

House resolution relating to conducting a recount in the election for the
House of Representatives for the Orange–1 District

Offered by: Committee on Government Operations

Whereas, Chapter I, Article 8 of the Vermont Constitution provides that
voters have the right to elect and to be elected into office agreeably to the
regulations of the Constitution, and

Whereas, Chapter II, § 14 provides that the House of Representatives shall
have the power to “judge of the elections and qualifications” of its
members, and

Whereas, on November 8, 2016, the general election was held for the
Orange–1 House District, with four candidates competing for two House
seats, and

Whereas, Rodney Graham won the most votes, 2,018, **and, as a result, his
election to one of the seats is not in dispute, and**

Whereas, Robert Frenier received the second highest number of votes,
1,853, and Graham and Frenier were therefore declared the winners of the two
House seats for this district, and

Whereas, Susan Hatch Davis, who had received 1,845 votes, eight less than
Robert Frenier, requested a recount pursuant to 17 V.S.A. § 2601(b), and

Whereas, the recount was held on November 28, 2016, and the initial results
indicated that Robert Frenier had beaten Susan Hatch Davis by a margin of six

votes, **with three questionable ballots** submitted to the Superior Court for a final decision in accordance with law, and

Whereas, on November 29, 2016 and December 12, 2016, Susan Hatch Davis moved in Superior Court for a hearing and second recount, and

Whereas, on December 19, 2016, the Superior Court conducted a hearing and ruled on three disputed ballots, and issued a Judgment that Robert Frenier had received 1,852 votes, seven more than Susan Hatch Davis' 1,845 votes, and

Whereas, on December 22, 2016, Susan Hatch Davis petitioned the House of Representatives to challenge the election and request that the House conduct another recount, and

Whereas, the petition of Susan Hatch Davis was referred to the Committee on Government Operations, and

Whereas, the Committee on Government Operations heard testimony from witnesses, including Petitioner, Petitioner's attorney, Respondent Representative Frenier, Respondent's attorney, multiple town clerks, representatives from the Office of the Secretary of State, and a representative from the Office of the Attorney General, and

Whereas, Petitioner and Petitioner's attorney presented a number of claims, including that **during the election** certain early voter absentee ballots were treated inconsistently in different towns, and **that during the recount** ballots

were forced into the tabulator machines, tabulator machines may not have functioned properly, transfer ballots were not created, some ballots were stapled together, and ballots were not manually inspected before being inserted into the tabulator, and

Whereas, it is the conclusion of the Committee on Government Operations that the petition should be granted and that a new recount should be conducted to determine if Robert Frenier or Susan Hatch Davis won more votes and therefore should be deemed duly elected and qualified to hold the other seat from the Orange–1 District, and

Whereas, it is the belief of the Committee on Government Operations that this **additional** recount is necessary to ensure public faith and confidence in the accuracy of the election, now therefore be it

Resolved by the House of Representatives:

That this legislative body resolves that a recount of all votes cast for the House of Representatives in District Orange–1, except for 14 ballots previously determined to be defective, shall be conducted, and be it further

Resolved: That the Committee on Government Operations shall adopt policies and procedures as to how the recount shall be conducted, and be it further

Resolved: That for purposes of this recount, and to ensure parity among members of the Republican, Progressive, and Democratic parties, a Special Recount Committee shall be created, and be it further

Resolved: That the Special Recount Committee shall be composed of 23 members. The leader of the Progressive Party caucus shall appoint six members, one of whom shall be the current member of the Committee on Government Operations who belongs to the Progressive Party caucus. The leader of the Democratic Party caucus shall appoint five members, each of whom shall be current members of the Committee on Government Operations who belong to the Democratic caucus. The leader of the Republican Party caucus shall appoint **11** members, four of whom shall be the current members of the Committee on Government Operations who belong to the Republican caucus. If the leader of the Progressive, Republican, or Democratic caucus fails to appoint sufficient members, the Speaker of the House shall do so. In addition to these 22 members, the Chair of the Committee on Government Operations shall serve on the Special Recount Committee as presiding officer, and shall have the special assistance of the Republican and Progressive Party caucus leaders, and be it further

Resolved: That the Special Recount Committee shall conduct the recount pursuant to the policies and procedures adopted by the Committee on Government Operations, and be it further

Resolved: That the Special Recount Committee shall be allowed to work without interruption to complete the recount as quickly as reasonably possible, and that the members of the Special Recount Committee will be exempt from all other duties and obligations, and be it further

Resolved: That the Special Recount Committee shall have the power to compel, by subpoena, the attendance of witnesses and the production of records and things, including documents, papers, and ballots, and be it further

Resolved: That the Committee on Government Operations and the Special Recount Committee shall have the support and assistance of the Secretary of State, Sergeant at Arms, Capitol Police Department, Clerk of the House, and Office of Legislative Council to carry out its duties, and be it further

Resolved: That the Special Recount Committee, after conducting the recount, shall report its findings and recommendations to the Committee on Government Operations, and that the Special Recount Committee will then be dissolved, and be it further

Resolved: That the Committee on Government Operations shall report its findings and recommendations to the House as to whether Robert Frenier or Susan Hatch Davis shall be deemed to be duly elected and qualified to represent the Orange–1 District in the House of Representatives.