



May 2, 2019

United States Senate
Washington, DC 20510

Re: Grave concerns on nomination of Michael Park to the Second Circuit Court of Appeals

Dear Senator:

On behalf of the Lawyers' Committee for Civil Rights Under Law (hereinafter Lawyers' Committee), we write to express our grave concern on the nomination of Michael Park to the Second Circuit Court of Appeals. The Lawyers' Committee is a nonprofit civil rights organization founded in 1963 by the leaders of the American bar, at the request of President John F. Kennedy, to help defend the civil rights of racial minorities and the poor. For over fifty years, the Lawyers' Committee has been at the forefront of many of the most significant cases involving race and national origin discrimination to secure equal justice. Mr. Park's record advocating against African Americans and other historically marginalized communities of color to limit equal opportunities in education and efforts to defend the citizenship question on the 2020 Census give us grave concern over his ability to serve as an impartial federal judge with an open mind on any civil rights issues impacting communities of color.

Mr. Park's strong opposition to civil rights for historically marginalized communities has defined his entire career as a lawyer. He has spent years advocating for limiting equal opportunities for African Americans and other marginalized communities of color so it is difficult to imagine he would put aside these extreme views if he were to be granted a lifetime appointment. Mr. Park is actively challenging the constitutionality of equal opportunity admissions programs at Harvard University and the University of North Carolina.¹ Mr. Park also co-authored an amicus brief in *Fisher v. University of Texas*, arguing the University of Texas's admission program was racially discriminatory and unconstitutional.² Mr. Park's briefs deride the benefits of diversity in higher education and show his deep commitment to dismantling equal opportunity admission

¹ The Lawyers' Committee represents the Intervenor-Defendant in *Students for Fair Admissions v. University of North Carolina*.

² https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-345_petitioneramcucurrentandfmrccivilrightsofficials.authcheckdam.pdf. The Supreme Court rejected these arguments and remanded the case to the lower courts to evaluate the admissions program under the proper standard.

programs. In *Students for Fair Admissions v. Harvard*,³ Mr. Park is one of the lead counsel opposing Harvard's race-conscious holistic admissions policy in a suit that "irresponsibly misrepresent[s] the truth" about the policy.⁴ His advocacy and actions make it hard to imagine any African American, Hispanic or person from other marginalized communities could appear before him and have confidence that their case will be fairly heard.

In continuing his record advocating against marginalized communities, Mr. Park authored an amicus brief on behalf of the Project on Fair Representation ("POFR") defending the addition of the citizenship question to the 2020 Census arguing it is essential for effective enforcement of the landmark Voting Rights Act. This argument is pretextual and hypocritical to say the least as POFR describes itself as a "not-for-profit legal defense foundation that is designed to support litigation that challenges racial and ethnic classifications and preferences in state and federal courts"⁵ specifically seeking to challenge the heart of the Voting Rights Act that ensures communities of color have equal representation. The addition of the citizenship question could drastically reduce the response rates among Black, Hispanic and immigrant communities leading to a reduction in the allocation of federal funding and political representation in the House of Representatives and Electoral College, inflicting egregious harm on America's most marginalized communities. It is profoundly troubling that Mr. Park would defend efforts to undercount immigrant communities under the pretext of supporting enforcement of the Voting Rights Act.

Mr. Park's responses during his Senate Judiciary Committee hearing and written responses to the Questions for the Record,⁶ do not assuage our fears of the likelihood that he would impose his ideological views from the bench. Mr. Park glaringly refused to say to the Senate Judiciary Committee whether the landmark *Brown v. Board of Education* case was correctly decided.⁷ *Brown* is the most widely accepted and celebrated Supreme Court precedent by federal judges and the American public.⁸ Mr. Park's refusal, when

³ <https://admissionscase.harvard.edu/>; The Lawyers' Committee, along with a coalition of civil rights groups, joined *Students for Fair Admissions v. Harvard* as amicus plus and submitted an amicus brief asserting that ethno-racial diversity is crucial to students educationally, personally, and professionally, and explaining how Harvard's current admissions policy is in line with Supreme Court precedent as it does not treat race as the primary consideration for admission. <https://lawyerscommittee.org/students-for-fair-admissions-sffa-v-harvard/>.

⁴ <https://admissionscase.harvard.edu/fact-check-sffa>.

⁵ <https://www.projectonfairrepresentation.org/>. In the amicus brief submitted to the Supreme Court of the United States, POFR does not use the description from its website, and instead describes itself as "a public interest organization dedicated to the promotion of equal opportunity and racial harmony." Additionally, Mr. Park, who signed the amicus brief submitted in the case to the Southern District of New York, was not listed on the amicus brief his firm submitted to the Supreme Court following his nomination to the Second Circuit. https://www.supremecourt.gov/DocketPDF/18/18-966/88121/20190212165914541_18-966%20Brief%20for%20Amicus.pdf.

⁶ <https://www.judiciary.senate.gov/imo/media/doc/Park%20Responses%20to%20QFRs.pdf>.

⁷ <https://www.judiciary.senate.gov/imo/media/doc/Park%20Responses%20to%20QFRs.pdf>.

⁸ Justice Brett Kavanaugh called *Brown* "the single greatest moment in Supreme Court history." <https://www.wsj.com/livecoverage/brett-kavanaugh-supreme-court-hearings/card/1536175337>; Justice

viewed with his record, is a dangerous signal to all Americans, especially African Americans, that *Brown* could be overturned, bringing our country back to a dark period of racial segregation. As a racial justice organization fighting for equal justice on behalf of communities of color, we hope the Senate will take this signaling seriously and consider the potential damage Mr. Park could do to our country and the integrity of the federal bench if he were granted a lifetime appointment to the Second Circuit.

The American public expects and relies on the Senate to take its constitutionally mandated duty to vet judicial nominees seriously and fully weigh the impact of granting lifetime appointments to judges with extreme ideological views that fall outside of the legal mainstream. Thank you for your consideration of our grave concerns on the nomination of Mr. Park to a lifetime appointment on the Second Circuit. We welcome the opportunity to discuss his nomination with your office further, if you have any questions or concerns please contact, Erinn D. Martin, Policy Counsel, at 202-662-8322 or emartin@lawyerscommittee.org.

Sincerely,

A handwritten signature in purple ink that reads "Kristen Clarke". The signature is written in a cursive, flowing style.

Kristen Clarke
President & Executive Director

Lawyers' Committee for Civil Rights Under Law
Washington, D.C.