IN THE

United States House of Representatives

RITA HART,

Contestant,

V.

MARIANNETTE MILLER-MEEKS,

Contestee.

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

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INTRODUCTION

> *"There is more to the right to vote than the right to mark a piece of paper and drop it in a box or the right to pull a lever in a voting booth. The right to vote includes the right to have the ballot counted."*[1]

In November 2020, Iowa officials counted ballots in an election that ultimately broke records in the Hawkeye State.[2] But through administrative error and the inequitable application of Iowa's election laws, 22 ballots were not included in the state's certified vote totals. The 22 Iowans who cast those ballots—some of whom supported Contestant Rita Hart, others of whom voted for Contestee Mariannette Miller-Meeks—tried to make their voices heard. But despite their efforts, and due to circumstances beyond their control, their votes were not counted.

Five months later, their ballots remain uncounted.

Contestee Miller-Meeks's adamant opposition to Contestant Hart's efforts to count these lawful ballots is alarming, but not surprising. Her obstruction is consistent with her party's outright hostility to fundamental democratic norms, from the baseless attempts of its standard-bearer and his allies to throw out hundreds of thousands of lawful votes and overturn the will of the people last November, to its refusal to uniformly condemn the assault on our democracy that unfolded on January 6, to its unanimous opposition to the For the People Act and other legislative efforts to safeguard the vote, to its open hostility to *this* attempt to prevent the disenfranchisement of 22 Iowans. The position of Contestee Miller-Meeks and the Republican Party is now clear: the right to vote is worthy of neither respect nor protection.

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[1] *Reynolds v. Sims*, 377 U.S. 533, 555 n.29 (1964) (Warren, C.J.) (quoting *South v. Peters*, 339 U.S. 276, 279 (1950) (Douglas, J., dissenting)).

[2] A record-setting 78.6 percent of eligible voters cast ballots in Iowa, giving it the third-highest turnout rate nationwide. *See* Brianne Pfannenstiel, *Election 2020: Iowa Has Third-Highest Voter Turnout Rate in Country, Preliminary Data Shows*, Des Moines Reg. (Nov. 5, 2020), https://www.desmoinesregister.com/story/news/politics/2020/11/05/election-2020-iowa-has-third-highest-voter-turnout-rate-country/6176217002.

Though Contestee Miller-Meeks might object to this contested election case and refuse even to engage with the process, this Committee should not follow her lead. The Committee has a constitutional, statutory, and moral obligation to ensure that every lawful vote is counted and that the people of Iowa's Second Congressional District are represented by the candidate of their choice. The rules and procedures Contestant Hart set forth in her initial brief will facilitate this objective as expeditiously as possible, minimizing the costs and inconveniences imposed on the parties, their witnesses, and the Committee. Rather than outline a similarly sound approach to resolving this contested election case (or any approach at all), Contestee Miller-Meeks has effectively turned her back on the process, filing a brief that relies on misinterpretations of the Federal Contested Elections Act ("FCEA") and House precedent and wrongly concludes that this Committee's effort to craft workable rules is somehow inappropriate. And despite three opportunities to present arguments as to why the 22 ballots should *not* be counted—in her motion to dismiss, answer, and initial brief—Contestee Miller-Meeks has still produced no better argument other than her apparent disdain for this forum. With the rights of 22 voters she claims to represent on the line, that's just not good enough.

Contestee Miller-Meeks is wrong on the law and wrong on the facts. None of her arguments should discourage the U.S. House of Representatives from exercising its constitutional prerogative and safeguarding the rights of Iowa voters. For the reasons discussed below, the arguments in her brief should be disregarded, and the Committee should adopt the rules and procedures proposed

by Contestant Hart, and any others that it sees fit, that will ensure a fair and timely resolution of this contested election case.[3]

ARGUMENT

I. The Committee's approach to this contested election case is consistent with its authority and House contest precedent.

