



December 8, 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 for staff whose identities Gableman has so far refused to disclose publicly.²

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

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, *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/>.



Requested Records

American Oversight requests that Representative Brandtjen produce the following records “as soon as practicable and without delay”:³

Please provide all responsive records described below from October 25, 2021, through the date the search is conducted:⁴

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, her aide Melodie Duesterbeck, or her aide Bill Savage (or anyone communicating on Representative Brandtjen’s behalf) regarding any investigations of the 2020 election.

This request should be interpreted to include, but not be limited to, all of the categories of records described in the request previously submitted by American Oversight identified as WI-REP-21-1491⁵ as well as records relating to, at a minimum:

1. Racine County Sheriff Christopher Schmalings’s referral of criminal charges for five Wisconsin Elections Commission (WEC) members regarding WEC’s decision to prohibit special voting deputies from visiting long-term care facilities during the April and November 2020 elections.⁶

³ Wis. Stat. § 19.35(4)(a).

⁴ This request seeks the records substantively described in American Oversight’s request identified as WI-REP-21-1491, directed to Rep. Brandtjen, from the period after that request was submitted —*i.e.*, from October 25, 2021, through the date of the search—with modifications to account for recent events. *See* <https://www.americanoversight.org/document/records-request-to-wisconsin-rep-brandtjen-for-communications-about-entities-investigating-november-2020-election>.

⁵ *See id.*

⁶ Molly Beck & Patrick Marley, *Racine County Sheriff Seeks Charges for 5 Wisconsin Elections Commissioners*, Milwaukee J. Sentinel (updated Nov. 3, 2021, 5:13 PM), <https://www.jsonline.com/story/news/politics/elections/2021/11/03/racine-sheriff-seeks-charges-wisconsin-elections-commissioners/6272910001/>.

2. The November 9 hearing of the Joint Legislative Audit Committee, during which members of the Legislative Audit Bureau (LAB) and WEC Administrator Meagan Wolfe testified regarding the LAB review of Wisconsin's elections.⁷
3. The Senate Elections Committee's investigation of the City of Madison's decision to bar LAB auditors from physically handling ballots.⁸
4. The November 10 hearing of the Assembly Committee on Campaigns and Elections at which Racine County Lieutenant Michael Luell and Special Counsel Michael Gableman spoke.⁹
5. U.S. Senator Ron Johnson's call for the Wisconsin Legislature to "reclaim" its authority over elections from WEC following a closed meeting with state legislators.¹⁰

Please note that these are exemplar categories only and should not be interpreted to limit American Oversight's request for records reflecting *all* communications sent or received by the parties described above regarding any investigations of the 2020 election.

Please also 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.

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

⁷ Mitchell Schmidt, *Republicans Take Aim at WEC Administrator over Audit Bureau's Election Report*, WI State Journal, Nov. 11, 2021, https://madison.com/wsj/news/local/govt-and-politics/republicans-take-aim-at-wec-administrator-over-audit-bureaus-election-report/article_f8fb0eec-ad8c-5617-9eac-e0cdcebc420b.html.

⁸ Patrick Marley, *Wisconsin Senate Republicans Want Further Review of Just-Completed Election Audit*, Milwaukee J. Sentinel (updated Oct. 26, 2021, 2:15 PM), <https://www.jsonline.com/story/news/politics/2021/10/25/one-election-review-wraps-up-wisconsin-republicans-launch-another/8541042002/>.

⁹ Mitchell Schmidt, *Gableman Investigation Expanding to Include Nursing Home Allegations Made by Racine County Sheriff*, WI State Journal, Nov. 11, 2021, https://madison.com/wsj/news/local/govt-and-politics/gableman-investigation-expanding-to-include-nursing-home-allegations-made-by-racine-county-sheriff/article_6e8a1a43-8764-5c50-a67c-1b323ba0e527.html.

¹⁰ *Johnson Urges Lawmakers to Take Over Elections Administration; Vos Says He Hasn't Studied the Issue*, WisPolitics.com, Nov. 12, 2021, <https://www.wispolitics.com/2021/johnson-urges-lawmakers-to-take-over-elections-administration-vos-says-he-hasnt-studied-the-issue/>.

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 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.¹¹ American Oversight also makes materials it gathers available on its public website¹² and promotes their availability on social media platforms, such as Facebook and Twitter.¹³

The public has a significant interest in the Wisconsin Assembly’s investigation of the November 2020 election.¹⁴ 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 public records requests publicly available, and the public’s understanding of the

¹¹ *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>.

¹² *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

¹³ American Oversight currently has approximately 15,630 page likes on Facebook and 108,900 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 20, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 20, 2021).

¹⁴ *See supra*, notes 1 & 2.

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.¹⁵

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.¹⁶ 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.

¹⁵ 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>.

¹⁶ 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