

**SAMPLING
OF
PAST
CONTESTED
LEGISLATIVE
ELECTIONS**

BetsyAnn Wrask, Clerk of the House
Last updated Aug. 29, 2023

2017
House Orange-1 District
(Frenier/Davis)

General Election: Frenier 1,853; Davis 1,845

Recount: Frenier 1,852; Davis 1,845¹

1. Issues raised in petition: Conduct of recount, including vote tabulator issues; counting of defective early voter absentee ballots. *See also* [response to petition](#) and [Attorney General report](#).²
2. House actions: House adopted [H.R.8](#) (establishing Special Recount Panel with authority to subpoena witnesses and ballots, conduct a full recount of the contested election, and report its findings and recommendations to the House) and [H.R.10](#) (policies and procedures to conduct recount).
3. Committee on Government Operations special report: Rep. Frenier duly elected and qualified.³
4. Final House vote: Committee special report adopted; **Rep. Frenier retains seat.** [2/22/17 House Journal](#), pgs. 308 and 309.

¹ At the House's organization, a member raised a point of order that Rep. Frenier was not qualified to be seated, which the Sec. of State ruled not well taken. [1/4/17 House Journal pg. 1](#).

² *See also* [this overview](#), [these details](#), and [this memo](#).

³ In accordance with [H.R.10](#), Part 2, Sec. V(c) (if seal or container from county recount is found to not be intact, the Panel recount shall not move forward and Rep. Frenier shall retain his seat), because on the morning of the scheduled Panel recount the Panel discovered that a ballot bag had been opened following the county recount, the Panel did not conduct a recount and the HGO Special Report recommended that Rep. Frenier be found to be duly elected and qualified. *See* [2/22/17 House Journal](#), pgs. 308 and 309.

2011

House Windsor-Orange 1 District
(Buxton/Ainsworth)

General Election: Buxton 882; Ainsworth 881

Recount: Buxton 881; Ainsworth 880

1. Issues raised in petition: Voter qualifications; use of provisional ballots; security of ballots. *See* Attorney General report, [1/14/11 House Journal pgs. 51-56](#).
2. Committee on Government Operations special report: Rep. Buxton duly elected and qualified. [2/3/11 House Journal pgs. 132-133](#).
3. Final House vote: Committee special report adopted; **Rep. Buxton retains seat**. [2/3/11 House Journal pg. 132](#).

1997

Senate Rutland District

(Maynard/Macaulay)

General Election: Maynard 10,952; Macaulay 10,934

Recount: Maynard 10,978; Macaulay 10,976

1. Issues raised in petition: Incorrectly counted or missing votes; recount procedures. *See also* Attorney General report, [1/15/97 Senate Journal, pgs. 63-74](#).
2. Senate actions: Senate adopted [S.R.5](#), which created the Special Select Committee on Elections to examine all facts concerning the contested election, including the authority to subpoena witnesses and documents, and which was required to recommend to the Senate appropriate action to resolve this matter.⁴
3. Special Select Committee on Elections report: Sen. Maynard duly elected and qualified. [1997 Senate Journal pg. 96](#).
4. Final Senate vote: Special Select Committee report adopted; **Sen. Maynard retains seat. *Id.***⁵

⁴ See also [1/15/97 Senate Journal pg. 59](#) for members appointed and materials referred.

⁵ See also [1997 Senate Journal Index pg. 1801](#).

1985

House Chittenden-Franklin-1 District
(Woodward/Greene)

General Election: Woodward 807; Greene 800

Recount: Woodward 803; Greene 801

1. Issues raised in petition: Counting errors in election or recount, or both; recount accuracy; failure of Superior Court to issue judgment.
2. House actions: House adopted [H.R.5](#), which authorized the Committee on Municipal Corporations and Elections to subpoena the ballots in this contested election (and the Stokes/Painter contested election) and related documents, and to be assisted by other members for equal political representation, and to count the ballots.
3. Committee recount and special report: Committee conducted a complete recount: Woodward 806; Greene 801. Rep. Woodward duly elected and qualified. [2/6/85 House Journal pg. 108](#).
4. Final House vote: Committee special report adopted; **Rep. Woodward retains seat.** *Id.*⁶

⁶ See also 1985 House Journal Index [pg. 952](#) and [pg. 930](#).

1985

House Chittenden-4 District

(Stokes/Painter)

General Election: Painter 1,651; Stokes 1,632

Recount: Stokes 1,641; Painter 1,638

1. Issues raised in petition: Counting errors in election or recount, or both; recount accuracy; recount committee failure to examine ballots.
2. House actions: House adopted [H.R.5](#), which authorized the Committee on Municipal Corporations and Elections to subpoena the ballots in this contested election (and the Woodward/Green contested election) and related documents, and to be assisted by other members for equal political representation, and to count the ballots.
3. Committee recount and special report: Committee conducted a complete recount: Stokes 1,649; Painter 1,632. Rep. Stokes duly elected and qualified. [2/6/85 House Journal pgs. 107-108](#).
5. Final House vote: Committee special report adopted; **Rep. Stokes retains seat.** Id.⁷

⁷ See also 1985 House Journal Index [pg. 952](#) and [pg. 930](#).

