

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SIMON ATEBA,

Plaintiff,

v.

KARINE JEAN-PIERRE,
in her official capacity as Press Secretary
to the President of the United States, *et al.*,

Defendants.

Case No. 1:23-cv-02321-JDB

PLAINTIFF’S REQUEST FOR JUDICIAL NOTICE

Plaintiff Simon Ateba hereby requests the Court to take judicial notice of the following public records and information from government websites under Rule 201 of the Federal Rules of Evidence:

1. Brief of *Amicus Curiae* The White House Correspondents’ Association, *Karem v. Trump*, Case No. 19-5255 (D.C. Cir. Jan. 13, 2020) (Attached as RJN Exhibit A).
2. Transcript of Oral Decision, *CNN v. Trump*, 1:18-cv-02610-TJK, at *7:19–22 (D.D.C. Nov. 16, 2018), Decision (ECF 22) (Attached as RJN Exhibit B).
3. *Congressional News Media and the House and Senate Press Galleries* 4, Congressional Research Service (April 13, 2017), available at <https://crsreports.congress.gov/product/pdf/R/R44816> (Attached as RJN Ex. C).
4. Periodical Press Gallery, *Accreditation*, House Periodical Press Gallery, available at <https://periodical.house.gov/accreditation> (Attached as RJN Ex. D).
5. Senate Daily Press Gallery, *Governing Rules*, available at <https://www.dailypress.senate.gov/membership/gallery-rules/> (Attached as RJN Ex. E)

These materials are the appropriate subjects of judicial notice because they are “generally known within [this] court’s territorial jurisdiction” and “can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Ev. R. 201(b). As demonstrated in the Declaration of Eric A. Sell, attached hereto as Ex. F, the materials were

obtained from websites administered by the federal government. Because the materials are “public records and government documents available from reliable sources,” they are also the proper subjects of judicial notice under Rule 201. *Johnson v. Comm'n on Presidential Debates*, No. CV 15-1580 (RMC), 2016 WL 4179269, at *4 (D.D.C. Aug. 5, 2016); *see also Juliana v. United States*, No. 6:15-CV-01517-AA, 2018 WL 9802138, at *2 (D. Or. Oct. 15, 2018) (collecting cases in which federal courts took judicial notice of reports from the Congressional Research Service).

For the foregoing reasons, the Court should take judicial notice of the aforementioned public records and information from government websites.

Dated: October 4, 2023

Respectfully submitted,

By: /s/Harmeet K. Dhillon

Harmeet K. Dhillon

Mark Trammell*

Josh Dixon

Eric A. Sell

(D.D.C. Bar ID: 1742565)

CENTER FOR AMERICAN LIBERTY

1311 S. Main Street, Suite 207

Mount Airy, MD 21771

Gary M. Lawkowski

(D.D.C. Bar ID: VA125)

DHILLON LAW GROUP INC.

2121 Eisenhower Avenue, Suite 608

Alexandria, VA 22314

Jesse D. Franklin-Murdock

(D.D.C. Bar ID: CA00147)

DHILLON LAW GROUP INC.

177 Post Street, Suite 700

San Francisco, CA 94108

Counsel for Plaintiff Simon Ateba

**Pro Hac Vice Motions Forthcoming*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SIMON ATEBA,
1666 Connecticut Ave NW
Washington, D.C. 20009

Plaintiff,

vs.

KARINE JEAN-PIERRE,
in her official capacity as Press Secretary
to the President of the United States,
1600 Pennsylvania Avenue NW
Washington, D.C. 20500;

the UNITED STATES SECRET SERVICE,
950 H Street NW
Washington, D.C. 20223;

and

KIMBERLY CHEATLE
in her official capacity as Director of the
United States Secret Service,
950 H Street NW #7800
Washington, D.C. 20223,

Defendants.

Case No. 1:23-cv-02321-JDB

DECLARATION OF ERIC A. SELL

I, Eric A. Sell, declare as follows:

1. I am over the age of eighteen and am competent to testify as to the matters herein.

I am licensed to practice law in the District of Columbia, the United States District Court for the District of Columbia, and the United States Court of Federal Claims.

2. I am an attorney at the Center for American Liberty (“CAL”).

3. I am one of the attorneys representing Plaintiff Simon Ateba (“Mr. Ateba”) in the above-captioned matter.

4. On October 4, 2023, I personally visited the website pacer.uscourts.gov and downloaded a true and correct copy of Brief of *Amicus Curiae* The White House Correspondents' Association, *Karem v. Trump*, Case No. 19-5255 (D.C. Cir. Jan. 13, 2020) (Attached as RJN Exhibit A).

5. On October 4, 2023, I personally visited the website pacer.uscourts.gov and downloaded a true and correct copy of Transcript of Oral Decision, *CNN v. Trump*, 1:18-cv-02610-TJK, at *7:19–22 (D.D.C. Nov. 16, 2018), Decision (ECF 22) (Attached as RJN Exhibit B).

6. On October 4, 2023, I personally visited the website <https://crsreports.congress.gov/product/pdf/R/R44816> and downloaded a true and correct copy of *Congressional News Media and the House and Senate Press Galleries 4*, Congressional Research Service (April 13, 2017) (Attached as RJN Ex. C).

7. On October 4, 2023, I personally visited the website <https://periodical.house.gov/accreditation> and downloaded the web page as a PDF document, Periodical Press Gallery, *Accreditation*, House Periodical Press Gallery (Attached as RJN Ex. D).

8. On October 4, 2023, I personally visited the website <https://www.dailypress.senate.gov/membership/gallery-rules/> and downloaded the web page as a PDF document, Senate Daily Press Gallery, *Governing Rules* (Attached as RJN Ex. E)

I, Eric A. Sell, declare under penalty of perjury that the foregoing is true and correct.

Executed at Baltimore, Maryland, October 4, 2023.


/s/ Eric A. Sell

EXHIBIT A

ORAL ARGUMENT NOT YET SCHEDULED

No. 19-5255

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIAN J. KAREM,
Plaintiff-Appellee,

V.

DONALD J. TRUMP; STEPHANIE A. GRISHAM
Defendants-Appellants.

On Appeal from the
United States District Court for the District of Columbia
No. 19-cv-2514 (Hon. Rudolph Contreras)

**BRIEF OF AMICUS CURIAE
THE WHITE HOUSE CORRESPONDENTS' ASSOCIATION
IN SUPPORT OF APPELLEE SEEKING AFFIRMANCE**

George A. Lehner, Esq.
Eli Segal, Esq.*
PEPPER HAMILTON LLP
Hamilton Square
600 Fourteenth Street, N.W.
Washington, D.C. 20005-2004
Phone: 202.220.1416
lehnerg@pepperlaw.com
segale@pepperlaw.com
*Counsel for Amicus Curiae White
House Correspondents' Association*
**Of counsel*

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES
PURSUANT TO CIRCUIT RULE 28(a)(1)(A)**

A. Parties and amici curiae

All parties, intervenors, and amici appearing before the district court and in this Court, to date, are listed in Appellant's brief.

B. Rulings under review

References to the rulings at issue appear in Appellant's brief.

C. Related cases

Counsel for the White House Correspondents' Association are not aware of any related case pending before this Court or any other court.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, the White House Correspondents' Association certifies that it is a nonprofit organization with no parent company, no subsidiaries, and no stock.

RULE 29(a)(4)(E) CERTIFICATION

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), the White House Correspondents' Association certifies that its counsel, Pepper Hamilton LLP, authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person—other than the White House Correspondents' Association, its members, or counsel—contributed money that was intended to fund preparing or submitting the brief.

CIRCUIT RULE 29(d) CERTIFICATION

The White House Correspondents' Association certifies that the filing of this brief is necessary to adequately represent the unique interests of, and provide the unique perspective of, its members—the individuals who cover the White House day in and day out and who would be impacted most directly if the Court were to accept the Defendants' position that the White House Press Secretary can take away a hard pass from any White House correspondent whose conduct she might deem “unprofessional.”

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I. SOURCE OF AUTHORITY

Amicus curiae the White House Correspondents' Association has obtained consent to file this brief from all parties and therefore may file it pursuant to Federal Rule of Appellate Procedure 29(a)(2) and Circuit Rule 29(b).

II. IDENTITY AND INTEREST OF AMICUS CURIAE

Amicus curiae is the White House Correspondents' Association ("WHCA"), a nonprofit association incorporated in the District of Columbia, whose primary mission is to advocate for the newsgathering rights of the press on behalf of journalists who cover the White House and on behalf of Americans who rely on the press to provide information about the activities of their elected officials. Founded over 100 years ago, in February 1914, the WHCA has consistently and effectively worked to ensure that the men and women who gather and report the news from the White House have the ability to seek answers from powerful officials, up to and including the President of the United States. The WHCA has 439 regular members and 152 associate members who represent over 100 different print, television, radio, and online journalism outlets.

The WHCA was founded on the belief, as expressed by this country's Founders and enshrined in the First Amendment, that an independent news media is vital to the health of the republic. The ability of the people to effectively govern themselves depends upon a free press' vigorous and regular coverage of those who

hold power in trust. When government officials—including the President of the United States and his Press Secretary here—attempt to restrict, curtail, intimidate, or silence the press in its newsgathering activities, the rights of the people and the press, as guaranteed by the First Amendment, are infringed, and our democratic form of government is placed in jeopardy.

Plaintiff and the district court have outlined in compelling detail the constitutional violations caused by the actions of the President and Press Secretary in connection with the suspension of Plaintiff’s hard pass. Amicus WHCA submits this brief, as authorized by its Board, to highlight the extent and breadth of the danger posed to all White House journalists, and to the American public, if the Court accepted the Defendants’ unprecedented assertion that the White House Press Secretary may exclude from the White House any journalist whose conduct she might deem “unprofessional.”

III. SUMMARY OF ARGUMENT

The Defendants contend that the White House Press Secretary should have absolute discretion to strip a hard pass—an essential tool for those who cover the White House—from any White House correspondent whose conduct she might deem “unprofessional.” As discussed below, the Court should reject this dangerous legal position as unworkable and unconstitutional for at least three reasons. First, whether a particular journalist’s conduct in a particular situation is

“unprofessional” is largely subjective. Second, journalistic “professionalism” is highly context-dependent. And third, particularly in the current climate, empowering the Press Secretary to be the “professionalism” arbiter would risk severely chilling White House correspondents from providing the White House reporting on which our democracy depends. After all, knowing that the Press Secretary could eliminate their ability to do their job just by classifying their conduct as “unprofessional,” would White House correspondents necessarily feel comfortable asking tough or aggressive questions or reporting information that could reflect negatively on the administration?

IV. ARGUMENT

As explained by Todd J. Gillman—a WHCA Board Member and Washington Bureau Chief for *The Dallas Morning News*—in his Declaration attached to Plaintiff’s injunction papers, “[a] hard pass is critical for anyone who reports regularly on the White House.” JA77-79 (Gillman Decl. at ¶¶ 1, 2, 9). It is no exaggeration to say that, without the access that a hard pass grants, a White House correspondent cannot effectively perform his or her duties, which include providing the public with on-the-spot news coverage of unforeseen and unscheduled events, along with cataloguing the daily activities of the head of the executive branch. *See* JA827-828 (Mem. Op. at 21-22). Yet the President and his Press Secretary assert that the Press Secretary may take away any White House

correspondent's hard pass as long as she (and she alone) deems that person's conduct "unprofessional." Appellants' Br. at 22-25. Moreover, they contend that the Press Secretary's "professionalism" decision is not subject to judicial review. *See id.* at 34-35.

The Defendants' position is deeply troubling to WHCA's members, as it should be to the public at large, and WHCA urges this Court to follow the district court's lead in roundly rejecting it. Indeed, arming the White House Press Secretary—the President's agent for dealing with the press, an institution that he has branded an "enemy of the people" and purveyor of "fake news," Appellee's Br. at 10—with absolute discretion to deny White House access based on such a vague "professionalism" standard would threaten the free flow of information about the President and his administration that is so crucial to the functioning of our democratic system. The Defendants insist that "[t]he concept of professionalism reflects expectations of professional conduct understood and adhered to by millions of Americans every day," and that there is therefore no problem with having the continued possession of a hard pass turn on the Press Secretary's administration of that "concept." Appellants' Br. at 29. The Defendants are wrong. For at least three reasons, the "the-Press-Secretary-thinks-it's-unprofessional" barometer for which they advocate is both unworkable and unconstitutional for White House correspondents.

