



Case Studies in Voter Suppression

Profiling Voter Suppressors

By Danielle Root and Aadam Barclay November 26, 2018

Voter suppression has a long and storied history in the United States. It has become a shameful tradition that persists every election year and comes in many forms—such as strict, discriminatory voter identification requirements; mass voter purges; poll closures in racially diverse neighborhoods; and reduced voting hours, including the elimination of Sunday early voting.

Barriers to voter registration and voting, along with other suppressive measures, have the potential to disenfranchise all eligible Americans but tend to disproportionately affect people of color, low-income Americans, and young people. Republican politicians have historically championed oppressive voting measures; in an effort to implement policies that corrupt free and fair elections in their party's favor, they have often made claims of “widespread voter fraud” that are unsubstantiated—and such voter fraud, in truth, is virtually nonexistent.¹ All Americans care about the security of the nation's elections, but politicians should not sacrifice eligible Americans' fundamental right to vote in the process.

Voter suppressors can be found in all corners of the country, at the local, state, and federal levels. And while most voter suppressors attempt to hide their discriminatory efforts to restrict access to the franchise, others are more blatant in their attempts. This issue brief profiles three of the nation's most notorious voter suppressors who have made careers out of making voting harder for historically underrepresented groups:

1. Outgoing Florida Gov. and Sen.-elect Rick Scott (R) *
2. Former Georgia Secretary of State and Gov.-elect Brian Kemp (R)
3. Outgoing Kansas Secretary of State Kris Kobach (R)

All three of these individuals ran for state or federal office during this year's general mid-term elections and used or attempted to use voter suppression tactics during 2018 and years prior. All three men also, at some point during their campaigns this year, failed to recuse themselves from overseeing their own elections or recounts and the certification of their races.² Moreover, shortly after the election, Rick Scott and Brian Kemp made baseless accusations alleging that their opponents were attempting to “steal” the elections simply because the other candidates requested that all votes cast by eligible voters be properly counted before the results were finalized.³ In making the accusations, neither

Scott nor Kemp provided any evidence of wrongdoing. In fact, in Florida, election administrators and law enforcement themselves said no election fraud occurred.⁴

To be clear, ensuring that every vote cast by an eligible American is counted does not constitute election stealing. Instead, counting every eligible vote is fundamental to the integrity of the democratic process. Rhetoric by politicians that baselessly attacks the integrity of elections is irresponsible and dangerous, as it threatens public confidence in election outcomes and could negatively affect eligible potential voters' propensity to participate in future elections.

Scott and Kemp ultimately won their respective races for Florida's Senate seat and Georgia's governorship. And although Kobach ultimately lost to Democrat Laura Kelly in his bid to become Kansas' next governor, he has been shortlisted to replace former Attorney General Jeff Sessions, which would have dire consequences for federal voting rights.⁵ All three men continue to hold significant political power and influence and are likely to resume their voter suppression efforts at the federal and state levels in the coming months and years.

It is critical that those responsible for voter suppression are called out for their actions, thus deterring them from restricting voting access in the future. Moreover, highlighting these individuals will help inform potential voters about how oppressive policies influence election outcomes.

Outgoing Florida Gov. and Sen.-elect Rick Scott

Outgoing Florida Gov. and Sen.-elect Rick Scott is a repeat offender when it comes to voter suppression. After becoming governor in 2011, Scott made it his personal mission to disenfranchise justice-involved individuals who have paid their debt to society, as well as other historically underrepresented groups. Many of his voting rights policies have been described as reminiscent of Jim Crow laws.⁶ For example, in 2007, Florida's then-Gov. Charlie Crist (D) established automatic rights restoration for formerly incarcerated people who had completed sentences for certain felonies; more than 154,000 formerly incarcerated people had their voting rights restored during Crist's term.⁷ Unfortunately, upon taking office, Scott scuttled Crist's rights restoration rule and established one of the strictest felon disenfranchisement rules in the country.⁸ Indeed, compared with the number of people whose voting rights were restored under Crist's tenure, only 3,005 formerly incarcerated people had their rights restored during Scott's time in office.⁹ During Scott's tenure, Florida's disenfranchised population had grown by 150,000 people by 2016,¹⁰ at that time accounting for 27 percent of the disenfranchised population nationwide,¹¹ nearly one-third of whom were African American.¹² In fact, 1 in every 5 African Americans in Florida was disenfranchised during Scott's gubernatorial term.¹³ Eventually, in March 2018, a federal court was forced to intervene, ordering Florida officials to

