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DEC 22 2020

U.S. HOUSE OF
REPRESENTATIVES

IN THE

United States House of Representatives

RITA R. HART,

Contestant,

v.

MARIANNETTE MILLER-MEEKS,

Contestee.

**NOTICE OF CONTEST
REGARDING THE ELECTION FOR
REPRESENTATIVE IN THE ONE HUNDRED SEVENTEENTH CONGRESS
FROM IOWA'S SECOND CONGRESSIONAL DISTRICT**

**Pursuant to the Federal Contested Elections Act,
2 U.S.C. §§ 381-396**

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December 22, 2020

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INTRODUCTION

1. Contestant Rita R. Hart brings this action under the Federal Contested Elections Act, 2 U.S.C. §§ 381-396, to contest the Iowa State Board of Canvassers' certification of Contestee Mariannette Miller-Meeks as the winner, by 6 votes, in the general election for Iowa's Second Congressional District ("the District").

2. Following the canvass of results by all 24 counties in the District, Contestee Miller-Meeks led with 196,862 votes to Contestant Hart's 196,815 votes, a margin of 47 votes.

3. Contestant Hart requested a recount in all 24 counties. The recount—in which ballots were reviewed by hand for voter intent and identifying marks in some counties but not in others—added votes to each candidate's total and shrunk Contestee Miller-Meeks's lead to a mere 6 votes. The State Board of Canvassers certified Contestee Miller-Meeks as the winner, with 196,964 votes to 196,958 for Contestant Hart.

4. But state and county election officials made two sets of errors that marred the certified vote total. As a result of these errors, the State Board of Canvassers certified as the winner the candidate who received *fewer* lawful votes (Contestee Miller-Meeks), thus depriving Contestant Hart of the certification to which she was entitled, as the candidate who received *more* lawful votes.

5. *First*, election officials erred by excluding at least 22 lawful ballots during the canvass. These 22 ballots include (i) curbside and absentee ballots that election officials accepted for counting but mistakenly omitted from the initial

count *and* (ii) valid absentee and provisional ballots that election officials erroneously rejected. Because the counties did not count these ballots during the canvass, election officials determined that they were ineligible to be recounted and they are not included in the certified total.

6. Of these wrongfully excluded 22 ballots, the evidence establishes that 18 were cast for Contestant Hart, three were cast for Contestee Miller-Meeks, and one did not record a vote for either candidate. Once those ballots are included in the final tally, Contestant Hart would have 196,976 votes and Contestee Miller-Meeks would have 196,967 votes, giving Contestant Hart a lead of nine votes.¹

7. *Second*, the recount itself failed to comply with Iowa law and the U.S. Constitution. Each county, led by a three-person “recount board,” conducted its own recount. Some county recount boards, in violation of Iowa law, failed to conduct a hand review of ballots that were recognized as “overvotes” or write-in ballots by the machines. Some county recount boards reviewed “undervotes” for voter intent while others did not. Some county recount boards reviewed and disqualified ballots for containing “identifying marks” while others did not. And some counties even engaged in different types of review for different precincts.

¹ In addition, at least 35 uniformed and overseas voters from Scott County were not given a meaningful opportunity to vote in the Second Congressional District race. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) permits certain U.S. servicemembers, overseas citizens, and their families to request and return absentee ballots via email and fax. Iowa Admin. Code 721-21.320(4)(a). Under Iowa law, an election official who receives an electronically-transmitted UOCAVA ballot must examine it and determine that “all pages have been received and are legible.” *Id.* 721-21.320(4). In Scott County, the Second Congressional District Race was printed at the very bottom of a legal-sized 8.5-inch by 14-inch ballot, without directions instructing UOCAVA voters to print their ballots using legal-sized paper or to scale down ballots when printing. In practice, some Scott County UOCAVA voters printed their ballots on regular-sized 8.5-inch by 11-inch paper, thereby cutting the Second Congressional District race and other races off of the bottom of the page. Although state law requires Scott County to notify these voters if their emailed ballots are incomplete, Scott County’s auditor did not do so. Ultimately, at least 35 UOCAVA voters emailed incomplete scans of their absentee ballots to Scott County and thus did not have a meaningful opportunity to cast a ballot in the Second Congressional District race.

8. As a result, whether a voter's ballot counted in the recount depended on the county where that ballot was cast. The U.S. Supreme Court has found that there are not "sufficient guarantees of equal treatment" where "the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another." *Bush v. Gore*, 531 U.S. 98, 106-7 (2000). Unfortunately, that is precisely what happened during the recount.

9. Expert analysis demonstrates that these unlawful variations in the recounts were consequential—that is, because the recounts were not conducted in compliance with Iowa law and were not conducted uniformly, lawful ballots were ultimately excluded from the final tally. The number of lawful ballots that were not counted, but which should have been, is more than enough to change the result of the election.

10. A uniform recount must be conducted to ensure that all ballots are reviewed to determine voter intent and that all lawful votes are indeed counted. A uniform recount is the only means of ensuring that the will of the voters in selecting their representative in Iowa's Second Congressional District is not thwarted by the irregular and erroneous exclusion and rejection of lawful ballots from the recount in multiple Iowa counties.

11. The election in Iowa's Second Congressional District is among the closest U.S. House elections in a hundred years and is currently within the narrowest margin since 1984. Although it is admittedly tempting to close the curtain on the 2020 election cycle, prematurely ending this contest would disenfranchise

Iowa voters and award the congressional seat to the candidate who received fewer lawful votes. Federal law does not permit such an outcome.

12. After the House has conducted its investigation and all lawful votes are accurately counted, Contestant Hart finally will be seated as the new U.S. Representative from the Second Congressional District.

JURISDICTION

13. The United States Constitution requires each House of Congress to be the “Judge of the Elections, Returns and Qualifications of its own Members.” U.S. CONST. art. I, § 5, cl. 1.

14. As the United States Supreme Court has recognized, this provision of the Constitution gives each Chamber the authority “to make an independent final judgment” in evaluating a Member’s election and their entitlement to the seat. *Roudebush v. Hartke*, 405 U.S. 15, 25-26 (1972).

15. In most instances, when the state’s election result is clear, and there are no doubts as to the qualifications of the Member-elect, the winner is seated without controversy. When the outcome of an election is contested, however, each Chamber has the power to determine for itself which candidate should be seated. Under settled precedent, each Chamber is free to undertake an “independent evaluation” of the election, “accept or reject” the state’s reported certification of votes, and, if it so chooses, “conduct its own recount.” *See id.*

16. Moreover, to determine which candidate is entitled to a seat, each Chamber “acts as a judicial tribunal,” considering witnesses and testimony in turn. *Barry v. U.S. ex rel. Cunningham*, 279 U.S. 597, 616 (1929).

17. In its history, the United States House of Representatives has heard, and successfully resolved, hundreds of contested elections.

18. To aid in its resolution of these contests, Congress enacted the Federal Contested Elections Act, now codified at 2 U.S.C. §§ 381-396. The Act provides a procedural framework for candidates for the United States House of Representatives to contest the outcome of their elections before the House.

19. Under the Act, the Contestant files a Notice of Contest with the Clerk of the House. *See* 2 U.S.C. § 382. The Contestee is given an opportunity to answer the notice or move to dismiss it. *See id.* § 383. If the House finds that the Contestant has made allegations that, if true, would be sufficient to change the outcome of the election and entitle her to the seat, the House moves forward with the contest and with its investigation. *See id.* §§ 383, 385.

20. To ultimately prevail in the election contest, the Contestant must demonstrate by a fair preponderance of evidence that “the election results entitle [her] to [the] contestee’s seat.” *See id.* § 385; 3 Lewis Deschler, PRECEDENTS OF THE UNITED STATES OF THE HOUSE OF REPRESENTATIVES, Ch. 9 § 35.2 (1994).

21. The evidence here supports Contestant Hart’s entitlement to the seat.

FIRST GROUND FOR ELECTION CONTEST:
IMPROPERLY EXCLUDED BALLOTS

22. As described in detail below, the returns certified by the State Canvassing Board excluded at least 22 lawful ballots, 18 of which were cast for Contestant Hart, three of which were cast for Contestee Miller-Meeks, and one of which did not record a vote for either candidate.

23. These wrongfully excluded ballots favor Contestant Hart by a margin of 15 votes, which is sufficient to change the outcome of the election.

