

## **UNITED STATES OF AMERICA FREEDOM OF EXPRESSION STABILIZES**

### **Executive Summary**

The United States scored 67.26 points on the Chapultepec Index of Freedom of Expression and of the Press, placing the country in the seventh position out of 22 nations. According to other data from the Index, citizens are generally well informed, free to express themselves, and there is a good flow of information. There are few restrictions on the practice of journalism and scarce instances of violence against the press reported. With respect to the legislative, judicial, and executive branches of government, their influence on freedom of expression is minor, with the exception of some governors who place some obstacles to the exercise of journalism.

### **Introduction**

Historically, there have been few restrictions on freedom of speech and the press in the United States. The First Amendment of the Constitution, which restricts the power of Congress to set boundaries on freedom of expression, has allowed the implementation of an atmosphere where the government has little influence over the media, the practice of journalism, and the dissemination of information; in general, citizens are free to voice their views.

This does not prevent the country from going through stages in which there have been pressure and even attacks against the media and journalists. One of them occurred during the administration of President Donald Trump (2017-2021), where there was a significant increase in attacks and public pressure against the media from the former President and his political allies. Trump called the press "the enemy of the people."

After Joe Biden became president (2021), there was a noticeable change in the Executive Branch's treatment of the press, especially for correspondents at the White House, as the attacks against the media by the Executive have disappeared. However, during the period surveyed (August 2, 2021 - August 1, 2022), the most common type of aggression has come from police forces (beatings, temporary detentions) and some political factions that have attacked journalists.

### **Background**

In this context, the United States holds a score of 67.26 in the Chapultepec Index of Freedom of Expression and the Press 2022, which puts the nation in position No. 7 out of a total of 22 countries. This places it as a nation with a low restriction on freedom of the press. The United States is below countries such as Canada (1), Uruguay (3), and Chile (6), but above Colombia (10), Brazil (15), and Mexico (17). Its global average was 53.69 points.

Among the instances of aggression or intimidation against journalists and the exercise of freedom of the press, we find the temporary detention of journalists, photographers, and camera operators covering the protests against the Supreme Court's decision repealing the constitutional right to abortion. This took place in Los Angeles, California; Portland, Oregon; and Phoenix, Arizona among other cities.

Another example of harassment against media were the orders (subpoenas) aimed at the disclosure of sources, information, or photographs in connection with the coverage of the insurrection at the U.S. Capitol in Washington, D.C., on January 6, 2021. In most cases, the media successfully had these subpoenas dismissed and there was no need to disclose information gathered during coverage of these news events.

## **Environments: Challenges to the exercise of journalism**

With respect to the influence of the Executive, Legislative, and Judicial environments over situations unfavorable to freedom of expression, the Chapultepec Index found that, in the case of the United States, there was only a slight influence of these environments during the period under analysis.

The Executive was the one that obtained the highest score (2.20 points out of 10) with respect to Realm B: Exercise of Journalism. This was revealed in the form of several instances in which Republican officials denied journalists access to special events or press conferences.

For example, in late July 2022, the Republican Party of Florida granted conservative media access to its annual Sunshine Summit, to be attended by Governor Ron DeSantis, but denied access to several journalists and media outlets, including the *Washington Post*. DeSantis's spokeswoman even posted a tweet mocking at journalists who complained about being denied access to the event (Kurtzleben, 2022).

Other examples of journalist discrimination include Alaska congressional candidate, Sarah Palin, and Pennsylvania candidate for governor, Doug Mastriano, both Republicans, who only granted access to conservative media during campaign events (Editorial Board, 2022).

With respect to the Legislative environment, the Chapultepec Index found that it had only a slight influence on freedom of expression. The highest score on record is for Realm B: Exercise of Journalism, where it obtained 1.40 points out of 10.

It is worth noting the case of a legislature that passed a law to regulate social media companies during the period under study. In May 2021, the state of Florida approved a law that limits or prohibits the type of content that companies such as Twitter, Facebook, and YouTube can remove from their platforms. Florida argued that these companies often censor comments from conservatives (Texas also passed a similar law).

