

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

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO: 4:05cv33TSL-AGN

IKE BROWN, ET. AL.

DEFENDANTS

DEFENDANT NOXUBEE COUNTY ELECTION COMMISSION'S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

COMES NOW the defendant Noxubee County Election Commission, by and through counsel of record and submits its proposed findings of fact and conclusions of law:

A. TRIAL EVIDENCE AGAINST THE NCEC IS MINIMAL

1. At the conclusion of its case in chief, the USA asserted that the NCEC was an indispensable party for relief, not that its conduct violated the Voting Rights Act. Evidence against the NCEC was scant at best. For instance, during the 2002 general election, Sue Sautermeister traveled to the Title One polling place in Macon, as a poll watcher for Congressman Chip Pickering. (T. 1963, lines, 18-25). Dorothy Windham Clanton was the poll manager. (T. 1965, lines. 11-3). Sautermeister complained that she was not allowed to inspect the precinct scanner results (T. 1266, line 7) and that Ike Brown came in and instructed the workers to count all absentee ballots, as long as the signatures were across the envelope flap. (T. 1967, lines 3-7). As a result, Clayton stopped allowing candidates or their authorized representatives to challenge absentee ballots. (T. 1967, lines, 11-21).

2. There was other testimony that when election Commissioner Essie Brooks came into the polling place, Sautermeister testified she "told the poll workers to ignore our challenges and do it as they were trained." (T. 1969, lines, 8-12). Sautermeister acknowledged that she did not attend any of the Noxubee County poll workers training and did not know how they were trained. (T. 1972, lines, 22-25) It was Sautermeister's belief, although not supported by any statute or rule, that each poll watcher had the right to inspect each and every signature on each absentee ballot to make a comparison for themselves. (T. 1978, lines, 2-9). There was further misapprehension as to a poll watcher's right to view the absentee ballot process, even if their acts adversely affected the process. Sautermeister was of the belief that the poll managers must accommodate each poll watchers' need to review each absentee ballot item. (T. 1986, lines, 1-3)

3. Next, the USA complained that the NCEC had not properly purged the county voter rolls and that this failure violated the Voting Rights Act. (T. 2284, lines, 2-4). The primary source of evidence against NCEC to support this argument was Ike Brown, who testified that there are over 10,000 people on the voter rolls and he believed that there are only between seven and eight thousand actual Noxubee County voters. (T. 1337, lines 1-13). Brown testified he believed at least 2,000 people were improperly on the voter rolls.

4. John Bankhead, chairman of NCEC, disagreed with Brown's view that the voter rolls had not be adequately purged and that

approximately 2,000 people needed to be removed. He stated that the National Voter Registration Act prevented the removal of voters from the roll simply because they did not vote. (T. 2695, lines 9-25). Further, indirect and misperceived criticism of the NCEC came from Michelle Agnew, a municipal election commissioner for Macon (T. 740, lines 1, 6), who testified that some deceased voters and persons who had moved out of the county "needed to be removed". She knew of no relationship between the Macon voter rolls and the County voter rolls maintained by the NCEC. (T. 757, lines 4-9, 17-22), even though Miss. Code Ann. § 23-15-221 (Rev. 1987) is clear and contrary to her testimony.

5. There was testimony that one time election commissioner John Smart stated that it was "payback time". The time he allegedly made the statement ranges from 1994 to 2002 and the context unknown. It was unclear as to whether he was referring to the defeat of a white republican election commissioner officials, his opponents or something else, or if the statement was made at all. (T. 220, lines 2 comment made before 1995); (T. 1569, lines 11 comment made around 2000).

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B. GENERAL FINDINGS OF FACT

1. This voting rights action is brought by the USA on behalf of white voters in Noxubee County and alleges claims of dilution of white voting strength through a pattern and practice of discriminatory intent against white voters which has denied white voters an equal opportunity to participate in the political process under Section 2 of the Voting Rights Act of 1965, as amended. The

USA also claims a violation of Section 11(b) which prohibits acts of intimidation, coercion and threats.

2. Pursuant to 42 U.S.C. § 1973 and 42 U.S.C. § 1973 i (b) the USAG and the DOJ is statutorily authorized to enforce the Voting Rights Act of 1965, as amended.

