

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' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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The United States of America respectfully submits its Proposed Findings of Fact and Conclusions of Law.

I. Introduction

A. Jurisdiction and Standing

1. This Court has subject matter jurisdiction over this action pursuant to 42 U.S.C. § 1973(j), 28 U.S.C. §§ 1331, 1343, and 1345. The voting rights claims advanced by the United States in this action are premised upon Sections 2 and 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. §§1973 and 1973i(b), respectively. Regarding the Court's jurisdiction over Chairman Ike Brown and the Noxubee County Democratic Executive Committee (hereinafter DEC), the Defendants' "conduct in functioning as a viable political party [and] holding precinct elections . . . of the Democratic Party have constituted the performance of such public functions as to give rise to state action for purposes of federal jurisdiction under 28 U.S.C. 1343." Riddell v. Nat'l Democratic Party, 508 F.2d 770, 773 (5th Cir. 1975); see also Gray v. Sanders, 372 U.S. 368, 374-75 (1963) (holding that because the state regulates primary elections, the conducting of the election itself is therefore state action for the purposes of federal jurisdiction).

B. Parties

2. Brown is the Chairman of the DEC, the entity responsible for “performing all duties that relate to the qualifications of candidates for primary elections” and the conduct of primary elections. Miss. Code Ann. § 23-15-263. The Defendant Noxubee County Election Commission is the entity responsible for the conduct of general elections in Noxubee County as well as the maintenance of voter registration rolls. Miss. Code Ann. § 23-15-213. Circuit Court Clerk Carl Mickens and Noxubee County were also named as Defendants, but they entered into a consent

decree with the United States on February 17, 2005. (Order Granting Consent Decree, Feb. 17, 2005.) As such, Mickens and Noxubee County were not active Defendants-participants at trial. The complaint was filed on February 17, 2005 and an amended complaint on August 16, 2005. (Compl., Feb. 17, 2005; Am. Compl., Aug. 16, 2005.)

C. Statutory Bases

3. As amended in 1982, Section 2(a) of the Voting Rights Act prohibits any state or political subdivision from imposing or applying any "qualification or prerequisite" to voting or any "standard, practice, or procedure" which "results in a denial or abridgement of the right of any citizen of the United States to vote on account or race or color." 42 U.S.C. § 1973(a). A violation of Section 2 "is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are 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). Section 2 prohibits all forms of voting discrimination that "result in the denial of equal access to any phase of the electoral process for minority group members." S. Rep. No. 97-417, at 30 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 205 ("Senate Report"). It also protects voters from election practices "which operate, designedly or otherwise," to deny them the same opportunity to participate in the political process as other citizens enjoy. Senate Report at 28. Section 11(b) of the Voting Rights Act states, "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote." 42 U.S.C. § 1973i(b).

4. Pursuant to 42 U.S.C. § 1973j(d), "[w]henver any person has engaged . . . in any act

or practice prohibited by Section[s] [2 or 11] . . . the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction . . . or other order." Thus, the United States has standing to challenge the Defendants' election practices which operate to discriminate against white voters and candidates preferred by white voters.

D. Summary of the United States' Claims

5. In many cases brought under Section 2, the focus of the litigation is a method of election, such as, for example, a challenge to an at-large election scheme or a challenge to an existing district voting plan. See, e.g., Thornburg v. Gingles, 478 U.S. 30 (1986) (reviewing a multi-member district voting plan). The United States' claims in this case are different inasmuch as they do not challenge the existing methods of election in Noxubee County; instead, the United States first alleges that the administration of Democratic Primary elections is operated in such a way as to discriminate against white voters and white voter-preferred candidates. Further, the United States alleges that this racially discriminatory operation of these primary elections by Defendants, in its totality, is conducted with the purpose of diluting the voting strength of white voters and reducing the opportunities for white voter-preferred candidates to be elected to local office.

6. Second, the United States alleges that the result of this discriminatory administration of Democratic Primary elections by Defendants is to dilute the voting strength of white voters, thereby denying white voters the opportunity to elect candidates of their choice and ensuring that the black candidates preferred by Defendants will be elected. Third, the United States alleges that some of the discriminatory actions taken by Defendants separately violate the anti-intimidation provisions of Section 11(b) of the Voting Rights Act. Fourth, the United States alleges that the

Noxubee County Election Commission has failed to purge the county's voter registration list of persons not entitled to vote in county elections. It also alleges that the Election Commission has knowingly allowed Defendants Brown and the DEC to issue improper instructions to poll managers in general elections. Because of these failures by the Election Commission and the fact that the Commission is a necessary party for comprehensive injunctive relief, the United States contends that a judgment and relief against the Commission should be entered as well.

7. Defendants' contention that the alleged violations would not necessarily have determined the outcome of some of the elections discussed herein misses the point. The present case is not an election contest that attempts to set aside a past election result and obtain a new election. Instead, it is a case in which the United States alleges that the Defendants have intentionally practiced racial discrimination, and that these actions have had the racially discriminatory result of reducing the electoral opportunities of white voters and white voter-preferred candidates.

II. Findings of Fact

A. Geographical and Census Data for Noxubee County

8. Noxubee County is located in east-central Mississippi, adjacent to the Mississippi-Alabama border. According to the 2000 Census, Noxubee County has a population of 12,548, of whom 3,667 (29.2%) are white and 8,634 (68.8%) are black. Of the 8,697 persons of voting age in the county, 2,826 (32.5%) are white and 5,711 (65.7%) are black. U.S. Census Bureau, Census 2000 Redistricting Data (Pub. Law 95-171) Summary File.

9. For purposes of elections for the Noxubee County Board of Supervisors, Board of Education, and Election Commission, the county is divided into five voting districts that are used

in the election of all three governing bodies. Other county officials are Circuit Court Clerk, Chancery Court Clerk, County Prosecuting Attorney, Sheriff, Tax Assessor, and Superintendent of Education, all of whom are elected countywide. Furthermore, there are two justice court judges, two constables, and a coroner elected from districts that constitute approximately one-half of the county.

10. The recent electoral history of the county demonstrates a disproportionately low number of white elected officials serving in county offices. Although the 2000 census reported that 32.5% of the Noxubee County voting age population is white, only two white persons (7.7%), Road District 4 Supervisor Eddie Coleman and County Prosecuting Attorney Roderick Walker, are currently serving in any of the twenty-six elective offices in Noxubee County. (Ex. P-1 ¶ 31.)

B. Background of Defendant Ike Brown

11. DEC Chairman Brown graduated from Jackson State University in 1977 and attended one year of law school at the Mississippi College School of Law. (Trial Tr. 1185, hereinafter "Tr.") He is a native of Madison County, Mississippi. (Tr. 1184.) Brown began coming to Noxubee County in 1977 to work in the political campaigns of, among other people, state Representative Reecy Dickson, and he moved his residence to Noxubee County in 1980. (Tr. 1185-86.)

12. In his political activities, Brown has worn a number of hats, some at the same time. Brown was originally elected to the Mississippi Democratic Executive Committee (hereinafter Mississippi DEC or state DEC) in 1976 and served on that Committee until 1980. (Tr. 1189.) In 1992, Brown was again selected as a member of the Mississippi DEC and served in that capacity until he began his period of federal imprisonment. (Tr. 1187-88.) He has also served on the Mississippi DEC from 2000 to the present. (Tr. 1188, 1189.)

13. Brown has served as Vice President of the Noxubee County Branch of the NAACP and as Vice President of the Mississippi NAACP from 2003 to the present. (Tr. 1189-90, 1192.) Brown was the founder and President of the East Mississippi Voters League, a small political organization that he and fellow DEC member Gary Naylor have run in the past. (Tr. 1190-91.) During the 2003 election cycle, Brown served as both Chairman of the DEC and President of the East Mississippi Voters League. (Tr. 1193.) Brown has served as an officer of the Noxubee County Voters League, and he has also served as a political consultant from the 1980's to the present for various candidates in statewide and local races. (Tr. 1191-92.)

14. In 1984, Brown entered a plea to a charge of forgery that arose out of his misconduct in the insurance business. (Ex. P-139; Tr. 1194.) He was placed on probation and required to make restitution. Id. In 1995, he was convicted in this Court of aiding and abetting the filing of nine false income tax returns for other taxpayers, and he was confined in a federal penitentiary from March 1995 to November 1996. (Tr. 1187, 1194.) Although these convictions occurred some twenty-three and twelve years ago, respectively, this Court deems it appropriate to admit them into evidence and consider them in making the many credibility determinations that it must make in this case regarding Brown's testimony.¹ These convictions are particularly appropriate to consider because they involve acts of dishonesty by Brown that bear directly upon his truth and veracity or the lack thereof. Under the Federal Rules of Evidence, a party may offer “[e]vidence that any witness has been convicted of a crime . . . if it involved dishonesty or false statement, regardless of the punishment.” Fed. R. Evid. 609(a)(2). The credibility of a witness may be attacked with evidence of a criminal conviction

¹ Brown was released from federal prison after serving time for his second conviction less than ten years after the originally scheduled date of the trial in October 2006. (Tr. 1187, 1194.)

older than ten years if the court determines “that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.” Fed. R. Evid. 609(b).

C. Brown’s Political Allies

15. Brown has developed close political alliances with a number of elected and appointed officials in Noxubee County who are involved in the governance of the county and the electoral process.² Over the years, Brown has developed political alliances with Circuit Clerk Carl Mickens and Sheriff Albert Walker. The close relationship between Brown and these two officials was shown, in part, by evidence that they provide direct support to the DEC and Brown. For example, copies of the minutes of the DEC meetings are maintained in the Circuit Clerk's office. (Tr. 1361-62.) Moreover, Freda Phillips, who is the Deputy Clerk in the Circuit Clerk's office, but not a member of the DEC, mails letters for the DEC from that government office. (Ex. P-4; Tr. 1363-65, 1367, 2222-23.) The Circuit Clerk's office also provides stamps to absentee ballot notaries who work for Brown. (Tr. 1648.) And during the 2003 Democratic Primary, Brown was transported to some of the polling places by officers from the Noxubee County Sheriff's Department. (Tr. 1367-69.)

16. Other political allies of Brown are state Representative Reecy Dickson, (Ex. P-10, Tr. 1185-86, 1505), her son Justice Court Judge Dirk Dickson, (Ex. P-35, Ex. P-45, Tr. 1252, 1505-06), Shuqualak Mayor Velma Jenkins (Ex. P-35), Election Commissioner Essie Brooks (Tr. 1969), former Election Commissioner Russell Smart, (Tr. 1205, 2478), DEC members Dorothy

² For the Court’s convenience, an index of individuals whose names appear in these Proposed Findings of Fact and Conclusions of Law are attached as Appendix A.

Clanton McCoy³ (Ex. P-9, Ex. P-10, Tr. 1427, 1506), Clanton McCoy's sister Carrie Kate Windham (Ex. P-9), DEC member Ethel May (Ex. P-9), and former DEC member Chief Deputy Sheriff Terry Grassaree. (Ex. P-9).⁴

D. Brown's Statements Showing His Racially Discriminatory Intent

17. Often, defendants who act with discriminatory intent, do so with a "degree of subtlety" that makes it difficult for courts to discern whether the defendants have acted with a racially discriminatory purpose. Lodge v. Buxton, 639 F.2d 1358, 1363 (5th Cir. 1981), aff'd sub nom. Rogers v. Lodge, 458 U.S. 613 (1982). Regarding Brown, however, he has made numerous statements over the years that show that he operates with a discriminatory intent against whites that permeates his election-related actions in Noxubee County.

Brown's Statement that the Voting Rights Act does not Protect Whites

18. In 2003, Brown told Clarion-Ledger reporter Jerry Mitchell that he questioned whether the protections of the Voting Rights Act of 1965 applied to white voters. (Ex. P-129; Tr. 1212, 1341.) The Court finds this statement by Brown demonstrates that Brown has acted with a discriminatory intent against white voters because he has believed incorrectly that it is legally permissible to do so.

Brown's Statements Concerning Redistricting

19. After receipt of the 2000 Census, Brown lobbied the Noxubee County Board of Supervisors to redistrict the five voting districts used in the election of the Board of Supervisors, the

³ Dorothy Clanton McCoy has also gone by the name Dorothy Windham.

⁴ Brown has referred to his political allies as a "machine." (Tr. 1206-07.)

Election Commission, and with one small variance, the Board of Education so as to maintain a 60.0% plus African American voting age population in each district. (Tr. 142, 1375-76.) Brown advocated this course of action because of his stated desire to ensure the election of an all-black Board. (Tr. 142, 1377.) Given that the white voting age population constitutes 32.5% of Noxubee County's total voting age population, according to the 2000 Census, Brown's position on redistricting demanded that black voters be provided the opportunity to elect all of the members of these three governing bodies, and was therefore a racially unfair demand. During the redistricting discussions, Brown specifically demanded that the Board of Supervisors place more black voters in Road District 4 so that a black candidate would have a better chance of beating the remaining white Supervisor, Eddie Coleman. (Tr. 143.)⁵

20. As noted by the United States' expert witness, Dr. Theodore Arrington, it is helpful to analyze the actions and statements of the Defendants using a "mirror image."⁶ That is, one must ask what the analysis of the facts would be if a member of a white majority were taking the same action against members or a member of the black minority. (Tr. 388.) Had a white official in a county with a sizeable black minority openly advocated that district lines be drawn to achieve an "all-white" board, the odious nature of the advocacy would be obvious. The current situation in Noxubee County, in some fundamental respects, represents the "mirror image" of historical events where various devices, schemes, and procedures that were used to disenfranchise blacks are now

⁵ In Velasquez v. City of Abilene, the Fifth Circuit opined that a statement by an official in which a component of a method of election was advocated on the grounds that it would increase the likelihood that minority candidates would lose, is highly probative of the presence of racial intent. 725 F.2d 1017, 1022 (5th Cir. 1984).

⁶Dr. Arrington's qualifications are more fully discussed infra at 108-13.

used against whites. (Tr. 387-90.)

Brown's Racially Motivated Statements made to the only White Supervisor

21. Brown has made a regular practice of putting Supervisor Coleman in a position where he must tolerate Brown's racially motivated comments. Brown has a strong disdain for Supervisor Coleman, and has stated that he resents Coleman, a white person, serving the majority black population of Road District 4. (Tr. 218.) Brown has come to Board of Supervisors' meetings and publicly asked Coleman if he was a racist and also asked whether Coleman had ever used the "N word." (Tr. 278, 1306, 1314, 1547.) At that time Brown made no such inquiry into the racial attitudes of the black members of the Board of Supervisors who were at the same meeting. (Tr. 279.) Supervisor Tate has been in Board meetings where, after a vote was taken, Brown has called out, "Eddie, you made that decision because you're white." (Tr. 220-21.)

Brown's Racial Bullying of Black Leaders who act Impartially

22. The United States' expert, Dr. Arrington, testified that in Noxubee County, Brown has used racial bullying tactics against blacks to discourage them from building political and social alliances with whites, much like those in the white power structure did to fellow whites who were sympathetic to black citizens during the Civil Rights Movement. (Tr. 389.) As Dr. Arrington explained, these bullying tactics are effectively used to "bring people into line." Id.

23. One such example involved Brown and District 2 Supervisor William Oliver, the President of the Board of Supervisors, who is black. (Tr. 2067.) At one meeting in 1998, the Board discussed whether to fire two black clerks who appeared to have embezzled over \$40,000.00 from the county. (Tr. 2068.) Oliver was convinced the Board needed to fire the women, and was joined by Supervisor Coleman in making the recommendation that the women be fired. (Tr. 2069.)

24. During the discussions as to whether the women would be fired, Brown aggressively spoke out in defense of the women, ending his tirade by calling Oliver a "white man's nigger." (Tr. 1309-10, 2069-70.) Oliver then leaped out of his chair and charged after Brown, so infuriated that former County Attorney Wilbur Colom and one of the other Supervisors had to physically restrain him. Id.; (Ex. P-116.)

25. Oliver testified that, as a black member and President of the Board of Supervisors, he knew exactly what Brown meant to communicate to everyone in the Board room that night. (Tr. 2070.) As Oliver explained, Brown's "insinuation of, you know, being a white man's nigger was that even though we had four black [Supervisors] there, it still was being handled the way it was when white folks [were] there. That's what made me so mad about that at that time." (Tr. 2070.)

26. After the situation settled down, the Board ultimately voted to fire the two women, but Brown kept talking. (Tr. 2071.) Brown finally exited the room, but before leaving, accused Oliver of "[selling] out to the white folks." (Tr. 2071-72.)

27. The Court finds that normally the use of the "N" word between two African Americans would reasonably be construed as an insulting racial slur. Yet it was not just the use of the racial slur, as offensive as that was, but Brown's attack on Oliver because Oliver chose to vote the same way Coleman did on these terminations. This incident is evidence of Brown's extreme hostility to black and white elected officials agreeing on an issue that might adversely affect certain black individuals.

28. Another African American leader who has, as a result of his impartiality, borne the brunt of Brown's disfavor is Superintendent of Schools Dr. Kevin Jones. Dr. Jones testified that Brown typically does not support him when he runs for office. (Tr. at 2451.) As Dr. Jones

explained, Brown's disdain for him and his family began when, in a prior Noxubee County race, Dr. Jones' father chose to support a white candidate, rather than Reecy Dickson, the black candidate. (Tr. at 2451-52.)

29. Dr. Arrington's "mirror image" analysis also informs the use of racial slurs and bullying. (Tr. 389.) For example, Brown's characterization of Oliver as a "white man's nigger" is the mirror image of historical events where whites sought to prevent other whites from working with blacks by calling them "nigger lovers." (Tr. 389.) In Noxubee County, terms such as "Oreo Cookie" have also been used to disparage blacks who work with whites. Id. These racial slurs and bullying terms are the mirror image of the past use of slurs and bullying terms to prevent whites from working with blacks. Id.

Brown's Other Racially Disparaging Remarks

30. During an interview with political scientist Dr. Colin Crawford, Brown stated that the political process would be improved with the death of some white Noxubee Countians. (Ex. P-162, P-162A; Tr. 1212-16.) In making such a statement to Crawford, Brown specifically referred to white Supervisor Kenny Misso, Jr. who had recently passed away at the time of the interview. (Tr. 1219-20.) During another portion of the interview, Brown criticized John Gibson, a black person, for making a political "alliance with the whites," and further stated that Gibson had "sold his soul to the devil." (Ex. P-163, P-163A, P-166, P-166A; Tr. 1223, 1231.) In another portion of this interview, Brown, while discussing his political support for candidates, stated, "I support all blacks pretty much." (Ex. P-164, P-164A; Tr. 1226-27.) Later, Brown told Crawford that all white Baptists are "racists." (Ex. P-165, P-165A; Tr. 1227-29.)

Brown's Racially Motivated Remarks about the Macon City Election

31. In 2001, and after a white person was elected the Mayor of Macon,⁷ Brown published a letter to the editor in the Beacon in which he warned the candidate, “[B]efore you celebrate, remember . . .”, and then he reminded her the white population was shrinking due, in part, to the deaths of white residents. (Ex. P-40; Tr. 1198-1200.) He ended with the prediction, "In other words, it's just a matter of time." (Ex. P-40.) The relevance of the 2001 letter to the editor is Brown’s publicly expressed view that race trumps everything else in Noxubee County elections.

Brown's Intimidation of White Candidates

32. Samuel Heard is a white, lifelong resident of Noxubee County who ran for the Democratic nomination for Sheriff in 2003 against Brown's political ally Albert Walker, who is African American. (Tr. 948-50.) After Heard filed his notice of intent to seek the Democratic nomination for Sheriff, Brown saw Heard in the Circuit Clerk's office and followed the latter into the foyer of the courthouse. (Tr. 953-54.) In a loud tone, Brown stated to Heard, "You know I'm not going to let you run as a Democrat, because you know what you are." (Tr. 954, 1026.) Given that Brown's loud tone had drawn an audience in the foyer, Heard did not argue with Brown but simply walked away. Id.⁸ The Court finds that Brown provoked this confrontation with Heard

⁷Macon, Mississippi is the county seat of Noxubee County.

⁸ At trial, Defendants pointed out that Heard and two of his poll watchers attended a poll watcher training session conducted by Jeppy Barbour, a relative of the current Governor of Mississippi, in Macon prior to the 2003 primary. (Tr. 1032.) The Republican Party did not sponsor this training session, and both Democrats and Republicans, blacks as well as whites, attended the training session. (Tr. 1032, 1081). The DEC did not conduct a training session for candidate poll watchers. (Tr. 1032). Given the way in which Brown and the DEC treated white voters and candidates such as Heard prior to the 2003 primary, it is no wonder they sought information about the election process from any helpful source willing to come to Noxubee County. This Court is unwilling to find, as Defendants suggest, that Heard was a disloyal

because Brown was attempting to get the only white candidate for Sheriff to leave the race.

33. David Clark is the District Attorney for Madison and Rankin Counties and was first elected District Attorney in 1987 as a Democrat. Prior to Clark taking office, Brown's brother had been indicted for shooting his wife in Madison County. Brown let Clark "know in no uncertain terms that he expected [Clark's] assistance in trying to get his brother off completely, if possible, and if not, a very light sentence." (Ex. P-161 at 11.) "[H]e acted like it [the shooting] was really nothing unusual in Madison County, and that I should really just disregard it." (Ex. P-161 at 11.)

34. Brown communicated this message to Clark on multiple occasions. During one conversation, he talked to Clark

about his brother and that he needed help in getting - in me not prosecuting his brother. And he told me the black vote in Madison County pretty much controlled who got the most votes in Madison County, and he indicated he was very strong in the black community and could garner many votes.

(Exs. P-161 at 11-12; P-167 (videotape of Clark testimony).)

As I specifically remember, out in front of the Courthouse in Canton, he stopped me and told me that I needed to help his brother . . . And he waved his hand and showed me almost everybody there was - in front of the Courthouse was black. He said, 'You see all these people out here? They vote like I tell them to. I have tremendous influence over them, and if you don't help my brother, none of them will be voting for you.'

(Ex. P-161 at 13-14.) Clark considered Brown to be threatening him. (Ex. P-161 at 15.) The testimony of Clark was uncontroverted.

35. This Court finds this incident to be evidence that Brown has used racial appeals and

Democrat because he attended such a training session.

threats in the context of elections prior to his election as DEC Chairman in Noxubee County.⁹

Brown's Lack of Interest in Recruiting Whites for the Democratic Party

36. At Mississippi DEC meetings, Brown often stated that he spoke for black voters and black Democrats. (Tr. 1899.) At party meetings, Brown on occasion spoke of the need to do outreach to Hispanic voters, but never spoke of a need to recruit whites to participate in the Democratic Party. (Tr. 1899-1900.) Brown made the statement that it was his job to turn out black voters and the whites' job to turn out white voters. (Tr. 1901.) In former state DEC Chairman Rickey Cole's experience, Brown's separatist view of a Democratic chairman's responsibilities was different in kind than the views of the vast number of African American Democratic Party officials in Mississippi. (Tr. 1901.)¹⁰ Brown's practices were contrary to the approach taken by Chairman Cole, and nothing in the practices of the state Democratic Party would have suggested to Brown that he should not encourage participation by whites in Democratic Party affairs. (Tr. 1943-45, 1954-55.)

Brown's Racially Motivated Statements to Black Voters at the Polls

37. Judith Ewing testified that on the morning of one election, Brown came into the Title One polling place, addressed a group of black voters in a loud voice, and said, "[Y]ou've got to put

⁹ Clark did not drop the charges, and Brown's brother was convicted. (Ex. P-161 at 12-13, 20.)

¹⁰ Cole served on the state DEC from 1988 to 1992 and 1994 to the present, and was the state DEC Chairman from 2001 to 2004. (Tr. 1879.) Cole has known Brown since 1988, and during the entire time that Cole was state Chairman, Brown was Noxubee County DEC Chairman. (Tr. 1880.) This caused Cole and Brown to frequently meet during the 2001 to 2004 period. (Tr. 1880.) In fact, Brown nominated Cole for Chairman in 2001. (Tr. 1880.) Both men were members of the Mississippi Association of County Democratic Chairmen from 1996 to 2002. (Tr. 1881.) Therefore, Cole has a basis for his knowledge of Brown's positions on political matters.

blacks in office, our candidates, because we don't want . . . white people over us anymore." (Tr. 1749, 2089-90.)¹¹ Ewing's testimony that Brown made these racial remarks to black voters was uncontroverted.

38. In summary, this extensive evidence bearing upon Brown's racial intent is compelling. It includes his statements calling for racial discrimination in redistricting; his criticisms of African Americans who attempt to build black/white political coalitions; his racially disparaging remarks that look forward to the deaths of white persons in Noxubee County; his threats to defeat white candidates by encouraging racially polarized voting by blacks; his lack of interest in any activities that would attract whites to participation in Democratic Party affairs; and his consistent use of racial campaigning in efforts to defeat white candidates. On the basis of this showing, this Court finds that Brown acts with racial intent in many of his voting-related and political activities.

E. Brown's Recruitment of Black Candidates to Oppose White Candidates

39. Brown has very openly communicated the racially discriminatory intent behind his actions, particularly with regard to his desire to recruit black candidates to oppose white officeholders.

Brown's Recruitment of Winston Thompson

Thompson's Qualification to Run

40. Roderick Walker is the Noxubee County Prosecuting Attorney and the only

¹¹ Ewing's testimony was corroborated by the fact that she recorded the incident in her diary. (Tr. 2088-89; Ex. P-174.)

remaining official elected countywide who is white. (Tr. 387.) He has served for twenty-three consecutive years in that position and has always run for the office as a Democrat. (Tr. at 56-57.) Winston Thompson, a black attorney, was certified by the DEC in 2003 to run against Walker. (Ex. P-142, Tr. 59, 69.) Thompson registered to vote in Noxubee County and qualified to run on the same day in 2003. (Ex. P-141, Tr. 61-62.) His candidate qualification forms were incomplete, omitting data such as zip code of residence, a home telephone number, and listing his business telephone numbers in an area code different than the area code for Noxubee County. (Ex. P-142, Tr. 59-60.) Thompson owned property in Madison County, Mississippi and owned no real property in Noxubee County. (Tr. 64-65.) The utility services in Thompson's rental apartment in Noxubee County were not activated during the time of his leasehold. (Tr. 65-67.)¹²

Brown's Assistance to Thompson

41. Brown told Thompson that he thought "it was a nice idea" for Thompson to run for County Prosecuting Attorney. (Tr. 1456, 1459.) Brown and Thompson knew each other because prior to the time Thompson qualified to run for County Prosecuting Attorney, Thompson served as Brown's attorney in a class action suit. (Tr. 1459.)¹³

¹²Under Mississippi law, a County Prosecuting Attorney must be a resident of the county where he stands for election. Miss. Code Ann. § 19-23-9 "requires a county prosecuting attorney to possess all the qualifications of other county officers in addition to being a regular licensed and practicing lawyer. That necessarily means that the person named to fill the vacancy must be a qualified elector of the county." Op. Miss. Att'y Gen., No. 2001-0020, Kilpatrick (Jan. 26, 2001). "Miss. Code Ann. Sec. 23-15-11 (Supp. 1988) sets forth the qualifications, including residency requirements, for voter registration. Residency, for electoral purposes, is not a function of the nature of an applicant's shelter, but is rather a function of whether the applicant permanently resides within the districts in which he offers to vote." Op. Miss. Att'y Gen., Mathers (June 29, 1989).

¹³ During that time, Thompson was an attorney in the Colom Law Firm in Columbus, Mississippi. (Tr. 1459.)

42. Brown also told Thompson, prior to the 2003 Democratic Primary, that he would aid Thompson's candidacy for Noxubee County Prosecuting Attorney. (Ex. P-2 Admiss. No. 5.) Brown communicated with landlord Bobby Crespino at least one time about the availability of an apartment for Thompson to rent in Noxubee County, (Ex. P-2, Admiss. No. 3), and Crespino subsequently rented an apartment to Thompson. (Tr. 1456-57.)

The DEC's Standards for Disqualification

43. In February 2003, the DEC created interview committees to consider any questions that arose concerning the qualifications, including residency, of candidates who had filed notice of intent to seek Democratic nominations. (Ex. P-8; Tr. 1430.) If that committee had determined that a person was not qualified to run for local office for failure to satisfy, among other things, a residency requirement, the committee could have refused to certify the placement of the person's name on the Democratic Primary ballot. (Tr. 1446-47.)

44. The February 17, 2003 minutes of the DEC specifically show that the members of the DEC were told that one of the grounds for challenge to a candidate was residency. (Ex. P-8; Tr. 1543.) These minutes showed that the DEC members were instructed that if "any committee member know[s] of any" disqualification, "please ack [sic] on it this is real serious." (Ex. P-8; Tr. 1544.)

45. For the DEC to disqualify someone from having his or her name placed on the primary ballot, a challenge or objection would have to be made to the committee; however, that challenge could be made by someone on the committee, including the Chairman. (Tr. 1453-54.) In 2003, the interview committee of the DEC acknowledged questions had been raised regarding Thompson's residency. (Tr. 1458.) They also acknowledged questions had been raised regarding

the residency of Bruce Bernard Brooks, who was a black candidate for Board of Supervisors and a resident of Road District 5. Id. After Thompson filed his notice of intent to seek nomination, Brown never asked him whether he was a resident of Noxubee County or whether Thompson had ever spent one night in the county. (Tr. 1461.)

Brown's Refusal to Assist Walker with his Petition

46. Roderick Walker complained about Thompson's residency to Brown and delivered a petition to Brown challenging Thompson's candidacy, but Brown told Walker that Thompson was a resident and would be allowed to run. (Tr. 70.) Walker asked for a list of members of the DEC, but Brown said it was not any of Walker's business to have the list of members and refused to give it to him. (Tr. 71, 1465; Ex. P-2 Admiss. No. 17.) Walker also asked for state Democratic Party rules from Brown, and Brown refused that request as well. (Tr. 72, 1466-67.)

47. On the Friday afternoon before the Monday meeting on Walker's petition, a handwritten note was delivered on a piece of notebook paper to Walker's law office. (Tr. 75.) The note stated that a hearing regarding Walker's petition would take place the following Monday at Brown's house. (Ex. P-156; Tr. 75.) In deciding that the DEC meeting on Roderick Walker's petition to disqualify Thompson would be held at his private residence, Brown did not talk with anyone who told him that the courthouse would not be available to the DEC in the evenings. (Tr. 1463-64, 1465.) Rather, Brown explained that he made the decision to hold the meeting at his home because "I wanted to do [it]." (Tr. 1464.)

Brown's Exclusion of Whites from the "Hearing"

48. When Scott Boyd, a newspaper reporter for the Beacon,¹⁴ who is white, learned that

¹⁴ The Beacon is a local, weekly newspaper in Macon, Mississippi. (Tr. 134.)

the meeting on Roderick Walker's petition would be held in Brown's home, he called Brown to ask about it. (Tr. 147-48.) When Boyd indicated he would be attending the meeting, Brown said, "[W]e're not going to let you in." Id. When Boyd asked why, Brown said, "Well, if I let you in, I'll have to let everyone else in." Id. Brown gave no further explanation, nor did he say the Committee was going into executive session. (Tr. 148.) Until that time, DEC meetings had always been open to the public, but because Brown told Boyd he would not let him in if he came, Boyd did not attend the meeting. Id.

49. Long-time DEC member Robert Cunningham, a white person, received a call from Walker informing him of the upcoming meeting at Brown's house. (Tr. 121.) Cunningham had not received notice from the Committee about the meeting and found it to be highly unusual for the meeting to be held in Brown's private residence since all prior Committee meetings had been held at the courthouse. (Tr. 121-22.) Fellow long-time DEC member Wallace Gray, who is white, accompanied Cunningham to the meeting. (Tr. 120.)