There was a series of lawsuits taking place during 2022 against this law to prevent it from entering into force. The case evolved through several appeal circuits, until September 2022 when it reached the U.S. Supreme Court. The court has not yet ruled on it, but it will surely have an impact on the way private social media companies regulate information on their platforms (Oremus & Zakrzewski, 2022).

With respect to the Judicial environment, here too, the Chapultepec Index found that it just had a slight influence on freedom of expression. The highest score was in Realm B: Exercise of Journalism, where it scored 0.80 points out of 10. This is a significantly low figure reflecting the slight influence of this environment on freedom of expression.

Nonetheless, the influence of the Judicial environment is clear in circumstances where judges or grand juries issue orders to journalists (subpoenas) to disclose their sources, hand over photographs, videos, or other types of information. With few exceptions, these court orders are often dismissed by means of appeals and injunctions, and in most cases the journalist or media outlet is not compelled to turn over the information.

For example, a grand jury in the state of Georgia ordered the newspaper *Atlanta-Journal Constitution* (AJC) to turn over a recording of a phone conversation between a Georgia federal prosecutor and his office staff during the investigation into former President Donald Trump's possible attempt to interfere with the results of the presidential election in that state.

Although the contents of that recording had already been reported by AJC, the newspaper agreed to release the recording after guaranteeing that confidential sources would not be revealed (U.S. Press Freedom Tracker, July 2022). This is an example of a rare situation: A media outlet agreeing to turn over information following a court order.

## **Realm A: Unrestricted access to information**

In the United States, people can easily access information sources and are free to express their views, and this is also reflected in the Chapultepec Index. With respect to realm A: Citizens Free to Express Themselves, the United States scored 17.8 out of 23 points possible. In the Information Flow sub-realm, it scored 7.2 points out of 11, and in the Free Speech sub-realm, it obtained 10.7 points out of 12.

Public libraries have computers with free access to Internet, and in many cities free Wi-Fi service is available in public spaces. U.S. population is 333.9 million, and by January 2022, there were 307.2 million Internet users, equivalent to 92% of the total population (Kemp, 2022).

In general, citizens are free to express themselves. However, there is a continuous debate on the kind of regulations on freedom of expression social media such as Twitter and Facebook may impose on users who share information considered inaccurate or manipulated. As private companies, they can introduce regulations regarding the type of information shared on their platforms, but the issue is complex. Some political personalities and officials, usually conservatives and Republicans, claim that social media apply censorship to their views, although others argue that it is not censorship but regulation on the dissemination of false information (Oremus, 2022).

## **Realm B: Tension eases**

In Realm B: Exercise of Journalism, the United States scored 6.7 out of 10 in the Chapultepec Index. Generally, journalists exercise their profession with few restrictions and have access to official sources. For example, with respect to White House correspondents covering President Joe Biden's administration, there have been no reports of press passes revoked, as was the case during the administration of former President Donald Trump.

Notwithstanding, there were incidents in which state governors have denied journalists critical of their administration access to events. This was the case of Florida Governor Ron DeSantis who, during the GOP event named "Sunshine Summit", did not grant access to a journalist from the *Washington Post* (Kurtzleben, 2022). This was also the case of congressional candidate for Alaska, Sarah Palin, and the candidate for governor of Pennsylvania, Doug Mastriano, both Republicans. They only allowed conservative media to cover their campaign events while denying access to newspapers and TV stations considered mainstream (Editorial Board, 2022).

During the period surveyed, at least 33 incidents were identified in which journalists or media outlets were subpoenaed to reveal information sources or material gathered during their duties. There were several cases regarding coverage of the January 6, 2021 insurrection at the U.S. Capitol in Washington D.C., and other cases regarding the investigation of former President Donald Trump's alleged efforts to interfere with the results of the presidential election in Georgia (U.S. Press Freedom Tracker, Incident Database).

## **Realm C: Existing risks for the profession**

In realm C, Violence and Impunity, the United States obtained 18.9 points out of 42 in the Chapultepec Index. The type of violence experienced by journalists in the United States often occurs during the coverage of protests, where police forces beat, confiscate equipment of, and even arrest reporters and camera operators. Violence may also come from political groups and isolated incidents usually associated with common crime.

