

August 10, 2022

The Honorable Lorrin Freeman  
Wake County District Attorney  
300 South Salisbury Street  
Raleigh, NC 27601

**VIA HAND DELIVERY**  
**HIGH PRIORITY**

**Re: False and derogatory statements by Jim O'Neill calculated to and intended to affect the election of Attorney General Josh Stein**

Dear Ms. Freeman,

I serve as counsel to the North Carolina Democratic Party, a political party as defined in N.C. Gen. Stat. 163-96. During the 2020 election cycle, the Democratic Party nominated incumbent North Carolina Attorney General Josh Stein as its nominee for reelection to the office of North Carolina Attorney General. The Republican nominee for Attorney General in 2020 was Jim O'Neill. Mr. O'Neill was first elected as Forsyth County District Attorney in 2008 and held that position at all times relevant to the matters identified in this letter.

In this regard, I write to inform you of false and derogatory reports which were published and caused to be circulated by Mr. O'Neill in the course of his effort to adversely affect the chances of Attorney General Josh Stein's reelection. The North Carolina Democratic Party requests your prompt and thorough investigation and prosecution of Mr. O'Neill for having made those reports. The reports, which are more fully described herein, include those published by Mr. O'Neill in a television interview at WUNC Television that was aired throughout the State of North Carolina, including Wake County, North Carolina. In addition, Mr. O'Neill published his reports in front of numerous television and news media cameras at a rally for President Donald J. Trump in Winston-Salem, the coverage of which was intended to be broadcast statewide and was circulated by the Winston-Salem Journal via the internet as well as by YouTube, and thus was published and circulated in Wake County, North Carolina.

As you are aware, certain false and defamatory statements published during the course of political campaigns have been designated as unlawful by our North Carolina General Assembly.

(a) Class 2 Misdemeanors. – Any person who shall, in connection with any primary or election in this State, do any of the acts and things declared in this subsection to be unlawful, shall be guilty of a Class 2 misdemeanor. It shall be unlawful to do any of the following (in pertinent part):

(9) For any person to publish or cause to be circulated derogatory reports with reference to any candidate in any primary or election, knowing such report to be false or in reckless disregard of its truth or falsity, when such report is calculated or intended to affect the chances of such candidate for nomination or election.<sup>1</sup>

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<sup>1</sup> N.C. Gen. Stat. 163-274(a) (“Certain acts declared misdemeanors”).

Attorney General Stein's admirable record in combating the rape kit backlog.

The historical record plainly shows that Attorney General Stein has led the attack on the backlog of untested rape kits from the beginning of his tenure as Attorney General to the present. During his first term in office, which began in January 2017, Attorney General Stein communicated with district attorneys statewide, including Mr. O'Neill, thereby leading a coordinated effort to determine the number of untested rape kits across the state. In March 2017, Attorney General Stein met with the North Carolina Conference of District Attorneys (the "Conference"), again including Mr. O'Neill, to ask for their help ascertaining the number of old rape kits in their jurisdiction in order to win justice for survivors and hold rapists accountable. In early May 2017, the Director of the Conference sent a reminder email to all of North Carolina's District Attorneys (including Mr. O'Neill) asking them to follow-up on Attorney General Stein's request to take action on untested kits.<sup>2</sup>

In June 2017, the North Carolina Department of Justice, over which Attorney General Stein presides, worked with the North Carolina General Assembly to pass Session Law 2017-57<sup>3</sup>, which requires every law enforcement agency to report to the State Crime Lab how many untested kits were in its possession. Thereafter, the Department of Justice, under the Attorney General's leadership, commissioned a statewide inventory concerning the backlog. The inventory found there were 15,160 untested sexual assault kits in the custody of local law enforcement agencies across the state, including 1,509 untested kits in Forsyth County.<sup>4</sup>

Attorney General Stein then sought and obtained authorization from the General Assembly to create a statewide sexual assault kit tracking system and initiated the development of a protocol for the testing of previously untested rape kits.<sup>5</sup> He launched the tracking system in October 2018 that barcodes all new sexual assault kits so survivors and actors in the criminal justice system can track these kits in real time, increasing transparency and accountability. He also sought and successfully obtained \$4 million in additional funding to expedite the testing of older rape kits, including in October 2018, when Attorney General Stein announced a \$2 million grant from the federal Sexual Assault Kit Initiative (SAKI), a program under the United States Department of Justice's Bureau of Justice Assistance, to support the testing of additional kits. Beginning in 2019, Attorney General Stein secured contracts with a private DNA testing lab to test old rape kits. The North Carolina State Crime Lab, which is part of the Department of Justice led by Attorney General Stein<sup>6</sup>, initiated work with local law enforcement agencies to send old kits for testing.