First, whether a particular journalist’s conduct in a particular situation is “professional” or “unprofessional” is largely subjective. Conduct in the course of newsgathering that one person classifies as the former, another person could easily classify as the latter. As the district court put it, “[s]uch abstract concepts may at times indicate what is allowed and disallowed at the furthest margins, but they do not clearly define what is forbidden or permitted in common practice within those margins.” *See* JA822 (Mem. Op. at 16). For example, questioning of the President or a White House aide that appears overbearing, rude, or harassing—and therefore “unprofessional”—to one observer might reasonably be viewed by another as simply the dogged pursuit of the truth.

Second, along with being subjective, journalistic “professionalism” is highly context-dependent. The district court correctly noted that White House events “vary greatly in character” and that “[w]hat is deemed ‘professional’ behavior in the context of a state dinner may be very different from what is considered ‘professional’ behavior during a performance by James Brown.” JA823 (Mem. Op. at 17). And in this administration—with the elimination of the daily press briefing, Appellee’s Br. at 9—White House correspondents must rely almost exclusively on an unpredictable hodgepodge of informal, freewheeling, and often chaotic questioning opportunities that do not lend themselves to any sort of uniform “professionalism” standard.

Third, making the Press Secretary the “professionalism” arbiter compounds these problems exponentially. The relationship between the press and the White House is, by design, adversarial. As the Supreme Court put it, “the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials, and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966). During the current administration, that adversarial relationship has, of course, risen to a new and disturbing level. The President regularly doles out to the media reproaches of “fake news” and “enemy of the people” and has even endorsed violence against reporters. Appellee’s Br. at 10.

By all appearances, in the eyes of the President and his administration, asking tough questions, bringing to light abuses of power, and airing criticisms of the administration is “unprofessional”—indeed, treasonous—press conduct. But in the eyes of the press and the Supreme Court, such conduct is precisely what the job of a journalist demands.

A framework that permits the White House Press Secretary—an agent of the President—to exclude a journalist from the White House based on her own evaluation of that journalist’s “professionalism” thus leaves White House correspondents with an untenable, unconstitutional, speech-chilling choice: avoid

any newsgathering activity that might tend to offend the President or raise the ire of one of his senior aides, on the one hand, or risk losing the access required to effectively do their job, on the other hand. In the Press Secretary's own words, she suspended Mr. Karem's hard pass in order to "*deter* Mr. Karem and other members of the press" from engaging in further conduct that she might deem unprofessional. JA at 146-47 (Aug. 16, 2019 Grisham Letter at 8-9) (emphasis added). That desired and likely "deter[rent]"—AKA chilling—effect makes it essential that this Court affirm the district court and thereby help ensure the continued free flow of information from and about the White House to the millions of people who depend on it to decide the future course of the republic.

V. CONCLUSION

For all of these reasons, the White House Correspondents' Association requests that the Court affirm the district court's decision and reject the Defendants' dangerous legal position.

Dated: January 13, 2020

Respectfully submitted,

/s/ George A. Lehner

George A. Lehner
PEPPER HAMILTON LLP
Hamilton Square
600 Fourteenth Street, N.W.
Washington, D.C. 20005-2004
Phone: 202.220.1416
Fax: 202.220.1665
lehnerg@pepperlaw.com

Eli Segal
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103-2799
Phone: 215.981.4239
Fax: 215.981.4750
segale@pepperlaw.com

*Counsel for Amicus Curiae White House
Correspondents' Association*

CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a) because this brief contains 1506 words, excluding the parts of the brief exempted under Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Dated: January 13, 2020

/s/ George A. Lehner
George A. Lehner
*Counsel for Amicus Curiae White House
Correspondents' Association*

CERTIFICATE OF SERVICE

I hereby certify that, on January 13, 2020, I caused the foregoing Brief of Amicus Curiae the White House Correspondents' Association in Support of Appellee Seeking Affirmance to be filed with the Clerk for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: January 13, 2020

Respectfully submitted,

/s/ George A. Lehner
George A. Lehner
*Counsel for Amicus Curiae White House
Correspondents' Association*

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- x
CABLE NEWS NETWORK, INC., et al., CA No. 1:18-cv-02610-TJK

Plaintiffs, Washington, D.C.
v. Friday, November 16, 2018
10:00 a.m.

DONALD J. TRUMP, et al.,
Defendants.

----- x

TRANSCRIPT OF MOTION HEARING
HELD BEFORE THE HONORABLE TIMOTHY J. KELLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Theodore J. Boutrous, Jr., Esq.
Joshua S. Lipshutz, Esq.
Anne M. Champion, Esq.
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7804

For the Defendants: James M. Burnham, Esq.
Michael H. Baer, Esq.
Eric R. Womack, Esq.
Joseph E. Borson, Esq.
U.S. DEPARTMENT OF JUSTICE
Civil Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
(202) 353-5049

Court Reporter: Timothy R. Miller, RPR, CRR, NJ-CCR
Official Court Reporter
U.S. Courthouse, Room 6722
333 Constitution Avenue, NW
Washington, DC 20001
(202) 354-3111

Proceedings recorded by machine shorthand; transcript
produced by computer-aided transcription.

P R O C E E D I N G S

1
2 THE DEPUTY CLERK: Your Honor, this is civil
3 matter 18-2610, Cable News Network, Incorporated, et al., v.
4 Donald J. Trump, et al.

5 Will counsel please approach the lectern and state
6 your appearance for the record.

7 MR. BOUTROUS: Good morning, Your Honor. Theodore
8 Boutrous for Plaintiffs CNN and Jim Acosta.

9 THE COURT: Good morning, sir.

10 MS. CHAMPION: Good morning, Your Honor. Anne
11 Champion from Gibson Dunn for Plaintiffs CNN and Jim Acosta.

12 MR. LIPSHUTZ: Good morning, Your Honor. Joshua
13 Lipshutz from Gibson Dunn for Plaintiffs CNN and Jim Acosta.

14 THE COURT: Good morning.

15 MR. BURNHAM: Good morning, Your Honor. James
16 Burnham here on behalf of the defendants, along with Michael
17 Baer, Eric Womack and Joseph Borson.

18 THE COURT: All right. Good morning to you all.

19 We are here for an oral ruling on the plaintiffs'
20 application for a temporary restraining order.

21 And I'd better get some water right away here.

22 (Brief pause.)

23 On November 7th, 2018, President Trump held a news
24 conference at the White House. Soon after it started, he
25 called on Plaintiff Acosta, a reporter for CNN, to take a

1 question from him. After Mr. Acosta asked several questions
2 about the caravan of migrants heading to the U.S.-Mexican
3 border, the President indicated that he wanted to move on to
4 call on another reporter but Mr. Acosta would not be seated
5 and continued trying to ask his question and then he would
6 not give up the microphone, even when approached by an
7 intern employed by the White House Press Office who
8 attempted to retrieve it from him. The President made
9 several comments toward Mr. Acosta while this happened,
10 including, You are a rude, terrible person, and, When you
11 report fake news which CNN does a lot, you are an enemy of
12 the people. Eventually, Mr. Acosta did relinquish the
13 microphone.

14 That night, his Secret -- the Secret Service asked
15 Mr. Acosta to relinquish his hard pass, his credential that
16 allows him access to the White House press facilities. That
17 same evening, the White House Press Secretary, Sarah
18 Sanders, posted a video on Twitter purporting to show the
19 exchange between Mr. Acosta, the intern and the President.
20 In a tweet, Ms. Sanders cited the conduct in the video as
21 the reason that Mr. Acosta's hard pass had been revoked. In
22 a tweet, she characterized Mr. Acosta as placing her hand --
23 his hands on the intern and she also asserted that Mr.
24 Acosta had been disrespectful to his colleagues to not allow
25 them to -- the opportunity to answer a question.

1 The next day, on November 8th, CNN sent a letter
2 to the White House requesting that Ms. -- the reporter's
3 credentials be reinstated immediately. CNN alleged that the
4 White House simply did not like the content of the questions
5 posed to the President and threatened to take legal action
6 if the revocation was not reversed.

7 The next day, on November 9th, the President
8 suggested that other reporters might have their credentials
9 revoked and that reporters must treat the White House with
10 respect and treat the presidency with respect and he also
11 conceded that Mr. Acosta's -- but he also conceded that Mr.
12 Acosta's conduct toward the Press Office intern had not been
13 overly horrible.

14 Then the long holiday weekend intervened. And on
15 the morning of Tuesday, November 13th, CNN and Mr. Acosta
16 filed this lawsuit and moved for a temporary restraining
17 order.

18 That morning, after -- the same morning, after the
19 suit was filed, Ms. Sanders issued a written statement
20 setting forth reasons for the revocation of Ms. -- Mr.
21 Acosta's hard pass. It read: We have been advised that CNN
22 has filed a complaint challenging the suspension of Jim
23 Acosta's hard pass. This is just more grandstanding from
24 CNN and we will vigorously defend against this lawsuit.
25 CNN, who has nearly 50 additional hard pass holders, and Mr.

1 Acosta is no more or less special than any other media
2 outlet or reporter with respect to the First Amendment.
3 After Mr. Acosta asked the President two questions, each of
4 which the President answered, he physically refused to
5 surrender a White House microphone to an intern so that
6 other reporters might ask their questions. This was not the
7 first time this reporter had -- has inappropriately refused
8 to yield to other reporters. The White House cannot run an
9 orderly and fair press conference when a reporter acts this
10 way which is neither appropriate nor professional. The
11 First Amendment is not served when a single reporter, of
12 more than 150 present, attempts to monopolize the floor. If
13 there is no check on this type of behavior, it impedes the
14 ability of the President, the White House staff and members
15 of the media to conduct business.

16 To obtain a temporary restraining order, the
17 plaintiffs must clearly demonstrate, one, a likelihood of
18 success on the merits of their claim; two, a likely
19 irreparable harm in the absence of preliminary relief;
20 three, a balance of the -- that the balance of the equities
21 is in their favor; and, four, that the TRO is in the public
22 interest. And where the Government is the party opposing
23 the TRO, the Court merges the latter two factors into a
24 single inquiry.

25 Much of our discussion at the hearing the other

1 day concerned the applicability or inapplicability of the
2 D.C. Circuit case Sherrill v. Knight. I'm going to first
3 talk about the likelihood of success of [sic] the merits
4 with regard to the plaintiffs' Fifth Amendment due process
5 claim.

6 Much of our discussion at the hearing concerned
7 the applicability of Sherrill v. Knight. I've read the case
8 closely and I think it's fair to conclude, as the Government
9 argued, that there are at least some portions of it that
10 plaintiffs would rely on that are fairly characterized as
11 dicta, but if Sherrill stands for anything at all, I think
12 it's unavoidable to conclude that it -- to conclude anything
13 other than it stands for the Fifth Amendment's due process
14 clause protects a reporter's First Amendment liberty
15 interest in a White House press pass. Whether that's a
16 holding I agree with or not is another thing, but that is
17 not relevant. The case has not been abrogated and, as a
18 district judge, I must apply the precedent of this circuit
19 as I see it.

20 So let me quote from Sherrill. Quote, In our
21 view, the procedural requirements of notice and the factual
22 basis for denial and opportunity for the applicant to
23 respond to these and a final written statement of the
24 reasons for denial are compelled by the foregoing
25 determination that the interest of a bona fide Washington

1 correspondent in obtaining a White House press pass is
2 protected by the First Amendment. This First Amendment
3 interest undoubtedly qualifies as liberty which may not be
4 denied without due process of law under the Fifth Amendment.

5 A few more words about Sherrill before I move on.

6 The Government argued that the holding of Sherrill
7 is limited to Secret Service restrictions based on security
8 concerns, and the Government points out there's nothing in
9 the record here that the security of the President or the
10 White House is at issue, but Sherrill, as I read it,
11 provides no reason why the court's recognition of a First
12 Amendment interest in a press pass -- in a White House press
13 pass would turn on whether that decision to limit that
14 interest was made by the White House Press Office or the
15 Secret Service or any other part of the executive branch,
16 and the case suggests no reason to me why the due process
17 required to deny someone a pass would turn on a specific
18 component of the executive branch that made that decision.
19 The court was very clear that the basis of this interest was
20 rooted in the First Amendment and not the decision of any
21 part of the executive branch to agree that Sherrill should
22 be granted the press pass.

23 The Government also made the point that there is
24 case law for the proposition that the public doesn't have a
25 general First Amendment right to enter the White House

1 grounds. I have no quarrel with that at all, but Sherrill
2 holds that once the White House opens a portion of it up to
3 reporters for their use, some kind of First Amendment
4 liberty interest protected by a due process right is
5 created, and I simply have no choice but to apply that
6 precedent here.

