

## **Race, misinformation, and voter depression**

*By Guy-Uriel E. Charles and Mandy Boltax*

Since the 2016 election, scholars have focused a lot of attention on the intentional deployment of misinformation to influence electoral politics. The growing body of research on “information disorder” emphasizes our evolving social media landscape, which is an increasingly dominant environment for news that is driven by artificial intelligence, online behavior tracking, and data-analytics. Researchers have expressed concern about rising hyperpartisanship, a product of confirmation bias, motivated reasoning, and highly personalized social networks that minimize exposure to dissenting opinions and maximize positive feedback for certain beliefs. Other reports raise alarms about the shrinking market for facts in our increasingly dysfunctional political system, warning of foreign trolls, bots, and deepfakes sowing confusion and distrust, and domestic ideologues amplifying populist rhetoric that erodes institutional trust.

Academics have paid less attention, however, to misinformation directed to Black voters. There has been insufficient focus on how information disorder uniquely affects Black Americans, who have been disproportionately subjected to micro-targeted content designed to demobilize, depress, and discourage their democratic participation. This lack of focus is unjustified particularly because disinformation targeting Black voters has been a distinctive electoral strategy of the Trump campaign.

In December 2016, following an electoral victory that caught pundits, pollsters, and many American voters by surprise, then President-elect Donald Trump embarked on a “thank you” tour of states where he had prevailed against Democratic nominee Hillary Clinton. Addressing a Michigan crowd, Trump took the time to [thank](#) “the African American community” for being “great to us. They came through, big league. Big league.”

While it makes sense for a candidate following a victory, particularly one that was as unexpected as Trump’s, to thank his or her supporters, Trump’s apparent gratitude to Black voters was odd. Notwithstanding the fact that the contest between Trump and Clinton was a close one, Black voters were not part of Trump’s core constituency. According to a [Pew survey](#), 91% of Black voters voted for Hillary Clinton, and only 6% of Black voters voted for Trump. Though it was true that Trump slightly outperformed the prior Republican nominee, Mitt Romney, among Black voters, Romney was running against Barack Obama, the nation’s first Black president; the baseline was low. Compared to other Republican nominees not running against Obama, Trump did not

compare as favorably. [“Trump earned less support from black Americans than any Republican in 40 years, except those who ran against Obama.”](#)

What was remarkable about the 2016 presidential election, other than the fact that Trump emerged as the winner, was the fact that a large percentage of Black voters did not vote. That datum did not escape Trump’s attention. Trump noted the observation and attributed the lower turnout among Black voters as an indication of their support for him. “If they had any doubt,” [he said](#), referring to Black voters, “they didn’t vote, and that was almost as good because a lot of people didn’t show up, because they felt good about me.”

In a moment of uncharacteristic [self-awareness](#), Trump recognized that he owed his Electoral College victory, at least in part, to the significant decrease in Black voter turnout, compared to the 2012 presidential election. By all accounts, if there was a factor that contributed to Trump’s victory over Clinton, it was certainly the fact that fewer Black voters showed up to vote. Black voter turnout [was notably lower](#) in the battleground states that decided the election: Wisconsin, Pennsylvania, and Michigan.

But Trump’s conclusion that fewer Black voters went to the polls than expected as an expression of support for his candidacy was not believable. More pertinently, the Trump campaign, by its own admission, was engaged in what it called a voter suppression campaign. [“We have three major voter suppression operations under way,”](#) a senior Trump campaign official reportedly said. And the voter suppression operation was aimed at the constituencies that the Trump campaign believed were critical to a Clinton victory, particularly Black voters.

By parasitically using the rising popularity of social media platforms, the 2016 U.S. presidential election marked a critical evolution in voter identification strategies. Taking a page out of the GOP playbook, Russian operatives and the Trump campaign both launched influence campaigns designed to target Black voters with misinformation that would “confuse, distract, and ultimately discourage” their participation in the election. Russian efforts used phony accounts and bogus advertisements to flood Black audiences with appeals like “no lives matter to Hillary Clinton” and “not voting is a way to exercise our rights.” These advertisements contained verifiably false information, include a directive to “vote by text message,” [a 2019 Senate Intelligence Committee report on Russian interference in the election confirmed](#):

“No single group of Americans was targeted by IRA information operatives more than African-Americans. By far, race and related issues were the preferred target of the information warfare campaign designed to divide the country in 2016.”

Meanwhile, the Trump campaign orchestrated a similar effort to stoke apathy and inaction among Black voters. A dataset the campaign purchased from notorious political consulting group Cambridge Analytica sorted 3.5 million Black voters in crucial battleground states into a category marked “Deterrence” — apparently [singling out the group for targeted social media messaging designed to discourage voting in the 2016 election](#). In 2020, many of the same domestic misinformation tactics seemed to be in play, and Black Americans were again disproportionately targets for misinformation. The messaging, though not always based entirely on false information, is nonetheless aimed to depress the turnout of Black voters.

The critical question is whether election law has anything to say about these new vote depression tactics. Vote depression is different from the other types of voting discriminatory devices — vote denial and vote dilution — that election law is currently designed to address. Vote depression — unlike vote denial and vote dilution, which occur through the proliferation of state election laws — does not depend upon state action. It is subtler, more elusive, and harder to identify. Vote depression tactics are often intermingled with campaign speech and voter mobilization efforts. Voter depression targets a particular group. These efforts disseminate misinformation to sow mistrust in the electoral process, erode faith in democratic institutions, or foster discontent between voters and their preferred party or candidate by lying about or exaggerating potentially divisive issues and events. They take advantage of social groupings and information asymmetries to dissuade and demobilize voters from participating and engaging, as opposed to persuading and mobilizing voters to participate and engage in the political process.

While the use of technology and social media by candidates, individuals, or foreign actors to deliberately spread misinformation in the course of an electoral campaign raises important epistemic worries and are important to understand, we caution that the technocentric framing might limit our ability to understand the root cause of the problem. Yes, a future in which a disoriented American electorate is left stumbling through a “post-truth” hellscape, unable to “separate truth from falsity” and powerless against malicious forces of foreign interference and domestic manipulation should be avoided. And to the extent that social media and technology serve as the handmaidens of this dystopian democratic future, we must come to terms with their distinctive roles.

But the targeting of Black voters through misinformation is not new. Inasmuch as the misinformation epidemic is institutional and not technological, we ought to be sure that our prognosis and proposed remedies are not based upon a misdiagnosis of the phenomenon. While we agree that misinformation signals an unhealthy democracy,

misinformation, particularly misinformation targeting marginalized communities, is a product of a democratic system that incentivizes one of two dominant political parties to strategically disenfranchise a growing segment of the electorate based on race. We suggest that misinformation, abetted by innovations in technology and social media, is novel only to the extent that it is the newest chapter in a long history of strategies designed to demobilize Black voters. Our political landscape is rife with racial tensions and razor-thin election margins, in which Black voter turnout can make or break elections. Academics ought to try to separate the role of technology, the role of race, and the role of politics in understanding race-based misinformation campaigns.

Thus, we need to both place misinformation targeting Black voters within historical context *and* understand the way in which technology facilitates vote depression. We also need to come to terms with the structural, electoral, and partisan incentives for targeting Black voters. We then need to understand what aspects of vote depression are currently illegal, what aspects can be regulated by law, and what aspects will have to be addressed by the private political marketplace.

*Guy-Uriel E. Charles is the Edward & Ellen Schwarzman Professor of Law at Duke Law School. Mandy Boltax is Duke Law student and a member of the 2022 graduating class.*