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We are submitting this letter in support of our appeal of the Standing Committee’s decision not to renew Lyle Denniston’s press credential.

Introduction

SCOTUSblog was founded more than a decade ago, in 2002. For the first few years of the blog’s existence, its coverage of the Court was not comprehensive, but it began to cover a steadily increasing proportion of the Court’s docket and news related to the Court. With the hiring of veteran reporter Lyle Denniston, who has now covered the Court for fifty-six years (thereby covering one-quarter of all of the Justices who have sat on the Court), the blog’s coverage expanded further: Denniston personally provided detailed coverage of over a third of the Court’s merits docket, including all of its major cases. Coverage of the remaining cases came from contributors both inside and outside the blog.

In addition to providing comprehensive coverage of the cases that the Court hears and decides on the merits every year, the blog also covers virtually all other news relating to the Court, including (but not limited to) petitions seeking Supreme Court review, detailed statistics regarding the Court’s cases and the Justices’ votes, “Plain English” explanations of major cases for non-lawyers, daily round-ups of other news related to the Court, coverage of cases in the lower courts that may eventually make their way to the Supreme Court, video interviews with Supreme Court journalists, advocates, and scholars, and – as described in more detail below – confirmation hearings.

As a result of this extensive coverage, the blog has built a substantial readership: On the days when the Court is issuing decisions during the middle of the Term (*i.e.*, before periods of the public’s peak interest), it averages nearly sixty thousand unique visits per day, and it has roughly 160,000 Twitter followers. In addition, the blog has over ten thousand subscribers to its RSS feed, along with over five thousand subscribers for its email updates.

In recent years, the blog has received several awards that recognize both the range and quality of its work. In 2013, SCOTUSblog received a Peabody Award – the first blog to do so. It has received the Sigma Delta Chi Award (from the Society of Professional Journalists) and the National Press Club Award. Within the law, it has received the American Bar Association’s Silver Gavel Award, the American Gavel Award, and the respected Webby Award in the Law



category. Lyle himself was just awarded the first-ever Burton Foundation “Outstanding Journalist in Law Award.”

SCOTUSblog’s need for onsite access to the Senate

We have been advised that the Standing Committee questioned whether the blog requires onsite access to the Senate. It does, for multiple reasons.

First, the Senate has a constitutional role in confirming the president’s nominees to the Supreme Court. Since the blog was established in 2002, the Senate has held four sets of hearings to consider the president’s nominees to fill vacancies for the Supreme Court. For each confirmation hearing, the blog hosted gavel-to-gavel coverage in a “live blog” format – that is, minute-by-minute coverage and analysis of the proceedings – which, for the Kagan confirmation hearings in 2010, was also hosted simultaneously on the websites of NPR and the PBS NewsHour. That gavel-to-gavel coverage of the confirmation hearing is an essential part of our comprehensive coverage of Supreme Court nominations, which begins immediately after a Justice [announces his intention to retire](#) and continues with a [survey of possible nominees](#), followed by an in-depth analysis of the eventual nominee’s record (for example, [here](#), [here](#), and [here](#)).

But it is not sufficient to cover those hearings remotely, which is why every major news organization does so in person. Numerous organizations distribute materials at the hearings. And the witnesses are only available to be interviewed onsite.

Second, the blog requires onsite access to cover testimony by the Justices on issues related to the Court and its workload. Members of the Court appear regularly before the Senate to testify regarding the Court’s budget proposals (see, for example, [here](#) and [here](#)). And, although such appearances are more infrequent, members of the Court also appear before the Senate to testify on other matters. Indeed, retired Justice John Paul Stevens did so just last month, when he testified in front of the Senate Rules and Administration Committee in favor of campaign finance reform – an event of obvious interest to our readers both because of the identity of the speaker and because of the substance of his remarks regarding campaign finance. Amy Howe reported on the Justice’s testimony [for the blog](#); Lyle Denniston then followed with a [broader commentary](#) on the significance of that testimony for public perceptions of the judiciary and its independence. The blog has covered appearances by other members of the Court as well, including testimony by [Justice Anthony Kennedy](#) regarding “judicial independence.”

Third, the blog requires onsite access to cover business at the Senate that directly relates to the Court and its operations, even if it does not involve testimony by members of the Court. Such matters include – but are not limited to – the periodic efforts to require the Supreme Court to televise its proceedings and legislative responses – such as the Lilly Ledbetter Fair Pay Act – to the Court’s decisions.



Fourth, the blog provides ongoing coverage of legislative issues as they move from the Senate into the courts: for example, Lyle Denniston has provided extensive reporting on the change in the Senate’s rules and the litigation that followed; on the continuing relationships between the Senate, the House and the other branches of government in the Guantanamo Bay situation; on the extensive litigation over the federal health care issue; and the legal consequences of the National Security Agency eavesdropping. To provide that coverage, a reporter for the blog needs access to legislative materials but, more importantly, needs journalistic access to Senate staff members, for whom a Senate credential is an important indication of legitimacy.

