

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

SALEM MEDIA OF ILLINOIS, LLC,
and AMY JACOBSON,

Plaintiffs,

v.

J.B. PRITZKER, in his official capacity
as Governor of the State of Illinois, and
JORDAN ABUDAYYEH, in her official
capacity as the Governor's press
secretary,

Defendants.

No. 1:20-cv-3212

Complaint

INTRODUCTION

1. Amy Jacobson is an award-winning journalist at one of Chicago's largest news/talk radio stations with a well-earned reputation for asking tough questions of Chicago's elected officials and decision-makers. After she consistently pushed for transparency and accountability from Illinois Governor J.B. Pritzker during his press conferences in recent weeks, particularly asking fair but strong questions about the First Family, he struck back by revoking her press credentials.

2. This is blatantly unconstitutional. A public official may not target particular news media organizations or journalists for exclusion from access made generally available to other media. The First Amendment guarantees the freedoms of speech and of the press, and those rights are incorporated against the states. The Fourteenth Amendment also guarantees citizens equal protection of the laws,

including equal treatment by their government, and due process, which requires fair notice and consideration before the government may revoke access. The First Amendment also guarantees editorial independence to Jacobson's employer, Salem Media.

3. All four of those clauses are violated in this case as a government official selectively denies access to a journalist based on the content of her speech. *See Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986); *Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977); *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977). Twice in recent years federal courts have struck down similar revocations of press passes for other reporters. *CNN v. Trump*, No. 1:18-cv-02610-TJK, Dkt. 20, Nov. 16, 2018¹ (D.D.C.); *Karem v. Trump*, 404 F. Supp. 3d 203, 218 (D.D.C. 2019).

4. Salem Media and Jacobson therefore bring this suit under 42 U.S.C. § 1983, seeking declaratory and injunctive relief.

PARTIES

5. Plaintiff Amy Jacobson is a career journalist currently with AM 560 news/talk radio who works in Cook County, Illinois, and lives in Cook County, Illinois.

6. Plaintiff Salem Media of Illinois, LLC, is a wholly owned subsidiary of Salem Media Group, Inc., located in Camarillo, California. Salem Media Group is America's leading radio broadcaster, Internet content provider, and magazine and

¹ Transcript of oral ruling available online at https://en.wikipedia.org/wiki/File:CNN_v._Trump_transcript_2018-11-16.pdf.

book publisher targeting audiences interested in Christian and family-themed content and conservative values. Salem owns and operates 96 radio stations, with 59 stations in the nation's top 25 top markets – and 28 stations in the top 10 markets, including WIND-AM 560.

7. Defendant J.B. Pritzker is governor of the State of Illinois and oversees the Office of the Governor, including its communications department. He lives and works in Cook County, Illinois. His address for service of process is Office of the Governor, 100 W. Randolph, 16-100, Chicago IL 60601.

8. Defendant Jordan Abudayyeh is press secretary to the Governor of the State of Illinois. She works in Cook County, Illinois. Her address for service of process is Office of the Governor, 100 W. Randolph, 16-100, Chicago IL 60601.

JURISDICTION AND VENUE

9. This case raises claims under the First and Fourteenth Amendments of the United State Constitution and 42 U.S.C. § 1983. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

10. Venue is appropriate under 28 U.S.C. § 1391(b)(1) and (2) because the Defendants are headquartered in and a substantial portion of the events giving rise to the claims occurred in the Northern District of Illinois.

FACTUAL ALLEGATIONS

11. Salem Media's WIND-AM 560 "The Answer" is a major news/talk radio station that serves the Chicago media market. AM 560's mission is to provide its

listeners with news, opinion, and insight. *See* “About Us,” 560TheAnswer.com.² Broadcasting at 5,000 watts, its content reaches listeners in Illinois, northwest Indiana, and southeast Wisconsin. It has over 150,000 weekly cumulative listeners according to Nielsen ratings.

12. Amy Jacobson is cohost of “Chicago’s Morning Answer” and a field journalist on AM 560. After graduating Phi Beta Kappa from the University of Iowa with a degree in broadcasting, Jacobson worked as a reporter for TV stations in Detroit, Tucson, and El Paso before returning to her home state of Illinois and WMAQ (NBC-5) Chicago in 1996. While at WMAQ, Jacobson won a regional Emmy Award and was nominated for six more. In 2008 she transitioned to reporting on radio, first at WLS and since 2010 at AM 560. In addition to four hours of airtime every weekday morning on AM 560, she also reports news and opinion on her social media channels.

13. Over the past several months, Governor Pritzker has held numerous press conferences to address the COVID-19 pandemic open to members of the press corps. Jacobson has been a regular attendee and participant in those press conferences since March 20, 2020. During those press conferences, Jacobson has asked numerous questions challenging the Governor’s response to the pandemic and how the Governor’s family has acted while other Illinoisans are following his order to remain sheltered-in-place.

² Available online at <https://560theanswer.com/content/all/aboutus>.

