

FILED
12-20-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV003007
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

AMERICAN OVERSIGHT
1030 15th St. NW, B255
Washington, DC 20005

Case No. _____
30952 Petition for Writ of Mandamus

Petitioner,

v.

ASSEMBLY OFFICE OF SPECIAL COUNSEL
200 South Executive Drive, Suite 101
Brookfield, WI 53005,

ROBIN VOS, in his official capacity,
Wisconsin State Assembly Speaker
Room 217 West
State Capitol
PO Box 8953
Madison, WI 53708,

EDWARD BLAZEL, in his official capacity,
Office of the Assembly Chief Clerk
17 West Main St., Room 401
Madison, WI 53703, and

WISCONSIN STATE ASSEMBLY
State Capitol Building
Second Floor, West Wing
PO Box 8952
Madison, WI 53708,

Respondents.

SUMMONS

THE STATE OF WISCONSIN, To each party named above as a Respondent:

You are hereby notified that the Petitioner named above has filed a lawsuit or other legal action against you. The petition, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in chapter 802 of the Wisconsin Statutes, to the petition. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Dane County Courthouse, 215 S. Hamilton Street, Madison, WI 53703, and to Pines Bach LLP, 122 W. Washington Avenue, Suite 900, Madison, WI 53703. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the petition, and you may lose your right to object to anything that may be incorrect in the petition. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

If you require the assistance of Auxiliary Aides or Services because of a disability, call (608) 266-4678 (TDD (608) 266-2138)) and ask for the Court ADA Coordinator.

Respectfully submitted this 20th day of December, 2021.

PINES BACH LLP

*Electronically signed by:
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**Pro Hac Vice Admission pending*

Attorneys for American Oversight, Petitioner

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PETITION FOR WRIT OF MANDAMUS

This is a suit to enforce the Wisconsin Open Records law, Wis. Stat. §§ 19.31 *et seq.* (the “Open Records Law”), with respect to records in the possession of the Wisconsin State Assembly Office of Special Counsel. Petitioner American Oversight sought these records in open records requests made in September and October 2021 to Respondents Assembly

Office of Special Counsel via Michael Gableman, Robin Vos, Edward Blazel, and the Wisconsin State Assembly. It now, through its attorneys at Pines Bach LLP, complains against Respondents as follows:

PARTIES

1. American Oversight is a nonpartisan, nonprofit organization dedicated to ensuring government transparency at all levels. Through research and requests for public records under the federal Freedom of Information Act and state public records laws, American Oversight uses the information it gathers, and its analysis of it, to educate the public about activities and operations of state and federal governments through its reports, published analyses, press releases, and other media. American Oversight has developed a significant focus on voting rights and election oversight, including in Wisconsin, and seeks to ensure the public has access to government records that enable them to monitor the performance and priorities of their public officials. American Oversight's mailing address is 1030 15th St. NW, B255, Washington, DC 20005.

2. The Assembly Office of Special Counsel ("OSC") was created on August 30, 2021 by the Assembly Committee on Assembly Organization, following a motion by Wisconsin State Assembly (the "Assembly") Speaker Robin Vos. The OSC is funded by the Assembly and staffed entirely by contractors or subcontractors of the Assembly, including Michael Gableman ("Gableman"), who Vos has designated as "special counsel" and who leads the OSC. The OSC has offices at 200 South Executive Drive, Suite 101, Brookfield, Wisconsin. It also does substantial business in Dane County, including conducting investigation activities and reporting to and appearing before Assembly committees. The OSC is an "authority" as that term is defined in Wis. Stat. § 19.32(1).

3. Robin Vos (“Vos”) is an adult resident of the State of Wisconsin and an elected member of the Assembly, representing the 63rd Assembly District. He also is Speaker of the Assembly. His office is located at Room 217 West, State Capitol, PO Box 8953, Madison, Wisconsin. Vos is an “authority” as that term is defined in Wis. Stat. § 19.32(1).

4. Edward Blazel (“Blazel”) is the duly selected Chief Clerk of the Wisconsin Assembly under Wis. Stat. § 13.15(1). His office is located at 17 West Main Street, Room 401, Madison, Wisconsin. The Chief Clerk is an “office” under Wis. Stat. §§ 19.32(1) and 19.42(13)(e), and Assembly Chief Clerk Blazel is an “authority” as that term is defined in Wis. Stat. § 19.32(1).

5. The Wisconsin State Assembly is the lower house of the Wisconsin Legislature. The Assembly’s address is State Capitol Building, Second Floor, West Wing, PO Box 8952, Madison, Wisconsin. The Assembly is an “authority” as that term is defined in Wis. Stat. § 19.32(1).

JURISDICTION, VENUE, AND RELATED CASES

6. This Court has jurisdiction over the subject matter of this dispute pursuant to Article VII, Section 8 of the Wisconsin Constitution and Wis. Stat. §§ 19.37 and 753.03.

7. Venue is proper under Wis. Stat. §§ 19.37(1) and 801.50(2).

8. Petitioner filed an Open Records action against Respondents Vos, Blazel, and the Assembly on October 8, 2021, alleging failure to provide contractor records under Wis. Stat. § 19.36(3) in response to Petitioner’s July and August 2021 open records requests.

American Oversight v. Robin Vos et al., Dane County Case No. 2021-cv-002440.

9. Petitioner filed a second Open Records action against Respondent Vos on October 18, 2021, alleging failure to provide records in his custody in response to other of Petitioner's May, July, August, and September 2021 open records requests. *American Oversight v. Robin Vos*, Dane County Case 2021-cv-002521.

10. Both existing Open Records actions seek records related to the Assembly's investigation of the 2020 election.

RELEVANT LEGAL AUTHORITY

11. Wisconsin Open Records Law, Wis. Stat. §§ 19.31 *et seq.*, controls public access to government records and mandates that the public be afforded access "to the greatest possible information regarding the affairs of government."

12. "Except as otherwise provided by law, any requester has a right to inspect any record." Wis. Stat. § 19.35(1)(a).

