

PETITION OF CRIMINAL COMPLAINTS
AGAINST SECRETARY OF STATE BRIAN KEMP

1. Background

We, the undersigned, present the following evidence of potential violations of Georgia law committed in Fulton County by Georgia Secretary of State Brian Kemp. We request that the Fulton County Public Integrity Unit review this evidence and provide assistance as needed in collecting corroborating evidence and presenting the evidence to a Fulton County Grand Jury so that they may determine if Georgia law has been violated.

2. Jurisdiction

The principal office of the Secretary of State is located in the Georgia State Capitol at 206 Washington St. in Fulton County, Georgia where Secretary Kemp performs his duties. All alleged crimes herein were committed or caused to be committed by Secretary Kemp in Fulton County. The alleged crimes affected residents of Fulton County and other jurisdictions. The Fulton County District Attorney's Office, the Fulton County Public Integrity Unit and the Fulton County Grand Jury have jurisdiction in this matter. The jurisdiction of the Grand Jury is specifically enumerated in the Ga. Const., Art I, s I, par. XI. The scope of that jurisdiction is found in the Grand Juror's oath in O.C.G.A. 15-12-67(b).

3. Summary of Complaints

This petition contains five separate complaints each with their own set of facts, alleged counts, citations and references. The five complaints are:

- Use of Government Property for Campaigning
- Criminal Negligence in Destroying Election Data
- Ballot Tampering
- Threatening an Elector
- Violations of Oath of Office

Complaint 1

Use of Government Property for Campaigning

Complaint 1 General Facts:

From the time he took office on or about January 8, 2010 until present, Secretary of State Brian Kemp has been ultimately responsible for the content and management of the Georgia Secretary of State web site found at <http://sos.ga.gov>

On or before October 24, 2016 Brian Kemp caused said Georgia Secretary of State web site to have a Facebook icon link to his personal Facebook gubernatorial campaign page.

On or before October 24, 2016 Brian Kemp caused said Georgia Secretary of State web site to have a Twitter icon link to his personal Twitter gubernatorial campaign feed

On or before October 24, 2016 Brian Kemp caused said Georgia Secretary of State web site to have an After Hours Contact banner link to his personal Facebook gubernatorial campaign page.

On or before October 24, 2016 Brian Kemp engaged one or more state employees to create the web page source code for said Facebook icon link to his personal Facebook gubernatorial campaign page.

On or before October 24, 2016 Brian Kemp engaged one or more state employees to create the web page source code for said Twitter icon link to his personal Twitter gubernatorial campaign feed.

On or before October 24, 2016 Brian Kemp engaged one or more state employees to create the web page source code for said After Hours Contact banner to link to his personal Facebook gubernatorial campaign page.

Brian Kemp's gubernatorial Facebook site contained an endorsement of Karen Handel in her race for Georgia's 6th District U.S. Congressional seat.

Brian Kemp's gubernatorial Twitter feed contained an endorsement of Karen Handel in her race for Georgia's 6th District U.S. Congressional seat.

When confronted by a local television station news reporter on May 9, 2017 about said links, Brian Kemp's gubernatorial campaign manager told the reporter that said links were "standard procedure".

The reporter and her TV station news investigators found that the only other candidate who had placed personal campaign links on his official government web page was Lieutenant Governor Casey Cagle.

Lieutenant Governor Cagle had similar links to his Facebook and Twitter gubernatorial campaign pages removed from the Lieutenant Governor web site on or about the evening of May 9th.

Brian Kemp continued to allow the Georgia Secretary of State web site to have the said Facebook icon link to his personal Facebook gubernatorial page through June 8th 2017.

Brian Kemp continued to allow the Georgia Secretary of State web site to have said Twitter icon link to his personal Twitter gubernatorial page through June 8th 2017.

Brian Kemp continued to allow the Georgia Secretary of State web site to have said After Hours Contact banner to link to his personal Facebook gubernatorial page through June 8th 2017.

Complaint 1 Counts Alleged:

Brian Kemp allowed a Facebook icon link to be [created](#) from the Georgia Secretary of State web site to his gubernatorial campaign Facebook [page](#) and allowed it to operate from at least October 24th 2016 through June 8th 2017.

Brian Kemp allowed a Twitter icon link to be [created](#) from the Georgia Secretary of State web site to his gubernatorial campaign Twitter feed and allowed it to operate from at least October 24th 2016 through June 8th 2017.

Brian Kemp allowed an After Hours Contact [banner link](#) to be created from the Georgia Secretary of State web site to his gubernatorial campaign Facebook page and allowed it to operate from at least October 24th 2016 through June 8th 2017.

