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VIA ELECTRONIC MAIL ONLY

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Re: Dr. Noel Collis for Congress Advertisement

Dear Mr. Winkelman and Mr. Hayes:

As an attorney for Dr. Noel Collis for Congress, I write to acknowledge the campaign's receipt of your unfortunate letter dated July 15, 2020, which was sent to *AxMedia*. We provide the following as a response on behalf of Dr. Noel Collis for Congress, and copy *AxMedia* on this response.

Dr. Noel Collis for Congress welcomes and encourages uninhibited, robust, and wide-open debate. Candidate Fischbach clearly does not. Put simply, your efforts to encourage *AxMedia* to censor my client and violate his First Amendment rights are misguided.

Your unsubstantiated allegations reference *N.Y. Times Co. v. Sullivan*, 376 U.S.254 (1964). We first note that *Sullivan* stresses a "commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include ... sharp attacks on government and public officials." *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270. Further, 47 CFR 73.1941 sets out that a station licensee, like *AxMedia*, shall have no power of censorship over the material broadcast by a legally qualified candidate for public office like Dr. Collis.

The fact is that Ms. Fischbach failed to register as a lobbyist in 2019 and the Collis campaign is well within its rights to bring that information to the public's attention.

Minnesota Statute 10A.01 defines a lobbyist as a person who engaged for pay or other consideration of more than \$3,000 from all sources in any year for the purpose of attempting to

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influence legislative or administrative action, or the official action of a metropolitan governmental unit, by communicating or urging others to communicate with public or local officials.

Minnesota Statute 10A.03 requires a lobbyist to file a registration form with the board within five days after becoming a lobbyist or being engaged by a new individual, association, political subdivision, or public higher education system.

Ms. Fischbach's own Financial Disclosure Report shows that she was paid \$8,000 in salary by the Central Minnesota Builder's Association ("CMBA") in 2019 for a position whose job description included lobbying activities. A CMBA newsletter boasts that they hired Ms. Fischbach to "maintain a working relationship with elected officials and agencies in the CMBA service territory, specifically the St. Cloud area region, as well as with counterparts at the city, county, state and national levels on such matters that affect the industry and members of the CMBA."

This is clearly a lobbying position and Ms. Fischbach did not register her lobbying status as Minnesota law requires – indeed, lobbyist reports show that CMBA had no registered lobbyist as of May 31, 2018. We look forward to your explanation of what the \$8,000 paid to Ms. Fischbach was for, if not – in whole or in part – for lobbying. All of this to say that your allegations fail under the *Sullivan* test, because the statement made in the advertisement is true. Further, as I am sure you are aware, *Sullivan* requires an actual malice standard in order to recover damages, which you surely cannot meet.

Your letter is lacking in both legal and factual substance, and appears merely an attempt to bully the media. We expect that you will retract your letter.

Very truly yours,

/s/ Richard G. Morgan

Richard G. Morgan of
LEWIS BRISBOIS BISGAARD & SMITH LLP

RGM

cc: Dr. Noel Collis for Congress
AxMedia