

Due Process and Press Credentialing

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ABSTRACT

Government-issued press credentials increasingly determine which journalists may access public officials, attend government events, and report from restricted spaces. Yet the legal frameworks governing these credentials remain underdeveloped, discretionary, and structurally vulnerable to abuse. This Article examines the constitutional dimensions of press credentialing through the lens of procedural due process. It is the first law review article to consider whether press credentials give rise to protected liberty or property interests under the Fifth and Fourteenth Amendments, such that denial or revocation requires due process.

Drawing on analogies to professional licensing regimes and recent litigation involving credentialing disputes, this Article maps the evolving doctrinal landscape and identifies key points of convergence and divergence across jurisdictions. It then situates these questions within the broader transformation of the media ecosystem, where independent and freelance reporters increasingly perform core newsgathering functions but face heightened barriers to access. Finally, this Article proposes structural reforms to insulate credentialing decisions from political control, drawing on institutional models such as professional licensing boards, congressional press galleries, and administrative oversight bodies.

In doing so, this Article offers a principled framework for modernizing press access systems: balancing legitimate government interests with the procedural protections essential to constitutional governance and democratic accountability.

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I. INTRODUCTION

Government-issued press credentials—passes that allow journalists to access restricted spaces like courthouses, crime scenes, or event sites—play a pivotal role in facilitating newsgathering. Whether covering the White House or a contentious city council meeting, these credentials often serve as practical gatekeepers to information. When denied or revoked, particularly without explanation or procedural safeguards, these credentials can meaningfully hinder a journalist’s ability to do their job. The implications of interfering with a press pass reach beyond occupational harm; they affect constitutional liberty and possibly

property interests.¹ The implications also intersect with core First Amendment values.

Despite their importance, the legal status of press credentials remains unsettled. Some courts have recognized that denying or revoking a journalist's access to newsworthy sites without due process can violate constitutional protections, while others have dismissed such claims.² This Article contends that when press credentials are denied or revoked by the government, procedural due process protections should apply. As with other professional licenses or government-issued permissions necessary to pursue a lawful occupation, interfering with press credentials warrants constitutional scrutiny.³

To understand why, it is necessary to examine the doctrinal framework of procedural due process. The Fifth Amendment, which applies to the federal government, and the Fourteenth Amendment, which applies to state and local governments, both prohibit the government from depriving any person of "life, liberty, or property, without due process of law."⁴ This clause requires procedural fairness when certain protected interests are at stake. Courts typically recognize two categories of such interests: liberty interests, which encompass fundamental freedoms including the right to pursue one's occupation; and property interests, which arise from a person's legitimate claim of entitlement to a benefit under existing laws or policies.⁵

Liberty interests have long been understood to include the right to pursue one's chosen profession. The U.S. Supreme Court has emphasized that freedom "to engage in any of the common occupations of life" is a component of liberty protected by the Due Process Clause.⁶

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1. See *Sherrill v. Knight*, 569 F.2d 124, 128, 130–31 (D.C. Cir. 1977).

2. Compare *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 232 (S.D.N.Y. 2019), with *Kelly v. Lightfoot*, No. 22-cv-4533, 2022 WL 4048508, at *3 (N.D. Ill. Sep. 2, 2022).

3. See *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 262–63 (1970).

4. U.S. CONST. amends. V, XIV.

5. See *Bd. of Regents*, 408 U.S. at 571; U.S. CONST. amends. V, XIV.

6. *Bd. of Regents*, 408 U.S. at 572; see *id.*:

While this Court has not attempted to define with exactness the liberty . . . guaranteed [by the Fourteenth Amendment], the Court has held that it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life . . . and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free men.

Id. (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

Revoking a press credential—much like revoking a medical license⁷—can interfere with a person’s ability to work and implicate this constitutional protection. Press passes, by design, authorize access that is often essential to performing journalistic duties. Denying them can exclude individuals from the very spaces where news is made.

Property interests, by contrast, are based on rules or policies that create a reasonable expectation of continued access or benefits.⁸ For instance, public housing recipients have a property interest in continued housing assistance when regulations provide that benefits may only be terminated for cause.⁹ Similarly, courts have found that holders of taxi medallions or street vendor licenses may have a property interest when those licenses are issued under regulatory schemes that limit removal to specific, cause-based conditions.¹⁰ In jurisdictions where press credentials are governed by clear criteria or longstanding practices, journalists may have a legitimate expectation that such access will not be revoked arbitrarily. In these contexts, the press pass becomes more than a privilege: it is a protected property interest.

Whether a liberty or property interest is implicated, the basic procedural requirements are similar: adequate notice, a meaningful opportunity to be heard, and a neutral decision-maker before revocation or denial of the interest.¹¹ These protections help ensure that individuals are not excluded unfairly or without justification. The Supreme Court’s decision in *Mathews v. Eldridge* provides a flexible framework for determining what process is due in any given context, balancing the private interest at stake, the risk of erroneous deprivation, and the government’s interest in expeditious action or administrative efficiency.¹²

7. See Wesley M. Oliver, *A Round Peg in A Square Hole: Federal Forfeiture of State Professional Licenses*, 28 AM. J. CRIM. L. 179, 191 (2001); *Tsirelman v. Daines*, 794 F.3d 310, 315 (2d Cir. 2015) (acknowledging that physicians have important, though not compelling, property and liberty interests in their licenses and right to pursue their chosen profession, respectively).

8. See *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970) (holding that welfare benefits are property interests protected by the Due Process Clause); see also *Bell v. Burson*, 402 U.S. 535, 542–43 (1971) (holding that driver’s license revocation must be preceded by due process).

9. See *Goldberg*, 397 U.S. at 262 (1970) (acknowledging that welfare benefits are a matter of statutory entitlement for persons qualified to receive them and may not be terminated without a hearing consistent with due process).

10. See, e.g., *Barry v. Barchi*, 443 U.S. 55, 64–65 (1979) (recognizing a property interest in a state-issued horse trainer license subject to revocation only under defined standards); *Walz v. Town of Smithtown*, 46 F.3d 162, 168–69 (2d Cir. 1995) (finding a property interest in a vendor permit where revocation was governed by established criteria).

11. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (establishing a balancing test for determining the specific procedures required under the Due Process Clause).

12. See *id.*

In the press credential context, this balancing is particularly significant.¹³ The government's interests in security and administrative control must be weighed against a journalist's ability to access information on behalf of the public. Courts first grappled with these tensions in *Sherrill v. Knight*, in which the D.C. Circuit held that the White House could not deny a press credential without providing the journalist notice and an opportunity to respond.¹⁴ Though *Sherrill* recognized a liberty interest under the Fifth Amendment's Due Process Clause, its reasoning has been inconsistently applied in subsequent cases.¹⁵ Some courts, such as the Southern District of New York in *Nicholas v. Bratton* and the U.S. Court of Appeals for the District of Columbia in *Karem v. Trump*, have affirmed *Sherrill*'s central holding.¹⁶ Others, including the Northern District of Illinois in *Kelly v. Lightfoot*, have rejected it, leaving a fractured legal landscape and significant uncertainty for journalists and government actors alike.¹⁷

This doctrinal inconsistency is compounded by the evolving media ecosystem. Today's journalists may be salaried reporters at legacy news outlets or independent creators producing investigative content on social media platforms. Regardless of affiliation, many journalists rely on press credentials to gain access to locations where news is unfolding. Yet credentialing systems are often opaque, inconsistent, and vulnerable to abuse, particularly against critics or nontraditional media actors.

This Article examines the extent to which procedural due process protections apply to the government's issuance and revocation of press credentials. Part II traces the historical development and practical function of press credentialing systems and considers how press passes operate as government-issued permissions that may implicate liberty and property interests under the Due Process Clause. Part III analyzes relevant case law, surveying how federal courts have evaluated procedural due process claims in credential-related disputes and highlights the doctrinal inconsistencies that have emerged across jurisdictions. Part IV explores the real-world consequences of credential denials and revocations, particularly for freelance and independent journalists navigating opaque or evolving standards. Part V considers how credentialing frameworks have failed to keep pace with the transformation of the media ecosystem, showing that outdated standards can systematically exclude journalists now essential to democratic

13. See *Sherrill v. Knight*, 569 F.2d 124, 129–33 (D.C. Cir. 1977).

14. See *id.*

15. See *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 279–82 (S.D.N.Y. 2019); *Kelly v. Lightfoot*, No. 22-cv-4533, 2022 WL 4048508, at *3 (N.D. Ill. Sep. 2, 2022).

16. See *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 232 (S.D.N.Y. 2019); *Karem v. Trump*, 960 F.3d 656, 665 (D.C. Cir. 2020).

17. See *Kelly*, 2022 WL 4048508, at *3.

oversight. Part VI proposes structural reforms to insulate credentialing decisions from political influence, drawing on models from other professional contexts and emphasizing the need for neutral decision-makers and transparent procedures. Together, these sections offer a comprehensive framework for understanding the constitutional dimensions of press credentialing and for designing systems that are both procedurally fair and institutionally legitimate. In doing so, this Article seeks to fill a significant gap in the law and existing scholarship, offering guidance to courts, policymakers, and the press alike.

II. THE HISTORICAL AND LEGAL LANDSCAPE OF PRESS CREDENTIALS

A. *Origins and Purpose of Press Credentials*

Government-issued press credentials have historically functioned as tools to regulate and facilitate media access to sensitive government-controlled spaces and events.¹⁸ For example, since the early 20th century, the White House Press Office has issued credentials allowing reporters to cover presidential activities while balancing the government's security concerns and the public's right to information.¹⁹ Other jurisdictions, like New York City, have similarly been issuing press credentials for decades.²⁰ These credentials serve multiple purposes: verifying the identity and legitimacy of journalists, managing limited physical access to crowded or high-security locations such as courthouses, police lines, or executive offices, and helping authorities maintain order during potentially volatile situations.

The credentialing process aims to balance competing interests. On one hand, the government must protect the safety and integrity of its operations, prevent disruptions, and control access to properly restricted areas. On the other hand, the public's interest in transparent governance

18. See John Wihbey, *Who Gets a Press Pass? Media Credentialing Practices in the United States*, JOURNALIST'S RES. (June 5, 2014), <https://perma.cc/JRK2-72Y8>; see, e.g., *Press Credentials Office Frequently Asked Questions*, N.Y.C. MAYOR'S OFF. MEDIA & ENT. (Apr. 26, 2022), <https://perma.cc/8SYV-CPKH> ("A member of the press must have a valid Press Card to: Cross police, fire lines, or other restrictions, limitations or barriers established by the City at emergency, spot, or breaking news events and non-emergency public events. Attend City-sponsored events that are open to members of the press."); *Press Pass Portal*, L.A. CNTY. SHERIFF'S DEP'T, <https://perma.cc/Q689-AEPT> (last visited May 20, 2025) ("A LASD Press Pass ID allows Media organizations physical access to locations generally closed off to the general public due to safety concerns."); cf. *Media Pass Information and Procedures*, METRO. POLICE WASHINGTON D.C., <https://perma.cc/UF9E-WRTL> (last visited May 20, 2025) (explaining purpose of media passes as providing the media to access with police activity and First Amendment demonstrations, but noting the decision to cease issuing media passes on April 1, 2015).

19. See *Sherrill*, 569 F.2d at 127–29 (discussing credentialing practices).

20. See Second Amended Complaint at ¶ 18, at 8, *Nicholas v. Bratton*, No. 1:15-cv-09592 (S.D.N.Y. Oct. 24, 2017), Dkt. 126.

and robust news coverage requires that legitimate journalists be granted meaningful access. Press passes enable authorities to distinguish bona fide media professionals from protesters, bystanders, or others who might seek access for non-journalistic purposes. Importantly, they also facilitate communication by granting journalists entry to official press briefings and newsworthy scenes, thereby ensuring accurate and timely dissemination of information.²¹ For this reason, in spaces where press credentials are issued, they can become essentially necessary to perform competitive newsgathering and be viewed as a serious journalist.

Naturally, news outlets are more inclined to hire a journalist with a press credential, who has greater access to news scenes, than someone without one.²² This concern is amplified by the geographic concentration of journalists in cities where credentials are most often required. A 2019 Pew Research Center study found that one in five U.S. journalists live in just three metropolitan areas—New York City, Los Angeles, and Washington, D.C.—with both New York and Los Angeles maintaining official press credentialing regimes.²³ In cities like these, where law enforcement or government credentials are necessary for accessing restricted areas or covering breaking events, the stakes are especially high: editors may simply not hire someone who lacks that access.

Editors at major news outlets have testified to this under oath in cases relating to the removal of press passes. For example, in *Nicholas v. Bratton*, discussed in more detail below, several current and former editors at the *New York Daily News* testified during deposition that the outlet only hires photographers if they possess “a valid NYPD-issued press credential.”²⁴ One *Daily News* editor emphasized that photographers “can’t work without a press credential,” describing it as one of “the tools that are required to do the job,” alongside essential equipment like a camera and a laptop.²⁵ Another editor echoed this sentiment, stating, “I wouldn’t hire somebody without a press pass.”²⁶

21. See *Nicholas v. City of New York*, No. 15-CV-9592, 2017 WL 766905, at *1 (S.D.N.Y. Feb. 27, 2017) (“According to [the plaintiff], an NYPD press credential is essentially required for photojournalists because it permits them to gain entry to official press conferences, to cross police lines, and to cover crime and fires scenes.”).

