

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

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CIVIL ACTION NO. 4:05CV33TSL-LRA

**IKE BROWN; NOXUBEE COUNTY
DEMOCRATIC EXECUTIVE COMMITTEE;
NOXUBEE COUNTY ELECTION COMMISSION**

DEFENDANTS

**MEMORANDUM OF IKE BROWN AND NOXUBEE COUNTY
DEMOCRATIC EXECUTIVE COMMITTEE REGARDING
ENTRY OF PRELIMINARY INJUNCTION ORDER
AND PERMANENT INJUNCTION**

The parties appeared before the Court on July 30, 2007, on the motion of the United States for preliminary injunction halting the Democratic Primary scheduled for August 7, 2007, as to local candidates. After a half-day hearing, the United States withdrew its motion for preliminary injunction and the parties, at the direction of the Court, conferred regarding actions on eminent elections and the submission of memorandums regarding permanent relief. As a result of those consultations, an agreed order was submitted to the Court delaying the run-off election.

Consistent with the consultations of the parties and the order of the Court, Ike Brown and the NCDEC submit to this Court their views regarding injunction relief. The comments herein are based upon the assumption that the order that will be submitted by the United States on August 13, 2007, is in essentially the same form, format and content as the order submitted for the preliminary injunction hearing. These Defendants assume the government would submit an order that

incorporated areas of agreement. However, these Defendants have received no such proposed order and must assume all disputes remain.

ARGUMENT

Counsel for Defendants Brown and NCDEC makes these comments, by way of argument, since they will not have the opportunity to appear before the Court in connection with these pleadings.

The Court will recall, in opening argument, counsel for these Defendants made the following remarks:

There is no relief that my clients fear. There is no protection of the rights of whites that they would shun. For every two steps they take, my clients are prepared to take eight. My clients know that they want honest elections. Anything less represents danger to them as a national minority. So we come here to try to make things better and to remedy fears, whether real or imagined.

The trial having been concluded and appeal initiated, these Defendants reaffirm that position. It is indeed the hope of these Defendants that the Court can do something that will make the racial situation better. But counsel would like to make some observations about this County. Back in 1977, as a lawyer just out of law school, I came to Columbus, Mississippi, and immediately became involved in Noxubee County, where a white minority controlled the county. Indeed, I came to know many of the current leaders as they attended a foundation-funded leadership training program to help develop political leaders in black majority counties then ruled by a white minority. Over the next 20 years, I observed the changes.

It has only been 12 years since the black majority in Noxubee County elected the leaders that control the political bodies. One could see an evolution over the decades, and as my career comes

to an end, politics had evolved in the county from an insurgent black attempt to oust white minority rule to successful political control by the black majority.

Politics were evolving during the 2003 Primaries from a solid black against white voting constituency to a division among the black leaders based upon policies and alliances not necessarily defined by race. This is unquestionably evidenced by the attempt in 2004 for one faction, led by blacks, to oust from power Defendant Brown as Chairman of the NCDEC. Defendant Brown argues that he out-maneuvered them in their attempt to oust him. The Court found that Mr. Brown used deceit to win. His opponents clearly did not pursue that effort, but simply decided to wait four years and return better organized and more sophisticated in pursuing the caucus process. That is how Noxubee African-Americans have dealt with the struggle to gain political power over the last 40 years. Not having the Justice Department to come and intervene on their behalf when they have lost (through what they believe were devious means), they have simply waited four years and tried it again and again until they were successful.

Unfortunately, this intervention by the Justice Department has probably done more harm than good. It has renewed the old battles, reconstructed the old racial alliances, and reminded everyone that divisions along racial lines are a primary focus. Black voters look at the reality of what has happened over the last 40 years in this area. They know that no white majority district ever votes a black candidate into office. Here, they know that Noxubee County has often elected a white candidate in a black majority district, as evidenced by the successful candidacy of two white candidates for Supervisor, who were in office as late as 2003.

The evolutionary process in politics requires that voters and candidates be allowed time to develop their own new alliances. If white candidates emerge in a black majority district, they must

be white candidates who are capable of doing as Eddie Coleman and Johnny Heard have done and appeal to voters across racial lines. If a white candidate is unable to do that, he does not have the requisite political skills to serve in a black majority district. Many blacks complain that in Mississippi, with 36% black population, and in many counties where the black population is 35-40%, that no black officials have been elected. On its face, one would be sympathetic to those complaints, but in reality the only successful candidates will be the black candidates who have the skill to attract enough white voters to win. If he does not have that appeal, then he does not have the political qualities to serve.

Sometimes, it simply takes time. Intervention here by the Justice Department can have unintended results; for you cannot force one group of voters to support a candidate of an opposite race. Politics is one of those processes where there is little anyone can do except await the arrival of a political figure who can mold together alliances that break down old barriers.

