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*Affiliations appear only for purposes of identification.*

August 7, 2025

Town of Bennett Board of Trustees  
207 Muegge Way  
Bennett, CO 80102

## VIA E-MAIL

Re: Constitutional Violation by Bennett Board of Trustees

Dear Bennett Board of Trustees,

I represent I-70 Publishing Company, Inc., and its publisher Doug Claussen, of *The I-70 Scout & Eastern Colorado News* (collectively “*The I-70 Scout*”) regarding the recent decision of the Town of Bennett Board of Trustees (the “Bennett Board” or “Board”) to withdraw display advertising from my client’s news publications. As this action was openly motivated by retaliation for *The I-70 Scout*’s editorial decision-making, the withdrawal of advertising was egregiously unconstitutional. I am writing to strongly urge you to reconsider this decision in the hope that we can resolve this matter without litigation.

As you are aware, at its public meeting on May 13, 2025, the Board—in a blatant and willful violation of my clients’ First Amendment rights—voted to withdraw the town’s display advertising from *The I-70 Scout*. Subsequently, in its online newsletter circulated on June 11, 2025, via email, the Board formally reiterated that it had “made the decision to discontinue advertising with *The I-70 Scout* and has provided the required 30-days notice to cancel the existing contract.”

Under the terms of the “existing contract,” the town had agreed to purchase a minimum amount of advertising space in *The I-70 Scout* publications each week—though, in practice, the town purchased significantly larger amounts of advertising space to promote particular events, such as the annual Bennett Days celebrations. The contract, which the parties entered into in 2015, has a term of one year, and automatically renews at the end of each year, unless a party provides thirty days’ notice of an intent to terminate the contract. Despite these clear contractual requirements, in an email to Mr. Claussen on May 14, the Board notified him that it was ceasing all advertising immediately, and has not placed any display advertisements since that date.

The Board’s actions go far beyond failure to abide by its contractual obligations. Rather, in deciding to terminate its advertisement relationship solely based on the content of *The I-70 Scout*’s reporting—specifically, an article from May 7, 2025 that truthfully reported on a police investigation into a sexual assault that took place in a high school locker room—the Board

violated *The I-70 Scout*'s First Amendment rights. As discussed below, a long line of cases has recognized that this exact type of decision—withdrawal of government ads—is unconstitutional when it is made in retaliation for First Amendment-protected expression.

At the May 13 meeting the Board trustees made it abundantly clear that this decision was motivated entirely by the content of *The I-70 Scout*'s May 7, 2025 article. Board trustees called the article by Mr. Claussen the “worst article I’ve ever seen” and voted to “cut out the advertising if that’s what needs to be done” in order to punish the so-called “distasteful” editorial decisions made by Mr. Claussen.

In particular, at the May 13 public meeting:

- Trustee Royce Pindell stated that *The I-70 Scout* article published on May 7, 2025, was the “worst article I’ve ever seen.” He further stated, “I would like this board not to spend any more money with his papers.” Because of the content in the article, Pindell said, “I don’t want to support him or his paper anymore” and that “anyone who is putting ads in his paper, I wish that they would reconsider supporting an editor that would let that happen.” He further stated that Claussen’s newspapers “have concerned me for most of the years I’ve lived out here, but this is by far the worst I’ve ever seen him do to anyone.”
- Bennett Town Mayor Whitney Oakley also directed the public to report Mr. Claussen’s “distasteful” reporting to state and/or federal agencies, stating that “there is a fair reporting agency that you can report that to [regarding the distasteful content].”
- In that same meeting, after further discussion regarding the content of the article, Mr. Pindell stated, “I would like this board to direct staff not to advertise our typical advertisements in the paper.” He then sought the Board’s agreement, saying: “I don’t want to use our public funds to participate in his newspaper enterprise anymore whether the rest of the Board agrees with me is a matter of discussion.” Finally, Pindell said, “[Claussen] has affected a family directly. Whether he was callous, or uncaring, or whatever he was, he wasn’t an editor I want to support anymore with either his paper or our dollars.”
- Trustee Denice Smith agreed with the proposal, stating “I’m willing to cut out the advertising if that’s what needs to be done.”
- Even though she had not read the article, Trustee Donna Sus stated: “If I as a person or community were to find an offensive thing like that happening, I would probably take a full-page ad out in that very newspaper censuring what just happened and publicly state we would withdraw our business from them.” In response, Scott Krob, attorney for the Town of Bennett, stated: “You certainly can. It’s free speech.”

