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May 7, 2019

Senator Mitch McConnell  
United States Senate  
317 Russell Senate Office Building  
Washington, D.C. 20510

Senator Chuck Schumer  
United States Senate  
322 Hart Senate Office Building  
Washington, D.C. 20510

Dear Senators McConnell and Schumer:

We write to share our strong opposition to the nomination of Michael Park to serve on the Second Circuit Court of Appeals. We oppose this nominee based on his demonstrated record of hostility to civil rights as demonstrated by the fact that he has spent much of his career working to eviscerate affirmative action programs which are focused on providing equal access for groups that have been historically excluded and/or underrepresented. His testimony at the February 13, 2019 nomination hearing did not assuage our concerns regarding his lack of fitness to serve as an impartial and fair jurist and we remain deeply disturbed by his nomination.

The NAACP Legal Defense & Educational Fund, Inc. (LDF) was founded in 1940 by Thurgood Marshall. It has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF was launched at a time when the nation's aspirations for equality and due process of law were stifled by widespread state-sponsored racial inequality. From that era to the present, LDF's mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has always been a pioneering force in our nation's quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained. For almost 80 years, LDF has relied on the Constitution and federal and state civil rights laws to pursue equality and justice for African Americans and other people of color.

Our federal courts play a critical role in enforcing the Constitution and other laws of this country. The legitimacy of our judiciary is derived, in part, from the confidence the people have in it. Michael Park's record of bias and intolerance would delegitimize the Second Circuit Court of Appeals by calling into question his impartiality and motives. This is especially true in the areas of civil rights and racial justice.

***Park's views on race and equality render him unqualified for the federal bench***

Mr. Park has spent his career working to undermine civil rights. In fact, Mr. Park has spent a substantial part of his career leading efforts focused on dismantling equal opportunity programs. In 2012, he served as a key contributor in *Fisher v. University of Texas*<sup>1</sup>, writing an amicus brief on behalf of petitioner Abigail Fisher in support of her argument that the university's use of race as one consideration among many in the admissions process was unconstitutional. The Supreme Court ruled against Ms. Fisher, upholding UT Austin's holistic admissions process and rejecting arguments asserted by Park. Mr. Park also challenged affirmative action policies at the University of North Carolina in *Students for Fair Admissions v. UNC*, 319 F.R.D. 490 (M.D.N.C. 2017). Mr. Park is also currently representing the plaintiff group, Students for Fair Admissions (SFFA), that has sued Harvard University for its race-conscious admissions process. The case is considered "one of the most high profile and controversial lawsuits designed to end affirmative action in college admissions."<sup>2</sup> The case aims to end the consideration of race in admissions to all universities and colleges and ultimately prevent large numbers of minorities from entering the top schools in this country, thereby contributing to the gross educational and economic racial disparities in this country.

Mr. Park's views on race and diversity are also displayed through his active defense of the highly controversial insertion of an untested and unprecedented question on citizenship on the 2020 Census. Insertion of this question would reverse 70 years of census practice and, according to former census officials, result in an undercount of as many as 6.5 million people. Specifically, the addition of this question will cause widespread fear in communities of color to engage with the Census Bureau or participate in the Census. In support of this question, Mr. Park argued that adding the citizenship question was "critical" to better enforce the Voting Rights Act and indicated that it was added "at DOJ's urging".<sup>3</sup> These arguments were rejected in three separate court rulings from U.S. District Judge Jesse Furman<sup>4</sup> and were undermined by evidence that the decision to add the citizenship question was actually advanced by Steve Bannon and Kris Kobach as part

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<sup>1</sup> [https://www.americanbar.org/content/dam/aba/publications/supreme\\_court\\_preview/briefs/11-345\\_petitioneramcucurrentandfmrcivilrightsofficials.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/11-345_petitioneramcucurrentandfmrcivilrightsofficials.authcheckdam.pdf)

<sup>2</sup> <https://www.motherjones.com/politics/2018/10/trump-appeals-court-nominee-is-working-to-end-affirmative-action-at-harvard/>

<sup>3</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_v_Dept-of-Commerce_Motion-for-Leave-to-File-Amicus-Brief_Project-on-Fair-Representation.pdf)

<sup>4</sup> <https://assets.documentcloud.org/documents/5684706/Jan-15-2019-Ruling-by-U-S-District-Judge-Jesse.pdf>

of a larger effort to ensure that certain immigrants, who are to be included in the census, are not counted.<sup>5</sup>

***Disturbingly, Park failed to acknowledge the landmark *Brown v. Board Supreme Court decision****

Mr. Park indicated a disturbing disregard for Supreme Court precedent at his nomination hearing when he refused to say whether the Court had correctly decided the landmark ruling in *Brown v. Board of Education* which ended racial apartheid in America. *Brown's* holding has long been recognized across the political and ideological spectrum as the foundational statement on equality in America. Each sitting U.S. Supreme Court justice testified that *Brown* was rightly decided at their confirmation hearings, with Justice Samuel Alito calling it “one of the greatest, if not the single greatest thing that the Supreme Court of the United States has ever done.” Circuit Court judges nominated by George W. Bush, dating at least back to 2003, all endorsed *Brown* at their confirmation hearings.

The *Brown* decision is a bedrock of this nation’s legal canon that must be accepted and embraced by anyone seeking a lifetime appointment to the federal bench. *Brown* is on par with *Marbury v. Madison*<sup>6</sup> in terms of its vitality to the American legal system. No one would or should accept a nominee to the federal bench who refused to publicly acknowledge that *Marbury* was rightly decided. *Brown* not only banned segregation in our schools, but also redefined equality under the law and, in the process, altered the lives of all people in this country, regardless of race, gender, religion, or disability or immigration status. Its legacy reaches almost every aspect of public life and undergirds our nation’s legal norms about equality and race. The ruling is not simply the Court’s most important civil rights decision, it is the Court’s most important decision dedicated to the rule of law.

Heretofore, the ruling in *Brown* has been considered an unassailable legal standard. Rejecting *Brown* is a dangerous departure from well-established norms that must not be tolerated and a dangerous flouting of democratic norms. Federal judges must be prepared to recognize the core canon of equality *Brown* represents and should have demonstrated throughout their careers that they stand behind and support racial equality and justice. Mr. Park’s refusal to acknowledge that *Brown* was rightly decided is unacceptable and aligns with a career devoted to attacking civil and human rights. It

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<sup>5</sup> <https://slate.com/news-and-politics/2018/10/ross-bannon-kobach-collaborated-on-census-citizenship-question.html>

<sup>6</sup> 5 U.S. (1 Cranch) 137 (1803).

would be dangerous and deeply destabilizing to our democracy to normalize Mr. Park's deviation from judicial norms by confirming him.

***The advancement of Park's nomination is contrary to years of Senate practice and norms***

The nomination of Mr. Park has been advanced over the objections of both of his home-state senators, Senators Charles Schumer and Kirstin Gillibrand. For many years the Senate Judiciary Committee has maintained a practice whereby a negative or unreturned blue slip from a home state Senator precluded action on the nomination and consideration by the full Senate<sup>7</sup>. Between 1936 and 1989 there were only five instances in which a judicial nominee was approved despite getting a negative blue slip from a home-state senator.<sup>8</sup> Additionally, the Congressional Research Service (CRS) has noted that of the 20 known nominees during the Obama presidency who experienced blue slip issues, only two were eventually confirmed after the home-state nominees withdrew their objections. The other 18 nominees were not confirmed<sup>9</sup>. The advancement of Mr. Park's nomination despite this previous blue slip practice exemplifies the breakdown in norms that once allowed the full Senate to work together while identifying highly qualified consensus nominees for the federal bench.

Michael Park's hostility to racial justice and equality coupled with his lack of regard for fundamental civil rights precedent render him poised to weaponize the federal judiciary against well-established norms and precedent. No litigant with a civil rights claim before him could trust that he would fairly, impartially or properly provide equal justice under the law. The Senate must use its "advice and consent" power to ensure that our nation is served by judges who will uphold the rule of law and equal rights for all Americans and reject nominees like Mr. Park whose views and career reflect deep opposition to these

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<sup>7</sup> <https://fas.org/sgp/crs/misc/R44975.pdf>

<sup>8</sup> [https://www.washingtonpost.com/context/judges-confirmed-by-the-senate-without-blue-slips/?notedId=a7539689-d6a7-4fcc-af4e-20a8c78ad708&questionId=4e9971fe-7ff8-485a-9770-10f1748f3802&utm\\_term=.7b9ded33e1f1](https://www.washingtonpost.com/context/judges-confirmed-by-the-senate-without-blue-slips/?notedId=a7539689-d6a7-4fcc-af4e-20a8c78ad708&questionId=4e9971fe-7ff8-485a-9770-10f1748f3802&utm_term=.7b9ded33e1f1)

<sup>9</sup> <https://fas.org/sgp/crs/misc/R44975.pdf>

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core principles. Michael Park has demonstrated who he is and what he believes. There is no reason to believe his biased views and beliefs will change as a judge. We call on the U.S. Senate to protect the rule of law and the integrity of the federal judiciary by voting 'no' on Mr. Park's nomination.

Sincerely,

A handwritten signature in black ink that reads 'Sherrilyn A. Ifill'. The signature is written in a cursive style with a large, prominent 'S' at the beginning.

Sherrilyn Ifill  
President and Director-Counsel

CC: Members of the Senate