



STATE OF VERMONT  
OFFICE OF THE ATTORNEY GENERAL  
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MONTPELIER, VT  
05609-1001

December 24, 2024

Honorable BetsyAnn Wrask  
Clerk of the Vermont House of Representatives  
Vermont State House  
115 State Street  
Montpelier, VT 05633

*Sent via email only:* [bwrask@leg.state.vt.us](mailto:bwrask@leg.state.vt.us)

Re: Requests to Judge Bennington-1 House District Election Filed by Bruce Busa, Select Residents to the Town of Pownal, the Board of Civil Authority for the Town of Stamford, and the Board of Civil Authority for the Town of Readsboro

Dear Ms. Wrask:

Pursuant to 17 V.S.A. § 2605, this letter provides an opinion on the law and facts regarding four requests related to the election of a member of the Vermont House of Representatives. On November 23, 2024, the Secretary of State provided the Attorney General's Office with notice of a written request filed by candidate Bruce Busa seeking to invoke the constitutional authority of the House of Representatives to judge the elections and qualifications of its own members. Vt. Const. ch. II, §14;<sup>1</sup> *see also* 17 V.S.A. § 2605(a). Mr. Busa's request is included as Attachment A. The Secretary of State also provided this Office with three subsequent written requests filed pursuant to 17 V.S.A. § 2605(a). First is a written request in the form of a petition by Pownal residents self-identified as the "Pownal 45" that was submitted to the Secretary of State by Mr. Busa on November 28, 2024 (the "Pownal 45"), included as Attachment C.<sup>2</sup> The Board of Civil Authority for the Town of Stamford also submitted a written request to the Secretary of State, dated November 21, 2024, and included as Attachment B. And

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<sup>1</sup> Chapter II, § 14 of the Vermont Constitution reads in part that "[t]he Representatives so chosen... shall have power to... judge of the elections and qualifications of their own members...."

<sup>2</sup> The request includes 29 signatures next to 29 of the 57 names listed as the people who live on the south side of Barber Pond Road, South Stream Road, and some residents of Moonrise Drive in Pownal. One of the 57 names is of an individual who has moved out of Pownal and the Bennington-1 House District.

the Board of Civil Authority for the Town of Readsboro submitted a written request to the Secretary of State on December 5, 2023, included as Attachment D.<sup>3</sup>

All four requests were properly filed in compliance with the three requirements in 17 V.S.A. § 2605. First, the requesters all qualify to file such a request. Section 2605 provides that “[a] candidate for the office of Representative to the General Assembly in the general election, or any elected town officer in the representative district, or any 25 voters in the representative district may request the House of Representatives to exercise its constitutional authority to judge the elections and qualifications of its own members....” Mr. Busa is a candidate for the Bennington-1 House District seat. The boards of civil authority are comprised of select board members, justices of the peace, and the town clerks in towns wholly within the representative district (i.e., the Bennington-1 House District). And the Pownal 45 request includes a petition by more than 25 voters in the representative district.

Second, they all filed requests within the statutory deadline. Section 2605 provides that the request be filed “not later than the latest of the following: (1) 20 days after the date of the election; or (2) 10 days after a final court judgment, if there is a recount under section 2602 of this title.” 17 V.S.A. § 2605(a). As will be discussed more below, the Bennington County Superior Court ordered a recount and entered final court judgment on November 26, 2024. Mr. Busa and the Stamford Board of Civil Authority filed requests within 20 days of the date of the election. The Pownal 45 and the Readsboro Board of Civil Authority filed requests within ten days after the Court entered final judgment. Therefore, all requests were filed within the statutory deadline.

Finally, they all filed their requests in the proper manner. Section 2605 provides that the manner of the request be submitted “by filing a written request with the Secretary of State specifying the candidate or candidates whose election is being challenged.” 17 V.S.A. § 2605(a). All requests were filed in writing with the Secretary of State. Mr. Busa and both boards of civil authority specify both the election being challenged and one of the candidates for that election (i.e., Mr. Busa). Although the Pownal 45 request does not specify a candidate or candidates, it does specify the house district and requests the ability to vote in that district. Given that the other requests provide the specific names of the candidates and context for the residents’ request, we recommend construing the Pownal 45 request liberally and accepting it as properly filed.

