

September 15, 2021

Re: Senate Bill 98, Public peace: media access, McGuire — Support

Dear Governor Gavin Newsom,

I'm on the board of directors for the Los Angeles Press Club, a 501(c)(3) with over 1,000 journalist members. I chair our committee on press rights, and in that role have personally spoken with dozens of journalists who were injured, detained, arrested, or otherwise had their constitutional rights chilled by police in California. I'd like to share the realities of what it's been like in the field for these people who were only trying to do their job.

At least 40 of these incidents happened in the four months before your September 2020 veto of Senate Bill 629, which would have clearly exempted journalists from arrest during unlawful assembly. At least 12 more of these incidents happened in the six months that followed. Over 50 of these occurred at protests. I point this out not to criticize your decision, but to emphasize the disturbing frequency of the problem in our state.

I provided your staff with a spreadsheet documenting these incidents, as well as a slideshow of photo and video evidence. If you aren't able to review it, I ask that you at least watch one of the 90-second videos (including many items from the slideshow) that will soon be provided by my friends with the National Association of Hispanic Journalists. This evidence proves why legislative reform is urgently needed.

Given the frequency, these are not one-off accidents. It's a pattern of misconduct facilitated by a grey area in California law. Until it's resolved, journalists will point to the First Amendment and various precedents in both California and Federal Courts which require limits on the press to be narrowly tailored. Police will point to a Penal Code section (409) that is out of sync with others (409.5 and 409.6). There are at least five active civil lawsuits in our state and untold police departmental complaints stemming from incidents I mentioned, wasting significant taxpayer and private dollars. I blame most of this on the legal grey area, which you can help resolve today.

I agree that SB-629 had shortcomings and so I agree with your decision last year. Fortunately, the bill has been remade as SB-98, which is now on your desk. The new bill resolves concerns in your veto message from the prior bill. Any remaining concerns were raised by law enforcement lobbyists before organizations like mine started to speak out, and that means they were raised without an opportunity for us to provide critical context and collaborate in the amendment process.

In your message last year, you wrote, "*I am concerned that this legislation too broadly defines a 'duly authorized representative of a news service, online news service, newspaper, or radio or television station or network.'*" Recent amendments have made this moot (more on that in a moment), though this quoted language remains for several important reasons. First and foremost, the legislation does not create a new definition but relies on the existing one in state

law. The exact phrasing already appears in Penal Code §409.5(d) and §409.6(d), which pertain to press access to disaster areas. These statutes have existed for decades and been interpreted and applied by courts. In 1984, California Attorney General John Van de Kamp even issued an official opinion (#84-802) on the matter. In it, he rejects that law enforcement would be allowed to authorize who qualifies as a journalist. However, he also notes that, "Law enforcement officers may of course take appropriate action to prevent the news media representatives at a disaster site from violating any specific laws." This is a healthy standard which SB-98 effectively follows. The goal of our laws shouldn't be to protect a special "class" of journalists but to protect the special "act" of journalism. I'm sure you'd agree it's better to craft a broader standard that protects people like Darnella Frazier (who filmed the murder of George Floyd and received an honorary Pulitzer Prize) than a narrow one that excludes professional "traditional" journalists if they don't register themselves with a government agency (an idea only popular with authoritarian regimes, obviously unbefitting California). SB-98 accomplishes the right balance by allowing arrest and citation (pursuant to PC §148) of any journalist (or person pretending to be one) who resists, delays or obstructs a police officer, but does not allow police to cite them "for gathering, receiving, or processing information." This is an important improvement over SB-629, which gave a blanket exemption to press from PC §148 and took away the police's ability to protect themselves from a rogue individual who might shove officers, shine lasers in their eyes, or otherwise try to get away with actual crimes by claiming to be a journalist.

I should point out that concerns about "fake" press have not been supported by evidence. I've made dozens of requests to California police agencies to share examples of anyone pretending to be press, especially as a cover for wrongdoing. Only one example was produced, and in that incident the suspect's biggest "crime" was shouting an expletive. Meanwhile, I've produced dozens of real examples where police injured, detained or arrested real journalists.

