

The Honorable David G. Estudillo

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT TACOMA

ARI HOFFMAN, BRANDI KRUSE, and  
JONATHAN CHOE,  
Plaintiffs,

v.

WASHINGTON STATE HOUSE OF  
REPRESENTATIVES, CHIEF CLERK  
BERNARD DEAN, in his official capacity,  
THE LEGISLATURE OF THE STATE OF  
WASHINGTON; THE STATE OF  
WASHINGTON and the WASHINGTON  
STATE CAPITOL CORRESPONDENTS  
ASSOCIATION,  
Defendants.

Case No. 3:26-cv-5214-DGE

**THE STATE DEFENDANTS’  
OPPOSITION TO PLAINTIFFS’  
MOTION FOR TEMPORARY  
RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

NOTE ON MOTION CALENDAR:  
March 9, 2026 @ 1:30pm

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**I. INTRODUCTION**

1  
2 Plaintiffs Ari Hoffman, Brandi Kruse, and Jonahan Choe ask for the extraordinary remedy  
3 of a temporary restraining order (“TRO”) and preliminary injunction requiring Defendants the  
4 Washington State House of Representatives, Chief Clerk Bernard Dean, and the State of  
5 Washington (collectively, “House”) to grant Plaintiffs press credentials they do not qualify to  
6 receive. Because Plaintiffs are not entitled to such relief, their motion should be denied.

7 The House floor and adjoining press areas are nonpublic fora. They are controlled  
8 legislative workspaces where elected Members debate and vote on legislation. Because those  
9 spaces are not by tradition nor designation for public communication but instead exist to facilitate  
10 the functioning of the legislative branch, the House may limit access so long as its rules are  
11 reasonable and viewpoint neutral. The House’s press credentialing policy (“Press Policy”)  
12 satisfies these standards. It applies viewpoint neutral criteria, informed by longstanding Capitol  
13 Correspondents Association (“CCA”) guidelines (“Guidelines”), designed to ensure that  
14 individuals granted floor access are bona fide journalists serving as independent observers, not  
15 participants in the political process.

16 Plaintiffs did not meet those criteria. Hoffman and Kruse were actively involved in  
17 political advocacy concerning initiatives before the Legislature. Choe applied for a press pass as a  
18 representative of a political think tank, not a news organization. The House denied Plaintiffs’  
19 requests for passes not because of Plaintiffs’ viewpoints, but because they were participants in the  
20 political arena rather than independent monitors of legislative proceedings. Plaintiffs cannot  
21 succeed on their claims for violation of press rights under the federal or state constitutions.

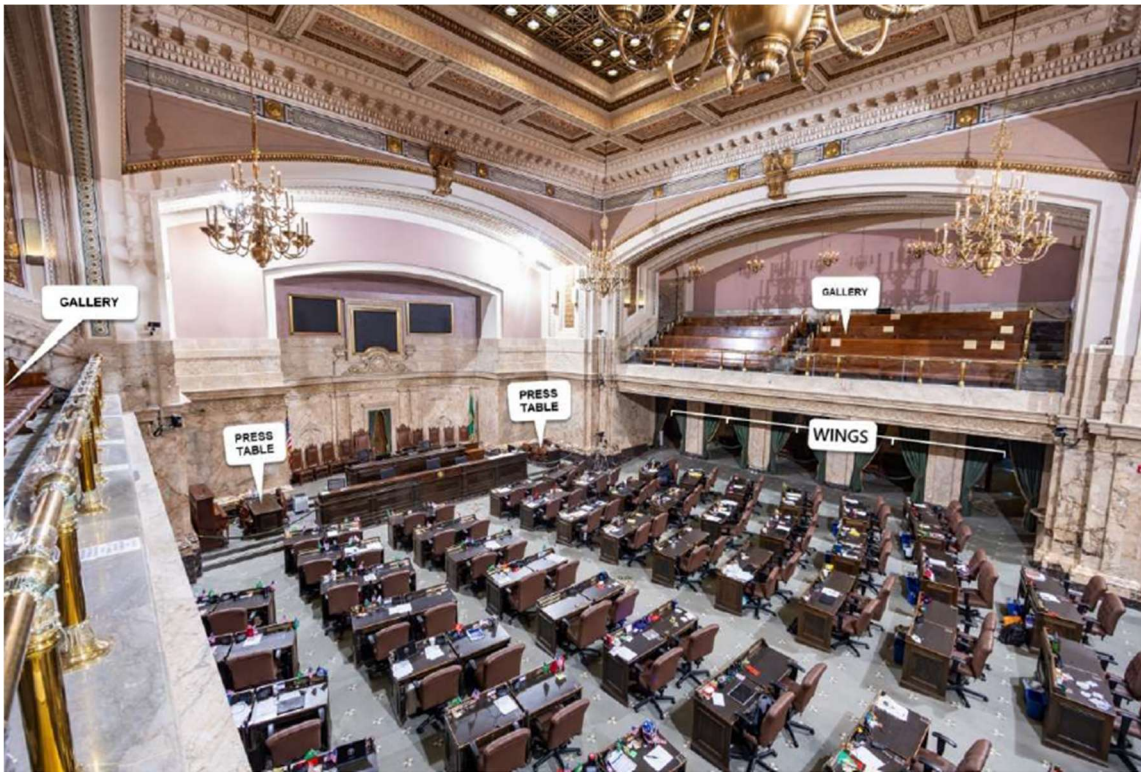
22 Plaintiffs’ Due Process claims fare no better. The Press Policy is available to the public  
23 and sets forth intelligible criteria for eligibility. Plaintiffs were informed of the factual bases for  
24 the denial of their applications and provided with an (immediate) opportunity to appeal. Due  
25 process requires no more.

1 And Plaintiffs’ non-delegation argument collapses at the threshold. The House has not  
 2 delegated its authority to grant press credentials to a private body; it retains and exercised final  
 3 decision-making authority. The House simply consults a journalists’ association, a commonplace  
 4 practice repeatedly upheld as reasonable in administering press access to nonpublic government  
 5 spaces.

6 Plaintiffs cannot demonstrate a likelihood of success on the merits or satisfy any of the  
 7 other requirements for preliminary injunctive relief.

8 **II. FACTS**

9 The Legislature meets annually to make Washington law.<sup>1</sup> During the session, elected  
 10 House Members convene in the House chamber to debate, amend, and vote on legislation. Dean  
 11 Decl. ¶3. The House chamber is an assembly room consisting of the House floor, wings, caucus  
 12 rooms, and public galleries overlooking the floor from which visitors may watch floor activity. *Id.*  
 13 ¶¶3-4 & Ex. A.



26 <sup>1</sup> <https://leg.wa.gov/about-the-legislature/house-of-representatives/> (last visited Mar. 4, 2026).

1 Dean Decl. ¶9.

2 The floor is where Members work during floor sessions. *Id.* ¶4. It is a space “that is not  
3 open to the public and not held on government property dedicated to open communication” by the  
4 public. *John K. MacIver Inst. for Pub. Policy, Inc. v. Evers*, 994 F.3d 602, 610 (7th Cir. 2021).

5 Centered at the front is the rostrum where the Speaker of the House presides. Dean Decl. ¶4.

6 Facing the rostrum are rows of desks, one for each Member. *Id.* These are Members’ workspaces.

7 *Id.* Flanking each side of the floor are the wings from which Members can access their party’s  
8 caucus room and party leadership offices, and from which invited guests and credentialed press  
9 can view floor activity. *Id.* On the floor are two tables available to credentialed journalists on a  
10 first come, first served basis.



22 *Id.* ¶9.

