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October 8, 2024

Colin Kennedy
City Manager
Newport City Hall
43 Broadway
Newport, RI 02840

VIA EMAIL

Dear Mr. Kennedy:

Our office has received a complaint from Newport resident Christian Winthrop, founder and publisher of the online media site *Newport Buzz*, about his being removed this past month from the City's email distribution list, which is used to notify designated individuals, including members of the media, of various municipal activities such as upcoming meetings of the City Council. Because we believe he has raised legitimate concerns that his removal from the list infringes upon fundamental First Amendment rights, I am writing to request that you immediately reinstate him to it.

Mr. Winthrop has shared with us copies of the emails that he received in response to an Access to Public Records Act request regarding your decision as City Manager to remove him from this distribution list. Those emails indicate that the decision to exclude Mr. Winthrop and the *Newport Buzz* was because you do not consider it to be a "reputable" media source based upon the content of the site's reporting/commentary. But city officials simply do not have the authority under the First Amendment to arbitrarily determine that certain members of the media should not be entitled to receive information that others get based on amorphous and clearly content- or viewpoint-based criteria.

While city officials may disapprove of this website's style or manner of reporting, the First Amendment's guarantee of a free press ensures that the *Newport Buzz* cannot be singled out for inequitable treatment because it may occasionally sting city officials in ways that the recipients deem offensive or unfair. This is a basic constitutional principle, rooted in both free press and due process standards, that courts have recognized for decades.¹

¹ See, e.g., *Borreca v. Fasi*, 369 F. Supp. 906, 907 (D. Haw. 1974) (enjoining mayor from barring journalist from press conferences where the mayor claimed the reporter "was irresponsible, biased, and malicious in reporting on the mayor and the city administration"); *Sherrill v. Knight*, 569 F.2d 124, 129 (D.C. Cir. 1977) (ruling unconstitutional the denial of a press pass based upon the content of a journalist's speech); *Alaska Landmine LLC v. Dunleavy*, 514 F.Supp.3rd 1123 (D. Alaska 2021) (exclusion of online reporter from media advisory list and denial of press credentials to attend election-related press conference violated First Amendment and due process).

I trust that, upon further consideration, you will agree to reinstate Mr. Winthrop's media site to the distribution list at issue here. In order to resolve this matter expeditiously, I would ask that you please advise us by COB Thursday of this week, October 10th, whether you have done so.

As this letter should also be considered notice of a potential legal claim, we ask that you take all necessary steps to apprise City officials and employees of their obligation to preserve any correspondence, emails, texts or other communications relating to this matter.

Thank you for your prompt attention to this, and I look forward to hearing back from you about it at the earliest possible opportunity.

Sincerely,

A handwritten signature in black ink that reads "Steven Brown". The signature is written in a cursive, flowing style.

Steven Brown
Executive Director

cc: Newport City Council
Laura Swistak, City Clerk
Christopher Behan, City Solicitor
Christian Winthrop