



June 8, 2021

VIA EMAIL

Senate President Karen Fann
Arizona State Capitol Complex
1700 W. Washington Street
Phoenix, AZ 85007
kfann@azleg.gov

Norm Moore
Senate Public Records Attorney
400 West Congress, Ste. 201
Tucson, AZ 85701
nmoore@azleg.gov

Re: Public Records Request

Dear Senate President Fann and Public Records Attorney Moore:

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

The Arizona Senate's investigation of the November 2020 election in Maricopa County continues to raise grave concerns from observers and elections experts¹ even as it has inspired calls for similar investigations in other jurisdictions.² Though the operation, led by contractor Cyber Ninjas, has yet to recount hundreds of thousands of votes,³ public

¹ See, e.g., Jen Fifield, *Arizona Secretary of State May Not Let Maricopa County Reuse Voting Machines After Audit*, AZ Republic (updated May 20, 2021, 6:48 PM), <https://www.azcentral.com/story/news/politics/elections/2021/05/20/katie-hobbs-may-not-let-maricopa-co-reuse-voting-machines-after-audit/5185817001/>; Rosalind Helderan, *Observers Report Ballots and Laptop Computers Have Been Left Unattended in Arizona Recount, According to Secretary of State*, Wash. Post (May 5, 2021, 7:18 PM), https://www.washingtonpost.com/politics/arizona-recount-observers/2021/05/05/b807c990-adc3-11eb-b476-c3b287e52a01_story.html.

² Josh Dawsey & Rosalind Helderan, *Trump Has Grown Increasingly Consumed with Ballot Audits As He Pushes Falsehood That Election Was Stolen*, Wash. Post (June 2, 2021, 7:50 PM), https://www.washingtonpost.com/politics/trump-2020-election-audits/2021/06/02/95fd3004-c2ec-11eb-8c34-f8095f2dc445_story.html.

³ Maricopa Arizona Audit (@ArizonaAudit), Twitter (June 2, 2021, 11:37 AM), <https://twitter.com/ArizonaAudit/status/1400114248223576069>.

reporting indicates that the Senate is considering a separate review of digital ballot images.⁴

American Oversight seeks records with the potential to shed light on the Arizona Senate's investigation of the November 2020 election, including records relating to the expansion of the current operation or plans for subsequent efforts. Prompt disclosure of these records is crucial to meaningfully inform the public about the details of the audit process before the auditors have finished reviewing ballots and handling election equipment. These requests are directed to Senate President Fann and the Arizona Senate as a branch of the State, and your response must include records of your agents and contractors, including Cyber Ninjas, Ken Bennett and Randy Pullen.

Requested Records

American Oversight requests that your office promptly produce the following records. To be clear, American Oversight is not requesting the reproduction of records that have already been produced in response to prior records requests by American Oversight.

All electronic communications (including emails, email attachments, text messages, or messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) between the following individuals:

Part 1

(a) Ken Bennett (or anyone communicating on his behalf, including Julie Fisher and John Brakey) and (b) any member of the Arizona Senate, including staff members or assistants.

The relevant time period for this part of the request is January 1, 2021 and ongoing.

Part 2

- (c) Randy Pullen (or anyone communicating on his behalf, including Julie Fisher and John Brakey) and (d) any member of the Arizona Senate, including staff members or assistants.

The relevant time period for this part of the request is April 1, 2021 and ongoing.

This request should be interpreted to include, but not be limited to communications with local, state, or federal governmental officials; contractors, subcontractors, or volunteers; consultants, counsel, or formal or informal advisors; media or observers; or fundraisers.

⁴ Jen Fifiield & Robert Anglen, *Another Election Audit Coming? Arizona Senate Considers Using New Technology for Digital Recount*, AZ Republic (updated May 28, 2021, 3:52 PM), <https://www.azcentral.com/story/news/politics/elections/2021/05/28/arizona-senate-considers-using-new-technology-2nd-audit-maricopa-county-election/7478902002/>.

Please consider this a standing request, the response to which should be updated promptly each time new information is added to any responsive records or new responsive records are created. *See W. Valley View, Inc. v. Maricopa Cty. Sheriff's Off.*, 216 Ariz. 225, 228 (App. 2007).

“Prompt” disclosure of these records is required by the law and is crucial to meaningfully inform the public on the details and scope of the audit process while the public still has an opportunity to affect the conduct of the process. The public has a legitimate interest in the manner in which the audit is conducted, as serious concerns exist with regard to protecting voter privacy, including the physical security of the facility where votes are being counted and the mishandling of paper ballots and election equipment.⁵ Further, the current investigation raises potential questions concerning the integrity of certain state government officials, including the extent to which these actors seek to undermine public confidence in the electoral process. Mr. Bennett, the former Arizona Secretary of State acting as liaison between Cyber Ninjas and the Senate, encouraged the public to fund the audit’s estimated \$2.8 million goal through a website which explicitly labels the operation as “the most in-depth Election Fraud Audit that has ever been performed.”⁶ Similarly, public reporting indicates that one of the contractors previously engaged in the audit conducted a post-election review in Pennsylvania under contract with Defending the Republic, an organization led by Sidney Powell, an attorney who raised numerous legal challenges attempting to overturn the 2020 presidential election results in numerous states.⁷

Disclosure of the requested records is most meaningful if it occurs sufficiently promptly to inform the public about the process while there is still time for them to petition their government to alter the process. Under the direction of Cyber Ninjas, more than 1.2 million paper ballots have already been counted.⁸ Furthermore, public reporting indicates that the Senate may soon undertake a parallel review of digital ballot images, possibly contracting with another entity with no prior election audit experience.⁹ Disclosure of records after the recount or potential further reviews been completed would be too late to prevent any potential harms resulting from those processes.

⁵ *See supra*, note 1.

⁶ *About the Audit*, The America Project, (last visited June 7, 2021), <https://fundtheaudit.com/maricopa/>; *see also* Rosalind S. Helderman & Josh Dawsey, *As Trump Seizes on Arizona Ballot Audit, Election Officials Fear Partisan Vote Counts Could be the Norm in Future Elections*, Wash. Post (Apr. 29, 2021, 3:05 PM), https://www.washingtonpost.com/politics/trump-arizona-recount/2021/04/29/bcd8d832-a798-11eb-bca5-048b2759a489_story.html.

⁷ Jeremy Duda, *Group Led by ‘Kraken’ Lawyer Sidney Powell Hired the Firm Recounting AZ’s Election to Probe a PA Election*, AZ Mirror, May 24, 2021, <https://www.azmirror.com/2021/05/24/group-led-by-kraken-lawyer-sidney-powell-hired-the-firm-recounting-azs-election-to-probe-a-pa-election/>.

⁸ *See supra*, note 3.

⁹ *See* Fifield & Anglen, *supra* note 4.

Statement of Noncommercial Purpose

This request is made for noncommercial purposes. American Oversight seeks records regarding the Arizona Senate's investigation of the November 2020 election. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including regarding the continuation or expansion of the Senate's effort or the influence or involvement of external parties.¹⁰

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.¹¹

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.¹² 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:

- 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, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

¹⁰ See *supra*, notes 2 & 4.

¹¹ American Oversight currently has approximately 15,660 page likes on Facebook and 106,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 2, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 2, 2021).

¹² 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.

- 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 or 202.539.6507.

Sincerely,

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