22. See Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment at 24–27, *Nicholas v. Bratton*, No. 15-Civ.-9592 (S.D.N.Y. July 16, 2018), 2018 WL 7585478 (providing deposition testimony from hiring editors at news outlets).

23. See Wihbey, *supra* note 19; see also Elizabeth Grieco, *One-in-Five U.S. Newsroom Employees Live in New York, Los Angeles or D.C.*, PEW RSCH. CTR. (Oct. 24, 2019), <https://perma.cc/3PS9-6N9V>.

24. Plaintiff’s Memorandum of Law in Support of Plaintiff’s Motion for Summary Judgment, *supra* note 23, at 25; see *id.* at 24–27.

25. *Id.* at 25 (citing Lewis Transcript at 13, 29–30, 44–46).

26. *Id.* (citing MacDonald Transcript at 41).

Similarly, a third editor testified that “you obviously need your press credential to work.”²⁷ In jurisdictions where press credentials are available, the absence of one would seem fatal to maintaining current or procuring future employment.

Oftentimes, to secure a “permanent” press pass, an applicant must demonstrate a consistent and active engagement in newsgathering activities. In New York City, the Mayor’s Office of Media and Entertainment (MOME) requires applicants for a Standard Press Card to submit at least six published works, such as articles, photographs, or videos, produced within the past 24 months.²⁸ These works must document the applicant’s in-person coverage of events where the city established police or fire lines, or other barriers for security or crowd control purposes, or events sponsored by the city that are open to the press.²⁹ This requirement ensures that the applicant has a demonstrable need for access to restricted areas to perform their journalistic duties.

Similarly, the Los Angeles Police Department (LAPD) issues media credentials to individuals who regularly cover news events occurring behind police or fire lines within the city.³⁰ Applicants must complete a California Department of Justice fingerprint background check and provide evidence of their regular engagement in newsgathering, such as recent publications related to law enforcement or fire stories.³¹

At the federal level, the White House Press Office manages the issuance of press credentials. While specific criteria can vary, applicants typically need to demonstrate a consistent presence at the White House and a need for access to cover presidential activities. The process may involve background checks conducted by the Secret Service and verification of the applicant’s journalistic credentials.³² Recent changes

27. *Id.* at 26 (citing Marino Transcript at 50).

28. See *Press Credentials Office Frequently Asked Questions*, N.Y.C. MAYOR’S OFF. MEDIA & ENT. (Mar. 13, 2025), at 5, <https://perma.cc/V5ET-HUDV>.

29. See *id.* at 3.

30. See *Press Pass Portal*, *supra* note 19.

31. See *Media/Press Pass Policy*, L.A. POLICE DEP’T, <https://perma.cc/H7EN-PQBT> (last visited June 5, 2025).

32. See *Covering the White House*, WHITE HOUSE CORRESPONDENTS’ ASS’N, <https://perma.cc/94B2-X2GN> (last visited June 5, 2025):

To get a hard pass, journalists must submit an application to the White House Press Office and undergo a background screening by the Secret Service, which protects the President and is responsible for security at the White House. This process can take several months. The hard pass is not required to cover events or press briefings, but since it allows journalists to enter the complex without permission ahead of time, it’s an important convenience for those who regularly cover the White House. When the Trump White House attempted to revoke a journalist’s hard pass, the WHCA advocated directly with the Administration and in federal court, where a judge ultimately deemed the revocation improper and restored the hard pass.

Id.

have also opened opportunities for non-traditional media representatives, such as podcasters and social media influencers, to obtain press access, reflecting the evolving media landscape.³³ Typically, however, press passes are granted to journalists with an established portfolio or record of published journalistic work.

To be sure, no journalist begins their career with a press credential in hand, and the industry must allow pathways for newcomers to gain access. But that is precisely why fair and transparent credentialing procedures matter so much. Press passes are not merely ornamental—they are practical tools that enable access to crime scenes, public events, and other restricted spaces where news is made. After obtaining a hard-to-get entry level journalist position, one could initially work under a senior reporter’s credential, cover stories in less restricted environments, or build a portfolio through freelance work that does not require credentials. In some jurisdictions, like New York, junior journalists who do not qualify yet for a press pass can obtain a “Reserve Press Card” for a limited period (currently, two years), as they work to build up the credentials to secure a more permanent credential.³⁴ But as they progress, especially in large metropolitan areas like New York and Los Angeles, obtaining an official press pass often becomes a prerequisite to advancing in the field. If the process for acquiring or retaining such a credential is arbitrary, opaque, or retaliatory, it forecloses opportunities not only for seasoned reporters but also for emerging voices seeking to break into the profession. Thus, the credentialing system must be subject to procedural safeguards not just to protect current employment, but to ensure the profession remains open and accessible to the next generation of journalists. Barriers to entry, particularly discretionary or opaque ones, can chill diverse voices and discourage emerging reporters from pursuing careers in public interest journalism.³⁵ Ensuring fairness in access procedures is therefore not only a matter of individual rights, but of sustaining the vitality and legitimacy of the press as a whole.

*B. Press Credentials as Government-Issued Permissions
Implicating Liberty and Property Interests*

Press credentials occupy a unique legal space as government-issued permissions that grant both occupational authorization and privileged access to public spaces controlled by state actors. Much like professional

33. See Charlotte McDonald-Gibson, *Karoline Leavitt: TikTokers are White House Press Too*, *TIMES* (Jan. 28, 2025, at 22:00 GMT), <https://perma.cc/AZ54-M3SK>.

34. See *NYC Press Credentials*, *NYC MEDIA & ENT.*, <https://perma.cc/FK6Q-K99C> (last visited June 2, 2025).

35. See Wesley Lowery, *A Reckoning Over Objectivity, Led by Black Journalists*, *N.Y. TIMES* (June 23, 2020), <https://perma.cc/P8GH-9SCR>.

licenses—such as those required to practice medicine or law—or permits issued to regulate business activity, press passes are tools through which the government grants access to certain professions and spaces.³⁶ They confer privileges not available to the general public, such as the ability to cross police or fire lines, attend press briefings, or gain physical entry to emergency or high-security locations during breaking news events.³⁷ In doing so, press credentials both enable the exercise of a profession and function as gatekeeping mechanisms that determine who may observe and report from the front lines of public life.³⁸

Since these credentials affect both a journalist's ability to perform their work and access the spaces necessary for competent performance, their denial or revocation can implicate constitutional protections.³⁹ Depending on the context and the governing legal framework, press credentials may give rise to either (or both) a liberty interest or a property interest protected by the Due Process Clause.⁴⁰

Other professional licensing regimes exemplify this principle. Courts have consistently held that once the government issues a license authorizing an individual to engage in a lawful occupation—whether practicing medicine, nursing, pharmacy, or other regulated fields—a constitutionally protected liberty or property interest may attach. As a result, revocation or suspension of such licenses generally requires, at a minimum, notice, a meaningful opportunity to be heard, and adjudication by a neutral decisionmaker. In *Ireland v. Iowa Board of Medicine*, for example, the Iowa Supreme Court found that a warning letter requiring a physician to undergo a competency evaluation before resuming practice effectively imposed discipline and violated due process because it was issued without a contested-case hearing or statutory safeguards.⁴¹ Similarly, in *Gonzales v. Arizona State Board of Nursing*, the Arizona Court of Appeals reversed a license revocation after holding that the Board's failure to provide the required 30 days' notice before a hearing

36. See *Schwartz v. Bd. of Bar Exam. of N.M.*, 353 U.S. 232, 238–39 (1957) (“A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection.”); *Greene v. McElroy*, 360 U.S. 474, 492 (1959) (noting that a constitutional concern arises when government regulations impair an individual's ability to engage in employment).

37. See *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977) (recognizing that denial of a White House press pass implicates First and Fifth Amendment concerns because of the access and professional consequences involved); *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 243 (S.D.N.Y. 2019).

38. See Sonja R. West, *Press Exceptionalism*, 127 HARV. L. REV. 2434, 2443–46 (2014).

39. See *Sherrill*, 569 F.2d at 129.

40. Cf. *Mathews v. Eldridge*, 424 U.S. 319, 332–33 (1976).

41. See *Ireland v. Iowa Bd. of Med.*, 939 N.W.2d 85, 87–89 (Iowa 2020).

rendered the process unconstitutional.⁴² Other courts have affirmed the same principle in licensing contexts involving pharmacists,⁴³ chiropractors,⁴⁴ and even public employees whose ability to work legally depended on being supervised by a credentialed individual, as required by state law.⁴⁵ In each case, courts applied the flexible test articulated in *Mathews v. Eldridge*, balancing the individual's occupational interest against the risk of erroneous deprivation and the government's regulatory aims.⁴⁶ These precedents reinforce the view that when the state provides official permission to perform essential professional work, it must also provide procedural safeguards before revoking that permission. Press credentials, though structurally distinct, function similarly: they grant qualified individuals access to spaces where the practice of their profession occurs. As with professional licenses, their denial or revocation, particularly when it impacts a person's ability to work, raises important procedural considerations under the Due Process Clause.

This Section explores how these considerations apply in the press credential context, beginning with a potential liberty interest in pursuing one's occupation, followed by a potential property interest that may arise when law or policy creates a legitimate claim of entitlement to press access.

1. Liberty Interests in Press Credentials

Press credentials carry significant liberty interests because they confer essential privileges necessary for journalists to perform their profession. A liberty interest is a constitutionally protected right.⁴⁷ It safeguards individuals against arbitrary government interference with their personal autonomy. Liberty interests include the right to pursue a lawful occupation. For example, a medical license implicates a liberty interest by enabling one to engage in a recognized profession.⁴⁸

42. See *Gonzales v. Ariz. State Bd. of Nursing*, 528 P.3d 487, 489–91 (Ariz. Ct. App. 2023).

43. See *Krusling v. Ohio Bd. of Pharm.*, 981 N.E.2d 320, 324 (Ohio Ct. App. 2012) (finding pharmacist's license revocation satisfied due process under *Mathews* analysis).

44. See *Chirila v. State Chiropractic Bd.*, 763 N.E.2d 1192, 1197–98 (Ohio Ct. App. 2001) (invalidating revocation due to constitutionally defective notice).

45. See *Braswell v. Shoreline Fire Dep't*, 622 F.3d 1099, 1102–03 (9th Cir. 2010) (recognizing a liberty interest where government action “effectively precludes future work in the individual's chosen profession”).

46. See *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

47. See *Allgeyer v. Louisiana*, 165 U.S. 578, 585 (1897).

48. See Kenneth R. Kohlberg, *Medical Licensure Regulation: The New Era of Discipline*, 105 MASS. L. REV. 84, 86 (2025); Wesley M. Oliver, *A Round Peg in A Square Hole: Federal Forfeiture of State Professional Licenses*, 28 AM. J. CRIM. L. 179, 191 (2001); see also *Tsirelman v. Daines*, 794 F.3d 310, 315 (2d Cir. 2015) (acknowledging that physicians have important, but not compelling, property and liberty interests in their licenses and right to pursue their chosen profession, respectively).

Similarly, press credentials facilitate a journalist's ability to work and gather news.⁴⁹ The U.S. Supreme Court has recognized that the freedom "to engage in any of the common occupations of life" is protected by the Due Process Clause of the Fourteenth Amendment.⁵⁰ Liberty interests, therefore, extend beyond freedom from physical restraint to encompass the right to pursue a chosen career without unjustified government interference.

The Supreme Court first articulated this principle in *Allgeyer v. Louisiana*, where it struck down a Louisiana statute that penalized residents for purchasing insurance from an out-of-state company not licensed to do business in Louisiana.⁵¹ The case arose when a Louisiana cotton merchant contracted with a New York insurance company to insure a shipment of goods, violating a state law that restricted such transactions. The Court held that the statute infringed the liberty protected by the Due Process Clause of the Fourteenth Amendment, reasoning that "liberty" includes the right to enter into lawful contracts and pursue legitimate business interests free from arbitrary government interference.⁵² This marked the first time the Court interpreted "liberty" in the Due Process Clause to include economic and occupational freedoms. By recognizing the right to contract and conduct lawful business as fundamental to personal autonomy, *Allgeyer* laid the groundwork for later decisions affirming that individuals have a constitutionally protected liberty interest in pursuing their chosen profession.

Later decisions reinforced this view, including *Meyer v. Nebraska*, a case in which the Supreme Court overturned the conviction of a teacher prosecuted under a state law prohibiting the instruction of foreign languages to young children.⁵³ The Court struck down the law as an unconstitutional infringement on individual liberty, emphasizing that liberty interests encompass the "freedom to engage in any of the common occupations of life."⁵⁴ Specifically, the Court was concerned that enforcing such a law would not only punish the teacher for a single act, but effectively bar her from continuing in her profession altogether. By criminalizing the act of teaching in a manner consistent with her training and expertise, the statute threatened to eliminate her ability to pursue her chosen vocation, thereby implicating core liberty interests protected by the Constitution.

49. See *supra* notes 25–27 and accompanying text.

50. *Planned Parenthood S. Atl. v. State*, 882 S.E.2d 770, 806 (2023).

