

CIVIL COVER SHEET

The ILND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(See instructions on next page of this form.)*

I. (a) PLAINTIFFS

Salem Media of Illinois, LLC, and Amy Jacobson

(b) County of Residence of First Listed Plaintiff Ventura County, California
(Except in U.S. plaintiff cases)

(c) Attorneys (firm name, address, and telephone number)

Daniel Suhr & Jeff Schwab, Liberty Justice Center, 190 S. LaSalle St., Suite 1500, Chicago IL 60603, 312-263-7668, dsuhr@libertyjusticecenter.org

DEFENDANTS

J.B. Pritzker, in his official capacity as governor, and Jordan Abudayyeh, in her official capacity as press secretary for the governor

County of Residence of First Listed Defendant Cook County, Illinois
(In U.S. plaintiff cases only)

Note: In land condemnation cases, use the location of the tract of land involved.

Attorneys (if known)

Office of the Attorney General of Illinois

II. BASIS OF JURISDICTION (Check one box, only.)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government not a party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate citizenship of parties in Item III.)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only.)

(Check one box, only for plaintiff and one box for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Check one box, only.)

CONTRACT	TORTS	PRISONER PETITIONS	LABOR	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 330 General <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Habeas Corpus: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Check one box, only.)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation ☐ 8 Multidistrict Litigation Direct File

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

42 U.S.C. 1983 - vindication of 1st and 14th Amdt. rights.

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. REQUESTED IN COMPLAINT:

☐ Check if this is a class action Under rule 23, Demand \$ F.R.C.V.P.

Check Yes only if demanded in complaint.
Jury Demand: ☐ Yes ☒ No

IX. RELATED CASE(S) IF ANY (See instructions)

Judge

Case Number

X. Is this a previously dismissed or remanded case? ☐ Yes ☐ No If yes, Case #

Name of Judge

Date

June 1, 2020

Signature of attorney of record

/s/ Daniel R. Suhr

**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-rx5qkabrag67j3dfkllbowntu-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**

By: /s/ Daniel R. Suhr

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**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, et al.,

Defendants.

No. 1:20-cv-3212

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65, Plaintiffs respectfully move for preliminary relief in the form of a temporary restraining order and preliminary injunction to avoid imminent and irreparable injury, as set forth in the attached supporting memorandum of law and declarations.

Plaintiffs will immediately contact attorneys for Defendants in the hope of avoiding the need for an *ex parte* hearing and order, and will advise the Court as promptly as possible of the results of that outreach.

Dated: June 1, 2020

Respectfully Submitted,

SALEM MEDIA OF ILLINOIS, LLC

AMY JACOBSON

By: /s/ Daniel R. Suhr

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Attorneys for Plaintiffs

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

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

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

SALEM MEDIA OF ILLINOIS, LLC, <i>et al.</i> , Plaintiffs, v. J.B. PRITZKER, <i>et al.</i> , Defendants.	No. Declaration of Amy Jacobson
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Pursuant to 28 U.S.C. § 1746, I declare that the following facts are true, to the best of my knowledge, information, and belief:

1. I am a resident of Cook County, Illinois.
2. I graduated from the University of Iowa, Phi Beta Kappa, with a degree in broadcasting in 1991.
3. After graduating, I worked as a television reporter for stations in Alexandra (MN), Tucson, El Paso, and Detroit.
4. I returned to my home state of Illinois in 1996 to work as an on-air news reporter for NBC-5 WMAQ (Chicago).
5. While on television, I won a regional Emmy Award and was nominated for an additional six regional Emmy's.
6. I transitioned from television to radio upon joining WLS in 2008.
7. I moved from WLS to WIND AM 560 in 2010. There, I am cohost of "Chicago's Morning Answer." I spend four hours every morning on air delivering the news along with insight, opinion, and analysis.

8. I also routinely contribute to the station's other shows and news updates as a field reporter.
9. I have covered numerous major media events for AM 560, including election night coverage in 2012, 2014, 2016, and 2018; former Governor Rod Blagojevich's final press conference before entering prison, and his first press conference upon his return from prison; and the 2016 presidential debate in St. Louis.
10. I also make and break news on my social media channels.
11. I began attending the Governor's daily COVID-19 press conference on Friday, April 17, 2020.
12. On May 14, I asked the Governor at the press conference about his furlough of over 1,000 prisoners during the pandemic, including 64 convicted murderers.
13. On May 13, I 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.
14. On April 18, I asked the Governor about the difference between his plan for reopening the state and the President's plan. I 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.
15. After asking those three questions on April 18, I watched the governor's press secretary Jordan Abudayyeh appear to become agitated with my line of questioning. I heard her say at the end of the press conference that "things in these briefings are going to change." I approached her for clarification, and she did not elaborate.