Pursuant to 17 V.S.A. § 2605(b)(1), after being notified by the Secretary of State of a request, it is the responsibility of the Attorney General to investigate the facts and deliver a report on the law and facts to the Clerk of the House at least ten days before the General Assembly convenes. Under the Vermont Constitution, the House is the final arbiter of the election and qualifications of its own members. Vt. Const. ch. II, §14. Reviewing the available

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<sup>3</sup> Although Mr. Busa is a member of the Readsboro Board of Civil Authority, the minutes from the December 2, 2024 meeting approving the submission of the request reflect that he recused himself after giving an update on his election contest. Minutes of the Readsboro Bd. of Civil Auth. (Dec. 2, 2024), available at [https://towncloud.io/go/readsboro-vt/agendas/738/minutes/get\\_agenda\\_document\\_link](https://towncloud.io/go/readsboro-vt/agendas/738/minutes/get_agenda_document_link).

facts, 56 voters received ballots for the incorrect house district in a race in which the successful candidate won by 23 votes.

### **FACTUAL BACKGROUND**

In 2022, the General Assembly divided the Town of Pownal into two House of Representatives districts through reapportionment. One portion of Pownal is part of the Bennington-1 House District and another is part of the Bennington-5 House District. *See* 17 V.S.A. § 1893b. The voter checklists were updated in 2022 in an attempt to match the reapportionment that placed Pownal in two House districts.

The 2024 general election was held on November 5, 2024. Two candidates ran for the single seat for the Bennington-1 House District: Bruce Busa of Readsboro and Jonathan Cooper of Pownal. On the night of the election, Jonathan Cooper received the highest vote total with 1,265 votes. Bruce Busa received the second highest total with 1,240 votes. The vote total in the Town of Pownal for the Bennington-1 House District race was: Jonathan Cooper, 745 and Bruce Busa, 525. There were also three write-in votes for others, one overvote, and 53 blank votes.

On November 7, 2024, the Pownal Town Clerk discovered the Town of Pownal voter checklist used for the 2024 general election had errors after Mr. Busa visited her office and informed her that he heard from a voter who had not received a ballot listing him as a candidate for the House of Representatives.<sup>4</sup> The Pownal Town Clerk immediately began reviewing the boundary street addresses and scheduled a meeting for the Board of Civil Authority for the Town of Pownal.

On November 8, 2024, Mr. Busa filed a petition for a recount of the Bennington-1 House District election with the Bennington County Superior Court.<sup>5</sup> On November 12, the canvass meeting was held, and the Bennington-1 House District Clerk certified Jonathan Cooper as the winner. After the court-ordered recount was conducted on November 18, the vote difference between the candidates narrowed from 25 votes to 23 votes. Following the recount and prior to the Court entering final judgment, Mr. Busa filed the instant request for the House to judge the election and qualifications of its own members. Additional requests to the House filed by the

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<sup>4</sup> Neither the Pownal Town Clerk nor the Bennington-1 House District Clerk are aware of voters notifying either office or election workers of the error on or prior to Election Day.

<sup>5</sup> Mr. Busa also filed a motion for a revote in the Town of Pownal with the Court on November 14, 2024, which the Court denied on November 15, 2024. In the denial, Judge Barra explained that the Vermont Constitution “places the final determination of the election and qualifications of its members exclusively in the House of Representatives of the General Assembly as a part of its legislative powers.” Entry Regarding Motion at 2, *Busa v. Cooper*, Case No. 24-CV-04565 (Vt. Super. Ct., Nov. 15, 2024) (Barra, J.) (*citing* Vt. Const. ch. II, §14; *Kennedy v. Chittenden*, 142 Vt. 397, 399 (1983)).

Pownal 45, the Stamford Board of Civil Authority, and the Readsboro Board of Civil Authority followed.

The Pownal Board of Civil Authority met on November 18, 2024 to review the reapportionment statute boundary description, the district maps, and voter registrations. Upon careful review, the Board concluded: (1) that 56 voters on the Bennington-5 House District checklist should have been on the Bennington-1 House District checklist; and (2) that 14 voters on the Bennington-1 House District checklist should have been on the Bennington-5 House District checklist.<sup>6</sup> These checklist errors existed at the time of the election but were subsequently corrected by the Pownal Town Clerk. As of December 12, 2024, the district checklists are correct.