51. See *Allgeyer v. Louisiana*, 165 U.S. 578, 585 (1897).

52. See *id.*

53. See *Meyer v. Nebraska*, 262 U.S. 390 (1923).

54. *Id.* at 399.

While early decisions such as *Allgeyer v. Louisiana* and *Meyer v. Nebraska* treated occupational liberty as a substantive constitutional guarantee, the Supreme Court's approach began to shift after 1937. The Court largely retreated from robust substantive protection under the Due Process Clause, embracing a more deferential rational basis standard for most economic and occupational regulations.⁵⁵ However, it never fully repudiated these earlier cases or the principle that occupational freedom is a constitutionally cognizable liberty interest. Rather, the center of gravity moved toward procedural protection: when the government burdens or interferes with a recognized liberty interest, it must do so through fair procedures.⁵⁶ In this modern framework, the early substantive due process decisions remain instructive not for their level of scrutiny, but for identifying which interests fall within the scope of "liberty" under the Constitution.⁵⁷

This occupational dimension of liberty received further clarification in *Greene v. McElroy*, a case involving the federal government's revocation of a defense contractor's security clearance without affording him a hearing or an opportunity to confront the evidence against him.⁵⁸ Although the government did not formally terminate Greene's employment, the revocation effectively barred him from performing his professional duties and thereby destroyed his ability to continue in his chosen field.⁵⁹ The Court acknowledged the severe consequences of this action and held that, in absence of congressional authorization, the executive branch could not impose such a penalty without adequate procedural safeguards.⁶⁰ The decision is significant not only because it recognized the due process implications of occupational exclusion, but also because it underscored the broader principle that governmental interference with a person's ability to pursue their profession must be accompanied by fair procedures. As the Court explained, "where governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."⁶¹ *Greene* thus illustrates that liberty interests in the occupational context are not merely

55. See, e.g., *Williamson v. Lee Optical of Okla. Inc.*, 348 U.S. 483, 489 (1955).

56. See, e.g., *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572–73 (1972).

57. See *id.* at 572. While the Court largely retreated from robust substantive protection under the Due Process Clause, it continued to recognize that occupational freedom constitutes a liberty interest subject to procedural protection when government action interferes with it.

58. See *Greene v. McElroy*, 360 U.S. 474, 496 (1959).

59. See *id.* at 476.

60. See *id.* at 492.

61. *Id.* at 496.

theoretical; on the contrary, when the government takes action that substantially impairs a person's ability to work, it implicates constitutional protections requiring notice and a meaningful opportunity to be heard.

While not every occupational disruption rises to the level of a constitutional deprivation, courts have found a liberty interest implicated when the government effectively bars a person from their profession or imposes reputational harm that forecloses future employment opportunities. For example, in *Wisconsin v. Constantineau*, the Court held that the government violated an individual's liberty interests when it caused her to be stigmatized without due process.⁶² In that case, a police chief had posted a notice in local liquor stores prohibiting the sale of alcohol to Constantineau for one year, labeling her as someone who "excessively" misused alcohol, without any opportunity for her to contest the accusation.⁶³ Similarly, in *Board of Regents v. Roth*, the Court recognized that the government cannot, without due process, make false charges that seriously damage a person's standing and associations in the community or impose a stigma that effectively forecloses other employment opportunities.⁶⁴

Press credentials implicate these occupational liberty interests insofar as they serve as a gatekeeping mechanism to meaningful participation in the newsgathering profession. Denial or revocation of such credentials can preclude journalists from covering critical events, limit their ability to compete professionally, and stigmatize them in the eyes of government agencies and the public. Indeed, this is why in 2020, the U.S. Court of Appeals for the District of Columbia found that the interest of a bona fide Washington correspondent in obtaining a White House press pass undoubtedly qualifies as a liberty interest which may not be denied without due process of law.⁶⁵

This occupational framing also sets the stage for evaluating whether press credentials may constitute not only a liberty interest, but also a property interest protected by the Due Process Clause. While liberty interests focus on the freedom to work and avoid unjust governmental stigma, property interests arise from legitimate claims of entitlement—

62. See *Wisconsin v. Constantineau*, 400 U.S. 433, 438–39 (1971).

63. *Id.* at 434–35.

64. See *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 573 (1972). There, the Court ultimately found no liberty interest in the plaintiff's nonrenewal. See *id.*; see also *Paul v. Davis*, 424 U.S. 693, 708–10 (1976) (clarifying that the reasoning in *Wisconsin v. Constantineau* did not establish a general constitutional right to be free from stigma alone). Under *Paul*, a procedural due process claim based on reputational harm requires both stigma and a change in legal status or deprivation of a tangible interest, called the "stigma-plus" test. See *id.*

65. See *Karem v. Trump*, 960 F.3d 656, 665 (D.C. Cir. 2020).

often grounded in rules, regulations, or established practices that govern the issuance and retention of government-granted benefits.

2. Property Interests in Press Credentials

Property interests arise from a legitimate claim or entitlement established by law, creating a reasonable expectation that such benefits or privileges will not be withdrawn arbitrarily.⁶⁶ While press credentials implicate liberty interests because they enable journalists to perform core occupational functions, they can also often generate reasonable expectations of continued access unless proper cause and procedure justify revocation.⁶⁷ Whether a property interest attaches to a press pass requires an examination of the issuing government authorities' guidance regarding how a pass may be issued or revoked.⁶⁸

If, for example, an issuing authority's rules relating to a press credential suggest they have limited discretion to revoke or remove the credential from a journalist, a journalist may reasonably expect continued possession of the credential.⁶⁹ If, however, journalists are explicitly informed that the credential may be revoked at the government's discretion, a property interest is less likely to be found.⁷⁰

In such cases, courts evaluating whether a property interest exists look to whether the governmental body's rules create a framework of "mutually explicit understandings" between the journalist and the state actor.⁷¹ Regularized procedures, written eligibility requirements, and historical patterns of consistent issuance and renewal may all support a claim of entitlement.⁷² Conversely, vague, arbitrary, or discretionary criteria will weigh against the finding of a property interest.⁷³ Notably, however, a written assertion of discretion alone does not automatically negate a property interest if that discretion is constrained by objective

66. *See Bd. of Regents*, 408 U.S. at 577.

67. *See Sherrill v. Knight*, 569 F.2d 124, 131 n.22 (D.C. Cir. 1977) ("[W]hen the substance of the property interest involves first amendment values to the degree of this entitlement to a White House press pass, it would be difficult not to infer constitutional recognition of this interest.").

68. *See Nicholas v. City of New York*, No. 15-CV-9592, 2017 WL 766905, at *7 (S.D.N.Y. Feb. 27, 2017).

69. *See id.* at *8.

70. *See id.*

71. *Perry v. Sindermann*, 408 U.S. 593, 601 (1972).

72. *See Barry v. Barchi*, 443 U.S. 55, 64 & n.11 (1979) (holding that even in a licensing scheme where discretion exists, regularized procedures and standards can support a property interest).

73. *See Nicholas*, 2017 WL 766905, at *7 ("The existence of a protected interest also depends on how curtailed the issuer's discretion is in revoking it, either by policy or in practice.").

standards or used in practice only for cause.⁷⁴ Accordingly, the degree of procedural formality and the presence of objective standards in a press credentialing system can be critical in determining whether a journalist possesses a cognizable property interest protected by the Due Process Clause.

III. CURRENT CASE LAW ON DUE PROCESS AND PRESS CREDENTIALS

Federal courts have taken divergent approaches in evaluating whether the denial or revocation of press credentials triggers due process protections. In 1977, the U.S. Court of Appeals for the District of Columbia affirmatively found that due process was required in *Sherrill v. Knight* before the White House could deny a press credential to a journalist. The same court upheld this principle in the 2020 case of *Karem v. Trump* as did the Southern District of New York in 2019 in *Nicholas v. Bratton*,⁷⁵ recognizing that revoking a press credential can deprive someone of a liberty interest when it meaningfully interferes with a journalist's ability to pursue their profession. However, other courts, including in *Kelly v. Lightfoot*, have taken the opposite approach, holding that because journalists lack a protected liberty or property interest in press credentials, the Constitution does not require due process before denial or revocation.

This divide reflects a broader doctrinal tension over how occupational access and reputational harm are treated under the Due Process Clause. Courts assessing liberty interests have generally followed the framework articulated in *Board of Regents v. Roth*, which limits liberty-based claims to deprivations that either alter legal status or impose reputational stigma in conjunction with a tangible injury, such as loss of employment or exclusion from a profession.⁷⁶ In the press credentialing context, some courts—such as in *Karem* and *Nicholas*—have analogized credential revocation to occupational exclusion, akin to the revocation of a professional license or denial of a security clearance.⁷⁷ Others, as in *Kelly*, have taken a narrower view, treating

74. See *Perry*, 408 U.S. at 601 (“A person’s interest in a benefit is a ‘property’ interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.”).

75. See *Nicholas v. Bratton*, 376 F. Supp. 3d 232, 279 (S.D.N.Y. 2019).

76. See *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972) (“To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.”).

77. See *infra* Sections III.B & III.C.

credentials as discretionary access tools rather than as gatekeepers to professional viability.⁷⁸

The doctrine surrounding property interests is similarly unsettled. Under *Roth*, a constitutionally protected property interest exists when there is a legitimate claim of entitlement under “rules or understandings” stemming from state law, policy, or practice.⁷⁹ In jurisdictions where credentialing decisions follow published standards or historical norms of renewal, applicants arguably possess a cognizable expectation of continued access. But where policies are vague, unpublished, or administered *ad hoc*, courts have been reluctant to find property interests at stake.

The following cases illustrate this developing and uneven body of law and together help clarify the conditions under which due process protections have and have not attached to government-issued press credentials under current jurisprudence.

A. *Sherrill v. Knight: Recognizing Due Process Protections in Press Credential Denials*

The D.C. Circuit’s decision in *Sherrill v. Knight* remains the foundational case for recognizing that government-issued press credentials may trigger due process protections.⁸⁰ In *Sherrill*, the plaintiff Robert Sherrill served as the Washington Correspondent for *The Nation*.⁸¹ He possessed press credentials for the House and Senate press galleries, but had repeatedly applied for, and been denied, a White House press pass.⁸² There were no published criteria explaining what grounds would justify denying a press pass for an established journalist.⁸³ Here, the denial was based on an undisclosed determination by the Secret Service that he posed a security risk; Sherrill received no formal explanation or procedural avenue to contest the decision.⁸⁴ Sherrill sued

78. *See infra* Section III.D.

79. *Roth*, 408 U.S. at 577; *see also Perry*, 408 U.S. at 601.

80. *See generally* *Sherrill v. Knight* 569 F.2d 124 (D.C. Cir. 1977).

81. *See id.* at 126.

82. *See id.*

83. So long as the journalist already had obtained a pass for the House and Senate press galleries, resided in the Washington D.C. area, and reported on the White House on a regular basis, it was presumed that a White House Press Pass would be issued following a routine security check by the Secret Service. *See id.*

84. *See id.* at 125–27. In a separate Freedom of Information Act (FOIA) action, the American Civil Liberties Union (ACLU) formally requested information relating to the denial. During that process, the ACLU was informed that Sherrill had “been arrested and fined for physical assault in the State of Florida,” ostensibly implying that these were the security reasons for the denial. However, this action cannot constitute notice to Sherrill, nor did Sherrill have an adequate opportunity to respond to the information that served as a basis for his denial. *Id.* at 127.

the Director of the Secret Service, among others, arguing that the process surrounding the denial violated his rights under the First and Fifth Amendments.

The court agreed in significant part, holding that the government could not arbitrarily deny access to the White House press facilities without providing basic procedural safeguards because such access was functionally necessary for covering public officials.⁸⁵ Sherrill deserved to be informed of the specific reasoning for his denial and be given the opportunity to appeal the decision. In so deciding, the D.C. Circuit reiterated the lower court's holding, which found that the "denial of a White House press pass constitutes a deprivation of 'liberty' without due process of law . . . because it interferes with the free exercise of the profession of journalism."⁸⁶ The appellate court expressly agreed, stating that this First Amendment interest "undoubtedly qualifies as liberty which may not be denied without due process of law under the fifth amendment."⁸⁷ The court reasoned that once the government voluntarily created a press access system and allowed certain members of the press to attend briefings, it could not exclude others without due process.⁸⁸ The court emphasized that denying a White House press pass to a bona fide Washington correspondent, without notice, opportunity to rebut, or express findings, is inconsistent with the Fifth Amendment.⁸⁹

The *Sherrill* decision suggested that excluding a working journalist from a public institution like the White House could implicate both First Amendment values and occupational liberty interests.⁹⁰ The court stopped short of prescribing a full evidentiary hearing, but made clear that, at a minimum, due process required notice of the factual basis for the denial and an opportunity to respond before an impartial decision-maker.⁹¹

This case laid the groundwork for later courts to evaluate press credential denials not merely as discretionary access decisions, but as potential deprivations of constitutionally protected interests. It remains the leading authority for the proposition that when the government establishes a press credentialing regime and uses it to regulate access to

85. *See id.* at 130.

86. *Id.* at 128.

87. *Id.* at 129–30.

88. *See id.* at 130–31.

