

AFJ NOMINEE REPORT

THOMAS FARR

U.S. District Court for the Eastern District of North Carolina

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INTRODUCTION

President Trump nominated attorney Thomas Alvin Farr on July 13, 2017, to the United States District Court for the Eastern District of North Carolina.¹ While there are numerous Republican lawyers in North Carolina who undoubtedly are qualified to serve on the district court and could administer justice fairly, this report demonstrates that Farr's deeply troubling record places him well outside that pool of candidates. Alliance for Justice strongly opposes Farr's nomination.

Indeed, it would be difficult to identify an attorney in North Carolina whose career is more closely associated with attacks on the rights of vulnerable citizens. For the last three decades, Farr, who represented the campaign of the ultraconservative Senator Jesse Helms at a time when the campaign was accused of taking part in conduct designed to intimidate black voters, has committed himself to two main missions: disenfranchising voters of color and attacking workers' rights. Farr has been the go-to private attorney for North Carolina Republicans in their efforts to dilute African-American votes and implement laws aimed at making it more difficult for communities of color to vote. Indeed, the courts have rebuked Farr's most recent voting rights cases. Farr unsuccessfully represented the Republican-led North Carolina Legislature in *Cooper v. Harris*, 137 S. Ct. 1455 (2017). The Supreme Court concluded that the Legislature had engaged in an unconstitutional racial gerrymander when it redrew two districts after the 2010 census. Farr also failed in his attempt to defend North Carolina's restrictive voter identification law. See *North Carolina v.*

N.C. State Conf. of the NAACP, 137 S. Ct. 1399 (2017). The Supreme Court denied review of the Fourth Circuit's decision that Republican legislators had enacted the law with discriminatory intent, "target[ing] African Americans with almost surgical precision." *N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016).

Farr also has championed weakening, or even eliminating, legal protections for employment discrimination. He said it was "better policy for the state" when the North Carolina Legislature eliminated the right of workers to bring *any* employment discrimination lawsuit in state court, an effort even Republicans in the Legislature realized had gone too far and quickly repealed. When the Legislature allowed a county to enact an anti-discrimination ordinance, Farr fought to have it invalidated.

Farr also has spent years working to undermine the rights of employees claiming unlawful and discriminatory employment practices. Farr defended a company when a supervisor said that "women with children should be at home and not employed in the workplace," that he would go to an employee's hotel room to "help [her] pick [her] panties off the floor," and that female employees were "stupid, retarded, and awful." Farr defended another company when a woman was denied a position because the job "was too hard and too rough for a woman." And, he defended Avis when it was sued for denying African Americans the right to rent cars on the same terms as white customers. While he repeatedly defended companies that discriminated against

¹ Press Release, The White House, President Donald J. Trump Announces Fifth Wave of Judicial Candidates (July 13, 2017), <https://www.whitehouse.gov/the-press-office/2017/07/13/president-donald-j-trump-announces-fifth-wave-judicial-candidates>.

employees, he has rarely represented a victim of discrimination or advocated for *strengthening* laws that would protect women and people of color.

Farr also has fought vigorously against workers' efforts to unionize. He was a staff attorney at the National Right to Work Legal Defense Foundation, which has deep ties to the Koch brothers and was described by The Center for Media and Democracy as "a national leader in the effort to destroy public and private sector unions."² Later, in private practice, he filed an amicus brief supporting a lawsuit challenging California's State Employer-Employee Relations Act, which provided for collective bargaining for state employees. He did this even though he was a North Carolina resident and was not representing any party to the litigation. He also defended companies trying to deny recognition of unions and committing unfair labor practices.

Notably, the seat to which Farr has been nominated has an unusual history. As of this writing, it represents the longest judicial vacancy in the country.³ Given Farr's extensive work to undermine voting rights for African-Americans, it is especially striking that Republicans' refusal to confirm two Obama judicial nominees, both women of color, has contributed to the extended vacancy. In 2013, President Obama nominated Jennifer May-Parker for the seat. Her nomination was blocked by Senator Richard Burr's refusal to return his blue slip. President Obama then nominated Patricia Timmons-Goodson in 2016, whom Senator Burr previously had recommended for the seat in 2009. Senator Burr, despite his previous support, refused to return his blue slip

on Timmons-Goodson.⁴ If either May-Parker or Timmons-Goodson had been confirmed, it would have been the first time an African-American judge sat on the Eastern District in the court's 143-year history.⁵ Farr is white.

