

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

SALEM MEDIA OF ILLINOIS, LLC, <i>et al.</i> ,	No. 1:20-cv-3212
Plaintiffs,	
v.	
J.B. PRITZKER, <i>et al.</i> ,	Memorandum of Law Supporting Motion for Temporary Restraining Order and Preliminary Injunction
Defendants.	

TABLE OF CONTENTS

Introduction 1

Facts..... 1

Standard of Review 5

Argument..... 6

I. Salem Media and Jacobson suffer irreparable harm by being excluded from the Governor’s press conferences, and traditional legal remedies are inadequate. 6

II. Plaintiffs are likely to succeed on the merits of their constitutional claims. 7

III. Plaintiffs and the public will suffer substantial harm without preliminary relief, unlike the Defendants, who will only suffer minor inconvenience at most. 15

Conclusion 15

INTRODUCTION

The First Amendment prevents a government official from selectively targeting particular journalists for exclusion from the press corps based on their coverage or the content of their editorial speech. In this case, Governor J.B. Pritzker has banned journalist Amy Jacobson from continuing to participate in press conferences open to other journalists based on her speech and reporting. Jacobson and her employer Salem Media are entitled to a temporary restraining order and preliminary injunction preventing the governor from prohibiting Jacobson from participating in press conferences based on her First Amendment rights. *See e.g., American Broadcasting Cos. v. Cuomo*, 570 F.2d 1080 (2nd Cir. 1977) (granting TRO in an oral ruling from the bench restoring ABC access); *Karem v. Trump*, 404 F. Supp. 3d 203, 218 (D.D.C. 2019) (granting preliminary injunction restoring press pass of magazine reporter); *CNN v. Trump*, No. 1:18-cv-02610-TJK, Dkt. 20 TRO Hearing (D.D.C.)¹ (granting TRO restoring the press pass of cable news reporter).

FACTS

Amy Jacobson is a veteran journalist with a well-earned reputation for asking the tough questions of Illinois' elected officials and decision-makers. Educated as a broadcast journalist at the University of Iowa, Jacobson spent a decade as a television reporter before transitioning to radio in 2008 (Jacobson Affidavit 2). While on television, Jacobson won a regional Emmy Award and was nominated for an additional six regional Emmy's (Jacobson Affidavit 5). First at WLS and now at Salem Media's AM 560, Jacobson brings news and insight to her listeners across the Chicago area. As the cohost of "Chicago's Morning Answer," Jacobson spends four hours every morning providing her unique blend of news reporting, interviews, and opinion (Jacobson

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

Affidavit 7). She also contributes to the station's other shows and news updates as a field reporter (Jacobson Affidavit 8). She also makes and breaks news on her social media platforms (Jacobson Affidavit 10). Her employer Salem Media relies on her as one of their top reporters in the Chicago media market, and gives her its prized morning drive-time slot because listeners rely on her for news, opinion, and insight into Illinois politics (Jacobson Affidavit 9; Reisman Affidavit 8).

J.B. Pritzker is Governor of Illinois. He regularly holds press conferences to answer questions from news media, and has done so with particular frequency during the COVID-19 pandemic. Jordan Abudayyeh is his press secretary.

Jacobson has been a regular and active participant in the Governor's COVID-19 press conferences (Jacobson Affidavit 11-21). During these press conferences, she has several times asked probing questions about the Governor's policies and the First Family's travels outside Illinois at a time when residents are ordered to shelter-in-place by the Governor. On May 14, for instance, she asked about the Governor's furlough of over 1,000 prisoners during the pandemic, including 64 convicted murderers. (Jacobson Affidavit 12). The previous day, she asked about the disconnect between the Governor's legal position in various COVID-related cases and a 2001 Attorney General opinion given the opposite interpretation of his powers under the emergency management act (Jacobson Affidavit 13). These questions spurred Jacobson's reporting for AM 560.

