

**Nomination of Thomas Farr to the
U.S. District Court for the Eastern District of North Carolina
Questions for the Record
Submitted January 12, 2018**

QUESTIONS FROM SENATOR BOOKER

1. On December 13, 2017, I sent you a letter asking a series of questions regarding your involvement in the 1990 Helms for Senate Committee and the campaign's efforts to suppress African-American votes. As I mentioned in my previous letter, in 1990, the Helms for Senate Committee sent over 100,000 postcards to African Americans suggesting that they were ineligible to vote and if they voted it could lead to criminal prosecution. The Department of Justice subsequently filed a Complaint in 1992 (the Complaint) against the Helms for Senate Committee. 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 when the postcards were sent out, you were counsel to the Helms for Senate Committee. Based on this position with the campaign, Senator Dianne Feinstein asked you a Questions for the Record: "Did you have any role in the drafting or sending of the postcards? Did you participate in any meetings in which the postcards were discussed before they were sent? If so please explain your role in such meetings."² In response to this question, you plainly stated, "No."³

Information reported in several news articles and provided by Gerald Hebert, a former DOJ attorney, dispute your answer to Senator Feinstein's question, which prompted my first letter to you.⁴ I understand you do not agree with Mr. Hebert's recollection of these events. Nevertheless, your answer to one of my questions directly contradicts an answer you provided to Senator Feinstein.

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.*

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

In your December 19, 2017 letter to me, you stated, “I fully stand by my answers in Senator Feinstein’s question about the 1990 card mailing.”⁵ Despite this, in your answer to my first question you wrote, “[S]everal weeks before the election, I participated in a short meeting with persons who wanted to be hired to do a ballot security program for the Helms Committee in 1990.”⁶ Based on this answer and Mr. Hebert’s notes, you fit the description of the “attorney” who attended an October 16 or 17, 1990 meeting referenced in paragraph 15 of the 1992 Complaint filed against the Helms for Senate Committee.⁷ Senator Feinstein asked you in a question, “Did you participate in any meetings in which the postcards were discussed before they were sent?” You replied, “No.”⁸

- a. In your response to Senator Feinstein’s question, why did you fail to mention your participation in a meeting where a “ballot security program” was discussed?

I believe the key misunderstanding here is the incorrect assumption that the 1990 card mailing was somehow inspired or approved by anything I said or endorsed at the short meeting I attended. In fact, that mailing was not even discussed at that short meeting.

As I stated in my December 19 letter to you, I participated in a short meeting with persons who wanted to be hired to do a ballot security program for the Helms Committee in 1990. Their purpose in meeting with me was to gather information they thought would be useful in pitching their services to the Helms Committee, i.e., this was a pre-pitch meeting. Most of the meeting focused on their questions whether it would be valuable for the campaign to recruit and train poll observers. The only discussion of any mailing was their question to me whether the Helms campaign would benefit from a mailing program in which mail pieces would be sent to voters at their last known addresses, and then mail pieces that were returned (for voters that no longer lived at those addresses) could be used to challenge, at the polls, voters’ claims to residency at those addresses. I did not support the idea, explaining that a 1985 state law did not allow that type of challenge at the polls. I also explained that they might decide to attempt to use returned mail pieces in a recount, but at that time I was doubtful that the 1985 law permitted that type of challenge even in a recount. At no point in that meeting did anyone discuss the contents of any (hypothetical) mail piece or the would-be recipients of a hypothetical mail piece.

The card mailing that actually went out in 1990 was drafted and distributed entirely without my knowledge or participation in any way (until I was called for legal advice about it after the fact). My complete lack of involvement in the 1990 card mailing is corroborated by the Dec. 14, 2017 letter of Carter Wrenn to

⁵ *Thomas Farr, Responses to Questions for the Record, Submitted December 19, 2017*, 115th Cong. 1 (2017) (Responses to Senator Booker).

⁶ *Id.* at 2.

⁷ See *North Carolina Republican Party*, *supra* note 1, at ¶ 15.

⁸ *Questions for the Record* at 1.