In addition, Attorney General Stein was the architect of a legislative initiative that became known as the Standing Up for Rape Victims Act, or Survivor Act. It mandated the testing of older kits, secured \$6 million in additional state funding for the testing of even more

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<sup>2</sup>[https://nmcldn.io/e186d21f8c7946a19faed23c3da2f0da/39922925729b42ca8419031346461dc8/files/Peg-Dorer-Email---untested-Sexual-Assault-Kits\\_Redacted.pdf](https://nmcldn.io/e186d21f8c7946a19faed23c3da2f0da/39922925729b42ca8419031346461dc8/files/Peg-Dorer-Email---untested-Sexual-Assault-Kits_Redacted.pdf).

<sup>3</sup> [https://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2017-2018/SL2017-57.html#:~:text=SL%202017%2D57%20\(SB%20257\)&text=AN%20ACT%20TO%20MAKE%20BASE,AGENCIES%2C%20AND%20FOR%20OTHER%20PURPOSES.&text=SECTION%201.1.,Operations%20Appropriations%20Act%20of%202017.%22](https://www.ncleg.net/EnactedLegislation/SessionLaws/HTML/2017-2018/SL2017-57.html#:~:text=SL%202017%2D57%20(SB%20257)&text=AN%20ACT%20TO%20MAKE%20BASE,AGENCIES%2C%20AND%20FOR%20OTHER%20PURPOSES.&text=SECTION%201.1.,Operations%20Appropriations%20Act%20of%202017.%22).

<sup>4</sup> See, e.g., <https://ncdoj.gov/attorney-general-josh-stein-announces-results-of-s-d1/>.

<sup>5</sup> <https://ncdoj.gov/attorney-general-josh-stein-announces-new-stat-281-29/>.

<sup>6</sup> See <https://ncdoj.gov/about-ncdoj/the-attorney-general/>;  
[https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter\\_114/Article\\_9.pdf](https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/ByArticle/Chapter_114/Article_9.pdf).

rape kits, and established protocols to prevent the accumulation of future backlogs. The Act attracted various bi-partisan bill sponsors and was successfully enacted.<sup>7</sup>

Jim O’Neill’s brazen attempt to spread misinformation in violation of longstanding North Carolina law.

**In both 2019 and 2020, Jim O’Neill knowingly misled his supporters, the press, and the voting public by making false and derogatory statements about Attorney General Stein’s exemplary record of tackling the backlog of sexual assault kits in North Carolina.**

On October 7, 2019, Mr. O’Neill issued a statement on Twitter falsely claiming that Attorney General Stein “has stood on the sidelines for almost his entire term while more than 15,000 untested rape kits have sat on the shelves of the lab that Stein is responsible for, collecting dust.”<sup>8</sup> He repeated similar claims on a number of other reported occasions.

Yet, Mr. O’Neill certainly knew that the untested rape kits were not in the custody of the State Crime Lab but instead actually were located at local law enforcement agencies across the state.<sup>9</sup> It is, of course, notable that approximately 1,500 rape kits—or about 10% of the state’s entire backlog—were within Mr. O’Neill’s prosecutorial district despite the fact that Forsyth County comprises less than 4% of the state’s population.

In the fall of 2019, two independent fact checkers examined Mr. O’Neill’s claims regarding Attorney General Stein’s record. Both concluded that Mr. O’Neill’s contentions were false. News & Observer reporter Lauren Horsch responded to Mr. O’Neill’s October 7, 2019 claim by writing:

“Well this is false. Literally one of Stein’s top priorities since the NCGA-mandated rape kit audit found those 15,000 untested kits has been testing them. And those particular kits weren’t even at the state crime lab. Those kits were found to be on the shelves of local law enforcement agencies.”<sup>10</sup>

Then, on October 18, 2019, UNC’s MediaHub wrote, “Stein has not ‘stood on the sidelines’ of the issue, and there are not ‘15,000 untested rape kits sitting on the shelves at ‘the lab Stein is responsible for.’” UNC’s MediaHub concluded that O’Neill’s claims were “misleading at best and false at worst.”<sup>11</sup>

Despite being called out repeatedly for his “false,” “misleading,” and malicious claims against Mr. Stein, Jim O’Neill decided to double and triple down. He engaged in a pattern of falsehoods.

On December 14, 2019, the North State Journal reported that Mr. O’Neill said, “When I look at the

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<sup>7</sup> See generally <https://ncdoj.gov/attorney-general-josh-stein-announces-survivor-act-d1/>; <https://ncdoj.gov/achieving-justice-for-sexual-assault-survivors-in-north-carolina/>.

<sup>8</sup> Exhibit 1, attached.

<sup>9</sup> See generally <https://ncdoj.gov/download/141/files/18096/saack-report-final>.