23 The public, including advocates for or against legislation and any member of the press,  
24 may view floor sessions from the gallery. *Id.* ¶¶3, 9. Access to the floor and wings, however, is

1 limited by House Rule 8, adopted pursuant to the Washington Constitution. *Id.* ¶6.<sup>2</sup> Under Rule  
 2 8, “[o]nly members of the house, pages, sergeants at arms, the speaker’s attorney, the leadership  
 3 counsel to the minority caucus, and clerks are permitted on the floor while the house is in session.”  
 4 The Rule limits access “to the wings and adjacent areas of the house chamber” during House floor  
 5 sessions to the governor, senators, state elected officials, officers and authorized employees of the  
 6 Legislature, “[f]ormer members of the house who are not advocating any pending or proposed  
 7 legislation,” representatives of the press, and “[o]ther persons with the consent of the speaker.”  
 8 Journalists are permitted in the wings or at press tables during floor sessions only with a press  
 9 pass. *Id.* ¶9.

#### 10 **A. House Floor Press Access**

11 To request a floor press pass, an individual must fill out the Floor Press Pass Request  
 12 Form.<sup>3</sup> It explains, among other information:

13 [The] House will issue floor press passes to individuals that meet the  
 14 Capitol Correspondents Association (CCA) guidelines, informed by  
 15 CCA recommendations. Guidelines are available upon request. In  
 16 addition, like all visitors to the House chamber, the individual must  
 abide by the House Rules of decorum, the Legislative Code of  
 Conduct, and the House guidelines below.<sup>4</sup>

17 The applicant must provide, *inter alia*, the press organization they represent and the type of pass  
 18 requested.<sup>5</sup>

19 There are two types of floor press passes: “daily” and “hard” passes.<sup>6</sup> Most passes issued  
 20 are daily, which give access for a specific day.<sup>7</sup> Applicants may request up to five daily passes at  
 21

22  
 23 <sup>2</sup> <https://leg.wa.gov/about-the-legislature/legislative-procedures/house-rules/?chapter=0a493781-325f-4f28-9d79-570102b4559c#book> (last visited Mar. 4, 2026).

24 <sup>3</sup> <https://form.jotform.com/253207367883061> (last visited Mar. 4, 2026).

25 <sup>4</sup> *Id.*

26 <sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

1 once.<sup>8</sup> In limited circumstances, a journalist may qualify for a hard pass, which covers the  
 2 duration of the legislative session.<sup>9</sup> Daily and hard passes provide access to the same physical  
 3 space and are issued using the same criteria—set forth in the Guidelines—the difference in  
 4 eligibility is simply that hard passes are available only to those whose primary assignment is the  
 5 capitol campus and are onsite often. Palmer Decl. ¶8.

6 **B. CCA Guidelines**

7 As the application explains, the House issues press passes based on the Guidelines. They  
 8 provide that (1) credentials may be issued only to professional journalists, meaning it is their  
 9 primary job, (2) a “credential-seeker’s employer must be a news organization,” meaning the  
 10 “entity must be doing news for the sake of news alone,” and (3) credentials should not be issued to  
 11 a person “who is or may become engaged in campaigns, lobbying, or the development of public  
 12 policy” or who does “any sort of consulting, advising, writing, or other work, whether paid or  
 13 unpaid, for a politician, public official, party organization, lobbying shop, etc.” ECF #2, Attach. 1  
 14 (“Maynard Decl.”), Ex. C.

15 These criteria are guided by the principle that House floor access should be given to press  
 16 who are independent observers and monitors, not participants with a stake in the proceedings, no  
 17 matter their political viewpoints. *Id.* (“This is the spirit in which the Legislature has offered  
 18 access: The press should act as an independent observer and monitor of the proceedings, not an  
 19 involved party.”) As the Guidelines explain, “The press must be independent from the government  
 20 and from the political parties, their constituent groups, and the many organizations which have a  
 21 stake in the Legislature’s proceedings. Blurring that line would raise questions about the motives  
 22 of everyone in the press corps....” *Id.* The Guidelines acknowledge that journalists may cross  
 23 “back and forth between being a journalist and being involved in political work.” *Id.* Thus, the  
 24 House assesses “the credential-seeker’s current or potential political involvement...each year –

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25 <sup>8</sup> *Id.*

26 <sup>9</sup> *Id.*

1 meaning that someone might qualify for a press credential one year, but not the following,  
 2 depending on their outside activities.” *Id.*; Palmer Decl. ¶17.

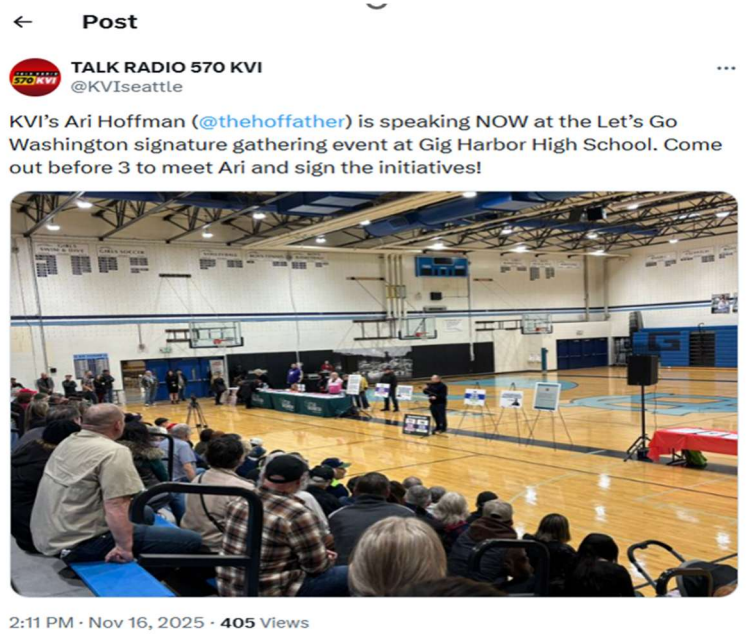
3 The Guidelines are consistent with those used by other legislative bodies, including  
 4 Congress. Palmer Decl. ¶6 & Exs. B, C.<sup>10</sup>

5 **C. Plaintiffs’ Ineligibility**

6 This lawsuit arises from the House’s denial of daily press passes in 2026 to Plaintiffs, who,  
 7 among others, were denied passes because they did not meet the Guidelines. Palmer Decl. ¶33.<sup>11</sup>

8 **1. Ari Hoffman**

9 Hoffman is a talk radio host for 570 KVI. He also is involved with Let’s Go Washington,  
 10 a political action committee that campaigns for initiatives, including two this legislative session.  
 11 Dean Decl. ¶19; Palmer Decl. ¶22.<sup>12</sup> He was the guest speaker at a Let’s Go Washington “Super  
 12 Signer Rally” in November 2025, supporting these initiatives. Dean Decl. ¶19.



23 <sup>10</sup> See, e.g., <https://periodical.house.gov/accreditation/application-process> (last visited Mar. 4, 2026);  
 24 <https://www.ncsl.org/legislative-staff/lincs/media-access-and-credentialing> (last visited Mar. 4, 2026);  
 25 <https://www.ccac.us/> (last visited Mar. 4, 2026); <https://content.leg.colorado.gov/agencies/senate/press-credentials>  
 26 (last visited Mar. 4, 2026).

<sup>11</sup> “Left-leaning organizations such as the Northwest Progressive Institute have so far chosen not to apply for  
 credentials, expecting they would be denied **because they advocate for legislation.**”  
<https://www.kuow.org/stories/is-right-wing-media-allowed-in-olympia> (last visited Mar. 4, 2026) (emphasis added).

<sup>12</sup> <https://letsgowashington.com/> (last visited Mar. 4, 2026).

