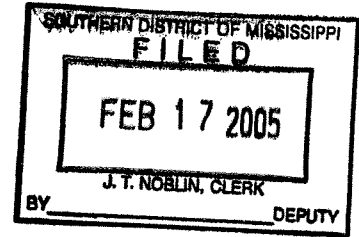


IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
IKE BROWN, individually and)
in his official capacities)
as Chairman of Noxubee County)
Democratic Executive)
Committee and Superintendent)
of Democratic Primary)
Elections; NOXUBEE COUNTY)
DEMOCRATIC EXECUTIVE)
COMMITTEE; CARL MICKENS,)
individually and in his)
official capacities as)
Circuit Clerk of Noxubee)
County, Superintendent)
of Elections,)
Administrator of Absentee)
Ballots, and Registrar of)
voters; NOXUBEE COUNTY)
ELECTION COMMISSION;)
NOXUBEE COUNTY, MISSISSIPPI;)
and those acting in concert,)
)
Defendants.)
)



CIVIL ACTION NO.

4:05CW33TSL-AGN

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. The Attorney General files this action seeking injunctive and declaratory relief pursuant to Sections 2 and 11(b) of the Voting Rights Act of 1965, as amended, 42 U.S.C. Section 1973, and 42 U.S.C. Section 1973i(b), and to enforce rights guaranteed by the Fifteenth Amendment to the Constitution

of the United States.

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. Section 1345 and 42 U.S.C. Section 1973j(f).

3. Defendant Noxubee County is a county within the State of Mississippi and is governed by the laws of that State.

4. Defendant Noxubee County Election Commission has statutory powers, duties, and responsibilities concerning the conduct of elections in Noxubee County.

5. Defendant Noxubee County Democratic Executive Committee is a body with duties, powers, and responsibilities concerning the conduct of Democratic primary elections held in Noxubee County.

6. Defendant Ike Brown is the Chairman of the Noxubee County Democratic Executive Committee and in that capacity is the superintendent of Democratic primary elections. Defendant Brown is a resident of Noxubee County and is sued in his individual and official capacity.

7. Defendant Carl Mickens is the Circuit Clerk of Noxubee County, and as such, he exercises statutory duties, powers, and responsibilities as superintendent of non-primary elections, as the administrator of absentee ballots for all elections, and as registrar of voters in Noxubee County. Defendant Mickens is a resident of Noxubee County and is sued in his individual and official capacity.

8. According to the 2000 Census of Population, Noxubee County has a total population of 12,548 persons and a voting-age population of 8,697 persons. Noxubee County has a total white population of 3,667 persons representing 29.2% of the county's total population. There are 2,826 white persons of voting age, representing 32.5% of the county's voting age population.

9. Voting in Noxubee County is racially polarized, especially in those elections in which black and white candidates oppose each other. Whites and blacks tend to vote as a cohesive bloc, making it possible to readily identify candidates that are white-preferred and black-preferred.

10. White voters, white candidates and those voters who have supported various white candidates have in Noxubee County experienced recent and relentless voting-related racial discrimination at the direction of Defendants Brown and Mickens and others acting in concert with them. This pattern of discriminatory actions has resulted in the denial or abridgement of the rights of these citizens of Noxubee County to vote on account of race or color, in violation of Section 2 of the Voting Rights Act. These acts of voting-related discrimination include, but are not limited to the following:

- a. Defendant Brown has recruited and qualified black candidates from outside of Noxubee County and from outside of candidates' election district to run against white candidates where Defendant Brown knew these

candidates did not qualify under state residency laws to hold the offices for which they had been qualified to run;

b. Defendant Brown has excluded whites from participation in Democratic Executive Committee affairs by excluding them from Committee meetings relating to primary election matters and by excluding them from Democratic caucuses;

c. Defendant Mickens has himself manipulated and has permitted Defendant Brown and those acting in concert with them to manipulate the voter registration rolls in an unlawful manner, by moving voters from one district to another in order to affect the racial percentages of voters in particular districts and in an attempt to alter the outcome in certain black-on-white elections;

d. Defendant Brown and those acting in concert with him have attempted to prohibit a number of white voters from voting in Democratic Primary elections even though those white voters were legally entitled to vote in those primary elections;