13. "Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor." *Id.* § 19.35(4)(a).

14. "If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request." *Id.* § 19.35(4)(b). Valid reasons for denial are limited to statutory exemptions, *id.* § 19.36, "[s]ubstantive common law principles," *id.* § 19.35(1)(a), or "specific demonstration[s] that there is a need to restrict public access at the time that the request" is made, *id.*

15. “Each authority shall make available for inspection and copying under s. 19.35(1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority.” *Id.* § 19.36(3).

FACTS

Background

16. Wisconsin held a general election on November 3, 2020. Over 3.2 million Wisconsinites cast ballots in that election. President Biden won Wisconsin with a margin of over 20,500 votes.

17. In the weeks following the election, and prior to certification on November 30, the results were scrutinized at multiple levels. Among other things, municipal, county, and state-level canvasses each reviewed and confirmed the results. In addition, over six days in November, county and municipal clerks directed the audit of more than 145,000 ballots.

18. Following a request from then-President Trump’s campaign on November 18, all ballots cast in Dane and Milwaukee Counties were recounted, resulting in a net gain of 87 votes for President Biden.

19. Before and after the recount and certification process, multiple cases were filed challenging the results of the presidential election in Wisconsin. The Wisconsin Supreme Court rejected each of the challenges that reached that court, *e.g.*, *Trump v. Biden*, 2020 WI 91, 394 Wis. 2d 629, 951 N.W.2d 568, *cert. denied*, 141 S. Ct. 1387 (U.S. 2021); *Wis. Voters Alliance v. Wis. Elections Comm’n*, No. 2020AP1930-OA (Wis. Dec. 4, 2020); *Trump v. Evers*, No. 2020AP1971-OA (Wis. Dec. 3, 2020); *Mueller v. Jacobs*, No. 2020AP1958-OA (Wis. Dec. 3, 2020), and confirmed that former President Trump’s

campaign could not “succeed in its effort to strike votes and alter the certified winner of the 2020 presidential election,” *Trump v. Biden*, 394 Wis. 2d 629, ¶ 32.

20. Additional challenges to Wisconsin’s election results failed in federal court. *See, e.g., Trump v. Wis. Elections Comm’n*, 506 F. Supp. 3d 620 (E.D. Wis. 2020), *aff’d*, 983 F.3d 919 (7th Cir. 2020), *cert. denied*, 141 S. Ct. 1516 (U.S. 2021); *Feehan v. Wis. Elections Comm’n*, 506 F. Supp. 3d 596 (E.D. Wis. 2020), *appeal dismissed*, Nos. 20-3396 & 20-3448, 2020 WL 9936901 (7th Cir. Dec. 21, 2020), *pet. for writ of mandamus denied*, No. 20-859 (U.S. Mar. 1, 2021).

The Assembly’s Investigation and the Role of Contractors

21. Notwithstanding the recount and numerous election challenges, on May 26, 2021, Vos announced the Assembly planned to hire three former law enforcement officers and a supervising attorney to investigate the November 2020 election.

22. Vos sent a “mail ballot” to the Committee on Assembly Organization on May 28, 2021, which permitted members to vote, without a hearing, to “authorize[] the Speaker of the Assembly to hire legal counsel and employ investigators to assist the Assembly Committee on Campaigns and Elections in investigating the administration of elections in Wisconsin.” The mail ballot also stated: “Speaker Vos, on behalf of the Assembly, shall approve all financial costs and contractual arrangements for hiring legal counsel and investigators.”

23. In June, the Assembly retained Gableman as coordinating attorney to supervise the investigation, including by receiving investigative reports and keeping a weekly report of investigative findings. Gableman’s designated contacts under his independent contractor agreement are Vos and Steve Fawcett, counsel to Vos. The

Assembly agreed to pay Gableman \$11,000 per month, with a term starting July 1, 2021. A copy of the fully executed Coordinating Attorney Independent Contractor Agreement signed by Vos and Gableman is attached hereto as pages A-000172–A-000175 to **Exhibit U**.

24. In June, the Assembly also contracted with at least two individual investigators to work with Gableman. Those investigators quit in or about the end of July, 2021.

25. Also at the end of July, Vos announced an expanded investigation and empowered Gableman to hire different or additional investigators. Vos has on several occasions indicated that Gableman makes key decisions regarding the investigation, including over hiring of consultants and private investigators, and whether to issue subpoenas and to whom.

26. On August 27, 2021, Vos sent another mail ballot to the Committee on Assembly Organization. It authorized “the Speaker of the Assembly to designate the legal counsel hired pursuant to the May 28, 2021, ballot adopted by the Committee on Assembly Organization, as special counsel to oversee an Office of Special Counsel. The special counsel shall direct an elections integrity investigation, assist the Elections and Campaign Committee, and hire investigators and other staff to assist in the investigation.”

27. The Committee on Assembly Organization adopted Vos’s mail ballot and a budget for the OSC on August 30, 2021.

28. The Assembly has continued to pay Gableman \$11,000 per month since the creation of the OSC. The Assembly also has paid directly to Gableman the funds allocated for hiring of additional investigators and staff.

American Oversight's Requests

29. Since Vos first announced the election investigation in May 2021, American Oversight has submitted to Vos and Blazel open records requests regarding the role and activities of the contractors who the Assembly has engaged to perform work in furtherance of the investigation. In each of these requests, American Oversight specifically stated that “responsive records include records that were ‘produced or collected’ under any contract entered by [] Speaker Vos and/or the Wisconsin Assembly” pursuant to Wis. Stat. § 19.36(3).

30. Prior to the constitution of the OSC, American Oversight submitted seven requests for contractor records to Vos and Blazel (the “July and August Requests”). Those requests, dated July 20 or August 12, 2021, are the subject of litigation pending in the Dane County Circuit Court. *See American Oversight v. Robin Vos et al.*, Dane County Case No. 2021-cv-002440. In that case, the Court ordered Vos, Blazel, and the Assembly to release contractor records through August 30, 2021, the date OSC was formally constituted, and stated with respect to records from after that date: “[T]hat’s a separate issue that will be addressed in a different matter.” Transcript of Motion Hearing at 35, *American Oversight v. Robin Vos et al.*, Dane County Case No. 2021-cv-002440.

