

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

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION
)	NO. 4:05-cv-33 (TSL/LRA)
)	
IKE BROWN, et al.,)	
)	
Defendants.)	
_____)	

**UNITED STATES’ MOTION FOR PERMANENT INJUNCTIVE RELIEF AGAINST
DEFENDANTS IKE BROWN, THE NOXUBEE COUNTY DEMOCRATIC EXECUTIVE
COMMITTEE, AND THE NOXUBEE COUNTY ELECTION COMMISSION**

Plaintiff United States of America respectfully moves this Court to enter remedial relief, pursuant to this Court’s June 29, 2007 Memorandum Opinion and Order, and requests that the Court order the following:

1. Defendant Brown, Defendant Noxubee County Democratic Executive Committee (“NDEC”), and Defendant Noxubee County Election Commission (“the Election Commission”), their agents, employees, contractors, successors, and all other persons representing the interests of the Defendants should be PERMANENTLY ENJOINED from:

(a) imposing any “voting qualification or prerequisite to voting” or applying any “standard, practice, or procedure . . . in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color,” 42 U.S.C. § 1973 (a); or

(b) maintaining an electoral system or election-related infrastructure which, based upon the totality of the circumstances, is “not equally open to participation by members of a class of citizens . . . in that its members have less opportunity than other members of the electorate

to participate in the political process and to elect representatives of their choice,” 42 U.S.C. § 1973(b).

2. The terms of this Order should apply to all federal, state, and local Democratic primary elections. In the event that Defendants, including the Election Commission, enter into an election services contract with any other entity, political subdivision, or political party to conduct an election on behalf of that entity, Defendants should provide copies of this agreement and require such other entity to agree to abide by the terms of this Order as if such entity were a party to this action. Consistent with such a responsibility, each such entity should be required to comply fully with the Voting Rights Act.

Responsibilities of the Referee-Administrator

3. Pursuant to the Court’s inherent equitable powers and the provisions of Fed. R. Civ. P. 53, within seven days of this Order, the parties should submit recommendations for an individual to be appointed by this Court to act as a Referee-Administrator to supervise the implementation of the remedies contained in this Order.

4. The Referee-Administrator should serve as the Superintendent of Elections for all Democratic Primary and Democratic runoff elections through November 20, 2012. Should a court proceeding or election challenge to a Democratic Primary or runoff result in the holding of a special election, the Referee-Administrator should also administer such election.

5. In serving as the Superintendent of Elections, all electoral duties of the Chairman of the Noxubee County Democratic Party and the NDEC should be executed by the Referee-Administrator. These duties would include, but would not be limited to, the following: certification of candidates, the appointment of poll officials, the assignment of poll officials to the various voting

precincts, distribution of regular ballots and ballot boxes containing cast absentee ballots, supervision of the polling locations and poll officials, and certification of election results.

6. The Circuit Court Clerk should continue to be the administrator of absentee ballots in Noxubee County elections pursuant to Mississippi law and the terms of the February 17, 2005 consent decree in this case. The Referee-Administrator should have full access to the Circuit Clerk's office and have the authority to veto any policy or procedure of the Circuit Clerk in the event that the Referee-Administrator and the Circuit Court Clerk materially differ concerning what constitutes the lawful administration of absentee ballots.

7. The Referee-Administrator should be vested with power to appoint poll managers and workers who he deems suitable to conduct poll activities, to seek to recruit members of all races, and shall not discriminate on the basis of race.

8. In the event of an election contest, the Referee-Administrator should preside over the hearing of the contest and should independently render a decision regarding the contest.

9. The Referee-Administrator should perform his or her duties objectively and should not exercise powers beyond those delegated by the Court. When conducting hearings and investigations, he or she should not consider matters that go beyond superintending compliance with the District Court's decree.

10. The Referee-Administrator should be required to submit a public filing to the Federal District Court Clerk after each election, detailing actions taken in furtherance of his or her powers.

11. The Defendants should not interfere or attempt to interfere in any way with the responsibilities of the Referee-Administrator.

Review of Ballots and Challenges to Ballots

12. Statutorily authorized poll watchers and candidates should “have the right to reasonably view and inspect the ballots when they are taken from the box and counted.” Miss. Code Ann. § 23-15-581. Poll managers should allow challengers to view the counting of the ballots from a “suitable position” and allow them to “carefully inspect the manner” in which the election is conducted. Miss. Code Ann. § 23-15-577. Candidates and their poll watchers “shall be allowed to challenge the qualifications of any person offering to vote, and [their] challenge shall be considered and acted upon by the managers” in accordance with Mississippi state law. Id. All statutorily authorized challengers should be allowed to challenge any absentee ballot, including those ballots voted in the Circuit Clerk’s office.

