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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 write in response to a quote attributed to you in the Associated Press wire story regarding the North Carolina Democratic Party's letter to you delivered yesterday, and to address the jurisdictional issue that you have raised. In the AP story you suggest that the Party is seeking "unique treatment." Far from it. Instead, the Party is requesting that you apply equal standards to the remarks made by each of the competing candidates in the 2020 North Carolina Attorney General's race.

You have implied in your comments that you are without the power or authority to address the remarks of Mr. Jim O'Neill. Respectfully, this is not the case. As a constitutional officer of North Carolina, you are charged with the prosecution on behalf of the state of all criminal actions in Superior Court. You have this responsibility in the District Court division as well (unless deprived of such authority by act of the General Assembly). The process recently applied to allegations against Attorney General Stein is evidence that the Wake County District Attorney's Office has—and has exercised—its authority regarding violations of NCGS § 163-274(a)(9). The North Carolina Democratic Party simply requests that your office utilize the same process that you have applied to a communication by Mr. O'Neill.

Indeed, your suggestion that the initiation of prosecution can only follow a State Board investigation and referral is not supported by the statutory scheme found in Chapter 163 of the North Carolina General Statutes. NCGS § 163-278 provides, in part, that: "It shall be the duty of the State Board of Elections and the district attorneys to investigate any violations of this Article, and the State Board and district attorneys are authorized and empowered to subpoena and compel the attendance of any person before them for the purpose of making such investigation." Thus, investigations of violations of NCGS § 163-274(a)(9) are conducted pursuant to the authority granted *concurrently* to the State Board of Elections and to district attorneys. Action by a district attorney is nowhere conditioned upon action by the State Board of Elections. Both are authorized to act to conduct an investigation, and both are authorized to call upon the director of the State Bureau of Investigations to furnish assistance. *Id.* Indeed, NCGS § 163-278 concludes

by providing: "The district attorney shall initiate prosecution and prosecute any violations of the article." We are not aware of any provision depriving district attorneys of jurisdiction, authority, and responsibility in the absence of a State Board investigation.

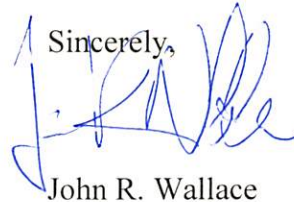
In any event, is it truly your position that such an investigation by the State Board of Elections must be accompanied by a recommendation for prosecution in order for you to initiate investigation and prosecution? Or just that the State Board have conducted its own investigation prior to yours? What if the wrongdoing is self-evident but the State Board for whatever reason declines to conduct an investigation? Your position as we understand it appears to make it so that if the State Board, which is composed of representatives from political parties, should refuse to investigate or refer a crime against the State's election laws, those laws are rendered unenforceable.

Similarly, is it your position that someone engaging in boisterous and disruptive activity in a polling place must be the subject of a state board investigation before prosecution could commence? What if an individual was charged and pled guilty to a federal election law offense? Would your prosecution of a related state law crime be barred in the absence of a State Board investigation?

We are of the view that you have both the authority and the duty to promptly commence an investigation and to initiate prosecution as we have requested. Your failure to do so will suggest bias or favoritism. Such uneven treatment in the consideration and investigation of these matters and, more importantly, such uneven treatment in connection with the prosecution of these matters is simply inappropriate.

As you are no doubt aware, the expiration of the statute of limitations on Mr. O'Neill's remarks is not far off and a fulfillment of your responsibility to initiate prosecution will require prompt attention to this matter. That said, there is more than ample time to undertake this prosecution. This undertaking is not unduly difficult inasmuch as you and your office have been immersed in these very issues now for more than a year. Further, you have by express statutory authority the resources of the SBI, available at your request, to conduct this investigation of matters that are documentary in nature and involving facts that are readily available.

We respectfully request that you take the opportunity that you have been provided to undertake, for the benefit of this State and its voters, evenhanded treatment of these matters. Most immediately, would you please provide us with your e-mail commenting on our letter which was apparently provided to the press yesterday?

Sincerely,

John R. Wallace