the Court noted:

> **Undeniably the Constitution of the United States protects the right of all qualified citizens to vote, in state as well as in federal elections. A consistent line of decisions by this Court in cases involving attempts to deny or restrict the right of suffrage has made this indelibly clear. [Citations omitted] The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.**

Id., 377 U.S. at 555 [underline supplied].

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[23] ***Contestee Underwood's assertion that Illinois law, specifically, the Illinois Supreme Court, in a very fact specific case over 50 years ago, does not require that vote-by-mail ballots be initialed in order to be counted, grossly misstates the law. The relevant portion of the statute, amended by the Illinois Legislature on January 1, 2019, and unchanged by the Illinois Legislature when it revised certain parts of the Elections Code in response to the COVID-19 situation, states: 10 ILCS 5/24a-10(1)(b): "The judges of election shall then examine all ballot cards and ballot card envelopes which are in the ballot box to determine whether the ballot cards and ballot card envelopes bear the initials of a precinct judge of election. If any ballot card or ballot card envelope is not initialed, it shall be marked on the back "Defective," initialed as to such label by all judges immediately under such word "Defective," and not counted, but placed in the envelope provided for that purpose labeled "Defective Ballots Envelope." [underline supplied]. Nevertheless, Contestee Underwood cites a 50-year old case and maintains an exception was carved out by the Illinois Supreme Court for vote-by-mail ballots (Contestee Motion to Dismiss, pp.16-17, citing Craig v. Peterson, 39 Ill. 2d 191, 233 N.E. 2d 345 (1968), a fact specific case involving a mere 10 "absentee" ballots, where only absentee ballots were "paper" and "where no question of fraud or tampering [was] presented, and it [was] stipulated that the ballots in question [were] in fact the same ballots delivered by the county clerk's office." 39 Ill. 2d at 194). Contestee Underwood utterly ignores more recent Illinois Supreme Court precedent affirming that it is the contestee's (i.e. Contestee Underwood here) burden to provide clear and convincing evidence that the uninitialed, vote-by-mail ballots she would have counted "can be identified and distinguished from in-precinct ballots" and "the initialing requirement does not contribute to the integrity of the election process." There is simply no way for Contestee here to prove by any standard, let alone with "clear and convincing proof" that the initialing requirement would not have contributed to the integrity of the election process". See, Notice of Contest, p. 9, fn. 4. Finally, the fact that the Illinois Legislature has not repealed or altered, in any way, the requirement that all ballots be initialed by an election judge to be "counted" despite having the opportunity to do so as recently as 2019 and 2020 makes Contestee Underwood's argument all the more infirm.***

[24] ***Contestant Oberweis has been illegally denied his requested discovery recount in two of the counties and is unaware how they tabulated uninitialed vote-by-mail ballots, something within the minds of those respective clerks and which he has no way of knowing except for the subpoena power of this proceeding.***

See, also, Mr. Justice Douglas' dissent in ***South v. Peters, 339 U.S. 276 (1950), footnoted in Reynolds, supra***:

> **There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted. United States v. Classic, supra; Ex parte Yarborough, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274. It also includes the right to have the vote counted at full value without dilution or discount. United States v. Saylor, 322 U.S. 385, 64 S.Ct. 1101, 88 L.Ed. 1341. That federally protected right suffers substantial dilution in *this case*. The favored group has full voting strength. The groups not in favor have their votes discounted.**

Id., 339 U.S. at 279 [underline supplied].

The "concept of political equality in the voting booth" extends to ***all phases of state elections*** [ ]" ***Gray v. Sanders, 372 U.S. 368, 380 (1963) [emphasis supplied].*** "'[T]he right to have ones vote counted' has the same dignity as 'the right to put a ballot in a box.' It can be protected from the diluting effect of illegal ballots [citations]. And these rights must be recognized in any preliminary election that in fact determines the true weight a vote will have." ***Gray, supra at 380***. (***See, also, Moore, supra at ¶37*** :[t]he requirement that a state "grant [ ] the right to vote on equal terms," Bush, 531 U.S. at 104,121 S. Ct. 525, includes protecting the public "from the diluting effect of illegal ballots," ***Gray, 372 U.S. at 380"***).