In addition, this is not the first time Farr has been nominated to fill this vacancy. President George W. Bush first nominated Farr in 2006⁶ and nominated him again in 2007.⁷ Each time, Farr's nomination failed to advance out of the Senate Judiciary Committee.⁸

Because Farr has built his career on disenfranchising voters of color and stripping workers' protections, which raises serious questions whether he will be fair and unbiased as a judge, Alliance for Justice strongly opposes his nomination to the United States District Court for the Eastern District of North Carolina.

BIOGRAPHY

Thomas Farr graduated from Hillsdale College in 1976.⁹ He attended Emory University School of Law, where he graduated with a J.D. in 1979.¹⁰ He then obtained an LL.M. in labor law from Georgetown University Law Center in 1983.¹¹ Farr has been a member of The

⁴ *Id.*

⁵ *Id.*

⁶ Tom Farr Nominated to Judgeship in District Court for the Eastern District of North Carolina, OGLETREE DEAKINS (July 13, 2017), <http://ogletree.com/press-releases/tom-farr-nominated-to-judgeship-in-district-court-for-the-eastern-district-of-north-carolina>.

⁷ Gary D. Robertson, *Farr Gets Another Crack at North Carolina Federal Judgeship*, U.S. NEWS (July 13, 2017), <https://www.usnews.com/news/best-states/north-carolina/articles/2017-07-13/farr-gets-another-crack-at-north-carolina-federal-judgeship>.

⁸ *Id.*

⁹ Sen. Comm. on the Judiciary, 115th Cong., Thomas Alvin Farr: Questionnaire for Judicial Nominees 1.

¹⁰ *Id.*

¹¹ *Id.*

² 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>.

³ Mark Dorosin & Brent Ducharme, *In Eastern NC district 10 years of waiting for a judge*, THE NEWS & OBSERVER (Mar. 1, 2016), <http://www.newsobserver.com/opinion/op-ed/article63396347.html>.

Federalist Society since 1985.¹²

After law school, Farr clerked for Chief Judge Frank Bullock, Jr. of the United States District Court for the Middle District of North Carolina.¹³ He also worked as counsel to the U.S. Senate Labor and Human Resources Committee and was a staff attorney at the National Right to Work Legal Defense Foundation.¹⁴

Farr served as legal counsel to the 1984 and 1990 Helms for Senate Committee.¹⁵ In 1992, the Justice Department issued a complaint alleging that during Farr's tenure, the Helms campaign had sent postcards "to 125,000 North Carolinians, most of whom were blacks eligible to vote, suggesting to them that they were not eligible and warning that if they went to the polls they could be prosecuted for voter fraud."¹⁶ The Department "described Farr as a participant in meetings about the mailing and said he had been involved in earlier 'ballot security' efforts."¹⁷ Farr represented the Helms campaign in negotiating a consent decree with the Department of Justice to settle the complaint.¹⁸

Farr also represented the Helms campaign in a case brought by the Federal Election Commission (FEC) for accepting excessive campaign contributions. After conducting a nearly four-year audit, the FEC concluded that Helms's 1984 campaign had improperly accepted over \$700,000 in unlawful campaign contributions.¹⁹ The Helms campaign settled the case with the FEC, agreeing to pay a \$25,000

fine.²⁰

In 2009, after Republicans gained control of the Wake County School Board, they hired Farr to conduct an audit of the school system's legal fees and provide advice about policy and personnel matters.²¹ The school board that hired Farr was later responsible for dismantling Wake County's efforts to diversify school enrollment. Before the Republicans changed the policy, Wake County had been "nationally recognized for its efforts to try to keep school enrollments diverse."²² When Republicans took over, they "dropped the goal of trying to keep school populations diverse and reassigned large numbers of low-income students to schools closer to their homes."²³

Farr's other notable representation is his pro bono defense of "three Catholic priests accused of different forms of misconduct."²⁴ Farr said that he "represented them in connection with internal investigations by the Raleigh Diocese," while he was an attorney at Maupin Taylor & Ellis, where he worked from 1983 to 2003.²⁵ Although Farr does not provide additional details, the Raleigh Diocese was rocked by sexual abuse allegations against several of its priests in the 1990s and 2000s. The News & Observer reported in 2004 that "[s]ince 1992, the diocese has removed three priests . . . and has received credible allegations against 10 others—all of whom

¹² *Id.* at 6.

¹³ *Id.* at 2–3.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 21.