50. When Cunningham and Gray arrived at Brown's house, Brown met them at the door of his garage and informed Cunningham and Gray for the first time that they were no longer members of the DEC, because Brown claimed that Cunningham and Gray had missed three DEC meetings in a row. (Tr. 80-81, 122, 1473, 1474-76.) However, Cunningham had every reason to believe he was still a member since he had attended meetings of the Committee between 2000 and 2003 and had previously been informed by Brown that he was a member. (Tr. 125-26.)

51. The DEC had failed to send written notices of removal to either Cunningham or Gray as required by the Mississippi Democratic Party Constitution, or to even vote on removal of these two members. (Tr. 121, 1476-77, 1888, 1891-92.) See Miss. Dem. Party Const. art. IV, §§ 6, 7, &

8 (providing the procedures to be followed to remove a member from a county DEC).¹⁵ At trial, Brown tried to suggest that a county DEC could opt out of the procedural requirements for the removal of a county DEC member by written amendment, but there was no evidence that the Noxubee County DEC had ever taken such an action. (Tr. 1478-81.) The Mississippi Democratic Party never received any communication, either orally or in writing, from the DEC or Brown indicating that the DEC had opted out of or amended portions of the state constitution as it applied to Noxubee County. (Tr. 1886-87.)

52. During the course of Cunningham's conversation with Brown in the garage, Brown threatened to call law enforcement, and Chief Deputy Terry Grassaree did, in fact, arrive at the meeting after the conversation.¹⁶ (Tr. 122.) Brown eventually allowed Cunningham and Gray into

¹⁵ In this case, the United States is not seeking a declaratory judgment that Brown and the DEC violated their own party's rules. Such noncompliance with party rules could not alone prove a violation of Section 2. Instead, in this instance, evidence that Defendants violated their own party rules bears directly upon the Defendants' discriminatory intent. See Arlington Heights v. Metropolitan Development Housing Corp., 429 U.S. 252, 267 (1977) (holding that substantive departures from procedures are particularly relevant if the factors usually considered by decision makers would support a contrary outcome). Dr. Arrington testified about this contrast and how selective formality assisted him in finding evidence of Defendants' racial intent under Arlington Heights, in light of the fact that the treatment of Walker's petition constituted a deviation from standard procedures by the DEC. (Tr. 360-61, 614-16.)

¹⁶ On a number of occasions in which Brown had disagreements with whites over voting issues, he summoned law enforcement officials to intervene in a non-criminal matters that did not appear to have reasonably required the involvement of police officers. (Tr. 81-82, 1599, 1614.) Other times, police officers, sometimes simultaneously members of the DEC, intervened in election matters against individuals opposed to Brown's interests. (Tr. 275-76, 970, 1104-05, 1768-1779.) This pattern is reminiscent of the intimidating and unnecessary use of police by some white officials during the Civil Rights Movement directed against citizens attempting to secure the voting rights of African Americans. See The Voting Rights Act: Ten Years Later A Report of the United States Commission on Civil Rights, 146-47 (1975) (police called when member of minority group sought to enforce anti-campaigning limits); cf. Political Participation, A Report of the United States Commission on Civil Rights, 120-21 (questionable traffic tickets issued to minority candidates).

the house, but he ordered the two men to go into the kitchen while the Committee met in the den, and the two men did as they were told. (Tr. 123.) Cunningham explained that he and Gray obeyed the order "because it was [Brown's] house." *Id.* No one else was in the kitchen, and being in a different room than the actual meeting effectively prohibited Cunningham and Gray from participating. (Tr. 123-24.) Cunningham and Gray's exclusion was particularly unusual in light of fact that the Committee had not gone into executive session and, in all Cunningham's years on the DEC, meetings had always been open to the public. (Tr. 123.)

Brown's Refusal to Allow Walker to Present his Petition

53. The "hearing" on Roderick Walker's petition was conducted in an extremely informal fashion. Walker had to sit on brick fireplace hearth next to a television which was playing loudly. (Tr. 79.) At the commencement of the meeting, Brown announced there would be no hearing on Walker's petition, because he claimed the petition was inadequate. (Tr. 80.) Nobody at the meeting had copies of Walker's petition even though he brought extra copies, because Brown did not allow Walker to distribute them. (Tr. 82-83.) Walker asked to be allowed to present the merits of his petition to the body but was refused by Brown. (Tr. 83.)

54. Thompson made no showing at the "hearing" whatsoever. (Tr. 83, 85.) Thompson did not even attend the meeting, which came as no surprise since Brown did not contact Thompson and give him notice of the meeting, even though Brown had Thompson's telephone number. (Tr. 124, 1467; Ex. P-2; Admiss. No. 14.)

55. Roderick Walker left to repair the alleged defects and returned with an amended petition, but upon his return to the DEC meeting at Brown's house, he discovered the meeting had already concluded. (Tr. 86, 1468, 1537, 1542.) Walker's petition was at some point denied by the

DEC, though Walker never saw any vote taken nor did he ever hear of the Committee's decision. (Tr. 86, 88, Ex. P-2, Admiss. No. 21.) Thus, Walker was never afforded an opportunity to be heard on his petition. (Tr. 1469.)

Brown's Admission to Targeting Walker Based on Race

56. Sometime before April 4, 2006, Bill Nichols, a reporter for USA Today interviewed Brown. According to the stipulated testimony of Nichols, Brown stated, in reference to the fact that Walker is the only remaining white official elected countywide, "If I could find a black lawyer who lives in the county, we'd get him [Roderick Walker] too." (Exs. P-134, 172; Tr. 1483-84.) As recently as 2006, there were no black attorneys who were residents of Noxubee County. (Ex. P-134.) Brown never asked for a retraction of this statement attributed to him by Nichols. (Tr. 1486.) When asked at trial whether he made the statement, Brown stated, "I don't remember." (Tr. 1489.)

Walker's Lawsuit to have Thompson Disqualified

57. Roderick Walker subsequently filed suit in circuit court against Brown and the DEC. See Walker v. Noxubee County DEC, Ike Brown Chairman, et al, No. 2003-028 (Noxubee County Circuit Court 2003); (Ex. P-138.) Based upon, among other things, a finding that Thompson "had never spent the night in [his] apartment" in Noxubee County, Circuit Judge Samac S. Richardson ruled that Thompson was not qualified to run for Noxubee County Prosecuting Attorney, because he did not meet Mississippi residency requirements. (Ex. P-138 at 2, 4.)¹⁷

58. This Court finds that in an attempt to defeat Walker and replace him with a black official, Brown encouraged Thompson to qualify for County Prosecuting Attorney, despite the fact

¹⁷The Circuit Court opinion was not appealed and was the final order in the matter. (Tr. 63.)

that Brown knew Thompson was not a resident of Noxubee County. Further, in an attempt to defeat Walker, Brown and the DEC intentionally denied Walker a fair hearing on his petition challenging Thompson's candidacy. Were there any question as to Brown's racially discriminatory motivation for his recruitment and qualification of Thompson, it was made manifestly clear by his statement to USA Today reporter Nichols. Although this scheme did not prove successful because of Judge Richardson's ruling, this episode nonetheless is powerful evidence of Brown's racially discriminatory intent.

Brown's Recruitment of David Boswell

59. Prior to the 2003 Democratic Primary, Brown summoned David Boswell, a black candidate for Road District 5 Supervisor, to a meeting regarding his candidacy. (Tr. 1211, 1729-30.) There were a number of people at the meeting, all of them black, and Brown addressed Boswell in front of the group. (Tr. 1730.) Brown told Boswell he was looking for a "good black candidate" to run for office in Road District 5. (Tr. 1740.) Brown expressed concern that a white candidate might win the position, and said, in reference to the officials working out of the courthouse, that he wanted to try to "keep this thing as black as possible." (Tr. 1740.) Brown also explained that since the county was predominately black, all the officials ought to be black. (Tr. 1740.)¹⁸ The fact that Brown made statements of this kind to Boswell was uncontroverted.

¹⁸Although Boswell said he was uncertain of the year the conversation took place, he was certain that when it happened, Brown was Chairman of the DEC. (Tr. 1729, 1733, 1735.) He also testified that Bruce Brooks ran for Supervisor of Road District 5 that year (Tr. 1736, 1738); and Johnny Kemp also ran for Supervisor of Road District 5 that year. (Tr. 1734). And though Boswell guessed that he might have had the conversation with Brown in 1995, he was unable to explain how Brown could have done that if he were in prison that year. (Tr. 1745.) Only in 2003 did all three of the events occur to which Boswell testified. The Court therefore finds that this conversation happened at some point prior to the 2003 Democratic Primary when Brown was Chairman of the DEC.

Brown's Recruitment of Kendrick Slaughter

60. Kendrick Slaughter is a black resident of Macon, an Aberdeen police officer, and was a candidate for Macon City Alderman in Ward 4 in the May 2005 municipal election. (Tr. 938-39.) Slaughter ran against Willie Dixon, another a black candidate. (Tr. 940.) Slaughter had a conversation with Brown about his candidacy against Dixon in which Brown told Slaughter to change the ward where he filed and to run against white incumbent Alderman James Watkins. (Tr. 941.) Despite the fact that Slaughter did not live in Watkins' district, Brown told Slaughter to change his address to his Slaughter's sister's address that was located inside white incumbent Watkins' ward. (Tr. 941.) Brown told Slaughter that if he ran in his own ward, he would "split the black votes between the blacks and let the white one win" in the race against Dixon. (Tr. 942.) Slaughter had no indices of residency at his sister's address and did not follow Brown's direction. (Tr. 942-44.)¹⁹ Slaughter's testimony regarding Brown's direction to run in an improper precinct against a white candidate was uncontroverted.

Brown's Recruitment of Larry Tate

61. Brown's racially-motivated recruitment of Thompson, Boswell, and Slaughter were in keeping with attempts he had made to recruit black candidates to run against white candidates in the past. There was uncontroverted testimony from Road District 1 Supervisor Larry Tate that when

¹⁹ In 2005, Brown went to the Macon City Election Commission and opined about which voters should or should not be taken off the rolls. (Tr. 745-46.) Brown asked Macon City Election Commissioners to move black voters into the ward represented by James Watkins, a white alderman. (Tr. 746.) Brown sought to move black voters into Watkins' district without the benefit of any change of registration forms or other documents executed by the voter. (Tr. 746-48.) This testimony was uncontroverted.

he ran for Chancery Clerk in 1991 and 1995, Brown gave advice to Tate on Tate's campaign, explaining the importance of defeating white candidates. (Tr. 214-17.) In 1991, Brown told Tate he wanted to defeat longtime white incumbent Janelle Craig so that a white person would not serve as Chancery Clerk. (Tr. 215.) Brown explained that "since the county was predominately black, we need a black candidate." *Id.* And in 1995, Brown called Tate from prison once or twice a month and gave Tate advice on his run for Chancery Clerk against two white candidates and three other black candidates. (Tr. 216-17.) Again, Brown explained that he wanted a black candidate to be elected Chancery Clerk, reasoning that because the county was predominately black, it should therefore have a black Chancery Clerk. (Tr. 217.)

62. This Court finds that Brown recruited Thompson, Boswell, Slaughter, and Tate with the express purpose of attempting to defeat white candidates, and in the case of Slaughter, suggested that he falsely represent his residency in order to run against a white candidate. Regarding Boswell and Slaughter, Brown's explicit racial recruitments of them occurred during the time of his DEC chairmanship. This is further persuasive evidence of Brown's racial intent in elections in Noxubee County.

F. Brown and the DEC's Qualification of Another Non-resident Black Candidate

63. In addition to attempting to qualify Winston Thompson to run for County Prosecuting Attorney even though Thompson was not a resident of Noxubee County, Brown and the DEC in 2003 also qualified a black candidate to run for Board of Supervisors who the evidence showed probably did not reside in the road district in which he was elected.

64. In 2003, Bruce Bernard Brooks was elected to the Noxubee County Board of Supervisors from Road District 5. (Tr. 2105-06.) In 1995, Brooks unsuccessfully ran against

incumbent Board of Supervisor member George Robinson in the Democratic Primary from Road District 3 and at that time, claimed his residence to be 3004 Macon Lynn Creek Road, which is located in Road District 3. (Tr. 2106-07.) And in 1999, Brooks ran for the Board of Supervisors as an independent candidate against George Robinson in Road District 3 and was again unsuccessful. (Tr. 2109-10.)

65. At the time of the 2003 Democratic Primary, Brooks was living in a two-story brick residence located at the 3004 Macon Lynn Creek Road address, the construction of which was completed in late 1999 or 2000. (Ex. P-150, P-151, P-152; Tr. 2108-10.) Brooks' elderly parents live in a house adjacent to his on Macon Lynn Creek Road. (Tr. 2111.) This two-story house has 2,600 square feet and four bedrooms. (Tr. 2112.) Brooks and his wife have one child at home, and in 2003 they gave the Macon Lynn Creek Road address to the Noxubee County Board of Education as the one for their child. (Tr. 2113.) Correspondence Brooks received from the United States Internal Revenue Service was mailed to the Macon Lynn Creek Road address. (Tr. 2114.) In 2003, Brooks' wife claimed the Macon Lynn Creek Road home as her residence, and in 2003, she voted in Road District 3 which is not the district in which her husband was running. (Tr. 2143, 2153, 2157.) The residence that Brooks claimed in Road District 5 in 2003, 425 Highway 45, is a much smaller house than the home on Macon Lynn Creek Road. (Ex. P-148, P-149; Tr. 2122.)

66. Before qualifying to run from Road District 5, Brooks contacted members of the Board of Supervisors and asked that the supervisor district lines be changed so that his Macon Lynn Creek home would be located in Road District 5; however, his request was not granted. (Tr. 2116-17, 2120, 2142.)

67. In 2005, records from the Noxubee County Tax Assessor's office showed that a

homestead exemption was taken by Brooks and his wife on the 3004 Macon Lynn Creek residence, and Brooks did not deny the accuracy of that public record or the fact that he and his wife were taking that exemption at the time he qualified and ran for the Board of Supervisors in 2003. (Ex. P-51; Tr. 2119-20.) The homestead exemption was not changed to his Road District 5 home until 2007 and after the issue was raised at Brooks' deposition in this case. (Tr. 2145.)

68. Brown had visited Brooks in his Macon Lynn Creek Road residence prior to the 2003 Democratic Primary. (Exs. P-150, 151; Tr. 1448-49, 1450, 2125.) Prior to that primary, DEC member Ethel May told Brooks that some questions had been raised concerning his qualifications to run for the Board of Supervisors from Road District 5. (Tr. 2127-28, 2129.) However, Brooks was never called to appear before the interview committee of the DEC concerning any questions regarding his qualifications, including whether he was a resident of Road District 5. (Tr. 2130.)

69. Brooks' white opponent in the 2003 Democratic Primary and runoff, Johnny Kemp, did not believe that Brooks was a resident of District 5 when he and Brooks ran against each other in 2003. (Tr. 894.) However, in light of how Brown had responded to the court ruling in Eichelberger v. Walker in 2000, discussed more fully below, Kemp did not file a legal action challenging Brooks' residency. (Tr. 894.)

70. This Court finds that, like County Prosecuting Attorney candidate Winston Thompson's qualification, Brown and the DEC had good reason to question whether Brooks was a permanent resident of Road District 5 in 2003. However, they chose to overlook this fact and not inquire into his residency as the DEC interview committee was charged to do, because they wanted to make sure that white candidate Kemp was defeated by a black candidate. This is further evidence of the racial intent of Brown and the DEC.

G. Racial Appeals

71. Courts in Section 2 cases look to see whether political campaigns in the jurisdiction have been characterized by overt or subtle racial appeals. NAACP v. Fordice, 252 F.3d 361, 366-67 (5th Cir. 2001). During the course of campaigns, Brown and his political allies in Noxubee County have polluted the political atmosphere with racial appeals which are intended to polarize voters on the basis of race and reduce the electoral success of candidates preferred by white voters in local elections. As can be seen below, there is nothing subtle about the racial appeals used by Brown and his political allies.

Brown's Racial Appeal from Prison to Black Voters

72. While incarcerated in the federal penitentiary, Brown published a political advertisement in which he endorsed various candidates for local office. (Tr. 1237-38.) Brown's handwritten letter was typed and posted on the outside window of a business he owned in Macon. (Ex. P-33; Tr. 136-37, 1238-39.)²⁰ This letter posted by Brown was addressed "TO THE BLACK VOTERS OF NOXUBEE COUNTY" and endorsed eleven candidates for local office and one candidate for state senate, including Brown's political allies Sheriff Albert Walker, Circuit Clerk Carl Mickens, Velma Jenkins and her husband Hal Jenkins, Dirk Dickson, and Johnny Kemp's 1995 black opponent, Robert Henley. (Ex. P-33.) The letter encouraged black voters to "Vote Black in 95." Id. All twelve of the candidates that Brown endorsed were African Americans. (Tr. 1239.)

²⁰Scott Boyd, editor of the Beacon, first saw the advertisement posted in the window of Brown's business prior to the 1995 Democratic Primary. (Tr. 136-37.) When Boyd inquired about the advertisement inside, Brown employee William Mitchell told him Brown had mailed it to him. (Tr. 136-37, 180.) Sometime later, Boyd had a telephone conversation with Brown from prison, and Brown confirmed he had authored the flyer. (Ex. P-2 Admiss. No. 30; Tr. 136-37.)

This Court finds that this letter unquestionably constituted a direct racial appeal by Brown to black voters to cast their ballots strictly along racial lines.

Brown's Racial Appeal and False Advertisement Against Three White Officials in 1999

73. One of Brown's racial appeals occurred during the 1999 Democratic Primary campaign when he ran a false political advertisement about two white candidates. The advertisement, published in the Beacon, falsely suggested that Board of Supervisors member Eddie Coleman as well as Justice Court Judge Sherlene Boykin were involved in the growing of illegal drugs. (Ex. P-35; Tr. 256-57, 1201-02.) In this political ad, Brown pointed out that both Coleman and Boykin were "white public officials" and compared them to a black person who had recently been convicted of selling crack cocaine. (Ex. P-35.) Neither Coleman nor Boykin were ever arrested or indicted for any illegal substance offense or even questioned by law enforcement. (Tr. 257-58.)

74. Before running this racial appeal, Brown never talked with his fellow Democrats Supervisor Coleman or Judge Boykin about whether they had been involved or charged with any drug offense, and he never apologized for running this false accusation. (Tr. 258, 324, 1235, 1236.) In this racial appeal, Brown also informed voters that he would be present "at the polls in Shuqualak all day" at the time of the August 1999 primary and encouraged voters to vote for his political allies Russell Smart and Dirk Dickson who are black and were running against Coleman and Boykin, respectively. (Ex. P-35; Tr. 1204-05.)

75. At trial, Brown claimed that he pointed out the race of Coleman and Boykin "to identify them as part of the establishment." (Tr. 1203.) Given the fact that the majority of government officials in Noxubee County are African American, Brown's testimony that he was not

identifying Coleman and Boykin by race, but as part of the governing group, is simply not credible. The Court finds this political ad to be a direct racial appeal against Coleman and Boykin in an attempt to defeat them.

76. Further in this 1999 political ad, Brown quoted District Attorney Forrest Allgood, who is white, as saying that black people had not been hired to work in his office because "[n]one are good enough." (Ex. P-35; Tr. 1245.) Brown admitted at trial that this quotation did not accurately represent what Allgood or any of his representatives had said concerning their hiring practices. (Tr. 1246-47.) This Court also finds this inaccurate statement to be a racial appeal against District Attorney Allgood.

Brown's Racial Appeal and False Ad about a White Official in 2003

77. Prior to the August 2003 Democratic Primary and while Chairman of the DEC, Brown ran another racial appeal in the Beacon against Coleman, in which he referred to the institution of slavery and the vestiges of slavery in Noxubee County and in which he falsely accused Supervisor Coleman of racial discrimination against black citizens in the area of road paving and maintenance. (Ex. P-42; Tr. 259-60; 295-96, 297.) Brown signed this racial appeal in both his capacities as Chairman of the DEC and of the East Mississippi Voters League. (Ex. P-42; Ex. P-2 Admiss. No. 91.) Although Brown had complaints about the paving practices of all of the members of the Board of Supervisors, it was only the white member, Coleman, who Brown mentioned in the ad. (Tr. 1241-42.) The allegations of discrimination against Coleman were baseless. (Tr. 261-65, 2074.) Indeed, Coleman's residence in 2003 was itself located on an unpaved road, and Brown knew this fact. (Tr. 322, 1242-43.)

78. Ironically, even though Brown singled out Coleman for this racial attack, Brown was

of the opinion that Coleman did a better job in the area of paving and maintaining roads than any of the other members of the Board. (Tr. 1243-44.) Brown's contradictory statements here can be understood in the context of his articulated opinion that when it comes to questions regarding racism, "There is no such thing as truth." (Tr. 1233.) Furthermore, Brown has admitted he "uses race to get the job done." (Tr. 2026.)

79. In this Court's opinion, Brown's false claims of racism against white candidates, apparently made without regard to whether the statements are true, have been one of the major factors exacerbating racial polarization in Noxubee County in the last decade. This type of statement by Brown has been done with the racial intent of defeating as many white candidates for local office as he can manage.

State Representative Dickson's Racial Appeals

80. During the 2003 campaign period, Brown's political ally, state Representative Reecy Dickson and her son, Judge Dirk Dickson, both of whom are black, went to the residence of Peggy Brown, a black woman who supported and worked for 2003 Sheriff's candidate Samuel Heard, who is white. (Tr. 1855, 1864.) Representative Dickson said to Peggy Brown, "I just [came] to tell you that we don't need a white Sheriff in Noxubee County." (Tr. 1864, 1870.) Dickson did not call Heard by name, nor did she or Judge Dickson discuss any deficiencies that Heard might have for the job of Sheriff; they only referred to his race. (Tr. 1864-65.) This evidence of a racial appeal by the highest ranking elected official in Noxubee County was uncontradicted inasmuch as Defendants offered no testimony by either Representative Dickson, her son, or anyone else to contradict Peggy Brown's testimony.

81. During the same campaign period, Samuel Heard learned that the Noxubee County

NAACP was holding a forum for candidates running in local races. (Tr. 962-63.) Although he was not invited to the event, he went anyway and was given five minutes to speak. (Tr. 963.) Heard was the only white candidate there, and there was no evidence that any white candidates were invited to this forum. (Tr. 1040.) Judge Dickson was chairing the NAACP forum, and after Heard spoke, Representative Dickson addressed the audience with a racial appeal, stating that in voting, "blacks need to stick together." (Tr. 964.)

Racial Appeal and Intimidation of a Black Voter by the Circuit Clerk

82. Aldine Cotton is a black voter who came to the Circuit Clerk's office to vote by absentee ballot in the 2003 Democratic Primary. (Tr. 2195.) In that primary, Mickens was opposed by Larry Cooper, who is white. (Tr. 2195.) Cotton has limited formal education and had difficulty voting her absentee ballot, but she did not want people in the Circuit Clerk's office to assist her in marking it. (Tr. 2196, 2214-15.) Because she had difficulty voting and spoiled her first ballot, Cotton asked for and was given a second ballot. (Tr. 2196-97.) Later, Mickens received a call from Cotton's daughter who works in the Oktibbeha County Circuit Clerk's office and who expressed concerns about her mother's ballot. (Tr. 2197-99.) When Cotton subsequently came back to Mickens' office to vote, he provided her a third ballot after spoiling the second, but in addition he inappropriately stated to her, "You didn't vote for me. You voted for the white folks." (Tr. 2199-2200, 2212.) Mickens admitted that he watched Cotton vote her second ballot and saw that she had voted for his white opponent. (Tr. 2200-01, 2213, 2215.)

83. This Court finds that this was a racial appeal for Cotton to vote for black candidates, and in the context in which Brown's political ally, Mickens, made this statement, it had the potential to intimidate the voter.

Racial Appeals used by a Black Supervisor

84. Supervisor Larry Tate admitted he has used racial appeals to ensure the defeat of white candidates when he has run for office in Noxubee County. According to Supervisor Tate, one of his central campaign slogans is, "Blacks need to stick together." (Tr. 227.) He explained that when there are multiple black candidates running for office along with a white candidate, he makes this appeal to discourage black voters from splitting their votes among the black candidates, with his goal to increase the likelihood that the white candidate will not be elected. Id.

Racial Appeals by an NAACP Official at a Noxubee County Forum

85. Before the 2005 Macon election, the NAACP held a forum at the Noxubee County High School that Brown, who is the state NAACP Vice President, and State Representative Dickson attended. At this forum, the President of the Mississippi NAACP stated that black candidates had "taken Shuqualak, the county, and Brooksville . . . and now it was time to take the city of Macon." (Tr. 1629-32.) Further, this speaker made statements about the presence of "whites" in the room and asked, "Are you feeling uncomfortable?" (Tr. 1632.) This testimony about these racial appeals was uncontroverted.

86. This Court finds that these unfortunate racial appeals were used by Brown and his allies to encourage racially polarized voting and to defeat the candidates preferred by white voters.

H. Party Loyalty Requirement as a Pretext for Racial Discrimination

87. Defendants contended at trial that some of the racially discriminatory actions taken by Brown and the DEC were done in an attempt to disqualify voters and candidates from participating in the Democratic Primary on party loyalty grounds. However, a review of the

evidence demonstrates that this attempted partisan justification was a pretext for racial discrimination.

Threats to Disenfranchise White Voters - the List of 174

88. In June of 2003, Brown publicly threatened to challenge a group of 174 white voters if they attempted to vote in the August 5 Democratic Primary. (Ex. P-128.) Brown sent a press release to the Beacon with the list of the 174 white individual voters' names and a threat that he would challenge the voters under the authority of Miss. Code Ann. § 23-15-575 if they attempted to vote in the Democratic Primary. (Tr. 151, Ex. P-128.) The majority of the voters listed were from Road District 4, the home of Supervisor Eddie Coleman. (Ex. P-128, Tr. 250.)

89. The statute to which Brown cited as authority to challenge the voters merely states that a voter who votes in a party primary must have the intention of supporting the party's candidates in the general election. Miss. Code Ann. § 23-15-575. In 2003, Mississippi DEC Chairman Cole asked Mississippi Attorney General Michael Moore under what circumstances a voter could be prohibited from participating in a party primary, pursuant to Miss. Code Ann. § 23-15-575. (Ex. P-50; Tr. 1921-22.) The answer from the Attorney General was that the stated intent of the voter was controlling. (Ex. P-50; Tr. 1921-22.)

90. At trial, Brown admitted his express purpose was to keep these 174 white voters from casting a ballot in the 2003 Democratic Primary (Tr. 1335); and he had trouble articulating what, if any, investigation he did into these voters' alleged violations of Miss. Code Ann. § 23-15-575. (Tr. 1338-44.) Nonetheless, Brown's actions had their intended effect. Circuit Clerk Mickens received telephone calls from voters regarding whether they would be challenged at the polls. (Tr. 2223-24, 2236.) Kari Hardy, a woman whose name was in the list of 174 white voters, saw her

name listed in the newspaper. (Tr. 912.) She felt very intimidated by the threat and understood it to mean she was not allowed to vote. (Tr. 913.) She also testified that she felt very intimidated by the fact that it came from someone whom she considered to be an authority. (Tr. 913, 915.) Before the election, she decided not to go vote because, as she testified, "I was worried I might be arrested." (Tr. 913.)

91. Sherri Anne Eaves, another woman whose name was on the list of 174 white voters, felt intimidated by the threat as well. (Tr. 910.) She understood the threat to mean that she could not vote, and if she tried to vote, she would be personally challenged at the polls. (Tr. 900-01.) Part of the reason she believed Brown would carry through with the threat against her is because he had previously lodged racially-motivated, false allegations against her mother, Sherlene Boykin, a local officeholder. (Tr. 907-08.) See supra Brown's Racial Appeal and False Advertisement Against Three White Officials at 30-31. Indeed, Brown listed her mother's name close to hers in the list of voters he threatened to challenge. (Ex. P-128.) On election day, Eaves was so afraid to go to the polls alone that she took her husband with her to vote in case anything happened. (Tr. 901.)

92. Although Brown testified that he published the list in an attempt to set up a test case concerning the enforcement of the loyalty provisions of Miss. Code Ann. § 23-15-575 in conjunction with then Mississippi DEC Chairman Cole, Brown acknowledged that Cole never suggested that he publish the names of voters in the newspaper that might be challenged. (Tr. 1342-43.) Regarding the number of active Republicans who might try to vote in Noxubee County Democratic primaries, Brown estimated that number to be somewhere between thirty to fifty party activists. (Ex. P-133; Tr. 1351-54.) Brown never articulated how he came up with the 174 names. Brown acknowledged that in his view, publishing the 174 names would have caused voters to believe that they would be

challenged at the polls. (Tr. 1530.) The Court finds that Brown had the names published, not because of party loyalty concerns, but in an attempt to intimidate white voters so that they would not vote in the 2003 Democratic Primary.

93. Brown attempted to justify his actions that would have prohibited white voters from participating in the Democratic Primary on party loyalty concerns. (Tr. 1335.) The Court does not find this explanation persuasive. Party loyalty issues normally arise in the context of a "party raiding" phenomenon. This occurs where voters in one party cross over and vote for the weaker candidate in the other party's primary in hopes that the weaker candidate wins the nomination, thereby increasing the chances that the party of the "raiding" voters will win the general election. (Tr. 1916.) This practice does not have any application or relationship to local races in Noxubee County, because the county is heavily Democratic and there are very few Republican nominees who run in local elections. (Tr. 1917.) In fact, no Republican candidate has won a local office in Noxubee County since the 1996 general election in which Carolyn Pugh won a seat on the Noxubee County Election Commission. (Ex. P-1 ¶ 46.) Therefore, avoiding "party raiding" could not have been the reason for Brown's actions in attempting to disenfranchise white voters. Denying white voters the opportunity to vote in the Democratic Primary was Brown's intent.

94. In the end, Brown did not challenge any of the 174 voters' right to vote in the 2003 Democratic Primary, but Brown's decision not to do so came after the Mississippi Attorney General had written him a letter and issued an opinion regarding the limited circumstances under which such challenges can be made, pursuant to Miss. Code Ann. § 23-15-575. (Ex. P-43, 50; Tr. 1346-47.)²¹

²¹ It is informative that Brown testified that he "wasn't interested in seeing" this letter addressed to him by Attorney General Moore and therefore did not read the letter. (Tr. 1350.)

Further, officials from the Mississippi Secretary of State's office came to Noxubee County prior to the August 5 primary and held a training session for poll managers and poll workers on the subject of when voters can be challenged under Mississippi law. (Ex. P-44; Tr. 1358, 1529, 224-25.) Nevertheless, Brown never publicly communicated the fact that he did not intend to challenge any of the 174 white voters whom he had listed in the Beacon. (Tr. 1359.) As noted above, these voters were therefore left with the decision either to stay home to avoid being challenged or come to the polls in fear of being challenged.

95. Dr. Arrington's "mirror image" analysis also informs Brown's publication of the list of 174 white voters who were subject to challenge if they sought to vote. (Tr. 407.) According to Dr. Arrington, public threats by a white official to challenge only black voters would rightfully be considered intimidation, and their discriminatory nature would be obvious. Id. Brown's efforts to do the same thing to white voters were a clear attempt to intimidate them so they would not vote in the Democratic Primary and therefore, because of racially polarized voting patterns, their lack of participation would consequently benefit the candidates favored by Brown. Id.

96. The Court finds Brown's public threat to these 174 white voters to be strongly indicative of his racially discriminatory intent.²² Brown used his authority to intimidate these voters into believing they could legitimately be challenged at the polls. Were Brown genuinely concerned about voters who support Republican nominees in the general election voting in the Democratic Primary, he would have also listed those black Democrats, as shown below, who he knew for a fact

²² The Fifth Circuit has recognized that conditioning participation in primaries upon a pledge of party loyalty may be used as a pretext for racial discrimination. McIntosh County NAACP v. City of Darien, 605 F.2d 753, 761 n.8 (5th Cir. 1979) (citing United States v. Bd. of Supervisors of Forrest County, 571 F.2d 951, 954 (5th Cir. 1978)).

supported Republican candidates. Yet Brown chose to list 174 voters, all-white, and the majority of them residents of the district which is home to the last remaining white Supervisor, Eddie Coleman. The evidence clearly demonstrates that Brown's intent was to realize his goal of unseating the remaining white Supervisor by threatening and intimidating white voters who would be less likely to come to the polls for fear of being challenged. The Court finds that Brown's claims of concerns for party loyalty are contradicted by his own conduct, and that his exaggerated concerns in this regard have been used as a pretext by him to attack white Democrats.