31. In September and October, American Oversight submitted to Vos and Blazel seven new requests for contractor records, each of which seeks substantive categories of information sought by American Oversight’s July and August requests, but for more recent time periods. American Oversight also submitted similar requests to Gableman as special counsel and overseer of the OSC. While those requests ask for the same general categories

of information as American Oversight's requests to Vos and Blazel, they seek records directly from the OSC.

32. On September 15, 2021, American Oversight submitted three requests to each of Vos and Blazel jointly, and to Gableman. True and correct copies of these requests as submitted to Vos and Blazel are attached hereto as **Exhibits A, C, and E**. True and correct copies of these requests as submitted to Gableman are attached hereto as **Exhibits B, D, and F**.

33. Because they follow American Oversight's previous requests for the same types of materials—and attempt not to seek duplicative records—each of the September requests seeks responsive records from August 12, 2021, through the date the search is conducted.

34. The first set of September requests seek contracts, invoices, plans, scope of work statements, and other documents related to the organization and structure of, and payment for, the investigation (the "September Organizing Materials Requests," **Exs. A & B**).

35. The second set of September requests seek interim or final reports, analyses, or work product prepared by Gableman or other contractors in the course of conducting the investigation (the "September Work Product Requests," **Exs. C & D**).

36. The third set of September requests seek communications between Gableman and others working on the election investigation and calendars for the investigators (the "September Communications Requests," **Exs. E & F**).

37. On October 15, 2021, American Oversight submitted an additional request to each of Vos and Blazel jointly, and to the OSC, via Gableman (the "October External

Communications Requests”). A true and correct copy of this request as submitted to Vos and Blazel is attached hereto as **Exhibit G**. A true and correct copy of this request as submitted to the OSC, via Gableman, is attached hereto as **Exhibit H**. The October External Communications Requests seek correspondence between OSC investigators and a specified list of recipients.

38. The October External Communications Requests seek responsive records from August 12, 2021, through the date the search is conducted for some individuals and entities, and for others, from June 1, 2021, through the date the search is conducted.

39. On October 26, 2021, American Oversight submitted to each of Vos and Blazel jointly, and to the OSC, via Gableman, follow-ups to the September requests (the “October Follow-up Requests”), seeking substantively the same categories of records as the September requests, but for the time period from September 15, 2021, through the date the search is conducted. True and correct copies of the October Follow-up Requests as submitted to Vos and Blazel are attached hereto as **Exhibits I, K, and M**. True and correct copies of the October Follow-up Requests as submitted to the OSC, via Gableman, are attached hereto as **Exhibits J, L, and N**.

40. In conjunction with its October requests to Gableman for records of the OSC, American Oversight made clear that its September requests, which had been submitted to Gableman via his consulting firm, “should be interpreted as specifically directed to the Office of Special Counsel in addition to Michael Gableman.”

41. Collectively, the September and October requests are hereinafter referred to as “American Oversight’s Requests.”

OSC's Improper Denial and Inadequate Response

42. With one exception, the OSC did not individually acknowledge American Oversight's Requests. In the sole communication American Oversight has received from the OSC that specifically refers to any of the September or October requests, Zakory Niemierowicz, writing on behalf of the OSC, responded to the October External Communications Request on the same day it was submitted, stating in full: "We have received your latest open records request sent on October 15th, we acknowledge this request and will send a response letter once our personal [sic] in charge of open records responses [sic] returns to the office."

43. Having not received acknowledgements of either the September requests or October Follow-up Requests and following public statements by Gableman suggesting that the OSC did not intend to release information regarding the election investigation, American Oversight wrote to Gableman on November 12, 2021, seeking confirmation that the OSC would respond to American Oversight's Requests as soon as practical and without delay. A true and correct copy of that letter is attached hereto as **Exhibit O**. The OSC did not respond to that letter.

44. On December 3, American Oversight received an email from Mr. Niemierowicz stating the OSC was "confirm[ing] we have gathered everything responsive to your requests" and indicating it would be providing records the next day.

45. On December 4, American Oversight received another email from Mr. Niemierowicz stating in full:

Good afternoon,

Attached are the open records for the Office of Special Counsel up until December 1st, 2021. Some documents that contain strategic information to our investigation will continue to be help [sic] until the conclusion of our investigation. If you have any questions or concerns please feel free to contact our office at coms@wispecialcounsel.org

Very Respectfully,

Zakory Niemierowicz
WI Special Counsel

46. The email included links to three PDFs totaling 114 pages. Copies of Mr. Niemierowicz's email and the produced records are attached hereto as **Exhibit P** (the "December 4 Partial Production"), with certain redactions and watermarking added by Petitioner. *See* Table 1.

47. Mr. Niemierowicz's December 3 and 4 emails did not identify any specific American Oversight Request to which the OSC was purporting to respond.

48. The 114-page December 4 Partial Production excludes numerous records responsive to American Oversight's Requests. Despite the OSC employing at least ten individuals in addition to Gableman, the December 4 Partial Production included almost no records reflecting communications between Gableman and those individuals. The December 4 Partial Production also included only minimal documents regarding the wide range of "evidence" the OSC allegedly has obtained or the activities of the OSC described in a report Gableman submitted to the Assembly Committee on Campaigns and Elections, which referred to "collect[ing] and review[ing] thousands of governmental and other documents" and "interview[ing] numerous witnesses." *See* Office of the Special Counsel, First Interim Report (delivered to the Wisconsin State Assembly Nov. 10, 2021), <https://www.wifraud.com/Content/files/InterimReportFINALSubmitt.pdf>.

