
BURSUM-BRATTON ELECTION CONTEST

APRIL 29 (calendar day, APRIL 30), 1926.—Ordered to be printed

Mr. KING (for Mr. ERNST), from the Committee on Privileges and Elections, submitted the following

REPORT

[To accompany S. Res. 215]

Your Committee on Privileges and Elections, acting under Senate Resolution No. 19, submitted by Hon. Seldon P. Spencer on March 9, 1925, to investigate the contest of Holm O. Bursum, hereinafter styled contestant, against Sam G. Bratton, hereinafter referred to as the contestee, to determine which was duly elected and is entitled to a seat as Senator from the State of New Mexico for a term of six years beginning March 4, 1925, respectfully submits the following:

Predicated upon a careful review of the pleadings, testimony submitted in the form of affidavits, documents, exhibits, and the several statements made by the attorneys for the contestant and the statement made by the contestee in person, the committee finds that Sam G. Bratton was duly elected to said office for said term.

The election in question was held November 4, 1924. Thereafter, on January 6, 1925, the contestant filed the following notice of his intention to institute this contest, which had been previously served upon the contestee:

Hon. SAM G. BRATTON:

Take notice that the undersigned here calls to your attention and gives formal notice of the undersigned's intention to contest your right to a seat in the Senate of the United States, at the same time lodging a protest against your occupancy of a seat in the Senate of the United States.

Formal petition in contest and protest will subsequently be lodged with the clerk of the Senate of the United States, a copy of which will be seasonably served upon you and when thus served upon you will inform you of the nature of the charges embraced in the contest and protest.

Respectfully,

HOLM O. BURSUM.

On March 10, 1925, the full committee met and considered the notice of intention to contest above referred to. A subcommittee, consisting of Senators Goff, Shortridge, and King, was appointed to

hear and determine any contest that might be filed and make recommendations to the full committee. On March 12, Senator Spencer, then chairman of the full committee, advised the contestant and the contestee that such subcommittee has been selected and requested that the parties file anything they desired to have considered at the earliest possible moment. On March 20, the subcommittee met, prepared and transmitted to the contestant the following communication:

Hon. HOLM O. BURSUM,
Senate Office Building, Washington, D. C.

DEAR SIR: Your formal notice, indicating your intention to contest the right of the Hon. Sam G. Bratton to a seat in the United States Senate, was duly referred to the Committee on Privileges and Elections. This committee, or any subcommittee thereof, has been authorized and directed to investigate any charges or countercharges therein arising, and to sit during sessions of the Senate or in recess of the Senate, and to hold its sessions at such place or places as it shall deem most convenient for the purposes of investigating any matter, fact, or thing touching or affecting the occupancy of a seat by the Hon. Sam G. Bratton in the Senate of the United States.

The Committee on Elections, pursuant to the authority just above mentioned, duly appointed, on March 10, 1925, a subcommittee, consisting of the undersigned, and authorized and directed it to take such step or steps as it might deem necessary to bring such matters to issue and hearing.

As contestant of the right of the Hon. Sam G. Bratton to hold a seat in the Senate of the United States, you are hereby respectfully requested to file your formal petition in contest and protest at the earliest possible date, to the end that the contestee, the Hon. Sam G. Bratton, may likewise be requested to make such answer or reply thereto as he may deem necessary.

It is the purpose of the undersigned, as the duly appointed, authorized, and acting Subcommittee of the Committee on Privileges and Elections, to proceed with all convenient speed, after the matter of such contest and protest is brought to issue, and take each and every step necessary to a full investigation of the matter here involved during the present recess of the Senate, so that the subcommittee may be ready to make its report to the full committee of the Senate upon its reconvening in December, 1925.

The subcommittee was ready at all times following the transmission of such notice to receive any contest filed by contestant and to hear and determine all matters relative to the right of the contestee to occupy a seat in the Senate; that notwithstanding such readiness of the subcommittee and their desire to hear said matter, no contest was filed until the last of October, 1925. A copy thereof was served upon the contestee on November 4. Answer was filed December 18, 1925, and contestee's reply thereto was filed February 5, 1926, thus making up the issues.

The contest shows upon its face that according to the official returns contestant received 54,558 votes and contestee 57,335 votes, thereby making the contestee's plurality over the contestant 2,797; it appears from the contestee's answer, and is conceded in the reply thereto, that the returns from precinct No. 3, of San Miguel County, were changed altered, and mutilated while they were in the custody and possession of the county clerk of said county and before the canvass thereof, by changing the figure 1 in the hundred column to the figure 2 for each and every candidate on the Republican ticket, including the contestant; that the actual vote cast for contestant in said precinct was 185, but that through such change, alteration, and mutilation he was credited with 285, which was included in the official count, thus making the actual plurality of the contestee 2,897.