The Facebook icon link from the Georgia Secretary of State web site to Brian Kemp's personal campaign Facebook [page](#) also [featured](#) Karen Handel's picture and an endorsement by Brian Kemp of her 6th District candidacy from on or about April 19th 2017 through June 8th 2017.

The Twitter icon link from the Georgia Secretary of State web site to Brian Kemp's personal campaign Twitter feed also [endorsed](#) Karen Handel's 6th District candidacy from on or about April 19th 2017 through June 8th 2017.

Brian Kemp continued to allow the SOS web site to be used for campaign purposes for another month after being informed that he was using government property and taxpayer funds to promote his campaign on May 9th 2017.

Complaint 1 Citations:

All five above acts of an agency giving promotional value to a candidate are prohibited in Georgia Law [\[O.C.G.A. § 21-5-30.2\(b\), O.C.G.A. § 21-5-30.2\(b\)\]](#).

The provable facts as to the use of taxpayer money to code promotional links to campaign sites indicate five potential violations of the elements of [O.C.G.A. 16-8-2](#)

Complaint 1 References:

[Internet archives of SOS web site from 2016](#)

[Internet archives of SOS web site from 2017](#)

See links to videos of SOS web site embedded within alleged counts.

Complaint 2:

Criminal Negligence in Elections Data Destruction

Complaint 2 General Facts:

From the time Brian Kemp took office on or about January 8th, 2010 through the time of the incidents described below, the office of the Secretary of State (SOS) has been enjoined in a contract with Kennesaw State University (KSU) for election preparation, election technical support, and other related election services.

KSU supplied said election preparation, services and support through its organization entitled the Center for Election Systems (CES) which has reporting responsibility to the Secretary of State.

On or about August 28th, 2016, internet security researcher Logan Lamb phoned and Emailed CES Executive Director Merle King to inform him that CES elections data on the *elections.kennesaw.edu* server was exposed to the public through the internet where any attacker could gain control of the elections server.

On or about March 1st, 2017, Lamb and colleague Christopher Grayson determined that exposure of said CES elections sever to the public was not mitigated and that the vulnerabilities still existed.

Grayson contacted KSU instructor Andy Greene who notified KSU Information Technology Services (UITs) Director and Chief Information Security Officer Stephen Gay about the exposure and risks.

On or about March 2nd, 2017 UITs seized the CES elections server, called the Federal Bureau of Investigation (FBI) and gave them the CES elections server on or about March 3, 2017.

On or about March 15th, CES Director Michael Barnes contacted Gay to request the CES elections data because CES had no backup of said elections data.

On or about March 17th, the FBI returned the CES elections server to UITs Director Gay who made it available to Director Barnes and CES.

Once the server was returned to the possession of Director Barnes and CES, there is no evidence that CES staff made a backup after it was returned.

On or about March 31st, KSU issued a press release concerning the matter.

By or before April 18th, UITS completed an “*Incident after Action Report*” that contained some remediation activities, preventive measures and other recommended actions as a result of the incident.

Included in said UITS report was an activity to format the elections server, which would destroy its data, and re-install said server on an isolated network.

On or about April 24th, UITS Director Gay sent the report to CES Directors Barnes and King requesting a review.

Neither CES Director responded to the Email request for a review sent by Director Gay.

On or about July 7th, UITS destroyed the data on said *elections.kennesaw.edu* elections server that was returned from the FBI after being accessed by Lamb.

On or about August 9th, UITS magnetically deleted all data on other CES servers used internally.

After learning of the data destruction, Brian Kemp denied knowledge of it in posts to his October 30th Facebook page and Twitter feeds and he stated that the SOS office had opened an investigation into the matter earlier in the day.

After learning of the data destruction by CES, Brian Kemp characterized it in October 30th posts to his Facebook page and Twitter feed as “reckless behavior”, “inexcusable conduct”, “gross incompetence”, and “undeniable ineptitude”.

Since the time of Brian Kemp’s October 30th comments, the SOS office has hired Director Barnes from CES to work in the SOS office at an increase in pay from his 2016-2017 contract budget.

On Oct 30th, four days after opening the investigation, Brian Kemp’s legal counsel Ryan Germany issued a two-page SOS report concluding in pertinent part that the data destruction was “standard procedure”.

Said two-page SOS Report also concluded, in pertinent part, that said elections data destroyed at KSU on or about July 7th was still available

Ryan Germany did not obtain for the SOS office from the FBI a copy of said elections data that was destroyed on or about July 7th.

Ryan Germany has never been sworn to an oath of office since being hired by Brian Kemp for the SOS office in or prior to 2014.

Ryan Germany is not an elections investigator in the office of the Secretary of State.