49. On December 9, 2021, American Oversight wrote to Gableman raising the deficiencies with the December 4 Partial Production, including that withholding records because they “contain strategic information” is not a specific or valid justification for denying a records request under Wisconsin law. American Oversight requested a response by December 15. A true and correct copy of American Oversight’s letter is attached hereto as **Exhibit Q**. OSC did not respond to American Oversight’s letter.

50. OSC has improperly withheld and delayed access to its records by asserting that it will not produce records that “contain strategic information” “until the conclusion of [its] investigation.” *See* Table 1. OSC’s indefinite withholding constitutes a denial, and is unjustified under Wisconsin law.

Vos’s and Blazel’s Failure to Respond to American Oversight’s Requests for Contractor Records

51. Vos acknowledged the September requests and the October External Communications Request, but has not made any substantive response to those or any other of American Oversight’s Requests. Vos has not acknowledged the three October Follow-up Requests.

52. Blazel responded to the September requests on October 5, 2021. While Blazel produced some records in response to the September Organizing Materials Request, his response only includes records from his files and not from those of Gableman or any other contractor. For the September Work Product and Communications Requests, Blazel indicated that he “ha[s] no records that are responsive.” Copies of Blazel’s responses to the September requests and produced records are attached hereto as **Exhibits R-T**, with bates numbering and watermarking added by Petitioner.

53. On November 15, 2021, American Oversight wrote to Vos and Blazel regarding its requests for contractor records. Neither Vos nor Blazel responded to the issues raised in those letters.

54. On November 19, Blazel responded to the October Requests. Blazel produced some records in response to the October Organizing Materials and External Communications Requests, but again his responses only include records from his files and not from those of Gableman or any other contractor. For the remaining October Requests, Blazel indicated that he “ha[s] no records that are responsive.” Copies of Blazel’s responses are attached hereto as **Exhibits U-X**, with bates numbering and watermarking added by Petitioner. Exhibit U also includes an excerpt of the produced records.

55. None of Blazel’s responses reflect a search of files maintained by the Assembly’s contractors.

56. Like the OSC, Vos has asserted that he does not intend to provide information about the investigation until the investigation is completed. In a radio interview on or about October 19, 2021, Vos stated:

If you think about just the basic way an investigation is conducted, if the district attorney decides they’re going to try to find out who killed somebody on the street corner, they do not put out for public display, for everybody to read, who they’re talking to and who they’re investigating — giving an advantage to the people who actually committed the crime to avoid prosecution That’s exactly what would happen if we decided to put all the documents out.

Molly Beck, Wisconsin Assembly Speaker Robin Vos Says He Wants To Withhold Records on Taxpayer-Funded Election Review Until It’s Over, Milwaukee J. Sent. (Oct. 19, 2021),

<https://www.jsonline.com/story/news/politics/2021/10/19/wisconsin-robin-vos-wants-withhold-records-until-election-review-over-gableman/8520632002/>.

57. Vos has recently stated that he does not know when the investigation will conclude. Laurel White, “We Don’t Know When It Will End”: Wisconsin Assembly Speaker Says Deadline for GOP-Backed Election Investigation is Unclear (Dec. 14, 2021), Wis. Public Radio, <https://www.wpr.org/we-dont-know-when-it-will-end-wisconsin-assembly-speaker-says-deadline-gop-backed-election>.

58. Respondents Vos, Blazel, and the Assembly have improperly withheld and delayed access to the Assembly’s contractors’ records, including records from Gableman, despite their clear obligation to provide such records “to the same extent as if the record[s] were maintained” by the Respondents. Wis. Stat. § 19.36(3). *See* Table 1.

Table 1: Summary of Requests and Responses

Request	Date Submitted	OSC's Response	Blazel's Response	Vos's Response
September Organizing Materials Requests (See Exs. A & B.)	Sept. 15, 2021	December 4 Partial Production; improper denial as to "strategic information." (See Ex. P.)	October 5 partial production; no records from contractors. (See Ex. R.)	None.
September Work Product Requests (See Exs. C & D.)	Sept. 15, 2021	December 4 Partial Production; improper denial as to "strategic information." (See Ex. P.)	October 5, no responsive records. (See Ex. S.)	None.
September Communications Requests (See Exs. E & F.)	Sept. 15, 2021	December 4 Partial Production; improper denial as to "strategic information." (See Ex. P.)	October 5, no responsive records. (See Ex. T.)	None.
October External Communications Requests (See Exs. G & H.)	Oct. 15, 2021	December 4 Partial Production; improper denial as to "strategic information." (See Ex. P.)	November 19 partial production; no records from contractors. (See Ex. U.)	None.
October Organizing Materials Requests (See Exs. I & J.)	Oct. 26, 2021	December 4 Partial Production; improper denial as to "strategic information." (See Ex. P.)	November 19 partial production; no records from contractors. (See Ex. V.)	None.
October Work Product Requests (See Exs. K & L.)	Oct. 26, 2021	December 4 Partial Production; improper denial as to "strategic information." (See Ex. P.)	November 19, no responsive records. (See Ex. W.)	None.
October Communications Requests (See Exs. M & N.)	Oct. 26, 2021	December 4 Partial Production; improper denial as to "strategic information." (See Ex. P.)	November 19, no responsive records. (See Ex. X.)	None.

59. American Oversight repeated its September and October Follow-up Requests in December 2021 (again requesting substantively the same records, from a more recent time period). Petitioner has not received a substantive response and is concerned that, without intervention from the Court, Respondents will continue to unlawfully withhold and indefinitely delay access to records to which American Oversight is entitled.

CAUSES OF ACTION

COUNT 1 (AGAINST OSC)

Improper Denial and Withholding in Violation of the Wisconsin Open Records Law

60. Petitioner restates and re-alleges paragraphs 1 through 59 above as if fully set forth herein.

61. It is the declared public policy of the State of Wisconsin “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Wis. Stat. § 19.31. In keeping with that public policy, Wis. Stat. § 19.31 requires that the Open Records Law “shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business.” Further, “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.” *Id.*

62. The Open Records Law provides that “any requester has a right to inspect any record,” Wis. Stat. § 19.35(1)(a), subject to narrow and limited exceptions.