1 On January 26, 2026, Hoffman requested a *daily* press pass for January 29. Dean Decl.,  
2 Ex. H; Mot. at 12:2-3. The House denied his request and told him how to appeal. Dean Decl.,  
3 Ex. I. Hoffman appealed:

4 It will be Jewish advocacy day and I will be there anyway. I was  
5 hoping for a media pass but was denied without being told the  
6 reason for the decision. Could you please tell me the basis for this  
7 decision, or approve a media pass for me for this Thursday.

8 *Id.* On January 28, the House denied his appeal and explained:

9 The House, in part, looks to the Capitol Correspondents'  
10 Association (CCA) to make recommendations regarding whether a  
11 press pass applicant is a bona fide journalist or not. Based on your  
12 recent engagement in public policy development and advocacy, your  
13 request for a House Press pass was denied. This decision was made  
14 irrespective of your broadcast work.

15 As stated in the CCA guidelines: "It is important that a line be  
16 established between professional journalism and political or policy  
17 work. This is the spirit in which the Legislature offered access: The  
18 press should act as an independent observer and monitor of the  
19 proceedings, not an involved party."

20 That said, they also state: "In some cases, professional journalists  
21 have crossed back and forth between being a journalist and being  
22 involved in political work. Some even have run for office. Since  
23 credentials must be renewed with each legislative session, an  
24 assessment of a credential-seeker's current or potential political  
25 involvement will be undertaken each year – meaning that someone  
26 might qualify for a press credential one year, but not the following,  
depending on their outside activities."

Also, please note that a press pass does not impact your ability to  
participate in Jewish advocacy day. The press pass provides you  
with access to the House chamber wings during floor activity, which  
is otherwise viewable from the House galleries and TVW. Jewish  
advocacy day is not a House sponsored event, and there are no  
scheduled activities in House spaces, including the wings.

Absent additional information, the decision to not issue a press pass  
is upheld. If you have anything else you would like me to consider,  
please provide it to me. I understand you applied for a pass for  
tomorrow, January 29, on Monday, January 26. In the future, it is

recommended to apply for a daily press pass no later than two weeks prior to when you seek access. Nonetheless, I will endeavor to review any information you provide and get back to you with a timely response.

*Id.*; Maynard Decl., Ex. E. Hoffman responded: “The Seattle Times and other outlets endorse candidates, levys [sic] and initiatives[.] That would fit your definition of policy work[.] Plus they run ads for candidates[.] Why are they allowed to get press passes and I am not[?]” Dean Decl., Ex. J. The House promptly responded: “[W]e have no knowledge of anyone on Seattle’s [sic] editorial board ever obtaining a House press pass. Press passes are issued per person not per organization.” *Id.*

Hoffman’s application was not denied based on the political leanings of his news organization. Indeed, the House provided a press pass to his 570 KVI colleague. Palmer Decl. ¶¶23, 34 & Ex. J.

Despite being denied a press pass, Hoffman accessed the House floor wing on January 29—the day for which he requested a daily pass—by invitation of a Member. Dean Decl. ¶21.

## 2. Brandi Kruse

Kruse is the host of a podcast called “unDivided with Brandi Kruse” with the tagline, “Political commentary for the anti-fringe.”<sup>13</sup> She is an “Ambassador”<sup>14</sup> of Future 42, an organization with the stated purpose to “change the course of Washington state to prioritize policies that will allow our citizens, entrepreneurs and businesses to thrive and prosper.”<sup>15</sup> Its mission is, in part, to “provide a means for citizens to make their voices heard and their actions count by respectfully communicating with lawmakers.”<sup>16</sup>

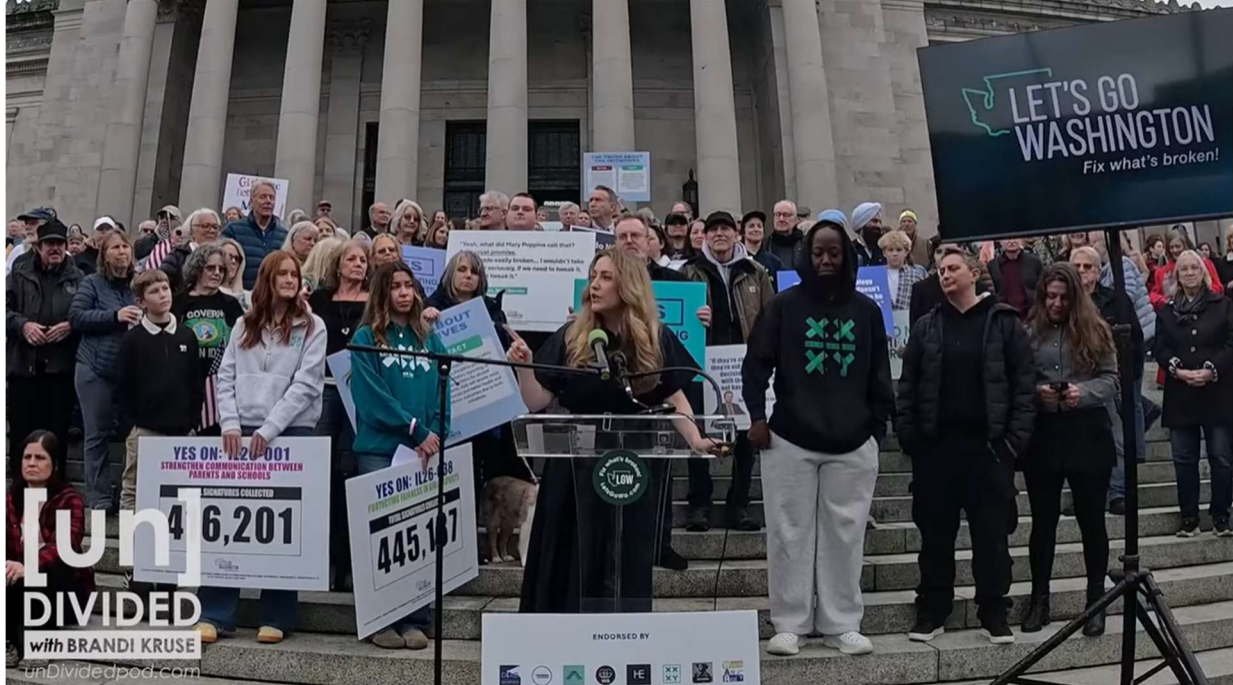
<sup>13</sup> <https://podcasts.apple.com/us/podcast/undivided-with-brandi-kruse/id1596795035> (last visited Mar. 4, 2026).

<sup>14</sup> <https://future42.org/people/brandi-kruse/> (last visited Mar. 4, 2026).

<sup>15</sup> <https://future42.org/about/> (last visited Mar. 4, 2026).

<sup>16</sup> *Id.*

1 Kruse also is involved with Let's Go Washington.<sup>17</sup> The following screenshot from an  
 2 unDivided YouTube video<sup>18</sup> shows Kruse speaking in support of the organization's initiatives on  
 3 the steps of the Legislative Building on February 3, 2026:



15 She also spoke at a Let's Go Washington rally in November 2025. Palmer Decl. ¶¶29 & Exs. E, G;  
 16 Dean Decl. ¶16.

17 On February 2, 2026, the day before she appeared at the above-pictured rally, she applied  
 18 for *daily* press passes for February 2 and 6 as a representative of unDivided. Dean Decl., Ex. F.  
 19 The House denied her request that day with instructions for appealing. *Id.*, Ex. G. She appealed.  
 20 *Id.*

21 On February 4, the House denied Kruse's appeal, explaining:

22 The House, in part, looks to the Capitol Correspondents'  
 23 Association (CCA) to make recommendations regarding whether a  
 24 press pass applicant is a bona fide journalist or not. Based on your  
 25 recent engagement in public policy development and advocacy, your  
 26 request for a House floor press pass was denied....

<sup>17</sup> <https://letsgowashington.com/> (last visited Mar. 4, 2026).

<sup>18</sup> <https://www.youtube.com/watch?v=Du6zOZ7T4Vo> (last visited Mar. 4, 2026).