Threats to Candidates

97. Pursuant to Article XIII of the Constitution of the Democratic Party of Mississippi, Democratic candidates must be willing to pledge that they will support the candidacy of all party nominees running in the general election for which the candidate is seeking the nomination. (Ex. P-49 at 9; Tr. 863.) During a 2003 Board of Supervisors meeting, Chairman Brown announced that he would challenge county Democratic officials who he claimed had not been faithful to the party. (Tr. 144.) Specifically, he named Supervisor Eddie Coleman, the only white Supervisor, claiming Coleman had contributed to Republican candidates and that he had not contributed to Democratic candidates. (Tr. 145.) However, Coleman has never, in fact, given money to a Republican candidate or the Republican Party (Tr. 276-77.) He has supported black Democratic candidates running against whites, and at a political rally/fish fry sponsored by his family, a black candidate was provided the opportunity to give a speech. (Tr. 307, 327.) Brown admitted that he did not have any evidence that Coleman was not loyal to the Democratic Party. (Tr. 1517.)

98. At trial, attorneys for Brown and the DEC interrogated white candidates for local office such as Roderick Walker, Eddie Coleman, Samuel Heard, and Johnny Kemp, on whether they

had actively supported other Democratic candidates for state or local office or financially contributed to the party. However, Supervisor Brooks, who is African American, acknowledged that he had not been active in other campaigns in Noxubee County other than his own. (Tr. 2146, 2148.) He testified that he never had a yard sign for a Democratic candidate or attended a political rally for certain candidates, other than rallies during the time that he was running. (Tr. 2147.)

99. Interestingly, Brown has not, in his own actions, manifested a loyalty to Democratic nominees that he has demanded of white candidates and voters. Brown actually supported Republican nominees for statewide office within six months of becoming the Chairman of the DEC. (Ex. P-37; Tr. 1257-59, 1356-57.) Furthermore, Brown personally knew that black Democrat, Shuqualak Mayor Velma Jenkins, publicly supported a Republican candidate, yet he did not include her in the list of 174 voters. (Tr. 2475-76.) Indeed, after Brown learned that Jenkins was supporting Republican Congressman Chip Pickering, he never even told Jenkins that he was not going to support her for Mayor of Shuqualak. (Tr. 2475-76.) This Court finds that Brown's reaction to Jenkins's self-acknowledged support of a Republican candidate stands in stark contrast to the way in which Brown reacted to mere suspicions that some of the white Democratic candidates, such as Samuel Heard or Eddie Coleman, had supported Republican candidates. Apparently, the only time it became important to Brown and became a possible ground for him to attack a person's loyalty to the Democratic Party was when the Democratic candidate was white.

100. This Court finds that this disparate treatment of black and white candidates by Brown is evidence of his racial intent.

I. Brown's Intimidation of a Black Voter who Publicly Supported a White Sheriff's Candidate

101. Persuasive evidence that Brown chose candidates he supported on racial grounds was how he, the Chairman of the DEC, responded when fellow black Democrats chose to support a white candidate in a bi-racial local race. One such example was his treatment of Debra Rice.

102. In 2003, Rice, who is black, supported white Sheriff's candidate Samuel Heard and encouraged voters at her place of employment to vote for Heard. (Ex. P-169 at 11, P-169A (videotape of Rice testimony).) After hearing Rice had supported Heard, the white candidate in the 2003 Sheriff's race, Brown went to Rice's home. (Ex. P-169 at 6; Tr. 1209-10.) Brown made statements critical of Rice's choice of candidates to support in the prior election, and Rice told Brown that she "had the right to vote for who the [profanity] I wanted to vote for" and that color did not mean anything to her. (Ex. P-169 at 6-8.) She then ordered Brown to leave her property. (Ex. P-169 at 8.) After Brown departed, Rice was upset about Brown's actions, telephoned him, and stated, "You know what you just did when you came to my house, that was wrong, I have my rights to vote for who I want to vote for." Id. at 8-9.

J. Brown and the DEC's Racial Discrimination in the Selection of Poll Workers

103. Courts have looked at the number of minority persons appointed to serve as poll workers in Section 2 cases, because a low number can impair minority access to the electoral process and undermine the confidence minorities have in the openness of the system. United States v. Marengo County Comm'n, 731 F.2d 1546, 1570 (11th Cir. 1984); see also Jackson v. Edgefield County, S.C. School Dist., 650 F. Supp. 1176, 1182 (D.S.C. 1986) ("We have regarded that the race of those appointed to serve as precinct workers is an important factor in considering the degree of

minority participation in the voting process.").

104. During the 1990's when Brown was the Vice President of the Noxubee County NAACP branch, Brown and the President of that organization wrote to the Election Commission requesting that some white poll managers be removed and replaced by black managers to "bring racial ratio in line." (Ex. P-32; Tr. 1379-81, 1383.) This demand for poll work forces that reflect the population percentages in the precincts was made when Brown was not a decision maker concerning who would be selected to work at the polls.

105. Once Brown became one of those decision makers, his interest in poll work forces that fairly reflected the racial composition of the voters dramatically changed. In the August 5, 2003 primary, of the 110 people who were selected to work as poll managers or workers, only seven (6.3%) of those were white people. (Ex. P-135 at 1-3; Tr. 1723.) In the August 26 primary runoff, of the seventy-six people who were selected to work as poll managers or workers, only two (2.6%) of those were white people. (Ex. P-135 at 4-5; Tr. 1723.) Thus, Brown and the DEC's selection of poll managers and workers for the 2003 primary and runoff resulted in the selection of an almost all-black poll work force. Indeed, in the August 5 primary, all thirty-eight of the poll managers in the following precincts were African American: fourteen black poll managers at Brooksville; six black poll managers in Cliftonville; four black poll managers at East Macon; four black poll managers at Prairie Point; four black poll managers at Savannah; five black poll managers at Shuqualak;²³ and a black poll manager at Summerville. (Exs. P-73-86; Tr. 277-278, 324, 1006-15.)

106. Prior to the August 2003 primary, candidate Coleman, who was the white incumbent

²³One of the signatures at the Shuqualak polling place was not legible. (Ex. P-85.) However, according to the testimony of Len Coleman, all of persons working in the Democratic primary in Shuqualak in the August 5 primary were black. (Tr. 1128-29.)

Democratic member of the Board of Supervisors, was not contacted by Brown or any member of the DEC concerning any suggestions or recommendations that Coleman had concerning people to work at the polls. (Tr. 277-78.) Neither was Board of Supervisors candidate Johnny Kemp or Sheriff candidate Samuel Heard contacted for suggestions as to who might work at the polls. (Tr. 837, 1016.) Coleman did not contact Brown with recommendations of people to work at the polls, because Brown's treatment of Coleman prior to August of 2003 suggested to Coleman that Brown would not be receptive to Coleman's suggestions. (Tr. 324-25.)

107. Brown's testimony verified that, by his count, only seven white persons of 112 poll managers (6.3%) were chosen to work in the 2003 primary in a county in which 22.0% of the people who participate in the Democratic Primary are white. (Tr. 1383-84.) Apparently, the reason for this disproportionately low number of white poll officials was not that whites will not work in the Democratic Primary in Noxubee County. When John Bankhead was Chairman of the DEC between 1996 and 2000, he never had any problems finding whites to work at the polls. (Tr. 2748.) In the 1999 Democratic Primary, of the ninety-nine poll managers and workers, twenty-one (21.2%) of them were white. (Ex. P-135 at 4-6.)²⁴

108. The state DEC had a rule of thumb in 2003 that encouraged DEC county chairmen to select poll officials and members of the local DEC's in each precinct so that they were representative of the Democratic electorate in that precinct. (Tr. 1883, 1928-29.) When former state

²⁴According to Brown, 26.0% of the poll managers in the 2006 Democratic Primary were white. Defendants offered no documentary evidence, such as a list of poll managers, as did the United States for 1999 and 2003, to support this 26.0% figure. However, assuming that the figure is accurate, it is noted that this result was achieved after the filing of this lawsuit and after the United States had conducted substantial discovery on, among other issues, racial discrimination in the selection of poll officials by Brown and the DEC. (Tr. 1385-86.)

DEC Chairman Cole talked to Brown about applying this approach, Brown adamantly told Cole, "In Noxubee County we hire who we want to." (Tr. 1884.) None of the other DEC chairmen in Mississippi reacted in this manner to encouragement from the state DEC to have racially diverse poll work forces. (Tr. 1885.) Further, when this subject was discussed, Brown did not claim to Cole that he had tried to involve whites in working at the polls and that they had refused his invitation. (Tr. 1885.)

109. At trial, Brown attempted to defend his nearly all-black poll work force on three grounds. First, he claimed that the committee members in each road district, and not the Chairman, appoint the poll managers in each district. (Tr. 1265.) That defense is unavailing because the DEC, along with Brown, is a Defendant in this case. Second, Brown claimed that he had told the DEC that white representation in the poll work force needed to be increased, but there was no minute entry of any such direction from Brown to the DEC members in the minutes of the DEC. (Tr. 1266-67.) In attempting to explain the absence of a minute entry, Brown claimed that the practice was for the minutes to only reflect actions taken by the DEC, and not merely recommendations by him. (Tr. 1267.) However, perusal of minute entries showed that this was not the practice of the DEC. (Ex. P-3; Tr. 1268-71.) Third, Brown claimed that there were no black poll managers who worked in the Republican Primary in 2003. (Tr. 1526-27.) However, the evidence showed that almost no blacks vote in the Republican Primary in Noxubee County. (Ex. P-1 ¶ 46; Tr. 352-53, 484-85.)

110. Doris Wilborn, who is African American, was a poll manager at the Old High School polling place in 2003. (Tr. 2395.) Wilborn has experienced serious health problems, including several heart attacks, triple bypass, knee replacement, and is a diabetic. (Tr. 2392.) Wilborn retired some twelve years before the 2003 primary for health reasons. (Tr. 2402.) Brown was aware of

Wilborn's serious health problems. (Tr. 2413.) In 2003, Wilborn did not tell anyone that she wanted to work at the polls but simply received a letter from the DEC notifying her that she had been chosen. (Tr. 2417.) The Court finds that evidently Brown and the DEC would rather appoint a black person suffering from serious health problems who had not asked to work at the polls rather than increase white participation in the poll work force in 2003.

111. In Dr. Arrington's opinion, the disproportionately low number of white managers and poll workers is a means for Brown to control the absentee ballot process. Nearly every person involved in the conducting of elections in Noxubee County was black. (Ex. P-1 ¶ 105.) Such a selection process removed members of the racial minority that would be most affected by racial discrimination from the administration of the election process. (Ex. P-1 ¶ 105.)

112. Brown and the DEC's discriminatory treatment of white poll workers has convinced at least some of the white poll workers not to return to work at the polls. For example, after being publicly berated by Brown in 2003 when she attempted to stop him from violating state law regarding the mishandling of absentee ballots, elderly, white poll manager Marie Abrams refuses to work at the polls again. (Tr. 1117-18, 1120, 1126.) Annette Hadaway, another elderly white poll manager, refuses to work at the polls anymore after being publicly scolded by DEC member Chief Deputy Terry Grassaree for trying to enforce statutory polling place anti-campaigning rules against supporters of Sheriff Walker. (Tr. 1105.)

113. On the basis of this poll worker evidence, this Court finds that Brown and the DEC intentionally chose to appoint an almost all-black poll work force for the 2003 primaries. This discriminatory selection process cannot be explained away on the basis that there were few whites in Noxubee County who were willing to work in Democratic Primaries, because both before and

after 2003, substantial numbers of whites had worked in these primaries. Moreover, the Court finds that Brown and the DEC intentionally chose to select this small number of white poll workers in 2003, because the lack of whites working at the polls would facilitate Brown's unlawful scheme to disenfranchise and dilute white voting strength by illegal conduct at the polls so as to defeat as many white voter-preferred candidates as possible, as more fully discussed below.

K. The DEC's Racially Discriminatory Enforcement of Poll Campaigning Limitations

114. Evidence that the DEC disparately enforced Mississippi's poll campaigning limitations on the basis of the race of the candidates is further evidence that white voters and the candidates they supported were denied equal access to the local political process. Annette Hadaway, an elderly white woman, worked as a bailiff at the Republican table in the East Macon polling place (located at the county courthouse) during the August 2003 primary election. (Tr. 1095.) Throughout the day Hadaway attempted to enforce the rules of the polling place, as instructed by the Secretary of State's County Election Handbook. (Tr. 1101-04, Ex. P-48.)²⁵ All the poll managers and workers at the Democratic table were black, and none was cooperative when Hadaway tried to enforce the rules. (Tr. 1101.) At one point, Hadaway saw one of the poll workers talking to Chief Deputy Terry Grassaree, pointing at her, and calling her a "troublemaker." Id.

115. Later, when checking the back entrance to the voting area, Hadaway noticed that some campaigners who were black had been passing out literature all day and had moved up to the back landing near the entrance to the courthouse. (Tr. 1104.) The campaigners had brought to the

²⁵The county election handbook is promulgated by the Mississippi Secretary of State's office. (Tr. 1330.) Brown produced it in discovery as what he used as the DEC Chair for training poll managers and workers. (Tr. 1331-32) (Ex. P-48 was used in 2004 and Ex. P-171 was used in 2002 and 2003 (Tr. 1330-34)).

back door their literature and a campaign sign for Sheriff Walker. (Tr. 966, 1104.) Hadaway then asked one of the black ladies to move the campaign literature and sign away from the entrance of the courthouse. (Tr. 965-67, 1104.)

116. Chief Deputy Terry Grassaree, who was a DEC member at the time, was sitting on the back steps, and immediately jumped up and confronted Hadaway. (Tr. 1104.) He loudly ordered her not to touch the papers, told her "he [was] the law," and added, "[T]his young lady is not the problem; you're the problem. You have no business touching her sign or trying to make her move." (Tr. 969, 1104.) In fact, Grassaree was incorrect as a matter of law, inasmuch as Mississippi law specifically gives the authority to the poll manager bailiff to prohibit individuals from loitering within thirty feet of an entrance to a polling place and prohibits individuals from passing out or posting campaign literature within 150 feet of an entrance. See Miss. Code Ann. §§ 23-15-245; 23-15-895.

117. Hadaway was shocked, and turned to go back inside when Samuel Heard, who was approaching from the outside and witnessed the exchange, told Grassaree that Sheriff Walker's campaign materials needed to be a certain distance from the entrance to the polling place. The uncontradicted evidence indicated that Grassaree then threatened Heard, stating, "I'll put your ass in jail." (Tr. 970.) Fearing he would be arrested on the day that he was running for Sheriff, Heard retreated from this confrontation. (Tr. 971.)

118. According to Peggy Brown, on primary election day in 2003, three persons were passing out campaign literature on the courthouse lawn for Heard. (Tr. 1857.) They were approached by Chief Deputy Grassaree and told to leave the courthouse lawn because they were in violation of the 150-foot anti-campaigning rule. (Tr. 1858-59, 1860.) As noted above, on the same

day, persons were passing out campaign literature for Sheriff Walker, and they were as close to or closer to the courthouse entrance than the three supporters of Heard had been. Yet these persons were not required to leave the courthouse property by Chief Deputy Grassaree. (Tr. 1860.)

119. The Court finds that this is direct evidence of the disparate treatment by former DEC member Grassaree of supporters of candidates for Sheriff in 2003, which was based on the race of those candidates.

L. Brown and his Political Allies' Improper Operation of the Absentee Ballot Process

120. To carry out his racially discriminatory purpose of denying white voters their opportunity to vote, diluting white voting strength, and defeating candidates who are preferred by white voters, Brown has operated the absentee ballot process in Noxubee County in a manner that is illegal for a number of reasons. Brown's scheme involved his hiring of notaries to work in conjunction with him and the Circuit Clerk's office to illegally distribute and collect absentee ballots from voters who were directed to vote for Brown's black candidate of choice. In addition, Brown has practiced racial discrimination in the selection of poll managers, who have the responsibility of ruling on challenges to absentee ballots on election night under Mississippi law. Further, to ensure that absentee ballots he wanted counted were not rejected, Brown went to the polls and instructed the DEC-appointed poll managers to count all ballots and ignore challenges thereto. This course of action has resulted in the counting of defective absentee ballots cast by black voters and the subsequent dilution of white voting strength. See Welch v. McKenzie, 592 F. Supp. 1549, 1558-59 (S.D. Miss. 1984) (stating that a Section 2 claim for vote dilution may be based on the counting of illegally cast ballots).

Unequal Access to the Absentee Ballot Process

Access to Absentee Ballots in the Circuit Clerk's Office

121. Carl Mickens has served as Noxubee County Circuit Clerk since 1991. (Tr. 2159.) In that capacity, Mickens is the administrator of absentee ballots in all county elections, and he also registers people to vote. (Tr. 2160, 2161.)

122. Prior to the 1999 Democratic Primary, Supervisor Coleman was in the Circuit Clerk's office behind the public counter perusing public information regarding which voters had received absentee ballots by mail. (Tr. 265-66.) During the time Coleman was examining these public documents, Russell Smart, who is black, came into the Circuit Clerk's office and asked Coleman, a sitting Board of Supervisors member, what he was doing "snooping around" in the office and told Coleman to leave. (Tr. 268.)²⁶ At the time Smart issued this directive, he was not, as Coleman was, a local elected or appointed government official, and he was also behind the public counter. (Tr. 267-69.) In addition to Smart, other black candidates were given access to the public information Smart was obtaining. (Tr. 268-69.)

123. In the 1996 and 1999 elections, Dorothy Taylor served as a poll watcher in the Circuit Clerk's office observing the voting of absentee ballots. (Tr. 1764-67.) When Taylor first began her poll watching in 1996, Sheriff Walker told her that if she did not leave the Circuit Clerk's office, she would be arrested. (Tr. 1768, 1779.) However, after she referred the Sheriff to the Mississippi Code section that allows candidates to have poll watchers in the Circuit Clerk's office to observe

²⁶ During a prior meeting with Election Commissioner Russell Smart, white voters were complaining about election irregularities. (Tr. 202-03.) In response to their complaints, Smart told the voters it was "payback time." (Tr. 202-03; 1562-63.) This testimony regarding Smart's racially motivated statement was uncontroverted.

pre-election day absentee voting, she was allowed to stay. (Tr. 1768-69.)

124. Taylor observed Mickens and other employees in the Circuit Clerk's office give Brown and Board of Supervisors member George Robinson quantities of unused absentee ballots that were then taken out of the Circuit Clerk's office. (Tr. 1772, 1780.) Brown and Robinson would then come back to the Circuit Clerk's office with absentee ballots, and they would be logged in by administrative personnel in that office. (Tr. 1772-73.) During this process, Brown was allowed to go behind the public counter in the Circuit Clerk's office where absentee ballots were kept. (Tr. 1776.)

125. Brown also closely monitored the activity surrounding the Circuit Clerk's receipt of absentee ballot requests and the mailing and return of voted absentee ballots during the August 2003 Democratic Primary. (Tr. 1819-1823.) Brown was a regular visitor to the Clerk's office where he would review records containing information about who requested absentee ballots, what precinct the ballots were mailed to, whether the ballots were mailed, and whether the ballots had yet been returned by the voters. (Tr. 1819-23.) Brown has engaged in this behavior in all elections. (Tr. 1821.)

126. Prior to the 2003 primary, Coleman was in the Circuit Clerk's office perusing the absentee ballot voter list again when Brown came into the office and told Coleman to get out. (Tr. 269, 1290-91; Ex. P-2 Admiss. No. 99). At the time this instruction was issued, both Brown and Coleman were behind the public counter, and Coleman was not involved in any improper activity. (Tr. 270, 1296.) During this incident Brown again summoned Chief Deputy Terry Grassaree, but Coleman refused to leave the Circuit Clerk's office. (Tr. 299, 322.) Mickens did not agree with Brown, because in Mickens' view, Coleman was doing nothing wrong and it was Brown who was

"out of place." (Tr. 2233-34, 2260-61.)

127. In 2003, any rule that would have prohibited candidates from being behind the public counter was not enforced against candidates other than Coleman, including Bruce Bernard Brooks and Larry Tate, both of whom were black candidates. (Tr. 224, 298, 322, 2138-39.) The confrontation between Brown and Coleman in the Circuit Clerk's office was the only time that Mickens ever heard Brown ask a candidate to leave Mickens' office while a candidate was reviewing public voting records. (Tr. 2223.) Moreover, the concern about candidates being too close to voters marking their absentee ballots in the Circuit Clerk's office was caused by the activities of Supervisor George Robinson and not Supervisor Coleman. (Tr. 2230-31.) Brown testified he and Circuit Clerk Mickens had agreed to a rule that prohibited candidates from being behind the public counter while voters were marking their absentee ballots, but Brown's testimony further indicated that he and Mickens did not agree about the enforcement of any such rule if, in fact, agreement was ever reached. (Tr. 1291).²⁷ Moreover, if there was such a rule, it was not applied to Jerome Miller, a black candidate running against Coleman for Road District 4 Supervisor, who was seen moving about behind the counter in 2003. (Tr. 983-84.)

128. Prior to the 2003 primaries, Brown was observed on numerous occasions behind the public counter in the Circuit Clerk's office, unsupervised and in close proximity to unvoted and unused absentee ballots to which he had full access. (Tr. 981-84.) Yet when Sheriff's candidate Samuel Heard went behind the public counter, he had to be escorted by a Circuit Clerk employee. (Tr. 984-85.)

²⁷ It bears remembering that Mickens, and not Brown, was the elected Circuit Clerk who had authority over management of Circuit Clerk's office.

**White Candidates and Voters who Support White Candidates
Required to take Additional Steps to Obtain Absentee Ballots**

129. In preparation for the August 2003 Primary, Heard talked with Circuit Clerk Mickens about helping gain access to absentee ballots for his supporters who needed to vote by absentee ballot. (Tr. 955.) Because he anticipated that a large number of absentee ballots would be cast in the Noxubee County 2003 Democratic Primary elections, Heard wanted to make sure that his supporters who were entitled to vote by absentee could do so. Id. Mickens told Heard that Heard needed to create a form for people to use in requesting an application for an absentee ballot. (Tr. 955-56.) Mickens indicated to Heard that for voters to receive an application and an absentee ballot by mail, they would have to fill out the request form and mail it back to the Circuit Clerk's office. (Tr. 957, 1030-31.)

130. Heard created his own request form and provided it to voters. (Ex. P-59; Tr. 258-59.) As the August primary drew near, voters who had filled out the request form provided to them by Heard complained that they had not received their applications for absentee ballots or the ballots themselves. (Tr. 959-60.) When Heard contacted Mickens about the problem, Mickens then stated to Heard, contrary to the instructions that he had given Heard at the start of the absentee ballot period, that a request form was not necessary, and that Mickens had been sending applications for absentee ballots and the ballots themselves to other voters merely on the basis of telephone calls to his office. (Tr. 960-62.)

131. The Court finds this evidence of racial discrimination in the access that black and white candidates had to the absentee ballot process. Quite simply, Circuit Clerk Mickens told Heard that his supporters had to fill out a form that he was required to provide them in order for these voters to receive an absentee ballot. On the other hand, Sheriff Walker's supporters, as shown

below, were apparently told they could just call Mickens' office on the telephone to receive an absentee ballot. The result of this disparate treatment was unequal access.

Brown's Payment of Numerous Notary Fees

132. In Mississippi, all absentee voters, with the exception of those who are temporarily or permanently disabled, are required to have their absentee ballot application and certificate notarized. Miss. Code Ann. § 23-15-631(1). Therefore, to conduct an effective, widespread absentee ballot operation, access to notaries is critically important.

133. Nan Ainsworth, records analyst for the Notary Division of the Mississippi Secretary of State, processes notary applications (including payment) and approves notary bonds. (Tr. 1677.) Around 1999, the Notary Division began to receive payments from RMB Enterprises, Inc. (RMB) for large numbers of notary applicants who were from Noxubee County. (Exs. P-144, P-145; Tr. 1689.) RMB is a corporation belonging to Brown. (Tr. 1679, 1686-92; 2306-07.)

134. In 2002 and 2003, Ainsworth processed in bulk at least forty-three notary applications, all of which were for residents of Noxubee County and all of which were paid for by RMB. (Ex. P-145; Tr. 1686-92, 1703.) From 1999 to 2003, Ainsworth processed ten individual notary applications for Noxubee County residents, with the application fee again being paid by RMB. (Ex. P-144; Tr. 1678-85.) All of the persons for whom Brown paid the notary certification fees were African Americans. (Tr. 1289.) Ainsworth recalled finding the high volume of applications paid for by RMB to be "slightly suspicious" because the corporation was paying for such large numbers of applicants, yet none of them claimed to work for RMB. (Tr. 1689.)

135. The processing fee for each application is \$25.00, bringing the total amount paid for these fifty-three applications by RMB to \$1,325.00. (Tr. 1693.) In addition, these applicants could

not have become notaries unless someone such as RMB also paid their bonds, which would have cost about \$50.00 per applicant. (Tr. 1693-94.) On the stand, Brown admitted to paying at least three surety bonds but expressed uncertainty when asked about others, (Tr. 1287-89), bringing the total bonds he admits paying to \$150.00. Based on the evidence presented, the Court finds that Brown paid at least \$1,425.00 to fund notaries, though he very likely paid much more than that amount. The Court also finds that Brown paid these notary fees so that these notaries could involve themselves in the absentee ballot process.

***Circuit Clerk Cooperation with Brown in the Hiring, Direction,
and Funding of the Notaries***

136. Brown-funded notary Gwendolyn Spann's testimony revealed the degree to which Brown and the Circuit Clerk's office are inextricably intertwined in the scheme to bring in substantial numbers of absentee ballots from black voters. Spann, a black woman, was recruited by Brown in 2003 to do absentee ballot notary work in days leading up the Democratic Primary. (Tr. 1286, 1644-45, 1653-54.) Brown told her he would pay her more money depending on how many ballots she brought in. (Tr. 1286, 1645, 1650-51, 1653-54.) This pay arrangement was in violation of Mississippi law which does not allow, for obvious policy reasons, notaries to be paid a commission based upon the number of absentee voters assisted. Miss. Code Ann. § 23-15-753 (1991).

137. After talking with Brown, Spann met with Circuit Clerk Mickens and Deputy Circuit Clerk Phillips to whom Spann gave her application. (Tr. 1645-46.) Brown paid Spann's notary fees, including her surety bond. (Tr. 1283-84, 1287-89; Ex. P-2 Admiss. No. 61.) Spann subsequently received her notary kit in the mail and met with Brown, who hired her to do absentee ballot work and gave her instructions on how to do her job. (Tr. 1646.) The Circuit Clerk's office then provided

stamps for Spann to use in mailing in the absentee applications and ballots. (Tr. 1648.)

138. Spann knew which voters to contact after being given a list from Deputy Clerk Phillips. (Tr. 1647.) Spann drove to the houses of the voters listed, exclusively contacting black voters, many of whom were registered to vote in the Prairie Point precinct, where Spann would eventually be assigned to work as a poll manager to review these absentee ballots for irregularities. (Tr. 1647, 1648-49, Ex. P-82.) To indicate to voters who the better candidate was when assisting them, Spann used a marked sample ballot she had picked up outside of the Circuit Clerk's office. (Tr. 1647-48.) In the course of assistance, Spann also gave voters her personal opinion as to who she believed to be the best candidates. (Tr. 1656.) When Spann delivered her ballot tallies to Brown, he expressed disappointment, telling her that although she had done good work, "more ballots could have been picked up." (Tr. 1653.)

139. As evidenced by the Ainsworth testimony, Spann was only one of dozens of individuals Brown funded in his absentee ballot scheme. And like Spann, these notaries took their orders from Brown, who gave instructions on how to "assist" Noxubee County voters. (Ex. P-2 Admiss. No. 67.)

Absentee Ballot Fraud by DEC Member and Brown-Funded Notary Carrie Kate Windham

140. Brown and his associates do not uphold the law that prevent bias and fraud in the administration of the Democratic Primary, and according to Dr. Arrington, Brown is involved in much of the absentee ballot fraud. (Tr. 378-79.) DEC member and Brown-funded notary Carrie Kate Windham's heavy-handed "assistance" sheds light on how Brown uses his notaries to fraudulently request ballots for voters who are then pressured into choosing his favored black candidates.

141. Windham became a member of the DEC during Brown's chairmanship. (Tr. 1278.) Her fee to become certified as a notary public was paid by Brown's corporation, RMB. (Exs. P-143, P-144; Tr. 1277-80, 1285, 1682-83.) Brown also paid Windham's surety bond for her notary certification. (Ex. P-146; Tr. 1287, 1693.) Windham assisted voters in the Title One precinct, (Tr. 1152-53), and then was present at the Title One polling place in the 2003 Democratic Primary with her sister, DEC Secretary Dorothy Clanton McCoy, whom she joined in silencing those who would challenge absentee ballots she had notarized. (Tr. 1167-68.)

142. Windham is one individual who has orally requested that absentee ballots be sent to addresses on the purported behalf of a third party voter. (Tr. 1816-17.) Prior to the 2003 Democratic Primary, an absentee ballot arrived at the home of Windham neighbor Susie Wood without Wood making any request for it. (Tr. 1787, 1796, 1798.) Windham subsequently came to Wood's home to "assist" her with voting the ballot. Id. However, Wood testified she is neither illiterate nor disabled and is fully capable of going to the precinct to vote her own ballot. (Tr. 1792.) The "assistance" provided by Windham included Windham picking the "best" candidates for Wood and marking the ballot for her, in violation of Mississippi law. (Tr. 1787-88, 1801.) See Miss. Code Ann. 23-15-555. Wood explained that Windham "assists" her with her absentee ballot in this way every election. (Tr. 1788.) When asked by the Court why Wood voted absentee when she was able to go to the precinct to vote, she said,

Well, Carrie Kate Windham had started coming over to the house. And so since . . . the vote started coming in the mail, then - I don't know how my name got to be where they could come to the mailbox, but she would come to the house and assist me . . .

(Tr. 1792.)

143. Additionally, Windham provided the same improper "assistance" to three other

members of Wood's household. (Tr. 1789-91, 1792-94.) None of these three individuals was illiterate, disabled, or otherwise in need of the so-called "assistance" Windham gives, nor did any of the testimony indicate why these voters, including Wood, were in need of absentee ballots at all. Id. Nonetheless, the ballots arrived at their home, and Windham reliably arrived each election to vote their ballots for them. Id.

144. Another voter, Nikki Halbert, a young, black, voter in the Title One precinct, was at her home with her mother, Pauline Grissom, when Windham came to her home and recruited her to vote absentee, informing Halbert that all she had to do in order to vote absentee was let Windham know. (Tr. 1152-54.) Halbert did not fill out a request form or application for an absentee ballot. (Tr. 1153-54.) Nevertheless, an absentee ballot arrived in the mail before the election. (Tr. 1154.)

145. Sometime after the absentee ballot arrived in the mail, Windham came by Halbert's home to pick up the ballots, which Halbert and her mother had already voted. (Tr. 1156.) When Windham came in, she said, "I hope you voted for Albert [Walker for Sheriff]." Id. Halbert's mother, Pauline Grissom, was offended by this and told Windham it was inappropriate for her to try to influence the way she and Halbert voted. Id. Windham then took the envelope and ballot with her after Halbert gave it to her without signing or sealing it. (Tr. 1157, 1161.)

