

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CIVIL ACTION NO: 4:05CV33TSL-AGN

IKE BROWN, individually and  
in his official capacities  
as Chairman of Noxubee County  
Democratic Executive  
Committee and Superintendent  
of Democratic Primary  
Elections; NOXUBEE COUNTY  
DEMOCRATIC EXECUTIVE  
COMMITTEE; CARL MICKENS,  
individually and in his  
official capacities as  
Circuit Clerk of Noxubee  
County, Superintendent  
of Elections,  
Administrator of Absentee  
Ballots, and Registrar of  
voters; NOXUBEE COUNTY  
ELECTION COMMISSION;  
NOXUBEE COUNTY, MISSISSIPPI;  
and those acting in concert

DEFENDANTS

DEFENDANT NOXUBEE COUNTY ELECTION COMMISSION'S ANSWER  
AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT

Defendant Noxubee County Election Commission (NCEC), by and through counsel of record, files this its answer and affirmative defenses to plaintiff's first amended complaint and states, as follows:

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

This action is barred by all applicable statute of limitations

under Mississippi law.

THIRD AFFIRMATIVE DEFENSE

The Voting Rights Act of 1965, as amended, is inapplicable to facts and circumstances alleged in the complaint.

FOURTH AFFIRMATIVE DEFENSE

Federal court is not the appropriate forum for garden variety election contests. This Court lacks jurisdiction to intervene in state election procedures. Mississippi has a procedure for filing election contests. Miss. Code Ann. § 23-15-927 (Supp. 2003).

FIFTH AFFIRMATIVE DEFENSE

The allegations of isolated and episodic election irregularities, errors, violations and chicanery set forth in plaintiff's complaint are legally insufficient to constitute a violation of the Voting Rights Act of 1965, as amended.

SIXTH AFFIRMATIVE DEFENSE

Due process claims of infringement of voting rights are not actionable in federal court because of our federal systems' recognition that states are primarily responsible for regulating their elections. Welch v. McZenie, 765 F.2d 1311 (5<sup>th</sup> Cir. 1985).

ANSWER

Without waiving any of the foregoing affirmative defenses, defendant NCEC, responds to the specific allegations of the complaint as follows:

1. Defendant NCEC admits the allegations contained in paragraph 1 of plaintiff's complaint, but deny that plaintiff is entitled to any of the relief sought.

2. Defendant NCEC admits the allegations contained in paragraph 2 of plaintiff's complaint.

3. Defendant NCEC admits the allegations contained in paragraph 3 of plaintiff's complaint.

4. Defendant NCEC admits the allegations contained in paragraph 4 of plaintiff's complaint.

5. Defendant NCEC admits the allegations contained in paragraph 5 of plaintiff's complaint.

6. Defendant NCEC admits the allegations contained in paragraph 6 of plaintiff's complaint except NCEC denies that Ike Brown is superintendent of election.

7. Defendant NCEC admits the allegations contained in paragraph 7 of plaintiff's complaint except NCEC denies that Carl Mickens is superintendent of non-primary elections.

8. Defendant NCEC admits the allegations contained in paragraph 8 of plaintiff's complaint.

9. Defendant NCEC denies the allegations contained in paragraph 9 of plaintiff's complaint.

10. The conclusory allegations of paragraph 10(a) to (l) are denied.

11. Defendant NCEC denies the allegations contained in paragraph 11 of the plaintiff's complaint.

12. Defendant NCEC denies the allegations contained in paragraph 12 of plaintiff's complaint.

13. Defendant NCEC admits the allegations contained in paragraph 13 of plaintiff's complaint.

14. Miss. Code Ann. § 23-15-715 (2004) speaks for itself.

15. Miss. Code Ann. § 23-15-715 (2004) speaks for itself.

16. Miss. Code Ann. § 23-15-715 (2004) speaks for itself.

17. Miss. Code Ann. § 23-15-715 (2004) speaks for itself.

18. Defendant NCEC denies the allegations contained in paragraph 18 (a) - (g) of plaintiff's complaint.

19. Defendant NCEC denies the allegations contained in paragraph 19 of plaintiff's complaint.

20. Defendant NCEC denies the allegations contained in paragraph 20 of plaintiff's complaint.

21. Defendant NCEC denies the allegations contained in paragraph 21 of plaintiff's complaint.

22. Defendant NCEC denies the allegations contained in paragraph 22 of plaintiff's complaint.

23. The conclusory allegations of paragraph 23(a) and (b) are denied.

24. Defendant NCEC denies the allegations contained in paragraph 24 of plaintiff's complaint.

25. The conclusory allegations of paragraph 25(a ) and (c) are denied.

26. Defendant NCEC admits the allegations contained in paragraph 26 of plaintiff's complaint.

27. Section 2 of the Voting Rights Act of 1965, as amended speaks for itself.

28. Defendant NCEC denies the allegations contained in paragraph 28 of plaintiff's complaint.

29. Defendant NCEC denies the allegations contained in paragraph 29 of plaintiff's complaint.

30. Defendant NCEC acknowledges plaintiff realleges and incorporates by reference, but deny plaintiff is entitled to any of the relief sought.

31. Section 2 of the Voting Rights Act of 1965, as amended speaks for itself.

32. Defendant NCEC denies the allegations contained in paragraph 32 of plaintiff's complaint.

33. Defendant NCEC denies the allegations contained in paragraph 33 of plaintiff's complaint.

34. Defendant NCEC acknowledges plaintiff realleges and incorporates by reference, but deny plaintiff is entitled to any of the relief sought.

35. Section 11(b) of the Voting Rights Act of 1965, as amended speaks for itself.

36. Defendant NCEC denies the allegations contained in paragraph 36 of plaintiff's complaint.

37. Defendant NCEC denies the allegations contained in paragraph 37 of plaintiff's complaint.

38 Defendant NCEC denies the allegations contained in paragraph 33 of the plaintiff's complaint.

39. Section 11(b) of the Voting Rights Act of 1965, as amended speaks for itself.

40. Defendant NCEC denies the allegations contained in paragraph 40 of the plaintiff's complaint.

41. Defendant NCEC denies the allegations contained in paragraph 41 of the plaintiff's complaint.

42. Defendant NCEC denies that plaintiff is entitled to any of the relief prayed for.

SO ANSWERED, this the \_\_\_\_ day of August, 2006.

Respectfully submitted,

NOXUBEE COUNTY ELECTION COMMISSION,  
Defendant

s/Ellis Turnage  
ELLIS TURNAGE  
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Attorney for Defendant Noxubee  
County Election Commission

CERTIFICATE OF SERVICE

I, Ellis Turnage, Attorney for defendant Noxubee County Election Commission, do hereby certify that I electronically filed this with the Clerk of the Court using the ECF system which sent notification of such filing to the following: Hon. Christopher Coates, and Hon. Wilbur O. Colom. I hereby certify that I have mailed by United States Postal Service the document to the following non-ECF participants.

Hon. Dunn Lampton  
U.S. ATTORNEY'S OFFICE  
188 E. Capitol Street, Suite 500

Jackson, Mississippi 39201

THIS, the \_\_\_\_ day of August, 2006.

s/Ellis Turnage

ELLIS TURNAGE