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September 19, 2017

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

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

RE: *The Nomination of Thomas Farr to be United States District Judge for the Eastern District of North Carolina*

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), I write to oppose the confirmation of Thomas Farr to be United States District Judge for the Eastern District of North Carolina (EDNC). Mr. Farr's 40-year record shows that he is highly partisan and hostile to the civil rights of African Americans and other minorities, particularly at the polls and in the workplace. Indeed, Mr. Farr has developed a niche legal practice defending discriminatory electoral laws that make it harder for African Americans to participate in our democracy. In addition, the EDNC has never had a Black judge in the court's 143-year history. Confirming Mr. Farr, who is white, will perpetuate that shameful history. With civil rights in America under siege, the Senate must use its "advice and consent" power to ensure an independent judiciary that will uphold equal rights and the rule of law for all Americans—and cannot rubberstamp nominees, like Mr. Farr, selected precisely because of their work opposing civil rights.

Headquartered in New York City, LDF is the nation's oldest civil rights law organization. Since Thurgood Marshall founded it in 1940, LDF has pursued racial justice and equity in the areas of education, economic justice, political participation, and criminal justice. As part of its advocacy, LDF seeks to ensure that the federal judiciary reflects the nation's diversity and to protect the judiciary's role in enforcing civil rights laws and the Constitution's guarantee of equal protection.

Our concerns with this nomination begin with the unconscionable lack of diversity on the EDNC. The EDNC is nearly 30 percent African American and includes every North Carolina county that has an African-American population of greater than 50 percent. Yet the region has never been served by an African American

federal judge.<sup>1</sup> President Obama nominated two African-American women—first federal prosecutor Jennifer May-Parker, and then former state Supreme Court Justice Patricia Timmons-Goodson—to this seat, but Republican Senator Richard Burr unilaterally blocked both. Sen. Burr never explained his objections, and his opposition came despite his initial recommendation that President Obama nominate May-Parker.<sup>2</sup> Because of Sen. Burr’s intransigence, this vacancy, open since 2005, is now the oldest in the country.

We do not oppose Mr. Farr based on diversity alone. But the extraordinary lengths to which Sen. Burr went to block two qualified African-American women, along with the EDNC’s history as a segregated court, reflect a shocking disregard for the importance of a diverse federal bench, particularly in regions with significant African-American populations. Mr. Farr’s nomination also continues a broader trend under President Trump. Out of Trump’s 49 federal judicial nominees, only four are people of color and only one is African American. Moreover, Trump has reversed much-needed efforts to diversify the courts. So far, Trump has replaced nine Obama nominees of color who the Senate failed to confirm last year, in each case doing so with a white nominee—including by replacing Justice Timmons-Goodson with Thomas Farr.

Mr. Farr began his legal career in 1979 at the National Right to Work Foundation, an organization known as “a national leader in the effort to destroy public and private sector unions.”<sup>3</sup> Since then, Mr. Farr has built a legal practice protecting the interests of Republican politicians at the expense of voting rights for people of color. Mr. Farr has also dedicated much of his practice to defending corporations accused of unlawful discrimination, while failing to demonstrate the commitment to fairness and equity necessary to serve on the bench. Even apart from his legal practice, Mr. Farr has advocated for policies that would restrict the ability of employment discrimination victims to seek justice in court. On the whole, Mr. Farr’s record is not one of a lawyer simply representing clients. Rather, Mr. Farr has demonstrated a longstanding dedication to undermining civil rights protections,

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<sup>1</sup> See Mark Dodson & Brent Ducharme, *In Eastern NC district, 10 years of waiting for a judge*, THE NEWS & OBSERVER (March 1, 2016), <http://www.newsobserver.com/opinion/op-ed/article63396347.html>.

<sup>2</sup> Letter from Senator Richard Burr to President Barack Obama (July 21, 2009), <http://big.assets.huffingtonpost.com/Burrletter.pdf>.

