



November 19, 2020

VIA EMAIL

FOIA Coordinator
Charter County of Wayne
Guardian Building
500 Griswold, 31st Floor
Detroit, MI 48226
foiarequests@waynecounty.com

Re: Freedom of Information Act Request

Dear FOIA Coordinator:

Pursuant to Michigan's Freedom of Information Act (FOIA), as codified at Mich. Comp. Laws Ann. § 15.231 et seq., American Oversight makes the following request for records.

On November 13, 2020, Wayne County Circuit Chief Judge Timothy Kenny rejected poll challengers' request to stop the canvassing and certification of election results in the county, dismissing the plaintiffs' allegations of misconduct by poll workers in Detroit as "incorrect and not credible."¹ On November 17, 2020, the deadline for certification, the Wayne County Board of Canvassers initially split votes for and against certification 2-2 along partisan lines, with Chairperson Monica Palmer indicating she would be willing to certify the results for jurisdictions other than Detroit.² The Board later unanimously voted in favor of certifying the results while also passing a resolution requesting Secretary of State Jocelyn Benson to conduct an independent audit of discrepancies in the county.³ The following day, Chairperson Palmer and Board Member

¹ Clara Hendrickson, *Detroit Judge Denies Request to Stop Election Certification in Wayne County*, Detroit Free Press (Nov. 13, 2020, 2:29 PM), <https://www.freep.com/story/news/local/michigan/detroit/2020/11/13/judge-rules-against-separate-audit-wayne-county-election/6272704002/>; Clara Hendrickson, *Michigan Court of Appeals Rejects Appeal in Lawsuit Seeking to Delay Wayne County Election Certification*, Detroit Free Press (updated Nov. 16, 2020, 9:53 PM), <https://www.freep.com/story/news/local/michigan/detroit/2020/11/16/court-appeals-wont-delay-wayne-county-election-certification/6319951002/>.

² Clara Hendrickson, *GOP Members Reverse Course, Vote to Certify Wayne County Election Results*, Detroit Free Press (updated Nov. 18, 2020, 10:50 AM), <https://www.freep.com/story/news/local/michigan/detroit/2020/11/17/wayne-county-election-certification/6309668002/>.

³ *Id.*



William Hartmann signed affidavits attempting to rescind their earlier votes to certify the county's election results.⁴

American Oversight seeks records with the potential to shed light on the Wayne County Board of Canvassers' initial refusal to certify election results and subsequent attempts to "rescind" their certification votes, including whether or to what extent board members may have acted at the behest of external political interests.

Requested Records

American Oversight requests that the Wayne County Board of Canvassers respond to this request for the following records within five business days:

All text message chains/conversations, or message chains/conversations on messaging applications similar in form to text messages (such as Signal, WhatsApp, Facebook Messenger, Twitter DMs, etc.), between (a) Chairperson Monica Palmer or Board Member William Hartmann, and (b) any of the following external parties:

External Parties:

1. David A. Kallman, Senior Legal Counsel, Great Lakes Justice Center
2. Stephen P. Kallman, Senior Legal Counsel, Great Lakes Justice Center
3. Erin Mersino, Senior Legal Counsel, Great Lakes Justice Center
4. Jack Jordan, Attorney, Great Lakes Justice Center
5. Matthew Morgan, General Counsel, Donald J. Trump for President Campaign
6. Aaron Van Langevelde, Vice Chair, Michigan State Board of Canvassers
7. Norman Shinkle, Member, Michigan State Board of Canvassers
8. John Gore, Partner, Jones Day
9. Alex Popatov, Associate, Jones Day
10. Justin Clark, Partner, Michael Best
11. Nathan Groth, Associate, Michael Best,
12. Stefan Passantino, Partner, Michael Best
13. Kory Langhofer, Managing Partner, Statecraft Law
14. Thomas Basile, Partner, Statecraft Law
15. Brett Johnson, Partner, Snell & Wilmer Law
16. Eric Spencer, Partner, Snell & Wilmer Law
17. Jason Stuckey, Senior Associate, Bricker Law
18. Jason Torchinsky, Partner, Holtzman Vogel Josefiak Torchinsky PLLC
19. Jay Sekulow, Chief Counsel, American Center for Law & Justice
20. Matt Schlapp, Chairman, American Conservative Union

⁴ Beth LeBlanc, *GOP Canvassers Attempt to Rescind Votes to Certify Wayne County Election*, The Detroit News (updated Nov. 19, 2020, 8:10 AM), <https://www.detroitnews.com/story/news/local/michigan/2020/11/19/gop-canvassers-attempt-rescind-votes-certify-wayne-county-vote/3775246001/>.