7 The Government also argued that some of the
8 factual underpinnings of Sherrill had changed and that
9 today, the White House routinely exercises discretion in
10 different ways, giving out hard passes to certain
11 journalists aside from whatever review the Secret Service
12 undertakes for security purposes. I can see how that might
13 be relevant in examining the nature of whatever liberty
14 interest Sherrill holds is at stake here, but even assuming
15 that was a distinction that would make a difference in terms
16 of how I apply Sherrill, I don't have any evidence in the
17 record here; I don't have any declarations or sworn
18 statements that explain how that factual landscape has
19 shifted since Sherrill was decided.

20 And, finally, the Government makes the point that
21 the First Amendment does not restrict the ability of the
22 President to dictate the terms of how he chooses to engage
23 or not engage with any particular journalist. That seems
24 entirely correct to me, but nothing in the holding of
25 Sherrill relating to the Fifth Amendment due process right

1 it recognized contradicts that. In fact, Sherrill
2 explicitly recognizes the President's right to engage with
3 whomever he pleases. Certainly, he need not ever call on
4 Mr. Acosta again. But under Sherrill, as I read it, the
5 government must provide Mr. Acosta due process if it is to
6 revoke his hard pass. Accordingly, the likelihood that the
7 plaintiffs succeed on the First -- on the Fifth Amendment
8 claim hinges on whether the government provided adequate due
9 process to Mr. Acosta. The court in Sherrill held that this
10 process must include notice, an opportunity to rebut the
11 government's reasons and a written decision. And all the
12 court -- although the court in Sherrill did not have
13 occasion to address it, when an important interest is at
14 stake and when the government is able to provide this
15 process before deprivation, it generally must do so. There
16 is no evidence that one of the few exceptions to this rule
17 would apply here such as some kind of emergency. So I do
18 hold that plaintiffs have demonstrated a likelihood of
19 success on their claim that adequate process was not
20 provided to Mr. Acosta. Indeed, whatever process occurred
21 within the government is still so shrouded in mystery that
22 the Government could not tell me at oral argument who made
23 the initial decision to revoke Mr. Acosta's press pass --
24 his hard pass.

25 On the notice, as for notice, the Government

1 points to only one statement that could possibly constitute
2 prior notice to Mr. Acosta that his pass would be revoked,
3 the President's statements to him during the exchange at the
4 press conference on November 7th, but the President's
5 statements did not revoke -- did not reference Mr. Acosta's
6 hard pass at all, let alone that it would be revoked;
7 therefore, that statement cannot have put him on notice of
8 the government's intention to revoke it.

9 Now, it is true that the public and Mr. Acosta
10 were eventually provided two things. First, explanations as
11 to why his hard pass was revoked through Ms. Sanders's
12 tweets; and a written statement of explanation, apparently
13 prompted by this litigation, but given their timing and
14 their lack of connection to Mr. Acosta's opportunity to
15 rebut -- which we'll talk about in a moment -- these belated
16 efforts were hardly sufficient to satisfy due process.

17 As for Mr. Acosta's opportunity to be heard in
18 rebuttal, the Government points to the letter CNN sent to
19 the White House the day after his hard pass was revoked, but
20 this does not reflect a meaningful opportunity to rebut the
21 government's reasons for the revocation or to challenge the
22 appropriateness of the government's action. Indeed, anyone
23 can avail themselves of the mail, and there's nothing in the
24 record that demonstrates that whoever the decisionmaker --
25 the initial decisionmaker was in this case read or

1 considered the letter. And, of course, the letter was sent
2 after the revocation, not beforehand. The need for the
3 opportunity to be heard seems especially important in this
4 case when the record strongly suggests that one of the
5 initial specific reasons for the revocation cited by the
6 government -- that Mr. Acosta laid his hands on the White
7 House intern -- was likely untrue and was at least partly
8 based on evidence that was of questionable accuracy.

9 At oral argument, the Government made the point
10 that more process would not have helped here because the
11 ultimate decisionmaker -- I believe, is how the Government
12 referred to the President -- at a minimum, ratified this
13 action. Maybe that's so, but on the record before me which,
14 at this point, is devoid of evidence concerning who, in the
15 government, first reached this decision; how they reached
16 the decision; whether they considered CNN's letter or
17 whether they considered potential other responses by the
18 government, I simply cannot assume that that would be so.

19 So in light of all the above, I find that the
20 plaintiffs are likely to succeed on the merits of their
21 Fifth Amendment due process claim.

22 I'll now talk about irreparable harm with regard
23 to that claim.

24 The plaintiffs also must demonstrate that
25 irreparable harm will result in the absence of preliminary

1 relief. That harm must be both certain and great, and it
2 must be actual and not theoretical. Here, harm to Mr.
3 Acosta has already occurred. As already explained, he's
4 demonstrated a likelihood of success on the merits of his
5 claim that his Fifth Amendment due process rights were
6 violated such that his liberty interests were deprived;
7 therefore, I don't need to speculate or theorize as to
8 whether harm will occur absent preliminary relief, but for
9 plaintiffs to satisfy their burden, the harm must be
10 irreparable. Constitutional injuries are often considered
11 irreparable due to their very nature. Indeed, the D.C.
12 Circuit has held that, quote, Suits for declaratory and
13 injunctive relief against the threatened invasion of a
14 constitutional right do not ordinarily require proof of any
15 injury other than the threatened constitutional deprivation
16 itself, closed quote.

17 On the other hand, procedural due process injuries
18 do not necessarily cause irreparable harm when, for example,
19 the thing that is deprived is tangible property, because the
20 due process violation that led to that injury might be
21 reparable with money damages. Here, the procedural due
22 process violation at issue that has led to the deprivation
23 -- to a deprivation of what Sherrill requires me to
24 recognize as a liberty interest as opposed to a property
25 interest that's grounded in, quote, The First Amendment

1 guarantee of freedom of the press, closed quote.

2 Moreover, the First Amendment interests, as
3 recognized in Sherrill, were not vested merely in
4 publications or agencies. They were liberties of the
5 individual journalists themselves. For that reason, that
6 CNN may still send another journalist or other journalist to
7 the White House does not make the harm to Mr. Acosta any
8 less irreparable. Each day that he is deprived of that
9 interest without the process prescribed by the court in
10 Sherrill, he suffers a harm that cannot be remedied in
11 retrospect. The Court cannot restore his access to press
12 briefings that have already occurred or to conversations in
13 the White House press facilities that have already been had.

14 And so on this highly, highly unusual set of facts
15 and interests at stake, I do find that the plaintiffs have
16 met their burden of establishing that irreparable harm has
17 and will continue to occur in the absence of preliminary
18 relief.

19 The next factors are the balance of the equities
20 and the public interests.

21 In balancing the equities at stake, I find that
22 the harm to Mr. Acosta from sustaining an ongoing violation
23 of his Fifth Amendment due process rights outweighs the
24 government's interest in orderly, respectful press
25 conferences. This is especially so because the government

1 can serve its stated interest in other ways during this
2 litigation or perhaps until it is back before me arguing
3 that their due process obligations had been fulfilled.
4 Obviously, the balance of the equities would not likely have
5 come out this way if Mr. Acosta had been excluded for safety
6 or security reasons, in which case, my deference to the
7 executive equities would be far, far higher. But even in
8 this circumstance, I don't take lightly the executive
9 branch's weighty general interest in control of its White
10 House press facility, but the balance here is tipped by the
11 fact that Sherrill obligates me to recognize the violation
12 of Mr. Acosta's due process rights and the resulting impact
13 on his First Amendment interests. So in finding -- also, in
14 finding that these factors favor the plaintiffs, I have also
15 considered case law that suggests that constitutional
16 violations are always contrary to the public's interest.

17 So because the plaintiffs have shown a likelihood
18 that the government has violated Mr. Acosta's Fifth
19 Amendment rights under Sherrill, because the type of injury
20 he has suffered is irreparable and because the public
21 interest in the balance of equities favor granting a
22 temporary restraining order, I will grant the application
23 for a -- for the temporary restraining order here. I will
24 order the defendants immediately restore Mr. Acosta's hard
25 pass until further order of the Court or the restraining

1 order expires. And if, at some point after restoring the
2 hard pass, the Government would like to move to vacate the
3 restraining order on the grounds that it has fulfilled its
4 due process obligations, then it may, of course, do so and I
5 will promptly address that and then the remaining bases for
6 the TRO.

7 I want to emphasize the very limited nature of
8 today's ruling. In resolving this TRO, I haven't -- because
9 I've found that it must be granted on -- as to the due
10 process claim, I haven't had to reach the plaintiffs' First
11 Amendment claim at all in which they alleged that the
12 government engaged in viewpoint or content discrimination.
13 So I want to make very clear a couple of things. I have not
14 determined that the First Amendment was violated here; I
15 have not determined what legal standard would apply to the
16 First Amendment claim here; I have not determined the
17 specific nature of the First Amendment interest that
18 Sherrill recognizes -- or that Sherrill at least doesn't
19 describe but recognizes, yes; and I haven't determined what
20 portions of Sherrill, if any, would bind me on those
21 questions.

22 So let me turn to the parties, then, and suggest
23 that as far as procedurally moving forward goes, one -- the
24 avenue I thought of is to give you all some time to consult
25 with your clients; assess your positions; and come back

1 early next week -- perhaps Tuesday afternoon -- to see how
2 you all would like to proceed from here. I trust the --
3 this litigation will continue in a rapid pace. Either
4 party?

5 MR. BOUTROUS: Thank you. Thank you very much,
6 Your Honor.

7 That sounds like a good process to us. We can
8 confer. We may be able to just confer and then report back
9 Monday with the proposal and see if we can work out either a
10 briefing schedule for the preliminary injunction or
11 something else and, if not, we can just come back and see
12 you on Tuesday.

13 THE COURT: All right. So your proposal would be
14 a written joint report for the parties --

15 MR. BOUTROUS: Would that --

16 THE COURT: -- on Monday?

17 MR. BOUTROUS: Yeah. Would that work for the
18 Court?

19 THE COURT: All right. That's fine, if that's --
20 but I'd like to hear from Mr. Burnham.

21 MR. BURNHAM: Your Honor, I'd like to talk to our
22 clients. That should be okay, but I'd just like to talk to
23 our clients and come up with a proposal before we --

24 THE COURT: Absolutely. I mean, we can't have any
25 quicker turnaround than a joint report --

1 MR. BURNHAM: Right.

2 THE COURT: -- on Monday. So --

3 MR. BURNHAM: Right.

4 THE COURT: I mean, I --

5 MR. BURNHAM: The timing certainly works for us.

6 Thank you.

7 THE COURT: Fair enough. So I'll get that report.
8 Obviously, if you can agree on something, great; if you
9 can't agree, if you would still submit it jointly but just
10 lay out your respective positions on where we go from here,
11 I'll take that under advisement, and my hope is -- well,
12 depending on what you all agree to, if we need to come back
13 to court next week, even though it's the short week -- the
14 holiday -- I will be available to do that.

15 MR. BURNHAM: Okay. Thank you, Your Honor.

16 THE COURT: All right.

17 MR. BOUTROUS: We greatly appreciate it, Your
18 Honor.

19 THE COURT: All right.

20 MR. BOUTROUS: And then just procedurally, under
21 the TRO, we'll just proceed to get the hard pass back
22 immediately and have it reactivated. Thank you very much.

23 THE COURT: Yes. Is there any other -- anything
24 further -- else from the plaintiffs that you think I need to
25 address today before I turn to Mr. Burnham?

1 MR. BOUTROUS: I think that's it, Your Honor.

2 THE COURT: All right.

3 MR. BOUTROUS: Thank you.

4 THE COURT: Sir?

5 MR. BURNHAM: So Your Honor, under the local
6 rules, our opposition to the PI is due on Tuesday.

7 THE COURT: Okay.

8 MR. BURNHAM: Would it be okay, given all that's
9 going on, to suspend that deadline until we file our joint
10 status report?

11 THE COURT: Yeah. I assume the plaintiffs --

12 MR. BURNHAM: I assume --

13 THE COURT: -- would agree to that.

14 MR. BURNHAM: We haven't spoken about it.

15 THE COURT: Yes.

16 MR. BOUTROUS: That's fine with --

17 MR. BURNHAM: Okay.

18 MR. BOUTROUS: That's fine with us, Your Honor.

19 THE COURT: Yeah. So that deadline certainly will
20 be, you know, held in abeyance --

21 MR. BURNHAM: Thank you, Your Honor.

22 THE COURT: -- vacated until I get your report and
23 we'll see where we go from there.

24 MR. BURNHAM: Thank you, Your Honor.

25 THE COURT: All right.

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MR. BOUTROUS: Thank you.