3. The defendants are the Noxubee County Democratic Executive Committee, Ike Brown, Chairman of the NCDEC and the Noxubee County, Election Commission (NCEC).

4. Pursuant to Miss. Code Ann. § 23-15-213 (Rev. 1986), NCEC is composed of five (5) members who are elected from the supervisory districts in Noxubee County and is charged with conducting all general and special elections in Noxubee County.

5. At all relevant times, the NCEC was acting under the color of the statues, ordinances, regulations, customs, and usages of the State of Mississippi and Noxubee County, Mississippi.

6. The present NCEC is composed of five (5) African American members. The last two white election commissioners were Carolyn Pugh (defeated in 2000 by John Bankhead in district 5) and Mary Allsup (defeated in 1996 by Essie Brooks in district 2).

7. According to the 2000 census, Noxubee County has a total population of 12,584, of whom 8696 (69.30%) are African American and 4019 (31.89%) are white and other ethnic origins. Exhibit DNCEC-2. There is a rather large white Mennonite population in Noxubee County. There was testimony that one group of this Mennonite population is politically inactive.

8. According to the 2000 census, Noxubee County has a total

voting age population of 8697, of whom 5751 (66.40%) are African American and 3946 (33.90%) are white and other ethnic origins. Exhibit DNCEC-2.

9. According to the most recent supervisory redistricting plan based on 2000 census data, the five (5) supervisory have the following total population and total voting age population and racial percentages:

| <u>District</u> | <u>TP</u> | <u>AATP</u> | <u>%</u> | <u>W&amp;OTP</u> | <u>%</u> |
|-----------------|-----------|-------------|----------|------------------|----------|
| 1               | 2539      | 1879        | 74.0%    | 660              | 26.0%    |
| 2               | 2518      | 1650        | 65.5%    | 868              | 34.5%    |
| 3               | 2538      | 1895        | 74.7%    | 643              | 25.3%    |
| 4               | 2442      | 1551        | 63.5%    | 891              | 36.5%    |
| 5               | 2511      | 1721        | 68.5%    | 790              | 31.5%    |
|                 | _____     | _____       | _____    | _____            | _____    |
|                 | 12548     | 8696        | 69.3%    | 3700             | 30.7%    |

| <u>District</u> | <u>TVAP</u> | <u>AAVAP</u> | <u>%</u> | <u>W&amp;OTP</u> | <u>%</u> |
|-----------------|-------------|--------------|----------|------------------|----------|
| 1               | 1700        | 1263         | 74.3%    | 437              | 25.7%    |
| 2               | 1812        | 1103         | 60.9%    | 709              | 30.1%    |
| 3               | 1732        | 1239         | 71.5%    | 493              | 28.5%    |
| 4               | 1736        | 1045         | 60.2%    | 691              | 39.8%    |
| 5               | 1717        | 1101         | 64.1%    | 616              | 35.9%    |
|                 | _____       | _____        | _____    | _____            | _____    |
|                 | 8697        | 5751         | 66.1%    | 2946             | 33.9%    |

Exhibit DNCEC-8.

10. Presently, the office of county prosecuting attorney and

the supervisor in district 4 are held by white citizens -- Rickey D. Walker and Eddie Coleman. There are five election commissioners, five school board members, five supervisors, two justice court judges, two constables, a county attorney, circuit clerk, chancery clerk, coroner, sheriff, superintendent of education and tax assessor in Noxubee County.

11. The school system in Noxubee County was desegregated by federal court order in 1969 and remains under court order. The school is almost 100% African American. White children in Noxubee County attend private school or schools in surrounding counties.

12. Prior to 1965, Mississippi and its political subdivisions, including Noxubee County used poll taxes and literacy tests to the extent required by then existent Mississippi law.

13. There is no candidate slating process in Noxubee County, Mississippi.

14. The last regularly scheduled quadrennial election for county election offices was held in 2003. The next quadrennial election is scheduled in August 2007.

C. SECTION 2 SPECIFIC FINDINGS OF FACT

1. Since November 1, 1964, the State of Mississippi and all of its political subdivisions including Noxubee County, have been covered by the Voting Rights Acts of 1965, as amended.

