



October 15, 2020

**VIA EMAIL**

Senator Kathleen Bernier  
Chair, Committee on Elections, Ethics and Rural Issues  
Wisconsin Senate  
Room 319 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707  
[Sen.Bernier@legis.wisconsin.gov](mailto:Sen.Bernier@legis.wisconsin.gov)

**Re: Public Records Law Request**

Dear Senator Bernier:

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

**Requested Records**

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:<sup>1</sup>

All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by Sen. Bernier, or her chief of staff, Nathan Duerkop, and containing any of the terms specified below:

**Specified Terms:**

- |                          |                         |
|--------------------------|-------------------------|
| 1. “Bush v”              | 13. “Section 15”        |
| 2. Chiafalo              | 14. “Title 3”           |
| 3. “Contested election”  | 15. Tribunal            |
| 4. “Direct appointment”  | 16. “Twelfth Amendment” |
| 5. “Electoral College”   | 17. “12th amendment”    |
| 6. “Electoral Count Act” | 18. 12A                 |
| 7. “Failed election”     | 19. “3 U.S.C.”          |
| 8. Faithless             | 20. “3 USC”             |
| 9. Gore                  | 21. “December 8”        |
| 10. McPherson            | 22. “Dec. 8”            |
| 11. “Slate of”           | 23. “Dec 8”             |
| 12. “Safe harbor”        | 24. “12/8”              |

---

<sup>1</sup> Wis. Stat. § 19.35(4)(a).



25. "December 23"  
26. "Dec. 23"  
27. "Dec 23"  
28. "12/23"

29. "January 6"  
30. "Jan. 6"  
31. "Jan 6"  
32. "1/6"

Please provide all responsive records from August 1, 2020, through the date the search is conducted.

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited its request to emails sent by Sen. Bernier or Mr. Duerkop. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages. This means, for example, that both Sen. Bernier's response to an email containing one of the listed terms as well as the initial received message are 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 other media.<sup>2</sup> American Oversight also makes materials it gathers available on its public

---

<sup>2</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>; *State Accountability Project*, American Oversight, <https://www.americanoversight.org/areas-of-investigation/state-local-investigations>; 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>.

website<sup>3</sup> and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>4</sup>

The public has a significant interest in the administration of elections in Wisconsin, especially in light of reporting suggesting delays in the certification of election results may cause state governments to appoint delegates to the Electoral College directly, potentially leading to scenarios in which a presidential candidate could gain a state's delegates without definitively winning a plurality of votes.<sup>5</sup> Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including whether and to what extent legislators are considering the possibility of appointing delegates to the Electoral College directly. 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**

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>6</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>7</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

---

<sup>3</sup> *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

<sup>4</sup> American Oversight currently has approximately 15,600 page likes on Facebook and 105,300 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 7, 2020); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 7, 2020).

<sup>5</sup> Edward Isaac-Dovere, *The Deadline that Could Hand Trump the Election*, The Atlantic, Sept. 9, 2020, <https://www.theatlantic.com/politics/archive/2020/09/trump-biden-electoral-count-act-1887/615994/>.

<sup>6</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>7</sup> Wis. Stat. § 19.36(6).

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 Emma Lewis at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 919-6303. 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,



Austin R. Evers  
Executive Director  
American Oversight