

officials in Macon, Mississippi, including members of Defendant Election Commission, to discuss the possibility of settlement.

After the filing of the complaint and the consent decree¹ on February 17, 2005, the United States attempted to perfect service of the summons and complaint upon the Election Commission by serving those documents by mail upon Noxubee County Attorney Christopher Hemphill. However, Mr. Hemphill notified attorneys for the United States that the Election Commission had specifically informed him that he was not authorized to accept service of process on its behalf in this case. Subsequently, Attorney Wilbur Colom who represents Defendant Ike Brown and the Noxubee County Democratic Executive Committee in this case indicated to attorneys for the United States that he might represent the Election Commission in this case, but prior to filing the answer for his two clients, Attorney Colom notified attorneys for the United States that the Election Commission had not retained him to represent it. Accordingly, the United States had Defendant Election Commission served with a summons and complaint by a United States Marshal on June 13, 2005.

Pursuant to Rule 12(a)(A)(1), F.R.Civ.P., Defendant Election Commission was required to file its answer by July 5, 2005. As of the date of the filing of this motion, the Election Commission has not filed an answer to the complaint or any other type of responsive pleading, and neither has it contacted attorneys for the United States and attempted to obtain an extension of time in which to file its answer. As can be seen from this sequence of events, these are not circumstances in which this the Election Commission was surprised by the filing of this lawsuit, and therefore could not within the twenty days period find an attorney to file its answer. Indeed, the Election Commission

¹ The February 17, 2005 consent decree in this case was signed by Noxubee County, Noxubee Circuit Clerk Carl Mickens, and the United States. Defendants Noxubee County Election Commission, Ike Brown, and the Noxubee County Democratic Executive Committee did not enter into the consent decree.

has been on notice since mid-December of last year that it would be named as a defendant in the present litigation. Since that time the Election Commission has attempted to avoid service by not authorizing the Noxubee County Attorney to accept service on its behalf and in deciding not retain another attorney [i.e., Mr. Colom] to represent them in this action. Having now had personal service made upon it by a federal marshal, the Election Commission has failed to answer the complaint in the time period provided for by law. Under these circumstances the United States submits that good cause exists for the entry of a default judgment against Defendant Election Commission as to liability issues in this case.

In light of the fact that the United States seeks only declaratory and injunctive relief in this case, no default judgment for damages is sought. Further, the United States requests that if its motion for default judgment is granted, it be allowed during the course of this litigation to move for a remedial order that will address specific election-related, injunctive relief against the Election Commission. Moreover, the United States requests that in the event that its motion for default judgment is granted, that the Election Commission be required to respond to discovery directed to it, including the taking of depositions of its members and production of documents in its possession.

On the basis of the above showing, the United States submits that its motion for default judgment should be granted.

Respectfully submitted,

ALBERTO R. GONZALES

Attorney General

BRADLEY J. SCHLOZMAN
Acting Assistant Attorney General
Civil Rights Division

DUNN O. LAMPTON
United States Attorney,
Southern District of
Mississippi

JOHN K. TANNER
Chief, Voting Section

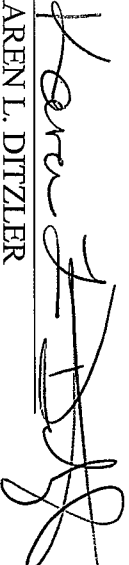

CHRISTOPHER COATES
Principal Deputy Chief
Voting Section

KAREN L. DITZLER
J. CHRISTIAN ADAMS
Attorneys, Voting Section
Department of Justice
Civil Rights Division
Voting Section
950 Pennsylvania Ave. NW
Room 7255 - NWB
Washington, D.C. 20530
(202) 307-2932

CERTIFICATE OF SERVICE

I hereby certify that on July 15, 2005, I served a true and correct copy of the foregoing Memorandum in Support of Motion for Default Judgment, via U.S. Mail to the following defendants at their addresses of record:

Christopher D. Hemphill
Noxubee County Attorney
Dunn, Webb & Hemphill, P.A.
214 5th St. South
P.O. Box 1428
Columbus, MS 39703-1428



KAREN L. DITZLER
Attorney, Voting Section
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
(202) 616-4349