<sup>10</sup> See Exhibit 1, attached.

<sup>11</sup> <http://mediahub.unc.edu/unc-factcheck-candidate-for-attorney-general-misleads-about-incumbents-record-on-rape-kit-backlog/>.

15,000 sexual assault kits sitting up on the shelves in Raleigh, and our current attorney general not making that a priority until three and a half years into his four-year term, it just makes me mad as fire.” The kits were not sitting on the shelves in Raleigh; they were with local law enforcement agencies across the state, including in Forsyth County. Additionally, Attorney General Stein prioritized this issue beginning in 2017. Mr. O’Neill knew or should have known these facts.

On January 18, 2020, O’Neill falsely declared, “The only time that rape kits became important to Attorney General Josh Stein was when I came out in January [2019] and announced I was running against him because I was tired of 15,000 kits sitting up on the shelves collecting dust.” Attorney General Stein had prioritized the issue long before Mr. O’Neill announced his candidacy in 2019, which was known by Mr. O’Neill.

Three weeks later, Mr. O’Neill’s pattern of falsehoods about Stein’s work to end the backlog continued. On February 5, 2020, the Smoky Mountain News quoted Mr. O’Neill as saying, “In January, when I announced, I had had enough of the thought of 15,000 rape kits sitting up on the shelves at the lab that (Stein’s) responsible for and he’s done absolutely nothing about.” Again, the kits were not at the State Crime Lab which Mr. O’Neill knew. Mr. O’Neill knew that Attorney General Stein had done a great deal about the untested sexual assault kits, not “absolutely nothing.”

Then on September 4, 2020, during an interview on WUNC Television, Mr. O’Neill made the following statement:

“One of the reasons that I filed against the current Attorney General was that prosecutors across the state had been asking him from day one to focus on the rape kits. Focus on the rape kits, clear the backlog, that was our number one priority. Unfortunately, he ignored those things until I had had enough and in January [2019] I filed and I came out and said one of the reasons I am running against the current AG is because he’s done nothing about the rape kits. Lo and behold, a month later, he held a press conference saying that he was now going focus on the rape kits. People can draw whatever conclusion they want from that, as to whether or not he was motivated simply because he was going to have opposition on it, on that issue, but it is a backlog, it continues to be a backlog, and it’s not getting done the way that prosecutors want it done.”<sup>12</sup>

Mr. O’Neill’s statements, broadcast across the state, were knowingly false and derogatory. Indeed, Mr. O’Neill was well aware of Attorney General Stein’s efforts and accomplishments. He had to be. Given the repeated communications he received as the Forsyth County District Attorney, his awareness of the statewide inventory of untested rape kits commissioned by Attorney General Stein, the open and transparent way that Attorney General Stein tackled this issue, the fact checks characterizing his earlier claims as false or misleading, and the numerous news articles published about the Attorney General’s work,<sup>13</sup> Mr. O’Neill

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<sup>12</sup> <https://www.youtube.com/watch?v=cf7nSDfINls>.

<sup>13</sup> “NC attorney general to rapists: ‘We are coming for you,’” Kate Martin, Carolina Public Press, 1/30/2019; “NC attorney general works to get thousands of untested rape kits processed,” Caroline Bunkard, WECT, 5/01/2019; “New law requires testing of all rape kits,” Matt Moore, WYFF, 9/19/2019; “Stein: The Survivor Act Will Put Rapists Behind Bars,” Press Release, Office of the North Carolina Attorney General, 9/19/2019; Nearly 300 sexual assault kits sent for testing; arrest made in 29-year-old cold case; Rape Kit Test Leads to Arrest of 71-Year-Old Man in 1993 Assault; “2 charged in Fayetteville cold case after rape kit tested 30 years later,” WTVD, 4/24/2020; “COLD CASE BREAKTHROUGH: Testing of rape kit leads to DNA match, arrest

could not have avoided knowing about them from the very beginning. Yet Mr. O’Neill did not just ignore the Attorney General’s work on rape kits. He proactively and voluntarily claimed that all those efforts simply did not happen.

Further, Mr. O’Neill’s statements were derogatory and were intended to affect Attorney General Stein’s chances of success in the Attorney General’s election of November 2020. His communications were uttered in the context of his campaign for Attorney General. They were clearly made with the purpose of casting Attorney General Stein’s record in a negative light and painting him as unresponsive to an acute need of the state. Mr. O’Neill even went so far as to cite the falsehoods he peddled as a justification for his candidacy.

