

# REPORTERS COMMITTEE

FOR FREEDOM OF THE PRESS

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March 14, 2019

Sarah Huckabee Sanders  
White House Press Office  
1600 Pennsylvania Avenue NW  
Washington, D.C. 20500

Re: Hard Pass for Mr. Andrew Feinberg

Dear Ms. Sanders:

The Reporters Committee for Freedom of the Press is a nonprofit organization founded in 1970 that provides pro bono legal representation, *amicus curiae* support, research, and other legal resources to defend First Amendment freedoms and the newsgathering rights of journalists. We write to raise our concerns regarding the White House's failure to grant Andrew Feinberg's application for a hard pass or, at a minimum, to explain the basis for its denial and articulate the standard used to make this decision.

Mr. Feinberg is the White House correspondent and Managing Editor of Breakfast Media LLC and has freelanced for other publications, including POLITICO and Sentinel Newspapers. Founded in 2008, Breakfast Media publishes two online news sites, [www.beltwaybreakfast.com](http://www.beltwaybreakfast.com) and [www.broadbandbreakfast.com](http://www.broadbandbreakfast.com), which provide news coverage of the technology and telecommunications policy sector. See About, Beltway Breakfast, <https://www.beltwaybreakfast.com/about/>. Mr. Feinberg holds congressional press credentials and reports from the White House frequently using day passes, which require Mr. Feinberg to submit information to the White House Press Office on a yearly basis. Mr. Feinberg has a sizable audience for his reporting. For example, [www.beltwaybreakfast.com](http://www.beltwaybreakfast.com), which publishes the majority of Breakfast Media's White House coverage, had tens of thousands of active users per week and more than 110,000 users during a sample, thirty-day period from December 13, 2018 to January 13, 2019.

Nearly two years ago, in April 2017, Mr. Feinberg applied for a hard pass. After failing to receive any response, Mr. Feinberg and his employer made repeated attempts to contact the White House Press Office and the Secret Service to inquire about the status of his application. In April 2018, Deputy Press Secretary Lindsay Walters notified Mr. Feinberg by e-mail that his application would not be approved because "hard passes are for outlets of mass distribution," without any further explanation. Since then, Mr. Feinberg's requests for reconsideration and specification of the criteria for assigning hard passes have gone unanswered.

The lack of a hard pass creates significant reporting challenges for journalists whose job it is to cover the White House. Mr. Feinberg has stated that his lack of a hard pass causes delays that, in some instances, have prevented him from covering a briefing or event, particularly when such events are held without notice. See also Decl. of Joseph Gillman in Support of Pl.'s Mot. for TRO & Prelim. Inj.,

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*CNN v. Trump*, No. 18-cv-02610-TJK, Dkt. 2–5 at ¶ 9 (D.D.C. Nov. 13, 2018) (“A hard pass is critical for anyone who reports regularly on the White House.”). In addition, without a hard pass, a journalist is deprived of access when the President travels. *Id.* at ¶¶ 14–15 (explaining that a hard pass is “invaluable for individuals [who] travel with the President aboard Air Force One” and noting that it “minimizes delays and allows a journalist to [cover presidential events domestically and abroad] unimpeded”).

The First Amendment and the Due Process Clause protect the rights of bona fide journalists to access the White House and report the news. *See, e.g., Cable News Network, Inc. v. ABC*, 518 F. Supp. 1238, 1245 (N.D. Ga. 1981). Indeed, *Sherrill v. Knight*, decided over forty years ago, firmly establishes that the White House cannot deny reporters White House press credentials absent “a compelling governmental interest.” 569 F.2d 124, 130–31 (D.C. Cir. 1977); *see also CNN v. Trump*, No. 1:18-cv-02610-TJK, Dkt. 22 at 6:13–15 (Tr. of Motion Hearing) (D.D.C. Nov. 16, 2018) (reaffirming that the “Fifth Amendment’s due process clause protects a reporter’s First Amendment liberty interest in a White House press pass”). *Sherrill* further requires the White House to “publish or otherwise make publicly known the actual standard employed in determining whether an otherwise eligible journalist will obtain a White House press pass.” 569 F.2d at 130.

In *Sherrill*, journalist Robert Sherrill applied for and was denied a White House press pass. *Id.* at 126. The D.C. Circuit explained that White House press passes are “routinely obtained in the following manner”:

A journalist submits a request for a pass to the White House Press Office. After determining that the applicant has obtained a pass for the House and Senate press galleries, resides in the Washington, D.C. area, and needs to report from the White House on a regular basis . . . , the Press Office forwards the application to the Secret Service for a security check, including a background FBI investigation. Whether a pass is then issued depends solely on the recommendation of the Secret Service.

*Id.*

Mr. Feinberg plainly satisfies the criteria identified in *Sherrill*. He holds a congressional press pass, “resides in the Washington, D.C. area,” and “needs to report from the White House on a regular basis,” as his near-daily presence at the White House confirms. To the extent that any application is denied by the Secret Service for security-related reasons, the applicant must be so informed. *See id.* at 131 (“[N]otice . . . of the factual bases for denial [of access to White House press facilities] with an opportunity to rebut is a minimum prerequisite for ensuring that the denial is . . . [not] based on arbitrary or less than compelling reasons.”). It is apparent, however, that the reason for the denial here is not security-related, given that the temporary credential that Mr. Feinberg must obtain from the Secret Service each day allows him to enter and move about the White House’s authorized press areas without the need for a staff escort.

None of the criteria in *Sherrill* relate to the size of the media outlet for which a reporter works, and we are aware of no published regulation that does. To the extent the White House has

adopted a new standard for determining whether an otherwise eligible journalist can obtain a White House press pass, it must publish this standard or otherwise make it publicly known. *Id.* at 130. If this new standard does, in fact, limit hard passes to “outlets of mass distribution,” the White House must clarify what this vague term means. *Id.* (rejecting Secret Service’s proffered reason for denying hard pass based on “reasons of security,” finding that phrase “unnecessarily vague and subject to ambiguous interpretation”). Moreover, the White House must apply any such standard consistently.

For these reasons, the Reporters Committee asks that the White House articulate the reasons why it has not granted Mr. Feinberg’s application for a hard pass and articulate the standard it uses to make such credentialing decisions.

Sincerely,

A handwritten signature in blue ink that reads "Katie Townsend" with a stylized flourish at the end.

Katie Townsend  
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