1 Absent additional information, the decision to not issue a press pass  
2 is upheld. If you have anything else you would like me to consider,  
3 please provide it to me. I will endeavor to review any information  
4 you provide and get back to you with a timely response.

5 Maynard Decl., Ex. J. Kruse responded:

6 The letter states I have worked on public policy development. I  
7 have not worked on public policy development. Can you provide  
8 precise information? In regard to advocacy, does this mean any  
9 individual who has taken a position on policy may not be granted a  
10 press pass? The Seattle Times editorial board?

11 Dean Decl., Ex. G. Kruse falsely claimed in her declaration that she “received no response” to  
12 this email. ECF #2, Attach. 4, ¶¶10-11. But the House responded February 5:

13 The House has no knowledge of anyone who is part of an editorial  
14 board being granted a floor press pass, including those from the  
15 Seattle Times. While the House floor press pass does not address  
16 any events beyond House Chamber access during House floor  
17 sessions, the House also has no knowledge of you being denied  
18 access to pressers or media avails.

19 *Id.* On February 6, Kruse replied: “The Tuesday pass I requested was so I could attend a press  
20 avail. If you’re [t]elling me that House Dems will still let me attend press conferences on their  
21 side of the wings, then I need a press pass to enter.” *Id.* She also requested “clarification on what  
22 ‘public policy development’ I have engaged in, specifically.” *Id.* The Chief Clerk responded that  
23 day:

24 As noted previously, the House floor press pass is specifically  
25 related to House floor sessions in the chamber, which are completely  
26 independent from media avails. You do not need a House floor  
press pass to attend a press conference.

You specifically referenced a presser that occurred on Tuesday,  
February 3rd, which was not a day the House had a floor session.  
Furthermore, that presser was held in the **Senate Rules Room**,  
which is controlled by the Lt. Governor and the Senate. Any  
questions about accessing those spaces should be directed to the  
Office of the Lt. Governor or the Senate. To my knowledge, House  
Democrats have not been holding media avails in the HDC Caucus  
Room. If for some reason the House Democrats have a press

1 conference in their caucus room, you can always reach out to their  
caucus communications staff to get access.

2 Press credentials are not issued to individuals who actively engage  
3 in campaigns, lobbying, or advocate for candidates for public office  
and/or bills and ballot measures.

4 *Id.* Kruse sought, and the House provided, additional clarification about where other press events  
5 are held. *Id.*

### 6 **3. Jonathan Choe**

7 On February 2, 2026, Choe applied for *daily* press passes for February 2-6 as a  
8 representative of “Discovery Institute/Frontlines TPUSA.” Dean Decl., Ex. D. Discovery  
9 Institute is a “[p]ublic policy think tank advancing a culture of purpose, creativity, and  
10 innovation.”<sup>19</sup> TPUSA (Turning Point USA) says its “mission is to identify, educate, train, and  
11 organize students to promote the principles of fiscal responsibility, free markets, and limited  
12 government.”<sup>20</sup> Choe did not list any other organization in his application. Dean Decl., Ex. D.

13 The House denied Choe’s request on February 2 and instructed him how to appeal.  
14 Maynard Decl., Ex. H. He responded: “[W]hat is the reason for this denial?” *Id.* The House  
15 explained to him that day: “Approvals and denials are based on Capitol Correspondence  
16 Association’s recommendations and may be appealed by contacting the Chief Clerk’s Office in  
17 writing.” *Id.*

18 Choe responded the next day that his request was “time sensitive” because “I need to  
19 attend a presser on Tuesday.” *Id.* The House responded within 30 minutes, explaining he did not  
20 need a press pass to attend a presser: “The House floor press pass is specific to floor proceedings  
21 in the chamber. There are no floor proceedings today in the House, other than a pro forma  
22 session. The House floor press pass does not have anything to do with pressers. Press  
23 conferences are handled by the caucuses.”<sup>21</sup> Dean Decl., Ex. E.

24  
25 <sup>19</sup> <https://www.discovery.org/about/> (last visited Mar. 4, 2026).

<sup>20</sup> <https://tpusa.com/> (last visited Mar. 4, 2026).

26 <sup>21</sup> “Pro forma” sessions address routine procedural matters that may take less than a minute. Dean Decl. ¶14.

1 On February 4, the House denied Choe’s appeal:

2 The House, in part, looks to the Capitol Correspondents’  
3 Association (CCA) to make recommendations regarding whether a  
4 press pass applicant is a bona fide journalist or not. You indicated  
that you represent the Discovery Institute/Frontlines TPUSA.

5 As stated in the CCA guidelines, credentials are not provided to  
6 individuals who work for any publication or information source that  
is part of a larger non-news organization; this includes think tanks.

7 Absent additional information, the decision to not issue a press pass  
8 is upheld. If you have anything else you would like me to consider,  
9 please provide it to me. I will endeavor to review any information  
you provide and get back to you with a timely response.

10 Maynard Decl., Ex. I.

11 In response, Choe stated he also did freelance work for the *Lynnwood Times*. He wrote: “I  
12 did not include this outlet in my credential request this first time around because I did not think it  
13 was necessary. But if this changes the equation, I’d be happy to apply again under Lynnwood  
14 Times.” *Id.*, Ex. H. The Chief Clerk responded:

15 Please be specific in terms of which organization you are  
16 representing when you are attempting to access the House chamber.  
17 If you are visiting on behalf of the Lynnwood [sic] Times, you should  
include that information in a new application for a House floor press  
pass.

18 I can’t speak to your point about House Democrats or Senate  
19 Democrats and their “access”. As noted in prior communication, the  
20 House press pass is specific to House floor sessions, it does not  
address access to press conferences held by the partisan caucuses or  
21 anything beyond House floor sessions.

22 *Id.* Choe responded: “[S]hould I reapply under Lynnwood Times?” *Id.* The Chief Clerk  
23 responded: “I would suggest that you should apply under the news outlet you are representing.”

24 *Id.* Choe did not reapply. Dean Decl. ¶15.

### III. ARGUMENT

#### A. Plaintiffs must, but cannot, satisfy a stringent standard.

Injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). A mandatory injunction “goes well beyond simply maintaining the status quo [p]endente lite [and] is particularly disfavored.” *Andersen v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1980) (quotations & citation omitted). Generally, mandatory injunctions “are not granted unless extreme or very serious damage will result and are not issued in doubtful cases[.]” *Id.* at 1115 (quotations & citation omitted).

To justify a TRO or a preliminary injunction, Plaintiffs must establish that: 1) they are likely to succeed on the merits, 2) they are likely to suffer irreparable harm without preliminary relief, 3) the balance of equities tips in their favor, and 4) an injunction is in the public interest. *Roe v. Critchfield*, 137 F.4th 912, 922 (9th Cir. 2025). When the government is a party, these last two factors merge. *Id.* Plaintiffs have not, and cannot, justify this extraordinary remedy.

#### B. Plaintiffs’ claims are not likely to succeed.

Likelihood of success on the merits “is the most important” factor. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (*en banc*). “Because it is a threshold inquiry, when a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three” elements. *Id.* (quotations omitted). Where the moving party offers only a conclusory argument without evidentiary support, it fails to meet its burden to demonstrate success on the merits. *Plintron Techs. USA LLC v. Phillips*, No. C24-93, 2024 WL 553718, at \*3 (W.D. Wash. Feb. 12, 2024).

Plaintiffs fail to satisfy this determinative threshold inquiry.

##### 1. Plaintiffs’ First Amendment claim is meritless.

“[A]llegations of suppression of the media must be sufficiently alleged to withstand” dismissal. *MacIver*, 994 F.3d at 605. “[S]tates can subject the press to generally applicable

1 regulations without offending the First Amendment.” *Id.* at 613. Plaintiffs’ empty allegations and  
 2 hyperbole do not even cross the threshold of viability.