146. When presented a copy of her alleged absentee ballot application and envelope, Halbert testified it was not her signature on either document. (Tr. 1154; Ex. P-68, P-68A.) In addition to the signature not matching her own, Halbert noted that whoever filled out her application claimed that Halbert needed to vote absentee because she had a temporary or permanent physical disability. (Tr. 1155; Ex. P-68.) Halbert testified that she has never been disabled nor has she ever claimed to have a disability. (Tr. 1155.) Interestingly, on the Halbert application, which was

processed by Deputy Clerk Freda Phillips, it was evident that Carrie Kate Windham at least began to sign her own name on the voter's signature line, but had stopped and written Halbert's name on the line. (Ex. P-68; Tr. 2553.)²⁸

147. The Court finds that Windham fraudulently completed Halbert's application, attempted to improperly influence Halbert to vote for Windham's preferred candidate, as she had the members of the Wood household, and left Halbert's home with an unsealed absentee ballot envelope.

148. This was not the first indication that DEC member Windham has been involved in absentee ballot fraud. In Allsup v. Election of the Office of Election Commissioner for the District 2 of Noxubee County Mississippi, Noxubee County Cir. Ct. No. 8350 (1993), a jury found that petitioner Allsup, a white candidate, was entitled to a new election.²⁹ At issue in the Allsup case was the behavior of certain notaries assisting absentee voters, including Windham. (Ex. P-1 ¶ 88, ¶¶ 123-126; Ex. P-136 at 8, 14.) According to the trial transcript, Earline Moore testified that she

²⁸The defense presented a witness, Catherine Johnson, a woman who claimed she saw Halbert sign the application and envelope in 2003 while accompanying Carrie Kate Windham on an absentee ballot run. (Tr. 2534.) However, the Court does not find Johnson's testimony credible. First, and most importantly, Halbert signed her name in court, and upon comparing the signature on the application and envelope to her signature, the Court finds there are a number of distinctive differences which demonstrate they are two different signatures. (Compare Ex. D-19 with Ex. P-68.) Second, on the stand, Johnson was unable to explain fully why, if she regularly accompanied Windham on her absentee ballot runs that year, she could barely remember any of the people Windham assisted other than Halbert. (Tr. 2549.) Third, Johnson claimed that Halbert was mentally "slow" and illiterate, though she had only met Halbert twice in her life. (Tr. 2554, 2557, 2559.) Yet it was evident to the Court that Halbert is quite intelligent, and, in fact, she demonstrated her literacy by reading a very complicated paragraph in court (a paragraph which, ironically, Johnson was unable to read accurately when she was asked to do so on the stand). (Compare Tr. 2273 with Tr. 2559-60.) Fourth, as noted below in this opinion, Johnson was involved in a racially-motivated attempt to suborn perjury of Halbert.

²⁹The Noxubee Circuit Clerk could not produce the final order in the case and deemed it lost. (Ex. P-1 ¶ 123.) As pointed out herein, records in the Noxubee County Courthouse are in disarray. (Ex. P-158; Ex. P-159; and Ex. P-160.)

told Windham that she did not wish to vote for anyone in the contest between Allsup and Earnestine George, who is black. (Ex. P-136 at 10-15.)³⁰ Yet when her ballot was opened at the Allsup trial, it revealed that Windham had in fact marked Moore's ballot for candidate Earnestine George. (Ex. P-136 at 30-31.)

149. According to Dr. Arrington, the absentee ballot and voter assistance practices and policies in Noxubee County are certainly intended to, and have the effect of, diluting the votes of white voters. (Ex. P-1 ¶ 107.) These irregular and fraudulent practices are distortions of well-intended federal and state provisions to encourage voting, especially among those who are ill, infirm, or have limited education. (Ex. P-1 ¶¶ 88, 91, 92, 94, 95, 96, 99, 107, 108.) Further enabling these notaries is the fact that the Circuit Clerk's office sends large numbers of absentee ballots to individuals who do not qualify for absentee ballots, exercises no control over requests for absentee ballots, and does not compare signatures on applications with signatures on voter registration forms when they are returned. (Ex. P-1 ¶ 224.)

150. The most important evidence to Dr. Arrington in forming the opinion that a pattern of ballot fraud exists in Noxubee is a long series of court rulings on absentee and affidavit ballots. (Ex. P-1 ¶ 115.) These include Spencer v. Sanders, (No. 98-0113, Noxubee County Circuit Court), Allsup v. Election of the Office of the Election Commissioner for District II (No. 8350 Noxubee County Circuit Court), (Ex. P-1 ¶ 108), Misso v. Oliver, 666 So. 2d 1366 (Miss. 1992), (Ex. P-1 ¶ 116), Eichelberger v. DEC & Albert Walker, (No. 99-99, Noxubee County Circuit Court), (Ex. P-1 ¶ 135), and Heard v. Walker (No. 2003-115, Noxubee County Circuit Court) (Ex. P-1 ¶ 170.) For

³⁰ The witness who testified in this portion of the trial transcript is dead, and therefore this in-court testimony is admissible. Fed. R. Evid. 804 (b)(1).

example, in the Eichelberger case, the circuit court found fundamental departures from the election code in fifty-two absentee ballots. (Ex. P-1 ¶ 141; Ex. P-137.) And in Heard v. Walker, the Circuit Court found thirty-three absentee ballots that on their face had fundamental departures from the requirements of the election code. (Ex. P-1 ¶ 166.)

151. Windham's influence over absentee ballots is not limited to one polling place. In the 2003 primary runoff, Supervisor candidate Bruce Brooks talked with Windham about who would be voting by absentee in the runoff election. (Tr. 2131-32, 2134.) Brooks was aware that Windham was a notary. (Tr. 2133.) There were people in the Brooksville area who were friends of Brooks and were notaries. (Tr. 2135.) Windham is from Macon, not Brooksville, but Brooks was interested in having Windham notarize absentee ballots in the 2003 runoff in Brooksville-based Road District 5.³¹ (Tr. 2135-36.)

152. Based on this evidence, the Court finds that Brown-funded notaries, and in particular DEC member Windham, have been involved in absentee ballot fraud as early as 1993 and as late as 2003. Regarding Brown-funded notary Gwendolyn Spann, she used the very questionable practice of showing voters sample ballots from the Circuit Clerk's office to influence how black absentee voters cast their ballots. Furthermore, after paying the notary fees, Brown instructed the notaries on how to conduct their voter drives, and these notaries received lists from the Circuit Clerk's office on which voters to contact. The Court finds that this type of "assistance," which was explicitly targeted to black voters and was facilitated by Brown and his political allies in the Circuit Clerk's office, brings in fraudulent or defective ballots that are intended to and have the result of

³¹Another person who did absentee ballot work for Brooks prior to the 2003 runoff was Juanita Harris, whose notary fee was also paid by Brown. (Tr. 1286-87, 2136.)

diluting white voting strength.

Brown's Attempt to Undermine Efforts of a Volunteer Notary who did not Work for him

153. Any defense that Brown's absentee ballot scheme is an altruistic, though imperfectly executed, attempt to enfranchise voters was rebutted by the testimony of Mable Jamison. Jamison, a black woman who volunteers her time and notary seal free-of-charge to assist absentee voters who request her help, has been a notary since she paid her own notary fees in 2003. (Tr. 916-17, 920.) As distinguished from Brown-paid notaries Gwendolyn Spann and Carrie Kate Windham, Jamison sits in a separate room while voters privately select their candidates of choice (assuming they do not need assistance in filling out the ballot) and then notarizes the documents for the voter. (Tr. 918.)

154. Brown is the only person in Noxubee County who has ever complained about Jamison's absentee ballot volunteer work as a notary. (Tr. 918.) One day prior to the 2003 primary, Brown called Jamison over the telephone and said he was upset with her for "picking up his ballots." (Tr. 918-19, 923.) He angrily told her that "his people" had assisted voters in filling out the absentee ballot applications, and he was upset that she had assisted some of those same voters by notarizing the absentee ballot envelopes containing their ballots. (Tr. 919.) In response, Jamison told Brown he could not tell her what to do, and then she hung up the telephone. (Tr. 919.)

155. This Court finds that Brown's chastisement of Jamison is evidence that his interest is not in ensuring that voters are allowed to participate, but that they are influenced by his notaries to vote for particular candidates.

M. Brown and the DEC's Racial Discrimination at the Polls Against Candidate Coleman

156. An indicator of whether the polls were operated in a racially fair manner would be whether candidates and their poll watchers of both races were afforded equal access to the polls. Brown and the DEC did not provide equal access to Supervisor Eddie Coleman and his Shuqualak poll watcher in 2003.

157. Len Coleman, who is white, worked as a poll watcher at the Shuqualak precinct in 2003 for Democratic candidate Eddie Coleman, a distant cousin. (Tr. 1128.) All the Democratic poll managers, workers, and other poll watchers were black. (Tr. 1129-30, 2479.) Interestingly, Shuqualak Mayor Jenkins, one of the poll managers at Shuqualak, testified that she did not "think anything wrong" with an all-black workforce, "because I've seen so many years [where] there were no blacks at the table." (Tr. 2480.) Apparently Mayor Jenkins believes that past racial discrimination against African Americans in the selection of poll workers justifies the present day discrimination against whites. (Ex. P-135 at 1-3; Tr. 1723.)³²

158. Len Coleman and poll watcher Evelyn Murray, who is black, were both standing an equal distance behind the Democratic table observing the poll officials when DEC member Gary Naylor, who is black, ordered Len Coleman to move further away from the table, but said nothing to Murray. (Tr. 1130-31.) Len Coleman tried to reason with Naylor, explaining that he did not understand why he had to move but Murray did not. (Tr. 1131-32.) Naylor then threatened to have Len Coleman removed if he did not move away from the table, so he obeyed for fear he was "going to be thrown out of there." (Tr. 1131-32.)³³ Although Naylor was not a poll manager, he appeared

³²Jenkins admitted that she had never asked a white person to work in elections in Shuqualak who had refused to work. (Tr. 2481-82.)

³³A pattern of interfering with minority poll watchers has been deemed to be probative of discrimination against minorities at the polls. Jeffers v. Clinton, 740 F. Supp. 585, 596 (E.D.

to be in charge of the polling place that day, and Len Coleman did not observe him enforcing election laws strictly at any other time. (Tr. 1146.)

159. Later on that day while Brown was at the Shuqualak polling place, he confronted Eddie Coleman and ordered him to get away from the entrance as Coleman was approaching the entrance of the Shuqualak polling place to cast his vote. (Tr. 270-71, 300-01.) At the time of this confrontation, Brown did not know whether Eddie Coleman had voted, and Brown issued this instruction in a loud tone of voice that caught the attention of persons outside this polling place entrance. (Tr. 271, 1300-01.) At the time Brown issued the instruction, Supervisor Coleman was not in violation of either the thirty foot or 150 foot prohibitions in Mississippi law. (Tr. 1301-02.) See Miss. Code Ann. §§ 23-15-245, 23-15-895. When Coleman told Brown that he was not going to comply with this directive that would have denied Coleman egress to his own polling place, Brown summoned Chief Deputy Terry Grassaree. (Tr. 271.) This Court finds that this incident shows white incumbent Supervisor Coleman could not even vote at his own polling place without Brown causing a confrontation and summoning law enforcement.

160. There were three candidates in the Shuqualak polling place after the close of the polls and during the counting of the absentee ballots: Supervisor Eddie Coleman, Jerome Miller, his black opponent, and Russell Smart, a black candidate for Superintendent of Education in 2003. (Tr. 1135.) During the counting of the ballots, a black Shuqualak police officer escorted Brown into the precinct between 8:00 and 8:30 p.m. (Tr. 273, 275-76, 1134-35.) When Brown noticed Supervisor Coleman

Ark. 1990) (citing Report of the Arkansas State Advisory Committee to the United States Commission on Civil Rights, March 1974, PX 59); cf. Hale County v. United States, 496 F. Supp. 1206, 1214 (D.D.C. 1980) (describing interference with minority poll watchers as being part of the jurisdiction's legacy of discrimination and harassment).

there, he either ordered him to leave the polling place, or Supervisor Coleman was ordered to leave the polling place by the black police officer escorting Brown; however, the two black candidates were allowed to stay inside. (Tr. 275-76, 1135-36.)³⁴ Eddie Coleman obeyed Brown's order, left the polling place, and did not return that evening. (Tr. 1136.) When Len Coleman approached Brown and told him it was not fair that Eddie Coleman had to leave the voting precinct while the black candidates were allowed to stay, Brown simply ignored him. (Tr. 1136.)

161. This Court finds that this is direct evidence of Brown and the DEC's intimidation of a white voter, interference with a white poll watcher for a white candidate, and discriminatory denial of a white candidate's opportunity to observe the absentee ballot count at the polls in the 2003 primary.

N. Mississippi Election Code Requirements for Processing of Absentee Ballots by Poll Managers

162. Defendants argued at trial that under Mississippi law, poll watchers did not have the right to observe the information contained on absentee ballot applications and envelopes that would inform the poll watcher whether a ground for challenge existed. (Tr. 1975-79). However, this notion is a fundamental misunderstanding of the provisions of the Mississippi Election Code which contains a methodical statutory scheme that governs the inspection of absentee ballots by poll managers as well as providing poll watchers an opportunity to observe and challenge absentee ballots, as explained below.

163. Before the absentee ballots are removed from the sealed envelopes, poll managers

³⁴Brown did not deny that Coleman was forced to leave the Shuqualak polling place. (Tr. 1302.)

must “first take the envelopes containing the absentee ballots of such electors from the box, and the name, address and precinct inscribed on each envelope shall be announced by the election managers.” Miss. Code Ann. § 23-15-639 (1)(a). The “signature on the application shall then be compared with the signature on the back of the envelope.” Miss. Code Ann. § 23-15-639 (1)(b). If the signature on the application and the signature on the back of the envelope “do not correspond,” poll managers are required to reject the ballot and shall not count it. Miss. Code Ann. § 23-15-641 (1). In addition, an absentee ballot can be challenged if, among other grounds, the voter “is not a duly qualified elector in the precinct, or otherwise qualified to vote” or if the voter “is otherwise disqualified by law.” Miss. Code Ann. §§ 23-15-571(3)(g); 23-15-641(1).

164. Candidates and their representatives "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 must 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.” Id.; cf. Miss. Code Ann. § 23-15-571 (listing candidates and their representatives as being statutorily authorized challengers). No one other than the “election managers of each voting precinct” are statutorily authorized to rule on challenges to absentee ballots. Miss. Code Ann. § 23-15-639; accord Miss. Code Ann. § 23-15-579 (only poll managers are endowed with the statutory power to determine whether ballots should be counted).

165. Therefore, Defendants’ arguments that poll watchers do not have the right to

observe absentee ballot applications and envelopes so as to make an informed challenge during the counting of those ballot is without merit.

O. Brown and the DEC's Issuance of Improper Instructions to Poll Managers Regarding Challenges to Absentee Ballots

166. Once Brown and his allies extensively involved themselves in the absentee ballot process, they wanted to ensure that the absentee ballots notarized by Brown-funded notaries were counted. This goal was accomplished during the August 2003 primaries by Brown and DEC members issuing directives in violation of Mississippi law to poll managers to count all absentee ballots regardless of whether they were materially defective, resulting in the dilution of white voting strength.

Shuqualak Polling Place

167. During the counting of the absentee ballots, Len Coleman remained at Table One inspecting the absentee ballots for irregularities that might form the basis for a challenge. (Tr. 1132-33.) The process was speedy and disorganized, which made it more difficult for Coleman to see if the absentee ballots had been voted in compliance with Mississippi law. (Tr. 1133-34.) Furthermore, there were ballots Len Coleman would have liked to have challenged, but he could not challenge them because the poll workers were moving too quickly. (Tr. 1148.) When Coleman complained to the poll workers that they were going too fast, they continued to conduct the process in a speedy and disorganized fashion at DEC member Naylor's order. (Tr. 1134.) Nonetheless, Len Coleman and others managed to make some challenges to ballots that night, and the poll managers sustained some of the challenges he made to the ballots. (Tr. 1133.)

168. As noted above, prior to Brown's arrival at the Shuqualak polling place, there had

been at least some attempt by poll officials to comply with the Mississippi election law procedures that allow for the challenge and rejection of defective absentee ballots. (Tr. 274.) When Brown observed that some challenged absentee ballots were being rejected, he stated to election officials, "No, we are not going to do that. We're going to count them all." (Tr. 275.)³⁵ The poll managers then began counting all the absentee ballots at Brown's instruction, including the ones which had already been successfully challenged and rejected, despite the fact that Mississippi law explicitly provides that the poll managers are the only individuals allowed to decide whether challenged ballots should be counted. (Tr. 1137.) Len Coleman turned to Brown and protested that the poll managers were counting all the absentee ballots, including those which they had already deemed irregular, but Brown again ignored him. Id. Consequently, all the absentee ballots that had been challenged and rejected by the poll managers were counted in violation of Mississippi law, and Brown effectively prohibited all other challenges which could have been made to other defective ballots. (Tr. 1137.)³⁶ Although Brown's rendition of what he

³⁵Len Coleman's memory of Brown's order insignificantly deviates from that of Eddie Coleman in the following respect: According to Len Coleman, Brown ordered that all absentee ballots voted at the courthouse were to be counted. (Tr. 1136-37.) However, the poll managers did not just count the absentee ballots voted at the courthouse; they began counting all the absentee ballots, including the ones which had already been successfully challenged and rejected. (Tr. 1137.) When confronted by Len Coleman, Brown ignored him, and the poll managers went ahead and counted all the ballots. Id.

³⁶The Court does not find very helpful the testimony of defense witness Laura Sparks, a friend of Brown who managed Table Two at the Shuqualak precinct. (Tr. 2422, 2431-32.) Sparks testified her memories of that night were vague and said she could not remember whether Brown gave any orders about how the ballots should be counted. (Tr. 2437.) Furthermore, she could not remember anything Len Coleman said that night, and she was not sure if Eddie Coleman or law enforcement personnel were in the polling place. (Tr. 2438.) And though Sparks gave testimony regarding the incident in which Coleman was told to move away from the poll managers but Murray was not, Sparks admitted she could not even remember where Murray was standing in the precinct. (Tr. 2435-36.)

said at Shuqualak on primary election night was different from that of the United States' witnesses, he agreed that he was upset because the managers were not processing the absentee ballots as rapidly as he desired. (Tr. 1327-28.)

East Macon Polling Place

169. At the East Macon polling place (the courthouse), Deputy Sheriff John Clanton, who is a black person, was leaning against one of the tables and issuing instructions to the poll managers. (Tr. 975-76, 1091.)³⁷ Deputy Clanton was out of uniform but wore a pistol on his side and a Sheriff's cap. (Tr. 976.) The poll managers had failed to call out the names of voters who voted by absentee so that it could be checked whether they had voted in person, and Samuel Heard objected to the poll managers not complying with Mississippi law on this point. (Tr. 974-75.) Clanton stated to the poll managers, "Don't you listen to him [Heard]. He can't tell you how to do your job. You know what you're supposed to do. You know what you've been told to do. You open those ballots now." (Tr. 975.) Because of the speed at which the absentee ballot envelopes were opened, Heard was unable to compare the signatures on absentee ballot applications with those on the absentee ballot envelopes, and therefore was unable to challenge any of the absentee ballots. (Tr. 977-79.) When he asked East Macon poll manager Annie Pearl Rice why the absentee ballots were being processed in this way, Rice told him she was following Brown's instructions. Id.

170. In response to Heard's complaints to East Macon poll managers, Brown charged

³⁷There was no evidence to explain why an employee of the Sheriff's Department, who was not a poll manager, was at the East Macon polling place issuing instructions to poll managers appointed by the DEC. Such a practice seems highly unusual, especially in light of the fact that Deputy Sheriff Clanton's employer, Sheriff Albert Walker, was a candidate in the 2003 primary.

out of the Sheriff's office that was located a short distance from the polling table at the East Macon precinct and instructed the poll managers, "Pick up those absentee ballots that are on that table and bring them over here and put them in that [electronic scanning] machine right now." (Tr. 980, 2444.) The poll managers then adhered to Brown's instruction to count all absentee ballots at the East Macon polling place. (Tr. 980, 2449-50.)

West Macon Polling Place

171. Octavia Stowers served as a poll manager in the 2003 Democratic Primary. She understood that poll watchers were permitted to lodge objections and challenge absentee ballots. (Tr. 2354.) When Peggy Brown, a poll watcher for Samuel Heard, informed poll manager Stowers that she wanted to challenge some of the absentee ballots, Stowers called Brown on a cell phone and spoke with him. (Tr. 1317-18, 1861, 2356.) After that call, Stowers informed Peggy Brown that "Ike instructed me to count all the ballots." (Tr. 1862-63, 1871, 1875, 1876.) Thereafter, Brown arrived at the polling place. (Tr. 1870-71, 2356-57.) Upon arriving, Brown stated at the polling place that he might have to call police officers. (Tr. 2357-58.)

Title One Polling Place

172. Richard Heard, son of Sheriff's candidate Samuel Heard, was a poll watcher for his father at the Title One precinct in 2003. (Tr. 1162.) Two of the three poll managers at the table he observed were black and one was white, and it was his understanding that the managers would vote as a group whether to sustain any challenges interposed. (Tr. 1162-63.) When it came time to count the absentee ballots, Richard Heard noticed the poll managers were moving through the ballots very quickly, and it was clear they were not checking the absentee ballots and envelopes for irregularities. (Tr. 1163.) In fact, they were moving so quickly that at one point,

they tore one of the ballots trying to get it out of the envelope. (Tr. 1163.)

173. Heard asked the managers to slow down numerous times so he could check the ballots for irregularities, to no avail. (Tr. 1163.) This speedy opening of the absentee ballot envelopes prevented him from being able to see ballots he might have challenged had he been able to see if they had irregularities. (Tr. 1166.) Furthermore, to make it even more difficult for Richard Heard to observe the absentee ballots, the two black managers blocked his view of the absentee ballot envelopes so he could not see them. (Tr. 1164.)

174. DEC Secretary Dorothy Clanton McCoy, a black woman who appeared to Richard Heard to be the head poll manager, was clearly in charge of the other poll managers at the Title One polling place (Tr. 1164.)³⁸ During the counting of the absentee ballots, Clanton McCoy decided whether challenges would be heard; and when she did allow challenges, Clanton McCoy alone ruled on the challenges, in violation of Mississippi law, never asking for input from the poll managers whose statutory duty it was to uphold or deny the challenge. (Tr. 1164-66.)

175. At one point, Richard Heard noticed an envelope and application for which the signatures clearly did not match. (Tr. 1167.) Carrie Kate Windham, Clanton McCoy's sister and a member of the DEC, was the one who had notarized the ballot and was present at the precinct. (Tr. 1168.) Windham joined Clanton McCoy in arguing with Heard that the signatures matched.

³⁸Robin Mason, a poll manager at the Title One precinct and a witness for the defense, gave testimony regarding the activities at the polling place that night; however, her memories were so vague as to make her testimony largely unhelpful. Mason told the Court she could not remember who made challenges, (Tr. 2303), the race of the challengers, *id.*, the table at which Richard Heard stood, (Tr. 2305-06), or whether DEC member Clanton McCoy was in the polling place that night. (Tr. 2306.) Mason also testified she was too busy to see what Clanton McCoy may have been doing or to have heard what anyone may have said. (Tr. 2308.)

Id. Heard told the women that under state law he should nonetheless be allowed to present the challenge to all of the poll managers so they could all vote on it. (Tr. 1167.) In response, Clanton McCoy yelled, "Well, today we're not going by state law. We're going by my law." Id. At that point, a hush went over the precinct, and Heard stopped trying to make challenges, believing his efforts were futile. (Tr. 1167.)

Brooksville Polling Place

176. Libby Abrams is the daughter of Samuel Heard and was a poll watcher for her father at the Brooksville polling place in the 2003 primary. (Tr. 1583-84.) The Brooksville polling place contains two different precincts, Brooksville and Brooksville Sub, and four tables are present in the polling place. (Tr. 1593-94.) It is impossible for one poll watcher to observe the processing and counting of absentee ballots at all four table simultaneously. (Tr. 1593-95.) Therefore, Samuel Heard had three persons, including Libby Abrams, present at the Brooksville precinct to attempt to observe the absentee ballot count. (Tr. 1595.)

177. When Abrams informed DEC member Ethel May that candidate Heard wanted three watchers inside the Brooksville polling place, May informed Abrams that she would have to speak with Brown. (Tr. 1595-96.) Brown informed Abrams that a candidate was only allowed one poll watcher per polling place, and when Abrams argued with Brown about Mississippi state law on this point, Brown stated to her, "This isn't Mississippi state law you're dealing with. This is Ike Brown's law." (Tr. 1597, 1598.) Further, Brown told Abrams that if more than one poll watcher entered the Brooksville polling place on behalf of Heard, Brown would have them arrested. (Tr. 1599, 1614.) Abrams' husband then called the Mississippi Secretary of State's office, and a person in that office spoke with May. (Tr. 1599.) Thereafter, Heard's three poll

watchers were allowed to enter the Brooksville polling place. (Tr. 1599.) Brown agreed that because the Brooksville precinct has two tables and two sub-precinct tables, for a total of four tables, one poll watcher could not observe the count of all absentee ballots at this polling place. (Tr. 1323-24.)

178. As to a few ballots, Abrams attempted to make challenges and talked with poll manager David Harrison, who is black, concerning her challenges. (Tr. 831, 1601.) Harrison's response was "We are taking them anyway," and no vote was taken by the poll managers on Abrams' challenges. (Tr. 1602, 1603, 1617.)

179. All of the absentee ballots for Brooksville and Brooksville Sub were processed in forty to forty-five minutes. (Tr. 1600.) The poll managers at Brooksville did not compare the signatures on the applications for absentee ballots with the signatures on the absentee ballot envelopes, as they were required to do under Mississippi law. (Tr. 1629.) Regarding most of the absentee ballots at the table where Abrams was located, she did not have an opportunity to observe the kind of information, such as comparisons of the signatures on applications with signatures on absentee ballot envelopes, to reach a conclusion as to whether she wanted to challenge. (Tr. 1600.) The ballots were being processed too quickly for that type of observation. (Tr. 1600, 1602.)

180. This Court finds that Brown and the DEC denied white candidates and their poll watchers an opportunity to challenge absentee ballots, as they are guaranteed the right to do so, pursuant to Miss. Code Ann. §§ 23-15-577 and 23-15-581. This end was achieved by Brown, DEC members, and poll managers appointed by the DEC being present at the various polling places during the absentee ballot count and processing the absentee ballots in a fashion directly

contrary to Mississippi law. These illegal procedures made it impossible for challenges to be made and voted upon in the manner prescribed by the Mississippi Election Code. Further, the Court finds that these actions were taken because Brown and the DEC were aware of the following: (1) large numbers of absentee ballots had been voted at Brown's encouragement; (2) many of these absentee ballots had been notarized by Brown-funded notaries; (3) some of those ballots contained material defects that were challengeable; (4) many of those absentee ballots were marked for black candidates favored by Brown; and (5) Brown's desire to defeat all of the white candidates for local office would be furthered by the poll managers complying with Brown and the DEC's orders to count all of these absentee ballots.

P. Black Voters Residing Outside of Noxubee County Allowed to Vote Absentee Ballots

181. Another way of diluting the voting strength of white voters was to commingle their votes with the votes of black voters who no longer reside in Noxubee County. Welch, 592 F. Supp. at 1558-59. As shown at trial, black voters who no longer lived in Noxubee County in 2003 cast absentee ballots that were counted. (Tr. 1557-58, 1561-62.)

182. Lucille Bland, a black woman, cast an absentee ballot in the 2003 primary election. (Ex. P-61.) The absentee ballot application indicated that the ballot was cast by a person having a temporary or permanent physical disability, and the ballot had no markings indicating the ballot was rejected. (Tr. 1557-58.) Given this evidence and the fact that there was no evidence suggesting that Bland's ballot was rejected, an inference is appropriate that the ballot was therefore accepted. Moreover, a ledger from the Circuit Clerk's office indicated the dates that absentee ballots were sent and returned to Geraldine and Lucile Bland in the 2003

Democratic Primary. (Ex. P-60.) Both Geraldine Bland and Lucille Bland are shown to have returned their absentee ballots. Id.

183. Carolyn Pugh was a neighbor and friend of Lucille Bland. Pugh testified that in August 2003, Lucille Bland no longer lived at the home in which she had previously lived in the Brooksville precinct. (Tr. 1558-59.) The house where Lucille Bland once lived was not even habitable in August 2003. (Tr. 1558-59.) The roof was falling in. Id. Weeds, trees, and kudzu had grown up all over the house, and a tree was growing through the house. Id. No cars were ever present; the lawn was never mowed; and the lights were never on. (Tr. 1558-59.) In fact, both Lucille and Geraldine Bland lived at Mason Drive in Columbus in Lowndes County on August 4, 2003. (Tr. 1560-61.) Despite suggestions by defense counsel to the contrary, the face of the Blands' ballot envelopes indicated that the ballots were executed at Mason Drive, the same street in Lowndes County where Carolyn Pugh testified the Blands lived. (Ex. P-61.) This Court finds that despite the fact that the Blands were non-residents, the DEC allowed their ballots to be counted in the August 5 primary election.

Q. Brown's Racially Discriminatory use of Yellow Stickers to Reject the Absentee Ballots of White Voters

184. The evidence of how Brown used yellow stickers to reject absentee ballots cast by whites, while directing that all absentee ballots cast by blacks be counted, was direct proof of racial discrimination by Brown and the DEC.

185. The August 26 runoff for the Road District 5 (Brooksville) Supervisor position was between Johnny Kemp, who is white, and Bruce Bernard Brooks, who is black and supported by Brown. (Tr. 1276.) Prior to the runoff, Brown calculated the number of blacks and

whites who had received absentee ballots in the four boxes in Road District 5, because he was interested in the number of blacks and whites who were voting absentee in the runoff. (Ex. P-89; Tr. 1271-74, 1277, 1318.) Indeed, Brown acknowledged that it is his practice to go through all the absentee ballots at all the polling places in all elections in Noxubee County and calculate the number of blacks and whites who have received absentee ballots. (Tr. 1275.)

186. After the polls closed at the Brooksville polling place on the night of the runoff, Brown stated to the poll officials that he had already gone through the absentee ballots, placed yellow stickers on the ballots he wanted rejected, and instructed that all of the other absentee ballots were to be counted. (Tr. 774, 777, 890, 1262.)³⁹ Brown further told the election officials that the reason for the rejection of the absentee ballots was written on the yellow sticker, and the poll managers followed Brown's instruction. Id.

187. Poll managers in Brooksville in 2003 did not comply with Mississippi Election Code requirement that signatures on the applications for absentee ballots and signatures on the absentee ballot envelopes be compared. (Tr. 878.) Yet when the poll managers encountered ballots, cast by white voters, to which Brown had attached a yellow sticker, they were rejected. (Tr. 775.)

188. All of the poll managers in the August 26 runoff in Brooksville were African American. (Exs. P-111-114; Tr. 834-836.) In addition to Brown, the other person issuing instructions at the Brooksville polling place in 2003 was DEC member Ethel May, who is black.

³⁹During cross-examination, Brown acknowledged that he had placed yellow stickers on some absentee ballots in the 2003 primary. (Tr. 1262.) Brown claimed that the sticker was only a recommendation that the ballot be rejected, not an instruction to the poll managers. Id. This explanation is contradicted by what Brown told the poll managers at the polling place, and therefore Brown's testimony on this point is not credited. (Tr. 774-75.)