On April 18, Jacobson pressed the Governor on the difference between his plan and the President's plan. She asked two follow-up questions about Chicago lakefront access for bikers and joggers, after which the governor's press secretary cut off in-person questioning. Abudayyeh appeared to become agitated with Jacobson's line of questioning, and said after the press

conference that “things in these briefings are going to change” (Jacobson Affidavit 14-15). Jacobson approached her for clarification, and she did not elaborate (*Id.*).

The following day, April 19, Abudayyeh notified all reporters via email that the afternoon’s press conference was moving to a pooled coverage system “to further ensure we’re appropriately following social distancing guidelines” (Jacobson Affidavit 19; Ex. 1). Abudayyeh put this system in place after a month of in-person briefings where reporters were spaced out in the room. Under the pool system, the press room was re-configured to end the physical presence of all reporters except two pool reporters, one for print and one for broadcast. Radio did not receive separate pool representation. Under the new system, non-pool reporters were required to submit questions to the pool reporters, who would then relay the questions to the Governor and his staff during the briefings (Jacobson Affidavit 17-19). Under this new system, Jacobson was invited to participate live in the press conferences via videoconference technology (WebX) and submitted her question to be read by the pool reporters to the Governor, who continued to visibly react to her lines of inquiry (*Id.*). The new system made it much harder to ask follow-up questions (*Id.*).

On Friday, May 15, Governor Pritzker acknowledged that his family had been residing in Florida, not Illinois, for the first several weeks of the outbreak. “Pritzker Says Wife and Daughter Were in Florida Before Stay-at-Home Order,” NBC-5 9 (May 15, 2020).² Later that same day, Jacobson broke the news that the First Family was remaining overnight at their horse farm in Wisconsin (Jacobson Affidavit 22; Ex. 2).

On Saturday, May 16, Jacobson was a speaker at a “Reopen Illinois” rally in Chicago (Jacobson Affidavit 23). Like other journalists, Jacobson sometimes speaks at public events and on news/talk programs other than her own to share her reporting and editorial views (Jacobson

² Available online at <https://www.nbcchicago.com/news/local/pritzker-says-wife-and-daughter-were-in-florida-before-stay-at-home-order/2272975/>.

Affidavit 24-25).³ She undertakes these speaking engagements within station guidelines; her employer sees public speaking as a good opportunity for her to build their brand and listenership (Reisman Affidavit 9). While at the rally, she gave remarks that repeated views she had given on her radio show many times previously (Jacobson Affidavit 26). As often happens in large public gatherings, a small handful of protestors showed up with signs that did not reflect the views of the majority of the crowd, the organizers of the event, or speakers including Amy Jacobson. In this case, several individuals held signs with imagery comparing Pritzker to Hitler or comparing Pritzker's stay-at-home COVID-19 orders to Nazism. On her Twitter that day Jacobson called those signs "offensive," saying "There is NO need for this" (Jacobson Affidavit 27; Ex. 3).

On Monday, May 18, 2020 — only three days after Jacobson broke the news that Governor Pritzker's family was staying in Wisconsin and at the very next press conference — Jacobson attempted to participate in the Governor's telephone press conference, where questions are submitted by reporters to the two pool reporters, who read them aloud to him for a response (Jacobson Affidavit 28). Jacobson reported on Twitter that Monday she was "BLOCKED from @Gov Pritzker's daily briefings" (Jacobson Affidavit 29; Ex. 4). Later that same day, Jacobson received an email from the Governor's press secretary, Defendant Abudayyeh: "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

