



March 18, 2021

**VIA EMAIL**

Missouri Attorney General's Office  
Supreme Court Building  
207 West High St.  
Jefferson City, MO 65102  
[sunshinerequest@ago.mo.gov](mailto:sunshinerequest@ago.mo.gov)

**Re: Sunshine Law Request**

Dear Custodian of Records:

Pursuant to the Missouri Sunshine Law, Mo. Rev. Stat. §§ 610.010 et seq., American Oversight makes the following request for records.

In early December 2020, Texas Attorney General Ken Paxton filed a lawsuit seeking to block various states from casting allegedly “unlawful and constitutionally tainted votes” in the Electoral College.<sup>1</sup> Seventeen additional states, including Missouri, filed an amicus brief backing Texas’s efforts.<sup>2</sup> Later, public reporting revealed that a team of lawyers associated with the Trump campaign formulated the plan which ultimately led to Texas’s challenge.<sup>3</sup>

Accordingly, American Oversight seeks records concerning the formulation and implementation of the plan to stop states from casting votes in the Electoral College.

**Requested Records**

American Oversight, requests that the Attorney General’s Office produce copies of the following records within three business days:

1. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar attachments) between (a)

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<sup>1</sup> Emma Platoff, *In New Lawsuit, Texas Contests Election Results in Georgia, Wisconsin, Michigan, Pennsylvania*, Tex. Tribune, Dec. 8, 2020, <https://www.texastribune.org/2020/12/08/texas-ken-paxton-election-georgia/>.

<sup>2</sup> Todd J. Gillman, *17 States and Trump Join Texas Request for Supreme Court to Overturn Biden Wins in Four States*, Dallas Morning News (Dec. 9, 2020, 10:34 AM), <https://www.dallasnews.com/news/politics/2020/12/09/trump-says-hell-join-texas-lawsuit-asking-supreme-court-to-block-62-biden-electors-from-four-states/>.

<sup>3</sup> Jim Rutenberg et al., *77 Days: Trump’s Campaign to Subvert the Election*, N.Y. Times, Jan. 31, 2021, <https://www.nytimes.com/2021/01/31/us/trump-election-lie.html>.



any of the Attorney General's Office officials listed below and (b) any of the external parties listed below.

Missouri Attorney General Officials:

- i. Eric Schmitt, Attorney General, or anyone communicating on that official's behalf (such as an assistant or scheduler)
- ii. Anyone serving as Chief of Staff to Attorney General Schmitt
- iii. D. John Sauer, Solicitor General
- iv. Justin Smith, Deputy Attorney General

External Parties:

- v. Kris Kobach (including, but not limited to, at the email addresses [kkobach@gmail.com](mailto:kkobach@gmail.com) or [kris@kriskobach.com](mailto:kris@kriskobach.com))
- vi. Lawrence Joseph (including, but not limited to, at the email addresses [ljoseph@larryjoseph.com](mailto:ljoseph@larryjoseph.com) or [lj@larryjoseph.com](mailto:lj@larryjoseph.com))
- vii. Mark Martin (including, but not limited to, at the email address [mmartin@regent.edu](mailto:mmartin@regent.edu))

2. All text messages or communications on messaging applications similar in form to text messages (including, but not limited to, Signal, WhatsApp, Facebook Messenger, and Twitter direct messages) between (a) any of the Attorney General's Office officials listed above and (b) any of the external parties listed above.
3. All email communications (including emails, complete email chains, email attachments, calendar invitations, and calendar attachments) sent by any of the Attorney General's Office officials listed above to any email address ending in .com, .net, .org, .mail, or .edu, containing any of the following key terms:

Key Terms:

- a. "Texas v. Pennsylvania"
- b. "TX v. PA"
- c. "592 U.S."
- d. separation-of-powers
- e. "separation of powers"
- f. electors
- g. "Article II"
- h. "fraud and abuse"
- i. "non-legislative actors"
- j. amicus
- k. amici
- l. unconstitutional
- m. "voting by mail"
- n. "vote by mail"
- o. Paxton
- p. "safe harbor"
- q. Kobach

- r. “Larry Joseph”
- s. “Lawrence Joseph”
- t. “Mark Martin”

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited item 3 of its request to emails sent by the listed custodians. 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 Attorney General Schmitt’s response to an email from an external party containing one of the key terms listed above and the initial received message are responsive to this request and should be produced.

For each item of this request, please provide all responsive records from November 3, 2020, through January 20, 2021.

### **Fee Waiver Request**

In accordance with Mo. Rev. Stat. § 610.026.1(1), American Oversight requests a waiver of fees associated with processing this request for records. Disclosure of the requested records is in the public interest because it will likely contribute to a better understanding of relevant government procedures by the general public in a significant way. Moreover, the request is primarily and fundamentally for non-commercial purposes.

