



March 29, 2022

VIA EMAIL

Senator Chris Kapenga
Room 220 South
State Capitol
PO Box 7882
Madison, WI 53707
Sen.Kapenga@legis.wisconsin.gov

Re: Public Records Law Request

Dear Senator Kapenga:

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

On May 26, 2021, Wisconsin State Assembly Speaker Robin Vos indicated that the legislature would hire three former law enforcement officers and a supervising attorney to investigate the November 2020 election.¹ Since the time of this announcement, Speaker Vos has expanded the scope of the investigation, appointing former Wisconsin Supreme Court justice Michael Gableman as “special counsel,” and gaining Assembly approval to spend at least \$676,000 in public funds.² Records released to American Oversight by the Office of Special Counsel indicate that you corresponded with Gableman in October 2021 regarding “election integrity issues.”³ These communications followed soon after the announcement of a separate, more limited investigation to be led by the Senate Elections Committee.⁴

¹ Patrick Marley, *Top Wisconsin Republican Robin Vos Hires Former Cops to Investigate November Election*, Milwaukee J. Sentinel (updated May 26, 2021, 5:16 PM), <https://www.jsonline.com/story/news/politics/elections/2021/05/26/wisconsin-republican-robin-vos-hires-ex-cops-investigate-election/7455034002/>.

² Patrick Marley & Molly Beck, *Michael Gableman Reveals One More Staffer for His Election Review in Testimony Before Lawmakers*, Milwaukee J. Sentinel (Nov. 10, 2021, 7:06 PM), <https://www.jsonline.com/story/news/politics/2021/11/10/michael-gableman-reveals-another-staffers-name-election-review/6371829001/>.

³ American Oversight, *Wisconsin Assembly's Office of Special Counsel Election Investigation Records* at 32, <https://www.documentcloud.org/documents/21398319-wisconsin-assemblys-office-of-special-counsel-election-investigation-records#document/p32>.

⁴ Patrick Marley, *Wisconsin Senate Republicans Want Further Review of Just-Completed Election Audit*, Milwaukee J. Sentinel (updated Oct. 26, 2021, 2:15 PM), <https://www.jsonline.com/story/news/politics/2021/10/25/one-election-review-wraps-up-wisconsin-republicans-launch-another/8541042002/>.



American Oversight seeks records with the potential to shed light on investigations into elections in Wisconsin.

Requested Records

American Oversight requests that your office produce the following records “as soon as practicable and without delay”:⁵

All electronic communications (including emails, email attachments, calendar invitations, calendar invitation attachments, text messages, or messages on messaging platforms, such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp) between (a) Wisconsin Senate President Chris Kapenga, or anyone communicating on his behalf, including, but not limited to, his chief of staff, or a scheduler or assistant, and (b) any of the individuals or entities listed below, including, but not limited to at the suggested email addresses or domains. The search for responsive communications should include those sent or received from the specified officials’ personal accounts and/or devices if they were used to conduct official business, as well as those sent from their official email addresses or government-issued devices.

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

Specified Entities:

1. Michael Gableman (mgableman@yahoo.com, mgableman@protonmail.com, wijustice@protonmail.com) or anyone communicating on behalf of the Office of Special Counsel, including but not limited to anyone with an email ending in the domain name @wispecialcounsel.org
2. Zakory Niemierowicz (coms@wispecialcounsel.org)
3. Anyone communicating from the email addresses wispecialcounsel@gmail.com, wispecialcounsel1@gmail.com, wispecialcounsel2@gmail.com, or wispecialcounsel3@gmail.com
4. Andrew Bath, or anyone communicating on behalf of the Thomas More Society (@thomasmoresociety.org)
5. Andrew Kloster (arkloster@gmail.com, 6@wispecialcounsel.org)
6. Carol Matheis (matheislaw@live.com, 3@wispecialcounsel.org)
7. Clint Lancaster (clint@thelancasterlawfirm.com, 7@wispecialcounsel.org)
8. Daniel Eastman (dan@attorneyeastman.com)
9. Edward Chaim
10. Erick Kaardal, Nicholas Morgan, William Mohrman, Mary Gynild, or anyone communicating on behalf of Mohrman, Kaardal & Erickson, P.A. (@mklaw.com)
11. Gary Wait (glwfishes@aol.com)
12. Harry Wait (harrytrex@gmail.com, hotgovernment@gmail.com)
13. James Bopp, Jr. (jboppjr@aol.com, jbopp@bopplaw.com), or anyone communicating on behalf of the Bopp Law Firm (@bopplaw.com)

⁵ Wis. Stat. § 19.35(4)(a).

14. Jay Stone (jayjoelstone@gmail.com, jcarlson@stillwateroffice.net)
15. Jacqueline Timmer, Luis Cornelio (lcornel001@citymail.cuny.edu), or anyone communicating on behalf of the American Voter's Alliance (@got-freedom.org)
16. Jefferson Davis (jeffersondavis784@gmail.com, davisforpresident@protonmail.com)
17. Jim Troupis (jtroupis@hotmail.com, troupisjames@gmail.com)
18. John Karlovich
19. Kevin Scott
20. Michael Dean (mikeddean@michaelddeanllc.com)
21. Neil Saxton (neil.saxton@protonmail.com)
22. Peter Bernegger (pmbmap123@gmail.com)
23. Phill Kline (phillklineva@gmail.com)
24. Representative Janel Brandtjen (rep.brandtjen@legis.wisconsin.gov, janel@brandtjen.com, janel@glmarketing.com), or her aides Melodie Duesterbeck or Bill Savage
25. Representative Tim Ramthun (timothy.ramthun@legis.wi.gov, ramthun@hotmail.com)
26. Ron Heuer (ronheuer@gmail.com, wiscjustice@outlook.com)
27. Thomas Obregon (obregonthomas67@gmail.com, moparmolly@outlook.com)
28. Tristan Johannes (Tristan.johannes@legis.wi.gov, tjohannesagency@gmail.com)
29. Wisconsin Elections Commissioner Bob Spindell (robert.spindell@wisconsin.gov, cd4.chairman@wisgop.info and rspindell@gottesmancompany.com)

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.⁶ American Oversight also makes materials it gathers available on its public

⁶ 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,

website⁷ and promotes their availability on social media platforms, such as Facebook and Twitter.⁸

The public has a significant interest in the Wisconsin legislature's investigation of the November 2020 election.⁹ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including the role of contractors in conducting the Assembly's investigation. 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.¹⁰

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 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.

<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>.

⁷ *Documents*, American Oversight, <https://www.americanoversight.org/documents>.

⁸ American Oversight currently has approximately 15,730 page likes on Facebook and 118,000 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Mar. 23, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Mar. 23, 2022).

⁹ *See supra*, notes 1, 2 & 4.

¹⁰ 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>.

¹¹ Wis. Stat. § 19.36(6).

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 Sarah Colombo at 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