

United States Senate

December 13, 2017

Thomas Farr
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4208 Six Forks Road, Suite 1100
Raleigh, North Carolina 27609

Dear Mr. Farr:

On October 19, 2017, your nomination to be a United States District Court Judge for the Eastern District of North Carolina was reported out of the Senate Judiciary Committee by a vote of 11-9. Since then, information as reported in certain press publications suggests there are serious discrepancies and inaccuracies in your responses to Questions for the Record regarding your involvement in the 1990 Helms for Senate Committee and a U.S. Department of Justice (DOJ) investigation regarding the campaign's efforts to suppress African-American votes. Based on this information, I request you provide additional information to my office and the Senate Judiciary Committee concerning your role in the 1984 and 1990 Helms for Senate Committees.

The U.S. Senate has the constitutional duty to provide advice and consent on judicial nominees pursuant to Article II, Section 2 of the Constitution. 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.

At the time the postcards were sent out, you served as legal counsel to the Helms for Senate Committee. Given your role in the campaign, Senator Dianne Feinstein, Ranking Member of the Senate Judiciary Committee, sent you several questions to determine your role in the mailing of the postcards. For instance, Senator Feinstein asked, "Did you 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, you simply replied, "No."³

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

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.*

However, recent reports indicate that you offered contradictory and inaccurate accounts regarding your role in mailing the postcards to mainly African-American voters in an effort to intimidate and threaten them from voting.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 you are now claiming under oath no involvement in the mailing of the postcards when in 2009 you stated that you advised the campaign not to send them. Given this, please answer the following questions:

1. Paragraph 15 of the DOJ Complaint describes a meeting on “October 16 or 17, 1990” with officials from the Helms campaign where “the 1990 ballot security program was discussed.”⁶ The complaint goes on to state that several named defendants “and *an attorney* who had been involved in the past ballot security efforts on behalf of Senator Helms and/or the Defendant North Carolina Republican Party.”⁷ According to Gerald Hebert, a former DOJ prosecutor, you are the attorney.
 - a. Are you the “attorney” referred to in paragraph 15 of the complaint?
2. According to contemporaneous notes of Mr. Hebert, you provided counsel at the 1990 meeting on whether to send postcards as part of the campaign’s so-called “ballot security” measures. You said, “Look we can’t do what we did in ’84 because in ’84 we sent all these postcards and we could use them to challenge voters at the polls, but we can’t do that anymore because the legislature fixed it in ’85. We’ll only use it if there’s a post-election challenge, a recount.”⁸
 - a. To the best of your recollection, do Mr. Hebert’s notes reflect what you stated at the meeting in question?
 - b. If your recollection of your statements at this meeting do not match Mr. Hebert’s notes, please detail your recollection of what you said at this meeting.
 - c. Do you have any contemporaneous notes that support your recollection of what happened at that meeting?

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 *Id.* (emphasis added).

⁸ Sam Levine, *Former DOJ Official Accuses Trump Judicial Pick of Misleading Senate About Past Work*, HUFFPOST (Nov. 12, 2017), https://www.huffingtonpost.com/entry/thomas-farr-voter-intimidation-senate_us_5a0f0c98e4b0e97dffed03a2.

- d. If you do have such notes, will you provide them to me and to the Senate Judiciary Committee?
 - e. Did you provide any other counsel regarding the use of postcards at the October 1990 meeting described in paragraph 15 of the DOJ complaint?
 - f. If the answer to 2e is “yes,” please describe the counsel you provided to campaign officials and whether you were a part of other meetings.
 - g. Please provide a detailed timeline of when you first became aware that the 1990 Helms for Senate Committee sent more than 100,000 postcards to mainly African-American voters suggesting that they were ineligible to vote and if they voted it could lead to criminal prosecution.
3. You served as legal counsel to the 1990 Helms for Senate Committee. Please describe your role.
- a. What matters did you provide counsel on?
 - b. Did the 1990 campaign make any decisions that potentially had major legal implications where you did not provide counsel? If so, please list what decisions.
 - c. Did you ever provide tactical, strategic, or political advice in addition to the legal advice you provided?
 - d. Did you ever provide counsel or advice with respect to political advertisements used in the 1990 campaign? If so, please identify the advertisements and the role you played.

You also served as legal counsel to the 1984 Helms for Senate Committee. That campaign was especially known for its appeals to racial fears and prejudices. In fact, the court that you are nominated to sit on once referenced the 1984 campaign as one that “unmistakably appeal[ed] to the same racial fears and prejudices” as “the crude cartoons and pamphlets of the outright white supremacy campaigning of the 1890’s[.]”⁹ Given this, please answer the following questions:

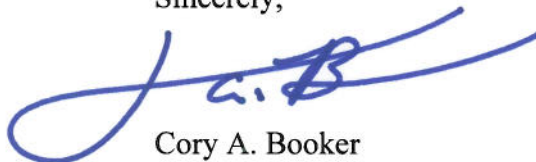
4. You served as legal counsel to the 1984 Helms for Senate Committee. Please describe your role.
- a. What matters did you provided counsel on?
 - b. Did the 1984 campaign make any decisions that potentially had major legal implications where you did not provide counsel? If so, please list what decisions.

⁹ *Gingles v. Edmisten*, 590 F. Supp. 345, 364 (E.D.N.C. 1984).

- c. Did you ever provide tactical, strategic, or political advice in addition to the legal advice you provided?
 - d. Did you ever provide counsel or advice with respect to political advertisements used in the 1984 campaign? If so, please identify the advertisements and the role you played.
5. According to notes of a former DOJ official, you provided counsel at the 1990 meeting on whether to send postcards as part of the campaign's so-called "ballot security" measures. You said, "Look we can't do what we did in '84 because in '84 we sent all these postcards and we could use them to challenge voters at the polls, but we can't do that anymore because the legislature fixed it in '85. We'll only use it if there's a post-election challenge, a recount."
- a. Did you provide any counsel regarding the mailing of postcards in the 1984 campaign? If so, what counsel did you provide to the campaign?
 - b. Given that postcards were mailed to voters during the 1984 campaign, were you ever concerned that similar postcards would be mailed in the 1990 campaign? If so, what actions did you take to stop the mailing of the postcards? Why were the postcards in the 1990 campaign still sent out?
6. The 1984 Helms for Senate Committee clearly used race as a tool to divide voters and win the election.
- a. Did the use of race in the 1984 campaign make you think twice about serving as legal counsel to the 1990 Helms for Senate Committee? If so, why did you serve as legal counsel to the campaign? If not, why were you not concerned?

Your nomination is currently pending on the Senate Executive Calendar. Therefore, I ask you respond to these questions in no less than five business days after receipt of this letter.

Sincerely,



Cory A. Booker
United States Senator