e. Defendant Brown and those acting in concert with him have participated in numerous racial appeals during primary and general campaigns and have criticized black citizens for supporting white candidates and for forming biracial political coalitions with white candidates on account of the race of those white candidates;

f. Defendant Brown and those acting in concert with

him have rejected the absentee ballots cast by whites on ground that they were defective under state law while counting absentee ballots cast by black voters that contained similar or more serious defects under state law;

g. Defendants Brown and Mickens and those acting in concert with them have discriminated against white candidates in failing to provide those candidates information concerning absentee ballots in the same way these Defendants have provided this information to black candidates;

h. Defendants have discriminated against whites in the selection of persons to work as poll managers and poll workers in elections in the county;

i. Defendants Brown and Mickens and those acting in concert with them have discriminated against white candidates by not allowing them and their supporters to observe the disposition of challenges to absentee ballots;

j. Defendant Brown and those acting in concert with him have discriminated against white candidates and their supporters in enforcing the fifty-foot, anti-campaigning law that is applicable at polling places in Mississippi;

k. Defendants Brown and Mickens and those acting in concert with them have allowed non-resident black persons to vote in Noxubee County elections, and black persons who were non-residents of districts to vote in those districts;

1. Defendants Brown and Mickens and those acting in concert with them have required white students and teachers who are legally entitled to vote in Noxubee County elections because they are residing outside of the county for educational or pedagogical purposes to vote in person, while allowing similarly situated black teachers and students to cast an absentee ballot by mail.

11. In conducting elections in Noxubee County, Defendants Brown, Mickens, and those acting in concert with them have systematically misapplied the Mississippi absentee ballot procedures. This practice has disproportionately burdened white voters, white candidates, and those voters who support white candidates and has denied them an equal opportunity to participate in the political process and to elect representatives of their choice in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. 1973.

12. The actions which contribute to this denial include Defendants' racially disparate application of state laws that govern when and how absentee ballots are mailed to voters, how ballots are cast, and the process by which poll officials decide whether these ballots will be counted.

13. The lawful procedure by which an eligible elector may obtain and cast an absentee ballot in Mississippi is set forth in the Mississippi Code of 1986.

14. Section 23-15-715 of the Mississippi Code requires that electors who wish to cast an absentee ballot must first request a ballot, and then must cast it during a prescribed period before the election at the county courthouse, unless they fit into one of several categories of voters who are eligible to vote by mail due to age, temporary residence outside of the county, or disability.

15. Sections 23-15-715(b) and 23-15-721 of the Mississippi Code require that electors who are eligible to cast absentee ballots by mail must first request those ballots, then must mark their ballots in secret before an official authorized to administer oaths, fold the ballot, deposit it in an envelope, seal it, and swear to an elector's certificate which appears on the back of the envelope.

16. Sections 23-15-639 and 23-15-641 of the Mississippi Code govern the examination and rejection of absentee ballots after they are received in their proper precincts on election day. Among other things, these sections of the Mississippi Code require that poll managers examine the envelopes containing the absentee ballots, compare the signatures on the envelopes with the signatures on the application for the absentee ballots, and check whether the absentee elector has voted in person during the election day. All of this is to be done before the envelope is opened and the ballot removed. These sections also permit any

person present at the polls to make challenges to the absentee ballots that are being examined.

17. Section 23-15-579 of the Mississippi Code governs the method of challenging votes and requires that if an absentee ballot is challenged, the ballot must be marked on the back with the word "challenged" and placed in a separate envelope, where it will be counted apart from the unchallenged ballots.

18. Defendants have systematically manipulated and misapplied the state absentee ballot procedures described above in paragraphs 13-17. This manipulation and misapplication includes, but is not limited to, the following actions:

a. Defendants Mickens and Brown and those acting in concert with them have mailed absentee ballots to persons without receiving a request from those persons for an absentee ballot;

b. Notaries, who are political allies of Defendant Brown, coordinate with Defendant Mickens to retrieve the absentee ballots that were sent to the homes of voters, and involve themselves in the marking of those ballots. Often the notaries deny the voter privacy in the marking of his or her ballot, and even deny the voter his or her choice of candidates in order to ensure that the ballots are marked in the manner preferred by the notaries, by Defendant Brown and by those acting in concert with them;

