AFJ OPPOSES

Michael H. Park

Potential SCOTUS Nominee, U.S. Court of Appeals for the Second Circuit

COURT
Circuit Court

DATE NOMINATED
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Introduction

On November 13, 2018, President Trump nominated Michael H. Park to the Second Circuit Court of Appeals. The senate did not act on Park's nomination before the end of the congress, and on January 3, 2019, his nomination was returned to Trump. On January 23, 2019, Trump renominated Park.

At the time, AFJ strongly opposed Park's confirmation for a number of substantive and procedural reasons. His subsequent confirmation to the court of appeals and the many opinions he's authored since then continue to confirm AFJ's strong opposition to his lifetime tenure on the federal judiciary.

Historically, Park's nomination to the second circuit — advanced over the objections of both of his home-state senators, Chuck Schumer and Kirsten Gillibrand — represented a departure from senate practice for nearly a century. Until his nomination, the Senate Judiciary Committee had not proceeded with a hearing without positive blue slips from both senators.

As Sen. Orrin Hatch said in 2014, "[w]eakening or eliminating the blue slip process would sweep aside the last remaining check on the president's judicial appointment power. Anyone serious about the Senate's constitutional 'advice and consent' role knows how disastrous such a move would be."

Up until his confirmation, Park dedicated his career to advocating for extremist right-wing causes and advancing far-right agendas. Nothing in his pre-confirmation record suggested that he would be a fair, unbiased jurist, as his pre-confirmation career fulfilled a checklist of extremist goals that included undermining voting rights, chipping away at affirmative action, cutting off access to abortion care, and weakening tribal rights, workers' rights, health care access, consumer protections, and environmental regulations.

If nominated and confirmed to the Supreme Court, Park would further entrench the Court's already extreme ideologies for decades longer.

Biography

Park graduated from Princeton University and Yale Law School. After graduating from law school in 2001, he clerked for then-Judge Samuel Alito on the Third Circuit Court of Appeals, and again for Justice Alito on the Supreme Court during the 2008 term.

Between 2002 and 2006, Park worked at WilmerHale before serving as an attorney-advisor from 2006 to 2008 at the Department of Justice's office of legal counsel under the George W. Bush administration. From 2009 to 2015, Park worked at Dechert LLP in New York, where he represented Deutsche Bank AG in a civil mortgage fraud lawsuit brought by the U.S. Attorney's Office in the Southern District of New York, and defended Merrill Lynch and Credit Suisse First Boston in securities actions. In 2015, Park joined the law firm Consovoy McCarthy Park as a name partner and specialized in appellate and complex litigation.

This boutique law firm "has become the go-to legal shop for conservative ideologues looking to fight everything from voting rights to affirmative action to abortion." The firm led the effort to erode voting rights and equal representation in *Shelby County v. Holder* and *Evenwel v. Abbott*, and its founder William Consovoy, argued to cut the Voting Rights Act in *Shelby County v. Holder*. This firm also represented Trump in a lawsuit over allegations of violations of the Constitution's emoluments clause by maintaining business interests that profit from spending by foreign countries.

While at Consovoy, Park also served as an adjunct professor at the Antonin Scalia Law School at George Mason University.

Park was confirmed to the United States Circuit Court of Appeals for the Second Circuit in May of 2019.

AFJ Opposition During Senate Hearing

Alliance for Justice strongly opposed Park's confirmation to the court of appeals during his senate confirmation process to the court of appeals. Many of Park's positions in private practice surfaced during his Senate Judiciary Committee hearing in February 2019, including his challenges to race-conscious college admissions. When asked about these positions, Park generally responded by pointing to Supreme Court precedent, stating that "[t]he Supreme Court has held that the consideration of race is permissible if it satisfies strict scrutiny."

Sen. Blumenthal highlighted Park's lack of experience – that he had never tried a case or watched a trial through the full process. Blumenthal also noted that Park was first contacted by the White House counsel's office a year before Park's firm was retained to represent President Trump and that Park was notified that he would be retained six months after his firm began representing Trump in the Emoluments case. Blumenthal asked if Park or other partners talked to Trump about Park's possible nomination, to which Park replied, "I don't have any awareness of that and I don't have any reason to think the two were connected and I'm just not privy to how the decision to nominate me was made by the president."

Additionally, Blumenthal asked Park if he believed that *Roe v. Wade* and *Brown v. Board of Education* were correctly decided. Regarding Roe, Park said it would "not be [his] place to grade or approve of precedent I would be bound to follow." Park similarly refused to answer directly whether *Brown v. Board of Education* was correctly decided. Park said, "*Brown v. Board* was a landmark decision of the Supreme Court, it overruled *Plessy v. Ferguson*, it struck down separate but equal." Blumenthal pressed Park on whether *Brown v. Board of Education* was rightly decided, but Park did not answer that question directly.