³ See, for instance: Rich Miller (Capitol Fax), "Christmas with Rich Miller," City Club of Chicago, available online at <https://www.cityclub-chicago.org/event/2/2321/christmas-with-rich-miller> (Dec. 17, 2018); Kristen McQueary (Chicago Tribune), "Insights into Illinois with Kristen McQueary," Illinois Policy Institute, https://www.youtube.com/watch?v=xCwCMW_Ytjo (Sept. 24, 2015); Carol Marin and Mary Ann Ahern (both of NBC-5), "The Finish Line is in Sight," First Friday Club of Chicago, <https://www.firstfridayclubchicago.org/podcasts/1611-marin-ahern> (Nov. 4, 2016); Carol Marin (NBC-5), "Journalism center co-director discusses 'apocalyptic' election year," DePaul University, <https://depauliaonline.com/24561/news/depaul-journalism-center-co-director-discusses-apocalyptic-election-year/> (Sept. 28, 2016).

journalist would not have attended that rally in that capacity and therefore you will no longer be invited to participate as an impartial journalist.” (Jacobson Affidavit 30; Exhibit 5).

Since the email, Jacobson has been blocked participating in the WebX videoconference like other journalists (Jacobson Affidavit 31). This significantly hampers her ability to do her job as AM 560’s reporter covering the most important story happening in Illinois right now, namely the Governor’s ongoing response to COVID-19 (Jacobson Affidavit 32). Because Jacobson cannot do her job, Salem Media’s AM 560 as a station is put at a competitive disadvantage (Reisman Affidavit 10). Most importantly, her listeners and the public are deprived of the answers to the tough but fair questions that only Jacobson has been pressing.

STANDARD OF REVIEW

The U.S. Court of Appeals for the Seventh Circuit has set up a two-stage test for the issuance of a temporary restraining order or preliminary injunction. *Merritte v. Kessel*, 561 F. App’x 546, 548 (7th Cir. 2014) (standards of proof for TRO or PI the same). First, the movant must show (1) irreparable harm in the period before resolution on the merits; (2) traditional legal remedies are inadequate, and (3) there is at least some likelihood of success on the merits. *HH-Indianapolis, LLC v. Consol. City of Indianapolis*, 889 F.3d 432, 437 (7th Cir. 2018). If a party meets these thresholds, the court moves to “weigh[] the factors against one another, assessing whether the balance of harms favors the moving party or whether the harm to other parties or the public is sufficiently weighty that the injunction should be denied.” *Id.* Considering these three factors, this Court should conclude that Salem Media and Jacobson have made the requisite showings, and that the balance of harms favors their request.

When a party seeks a preliminary injunction to prevent a First Amendment violation, the primary focus is on the likelihood of success on the merits. As to the first and second factors, “The

loss of First Amendment freedoms is presumed to constitute an irreparable injury for which money damages are not adequate, and injunctions protecting First Amendment freedoms are always in the public interest.” *Christian Legal Soc’y v. Walker*, 453 F.3d 853, 859 (7th Cir. 2006). Finally, as to the weighing of interests, if Salem Media and Jacobson shows their likelihood of success on the merits, the Defendants have little interest in enforcing a decision that is likely unconstitutional. *Planned Parenthood of Ind. & Ky., Inc. v. Adams*, 937 F.3d 973, 991 (7th Cir. 2019).

ARGUMENT

The Court should issue a preliminary injunction enjoining the Defendants from continuing to retaliate against Salem Media and Jacobson by excluding her from equal press access. Salem Media and Jacobson are suffering irreparable harm without an injunction because they are denied equal access from press conferences, traditional legal remedies are inadequate to resolve this harm, and they are likely to succeed on the merits of their constitutional claims.

I. Salem Media and Jacobson suffer irreparable harm by being excluded from the Governor’s press conferences, and traditional legal remedies are inadequate.

News is an inherently time-bound business. When reporters are prevented from reporting the news, “each passing day may constitute a separate and cognizable infringement of the First Amendment.” *CBS v. Davis*, 510 U.S. 1315, 1317 (1994) (Blackmun, J., in chambers). A reporter and outlet’s timely access to news is essential because “the newsworthiness of a particular story is often fleeting. To delay or postpone . . . undermines the benefit of public scrutiny and may have the same result as complete suppression.” *Grove Fresh Distribs. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994).