Senator Tillis and by the fact that the Justice Department never named me as a defendant after the extensive investigation it did at the time.

My answer to Senator Feinstein does not contradict my Dec. 19 answer to your question in any respect. Senator Feinstein asked me if I provided counsel or advice on the 1990 card mailing. As I told Senator Feinstein, I did not have any such role until after the cards were mailed and I was then called to advise the Helms Committee on a letter it received from the Voting Rights Section of the Justice Department.

Your question was different and appears to quote Mr. Hebert's paraphrasing of notes he made when talking to attorneys in the Justice Department about a meeting they had with me, which he did not attend. The pre-pitch meeting described by Mr. Herbert (which he did not attend, but has described on the basis of notes he made about the DOJ meeting, which he also did not attend) did not include any discussion about the 1990 card mailing.

- b. Who else was present in that October 16 or 17 meeting where the "ballot security program" was discussed?

I recall that the attendees included persons named Ed Locke, Doug Davidson and Peter Moore.

- c. You stated you do not have contemporaneous notes of this October 16 or 17 meeting and your recollection of specific details of the meeting appears to be lacking. What reasons do you have to doubt Mr. Hebert's account considering he does have contemporaneous notes and you do not?

Mr. Hebert did not attend the pre-pitch meeting I attended or the meeting in which I participated with Justice Department attorneys several months later, so he can have no personal recollection of what was discussed at either meeting. My recollection is corroborated by the Dec. 14, 2017 letter of Carter Wrenn to Senator Tillis, in which Mr. Wrenn states that the card mailed in 1990 was drafted and distributed entirely without my knowledge or participation in any way (until he called me after the fact). My recollection is corroborated further by the fact that the Justice Department, after a lengthy contemporaneous investigation, never named me as a defendant in any action. I know with 100% certainty that I played no role whatsoever in drafting the card that was mailed in 1990, providing counsel on the card, deciding to mail the card, or identifying those who would receive the card.

My recollections, as corroborated by Mr. Wrenn's letter and the Justice Department's actions at the time, are all consistent with my sworn testimony, which I gave under penalty of perjury in a setting that permitted cross-examination. Mr. Hebert's 1990 notes (which, again, do not memorialize any meeting he personally attended) are not inconsistent with my testimony, and any

present-day statements of Mr. Hebert are unsworn, with no opportunity for him to be cross-examined regarding them.

2. Senator Jesse Helms had a long history of using racially charged language in his campaigns. As one journalist wrote in 1984, “Racial epithets and standing in school doors is no longer fashionable, but 1984 proved that the ugly politics of race are alive and well. Helms is their master.”⁹ Despite this, in your response letter you stated, “When I first saw the language on the card after it had been mailed and was advised as to whom it had been mailed, I was appalled.”¹⁰ Additionally, you wrote “I am completely opposed to using race to divide people. I have never done anything in my life to use race to divide people.”¹¹
 - a. Were you appalled at the Helms for Senate Committee’s “white hands” ad that aired during the 1990 campaign that showed the hands of a white man in a plaid shirt reading a job rejection letter while a voiceover said, “You needed that job, and you were the best qualified. But they had to give it to a minority because of a social quota. Is that really fair?”¹²

This question gives me the opportunity to respond to misunderstandings or misrepresentations regarding my role with Senator Helms.

From 1983 until Senator Helms’ death in 2008, I recall no more than five conversations or less with him. None of these conversations lasted more than five minutes. Senator Helms never asked me for legal advice, and I never gave Senator Helms legal advice. Nor was I ever anything remotely approaching the “General Counsel” to any of the Helms campaigns. I was never involved in the daily activities of these campaigns, and the Helms Committee used other attorneys and other professionals to obtain advice on other matters.

I used the term “appalled” to describe my reaction when I learned, after the fact, about the 1990 card mailing upon being asked to provide advice about it. I was not called upon to provide advice on the ad you describe.