(Tr. 836.) Poll managers in Brooksville went through the absentee ballots so quickly that poll watchers for the candidates did not have a reasonable opportunity to observe basic information, such as an opportunity to observe the signature on the application for an absentee ballot and the signature on the envelope for the ballot, in order to make proper challenges. (Tr. 832, 880-81, 885.)⁴⁰

189. Yellow stickers were used in the August 26 runoff as well as the August 5 primary, and Heard observed approximately twenty of them lying in a Brooksville precinct box during his box review of his August 5 primary election. (Tr. 1000-01.) At his box review after the August 26 runoff, Circuit Court Clerk Mickens stated to District 5 Supervisor candidate Johnny Kemp that Ike Brown had placed the yellow stickers on the absentee ballots after they left Mickens' possession. (Tr. 829-30.)

190. In the 2003 primary or primary runoff, no one in the Circuit Clerk's office placed yellow stickers on individual absentee ballots indicating grounds to reject the ballot. (Tr. 1825-26, 2164.) Mickens would not have allowed yellow stickers indicating grounds for rejection of an individual absentee ballot to be placed on absentee ballots while they were in his possession, because in his view it would not be appropriate to attempt "to lead - them give [poll managers] directions on how to proceed on a ballot." (Tr. 2169-71, 2171, 2258-59.)

191. According to Dr. Arrington, control of or undue influence over the poll managers allowed Brown, members of the DEC, and his political allies to handle absentee ballots in a

⁴⁰Kemp did not challenge, for example, black voters Johnny Will Thomas, Larry Williams, and Alberta Harper's absentee ballots because he was not given an opportunity to see that they contained the same defect as did the rejected ballot of a white voter, Charles Bryant Cooper. (Tr. 794-95, 803, 807.) These ballots are discussed in detail below.

discriminatory manner, contrary to Mississippi law. (Ex. P-1 ¶ 227.) As outlined below, absentee ballots of white voters were successfully challenged for minor flaws, while absentee ballots from black voters were counted when they had equal or more serious flaws. Id.

Brown's Racially Discriminatory Treatment of Student and Teacher Absentee Ballots

192. Emily Cade is a white voter who made application for an absentee ballot to vote in the August 2003 Democratic Primary on the grounds that she was a teacher residing temporarily outside of Noxubee County in Sturgis, Mississippi. (Ex. P-64; Tr. 778, 784-85.) Her absentee ballot in the August 5 primary was counted. (Tr. 778.) Because she applied for an absentee ballot in the first primary, the standard practice was to forward an absentee ballot to her for the August 26 runoff. (Tr. 779-80, 833.)⁴¹ Emily Cade's absentee ballot in the August 26 runoff had a yellow sticker on it, and it was rejected by the poll managers at the Brooksville polling place, pursuant to erroneous instructions from Brown to the effect that Emily Cade was not entitled to vote an absentee ballot unless she voted it at the courthouse. (Tr. 783-84, 849.)

193. Emily Cade's brother, Robert Adam Cade, who is a white voter, also applied to vote in the August 2003 Democratic Primary on the grounds that he was a student residing temporarily outside the county. (Ex. P-66; Tr. 786-88.) At the time of the August 26 runoff, Robert Cade's absentee ballot had a yellow sticker on it and it was rejected as well. Id.

194. In contrast, Willie Harris Graham, a black student, voted his absentee ballot away from the courthouse, but unlike the Cades' absentee ballots, Brown did not place a yellow sticker

⁴¹The United States was never able to obtain through discovery or by any other means a copy of the envelope that contained Emily Cade's absentee ballot for the August 26 Primary. (Tr. 779-783.)

on Graham's absentee ballot, and it was counted in the August 26 primary. (Tr. 788-89.)⁴²

195. This Court finds that the disparate treatment of the absentee ballots cast by the Cades and Graham was directed by Brown's inappropriate placement of yellow stickers on the Cades' absentee ballots. Based upon the evidence, there is no other reasonable explanation for this disparate treatment of similarly situated absentee voters temporarily residing outside the county than Brown wanting the black student's absentee ballot counted and the white student's and white teacher's absentee ballots rejected in order to increase the chances that Brown's favored black candidate, Bruce Bernard Brooks, would defeat white candidate Johnny Kemp for the Board of Supervisors Road District 5 position. (Tr. 1276.) Brown's directives regarding these ballots and the implementation of those instructions by the Brooksville poll managers who were all-black is persuasive evidence of racial discrimination by Defendants Brown and the DEC in the administration of absentee ballots.

Brown's Racially Discriminatory Treatment of Voters who Signed Below the "Signature of Voter" Line

196. White voter Charles Bryant Cooper's absentee ballot in the August 26 runoff had a yellow sticker on it and was rejected. (Tr. 789-90.) Johnny Kemp argued with the Brooksville poll managers that Cooper's ballot should be counted, but was told that it was defective, because

⁴²Miss. Code Ann. § 23-15-631 (1)(a) provides that teachers and students residing outside of their county of permanent residence must mark their ballots at the courthouse if they mark them inside the county of their residence. Otherwise, this class of absentee voter is entitled to forward their absentee ballot by mail. There is nothing on the face of the Cades' absentee ballots or any other evidence to show that they had to be voted at the courthouse. Therefore, the Cades' ballots should not have been rejected, and particularly in light of the fact that the black student voter Willie Harris Graham's ballot was counted. (Tr. 851.)

although this voter had signed "Charles Bryant" on the "signature of voter" line, he had written "Cooper" below the signature line. (Tr. 790-92.) Black voter Johnny Will Thomas also wrote his first and middle name on the "signature of voter" line but wrote "Thomas" below the signature line. (Ex. P-109; Tr. 793-94.) Unlike the Cooper ballot, Thomas' ballot had no yellow sticker on it, and it was not rejected. Black voter Larry Williams signed his entire name below the "signature of voter" line, but unlike the Cooper ballot, Williams' ballot was counted. (Ex. P-110; Tr. 802-03.)

197. Black voter Theresa Brooks did not even sign her application for absentee ballot for the August 26 runoff. (Ex. P-63; Tr. 803-05.) In addition, her name was printed on the "signature of voter" line. (Ex. P-90.) Her ballot had no yellow sticker on it, but at the polls Johnny Kemp challenged it on the grounds that the application did not contain a signature of the voter. (Tr. 804-05.) DEC member Ethel May denied the challenge, stating that she knew Brooks and there was nothing wrong with the ballot. (Tr. 805.)⁴³ Black voter Alberta Harper, like white voter Cooper, did not sign her entire name on the signature of voter line, but that ballot did not have a yellow sticker on it and was counted. (Ex. P-95; Tr. 3 806-07.) Similarly, the name on the voter signature line on the absentee ballot envelope for black voter Demetrice Latrice Roby was printed and did not contain a cursive signature. (Ex. P-104.) This ballot did not contain a yellow sticker and was counted. (Tr. 826-27.) Kemp was not afforded an

⁴³Having the signature of the voter on the application for the absentee ballot is obviously material since a signed application indicates that the voter requested to vote by absentee, and the signature on the application can be compared with the signature on the absentee ballot envelope to ensure that the person who applied for the absentee ballot is the person who voted it. Therefore, the notion that a missing signature on the application is unimportant is incorrect.

opportunity to observe the envelope containing Roby's ballot and therefore did not challenge it. (Tr. 827.)

198. This Court finds Brown's instruction to reject white voter Cooper's absentee ballot and the counting of the absentee ballots of black voters Thomas, Williams, Brooks, Harper, and Roby is direct evidence of the disparate treatment of absentee voters on the basis of race.

Brown's Racially Discriminatory Treatment of Absentee Ballots Missing Date

199. In the 2003 runoff election, the absentee ballot of retired Circuit Court Judge Ernest Brown was challenged by Annie Brooks, the wife of black Board of Supervisors candidate Bruce Bernard Brooks, and rejected on the grounds that the date on which Judge Brown had voted his ballot was missing from his certification. (Tr. 818-21, 2137.) Kemp argued to the Brooksville poll managers that Judge Brown's ballot should have been counted, but to no avail. (Tr. 820-21.) In comparison, the absentee ballot envelope for black voter Emanuel Mallard, Jr. did not contain a date on which the attesting witness had signed, but had no yellow sticker affixed to it, and it was counted. (Ex. P-98; Tr. 817-18.)

200. This Court finds the counting of Mallard's absentee ballot and the rejection of Judge Ernest Brown's ballot to have also to have involved racially disparate treatment of voters.

Brown's Rejection of a Legally Compliant Absentee Ballot of a White Voter

201. Judith Bolin is a white person who attempted to vote by absentee ballot in the Brooksville precinct in the August primary. (Ex. P-62; Tr. 1001-04.) Bolin's absentee ballot in the August 5 primary was challenged by a black poll watcher, and the ballot was rejected. (Tr. 1603-04.) At Samuel Heard's box review, he observed Bolin's unopened absentee ballot

envelope that had been rejected lying at the bottom of a ballot box. (Ex. P-62; Tr. 1001-02, 1606.)⁴⁴ When Heard inquired at the box review why the Bolin ballot had been rejected, Brown, who had come to the box review, stated that the voter signature line had not been signed across the flap. (Tr. 1003.)

202. The Court finds that an examination of Bolin's absentee ballot certificate shows that her entire signature was on the signature line, and that the only argument that Bolin's signature was not across the flap had to be predicated on the notion that no letter in Bolin's signature was precisely touching the edge of the flap on the envelope. Given this is the only possible explanation for the rejection of this ballot, its rejection is further compelling evidence of racial discrimination by the DEC. To conclude otherwise would require acceptance of a rule that black absentee voters could sign entirely off the "signature of voter" line and have their absentee ballots counted, while a white voter who signed completely on the line would have her absentee ballot rejected because a letter in the signature did not precisely touch the edge of the flap on the absentee envelope. Application of such an irrational rule is indicative of a discriminatory intent by Brown, and the Court refuses to validate such an absurd standard.

Brown's Failure to Enforce his own Rule when Resulting in the Rejection of Absentee Ballots cast by Black Voters

203. Prior to the August 26 runoff, Brown gave instructions to candidates that pursuant

⁴⁴Most all of the rejected absentee ballots for the August 2003 first primary and runoff were in a rejected ballots envelope and not available to Heard and Kemp during their box reviews. (Tr. 775-76, 1059.) However, Bolin's unopened absentee ballot envelope containing her rejected absentee ballot was inexplicably not in the rejected envelope. Thus, it was observed by Heard at his box review.

to a recent Mississippi Attorney General's opinion, the person signing for voters who had to sign their names by an "x" would have to sign their name on the voter signature line with a "witnessed by" entry. (Tr. 808-10, 854, 874.) The absentee ballot envelopes for black voters Rosie Henley, Fred Longstreet, Alice Shields Edwards, and Royal Lee Davis did not comply with this instruction, but they did not contain a yellow sticker and were counted. (Exs. P-94, P-96, P-97, P-101; Tr. 810-15, 822-24, 856-57.) According to the evidence, all of the ballots that contained this defect and were counted were cast by black voters. *Id.* Kemp was not afforded an opportunity to observe the envelope containing the absentee ballots of Henley, Longstreet, and Edwards, and therefore did not challenge them. (Tr. 816.) When Davis' absentee ballot was challenged, Brooksville poll manager David Harrison stated in response, "I know this man," and "We are going to count it." (Tr. 824.)

204. For the Court's purposes, it is not dispositive whether Brown's interpretation of this Attorney General's opinion was correct or whether the failure to comply with this witnessing requirement would constitute a sufficient ground for rejection of the ballot. The relevance of this evidence is that it shows that Brown went through absentee ballots cast by white voters, identified any alleged technical grounds for rejection he could find, and marked them with a yellow sticker, but then failed to enforce a witnessing rule against black absentee voters even though he had himself called a meeting about the Attorney General's opinion. There was no evidence that any white voters' absentee ballots were deficient in this regard. All absentee ballots identified at trial that were counted contrary to Brown's interpretation of the Attorney General's opinion were cast by black voters. Thus, this evidence of Brown's inconsistent enforcement of rules on the basis of the race of the voter is persuasive evidence of both his

discriminatory intent and a discriminatory result.

205. Defendants pointed out at trial that the certificates for the four boxes at the Brooksville polling place in the August 26 runoff do not indicate that any absentee ballots were rejected. (Exs. P-111-114; Tr. 844-45.)⁴⁵ The United States obviously did not accept the accuracy of the entries on these certificates that purport to show that no absentee ballots were rejected by the poll managers. Indeed, the United States offered testimonial evidence showing that poll managers in Brooksville actually rejected certain absentee ballots cast by white voters (Tr. 871, 892.) This evidence convincingly demonstrated that the information on the face of these documents regarding whether absentee ballots were rejected at this polling place was incorrect. (Tr. 871, 892.) Therefore, Defendants did not answer this compelling evidence of racially disparate rejection of absentee ballots by simply pointing to certificates that inaccurately indicate that no ballots were rejected.

United States' Inability to Introduce Certain Absentee Ballot Certificates

206. At trial, Defendants pointed to the inability of the United States to introduce particular absentee ballot applications and envelopes on which the United States introduced testimonial evidence, such as the absentee ballot envelope of Charles Bryant Cooper. Because that document was not produced or located during discovery or by any other means, the United States necessarily had to rely upon eye witness testimony to establish how Cooper's absentee ballot envelope was signed and that it was rejected.

⁴⁵The United States introduced into evidence Exhibits P-111 through P-114 for the purpose of showing that all of the poll managers in Road District 5 in the runoff were black.

207. Noxubee County voting records of past elections, including absentee ballot envelopes and absentee ballot applications, are maintained in the basement of the courthouse. (Tr. 2171.) As shown in the United States' exhibits/photographs and according to the custodian of the records, Circuit Clerk Mickens, those records "are not kept in an orderly manner." (Ex. P-157-160; Tr. 2171.) Further, Mickens retained some records and some he no longer had. (Tr. 2171.) At trial, Defendants stipulated that these photographic exhibits accurately showed where voting records for the 2003 elections were kept, and the Court notes that the photographic exhibits show that these records are in disarray. (Ex. P-157-160; Tr. 2173.) During discovery, attorneys and a paralegal for the United States came to the Circuit Clerk's office for document production and were directed to, among other places, the courthouse basement for document searches. (Tr. 2172.) Thus, in the absence of available documentary evidence due to the Defendants' poor record keeping, it would be fundamentally unfair, in this Court's opinion, to fault the United States for not producing certain documentary evidence. The Court's reliance upon eyewitness testimony is particularly appropriate in these circumstances where the documentary evidence is not available.

Brown's Attempted Justification for the use of Yellow Stickers

208. Although Brown claimed that black as well as white absentee ballots had yellow stickers on them and were rejected in the 2003 primary, at trial Brown was not able to identify the name of any black voter on whose absentee ballot he had placed a yellow sticker. (Tr. 1321-22.) Moreover, Defendants produced no documentary evidence of an absentee ballot cast by an African American voter that was rejected by poll managers. Thus, other than argument by counsel or this generalized claim by Brown that he placed yellow stickers on some absentee

ballots cast by black voters, there is nothing in the record to support this defense. In light of the United States' extensive documentary and testimonial evidence of Brown placing yellow stickers on specific absentee ballots of white voters and those ballots being rejected, this Court does not credit Brown's generalized assertion that absentee ballots of black voters were rejected as well. Accordingly, the Court finds that on the basis of this evidence, Brown and the DEC-appointed poll managers rejected ballots cast by white voters in a racially discriminatory manner, in accordance with Brown's instructions.

R. The Overwhelming Number of Absentee Ballots Voted in the 2003 Primary

209. According to Dr. Arrington, the unusually high rate of absentee ballot voting in 2003 was connected to the activities of Brown's notaries. This high volume of absentee ballot voting was particularly prevalent in elections of interest to Brown. (Ex. P-1 ¶ 94-98.) In the 2003 Democratic Primary, 21.11% of all ballots cast were absentee ballots, a total of 1,201 absentee ballots. (Ex. P-1 at 88 tbl.2.) Normal rates of absentee ballots in comparable Mississippi counties are usually between 3.0% and 6.0%. (Ex. P-1 ¶ 94.) These high rates of absentee ballot activity in Noxubee County cannot be attributed unusual demographics. (Ex. P-1 ¶ 95.)

210. Samuel Heard received 155 absentee votes county-wide while Brown's candidate, Albert Walker, received approximately 1,050 absentee votes. (Tr. 1021.) The overwhelming majority of absentee ballots in three of the largest precincts were cast for Sheriff Albert Walker. (Ex. P-88.) In these three precincts alone, Walker enjoyed a 310 to 117 margin. *Id.* As Dr. Arrington explained, such high rates of absentee ballot voting requires organization and

planning, it does not simply happen. *Id.* The testimony of Nan Ainsworth, Gwendolyn Spann, and Brown himself all pointed to an organized campaign by Brown to generate and control large numbers of absentee ballots from black voters in the Democratic Primary.

211. Without any evidence to support the point, Defendants suggested at trial that Heard had been the beneficiary of some giant absentee ballot campaign in the 2003 Sheriff's primary. This claim was made for the apparent purpose of attempting to show that it was Heard, and not Brown and his notaries, who were the absentee ballot facilitators in that primary. However, not only did Defendants fail in their attempt to prove that Heard had a countywide absentee ballot program, but the election results suggested otherwise.

S. Brown and the DEC's Refusal to Give a Fair Hearing to a White Candidate

212. A traditional indication of fundamental fairness is whether a party is accorded procedural due process provided for in applicable rules. Brown and the DEC's failure to provide losing candidate Samuel Heard a fair hearing in his 2003 election contest is further evidence of racial discrimination against white candidates.

213. After Albert Walker was certified as the winner of the 2003 Democratic Primary for Sheriff, Heard filed a petition contesting the election results with the DEC. (Tr. 951, 994.) During Heard's box review, Mickens stated that the latter "had never seen things so screwed up in an election" as they were in 2003. (Tr. 2177.) Mickens made the statement in the context of the discovery of the unaccounted for absentee and regular ballots and the yellow stickers on some absentee ballots. (Tr. 2256-58.) At the box review both Heard and Mickens concluded that there were unaccounted for regular ballots that had been sent to the Shuqualak precinct. (Tr.

2216.)

214. Although the DEC was required to provide Heard with sufficient notice of his hearing, neither Brown nor the DEC did so. (Ex. P-170 at 2, Tr. 997.)⁴⁶ When Heard went to the DEC meeting, Brown was present along with fellow DEC members Terry Grassaree, Carrie Kate Windham and her sister Dorothy Clanton McCoy, Mayor Velma Jenkins, and Ethel May. (Tr. 997.)⁴⁷

215. On three occasions, Brown asked Heard whether he was ready to present his case. (Tr. 998-99.) In response, Heard explained that he had not received proper notice of a hearing, that his lawyer was not able to attend, and that therefore he was not ready to proceed with a hearing. Id. Heard asked the DEC to provide him a time for the hearing so that he and his lawyer could attend. (Tr. 1073, 1092.) Without taking a vote of the DEC members, Brown informed Heard that his petition was denied. (Tr. 998-99.) At no time did Brown ever state to Heard that if the latter needed more time to have his attorney present for a hearing, it would be granted. (Tr. 998.)⁴⁸

⁴⁶Heard received "notice" that the DEC was holding a meeting on his and other candidates' complaints arising out of the 2003 primary by way of a message left on his answering machine two days prior to the meeting and in a conversation with a DEC member the day before the meeting. (Tr. 995-96.)

⁴⁷ It is important to note that when the DEC appointed persons to decide whether to certify the 2003 primary election returns, consistent with its appointment of a nearly all-black group of poll managers and workers, it appointed an all-black Certification Board, including DEC members Ethel May, Carrie Kate Windham, Dorothy Clanton McCoy, and William Rice, as well as Brown. (Ex. P-87.)

⁴⁸At trial, Defendants introduced into evidence a set of written minutes for the September 6, 2003 meeting that the DEC held on Heard's petition that were materially different from the minutes produced during discovery. (Ex. D-14; Tr. 1075-76, 1471-72.) The new set of minutes, which were not admitted by the Court, did not accurately reflect what went on at the September 6 meeting. (Tr. 1077-78.)

216. Heard challenged the DEC's denial of his election contest in circuit court, and it concluded that Heard was not provided fair notice or hearing by the DEC on his election contest petition, as provided by Miss. Code Ann. § 23-15-927. (Ex. P-170 at 2; Tr. 951.) Further, although the court ultimately ruled against Heard's contest of the 2003 election results, the court in Heard v. Walker (No. 2003-115, Noxubee County Circuit Court) (Ex. P-1 ¶ 170), did find that thirty-three of the absentee ballots counted in that election were defective, including findings that some of the signatures on absentee ballots envelopes and on applications for absentee ballots did not match. (Tr. 951-52.)

217. This Court finds that the treatment of Heard by Brown and the DEC was not only procedurally unfair; but more importantly for this case, it is evidence that Brown and the DEC were willing to deny Heard an equal opportunity to participate in the political processes of the DEC in order for the Defendants to ensure that Albert Walker continued to be the Sheriff of Noxubee County and that he not be replaced by a white person. This episode is persuasive evidence of Defendants' racially discriminatory intent against white candidates who, as was the case with Heard, were preferred by the vast majority of white voters.

T. Unaccounted for Regular and Absentee Ballots in the 2003 Primary

218. Another indicia that the election system in Noxubee County had gone awry during the 2003 primary was the fact that election officials could not account for hundreds of ballots after the election. Heard's box review found that in the Shuqualak precinct alone, there

were 367 regular ballots⁴⁹ that were unaccounted for in Shuqualak and 181 unaccounted for in the Brooksville precinct. (Tr. 988-89.) When Heard asked Mickens about this discrepancy at his box review, the Circuit Clerk responded, "[T]his one sure is screwed up." (Tr. 990.)

219. Regarding unaccounted for absentee ballots, Heard obtained a manifest from the company that printed the absentee and regular ballots for the 2003 Noxubee County Primary, and determined that there were 121 unaccounted for absentee ballots for that primary. (Ex. P-58; Tr. 990-94.) Mickens agreed that the 121 absentee ballots were missing and unaccounted for, and that he (Mickens) did not know what had happened to these absentee ballots. (Tr. 993-94.) These calculations concerning the unaccounted for ballots are in direct conflict with the information recorded on the certificates signed by the poll managers at the Shuqualak and Brooksville precincts. Id.

220. Dr. Arrington found these systemic failures in accountability and control of ballots and election materials in Noxubee County to be relevant to the development of his opinions in this case. (Ex. P-1 ¶ 180-81.) Either accounting procedures are wholly inadequate or ballot boxes have been stuffed on election day with extra ballots. (Ex. P-1 ¶ 180; Tr. 423.) Election records such as security seal ledgers, absentee voting ledgers, ballot purchasing records, absentee ballot accounting ledgers, and a wide array of information necessary to maintain safeguards to ensure accountable and honest elections have simply gone missing. (Ex. P-1 ¶ 185.)⁵⁰ Lastly, Dr. Arrington discovered that in the Paulette precinct in past elections, more

⁴⁹ The term "regular ballots" refers to the paper ballots used by voters at polling places in 2003 that were run through the electronic scanning machine after being marked by the voter.

⁵⁰ Even final judgments of the Noxubee County Circuit Court pertaining to election disputes are missing from the Circuit Court Clerk's office. (Ex. P-1 ¶ 185.)

votes were cast than there were eligible voters. (Tr. 353; Ex. P-1 ¶ 122.)

221. The Court finds the number of unaccounted for ballots for the 2003 primary from the Shuqualak and Brooksville precincts alone which, according to Heard's testimony, was 669, to be very troubling in light of all the other evidence in this case that points to the occurrence of irregular election practices in Noxubee County.

U. Failure to take Remedial Action

222. Despite the fact that the ruling in Heard v. Walker found thirty-three irregular absentee ballots, including ballots where the signatures on the applications and the signatures on the envelopes did not match, neither Mickens nor the Noxubee County Election Commission took any action to try to determine why this had occurred. (Tr. 2186-87, 2188, 2191, 2759.) Mickens talked with neither Brown nor the DEC about these irregular absentee ballots that had been counted at Brown's instruction by the DEC-appointed poll managers. (Tr. 2191-92.)⁵¹

V. Brown and the DEC's Racial Intimidation of Nikki Halbert

223. Nikki Halbert, a black female who was a witness for the United States, became a victim of racially-motivated intimidation by the Defendants after she testified. Halbert's testimony, discussed more thoroughly above, included allegations that Carrie Kate Windham, a

⁵¹Similarly, Circuit Clerk Mickens has provided no instructions to his staff about the consent decree entered into with the United States in this case. He has provided staff no new instructions about processing absentee ballots since the entry of the consent decree, nor has he discussed the terms of the consent decree with staff. (Tr. 1826-27.) These failures to act by the Election Commission, the DEC, and the Circuit Clerk suggest that federal court intervention will be necessary to ensure that racially fair elections are conducted in the future in Noxubee County.

black woman who is a member of the DEC and a Brown-funded notary, had forged Halbert's name on an absentee ballot application.

224. Halbert returned to the stand and told the Court that after she left the courtroom after testifying, Brown and Dorothy Clanton McCoy, Secretary of the DEC (who is also the sister of Windham), stood a few feet away as she prepared to leave and loudly discussed Halbert's testimony. (Tr. 2266-68.) Halbert heard Clanton McCoy refer to her as a liar, and then heard Brown order Clanton McCoy to "call Carrie Kate." (Tr. 2268.) Brown then called Catherine Johnson, a friend of Windham's, and told her to "go get Carrie Kate" and tell her he was trying to get in touch with her. (Tr. 2535.) After Brown finally spoke with Windham by phone, she and Johnson went to Halbert's home to talk with her. (Tr. 2561.)

225. Halbert's mother was present when the two women arrived shortly after Halbert returned home from giving her testimony. (Tr. 2269-70.) Windham asked Halbert, "Hadn't you been to Jackson?" (Tr. 2269.) When Halbert confirmed that she had, Windham replied, "Well, I had got[ten] a phone call. Somebody said that I forged your name." Id. After Halbert acknowledged she had testified to the forgery, Windham told Halbert, "We black people need to stick together," and said that Halbert ought to therefore go back to court, and "tell them that you probably didn't understand what you [were] being asked." (Tr. 2269.) The two women continued for about an hour trying to convince Halbert that either she or her mother had signed the application and envelope, but Halbert and her mother refused to accept this invitation to change Halbert's testimony. (Tr. 2270-71.)⁵²

⁵² The United States objected when Catherine Johnson testified on behalf of the defense as to what Halbert said during the conversation, and the Court sustained the objection to the degree the hearsay was offered to prove the truth of the matter asserted. (Tr. 2536-37.)

226. The Court finds this exchange between Windham, a member of the DEC, and Halbert, one of the United States' witnesses, to be probative evidence of the racially discriminatory intent of the Defendants. Even in the midst of this trial, Brown, DEC Secretary Clanton McCoy, and DEC Member Windham colluded to engage in racially-motivated bullying to intimidate one of the United States' witnesses into concocting a tale that would cover up their involvement in racially discriminatory absentee vote fraud. The Court finds that Windham's attempt to coerce Halbert into changing her testimony to look more favorably upon the DEC because "we black people need to stick together," is compelling evidence that Brown and members of the DEC operate with a racially discriminatory motive.

W. Brown's Participation in Election Fraud at the Polls

227. There was uncontroverted evidence that at the polls, Brown participated in at least two incidents of voting fraud involving black voters. Outside the polling place during the Macon City Election in 2005, Kendrick Slaughter witnessed Brown directing a black individual to vote under a false name. The uncontroverted testimony of Slaughter was that he saw Brown tell an individual to "go in there to vote . . . [U]se any name, they are not going to say anything." (Tr. 939-40.)⁵³

228. Judith Ewing offered uncontroverted testimony that Brown walked in to a polling place accompanied by a black, male voter. (Tr. 1750.) When asked by the poll workers his name and address, he did not respond; and Brown signed the man's name for him. (Tr. 1751,

⁵³Mississippi law does not require photo identification to vote.

1757, 2091.) When the poll manager tried to hand the ballot to the voter, Brown took it and walked over to the voting booth as the man followed behind. (Tr. 1751-52.) The voter stood behind Brown with his back to Brown as Brown began marking the ballot without consulting him. (Tr. 1752.)

229. Ewing got up from the table, went over to Brown, and asked him what he was doing. (Tr. 1752.) Brown said he was assisting the voter. Id. Ewing replied that Brown was not assisting him, he was voting for him. Id. She added that if the voter needed Brown to read the names to him, he could help in that manner, but Brown was not allowed to mark the ballot for him. Id. Brown told Ewing she could not take away the man's constitutional right to vote. Id. She replied, "I'm not trying to take away his constitutional right to vote. I'm trying to make sure that this man is the one voting, because he's the voter." (Tr. 1753.) Brown ignored Ewing, finished voting the man's ballot, and put it in the ballot box. Id.

230. This Court finds that these two uncontroverted incidents of Brown's participation in voting fraud involving black voters are corroborating evidence of the United States' contentions that Brown has engaged in racially motivated manipulation of the electoral process.

X. Brown and the DEC's Discriminatory Exclusion of Whites from Party Caucuses

231. Exclusion of individuals on the basis of their race from participation in the activities of political parties served, in part, as the impetus for Congress passing the Voting

Rights Act of 1965. Morse v. Republican Party of Virginia, 517 U.S. 186, 213 n.27 (1996).⁵⁴

Ironically, exclusion of white persons on account of their race from Noxubee County Democratic Party activities occurred in 2004, in part, because of Brown and the DEC's decision to hold caucuses in private locations.

232. The practice of holding caucuses at private locations was not instituted in Noxubee County until Brown became Chairman of the DEC. Former DEC Chairman John Bankhead, who is black, testified it was his practice to hold party meetings in public places when he was Chairman. (Tr. 2744.) He specifically stated that it would be "stupid" for the Chairman to hold Committee meetings in his home. (Tr. 2744-45.) Bankhead always provided written notice of meetings of the DEC when he was Chairman. (Tr. 2741-42.) Bankhead never once had any difficulty using regular polling places for precinct caucuses from the time he first served on the committee beginning in the 1960's. All Democratic Party caucuses took place in public polling places from the 1960's until before Brown became Chairman. (Tr. 2746.)

233. On February 19, 2004, just days before the Saturday caucus meetings of the Noxubee County Democratic Party, an article in the Beacon informed readers that caucuses would be held at the voting precincts. (Ex. P-130; Tr. 1395-96.) Before running the story,

⁵⁴ In Morse v. Republican Party of Virginia, 517 U.S. 186, 213 n.27 (1996). The Court noted that in 1968, the Mississippi Democratic Party continued its pattern of excluding and discriminating against minorities in the holding of "precinct meetings, county conventions and the State convention . . ." Id. The party even went so far as to withhold "information from black party members about party precinct meetings and conventions" in order to prevent them from participating fully in party politics. Id. The Morse Court then held that because the purpose of the Voting Rights Act is to enforce the provisions of the Fifteenth Amendment, "It is beyond question, therefore, that the Act encompassed the discriminatory practices struck down" in previous Supreme Court opinions which declared unconstitutional the political party practices which operated to discriminate against voters on the basis of their race. Id. at 217.

Beacon editor Scott Boyd, who is white, called Brown to interview him about the upcoming caucuses. (Tr. 154-55.) During the course of the interview, Boyd asked Brown where the precinct caucuses would be held, but Brown replied that if anyone had any questions, they could call him. (Tr. 154-55.) When asked, Brown would give no further information to Boyd. (Tr. 155.) After Boyd published an article stating that, as usual, the caucuses would be held at the voting precincts, Brown never called to complain about the accuracy of the information, and he took no action to publicize by way of the media the fact that some of the caucuses would be held at private residences in 2004. (Tr. 1391.)

234. Brown directed or allowed caucuses to be held in at least five private locations, despite the fact that he was aware that the state Democratic Party Delegate Selection Plan provided that if possible, the polling places were to be used as caucus sites. (Ex. P-176 at 5; Tr. 1392, 1934.) When Boyd subsequently tried to question Brown about the secret caucuses, Brown became very angry, refused to release the names of the delegates chosen at the caucuses, and told Boyd that he was the county Chairman and could do what he wanted. (Tr. 156.) Even so, at trial Brown agreed that holding caucuses and meetings of the DEC in private locations sometimes reduced the opportunity for public participation. (Tr. 1362-63.)

