



November 30, 2023

**VIA ELECTRONIC MAIL**

Pamela Y. Price, Esq.  
Alameda County District Attorney  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

Email: [alcoda@acgov.org](mailto:alcoda@acgov.org)

Re: Excluding Reporter from Press Conference

Dear District Attorney Price:

The First Amendment Coalition (“FAC”) is a nonprofit public interest organization dedicated to defending free speech, a free press, and the people’s right to know. With the Northern California Chapter of the Society of Professional Journalists and the Reporters Committee for Freedom of the Press, we write to protest your office’s exclusion of a reporter from its media distribution list and a recent press conference. Based on the facts known to us, those actions violated the First Amendment and must be immediately rescinded, with a public commitment by your office that going forward, all members of the press will receive equal access to press releases and any other general announcements as well as equal opportunity to attend any events generally open to the media.

Emilie Raguso is a veteran reporter and founder of The Berkeley Scanner. It is our understanding that your office has removed her from its general media distribution list or otherwise failed to notify her of press releases or events and that it has done so without any notice or explanation. We also understand that yesterday your staff refused to allow Ms. Raguso access to a press conference open to other media concerning services provided to victims of crime and their families. Your staff denied that the exclusion was based on the content of her reporting and asserted there were unspecified “safety issues” preventing her from attending. Meanwhile, other reporters were reportedly allowed to enter without any screening, interference, or request for credentials.

Ms. Raguso displayed her Oakland Police Department press credential, although that was not required to verify her status as a reporter, which is well known to you and your staff, nor was it necessary to enter a press conference. Nonetheless, it confirmed she is a member of the press, but your staff still refused to allow her into the press conference. I also understand you personally refused to intervene.

For the following reasons, your office’s actions violated the First Amendment and threatened freedom of the press. The First Amendment was designed to “preserve an untrammelled press

as a vital source of public information.” *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936). From the earliest days of this nation, the “right of free public discussion of the stewardship of public officials” has been “a fundamental principle of the American form of government.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 275 (1964).

As the Supreme Court has confirmed, the “Constitution specifically selected the press” to “play an important role in the discussion of public affairs,” and “the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve.” *Mills v. Alabama*, 384 U.S. 214, 219 (1966).

In particular, the First Amendment prohibits the government from arbitrarily excluding specific reporters from access to press conferences or other facilities or materials generally open to the media. The government may not “selectively exclude news media from access to information otherwise made available for public dissemination,” because the government cannot be “allowed to affect the content or tenor of the news by choreographing which news organizations have access to relevant information.” *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 9 (1st Cir. 1986).

In other words, “once there is a public function, public comment, and participation by some of the media, the First Amendment requires equal access to all of the media or the rights of the First Amendment would no longer be tenable.” *Am. Broad. Cos. v. Cuomo*, 570 F.2d 1080, 1083 (2d Cir. 1977); see also, e.g., *Telemundo of L.A. v. City of Los Angeles*, 283 F. Supp. 2d 1095, 1102–03 (C.D. Cal. 2003) (noting First Amendment prohibits discriminating in press access “to public forums or information”); *United Teachers of Dade v. Stierheim*, 213 F. Supp. 2d 1368, 1373–74 (S.D. Fla. 2002) (holding that exclusion of a reporter from a press room that was open to the media was improper); *Westinghouse Broad. Co. v. Dukakis*, 409 F. Supp. 895, 896 (D. Mass. 1976) (holding selective exclusion of television station from press conference violated First Amendment); *Borreca v. Fasi*, 369 F. Supp. 906, 909-10 (D. Haw. 1974) (enjoining mayor from excluding reporter from news conferences).

The mere generic assertion of unspecified “reasons of security” cannot justify excluding a reporter from a press conference that has been “made publicly available as a source of information” to the media. *Sherrill v. Knight*, 569 F.2d 124, 129-30 (D.C. Cir. 1977). The lack of any specific factual basis for the claimed safety concerns strongly suggests they were pretextual. Selective targeting of members of the press for exclusion is blatantly unconstitutional, regardless of whether the government intends to discriminate based on content. *Minneapolis Star & Tribune Co. v. Minn. Comm’r of Revenue*, 460 U.S. 575, 591–92 (1983). Where, as here, the facts suggest that such content-based discrimination may indeed have been a motivating factor in excluding Ms. Raguso from covering the news, the constitutional violation is particularly stark. *Sherrill*, 569 F.2d at 129.

Beyond the threat to Ms. Raguso’s press freedoms, your office’s actions exert a chilling effect on the journalism community as a whole. No reporter should have to couch their coverage of public officials for fear of losing basic rights guaranteed to the media. Whatever your office’s intent may have been, its actions suggest that reporters will be punished for critical coverage. The First Amendment does not tolerate such interference with a free press, intentional or otherwise.

Thank you for your attention to these matters. Please let me know if you have any questions.

Sincerely,

FIRST AMENDMENT COALITION



David Loy  
Legal Director

NORTHERN CALIFORNIA CHAPTER OF  
THE SOCIETY OF PROFESSIONAL  
JOURNALISTS

REPORTERS COMMITTEE FOR FREEDOM  
OF THE PRESS