24. Taking into account the current six vote margin, when these ballots are counted, Contestant Hart will lead by a margin of nine votes.

LEGAL PRINCIPLES

25. “The right to vote is a fundamental political right. It is essential to representative government.” *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978) (citing *Wesberry v. Sanders*, 376 U.S. 1, 17-18 (1964)).

26. The right to vote includes not only the right to cast a ballot but also the right to have that ballot counted. *See id.* (noting that qualified voters have the right “to have their ballots counted for the candidate of their choice”) (citing *Wesberry*, 376 U.S. at 17-18); *see also United States v. Saylor*, 322 U.S. 385, 387-388 (1944) (“[The] protected personal rights of a citizen includ[e] the right to cast his ballot and . . . that to refuse to count and return the vote as cast [is] as much an infringement of that personal right as to exclude the voter from the polling place”); *United States v. Classic*, 313 U.S. 299, 315 (1941) (voters have the right “to cast their ballots *and have them counted* at Congressional elections”) (emphasis added).

27. Eligible voters should not be disenfranchised where there is no question as to the voter’s eligibility or the voter’s intent to vote for a particular candidate. *See* Deschler, Ch. 9 §§ 10.6-10.12, 38.1-3; *see also Campbell v. Doughton*, H.R. Rept. No. 882 (1922) (confirming voters are to be “given the benefit of the doubt” and that failure to adhere to technicalities should not result in the disenfranchisement of voters).

28. It is well-settled that voters are not to be disenfranchised based on the errors or mistakes of election workers. *See Parra v. Harvey*, 89 So. 2d 870, 874 (Fla. 1956) (“After an elector casts a ballot that is regular in all particulars, he transfers control to the election officials and should not be charged with their mishandling afterward.”); *State v. Barnett*, 195 N.W. 707, 712 (Wis. 1923) (“As a general rule a voter is not to be deprived of his constitutional right of suffrage through the failure of election officers to perform their duty . . .”). Indeed, courts have found that failure to count an otherwise valid ballot due to election worker error would violate voters’ due process rights. *See Ne. Ohio Coal. for Homeless v. Husted*, 696 F.3d 580, 593-595, 597 (6th Cir. 2012); *Griffin v. Burns*, 570 F.2d 1065, 1075-1078 (1st Cir. 1978).

29. Consistent with these judicial precedents, the House has refused to disenfranchise voters based on mere election worker error or mishandling of ballots. *See* Deschler, Ch. 9 §§ 10.14, 10.16, 38.1; 6 Clarence Cannon, PRECEDENTS OF THE UNITED STATES OF THE HOUSE OF REPRESENTATIVES, Ch. 162 § 92 (explaining the “voter is not to be deprived of his right and the citizens are not to lose the result of an election fairly held because of some important omission of form or of the neglect or carelessness or ignorance on the part of some election officers”) (quoting *Carney v. Smith*, H.R. Rept. No. 202 (1914)); *see also McCloskey v. McIntyre*, H.R. Rept. No. 99-58 (1985) at 24 (“The House has chosen overwhelmingly in election cases throughout its history not to penalize voters for errors and mistakes of election officials.”).

30. Ultimately, the House is free to make its own determination as to the “validity of ballots where the intention of the voter is clear and there is no evidence of fraud.” Deschler, Ch. 9 § 38.4. This basic principle—that the will of the voters is the paramount concern—runs throughout the House’s precedents. *Id.* § 38.1.

WRONGFULLY EXCLUDED BALLOTS

Scott County Curbside Ballots (Two Ballots)

31. Iowa permits voters who are unable to access their polling location due to a disability to vote from their cars. *See* Iowa Code § 49.90 (“If any elector because of a disability cannot enter the building where the polling place for the elector’s precinct of residence is located, the two [elections] officers shall take a paper ballot to the vehicle occupied by the elector with a disability and allow the elector to cast the ballot in the vehicle.”).

32. “Ballots cast by voters with disabilities shall be deposited in the regular ballot box, or inserted in the tabulating device, *and counted in the usual manner.*” *Id.* (emphasis added).

33. In accordance with this provision, two registered voters in Scott County cast ballots from their cars at the D23 precinct on Election Day. *See* Russell Aff. ¶ 11, Exs. A & B; Nahra Aff. ¶ 13, Exs. A & B.

34. However, when poll workers tried to insert the ballots into the voting machine to be counted, the voting machine would not accept the ballots. A poll worker named Rose took contemporaneous notes. Regarding one ballot, she wrote, “This was voted curbside and the machine wouldn’t take it. Didn’t give us the option to ‘cast’ it. Dave said to put this in with our voted ballots. Our count will be

off by 1. Rose - D23.” Russell Aff. ¶ 11, Ex. A; Nahra Aff. ¶ 13, Ex. A. Regarding the other ballot, she wrote, “For some reason the machine would not accept this ballot. Didn’t give the option to ‘cast’ it. Rose - D23.” Russell Aff. ¶ 11, Ex. B; Nahra Aff. ¶ 13, Ex. B.

35. The Scott County Recount Board later determined that these two ballots were mistakenly excluded from the initial canvass. Russell Aff. ¶ 11; Nahra Aff. ¶ 13.

36. At least two members of the Recount Board observed that these ballots contained votes for Contestant Hart. Russell Aff. ¶ 12; Nahra Aff. ¶ 14. Although these were lawfully cast votes, the Recount Board determined it could not include the votes on these ballots in the recounted tally because they were not counted during the initial canvass. *See* Iowa Code § 50.48(4)(a) (“The board shall recount only the ballots which were voted and counted for the office in question ...”); *see also* Russell Aff. ¶ 14 (noting that they did not believe they had the authority to include ballots); Nahra Aff. ¶ 16 (same). As such, these votes were not counted in the recount or reflected in the certified results.

37. Both curbside ballots were lawfully cast, contained votes for Contestant Hart, and should have been included in Iowa’s certified count for the Second Congressional District. These two ballots, which, when counted, will result in a net gain of two votes for Contestant Hart, should be included in the final determination of who is entitled to hold the office of United States Representative for Iowa’s Second Congressional District.

Marion County Absentee Ballots (Nine Ballots)

38. In Iowa, any voter may apply to vote absentee and ultimately vote absentee if the voter “expects to be unable to go to the polls and vote on election day.” Iowa Code § 53.1(1)(c).

39. Absentee voters are sent a ballot and an unsealed return envelope, which must be completed and returned to a county auditor “before the polls close on election day or be clearly postmarked ... not later than the day before the election ... and received by the commissioner not later than noon on the Monday following the election.” *Id.* §§ 53.17(2), 53.8. If a ballot cannot be folded so that all votes cast on the ballot will be hidden, the county auditor must also enclose a secrecy envelope with the absentee ballot. *Id.* § 53.8(1).

40. Each county must establish a “special precinct election board” to review and count its absentee ballots. *Id.* § 53.23.

41. The special precinct election board “shall first review voters’ affidavits to determine which ballots will be accepted for counting and...whose ballots have been rejected.” Iowa Admin. Code 721–21.359(2). From there, “*envelopes...containing ballots that have been accepted for counting...shall be opened and the secrecy envelope containing the ballot shall be removed.*” *Id.* (emphasis added).

42. In other words, it is only “[*a*fter the affidavits on the envelopes have been reviewed and the qualifications of the persons casting the ballots have been determined [that] those [absentee ballots] that have been accepted for counting shall be opened.” Iowa Code § 53.23(5) (emphasis added). Consequently, any absentee

ballot that has been removed from its secrecy envelope has been accepted for counting by the special precinct election board and must be counted under Iowa law.

43. On November 20, 2020, the Marion County Recount Board opened a sealed box of absentee ballots that was labeled as containing 457 total absentee ballots. *See* Biderman Aff. ¶ 10, Ex. A (memorialized joint statement of the Marion County Recount Board).

44. When the Marion County Recount Board recounted the ballots, however, it found that the box contained 466 ballots *not* 457 ballots. *See id.* ¶ 10, Ex. A. Because an absentee ballot is separated from its secrecy envelope only after being reviewed and accepted for counting by the special precinct election board, all 466 ballots were lawfully cast and should have been counted. In fact, the Marion County Recount Board concluded that the additional nine ballots were lawfully cast. *See id.* ¶ 13.