2. Mississippi and its political sub-divisions, including Noxubee County discontinued the use of a poll tax, literacy tests, citizenship test and good moral test as a pre-requisite to voting or voter registration contemporaneously with the passage of the

Voting Rights Act in 1965.

3. The white population in Noxubee County is dispensed throughout the county and is not geographically compact to constitute a voting age majority in a district. At trial, the USA did not offer proof to satisfy this Gingle pre-condition. There was lay testimony from Scott Boyd and others that the white population was too spread out to form a majority in a district. In 86 elections (69 bi-racial, 21 African American versus African American and 6 white versus white) county, state and federal election in Noxubee County from 1990 to 2004, white and African American voters in Noxubee County are politically cohesive. Exhibit P-1, Appendix B. Dr. Arrington did not analyze statewide elections in which all of the candidates were of one race. P-1, paragraph 45. The white versus white statewide elections demonstrate white voters in Noxubee County prefer republican candidates and African Americans prefer democratic candidates. DNCEC Exhibits 4,5, and 9.

4. Prior to redistricting based on 2000 census data, there were 16 county voting precincts. After redistricting based on 2000 census data, Noxubee County is divided into 12 county voting precincts. These voting precincts range from a high of 87.75% African American voting age population to a low of 18.84% African American voting age population, 7 of the 16 voting precincts have less than 200 persons. The four majority white voting age population precincts have less than 175 persons of voting age population. DNCEC Exhibit 2. Following the 2000 census, Noxubee County redistricted and consolidated Cliftonville and Deerbrock

precincts, consolidated Center Point, Pualette and Cooksville and consolidated Hasbugua and Summersville.

5. Mississippi and its political subdivisions including Noxubee County have a long history of official discrimination touching on the right of African American citizens to vote and participate in the democratic process. This history has been judicially determined by federal courts at all levels.

6. This history includes the use of such discriminatory devices as poll taxes, literacy tests, and intimidation of African Americans. The history also includes the frequent use in municipal elections of at-large election schemes and majority white election districts which had the effect of precluding African American citizens from election to public office. Kirksey v. Board of Supervisors of Hinds Co. Miss., 554 F.2d 139, 148 (5th Cir. 1977) (en banc) (supervisory redistricting); Stewart v. Waller, 404 F. Supp. 206, 214 (N. D. Miss. 1975) (three court judge); (at-large municipal elections). Jordan v. Winter, 604 F. Supp. 807, 811-12 (N. D. Miss. 1984) (three court judge) (congressional redistricting).

7. Federal court decisions in Martin v. Allain, 658 F. Supp. 1183 (S. D. Miss. 1987); Miss. State Chapter, Operation Push v. Allain, 674 F. Supp. 1245 (N. D. Miss. 1987) aff'd 932 F.2d 400 (5th Cir 1991) took judicial notice and made statewide findings pertaining to lower African American voter turnout rates. These findings are supported by the evidence in this case.

8. The existence of racially polarized voting in Mississippi

has been found by numerous courts over the last decade. Gunn v. Chickasaw County, Miss., 705 F. Supp. 315, 319 (N. D. Miss. 1989); Ewing v. Monroe County, Miss., 740 F. Supp. 417, 421 (N. D. Miss. 1990); Martin v. Allain, 658 F. Supp. 1183, 1193 (S. D. Miss. 1987); Teague v. Attala County, Miss., 92 F. 3d 283, 287 - 291 (5th Cir. 1996); Clark v. Calhoun County, Miss., 88 F. 3d 1393, 1397 - 98 (5th Cir. 1996); Houston v. Lafayette Co., 20 F. Supp. 2d 996 (N.D. Miss. 1998).

9. The plaintiff presented Dr. Theadore Arrington, an expert on racial bloc voting. Dr. Arrington performed ecological regression analyses in Noxubee County elections to determine voting preferences of White and African American voters. Dr. Arrington's analysis included 86 elections in Noxubee County from 1990 to 2004. The ecological regression extreme case analysis was accepted in Thornburg v. Gingles, 478 U. S. 30 (1986). Dr. Arrington indicated that Noxubee County district and countywide African American versus White electoral contests there is extreme racial polarization. This testimony was largely corroborated by lay testimony that there is strong cohesion among both African American and White voters in African American versus White elections. Exhibit P-1, Appendix B.