14. On Friday, May 15, Jacobson was the first journalist to report that Governor Pritzker's family was staying at their 1,000-acre horse farm in Wisconsin, after previously staying on a family farm in Florida. "Pritzker bans AM 560's Jacobson from daily press conferences, claims she isn't 'impartial,'" Prairie State Wire (May 19, 2020).³

15. The story struck a nerve, with coverage by numerous statewide news outlets. *See, e.g.*, "Pritzker family travel to Wisconsin during stay-at-home order," WICS (May 18, 2020)⁴; Rick Pearson and Jamie Munks, "Gov. J.B. Pritzker acknowledges family members have been in Florida and Wisconsin during coronavirus shutdown," Chicago Tribune (May 15, 2020).⁵

16. On Saturday, May 16, 2020, Jacobson was one of several speakers at a rally in Chicago in support of reopening Illinois.

17. On Monday, May 18, 2020 — at the very next press conference after Jacobson broke the story about Governor Pritzker's family staying in Wisconsin — Jacobson was blocked from asking questions. Later that day Governor Pritzker's press secretary Defendant Jordan Abudayyeh wrote in an email to Jacobson, "This weekend you attended and spoke at a political rally to fire up the crowd opposing the Governor's policies to combat COVID-19. That rally was attended by people holding hateful Nazi imagery. An impartial journalist would not have attended that

³ Available online at <https://prairiestatewire.com/stories/537599785-pritzker-bans-am-560-s-jacobson-from-daily-press-conferences-claims-she-isn-t-impartial>.

⁴ Available online at <https://newschannel20.com/news/local/pritzker-family-cross-state-border-during-stay-at-home-order-report-says>.

⁵ Available online at <https://www.chicagotribune.com/coronavirus/ct-coronavirus-pritzker-family-whereabouts-20200515-rx5qkabrabg67j3dfkllbowntu-story.html>.

rally in that capacity and therefore you will no longer be invited to participate as an impartial journalist.”

18. When asked by another journalist about the ban on Jacobson at his May 20, 2020, press conference, Governor Pritzker responded: “When you’re standing up at a rally, where people are taking a political position, holding up Nazi swastikas, holding up pictures of Hitler, and taking an extreme position as she did, that strikes me that that’s not objective in any way. It’s not, it’s not the way you [the reporter asking the question] act, it’s not the way your colleagues in the media act, who are reporters. That is not a reporter. She represents a talk show that has a particular point of view, we allowed her to ask questions because once upon a time she was a reporter, but she proved that she is no longer a reporter.”⁶

19. Journalists frequently speak at public events, whether for community organizations, universities and schools, or trade associations. Salem Media permits its journalists to undertake public speaking events like the rally to connect with its listeners in-person and to potentially gain new listeners among like-minded audience members. Moreover, Jacobson’s comments at the rally were consistent with the “point of view” that she had been expressing for weeks on her show.

20. The Governor’s comments show his action was in retaliation for what he regards as her “extreme positions” and her “particular point of view.” And the fact that the revocation of her access came after she had already been sharing those

⁶ Archived video of press conference available at <https://livestream.com/blueroomstream/events/9107223>. Transcript of answer available at <https://capitolfax.com/2020/05/20/pritzker-changes-course-state-will-allow-limited-outdoor-seating-at-bars-restaurants-in-phase-3/>.

positions and views for weeks on her radio show indicates her rally attendance was a pretext to remove a troublesome or contrarian reporter from the press corps.

21. Press conferences are an essential tool for journalists to do their job collecting and reporting the news. *Borreca v. Fasi*, 369 F. Supp. 906 (D. Haw. 1974) (targeted exclusion of a disfavored journalist from press conferences). By targeting Jacobson for intentional and selective exclusion from future press conferences, the Governor's office impedes her ability to report the news in a timely, thorough manner.

22. Journalists frequently provided commentary and analysis in print, on air, and at public speaking engagements. Jacobson's remarks at the Reopen Illinois rally to share her views are no different from numerous other journalists who blend news and opinion in their reporting, like a TV show host or newspaper columnist. Numerous other journalists who retain their press passes from the Governor's office also provide opinion and commentary on public events, which shows that the revocation of Jacobson's pass is either pretextual or content-based retaliation and viewpoint discrimination (or both).

COUNT I

By targeting Jacobson for exclusion from generally available information and press conferences, Defendants are violating Plaintiffs' First Amendment right to freedom of the press.

23. The allegations contained in all preceding paragraphs are incorporated herein by reference.

24. The right to freedom of the press in the First Amendment has been incorporated to and made enforceable against the states through the Fourteenth Amendment guarantee of Due Process. *Near v. Minnesota*, 283 U.S. 697, 707 (1931).

25. The Governor's targeted exclusion of Jacobson from press conferences and other materials otherwise generally available to the news media violates the right of equal access inherent in the freedom of the press.