With regard to the profligate, uneven and arbitrary distribution of vote-by-mail ballot applications to some voters, but not all voters, Contestee Underwood argues that actions of election authorities which seek to "expand" the franchise "without otherwise imposing differing standards on whose votes are ultimately counted" are "not cognizable under the Equal Protection Clause" (***Motion to Dismiss, pp. 9-10, underline supplied***). Her conclusion ignores the law, the facts alleged in the Notice of Contest, and the House's duty to "bolster the integrity of our electoral system" by "ensuring that elections are decided only by legal votes. ***Dornan, supra, pp. 11-12.***

But ***there were "differing standards"*** regarding "whose votes [would be] ultimately counted": Three months before the November 3, 2020 election the Illinois legislature[25] directed county clerks to send unsolicited vote-by-mail applications, ***but only to those voters who had voted in certain cherry-picked elections with record-breaking Democrat turn-out*** and to ***all*** addresses that voting class had on file. "Whose votes" would "ultimately be counted" was, therefore, based on a scheme expanding ease of voting access to Democrat-weighted lists -- they didn't even have to request a ballot application in order to have one sent to them, at multiple addresses! Clearly, a disproportionate share of Democrat, vote-by-mail votes would be cast based solely on the fact that a disproportionate share of Democrats would receive unsolicited, vote-by-mail ballot applications. Elections with record-breaking ***Republican*** turn-out, like the 2016 U.S. Presidential election, were not included in this "franchise expansion" scheme. In this case, "politics as usual" impermissibly inserted itself into the elections process, resulting in an unconstitutional skewing of ultimate elections returns, whether the Democrat-controlled legislature "intended" it or not.

Second, to add insult to injury, individual county clerks in ILCD-14 arbitrarily ***ignored the law*** by mailing out additional vote-by-mail applications to other registered voter lists in their counties. ***Notice of Contest, pp. 11-13***. What Contestee Underwood merrily refers to as "expanding the franchise" (***Motion to Dismiss, pp. 9-10),*** is, in fact, ***illegally creating differing standards on the "expansion" of the franchise*** based on the registered voter's voting record, arbitrary changes of addresses, or the whim of a county clerk in ILCD-14.

No one seriously disputes that "expanding the franchise" to qualified electors is a laudatory idea, ***but when differing standards are created that make it easier for some and more difficult***

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[25] ***The Democrat-controlled, super-majority Illinois legislature cobbled extraordinary new provisions into the Election Code, less than three months before voting began in the November 3, 2020 General Election, expanding the opportunity to vote-by-mail, which were ostensibly based on preventing the spread of COVID-19 possibly attendant with "in-person" voting during the early vote and election day period.***

for others to enjoy that right based merely on their voting record or some other impermissible, arbitrary criteria, Equal Protection concerns are paramount.

As stated in the Notice of Contest, if the Kane County vote-by-mail ballots are discounted, and vote totals proportionately reduced, even without the votes discussed in ***parts 3 B and 3 C.***, above, Contestant Oberweis is revealed as the true winner of ILCD-14 ***by over 9,300 votes on this basis alone.***

Moreover, because the vote-by-mail program was administered unconstitutionally disparately throughout the various counties comprising ILCD-14, it would be appropriate to not simply proportionally reduce the entire vote-by-mail vote balloting in Kane County, but would be appropriate to simply discount the entire vote-by-mail vote throughout ILCD-14 because it was unconstitutionally, materially, disparately administered, resulting in the creation of unconstitutional classes of voters, giving some greater voting power than others based simply on: (1) their voting record as Democrats; (2) where they lived in the "geographical unit"; and/or (3) whether their Clerk rejected or accepted their uninitialed ballot.

If the House were to reject all vote-by-mail ballots, District-wide, then it is more likely than not, even at this stage of the proceedings[26], that the results would change the outcome of the election.