Jim O’Neill continued making derogatory falsehoods about Attorney General Stein. On September 8, 2020, Mr. O’Neill took the stage in front of numerous television cameras, various digital video recording devices, and an audience of thousands at the Piedmont Triad Airport. There he intentionally made the following false and derogatory statement regarding the tenure of Attorney General Stein:

“The current Attorney General is a radical, left-wing liberal that spends every single day figuring out how he is going to sue Donald Trump every single day. The border wall. President Trump wanted to build us a border wall to keep our nation safe. And you also know that 85% of the heroin that comes into our country comes in through our southern borders. 85%. *This Attorney General here in North Carolina sued Donald Trump over the funding of that border wall.* That’s right. It doesn’t matter to this Attorney General what you want, it only matters what he wants.”<sup>14</sup>

Mr. O’Neill’s derogatory remarks are false for a number of objective reasons. First, Attorney General Stein never sued President Trump over the funding of a wall at the United States’ southern border. Second, Attorney General Stein did not sue Donald Trump every single day. Further, Mr. O’Neill’s remarks regarding the importation of illegal drugs on the southern border were clearly designed to create the impression that Attorney General Stein’s actions contributed to the flow of illegal drugs across the border.

Amid a stream of epithets and pejoratives, Mr. O’Neill inserted an utterly false, easily verifiable statement that was no doubt designed to touch a nerve with his audience regarding a lawsuit concerning the border wall funding. Or, in the language of the law, Mr. O’Neill circulated—indeed, uttered himself—derogatory reports about a candidate against whom he was running in an attempt to tarnish his opponent’s image enough to beat him at the polls. He did so, yet again, knowing his statements to be false, or at least in reckless disregard for their falsity. As a lawyer, he certainly knows how to read a pleading and see who is listed in the plaintiff caption.

#### Conclusion and request for investigation.

Over the course of the campaign, Mr. O’Neill circulated multiple, separate derogatory reports against Attorney General Stein when he was a candidate for reelection that was intended to affect his chances for reelection when Mr. O’Neill knew they were false or was in reckless disregard as to their falsity, including two specific instances within the last two years.

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in 1996 sexual assault,” WECT, 6/10/2019; “24 years after a teen was raped near uptown Charlotte, DNA leads to an arrest,” Joe Marusak, Charlotte Observer, 4/17/2019.

<sup>14</sup> <https://www.youtube.com/watch?v=soyKzauhv0s>.

- (1) On September 4, 2020 Mr. O’Neill stated, “Unfortunately, [Stein] ignored those things until I had had enough and in January [2019] I filed and I came out and said one of the reasons I am running against the current AG is because he’s done nothing about the rape kits.” This is objectively false. Stein had not ignored the issue of untested sexual assault kits before January 2019, and Stein had clearly done many things about the rape kits.
- (2) On September 8, 2020, Mr. O’Neill said, “This Attorney General here in North Carolina sued Donald Trump over the funding of that border wall.” This is objectively false. Stein did not sue Donald Trump over the funding of the border wall.

Through his false and defamatory statements, Mr. O’Neill didn’t just lie to the public about Attorney General Stein’s record of accomplishment concerning old rape kits. Instead of bringing hope to sexual assault victims across the state, he sewed despair and undermined faith in the criminal justice system by misleading the public about Attorney General Stein’s efforts to catalog and process more rape kits. Instead of focusing on substantive policy differences, he instead slung epithets and tried to impugn his political opponent regarding hot-button issues that happened to be at the forefront of the national public discourse. And most relevant to the purpose of this communication, he committed a crime by making derogatory statements about his opponent, knowing those statements “to be false or in reckless disregard” of their “truth or falsity,” where his statements were “calculated or intended to affect the chances of such candidate for nomination or election.”<sup>15</sup>

The North Carolina Democratic Party had not filed this complaint with you until today because it believes the statute is likely unconstitutional. However, in light of the United States District Court’s recent denial of the Stein Campaign’s request for a preliminary injunction and your office’s advocacy in favor of the statute’s constitutionality, the Party has determined it is timely to file this complaint with you.

State law declares that “[i]t shall be the duty of ... the district attorneys to investigate any violations of this Article, and the ... district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation.” See N.C. Gen. Stat. 163-278. The two claims listed above will be simple to investigate; the falsehoods are straightforward and objective. There is nearly a full month before the statute of limitations runs on these two violations of state law so you have plenty of time to investigate, charge and prosecute Mr. O’Neill if warranted.

Therefore, the North Carolina Democratic Party hereby requests that your office investigate the facts relating to the aforementioned statements made by Mr. O’Neill and, where warranted, prosecute him for his crimes. The issues identified herein do not require protracted investigation because the claims are easily provable and the evidence is clear, conclusive, and in the public domain.

If you have any questions or wish to communicate further, please do not hesitate to contact me at 919-782-9322.

Sincerely,



John R. Wallace

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<sup>15</sup> See generally N.C. Gen. Stat. 163-274(a)(9).

