



August 13, 2021

VIA EMAIL

Representative Janel Brandtjen
Wisconsin State Capitol, Room 12 West
Madison, WI 53708
rep.brandtjen@legis.wi.gov

Re: Public Records Law Request

Dear Representative Brandtjen:

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

On May 26, 2021, Wisconsin State Assembly Speaker Robin Vos indicated that the legislature would hire three former law enforcement officers and a supervising attorney to investigate the November 2020 election.¹ Since the time of this announcement, the names of several of the contracted individuals have been made public, including former Milwaukee Police Detective Mike Sandvick and former Wisconsin Supreme Court Justice Michael Gableman, whose past actions have raised concerns over the partiality of the investigation.²

On July 26, Representative Brandtjen announced that the Assembly Campaign and Elections Committee intended to “initiate a more intensive investigation” of alleged

¹ Patrick Marley, *Top Wisconsin Republican Robin Vos Hires Former Cops to Investigate November Election*, Milwaukee J. Sentinel (updated May 26, 2021, 5:16 PM), <https://www.jsonline.com/story/news/politics/elections/2021/05/26/wisconsin-republican-robin-vos-hires-ex-cops-investigate-election/7455034002/>.

² Patrick Marley & Molly Beck, *The Election Investigator Hired by Vos Wrote a Police Report that Spawned Partisan Fight over Voting Rules in 2008*, Milwaukee J. Sentinel (updated May 28, 2021, 3:07 PM), <https://www.jsonline.com/story/news/politics/2021/05/28/wisconsin-election-investigator-vos-hired-has-partisan-past/7477548002/>; Molly Beck, *A Former Wisconsin Supreme Court Justice Will Oversee the Latest Election Review Sought by the State's GOP Leaders*, Milwaukee J. Sentinel (updated June 26, 2021, 2:45 PM), <https://www.jsonline.com/story/news/politics/elections/2021/06/26/former-wisconsin-supreme-court-justice-michael-gableman-will-oversee-robin-vos-2020-election-review/5357319001/>.



fraud,³ separate from that overseen by Assembly Speaker Robin Vos,⁴ and issued subpoenas to Milwaukee and Brown Counties for election materials the following week.⁵ On July 30, Speaker Vos announced that two investigators had quit due to time demands and former justice Gableman would instead serve as “special counsel” in an expansion of the original investigation.⁶ Many details remain obscure regarding the inquiries announced by Speaker Vos and Representative Brandtjen, including when contractors’ terms commenced and/or ended, and whether or to what extent the two investigations will intersect or overlap.

American Oversight seeks records with the potential to shed light on the Wisconsin legislature’s investigations of the November 2020 election.

Requested Records

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:⁷

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) sent or received by Representative Janel Brandtjen, or anyone communicating on her behalf, such as a scheduler or assistant, or by her chief of staff regarding any investigations of the 2020 election.

This request should be interpreted to include, but not be limited to:

1. Communications with contracted investigators (including, but not limited to, Mike Sandvick and Steve Page) and former justice Michael Gableman, now designated Special Counsel, as well as with any individuals or entities contracted following the investigation’s expansion⁸
2. Communications with any contractors, subcontractors, counsel, consultants, formal or informal advisors, temporary workers, or volunteers associated with

³ Melanie Conklin, *Elections Chair Initiates a Forensic Arizona-Style Audit in Wisconsin*, WI Examiner, July 27, 2021, <https://wisconsinexaminer.com/brief/elections-chair-initiates-a-forensic-arizona-style-audit-in-wisconsin/>.

⁴ See Marley, *supra* note 1.

⁵ Patrick Marley, *et al.*, *Republican Lawmaker Seeks to Seize Ballots and Voting Machines in Milwaukee and Brown Counties*, Milwaukee J. Sentinel (updated Aug. 8, 2021, 10:26 PM), <https://www.jsonline.com/story/news/politics/2021/08/06/gop-lawmaker-seeks-seize-ballots-and-voting-machines-milwaukee-and-brown-counties/5512163001/>.

