

Members Appointed to Judicial Retention Committee

Pursuant to the provisions of 4 V.S.A. § 607, the Speaker appointed the following members to the Judicial Retention Committee to serve for the biennium:

Hise of Bristol
Brown of St. Albans City
Zuccaro of St. Johnsbury
Corcoran of Bennington

Members Appointed to Health Policy Corporation

Pursuant to the provisions of 18 V.S.A. § 2361, the Speaker appointed the following members to the Health Policy Corporation to serve from February 15, 1983, for a period of two years:

Young-Price of Westminster
Knapp of Bennington

Member Appointed to New England Board of Higher Education

Pursuant to the provisions of 16 V.S.A. §§ 2692, 2694 and 2731, the Speaker appointed Mrs. Condon of Bennington to the New England Board of Higher Education to fill a vacancy caused by the resignation of Mrs. Irene Durkee of Rutland City. Mrs. Condon will serve from February 1, 1983, until February 28, 1985.

Members Appointed to Legislative Council

Pursuant to the provisions of 2 V.S.A. § 402, the Speaker appointed the following members to the Legislative Council to serve for the biennium:

DeBonis of Poultney
DaPrato of Swanton
Morse of Charlotte

Judgment Order Received from Chittenden Superior Court

The Speaker placed before the House a certified copy of a Judgment Order from Chittenden Superior Court, as follows:

"STATE OF VERMONT
CHITTENDEN COUNTY, SS

| | | |
|-------------------|---|---------------------------|
| In RE: | : | CHITTENDEN SUPERIOR COURT |
| PETITION OF | : | |
| JEANNE B. KENNEDY | : | DOCKET NUMBER S110-82 CnM |

JUDGMENT ORDER

The report of the Recount Committee, conducting a recount of the votes cast for the Office of Representative to the General Assembly from Chittenden District 6-2, was filed with this Court on December 7, 1982.

The report of the recount discloses that the total votes cast for each of three candidates at the General Election on November 2, 1982, is as follows:

| | |
|-------------------|-----|
| Robert Chittenden | 788 |
| Jeanne B. Kennedy | 783 |
| Charles Carpenter | 73 |
| Write Ins | 3 |
| Spoiled | 4 |
| Miscellaneous | 58 |

The Court having approved the report of the Recount Committee it is hereby ORDERED and ADJUDGED:

1. That this Court certifies that Robert Chittenden received the greatest number of votes cast for the Office of Representative to the General Assembly from Chittenden District 6-2;
2. That this Judgment shall supersede any Certificate of Election previously issued;
3. That a certified copy of this Judgment shall be sent to the Secretary of State;
4. That a copy of this Judgment shall be furnished to the City Clerk of South Burlington;
5. That a copy of this judgment shall be furnished to each of the candidates for the Office of Representative to the General Assembly from Chittenden District 6-2.
6. The Court certifies that the Report of the Recount Committee, approved by the Court, is as follows:

| | |
|-------------------|-----|
| Robert Chittenden | 788 |
| Jeanne B. Kennedy | 783 |
| Charles Carpenter | 73 |
| Write Ins | 3 |
| Spoiled | 4 |
| Miscellaneous | 58 |

7. The final determination of the election and qualification of its members having been vested exclusively in the House of Representatives of the General Assembly, as a part of its legislative powers, a certified copy of this Judgment Order is to be sent to the Speaker of the House of Representatives of the Vermont General Assembly.

Dated this 24th day of January, 1983.

/s/ Thomas L. Hayes

Thomas L. Hayes
Presiding Judge

/s/ Jane L. Wheel

Jane L. Wheel
Assistant Judge"

**"STATE OF VERMONT
CHITTENDEN COUNTY, SS**

I, MARGARET H. MASKELL, Deputy Clerk of the Chittenden Superior Court, the same being a court of record having a seal as hereto affixed, DO CERTIFY that the within and foregoing is a true and complete copy of:

Judgment Order

as filed on January 24, 1983 in the within-entitled cause.