¹⁶ *The 1992 Campaign; Helms Campaign Decree on Racial Postcards*, N.Y. TIMES (Feb. 28, 1992), <http://www.nytimes.com/1992/02/28/us/the-1992-campaign-helms-campaign-signs-decree-on-racial-postcards.html?mcubz=1>.

¹⁷ Thomas Goldsmith & T. Keung Hui, *Wake school board buzz persists*, THE NEWS & OBSERVER (Dec. 22, 2009).

¹⁸ See *The 1992 Campaign*, *supra* note 16; Goldsmith & Hui, *supra* note 17.

¹⁹ Glenn R. Simpson, *Helms Fined \$25,000 for '84 Senate Match FEC Claims \$700,000 in Excess Donations*, ROLL CALL (Mar. 24, 1994).

²⁰ *Id.*

²¹ Thomas Goldsmith, *Wake schools' January legal bill is \$6,000*, THE NEWS & OBSERVER (Mar. 9, 2010); Bob Geary, *Why did the new majority hire its own attorney, Tom Farr?*, INDY WEEK (Jan. 20, 2010), <https://www.indyweek.com/indyweek/why-did-the-new-majority-hire-its-own-attorney-tom-farr/Content?oid=1299899>.

²² T. Keung Hui, *Electing Democratic school board members reduces school segregation, study finds*, THE NEWS & OBSERVER (July 27, 2017), <http://www.newsobserver.com/news/local/education/article163919969.html>.

²³ *Id.*

²⁴ Questionnaire, *supra* note 9, at 37.

²⁵ *Id.* at 2, 37.

are retired, dead or no longer in the diocese.”²⁶

Currently, Farr is a shareholder at Ogletree Deakins, in its Raleigh office.²⁷ Though he is widely touted as an employment lawyer, he has worked extensively on voting rights cases, often representing those who sought to erect barriers to voting.

LEGAL AND OTHER VIEWS

I. VOTING RIGHTS

Farr has led Republican attempts to disenfranchise voters of color, including but not limited to his representation of the Jesse Helms campaign when it was accused of an effort to intimidate African-American voters. From the beginning of his career, Farr has represented various legislators and entities in the State of North Carolina in their efforts to create redistricting plans that dilute votes of African Americans, and to pass legislation that made it more difficult for people of color to vote. In many of these cases, Farr has lost his bids to protect these discriminatory actions.

a. Elections

Farr represented the State of North Carolina in its effort to enact the harshest and most discriminatory election law in the country. The day after the Supreme Court issued its decision in *Shelby County v. Holder*, 570 U.S. 2 (2013), eliminating preclearance requirements for

many jurisdictions in North Carolina, the Republican-led North Carolina General Assembly began gathering data on the use of certain voting practices, broken down by race.²⁸ Then-Speaker of the North Carolina House of Representatives Thom Tillis’s general counsel e-mailed the State Board of Elections, “asking for additional race data on people who requested absentee ballots in 2012,” which the Board provided. *League of Women Voters of N.C. v. North Carolina*, 769 F.3d 224, 231 (4th Cir. 2014). Other legislators also requested voting information broken down by race, including the number of voters who lacked qualifying photo identification and the racial composition of that group of voters. *Id.*

The Legislature then drafted a law that eliminated several voting practices that were disproportionately utilized by voters of color. The actions included reducing early-voting days, eliminating same-day registration and preregistration of teenage voters, and implementing strict voter photo identification requirements. *Id.* at 229.

Several groups challenged the law, arguing that it was passed with intent to discriminate against voters of color. Farr argued that the voter ID provision in particular was not problematic. He said that previous permissive voter ID laws in North Carolina aimed at increasing participation of voters of color had not actually increased turnout. Rather, he argued, “the historic nature of the Obama campaign generated massive enthusiasm among African American voters,” which was the source of increased African-American

²⁶ Yonat Shimron, 33 years’ Silence Broken, THE NEWS & OBSERVER (Apr. 17, 2004), http://www.bishop-accountability.org/news/2004_04_17_Shimron_33Years_Behan_AND_McSweeney.htm.

²⁷ *Id.* at 2.