Said SOS Report ignored standard SOS procedures for election investigations and failed to identify the complainant, the respondent groups, the impacted elections, the documents reviewed, exhibits or any individuals who were interviewed in the conduct of the investigation.

Said SOS Report did not investigate:

- Why mission critical elections data was placed on a publicly exposed web server in conflict with basic internet design security procedures
- Why CES staff failed repeatedly to secure the election data once it was placed on that server
- Why CES failed to maintain a proper back up of their critical elections data
- Why CES failed to realize they had no backup of elections data for two weeks after an incident
- Why CES allowed mission critical elections data to be destroyed without a backup
- Why CES failed to perform a forensic risk assessment defining impact of potential prior breaches that may have occurred during the period of time when the elections data was vulnerable and exposed
- Why CES allowed elections data to be destroyed despite having no forensic risk assessment
- Why CES allowed elections data to be destroyed in conflict with SOS data retention policies

Complaint 2 Counts Alleged:

Brian Kemp allowed Georgia's critical and private election data to be placed on a public web server in conflict with generally accepted internet design principles.

On or about March 3, 2017, when Brian Kemp became aware of long standing vulnerabilities and unauthorized accesses of elections data, he failed to order any type of risk assessment to determine the impact of any past breach and impact to elections that may have occurred when the server was vulnerable.

On or about March 3, 2017, when Brian Kemp became aware of long standing vulnerabilities and unauthorized accesses of elections data, he failed to order any type of incident action instructions and failed to review the Incident after Action Report that was created on April 18th by the KSU UITS staff.

When the elections server was returned from the Federal Bureau of Investigation on March 7th, Brian Kemp failed to ensure that the elections data was backed up.

When the elections server was returned from the Federal Bureau of Investigation on March 7th, Brian Kemp failed to ensure that data retention policies for the elections data were enforced.

Brian Kemp caused an SOS investigation into the election matters cited above to be initiated and failed to ensure that the investigation would follow standard SOS election investigation procedures.

Brian Kemp caused said SOS investigation into the election data destruction that occurred at KSU but failed to ensure that the investigation would investigate critical election matters such as why election data was exposed, why no breach assessment was performed to define the impact of the exposure, why no backup existed, why the data was destroyed with no backup or why the data was destroyed in violation of SOS data retention policies.

After becoming aware of the problems at CES, Brian Kemp hired Director Barnes, who evidence indicates was at least partially responsible for unacceptable actions such as exposing critical elections data, failing to assess the impact of the exposure, failing to back up the elections data, destroying elections data without a backup or assessment and failing to follow applicable data retention policies.

Complaint 2 Citations:

The totality of alleged counts as to exposure of Georgia's elections data, failure to backup said elections data, failure to assess potential breaches of elections data, failure to comply with SOS data retention policies, destruction of said elections data, conduct of SOS investigation that does not comply with standard SOS investigative techniques, failure to properly investigate these incidents, each or all constitute criminal negligence individually or in their entirety [O.C.G.A. 16-2-1\(b\)](#)

The destruction of government property or interference with it is a violation [O.C.G.A. 16-7-24](#)

The provable facts as to the destruction of election data address elements of [O.C.G.A. 16-8-2](#)

The creation of a SOS report that failed to investigate several reasons for critical actions not taken and failed to follow standard election investigation procedures indicates numerous violations of [O.C.G.A. 16-8-3](#)

Complaint 2 References:

VoterGA [Georgia Elections Destruction Audit](#) and embedded references

Complaint 3 Ballot Tampering

Complaint 3 General Facts:

On or about April 21, 2010 the Georgia General Assembly passed [HB277](#) to create a Transportation Special Purpose Local Option Sales Tax (T-SPLOST) referendum among other things.

On or about June 2, 2010 Governor Nathan Deal signed the bill into law as Act 554 of the 2010 General Assembly.

The Act 554 [bill text](#) made changes and additions to Georgia law including a new section O.C.G.A. 48-8-244 that provided for said referendum to be placed on a ballot for voters.

Act 554 defined the ballot language legally mandated by O.C.G.A. 44-8-244 to read as follows:

“Shall _____ County's transportation system and the transportation network in this region and the state be improved by providing for a 1 percent special district transportation sales and use tax for the purpose of transportation projects and programs for a period of ten years?”

From the time he took office on or about January 8, 2010 until present, Secretary of State Brian Kemp has been ultimately responsible for causing the creation of ballots and ensuring referendum language placed on any ballot is legally correct.

In 2012, while in control ballot creation, Brian Kemp caused the ballot language to be changed to include promotional language.