<sup>3</sup> Jay Riestenberg & Mary Bottari, *Who Is Behind the National Right to Work Committee and its Anti-Union Crusade*, PR WATCH (June 3, 2014), <http://www.prwatch.org/news/2014/06/12498/who-behind-national-right-work-committee-and-its-anti-union-crusade>.

particularly when it comes to the voting rights of African Americans and other people of color.

### **Voting Rights.**

- Mr. Farr served as lead counsel to the 1984 and 1990 Jesse Helms for Senate Committees. During his tenure, the Justice Department filed a complaint charging the campaign and the North Carolina Republican Party with intimidating Black voters in violation of the Voting Rights Act of 1965. The campaign had sent 125,000 postcards to North Carolina voters—most of them African American—suggesting that they were ineligible to vote and warning that voting could lead to criminal prosecution. While Mr. Farr has said that he learned of the postcards only “after the fact,” the complaint alleged that Mr. Farr was involved in the campaign’s “ballot security” measures.<sup>4</sup> At a minimum, Mr. Farr must further explain his relationship to this despicable scheme to disenfranchise African-American voters for the sake of political gain.
- In 2016, Mr. Farr defended what the Fourth Circuit Court of Appeals called “the most restrictive voting law North Carolina has seen since the era of Jim Crow[.]”<sup>5</sup> The law reduced early voting, eliminated same-day registration, prohibited counting out-of-precinct votes, and required voters to comply with a strict photo ID requirement.<sup>6</sup> The Fourth Circuit found that the law was passed *with the purpose* of discriminating against Black voters and in fact “target[ed] African Americans with almost surgical precision.”<sup>7</sup> Nevertheless, in a petition for review to the Supreme Court, Mr. Farr characterized the law as “lenient” and “sensible” and accused the court of “insult[ing] the people of North Carolina and their elected representatives.”<sup>8</sup> He wrote that “the notion that these election laws are reminiscent of ‘the era of Jim Crow’ is ludicrous.”<sup>9</sup>
- Mr. Farr has often represented the state and Republican plaintiffs in redistricting cases, always on the side of reducing the political power of

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<sup>4</sup> See Thomas Goldsmith & T. Keung Hui, *Wake school board buzz persists*, NEWS & OBSERVER, 2009 WLNR 25702647, (Dec. 22, 2009).

<sup>5</sup> *N.C. St. Conf. of the NAACP v. McCrory*, 831 F.3d 204, 219 (4th Cir. 2016).

<sup>6</sup> See *McCrory*, 831 F.3d at 219.

<sup>7</sup> *Id.* at 211.

<sup>8</sup> 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 \*2.

<sup>9</sup> *Id.* at \*20.

African-American voters. In 1996, Mr. Farr argued before the Supreme Court in *Shaw v. Hunt*,<sup>10</sup> a case challenging two majority-Black congressional districts in North Carolina. Mr. Farr argued that the districts constituted an unlawful racial gerrymander, and the Supreme Court agreed in a 5-4 decision, dismantling a redistricting plan designed to ensure that voters of color had an opportunity to elect representatives of their choice. Two decades later, Mr. Farr *defended* the same districts when the Republican-controlled state legislature redrew them in 2011.<sup>11</sup> The legislature packed African-American voters into the two districts to strengthen white majorities and dilute the power of Black voters elsewhere. In 2017, the Supreme Court ruled against the state and Mr. Farr, finding that the districts violated the Constitution’s Equal Protection Clause.<sup>12</sup>

- Mr. Farr also defended the unconstitutional racial gerrymanders that North Carolina drew for its state legislative districts in 2011.<sup>13</sup> Again, Mr. Farr lost in court when the District Court invalidated 28 districts—a ruling the Supreme Court summarily affirmed.<sup>14</sup>

### **Employment Discrimination.**

- Speaking in his personal capacity in 2016, Mr. Farr praised a provision of HB2—the North Carolina law best known for discriminating against transgender people—that eliminated the right of workers to bring discrimination claims in state court. Mr. Farr called it a “better policy for the state,”<sup>15</sup> but even Republican legislators regretted the provision and later repealed it. After the repeal, Republican State House Speaker Tim Moore, unlike Mr. Farr, said “there was never an intent to limit the right of anybody to seek redress in state court.”<sup>16</sup>

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<sup>10</sup> 517 U.S. 899 (1996).