63. American Oversight is a “requester” as defined by the Open Records Law. *See* Wis. Stat. § 19.32(3).

64. American Oversight's Requests seek "records" as defined by the Open Records Law. *See* Wis. Stat. § 19.32(2).

65. Respondent OSC is an "authority" and "custodian" with respect to its own records as those terms are used in Wis. Stat. §§ 19.32(1) and 19.33.

66. Respondent OSC has flouted the Open Records Law and its "presumption of complete public access."

67. Respondent OSC has improperly withheld records responsive to American Oversight's Requests attached hereto as **Exhibits B, D, F, H, J, L, and N**, by partially denying those Requests on grounds they "contain strategic information."

68. Respondent OSC also has failed to "as soon as practicable and without delay, either fill [American Oversight's] request[s] or notify [American Oversight] of [its] determination[s] to deny the request[s] in whole or in part and the reasons therefor", and has delayed providing access to records. Wis. Stat. § 19.35(4).

69. Respondent OSC's denial of records that "contain strategic information" until the conclusion of the investigation is not sufficiently specific, and the Court should order the records to be produced immediately.

70. Respondent OSC's actions have caused and will continue to cause injury to American Oversight by depriving it and the public of their rights under the Open Records Law.

COUNT 2 (AGAINST VOS, BLAZEL, AND THE ASSEMBLY)***Improper Withholding of Contractor Records in Violation of the Wisconsin Open Records Law***

71. Petitioner restates and re-alleges paragraphs 1 through 59 above as if fully set forth herein.

72. It is the declared public policy of the State of Wisconsin “that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them.” Wis. Stat. § 19.31. In keeping with that public policy, Wis. Stat. § 19.31 requires that the Open Records Law “shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business.” Further, “[t]he denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.” *Id.*

73. The Open Records Law provides that “any requester has a right to inspect any record,” Wis. Stat. § 19.35(1)(a), subject to narrow and limited exceptions.

74. American Oversight is a “requester” as defined by the Open Records Law. *See* Wis. Stat. § 19.32(3).

75. American Oversight’s Requests seek “records” as defined by the Open Records Law. *See* Wis. Stat. § 19.32(2).

76. Respondents Vos, Blazel, and the Assembly are “authorities” and “custodians” for the records of the Assembly’s contractors as those terms are used in Wis. Stat. §§ 19.32(1) and 19.33, and are the proper recipients of requests for the records of their contractors who are not themselves authorities, *WIREData, Inc. v. Village of Sussex*, 2008 WI 69, ¶ 74, 310 Wis. 2d 397, 751 N.W.2d 736.

77. Gableman is at most a “custodian” but not an “authority” as those terms are used in Wis. Stat. §§ 19.32(1) and 19.33. Gableman and the staff of the OSC that are contractors or subcontractors of the Assembly are contractors of an authority as provided for in the Open Records Law. *Id.* § 19.36(3).

78. Respondents Vos, Blazel, and the Assembly have flouted the Open Records Law and its “presumption of complete public access.”

79. Respondents Vos, Blazel, and the Assembly have improperly withheld records responsive to American Oversight’s Requests attached hereto as **Exhibits A, C, E, G, I, K, and M**, and have failed to conduct an adequate search for records, including a search of their contractors’ files.

80. Respondents Vos, Blazel, and the Assembly also have failed to “as soon as practicable and without delay, either fill [American Oversight’s] request[s] or notify [American Oversight] of [their] determination[s] to deny the request[s] in whole or in part and the reasons therefor”, and have delayed providing access to records. Wis. Stat. § 19.35(4).

81. Respondents’ failure to provide contractor records violates Wis. Stat. § 19.36(3), and the Court should order the records to be produced immediately.

82. Respondents’ actions have caused and will continue to cause injury to American Oversight by depriving it and the public of their rights under the Open Records Law.

WHEREFORE, for the foregoing reasons, Petitioner American Oversight respectfully requests this Court grant the following relief pursuant to Wis. Stat. §§ 19.31 *et seq.*:

- A. An order declaring Respondents violated Wisconsin's Open Records Law, Wis. Stat. §§ 19.31 *et seq.*;
- B. A mandamus order under Wis. Stat. § 19.37(1)(a) compelling Respondents to immediately produce to Petitioner copies of the requested records without further delay and improper withholdings;
- C. An award to Petitioner for its reasonable attorneys' fees, damages of not less than \$100, and Petitioner's other actual costs under § 19.37(2);
- D. An order finding Respondents have acted arbitrarily and capriciously and awarding of punitive damages under Wis. Stat. § 19.37(3); and
- E. Any other relief as the Court deems just and equitable.

Respectfully submitted this 20th day of December, 2021.

PINES BACH LLP

*Electronically signed by:
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**Pro Hac Vice Admission pending*

Attorneys for American Oversight, Petitioner

FILED
12-20-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV003007
Honorable Frank D.
Remington
Branch 8

STATE OF WISCONSIN CIRCUIT COURT
Branch _____

DANE COUNTY

AMERICAN OVERSIGHT
1030 15th St. NW
Suite B255
Washington, DC 20005

Petitioner,

v.

Petition for Writ of Mandamus
Case Code: 30952

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EDWARD BLAZEL, in his official capacity,
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WISCONSIN STATE ASSEMBLY
State Capitol Building
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PO Box 8952
Madison, WI 53708

Respondents.