c. Poll officials, working under the direction of

Defendant Brown, routinely tear open absentee ballot envelopes without first examining the signatures on the ballots or attempting to determine whether the voter appeared at the polls during the day to vote, and without allowing poll watchers for the candidates a reasonable opportunity to make challenges to absentee ballots in accordance with Mississippi law;

d. Defendant Brown has personally interfered with the lawful absentee ballot examination and challenge process by ordering whole groups of absentee ballots, such as those voted at the courthouse, to be counted notwithstanding unresolved challenges that were made to the ballots;

e. Defendants Brown, Mickens, and those acting in concert with them have directed poll officials, by the placement of yellow stickers on certain absentee ballots or by other means, to reject various absentee ballots in violation of the procedure provided for in Mississippi law that directs that the determination whether a challenged absentee ballot will be accepted or rejected is to be made at the polls by poll officials;

f. This mis-administration of absentee ballots has caused a number of absentee ballots that were challenged and should have been rejected in accordance with Mississippi law to have been counted, and as a result thereof the value or weight of legally cast ballots by white voters and for white candidates has

been significantly reduced;

g. This mis-administration of absentee ballots has resulted in substantial numbers of unused absentee ballots not being accounted for in some primary and general elections. Further, ballots have been found in inappropriate locations after the votes were tabulated and ballots were supposed to be under seal, including an incident in at least one election where a number of absentee ballots were found in a drawer in Defendant Mickens's office instead of being located in sealed precinct boxes.

19. Under the totality of the circumstances that exist in Noxubee County, which include a climate of racially polarized voting, a recent history of voting-related discrimination against whites, and overt racial appeals in campaigns, Defendants' conduct, including the manipulation and misapplication of Mississippi's absentee ballot procedures, has the effect of denying white voters, white candidates and those voters who support them, an equal opportunity to participate in the political process and to elect candidates of their choice in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973.

20. In addition to this racially discriminatory result, these actions are also undertaken with the purpose of discriminating against white voters, white candidates, and those

voters who support them, in further violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973, and thus denying rights guaranteed by the Fifteenth Amendment of the Constitution of the United States.

21. Proof of this racial purpose is evident from the fact that the absentee ballot procedures followed by Defendants Brown, Mickens, and others acting in concert with them, are clearly disproportionately burdensome toward white voters, white candidates, and those voters who support these white candidates. Such actions systematically have skewed election results in closely contested elections against white-preferred candidates and appear to have actually determined the result in some elections. Thus, the absentee ballot procedures followed by Defendants have denied white voters, white candidates and those voters who support them, a meaningful opportunity to participate in their own local government.

22. Defendant Mickens and those acting in concert with him, as officials authorized to administer oaths under Mississippi law, have engaged in coercion, threats and intimidation of voters in violation of Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973i(b).

23. Such acts of intimidation and coercion include, but are not limited to:

a. During the absentee in-person voting period before

the 2003 primary election, Defendant Mickens received an absentee ballot that had been voted in the courthouse by an eligible voter. After receiving the ballot from this voter, Mickens set it aside without placing it in a sealed envelope as required by law. When this voter objected and asked that the unsealed ballot be spoiled and that she be allowed to vote a new ballot, Defendant Mickens loudly and abusively berated the voter and complained to the voter that she had cast her ballot for Defendant Mickens' white opponent. As a result of this experience, this voter has resolved never to cast another absentee ballot at the courthouse as long as Defendant Mickens remains Circuit Clerk;

b. Prior to the August 2003 primary election, Defendant Mickens and others acting in concert with him coerced a voter to vote by absentee ballot, failed to provide that voter privacy in which to cast his absentee ballot at the Circuit Clerk's office, then instructed the voter on what candidates the voter should vote for, including Defendant Mickens, and looked on during the voting process to make sure that the voter followed the instruction.

FIRST CAUSE OF ACTION

24. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 -23 above.

25. Section 2 of the Voting Rights Act prohibits Defendants from imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which results in a denial or abridgement of the right to vote on account of race or color. 42 U.S.C. Section 1973(a).

26. The totality of circumstances of Defendants' actions, as described in ¶¶ 1-24, has resulted in white voters, white candidates and those voters who support them having "less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice." 42 U.S.C. Section 1973.

