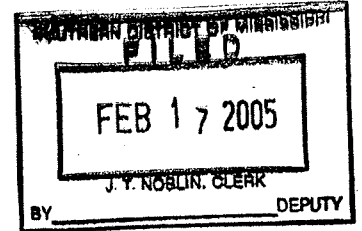


IN THE UNITED STATES DISTRICT COURT FOR THE  
SOUTHERN DISTRICT OF MISSISSIPPI  
Eastern Division



UNITED STATES OF AMERICA )

Plaintiff, )

v. )

CIVIL ACTION NO. 4:05CV 33TSL-AGN )

IKE BROWN, individually, and )  
in his official capacities as )  
Chairman of Noxubee County )  
Democratic Executive )  
Committee and Superintendent )  
of Democratic Primary )  
Elections; NOXUBEE COUNTY )  
DEMOCRATIC EXECUTIVE )  
COMMITTEE; CARL MICKENS, )  
individually, and in his )  
official capacities as the )  
Circuit Clerk of Noxubee )  
County, Superintendent )  
of Elections, )  
Administrator of absentee )  
ballots and Registrar of )  
voters; the NOXUBEE COUNTY )  
ELECTION COMMISSION; )  
NOXUBEE COUNTY, MISSISSIPPI; )  
and those acting in concert, )

Defendants. )

CONSENT DECREE

The United States filed the complaint in this case on February , 2005. The complaint alleges that certain of the Defendants have violated Section 2 of the Voting Rights Act, as amended, 42 U.S.C. Section 1973a, by employing voting-related practices and procedures which have the purpose and/or the result of denying white voters and white candidates and the voters who support them an equal opportunity to cast their votes and have them counted for their preferred candidates. Further, it is alleged that, in violation of Section 2 of the Voting Rights Act, the actions of certain of the Defendants have had the purpose and/or result of denying these groups of voters and candidates their right to participate in elections that are untainted by the counting of illegal votes that are accepted on the basis of race of the voter. In addition, the complaint alleges that certain of the Defendants have violated Section 11(b) by subjecting voters to intimidation, threats, and coercion related to the voters' candidate preference.

Defendants Carl Mickens and Noxubee County, Mississippi have not admitted the allegations of the complaint and, in fact, have specifically denied the allegations.

To avoid protracted and costly litigation, these parties have agreed that this lawsuit should be resolved through the terms of this Consent Decree (hereinafter the "Decree").

Accordingly, the United States and Defendants Carl Mickens and Noxubee County, Mississippi hereby consent to the entry of this Decree, as indicated by the signatures of counsel and parties at the end of this document. These parties waive a hearing and entry of findings of fact and conclusions of law on all issues involved in this matter.

These Defendants are committed to comply fully with all provisions of the Voting Rights Act of 1965, as amended, in future elections and stipulate that each provision of this Decree is appropriate and necessary.

Accordingly, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. Defendants and others acting in concert with them are permanently enjoined from imposing or applying any qualification or prerequisite to voting or any standard, practice, or procedure which has the purpose or the result of denying or abridging the right of any citizen of the United States to vote on account of race or color.

2. Defendants and others acting in concert with them are permanently enjoined from undertaking any action which intimidates, threatens, or coerces, or attempts to intimidate, threaten, or coerce any person voting or attempting to vote, or any person urging or aiding any person voting or attempting

to vote.

Racially Disparate Treatment

3. Defendants and others acting in concert with them are permanently enjoined from subjecting white voters and white candidates and those who support them to voting-related racial discrimination. These prohibited acts of voting-related discrimination include, but are not limited to the following:

a. Defendants and others acting in concert with them are permanently enjoined from qualifying candidates from outside of Noxubee County and from outside of their election districts when these candidates do not qualify under state residency laws to hold the office for which they attempt to qualify to run;

b. Defendants and others acting in concert with them are permanently enjoined from taking any actions for the purpose of disadvantaging or defeating white candidates, disadvantaging or discriminating against white voters, or any voter on the basis of the race of the candidate that voter is supporting;

c. These Defendants and those acting in concert with him are permanently enjoined from assigning voters to districts in which they are not permanent residents, or registering voters

to vote in Noxubee County or allowing voters to remain on the voter registration list when those voters are not permanent residents of the county;

d. These Defendants and those acting in concert with them are permanently enjoined from attempting to prohibit white voters from voting in Democratic Primary elections when such white voters are legally entitled to vote in those primary elections;

e. These Defendants and all those acting in concert with them are permanently enjoined from rejecting the absentee ballots cast by whites on grounds that they are defective under state law while counting absentee ballots cast by black voters that contain similar or more serious defects under state law;

f. These Defendants and all those acting in concert with them are permanently enjoined from discriminating against white candidates by refusing to provide those candidates information concerning the absentee ballot process that is provided to black candidates. Further, these Defendants are enjoined from refusing to provide absentee ballots to white voters or voters who are believed to support white candidates without prior written application from the voter, while providing absentee ballots to black voters or voters who are

