

A group of 24 campaign finance reform organizations sent a letter saying: “Judge Thapar embraced the troubling ‘money is speech’ paradigm in a radical way that goes beyond Supreme Court doctrine.” These groups oppose his confirmation, and I ask unanimous consent to have their letter printed in the RECORD at the conclusion of my remarks.

Given Judge Thapar’s evasiveness on questions about his views, I am left to judge him on his record, such as his troubling decision in the Winter case, and the fact that the Federalist Society and Heritage Foundation hand-picked him for their judicial wish list.

I need more reassurance than that to support a nominee for a lifetime appointment on the Federal court of appeals. I will oppose his nomination.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

MAY 17, 2017.

SENATE JUDICIARY COMMITTEE,
Washington, DC.

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. 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.

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. The Sixth Circuit overturned Judge Thapar’s ruling on this point and reinstated the contribution ban.

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

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.”

The Supreme Court itself does not treat financial contributions as being equal to ac-

tual 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.

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.

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. 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.

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.

HEALTHCARE LEGISLATION

Mr. DURBIN. Mr. President, I would like to address the comments that were made by the Republican majority leader about the issue of healthcare. What he said today I have never heard him say before. He said it was the fault of the Democrats for refusing to work with the Republicans to change the Affordable Care Act. I had not heard that before.

I find it an interesting suggestion because what happened after the House of Representatives passed a measure 3 weeks ago to change the healthcare system in America, the issue then came to the Senate but did not go through the regular order of business.

It is my understanding—and has been reported widely in the press—that Senator McCONNELL, the Republican leader, assembled a group of 13 Republican Senators who have been meeting in private over the last 3 weeks to discuss an alternative to the healthcare bill that passed in the House of Representatives.

There are no Democrats in that room. None have been invited. Incidentally,

there are no women in that room from the Republican side—13 male Senators meeting in private.

So to hear this suggestion from the Republican leader that the real problem they are running into is that the Democrats are not helping, we were not invited to this party. They are meeting privately to come up with something, and I don’t know what it might be, but I have an idea of how we can achieve a bipartisan real effort when it comes to healthcare in America.

I would suggest we create a committee in the Senate. I have a name for it, the Health, Education, Labor, and Pensions Committee. I suggest we have 12 Republicans and 11 Democrats on that committee. I suggest they sit down, take the bill sent by the House, and improve it, make it better. Now, this suggestion is such a good one that the committee already exists.

It is under the chairmanship of LAMAR ALEXANDER—whom I respect personally very much—and the ranking member, PATTY MURRAY of the State of Washington, a Democrat. I know, having spoken to Senator MURRAY, she is ready to roll up her sleeves and go to work to write a revision to the healthcare bill, the healthcare system in America.

There have been no hearings, none, on the measure passed by the House of Representatives. So when the Republican leader says he wishes the Democrats would join in the effort, this committee is ready and willing to work. I am sure, if he picked up the phone and called Senator ALEXANDER and Senator MURRAY, they could get to work on doing a much better job than what the House of Representatives did.

Why am I so critical of the House of Representatives? Not because of the traditional rivalry between the Chambers, but because yesterday the Congressional Budget Office took a look at the bill that passed the U.S. House of Representatives 3 weeks ago by two votes. It was all Republicans voting for it. It passed by two. A number of Republicans refused to support it. It had no support from the Democratic side.

It was an unusual bill because it went out of the regular order of business. The regular order of business suggests that when you are going to do something that might have an impact—a large impact—on America, you should go to an agency that is a non-partisan, expert in the field, that will analyze your bill and tell you what impact it will have. Most of us think we have pretty good ideas for making America a better place to live and good ideas for legislation.

Luckily, we have something called the Congressional Budget Office, which sometimes brings us back down to Earth and says: It might not work exactly as you thought it would work. Traditionally, bills—significant bills that affect a lot of Americans and families and things important like healthcare—they are submitted to the

Congressional Budget Office so they can analyze them and decide the impact they will have.

Well, 3 weeks ago, Speaker PAUL RYAN and Republicans in the House said something I had not heard before in my service in Congress. They said: We are not going to wait for this analysis. We are going to vote on this bill even before the Congressional Budget Office has a chance to analyze its impact. Remember, we are talking about changing the healthcare system in America, and that literally impacts every single American. It is one-sixth of our Nation's economy. You would think, before anyone was bold enough to suggest they wanted to change the system, they would at least send their proposal to the Congressional Budget Office for an analysis. The Republicans in the House failed to do so, refused to do so, passed the measure by two votes, and sent it to the Senate.

So, yesterday, the Congressional Budget Office completed its analysis. Now that we have an analysis of what is known as TrumpCare or the Republican healthcare approach, it is pretty clear why they did not want the Congressional Budget Office to take a look at it. This is what the Congressional Budget Office reported publicly last night: Next year, under the Republican proposal for healthcare reform, 14 million Americans will lose their health insurance. Over the next 10 years, 23 million Americans will lose their health insurance.

