



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNCIL

**MEMORANDUM**

2017 ORANGE-1 CONTESTED HOUSE ELECTION  
TOWNS OF CHELSEA, CORINTH, ORANGE, VERSHIRE, WASHINGTON, AND WILLIAMSTOWN

*I. Order of Events*

- A. General Election: Nov. 8, 2016. Frenier 1,853; Davis 1,845.
- B. Recount: Nov. 28, 2016. Frenier 1,852; Davis 1,845. Recount conducted by vote tabulator under supervision of county clerk. Final results certified by Orange Superior Court on Dec. 19, 2016. Recount procedures set forth in [17 V.S.A. ch. 51, subch. 9](#).
- C. House petition: Dec. 22, 2016. Main issues raised: 1) conduct of recount, including vote tabulator issues; 2) counting of defective early voter absentee ballots.

*II. Applicable Constitutional Provisions*

- A. Vt. Const. Ch. I, Art. 8: All voters have a right to elect and be elected into office, agreeably to the regulations in this Constitution.
- B. Vt. Const. Ch. II, § 14: House has power to “judge of the elections and qualifications” of its members. This provision “places the final determination of the election and qualifications of its members exclusively in the House” as part of its legislative powers. Kennedy v. Chittenden, 142 Vt. 397, 399 (1983).

*III. Recounts: Statutory Judicial and Constitutional Legislative Authorities*

- A. Statutory Judicial Authority: Recounts seldom reach results without discrepancy; the recount statute calls only for the Superior Court judge’s certification of the recount, leaving the validity to the chamber for determination. In re Smith, 131 Vt. 24, 26 (1972).<sup>1</sup>
- B. Constitutional Legislative Authority: A prior recount does not prevent the chamber from independently evaluating the election any more than the initial count does. The chamber is free to accept or reject the apparent winner in either count, and, if it chooses, conduct its own recount. Roudebush v. Hartke, 405 U.S. 15, 25–26 (1972).<sup>2</sup>

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<sup>1</sup> Vt. S. Ct. case in regard to a former recount statute, which, like current [17 V.S.A. § 2602j\(c\)](#), provided that the recount results superseded the original election results.

<sup>2</sup> U.S. S. Ct. case in regard to each U.S. congressional chamber’s authority to “be the Judge of the Elections, Returns and Qualifications of its own Members” in U.S. Const. Art. 1, § 5.

#### *IV. Known Contested Vermont Legislative Elections*

- A. Recent Journalized or Documented Contested Legislative Elections (year, parties; chamber)<sup>3</sup>
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

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<sup>3</sup> See also [this sampling of past contested legislative elections](#), containing journalized information for some of these contests.