



October 15, 2020

VIA EMAIL

South Carolina Election Commission
1122 Lady Street, Suite 500
Columbia, SC 29201
elections@elections.sc.gov

Re: Freedom of Information Act Request

Dear Freedom of Information Officer:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq., American Oversight makes the following request for records.

On October 5, 2020, the U.S. Supreme Court essentially reinstated the requirement that South Carolina absentee ballots must have a witness signature, staying the application of a lower court ruling that witness signatures could not be required.¹ The Supreme Court created only a narrow exception for ballots already returned and received within two days of the court's order.² But at least one South Carolina county—Georgetown County—has already sent (and continued to send after the Court's decision) instructions with absentee ballots in bold font and all capital letters that no witness signature is required: "**NO WITNESS SIGNATURE NEEDED.**"³ American Oversight seeks records with the potential to shed light on remedial action South Carolina election authorities are taking to remedy any such instructions to prevent voters from being unfairly disenfranchised in light of the Supreme Court's order.

Requested Records

American Oversight requests that your office promptly produce the following records:⁴

¹ Adam Liptak, *Supreme Court Revives Witness Requirement for South Carolina Absentee Ballots*, N.Y. Times, Oct. 5, 2020, <https://www.nytimes.com/2020/10/05/us/supreme-court-south-carolina-absentee-ballots.html>.

² *Id.*

³ Trip Gabriel, @tripgabriel, Twitter (Oct. 10, 2020, 2:03 PM), <https://twitter.com/tripgabriel/status/1314989946944606209>.

⁴ Pursuant to S.C. Code Ann. § 30-4-30(C), please notify American Oversight of your final determination as to the public availability of the requested records within ten business days and produce the records within thirty calendar days after issuing your final determination.



All email communications (including emails, complete email chains, and email attachments) sent by Executive Director Marci Andino, Director of Voter Services Howard M. Knapp, or Commission Chair John Wells, containing any of the following key terms:

- 1) "Supreme Court"
- 2) "witness signature"
- 3) "witness signatures"
- 4) "ballot witness"
- 5) "signature requirement"
- 6) "witness requirement"
- 7) "ballot instructions"
- 8) "instruction sheet"

Please provide all responsive records from October 5, 2020, to the date of the search.

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by the specified officials. 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 a specified official's response to an email and the initial received message are responsive to this request and should be produced.

Fee Waiver Request

In accordance with S.C. Code Ann. § 30-4-30(B), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested records is in the public interest because it will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. In addition, the request is primarily and fundamentally for non-commercial purposes.

A waiver of fees is "in the public interest because furnishing the information can be considered as primarily benefiting the general public."⁵ The public has a significant interest in understanding whether election officials are taking action to ensure that voters have correct information about what is required to have their votes counted. Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the government, including whether election officials have taken action to make sure incorrect information about the witness signature requirement for absentee ballots has been corrected. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public's understanding of the government's activities would be enhanced through American Oversight's analysis and publication of these records.

⁵ S.C. Code Ann. § 30-4-30(B).

Furthermore, American Oversight’s work is aimed solely at serving the public interest. 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.⁶

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.⁷ Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records related to the organization’s State Accountability Project covering voting rights issues in various states;⁸ 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;⁹ 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 a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹⁰ posting records regarding potential self-dealing at the Department of Housing & Urban Development and related analysis;¹¹ posting records and analysis relating to the

⁶ American Oversight currently has approximately 15,600 page likes on Facebook and 105,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 13, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 13, 2020).

⁷ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁸ *State Accountability Project*, American Oversight, <https://www.americanoversight.org/state-accountability-project>.

⁹ *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>.

¹⁰ *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>.

¹¹ *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>.

federal government's efforts to sell nuclear technology to Saudi Arabia;¹² 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.¹³

Accordingly, American Oversight qualifies for a fee waiver.

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:

- 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.
- 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.¹⁴ 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.

¹² *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>.

¹³ *Sessions' Letter Shows DOJ Acted on Trump's Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

¹⁴ S.C. Code Ann. § 30-4-40.

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 search or 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 possible, 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, have any questions, or foresee any problems in fully releasing the requested records, please contact Dan McGrath at records@americanoversight.org or (202) 897-4213.

Sincerely,



Austin R. Evers
Executive Director
American Oversight