

Brendan J. Healey

January 19, 2023

Via email

J. Casey Costigan
Chief Judge
Courtroom 4B
11th Judicial Circuit
for the State of Illinois
104 W. Front Street
Bloomington, IL 61701
c/o Joy.mckinney@mcleancountyil.gov &
circuitcourt@mcleancountyil.gov

Re: Request for Reconsideration of Denial of Media Credentials for Edgar County
Watchdogs

Dear Chief Judge Costigan:

I represent the Edgar County Watchdogs (the “Watchdogs”), and I write with regard to the Watchdogs’ request for media credentials for the purpose of participating in extended media coverage. The Watchdogs seek to participate in extended media coverage for the following three cases currently pending in the Eleventh Judicial Circuit: *Conklin v. Town of Normal, et al.*, 2023-MR-000002; *Shoraga v. Town of Normal, et al.*, 2023-MR-000003; and *Sila v. Town of Normal, et al.*, 2023-MR-000004 (consolidated under 2023-MR-000002 and collectively, the “Cases”).

The Watchdogs understand that extended media coverage has been granted in the Cases, and the Watchdogs requested media credentials from media coordinator Ryan Denham in order to participate in the extended media coverage. Mr. Denham denied their request. I then wrote Mr. Denham on behalf of the Watchdogs, but Mr. Denham stated, “I don’t plan to reverse the decision at this time.” (Copies of both denials are attached hereto as Ex. A.)

The Watchdogs believe that the decision to deny credentials is in error, and that a decision of this nature is properly the province of the Court. The Watchdogs therefore respectfully request that the Court reconsider and reverse the decision.

Under the Illinois Supreme Court’s rules for extended media coverage, “news media . . . means established news gathering and reporting agencies and their representatives whose function is to inform the public.” Illinois Supreme Court Policy for Extended Media Coverage in the Circuit Courts of Illinois, § 1.1(b).

The Watchdogs fulfill these criteria. First, they are established. The Watchdogs have been reporting on the news for more than a decade—since 2011. They became an Illinois not-for-profit in January 2013.

As for newsgathering and reporting, they have posted thousands of stories on their Illinoisleaks.com website. They provide hundreds of news stories per year as well as audio and video content to the public. Illinoisleaks.com has averaged 1.4 million page views per year for the past eight years. The Watchdogs have more than 15,000 subscribers to their mailing list and more than 18,000 Facebook followers.

In an era when many media organizations have cut back on their reporting budgets, the Watchdogs aggressively report the news. They file dozens of FOIA requests every year, and they litigate when necessary. *See, e.g., Edgar Cnty. Watchdogs v. Will Cnty. Sheriff’s Off.*, 2022 IL App (3d) 210058 ¶ 31 (largely affirming summary judgment in FOIA case on behalf of Watchdogs). They intervene in court cases for the purpose of gaining access to public records—recently, in DuPage County and in White County (both times successfully)—and they aggressively pursue their rights under the Open Meetings Act.

The results are impressive. The Watchdogs have been cited numerous times by other Illinois news outlets such as:

- the *Chicago Tribune*, “Illinois watchdog Mautino’s campaign fund narrowly avoids more fines,” July 10, 2018, at <https://www.chicagotribune.com/politics/ct-met-frank-mautino-elections-board-20180710-story.html> (“Though the board voted against additional penalties, board Chairman William Cadigan praised the work of a downstate group known as the Edgar County Watchdogs that brought attention to the issues, saying the system of campaign finance reporting relies on the public’s ability to examine records.”);
- WAND-TV, “Watchdogs praise Shelby County Treasurer,” June 22, 2022 at https://www.wandtv.com/news/watchdogs-praise-shelby-county-treasurer/article_c93dd320-f26a-11ec-8d45-4b08e8eff705.html;
- the *Champaign-Urbana News-Gazette*, “Watchdog group details findings of investigation on website,” March 20, 2013 at https://www.news-gazette.com/news/our_county/ford_county/watchdog-group-details-findings-of-investigation-on-website/article_35ed03b5-8d21-5770-90cc-0d3374229ba5.html (“The Edgar County Watchdogs posted a story Monday on

