

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 AND PRELIMINARY 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 elections administered by the Defendants. 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 fifteen 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. In the event that the Referee-Administrator and the Circuit Court Clerk materially differ concerning what constitutes the lawful administration of absentee ballots, the Referee-Administrator should notify the parties, in writing, of this difference, and each of the parties should have the right to bring before the Court any dispute regarding the administration of absentee ballots.

7. In appointing poll managers, the Referee-Administrator should seek to recruit members of all races and should not discriminate on the basis of race. In appointing poll workers, the Referee-Administrator should seek to recruit members of all races and should not discriminate on the basis of race.

8. 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 who review the ballots delivered from the polling places.

9. 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.

10. 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 challenge.

11. 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.

12. 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.

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

Poll Official Training

14. Poll officials should be trained, and their training should include distribution of the Court's liability and remedial Order, 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 Order and Handbook.

Voter Assistance

15. 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 expressly asks for assistance and is provided an opportunity to choose his or her

assistant. See Miss. Code Ann. § 23-15-549. Further, poll officials should strictly enforce these rules.

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

16. 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 administration of absentee applications and ballots. 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. 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.

17. Defendant Brown and members of the Defendant NDEC 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.

18. 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.

19. Defendant Brown and members of the Defendant NDEC 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. Defendants and members of the Defendant NDEC who have not been appointed to work as poll managers should not give any written or oral instructions to poll officials.

20. The Defendant Election Commission should not allow any third party, including Defendant Brown and members of the Defendant NDEC who were members 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

21. For the duration of this Order, the Defendants, including Defendant Circuit Court Clerk and members of the Election Commission, 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.

22. 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

23. 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.

24. In addition to the Defendant Election Commission's other responsibilities pursuant to 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.

25. The Defendant Election Commission should not change a voter's address from one location in the county to another location in the county prior to receiving a written and signed request by the voter.

26. 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

27. 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.

Other Curative Remedies

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

29. 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.

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

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

32. Defendants should not intimidate or attempt to intimidate any voter who supports white candidates or otherwise intervene in the voter's choice of candidate because of the race of the voter or the race of their preferred candidate.

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

Delay of Election

34. Defendants Ike Brown and the Noxubee County Democratic Executive Committee ("the NDEC") should be preliminarily enjoined from conducting Democratic Primary elections for local county offices on August 7, 2007.

35. Defendants should be required to conduct Democratic Primary elections for local county offices that would have been held on August 7, 2007, at the time of the regularly scheduled general election on November 6, 2007.

36. Voters who have already cast absentee ballots should have their votes for statewide office, state legislative offices, and multi-county offices counted in the August 7, 2007 election. These voters should then have another opportunity to vote for their local candidates of choice in the forty-five days preceding the November 6, 2007 special election.

37. Absentee voters should have an opportunity to cast their ballots for local offices beginning September 22, 2007, forty-five days prior to the election, and the ballots shall be delivered to the Circuit Clerk's office in accordance with Mississippi law.

38. In the event Democratic Primary runoff elections are required for any local office, such runoff elections should be held on November 27, 2007.

39. In the event a general election is necessary for any local office open for election in 2007, such general election should be held on December 11, 2007.

40. This injunction should only apply to local elections and not to elections for statewide office, state legislative offices, or multi-county offices. Regarding statewide office, state legislative offices, or multi-county offices, primary elections and runoffs should be held at the regularly scheduled dates of August 7, 2007 and August 28, 2007, and certified during the time allowed under Mississippi law. However, the primary elections and runoffs should be administered by the Noxubee County Election Commission and not by Defendants Brown or the NDEC.

Other Provisions

41. Within thirty days of the issuance of this Order, the Defendants should remit to the United States the \$500 fine imposed upon them in the Magistrate Judge's January 25, 2006 order.

42. In the event that the United States receives information indicating that the provisions of this Order may have been breached, the United States 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.

43. Violations of this Order may result in the imposition of a contempt finding and subsequent commission to jail. Each party should bear its own costs. However, if the Referee-Administrator or this Court determines that the Defendants have failed to comply with the Order, the Defendants should bear all costs of enforcing the Order.

44. 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.

45. 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.

46. 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 and Preliminary Injunctive Relief.

Respectfully Submitted,
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