

By Email

May 22, 2014

Laura Lytle
Director
U.S. Senate Press Gallery

Dear Ms. Lytle:

The Reporters Committee for Freedom of the Press and 14 media outlets write in support of the credentialing of SCOTUSblog and its reporters to the U.S. Senate Daily Press Gallery.

We commend the Gallery and the members of its Standing Committee for their hard work on the issues surrounding this credentialing matter. The journalism community respects and admires the work that you do to promote journalistic excellence and protect the Gallery institutionally from influences that may dilute the independence of the reporters whom you credential. It is a serious and important assignment, and you are fulfilling it in a way that will give your colleagues great confidence in the process and the overriding public interest behind it.

The Reporters Committee's interest in this matter stems in part from our role in assisting the Gallery in earlier years with fine-tuning the very rules that are at issue in the SCOTUSblog application. We see ourselves as your partner in the ongoing effort to apply these rules to a media landscape that continues to shift rapidly. Since our founding in 1970, we have advocated on behalf of the mainstream media as well as "non-traditional" journalists, such as bloggers, columnists who self-syndicate, and other Internet-based publishers such as SCOTUSblog. The function a journalist serves – providing news and commentary about pressing issues to the public – has always been to us more important than the organizational format within which he or she sits, so long as his or her news outlet has clear policies to maintain editorial independence.

Our interests here also relate to our longstanding focus on better public understanding of the U.S. Supreme Court. SCOTUSblog is a leading source of daily news and analysis about the Court, and we believe that regulations that determine whether its reporters can receive permanent press passes to the U.S. Senate, where stories pertinent to the Court often arise, must be flexible enough to accommodate new and emerging forms of media ownership and revenue models. The media coalition also is concerned that a policy that is interpreted to restrict SCOTUSblog might exclude other similarly situated news outlets.

We understand the Gallery told SCOTUSblog publisher Tom Goldstein that he should address three topics in his appeal of the credentialing application: editorial independence, the site's Bloomberg Law sponsorship, and the need for direct access to the Senate. He has now responded, and his letter is available online.¹ In his letter, Goldstein speaks to SCOTUSblog's organizational structure and how it qualifies the publication for credentials.

¹ <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/05/electronic-letter-to-Director-Lytle.pdf>

While we touch on that issue briefly, we write separately to urge the Gallery to consider as an overarching point the changing finances of the media industry when construing its rules and to offer suggestions that would accommodate SCOTUSblog and similar groups. We provide ideas on how funding, editorial independence, and journalistic need should inform credentialing decisions. We also discuss why we believe the rules support the application of SCOTUSblog, a news outlet that plays an essential role in providing comprehensive information about an institution that despite its influence on American life remains in many ways impenetrable. Journalists, lawyers, the public at large, and even the Court itself have benefited from SCOTUSblog's coverage.

We hope that if the Gallery has any follow-up questions or concerns, it will reach out to us as it has in prior years for any assistance we can offer.

I. Editorial independence and funding

We encourage the credentialing committee to focus on the firewalls a news outlet has in place to maintain editorial independence instead of putting great weight on an organization's ownership structure. While we understand the Gallery's desire to exclude writers whose objective is to lobby on behalf of a corporation or an advocacy organization, we believe that the committee should determine whether an organization crosses that line on a case-by-case basis that looks at the internal controls each applicant has in place. If a group has clear processes to ensure that corporate or other interests do not influence editorial systems, a "non-traditional" organizational structure should not preclude it from obtaining a press pass.

The media coalition also believes that an organization's sponsorship by a single entity should not disqualify its reporters from receiving credentials. Indeed, the key issue is whether that sponsorship is actually a sign of control by a non-journalistic entity or whether appropriate firewalls are in place to maintain editorial independence.

It is possible that SCOTUSblog's application may have been rejected in part because the site does not receive revenue from subscriptions or advertisements.² As traditional business models in news publishing have deteriorated in recent years, many media outlets, such as SCOTUSblog, are finding new ways to fund high-quality journalism. For instance, some news outlets are turning to philanthropic organizations to help pay for their work. Given the economic challenges news outlets face, it is especially important that "alternative" income sources do not disqualify applicants from admission.

Moreover, it does not seem workable for credentialing rules as applied to focus solely on a blog's financial and organizational structure when many large news outlets are owned by corporate conglomerates or obtain substantial advertising revenue from individual companies. Instead of rejecting funding structures that may be unfamiliar to them, committee members

² According to a recent article in the Columbia Journalism Review, guidelines that implement the Gallery's application policy explain that one factor it may consider is "whether [a news organization's] principal revenue comes from readership support through subscriptions or advertising." Jonathan Peters, *Why Can't SCOTUSblog Get a Credential?*, Colum. Journalism Rev., Apr. 29, 2014, available at <http://bit.ly/QWFLD8>.

should carefully analyze the internal controls of all applicants to ensure their reporters have editorial independence. The media coalition worries that failure to take into account the economic realities of the journalism industry will stymie new and creative voices like SCOTUSblog from providing the public with important information.