Fifth, and finally, Lyle Denniston is invited from time to time to give lectures or participate in panel discussions for Senate staff members – most recently, for example, the association of press secretaries to Republican senators. For such events, there is a need for physical access to the Senate Office Buildings, and, again, the Senate credential is an important manifestation of legitimacy for Senate staff members at these sessions.

SCOTUSblog’s independence from Goldstein & Russell, P.C.

We understand the Committee questioned SCOTUSblog’s editorial independence from the law firm of its publisher. SCOTUSblog is a distinct entity that is both financially and editorially independent of Goldstein & Russell, P.C. As Tom Goldstein’s [post](#) of January 12, 2014, explains, all of the salaries and expenses associated with the blog (which is a Delaware corporation) are paid from outside sources other than Goldstein & Russell, P.C. – that is, with the funds received from Bloomberg Law’s sponsorship of the blog. Conversely, the blog does not pay any compensation to any attorney or staff member of Goldstein & Russell, P.C.

Lyle Denniston has never been affiliated with the firm; although Amy Howe was once a partner in the firm, she resigned from the firm last year. She does not receive any salary or benefits from the firm, nor is she eligible to participate in the firm’s profit-sharing or 401(k) programs. Moreover, she no longer practices law in any court, including the Supreme Court.

Although Howe appears on a different part of the masthead than Denniston on the blog itself, that difference is the result of her dual role on the blog: in addition to providing reporting for the blog, including the popular “Plain English” feature, she also serves as the editor for the blog both in terms of editing all of the content that goes up on the blog and in terms of working with the blog manager to plan and schedule content and identify other potential contributors to the blog. Moreover, although her background is not a traditional journalistic one, and she has only worked full-time as a journalist for a few years, in her prior career as a litigator she argued two cases at the Court personally and served as counsel in over two dozen cases on the merits. She is therefore an illustration of the way in which the blog brings to bear significant experience that would not otherwise be represented in coverage of the Court. By contrast, applying a



standard that focuses solely on whether applicants for a credential hew closely to more traditional journalistic requirements creates a real danger that the committee will in the future decline to recognize other emerging media that specialize in a particular topic.

As an editorial matter, the blog has in place a variety of policies to ensure the blog’s editorial independence from Goldstein & Russell, P.C. (A complete list of the blog’s policies are described in more detail [here](#).) Of particular note, the blog does not permit anyone from the firm or the blog to play any role in reporting any case in which Tom Goldstein or his firm plays any role at all, including by representing an *amicus* (friend of the court) in the case. This rule applies fully to lawyers at Goldstein & Russell, P.C. Moreover, although Lyle Denniston and Amy Howe are not affiliated with Goldstein & Russell, P.C., the blog has adopted a policy under which its reporters will not report on any case in which the firm is involved; all reporting on those cases will be done by someone else who has no affiliation with the firm and has complete independence from the publisher and the firm. And although the blog will, to provide comprehensive coverage of the Court’s merits docket, note the firm’s merits cases in its coverage of orders granting review of such cases, it will not otherwise comment, report, or pass judgment on the cases.

Advertising and the Bloomberg Law sponsorship

We understand that the Committee questioned whether SCOTUSblog was sufficiently supported by advertising. Since 2011, the blog has been sponsored by Bloomberg Law. In return for that sponsorship – which funds the blog’s expenses in their entirety – an advertisement regarding the sponsorship is prominently located in the banner at the top of the blog. The blog also places advertisements for Bloomberg Law (under the headline “Sponsored by Bloomberg Law”) in the sidebar on the blog’s home page – that space is currently occupied, for example, by an advertisement for the newest version of Bloomberg BNA’s *Supreme Court Practice* treatise. Further down on the sidebar, the blog also displays the current standings for the law student competition (a sort of “Fantasy Football” league for Supreme Court watchers) that Bloomberg Law and the blog co-sponsor every year. And any links to court decisions within blog posts take the reader to the Bloomberg Law version of those decisions.

Bloomberg Law sponsors the blog both out of its own economic self-interest and also as a public service, to allow the blog to bring its content to the general public free of charge. That exclusive sponsorship has the further benefit of allowing the blog to accomplish that mission without subjecting its readers to multiple advertising banners or distracting pop-up ads.

With its funding from the Bloomberg Law sponsorship, rather than subscribers or advertising, the blog thus stands in a position very similar to that of Kaiser Health News, an institution with ([to the best of our knowledge](#)) seventeen reporters currently credentialed by the committee. Like the blog, KHN’s website emphasizes that it is “editorially independent” and “accepts no advertising”; “all original content is available to other news organizations and the public free of charge.” Instead, KHN’s “primary financial support” comes from the Henry J.



Kaiser Family Foundation, which serves as KHN’s publisher and also provides “strategic guidance” to KHN. The only real difference between SCOTUSblog and KHN is that KHN is unquestionably part of the Kaiser Family Foundation, [which provides its funding](#), while SCOTUSblog is both legally and editorially distinct from both Bloomberg Law (the organization that sponsors it) and Goldstein & Russell, P.C. (which does not provide it with any funds at all).

Conclusion

We are grateful for your consideration of our appeal, and we hope that you will not hesitate to raise any additional issues or questions that you may have.