Salem Media and Jacobson suffer irreparable harm every day that she is barred from the Governor’s press conferences. It is the bread-and-butter of reporting for journalists to cover these events and to ask questions about the news, and then to share that news through their outlet. “A

person singled out for exclusion ... is placed at an extraordinary disadvantage in his or her attempt to compete in the ‘marketplace of ideas.’” *Huminski v. Corsones*, 386 F.3d 116, 146 (2d Cir. 2004). Though she continues to work hard and regularly breaks other stories, Jacobson cannot press the important questions which her listeners and many other news outlets find worthy of coverage.

The “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury” for purposes of the issuance of preliminary relief. *Elrod v. Burns*, 427 U.S. 347, 373 (1976). Moreover, traditional legal remedies are inadequate — there is no way to later make whole the lost opportunity to exercise First Amendment freedoms or to cover important news conferences or press events. *See Christian Legal Soc’y*, 453 F.3d at 859.

II. Plaintiffs are likely to succeed on the merits of their constitutional claims.

Salem Media and Jacobson are likely to succeed on the merits of their First and Fourteenth Amendment claims. At a minimum, they pass the “low threshold” that their claims have a “better than negligible” chance of success. *HH-Indianapolis, LLC*, 889 F.3d at 437.

A. Salem Media and Jacobson are likely to succeed on their First Amendment claim against Defendants for violating their right to equal access to information and events. (Count I)

The First Amendment’s freedom of the press clause includes a right of equal access for all journalists and the outlets they represent to information or events made generally available to the press corps. *Am. Broad. Cos.*, 570 F.2d at 1083 (“once there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media”); *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986); *Sherrill v. Knight*, 569 F.2d 124, 129-30 (D.C. Cir. 1977). *See Courthouse News v. Planet*, 947 F.3d 581, 595 n.8 (9th Cir. 2020).⁴

⁴ For these first four claims, the rights of Salem Media as a news organization and Jacobson as a reporter are basically one in the same: “the cases do not distinguish between the First Amendment rights of reporters and the media for whom they report.” *Brown v. Damiani*, 154 F. Supp. 2d 317, 320 n.4 (D. Conn. 2001).

This is an important First Amendment right which is protected by strict scrutiny. *Sherrill*, 569 F.2d at 130 (“such refusal must be based on a compelling governmental interest.”); *United Teachers of Dade v. Stierheim*, 213 F. Supp. 2d 1368, 1375 (S.D. Fla. 2002) (same); *Times-Picayune Pub. Corp. v. Lee*, Civil Action No. 88-1325, 1988 U.S. Dist. LEXIS 3506, at *25 (E.D. La. Apr. 15, 1988) (same); *Borreca v. Fasi*, 369 F. Supp. 906, 909 (D. Haw. 1974) (same). See *United States v. Connolly*, 204 F. Supp. 2d 138, 139 (D. Mass. 2002) (“[O]nly in the most extraordinary circumstances is the government permitted, consistent with the First Amendment, to discriminate between members of the press in granting access . . .”).

In this instance, Jacobson has been denied the equal access guaranteed by the First Amendment. She is prevented from participating in the Governor’s press conferences on the same basis as all of her colleagues in the press corps.

Moreover, the Governor can present no compelling interest at stake in such a denial. She presents no security threat to the Governor. See *Sherrill*, 569 F.2d at 130. Nor is this an instance where there are simply a limited number of seats for the press on Air Force One. See *Frank v. Herter*, 269 F.2d 245, 248-49 (1959) (Burger, J., concurring); *Getty Images News Servs. v. DOD*, 193 F. Supp. 2d 112, 120 (D.D.C. 2002). There is no obvious reason besides Jacobson’s viewpoint and the content of her speech and reporting that would justify her exclusion.

