

COMMITTEE MEETING ON A RESOLUTION TO
ESTABLISH PROCEDURES IN CONTESTED ELEC-
TION CASES PROPERLY FILED UNDER THE
FEDERAL CONTESTED ELECTION ACT, AND RE-
LATED MATTERS

MARKUP

BEFORE THE

COMMITTEE ON HOUSE
ADMINISTRATION
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

—————
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COMMITTEE ON HOUSE ADMINISTRATION

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**COMMITTEE MEETING ON A RESOLUTION TO
ESTABLISH PROCEDURES IN CONTESTED
ELECTION CASES PROPERLY FILED UNDER
THE FEDERAL CONTESTED ELECTION ACT,
AND RELATED MATTERS**

FRIDAY, FEBRUARY 19, 2021

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC.

The Committee met, pursuant to call, at 2:32 p.m., via Webex, Hon. Zoe Lofgren [chairperson of the Committee] presiding.

Present: Representatives Lofgren, Raskin, Butterfield, Aguilar, Scanlon, Leger Fernandez, Davis, Loudermilk, and Steil.

Staff Present: Jamie Fleet, Staff Director; David Tucker, Parliamentarian; Daniel Taylor, General Counsel; Khalil Abboud, Deputy Staff Director; Brandon Jacobs, Legislative Clerk; Peter Whippy, Communications Director; and Natalie Young, Press Secretary; Tim Monahan, Republican Deputy Staff Director; and Caleb Hays, Republican General Counsel.

The CHAIRPERSON. We will call the House Administration Committee to order. We have a quorum.

As I begin, I want to note that we are holding this meeting in compliance with the regulations for remote committee proceedings pursuant to H. Res. 8.

Generally, we ask the Committee Members to keep their microphones muted to limit background noise, and then Members will need to unmute when seeking recognition or when recognized for their five minutes.

Members, please, the rules require you to keep your camera on at all times. Even if you need to step away for a moment, please don't leave the meeting or turn your camera off.

I would also like to remind all of us that the regulations governing remote proceedings require that we cannot participate in more than one committee proceeding at the same time.

So, at this time, I would ask unanimous consent that all members have five legislative days to revise and extend their remarks and that any written statements be made part of the record. Hearing no objection, so ordered.

Under Article I, Section 5, Clause 1 of the United States Constitution, each house of Congress is the judge of the "elections, returns, and qualifications of its own members."

Today, the Committee on House Administration will consider two Committee on House Administration Resolutions so that we can

begin the important work of deciding the two election contests that have been properly filed under the Federal Contested Elections Act and are therefore within the Committee's jurisdiction. The two Committee Resolutions we will adopt provide a framework for these contests as we move forward.

I will now recognize our Ranking Member, Mr. Davis of Illinois, for the purpose of making an opening statement.

Mr. Davis.

Mr. DAVIS. Sorry—

The CHAIRPERSON. We can hear you now.

Mr. DAVIS. All right. You got me?

The CHAIRPERSON. We got you.

Mr. DAVIS. Okay. I apologize here. I had my document up, and then it went away.

You know, Zoe—there it is.

The CHAIRPERSON. We can hear you.

Mr. DAVIS. I am still having a problem accessing it. I am sorry.

First off, I want to say thank you. Of course I would have had this ready before, but now I do not.

Well, Madam Chair, I apologize. My printer is not working. Can you come back to me for the opening statement?

The CHAIRPERSON. Certainly.

Does any other member wish to be heard at this time?

Seeing none, I will call up Committee on House Administration Resolutions 117–10 and 117–11.

Committee on House Administration Resolution 117–10 provides a general framework for future filings by the contestant and contestee in contested election cases this Congress. It restricts filings from either party to those expressly authorized or directed by the Federal Contested Elections Act or by the Committee on House Administration.

It sets standards for responses to motions to dismiss and replies to those responses. The resolution also informs the parties that, if the motion to dismiss is denied or postponed, the Committee on House Administration may request that each party file a brief within 10 days that answers specific questions put forward by the Committee.

Committee on House Administration Resolution 117–11 responds to the motion filed by contestant James “Jim” Oberweis on February 11, 2021, requesting 28 days to file a response to Representative Underwood's motion to dismiss any hearing on the motion.