3 **a. The House Floor is a nonpublic forum.**

4 “[T]he First Amendment does not guarantee the press a constitutional right of special  
 5 access to information not available to the public generally.” *Branzburg v. Hayes*, 408 U.S. 665,  
 6 684 (1972); *accord TGP Commns., LLC v. Sellers*, No. 22-16826, 2022 WL 17484331, at \*4 (9th  
 7 Cir. Dec. 5, 2022) (“The First Amendment does not provide a right of free and unconditional  
 8 access to all government properties or events.”) (citing *Cornelius v. NAACP Legal Def. & Educ.*  
 9 *Fund, Inc.*, 473 U.S. 788, 799-800 (1985)); *Smith v. Plati*, 258 F.3d 1167, 1178 (10th Cir. 2001)  
 10 (there is no First Amendment right of press access to public university where other members of  
 11 the press receive access).<sup>22</sup> The Ninth Circuit reaffirmed that “[t]he government, like a private  
 12 owner of property, can reserve its property to be used for the purposes for which it meant the  
 13 property to be used.” *Jacobsen v. U.S. Postal Serv.*, 812 F.2d 1151, 1152-53 (9th Cir. 1987).  
 14 Hence, “[m]embers of the press are routinely excluded from places that other members of the  
 15 public may not access such as ... the meetings of other official bodies gathered in executive  
 16 session[.]” *MacIver*, 994 F.3d at 612. The House “could, consistent with the First Amendment,  
 17 exclude press from” the House floor “entirely.” *Associated Press v. Budowich*, No. 25-5109, 2025  
 18 WL 1649265, at \*6 (D.C. Cir. June 6, 2025).

19 “The existence of a right of access to public property and the standard by which limitations  
 20 upon such a right must be evaluated differ depending on the character of the property at issue.”  
 21 *Perry Educ. Ass’n v. Perry Loc. Educators’ Ass’n*, 460 U.S. 37, 44 (1983). To determine the  
 22 extent of any First Amendment protection, the Court must first identify the relevant government  
 23 space. Government property may be one of “three types of fora: the traditional public forum,”  
 24

25 <sup>22</sup> Plaintiffs try to sidestep this bedrock constitutional law by misleadingly quoting from *Leigh v. Salazar*, 677 F.3d  
 26 892 (9th Cir. 2012). Here is their quotation of *Leigh* with the words Plaintiffs omitted added in bold: there is a  
 “**qualified** right of access for the press **and public** to observe government activities.” Mot. at 16:3-4 (misquoting  
*Leigh*, 677 F.3d at 898) (emphasis added).

1 such as streets, sidewalks, and parks, “the public forum created by government designation,”  
2 known as a limited public forum, “and the nonpublic forum.” *Cornelius*, 473 U.S. at 802.

3 The House permits credentialed journalists to access limited space on and near the House  
4 floor. Dean Decl. ¶9. This area is a nonpublic forum. *Ateba v. Leavitt*, 133 F.4th 114, 121 (D.C.  
5 Cir. 2025) (White House press area is a nonpublic forum), *cert. denied*, No. 25-338, 2025 WL  
6 3260204 (U.S. Nov. 24, 2025); *MacIver*, 994 F.3d at 609 (governor’s press briefings occur in a  
7 nonpublic forum). A nonpublic forum is government property that “is not by tradition or  
8 designation a forum for public communication,” such as a government office building. *Minn.*  
9 *Voters All. v. Mansky*, 585 U.S. 1, 11 (2018). Although the government is not required to open  
10 such spaces for public speech at all, the government creates a nonpublic forum when it provides  
11 “selective access for individual speakers.” *Ark. Educ. Television Comm’n v. Forbes*, 523 U.S.  
12 666, 679 (1998).

13 As a nonpublic forum,<sup>23</sup> access to the House floor “can be restricted as long as the  
14 restrictions are” reasonable and viewpoint neutral. *Cornelius*, 473 U.S. at 800; *accord Ateba*, 133  
15 F.4th at 123 (“Control over access to a nonpublic forum can be based’ even ‘on subject matter  
16 and speaker identity so long as’ it meets the requirements of reasonableness and viewpoint  
17 neutrality.”) (quoting *Cornelius*, 473 U.S. at 806); *MacIver*, 994 F.3d at 610 (governor’s press  
18 conference was a nonpublic forum “to which the government may regulate access provided the  
19 regulations are reasonable and” not based on viewpoint). The purpose of the forum is central to  
20 this analysis because the government may “reserve the [nonpublic] forum for its intended  
21 purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not  
22 an effort to suppress expression merely because public officials oppose the speaker’s view.”  
23 *Perry*, 460 U.S. at 46. “Control over access to a nonpublic forum can be based on subject matter  
24

25 <sup>23</sup> Plaintiffs agree that the House floor is a “nonpublic forum.” Mot. at 17:17. But they mistakenly cite to *Jacobsen*  
26 for the proposition that the loss “of access to a **public forum** is, each day, an irreparable injury.” *Id.* at 16:6-10  
(quoting *Jacobsen*, 812 F.2d at 1154) (emphasis added).

1 and speaker identity so long as the distinctions drawn are reasonable in light of the purpose served  
2 by the forum and are viewpoint neutral.” *Cornelius*, 473 U.S. at 806.

3 Speech restrictions in a nonpublic forum need satisfy only this “limited review.” *United*  
4 *States v. Nassif*, 97 F.4th 968, 978 (D.C. Cir.), *cert. denied*, 145 S. Ct. 552 (2024). The  
5 restrictions imposed by the Press Policy easily pass constitutional muster. *Ateba*, 133 F.4th at 127  
6 (“[T]he White House’s reliance on an outside credentialing body is both reasonable and viewpoint  
7 neutral.”).

8 **b. The Press Policy is reasonable.**

9 To be reasonable, a restriction “need not be the most reasonable or the only reasonable”  
10 restriction. *Cornelius*, 473 U.S. at 808. “Nor does it mean that” a court “must disallow a  
11 government’s set of viewpoint-neutral criteria simply because” the court “can imagine a superior  
12 system of allocation.” *MacIver*, 994 F.3d at 615. The Supreme Court gives the government  
13 substantial leeway to regulate access to a nonpublic forum and has upheld a range of restrictions  
14 that were justified considering the forum’s purpose. *See, e.g., Forbes*, 523 U.S. at 682 (reasonable  
15 for public television broadcaster to exclude independent political candidate from candidate debate  
16 because he had “generated no appreciable public interest”); *Cornelius*, 473 U.S. at 808-09  
17 (reasonable to exclude certain legal defense and political advocacy organizations from charity  
18 drive because donations to other charity causes were “more beneficial” and better served the  
19 purpose of the charity drive).

20 The type of press access rules employed by the House repeatedly have been held to be  
21 reasonable. For example, the Seventh Circuit upheld a governor’s restrictions of access to  
22 journalists who are “bona fide correspondent[s] of repute in their profession,” “avoid real or  
23 perceived conflicts of interest,” “are free of associations that would compromise journalistic  
24 integrity or damage credibility,” and refrain from “any lobbying, paid advocacy, advertising,  
25 publicity or promotion work for any individual, political party, corporation or organization.”  
26 *MacIver*, 994 F.3d at 606. The Court ruled these criteria “are reasonably related to the viewpoint-

1 neutral goal of increasing journalistic integrity by favoring media that avoid real or perceived  
2 conflicts of interest or entanglement with special interest groups, or those that engage in advocacy  
3 or lobbying.” *Id.* at 610.