89. *See id.* at 128–31.

90. *See Sherill*, 569 F.2d at 129–30 (noting that "the public at large ha[s] an interest protected by the First Amendment in assuring that restrictions on newsgathering be no more arduous than necessary, and that individual newsmen not be arbitrarily excluded from sources of information").

91. *See id.* at 130.

essential public forums, the procedural protections of the Due Process Clause are triggered.

B. Karem v. Trump: Reaffirming Procedural Protections in Credential Revocations

In *Karem v. Trump*, the D.C. Circuit extended the procedural protections articulated in *Sherrill v. Knight*—which addressed the denial of a White House press pass—to the suspension of an existing credential.⁹² Journalist Brian Karem held a “hard pass,” allowing him ongoing access to White House press events.⁹³ After a disputed verbal exchange with a guest at a White House event,⁹⁴ the Trump administration suspended his pass for 30 days on the ground that he had engaged in “unprofessional conduct.”⁹⁵ This was the first time ever that a journalist had their White House hard pass suspended based on unprofessional conduct.⁹⁶ The government offered no clear standards governing acceptable behavior,⁹⁷ nor did Karem receive any notice that his conduct could lead to a suspension or any meaningful opportunity to respond before his credential was suspended.⁹⁸

Karem sought a preliminary injunction, arguing that the government’s actions violated his Fifth Amendment right to due process.⁹⁹ The D.C. Circuit affirmed the district court’s decision granting the injunction. Citing *Sherrill*, the court held that when the government establishes and administers a press credentialing system, it cannot revoke access arbitrarily or for less than compelling reasons.¹⁰⁰ Even if the government has discretion to enforce rules of decorum, that discretion must be exercised in a manner consistent with due process. Because the rules governing press conduct at the relevant event were vague, inconsistently applied, and communicated only after the fact, the court concluded that Karem lacked fair notice of the standard that was allegedly violated and was not given a proper chance to defend himself.¹⁰¹

92. See *Karem v. Trump*, 960 F.3d 656, 666 (D.C. Cir. 2020).

93. See *id.* at 659.

94. See *id.* at 662–63 (noting Karem sought to talk with the guest, while the guest claims that Karem threatened to fight him).

95. *Id.* at 663.

96. See *id.* at 659.

97. See *id.* at 663. (“[N]o formal, written standards regulated reporters’ conduct at non-press-conference events.”).

98. See *id.* at 667.

99. See *id.* at 664.

100. See *id.* at 659–60, 665 (citing *Sherrill v. Knight*, 569 F.2d 124, 129–31 (D.C. Cir. 1977)).

101. See *Karem*, 960 F.3d at 665–66.

Further relying on *Sherrill*, the court explained that an established Washington correspondent has a “liberty [interest] which may not be denied without due process of law under the fifth amendment.”¹⁰² It reasoned that suspending, even for one month, a long-held press credential that provides essential occupational access can impair a journalist’s ability to pursue their profession.¹⁰³ The court emphasized that “fair notice” and a meaningful opportunity to be heard are essential procedural safeguards in the press pass context.¹⁰⁴ In reinforcing that due process principles constrain credentialing decisions, *Karem* demonstrates that the government’s authority over press access is subject to judicial scrutiny, particularly where that authority may be used to suppress or punish journalistic activity.

C. *Nicholas v. Bratton: Due Process at the Local/State Level*

In *Nicholas v. Bratton*, the Southern District of New York expressly recognized that the suspension of a journalist’s press credential could implicate a protected liberty interest under the Fourteenth Amendment.¹⁰⁵ Having found a constitutional interest, the court declined to address the plaintiff’s arguments regarding a possible property interest.¹⁰⁶ In the case, Jason Nicholas, a longtime credentialed photojournalist, brought suit after NYPD officers confiscated his press credential at the scene of a building collapse.¹⁰⁷ He was given no formal notice of the credential’s suspension, no explanation of the reason for it, and no information about how to challenge the suspension through the City’s established procedures.¹⁰⁸ Nicholas asserted claims under the First and Fourteenth Amendments, including a procedural due process challenge.¹⁰⁹

The court held that Nicholas had a constitutionally protected liberty interest in the continued enjoyment of his NYPD-issued press credential. Citing *Sherrill v. Knight* approvingly, the court emphasized that when the government grants access to restricted spaces through a credentialing regime, it must provide procedural protections before revoking that

102. *Id.* at 660 (alteration in original) (quoting *Sherrill*, 569 F.2d at 130–31).

103. *See id.* at 665.

104. *See id.* at 664.

105. *See Nicholas v. Bratton*, 376 F. Supp. 3d 232, 279 (S.D.N.Y. 2019) (“For the reasons that follow, the Court determines that Plaintiff did have a protected liberty interest in the continued enjoyment of his NYPD-issued press credential.”).

106. *See id.* at 279 n.21 (“Because the Court holds that Plaintiff had a protected liberty interest in the continued enjoyment of his NYPD-issued press credential, the Court need not address the parties’ arguments with respect to whether Nicholas also held a protected property interest in the credential.” (emphasis in original)).

107. *See id.* at 251.

108. *See id.* at 281–83.

109. *See id.* at 241, 281–83.

access.¹¹⁰ The court concluded that Nicholas’s credential was not a discretionary privilege but a form of professional access that, when revoked, impacted his ability to work and potentially impaired his standing in the profession.¹¹¹ The court pointed to evidence that Nicholas received fewer assignments and was unable to work for a period after his credential was suspended.¹¹²

Although the court ruled in Nicholas’s favor on the merits of his procedural due process claim—finding that the notice he received was constitutionally deficient as a matter of law—it nonetheless granted qualified immunity to the individual officers involved.¹¹³ The court reasoned that the legal status of a press credential as a protected liberty interest had not been “clearly established” at the time of the suspension.¹¹⁴ Because neither the Supreme Court nor the Second Circuit had directly resolved whether denial of a municipal press credential triggered due process protections, the officers were shielded from liability.

Notably, *Nicholas* strongly reaffirmed the continuing validity of *Sherrill*, stating that its principles “govern here,” and drawing analogies between White House credentials and those issued by the NYPD.¹¹⁵ The court’s holding thus supports the view that under the proper factual circumstances—particularly where suspending a credential impairs access to information or restricts professional functions—a liberty interest does exist. The decision also demonstrates the critical importance of a developed factual record in press pass cases. Had Nicholas’s due process rights been “clearly established” in prior precedent, the result might have been different. And cases moving forward now have the *Nicholas* case to lean on for this very purpose.

D. *Kelly v. Lightfoot: Rejecting Liberty or Property Interests in Press Credentials*

In sharp contrast to *Sherrill*, *Karem*, and *Nicholas*, the Northern District of Illinois in *Kelly v. Lightfoot* rejected the argument that the denial of press credentials triggers procedural due process protections.¹¹⁶ William Kelly, a freelance journalist and frequent attendee at Chicago mayoral press conferences, had his City of Chicago press credential revoked by the Chicago Police Department (CPD) following a

110. *See id.* at 279–80.

111. *See id.* at 280–81.

112. *See id.* at 252–53.

113. *See id.* at 275–81.

114. *See id.* at 287.

115. *Nicholas*, 376 F. Supp. 3d at 281.

116. *See Kelly v. Lightfoot*, No. 22-cv-4533, 2022 WL 4048508, at *3 (N.D. Ill. Sep. 2, 2022).

contentious exchange with Mayor Lori Lightfoot as he was leaving a press conference.¹¹⁷ Kelly filed suit alleging that the revocation violated his First and Fourteenth Amendment rights, including a due process claim based on the suspension of his credentials.¹¹⁸

Notably, the CPD did provide Kelly with notice of the revocation and identified the procedure for challenging it; Kelly was informed of the specific charges against him and was advised that he could submit a written letter to the Superintendent outlining why the decision should be reconsidered.¹¹⁹ As a result, even if a liberty interest had been recognized, it is not clear that the procedures used—including a post-deprivation opportunity to respond in writing—would have been found constitutionally inadequate here.¹²⁰ Indeed, some courts have held that such post-deprivation remedies may be sufficient, depending on the circumstances.¹²¹ However, the court expressly declined to reach that question, holding clearly that Kelly had failed to establish either a liberty or property interest sufficient to trigger due process protections.¹²²

As to liberty interests, the court rejected the idea that exclusion from press conferences interfered with a protected occupational right.¹²³ Departing from *Sherrill* and *Karem*, the court declined to recognize any constitutional interest in continued access to press spaces, characterizing credentials as wholly discretionary and rooted in forum access doctrine rather than professional liberty.¹²⁴ The court distinguished *Sherrill* as outdated and unpersuasive.¹²⁵ Instead, it focused on whether mayoral press conferences qualified as a public forum and concluded that they were nonpublic forums subject only to viewpoint-neutral restrictions.¹²⁶

The court only mentioned property interests in passing and chose not to engage in an analysis regarding a possible property interest.¹²⁷ Because the City's credentialing regime was discretionary and did not guarantee continued access based on any rule-based entitlement, the court most likely presumed that Kelly lacked the kind of legitimate claim

117. *See id.*

118. *See id.* at *1.

119. *See id.*

120. *See id.*; *see also* *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

121. *See, e.g., Mathews*, 424 U.S. at 343–45 (explaining that the adequacy of post-deprivation process depends on the private interest at stake, the risk of erroneous deprivation, and the government's interest).

122. *See Kelly*, 2022 WL 4048508, at *3.

123. *See id.*

124. *See id.* at *2–3.

125. *See id.* at *3.

126. *See id.* at *2.

127. *See id.* at *3 (“Meanwhile, without a liberty interest (*or property interest*), Kelly’s due process claim fails.” (emphasis added)).

of entitlement necessary to establish a property interest under the Due Process Clause.

The court's reasoning in *Kelly* sharply contrasts with the D.C. Circuit's approach in *Karem v. Trump*, which recognized that revocation of press credentials may implicate a journalist's ability to perform core professional functions, thereby triggering constitutional protections. In *Karem*, the court emphasized that when the government creates and administers a press credentialing system, it must do so with fair notice and consistent standards—particularly when exclusion could chill newsgathering or impair a journalist's ability to work. By contrast, *Kelly* declined to consider whether press credentials were essential to professional access, focusing instead on forum classification and administrative discretion. Whereas *Karem* viewed credential revocation as potentially impacting a journalist's liberty interest in pursuing their occupation, *Kelly* treated credentials as revocable favors, not constitutionally protected interests. This split illustrates a significant tension in the case law: while some courts have recognized that denial of access to government-controlled press spaces can function as a form of professional exclusion requiring due process, others have declined to recognize any liberty interest at all, even where exclusion may be arbitrary or retaliatory.

In this respect, *Kelly* represents a clear departure from the dominant line of cases, including *Sherrill* and *Karem*, that ground press credentialing in principles of occupational liberty and procedural fairness. While *Sherrill* and *Karem* emphasize the need for procedural safeguards in credentialing decisions that implicate a journalist's ability to work, *Kelly* signals that in at least some courts, the Constitution offers no such protections, leaving journalists vulnerable to exclusion without meaningful recourse.

IV. REAL-WORLD IMPACTS: THE CONSEQUENCES OF REVOKING PRESS CREDENTIALS WITHOUT DUE PROCESS

While the doctrinal landscape governing press credentials and due process remains unsettled, recent real-world incidents illustrate how the absence of procedural protections can harm not just individual journalists, but the broader democratic function of the press. These examples show that without transparent standards and meaningful review, government actors at all levels can use press credentialing systems to silence criticism, retaliate against disfavored viewpoints, or impose arbitrary exclusions. The resulting harms are concrete: lost assignments, professional discrediting, restricted access to vital information, and, importantly, diminished governmental accountability.

A. *White House Examples*

Conflicts over press credentialing are not limited to one administration or political party. In the last two decades, both Democratic and Republican administrations have been accused of using access as a tool to punish disfavored coverage. While not always rising to the level of formal revocation, such actions can have significant implications for journalistic access and constitutional protections.

For example, in 2009, the Obama administration attempted to exclude Fox News from a press pool interview with Kenneth Feinberg, the administration's "pay czar."¹²⁸ Though Fox held standard White House credentials and was a regular member of the television pool, White House officials initially informed other networks that Fox would not be permitted to participate.¹²⁹ In a rare act of inter-network solidarity, the other major broadcasters—including CNN, ABC, CBS and NBC—refused to proceed unless Fox was included.¹³⁰ Under pressure, the White House reversed its decision and allowed Fox to take part.¹³¹ While no credentials were formally revoked, the incident illustrates how executive actors may attempt to manipulate press access in ways that evade formal process but still raise serious First Amendment and due process concerns.

Then in 2018, the first Trump administration revoked the "hard pass" of CNN correspondent Jim Acosta following a combative press conference in which he refused to surrender the microphone during questioning.¹³² Acosta was not provided prior notice or an opportunity to contest the decision; he learned of the revocation when he was physically denied entry to the White House later that day.¹³³ CNN filed suit, and a federal court quickly granted a temporary restraining order restoring

128. *White House Attempted to Shut Out Fox News Reporter*, REPS. COMM. FOR FREEDOM PRESS (Oct. 23, 2009), <https://perma.cc/YZV6-S9RR> [hereinafter *RCFP Report*]; see Jim Rutenberg, *Behind the War Between White House and Fox*, N.Y. TIMES (Oct. 22, 2009), <https://perma.cc/5SXH-FMS6> ("executive-pay czar").