235. The Mississippi Delegate Selection and Affirmative Action Plan at Section 3(a)(1)(B) states, "Precinct meetings shall be held at 10:00 a.m., February 21, 2004, at sites designated by the Chair of each County Executive Committee. Regular polling places shall be used whenever possible." (Ex. P-176 at 5; Tr. 1904-05.) Former State DEC Chairman Cole, who was the principal author of this plan, testified that the regular polling places were to be the caucus meeting sites, because they would be familiar locations to the voters and would be a

public place accessible to all. (Tr. 1906.) Cole believed that holding official meetings of the Democratic Party in private residences chilled participation. (Tr. 1909.) He pointed out that the Mississippi Democratic Party had in the past been an all-white club and that Mississippi civil rights activists such as Fannie Lou Hamer had worked hard to open the party to all who wanted to participate in it. (Tr. 1910.) This delegate plan was mailed to all county DEC chairmen. (Tr. 1906.) Yet Cole received a letter from Noxubee Chancery Clerk Mary Shelton complaining about the fact that precinct caucuses had not been held at the regular polling places in Noxubee County. (Ex. P-52; Tr. 1907-08.)

High School Caucus

236. In February 2004, Phillip McGuire, who is white and the Chairman of the Macon DEC, saw the notice in the Beacon that precinct caucuses were taking place at the regular precinct polling places. (Tr. 2026-27.) McGuire had previously attended precinct caucuses. (Tr. 2028.) McGuire had no recollection of previous precinct caucuses taking place anywhere other than the voting precinct. Id.

237. McGuire's regular polling location was the old Noxubee County High School, and he went to the location on the morning of February 21, 2004 to attend the caucus. (Tr. 2029-30; Ex. P-155.) McGuire arrived on time for the caucus and entered the unlocked building. (Tr. 2031-32.) However, no caucus occurred at the Old High School that day. (Tr. 2033.) Instead, the precinct caucus occurred at Ike Brown's house in Macon, although Brown was not refused use of the polling place in the High School Precinct. (Ex. P-156; Tr. 1391, 1394, 1397-98.)

238. The sign-in sheet for the caucus shows that DEC member William Rice attended the caucus at Brown's house. (Tr. 2036; Ex. P-15.) Rice, however, also drove to the Old High

School parking lot while McGuire was present for the advertised caucus at approximately 10:30 to 10:45 a.m., at least a half hour after the caucuses were to commence. (Tr. 2034.) Rice said to McGuire, "[W]here is everybody? . . . I was just kind of looking for the meeting." (Tr. 2035.) McGuire requested, "[I]f you find them, let me know." (Tr. 2035-36.) McGuire heard nothing and ultimately left, but would have attended the caucus at Brown's house had he known about it. However, no one informed him the caucus was taking place at Brown's house. (Tr. 2039-40.)

239. Four persons attended the caucus at Brown's house, and six delegates to the county convention were selected including Brown, Dorothy Clanton McCoy, Chester Turner, and Doris Wilburn, all of whom are African American. (Ex. P-15.) Wilborn was notified by a telephone call from Rice that the High School caucus in 2004 was going to be held at Brown's residence. (Tr. 2409.) At that caucus, Wilborn was selected as a delegate to the county convention even though she did not attend the caucus. (Ex. P-15; Tr. 2409-10.) In fact, Wilborn was not even notified that she had been selected as a delegate. (Tr. 2410.) Wilborn's notary certificate was paid by Brown's RMB. (Tr. 2414.)

240. Turner was never told about the meeting at Brown's house, though someone told him later that he had been elected a delegate at the caucus. (Tr. 2530.) Nonetheless, like Wilborn, he was selected as a delegate to the county convention even though he did not attend. Id. At trial, Turner admitted that in a previous election contest brought by Noxubee School Board Member Essie Spencer, Spencer v. Sanders, (No. 98-0113, Noxubee County Circuit Court), he had invoked the Fifth Amendment to avoid incriminating himself on charges that he and Brown had engaged in absentee ballot fraud. (Tr. 2529-30.)

241. This Court finds it relevant to compare McGuire's experience with Wilborn's and

Turner's regarding the 2004 Old High School caucus. McGuire, who is white, attempted to attend the High School caucus by going to the polling place on caucus day. However, unlike Wilborn, who received a call from Rice to come to Brown's residence for a caucus, no one from the DEC notified McGuire that the caucus was being held at Brown's residence. Indeed, on the morning of the caucus, Rice drove by the High School polling place while McGuire was standing there, but did not notify McGuire where the caucus was being held. And unlike Turner, who was simply elected as a delegate and told about it later, there is no evidence in the record that McGuire was even considered to be a delegate. And in this regard, it is important to remember that McGuire is the Superintendent of Elections for Democratic primaries in Macon and therefore a significant member of the Democratic Party in Noxubee County. The Court finds this disparate treatment of black Democrats (Wilborn and Turner) and a white Democrat (McGuire) to be compelling evidence of Brown's racially discriminatory intent to exclude whites from the 2004 caucuses.

Brooksville Caucus

242. In February 2004, a Noxubee County Democratic Party precinct caucus was held in the private home of Catherine Johnson in Brooksville.⁵⁵ (Exs. P-12, P-154; Tr. 1660.) Johnson is black, and there were no whites at the caucus which occurred at Catherine Johnson's home. (Tr. 1676.) Approximately five to eight days prior to the 2004 caucus day, Brown talked with Catherine Johnson's daughter about using the Johnson residence as a place to hold the

⁵⁵ Catherine Johnson of Brooksville is a different person than the Catherine Johnson who the Court mentioned in its discussion of the racially motivated intimidation of United States' witness, Nikki Halbert. See supra Brown and the DEC's Racial Intimidation of Nikki Halbert, at 90.

Brooksville caucus. (Tr. 1387-88.)⁵⁶ Johnson testified at trial that Brown did not tell her that the meeting to take place in her home would be a meeting of the "black caucus," even though her signed declaration says "Ike Brown called me to ask if the 'black caucus' could meet at my house." (Ex. P-173 ¶ 4; Tr. 1662.)

243. Both Johnny Kemp and Samuel Heard attempted to attend the Democratic caucus in Brooksville by going to the Lottie Smith Center. (Ex. P-153, Tr. 839-40, 1017.) Past caucuses for Brooksville had been held in the Smith Center, including a Democratic caucus Kemp attended there in the 1990's. (Tr. 839, 869, 1019.) The door of the center was locked, preventing Kemp and Heard from going into the center and holding their own caucus, and there were no signs or persons there directing people to Catherine Johnson's residence. (Tr. 840-41, 891, 1017.)⁵⁷

Shuqualak Caucus

244. There were two competing caucuses held in the Shuqualak precinct. Twenty people, including Supervisor Eddie Coleman, attended a caucus held at the Shuqualak polling

⁵⁶Even if the regular caucus location, the Lottie Smith Center, was not available, other public buildings are very close to the regular caucus meeting place. Brooksville City Hall is half a block away from the Lottie Smith Center. (Tr. 1668-69.) The Brooksville fire station is also about a half a block away from the Lottie Smith Center. (Tr. 1669.)

⁵⁷At trial, Brown suggested that the Lottie Smith Center could not be used because of a funeral there. However, there was nothing at the Center to indicate that a funeral was going to be held on caucus day. (Tr. 891, 1018.) In fact, Heard's catering business was within sight of the Center, and Heard stayed at the business until approximately 7:00 p.m. on caucus day. (Tr. 1019.) He saw nothing happening that day at the Center that was indicative of a funeral. *Id.* Moreover, Defendants produced no evidence from any member of purported decedent's family or anyone else that supported their contention that a funeral was held on caucus day at the Center. Further, when asked who had passed away, Brown could not provide a name. (Tr. 1388, 1527.) Thus, the weight of the evidence does not indicate that the caucus in Brooksville had to be moved to the Johnson residence to accommodate a funeral.

place (the fire station) in February 2004. (Ex. P-18; Tr. 279-80, 304, 1399-1400.) In addition, the Beehive, which is a privately owned cafe in Shuqualak, was the site of another caucus at a private location. (Ex. P-17; Tr. 281.) DEC member and Brown ally Gary Naylor chaired this caucus. (Ex. P-17; Tr. 1401.)

West Macon Caucus

245. One caucus was held in the polling place in West Macon which was at the Macon City Hall. (Ex. P-24, P-25; Tr. 1401-03.) Bob Boykin and his son, who are white, attended this caucus. Id. Another caucus for West Macon was held in a private residence. (Ex. P-22; Tr. 1406.)

Title One Caucus

246. There were two caucuses held in the Title One precinct. (Ex. P-19, P-20, P-21; Tr. 1403.) One caucus appears to have been held at the Title One polling place. At a competing caucus, six of the eight attendees, including Carrie Kate Windham, had the last name of Windham and were related to each other. (Tr. 1403-05.)

247. At the time of trial, only two of the thirty members (6.7%) of the DEC were white. (Ex. P-31.) According to Dr. Arrington, this significant under-representation of whites on the DEC can be attributed, in part, to Brown's discriminatory decision to hold precinct caucuses in private locations without giving notice to the general public. (Ex. P-1 ¶ 208.) The holding of clandestine caucuses in private homes had the effect of minimizing or excluding white participation in caucuses and white participation as delegates to the county convention. (Ex. P-1 ¶¶ 208, 213.)

Brown's Misrepresentations Regarding the Private Caucus Meetings

248. On May 10, 2004, Brown responded to an appeal that was filed by John Gibson before the Mississippi Democratic Party concerning whether Brown had been properly reelected Chairman of the DEC. Notwithstanding the fact that caucuses were held in at least five private locations, Brown falsely represented: "The Facts: It was shown at the credential committee hearing that only one private home was used, and there were [sic] only one duplicate caucus out of 13 [precincts]." (Ex. P-46 at 1.) Brown then went on in his written response to claim that it was former DEC Chairman John Gibson who had attended a caucus in a private home in Brooksville. Id. at 2. Of course, Brown had actually arranged that the Brooksville caucus be held at the Johnson residence. Id. at 2. Moreover, Brown never informed anyone at the state DEC that a caucus was held in his personal residence in 2004. (Tr. 1415.) This misrepresentation by Brown to the state Democratic Party strongly suggests he fully understood the inappropriateness of his holding caucuses in private locations and was attempting to cover up this racially motivated behavior.

249. This Court finds that the weight of the evidence supports the finding that the movement of the sites of the caucuses to private locations without informing interested white Democrats, such as Phillip McGuire, Johnny Kemp, and Samuel Heard, resulted in them and other white Democrats not being able to participate in the 2004 caucuses. Moreover, the rules of the Mississippi Democratic Party prohibited the holding of caucuses at locations other than the regular polling places unless it was necessary to do so. The weight of the evidence here does not indicate that it was necessary to use these private locations. Therefore, this evidence concerning the 2004 caucuses supports the United States' claim of intentional racial discrimination against white voters and white candidates by Brown and the DEC.

Y. Brown's Exclusion of White Democratic Voters from the County Convention

250. The 2004 Noxubee County Democratic Convention was held on March 13, 2004, with approximately 100 people in attendance. (Tr. 1418-19.) Not surprisingly, quarrels broke out at the county convention between the delegates selected at the competing caucuses, and Brown used Chief Deputy Terry Grassaree to separate the "delegates" from the "non-delegates." (Tr. 1414.) A vote was taken to determine who would be the permanent Chair of the convention, and Betty Robinson won that vote thirty-nine to twenty-two over Brown. (Exs. P-26, P-27; Tr. 2226-27.) However, Brown claimed that he won and then adjourned the county convention. (Tr. 1422.) Brown held a DEC meeting on March 22, and at this time Brown was reelected DEC Chairman for another four years. (Ex. P-10; Tr. 1424.) All of the delegates elected to the state Democratic convention from the county convention were African American. (Ex. P-30; Tr. 1429, 1930.)

251. Dr. Arrington offered his opinion that

Brown has also manipulated the rules of the Democratic Party in order to remain in power to the detriment of white Democrats As far as I can tell, Ike Brown's election to the office of [DEC] Chair in 2000 was legitimate, but he managed to remain in the office in 2004 by prevarication, manipulation, and the misuse of the desire of the state party to promote harmony and involve as many Democrats as possible in the process [The] legitimately elected Chair of the DEC is John Gibson or Betty Robinson, and Ike Brown was not even selected as a member of the DEC at the 2004 County Convention.

(Ex. P-1 ¶¶ 192-193; see also Ex. P-1 ¶ 205) (Dr. Arrington's explanation of the various types of

information he considered in reaching his conclusions regarding the county convention).⁵⁸

252. An additional written statement from a party Defendant further supports Dr. Arrington's conclusion and eyewitness testimony that Brown was not elected Chairman of the DEC in 2004. DEC members Betty Robinson and John Gibson both wrote to then state DEC Chairman Cole complaining of Brown's activities at the county convention. (Ex. P-31, P-53, P-54; Tr. 1913.) Robinson noted that Brown left the meeting after losing the vote, and the convention continued without him. (Ex. P-53.)

253. On the basis of this evidence, this Court finds that Brown intentionally excluded whites from the caucus process so that they would ultimately be excluded from participating in the delegate selection process for the county convention that took place at the caucuses. This exclusion from consideration for selection as a delegate resulted in: (1) whites being removed from voting in the selection of the DEC; and (2) consequently excluding whites from participating in the selection of DEC Chairman for the 2004 to 2008 period.

Z. Racial Slating by Brown and his Allies

254. Courts have observed that the existence of a slating process that excludes

⁵⁸Dr. Arrington's expertise and experience extends to the operation of county party affairs. (Ex. P-1 ¶10, Tr. 337-38, 435-36.) He therefore is qualified to review facts relating to the 2004 county convention and offer opinions about what he believes transpired. See, e.g., Satcher v. Honda Motor Co., 52 F.3d 1311, 1317 (5th Cir. 1995) (trial court properly allowed expert testimony about safety of a motorcycle based on the experience of a witness with over nine years as motorcycle policeman who investigated accidents).

candidates on the basis of their race is a factor that weighs in favor of a Section 2 violation. See, e.g., Marengo County Comm'n, 731 F.2d at 1569 (noting that slating can be important evidence of minority vote dilution). This factor exists in Noxubee County, and the slating process is operated by Brown and his allies.

255. On the day of the 2003 Democratic Primary, a sample ballot under the name of the East Mississippi Voters League, a small organization founded by Brown, was being passed out. (Ex. P-2; Admiss. Nos. 90, 91; Tr. 1046.) This sample ballot endorsed four candidates in local races involving both black and white candidates, and in all four of those races the sample ballot endorsed the black candidate, that is, Dirk Dickson over Tommy Cade for Justice Court Judge, Jerome Miller over Eddie Coleman for Road District 4 Supervisor, Albert Walker over Samuel Heard for Sheriff, and Carl Mickens over Larry Cooper for Circuit Clerk. (Ex. P-45; Tr. 1044, 1088, 1251.)

256. In the 1999 general election, a sample ballot was distributed in Noxubee County under Brown's name and in his capacity as Chairman of the Noxubee County Voters' League that supported, among others, Brown's political allies Carl Mickens, Albert Walker, George Robinson, and Dirk Dickson. (Ex. P-37.)⁵⁹

257. In the 2001 Town of Shuqualak elections, Mayor Jenkins promulgated campaign literature that supported an all-black slate of five candidates for election to Mayor and Aldermen. (Tr. 2498-99.) In fact, Jenkins was so confident that the race of the candidates was a salient factor in Shuqualak elections that she distributed the all-black slate without checking with one of

⁵⁹Brown acknowledged that he was a part of the Voters League in 1999. (Tr. 1256-57.)

the black candidates to see if he agreed to be a part of her slate. (Tr. 2501.)

258. This evidence of racial slating by Brown and his political ally, Mayor Jenkins, weighs in favor of a finding of a violation of Section 2 in this case.

AA. Brown's Refusal to hold a Court-Ordered Election to the Detriment of White Voters

259. A major piece of evidence that demonstrates Brown has denied white voters an equal opportunity to participate in the electoral process and to elect candidates of their choice is his refusal to comply with a court order for the DEC to conduct a special election.

260. The 1999 Democratic Primary for Sheriff was between Brown's political ally, incumbent Sheriff Walker, and his Democratic Primary challenger, Earnest Eichelberger, who was the preferred candidate of white voters. (Ex. P-1 at 143, App. B tbl. 42C.) Before Brown became Chairman of the DEC, he represented Walker's interest before the DEC when Eichelberger petitioned the DEC to overturn its certification of Walker's election victory. (Exs. P-38, P-39, P-119, P-120; Tr. 130, 1489-90.) Beacon reporter Scott Boyd did an interview with Brown in which Brown said the DEC did not have the authority to overturn its certification, and that if Eichelberger "disputed the outcome of the election, [he] needed to file a lawsuit." (Tr. 140.) Ultimately, the Committee did not overturn its certification of Walker as the winner, and Eichelberger filed a lawsuit. Id.

261. On September 15, 2000, Hinds County Chancery Judge Patricia Wise entered an opinion and order in the case of Earnest Eichelberger v. Noxubee County DEC. (Ex. P-137.) Brown was the Chairman of the Democratic Executive Committee on that date. (Tr. 1492.) In that order and opinion, the court stated,

It is therefore ordered and adjudged and decreed that consistent with the analysis above, those ballots that are found to have fundamental departures from the mandatory provisions of the election code are to be invalidated and a special election held to determine the Democratic nomination for the office of Sheriff of Noxubee County, Mississippi.

(Ex. P-137 at 30) (emphasis added).

262. Boyd interviewed Brown after Judge Wise handed down her ruling, and Brown said it was his responsibility to hold a new election; but there was not going to be a new election. (Tr. 141.)⁶⁰ He also said that if Eichelberger wanted a new election, he could file another lawsuit and try to get a favorable ruling. Id.

263. Although at trial Brown denied he ever had a copy of this court order in his physical possession, he admitted that he read about the fact that a special election had been ordered in the newspaper. (Tr. 1492.) Contrary to Brown's testimony, Circuit Clerk Mickens testified that Brown, the Chairman of the DEC-defendant in Eichelberger, received a copy of Judge Wise's order and opinion directing a special election. (Tr. 2182, 2241.)

264. Brown did not contact Judge Wise on behalf of the DEC to determine what the court expected of him or the DEC regarding the ordered special election, nor did Brown inquire of the Board of Supervisors what they expected him to do. (Tr. 1496, 1541-42.) Importantly, Brown did not contact Eichelberger or anyone acting on his behalf concerning whether he

⁶⁰In the same vein, the magistrate judge in this case ordered Brown to pay a \$500 fine because he and his attorneys had not complied with discovery deadlines. (Tr. 1501.) Brown had actual notice of the fine because he read about it in the newspapers. Id. The magistrate's order directing payment of the fine was not appealed to this District Court Judge and has not been paid some fourteen months later. Id.

wanted a new election. (Tr. 1497.) Eichelberger never told Mickens that he did not want a new election, and Mickens never talked with Judge Wise about the order directing a special election. (Tr. 2181-82.)

265. Brown acknowledged that he wanted Walker to win his race over Eichelberger and that if a special election were not held and Walker was allowed to continue to serve as Sheriff, "That would be fine with me." (Tr. 1496.) At the time of the Eichelberger order, Brown was the Chairman of the DEC, the entity that had the authority under Mississippi law to conduct Democratic Primary elections.

266. This Court finds that Brown intentionally did not take any actions to comply with the court order to hold a special primary election for Sheriff in 2000, because he wanted to ensure that his political ally, Albert Walker, remained in office. Besides the harm Brown's failure to comply with this court order may have done to Eichelberger, it resulted in white voters of Noxubee County being denied an opportunity to vote for their preferred candidate, Eichelberger, in a lawful election process.⁶¹

⁶¹The Fifth Circuit has recognized a claim of vote denial in contexts involving isolated incidents of blanket voter disenfranchisement. In Duncan v. Poythress, 657 F.2d 691, 708-12 (5th Cir. 1981), Georgia state officials thwarted state law by refusing to hold a special election to fill a position on the Georgia Supreme Court. The Fifth Circuit upheld the lower court's ruling in favor of the plaintiffs, and stated,

[We] likewise can imagine no claim more deserving of constitutional protection than the allegation that state officials have purposely abrogated the right to vote, a right that is fundamental to our society and preservative of all individual rights . . . The United States Constitution protects against complete deprivation as well as invidious discrimination.

Id. at 704.

BB. Racially Polarized Voting

267. Voting in Noxubee County is polarized along racial lines. Dr. Arrington's opinion is that racial polarization results in Brown's actions necessarily diluting the voting strength of white voters and harming white voter-preferred candidates disproportionately. (Ex. P-1 ¶ 63.)

The Qualifications of the United States' Expert

268. The expert witness for the United States, Dr. Theodore S. Arrington, submitted a 178-page report containing his opinions. (Ex. P-1.) Dr. Arrington's trial testimony and opinions were largely uncontroverted by any evidence offered by the Defendants. In particular, Defendants offered no evidence to rebut Dr. Arrington's statistical analysis of elections and his associated conclusions. Moreover, counsel for Defendants waived objections or otherwise consented to the admissibility of Dr. Arrington's testimony regarding his statistical analysis of elections. (Tr. 328-29.)

269. Dr. Arrington is the Chair of the Department of Political Science at the University of North Carolina at Charlotte. Dr. Arrington has been retained as an expert in thirty-five voting rights cases. (Ex. P-1 ¶ 11-24.) He has served on the Charlotte/Mecklenberg Board of Elections, and for six years was Chair of that body. (Ex. P-1 ¶ 7.) For twenty-five years, Dr. Arrington was also a political party official and organized party caucuses and county conventions, chaired precinct caucuses and a county convention, and attended executive committee meetings. (Ex. P-1 ¶ 10.) The United States presented Dr. Arrington as an expert qualified to offer opinions about voting behavior, racial and partisan politics, political party organization, and election

administration. (Tr. 341-42.)

270. In reaching his expert opinions, Dr. Arrington examined election returns, census data, Mississippi election law, and Mississippi Democratic Party rules. (Tr. 346-47.) He also reviewed newspaper accounts of Noxubee County politics using objective search criteria and conducted interviews with twenty-one individuals, sixteen white and five black. Id.; (Ex. P-1 App. C & D; Ex. P-1 App. E.) He reviewed the depositions of at least thirty individuals, six white individuals and twenty-five black individuals. (Ex. P-1 App. F.) Dr. Arrington also reviewed documents obtained in discovery, including Noxubee County Circuit Court opinions regarding various election contests. (Tr. 345-52.)

271. Dr. Arrington analyzed eighty-six elections that he determined, based upon his professional opinion, to be the most probative on the issue of whether voting is racially polarized in Noxubee County. He analyzed county elections from 1990 to 2004 where there were two candidates, where each candidate got at least 10.0% of the vote, and where there were at least five precincts voting. (Ex. P-1 App. B; Tr. 352.)

272. Contrary to Defendants' objections at trial, experts may rely on hearsay to form their opinions. Fed. R. Evid. 703; First Nat'l Bank of Louisville v. Lustig, 96 F.3d 1554, 1576 (5th Cir. 1996) (district court properly allowed opinions based on hearsay and investigation about bank procedures and operations).

273. Defendants objected to some of Dr. Arrington's opinions, including his opinion that Brown acts with a discriminatory intent, on the ground that they were not reached in compliance with the standard articulated by the Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). Factors outlined in Daubert are: (1) whether the

expert's technique or theory can challenged or tested; (2) whether the technique or theory has been subject to peer review or publication; (3) the known or potential rate of error; (4) the existence of standards and controls; and (5) whether the technique or theory has general acceptance in the scientific community. Id. at 593-94.

274. The expert's testimony must be both "reliable and relevant." Curtis v. M & S Petroleum, Inc., 174 F.3d 661, 668 (5th Cir. 1999); Moore v. Ashland Chem., Inc., 151 F.3d 269, 278-79 (5th Cir. 1998). To be reliable, the reasoning or methodology must be scientifically valid. Curtis, 174 F.3d at 668. The reasoning or methodology then must be able to be applied to the facts in issue to be relevant. Id.; see also Tyus v. Urban Search Mgmt., 102 F.3d 256, 263-64 (7th Cir. 1996) (finding it is error to exclude social scientist expert testimony based on focus group findings in a discrimination case).

275. At trial, Defendants sought the exclusion of Dr. Arrington's opinions because they claimed they are not subject to replication by other scientists. (Tr. 330.) However, the Defendants or any other academic or interested person could have simply conducted interviews with the same people as Dr. Arrington, reviewed the same depositions, reviewed and analyzed the same publicly available materials, and opined about the conclusions reached by Dr. Arrington. Dr. Arrington's conclusions were therefore subject to testing, review, and replication.

276. The Defendants undertook no steps to replicate the research, neither through their own expert nor by conducting their own telephone interviews. The Court denied the oral motion of the Defendants which was an objection to Dr. Arrington testifying about matters involving whether or not Brown and other Defendants engage in a pattern of behavior with the intent and result of denying or diluting white votes. (Tr. 329-30, 333; Ex. P-1 ¶ 25 (5)).

277. Expert testimony which forms opinions based, in part, on interviews, is admissible. In Doctors Hospital of Jefferson v. Southeast Medical Alliance, 878 F. Supp. 884, 886 (E.D. La. 1995), defendants sought to exclude opinion based on interviews. The court held that defendants failed to establish that interviews are not an information gathering device reasonably relied on by experts in the field. Id. at 887. Similarly, Defendants left uncontroverted the testimony of Dr. Arrington that political scientists rely on methodologies the same as his interview methodology to conduct qualitative political science analysis. (Tr. 345, 349, 361-70.) See Curtis, 174 F.3d at 670-71 (documents and statements provided to an expert and study of work practices at a refinery were a sufficient basis to form an expert opinion).

278. In Chen v. Street Beat Sportswear, 364 F. Supp. 2d. 269, 284 n.17 (E.D.N.Y. 2005), the expert's report appeared "to be based on investigations into the garment industry, including interviews with quality control staff." Similarly, the expert's report in Chen was admitted. Id. at 284 n.17. In Katt v. City of New York, 151 F. Supp. 2d 313, 357 (S.D.N.Y. 2001), expert opinions about discrimination were admitted which were based on interviews with police officers. The court stated,

A large and fully respectable branch of the field, including many works regarded as classics in the field, is based on 'anecdotal' research of the sort relied upon by Leinen, incorporating interviews with police officers, criminals, and victims, in an effort to develop an understanding of actual practices in the real life of crime and law enforcement.

Id.; cf. Yapp v. Union Pacific Railroad Company, 301 F. Supp. 2d. 1030, 1036 (E.D. Mo. 2004) (describing inappropriate interview methods by an expert who was improperly influenced by counsel). Scholarly works using the same interview methodology have been published by Dr. Arrington. (Tr. 367.)

279. It was the uncontroverted testimony of Dr. Arrington that experts in voting rights cases regularly analyze racial intent of the defendants, using a methodology that is symmetrical to the standards set forth in Arlington Heights v. Metropolitan Development Housing Corp., 429 U.S. 252 (1977) and Garza v. County of Los Angeles, 918 F.2d 763 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991). (Tr. 358, 359, 361.)

280. Although Defendants objected to Dr. Arrington testifying about ultimate factual issues, including intent, (Tr. 405), such opinions by an expert are admissible. "An opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact." First United Fin. Corp. v. U.S. Fidelity & Guar. Co., 96 F.3d 135, 138 n.2 (5th Cir. 1996). In Brazos River Authority v. G.E. Ionics, Inc., 469 F.3d 416, 435 (5th Cir. 2006), the court held that an expert should be allowed to offer opinions about whether work deviated from the performance requirements of a contract, but not what the interpretation of the contract language should be. "To the extent that this question embraces an ultimate issue to be decided by the trier of fact, that testimony would not be inadmissible on that ground under Rule 704(b) because the rule is by definition applicable only to criminal cases." Id. An objection that expert testimony touches on an ultimate issue might be appropriate under the old rules, but not under Rule 704 currently in effect. See First United, 96 F.3d at 138 n.2 ("Rule 704 specifically abolishes the old 'ultimate issue' rule . . .").

281. "A trial court's ruling regarding admissibility of expert testimony is protected by an ambit of discretion and must be sustained unless manifestly erroneous." Satcher v. Honda Motor Co., 52 F.3d 1311, 1317 (5th Cir. 1995) (citation omitted); see also Koonce v. Quaker Safety Prods. & Mfg. Co., 798 F.2d 700, 721 (5th Cir. 1986) (holding that the trial court is given

the widest available discretion in deciding whether a witness qualifies as an expert).

282. The Court finds that Dr. Arrington's expert opinions on the issue of racial polarization and his opinions regarding whether Defendants Brown and the DEC act with a racially discriminatory intent and whether their actions have a racially discriminatory result are admitted into evidence.

Evidence of Racially Polarized Voting

283. Whites in Noxubee County find themselves in similar electoral situations as other racial or ethnic groups, such as blacks or Hispanics, when they are the minority in a jurisdiction. (Ex. P-1 ¶ 29.) Ike Brown and his associates' actions to manipulate and violate state and federal election law in order to support candidates he favors necessarily harms white voters disproportionately and dilutes their votes, because the vote is racially polarized and white voters almost always favor a candidate different than Ike Brown. (Tr. 379-80.)

284. Brown concedes that elections are racially polarized in Noxubee County and that whites and blacks vote as racially cohesive blocs. (Defs.' IB/DEC Answer to Am. Compl. ¶ 9.) The data show that 95.0% of the elections analyzed by Dr. Arrington were racially polarized when a black candidate ran against a white candidate. Even contests where a black candidate ran against another black candidate, elections were polarized 80.0% of the time. Overall, of the elections analyzed by Dr. Arrington, 88.0% of contests were racially polarized. (Tr. 381; Ex. P-1 tbl.1; Ex. P-1 ¶ 215.)

285. Dr. Arrington testified that white voters in Noxubee County regularly vote as a cohesive racial bloc. In 91.0% of the contests between white candidates and black candidates, white voters voted with racial cohesion. (Tr. 381-82; Ex. P-1 tbl.1.) The candidate supported by

white voters lost 76.0% of the time in the biracial elections analyzed by Dr. Arrington. (Ex. P-1 tbl.1; Ex. P-1 ¶ 215.) The Defendants presented no statistical evidence whatsoever to rebut Dr. Arrington's conclusion that race is the most important factor in electoral outcomes. Dr. Arrington testified that when race is held constant, whites are willing to vote for Democrats in a general election. (Tr. 459; Ex. P-1 App. B tbls.27 (Blanton is white, Tr. 469-70), 28 and 66.) These three contests represent races where whites in Noxubee County were willing to vote for a white Democrat over a white Republican. Thus, Dr. Arrington's conclusions about racial polarization and its effects were uncontroverted.

286. There were sixty-one elections in which the candidate supported by Brown could be identified. In those sixty-one elections, the white voters opposed the candidate favored by Brown fifty-three times, which is 87.0% of the time. (Ex. P-1 tbl.1; Tr. 382-83; Ex. P-1 ¶ 216.) In fact, Brown admitted he had never supported a white candidate over a black candidate in a contested local Democratic Primary while serving as Chairman of the DEC. (Ex. P-2 Admiss. No. 59.) The eight elections where Brown and the white voters supported the same candidate were unusual elections. (Tr. 383.) In two of the eight, there were only white candidates. In one contest there were only black candidates. Id. And in four of these eight elections, voting was not even racially polarized. Id.

287. Brown takes sides in Democratic Party primaries. (Tr. 149-50.) Thus, according to Dr. Arrington, Brown's actions in taking sides at the same time he administers the primary election is significant. (Tr. 392-93.) Brown does not differentiate between his duty as an objective administrator of primary elections and an aggressive partisan for certain candidates in the primary, almost all of whom are not the preferred candidates of white voters. Id. Indeed, he

uses his control of the electoral machinery to manipulate and favor his preferred candidates. *Id.* Because he almost always opposes the candidates preferred by whites, this bias and manipulation of the electoral mechanism necessarily harms white voters disproportionately. (Ex. P-1 ¶ 63.)

