



October 16, 2017

Officers

Chair

Judith L. Lichtman
National Partnership for
Women & Families

Vice Chairs

Jacqueline Pata
National Congress of American Indians
Thomas A. Saenz

Mexican American Legal
Defense and Educational Fund

Hilary Shelton

NAACP

Secretary

Jo Ann Jenkins
AARP

Treasurer

Lee A. Saunders
American Federation of State,
County & Municipal Employees

Board of Directors

Helena Berger
American Association of
People with Disabilities
Kimberly Churches

AAUW

Kristen Clarke
Lawyers' Committee for
Civil Rights Under Law

Lily Eskelsen Garcia

National Education Association

Fatima Goss Graves

National Women's Law Center

Chad Griffin

Human Rights Campaign

Wylecia Wiggs Harris

League of Women Voters of the
United States

Mary Kay Henry

Service Employees International Union

Sherrilyn Ifill

NAACP Legal Defense and

Educational Fund, Inc.

David H. Inoue

Japanese American Citizens League

Derrick Johnson

NAACP

Michael B. Keegan

People for the American Way

Samer E. Khalaf

American-Arab

Anti-Discrimination Committee

Marc Morial

National Urban League

Janet Murguía

UnidosUS

Debra L. Ness

National Partnership for

Women & Families

Rabbi Jonah Pesner

Religious Action Center

Of Reform Judaism

Anthony Romero

American Civil Liberties Union

Shanna Smith

National Fair Housing Alliance

Richard L. Trumka

AFL-CIO

Toni Van Pelt

National Organization for Women

Randi Weingarten

American Federation of Teachers

Dennis Williams

International Union, UAW

John C. Yang

Asian Americans Advancing Justice |

AAJC

Policy and Enforcement

Committee Chair

Michael Lieberman

Anti-Defamation League

President & CEO

Vanita Gupta

**OPPOSE THE CONFIRMATION OF THOMAS FARR TO THE
U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA**

Dear Senator:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, I write in opposition to the confirmation of Thomas Farr, a nominee to the U.S. District Court for the Eastern District of North Carolina.

Mr. Farr has devoted much of his 38-year legal career to restricting voting rights and defending employment discrimination. As the Congressional Black Caucus wrote in a letter last month opposing Mr. Farr's nomination: "It is no exaggeration to say that had the White House deliberately sought to identify an attorney in North Carolina with a more hostile record on African-American voting rights and workers' rights than Thomas Farr, it could hardly have done so."¹ The judicial vacancy to which Mr. Farr has been nominated has never had an African-American judge in its 143-year history. President Obama nominated two highly qualified African-American women for this judgeship, but they were blocked by Republican senators. It is now the oldest judicial vacancy in the country.

Voting Rights. Mr. Farr aggressively defended North Carolina's massive voter suppression law passed in 2013 in the wake of the Supreme Court's *Shelby County v. Holder* decision, which struck down the Voting Rights Act provision that required jurisdictions like North Carolina with a history of voter discrimination to pre-clear voting changes with the U.S. Department of Justice. North Carolina's law imposed a burdensome photo ID requirement, eliminated same-day voter registration and voting, reduced the availability of early voting, and prohibited the counting of out-of-precinct voting. This law was struck down last year by the U.S. Court of Appeals for the Fourth Circuit, which concluded that the law had been passed with discriminatory intent. The Fourth Circuit stated that provisions of the law "target African Americans with almost surgical precision," and the court described the law as "the most restrictive voting law North Carolina has seen since the era of Jim Crow."² In his brief to the Supreme Court seeking review of the case, Mr. Farr fired back at the Fourth Circuit, writing that "the notion that *these* election laws are reminiscent of 'the era of Jim Crow' is ludicrous," "[e]vidently in the Fourth Circuit's eyes, where North Carolina is concerned, it is *always* 1965," and "the decision insults the people of North Carolina and

¹ https://cbc.house.gov/uploadedfiles/cbc_farr_nomination_letter.pdf.

² *N.C. St. Conf. of the NAACP v. McCrory*, 831, F.3d 204, 211, 219 (4th Cir. 2016).



their elected representatives by convicting them of abject racism.”³ The Supreme Court denied Mr. Farr’s appeal.⁴

Mr. Farr also defended North Carolina’s racial gerrymanders of congressional and state legislative districts, which were also struck down in court. He was unsuccessful in defending two racially discriminatory congressional districts last year before a three-judge district court. Just a few months ago, the Supreme Court affirmed the lower court ruling, concluding: “The Constitution entrusts States with the job of designing congressional districts. But it also imposes an important constraint: A State may not use race as the predominant factor in drawing district lines unless it has a compelling reason.”⁵ Mr. Farr was also unsuccessful in defending unconstitutional racial gerrymanders that North Carolina drew for its legislative districts in 2011, and again the Supreme Court affirmed the lower court ruling.⁶

