
IN THE

United States House of Representatives

RITA HART,

Contestant,

v.

MARIANNETTE MILLER-MEEKS,

Contestee.

**CONTESTANT'S INITIAL BRIEF IN RESPONSE TO CHAIRPERSON LOFGREN'S
LETTER OF MARCH 10, 2021**

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Pursuant to Chairperson Zoe Lofgren’s letter dated March 10, 2021 (the “March 10 Letter”) and Committee Resolutions 117-10 and 117-12, Contestant Rita Hart submits this brief containing her proposed rules and procedures for this contested election case.

As an initial matter, Contestant Hart will commence her statutory discovery period upon the filing of Contestee Mariannette Miller-Meeks’s answer, which is due today pursuant to Committee Resolution 117-12. *See* 2 U.S.C § 386(c)(1) (“Contestant may take testimony within thirty days after service of the answer . . .”). However, consistent with her proposals outlined in Questions 8 and 13, Contestant Hart encourages the Committee to adopt rules and procedures to streamline discovery through the use of affidavit testimony. To that end, counsel for Contestant Hart plans to contact counsel for Contestee Miller-Meeks in the hope of stipulating to various measures to expedite these proceedings—including use of affidavit testimony as contemplated by the Federal Contested Elections Act (“FCEA”). *See id.* § 387(c).

Question 1

Please describe as clearly, precisely, and comprehensively as possible the rules and procedures, if any, that the Committee should adopt for (a) determining whether particular ballots were validly cast by eligible voters; (b) examining, inspecting, and counting ballots, consistent with voters’ intent; and (c) facilitating the just and speedy disposition of this contested election case.

General Principles.

1. The purpose of an election is to ascertain the will of the electorate.
2. Because the will of the electorate is best reflected by counting all validly cast ballots, the rules adopted by the Committee shall disenfranchise the smallest number of voters.
3. No voter shall be disenfranchised as a result of errors committed by election administrators or circumstances outside the voter’s control.
4. Absent clear and convincing evidence to the contrary, a voter’s testimony shall be deemed accurate for the purpose of determining whether a ballot was validly cast.

5. Absent clear and convincing evidence to the contrary, all voters who cast ballots in the November 3, 2020 general election shall be deemed eligible voters.

(a) Determining whether particular ballots were validly cast by eligible voters

Previously Certified Ballots.

Any ballot included as part of the certified vote total—as a vote for a candidate, an undervote, an overvote, a write-in vote, or a ballot disqualified for having an identifying mark—shall be deemed validly cast for purposes of this contested election case. *See, e.g., McCloskey & McIntyre*, H.R. Rep. No. 99-58, at 36 (1985) (“[T]he Task Force accepted the argument that the ballots already counted should remain in the count . . .”).

Election Day Ballots.

1. Any ballot marked by an eligible voter on Election Day in any manner (excluding provisional and absentee ballots, but including in-precinct ballots, ballots marked with assistance, and curbside ballots) and submitted to an election official or inserted into a scanning machine shall be deemed validly cast, unless the ballot is (1) clearly marked as “spoiled” or (2) a damaged or defective ballot that was properly duplicated in accordance with Iowa Code § 52.37. *See* Iowa Code § 52.37(1)(a); Iowa Admin. Code r. 721-22.232(6).
2. No Election Day ballot shall be deemed invalid due to administrative error or circumstances outside the voter’s control. *See, e.g.,* Jack Maskell & L. Paige Whitaker, Cong. Rsch. Serv., RL33780, *Procedures for Contested Election Cases in the House of Representatives* 15–16 (2010) (collecting contests); *see also infra* note 4.

Provisional Ballots.

1. A provisional ballot shall be deemed validly cast if it satisfies the statutory requirements for provisional ballots provided in Iowa Code § 49.81 and the required proof of residency or identification was timely received by the county auditor. *See* Iowa Admin. Code r. 721-21.15.
2. If a provisional voter cast a valid ballot but there is uncertainty about which ballot is associated with that voter, the Committee shall undertake reasonable efforts to identify the associated ballot. Reasonable efforts include:
 - a. Opening provisional ballot envelopes suspected to contain such ballots;

- b. Comparing the ballots within those envelopes to the testimonies of the provisional voters; *and*
 - c. Taking any additional steps the Committee deems necessary to match the correct ballots to the provisional voters with reasonable certainty.
3. All ballots matched to provisional voters with reasonable certainty shall be deemed validly cast.
4. No provisional ballot shall be deemed invalid due to administrative error or circumstances outside the voter's control. *See, e.g.,* Maskell & Whitaker, *supra*, at 15–16 (collecting contests); *see also infra* note 4.

Absentee Ballots.

1. An absentee ballot shall be deemed validly cast if:
 - a. It was cast by an eligible voter;
 - b. It was contained, by itself, in an official return envelope;
 - c. The official return envelope was neither open nor open and resealed;
 - d. The official return envelope was signed by the voter; *and*
 - e. It was timely returned. *See* Iowa Code §§ 53.16, 53.25(1)(a); Iowa Admin. Code r. 721-21.361(1)–(6).
2. An absentee ballot shall be deemed contained, by itself, in an official return envelope if:
 - a. The ballot was returned in an official return envelope; *and*
 - b. No other ballot was contained in the envelope. *See* Iowa Code § 53.25(1)(a); Iowa Admin. Code r. 721-21.361(5).
3. An official return envelope shall be considered “open” only if there is clear and convincing evidence that:
 - a. No portion of the envelope flap was affixed or connected to the body of the return envelope; *and*
 - b. There has been tampering with the ballot's selection of a candidate in the election for U.S. Representative for Iowa's Second Congressional District.
4. An official return envelope shall be considered “opened and resealed” only if there is clear and convincing evidence that:

- a. The envelope was opened and resealed after the voter placed their completed ballot in the envelope; *and*
 - b. There has been tampering with the ballot’s selection of a candidate in the election for U.S. Representative for Iowa’s Second Congressional District.
5. An envelope shall be deemed to be signed by the voter if the voter has affixed their signature anywhere on the envelope by 5 p.m. the day before the election. *See* Iowa Code § 53.16; Iowa Admin. Code r. 721-21.355(1)(b)(1).
 6. An absentee ballot shall be deemed timely returned if it was:
 - a. Returned to an election official in person or by drop box by the close of the polls on Election Day;
 - b. Returned by mail to an election official and arrived on or before Election Day; *or*
 - c. Returned by mail to an election official and arrived after Election Day but prior to noon on November 9, 2020 and bore a postmark or barcode indicating that it was mailed before Election Day. *See* Iowa Code § 53.17(1)–(3); Iowa Admin. Code r. 721-21.303(5).
 7. Any absentee ballot that has been removed from its secrecy envelope shall be deemed validly cast. *See* Iowa Code § 53.23(5) (“After 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.”).
 8. No absentee ballot shall be deemed invalid due to administrative error or circumstances outside the voter’s control. *See, e.g.,* Maskell & Whitaker, *supra*, at 15–16 (collecting contests); *see also infra* note 4.

(b) Examining, inspecting, and counting ballots, consistent with voters’ intent

The Committee should generally apply Iowa law, regulations, and guidance—specifically, Iowa Code §§ 49.92–49.99, Iowa Administrative Code r. 721-26.1 et seq., and the Counting Votes guide issued by the Office of the Iowa Secretary of State (collectively, the “Iowa Counting Rules”), *see* Ex. 1—consistent with the General Principles articulated above.

But while “the best guidelines available to the Committee are the election laws of the State. . . as enacted by the State legislature. . . and as interpreted by the State’s highest court,” the Committee “is certainly not bound to” follow state law. *McCloskey*, H.R. Rep. No. 99-58, at 16,

22 (quoting *Kyros v. Emery*, H.R. Rep. No. 94-760, at 10 (1975)). Indeed, “there are instances where it is in fact bound by justice and equity to deviate from it,” *id.* at 23—particularly when voter intent can be determined but a ballot is not, for one reason or another, in strict conformity with state law.¹ Where necessary to effectuate the will of the voters of the Second Congressional District, the Committee should therefore exercise its discretion to depart from Iowa law, and adopt counting rules that “disenfranchise the smallest possible number of voters.” *Id.* at 16.² Such an approach would be consistent with both House precedent and the Committee’s inherent powers to equitably resolve contested election cases. *See, e.g., id.* at 26–27 (noting that “[t]he Committee in its investigation has the power to establish uniform standards and guidelines for the counting of ballots when voter intentions can be determined, even where “such standards and guidelines for counting ballots run contrary to the technical requirements of state election laws”).

¹ Indeed, a century-and-a-half ago, one committee rejected the proposition that the House’s role in a contested election case is “purely ministerial,” explaining that

[i]t is manifest that the House, with its large powers and wide discretion, should not be confined within any such narrow limits. The House possesses all the powers of a court having jurisdiction to try the question, Who was elected? It is not even limited to the powers of a court of law merely, but, under the Constitution, clearly possesses the functions of a court of equity also.

McKenzie v. Braxton, 1 *Hinds’ Precedents* ch. 21, § 639, at 850 (1907).

² As a specific example, Iowa law prohibits the counting of certain races on a ballot where the voter departs from a standard method of marking their choices. *See* Iowa Admin. Code r. 721-26.18(2); *Counting Guide* at 5. Consistent with the principles articulated above, the Committee might instead adopt a rule to “[c]ount an otherwise valid ballot on which the voter has made any reasonable mark on (or in) a party emblem or voting square next to a candidate’s name. If the mark touches an emblem or square, it shall be counted as if in, or on, that emblem or square.” *McCloskey*, H.R. Rep. No. 99-58, at 28 (citing *In re Alford*, H.R. Rep. No. 86-1172 (1959); *Moss v. Rhea*, H.R. Rep. No. 625 (1902); 2 *Hinds’ Precedents* ch. 40, § 1121, at 695–96 (1907); *Roush or Chambers*, H.R. Rep. No. 87-513, at 22 (1961); *Kyros*, H.R. Rep. No. 94-760, at 3–5).

(c) Facilitating the just and speedy disposition of this contested election case

As discussed in Questions 3 and 5 below, the Committee should address two general categories of votes in this contested election case: (1) validly cast ballots that were deemed invalid by election officials and not counted, and (2) validly cast ballots that were subjected to inconsistent counting procedures in the Second Congressional District’s 24 counties. A just disposition of this contested election case can be achieved by applying Contestant Hart’s proposed rules and procedures to remedy both issues.

First, as discussed in Question 3, certain ballots—in particular, the 22 ballots identified by Contestant Hart in her notice of contest—were wrongfully rejected by election officials. These and any other wrongfully excluded ballots should be first reviewed using the rules and procedures articulated in Question 1(a) above and then counted pursuant to the guidelines established in Question 1(b).

Second, as discussed in Question 5, certain ballots were subjected to inconsistent counting protocols among the 24 counties in the District—specifically, differing reviews for overvotes, undervotes, and identifying marks. To remedy these inconsistencies and ensure that every ballot in the Second Congressional District is judged using the same standards, the Committee should grant Contestant Hart’s request in her notice of contest and apply the guidelines established in Question 1(b) above to “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.” Prayer for Relief ¶ 4.³

Question 2

How would your proposed rules and procedures promote fairness, impartiality and nonpartisanship, the accurate counting of all ballots validly cast by eligible voters and only those ballots, transparency, public confidence, timely dispute resolution, the equal right of all eligible voters to participate in the election, and the integrity of the election?

