



October 12, 2018

By Email & Certified Mail

Brian P. Kemp
Georgia Secretary of State
214 State Capitol
Atlanta, Georgia 30334
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soscontact@sos.ga.gov

Re: Recusal from Voter Registration Duties During Campaign for Governor

Dear Secretary Kemp:

The NAACP Legal Defense and Educational Fund, Inc. (LDF) writes to urge that you recuse yourself from any involvement in or control over the voter-registration process in Georgia for the remainder of the 2018 gubernatorial campaign in which you are a candidate.¹ Based on your past and present involvement in limiting the pool of registered voters—by means of a process well-known to be error-prone—your ability to impartially perform the Secretary of State’s duty “[t]o maintain the official list of registered voters”² while running in a contested and historic election for Governor is compromised. Indeed, your role in determining which voters can participate in an election for which you are a candidate threatens to subvert the democratic process and violate fundamental principles of governmental impartiality and fairness enshrined in Georgia law and recognized by the United States Constitution.

To preserve “public confidence in the integrity of government” and ensure “the proper operation of democratic government,” the State of Georgia demands “that public officials be independent and impartial.”³ This impartiality is compromised, Georgia law explains, whenever “there exists a conflict between the private interests of an elected official or a government employee and his duties as such.”⁴ Impartiality in the performance of government functions also is mandated by the U.S. Constitution.⁵ As the Supreme Court instructed in *Romer v. Evans*, the

¹ An appendix to this letter includes a brief description about the work of LDF.

² Ga. Code Ann. § 21-2-50(a)(14).

³ Ga. Code Ann. § 45-10-21(a).

⁴ *Id.*

⁵ See *Hampton v. Mow Sun Wong*, 426 U.S. 88, 100 (1976).



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Constitution requires “a commitment to the law’s neutrality where the rights of persons are at stake.”⁶

We respectfully urge you to recognize that these standards require your recusal here. Your impartiality and commitment to the law’s neutrality are subject to serious doubt when you are simultaneously running in the election for Governor and deciding contested issues as to which voters are eligible to participate in that election in your role as Secretary of State.

During the present gubernatorial campaign, in which your opponent, Stacey Abrams, is a Black woman, you have blocked the registration of more than 53,000 Georgia voters, over 70 percent of whom are reportedly people of color.⁷ You have done so using an “exact match” protocol that you know or should know imposes discriminatory burdens on Black, Latinx, and Asian-American voters, whose names are disproportionately—and wrongly—flagged by the protocol.⁸ You previously settled a lawsuit brought by advocates challenging a substantially identical process.⁹ Your actions would appear to create needless barriers to the exercise of the fundamental right to vote and abridge the ability of voters of color to elect their candidates of choice in violation of the Voting Rights Act of 1965¹⁰ and to vote free from racial discrimination in violation of the Fourteenth and Fifteenth Amendments¹¹ and other laws.

We respectfully urge you to recognize that, under Georgia law, you should recuse yourself from any further involvement in these registration issues. It is a “core principle of republican government,” recognized by federal and state courts across the nation, “that the voters should choose their representatives, not the other way around.”¹² If you wish to maintain your candidacy

⁶ 517 U.S. 620, 623 (1996).

⁷ Ben Nadler, *Report: Georgia’s Secretary of State Is Blocking 53,000 Voter Registrations as He Runs for Governor*, TIME (Oct. 10, 2018), <http://time.com/5421332/georgia-brian-kemp-secretary-of-state-53000-voters-governor/>.

⁸ Sam Levine, *Georgia Knew Its Voter Roll Practice Was Discriminatory. It Stuck With It Anyway.*, Huffington Post (Oct. 10, 2018, 11:10 p.m.), https://www.huffingtonpost.com/entry/georgia-voter-suspensions_us_5bbeaef6e4b0c8fa1367f40a.

