



February 16, 2021

**VIA EMAIL**

Justin Riches  
Public Records Counsel  
Arizona House of Representatives  
1700 W. Washington Street  
Phoenix, AZ 85007-2844  
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**Re: Public Records Request**

Dear Public Records Officer:

Pursuant to the Arizona Public Records Law, A.R.S. §§ 39-121 et seq., American Oversight makes the following request for records.

On January 6, 2021, former Arizona state representative Anthony Kern reportedly participated in the rally outside of the U.S. Capitol, from which a riotous crowd stormed the building. There, Kern took the stage and stated “We’re here for such a time as this, right? So, this is a revolution, right? 1776 is past, right?”<sup>1</sup>

American Oversight seeks records with the potential to shed light on former state representative Anthony Kern’s potential participation, knowledge of, and involvement in an attempt to overturn the results of the 2020 presidential election.

**Requested Records**

American Oversight requests that the Arizona House of Representatives promptly produce the following records:

- 1) All email communications (including email messages, complete email chains, email attachments, calendar invitations, and calendar attachments) sent by Rep. Anthony Kern containing any of the key terms listed below.

Please provide all responsive records from January 1, 2021, through the date a search is conducted.

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<sup>1</sup> Robert Anglen et al., *Arizona Lawmakers Who Pushed ‘Stop the Steal’ Face Scrutiny for Presence at U.S. Capitol Riot*, AZ Central (Jan. 24, 2021, 7:27 AM), <https://www.azcentral.com/story/news/local/arizona-investigations/2021/01/14/arizona-lawmakers-pushed-stop-steal-rally-appeared-u-s-capitol-mark-finchem-anthony-kern/4147370001/>.



Key terms:

i.	Capitol	xiii.	Patriot
ii.	“Stop the steal”	xiv.	Pelosi
iii.	“Save America”	xv.	Schumer
iv.	Storm	xvi.	Pence
v.	Trump	xvii.	“Our House”
vi.	Biden	xviii.	MAGA
vii.	Congress	xix.	KAG
viii.	DC	xx.	“great again”
ix.	D.C.	xxi.	Caravan
x.	Washington	xxii.	Revolution
xi.	RNC	xxiii.	1776
xii.	DNC		

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited Item 1 of its request to communications sent by Rep. Kern. This means, for example, that with respect to emails, both Rep. Kern’s response to an email containing one of the listed key terms and the initial received message are responsive to this request and should be produced.

- 2) All text message chains/conversations, or messages on similar applications (such as Signal, WhatsApp, or Facebook Messenger) sent to or received by Rep. Anthony Kern containing any of the key terms listed in Item 1 above.

Please provide all responsive records from January 1, 2021, through the date a search is conducted.

American Oversight requests complete text threads/conversations. This means, for example, if Rep. Kern sent or received a text message containing any of the key terms listed above, the complete text thread/conversation for the timeframe listed above should be produced, and not just the message containing the key term.

- 3) Records reflecting any and all expenditures of Rep. Anthony Kern’s trip on or about January 6, 2021 to Washington, DC, including, but not limited to, records of any reimbursements submitted by or on behalf of Rep. Kern.

Please provide all responsive records from January 1, 2021, through the date a search is conducted.

Responsive records would include, but are not limited to, hotel or other lodging invoices or receipts; legislature-issued charge card or travel card reports; receipts from airlines, rental car, or other transportation companies; records reflecting the cost of government transportation; receipts or other records reflecting the cost of meals or refreshments; or records reflecting per diem payments.

## **Statement of Noncommercial Purpose**

This request is made for noncommercial purposes. American Oversight seeks records regarding the communications and expenses from a representative who reportedly participated in a rally that grew into a riot. The events of January 6, 2021, including the role of members of state legislatures in them, have drawn both local<sup>2</sup> and national media attention.<sup>3</sup> Records with the potential to shed light on this issue would contribute significantly to public understanding of operations of the government, including whether and to what extent Arizona representatives were involved in the event's planning and aftermath.

Because American Oversight is a 501(c)(3) nonprofit, this request is not in American Oversight's financial interest and is not made for a commercial purpose. 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.<sup>4</sup>

Because this request is made for noncommercial purposes, American Oversight requests that any fees charged in connection with processing this request be limited to copying and postage charges, if applicable.<sup>5</sup> Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

## **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:

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<sup>2</sup> *Id.*; Josh Kelety, *Arizona Lawmaker Mark Finchem Struggles to Keep His Capitol Riot Story Straight*, Phoenix New Times (Jan. 11, 2021, 3:40 PM), <https://www.phoenixnewtimes.com/news/arizona-mark-finchem-doubles-down-on-defending-capitol-rioters-11524876>.

<sup>3</sup> Soo Kim, *Every Republican State Legislator Spotted at Rally Before Capitol Riot*, Newsweek (Jan. 8, 2021, 10:27 AM), <https://www.newsweek.com/every-republican-state-legislator-rally-capitol-riot-1560007>.

<sup>4</sup> American Oversight currently has approximately 15,700 page likes on Facebook and 105,600 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 12, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Feb. 12, 2021).

<sup>5</sup> A.R.S. § 39-121.01(D)(1); *see also Hanania v. City of Tucson*, 128 Ariz. 135, 624 P.2d 332 (Ct. App. 1980). Furthermore, because this request is for noncommercial purposes, additional fees provided for under A.R.S. § 39-121.03(A) are not applicable and should not be assessed.

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage,) and voicemail messages.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their broadest sense, to include any written, typed, recorded, graphic, printed, or audio material of any kind. We seek records of any kind, including electronic records, audiotapes, videotapes, and photographs, as well as letters, emails, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions.
- 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.
- If any records are withheld in full or in part, pursuant to A.R.S. § 39-121.01(D)(2), please provide an index of records or categories of records that have been withheld and the reasons the records or categories of records have been withheld.
- 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 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, please contact Khahilia Shaw at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 539-6507.

Sincerely,

/s/ Khahilia Shaw  
Khahilia Shaw  
on behalf of  
American Oversight