

United States Senate

December 13, 2017

The Honorable Jeff Sessions
United States Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

I am writing to you with regards to Thomas Farr, President Donald Trump's nominee to be a United States District Judge for the Eastern District of North Carolina. It has come to my attention that a U.S. Department of Justice (DOJ) "justification memo" (j-memo) from a 1992 voting rights case holds pertinent information necessary for the Senate to provide advice and consent on the nomination of Mr. Farr. I request that the factual section of this j-memo be released to my office and members of the Senate Judiciary Committee without delay.

As you are aware, it is an obligation of the United States Senate to provide "Advice and Consent" on judicial nominees pursuant to Article II, Section 2 of the Constitution. This duty is one of the essential functions of the Founders' system of separation of powers through checks and balances. Particularly, in the case of lifetime appointments to the Judicial Branch, it is important that nominees be fully vetted and all necessary information be turned over to the Senate for consideration and evaluation.

In 1992, the DOJ filed a complaint in federal court for declaratory and injunctive relief against the North Carolina Republican Party, Helms for Senate Committee, and several other entities and persons. The complaint alleged the Helms Campaign sent over 100,000 postcards to predominantly African-American voters suggesting that they were ineligible to vote and if they voted it could lead to criminal prosecution. As the complaint stated, "A purpose of the postcard mailing, as described above, was to intimidate and/or threaten black voters in an effort to deter such voters from exercising their right to vote in the November 6, 1990, general election and future election contests in North Carolina."¹ The complaint alleged violations of the Voting Rights Act of 1965 and the Civil Rights Act of 1957.

In 1990, at the time when the postcards were mailed, Mr. Farr served as legal counsel to the Helms for Senate Committee. Based on his involvement in the campaign, Senator Dianne Feinstein, Ranking Member of the Senate Judiciary Committee, sent him Questions for the Record to determine his role in the mailing of the postcards. Senator Feinstein asked, "Did you

¹ *United States of America v. North Carolina Republican Party, et al.*, 92-CV-161, ¶ 43.

provide any counsel, or were you consulted in any way, about the content of or the decision to send these postcards?”² In response to this question, Mr. Farr simply replied, “No.”³

However, recent reports, based on the contemporaneous notes of Gerald Hebert, a former DOJ prosecutor, indicate that Mr. Farr is offering contradictory and inaccurate accounts regarding his role in this scheme to intimidate and threaten African-American voters.⁴ One article stated, “[A] former Department of Justice prosecutor repeated to the INDY this week what he told this reporter in 2009—that Farr knew about the postcards well in advance of the mailing, which implies that he misled the Senate committee about his involvement.” In fact, the same reporter wrote an article in 2009 which stated that, “Farr said on Monday that he had limited contact with campaign officials before the 1990 mailing and advised them not to send the postcards.”⁵ It is startling that Mr. Farr is now claiming under oath no involvement in the mailing of the postcards when in 2009 he stated that he advised the campaign not to send them.

Mr. Farr also said that he did not “participate in any meetings in which the postcards were discussed before they were sent. But according to Mr. Hebert, Mr. Farr attended a meeting in October 1990—three weeks before the postcards were sent—at which the postcard scheme and other “ballot security” efforts were discussed. That meeting is described in paragraph 15 of the DOJ complaint, which listed one participant as “an attorney who had been involved in past ballot security efforts on behalf of Senator Helms[.]”⁶ According to Mr. Hebert, Mr. Farr is the “attorney” referenced in the complaint.⁷

It is of the utmost importance Senators be able to further probe Mr. Farr’s record to clear up this obvious inconsistency contained within his own accounts, and reportedly between his later account and that of the DOJ lawyer.

The June 19, 1991 j-memo produced as a result of the DOJ’s investigation and sent to then-Assistant Attorney General John R. Dunne should provide further details regarding Mr. Farr’s involvement in the Helms for Senate Committee and the postcard mailings. A j-memo is a document produced by the investigating attorney that either recommends filing a suit or closing the investigation.⁸ It contains facts and legal arguments that support the filing of a lawsuit. It is clear to me that this memo is essential in determining whether Mr. Farr misled the Senate Judiciary Committee.

² *Nomination of Thomas Farr to the Eastern District of North Carolina, Questions for the Record, Submitted September 27, 2017*, 115th Cong. 1 (2017) (Questions from Senator Feinstein), <https://www.judiciary.senate.gov/download/farr-responses-to-questions-for-the-record>.

³ *Id.*

⁴ See Thomas Goldsmith, *After INDY’s Report About Judicial Nominee Thomas Farr Misleading a Senate Committee, Senator Dianne Feinstein Wants Answers*, INDY WEEK, Nov. 17, 2017, <https://www.indyweek.com/news/archives/2017/11/17/after-the-indys-report-about-judicial-candidate-thomas-farr-misleading-a-senate-committee-senator-dianne-feinstein-wants-answers>.

⁵ Thomas Goldsmith and T. Keung Hui, *Wake school board buzz persists*, THE NEWS & OBSERVER, Dec. 22, 2009, Section B.

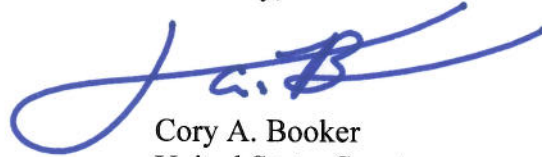
⁶ *North Carolina Republican Party*, *supra* note 1, at ¶ 15.

⁷ Goldsmith, *supra* note 4.

⁸ The United States Department of Justice, *How Does The Division Decide What Cases to Bring*, <https://www.justice.gov/crt/how-does-division-decide-what-cases-bring> (last visited Nov. 20, 2017).

Recognizing the deliberative process privilege, I respectfully request that you simply provide me and Senate Judiciary Committee members with the factual section of the June 19, 1991 j-memo and not the legal analysis. As Mr. Farr is currently pending on the Senate calendar, I request this j-memo be provided within two business days of the receipt of this letter. Thank you in advance for your prompt attention to this urgent matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'C.A. Booker', with a large, sweeping flourish extending to the left.

Cory A. Booker
United States Senator