AFFIDAVIT OF SARAH COLOMBO

STATE OF NEW YORK)
) SS
COUNTY OF KINGS)

Sarah Colombo, being duly sworn on oath, states as follows:

1. I am an attorney for the Petitioner in this matter, American Oversight.

2. I have personal knowledge of the information set forth in this affidavit.

3. On September 15, 2021, on behalf of American Oversight, I authored three open records requests to Robin Vos and Edward Blazel for records related to the work of individuals retained by the Wisconsin Assembly to conduct an investigation of the November 2020 election. These individuals included Michael Gableman. Citing Wis. Stat. § 19.36(3), the requests specifically sought “records that were ‘produced or collected’ under any contract entered by [] Speaker Vos and/or the Wisconsin Assembly.” I also authored three similar requests to Consultare, LLC, c/o Michael Gableman. True and correct copies of the requests are attached hereto as follows:

- Exhibit A:** Request to Rep. Vos and Clerk Blazel for records relating to how the contractors are organized; tracking number WI-REP-21-1295
- Exhibit B:** Request to Consultare, LLC/Michael Gableman for records relating how the contractors are organized; tracking number WI-REP-21-1296
- Exhibit C:** Request to Rep. Vos and Clerk Blazel for contractor work product; tracking number WI-REP-21-1298
- Exhibit D:** Request to Consultare, LLC/Michael Gableman for contractor work product; tracking number WI-REP-21-1299
- Exhibit E:** Request to Rep. Vos and Clerk Blazel for internal contractor communications; tracking number WI-REP-21-1301
- Exhibit F:** Request to Consultare, LLC/Michael Gableman for internal contractor communications; tracking number WI-REP-21-1302

4. On October 15, 2021, on behalf of American Oversight, I authored an open records request to Robin Vos and Edward Blazel for records related to the work of individuals retained by the Wisconsin Assembly to conduct an investigation of the November 2020 election. These individuals included Michael Gableman. Citing Wis. Stat. § 19.36(3), the request specifically sought “records that were ‘produced or collected’ under

any contract entered by Speaker Vos and/or the Wisconsin Assembly.” I also authored a similar request to the Office of Special Counsel (“OSC”), c/o Michael Gableman. True and correct copies of the requests are attached hereto as follows:

Exhibit G: Request to Rep. Vos and Clerk Blazel for external contractor communications; tracking number WI-REP-21-1437

Exhibit H: Request to OSC/Michael Gableman for external contractor communications; tracking number WI-EXT-21-1438

5. On October 26, 2021, on behalf of American Oversight, I authored three open records requests to Robin Vos and Edward Blazel for records related to the work of individuals contracted by the Wisconsin Assembly to conduct an investigation of the November 2020 election. These individuals included Michael Gableman. Citing Wis. Stat. § 19.36(3), these requests specifically included “records that were ‘produced or collected’ under any contract entered by [] Speaker Vos and/or the Wisconsin Assembly.” I also authored three similar requests to the OSC, c/o Michael Gableman. True and correct copies of the requests are attached hereto as follows:

Exhibit I: Request to Rep. Vos and Clerk Blazel for records relating to how the contractors are organized; tracking number WI-REP-21-1493

Exhibit J: Request to OSC/Michael Gableman for records relating to how the contractors are organized; tracking number WI-EXT-21-1494

Exhibit K: Request to Rep. Vos and Clerk Blazel for contractor work product; tracking number WI-REP-21-1495

Exhibit L: Request to OSC/Michael Gableman for contractor work product; tracking number WI-EXT-21-1496

Exhibit M: Request to Rep. Vos and Clerk Blazel for internal contractor communications; tracking number WI-REP-21-1497

Exhibit N: Request to OSC/Michael Gableman for internal contractor communications; tracking number WI-EXT-21-1498

6. On November 12, 2021, on behalf of American Oversight, I sent a letter to Michael Gableman regarding American Oversight's outstanding open records requests to the OSC. A true and correct copy of this letter is attached hereto as **Exhibit O**.

7. On December 4, 2021, American Oversight received an email from Zakory Niemierowicz of the OSC with links to 114 total pages of records. A true and correct copy of the email and records, with redactions in blue from the OSC and a watermark and redactions in black from American Oversight, is attached hereto as **Exhibit P**.

8. On December 9, 2021, on behalf of American Oversight, I sent a letter to the OSC and Michael Gableman identifying deficiencies in the OSC's December 4, 2021, response. A true and correct copy of the letter is attached hereto as **Exhibit Q**.

9. In October and November, 2021, I received various emails and letters from Clerk Blazel's office responding to my earlier requests, none of which indicate any attempt to obtain records from the Assembly's contractors. They are attached hereto as follows:

Exhibit R: October 5, 2021, email and records, with a watermark and page numbers from American Oversight, responding to WI-REP-21-1295

Exhibit S: October 5, 2021, email responding to WI-REP-21-1298

Exhibit T: October 5, 2021, email responding to WI-REP-21-1301

Exhibit U: November 19, 2021, letter, and excerpt of records with a watermark and page numbers from American Oversight, responding to WI-REP-21-1437

Exhibit V: November 19, 2021, letter responding to WI-REP-21-1493

Exhibit W: November 19, 2021, letter responding to WI-REP-21-1495

Exhibit X: November 19, 2021, letter responding to WI-REP-21-1497

10. Rep. Vos has not responded to the requests at Exhibits A, C, E, G, I, K, or M.

11. Prior to submitting the above-referenced requests, American Oversight submitted seven requests for contractor records to Rep. Vos and Clerk Blazel. Those requests, dated July 20 or August 12, 2021, are the subject of litigation pending in the Dane County Circuit Court. *See American Oversight v. Robin Vos et al.*, Dane County Case No. 2021-cv-002440. In that case, the Court ordered Vos, Blazel, and the Assembly to release contractor records through August 27, 2021, the date OSC was constituted. The parties later agreed that this date should be adjusted to the August 30, 2021, and the Court issued a written order with the adjusted date. The September and October 2021 requests referenced above are continuations of the July and August 2021 requests.

