



March 3, 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 December 14, 2020, ten Wisconsin Republicans convened to submit a false Certificate of Ascertainment casting the state's electoral votes for former President Trump. Among these false electors was Wisconsin Elections Commission (WEC) member Robert Spindell, who described the function as “ministerial” and a precaution in anticipation of further court rulings.¹ However, memoranda circulated by attorney for the Trump campaign, John Eastman, suggested that the mere presence of the false slates of electors submitted by seven states could have enabled former Vice President Pence to declare no winner in those states.² Furthermore, a number of individuals involved in attempts to block the certification of the election remain involved in conducting or advocating for partisan “audits” of elections, including in Wisconsin.³

¹ 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/>.

² Beth Reinhard, *et al.*, *As Giuliani Coordinated Plan for Trump Electoral Votes in States Biden Won, Some Electors Balked*, Wash. Post (Jan. 20, 2022, 11:41 AM), https://www.washingtonpost.com/investigations/electors-giuliani-trump-electoral-college/2022/01/20/687e3698-7587-11ec-8b0a-bcfab800c430_story.html.

³ Patrick Marley, *Gableman Hires Investigator Who Has Brought Legal Challenges Seeking to Overturn Wisconsin's Presidential Results*, Milwaukee J. Sentinel (updated Dec. 3, 2021, 10:50 AM), <https://www.jsonline.com/story/news/politics/2021/12/01/michael-gableman-hires-investigator-who-sought-to-overturn-2020-election/8823272002/>; Christina Lieffring, *Gableman Denied Working with a Group That Tried to Overturn the Election. The Group's Leader Says Otherwise*, Up North News (Jan. 18, 2022, 11:29 AM), <https://upnorthnews.com/2022/01/18/gableman-denied-working-with-a-group-that-tried-to-overturn-the-election-the-groups-leader-says-otherwise/>.



American Oversight seeks records with the potential to shed light on attempts to overturn or cast doubt on the results of the November 2020 election in Wisconsin.

Requested Records

American Oversight requests that the Wisconsin Elections Commission produce the following records “as soon as practicable and without delay”:⁴

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 regarding attempts to block, delay, or otherwise alter the certification of the November 2020 election, whether in Wisconsin or other jurisdictions, including, but not limited to:

1. The December 14, 2020, meeting at which a false Certificate of Ascertainment was signed and submitted, and any communications that preceded or followed the meeting⁵
2. Communications with any representatives of or intermediaries for the former Trump administration or the Trump campaign
3. Communications regarding the January 6, 2021, certification or any objections to vote counts
4. Wisconsin Assembly Speaker Robin Vos’s call for the Assembly Committee for Campaigns and Elections to investigate the election⁶
5. Memoranda issued by the Legislative Research Bureau indicating that the legislature may not retroactively change the selection or actions of presidential electors⁷

Please provide all responsive records from November 3, 2020, through January 20, 2021.

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

⁴ Wis. Stat. § 19.35(4)(a).

⁵ *See supra*, note 1.

⁶ Melanie Conklin, *Assembly Elections Committee Leader Suggests Illegal Actions to Overturn Wisconsin’s Election*, Wis. Examiner (Nov. 10, 2020, 1:36 PM), <https://wisconsinexaminer.com/2020/11/10/assembly-elections-committee-leader-suggests-illegal-actions-to-overturn-wisconsin-election/>.

⁷ Alan Feuer, *et al.*, *Memo Shows Roots of Trump’s Focus on Jan. 6 and Alternate Electors*, N.Y. Times, Feb. 2, 2022, <https://www.nytimes.com/2022/02/02/us/politics/trump-jan-6-memos.html>.

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

The public has a significant interest in the administration of elections in Wisconsin.¹¹ Records with the potential to shed light on this matter would contribute significantly to public understanding of operations of the government, including the extent of communications between Wisconsin officials and individuals or entities seeking to contest the result of the 2020 presidential election. American Oversight is committed to transparency and makes the responses agencies provide to public records requests

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>.

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

¹⁰ American Oversight currently has approximately 15,720 page likes on Facebook and 117,800 followers on Twitter. American Oversight, Facebook, <https://www.facebook.com/weareoversight/> (last visited Feb. 28, 2022); American Oversight (@weareoversight), Twitter, <https://twitter.com/weareoversight> (last visited Feb. 28, 2022).

¹¹ See *supra*, note 1-3.

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 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

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).

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