



## New England First Amendment Coalition

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Attn: Robert Long, Communications Director

*SENT VIA EMAIL TO ROBERT.LONG@MAINE.GOV*

October 14, 2021

Dear Robert,

I'm writing on behalf of the New England First Amendment Coalition, the region's leading advocate for First Amendment freedoms and the public's right to know about its government.<sup>1</sup>

Last week the Maine Center for Disease Control and Prevention decided to bar both the Maine People's Alliance and the Maine Policy Institute from its press briefing. It justified the decision by calling representatives of the organizations "advocacy journalists."<sup>2</sup> While we are pleased that the CDC later reversed this decision, our coalition is still deeply concerned about the potential for similar decisions to be made again in the future.

It is our understanding that the CDC does not have a formal policy about press access to its briefings.<sup>3</sup> Without such a policy moving forward, the opportunity remains for officials to discriminate against members of the media based on the content or viewpoint of their reporting. Though the CDC said both MPA and MPI will be able to participate in this week's COVID-19 briefing, there is no assurance that these organizations — or any organization officials unilaterally deem to be "advocacy journalists" — will continue to have access after this week.

**Our coalition requests that the CDC confirm that access to press briefings will be granted to any media organization subject only to content- and viewpoint-neutral restrictions.**

Confirming such a practice would provide protection for not just so-called "advocacy journalists" but for all newsrooms that might be denied access to briefings based on political allegiances or sensibilities apt to change with each administration.

This scenario isn't merely hypothetical. At a time when officials at all levels of government throughout the country are using terms such as "fake news" to dismiss unfavorable coverage, a label like "advocacy journalist" can be used as a similar pejorative to punish news organizations for their reporting. Indeed, this type of retribution against the press occurred in 2013 when former Gov. Paul LePage attempted to punish the Portland Press Herald — dubbed "the opposition" by his spokeswoman — for publishing a series of stories critical of the administration's Department of Environmental Protection chief.<sup>4</sup>

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The First Amendment does not tolerate this type of political influence on press freedom. But it can more likely be avoided given the assurances we are requesting from the CDC. To put the need for such assurances more succinctly:

The danger in granting favorable treatment to certain members of the media is obvious: it allows the government to influence the type of substantive media coverage that public events will receive. Such a practice is unquestionably at odds with the first amendment. Neither the courts nor any other branch of the government can be allowed to affect the content or tenor of the news by choreographing which news organizations have access to relevant information.

*Anderson v. Cryovac, Inc., 805 F.2d 1, 9 (1st Cir. 1986)*

Thank you for considering our concerns. On behalf of the New England First Amendment Coalition, I welcome the opportunity to provide additional guidance on media access or any other matter implicating the First Amendment or the public's right to know about government. We look forward to your response.

Sincerely,



**Justin Silverman**  
Executive Director

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**1** The New England First Amendment Coalition, a non-partisan non-profit organization, is led by some of the most esteemed attorneys, journalists and publishers in the region. Our Board of Directors includes Judith Meyer, executive editor at Sun Media Group, and Sigmund Schutz, attorney at Preti Flaherty in Portland. Please visit nefac.org to learn more about us and our leadership.

**2** See "In Reversal, Maine CDC Will Allow 'Advocacy Journalists' Into Next COVID-19 Briefing," Bangor Daily News, Oct. 6, 2021 (<https://bangordailynews.com/2021/10/06/politics/main-cdc-bars-advocacy-journalists-from-briefings-kicking-off-debate/>).

**3** In an Oct. 6 email to Judy Meyer, executive editor at the Sun Media Group and a member of NEFAC's Board of Directors, the CDC's Robert Long confirmed that "there is no written directive."

**4** See "How the Maine CDC's Ill-Fated Stand Against 'Advocacy Journalists' Backfired," Maine Public, Oct. 8, 2021 (<https://www.mainepublic.org/2021-10-08/how-the-main-cdc-ill-fated-stand-against-advocacy-journalists-backfired>).