(SEAL)

IN WITNESS WHEREOF I HERETO set my hand and affix the seal of the Chittenden Superior Court at Burlington, in said county, this 24th day of January, A.D. 1983.

/s/ Margaret H. Maskell

Margaret H. Maskell
Chief Deputy Clerk"

Petition for New Election in Chittenden District 6-2

The Speaker placed before the House a communication from Bruce M. Lawlor, Esq., containing a Petition for a new election in Chittenden District 6-2. The Petition and attachments were referred to the Committee on Municipal Corporations and Elections. The communication, Petition and attachments are as follows:

"Bruce M. Lawlor, Esq.
Attorney at Law
P.O. Box 830
23 Pleasant Street
Springfield, Vermont 05156-0830

January 24, 1983

The Honorable Robert L. Picher
Clerk of the House of Representatives
State House
Montpelier, Vermont 05602

TUESDAY, JANUARY 25, 1983

81

Re: Chittenden District 6-2

Dear Bob:

Enclosed please find a Petition for a new election in Chittenden District 6-2 for the Office of State Representative. This petition is directed to the Honorable House of Representatives under Chapter II, Section 14 of the Vermont Constitution.

The Petition is also simultaneously being filed with the Office of Secretary of State pursuant to the provisions of 17 V.S.A. 2605. However, as the recent Supreme Court decision in the matter of Kennedy vs. Chittenden et al., No. 83-016, appears to indicate the House may not delegate its authority with respect to elections to any other branch of government, 17 V.S.A. 2605 may well be constitutionally invalid.

Based on the foregoing, we would respectfully request that the House exercise its constitutional authority with respect to the election of its members in as expeditiously a manner as possible. Stated differently, based on the Supreme Court decision, we do not believe the House must wait upon the investigation called for under the statute but may, and probably is required to, conduct its own investigation of the election independent of the executive branch.

Thank you for your consideration.

Very truly yours,

/s/ Bruce M. Lawlor

Bruce M. Lawlor"

"STATE OF VERMONT

HOUSE OF REPRESENTATIVES

IN RE: ELECTION FOR THE *
OFFICE OF STATE *
REPRESENTATIVE * PETITION
FROM CHITTENDEN *
DISTRICT 6-2 *

Now comes your Petitioner, Jeanne B. Kennedy, and pursuant to Chapter II, Section 14 of the Vermont Constitution and the provisions of 17 V.S.A. 2605 respectfully petitions the House of Representatives of the State of Vermont to exercise its constitutional authority to judge elections and order that a new election be held for the Office of State Representative from Chittenden District 6-2. In support of this her petition for a new election, your Petitioner avers and says as follows:

1. Jeanne B. Kennedy, a resident of the City of South Burlington, was a candidate for the Office of State Representative to the Vermont General Assembly from Chittenden District 6-2 which said election was held in the

aforementioned district on 2 November 1982.

2. Robert Chittenden, also a resident of the City of South Burlington, was a candidate for the same office in the same district at the same time and place all as aforesaid.

3. Chittenden District 6-2, as established in 1982 by the Vermont Legislative Apportionment Board, is as follows:

Chittenden District 6-2 (one member): Beginning at the center line of the Williston Road at the boundary line of the City of South Burlington and the Town of Williston; thence westerly along the center line of Route 2 to the intersection of Route 89; thence along the center line of Route 89 southerly to a point 200 feet west of the westerly boundary of Dorset Street; thence southerly parallel to the westerly boundary of Dorset Street and 200 feet westerly therefrom to the Shelburne Town line and northerly along the Williston Town line to the point of beginning.

4. Pursuant to the provisions of 17 V.S.A. 2501(c), the Board of Civil Authority for the City of South Burlington is responsible for accurately determining the geographical location of the last known place of residence of each voter in Chittenden District 6-2 and for properly placing said voter on the appropriate checklist.

