

November 27, 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: *Newly discovered information regarding judicial nominees Brett Talley and Thomas Farr*

Dear Chairman Grassley and Ranking Member Feinstein:

The Senate has a constitutional duty to thoroughly vet all judicial nominees, and cannot vote to confirm life-tenured judges when new information raises serious questions about their integrity and honesty. Such questions currently exist regarding two district court nominees recently reported by the Judiciary Committee – Brett Talley, a nominee to the Middle District of Alabama, and Thomas Farr, a nominee to the Eastern District of North Carolina. Media reports make clear that both nominees failed in their obligation to provide full and accurate disclosures to the Committee. Based on this information, the undersigned organizations strongly urge the Committee to hold additional hearings and demand that both nominees explain their deficient responses.

After the Committee reported Talley to the full Senate along party lines on November 9, 2017, news reports established that he failed to accurately answer two questions on his Judiciary Questionnaire. First, he failed to disclose that his wife serves as chief of staff to White House counsel Donald F. McGahn II.¹ Such disclosure was required by Question 24(a), which asks nominees to “[i]dentify family members . . . that are likely to present potential conflicts-of-interest when you first assume the position” of district court judge.² District court judges are often required to rule on the constitutionality of the president’s policies, placing them in direct conflict with White House lawyers. Talley’s failure to disclose his wife’s employment in response to a question that specifically refers to “family members” is inexplicable.

Second, Talley failed to disclose that he authored over 16,000 posts on the University of Alabama fan message board TideFans.com.³ Question 12(a) requires nominees to list all “published material you have written or edited, including material published only on the Internet.”⁴ Talley’s failure to comply with the question’s plain meaning cannot be excused by the website’s ostensible purpose of discussing football. Talley used the platform to express controversial views on a variety of

¹ Matt Apuzzo & Michael S. Schmidt, *Trump Judicial Pick Did Not Disclose He Is Married to a White House Lawyer*, THE NEW YORK TIMES (Nov. 13, 2017), <https://www.nytimes.com/2017/11/13/us/politics/trump-judge-brett-talley-nomination.html>.

² Sen. Comm. on the Jud., 115th Cong., Brett Joseph Talley: Questionnaire for Judiciary Nominees, 29, <https://www.judiciary.senate.gov/imo/media/doc/Talley%20SJQ.pdf>.

³ Mark Joseph Stern, *Trump Judicial Nominee Brett Talley Appears to Have Defended “the First KKK” in Message Board Post*, SLATE (Nov. 15, 2017), http://www.slate.com/blogs/the_slatest/2017/11/15/trump_nominee_brett_talley_appears_to_have_defended_the_fir_st_kkk.html.

⁴ See n.2, *supra* at 5.

issues, even offering a defense of what he called “the first KKK,”⁵ and arguing that the Supreme Court decisions in *Roe v. Wade* and *Miranda v. Arizona* are “indefensible.”⁶ In December 2012, a few days after the mass shooting at Sandy Hook Elementary School in Newtown, Connecticut, Talley posted that, “My solution would be to stop being a society of pansies and man up.”⁷ These disturbing statements suggest strong bias and a lack of judicial temperament that go directly to Talley’s fitness to serve as a judge. At the least, the Senate and the American people deserve to hear Talley explain these posts – and his failure to report them – before he is awarded life tenure on the federal bench.

Thomas Farr appears to have misled the Senate about his role in a notorious scheme to confuse and intimidate African-American voters in North Carolina. In 1990, the Jesse Helms for Senate Campaign sent over 100,000 postcards to mostly African-American voters, suggesting that they were ineligible to vote and could be prosecuted for casting a ballot. The Justice Department sued the campaign for violating the Voting Rights Act of 1965. Farr represented the campaign and negotiated a consent decree to resolve the case.

In written questions, Farr denied having any knowledge of or role in the scheme. Farr said that he “was not aware that the cards had been sent until they had been sent and the manager of the Helms Committee received a letter about the cards from the Voting Rights Section of the United States Department of Justice.”⁸ Farr also said that he was “not consulted in any way about the content of or the decision to send the postcards,” and that he did not “participate in any meetings in which the postcards were discussed before they were sent.”⁹

But last week a former Justice Department lawyer told reporters that “there is no doubt that the answers in [Farr’s] questionnaire are contrary to the facts.”¹⁰ Gerald Hebert, who served as deputy chief in the voting section of the Department’s Civil Rights Division, took contemporaneous notes during the investigation of the Helms’ campaign. According to Hebert, Farr attended a meeting in October 1990 – three weeks before the postcards were sent – at which the postcard scheme and other “ballot security” measures were discussed. That meeting is described in the Justice Department complaint, which says that the participants included named defendants and “an attorney who had been involved in past ballot security efforts on behalf of Senator Helms[.]”¹¹ Hebert confirmed that the unnamed “attorney” was Thomas Farr, and that

⁵ See n.3, *supra*.

