

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

Defendant Noxubee County Election Commission (NCEC), by and
through counsel of record, files this its answer and affirmative
defenses to plaintiff's 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 (5th 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. Section 2 of the Voting Rights Act of 1965, as amended speaks for itself.

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

27. Defendant NCEC denies the allegations contained in paragraph 27 of plaintiff's complaint.

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

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

30. Defendant NCEC denies the allegations contained in paragraph 30 of plaintiff's complaint.

31. Defendant NCEC denies the allegations contained in paragraph 31 of plaintiff's complaint.

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

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

34. Defendant NCEC denies the allegations contained in paragraph 34 of plaintiff's complaint.

35. Defendant NCEC denies the allegations contained in paragraph 35 of plaintiff's complaint.

SO ANSWERED, this the 19th day of July, 2005.

Respectfully submitted,

NOXUBEE COUNTY ELECTION COMMISSION,
Defendant

s/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 19th day of July, 2005.

s/Ellis Turnage
ELLIS TURNAGE