129. See *RCFP Report*, *supra* note 129.

130. See Ryan King, *Obama Slams Trump for Yanking Media Out of WH Pool—Despite Trying to Cut Fox News Access as President: 'Imagine If I Had Done Any of This'*, N.Y. POST (Apr. 6, 2025, at 13:38 ET), <https://perma.cc/98PE-EBHG>.

131. See Bruce D. Brown & Joshua A. Geltzer, *Why the Constitution Bars Trump from Retaliating Against Jim Acosta*, REPS. COMM. FOR FREEDOM PRESS (Nov. 13, 2018), <https://perma.cc/43WS-V55V>.

132. *Id.*

133. See Scott Nover, *The Legal Precedent That Could Protect Jim Acosta's Credentials*, ATLANTIC (Nov. 9, 2018), <https://perma.cc/Z9E6-BGEU>; Jenna Amatulli, *White House Restores Jim Acosta's Press Pass CNN Drops Lawsuit*, HUFFPOST (Nov. 19, 2018, 16:20 ET), <https://perma.cc/C6NW-AHSP>; Complaint at 11, *Cable News Network, Inc. v. Trump*, No. 1:18-cv-02610 (D.D.C. Nov. 13, 2018).

Acosta's access.¹³⁴ The court did not resolve the First Amendment claims, but ruled on due process grounds that the White House's procedures were constitutionally insufficient.¹³⁵

In 2023, the Biden administration implemented new credentialing standards requiring all White House press pass holders to reapply under stricter criteria.¹³⁶ Reporter Simon Ateba, a frequent presence at press briefings known for interrupting proceedings, had been previously warned that continued disruption could lead to suspension.¹³⁷ When the new standards were announced, Ateba did not reapply, acknowledging that he could not meet the revised criteria.¹³⁸ He later filed a lawsuit alleging viewpoint discrimination, but did not succeed.¹³⁹ While the case did not focus on procedural due process,¹⁴⁰ it exemplifies how changes in credentialing standards can serve as a method of exclusion when applied specifically against journalists who challenge the administration's preferred narratives.

In February 2025, the White House, under the second Trump administration, began excluding the Associated Press (AP) reporters from the Oval Office, press pool events, and Air Force One because the AP refused to adopt President Trump's preferred term "Gulf of America" in place of "Gulf of Mexico."¹⁴¹ Although the AP technically retained its hard pass and therefore still, in name, had White House credentials, it was effectively barred from all sensitive spaces, rendering the credential meaningless.¹⁴² A federal judge found this restriction likely constituted viewpoint discrimination, issuing a preliminary injunction restoring access to restricted areas accessible to the press pool.¹⁴³

At the preliminary injunction hearing, the Government conceded that the AP was being excluded based on its refusal to comply with the

134. See Michael M. Grynbaum, *CNN's Jim Acosta Has Press Pass Restored by White House*, N.Y. TIMES (Nov. 19, 2018), <https://perma.cc/DTB2-3BKM>.

135. *Reporters Committee: White House Must Reinstate Credentials for CNN's Jim Acosta*, REPS. COMM. FOR FREEDOM PRESS (Nov. 8, 2018), <https://perma.cc/UF4X-H6Y9>.

136. See Eli Stokols, Lauren Egan & Lawrence Ukenye, *Simon's No Longer Got a Hard Pass*, POLITICO (Aug. 2, 2023, 18:00 ET), <https://perma.cc/W2WD-KQ2H>.

137. See Ron Dicker, *White House Formally Threatens to Revoke Disruptive Reporter's Press Pass*, HUFFPOST (July 13, 2023, 08:26 ET), <https://perma.cc/Y256-L4QY>.

138. See Stokols, Egan, & Ukenye, *supra* note 137.

139. See *Ateba v. Jean-Pierre*, 706 F. Supp. 3d 63, 73 (D.D.C. 2023).

140. See *id.* at 75–76 (discussing, minimally, due process).

141. See David Bauder, *Despite a Court Order, White House Bars AP from Oval Office Event*, ASSOCIATED PRESS (Apr. 14, 2025, at 22:03 ET), <https://perma.cc/HF2Q-KV4D>.

142. See Jeremy Barr & Laura Wagner, *Associated Press and the White House Remain in Standoff Over Access*, WASH. POST (Feb 14, 2025), <https://perma.cc/G3RK-4A67>.

143. See *Associated Press v. Budowich*, No. 1:25-cv-00532, 2025 U.S. Dist. LEXIS 69980, at *5 (D.D.C. Apr. 11, 2025).

President's lawful geographic name change and offered no alternative justification for its treatment.¹⁴⁴ The court held that even though the Oval Office is a nonpublic forum, the Government must still refrain from viewpoint discrimination in administering press access.¹⁴⁵ The court also rejected the Government's argument that it was under no obligation to grant any journalist access, ruling that once the White House opens access to some members of the press, it cannot exclude others for disfavored editorial views.¹⁴⁶ And although the court declined to consider a Fifth Amendment claim, it noted that this case presented a potentially significant expansion of the due process rights first recognized in *Sherrill v. Knight* and acknowledged that such claims might succeed under a fully developed record.¹⁴⁷ Indeed, this case reflects a broader pattern seen across jurisdictions: without enforceable procedural protections, credentialing systems can become vehicles for control, exclusion, and retaliation, posing risks that persist well beyond the White House.

B. State and Local Government Examples

1. San Diego Police Department

Eva Knott, a longtime independent court reporter in San Diego,¹⁴⁸ had her press credential revoked by the San Diego Police Department (SDPD) in 2022 after years of credentialed access.¹⁴⁹ Knott, who writes under a pseudonym for safety reasons following threats and intimidation linked to her courthouse reporting,¹⁵⁰ had consistently renewed her SDPD press pass using that name with the department's knowledge and approval. She was covering a high-profile criminal trial of eleven Antifa defendants when an encounter with another journalist, whom she later identified as a USA Today reporter, prompted questions about her real name.¹⁵¹ Soon after, she received an unsigned e-mail from SDPD stating that her press pass had been revoked, allegedly for applying under a pseudonym, despite the department's longstanding practice of credentialing her under that name.¹⁵²

144. *See id.*

145. *See id.* at *3.

146. *See id.* at *6 (citing *Sherill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977)).

147. *Id.* at *5–6.

148. *See* Declaration of Eva Knott in Support of Plaintiff's Motion to Proceed Using Pseudonym and Motion for Preliminary Injunction ¶ 2, at 2, *Knott v. S.D. Police Dep't*, No. 3:24-cv-00855 (S.D. Cal. May 15, 2024), Dkt. No. 1 [hereinafter *Knott Decl.*], <https://perma.cc/4AGX-7V56>.

149. *See id.* ¶ 9, at 4.

150. *See id.* ¶¶ 5–6, at 2–3.

151. *Id.* ¶ 8, at 3–4.

152. *See id.* ¶¶ 6–10, 12, at 3–5.

When Knott reapplied in 2024, SDPD denied her request, this time citing failure to demonstrate a need to cross police or fire lines.¹⁵³ Knott disputed this rationale, explaining that she routinely used her press pass to gain front-row courtroom access, expedite file requests, and cover demonstrations—especially during sensitive or high-risk moments, such as the Antifa sentencing hearings scheduled for June 2024.¹⁵⁴ She further noted that her recent reporting had expanded from local to national outlets, including co-bylined work with journalist Andy Ngo for *The Post Millennial*.¹⁵⁵ SDPD did not seemingly provide a formal explanation, record of revocation, or clear appeals process. Knott subsequently filed suit in federal court, alleging violations of her First and Fifth Amendment rights and expressing great concern about her inability to access newsworthy events without her press pass.¹⁵⁶

On X (formerly Twitter), Knott later posted that her press pass was ultimately restored.¹⁵⁷ While details of the resolution are not publicly available, the case underscores the vulnerability of freelance and independent journalists who rely on discretionary credentialing systems, particularly when vague standards like “need” are used to withhold access without meaningful procedural safeguards.

2. Iowa House of Representatives

Laura Belin, an Iowa-based political journalist and longtime publisher of the *Bleeding Heartland* blog, was denied press credentials by the Iowa House of Representatives from 2019 through early 2024.¹⁵⁸ Belin has covered state politics for nearly 30 years and is also a statehouse reporter for KHOI Radio.¹⁵⁹ Despite this extensive experience and regular praise and bylines from Iowa’s mainstream press, House officials rejected her requests to access the House press box, denying her the ability to observe debates, interact with legislators, and attend press briefings available to credentialed reporters.¹⁶⁰

Each time Belin applied for credentials, the reason for denial changed. In 2019, the Chief Clerk did not have any written policy regarding how press credentials were approved or what criteria was

153. *See id.* ¶ 16, at 6.

154. *See id.*

155. *See id.*

156. *See id.* ¶ 18, at 7.

157. *See* Eva Knott (@EvaKnott), X (Jan. 5, 2025, 11:46 ET), <https://perma.cc/MX36-2QMX>.

158. Verified Complaint at 1, *Belin v. Nelson*, No. 4:24-cv-00021 (S.D. Iowa Jan. 19, 2024) [hereinafter *Belin Compl.*], <https://perma.cc/846J-VGCE> (last visited on July 8, 2025).

159. *Id.* at 2, ¶ 5, at 3–4.

160. *Id.* ¶¶ 9, 10, 67, 71, 82, at 5, 18–20, 22.

necessary for approval.¹⁶¹ In denying her application, the Chief Clerk told her simply that “press credentials are not issued to members of the public.”¹⁶² In 2020, she was told the House “does not credential outlets that are nontraditional/independent in nature,” a standard found nowhere in any written credentialing policy.¹⁶³ In subsequent years, officials either provided no explanation or invoked vague criteria like accusing her coverage of failing to provide “nonpartisan news to a broad segment of the public.”¹⁶⁴ Though Belin demonstrated compliance with all stated requirements, including maintaining a full-time paid position with an editorially independent news outlet, she was consistently denied access without explanation.¹⁶⁵

These denials came despite strong support from Iowa’s press corps. In 2019, more than thirty-seven editors, news directors, and publishers signed a letter criticizing the denials as “discouraging coverage through arbitrary rules.”¹⁶⁶ Nonetheless, Belin was the only statehouse reporter denied access to the Iowa House for the start of the 2024 session, even while others attended floor debates and press briefings.¹⁶⁷

Belin filed a federal lawsuit in January 2024, asserting violations of her rights under the First and Fourteenth Amendments.¹⁶⁸ Days later, she was granted a press credential by the Iowa House, and the parties reached a settlement in April whereby the state of Iowa agreed to pay Belin \$49,000 for her legal expenses incurred as she sought access to a press credential.¹⁶⁹ Although the court did not ultimately issue a ruling due to the settlement, Belin’s case underscores how vague and shifting standards—especially those relying on subjective judgments like “nonpartisan” or “traditional”—enable viewpoint discrimination and deny procedural fairness to reporters outside the mainstream.

161. *Id.* ¶ 19, at 8.

162. *Id.* ¶ 21, at 8.

163. *Id.* ¶ 37, at 12.

164. *Id.* ¶ 49, at 15. To even reach this determination, the government would have needed to view and weigh the content and viewpoint of Belin’s news coverage, leading to a viable claim for content-based and viewpoint-based discrimination in violation of the First Amendment.

165. *See id.* ¶¶ 50–52, 57, at 15–16.

166. *Id.* ¶ 35, at 11.

167. *See id.* ¶ 59, at 17.

168. *See id.* ¶¶ 62, 78–82, at 17–18, 21–22.

169. *See* Paul Brennan, *State Will Pay \$49,000 Settlement to Journalist Laura Belin after Six-Year Denial of Media Credentials*, LITTLE VILL. (Apr. 3, 2024), <https://perma.cc/33FA-UN7B>; *see also* Robin Guess, *Iowa Journalist Wins Five-Year Fight for Press Credentials*, VOA NEWS (Mar. 6, 2024, 11:27 ET), <https://perma.cc/NPX4-RNAQ>.