- Trustee Pindell also made it clear that his decision to propose revoking the display ads was directly related to the content of *The I-70 Scout*'s reporting, stating "to put that graphic of descriptions into the paper [was wrong]," to which Trustee Kevin Barden said "I agree with you 100 percent. The man needs to be – I can't say it here." Trustee Pindell then suggested the Board consider placing legal notices and advertisements in a nearby "Aurora newspaper."
- When asked directly whether the Board has "any authority or no on directing town staff to not spend advertising dollars" on Mr. Claussen's newspapers, Town attorney Scott Krob advised: "I think that the board could direct staff not to expend any advertising dollars with that particular paper." Neither Mr. Krob nor any other member of the Board appeared to acknowledge the obvious constitutional problems with basing a governmental decision squarely on the content of a publisher's editorial speech.
- Trustee Pindell then made "a motion that we stop the advertising that we can" in *The I-70 Scout* and any affiliated publications. Trustee Dambroski seconded that motion and it carried unanimously.

The above facts, which are matters of public record, unambiguously show the unconstitutional nature of the Board's actions. It is firmly established that when the government threatens to revoke a "valuable financial benefit ... in retaliation for speech," it serves to "chill speech on matters of public concern...." *Board of County Comm'rs v. Umbehr*, 518 U.S. 668, 674 (1996). As courts (including the U.S. Supreme Court) have long recognized, to deny a benefit to those who engage in protected speech "is in effect to *penalize* them for such speech. Its deterrent effect is the same as if the State were to *fine* them for this speech." *Speiser v. Randall*, 357 U.S. 513, 518 (1958) (emphasis added). Colorado law is in accord with this. Colorado District courts have held that a county board violates the First Amendment if its retaliatory actions are a "substantial motivating factor" in the government's decision to withdraw a benefit. *Montgomery v. Bd. of Cnty. Comm'rs of Douglas Cnty., Colorado*, 637 F. Supp. 2d 934 (D. Colo. 2009); *see also Olson v. State Bd. for Cmty. Colleges & Occupational Educ.*, 759 P.2d 829, 830 (Colo. App. 1988) (acknowledging that student editors had standing to file an action pursuant to 42 U.S.C. § 1983 claiming that the termination of its funding was in retaliation for the editorial content of the paper and a violation of their First Amendment rights).

Courts have consistently applied this principle in the context of government decisions to withdraw public advertising from publishers of which the government disapproves, reasoning that "[c]learly established law prohibits the government from conditioning the revocation of benefits on a basis that infringes constitutionally protected interests." *El Dia, Inc. v. Rosello*, 165 F.3d 106, 110 (1st Cir. 1999) (holding that the governor's withdrawal of advertising from a newspaper in response to editorial content violated the newspaper's rights under the First Amendment).<sup>1</sup> The upshot of this long line of case law

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<sup>1</sup> *See, e.g., Alameda Newspapers, Inc v. City of Oakland*, 95 F. 3d 1406, 1421 (9th Cir. 1996) (holding that the "First Amendment protects newspapers from retaliation by

is that, even as “the [government] is under no federal constitutional obligation to advertise in [a particular newspaper, it] cannot *withdraw* that advertising to punish [the newspaper] for its editorials or articles.” *Sliger Livingston Publ’ns, Inc. v. Hamburg Township*, No. 93-cv-40295, 1993 U.S. Dist. LEXIS 15853, at \*4-5 (E.D. Mich. Sept. 22, 1993) (finding unconstitutional a town’s withdrawal of its advertising).