- the organization’s website . . . detailing information it has uncovered in its investigation into the Ford-Iroquois Public Health Department.”);
- WTTW/Chicago Tonight, “Illinois Fiscal Watchdog Under Investigation for Campaign Spending,” May 24, 2016 at <https://news.wttw.com/2016/05/24/illinois-fiscal-watchdog-under-investigation-campaign-spending> (“Kirk Allen and John Kraft, the two watchdogs who broke the story [that led to a federal investigation of the Illinois Auditor General for campaign spending], joined ‘Chicago Tonight’ to discuss their investigation.”); and
 - WCIA-TV <https://www.youtube.com/watch?v=ZCRsI-rU7II> (reporting on Watchdogs’ citizen training sessions on government oversight).¹

Indeed, Mr. Denham himself cited the Watchdogs in a story WGLT published in 2017. *See* “Library Told To Repay State Grant Money Over Conflict of Interest,” Nov. 2, 2017 at <https://www.wgl.org/news/2017-11-02/library-told-to-repay-state-grant-money-over-conflict-of-interest> (noting that “[t]he potential conflict of interest was initially brought to the Secretary of State’s attention by a website called Illinois Leaks, also known as Edgar County Watchdogs, said Secretary of State spokesperson David Druker. The website has written extensively about the Atlanta library in recent months.”).

By any objective measure, the Watchdogs qualify as a news media organization under Illinois Supreme Court policy. The Watchdogs also believe they qualify for the protections accorded news organizations and reporters under the Open Meetings Act, 5 ILCS 120/1-7.5; Freedom of Information Act, 5 ILCS 140/2(f); Local Records Act, 50 ILCS 205/3b(b); and Reporter’s Privilege Act, 735 ILCS 5/8-907. In the past five years, three courts have quashed subpoenas against the Watchdogs under the Reporter’s Privilege Act.

¹ The Watchdogs have received coverage literally from coast to coast. *See* Student Press Law Center, “Illinois AG: FERPA does not excuse colleges from turning over email directories,” March 29, 2015 at <https://splc.org/2015/03/student-email-directories-not-ferpa-secrets-illinois-ag-rules/>; NPR-Illinois, “State’s Top Fiscal Watchdog Misspent Nearly \$250K In Campaign Funds, High Court Finds,” May 20, 2021 at <https://www.nprillinois.org/statehouse/2021-05-20/states-top-fiscal-watchdog-misspent-nearly-250k-in-campaign-funds-high-court-finds#stream/0>; The CT Mirror, “Questions raised about lack of transparency in Dalio partnership at ‘town hall’ meeting,” Aug. 20, 2019 at <https://ctmirror.org/2019/08/20/questions-raised-about-lack-of-transparency-in-dalio-partnership-at-town-hall-meeting/>; Whatcom Watch, “Washington Reporters Get Free Legal Help,” Jan. 2021 at <https://edgarcountywatchdogs.com/wp-content/uploads/2021/07/Protecting-Journalists-Pro-Bono-article.pdf>; WRTV, “Elwood fire chief removed after photos show him with city fire truck in Illinois,” May 12, 2019 at <https://www.wrtv.com/news/local-news/elwood-fire-chief-removed-after-photos-show-him-with-city-fire-truck-in-illinois>; Computer World Magazine, “H-1B workers in line for Obamacare work,” Sept. 25, 2013 at <https://www.computerworld.com/article/2829871/h-1b-workers-in-line-for-obamacare-work.html>.

The Watchdogs are members of the following organizations for media/journalists: Investigative Reporters and Editors,² Society of Professional Journalists, Chicago Headline Club, and Media Law Resource Center. They were included in the press pool as a media organization for Governor Pritzker’s daily press briefings regarding COVID when they requested access, and they were previously issued White House press pool credentials. The Watchdogs also have a media credential for the Illinois House of Representatives that was issued by the Illinois Secretary of State. The Illinois Supreme Court granted the Watchdogs leave to file an amicus curiae brief in a third-party FOIA lawsuit. *See Perry v. Dep’t of Fin. & Prof’l Regulation*, 2018 IL 122349 ¶ 3 (granting Watchdogs leave to file amicus curiae brief along with other organizations such as Illinois Press Association and Reporters Committee for Freedom of the Press).

The Watchdogs easily meet every qualification to be deemed a member of the news media. Not surprisingly, the following Illinois Circuit Courts have granted the Watchdogs’ requests for participation in extended media coverage: Champaign County, Wabash County, DeKalb County, Macoupin County, and Sangamon County.³ In fact, the 11th Circuit is the only Illinois circuit court that has ever denied a request from the Watchdogs to participate in extended media coverage.

Mr. Denham recommended that the Watchdogs ask a local television station for pool video footage from the hearing. The Watchdogs did so and were denied. (*See* denial attached hereto as Ex. B.) Regardless, as a member of the news media, the Watchdogs should not have to rely on the good graces of a television station to receive these materials.

