

January 17, 2018

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Lambda Legal and Equality NC Oppose Confirmation of Thomas Farr

Dear Chairman Grassley and Ranking Member Feinstein:

Lambda Legal and Equality NC are writing to oppose the nomination of Thomas Farr to the United States District Court for the Eastern District of North Carolina. Lambda Legal is the oldest and largest national legal organization dedicated to achieving full recognition of the civil rights of lesbian, gay, bisexual, and transgender (“LGBT”) people and everyone living with HIV, through impact litigation, policy advocacy, and public education. Equality NC is dedicated to securing equal rights and justice for lesbian, gay, bisexual, transgender, and queer North Carolinians.

Mr. Farr is notorious for his years of advocacy against the rights of women and minorities, especially the civil rights of African-Americans, and the volume of opposition to his nomination is a reflection of the breadth and depth of his disdain for civil rights. Furthermore, Mr. Farr’s apparent lack of candor about his record also calls into question his respect for the important role that the Senate plays as part of the nominations process, and more broadly for the rule of law. While his anti-civil-rights record is too voluminous to detail here, three examples are especially telling:

- Mr. Farr has demonstrated a disdain for the voting rights of African-Americans. For example, he unsuccessfully represented the North Carolina state legislature after it redrew two districts that created voting districts that were racially gerrymandered, and also aggressively defended the state legislature after it enacted a law with the discriminatory intent of “target[ing] African Americans with almost surgical precision.”¹ In the latter case, North Carolina admitted eliminating voting on a Sunday before the election because “counties with Sunday voting in 2014 were disproportionately black” and “disproportionately Democratic.”² Nevertheless, Mr. Farr maintained during his confirmation hearing that “at the time our clients enacted those laws, I

¹ *N.C. State Conference of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

² *Id.*

do not believe that they thought that were purposefully discriminating against African Americans.”

- In addition, Mr. Farr has defended companies against employees claiming unlawful and discriminatory employment practices, including claims of sex discrimination and hostile work environment. In one exceptionally egregious example, Mr. Farr represented an employer whose employee allegedly told female subordinates that “women with children should be at home and not employed in the workplace,” and that female employees were “stupid, retarded, and awful.”³ Mr. Farr commented that “there are situations where somebody engages in boorish behavior, rude behavior, behavior that my mother would wash my mouth out with soap over, but they still don’t arise to actionable sexual harassment under the legal standards that apply.”
- Mr. Farr publicly supported a provision of North Carolina’s anti-LGBT HB2 law that curtailed the rights of workers who believe they were fired due to racial, gender, or other types of discrimination, stating, “I think it’s better policy for the state.”⁴ Even former Governor McCrory, defender of HB2, disparaged this aspect of the law, calling it “very poorly thought out.”⁵

Based on Mr. Farr’s long history of opposing civil rights, we join the Congressional Black Caucus,⁶ as well as numerous civil rights groups, including the Leadership Conference on Civil and Human Rights⁷ and the NAACP Legal Defense & Education Fund⁸ in opposing Mr. Farr’s nomination. That same record should not now, nor ever, be rewarded with a lifetime appointment to the federal bench. And based on information that has been reported in the press since Mr. Farr’s hearing before this Committee, it appears that he may have provided misleading testimony about his role in a campaign to intimidate Black voters.⁹ Dishonesty to the Committee undermines confidence in the democratic process. Lambda Legal reiterates our support for the NAACP Legal Defense & Education Fund’s call for this Committee to hold additional hearings on Mr. Farr’s nomination.¹⁰ At a moment when we are witnessing renewed assaults on minority rights and democratic traditions, Thomas Farr is not the kind of judge that this country wants, needs or deserves. We strongly urge you to reject his nomination.

³ *Doyle-McTighe v. Pfizer*, No. 02-CV-606 (E.D.N.C. Aug. 4, 2004).

⁴ Anne Blythe, *Employment law advocates in NC hope for HB2 changes*, The News & Observer (April 9, 2016), available at <http://www.newsobserver.com/news/politics-government/state-politics/article70918692.html>.

⁵ *Governor McCrory of North Carolina admits parts of HB2 are “poorly thought out”*, WIRE REPORT (April 19, 2016), available at <http://www.watermarkonline.com/2016/04/19/governor-mccrory-of-north-carolina-admits-parts-of-hb2-are-poorly-thought-out/>.

⁶ Letter from Congressional Black Caucus to Charles Grassley and Dianne Feinstein (Sept. 19, 2017), available at https://cbc.house.gov/uploadedfiles/cbc_farr_nomination_letter.pdf.

⁷ Letter from The Leadership Conference to the Senate (Oct. 16, 2017), available at <http://civilrightsdocs.info/pdf/policy/letters/2017/opposition-letter-thomas-farr-ednc-final.pdf>.

⁸ Letter from NAACP Legal Defense and Educational Fund, Inc. to Charles Grassley and Dianne Feinstein (Sept. 19, 2017), available at

http://www.naacpldf.org/files/case_issue/LDF%20Letter%20in%20Opposition%20to%20the%20Confirmation%20of%20Thomas%20Farr%209.19.2017.pdf.

⁹ Thomas Goldsmith, *Did Former Helms Lawyer Thomas Farr Lie to the Senate Judiciary Committee? It Sure Looks That Way*, INDY WEEK (Nov. 15, 2017), <https://m.indyweek.com/news/archives/2017/11/15/did-former-helms-lawyer-thomas-farr-lie-to-the-senate-judiciary-committee-it-sure-looks-that-way>

¹⁰ Lambda Legal, *Senate Judiciary Must Set New Hearing for Unqualified Judge Nominees Brett Talley and Thomas Farr* (Nov. 17, 2017), available at https://www.lambdalegal.org/blog/dc_20171117-sen-judiciary-must-set-new-hearing-talley-farr



Thank you for considering our views on this important issue. Please do not hesitate to reach us through Sharon McGowan, Director of Strategy for Lambda Legal, at smcgowan@lambdalegal.org.

Very truly yours,

Lambda Legal and Equality NC