



January 10, 2023

**VIA EMAIL**

Representative Janel Brandtjen  
Wisconsin State Capitol, Room 12 West  
Madison, WI 53708  
[rep.brandtjen@legis.wi.gov](mailto: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 November 4, 2022, Milwaukee County prosecutors filed charges against former Election Commission deputy director Kimberly Zapata, who requested three absentee ballots in the names of nonexistent military voters, purportedly to indicate vulnerabilities within Wisconsin's elections system.<sup>1</sup> The same day, Representative Janel Brandtjen, the recipient of the absentee ballots, filed suit to attempt to sequester military ballots from being counted until additional security checks could be performed.<sup>2</sup> Public reporting later indicated that while Zapata had been fired from her position on the Election Commission, she still remained employed by the city.<sup>3</sup>

American Oversight seeks records with the potential to shed light on Representative Brandtjen's response to the military ballots requested by Kimberly Zapata, including whether or to what extent Rep. Brandtjen communicated with external entities on the matter.

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<sup>1</sup> Daniel Bice et al., *Milwaukee Election Commission Official Kimberly Zapata Charged with Felony and Misdemeanor Counts Over Fraudulent Military Ballots*, Milwaukee J. Sentinel (updated Nov. 4, 2022, 3:12 PM),

<https://www.jsonline.com/story/news/politics/elections/2022/11/04/milwaukee-city-election-official-expected-to-be-charged-friday/69618684007/>.

<sup>2</sup> Patrick Marley, *Lawsuit Seeks to Block Counting of Military Ballots in Wisconsin*, Wash. Post (Nov. 5, 2022, 11:34 AM),

<https://www.washingtonpost.com/politics/2022/11/05/wisconsin-military-ballots-fraud-lawsuit/>.

<sup>3</sup> Alison Dirr, *Kimberly Zapata, Who Lost Her Position Over the Military Ballot Scheme, Remains on the City Payroll*, Milwaukee J. Sentinel (updated Nov. 14, 2022, 9:05 AM),

<https://www.jsonline.com/story/news/politics/2022/11/10/milwaukee-deputy-election-director-not-fired-from-city-employment-fraud-absentee-voting-ballots/69634759007/>.



## **Requested Records**

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:<sup>4</sup>

All electronic communications (including emails, email attachments, calendar invitations, calendar invitation attachments, text messages, or messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) sent or received by Representative Janel Brandtjen, or her aides Melodie Duesterbeck and Bill Savage, regarding the military ballots requested by former Milwaukee Election Commission deputy director Kimberly Zapata and sent to Representative Brandtjen,<sup>5</sup> including referrals to local, state, or federal law enforcement, or notification of other public officials.

Please provide all responsive records from October 15, 2022, through the date the search is conducted.

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 military ballots or Rep. Brandtjen’s lawsuit, that initial email would not be responsive to this request. However, if Rep. Brandtjen forwarded that email to another individual with her own commentary, that subsequent message would be responsive to this request and should be produced.

## **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

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

<sup>5</sup> *See supra*, note 1.

other media.<sup>6</sup> American Oversight also makes materials it gathers available on its public website<sup>7</sup> and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>8</sup>

The public has a significant interest in the administration of elections in Wisconsin. 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 Rep. Brandtjen communicated with external entities regarding military ballots requested by former Milwaukee Election Commission deputy director Kimberly Zapata.<sup>9</sup> 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

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<sup>6</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>7</sup> *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

<sup>8</sup> American Oversight currently has approximately 16,000 followers on Facebook and 113,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Jan. 3, 2023); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Jan. 3, 2023).

<sup>9</sup> See *supra*, notes 1-3.

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>10</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>11</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.

### **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 [downloads@americanoversight.org](mailto:downloads@americanoversight.org) or (202) 869-5244. Also, if American Oversight's

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<sup>10</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>11</sup> 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