



February 12, 2019

**OPPOSE THE CONFIRMATION OF MICHAEL PARK TO THE
U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT**

Dear Senator:

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, I write in opposition to the confirmation of Michael Park to the U.S. Court of Appeals for the Second Circuit.

Mr. Park is a right-wing ideologue who has worked to defend the Trump administration's last-minute addition of an untested, harmful citizenship question on the 2020 Census that would depress census participation and reduce census accuracy. He has also attempted to limit equal opportunities in university admissions for underrepresented communities of color, and to restrict reproductive health care access for women. It is no wonder Senators Schumer and Gillibrand, his home-state senators, oppose his nomination – opposition that traditionally would have been a bar to Mr. Park even receiving a Senate hearing. But in their zeal to pack the federal courts with far-right extremists, Senate Republicans have been moving and confirming nominees like Mr. Park at record numbers. The Senate must finally put a stop to this abusive practice and oppose the confirmation of nominees like Mr. Park for lifetime appointments on the federal judiciary.

Advocated for Harmful Citizenship Question on 2020 Census: In an amicus brief he authored on behalf of a right-wing organization, the so-called Project on Fair Representation, Mr. Park defended the Trump administration's disturbing decision to add a citizenship question to the 2020 Census, which would reverse 70 years of consistent census practice; undermine the integrity of the count and damage communities across the country, especially communities of color and immigrants; and violate the Census Bureau's constitutional and statutory duties to conduct a full enumeration of the U.S. population. Mr. Park argued that adding the citizenship question was "critical" to better enforce the Voting Rights Act and was added "at DOJ's urging."¹ These arguments were rejected in a recent court ruling from U.S. District Judge Jesse Furman.² Mr. Park's arguments were undermined by evidence showing that the decision to add the citizenship question was driven by nativist advocates Stephen Bannon and Kris Kobach who do not want to count noncitizens for congressional

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¹ https://www.brennancenter.org/sites/default/files/legal-work/New-York_v_Dept-of-Commerce_Motion-for-Leave-to-File-Amicus-Brief_Project-on-Fair-Representation.pdf.

² <https://assets.documentcloud.org/documents/5684706/Jan-15-2019-Ruling-by-U-S-District-Judge-Jesse.pdf>.



apportionment purposes.³ It was not based on Voting Rights Act enforcement needs or at the request of the Justice Department, as Mr. Park maintained. It is deeply troubling that Mr. Park would advance such specious and pretextual claims, and that he would defend President Trump’s efforts to discriminate against immigrant and minority communities.

Opposed Equal Opportunity Admissions Policies: Mr. Park has been at the center of recent efforts to dismantle equal opportunity admissions programs in America’s universities. Such programs are critical for advancing educational diversity, which, as the Supreme Court has noted, “promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races.”⁴ The Court has also concluded that “student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society.”⁵ But Mr. Park has attacked equal opportunity programs and challenged their constitutionality in lawsuits against Harvard University, the University of North Carolina, and the University of Texas.

In the Harvard case, Mr. Park is one of the lead counsels for a right-wing organization, “Students for Fair Admissions,” which seeks to have the Harvard equal opportunity program dismantled. As a recent news article noted, Mr. Park “is currently involved in one of the most high-profile and controversial lawsuits ever designed to end affirmative action in college admissions” and “if the case goes to the Supreme Court, as its backers seem to hope it will, it could ultimately end the consideration of race in admissions to all universities and colleges and shut out large numbers of minorities from top schools.”⁶ Trial took place last fall before U.S. District Judge Allison Burroughs, but she has not yet issued an opinion.

Mr. Park represents the same right-wing plaintiff in a similar challenge brought against the University of North Carolina.⁷ In a brief filed just last month, Mr. Park attacked the university’s equal opportunity admissions program as “a massive racial preference” that “cynically focuses on diversity at the most superficial level.”⁸ Motions for summary judgment are pending in this case.

And in 2012, Mr. Park filed a brief with the Supreme Court in *Fisher v. University of Texas at Austin*, in which he argued that the admissions program at the University of Texas’s flagship campus was racially discriminatory and should be struck down.⁹ Criticizing the value of campus diversity, Mr. Park declared: “Asking a student of a particular race to represent that race in class discussions would be an objectionable invitation to stereotyping and very poor pedagogy. Moreover, through the Internet, professors and students can instantly access any diverse viewpoint relevant to any class, regardless of the racial or ethnic

³ <https://slate.com/news-and-politics/2018/10/ross-bannon-kobach-collaborated-on-census-citizenship-question.html>.

⁴ *Fisher v. University of Texas at Austin*, 136 S. Ct. 2198, 2210 (2016).

⁵ *Id.*

⁶ <https://www.motherjones.com/politics/2018/10/trump-appeals-court-nominee-is-working-to-end-affirmative-action-at-harvard/>.

⁷ <http://samv91khoyt2i553a2t1s05i-wpengine.netdna-ssl.com/wp-content/uploads/2019/01/158-SFFA-Brief-ISO-MSJ.pdf>.

⁸ *Id.*

⁹ https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-345_petitioneramcucurrentandfmrcivilrightsofficials.authcheckdam.pdf.



identifications of course classmates.”¹⁰ The Supreme Court rejected such misguided, ideological arguments and remanded the case so the Texas admissions process could be evaluated by lower courts under the proper standard. Mr. Park’s hostility to equal opportunity admissions programs is alarming, and he would be incapable of approaching such cases with an open mind if he were a judge.