Contestant Oberweis is well aware of the House's history not to penalize voters for "errors and mistakes" caused by election officials and its preference for counting votes "rather than

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[26] ***Of the seven election authorities comprising ILCD-14, only four—Kane, Lake, Will and Kendall-- have called out their vote-by-mail vote totals in either an official or unofficial canvass of the November 3, 2020, ILCD-14 election, primarily on their official websites. The failure of DuPage, DeKalb and McHenry to make public or accessible those vote-by-mail totals for the race makes it impossible at this time, to nail down precisely how many vote-by-mail ballots were cast, District-wide, per county, and gauge the impact of rejecting them all with a proportional reduction based on the percentage of the ILCD-14 total vote in any given county. However, even without being able to calculate the impact of the DuPage, DeKalb and McHenry vote-by-mail vote, one can estimate Contestant's likelihood of success if the vote-by-mail vote in ILCD-14 is rejected: total vote in DuPage, DeKalb and McHenry is only 35% of the total vote in ILCD-14. 65% of the vote is in Kane, Lake, Will and Kendall where Contestee leads with 65% of the vote-by-mail vote. Contestee's vote-by-mail vote in DuPage, DeKalb and McHenry would have to drop to a fraction of her current 65% vote-by-mail share for her to retain her seat if all vote-by-mail ballots are rejected.***

denying the franchise to any individual due to malfeasance of election officials." ***McCloskey and McIntyre, H. Rept. 99-58 at 24 (1985).*** He is also well aware that the House is not "legally bound to follow state law" in an elections contest and is, in some cases, "bound by justice and equity to deviate from it." ***Id. at 23.***

However, the House, indeed, the entire legislative branch and the executive branch of our government, ***is bound*** to follow the Constitution. There is a tension between ignoring state legislative so-called "technicalities" to prevent very "non-technical" elections fraud or malfeasance, and the Constitutional mandate against creating favored voting classes within the geographical unit, as was done here in ILCD-14. That this is a justiciable question, and whether Contestant Oberweis pursues a judicial remedy, remains to be seen. ***See, e.g. Powell v. McCormack, 395 U.S. 486 (1969).***

Contestee Underwood scoffs at Illinois' fraud preventative, ballot initialing requirement as mere "state law technicalities" hardly worthy of discussion, and argues the only solution for ballots cast in contravention of state law, regardless of other circumstances that undercut their legitimacy, or ballots cast according to the crazy-quilt pattern created by different standards among the seven county clerks in ILCD-14 is "levelling up", i.e. "***counting all votes***" cast, not proportional reduction and, one assumes, not the rejection of all vote-by-mail ballots. ***Motion to Dismiss, p. 10, emphasis in the original.*** Had the Democrat super-majority in the Illinois house fairly and even-handedly expanded access to the franchise to all voters, not just those voting in record Democrat turn-out years, and had all county clerks sent out vote-by-mail applications to the same universe of voters, and had all county clerks followed one set of standards—either ***rejecting*** all uninitialed vote-by-mail ballots or ***accepting*** all uninitialed vote-by-mail ballots (under circumstances that ensured their legitimacy), her argument might be marginally worth a second thought. As it is, voting in ILCD-14 created unconstitutional disparities in the "geographical unit"

of ILCD-14 that violated the Equal Protection Clause of the Fourteenth Amendment. Obviously, ignoring that and "levelling up" simply compounds the problem and is not the solution.

Finally, the House has the authority "to arrive at its own conclusions on any particular issue affecting the validity of a ballot or return." ***Anderson, H. R. Rep. No. 104-852.*** This includes, and has always included, the House's ability not just to accept, but ***to reject ballots. See, e.g. Fox v. Higgins, H. Rep. No. 894 (1934)***. The question remains whether the House will reject ballots cast pursuant to a patently unconstitutional voting scheme, and/or reject those vote-by-mail ballots simply illegal on their face, in order to prevent the unconstitutional dilution of legal votes, or not.

E. The Available remedies include Proportional Reduction, Rejecting All Vote-By-Mail Ballots, a Recount or Conducting A New, Fair Election

If, after discovery, "a contestant is eventually successful in establishing convincing evidence of irregularities or fraud, the Committee could order remedies, including proportional deduction of improper ballots [fn], exclusion of contaminated precincts [fn], or ordering a new election [fn]" ***Anderson, supra at 7-8.*** Specifically:

> **The House's precedents allow for deletion of improper ballots by proportional deduction . . . where it is impossible to determine for which candidate they were counted." This requires "reducing the total vote count in affected precincts in proportion to the percentage of votes received by each candidate in each precinct to eliminate the improper ballots from the vote count [Citations omitted]**

Id., footnote 15.

