



October 25, 2021

VIA EMAIL

Office of the Governor
Attn: FOIA
1100 Gervais Street
Columbia, SC 29201
FOIA@governor.sc.gov

Re: Freedom of Information Act Request

Dear FOIA Officer:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 *et seq.*, American Oversight makes the following request for records.

On September 1, 2021, Senate Bill 8 (SB8) took effect in Texas, resulting in a near-total ban on abortions in the state.¹ Soon after SB8 took effect, South Carolina officials said they would move to pass legislation mirroring Texas's if it stood a "greater chance of being upheld by the Supreme Court."²

American Oversight seeks records to shed light on decisionmaking about women's healthcare policy and whether and to what extent outside groups have influenced recent changes.

Requested Records

American Oversight requests that your office promptly produce the following records:³

1. All electronic communications (including emails, email attachments, complete email chains, calendar invitations, calendar invitation attachments, and text messages) between (a) Governor Henry McMaster; anyone communicating on his behalf such as a chief of staff, scheduler, or assistant; or anyone serving as Director of Legislative Affairs, and (b) any

¹ Adam Liptak, et al., *Supreme Court, Breaking Silence, Won't Block Texas Abortion Law*, N.Y. Times, Sept. 1, 2021, <https://www.nytimes.com/2021/09/01/us/supreme-court-texas-abortion.html?referringSource=articleShare>.

² Meryl Kornfield, et al., *Texas Created a Blueprint for Abortion Restrictions. Republican-Controlled States May Follow Suit*, Wash. Post, Sept. 3, 2021, <https://www.washingtonpost.com/nation/2021/09/03/texas-abortion-ban-states/>.

³ Pursuant to S.C. Code Ann. § 30-4-30(C), please notify American Oversight of your final determination as to the public availability of the requested records within ten business days and produce the records within thirty calendar days after issuing your final determination.



of the following outside individuals and groups (including, but not limited to, at the specified domain names):

- a. Alliance Defending Freedom (adflegal.org, adfmedia.org)
 - b. America First Legal (aflegal.org)
 - c. American Family Association (afa.net)
 - d. Americans United for Life (aul.org)
 - e. Charlotte Lozier Institute (lozierinstitute.org)
 - f. Concerned Women for America (cwfa.org, concernedwomen.org)
 - g. David Daleiden
 - h. Family Research Council and Family Research Council Action (frc.org; frcaction.org)
 - i. First Liberty (firstliberty.org)
 - j. FreedomWorks (freedomworks.org)
 - k. GOP (gop.com, rnchq.com, msgop.org)
 - l. Hacker Stephens LLP (hackerstephens.com)
 - m. Heritage Foundation and Heritage Action for America (heritage.org, heritageaction.com)
 - n. Home School Legal Defense Association (hsllda.org)
 - o. Human Coalition and Human Coalition Action (hucoaction.org, humancoalition.org)
 - p. Independent Women's Forum (iwf.org)
 - q. James Bopp, Jr. (bopplaw.com)
 - r. Janet Porter and Faith to Action (f2a.org)
 - s. Jonathan Mitchell (jonathan@mitchell.law)
 - t. Liberty Counsel (lc.org)
 - u. Life Legal Defense Foundation (lldf.org)
 - v. Live Action (liveaction.org)
 - w. March for Life and March for Life Action (marchforlife.org, marchforlifeaction.org)
 - x. Mark Crutcher and Life Dynamics (lifedynamics.com)
 - y. National Association of Christian Lawmakers (christianlawmakers.com)
 - z. National Pro-Life Alliance (prolifealliance.com)
 - aa. National Right to Life Committee (nrlc.org)
 - bb. Personhood Alliance (personhood.org)
 - cc. Pro-Life Action League (prolifeaction.org)
 - dd. Students for Life (studentsforlife.org)
 - ee. Susan B. Anthony List (sba-list.org)
 - ff. Thomas More Society (thomasmoresociety.org)
 - gg. Troy Newman, Cheryl Sullenger, and Operation Rescue (operationrescue.org)
 - hh. South Carolina Citizens for Life (@sclife.org)
 - ii. Personhood South Carolina (@personhood.sc)
2. All electronic communications (including emails, email attachments, complete email chains, calendar invitations, calendar invitation attachments, and text messages) sent by Governor Henry McMaster,

anyone communicating on his behalf such as a chief of staff, scheduler, or assistant, or anyone serving as Director of Legislative Affairs, containing any of the following key terms (including, but not limited to, at the specified domain names):

- a. SB8
- b. "SB 8"
- c. "S.B. 8"
- d. "Heartbeat bill"
- e. "Heartbeat act"
- f. "Whole Woman's Health"
- g. Waskom
- h. Dixon
- i. Roe
- j. Abortion
- k. "Pro life"
- l. "Pro-life"
- m. "Right to Life"
- n. Unborn
- o. "Gestational Age"
- p. Dobbs
- q. "Planned Parenthood"

In an effort to accommodate the Office of the Governor and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited item 2 of this request to communications sent by Governor McMaster. To be clear, however, American Oversight still requests that complete email chains and texts be produced, displaying both sent and received messages. This means, for example, that both Governor McMaster's response to an email or text about SB8 and the initial received message are responsive to this request and should be produced.

Please provide all responsive records from January 12, 2021, through the date the request is received.

Fee Waiver Request

In accordance with S.C. Code Ann. § 30-4-30(B), 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. In addition, this request is primarily and fundamentally for non-commercial purposes.

A waiver of fees is “in the public interest because furnishing the information can be considered as primarily benefiting the general public.”⁴ The general public has a significant interest in understanding whether and how non-governmental groups are influencing healthcare policy in the state. Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including how decisions about women’s health are being made. 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.

Furthermore, 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. American Oversight’s mission is 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.⁵

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.⁶ 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;⁷ posting records and analysis of federal and state governments’ responses to the Coronavirus pandemic;⁸ posting records received as part of American

⁴ S.C. Code Ann. § 30-4-30(B).

⁵ American Oversight currently has approximately 15,630 followers on Facebook and 108,900 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Oct. 22, 2021); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Oct. 22, 2021).

⁶ See generally *News*, American Oversight, <https://www.americanoversight.org/blog>.

⁷ 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>.

⁸ 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,

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;⁹ and the posting of records related to an ethics waiver received by a senior Department of Justice attorney and an analysis of what those records demonstrated regarding the Department’s process for issuing such waivers.¹⁰

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.
- 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.
- Our request for records includes any attachments to those records or other materials enclosed with those records when they were previously transmitted.

<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>.

⁹ 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>.

¹⁰ *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>.

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 the requested records.¹¹ 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, have any questions, or foresee any problems in

¹¹ S.C. Code Ann. § 30-4-40(b).

fully releasing the requested records, please contact Khahilia Shaw at records@americanoversight.org or (202) 539-6507.

Sincerely,

/s/Khahilia Shaw
Khahilia Shaw
on behalf of
American Oversight