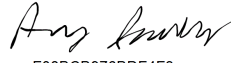
16. On April 19, I received an email sent to all reporters from Abudayyeh notifying us that the press conference that afternoon was moving to a pooled coverage system “to further ensure we’re appropriately following social distancing guidelines.” A copy of the email is attached to this affidavit as Exhibit 1.
17. 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
18. Under this new system, I was invited to participate live in the press conferences via videoconference technology (WebX) and submitted my question to be read by the pool reporters to the Governor.
19. The new system made it much harder to ask follow-up questions.
20. On April 23, 2020, I asked the Governor about the State of Illinois being forced to declare bankruptcy and he responded that “Amy clearly doesn’t understand what happens when an organization goes through a bankruptcy and out the other side.”
21. On April 29, 2020, the Governor corrected a previous statement he had made in a press conference in response to a question I asked about President Trump’s phases.
22. On May 15, 2020, I reported that the First Family was remaining overnight at their horse farm in Wisconsin. A copy of the tweet is attached as Exhibit 2.

23. On May 16, 2020, I was one of several speakers at a “Reopen Illinois” rally outside the Thompson Center in downtown Chicago sponsored by Freedom Movement USA, a nonprofit grassroots civic organization.
24. I sometimes speak at public events and on news/talk programs other than my own to share my reporting and editorial views.
25. I undertake these speaking engagements within my employer’s policies governing employee conduct.
26. While at the rally, I gave remarks that repeated views I had given on my radio show many times previously.
27. While at the rally, I observed two people holding signs making Nazi references. On My Twitter that day I called those signs “offensive,” saying “There is NO need for this.” A copy of the tweet is attached as Exhibit 3.
28. On Monday, May 18, 2020, I attempted to participate in the Governor’s videoconference press conference, but the question I submitted to the pool reporters was not read.
29. I reported that day that I was “BLOCKED from @Gov Pritzker’s daily briefings.” A copy of the tweet is attached as Exhibit 4.
30. Later that same day, I received an email from the Governor’s press secretary, Jordan Abudayyeh, a copy of which is attached as Exhibit 5.
31. Since Abudayyeh’s email, I have been blocked from participating in the WebX videoconference like other journalists.
32. My inability to participate and ask questions of the Governor during his press conferences on the same basis as other journalists significantly hampers my ability to do my 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.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 31, 2020

DocuSigned by:

F08BCB976BDF4F3...

Amy Jacobson, declarant

EXHIBIT 1

From: Abudayyeh, Jordan <Jordan.Abudayyeh@Illinois.gov>
Sent: Sunday, April 19, 2020 3:35:37 PM
To: Abudayyeh, Jordan <Jordan.Abudayyeh@Illinois.gov>
Cc: SanchezMolina, Jose <Jose.SanchezMolina@Illinois.gov>; Hanns, Alex <Alex.Hanns@Illinois.gov>
Subject: UPDATED PROCEDURE: Governor's 2:30pm briefing

Reporters—

I appreciate your patience as we navigate a new normal due to COVID-19.

STARTING MONDAY: To further ensure we're appropriately following social distancing guidelines we will now only allow one print pool reporter and one broadcast pool reporter in the room for the governor's daily press briefings. We will continue to accept questions from our portal that most of you have already been using.

The broadcasters have organized themselves into a pool without my involvement and will continue doing so. Broadcasters, only the reporter from the pool team that day will be allowed in the room. Print reporters, I trust you can talk amongst yourselves to work out a similar system, but let me know if I can be helpful. Pool reporters gather questions from their colleagues and ask them in the room. I will continue working to ensure reporters working from home and from across the state are also equally represented by asking questions from our portal.

The only thing I ask is that you let me know who will be the pool reporters that day so I can let the security desk know who to expect.

Please let me know if you have any questions. I look forward to the day when we can return to a normal press conference set up where we can stand too close together and shout over each other once again.

Thanks!
 Jordan

--
Jordan Abudayyeh
 Press Secretary
 Office of Governor JB Pritzker
 312.533.5950

EXHIBIT 2

twitter.com/AmyJacobson/status/1261476605978951683

WI Talk Radio Sho... Regional Account... Calendar Fillers Bookmarks Google Calendar -... University of Stat... N



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Notifications

Messages

Bookmarks

Lists

← **Tweet**



Amy Jacobson
 @AmyJacobson

Now I'm hearing that @GovPritzker has a 1,000 acre ranch in Kenosha, WI. That's where the family is tending to the animals tonight. You know #essential workers while most of us have been deemed "non essential. "
[@MorningAnswer](#) [@DanProft](#)

9:00 PM · May 15, 2020 · [Twitter for iPhone](#)

106 Retweets 300 Likes

EXHIBIT 3



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Tweet

← Tweet



Amy Jacobson
@AmyJacobson

Here in Chicago I found 2 signs to be offensive. There is NO need for this. [@GovPritzker](#) [@MorningAnswer](#) [@DanProft](#)



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Tweet



Mark Maxwell @MarkMaxwellTV · May 16

Several protesters carried signs that read "death to tyrants." Others carried signs with racist, anti-Semitic imagery. They're standing near the statue of an American president who was assassinated by a racist who considered him a tyrant.