Since the standard set out in the Committee on House Administration Resolution 117–10 will now apply to Mr. Oberweis's response, the resolution dismisses as moot his request to file a response because he will have that opportunity under the rules that we are adopting.

The resolution also denies the motion to set a hearing date on the motion to dismiss, because we have provided for the response in the first resolution.

I will now recognize Mr. Davis for his opening statement or for any comments he might have on the resolutions before us.

Mr. DAVIS. Thank you, Madam Chair.

I am actually glad we can come to an agreement on adding some additional structure to the election contests before us. We do need

to ensure these proceedings are fair, impartial, and transparent. As you know, taxpayers deserve to know exactly how much this is costing, so I hope we can find a transparent way to disclose the spending.

Rita Hart had an opportunity to challenge each of these claims using Iowa's impartial judicial proceedings, but, instead, she has chosen to sidestep Iowa law and ask this House to decide this election for Iowa voters. Taking up this election contest would set a dangerous precedent that candidates don't have to exhaust their legal options through the State and can instead go straight to Congress if they don't like the outcome of an election.

I can't think of a worse first step this Committee could take in a new Congress than to waste taxpayer dollars by moving forward with overturning this election. We know every legal vote was counted in Iowa's Second District because the votes were counted and recounted using a timely, transparent, and bipartisan process. And Congresswoman Miller-Meeks never trailed in any officially reported count.

Bipartisan recount boards in all 24 counties, including a member from each campaign and their agreed-upon third member, conducted the recount. Following the recount, Iowa's bipartisan State canvassing board voted unanimously to declare Congresswoman Miller-Meeks the winner on November 30.

The State's process is solid and fair, and we can trust the outcome. In fact, we already have, by seating all four Members from Iowa on January 3, who were, again, elected at the same time. There is no reason why we should hold Congresswoman Miller-Meeks to a different standard.

Just to be clear, there are no provisional or conditional Members of Congress. If you are sworn in and given the right to cast a vote on the House floor, you are a duly elected Member of Congress, just like Mariannette Miller-Meeks. Congresswoman Miller-Meeks is our colleague.

The last time Democrats overturned an election was in 1985, and we saw how partisan of a process this was. In fact, it was dubbed the "Bloody Eighth." Democrats decided ballots that were not legal under the State law were suddenly determined legal votes under new rules invented by a partisan task force who completely rejected State law. They changed the rules of the game after the game had already been played. And that is exactly what could be happening 35 years later.

While running for an election is partisan in nature, administering and determining the outcome should never be. It will be one of the greatest mistakes this House makes to take up an election contest where the candidate sidestepped the courts and instead turned to a partisan process in the House because they knew they could not win in any other way.

I did want to address another election issue related to this Committee. Majority Leader Hoyer announced H.R. 1 will be on the floor the week of March 1, just over a week away, yet this Committee hasn't held any hearings on this bill.

Could the Chairperson tell me if this Committee will be holding any hearings specifically on H.R. 1 or markups on this nearly 800-page bill before it goes to the floor?

The CHAIRPERSON. If the gentleman has concluded his statement, I will be happy to deal with that.

Mr. DAVIS. Well, I would be happy to get your answer after I have a couple of more things to say about this bill.

Regardless of the process, I certainly hope that we are not going to be disappointed by hearing that we are not going to have a markup. I think this nearly 800-page bill will impact millions of Americans' right to vote, and it deserves a markup. The taxpayers deserve committees who are doing their work. And since Democrats changed House floor rules to shut out a difference of opinion, committees are now the only real opportunity for the minority to provide an alternative.

This Committee needs to hear from those who actually run our elections about the impact this bill could have. We should review the issues we saw during the 2020 election cycle and help States develop a better process. Simply mandating how States run their elections is not only unconstitutional but it will lead to chaos and confusion for voters.

We saw this play out last year. States that were not accustomed to vote-by-mail struggled to implement it. This led to chaos in elections throughout the country and weakened voter confidence in the process. Hundreds of thousands of people were unintentionally disenfranchised. Many ballot integrity safeguards were abandoned, and election results took weeks and in some cases months to determine.

H.R. 1 forces all States to make many of these changes that were made in the name of COVID permanent. We had observers in New York, in California, in Pennsylvania and other parts of the country, and I think I speak for many Americans when I say I don't want an election process like that again.