10. Racial polarization of voters exists in Noxubee County, Mississippi. African American voters overwhelmingly tend to vote for African American candidates and White citizens almost unanimously vote for White candidates in African American versus white elections.

11. No evidence was presented of a candidates slating process;

this factor is not probative in this case.

12. Severe disparities exist between White and African American citizens in Noxubee County, Mississippi in the areas of education, income, employment, housing and other socio-economic categories. See, Exhibit DNCEC-3.

13. The present day socio-economic disparities between White and African American citizens in Noxubee County were the result of historical official socio-economic disparities and causes a lower level of African American political involvement in Noxubee County as compared to White political involvement. The official historical racial discrimination against African American citizens led to present day socio-economic disparities, which in turn hinders the present day ability of African American citizens in Noxubee County to participate effectively in the political process.

14. Lay witnesses testifying for NCEC corroborated the United States census findings, stating that many of their volunteer voter registration drives conducted were dependent on transportation to prospective voter registrants. In addition, a disproportionately high percentage of African American households do not have a car or a telephone available for household use.

15. The decisions of a number of courts in the past have concluded that socio-economic disparities throughout Mississippi hinder the present day ability of African American citizens to participate effectively in the political process. Magnolia Bar Ass'n., Inc. v. Lee 793 F. Supp. 1386, 1409 (S. D. Miss. 1992); Mississippi State Chapter, Operation Push vs. Mabus, 932 F.2d. 406,

409 (5th Cir. 1991); Kirksey v. Board of Supervisors of Hinds County, Mississippi, 554 F.2d 139, 148 (5th Cir. 1977) (en banc); Teague v. Attala County, Miss., 92 F. 3d 283, 293 - 294 (5th Cir. 1996).

16. Exhibit DNCEC-3 and lay testimony on socio-economic disparities are unrebutted and clearly demonstrated that present day socio-economic disparities impair African American citizens' ability to effectively participate in the electoral process in Noxubee County today.

17. There have been judicial findings of racial appeals by White candidates in political campaigns in Mississippi elections. Martin v. Allain, 658 F.Supp. 1183, 1194 (S.D. Miss. 1987); Magnolia Bar Ass'n v. Lee, 793 F.Supp. 1386, 1409 (S.D. Miss. 1992); Jordan v. Winter, 604 F.Supp. 807, 813 (N.D. Miss. 1984) (three judge court). The lay testimony offered at trial corroborate the existence of racial appeals in Noxubee County in state and federal elections.

18. Noxubee County, Mississippi has not been responsive to the needs of African Americans.

19. White voters in Noxubee County vote as a bloc in white versus African American elections.

#### CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and subject matter of this action pursuant to 28 U.S.C. Sections 1331, 1343(a) (3) and (4), and 42 U.S.C. Sections 1973, 1973a(3), 1973j(f).

2. White citizens in Noxubee County are dispered throughout

and are not geographically compact to constitute a majority of the voting age population in either of the five (5) supervisory districts in the absence of gerrymandering based solely on race. Furthermore, since the evidence indicates that the white population in Noxubee County is not geographically compact to form a majority in a single member district, the proof fails to establish the Gingle pre-conditions and the case must be dismissed. Overton v. City of Austin, 871 F.2d 529 (5<sup>th</sup> Cir. 1989); Brewer v. Ham, 876 F. 2d 448 (5<sup>th</sup> Cir. 1989); Magnolia Bar Ass'n, Inc. v. Lee, 994 F. 2d 1143, 1147 (5<sup>th</sup> Cir. 1993). Accordingly, plaintiff has failed to prove a violation of Section 2 of the Voting Rights Act of 1965, as amended.

3. The testimony offered against the NCEC is legally insufficient to prove purposeful and intentional racial motivation against NCEC. There is no perfect election. The evidence at best indicate episodic and sporadic errors and omissions in the conduct of an election and do not rise to a violation of the Voting Rights Act. Welch v. McKenzie, 765 F. 2d 1311, 1315 (5<sup>th</sup> Cir. 1985).

