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Dear Mr. Brodkorb,

I am pleased to hear of the formation of a working group to address the revision of rules governing press access to the floor of the Minnesota Senate. As a freelance television producer and videographer, I have had the opportunity to work at the Capitol complex on many occasions.

As someone who has worked both as a contract employee of media organizations and as an independent operator, I have a desire to see equal opportunities extended to all media who operate at the Capitol. Recent controversies over “new media” access to parts of the Capitol complex underscore the need for an equitable, non-partisan solution. Resolving issues related to Senate access may help to pave the way for a uniform policy in other areas of the complex, as well.

I have identified several issues that I would like to see the working group address. I have also made several recommendations for your consideration. Please share these with members of the working group, and with other parties as you see fit.

The attached comments and proposals are submitted on my own behalf, and also in my capacity as an officer of the Minnesota-based media production

company Public Record Media, LLC. They do not represent the institutional position of any other media organization that I am affiliated with in any contract, freelance, governance, or other capacity.

Sincerely,

Matt Ehling

President, Public Record Media, LLC

## 1. SELECTING JOURNALISTS

**Issue:** *Should the Minnesota Senate Rules guarantee floor access to specific news organizations?*

**Recommendation:** *The Minnesota Senate should not enumerate which media institutions shall be granted ongoing access to the Senate floor, as it currently does in rule 16.1 of the 2011 Temporary Senate Rules.*

Rule 16.1 may be read as a legitimate attempt to deal with the limited physical space of the Senate chamber. However, I believe that this matter could be better dealt with in the following way:

- a.) The Senate should establish a system whereby a fixed number of Senate floor passes are reserved for journalists.
- b.) The Senate should establish a “first-come, first-serve” policy for awarding a set number of Session-long floor passes to journalists. These passes could amount to at least seventy-five (75) percent of the total number of available passes. Such a policy could be implemented in a variety of ways, the details of which are beyond the scope of this writing.

The intention of such a policy would be to award Session-long passes to those who are dedicated enough to rigorously apply themselves to following a “first-come, first-serve” accreditation process. Members of the legacy press would generally have the discipline to ensure that they obtained such passes, but this would also provide opportunities for dedicated, newer players to obtain Session-long passes.

- c.) The Senate should establish a “first-come, first-serve” policy for awarding the remaining Senate floor passes, which would each provide floor privileges for one day. A similar process is often used at national political conventions for smaller-scale domestic and foreign press outlets. As a freelancer, I have been able to obtain passes at such conventions, and have found the process to be sufficiently flexible.

## 2. DEFINING JOURNALISTS

**Issue:** *Should the rules of the Minnesota Senate define what type of person is eligible to be considered an accredited journalist, and thus eligible to receive floor passes?*

**Recommendation:** *If the Minnesota Senate chooses to further define who is eligible to receive floor passes, it should choose its language carefully, and craft it in concert with applicable free speech case law.*

The existing Senate rules do not define who is eligible to be considered a journalist for the purposes of floor access. Rule 16.3 simply states that the Secretary “must issue each accredited reporter an identification badge showing the reporter’s name and news organization.”

For the purposes of comparison, the Permanent House rules also do not define journalists, other than to say that “accredited representatives of the press, press associations, and radio and television stations must be given equal press privileged by the House.” The House Chief Sergeant at Arms is then given authority to issue passes based on “available space.”

If the working group seeks to admit journalists, bloggers, and others from outside of the scope of the traditional, legacy media, it will doubtlessly struggle with issues of definition. Indeed, legitimate questions will arise regarding these definitions. For instance, is a registered lobbyist with a blog due the same access as a representative of an on-line news site, if they both apply for Senate press passes? Is a staffer of a political party newsletter due the same deference as the proprietor of a partisan-themed blog that is not run by party employees or officials?

Such questions need to be considered, as they will continue to arise in many forms. However, any definitions written into the Senate rules should be carefully crafted to comport with existing (and applicable) First Amendment case law, and with case law related to Article I, Section 3 of the Minnesota Constitution.

If the Minnesota Senate were to adopt a definition of who is eligible for journalistic accreditation, I would urge the adoption of a broad standard that would result in the issuance of press credentials without regard for the size of the media outlet, the size of its audience, its editorial viewpoint, its political affiliation, or any other content-related considerations.

### 3. RULES OF DECORUM FOR JOURNALISTS

**Issue:** *If more non-traditional media are admitted to the Senate chamber, should more specific rules of decorum be enumerated?*

**Recommendation:** *Any media-specific rules of decorum should focus narrowly on behavior, rather than on speech conduct.*

Opening the Senate chamber to more non-traditional media may spur discussions about the need to craft more specific rules of conduct, in order to ensure that there is no disruption of Senate business.

Currently, some Senate rules essentially prohibit certain types of behavior. Senate Rule 17.1 states that, “In the case of a disturbance or disorderly conduct in the lobbies or the galleries, the President may order them cleared.”

Other rules of conduct are enumerated in Section 36, such as Rule 36.9, which states that, “When the President puts a question, or addresses the Senate, no one may walk out of or cross the chamber.” The rules in this section explicitly bind members of the Senate, but they could be read to apply to others in the Senate chamber as well.

As part of its review, the working group may or may not propose additional, media-specific rules of decorum. If the Senate finds it desirable to enact such rules, any rules should focus narrowly on behavior, rather than on speech content.