²⁸ Mark Joseph Stern, North Carolina’s Voter Suppression Law Was Killed By Its Own Racism, SLATE (May 15, 2017), <http://www.slate.com/arts/2017/08/the-new-movies-de-troit-and-whose-streets-reviewed.html>.

turnout in recent elections.²⁹

The Fourth Circuit rejected Farr’s arguments and struck down the discriminatory law. The Fourth Circuit concluded that the Legislature had intentionally discriminated against African Americans in drafting the law, saying that “the new provisions target African Americans with almost surgical precision.” [*N.C. State Conf. of the NAACP v. McCrory*, 831 F.3d 204, 214 \(4th Cir. 2016\)](#). The Fourth Circuit admonished the state for offering “meager justifications” for the law, noting that the provisions “constitute inapt remedies for the problems assertedly justifying them and, in fact, impose cures for problems that did not exist.” *Id.* It was clear, the Fourth Circuit stated, that the law had been passed as quickly as possible after *Shelby County* in order to strip people of color from exercising their rights to vote at a time when, “[a]fter years of preclearance and expansion of voting access, . . . African American registration and turnout rates had finally reached near-parity with white registration and turnout rates.” *Id.* This “rush” to pass “the most restrictive voting law North Carolina has seen since the era of Jim Crow—bespeaks a certain purpose,” the Fourth Circuit noted. *Id.* at 229.

The state petitioned the Supreme Court for review, but in January 2017, a new governor and state attorney general of North Carolina took office and declined to defend the law. Farr, however, continued his defense of the law in the Supreme Court. In his petition urging review, Farr argued that “the notion that *these* election laws are reminiscent of ‘the era of Jim Crow’ is ludicrous.”³⁰ Moreover, Farr said, “[t]o hypothesize that North Carolina

intended to keep African-Americans from voting by eliminating” an early voting day disproportionately used by African-American voters was “absurd.”³¹ He also argued that “*Shelby County* freed former preclearance States like North Carolina to legislate without ‘long-ago history’—however shameful—forever besmirching the motives of today’s legislators. At a minimum, the decision *must* mean that those States may adjust voting procedures as they choose—potentially in ways §5 would have blocked—provided they satisfy §2.”³²

The Supreme Court declined to hear the case in May 2017. See [*North Carolina v. N.C. State Conf. of the NAACP*, 137 S. Ct. 1399 \(2017\)](#).

b. Redistricting

In one of his first attacks on voting rights, Farr represented plaintiffs who challenged North Carolina’s redistricting plan as violating the Equal Protection Clause. See [*Shaw v. Hunt*, 517 U.S. 899 \(1996\)](#). In that case, North Carolina had redrawn its congressional districts after the 1990 census. *Id.* at 902. The plan included one majority-black district in the northeastern part of the state, District 1. *Id.* The state submitted the plan for preclearance to the Department of Justice—this case arose before the Supreme Court’s decision in *Shelby County*—and the plan was rejected for failing to properly “give effect to black and Native American voting strength.” *Id.* Accordingly, the state redrew the legislative map to include a second

²⁹ Defendants’ Memorandum in Opposition to Plaintiffs’ Motions for Preliminary Injunction and to the United States’ Motion for Appointment for Federal Observers, North Carolina State Conference of the NAACP v. North Carolina, Nos. 1:13cv658, 1:13CV660, 1:13CV861, 2014 WL 11791527 (M.D.N.C. June, 18, 2014).

³⁰ Petition for Writ of Certiorari and Volume I of the Appendix at 20, North Carolina v. N.C. State Conf. of the NAACP, 137 S. Ct. 1399 (2017) (No. 16-833).

³¹ *Id.* at 31.

³² Reply in Support of Petition for a Writ of Certiorari at 3–4, North Carolina v. N.C. State Conf. of the NAACP, 137 S. Ct. 1399 (2017) (No. 16-833).

majority-black district, District 12. The Justice Department then approved the plan. *Id.*

Voters in North Carolina brought two lawsuits challenging the plan. Farr represented a group of plaintiffs in one of the lawsuits. He argued that the plan was an unconstitutional racial gerrymander. That the North Carolina Legislature had engaged in a racial gerrymander was clear, Farr argued, based on the bizarre shapes of the districts.³³

Further, Farr argued, the state had provided no compelling state interest justifying the plan.

After the district court upheld the redistricting plan, Chief Justice William Rehnquist, writing for the U.S. Supreme Court's conservative bloc, struck down the plan as it pertained to District 12. The Supreme Court threw out the portion of the case challenging District 1 for lack of standing because none of the plaintiffs resided in the district.

Because Farr's clients all resided outside of Districts 1 and 12, the Supreme Court dismissed all of their claims.³⁴ Although Farr ultimately was unsuccessful in representing his clients, the overall lawsuit was partially successful in dismantling a redistricting plan that was aimed at enhancing the voting power of African Americans in North Carolina.