3. Utah Legislature

Bryan Schott, a veteran Utah political journalist and founder of the independent news outlet *Utah Political Watch*, was denied press credentials for the state's 2025 legislative session in a case that illustrates the vulnerability of independent reporters when access decisions are left to unreviewable discretion.¹⁷⁰ Schott had reported on Utah politics for more than 25 years and received Capitol press credentials without interruption since 2013, including during his time at *The Salt Lake Tribune*, KUER, and KSL NewsRadio.¹⁷¹ But in late 2024—shortly after launching *Utah Political Watch*, for which he serves as sole editor and reporter—his application for legislative access was denied.¹⁷²

In early November 2024, Schott reached out to the legislature about press credentials for the upcoming session.¹⁷³ At the time, there had been no formal change to the credentialing policy.¹⁷⁴ On November 24, however—less than three weeks after Schott's initial inquiry—the policy was revised to explicitly exclude “[b]logs, independent media or other freelance media.”¹⁷⁵ Schott submitted his application on December 17, and although his background check was approved, his credential was denied on the basis that he did not represent an “established reputable news organization.”¹⁷⁶

Schott quickly connected this denial to his recent reporting. On December 12, just three days before Schott submitted his application, he had published an article alleging campaign finance violations by Senate President Stuart Adams.¹⁷⁷ In response, Senate media liaison Aundrea Peterson sent Schott a sharply worded text accusing him of “neglectful journalism.”¹⁷⁸ In the same exchange, Schott raised concerns that his coverage was being used as a basis for exclusion. “It certainly sounds like you’re going to use your criticism of this story you don’t like to deny me a press credential next week,” he wrote.¹⁷⁹ Five days later, the denial

170. See Complaint at 2, *Utah Pol. Watch v. Musselman*, No. 2:25-cv-00050 (D. Utah Jan. 22, 2025) [hereinafter Schott Compl.]; *Reporter Denied Press Credentials by Utah Capitol; Files Suit for Access*, U.S. PRESS FREEDOM TRACKER (Dec. 14, 2024) [hereinafter *Utah Reporter Files Suit*], <https://perma.cc/95CX-P5UY>; *Journalist Bryan Schott Sues Over Denial of Legislative Press Credentials*, INST. FOR FREE SPEECH (Jan. 22, 2025), <https://perma.cc/H5D9-2J6A>.

171. See Schott Compl., *supra* note 171, ¶¶ 9–10, 12, at 6.

172. See *id.* ¶¶ 15, 32, 40–43, at 7, 11, 13–14.

173. See *id.* ¶ 22, at 8.

174. See *id.* ¶ 31, at 10–11.

175. *Id.* ¶¶ 22–24, at 8–9.

176. *Id.* ¶¶ 24, 26, 40, at 9, 13.

177. *Id.* ¶¶ 35–36, at 11–12.

178. *Id.* at 3, ¶ 36, at 12; President J. Stuart Adams (@JStuartAdams), X (Dec. 12, 2024, 22:02 ET), <https://perma.cc/7TPK-S33A>.

179. *Utah Reporter Files Suit*, *supra* note 171.

was official.¹⁸⁰ Schott appealed, but the chiefs of staff for both the House and Senate upheld the decision on December 26.¹⁸¹

On January 22, 2025, Schott and *Utah Political Watch*, represented pro bono by the Institute for Free Speech, filed suit in federal court.¹⁸² The complaint alleged violations of his First and Fourteenth Amendment rights and sought both injunctive relief and nominal damages of \$17.91—a symbolic reference to the ratification of the Bill of Rights.¹⁸³ Schott emphasized that while he was excluded, other media outlets—some also new or online-only—were granted access.¹⁸⁴ “It’s dangerous when you allow the people who are the subject of reporting to decide who is and who is not a legitimate media outlet or legitimate journalist,” he told reporters.¹⁸⁵

Schott requested a temporary restraining order to compel immediate credentialing. That motion was denied on February 5.¹⁸⁶ In a public statement following the ruling, Schott wrote: “My motion is denied. In practical terms, that means they won’t be forced to give me a media credential today. That means I remain shut out of press conferences—so I cannot ask questions of lawmakers during their regular media availabilities.”¹⁸⁷ The appeal was dismissed by the Utah District Court on September 29, 2025. Schott filed an appeal to the Tenth Circuit, which is now pending.¹⁸⁸ The ACLU and the Foundation for Individual Rights and Expression (“FIRE”) submitted amicus briefs in support of Schott shortly after his appeal was filed, arguing that the denial of a press credential based on an amorphous exclusion of “independent” or non-institutional journalists constitutes impermissible viewpoint discrimination and retaliation in violation of the First Amendment, and that press-credentialing schemes—once established—trigger both First Amendment and due-process constraints that forbid arbitrary, content- or viewpoint-based exclusions from legislative press access.¹⁸⁹

180. See Schott Compl., *supra* note 171, ¶ 42, at 13–14.

181. See *id.* ¶¶ 43–44, at 14.

182. See *id.* at 1.

183. See *id.* at 23; see also *Utah Reporter Files Suit*, *supra* note 171.

184. See Schott Compl., *supra* note 171, ¶ 51.

185. *Utah Reporter Files Suit*, *supra* note 171.

186. See Bryan Schott (@schotthappens), THREADS (Feb. 5, 2025), <https://perma.cc/A3L5-AFC7>.

187. *Id.*

188. See Docket, *Utah Pol. Watch v. Musselman*, No. 2:25-cv-00050 (D. Utah Jan. 22, 2025), <https://perma.cc/ZD2Z-CAX2> (last updated Oct. 6, 2025).

189. See Amicus Curiae Brief of the Foundation for Individual Rights and Expression & The Reporters Committee for Freedom of the Press in Support of Appellants, *Utah Pol. Watch v. Musselman*, No. 25-4124 (10th Cir. Nov. 17, 2025), <https://perma.cc/8GUV-T8JQ>.

Schott's experience underscores the dangers of vague credentialing standards, particularly when those standards are selectively amended and enforced in direct response to disfavored speech. Like the *Knott* and *Belin* cases, it reveals how state actors can use credentialing discretion to exclude critics from spaces where newsgathering occurs, without notice, hearing, or neutral review.

V. THE EVOLVING MEDIA LANDSCAPE AND THE NEED FOR MODERN STANDARDS

Most press credentialing systems were built for a media world that no longer exists. For much of the twentieth century, political journalism was dominated by legacy newspapers and a handful of national broadcasters.¹⁹⁰ Credentialing decisions were, with some notable exceptions,¹⁹¹ relatively uncontroversial because the professional boundaries of journalism were widely understood: reporters worked for institutions, those institutions adhered to formal codes of conduct, and access was managed by stable networks of press galleries and government liaisons.¹⁹²

But, as the exclusions of Eva Knott, Laura Belin, and Bryan Schott make clear, that world is no more. Each of these discussed journalists had substantial experience, years of beat reporting, and demonstrated readership or listenership. Yet each was denied access to government proceedings based on vague or shifting credentialing standards. These are not isolated stories. They are early indicators of a system increasingly out of step with the realities of American journalism.

Today, news and commentary flow through independent newsletters, social media feeds, YouTube channels, podcasts, and freelance reporters publishing on digital platforms.¹⁹³ Americans are consuming more news from unaffiliated, digital-native sources than ever

190. See Nicole J. Ligon, *Open Trials in the Social Media Age*, 30 VA. J. SOC. POL'Y & L. 287, 300–03 (2023) (detailing the shifting trend toward widespread consumption of news on social media); cf. Galen Stocking et al., *America's News Influencers*, PEW RSCH. CTR. (Nov. 18, 2024), <https://perma.cc/HC3G-L6MQ> (noting that about 1 in 5 Americans regularly get from news influencers on social media, with even higher numbers among younger adults); *Social Media and News Fact Sheet*, PEW RSCH. CTR., (Sep. 25, 2025), <https://perma.cc/BS87-83J2>.

191. See *supra* Part III.

192. Cf. Lili Levi, *Social Media and the Press*, 90 N.C. L. REV. 1531, 1545–50 (2012) (detailing the shift from reliance on once-popular traditional media forms to new media).

193. See *id.*; see also Nieman Lab Staff, *For the First Time, Social Media Overtakes TV as Americans' Top News Source*, NIEMAN LAB (June 16, 2025, at 19:02 ET), <https://perma.cc/9X2Q-ZLQK>. See generally Ligon, *supra* note 191.

before.¹⁹⁴ Meanwhile, local newspapers have shrunk, many traditional outlets have closed, and freelancers are filling the gaps left behind.¹⁹⁵ Credentialing regimes have not kept pace.¹⁹⁶ As a result, the journalists most likely to face exclusion from press-access systems today are often those most essential to public oversight at the state and local level.

A. Independent Journalism Is Now Essential Journalism

The marginalization of nontraditional journalists is not just a policy failure—it is a factual error. Independent and freelance journalists now constitute a critical share of the press,¹⁹⁷ particularly in undercovered areas such as local government, criminal justice, education, and state legislative activity.¹⁹⁸ This shift is not theoretical as it is already defining how Americans get their news.¹⁹⁹ This is not to say that standards should not exist to help define who qualifies as a journalist; the government may have a legitimate interest in ensuring that limited access to critical spaces goes to those engaged in actual newsgathering. But any definition must reflect the realities of modern journalism, where independent and digital-first reporters often play the very roles those standards were designed to protect.

As the experiences of Schott and Belin illustrate, independent reporters are often the last full-time watchdogs on major state government beats. Schott, for example, was offering daily coverage of

194. See Stocking et al., *supra* note 191; Lu Wu, *Did You Get the Buzz? Are Digital-Native Media Becoming Mainstream?*, INT'L SYMP. ON ONLINE JOURNALISM, <https://perma.cc/3RNW-EBY9> (last visited July 26, 2025) (“The term ‘digital native media’ describes media companies that were born and grown entirely online.”).

195. See Nicole J. Ligon, *Protecting Local News Outlets from Fatal Legal Expenses*, 95 N.Y.U. L. REV. ONLINE 280, 281 (2020); Luke Morgan, *The Broken Branch: Capitalism, the Constitution, and the Press*, 125 PENN ST. L. REV. 1, 14 (2020).

196. *But see* Karoline Leavitt, Press Secretary, The White House, *Press Briefing by Press Secretary Karoline Leavitt* (Jan. 29, 2025, at 13:06 ET), <https://perma.cc/4DYP-64H7> (encouraging new media to begin applying for press access); Fatima Hussein & Halleluya Hadero, *Social Media Influencers Descend on the White House, Where Biden Calls Them the New ‘Source of News’*, ASS. PRESS (Aug. 14, 2024, at 17:19 ET), <https://perma.cc/4X7B-95FD>; Sasha Rogelberg, *More Than 7,400 Influencers Applied for White House Press Credentials After Trump Administration Calls for ‘New Media Voices’*, FORTUNE (Jan. 31, 2025, at 12:33 ET), <https://perma.cc/MKM9-RTWZ>; *Police Departments Restructure Press Pass Policies to Adapt to Bloggers, Freelancers*, REPS. COMM. FOR FREEDOM PRESS, <https://perma.cc/5CSC-CL7T> (last visited Oct. 10, 2025).

197. See *supra* note 191 and accompanying text.

198. See Elisa Shearer et al., *Americans’ Changing Relationship with Local News*, PEW RSCH. CTR. (May 7, 2024), <https://perma.cc/84PL-XHB5> (“Americans are now more likely to say they prefer to get local news online, either through *news websites* (26%) or *social media* (23%). Both of these numbers have increased in recent years.” (emphasis altered)).

199. See *id.*

the 2025 Utah legislative session before he was denied credentials.²⁰⁰ Belin, too, had covered Iowa politics for decades before being sidelined by the state House.²⁰¹ Neither was affiliated with a national chain or print daily, but both produced reporting relied upon by legislators, advocacy groups, and the public. The rise of independent news coverage on local issues corresponds with a decline in traditional newsroom staff since 2008.²⁰² Indeed, a July 2025 report published by the Nieman Lab demonstrates a “severe” and “widespread” shortage of traditionally-defined “local journalists” in the United States.²⁰³

Far from operating on the fringes, independent journalists increasingly fill the vacuum left by commercial consolidation. In many parts of the country, blogs, newsletters, and regional nonprofit media are the only sources of sustained civic coverage.²⁰⁴ When these reporters are excluded on formalistic or subjective grounds, the public loses access to the very journalism that sustains transparency and accountability.

B. *Legacy Standards No Longer Reflect How Journalism Works*

Credentialing policies sometimes rely on outdated or ill-defined criteria—such as affiliation with a “mainstream” outlet, daily circulation, or supposed objectivity.²⁰⁵ In today’s media landscape, these requirements are both conceptually and operationally flawed.

The vague references to “established,” “reputable,” or “professional” organizations—used to deny credentials to both Belin and Schott—provide no clear guidance and no meaningful constraints. As Schott’s case illustrates, these terms can be weaponized *post hoc* to exclude critical voices. The Utah Legislature revised its credentialing policy only after he began asking questions, inserting new language that conveniently disqualified him alone.²⁰⁶ The newly-added term “blog,” which was undefined in the policy, was used to exclude him from a category of access that he had held for over a decade.²⁰⁷ This is not to

200. See Schott Compl., *supra* note 171, ¶¶ 10–15, at 6–7.

201. See Belin Compl., *supra* note 159, ¶¶ 5–6, 10–11, at 3–6.

202. See Mason Walker, *U.S. Newsroom Employment has Fallen 26% Since 2008*, PEW RSCH. CTR. (July 13, 2021), <https://perma.cc/6NVP-MTPW>.

203. Corey Hutchins, *New Report Maps a “Severe” Shortage of Local Journalists in the U.S.*, NIEMAN LAB (July 10, 2025), <https://perma.cc/P99R-D5V8>.

204. See Penelope Muse Abernathy, *The State of Local News 2022*, LOCAL NEWS INITIATIVE (2022), <https://perma.cc/8ATM-BA7L>.

205. See Belin Compl., *supra* note 159, ¶ 37, at 12; Jonathan Peters, *Survey: One in Five Journalists Has Had a Credential Request Denied*, COLUM. JOURNALISM REV. (June 5, 2014), <https://perma.cc/Q9R8-N3BB> (noting that freelancers are denied press credentials more often than other press employees by numerous credentialing organizations, among them the US Congress).