American Oversight requests a waiver of fees because disclosure of the requested information “is likely to contribute significantly to public understanding of the operations or activities of [a] public governmental body.”<sup>4</sup> The public has a significant interest in the Attorney General’s Office’s efforts overturn then-President-elect Joe Biden’s victories in key swing states.<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 Attorney General’s Office officials coordinated with affiliates of the Trump campaign. American Oversight is committed to transparency and makes the responses agencies provide to Sunshine Law 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.

This request is primarily and fundamentally for non-commercial purposes.<sup>6</sup> 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. American Oversight’s mission is to promote transparency in government, to educate the public about government activities, and to ensure the accountability of government

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<sup>4</sup> Mo. Rev. Stat. § 610.026(1)(1).

<sup>5</sup> E.g., Jonathan Shorman, *Before Attack, Kansas and Missouri Attorneys General Backed ‘Insane’ Election Challenge*, Kan. City Star (Jan. 14, 2021, 5:00 AM), <https://www.kansascity.com/news/politics-government/article248484620.html>.

<sup>6</sup> Mo. Rev. Stat. § 610.026.1(1).

officials. American Oversight uses the information gathered, and its analysis of it, to educate the public through reports, press releases, or other media. American Oversight also makes materials it gathers available on its public website and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>7</sup>

American Oversight has also demonstrated its commitment to the public disclosure of documents and creation of editorial content through regular substantive analyses posted to its website.<sup>8</sup> Examples reflecting this commitment to the public disclosure of documents and the creation of editorial content include the posting of records and analysis related to the organization's investigations into misconduct and corruption in state governments;<sup>9</sup> posting records and analysis of federal and state governments' responses to the Coronavirus pandemic;<sup>10</sup> posting records received as part of American Oversight's "Audit the Wall" project to gather and analyze information related to the Trump administration's proposed construction of a barrier along the U.S.-Mexico border, and analyses of what those records reveal;<sup>11</sup> and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis

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<sup>7</sup> American Oversight currently has approximately 15,600 page likes on Facebook and 105,400 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 3, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 3, 2021).

<sup>8</sup> See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

<sup>9</sup> See generally *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>; *Georgia's Voting Machines and Election Security*, American Oversight, <https://www.americanoversight.org/investigation/georgias-voting-machines-and-election-security>.

<sup>10</sup> See, e.g., *The Trump Administration's Response to Coronavirus*, American Oversight, <https://www.americanoversight.org/investigation/the-trump-administrations-response-to-coronavirus>; *Tulsa Health Officials Initially Estimated Trump Rally Would Directly Lead to 2 to 9 Deaths*, American Oversight, <https://www.americanoversight.org/tulsa-health-officials-initially-estimated-trump-rally-would-directly-lead-to-2-to-9-deaths>; *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>; *In the Documents: Florida Health Department Efforts to Suppress Release of Coronavirus Records*, American Oversight, <https://www.americanoversight.org/in-the-documents-florida-health-department-efforts-to-suppress-release-of-coronavirus-records>.

<sup>11</sup> See generally *Audit the Wall*, American Oversight, <https://www.americanoversight.org/investigation/audit-the-wall>; see, e.g., *Border Wall Investigation Report: No Plans, No Funding, No Timeline, No Wall*, American Oversight, <https://www.americanoversight.org/border-wall-investigation-report-no-plans-no-funding-no-timeline-no-wall>.

of what those records demonstrated regarding the Department's process for issuing such waivers.<sup>12</sup>

Accordingly, American Oversight qualifies for a fee waiver.

### **Guidance Regarding the Search & Processing of Requested Records**

In connection with its request for records, American Oversight provides the following guidance regarding the scope of the records sought and the search and processing of records:

- Please search all locations and systems likely to have responsive records, regardless of format, medium, or physical characteristics. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- In conducting your search, please understand the terms “record,” “document,” and “information” in their 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.<sup>13</sup>
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted. To the extent that an email is responsive to our request, our request includes all prior messages sent or received in that email chain, as well as any attachments to the email.
- Please search all relevant records or systems containing records regarding agency business. Do not exclude records regarding agency business contained in files, email accounts, or devices in the personal custody of your officials, such as personal email accounts or text messages.
- In the event some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of

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<sup>12</sup> *DOJ Records Relating to Solicitor General Noel Francisco's Recusal*, American Oversight, <https://www.americanoversight.org/document/doj-civil-division-response-noel-francisco-compliance>; *Francisco & the Travel Ban: What We Learned from the DOJ Documents*, American Oversight, <https://www.americanoversight.org/francisco-the-travel-ban-what-we-learned-from-the-doj-documents>.

<sup>13</sup> Mo. Rev. Stat. § 610.010(6).

the requested records.<sup>14</sup> If a request is denied in whole, please state specifically why 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 Mehreen Rasheed at [records@americanoversight.org](mailto:records@americanoversight.org) or (202) 848-1320. 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/Mehreen Rasheed*  
Mehreen Rasheed  
on behalf of  
American Oversight

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<sup>14</sup> Mo. Rev. Stat. § 610.024.1.