



N.C. Attorney General Josh Stein, Chair of the Racial Equity Task Force, Has Been a Disappointment to Racial Justice Advocates. We Challenge Him to Do Better.

A Call to Action from Emancipate NC
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Governor Cooper’s appointment of Attorney General Josh Stein as co-chair of the [North Carolina Task Force on Racial Equity in Criminal Justice](#), where he served alongside veteran civil rights attorney and current Supreme Court Justice Anita Earls, went largely unremarked upon when it happened last year. Yet the appointment raised eyebrows among many racial and criminal justice advocates and reformers around the state, who for years have lamented Stein’s dispiriting approach to many of the very issues his task force was charged with investigating.

Stein was recently re-elected to his second four-year term as the state’s top law enforcement official and has managed to maintain a reputation as a progressive AG. He has accomplished this largely by championing uncontroversial environmental and consumer protection issues that resonate with his base and beyond. Yet for much of Stein’s first term and prior to his work on the task force, he either remained silent or, worse, was on the wrong side of some of the most critical civil rights and criminal justice issues facing North Carolina. Whether it was racial discrimination in [jury selection](#)¹ or application of the [death penalty](#);² protecting medically-vulnerable [people in prison](#) during the pandemic;³ the withholding by police and prosecutors of [exculpatory evidence](#);⁴ racial [profiling](#) by law enforcement;⁵ or the [sentencing](#) of juveniles to life in prison without parole⁶—on these issues and more, **Stein’s office either slowed or was an obstacle to justice.** Each of the recent landmark civil rights opinions from the state’s Supreme Court came in cases where left-leaning justices declined to adopt the outcome it advocated.

During his most recent campaign for office, Stein’s [television ads](#) emphasized his support “from law enforcement across North Carolina” and characterized him as “the clear choice” of conservative prosecutors. Since the end of the campaign, he has moved away from this image somewhat and made gestures that seem to signal his commitment towards racial justice work. When police in Graham assaulted and pepper sprayed a Black minister who was leading voters to the polls, Stein issued a [statement](#) calling the events “troubling” and reaffirming that “all

¹ See *State v. Hobbs*, 374 N.C. 345 (2020).

² See *State v. Ramseur*, 374 N.C. 658(2020); *State v. Robinson*, 375 N.C. 173, 175 (2020).

³ See Brief for the State, *State v. Daw*, No. COA20-680 (Dec. 2, 2020).

⁴ See *State v. Best*, __ N.C. __, __, 852 S.E.2d 191 (2020).

⁵ See *State v. Johnson*, 852 S.E.2d 733 (N.C. App. 2020) (unpublished).

⁶ See *State v. Kelliher*, 849 S.E.2d 333 (N.C. App. 2020).

eligible voters in North Carolina have a constitutional right to cast their vote safely and securely, without threats or intimidation.” More recently, he [touted](#) his decision to join other state AGs on an amicus brief that argued people convicted of low-level crack cocaine offenses should be eligible for resentencing under the Fair Chance Act.

While certainly the right thing, the decision to sign on to the occasional amicus brief hardly makes for a profile in courage. And in the Graham case, Stein’s office ultimately took no action, again leaving it to the [non-profit advocacy community](#) to seek accountability for yet another example of police abuses in Alamance County. Sheriff Terry Johnson, once prosecuted by President Obama’s Department of Justice for race-based profiling, appears to have only gotten bolder during Stein’s tenure. It is no wonder: when pressed by reporters on why he had not acted in Graham, Stein took the [rather incredible position](#) that he had no legal “authority to investigate or prosecute civil rights violations.” (Unlike his predecessor in the AG’s office, Roy Cooper, Stein has not prosecuted any police officers for the killing of unarmed civilians, although a number of such deaths [have occurred](#) during his tenure.)