### **REMEDIES SOUGHT BY REQUESTERS**

The requesters all seek a revote, but the scope varies. Although some request that only the voters who reside in the Bennington-1 House District who received a Bennington-5 House District ballot in error be given the correct Bennington-1 House District ballot and given the chance to vote on the proper ballot, Mr. Busa generally requests a revote of “District 1.”<sup>7</sup> *See* Attachment A.

The Pownal 45 asks the Legislature “to send us our ballot(s) for the Bennington 1 House District, so we can vote in our district” and cites 17 V.S.A. § 2605. *See* Attachment C.

The Boards of Civil Authority for the Town of Stamford and the Town of Readsboro both request that the legislative boundary, including Barbers Pond Road and South Stream Road, as well as Route 7 and the remaining boundary line, be investigated to determine how many voters were erroneously included in the wrong district and were sent a Bennington-5 House District ballot instead of the correct Bennington-1 House District ballot. They also both state that they believe the votes cast fairly and properly in Stamford, Readsboro, Woodford, Searsburg, and Pownal should be recognized and accepted. They further submit to the House the following verbatim request for relief:

A determination should be made to correct this unfortunate error by recognizing all the voters who reside in the Bennington-1 District who

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<sup>6</sup> The winning candidates for the two seats in the Bennington-5 House District won with a margin of 177 votes separating the second place candidate from the third place candidate, a margin greater than the number of incorrectly listed voters in the Bennington-5 House District and the Bennington-1 House District.

<sup>7</sup> Of note, Mr. Busa’s motion for a revote filed with the Bennington County Superior Court on November 14, 2024 contended that “the most accurate and efficient way to correct the error in Pownal is to simply conduct a new vote for the Bennington-1 House district in the precinct where the error occurred... Pownal.” Plaintiff’s Motion to Have a Revote in the Town of Pownal at 2, *Busa*, Case No. 24-CV-04565.

received a Bennington-5 District ballot in error. Only these voters should be given the correct Bennington-1 District ballot and given the chance to vote on the proper ballot. It does not seem prudent to burden all of the towns in the Benn-1 District with the expense of another election and this would invalidate the votes that have been properly cast. Voters who have already voted on the correct Benn-1 ballot, whether in Pownal or the other four towns, should not be given the opportunity to vote twice.

Attachment B at 2 and Attachment D at 2.

## **LEGAL BACKGROUND**

### **ACT 89 2022 REAPPORTIONMENT**

Vermont apportionment laws require periodic reapportionment of the House of Representatives and the Senate to ensure that all state legislative bodies are apportioned in a way that achieves substantially equal weighting of the votes of all voters in the choice of legislators. *See* 17 V.S.A. § 1901. The periodic reapportionment is done following each decennial census of the United States. *See* 17 V.S.A. § 1903.

Following the 2020 U.S. census, the General Assembly passed H.722 in 2022 reapportioning the House of Representatives and the Senate. The Governor signed H.722 into law on April 6, 2022, as Act 89. *See* 2021, No. 89 (adj. sess.), available at <https://legislature.vermont.gov/Documents/2022/Docs/ACTS/ACT089/ACT089%20As%20Enacted.pdf>.

Act 89 established the Bennington-1 House District as follows:

BENNINGTON-1 Readsboro, Searsburg, Stamford, Woodford, and that portion of the town of Pownal encompassed within a boundary beginning at the point where the northern boundary line of the town of Pownal intersects with VT Route 7; then southerly along the western side of the centerline of VT Route 7 to the intersection of Barber Pond Road; then easterly along the southern side of the centerline of Barber Pond Road to the intersection of South Stream Road; then easterly along the south side of the centerline of South Stream Road to where it intersects with the power lines after 620 South Stream Road and before 802 South Stream Road; then easterly along the southern side of the power lines to where the power lines intersect with the boundary of the town of Stamford approximately one mile north of County Road; then southerly along the town line of Stamford to the state border of Massachusetts; then easterly along the state border of Massachusetts to the state border of New York; then northerly along the state border of New York to the boundary of the town of Bennington; then easterly along the town line of Bennington to the point of beginning[.]

17 V.S.A. § 1893b. The Statewide map showing the House districts is included as Attachment E and the map showing the Bennington-1 House District is included as Attachment F.<sup>8</sup>

After reapportionment, the Secretary of State's Office updates the Vermont Election Management System, the statewide computer system that clerks use to maintain voter checklists (commonly called VEMS). The Secretary of State's Office does this by adding the names of the new districts to the system and linking them to the towns included within the boundaries of those districts. The town clerks then review their town's street listings in VEMS and verify they are accurate.

