

January 30, 2020

Dear Senator,

On behalf of the American Civil Liberties Union, we strongly urge you to ask Senate leaders to rescind the Senate's severe restrictions currently imposed on news media covering the impeachment trial. As a nonpartisan organization dedicated to upholding press freedoms under the First Amendment, we have strong concerns that the restrictions are substantially harming journalists' ability to report on the trial and thus compromising the public's understanding of this historically important event. We urge you to end these harsh limitations immediately so that the remainder of the Senate impeachment trial, including the final votes, is fully transparent to the American public.



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Press freedoms are pivotal to a functioning and accountable government and to preserving all other cherished civil liberties, given the essential role that journalists serve in informing the public and shining a light on government activities. If there's ever a time for robust press access, it's when the United States Senate is deciding whether to convict and remove an impeached President of the United States — a government proceeding that brings the whole of our constitutional scheme into sharp focus.

However, the Senate's press restrictions are making it harder to obtain crucial context and independent reporting from the journalists chronicling this extraordinary event, thereby also impairing the public's ability to bear witness. The specific rules<sup>1</sup> include a prohibition on electronic devices such as laptops in the only area of the Senate chamber where the press corps is allowed and a new magnetometer in the entrance way added for the trial. These two provisions interact to needlessly slow down reporters by requiring them to step out each time to report what they observed and wait in queue to return.

Furthermore, the new rules imposed for the trial forbid reporters from conducting "walk and talk interviews" in previously open areas and confine them to roped-off pens away from senators — literally keeping the press away from the elected leaders they routinely cover. As Associated Press reporter Andrew Taylor noted,<sup>2</sup> "The press has had the right to walk, unfettered, through those doors and others to witness

public sessions of the Senate since the 18th century. Tomorrow, there will be a police officer and a magnetometer in our way for the 1st time ever."

The notion that the government, acting in the public's name, is forbidding journalists from interviewing public officials on public grounds is unacceptable to begin with, but we are further disturbed by the accounts of actual implementation. Incidents now include police officers stopping reporters from continuing interviews with willing senators<sup>3</sup> and even speaking with a trial participant who is not a senator.<sup>4</sup> This evidence suggests that the restrictions are metastasizing into a broader blanket ban on journalistic activities in the U.S. Capitol.

Another troubling press restriction is the total exclusion of independent video cameras from the Senate chamber, especially in combination with the related ban on journalists and photographers from carrying electronic devices into the Senate viewing gallery. Because only a very small number of visitors to the U.S. Capitol are able to watch in person, virtually all Americans must rely on press entities for independent news, images, and contextual information about the event. Thus C-SPAN along with other news networks had sought to use their own cameras to record the impeachment trial and to obtain video feeds from all cameras, so they could choose which imagery to feature, but the Senate denied their request.<sup>5</sup>

As a result, the government is completely controlling the images people can see of the impeachment trial and depriving the public of the benefit of the editorial choices that independent outlets would otherwise make in broadcasting the event, such as showing the images of senators' reactions to the testimony.<sup>6</sup> As news anchor Chris Wallace put it, "Because these are the government set of controlled cameras, we are only able to see the podium and who is speaking. We are not able to see what is the emotion, what is the state of consciousness of the members of the Senate as all this goes on at considerable length."<sup>7</sup> For the striking contrast in resulting coverage as

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<sup>1</sup> Melissa Wasser and Linda Moon, *Senate rules on impeachment press coverage restrict real-time reporting*, Reporters Committee for Freedom of the Press (Jan. 23, 2020), <https://www.rcfp.org/trump-impeachment-coverage-rules/>.

<sup>2</sup> Andrew Taylor (@APAndrewTaylor), Twitter (Jan. 20, 2020, 8:29 PM), <https://twitter.com/APAndrewTaylor/status/1219431703904649217>.

<sup>3</sup> Ashraf Khalil, *Reporters getting 1st taste of impeachment restrictions*, Associated Press (Jan. 16, 2020), <https://apnews.com/dd945e7c4c820637272a087d6b99043b>.

<sup>4</sup> Leigh Ann Caldwell (@LACaldwellDC), Twitter (Jan. 27, 2020, 3:30 PM), <https://twitter.com/LACaldwellDC/status/1221893194318864384>.

<sup>5</sup> Dan Berman, *The Senate controls the pictures at the impeachment trial -- here's why and what it means*, CNN (Jan. 24, 2020), <https://www.cnn.com/2020/01/23/politics/senate-impeachment-television-cameras-media-coverage/index.html>.