Throughout her initial brief, Contestee Miller-Meeks repeatedly and erroneously suggests that the Committee's adoption of rules and procedures to guide this contested election case—and this very briefing—is prohibited by the FCEA. *See, e.g.*, Br. in Resp. to Letter from Chairwoman Lofgren ("Contestee's Br.") 2–5, 7–8 (implying that Committee is "attempt[ing] to leapfrog the discovery procedures in the FCEA"). The FCEA provides the procedural *framework* for contested election cases in the House. It does not—and was never intended to—provide an *exhaustive* list of procedures that the House must use. Instead, this Committee is responsible for developing case-specific procedures for the efficient and expeditious resolution of House contests. And those procedures are necessarily dependent on a contestant's claims and any defenses asserted by the corresponding contestee. Consistent with House precedent, the Committee has the authority—and the obligation—to ask questions and use the parties' answers (or non-answers, in Contestee Miller-

[3] As an initial matter, Contestant Hart wishes to correct an error in her initial brief and suggest two additional points of procedure. First, in her proposed approach to the discovery process, Contestant Hart suggested that Contestee Miller-Meeks would have "the opportunity during her discovery period to . . . conduct depositions of any *election officials* whose *subpoenas* Contestant Hart submitted during her discovery period." Contestant's Initial Br. in Resp. to Chairperson Lofgren's Letter 22 (second emphasis added) (citation omitted). Consistent with her position that she only submit *affidavits* during her initial discovery period, Contestant Hart intended the word "subpoenas" to actually be "affidavits." Additionally, Contestant Hart proposes that (1) the Committee allow the use of affidavits to authenticate documents, in the interest of further streamlining these proceedings, and (2) the Committee itself subpoena the ballots, ballot envelopes, and other materials needed to complete any tabulation of votes that it decides to undertake. Placing such materials in the custody of the Committee (rather than the parties) would reduce confusion and promote confidence in the process.

Meeks's case) to supplement the FCEA's procedural framework and create a case-specific process for fairly and efficiently resolving this contest.

The legislative history of the FCEA clearly demonstrates the House's intent to create an efficient procedural framework for the resolution of contested election cases. After nearly two centuries of inconsistent, unsatisfactory approaches to certain common aspects of House contest procedure, Congress concluded that "[h]istorical experience with the existing law ha[d] demonstrated its inadequacies" and enacted the FCEA to provide efficiency and consistency for future proceedings. H.R. Rep. No. 91-569, at 2–3 (1969); *see also* 115 Cong. Rec. 30,510 (1969) (floor statement that previous contest law "prescribe[d] antiquated and cumbersome procedures which are unsuitable for the changed conditions of our time"). The FCEA focuses primarily on questions and concerns that are procedural and universal to all contests: Who has standing to file a contest? When does discovery commence? What is the procedure for subpoenaing witnesses and documents? The legislation addressed these issues and provided informed solutions. *See* H.R. Rep. No. 91-569, at 3–5.

Nowhere did the legislation state that these were the *only* procedures that the House could apply to a contested election case, and for good reason: just as each election is unique, so too is each contest. Each necessarily raises unique logistical issues unaddressed by the FCEA but central to the contest's resolution. Which ballots are in dispute? Do the parties agree on the ballots that are in dispute, or must that first be adjudicated before examining the disputed ballots? How should the Committee review these ballots and add or subtract the votes from the parties' totals? The Committee's decision to seek out and apply streamlined, efficient rules and procedures in this contested election case is wholly consistent with the spirit and purpose of the FCEA. "It is essential," the House report that accompanied the legislation explained, "that such contests be

determined by the House under modern procedures which provide efficient, expeditious processing of the cases and a full opportunity for both parties to be heard." H.R. Rep. No. 91-569, at 3. It emphasized that "[n]o substantive grounds for upsetting an election are set forth in the bill[,] which is strictly limited to setting up a procedural framework for the prosecution, defense and disposition of an election challenge." *Id.* at 4. As the legislation's sponsor explained during the floor debate, the FCEA was "intended to expedite the [contest] hearings, so that the matter can be brought to a decision as quickly as possible." 115 Cong. Rec. 30,510 (1969). The Committee's actions in seeking the parties' proposed rules and procedures, which are similarly "designed to permit a more expeditious, orderly and efficient means of adjudicating the controversy," H.R. Rep. No. 91-569, at 4, thus promote the expressed aim of the FCEA.