5. The Board of Civil Authority for the City of South Burlington failed to carry out its responsibilities under the provisions of the aforementioned 17 V.S.A. 2501(c) in that eighteen (18) persons residing outside the geographical boundaries of Chittenden District 6-2, as set forth hereinabove, were improperly included on the voter checklist for said district and were so present on said checklist at the time of the election for the Office of State Representative from said district held on 2 November 1982.

6. Of the aforementioned eighteen (18) persons improperly listed on the voter checklist for Chittenden District 6-2, ten (10) such persons actually voted in the election for the Office of State Representative from said district held on 2 November 1982.

7. A recount of the election held for State Representative from Chittenden District 6-2 was requested and the result of said recount, filed with the Superior Court, Chittenden County on 7 December 1982, disclosed that the total votes cast for each of the three candidates for the Office of State Representative were as follows:

| | |
|-------------------|-----|
| Robert Chittenden | 788 |
| Jeanne B. Kennedy | 783 |
| Charles Carpenter | 73 |
| Write-ins | 3 |
| Spoiled | 4 |
| Miscellaneous | 58 |

8. On 9 December 1982 and pursuant to the provisions of 17 V.S.A. 2603 and 17 V.S.A. 2617, your Petitioner initiated a contest in the Superior Court, Chittenden County alleging and asserting that the improper listing of the aforementioned eighteen (18) persons on the voter checklist for Chittenden District 6-2 and the actual voting of ten (10) such persons constituted an election irregularity sufficient to change the ultimate result of the election for the Office of State Representative from said district and that by virtue thereof said election should be set aside and a new election ordered.

9. On 4 January 1983, the Superior Court, Chittenden County, the Honorable Thomas L. Hayes, presiding, issued its Findings of Fact, Conclusions of Law and Order agreeing with the contentions of your Petitioner and ordering that a new election for the Office of State Representative from Chittenden District 6-2 be held on 25 January 1983. A copy of said Findings of Fact, Conclusions of Law and Order is attached herewith.

10. On 11 January 1983, Robert Chittenden filed a Petition for Extraordinary Relief and an Appeal with the Supreme Court of the State of Vermont requesting it to reverse the aforementioned decision of the Superior Court, Chittenden County and to vacate the election scheduled for 25 January 1983.

11. On 21 January 1983, the Supreme Court, State of Vermont issued its decision interpreting Chapter II, Section 14 of the Vermont Constitution and held Vermont courts to be without jurisdiction to decide election contests initiated under 17 V.S.A. 2603. Said Court went on to declare 17 V.S.A. 2603 and 2617 unconstitutional and to vacate the Superior Court's order of 4 January 1983 ordering a new election for the Office of State Representative from Chittenden District 6-2. A copy of said decision is attached herewith.

12. As a result of the aforementioned decision of the Supreme Court, your Petitioner's allegations of election irregularities sufficient to change the results of the election for State Representative from Chittenden District 6-2 have not been ruled upon by any tribunal of competent jurisdiction.

13. The inclusion of eighteen (18) persons on the voter checklist for Chittenden District 6-2, who reside beyond the geographical boundaries of said district, and the voting by ten (10) such persons in the election for State Representative from said district on 2 November 1982 constitute sufficient election irregularity and error to change the ultimate result of said election in that only five votes separate your Petitioner and Robert Chittenden.

14. By virtue of the aforementioned election irregularities and errors, the election for the Office of State Representative from Chittenden District 6-2 held on 2 November 1982 was not valid and a new election should be ordered.

Wherefore, your Petitioner respectfully prays as follows:

1. That the House of Representatives of the State of Vermont exercise its authority under Chapter II, Section 14 of the Vermont Constitution and the provisions of 17 V.S.A. 2605 to judge elections in the most expeditious manner

possible with respect to the election for the Office of State Representative from Chittenden District 6-2 held on 2 November 1982.

2. That the House of Representatives of the State of Vermont declare the election for the Office of State Representative from Chittenden District 6-2 held on 2 November 1982 is void and invalid.

3. That the House of Representatives of the State of Vermont order a new election for the Office of State Representative from Chittenden District 6-2 to be held no later than Town Meeting Day 1983.