288. On the basis of this evidence, the Court finds that voting in Noxubee County is polarized along racial lines. Additionally, in Noxubee County races, the candidates that Brown supports are always black and are the candidates opposed by the white voting minority. This polarization, both as to the race of the voters and as to the candidates that Brown supports, means that when Brown or the DEC practice voting-related, racial discrimination and racially motivated voting fraud, the intent and result of those actions are to dilute the voting strength of the white minority.

CC. The Bases of Liability Against Defendant Election Commission

289. Most of the evidence in this case addresses actions by Brown and the DEC. However, there is evidence that the Election Commission has been directly involved in some of the election-related problems in Noxubee County elections. In light of that evidence and because the Election Commission is a necessary party for the issuance of effective injunctive relief in this case, a liability ruling should be made against it as well.

The Election Commission's Complicity with Brown's Electoral Wrongdoing

290. Sue Sautermeister serves on the Board of Advisors of the United States Election Assistance Commission and the Mississippi Civil Rights Advisory Commission. (Tr. 1964.) Sautermeister has taught for eleven years at the Election Commissioners Association of

Mississippi's (ECAM) training sessions which were conducted by the Secretary of State's office. (Tr. 1979, 2003.)

291. Sautermeister served as a poll watcher at the Title One polling place during the November general election in 2002. (Tr. 1963.) At this polling place, Sautermeister conferred with DEC member Dorothy Clanton McCoy who had been appointed a poll manager in this general election by the Noxubee County Election Commission. (Tr. 1965.) After the polls closed, Brown came to the Title One polling place and told the poll officials to count all absentee ballots as long as there was a signature across the flap and to ignore challenges on any other grounds. (Tr. 1967, 2006.) After Brown issued this instruction, Clanton McCoy stopped allowing Sautermeister to challenge absentee ballots, informing Sautermeister that she (Clanton McCoy) was not a handwriting expert and did not want to stay at the polling place all night examining signatures. (Tr. 1967, 2009.) After the instruction, poll officials began opening the absentee ballots at a very rapid rate and began not checking for any discrepancy other than whether the signature was across the flap. (Tr. 1967.) Prior to Brown's entry, Sautermeister had been allowed to compare signatures on applications for absentee ballots and the signatures on the absentee ballot envelopes, and four of her challenges had been sustained. (Tr. 1967-68, 1984.) However, after Brown's instruction, the opportunity to challenge ceased. (Tr. 1967-68, 1984.)

292. After Brown gave the instruction, Election Commissioner Essie Brooks came into the Title One polling place. (Tr. 1969.) Brooks told the poll officials to ignore challenges, and they did so. (Tr. 1969, 2006.) The names and addresses of the absentee voters were not read aloud at Title One before the ballot was opened. (Tr. 1990.) Neither Clanton McCoy nor any of the other poll officials at Title One compared the signatures on the applications with the

signatures on the back of the absentee ballot envelopes before opening the envelopes and taking the ballot out of the envelope. (Tr. 2008-09.) In addition, Clanton McCoy would not let Sautermeister see the consolidated vote results. (Tr. 1968.)⁶²

293. No explanation was given to explain why Brown, the Chairman of the DEC at the time of the 2002 general election, or Clanton McCoy, a DEC member, were at a polling place giving instructions to election officials, especially where the election involved a hotly-contested congressional contest between Democratic candidate Shows and Republican candidate Pickering. (Tr. 1970.) Election Commissioner John Bankhead conceded that if the Defendant Ike Brown were giving instructions to poll workers in a general election, it would be contrary to the rules and procedures of the Election Commission. (Tr. 2738.)

294. The Court finds that this evidence shows that there is a close relationship between Brown, the DEC, and Election Commission members.⁶³ Further, it shows that on occasion the Election Commission has difficulty operating independently from Brown and the DEC, and especially in the area of Brown's improper instructions to poll managers even in general elections.

⁶² According to Sautermeister, the Mississippi Election Code, including Miss. Code Ann. §§ 23-15-631, 23-15-633, 23-15-641, and 23-15-643, read in their entirety, provide poll watchers with the right to see, observe, and challenge absentee ballots that are legally insufficient under Mississippi law. (Tr. 1985-87, 2003.) Sautermeister's testimony concerning the proper application of these code sections was consistent with the training she had given in sessions conducted for the Mississippi Secretary of State's office. (Tr. 2011.)

⁶³In this 2002 general election, the Election Commission's appointees to the Resolution Committee were all-black, including DEC members Betty Robinson and William Rice. (Ex. P-57.) Moreover, all of its appointees to the Canvassing Board were also all-black, including DEC member Dorothy Clanton McCoy. *Id.* Again, this is in a county in which 32.5% of the voting age population is white. U.S. Census Bureau, Census 2000 Redistricting Data (Pub. Law 95-171) Summary File.

The Election Commission's Failure to Purge the Voter Rolls

295. The responsibility of removing or purging names from the voter registration lies with Defendant Noxubee County Election Commission, and not with the Circuit Clerk. (Tr. 2160-61.) The Noxubee County Election Commission has maintained a voter registration list with approximately 10,000 voters on it while only 8,537 residents of the county are of voting age. (Tr. 1338, 1369, 1371.) U.S. Census Bureau, Census 2000 Redistricting Data (Pub. Law 95-171) Summary File.

296. Michelle Agnew served as a Macon City Election Commissioner until 2005. (Tr. 740-41.) The Macon City Election Commission has the responsibility for maintaining the voter rolls in Macon for city-only elections and administering municipal elections for Macon. (Tr. 740.) See Miss. Code Ann. § 23-15-221. Prior to the election in 2005, the Macon Election Commission met and reviewed the voter rolls and discovered ineligible voters were on the voter rolls because they were dead or had moved from the city. (Tr. 743.) The Commissioners initialed the names of ineligible voters which fell into this category and forwarded the results to Circuit Clerk Mickens for names to be removed from the rolls. (Tr. 741-43.) The Circuit Clerk serves only in a data entry capacity and merely maintains the voter rolls. See generally Miss. Code Ann. § 23-15-153. The Noxubee County Election Commission is ultimately responsible for the decision to purge ineligible voters. (Tr. 2734-36.) The Noxubee County Election Commission has the power, and has exercised the power in the past, to remove some individuals from the voter rolls after they move from Noxubee County. (Tr. 1582.)

297. When the Macon City Election Commission received the voter rolls from the Election Commission, individuals that the Macon Election Commission had determined were

either dead or non-residents had been returned to the voter rolls. (Tr. 742.) Consequently, these inaccurate voter rolls were used in the 2005 Macon City elections. (Tr. 742-44.)

298. This Court finds the Noxubee County Election Commission failed to purge ineligible voters from the rolls, and this failure has exacerbated voting-related problems in Noxubee County.

DD. Disparate Voter Assistance

299. A very direct way to deny voters equal access on the basis of their race is to refuse to help voters of one race while excessively “assisting” voters of another race. The DEC appointed poll managers who participated in this unequal assistance on the basis of race in 2003.

Improper Assistance to Black Voters

300. Annette Hadaway, a white woman working as a bailiff at the Republican table in the East Macon precinct, offered uncontroverted testimony that she saw improper assistance imposed upon black voters throughout the day of the 2003 primary election. See Miss. Code Ann. § 23-15-549 and Ex. P-171 (state law and the Secretary of State’s handbook instruct that assistors are to wait to be asked for assistance, as opposed to asking voters whether they need assistance).

301. According to Hadaway, there were a number of people in this polling place who were exclusively approaching black voters, offering assistance (the majority of which was accepted by the voters approached), and marking their ballots. (Tr. 1101-03.) When Hadaway tried to ask these people why they were there, they replied in a sharp tone that they were supposed to be there, and Democratic poll managers and workers never helped her in preventing

the unlawful assistance. (Tr. 1102-03.) Poll watcher Len Coleman testified that black poll workers at the Shuqualak precinct improperly volunteered assistance exclusively to black voters, who usually took the assistance when it was imposed upon them. (Tr. 1129.) Furthermore, DEC-appointed poll manager Octavia Stowers testified that some voters in the West Macon polling place complained about offers of unwanted assistance in the August 2003 primary. (Tr. 2353.) Stowers also testified there was a problem with voters being asked if they needed assistance, and these voters expressed these complaints to poll workers. (Tr. 2364.) Stowers took no steps to remedy the problems which gave rise to these complaints. (Tr. 2364.) According to Dr. Arrington, this is a common and continuing abuse of the electoral system in Noxubee County. (Ex. P-1 ¶ 226.)

Improper Denial of Assistance to a White Voter

302. In the 2003 Democratic Primary, African American poll workers at the Brooksville polling place were also approaching black voters who had not asked for assistance and offering it to them. (Tr. 1584.) The assistance would involve the poll worker leading the voter to the voting stand, staying in the dominant position at the booth, and marking the ballot without discussing it with the voter. (Tr. 1588-89.) Libby Abrams, who was working as a poll watcher in the election, objected to these inappropriate practices, but her objection was disregarded by the poll managers. (Tr. 1588, 1611.)

303. In contrast, an elderly white voter experienced difficulty marking her ballot, and when she attempted to insert the paper ballot in the electronic scanner, the scanner registered "Blank ballot. Accept or Reject." (Tr. 1589-90, 1610.) When the scanner rejected the ballot, the white voter informed the black poll official in charge of the machine that she did not want

anyone to see how she had marked her ballot. (Tr. 1590-91.) Instead of assisting the voter, the poll official simply pushed the "Accept" button. Id. Abrams then asked the poll official, "Do you realize that you just accepted her blank ballot?" Id. The poll official responded, "She wanted her ballot to be kept secret. So now it is." (Tr. 1591.)

304. The Court finds that these actions involve disparate treatment of black and white voters at the polling places. Some black voters were "overly assisted" inasmuch as some poll officials were offering "assistance" and marking their ballots without any request being made by the voter for assistance. While at the same time, an elderly white voter who was experiencing difficulty marking her ballot was not assisted, and instead the poll official took action that resulted in this voter being denied the opportunity to cast a ballot. This type of racially discriminatory mistreatment of a voter by a poll official is outrageous conduct.

III. Conclusions of Law

A. Section 2 of the Voting Rights Act

305. As amended in 1982, Section 2(a) of the Voting Rights Act prohibits any state or political subdivision from imposing or applying any "qualification or prerequisite" to voting or any "standard, practice, or procedure" 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). A violation of Section 2 "is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are 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).⁶⁴

306. Section 2 prohibits all forms of voting discrimination that "result in the denial of equal access to any phase of the electoral process for minority group members." S. Rep. No. 97-417, at 30 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 205 ("Senate Report"). It also protects voters from election practices "which operate, designedly or otherwise" to deny citizens of one race the same opportunity to participate in the political process as other citizens enjoy. Senate Report at 28. The Voting Rights Act was enacted under the authority of the Fifteenth Amendment, Riddell v. Nat'l Democratic Party, 508 F.2d 770, 774 n.4 (5th Cir. 1975), which provides, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

⁶⁴ Section 2 of the Voting Rights Act was not changed in any way when Congress reauthorized the Act in 2006. See H.R. 9, The Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006.

U.S. Const. amend. XV, § 1.

307. As the reading of the statutory language of Section 2 and the pertinent language of the Fifteenth Amendment both show, the prohibitions against racial discrimination in voting are race-neutral. On their face, these provisions prohibit voting discrimination on the basis of race, regardless of the race of the victim.⁶⁵

The Fifteenth Amendment and Section 2 Protect White Voters as well as Voters of Other Races from Discrimination on the Basis of their Race

308. The Fifteenth Amendment prohibits racial discrimination in voting regardless of the race of the victim. In the Ku Klux Cases, 110 U.S. 651, 665 (1884), the Supreme Court recognized that while the Amendment “was mainly designed for citizens of African descent,” its protections extended to members of all races. “The principle, however, that the protection of the exercise of this right is within the power of [C]ongress, is as necessary to the right of other citizens to vote as to the colored citizen, and to the right to vote in general as to the right to be protected against discrimination.” Id.; see also Ex Parte Commonwealth of Virginia, 100 U.S. 339, 361 (1879) (Field, J., dissenting) (“The generality of the language used [in the Civil War Amendments] necessarily extends some of their provisions to all persons of every race and color . . .”).

309. More recently, the Supreme Court expressly held that the Fifteenth Amendment’s

⁶⁵ The long history of official discrimination against African Americans in Mississippi is well documented. See, e.g., Kirksey v. Bd. of Supervisors of Hinds County, 554 F.2d 139, 143-44 (5th Cir. 1977) (citing the long history of racial discrimination in Hinds County touching upon almost every facet of life for African Americans). In this case, Defendants have pointed to this history as it played out in Noxubee County. As tragic as this past history is, it cannot serve as a legal justification for present day discrimination against whites in the area of voting. To do so would subvert the clear, race-neutral, anti-discrimination prohibitions in the Voting Rights Act.

protections were race-neutral. In Rice v. Cayetano, 528 U.S. 495 (2000), a white resident of Hawaii challenged a provision of the Hawaiian Constitution giving only native Hawaiians the right to vote for trustees who would serve on the state Office of Hawaiian Affairs. Id. at 510.⁶⁶ The Court first addressed the breadth of the Fifteenth Amendment and held that the Fifteenth Amendment's protections were "both explicit and comprehensive": that federal and state governments "may not deny or abridge the right to vote on account of race." Id. at 511-12. The Court further explained the genesis and current utility of the Amendment:

Enacted in the wake of the Civil War, the immediate concern of the Amendment was to guarantee to the emancipated slaves the right to vote, lest they be denied the civil and political capacity to protect their new freedom. Vital as its objective remains, the Amendment goes beyond it. Consistent with the design of the Constitution, the Amendment is cast in fundamental terms, terms transcending the particular controversy which was the immediate impetus for its enactment. The Amendment grants protection to all persons, not just members of a particular race.

The design of the Amendment is to reaffirm the equality of races at the most basic level of the democratic process, the exercise of the voting franchise. A resolve so absolute required language as simple in command as it was comprehensive in reach. Fundamental in purpose and effect and self-executing in operation, the Amendment prohibits all provisions denying or abridging the voting franchise of any citizen or class of citizens on the basis of race.

Id. (quoting Guinn v. United States, 238 U.S. 347, 363 (1915)) (emphasis added).⁶⁷

⁶⁶Although the plaintiff's race is not specified in the Supreme Court's opinion, in the Ninth Circuit's opinion, he is identified as being white. See Rice v. Cayetano, 146 F.3d 1075, 1076 (9th Cir. 1998).

⁶⁷The Court's reasoning here mirrors the intent of Congress in designing the Civil War Amendments; that is, the Amendments affirmatively protect the rights of all citizens – regardless of race. See, e.g., Cong. Globe, 40th Congress 2d Sess. S.p. 725 (Jan. 1868) (Congressman Morton arguing of the necessity to protect both black and white citizens); Cong. Globe, 40th

310. The Rice Court further held that native ancestry had essentially been used as a proxy for race, to the exclusion of white Hawaiian voters and in violation of the Fifteenth Amendment. Rice, 528 U.S. at 517. The Court stated that accepting Hawaii's position that a white voter would not cast a principled vote in a state election "would give rise to the same indignities, and the same resulting tensions and animosities, the Amendment was designed to eliminate." Id. at 523-24; cf. Hines v. Mayor & Town Council of Ahuskie, 998 F.2d 1266, 1274 (4th Cir. 1993) (rejecting a proposed districting plan that gave black voters who were the minority of the voting age population in the jurisdiction control of a majority of voting districts on the ground that it would violate white voters' equal protection rights).

311. "The Voting Rights Act was designed by Congress to banish the blight of racial discrimination in voting" and to implement the Fifteenth Amendment. South Carolina v. Katzenbach, 383 U.S. 301, 308 (1966); Allen v. State Bd. of Elections, 393 U.S. 544, 556 (1969) ("The [Voting Rights] Act was drafted to make the guarantees of the Fifteenth Amendment finally a reality for all citizens."); United States v. Mississippi, 380 U.S. 128, 138 (1965) (The Voting Rights Act "was passed by Congress under the authority of the Fifteenth Amendment to enforce that Amendment's guarantee" of one's "right to vote regardless of race against any denial or abridgement by the United States or by any State."); Riddell, 508 F.2d at 774 n.4 ("The Voting Rights Act . . . was enacted to banish racial discrimination in voting and implement the Fifteenth Amendment."); see also United States v. Blaine County, 363 F.3d 897 (9th Cir. 2004)

Congress 3d Sess. H.p. 197 (Feb. 8, 1869) (Congressman Fowler arguing that the Fifteenth Amendment needed to protect white citizens as well as black citizens); Cong. Globe, 39th Congress 1st Sess. 1832-33 (April 7, 1866) (Congressman Lawrence arguing that all persons who had been loyal to the Union, regardless of race, needed protection).

(finding a Section 2 violation of the voting rights of Native American voters); United States v. Osceola County, --- F.Supp.2d ----, 2006 WL 2989268 (M.D. Fla. 2006) (finding a Section 2 violation of the voting rights of Hispanic voters); United States v. Charleston County, 316 F. Supp. 2d 268 (D.S.C. 2003) (finding a Section 2 violation of the voting rights of black voters). The Act is thus a powerful tool to guarantee the protections of the Fifteenth Amendment to black citizens, white citizens, and citizens of other races, and has been recognized as such by the courts.⁶⁸

312. In United Jewish Organizations of Williamsburgh, Inc. v. Wilson, a case brought by white plaintiffs under the Voting Rights Act, standing was challenged. 510 F.2d 512, 520 (2d Cir. 1975), aff'd sub nom., United Jewish Org.'s of Williamsburgh, Inc. v. Carey, 430 U.S. 144 (1977). The Second Circuit held, "A more difficult question is whether appellants have standing either as representing the Hasidic community or as white voters to seek relief against the State appellees. We hold that they do not as Hasidim but do as white voters." Wilson, 510 F.2d at 520. The court of appeals reasoned,

[T]here is no reason, as we see it, that a white voter may not have standing, just as a nonwhite voter, to allege a denial of equal protection as well as an abridgement of his right to vote on account of race or color, regardless of the fact that the fourteenth and fifteenth amendments were adopted for the purpose of ensuring equal protection to the black person. While we generally tend to think of white voters as being in the majority because in the country as a whole and in most states they are, it is plain enough

⁶⁸ The principle that the protections of anti-discrimination laws extend to all citizens equally is well-accepted. See, e.g., McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 278-279 (1976) (expressly holding that Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e, and the Civil Rights Act of 1870, 42 U.S.C. 1981, protects white employees from discrimination in private employment on the basis of their race).

that in a given state or political subdivision they may not be;⁶⁹ to the extent that the fourteenth and fifteenth amendments can be construed as extending the rights of minority groups, in a given situation that group may of course be white.

Id.; see also White v. Alabama, 74 F. 3d. 1058, 1073-74 (11th Cir. 1996) (finding that a white intervener's right to be free from racial discrimination, as protected by Section 2, was violated by a settlement agreement which racially apportioned state judicial offices).

313. Indeed, United Jewish Organizations was cited by the Mississippi Supreme Court in an annexation challenge grounded in the Fifteenth Amendment. The court held,

A person does not have to be a member of any particular race or group in order to have his right to vote respected. White persons have the same constitutional and legal immunity against the abridgment of, or dilution of, their right to vote on account of race and color as do black persons.

Enlargement of Boundaries of Yazoo City v. City of Yazoo City, 452 So. 2d 837, 843 (Miss. 1984).

314. Therefore, racial discrimination against all voters, including those who are white, is actionable under both the racial intent and racial result standards of Section 2 of the Voting Rights Act.

B. The Intent and Result Standards of Section 2

315. A claim brought under Section 2 can be proven by a showing that the challenged practice either has a discriminatory intent or result. Askew v. City of Rome, 127 F.3d 1355, 1373 (11th Cir. 1997) (citing Thornburg v. Gingles, 478 U.S. 30 (1986); Hunter v. Underwood,

⁶⁹ It bears remembering that in Noxubee County white citizens are the racial minority.

471 U.S. 222 (1985); Rogers v. Lodge, 458 U.S. 613 (1982)); accord Charleston County, 316 F. Supp. 2d 268, 304-05 (D.S.C. 2003). The Court concludes, based on the following analysis, that the Defendants have violated the intent standard of Section 2.

Defendants' Conduct Violates the Intent Standard of Section 2

Racial Purpose Violates Section 2

316. State action that is "racially neutral on its face violates the Fifteenth Amendment only if motivated by a discriminatory purpose." Reno v. Bossier Parish Sch. Bd., 520 U.S. 471, 481 (1997) (citing City of Mobile v. Bolden, 466 U.S. 55, 62, 66 (1980)). However, "[r]acial discrimination need only be one purpose, and not even a primary purpose, of an official act" in order to prove an intent claim under the Voting Rights Act. Velasquez v. City of Abilene, 725 F.2d 1017, 1022 (5th Cir. 1984) (citing Arlington Heights v. Metropolitan Development Housing Corp., 429 U.S. 252, 265 (1977)) (emphasis added); accord Garza v. County of Los Angeles, 918 F.2d 763, 771 (9th Cir. 1990), cert. denied, 498 U.S. 1028 (1991) ("[D]iscrimination need not be the sole goal in order to be unlawful."). Furthermore, the Supreme Court has held, "Discriminatory intent is simply not amenable to calibration. It either is a factor that has influenced the legislative choice or it is not." Pers. Admin. of Mass. v. Feeney, 442 U.S. 256, 277 (1979).

317. The Eleventh Circuit's position on the plaintiff's burden of proof in an intent claim is in accord with the Fifth Circuit's holding in Velasquez. In Askew v. City of Rome, 127 F.3d at 1373, the court held that plaintiffs are not required "to prove that a discriminatory purpose was the sole, dominant, or even the primary purpose for the challenged practice or procedure, but only that it has been a motivating factor in the decision." It therefore logically follows that,

"Once intent is shown, it is not a defense under the Voting Rights Act that the same action would have been taken regardless of the racial motive." Id. (citing Richmond v. United States, 422 U.S. 358, 378 (1975)).

318. This Court concludes that the primary purpose underlying Defendants' administration of Democratic Primary elections in the racially discriminatory manner in which Brown and the DEC have operated them has been to discriminate against white voters. However, even if the Court were to conclude that racial discrimination was one purpose, but not the primary purpose, underlying the Defendants' actions, such a finding would be sufficient under Velasquez to support a determination that the Section 2 intent standard has been violated.

Proof of Animus is not Necessary

319. To prove discriminatory intent, a party is not required to prove that the defendant acted with racial animus. Actions taken with the intent of effectuating a disproportionately negative impact on a racial minority are violative of the intent standard. Garza, 918 F.2d at 778 (Kozinski, J., concurring and dissenting in part). Judge Kozinski cogently explained that one might

wonder if there can be intentional discrimination without an invidious motive. Indeed there can. A simple example may help illustrate the point. Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

Id. at 778, n.1 (Kozinski, J., concurring and dissenting in part). Thus, Brown, the DEC, and those acting in concert with him violated the Section 2 intent standard by taking numerous actions that together have disadvantaged, on the basis of race, white voters and the candidates preferred by white voters, whether or not Brown and his allies acted with a racial animus.

320. Therefore, even if this Court were persuaded that Brown, the DEC, and their political allies did not act with a hatred or animus towards whites, such a conclusion would not be determinative of a Section 2 intent claim, nor would the lack of such animus even be relevant to whether the Section 2 intent standard had been violated.

Episodic Practices are Actionable

321. One type of practice which may provide evidence of a discriminatory intent or result under Section 2 falls into the category of "episodic practices . . . that result in discrimination in voting." Welch v. McKenzie, 765 F.2d 1311, 1315 (5th Cir. 1985). Episodic practices, rather than being "isolated and singular incidences of misconduct and improper administration," are "part of an over-all scheme or pattern." Welch v. McKenzie, 592 F. Supp. 1549, 1558 (S.D. Miss. 1984), affirmed Welch v. McKenzie, 765 F.2d 1311 (5th Cir. 1985). Episodic practices are also distinguished from "systematically discriminatory laws." Gamza v. Aguirre, 619 F.2d 449, 453 (5th Cir. 1980). Similarly, the Fifth Circuit recognized in voting rights cases decided prior to the passage of the Voting Rights Act of 1965 that multiple, isolated acts of racial discrimination, together can constitute a "pervasive pattern and practice of disenfranchisement" United States v. Louisiana, 225 F. Supp. 353, 384 (E.D. La. 1963); accord United States v. Lynd, 349 F.2d 785, 786-87 (5th Cir. 1965); United States v. Ward, 345 F.2d 857, 860-61 (5th Cir. 1965).

322. American citizens have "the right to have their votes counted, a right which can neither be denied outright . . . nor diluted by ballot box stuffing." Duncan v. Poythress, 657 F.2d 691, 700 (5th Cir. 1981) (citations omitted). This includes the "right not to have [their] ballot diluted by the casting of illegal ballots or weighting of one ballot more than another." Welch, 592 F. Supp. at 1558-59 (citing Reynolds v. Sims, 377 U.S. 533, 554-55 (1964)).

323. In Welch v. McKenzie, black plaintiffs brought intent and results claims under Section 2, alleging that rampant abuse of absentee balloting procedures by county officials and a candidate were of the episodic type prohibited under the Fifteenth Amendment and the Voting Rights Act. 592 F. Supp. at 1553. This Court found that the county's absentee ballot process was fraught with irregularities, including, but not limited to: (1) many of the absentee ballots cast were improperly obtained and voted in violation of Mississippi law; (2) the poll workers' decision to prematurely open the absentee ballots effectively prevented the ballots being challenged by a black candidate; and (3) there were six incidents involving the perpetration of blatant vote fraud. Id. at 1554-57. However, regarding the plaintiffs' intent claims under Section 2 and the Fifteenth Amendment, the Court found that the mishandling of the absentee ballots by county officials was due to their ongoing ignorance of the state absentee ballot laws, and found no evidence that the officials acted with a racially discriminatory intent. Id. at 1558. The Court stated that rather than being intentional, episodic actions that were "part of an over-all scheme or pattern," the plaintiffs had only proven the existence of a smattering of "isolated and singular incidences of misconduct and improper administration." Id.

324. In this case, the totality of the evidence clearly shows that Brown, the DEC, and his other political allies have taken a number of actions with the intent of discriminating against

white voters and candidates preferred by white voters. These actions include the issuance of participation in absentee ballot fraud to dilute the voting strength of white voters; improper instructions to poll managers resulting in the counting of legally defective ballots cast by black voters; the racially discriminatory rejection of the absentee ballots of white voters; the recruitment of black candidates not legally qualified to run for local office in an explicit attempt to defeat all of the white candidates for county office; the consistent use of racial appeals in elections where voting is racially polarized at a high level; direct threats publicly communicated to disenfranchise white voters; racial discrimination in the selection of persons working at the polls; and the racially discriminatory exclusion of whites from participation in Democratic Party affairs.

325. The racially discriminatory actions of Defendants and those acting in concert with them are not isolated or singular incidences of misconduct due to their ignorance, but a well conceived and sophisticated pattern of episodic behavior intended to deny white voters the opportunity to elect candidates of their choice. On the basis of this pattern of racially discriminatory, episodic practices, Welch is factually distinguishable from this case. Indeed, the evidence that was missing in Welch that resulted in the conclusion that no Section 2 violation had been proven in that case, is the very type of evidence of racial discrimination that the United States has proven in abundance here.

Arlington Heights Standard

326. When a plaintiff "chooses to prove discriminatory intent, 'direct or indirect circumstantial evidence, including the normal inferences to be drawn from the foreseeability of defendant's actions' [are] relevant evidence of intent." McMillan v. Escambia County, 748 F.2d

1037, 1046-47 (5th Cir. 1984) (citing Senate Report at 205 n. 108). Moreover, the "existence of a right to redress does not turn on the degree of subtlety with which a discriminatory plan is effectuated[;]" therefore, "[c]ircumstantial evidence, of necessity, must suffice, so long as the inference of discriminatory intent is clear." Lodge v. Buxton, 639 F.2d 1358, 1363 (5th Cir. 1981), aff'd sub nom. Rogers v. Lodge, 458 U.S. 613 (1982); accord Seastrunk v. Burns, 772 F.2d 143, 150 (5th Cir. 1985).

327. Under the ruling in Arlington Heights, a plaintiff may circumstantially prove intentional discrimination through evidence of: (1) whether the official action bears more heavily on one race than another; (2) the historical background of the decision; (3) the sequence of events leading up to the challenged decision; (4) procedural or substantive departures from normal decision-making; and (5) statements, including legislative or administrative history, reflecting on the purpose of the decision. Arlington Heights, 429 U.S. at 266; Jones v. City of Lubbock, 727 F.2d 364, 371 n.3 (1984) (citing Arlington Heights, 429 U.S. at 267-68). The list of factors that may be considered under Arlington Heights is not, however, an exhaustive one and courts may consider other relevant factors. Overton v. City of Austin, 871 F.2d 529, 540 (5th Cir. 1989).⁷⁰

⁷⁰In the Fifth Circuit, there is no distinction between voting rights causes of action under the Fourteenth and Fifteenth Amendments. City of Lubbock, 727 F.2d at 370 n.2. Therefore, the Fifth Circuit has used the Supreme Court's Arlington Heights intent standard to review a decision for circumstantial evidence of intentional discrimination in violation of the Fifteenth Amendment. Id. at 371 n.3; see also Charleston County, 316 F. Supp. 2d at 304-05 (using the Arlington Heights intent standard to analyze an intent claim brought under the Fifteenth Amendment and Section 2); cf. Bossier Parish, 520 U.S. at 488-89 (using Arlington Heights intent standard to analyze a case brought under Section 5 of the Voting Rights Act); Rogers, 458 U.S. at 618 (using Arlington Heights intent standard to evaluate a vote dilution claim brought under the Equal Protection Clause).

328. This Court concludes that the actions of Brown, the DEC, and their political allies pointed to by the United States fall within the categories of evidence recognized in Arlington Heights to be probative of discriminatory intent. First, Brown and members of the DEC have made a number of statements that indicate their intent to disadvantage white voters and their preferred candidates and to only elect black candidates. Some of these statements constitute circumstantial evidence of intent while others directly manifest racial intent on the face of the statement.

329. Second, in many instances, the actions challenged are either in violation of state election law or are inconsistent with Democratic Party rules, to the disadvantage of white voters and their preferred candidates. Arlington Heights recognize that these departures from standard procedure are themselves indicative of a discriminatory intent. As Dr. Arrington pointed out, Brown has a pattern of extraordinary formality in enforcing the rules when doing so disadvantages a white person, such as Brown's refusal to even entertain the election contest petition of Roderick Walker. Yet when the action works to the advantage of a black candidate, such as Winston Thompson, Brown disregards formal rules, as he did by removing white DEC members Robert Cunningham and Wallace Gray from the DEC in violation of the Democratic Party Constitution. All of the circumstantial evidence in this case coupled with the direct evidence of discriminatory intent clearly supports the conclusion that these Defendants have acted with a racial intent in violation of Section 2.

Finding of Discriminatory Intent

330. This Court concludes that Brown, the DEC, and their political allies acting in concert with them in the administration of Democratic Primary elections have engaged in a

pattern of voting-related behavior which has the intent of denying white voters the ability to participate equally in the political process and elect representatives of their choice in Noxubee County in violation of the intent standard of Section 2 of the Voting Rights Act.

331. This Court further concludes that the actions of Brown, the DEC, and their political allies acting in concert with them in their administration of Democratic Primary elections were taken for the purpose of diluting the voting strength of white voters in order to defeat candidates preferred by white voters and to elect black candidates preferred by the Defendants in violation of the intent standard of Section 2 of the Voting Rights Act.