It is also consistent with House precedent postdating the very legislation that Contestee Miller-Meeks now argues prohibits it. The Committee has regularly turned to parties to provide answers to case-specific questions to facilitate the resolution of contested election cases. In *Kyros v. Emery*, for example, an FCEA contestant asserted that if all validly cast ballots were properly counted, he would win the election. *See* H.R. Rep. No. 94-760, at 2 (1975). At the Committee's first hearing on March 25, 1975 (near the outset of the case and well before the statutory close of discovery), the Committee gave the parties 30 days to submit briefs with "points and authorities" (with "an additional 10 days for each to prepare responses to the briefs of the other") with respect to two issues: "(1) should the [Committee] follow Maine law, to the extent that it can be ascertained, in resolving the disputed ballots, [and] (2) what is the law of Maine with respect to each category of disputed ballots." *Id*. To resolve the contest before it, the Committee needed answers to these questions. And as a fair tribunal, it offered each side the opportunity to present

its arguments, provide support for its arguments, and reply to its opponent's arguments—just as the Committee has done in *this* contested election case.

A similar process unfolded more recently in *Jennings v. Buchanan*. *See* H.R. Rep. No. 110-528, pt. 1, at 5 (2008). There, the contestant asserted in part that the voting machines used in a particular county contributed to an "unusually high number of undervotes." *Id.* at 2. After the contestee filed a motion to dismiss, the Committee *suspended discovery* and eventually engaged the Government Accountability Office to investigate the voting machines and determine whether they required additional testing. *See id.* at 15–16. The Committee then asked the parties, by letter, "to address central questions relating to the adequacy or inadequacy of prior testing of the electronic voting machines, whether additional tests were needed, and provide suggested testing protocols in the event that additional testing was required." *Id.* at 5. Accordingly, the Committee in *Jennings* not only posed substantive questions to the parties—again, just as the Committee has done here—but also built upon the FCEA's procedural framework with case-specific rules and processes to resolve that contest.

There is, in short, nothing untoward, suspect, or otherwise unprecedented about Chairperson Lofgren's request that the parties answer questions regarding the "specific procedures, legal principles, and timelines that should control the course of the contested election case and facilitate the case's disposition." Chairperson Lofgren's Letter of Mar. 10, 2021 ("March 10 Letter") 1 (quoting Committee Resolution 117-10). Far from "ignor[ing] . . . this chamber's precedents," Contestee's Br. 2, the Committee has charted a course consistent with both the FCEA and the Committee's past practice of seeking input from both parties on case-specific questions that necessarily impact how contested election cases will proceed.

House precedent further underscores a key detail of this contested election case that warrants the Committee's careful attention as it considers the parties' arguments: this is a *remarkably* close election. The six-vote margin separating Contestant Hart and Contestee Miller-Meeks in the state-certified tally—*0.000015 percent of the vote*—constitutes nothing short of an aberration; House races decided by single-digit margins are exceedingly rare, with only a handful in the past century. *See, e.g.*, Kirk Johnson, *Recount Shows Rep. Gejdenson Wins in Connecticut by 4 Votes*, N.Y. Times (Nov. 16, 1994), https://www.nytimes.com/1994/11/16/nyregion/recount-shows-rep-gejdenson-wins-in-connecticut-by-4-votes.html (reporting in 1994 that "only eight Congressional races [were] settled by a single-digit vote margin in this century"). Even in the annals of House election contests brought under the FCEA since its 1969 enactment, this contest is particularly noteworthy:[4]

Election Year	***Contest***	***Pre-Contest Vote Margin***	***Source***
2020	*Hart v. Miller Meeks*	6	Notice of Contest ¶ 3
2020	*Oberweis v. Underwood*	5,374	Notice of Contest ¶ 3, *Oberweis v. Underwood* (Jan. 3, 2021)
2012	*Hayward v. Cuellar*	63,147	H.R. Rep. No. 113-22, at 2 (2013)
2008	*Tataii v. Abercrombie*	116,093	H.R. Rep. No. 111-68, at 2 (2009)
2006	*Jennings v. Buchanan*	369	H.R. Rep. No. 110-528, at 2
2006	*Russell v. Brown-Waite*	53,462	H.R. Rep. No. 110-178, at 2 (2007)
2006	*Curtis v. Fenney*	33,932	H.R. Rep. No. 110-176, at 2 (2007)
2006	*Gonzalez v. Diaz-Balart*	21,262	H.R. Rep. No. 110-175, at 2 (2007)
2002	*Lyons v. Gordon*	113,969	H.R. Rep. No. 108-208, at 2 (2003)

[4] This table excludes contests where no report was filed, no vote margin was specified, or a general election result was not challenged.