THE COURT: If there's nothing further, then,
counsel's dismissed.

THE DEPUTY CLERK: All rise. This Honorable Court
is adjourned.

(Proceedings concluded at 10:28 a.m.)

* * * * *

CERTIFICATE OF OFFICIAL COURT REPORTER

I, TIMOTHY R. MILLER, RPR, CRR, NJ-CCR, do hereby certify
that the above and foregoing constitutes a true and accurate
transcript of my stenographic notes and is a full, true and
complete transcript of the proceedings to the best of my
ability, dated this 16th day of November 2018.

/s/Timothy R. Miller, RPR, CRR, NJ-CCR
Official Court Reporter
United States Courthouse
Room 6722
333 Constitution Avenue, NW
Washington, DC 20001

EXHIBIT C



**Congressional
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Congressional News Media and the House and Senate Press Galleries

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Summary

The House and Senate press galleries provide services both for journalists and for Members of Congress. The news media helps Members communicate with the public, and enables the public to learn about policy initiatives, understand the legislative process, and observe elected officials representing their constituents. In the earliest Congresses, news reports commonly provided the most comprehensive record of congressional proceedings, even for Members themselves, because few official documents were kept. To accommodate the press, and in response to its growth through the mid-19th century, the House and Senate established formal press galleries in 1877, providing resources and organization for journalists reporting from the Capitol. This report provides information about the rules and authorities that affect media coverage of Congress, current practices among the press galleries, and selected data on gallery membership since the 94th Congress. It also provides a brief discussion of considerations that commonly underlie the galleries' practices or may affect gallery operations and congressional media rules.

Although they are separate entities, the House and Senate press galleries have traditionally operated under the same governing rules, approved by the Speaker of the House and the Senate Committee on Rules and Administration. Additionally, chamber rules addressing use of electronic devices, photography, and recording or broadcasting of audio and video, also affect journalists covering Congress. Increasingly, non-journalists may also be able to effectively report news from the Capitol with handheld Internet-connected devices. Many elements of the original press gallery rules have persisted over time, and include provisions to preserve journalistic independence from encroachment by Congress. One key feature that helps preserve this independence is the delegation of many gallery responsibilities to correspondents' committees, comprised of gallery members, and to nonpartisan House and Senate staff. Requirements for press credentials, along with other gallery practices, also reflect a balance between ensuring congressional access for professional reporters while managing the limited space and resources available in the Capitol.

Today, four correspondents' committees exist to oversee the seven congressional press galleries: one for the House and Senate daily press galleries; one for the House and Senate periodical press galleries; one for the House and Senate radio/television galleries; and one for the Senate press photographers' gallery. Credentials from a correspondents' committee provide journalists with access to the relevant House and Senate galleries and office resources. Each committee's credentialing requirements, along with other gallery rules and the names of accredited journalists and news outlets, are published in the *Official Congressional Directory*.

The congressional press galleries also provide services for Members of Congress and staff. This can include distributing press releases or helping to facilitate Member communications with journalists. Members can use a number of sites around the Capitol Complex for press conferences or interviews. Some of these locations need to be reserved through a particular press gallery. Press gallery staff can also assist Members with media logistics and security for certain events.

Although the press galleries have retained similar structures and practices over the years, changes in gallery membership and broader trends in how news is produced and distributed may be relevant as the House, Senate, and correspondents' committees consider the existing rules related to media coverage of Congress and the press galleries. Since the 94th Congress, for example, the number of credentialed correspondents has grown, particularly for the radio/television galleries, but the number of outlets they represent has decreased. Cable and satellite television and the Internet allow for smaller, more specialized news outlets to exist, yet many news outlets are consolidated under larger parent companies. Additionally, journalists making use of the multimedia capacities of Internet-based journalism may find it difficult to categorize themselves under the current gallery structure.

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Introduction and Origins of Press Galleries

Reporters have covered Congress since its earliest sessions. Press coverage of Congress and other government institutions helps inform citizens about public policy, the legislative process, and representation. It is also thought to improve government accountability.¹ As the number of reporters and news outlets covering Congress increased during the 1800s, the House and Senate established formal press galleries, resources, and administrative rules to help manage the Capitol press corps while preserving its access and independence.

The first congressional reporters mainly transcribed the floor debates and provided more detailed accounts of congressional proceedings than what was available in the official records maintained in the *House Journal* and the *Senate Journal*.² This information, sometimes provided by Members of Congress themselves, would be sent as correspondence to newspaper publishers outside the capital area. Known correspondents were often permitted on the chamber floors so that they could better hear the proceedings, but correspondents were sometimes restricted to the public galleries. By the middle of the 1800s, each chamber had established its own designated reporters' gallery space.

In 1877, the House and Senate decided to create a committee of correspondents to oversee press gallery membership and administration.³ The *Official Congressional Directory* first published a list of 86 correspondents entitled to admission to the reporters' galleries in 1880⁴ and published press gallery rules in 1888.⁵ Separate galleries and correspondents' committees now exist for the daily printed press, periodical press, radio and television press, and press photographers. Correspondents' committees, often upon request of gallery members, may propose changes to their gallery rules, subject to the approval of the Speaker of the House and the Senate Committee on Rules and Administration.

Today, the congressional press galleries provide services both for journalists and for Members of Congress. For the media format and chamber it represents, each press gallery is typically responsible for credentialing journalists, maintaining Capitol workspace for correspondents, and coordinating coverage for news conferences, hearings, and other congressional events. The press galleries also distribute press releases; provide the press with information on floor proceedings, upcoming rules, amendments, and legislation; provide information on committee hearings, witness testimony, and mark-ups; and deliver messages or facilitate Member communications with journalists. In addition to these regular responsibilities, the House and Senate press galleries

¹ W. Lance Bennet, and William Serrin, "The Watchdog Role," in *The Press*, eds. Geneva Overholser and Kathleen Hall Jamieson (Oxford: Oxford University Press, 2005), ch. 10, pp. 169-188; Thomas Patterson and Philip Seib, "Informing the Public," *ibid.*, ch. 11, pp. 189-202.

² Today, much of this information is officially available in the *Congressional Record* from the Government Publishing Office (GPO), but the *Record* was not published until 1873. Precursors to the *Record*, including the *Annals of Congress* (1789-1824), *Register of Debates* (1824-1837), and the *Congressional Globe* (1833-1873), were compiled by private publishers and varied in the scope of their coverage. See U.S. Senate Historical Office, "Reporters of Debate and the Congressional Record," at http://www.senate.gov/artandhistory/history/common/briefing/Reporters_Debate_Congressional_Record.htm; Library of Congress, "A Century of Lawmaking for a New Nation: U.S. Congressional Documents and Debates, 1774-1875," available at <http://memory.loc.gov/ammem/amlaw/lawhome.html>; Elizabeth Gregory McPherson, "Reports of the Debates of the House of Representatives During the First Congress," *Quarterly Journal of Speech*, vol. 30, no. 1, February 1944, pp.64-71.

³ U.S. Senate Press Gallery, "Gallery History," at http://www.dailypress.senate.gov/?page_id=81.

⁴ U.S. Congress, Senate, *Official Congressional Directory*, 2nd ed., 46th Cong., 2nd sess., corrected to January 29, 1880, (Washington: GPO, 1880), pp. 93-94.

⁵ U.S. Congress, Senate, *Official Congressional Directory*, 1st ed., 50th Cong., 1st sess., corrected to December 3, 1887, S. Mis. 1 (Washington: GPO, 1887), p. 160.

take on additional roles during presidential elections, overseeing arrangements and credentialing for daily press at the national political conventions and presidential inaugurations.

The degree of autonomy granted to each press gallery and correspondents' committee results from responsibilities bestowed upon them by the Speaker of the House and the Senate Committee on Rules and Administration. Many rules and practices are similar across the different galleries and correspondents' committees. Additional House and Senate chamber rules that apply generally to photography, use of electronic equipment, and audio and video recording or broadcasting in the Capitol may also affect how members of the press cover Congress.

Due to the similarities across galleries, this report first presents the general rules and authorities that affect the press galleries and media coverage of Congress, followed by the credentialing requirements that the galleries typically share. Key distinctions between the daily press galleries, periodical press galleries, radio and television galleries, and press photographers' gallery are then discussed. To highlight some of the changes in gallery composition over time, data are provided comparing the number of gallery members and news outlets represented in 10-year intervals between the 94th Congress (1975-1976) and the 114th Congress (2015-2016). The report concludes with a brief discussion of some of the considerations that commonly underlie the galleries' practices and some current developments in news production and distribution that may affect the congressional press galleries.

General Authorities for Media and Press Galleries

The House and Senate press galleries have historically operated under a unified set of governing rules, approved by the Speaker of the House and the Senate Committee on Rules and Administration.⁶ The rules established for each press gallery type, and the names of gallery members, are published in the *Official Congressional Directory*. Because the galleries are creations of each chamber, separate House and Senate authorities are responsible for their own galleries, and each chamber hires its own administrative gallery staff. In practice, however, the galleries may often coordinate with one another on a number of matters. The sections below provide more details on press gallery rules and authorities for the House and for the Senate. A third section addresses the shared delegation of responsibilities from the chambers to the correspondents' committees, which began in 1877.

House of Representatives

Media access to the House of Representatives is subject to the discretion and control of the Speaker of the House. This tradition was first established by a House resolution in 1838 enabling the Speaker to admit press representatives to the floor.⁷ When the new House chamber was completed in 1857, a designated press space was created in the gallery above the Speaker's chair, and the rules of the House were amended to allow the Speaker to grant press gallery access.⁸ The

⁶ The chambers have shared press gallery rules since at least 1888, when the rules pertaining to the regulation of the congressional press galleries first appeared in the *Official Congressional Directory*. See U.S. Congress, Senate, *Official Congressional Directory*, 1st ed., 50th Cong., 1st sess., corrected to December 3, 1887, S. Mis. 1 (Washington: GPO, 1887), p. 160.

⁷ Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States* (Washington, DC: GPO, 1907), vol. 5, ch. 148, §7305, pp. 1116-1117. The Speaker's general authority to maintain order and decorum in the House galleries or lobby is found in House Rule I, clause 2.

⁸ *House Journal*, December 23, 1857, vol. 54, pp. 116-117; Asher C. Hinds, *Hinds' Precedents of the House of Representatives of the United States* (Washington, DC: GPO, 1907), vol. 5, ch. 148, §7304, pp. 1116-1117; "Rule VI:

press gallery was outfitted by the superintendent of the House with “desks and seats, and conveniences for taking notes,” and a room was also reserved for the use of telegraph companies and reporters.⁹ In 1939, language was added to the House rules designating a portion of the gallery for radio, wireless, and similar correspondents, who were subject to rules similar to those that applied to print reporters.¹⁰

Today, the Speaker’s role in regulating gallery admission and floor access for daily print and periodical journalists is found in Rule VI, clause 2, of the *Rules of the House of Representatives*. This clause also states that the Standing Committee of Correspondents will supervise the daily press gallery and designate its employees, and that the Executive Committee of Correspondents for the Periodical Press Gallery will perform those same functions for the periodical gallery. The Speaker’s role in regulating gallery admission and any floor access for radio and television journalists is found in Rule VI, clause 3, which also delegates radio/TV gallery supervision and designation of its employees to the Executive Committee of Radio and Television Correspondents’ Galleries.¹¹ The professional staff who operate the House press galleries report to the Chief Administrative Officer and Committee on House Administration.

Senate

Records indicate that in 1838, the Senate adopted rules granting floor privileges to local newspaper reporters, and in 1839, the Senate Committee on the Contingent Fund recommended that gallery seats be reserved for reporters.¹² Initially, the vice president oversaw the Senate press gallery. On March 12, 1873, the Senate agreed to a resolution that gave the Rules Committee jurisdiction over the Senate press gallery and authorized that the committee provide no more than one gallery seat to each newspaper. Additionally, a seat on the floor could be reserved for Associated Press reporters.¹³ In 1939, the Senate amended its existing rules to include reporters transmitting news via radio, wire, wireless, and similar media.¹⁴

Official Reporters and News Media Galleries,” in U.S. Congress, House, *Rules of the House of Representatives, One Hundred Fifteenth Congress*, prepared by Karen L. Haas, Clerk of the House of Representatives, 115th Cong., 1st sess., January 5, 2017, p. 5, available at <https://rules.house.gov/sites/republicans.rules.house.gov/files/115/PDF/House-Rules-115.pdf>.

