

April 5, 2019

RE: AAPI Advocacy Groups Oppose Confirmation of Michael Park

Dear Senator:

We, the Asian Pacific American Labor Alliance, National Asian Pacific American Women's Forum, and Southeast Asia Resource Action Center, write to express our strong opposition to the confirmation of Michael Park to the U.S. Court of Appeals for the Second Circuit. We are all organizations committed to protecting the rights and lifting up the voices of Asian American and Pacific Islanders (AAPI) and our communities.

Given our organizations' longstanding commitment to civil rights, workers' rights, gender equity and immigrant justice, we are deeply concerned regarding Mr. Park's nomination. The role of a judge is to be a fair and impartial arbiter of the law, one that is open-minded and willing to hear all sides of a case. Mr. Park's record demonstrates a hostility towards civil, human and constitutional rights -- rights that continue to be critical to addressing discrimination and injustices faced by AAPI communities and other communities of color. Based on his record, we believe that Mr. Park has not demonstrated that he will be able to hear and adjudicate cases fairly and impartially, and therefore lacks the qualifications necessary to be a judge in one of our nation's highest courts.

Immigrant Rights

Mr. Park is currently working to defend the Trump Administration's efforts to insert a citizenship question into the 2020 census that would be extremely harmful to AAPI communities. A question regarding citizenship has not been on the census in roughly 70 years. The inclusion of this question will chill the participation of immigrants and communities of color and will result in an undercount of these communities. This "would have major implications for the way political power and federal funding are shared over the next decade,"¹ impacting resources and services that immigrant communities, including AAPI immigrant communities, deeply need.

Mr. Park also wrote an amicus brief supporting President Trump's executive order to cut funding for sanctuary cities, cities that have a policy of refusing to aid federal law enforcement in finding and detaining undocumented immigrants. By refusing to do so, these cities protect undocumented immigrants from being targeted and racially profiled for detention and deportation. The city of Chicago filed a lawsuit to challenge the order and the district court ruled in favor of Chicago, issuing an injunction barring enforcement of the order nationwide. On appeal, Mr. Park, on behalf of the National Sheriffs' Association, filed an amicus brief in support of President Trump's executive order. The brief argued that a nationwide injunction was inappropriate because some jurisdictions supported the Trump Administration's policy, stating

¹ Hansi Lo Wang, *Supreme Court To Decide Whether 2020 Census Will Include Citizenship Question*, Nat'l Pub. Radio (Feb 15, 2019, 1:33 PM), <https://www.npr.org/2019/02/15/692656180/supreme-court-to-decide-if-2020-census-includes-citizenship-question>.

that “Chicago's political preference to hold itself out as a ‘sanctuary city’ should not be the basis for depriving funds from other jurisdictions that agree with and accept [the policy].”² The brief evinced a hostility towards immigrants’ rights and their lived experiences.

At his confirmation hearing, Mr. Park recounted his own personal story of being the child of immigrants. At the same time, Mr. Park’s work as an attorney has consistently undermined the rights of immigrants. His legal arguments and positions suggest that as a judge, Mr. Park will not fairly and impartially evaluate cases involving the rights of immigrants to be free from discrimination.

Educational Equity and Affirmative Action

Mr. Park has repeatedly advocated against affirmative action policies employed by colleges and universities to promote equal access to higher education and to increase educational opportunities for students of color. He has brought numerous lawsuits on behalf of Students for Fair Admissions (SFFA), an organization whose mission is to dismantle affirmative action programs at colleges and universities across the country. Mr. Park is currently representing SFFA in its lawsuit against Harvard University for using a race-conscious admissions process. He also represents SFFA in a similar case challenging the race-conscious admissions policies at the University of North Carolina³ and co-drafted an amicus brief on behalf of SFFA in *Fisher v. University of Texas*⁴, in support of Fisher’s argument that the use of race as a consideration in admissions is unconstitutional.⁵ Notably, his work in the Fisher case was done *pro bono*.

At his Senate Judiciary Committee hearing, Mr. Park said that his representation of certain clients does not necessarily align with his views. However, in discussing his work on affirmative action, specifically the ongoing litigation in *Students for Fair Admissions, Inc. v. Harvard*, Mr. Park confirmed his personal view opposing affirmative action: “I, personally, that’s something that I have experienced as an Asian American in applying for schools and my role in that case involved speaking to dozens of students and families and, you know, seeing their sort of idealism and being somewhat disheartened by what they experienced as an unfair opportunity in education because of their skin color.”

While the majority of AAPIs support affirmative action⁶, opponents of affirmative action have consistently used AAPIs as a wedge in the affirmative action debate, arguing that affirmative action harms AAPIs. These arguments are based on, and further promote, the “model minority” myth, the inaccurate and dangerous stereotype that AAPIs have socioeconomic stability and do

² See https://afj.org/wp-content/uploads/2019/02/CITY-OF-CHICAGO-v.-SESSIONS_-2017-U.S.-7th-Cir.-Briefs.pdf.

³ *Students for Fair Admissions v. UNC*, 319 F.R.D. 490 (M.D.N.C. 2017).

⁴ 133 S. Ct. 2411 (2013).

⁵ See https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-345_petitioneramcucurrentandfmrcivilrightsofficials.authcheckdam.pdf.