Throughout this contested election case, Contestant Hart has been guided by one overarching principle: that every ballot validly cast by a lawful voter should be counted. The success of any election—indeed, the functioning of any democratic society—is premised on the foundation that every voice is fairly heard. This objective is thwarted when, as here, otherwise-lawful ballots are unfairly and arbitrarily discarded by election officials. Contestant Hart initiated this contested election case to vindicate the promise of our democratic system: that the representatives who serve us have been selected by the votes of their constituents, not the errors and caprices of election administrators.

The rules and procedures proposed in this brief ensure that the Second Congressional District’s voters are properly enfranchised and represented by the candidate of their choice. Contestant Hart’s proposed process allows robust and thorough investigation while remaining conscientious of the Committee’s limited resources and desire to resolve this contested election case as expeditiously as possible.

³ Alternatively, if the Committee would prefer a more expeditious option, it could forgo a full hand recount and instead apply these proposed rules and procedures only to those ballots that were not previously included in the state-certified vote totals; apply these proposed rules and procedures only to those ballots that have been or will be identified by the parties in their briefing to date (including, in particular, their responses to Question 3 in this round of briefing); or apply these proposed rules and procedures only to the 22 ballots already identified by Contestant Hart in this contested election case.

The rules described above, which balance Iowa law with the need to ensure that all ballots cast by lawful voters are counted, will ensure just and speedy disposition of this contested election case. The General Principles ensure that any action by the Committee *expands* rather than contracts the franchise, and that voters are not unfairly or arbitrarily disenfranchised due to circumstances beyond their control. The specific rules and procedures described above ensure that administrative errors do not disenfranchise voters who (1) timely and properly surrendered their completed Election Day in-person ballots to officials, (2) properly cast provisional ballots and provided whatever cure was needed to validate them, and (3) cast absentee ballots with sufficient assurance of ballot integrity. This approach—prioritizing the counting rather than the rejection of ballots and ensuring that voters are not disenfranchised due to administrative errors or circumstances outside their control—is consistent with not only principles of justice and equity, but House precedent as well.⁴ Similarly, the rules for counting ballots prescribed by Contestant Hart default to the Iowa

⁴ See, e.g., Maskell & Whitaker, *supra*, at 15–16 (collecting contests); *McCloskey*, H.R. Rep. No. 99-58, at 24–26 (collecting contests and authorities and noting that “[a]bsent evidence of fraud, the House has counted votes where the honest intent of the voter could be determined, rather than denying the franchise to any individual due to nonfeasance of election officials”); *Roush or Chambers*, H.R. Rep. No. 87-513, at 33 (1961) (affirming that “the acts of election officials are merely directory and the voter will not be disenfranchised for failure of these officials to perform their duty”); *Brewster v. Utterback*, 2 *Deschler’s Precedents* ch. 9, § 47.2, at 1113 (1994) (1933 contest where committee “refused to ‘disfranchise the voters in the 16 precincts . . . because of some alleged breach of official duty of the election officers’” (alteration in original)); *Taylor v. England*, 6 *Cannon’s Precedents* ch. 172, § 178, at 342–43 (1936) (1928 contest where committee concluded that “[t]he House of Representatives should not consider itself obligated to follow the drastic statute of the State of West Virginia, under the provisions of which all ballots not personally signed by the clerks of election in strict compliance with the manner prescribed had been rejected, but should retain the discretionary right to follow the rule of endeavoring to discover the clear intent of the voter”); *Camey v. Smith*, 6 *Cannon’s Precedents* ch. 162, § 91, at 144–45 (1914 contest where committee declined to “disenfranchise the electors of [a] township” due to administrative nonfeasance where “[n]o question [was] made but that the ballots cast in this precinct were cast by legal voters and in good faith”); *Moss v. Rhea*, 2 *Hinds’ Precedents* ch. 40, § 1121, at 696 (1907) (1901 contest where committee counted ballots that were previously “thrown

Counting Rules while retaining the Committee’s prerogative to depart from those rules to ensure that all valid ballots are counted where the intent of the voter is clear.

Notably, where state law has failed to supply necessary standards for implementation of these rules, Contestant Hart has proposed approaches that are readily justified by basic principles of justice, equity, and common sense. Two particular examples illustrate this dynamic.

First, Iowa law requires absentee ballots to be rejected if they “[are] open” or “[have] been opened and resealed,” but does not define these terms. Iowa Code § 53.25(1)(a). To remedy this shortcoming, Contestant Hart’s proposed rules take a practical, functional, and realistic approach to determining whether an envelope “is open” or “has been opened and resealed,” which will allow ballots to be counted so long as the integrity of the ballot can be assured. This approach ensures that votes are not unfairly discarded due to circumstances outside a voter’s control. *See In re Canvass of Absentee &/or Mail-in Ballots of Nov. 3, 2020 Gen. Election*, No. 20-05786-35, slip op. at 20 (Pa. Ct. Com. Pl. Nov. 19, 2020) (“If the glue on the envelope failed that would be the responsibility of the government. . . . [I]t 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 . . .”).

Second, Iowa law requires that absentee ballots “be received in the commissioner’s office before the polls close on election day” Iowa Code § 53.17(2)—which is to say, the office of the county auditor, *see id.* § 47.2(1)—without specifying *which* commissioner is acceptable. Accordingly, to ensure that voters who timely relinquished their ballots to election officials are not

out because of the negligence of an election judge, who was required to detach a stub from the ballots before they were deposited in the ballot box” because voters were not responsible for negligence).

disenfranchised, Contestant Hart’s proposed rules permit absentee ballots to have been returned to any county auditor.

Question 3

Please describe as clearly, precisely, and comprehensively as possible (a) any ballots that were validly cast by eligible voters but were erroneously excluded from the state-certified vote totals at any point during the initial tabulation of results, the canvass, or the recount, and (b) what, if anything, the Committee should do to determine whether and how each of these ballots should be added to the vote totals.

Contestant Hart believes that all ballots that were validly cast based on the rules and procedures articulated in Question 1—but were *not* initially counted and included in the certified vote totals—should now be counted. Specifically, in her notice of contest, Contestant Hart identifies 22 specific ballots that were validly cast by eligible voters but erroneously excluded from the state-certified vote totals.

Two ballots validly cast by Scott County voters who voted curbside on Election Day that were erroneously not counted. *See* Notice of Contest (“Notice”) ¶¶ 31–37. Both ballots were cast in the Davenport D23 precinct and were accepted for counting by a Scott County poll worker after she and another poll worker confirmed the voters’ eligibility to vote. After the poll worker struggled to get the tabulation machine to accept the ballots, she set them aside without counting them. As senior election officials in Scott County will confirm, setting the ballots aside without counting them was an error.

To determine whether both Scott County curbside ballots should be included in the vote totals, the Committee can consider the affidavits from members of the Scott County Recount Board that Contestant Hart submitted with her notice of contest. *See id.* at A-35–39, A-48–51. Additionally, if the Committee needs more information to determine the validity of these ballots, it can consider testimony from Rose Strohbehn, the poll worker who accepted the curbside ballots

and set them aside without counting them, and Scott County Auditor Roxanna Moritz, who can confirm that the decision to set aside the ballots without counting them was an error.

Nine ballots validly cast by Marion County absentee voters that were removed from their envelopes and accepted for counting but erroneously not counted. *See id.* ¶¶ 38–47. Iowa recount law provides that a “[recount] board shall recount only the ballots which were voted and counted for the office in question.” Iowa Code § 50.48(4)(a). The Marion County Recount Board members thus concluded that they lacked the authority to include in their recount ballots that had been excluded from the initial canvass—including these nine absentee ballots that had been lawfully cast. While the Marion County Recount Board did not include these nine absentee ballots in their final tally, it memorialized a joint statement articulating how these ballots would have changed the vote totals. *See* Notice A-20. Because that memorialization includes the tabulation of these nine votes and is signed by all three members of the Marion County Recount Board (including the designee of Contestee Miller-Meeks), the Committee can simply add these ballots to the final tally.

One ballot validly cast by Johnson County voter Cheyanne Kurth, whose timely cured provisional ballot was erroneously not counted after election officials separated her ballot from the paperwork confirming her identity. *See id.* ¶¶ 48–57. Due to this administrative error, Ms. Kurth’s ballot was excluded from the initial canvass and subsequent recount. Johnson County election officials have acknowledged that Ms. Kurth timely provided the materials required by law to qualify her ballot for counting and that her ballot should have been counted. *See id.* at A-86.

To determine whether Ms. Kurth’s ballot should be included in the vote totals, the Committee can consider the affidavit from Ms. Kurth that Contestant Hart submitted with her notice of contest. *See id.* at A-84–86. Ms. Kurth’s affidavit also attaches a letter that she received

from the Johnson County Auditor explaining these circumstances and apologizing for the error. *See id.* at A-86. Additionally, if the Committee needs more information to determine the validity of Ms. Kurth’s ballot, it can consider testimony from members of the Johnson County Auditor’s office, who can confirm that election worker error is the sole reason that Ms. Kurth’s ballot was not counted.

One ballot validly cast by Johnson County voter Nasr Mohamed Nasr, whose ballot was not counted after election officials erroneously concluded that his ballot envelope was not signed. *See id.* ¶¶ 58–68. Mr. Nasr signed his ballot envelope in the blank space immediately under the large, bolded red lettering stating, “Signature Required.” While Mr. Nasr did not sign his ballot envelope in the separate signature field on the envelope, Iowa law neither mandates where on the ballot envelope a voter must sign nor authorizes election officials to reject an absentee ballot based on where a voter’s signature appears on the envelope.

To determine whether Mr. Nasr’s ballot should be included in the vote totals, the Committee can consider the affidavit from Mr. Nasr that Contestant Hart submitted with her notice of contest. *See id.* at A-94–96. Additionally, if the Committee needs more information to determine the validity of Mr. Nasr’s ballot, it can hear testimony from Johnson County election officials, who can confirm that Johnson County previously accepted ballots for counting so long as the ballot envelope was signed, even if the signature was located outside the signature box. *See Ex. 2* ¶ 7 (affidavit of Deputy Auditor for Elections Bogdana Veltorean).

Two ballots validly cast by Johnson County voters who received their absentee ballots with ballot envelopes that were already sealed and were consequently required to open the envelopes and reseal them, and that were not counted when election officials erroneously concluded that the ballot envelopes had been impermissibly resealed. *See Notice* ¶¶ 69–87.

The first voter, Sada Rhomberg, returned her ballot resealed with tape only after her mother, Susan Johnson, called the Johnson County Auditor's office to confirm that her daughter's ballot would still be accepted. Ms. Rhomberg further wrote on the back of her ballot envelope: "My return envelope was shut when I got it, so I taped it shut." The second voter, Steven Schaefer, similarly received a sealed ballot envelope and, after securely resealing it with his ballot inside, signed his envelope along the seal to indicate that he was the individual who sealed it.

To determine whether Ms. Rhomberg's ballot and Mr. Schaefer's ballot should be included in the vote totals, the Committee can consider the affidavits from Ms. Rhomberg, Ms. Johnson, and Mr. Schaefer that Contestant Hart submitted with her notice of contest. *See id.* at A-79–80, A-101–08. Additionally, if the Committee needs more information to determine the validity of these ballots, it can consider further testimony from members of the Johnson County Auditor's office.

Five ballots validly cast by Johnson and Scott County voters—who affirmed under oath that they sealed their ballot envelopes before returning them and have confirmed the particulars of their ballots to alleviate any concerns about tampering—whose ballots were erroneously not counted due to improper sealing. *See id.* ¶¶ 88–99. These ballots—cast by voters Joshua Reyes-Torres, Trajae Lackland, Michael Overholt, Charles Tucker, and Jo Donna Loetz—should not have been rejected given that there is no evidence that the voters failed to seal their ballots. To the contrary, the evidence demonstrates that these voters *did* seal their ballots, and there is a strong likelihood that their ballot envelopes became inadvertently (and only partially) unsealed during transit to election officials, due to circumstances outside of their control.