Politics is also an area where courts should be most hesitant to intervene. The United States proposes to place restrictions upon Defendant Brown and those who they believe are allied with him, so as to render them impotent in campaigning and the political processes. They propose to place restrictions upon them that will make candidates that they support unable to use them within a campaign, thereby letting the United States guarantee their opponent's victory. Ironically, that is quite similar to what dictators like Robert Mugabe do in Zimbabwe. It is not that he prohibits political opposition; what he does is place campaign restrictions upon them that makes their efforts to win ineffective.

We simply have to accept that which makes us feel uncomfortable as part of our First Amendment and political process. There is no doubt that much of Ike Brown's rhetoric frightens

some white voters, appears to have racial appeal, and suggested that he has, as the Court said, “an agenda” to elect black officials. However, Thomas Jefferson was accused of having an illegitimate black child when he ran for President, and as recently as 1999, race was used in the South Carolina Republican Primary as John McCain claimed the Bush campaign circulated rumors that he had an illegitimate black child, when in fact he had adopted a Filipino child. Even now, claims are being widely circulated against Barak Obama that he is a Muslim and that he had been trained in a radical Muslim school, all in hope of using religious prejudice as a basis for voting against him. Should the courts get involved? Not in a democracy.

The best approach is to allow the political process in Noxubee County to evolve and mature. It will take generations for the memories of segregation and political oppression to die among blacks. There are whites that will never accept the dominance of the black voting majority, and there are blacks who will never forgive the actions of the white minority prior to the 1990s. But there will emerge a generation that will put this behind them, unless we manage to make it a lingering issue in politics.

Your Honor may recall that I predicted that there would be three run-off elections, with white candidates against black candidates. It has come true. Let me also predict that unless there is not only the reality, but the appearance, that all are not being treated fairly, it will set back the evolution of politics in Noxubee County for decades. To load the deck in favor of the white candidates would ignite another 20 year struggle.

Brown and NCDEC has taken substantial voluntary efforts. They have never expressed an unwillingness to conform to the Court orders. There will be caucuses in February of 2008, and any coalition of voters who are willing to work hard can control the Democratic Party. This is usually

a very small group of people. They will need be prepared for competition and know the rules. It will not be handed to them; they must earn it.

Brown and the NCDEC have never violated a court order, and it cannot be presumed they would do so. Whatever this Court orders in relief will be obeyed by these Defendants.

GENERAL PROVISIONS

The language proposed by the United States appears to be consistent with the Court's opinion, with the exception that the Court did not make any finding with respect to Federal or State elections and that the general relief provided therein should be limited to local primary elections for County offices, and Federal, State and general elections should be excluded from the order.

REFEREE ADMINISTRATOR

Defendants Brown and NCDEC would suggest to the Court that the Referee be appointed for the limited purpose to report to the Court whether or not it has observed any violations of the Court order during the primary elections. Defendants recognize that it is impossible for the Court to personally observe election processes. The Referee should insure the non-discrimination.

The Court should assume that the Defendants will obey his Court Order. There is no reason to believe that they would not, considering the numerous voluntary acts they have taken as a result of the Court entering an opinion. Without any order or injunctive relief they have sought to comply. The conduct of the August 7, 2007, Primary suggests that the Defendants will faithfully attempt to comply with the Order of the Court.

Attached is a copy of an Affidavit which alerts the Court to an important consideration in a democracy regarding the separation of power. It is incumbent upon the Court to avoid injecting itself into the political process. Here, the Court Orders proposed by the United States would insure the

the virtual takeover of the Democratic Party by a neutral referee, of no partisan persuasion. It would be tantamount to the abolition of the Democratic Party in the County. It would lead to a perception, undesirable for the Justice Department, the Court, and the Referee, as entities associated with political retribution, rather than enforcement of judicial fairness.

We would note to the Court that even during the most traumatic days of desegregation of the public schools, no public school system was ever ordered taken over by a referee or administrator in the State of Mississippi. When blacks were barred from voting, no court ever removed any official from his duties. The Court has the contempt powers to reach out and enforce its orders through means that are not disruptive to the political process itself.

The referee would play an important role as an observer for and reporter to the Court. It is difficult in the heat of election day and election contests to get unbiased reporting. These Defendants would welcome the presence of someone who did not disrupt the operations of the Democratic Party, but did report back to the Court to inform the Court as to whether or not violations of the Voting Rights Act were occurring. The Court has remedial power to order a new election if the Defendants violate the law.

POLL OFFICIAL TRAINING

On its face, the Defendants have no objection to the distribution of the remedial order and the most recent version of the Mississippi Secretary of State Election Handbooks. However, the inclusion of the opinion and training on the contents of the opinion will lead to subjective interpretations that will only lead to misinformation and conflict. If there is to be any education as to the Court's opinion and training as to such, then it should be the Court that undertakes that

responsibility if it thinks it is necessary. The remedial order is really the guidance to be given the poll workers.