The House could also reject entire precincts whose ballots were improperly cast, in this case, reject all uninitialed ballots across ILCD-14, to preserve the integrity of the election and restore confidence in the electorate that "rules are rules" and apply to Democrats and Republicans

alike[27].

Notwithstanding the clear precedent of the House, Contestee Underwood argues the only "remedy" for uninitialed, ballots, which are illegal under Illinois law, is to "count all votes", even illegal votes, thus eviscerating over 100 years of House precedent on proportional deduction. "Counting all votes" by definition means ***counting all legal votes*** -- an illegally cast ballot is a legal nullity, a piece of paper with some printing and a few dots, and not anything for which Americans have traditionally fought and died.

Furthermore, Contestee Underwood argues that, at most, only 3,267 votes are "implicated" by improprieties, 2,108 short of the margin of victory. ***Motion to Dismiss, p. 35***. She bizarrely opposes further investigation of facts leading to an appropriate proportional reduction with the oxymoron that Contestant Oberweis has urged a "heavy-handed proportional reduction": a "proportional" reduction is neither "heavy", nor "light" but "proportional", and freely embraced by the precedents of this House as an appropriate remedy which "allow[s] for deletion of improper ballots by proportional deduction":

> **This 'general rule in the House for deduction of illegal votes where it is impossible to determine for which candidate they were counted' requires reducing the total vote count in affected precincts in proportion to the percentage of votes received by each candidate in each precinct to eliminate the improper ballots from the vote count.'"**

Dornan, supra, fn 20.

In addition to proportional deduction, the House has the authority to conduct a "recount" under its "general investigatory power." To receive a recount, the contestant must submit evidence sufficient to raise "at least a presumption of irregularity" and demonstrate that a recount would

[27] ***"Absentee", or vote-by-mail ballots with invalid envelopes and applications should also be rejected when "it cannot be determined to which ballots the invalid material relates" as should any ballot "when it cannot be ascertained for which candidate the illegal votes were cast [.]" 2 Deschler's Precedents ch.9, §§ 37.3 – 37.5.***

change the outcome of the election. ***2 Deschler's Precedent ch. 8, § 8.5, ch. 9 §40, 1078-1079.*** Finally, the House also may reject the certified returns, declare the seat vacant and recommend a new election be held. ***Tunno v. Veysey, H. Rept. 92-626 (1971).***

Whether a recount or new election are apt in this case need not be determined at this time as Contestant Oberweis has already satisfied the relevant pleading standard to move forward with discovery and the establishment of his right to Contestee's seat.

CONCLUSION

Having established by the allegations in his Notice of Contest, stated with particularity, and based only on a fraction of the evidentiary review to which he was entitled under Illinois law, but denied, together with the credible evidence submitted therewith, Contestant Oberweis has more than established his right to proceed on the merits and adduce discovery that will help him prove he "is entitled to contestee's seat." ***2 U.S.C. §385.***

Contestee Underwood's studied indifference to the voting irregularities and possible fraud in ILCD-14 attendant with the November 3, 2020 General Election, should not deter the House as a whole from performing the doubly grave task before it: granting Contestant Oberweis the ability to take discovery to prove his claim to Contestee's seat[28], and "bolster[ing] the integrity of our electoral system"[29] by exposing the voting irregularities and/or fraud in ILCD-14. The performance of the latter duty is especially vital in light of the historic, tsunami-level cynicism with which the American people currently view the electoral process, and the extreme polarization

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[28] ***Contestant Oberweis has only been allowed to examine 25% of the ballots in selected precincts in four counties, begun the process in one, and not been allowed to even start the process in two others. He has made a good faith, costly attempt to ensure the will of the voters in ILCD-14 is respected and voting procedures in ILCD-14 statutorily and constitutionally compliant. He does not waive any of the other arguments in his Notice of Contest regarding the illegality of other votes which are not addressed here in the interests of brevity and focusing on those classes of votes and those irregularities and/or fraud that are the most problematic and wide-spread.***

[29] ***Dornan, supra, at 11-12.***

of the electorate based, in part, on that distrust.