To determine whether these five ballots should be included in the vote totals, the Committee can consider the affidavits from Mr. Reyes-Torres, Mr. Lackland, Mr. Overholt, Mr. Tucker, Linda Tucker, and Ms. Loetz that Contestant Hart submitted with her notice of contest.

See id. at A-87–88, A-92–93, A-97–100, A-109–12. Additionally, if the Committee needs more information to determine the validity of these ballots, it can consider testimony from staff members of the Johnson County Auditor’s office and the Scott County Auditor’s office.

Two ballots validly cast and returned to the custody of an auditor’s office by voters before the close of polls that were not counted when election officials erroneously determined that these ballots were not timely returned. *See id.* ¶¶ 100–08. Both voters—Mei Ling Lietsch and Krystal Nicole Klawonn—returned their absentee ballots to ballot drop boxes. Although these drop boxes were outside the counties in which Ms. Lietsch and Ms. Klawonn were registered, Iowa law requires only that a ballot envelope be “received in the commissioner’s office” by Election Day. Iowa Code § 53.17(2). This requirement guarantees that any ballots included in the certified returns were cast on or before Election Day. Iowa law does *not* specify that the envelope must be returned to the office of the particular commissioner of the voter’s home county, unlike other provisions of Iowa law that do include such specification.

To determine whether Ms. Lietsch’s ballot and Ms. Klawonn’s ballots should be included in the vote totals, the Committee can consider the affidavits from Ms. Lietsch and Ms. Klawonn that Contestant Hart submitted with her notice of contest. *See* Notice A-81–83, A-89–91. Additionally, if the Committee needs more information to determine the validity of these ballots, it can consider testimony from members of the Linn County Auditor’s office, who can confirm that both ballots were in the custody of election officials before the close of the polls on Election Day.

Question 4

Please describe as clearly, precisely, and comprehensively as possible (a) any ballots that were not validly cast by eligible voters but were erroneously included in the state-certified vote totals and (b) what, if anything, the Committee should do to determine whether and how each of these ballots should be deducted from the vote totals.

Contestant Hart does not contend that any ballots that were not validly cast by eligible voters were erroneously included in the state-certified vote totals. Accordingly, the Committee need not devise a mechanism for deducting any ballots from the vote totals.

Question 5

Please describe as clearly, precisely, and comprehensively as possible (a) any other ballot-counting or ballot-tallying errors or irregularities that affected the state-certified vote totals and (b) what, if anything, the Committee should do to correct them.

Contestant Hart has identified two ballot-counting irregularities that might have affected the state-certified totals.

First, an inconsistent method of inspecting overvotes and undervotes for voter intent might have led to an undercounting of the total number of validly cast ballots. Iowa law requires voting machines to reject ballots that register as overvotes. *See* Iowa Admin. Code r. 721-22.261(2)(a) (rule for ES&S machines), 721-22.264(2)(c) (rule for Unisyn machines), 721-22.266(2)(b) (rule for Dominion machines). The Recount Board Guide requires that all ballots rejected by a voting machine be inspected for voter intent and counted pursuant to Iowa law, *see* Notice A-123, and Iowa law requires overvotes to be scrutinized for voter intent. However, during the recount process, only *six* of the 24 recount boards in the Second Congressional District reviewed each overvote for voter intent (specifically, the recount boards in Appanoose, Clinton, Jefferson, Johnson, Muscatine, and Scott Counties). The remaining 18 recount boards did *not* inspect all ballots that their voting machines registered as overvotes for voter intent. Contestant Hart's expert,

Dr. Maxwell Palmer, reviewed the overvote data from the Secretary of State’s certified results and estimated that the failure to inspect all overvote ballots for voter intent might have resulted in an undercounting of approximately 38 validly cast ballots, which would have reflected voter intent to vote for either Contestant Hart or Contestee Miller-Meeks. *See id.* at A-2–14.

Second, an inconsistent method of applying rules regarding identifying marks led to the inclusion of ballots with such marks in the certified vote total. Iowa law requires the rejection of ballots that contain any identifying marks. *See, e.g.*, Ex. 1, at 4 (“If you find identifying marks on a ballot, the whole ballot must be rejected.”). Only four recount boards are known to have inspected ballots for identifying marks (specifically, the recount boards in Clinton, Jefferson, Johnson, and Scott Counties). According to the information available to Contestant Hart, these recount boards rejected 18 ballots due to identifying marks: 14 in Johnson County, two in Scott County, one in Clinton County, and one in Jefferson County. *See* Notice A-5. Either because the remaining counties’ recount boards did not review ballots for identifying marks or because Contestant Hart could not ascertain whether they rejected ballots for identifying marks, the total number of ballots with identifying marks that were included in the final tally is presently unknown, but is likely greater than zero.

Question 6

Which, if any, of these alleged ballot-counting or ballot-tallying errors or irregularities could either party have reasonably foreseen and successfully challenged through Iowa state administrative or judicial procedures prior to (a) Election Day (November 3, 2020) or (b) the Iowa State Canvassing Board’s final certification of the election (November 30, 2020)? If either party did unsuccessfully challenge any of these alleged errors or irregularities, please describe those challenges.

Contestant Hart could not have challenged any of these errors and irregularities prior to Election Day. Election officials erred in not counting the 22 specific ballots identified in her notice of contest—administrative errors that could not have been successfully challenged until *after* the

tabulation process had concluded following Election Day. And Contestant Hart could not have reasonably foreseen that election officials would reject validly cast ballots that should have been counted. For this reason, this contested election case is readily distinguishable from those where the House faulted contestants for failing to bring challenges to issues that were known *before* an election. *See generally, e.g., McLean v. Bowman*, H.R. Rep. No. 62-1182 (1910) (dismissing contest where contestant claimed that *nomination* violated law and party rules); *Huber v. Ayers*, H.R. Rep. No. 82-906 (1951) (dismissing contest where contestant failed to address alleged violation of ballot order law before election).

Contestant Hart was not made aware of most of the irregularities challenged in her notice of contest until *after* the final certification of the election on November 30. Specifically, as to the seven ballots with purported sealing issues and Mr. Nasr's ballot, Contestant Hart did not receive copies of these ballot envelopes—and was thus unable to identify their specific issues—*until* November 30, thus foreclosing any pre-certification challenge. Similarly, Contestant Hart did not learn about Ms. Lietsch's and Ms. Klawonn's uncounted ballots until December 1.

As for the remaining 12 ballots, although Contestant Hart first received indication of potential issues with these ballots prior to November 30, the limited information available then, and the limited time to investigate and pursue a contest in state court, meant that she lacked the ability to ensure through a state proceeding that all valid ballots cast in the Second Congressional District would be counted. Instead, the only proceeding available to her that could have provided the necessary time, investigatory capabilities, and equitable approach necessary to ensure that all lawful votes were counted was a House contest—which is precisely why Contestant Hart initiated these proceedings. Similarly, Contestant Hart was only able to request a full hand recount conducted pursuant to the rules and procedures described in Question 1—which, as discussed

above, are needed to ensure the fair, justice, and equitable tabulation of ballots—from this Committee. Accordingly, Contestant Hart could not have successfully challenged the improper and inconsistent counting procedures between counties in any other forum than this contested election case.

Question 7

Given the decision in Committee Resolution 117-12 not to immediately dismiss this contested election case, what measures, if any, should the Committee take in response to Contestant's decision not to file a state-court case contesting the Iowa State Canvassing Board's November 30, 2020, final certification of the election?

The Committee should take no measures in response to Contestant Hart's decision not to file a state court contest and should instead exercise its constitutional and statutory prerogatives to proceed with this contested election case under the FCEA.

First, as discussed in Contestant Hart's prior briefing, neither the FCEA nor any other rule adopted by the House required Contestant Hart to first bring a contest in state court. The plain language of the FCEA does not require a contestant to exhaust all state remedies before filing a notice of contest—a notable omission, given that Congress routinely includes statutory exhaustion requirements in other contexts. The Committee should not read into the FCEA an exhaustion requirement where none exists.

Moreover, there is no uniform requirement found in House precedent that a contestant must exhaust every possible state judicial remedy before filing a notice of contest. *Cf. Dornan v. Sanchez*, H.R. Rep. No. 105-416, at 4–5 (1998) (rejecting contestee's proposed exhaustion requirement and proceeding with contest where contestant did not exhaust state remedies). Indeed, such a requirement would directly intrude upon the House's constitutional mandate to judge the

elections of its members.⁵ Although dismissal of a contested election case might be warranted where a contestant fails to take advantage of a state’s post-election *administrative* (as opposed to judicial) remedies, *compare Swanson v. Harrington*, H.R. Rep. No. 1722 (1940) (dismissing contest where contestant had not taken advantage of state recount procedure before seeking recount in House), *with Carter v. LeCompte*, H.R. Rep. No. 85-1626 (1956) (considering recount request where state law did not provide for recount and contestant produced attorney general opinion to that effect), in this case Contestant Hart *did* take advantage of all post-election administrative remedies before initiating this contested election case.

Second, Contestant Hart had an overriding practical reason for not bringing a state contest: the state’s procedures would not have provided a sufficient process to ensure that the 22 votes identified in this contested election case would have been counted, let alone achieve a full hand recount using the rules and procedures articulated in this brief. Iowa law provides no rules or guidance for contest courts. Accordingly, a state contest would have required precisely the sort of rulemaking that this Committee is now undertaking. But significantly, whereas this Committee’s process has taken place over a series of *months*, including 19 days for the parties to craft their proposed rules, a state contest would have mandated this entire, complex, fact-specific undertaking in a period of only *one week*. *See* Iowa Code §§ 60.4–5 (setting deadline of December 8 for final determination of state contest court). Simply put, it would not have been possible for Contestant Hart to ensure that every lawful vote was counted in the Second Congressional District under such restrictive circumstances. Instead, this forum provides the best—indeed, the *only*—means of ensuring that every vote is counted and that the voice of every Iowan is heard.

⁵ For this reason, such a requirement would be arguably unconstitutional. *See* Contestant’s Resp. to Contestee’s Mot. to Dismiss Notice of Contest 17–18 (Feb. 2, 2021).

Question 8

Do you intend to depose witnesses or subpoena documents or other tangible things, as described in the FCEA? Should the Committee limit (a) the number of deposition hours available to each party and/or (b) the number or types of documents or other tangible things available to each party? Should the Committee impose any other limits on discovery?

Contestant Hart’s need to depose witnesses or subpoena documents—and, accordingly, her views on the propriety of discovery limits in this contested election case—depends on several variables, including (1) the evidentiary requirements of the rules established by the Committee; (2) the scope of the Committee’s own investigation, if any; (3) Contestee Miller-Meeks’s responses to Questions 3, 4, and 5; and (4) whether the parties are able to stipulate to testimony by affidavit pursuant to 2 U.S.C. § 387(c). However, given the straightforward factual predicates of this contested election case and the parties’ ability to rely primarily on affidavit testimony, Contestant Hart is confident that discovery in this matter can be streamlined and, ideally, shortened as well.

As an initial matter, while the Committee should not expressly limit the number of deposition hours or the number or types of documents or other tangible things available to each party, it should certainly limit the *scope* of depositions and subpoenas to only necessary, non-redundant information and materials that are directly relevant to the evidentiary requirements of the rules established by the Committee. This would, in effect, bolster the relevancy standard articulated in 2 U.S.C. § 386. It would also reflect the relatively narrow and straightforward factual issues in this contested election case.