13. After the close of the polls, while poll managers are reviewing absentee ballots and absentee ballots are being challenged, poll managers should refer all questions related to their duties to the Referee-Administrator or his chosen agent. Poll managers should be enjoined from contacting or receiving communication from Defendants Brown, members of the NDEC since August 1, 2003, or anyone communicating on behalf of these Defendants at any time regarding the review of the absentee ballots.

14. Throughout the time period in which ballots are reviewed or tabulated, the poll managers and officials appointed by the Referee-Administrator should continue to exercise statutory discretionary authority to accept or reject challenges to voters and/or ballots under Mississippi law. No individual other than the designated poll managers and officials should decide or review challenges to the qualifications of a voter or an absentee ballot.

15. After the close of the voting precincts and the delivery of the ballots to the tabulation center, the Referee-Administrator should supervise the counting of the ballots at the tabulation

center. The Referee-Administrator should appoint the officials at the tabulation center to review and tabulate the ballots delivered from the polling places.

Poll Official Training

16. Poll officials should be trained, and their training should include distribution of the Court's liability and remedial Order in this case, the distribution of the most recent version of the Mississippi Secretary of State's County Election Handbook, and training as to the contents of the aforementioned Order and Handbook.

17. Poll official training should be conducted by the Referee-Administrator or his designee.

Voter Assistance

18. Voters who require "assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union," 42 U.S.C. § 1973aa-6; however, in accordance with Mississippi law, no one should impose assistance on any such voter unless that voter independently goes to a poll manager, requests assistance, and is provided an opportunity to choose his or her assistor. See Miss. Code Ann. § 23-15-549; O'Neal v. Simpson, 350 So. 2d 998, 1009 (Miss. 1977). In no event should poll officials allow any person to enter and/or remain in a polling place and individually assume the roll of assistor.

19. No person should be allowed by poll officials, during the course of assistance, either to suggest verbally or nonverbally the candidate or proposition for which the voter should vote; nor should any assistor be allowed to manually mark or otherwise make a selection on the voter's ballot unless the voter is physically unable to mark the ballot themselves. In any case, the assistor should

be required by poll managers to communicate to the voter each candidate or proposition on the ballot and then wait for the voter to respond by indicating his or her own choice.

20. If it is brought to the attention of any poll official or employee of the Circuit Clerk's office that an assistor is not conducting assistance in the aforementioned manner and the official witnesses the inappropriate assistance, he or she should immediately intervene and order the assistor to conduct the assistance as required under these provisions. In the event that the assistor persists in giving the inappropriate assistance, the official should immediately contact the Referee-Administrator and request that the assistor be removed from the polling place or the Circuit Clerk's office.

Non-involvement of Defendant Brown, Defendant NDEC, and their Agents in Elections

21. Defendant Brown and any notary whose fees have been paid by him, in whole or in part, should not act as a notary in the collection of absentee applications and ballots in a Democratic primary or runoff election. Moreover, Defendant Brown and those notaries whose fees he has paid, in whole or in part, should not participate in any action which involves encouraging or assisting others in notarizing or collecting absentee applications or ballots in a Democratic primary or runoff election. This prohibition includes, but is not limited to, the hiring or providing of compensation to anyone for the purpose of hiring notaries to collect absentee ballot applications and ballots.

22. Defendant Brown and any person who has served as a member of the Defendant NDEC since August 1, 2003 should not be present in the Circuit Clerk's office two weeks prior to any primary election except for matters pertaining solely to them or their immediate family.

23. In order to avoid a conflict of interest which may impair the integrity of the electoral process, notaries and those who accompany notaries in the collection of absentee applications or

ballots prior to a primary or runoff election should not be permitted to serve as poll officials in the same election.

24. Defendant Brown and any person who has served as a member of the Defendant NDEC since August 1, 2003 should not be present in the polling places unless they are voting, they have been appointed as a poll watcher for a candidate, or the Referee-Administrator has appointed them to work as a poll official. At no time before, during, or after an election should Defendant Brown and any person who has served as a member of the Defendant NDEC since August 1, 2003 who have not been appointed to work as poll managers give any written or oral instructions or make any suggestions to poll officials regarding their duties as poll officials, even if asked by poll officials for instructions or suggestions.

25. The Defendant Election Commission should not allow any third party, including Defendant Brown and members of the Defendant NDEC at the time of the filing of this action and thereafter, to manage the general election or give instructions to poll officials under its control in the general election.