believed to support black candidates without such written application from the voter;

g. These Defendants and all those acting in concert with them are permanently enjoined from taking any action against white voters at the polling place with the purpose or result of making it more likely that the voters' ballot will be found defective or not counted;

h. These Defendants and all those acting in concert with them are permanently enjoined from discriminating against white candidates by prohibiting them and their poll watchers from observing challenges to absentee ballots at the polls and from observing the decision-making process concerning whether those ballots are to be counted or rejected;

i. These Defendants and all those acting in concert with them are permanently enjoined from enforcing the fifty-foot, anti-campaigning state law that is applicable at polling places against white candidates and their supporters while not enforcing the same state law against black candidates and their supporters;

j. These Defendants and all those acting in concert with them are permanently enjoined from permitting non-residents of voting districts to vote in those districts, or non-residents of the County to vote in Noxubee County elections, including

but not limited to persons who are no longer residents of the county because they reside in nursing homes located outside of the county;

k. These Defendants and all those acting in concert with them are permanently enjoined from requiring white students and teachers who are legally entitled to vote in Noxubee County elections even though they are residing outside of the county for educational or pedagogical purposes to cast their ballots in person, while allowing similarly situated black teachers and students to cast an absentee ballot by mail.

#### Absentee Ballot Process

4. To ensure that the administration of elections in Noxubee County is conducted in a manner that does not deny or abridge the right of any citizen to vote on account of race or color, these Defendants and all those acting in concert with them are permanently enjoined from violating Mississippi law governing absentee ballot procedures. These prohibited acts include but are not limited to the following:

a. Defendant Mickens and those acting in concert with him are permanently enjoined from mailing absentee ballots to persons without receiving a request from those persons for an absentee ballot, as required by state law;

b. Defendants Mickens and those acting in concert with them, including but not limited to notary Carrie K. Wyndham, are permanently enjoined from involving themselves unlawfully in the marking of those ballots, such as by retrieving absentee ballots from mail boxes and appearing at the voters' residences uninvited with the absentee ballot, by denying the voter privacy in the marking of his or her ballot, or denying the voter his or her choice of candidates in order to ensure that the ballots are marked in the manner preferred by certain of the Defendants and the notaries working in concert with them;

c. Defendants Mickens and all those acting in concert with him are permanently enjoined from opening 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 a lawful challenge to the absentee ballots;

d. Defendants Mickens and those acting in concert with him are permanently enjoined from failing to separate absentee ballots that were challenged from those that were not challenged, and from failing to separate successfully challenged absentee ballots from those that were challenged



but not ultimately rejected by election officials;

e. Defendants Mickens and all those acting in concert with him are permanently enjoined from interfering 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 indiscriminately, notwithstanding successful or unresolved challenges that were made to absentee ballots at the polls;

f. Defendants Mickens and those acting in concert with them are permanently enjoined from directing poll officials, by the placement of yellow stickers on certain absentee ballots or by other means, to reject certain absentee ballots in violation of the procedure provided in state 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.

g. Defendants Mickens and those acting in concert with them are permanently enjoined from allowing candidates or others not involved in the absentee ballot process to handle or take possession of absentee ballots, including taking absentee ballots that have already been voted from the circuit court clerk's office and placed in a sealed envelope.

Voter Intimidation, Threats, and Coercion

5. Defendant Mickens and those acting in concert with them are permanently enjoined from intimidating, threatening, or coercing, or attempting to intimidate, threaten, or coerce voters in violation of Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. Section 1973i. Such prohibited acts of intimidation, threats, or coercion include, but are not limited to:

a. Defendant Mickens and those acting in concert with him are permanently enjoined from denying privacy to voters who appear at the courthouse in order to cast their absentee ballots. This privacy in voting shall require Defendants to provide affirmatively every such voter an opportunity to mark his or her ballot at a voting stand or booth that provides privacy and does not enable election officials or any other person, with the exception of an assistor chosen by the voter, to observe how the voter's ballot is marked;

b. Defendant Mickens and those acting in concert with him are permanently enjoined from handling absentee ballots cast at the county courthouse in any manner that is contrary to that prescribed in state law, including but not limited to looking at the ballot to see for whom the voter cast his or her ballot or failing to seal the absentee ballot envelope

immediately upon its delivery by the voter to Defendant Mickens or those acting under his supervision;

c. Defendant Mickens and those acting in concert with him are permanently enjoined from harassing, intimidating, threatening, or coercing voters who appear in the courthouse to cast absentee ballots, or in any way subjecting them to rude or hostile treatment, or heavy-handed instruction regarding the voter's choice of candidate;

d. Defendants Mickens and those acting in concert with them are permanently enjoined from harassing, threatening, intimidating, or coercing poll watchers;

e. Defendants Mickens and those acting in concert with them are permanently enjoined from asking voters if they need assistance to vote when the voter has not requested assistance and when there is no reasonable indication that the voter is in need of assistance in casting a ballot;

f. Defendants Mickens and all those acting in concert with them are permanently enjoined from attempting to influence a voter's choice of candidate through heavy-handed instruction by an assistor, or by marking the ballot for the candidate preferred by Defendants or the assistor.