Farr was back in the Supreme Court challenging the same districts nearly two decades later after the North Carolina Legislature redrew them following the 2010 census. See [Cooper v. Harris, 137 S. Ct. 1455 \(2017\)](#). This time Farr represented the Republican-led legislature that had decided to redraw Districts 1 and 12 as majority-black districts despite both

districts' repeated election of candidates who received heavy support from voters of color. In redrawing the districts, the Legislature had effectively removed a number of African-American voters from other, majority-white districts. The net result was to strengthen the white majority in those other districts, while diluting African-American voters' overall influence by concentrating it in a smaller number of districts.

Before redistricting, District 1 had a black population of 48.6% and District 12 had a black population of 43.8%. *Id.* at 1459. Despite the fact that neither district was majority African American, "in five successive general elections . . . all the candidates preferred by most African-American voters won their contests—and by some handy margins," never dipping below receiving 59% of the total vote. *Id.* at 1465. After redistricting, District 1 became 52.7% African American—a four percent increase—and District 12 became 50.7% African American—a seven percent increase. *Id.* at 1459.

Writing for the Supreme Court, Justice Elena Kagan struck down the redistricting plan as an unconstitutional racial gerrymander. The district court had not erred in finding that race had predominated in the redrawing of the two districts, the Court concluded. Moreover, the Legislature had not provided adequate reasons for the race-based redistricting. Instead, the Legislature was attempting to solve a problem that didn't exist by packing more African-American voters into two districts that already had been electing candidates that received the support of

³³ Brief of Appellants Pope, et al., on the Merits at 13, *Shaw v. Hunt*, 517 U.S. 899 (1996) (No. 94-924).

³⁴ *Id.* at ii.

most African-American voters.

Thus, *Cooper* represented another of Farr's failed attempts to dilute African-American voting power in North Carolina.³⁵

Farr also defended the unconstitutional racial gerrymanders of North Carolina's state Senate and state House of Representatives districts. See [Covington v. North Carolina, No. 1:15-CV-399, 2016 U.S. Dist. LEXIS 106162 \(M.D.N.C. Aug. 11, 2016\)](#). Like the *Cooper* case discussed above, the Republican-led legislature had redrawn state legislative districts to include several majority-black districts, despite the lack of evidence that these districts were necessary to ensure that candidates supported by voters of color won elections. The Supreme Court unanimously affirmed the district court's judgment throwing out the unconstitutional map. See [North Carolina v. Covington, 137 S. Ct. 2211 \(2017\)](#).

Farr continued to represent the state as it later opposed the district court's remedial redistricting plan. See [Covington v. North Carolina, No. 1:15-CV-399, 2017 U.S. Dist. LEXIS 759 \(M.D.N.C. Jan. 4, 2017\)](#). The district court imposed a remedial plan that gave the Legislature two months to redraw the map and ordered the state to hold special elections in November 2017 to replace the state representatives who had been elected using the illegal maps in November 2016. *Id.* at *3. The Supreme Court vacated the remedial plan, ordering the district court to engage in a more thorough analysis of why a special election was necessary to rectify the harm caused by the

³⁵ Farr also is representing the State of North Carolina in a lawsuit alleging that the redistricting following the 2010 census was an unconstitutional partisan gerrymander. See [Common Cause v. Rucho, No. 1:16-CV-1026 & No. 1:16-CV-1164, 2017 U.S. Dist. LEXIS 30242 \(M.D.N.C. Mar. 3, 2017\)](#). Farr is representing the Republican-led General Assembly from allegations that it purposefully drew districts that would give Republicans a large partisan advantage. Farr has been involved in other political gerrymandering cases, always representing Republican interests. See, e.g., [Stephenson v. Bartlett, 180 F. Supp. 2d 779 \(E.D.N.C. 2001\)](#); [562 S.E.2d 377 \(N.C. 2002\)](#); [582 S.E.2d 247 \(N.C. 2003\)](#); [595 S.E.2d 112 \(N.C. 2004\)](#).

unconstitutional racial gerrymander. See [North Carolina v. Covington, 137 S. Ct. 1624 \(2017\)](#).

