



July 13, 2022

VIA EMAIL

Public Records Requests
Wisconsin Elections Commission
212 East Washington Avenue, Third Floor
P.O. Box 7984
Madison, Wisconsin 53707-7984
elections@wisconsin.gov

Re: Public Records Law Request

Dear Public Records Officer:

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, Speaker Robin Vos announced the Wisconsin Assembly's investigation into the November 2020 election,¹ later appointing former Wisconsin Supreme Court justice Michael Gableman as "special counsel," and gaining Assembly committee approval to form an Office of Special Counsel (OSC).² In the year since, the investigation has cost nearly \$900,000 in public funds³ and Gableman has suggested the legislature consider "decertifying" the results of the November 2020 presidential election.⁴ Records obtained by American Oversight suggest that Wisconsin Elections Commission member Robert Spindell, one of the ten Wisconsin Republicans who

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 Scott Bauer, *Wisconsin Election Probe Includes \$325,000 for Data Analysis*, Associated Press, Sept. 1, 2021, <https://apnews.com/article/technology-business-elections-wisconsin-election-2020-f0341f70bb123e809304771ed0c0b909>; Laurel White, *Republican Lawmakers Approve Former Conservative Justice as Head of 2020 Election Investigation*, Wis. Public Radio, Aug. 30, 2021, <https://www.wpr.org/republican-lawmakers-approve-former-conservative-justice-head-2020-election-investigation>.

³ Patrick Marley, *The Wisconsin Election Review Has Cost Nearly \$900,000 So Far, Going Beyond Its Original Budget*, Milwaukee J. Sentinel (updated June 1, 2022, 1:15 PM), <https://www.jsonline.com/story/news/politics/2022/06/01/wisconsin-election-review-goes-beyond-original-budget-nears-900-000/7457832001/>.

⁴ Molly Beck, *There's No Legal Way to Decertify the 2020 Election, but the Gableman Report Is Forcing Republican Candidates to Confront the Question*, Milwaukee J. Sentinel (updated Mar. 3, 2022, 12:55 PM), <https://www.jsonline.com/story/news/politics/elections/-2022/03/03/gableman-report-forces-republicans-confront-theory-can-decertify-2020-election/6981022001/>.



signed a false Certificate of Ascertainment pledging the state's electoral votes to Donald Trump,⁵ has communicated with OSC regarding its investigation.⁶

American Oversight seeks records with the potential to shed light on Commissioner Spindell's communications regarding the Assembly investigation into the November 2020 election led by Michael Gableman and the Office of Special Counsel.

Requested Records

American Oversight requests that your office produce the following records "as soon as practicable and without delay":⁷

All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) sent or received by Commissioner Robert Spindell, or anyone communicating on his behalf, regarding the Wisconsin Assembly's investigation into the state's elections led by former Wisconsin Supreme Court Justice Michael Gableman and the Office of Special Counsel, including, but not limited to:

1. Communications with Michael Gableman or the Office of Special Counsel, its contractors, subcontractors, or anyone serving as formal or informal consultant, counsel, funder, or volunteer assisting the investigation led by Gableman.
2. Communications with members, staff, or agents of the Wisconsin legislature regarding the planning, preparation, execution, or outcomes of the Assembly investigation led by Gableman and the Office of Special Counsel.
3. Communications with other public officials, advocacy groups, or media regarding the planning, preparation, execution, or outcomes of the Assembly investigation led by Gableman and the Office of Special Counsel.

⁵ Melanie Conklin, *Will False Trump Electors' Attempt to Hijack the Wisconsin Vote Be Punished?*, Wis. Examiner (Jan. 14, 2022, 7:00 AM), <https://wisconsinexaminer.com/2022/01/14/will-false-trump-electors-attempt-to-hijack-the-wisconsin-vote-be-punished/>.

⁶ American Oversight, *Wisconsin Election Investigation Records – Released Dec. 4, 2021*, https://www.documentcloud.org/documents/21137469-ao-wi-20211204_combined#document/p84. The linked record consists of an email between Commissioner Spindell's assistant, Darlene Lathrop, and Michael Gableman regarding furnishing OSC's offices and procuring security equipment, and references an in-person meeting including Lathrop, Gableman, and his office administrator, Zakary Niemierowicz.

⁷ Wis. Stat. § 19.35(4)(a).

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

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 Commissioner Spindell received a mass-distribution news clip email, that initial email would not be responsive to this request. However, if Commissioner Spindell forwarded that email to another individual with his own commentary, that subsequent message would be responsive to this request and should be produced.

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.⁸ American Oversight also makes materials it gathers available on its public

⁸ 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>.

website⁹ and promotes their availability on social media platforms, such as Facebook and Twitter.¹⁰

The public has a significant interest in the OSC investigation into the November 2020 election.¹¹ 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 Commissioner Spindell has communicated with OSC or regarding the OSC 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

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.¹²

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.¹³ If it is your position that a document contains non-exempt

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

¹⁰ American Oversight currently has approximately 16,000 followers on Facebook and 117,700 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited June 24, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited June 24, 2022).

¹¹ *See supra*, notes 1-4.

¹² 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>.

¹³ Wis. Stat. § 19.36(6).

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.

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 Emma Lewis at records@americanoversight.org or (202) 919-6303. 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/ Emma Lewis

Emma Lewis
on behalf of
American Oversight