Any proposed language governing press behavior should be carefully scrutinized, so that it does not invite legal challenges. For instance, one of the most commonly enforced prohibitions on behavior in the state of Minnesota is the prohibition on “disorderly conduct,” which appears in the Minnesota statutes, as well as in numerous municipal codes. Such provisions have been subjected to many speech-based challenges due to overbroad language - some of which have been upheld by Minnesota courts.

It should be noted that articulating media-specific rules might cut two ways. Depending on their construction, such rules could invite heightened legal scrutiny, due to the broad protections offered the press by Article I, Section 3 of the Minnesota Constitution. On the other hand, enumerating specific, narrowly-focused rules of media conduct could provide a shield against the abuse of discretion by the Senate leadership, should the leadership wish to

exclude certain press outlets from the chamber on the pretext of a rules violation.

Given the space restrictions of the Senate floor, it may also be seen as desirable to craft rules that regulate the size and manner of media equipment that can be brought into the Senate chambers. Such rules should focus on the potential for functional disruption only. I would suggest that they include no more than the following:

- The use of video camera support equipment such as tripods on the Senate floor shall be at the discretion of the Secretary;
- The use of video or audio recording equipment with cables or cords that lay upon the floor shall be at the discretion of the Secretary;
- The use of lighting equipment on the Senate floor, or in the lobbies or galleries, shall be at the discretion of the Secretary during those times when then the Senate is in Session;
- The use of video or audio recording equipment that causes a visual or audible disruption may be regulated by the Secretary. In circumstances where such equipment is deemed prohibited by the Secretary, an opportunity shall be provided to continue recording with substitute equipment;
- The Secretary shall permit the use of camera support equipment such as tripods in the Senate galleries.

#### **4. RULES FOR VIDEO RECORDING AND DISSEMINATION**

**Issue:** *Should the Minnesota Senate Rules be modified to allow video recording in a greater range of circumstances?*

**Recommendation:** *The Minnesota Senate Rules should be modified to allow for video recording at all times, once someone is properly admitted to the Senate floor, lobbies, or galleries. The rules should also allow for the simultaneous dissemination of the recordings via any communications medium.*

Currently, video recording in the Senate chamber is at the discretion of Senate officials. Senate Rule 17.5 states that, “Television recording or broadcasting on the Senate floor is under the direction of the Secretary.”

This stands in contrast to the Permanent House Rules, which specify in Rule 2.41 that, “Television stations must be permitted to televise sessions of the House.”

The Senate rule on television recording should be amended to make it broader, and also to update it to encompass new technology. I would suggest striking the text of Senate Rule 17.5 in its entirety, and replacing it with:

“Anyone properly admitted to the Senate chamber may record the proceedings of the Senate via video or audio recording devices, and simultaneously disseminate the same via any communications medium.”

This language intentionally includes those admitted to the Senate chamber who are not members of the media, however that definition is to be articulated by the Senate, if at all.

## **5. RULES FOR PHOTOGRAPHY**

**Issue:** *Should the Minnesota Senate Rules be modified to allow for the taking of photographs in a greater range of circumstances?*

**Recommendation:** *The Minnesota Senate Rules should be modified to allow for the taking of photographs at all times, once someone is properly admitted to the Senate floor, lobbies, or galleries.*

Currently, Senate Rule 17.4 states that, “During floor proceedings, picture taking by persons other than accredited news or legislative photographers, picture taking with flood lights or flash units, and visual or audible disruptions are prohibited.”

I would suggest striking the text of Rule 17.4 in its entirety, and replacing it with,

“Anyone properly admitted to the Senate chamber may take photographs of Senate proceedings, so long as such photography does not include the use of flash units or floodlights.”

This language intentionally includes those admitted to the Senate chamber who are not members of the media, however that definition is to be articulated by the Senate, if at all.

Existing language in 17.4 regarding “visual or audible disruptions” should be contained in another rule that deals with media conduct, if such a rule is

desired. Existing language regarding food and beverages should be contained in another rule governing general conduct in the Senate chamber.

## **6. ESTABLISHING NEAR-UNIFORMITY WITH HOUSE RULES**

**Issue:** *Should the Minnesota House and Senate continue to have media rules that are divergent?*

**Recommendation:** *The Senate media rules working group should enter into discussions with appropriate staff from the Minnesota House of Representatives, in order to suggest the adoption of substantially similar media rules governing both the House and Senate. This recommendation is made with certain qualifications.*

It may be advantageous to achieve substantial similarity between the media rules governing press access to both the Minnesota Senate and the House. Such similarity may put to rest any ambiguity over who has access to those bodies via media passes, and under what circumstances.

I would only recommend that discussions about working toward such similarity be entered into if the Senate working group adopts a broader set of standards than those that currently exist. If a more narrow set of standards is adopted, I would urge that the existing House rules be preserved.

In the case that a substantially similar set of rules is adopted by both bodies, I would recommend that only the Senate rules contain a provision limiting the number of available press passes.

## **7. OTHER ISSUES**

A review of the Temporary Senate Rules may raise questions about existing language that falls outside of the purview of press issues, but touches on free speech matters generally. For instance, language prohibiting “demonstrations” in Senate Rule 17.4 may raise issues that need to be reviewed, in order to prevent future legal challenges.

For instance, does rule 17.4 comport with existing case law regarding time, place, and manner regulations of speech? Might it be advisable to remove the specific reference to “demonstrations,” and simply leave the general prohibition on disorderly conduct found in 17.1? Further legal review will help to clarify these matters.

These and other tangential issues that stem from the Senate media rules should be reviewed by members of the working group, and by appropriate

legal counsel. Any rules changes raised by these issues should be made in compliance with all applicable statutory authorities and Constitutional provisions.