2003	*Tataii v. Case*	32,993	H.R. Rep. No. 108-207, at 3 (2003)
1996	*Dornan v. Sanchez*	979	H.R. Rep. No. 105-416, at 2 (1998)
1994	*Anderson v. Rose*	3,821	H.R. Rep. No. 104-852, at 2 (1996)
1992	*McCuen v. Dickey*	10,019	H.R. Rep. No. 103-109, at 2 (1993)
1984	*Hansen v. Stallings*	170	H.R. Rep. No. 99-290, at 2 (1985)
1984	*Won Pat v. Blaz*	355	H.R. Rep. No. 99-220, at 2 (1985)
1982	*Hendon v. Clarke*	1,325	H.R. Rep. No. 98-453, at 1 (1983)
1982	*Archer v. Packard*	8,449	H.R. Rep. No. 98-452, at 1 (1983)
1978	*Thorsness v. Daschle*	105	H.R. Rep. No. 96-785, at 1 (1980)
1978	*Wilson v. Leach*	266	H.R. Rep. No. 96-784, at 1 (1980)
1978	*Rayner v. Stewart*	14,041	H.R. Rep. No. 96-316, at 2 (1979)
1978	*Hanania-Freeman v. Mitchell*	45,370	H.R. Rep. No. 96-226, at 1 (1979)
1978	*Perkins v. Byron*	108,098	H.R. Rep. No. 96-78, at 1 (1979)
1977	*Lowe v. Fowler*	29,622	H.R. Rep. No. 95-724, at 1 (1977)
1976	*Dehr v. Leggett*	651	H.R. Rep. No. 95-654, at 1 (1977)
1976	*Pierce v. Pursell*	344	H.R. Rep. No. 95-245, at 1 (1977)
1976	*Young v. Mikva*	201	H.R. Rep. No. 95-244, at 2 (1977)
1976	*Paul v. Gammage*	268	H.R. Rep. No. 95-243, at 1 (1977)
1976	*Saunders v. Kelly*	42,111	H.R. Rep. No. 95-242, at 1 (1977)
1974	*Ziebarth v. Smith*	737[5]	H.R. Rep. No. 94-763, at 9 (1975)
1974	*Wilson v. Hinshaw*	59,599	H.R. Rep. No. 94-761, at 1 (1975)
1974	*Kyros v. Emory*	421	H.R. Rep. No. 94-760, at 2
1974	*Young v. Mikva*	2,860	H.R. Rep. No. 94-759, at 1 (1975)

[5] Although the results of the election in *Ziebarth v. Smith* are described in the House report as 80,992 votes to 80,225—a margin of 767 votes—the report also uses the figure of 737 votes. *See* H.R. Rep. No. 94-763, at 2, 9, 11 (1975).

1972	*Conover v. Walgren*	2,691	H.R. Rep. No. 92-1090, at 1 (1972)
1970	*Tunno v. Veysey*	1,795	H.R. Rep. No. 92-626, at 1 (1971)

Even *McCloskey & McIntyre*, the last contested election case in which the House reversed a state-certified vote total, implicated an initial margin of 34 votes. *See* H.R. Rep. No. 99-58, at 6 (1985).[6] Given just how astoundingly and uncommonly close this election is, Contestee Miller-Meeks's fear that the Committee's adjudication of this contest will lead to a deluge of future contested election cases—that it will "open the flood gates," Contestee's Br. 4—is simply without merit.

II. The U.S. Constitution and the FCEA require the Committee to adjudicate this contested election case.

Throughout her brief, Contestee Miller-Meeks also questions the propriety of this entire proceeding, painting the House as an unreliable partisan actor that cannot be entrusted with the fair, impartial resolution of this contest. *See* Contestee's Br. 3–4. But she wholly ignores the central fact that the U.S. Constitution and the FCEA do not merely *permit* the House's consideration of this contested election case, they *require* it.

A. The House cannot abrogate its constitutional prerogative to judge the elections of its members.

Article I, Section 5, Clause 1 of the U.S. Constitution instructs that "[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own Members." This provision allows each chamber of Congress "to make an independent final judgment" as to its members. *Roudebush v. Hartke*, 405 U.S. 15, 25 (1972). This "power carries with it authority to take such steps as may be appropriate and necessary to secure information upon which to decide concerning elections," *Reed v. Cnty. Comm'rs*, 277 U.S. 376, 388 (1928), which

[6] The *McCloskey* contest was initiated by a majority vote of the House on the first day of the 99th Congress, not by the filing of a notice of contest under the FCEA. *See* H.R. Rep. No. 99-58, at 2.