Nor has Stein seemed inclined to embrace his authority to make change and seek justice where it may matter the very most: in criminal cases where people’s actual lives and liberty are at stake. An informal survey of North Carolina attorneys who do criminal appeals did not uncover any examples during Stein’s tenure of his criminal division supporting the dismissal of charges on account of police or prosecutorial misconduct, although it did identify a few cases where the office felt judges or defense attorneys had dropped the ball in a way that might warrant relief. **Despite having a massive caseload that pulls from all corners of the state, Stein’s office does not appear to have encountered a case in which its interest in deterring police or prosecutorial abuse trumped its interest in defending a conviction.**

Even in those rare cases where the office has been willing to concede serious misconduct has occurred, it has aggressively fought to keep people in prison. Forty-four years after what is now regarded as a [wrongful conviction](#), the office continued to defend the conviction of the now-exonerated (and [pardoned](#)) Ronnie Long. Stein’s persistent defense of the conviction drew a sharp rebuke from federal Judge James Wynn of the U.S. Court of Appeals for the Fourth Circuit, who noted the strong racial overtones of the case and asked a question one would hope no Department of Justice attorney would have to be asked: [“When did justice leave the process?”](#) Since taking office, Stein has not seemed terribly concerned about the plight of wrongfully convicted people in North Carolina prisons, [failing to keep a written commitment](#) from May 2017 to undertake a comprehensive review of cases in which prosecutors utilized the now-discredited practice of microscopic hair comparison.

When pressed for an explanation, attorneys we spoke with characterized Stein’s criminal division as “on autopilot” and reflexively willing to defend misconduct. Others said the culture pre-dates his time and has existed in the office for a while, inherited from the tenure of now-Gov. Cooper. During that administration, Deputy AG Danielle Elder, who now represents Stein in death penalty cases, disturbed many people when she unsuccessfully urged the state’s Supreme Court to [permit the execution](#) of four defendants, three of them Black and one Native American, despite the fact lower courts [concluded](#) prosecutors intentionally purged Black prospective jurors from their trials.

Other attorneys we spoke with lamented what they described as Stein’s delegation of decision-making authority on criminal matters to attorneys, like Elder, whose values seem misaligned with Stein’s stated commitments. One gave the example of [Nicholaos G. Vlahos](#), another member of Stein’s criminal division, whose actions as a Stanly County prosecutor may provide insight into how seriously he, and perhaps the office he now represents, takes police and prosecutorial abuses:

Stanly County Assistant District Attorney Nichola(o)s Vlahos had created and displayed a two-picture “poster” of Defendant, in which the first picture showed . . . [D]efendant to be unmarked and in good health, with the words, “Before He Sued The DA’s Office” written above it. The second picture was located directly below the first picture and showed . . . [D]efendant to be badly beaten and bruised, with the words “After He Sued The DA’s Office” written above it. [State v. Williams](#), 190 N.C. App. 301, 303 (2008).

The trial judge in that case, which involved the beating of a man in custody who had earlier filed a civil rights complaint, said that Vlahos “would have had a real problem” had he worked for him. He also criticized the prosecutor for his inability [“to treat people with dignity and respect.”](#) These criticisms did not keep Vlahos from rising through the ranks to become an Assistant Attorney General.

Criminal defense and civil rights attorneys consider the aforementioned cases and many others; they look at the attorneys Mr. Stein has chosen to empower, the arguments and causes they have advanced in his name, and they struggle to see his tenure as anything other than a serious disappointment. In so many cases, Stein’s positions and arguments have been indistinguishable from what we might have expected from Buck Newton or Jim O’Neill, his past right-wing opponents. Like Stein, both men worked to undermine the state’s historic Racial Justice Act. Yet unlike Stein, when election season came around, neither sought to position themselves as the [racial justice candidate](#).

This is not to say that Stein does not act on principle or ever take positions contrary to what his role as AG might suggest. His responsibility to defend laws passed by the legislature, his presumable reason for defending positions many find indefensible, did not stop him from [taking steps to kill](#), once and for all, a racist voter suppression law that the Fourth Circuit said had “targeted African-Americans with almost surgical precision.” There is no doubt Newton, as AG, would have pursued the appeal to the U.S. Supreme Court.