Retention of Documents and Reporting Requirements

26. For the duration of this Order, the Defendants, including the Circuit Clerk, should make and maintain legible, written records of all actions taken pursuant to this Order and should produce such records to the United States or the Referee-Administrator upon request. Moreover, Defendants should preserve, in an orderly fashion, all election-related records for a period of at least two years after each election.

27. Should the Defendants receive any election-related complaints, within twenty-one days of receiving the complaint they should provide a written record of the complaint, including the

original document, and any actions taken in response thereto, to the United States and the Referee-Administrator.

Voter Rolls

28. Defendant Election Commission should, within sixty days of the entry of this order, purge the voter registration list of persons who are not legally entitled to vote in elections in Noxubee County pursuant to state and federal law.

29. In addition to the Defendant Election Commission's other responsibilities pursuant to this Order, during the period of this Order, it should provide an electronic copy of the voter rolls once a year to the United States and the Referee-Administrator. The Defendant Election Commission should also make available to the United States and the Referee-Administrator a record of all requested and implemented changes made to the voter rolls.

30. Requests to the Defendant Election Commission to change voter residence should be made by the voter.

31. The Defendant Election Commission and Circuit Court Clerk should process written requests to change a voter's address within two weeks of receipt of the request. The Defendant Election Commission and Circuit Court Clerk should process voter roll changes made and forwarded by the three municipal Election Commissions in Noxubee County.

Federal Observers

32. The appointment of federal observers should be authorized for Noxubee County pursuant to Section 3(a) of the Voting Rights Act, 42 U.S.C. § 1973a(a), as long as this Order is in effect.

33. Defendants should recognize the authority of federal observers to observe all aspects of voting conducted in the polls on Election Day, including the authority to view assistance to voters during voting, except where the voter objects.

34. Federal observers should be allowed to ask the voter whether he or she would be willing to allow the observer to watch the assistance at a close enough proximity to observe the marking of the ballot so as to insure that the voter's wishes are being followed. In no case should a poll official attempt to interfere, either verbally or nonverbally, with the observer's inquiry or observation. In the event that the voter declines to allow the observer to watch the marking of the ballot, the observer should be allowed stand at a close enough proximity from the voter that the observer may see and hear verbal and non-verbal exchanges between the voter and the assistor.

35. Federal observers should be allowed to move throughout the polling place so as to maintain an adequate vantage point from which they may observe all aspects of voting.

36. If a poll official attempts to interfere with the lawful work of a federal observer, the observer should report the incident to an attorney for the United States. The attorney should then report the incident to the Referee-Administrator, and the Referee-Administrator should admonish the poll official and, if the behavior persists, the Referee-Administrator should remove the poll official from his or her position and replace the official with an alternate poll official.

Responsibilities Regarding the September 18, 2007 Runoff

37. In light of the Court's injunction of the August 28, 2007 Democratic Primary runoff election until September 18, 2007, voters should have the opportunity to cast their absentee ballots in the runoff twenty-one days prior to the election.

Other Curative Remedies

38. Defendants and their agents should not recruit or encourage ineligible candidates to run for office until those candidates satisfy state law requirements.

39. To the degree that Defendants or their agents enforce state law limitations on electioneering and campaigning, they should enforce the limitations against all candidates and voters equally.

40. Defendants and their agents should not enforce any party loyalty requirements in a racially discriminatory manner.

41. Defendants and their agents should not encourage voters to vote under false names.

42. The Circuit Court Clerk should not expend funds, including on postage, to aid notaries in procuring the return of completed absentee ballots.

Other Provisions

43. In the event that any party receives information indicating that the provisions of this Order may have been breached, the party should be able to take depositions for the purpose of investigating whether the Defendants have failed to comply with this Order. In these circumstances, the Defendants should be allowed to seek a motion to quash deposition subpoenas.

44. Should Defendants engage in willful and wanton violations of this Order, it may result in the imposition of a contempt finding and subsequent commission to jail. Each party should bear its own costs.

45. This Order should be served on each Defendant, including the individual members of the Defendant NDEC and Defendant Election Commission with the filing of proof of service with the Federal Clerk of Court.

46. This Order should be final and binding between the parties and their successors in office regarding the claims raised in this action, except that, for good cause, the parties should be allowed to seek modification of this Order during its pendency. This Order should remain in effect through November 20, 2011. The Court should retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with the Voting Rights Act.

47. The arguments and legal authority supporting the United States' motion are set forth in the accompanying United States' Memorandum of Law in Support of its Motion for Permanent Injunctive Relief.

Respectfully Submitted,
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