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Josh Stein for North Carolina
P.O. Box 1326
Raleigh, NC 27602

SENT VIA EMAIL: team@joshstein.org

Re: Josh Stein’s False and Misleading Advertisement

On behalf of Friends of Mark Robinson, we write you about the false and misleading ads that Josh Stein and his campaign, Josh Stein for North Carolina, recently aired. The ad titled “Precious Beginnings” includes a series of misleading statements, visuals that distort the truth, and false assertions regarding the content of state records. Unfortunately, this attack is consistent with Stein’s history of running ads lying about his opponents, and we hereby demand that you cease and desist from continuing to air this ad.

As you are aware, Stein has a well-documented history of running false and misleading ads. In 2022, Stein’s dishonest ads were so egregious that a Democrat prosecutor went so far as to convene a grand jury and indict Stein for violating North Carolina’s law making it a crime to publish “derogatory reports” about candidates for public office where the speaker “know[s] such report be false or” acts “in reckless disregard of its truth or falsity.” N.C. Gen. Stat § 163-274(a)(9). It is disappointing that after years of litigation and criminal charges related to his running false ads, Stein is continuing his old dishonest tactics. **This letter puts Josh Stein and his campaign on notice that this advertisement contains false and defamatory information. Both Josh Stein personally and his campaign will bear liability if the advertisement continues to air.**

Among other misleading claims, the ad claims that “state documents show it was unsanitary and endangered children.” While the childcare center was occasionally cited on technicalities—such as serving chicken tenders, peaches, green beans, and milk...but not bread, for lunch—no official documents state that the childcare center was unsanitary or endangered children. The ad further attempts to mislead voters by showing graphics indicating these terms were citations from state documents.

The ad continues on to display multiple graphics showing an electrical socket out of the wall around children in an attempt to mislead voters about the content of the state reports. To be clear, there were no loose electric cords or circuits sticking out of the wall at the childcare center.

The state report explicitly says that there was a dispute between the childcare center and the inspector about whether the outlets needed to be covered because the outlets were the “safety type that does not require a cover.” After examining the plugs, the inspector found the childcare center, in fact, had safety outlets. The inspector went on to state that it “appeared” that there also were some standard outlets that should be covered when not in use.

The ad also falsely asserts that “the daycare center even operated at times without lights, heat, or running water.” Like multiple other claims in the ad, this is false and misleading. While one state report mentions that the lights had been cut off before, the report then states that it is “unknown if the daycare has running water at this time.” At no point does any state report state that the daycare center did not have running water, and it is false to transform something that is “unknown” into a statement of fact.

A published statement gives rise to liability for defamation if it is (1) factually false, (2) defamatory in character, and (3) in the case of public figures, made with actual malice (*i.e.*, knowledge of its falsity or reckless disregard of the truth). *See generally New York Times v. Sullivan* 376 U.S. 254 (1964). The claims in the ads claim are objectively false and misleading, the ad's claims are—in both its purpose and effect—defamatory in character, and your citations to state documents demonstrate your knowledge of the falsity of the claims in the ad. The willful misrepresentations in the ad cross the line from protected opinion to actionable defamation because they include false statements of facts.

In light of the legal obligations at play here, we demand that you affirmatively preserve, and not destroy, delete, hide, or misplace documents and materials of all kinds, without limitation, regarding the publication of these false statements, including, but not limited to, all your communications regarding the publication of these false statements.

North Carolina voters deserve to know the truth about both candidates and their records, and you have a legal obligation not to publish false smears designed to mislead voters. In light of Stein previously having to litigate defending himself because of his false attacks on a political opponent, we note that both Stein and his campaign are now on formal notice that his advertisement is false and defamatory. Continuing to air this advertisement and/or repeat the false attacks will be considered malicious. Moreover, failure to comply with the demands in this letter will force our clients to seek legal recourse to the fullest extent of the law.

Please respond to me directly at 202-466-5964 or cspies@dickinsonwright.com within 48 hours to confirm your compliance with these demands.

Sincerely,



Charles Spies
Benjamin Mehr
*Counsel to Mark Robinson
and Friends of Mark Robinson*