The petition in contest contained general averments that various employees of the Government and the State, as well as others, voted without possessing the requisite residential qualifications; that

residents of the State who were attending schools and colleges therein voted at the places they were attending school instead of their home precincts; that aliens, minors, and ex-convicts were permitted to vote and certain Indians denied the right; that in one county the county clerk failed to comply strictly with the law in the preparation of the official ballots; and that martial law was improperly declared in one county. A general allegation was made that votes cast for contestant, as well as the candidate on the Progressive ticket, were counted for contestee. Other averments of incidental importance were made.

The answer specifically denied the allegations with regard to votes cast by persons lacking residential qualifications; it raised questions of law respecting the preparation of the ballots above referred to, as well as the right of Indians to vote, and denied all other material allegations. Many hundreds of votes cast for the contestant by persons who were specifically named and identified were then attacked because they voted without being registered, as required by law, and without making and tendering to the judges of election affidavits in accordance with the law of that State; others were challenged because they received assistance in the preparation of their ballots without making the necessary affidavit entitling them to such assistance. Many others were attacked because they lacked residential qualifications, on account of being aliens, minors, ex-convicts, and on other grounds. Other allegations of incidental importance are contained in said answer.

The reply denied the issues of fact and argued the issues of law, but presented no new issues of substance.

A meeting of the subcommittee was held on November 24, 1925, at which the attorney for the contestant stated that a recount of the ballots was all that was relied upon; that the pleading tendered other issues, but that he did not rely upon them, and that if a recount of the ballots did not totally or substantially overcome the contestee's plurality the protest would be dismissed. Another meeting of the subcommittee was held February 5, 1926, at which substantially the same statement was repeated by said attorney. In view of these statements the subcommittee after full argument by one of contestant's attorneys, covering the entire case and the sufficiency of the contestant's pleadings, was of the opinion that the pleading filed by the contestant failed to state grounds justifying the committee in taking steps to impound, open, and recount the ballots cast throughout the State, or for further proceedings, but concluded that the matter should be submitted to the full committee for its consideration. Accordingly, meetings of the full committee were had on the 17th and 26th days of March, 1926, at which said attorney for the contestant was present, as was also the contestee. Said attorney there repeated the statement he had previously made to the subcommittee, namely, that the contestant relied entirely upon a recount of the ballots and that the pleading tendered other issues, but that they were not relied upon; that if such recount failed to totally or substantially overcome contestee's plurality the contest might be dismissed.

The committee adopted the view of the subcommittee as to the insufficiency of the contestant's pleadings but advised contestant's counsel that if he desired he could amend his pleadings so as to set

forth some specific facts or as a bill of particulars showing fraud in the count canvassed and return of ballots or any pertinent and relevant facts which he expected to prove, or that contestant could file affidavits stating such matters and the same would be treated as an amendment to the pleadings. Thereupon contestant's counsel requested 20 days' time within which he proposed to secure and file affidavits showing fraud and facts sufficient to warrant a recount of the ballots, and further stated that if he failed to do so at the expiration of said time the case should be dismissed. Thereupon, the committee granted the request and granted the time asked for.

After the expiration of such period seven affidavits were presented, together with certain documents, much of which was foreign to the subject and related to matters which could not be determined by a recount of the ballots. Two of such affidavits tended to show fraud committed in three precincts in Curry County. When the substance of the two is combined they charge that in precinct 13, 10 votes were cast for the contestant and counted for the contestee; that in precinct 1, 122 Progressive ballots were scratched for the contestant but counted for the contestee; that in said precinct 85 Democratic ballots were scratched for the contestant but counted for the contestee; that the tallies in said precinct were kept on separate paper from the official poll books; that there is confusion and doubt with reference to the variance between the tallies and the certificate, under one view such variance reaches the maximum of 225, under another view it is 75; that in precinct 9 of said county 50 ballots cast for the contestant were counted for the contestee and that 45 were declared to be mutilated when they should have been counted for the contestant. One of these affiants undertook to state facts occurring in the count at three separate precincts. The other does not purport to know any facts except as to one precinct. This is the only attack made upon the entire State, consisting of 31 counties and approximately 715 precincts.

Two other affidavits were presented with certain photographic copies of excerpts from the poll books of precinct 3 of Quay County. These affidavits established the authenticity of such photographs and argued that they tended to show that 65 votes cast in such precinct for A. C. Voorhees, candidate for United States Senator on the Progressive ticket, were counted for the contestee. One of these affidavits sets forth that a careful audit of all the poll books, tallies, and other records of such election in the office of the secretary of state, made soon after the election was held, shows that various discrepancies between the tallies and the certificates throughout the entire State give a gain for the contestant of 217 votes, if the tally marks control over the certificates; that the State canvassing board canvassed the result from the certificates furnished by the various county canvassing boards; that had such State canvassing board canvassed from the duplicate poll books the contestee would have sustained a loss of 516. The substance of such affidavits was embodied in an amended contest filed April 22, 1926.

The contestee interposed a demurrer to such facts upon the ground that if they were true they could not change the result of the election, but could only decrease the size of his plurality. At the same time contestee submitted a joint affidavit made by two election judges of the above-mentioned precinct 3, in Quay County, one being a Republican and the other a Democrat, in which it is affirmatively stated