As to the language of the United States regarding voter assistance, these Defendants have no objections since this is currently the law.

As to the limitations on Defendant Brown's participation in absentee ballots, these Defendants would object to limiting Brown's collection of absentee applications and ballots. First, there was no evidence presented that Mr. Brown actually did any such collections of absentee ballots or applications during the Primary Elections. There being no findings against him on this issue, it seems inappropriate to restrict his ability to do so. Further, any limitations upon any Notary Public paid for by Mr. Brown would be a denial of due of process to those individuals, since no evidence was presented against them and none of them were parties to the proceedings, therefore, not subject to the imposition of any injunctive relief.

Defendants would object to paragraph 17 of the Order, which restricts Brown and members of the NCDEC from being present in the Clerk's office two weeks prior to the Primary Election with limited exceptions. First, there are no findings in the Court's Order to suggest that this request is within the scope of the appropriate relief. Second, members of the Democratic Executive Committees are not parties to this proceeding and cannot be personally enjoined. Third, any such restriction would give an undue advantage to the opponents of Brown during the election process by so limiting his participation as to render him defenseless in the competition for electoral success. The government recognizes that it cannot prohibit Brown from participating in the electoral process, but it attempts to achieve its goal of removing him from that process by placing upon him restriction that would render his efforts ineffectual and give extreme advantage to his opponents.

Paragraph 18 suggests that conflicts of interest be eliminated in the absentee ballot process by restricting those who notarize absentee ballots from also working as poll workers who evaluate absentee ballots. While this seems to be a perfectly logical suggestion, it is not consistent with Mississippi State Law and there is nothing in the Court's opinion that warrants the imposition of this restriction.

Paragraph 19 attempts to restrict Brown and members of the Democratic Executive Committee from being present in the polls. One, it imposes upon them restrictions that violate their rights under the First Amendment. Two, it gives their political opponents an undue advantage and renders their participation in the political process ineffectual. Three, it achieves indirectly what the government could not achieve directly, which is the elimination of Brown from the political process in violation of his First Amendment rights by placing restrictions upon him that make his equal participation impossible. If these restrictions are placed upon him, the same should be placed upon any persons favoring candidates not favored by Brown or members of the NCDEC.

Paragraph 20 of the proposed Order does not apply to Brown or the NCDEC.

Brown and NCDEC do not have any objections to paragraph 21 of the proposed Order.

Defendants Brown and NCDEC have no objections to paragraph 22 of the proposed Order, provided it is limited to written complaints. As volunteers, they do not wish to undertake the responsibility of writing down someone else's complaint and reporting it to any third party. If a party believes that they have a meritorious complaint, they should at the minimum be required to write that complaint down.

Paragraphs 23-26 do not apply to Brown or the NCDEC.

Defendants Brown and NCDEC have no objections to paragraphs 27 and 28 of the proposed Order.

Paragraph 29 of the proposed Order appears to be directed at the finding that Mr. Brown recruited a person to run for office who lived outside the District. However, it appears to be excessively broad and seems to be directed at a nebulous restriction on recruiting “ineligible” persons. If the Court finds this merits injunctive relief, which the Defendants suggest that it does not, it should be limited to “knowingly” recruiting people who do not meet the residency requirements for running for the office they seek purely for the purpose of defeating white candidates.

Defendants Brown and NCDEC have no objection to paragraphs 30 and 31 of the proposed Order.

Defendants Brown and NCDEC object to paragraph 32 of the proposed Order. There was no finding that this occurred, so it appears inappropriate for the Court to enter an injunction to prohibit an illegal act when there is no evidence it occurred.

Defendants Brown and NCDEC believe that paragraphs 43 and 44 of the proposed Order are appropriate if they appear as the parties agreed in their conference.

Defendants believe that this Order should remain in effect only for two years as a reasonable time for the Court to evaluate the progress being made. The Court should be cognitive that this is an imposition upon the most sacred right in a democracy: the right to participate in an electoral process. It is not an issue of school, employment, or other private activity. It goes to the heart of a democracy and to disadvantage one group of competitors by legal fiat as against their opponents in the political process presents grave hazard to the perception and reality of equal participation. While

the government seeks to encourage white participation and success in the political process, they should not do so by decreasing black participation and success in the political process.

Respectfully submitted this 13th day of August, 2007.

IKE BROWN and the NOXUBEE COUNTY
DEMOCRATIC EXECUTIVE COMMITTEE

BY: /s/ Wilbur O. Colom
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CERTIFICATE OF SERVICE

I, Wilbur O. Colom, hereby certify that on August 13, 2007, I electronically filed the foregoing *Memorandum of Ike Brown and Noxubee County Democratic Executive Committee Regarding Entry of Preliminary Injunction Order and Permanent Injunction* with the Clerk of the Court using the ECF system which sent notification of such filing to all counsel of record.

/s/ Wilbur O. Colom
Wilbur O. Colom

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