

IN THE
UNITED STATES HOUSE OF REPRESENTATIVES

RITA HART,
Contestant,

v.

MARIANNETTE MILLER-MEEKS,
Contestee,

REPLY TO RESISTANCE TO MOTION TO DISMISS NOTICE OF CONTEST
REGARDING THE ELECTION FOR REPRESENTATIVE
IN THE 117th CONGRESS FROM THE
SECOND CONGRESSIONAL DISTRICT OF IOWA

OFFICE OF THE CLERK

FEB 09 2021

**U.S. HOUSE OF
REPRESENTATIVES**

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Contestant Rita Hart does not attempt to justify her failure to first raise her claims before a neutral panel of Iowa judges before filing her contest with the House of Representatives. She claims that she doesn't have to but fails to meaningfully distinguish the numerous precedents where the House has dismissed contests for a failure to exhaust state-law remedies. And her notice of contest does not allege fraud, misconduct, or irregularities. In essence, she says that her disagreement with routine election administration decisions that disfavored her is enough to sustain a contest.

In a way there is a kind of perverse consistency in Hart's position. She wants to ignore Iowa law on contesting an election just like she wants to ignore Iowa law on how ballots are properly counted or rejected by election officials. In fact, she says the quiet part out loud when she cites *McCloskey v. McIntyre*, H.R. Rep. 99-58—the infamous “Bloody Eighth” election contest—for the proposition that the House can discard state law as it sees fit.¹

Hart's resistance does not devote a single word to explain why she did not raise her claims before a neutral panel of Iowa judges as was her right under Iowa law. *See*, Iowa Code § 60.1. Of course, a trial in an Iowa contest court would have presented risks to Hart's position. She would have had to have actual live witnesses (instead of just affidavits drafted by lawyers). Her claims could have been tested by cross-

¹ Hart quotes thi: “[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’”

examination. Proof could have been introduced in opposition to her claims. Logical and factual inconsistencies in her case would have been visible to all.

Hart doesn't have to worry about any of those things right now. She can present wild allegations about ballots in her favor and simply assume that Iowa election law is no obstacle to her victory. She can huff and puff in her filings without the fear that neutral judges will not agree with her. She can posture publicly without being confronted about facts that are inconvenient to her position. She can even make the absurd argument that raising procedural default in a motion to dismiss somehow concedes the fact allegations of Hart's contest.²

Hart argues that House precedent doesn't mean what it says. She denies the import of the House's decision in case after case to refuse to entertain a contest where the contestant has not first done everything possible under state law. And then she drops the real argument: the House can do what it wants under majority rules. The word "precedent" means little or nothing, in her view, to a Member.

Hart's argument is essentially about power, not law. In the end, this House *can* do many things by the brute force of a majority vote. But this does not mean it *should* do those things. If ratified by the House, Hart's decision to not first contest the election under Iowa law will mark a troubling departure from precedent and will

² News flash to Hart's attorney: that's not how this works—not any of it.

encourage even greater departures from norms in judging election contests. This House should not indulge Hart's request to demolish precedent simply because she cannot accept that she lost a close race.

This House stands at a precipice. It seems that a long-standing norm crumbles each day in our civil society. At some point someone has to ask the question: How do we come back from this? Can the House endure the might-makes-right display of majority power as Hart asks for? What is the next escalation?

This House should dismiss Hart's notice of contest.

Mariannette Miller-Meeks
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