4 Last year, the D.C. Circuit in *Ateba* approved as reasonable the White House’s reliance on  
5 credentialing decisions by a “committee[] of journalists that evaluate the qualifications of reporters  
6 who seek to enter nonpublic areas” of the White House “to cover the work of the government.”  
7 133 F.4th at 123. “It is surely reasonable for the White House to open the Press Area only to bona  
8 fide journalists and to” use “its long-established practice of” vetting by the journalists’ association  
9 “as a measure of a reporter’s professional standing.” *Id.* “[I]t is reasonable to allow established  
10 members of the profession to make the credentialing decision.” *Id.* at 123. The House does not go  
11 nearly as far as the White House; the House, itself, applies the Press Policy to applicants, with  
12 only guidance from the CCA. Dean Decl. ¶11.

13 The D.C. Circuit held that it had “no basis to question such discretionary policies that  
14 reasonably limit access to a nonpublic forum, consistent with its purpose.” *Ateba*, 133 F.4th at  
15 123. Here, the purpose of the nonpublic forum is for the House to debate and pass laws without  
16 interruption or lobbying in that space. Dean Decl. ¶¶3-6. The Press Policy reasonably limits  
17 access to the House floor consistent with these purposes. *Nassif*, 97 F.4th at 979 (“Like any  
18 occupant of a government office building, Congress must be free to restrict at least some  
19 expressive activity to preserve its buildings as a functional workplace.”).

20 Plaintiffs say the Press Policy is unreasonable for four reasons, none of which has merit.  
21 First, they say the Guidelines “are unpublished, vague, ambiguous, and unenforceable.” Mot. at  
22 18:3. But they **are** published and available to anyone, as evidenced by Plaintiffs’ ability to obtain  
23 them. *Id.* at 10:1-3; Maynard Decl., Ex. C. Moreover, while Plaintiffs disagree with the Press  
24 Policy, they have not said **how** it is “vague” or “ambiguous.” They were denied press passes  
25 because they applied on behalf of entities that are not “doing news for the sake of news alone”  
26 (Choe) or because they are currently “engaged in campaigns, lobbying, or the development of

1 public policy” (Huffman and Kruse). Maynard Decl., Ex. C. They **are not** “independent  
2 observer[s] and monitor[is of the proceedings”]; they **are** “involved part[ies].” *Id.* There is no  
3 unbridled discretion here. *Ateba*, 133 F.4th at 126 (policy requiring that credentialed  
4 correspondents work full-time for a news organization and not engage in lobbying “provide[s]  
5 concrete guidelines that cabin the Standing Committee’s discretion”).

6 Second, Plaintiffs say the Press Policy is not reasonable because it is “not applied  
7 uniformly or even consistently.” Mot. at 18:4. In support of this argument, they offer nothing.  
8 They point to “members of the press” who “routinely testify on pending legislation[.]” *Id.* at  
9 11:11. But they identified no member of the press who routinely testifies on pending legislation  
10 who has been provided a pass. Indeed, none has. Palmer Decl. ¶34. And they point to the  
11 “editorial pages” of newspapers “which endorse political candidates and advocate for or against  
12 specific policies.” Mot. 11:17-18. But they identified no editorial writer who has been provided a  
13 pass. That is because editorial writers do not receive press passes from the House. Palmer Decl.  
14 ¶18. Contrary to Plaintiffs’ bald accusations, the House consistently applies its Press Policy.  
15 Palmer Decl. ¶¶4, 21.

16 Third, Plaintiffs claim the Press Policy is not reasonable because of “[t]he lack of due  
17 process of standards of review for appeals, or facts or law that would be considered by the Clerk in  
18 an appeal[.]” Mot. at 18:6. This too is supported by nothing. The House promptly reviewed  
19 Plaintiffs’ appeals of their pass denials, explained exactly how and why Plaintiffs failed to satisfy  
20 the Press Policy, and immediately answered their questions. Dean Decl. ¶¶13-16, 18-20, 22 &  
21 Exs. E, G, I, J. In any event, “processing deadlines” are not “constitutionally required in the  
22 context of a content-neutral licensing scheme.” *Ateba*, 133 F.4th at 126. The Press Policy “is the  
23 type of ‘traditional’ exercise of government authority that does not trigger heightened procedural  
24 protections.” *Id.* at 127.

25 Fourth, Plaintiffs say “[a] ‘day pass’ is not an adequate substitute for full credentials.”  
26 Mot. at 18:8. These two passes provide identical access to the House floor based on the frequency

1 of the journalist’s need. Palmer Decl. ¶¶8, 10. And Plaintiffs **did not** apply for “full credentials,”  
 2 they applied only for daily passes. Dean Decl., Exs. D, F, H.

3 **c. The Press Policy is viewpoint neutral.**

4 Viewpoint discrimination is an “egregious form of content discrimination” that occurs  
 5 when a government regulation “targets not subject matter, but particular views taken by speakers  
 6 on a subject.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). “In  
 7 evaluating claims of viewpoint discrimination, “[w]e thus look to the government’s purpose as the  
 8 threshold consideration.” *TGP Commns.*, 2022 WL 17484331 at \*4 (quoting *Madsen v. Women’s*  
 9 *Health Ctr.*, 512 U.S. 753, 763 (1994)). The House’s purpose and the effect of its policy, as with  
 10 other such policies that have passed constitutional challenge, is “increasing journalistic integrity  
 11 by favoring media that avoid real or perceived conflicts of interest or entanglement with special  
 12 interest groups, or those that engage in advocacy or lobbying.” *MacIver*, 994 F.3d at 610. As the  
 13 Seventh Circuit held with respect to press access criteria just like the ones at issue here, “[t]here is  
 14 nothing inherently viewpoint-based about these criteria, and [the plaintiff] has not provided any  
 15 evidence that the Governor’s office manipulates these neutral criteria in a manner that  
 16 discriminates against conservative media.” *Id.* at 611.

17 As with the policy for accessing the White House approved by the D.C. Circuit, the Press  
 18 Policy “does not reference viewpoints in any way” in language or application. *Ateba*, 133 F.4th at  
 19 124; *accord Utah Policy Watch, Inc. v. Musselman*, No. 2:25-cv-00050-RJS, 2025 WL 2772470,  
 20 \*5 (D. Utah Sep. 29, 2025) (Utah legislature press access policy exclusion of “blogs, independent  
 21 media or other freelance media” was not impermissible content and viewpoint discrimination),  
 22 *appeal docketed*, No. 25-4124 (10th Cir. Sep. 30, 2025). The House does not deny press  
 23 credentials based on the content of a correspondent’s reporting. Palmer Decl. ¶21; Maynard Decl.,  
 24 Ex. C. To the contrary, the journalists who are credentialed under the Press Policy represent news  
 25 organizations with a broad and divergent range of editorial views. Palmer Decl. ¶24. What they  
 26 have in common is that they are full-time journalists who are not directly involved in lobbying and

1 policy debates. Maynard Decl., Ex. C; Palmer Decl. ¶¶13, 19. Plaintiffs’ contention that the  
 2 “effect” of the Press Policy is “suppressing opposing viewpoints because” they are actively  
 3 engaged in politics, Mot. at 18:9, is supported by nothing and flies in the face of the diverse  
 4 journalists who satisfy the Policy’s requirements. Palmer Decl. ¶¶23-24. The D.C. Circuit last  
 5 year approved precisely such a policy, requiring “that credentialed correspondents work full-time  
 6 for a news organization” and “not engage in lobbying.” *Ateba*, 133 F.4th at 125.

7 Plaintiffs’ bald assertions do not suffice. The Seventh Circuit explained why:

8 MacIver asserts that it viewed the media advisory list as  
 9 confirmation that its exclusion was ideologically motivated, but **it**  
 10 **offers no support or explanation for that factual assertion.** In  
 11 fact, the list includes media outlets traditionally viewed as  
 12 conservative leaning such as the Washington Times, Wall Street  
 13 Journal, Fox News, and Washington Examiner, as well as those  
 14 viewed as liberal leaning such as the Capitol Times, New York  
 15 Times, and Huffington Post.... [T]he inclusion of a broad range of  
 16 media outlets on both sides of the political spectrum certainly  
 17 diminishes any claim that the list is based on political ideology.

