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February 27, 2024

Senator Mary Kathryn "Heidi" Heitkamp

VIA EMAIL: [REDACTED]

Re: False and Defamatory Statement Regarding Representative Matt Rosendale

Dear Senator Heitkamp:

Our firm represents Representative Matt Rosendale. It has come to our attention that you recently made a false and defamatory statement about Representative Rosendale during an appearance on the "Talking Feds" podcast. Specifically, when discussing Representative Rosendale's decision to withdraw from the race to represent Montana in the United States Senate, you stated: "Just to gossip just a little bit: There's a reason why Rosendale backed out of that Senate race—the rumor is he impregnated a 20-year-old staff person"¹ (the "Defamatory Statement").

You may think it's acceptable for a former United States Senator to perpetuate this so-called "gossip" like an adolescent, but your reckless disregard for the truth has unequivocally crossed the line from misleading to the basest form of false and unlawful scandalmongering. By falsely claiming that Representative Rosendale impregnated a staff person, you have defamed Representative Rosendale's character and reputation and caused damage to his work as a member of Congress, his business endeavors, and his family. In other words, your "gossip" has real consequences.

In North Dakota "[e]very person, subject to the qualifications and restrictions provided by law, has the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to the person's personal relations." N.D. Cent. Code § 14-02-01. Defamation includes libel or slander. N.D. Cent. Code § 14-02-02. Libel "is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation

¹ Talking Feds Podcast, *Alabama Goddam*, YOUTUBE, at 35:10 (Feb. 26, 2024), <https://www.youtube.com/watch?v=QsyJIuB9HEM&t=2095s>.

to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes the person to be shunned or avoided, or which has a tendency to injure the person in the person's occupation." N.D. Cent. Code § 14-02-03. Slander includes any false and unprivileged publication other than libel which, as relevant here:

Tends directly to injure the person in respect to the person's office, profession, trade, or business, either by imputing to the person general disqualifications in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to the person's office, profession, trade, or business that has a natural tendency to lessen its profits;

Imputes to the person impotence or want of chastity; or

By natural consequence causes actual damage.

N.D. Cent. Code § 14-02-04(3)-(5); *see also*, e.g., *Riemers v. Mahar*, 748 N.W.2d 714, 719-20 (2008).²

The purpose of this letter, therefore, is threefold.

1. Demand for corrective action.

First, this letter is a demand that you immediately cease and desist from making communications, whether oral, written, electronic, or otherwise, that include or reference the Defamatory Statement.

2. Notice that the Defamatory Statement is false.

Second, this letter serves as unequivocal notice to you and your agents and representatives that the Defamatory Statement was false. Even if you originally made this false claim due to oversight or confusion, continuing to make the Defamatory Statement will constitute "actual malice" for a defamation action. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

3. Notice of litigation hold.

Third, this letter provides you with written notice that my client anticipates additional legal proceedings related to the Defamatory Statement. This letter shall further serve as notice that we believe that you possess information related to the Defamatory Statement—

² This letter presumes that the Defamatory Statement is actionable in North Dakota state court, but we reserve the right to bring legal action in any appropriate jurisdiction.

including your potential sources—which will support my client’s claims against you. Accordingly, you and your agents and principals, in whatever form, may be required to produce documents, records, and other information regarding the Defamatory Statement and related matters in a legal proceeding.

This letter places you on notice that you are under an obligation to safeguard and preserve all documents, records, and data related to the Defamatory Statement or to my client. In addition, this letter places you on notice not to destroy, delete, discard, alter, or remove any documents, records, or data (both duplicates and originals) from all sources that relate to the Defamatory Statement or to my client. This includes, without limitation, any electronic communications, such as emails, text messages, and social media messages.

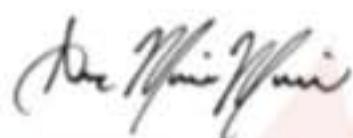
“Documents, records, and data,” as used in this letter, means *all typed, handwritten, and electronic documents, records, and data* of any kind, including files, email, text messages, social media messages and other electronic communications, word processing documents, spreadsheets, databases, calendars, telephone logs, presentations, graphs, charts, images, audio and/or visual recordings, and voicemail, as well as copies and versions of such documents, including drafts, markups, revisions, and handwritten documents.

“All sources,” as used in this letter, means all hard copy files, computer hard drives, computer servers, websites, removable media (e.g., CDs and DVDs), laptop computers, PDAs, smartphones, portable (“thumb”) drives, and any other locations where hard copy or electronic data is stored. This includes personal computers or devices that you use or have access to at home or work, cloud-based data hosted by third parties, or other locations. It also includes inaccessible storage media, such as backup tapes.

In addition to preserving documents, records, and data, we demand that you immediately take affirmative steps to prevent anyone with access to documents, records, and data relevant to the Defamatory Statement from hiding, modifying, or destroying them.

I can be reached at (512) 354-1785 if you have any questions regarding this letter.

Respectfully,



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