<sup>6</sup> See, e.g., Reliable Sources, *The impact of press restrictions during impeachment*, CNN (Jan. 26, 2020), <https://www.cnn.com/videos/business/2020/01/26/the-impact-of-press-restrictions-during-impeachment.cnn>.

<sup>7</sup> Michael M. Grynbaum, *Trump Trial Day 1: Roped-Off Reporters and TV Cameras Run by the Senate*, The New York Times (Jan. 21, 2020), <https://www.nytimes.com/2020/01/21/business/media/impeachment-trial-media-coverage.html>.

well as the questionable public value of banning even C-SPAN, one needs only to point to the recent impeachment hearings and the State of the Union addresses when C-SPAN video cameras were allowed in the room.

The totality of all these press restrictions, including new ones imposed by the Senate just for the trial, raises strong doubts about senators' commitment to the freedom of the press and government transparency as pillars of our constitutional democracy. Our concerns are also informed by the lack of specific, articulable security rationales justifying the new restrictions, especially given that Hill reporters must be credentialed<sup>8</sup> and the U.S. Capitol already has one of the most heavily armed police presences in the country. Not only do the restrictions keep the press corps literally at a distance from their news sources, the resulting coverage impairments distort and shrink the availability of accurate, timely information at a moment of intense public interest and monumental historical significance. The restrictions also undermine the legitimacy of the impeachment trial by needlessly shielding the President and the Senate jurors deliberating on his actions from full and independent scrutiny.

For these reasons, the ACLU wrote to you earlier this month as part of a coalition of civil society organizations<sup>9</sup> asking the Senate not to move forward with the restrictions as proposed and echoing the objections previously shared by the Standing Committee of Correspondents. Senators on both sides of the aisle have also criticized the rules, including Sen. John Kennedy ("It's a huge mistake. U.S. senators are grown women and grown men. If they don't want to make a comment, they know how to say 'no comment.' ... We aren't children.")<sup>10</sup> and Sen. Martin Heinrich ("These restrictions are antithetical to a free press, good governance, and the ability of the public to be fully informed about what we as elected leaders do in their name.")<sup>11</sup> We wholeheartedly agree.

We are troubled that the rules hobbling press freedoms are still in place for the impeachment trial despite the demonstrated concrete harms to the news coverage, even as the Senate nears the final votes. Although the Sergeant at Arms of the

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<sup>8</sup> Sarah J. Eckman, *Congressional News Media and the House and Senate Press Galleries* (Apr. 13, 2017), CONG. RESEARCH SERVICE (last updated Apr. 13, 2017), <https://fas.org/sgp/crs/misc/R44816.pdf>.

<sup>9</sup> Coalition Letter to Senate Leaders Mitch McConnell and Charles Schumer (Jan. 17, 2020), [https://s3.amazonaws.com/demandprogress/documents/Restrictions\\_on\\_press\\_access\\_during\\_Senate\\_impeachment\\_trial\\_2020-01-17.pdf](https://s3.amazonaws.com/demandprogress/documents/Restrictions_on_press_access_during_Senate_impeachment_trial_2020-01-17.pdf).

<sup>10</sup> Marianne Levine And Burgess Everett, *'Huge mistake': Senators in both parties rip impeachment press access*, Politico (Jan. 15, 2020), <https://www.politico.com/news/2020/01/15/senators-press-restriction-impeachment-099378>.

<sup>11</sup> Michael Brice-Saddler, *Senator blasts 'draconian' restrictions on journalists covering impeachment trial*, The Washington Post (Jan. 21, 2020), <https://www.washingtonpost.com/politics/2020/01/21/martin-heinrich-impeachment-trial/>.

Senate, Michael Stenger, enforces Senate protocols,<sup>12</sup> the members of the Senate and the Senate Committee on Rules and Administration in particular determine those regulations.<sup>13</sup> Thus we urge you to demand the immediate rescission of the overly restrictive rules on the press and do so before the Senate holds its final votes. Given the high stakes, it is imperative that the rest of the Senate's impeachment trial unfolds in the full, unfettered view of a free and independent press.

If you have any questions, please contact Kate Oh ([koh@aclu.org](mailto:koh@aclu.org)) and Kate Ruane ([kruane@aclu.org](mailto:kruane@aclu.org)). Thank you for your consideration.

Sincerely,



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<sup>12</sup> United States Senate, *Office of the Sergeant at Arms and Doorkeeper*, [https://www.senate.gov/reference/office/sergeant\\_at\\_arms.htm](https://www.senate.gov/reference/office/sergeant_at_arms.htm) (last visited Jan. 29, 2020).

<sup>13</sup> Under Rule XXV of the Standing Rules of the Senate, the Committee on Rules and Administration holds general authority to make rules and regulations for the Senate floor and galleries.