But if H.R. 1 were to become law, that is exactly what the American people will get, along with the first-ever corporate funding that is laundered through the Federal Government that will go directly into your own campaign accounts if you are a Member of Congress. This is why I believe it is important we have a markup.

I will conclude now and yield back and await my response.

The CHAIRPERSON. The gentleman yields back. And the chair will happily respond to the question about the hearing.

A hearing has been noticed on H.R. 1 for next Thursday at 4:00 p.m. eastern standard time. As the Ranking Member has noticed, the rules of the House do not require a hearing on H.R. 1 since it was passed in the last Congress, but we decided to schedule a hearing on it nevertheless. And we look forward to the participation of every member.

I would like—

Mr. DAVIS. Would the gentlelady yield?

The CHAIRPERSON. I yield.

Mr. DAVIS. A hearing has been scheduled, yes, on election issues?

The CHAIRPERSON. On H.R. 1. On H.R. 1.

Mr. DAVIS. So we are not going to do another markup of H.R. 1 even though it has changed from last Congress?

The CHAIRPERSON. No. We are going to have a hearing, and I hope that all Members will participate. It is properly noticed, and

Members will have a chance at the Rules Committee, but we are on a tight schedule, as you know.

I am not going to get into the merits of the contests before us, because that will be for down the line in the process. We are setting up today a procedure under the Constitution and the Federal Contested Elections Act.

It is my understanding from staff that both the Republican staff and the Democratic staff and the members have agreed to these procedures. I don't know if any member would like to be further heard on the two resolutions laying out the procedures before us. Would any member like to be heard on the resolutions?

Hearing none, then I will ask unanimous consent that they be considered en bloc and that further reading of the resolutions be dispensed with and open for amendment at any time.

[The resolutions follow:]

COMMITTEE ON HOUSE ADMINISTRATION
117th CONGRESS
A RESOLUTION

COMMITTEE RESOLUTION 117-10

**Resolution to Establish Procedures in Contested Election Cases Properly Filed
under the Federal Contested Election Act**

Be it resolved, that the Committee on House Administration, under the authority of clause 1(k)(12) of rule X of the Rules of the House of Representatives and in accordance with the Federal Contested Election Act, 2 U.S.C. §§ 381–396, sets forth the following procedures to be followed by the Committee for contested election cases in which written notice of intention to contest an election has been properly filed with the Clerk of the House of Representatives.

**Procedures in Contested Election Cases Properly Filed
under the Federal Contested Election Act**

SECTION 1. FILINGS BY CONTESTANT AND CONTESTEE

(a) **Filing Authorization.**— No pleading, motion (other than a motion for leave to file), brief, or other paper may be filed by either party unless expressly authorized or directed by the Federal Contested Election Act, or by the Committee, the Chairperson, or a task force of the Committee.

(b) **Contestant's Response.**— If a contestee files a motion under 2 U.S.C. § 383(b), the contestant may file a response. The contestant shall file and serve the response as soon as practicable, and no later than 21 days after service of the contestee's motion or 21 days after issuance of these regulations, whichever is later. The response must not exceed 13,000 words. If filed and served before issuance of these regulations, a contestant's response that complies with this word limit shall be deemed authorized notwithstanding subsection (a).

(c) **Contestee's Reply.**— If a contestant files a response as described in subsection (b), the contestee may file a reply. The contestee shall file and serve the reply as soon as practicable, and no later than 7 days after service of the contestant's response or 7 days after issuance of these regulations, whichever is later. The reply must not exceed 6,000 words. If filed and served before issuance of these regulations, a contestee's reply that complies with this word limit shall be deemed authorized notwithstanding subsection (a).

(d) **Word Limits.**— Except as expressly provided by the Committee, the Chairperson, or a task force of the Committee, a motion or brief must not exceed 13,000 words,

except for a reply brief, which must not exceed 6,000 words. The word limits do not include any cover page, table of contents, table of authorities, certificate of counsel, signature block, proof of service, or affidavit or other exhibit. The word limits do include headings, footnotes, and quotations.

(e) Hearing on Papers.— The Committee shall hear and decide any motion under 2 U.S.C. § 383 on the papers, without conducting oral argument or a hearing.