Civil Rights

PRIVATE PRACTICE

Park spent much of his career working to undermine civil rights. As Jon Greenbaum, chief counsel at the Lawyers' Committee for Civil Rights Under Law noted, "Michael Park has a demonstrated record of hostility to civil rights, and it is hard to imagine he would change his views as a judge." On behalf of the Project on Fair Representation, Park defended the Trump administration's effort to insert a citizenship question into the 2020 census, which would have reversed 70 years of census practice and potentially resulted in an undercount of as many as 6.5 million people. Civil rights advocates emphasized that inserting this question into the census would lead to a drastic undercount of communities of color. In its amicus brief, the Leadership Conference on Civil and Human Rights argued that "including a citizenship question on the 2020 census will inflict grievous harm on poor people and communities of color, with no countervailing benefit."

The Leadership Conference , the Leadership Conference Education Fund, Muslim Advocates, the National Association of Latino Elected and Appointed Officials Educational Fund, the National Coalition on Black Civic Participation, and 149 other organizations wrote that such an insertion would "violate[] the Census Bureau's constitutional and statutory duties to conduct a full enumeration of the U.S. population."

Former Census Bureau directors, in an amicus brief, explained: "The Census Bureau's own experts have concluded that the addition of a citizenship question is likely to compromise data quality and census accuracy by depressing response rates and introducing a differential impact on specific populations and the geographies where those populations are most concentrated."

In a lengthy opinion, Judge Jesse Furman of the Southern District of New York rebuked the Commerce Department for breaking "a veritable smorgasbord" of federal rules when it ordered the citizenship question added. Judge Furman said Secretary Wilbur Ross "cherry-picked" facts to support his argument, ignored contrary evidence, and kept Census Bureau experts in the dark. In addition, Furman discussed Ross's false or misleading statements under oath when he attempted to defend his pretextual justification.

Park also demonstrated a commitment to dismantling equal opportunity programs. In 2012, he served as a key contributor in *Fisher v. University of Texas* (2013), writing an amicus brief on behalf of petitioner Abigail Fisher, who

argued that the university's use of race as one consideration among many in the admissions process was unconstitutional. He also represented Students for Fair Admissions (SFFA) in lawsuits against Harvard University and the University of North Carolina over their race-conscious admissions policies. The case is considered "one of the most high-profile and controversial lawsuits designed to end affirmative action in college admissions."

On June 29, 2023, the Supreme Court's conservative majority held that Harvard's and UNC's race-conscious admissions programs violated the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964.

WHILE SERVING ON SECOND CIRCUIT

Soule v. Connecticut Ass'n of Sch., Inc.

Four cisgender female high school student athletes sued their interscholastic athletic conference alleging that the conference's policy of allowing transgender female athletes to compete constituted sex discrimination in violation of Title IX. The U.S. District Court for the District of Connecticut granted the defendant's motion to dismiss, which the cisgender athletes appealed. The Second Circuit, *en banc*, sided with the plaintiffs.

Park wrote a concurrence to note that only the majority opinion has precedential weight and that the case's numerous concurrences "represent what a majority of the Court did *not* join." While Park did not specify which concurrences he took issue with, other concurrences that Park *did not* join were more sympathetic to the transgender athletes. Park also joined a concurrence by Judge Menashi, which stated that the plaintiffs "have standing to seek an injunction to modify athletic records to account for the 'CIAC's policy that allow[ed] biological males to compete in girls-only events." Menashi's concurrence also addressed issues related to procedural issues related to *Pennhurst* notice.

Quinones v. City of Binghamton

Alan Quinones, a Latino police officer, sued the Binghamton Police Department alleging that he was racially harassed by members of the department and retaliated against for voicing concerns about discrimination. Quinones claimed that he was subjected to "humiliation and ridicule," such as being derogatorily imitated when speaking Spanish and faced derogatory references to jumping fences and gang associations. Quinones alleged a First Amendment retaliation claim and a discrimination claim. The district court dismissed the complaint, holding that Quinones did not plausibly state a claim for retaliation and failed to enumerate any discrimination claim.

Judge Park's opinion agreed with the district court's decision regarding the First Amendment retaliation claim but held that Quinones did identify a discrimination claim. Park vacated and remanded the case for consideration of the discrimination claim.