> necessarily involves the ascertainment of facts, the attendance of witnesses, the examination of such witnesses, with the power to compel them to answer pertinent questions, to determine the facts and apply the appropriate rules of law, and, finally, to render a judgment which is beyond the authority of any other tribunal to review.

Barry v. United States ex rel. Cunningham, 279 U.S. 597, 613 (1929).

In her brief, Contestee Miller-Meeks repeatedly questions the ability of the Committee and the House to exercise these powers and fairly judge the outcome of this contested election case, suggesting that this is a "purely partisan" process as opposed to a "fair and impartial judicial process." Contestee's Br. 3. But her unwarranted skepticism should not and cannot give the House license to ignore its constitutional responsibility. As then-Judge Antonin Scalia once observed,

> It is difficult to imagine a clearer case of "textually demonstrable constitutional commitment" of an issue to another branch of government to the exclusion of the courts than the language of Article I, section 5, clause 1 . . . . The provision states not merely that each House "may judge" these matters, but that each House "shall be *the* Judge." The exclusion of others—and in particular of others who are judges—could not be more evident.

Morgan v. United States, 801 F.2d 445, 447 (D.C. Cir. 1986) (citations omitted) (first quoting *Baker v. Carr*, 369 U.S. 186, 216 (1962); and then quoting U.S. Const. art. I, § 5, cl. 1). In so concluding, Judge Scalia expressly rejected the same argument Contestee Miller-Meeks advances here: that the House is too partisan an instrument to adjudicate a contested election case. He explained,

> If it be said that the relevant House is not the appropriate body to make the determination because of the possibility of improper political motivation, the response is that "[a]ll power may be abused if placed in unworthy hands. But it would be difficult . . . to point out any other hands in which this power would be more safe, and at the same time equally effectual."

Id. at 450 (alterations in original) (quoting *Luther v. Borden*, 48 U.S. (7 How.) 1, 44 (1849)).

The House cannot escape its constitutional responsibility to decide this contested election case. After all, it is "unquestionable that the right to have one's vote counted is as open to protection by Congress as the right to put a ballot in a box." *United States v. Mosley*, 238 U.S. 383,

386 (1915). Nor should the House rubberstamp the errors of Iowa's election officials when the decisions to reject these 22 ballots violated not only the spirit of justice and equity with which the House should judge contested election cases, *see* Contestant's Initial Br. in Resp. to Chairperson Lofgren's Letter ("Contestant's Br.") 4–5 & n.1, 8–9 & n.4, *but also Iowa law itself*—a point that, after five months, Contestee Miller-Meeks continues to ignore.

B. The FCEA does not alter the House's substantive responsibilities.

Congress's enactment of the FCEA did not alter the House's central substantive role in adjudicating contested election cases. Instead, as discussed in Part I *supra*, it was meant only "to bring the procedure" for contested election cases "into closer conformity with the Federal Rules of Civil Procedure." H.R. Rep. No. 91-569, at 3.[7]

Indeed, the architects of the FCEA emphasized what Contestant Hart (and House precedent) have repeatedly noted: that "[w]ith respect to the substantive grounds of election contests, the House has held that it is not confined to the conclusions of election returns made by official canvassers notwithstanding such returns are in strict conformity to State law, but may examine the votes and correct the returns." *Id.* at 2. The House report noted that "[a]lthough most laws governing the elections of Representatives in Congress are State laws, the courts of a State *have no direct power* to judge the elections, returns and qualifications of Members." *Id.* (emphasis added). Accordingly, notwithstanding Contestee Miller-Meeks's repeated insistence to the contrary, contestants are not required to exhaust state remedies before the House is able to exercise its constitutional prerogative, *see* Contestant's Br. 18–19 & n.5; Contestant's Resp. to Contestee's

[7] This point was underscored repeatedly during the FCEA's floor debate. After one member queried, "Just for the purpose of clarifying the record, this [legislation] deals with the mechanics of an election contest and not the substance," its sponsor replied, "Purely and simply the mechanics." 115 Cong. Rec. 30,510 (1969).