On remand, the district court ordered the legislature to redraw the legislative districts within one month and denied plaintiffs' request for a special election. See [Covington v. North Carolina, No. 1:15-CV-399, 2017 U.S. Dist. LEXIS: 122281 \(M.D.N.C. July 31, 2017\)](#). The district court chastised the Legislature for failing to move more quickly on redrawing the districts, saying that "[t]he General Assembly's failure to comply with this Court's August 2016 Order or to take any apparent action since the Supreme Court unanimously affirmed this Court's judgment tends to indicate that the General Assembly does not appreciate the need to move promptly to cure the unconstitutional racial gerrymanders in the 2011 districting plans." *Id.* at *10.

In addition to the cases described above, Farr has represented now-Senator Thom Tillis when he was speaker of the North Carolina House of Representatives in two other cases involving challenges to allegedly discriminatory redistricting practices. See [NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections, 858 F. Supp. 2d 516 \(M.D.N.C. 2012\)](#); [Dickson v. Rucho, 781 S.E.2d 404 \(N.C. 2015\), vacated and remanded by 137 S. Ct. 2186 \(2017\)](#).

c. National Voter Registration Act

Outside of voter ID laws and redistricting, Farr has represented the State of North Carolina in a lawsuit alleging that it had failed to comply with the National Voter Registration Act ("NVRA"). See [Action NC v.](#)

[Strach, 216 F. Supp. 3d 597 \(2016\)](#). In that case, several people sued the state alleging that their votes had not been counted in the November 2014 election based on the Department of Motor Vehicles' failure to transmit their voter registration or properly update their information with the State Board of Elections. *Id.* at 610. Moreover, several organizations joined the suit alleging that the state had failed to comply with the NVRA's various requirements that voter registration be provided to low-income individuals through public assistance agencies. *Id.* The district court granted in large part the plaintiffs' motion for a preliminary injunction, concluding that the plaintiffs would likely succeed on their claims that the state entities had failed to comply with the NVRA, leading to several instances of voter disenfranchisement.

d. Money in Politics

Farr also represented a Republican candidate for North Carolina State Senate, Ralph Hise, who had been accused of violating North Carolina's "Stand by Your Ad" law, which required certain disclosures in political advertisements. See [Friends of Joe Sam Queen v. Hise, 223 N.C. App. 395 \(2012\)](#). The plaintiff alleged that Senator Hise had failed to disclose in his advertisements that the North Carolina GOP paid for them. The court concluded that despite Senator Hise's failure to comply with the disclosure law, his Democratic opponent also had failed to strictly comply with the law, so Hise could avoid liability. *Id.* at 407–08.

II. EMPLOYMENT DISCRIMINATION

In addition to his work on voter disenfranchisement in North Carolina, Farr has chosen to build his career undermining workers' rights. Farr has consistently and repeatedly

taken positions that would make it more difficult for workers who face discrimination in the workplace to get a remedy.

Farr's hostility to workers' rights extends beyond his representation of corporations accused of discrimination. In his personal capacity, at the behest of no client, Farr cheered parts of North Carolina HB2, which along with discriminating against transgender people by requiring them to use bathrooms matching the gender on their birth certificates, eliminated the right of workers to bring employment discrimination lawsuits in state court. He said it was a "better policy for the state."³⁶ Farr's position would have prevented North Carolinians from seeking redress in state court for any claim of discrimination in employment based on race, religion, color, national origin, age, sex, or disability. Even Republicans in the North Carolina Legislature recognized the danger of such a policy. In 2016, North Carolina lawmakers repealed the provision of the law Farr championed, saying that "there was never an intent to limit the right of anybody to seek redress in state court."³⁷

Williams v. Blue Cross Blue Shield

In [Williams v. Blue Cross Blue Shield, 581 S.E.2d 415 \(N.C. 2003\)](#), Farr defended Blue Cross Blue Shield and managed to invalidate a county ordinance that protected employees from discrimination. In that case, the North Carolina Legislature had passed legislation permitting Orange County to enact an antidiscrimination-

³⁶ 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>.

³⁷ Colin Campbell & Lynn Bonner, *Legislature repeals only lawsuit provision of HB2*, CHARLOTTE OBSERVER (July 1, 2016), <http://www.charlotteobserver.com/news/politics-government/article87180557.html>.

in-employment provision. *Id.* at 419. A Blue Cross employee sued the company under the ordinance, alleging that the company had discriminated against her on the basis of her age and sex. *Id.* at 421. Farr successfully argued that the county ordinance was unconstitutional because it contravened language in the North Carolina Constitution preventing the General Assembly from passing local resolutions regulating labor. *Id.* at 428–29.

