



October 4, 2021

VIA EMAIL

Office of the Secretary of State
State Capitol Building
Charleston, WV 25305
FOIA@wvsos.gov

Re: West Virginia Freedom of Information Act Request

Dear Records Custodian:

Pursuant to the West Virginia Freedom of Information Act, W. Va. Code §§ 29B-1-1, et seq., American Oversight makes the following request for copies of records.

Requested Records

American Oversight requests that the West Virginia Secretary of State produce the following records within five business days:¹

1. All text message threads or message threads on messaging applications similar in form to text messages (such as Signal, WhatsApp, Facebook Messenger, Twitter DMs, etc.) between a) Secretary of State Mac Warner, and b) any of the external individuals listed below:

External Individuals:

- i. John Merrill, Alabama Secretary of State
 - ii. Tre Hargett, Tennessee Secretary of State
 - iii. Michael Adams, Kentucky Secretary of State
 - iv. Michael Watson, Mississippi Secretary of State
 - v. Christi Jacobsen, Montana Secretary of State
 - vi. Frank LaRose, Ohio Secretary of State
 - vii. Kim Wyman, Washington Secretary of State
 - viii. Laurel Lee, Florida Secretary of State
2. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar attachments) between any of the West Virginia Secretary of State officials listed in Column A, below, and any of the external parties listed in Column B, below.

¹ W. Va. Code § 29B-1-3(d) (requiring custodian to furnish requested records “as soon as practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays.”).



Column A: West Virginia Secretary of State Officials	Column B: External Parties
<ul style="list-style-type: none"> i. Mac Warner, Secretary of State, or anyone serving as his scheduler or assistant ii. John Hoover, Special Assistant iii. Kathy Hess, Executive Scheduler iv. Chuck Flannery, Deputy Secretary and Chief of Staff v. Donald “Deak” Kersey, General Counsel 	<p><u>Republican State Leadership Committee/Republican Secretaries of State Committee:</u></p> <ul style="list-style-type: none"> i. John Merrill, Alabama Secretary of State ii. Anyone communicating from an email address ending in sos.alabama.gov iii. Tre Hargett, Tennessee Secretary of State iv. Anyone communicating from an email address ending in tn.gov v. Michael Adams, Kentucky Secretary of State vi. Anyone communicating from an email address ending in ky.gov vii. Michael Watson, Mississippi Secretary of State viii. Anyone communicating from an email address ending in sos.ms.gov ix. Christi Jacobsen, Montana Secretary of State x. Anyone communicating from an email address ending in mt.gov xi. Frank LaRose, Ohio Secretary of State xii. Anyone communicating from an email address ending in ohio.sos.gov xiii. Kim Wyman, Washington Secretary of State xiv. Anyone communicating from an email address ending in sos.wa.gov xv. Laurel Lee, Florida Secretary of State xvi. Anyone communicating from an email address ending in dos.myflorida.com

	<ul style="list-style-type: none"> xvii. Michigan State Senator Ruth Johnson xviii. Dee Duncan, President and Executive Director xix. Edith Jorge-Tuñon, Deputy Executive Director xx. Joy Lee, General Counsel xxi. Andrew Romeo, Communications Director xxii. Anyone communicating from an email address ending in rslc.gop <p><u>Other External Organizations</u> (including, but not limited to, anyone communicating from an email address ending in the listed domains):</p> <ul style="list-style-type: none"> i. The Heritage Foundation (heritage.org) ii. Heritage Action for American (heritageaction.com) iii. American Legislative Exchange Council (ALEC) (alec.org) iv. Public Interest Legal Foundation (publicinterestlegal.org) v. True the Vote (truethevote.org) vi. Family Research Council (frc.org) vii. Susan B. Anthony List (sba-list.org) viii. American Principles Project (americanprinciplesproject.org) ix. Election Transparency Initiative (electiontransparency.org) x. FreedomWorks (freedomworks.org) xi. Tea Party Patriots (teapartypatriots.org) xii. Judicial Crisis Network (judicialnetwork.org)
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	xiii. Honest Elections Project (honestelections.org)
	xiv. Federalist Society (fed- soc.org)
	xv. America First Legal (aflegal.org)
	xvi. America First Policy Institute (americafirstpolicy.com)

3. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar attachments) sent by any of the West Virginia Secretary of State officials listed in Column A, above, containing any of the key terms listed below.

Key Terms:

- i. RSLC
- ii. “Republican State Leadership Committee”
- iii. RSSC
- iv. “Republican Secretaries of State Committee”
- v. Heritage
- vi. ALEC
- vii. “Public Interest Legal”
- viii. PILF
- ix. “True the Vote”
- x. TTV
- xi. “Family Research”
- xii. FRC
- xiii. “Susan B. Anthony”
- xiv. “SBA List”
- xv. “American Principles”
- xvi. “Election Transparency Initiative”
- xvii. FreedomWorks
- xviii. “Tea Party Patriots”
- xix. “Judicial Crisis”
- xx. “Honest Elections”
- xxi. “Federalist Society”
- xxii. FedSoc
- xxiii. Von Spakovsky
- xxiv. Engelbrecht
- xxv. Cuccinelli
- xxvi. “Christian Adams”

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 2 of its request to emails sent by the listed officials. 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 Secretary Warner's response to an email mentioning the Republican State Leadership Committee and the initial received message are responsive to this request and should be produced.

For all parts of this request, please provide all responsive records from January 1, 2021, through the date this request is received by your office.

Please notify American Oversight of any anticipated fees or costs in excess of \$100 prior to incurring such costs or fees.

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.
- 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.² 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 the requested records.³ If a request is denied in whole, please state specifically whether 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

² See W. Va. Code § 29B-1-2(5) (defining a "public record" to include "any writing containing information prepared or received by a public body" that "relates to the conduct of the public's business.").

³ See *Farley v. Worley*, 215 W. Va. 412, 424, 599 S.E.2d 835, 847 (2004) (holding that a public body must redact or segregate exempt from non-exempt information contained within a responsive record, absent a written justification explaining that such segregation or redaction would impose an unreasonably high burden or expense).

basis, please take steps to prevent that deletion, including, as appropriate, by instituting a litigation hold on those records.

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 office 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.

Conclusion

American Oversight is a 501(c)(3) nonprofit with the mission to promote transparency in government, to educate the public about government activities, and to ensure 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. 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.⁴

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 or (202) 848-1320.

Sincerely,

/s/ Mehreen Rasheed
Mehreen Rasheed
on behalf of
American Oversight

⁴ American Oversight currently has approximately 15,630 page likes on Facebook and 107,700 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Aug. 31, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Aug. 31, 2021).