For towns split into two or more districts, like Pownal, the process is more complicated. Those clerks update a spreadsheet downloaded from VEMS that includes street listings. Clerks then either upload those changes back into VEMS or send them to the Secretary of State's Office to be uploaded. The system then updates voter records with the newly assigned districts according to changes made to the street listings. When a street is divided into two districts, such as Barber Pond Road and South Stream Road in Pownal, the clerk must determine which districts apply to which street segments. Town clerks work closely with the Secretary of State's Office, the board of civil authority for their town, and their E911 coordinator to ensure the reapportionment changes are captured accurately in the system.<sup>9</sup>

The Secretary of State's Office manages the contracts with the vendors that fulfill the design, printing, and mailing of the universal vote-by-mail ballots based on the information in VEMS. *See* 17 V.S.A. § 2537a. The Secretary of State's Office works with one vendor to design the ballots that will be used in each of the districts<sup>10</sup> and another vendor to print and mail the ballots. The production process for printing and mailing runs throughout mid-September, so the Secretary of State's Office requests that town clerks review and update their checklists prior to Labor Day.<sup>11</sup>

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<sup>8</sup> Note that the 2022 reapportionment maps are also available on the General Assembly's website at the following URLs:

<https://legislature.vermont.gov/Documents/SmallMaps/2022/Final%20House%20Statewide.pdf>

(Statewide map) and

<https://legislature.vermont.gov/Documents/SmallMaps/2022/House/Bennington-1.pdf>

(Bennington-1 House District map).

<sup>9</sup> For example, the Secretary of State's Office provides support for clerks by answering questions about the process and the statewide computer system. It also helps connect town clerks to their E911 coordinator to answer questions about the boundaries of particular properties.

<sup>10</sup> The State has 283 distinct ballot styles. This is due to overlapping House and Senate districts across Vermont's 247 towns. Pownal accounts for two of the 283 ballot styles statewide.

<sup>11</sup> Vermont law requires that the mailing of the ballots commence no later than 43 days before the election and be completed no later than October 1. 17 V.S.A. § 2537a(a)(1).

As noted above, the Pownal Town Clerk discovered errors on her voter checklist after the election. She immediately brought those errors to the attention of the Pownal Board of Civil Authority, which convened a meeting on November 18, 2024.<sup>12</sup>

The Pownal Board of Civil Authority determined that there were 56 voters on the Bennington-5 House District checklist who should have been on the Bennington-1 House District checklist.<sup>13</sup> More specifically, the voters on both the north and south sides of Barber Pond Road and South Stream Road, as well as six voters on Moonrise Drive, were incorrectly included in the Bennington-5 House District instead of the Bennington-1 House District.<sup>14</sup> This meant that those voters received the Bennington-5 House District ballot by mail and, if voting in person, at Pownal's polling location.

The Pownal Town Clerk has since updated the voter checklists for both House districts. Our Office has verified that the names in the Pownal 45 request are all included in the corrected checklist for the Bennington-1 House District, except for two voters who moved out of Pownal and did not vote in Pownal in the November 5, 2024 general election.

### THE RECOUNT

A recount is commenced by filing a petition with the Superior Court under 17 V.S.A. § 2602. The county clerk then obtains the ballots from the town clerks and secures them. 17 V.S.A. § 2602(c)(2).

Pursuant to 17 V.S.A. § 2602a, the county clerk notifies the candidates for the office that is the subject of the recount and asks for a list of a minimum of ten nominees to serve on the recount committee. The Court then sets a date for the recount and names the committee. *See* 17 V.S.A. §§ 2602(c)(1), 2602a(b).

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<sup>12</sup> Further evidence of the error appeared on some of the Bennington-5 House District ballots, some of which included write-in votes that appear to have been for the Bennington-1 House District candidates: three write-in votes for "Bruce Buso," and eight write-in votes for Jonathan Cooper.

<sup>13</sup> Although the Pownal Board of Civil Authority is the authority on the determination as to the number of voters impacted, we note the estimates of the requesters. Mr. Busa estimates in his request that approximately 47 voters in the Bennington-1 House District were affected by the voter checklist errors. The Pownal 45 filed a request with 29 signatures and 57 names listed. The Boards of Civil Authority for the towns of Stamford and Readsboro do not make any estimates as to the number of affected voters.