The FCEA contemplates that the parties may conduct depositions or subpoena documents “for the purpose of discovery or for use as evidence in the contested election case, or for both purposes.” 2 U.S.C. § 386; *id.* § 388. Contestant Hart will therefore describe her depositions needs for both purposes.

First, regarding depositions and subpoenas “for the purpose of discovery,” Contestant Hart will *not* need to depose any witnesses or subpoena any documents *if* Contestee Miller-Meeks’s responses to Questions 3, 4, and 5—which address, respectively, allegations of uncounted ballots, unlawfully counted ballots, and counting irregularities—do not materially diverge from Contestant Hart’s responses to those questions. In that scenario, Contestant Hart would need depositions and subpoenas only for evidentiary purposes. By contrast, if Contestee Miller-Meeks’s responses contain allegations regarding previously uninvestigated ballots or tabulation issues, then Contestant Hart might be required to conduct discovery to ascertain the factual underpinnings of these new claims.

Second, regarding “evidence in the contested election case,” Contestant Hart will likely need to acquire testimony and subpoena documents—namely, ballots, ballot envelopes, and various memorializations from election officials such as notes, letters, and emails that document relevant observations and conduct—to satisfy the evidentiary requirements of the rules established by the Committee following this briefing.

Although it is unlikely that *all* further discovery and evidence-gathering can be avoided, the Committee can adopt certain procedures, rules, and expectations that will significantly reduce the time and cost of discovery and the inconvenience imposed on election officials, voters, and other witnesses.

Use of testimony by affidavit. To streamline the discovery process, minimize the need for depositions and subpoenas, and avoid requiring election officials to be deposed more than once, Contestant Hart proposes that the parties adopt (or the Committee require) the following discovery procedure that relies, to the extent possible, on testimony by affidavit:

1. Contestant Hart will submit testimonial affidavits from relevant witnesses (namely, voters and election officials) to satisfy her discovery and evidentiary requirements during her discovery period. *See* 2 U.S.C. § 386(c)(1).⁶
2. Contestee Miller-Meeks will then have the opportunity during her discovery period, *see* 2 U.S.C. § 386(c)(1), to both submit relevant witness affidavits and conduct depositions of any *election officials* whose subpoenas Contestant Hart submitted during her discovery period. Whether by agreement of the parties or mandate of this Committee, however, depositions of individual voters—whose sworn affidavits regarding their ballots contain all information relevant to this contested election case—should be avoided as unnecessary. *See Tunno v. Veysey*, H.R. Rep. No. 92-626, at 8 (1971) (“The law is settled that the declaration of a voter as to how he voted or intended to vote, made at the time, is competent testimony on the point.”).
3. Contestant Hart will then conclude the discovery process with her rebuttal discovery period, *see* 2 U.S.C. § 386(c)(3), to depose, if necessary, any election officials whose affidavits Contestee Miller-Meeks submitted during her 30-day discovery period.

Use of the Committee’s investigatory powers. To the extent that the Committee uses its own investigatory powers to subpoena ballots and ballot envelopes, as well as materials generated by county auditors, recount boards, and other election officials, Contestee Hart’s need to subpoena documents would be reduced. Similarly, the Committee’s issuance of its own interrogatories would minimize the need for Contestant Hart to conduct depositions. Such centralized measures would also increase the efficiency of these proceedings.

Remote depositions. To safeguard the health and safety of the parties, counsel, and deponents—especially as the ongoing pandemic continues to pose risks for travel and in-person interactions—Contestant Hart requests that the Committee expressly permit all depositions to be conducted remotely. Such a rule would be consistent with the policies adopted by legislative bodies and courts—including the House, *see* H.R. Res. 965, 116th Congress § 4 (2020) (enacted)—in

⁶ If the parties stipulate to Contestant’s Hart use of affidavit testimony, or if the Committee sanctions it, then Contestant Hart’s initial 30-day discovery period can be reduced to only *15 days*, thus facilitating a more expeditious resolution of this contested election case. *See infra* Question 13 & note 7.

response to the ongoing health crisis. *See, e.g., In the Matter of Ongoing Provisions for Coronavirus/COVID-19 Impact on Court Services*, Iowa Sup. Ct. 1 (Nov. 24, 2020), https://www.iowacourts.gov/static/media/cms/1124_admin_order_3D1F9388E4525.pdf (“Courts, parties, and attorneys are strongly encouraged to conduct civil court business when feasible using videoconference or telephone.”).

Single case for issuance of subpoenas. To facilitate the convenient issuance of subpoenas, Contestant Hart proposes that the parties initiate a single miscellaneous case in Iowa state court, which will serve as the vehicle for all deposition notices and subpoenas that need to be filed. *See, e.g., In re Contested Election of Loretta Sanchez to House of Representatives of U.S. Cong.*, No. SA CV 97-176-GLT (C.D. Cal. Mar. 6, 1997) (miscellaneous case filed for purpose of issuing subpoenas in *Dornan v. Sanchez* contest).

Electronic courtesy copies. To streamline the discovery process and expedite these proceedings, the Committee should require the parties to provide courtesy copies of all filings to each other and the Committee via electronic means (email or electronic file delivery service) on the days such filings are made, in addition to formal service under the FCEA. *See* 2 U.S.C. §§ 384, 393.

Set compensation. Under the FCEA, “[w]itnesses whose depositions are taken shall be entitled to receive from the party at whose instance the witness appeared the same fees and travel allowance paid to witnesses [subpoenaed] to appear before the House of Representatives or its committees.” 2 U.S.C. § 389(b); *see also id.* § 388(b). If the Committee established these rates, the parties would be able to fairly and consistently compensate all witnesses as required by law.

Question 9

What physical evidence, including ballots, other records or papers, voting machines, or other equipment, might the Committee need to examine? For each type of evidence, please explain why examination might be necessary; the specific claim or defense to which the evidence might relate; and where, how, and by whom the evidence is currently being maintained.

The types and volume of records that the Committee will need to examine to decide this contested election case will depend on the scope of the investigation the Committee chooses to undertake. For example, if the Committee chooses to accept the final state-certified results and supplement those totals with *only* the 22 wrongfully excluded ballots identified by Contestant Hart, then the Committee will only need to review physical evidence pertaining to those 22 ballots. By contrast, if the Committee chooses to conduct a full hand recount of all ballots validly cast in the District, then it will need to inspect records from all 24 counties. To the best of Contestant Hart's knowledge, all documents, records, and equipment used in or pertaining to the November 3, 2020 general election remain in the custody of each of the 24 county auditors.

Ballots and other records. Regardless of the scope of the Committee's investigation, at a minimum, the Committee will need to examine the 22 wrongfully excluded ballots identified in Contestant Hart's notice of contest to determine whether they were validly cast and ascertain the voters' choices in the election for U.S. Representative from the Second Congressional District.

Eleven of these ballots—the two curbside ballots in Scott County and the nine absentee ballots in Marion County—are no longer contained in identifying envelopes but have, to Contestant Hart's knowledge, been segregated from other ballots in such a way that they will be easily distinguishable to the auditors, the Committee, and the parties. *See, e.g.*, Notice A-19 (affidavit of Marion County Record Board member attesting that absentee ballots at issue “were subsequently removed and put in a separate sealed box”). In addition to the ballots themselves, the Committee might want to examine contemporaneous notes taken by election officials documenting

the exclusion of these ballots from the final vote tallies. For example, the Committee might want to examine copies of the statement signed by the members of the Marion County Recount Board, in which they described their decision to exclude the nine absentee ballots from their tally, *see id.* at A-20, or the notes taken by Scott County poll worker Rose Strohbehn concerning the two wrongfully excluded curbside ballots from precinct D23, *see id.* at A-38–39. The ballots and contemporaneous notes, along with the testimony of relevant witnesses, will provide sufficient evidence for the Committee to accept and count these ballots.

The remaining 11 ballots are currently contained in identifiable envelopes. Ten of these ballots—belonging to Johnson County voters Mr. Nasr, Ms. Rhomberg, Mr. Schaefer, Mr. Reyes-Torres, Mr. Lackland, and Mr. Overholt; Scott County voters Mr. Tucker and Ms. Loetz; Des Moines County voter Ms. Lietsch; and Wapello County voter Ms. Klawonn—are contained in envelopes labeled with the voters’ names and thus will be easily identifiable. An examination of these ballots and their return envelopes, along with the testimony of the voters who cast them and the election officials who excluded them from the final tally, will again provide sufficient evidence for the Committee to accept and count the ballots.

The final ballot, belonging to Johnson County voter Ms. Kurth, is contained in an envelope that lacks a label to distinguish it from the ballot of *another* provisional voter in her precinct. However, these two sealed ballots, along with their accompanying provisional ballot forms, are, to the best of Contestant Hart’s knowledge, stored together by the Johnson County Auditor. Additionally, an electronic copy of Ms. Kurth’s proof of identification and residence—which was submitted before noon on November 9, 2020 and was, according to election officials, sufficient to cure her ballot—will also be in the custody of the Johnson County Auditor. These documents,

along with Ms. Kurth's affidavit, will provide sufficient evidence for the Committee to identify Ms. Kurth's ballot and count it.

Because there is no question that these voters were qualified to cast ballots in the election, the Committee should not need any other documentation to determine that these ballots were wrongfully excluded from the final tally.

Voting machines and other equipment. Contestant Hart has requested the physical review and counting of the 22 wrongfully excluded ballots described above *and* a hand recount of all validly cast ballots in the District. Because Contestant Hart has not requested a machine count or recount of any of these ballots, the Committee should not need access to any voting machines or other equipment utilized by the 24 counties in the 2020 general election.

Question 10

If you have any concerns about the current preservation or security of any physical evidence, please explain those concerns.

Iowa law provides that

[m]aterial pertaining to elections for federal offices, including ballots, precinct election registers, declarations of eligibility signed by voters, documents relating to absentee ballots, and challenges of voters, shall be preserved for twenty-two months after the election. If a contest is not pending the materials may be destroyed at the end of the retention period.

Iowa Code § 50.19(2). At this time, Contestant Hart is not aware of any auditors or other officials who have violated or plan to violate this provision, and therefore does not have any specific concerns about the preservation of relevant records. While the Committee may impound or subpoena ballots or election materials from any or all of the 24 counties in the District, Contestant Hart does not believe that any such preservation measures are immediately necessary.

Question 11

For each county, please describe whether the November 2020 recount was conducted by hand, by machine, or a mix of the two; and if a mix of the two, please describe what types of ballots were counted by hand, and what types were counted by machine.

The recounts that occurred across the 24 counties in Iowa’s Second Congressional District did not proceed in a uniform manner. Recount board members generally lacked election administration or recount experience but were given near-total discretion to determine the methods for their county’s recount. With no written rules of procedure or official records of recount board votes, descriptions of these ad hoc processes are subject to the limitations of human memory. Nonetheless, based on the sworn testimony of members of the recount boards across the District, and upon information and belief, the following is a description of whether the recount in each county was conducted by hand, by machine, or by a mix of the two.

As an initial matter, under Iowa law, absentee and provisional ballots are considered part of a “special precinct” that encompasses an entire county, referred to as the “absentee ballot and special voters precinct.” *See* Iowa Code §§ 53.20, 53.23. Recount boards reviewed such ballots as one precinct, generally referred to as the “absentee precinct.” For simplicity, in Contestant Hart’s responses to Questions 11 and 12, all ballots included within this special precinct are referred to as “absentee ballots.” The term “Election Day precinct” refers to the particular precincts in which ballots other than absentee and provisional ballots were cast on Election Day. The term “Election Day ballots,” in turn, refers to those ballots cast on Election Day. Finally, the term “ballots” should be understood to encompass *all* types of ballots—absentee, provisional, and Election Day—unless otherwise specified.