45. However, a majority of the Marion County Recount Board members concluded that they lacked the authority to recount a ballot that had not been counted in the initial canvass. *See id.* ¶ 13, Ex. A. As a result, the Marion County Recount Board did not include the nine absentee ballots “at the end of the stack of ballots” in their final count of the results. *See id.* ¶¶ 10, 13, Ex. A. The ballots were not reflected in the certified vote total.

46. To preserve the issue, the Marion County Recount Board unanimously agreed to separately tabulate the nine absentee ballots and record the results. Of these nine ballots, five were cast for Contestant Hart, three were cast for Contestee

Miller-Meeks, and one did not record a vote for either candidate. *See id.* ¶¶ 14-15, Ex. A. After tabulating the nine ballots, the Recount Board placed the ballots and the joint statement memorializing the circumstances and the results of those ballots in a sealed box for preservation. *See id.* ¶ 15.

47. These nine ballots were lawfully cast and should have been included in Iowa's certified count for the Second Congressional District. These nine ballots, which result in a net gain of two votes for Contestant Hart, should be included in the final determination of who is entitled to hold the office of United States Representative for Iowa's Second Congressional District.

Johnson County Cured Provisional Ballot (One Ballot)

48. Under Iowa law, a voter who resides in a precinct but is not yet registered to vote in that precinct may register to vote in person on Election Day and cast a ballot. Iowa Code § 49.77(3)(b). However, such voters must vote by provisional ballot if they are unable to provide acceptable proof of identity and residence at the time of registration. *Id.* §§ 49.81(2), 49.77(3)(b), 48A.7A(1).

49. Provisional ballots should be marked and sealed in a provisional ballot envelope, which includes the voter's name, date of birth, address, and declaration of eligibility. *Id.* § 49.81(5)(a).

50. Any person required to cast a provisional ballot for failure to provide acceptable proof of identity or residence may submit such proof after Election Day, so long as it is received by the county auditor by noon on the Monday after the election (November 9, 2020). Iowa Admin. Code 721-21.3(7). For these purposes,

a person may establish identity and residence by presenting a current and valid Iowa driver's license. Iowa Code § 48A.7A(1)(b)(1).

51. A special precinct election board is charged with reviewing the information on provisional ballot envelopes, along with any evidence submitted by a voter in connection with their provisional ballot. *Id.* § 50.22 (describing process for reviewing provisional and challenged ballots and any evidence submitted). Under Iowa law, “[a]fter the affidavits on the envelopes have been reviewed and the qualifications of the persons casting the ballots have been determined, those that have been accepted for counting shall be opened...[and] removed from the affidavit envelopes...without being unfolded or examined, and then shall be thoroughly intermingled, after which they shall be unfolded and tabulated.” *Id.* § 53.23(5).

52. In Johnson County, voter Cheyanne J. Kurth cast a provisional ballot on Election Day because she was unable to provide the requisite proof of residency and identity. Before noon on November 9, Ms. Kurth timely provided the County Auditor with proof of her residency and identity in the form of a current Iowa driver's license and a piece of recent official mail showing her address. She completed a declaration swearing to her identity and residency. *See Kurth Aff.* ¶¶ 4-5.

53. When the special precinct election board convened to review provisional ballots, however, Ms. Kurth's ballot was not counted due to election worker error.

54. As the Johnson County auditor explained in an apologetic letter to Ms. Kurth admitting error, there were two provisional ballots in Ms. Kurth's precinct (one of which was Ms. Kurth's) which needed to be cured before they could be counted. *See id.* at Ex A. Although Ms. Kurth timely submitted the cure materials required by law to qualify her provisional ballot for counting, her provisional ballot paperwork had detached from her provisional ballot envelope while in the custody of election officials. The same thing happened with another provisional voter who, unlike Ms. Kurth, failed to cure his ballot. Election officials claimed that they could not identify which ballot was Ms. Kurth's and which ballot belonged to the other provisional voter. *See id.* ¶¶ 4-7, Ex A. As a result, neither ballot was counted, even though Ms. Kurth timely submitted her paperwork.

55. Johnson County election officials acknowledged that Ms. Kurth timely provided the materials required by law to qualify her ballot for counting and that, as a result, Ms. Kurth "should have had [her] vote counted." *See id.* ¶ 7, Ex A ("We are very sorry this happened, especially since you did everything you needed to do and should have had your vote counted."). Because of this error by election officials, Ms. Kurth's ballot was excluded from the initial canvass and subsequent recount. *See id.* ¶¶ 6-7, Ex A.

56. Ms. Kurth is willing to identify which ballot is hers and swear to the contents of her ballot. *See id.* ¶ 8. Ms. Kurth has affirmed under oath that she cast a vote for Contestant Hart. *See id.* ¶ 9.

57. Ms. Kurth complied with Iowa law. Her ballot was lawfully cast, contained a vote for Contestant Hart, and should have been included in Iowa's

certified count for the District. Ms. Kurth has voluntarily waived her right to a secret ballot to affirm that she cast a vote for Contestant Hart. Her ballot, which results in a net gain of one vote for Contestant Hart, should be included in the final determination of who is entitled to hold the office of United States Representative for Iowa's Second Congressional District.

Johnson County Signed Absentee Ballot (One Ballot)

58. Iowa law requires absentee voters to sign their absentee ballot envelope. *See* Iowa Code § 53.16. (the voter shall “make and subscribe to the affidavit *on the affidavit envelope or on the return envelope* marked with the affidavit”) (emphasis added).

59. In Johnson County, the back of the absentee ballot affidavit envelope states: “If this affidavit *envelope* is not signed and sealed, your ballot cannot be counted.” (emphasis added). *See* Nasr Aff. at Ex. A.

60. Iowa statutes provide that “a return envelope marked with the affidavit shall be considered to contain a defect if it appears to the [auditor] that the signature on the envelope has been signed by someone other than the registered voter,” Iowa Code § 53.18, but does not provide any additional legal basis to reject an absentee ballot based on the signature.²

61. Significantly, Iowa law does not mandate *where* on the envelope the voter must sign, nor does Iowa law authorize election officials to reject an absentee ballot based on *where* the signature appears on the envelope.

² *But see League of United Latin Am. Citizens of Iowa v. Pate*, No. CVCV056403 (Iowa Dist. Sep. 30, 2019) (holding that Iowa's signature matching law is unconstitutional and unenforceable).

62. The Johnson County absentee ballot envelope contains large, bold red lettering stating, "Signature Required." Next to the lettering is a red arrow pointing downward. Below the red arrow is approximately 1.25 inches of blank space and, below that, a Voter's Affidavit with a signature field. *See* Nasr Aff. at Ex. A. Given this layout, it is entirely reasonable for a voter to sign in the blank space to affirm the statement in the affidavit.

63. Johnson County voter Nasr Mohamed Nasr signed the Voter's Affidavit envelope, as required by law. *See* Iowa Code § 53.16. Mr. Nasr signed his name in the blank space referenced above, rather than on the separate signature field within the voter affidavit. *See* Nasr Aff. ¶ 6, Ex. A. Mr. Nasr then timely returned his absentee ballot to Johnson County. *See id.* ¶ 8.

64. The Johnson County special precinct election board rejected Mr. Nasr's absentee ballot not because his ballot lacked a signature but because his signature was in the blank space rather than on the signature field. *See id.* at Ex. A.

65. Johnson County thus disenfranchised Mr. Nasr solely based on the *location* of his signature on the affidavit envelope. Iowa law does not authorize election officials to reject a signature on this basis.

66. Mr. Nasr has affirmed under oath that, in signing his affidavit envelope, he was affirming the truth of the statements in the Voter's Affidavit—that he is a qualified, registered voter in his precinct and that he did not vote in any other precinct. *See id.* ¶ 7.

67. Mr. Nasr has affirmed under oath that he cast a vote for Contestant Hart. *See id.* ¶ 4.

68. Mr. Nasr complied with Iowa law in his execution and return of his absentee ballot. His ballot was lawfully cast, contained a vote for Contestant Hart, and should have been included in Iowa's certified count for the District. Mr. Nasr has voluntarily waived his right to a secret ballot to affirm that he cast his vote for Contestant Hart. His ballot, which results in a net gain of one vote for Contestant Hart, should be included in the final determination of who is entitled to hold the office of United States Representative for Iowa's Second Congressional District.