18 *MacIver*, 994 F.3d at 611 (emphasis added). The same is true here. As in *MacIver*, Plaintiffs have  
 19 not provided “factual support in the record demonstrating that the” House “discriminated against  
 20 [Plaintiffs] on the basis of [their] viewpoint[s], rather than the stated reason that their practices ran  
 21 afoul of the neutral factors.” 994 F.3d at 611 (quotations & citation omitted). “[N]aked assertions  
 22 of bias” that are “unsupported by references to the record” do not suffice. *Id.*

23 *TGP Communications*, to which Plaintiffs point, offers them no aid. The Ninth Circuit’s  
 24 *per curiam* order with respect to an injunction pending appeal is wholly distinguishable. In that  
 25 case, a journalist was denied a pass to a facility where ballots were being counted. The Court  
 26 found that, despite the government’s stated reasons for denying the pass, “the evidence” offered by  
 both parties “strongly suggests that a predominant reason for the County denying Plaintiffs a press  
 pass was Conradson’s political views.” 2022 WL 17484331 at \*4-\*5. The Court emphasized that

**[t]he County’s own witness** ... stated at the **evidentiary hearing**  
 that, beyond not avoiding conflicts of interest, Conradson’s press

1 pass was denied because “[h]e doesn’t seek the truth and his articles  
2 have led to direct threats to Board of Election officials and  
3 employees.” Permitting “truth” to be determined by the County  
4 violates our foundational notions of a free press.

5 *Id.* (emphasis added). “The County’s own evidence only underscores that the press-pass denial, as  
6 applied to Conradson, was not viewpoint neutral; the County’s evidence indeed highlights its  
7 reliance on Conradson’s political views.” *Id.* The Ninth Circuit readily distinguished *TGP*  
8 *Communications* from the ruling in *MacIver* where the Seventh Circuit “noted that there was no  
9 evidence that the government had ‘manipulate[d] the[] neutral criteria in a manner that  
10 discriminate[d]’ against the applicant.” *Id.* (quoting *MacIver*, 994 F.3d at 611).

11 Plaintiffs’ First Amendment challenge fails.

12 **2. Plaintiffs’ Art. I, section 5 claim is meritless.**

13 Plaintiffs’ press right claim under the Washington Constitution is unlikely to succeed for  
14 the same reasons. As the Washington Supreme Court has explained, “[w]e apply the same  
15 standard under article I, section 5 for speech in a nonpublic forum as is applied under the First  
16 Amendment. Speech in nonpublic forums may be restricted if the distinctions drawn are  
17 reasonable in light of the purpose served by the forum and are viewpoint neutral.” *Sanders v. City*  
18 *of Seattle*, 156 P.3d 874, 880 (Wash. 2007) (internal citation and quotations omitted). While  
19 Plaintiffs cite the general proposition that the Washington free speech provision affords greater  
20 protection than its federal counterpart, Mot. at 18, there are no “greater” protections in this  
21 context. *World Wide Video of Wash., Inc. v. City of Spokane*, 103 P.3d 1265, 1272 (Wash. Ct.  
22 App. 2005) (“Speech in a nonpublic forum, however, is not entitled to greater protection under  
23 article I, section 5.”).

24 Indeed, none of the three cases Plaintiffs cite is relevant. At issue in *State v. Noah*, 9 P.3d  
25 858 (Wash. Ct. App. 2000), *as amended on reconsideration* (Oct. 30, 2000), was whether an  
26 antiharassment order and contempt conviction violated the defendant’s free speech rights (they did  
not) and whether judicial enforcement of a settlement agreement involved “state action” as

1 required to establish an article I, section 5 violation (it did not). *Id.* at 865-66, 870-71. *Adams v.*  
 2 *Hinkle*, 322 P.2d 844 (1958), involved a challenge to a statute from the 1950s that restricted the  
 3 sale of comic books on the theory they were “a factor in juvenile delinquency.” *Id.* at 847. And  
 4 Plaintiffs quote a headnote, not the opinion. Mot at 18. In *State v. Coe*, 679 P.2d 353 (Wash.  
 5 1984), the Court reversed a contempt conviction where the “trial court held a radio and television  
 6 station in contempt for violating a court order prohibiting the broadcast of accurate, lawfully  
 7 obtained copies of tape recordings that had been played in open court.” None of this authority  
 8 supports an independent state constitutional claim here.

9 **3. Plaintiffs’ Due Process claims are meritless.**

10 Plaintiffs contend that the denial of their press passes violated their right to due process  
 11 under the Fourteenth Amendment to the U.S. Constitution and Article I, Section 3 of the  
 12 Washington Constitution. This is so, they assert, because the Press Policy is “inadequate, vague  
 13 and ambiguous and inconsistently enforced” and because the decision to deny them press passes  
 14 was “arbitrary and wholly unconvincing.” Mot. at 20. Their arguments are without merit.

15 “Procedural due process imposes constraints on governmental decisions which deprive  
 16 individuals of ‘liberty’ or ‘property’ interests within the meaning of the Due Process Clause of the  
 17 Fifth or Fourteenth Amendment.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).<sup>24</sup> The interest  
 18 of a bona fide journalist in obtaining a press pass may be a protected liberty interest which may  
 19 not be denied without due process. *Sherrill v. Knight*, 569 F.2d 124, 130-31 (D.C. Cir. 1977).  
 20 The due process required in such circumstances is fulfilled if the government relies on “some  
 21 criteria to guide its determinations” and has “a reasonable way of assessing whether the criteria are  
 22 met.” *Getty Images News Servs. Corp. v. Dept. of Defense*, 193 F. Supp. 2d 112, 121 (D.D.C.  
 23 2002). Where an applicant does not meet the criteria, the government must provide “notice to the  
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25 <sup>24</sup> Plaintiffs do not argue that the state constitution provides greater protections than the federal constitution. *See*  
 26 Mot. at 20 (citing *State v. Beaver*, 336 P.3d 654, 658 n.14 (Wash. Ct. App. 2014) (analyzing due process claim solely  
 under the U.S. Constitution because “Washington’s due process clause does not afford broader protection than that  
 given by the Fourteenth Amendment to the United States Constitution.”), *aff’d*, 358 P.3d 385 (2015).

1 unsuccessful applicant of the factual bases for denial with an opportunity to rebut.” *Sherrill*, 569  
2 F.2d at 131.

3 As discussed *supra*, §II.A-B, the Press Policy is memorialized in writing and is available to  
4 anyone. The press pass application provides that eligibility also depends on compliance with the  
5 House Rules, House Guidelines, and Legislative Code of Conduct, all of which are publicly  
6 available. Palmer Decl. ¶4. Plaintiffs requested and received a copy of the Press Policy. Maynard  
7 Decl., Ex. C. Although Plaintiffs repeatedly assert that the Press Policy is “vague” and  
8 “ambiguous,” they never identify which terms or parts of the policy they do not understand. A  
9 statute is unconstitutionally vague only if it “fails to provide people of ordinary intelligence a  
10 reasonable opportunity to understand what conduct it prohibits” and if it “authorizes or even  
11 encourages arbitrary and discriminatory enforcement.” *Hill v. Colorado*, 530 U.S. 703, 732  
12 (2000).

