

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.)

**UNITED STATES' REPLY MEMORANDUM IN SUPPORT OF ITS MOTION FOR AN
INJUNCTION, *PENDENTE LITE*, PROHIBITING DEFENDANTS IKE BROWN AND
THE NOXUBEE COUNTY DEMOCRATIC EXECUTIVE COMMITTEE FROM
THREATENING, HARASSING, OR INTIMIDATING ITS WITNESSES**

The United States submits this Reply Memorandum in support of its Motion for an
Injunction, *pendente lite*, prohibiting Defendants Ike Brown and the Noxubee County Democratic
Executive Committee, and those acting on their behalf or in concert with them, including Terry
Grasseree, from harassing, threatening, or intimidating persons who are potential witnesses for

the United States in this case.

Defendants argue in their opposition memorandum that the United States' motion for injunctive relief should be denied because plaintiffs have either failed to show sufficient link between the actions of Terry Grassaree and the Defendants, or because the United States has not attempted to show how it could satisfy the four requirements for traditional preliminary injunctive relief. These arguments misconstrue both the facts and the law applicable to the motion presently before this Court, and neither provide compelling grounds for denying the United States' motion.

I. This Court has the inherent power to grant injunctive relief to protect the rights of federal litigants whose access to the courts is being threatened, notwithstanding any alternative case law governing traditional preliminary injunctive relief.

This Court has the inherent power to issue the injunctive relief requested by the United States in order to protect federal court litigants from violence, intimidation, and harassment that is designed to deter use of the federal courts. See Commonwealth v. Local Union No. 542, Int'l Union of Operating Eng'rs, 347 F. Supp. 268, 285 (E.D. Pa. 1972). The Defendants argue that the relief sought by the United States in its present motion would require a showing of four traditional factors relevant to the issuance of traditional preliminary injunctive relief. Opposition Memorandum, 6-8. However, the doctrine cited by Defendants is inapposite to the present motion. The United States has presently moved this Court to exercise its inherent powers to protect the Court's own jurisdiction. The relief here requested by the United States is not, like in the case of most requests for traditional preliminary injunctive relief, fashioned as a preliminary remedy of the type sought in the underlying case. The relief requested here is not substantively related to the relief sought in the underlying case. While in the underlying case, the United States

is seeking relief from harms relating to racial discrimination in voting, in its present motion, the United States is merely seeking relief from harms related to obstruction of access to federal courts. The United States is merely seeking to preserve its right to have its underlying case heard on the merits, without interference from those who would seek to obstruct the process through illegal means. This Court can and should grant such relief, pursuant to its inherent powers. See e.g., Bell v. Hood, 327 U.S. 678, 684 (1946) (“where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief”); and United States v. Farrar, 414 F.2d 936, 938 (5th Cir. 1969).

II. Deputy Grassaree's intimidation of Kendrick Slaughter was directly related to his cooperation with the United States and against Defendants in this case.

Defendants argue in their opposition memorandum that Deputy Grassaree “presently has no affiliation with the Defendants” and that Plaintiff’s attempt to show a connection between the two is based on “mere speculation and conjecture.” Opposition Memorandum, at 2.

Defendants arguments in this regard strain credibility. The factual record before this court regarding Grassaree's affiliation with Defendants is significantly more substantial than mere speculation. First, counsel for Defendants has acknowledged that Deputy Grassaree was a member of Defendant Noxubee County Democratic Executive Committee (NCDEC) as recently as 2003, during the period in which Defendant Brown was Chairman, and when many of the unlawful acts alleged in the United States' Complaint took place. The United States alleges that, in 2003, Defendants Brown and NCDEC engaged in a myriad of unlawful acts in violation of the

Voting Rights Act during the Democratic primary election. In one of the 2003 primary races, Sheriff Albert Walker ran against Samuel Heard, a white candidate whom Brown opposed. The efforts of Defendants Brown and NCDEC to defeat Sheriff candidate Heard in 2003 directly involved and benefitted Deputy Grassaree and Sheriff Walker. During that election, Deputy Grassaree was a member of NCDEC and, while acting in his capacity as deputy sheriff, engaged in campaign activities aimed at defeating Heard. See Complaint, ¶ 10(j).

Even when Grassaree's formal affiliation with NCDEC ceased, after 2003, he continued to demonstrate an affiliation and alliance to Brown. Grassaree adopted Brown's tactic of race-based politics when he sought to induce Kendrick Slaughter with \$3,000 to get him to withdraw from the Macon Alderman's race in order to keep a white person from being elected. Decl. of Slaughter, ¶ 10-11. It defies belief that Grassaree's affiliation and allegiance to Defendant Brown and to Brown's race-based methods, ceased when he stepped down from NCDEC. More credibly, it seems that Grassaree has continued his allegiance with Brown, repeating his tactics in the 2005 municipal election.

