



May 1, 2023

**VIA ONLINE PORTAL**

Office of the Secretary of State  
State Capitol Building  
Charleston, WV 25305  
VIA Online Portal

**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 Office of the Secretary of State produce the following records within five business days:<sup>1</sup>

1. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) sent or received by any of the West Virginia Office of the Secretary of State personnel listed below containing any of the key terms listed below. For this request item, please note that American Oversight does not object to the exclusion of communications exclusively internal to members of the West Virginia state government.

**West Virginia Office of the Secretary of State Personnel:**

- a. Mac Warner, Secretary of State (or anyone communicating on his behalf, such as an assistant or scheduler)
- b. Chuck Flannery, Chief of Staff
- c. Donald Kersey, General Counsel
- d. Brittany Westfall, Elections Director

**Key Terms:**

- i. ERIC<sup>2</sup>

---

<sup>1</sup> 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.”).

<sup>2</sup> American Oversight does not object to excluding results where “ERIC” is the only key term to appear in the record and the term is not in reference to Electronic Registration Information Center.



- ii. “Electronic Registration”
- iii. “Voter registration network”
- iv. Hamlin
- v. Haas
- vi. Whitt
- vii. Becker
- viii. “list maintenance”
- ix. ericstates.org

For request item 1, 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 or responding to such emails are responsive to this request. In other words, for example, if Elections Director Brittany Westfall received a mass-distribution newsletter mentioning “list maintenance,” that initial email would not be responsive to this request. However, if Director Westfall forwarded that email to another individual with her own commentary, that subsequent message would be responsive to this request and the complete email chain should be produced.

- 2. All email communications (including emails, email attachments, complete email chains, calendar invitations, and calendar invitation attachments) between (a) any of the Office of the Secretary of State personnel listed in item 1 above, and (b) any of the external parties or representatives of any of the external entities listed below (including, but not limited to, anyone communicating from an email address containing any of the listed domains).

External Parties:

- i. Shane Hamlin, Ericka Haas, Sarah Whitt, or anyone communicating on behalf of the Electronic Registration Information Center (ERIC) (ericstates.org)
- ii. Conservative Partnership Institute (cpi.org or conservativepartnership.org)
- iii. Cleta Mitchell ([cleta@cletamitchell.com](mailto:cleta@cletamitchell.com))
- iv. Erick Kaardal or anyone communicating on behalf of Mohrman, Kaardal & Erickson, P.A. (mklaw.com)
- v. Tim Griffin, or anyone communicating on behalf of the Thomas More Society (thomasmoresociety.org)
- vi. Phill Kline ([phillklineva@gmail.com](mailto:phillklineva@gmail.com))
- vii. Luis Cornelio ([luis.cornelio@protonmail.com](mailto:luis.cornelio@protonmail.com), [lcornel001@citymail.cuny.edu](mailto:lcornel001@citymail.cuny.edu))
- viii. The Heritage Foundation (heritage.org or heritageaction.com)
- ix. Hans von Spakovsky ([hans.vonspakovsky@heritage.org](mailto:hans.vonspakovsky@heritage.org))
- x. Public Interest Legal Foundation (publicinterestlegal.org)
- xi. J. Christian Adams ([a@electionlawcenter.com](mailto:a@electionlawcenter.com), [adams@electionlawcenter.com](mailto:adams@electionlawcenter.com), and [jadams@usccr.gov](mailto:jadams@usccr.gov))
- xii. Jim Hoft ([midwestjim@charter.net](mailto:midwestjim@charter.net)), or anyone communicating on behalf of The Gateway Pundit (thegatewaypundit.com)