⁶ Scott Bauer, *Wisconsin Republican Expands 2020 Election Investigation*, Associated Press, July 30, 2021, <https://apnews.com/article/joe-biden-elections-wisconsin-election-2020-d59426b14d870a5722f574ed246b6f79>.

⁷ Wis. Stat. § 19.35(4)(a).

⁸ *Id.*

- any investigations, or communications regarding the procurement of those individuals or entities
3. Communications with advocacy groups, external fundraisers, representatives of political parties, or news media regarding the investigation
 4. Communications regarding any proposed interim or final work products associated with any investigations, or actions to be taken based on any findings
 5. Communications regarding the Assembly's authorization of any investigations or the legal basis of any investigations
 6. Communications regarding the scope and conduct of any investigations, including, but not limited to, the potential or actual use of subpoena power⁹ or referrals to prosecutors
 7. Communications regarding the selection and evaluation of contractors
 8. Communications regarding the underlying premise of any investigation, including, but not limited to suspected or alleged fraud, misconduct, or irregularities
 9. Communications regarding the expansion of the investigation overseen by Speaker Vos and its relation to the investigation announced by Rep. Brandtjen on July 26¹⁰
 10. Communications regarding the statement issued by former President Trump accusing Speaker Vos and other Wisconsin officials of concealing "election corruption" and the subsequent call for Speaker Vos's resignation¹¹
 11. Communications between members or agents of the Wisconsin Legislature and former President Trump or his intermediaries
 12. Communications regarding potential or actual election investigations in other states, including, but not limited to, efforts in Arizona, Michigan, Pennsylvania, and Texas

Please note that American Oversight does not seek, and that this request specifically excludes, the initial mailing of news clips or other mass-distribution emails. However, subsequent communications forwarding such emails are responsive to this request. In other words, for example, if Rep. Brandtjen received a mass-distribution news clip email referencing the relevant statement by the president, that initial email would not be responsive to this request. However, if Rep. Brandtjen forwarded that email to another individual with their own commentary, that subsequent message would be responsive to this request and should be produced.

Please provide all responsive records from July 15, 2021, through the date the search is conducted.

For all portions of this request, this request should be interpreted to include records pertaining to the investigation announced by Speaker Vos on May 26, the expansion announced by Speaker Vos on July 30, the investigation announced by Representative Brandtjen on July 26, and any other investigations by the Assembly into any matters related to the 2020 election. Please note that this request seeks

⁹ See Marley et al., *supra* note 5.

¹⁰ See Conklin, *supra* note 3.

¹¹ See Beck, *supra* note 2.

records in addition to, and not duplicative of, the records sought by any previous requests submitted by American Oversight.

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 action 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.¹² American Oversight also makes materials it gathers available on its public website¹³ and promotes their availability on social media platforms, such as Facebook and Twitter.¹⁴

The public has a significant interest in the Wisconsin state legislature’s investigations of the November 2020 election.¹⁵ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether or to what extent partisan motivations or external actors guided the decision to open investigations or expand the scope of existing investigations. American Oversight is committed to transparency and makes the responses agencies provide to public records requests publicly available, and the public’s

¹² 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>.

¹³ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

¹⁴ American Oversight currently has approximately 15,640 page likes on Facebook and 107,500 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited August 6, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited August 6, 2021).

¹⁵ See *supra*, notes 1–3, 5 & 6.

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 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.¹⁶

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.¹⁷ 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.

American Oversight expects that you have ensured all responsive records and records relevant to this request and your compliance with it are retained as required by Wisconsin law. Please take all appropriate steps to ensure that no such records are deleted by the agency before the completion of processing for this request. If records potentially responsive or relevant to this request, or your compliance with it, 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.

¹⁶ 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>.

¹⁷ Wis. Stat. § 19.36(6).

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 Sarah Colombo 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,

/s/ Sarah Colombo

Sarah Colombo
on behalf of
American Oversight