Everybody Out of the Press Pool

How Donald Trump's Exclusion of Media Outlets Violates Free Expression Principles

Jane Kirtley

12.10.2026 doi: 10.59704/d58289266f59855b

U.S. President Donald Trump is clear about his feelings about a free press. He despises it. His invectives against individual journalists and media outlets are legion. According to the Committee to Protect Journalists, he first used the term "fake news" in December 2016, and referred to the news media as "the enemy of the people" in December 2017, both during his first term as President. That rhetoric has only escalated during his second term. He has proudly proclaimed that his efforts to discredit the press have undermined public confidence in the news media. And now his mission appears to be to exclude from the White House any outlets he deems insufficiently supportive of him and his policies.

Creative Approaches

During his current term, the attacks have become as overt and shameless as they are unprecedented. For example, President Trump has filed numerous defamation lawsuits against both U.S.-based and international news media, including The New York Times, the British Broadcasting Corporation (BBC), The Wall Street Journal, and CNN. He sued the Des Moines [Iowa] Register and a pollster for election interference and consumer fraud after they reported just prior to the 2024 election that he was trailing in the polls in a state that he later won. (That case was dismissed on September 23, 2026, on the ground that it involved "speech that enjoys the highest category of First Amendment protection.") He has also used the regulatory authority of the Federal Communications Commission to threaten television networks with retaliation, including the loss of broadcast licenses, for airing programs that include satirical commentary the President finds offensive.

Barring Media from the White House

In addition to suing news outlets for their published content, President Trump has recently focused on barring certain news outlets from the White House or other government-owned and operated locations, such as aboard Air Force One. For example, in February 2025, he banned reporters from the Associated Press (AP) from attending certain press pool events after the wire service announced that it would defy Trump's executive order purporting to rename the Gulf of Mexico as the Gulf of America. The AP sued, claiming that its exclusion was based on the President's disagreement with its viewpoint, in violation of the First Amendment to the U.S. Constitution.

A federal District Court judge in Washington, D.C. granted a preliminary injunction ordering the White House to lift the restrictions in April 2025, but permitted the government to appeal, resulting in a partial stay from the D.C. Circuit. A majority of the three-judge panel concluded that the Oval Office, Air Force One and Mar-a-Lago are nonpublic spaces controlled by the President and to which the First Amendment does not apply. But it also found that the East Room of the White House does not share those same characteristics, and that access to that space for the wire service should be restored. The appeals court denied an emergency petition to rehear the stay *en banc*, and the case on the merits is pending.

The Latest Salvo

President Trump's latest salvo, also still under judicial review, involves his attempt to block CNN, MS NOW, and Politico from entering the White House at all, "as a result of their constant 'reporting' FAKE NEWS." He promised "Other Fake News Media Outlets to follow."

The day after his social media post, MS NOW reported that one of its journalists was denied access to the White House grounds and ordered to surrender her access badge (known as a "hard pass," which is issued by the White House), as were reporters from CNN and Politico. All three outlets sued in the federal District Court in Washington, D.C., calling the restrictions "a direct assault on the First Amendment" in retaliation for the content of their reporting, designed to coerce the organizations into providing more favorable coverage of him.

Due Process and Viewpoint Discrimination

Although, at least as a legal matter, the White House has no obligation to grant access to the press at all, once it does so, federal court precedent holds that, under the First and Fifth Amendments, *bona fide* journalists may not be denied White House press passes arbitrarily. And as recently as 2024, the U.S. Supreme Court reaffirmed the principle that speakers cannot be punished based on their viewpoints. Accordingly, the three news outlets argue that their exclusion from the White House violates the Constitution on both grounds: as unlawful viewpoint discrimination and retaliation for their reporting, and because no clear warnings or justifications were provided before the bans were imposed.

This is not the first time President Trump tried to revoke hard passes – both CNN's Jim Acosta and Playboy magazine correspondent Brian Karem temporarily lost their access during his first term. But so far, the courts have rejected each of these attempts as unconstitutional, finding that they denied the journalists due process.