Dated at Montpelier, County of Washington and State of Vermont, this 24th day of January 1983.

/s/ Jeanne B. Kennedy
Jeanne B. Kennedy"

"STATE OF VERMONT
CHITTENDEN COUNTY, SS.

CHITTENDEN SUPERIOR COURT
DOCKET NO. S115-82 CnM

JEANNE B. KENNEDY

-VS-

ROBERT CHITTENDEN, THE
CITY OF SOUTH BURLINGTON,
and THE BOARD OF
CIVIL AUTHORITY

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*
*

The above-entitled cause came on for hearing on the merits before the Chittenden Superior Court December 17, 1982.

The Plaintiff, Jeanne B. Kennedy, was present at the hearing and represented by Rick Sharp, Esquire, and Bruce Lawlor, Esquire. The Defendant, Robert Chittenden, was also present and represented by Clarke B. Gravel, Esquire. The City of South Burlington, the City Clerk, and the Board of Civil Authority, were represented by Richard A. Spokes, Esquire.

This matter came before the Court on Plaintiff's request for a hearing pursuant to 17 V.S.A. Section 2602 and upon Plaintiff's complaint under 17 V.S.A. Section 2603.

After the review of the file and consideration of the evidence and the representations of counsel, the Court makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

1. The Plaintiff, Jeanne B. Kennedy, resides in South Burlington, County of Chittenden, State of Vermont, and is a candidate for office of

Representative to the Vermont Legislature from Chittenden District 6-2.

2. Defendant Robert Chittenden resides in South Burlington, County of Chittenden, State of Vermont, and is a candidate for the office of Representative to the Vermont Legislature from Chittenden District 6-2.

3. Defendants City of South Burlington, City Clerk, and the Board of Civil Authority of South Burlington, were responsible for the conduct of the election for Representative to the Vermont Legislature, Chittenden District 6-2, held on November 2, 1982.

4. The above-mentioned District 6-2 was established by the South Burlington Board of Civil Authority and was approved with one minor change by the Legislative Apportionment Board. Said District is as follows:

Chittenden 6-2 (one member): Beginning at the center line of Williston Road at the boundary line of the City of South Burlington and the Town of Williston; thence westerly along the center line of Route 2 to the intersection of Route 89; thence along the center line of Route 89 southerly to a point 200 feet west of the westerly boundary of Dorset Street; thence southerly parallel to the westerly boundary of Dorset Street and 200 feet westerly therefrom to the Shelburne town line; thence southeasterly along the Shelburne town line and northerly along the Williston town line to the point of beginning.

5. Initially, one of the claims made by the Plaintiff was that the Recount Committee erroneously failed to count three absentee ballots. This claim was withdrawn by the Plaintiff at the hearing and is not now before this Court.

6. A second claim of the Plaintiff relates to the manner in which the recount was conducted under the supervision of Chittenden County Clerk Francis G. Fee. The Court finds this claim to be without merit. The facts indicate, and the Court finds, that at the recount, conducted under the supervision of Mr. Fee, the counters at one table used a system in which one person read the results of each ballot and the other two counters worked on tally sheets and, at the other table, two counters checked the ballots while one worked on the tally sheet. After objection was made to the procedure at the second table, the counters switched to a two-tally sheet method similar to that used by the other table.

7. Each system employed by the counters was proper and the Court finds no error with respect to the manner in which the recount was conducted.

8. The report of the Recount Committee conducting a recount of the votes cast for the office of Representative to the General Assembly from Chittenden District 6-2, was filed with this court on December 7, 1982.

9. The report of the recount discloses, and the Court finds, that the total votes cast for each of the three candidates at the general election on November 2, 1982 is as follows:

| | |
|-------------------|-----|
| Robert Chittenden | 788 |
| Jeanne B. Kennedy | 783 |
| Charles Carpenter | 73 |
| Write-ins | 3 |
| Spoiled | 4 |
| Miscellaneous | 58 |

10. Each ballot, about which there was any question, was counted only if a majority of the members of the Recount Committee was able to ascertain the intention of the voter.