Doyle-McTighe v. Pfizer

Farr represented Pfizer in *Doyle-McTighe v. Pfizer*, No. 02-CV-606 (E.D.N.C. Aug. 4, 2004), a lawsuit involving claims of sex discrimination and hostile work environment. Barbara Doyle-McTighe alleged that one of her supervisors, Howard Swain, made her life at Pfizer nearly unbearable. During “field rides,” monthly events where Pfizer representatives visited clients, Swain would berate Doyle-McTighe and other female employees, calling them “stupid, retarded, and awful.” *Id.* at Order Granting Summary Judgment,*3. He also said “that women with children should be at home and not employed in the workplace” and that “[t]here’s no room for babies in our district right now.” *Id.* at *3–4. Swain also told female employees to wear skirts to attract doctors, pulled Doyle-McTighe onto his lap on one occasion, and told another female employee that he would go up to her hotel room to “help [her] pick [her] panties off the floor.” *Id.* at *4. The district court dismissed all of Doyle-McTighe’s claims as untimely filed. (Some of Doyle-McTighe’s state-law claims of employment discrimination proceeded to trial in a separate proceeding, *Doyle-McTighe v. Pfizer*, No. 02-CVS-010341 (Wake Cnty. Sup. Ct. Oct. 2005). After a four-week trial, the jury found in favor of Pfizer.)

Pugh v. Avis

Farr represented Avis in a case brought by the Lawyers Committee on Civil Rights alleging that Avis had discriminated against African-American customers. See *Pugh v. Avis*, No. 7:96-cv-00091-F (E.D.N.C. 1998).³⁸ The plaintiffs alleged that certain Avis franchises had denied African Americans the ability to “rent cars on the same terms as white individuals.” *Pugh v. Avis Rent a Car Sys.*, No. M8-85, 1997 U.S. Dist. LEXIS 16671, at *2 (S.D.N.Y. Oct. 28, 1997). Among other things, the plaintiffs said that the company engaged in several discriminatory practices, including “searching for reasons to deny car rentals to African-Americans, questioning African-American customers more rigorously than similarly situated white customers . . . [and] denying car rentals to African-Americans if they expressed an intention to drive a long distance.” *Id.* The parties ultimately entered into a settlement decree.³⁹

Blalock v. Waste Industries, Inc.

In *Blalock v. Waste Industries*, No. 5:00-cv-02668-RDP (N.D. Ala. 2004), Farr defended Waste Industries, Inc. from a lawsuit alleging sex discrimination in hiring. Gaynell Blalock alleged that she was denied a position as a truck driver after the site-supervisor, Bud Emmer, told her that the job was “too hard and too rough for a woman,” and “that a woman couldn’t handle doing that kind of job.” *Id.* at Order Denying Class Certification, *5–6. The district court denied Waste Industries’ motion for summary judgment in part,

³⁸ Questionnaire, *supra* note 9, at 13.

³⁹ *Id.*

finding that Blalock had alleged sufficient facts for a reasonable juror to conclude that she had not been hired because she was a woman. *Id.* at Opinion Denying in Part Summary Judgment, *11–15. Waste Industries ultimately settled the case with Blalock before it went to trial.⁴⁰

Buchanan v. Hunter Douglas, Inc.

In [*Buchanan v. Hunter Douglas, Inc.*, 359 S.E.2d 271 \(N.C. App. 1987\)](#), Farr represented a corporation, Hunter Douglas, in its attempt to make it more difficult for a person with disabilities to sue for employment discrimination. Eddie Sumner Buchanan filed a complaint against Hunter Douglas alleging that it had discriminated against him because he had a disability resembling cerebral palsy. *Id.* at 271. Buchanan voluntarily withdrew his complaint. *Id.* But before Buchanan had a chance to refile the complaint, the North Carolina Legislature repealed the law under which Buchanan had sued and replaced it with a new statute related to disability discrimination in employment. *Id.* at 271–72. When Buchanan refiled his complaint, he mislabeled it, arguing that Hunter Douglas’s conduct violated the repealed version of the statute. *Id.* Hunter Douglas argued that the mislabeling of the complaint warranted dismissal. *Id.* The court rejected Hunter Douglas’s argument, concluding that it had sufficient notice of the claims against it, regardless of how the complaint was labeled. *Id.* at 273. Moreover, it stated, “[i]t would be a grave injustice for this Court to foreclose the remedy of plaintiff and other similarly situated persons when the North Carolina General Assembly so clearly did not intend this particular cause of action to expire.” *Id.*

⁴⁰ *Id.* at 11.