⁹ *House Journal*, December 23, 1857, vol. 54, pp. 116-117.

¹⁰ “Assignment of Space in Gallery of House of Representatives to Radio Reporters,” consideration of H. Res. 169, *Congressional Record*, vol. 84, part 4 (April 20, 1939), p. 4561. The evolution of these clauses from Rule VI is discussed in Sections 693-694 of U.S. Congress, House, *Constitution, Jefferson’s Manual, and Rules of the House of Representatives of the United States, One Hundred Fourteenth Congress*, 113th Cong., 2nd sess., H. Doc. 113-181, (Washington: GPO, 2015), at <https://rules.house.gov/HouseRulesManual114/rule6.xml>.

¹¹ “Rule VI: Official Reporters and News Media Galleries,” in U.S. Congress, House, *Rules of the House of Representatives, One Hundred Fifteenth Congress*, prepared by Karen L. Haas, Clerk of the House of Representatives, 115th Cong., 1st sess., January 5, 2017, p. 5, available at <https://rules.house.gov/sites/republicans.rules.house.gov/files/115/PDF/House-Rules-115.pdf>.

¹² Information on the early Senate press is reported in U.S. Congress, Senate Committee on Rules, *Use of Reporters’ Galleries in Senate*, report to accompany S. Res. 117, 76th Cong., 1st sess., April 21, 1939, Report No. 317 (Washington: GPO, 1939).

¹³ Sen. Henry Anthony, “Duties of Committee on Rules,” *Congressional Record*, vol. 1 (March 12, 1873), p. 48; F.B. Marbut, *News from the Capital: The Story of Washington Reporting* (Carbondale, IL: Southern Illinois University Press, 1971), p. 135.

¹⁴ “The Senate Press Gallery,” consideration of S. Res. 117, *Congressional Record*, vol. 84, part 5 (April 25, 1939), pp. 4721-4723. See also U.S. Congress, Senate Committee on Rules, *Use of Reporters’ Galleries in Senate*, report to accompany S. Res. 117, 76th Cong., 1st sess., April 21, 1939, Report No. 317 (Washington: GPO, 1939).

Under the current *Standing Rules of the Senate*, Rule XXV, paragraph 1(n)(1), provides the Committee on Rules and Administration with the general authority to make rules and regulations for the Senate floor and galleries.¹⁵ Further directives providing the Committee on Rules and Administration with authority to make rules and regulations for the reporters' galleries and related press facilities on the Senate side of the Capitol are found in Rule XXXIII, paragraph 2.¹⁶ Rule VI of the *Rules for Regulation of the Senate Wing* provides additional details on admission to and administration of each of the Senate press galleries, and notes that the Sergeant at Arms is responsible for maintaining order in the galleries.¹⁷ The professional staff who operate the galleries report to the Senate Sergeant at Arms and the Senate Committee on Rules and Administration.

Correspondents' Committees

Since 1877, the Speaker of the House and the Senate Committee on Rules and Administration have provided for the correspondents' committees to make many of the decisions related to the operation of the galleries.¹⁸ One correspondents' committee exists per gallery type, which helps ensure that gallery practices are consistent between the chambers, even as the House and Senate maintain separate gallery facilities. Four correspondents' committees exist today: one for the House and Senate daily press galleries; one for the House and Senate periodical press galleries; one for the House and Senate radio/TV galleries; and one for the Senate press photographers' gallery.

A main responsibility of each correspondents' committee is determining which journalists receive congressional press credentials. Press credentials may be offered on a temporary or permanent basis,¹⁹ and they entitle journalists admission to a particular gallery type in both the House and the Senate, along with access to the resources provided by the gallery's office. Changes to press gallery rules or credentialing requirements may be suggested by the correspondents' committees on behalf of gallery members, but are subject to the approval of the Speaker of the House and the Committee on Rules and Administration.²⁰

Correspondents' committee members must be members in good standing of the gallery they oversee. They are selected by fellow gallery members in accordance with the rules set by that gallery. This system is thought to help preserve the independence of the press corps by removing it from direct congressional influence. It is also thought to help maintain journalistic integrity in

¹⁵ Rule XXV, paragraph 1(n)(1) in U.S. Congress, Senate Committee on Rules and Administration, *Standing Rules of the Senate*, revised to January 24, 2013, 113th Cong., 1st sess., November 4, 2013, Doc. 113-18 (Washington: GPO, 2013), p. 26, available at <http://www.gpo.gov/fdsys/pkg/CDOC-113sdoc18/pdf/CDOC-113sdoc18.pdf>.

¹⁶ Rule XXXIII, paragraph 2, in *ibid.*, pp. 59-60.

¹⁷ See Rule VI of the *Rules for the Regulation of the Senate Wing* in U.S. Congress, Senate Committee on Rules and Administration, *Senate Manual*, 113th Cong., 1st sess., S. Doc. 113-1 (Washington: GPO, 2014), pp. 211-217.

¹⁸ U.S. Senate Press Gallery, "Gallery History," at http://www.dailypress.senate.gov/?page_id=81; Marbut, pp. 154-156.

¹⁹ Permanent press credentials are only valid for the Congress during which they were issued. At the start of a new Congress, each journalist who had permanent credentials for the preceding Congress must reapply to retain them.

²⁰ U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 114th Cong., 1st sess., corrected to February 12, 2016, S.Pub. 114-1 (Washington: GPO, 2016) (hereinafter cited as *Official Congressional Directory*, 114th Cong., 1st sess.). For daily press galleries, see p. 982; for press photographers' gallery, see p. 1003; for radio/TV galleries, see p. 1016; and for periodical press galleries, see p. 1064.

the congressional press corps, as the rules agreed upon by gallery members reflect commonly held professional norms and standards of the news industry.²¹

As gallery members themselves, correspondents' committee members must remain primarily employed as journalists. The day-to-day management of the gallery facilities is instead tasked to professional, nonpartisan staff members hired by the House and Senate to operate the press facilities for each media type. Press gallery staff for each chamber report to the Chief Administrative Officer and the Committee on House Administration or the Senate Sergeant at Arms and the Senate Committee on Rules and Administration.

Related Rules Affecting Media in Congress

In addition to the House and Senate rules that directly address the operation of the press galleries, other provisions in each chamber's rules affect media coverage of Congress. For more information on these topics, see CRS Report R44665, *Video Broadcasting of Congressional Proceedings*, by Sarah J. Eckman. Many of these provisions address photography or the broadcasting or recording of audio and video. The press gallery rules regulate these activities for credentialed correspondents, yet handheld electronic devices, like smartphones, have made it technologically possible for individuals who are not reporters to capture and transmit visual and/or audio materials.

Some of these rules prohibit certain activities to preserve decorum in the chamber, like photographing or broadcasting proceedings, or prohibit use of particular electronic devices on which these activities might occur. In the House and Senate galleries, for example, use of cameras and electronic devices is generally prohibited.²² These provisions apply to any individual, including accredited journalists. The widespread ability to report news from smartphones and other handheld Internet-connected devices may be a relevant consideration for broader chamber rules and policies like these regarding photography, broadcasting, or use of electronic devices.

Other rules enable the House, the Senate, and committees within each chamber to broadcast their own proceedings. Live audio and video feeds and past recordings of floor proceedings have been produced by the House since 1977,²³ and by the Senate since 1986.²⁴ Employees of the House

²¹ For some examples of these journalistic values, see Robert M. Entman, "The Nature and Source of News," in *The Press*, eds. Geneva Overholser and Kathleen Hall Jamieson (Oxford: Oxford University Press, 2005), ch. 3, pp. 48-65.

²² For the House, see Rule XVII, clause 5, and its interpretations as discussed in Section 945 of U.S. Congress, House, Constitution, Jefferson's Manual, and Rules of the House of Representatives of the United States, One Hundred Fourteenth Congress, 113th Cong., 2nd sess., H. Doc. 113-181, [compiled by] Thomas J. Wickham, Parliamentarian (Washington: GPO, 2015), at <https://rules.house.gov/HouseRulesManual114/rule17.xml>. For the Senate, see "Rule IV: Taking of Pictures Prohibited; Use of Mechanical Equipment in Chamber," U.S. Congress, Senate, Rules for Regulation of the Senate Wing of the United States Capitol and Senate Office Buildings, in Senate Manual, 113th Cong., 1st sess., S. Doc. 113-1, prepared by the Committee on Rules and Administration (Washington: GPO, 2014) p. 193; "Use of Tablet Computer Under Interpretative Ruling 444," Dear Colleague letter from Sen. Barbara Boxer, chair, and Sen. Johnny Isakson, vice-chair, Senate Select Committee on Ethics, and Sen. Charles E. Schumer, chair, and Sen. Lamar Alexander, ranking member, Senate Committee on Rules and Administration, June 12, 2012, at http://www.ethics.senate.gov/public/index.cfm/files/serve?File_id=A25EEB37-8A15-44E2-A9C9-FC47756047C1; Brian Friel, "Calculated Move," National Journal, March 24, 2007.

²³ H.Res. 866 (95th Congress), agreed to October 27, 1977; "Providing for Radio and Television Coverage of House Proceedings," *Congressional Record*, vol. 123, part 27 (October 27, 1977), pp. 35425-35437; "Rule V: Broadcasting the House," in U.S. Congress, House, *Rules of the House of Representatives, One Hundred Fifteenth Congress*, prepared by Karen L. Haas, Clerk of the House of Representatives, 115th Cong., 1st sess., January 5, 2017, p. 4, available at <https://rules.house.gov/sites/republicans.rules.house.gov/files/115/PDF/House-Rules-115.pdf>.

²⁴ S.Res. 28 (99th Congress), agreed to February 27, 1986; *Congressional Record*, vol. 132, part 3 (February 27, 1986),

Recording Studio and the Senate Recording Studio are responsible for operating the recording equipment for each chamber. Accredited radio/TV correspondents may request access to these audio or video feeds to rebroadcast, as long as the footage is used for news or public affairs programs, not for commercial or political purposes. The Legislative Reorganization Act of 1970 enabled the House and Senate to allow photographic, radio, and television coverage of proceedings, subject to additional rules established by each committee.²⁵

Today, the House and Senate also provide live and archived video of floor proceedings on their websites, enabling anyone with an Internet connection to access these official video feeds. Beginning in 2010, the House made floor videos available under the direction of the Clerk of the House.²⁶ The Senate began providing floor videos on its website in January 2012 under the direction of the Sergeant at Arms.²⁷

Typical Press Credentialing Requirements

Press credentialing requirements are published in each edition of the *Official Congressional Directory*, and are often available on the press gallery websites. Press credentials admit individual journalists to the congressional press galleries and allow journalists access to the resources provided for their medium, like workspace in the Capitol. The *Official Congressional Directory* also lists the names of the individuals who hold current permanent credentials for each gallery and the news organizations represented.²⁸

Each correspondents' committee administers its own credentialing requirements at the start of every Congress, subject to the approval of the Speaker of the House and the Senate Committee on Rules and Administration. Journalists seeking press credentials must submit a new application at the start of every Congress to continue their gallery membership. Temporary credentials may be available to journalists who do not meet all of the gallery's regular requirements. These requirements are typically similar across the galleries and have been consistent over time. Generally, to receive a press credential from a congressional gallery, an individual

pp. 3130-3158; Nancy J. Schwerzler, "Leaders of Senate Agree on TV Plan, Rule Reforms," *The Sun*, February 21, 1986, pp. 1A-13A; Standing Order 69, "Television and Radio Broadcast of Senate Chamber," U.S. Congress, Senate, *Senate Manual*, 113th Cong., 1st sess., S. Doc. 113-1, prepared by the Committee on Rules and Administration (Washington: GPO, 2014) pp. 129-133.

²⁵ P.L. 91-510, 84 Stat. 1140. See §116(b) for House committees and §116(a) and §242(a) for Senate committees. For the House, also see Rule XI, clause 4, in U.S. Congress, House, *Rules of the House of Representatives, One Hundred Fifteenth Congress*, prepared by Karen L. Haas, Clerk of the House of Representatives, 115th Cong., 1st sess., January 5, 2017, pp. 23-24, available at <https://rules.house.gov/sites/republicans.rules.house.gov/files/115/PDF/House-Rules-115.pdf>. For the Senate, also see Rule XXVI, paragraph 5(c) in U.S. Congress, Senate Committee on Rules and Administration, *Standing Rules of the Senate*, 113th Cong., 1st sess., November 4, 2013, Document 113-18 (Washington: GPO, 2013), pp. 32-33.