1983

House Chittenden 6-2 District

(Chittenden/Kennedy)

General Election: Chittenden 788; Kennedy 783

Recount Order #1: Invalidated general election; ordered new election⁸

*No member seated for this district on first day of session*⁹

Recount Order #2: Chittenden 788; Kennedy 783¹⁰

*Rep. Chittenden seated on Jan. 25, 1983*¹¹

1. Background: This contested legislative election ultimately resulted in Supreme Court of Vermont (SCOV) caselaw invalidating the application of prior statutory law that a Superior Court relied upon to vacate the general election results for this legislative district and to order a new election to be held on Jan. 25, 1983. However, on the first day of the 1983 session—Jan. 5, 1983—that Superior Court order was still in effect, resulting in no candidate having received a certificate of election and accordingly, no member being seated for this district. Later in the month on Jan. 21, 1983, on appeal, the SCOV vacated the Superior Court order

⁸ See 1/4/83 CHI Sup. Ct. Order attached to petition, [1/25/83 House Journal pgs. 84-89](#).

⁹ [1/5/83 House Journal pgs. 4-5](#).

¹⁰ 1/24/83 CHI Sup. Ct. Order, [1/25/83 House Journal pgs. 78-80](#). These recount results, filed with the Sup. Ct. on Dec. 7, 1982, were also included in the 1/4/83 CHI Sup. Ct. Order (Recount Order #1).

¹¹ [1/25/83 House Journal pg. 72](#).

as an unconstitutional violation of legislative and judicial power, holding that the Superior Court did not have jurisdiction to adjudicate a challenge to a legislative election, nor did the Legislative Branch have authority to delegate that exclusive legislative power to the Judicial Branch.

Accordingly, a subsequent Superior Court order dated Jan. 24, 1983 certified the Dec. 7, 1982 recount results (Chittenden 788; Kennedy 783); Rep. Chittenden was seated on Jan. 25, 1983; and the House proceeded with its exclusive constitutional authority to judge this member's election upon Ms. Kennedy's petition.

2. Issues raised in petition: Voter qualifications (18 voters on checklist did not reside in the legislative district, and 10 of them voted in this election). Petitioner requested that the House declare the election void and order a new election. [1/25/83 House Journal pgs. 80 et seq.](#)¹²
3. House action: Petition referred to the House Committee on Municipal Corporations and Elections. [1/25/83 House Journal pg. 80.](#)
4. Committee special report: Rep. Chittenden duly elected and qualified. [2/1/83 House Journal pgs. 111-112.](#)
5. Final House vote: Committee special report adopted; **Rep. Chittenden retains seat.** Id.¹³

¹² Attached to the petition was the SCOV's Kennedy v. Chittenden, 142 Vt. 397 (1983) (statutory law purporting to confer Superior Court general jurisdiction to hear and determine matters relating to elections and fashion appropriate relief—and Superior Court's application of it to this legislative election by vacating the general election results and ordering a new election—violated separation of powers because Vt. Const. Ch. II, § 14 provides the House with the exclusive authority to judge its members' elections and qualifications and the applicable statutory law therefore was an improper delegation of legislative powers to the Judicial Branch, and because the Vt. Const. requires that judicial decisions lead to a final, enforceable result that is not merely informative or advisory as described in In re Constitutionality of House Bill 88, 115 Vt. 524 (1949)).

¹³ See also [House Journal Index pg. 803.](#)

1981

Senate Lamoille District
(Manchester/Hastings)

General Election: Manchester 5,671; Hastings 150

1. Issue raised in petition: Failure to timely file a consent form for the primary election.¹⁴
2. Senate action: Referred election challenge to the Committee on Government Operations. [1/13/81 Senate Journal pgs. 16-17.](#)
3. Committee special report: Reject challenge and allow Sen. Manchester to continue to serve as the duly elected member. [1/23/81 Senate Journal pgs. 63-66.](#)
4. Final Senate vote: Committee's special report adopted;
Sen. Manchester retains seat. Id.¹⁵

¹⁴ Among other details, the consent forms were unavailable at the time of Mr. Manchester's otherwise timely submission of his primary petition signatures. See Background in Committee's special report, [1/23/81 Senate Journal pgs. 63-66.](#)

¹⁵ See also [Senate Journal Index pg. 1127.](#)

1977

House Windham-4 District

(Nixon/Emond)