Mot. to Dismiss Notice of Contest 17–18 (Feb. 2, 2021), and the House is not "bound by [the] interpretation" of state laws even as provided by a state's highest court, particularly where it would mean disenfranchising lawful voters. H.R. Rep. No. 91-569, at 2. Although Contestee Miller-Meeks repeatedly urges the Committee to simply apply Iowa law as if it were merely a substitute for state court, the FCEA was never intended to abrogate the House's singular ability to interpret state law and even depart from it where necessary to ensure that lawful voters' ballots are counted and that the representative *that the voters chose* is seated in the House. *See infra* Part III.B.

Because both the U.S. Constitution and the FCEA place the ultimate resolution of this contested election case with the House and no one else, it is both patently appropriate and legally sound that Contestant Hart initiated this action, that the Committee is setting rules and procedures to guide it, and that the House will ultimately render the final judgment.

III. Contestee Miller-Meeks's brief is substantively flawed.

To the extent that Contestee Miller-Meeks *did* provide substantive responses in her initial brief—and not merely unwarranted aspersions and mischaracterizations of statute and precedent—she did so in an effort to unnecessarily prolong this contest and shackle the Committee to the missteps of Iowa election officials that unfairly disenfranchised 22 voters.

A. The Committee should resolve this case expeditiously and efficiently.

Recognizing both the Committee's and the public's interests in resolving this contested election case as expeditiously and efficiently as possible, Contestant Hart proposed a timeline that would allow both sides to engage in discovery and briefing without needlessly prolonging these proceedings.

In particular, Contestant Hart proposed that the post-discovery briefing period be reduced to only five weeks, a sufficient interval for both sides to address any outstanding issues. *See* Contestant's Br. 33. Contestee Miller-Meeks, by contrast, proposed over *20* weeks for post-

discovery briefing. *See* Contestee's Br. 14–15. Contestant Hart struggles to understand why such a lengthy briefing period is necessary, and Contestee Miller-Meeks provides no reasoning as to why the parties would need more than five months to exchange legal briefs. It certainly would not "help drive this case toward a just and speedy conclusion," as Chairperson Lofgren hopes to facilitate. March 10 Letter 2. Five weeks of briefing is more than sufficient to enable the parties' final submissions of evidence and presentations of their legal positions—positions that, in an effort to resolve this contested election case expeditiously, the parties were already invited to articulate (as Contestant Hart did) in their initial briefs.

An expedited process is particularly appropriate here because Contestant Hart has already satisfied her burden in this contested election case: she has identified and corroborated specific ballots that were wrongfully excluded from the state-certified vote totals and are sufficient to change the result of the election and entitle her to Contestee Miller-Meeks's seat. *See* 2 U.S.C. §§ 382(b), 385. Contestant Hart does not require, and does not seek, any sort of fishing expedition in the hopes of finding more votes. Instead, she has given the Committee what it needs—without a *single* word of substantive argument from Contestee Miller-Meeks in opposition—to count these votes and resolve this contest in her favor. She has therefore proposed an expedited discovery procedure that maximizes efficiency, minimizes unnecessary costs for the parties and the Committee, and preserves Contestee Miller-Meeks's ability to effectively engage in this process. *See* Contestant's Br. 20–23.[8] Although Contestee Miller-Meeks has thus far refused to stipulate to

[8] One of the "inadequacies" that the FCEA was enacted to remedy involved the time allotted to take depositions. As the House report noted, "[g]iven the speed of modern communication and transportation, the 90 days allowed for taking testimony by deposition is too long." H.R. Rep. No. 91-569, at 3. Contestant Hart's proposals to streamline the deposition process—including, in

this streamlined discovery period, Contestant Hart encourages the Committee to adopt this proposal and any other rules and procedures it sees fit to ensure a fair and expeditious resolution of this contested election case.[9]

B. The Committee should apply Iowa law in a way that prevents the arbitrary and unjust disenfranchisement of lawful voters.

As Contestant Hart indicated in her intial brief, Iowa law should be the starting point for the Committee's future inquiries. *See, e.g.*, Contestant's Br. 4 ("The Committee should generally apply Iowa law, regulations, and guidance . . . ."). And in almost all circumstances, a straightforward application of Iowa law would lead the Committee to count the unfairly rejected ballots that Contestant Hart has identified. Contestee Miller-Meeks notes that "Iowa has specific statutes and rules on whether a ballot has been validly cast and on the processes for examining, inspecting, and counting ballots" and argues that "[t]here is no reason for this Committee to follow anything different." Contestee's Br. 6. But what Contestee Miller-Meeks determinedly fails to acknowledge is that, as Contestant Hart continues to demonstrate, election officials *misapplied Iowa law* in rejecting the 22 ballots identified in her notice of contest. Contestee Miller-Meeks cannot at once claim that this contested election case is spurious while also urging the Committee to embrace Iowa law, given that proper application of state law would require that the ballots of wrongfully disenfranchised Iowans be counted.