**Attachments:**

Exhibit 1: Tweet by Jim O'Neill and responsive Tweet by Lauren Horsch, October 7, 2019.

Exhibit 2: Graphic on Attorney General Stein's work to end the backlog:

<https://ncdoj.gov/public-protection/supporting-victims-and-survivors-of-sexual-assault/>

Exhibit 3: Timeline of Attorney General Stein's work:

<https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/39922925729b42ca8419031346461dc8/files/Events-Timeline.pdf>

Exhibit 4: Fact sheet on Attorney General Stein's work and O'Neill's falsehoods:

<https://nmcdn.io/e186d21f8c7946a19faed23c3da2f0da/39922925729b42ca8419031346461dc8/files/Fact-Sheet-Overview.pdf>

# EXHIBIT 1





**Lauren Horsch** ✓  
@LaurenHorsch

Well, this is false. Literally one of Stein's top priorities since the NCGA-mandated rape kit audit found those 15,000 untested kits has been testing them. The [#NCGA](#) approved an additional \$6 million to test kits through a mini-budget (H29) in September. [#ncpol](#)



**Jim O'Neill** @JimONeillNC · Oct 7, 2019

.@JoshStein\_ is not a prosecutor and never has been. Stein has stood on the sidelines for almost his entire term while more than 15,000 untested rape kits have sat on the shelves of the lab that Stein is responsible for, collecting dust. [#WhereIsStein](#)

3:18 PM · Oct 7, 2019 · TweetDeck

13 Retweets 4 Quote Tweets 45 Likes



## EXHIBIT 2

# Ending the Sexual Assault Kit Backlog



Attorney General  
**Josh Stein**

## Backlog Audit Begins

June 28, 2017

The legislature, in consultation with NC DOJ, enacted Session Law 2017-57 to require every law enforcement agency to report to the State Crime Lab how many untested kits were in its possession.

## Obtained Legislative Approval

June 25, 2018

AG Stein obtained legislative approval to begin kit tracking and the legislature authorized creation of a working group. The legislature failed to fund any outsourcing of old kits.

## Awarded SAKI Grant Funding

October 4, 2018

AG Stein announced \$2 million in grant funding from the US DOJ's Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI) to test untested kits.

## Awarded Crime Commission Funding

January 29, 2019

AG Stein announced \$2 million in grant funding from the Governor's Crime Commission to test untested kits.

## Testing Kits

January 2019 - Present

Law enforcement agencies across the state engage in renewed efforts to test untested kits. More than 1,000 old kits have already been tested and law enforcement announces solving of cold cases and arrests of rapists.

## Inventory of Untested Kits Completed

February 2, 2018

AG Stein announced the results of the State Crime Lab's audit, which found a backlog of ~15,000 untested sexual assault kits located across the state. AG Stein asked the legislature to create a working group, fund kit testing, and authorize a tracking system.

## Launched Kit Tracking

October 1, 2018

AG Stein launched a new statewide sexual assault kit tracking system that barcodes all new sexual assault evidence collection kits. Survivors and actors in the criminal justice system can now track these kits, in real time, increasing transparency and accountability.

## SURVIVOR Act Announced

January 29, 2019

AG Stein, joined by bill sponsors, Sens. Warren Daniel, Danny Britt, and Floyd McKissick and Reps. Jamie Boles, Mary Belk, Billy Richardson, and Carson Smith, unveiled the Standing Up for Rape Victims Act, or SURVIVOR Act, to test older kits and prevent future backlogs.

## SURVIVOR Act Becomes Law

September 19, 2019

After passing the House and Senate unanimously on Sept. 16, Gov. Roy Cooper signed the SURVIVOR Act into law. The law appropriates \$6 million to outsource kit testing and institutes reforms of the rape kit testing process.

## EXHIBIT 3

Date	Action
November 17, 2009	<b>Jim O'Neill sworn in as Forsyth County District Attorney</b>
January 1, 2017	<b>Josh Stein sworn in as North Carolina Attorney General</b>
March 23, 2017	<b>Conference of District Attorneys Meeting</b> AG Stein met with the Conference of DAs, including Forsyth County DA Jim O'Neill, to ask for their help to test old kits, get justice for survivors, and hold rapists accountable.
May 4, 2017	<b>Conference of DAs Email</b> Executive Director sends reminder <a href="#">email</a> to all elected DAs (including O'Neill) asking them to follow-up on Attorney General Stein's request to take action on untested kits
June 28, 2017	<b>Backlog Audit Begins</b> The legislature in coordination with NC DOJ enacted Session Law 2017-57 to require every law enforcement agency to report to the State Crime Lab how many untested kits were in its possession.
February 18, 2018	<b>Attorney General Stein Announces Results of Sexual Assault Kit Inventory</b> The inventory found there were 15,160 untested sexual assault kits in North Carolina in the custody of local law enforcement agencies across the state, including 1,509 untested kits in Forsyth county.
June 25, 2018	<b>Obtained Legislative Approval</b> AG Stein obtained legislative approval to implement a kit tracking system and the legislature authorized creation of a working group to analyze old kits. The legislature failed to provide funding to test old kits.
October 1, 2018	<b>Launched Kit Tracking</b> AG Stein launched a new <a href="#">statewide sexual assault kit tracking system</a> based on barcodes added to all sexual assault evidence collection kits. Survivors and actors in the criminal justice system can now track these kits, in real time, increasing transparency and accountability.