The Defendants' Conduct Violates the Discriminatory Result Standard of Section 2

332. Congress made clear through the 1982 amendment to Section 2 of the Voting Rights Act that "certain practices and procedures that result in the denial or abridgment of the right to vote are forbidden even though the absence of proof of discriminatory intent protects them from constitutional challenge." Chisom v. Roemer, 501 U.S. 391, 383-84 (1991); accord Bossier Parish Sch. Bd., 520 U.S. at 482. Therefore, regardless of the reason why the electoral process is not equally open to members of a racial minority, a plaintiff may prove a Section 2 case by showing that the members of the minority group have "less opportunity than other members of the electorate to participate in the political process." Miss. State Chapter, Operation PUSH, Inc. v. Mabus, 932 F.2d 400, 405 (5th Cir. 1991) (citing 42 U.S.C. § 1973(b)); accord Blaine County, 363 F.3d at 909; cf. Chisom, 501 U.S. at 403 (stating that courts must interpret the Voting Rights Act in "a manner that provides the 'broadest possible scope' in combating racial discrimination.").

333. Since the Constitution requires proof of intent that Section 2 does not, a violation

of Section 2's "results" standard is not necessarily a violation of the Fifteenth Amendment. Bossier Parish, 520 U.S. at 482 (citing Senate Report at 39). As the Supreme Court has held, "The Voting Rights Act is the best example of Congress' power to enact implementing legislation that goes beyond the direct prohibitions of the Constitution itself." Bossier Parish, 520 U.S. at 482 (citations omitted).

334. Intentional or not - vote denial, illegal casting of ballots, and ballot box stuffing present a viable results claim under the Voting Rights Act when the result of such episodic practices is to "deny the minority plaintiff an equal opportunity to participate and to elect candidates of [his or her] choice." Welch, 765 F.2d at 1315; see also Duncan, 657 F.2d at 700; Armstrong, 893 F. Supp. at 1326-27. In Goodloe v. Madison County Board of Election Commissioners, 610 F. Supp. 240, 241 (S.D. Miss. 1985), this Court dealt with a fact scenario in which the Madison County Board of Election Commissioners issued a blanket invalidation of 250 absentee ballots cast by black voters and notarized by the same woman. Id. at 241. Although the court found no evidence of discriminatory intent on the part of the Election Commission, it held that the isolated decision to blindly invalidate the ballots of voters belonging to one racial group nonetheless had the discriminatory result under Section 2 of denying black voters an "equal opportunity to participate and to elect candidates of their choice." Id. at 243 (citing Senate Report).

All Three Gingles Preconditions are not Necessary

335. Though the three preconditions enunciated in Thornburg v. Gingles, 478 U.S. 30 (1986), establish the correct considerations for analyzing a Section 2 results claim in most "district line" (i.e. at-large or multi-member district) cases, "such proof is not essential in all

Section 2 cases." Armstrong v. Allain, 893 F. Supp. 1320, 1328 (S.D. Miss. 1994).⁷¹ Accordingly, "the Gingles factors cannot be applied mechanically and without regard to the nature of the claim." Id. (quoting Voinovich v. Quilter, 507 U.S. 146, 156 (1993)). For example, in Armstrong, this Court reviewed a vote dilution challenge to a Mississippi statute requiring school bond referenda to pass by a 60.0% vote, but in doing so, chose not to consider the first Gingles precondition, finding it to be irrelevant to an analysis of the plaintiffs' claim under the Voting Rights Act. 893 F. Supp. at 1328. And in Mississippi State Chapter, Operation PUSH v. Allain, the court analyzed a Section 2 challenge to Mississippi's dual registration requirement and its statutory prohibitions against off-site voter registration, but chose to review the case under the factors listed in the Senate Report accompanying Section 2's 1982 amendments rather than consider any of the Gingles preconditions at all in its analysis. 674 F. Supp. 1245, 1247, 1262-68 (N.D. Miss. 1987), aff'd sub nom. Miss. State Chapter, Operation PUSH, Inc. v. Mabus, 932 F.2d 400 (5th Cir. 1991).

336. The Section 2 claims brought by the United States encompass a variety of voting-related practices pertaining to the administration of Democratic Primary elections which it claims have, in their totality, resulted in members of the white minority in Noxubee County having less of an opportunity to participate in the political process. In light of the nature of these claims and the fact that consideration of first of the Gingles preconditions would be superfluous

⁷¹In at-large or multi-member district cases, the plaintiff must demonstrate: "(1) the group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) it is politically cohesive; and (3) the . . . majority votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate." Armstrong, 893 F. Supp. at 1327 (citing Grove v. Emison, 507 U.S. 25 (1993); Gingles, 478 U.S. at 50-51).

to the analysis of the United States' claims, this Court will analyze the United States' Section 2 results claim under the Senate factors, considering the second and third Gingles preconditions within its analysis of the Senate factors when necessary.

The Totality of the Circumstances Inquiry / the Senate Factors

337. In a results claim under the Voting Rights Act, plaintiffs are required to show that "under the 'totality of the circumstances,' they do not possess the same opportunities to participate in the political process and elect representatives of their choice enjoyed by other voters." Armstrong, 893 F. Supp. at 1327. In the Senate Report accompanying Section 2's 1982 amendments, Congress provided a litany of "factors that will typically be relevant to the totality of circumstances inquiry." Magnolia Bar Ass'n, Inc. v. Lee, 994 F.2d 1143, 1146 (5th Cir. 1993); accord Armstrong, 893 F. Supp. at 1327. The Senate Report for the amended Section 2 indicates that a "proper application of the results test requires courts to distinguish between situations in which racial politics play an excessive role in the electoral process, and communities in which they do not." LULAC v. Clements, 999 F.2d 831, 855 (5th Cir. 1993) (en banc) (alterations and internal quotations omitted).

338. The Fifth Circuit instructs courts using the Senate Factors not to "become bogged down in mechanical point counting, but rather, to make a searching practical evaluation of the locality's past and present reality. There is no requirement that any particular number of the Senate factors be proved, or that a majority of them point one way or another." Magnolia Bar Ass'n, Inc., 994 F.2d at 1147 (internal citations and quotations omitted); see also McMillan, 748 F.2d at 1046 (stating that the absence of any of the Senate factors is not conclusive under the Section 2 "totality of the circumstances" test); Magnolia Bar Ass'n, Inc., v. Lee, 793 F. Supp.

1386, 1401 (S.D. Miss. 1992), aff'd 994 F.2d 1143 (5th Cir. 1993) ("No one of the factors is dispositive, and proof of a majority of the factors is unnecessary for plaintiffs to prevail.");⁷² cf. E. Jefferson Coal. for Leadership & Dev. v. Parish of Jefferson, 926 F.2d 487, 494 (5th Cir. 1991) (stating that the court is not required to rule on all of the Senate factors "as long it is satisfied that the totality of the circumstances warrant liability"). This Court therefore focuses on the factors and related episodic practices most pertinent to examining whether the totality of the circumstances warrant liability on the part of the Defendants.

Senate Factor One: The Extent of any History of Official Discrimination in the Political Subdivision that Touched on the Right of Members of the Minority Group to Vote or Otherwise to Participate in the Democratic Process

339. According to Dr. Arrington, the important history pertaining to the claims made in this case is not what occurred decades ago, but the recent history of voting-related discrimination in the last ten to fifteen years in Noxubee County in which black elected officials have held the balance of power. (Tr. 358-59, 444-46.) See United States v. Osceola County, --- F.Supp.2d ----, 2006 WL 2989268, *12 (M.D. Fla. 2006) (finding the United States met its burden of proving Senate Factor One by providing evidence, beginning in the 1990's, of a recent history of discrimination against Hispanic voters in the jurisdiction).

340. In this regard, there is ample evidence that Brown, the DEC, and their political allies have involved themselves in a plethora of racially discriminatory acts in the recent past affecting white voters, that have included: (1) racial discrimination in the selection of persons to

⁷²Only in cases brought in the context of “[Section] 2 challenges to multimember districts” has the Supreme Court spoken to the importance of one factor over another. See Gingles, 478 U.S. at 51 n.15.)

work at the polls;⁷³ (2) racially discriminatory statements directed toward white voters and white candidates; (3) the qualification of black candidates who were not legally entitled to run for local office in an attempt to defeat white candidates; (4) intimidation of black voters who supported white candidates; (5) illegal operation of the absentee ballot process for the purpose of disenfranchising white voters and diluting white voting strength; (6) publication of the names of white voters in an attempt to prevent them from voting; and (7) exclusion of white voters from participating in Democratic Party affairs.

341. This Court concludes that the United States has proven that in the recent past there has been a history of discrimination against whites in Noxubee County, touching upon their right to vote and participate in the democratic process, and therefore the conditions of Senate Factor One are present.

Senate Factor Two: Extent to Which Voting in the Elections of the Political Subdivision is Racially Polarized

342. The existence of racially polarized voting is the second of the Senate factors which plaintiffs may use to show a violation of Section 2 of the Voting Rights Act. NAACP v. Fordice, 252 F.3d 361, 366-67 (5th Cir. 2001). In this case, Brown and the DEC admitted that

⁷³In Harris v. Graddick, 593 F. Supp. 128 (M.D. Ala. 1984), plaintiffs claimed that officials had failed to hire minorities to such a disproportionate degree that it had the effect of hindering minority voters from coming to the polls. The court stated that the presence of minority poll workers is important for a number of reasons, including: (1) it is a visible indication to minority voters of the openness of the process; (2) it increases minority confidence in the system; and (3) it allays fears minority voters may have in coming to the polls. Id. at 131. The court found that by having a disproportionately low number of minority poll workers, the state inevitably discouraged minorities from voting at the polls and therefore facilitated a discriminatory result in violation of Section 2. Id. at 133. In this regard, it is important to recall that in the 2003 primary runoff between a black and white candidate in Road District 5, only two of the seventy-six poll managers and workers were white. (Ex. P-135.)

voting in Noxubee County is racially polarized. (Defs.' IB/DEC's Answer to Compl. ¶ 9, May 3, 2005 and Answer to Am. Compl. ¶ 9, July 24, 2006.) Dr. Arrington's racial bloc voting analysis demonstrated beyond question that this pattern of racially polarized voting results in white voters preferring candidates who are opposed by Brown's candidates. See supra pp. 113-14. This Court concludes that the United States has proven the existence of racially polarized voting.

Senate Factor Three: Extent to Which Voting Practices and Procedures have been used that may Enhance the Opportunity for Discrimination Against a Minority Group

343. One of the voting procedures that has been judicially recognized as an enhancing factor is the use of a majority vote requirement, Teague v. Attala County, 92 F.3d 283, 292 (5th Cir. 1996) (citing Gingles, 478 U.S. at 44), because it ensures that the minority's preferred candidate can be forced into a runoff election if he or she does not receive a majority of the votes in the first primary. Under Mississippi law, a majority vote requirement is in effect in primary elections statewide, and is applicable in Democratic primary elections for local office. Miss. Code Ann. § 23-15-305. Dr. Arrington noted that the majority vote requirement had served as a mechanism that made it more difficult for white voters to elect candidates of choice, such as Johnny Kemp, the white-preferred candidate to the Board of Supervisors. (Tr. 446, 769.) Kemp and a white constable candidate won a plurality of the vote, but subsequently lost in runoff elections. (Tr. 476-77.)

344. In addition to the majority vote requirement, the way in which absentee ballots have been administered in a racially discriminatory fashion is itself a mechanism that enhances discrimination against the white minority in Noxubee County. Quite simply, for Brown to go

through absentee ballots and place yellow stickers on ballots cast by white voters, as he did in the 2003 Kemp v. Brooks race, while at the same time not directing that absentee ballots cast by black voters be held to the same standard, enhanced the opportunity for discrimination against white voters. See generally Goodloe v. Madison County Bd. of Election Comm'rs, 610 F. Supp. 240 (S.D. Miss. 1985).

345. This Court concludes that the Noxubee County Election Commission has failed to purge the voter registration list so as to remove ineligible persons from that list and that this failure enhances the opportunity for racially discriminatory absentee ballot fraud. Furthermore, the Election Commission has also failed to exercise its authority in general elections over Brown and members of the DEC to ensure that these Defendants do not issue improper instructions to poll managers. The Court concludes this failure, as well, has enhanced the opportunity for racially discriminatory absentee ballot fraud.

346. Therefore, this Court concludes that the majority vote requirement, the racially discriminatory rejection of absentee ballots cast by whites, and the administrative failures of the Election Commission are factors that enhance discrimination against white voters and their preferred candidates in local Noxubee County elections.

Senate Factor Four: If there is a Candidate Slating Process, Whether the Members of the Minority Group have been Denied Access to that Process

347. "In jurisdictions where there is an influential official or unofficial slating organization, the ability of minorities to participate in that slating organization and to receive its endorsement may be of paramount importance." United States v. Marengo County Comm'n, 731 F.2d 1546, 1569 (11th Cir. 1984). Consequently, minority candidates may "be denied effective access to the slating process if racial discrimination prevents them from actively seeking . . .

votes and support" from members of the racial majority in the community. Id. at 1569 n.40 (citing Perkins v. City of West Helena, 675 F.2d 201, 209-10 (8th Cir. 1982)); see also LULAC, 999 F.2d at 851-53, (discussing how slating by private groups and individuals can influence party politics in such a way as to constitute an impairment to minority voters in violation of the Voting Rights Act). As the Fifth Circuit stated in McIntosh County NAACP v. City of Darien, when there exists a small group of organized citizens who are members of the majority race and the group only uses its power to aid those who are of the same race, "it is strong evidence of denial of access" to minority members. 605 F.2d at 758 (citing White, 412 U.S. at 766-67).

348. Brown has distributed slates of candidates under the auspices of the Noxubee County Voters League or East Mississippi Voters League. (Exs. P-1, P-2 Admiss. No. 91, P-33, P-42.) Brown's political ally, Shuqualak Mayor Velma Jenkins, has operated a racial slating process in Shuqualak city elections. (Tr. 2498-99.) In Dr. Arrington's opinion, there is also a process in Noxubee County, akin to slating, of Brown and those acting in concert with him recruiting candidates to the exclusion of white candidates. (Ex. P-1 ¶ 33.)

349. Through his influence on the Noxubee County Democratic Party, the Noxubee County Voters League, and the East Mississippi Voters League, Brown and his political allies have used slating to disadvantage candidates for local office preferred by white voters, thereby satisfying Senate Factor Four.

Senate Factor Six: Whether Political Campaigns have been Characterized by Overt or Subtle Racial Appeals

350. Courts have considered a variety of racial appeals which have satisfied Senate Factor Six. See, e.g., Lee, 793 F. Supp. 1409-10 (finding a racial appeal where the photos of minority candidates appeared in the campaign ads for their opponents); see also Garza v. County

of Los Angeles, 756 F. Supp. 1298, 1341 (C.D. Cal. 1990) (noting that racial appeals by opponents to minority candidates included campaign literature with photographs of the minority opponent); Neal v. Coleburn, 689 F. Supp. 1426, 1431-32 (E.D. Va. 1988) (finding evidence of a racial appeal in a newspaper editorial which warned voters that one minority candidate would receive solid minority support and unseat the "more experienced" incumbent); Dillard v. Crenshaw County, 649 F. Supp. 289, 295 (M.D. Ala. 1986) (generally finding that candidates had encouraged voting along racial lines by appealing to racial prejudice).

351. According to Dr. Arrington, political campaigns in Noxubee County are characterized by overt or subtle racial appeals. (Ex. P-1 ¶ 217.) These overt racial appeals made by Brown and his political allies are directed against the white voters and candidates they support. (Ex. P-1 ¶ 32.)

352. Therefore, this Court concludes that the racial appeals used by Brown and his political allies are far more direct than the racial appeals noted by courts in many other Section 2 cases. This evidence is strongly indicative of a political atmosphere which lessens the opportunity for white members of the electorate to participate in the political process.

Senate Factor Seven: Extent to Which Members of the Minority Group have been Elected to Public Office in the Jurisdiction

353. At present, of the twenty-six county officials, only two of them (7.7%), County Prosecuting Attorney Roderick Walker and Supervisor Eddie Coleman, are white in a county where whites constitute 32.5% of the voting age population. (Ex. P-1 ¶ 31.) White candidates are presently being elected in a disproportionately low number in the county. Therefore, this Senate Factor is satisfied as well. In fact, this disproportionately low number of white elected officials strongly suggests that the racially discriminatory practices of Brown, the DEC, and their

political allies are having their intended effect.

Senate Factor Nine: Whether the Policy Underlying the Political Subdivision's use of Prerequisite to Voting, or Standard, Practice, or Procedure is Tenuous

354. As Dr. Arrington testified, in Noxubee County many of the practices and procedures followed in conducting elections are not just tenuous; they are contrary to Mississippi and federal election law. (Ex. P-1 ¶ 34.) Therefore, this Court concludes that a number of the illegal practices by the Defendants in this case satisfy Senate Factor Nine.

Finding of Discriminatory Result

355. Based upon the totality of the circumstances, including the existence of seven Senate Factor, this Court concludes that Brown, the DEC, their political allies, and the Election Commission have engaged in a pattern of voting-related behavior in the administration of elections which has the result of denying white voters the ability to participate equally in the political process and elect representatives of their choice in Noxubee County, in violation of the result standard of Section 2 of the Voting Rights Act.

356. This Court further concludes, based on the totality of the circumstances, that the actions of Brown, the DEC, their political allies, and the Election Commission in the administration of elections have the result of diluting the voting strength of white voters and defeating their preferred candidates in violation of the result standard of Section 2 of the Voting Rights Act.

C. Section 11(b) of the Voting Rights Act

357. Section 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973i(b),

prohibits any person from: (1) intimidating, threatening, or coercing any person for voting or attempting to vote; (2) attempting to intimidate, threaten, or coerce any person for voting or attempting to vote; (3) intimidating, threatening, or coercing any person for urging or aiding any person to vote; or (4) attempting to intimidate, threaten, or coerce any person for urging or aiding any person to vote.⁷⁴

358. In the Court's review of the few cases bringing claims under Section 11(b), it has been unable to find one decision in which the plaintiffs prevailed. In each case the case has reviewed, the plaintiffs' lack of success has been due to their inability to prove the presence of actions which could arguably constitute intimidation, threats, or coercion in the context of voting. See, e.g., Willingham v. County of Albany, 2006 WL 1979048, *14-*16 (N.D.N.Y. 2006) (finding that deceiving voters was not tantamount to intimidation); Gremillion v. Rinaudo,

⁷⁴In Willingham v. County of Albany, 2006 WL 1979048, *14 (N.D.N.Y. 2006), the court held that although the “purpose of the Voting Rights Act was to eliminate racial discrimination in voting, [Section] 11(b) of the act does not explicitly require proof that racial discrimination motivated the intimidation, threats, or coercion.” The Willingham court then cited to the House Report on Section 11(b), which explicitly states, “The prohibited acts of intimidation need not be racially motivated; indeed, unlike 42 U.S.C. 1971(b) (which requires proof of a ‘purpose’ to interfere with the right to vote), no subjective purpose or intent need be shown.” Id. (citing H.R. Rep. No. 89-439, at 30 (1965), as reprinted in 1965 U.S.C.C.A.N. 2462) (alterations omitted); see also Whatley v. City of Vidalia, 399 F.2d 521, 526 (5th Cir. 1968) (dictum) (noting that Section 11(b) was written with the intention of expanding the rights protected by Section 1971(b)); cf. Jackson v. Riddell, 476 F. Supp. 849, 859-60 (N.D. Miss. 1979) (stating that Section 11(b) is to “be given an expansive meaning” (quoting Whatley, 399 F.2d at 525)).

The Willingham court added that its research had “revealed no cases directly deciding” the issue of whether intimidation, threats, or coercion required a racial component in order to be a violation of Section 11(b). Id., at *14; but see Willing v. Lake Orion Cmty. Schs., 924 F. Supp. 815, 820 (E.D. Mich. 1996) (citing a Second Circuit case interpreting Section 11(a) of the Voting Rights Act to support the proposition that no claim exists under Section 11(b) “[a]bsent a claim of any racial or other intentional invidious discrimination . . .”). However, because there is ample evidence of racially motivated intimidation in this case, this Court need not address the issue of whether a racial motive is required to prove a Section 11(b) violation.

325 F. Supp. 375, 379 (E.D. La. 1971) (finding that voter assistance from a white, uniformed officer to a black voter, without more, did not violate Section 11(b)); United States v. Harvey, 250 F. Supp. 219, 231-37 (E.D. La. 1966) (finding that termination of a business relationship, without more, did not violate Section 11(b)).

359. In this case, there is ample evidence of racially motivated intimidation of voters and a voter assistor. Brown publicly threatened to challenge the list of 174 white voters if they attempted to vote in the 2003 Democratic Primary, though he had no reasonable basis for believing that these voters were not loyal to Democratic nominees. Without question, Brown's stated goal in publishing this list of white voters was to attempt to prevent them from voting. Indeed, he was successful in keeping white voter Kari Hardy from coming to the polls. Second, Brown interfered with Supervisor Eddie Coleman's attempt to vote in the 2003 primary by stopping him from entering the Shuqualak polling place and calling law enforcement to have Coleman removed.

360. This Court concludes that these actions taken against white voters by Brown constituted a violation of Section 11(b).

IV. Remedy

361. Within fifteen days of the issuance of this ruling on liability issues, the parties are to submit memoranda addressing what they believe would constitute a curative remedy in this case. In addition, attorneys for the parties will make themselves available at a date and time to be set by the Court in conference or at a formal hearing to address any remedial issues.

IT IS SO ORDERED, THIS _____ DAY OF _____, 2007.

Tom S. Lee
United States District Judge

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APPENDIX A - INDEX OF CHARACTERS

Abrams, Libby	White poll watcher for Samuel Heard at the Brooksville polling place during the 2003 Democratic Primary.
Abrams, Marie	White poll manager who worked at the polls in 2003.
Agnew, Michelle	Former Macon City Election Commissioner.
Ainsworth, Nan	Analyst for the Notary Division of the Mississippi Secretary of State.
Allgood, Forrest	District Attorney, Sixteenth Judicial District, who was one of three white elected officials against whom Ike Brown ran an ad with racial appeals during the 1999 Democratic Primary campaign.
Bankhead, John	Chairman of the Noxubee County Election Commission; Former Chairman of the Noxubee County Democratic Executive Committee.
Bland, Geraldine	Black voter who cast an absentee ballot during the 2003 Democratic Primary but did not reside in Noxubee County.
Bland, Lucille	Black voter who cast an absentee ballot during the 2003 Democratic Primary but did not reside in Noxubee County.
Bolin, Judith	White voter whose absentee ballot was improperly rejected in the 2003 Democratic Primary.
Boswell, David	Black candidate for Noxubee County Board of Supervisors, Road District 5 in 2003.
Boyd, Scott	Editor of the <u>Beacon</u> , the local newspaper in Macon, Mississippi (Noxubee County).
Boykin, Sherlene	Justice Court Judge in 2003; one of three white elected officials against whom Ike Brown ran an ad with racial appeals during the 1999 Democratic Primary campaign.
Brooks, Annie	Wife of Bruce Bernard Brooks.
Brooks, Bruce Bernard	Noxubee County Supervisor for Road District 5.

Brooks, Essie	Noxubee County Election Commissioner and political ally of Ike Brown.
Brooks, Theresa	Black voter whose absentee ballot in the 2003 Democratic Primary runoff was improperly counted.
Brown, Judge Ernest	White voter whose absentee ballot was improperly rejected in the 2003 Democratic Primary.
Brown, Ike	Defendant and Chairman of the Defendant DEC.
Brown, Peggy	Black citizen who supported white Sheriff's candidate Samuel Heard.
Cade, Emily	White voter whose absentee ballot had a yellow sticker on it in the 2003 Democratic primary runoff and was rejected by poll managers at the Brooksville polling place.
Cade, Robert Adam	White student voter whose absentee ballot had a yellow sticker on it in the 2003 Democratic primary runoff and was rejected by poll managers at the Brooksville polling place.
Clanton McCoy, Dorothy	Secretary of the DEC (a.k.a. Dorothy Windham) and political ally of Ike Brown.
Clanton, John	Deputy Sheriff of the Noxubee County Sheriff's Department.
Clark, David	District Attorney for the Twentieth Judicial District, who is white, against whom Brown used racially motivated threats in the context of an election.
Cole, Rickey	Former Mississippi DEC Chairman.
Coleman, Eddie	Noxubee County Board of Supervisor for Road District 4 who is the only white member of the Board of Supervisors.
Coleman, Len	White poll watcher for candidate Eddie Coleman at the Shuqualak polling place during the 2003 Democratic Primary.
Cotton, Aldine Farmer	Black voter who voted by absentee ballot in the Noxubee County Circuit Clerk's office in the 2003 Democratic Primary.

Cooper, Charles Bryant	White voter whose absentee ballot had a yellow sticker on it and was rejected in the 2003 Democratic Primary Runoff.
Craig, Janelle	White person who was the Noxubee County Chancery Clerk until 1995.
Crawford, Ph.d, Colin	Political Scientist who made audiotapes of Ike Brown in an interview.
Crespino, Bobby	Landlord Ike Brown contacted about the availability of an apartment for Winston Thompson, III.
Cunningham , Robert	Former member of the DEC, and one of two white members removed from the DEC without proper notice.
Dickson, Dirk	Justice Court Judge and political ally of Ike Brown.
Dickson, Reecy	State Representative and political ally of Ike Brown.
Dixon, Willie	Black candidate for City of Macon Alderman Ward 4 in 2005.
Eaves, Sherri Anne	White voter whose name appeared on list of 174 voters in the June 26, 2003 edition of the <u>Beacon</u> .
Eichelberger, Earnest	Candidate for Sheriff in 1999 who was the preferred candidate of white voters.
Ewing, Judith	Poll worker at the Title One polling place in one election.
Gibson, John	Member of the DEC.
Graham, Willie Harris	Black student voter whose absentee ballot was counted in the 2003 Democratic Primary runoff.
Grasseree, Terry	Chief Deputy of the Noxubee County Sheriff's Department, political ally of Ike Brown, and former member of Democratic Executive Committee.
Gray, Wallace	Former member of the Noxubee County Democratic Executive Committee, and one of two white members removed from the DEC without proper notice.

Grissom, Pauline	Mother of absentee ballot fraud victim Nikki Halbert.
Hadaway, Annette	White poll manager bailiff who worked at the East Macon polling place in 2003.
Halbert, Nikki	Black voter whose absentee ballot, application, and envelope was fraudulently completed by Carrie Kate Windham and who was a victim of witness intimidation.
Hardy, Kari	White voter whose name appeared on list of 174 voters in the June 26, 2003 edition of the <u>Beacon</u> .
Harper, Alberta	Black voter whose absentee ballot in the 2003 Democratic Primary Runoff had a similar defect to Charles Bryant Cooper's ballot, but did not have a yellow sticker on it and was not rejected.
Harrison, David	Black poll manager at the Brooksville polling place during the 2003 Democratic primary.
Heard, Richard	White poll watcher for Samuel Heard at the Title One polling place during the 2003 Democratic Primary.
Heard, Samuel	White candidate for Noxubee County Sheriff in 2003.
Jamison, Mable	Notary who Ike Brown criticized for "picking up his [absentee] ballots" in 2003.
Jenkins, Velma	Mayor of the Town of Shuqualak, Mississippi (in Noxubee County)
Johnson, Catherine	Black person who joined Carrie Kate Windham in engaging in the intimidation of Nikki Halbert, one of the United States' witnesses.
Johnson, Catherine (different than first Catherine Johnson)	Black citizen of Noxubee County who held the 2004 Democratic precinct caucus at her home in Brooksville after Ike Brown asked her to hold the "black caucus" at her house.
Jones, Kevin	Superintendent of Schools of Noxubee County.
Kemp, Johnny	White candidate for Road District 5 Supervisor in 2003.

Mallard Jr., Emanuel	Black voter whose absentee ballot envelope in the 2003 Democratic Primary Runoff had a similar defect as Judge Ernest Brown's, but no yellow sticker was placed on it and it was counted.
May, Ethel	Member of the Noxubee County DEC and political ally of Ike Brown.
Mickens, Carl	Noxubee County Circuit Court Clerk and political ally of Ike Brown.
Misso Jr., Kenny	Noxubee County Board of Supervisors member who passed away in office during the 1990's.
Mason, Robin	Poll manager at the Title One polling place in 2003.
May, Ethel	Member of the DEC.
McGuire, Phillip	Chairman of the City of Macon DEC.
Mitchell, Jerry	Reporter for the <u>Clarion-Ledger</u> newspaper.
Mitchell, William	Employee of Brown who received an ad from Ike Brown with racial appeals during the 1999 Democratic Primary campaign.
Murray, Evelyn	Poll watcher at the Shuqualak polling place during the 2003 Democratic Primary.
Naylor, Gary	Treasurer of the DEC.
Nichols, Bill	Reporter for <u>USA Today</u> newspaper.
Oliver, William	Noxubee County Board of Supervisor's President and Supervisor for Road District 2.
Phillips, Freda	Deputy Circuit Court Clerk.
Pugh, Carolyn	Neighbor and friend of Lucille Bland who knew that Bland no longer lived in Noxubee County at the time of the 2003 Democratic Primary.
Rice, Debra	Black citizen of Noxubee County who supported Samuel Heard for Sheriff in the 2003 Democratic Primary.

Rice, William	Member of the DEC and ally of Ike Brown.
Robinson, Betty	Vice-Chair of the DEC.
Robinson, George	Noxubee County Supervisor for Road District 3.
Roby, Demetrice Latrice	Black voter whose absentee ballot in the 2003 Democratic Primary Runoff had a defect on the envelope, but no yellow sticker was placed on it and it was counted.
Sautermeister, Sue	Member of the Board of Advisors of the U.S. Election Assistance Commission and the Mississippi Civil Rights Advisory Commission; trainer for the Election Commissioners Association of Mississippi.
Shelton, Mary	Noxubee County Chancery Court Clerk.
Slaughter, Kendrick	Black candidate for City of Macon Alderman Ward 4 in 2005.
Smart, Russell	Former Noxubee County Election Commissioner, candidate for Board of Supervisors and Superintendent of Education, and political ally of Ike Brown.
Spann, Gwendolyn	Brown-funded notary who worked for him in the 2003 Democratic Primary.
Sparks, Laura	Poll manager at the Shuqualak polling place during the 2003 Democratic Primary.
Stowers, Octavia	Poll manager at the West Macon polling place during the 2003 Democratic Primary.
Tate, Larry	Noxubee County Supervisor for Road District 1.
Taylor, Dorothy	Poll watcher at the Circuit Clerk's office during the 1996 and 1999 elections.
Thomas, Johnny Will	Black voter whose absentee ballot in the 2003 Democratic Primary Runoff had a similar defect to Charles Bryant Cooper's ballot, but did not have a yellow sticker on it and was not rejected.

Thompson, III, Winston	Attorney whom the DEC qualified to run against Roderick Walker for the position of Noxubee County Prosecuting Attorney in 2003.
Turner, Chester	Black citizen of Noxubee County who was selected as a delegate to the 2004 county convention.
Walker, Albert	Sheriff of Noxubee County and political ally of Ike Brown.
Walker, Roderick	Noxubee County Prosecuting Attorney.
Watkins, James	White Alderman of the City of Macon in 2005.
Wilborn, Doris	Poll manager at the High School polling place in 2003 who was selected as a delegate to the 2004 county convention.
Williams, Larry	Black voter whose absentee ballot in the 2003 Democratic Primary runoff had a similar defect to Charles Bryant Cooper's ballot, but did not have a yellow sticker on it and was not rejected.
Windham, Carrie Kate	Brown-funded notary and member of the DEC who worked for Brown in the 2003 Democratic Primary.
Wise, Judge Patricia	Hinds County Chancery Court Judge who ruled on the case of <u>Eichelberger v. Noxubee County DEC</u> .
Wood, Susie	Absentee voter who receives improper assistance from Carrie Kate Windham.