



July 19, 2021

**VIA EMAIL**

Representative Shae Sortwell  
Wisconsin State Capitol  
Room 420 North  
Madison, WI 53708  
[rep.sortwell@legis.wisconsin.gov](mailto:rep.sortwell@legis.wisconsin.gov)

**Re: Public Records Law Request**

Dear Representative Sortwell:

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

Following the November 2020 election, leadership in the Wisconsin State Legislature announced plans to pursue an investigation into the election's administration, citing vague concerns of "questions raised" during the election.<sup>1</sup> State Representative Shae Sortwell indicated he would conduct an inquiry into the City of Green Bay's elections as part of the legislature's broader effort.<sup>2</sup> On May 26, 2021, Speaker of the Assembly Robin Vos announced that three retired law enforcement officers overseen by an attorney would conduct a three-month investigation of the election, including the role of external election funding in several cities.<sup>3</sup>

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

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<sup>1</sup> Patrick Marley, *Top Republican Says an Investigation of Wisconsin's Election Is Unlikely to Take Away Biden's Win in the State*, Milwaukee J. Sentinel (updated Nov. 12, 2020, 8:42 AM),

<https://www.jsonline.com/story/news/politics/elections/2020/11/11/wisconsin-republicans-say-election-probe-likely-wont-change-results/6248225002/>.

<sup>2</sup> *Rep. Sortwell: Investigation Underway Regarding Voting Concerns in Green Bay*, WBAY (Nov. 11, 2020, 6:19 PM), <https://www.wbay.com/2020/11/11/rep-sortwell-investigation-underway-regarding-voting-concerns-in-green-bay/>.

<sup>3</sup> Patrick Marley, *Top Wisconsin Republican Robin Vos Hires Former Cops to Investigate November Election*, Milwaukee J. Sentinel, May 26, 2021, <https://www.jsonline.com/story/news/politics/elections/2021/05/26/wisconsin-republican-robin-vos-hires-ex-cops-investigate-election/7455034002/>.



## 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, text messages, messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) sent or received by Representative Shae Sortwell, or anyone serving as a legislative aide, scheduler, or assistant to Rep. Sortwell, regarding the legislature’s investigation of the 2020 election.

This request should be interpreted to include, but not be limited to: direct communications with the three retired law enforcement officers contracted to conduct the investigation (including Mike Sandvick and Steve Page) and former justice Michael Gableman;<sup>5</sup> communications regarding the Assembly’s resolution authorizing the investigation;<sup>6</sup> communications regarding the scope and conduct of the investigation, including the potential use of subpoena power and potential referrals to prosecutors; communications regarding the selection and evaluation of contractors; or communications regarding the underlying premise of the investigation, including but not limited to Rep. Sortwell’s previous inquiry into the conduct of elections in Green Bay.<sup>7</sup> The search should include all communications sent or received from the specified officials’ individual accounts (including personal email addresses and personal cell phones and other devices) if they were used to conduct official business, as well those sent from their official email addresses or official phones and devices.

Please 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. Sortwell received a mass-distribution news clip email referencing the legislature’s investigation, that initial email would not be responsive to this request. However, if Rep. Sortwell forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

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

<sup>5</sup> Molly Beck, *A Former Wisconsin Supreme Court Justice Will Oversee the Latest Election Review Sought by the State’s GOP Leaders*, Milwaukee J. Sentinel (updated June 26, 2021, 2:45 PM),

<https://www.jsonline.com/story/news/politics/elections/2021/06/26/former-wisconsin-supreme-court-justice-michael-gableman-will-oversee-robin-vos-2020-election-review/5357319001/>.

<sup>6</sup> Scott Bauer, *Wisconsin Assembly OKs Election Investigation*, Associated Press, Mar. 23, 2021, <https://apnews.com/article/joe-biden-donald-trump-wisconsin-elections-subpoenas-bb7a79e35b86a34d02e8a4b1330e21c2>.

<sup>7</sup> See *supra*, note 2.

Please provide all responsive records from March 1, 2021, through the date the search is conducted.

### **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>8</sup> American Oversight also makes materials it gathers available on its public website<sup>9</sup> and promotes their availability on social media platforms, such as Facebook and Twitter.<sup>10</sup>

The public has a significant interest in the Wisconsin Assembly’s investigations into the November 2020 election.<sup>11</sup> 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 external partisan actors may have influenced the legislature’s decision to pursue an investigation. American Oversight is committed to transparency and makes the responses agencies provide to public records requests

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<sup>8</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>9</sup> *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

<sup>10</sup> American Oversight currently has approximately 15,640 page likes on Facebook and 106,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited July 9, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited July 9, 2021).

<sup>11</sup> See *supra*, notes 1-3.

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>12</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>13</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.

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.

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<sup>12</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>13</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