During the coverage of two massacres, there were instances of police officers intimidating journalists and threatening to arrest them. These actions are reviewed by the Persecution sub-realm. On May 24, 2022, a young gunman killed 19 students and two teachers at an elementary school in Uvalde, Texas. A week later, police prevented a group of CNN journalists from covering an Uvalde school board meeting, and police officers threatened to arrest the journalists.

Another similar incident occurred during coverage of a massacre with ten casualties at a supermarket in Buffalo, New York, almost two weeks after the tragedy in Uvalde. In this opportunity, police did not allow a *Los Angeles Times* reporter to interview people who attended the high school where the assailant had studied (U.S. Press Freedom Tracker, June 1, 2022).

During the period under study, there are no instances on record of special protection mechanisms for journalists created by the government, or laws passed to punish crimes against them more severely.

## **Realm D: A government alien to exerting control**

With respect to Realm D: Control over the Media, the United States achieved 23.8 points out of 25 in the Chapultepec Index. This is the best score the country reached among all realms during the period surveyed. This is the result of the government truly having little influence on exerting direct or indirect control over the media, including the granting or revocation of television or radio broadcasting licenses on political grounds.

The most important debate in terms of media acquisition took place in the private sector. In April 2022, business investor Elon Musk offered to buy Twitter for USD 44 billion. The board of directors announced its intention to accept the offer, but Musk later withdrew his acquisition proposal. This prompted Twitter to sue Musk, and in September 2022 the entrepreneur agreed to move forward with the transaction and put an end to the lawsuit.

This transaction is worth mentioning since Musk is regarded as a person with libertarian or conservative political leanings, and does not agree with content restrictions for Twitter users. This has fueled fear of a resurgence of false and racist posts without consequences, and some employees have expressed their intention to quit the company if Musk's transaction is closed. Additionally, hundreds of users have said they would stop using this social media app if the magnate buys the company (Ortutay & Krisher, 2022).

## **Conclusions**

The United States was rated by the Chapultepec Index as a nation where there is low restriction on freedom of the press. With a score of 67.26 out of 100, the United States ranked seventh out of 22 countries. In general, its citizens have free access to information and are free to express themselves. There are few hurdles to the exercise of journalism and reported cases of aggression or violence against journalists by police forces and private individuals are rare. The government exercises very little influence to control the media directly or indirectly.

Although the three environments analyzed, Executive, Legislative and Judicial, had a very little influence on freedom of the press and expression, the one with the greatest unfavorable influence was the Executive environment. There were cases of governors and political candidates who did not allow journalists –whom they considered critical of their administrations– to access their events. However, conservative media or media aligned with their ideas did have access to their events.

With respect to the Legislative environment, despite having a slight influence, there is an important case that is worth highlighting and monitoring. The State of Florida passed a law restricting the power of social media companies to regulate the information shared on their platforms. A lawsuit to prevent the law from going into effect managed to stop it temporarily; but the case will be revised by the U.S. Supreme Court. This ruling will have a major impact on how companies can regulate the information disseminated through their platforms.

Of the realms analyzed for this Index, it is worth following up on that of Violence and Impunity, and monitoring the number of attacks and assaults against journalists in the line of duty by police forces. It has been determined that during protests on issues such as abortion advocacy, or other issues sparking political tension, violence against journalists is very likely to occur.

With respect to the other three realms, Informed Citizens Free to Express Themselves, Exercise of Journalism, and Direct or Indirect Control over Media, the United States showed positive numbers proving that there is low restriction on freedom of expression and the press in that country.

In conclusion, the Chapultepec Index is an important instrument for measuring the factors that can restrict freedom of expression and the press in a country. It also serves to assess best practices regarding these rights in different countries. In the case of USA, the new presidential administration had an important effect in easing tensions between the press and the Executive; but this does not mean that these tensions may not escalate again if a new president arrives with a different agenda. Although free speech in the United States is not in danger, threats to this important right can always arise.

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