<p>October 4, 2018</p>	<p><b>Awarded SAKI Grant Funding</b>  AG Stein announced \$2 million in grant <a href="#">funding</a> from the US DOJ’s Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI) to test untested kits.</p>
<p>January 2019 - present</p>	<p><b>Testing Kits</b>  Attorney General Stein contracts with private DNA lab to test old rape kits and the State Crime Lab works with local law enforcement agencies to begin sending old kits for testing.</p>
<p>January 29, 2019</p>	<p><b>Survivor Act Announced</b>  AG Stein and various bill sponsors unveiled the Standing Up for Rape Victims Act, or <a href="#">SURVIVOR Act</a>, to mandate testing of older kits and prevent future backlogs.</p>
<p>April 11, 2019</p>	<p><b>Conference of District Attorneys send letter supporting Survivor Act</b>  O’Neill’s name appears on that letter of support as a member of the Conference’s Executive Committee.</p>
<p>September 16, 2019</p>	<p><b>SURVIVOR Act Becomes Law</b>  After passing the House and Senate unanimously on September 16, Gov. Roy Cooper signed the <a href="#">SURVIVOR Act</a> into law. The law appropriates \$6 million to outsource kit testing and institutes reforms of the rape kit testing process.</p>
<p><a href="#">October 7, 2019</a></p> <p>also  <a href="#">December 2019</a>  <a href="#">January 2020</a>  <a href="#">February 2020</a>  <a href="#">September 2020</a></p>	<p><b>O’Neill Deceives About AG Stein’s Record</b>  O’Neill <a href="#">falsely claimed</a> “...Stein has stood on the sidelines for almost his entire term while more than 15,000 untested rape kits have sat on the shelves of the lab that Stein is responsible for, collecting dust.”</p> <p>O’Neill continued to mislead voters about Stein’s record, <a href="#">claiming</a> “that the only time that the rape kits became important” to AG Stein was when O’Neill launched his campaign for AG in January of 2019 and that Stein “had done nothing about the rape kits.”</p>
<p>October 7, 2019</p>	<p><b>O’Neill Falsehoods Fact Checked</b>  Then News &amp; Observer reporter Lauren Horsch <a href="#">responds</a> to O’Neill’s claim of 10/7/19: “Well this is false. Literally one of Stein’s top</p>

	<p>priorities since the NCGA-mandated rape kit audit found those 15,000 untested kits has been testing them. And those particular kits weren't even at the state crime lab. Those kits were found to be on the shelves of local law enforcement agencies.”</p>
October 18, 2019	<p><b>UNC’s MediaHub fact checked O’Neill</b> It <a href="#">concluded</a> that O’Neill’s claims about Stein’s record on the rape kit backlog was “misleading at best and false at worst.”</p>
November 7, 2019	<p><b>SAFE Child Act</b> Passes unanimously and is signed into law. The law requires adults to report suspected child abuse, extends the statute of limitations for criminal and civil actions, and protects children from sex offenders online.</p>
September 24, 2020	<p><b>Stein’s campaign airs ‘Survivor’ Ad</b> ‘Survivor’ corrects the record and makes clear Stein’s commitment to testing kits in contrast with O’Neill’s inaction on the more than 1,500 rape kits in Forsyth County.</p>
September 29, 2020	<p><b>O’Neill files a complaint with the State Board of Elections about the ‘Survivor’ ad</b></p>
December 10, 2020	<p><b>AG Stein Provides Kit Testing Update</b> 2,169 total kits tested 4,739 in process for testing 764 samples added to the CODIS database</p>
May 18, 2021	<p><b>AG Stein Provides Kit Testing Update</b> 2,965 total kits tested 5,404 in process for testing 1,055 samples added to the CODIS database 40 arrests</p>
July 14, 2022	<p><b>AG Stein Provides Kit Testing Update</b> 6,640 total kits tested 3,440 in process for testing 2,387 samples added to the CODIS database 66 recent arrests (related to 91 assaults)</p> <p><b>Testing Dashboard Launches</b> AG Stein launched a public statewide sexual assault kit dashboard: <a href="https://ncdoj.gov/testthekits">ncdoj.gov/testthekits</a></p>