12. News reports during the periods covered by the above-referenced requests indicated that Michael Gableman and other individuals associated with the OSC were being paid for and working on the investigation during this time. Rep. Vos has also stated to the media that he is not sure when the election investigation will end. True and correct copies of some of these reports are attached hereto as follows:

Exhibit Y: Patrick Marley, A who's who guide to the Republican review of Wisconsin's 2020 presidential election, Milwaukee J. Sentinel (updated Dec. 17, 2021, 10:44 AM), <https://www.jsonline.com/story/news/politics/2021/12/16/whos-who-guide-wisconsins-partisan-election-review/6467521001/>

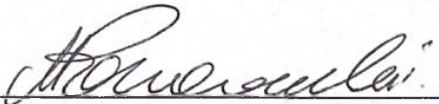
Exhibit Z: Patrick Marley, Gableman touts Kleefisch's run for governor, asks for support in keeping his election review going, Milwaukee J. Sentinel (updated Dec. 14, 2021, 2:18 PM), <https://www.jsonline.com/story/news/politics/2021/12/14/gableman-touts-kleefisch-pushes-keep-his-election-review-going/8892104002/>

Exhibit AA: Laurel White, 'We don't know when it will end': Wisconsin Assembly Speaker says deadline for GOB-backed election investigation is unclear, Wis. Public Radio, Dec. 14, 2021, <https://www.wpr.org/we-dont-know-when-it-will-end-wisconsin-assembly-speaker-says-deadline-gop-backed-election>



SARAH COLOMBO

Subscribed to and sworn before me
this 20 day of December, 2021.



Notary Public, State of New York

My commission expires: 05.11.2021



ALEKSANDRA PARADOWSKI
NOTARY PUBLIC, State of New York
No. 01PA6324707
Qualified in Kings County
Commission Expires May 11, 2023



**FILED
12-20-2021
CIRCUIT COURT
DANE COUNTY, WI
2021CV003007
Honorable Frank D.
Remington
Branch 8**

STATE OF WISCONSIN CIRCUIT COURT
Branch _____

DANE COUNTY

AMERICAN OVERSIGHT
1030 15th St. NW, B255
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Petitioner,
v.

Petition for Writ of Mandamus
Case Code: 30952

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WISCONSIN STATE ASSEMBLY
State Capitol Building
Second Floor, West Wing
PO Box 8952
Madison, WI 53708,

Respondents.

APPLICATION FOR ALTERNATIVE WRIT

Petitioner, American Oversight, by its attorneys, Pines Bach LLP, hereby applies to this Court for the immediate issuance of an alternative writ of mandamus ordering the Respondents, Assembly Office of Special Counsel, Robin Vos, Edward Blazel, and the

Wisconsin Assembly, to produce records in response to American Oversight's September and October 2021 requests under the Open Records Law, Wis. Stat. § 19.31 *et seq.*, or to appear before this Court and show cause to the contrary.

The grounds for this application are as set forth in the accompanying affidavit of Sarah Colombo and as follows:

1. An alternative writ of mandamus is “[a] mandamus issued upon the first application for relief, commanding the defendant either to perform the act demanded or to appear before the court at a specified time to show cause for not performing it’.” *State ex rel. Milwaukee Police Assoc. v. Jones*, 2000 WI App 146, ¶ 7 & n.7, 237 Wis. 2d 840, 615 N.W.2d 190 (quoting BLACK’S LAW DICTIONARY (7th Ed. 1999)).

2. “The usual practice, if a prima facie case is made out by the petition or application, is to issue an alternative writ of mandamus, directed to the person claimed to be under a duty to act, requiring the person, either to act or to show cause why the person should not be compelled to do so.” 9 *Wis. Pleading & Practice Forms*, § 85.37 (5th Ed., June 2021 Update) (footnote omitted).

3. Courts can issue alternative writs of mandamus immediately in open records cases. *See, e.g., ECO, Inc. v. City of Elkhorn*, 2002 WI App 302, ¶ 6, 259 Wis. 2d 276, 655 N.W.2d 510 (court issued alternative writ on same day petition was filed); *Jones*, 237 Wis. 2d 840, ¶ 7 (court issued alternative writ on same day petition was filed); *State ex rel. Richards v. Foust*, 165 Wis. 2d 429, 431, 477 N.W.2d 608, 608 (1991) (“The Honorable Gerald C. Nichol issued an alternative writ of mandamus directing Foust to furnish Richards with access to the prosecutor’s case file or show cause why access to the file should be denied.”); *State ex rel. Morke v. Donnelly*, 155 Wis. 2d 521, 525, 455 N.W.2d 893, 895

(1990) (“[T]he alternative writ of mandamus commanded that Donnelly either provide Morke with access to the requested public records or show cause for withholding the records.”); *see also, e.g.,* Alternative Writ of Mandamus, *American Oversight v. Robin Vos et al.*, Dane County Case No. 2021-cv-002440 (Dkt. 38) (issuing alternative writ on day petition was filed in related open records case).

4. This Petition and the supporting affidavit and exhibits establish a prima facie case that Respondents have failed to perform their clear duties mandated by the Open Records Law.

5. The Open Records Law provides that “[e]xcept as otherwise provided by law, any requester has a right to inspect any record.” Wis. Stat. § 19.35(1)(a). It further provides that “[e]ach authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority’s determination to deny the request in whole or in part and the reasons therefor.” *Id.* § 19.35(4)(a).

6. The Open Records Law also requires an authority that denies a request in whole or in part to provide “a written statement of the reasons for denying the written request.” *Id.* § 19.35(4)(b). Valid reasons for denial are limited to statutory exemptions, *id.* § 19.36, “[s]ubstantive common law principles,” *id.* § 19.35(1)(a), or “specific demonstration[s] that there is a need to restrict public access at the time that the request” is made, *id.*

7. Regarding records of an authority’s contractor, the law provides, in relevant part, “[e]ach authority shall make available for inspection and copying under s. 19.35 (1) any record produced or collected under a contract entered into by the authority with a

person other than an authority *to the same extent* as if the record were maintained by the authority.” *Id.* § 19.36(3) (emphasis added).

8. The proper recipient of a request for contractors’ records is the authority. *WIREDATA, Inc. v. Village of Sussex*, 2008 WI 69, ¶ 74, 310 Wis. 2d 397, 751 N.W.2d 736.