National Security as a Pretext

Clearly, President Trump is antagonistic against outlets he claims are biased against him. But given existing judicial interpretations, how could he hope to prevail in this case? The answer is that the government has now invoked an additional justification: national security.

Governments often regard this vague term as the trump card that outweighs other interests like government transparency. But U.S. Supreme Court precedent has made clear that, when freedom of expression is involved, it is not sufficient for the government simply to cite national security. Rather, it has the burden to prove, as it failed to do in the "Pentagon Papers" case, that direct, immediate and irreparable harm would result if the expressive activity was not prohibited.

And, indeed, that is what U.S. District Judge Timothy J. Kelly (a Trump appointee) found in his September 24, 2026 ruling granting a temporary restraining order (TRO) against the White House. Expressing skepticism that national security was even implicated and finding that the media organizations were likely to suffer irreparable harm as long as their passes were withheld, he ordered immediate reinstatement of the press passes for a period of fourteen days.

Trump's Defiance of TRO

But within days of the court's order, the Trump White House effectively defied it by prohibiting reporters from CNN and Politico from traveling with him on Air Force One, arguing that access to the plane was different from access to the White House, and that Judge Kelly's ruling did not explicitly address press pool assignments. The decision to bar these outlets was particularly significant because Politico was designated the "primary pooler" for a trip to Nebraska. Other pool members declined to accept the assignment, which, CNN reported, demonstrated "a show of solidarity by news outlets that usually compete fiercely on the White House beat."

Back to Court

Within days, the news outlets were back before Judge Kelly, who, on October 8, 2026, extended his initial order to October 13, the day after a federal holiday. CNN reported at that hearing that Kelly, apparently still skeptical of the government's national security claims, also questioned whether, as Department of Justice (DOJ) attorney Michael Velchik argued, the President actually has the power to decide to cancel media access once he has made clear that he believes the news outlets have published "fake news" that violates national security, and if he had provided

adequate notice to meet Fifth Amendment requirements. The media attorney, Theodore Boutrous, countered that even if that notice met due process standards, it would still amount to viewpoint or content discrimination and be unconstitutional under the First Amendment. However Judge Kelly rules on October 13, many questions will remain in play, as it is almost certain that one or both sides will appeal.

Important Questions at Stake

As the latest case underscores, President Trump's administration has challenged many norms. Presidents of both parties have always had complicated relations with the press. President Richard Nixon had an enemies list that included journalists. Barack Obama had a frosty relationship with Fox News, and his Treasury Department tried to exclude a Fox correspondent from pool coverage of an interview. But President Trump's multi-faceted approach to suppress robust and independent journalism is without precedent.

The combination of legal suits, pressure from regulatory agencies, and negative language aimed at undermining the press is significant in itself. But the repeated attempts to exclude particular news outlets from access to the President and the White House mark a line in the sand that the news media must address. As attorney Boutrous has said, "The case has gotten stronger for the plaintiffs thanks to President Trump" confessing "viewpoint discrimination and retaliation." Columbia Journalism Review has called the press reaction to the bans on its competitors "a striking and heartening show of solidarity."

But whether the courts will agree, and whether that solidarity will endure, are critical questions. As midterm elections loom, and as the President and his administration engage in ever more outrageous rhetoric, the news media must determine whether they can, ethically, decline to cover what President Trump does and says. The public has a right to know, and the press must perform its essential function of conveying that information. But it must also maintain its independence to keep government accountable. It won't be easy. And that's not Fake News.

ABOUT THE AUTHOR

Jane Kirtley
Jane E. Kirtley is the Silha Professor of Media Ethics and Law Emerita at the University of Minnesota, where she directed the Silha Center for more than 25 years. She was executive director of the Reporters Committee for Freedom of the Press from 1985-1999

SUGGESTED CITATION

Kirtley, Jane: Everybody Out of the Press Pool: How Donald Trump's Exclusion of Media Outlets Violates Free Expression Principles, Verfassungsblog, 12.10.2026, doi: 10.59704/d58289266f59855b.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20261013-143321-0.