

February 4, 2014

VIA E-MAIL

Hon. Morgan Carroll
President of the Senate
State of Colorado

Hon. Mark Ferrandino
Speaker of the House of Representatives
State of Colorado

Members of the Standing Committee of the
Colorado Capitol Press Association

Dear Senator Carroll, Speaker Ferrandino and members of Standing Committee of the Capitol Press Association:

This law firm represents *The Colorado Independent*, an online newspaper providing information to the people of the State of Colorado and beyond about matters of public concern at its website www.coloradoindependent.com. The Editor, Susan Greene, has shared with me the correspondence between Colorado Independent and the Colorado Capitol Press Association, and the House and Senate leadership concerning the requests to obtain press credentials to cover the workings of the House and Senate. Apparently, despite numerous attempts, *The Colorado Independent* has failed to obtain press credentials allowing its correspondents to access the House and Senate floors. I write, respectfully, to request that *The Colorado Independent* forthwith be issued the press credentials to which it is entitled, under the published criteria for membership in the Colorado Capitol Press Association. By “forthwith,” I mean, *immediately*, without any further delay.

As I understand it, the Capitol Press Association made an initial recommendation on January 13, on the mistaken belief that *The Colorado Independent* was a paid voice of the Colorado Democracy Alliance because that organization is underwritten, in part, by two of the Colorado Independent’s funding sources. Obviously, if that criteria were applied to other credentialed press entities in the Capitol, numerous other organizations – including “mainstream newspapers” who accept advertising revenues from myriad political organizations, much less charitable and philanthropic organizations – would be similarly disqualified from membership.

Since that time, Ms. Greene has provided the Association with a cogent and articulate statement clarifying that *The Colorado Independent*, is, in fact, is a truly *independent* news organization, un beholden to, and not operating under the auspices of, any political advocacy

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February 4, 2014

Page 2

group. I would note, in addition to Ms. Greene's statement of the reasons why *The Colorado Independent* clearly and unequivocally satisfies the Association's published criteria for membership, that among the primary descriptors of those criteria is the statement that "the Standing Committee shall limit its recommendations for access to the Chamber floors to *bona fide correspondents of repute* in their profession . . ." One would be hard pressed to find a group of *bona fide* correspondents with greater, and more well-deserved "repute in their profession" than *journalists* of the likes of Susan Greene, Mike Littwin, and Mike Keefe (not to mention Dave Krieger in the area of sports, and Robert Dennerstein in the area of film criticism).

The notion that an online news organization which has committed more than one full-time correspondent to covering the State Capitol, and makes its reporting on the proceedings of the legislature available, free of charge, to five newspapers statewide, would be denied access to the floors of the Senate and House on equal footing with other members of the mainstream press is not only counter-sensical, but in all likelihood an unconstitutional abridgement of the freedom of the press. *See, e.g., Getty Images News Servs. Corp. v. Dep't of Defense*, 193 F.Supp.2d 112, 119 (D.D.C. 2002) (noting that "equal access claims by the press warrant careful judicial scrutiny"); *Id.* ("press facilities having been made publicly available as a source of information for newsmen, the protection afforded newsgathering under *the first amendment guarantee of freedom of the press requires that this access not be denied arbitrarily or for less than compelling reasons*. Not only newsmen and the publications for which they write, but also *the public at large have an interest protected by the first amendment in assuring that restrictions on newsgathering be no more arduous than necessary, and that individual newsmen not be arbitrarily excluded from sources of information.*") (quoting *Sherrill v. Knight*, 569 F.2d 124 (D.C. Cir.1977)).

As I know you are aware and fully appreciate, "the loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

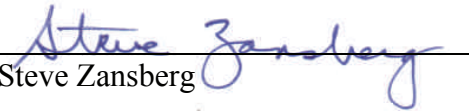
Accordingly, once again, I hereby respectfully request that *The Colorado Independent* be issued press credentials to provide its correspondents with access to the House and Senate floors on par with the access provided other *bona fide* correspondents for news media entities. I am about to depart, and will be away from the State until Wednesday, February 12th. During my time away, I would be glad to set a meeting with you to further discuss this matter. However, in the interim, the *status quo* cannot be maintained; I greatly appreciate your seeing to it that *The Colorado Independent* is provided access to the Colorado State House and Senate forthwith.

Thank you, in advance, for your prompt consideration and action on this request.

February 4, 2014
Page 3

Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: 
Steve Zansberg

SDZ/cdh

cc: Susan Greene, Editor, *The Colorado Independent*
Dean Toda c/o the Speaker's office
Joe Hanel, on behalf of the CCPA
Jeffery Roberts, Executive Director, Colorado Freedom of Information Coalition