13 The Press Policy provides people of ordinary intelligence with a reasonable opportunity to  
14 understand eligibility criteria. It states that a “credential-seeker’s employer must be a news  
15 organization, full stop.” Maynard Decl., Ex. C. This explicitly excludes entities “founded, funded  
16 or affiliated with lobbyists, lobbyist firms or lobbying associations...” *Id.* Credentials will not be  
17 provided to “a person who is or may become engaged in campaigns, lobbying, or the development  
18 of public policy.” *Id.* These are commonly understood terms and are well understood in context.  
19 *See Utah Political Watch*, 2025 WL 2772470 at \*9 (concluding that the Utah Legislature’s media  
20 credentialing policy was not unconstitutionally vague).

21 Plaintiffs each received notice of the factual bases for the denial of their press passes.  
22 Hoffman and Kruse were denied press passes “[b]ased on your recent engagement in public policy  
23 development and advocacy.” Maynard Decl., Exs. E & J. None of this is vague.<sup>25</sup> Choe was  
24 denied a press pass because he applied for the pass as a representative of the Discovery

25 \_\_\_\_\_  
26 <sup>25</sup> Plaintiffs provide no authority—because there is none—supporting their assertion that due process required the House to list “examples” of their public policy advocacy. Mot. at 21:9-11.

1 Institute/Frontlines TPUSA, a self-described “[p]ublic policy think tank,”<sup>26</sup> and “credentials are  
2 not provided to individuals who work for any publication or information source that is part of a  
3 larger non-news organization; this includes think tanks.” *Id.*, Ex. I. He was offered an  
4 opportunity to reapply for a press pass in his capacity as a freelancer with the *Lynnwood Times*,  
5 but he elected not to do so. Palmer Decl. ¶32.

6 Plaintiffs’ assertion that they were not provided an opportunity to challenge their access  
7 denials is puzzling, and false. Mot. at 21. The House told Plaintiffs that “[i]f you wish to appeal  
8 this decision, you can contact the Chief Clerk’s Office in writing stating the nature of the appeal.”  
9 Maynard Decl., Ex. H. Plaintiffs did, in fact, appeal these decisions by contacting the Chief  
10 Clerk’s Office. Dean Decl. ¶¶15, 18, 20. Plaintiffs were provided with an opportunity to show  
11 that they satisfied the Press Policy, *Sherrill*, 569 F.2d at 131, but they could not.

12 Neither were Plaintiffs denied press passes for arbitrary or less than compelling reasons.  
13 The criteria in the Press Policy are guided by the principle that House floor press access should be  
14 given to press who are independent observers and monitors, not participants with a stake in the  
15 proceedings, no matter their political viewpoints. Maynard Decl., Ex. C; *see supra*, §II.B.  
16 Plaintiffs’ unsupported assertion that they are “to their knowledge, the only journalists so  
17 affected” does not render the decision to deny them press passes arbitrary. The House this year  
18 has denied press passes to others who did not satisfy the Press Policy. Palmer Decl. ¶33. Finally,  
19 Plaintiffs were **not** denied press passes “based entirely on an impermissible regulation of the  
20 content and perceived viewpoints” of their speech. Mot. at 22. They offer no evidence  
21 whatsoever in support of this argument, which is also undermined by the stated reasons for the  
22 denials and the House’s grant of press passes to Plaintiffs’ colleagues who met the eligibility  
23 criteria. Dean Decl. ¶20; Palmer Decl. ¶¶23, 32.

24 Plaintiffs were provided all the process they were due (and more).  
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26 <sup>26</sup> <https://www.discovery.org/about/>.

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**4. Plaintiffs’ non-delegation claim is meritless.**

Plaintiffs are not likely to succeed on the merits of their non-delegation claim as they attack only a hypothetical, not even an alleged, delegation of legislative powers.

The non-delegation doctrine stems from article II, section 1 of the Washington Constitution, which provides: “The legislative authority of the state of Washington shall be vested in the legislature.” Wash. Const. art. II, § 1. Under this provision, “it is unconstitutional for the Legislature to abdicate or transfer its legislative function to others.” *Brower v. State*, 969 P.2d 42, 49 (Wash. 1998). However, the Legislature may delegate legislative powers to private parties “if proper standards, guidelines, and procedural safeguards exist.” *Associated Gen. Contractors of Wash. v. State*, 518 P.3d 639, 644 (Wash. 2022) (quotations & citation omitted).

Plaintiffs do not allege there was a delegation of powers here. Mot. at 22 (arguing only that “[t]o the extent that the House of Representatives claims to delegate to the CCA, ...”); Pet. ¶ 77 (same). There was none. The House has not delegated to the CCA authority to grant and deny press passes—that authority lies with the House, which denied Plaintiffs’ requests for press passes here. Dean Decl. ¶11; Maynard Decl., Ex. C (“Issuing press credentials is subject to the direction and control of the administrations of the Senate and House.”). The appeals process is likewise handled by the House, as happened here.<sup>27</sup>

No delegation was alleged (or occurred) that offends the Washington Constitution.

**C. Plaintiffs are not likely to suffer irreparable harm.**

Even when there is a strong likelihood of success on the merits an injunction “cannot issue” “if there is just a mere possibility of irreparable harm.” *McGary v. Inslee*, No. C23-5388 BHS, 2023 WL 5822280, at \*3 (W.D. Wash. Sep. 8, 2023). “Speculative injury does not constitute irreparable injury sufficient to warrant” preliminary injunctive relief. *Caribbean*

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<sup>27</sup> Even if there were a delegation of legislative powers (there is not), proper standards, guidelines, and procedural safeguards exist. The Guidelines are expressly rooted in the Legislature’s prohibition on lobbying during floor sessions. And the appeals process safeguards against abuse of discretion or arbitrary action. Courts have found even more attenuated processes sufficient. *Auto. United Trades Org. v. State*, 357 P.3d 615, 624 (Wash. 2015) (“We have found sufficient safeguards exist because of administrative review and the availability of writs of certiorari, among other things.”) (internal citations omitted).

1 *Marine Servs. Co. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988). Thus, an injunction should be  
2 rejected where there is no evidence “to suggest, or for the Court to rely on, that irreparable injury  
3 would occur if the Court does not issue” an injunction. *Plintron Techs.*, 2024 WL 553718 at \*4.

4 Any harm Plaintiffs may suffer is not “irreparable.” Choe, for one, was offered an  
5 opportunity to reapply for a press pass in his capacity as a freelancer with the *Lynnwood Times*,  
6 but he elected not to do so. Palmer Decl. ¶32. Any harm he experienced was self-inflicted.  
7 Moreover, as discussed above, the notion that Plaintiffs will suffer the loss of constitutional rights  
8 is not just speculative, but baseless. And it ends consideration for the requested injunction. *Baird*  
9 *v. Bonta*, 81 F.4th 1036, 1041 (9th Cir. 2023) (If a plaintiff “alleges a constitutional violation,” the  
10 likelihood of success on the merits factor is “usually decisive.”).

11 **D. The equities do not favor Plaintiffs, and an injunction would not be in the public**  
12 **interest.**

13 In assessing these final factors, the Court “must balance the competing claims of injury and  
14 must consider the effect on each party of the granting or withholding of the requested relief.”  
15 *Winter*, 555 U.S. at 24. If it were appropriate to get this far in the analysis, the balance of equities  
16 and the public interest would point only in the House’s direction. It has a substantial interest in  
17 preserving the working space of Members on the House floor free of lobbyists.

18 **IV. CONCLUSION**

19 Defendants respectfully request that the Court deny Plaintiffs’ motion.  
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1 DATED this 6<sup>th</sup> day of March, 2026.

2 SUMMIT LAW GROUP, PLLC  
3 Attorneys for the Washington State House of  
4 Representatives, Chief Clerk Bernard Dean, and  
the State of Washington

5 I CERTIFY THAT THIS MEMORANDUM CONTAINS  
6 8,400 WORDS, IN COMPLIANCE WITH THE LOCAL  
CIVIL RULES.

7  
8 By *s/ Jessica L. Goldman*

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