Mbendeke v. Garland

Park was present for the summary order denying a petition for review of a Board of Immigration Appeals ("BIA") decision denying Emily Mbendeke's application for asylum, withholding of removal, and relief under the Convention Against Torture. The BIA denied Mbendeke's application for asylum and withholding of removal due to her "leadership role" in a "conspiracy" that included "at least eight fraudulent marriages and four fraudulent visa petitions."

Mbendeke is a transwoman but raised concerns about being treated as a homosexual man in Cameroon, including the risk of persecution and torture. This concern was compounded by her status as HIV positive. Regarding the Commission Against Torture, Mbendeke's expert witness testified that it was "more likely than not" that Mbendeke would be tortured if she returned to Cameroon. The expert witness noted that over the prior seven to eight years, 35 to 45 individuals had been detained and arrested for being homosexual in Cameroon. However, upon further questioning, the expert witness stated that she could not say with certainty if it was more likely than not that Mbendeke would be tortured. The summary opinion stated, "[a] reasonable adjudicator could glean from this reticence on the part of Mbendeke's expert that the chance of Mbendeke being tortured in Cameroon – while non-trivial – was not more likely than not."

Mbendeke gave an interview in 2022 in which she discussed her detention with DHS/ICE. During this time Mbendeke helped other detainees look for pro bono lawyers, defend themselves pro se, or connect them with organizations that could pay their bond. Mbendeke also discussed her work with Envision Freedom, an organization working to "dismantle the oppressive and interconnected criminal legal and immigration systems."

Access to Abortion Care

Prior to serving on the bench, Park represented the state of Kansas in *Planned Parenthood of Kansas v. Andersen (2018)*, after the state attempted to defund Planned Parenthood and ban it from participating in the state Medicaid program. The Tenth Circuit affirmed the injunction prohibiting the state from cutting off funding.

Park was also involved in defending the Trump Administration's effort to prevent Jane Doe, a young immigrant woman in government custody, from accessing abortion care in *Garza v. Hargan*. The young woman ultimately won the case and was able to access the health care she needed.

Tribal Rights

As a private attorney, Park worked on two briefs in *Sturgeon v. Frost*, advocating for Alaskan hunter John Sturgeon in a position that many feared could eliminate federal protection of subsistence fishing rights for Alaska Natives. The case raised "questions about who has the authority to regulate water in national parks" in Alaska: the federal government or the state.

Sturgeon was riding a hovercraft on a river running through a national park when National Park Service officials threatened him with a citation for violating federal law. He sued, arguing that the Park Service had no authority over the Nation River because the State of Alaska, not the federal government, owned it. Because Alaska's constitution prohibits the state from providing preferential fishing rights to certain communities, a victory for Sturgeon would negatively transform Alaska Natives' longstanding fishing activity on the river.

Heather Kendall-Miller, an Alaska Native and attorney with the Native American Rights Fund said adopting Park's position "would be a death knell to us in Alaska, absolutely." Kendall-Miller emphasized in the *Anchorage Daily News* that if Park's position is successful, it "could abolish all Alaska Native subsistence fishing rights . . . so that one man can drive a hovercraft in a national park." She also said that if the Court rules for Sturgeon, "Alaska will be in a state of chaos when the fishing season begins. There will be lots of civil disobedience. It will be explosive."

Fred John Jr., a tribal member from Mentasta, stated: "I think as soon as you back up the Sturgeon case, you're against the Native way of life. That's what the state wanted all these years, the power to take subsistence back, which is for everybody. Once they do that, we've lost everything."

Environmental groups also voiced major concerns with Park's position in the case. As several groups wrote in an amicus brief, "[t]he authority of the Park Service over navigable waters within the parks is critical to the parks fulfilling the purposes for which they were established. . . If the Park Service did not have regulatory authority over navigable waters within the parks, [the] mandate to protect these areas would be impossible to fulfill."

In another amicus brief submitted by a group of Alaska Native subsistence users, the native advocates argued that importance of subsistence fishing to Alaska Native subsistence users cannot be overestimated. A ruling removing federal reserved waters from the definition of "public lands" would be a disaster for subsistence users considering "[a]pproximately 40 million pounds of fish and wildlife are harvested annually by subsistence users, of which fish account for 60 percent."

The district judge held for the National Park Service. On appeal, the Ninth Circuit affirmed (2014). The Supreme Court heard Sturgeon's case for the first time in 2016, holding that the Ninth Circuit misinterpreted the applicable federal statute. On remand, the Ninth Circuit held for the National Park Service on a different theory. The case was argued again before the Supreme Court on November 5, 2018, where this time, the court unanimously ruled in favor of Sturgeon and declared that the Nation River is not "public land" under the Alaska National Interest Lands Conservation Act (ANILCA), thereby exempting state-owned navigable waters within national parks from the National Park Service's standard regulatory authority.