Recount conducted by hand. The only county to conduct a full hand recount without a machine was Jefferson County. *See* Notice A-46.

Recounts conducted by machine. Davis, Decatur, Henry, Lee, Louisa, Lucas, Marion, Monroe, Van Buren, Wapello, Washington, and Wayne Counties conducted their recounts entirely by machine, with minor exceptions. *See id.* at A-18, A-22, A-24, A-28, A-30, A-34, A-42, A-44, A-58, A-60, A-72, A-76. In Marion County, the nine absentee ballots described above, which the recount board believed it did not have the authority to include in its final tally, were counted by hand. *See id.* at A-18–19. And in Monroe and Lee Counties, ballots that their machines would not process were counted by hand. *See id.* at A-24, A-44.

Recounts conducted using a mix of hand and machine. The 11 remaining counties engaged in some combination of hand and machine recounts:

- **Appanoose, Jasper, and Mahaska Counties:** Recount boards counted one Election Day precinct by hand and counted the rest of the ballots by machine. *See id.* at A-40, A-62, A-64.
- **Cedar County:** The recount board counted absentee ballots by hand and Election Day ballots by machine. *See id.* at A-16.
- **Clarke County:** The recount board counted three Election Day precincts and all absentee ballots by hand. It counted all other ballots by machine. *See id.* at A-68.
- **Clinton County:** The county auditor’s deputy opened ballot packages, ran the ballots through a machine, and provided to the recount board the total numbers of votes cast for each candidate, overvotes, undervotes, and write-in votes. *See id.* at A-56, A-74. The recount board then looked at every ballot to ensure that all ballots that the machine read as overvotes or undervotes were counted for a candidate if there was evidence of voter intent. *See id.* at A-56, A-74.
- **Des Moines County:** The recount board counted Election Day ballots by hand and absentee ballots by machine. *See id.* at A-52.
- **Johnson County:** The recount board counted Election Day ballots by running them through a machine and comparing the machine’s count to the tally sheet from Election Day. *See id.* at A-54. If the tallies differed, then the recount board conducted a “full hand recount” of the precinct at issue. *Id.* If the tallies matched, then the recount board “paged through” the ballots, counting the number of undervotes and overvotes, setting aside any write-in votes that indicated support for one of the major candidates, and flagging “any other unusual issues.” *Id.* If there were no “significant issues,” the board accepted the machine count. *Id.* In precincts where the recount board felt there was an “issue” to resolve with a ballot, the

recount board conducted “a full hand recount.” *Id.* For absentee ballots, the recount board largely repeated this process of running the ballots through machines and “pag[ing] through” them looking for “issues.” *Id.* Absent “significant issues,” the board accepted the machine tally. *Id.* When necessary, the board applied the rules for hand counting to determine whether to count a ballot. *See id.*

- **Keokuk County:** The recount board counted some Election Day precincts by hand and others by machine. *See id.* at A-66. The board counted absentee ballots by hand and then ran the ballots through a machine to ensure that the tabulations matched. *See id.*
- **Muscatine County:** For Election Day ballots, the recount board divided ballots into piles of overvotes, undervotes, write-in votes, and one combined pile for all ballots that showed “clear intent” to vote for either candidate. *Id.* at A-26, A-32. The recount board then reviewed the overvotes, undervotes, write-in votes, and ballots it deemed “otherwise questionable” to determine if those votes showed intent to vote for a candidate. *Id.* at A-26, A-32. After assigning votes that showed voter intent for a candidate to that candidate, the board used the machines to tally the ballots. *See id.* at A-26, A-32. For absentee ballots, the recount board repeated this process but had separate piles for each candidate where the ballots showed voter intent, rather than one combined pile. *See id.* at A-26, A-32.
- **Scott County:** The recount board used a machine to tally all votes, but then further reviewed any ballots that the machine separated into a bin for ballots with write-in votes, overvotes, or stray marks in the “voting target” area. *Id.* at A-35. In addition, for some Election Day precincts, the recount board reviewed all ballots by hand. *See id.* at A-36.

Question 12

For each county, please describe which of the rules, procedures, and methods that the county recount board used were requested or agreed to by your designee to the board.

The county recount boards do not appear to have had any uniform or official rules governing their recounts or any formal records of their decisions. Instead, they operated in an ad hoc style that makes it difficult to be certain of their members’ proposals and decisions.

Each county’s recount board consisted of three members: a designee of Contestant Hart, a designee of Contestee Miller-Meeks, and a neutral member. Upon information and belief, most recount boards adopted a majority-vote approach to decision-making; to the extent there was disagreement regarding a given procedure or rule, the option with two out of three votes prevailed.

Upon information and belief, every recount board applied what it understood to be Iowa law and regulations when determining how to count ballots. And upon information and belief, the following represents the rules, procedures, and methods requested or agreed to by Contestant Hart's designees to the county recount boards:

- **Appanoose County:** All three recount board members agreed to a machine recount. Contestee Miller-Meeks's designee requested a hand recount of one precinct and the recount board agreed.
- **Cedar County:** Contestant Hart's designee proposed a hand recount of absentee ballots. The neutral designee supported a machine recount of Election Day ballots and a hand recount of absentee ballots, to which the recount board agreed.
- **Clarke County:** Initially, all three recount board members agreed to a machine recount. However, during the recount, the board noticed that the machine count did not match the Election Day results; it then agreed to count certain precincts by hand.
- **Clinton County:** Contestant Hart's designee first proposed a hand recount and then proposed a recount that would use a machine to tally votes but also include a visual inspection of all ballots for voter intent. All members of the recount board eventually agreed to this second method.
- **Davis County:** Contestant Hart's designee originally proposed a hand recount. Later, based on new information learned about the voting machines, the recount board members all agreed to a machine count.
- **Des Moines County:** Contestant Hart's designee proposed a hand recount of the entire county. Contestee Miller-Meeks's designee agreed to conduct a hand recount for the Election Day ballots but did not support a hand recount for absentee ballots. Contestant Hart's designee was outvoted, and the board counted Election Day ballots by hand and absentee ballots by machine.
- **Jasper County:** Contestant Hart's designee proposed a recount that would use a machine but require a hand count of all ballots the machine read as overvotes or undervotes. Contestee Miller-Meeks's designee supported a machine recount that did *not* examine any votes for voter intent, except for a single precinct where it was believed there was an unreported vote for Contestee Miller-Meeks. In that precinct, Contestee Miller-Meeks's designee supported a hand recount. Contestant Hart's designee was outvoted, and the recount was done entirely by machine except for the single precinct selected by Contestee Miller-Meeks's designee.
- **Jefferson County:** Contestant Hart's designee proposed that the recount be done entirely by hand, to which a majority of the recount board agreed.

- **Johnson County:** After Contestant Hart’s designee’s proposal for a hand recount was voted down, the board adopted another proposal by Contestant Hart’s designee for a machine recount where every ballot was examined for voter intent.
- **Marion County:** Contestant Hart’s designee proposed that the nine validly cast absentee ballots described above be counted. *See id.* at A-18. Contestant Hart’s designee was outvoted two-to-one, based on the other board members’ belief that the recount board did not have the authority to include these absentee ballots in the recount. *See id.* For all other ballots, the three board members agreed to a machine recount.
- **Muscatine County:** The recount board agreed to a procedure where its members would inspect each ballot and sort them into piles based on whether the ballots were overvotes, undervotes, or write-in votes or showed clear intent to vote for a candidate. The ballots were then tallied by a machine.
- **Scott County:** All three members of the recount board initially agreed on an approach that used a machine to tally ballots but included a hand count of ballots that the machine could not read. The recount board referred to this as a “hybrid method” because it used both a machine and hand counting. After the recount was underway using the hybrid method, the recount board learned of allegations that the hybrid method was not permitted under Iowa law. At that point, Contestant Hart’s designee proposed a full hand recount. Contestee Miller-Meeks’s designee refused and threatened to quit if a full hand recount were undertaken, and the recount proceeded using the hybrid method. Later, while the recount was ongoing, Contestee Miller-Meeks’s designee refused to sign the tally sheets, apparently in objection to the use of the hybrid method. At that point, the neutral member proposed that, if the board would not agree to the hybrid method, then a full hand recount would be undertaken—a proposal with which Contestant Hart’s designee agreed. Contestee Miller-Meeks’s designee still refused to agree to a hand recount and resigned from the board. Contestee Miller-Meeks’s designee was replaced by a new designee, and the recount was completed using the hybrid method.
- **Wapello County:** The recount board agreed to a machine recount, with the option to revisit that decision if any ballots gave the board reason to think that a hand recount was preferable.
- **All Other Counties:** In the other counties in the Second Congressional District, all three recount board members agreed to a machine recount.

Question 13

Please propose a timeline that includes (a) the close of any discovery; (b) the close of any Committee investigation; (c) any post-investigation briefing; (d) announcement of any Committee decision; and (e) any other deadlines the Committee should impose.

Based on the Committee’s expressed desire to expeditiously resolve this contested election case, Contestant Hart’s proposed timeline prioritizes the matter’s speedy resolution to ensure that the constituents of Iowa’s Second Congressional District have certainty as to their U.S. Representative as soon as possible. Contestant Hart believes that this timeline would allow the parties to undertake discovery and briefing without unnecessarily prolonging these proceedings. The Committee itself, of course, is in the best position to determine the most efficient process to obtain the information it needs to reach its decision and could take other steps to reduce the time and cost of discovery—including ordering testimony through affidavits, as discussed above in Question 8.

<i>Date</i>	<i>Event</i>	<i>Authority & Commentary</i>
03/22/2021	Contestant and Contestee file initial briefs in response to March 10 Letter	March 10 Letter; Committee Resolution 117-10
	Contestee files Answer	Committee Resolution 117-12
	Contestant’s 30-day discovery period begins ⁷	2 U.S.C § 386(c)(1)
03/29/2021	Contestant and Contestee file reply briefs in response to March 10 Letter	March 10 Letter; Committee Resolution 117-10

⁷ As discussed in Question 8, Contestant Hart is willing to shorten her 30-day discovery period to 15 days if Contestee Miller-Meeks or the Committee will accept affidavit testimony in lieu of deposition testimony. This proposed approach would not prohibit Contestee Miller-Meeks from taking depositions during her discovery period.

04/02/2021	Committee begins issuing any interrogatories and requests for production on a rolling basis, with responses to be filed by 05/10/21	N/A
04/21/2021	Contestee's 30-day discovery period begins	2 U.S.C § 386(c)(2)
05/21/2021	Contestant's ten-day rebuttal discovery period begins (if Contestee took testimony, <i>see supra</i> Question 8)	2 U.S.C § 386(c)(3)
05/31/2021	Party discovery closes	2 U.S.C § 386(c)(3)
06/15/2021	Contestant files brief and appendix	2 U.S.C § 392(d) <i>Note: Contestant Hart's proposed timeline shortens this briefing period to one-third of the time provided by statute.</i>
06/30/2021	Contestee files response brief and appendix	2 U.S.C § 392(e) <i>Note: Contestant Hart's proposed timeline shortens this briefing period to one-half of the time provided by statute. Contestee Miller-Meeks would thus have equal time as Contestant Hart to submit a final brief, even though the statute contemplates that she would have less time.</i>
07/07/2021	Contestant files reply brief	2 U.S.C § 392(f) <i>Note: Contestant's proposed timeline shortens this briefing period from ten days to seven.</i>
Week of 07/12/2021	Committee announces decision and remedy	N/A

Question 14

Please identify any other considerations the Committee should take into account to adjudicate and resolve this contested election case.

Contestant Hart would like to emphasize two crucial and related points that should underlie the Committee's approach to this contested election case.