## EXHIBIT 4



## Fact Sheet

### Stein has Prioritized Testing Sexual Assault Kits

- In March 2017, three months into his first term as Attorney General, Josh Stein addressed the NC Conference of District Attorneys and asked for their help in testing sexual assault kits located in local law enforcement jurisdictions across the state.
- In May 2017, NC Conference of District Attorneys Executive Director Peg Dorer [emailed](#) each district attorney: *“You may recall, at our recent conference, the AG and the State Crime Lab Director asked for your assistance in trying to determine the number of untested sexual assault kits that remain in law enforcement agencies around the state. The purpose is to make efficient use of existing testing resources to test these kits. You all committed to assist with this project.”*
- In June 2017, the legislature, in coordination with NCDOJ, passed a law to require each law enforcement agency to report their number of untested sexual assault kits to the State Crime Lab.
- In February 2018, Stein announced the results of the statewide sexual assault kit inventory that found there were 15,160 untested sexual assault kits across North Carolina in the custody of local law enforcement agencies. This included 1,509 untested kits in Forsyth county.
- In June 2018, Stein obtained legislative approval to implement a sexual assault kit tracking system that allowed sexual assault survivors and law enforcement to see in real time where any individual kit was located. Stein also worked with the legislature to authorize the creation of a working group to determine how best to test the kits. The legislature failed to fund any outsourcing of old kits at this time.
- In October 2018, Stein launched a new statewide [sexual assault kit tracking system](#) that barcodes all new sexual assault kits. Survivors and actors in the criminal justice system can now track these kits, in real time, increasing transparency and accountability.
- Also in October 2018, Stein announced \$2 million in grant funding from the US DOJ’s Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI) to test untested kits.
- In January 2019, Stein and the State Crime Lab contracted with a private DNA lab and worked with local law enforcement agencies to begin sending old kits for testing. Stein also worked with legislators to unveil the Standing Up for Rape Victims Act, or SURVIVOR Act, to mandate testing of older kits and prevent future backlogs.
- Since that time, Stein has worked closely with District Attorneys, Sheriffs, Chiefs of Police, and the legislature to test these kits.
- As a result:
  - 80 percent of the older sexual assault kits that are appropriate for testing are either tested (6,640) or in the process of being tested (3,440).
  - DNA samples from 2,287 tested kits have been entered into the CODIS database.
  - 954 of those samples have resulted in a hit that may help law enforcement further investigations and solve cold cases.

- 66 arrests have been made by law enforcement officials related to 91 sexual assaults.

### **O’Neill Misled Voters About Stein’s Record**

- In October 2019, Forsyth County District Attorney Jim O’Neill claimed on Twitter (tweet now deleted) “...Stein has stood on the sidelines for almost his entire term while more than 15,000 untested rape kits have sat on the shelves of the lab that Stein is responsible for, collecting dust.”
  - Then-News & Observer reporter Lauren Horsch [responds](#) to correct O’Neill’s assertion. “Well this is false. Literally one of Stein’s top priorities since the NCGA-mandated rape kit audit found those 15,000 untested kits has been testing them.” “And those particular kits weren’t even at the state crime lab. Those kits were found to be on the shelves of local law enforcement agencies.”
  - MediaHub at UNC also [fact-checked](#) O’Neill’s claim, stating “Stein has not ‘stood on the sidelines’ of the issue, and there are not ‘15,000 untested rape kits’ sitting on the shelves at ‘the lab that Stein is responsible for.’” The fact check concluded that O’Neill’s claims about Stein’s record on the rape kit backlog were “misleading at best and false at worst.”
- December 2019 in the [North State Journal](#), O’Neill stated “When I look at the 15,000 sexual assault kits sitting up on the shelves in Raleigh, and our current attorney general not making that a priority until three and a half years into his four-year term, it just makes me mad as fire.”
- In a January 2020 interview on [WRAL](#), O’Neill said “The only time that the rape kits became important to Attorney General Josh Stein was when I came out in January and announced I was running against him, because I was tired of 15,000 untested rape kits sitting up on the shelves collecting dust.”
- In February 2020 O’Neill told the [Smoky Mountain News](#), “In January, when I announced, I had had enough of the thought of 15,000 rape kits sitting up on the shelves at the lab that (Stein’s) responsible for and he’s done absolutely nothing about.”
- O’Neill continued to mislead voters about Stein’s record with similar statements throughout the 2020 election.