206. See Schott Compl., *supra* note 171, ¶¶ 67–68, at 18.

207. *Id.* at 3, ¶ 26, at 9.

suggest that all forms of online commentary merit press access, but it is difficult to justify excluding seasoned reporters with decades of experience simply because they now publish through digital platforms. This is particularly true when those platforms now serve as primary sources of news for much of the public.

Similarly, Belin was told she failed to meet the legislature's expectation of "nonpartisan" reporting—a standard that appears nowhere in any formal access policy.²⁰⁸ The decision functioned less as a procedural assessment and more as a viewpoint-based response to her independent editorial voice.²⁰⁹ Interestingly, the traditional concept of journalistic neutrality—often cited in credentialing policies as a benchmark of professionalism²¹⁰—has been widely critiqued as both unrealistic and inconsistently applied.²¹¹ In its place, many contemporary journalism ethics frameworks emphasize transparency, accountability, and accuracy over performative neutrality, recognizing that fairness does not always require detachment from truth or context.²¹² At the same time, debates continue over how best to draw that line, particularly when journalists describe disputed claims or frame politically charged stories.²¹³

Even references to "professional ethics" are often selectively invoked. In both Schott and Knott's cases, decision-makers alluded to vague concerns about ethical behavior, despite the absence of any clear violation or articulated code. Where ethical judgments are cited without notice, process, or specific standards, they become a pretext for exclusion rather than a protection for the integrity of the press. Just as troubling, the same discretion can be used to confer favored access on those whose coverage flatters or aligns with official narratives, undermining independence and reinforcing bias by omission.²¹⁴

208. Belin Compl., *supra* note 159, ¶¶ 69–71, 80, at 18–19, 21.

209. *See id.*

210. *See Journalism Must Be Independent—The Most Important Rules for Neutrality in Reporting*, U.S. PRESS AGENCY (Apr. 2, 2025), <https://perma.cc/7C4J-67KA>.

211. *See, e.g.*, Roy Peter Clark, *When Writing News Requires a Distance from Neutrality to "Tell It Like It Is"*, NIEMANSTORYBOARD (Jan. 14, 2021), <https://perma.cc/AT7R-ZKLM>.

212. *See SPJ Code of Ethics*, SOC'Y PRO. JOURNALISTS, (Sep. 6, 2014, at 16:49 CT), <https://perma.cc/ER6K-MYRY>.

213. *See, e.g.*, Lowery, *supra* note 36.

214. *See Nicholas v. Bratton*, 376 F. Supp. 3d 232, 248 (S.D.N.Y. 2019) (noting that a videographer who "makes an effort to favorably depict FDNY in his videos" was permitted to record a fifty-minute video of a scene where the plaintiff, a more critical journalist, was removed and had his press pass suspended); Ben Smith, *Journalists Aren't the Enemy of the People. But We're Not Your Friends*, N.Y. TIMES (Sep. 6, 2020), <https://perma.cc/GS9C-JTVD> (describing how political actors exploit favorable coverage,

C. *Public Officials Engage with the Same Media They Exclude*

There is a deep irony in the way many public officials interact with the press. While denying credentials to certain reporters, they simultaneously engage with those same reporters on social media, cite their coverage when it is favorable, and respond to their inquiries when it suits their interests.²¹⁵ Across the political spectrum, public officials selectively engage with reporters by criticizing them in public while still relying on their work when convenient.

Consider Kaitlan Collins, CNN's chief White House correspondent. Though she was barred from a Rose Garden event in July 2018 for asking President Trump pointed questions about Michael Cohen and Vladimir Putin,²¹⁶ she later received access to an exclusive Trump interview in 2023.²¹⁷ This illustrates how access can fluctuate based on political expediency rather than any consistent, transparent standards for journalists. Such selective enforcement underscores the need for clear, constitutionally compliant standards that cannot be manipulated to reward favorable coverage or punish critical reporting.

Similarly, independent journalist Matt Taibbi came under fire from Democratic lawmakers following his testimony before the 2023 House Judiciary Committee's Subcommittee on the Weaponization of the Federal Government.²¹⁸ Taibbi had helped report the "Twitter Files," a trove of internal company documents released by Elon Musk that detailed how Twitter coordinated with government agencies—including the FBI and CDC—to moderate online speech, especially around the 2020 election and COVID-19 pandemic.²¹⁹ During the March 9 hearing,

and how journalists may posture or receive privileged access based on audience appeal or alignment with official narratives).

215. See Kate Harris & Michael Gonchar, *Analyzing the Relationship Between the Press and the President: A Lesson Plan*, N.Y. TIMES (May 11, 2017), <https://perma.cc/6B66-MG6B> (including remark from President Trump disparaging CNN's negative coverage). Compare *id.* with Donald J. Trump (@realDonaldTrump), X (Aug. 25, 2020, 08:47 ET), <https://perma.cc/Y3UY-PAQ2> (praising CNN's positive coverage). Cf. Sarah Ludington, Lauren Smith & Christian Bale, *How Social Media Platforms Can Promote Compliance with the First Amendment*, 97 N.Y.U. L. REV. F. 70 (May 11, 2022), <https://perma.cc/6D5X-35RP> (discussing government officials' frequent use of social media in correspondence with members of the public).

216. See Vanessa Romo, *CNN Reporter: White House Called My Questions 'Inappropriate,' Banned Me from Event*, NPR (July 25, 2018), <https://perma.cc/SYR6-8P5E>.

217. See Anna Skinner, *Trump Sidesteps Kaitlan Collins' Attempt to Get Him to Admit 2020 Loss*, NEWSWEEK (May 10, 2023), <https://perma.cc/VYT7-PC65> (showing President Trump sitting down with Kaitlan Collins for an interview broadcast on CNN).

218. See *Hearing on the Weaponization of the Fed. Gov't, Before the H. Judiciary Subcomm. on the Weaponization of the Fed. Gov't*, 118th Cong. 78-127, at 78-84 (2023) (statement of Matt Taibbi, independent journalist), <https://perma.cc/8MHP-WAVH>.

219. See *id.*

Delegate Stacey Plaskett (D-VI), the subcommittee's ranking member, dismissed Taibbi as a "so-called journalist[]" and accused him of promoting "a false narrative."²²⁰

A month later, Plaskett escalated the confrontation by sending Taibbi a letter alleging that portions of his testimony were false or misleading and warning him that perjury before Congress is punishable by up to five years in prison.²²¹ Taibbi publicly defended the accuracy of his statements and described the letter as an intimidation tactic.²²²

Yet, despite these intense accusations and criticisms, Taibbi's earlier work—such as his acclaimed investigations into Wall Street misconduct during the 2008 financial crisis—had previously been praised by lawmakers, including Democrats.²²³ For example, Representative Gwen Moore (D-WI) drew directly on Taibbi's reporting during a 2009 Congressional hearing on financial regulation, noting that "many of us . . . have been reading the recent Rolling Stone article by Matt Taibbi, *The Great American Bubble Machine*," and highlighting its relevance to systemic risk-concerns.²²⁴

The differential treatment toward Taibbi and Collins illustrates how public officials may cite a journalist's reporting when politically convenient, only to discredit that same journalist's legitimacy when the coverage challenges them. These examples also reflect a larger pattern that could weigh on the credentialing context: there is good reason to think that credentialing decisions can sometimes be less about standards and more about control. Access is granted to those who are useful or safe, and denied to those who are critical or unpredictable.²²⁵ This practice violates not only the spirit of the First Amendment, but also constitutionally guaranteed due process protections under the Fifth and Fourteenth Amendments.

VI. STRUCTURAL SAFEGUARDS: RETHINKING WHO CONTROLS ACCESS

Much of the limited case law on press credentialing focuses on whether and when constitutional protections, such as due process, apply

220. *Id.* at 5, 6.

221. See *Journalist Threatened with Perjury Charges by Member of Congress After Testimony*, U.S. PRESS FREEDOM TRACKER (Apr. 20, 2023), <https://perma.cc/HS26-9RRJ>.

222. See *id.* (quoting Taibbi as saying, "I'm not going to lie, it frightens me a little that I even have to offer this defense").

223. See Matt Taibbi, *The Great American Bubble Machine*, ROLLING STONE (Apr. 5, 2010), <https://perma.cc/Z89Q-GMDD>.

224. *Financial Reform: Systemic Risk: Hearing Before the H. Comm. on Fin. Servs.*, 111th Cong. 30 (2009) (statement of Rep. Gwen Moore, Member, H. Comm. on Fin. Services), <https://perma.cc/L4CP-AUUX>.

225. Indeed, this is essentially Nicholas's argument in *Nicholas v. Bratton*. See 376 F. Supp. 3d 232, 248, 266–69 (2019).

to government decisions about journalist access. But even assuming that such protections are required, another foundational issue remains largely unexamined: who is responsible for making credentialing decisions in the first place. In many jurisdictions, credentialing authority rests with the very government actors or offices that are the subject of the journalist's reporting.²²⁶ This structural arrangement raises not only due process concerns, but also questions of institutional legitimacy, bias, and the potential for retaliatory or self-serving exclusion.

The concern is not hypothetical. In *Sherrill v. Knight*, the D.C. Circuit recognized that press access decisions made without articulated standards or opportunity for review pose risks of censorship and viewpoint discrimination.²²⁷ More recently, in *Alaska Landmine, LLC v. Dunleavy*, the District of Alaska denied a motion to dismiss a First Amendment claim brought by an independent journalist who had been excluded from the Alaska governor's press conferences.²²⁸ The governor's communications staff had implemented an unwritten policy change, under which the plaintiff, who operated a political blog frequently concerning the governor and his administration, was the only reporter denied access. The court emphasized that a lack of written criteria, combined with individualized exclusion, could raise constitutional concerns where press access is generally granted to others.²²⁹ Similarly, in Utah, political staff in the state legislature revised the credentialing policy to explicitly exclude "blogs" just as independent journalist Bryan Schott sought access after leaving a traditional newspaper.²³⁰ These examples illustrate a common structural feature: the same public offices responsible for managing public perception are also empowered to decide which journalists are granted access, often without external review or oversight.

226. This concern is repeated by many of the previously discussed journalists, and alleged as viewpoint discrimination in their respective complaints. *See, e.g., id.* at 266–67; Belin Compl., *supra* note 159, ¶ 11, at 6.

227. *See Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977) (explaining that the access afforded by press credentials may “not be denied arbitrarily or for less than compelling reasons”).

228. *See Alaska Landmine, LLC v. Dunleavy*, 514 F. Supp. 3d 1123, 1134 (D. Alaska 2021) (denying motion to dismiss journalist's First Amendment claim where the governor's staff excluded a reporter from press conferences under an unwritten policy and without neutral criteria); *see also* Rashah McChesney, *Online News Outlet Alaska Landmine Sues Dunleavy Administration Over Access*, ALASKA PUBLIC MEDIA (Dec. 23, 2020), <https://perma.cc/3TN7-M8S8>.

229. *See Dunleavy*, 514 F. Supp. 3d at 1131–34 (noting that lack of memorialized standards or procedures for press access, combined with exclusion of a disfavored speaker, may support claim of viewpoint discrimination).

230. *See Utah Reporter Files Suit*, *supra* note 171; Schott Compl., *supra* note 171, at 2, ¶ 24, at 9.

This convergence of roles raises concerns familiar from other areas of law and governance. In contexts where decisions affect individual rights or public accountability—such as professional licensing, academic research, or judicial ethics—governments frequently create independent or semi-independent bodies to reduce the risk of bias or politicization. Professional licensing boards, for example, typically include a mix of subject-matter experts, public representatives, and legal advisors, and follow published procedures for denial or discipline.²³¹ Similarly, university Institutional Review Boards (IRBs) are designed to assess research proposals involving human subjects through layered, multidisciplinary review.²³²

The legal profession offers a parallel worth noting. While individual states maintain authority over licensing lawyers,²³³ bar admissions decisions are often made by independent boards or committees, rather than by judges or state officials who might be targets of legal advocacy or press scrutiny.²³⁴ Additionally, the American Bar Association, though not a licensing body itself, plays a central role in shaping professional norms through law school accreditation, model ethical rules, and standards for legal education and practice.²³⁵ This model helps ensure that those setting and enforcing standards remain institutionally separate from those being evaluated, minimizing conflicts of interest and promoting public confidence in the system. Though distinct in function, this model of gatekeeping by independent or external institutions offers potential insights for structuring press credentialing systems that are fair, credible, and resistant to political manipulation.

Credentialing systems for press access could benefit from similar institutional design. Some already do. The U.S. Senate Press Gallery, for

231. See, e.g., *Board Members*, N.C. LICENSING BD. FOR GEN. CONTRACTORS, <https://perma.cc/4DQ7-EZAP> (last visited July 15, 2025) (“Five of the nine members are to be general contractors, one member shall be a licensed structural engineer and three members are to public members who shall have no ties with the construction industry and who shall represent the interests of the public at large.”); *About the Board*, N.C. MED. BD., <https://perma.cc/8PEZ-KCYL> (last visited July 15, 2025) (“Eight of the 13 are licensed physicians, one is a licensed physician assistant (PA), one is an approved nurse practitioner (NP), and three are members of the public with no financial or professional interest in a health service or profession.”).