Even if Iowa law did not preclude the rejection of these 22 ballots on the grounds cited by election officials, where administrative errors outside of a voter's control or technical violations

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particular, reliance where possible on affidavit testimony—is thus consistent with the FCEA's objectives.

[9] While the submission of affidavits in lieu of depositions would allow Contestant Hart to shorten her 30-day discovery period, in light of Contestee Miller-Meeks's refusal to stipulate to this proposal, Contestant Hart currently expects to conduct a host of depositions throughout the remainder of this period, which closes on April 21.

lead to arbitrary and unfair disenfranchisement, the interests of equity and justice require departures from state law. House precedent provides the Committee the flexibility needed to ensure that all lawful votes are fairly counted in such situations. As the Committee explained in the House report for *Kyros*, while state law should be a guide, "equity require[s] that no voter be deprived of his weight on the electoral scale through the imposition of unnecessary technicalities." H.R. Rep. No. 94-760, at 5; *see also, e.g.*, Jack Maskell & L. Paige Whitaker, Cong. Rsch. Serv., RL33780, *Procedures for Contested Election Cases in the House of Representatives* 15–16 (2010) ("[T]he Committee on House Administration has noted that 'in addition to the fact that the House is not legally bound to follow state law, there are instances where it is in fact bound by justice and equity to deviate from it,' such as to ensure that 'the will of the voters should not be invalidated' by mere technicalities of state law or regulation . . . ." (footnote omitted) (quoting *McCloskey*, H.R. Rep. No. 99-58, at 23–24)); Contestant's Br. 8 n.4. To this end, the House is not bound by the decision of state officials as to any ballot; instead, "the House has the authority to arrive at its own conclusions on any particular issue affecting the validity of a ballot or return." *Anderson*, H.R. Rep. No. 104-852, at 17 n.37. And although Contestee Miller-Meeks suggests that it would be "an affront to the people of Iowa" if the Committee were to do anything but "follow [] Iowa election laws," the authority on which she relies for this argument *supports* Contestant Hart's argument that the House should depart from Iowa law where necessary to avoid injustice. Contestee's Br. 5 ("Indeed, '[w]ith respect to election contests, Congress has repeatedly said that it will follow state laws and decisions of state courts *unless they are shown to be unsound*.'" (emphasis added)).[10]

[10] Contestee Miller-Meeks wrongly cites the House contest *Carney v. Smith* for this quotation, *see* Contestee's Br. 5, but the actual source of the excerpt she quotes is a status conference memorandum filed by the contestee in *Jennings*. *See* Congressman Vern Buchanan's Status

The wisdom of this approach is amply demonstrated by its application to the unfairly rejected ballots identified by Contestant Hart in this contested election case. Take, for example, the 11 eligible voters (two in Scott County and nine in Marion County) who cast valid and timely ballots in this election. *See* Contestant's Br. 10–11; Notice of Contest ¶¶ 31–47. Their ballots were mistakenly not counted on Election Day due to election worker error, and, per Iowa law, could not be counted in the recount *solely* because they had not been counted on Election Day. *See* Notice of Contest A-118 (Recount Board Guide instructing that "[t]he [recount] board does not decide if ballots were correctly accepted or rejected" and "merely counts ballots which were already counted"). Following that rule at this time—when there is no dispute that these 11 ballots should be counted—would be perverse. The Committee has the opportunity to right this wrong and count these ballots that should have been counted five months ago.

Similarly, the Committee can adopt Contestant Hart's proposals that equitably fill in the gaps present in Iowa's voting laws. *See* Contestant's Br. 9–10. For example, while Iowa law indicates that ballot envelopes that have been "open and resealed" should not be counted, Iowa Code § 53.25(1)(a), several Iowa voters in this past election *received* ballot envelopes that were already sealed, requiring them to break open the seals to cast their ballots. *See* Contestant's Br. 12–13; Notice of Contest ¶¶ 69–87. Particularly where those voters took pains to make sure their ballots would still be counted and there are no concerns that their ballots were tampered with, *see*

Conference Mem. 2, *Jennings v. Buchanan* (Apr. 13, 2007). *Carney v. Smith*, incidentally, also supports Contestant Hart's position that principles of justice and equity—and the House's constitutional role as final arbiter of its members—might require departure from state law and decisions in some instances. *See* H.R. Rep. No. 202, at 9–10 (1914) ("If a State legislature should pass a law unreasonable and unjust in its terms, and the State courts should uphold such unreasonable and unjust law, should Congress be bound by such law or adjudication? To say that it should would be subversive of the constitutional provision that each House shall be the judge of the election, qualifications, and returns of its own Members.").