Stein was not an entirely disinterested party when it came to that particular law, of course. He was [re-elected](#) in November by a margin of 13,622 votes out of nearly 5 ½ million cast, and he likely would not have been had the election run under the GOP-authored rules. And therein may lie the problem. Many suspect Mr. Stein’s opposition to taking the “civil rights position” on the aforementioned issues is a function of his concern that he would be seen as weak on crime and risk alienating crucial supporters on the right. They presume he is banking on the notion that those to his left have nowhere to go, at least as long as the right keeps running candidates who think we need to [“back President Trump”](#) and [“fight to keep our state straight.”](#)

But that is not entirely right. **Some individuals abstained from voting in the Attorney General’s race in 2020, feeling that they could not support someone who has consistently been on the wrong side of critical issues of justice, particularly ones in which race has played such a central role.** If Stein’s second term in office is a repeat of his first—if, for example, he puts together eight years of never encountering a conviction he’s unwilling to defend—more people are likely to share in the sentiments expressed here. Being Attorney General is about more than coal ash, opioids, and robocalls. It’s also about seeking justice when it proves difficult, sometimes even unpopular. On too many issues, Mr. Stein’s office has been unwilling to do the hard thing, even when it was the right thing. Now that he has secured his second term and will not face voters for another four years, we ask him to critically examine how his office has handled the issues raised here, as well as those others may bring forth in the coming weeks and months.

A Call to Action: Taking Steps for Racial and Social Justice

We challenge Attorney General Stein to use his office to [“do justice.”](#) This means ensuring that those in his employ are not reflexively defending the work of the state’s police and prosecutors and are instead evaluating each case and the work of each person on the basis of their individual conduct. **This means dismissing appeals of convictions that are based on prosecutorial or law enforcement misconduct.** Until our Supreme Court recently [remanded a case](#) to the trial court for further proceedings, state courts had [not once](#), in more than thirty years and a hundred cases since [Batson v. Kentucky](#), upheld a claim of discrimination against jurors of color. North Carolina was the only Southern state with this ignoble distinction. This could not have happened but for an Attorney General’s Office that either turned a blind eye to such discrimination, was willing to excuse it, or was too disengaged to catch it. By contrast, [Alabama courts](#) alone identified and reversed nearly eighty convictions where such conduct had occurred.

The Attorney General should also **convene a working group of internal and external stakeholders to discuss and advise on the implications of the Office’s litigation positions in criminal and corrections cases involving issues of race or civil rights and liberties.** Such an effort should proceed with an aim of informing future decision-making on cases that might affect systemic racial inequities in the criminal process that the Attorney General has made clear [he is committed to addressing](#). This working group should include people who have been directly impacted by the criminal legal system, as well as the criminal defense bar. Too often, the AG’s Office, in the interest of defending a criminal conviction, has advocated positions that risk significantly diminishing people’s rights. Given courts’ reliance on precedent, these decisions have real world consequences for people’s future ability to combat real instances of discrimination and police and prosecutorial abuse. It is critical that the AG’s office be more sensitive to these concerns.

Doing justice means [joining the rest of the world](#) and **abandoning the effort to reverse the N.C. Court of Appeals’ determination that life without parole sentences, to include “virtual life” sentences, are unconstitutionally cruel when imposed against juveniles.** The sentence is not only inhumane; it is racially discriminatory. According to the Mr. Stein’s [own report](#), “the vast majority, or 91.5 percent of those sentenced to JLWOP [in NC] from 1994 to 2018, are people of

color or members of minority groups.” Studies have shown that the source of this racial disparity is “not because one group is more often arrested for homicide than the other is—the disparity necessarily arises [at some point after the arrest](#).” In no other state that has imposed as many JLWOP sentences as North Carolina have they been imposed in such a racially disparate fashion. **The Attorney General’s Office should stop defending them.**

Doing justice means taking the view, even as the Attorney General—the people’s attorney—that the state apparatus will not always get things right. It means **taking seriously and investing resources into investigating claims of innocence**. It means not assuming that everyone who makes such a claim is lying, or that the problem is solved because we have an Innocence Commission. It also means making sure DOJ attorneys argue issues are waived or procedurally barred only when they actually clearly are, and that they are not making such arguments gratuitously.

We know that various attorneys have previously tried to raise many of these issues with Mr. Stein’s office without success. We implore him to take seriously the concerns raised here and the related calls to action. The people of North Carolina face many critical issues of criminal and racial justice. They cannot afford to have their Attorney General sit on the sidelines, or worse, be on the wrong side, of these issues for the next four years.
