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April 25, 2017

The Honorable Charles Grassley
Chairman
Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 200 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, we are writing to express serious concerns about the nomination of Amul Thapar to the U.S. Court of Appeals for the Sixth Circuit. We urge the Senate Judiciary Committee to closely scrutinize his record.

As an initial matter, we are troubled by the fact that this hearing was scheduled before Judge Thapar's American Bar Association (ABA) rating was completed. By permitting hearings to be scheduled prior to ABA ratings, this committee is complicit in President Trump's irresponsible and ideological decision to nominate individuals for federal judgeships before the ABA has a chance to review their experience, integrity, and temperament to determine if they are minimally qualified for the position. President Trump is only the second president in modern American history to demonstrate such disregard for the critical role the nonpartisan ABA has played in the federal judicial nominations process.

During his nine years on the U.S. District Court for the Eastern District of Kentucky, Judge Thapar has demonstrated a conservative ideology and misapplied precedent in several cases that resulted in his being reversed a dozen times by either the Supreme Court or Sixth Circuit.ⁱ In each of these reversals, Judge Thapar ruled against plaintiffs, prisoners, criminal defendants, or campaign finance restrictions, including in the following cases:

- *Sours v. Big Sandy Regional Jail Authority*. Judge Thapar granted summary judgment for the defendants where a prison inmate with severe diabetes was denied insulin that he needed to stay alive. Instead, the prison nurse merely placed the inmate in a medical observation cell and instructed the guards to monitor his blood sugar. In reversing Judge Thapar's decision, the Sixth Circuit stated: "[O]ur holding that medical care that 'is so cursory as to amount to no treatment at all' constitutes deliberate indifference does not support the district court's conclusion that there is no deliberate indifference unless the treatment amounted to no treatment at all. A jury could find that [Nurse] Allison consciously exposed [inmate] Sours to an excessive risk of serious harm by failing to arrange for insulin injections or medical care."ⁱⁱ

- *United States v. Zorn*. Judge Thapar, while sitting by designation on the Sixth Circuit, ruled that the district court lacked authority to reduce a defendant's federal sentence for time served in state custody while awaiting sentencing in state court for the same conduct.ⁱⁱⁱ The Supreme Court vacated and remanded Judge Thapar's ruling in light of a related case it heard in which it held, with Justice Scalia writing for the Court, that district courts do have discretion to factor in state custody when determining a federal sentence.^{iv}
- *United States v. Walli*. Judge Thapar sentenced three pacifists – including an 82-year-old nun – to lengthy prison terms when they were convicted of violating the Sabotage Act after breaking into a U.S. government facility and hanging up banners with peace slogans. The Sixth Circuit overturned the convictions and ruled that Judge Thapar had misread the statute.^v
- *Winter v. Wolnitzek*. Judge Thapar struck down several Kentucky judicial conduct rules that were passed to keep state judicial candidates out of politics. Most significantly, Judge Thapar struck down the rule that prohibited judicial candidates from making campaign contributions. The Sixth Circuit reversed Judge Thapar because he misapplied *Citizens United v. FEC*^{vi} and misunderstood the difference between contributions to a political candidate and a candidate's own speech. The Sixth Circuit stated: "While 'judicial candidates have a First Amendment right to speak in support of their campaigns,' they do not have an unlimited right to contribute money to someone else's campaign."^{vii}

This is not the record of a neutral arbiter applying the law even-handedly. Judge Thapar's conservative ideology helps explain why he was one of the 21 individuals recommended by the right-wing Federalist Society and Heritage Foundation and put forward by Donald Trump last year as the pool of people he would consider for Supreme Court nominations.

In addition, during last year's presidential campaign, Mr. Trump created unseemly litmus tests and stated he would only appoint Supreme Court justices who opposed abortion rights and gun safety laws. Asked in the third presidential debate if his Supreme Court selections would vote to overturn *Roe v. Wade*, candidate Trump said: "If we put another two or perhaps three justices on, that is really what will happen. That will happen automatically in my opinion. Because I am putting pro-life justices on the court."^{viii} In the same debate, he stated: "I am a very strong supporter of the second amendment. And I don't know if Hillary was saying it in a sarcastic manner but I'm very proud to have the endorsement of the NRA and it was the earliest endorsement they've ever given to anybody who ran for president.... We are going to appoint justices that will feel very strongly about the second amendment."^{ix} One can assume that Judge Thapar – a longtime Federalist Society member, speaker, and "expert" according to the Federalist Society website^x – passes these litmus tests.

We recommend that you closely examine Judge Thapar's record on the bench. Moreover, we request that you not schedule future judicial nomination hearings until nominees' ABA ratings have been submitted to the committee. Thank you for your consideration of our views. If you have any questions or would like to discuss this matter further, please contact Mike Zubrensky, Chief Counsel and Legal Director, or Nancy Zirkin, Executive Vice President, at (202) 466-3311.

Sincerely,



Wade Henderson
President & CEO



Nancy Zirkin
Executive Vice President

ⁱ <https://www.judiciary.senate.gov/imo/media/doc/Thapar%20SJQ%20Public.pdf>.

ⁱⁱ 593 F. App'x 478, 486 (6th Cir. 2014) (internal citation omitted).

ⁱⁱⁱ 461 F. App'x 493 (6th Cir. 2012), *vacated and remanded*, 133 S. Ct. 149 (2012).

^{iv} *Setser v. United States*, 566 U.S. 231 (2012).

^v 785 F. 3d 1080 (6th Cir. 2015).

^{vi} 558 U.S. 310 (2010).

^{vii} 834 F.3d 681, 690 (6th Cir. 2016) (internal citation omitted).

^{viii} <http://www.politico.com/story/2016/10/full-transcript-third-2016-presidential-debate-230063>.

^{ix} *Id.*

^x <http://www.fed-soc.org/experts/detail/amul-thapar>.