Mr. Denham also stated that he denied the Watchdogs’ request because he did not believe “ECW is similar enough to other credentialed media to warrant credentials of your own.” The Watchdogs disagree that the standard for the issuance of media credentials is similarity to legacy media. That language is nowhere in the Supreme Court policy. Regardless, the Watchdogs fulfill the characteristics of legacy media organizations, and, with regard to reader engagement, investigative reporting, and content production, even surpass many legacy media organizations. The wrong standard was applied, and, under the plain language of the Supreme Court rule, the

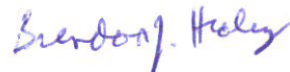
² In 2021, the Investigative Reporters and Editors organization chose the Trustees of Algonquin Township in McHenry County as one of four finalists for the “Golden Padlock Award honoring the most secretive public agency or official in the U.S.” based on the Township’s “aggressive attempts to fight the release of information related to alleged corruption reported by the Edgar County Watchdogs.” *See* <https://www.ire.org/four-finalists-chosen-for-2021-golden-padlock-award>.

³ Two recent Watchdogs articles that were derived from the Watchdogs’ participation in extended media coverage are found at <https://edgarcountywatchdogs.com/2018/11/urbana-schools-asst-superintendent-arraigned-on-eavesdropping-charge> (from Champaign County); and <https://edgarcountywatchdogs.com/2020/10/video-darren-bailey-and-consolidated-cases-v-gov-pritzker-hearing-in-sangamon-county> (from Sangamon County).

Watchdogs meet the requisite criteria for credentials and the ability to participate in extended media coverage.

For the reasons stated herein, we respectfully request that you reconsider Mr. Denham's denial of extended media credentials to the Watchdogs, and we look forward to receiving a response from you as soon as is reasonably practicable for you. Thank you for your consideration.

Sincerely,



Brendan J. Healey
Baron Harris Healey

cc: Ryan Denham (via email, rmdenha@ilstu.edu)
Michael J. Kasper (via email, mjkasper60@me.com)
Brian Day (via email, bday@normalil.gov)
Jason Guisinger (via email, jaguisinger@ktjlaw.com)
Thomas Devore (via email, tom@silverlakelaw.com)
John Kraft (via email, john@illinoisleaks.com)
Kirk Allen (via email, kirk@illinoisleaks.com)

EXHIBIT A

From: Denham, Ryan <rmdenha@ilstu.edu>

Sent: Thursday, January 12, 2023 4:02 PM

To: John Kraft <john@illinoisleaks.com>

Subject: RE: Extended Media Request - Mclean County Circuit Court - for 1-20-2023

Hi John,

I'm going to decline your request to be credentialed media at the McLean County courthouse.

The IL Supreme Court has done a poor job thus far in defining what is and what is not a media outlet for Extended Media cases. Using the discretion I have in my role as Media Coordinator for the circuit, I don't think ECW is similar enough to other credentialed media to warrant credentials of your own. They are, generally, legacy media outlets with longer histories of operating in our county and abiding by courthouse rules.

However, I will share contact information with you for the TV stations(s) that will be serving as pool video for the 1/20 hearing, once that's determined. You can reach out to them directly and see if they'll be willing to share video with you.

As you likely know, you're still able to attend the hearing and take notes.

Thanks,

RD

From: Denham, Ryan <rmdenha@ilstu.edu>

Sent: Wednesday, January 18, 2023 2:19 PM

To: Brendan Healey <bhealey@bhhlawfirm.com>

Cc: Kirk Allen (Kirk@illinoisleaks.com) <kirk@illinoisleaks.com>; John Kraft (john@illinoisleaks.com) <john@illinoisleaks.com>

Subject: RE: Letter Regarding Edgar County Watchdogs

Hi Brendan – I received your voicemail and confirm receipt of this letter. I don't plan to reverse the decision at this time.

Thanks,

RD

EXHIBIT B

From: Lawton Dodd <LDodd@wmbd.com>

Sent: Thursday, January 19, 2023 1:34:41 PM

To: John Kraft <john@illinoisleaks.com>

Subject: FW: Extended Media Request - Mclean County Circuit Court - for 1-20-2023

Mr. Kraft:

With regard to your inquiry about pool video of Friday's hearing: it is our understanding that Edgar County Watchdogs is not a credentialed media organization.

We will not be able to provide you with pool video.

Thank you for understanding.

Kind regards,

Lawton J. Dodd

News Director

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