

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

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 4:05-cv-33 (TSL/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 the Circuit Clerk of Noxubee County,)	
Superintendent of Elections, Administrator)	
of absentee ballots and Registrar of voters;)	
the NOXUBEE COUNTY ELECTION)	
COMMISSION; NOXUBEE COUNTY,)	
MISSISSIPPI; and those acting in concert,)	
)	
Defendants.)	
_____)	

**MEMORANDUM OF THE UNITED STATES IN SUPPORT OF THE MOTION
FOR LEAVE TO FILE AN AMENDED COMPLAINT**

I. Claims and procedural history.

This case has been brought by the United States of America, through the Department of Justice, pursuant to the Voting Rights Act, as amended, 42 U.S.C. § 1973, *et seq.* The complaint alleges that the defendants Ike Brown, the Noxubee County Democratic Executive Committee, the Noxubee County Election Commission, Noxubee County, Noxubee County Circuit Court Clerk Carl Mickens and unnamed individuals

acting in concert with them have violated Sections 2 and 11(b) of the Voting Rights Act. In addition to other claims, the complaint alleges that in violation of Section 11(b) of the Act, the defendants have intimidated, threatened and coerced voters. The complaint alleges a variety of practices by the defendants to deny rights secured by the United States Constitution and the Voting Rights Act.

The United States' original complaint included allegations against defendant Carl Mickens, individually and in his official capacity as Clerk of Circuit Court in Noxubee County and defendant Noxubee County. These two defendants entered into a settlement and Consent Decree with the United States on February 17, 2005. The United States seeks leave to file an amended complaint that clarifies and amplifies the allegations that the defendants Brown and the Noxubee County Democratic Executive Committee violated Sections 11(b) of the Voting Rights Act. Moreover, the United States seeks to file an amended complaint to include allegations based on facts previously unknown to the plaintiff or occurring subsequent to the filing of the original complaint. Specifically, the United States seeks to add paragraphs 24, 25 and 38-41 as described in the First Amended Complaint of the United States and attached as Exhibit A to the Motion of the United States of America for Leave to File Amended Complaint.

II. The amended complaint clarifies and amplifies claims already made and alleges new claims previously unknown to the plaintiff or occurring subsequent to the filing of the complaint.

The motion seeking leave to file an amended complaint has three parts. First, the United States seeks to amend the complaint to include violations of the Voting Rights Act that occurred in elections subsequent to the filing of the original complaint. Second, the

United States seeks to amend the complaint to include past violations of the Voting Rights Act that were discovered after the original complaint was filed. Third, the United States seeks to amend the complaint to amplify and clarify violations of Section 11(b) of the Voting Rights Act by Brown and the Noxubee County Democratic Executive Committee in order for those specific claims to be differentiated from the general averments against all defendants in the original complaint, including those defendants who entered into a consent decree. Thus, if this amendment is allowed there will be no question that defendants Brown and the Noxubee County Democratic Executive Committee will be on clear notice that Section 11(b) claims are made against them as well as the other defendants.

III. Granting leave to amend the complaint would cause no delay or prejudice and would result in a more complete hearing of claims.

Rule 15(a) states "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The Supreme Court relies on five factors in determining whether to deny leave to amend a complaint: "undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, [and] futility of the amendment. . . ." Foman v. Davis, 371 U.S. 178, 182 (1962). Absent such factors, "the leave sought should, as the rules require, be freely given." Id.

In the instant case, there is no undue delay. Trial has not been set. Discovery has not commenced. No motions have been heard. The motion to amend was timely filed.

Furthermore, the allegations that the defendants violated Section 11(b) of the Voting Rights Act were included in the original complaint. New facts have come to light that mirror a statutory cause of action about which defendants were already notified.

Moreover, there is no bad faith. In fact, the amendment plaintiff seeks clarifies and simplifies the pleadings. This may create judicial economy beneficial to all parties and this Court. Next, no prior amendments have been sought and thus the United States does not seek to "cure deficiencies." Defendants are not prejudiced by granting leave to amend the complaint because defendants had notice of the general averments pertaining to Section 11(b) violations in the original complaint. Lastly, in no circumstance could the amendments proposed be considered futile.

While it is within the discretion of this court to grant leave to amend, "[i]n the context of motions to amend pleadings, 'discretion' may be misleading, because Fed. R. Civ.P. 15 (a) 'evinces a bias in favor of granting leave to amend.' Martin's Herend Imports v. Diamond & Gem Trading, 195 F.3d 765, 770 (5th Cir.1999) (quoting Dussouy v. Gulf Coast Inv. Corp., 660 F.2d 594, 597 (5th Cir. Nov.1981)). Rule 15(a) states that leave to amend 'shall be freely given when justice so requires.'" Rosenzweig v. Azurix Corp., 332 F.3d 854, 863 (5th Cir. 2003).

Because allowing an amendment would result in a more complete adjudication of claims brought by the United States and no prejudice or delay would result from an amendment, leave to amend should be granted.


Respectfully Submitted,

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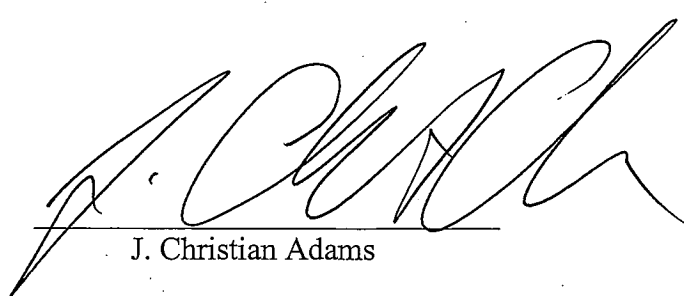


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CERTIFICATE OF SERVICE

I hereby certify that on, July 28 2005, I electronically filed the foregoing Memorandum with the Clerk of Court using the ECF system which sent notification of such filing to Wilbur O. Colom, Esq. and Kerri Woodrick, Esq. of the Colom Law Firm, LLC, 406 3rd Avenue North Columbus, MS 39703, and Ellis Turnage, Esq., Post Office Box 216, 108 North Perman Avenue, Cleveland Mississippi. I further certify that I have mailed by United States Postal Service the document to the following non-ECF participant:

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