Colorado law is consistent with this. I am attaching the Orders from two Colorado federal district cases which hold that the government cannot revoke advertising from a newspaper based on its content (the relevant sections are highlighted).

Most recently, here in Colorado, when the Custer County Board of Commissioners decided in 2022 to punitively deny *The Wet Mountain Tribune* its advertising dollars because of its critical reporting on a public health director, the newspaper filed suit to protect its right not to have the government retaliate against it for exercising its First Amendment rights. In that case, as here, one of the County’s commissioners had made it clear that his vote was based on his opinions of the newspaper’s reporting. The County made the sensible decision to settle *The Wet Mountain Tribune*’s federal lawsuit, and reinstated it as the newspaper of record.<sup>2</sup> The parties also agreed to a [\\$50,000 settlement](#) paid by the Custer County Board of Commissioners and that the paper would remain its paper of record for four years.

As a result of the Bennett Board’s blatantly unconstitutional actions on May 13, *The I-70 Scout* has lost hundreds of dollars in revenue and stands to lose thousands more.

As set forth above, the Board’s video-recorded statements on the official record establish beyond dispute that retaliation was not merely a “substantial motivating factor” in its decision—it was the *only* motivating factor. Although my client has already suffered harm as a result of the Board’s actions to immediately pull advertising from *The I-70 Scout* to date, we would still prefer to spare all involved from the burdens of litigation, the inevitable result of which will be a injunctive relief and a monetary judgment in my

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government agencies on account of articles or views that the newspapers have published (or intend to publish)”; *McBride v. Village of Michiana*, 100 F.3d 457, 461 (6th Cir. 1996) (“[governmental] retaliation aimed at chilling fundamental rights [is] improper.”); *North Mississippi Communications, Inc. v. Jones*, 792 F.2d 1330, 1337 (5th Cir. 1986) (“[I]t would violate the Constitution for [a government entity] to withhold public patronage, in the form of advertising, from [a newspaper] in retaliation for that newspaper’s exercise of first amendment rights.”); *Review Publ’ns, Inc. v. Navarro*, No. 89-cv-1187, 1991 U.S. Dist. LEXIS 17499, at \*14 (S.D. Fla. June 26, 1991) (finding that local sheriff violated First Amendment when he terminated county advertising in retaliation for news coverage), *aff’d without op.*, 983 F.2d 236 (11th Cir. 1992).

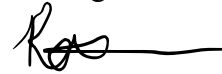
<sup>2</sup> See *Wet Mountain Publ’g Co. v. William R. Canda, et al.*, No. 22-cv-02121 (D. Colo.), <https://www.courtlistener.com/docket/64907346/wet-mountain-publishing-company-v-canda/>.

clients' favor, including but not limited to recovery of attorneys' fees and costs,<sup>3</sup> and, potentially, a breach of contract claim and punitive damages against the Board and/or its members.

In light of all the above, we respectfully but strongly request that the Bennett Board reinstate its advertising relationship with *The I-70 Scout* at its next public meeting by rescinding its termination of its advertising contract with *The I-70 Scout* and to immediately restore the *status quo ante*, in which the Board placed its display advertisements in Mr. Claussen's newspapers. As such, this request does not act as the final offer to resolve my client's claim.

My client is fully prepared to litigate these issues, if necessary. To avoid this, please contact me by email or telephone to discuss this matter further at your earliest convenience, and in no event more than one week from today.

Best regards,



Rachael Johnson  
REPORTERS COMMITTEE  
FOR FREEDOM OF THE  
PRESS

c/o Colorado News  
Collaborative  
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cc: Scott Krob, Esq.

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<sup>3</sup> Under 42 U.S.C. § 1988, a litigant is entitled to recover its costs and attorneys' fees incurred in bringing an action to vindicate violations of its civil rights by state government actors under 42 U.S.C. § 1983.