⁶ *Survey Roundup: Asian American Attitudes on Affirmative Action*, AAPI DATA (June 18, 2018), aapidata.com/blog/asianam-affirmative-action-surveys/.

not face inequities based on their race.⁷ However, this narrative not only obscures the vast socioeconomic differences within the AAPI population, but also aims to create a divide or wedge between AAPIs and other communities of color, when, in reality, pervasive racism and discrimination harms all people of color. Furthermore, affirmative action programs are important in improving access for those in our communities that face systemic barriers to accessing higher education and economic opportunities. Studies show that affirmative action programs work to the benefit of many AAPIs, including Southeast Asians, Native Hawaiians, Pacific Islanders, and AAPIs with low incomes.⁸ Thus, affirmative action is critical to addressing inequities in education for all communities of color, and we reject attempts by opponents of affirmative action to advance false narratives about AAPIs to undermine these vital policies.

Mr. Park's advocacy work and his own statements reveal that he is personally biased against affirmative action policies. These beliefs raise serious concerns about Mr. Park's ability to be an impartial judge on cases that relate to affirmative action policies.

Reproductive Rights and Access to Healthcare

Mr. Park has shown hostility toward access to healthcare generally and access to reproductive healthcare specifically. In an amicus brief that Mr. Park drafted on behalf of a group of economists, he argued against the Affordable Care Act (ACA).⁹ However, the ACA has been vital in expanding and making healthcare, including reproductive healthcare, accessible and affordable for uninsured people throughout the United States, particularly for AAPI communities. Under the ACA, "1.9 million eligible uninsured Asian Americans, Native Hawaiians, and Pacific Islanders (AANHPIs) gained access to new options for health care coverage starting in January 1, 2014."¹⁰ The repeal of the ACA would directly harm access to healthcare for our communities.

Furthermore, in *Planned Parenthood of Kansas v. Andersen*, Mr. Park represented the state of Kansas in its efforts to defund Planned Parenthood and remove it as a provider from the Medicaid program. Nearly one in five AAPI women are enrolled in Medicaid nationwide. Allowing states to disqualify Planned Parenthood as a Medicaid provider for political reasons that are unrelated to their ability to provide services would have a devastating impact on the reproductive health of AAPI women and girls enrolled in Medicaid. The ACA and Medicaid are vital to ensuring the accessibility and affordability of healthcare for AAPIs, particularly reproductive healthcare.

⁷ See Kat Chow, 'Model Minority' Myth Again Used As A Racial Wedge Between Asians And Blacks, NAT'L PUB. RADIO (Apr. 19, 2017, 8:32 AM), <https://www.npr.org/sections/codeswitch/2017/04/19/524571669/model-minority-myth-again-used-as-a-racial-wedge-between-asians-and-blacks>.

⁸ *Not Your Wedge*, ASIAN AMERICANS ADVANCING JUSTICE, <https://www.advancingjustice-la.org/what-we-do/policy-and-research/educational-opportunity-and-empowerment/affirmative-action/not-your-wedge>.

⁹ See https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-393_petitioneramicueconomists.pdf.

¹⁰ Minh Wendt et al., *Eligible uninsured Asian Americans, Native Hawaiians, and Pacific Islanders: 8 in 10 could receive health insurance marketplace tax credits, Medicaid, or CHIP*, DEP'T OF HEALTH & HUMAN SERVICES (Mar. 18, 2014), https://aspe.hhs.gov/system/files/pdf/180311/rb_UninsuredAANHPI.pdf.

Additionally, as plaintiffs' counsel in *Garza v. Hargan*¹¹ (currently on appeal in the D.C. Circuit as *J.D. v. Alex Azar, II*), Mr. Park has defended the Trump Administration's policy of blocking abortion access to young immigrant women being held in government custody. In that case, Jane Doe, a young immigrant woman, was denied an abortion while in government custody even though she had successfully completed all of the Texas state requirements for a minor to obtain an abortion. Throughout the course of the litigation of the case, the Trump administration has consistently made arguments that not only disregard the reproductive rights of women but also reflect hostility and contempt for immigrants and their rights.

Mr. Park's record on healthcare and reproductive rights and health is troubling and suggests that he will be unable to approach cases related to healthcare access and reproductive rights with the impartial mind required of a judge.

Workers' Rights

Finally, Mr. Park has supported business owners at the expense of workers' rights and protections. For instance, Mr. Park represented nail salon owners in a lawsuit challenging the emergency order issued by New York's governor to protect nail salon workers by improving work conditions. Nail salon workers typically earn low wages and are often subjected to wage theft, physical abuse, and detrimental health consequences from exposure to toxic products. The nail salon owners in this case, represented by Mr. Park, alleged an equal protection claim, contending that the order was discriminatory because it targeted only nail salons, the majority of which were owned by Asian Americans. These arguments ignored the fact that the order was intended to protect nail salon workers from harmful working conditions and that the majority of these workers were also AAPI.

Legal protections for workers, including policies that ensure fair and humane wages and working conditions, are vital to achieving economic justice for AAPIs. Mr. Park's record in representing business owners against workers seeking safe and humane working conditions raises serious doubts as to his ability to be a fair and impartial judge on issues concerning the rights of workers.

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For AAPIs, threats to racial justice, immigrant rights, reproductive rights and health, and workers' rights are direct threats to our communities, our ability to access healthcare, to have agency over our bodies and lives, and to live free from discrimination. For the foregoing reasons, we urge you to strongly oppose the confirmation of Michael Park to serve on the U.S. Court of Appeals for the Second Circuit.

Sincerely,

Asian Pacific American Labor Alliance
National Asian Pacific American Women's Forum
Southeast Asia Resource Action Center

¹¹ 304 F. Supp. 3d 145 (D.D.C. 2018).