Said promotional language reads:

- *"Provides for local transportation projects to create jobs and reduce traffic congestion with citizen oversight."*

The actual 2012 ballot contained promotional language not authorized by law under O.C.G.A. 48-8-244 or any other statute.

When Brian Kemp was questioned about the referendum promotional language prior to the election, his legal counsel implied in an Email that the referendum was a constitutional amendment.

When Brian Kemp was questioned about the referendum promotional language prior to the election, his legal counsel also implied in an Email that the referendum promotional language was a “preamble”. Said “preamble” was not authorized.

Said promotional language that Brian Kemp caused to be added to the ballot contained unproven claims about job creation and reduced traffic congestion.

Said promotional language that Brian Kemp caused to be added to the ballot contained a false or deceptive claim that transportation project would have citizen oversight while the bill language actually provided for oversight by political appointees.

On or about June 28th, 2012, Attorney Pitts Carr sent a [letter](#) to Brian Kemp asking, among other things, what authority he invoked to alter the legally mandated referendum ballot language.

On or about June 28th, 2012 Attorney Pitts Carr also submitted his letter as a Freedom of Information Act Request.

Brian Kemp did not respond to the letter from Pitts Carr sent on or about June 28th, 2012 as a Freedom of Information Act request.

Brian Kemp never removed the promotional language he added to the ballot from the time he was first notified on June 19th until the time the July 31st referendum was conducted.

Complaint 3 Counts Alleged:

1. Brian Kemp deprived Georgia voters, including Fulton County residents of their right to vote on the July 31st, 2012 referendum according to the [exact interpretation of the ballot question](#) that was legally mandated by the General Assembly.
2. When notified of the language deviation on or about June 19th 2012, Brian Kemp took no action to remove the language that was legally unauthorized by the General Assembly.
3. When notified of the language deviation on or about June 19th 2012, Brian Kemp caused his legal counsel to produce an Email falsely implying that the

unauthorized language that he added was a preamble and the referendum was a constitutional amendment.

4. Brian Kemp never responded to the June 28th letter submitted to him as a Freedom of Information Act request to, among other things, cite the authority he used in changing the legally mandated language.

Complaint 3 Citations

The exact language for said ballot was legally mandated by the General Assembly via [O.C.G.A. 48-8-244](#)

Issuing false, deceptive or misleading statements or causing a legal counsel to do address elements of [O.C.G.A. 16-10-20](#), [O.C.G.A. 16-8-3](#) and [O.C.G.A. 16-8-4](#)

Failure to respond to a Freedom of Act request is a violation of 5 U.S.C. § 552, As Amended by Public Law No. 104-231, 110 Stat. 3048

Complaint 3 References:

[2012 sample SPLOST ballot language](#)

[Pitts Carr June 28th letter](#)

Complaint 3 Statute of Limitations:

Brian Kemp is still in office at the time of the submission of this petition and the statute of limitations does not start for this alleged violation until Mr. Kemp retires from office.

The unauthorized addition of promotional language on said ballot continues to be unknown to many of those referendum voters including one or more petitioners who did not know such language was added and such language may be illegal.

The Grand Jury members further may be unaware of said violation, and they remain as the judges of the law as to statute of limitation regarding this count.

Complaint 4: Threatening an Elector

Complaint 4 General Facts:

On or about November 14th, 2017, Brian Kemp posted on his social media Twitter feed a picture of a Georgia elector with text that included the statement: *“I stopped left-wing radicals from undermining our elections and Georgia Values. This Democracy Spring activist – who wants to recall me - is next”*.

Complaint 4 Counts Alleged:

Brian Kemp publicly posted a picture of an elector with a [personal threat](#) specifically against him.

Complaint 4 Citations:

Any person who threatens an elector has likely violated [O.C.G.A. 21-2-567](#)

Complaint 4 References:

[Brian Kemp’s social media posted threat](#)

Complaint 5: Oath of Office Violations

Complaint 5 General Facts:

This complaint considers the entirety of facts presented in the previous complaints.

Complaint 5 Counts Alleged:

Brian Kemp refused to remove campaign links from a government web site for over 30 days after being notified their existence is a likely violation of law.

Brian Kemp failed to perform duties to protect election data in a variety of ways described in Count 2.

Brian Kemp willfully disregarded the law when notified that language he caused to have placed on a ballot for a referendum was not legal.

Brian Kemp personally threatened a specific elector be placing his picture on social media and stating that he would “is next”.

The provable facts from the previous complaints demonstrate Brian Kemp’s systemic history of willful and intentional disregard for his oath of office.

Complaint 5 Citations:

Anyone who willfully and intentionally ignores his oath of office is in violation of [O.C.G.A. 16-10-1](#)

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