Mr. Farr defended North Carolina when it was sued for violating the National Voter Registration Act (NVRA). The suit alleged that the state had violated the NVRA by failing to collect and transmit voter registration applications and failing to provide online voter registration opportunities. The federal district judge determined that the plaintiffs were likely to be successful on the merits and granted a preliminary injunction, rejecting the arguments of Mr. Farr.⁷ The judge wrote: “Voter enfranchisement cannot be sacrificed when a citizen provides the state the necessary information to register to vote but the state turns its own procedures into a vehicle to burden that right.”⁸

In addition, Mr. Farr represented the Jesse Helms for Senate Committee in 1984 and 1990. The Helms re-election committee in 1990 was notorious for sending postcards to 125,000 African-American voters in North Carolina, falsely stating they could be prosecuted and imprisoned for up to five years if they tried to vote in a precinct in which they had lived for fewer than 30 days.⁹ Based on the sending of these postcards, the Justice Department sued the Helms campaign in 1992 for violating the Voting Rights Act, and the campaign entered into a consent decree. Mr. Farr denies knowing about the postcards before they were sent on October 26 and 29, 1990, and he responded to a written question from Senator Durbin by stating “I would never plan or participate in any scheme to mail African American voters cards of this nature and I did not play any role in the planning or execution of this card mailing.”¹⁰ However, the Justice Department’s complaint stated that there were meetings on October 16 and 17, 1990 which included “an attorney who had been involved in past ballot security efforts on behalf of Senator Helms and/or the Defendant North Carolina Republican Party” and that at these meetings, “some of the participants formulated a tentative outline for the 1990 ballot security program, which included a mailing targeted to voters who may have changed residences.”¹¹ A 2009 news article identified Mr. Farr as the

³ Petition for Writ of Certiorari, *N.C. v. N.C. St. Conf. of the NAACP*, 581 U.S. ___ (2017) (No. 16-833), 2016 WL 7634839, at *20, *2.

⁴ *N.C. v. N.C. St. Conf. of the NAACP*, 137 S. Ct. 1399 (2017).

⁵ *Harris v. McCrory*, 159 F. Supp.3d 600 (M.D.N.C. 2016), *aff’d sub nom, Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017).

⁶ *Covington v. North Carolina*, 316 F.R.D. 117 (M.D.N.C. 2016), *aff’d*, 137 S. Ct. 2211 (2017).

⁷ *Action NC v. Strach*, 216 F.Supp.3d 597 (M.D.N.C. 2016).

⁸ *Id.* at 648.

⁹ <http://www.nytimes.com/1992/02/28/us/the-1992-campaign-helms-campaign-signs-decree-on-racial-postcards.html?mcubz=1>.

¹⁰ <https://www.judiciary.senate.gov/imo/media/doc/Farr%20Responses%20to%20QFRs.pdf>.

¹¹ Complaint at 4, *United States v. North Carolina Republican Party* (E.D.N.C. Feb. 26, 1992).



unnamed attorney in the Justice Department complaint.¹² This raises the serious question of whether Mr. Farr was being candid with the Senate Judiciary Committee.

Mr. Farr's nomination appears to be part of an overall campaign by the Trump administration to suppress voting rights in America. This effort includes the Trump administration's litigation positions that have supported efforts in Texas and Ohio to restrict voting rights, as well as its creation of a voter suppression commission stacked with members like Kris Kobach and Hans von Spakovsky, who have been among the chief architects of voter suppression tactics throughout the nation in recent years. When asked in writing by Senator Hirono, "Despite the lack of evidence, do you believe that millions of people voted illegally in the 2016 election?" Mr. Farr responded: "I have not investigated this issue and have no basis to offer an opinion."¹³

Workers' Rights. Mr. Farr has defended employers and corporations charged with employment discrimination throughout his legal career, and he has fought efforts to create safe working conditions for employees. Mr. Farr's nomination is opposed by the AFL-CIO,¹⁴ the largest federation of unions in the United States. It is telling that Mr. Farr's first job out of law school was working at an anti-union organization, the so-called National Right to Work Foundation. He has continued to defend employers against discrimination claims and worker safety claims ever since. For example, he authored a brief asking the U.S. Supreme Court to overturn a North Carolina Supreme Court decision that invalidated a state workers' compensation law that would not permit workers who developed chronic lung disease due to asbestos exposure from obtaining a remedy.¹⁵ The U.S. Supreme Court denied certiorari.¹⁶ In another case, he defended a company that refused to allow a union to take temperature readings in the workplace where glass-making workers were exposed to extreme heat conditions. The Fourth Circuit ruled on behalf of the union and against Mr. Farr. He has taken similar anti-worker positions in many other cases during his career.¹⁷