You continued, *"As written, [SB-629] would allow any person who appears to be engaged in gathering, receiving or processing information, who produces a business card, press badge, other similar credential, or who is carrying professional broadcasting or recording equipment, to have access to a restricted law enforcement area. This could include those individuals who may pose a security risk - such as white nationalists, extreme anarchists or other fringe groups with on online presence."* The new bill deletes the specific subsection referencing cards, badges, and equipment, further addressing your concerns about broad definitions. Perhaps most importantly, access to "restricted law enforcement areas" has been fixed by another change which I'll address in the next paragraph. I should note that your concern here is also alleviated by narrowing the PC §148 exemption. You and I both find the views of white nationalists and extreme anarchists despicable. However, it would violate both of our principles and the First Amendment to deny someone a point of view. These two positions are compatible only if we judge people on their actions, and SB-98 ensures that by allowing police to arrest and cite actual criminals under PC §148 (or any other applicable statute, from vandalism to assault). I condemn any criminal misconduct by somebody pretending to be press, much as police condemn any criminal misconduct by somebody pretending to be an officer. Sadly, some of the most violent and horrific conduct at unlawful assemblies has been carried out by badge-carrying

law enforcement officers (repeatedly against journalists!), and some may even have ties to white nationalism. This is not to besmirch the majority of officers who are professional and strive to do the right thing, but to underscore the importance of judging a person by their actions and not giving anybody a free pass whether they carry a police badge or press credential.

You wrote, *“Law enforcement agencies should be required to ensure journalists and legal observers have the ability to exercise their right to record and observe police activities during protests and demonstrations. But doing so shouldn’t inadvertently provide unfettered access to a law enforcement command center.”* The journalism community agrees on all of this, even on limits of press access to a command center. This has been fixed in SB-98 by moving the phrase “any other command post.” SB-629 accidentally implied that journalists would be allowed inside such an area. Now, SB-98 clarifies that press access is just to areas near those command posts (not inside), creating parity with existing disaster area provisions under PC §409.5(d) and §409.6(d). It’s also important to recognize that this concern was always a red herring. During unlawful assembly, the press is typically trying to observe skirmish lines and how police and the general public are interacting. A command center (a.k.a. command post or emergency operations center) is usually too remote for a journalist to do their job. For example, during the unlawful assemblies at Echo Park this past March, the Los Angeles Police Department placed their command post in a Dodger Stadium parking lot a mile away. This is par for the course. Furthermore, most of these literal command posts are inside a satellite truck or other vehicle or trailer. Under the status quo, even in disaster areas where press have access under PC §409.5(d) and §409.6(d), journalists aren’t allowed to demand access inside an official vehicle (nor backroom in a police station nor other closed building). They won’t be under SB-98, either. This fix in the new bill is why I’d mentioned earlier that defining a journalist would be moot. If “duly authorized” press isn’t allowed into command posts before or after SB-98, neither is the questionable element that we both would be concerned about.

Finally, you wrote, *“In fact, the police reform advisors that I appointed in the wake of the nationwide protests this summer to advise me on what more California can do to protect and facilitate the right to engage in peaceful protests and demonstrations made concrete recommendations on protecting journalists and legal observers exercising their right to record and observe police activities during protests and demonstrations. I plan to implement these recommendations at the state level and am encouraging every California law enforcement agency to do the same. I also plan to work with the Legislature on providing access to journalists in a way that addresses the security concerns and accomplishes the intent of this bill.”* If you were referring to the September 2020 public recommendations of Ron Davis and Lateefah Simon, I don’t think this characterization is fair. Davis and Simon did extensive and important work on the much larger issues, but their brief references to journalist protections weren’t very concrete. Both recommendations (officer training and points of contact) had been implemented long ago by the very agencies who’ve recently violated the rights of journalists. While the two recommendations are good principles and I agree with them, I’m unaware of any practical steps that have happened in the year since. Fortunately, SB-98 presents you with an opportunity to make real progress on related issues with one stroke of your pen.

Both press and police play a crucial role in a healthy democracy. Both should hold their own colleagues to a high professional standard, and both should welcome earnest questioning -- by anyone -- of how they perform their duties. In that spirit, I'm happy to answer any questions you or your team may have. I'm confident I can dispense with any concerns.

Please also read the letter that I signed as part of a coalition with more than 20 other press groups, collectively representing several thousand journalists who live and work in California. Journalists don't normally lobby, but these circumstances are extraordinary. I'm proud to stand alongside so many wonderful colleagues as we ask you to sign SB-98.

Please affirm that journalism is not a crime.

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Rose', with a long horizontal flourish extending to the right.

Adam Rose
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Secretary, Board of Directors
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