²⁶ HouseLive is available at <http://www.houselive.gov>. See also U.S. Congress, House Committee on House Administration, *Oversight of the Clerk, Sergeant at Arms, Chief Administrative Officer, and Inspector General of the House of Representatives*, hearing, 111th Cong., 2nd sess., April 28, 2010 (Washington: GPO, 2010), pp. 5-13, 164; U.S. Congress, House Committee on Appropriations, Subcommittee on Legislative Branch, *Legislative Branch Appropriations for 2015, Part 2 - Fiscal Year 2015 Legislative Branch Appropriations Requests*, 113th Cong., 2nd sess., March 4-6, 26 2014 (Washington: GPO, 2015), p. 233.

²⁷ Senate floor webcast is available at <http://www.senate.gov/floor>.

²⁸ The most recent gallery rules, along with the names of gallery staff, correspondents' committee members, gallery members, and news organizations represented for each gallery is found in the *Official Congressional Directory*, 114th Cong., 1st sess. For daily press galleries, see pp. 981-1002; for press photographers' gallery, see pp. 1003-1010; for radio/TV galleries, see pp. 1015-1062; and for periodical press galleries, see pp. 1063-1082.

- must be a correspondent for that medium, in good standing at a reputable employing organization;
- must be primarily employed as a journalist;
- cannot pursue any claim before Congress or another department of government;
- cannot be employed by the U.S. government or a foreign government; and
- cannot engage in direct or indirect lobbying activity.

Every four years, each correspondents' committee is also responsible for providing press credentials for the presidential nominating conventions and inauguration. Beyond these basic parameters, each gallery may set additional credentialing requirements.

Daily Press Galleries

The original House and Senate press galleries were established in the 1800s for members of the daily printed press, which today includes newspapers, wire services, and electronic news organizations. Correspondents seeking daily press credentials must work for a publication that either (1) publishes daily and holds general publication periodicals mailing privileges from the U.S. Postal Service; or (2) has been in publication continuously for 18 months and has as its principal business “the daily dissemination of original news and opinion of interest to a broad segment of the public.”²⁹

The daily press galleries are overseen by the Standing Committee of Correspondents. The Standing Committee of Correspondents is comprised of members of the daily press gallery who are elected to two-year terms.³⁰ Day-to-day operations of the daily press galleries are managed by professional staff members from each chamber. The House press gallery offices are located in H-315 - H-319 and employ four professional staff. The Senate press gallery offices are located in S-316 and employ seven professional staff.³¹

Although the Standing Committee of Correspondents is responsible for accreditation decisions, the Senate press gallery office serves as a liaison between the committee and the journalists, receiving applications, supporting materials, or fees submitted by journalists. In addition to other credentialing requirements, journalists in the daily press galleries must reside in the Washington, DC, area.

Periodical Press Galleries

The periodical press galleries of the House and Senate include correspondents working for magazines, newsletters, and non-daily newspapers or online publications. These periodicals must “regularly publish a substantial volume of news material of either general, economic, industrial, technical, cultural, or trade character” and “require Washington coverage on a regular basis.”³²

The periodical press galleries are overseen by the Executive Committee of Correspondents, which is comprised of seven periodical press correspondents. The Executive Committee of

²⁹ *Official Congressional Directory*, 114th Cong., 1st sess., p. 981.

³⁰ Three members of the daily correspondents committee are elected by gallery members in January of odd-numbered years, and two members are elected in January of even-numbered years.

³¹ *Official Congressional Directory*, 114th Cong., 1st sess., p. 981.

³² *Ibid.*, p. 1063.

Correspondents is elected by periodical press gallery members every two years, coinciding with the start of a new Congress. Credentialing responsibilities rotate between the administrative staff of the House and Senate periodical galleries every four years.³³ The House periodical press gallery offices are located in H-304 and employ four professional staff. The Senate periodical press gallery offices are located in S-320 and employ three professional staff.

Radio and Television (Radio/TV) Galleries

The radio and television galleries provide credentials for members of broadcast media outlets. The Senate radio/TV gallery coordinates the application process, but credentialing decisions are made by the Executive Committee of the Radio and Television Correspondents' Galleries. The Executive Committee is comprised of seven members.³⁴

Electronic recording or broadcasting equipment is generally prohibited in the chamber galleries, but radio/TV gallery credentials enable journalists to rebroadcast the floor audio and video footage produced by the House and the Senate. The radio/TV galleries also maintain broadcast and recording studio spaces, which can be used by any correspondent with congressional credentials.

In addition to the services provided to journalists, the radio/TV galleries also provide assistance to Members of Congress. The radio/TV galleries manage reservations from Members and congressional staff seeking to hold press conferences in various locations around the Capitol Complex. The radio/TV galleries can also assist Members with media logistics and security for these events.

House Radio/TV Gallery and Related Resources

The House radio and television gallery is located in H-320 and employs seven professional staff. The House radio/TV gallery manages reservation requests for Members' press conferences at the "House Triangle,"³⁵ and provides information about other press conference locations suitable for radio or television coverage.³⁶ Upon the invitation of an accredited journalist, and subject to other gallery rules, Members may host press conferences in the House radio/TV gallery's Capitol

³³ U.S. Senate Periodical Press Gallery, "Congressional Press Accreditation Application Process," at <http://www.periodicalpress.senate.gov/accreditation/>. Credentialing responsibilities are currently handled by the Senate periodical gallery.

³⁴ "Election Bylaws," U.S. Senate Radio & Television Correspondents Gallery, at <http://www.radiotv.senate.gov/executive-committee-bylaws/>.

³⁵ The "House Triangle" is a popular location for media availabilities, is located outside near the southeast corner of the Capitol.

³⁶ Information on media spaces available for Members and their staff is available from House Radio Television Correspondents' Gallery, "Press Conference Locations," at <https://radiotv.house.gov/for-press-secretaries/press-conference-locations>. For a full list of locations where journalists may broadcast live from the House, see House Radio Television Correspondents' Gallery, "House Complex Live Locations," at <https://radiotv.house.gov/for-gallery-members/house-complex-live-locations>.

Visitor Center (CVC) studios.³⁷ Any of the three House studios may be used by journalists seeking exclusive interviews with Members, subject to gallery rules.³⁸

Other locations throughout the Capitol may be used by Members for broadcast media events, but are not managed by the House radio and television gallery. Committee rooms, for example, may be available by contacting the committee of jurisdiction; events in HC rooms on the House-side of the Capitol may be available by contacting the Speaker's Office. Gallery staff can assist Members with logistics for events in these locations.³⁹

Senate Radio/TV Gallery and Related Resources

The Senate radio and television gallery is located in S-325 and employs six professional staff. The Senate radio/TV gallery manages reservation requests for Senators' press conferences outside the Capitol building at the "Senate Swamp,"⁴⁰ and provides information about other press conference locations suitable for radio or television coverage.⁴¹ Upon the invitation of an accredited journalist, and subject to other gallery rules, Senators may host press conferences in the Senate radio/TV gallery's Capitol Visitor Center (CVC) studio.⁴² The Senate studio may also be used by journalists seeking exclusive interviews with Senators.

Senators may use other locations in the Capitol for broadcast media events that are not managed by the Senate radio and television gallery. Committee rooms, for example, may be available by contacting the relevant committee. Rooms in the CVC, including SVC-200/201 may be available from the Committee on Rules and Administration; S-211 may be available from the Secretary of the Senate; and S-207 may be available from the Sergeant-at-Arms. Gallery staff can assist Members with logistics for events in these locations.⁴³

Press Photographers' Gallery

The Press Photographers' Gallery provides credentials for news photographers and assists in facilitating photographic coverage of the House and the Senate. The photo gallery offices are located on the Senate side of the Capitol, in S-317, and employ three professional staff. There is

³⁷ Media events in the HVC studios may only be attended by accredited journalists and staff of the Members involved. For HVC Studio A, located in HVC 117, a Member must be invited by a broadcast journalist who attends and covers the duration of the event; for HVC Studio B, located in HVC 110, a Member may be invited by a print or broadcast journalist. *Ibid.*

³⁸ House Radio Television Correspondents' Gallery, "Exclusive Interview Locations," at <https://radiotv.house.gov/for-gallery-members/exclusive-interview-locations>.

³⁹ House Radio Television Correspondents' Gallery, "For Gallery Members," at <http://radiotv.house.gov/for-gallery-members>.

⁴⁰ The "Senate Swamp," a popular location for media availabilities, is located outside near the northeast corner of the Capitol.

⁴¹ Information on media spaces available for Senators and their staff is available from the Senate Radio and Television Correspondents Gallery, "For Press Secretaries," at <http://www.radiotv.senate.gov/for-press-secretaries/>. For a full list of locations where journalists may broadcast live from the Senate, see Senate Radio and Television Correspondents Gallery, "Senate Complex Live Locations & Other Connectivity Details," at <http://www.radiotv.senate.gov/senate-complex-live-locations/>.

⁴² The Senate Majority and Minority Leaders can make studio reservations without an invitation from a journalist. Media events in the SVC studio, located in S-325, may only be attended by accredited journalists and staff of the Senators involved. *Ibid.*

⁴³ U.S. Senate Periodical Press Gallery, "Using the Gallery," at <http://www.radiotv.senate.gov/using-the-gallery/>.

no separate House photo gallery facility. The press photographers' photo studio is located in 151 Dirksen. Requirements for press photography credentials are found in Senate Rule XXXIII.

The Standing Committee of Press Photographers is a six-member board that is responsible for the administration of the photographers' gallery. Members of the photo gallery elect standing committee members each year, no later than March 31. The Press Photographers' Gallery rules also state that the standing committee must include one member from Associated Press Photos; Reuters News Pictures or AFP Photos; a magazine; a local newspaper; and an agency or freelance photographer. No organization may have more than one representative on the standing committee at any time.

Gallery Membership in Selected Years

The news media environment has changed in a number of ways over the last several decades, and some of these changes are reflected by the composition of the congressional press galleries. Data regarding press gallery membership was collected from the *Official Congressional Directory* for 10-year intervals representing Congresses between 1975 and 2015. The changes in gallery membership and the current composition of the galleries may be relevant to consideration of the rules governing the press galleries or the resources allocated across different galleries.

Table 1 provides the number of credentialed congressional correspondents in selected years, subdivided by gallery type. Credentials provide correspondents with access to the galleries and associated offices, but at any one time, it is unlikely that all eligible correspondents would be working from the Capitol. Between the 94th and the 114th Congresses, the overall number of accredited congressional journalists more than doubled, growing from 2,588 credentialed correspondents in 1975 to 6,016 in 2015. These findings suggest that, consistent with other measures to increase congressional transparency since the 1970s, more journalists have access to Congress today than in the past.

Table 1. Number of Credentialed Correspondents in Selected Congresses

	94 th Congress (1975-1976)	99 th Congress (1985-1986)	104 th Congress (1995-1996)	109 th Congress (2005-2006)	114 th Congress (2015-2016)
Daily Press	1,125	1,375	1,699	1,417	1,162
Periodical Press	723	1,219	1,668	1,244	1,106
Radio/TV	571	1,393	1,942	2,577	3,515
Press Photographers	169	287	362	307	233
Total	2,588	4,274	5,671	5,545	6,016

Sources: U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 94th Cong., 1st sess., updated through March 10, 1975, (Washington: GPO, 1975), pp. 870-950; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 99th Cong., 1st sess., updated through April 5, 1985, S.Prt. 99-39 (Washington: GPO, 1985), pp. 896-1004; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 104th Cong., 1st sess., updated through May 5, 1995, S.Pub. 104-14 (Washington: GPO, 1995), pp. 969-1035; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 109th Cong., 1st sess., updated through July 11, 2005, S.Pub. 109-12 (Washington: GPO, 2005), pp. 929-1031; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 114th Cong., 1st sess., updated through February 12, 2016, S.Pub. 114-1 (Washington: GPO, 2015), pp. 981-1082.

Note: Counts represent the number of individual names listed under "Members Entitled to Admission" in the *Official Congressional Directory* for each gallery.