Do you remember when we started this conversation? The goal was to make sure we changed the laws in America so more Americans would have the protection of health insurance. Just the opposite occurs if the Republican plan goes forward. The second thing we were looking for is a goal in healthcare reform to reduce the growth, the rate of growth, in health insurance premiums.

Every one of us knows what that is all about. Health insurance premiums have been going up way too high for way too long. The Republicans have been critical of the current system, saying the cost of health insurance is going up too fast. So they put in their reform proposal which passed the House of Representatives.

Here is what the Congressional Budget Office had to say about the Republican approach: Next year, premiums for health insurance will increase by 20 percent in the individual market. That is the market where we have seen this dramatic growth in costs already, and the Republican plan makes it worse.

The third thing we find is this argument by the Republicans that somehow the current healthcare system in America, the Affordable Care Act, is in a death spiral. Listen to what the Congressional Budget Office said about the health insurance market in America today. The CBO affirms that under current law, marketplaces—health insurance marketplaces—are stable.

However, under the Republican repeal bill, one out of every six Ameri-

cans will be living in parts of this country where the individual market would become unstable as a result of the Republican bill. So instead of stabilizing the market and ending the so-called death spiral, the Republican bill makes it worse.

It turns out that when you take a close look at this so-called death spiral, you find the Republicans have their hands around the throats of the healthcare system of America choking it and claiming this patient is not looking good, Doctor. If they would stop their efforts to sabotage the current system and work to improve it and make it stronger, then we could save health insurance for a lot of Americans and bring stability to the system.

The Republican bill at its heart is not about a healthcare bill, though, it is about tax cuts. The Republican proposal for healthcare reform starts with eliminating almost \$900 billion in taxes paid by the wealthiest people in America. By taking \$900 billion out of the healthcare system, they are unable to keep health insurance alive for so many Americans. The Republican approach eliminates \$834 billion in the Federal Medicaid Program. What is the Federal Medicaid Program? Let me give you three examples of what it is.

In Illinois today, half of the babies who are born are paid for—their medical care is paid for by the Medicaid system: prenatal care for mom so the baby is healthy, the delivery of the baby, and postnatal care afterward. These are lower income individuals. Half of them are paid for by Medicaid today, but that is not the most expensive part of Medicaid.

The most expensive part of Medicaid is for your mom and dad and your grandmother and grandfather who are in a nursing home and have no savings left. All they have is Social Security, Medicare, and Medicaid. That is the most expensive part of Medicaid. Those who are disabled living in my State, in Alabama, in New York, and other States—disabled people and low-income people need medical care and they rely on Medicaid.

So when the Republican healthcare reform and repeal cuts \$800 billion-plus out of Medicaid, it is at the expense of the groups I just mentioned: babies and moms, elderly people in nursing homes, and the disabled. Those are the ones who will see a cutback in medical services so we can give a \$900 billion tax cut to the wealthiest people in America.

I know the Democratic leader is here. I want to yield the floor when he arrives, but I want to close by telling a story. Yesterday, I had three moms and a dad who brought their children to a press conference. It was a great press conference, if I may say so. These kids stole the show, as they should. Each one of them—each one of them had a compelling story about having survived a terrible illness. Many of them were cancer victims.

Moms told stories. One mom said: I was changing my little girl, and I noticed a lump in her abdomen. It turned out to be a neuroblastoma cancer tumor. It was removed. My little girl spent weeks, months in the hospital, and she is still going back.

Each one of them told a story. As you looked at these kids, smiling and happy and bouncing around, you thought to yourself: Thank goodness. Thank goodness for America, with its great medical care, and thank goodness these families had health insurance—because they were there concerned about what the Republicans are doing when it comes to preexisting conditions.

Because these kids have survived cancer, they are risky from an insurance viewpoint. We decided 6 years ago to put an end to that worry for these families. You cannot discriminate against a person or a family in America based on a preexisting condition—thank goodness—because one out of three of us have a preexisting condition. The Republican approach takes away that protection and says Governors can ask for a waiver so health insurance in their State can discriminate against people with preexisting conditions.

So three moms and a dad came yesterday and said: Please stop this Republican plan. What will our families do? Our kids have preexisting conditions. We cannot afford to see our premiums go through the roof because the Republicans withdraw this protection.

That is the real-life consequence of this debate. This is not just about a lot of politicians on Capitol Hill blowing hot air. It is about families—real families with real kids and real challenges and whether they are going to have real protection when they need it.

The Congressional Budget Office yesterday came out with a report and said the measure that passed the House, the Republican measure, is a disaster for families across America. We have to stop it. We have to do everything in our power to do it. I might say to my friend from New York, the Democratic leader, that when the Republican leader came to the floor this morning and said: Why won't the Democrats join us in repairing the Affordable Care Act? I say to the Republican leader: Open the door of that room where you have 13 male Republican Senators sitting down and debating the future of healthcare. Open the door, open the windows, and let's have an honest, open, bipartisan conversation not about repealing our healthcare system but making it stronger, protecting the very families who showed up yesterday at a press conference and whom I am going to remember for a long time.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The ACTING PRESIDENT pro tempore. The minority leader is recognized.