

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

UNITED STATES OF AMERICA

PLAINTIFF

VS.

CIVIL ACTION NO. 4:05CV33LR

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 Circuit Clerk of Noxubee County, Superintendent of Elections, Administrator of Absentee Ballots, and Registrar of Voters; NOXUBEE COUNTY ELECTION COMMISSION and NOXUBEE COUNTY, MISSISSIPPI

DEFENDANTS

ORDER

This matter came before the court on the Defendants' Motion to Continue Trial and Amend the Scheduling Order, which is contested by the Plaintiff. A review of the docket in this case shows that this matter has been aggressively pursued by the Plaintiff, while the Defendants have a history of delay. Their current request for a continuance is based upon their contention that they were unaware of an Amended Complaint that was filed in August, 2005, but only recently answered. The court understands the Plaintiff's frustration over the conduct of these proceedings.

Nevertheless, it is clear from a review of the pleadings that the Defendants are not ready for trial, nor will they be in October, and the court is not inclined to waste its time, and that of the parties, in trying a case for which the Defendants are unprepared. Therefore, it will continue this matter. The court is aware of the fact that this continuance will delay the resolution of this matter beyond the November elections and has noted the Plaintiff's claim that delay could cause further

misconduct. However, those allegations are no more than unsubstantiated claims, and the court is of the opinion that the very existence of this lawsuit should have a cautionary effect on any election-related misconduct, if any was even contemplated.

In its rebuttal pleading, which, in keeping with the Defendants' custom, was filed four days late, they requested a continuance of the trial to a date no later than May, 2007. Such a continuance is not warranted by the need to complete discovery on the additional claims raised by the Amended Complaint. The continuance will be to the next available trial calendar, and the Defendants should use utmost diligence in completing their preparations for trial.

IT IS, THEREFORE, ORDERED that the Defendants' Motion to Continue Trial and Amend the Scheduling Order is hereby **granted**, and the Case Management Plan Order previously entered in this matter is amended as follows:

1. The trial of this matter will be held on the trial calendar that begins on January 15, 2007, and ends on January 26, 2007.
2. The pretrial conference will be held on December 11, 2006.
3. Discovery shall be completed by October 10, 2006.
4. The deadline for submitting motions, other than motions *in limine*, is October 17, 2006.

IT IS FURTHER ORDERED that the Plaintiff's Motion to Strike the Defendants' Rebuttal Memorandum is hereby **denied**.

IT IS SO ORDERED, this the 8th day of September, 2006.

S/John M. Roper

UNITED STATES MAGISTRATE JUDGE