dismantle and fix the state’s “fatally flawed” restoration process.¹⁴ On Election Day, Floridians took a stand against Scott’s Machiavellian disenfranchisement policies by approving Amendment 4, which will automatically restore voting rights to nearly 1.2 million people in Florida with prior felony convictions.¹⁵

As governor of Florida, Scott did not technically oversee most aspects of election administration in the state. However, as governor, he was responsible for appointing Florida’s secretary of state. As a result, he has directly contributed to the poor election policies that have made Florida elections the “laughing stock of the world.”¹⁶

Under Scott’s leadership, Florida engaged in mass voter purges that disproportionately targeted communities of color. As just one example, in 2012, Florida officials used motor vehicle databases to compile lists of more than 180,000 people suspected of being noncitizens.¹⁷ The state threatened to remove these individuals from the voter rolls unless they could prove citizenship status, an unreasonable burden that could have resulted in eligible Florida voters being prevented from voting through no fault of their own.¹⁸ The state’s lists were based on “limited and often-outdated citizenship information that carried a high risk of making lawful voters look like noncitizens.”¹⁹ As reported by the *Miami Herald*, 87 percent of those whose eligibility was questioned were people of color.²⁰ All of Florida’s 67 county election officials, including 30 Republicans, refused to comply due to the lists’ inaccuracies.²¹ The Miami-Dade election supervisor, Penelope Townsley, reported an error rate of more than 30 percent for that county alone, while another election supervisor said that he and other supervisors agreed: “The list is bad. And this is illegal.”²² The state was later found by a federal court to have violated federal prohibitions against engaging in systematic purges too close to Election Day.²³

Also in 2012, Gov. Scott oversaw the implementation of a law that cut the state’s early voting period from 14 days to 8 days and eliminated voting on the last Sunday before Election Day. Early voting, particularly Sunday voting, is especially popular among African American communities.²⁴ As a result, early voting participation for African Americans dropped by 4.1 percent, and participation for Latinos dropped by 4.6 percent, relative to 2008.²⁵ This year, Gov. Scott, who was running for senator, attempted to prevent college students from casting ballots by banning early voting opportunities on college campuses throughout the state. In striking the law down as discriminatory and illegal in July 2018, a federal judge cited “a stark pattern of discrimination” in Scott’s efforts to disenfranchise voters.²⁶

Moreover, Scott proved that he is not above engaging in voter intimidation and unethical behavior to benefit himself. On election night this year—with only 0.26 percentage points separating Gov. Scott and incumbent Sen. Bill Nelson (D) in their race for U.S. Senate—Scott deployed police officers to Broward and Palm Beach counties to monitor ballot counting in an apparent attempt to intimidate.²⁷

Sen. Nelson made numerous attempts to counter the oppressive efforts of Scott and Scott's secretary of state, filing several lawsuits during and after the election in an effort to ensure that all ballots were fairly counted before elections are certified—much to the chagrin of Scott, who was leading in initial vote counts.²⁸ As just one example, Sen. Nelson filed a lawsuit after it was revealed that Florida officials initially discarded large numbers of voted absentee ballots and provisional ballots for purported signature mismatches. At least 4,000 absentee ballots were initially discarded on this basis.²⁹ Laws that require a voter's signature to exactly match that which the state already has on file disproportionately affect certain groups, including the elderly and young people, as well as Americans with disabilities.³⁰ Some election officials receive forensic signature training to assist them in determining matches, but the process often lacks standards and is in many cases based upon subjective determinations.³¹ U.S. District Chief Judge Mark Walker agreed, and in ruling that voters must be given the opportunity to “cure” any signature-related problems, proclaimed:

*[T]his is a case about the precious and fundamental right to vote—the right preservative of all other rights. And it is about the right of a voter to have his or her vote counted. There is no doubt there must be election laws ... There is no doubt that election officials must make certain calls, under the rules, that deserve review. And there is no doubt some of those calls may hinge on highly subjective factors. The precise issue in this case is whether Florida's law that allows county election officials to reject vote-by-mail and provisional ballots for mismatched signatures—with no standards, an illusory process to cure, and no process to challenge the rejection—passes constitutional muster. The answer is simple. It does not.*³²

Scott appealed Judge Walker's ruling on November 15, 2018.³³ However, the 11th Circuit agreed with Judge Walker that voters must have the opportunity to cure any signature problems.³⁴

Former Georgia Secretary of State and Gov.-elect Brian Kemp

Like Rick Scott, former Georgia Secretary of State and Gov.-elect Brian Kemp is one of the most infamous voter suppressors in the country. As a seasoned politician, Kemp knows who his voters are, and he has crafted policies that make it harder for his critics to cast ballots against him. As the highest-ranking election official in Georgia, Kemp oversaw all aspects of election administration, including discriminatory voter registration and voting requirements, as well as Election Day problems that kept historically underrepresented groups from voting. Despite his role as the chief election official in the state, Kemp initially refused to step down from overseeing the 2018 gubernatorial election between himself and challenger Stacey Abrams (D).³⁵ Kemp only agreed to step down after Election Day, when all administrative decisions, including the allocation of voting machines and polling places, had already been determined by his office and employees under his supervision.³⁶

After Kemp took office in 2010, Georgia closed 214 polling locations across the state, making it harder for poor people and the elderly to travel to other voting sites.³⁷ Seven of the locations that experienced closures were heavily African American. At least one longtime Georgia voter reported he would not participate in the 2016 elections due to mobility challenges and difficulty traveling longer distances to his new polling places.³⁸ Moreover, in 2016, Secretary Kemp removed tens of thousands of people from Georgia's voter rolls based on minor discrepancies in voter registration forms. Nearly 35,000 voter registrations were canceled or placed in pending status and slated for removal.³⁹ After significant public pressure, the state agreed in September 2016 to discontinue its removal process and to allow Georgians whose voter registrations had been canceled dating back to at least 2015 to vote in the 2016 general election.⁴⁰ Of those whose registration was targeted, more than 60 percent were African American, making African Americans eight times more likely to be affected than whites.⁴¹ Asian Americans and Latinos were more than six times more likely than white voters to be affected.

Kemp continues to torment voters with threats to and outright violations of their fundamental right to vote. Young voters overwhelmingly supported Kemp's opponent, Democrat Stacy Abrams, in the 2018 midterm, and they faced significant obstacles registering to vote and making their voices heard.⁴² Several students at historically black Albany State University were not allowed to vote even though their voter registration was up-to-date and easily confirmable on the Georgia secretary of state's website.⁴³ Many others were told that their registration couldn't be found and were subsequently given provisional ballots.⁴⁴ Facing legal challenge after experiencing long lines and voting machine malfunctions, two polling places near historically black Spelman and Morehouse colleges stayed open until 10:00 p.m.⁴⁵ Some out-of-state students even reported receiving absentee ballots after the deadline had passed or—worse—not receiving them at all. As a result, in Dougherty County, a judge ordered officials to accept ballots postmarked on Election Day and received by November 9.⁴⁶

