



April 21, 2020

VIA FACSIMILE

Custodian of Records
University Archives and Records Center
Ekstrom Library 400
University of Louisville
Louisville, KY 40292
Fax: 502.852.6673

Re: Open Records Act Request

Dear Custodian of Records:

Pursuant to the Kentucky Open Records Act (KORA), KRS § 61.870 et seq., American Oversight makes the following request for records.

Requested Records

American Oversight requests that the University of Louisville produce copies of the following records:

1. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) between Associate Professor/former Assistant Professor Justin Walker and any of the following individuals or organizations:
 - a. Senator Mitch McConnell or any member of his staff, including anyone communicating from an email address ending in @mccconnell.senate.gov or @teammitch.com
 - b. Justice Anthony Kennedy
 - c. Justice/former Judge Brett Kavanaugh
 - d. Anyone communicating from an email address ending in @supremecourt.gov
 - e. Anyone communicating from an email address ending in @cadc.uscourts.gov
 - f. Anyone communicating from an email address ending in @dcd.uscourts.gov
 - g. Leonard Leo (including but not limited to the email address leonard.leo@fed-soc.org or leonard.leo@mindspring.com)
 - h. Carrie Severino (including but not limited to the email address



- carrie.severino@gmail.com)
- i. Tony Perkins (including but not limited to the email address arp@frc.org)
- j. C. Boyden Gray (including but not limited to the email address cbg@cboydengray.com)
- k. Brian Benczkowski (including but not limited to email addresses ending in @usdoj.gov or the email address brian.benczkowski@kirkland.com)
- l. John Malcolm (including but not limited to the email address john.malcolm@heritage.org)
- m. Alden Abbott (including but not limited to the email address alden.abbott@heritage.org)
- n. Roger Severino (including but not limited to the email address roger.severino@heritage.org and roger.severino@hhs.gov)
- o. Jay Sekulow
- p. Jordan Sekulow
- q. Chris Cox (including but not limited to the email address ccox@nrahq.org)
- r. Wayne LaPierre
- s. Neomi Rao
- t. David Lehman (including but not limited to the email address dlehman@nrahq.org)
- u. Lily Claffee
- v. Jamil Jaffer
- w. Kelly Shackelford (including but not limited to the email address kshackelford@libertyinstitute.org)
- x. Kellie Fiedorek
- y. Doug Cox
- z. John Bash
- aa. Zina Gelman Bash
- bb. Josh Blackman
- cc. Kyle Hawkins

For item 1 of this request, please provide all responsive records from May 1, 2015, through the date the search is conducted.

2. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) sent by Associate Professor/former Assistant Professor Justin Walker to any of the following individuals or organizations:
 - a. Anyone communicating from an email address ending in @usdoj.gov
 - b. Anyone communicating from an email address ending in @gibsondunn.com

- c. Federalist Society, including anyone communicating from an email address ending in @fedsoc.org or @fed-soc.org
- d. Family Research Council, including anyone communicating from an email address ending in @frc.org
- a. Family Research Council Action, including anyone communicating from an email address ending @frcaction.org
- e. Boyden Gray & Associates, including anyone communicating from an email address ending in @boydengrayassociates.com or @cboydengray.com
- f. Heritage Foundation, including anyone communicating from an email address ending in @heritage.org
- g. Heritage Action for America, including anyone communicating from an email address ending in @heritageaction.org
- h. National Rifle Association, including anyone communicating from an email address ending in @nra.org, @nrahq.org, @nraia.org, or @am.com
- a. Concerned Women for America including anyone communicating from an email address ending in @concernedwomen.org or @cwfa.org
- b. American Center for Law & Justice, including anyone communicating from an email address ending in @aclj.org
- c. Judicial Crisis Network, including anyone communicating from an email address ending in @judicialnetwork.org
- d. First Liberty Institute, including anyone communicating from an email address ending @firstliberty.org @libertyinstitute.org
- e. Alliance Defending Freedom, including anyone communicating from an email address ending in @adflegal.org
- f. Americans for Prosperity, including anyone communicating from an email address ending in @afphq.org or @americansforprosperity.org
- g. Liberty Counsel, including anyone communicating from an email address ending in @lc.org or @libertycounsel.org
- h. Liberty Counsel Action, including anyone communicating from an email address ending in @lcaction.org
- i. Becket Fund for Religious Liberty, including anyone communicating from an email address ending in @becketlaw.org
- j. Concerned Veterans for America, including anyone communicating from an email address ending in @cv4a.org

For item 2 of this request, please provide all responsive records from January 1, 2019, through the date the search is conducted.

3. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar invitation attachments) sent by Associate Professor/former Assistant Professor Justin Walker containing any of the following key terms:

- McConnell
- Chao
- Kennedy
- Kavanaugh
- Rumsfeld
- Trump
- POTUS
- Cipollone
- Mulvaney
- Meadows
- “great again”
- MAGA
- fedsoc
- “fed soc”
- “federalist society”
- “Leonard Leo”
- nominate
- nominated
- nomination
- “DC Circuit”
- “D.C. Circuit”
- “Western District”
- Griffith
- “confirmation hearing”
- “not qualified”
- ABA
- “American Bar Association”
- “trial experience”
- “litigation experience”
- temperament
- backgrounder
- Roe
- Abortion
- “birth control”
- contraception
- contraceptive
- unborn
- “religious freedom”
- “religious liberty”
- ACA
- “Affordable Care Act”
- Obamacare
- “individual mandate”
- “On Fire Christian Center”

For item 3 of this request, please provide all responsive records from January 1, 2019, through the date the search is conducted.

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited items 2 and 3 of its request to emails sent by Professor Walker. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Professor Walker's response to an email from a responsive email domain or containing a listed key term and the initial received message are responsive to this request and should be produced.