Johnson County Voters With Pre-Sealed Ballot Envelopes (Two Ballots)

69. When county auditors mail absentee ballots to voters, they are required by law to "enclose the absentee ballot in an *unsealed envelope*." Iowa Code § 53.12 (emphasis added). However, due to election official error or circumstances outside their control, some voters actually receive a *sealed envelope*.

70. After signing the absentee ballot envelope, voters must "fold the ballot or ballots ... and deposit them in the envelope, and securely seal the envelope." *Id.* § 53.16. A voter who receives a sealed envelope, opens that envelope, deposits the ballot in the envelope, and securely seals the envelope has complied with Iowa law.

71. Iowa law directs absentee and special ballot precinct boards to reject an absentee ballot "[i]f the affidavit envelope or return envelope ... has been opened and resealed." *Id.* § 53.25(1)(a). Because Iowa law presumes that voters will receive an *unsealed envelope*, this directive cannot logically apply where the voter receives a *sealed envelope* and, therefore, must first open the envelope to deposit the ballot and then securely seal it. Otherwise, a voter would be disenfranchised based solely

on election official error or circumstances outside the voter's control — an absurd and unconstitutional result that courts and the U.S. House of Representatives have consistently rejected. *See supra* ¶¶ 28-29.

72. In Johnson County, at least two absentee voters received an absentee return envelope that was *sealed* when it arrived, requiring them to break the seal on their envelopes prior to depositing their ballots in the envelope and securely sealing them, in accordance with Iowa law.

73. The first Johnson County voter, Sada Rhomberg, requested an absentee ballot to vote in the November general election because she is a student in Chicago and did not plan to be in Iowa for Election Day. *See Rhomberg Aff.* ¶ 3.

74. When Ms. Rhomberg received her absentee ballot materials in the mail, the affidavit envelope was already sealed, likely due to moisture to which the ballot had been exposed in transit. *See id.* ¶ 5.

75. Ms. Rhomberg carefully unsealed the affidavit envelope, placed her completed ballot in the unsealed envelope, and re-sealed the envelope using tape. *See id.* ¶ 6.

76. Before Ms. Rhomberg sent her absentee ballot back, Ms. Rhomberg's mother, Susan Johnson, called the Johnson County auditor's office on her daughter's behalf to determine whether sealing the ballot with tape would impact whether the ballot was counted. *See Susan Johnson Aff.* ¶ 4.

77. A woman in the Johnson County auditor's office informed Ms. Johnson that re-sealing the envelope with tape would not prevent an absentee ballot

from being counted. *See id.* ¶ 5. Ms. Johnson relayed this information to her daughter. *See id.* ¶ 6.

78. Ms. Rhomberg relied on this information. *See Rhomberg Aff.* ¶ 7. To ensure her ballot would be counted, she inscribed the following on the back of the envelope: “My return envelope was shut when I got it, so I taped it shut.” *See id.* ¶ 8, Ex. A (showing Ms. Rhomberg’s inscription on her ballot envelope). Ms. Rhomberg then timely submitted her absentee ballot. *See id.* ¶ 9.

79. Despite the assurances provided by the Johnson County auditor’s office, Johnson County election officials rejected Ms. Rhomberg’s sealed absentee ballot for not being properly sealed. *See id.* at Ex. B.

80. Iowa law does not prohibit voters from using tape to securely seal their ballot and courts in other states have permitted it. *See Myrtle v. Essex County Board of Elections*, 943 N.Y.S.2d 793, 2011 N.Y. Slip Op. 52153 (Dec. 2, 2011), n. 3 (“After observing that no statutory or case authority could be found prohibiting the use of tape to close an envelope containing an absentee ballot, the Clerk dismissed that claim.”).

81. Like Ms. Rhomberg, a second Johnson County absentee voter, Steven Schaefer, also received his absentee ballot envelope sealed shut. *See Schaefer Aff.* ¶ 4.

82. Like Ms. Rhomberg’s ballot materials, Mr. Schaefer’s ballot materials were also wet when he received them, causing the return envelope to seal. *See id.*

83. Therefore, to cast his ballot, Mr. Schaefer carefully opened the envelope, placed his ballot inside, and securely sealed it. *See id.* ¶¶ 4, 9-10.

84. To ensure that his ballot would be counted, Mr. Schaefer signed the top of the envelope where he had securely sealed the ballot envelope to indicate that he was the individual who sealed it. *See id.* ¶¶ 4-10, Ex. A (displaying Mr. Schaefer's signature at the top of the ballot envelope).

85. Johnson County officials did not count Mr. Schaefer's ballot or Ms. Rhomberg's ballot because both of their envelopes had been opened by the voter prior to the voter securely sealing them, even though both voters took affirmative steps to indicate that they had been the ones who sealed the envelopes and, in Ms. Rhomberg's case, had confirmed with election officials that her ballot would count.

86. Both Ms. Rhomberg and Mr. Schaefer affirm under oath that they cast a vote for Contestant Hart. *See Rhomberg Aff.* ¶ 11; *Schaefer Aff.* ¶ 5.

87. Both Ms. Rhomberg and Mr. Schaefer fully complied with the statutory requirement to securely seal their ballots. Both ballots were lawfully cast, contained votes for Contestant Hart, and should have been included in Iowa's certified count for the District. Ms. Rhomberg and Mr. Schaefer have voluntarily waived their rights to a secret ballot to affirm they cast votes for Contestant Hart. Both of their ballots, which result in a net gain of two votes for Contestant Hart, should be included in the final determination of who is entitled to hold the office of United States Representative for Iowa's Second Congressional District.

**Johnson and Scott County Voters Who Affirm That They Sealed Their
Ballots (Five Ballots)**

88. As noted above, after signing the absentee ballot envelope, voters must “fold the ballot or ballots ... and deposit them in the envelope, and securely seal the envelope.” Iowa Code § 53.16. Iowa law directs absentee and special ballot precinct boards to reject an absentee ballot where the voter fails to comply with this statutory requirement and if, as a result, “the affidavit envelope or return envelope marked with the affidavit is open.” *Id.* § 53.25. Iowa law does not address what happens if a voter complies with the statutory requirement, but the envelope is nonetheless “open” when it is reviewed by the absentee and special ballot precinct board. Nor does Iowa law define what “open” means.

89. In Johnson County and Scott County, multiple voters had their absentee ballots rejected because “the affidavit envelope was not properly sealed.” The term “properly sealed” is not found in Iowa’s election law statute. Iowa law does not authorize election officials to reject absentee ballots because they are not “properly sealed.”

90. The evidence suggests that Johnson County applied a stricter standard than did other counties when it encountered an envelope that its officials believed to be “improperly sealed.” Even though Johnson County voters cast fewer than one-fourth (23 percent) of absentee ballots in the District, it accounted for nearly three-fourths (73 percent) of all absentee ballots in the District rejected based on how the ballot enveloped was sealed. *See* Dr. Palmer Decl. ¶ 10.

91. In a recent case in Pennsylvania, a court held that 69 ballots identified as “unsealed” during the canvass should be *counted* where there was no evidence that the *voter* had failed to seal the ballot:

Therefore, this Court finds there is no evidence that the electors failed to “securely seal [the ballot] in the [privacy] envelope,” as required by the Election Code. The elector was provided the envelope by the government. If the glue on the envelope failed that would be the responsibility of the government. There is insufficient evidence to determine whether the specific language of the mandated law was violated. This Court finds it would be an injustice to disenfranchise these voters when it cannot be shown that the ballots in question were not “securely sealed” in the privacy envelope prior to the canvassing of those ballots, and for all of the reasons stated previously, there has been no suggestion or evidence that the absence of a sealed inner envelope in anyway jeopardized the privacy of the ballot.

In re: Canvass of Absentee and/or Mail-in Ballots of November 3, 2020 General Election, Petition of Donald J. Trump for President, et. al., No. 20-05786-35 (Nov. 19, 2020).

92. At the time of this filing, at least five voters in Iowa’s Second Congressional District whose ballots were rejected based on how the envelopes were sealed have affirmed that they marked their own ballots, placed the ballots in the envelopes, securely sealed their envelopes, and returned the sealed envelopes to their county auditor (or in the case of one voter with a physical disability, had his wife assist him with these tasks). These voters affirm that they were in possession of their absentee ballot from the time they marked it to when it was returned.

93. These voters include Johnson County voters Joshua Reyes-Torres, Trajae Lackland, and Michael Overholt, as well as Scott County voters Charles Tucker and Jo Donna Loetz. *See generally* Reyes-Torres Aff.; Lackland Aff.; Overholt Aff.; C. Tucker Aff.; Loetz Aff.