There was another time in our history of extreme polarization, when American fought American, not with lawsuits, contests or "tweets", but with rifle, bayonet and sword. Illinois' favorite son, President Abraham Lincoln, standing in the killing fields at Gettysburg, exhorted his listeners to believe those Americans had not "died in vain". He declared if Americans honored that sacrifice, then a "government of the people, by the people, for the people" would not "perish from the earth."[30] In 2021 and beyond, only a free, honest and transparent electoral process will ensure the Republic does not perish and the perpetual sacrifice is honored.

For the reasons stated above, and pursuant to ***2 U.S.C. §383(d)***, Contestant Oberweis respectfully requests that the House deny Contestee Underwood's Motion to Dismiss, or postpone its disposition until a hearing on the merits, and grant him any other relief it deems just and fitting.

Respectfully Submitted,

JAMES "JIM" OBERWEIS

By:
One of His Attorneys

Mark L. Shaw, Esq. (D.C. Bar No. 427789)
Jennifer Craigmile Neubauer, Esq.
SHAW LAW LTD.
33 North County Street; Suite 300
Waukegan, Illinois 60085
T: (847) 244-4696
F: (847) 244-4673
E-1: ***mlshaw@shawlawltd.com***
E-2: ***jcneubauer@shawlawltd.com***
Attorneys for Contestant

[30] ***Abraham Lincoln, Gettysburg Address, Library of Congress (1863).***

IN THE

United States House of Representatives

JAMES "JIM" OBERWEIS,

Contestant,

V.

LAUREN UNDERWOOD,

Contestee.

AFFIDAVIT OF SUPPORT OF: <u>JEFF DAVIS</u>

STATE OF ILLINOIS	)	
	)	**SS.**
COUNTY OF LAKE	)	

I, **JEFF DAVIS**, being first duly sworn upon oath, and pursuant to the penalties imposed upon me for a knowing violation of ***735 ILCS 5/1-109***, depose and state that I have personal knowledge of the factual allegations contained in this Affidavit and, if called to testify at a hearing and/or trial, I will competently and truthfully testify to the factual allegations contained in this Affidavit and, further, pursuant to ***28 U.S.C. § 1746***, I verify under penalty of perjury that the foregoing is true and correct.

1. On the evening of January 3, 2021, Mark L. Shaw ("Shaw"), attorney of record for Contestant James "Jim" Oberweis ("Oberweis"), tendered to me, via personal delivery, a package of materials for delivery to the Clerk of the House of Representatives in Washington D.C., on January 4, 2021;

2. I flew to Washington D.C. on the morning of January 4, 2021 and was escorted into the U.S. Capitol by personnel who had pre-arranged to meet me;

JEFF DAVIS AFFIDAVIT: EXHIBIT A

3. I was brought to the office of the Clerk of the House of Representatives, Cheryl L. Johnson ("Clerk Johnson"). I handed her the package which I knew contained copies of a "Notice of Filing" an "Appearance" form and a "Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District" ("Notice of Contest");

4. Clerk Johnson signed the front page of the "Notice of Filing", signifying her receipt of these documents. Attached hereto as Exhibit 1 is a copy of the signed "Notice of Filing" addressed to "Lauren Underwood, Washington, D.C. Office, 1118 Longworth HOB, Washington, DC 20515", signed by Clerk Johnson in my presence at or about the hour of 11:46 a.m. on January 4, 2021;

5. I was then escorted to what I was told was Ms. Underwood's personal office in the United States Capitol building. No one was present in her offices, which was also locked. Therefore, I slid a copy of the aforementioned documents, the "Notice of Filing", "Appearance" and "Notice of Contest" together in a package, under her office door.

FURTHER, AFFIANT SAYETH NAUGHT.

JEFF DAVIS

Subscribed to and sworn before me
this 10th day of March, 2021

Notary Public

My commission expires: 3-21-2023

JENNIFER CRAIGMILE NEUBAUER
Official Seal
Notary Public - State of Illinois
My Commission Expires Mar 21, 2023

IN THE

United States House of Representatives

JAMES "JIM" OBERWEIS,

Contestant,

v.