Hostile to Women’s Reproductive Rights: Mr. Park has attempted to restrict access to reproductive health care for women. He represented Kansas in an effort to defund Planned Parenthood by terminating its Medicaid contracts, which allow Planned Parenthood clinics to provide contraception, cancer screenings, and other vital health care services to nearly 200,000 Kansas residents who receive insurance through Medicaid.¹¹ The Tenth Circuit rejected his arguments in February 2018,¹² and the Supreme Court affirmed that decision by denying Mr. Park’s certiorari petition in December 2018.¹³

In addition, Mr. Park defended the Trump administration’s efforts to block two young women who were undocumented from accessing abortion care in December 2017.¹⁴ He argued that Jane Roe and Jane Poe were not entitled to abortions because “[e]ven aliens who have effected entry into the United States could not assert a constitutional right to an elective abortion absent connections to this country.”¹⁵ His arguments were rejected by U.S. District Judge Tanya Chutkan, who held that the women were legally entitled to an abortion and issued a temporary restraining order requiring the Trump administration to allow the women access to abortion-related medical care.¹⁶

Ideological Affiliations: Mr. Park has been a member of the Federalist Society for the past decade and serves on the executive committee of one of its practice groups. This out-of-the-mainstream legal organization represents a sliver of America’s legal profession – just four percent – yet more than 80 percent of President Trump’s circuit court nominees, and a significant number of his district court nominees, have been Federalist Society members. Since 2015, Mr. Park has worked at the law firm of Consovoy McCarthy Park PLLC, which has been called “the go-to legal shop for conservative ideologues looking to fight everything from voting rights to affirmative action to abortion, particularly at the Supreme Court.”¹⁷

Lack of Home-State Senator Support: Due to his extreme record, Mr. Park is opposed by Senators Schumer and Gillibrand, his home-state senators. Nominating someone over the objection of their home-state senators departs from past Senate tradition and subverts the Constitution’s advice and consent process. It is particularly alarming when one of those senators is the leader of his Senate caucus. The Congressional Research Service has identified only three known instances during the 102-year history of

¹⁰ *Id.*

¹¹ <https://www.plannedparenthood.org/about-us/newsroom/press-releases/supreme-court-denial-is-a-victory-for-planned-parenthood-patients>.

¹² *Planned Parenthood of Kansas v. Andersen*, 882 F.3d 1205 (10th Cir. 2018).

¹³ https://www.supremecourt.gov/opinions/18pdf/17-1492_g3bi.pdf.

¹⁴ <https://www.politico.com/f/?id=00000160-6f4e-da3c-a371-ef7eaa260000>.

¹⁵ *Id.*

¹⁶ *Garza v. Hargan*, No. 17-cv-02122, 2017 WL 6462270 (D.D.C. Dec. 18, 2017).

¹⁷ <https://www.motherjones.com/politics/2018/10/trump-appeals-court-nominee-is-working-to-end-affirmative-action-at-harvard/>.



the blue slip – prior to the Trump presidency – in which a judicial nominee was confirmed over the objections of a home-state senator.¹⁸ In light of this opposition, Mr. Park should not be granted a committee hearing or vote. During the last two years of the Obama presidency, when he served as chair of the Senate Judiciary Committee, Senator Grassley did not grant a hearing or vote to a single nominee unless they had support from both home-state senators. During the Trump presidency, Senator Grassley hypocritically gave a hearing to eight circuit court nominees who lacked the support of a home-state senator: David Stras, Michael Brennan, Ryan Bounds, David Porter, Eric Murphy, Chad Readler, Eric Miller, and Paul Matey. The number of “blue slipped” circuit court nominees now stands at ten – with the additions of Mr. Park and fellow Second Circuit nominee Joseph Bianco. It is highly troubling that the new Senate Judiciary Committee chair, Senator Graham, has chosen to adopt the Grassley double standard on blue slips.

Over the years, when the Senate majority placed partisan loyalty to the president over the Senate’s institutional interest in independently carrying out its constitutional responsibilities, the blue slip served as a vital corrective. This institutional check has arguably never been more important than today, with a president who undermines the legitimacy of judges and their rulings, and who prioritizes loyalty to him over fealty to the law. As former Senator Hatch astutely observed in 2014: “Weakening or eliminating the blue slip process would sweep aside the last remaining check on the president’s judicial appointment power. Anyone serious about the Senate’s ‘advice and consent’ role knows how disastrous such a move would be.”¹⁹ Republican elimination of the blue slip for circuit court nominees has led to the confirmation over the past two years of numerous extreme nominees, diminishing the power of the Senate and threatening the reputation of the federal judiciary as a fair and independent tribunal.

For the foregoing reasons, The Leadership Conference urges you to oppose the confirmation of Michael Park to the U.S. Court of Appeals for the Second Circuit. 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, at (202) 466-3311.

Sincerely,

Vanita Gupta
President & CEO

¹⁸ <https://fas.org/sgp/crs/misc/R44975.pdf>.

¹⁹ <https://thehill.com/opinion/op-ed/203226-protect-the-senates-important-advice-and-consent-role>.