Mr. Farr's anti-worker bias can be seen in public comments he made last year in support of a North Carolina law that abolished the right to bring discrimination-based wrongful discharge claims in state court. This extreme law was passed last year and quickly reversed by the Republican-controlled state legislature due to public pressure, but not before Mr. Farr expressed public support for the law in an interview: "Farr said he, too, supports the employment law change. 'I think it's better policy for the state,' Farr said."¹⁸ He continued to express support for the anti-worker law in his answers to written questions submitted by senators following his hearing. His support for this law is deeply disturbing.

Extreme Ideology. In a 2012 speech, Mr. Farr compared *NFIB v. Sebelius*, in which the Supreme Court upheld the constitutionality of the Affordable Care Act, with two of our nation's most ignominious Supreme Court decisions: *Plessy v. Ferguson* (upholding separate-but-equal laws) and *Dred Scott*

¹² Thomas Goldsmith & T. Keung Hui, "Wake school board buzz persists," News & Observer, 2009 WLNR 25702647, Dec. 22, 2009.

¹³ <https://www.judiciary.senate.gov/imo/media/doc/Farr%20Responses%20to%20QFRs.pdf>.

¹⁴ <https://aflcio.org/about/advocacy/legislative-alerts/letter-opposing-nomination-thomas-farr>.

¹⁵ 1997 U.S. S. Ct. Briefs LEXIS 172.

¹⁶ *Algernon Blair, Inc. v. Walters*, 520 U.S. 1196 (1997).

¹⁷ <https://www.afj.org/wp-content/uploads/2017/09/AFJ-Farr-Report.pdf>.

¹⁸ <http://www.newsobserver.com/news/politics-government/state-politics/article70918692.html>.



(holding that no person of African descent could be a U.S. citizen). In a written question following his hearing, Senator Feinstein asked Mr. Farr: “In what way was the challenge to the ACA similar to *Plessy v. Ferguson* and *Dred Scott*?”¹⁹ Mr. Farr declined to directly answer, merely responding: “As a private citizen, I did not agree with the decision rendered by the Supreme Court in each of these cases.”²⁰ He gave similar answers to Senators Whitehouse and Coons, who also asked him about this statement. It is one thing to disagree with the Court’s ACA decision, but quite another to compare it to the evils validated by the Supreme Court in those shameful 19th century decisions. Mr. Farr’s extreme ideology is also demonstrated by his membership since 1985 in the arch-conservative Federalist Society.

We are cognizant of the fact that an attorney should not be held responsible for the conduct or claims of his or her clients. But in the case of Mr. Farr, the anti-civil rights positions he has advanced on behalf of clients for decades appear to reflect his own personal ideology.

History of the Vacancy. The Eastern District of North Carolina has never had an African-American judge in its 143-year history, despite having a population that is nearly 30 percent African-American. President Obama nominated two accomplished African-American women for this vacancy – Jennifer May-Parker (an Assistant U.S. Attorney) and Patricia Timmons-Goodson (a former Justice of the North Carolina Supreme Court) – but North Carolina’s Republican senators blocked them by refusing to return their blue slips, even though one of the senators had originally recommended May-Parker to the White House.²¹ Mr. Farr’s nomination represents a vindication of the North Carolina senators’ obstructionist strategy and refusal to integrate this court. The president of the North Carolina NAACP, Rev. Dr. William Barber, II, has stated: “The North Carolina NAACP takes serious exception to this nomination and to the efforts by Senators Tillis and Burr to advance the nomination of an individual who has repeatedly demonstrated his open hostility to the protection of the constitutional and civil rights of African Americans, Latinos and the poor in this State. It is the position of the NC NAACP State Conference that if this nomination is confirmed, it represents an historic insult to justice and to the people of North Carolina.”²²

For the foregoing reasons, The Leadership Conference urges you to reject the nomination of Thomas Farr to the U.S. District Court for the Eastern District of North Carolina. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel and Legal Director, at (202) 466-3311.

Sincerely,

Vanita Gupta
President & CEO

¹⁹ <https://www.judiciary.senate.gov/imo/media/doc/Farr%20Responses%20to%20QFRs.pdf>.

²⁰ Id.

²¹ <http://big.assets.huffingtonpost.com/Burrletter.pdf>.

²² http://pulse.ncpolicywatch.org/wp-content/uploads/2017/09/Letter_in_Opposition_to_Farr_-_Federal_Judge_Nomination_1.pdf.