94. All of these voters affirm that they sealed their ballots. Mr. Lackland, for example, remembers that he had difficulty sealing his ballot because the glue on his envelope was dry. *See* Lackland Aff. ¶ 7. Another voter, Mr. Overholt, specifically remembers sealing his ballot because he was concerned about licking his return envelope in the middle of a pandemic. *See* Overholt Aff. ¶ 6.

95. One of these voters, Ms. Loetz, handed her absentee ballot directly to a county election official and later made a special effort to cast a ballot in person when she became concerned that her absentee ballot would not be counted. *See* Loetz Aff. ¶ 8. When Ms. Loetz arrived at her precinct on Election Day, a poll worker confirmed that her original ballot would be counted, and so Ms. Loetz left without casting a new ballot. *See id.* ¶ 10.

96. These voters did everything that was asked of them, and yet, they have been disenfranchised for reasons outside of their control. As the court in Pennsylvania concluded, it “would be an injustice to disenfranchise these voters when it cannot be shown that the ballots in question were not ‘securely sealed’ in the privacy envelope prior to the canvassing of those ballots...there has been no suggestion or evidence that the absence of a sealed inner envelope in anyway jeopardized the privacy of the ballot.” *See supra* ¶ 91.

97. Although an unsealed ballot might otherwise present a concern that the ballot has been tampered with, that concern is not present when the voters have affirmed, under oath, that they maintained custody over the ballots from the time they marked their ballots to the time of mailing or otherwise returning their ballots,

and have affirmed, under oath, for whom they cast their ballot. Under these circumstances, the U.S. House of Representatives can have full confidence that these voters' ballots have not been tampered with in a way that affects the voters' honestly cast ballots.

98. These five voters have affirmed, under oath, that they voted for Contestant Hart. These voters should not have their ballots invalidated when the voters themselves can confirm their honest votes, and particularly when their testimony negates any possible inference of ballot tampering or fraud.

99. These voters fully complied with the statutory requirement to securely seal their ballots. These five voters' ballots were lawfully cast, contained votes for Contestant Hart, and should have been included in Iowa's certified count for the District. These five voters have voluntarily waived their right to a secret ballot to affirm they cast votes for Contestant Hart. Their ballots, which result in a net gain of five votes for Contestant Hart, should be included in the final determination of who is entitled to hold the office of United States Representative for Iowa's Second Congressional District.

Absentee Ballots Timely Returned to Auditor's Office (Two Ballots)

100. For an absentee ballot "to be counted, the return envelope must be received in the commissioner's office before the polls close on election day." Iowa Code § 53.17(2). This law ensures that only ballots cast on or before Election Day are included in the count.

101. Before Election Day, two eligible Iowa voters, Mei Ling Lietsch and Krystal Nicole Klawonn, returned their absentee ballots to a no-contact ballot

delivery drop box affixed to the Linn County Auditor Office. *See* Lietsch Aff. ¶ 5; Klawonn Aff. ¶ 5. Each voter attends school in Linn County.

102. The Linn County Auditor's Office marked both ballots as received by Election Day (November 3). *See* Lietsch Aff. at Ex. A (scan of ballot envelope); Klawonn Aff. at Ex. A (same).

103. The two voters were registered in Des Moines and Wapello Counties, respectively. *See* Lietsch Aff. ¶ 2; Klawonn Aff. ¶ 2. The Linn County Auditor thus mailed both ballots to those respective counties.

104. Des Moines and Wapello Counties rejected both ballots as untimely, even though both ballots were in the hands of election officials (in Linn County) before the close of polls. *See* Lietsch Aff. ¶¶ 5-7; Klawonn Aff. ¶¶ 5-7.

105. Iowa law merely requires that the envelope be "received in the commissioner's office" by Election Day. This requirement guarantees that any ballot included in the certified returns was cast on or before Election Day. Iowa law does not specify that the envelope must be returned to the commissioner's office where the voter resides, unlike other provisions of Iowa law that do include that specification. *See, e.g.*, Iowa Code § 53.42 (allowing military voters to "personally appear in the office of the commissioner of the county of the voter's residence"). Voters that returned their envelopes to a county auditor by the statutory deadline should not be disenfranchised because it took several additional days for that county auditor to forward the envelope to the county where the voter resides.

106. Voters that returned their ballot envelopes to a county auditor by the statutory deadline should not be disenfranchised because it took several additional

days for that county auditor to forward the envelope to the county where the voter resides. Moreover, under Iowa law, county auditors must accept for counting any ballot that is postmarked by November 2 (the day before the election) and arrives by November 9 (the Monday following the election). *See id.* § 53.17(2). Auditors may not complete their canvass of absentee ballots until after that date. Because the auditors in Des Moines and Wapello Counties possessed the two ballots in question by November 9, they suffered no prejudice or inconvenience by the delay.

107. Both Ms. Lietsch and Ms. Klawonn have voluntarily waived their right to cast a secret ballot to affirm they cast their ballots for Contestant Hart. *See Lietsch Aff.* ¶ 4; *Klawonn Aff.* ¶ 4.

108. Both ballots were lawfully cast, contained votes for Contestant Hart, and should have been included in Iowa's certified count for the District. Ms. Lietsch and Ms. Klawonn's ballots, which result in a net gain of two votes for Contestant Hart, should be included in the final determination of who is entitled to hold the office of United States Representative for Iowa's Second Congressional District.

Summary of Erroneously Excluded Ballots

109. In sum, the following voters' ballots were erroneously excluded from the state's certified returns. Each of these ballots should be considered in the House's determination of who is entitled to hold the office of United States Representative for Iowa's Second Congressional District.

Voter(s)	County	Circumstances	Votes
Unidentified	Scott	Two curbside ballots erroneously excluded from initial count.	+2 Hart

Unidentified	Marion	Nine absentee ballots erroneously excluded from count.	+5 Hart +3 Miller-Meeks +1 undervote
Ms. Kurth	Johnson	Voter provided required cure documents in a timely manner. Provisional ballot sheet detached due to election worker error.	+1 Hart
Mr. Nasr	Johnson	Voter signed absentee envelope in white space under "Signature Required" rather than on signature line.	+1 Hart
Ms. Rhomberg	Johnson	Voter received <i>sealed</i> absentee ballot envelope. Voter opened envelope to deposit ballot and securely sealed it. Voter can confirm contents of ballot to negate any inference of fraud or tampering.	+1 Hart
Mr. Schaefer	Johnson	Voter received <i>sealed</i> absentee ballot envelope. Voter opened envelope to deposit ballot and securely sealed it. Voter can confirm contents of ballot to negate any inference of fraud or tampering.	+1 Hart
Ms. Loetz	Scott	Voter accidentally ripped ballot envelope, but election officials confirmed ballot would still be counted. Voter can confirm contents of ballot to negate any inference of fraud or tampering.	+1 Hart
Mr. Tucker	Scott	Voter's sealed absentee ballot envelope was deemed "not properly sealed," but voter can confirm contents of ballot to negate any inference of fraud or tampering.	+1 Hart
Mr. Lackland	Johnson	Voter's sealed absentee ballot envelope was deemed "not properly sealed," but voter can confirm contents of ballot to negate any inference of fraud or tampering.	+1 Hart
Mr. Overholt	Johnson	Voter's sealed absentee ballot envelope was deemed "not properly sealed," but voter can confirm contents of ballot to negate any inference of fraud or tampering.	+1 Hart

Mr. Reyes-Torres	Johnson	Voter's sealed absentee ballot envelope was deemed "not properly sealed," but voter can confirm contents of ballot to negate any inference of fraud or tampering.	+1 Hart
Ms. Lietsch	Des Moines	Voter timely returned absentee ballot to Linn County.	+1 Hart
Ms. Klawonn	Wapello	Voter timely returned absentee ballot to Linn County.	+1 Hart
Net Votes for Hart			+15 Hart

110. In total, the state's certified returns erroneously failed to include at least 22 ballots, which included 18 votes for Contestant Hart, three votes for Contestee Miller-Meeks, and one ballot that did not record a vote for either candidate, resulting in a net gain of 15 votes for Contestant Hart. These votes are sufficient to change the outcome of the election and establish Contestant Hart's entitlement to the seat.

