INSTITUTE FOR JUSTICE

May 27, 2025

Via Email

Mayor Michael Cornell
Riverview City Hall
9699 Lilac Drive
Riverview, MO 63137
MikeCornell@CityofRiverviewmo.org

Board of Aldermen
Riverview City Hall
9699 Lilac Drive
Riverview, MO 63137
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Crystal Sauls
City Clerk
Riverview City Hall
9699 Lilac Drive
Riverview, MO 63137
CityHall@riverviewmo.org

Re: Unconstitutional Retaliatory Subpoena Related to Online Joke

Mayor Cornell, Board of Aldermen Members, and Clerk Sauls:

My name is Ben Field, and I am an attorney at the Institute for Justice (IJ), a national public-interest law firm that fights to defend people's constitutional rights, including the right to free speech. One area of particular interest for IJ is protecting free speech against governmental retaliation. We have done so in cases across the country, including at the Supreme Court, and in lawsuits in states such as Alabama, Iowa, Kansas, Louisiana, Michigan, Ohio, Texas, Virginia, and Wisconsin.

I am writing because IJ has concerns that the City of Riverview has taken retaliatory actions in response to constitutionally protected speech—including, specifically, issuing a subpoena related to an online joke about Mayor Michael Cornell. Such retaliation would violate the guarantees of the First Amendment to the U.S. Constitution. The City should rescind the subpoena and unequivocally disavow any further retaliatory action.

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Mayor Cornell and the City of Riverview appear to have taken retaliatory actions against an online joke about the mayor.[1]

James Carroll is a resident of Illinois, who used to live in north St. Louis County near Riverview, Missouri. When he lived there, he followed news about Riverview, and he continues to do so. In April of this year, he posted a joke on the website Nextdoor poking fun at Mayor Cornell in response to recent news articles about him.

Shortly thereafter, on both April 15 and 16, Mr. Carroll found copies of subpoenas left at his Illinois home by a process server. Titled "Order To Appear or Produce Documents," these subpoenas commanded Mr. Carroll to appear "before the mayor and board of aldermen of the City of Riverview" at Riverview City Hall on April 16, 2025. The subpoenas listed several topics that Mr. Carroll was apparently intended to address, including "[i]nciting violence against an elected official," "[c]yber [b]ullying," and "[s]lander and [d]efamation of [c]haracter." These topics appear to relate to Mr. Carroll's joke about Mayor Cornell. The subpoena was signed by Mayor Cornell and by Crystal Sauls, the city clerk.

Our understanding is that, rather than subject himself to the City's subpoena, Mr. Carroll instead filed a lawsuit to have the subpoena declared invalid. We understand that a hearing on that issue is scheduled for May 28.

Riverview's retaliatory subpoena and investigation likely violate the First Amendment.

From these facts, it appears that Mayor Cornell issued this subpoena in response to Mr. Carroll's online joke—putatively to investigate the joke, but also with the (likely intended) side effect of inconveniencing Mr. Carroll by compelling him to travel to Riverview to attend a hearing where he would be confronted by City officials about his joke. If that is correct, and the subpoena was indeed retaliation against a joke about a public official, then it is plainly a violation of the First Amendment.

"Official reprisal for protected speech offends the Constitution because it threatens to inhibit exercise of the protected right," and, accordingly, "the law is settled that . . . the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out."[2] "[T]he threat of invoking legal sanctions and

[1] IJ has learned some of these facts from news coverage of the events described in this letter. *See, e.g.*, Nassim Benchaabane, *Lawsuit: Riverview mayor sent man bogus subpoena*, St. Louis Post-Dispatch, May 14, 2025, at A1.