First, Contestant Hart notes that this contested election case is unlike other House contests—such as, for example, *Dornan v. Sanchez*, in which the contestant claimed that nearly 2,000 ballots were cast unlawfully, including by underaged voters and noncitizens. See H.R. Rep. No. 105-416, at 4. Here, Contestant Hart has not made allegations of widescale fraud or deliberate misconduct. Similarly, this contested election case is vastly different from the meritless actions initiated in the aftermath of the 2020 general election—including most notably by former president Donald Trump—that sought to *throw out lawful ballots* based on unfounded accusations of massive conspiracies and widespread fraud and that were, consequently, roundly rejected by state and federal courts.⁸ Here, by striking contrast, Contestant Hart has claimed victory in the Second Congressional District based on the wrongful rejection of 22 specific ballots and the inconsistent application of the Iowa Counting Rules across the District’s 24 counties. She premises this contested election case on the need to *count* all lawful ballots, not on an unwarranted impulse to discard them. Moreover, the factual underpinnings of her claims are not in dispute; this is instead

⁸ See, e.g., *Law v. Whitmer*, No. 82178, 2020 WL 7240299, at *1–2, *12 (Nev. Dec. 8, 2020) (affirming district court’s dismissal of election contest challenging President Joe Biden’s 33,596-vote margin of victory in Nevada where contestants failed to provide evidence that any voters were actually ineligible to cast ballots); *Bowyer v. Ducey*, No. CV-20-02321-PHX-DJH, 2020 WL 7238261, at *1 (D. Ariz. Dec. 9, 2020) (rejecting effort to “set aside the results of the 2020 General Election” where “the Complaint’s allegations are sorely wanting of relevant or reliable evidence”); *King v. Whitmer*, No. 20-13134, 2020 WL 7134198, at *1, *13 (E.D. Mich. Dec. 7, 2020) (rejecting plaintiffs’ “claims of widespread voter irregularities and fraud in the processing and tabulation of votes and absentee ballots” and refusing to disturb President Biden’s 150,000-plus-vote margin of victory); *Donald J. Trump for President, Inc. v. Boockvar*, No. 4:20-CV-02078, 2020 WL 6821992, at *1–2 (M.D. Pa. Nov. 21, 2020) (rejecting effort “to discard millions of votes legally cast by Pennsylvanians” and overturn President Biden’s 80,000-plus-vote margin of victory where plaintiffs “presented [] strained legal arguments without merit and speculative accusations, unpled in the operative complaint and unsupported by evidence”), *aff’d sub nom. Donald J. Trump for President, Inc. v. Sec’y of Commonwealth*, 830 F. App’x 377 (3d Cir. 2020); *Wood v. Raffensperger*, No. 1:20-cv-04651-SDG, 2020 WL 6817513, at *12–13 (N.D. Ga. Nov. 20, 2020) (denying motion to halt certification of Georgia’s election results where plaintiff could not show likelihood of success on merits and failed to demonstrate “a legally cognizable harm, much less an irreparable one”), *aff’d*, 981 F.3d 1307 (11th Cir. 2020).

a primarily *legal* dispute, one that does not require extensive investigation or prolonged proceedings. Contestant Hart neither requires nor seeks an opportunity to conduct a fishing expedition. She instead asks that the Committee trust the testimony of lawful voters who only wish to have their ballots counted and their voices heard. Accordingly, the Committee should exercise its discretion to streamline discovery in this contested election case and render a decision in an expeditious manner.

Second, because each lawful voter should have their ballot counted, this Committee should exercise its constitutional prerogative to ensure that Iowans are not disenfranchised due to administrative errors or technical deficiencies. As a previous contest task force concluded,

[i]n our judgment this House could not adhere to state law and simultaneously discharge its Constitutional responsibility to be a fair judge of the elections and returns of its members. Faced with the two alternatives, the Committee chose—as this House had done numerous times in its history in like circumstances—to count all the votes cast by the citizens of the district, regardless of technical irregularities of election officials, to see who had in fact been elected.

McCloskey, H.R. Rep. No. 99-58, at 43. This Committee should do the same.

DATED this 22nd day of March, 2021.

PERKINS COIE LLP

By: 

Marc E. Elias
700 Thirteenth St., N.W., Suite 800
Washington, D.C. 20005

Attorney for Contestant Rita Hart

CERTIFICATE OF COMPLIANCE

Pursuant to Committee Resolution 117-10, the undersigned certifies that this reply brief contains 11,608 words, excluding the items listed in section 1(d).

DATED this 22nd day of March, 2021.

PERKINS COIE LLP

By: 

Marc E. Elias
700 Thirteenth St., N.W., Suite 800
Washington, D.C. 20005

Attorney for Contestant Rita Hart

EXHIBIT 1

Counting Votes

For use by precinct election officials, absentee and special voters precinct board, recount boards, and contest courts

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Getting Started

This is a reference guide for use by precinct election officials, the absentee and special voters precinct board, recount board, and contest courts when counting write-in votes or counting ballots by hand.

The instructions set forth contain administrative rules from Iowa Administrative Code Chapter 26. Chapter 26 was written to ensure statewide uniformity in the event ballots or write-in votes are counted by hand. The rules in this guide must be followed because all administrative rules have the full force and effect of law.

The auditor does not have a role in counting ballots. Decisions about whether or not to count a vote are determined by the precinct election officials, the absentee and special voters precinct board, recount boards, and contest courts.

The examples used in this guide all show the voting target as an oval on the left-hand side next to each candidate's name. Use the same rules for other kinds of voting targets.

Example:  CANDIDATE'S NAME
  CANDIDATE'S NAME

[IAC 721—26.11]

Important Note:

When optical scanners are used, ballots are counted as they are inserted into the scanner. Do not reexamine ballots accepted and counted by the machine. Follow these instructions only for counting write-in votes.

Basic Rules for Hand Counting Ballots

A Voter's Choices Count

Do not reject a vote for any office or question solely because a voter failed to follow instructions for marking the ballot.

- If the choice of the voter is clear, count the vote as the voter has indicated.
- If, for any reason, it is impossible to determine the choice of the voter for any office or question, do not count the vote for that office or question.

[IAC 721—26.15]

If optical scanners were used in the election, write-in votes can only be counted if the voting target next to the write-in line is darkened.

[\$49.99, IAC 721—26.20(1)]

A voter's definite choices shall be counted during a hand recount even if the recount board determines that the voter's choices differ from the votes as counted by the tabulating device.

[IAC 721—26.104(3)]

Ballots Properly Marked Still Count

Do not refuse to count any ballot because:

- The ballots were misprinted (e.g. candidate name misspelled)
- The precinct election official's initials are missing
- The wrong ballots were delivered to the polling place

[IAC 721—26.13]

Standards for Determining a Voter's Choice During a Hand Count

Prescribed and Other Marks on the Same Ballot

If a voter used both the prescribed mark and other marks, count only the prescribed marks as votes.







Prescribed mark = the mark shown in the voting instructions as the appropriate way to mark a vote; also includes a close approximation of the mark

Example 1:

The voter used both the prescribed mark (filled in oval) and an "X" in the voting targets within the same office.

For Board of Supervisors

(Vote for no more than two.)

-  CANDIDATE 1 (Party A)
-  CANDIDATE 2 (Party A)
-  CANDIDATE 3 (Party B)
-  CANDIDATE 4 (Party B)
-  _____
(Write-in vote, if any)
-  _____
(Write-in vote, if any)

Count only the prescribed mark, so only the one vote for CANDIDATE 4 should be counted. It is not clear from the voter's mark whether the mark in the oval for CANDIDATE 3 is intended as a vote.

[IAC 721—26.16]

Marks Not Counted

Do not count any of the following marks on ballots as votes:

1. Hesitation mark

Hesitation mark = small mark made by resting a pen or pencil on the ballot

Example: 

2. Identifying mark

Identifying mark = includes a comment or statement that indicates the identity of the voter either individually or as a member of a group; or initials, a printed name, or signature placed on the ballot in any place other than on the lines intended for write-in votes or intended for the initials of the precinct election official who issued the ballot

Example: 

If you find identifying marks on a ballot, the whole ballot must be rejected if ballots are being counted by hand.

If the ballots are tabulated by voting equipment and an identifying mark is found when tallying write-in votes, do not count the write-in votes. Return the ballot as "Objected to" in a disputed ballot envelope and indicate on the ballot that the write-in vote was not counted.

3. Random mark

Random mark = a mark on a ballot (other than prescribed mark) that is used inconsistently, either in or near the voting target or the names of candidates

Examples: 



4. Stray mark

Stray mark = a mark on a ballot that appears to be accidental or appears to be unrelated to the act of filling in the voting target

Example: 

[IAC 721—26.14, 26.17]

Consistent Use of Other Mark

If a voter does not use the mark prescribed in the voting instructions but consistently uses some other mark, the mark shall be counted as a vote if the mark is:

- In the voting target
- Close to a candidate's name, voting target associated with a candidate's name, or "yes" or "no" choice for a ballot question

[IAC 721—26.16(2)]

The following marks count as votes:







1. The prescribed mark [IAC 721—26.18(1)]
2. A mark that is a close approximation of the prescribed mark even if it strays outside the voting target or does not completely fill the voting target [IAC 721—26.18(2)]

Example 2:

The voter consistently marked the ballot by scribbling in the voting targets. The marks do not completely blacken the voting target and one strays outside the voting target.

For Board of Supervisors

(Vote for no more than two.)

	CANDIDATE 1 (Party A)
	CANDIDATE 2 (Party A)
	CANDIDATE 3 (Party B)
	CANDIDATE 4 (Party B)
	_____
	(Write-in vote, if any)
	_____
	(Write-in vote, if any)

Count one vote for CANDIDATE 3 and one vote for CANDIDATE 4. The same principle applies for other voting marks. If the mark is a close approximation of the prescribed mark, it shall be counted as a vote if all other applicable standards are met.

3. Any mark inside the voting target counts as a vote if the mark is used for every voted office or question instead of the prescribed mark.

Some examples you may find include:

cross		diagonal line	
check mark		horizontal line	
asterisk		vertical line	
plus sign			

[IAC 721—26.18(3)]

Example 3:

The voter has consistently marked each choice by putting a check mark in the voting target.

Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (Party A)
- CANDIDATE 2 (Party A)
- CANDIDATE 3 (Party B)
- CANDIDATE 4 (Party B)
- _____
(Write-in vote, if any)
- Martha Stone
(Write-in vote, if any)

Count one vote for CANDIDATE 3 and one for the write-in choice Martha Stone.

4. Any mark of the type described in # 3 on the previous page counts as a vote if it is near the name of a candidate or voting target.

[IAC 721—26.18(4)]

Example 4A:

The voter has consistently marked each choice by putting a check mark in the space between the voting target and the candidate's name.

Board of Supervisors

(Vote for no more than two.)

<input type="radio"/>	CANDIDATE 1 (Party A)
<input checked="" type="radio"/>	CANDIDATE 2 (Party A)
<input checked="" type="radio"/>	CANDIDATE 3 (Party B)
<input type="radio"/>	CANDIDATE 4 (Party B)
<input type="radio"/>	_____
	(Write-in vote, if any)
<input type="radio"/>	_____
	(Write-in vote, if any)

Count one for CANDIDATE 2 and one for CANDIDATE 3.

Example 4B:

The voter has consistently marked each choice by putting a check mark behind the candidate's name.

Board of Supervisors

(Vote for no more than two.)

<input type="radio"/>	CANDIDATE 1 (Party A)	✓
<input type="radio"/>	CANDIDATE 2 (Party A)	
<input type="radio"/>	CANDIDATE 3 (Party B)	
<input type="radio"/>	CANDIDATE 4 (Party B)	✓
<input type="radio"/>	_____	
	(Write-in vote, if any)	
<input type="radio"/>	_____	
	(Write-in vote, if any)	

Count one for CANDIDATE 1 and one for CANDIDATE 4.