232. See Christine Grady, *Institutional Review Boards: Purpose and Challenges*, 148 CHEST 1123, 1148–55 (2015), <https://perma.cc/74XP-2KE4>.

233. See *Lawyer Licensing*, A.B.A., <https://perma.cc/FFU3-YWDC> (last visited July 16, 2025).

234. See, e.g., *Home*, N.C. BD. OF LAW EXAM’RS, <https://perma.cc/GFN8-WSUX> (last visited July 16, 2025); see *Boards of Bar Examiners*, N.Y.L. SCH., <https://perma.cc/M37A-TSQY> (last visited July 16, 2025) (providing information on the admissions processes for New York, New Jersey, and Connecticut).

235. See *Overview of ABA-Approved Law Schools*, A.B.A., <https://perma.cc/6YM2-EU7U> (last visited July 15, 2025); Deborah L. Rhode, *Moral Character as a Professional Credential*, 94 YALE L.J. 491, 494–95 (1985).

example, is administered not by elected officials or Senate staff, but by a Standing Committee of Correspondents consisting of credentialed journalists who assess new applicants based on their journalistic function and publication frequency.²³⁶ The committee operates independently from Senate leadership and applies defined, content-neutral criteria.²³⁷ Likewise, many federal appellate courts use internal administrative processes to assess press access requests, relying on standardized applications and published rules.²³⁸

Other liberal democracies offer additional models that insulate press credentialing decisions from political influence.²³⁹ In Canada, for instance, the Parliamentary Press Gallery is administered by its own elected board of directors, consisting of a group of credentialed journalists that operate independently from the Prime Minister's Office and parliamentary leadership.²⁴⁰ Applicants are vetted by the gallery association based on journalistic principles and established membership criteria, with the final decision made by the Speaker of the House of Commons rather than by the politicians being covered.²⁴¹ Similarly, the

236. *Governing Rules*, U.S.S. DAILY PRESS GALLERY, <https://perma.cc/L89P-WX5S> (last visited July 16, 2025); *Standing Committee of Correspondents*, U.S.S. DAILY PRESS GALLERY, <https://perma.cc/WC7M-CRTZ> (last visited July 16, 2025).

237. See *Standing Committee of Correspondents*, *supra* note 237.

238. See *A Journalist's Guide to the Federal Courts*, ADMIN. OFF. U.S. CTS., <https://perma.cc/L37Y-JQFN> (last visited July 16, 2025) (describing typical procedures and standardized protocols for media access to federal courts); *Media Access at the Oregon Supreme Court & Court of Appeals*, OR. JUD. DEP'T, <https://perma.cc/WZ5V-H4ZG> (last visited July 16, 2025) (outlining application process and media policies for Oregon state appellate court coverage); *Media & Public Information*, U.S. CT. APPEALS FOR FED. CIR., <https://perma.cc/SS6Q-43MH> (last visited July 16, 2025) (providing guidance and request forms for media access to Federal Circuit proceedings).

239. In addition to the examples discussed here, other democratic countries offer some guidance or alternative structures as well. For example, in Germany, the *Bundespressekonferenz*, an independent association of journalists, organizes federal press conferences and restricts membership to professional reporters, providing an institutionalized, journalist-run mechanism for access to executive branch officials. See BUNDESPRESSEKONFERENZ [FEDERAL PRESS CONFERENCE] (Ger.), <https://perma.cc/599H-QG3T> (last visited July 18, 2025). Additionally, Sweden's Parliament, the *Riksdag*, manages press accreditation through a centralized administration, a professional and nonpartisan civil service that provides logistical and informational support to all members of Parliament regardless of party affiliation. Journalists and photographers must apply for and be granted accreditation in order to work independently within the *Riksdag*. See The Riksdag Administration, *Media Accreditation*, SVERIGES RIKSDAG [SWEDISH PARLIAMENT] (Swed.), <https://perma.cc/X2R4-FT92> (last visited July 18, 2025).

240. See *Canadian Parliamentary Press Gallery*, CANADIAN ENCYC. (Dec. 16, 2013), <https://perma.cc/6LZU-D2AA>. While the gallery association reviews membership applications, the final decision on membership lies with the Speaker of the House of Commons.

241. *On 'Generally Accepted Journalistic Principles and Practice': A White Paper*, CANADIAN PARLIAMENTARY PRESS GALLERY, <https://perma.cc/R2LA-XBL9> (last visited July 18, 2025) (noting that applicants must follow "generally accepted journalistic principles and practices" under the Gallery's Constitution).

European Parliament administers a centralized press accreditation system through its Directorate General for Communication, applying consistent professional criteria to all applicants based on their journalistic function and independence from lobbying or advocacy roles.²⁴² While the rules do not reference editorial viewpoint, accreditation decisions are governed by occupational standards rather than outlet type or political perspective.²⁴³ This differs from practices in some U.S. jurisdictions, where access decisions may be made by political staff without published standards. By placing express credentialing authority in the hands of journalists or independent administrators, these systems help ensure that access is based on a newsgathering function rather than perceived loyalty or tone.

By contrast, credentialing in many executive branch settings and at the state and local level in the United States often remains highly discretionary and lacks meaningful safeguards to prevent arbitrary or retaliatory exclusion. Government employees who report directly to the elected officials being covered, frequently retain unilateral authority to grant, deny, or revoke press credentials.²⁴⁴ These decisions may be made without a written policy, formal appeals process, or external review.²⁴⁵ As recent litigation involving local reporters Eva Knott in San Diego and Laura Belin in Iowa illustrates, these settings create opportunities for arbitrary exclusion—sometimes following personal complaints or perceived political criticism.²⁴⁶

To address these concerns, governments should consider adopting structural reforms that separate the decision-making authority from the individuals or offices that are the subject of the reporting. Several models are available, drawing from both domestic and international practices already in place for other forms of professional credentialing, public oversight, and journalist-led governance. For example, the U.S. Senate Press Gallery relies on a *Standing Committee of Correspondents*, consisting of credentialed journalists elected by gallery members who evaluate new applicants based on clearly defined, content-neutral criteria such as journalistic function and publication frequency.²⁴⁷ This peer-

242. See European Parliament, RULES FOR MEDIA ACCREDITATION EUROPEAN PARLIAMENT, <https://perma.cc/KYC6-DZAG> (last visited Jan. 12, 2026).

243. See *id.*

244. See, e.g., *Nicholas v. City of New York*, No. 15-CV-9592, 2017 WL 766905, at *3 (S.D.N.Y. Feb. 27, 2017) (describing allegations that the NYPD press credential revocation hearing was biased, led by subordinates of the official who made the initial decision, and conducted without notice of the rule violated, access to adverse evidence, or written outcome); Laura Belin, *Iowa House, Governor Have No Grounds to Exclude Me from “Press”*, BLEEDING HEARTLAND (Feb. 1, 2019), <https://perma.cc/ZBA5-D2JP>.

245. See *supra* notes 98, 161–65 and accompanying text.

246. See *supra* Section IV.B.

247. See *Governing Rules*, *supra* note 237.

review structure has proven effective in managing access while shielding decision-making from political pressure.

Independent credentialing committees also mirror practices in other accountability-driven institutions. University IRBs evaluate proposed research through interdisciplinary review, ensuring decision-makers are neither personally invested nor politically influenced.²⁴⁸ For appeals processes, existing oversight mechanisms offer practical alternatives as well. For example, inspector general offices at the federal and state level already resolve transparency disputes and investigate retaliatory exclusions.²⁴⁹

Adapted to the credentialing context, these models could include: (1) Independent Credentialing Committees, staffed by neutral administrators, civil servants, or third-party reviewers, that operate under published standards and handle appeals in a process modeled after professional licensing boards and academic review bodies; (2) Journalist Peer Review Panels, similar to the *Standing Committee of Correspondents*, that assess applications based on demonstrated reporting function, platform reach, and independence from lobbying or partisan affiliation; (3) Ombudsperson or Inspector General Review, where contested denials or revocations are handled by offices already tasked with enforcing transparency laws.²⁵⁰

Each model presents tradeoffs in legal authority, institutional capacity, and administrative burden, but all remove credentialing decisions from direct political control. Jurisdictions should also consider hybrid approaches, such as initial review by civil service staff followed by appeals to independent committees or oversight offices, provided such systems are grounded in published eligibility criteria and afford meaningful procedural protections.

Empirical data likewise supports the need for reform. Independent and nontraditional journalists now comprise a growing share of the media ecosystem, particularly at the local and state level.²⁵¹ These

248. See Andrea S. Nichols, *Research Ethics Committees (RECs)/Institutional Review Boards (IRBs) and the Globalization of Clinical Research: Can Ethical Oversight of Human Subjects Research Be Standardized?*, 15 WASH. U. GLOBAL STUD. L. REV. 351, 351 (2016). I serve on my university's IRB, which employs a roster of faculty from multiple disciplines and areas of expertise. This is consistent with policies at universities nationwide.

249. See COUNCIL INSPECTORS GEN. ON INTEGRITY & EFFICIENCY, <https://perma.cc/V25D-ENT2> (last visited July 18, 2025).

250. See *Office of Open Gov't*, OPEN D.C., <https://perma.cc/7SDM-C8DN> (last visited Oct. 17, 2025).

251. See Elise Shearer et al., *Podcasts as a Source of News and Information*, PEW RSCH. CTR. (Apr. 18, 2023), <https://perma.cc/T4J5-74W2>; *Social Media and News Fact Sheet*, *supra* note 191; *Digital News Fact Sheet*, PEW RSCH. CTR. (Nov. 10, 2023), <https://perma.cc/L75E-25W3>.

reporters often break stories on government accountability and fill coverage gaps left by shrinking legacy newsrooms.²⁵² Yet it is frequently these same journalists who face heightened obstacles to access.²⁵³ The absence of structural safeguards in credentialing thus has disproportionate effects on the watchdog function of the press.

Designing fair and transparent credentialing systems is not solely a procedural challenge. It is a question of institutional legitimacy and public accountability. Some courts have begun to articulate constitutional constraints on arbitrary exclusion. But unless those constraints are implemented through structurally sound systems—where neutral decision-makers apply transparent standards—press access may remain subject to discretion that is difficult to challenge and easy to abuse.

VII. CONCLUSION

The denial or revocation of press credentials implicates core constitutional protections, yet the existing legal landscape remains fragmented and underdeveloped. This Article has examined government press credentialing systems through the lens of procedural due process, arguing that in many contexts, these credentials function not merely as conveniences but as government-administered permissions that enable journalists to perform essential occupational functions. When access to those functions is conditioned on government approval, the liberty to pursue a profession and, in some cases, a property interest in continued access may arise, triggering procedural protections under the Fifth and Fourteenth Amendments.

Drawing on analogies to professional licensing regimes and case law including *Sherrill v. Knight*, *Karem v. Trump*, and *Nicholas v. Bratton*, this Article situates press credentials within the broader framework of government benefits that cannot be arbitrarily revoked without due process. It also identifies significant doctrinal divergence: some courts treat credentialing as a discretionary privilege subject only to forum-based analysis, while others acknowledge the reputational and occupational stakes involved. This inconsistency reflects a broader tension in the case law over how traditional due process principles apply to the evolving realities of journalism, particularly as independent,

252. See Shearer et al., *supra* note 252; see also Mark Glaser, *Local Foundations Are Stepping Up to Fund Nonprofit, For-Profit and Collaborative Journalism Projects Around the Country. Here is How to Join Them*, KNIGHT FOUNDATION, <https://perma.cc/2EHE-AQ9E> (last visited July 17, 2025) (noting that local news outlets are increasingly adopting nonprofit, public media, and digital-native models to fill coverage gaps left by legacy media, with local foundations funding this transformation).

253. See Peters, *supra* note 206.

digital-first, and freelance reporters increasingly shoulder the burdens of local accountability reporting.

To resolve this uncertainty and promote both procedural fairness and democratic oversight, this Article offers two key contributions. First, it articulates a principled framework for identifying when press credentials implicate constitutionally protected liberty or property interests—grounded in established due process doctrine and tailored to the modern media environment. Second, it proposes structural reforms to insulate credentialing decisions from direct political control, including the adoption of independent credentialing bodies, neutral review mechanisms, and content-neutral standards modeled on analogous administrative systems.

While the First Amendment remains an essential safeguard against censorship and viewpoint discrimination, it does not always provide effective protection in press credentialing disputes. Courts are often reluctant to infer discriminatory intent, and forum-based doctrines limit judicial scrutiny. This Article does not seek to replace the First Amendment framework but to supplement it. Procedural due process offers a parallel constitutional approach focused not on speech content but on fair and consistent administration. By requiring notice, standards, and neutral review, due process can protect press access in a more predictable and administrable way. This is especially true in cases where First Amendment claims are difficult to prove, as showing that a journalist was excluded based on their speech or viewpoint often requires a fact-intensive inquiry. In this respect, due process reinforces First Amendment values by ensuring access decisions are not left to unchecked discretion.

As government actors increasingly regulate who may report from the front lines of public life, the need for clear, enforceable safeguards becomes not just a matter of policy design, but of constitutional fidelity. Procedural due process safeguards are necessary to ensure that press access is grounded in constitutional principle, not political discretion.