<sup>14</sup> Although Moonrise Drive itself is in the Bennington-1 House District, some of the residents on that street have a legal address with the Cozy Meadow Mobile Home Park, which is located on the east side of Route 7 and part of the Bennington-5 House District.

At the outset, the county clerk explains the responsibilities of the committee and assigns committee members to a counting team, a vote tabulator team, and a clerk observer team. 17 V.S.A. §§ 2602b, 2602c. Ballots are counted according to the procedures spelled out by the statutes. *See* 17 V.S.A. §§ 2602c, 2602d, 2602e, 2602f, 2602h. The Superior Court then holds a hearing during which candidates are given the opportunity to present evidence to the Court relating to the conduct of the recount, how to count questionable votes, and the marking of any ballot as defective. 17 V.S.A. § 2602j(c). The Court must order a new recount if it finds a violation of recount procedures that may have affected the outcome of the recount. 17 V.S.A. § 2602j(e).

Within five working days after the hearing and the Court's final decision on any questionable votes or defective ballots, the Court: (1) issues a judgment that supersedes any certificate of election previously issued; (2) sends a certified copy of the judgment to the Secretary of State; and (3) returns to the county clerk any ballots containing questionable votes and defective ballots that had been forwarded to the Court. 17 V.S.A. § 2602j(f). Once the Court order has been issued, a candidate for the Legislature may file a request with the appropriate body of the General Assembly if they wish to contest the results of the election or recount. 17 V.S.A. §§ 2605, 2606 (Senate); *Kennedy*, 142 Vt. 397.

Following the thorough process laid out above, the recount for the Bennington-1 House District was conducted on November 18, 2024, under the supervision of the Bennington County Clerk. The Court held a hearing on November 25, 2024, after which it entered a final judgment finding Jonathan Cooper the winner of the Bennington-1 House District race. *See* Amended Judgment, *Busa*, Case No. 24-CV-04565 (final order issued Nov. 25, 2024 and amended order issued Nov. 26, 2024), included as Attachment G. Both candidates were represented by legal counsel at the hearing.

The final judgment vote totals are as follows:

Jonathan Cooper	1265
Bruce Busa	1242
Write-In's	5
Overvotes	0
Blank Votes	108

The Amended Master Recount Summary Sheet signed by the Bennington County Clerk on November 21, 2024, and included as Attachment H, provides the following vote totals for ballots cast in the Town of Pownal:

Jonathan Cooper	745
Bruce Busa	526
Write-In's	3
Overvotes	0
Blank Votes	54



On information and belief, no appeal challenging the manner in which the recount process was conducted has been filed as of the date of this letter.

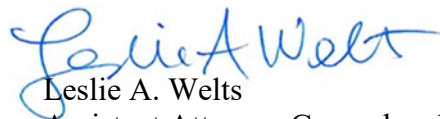
### CONCLUSION

Based upon the factual and legal background set forth above, it is the Opinion of this Office that 56 voters registered in the Bennington-1 House District received the Bennington-5 House District ballot and were unable to properly cast a vote in the race for the Bennington-1 House District seat. It is also the Opinion of this Office that the winner of the certified recount of the Bennington-1 House District won by a margin of 23 votes, meaning that the number of registered voters who were not able to properly vote in the Bennington-1 House District election (56 voters) is greater than the margin of victory (23 votes).

Outside of the Bennington-1 House District election, no other elections or election outcomes were considered as a part of this review and report. Federal, statewide, and county elections were not impacted by the voter checklist errors. The Town of Pownal's Bennington-1 House District and Bennington-5 House District ballots were identical, other than (1) the candidates listed for the House, and (2) the label at the top of the ballot. Similarly, as noted above, the voter checklist errors would not have impacted the outcome in the Bennington-5 House District, i.e. any voters who voted in that district in error or did not receive a Bennington-5 House District ballot would not have been enough to change the outcome of that election.

This Report and Opinion is intended to provide the House of Representatives with our Office's opinion on the law and facts to enable the House to determine appropriate actions, if any. 17 V.S.A. § 2605(b)(1).

Respectfully submitted and dated at Montpelier, Vermont this 24th day of December, 2024.



Leslie A. Welts  
Assistant Attorney General and Chief of  
General Counsel and Administrative Law Division

cc: Sarah Copeland Hanzas, Secretary of State  
Rob McDougall, Deputy Attorney General