[Show this thread](#)



3:32 PM · May 16, 2020 · [Twitter for iPhone](#)

EXHIBIT 4

twitter.com/AmyJacobson/status/1262486394506747906

WI Talk Radio Sho... Regional Account... Calendar Fillers Bookmarks Google Calendar -... University of Stat... Nat

Tweet

Amy Jacobson
@AmyJacobson

I've been BLOCKED from @GovPritzker's daily briefings. "Some" fellow reporters, egged on by Rick Pearson, have convinced @JordanAbudayyeh not to take my ?'s ever again. I WANT it in writing from their office! @MorningAnswer This was a ? I wanted answered. Got link from a friend

1:30
Messages

All Q&A (4) My Q&A (2)

Ask a Question

Q: Amy Jacobson (me) 1:30 PM
Did you receive my ?

Q: Amy Jacobson (me) 1:29 PM
Amy Jacobson WIND radio: You mentioned Friday that a GOP Super Pac was threatening your family. What group and what are the nature of their threats? Have you contacted IL State Police?

Q: Jerry Nowicki 12:47 PM
Please let me know that this was received, if you will.

A: Jake Strother 12:50 PM
Jerry - got it

Q: Ryan Denham 1:04 PM
Jake, can you please confirm receipt of my question?

A: Jake Strother 1:05 PM
Ryan - got it

3:53 PM · May 18, 2020 · Twitter for iPhone

134 Retweets 317 Likes

EXHIBIT 5

From: "Abudayyeh, Jordan" [REDACTED]@Illinois.gov>

Date: May 18, 2020 at 5:04:49 PM MDT

To: Amy Jacobson [REDACTED]

Subject: RE: FRIDAY - GOV'S DAILY BRIEFING

Amy—

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

As a former journalist myself, I have the utmost respect for journalists who do the tough work to hold public officials accountable while preserving the unbiased coverage we all rely on.

Thank you,
Jordan

--

Jordan Abudayyeh

Press Secretary

Office of Governor JB Pritzker

[REDACTED]

[REDACTED]@Illinois.gov

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

SALEM MEDIA OF ILLINOIS, LLC, <i>et al.</i> , Plaintiffs, v. J.B. PRITZKER, <i>et al.</i> , Defendants.	No. Declaration of Jeff Reisman
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Pursuant to 28 U.S.C. § 1746, I declare that the following facts are true, to the best of my knowledge, information, and belief:

1. I am a resident of Cook County, Illinois.
2. I am the Regional Vice President, General Manager, responsible for AM 560 “The Answer” and AM 1160 “Hope For Your Life.”
3. Salem Media of Illinois, LLC, is a wholly owned subsidiary of Salem Media Group, Inc., located in Camarillo, California.
4. In my opinion, Salem Media Group is America’s leading radio broadcaster, Internet content provider, and magazine and book publisher targeting audiences interested in Christian and family-themed content and conservative values.
5. 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 AM 560.
6. As the station manager for AM 560, I am responsible for supervising all of our employees and programs, including Amy Jacobson and “Chicago’s Morning Answer.”

7. Amy is a crucial part of our news team. In addition to cohosting our morning show, Amy is routinely assigned as a field reporter to cover major news events and press conferences on behalf of AM 560, especially those related to Illinois politics.
8. Salem Media relies on Amy in the Chicago media market, and we give her our prized morning drive-time slot because our listeners rely on her for news, opinion, and insight into Illinois politics.
9. Salem Media permits its journalists to take public speaking events outside those scheduled directly by the station because they offer opportunities to connect with current listeners in person and to reach new potential listeners.
10. Amy's inability to participate as a journalist in Governor Pritzker's press events and press conferences puts AM 560 at a competitive disadvantage in the news/talk market in Chicago. Our listeners appreciate that Amy participates in these opportunities, asking tough but fair questions of elected officials and decision-makers. Without that access, listeners may migrate to other stations whose reporters they believe are doing a better job asking the questions they themselves would ask of their public leaders.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

5/31/2020

Dated: May _____, 2020

DocuSigned by:

Jeff Reisman

1E20CD1996644E4...

Jeff Reisman, declarant

**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

Affiliate Disclosure Statement

Pursuant to N.D. Ill. Local R. 3.2, Plaintiff Salem Media of Illinois, LLC, states that:

Salem Media of Illinois, LLC, is a limited liability company with two members: SCA License Corp. and Salem Radio Operations, LLC. Salem Radio Operations, LLC, is a limited liability company with a single member: Salem Communications Holding Corporation.

Dated: June 1, 2020

Respectfully Submitted,

SALEM MEDIA OF ILLINOIS, LLC

By: /s/ Daniel R. Suhr

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