



September 15, 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, Speaker Vos has expanded the scope of the investigation, appointing former Wisconsin Supreme Court justice Michael Gableman as “special counsel,” and gaining Assembly approval to spend at least \$676,000 in public funds, including budgeting for five investigators and \$325,000 for a data analysis contractor.² Speaker Vos also has indicated that he is willing to authorize subpoenas requested by Michael Gableman.³

Representative Janel Brandtjen, chair of the Assembly Committee on Campaigns and Elections has likewise indicated she intends to pursue an investigation. On August 6, 2021, she issued demands for ballots and election equipment to Brown and Milwaukee

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 Scott Bauer, *Wisconsin Election Probe Includes \$325,000 for Data Analysis*, Associated Press, Sept. 1, 2021, <https://apnews.com/article/technology-business-elections-wisconsin-election-2020-f0341f70bb123e809304771ed0c0b909>.

³ Patrick Marley, *Top Assembly Republican Robin Vos is Leaving It to an Investigator to Decide on Subpoenas for the Election Investigation*, Milwaukee J. Sentinel (Aug. 27, 2021, 12:47 PM), <https://www.jsonline.com/story/news/politics/2021/08/27/robin-vos-let-gableman-make-call-wisconsin-election-subpoenas/5617382001/>.



counties,⁴ though those counties have indicated they will not comply with Rep. Brandtjen's requests, which legislative attorneys deemed unenforceable.⁵

American Oversight seeks records with the potential to shed light on the Wisconsin legislature's investigations of elections.

Requested Records

American Oversight requests that your office produce the following records "as soon as practicable and without delay":⁶

All records substantively described in the request identified as WI-REP-21-1136⁷ from the period after that request was submitted—*i.e.*, from August 13, 2021, through the date of the search. For clarity, the records requested are reproduced, with modifications to account for newly identified information, as follows:

1. A complete copy (including any attachments) of any formal or informal guidance, directives, memoranda, or other policy and procedure documents issued to entities investigating the November 2020 election, including but not limited to:
 - a. Directives regarding the scope and duration of any investigations
 - b. Records identifying, prioritizing, and investigating alleged fraud, misconduct, or irregularities
 - c. Protocols for contacting persons of interest, including, but not limited, to guidelines or scripts for contacting and interviewing witnesses
 - d. Guidance regarding the presentation of any findings; guidelines for ensuring the safe handling and privacy of confidential voter information and ballot equipment
 - e. Any other directives regarding the planning, preparation, and execution of any investigations

⁴ 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, 9:26 PM), <https://www.jsonline.com/story/news/politics/2021/08/06/gop-lawmaker-seeks-seize-ballots-and-voting-machines-milwaukee-and-brown-counties/5512163001/>.

⁵ Patrick Marley, *Milwaukee, Brown County Clerks Refuse to Turn Over Ballots, Voting Machines to GOP Lawmaker, but Issue Could Escalate*, Milwaukee J. Sentinel (updated Sept. 3, 2021, 4:48 PM), <https://www.jsonline.com/story/news/politics/2021/09/03/milwaukee-county-clerk-refuses-turn-over-ballots-republican-lawmaker/5712256001/>.

⁶ Wis. Stat. § 19.35(4)(a).

⁷ To be clear, the August 13, 2021 request referenced above seeks records from the period of July 15, 2021, through the date the search is conducted. This request seeks the same types of records from August 13, 2021, through the date the search is conducted. See <https://www.americanoversight.org/document/public-records-request-to-wisconsin-rep-brandtjen-seeking-guidance-for-entities-investigating-november-2020-election/wi-rep-21-1136>.

2. A complete copy (including any attachments) of any interim reports, analyses, notifications, or other work product submitted by individuals or entities under contract to investigate the November 2020 election.

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 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.⁸ American Oversight also makes materials it gathers available on its public

⁸ 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>.

website⁹ and promotes their availability on social media platforms, such as Facebook and Twitter.¹⁰

The public has a significant interest in the Wisconsin state legislature's investigations of the November 2020 election.¹¹ 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, expand the scope of existing investigations, or influence the conduct of the investigations. 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 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.¹²

In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the

⁹ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

¹⁰ American Oversight currently has approximately 15,630 page likes on Facebook and 108,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Sept. 13, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Sept. 13, 2021).

¹¹ *See supra*, notes 1-5.

¹² 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>.

requested records.¹³ 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.

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

¹³ 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/ Sarah Colombo

Sarah Colombo
on behalf of
American Oversight