⁶ Mark Joseph Stern, *Trump Judicial Nominee Brett Talley Appears to Have Called Roe v. Wade “Indefensible,”* SLATE (Nov. 15, 2017), http://www.slate.com/blogs/the_slatest/2017/11/15/trump_judicial_nominee_brett_talley_appears_to_reject_roe_v_wade.html.

⁷ Zoe Tillman, *A Trump Judicial Nominee Appears to Have Written About Politics On a Sports Website and Didn’t Disclose It*, BUZZFEED (Nov. 13, 2017), https://www.buzzfeed.com/zoetillman/a-trump-judicial-nominee-appears-to-have-written-about?utm_term=.jkJoQQnInG#.vcbxkkbRbY.

⁸ Sen. Comm. on the Jud., 115th Cong., Thomas Farr, Written Questions for the Record from Senator Feinstein, Question No. 3, <https://www.judiciary.senate.gov/imo/media/doc/Farr%20Responses%20to%20QFRs.pdf>.

⁹ *Id.*

¹⁰ Sam Levine, *Former DOJ Official Accuses Trump Judicial Pick Of Misleading Senate About Past Work*, THE HUFFINGTON POST (Nov. 17, 2017), https://www.huffingtonpost.com/entry/thomas-farr-voter-intimidation-senate_us_5a0f0c98e4b0e97dffed03a2.

¹¹ *United States v. North Carolina Republican Party, et al.*, No. 92-cv-161, Compl. ¶ 15.

Farr had performed a similar role in the 1984 campaign.¹² In Hebert’s words, Farr “was certainly involved in the scheme as it was being developed.”¹³ Farr must appear before the Committee to explain the discrepancies between this credible account and his own responses. Senators must determine whether Farr intentionally misled the Committee, and whether he participated in an unconscionable and unlawful scheme to disenfranchise African-American voters.

Americans rely on federal judges to provide equal justice and to uphold the rule of law and the Constitution. This tremendous responsibility requires candidates with a commitment to independence and unquestionable veracity. The newly discovered information about Brett Talley and Thomas Farr makes clear that both have fallen well short of these most basic requirements. At a minimum, the Senate Judiciary Committee should recall Talley and Farr for additional hearings so they can explain why they failed to provide full and accurate information. Senator Feinstein has taken important first steps, submitting additional questions to Talley in a detailed letter,¹⁴ and highlighting the seriousness of Farr’s apparent dishonesty in a press statement.¹⁵ The full Committee must evaluate the responses – or lack thereof – from Talley and Farr in additional hearings so the Senate can properly exercise its constitutional role to provide advice and consent on lifetime appointments to the federal bench.

Sincerely,

Alliance for Justice
American Association for Justice
American Association of University Women (AAUW)
American Constitution Society
American Federation of Labor-Congress of Industrial Organizations (AFL-CIO)
Center for American Progress
Citizen Advocacy Center
Color Of Change
CREDO
Demos
Equality California
Human Rights Campaign
Lambda Legal
Lawyers’ Committee for Civil Rights Under Law
Mabel Wadsworth Center, Maine

¹² Thomas Goldsmith, *Did Former Helms Lawyer Thomas Farr Lie to the Senate Judiciary Committee? It Sure Looks That Way*, INDYWEEK (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 *Id.*

¹⁴ Letter from Senator Dianne Feinstein to Brett J. Talley (Nov. 17, 2017), https://www.feinstein.senate.gov/public/index.cfm/press-releases?ContentRecord_id=5BBF3A16-49AF-4AA7-8F95-2C7FEC50F74C.

¹⁵ See Thomas Goldsmith, *After the INDY’s Report About Judicial Nominee Thomas Farr Misleading a Senate Committee, Senator Dianne Feinstein Wants Answers*, INDYWEEK (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>.

Maine Women's Lobby
MALDEF
NAACP
NAACP Legal Defense and Educational Fund, Inc.
NARAL Pro-Choice America
National Association of Social Workers
National Bar Association
National Center for Transgender Equality
National Council of Jewish Women
National Education Association
National Employment Lawyers Association
National Women's Law Center
Nevadans for Judicial Progress
People for the American Way
Planned Parenthood Federation of America
ProgressOhio
Service Employees International Union
Sierra Club
The Leadership Conference on Civil and Human Rights
Transformative Justice Coalition
Why Courts Matter - Pennsylvania