11. The above-mentioned recount, conducted on November 22, 1982, demonstrates a difference of five votes between Jeanne B. Kennedy and Robert Chittenden, with Mr. Chittenden having the greater number.

12. The evidence indicates, and the Court finds, that eighteen persons were included on the checklist for Chittenden District 6-2 who did not reside within the aforementioned geographical boundaries of said district. Ten of these persons voted in the November 2, 1982 election for Representative from Chittenden District 6-2.

13. The ten people who voted in the election for Representative from Chittenden District 6-2 held on November 2, 1982, who did not reside in said district, are as follows:

| | |
|----------------------|--------------------|
| Lloyd Roberts | 1435 Dorset Street |
| Shelly Roberts | 1435 Dorset Street |
| Jane Demers | 1505 Dorset Street |
| Lucien Demers | 1505 Dorset Street |
| William Lang | 1675 Dorset Street |
| Gail Lang | 1675 Dorset Street |
| Michael Beardseley | 655 Spear Street |
| Gary Eley | 300 Spear Street |
| Karen (Eley) Sanborn | 300 Spear Street |
| Dawn Serridinger | 1575 Dorset Street |

14. The residential dwellings of each of the ten persons mentioned in the preceding paragraph are located more than 200 feet westerly from the western edge of Dorset Street and are therefore beyond the geographical boundary of Chittenden District 6-2.

15. There was no showing by credible evidence that the land portion of the real property of each of these ten individuals extends to Dorset Street.

16. If it was error to allow the aforementioned ten persons to vote in Chittenden District 6-2, the error was sufficient to change the ultimate result of the election for Representative because the recount indicates a difference of five votes between Jeanne B. Kennedy and Robert Chittenden, with Mr. Chittenden having the greater number.

17. There was no showing by credible evidence that any candidate for

Representative in District 6-2 or any voter in said District, prior to the election, requested the elimination of any names appearing on the pertinent checklist.

18. The Defendant Robert Chittenden contends, and the Court finds, that no request was made by the Plaintiff, the Democratic Party, or any other voter in the City of South Burlington to revise the posted checklist and eliminate the voters listed in Plaintiff's complaint as being physically resident outside the boundaries of District 6-2.

19. The Plaintiff, Mrs. Kennedy, prior to the election in question, had a telephone conversation with the South Burlington City Clerk regarding the residences of the ten voters whose eligibility is now being questioned. Mrs. Kennedy did not protest the inclusion of the names of said ten persons on the checklist but was interested in determining whether she should campaign at their residences and wanted to know whether said persons lived within District 6-2.

20. Mr. Carpenter, another candidate for Representative from District 6-2, made similar inquiries of the South Burlington City Clerk for like reasons.

CONCLUSIONS OF LAW

1. The result of an election for any office may be contested by any legal voter and contest may be initiated by filing a Complaint with a Superior Court alleging that errors were committed in the conduct of the election or in count or return of votes, sufficient to change the ultimate result. 17 V.S.A. § 2603. Such a Complaint was filed by Jeanne B. Kennedy in the case at bar and the Court concludes that it has jurisdiction in this matter.

2. Plaintiff contended, among other things, that three absentee ballots were not counted that should have been counted. However, at trial, this claim was withdrawn and requires no further consideration here.

3. A second contention of the Plaintiff related to the manner in which the recount was conducted under the supervision of the Chittenden County Clerk Francis G. Fee. There was no showing by credible evidence that there was any impropriety or illegality in the conduct of the recount. Each of the methods employed by the counters is deemed by the Court to be a proper method of conducting a recount.

4. The sole issue remaining for consideration is whether errors were committed in the conduct of the election sufficient to change the ultimate result. Plaintiff contends that the inclusion of eighteen persons on the checklist for Chittenden District 6-2 who resided beyond the boundaries of said District and the fact that ten of these persons voted in the election in dispute constitutes error sufficient to change the ultimate result of the election in that only five votes separate the Plaintiff, Jeanne B. Kennedy, and Defendant, Robert Chittenden, in the recount.

