



December 8, 2021

**VIA EMAIL**

Michael Gableman  
Office of Special Counsel  
200 South Executive Drive, Suite 101  
Brookfield, WI 53005  
[coms@wispecialcounsel.org](mailto:coms@wispecialcounsel.org)

**Re: Public Records Law Request**

Dear Special Counsel Michael Gableman:

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.<sup>1</sup> 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 for staff whose identities Gableman has so far refused to disclose publicly.<sup>2</sup> Gableman has also indicated that he may not necessarily conduct interviews of witnesses in public settings, stating in a November 10 hearing of the Assembly Committee on Campaigns and Elections, “There are going to be times where information should not be shared in real-time.”<sup>3</sup> The investigation, originally intended to be completed by the end of October, may also broaden in scope and extend through at least the end of the year.<sup>4</sup>

American Oversight seeks records with the potential to shed light on the Wisconsin Assembly's investigation of the November 2020 election, including regarding the role

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<sup>1</sup> 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/>.

<sup>2</sup> Patrick Marley & Molly Beck, *Michael Gableman Reveals One More Staffer for His Election Review in Testimony Before Lawmakers*, Milwaukee J. Sentinel (Nov. 10, 2021, 7:06 PM), <https://www.jsonline.com/story/news/politics/2021/11/10/michael-gableman-reveals-another-staffers-name-election-review/6371829001/>.

<sup>3</sup> *Wisconsin Lawmakers Get an Update on Election Investigation*, Associated Press, Nov. 10, 2021, <https://apnews.com/article/donald-trump-joe-biden-madison-wisconsin-subpoenas-07ee3bd6f4b6ff5a5acf29edc25cb86b>.

<sup>4</sup> *Id.*



and activities of contractors who are performing work in furtherance of that investigation.

### **Requested Records**

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:<sup>5</sup>

Please provide all responsive records described below from October 26, 2021, through the date the search is conducted:

- 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 (i) Michael Gableman or anyone communicating on his or the Office of Special Counsel’s behalf; and (ii) any other contractor or agent of the Wisconsin Assembly charged with investigating the November 2020 election, including but not limited to, investigators or attorneys directly employed by the Wisconsin Assembly, or subcontractors, assistants, consultants, counsel, formal or informal advisors, temporary workers, unpaid volunteers, or external funders.
- B. All calendars or calendar entries regarding the legislature’s investigation of the November 2020 election and maintained by or on behalf of the Wisconsin Assembly’s investigators, including any investigators engaged by the Office of Special Counsel, as well as overseeing attorney and Special Counsel Michael Gableman.

American Oversight requests that the calendars be produced in a format that includes all invitees, any notes, and all attachments. Please do not limit your search to Outlook calendars; we request the production of any calendar—paper or electronic, whether on government-issued or personal devices—used to track or coordinate how these individuals allocate their time related to the investigation of the November 2020 election.

This request seeks records in addition to, and not duplicative of, records previously sought by American Oversight. In all cases, responsive records include records that were “produced or collected” under any contract entered by the Speaker Vos and/or the Wisconsin Assembly.<sup>6</sup>

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<sup>5</sup> Wis. Stat. § 19.35(4)(a).

<sup>6</sup> Wis. Stat. Ann. § 19.36(3) (“Each authority shall make available for inspection and copying under s. 19.35(1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority.”).

To be clear, this request seeks the records substantively described in Parts A and B of American Oversight’s request identified as WI-EXT-21-1498, directed to Michael Gableman, from the period after that request was submitted —*i.e.*, from October 26, 2021, through the date of the search. *See* <https://www.americanoversight.org/document/records-request-to-wisconsin-office-of-special-counsel-seeking-additional-communications-regarding-elections-investigation>.]

### **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.<sup>7</sup> American Oversight also makes materials it gathers available on its public website<sup>8</sup> and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>9</sup>

The public has a significant interest in the Wisconsin Assembly’s investigation of the November 2020 election.<sup>10</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including the role of contractors in conducting the Assembly’s investigation. American Oversight is committed to transparency and makes the responses agencies provide to

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<sup>7</sup> *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>.

<sup>8</sup> *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

<sup>9</sup> American Oversight currently has approximately 15,600 page likes on Facebook and 109,100 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Nov. 30, 2021) American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Nov. 30, 2021).

<sup>10</sup> *See supra*, notes 1-3.

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.<sup>11</sup>

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.<sup>12</sup> 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.

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<sup>11</sup> 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>.

<sup>12</sup> 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](mailto: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