4. All political subdivisions of Mississippi are covered by the Voting Rights Act of 1965.

5. This case alleges intentional and purposeful, vote dilution of white voting strength in violation of Section 2 of the Voting Rights Act and the Constitution. Proof of a Section 2 violation requires a demonstration that the election system has a racially discriminatory result, while proof of a constitutional violation requires a much more difficult showing of discriminatory intent.

Jones v. City of Lubbock, 727 F.2d 364, 3670, 378 (5th Cir. 1984).

6. Section 2 of the Voting Rights Act, as amended in 1982, is codified at 42 U.S.C. Section 1973, and reads as follows:

(a) No voting qualification or prerequisite to voting, standard, practice, or procedure shall be imposed or applied by and State or political subdivision in a manner which results in a denial or abridgment of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973(f) (2) of this title [which applies the Act's protection to members of any language minority], as provided in subsection (b) of this section. (b) A violation of subsection (a) of this section is established if, based on the totality of circumstance, 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 protected by subsection (a) of this section in that its members of that electoral to opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance that may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

7. The drafters of the 1982 amendment to Section 2 listed the following evidentiary factors as being probative of a Section 2 vote dilution case:

1. the extent of any history of official discrimination in the State of political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;
2. the extent to which voting in the electing of the state or political subdivision is racially polarized;
3. the extent to which the membership of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
4. if there is a candidate slating process, whether the members of he minority group have been denied access to that

process;

5. the extent to which the membership of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

S. Rep. 417, 97th Cong., 2d Sess. at 28-29 (Senate Judiciary Committee's Report on the 1982 Amendments to the Voting Rights Act, hereinafter referred to As "Senate Report"). In addition, the drafters cite two other factors that might have limited relevance:

whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group.

whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, standard, practice, or procedure is tenuous.

Senate Report at 29. See also, Jones v. City of Lubbock, 727 F.2d 363, 379 (5th Cir. 1984) (listing the Senate Report factors as an "interpretative aid" for Section 2 cases).

8. The question whether the political processes are 'equally open' depends upon a searching practical evaluation of the 'past and present reality' and on a 'functional' view of the political process. Martin v. Allain, 658 F. Supp. 1183, 1201-02, (S.D. Miss. 1987) (citing, Thornburg v. Gingles, 478 U.S. 30, 43 (1986)).

9. Subsection 2(b) established that Section 2 has been violated where the "totality of the circumstances" reveal that "the political processes leading to nomination or election. . . are

not equally open to participation by members of a [protected class]. . . and that its members have less opportunity than other members to participate in the political processes and to elect candidates of their choice. Martin v. Allain, 658 F. Supp. 1183, 1202 (S.D. Miss. 1987) citing, 42 U.S.C. Section 1973 (b); Thornburg, 478 U.S. at 43. An analysis of the totality of circumstances presented in case reveals a violation of Section 2.

#### HISTORY OF OFFICIAL DISCRIMINATION

10. There is no history of statutory and other official racial segregation and discrimination in Mississippi which has had an adverse effect on the political participation of White citizens in the state. There is no history of discriminatory devices as poll taxes, White primaries, literary tests, rudeness and harassment from voting registrars, and the use of violence to prevent and intimidate White citizens from registering to vote. No similar findings have been made in favor of white voters in Mississippi.

11. Similarly, there is no history of electoral devices that have prevented white candidates from attaining victory in federal, state, county or municipal election contests.

12. There is no history of discrimination in Mississippi against white voters in education, employment, governmental services, public accommodations, housing or in the justice system. In Mississippi, white citizens have not been systematically excluded from jury service.

13. Racial bloc voting prevails throughout Mississippi by white and African American voters.

14. Several witnesses who have been actively involved with politics on various levels in Noxubee County corroborated the conclusion of Dr. Arrington that great polarization exists. The Court finds the racial polarization of voters exists in Noxubee County and that African American overwhelmingly tend to vote for African Americans and Whites almost unanimously vote for Whites in most African Americans versus White elections.

UNUSUALLY LARGE ELECTION DISTRICTS

15. The use of unusually large election districts is not a factor in this case.

MAJORITY VOTE REQUIREMENT

16. The majority vote requirement prescribed by Miss. Code Ann. Section 23-15-305 (Rev. 2002) applies to elections in Noxubee County, Mississippi, but not to general elections.