To date, Kemp has purged an estimated 1.5 million people from Georgia's voter rolls, 107,000 of whom were removed simply for having not voted in the two previous general elections.⁴⁷ In 2018, 53,000 voter registrants were placed in pending status by Kemp because of minor misspellings or missing hyphens on their registration forms.⁴⁸ An estimated 70 percent of those affected were African American. On November 2, 2018, a federal judge intervened, citing “the differential treatment inflicted on a group of individuals who are predominantly minorities.”⁴⁹ However, those with pending registration statuses were still forced to prove eligibility, such as citizenship, before they could cast a ballot on Election Day. Proving citizenship may be difficult for Americans lacking access to expensive or hard-to-obtain documents such as birth certificates, passports, or naturalization papers. Furthermore, despite long lines and machine malfunctions at several polling places, more than 1,800 voting machines were left sitting unused in a warehouse in three of the state's largest and most heavily Democratic counties on Election Day. Georgia officials also failed to provide power cords for vot-

ing machines in Gwinnett County.⁵⁰ These problems resulted in long wait times of several hours in predominantly African American neighborhoods, forcing some would-be voters to abandon the polling place before casting their ballot.⁵¹

Georgia also summarily discarded hundreds of voted absentee ballots without proper notification during the 2018 midterm elections because voters' signatures on their ballots did not exactly match the signatures the state had on file. Of those discarded ballots, more than one-third came from Gwinnett County, where more than half of the rejected ballots belonged to African American or Asian American voters.⁵² On October 24, a federal judge ruled that the state must end its practice of summarily discarding ballots due to signature problems.⁵³ But Georgia fell under heavy scrutiny again after reports surfaced that election officials were discarding voted absentee ballots simply for having minor discrepancies such as missing or incorrect birth years.⁵⁴ Gwinnett County, for example, initially discarded 1,587 absentee votes on this basis, accounting for nearly one-third of the state's total.⁵⁵ Again, a federal court was forced to intervene and ruled that those ballots must be counted.⁵⁶

Kemp's policies and rhetoric have fostered an environment that perpetuates intimidation and hate within the state, particularly against African Americans. In November 2018, the Idaho-based white supremacist website Road to Power released a robocall in response to Oprah Winfrey's canvassing for Georgia Democratic gubernatorial candidate Stacey Abrams. In answering the phone, a person would hear: "This is the magical Negro Oprah Winfrey asking you to make my fellow Negress Stacey Abrams the governor of Georgia," along with racist and anti-Semitic statements, such as a reference to Abrams as "a poor man's Aunt Jemima."⁵⁷ Kemp himself engaged in racially based fearmongering by tweeting on November 5, 2018, "The Black Panther Party is backing my opponent. RT if you think Abrams is TOO EXTREME for Georgia!"⁵⁸ The tweet included a photo shared by Breitbart News, originally from the Atlanta New Black Panther Party, depicting armed African American men and a "Stacy Abrams Governor" sign.⁵⁹ In a Facebook post that included the photo, the Atlanta New Black Panther Party stated: "And relax, before you make any assumptions we are not working for & we did not plan this event with either campaign, and we have members with different political views both here in Atlanta as well as nationwide."⁶⁰

Finally, Kemp has played upon the very real threat of election interference by foreign adversaries for his own gain. On November 4, Kemp announced that the state was investigating Georgia's Democratic Party for attempting to hack the state's voter registration files—without presenting any corroborating evidence.⁶¹ The state Democrats called it "a reckless and unethical ploy" designed by Kemp to discredit his opponent.⁶² It is worth noting that Georgia is one of only five states still using the infamous paperless electronic voting machines, which can be easily hacked and manipulated.⁶³ Kemp, in his role as Georgia's chief election officer, has made no

meaningful effort to overhaul the machines during his tenure, despite repeated warnings from experts and lawmakers that they leave the state—and its voters—vulnerable to attack.⁶⁴ As described by Sen. Ron Wyden (D-OR), who has emerged as a federal leader on election security:

*Secretary of State Kemp has shown a total disregard for election security ... He seems to see a personal benefit to ignoring the urgent warnings from experts and intelligence agencies about the threats to Georgia's election system.*⁶⁵

Abrams, the Democratic candidate and Kemp's gubernatorial opponent, initially refused to concede the election, citing the widespread voter suppression that Kemp waged against eligible Georgian voters during the lead-up to the election.⁶⁶ Although Abrams ultimately did not succeed in beating Kemp, she spoke out strongly against his methods and successfully challenged his unfair practices in court. As just one example, Abrams was victorious in stopping Kemp from certifying the election results before all votes had been counted and 10 days earlier than state law requires.⁶⁷ Abrams is reportedly gearing up to file a lawsuit against Kemp based on a Georgia law that allows candidates who lose their respective races to challenge results based on "misconduct, fraud or irregularities ... sufficient to change or place in doubt the results." As described by Abrams, "In the coming days, we will be filing a major federal lawsuit against the state of Georgia for the gross mismanagement of this election and to protect future elections from unconstitutional actions."⁶⁸ In response, Kemp said, "The election is over and hardworking Georgians are ready to move forward ... We can no longer dwell on the divisive politics of the past but must focus on Georgia's bright and promising future."⁶⁹

Former Kansas Secretary of State Kris Kobach

Finishing out the trifecta of infamous voter suppressors is former Kansas Secretary of State Kris Kobach, dubbed the "king of voter suppression" by the American Civil Liberties Union.⁷⁰ For years, Kobach has relied upon discriminatory tactics to keep eligible Americans—particularly Americans of color—from participating in elections. He is also notorious for his less-than-ethical behavior. In April 2017, a federal magistrate fined Kobach \$1,000 and reprimanded him for his "deceptive conduct and lack of candor."⁷¹ Kobach appealed the magistrate's order, but it was upheld by a federal judge in July 2017.⁷² One year later, in June 2018, Kobach was ordered by a different federal judge to take more hours of continuing legal education (CLE) classes, citing Kobach's "well-documented history of avoiding this Court's orders" and his failure to understand even basic rules of legal evidence during court hearings, a notable admonishment for the Yale Law School-educated lawyer.^{**73} Kobach's office has appealed the ruling, but the case remains pending.⁷⁴

During the 2018 Republican gubernatorial primary election, Kobach proved that he will suppress the voting rights of anyone who gets in his way. For example, when he

was leading opponent Gov. Jeff Colyer by only a handful of votes, Kobach ordered election officials not to count mailed ballots cast by Republican or unaffiliated voters with smudged postmarks.⁷⁵ Kobach also ordered election officials not to count provisional ballots cast by unaffiliated voters, which contradicted state law.⁷⁶ Although Kobach initially refused to recuse himself from overseeing a recount of the race, he ultimately did so after significant public outcry.⁷⁷

Although Kobach lost his gubernatorial bid in November 2018 to challenger Laura Kelly (D), he is reportedly on the shortlist to replace Jeff Sessions as the next U.S. attorney general, which would have catastrophic consequences for eligible voters nationwide.⁷⁸ For instance, Kobach is the architect of Kansas' documentary proof of citizenship law, which was struck down by a federal court in 2018 for violating federal law. Kobach's law required voter registrants to provide documentation proving citizenship—such as a passport, a birth certificate, or naturalization papers—before being added to the state voter rolls even though Americans are already required to affirm their citizenship under penalty of perjury to be registered to vote.** One survey found that as many as 7 percent of American citizens, 13 million in all, do not have easy access to these kinds of documents, while nearly 9 percent of voting-age African Americans—around 2 million people—lack access to birth certificates and passports, compared with 5.5 percent of whites.⁷⁹ Kobach's documentary proof of citizenship requirement threatened the voter registrations of more than 30,000 people, which was 14 percent of all voter registrations from 2013 to 2015.⁸⁰ Of those, more than 12,000 registrants were purged from Kansas' voter lists.⁸¹ Had a federal court not intervened, up to 50,000 people could have been prevented from voting in the 2016 general election.⁸² Kobach's documentary proof of citizenship law was ruled unconstitutional by a federal court earlier this year.⁸³ An appeal remains pending.⁸⁴