General Election: Emond by one vote

Recount: Nixon by one vote

1. Issues raised in petition: [not journalized] [1/11/77 House Journal pg. 51](#).
2. House actions: H.R.4 (Committee on Municipal Corporations and Elections resolution authorizing Committee to issue subpoenas to obtain production of ballots and other documents re: this contested election) was introduced; later ordered to lie; and finally, upon request, withdrawn. [1977 House Journal pgs. 64-65, 75, 101-102, and 114](#).
3. Final House result: According to [Rep. Nixon's 1/27/77 resignation letter](#),¹⁶ the Committee conducted a recount and determined that Emond won by one vote, and **Rep. Nixon resigned** prior to the final House vote on this contested election. On the day of Rep. Nixon's resignation, the Governor appointed Mr. Emond to the vacancy, and **Rep. Emond was seated** the following day.¹⁷ The Committee's special report was thereafter withdrawn.^{18, 19}

¹⁶ For journalized member responses, see [1/27/77 House Journal pgs. 100-101](#).

¹⁷ [1/28/77 House Journal pgs. 106-107](#).

¹⁸ [2/1/77 House Journal pg. 121](#).

¹⁹ See also [House Journal Index pg. 953](#).

1973

Senate Chittenden District

(Smith/Fayette)

General Election: Fayette wins

Recount: Smith 19,319; Fayette 18,957

1. Issues raised in petition: Failure to secure the ballots between the general election and Smith's requested recount, resulting in the judge overseeing the recount to refuse to certify the recount results. Petition requested that the Senate A) refuse to acknowledge Smith's election and deny his seat; B) certify Fayette's general election win; or C) most preferably, declare the election void and direct a runoff election between the two candidates.
2. Senate actions: Senate adopted [S.R.6](#) (establishing a Special Election Committee to investigate the contested election, including the authority to subpoena witnesses and documents).
3. Special Committee individual member reports: The Chair and another member of the Special Committee recommended that a new election or referendum be held only in the Town of Essex, and that those vote results be added to the recount totals of the other District towns. Two other Special Committee members recommended instead that the recount results be affirmed. [1/12/73 Senate Journal pgs. 37-40](#).
4. Final Senate votes: A) S.R.7 (advisory referendum in Town of Essex) disagreed to; B) Fayette petition denied; and C) Smith election affirmed (**Rep. Smith retains seat**). [1/12/73 Senate Journal pgs. 40-43](#).²⁰

²⁰ See also [1973 Senate Journal Index pg. 875](#).

ATTACHMENT A: KNOWN CONTESTED VERMONT LEGISLATIVE ELECTIONS

[list will be updated as research continues]

- A. Recent Journalized Contested Legislative Elections (year, parties; chamber)
1. 2017, Frenier/Davis (House)
 2. 2011, Buxton/Ainsworth (House)
 3. 1997, Maynard/Macaulay (Senate)
 4. 1985, Woodward/Greene (House)
 5. 1985, Stokes/Painter (House)
 6. 1985, M. Powell/Harroun/J. Powell/Stanion (House)
 7. 1985, Grimes/Chagnon (House)
 8. 1983, Chittenden/Kennedy (House)
 9. 1983, McCormack/Goodwin (House)
 10. 1981, Sassi/Leavitt (House)
 11. 1981, Manchester/Hastings (Senate)
 12. 1981, Youngbaer/[unknown petitioner] (House)
 13. 1979, Coy/Robinson (House)
 14. 1977, Nixon/Emond (House)
 15. 1977, Curran/[unknown petitioner] (House)
 16. 1973, Smith/Fayette (Senate)
- B. Historical Records of Past Contested Legislative Elections (year, basis for petition; all House)
17. 1939, polls closed too early
 18. 1927, marking of ballots
 19. 1919, tie vote
 20. 1912, improperly marked ballots
 21. 1908, election procedures (#1)
 22. 1908, election procedures (#2)
 23. 1906, holding office of profit or trust (#1)
 24. 1906, holding office of profit or trust (#2)
 25. 1906, election procedures
 26. 1898, improperly rejected ballots
 27. 1898, candidate qualifications
 28. 1896, holding office of profit or trust
 29. 1894, improperly counted ballots
 30. 1892, improperly rejected ballots
 31. 1890, voters balloted illegally
 32. 1890, improperly marked ballots
 33. 1888, mistake in counting votes
 34. 1888, unqualified voters
 35. 1886, holding office of profit or trust
 36. 1884, holding office of profit or trust (#1)
 37. 1884, holding office of profit or trust (#2)
 38. 1882, voters balloted illegally
 39. 1880, failure to take oath
 40. 1880, elected after adjournment
 41. 1878, meeting adjourned before Representative chosen
 42. 1874, ballot cast by illegal voters
 43. 1872, tie vote