LAUREN UNDERWOOD,

Contestee.

NOTICE OF FILING

TO: Lauren Underwood
Washington, D.C. Office
1118 Longworth HOB
Washington, DC 20515

PLEASE TAKE NOTICE that on **January 4, 2021,** there was filed with the Clerk of the United States House of Representatives, U.S. Capitol, Room H154, Washington, DC 20515, the attached ***Appearance*** and ***Contestant James "Jim" Oberweis' Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District.***

Respectfully submitted,

JAMES "JIM" OBERWEIS

By: Mark L. Shaw
One of His Attorneys

Mark L. Shaw (D.C. Bar No. 427789)
Jennifer Craigmile Neubauer
SHAW LAW LTD.
33 North County Street; Suite 300
Waukegan, Illinois 60085
(T): (847) 244-4696
(F): (847) 244-4673
(E): *mlshaw@shawlawltd.com*
(E): *jcneubauer@shawlawltd.com*

Recv'd
Cy 4 Jn
1/4/2021
11:46 Am

JEFF DAVIS AFFIDAVIT: EXHIBIT A-1

PROOF OF SERVICES

The undersigned, a non-attorney, being sworn upon oath pursuant to the penalties imposed upon them for a knowing violation of *2 USC 382: Notice of Contest,* hereby certifies that copies of the attached ***Notice of Filing, Appearance*** and ***Contestant James "Jim" Oberweis' Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District*** were served on **January 4, 2021,** upon **LAUREN UNDERWOOD** via Personal Delivery by the following applicable procedures:

_____ By delivering a copy to her personally through the Clerk of the U.S. House of Representatives;
_____ By leaving a copy at her dwelling house or usual place of abode with a person of discretion not less than sixteen (16) years of age then residing therein;
__X__ By leaving a copy at her principal office or place of business with some person then in charge thereof; left under her office door
_____ By delivering a copy to an agent authorized by appointment to receive service of such notice; and/or
_____ By mailing a copy via U.S. Certified Mail, Return Receipt Requested, postage prepaid addressed to contestee at her place of place of business.

X [signature]

PROOF OF SERVICES

The undersigned, a non-attorney, being sworn upon oath pursuant to the penalties imposed upon them for a knowing violation of *2 USC 382: Notice of Contest,* hereby certifies that copies of the attached ***Notice of Filing, Appearance*** and ***Contestant James "Jim" Oberweis' Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District*** were served on **January 4, 2021,** upon **LAUREN UNDERWOOD** via Personal Delivery by the following applicable procedures:

_____ By leaving a copy at her dwelling house or usual place of abode with a person of discretion not less than sixteen (16) years of age then residing therein;
_____ By leaving a copy at her principal office or place of business with some person then in charge thereof;
_____ By delivering a copy to an agent authorized by appointment to receive service of such notice; and/or
_____ By mailing a copy via U.S. Certified Mail, Return Receipt Requested, postage prepaid addressed to contestee at her place of place of business.

X____________________

JEFF DAVIS AFFIDAVIT: EXHIBIT A-2

IN THE

United States House of Representatives

JAMES "JIM" OBERWEIS,

Contestant,

V.

LAUREN UNDERWOOD,

Contestee.

AFFIDAVIT OF SUPPORT OF: GLORISELL POMALES

STATE OF ILLINOIS	)	
	)	**SS.**
COUNTY OF LAKE	)	

I, **GLORISELL POMALES**, being first duly sworn upon oath, and pursuant to the penalties imposed upon me for a knowing violation of ***735 ILCS 5/1-109***, depose and state that I have personal knowledge of the factual allegations contained in this Affidavit and, if called to testify at a hearing and/or trial, I will competently and truthfully testify to the factual allegations contained in this Affidavit and, further, pursuant to ***28 U.S.C. § 1746***, I verify under penalty of perjury that the foregoing is true and correct.