SEC. 2. FURTHER BRIEFING BY CONTESTANT AND CONTESTEE

(a) If the Committee denies a contestee's motion under 2 U.S.C. § 383(b) or postpones its disposition, the Committee, the Chairperson (following consultation with the ranking minority member), a task force of the Committee, or the Chairperson of a task force (following consultation with its ranking minority member) may request that each party file and serve no later than 10 days after notice of that action a brief that:

(1) expresses the party's views and answers any specific questions asked by a request made under this subsection about specific procedures, legal principles, and timelines that should control the course of the contested election case and facilitate the case's disposition; and

(2) explains how the party's views and answers in paragraph (1) comport with the Constitution, the Federal Contested Election Act, precedents of the House of Representatives, and any other applicable authorities.

(b) A brief filed by a party under subsection (a) must comply with the limitations for a brief under section 1(d).

(c) No later than 7 days after service of a brief filed by a party under subsection (a), the opposing party may file a reply brief, which must comply with the limitations for a reply brief under section 1(d).

SEC. 3. PUBLICATION AND NOTIFICATION OF RESOLUTION.

Following adoption, these regulations shall be made available to the House and the public by publication in the *Congressional Record* and on the Committee's website, and transmitted to the contestants and contestees in any contested election case properly filed in the 117th Congress on or before the date of adoption, or their attorneys.

SEC. 4. EFFECTIVE DATE.

This resolution shall be effective upon adoption by the Committee.

COMMITTEE ON HOUSE ADMINISTRATION
117th CONGRESS
A RESOLUTION
COMMITTEE RESOLUTION 117-11

**A Resolution to Decide Contestant James “Jim” Oberweis’s
February 11, 2021 Motion for Leave to File**

Be it resolved, that the Committee on House Administration adopt the following resolution, under the authority of clause 1(k)(12) of rule X of the Rules of the House of Representatives and pursuant to the Federal Contested Election Act, 2 U.S.C. §§ 381–396, and Committee Resolution 117-10, to decide Contestant James “Jim” Oberweis’s February 11, 2021 Motion for Leave to File.

**Order dismissing as moot in part and denying in part Contestant’s Motion for Leave
to File**

SECTION 1. COMMITTEE RESOLUTION OF PENDING MOTION FOR LEAVE
TO FILE

(a) *Ordered.*—The Committee on House Administration hereby dismisses as moot in part and denies in part Contestant’s Motion for Leave to File Response in Opposition to Contestee’s Motion to Dismiss Contestant’s Notice of Contest Regarding the Election for Representative in the One Hundred Seventeenth Congress from Illinois’ Fourteenth Congressional District, dated February 11, 2021 (“the Motion” or “Mot.”).

(b) *Leave to File.*—Pursuant to Committee Resolution 117-10, the Committee dismisses the Motion as moot to the extent that it seeks “leave to file a Response to Contestee’s Motion, and . . . twenty-eight (28) days within which to file said Response” (Mot. at 2).

(c) *Related Requests.*—Pursuant to Committee Resolution 117-10, the Committee denies the Motion to the extent that it seeks “the setting of a hearing date on Contestee’s Motion” and “any other relief” (id.).

SEC. 2. NOTIFICATION OF RESOLUTION

The Committee shall transmit to the parties’ attorneys both this Committee Resolution and Committee Resolution 117-10, which promulgates regulations addressing the timing and word limits for Contestant’s response to Contestee’s motion under 2 U.S.C. § 383(b) and for Contestee’s reply to that response.

The CHAIRPERSON. The question is now on the en bloc resolutions. Are there any amendments to these resolutions?

Hearing none, then I would call for the question.

All those in favor will say aye.

Any opposed will say no.

Hearing no noes, it appears the ayes have it, and the en bloc resolutions are agreed to.

Without objection, the motion to reconsider is laid upon the table.

As we know, this Committee is known for its bipartisan work and its collegiality, and I know I can rely on all of our Members to continue this tradition as we fulfill our constitutional duty to consider these election contests.

This concludes the business before the Committee today. And, without objection, staff is authorized to make any necessary technical and conforming changes.

And I would like to thank all the Members for their participation. I look forward to working with each of you in the months ahead to accomplish our vital work on these election contests.

And, without further ado, this meeting of the Committee on House Administration is, without objection, adjourned.

[Whereupon, at 2:44 p.m., the Committee was adjourned.]