27. Unless enjoined by this Court, Defendants will continue to violate Section 2 of the Voting Rights Act, 42 U.S.C. Section 1973, by enforcing standards, practices, or procedures that deny white voters, white candidates and those voters who support them, the opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

SECOND CAUSE OF ACTION

28. Plaintiff hereby realleges and incorporates by

reference ¶¶ 1 -23 above.

29. Section 2 of the Voting Rights Act prohibits Defendants from imposing any "voting qualification or prerequisite to voting or standard, practice, or procedure" which has the purpose or has the effect of denying or abridging the right to vote on account of race or color. 42 U.S.C. Section 1973.

30. Defendants knowingly and purposefully participated in numerous actions, including misapplication of Mississippi's absentee ballot procedures as described above, with the intent of denying white voters, white candidates, and those voters who support them, an equal opportunity to participate in the political process and to elect their candidates of choice in violation of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. Section 1973, thus denying rights guaranteed by Section 2 and by the Fifteenth Amendment to the Constitution of the United States.

31. Unless enjoined by this Court, Defendants will continue to violate Section 2 of the Voting Rights Act, 42 U.S.C. Section 1973, thus denying rights guaranteed by the Fifteenth Amendment by participation in actions that deny white voters, white candidates, and those voters who support them, an opportunity to participate effectively in the political process on an equal basis with other members of the electorate.

THIRD CAUSE OF ACTION

32. Plaintiff hereby realleges and incorporates by reference ¶¶ 1 - 23 above.

33. Section 11(b) of the Voting Rights Act provides that: "No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce . . . any person for voting or attempting to vote." 42 U.S.C. Section 1973i(b).

34. Defendant Mickens and those acting in concert with him have violated Section 11(b) by treating voters in a hostile and intimidating manner when they come into the courthouse to vote absentee ballots. Specifically, voters who might not wish to vote for candidates preferred by Defendants, are targeted with hostile treatment, are denied privacy in the voting process, and are instructed in a coercive manner to vote for candidates preferred by Defendants rather than candidates preferred by the voter.

35. Unless enjoined by this Court, Defendant Mickens and those acting in concert with him will continue to violate Section 11(b) of the Voting Rights Act by continuing to use coercion, threats and intimidation to ensure that voters cast ballots in a manner preferred by Defendants, rather than in the manner preferred by voters casting those ballots.

WHEREFORE, the Plaintiff, United States of America, prays for an order:

(1) With respect to Plaintiff's First Cause of Action:

(a) Declaring that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. Section 1973, because their actions have resulted in white voters, white candidates and those voters who support white candidates, having less opportunity than other members of the electorate to participate in the political process and to elect the representatives of their choice; and

(b) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from implementing practices and procedures which have the result of denying white citizens, white candidates and those voters who support them, an opportunity to participate effectively in the political process on an equal basis with other members of the electorate;

(2) With respect to Plaintiff's Second Cause of Action:

(a) Declaring that Defendants have violated Section 2 of the Voting Rights Act, 42 U.S.C. Section 1973, and the Fifteenth Amendment by actions taken with the intent of denying white voters, white candidates and those voters who support them, an equal opportunity to participate in the political process and to elect candidates of their choice; and

(b) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from purposefully implementing practices and procedures with the intent of denying white voters, white

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candidates and those voters who support them, an opportunity to participate effectively in the political process on an equal basis with other members of the electorate in violation of Section 2 of the Voting Rights Act, 42 U.S.C. Section 1973; and

(3) With respect to Plaintiff's Third Cause of Action:

(a) Declaring that Defendants have violated Section 11(b) of the Voting Rights Act, 42 U.S.C. Section 1973i(b), by coercing, threatening, and intimidating persons in the voting process; and

(b) Preliminarily and permanently enjoining Defendants, their agents and successors in office, and all persons acting in concert with them, from coercing, threatening, or intimidating or attempting to coerce, threaten, or intimidate persons for voting or attempting to vote, in violation of Section 11(b) of the Voting Rights Act, 42 U.S.C. Section 1973i(b).

(4) Plaintiff further requests that this Court:

(1) Award Plaintiff the costs and disbursements associated with the filing and maintenance of this action;

(2) Award such other equitable and further relief as the Court deems just and proper to ensure that elections in Noxubee County are held in a racially fair manner.

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