1. I am a legal assistant at Shaw Law Ltd., attorneys for Contestant James "Jim" Oberweis ("Oberweis"), in this matter;

2. For over the past 12 years, I have worked as a legal assistant at Shaw Law Ltd. and my job responsibilities include, among other things, the timely filing of pleadings and other papers in litigated matters, in both State and Federal Court, arbitrations and before other administrative tribunals;

GLORISELL POMALES AFFIDAVIT: EXHIBIT B

3. On Sunday, January 3, 2021, from early afternoon through late evening, I worked at Shaw Law Ltd. assisting attorneys Mark L. Shaw ("Shaw") and Jennifer Craigmile Neubauer ("Neubauer"), who are the attorneys of record in the above-referenced matter, in the preparation and finalization of the Notice of Contest, Notice of Filing, Certificate of Service and Appearances for the above-named attorneys ("Notice of Contest and affiliated documents"), in the above-referenced cause of action;

4. On Monday, January 4, 2021, I placed the original signature version of Shaw Law Ltd.'s correspondence to the Honorable Cheryl L. Johnson ("Clerk Johnson"), Clerk of the U.S. House of Representatives, dated January 4, 2021, along with a copy of the Notice of Contest, Notice of Filing, Certificate of Service and Appearances for the above-named attorneys ("Notice of Contest and affiliated documents") via U.S. Certified Mail, Return Receipt Requested at the mailing address located at U.S. Capitol - Room H154, Washington, DC 20515–6601 ("the Clerk's Parcel"). ***See copy of the Certified Mail, Return Receipt Requested Mailing Envelope to Honorable Cheryl L. Johnson ("Clerk Johnson"), Clerk of the U.S. House of Representatives, and U.S. Postal Service Certified Mail Receipt and Certified Mail Signature Card ("Green Card"), signed by a house agent, attached hereto to this Affidavit as Exhibit B-1 and B-2;***

5. Also, on Monday, January 4, 2021, I mailed a copy of the January 4, 2021, correspondence to the Honorable Cheryl L. Johnson, Clerk of the U.S. House of Representatives, along with a copy of the Notice of Contest, Notice of Filing, Certificate of Service and Appearances for the above-named attorneys ("Notice of Contest and affiliated documents") via U.S. Certified Mail, Return Receipt Requested to Lauren Underwood ("Underwood") at her Washington, D.C. business address located at Washington, D.C. Office, 1118 Longworth HOB, Washington, DC 20515 ("the Underwood Parcel"). ***See copy of the Certified Mail, Return Receipt Requested Mailing Envelope to Lauren Underwood ("Underwood"), and U.S. Postal Service Certified Mail Receipt and Certified Mail Signature Card ("Green Card"), signed by Underwood, and/or an agent on her behalf, attached hereto***

to this Affidavit as Exhibit C-1 and C-2;

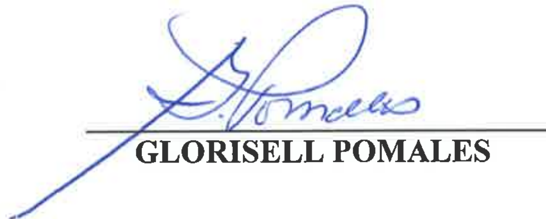
6. On Monday, January 4, 2021, in the afternoon, I deposited the Clerk's Parcel and Underwood Parcel in the United States Post Office authorized mail collection box located at the corners of County Street and Madison Street in Waukegan, Illinois (the "Mailbox");

7. Throughout my years of employment at Shaw Law Ltd., I have deposited many items of mail, to be collected and carried by the United States Postal Service, in said Mailbox, and I have learned, from experience, that the collection of mail from said Mailbox is typically collected every business day in the afternoons and handled by United States Postal Service personnel for processing;

8. I was also made aware by Shaw and Neubauer that a person by the name of Jeff Davis ("Davis") would be hand-delivering the original Notice of Contest and affiliated documents to the Clerk of the House of Representatives and hand-delivering a copy of the Notice of Contest and affiliated documents to Lauren Underwood at the United States Capitol on January 4, 2021; and

9. I hereby acknowledge learning, through on-line research, that mail and parcels deposited in Waukegan, Illinois, are sent to a United States Postal Service distribution center located at or about Carol Stream, Illinois, for processing.

FURTHER, AFFIANT SAYETH NAUGHT.