- b. Were you appalled when Senator Helms led a filibuster against the bill to make the birth of Martin Luther King, Jr. a holiday?¹³

⁹ Bill Peterson, *Jesse Helms’ Lesson for Washington*, Washington Post, Nov. 18, 1984, available at https://www.washingtonpost.com/archive/opinions/1984/11/18/jesse-helms-lesson-for-washington/89952868-aefd-4230-8f39-019e3cdfd0b9/?utm_term=.b81c6c91a2e9.

¹⁰ *Farr Response* at 2.

¹¹ *Id.* at 5.

¹² Deron Lee, *Ad Spotlight Classic: Jesse Helms, 1990*, NATIONAL JOURNAL, July 8, 2008 (archived from original), available at

https://web.archive.org/web/20090817073443/http://adspotlight.nationaljournal.com/2008/07/jesse_helms.php.

¹³ Steven V. Roberts, *King Holiday Bill Faces a Filibuster*, NY Times, Oct. 4, 1983, available at <http://www.nytimes.com/1983/10/04/us/king-holiday-bill-faces-a-filibuster.html?mcubz=3>.

Please see my answer to 2a. I was not called upon to provide advice to Senator Helms or his Committee on this issue.

- c. In 1984, the Helms for Senate Committee distributed campaign literature that had a picture of Governor James Hunt with Jesse Jackson, a prominent African-American civil rights advocate, and contained the following headline: “Black Voter Registration Rises Sharply.”¹⁴ In that instance, do you believe the Helms for Senate Committee was using race to divide people? Do you believe Senator Helms used race to divide people in other circumstances?

I do not recall the campaign literature you describe, and I was never called upon to give advice to Senator Helms or his Committee about this literature. I cannot speak to the motivation of Senator Helms and will not do so.

- d. Did Senator Helms’ use of race to divide people ever make you think twice about working for the Helms for Senate Committee for a second time in 1990? If so, why did you still work for the Helms for Senate Committee?

Senator Helms was elected by the people of North Carolina at least five times. Because someone worked for the Helms Committee or voted for him does not make that person a racist or show that they support the use of race to divide people. Senator Helms was a long-time client of my former law firm before I joined that firm in 1983. My client contact was always with Carter Wrenn, not Senator Helms. My job as an attorney was to give the best possible advice to our client only for those issues on which I was consulted.

3. Have you ever represented, performed any work for, or been affiliated with any of the following organizations: Pioneer Fund, Inc.; Coalition For Freedom, Inc.; Educational Support Foundation, Inc.; Jefferson Marketing, Inc.; Harbison Corporation; Congressional Club Foundation, Inc.; Southern Legal Defense Foundation; The Campaign Committee; Computer Operations and Mailing Professionals, Inc.; Common Sense Publishing, Inc.; Discount Papers Brokers, Inc.; Fiscal Operations Services, Corporation; Liberty Consultants, Inc.; Campaign Management, Inc.; Communications South, Inc.; Platform Education Committee, Inc.; Fairness in Media; American Family Institute; American Education Legal Defense Fund, Inc.; Institute of American Relations; IAR Foreign Affairs Council; or Centre for a Free Society? For each organization you represented, performed work for, or been affiliated with, describe the nature of your representation, work, or affiliation and the duration of time you represented, worked, or affiliated with each organization.

I do not have a client list for the firm I left in 2003 and which no longer exists. I know that I never had any relationship of any kind with any entity called “Pioneer Fund.” It is my recollection that our firm assisted Covington & Burling in representing the Congressional Club in FEC matters. Corporate lawyers in our firm may have provided advice to Jefferson Marketing, Discount Papers Brokers, and the Coalition for Freedom,

¹⁴ Peterson, *Jesse Helms’ Lesson for Washington*.

Inc. I would not have been involved in any corporate work. Jefferson Marketing, Computer Operations and Mailing Professionals, Discount Paper Brokers, and Campaign Management were named as defendants in the card mailing lawsuit. I recall that I initially represented all of the defendants in that case for a short period of time until they secured separate counsel. At this time I cannot recall whether our firm represented any of the other entities listed. I do not recall doing work for these other entities.

4. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

No.

- a. Have you ever faced discipline or entered into a settlement related to this kind of conduct?

No.