



Written by [Bob Adelman](#) on July 9, 2018

## Politics Reduces Trump's Picks for Supreme Court Down to Two

With the clock ticking toward the moment when President Trump announces his pick to replace Supreme Court Justice Anthony Kennedy on Monday night, [political expediency](#) has narrowed his list first from five to four and now down to two: Judge Raymond Kethledge and Judge Thomas Hardiman.



Amul Thapar, nominated by the president to the 6th Circuit of Appeals in 2017, has largely disappeared from public discussion and private consideration by the president. Judge Amy Barrett, serving on the 7th Circuit Court, has been ruled too risky of becoming a lightning rod over *Roe v. Wade* while Judge Brett Kavanaugh, considered by many to be the front-runner, has been deemed too risky. Senate Democrats opposed to all of them would see an opportunity to delay confirmation due to Kavanaugh's 12 years of opinions covering millions of pages which they could use as an excuse for that delay.

The American people are essentially holding five winning lottery tickets — whichever one the president redeems will bring the Supreme Court ever closer to a faithful consideration of the Constitution as intended by its crafters. Each of Trump's picks has been vetted by the Federalist Society which, as *The New American* noted last week, "supports a 'textualist' or 'originalist' interpretation of the Constitution." The Society's purpose is

To promote the principles that the state exists to preserve freedom, that the separation of governmental powers is central to our constitution, and that it is emphatically the province and duty of the judiciary to say what the law is, not what it should be.

Said *The New American*:

In that purpose the Federalist Society answers questions citizens need to know about any of Trump's five remaining picks: They will be highly intelligent, highly regarded by their peers, consider the Constitution the bulwark against tyranny through its limitations of powers further enhanced by its separation of powers structure, and decide critical cases brought before the court based on clear thinking about what the Founders intended when they wrote the founding document and not on whatever political winds may be blowing at the time.

Kethledge, a former clerk for Justice Kennedy, currently sits on the 6th Circuit Court and is best known



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for an anti-union opinion he issued in a case brought by public school employees. Even the online Huffington Post considers Kethledge “a solidly conservative choice [but] with less baggage than Kavanaugh.” Kethledge’s advantage is that he is liked by the president, that he is a Midwesterner who graduated from the University of Michigan and not Yale or Harvard, and who has issued strongly conservative rulings on immigration, religion, campaign finance, and gun rights.

The other remaining pick is Judge Thomas Hardiman, the runner-up behind Neil Gorsuch.

This is where the president is informed by Senate Majority Leader Mitch McConnell, who is balancing the president’s pick on a knife-edge. With Arizona Senator John McCain absent while undergoing cancer treatments at home, Republicans have the slimmest of margins. As Senator Roy Blunt (R-Mo.) told NBC’s *Meet the Press* on Sunday: “The president has to think about who is the easiest to get confirmed here.”

Democrats are already gearing up to protest whomever the President picks on Monday night. As Sarah Wire wrote in the *Los Angeles Times*, “Democrats are embarking on a Hail Mary campaign” with the goal of flipping a moderate Republican to their side. Millions of dollars are ready to be invested in the campaign, wrote Wire, with the focus on *Roe v. Wade*:

Frame the process around women’s health and the future of legalized abortion; mobilize the kind of nationwide protests that helped kill Republican efforts to repeal the Affordable Care Act [ObamaCare]; and focus their attention on five key senators whose votes will determine whether Trump’s pick is confirmed.

The two Republican senators thought to be most likely to flip are Susan Collins of Maine and Lisa Murkowski of Alaska, each of whom helped to defeat the bill to repeal ObamaCare, and each of whom have expressed reservations about the impact of any of Trump’s picks on the Supreme Court’s ruling in *Roe v. Wade*. Three Democrats who might support Trump’s pick — Senators Joe Manchin (D-W.Va.), Joe Donnelly (D-Ind.), and Heidi Heitkamp (D-N.D.) — will also be targeted. It’s a last gasp measure — Wire called it “a long shot” — but groups such as Demand Justice, Indivisible, MoveOn, and the Progressive Change Campaign Committee plan to spend upwards of five million dollars in their states with radio, television, and online ads opposing Trump’s nominee, whoever it might be.

This writer’s choice between the two would be Judge Thomas Hardiman, for several reasons. First, he was runner-up behind Neil Gorsuch. Second, he was recommended to the president by his sister, Judge Maryanne Trump Barry, who serves with Hardiman on the 3rd U.S. Circuit Court of Appeals in Philadelphia. Trump trusts his family members to give him good advice, valuing loyalty above all.

Third, Hardiman is considered a “Second Amendment Extremist” by Adam Winkley, a law professor at the University of California at Los Angeles. Wrote Winkler:

He believes the government has very little leeway in regulating guns. He thinks the only types of gun-control laws that are constitutionally permissible are ones that existed at the founding.

To prove the point, Hardiman dissented on a three-judge panel that ruled that a citizen applying for a handgun permit in New Jersey must demonstrate a “justifiable need” to carry such a weapon. The state defined “justifiable need” as an urgent need for self-protection because of “specific threats or recent attacks.” Hardiman dissented, claiming that not only do Americans have a right to carry guns outside their homes but forcing them to prove they have a “justifiable need” to exercise that right amounts to an unconstitutional “rationing system.”



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To further prove the point, in 2016, Hardiman's 3rd Circuit Court decided a case that challenged a federal law prohibiting convicted criminals, once their sentences had been served, from regaining the right to own firearms. As the *Washington Post* summarized Hardiman's opinion, "In cases involving people convicted of nonviolent crimes, the burden should not fall on citizens to prove that they deserve their Second Amendment rights, but on the government to prove [that] they do not."

Whomever the president names Monday night will, once confirmed by the Senate, improve the high court's originalist view of the Constitution significantly, with a generational impact on preserving and strengthening the Republic.

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