Contestant's Br. 12–13, disenfranchising those voters based on a law that was meant to *protect* the security of their ballots serves no purpose. The same is true of the signature requirement for absentee ballots, which requires voters to sign an affidavit on their ballot envelopes. But Iowa law does not mandate *where* voters must sign. Should the Committee disenfranchise a voter because he signed in the space immediately below the "↓ **Signature Required**" instruction, rather than on the signature line two inches below? *See* Notice of Contest ¶¶ 58–68, A-95. Contestant Hart believes the answer to this question is straightforward; the ballot must be counted, and this Committee should not disenfranchise a voter "through the imposition of unnecessary technicalities." *Kyros*, H.R. Rep. No. 94-760 at 5.[11]

The rules and procedures Contestant Hart laid out in her intial brief promote election integrity, fairness, and impartiality. Contestant Hart has not asked the Committee to flaunt Iowa law; nor should it. But the Committee has a constitutional and precedential obligation to count the votes of Iowans whose votes were unfairly discarded due to misapplication of Iowa law and other circumstances beyond their control. Contestant Hart's proposed rules and procedures reflect a good-faith attempt to engage with this Committee and provide fair rules for the just and speedy resolution of this contest. Contestee Miller-Meeks, by striking contrast, refuses to even grapple with the disenfranchisement of 22 Iowans, let alone provide the Committee with a path to remedy this injustice.

CONCLUSION

In her brief, Contestee Miller-Meeks claims that if the House exercises its constitutional and statutory authority to resolve this contested election case consistent with precedent—which

[11] This is especially true given that such ballots were *accepted for counting* during the 2020 primary election. *See* Contestant's Br. Ex. 2, ¶ 7.

might mean departing from Iowa law when necessary to avoid injustice and inequity—then it will "undermine[] public confidence in our election system and show Iowans that their laws do not matter, that their elections do not matter, and that they will be represented by whichever party controls the House." Contestee's Br. 6–7. Elections do indeed matter. But they matter because they are expressions of the popular will, exercises in democratic action in which every vote matters. *Every vote matters*, and every vote must be counted. Try as Contestee Miller-Meeks might to distract both the public and the House by injecting partisan rancor into these proceedings—an apparent effort to compensate for her lack of legal, factual, or normative arguments—Contestant Hart's position is, and has always been, that the people of Iowa's Second Congressional District should be represented by whichever candidate received the most lawful votes. That candidate, as has already been amply and indisputably demonstrated in this contested election case, is Rita Hart.

After months of discussion and filings, Contestee Miller-Meeks has yet to produce a single argument to suggest why the 22 votes identified in this proceeding should not be counted. Instead, she and her supporters have clamorously accused Contestant Hart of "harm[ing] our democratic norms and values." Contestee's Br. 15. But it is Contestee Miller-Meeks who stands opposed to our democratic norms. Refusing to engage in this process in good faith violates our norms. Insulting the Committee and questioning its integrity violates our norms. And, most of all, ignoring the clear, undisputed disenfranchisement of Iowans she claims to represent violates our norms.

Unlike Contestee Miller-Meeks, Contestant Hart is not trying to exclude a single vote from this past election. To the contrary, this contested election case seeks to *count every vote*. That imperative is now the obligation of the House, and Contestant Hart encourages the Committee to adopt rules and procedures that will ensure that all lawful votes are properly and expeditiously counted.

DATED this 29th day of March, 2021.

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CERTIFICATE OF COMPLIANCE

Pursuant to Committee Resolution 117-10, the undersigned certifies that this reply brief contains 5,968 words, excluding the items listed in section 1(d).

DATED this 29th day of March, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to 2 U.S.C. § 384, on this 29th day of March, 2021, a true and correct copy of **CONTESTANT'S REPLY 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 29th day of March, 2021.

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