No Place Requirement

17. This is not a factor in this case.

Slating Process

18. Factor number 4 in the Senate Report reads: "if there is a candidate slating process, whether the member of the minority group have been denied access to that process." Senate Report 29 (emphasis added). In Noxubee County, no evidence was presented of any type of prevalent candidate slating process, so that factor is irrelevant. The proof indicates white voters prefer republican candidates in general elections and African American voters prefer democratic candidates.

Socioeconomic Disparities

19. The courts have recognized the disproportionate educational, employment, income level and living conditions arising from past discrimination tend to depress minority political participation, e.g., White v. Register, 412 U.S. at 768; Kirksey v. Board of Supervisors, 554 F. 2d 139, 145. Where these conditions are shown, and where the level of African American participation in politics is depressed, plaintiff need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation. Inequality of access is an inference which flows from the existence of economic and educational inequalities. 554 F.2d at 145. The proof in this case demonstrates that white voters do not suffer from socio-economic disparities in Noxubee County, Mississippi. Rather, African American voters suffers from socio-economic disparities. Cf. Teague v. Attala County, Miss., 92 F.3d 283, 294 (5th Cir. 1996); Kirksey v. Board of Supervisors, 554 F.2d at 144; Jordan v. Winter, 604 F. Supp. at 812; Magnolia Bar Ass'n., Inc., 793 F. Supp. at 1409.

20. Exhibit NCEC-3 indicates African Americans suffer from a vast socioeconomic inequality and significantly lower voter registration and turnout levels, not white citizens. Cf. Operation Push, 932 F.2d at 409 (25% difference in the registration rates of eligible African American and White voters).

The Extent to Which Minority Candidates Have Been Elected

21. There are seven countywide officers in Noxubee County: county attorney, circuit clerk, chancery clerk, coroner, sheriff, tax assessor and superintendent of education. Whites hold 1 of 7

(14.28%) of countywide offices in Noxubee County. There are 19 county district officers: five supervisors, five election commissioners, five school board members, two justice court judges and two constables the nineteen county district offices, these is one white supervisor.

#### Responsiveness

22. Here, the parties have not offered evidence one way or the other on responsiveness.

#### Tenuousness

23. No proof was offered on this factor.

#### Summary

24. The USA has failed to prove the existence of several of the Section 2 factors, including a history of racial discrimination against white voters and socioeconomic inequalities which hinder White voters present day political participation. Looking at these factors and the parisian differences between African American voters and white voters in Noxubee County as demonstrated by the evidence in this case, it is clear that partisanship best explain the divergent voters patterns in Noxubee County. The ongoing legal dispute by African Americans with the state democratic party to end open primaries in Mississippi that allow white voters who clearly prefer republican candidates in general elections to vote in local county elections in the democratic party primary election best explain voting patterns in Noxubee County. Furthermore, since the evidence indicates that the white population in Noxubee County is not geographically compact to form a majority in a single member

district, the proof fails to establish the Gingle pre-conditions and the case must be dismissed. Overton v. City of Austin, 871 F.2d 529 (5<sup>th</sup> Cir. 1989); Brewer v. Ham, 876 F. 2d 448 (5<sup>th</sup> Cir. 1989); Magnolia Bar Ass'n, Inc. v. Lee, 994 F. 2d 1143, 1147 (5<sup>th</sup> Cir. 1993). Accordingly, plaintiff has failed to prove a violation of Section 2 of the Voting Rights Act of 1965, as amended.

THIS the, 9<sup>th</sup> day of April, 2007.

Respectfully submitted,

NOXUBEE COUNTY ELECTION COMMISSION,  
DEFENDANT

By: s/ Ellis Turnage  
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Commission

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CERTIFICATE OF SERVICE

I, Ellis Turnage, Attorney for defendant Noxubee County Election Commission, do hereby certify that I electronically filed this with the Clerk of the Court using the ECF system which sent

notification of such filing to the following: Hon. Christopher Coates, and Hon. Wilbur O. Colom.

THIS, the 9<sup>th</sup> day of April, 2007.

s/Ellis Turnage  
ELLIS TURNAGE