Even if one were inclined to believe that this political alliance and affiliation between Brown, NCDEC, and Grassaree ceased abruptly in 2003, one still need not rest on conjecture to find a connection between Grassaree and the Defendants in 2005. One need only look to Grassaree's own words, which should resoundingly put to rest any suggestion that his recent actions against Slaughter were undertaken independently from the Defendants. Some time between the May 17, 2005 and the June 7, 2005 municipal elections in Macon, Grassaree invited Slaughter into his patrol car and threatened Slaughter by saying, "Don't fool with those Justice Department people. Don't fool with them because they ain't no good to fool with. Don't deal

with the Justice Department.” Decl. of Slaughter, ¶ 13.¹ Grassaree's words reveal his intentions. He was not harassing Slaughter for his own private reasons, he was acting on behalf of Defendants.

Defendants take great pains to establish that they did not instruct Grassaree to intimidate Slaughter. One of Defendants' counsel (although not lead attorney Wilbur Colom) has offered a declaration saying that she did not produce a copy of Plaintiff's disclosures for Defendants. Decl. of Kerri Woodrick. And Defendant Brown has offered a declaration saying that he did not know that Slaughter was a potential witness in the case.² Decl. of Ike Brown, ¶ 2. All of this, apparently in an attempt to foreclose the possibility that Defendant Brown could have been directly involved in the intimidation of Slaughter. However, whether or not Defendants directly instructed Grassaree to intimidate Slaughter on this occasion is not terribly relevant. The fact is, Grassaree was acting on Defendants' behalf, and there is no good reason for the Court to ignore this reality. This Court should not tie its own hands, in declining to exercise its inherent authority to prohibit illegal acts and protect litigants before it, just because there Defendants themselves may not have *directly* participated in the intimidation of Kendrick Slaughter.

Defendants' counsel complains that the injunction sought by the United States would unduly burden Defendants by “charging [them] with the task of ensuring that there are no altercations between Plaintiff's 110 witnesses and any person in Noxubee County...”.

¹ Defendants have offered no evidence to rebut Slaughter's declaration testimony regarding what Grassaree said to Slaughter.

² The credibility of statements made in the declaration from Defendant Brown should be especially scrutinized given the fact that, in 1994, Brown was convicted of a felony, including 9 counts of federal tax fraud. Defendant Brown was sentenced to 2 years in federal prison as a result of these convictions.

Opposition Memorandum, at 8. Here, Defendants protest too much. It is important to keep in mind that the remedy sought by the United States is not to sanction Defendants or to subject them to any extraordinary liability. Rather, the proposed injunction would require Defendants merely to refrain from any harassment, intimidation, or threatening of witnesses; actions which are already legally prohibited. Further, the injunction would not reach the conduct of "any person in Noxubee county" but rather, merely the conduct of persons acting in concert with or on behalf of Defendants, such as Deputy Grassaree, who was officially a member of the Defendant organization in the recent past, who was mimicing the tactics of Defendants as alleged in the Complaint, and whose very admissions link his actions to the present litigation.

III. CONCLUSION

On the basis of the above showing, as well as its Memorandum in Support of its Motion, and the attached Declaration of Kendrick Lashawn Slaughter, the United States submits that its Motion for An Injunction, *Pendente Lite*, prohibiting Defendants Ike Brown and Noxubee County Democratic Executive Committee, and all those acting on their behalf or in concert with them, including Terry Grasserree, from harassing, threatening, or intimidating any person who was identified by the United States in its initial disclosures pursuant to Fed. R. Civ. P. 26(a), or any other person who is believed to have information in any way related to the matters at issue in this case, should be GRANTED.

The United States wishes to inform the Court that Defendant Brown and Terry Grassaree are scheduled to be deposed by Plaintiffs on October 25, 2005 and October 26, 2005, respectively. If the Court is not inclined to grant the United States' motion before this time, the United States requests that the record on this matter be kept open until these depositions are

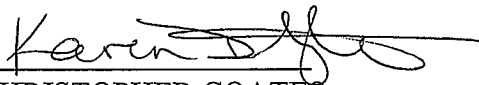
transcribed, so that information received during the deposition may supplement the record.

Respectfully submitted,

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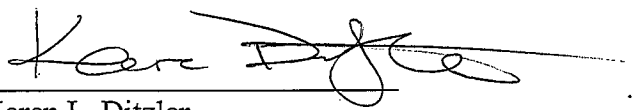
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CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2005, I filed the foregoing using the ECF system, which sent notification of such filing to Wilbur O. Colom, Esq. of the Colom Law Firm, LLC 200 6th Street North, Suite 102, Columbus, Mississippi 39701; Ellis Turnage, Esq. P.O. Box 216, 108 North Pearman, Cleveland, Mississippi 38732; and Christopher D. Hemphill, Esq., Webb, Dunn, and Hemphill, P.A., 214 5th Street South, Columbus, Mississippi 39701.


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