### **Stein Set the Record Straight**

- In September 2020, Stein’s campaign aired an ad titled ‘Survivor’ to [correct the record](#) and make clear Stein’s commitment to testing kits. The ad contrasted Stein’s action with O’Neill’s inaction and noted the more than 1,500 untested sexual assault kits in Forsyth County where O’Neill had been district attorney since 2009.
- In the ad, a survivor of sexual assault states “...when I learned that Jim O’Neill left fifteen hundred rape kits sitting on a shelf, leaving rapists on the streets, I had to speak out. Jim O’Neill cannot be our attorney general.”
- Before the ad was aired, a third-party research firm specialized in evaluating the accuracy of political ads confirmed that “Survivor” was accurate.
- Two separate [media outlets](#) later fact-checked the ad, and neither concluded the ad was false. In fact, one quoted another district attorney “on the condition of anonymity,” who stated that while local law enforcement was typically responsible for having rape kits tested that “doesn’t leave the DA in that jurisdiction entirely blameless.”

## O'Neill's Record and Statutory Duty

- The 2017 inventory of untested sexual assault kits (published in February 2018), found 1,509 untested kits in Forsyth county, O'Neill's prosecutorial district.
  - ["2017 Sexual Assault Evidence Collection Kit Law Enforcement Inventory Report," North Carolina State Crime Laboratory, NC Dept. of Justice, 3/01/2018: Appendix 1: Audit Responses by Agency](#)

Agency Name	Total # Kits
Forsyth County Sheriff's Office	96
Winston-Salem Police Department	1,339
Kernersville Police Department	65
Forsyth Technical Community College	0
Wake Forest University	7
University of North Carolina School of the Arts	2
<b>TOTAL</b>	<b>1,509</b>

- Forsyth County District Attorney [Jim O'Neill's official website](#) describes his "primary responsibility" to "advise local law enforcement."
- Most importantly, the [North Carolina Constitution, in Article IV Section 18](#), states: "The District Attorney shall advise the officers of justice in his district..."
- O'Neill also declared that ending the backlog was his top priority yet he failed to get these kits tested.

## O'Neill Complained

- On September 29, 2020, O'Neill filed a complaint with the State Board of Elections about the 'Survivor' ad. He asked that Attorney General Stein and his campaign committee be investigated under N.C. Gen. Stat. § 163-274(a)(9) in connection with a statement made in a television advertisement by a sexual assault survivor who spoke out when she learned that O'Neill "left fifteen hundred rape kits sitting on a shelf."

## Stein's Campaign Takes a Stand

- On July 21, 2022, Stein's campaign, commercial production company, and a volunteer who is a survivor of sexual assault [filed a declaratory judgment action](#) to ask the U.S. District Court for the Middle District of North Carolina to strike down [North Carolina General Statute § 163-274\(a\)\(9\)](#).
- The statute has been codified for nearly 100 years, but has never been the subject of a reported indictment or charge against any individual or political campaign, likely because it is so clearly unconstitutional.
- This law is unconstitutional because it infringes on the freedom of speech protected under the First Amendment to the Constitution.
- The speech involved in this situation - concerning a political candidate during an election - is core political speech that is the most protected under the First Amendment.
- In 2016, a federal appellate court struck down a nearly identical statute in Ohio. In recent years, other courts have declared unconstitutional similar laws in Minnesota, Massachusetts, and Washington.
- Former North Carolina Supreme Court Justice Bob Orr [released a statement](#) agreeing that the law is unconstitutional.
- Constitutional law expert Michael Gerhardt [filed a declaration](#) with the District Court, outlining the ways in which the law is unconstitutional.
- Stein's campaign team has fully cooperated with this baseless investigation, but the time has come to move forward from this distraction.
- That is why the Stein Campaign and others are asking the court to strike down this unconstitutional law.

**Other Notable Information:**

["NC attorney general to rapists: 'We are coming for you'", Kate Martin, Carolina Public Press, 1/30/2019:](#)

["NC attorney general works to get thousands of untested rape kits processed," Caroline Bunkard, WECT, 5/01/2019:](#)

["New law requires testing of all rape kits," Matt Moore, WYFF, 9/19/2019:](#)

["Stein: The Survivor Act Will Put Rapists Behind Bars," Press Release, Office of the North Carolina Attorney General, 9/19/2019:](#)

[Nearly 300 sexual assault kits sent for testing; arrest made in 29-year-old cold case](#)

[Rape Kit Test Leads to Arrest of 71-Year-Old Man in 1993 Assault](#)

["2 charged in Fayetteville cold case after rape kit tested 30 years later," WTVD, 4/24/2020:](#)

["COLD CASE BREAKTHROUGH: Testing of rape kit leads to DNA match, arrest in 1996 sexual assault," WECT, 6/10/2019:](#)

["24 years after a teen was raped near uptown Charlotte, DNA leads to an arrest," Joe Marusak, Charlotte Observer, 4/17/2019:](#)