

May 17, 2017

Senate Judiciary Committee
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Senators:

We the undersigned organizations write to oppose the confirmation of Judge Amul Thapar to the United States Court of Appeals for the Sixth Circuit due to his troubling record on the issue of money in politics.

We are deeply concerned with the power of wealthy campaign donors in American politics, and specifically with the aggressive role the U.S. courts have played in undermining our democracy by elevating the voices of a wealthy few over the views of everyday Americans.

Much of the problem can be attributed to four decades of flawed Supreme Court rulings. These decisions have twisted the meaning of the First Amendment and prevented our elected representatives and the people from enacting reasonable protections against big money.¹ In fact, nearly half of the money in the 2016 federal elections—more than \$3 billion—can be directly tied to a few of the Court’s most damaging rulings.²

What concerns us about Judge Thapar’s record is that he has gone beyond the Supreme Court’s directives in his antagonism towards basic rules designed to ensure we have a government that is of, by and for the people.

In *Winter v. Wolnitzek*, 186 F.3d 673 (E.D. Ky. 2016), Judge Thapar struck down a prohibition on judges making political contributions by applying strict scrutiny to this contribution ban, in spite of the fact that the Supreme Court has been clear that contribution limits and bans are to be reviewed under a lower form of scrutiny.³ The Sixth Circuit overturned Judge Thapar’s ruling on this point and reinstated the contribution ban.⁴

Further, Judge Thapar embraced the troubling “money is speech” paradigm in a radical way that goes beyond Supreme Court doctrine, writing “there is simply no difference

¹ Adam Lioz, [Breaking the Vicious Cycle: Rescuing Our Democracy and Our Economy By Transforming the Supreme Court’s Flawed Approach to Money in Politics](#), DEMOS (2015).

² Adam Lioz, Juhem Navarro-Rivera & Sean McElwee, [Court Cash: 2016 Election Money Resulting Directly from Supreme Court Rulings](#), DEMOS (2017).

³ *Federal Election Com’n v. Beaumont*, 539 U.S. 146 (2003); *Wagner v. FEC*, 793 F.3d 1 (D.C. Cir. 2015).

⁴ *Winter v. Wolnitzek*, 834 F.3d 681 (6th Cir. 2016).

between ‘saying’ that one supports an organization by using words and ‘saying’ that one supports an organization by donating money.”⁵

Sen. Whitehouse pointed out in Judge Thapar’s Senate Judiciary Committee hearing that “those of us who are in politics know that that is a false statement, that it is indeed a preposterous statement factually because money has a completely different effect than speech once it enters the political arena.”⁶

The Supreme Court itself does not treat financial contributions as being equal to actual speech. Rather, the Court considers contributing to a campaign a form of association or attenuated speech since the contributor does not control the content of the communication resulting from the contribution.⁷

If Judge Thapar had his way, wealthy donors and special interests could be able to give unlimited sums of money directly to candidates for office. Thapar would make it even harder than it is now for everyday people to be heard and affect who runs for office, who wins elections, and what issues get attention; and easier for powerful politicians to make secret wink and nod deals with their richest contributors.

Judge Thapar’s responses to questioning on the subject during his hearing and in subsequent “questions for the record” did nothing to allay our concerns. In response to Sen. Klobuchar’s questions about why he applied strict scrutiny to the contribution ban, for example, Judge Thapar struggled to explain why he assumed (without analysis) that the same standard should apply to contributions as to solicitations.⁸

The role of big money in politics became a central issue in the debate over Justice Neil Gorsuch’s confirmation to the U.S. Supreme Court because the public cares deeply about this issue.⁹ To ensure that all voices are heard, not just those of powerful corporations and wealthy donors, it is essential that we confirm judges and justices who understand that the Constitution gives we the people the power to protect our democracy from big money.

Unfortunately, Judge Amul Thapar does not appear to see our pro-democracy Constitution as the vast majority of Americans do—and for this reason we urge you to oppose his confirmation to the U.S. Court of Appeals for the Sixth Circuit.

⁵ *Winter v. Wolnitzek*, 186 F.3d 673, 693 (E.D. Ky. 2016).

⁶ [Senate Judiciary Committee Hearing of Judge Amul Thapar](#), April 26, 2017 at 1:45.

⁷ Adam Lioz, [Buckley v. Valeo at 40](#), DEMOS (2015).

⁸ [Senate Judiciary Committee Hearing of Judge Amul Thapar](#), April 26, 2017 at 0:55.

⁹ [The Supreme Court and Money in Politics: Survey Topline Findings](#), HATTAWAY COMMUNICATIONS (January 2017).

Sincerely,

American Federation of Teachers
Americans for Democratic Action
Center for American Progress
Center for Emergent Diplomacy
Class Action
Communications Workers of America
CODEPINK
Democracy Spring
Demos
End Citizens United
Every Voice
Free Speech for People
Friends of the Earth
Just Foreign Policy
Maplight
MAYDAY
National Association of Social Workers
Participatory Politics Foundation
People for the American Way
PeopleNow.org
Reverb Press
Small Planet Institute
United for Democracy
Voices for Progress