### Poll Officials

6. To remedy the prior selection practices regarding white poll officials, these Defendants and any other pertinent Noxubee County officials shall recruit, hire, and assign poll officials in a manner which seeks to provide both black and white citizens an opportunity to work in elections. These Defendants and any other pertinent Noxubee County officials shall invite eligible white voters in the county to serve as poll officials, including those officials who are designated to determine challenges to absentee ballots at various polling places.

Fifteen days after every election during the period this Decree is in effect, these Defendants shall provide Counsel for the United States documentation showing: the number of poll officials and workers per precinct who were present at the polls during any portion of election day; the race of each official or worker; and whether each worker or official played a part in any determination as to whether challenged absentee ballots would be accepted or rejected. Further, in this reporting these Defendants shall identify the names of any white persons who were asked by election officials to work at the polls and who refused to do so, and the names of any white persons who applied to work at the polls, were rejected, and

the reason for said rejection. Moreover, in this reporting these Defendants shall provide a detailed description and, where appropriate, copies of all public notices, advertisements, or solicitations used by election officials for the purpose of recruiting eligible white citizens to work as poll officials or workers for each election. This provision shall remain in effect through the primary and general election cycle of 2011.

#### Election Official Training

7. Prior to each election, in addition to any required state or county training, these Defendants shall train all poll officials and other election personnel present at the polls regarding the following: the provisions of Sections 2 and 11(b) of the Voting Rights Act of 1965, including the legal obligation to provide voters equal opportunity to participate in the political process regardless of their race, and to cast their ballots and have them counted for the candidates of their choice. Further, this training shall emphasize to poll workers the need to be respectful and courteous to all voters regardless of race, ethnicity or color.

Official Response to Complaints about Poll Workers or Election Officials, or Other Unusual Occurrences in the Voting Process

8. These Defendants, upon receipt of complaints by voters, whether oral or written, shall investigate expeditiously any allegations of poll official or worker hostility or disparate treatment toward voters, candidates, or their supporters in any elections. The results of the investigation(s) conducted by Defendants shall be reported to counsel for the United States. Where there is credible evidence that poll workers or election officials have engaged in treatment of voters, or candidates, or those who support them, in any manner that violates any terms of this Decree, Defendants shall exercise whatever authority they have under state law to remove the poll worker or election official.

9. To ensure that the administration of elections in Noxubee County is conducted in a manner that does not deny or abridge the right of any citizen to vote on account of race or color, Defendants shall report to Counsel for the United States any of the following incidents:

a. The discovery of any unused regular or absentee ballots that are unaccounted for after any election;

b. The discovery of any ballot box that was required to be under seal, which is later found not to be under seal or

found to have a broken seal;

c. The discovery of absentee ballots that have been voted, that were not sent out to the appropriate polling place, but were found after the close of the polls;

d. The observing or receiving of reports of activities that directly or indirectly indicate that persons are involved in schemes to give voters something of financial value for casting their ballots for certain candidates, including but not limited to the passing out of vouchers that are redeemable for things of financial value; and

e. The observing of or receiving of reports that persons involved in the hauling of voters to the polls are offering money, alcoholic beverages, or other things of value to voters if they vote or promise to vote for certain candidates.

#### Duration of Consent Decree

10. This Decree is final and binding between the United States and these parties and their successors in office regarding the claims raised in this action. This Decree shall remain in effect through December 31, 2012, and the United States may within 90 days of that date move to extend the Decree for good cause shown, in the event of a violation of any provision contained herein by these Defendants.

Other Provisions

11. The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement and to ensure compliance with Sections 2 and 11(b) of the Voting Rights Act.

12. Each party shall bear its own costs and fees.

AGREED AND CONSENTED TO:

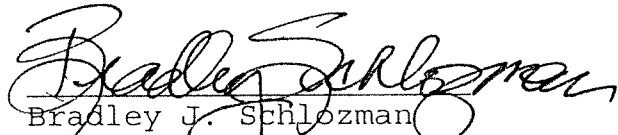
For Plaintiff:

UNITED STATES OF AMERICA

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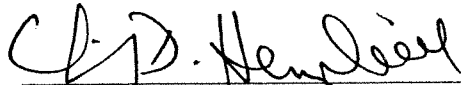
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For Defendants Noxubee County,  
Mississippi, and Noxubee County  
Circuit Clerk Carl Mickens, in his  
official capacity:



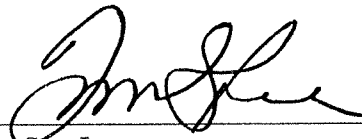
CHRISTOPHER HEMPHILL  
Noxubee County Attorney

For Defendant Carl Mickens, in his  
individual capacity:



Carl Mickens

APPROVED BY AND ENTERED this <sup>14</sup>17 day  
of February, 2005.



Tom S. Lee  
United States District Judge