

November 27, 2018

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

Dear Senator:

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 widely considered to be the most anti-civil-rights of all current judicial nominees, a reputation earned over decades of relentless efforts to undermine the rights of women and minorities, especially African-Americans. In particular, Mr. Farr’s disdain for voting rights suggests a disdain for civil rights at the most basic levels. While his broader anti-civil-rights record is too voluminous to capture here, three examples are revealing:

- As North Carolina’s chief defender of voter suppression, Mr. Farr unsuccessfully represented the state legislature when it redrew two districts in an act of unconstitutional racial gerrymandering, and when it enacted a law with 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, despite that admission and the copious evidence that drove it, Mr. Farr maintained during his confirmation hearing that “at the time our clients enacted those laws, I do not believe that they thought that were purposefully discriminating against African Americans.”
- In the same voter-suppression case, Mr. Farr unsuccessfully sought to defend an overbroad photo-ID requirement for in-person voting. The court called it “both too restrictive and not restrictive enough to effectively prevent voter fraud.”³ These voter-ID laws, which the court found disproportionately targeted African-American communities, also disproportionately exclude the transgender community. A study conducted before the 2018 midterm elections by The Williams Institute at the UCLA School of Law found that 57% of eligible transgender voters may not have any identification that accurately reflects their gender.⁴ Transgender people often face significant barriers to access to proper identity documents. These can include requirements

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

² *Id.*

³ *Id.*

⁴ Jody L. Herman & Taylor N.T. Brown, *Impact of Strict Voter ID Laws on Transgender Voters in 2018 General Election*, The Williams Institute (August 2018), available at <https://williamsinstitute.law.ucla.edu/research/voter-id-laws-2018/>.

to undergo surgery, obtain a court order, or pay costly fees,⁵ none of which should be required as a condition of voting, especially given the lack of an actual voter fraud problem. Mr. Farr has repeatedly, blatantly disregarded the barriers faced by minority communities in accessing the newly-required forms of identification, and instead has striven to justify these barriers and their role in suppressing voter turnout from those communities.

- Mr. Farr has defended companies against employees claiming unlawful and discriminatory employment practices, including claims of sex discrimination and hostile work environment. In particular, he defended a company where a supervisor allegedly told female employees that “women with children should be at home and not employed in the workplace,” and that female employees were “stupid, retarded, and awful.”⁶ Showing his failure to understand and comply with longstanding precedent in this area, Mr. Farr commented on the case 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 curtails the legal 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.”⁷

The sheer breadth of Mr. Farr’s anti-civil-rights record has earned him resounding opposition from the Congressional Black Caucus⁸ as well as numerous civil rights groups—including the Leadership Conference on Civil and Human Rights⁹ and the NAACP Legal Defense & Educational Fund.¹⁰ In particular, because this nominee learned voter-suppression at the feet of Senator Jesse Helms, and has shown consistently since then how well he learned those lessons,¹¹ it is inconceivable to us that he would even be considered for confirmation. Such a record should not now, nor ever, be rewarded with a lifetime appointment on the federal bench.

⁵ S.E. James, et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), available at <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>; Herman & Brown, *supra* note 4, at p. 3, <https://williamsinstitute.law.ucla.edu/research/voter-id-laws-2018/>.

⁶ *Doyle-McTighe v. Pfizer*, No. 02-CV-606 (E.D.N.C. Aug. 4, 2004).

⁷ 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>.

⁸ 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.

⁹ 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>.

¹⁰ 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.

¹¹ AFJ Nominee Report: Thomas Farr, Alliance for Justice, pp. 3-4 (November 2018), available at <https://www.afj.org/wp-content/uploads/2017/09/AFJ-Farr-Report.pdf>.

Furthermore, according to media reports, Mr. Farr also appears to have misled the Senate Judiciary Committee about his role in a campaign to intimidate Black voters.¹² In response to this reporting, Lambda Legal joined the NAACP Legal Defense & Educational Fund in calling on the Committee to hold additional hearings on Mr. Farr's nomination.¹³ The Senate should, at a minimum, demand such a hearing in order to assess and to fully understand his involvement in this voter suppression scheme and to fulfill their constitutional duty to provide meaningful advice and consent. In the wake of a midterm election characterized by concerns about pervasive attempts to suppress voting by African-Americans and other minorities, together with other continued assaults on our 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.

Thank you for considering our views on this important issue. Please do not hesitate to reach out if we can provide additional information throughout the confirmation process. You can reach us through Sharon McGowan, Chief Strategy Officer and Legal Director for Lambda Legal, at smcgowan@lambdalegal.org, or Sasha Buchert, Senior Attorney for Lambda Legal, at sbuchert@lambdalegal.org.

Very truly yours,

Lambda Legal and Equality NC

¹² 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>.

¹³ 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.