

Intersections of Our Lives

March 22, 2019

RE: Reproductive Justice Groups Oppose Confirmation of Michael Park

Dear Senator:

We, In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum, and the National Latina Institute for Reproductive Health, write to express our strong opposition to the confirmation of Michael Park to the United States Court of Appeals for the Second Circuit. We are three women of color-led Reproductive Justice organizations committed to lifting up the voices and experiences of Black, Latinx, and Asian American and Pacific Islander (AAPI) women and girls.

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives with dignity and self-determination.

Given our commitment to reproductive justice, we are deeply troubled by Michael Park's nomination. While we champion a diverse judiciary that accurately reflects the demographics of our society, a judicial nominee must also have qualifications beyond their identity--they must possess the skills, knowledge, and values necessary to enforce equal justice under the law. Importantly, Mr. Park's identity as a person of color does not automatically qualify him for a seat on the Second Circuit, nor does it make him an authority on the oppressions experienced by communities of color.

In fact, his record demonstrates hostility towards communities of color, including women, immigrants, and workers, as well as a disregard for fundamental constitutional and civil rights. A longstanding member of the Federalist Society, a conservative organization who has "played a crucial role in putting conservative jurists on the bench" under the Trump Administration,¹ and a partner at Consovoy McCarthy Park, a law firm "with deep ties to the conservative legal establishment,"² Mr. Park has devoted his legal career to advocating for policies and principles that undermine the rights of our communities. In light of

¹ Jason Zengerle, *How the Trump Administration is Remaking the Courts*, N.Y. TIMES (August 22, 2018), <https://www.nytimes.com/2018/08/22/magazine/trump-remaking-courts-judiciary.html>.

² ALM Media, *Trump 2nd Circuit Nominees Grilled as Democrats Fume Over Consideration* (February 13, 2019), <https://finance.yahoo.com/news/trump-2nd-circuit-nominees-grilled-051257563.html>.



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his record, we believe this nominee lacks the qualifications to serve with the fairness and impartiality required of a judge.

Racial Justice

Mr. Park has repeatedly advocated against policies that promote racial justice, and has demonstrated particular animus towards affirmative action programs. 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*, indicating that he provided his services solely to vindicate his belief in the merits of the case.

At Mr. Park's Senate Judiciary Committee hearing, he said that his representation of certain clients does not necessarily align with his personal 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."

Affirmative action plays a critical role in addressing educational inequities for communities of color. Due to a long history of oppression, these policies serve as a response to the discrimination faced by students of color. Affirmative action helps to address the racial disparities in higher education and provides opportunities for our communities to access institutions that would otherwise be inaccessible. Furthermore, the ability to pursue higher education free from discrimination contributes to a person living with autonomy and self-determination. Mr. Park's advocacy work and his own statements reveal that he is deeply opposed to affirmative action. His personal bias raises serious concerns about Mr. Park's ability to be an impartial judge in cases involving affirmative action policies and other policies designed to address racial disparities and inequities.

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.



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Immigrant Justice

Mr. Park has advocated for policies that undermine the rights and agency of immigrants. Notably, he is currently working to defend the Trump Administration's efforts to insert a citizenship question into the 2020 census. A question regarding citizenship has not been on the census in roughly 70 years. The inclusion of a citizenship 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,”⁶ impacting resources and services that immigrant communities deeply need. The impact of changes in the Census has far reaching consequences. An example of this includes the ways in which states receive funding for their Medicaid programs; Medicaid is critical for communities of color and LGBTQ individuals who make up a disproportionate share of recipients. These policies directly harm and alienate communities of color and immigrant populations.

In addition, Mr. Park 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 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].”⁷ The brief evinced hostility towards immigrants’ rights and their lived experiences.

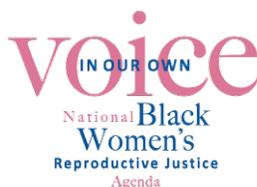
In light of Mr. Park’s record on immigrant rights, we do not believe that he will fairly and impartially evaluate cases involving the rights of immigrants and communities of color to be free from discrimination.