Nor is she seeking special treatment. She acknowledges the First Amendment contains no right to an off-the-record tidbit or an exclusive interview. See *Balt. Sun Co. v. Ehrlich*, 437 F.3d 410 (4th Cir. 2006); *Youngstown Publ’g Co. v. McKelvey*, No. 4:05 CV 00625, 2005 U.S. Dist. LEXIS 9476, at *17-18 (N.D. Ohio May 16, 2005). But that is not the type of access Plaintiffs seek here. Instead, they only want the same access that all members of the press corps receive to cover the Governor’s events. On that they have a compelling claim worthy of vindication.

B. Salem Media and Jacobson are likely to succeed on their First Amendment claim against Defendants for discriminating against her based on her viewpoint. (Count II)

The First Amendment's freedom of speech clause prohibits government from discriminating among citizens on the basis of viewpoint. *Lamb's Chapel v. Center Moriches Union Free School Dist.*, 508 U.S. 384, 394 (1993) ("The First Amendment forbids the government to regulate speech in ways that favor some viewpoints or ideas at the expense of others."). This prohibition on viewpoint discrimination extends to denying press access based on a reporter's content or viewpoint. *Sherrill*, 569 F.2d at 129 ("arbitrary or content-based criteria for press pass issuance are prohibited under the first amendment"). See *McBride v. Vill. of Michiana*, 100 F.3d 457, 461-62 (6th Cir. 1996) (retaliating against a reporter because of the stories she reports by barring her from equal access violates the First Amendment); *Quad-City Cmty. News Serv., Inc. v. Jebens*, 334 F. Supp. 8, 13 (S.D. Iowa 1971).

"A discrimination against a news organization based upon the perceived inaccuracy or bias of its news coverage is a content-based discrimination. . . . Especially is this so when the governmental official enforcing the discrimination is himself the subject of the news reporting In such circumstances, the official's discriminatory actions seek to promote an interest with which the government may not concern itself at all - control by an official of what is said and written about him." *Times-Picayune Pub. Corp. v. Lee*, Civil Action No. 88-1325, 1988 U.S. Dist. LEXIS 3506, at *25-26 (E.D. La. Apr. 15, 1988). *Accord United Teachers of Dade*, 213 F. Supp. 2d at 1373; *Consumers Union of United States, Inc. v. Periodical Correspondents' Assoc.*, 365 F. Supp. 18, 22-23 (D.D.C. 1973), *rev'd on other grounds*, 515 F.2d 1341 (D.C. Cir. 1975) ("A free press is undermined if the access of certain reporters to facts relating to the public's business is limited merely because they advocate a particular viewpoint.").

This is just what has happened here. Jacobson was consistently asking hard questions about the Governor's policies and the First Family that made the Governor and his press secretary uncomfortable during his press conferences. So first she was kicked out of the press room and access was limited to two pool reporters, neither of whom were from her industry (radio broadcasting). Then, three days after Jacobson broke a story about the Governor's family staying at a family farm in Wisconsin, at the very next press conference she was blocked then permanently barred from asking her questions.

In her email to Jacobson stating the fact of her ban, Governor Pritzker's press secretary said that she was no longer permitted to participate because she was no longer "an impartial journalist." (Jacobson Affidavit X; Complaint Exhibit 1). The Governor doubled-down on her decision, defending it to another journalist saying her remarks at the rally were "taking an extreme position" and that she "represents a talk show that has a particular point of view" (Jacobson Affidavit X). When a government official sets himself up as the judge of his own press coverage to determine when particular reporters are no longer "impartial," he is admitting viewpoint discrimination. When he defends his decision to kick out journalist because she has "a particular point of view" and what he believes is an "extreme position" in her editorial stance, he is basing his decision on the content of her speech and his unwillingness to tolerate her views.