⁹ See Settlement Agreement, *Georgia State Conference of the NAACP v. Kemp*, No. 2:16-cv-219-WCO (Feb. 8, 2017), <https://lawyerscommittee.org/wp-content/uploads/2017/02/Executed-Settlement-Agreement.pdf>.

¹⁰ 52 U.S.C. § 10301; see Complaint for Injunctive & Declaratory Relief at 41-48, *Georgia Coalition for the Peoples’ Agenda, Inc. v. Kemp*, No. 1:18-mi-99999-UNA (N.D. Ga. Oct. 11, 2018), ECF No. 3348.

¹¹ U.S. Const. amends. XIV & XV; see, e.g. *North Carolina State Conference of NAACP v. McCrory*, 831 F. 3d 204, 233-33 (2016).

¹² *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, 135 S. Ct. 2652, 2677 (2015) (plurality opinion); see *Gill v. Whitford*, 138 S. Ct. 1916, 1940 (2018) (Kagan, J., concurring); *Vieth v. Jubelirer*, 541 U.S. 267, 332 (2004) (Stevens, J., dissenting); *Agre v. Wolf*, 284 F. Supp. 3d 591, 604 (E.D. Pa. 2018); *Harris v. McCrory*, 159 F. Supp. 3d 600, 628 (M.D.N.C. 2016) (Cogburn, J., concurring); *Vera v. Richards*, 861 F. Supp. 1304, 1334 (S.D. Tex. 1994); *League of Women Voters v. Commonwealth*, 178 A.3d 737, 740 (Pa. 2018); *Hooker*



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without further challenge on this basis and give the people of Georgia the option to fairly choose you as their Governor without the taint of an appearance of impartiality, you must recuse yourself from any further exercise of the power you currently hold to inappropriately “choose your voters.” This is clear as a matter of Georgia law, which supports recusal whenever there are “circumstances which might be construed by reasonable persons as influencing the performance of [an official’s] governmental duties.”¹³

Recusal under comparable circumstances has precedent and support. U.S. Attorney General Jeff Sessions has stated that recusal is appropriate if an official’s “impartiality might reasonably be questioned.”¹⁴ Kansas Secretary of State Kris Kobach recused himself from a primary recount during his own gubernatorial campaign earlier this year.¹⁵ We urge you to learn from these examples and immediately recuse yourself from all aspects of the Georgia Secretary of State’s duties pertaining to voter registration during the remainder of your campaign for Governor of Georgia.

Our democracy depends on free and open access to the sacred right to register and vote, a “fundamental political right” that is “preservative of all rights” and must be protected.¹⁶ Even the perception of an unfair or racially discriminatory infringement of that right undermines the legitimacy of our political system. As the chief election official in Georgia,¹⁷ a state with a well-documented history of discrimination in voting, you bear a heavy burden to fulfill the state’s “responsibility to protect the integrity of the democratic process and to ensure fair elections.”¹⁸ Thus, we call on you to avoid the appearance of impropriety or self-interest, and uphold the integrity of Georgia’s elections by immediately recusing yourself from any further involvement in or authority over the voter registration process during your candidacy for Governor of Georgia.

v. Illinois State Bd. of Elections, 63 N.E.3d 824, 856 (Ill. 2016); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 370 (Fla. 2015).

¹³ See Ga. Code. § 45-10-1(V) (Code of Ethics for Governmental Service).

¹⁴ Dep’t of Justice, Office of Public Affairs, *Attorney General Sessions Statement on Recusal* (Mar. 2, 2017), <https://www.justice.gov/opa/pr/attorney-general-sessions-statement-recusal>.

¹⁵ Associated Press, *Kobach recuses himself from recount in his own race* (Aug. 10, 2018, 11:08 a.m.), <https://www.nbcnews.com/politics/elections/kobach-recuses-himself-recount-his-own-race-n899596>

¹⁶ *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886); see also Ga. Const. art. II, § 1, ¶ II (granting an explicit right to register and vote).

¹⁷ Ga. Code Ann. § 21-2-50(b).