9. The Wisconsin Assembly hired contractors in June 2021 to investigate the November 2020 election; the contractors included former Wisconsin Supreme Court justice Michael Gableman, retained as a supervising attorney, and individual investigators. (*See, e.g.*, Exhibit U at A-000172–A-000175.)

10. At the end of July 2021, Vos announced an expanded election investigation and empowered Gableman to hire different or additional investigators. Vos has on several occasions indicated that Gableman makes key decisions regarding the investigation, including the hiring of consultants and private investigators, and whether to issue subpoenas and to whom.

11. On August 30, 2021, the Assembly Committee on Assembly Organization, by mail ballot, authorized “the Speaker of the Assembly to designate the legal counsel hired pursuant to the May 28, 2021, ballot adopted by the Committee on Assembly Organization, as special counsel to oversee an Office of Special Counsel. The special counsel shall direct an elections integrity investigation, assist the Elections and Campaign Committee, and hire investigators and other staff to assist in the investigation.”

12. Prior to the constitution of the Office of Special Counsel (“OSC”), American Oversight submitted seven requests for contractor records to Vos and Blazel. Those requests, dated July 20 or August 12, 2021, are the subject of litigation pending in the Dane County Circuit Court. *See American Oversight v. Robin Vos et al.*, Dane County Case No. 2021-cv-

002440. (Colombo Aff., ¶ 11.) In that case, the Court ordered Vos, Blazel, and the Assembly to release contractor records through August 30, 2021, the date OSC was constituted. (*Id.*) The Court assumed for purposes of that hearing that the OSC would be the proper authority to receive requests after August 30, 2021, but stated with respect to records from after that date: “[T]hat’s a separate issue that will be addressed in a different matter.” Transcript of Motion Hearing at 35, *American Oversight v. Robin Vos et al.*, Dane County Case No. 2021-cv-002440 (Dkt. 58).

13. Since the creation of the OSC, American Oversight has continued to seek records regarding the activities of the Assembly’s contractors, including Gableman. In September and October, American Oversight submitted to Gableman, as special counsel and overseer of the OSC, seven new requests for records. (Colombo Aff., ¶¶ 3-5 & Exs. B, D, F, H, J, L, N.) Each request sought substantive categories of information similar to American Oversight’s July and August requests, but for more recent time periods. (*Id.* ¶ 11.) American Oversight also submitted similar requests to Vos and Blazel. (*Id.* ¶¶ 3-5 & Exs. A, C, E, G, I, K, M.)

14. Respondents, who each have an obligation to provide records in the possession of the OSC and its staff members, have not responded to these requests in compliance with the Open Records Law.

15. On December 4, 2021, American Oversight received an email from the OSC that granted Petitioner’s requests, with some redactions, as to 114 pages of documents provided in PDF format. The email, sent by OSC staff member Zakory Niemierowicz, also denied the requests in part, stating, “Some documents that contain strategic information to

our investigation will continue to be help [sic] until the conclusion of our investigation.” No further analysis or explanation was provided. (*Id.* ¶ 7 & Ex. P.)

16. For his part, Respondent Blazel has provided some limited records in his own possession with respect to some of the requests, but nothing Petitioner has received to date indicates that he has provided records of the Assembly’s contractors that were produced or collected under their contracts with the Wisconsin Assembly. (*Id.* ¶ 9 & Exs. R-X.)

Respondent Vos has failed to respond to any of Petitioner’s requests. (*Id.* ¶ 10.)

17. The contract for Gableman includes creation and retention of various records as part of his duties. (*See, e.g., id.* Ex. U at A-000172–A-000175.)

18. Additionally, news reports generated during the periods for which Petitioner requested records show that Gableman has hired numerous staff over the period of the investigation and communicated with many other individuals. (*Id.* ¶ 12 & Exs. Y-AA.) Some of the limited records American Oversight have received to date confirm these reports. (*See, e.g.,* Ex. P.)

19. News reports and other media also indicate Gableman is continuing his work on the election investigation and would have generated records, while also undertaking activities like attending rallies for partisan groups like the Rock County Republican Party (*e.g., id.* ¶ 12 & Ex. Z), raising questions about the impartiality and integrity of the investigation.

20. Vos recently stated that he does not know when the election investigation will conclude. (*Id.* ¶ 12 & Ex. AA.) The failure to produce requested records until the end of the investigation is thus indefinite.

21. The Open Records Law requires custodians to provide requesters with records “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a).

22. The OSC’s December 4, 2021, letter is an improper denial of the Petitioner’s request. Its statement that some records will be withheld until the conclusion of the investigation is a denial. *See WTMJ, Inc. v. Sullivan*, 204 Wis. 2d 452, 458, 555 N.W.2d 140, 142 (Ct. App. 1996) (holding a custodian’s choices in response to an open records request are to “comply or deny,” and “compliance at some unidentified time in the future, is not authorized by the open records law”).

23. Moreover, the letter’s withholding of records because they “contain strategic information to our investigation” is not a sufficiently specific or valid reason for denial. “If specific, sufficient reasons are not given, a writ of mandamus must be issued, compelling disclosure of the requested public record.” *Oshkosh Nw. Co. v. Oshkosh Library Bd.*, 125 Wis. 2d 480, 483, 373 N.W.2d 459, 461-62 (Ct. App. 1985).

24. Respondent OSC is required by state law to provide the records responsive to Petitioner’s September and October requests and has failed to do so.

25. Respondents Vos, Blazel, and the Wisconsin Assembly remain “authorities” for Petitioner’s requests for the records of their contractors associated with the OSC. Respondents Vos, Blazel, and the Wisconsin Assembly have a separate obligation in state law to provide the records that were “produced or collected” by those contractors as the individual contractors themselves are *at most* custodians of records, but *not* authorities. *See* Wis. Stat. § 19.36(3). Their failure to provide their contractors’ records responsive to Petitioner’s September and October requests violates that obligation.

26. The Court should grant Petitioner’s application for an alternative writ.

Respectfully submitted this 20th day of December, 2021.

PINES BACH LLP

*Electronically signed by:
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**Pro Hac Vice Admission pending*

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