5. In this contention, the Court concurs.

6. The Vermont General Assembly placed upon the Board of Civil Authority the responsibility for accurately determining the geographical location of the last known place of residence of each voter in order to place the voter on the proper separate checklist. This responsibility is set forth in 17 V.S.A. § 2501(c) which states as follows:

'In preparing the separate checklists, the board of civil authority shall be responsible for accurately determining the geographical location of the last known place of residence of each voter in order to place the voter on the proper separate checklist. If at any time except on election day the board determines that a voter should be on a different checklist from the one on which his name appears, the board shall remove the voter's name from the wrong checklist and place it on the proper checklist in accordance with section 2147 of this title.'

7. It was the responsibility of the City Clerk of South Burlington to call such meetings of the Board of Civil Authority as were necessary before the election or at other times for revision of the checklist. 17 V.S.A. § 2142.

8. The Defendants have argued, in effect, that a post-election attack on the checklist is not allowed under § 2603 of Title 17. The Court disagrees. Such an argument amounts to an assertion that the checklist is conclusive proof which forecloses subsequent inquiry with respect to a voter's right to vote. This is apparently the law in some jurisdictions but it is not the law in Vermont. In this state the checklist is conclusive only on election day, and an aggrieved party may attack the list after election day. *State ex rel. Cawley v. O'Hearn*, 58 Vt. 718 (1886).

9. In the *Cawley* case, the Court allowed a post-election challenge even though there was a pre-election mechanism for challenge as here. The Court in *Cawley* discounted votes cast by voters improperly included on the checklist by the Board of Civil Authority. The results of the election were not changed, however, because the defendant in that case still came out with a majority of eight votes.

10. In contesting the election in District 6-2, the Plaintiff has the burden of showing that errors were committed in the conduct of the election that were sufficient to change the ultimate result. We conclude that the Plaintiff has met this burden.

11. The Defendant, Robert Chittenden, maintains that, in the absence of an allegation of fraud, the existence of alleged errors in the checklist does not provide a mechanism for this Court to order a new election. This assertion is in direct conflict with the language of 17 V.S.A. § 2603 which permits any legal voter entitled to vote on the office in question to contest an election if errors were committed in the conduct of the election or in count or return of votes, sufficient to change the ultimate result or if for any other reason the result of the election was not valid. The General Assembly intended to confer upon the

Court the power to grant appropriate relief for any of the reasons set forth in § 2603.

12. Ten persons voted in the election for Representative in Chittenden District 6-2 who do not reside in that District. Since only five votes separate the Plaintiff, Jeanne B. Kennedy, and Defendant, Robert Chittenden, in the recount, the error in the conduct of the election was such as to be sufficient to change the ultimate result.

13. The Court finds and concludes that there is just cause to order a new election in the case at bar.

ORDER

In view of the foregoing, it is hereby ordered, adjudged and decreed:

1. That a new election shall be held on January 25, 1983 for the office of State Representative from District 6-2. The date for this election has been set after consultation with the Secretary of State.

2. The Secretary of State and the election officials of the City of South Burlington, Vermont are to take such action as may be necessary to carry out paragraph 1 of this order.

3. All of those who qualified as candidates for State Representative from District 6-2, and whose names were on the official general election ballot for said election, shall appear on the ballots provided for the election to be conducted.

4. This Court shall issue such supplemental orders as may be necessary.

5. The Clerk of the Chittenden Superior Court is directed to send a certified copy of this decision to the Honorable James Douglas, Secretary of State of the State of Vermont.

6. All other claims of the parties are hereby dismissed with prejudice.

Dated this 4th day of January, 1983, at Burlington, County of Chittenden, State of Vermont.