Please note that, for each item of this request, American Oversight does not seek, and that this request specifically excludes, the initial mailing of newsletters or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Professor Walker received a mass-distribution newsletter from one of the listed organizations, that initial email would not be responsive to this request. However, if Professor Walker forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

Pursuant to KRS § 61.880(1), American Oversight requests that you notify us within three workdays as to whether you will comply with this request.

Statement of Noncommercial Purpose

This request is for noncommercial purposes, and American Oversight respectfully requests a waiver of any fees associated with processing this request for records. To the extent any fees are charged, pursuant to KRS § 61.874(3), American Oversight asks that such fees be limited to the actual cost of reproduction and exclude the cost of agency staff time.

This request is primarily and fundamentally for non-commercial purposes. American Oversight seeks the records requested to inform the public regarding the qualifications and background of United States District Court Judge Justin Walker, who has recently been nominated to serve on the United States Court of Appeals for the D.C. Circuit.¹ A judgeship on the D.C. Circuit is a prestigious post that can ultimately lead to a nomination

¹ Seung Min Kim, *Trump Taps Former Kavanaugh Clerk to Fill Vacancy on Powerful D.C. Appeals Court*, WASH. POST (Apr. 3, 2020, 12:41 PM), https://www.washingtonpost.com/politics/trump-taps-former-kavanaugh-clerk-to-fill-vacancy-on-powerful-dc-appeals-court/2020/04/03/3ddb5e50-7446-11ea-ae50-7148009252e3_story.html.

to the U.S. Supreme Court.² Records with the potential to shed light on the background and qualifications of a federal judge with a lifetime appointment would contribute significantly to public understanding of operations of the government, particularly where the judge in question has notably limited experience and whose opinions have already stirred controversy.³

Furthermore, as a 501(c)(3) nonprofit, American Oversight does not have a commercial purpose and the release of the information requested is not in American Oversight's financial interest. American Oversight's mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.⁴

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through numerous substantive analyses posted to its website.⁵ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department's process for issuing such waivers;⁶ posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the administration's proposed construction of

² *See id.*

³ *See, e.g.,* Debra Cassens Weiss, *Trump Nominee to DC Circuit Was Rated 'Not Qualified' by ABA for Trial Court Judgeship*, ABA JOURNAL (Apr. 3, 2020, 11:54 AM), <https://www.abajournal.com/news/article/trump-nominee-to-dc-circuit-was-rated-not-qualified-by-aba-for-trial-court-judgeship>; Ian Millhiser, *The Controversy Over a Trump Judge's Oddly Partisan 'Religious Liberty' Opinion, Explained*, VOX (Apr. 14, 2020, 8:30 AM), <https://www.vox.com/policy-and-politics/2020/4/14/21218939/trump-judge-justin-walker-religious-liberty-on-fire-partisan-klan>.

⁴ American Oversight currently has approximately 16,100 followers on Facebook and 102,400 followers on Twitter. American Oversight, FACEBOOK, <https://www.facebook.com/weareoversight/> (last visited March 18, 2020); American Oversight (@weareoversight), TWITTER, <https://twitter.com/weareoversight> (last visited March 18, 2020).

⁵ *News*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/blog>.

⁶ *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

a barrier along the U.S.-Mexico border, and analyses of what those records reveal;⁷ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;⁸ posting records and analysis relating to the federal government's efforts to sell nuclear technology to Saudi Arabia;⁹ and posting records and analysis regarding the Department of Justice's decision in response to demands from Congress to direct a U.S. Attorney to undertake a wide-ranging review and make recommendations regarding criminal investigations relating to the President's political opponents and allegations of misconduct by the Department of Justice itself and the Federal Bureau of Investigation.¹⁰

Guidance Regarding the Search & Processing of Requested Records

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.

⁷ See generally *Audit the Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

⁸ *Documents Reveal Ben Carson Jr.'s Attempts to Use His Influence at HUD to Help His Business*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/documents-reveal-ben-carson-jr-s-attempts-to-use-his-influence-at-hud-to-help-his-business>.

⁹ *Investigating the Trump Administration's Efforts to Sell Nuclear Technology to Saudi Arabia*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/investigating-the-trump-administrations-efforts-to-sell-nuclear-technology-to-saudi-arabia>.

¹⁰ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, AMERICAN OVERSIGHT, <https://www.americanoversight.org/sessions-letter>.

- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. If a request is denied in whole, please state specifically why it is not reasonable to segregate portions of the record for release.
- Please take appropriate steps to ensure that records responsive to this request are not deleted by the agency before the completion of processing for this request. If records potentially responsive to this request are likely to be located on systems where they are subject to potential deletion, including on a scheduled basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

Conclusion

If you have any questions regarding how to construe this request for records or believe that further discussions regarding search and processing would facilitate a more efficient production of records of interest to American Oversight, please do not hesitate to contact American Oversight to discuss this request. American Oversight welcomes an opportunity to discuss its request with you before you undertake your search or incur duplication costs. By working together at the outset, American Oversight and your agency can decrease the likelihood of costly and time-consuming litigation in the future.

Where the requested records are maintained in electronic format, please provide responsive material in an electronic format by email. Alternatively, please provide responsive material in native format or in PDF format on a USB drive. Please send any responsive material being sent by mail to American Oversight, 1030 15th Street NW, Suite B255, Washington, DC 20005. If it will accelerate release of responsive records to American Oversight, please also provide responsive material on a rolling basis.

We share a common mission to promote transparency in government. American Oversight looks forward to working with your agency on this request. If you do not understand any part of this request, please contact Katherine Anthony at foia@americanoversight.org or (202) 897-3918. Also, if American Oversight's request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,



Austin R. Evers
Executive Director
American Oversight