II. The need for direct access to the Senate

The Gallery also asked SCOTUSblog to address its need for a Senate press pass. Many issues that arise in the Senate affect the Supreme Court, even if not on a daily basis. The media coalition believes that the Gallery should not limit credentials only to groups that cover the day-to-day operations of Congress. The Gallery seems to agree with this philosophy, as its members include reporters from regional publications and from news outlets that focus on specific issues, such as healthcare or education.

III. The case for credentialing SCOTUSblog

We again appreciate the importance of the fact-finding role the Gallery is playing and its efforts to act in the best interests of independent journalism. Self-governance for the industry on matters of credentialing is essential to its broader autonomy.

SCOTUSblog clearly serves a journalistic function. It provides deep and wide-reaching daily coverage about how news from Congress affects the Supreme Court. Its aim is to “comprehensively cover the work of the Supreme Court,” and many news industry organizations and journalists have recognized its success in fulfilling that mission. The site has won the Peabody Award for excellence in electronic media and Sigma Delta Chi and National Press Club awards for breaking news coverage of the Affordable Care Act decisions. In a recent article about SCOTUSblog, *New York Times* Supreme Court correspondent Adam Liptak called the site “an invaluable resource and an important competitor,” and NPR Supreme Court correspondent Nina Totenberg labeled it “a high-quality news organization.”³ *National Law Journal* Supreme Court correspondent Tony Mauro said in the article, “SCOTUSblog’s work is remarkable and extensive, and there’s basically nothing I could fault.”⁴

SCOTUSblog’s readership is large and growing: the site had close to 20 million page views in 2012 and nearly twice that amount in 2013. Its impact is especially important given the challenges to access presented by the Court. Cameras are not allowed in the building, the courtroom only has about 250 public seats, and audio recordings are not released until days after arguments. SCOTUSblog has helped fill the information void about Court-related news.

The site’s coverage is especially comprehensive: it publishes at least three stories (before argument, after argument, and after decision) about all cases that the justices hear, and it runs broad and enriching analytical pieces.⁵ It also reports on the interplay between the Senate and the Court in many ways, including coverage of confirmation hearings and nominees, laws that

³ *Id.*

⁴ *Id.*

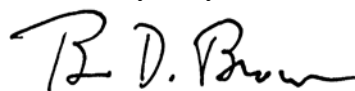
⁵ <http://www.scotusblog.com/about/>

are intended to address or override Supreme Court decisions, testimony from current and former justices, and hearings on matters related to the Court, such as budget issues and camera access.

In its recent letter to you, SCOTUSblog identified the firewalls it has established to ensure editorial independence. It also has posted these standards for the public to see.⁶ Though we expect that SCOTUSblog staff and the Gallery will discuss these policies in more detail at the May 23 meeting, we believe that such a firewall policy is exactly what an organization like SCOTUSblog should have in place to demonstrate its editorial independence and to earn your trust and your support for its credentialing application.

Based on the years of its journalistic work, and the case it makes in its materials, we encourage this committee to recognize SCOTUSblog as a qualifying news organization that is staffed by professionals engaged in the practice of journalism. We hope the upcoming meeting will be a chance for parties to come together and reach a resolution that respects the spirit of the Gallery's guidelines, promotes the inclusion of alternatively structured news outlets, and continues to make the provision to the public of high-quality daily journalism about the activities of the Senate its highest goal.

Yours very truly,



Bruce D. Brown, Executive Director
Gregg P. Leslie
Jamie T. Schuman
Reporters Committee for Freedom of the Press

The Association of American Publishers, Inc.
Atlantic Media, Inc.
Cable News Network, Inc.
The E.W. Scripps Company
First Amendment Coalition
Freedom of the Press Foundation
Investigative Reporting Workshop at
American University
Media Consortium
National Press Photographers Association
National Public Radio, Inc.
The New Yorker
Online News Association
POLITICO LLC
Tully Center for Free Speech

cc: Siobhan Hughes, Chairwoman,
Wall Street Journal
Peter Urban, Secretary,
Stephens Media Group
Colby Itkowitz, Washington Post
Kate Hunter, Bloomberg
Emily Ethridge, CQ/Roll Call

⁶ <http://www.scotusblog.com/about/our-policies/>