/s/ Thomas L. Hayes

Thomas L. Hayes
Superior Judge"

"NO. 83-016

JEANNE B. KENNEDY

-VS-

ROBERT CHITTENDEN,
CITY OF SOUTH BURLINGTON,
and BOARD OF
CIVIL AUTHORITY

SUPREME COURT
APPEALED FROM
CHITTENDEN SUPERIOR COURT
NOVEMBER TERM, 1982

PRESENT: Billings, C.J., Hill, Underwood and Peck, J.J., and Barney, C.J. (Ret.), (Specially Assigned)

Per Curiam. This is an election contest first started as a recount under 17 V.S.A. Sections 2601 and 2602. That recount appeared to confirm the narrow victory of the defendant Chittenden, whereupon a contest was initiated before Chittenden Superior Court, on the basis of asserted checklist irregularities, under the authority of 17 V.S.A. Section 2603. The court below held a hearing, took evidence and made findings of fact and conclusions of law. The judgment order issued based on these findings called for a new election for the Chittenden District 6-2 seat.

The procedures outlined in 17 V.S.A. Section 2603 were followed and the new election scheduled as provided in Section 2603(e). 17 V.S.A. Section 2604 provides that nothing in these contested election statutes is to abridge the provisions of Chapter II, Article 14 of the Vermont Constitution which reads in part:

Section 14. The Representatives so chosen . . . shall have the power to . . . judge of the election and qualifications of their own members

This provision 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.

The provisions of 17 V.S.A. Sections 2603 and 2617¹, insofar as they relate to elections to the House of Representatives are an improper delegation of legislative powers to a separate branch of government, to wit, the judicial branch, contrary to the Separation of Powers doctrine set forth in Chapter II, Article 5 of the Vermont Constitution. It provides:

Section 5. The Legislative, Executive, and Judicial departments, shall be separate and distinct, so that neither exercise the powers properly belonging to the others.

A further doctrinal difficulty arises from the lack of finality of the judicial adjudication contemplated under 17 V.S.A. Section 2503. Whatever result reached is subject to total revision or reversal by the exercise by the General Assembly of its acknowledged constitutional power over its own members as already noted under Chapter II, Section 14. Such power of revision, whether exercised or not, represents a further intrusion prohibited by the doctrine of separation of powers and also runs contrary to the precept that the exercise of judicial authority must lead to a final enforceable result and not be merely informative or advisory. *In re Constitutionality of House Bill 88*, 115 Vt. 524, 64 A.2d 169 (1949).

¹ 17 V.S.A. Section 2617 purports to confer general jurisdiction on the superior court "to hear and determine matters relating to elections and to fashion appropriate relief."

Moreover, '[c]ourts do not look with favor on the making of orders that are subject to be set at naught or avoided at the legitimate option of the party against whom the order is directed.' *State Highway Board v. Loomis*, 122 Vt. 125, 132, 165 A.2d 572 (1960).

Accordingly, we hold that the action below, instituted by plaintiff against defendants, has no support in law. The court was without jurisdiction to hear and determine the cause as stated in the complaint; accordingly, the order dated January 4, 1983, mandating a new election to be held on January 25, 1983, should be vacated and the complaint is to be dismissed.

The order in the above-captioned case dated January 4, 1983 ordering a new election on January 25, 1983 is vacated and the complaint and cause are dismissed as being without jurisdictional basis.

BY THE COURT

/s/ Franklin S. Billings, Jr.

Franklin S. Billings, Jr.
Chief Justice

/s/ William C. Hill

William C. Hill
Associate Justice

/s/ Wynn Underwood

Wynn Underwood
Associate Justice

/s/ Louis P. Peck

Louis P. Peck
Associate Justice

/s/ Albert W. Barney

Albert W. Barney
Chief Justice (Retired)
Specially Assigned"

Bill Amended, Read Third Time and Passed

H. 40

House bill, entitled

An act relating to construction aid to the Morristown school district;

Was taken up and pending third reading of the bill, Mr. Hise of Bristol moved to amend the bill in Sec. 1, by striking the following: "1984" and