

January 16, 2020

The Honorable Mitch McConnell
Majority Leader, United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Charles E. Schumer
Minority Leader, United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Re: Restrictions on press access during upcoming Senate impeachment trial

On behalf of a coalition of undersigned organizations dedicated to government transparency and the First Amendment, we write today regarding a proposed plan that would place unprecedented restrictions on the press seeking to inform the public about the Senate impeachment trial of President Donald J. Trump.

The proposal – reported by multiple media outlets but not published online by the Senate for public inspection – would reportedly¹ restrict the movements of the press to a “pen,” install a magnetometer, and limit journalists from using electronic devices to report on the trial from the gallery.

We share the concerns² of the Standing Committee of Correspondents and press freedom organizations and vigorously object to these proposed restrictions.

The Senate should abandon installing magnetometers and embrace the affordances of modern technology to empower journalists to inform the hundreds of millions of Americans distributed across our union about a matter of the greatest public interest in this young millennium.

In the 225 years since the Senate opened public galleries, the arc of public access to its proceedings has bent towards openness, despite attempts by some to restrict the rights of the people to know what our representatives were doing on our behalf.

In fact, for six years after it first convened in 1789, the Senate was deliberately opaque. While the nation’s “greatest deliberative body” published a weekly journal with a list of votes and summary of activity, the public were unable to enter the chamber and view the proceedings.

The Senate has made great strides in increasing press freedom since it first opened galleries to the public in 1795, from creating the first press galleries in 1841 to the first television broadcast

¹ “Impeachment Trial Security Crackdown Will Limit Capitol Press Access,” Roll Call
<http://www.rollcall.com/news/congress/impeachment-trial-security-crackdown-will-limit-capitol-press-access>

² Statement of the Chair of the Standing Committee of Correspondents on proposed restrictions, Twitter.
<https://twitter.com/sarahdwire/status/1217204300260216835>

in 1974³ to the first live broadcasts from C-SPAN in 1986⁴ to the launch of Senate.gov in 1995 to livestreams⁵ from the floor today.

While congressional proceedings should be open to the public as a matter of general principle, the public interest value of transparency in an impeachment trial supersedes all others. As is true in state legislatures and federal courts across the country, public access can be preserved without unduly restricting movement or the capacity to report by adding cameras to courtrooms and allowing reporters to use laptops and smartphones. Indeed, when in doubt, a presumption of openness should prevail.

Instead of imposing restrictions on the nation's greatest deliberative body that seek to go back to the 20th Century, the Senate should be using modern technologies to enable every American to arm themselves with knowledge about how our representatives are upholding their oaths to be fair and impartial jurors in one of the most momentous proceedings in our nation's history. The public and the press should be empowered to bear and use computing devices to bear witness to history from the galleries. C-SPAN should be allowed⁶ into the Senate Chamber to position its cameras so that they can broadcast the historic proceedings throughout the country and make the archives available to the public.

Unfortunately, these proposed restrictions follow previous attempts to crackdown on media access in 2017, during the Senate's effort to repeal the Affordable Care Act, and in 2018, during the confirmation hearings of Supreme Court Justice Brett M. Kavanaugh. The Members of Congress are, however, more secure in the Capitol Complex than they have ever been in our union's history. The U.S. Capitol Police has more than 2,300 officers⁷ and civilian employees, with a budget of \$450 million, which is greater than many major American cities.

Journalists are not, as the Senate itself unanimously affirmed in 2018, the "enemy of the people," nor should they ever be treated as such by an institution in the United States government. When Members of Congress answer questions from the public in town halls at community centers or in online forums, or from the press in the civic spaces of Congress, they are fulfilling a core element of their role in representative government: holding themselves accountable to the people who they serve.

³ First Television Broadcast from the Senate Chamber, https://www.senate.gov/artandhistory/history/minute/First_Television_Broadcast_from_the_Senate.htm

⁴ First Live Television in the Senate Chamber https://www.senate.gov/artandhistory/history/minute/live_television.htm

⁵ Senate Floor Webcast, <https://www.senate.gov/floor/>

⁶ C-SPAN letter to the Senate requesting cameras be allowed <https://static.c-span.org/assets/documents/letters/C-SPAN-Letter-to-Senate.pdf>

⁷ US Capitol Police "Fast Facts" <https://www.uscp.gov/media-center/uscp-fast-facts>

These proposed restrictions are a “huge mistake”⁸, as both Republican and Democratic Senators have said since they were first reported. The Ranking Member on the Rules Committee, Senator Amy Klobuchar (D-MN), said it’s a “big mistake.” Senator Mike Braun (R-IN) agreed, noting that “I don’t think you guys should ever be restricted.” As Senator John Kennedy (R-LA) said, this “sends the wrong message” to the public.

They’re right: the American people and the world are watching whether this Senate will not only vote to reaffirm “the vital and indispensable role the free press serves” in a unanimous resolution⁹ but uphold that essential role in practice by preserving open access at a critical moment in our history.

We ask that the Sergeant at Arms and the Senate Rules Committee rescind these overly restrictive regulations. Short term restrictions on access all too often metastasize into long term bans. Should there still be a desire to promulgate new regulations, we expect it will occur in an open and deliberative fashion — not prompted by the rush of history, but rather in light of informing our posterity.

Please do not hesitate to contact Alexander B. Howard, director of the Digital Democracy Project at the Demand Progress Educational Fund, at alex@demandprogress.org with any questions.

Sincerely,

Alexander B. Howard

American Civil Liberties Union
Citizens for Responsibility and Ethics in Washington (CREW)
Defending Rights and Dissent
Demand Progress
Fix the Court
Government Information Watch
Mainers for Accountable Leadership
Media Freedom Foundation
National Coalition Against Censorship
National Security Counselors
Open The Government
PEN America

⁸ “Senators in both parties rip impeachment press access,” Politico

<https://www.politico.com/news/2020/01/15/senators-press-restriction-impeachment-099378>

⁹ Senate Resolution “Reaffirming the vital and indispensable role the free press serves,” 115th Congress. <https://www.schatz.senate.gov/imo/media/doc/FPR%2008-15-18.pdf>

Project Censored

Public Citizen

Woodhull Freedom Foundation