III. WORKERS’ RIGHTS

Farr also has spent considerable time battling unions, even when they are seeking to protect workers from unfair and unsafe labor practices.

Pacific Legal Foundation v. Brown

Farr filed an amicus brief in [*Pacific Legal Foundation v. Brown*, 624 P.2d 1215 \(Cal. 1981\)](#), supporting the Pacific Legal Foundation’s challenge to California’s State Employer-Employee Relations Act (“SEERA”). The Pacific Legal Foundation “mounted a sweeping constitutional challenge” to the law, which provided for collective bargaining for state employees, arguing that it “conflict[ed] with the ‘merit system’ of employment embodied in the civil service provisions” of the California Constitution. *Id.* at 1217. According to the California Supreme Court, the main features of SEERA were to “strengthen the role of employees and to increase the efficiency of the employer-employee negotiation process” of the terms and conditions of their employment. *Id.* at 1220. The California Supreme Court rejected Pacific Legal Foundation’s challenge, concluding that “nothing in the history of” the system of merit appointment in California prohibited “the Legislature from adopting a labor relations policy affording employees a meaningful voice in determining the terms and conditions of their employment; instead [merit appointment] simply sought to eliminate the ‘spoils system’ of public appointment” that was based on “political patronage.” *Id.* at 1222–24.

Algernon Blair, Inc. v. Walters

In 1997, Farr urged the U.S. Supreme Court to consider and reverse a case that expanded protections for workers harmed by exposure to asbestos. The North Carolina Supreme Court had struck down a workers' compensation law that treated workers with asbestos-related illnesses less favorably than workers with other occupational diseases. In order to qualify for benefits under the statute, a worker had to have been exposed to asbestos for "at least two years in North Carolina during the ten years prior to his last exposure." [*Walters v. Algernon Blair, Inc.*, 462 S.E.2d 232, 233 \(N.C. 1995\)](#) (internal quotation marks omitted). Farr argued that the North Carolina Supreme Court's ruling was incorrect.⁴¹ The United States Supreme Court declined to hear the case. *Algernon Blair, Inc. v. Walters*, 520 U.S. 1196 (1997).

NLRB v. American National Can Co.

In [*NLRB v. American National Can Co.*, 924 F.2d 518 \(4th Cir. 1991\)](#), Farr represented a corporation that had refused to allow AFL-CIO representatives access to its plant to "take heat measurements necessary for processing a heat relief grievance and for monitoring the Company's compliance with the on-job health protection provisions of the parties' collective bargaining agreement." *Id.* at 520. The company operated several glass-container manufacturing plants where workers were often subjected to extreme heat. The National Labor Relations Board's (NLRB) conclusion that the company had committed an unfair labor practice in violation of the National Labor Relations Act (NLRA) was upheld by the Fourth Circuit.

NLRB v. Lundy Packing Co.

Farr represented Lundy Packing Company in its bid to prevent its workers from unionizing. See [*NLRB v. Lundy Packing Co.*, 68 F.3d 1577 \(4th Cir. 1995\)](#). In that case, the AFL-CIO and Lundy disagreed about the composition of the bargaining unit. Lundy wanted a more inclusive unit, knowing that inclusion of more workers would defeat efforts to unionize. *Id.* at 1579. An election was held and the union narrowly prevailed; the ballots of the employees that were excluded from the unit were not counted. *Id.* The NLRB certified the union, concluding that the less-inclusive unit was appropriate. *Id.* The company refused to bargain with the new union, leading to a claim of unfair labor practices. *Id.* The Fourth Circuit concluded that the NLRB had improperly excluded a subset of quality control employees from the unit and refused to enforce the Board's certification of the union. *Id.* at 1580.

CONCLUSION

Thomas Farr, President Trump's nominee to the United States District Court for the Eastern District of North Carolina, has built his career working to disenfranchise voters of color and undermine workers' rights. He has spent decades representing extreme right-wing politicians and policies, including defending Jesse Helms's campaign against allegations of race discrimination and campaign finance violations. Farr's penchant for championing partisan causes that diminish the rights of people of color and workers makes him uniquely ill-suited for a lifetime appointment to the federal bench. Alliance for Justice strongly opposes his nomination.

⁴¹ Petition for Writ of Certiorari, *Algernon Blair v. Walters*, 520 U.S. 1196 (1997) (No. 96-1082).