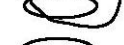



5. A circle around the voting target counts as a vote if it is used for all choices on the ballot.
[IAC 721—26.18(5)]

Example 5:

The voter has consistently marked each choice by circling the voting target.

Board of Supervisors

(Vote for no more than two.)

	CANDIDATE 1 (Party A)
	CANDIDATE 2 (Party A)
	CANDIDATE 3 (Party B)
	CANDIDATE 4 (Party B)
	_____
	(Write-in vote, if any)
	_____
	(Write-in vote, if any)








Count one vote for CANDIDATE 1 and one vote for CANDIDATE 4.

6. A circle around or a line drawn under the name of a candidate counts as a vote if this same mark is used for all choices on the ballot.
[IAC 721—26.18(6)]

Example 6:

Board of Supervisors

(Vote for no more than two.)

	<u>CANDIDATE 1 (Party A)</u>
	CANDIDATE 2 (Party A)
	CANDIDATE 3 (Party B)
	<u>CANDIDATE 4 (Party B)</u>
	_____
	(Write-in vote, if any)
	_____
	(Write-in vote, if any)

Count one vote for CANDIDATE 1 and one vote for CANDIDATE 4.

7. Name of a candidate that is not crossed out counts as a vote if the voter consistently used this method for marking all offices or questions on the ballot.

[IAC 721—26.18(7)]

Example 7:

Board of Supervisors

(Vote for no more than two.)

<input type="radio"/>	CANDIDATE 1 (Party A)
<input checked="" type="radio"/>	CANDIDATE 2 (Party A)
<input checked="" type="radio"/>	CANDIDATE 3 (Party B)
<input type="radio"/>	CANDIDATE 4 (Party B)
<input type="radio"/>	_____
	(Write-in vote, if any)
<input type="radio"/>	_____
	(Write-in vote, if any)

Count one vote for CANDIDATE 1 and one vote for CANDIDATE 4.

Counting Straight Party or Organization Votes

The optical scan machine is programmed to count straight party votes according to this rule. When counting ballots by hand, precinct election officials, recount boards, and contest courts shall also count straight party votes according to this rule.

Effect of Straight Party Vote

When a voter has marked a voting target for one political party or one NPPO, each candidate on the ballot for that party or NPPO shall receive one vote.

Overvote

If a voter has marked the voting target next to the name of more than one political party or organization, only votes cast for individual candidates shall be counted.

[IAC 721—26.19(2)]

Example 1:

The voter has marked a straight party vote for POLITICAL PARTY A and for POLITICAL ORGANIZATION D.

STRAIGHT PARTY VOTING

- POLITICAL PARTY A
- POLITICAL PARTY B
- POLITICAL ORGANIZATION C
- POLITICAL ORGANIZATION D

This example shows an overvote. Count only votes cast separately for candidates listed on the ballot.

Overriding a Straight Party Vote

If the voter has marked a straight party vote and has also marked a voting target for a candidate or write-in line for a partisan office, the straight party vote shall not apply to that office.

The vote shall be counted as the voter has marked that individual office.

[IAC 721—26.19(3)]

Example 2:

The voter has marked a straight party vote for POLITICAL PARTY A.

For County Recorder

(Vote for no more than one.)

- CANDIDATE 1 (POLITICAL PARTY A)
- CANDIDATE 2 (POLITICAL PARTY B)
- CANDIDATE 3 (POLITICAL ORGANIZATION W)
- _____
(Write-in vote, if any)

This example shows one vote for CANDIDATE 3. Do not count a vote for the candidate from POLITICAL PARTY A. The vote for CANDIDATE 3 overrides the straight party vote for that office.

Overriding a Straight Party Vote, More than One Candidate to be Elected

If the voter may vote for more than one candidate for an office, a straight party vote does not apply to that office if:

- the voter marks one or more voting targets next to the names of candidates listed under that office title
- the voter marks one or more voting targets to write-in lines.

The vote shall be counted as the voter has marked that individual office.

[IAC 721—26.19(4)]

Example 3:

The voter has marked a straight party vote for POLITICAL PARTY A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (POLITICAL PARTY A)
 CANDIDATE 2 (POLITICAL PARTY B)
 CANDIDATE 3 (POLITICAL PARTY B)

(Write-in vote, if any)

(Write-in vote, if any)

This example shows one vote for CANDIDATE 3. Do not count a vote for the candidate from POLITICAL PARTY A. The vote for CANDIDATE 3 overrides the straight party vote even though more than one is to be elected to the office.

Example 4:

The voter has marked a straight party vote for POLITICAL PARTY A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (POLITICAL PARTY A)
- CANDIDATE 2 (POLITICAL PARTY A)
- CANDIDATE 3 (POLITICAL PARTY B)
- CANDIDATE 4 (POLITICAL PARTY B)
- _____
(Write-in vote, if any)
- _____
(Write-in vote, if any)

This example shows one vote for CANDIDATE 4. Do not count any votes for either of the two candidates from POLITICAL PARTY A. The vote for CANDIDATE 4 overrides the straight party vote.

Example 5:

The voter has marked a straight party vote for POLITICAL PARTY A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (POLITICAL PARTY A)
- CANDIDATE 2 (POLITICAL PARTY A)
- CANDIDATE 3 (POLITICAL PARTY B)
- CANDIDATE 4 (POLITICAL PARTY B)
- _____
(Write-in vote, if any)
- _____
(Write-in vote, if any)

This example shows one vote for CANDIDATE 2. Do not count a vote for CANDIDATE 1, who is also a candidate for POLITICAL PARTY A. The separate vote for one candidate of POLITICAL PARTY A overrides the straight party vote.

Example 6:

The voter has marked a straight party vote for POLITICAL PARTY A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (POLITICAL PARTY A)

CANDIDATE 2 (POLITICAL PARTY A)

CANDIDATE 3 (POLITICAL PARTY B)

CANDIDATE 4 (POLITICAL PARTY B)



(Write-in vote, if any)



(Write-in vote, if any)

This example shows one vote for “blank.” No vote shall be counted for either of two POLITICAL PARTY A candidates: CANDIDATE 1 or CANDIDATE 2. The separate vote for a write-in choice overrides the straight party vote, even if there is no name written on the line.

Example 7:

The voter has marked a straight party vote for POLITICAL PARTY A. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (POLITICAL PARTY A)

CANDIDATE 2 (POLITICAL PARTY A)

CANDIDATE 3 (POLITICAL PARTY B)

CANDIDATE 4 (POLITICAL PARTY B)



Candidate 1

(Write-in vote, if any)



Candidate 2

(Write-in vote, if any)

This example shows one vote for CANDIDATE 1 and one vote for CANDIDATE 2. Although the write-in vote duplicates the voter’s straight party vote, it is clear that the voter has chosen CANDIDATE 1 and CANDIDATE 2. Include the write-in votes for CANDIDATE 1 and CANDIDATE 2 in the tally of write-in votes.

Counting Write-In Votes

1. If ballots were counted by an optical scanner on election day, count a write-in vote only if the voting target is marked.

Example 1A:

The voter has not marked the voting target for the write-in votes. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (POLITICAL PARTY A)
- CANDIDATE 2 (POLITICAL PARTY A)
- CANDIDATE 3 (POLITICAL PARTY B)
- CANDIDATE 4 (POLITICAL PARTY B)
- Candidate 1
(Write-in vote, if any)
- Candidate 2
(Write-in vote, if any)

This example does not show a vote.

EXCEPTION: If optical scan machines were not used on election day and the ballots are hand-counted, the voter is **not** required to mark the voting target next to a write-in vote.

[§49.99, IAC 721—26.20(1)]

Example 1B:

The voter has written in two names on the write-in lines but has not marked the voting targets. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (POLITICAL PARTY A)
- CANDIDATE 2 (POLITICAL PARTY A)
- CANDIDATE 3 (POLITICAL PARTY B)
- CANDIDATE 4 (POLITICAL PARTY B)
- Candidate 9
(Write-in vote, if any)
- Candidate 8
(Write-in vote, if any)

This example shows one vote for CANDIDATE 1 and one vote for CANDIDATE 2. The write-in votes shown in this example do not count.

Example 1C: (Overvote)

The voter has marked three voting targets and has not written a name on the line. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (POLITICAL PARTY A)
 CANDIDATE 2 (POLITICAL PARTY A)
 CANDIDATE 3 (POLITICAL PARTY B)
 CANDIDATE 4 (POLITICAL PARTY B)

(Write-in vote, if any)

(Write-in vote, if any)

This example shows an overvote. Do not count any votes for this office because the voter's choice can be interpreted in more than one way. The optical scan machine reads this office as an overvote. You do not need to include any more information about this office in the tally list.

- 2. If a voter writes the name of the same person more than once in the proper places on a ballot for an office to which more than one person is to be elected, all but one of those votes for that person for that office are void and cannot be counted.

[IAC 721—26.20(2)]

Example 2: (two write-ins for the same person)

The voter has written in the name of the same person on both write-in lines. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

CANDIDATE 1 (POLITICAL PARTY A)
 CANDIDATE 2 (POLITICAL PARTY A)
 CANDIDATE 3 (POLITICAL PARTY B)
 CANDIDATE 4 (POLITICAL PARTY B)

Candidate 7

(Write-in vote, if any)

Candidate 7

(Write-in vote, if any)

This example shows one vote for CANDIDATE 7.

3. If ballots are being counted by hand and a write-in vote duplicates an otherwise correctly cast vote for a candidate whose name appears on the ballot, the write-in vote shall be counted. The optical scan machine reads this as an overvote and does not count any votes for this office.

[IAC 721—26.20(3)]

Example 3: (write-in vote duplicates other votes)

The voter has written on the write-in lines the names of the candidates for whom the voter has also marked the voting targets next to the printed names. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

<input checked="" type="radio"/>	CANDIDATE 1 (POLITICAL PARTY A)
<input checked="" type="radio"/>	CANDIDATE 2 (POLITICAL PARTY A)
<input type="radio"/>	CANDIDATE 3 (POLITICAL PARTY B)
<input type="radio"/>	CANDIDATE 4 (POLITICAL PARTY B)
<input checked="" type="radio"/>	<u> <i>Candidate 1</i></u>
	(Write-in vote, if any)
<input checked="" type="radio"/>	<u> <i>Candidate 2</i></u>
	(Write-in vote, if any)

This example shows one vote for CANDIDATE 1 and one vote for CANDIDATE 2. Although the write-in votes duplicate the votes for candidates on the ballot, it is clear that the voter has chosen CANDIDATE 1 and CANDIDATE 2. Include these write-in votes in the tally list.

4. Spellings of Names

Disregard misspellings or variations in names or abbreviations. Count different spellings of a name as votes for the same person if it can be determined for whom the write-in votes were cast.

Fictitious Characters

Count write-in votes for fictitious characters (ex. Mickey Mouse) just as they are written on the ballot. Don't ignore them or group them together as "fictitious names."

[IAC 721—26.20(5)]

5. Write-in votes cast for the office of president and vice president or for the office of governor and lieutenant governor must be tabulated as a single vote for a pair of candidates.
[IAC 721—26.20(4)]

Example 5A:

The voter has written in the names of candidates for president and vice president whose names also appear on the ballot.

For President and Vice President
(Vote for no more than one team.)