[2] *Hartman v. Moore*, 547 U.S. 250, 256 (2006); *see also, e.g.*, *Gonzalez v. Trevino*, 602 U.S. 653, 662 (2024) (Alito, J., concurring); *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022); *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019); *Crawford–El v. Britton*, 523 U.S. 574, 588 & n.10 (1998); *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 283–84 (1977).

other means of coercion"—such as issuing a subpoena like the one at issue here—plainly qualifies as the sort of retaliatory action that the First Amendment proscribes.[3]

Moreover, a joke about an elected official is indisputably speech protected by the Constitution. "It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions."[4] The First Amendment thus reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[5] "The sort of robust political debate encouraged by the First Amendment is bound to produce speech that is critical of those who hold public office," and such critical speech is fully constitutionally protected.[6]

The subpoena hints at some categories of speech that are not constitutionally protected, but it is obvious that none of them applies to an innocuous joke like Mr. Carroll's. For instance, the subpoena mentions "[s]lander and [d]efamation." But when it comes to public figures like an elected mayor, there can be no defamation without "actual malice—that is, with knowledge that [the statement] was false or with reckless disregard of whether it was false or not."[7] Here, Mr. Carroll's joke made no statement of fact at all—at most, it implied an opinion based on prior allegations against Mayor Cornell. The subpoena also hints that Mr. Carroll's joke was somehow responsible for "[i]nciting violence." But, as for defamation of a public official, the constitutional standard for incitement is demanding. It is satisfied only when "advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action."[8] A (rather mild) online joke comes nowhere near meeting that high bar.

This situation reminds us of a case we litigated out of Louisiana in which our client, Waylon Bailey, wrote a joke on Facebook poking fun at his local sheriff's office.[9] In response, the sheriff's office assembled a ramshackle SWAT team and arrested Mr. Bailey on the ground that his joke constituted terrorism.[10] Mr. Bailey then sued the sheriff's office and the responsible deputy for violating his constitutional rights. The U.S. Court of Appeals

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[3] *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963); *see also, e.g.*, *White v. Lee*, 227 F.3d 1214, 1228 (9th Cir. 2000).

[4] *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (cleaned up) (quoting *Bridges v. California*, 314 U.S. 252, 270 (1941)).

[5] *Id.* (and collecting cases).

[6] *Hustler Mag., Inc. v. Falwell*, 485 U.S. 46, 51 (1988).

[7] *N.Y. Times*, 376 U.S. at 280 (cleaned up).

[8] *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

[9] *See Bailey v. Iles*, 87 F.4th 275, 280 (5th Cir. 2023).

[10] *See id.* at 281.

for the Fifth Circuit held that Mr. Bailey's joking online speech was fully protected by the First Amendment. As it explained, "[t]he First Amendment's protections apply to jokes, parodies, satire, and the like, whether clever or in poor taste."[11] In fact, that court specifically rejected the idea that a mundane online joke could constitute incitement.[12] When Mr. Bailey's lawsuit then went to trial, the jury awarded him a six-figure verdict to compensate him for the sheriff's office's violation of his constitutional rights.[13]

Riverview should rescind its retaliatory subpoena and disavow any further retaliatory actions.

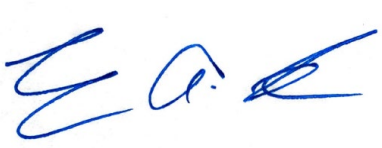
Based on our understanding of the facts, Riverview's treatment of Mr. Carroll is just as unconstitutional as the treatment of Mr. Bailey. In both cases, it is wholly at odds with the guarantees of the First Amendment to target a citizen for retaliation because he made a joke about government officials.

For these reasons, Riverview should immediately rescind its retaliatory subpoena issued to Mr. Carroll. The City should also unambiguously disavow any further retaliatory actions against Mr. Carroll.

Simply put, when Mayor Cornell took public office, he invited criticism—and even the occasional joke. The First Amendment to our Constitution assures that neither Mayor Cornell nor any other Riverview official may weaponize the City's powers to punish such jokes.

If you would find it helpful, I am available to discuss this issue with you further. You can reach me by phone at (703) 682-9320 or email at bfield@ij.org.

Sincerely,



Benjamin A. Field
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[11] *Id.* at 283.

[12] *See id.* at 283–85.

[13] *See* Andrew Wimer, *Jury Award Waylon Bailey $205,000 Over Unconstitutional Arrest for His Facebook Joke*, Institute for Justice (Feb. 1, 2024), https://ij.org/press-release/jury-awards-waylon-bailey-205000-over-unconstitutional-arrest-for-his-facebook-joke/.