The government has no interest in ensuring only "impartial" news media can cover public affairs. In fact, quite the opposite: the First Amendment protects a strong, independent press corps that embraces a wide variety of viewpoints. This stems from our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Any attempt by the government to ensure “impartial” news media inevitably results in viewpoint discrimination. When government officials get in the business of deciding for themselves which news outlets are “impartial” in their coverage of those officials, they are making impermissible judgment calls about each journalist’s reporting and viewpoint. And those journalists whose viewpoint they don’t like, that often file stories or ask questions that are considered critical, or who engage in investigative reporting of an incumbent’s administration that uncovers embarrassing facts — those journalists are deemed “unfair” and “biased” and thus denied press access. Here, the governor can come up with no other journalist who was barred from press conferences based on his or her lack of impartiality. Nor can the governor provide any examples of a journalist being barred because he or she lacked impartiality by openly *supporting* the governor. This case is a government official picking winners and losers among the press corps based on the content of their questions.

This sort of picking-and-choosing who is “fair” or “impartial” is unconstitutional: “Requiring a newspaper’s reporter to pass a subjective compatibility-accuracy test as a condition precedent to the right of that reporter to gather news is no different in kind from requiring a newspaper to submit its proposed news stories for editing as a condition precedent to the right of that newspaper to have a reporter cover the news. Each is a form of censorship.” *Borreca*, 369 F. Supp. at 909-10 (finding against a mayor who excluded a particular reporter from press conferences). *Borreca* continued, “[a] free press is not necessarily an angelic press. Newspapers take sides, especially in political contests. Newspaper reporters are not always accurate and objective.” *Id.* at 910. The appropriate response, however, is for the government official to dispute or criticize the reporting. But the government official crosses a line “when criticism transforms

into an attempt to use the powers of governmental office to intimidate or to discipline the press or one of its members. . .” *Id.* That is the line Governor Pritzker has crossed in this case.

C. Salem Media and Jacobson are likely to succeed on their Fourteenth Amendment claim against Defendants for violating their right to equal protection of the laws. (Count III)

The Fourteenth Amendment guarantees all citizens equal protection of the laws against arbitrary or unfair enforcement by state governments. It is a violation of that protection for the government to grant access to one news organization and deny it to another. *McCoy v. Providence Journal Co.*, 190 F.2d 760, 766 (1st Cir. 1951); *Westinghouse Broad. Co. v. Dukakis*, 409 F. Supp. 895, 897 (D. Mass. 1976) (same). *See Capital Cities Media, Inc. v. Chester*, 797 F.2d 1164, 1176 (3d Cir. 1986) (en banc) (similar). Here again the government must show a compelling interest to justify its classification. *Quad-City Cmty. News Serv., Inc.*, 334 F. Supp. at 15. Again, the Governor cannot meet this standard — there is no compelling interest which justifies his decision to exclude Jacobson while permitting access to all others.

D. Salem Media and Jacobson are likely to succeed on their Fourteenth Amendment claim against Defendants for violating their right to due process of the laws. (Count IV)

Access to the press corps is a First Amendment liberty interest that once granted cannot be revoked without due process of law. *Sherrill*, 569 F.2d at 130-31 (“This first amendment interest undoubtedly qualifies as liberty which may not be denied without due process of law.”). *Accord Karem*, 404 F. Supp. 3d 203 (applying *Sherrill*’s due-process holdings).

In order to comport with due process, a government official must first publicize “the actual standard employed in determining whether an otherwise eligible journalist [would] obtain a White House press pass” so judges, journalists, and the public can determine whether an appropriate denial has been made. *Id.* at 130. *See id.* at 131 (“articulate and publish an explicit and meaningful

standard governing denial of White House press passes”). *Accord Getty Images News Servs.*, 193 F. Supp. 2d at 121 (same); *Quad-City Community News Service, Inc.*, 334 F. Supp. at 17 (same). This is the vagueness component of *Sherrill*’s holding.

Second, when an official believes that standard has been violated, he must provide the journalist “notice of the factual bases for denial, an opportunity for the applicant to respond to these, and a final written statement of the reasons for denial.” *Sherrill*, 569 F.2d at 130. This is the procedural due-process component of *Sherrill*’s holding.