- CANDIDATE 19, of State
CANDIDATE 20, of State
POLITICAL PARTY A
- CANDIDATE 21, of State
CANDIDATE 22, of State
POLITICAL PARTY B
- CANDIDATE 23, of State
CANDIDATE 24, of State
POLITICAL ORGANIZATION C
- CANDIDATE 25, of State
CANDIDATE 26, of State
POLITICAL ORGANIZATION D

Candidate 21
(Write-in vote for President, if any)

Candidate 22
(Write-in vote for Vice President, if any)

This example shows one vote for the POLITICAL PARTY B team of CANDIDATE 21 for president and CANDIDATE 22 for vice president. The voter has clearly chosen this team of candidates. Record this with the other write-in votes.

Example 5B: (identifying mark with write-in vote for team on the ballot)

The voter has written in the names of candidates for president and vice president whose names also appear on the ballot and has identified the political affiliation of the voter.

For President and Vice President

(Vote for no more than one team.)

- CANDIDATE 19, of State
CANDIDATE 20, of State
POLITICAL PARTY A

- CANDIDATE 21, of State
CANDIDATE 22, of State
POLITICAL PARTY B

- CANDIDATE 23, of State
CANDIDATE 24, of State
POLITICAL ORGANIZATION C

- CANDIDATE 25, of State
CANDIDATE 26, of State
POLITICAL ORGANIZATION D

Candidate 21
(Write-in vote for President, if any) *By the New Party*

Candidate 22
(Write-in vote for Vice President, if any)

This is not a vote. The political identification next to the write-in lines is an identifying mark. **Do not count these write-in votes.**

Election Day

Optical Scanners Used

If the ballots are tabulated by voting equipment and an identifying mark is found when tallying write-in votes, do not count the write-in votes. Return the ballot as “Objected to” in the disputed ballot envelope and indicate on the ballot that the write-in vote was not counted.

Hand Counting

If you find identifying marks on a ballot, the whole ballot must be rejected if ballots are being counted by hand.

Recounts and Contests

If you find identifying marks on a ballot, the whole ballot must be rejected.

Example 5C: (write-in vote for part of a team)

The voter has written in the names of the presidential candidate for one party and the vice presidential candidate of another.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
POLITICAL PARTY A

CANDIDATE 21, of State
CANDIDATE 22, of State
POLITICAL PARTY B

CANDIDATE 23, of State
CANDIDATE 24, of State
POLITICAL ORGANIZATION C

CANDIDATE 25, of State
CANDIDATE 26, of State
POLITICAL ORGANIZATION D

Candidate 19
(Write-in vote for President, if any)
Candidate 22
(Write-in vote for Vice President, if any)

This example shows one vote for the team of CANDIDATE 19 for president and CANDIDATE 22 for vice president. Although this pairing of candidates does not appear on the ballot, the vote will be recorded for this new pairing. This does not count as a vote for the president/vice president team of either POLITICAL PARTY A or POLITICAL PARTY B.

Example 5D: (write-in vote for part of a team)

The voter has written in the names of the presidential candidate for one party and the name of another person for vice president.

For President and Vice President

(Vote for no more than one team.)

- CANDIDATE 19, of State
CANDIDATE 20, of State
POLITICAL PARTY A

- CANDIDATE 21, of State
CANDIDATE 22, of State
POLITICAL PARTY B

- CANDIDATE 23, of State
CANDIDATE 24, of State
POLITICAL ORGANIZATION C

- CANDIDATE 25, of State
CANDIDATE 26, of State
POLITICAL ORGANIZATION D

 Candidate 19
(Write-in vote for President, if any)
 Candidate 45
(Write-in vote for Vice President, if any)

This example shows one vote for the team of CANDIDATE 19 for president (who is also the presidential candidate for POLITICAL PARTY A) and one vote for CANDIDATE 45 for vice president. Although this pairing of candidates does not appear on the ballot, the vote will be recorded for this new pairing. This does not count as a vote for the president/vice president team of POLITICAL PARTY A.

Example 5E: (write-in vote for president and vice president)

The voter has written in the names of the president and vice president.

For President and Vice President

(Vote for no more than one team.)

- CANDIDATE 19, of State
CANDIDATE 20, of State
POLITICAL PARTY A

- CANDIDATE 21, of State
CANDIDATE 22, of State
POLITICAL PARTY B

- CANDIDATE 23, of State
CANDIDATE 24, of State
POLITICAL ORGANIZATION C

- CANDIDATE 25, of State
CANDIDATE 26, of State
POLITICAL ORGANIZATION D

- Candidate 44
(Write-in vote for President, if any)
- Candidate 45
(Write-in vote for Vice President, if any)

This example shows one vote for the team of CANDIDATE 44 for president and for CANDIDATE 45 for vice president.

Example 5F: (write-in vote for president and vice president)

The voter has written in the names of the president and vice president.

For President and Vice President

(Vote for no more than one team.)

CANDIDATE 19, of State
CANDIDATE 20, of State
POLITICAL PARTY A

CANDIDATE 21, of State
CANDIDATE 22, of State
POLITICAL PARTY B

CANDIDATE 23, of State
CANDIDATE 24, of State
POLITICAL ORGANIZATION C

CANDIDATE 25, of State
CANDIDATE 26, of State
POLITICAL ORGANIZATION D

Candidate 44
(Write-in vote for President, if any)
Candidate 50
(Write-in vote for Vice President, if any)

This example shows one vote for the team of CANDIDATE 44 for president and for CANDIDATE 50 for vice president. Even though other write-in votes have been counted for CANDIDATE 44 (in the previous example) for president with a different vice presidential teammate, this team is listed and counted separately.

Corrections by Voters

When counting ballots by hand, count the vote for an office or question if the voter has marked the ballot in a manner that will be counted as an overvote by the optical scan machine and the voter has indicated in a clear fashion that the voter has made a mistake. **Do not count the vote if the correction includes an identifying mark.**

[IAC 721—26.21]

Example 1:

The voter has crossed out the mark for one candidate and has written in the names of two persons on the write-in lines. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors
(Vote for no more than two.)

<input type="radio"/>	CANDIDATE 1 (POLITICAL PARTY A)
<input type="radio"/>	CANDIDATE 2 (POLITICAL PARTY A)
<input checked="" type="radio"/>	CANDIDATE 3 (POLITICAL PARTY B)
<input type="radio"/>	CANDIDATE 4 (POLITICAL PARTY B)
<input checked="" type="radio"/>	<u>Margaret Allen</u>
	(Write-in vote, if any)
<input checked="" type="radio"/>	<u>Bob Burns</u>
	(Write-in vote, if any)




Note: The word "NO" is written to the left of the candidates, and a large "X" is drawn over the radio button for Candidate 3.

This example shows one vote for Margaret Allen and one vote for Bob Burns. The voter has clearly crossed out the mark for CANDIDATE 3.

Example 2:

The voter has corrected a mistake by crossing out a marked voting target and has also initialed the correction.

For Board of Supervisors
(Vote for no more than two.)

tw NO		CANDIDATE 1 (POLITICAL PARTY A)
		CANDIDATE 2 (POLITICAL PARTY A)
		CANDIDATE 3 (POLITICAL PARTY B)
		CANDIDATE 4 (POLITICAL PARTY B)
		<u>Margaret Allen</u>
		(Write-in vote, if any)
		<u>Bob Burns</u>
		(Write-in vote, if any)

This example does not show a vote. The initials next to the correction identify the vote. **Do not count any votes on this ballot.**

Election Day

Optical Scanners Used

If the ballots are tabulated by voting equipment and an identifying mark is found when tallying write-in votes, do not count the write-in votes. Return the ballot as “Objected to” in the disputed ballot envelope and indicate on the ballot that the write-in vote was not counted.

Hand Counting

If you find identifying marks on a ballot, the whole ballot must be rejected if ballots are being counted by hand.

Recounts and Contests

If you find identifying marks on a ballot, the whole ballot must be rejected.

Example 3:

The voter has attempted to erase one marked voting target and has marked another voting target. Two persons are to be elected to the county board of supervisors.

For Board of Supervisors

(Vote for no more than two.)

- CANDIDATE 1 (POLITICAL PARTY A)
- CANDIDATE 2 (POLITICAL PARTY A)
- CANDIDATE 3 (POLITICAL PARTY B)
- CANDIDATE 4 (POLITICAL PARTY B)
- _____
(Write-in vote, if any)
- _____
(Write-in vote, if any)

This example shows one vote for CANDIDATE 3. The voter has attempted to erase the mark for CANDIDATE 2.

EXHIBIT 2

AFFIDAVIT OF BOGDANA VELTEREAN

I, Bogdana Velterean, under oath affirm and state under penalty of perjury that the following is true and correct to the best of my knowledge:

1. I am the Deputy Auditor for Elections in Johnson County, Iowa. In that role, I supervise the administration of elections for federal, state, and local offices in Johnson County.

2. I oversaw Johnson County's administration of the election for U.S. Representative from Iowa's Second Congressional District in 2020.

3. Due to my role as Deputy Auditor for Elections, I can represent the following facts concerning election administration in Johnson County.

4. At the time that a voter gives their ballot to auditor's office staff or precinct officials, or when the voter places their ballot into a receptacle designated by the auditor for the collection of ballots, with the intent that their ballot be cast, responsibility for that ballot passes from the voter to the County. Once responsibility for that ballot passes to the County, the ballot is cast, though it may not ultimately be counted by precinct officials. Examples of this transfer of responsibility include curbside voters who give their ballots to poll workers, voters who hand their ballots to auditor's office staff collecting absentee ballots at the auditor's office, voters dropping their absentee ballots in an official drop box, voters depositing their absentee ballots in the mail, and voters depositing their ballots at an absentee-in-person voting location.

5. In the 2020 general election, absentee ballot affidavit envelopes cast in Johnson County were reviewed by approximately 60 part-time staff members for completeness and defects pursuant to the processes described in Iowa Code § 53.18 and Iowa Admin. Code 721-21.351 *et seq.* These reviewers were instructed to be as inclusive as possible when reviewing affidavit envelopes for potential defects in order to ensure that any voter whose ballot might be rejected by the Absentee Ballot and Special Voters Precinct Board ("**ASVP Board**") would have an opportunity to complete their affidavit or cast a new ballot to ensure that their votes were ultimately counted. If an affidavit envelope is flagged for incompleteness or for a potential defect, we make an effort to contact the voter by mail, email, or telephone and inform them of the issue. If a voter did not cast another ballot or complete their incomplete affidavit by the deadline, their original ballot would be held in a box with other ballots identified by the review team as incomplete or defective and would be presented to the ASVP Board in that box for the ASVP Board to either accept or reject.

6. The ASVP Board inspects each absentee ballot affidavit envelope before opening it. If the ASVP Board removes a ballot from its envelope, that means the ASVP Board was satisfied that the ballot was validly cast and should be counted, provided that such ballot was the only ballot contained in that envelope.

7. The ASVP Board in the 2020 primary election, which may include different members than the ASVP Board in the 2020 general election, accepted for counting an absentee ballot in an affidavit envelope that was signed by the voter outside, rather than inside, the

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 2 U.S.C. § 384, on this 22nd day of March, 2021, a true and correct copy of **CONTESTANT'S INITIAL BRIEF IN RESPONSE TO CHAIRPERSON LOFGREN'S LETTER OF MARCH 10, 2021** was served upon the attorney representing Contestee Mariannette Miller-Meeks via certified mail at the following address:

Alan R. Ostergren
Alan R. Ostergren, P.C.
500 Locust Street, Suite 199
Des Moines, IA 50309

A courtesy copy will be transmitted to Contestee Miller-Meeks's attorneys of record via email.

DATED this 22nd day of March, 2021.

PERKINS COIE LLP

By: 

Marc E. Elias
700 Thirteenth St., N.W., Suite 800
Washington, D.C. 20005

Attorney for Contestant Rita Hart