SECOND GROUND FOR CONTESTING ELECTION: UNLAWFUL AND NON-UNIFORM RECOUNT PROCEDURES

111. Had the recounts that occurred across the District from November 17 to November 28 been conducted lawfully and consistently, they would have put Contestant Hart in the lead, and she would have been certified as the winner. But the recounts, which took place across 24 different counties, were haphazard and non-uniform, and in several counties, failed to conform to law. As a direct result, Contestee Miller-Meeks was improperly certified as the winner.

112. A marked and troubling lack of uniformity across the 24 counties caused a failure to identify lawful votes cast among ballots treated by the machines as "overvotes" (i.e., ballots assumed to select multiple candidates for a single

office) and “undervotes” (i.e., ballots assumed to select no candidates for that office). It likewise caused a failure to identify lawful “write-in” votes, where the voters made no selection next to the printed names but wrote Contestant Hart’s or Contestee Miller-Meeks’s name in the space provided on the ballot. Finally, this lack of uniformity caused ballots containing identifying marks to be rejected in Contestant Hart’s stronghold counties but ignored in counties Contestee Miller-Meeks won handily.

113. In each case, voters whose ballots would have been counted had they resided in other counties were rejected because of different decisions made by the recount boards in their counties. These disparities resulted in a net loss of votes for Contestant Hart, disenfranchised lawful Iowa voters who cast ballots that should have been counted, and deprived Contestant Hart of the certification to which she is legally entitled.

LEGAL PRINCIPLES

Federal Equal Protection Requirements

114. The Equal Protection Clause prohibits the arbitrary and disparate treatment of voters. In *Bush v. Gore*, the Supreme Court held that the Equal Protection Clause applies not only to the “initial allocation of the franchise,” but also to “the manner of its exercise,” and that “[h]aving once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” *Bush v. Gore*, 531 U.S. 98, 104–05 (2000).

115. The Court in *Bush v. Gore* found an equal protection violation specifically when a “citizen whose ballot was not read by a machine because he failed to vote for a candidate in a way readable by a machine may still have his vote counted in a manual recount,” while a “citizen who marks two candidates in a way discernible by the machine will not have the same opportunity to have his vote count, even if a manual examination of the ballot would reveal the requisite indicia of intent.” *Id.* at 108. The Court found that such a disparity presented an “equal protection problem.” *Id.*

116. Multiple lower courts have since similarly held that voting systems that result in varying chances that an individual’s vote will be counted based on their jurisdiction are constitutionally impermissible. *E.g.*, *Stewart v. Blackwell*, 444 F.3d 843, 868 (6th Cir. 2006), *vacated en banc on other grounds*, 473 F.3d 692 (6th Cir. 2007) (holding that decision to certify voting machines with substantially different error rates violated the Equal Protection Clause); *Black v. McGuffage*, 209 F. Supp. 2d 889 (N.D. Ill. 2002) (same).

Iowa Recount Procedures and Counting Standards

117. Under Iowa law, there is no single “recount,” but rather separate recounts occur in each county in a district. In each county, a single three-person recount board must conduct the recount, regardless of the county’s size or the number of ballots to be counted. For the recount in Iowa’s Second Congressional District, three people conducted the recount in Johnson County, where over 84,000 ballots were cast. Likewise, three people conducted the recount in Wayne County, where fewer than 3,200 ballots were cast.

118. There are no minimum qualifications or standardized trainings for recount board members.

119. Each recount board consists of a designee of each candidate and a third member chosen jointly by the candidates' designees. Iowa Code § 50.48(3). If the designees cannot agree on a third member by a certain date, then the chief judge of the district covering the county selects the third member. *Id.*

120. The recount board's small size makes it hard to count large numbers of ballots by hand. Moreover, Iowa law requires the recount to be finished within 18 days of the county canvass. *Id.* § 50.48(4)(c). Because of the time required to form a recount board, and because Thanksgiving Day falls within the 18 days available for a recount, each three-person recount board has little more than ten days to complete its recount, if all members can even meet on each of those days. This makes it impracticable for a full hand recount to be conducted, especially in large counties.

121. The three-person recount board may count the ballots by machine, by hand, or both. Iowa Admin. Code 721-26.105(50). The mechanics of the recount are left to the discretion of the recount board.

122. In a machine recount, the machine reads and tallies the ballots. In a hand recount, by contrast, the recount board visually inspects the ballots and determines the intent of the voter. Even where a machine recount is supplemented by a hand recount of some of the ballots, the result is a disparate treatment of voters. The same ballots that are rejected in a machine-recount jurisdiction because of errors by the voting machines will be counted in a hand-recount jurisdiction.

123. For example, under Iowa law, voting machines are programmed to reject ballots that contain what the machine reads as an overvote, an unreadable mark, or a completely blank ballot. The machines are *not* programmed to reject ballots that contain what the machine reads as an undervote. Iowa Admin. Code 721–22.261(2)(a) (ES&S machines), 721–22.264(2)(c) (Unisyn machines), & 721–22.266(2)(b) (Dominion machines). However, voting machines are fallible, and the machines used in Iowa sometimes erroneously interpret a ballot as an undervote, when in fact the voter has marked the ballot—but the machine, for whatever reason, does not pick up that mark. As a result, even if a machine-recount jurisdiction reviews rejected ballots by hand, as the Secretary of State has made clear they should, directing that “[a]ny ballots rejected by the scanner should be counted accordingly to the provisions of IAC 721–26,” some lawfully-cast ballots (e.g., those read by machines as undervotes, but containing mark(s) reflecting voter intent to support a candidate) will still be unread entirely because of machine error. Office of the Iowa Secretary of State, *Recount Board Guide* at 6 (Sep. 2014).

124. A machine recount will fail to count some ballots where the voter cast a legal vote for a particular candidate—including *overvotes*, where the voter selected only one candidate, but the machine “thinks” the voter erroneously selected two candidates, and *undervotes*, where the voter selected a candidate, but the machine cannot associate a mark with a selection.

125. The same problem can occur with write-in ballots. For both machine and hand recounts, write-in ballots must be tallied in accordance with Iowa law. Office of the Iowa Secretary of State, *Recount Board Guide* at 6, 8 (Sep. 2014).

Under Iowa law, a write-in vote for a candidate who is pre-printed on the ballot still counts as a vote for that candidate. *See* Iowa Admin. Code 721–26.20(49). But if a county conducts only a machine recount, and does not visually inspect any of the ballots, then it will overlook valid write-in votes. The machine will record no vote for the race, when in fact the voter cast a valid ballot by writing the candidate’s name in the available space on the ballot.

126. All these disparities can cause identically situated voters in counties using different recount methods to be treated differently.

127. For example, a voter whose ballot was erroneously treated as an “overvote” is less likely to have her vote counted in a county that conducts only a machine recount than an identical voter in a county that conducts a hand recount. A machine recount would not suffice to determine the voter’s intent, while a hand recount would.

128. Likewise, a voter whose ballot was erroneously treated as an “undervote” is less likely to have her vote counted in a county that conducts only a machine recount than an identical voter in a county that conducts a hand recount. Again, a machine recount alone would not suffice to determine the voter’s intent, while a hand recount would.

129. Similarly, the write-in ballots described above are valid votes under Iowa law. *Id.* But the voter who casts such a ballot is less likely to have her vote counted in a county that conducts only a machine recount, than an identical voter in a county that conducts a hand recount. A machine recount alone will not reveal that the voter actually voted for Contestant Hart or Contestee Miller-Meeks.

130. Finally, Iowa law requires a ballot to be rejected if it contains “identifying marks.” *See id.* 721–26.14(50). However, a voter who makes such a mark in a county that conducts only a machine recount is more likely to have his vote counted than an identical voter in a county that conducts a hand recount. A machine recount alone would not surface the ballot’s defect, while a hand recount would.

131. Such disparate treatment becomes increasingly consequential in a race like this one—with a razor-thin margin—where a large number of ballots were subjected to a machine recount only. The disparate treatment is exacerbated further when several counties that conduct machine recounts do *not* supplement them with a hand count of all overvotes, undervotes, and write-in votes, as discussed further below.

132. As a result, the ordinary disparities that would follow in any recount (and which themselves could make the difference in a race as close as this one) were significantly exacerbated in the chaotic, compressed, and high-pressure series of recounts at issue here, which took place over 11 days across 24 counties in eastern Iowa. Together, they caused a net loss of votes for Contestant Hart that exceeded her opponent’s illusory six-vote margin, disenfranchised Contestant Hart’s voters, deprived them of equal protection under the law, and deprived Contestant Hart of the office to which she is entitled.