Table 2 provides the number of credentialed news outlets in selected years, subdivided by gallery type. Correspondents may be credentialed as representatives of multiple news outlets, and although the number of accredited correspondents has increased, the number of media outlets they represent has diminished by more than half, decreasing from 1,272 in 1975 to 581 in 2015. This may reflect broader trends in the news industry, including the consolidation of smaller media outlets into larger entities.⁴⁴

Table 2. Number of Credentialed Media Outlets in Selected Years

	94 th Congress (1975-1976)	99 th Congress (1985-1986)	104 th Congress (1995-1996)	109 th Congress (2005-2006)	114 th Congress (2015-2016)
Daily Press	858	624	336	246	192
Periodical Press	160	259	218	190	143
Radio/TV	125	116	160	204	194
Press Photographers	129	98	79	84	52
Total	1,272	1,097	793	724	581

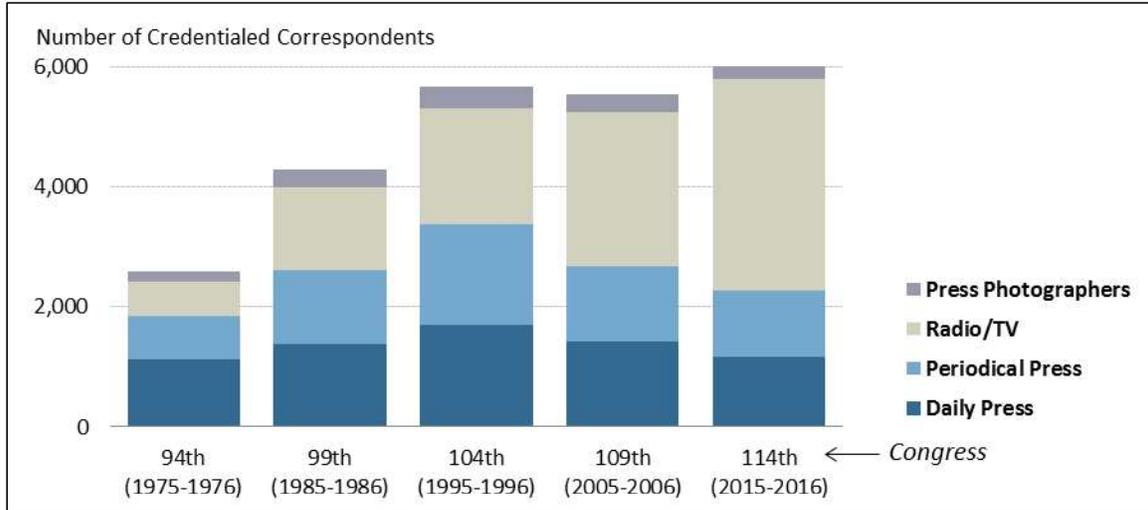
Sources: U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 94th Cong., 1st sess., updated through March 10, 1975, (Washington: GPO, 1975), pp. 870-950; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 99th Cong., 1st sess., updated through April 5, 1985, S.Prt. 99-39 (Washington: GPO, 1985), pp. 896-1004; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 104th Cong., 1st sess., updated through May 5, 1995, S.Pub. 104-14 (Washington: GPO, 1995), pp. 969-1035; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 109th Cong., 1st sess., updated through July 11, 2005, S.Pub. 109-12 (Washington: GPO, 2005), pp. 929-1031; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 114th Cong., 1st sess., updated through February 12, 2016, S.Pub. 114-1 (Washington: GPO, 2015), pp. 981-1082.

Notes: Counts represent the number of entities listed as the media services represented in the *Official Congressional Directory* for each gallery. Records available in the *Official Congressional Directory* can vary across years; in some years and for some outlets, a news organization and its parent organization are listed separately, resulting in some duplication and overestimation of these counts. Freelance reporters are listed as a category in the *Official Congressional Directory* but are excluded from the counts of radio/television and press photographer organizations.

Figure 1 and **Figure 2** illustrate how the proportion of journalists and outlets holding credentials from the daily press, periodical press, radio/TV, and press photographers galleries compare between the 94th Congress (1975-1976) and the 114th Congress (2015-2016). The number of accredited correspondents increased for all the press galleries during this time period, but the number of radio/TV correspondents grew most substantially, as shown in **Figure 1**. In the 114th Congress, a majority of the congressional correspondents (58%) held radio/TV credentials, whereas only 28% of correspondents held radio/TV credentials in the 94th Congress. This change likely reflects the growth of video-based cable and satellite news that occurred during the same time period. The same dynamic may also be reflected in the larger proportion of credentialed radio/TV news outlets, relative to outlets in other gallery types, as shown in **Figure 2**.

⁴⁴ Amy Mitchell, Jesse Holcomb, and Rachel Weisel, *State of the News Media 2016*, Pew Research Center, Washington, DC, June 15, 2016, at <http://assets.pewresearch.org/wp-content/uploads/sites/13/2016/06/State-of-the-News-Media-Report-2016-FINAL.pdf>.

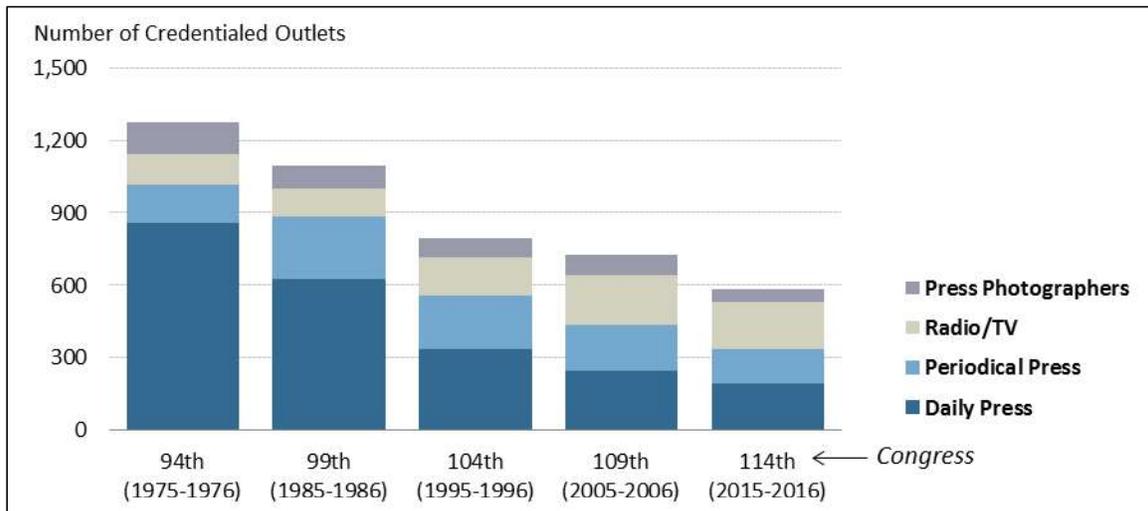
Figure 1. Number of Credentialed Correspondents in Selected Congresses



Sources: U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 94th Cong., 1st sess., updated through March 10, 1975, (Washington: GPO, 1975), pp. 870-950; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 99th Cong., 1st sess., updated through April 5, 1985, S.Prt. 99-39 (Washington: GPO, 1985), pp. 896-1004; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 104th Cong., 1st sess., updated through May 5, 1995, S.Pub. 104-14 (Washington: GPO, 1995), pp. 969-1035; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 109th Cong., 1st sess., updated through July 11, 2005, S.Pub. 109-12 (Washington: GPO, 2005), pp. 929-1031; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 114th Cong., 1st sess., updated through February 12, 2016, S.Pub. 114-1 (Washington: GPO, 2015), pp. 981-1082.

Note: Counts represent the number of individual names listed under “Members Entitled to Admission” in the *Official Congressional Directory* for each gallery.

Figure 2. Number of Credentialed Media Outlets in Selected Congresses



Sources: U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 94th Cong., 1st sess., updated through March 10, 1975, (Washington: GPO, 1975), pp. 870-950; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 99th Cong., 1st sess., updated through April 5, 1985, S.Prt. 99-39 (Washington: GPO, 1985), pp. 896-1004; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 104th Cong., 1st sess., updated through May 5, 1995, S.Pub. 104-14 (Washington: GPO, 1995), pp. 969-1035; U.S. Congress, Joint Committee on Printing, *Official Congressional Directory*, 109th Cong., 1st sess., updated through July 11, 2005, S.Pub. 109-12 (Washington: GPO, 2005), pp. 929-1031; U.S. Congress, Joint Committee

on Printing, *Official Congressional Directory*, 114th Cong., 1st sess., updated through February 12, 2016, S.Pub. 114-1 (Washington: GPO, 2015), pp. 981-1082.

Notes: Counts represent the number of entities listed as the media services represented in the *Official Congressional Directory* for each gallery. Records available in the *Official Congressional Directory* can vary across years; in some years and for some outlets, a news organization and its parent organization are listed separately, resulting in some duplication and overestimation of these counts. Freelance reporters are listed as a category in the *Official Congressional Directory* but are excluded from the counts of radio/television and press photographer organizations.

Additional Considerations and Developments

The basic operating structure of the House and Senate press galleries has remained relatively unchanged over the years. This system is comprised of independent correspondents' committees, which establish gallery rules and credentialing requirements; professional nonpartisan administrative staff who manage day-to-day gallery operations; and the House Speaker and Senate Committee on Rules and Administration, which retain authority over the galleries' operations. This division of responsibilities, along with the longstanding gallery rules, has generally addressed potential concerns regarding conflicts of interest or infringements on press freedom. Occasionally, the congressional press galleries have adapted to significant changes in the news media environment; one key example was the establishment of the radio and television galleries in 1939.

Independence of Correspondents' Committees

Although the Speaker of the House and the Senate Committee on Rules and Administration must formally approve of gallery rules and are responsible for oversight, the galleries themselves run fairly autonomously. Nonpartisan, professional personnel operate the galleries on a daily basis, and the correspondents' committees are responsible for many decisions, including accreditation of journalists. The independence of the correspondents' committees from Congress is an important feature of how the press galleries operate, helping to maintain a boundary between the two. Prior to the 1877 establishment of the first correspondents' committee, observers were concerned that, at times, Members seemed too close to the press, and at other times, were somewhat antagonistic to the press.⁴⁵ Some observers continue to voice similar concerns,⁴⁶ but generally, this separation is thought to improve media accountability and ensure that press access to Congress is not contingent on favorable coverage.⁴⁷ Independence of correspondents' committees is also thought to relieve concerns about government infringements on the freedom of

⁴⁵ The publication of congressional documents not authorized for release occurred several times throughout the mid-1800s, illustrating both the close access reporters could have to Congress and how that could lead to tension between Congress and the press. Reporters were arrested and detained by the Senate Sergeant at Arms both in 1848 and in 1871 for publishing treaties that they obtained but were not yet public. Press coverage of congressional scandals also led to greater tensions between Members and reporters. See Marbut, pp. 105-107.

⁴⁶ For example, see Bruce D. Collins, "Journalists as Congressional Agents—Legal Confusion and Conflict in the Radio and Television Gallery," *CommLaw Conspectus*, vol. 21, no. 2 (2013), pp. 298-335.

⁴⁷ Examples of tension between Members and reporters date back to the first Congress, and during these early years, sometimes affected press access to the chambers. See McPherson, p. 69. For a more general discussion of government and press relations, see also Martha Joynt Kumar and Alex Jones, "Government and the Press: Issues and Trends," in *The Press*, eds. Geneva Overholser and Kathleen Hall Jamieson (Oxford: Oxford University Press, 2005), ch. 13, pp. 226-247; Timothy Besley and Andrea Prat, "Handcuffs for the Grabbing Hand? Media Capture and Government Accountability," *The American Economic Review*, vol. 96, no. 3 (June 2006), pp. 720-736.

the press,⁴⁸ since the press—and not any agent of the House or Senate—is largely responsible for formulating and enforcing its own rules.⁴⁹

Establishing and Maintaining Journalistic Standards

The system of press credentialing requirements and associated gallery rules can be viewed as ways to establish and maintain certain journalistic standards for congressional reporters. Many of the current rules can be traced back to the first rules created in the late 1800s. Press credentialing requirements originated, in part, as a way to ensure legitimate news reporters had access to Members of Congress while preventing lobbyists—who sometimes posed as reporters—from gaining similar access to advance their own agendas. In these early years, congressional staff sometimes also served as newspaper correspondents, leading to concerns about conflicts of interest and occasional speculation that staff might be responsible for the publication of unreleased information.⁵⁰

The rules of the galleries continue to prohibit accredited journalists from participating in lobbying, paid advocacy, or advertising activity on behalf of any individual, corporation, organization, political party, or federal government agency. Credentialed correspondents must also be primarily employed as journalists, as concerns have been raised that additional sources of income may affect correspondents' impartiality.⁵¹ Occasional questions have also been raised about whether the disclosure requirements are sufficient and achieve their intended aims, or if enforcement of the rules by independent correspondents' committees introduces the risk that committee members may, at times, be somewhat permissive regarding their peers' activities.⁵²

In addition to these individual-level restrictions, the media outlets that employ congressional correspondents must be editorially independent of any entity that lobbies the federal government. By excluding individuals and organizations that have a clear connection to policy advocacy, these rules help assure Members of Congress that congressional correspondents are primarily interested

⁴⁸ Congressional initiatives that would have required honoraria disclosure from journalists, for example, have raised these types of concerns. See “Right Job, Wrong Tool,” editorial, *Boston Globe*, August 15, 1995, p. F4; Debra Gersh Hernandez, “Senator Wants to Monitor Reporters’ Incomes,” *Editor & Publisher*, vol. 128, no. 32 (August 12, 1995), p. 9, at <https://www.editorandpublisher.com/news/senator-wants-to-monitor-reporters-incomes-p-9/>; Rep. Charles T. Canady, remarks in the House, *Congressional Record*, daily edition, vol. 141, part 23 (November 16, 1995), pp. H13135-H13136; Rep. Barney Frank, *Ibid.*, pp. H13136-H13137; David A. Schultz, “The Truth Behind the Truth in Reporting Proposal,” *Editor & Publisher*, vol. 128, no. 49 (December 9, 1995).