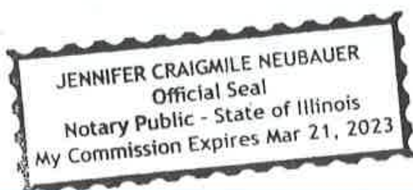


GLORISELL POMALES

Subscribed to and sworn before me
this 11 th day of March, 2021.

Notary Public

My Commission Expires: 3-21-2023



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

The Honorable Cheryl L. Johnson
Clerk of the
U.S. House of Representatives
U.S. Capitol
Room H154
Washington, DC 20515-6601

2. Article Number (Transfer from service label)
7019 0140 0000 7260 0683

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) | C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☑ Signature Confirmation™
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PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

SHAW LAW LTD.
ATTORNEYS AT LAW
33 North County Street, Suite 300
Waukegan, Illinois 60085

7019 0140 0000 7260 0683

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS, FOLD AT DOTTED LINE

CERTIFIED MAIL®

CERTIFIED MAIL

The Honorable Cheryl L. Johnson
Clerk of the
U.S. House of Representatives
U.S. Capitol
Room H154
Washington, DC 20515-6601

Mailing of 01/04/21: Correspondence to Clerk Johnson dated January 4, 2021, Notice of Filing, Appearance and Contestant James "Jim" Oberweis' Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District

GLORISELL POMALES AFFIDAVIT: EXHIBIT B-1

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- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

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The Honorable Cheryl L. Johnson
Clerk of the
U.S. House of Representatives
U.S. Capitol
Room H154
Washington, DC 20515-6601

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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1. Article Addressed to:

The Honorable Cheryl L. Johnson
Clerk of the
U.S. House of Representatives
U.S. Capitol
Room H154
Washington, DC 20515-6601

2. Article Number *(Transfer from service label)*
7019 0140 0000 7260 0683

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☒ Agent ☐ Addressee

B. Received by *(Printed Name)*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

RECEIVED
FEB 1 REC'D

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
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- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
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- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Lauren Underwood
Washington, D.C. Office
1118 Longworth HOB
Washington, DC 20515

2. Article Number (*Transfer from service label*)
7019 0140 0000 7260 0690

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ Agent
☐ Addressee

B. Received by (*Printed Name*)

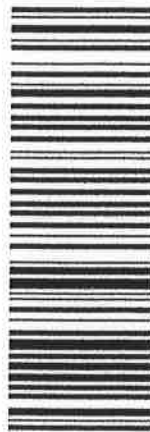
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☐ Adult Signature
☐ Adult Signature Restricted Delivery
☑ Certified Mail®
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Insured Mail Restricted Delivery (over $500)
☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☑ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt

SHAW LAW LTD.
ATTORNEYS AT LAW
33 North County Street, Suite 300
Waukegan, Illinois 60085



7019 0140 0000 7260 0690

CERTIFIED MAIL
Lauren Underwood
Washington, D.C. Office
1118 Longworth HOB
Washington, DC 20515

Mailing of 01/04/21: Correspondence to Clerk Johnson dated January 4, 2021, Notice of Filing, Appearance and Contestant James "Jim" Oberweis' Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois' Fourteenth Congressional District

GLORISELL POMALES AFFIDAVIT: EXHIBIT B-2

7019 0140 0000 7260 0690

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at *www.usps.com®*.

OFFICIAL USE

Certified Mail Fee
$
Extra Services & Fees *(check box, add fee as appropriate)*
- ☐ Return Receipt (hardcopy) $
- ☐ Return Receipt (electronic) $
- ☐ Certified Mail Restricted Delivery $
- ☐ Adult Signature Required $
- ☐ Adult Signature Restricted Delivery $

Postage
$
Total P
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Sent To
Street
City, St

Postmark
Here

Lauren Underwood
Washington, D.C. Office
1118 Longworth HOB
Washington, DC 20515

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

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SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RECEIVED
JAN 25

Lauren Underwood
Washington, D.C. Office
1118 Longworth HOB
Washington, DC 20515

2. Article Number *(Transfer from service label)*
7019 0140 0000 7260 0690

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X
☐ ~~Agent~~
☐ Addressee

B. Received by *(Printed Name)*
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over $500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☑ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt