



February 12, 2019

United States Senate Committee on the Judiciary  
224 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Graham, Ranking Member Feinstein, and Committee Members:

On behalf of our hundreds of thousands of members throughout the United States, People For the American way opposes the nomination of Michael Park of New York to be a federal judge on the Second Circuit Court of Appeals. His record demonstrates that he should not be given the power and responsibility that come with a lifetime seat on a body that is just one step below the Supreme Court in importance and influence.

As an initial matter, President Trump has bypassed traditional norms in selecting Park without the support of either home state senator. Nevertheless, Judiciary Committee Chair Lindsey Graham is enabling that power grab by the executive branch by holding a hearing, thereby continuing the missteps of the previous chairman and facilitating the long-term weakening of the Senate in fulfilling its constitutional duties.

Of all the committees in Congress, none has more responsibility for maintaining the rule of law than the Senate Judiciary Committee. Nothing could be more American than the principle that you don't apply one set of rules to those in power and a different (and less fair) set of rules to everyone else. That is why former Chairman Leahy did not let the change in administrations from Bush to Obama affect his blue slip policy, even though adherence to principle over partisanship meant disadvantaging his own party. His Republican successor, who took the chair in the last two years of the Obama presidency, adhered to Chairman Leahy's policy in word and in deed for two years in 2015-2016. But he changed the rules in 2017 when Obama was succeeded by Trump.

At a time when the American people are seeking reassurance that the rule of law and our democratic norms are not disappearing, the Judiciary Committee should not continue a system of vetting potential judges that is based on violating those principles.

It is not a surprise that Michael Park has failed to earn the support of either of his home state senators. His record shows that he would favor corporations and other powerful interests in a variety of ways. It also indicates a strong belief that the Constitution does not protect important individual rights such as the right to abortion.

Park has been a member of the Federalist society for the past decade (more than half his legal career). Although even longtime and active members reliably profess ignorance of this organization's mission when asked by senators, it is not a secret. Funded by large corporate interests and extremely wealthy individuals whose fortunes came from business,<sup>i</sup> it seeks to change American law dramatically in ways that would undo many of the advances of the

twentieth century, including the New Deal.<sup>ii</sup> Its members generally believe that the Constitution severely limits congressional authority to enact and enforce laws protecting the environment, workplace health and safety, voting rights, civil rights, gun violence prevention measures, reasonable rules governing money in politics, and other areas.

Park is a named partner at a relatively new law firm, Consovoy McCarthy Park. It is not like most firms, which chooses its legal arguments as part of its representation of its clients. Instead, it is a boutique firm dedicated to an ultraconservative ideology. Most of its attorneys are former clerks of the nation's most conservative justices and judges, especially of Justice Clarence Thomas.<sup>iii</sup> The firm 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,”<sup>iv</sup> as it seeks clients who will give them opportunities to make their legal arguments.

His firm's website boasts of its work for government bodies accused of violating the Voting Rights Act or otherwise engaged in election-related activities that are widely recognized as voter suppression; challenging regulatory actions; insulating businesses from class action lawsuits through arbitration agreements; and other policy goals of the right.<sup>v</sup>

Those policy goals intersect with race. Park has litigated against universities' equal opportunity admission programs, which play a vital role in promoting diversity. He is currently representing the organization that has filed a lawsuit challenging Harvard's admissions program.<sup>vi</sup>

Park has also taken cases that directly or indirectly attack the constitutional right to abortion. For instance, he helped defend Trump administration officials involved in acts to prevent undocumented immigrant women in detention from exercising their constitutional right to abortion.<sup>vii</sup> He also chose to represent Kansas in its ultimately unsuccessful effort to strip its funding of Planned Parenthood by terminating its Medicaid agreements under several false pretexts.<sup>viii</sup>

And in line with his firm's commitment to defending voter suppression, Park is defending the Trump administration's efforts to add a citizenship question to the 2020 Census, submitting an amicus brief on behalf of the Project on Fair Representation.<sup>ix</sup> The resultant (and intended) undercount in predominantly Democratic areas would deprive those areas of the congressional representation their numbers merit, thereby giving a decade-long unfair and anti-democratic boost to the Republican Party. The district court judge who considered the administration's purported reasons for adding the question recognized it as a pretext. The judge wrote that to let the administration's decision stand:

would undermine the proposition — central to the rule of law — that ours is a “government of laws, and not of men.” ... And it would do so with respect to what Congress itself has described as “one of the most critical constitutional functions our Federal Government performs.”<sup>x</sup>

Similarly, Park cited the firm's work toward excluding non-citizens from the “one person one vote” requirement in legislative redistricting in the Supreme Court's *Evenwel v. Abbott* case as one of the reasons he chose to join the firm.<sup>xi</sup>

The judicial branch is vital to protecting our democratic system of government and the rights of all people, not just the powerful. But Park's agenda is at odds with a democratic system of government. If an individual's constitutional views would undermine the legitimacy of the elected bodies under Article I and Article II of the Constitution, he should not be given a lifetime seat on the judiciary to help him turn those views into law. President Trump should work with Sens. Schumer and Gillibrand to find another nominee for this vacancy.

Sincerely,



Marge Baker  
Executive Vice President for Policy and Program

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<sup>i</sup> "In Gorsuch, Conservative Activist Sees Test Case for Reshaping the Judiciary," New York Times, March 18, 2017, <https://www.nytimes.com/2017/03/18/us/politics/neil-gorsuch-supreme-court-conservatives.html>.

<sup>ii</sup> "The Federalist Society: From Obscurity to Power," People for the American Way Foundation, Aug. 2002, <http://www.pfaw.org/report/the-federalist-society-from-obscurity-to-power/>.

<sup>iii</sup> Consovoy McCarthy Park website, Our Team, <https://consovoymccarthy.com/team>.

<sup>iv</sup> "Trump Appeals Court Nominee Is Working to End Affirmative Action at Harvard," Mother Jones, Oct. 23, 2018, <https://www.motherjones.com/politics/2018/10/trump-appeals-court-nominee-is-working-to-end-affirmative-action-at-harvard>.

<sup>v</sup> Consovoy McCarthy Park website, Practice Areas, <https://consovoymccarthy.com/practice-areas>.

<sup>vi</sup> Mother Jones.

<sup>vii</sup> Garza v. Hargan, 304 F. Supp. 3d 145 (D.D.C., 2018).

<sup>viii</sup> Petition for cert., Andersen v. Planned Parenthood of Kansas and Mid-Missouri, No. 17-1340 (U.S. 2018), [http://www.supremecourt.gov/DocketPDF/17/17-1340/39617/20180321141128195 Andersen v. Planned Parenthood of Kansas et al. Petition.pdf](http://www.supremecourt.gov/DocketPDF/17/17-1340/39617/20180321141128195%20Andersen%20v.%20Planned%20Parenthood%20of%20Kansas%20et%20al.%20Petition.pdf).

<sup>ix</sup> [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](https://www.brennancenter.org/sites/default/files/legal-work/New-York%20v%20Dept-of-Commerce%20Motion-for-Leave-to-File-Amicus-Brief%20Project-on-Fair-Representation.pdf).

<sup>x</sup> State of New York v. Department of Commerce, <https://www.brennancenter.org/sites/default/files/legal-work/2019-01-15-574-Findings%20of%20Fact.pdf>.

<sup>xi</sup> "Prominent Young Partners Leave Biglaw For A High-Powered Boutique," Above the Law, May 28, 2015, <https://abovethelaw.com/2015/05/prominent-young-partners-leave-biglaw-for-a-high-powered-boutique>.