⁴⁹ For example, the rules for the daily press gallery provide that the Standing Committee of Correspondents may propose rule changes to the Speaker of the House and Senate Committee on Rules and Administration only upon receiving a written petition signed by at least 100 of the gallery’s members. See *Official Congressional Directory*, 114th Cong., 1st sess., p. 982.

⁵⁰ Donald A. Ritchie, *Press Gallery: Congress and the Washington Correspondents* (Cambridge, MA: Harvard University Press, 1991), pp. 75-77, 92-112, 121; Marbut, pp. 33, 140-141, 154.

⁵¹ For a discussion of some of these issues, and whether or not journalists should be required to disclose honoraria, speaking fees, or other sources of outside income, see Howard Kurtz, “Money Talks,” *Washington Post Magazine*, January 21, 1996, pp. 10-15, 22-25, available at <https://www.washingtonpost.com/archive/lifestyle/magazine/1996/01/21/money-talks/12b89778-29f6-4481-ac01-32e5e014c3fb/>; Alicia C. Shepard, “Talk is Expensive,” *American Journalism Review*, vol. 16, no. 4 May 1994, pp. 20-27, at <http://ajrarchive.org/Article.asp?id=1607>; Ken Auletta, “Fee Speech,” *New Yorker*, vol. 70, September 12, 1994, p. 40.

⁵² For example, see Sen. Charles E. Grassley, “Speaking Fees and Journalists,” remarks in the Senate, *Congressional Record*, daily edition, vol. 140, part 85 (June 29, 1994), p. S7879; Sen. Robert C. Byrd, “Senate Resolution 162—Relative to the Senate Press Gallery,” remarks in the Senate, *Congressional Record*, daily edition, vol. 141, part 134 (August 10, 1995), pp. S12291-S12292; Rep. Gerald C. “Jerry” Weller, “Amendment Offered by Mr. Weller,” remarks in the House, *Congressional Record*, daily edition, vol. 141, part 23 (November 16, 1995), pp. H13128-H13135.

in reporting the news and are not seeking access in the interest of promoting their own policy objectives.

New Media Environment and Gallery Operations

Changes in how news is produced and distributed have sometimes led the House, Senate, and correspondents' committees to revisit the existing rules, facilities, and administration related to the congressional press. Once radio became a popular news format, for example, the House and Senate rules were amended to include radio reporters, and the chambers created the radio and television galleries.⁵³ Since the addition of the radio/TV galleries, the overall structure of the congressional press galleries has remained fairly unchanged. Within that structure, new facilities for the existing galleries became available in 2008 upon the completion of the Capitol Visitor Center (CVC). Those who study the news industry have observed several trends in recent decades that may affect the composition of congressional press gallery membership and may be relevant to consideration of congressional rules or resources related to the galleries.⁵⁴

Television, for example, has become the predominant news source for most Americans and many prefer to watch cable networks, which can include more editorializing than the broadcast networks.⁵⁵ If it appears that journalists representing these outlets are advocating for particular interests, this might contradict the spirit of the longstanding lobbying and advocacy prohibitions in the press gallery rules. Media consolidation trends sometimes raise similar concerns, if a large corporation owns news outlets along with other holdings that may be affected by federal policies or regulations.⁵⁶

Internet-based news represents another important development in news production and consumption that may receive additional consideration.⁵⁷ Currently, Internet-based journalists

⁵³ "Assignment of Space in Gallery of House of Representatives to Radio Reporters," consideration of H. Res. 169, *Congressional Record*, vol. 84, part 4 (April 20, 1939), p. 4561.

⁵⁴ For an overview of some of these trends, see John Carey and Nancy Hicks Maynard, "The Future of News, the Future of Journalism," in *The Press*, eds. Geneva Overholser and Kathleen Hall Jamieson (Oxford: Oxford University Press, 2005), ch. 25, pp. 415-432; Samuel L. Popkin, "Changing Media, Changing Politics," review of *All the News That's Fit to Sell* by James Hamilton and *American Foreign Policy in the New Media Age* by Matthew Baum, *Perspectives on Politics*, vol. 4, no. 2 (June 2006), pp. 337-338.

⁵⁵ Jonathan S. Morris, "Slanted Objectivity? Perceived Media Bias, Cable News Exposure, and Political Attitudes," *Social Science Quarterly*, vol. 88, no. 3 (September 2007), pp. 707-728; Norman H. Nie, Darwin W. Miller, III, and Saar Golde, et al., "The World Wide Web and the U.S. Political News Market," *American Journal of Political Science*, vol. 54, no. 2 (April 2010), pp. 428-439; Amy Mitchell and Dana Page, Millennials & Political News, Pew Research Center, Washington, DC, June 1, 2015, at <http://www.journalism.org/files/2015/06/Millennials-and-News-FINAL-7-27-15.pdf>.

⁵⁶ Dell Champlin and Janet Knoedler, "Operating in the Public Interest or in Pursuit of Private Profits? News in the Age of Media Consolidation," *Journal of Economic Issues*, vol. 36, no. 2 (June 2002), pp. 459-468; Pamela Taylor Jackson, "News as a Contested Commodity: A Clash of Capitalist and Journalistic Imperatives," *Journal of Mass Media Ethics*, vol. 23, no. 2-3 (June 2009), pp. 146-163.

⁵⁷ Michael T. Heaney, "Blogging Congress: Technological Change and the Politics of the Congressional Press Galleries," *PS: Political Science & Politics*, vol. 41, no. 2 (April 2008), pp. 422-426; Ryan Witte, "It's MY News Too!," *Yale Journal of Law & Technology*, vol. 12, no. 1 (January 2010), pp. 208-347; Amy Mitchell, Jeffrey Gottfried, Michael Barthel, et al., The Modern News Consumer, Pew Research Center, Washington, DC, July 7, 2016, at http://assets.pewresearch.org/wp-content/uploads/sites/13/2016/07/08140120/PJ_2016.07.07_Modern-News-Consumer_FINAL.pdf; Kristen Purcell, Lee Raine, and Amy Mitchell, et al., Understanding the Participatory News Consumer, Pew Research Center, Washington, DC, March 1, 2010, at <http://www.pewInternet.org/2010/03/01/understanding-the-participatory-news-consumer/>; Norman H. Nie, Darwin W. Miller, III, and Saar Golde, et al., "The World Wide Web and the U.S. Political News Market," *American Journal of Political Science*, vol. 54, no. 2 (April 2010), pp. 428-439.

apply to the gallery that best matches how they report the news and must meet similar employment and parent publication rules as traditional media journalists. Because websites can provide text, photographs, audio, video, or a combination of these formats, it may be more difficult to draw distinctions between media types for these outlets.⁵⁸ Publication can also occur immediately and may obscure differences between daily and periodical publications. The low cost to self-publish on the Internet could also present challenges to the gallery requirements that journalists must be primarily employed by a news outlet. Non-journalists may also be able to effectively report news from the Capitol with handheld Internet-connected devices, like smartphones, and the ubiquity of social media publishing and broadcasting applications. These considerations may be relevant for the congressional press galleries, or for broader chamber rules and policies regarding photography, broadcasting, or use of electronic devices.

Concluding Observations

Since the 1800s, a number of changes have occurred in how news is produced and distributed. The basic structure of the congressional press galleries, however, has remained fairly consistent. Credentialing requirements originated as a way to facilitate professional news reporting from Congress, preventing congressional staff from doubling as reporters and lobbyists from posing as reporters to gain access. Today, the accreditation process continues as a measure to provide access to Congress for credible journalists and news outlets.

The system of having an independent correspondents' committee, comprised of gallery members, as the gatekeepers for congressional press credentials for that gallery, generally addresses potential concerns that Congress might infringe upon the rights of a free press or only allow for favorable news coverage. Although the Speaker of the House and the Senate Committee on Rules and Administration must approve any gallery rules, the substance of the rules often reflect measures initiated by the correspondents' committees and gallery members. Designated administrative staff in each gallery further help to insulate the press galleries from possible political pressure.

The level of administrative resources granted to the galleries has increased since their creation, but the number of credentialed correspondents has also continued to grow, particularly in the radio/TV galleries. This may be relevant to the consideration of what resources are allocated to the galleries, or how these resources are distributed across each chamber's galleries. Previously clear distinctions between media types and publication schedules, which form the basis of the current gallery divisions, may become increasingly blurred, and this may be relevant as Congress considers how to accommodate multimedia journalists and Internet-based news.

Author Information

Sarah J. Eckman
Analyst in American National Government

⁵⁸ One scholar notes that Congress is “the only national legislature to divide its galleries among different forms of media.” See Ritchie, p. 217.

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EXHIBIT D

About Us	Accreditation	For Gallery Members	Membership	Special Events and Announcements	Contact Us
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Accreditation

Congressional press accreditation for magazines, newsletters, non-daily newspapers, and on-line publications are handled through the Periodical Press Gallery. The **Executive Committee of Correspondents** decides which publications qualify for press credentials.

The application process can be lengthy with the potential for taking six months to a year to complete, and some applications have taken even longer. Approval is not guaranteed at the end of the process. Please see the **rules and regulations** to review the qualifications.

New credentials are issued for each session of Congress (annually) and a new application form must be submitted every Congress in order to continue membership in the Gallery.

Please note that old press credentials must be turned in to receive new credentials.

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EXHIBIT E

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1. Administration of the press galleries shall be vested in a Standing Committee of Correspondents elected by accredited members of the Galleries.

The Committee shall consist of five persons elected to serve for terms of two years. Provided, however, that at the election in January 1951, the three candidates receiving the highest number of votes shall serve for two years and the remaining two for one year. Thereafter, three members shall be elected in odd-numbered years and two in even-numbered years. Elections shall be held in January. The Committee shall elect its own chairman and secretary. Vacancies on the Committee shall be filled by special election to be called by the Standing Committee.

2. Persons desiring admission to the press galleries of Congress shall make application in accordance with Rule VI of the House of Representatives, subject to the direction and control of the Speaker and Rule 33 of the Senate, which rules shall be interpreted and administered by the Standing Committee of Correspondents, subject to the review and an approval by the Senate Committee on Rules and Administration.

3. The Standing Committee of Correspondents shall limit membership in the press galleries to bona fide correspondents of repute in their profession, under such rules as the Standing Committee of Correspondents shall prescribe.

4. An applicant for press credentials through the Daily Press Galleries must establish to the satisfaction of the Standing Committee of Correspondents that he or she is a full-time, paid correspondent who requires on-site access to congressional members and staff.

Correspondents must be employed by a news organization:

- (a) with General Publication periodicals mailing privileges under U.S. Postal Service rules, and which publishes daily; or
- (b) whose principal business is the daily dissemination of original news and opinion of interest to a broad segment of the public, and which has published continuously for 18 months.

The applicant must reside in the Washington, D.C. area, and must not be engaged in any lobbying or paid advocacy, advertising, publicity or promotion work for any individual, political party, corporation, organization, or agency of the U.S. Government, or in prosecuting any claim before Congress or any federal government department, and will not do so while a member of the Daily Press Galleries.

Applicants' publications must be editorially independent of any institution, foundation or interest group that lobbies the federal government, or that is not principally a general news organization. Failure to provide information to the Standing Committee for this determination, or misrepresenting information, can result in the denial or revocation of credentials.

5. Members of the families of correspondents are not entitled to the privileges of the Galleries.

6. The Standing Committee of Correspondents shall propose no changes in these rules except upon petition in writing signed by not less than 100 accredited members of the galleries.

The above rules have been approved by the Committee on Rules and Administration.

View Congressional Directory
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