

Preserving Voting-Machine Data

Burse v. South Carolina Election Commission
(Cameron McGowan Currie, D.S.C. 3:10-cv-1545)

After an unknown candidate defeated a well-known candidate for the Democratic nomination to challenge a Republican incumbent U.S. Senator, a pro se plaintiff filed a federal complaint to enjoin election officials from clearing the primary-election data from the election machines. After he learned more about the election data, the plaintiff dropped his plea for emergency relief and eventually dismissed his action voluntarily.

Subject: Voting procedures. *Topics:* Election errors; pro se party; voting technology.

A pro se plaintiff filed a form federal civil complaint in the District of South Carolina’s Columbia courthouse on June 16, 2010, asking the court to require South Carolina’s election commission to preserve primary-election data in voting machines that were about to be erased for a June 22 runoff election.¹ The plaintiff, a frequent and capable pro se litigator on matters of public concern,² filed with his complaint a hand-written motion for a temporary restraining order.³

South Carolina’s June 8 primary election had delivered a surprising result. Essentially unknown candidate Alvin Greene defeated well-known Vic Rawl as the Democratic nominee to run against Republican Senator Jim DeMint.⁴ Concerns about the reliability of voting machines were among the suspicions about the event.⁵

On the case’s second day, the plaintiff moved to relieve the court of expedited consideration of his complaint, because “all of the voting machine flash card memories have been, or will have been, erased before an order to stop

1. Complaint, *Burse v. S.C. State Election Comm’n*, No. 3:10-cv-1545 (D.S.C. June 16, 2010), D.E. 1.

2. Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.
Tim Reagan interviewed Judge Currie for this report by telephone.

3. Temporary-Restraining-Order Motion, *Burse*, No. 3:10-cv-1545 (D.S.C. June 16, 2010), D.E. 2.

4. See David Slade & Schuyler Kropf, *Greene Certified as Winner*, *Charleston Post & Courier*, June 12, 2010, at A1.

5. See Robert Behre & Schuyler Kropf, *Surprise Winner Greene Adamant About Staying in Senate Race*, *Charleston Post & Courier*, June 11, 2010, at A1; Kate Phillips, *Calls Mount for Inquiry Into Primary in S. Carolina*, *N.Y. Times*, June 11, 2010, at A15; Manuel Roig-Franzia, *Scrutinizing an Election Surprise*, *Wash. Post*, June 15, 2010, at C10; *Senator Wants Voting Machines Impounded*, *Greenville News*, June 15, 2010; Glenn Smith, *Rawl Files Protest in Primary Upset*, *Charleston Post & Courier*, June 15, 2010, at A1.

An analysis by political scientists concluded “that voting patterns in Greene’s victory over Rawl do not exhibit peculiarities and are instead consistent with the types of regularities observed in American elections more generally.” Joseph Bafumi, Michael C. Herron, Seth J. Hill & Jeffrey B. Lewis, *Alvin Greene? Who? How Did He Win the United States Senate Nomination in South Carolina?*, 11 *Election L.J.* 358, 360 (2012).

the erasing can be considered by this court.”⁶ Judge Cameron McGowan Currie granted this motion, noting that the parties agreed to cooperate in devising a plan for compliance with the federal statute requiring preservation of election records.⁷ Judge Currie required from the plaintiff within thirty days either a status report or a voluntary dismissal.⁸

The plaintiff filed a status report on July 19, indicating no resolution of the dispute,⁹ and the defendant filed a motion to dismiss the action on August 20.¹⁰ Judge Currie dismissed it on October 4, finding that the federal statute requiring preservation of election records for twenty-two months did not afford a private right of action.¹¹

Senator DeMint won reelection on November 2.¹²

6. Motion, *Burse*, No. 3:10-cv-1545 (D.S.C. June 17, 2010), D.E. 1; *see also* Continuance Motion, *id.* (June 17, 2010), D.E. 12.

7. Docket Sheet, *id.* (June 16, 2010) (citing 42 U.S.C. § 1974).

8. *Id.*

9. Status Report, *id.* (July 19, 2010), D.E. 19.

10. Motion to Dismiss, *id.* (Aug. 20, 2010), D.E. 23.

11. Opinion, *id.* (Oct. 4, 2010), D.E. 26, 2010 WL 3938390; *see* 42 U.S.C. § 1974 (2012).

12. *See* Schuyler Kropf, *DeMint Wins Second Senate Term*, Charleston Post & Courier, Nov. 3, 2010, at A5.