FACTS

Initial Returns Contained Significant Errors, Revealing Potential Issues for the Recount

133. On election night, initial returns from the 24 counties in the Second Congressional District showed that Contestee Miller-Meeks had a lead of 282 votes. That lead, however, was short-lived.

134. Three days after the initial returns were reported, the Jasper County auditor discovered a significant reporting error necessitating an administrative recount. After a machine-only administrative recount in Jasper County, Miller-Meeks was no longer in the lead, and Hart was ahead by 162 votes. But Contestant Hart's lead was also short-lived.

135. On the evening of November 9, 2020, the Lucas County auditor discovered another significant reporting error: inaccurate totals for one precinct. After Lucas County conducted its own machine-only administrative recount, the race seesawed again, and Contestee Miller-Meeks led by 47 votes.

136. After these irregularities, to ensure that all lawful votes in the District were counted, Contestant Hart timely requested recounts in all 24 counties.

137. The recount boards for each county met and conducted their recounts, with the first beginning on November 17, 2020, and the last ending on November 28, 2020.

Lack of Uniformity Left Lawful Votes Uncounted, and Invalid Ballots Inconsistently Treated

138. When a machine reads a ballot as an overvote, an undervote, or a write-in vote, the only sure way to determine the voter's choice is to visually inspect

the ballot. But as the table below shows, only three of the 24 recount boards visually inspected all the undervotes, overvotes, and write-in votes to see whether they showed legal votes: Clinton, Jefferson, and Muscatine. *See Wolfe Aff.* ¶¶ 4–7; *Sivright Aff.* ¶¶ 5-8; *Riley Aff.* ¶ 4; *Glick Aff.* ¶¶ 6–8.

Recount Method by County ³							
	All Overvotes Hand-Counted?	All Undervotes Hand-Counted?	All Write-Ins Hand-Counted?	Inspected for Identifying Marks?	Number of Undervotes After Recount	Number of Overvotes After Recount	Number of Write-in Ballots After Recount
Appanoose	Yes	Only 1 precinct	Yes	Not Confirmed	508	7	8
Cedar	Only Absentee	Only Absentee	Only Absentee	Not Confirmed	577	4	17
Clarke⁴	No	No	No	Not Confirmed	330	3	13
Clinton	Yes	Yes	Yes	Yes	833	7	35
Davis	No	No	No	No	200	2	7
Decatur	No	No	No	No	253	3	9
Des Moines	Only Election Day	Only Election Day	Only Election Day	Not Confirmed	1,096	17	62
Henry	No	No	No	No	551	6	23
Jasper	Only 1 precinct	Only 1 precinct	Only 1 precinct	Not Confirmed	968	5	36
Jefferson	Yes	Yes	Yes	Yes	388	3	17
Johnson⁵	Yes	No	Yes	Yes	3,863	36	68
Keokuk⁶	No	No	No	Not Confirmed	297	0	8

³ See generally Appendix, Affidavits from County Recount Board Members.

⁴ Clarke reviewed overvotes, undervotes, and write-ins for all absentee ballots and Election Day ballots in three of eight precincts.

⁵ Johnson “paged through” some boxes of absentee ballots but did not conduct a full undervote review of those boxes.

⁶ Keokuk reviewed overvotes, undervotes, and write-ins only in certain precincts.

Recount Method by County ³							
	All Overvotes Hand-Counted?	All Undervotes Hand-Counted?	All Write-Ins Hand-Counted?	Inspected for Identifying Marks?	Number of Undervotes After Recount	Number of Overvotes After Recount	Number of Write-in Ballots After Recount
Lee	No	No	No	No	675	5	35
Louisa	No	No	No	No	273	2	10
Lucas	No	No	No	No	449	3	7
Mahaska	Only 1 precinct	Only 1 precinct	Only 1 precinct	Not Confirmed	772	9	26
Marion	No	No	No	No	1,006	12	43
Monroe	No	No	No	No	298	0	6
Muscatine	Yes	Yes	Yes	Not Confirmed	764	2	37
Scott⁷	Yes	No	Yes	Yes	3,384	23	168
Van Buren	No	No	No	No	100	0	4
Wapello	No	No	No	No	751	14	36
Washington	No	No	No	No	502	12	23
Wayne	No	No	No	No	351	0	5
Total:					19,189	175	703

139. The remaining 21 recount boards did not visually inspect all overvotes, undervotes, and write-in votes. Twelve recount boards *did not review a single overvote, undervote, or write-in vote* for voter intent: Davis, Decatur, Henry, Lee, Louisa, Lucas, Marion, Monroe, Van Buren, Wapello, Washington, and Wayne. *See* Taylor Aff. ¶¶ 5–9; Morain Aff. ¶ 4; Helman Aff. ¶¶ 5–9; Pedersen Aff. ¶¶ 4, 6–10; Buckman Aff. ¶ 5–9; Zastawniak Aff. ¶¶ 5–8; Biderman Aff. ¶¶

⁷ Scott reviewed overvotes, undervotes, and write-ins for votes cast on Election Day in only certain precincts and reviewed only certain ballots for distinguishing marks.

5-9; Colosimo Aff. ¶¶ 4-7; Peacock Aff. ¶ 5-9; Sandra Johnson Aff. ¶¶ 5-9; Stewart Aff. ¶¶ 5, 9-10; Wandro (Wayne) Aff. ¶ 5-9. These 12 counties alone account for 5,676 ballots that were not reviewed for voter intent during the recount.

Counties Failed to Review Overvotes for Voter Intent

140. For overvotes, only six of the 24 recount boards reviewed all overvotes for voter intent: Appanoose, Clinton, Jefferson, Johnson, Muscatine, and Scott. *See* Thomas Aff. ¶ 7; Sivright Aff. ¶ 8; Wolfe Aff. ¶ 7; Riley Aff. ¶ 4; Sillman Aff. ¶ 9; Wandro (Johnson) Aff. ¶ 5; Glick Aff. ¶¶ 7-8; Metcalf ¶¶ 7-8; Russell Aff. ¶¶ 4-6; Nahra Aff. ¶¶ 5-7.

141. Six recount boards reviewed only some overvotes for voter intent: Cedar, Clarke, Des Moines, Jasper, Keokuk and Mahaska. *See* Alt Aff. ¶ 9; Truitt Aff. ¶¶ 7-8; Schulte Aff. ¶ 10; Thoma Aff. ¶¶ 7-8; Thostenson Aff. ¶¶ 9-10; Eric Palmer Aff. ¶¶ 7-8.

142. Twelve recount boards did not review *any* overvotes for voter intent: Davis, Decatur, Henry, Lee, Louisa, Lucas, Marion, Monroe, Van Buren, Wapello, Washington, and Wayne. *See* Taylor Aff. ¶ 5; Morain Aff. ¶ 4; Helman Aff. ¶¶ 5-9; Pedersen Aff. ¶¶ 4, 6-10; Buckman Aff. ¶ 5; Zastawniak Aff. ¶¶ 5-8; Biderman Aff. ¶¶ 5-9; Colosimo Aff. ¶¶ 4-7; Peacock Aff. ¶ 5; Sandra Johnson Aff. ¶¶ 5-6; Stewart Aff. ¶¶ 5, 9-10; Wandro (Wayne) Aff. ¶ 5. These counties alone accounted for 59 unreviewed overvotes, as can be seen in the table above.

143. Dr. Maxwell Palmer conducted an analysis of the six recount boards that reviewed all overvotes for voter intent. He found that 39.5 percent of votes that a machine classified as an overvote were ultimately determined to show voter

intent. This means that more than 50 ballots that had initially been characterized by the voting machine as overvotes actually contained a discernable vote for Contestant Hart or Contestee Miller-Meeks. Dr. Palmer Decl. ¶ 16.

144. From this analysis, Dr. Palmer found that the current certified totals contain an estimated 38 votes that, while classified as overvotes in the final tally, actually expressed voter intent for specific candidates. *Id.* ¶ 17. In other words, approximately 38 voters were likely disenfranchised by the recount boards' failure to review all ballots deemed "overvotes" for voter intent.

