



June 9, 2021

VIA EMAIL

The Honorable Devin LeMahieu
Majority Leader, Wisconsin State Senate
Room 211 South
State Capitol
PO Box 7882
Madison, WI 53707
sen.lemahieu@legis.wisconsin.gov

Re: Public Records Law Request

Dear Senator LeMahieu:

Pursuant to Wisconsin's public records law, Wis. Stat. §§ 19.31–19.39, American Oversight makes the following request for copies of records.

On April 29, 2021, Dane County Judge Stephen Ehlke voided contracts between legislators and attorneys providing counsel in advance of anticipated litigation over the state's redistricting process.¹ Prior to the contracts' cancellation, Assembly Speaker Robin Vos and Senate Majority Leader Devin LeMahieu allocated nearly \$1 million of public funds for legal services prior to any litigation being filed.²

American Oversight seeks records with the potential to shed light on efforts to prepare for redistricting in Wisconsin, including regarding the use of public funds for hiring external contractors, consultants, or counsel.

Requested Records

American Oversight requests that your office produce the following records "as soon as practicable and without delay":³

¹ Patrick Marley, *Dane County Judge Voids Redistricting Contract with Republicans and Their Lawyers*, Milwaukee J.-Sentinel (updated Apr. 29, 2021, 5:05 PM), <https://www.jsonline.com/story/news/politics/2021/04/29/dane-county-judge-voids-redistricting-contract-republicans/4889078001/>.

² Patrick Marley, *Wisconsin Republicans Hire Redistricting Lawyers That Could Cost \$1 Million or More*, Milwaukee J.-Sentinel (updated Feb. 16, 2021, 8:40 AM), <https://www.jsonline.com/story/news/politics/2021/02/16/wisconsin-republicans-hire-redistricting-lawyers-1-million/6757773002/>.

³ Wis. Stat. § 19.35(4)(a).



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 (A) Majority Leader LeMahieu or anyone communicating on his behalf, such as a scheduler or assistant; his Chief of Staff Jennifer Malcore; Deputy Chief of Staff Ashley Czaja; or Policy Advisor Brian Radday; and (B) any of the following entities listed below. In the case of emails and texts, the search should include those sent or received from the listed officials' personal accounts or devices if they were used to conduct official business, as well those sent from official email addresses or official phones.

Specified Parties:

1. Adam Mortara (including, but not limited to, mortara@lawfairllc.com), or anyone communicating on behalf of Consovoy McCarthy PLLC (including anyone communicating from an email address ending in @consvoymccarthy.com)
2. Kevin St. John, or anyone communicating on behalf of Bell Giftos St. John (including anyone communicating from an email address ending in @bellgiftos.com)
3. U.S. Representative and former Wisconsin Senate Majority Leader, Scott Fitzgerald (including, but not limited to, email addresses ending in @mail.house.gov, @legis.wisconsin.gov)
4. Former Chief of Staff to Sen. Fitzgerald, Dan Romportl
5. Former Legislative Aide to Sen. Fitzgerald, Adam Foltz
6. Former Legislative Aide to Sen. Fitzgerald, Tad Ottman

Please provide all responsive records from December 1, 2020 through the date the search is conducted.

Fee Waiver Request

In accordance with Wis. Stat. § 19.35(3)(e), American Oversight respectfully requests that the records be produced without charge. Providing American Oversight with a waiver of fees is in the “public interest” because American Oversight will, in accordance with its organizational mission, make the records available to the public without charge. These disclosures will likely contribute to a better understanding of relevant government procedures by the general public.

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. Rather, American Oversight’s mission is to serve the public by promoting transparency in government, educating the public about government activities, and ensuring 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.⁴ American Oversight also makes materials it gathers available on its public website⁵ and promotes their availability on social media platforms, such as Facebook and Twitter.⁶

The public has a significant interest in efforts to prepare for the redistricting process in Wisconsin.⁷ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including understanding the allocation of public funds for anticipated litigation over redistricting. 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.

American Oversight asks that if its request for a fee waiver is denied in whole or in part, that you contact us prior to incurring any costs.

Guidance Regarding the Search & Processing of Requested Records

American Oversight seeks all responsive records regardless of format, medium, or physical characteristics. In conducting your search, please understand the term "record" in its 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 includes any attachments to these records. **No category of material should be omitted from search, collection, and production.**

Please search all locations and systems likely to have responsive records regarding official business. **You may not exclude searches of files or emails in the personal custody of your officials, such as personal email accounts.** Emails conducting

⁴ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; *State Investigations*, American Oversight, <https://www.americanoversight.org/states>; see, e.g., *State Government Contacts with Voting-Restriction Activists*, American Oversight, <https://www.americanoversight.org/investigation/state-government-contacts-with-voting-restriction-activists>; *Wisconsin Documents Offer Window into Early Uncertainty over COVID-19*, American Oversight, <https://www.americanoversight.org/wisconsin-documents-offer-window-into-early-uncertainty-over-covid-19>.

⁵ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

⁶ 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).

⁷ See *supra*, notes 1 & 2.

government business sent or received on the personal account of the authority's officer or employee constitutes a record for purposes of Wisconsin's public records laws.⁸

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.⁹ If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. If a request is denied in whole, please state specifically that 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 Emma Lewis at records@americanoversight.org or (202) 919-6303. Also, if American Oversight's

⁸ Wisc. Dep't of J., *Wisconsin Public Records Law Compliance Guide*, Oct. 2019, at 3, <https://www.doj.state.wi.us/sites/default/files/office-open-government/Resources/PRL-GUIDE.pdf>.

⁹ Wis. Stat. § 19.36(6).

request for a fee waiver is not granted in full, please contact us immediately upon making such a determination.

Sincerely,

/s/ Emma Lewis

Emma Lewis
on behalf of
American Oversight