Reproductive Rights and Health Care Access

Mr. Park has also shown hostility toward access to health care, including reproductive rights. In an amicus brief Mr. Park drafted on behalf of a group of economists, he argued against the Affordable Care Act

⁶ 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>.

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



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(ACA).⁸ However, the ACA has been vital in expanding coverage and access to health care service, including reproductive care, for uninsured communities of color. Under the ACA, our communities “have experienced large coverage gains that helped narrow the longstanding racial and ethnic disparities in coverage.”⁹ Uninsured rates among communities of color remain high and any attacks on the ACA only continue to set our communities back and a repeal of the ACA would directly harm access to health care for our communities. If confirmed, Mr. Park may have to rule on challenges to the ACA, and we do not believe that he will be able to fairly and impartially enforce the law and uphold the rights of our communities.

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. Importantly, across the U.S. women make up the majority of Medicaid enrollees (53 percent) and approximately 40 million women rely on the program for life-saving care. Women of color make up a disproportionate share of this population. Nearly one-third (31 percent) of Black women of reproductive age and (27 percent) Latinas of reproductive age are enrolled in the Medicaid program. Nearly one-fifth of AAPI women in the aggregate are enrolled in the Medicaid program, and enrollment rates for certain Asian ethnic subgroups are much higher (e.g., 62 percent of Bhutanese women and 43 percent of Hmong women). Allowing states to disqualify Planned Parenthood clinics 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 many women of color. The ACA and Medicaid are vital to ensuring the accessibility and affordability of health care for communities of color, particularly reproductive health care.

Mr. Park has demonstrated hostility to reproductive rights, including against immigrant women. For example, as plaintiffs’ counsel in *Garza v. Hargan*¹⁰ (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. This case garnered national attention when, 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 key role in this case, along with his overall record on health care and reproductive rights, indicates that he will not uphold critical health care protections and reproductive rights.

⁸ See https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-393_petitioneramcueconomists.pdf.

⁹ Samantha Artiga, Kendal Orgera, & Anthony Damico, *Changes in Health Coverage by Race and Ethnicity since Implementation of the ACA, 2013-2017*, KAISER FAMILY FOUNDATION (Feb. 13, 2019), <https://www.kff.org/disparities-policy/issue-brief/changes-in-health-coverage-by-race-and-ethnicity-since-implementation-of-the-aca-2013-2017/>.

¹⁰ 304 F. Supp. 3d 145 (D.D.C. 2018).



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Workers' Rights

Finally, Mr. Park has supported the interests of business owners to the detriment of the rights, safety, and health of working people. This is most evident in Mr. Park's representation of nail salon owners in a lawsuit challenging the emergency order issued by New York's governor to protect nail salon workers in New York, the majority of who are AAPI women, by improving work conditions. Nail salon workers typically earn low wages and are often subjected to wage theft, physical abuse, and health consequences from exposure to toxic products. Similarly, in another case, Mr. Park co-drafted an amicus brief on behalf of the Chamber of Commerce of the United States of America arguing that corporations had no duty to warn workers, morally or legally, about the presence or the dangers of asbestos in products made by a third party.¹¹

Legal protections for workers, including policies that ensure fair and humane wages and working conditions, are vital to achieving economic justice for women of color. Mr. Park has repeatedly represented the interests of business owners over the rights of workers to be free from discrimination and poor working conditions. These positions and arguments create serious doubts as to Mr. Park's ability to be a fair and impartial judge on issues concerning the rights of workers.

* * *

For women of color and immigrant women, threats to not only reproductive rights but also racial justice, immigrant justice, and workers' rights are threats to our bodily autonomy and undermine our ability to make decisions regarding our own lives and families. Mr. Park has repeatedly revealed his disdain for the human and civil rights of communities of color. By advocating against affirmative action policies, immigrant rights, the accessibility of reproductive health care, and protections for working people, among other things, Mr. Park has advocated against the autonomy and agency of our communities and the ability to shape our lives and families free from oppression and 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,

In Our Own Voice: National Black Women's Reproductive Justice Agenda
National Asian Pacific American Women's Forum
National Latina Institute for Reproductive Health

¹¹ See <https://afj.org/wp-content/uploads/2019/02/U.S.-Chamber-Amicus-Brief-Suttner-v.-Crane-Co.-.pdf>.