145. Each unreviewed overvote represents a potentially disenfranchised Iowan.

Counties Failed to Review Undervotes for Voter Intent

146. For undervotes, only three of the 24 recount boards reviewed all undervotes for voter intent: Clinton, Jefferson, and Muscatine. *See* Wolfe Aff. ¶¶ 4-7; Sivright Aff. ¶¶ 5-8; Riley Aff. ¶ 4; Glick Aff. ¶¶ 6-8; Metcalf Aff. ¶¶ 6-8.

147. Nine recount boards reviewed only some undervotes for voter intent: Appanoose, Cedar, Clarke, Des Moines, Jasper, Johnson, Keokuk, Mahaska and Scott. *See* Thomas Aff. ¶ 4; Alt Aff. ¶¶ 4-5; Truitt Aff. ¶¶ 4-6; Schulte Aff. ¶¶ 4-5; Thoma Aff. ¶¶ 4-8; Sillman Aff. ¶¶ 5-7; Thostenson Aff. ¶¶ 9-10; Eric Palmer Aff. ¶¶ 4, 8; Nahra Aff. ¶ 10; Russell ¶ 8.

148. Twelve recount boards did not review *any* undervotes for voter intent: Davis, Decatur, Henry, Lee, Louisa, Lucas, Marion, Monroe, Van Buren, Wapello, Washington, and Wayne. *See* Taylor Aff. ¶ 5; Morain Aff. ¶ 4; Helman Aff. ¶¶ 5-9; Pedersen Aff. ¶¶ 4, 6-10; Buckman Aff. ¶ 5; Zastawniak Aff. ¶¶ 5-8;

Biderman Aff. ¶¶ 5–10; Colosimo Aff. ¶¶ 4–7; Peacock Aff. ¶ 5; Sandra Johnson Aff. ¶¶ 5–6; Stewart Aff. ¶¶ 5, 9–10; Wandro (Wayne) Aff. ¶ 5. These 12 counties alone accounted for over 5,400 unreviewed undervotes, as can be seen from the table above.

149. Each unreviewed undervote represents a potentially disenfranchised Iowan.

Counties Failed to Review Write-In Votes for Voter Intent

150. For write-in votes, at least ten of the 24 recount boards did not review ballots to determine whether the space for write-in candidates contained valid votes for either Hart or Miller-Meeks: Davis, Decatur, Henry, Lee, Louisa, Lucas, Marion, Monroe, Van Buren, Wapello, Washington, and Wayne. *See* Taylor Aff. ¶¶ 5, 9; Morain Aff. ¶ 4; Helman Aff. ¶¶ 5, 9; Pedersen Aff. ¶¶ 4–6, 10; Buckman Aff. ¶¶ 5, 9; Zastawniak Aff. ¶¶ 5, 8; Biderman Aff. ¶¶ 5, 9; Colosimo Aff. ¶¶ 5, 7; Peacock Aff. ¶¶ 5, 9; Stewart Aff. ¶ 10; Sandra Johnson Aff. ¶¶ 5, 9; Wandro (Wayne) Aff. ¶¶ 5, 9. These counties alone account for 208 unreviewed write-in votes, as can be seen in the table above.

151. Each unreviewed write-in vote represents a potentially disenfranchised Iowan.

Counties Failed to Review Ballots for Identifying Marks

152. For ballots containing identifying marks, the recount boards did not consistently apply Iowa law's requirement that a ballot be rejected entirely if a voter marks it with an identifying mark. Iowa Code § 49.98.

153. Four counties reviewed some or all ballots for identifying marks. Dr. Palmer Decl. ¶ 18. In Johnson County, where Contestant Hart won by a wide margin, the recount board *did* inspect and reject ballots for identifying marks. *See* Wandro (Johnson) Aff. ¶ 8. From around 84,000 ballots cast, the board found (and excluded) 14 ballots with identifying marks. Nine of those 14 excluded ballots were for Contestant Hart, and five were for Contestee Miller-Meeks, resulting in a net loss of four votes for Contestant Hart. Dr. Palmer Decl. ¶ 18. Jefferson County excluded one vote for Contestee Miller-Meeks based on an identifying mark. *See* Riley Aff. ¶ 9; Dr. Palmer Decl. ¶ 18. Scott County reported that two ballots with overvotes had identifying marks while Clinton County excluded at least one ballot for an identifying mark but did not report the number of ballots excluded for identifying marks for each candidate. Dr. Palmer Decl. ¶ 18.

154. However, at least 12 of the 24 recount boards did not examine *a single ballot* for identifying marks—Davis, Decatur, Henry, Lee, Louisa, Lucas, Marion, Monroe, Van Buren, Wapello, Washington, and Wayne. *See* Taylor Aff. ¶ 8; Morain Aff. ¶ 5; Helman Aff. ¶ 8; Pedersen Aff. ¶ 9; Buckman Aff. ¶ 8; Zastawniak Aff. ¶ 7; Biderman Aff. ¶ 8; Colosimo Aff. ¶ 6; Peacock Aff. ¶ 8; Stewart Aff. ¶ 9; Sandra Johnson Aff. ¶ 8; Wandro (Wayne) Aff. ¶ 8. In those counties, more than 97,000 votes were recorded for Contestant Hart and Contestee Miller-Meeks. All were counties that Contestee Miller-Meeks won.

155. Because the Johnson County recount board's review of around 84,000 ballots resulted in the rejection of 14 ballots with identifying marks, it is highly likely that similar reviews in the other counties would result in the rejection

of a greater number of ballots, and a greater net loss of votes for Contestee Miller-Meeks.

156. These disparities affected the outcome of the election. They deprived Contestant Hart of votes that would have led to her certification and deprived her supporters of the right to select the candidate of their choice.

157. The House has authority to conduct a full, uniform recount of the ballots cast in Iowa's Second Congressional District, to avoid and correct the disparities that the practices in the previous recount created, and to ensure that every Iowan's voice in the Second Congressional District is fully and fairly heard.

CONCLUSION

For the reasons described above, Iowa's certified returns did not include every lawful ballot cast by every eligible voter in Iowa's Second Congressional District. The errors and irregularities made in Iowa's initial count of ballots and in the subsequent recount render the state's certified returns patently inaccurate and unreliable. Given the margin of this race, those errors are, if now corrected, sufficient to change the outcome of the election in favor of Contestant Hart, who is rightfully entitled to a seat as the Representative in the One Hundred Seventeenth Congress from Iowa's Second Congressional District when every lawful vote is counted.

PRAYER FOR RELIEF

Wherefore, Contestant Rita R. Hart prays that the United States House of Representatives:

1. Ensures that all evidence related to the November 2020 general election in Iowa's Second Congressional District is preserved.

2. Resolves that the Iowa State Board of Canvassers' certified returns as to Iowa's Second Congressional District are null and void because such returns failed to account for every lawful vote by eligible voters in Iowa's Second Congressional District.

3. Resolves that the 22 lawful ballots cast by eligible voters in Iowa's Second Congressional District, and which were excluded from the canvass of ballots and the certified totals, are to be included in the final count of ballots in Iowa's Second Congressional District.

4. Conducts a hand recount of every ballot, including but not limited to any ballot which was initially marked as an overvote, undervote, or write-in vote in the initial count, in order to determine true voter intent and ensure that every lawful vote is counted, and include those ballots in the final count of ballots in Iowa's Second Congressional District.

5. Resolves that Contestant Hart is entitled to a seat as the Representative in the One Hundred Seventeenth Congress from Iowa's Second Congressional District.

6. Pursuant to 2 U.S.C. § 396, reimburses from the applicable accounts of the House of Representatives the Contestant's and the Contestee's reasonable expenses for this contested-election case, including reasonable attorneys' fees, upon such party's verified application, accompanied by a complete and detailed account of the party's expenses and supporting vouchers and receipts.

7. Under 2 U.S.C. § 383, Contestee must serve her Answer on Contestant within 30 days after service of this Notice of Contest.

Respectfully submitted by:

Rita R. Hart
RITA R. HART

VERIFICATION

I swear or affirm that I am a party to this action, that I have read the foregoing Notice of Contest, and that the information stated in the Notice of Contest is true to the best of my knowledge and belief. I declare under penalty of perjury under the laws of the United States and of the State of Iowa that the foregoing is true and correct.

Rita R. Hart
RITA R. HART

Subscribed and sworn to before me
this 19th day of December, 2020.

Jalen Snowbarger
Notary Public

5-21-22
My Commission Expires