<sup>11</sup> *Cooper v. Harris*, 137 S. Ct. 1455 (2017).

<sup>12</sup> *Id.* at 1472, 1481-82.

<sup>13</sup> *Covington v. North Carolina*, 316 F.R.D. 117, 125 (M.D.N.C. 2016).

<sup>14</sup> *North Carolina v. Covington*, 137 S. Ct. 2211 (2017).

<sup>15</sup> Anne Blythe, *Employment law advocates in NC hope for HB2 changes*, THE NEWS & OBSERVER (Apr. 9, 2016), <http://www.newsobserver.com/news/politics-government/state-politics/article70918692.html>.

<sup>16</sup> Colin Campbell & Lynn Bonner, *Legislature repeals only lawsuit provision of HB2*, THE NEWS & OBSERVER (July 1, 2016), <http://www.charlotteobserver.com/news/politics-government/article87180557.html>.

- Mr. Farr’s personal views are reflected in his legal practice defending companies accused of unlawful discrimination. To note just two examples: Mr. Farr successfully argued on behalf of Blue Cross Blue Shield that a county anti-discrimination ordinance was invalid under the North Carolina Constitution.<sup>17</sup> In another case, Mr. Farr represented a rental car company in a class action discrimination suit brought by the Lawyers’ Committee for Civil Rights Under Law. The suit alleged that the company discriminated against African-American customers by, among other things, denying car rentals to African Americans if they could not produce proof of employment, denying car rentals to African Americans if they expressed intent to drive a long distance, and falsely telling African Americans that no rental cars were available.<sup>18</sup> The litigation ended with a negotiated consent decree.

As the Congressional Black Caucus wrote in its letter opposing Mr. Farr’s nomination, “Mr. Farr has amassed a record that puts him at the forefront of an extended fight to disenfranchise African-American voters in his home state of North Carolina.”<sup>19</sup> With that record, it is no coincidence that he has been nominated by a President intent on stoking unfounded fear about widespread voter fraud as a pretext for the suppression of Black and Latino voters.<sup>20</sup> Moreover, with a confirmation hearing, Mr. Farr has already received more consideration from this Committee than the two extremely well-qualified African-American women who President Obama nominated to this vacancy. Mr. Farr’s troubling record is only magnified in light of the efforts to keep this vacancy open for President Trump to fill, and we have no confidence that he would fairly and impartially uphold the law and the Constitution’s guarantee of equal protection as a federal judge.

We oppose Mr. Farr’s confirmation for the reasons set forth above, and appreciate your consideration of our views. If you have any questions, please contact Senior Policy Counsel Kyle Barry at 202-682-1300.

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<sup>17</sup> *Williams v. Blue Cross Blue Shield*, 581 S.E.2d 415 (N.C. 2003).

<sup>18</sup> *See Pugh v. Avis Rent A Car System, Inc.*, 1997 WL 669876 (S.D.N.Y. 1997).

<sup>19</sup> Letter from Congressional Black Caucus to the Hon. Charles Grassley (Sept. 19, 2017), [http://www.naacpldf.org/files/case\\_issue/CBC%20Farr%20Nomination%20Letter.pdf](http://www.naacpldf.org/files/case_issue/CBC%20Farr%20Nomination%20Letter.pdf).

<sup>20</sup> *See Sherrilyn Ifill, President Trump’s Election Integrity Commission is illegal and unconstitutional – that’s why we filed a lawsuit*, SALON (July 27, 2017), <http://www.salon.com/2017/07/27/president-trumps-election-integrity-commission-is-illegal-and-unconstitutional-that-is-why-we-filed-a-lawsuit/>.



Sincerely,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive style with a prominent initial "S".

Sherrilyn A. Ifill  
President & Director Counsel

CC: Members of the Senate Judiciary Committee