Although a federal judge struck down Kansas' illegal documentary proof of citizenship voter registration requirement in June 2018, the state's strict voter ID requirement remained in place on Election Day.⁸⁵ Voters in Kansas without the requisite ID were required to vote on a provisional ballot and present ID before the canvassing board met or else have their ballot discarded. In 2016, Kansas discarded provisional ballots at a rate that was 8.5 percent higher than the national average.⁸⁶ In October 2018, Kansas officials moved the last remaining polling location in Dodge City—a majority-Hispanic community—outside the city limits and far away from public transportation. Compounding the problem, officials sent mailers to newly registered voters, incorrectly informing them that they were allowed to vote at the old location.⁸⁷ Furthermore, under Kobach's leadership, the actual process of voting was mired in confusion and major mishaps that prevented some eligible Americans from making their voices heard during the 2018 midterms. Potential voters abandoned their posts at polling places on Election Day in Johnson County, Kansas, after some electronic poll books—which are used to check in voters—ceased to function during the early hours, while at least one polling place handed out the wrong ballot for a period of time.⁸⁸

Kobach is also famous for designing the Interstate Voter Registration Crosscheck Program, which, as one commentator noted, “has evolved into a tool for shoring up claims of voter fraud instead of its original intention of keeping voter rolls accurate.”⁸⁹ The Interstate Crosscheck system compares voter lists across a handful of states to detect instances of double registrations or illegal voting. The system’s minimal search criteria, which, in practice, often consider only first and last names and birthdates, result in eligible Americans—mostly people of color—being misidentified as potential illegal voters.⁹⁰ African Americans living in states that rely on Crosscheck have a 1 in 9 chance of being flagged as potentially ineligible because African Americans tend to have more common last names.⁹¹ If a voter is Hispanic or Asian American, their chances increase to 1 in 6 and 1 in 7, respectively.⁹²

Kris Kobach’s championing of discriminatory laws and initiatives is unsurprising considering his long history of oppressing historically underrepresented groups. Kobach played a key role, for example, in establishing the George W. Bush administration’s “Muslim registry,” or “National Security Entry-Exit Registration System,” which required immigrants from some Middle Eastern nations to register with the federal government.⁹³ He was also the architect of Arizona’s controversial “show me your papers” law, or S.B. 1070. The law, which allowed police officers to request proof of citizenship from any person they had “reasonable suspicion” of being in the country illegally, was partially struck down by the U.S. Supreme Court in 2012 for being discriminatory.⁹⁴ Furthermore, Kobach has ties to white supremacists and extremist groups. Kobach, for example, was a featured speaker at an October 2015 event hosted by the Social Contract Press, which publishes the work of white nationalists, and previously worked as legal counsel for the Immigration Reform Law Institute, the legal arm for the Federation for American Immigration Reform (FAIR), whose leadership has expressed support for racial quotas.⁹⁵

Conclusion

The three men described above are among the worst voter suppressors in the country and have played crucial roles in overseeing elections in their respective states. Although some estimates have attempted to gauge exactly how many individuals were disenfranchised by one or more of their policies, the true number of eligible Americans who were dissuaded or prevented from voting due to the voter suppression efforts of these men is unknown.⁹⁶ For too long, these men have corrupted the electoral process for their own gain. Enough is enough.

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** Correction, November 26, 2018: This brief has been updated throughout to reflect that Rick Scott is the outgoing governor of Florida.*

*** Correction, November 28, 2018: This brief has been updated to reference Kris Kobach’s CLE classes and documentary proof of citizenship law.*

Endnotes

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