26. Salem Media and Jacobson are entitled to an injunction under 42 U.S.C. § 1983 ordering Defendants to immediately end their pattern of behavior barring her from equal access to information and press conferences on the same basis as her colleagues in the press corps.

COUNT II

By targeting Jacobson for exclusion from generally available information and press conferences, Defendants are violating Plaintiffs' First Amendment free speech right.

27. The allegations contained in all preceding paragraphs are incorporated herein by reference.

28. If the Governor's decision is actually based on her attendance at the Reopen Illinois rally, then it is retaliation for the content of her speech and discrimination based on the critical editorial viewpoint she expressed.

29. If attendance at the rally is in fact a pretextual reason to remove her from the press corps after her tough but fair questions about the First Family, then it is retaliation for the content of her speech and discrimination based on her reporting.

30. Retaliating against a journalist and her news organization based on her editorial stances and tough questions, preventing her from speaking or asking questions in press conferences and gaggles, violates the First Amendment's free speech clause. *See United Teachers of Dade v. Stierheim*, 213 F. Supp. 2d 1368 (S.D. Fl. 2002). The government may not require journalists to hold a particular point-of-view or to remain impartial to the government's actions. Nor may the government forbid journalists from attending a rally, parade, march, or demonstration where a particular point-of-view is being expressed. In this sense it is an unconstitutional condition, making editorial silence or agreement with the Governor a prerequisite for continued access.

COUNT III

By targeting Jacobson for exclusion from generally available information and press conferences, Defendants are violating Plaintiffs' Fourteenth Amendment right to equal protection of the laws.

31. The allegations contained in all preceding paragraphs are incorporated herein by reference.

32. The equal protection clause requires that a state government grants equal treatment to its citizens and not discriminate amongst them, especially in respect of their fundamental rights. In this context, it requires that all journalists have equal access to information generally available to the news media. *See McCoy v. Providence Journal Co.*, 190 F.2d 760, 766 (1st Cir. 1951); *Getty Images News Servs. v. Dept. of Defense*, 193 F.Supp.2d 112 (D.D.C. 2002); *Ludtke v. Kuhn*, 461 F.Supp. 86 (S.D.N.Y. 1978).

33. The targeted exclusion from equal access of Jacobson and Salem Media by Defendants denies them the equal protection of the laws to which they are entitled.

COUNT IV

By targeting Jacobson for exclusion from generally available information and press conferences without clear standards or fair consideration, Defendants are violating Plaintiffs' Fourteenth Amendment right to due process of laws.

34. The allegations contained in all preceding paragraphs are incorporated herein by reference.

35. The due process clause requires that a state government provide all journalists with prior notice of the standards of professional conduct by which it will judge their press-credentialing. When a government official decides to revoke a press credential, he must extend fair notice and consideration based on those standards before entering a final decision. *Sherrill*, 569 F.2d at 130-31; *Karem*, 404 F. Supp. 3d 203.

36. Jacobson was not provided with prior notice of the standards or policies used by the Governor's Office for press credentialing, and Defendant Abudayyah's email gestured at an amorphous standard with no opportunity of review before a final decision was entered.

COUNT V

By targeting Jacobson for exclusion from generally available information and press conferences without clear standards or fair consideration, Defendants are interfering with Salem Media's editorial independence in violation of the First Amendment's freedom of the press.

37. The allegations contained in all preceding paragraphs are incorporated herein by reference.

38. Separate from the shared right of journalists and their employing news organizations to equal access to official newsmakers, Salem Media as a news organization has a separate right to make editorial choices about which of its employee journalists cover different stories. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974); *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 653 (1994); *McDermott ex rel. NLRB v. Ampersand Publ'g, LLC*, 593 F.3d 950, 962 (9th Cir. 2010). By excluding Jacobson from the press corps, Defendants are violating Salem Media's right to make independent editorial choices about what stories its reporters cover and when and how its journalists can engage in the public square.

PRAYER FOR RELIEF

Plaintiffs Salem Media of Illinois, LLC, and Amy Jacobson respectfully request that this Court:

- a. Declare that retaliating against Amy Jacobson by barring her from the Governor's press conferences based on the content of her speech and views violates the First Amendment's free speech clause;

b. Declare that the targeted exclusion of Amy Jacobson from the Governor's press conferences violates the First Amendment's free speech and free press clauses, and the Fourteenth Amendment's equal protection clause;

c. Declare that the exclusion of Amy Jacobson was made without due process of law in violation of the Fourteenth Amendment;

d. Declare that the exclusion of Amy Jacobson violates Salem Media's editorial independence in violation of the First Amendment's free press clause;

e. Enjoin Governor Pritzker from excluding Amy Jacobson from generally available information and press conferences;

f. Award Plaintiffs their costs and attorneys' fees under 42 U.S.C. § 1988; and

g. Award any further relief to which Plaintiffs may be entitled.

Dated: June 1, 2020

Respectfully Submitted,

**SALEM MEDIA OF ILLINOIS, LLC
and AMY JACOBSON**

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