

Intimidating Native American Voters

Daschle v. Thune

(*Lawrence L. Piersol, D.S.D. 4:04-cv-4177*)

At approximately 7:00 p.m. on the day before the 2004 general election, U.S. Senator Thomas Daschle filed a federal complaint in the District of South Dakota's Sioux Falls courthouse against Senate challenger John Thune and the South Dakota Republican Party, claiming that the party was engaging in a program designed to intimidate and discourage Native American voters in violation of consent decrees issued in the 1980s by the federal court in New Jersey governing ballot security practices of the two major national parties.¹ Daschle sought a temporary restraining order.²

At the time of this case, Judge Lawrence L. Piersol was the only active district judge in the Southern Division, which has its only chambers in Sioux Falls, and it was his practice to be sure to be on hand at the time of general elections to handle emergency election litigation.³ He learned from chambers staff in the afternoon that the case was coming.⁴

All three of the district's active judges had been appointed by President Clinton on Senator Daschle's recommendation, but there was no suggestion of recusal.⁵ Once he knew who the parties were, Judge Piersol had chambers staff contact their attorneys so that a proceeding could be arranged promptly.⁶ It is Judge Piersol's practice never to communicate *ex parte* with counsel.⁷

From 8:05 p.m. to 11:30 p.m., Judge Piersol conducted an evidentiary hearing.⁸ At 1:45 a.m., he issued a temporary restraining order.⁹ The defendants were enjoined

from following Native Americans from the polling places and directing that they not copy the license plates of Native Americans driving to the polling places, or being driven to the polling places, and further directing that the license plates of Native Americans driving away from the polling places also not be recorded.¹⁰

1. Complaint, *Daschle v. Thune*, No. 4:04-cv-4177 (D.S.D. Nov. 1, 2004), D.E. 1; see *Democratic Nat'l Comm. v. Republican Nat'l Comm.*, 673 F.3d 192, 196–98 (3d Cir. 2012) (discussing the consent decrees); see also Carson Walker, *Daschle Takes Thune to Court on Night Before Election*, Aberdeen Am. News, Nov. 2, 2004, at 8B.

2. Docket Sheet, *Daschle*, No. 4:04-cv-4177 (D.S.D. Nov. 1, 2004).

3. Interview with Hon. Lawrence L. Piersol, Sept. 10, 2012; see 28 U.S.C. § 122(2) (2012). Tim Reagan interviewed Judge Piersol for this report by telephone.

4. Interview with Hon. Lawrence L. Piersol, Sept. 10, 2012.

5. *Id.*

6. *Id.*

7. *Id.*

8. Minutes, *Daschle v. Thune*, No. 4:04-cv-4177 (D.S.D. Nov. 2, 2004), D.E. 4; see Walker, *supra* note 1.

9. Temporary Restraining Order, *Daschle*, No. 4:04-cv-4177 (D.S.D. Nov. 2, 2004), D.E. 6; Minutes, *supra* note 8; see Mike Madden, *Judge Orders GOP to Halt Poll Tactics*, Argus Leader, Nov. 2, 2004, at 1A.

10. Temporary Restraining Order, *supra* note 9, at 2.

Although Daschle sought statewide relief, Judge Piersol limited the injunction to Charles Mix County, because Daschle's evidence was limited to Charles Mix County.¹¹

Daschle lost his bid for reelection.¹² Noting that the election was over, Judge Piersol dissolved the temporary restraining order on the day after the election;¹³ nine days later, Daschle voluntarily dismissed the action as moot.¹⁴

11. *Id.*; see Chet Brokaw, *Lawsuit on Alleged Voter Intimidation Will Be Dropped*, Aberdeen Am. News, Nov. 9, 2004, at 10A.

12. See Brokaw, *supra* note 11.

13. Order, *Daschle*, No. 4:04-cv-4177 (D.S.D. Nov. 3, 2004), D.E. 9; see Brokaw, *supra* note 11.

14. Voluntary Dismissal, *Daschle*, No. 4:04-cv-4177 (D.S.D. Nov. 15, 2004), D.E. 11.