21. Rudolph Giuliani, Personal Attorney to President Trump, or anyone communicating on his behalf (such as Jo Ann Zafonte, Christianne Allen, Beau Wagner)
22. Senator Lindsey Graham
23. Richard Straus Perry, Chief of Staff to Senator Lindsey Graham
24. Jeff Landry, Attorney General of Louisiana
25. Joseph diGenova, Partner, DiGenova & Toensing
26. Victoria Toensing, Partner, DiGenova & Toensing
27. Sidney Powell, President, Sidney Powell P.C.
28. Jenna Ellis, Special Counsel, Thomas More Society
29. Ronna McDaniel, Chairwoman, Republican National Committee
30. Laura Cox, Chair, Michigan Republican Party
31. Terry Bowman, Co-chairman, Michigan Republican Party
32. John Solomon, Editor in Chief, Just the News

Please provide all responsive records from November 3, 2020, through the date the search is conducted.

Fee Waiver Request

In accordance with Mich. Comp. Laws Ann. § 15.234(2), American Oversight requests a waiver of fees associated with processing this request for records. A waiver of fees for this request “is in the public interest because searching for or furnishing copies of the public record[s] can be considered as primarily benefiting the general public.”⁵

The public has a significant interest in the conduct of elections in Wayne County, including the certification of results.⁶ Records with the potential to shed light on this matter will help the general public understand whether or to what extent external entities, including those with partisan motivations, have attempted to exert influence over election administration and certification.

American Oversight is committed to transparency and makes the responses agencies provide to FOIA requests publicly available, and the general public’s understanding of the government’s activities would be enhanced through American Oversight’s analysis and publication of these records. 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.⁷

⁵ Mich. Comp. Laws Ann. § 15.234(2).

⁶ *See supra*, notes 1 & 2

⁷ American Oversight currently has approximately 15,600 page likes on Facebook and 106,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Nov. 18, 2020); American

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.⁸ 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;⁹ an ethics waiver received by a senior U.S. Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers;¹⁰ posting records received as part of American Oversight’s “Audit the Wall” project to gather and analyze information related to the federal administration’s proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;¹¹ posting records regarding potential self-dealing at the U.S. Department of Housing & Urban Development and related analysis;¹² posting records and analysis relating to the federal government’s efforts to sell nuclear technology to Saudi Arabia;¹³ and posting records and analysis regarding the U.S. 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.¹⁴

Finally, this request is primarily and fundamentally for non-commercial purposes. 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.

Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Nov. 18, 2020).

⁸ *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁹ *State Accountability Project*, American Oversight, <https://www.americanoversight.org/state-accountability-project>.

¹⁰ *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>.

¹¹ *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>.

¹² *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>.

¹³ *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>.

¹⁴ *Sessions’ Letter Shows DOJ Acted on Trump’s Authoritarian Demand to Investigate Clinton*, American Oversight, <https://www.americanoversight.org/sessions-letter>.

Accordingly, American Oversight qualifies for a fee waiver.

Guidance Regarding the Search & Processing of Requested 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 use all tools available to your agency to conduct a complete and efficient search for potentially responsive records. 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.**
- 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.¹⁵ 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 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

¹⁵ Mich. Comp. Laws Ann. § 15.234(14).

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 Christine Monahan at records@americanoversight.org or (202) 869-5244. 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,

A handwritten signature in blue ink that reads "Austin R. Evers". The signature is fluid and cursive, with a long horizontal line extending to the left.

Austin R. Evers
Executive Director
American Oversight