The Defendants failed in both respects here. At no time has the Governor’s Office circulated to Jacobson any policy or professional standard by which it expects members of the press corps to behave to retain their access. Second, when she chose to revoke Jacobson’s access the Governor’s press secretary issued a simple email edict with no invitation to respond or to seek review. In other words, the Governor’s decision failed both prongs of due process to which Jacobson was entitled.

E. Salem Media is likely to succeed on its First Amendment claim against Defendants for violating its right select its own representatives in the press room. (Count V)

Any journalist only has a right to sit in the briefing room as a representative of a particular outlet, station, publication, or website. And news organizations have a First Amendment free-press right to select their representatives in a press conference without interference from the government. “To the extent the publisher’s choice of writers affects the expressive content of its newspaper, the First Amendment protects that choice.” *McDermott ex rel. NLRB v. Ampersand Publ’g, LLC*, 593 F.3d 950, 962 (9th Cir. 2010). *See Claybrooks v. ABC, Inc.*, 898 F. Supp. 2d 986, 1000 (M.D. Tenn. 2012) (same, as to television show production).

This might be phrased as a “publisher autonomy” doctrine under the First Amendment’s free press clause similar to the “church autonomy” doctrine under the free exercise clause.

Religious institutions have a right to determine their own leaders, teachers, and preachers without government interference, because those employees shape and deliver the church's content/message. *Gonzalez v. Roman Catholic Archbishop*, 280 U.S. 1, 10 (1929); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171, 186 (2012).

The same is true here — news organization editors and publishers have a right to make their own decisions about which of their reporters will cover a news story or event. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974). *Accord Turner Broad. Sys. v. FCC*, 512 U.S. 622, 653 (1994) (“*Tornillo* affirmed an essential proposition: The First Amendment protects the editorial independence of the press.”). Editors may assign a reporter based on how skeptical he will be of an elected official, or his reputation for investigative journalism and relentless digging, or because the publisher has invested significant resources in building the reporter's personal brand. A government official should not interfere with a news organization's editorial choices absent exceptional circumstances.

III. Plaintiffs and the public will suffer substantial harm without preliminary relief, unlike the Defendants, who will only suffer minor inconvenience at most.

The balance of harms favors the Plaintiff. First, the harm to Plaintiffs is substantial:

Certainly the exclusion of particular reporters from the news presented each morning at on-the-record press conferences, which hundreds of other reporters are eligible to attend, affects the content and quality of the news that is reported as well as access to the sources of news. Moreover, it is important to recognize that this is not a single, sporadic refusal of access. Exclusion from the press galleries constitutes a permanent disadvantage with regard to the gathering of news and has a significant impact when measured in terms of the First Amendment, both upon the publication excluded and others in similar situations.

Consumers Union of United States, Inc., 365 F. Supp. at 26.

Second, the exclusion harms not only Jacobson and Salem Media, but the public at large as well. “Exclusion of an individual reporter also carries with it the danger that granting

favorable treatment to certain members of the media allows the government to influence the type of substantive media coverage that public events will receive, which effectively harms the public.” *Huminski*, 386 F.3d at 147. Here, “the public interest will be well served by [injunctive] relief.” *United Teachers of Dade*, 213 F. Supp. 2d at 1376.

Moreover, considering the effect on the other side, the Governor will suffer no harm, “merely involve some minor inconvenience to the [Governor’s] press staff.” *Cable News Network, Inc. v. Am. Broad. Cos.*, 518 F. Supp. 1238, 1246 (N.D. Ga. 1981) (granting a preliminary injunction to CNN ordering the White House to include television reporters in the regular press pool for limited-access presidential events on the same basis as print reporters). The inclusion of Jacobson requires nothing more than restoring a single name to the press list; there is no harm to the Governor; only the slightest inconvenience to staff.

CONCLUSION

As all the factors are met, Plaintiffs respectfully request that their motion be granted.

Dated: June 1, 2020

Respectfully Submitted,

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

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