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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH - CENTRAL DIVISION**

UTAH POLITICAL WATCH, INC., and  
BRYAN SCHOTT,

*Plaintiffs,*

v.

ALEXA MUSSELMAN, Utah House of  
Representatives Communications Director and  
Media Liaison Designee; AUNDREA  
PETERSON, Utah Senate Deputy Chief of Staff  
and Media Liaison Designee; ABBY  
OSBORNE, Utah House of Representatives  
Chief of Staff; and MARK THOMAS, Utah  
Senate Chief of Staff, in their official and  
individual capacities;

*Defendants.*

**Defendants' Notice of Supplemental  
Authority re: *Associated Press v. Budowich*,  
No. 25-5109, 2025 WL 1649265 (D.C. Cir.  
June 6), *reh'g en banc denied*, 2025 WL  
2047025 (July 22)**

Case No. 2:25-cv-00050-RJS-CMR

Hon. Robert J. Shelby  
Hon. Cecilia M. Romero

In accordance with Local Rule 7-1(c), Defendants bring to the Court's attention a recent order of the U.S. Court of Appeals for the District of Columbia Circuit, partially staying the preliminary injunction issued in *Associated Press v. Budowich*, 2025 WL 1649265 (D.C. Cir. June 6). The order and opinion by Judge Rao (joined by Judge Katsas) explaining the panel's decision are attached as Exhibit A. The D.C. Circuit denied rehearing en banc. *See* 2025 WL 2047025 (July 22).

Plaintiffs' opposition to Defendants' motion to dismiss relies heavily on *Associated Press*, where the district court issued a preliminary injunction requiring the restoration of the AP's access to the Oval Office and other spaces. 2025 WL 1039572, at \*19 (D.D.C. Apr. 8); *see* Dkt.59 at 8-10, 17-19. The D.C. Circuit's stay allows the White House to exclude the AP from "the Oval Office, Air Force One, Mar-a-Lago, and other similar spaces." Rao Op. 26.

The D.C. Circuit's decision supports Defendants' motion to dismiss Plaintiffs' First Amendment claims in at least two ways. *First*, the decision strengthens Defendants' argument that the denial of a press credential was not a materially adverse action, *i.e.*, an action that would chill a person of ordinary firmness from engaging in speech. Dkt.53 at 25-26; Dkt.62 at 10. Plaintiffs rely on *Associated Press* to support their argument that the Legislature's denial of a press credential "would chill and adversely affect any person of ordinary firmness from exercising their First Amendment speech rights." Dkt.59 at 19. The D.C. Circuit majority concluded the AP's retaliation claim was likely to fail because the "decision to exclude the AP from limited-access presidential events is not the type of action that counts as materially adverse for purposes of a retaliation claim." Rao Op. 20. The panel explained that "[c]hoosing who may observe or possibly speak with the President in these spaces is not the type of action that supports a retaliation claim" and "is more akin to a decision about how the President wields the bully pulpit." *Id.* at 22. Just as "[d]enying access to observe or speak with the President in his private spaces" cannot "support a First Amendment retaliation claim," *id.* at 22 n.9, so too the Legislature's denial of a press credential to Schott cannot support his retaliation claim, even

if it reduces access to members of the Legislature.

*Second*, the decision undermines Schott's insistence that his long history of having a press credential means he cannot be deprived of one now. *See* Dkt.59 at 4, 16; Dkt.36 ¶¶43-45. Rejecting the argument that the AP's long history of access through the press pool supported its retaliation claim, the D.C. Circuit majority explained that "the AP cannot adversely possess a seat in the Oval Office, no matter how long its tradition of access." Rao Op. 23. So too, Schott cannot rely on his long history of access to support his First Amendment claims.

The D.C. Circuit's decision also supports Defendants' opposition to Plaintiffs' preliminary injunction motion. As Defendants argue, and this Court previously held, Plaintiffs cannot show irreparable harm because they have ample capacity to gather news and continue reporting on the Legislature without a press credential. Dkt.54 at 51-52. Similarly, in holding that the equities favored the White House, the D.C. Circuit majority emphasized that "[t]he AP ... may continue to exercise its free speech rights in other spaces." Rao Op. 25.

Dated: July 31, 2025

Respectfully submitted,

/s/ Tyler Green  
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**CERTIFICATE OF SERVICE**

I certify that on this 31st day of July 2025, I electronically filed the foregoing Notice of Supplemental Authority using the Court's CM/ECF filing system.

/s/ Tyler R. Green