

# TARRANT GILLIES & SHEMS

GERALD R. TARRANT  
PAUL S. GILLIES  
RONALD A. SHEMS  
MICHAEL J. TARRANT II  
NICHOLAS A.E. LOW

44 EAST STATE STREET  
MONTPELIER, VT 05602  
(802) 223-1112  
FAX: (802) 223-6225

K. HEATHER DEVINE  
SARAH E. BUXTON  
DAVID K. MEARS  
STEPHEN F. COTEUS,  
*of counsel*

## EXECUTIVE SUMMARY

TO: Committee on Government Operations & Military Affairs, Vermont House of Representatives  
FROM: Sarah E. Buxton, Esq; Attorney for Representative Jonathan Cooper  
RE: Petitions of Bruce Busa, et. al., Appealing the Election of Jonathan Cooper  
DATE: January 21, 2025

---

### REQUESTED ACTION OF THE HOUSE

The Committee should find that Jonathan Cooper was duly elected and is qualified to represent Bennington-1 House District as a member of the House of Representatives and recommend to the House that it find the same.

### ARGUMENTS

- Ordering a revote is likely unconstitutional as to the power of the House because the plain language of the Constitution directs the House to judge the *past* elections of its own members – not to create *new* elections through this petitioning process. In interpreting the words of the Constitution, we must avoid reading that “creates an irrational or absurd result.” **It is irrational to conclude that Section 14 was intended to so readily convey the power to “redo” an election without further limitation.**
- In its over 200-year history, there is no evidence that the General Assembly has ever ordered a revote of any election of its members – despite allegations of checklist error or voter ineligibility. **The House should exercise institutional restraint, mindful of the dangerous precedent it would set if it ordered a new election or partial revote in this case.**
- Checklist errors are addressed by a statutory process designed to occur before Election Day. This election should be upheld because it was conducted according to the law and without controversy prior to the close of the polls when opportunity for redress was available. **Complainants have waived their right to redress because they had both notice and an opportunity to remedy the problems they raise before Election Day.**
- Public policy must avoid creating an incentive for people to turn a blind eye to the technical and collective responsibilities of verifying the checklist – thus enabling stakeholders who are dissatisfied with the outcome of an election to challenge it only after the results are known. **This creates intolerable opportunity for partisan political gamesmanship.**

- Creating a de novo election by operation of this appeal would void the votes cast by voters in the first election and grant unique and outsized power to the voters who (are allowed to) participate in the revote.
- **A revote cannot be conducted in a manner that treats all eligible voters fairly.** Since any eligible voter may present themselves at the polls on election day without already being on the checklist, **the actual number of eligible voters in the Bennington-1 and Bennington-5 House Districts is unknown.** There may be voters who participated on November 5, 2024, who are no longer living or no longer residents of the district. Likewise, new voters may have become eligible since November 5<sup>th</sup> by virtue of age, residence, or citizenship.
- If only the 55 newly added voters to the Bennington-1 District (or the 42 that voted) are permitted a chance to revote, **the result will still be inaccurate because the total will still include 8 voters who are now reassigned to the Bennington-5 District.**
- State and federal election procedures include deadlines for key activities along with timetables for appeals - all carefully aligned to enable transfer of power and the continuation of government operations. **Ordering a revote after the session has begun undermines the necessary finality created by elections to enable the continued operation of government.**

### EQUITABLE REMEDY

Section 73 of the Vermont Constitution directs the General Assembly to “establish representative districts within and including all of the state” and to revise these boundaries “. . . *at such other times as the General Assembly finds necessary . . .*” The plain language of the Constitution expressly permits the Legislature to redraw the line between the Bennington-1 and Bennington-5 district. **Petitioners’ concerns are best addressed by redrawing the Bennington-1 and Bennington-5 House Districts to reflect the checklists prepared for and approved by the Pownal Board of Civil Authority and understood to be in effect by the voters of Pownal in the past four elections.**

### CONCLUSION

- The Committee should prepare and recommend to the House a bill that would revise the boundary between the Bennington-1 and Bennington-5 House Districts to reflect the checklists prepared by the Town of Pownal in 2022, which remained in effect though the General Election of 2024.