

# Media of Nebraska, Inc.

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April 16, 2021

Office of Governor Pete Ricketts  
Attn: Taylor Gage  
P.O. Box 94848  
Lincoln, NE 68509-4848

VIA EMAIL ONLY TO [taylor.gage@nebraska.gov](mailto:taylor.gage@nebraska.gov)

***Re: Media Credential Application issues***

Dear Mr. Gage:

On behalf of Media of Nebraska, we write to formally object to the media credential policy your office promulgated yesterday, April 15, 2021, that includes an apparent requirement that media outlets fill out the "Media Credential Application" that accompanied the release before being granted or denied access to certain events involving the governor.

The policy is troubling because it seems to confer on your office the authority to grant access to some media outlets but not others. Courts that have ruled on the constitutionality of restrictions on press access have found that "whenever an area is open to either the general public or to some members of the press, the First Amendment restricts the government's ability to selectively regulate the press's access to that area." *Nicholas v. Bratton*, 376 F.Supp.3d 232, 260 (2019). However, this "right to equal access under the [F]irst [A]mendment is not absolute, ... and the interest to be served by the newsgathering activity at issue must be balanced against the interest served by denial of that activity." *WPIX, Inc. v. League of Women Voters*, 595 F.Supp. 1484, 1489 (S.D.N.Y. 1984). At issue are two questions: "(1) whether the unequal access afforded to different journalists is based on content-neutral grounds, and (2) whether that unequal access serves a legitimate governmental objective and the benefits derived from the restriction are greater than the benefits that would result from lifting the restriction." *Nicholas v. Bratton*, 376 F.Supp.3d at 260.

Certainly, as the preface to the Media Credential Application suggests, implementing a media credentialing policy aimed at regulating "operational limits" and promoting "security reasons" would be a legal, content-neutral basis to restrict media access. But the policy promulgated yesterday is objectionable not only because many of the questions do not seem to have any relationship to "operational limits" or "security reasons," but also because your office has failed to explain why the requested information advances either of those stated purposes. For example, the public has no way to know why a media outlet's source of funding has anything to do with "operational limits" or "security reasons." Further, it proposes onerous, unnecessary and chilling steps, such as requiring a notarized letter from a publisher – to whom you could easily reach out for verification. It is clearly improper to seek information about the finances of media organizations – this is proprietary information.

Moreover, the policy promulgated yesterday is silent as to the relevance of answers to the application questions to the governor's decision-making process when approving or accepting an application. The First Amendment requires that credentialing systems utilize "narrow and specific standards which advance a compelling state interest." *Quad-City Community News Serv. v. Jebens*, 334 F.Supp. 8, 17 (S.D. Iowa 1971). Failing to be transparent about what information tends to result in approval or denial disregards the importance of relating the questions in the application to a legitimate governmental purpose and, as such, smacks of arbitrariness.

Finally, the policy is objectionable because it is silent on a media outlet's right to appeal. "Such rules must, among other things, be so fashioned that due process is provided prior to exclusion, with opportunity for adequate impartial review wherever a publication is excluded." *Consumers Union of U.S. v. Periodical Correspondents' Ass'n*, 515 F.2d 1341, 1351 (D.D.C. 1973). The policy promulgated yesterday does not even contain an effective date, let alone a timeframe for an appeal.

In the press release that accompanied the policy issued yesterday, your office claimed that the policy was being implemented to "ensure that the people of Nebraska receive factual information about the business of state government." But once again, the stated purposes of the policy have nothing to do with many of the questions in the application. The failure to connect the application questions to legitimate governmental purposes is a red flag that the policy violates the First Amendment.

We would welcome the opportunity to work with you on a reasonable approach to meeting your stated goals of promoting security and that we work within "operational limits." In the meantime, Nebraska print and broadcast outlets have been asked not to complete the application. We look forward to hearing from you.



Dave Bundy,  
President of Media of Nebraska,  
Editor of the Lincoln Journal Star



Jim Timm,  
President/Executive director,  
Nebraska Broadcasters Association



Randy Essex,  
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