¹⁸ Ga. Code Ann. § 21-5-2.



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If you have any questions, please contact Sherrilyn Ifill via Leah Aden at 212-965-7715.

Sincerely,

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Appendix

Since its founding in 1940, LDF has been a pioneer in the struggle to secure and protect the voting rights of Black people. LDF has been involved in much of the precedent-setting litigation related to securing voting rights for people of color. *See, e.g., Shelby Cnty., Ala. v. Holder*, 133 S. Ct. 2612 (2013) (LDF defending Section 5 of the Voting Rights Act before the U.S. Supreme Court). LDF uses legal, legislative, public education, and other advocacy strategies to promote the full, equal, and active participation of Black people in America's democracy. LDF has been a separate entity from the NAACP, and its state branches, since 1957.

In recent years, LDF has successfully worked to ensure that Black voters in Georgia have the equal opportunity to elect their candidates of choice. *See Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) (LDF successfully challenging the at-large electoral method to the county board of commissioners and board of education in Fayette County). LDF also has advocated against proposals that restrict access to the ballot box for Georgia's voters. In 2013, LDF successfully advocated against a proposal that would have closed all but one polling place in Baker County.¹⁹ Similarly, LDF and other civil rights organizations successfully advocated against Randolph County's attempt to close all but one polling place, as well as sent letters to the other 158 counties in the state urging them to consider the impact of polling place changes on Black voters.²⁰ Moreover, over two successive legislative sessions in 2014 and 2015, LDF, along with other civil rights and pro-democracy organizations challenged statewide legislative bills that would have reduced the number of early voting days across Georgia's counties.²¹ In 2018, LDF and other civil rights and pro-democracy organizations successfully opposed the enactment of a legislative bill that would have shortened voting hours on

¹⁹ Ltr. from Ryan P. Haygood, Director, and Leah C. Aden, Assistant Counsel, LDF, to the Baker County Board of Elections and Registration (Oct. 4, 2013) (on file with authors); Letter from Karin S. Tabb, Chairperson, Baker County Board of Elections and Registration, to Ryan P. Haygood, Director, and Leah Aden, Assistant Counsel, LDF (Oct. 7, 2013) (on file with authors).

²⁰ Ltr. from Sherrilyn Ifill, President and Director-Counsel, Samuel Spital, Director of Litigation, Leah C. Aden, Deputy Director of Litigation, and John S. Cusick, Equal Justice Works Fellow, LDF, to Todd Black, Randolph County Board of Elections and Registration (Aug. 22, 2018) (on file with authors); Sherrilyn Ifill, President and Director-Counsel, Samuel Spital, Director of Litigation, Leah C. Aden, Deputy Director of Litigation, and John S. Cusick, Equal Justice Works Fellow, LDF, and Sean J. Young, Legal Director, ACLU of Georgia, to Baker County Board of Elections and Registrations (Aug. 22, 2018), http://www.naacpldf.org/files/case_issue/Baker%20-%20BOE.PDF.

²¹ Zachary Roth, *In Voting Rights Win, Bill to Cut Georgia Early Voting is Dead*, MSNBC (Apr. 6, 2015), <http://www.msnbc.com/msnbc/voting-rights-win-bill-cut-georgia-early-voting-dead>; *PPG's Advocacy Halts Efforts to Reduce Early Voting in Georgia*, NAACP LDF (Mar. 24, 2014), <http://www.naacpldf.org/press-release/ppgsadvocacy-halts-efforts-reduce-early-voting-georgia>.



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Election Day in Atlanta and would have effectively eliminated early voting on the Sunday before Election Day throughout Georgia.²²

²² Ltr. from Leah Aden, Senior Counsel, LDF, to Members of the Georgia General Assembly (Mar. 26, 2018), <http://www.naacpldf.org/files/about-us/Ltr.%20Georgia%20General%20Assembly%20re%20S.B.%20363%203.26.18%20%28final%29.pdf>.