- xiii. Victoria Marshall ([victoria@thefederalist.com](mailto:victoria@thefederalist.com)), Molly Hemingway ([mzhemingway@thefederalist.com](mailto:mzhemingway@thefederalist.com)), or anyone communicating on behalf of The Federalist (thefederalist.com)
- xiv. Hayden Ludwig, or anyone communicating on behalf of Capital Research Center (capitalresearch.org)
- xv. Restoration of America (restorationofamerica.org or restorationpac.com)
- xvi. Mike Lindell ([mike@mypillow.com](mailto:mike@mypillow.com)), or anyone communicating on behalf of MyPillow (mypillow.com)
- xvii. Michele Replogle ([micrep@protonmail.com](mailto:micrep@protonmail.com), [micrep@pm.me](mailto:micrep@pm.me), [causeofamerica@protonmail.com](mailto:causeofamerica@protonmail.com)), or anyone communicating on behalf of Cause of America (causeofamerica.org)
- xviii. Jay Valentine ([jay@contingencysales.com](mailto:jay@contingencysales.com)), or anyone communicating on behalf of Omega4America (omega4america.com, contingencysales.com, or jayvalentine.com)
- xix. Alaska Division of Elections (alaska.gov)
- xx. Florida Department of State (dos.myflorida.com)
- xxi. Iowa Secretary of State (sos.iowa.gov)
- xxii. Missouri Office of the Secretary of State (sos.mo.gov)
- xxiii. Office of the Ohio Secretary of State (ohiosecretaryofstate.gov)
- xxiv. Texas Secretary of State (sos.texas.gov)
- xxv. Louisiana Secretary of State (sos.la.gov)
- xxvi. Alabama Secretary of State (sos.alabama.gov)

For request item 2, 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 Secretary of State Mac Warner received a mass-distribution newsletter email from The Heritage Foundation, that initial email would not be responsive to this request. However, if Secretary Warner responded to or forwarded that email to anyone at one of the emails or domains listed above, that subsequent message would be responsive to this request and the complete email chain should be produced.

- 3. Records reflecting any final formal or informal directives or guidance concerning any of the following matters:
  - a. the decision to withdraw West Virginia from the Electronic Registration Information Center (ERIC);
  - b. any amendments or alterations to the bylaws or membership agreement of ERIC;
  - c. voter roll list maintenance;
  - d. notifying eligible but unregistered voters of their eligibility.
- 4. All final assessments, reports, analyses, or recommendations in your possession (including formal memoranda and other written products) prepared by your office or otherwise provided to your office by other state or

local offices, or independent experts, regarding any projected or actual impacts of withdrawing from the Electronic Registration Information Center.

For request items 1 through 4, please provide all responsive records from January 1, 2023, through the date the search is conducted.

5. All text messages or messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, Twitter direct messages, Facebook Messenger, WhatsApp, Signal, Telegram, or Parler) sent or received by any of the Office of the Secretary of State personnel listed in item 1 above (whether on government-issued or personal devices), concerning any government business.
6. Any record of any telephone calls made, received, or transferred to or by Secretary of State Mac Warner or Elections Director Brittany Westfall, or anyone communicating on their behalf (such as an assistant, secretary, or scheduler). This request includes any detailed billing information or phone records received by the Office of the Secretary of State from any telecommunications provider for (a) state-owned/leased phones maintained by the Office of the Secretary of State, and (b) personal phones or devices to the extent they are used to conduct official business. American Oversight does not object to the redaction of personal telephone calls.

For request items 5 and 6, please provide all responsive records from March 1, 2023, through March 10, 2023.

7. All calendars or calendar entries for Secretary of State Mac Warner and Elections Director Brittany Westfall, including any calendars maintained on their behalf from January 1, 2023, through March 31, 2023.

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. For instance, if the request seeks “communications,” please search all locations likely to contain communications, including relevant hard-copy files, correspondence files, appropriate locations on hard drives and shared drives, emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or Twitter direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.

- 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.<sup>3</sup> 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. 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.<sup>4</sup> 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.<sup>5</sup> 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 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

---

<sup>3</sup> See W. Va. Code § 29B-1-2(6) (defining “writing” to include “books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.”).

<sup>4</sup> 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.”).

<sup>5</sup> 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).

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.<sup>6</sup>

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](mailto:records@americanoversight.org) or (202) 848-1320.

Sincerely,

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

---

<sup>6</sup> American Oversight currently has approximately 16,000 followers on Facebook and 112,200 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Apr. 26, 2023); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Apr. 26, 2023).