Immigration

PRIVATE PRACTICE

On January 25, 2017, Trump issued an executive order titled "Enhancing Public Safety in the Interior of the United

States." The order threatened to cut federal funding for local jurisdictions that Trump and then-Attorney General Jeff Sessions argued were so-called "sanctuary" jurisdictions. The city of Chicago sued, challenging the order, and the U.S. District Court for the Northern District of Illinois agreed, ruled the order unlawful, and enjoined the attorney general from enforcement. On appeal, Park filed an amicus brief on behalf of the National Sheriffs' Association, arguing the district court decisions should be reversed.

WHILE SERVING ON SECOND CIRCUIT

More recently in *Garcia Martinez v. Bondi,* Park and two other second circuit judges affirmed a decision from the Board of Immigration Appeals denying the asylum and withholding of removal requests of an El Salvadorian woman, Cecilia Yamileth Garcia Martinez. Martinez applied for asylum and withholding of removal on the basis that she was a "young woman who refuse[d] to join gangs." The second circuit found that the BIA did not err in concluding that this proposed group was not cognizable because Martinez failed to establish that it was socially distinct.

Martinez also argued that she was targeted by gangs because of her family ties, and that gang members threatened to kill both her and her brother in an attempt to recruit them. She shared that her two cousins were killed, though she did not know why. Despite these facts, Park and his fellow judges concluded that this evidence still failed to show she was targeted because of her family ties. Instead, the second circuit found that "[t]hese facts reflect that the gang was principally motivated by the desire to expand its ranks, not by animosity towards this specific family" and thus that Martinez failed to meet her burden for asylum and withholding of removal.

Park was also present for a number of other summary orders denying asylum claims from female asylum seekers, including:

- *Yuan Lan Shi v. Barr (2020)*: denial of claim from female asylum seeker who claimed to have been subject to a forced abortion
- *Zhang v. Garland (2022)*: denial of claim from female asylum seeker who claimed to have been detained and fined for spreading her Christian religion and forced to have an abortion under China's family planning policy
- *Ou Yang v. Garland (2022)*: denial of claim from female asylum seeker who claimed to have been subject to a forced abortion
- *Cosma Garcia v. Garland (2023)*: denial of claim from female asylum seeker who claimed to be a victim of domestic violence and gang violence

Workers' Rights

PRIVATE PRACTICE

After New York City issued an emergency order to improve work conditions for low-income nail salon workers, Park sued on behalf of salon owners, fighting efforts to protect workers.

In May 2015, *The New York Times* published an exposé on the poor health, safety, and labor conditions for low-wage nail salon workers. The article detailed wage theft, physical abuse, and health consequences from toxic product exposure. Another study found that more than one-third of workers in beauty salons were paid less than minimum wage.

Soon after the first *Times* article appeared, Gov. Andrew Cuomo announced a task force to inspect nail salons, and a state investigation resulted in the finding of 116 wage violations at 29 nail salons. Cuomo issued an emergency order in August 2015 requiring salons to purchase a "wage bond," which would give workers recourse to collect funds if owners are found to pay their employees an illegally low wage. This was a requirement that "received universal support from worker advocates."

Park represented the nail salon owners in their lawsuit, which commenced in September 2015. According to the court decision, the plaintiffs argued that the wage bond mandate unfairly singled out an Asian-dominated industry and was discriminatory. The *Times* reported that plaintiffs also argued that wage bonds were "not readily available" because "too few surety companies offer the wage bond and that those that do have such strict requirements — such as high personal credit scores — that the bond is out of reach for many owners."

In 2015, a court rejected this argument, finding the emergency regulation was facially neutral and bore a rational relationship to a legitimate state interest. In dismissing the lawsuit, the court wrote that the state had "sufficiently demonstrated that nail salon workers are being deprived of legally due wages and that immediate adoption" of the regulation "was necessary for the preservation of the public health, safety or general welfare of nail salon workers."

Also relevant are Park's efforts to make it more difficult for workers injured by asbestos to hold corporations accountable. In 2016, the New York Court of Appeals addressed the question of whether a manufacturer has a duty to warn about asbestos-containing parts made by a third party but combined with its non-asbestos products. In this case, Crane Co. sold asbestos-laden products without providing warnings, despite its knowledge of the dangers of exposure to asbestos. The plaintiffs, Ronald Dummitt, a Navy boiler technician, and Gerald Suttner, a pipe fitter at a GM plant, worked with Crane's asbestos-laden products. Both later died from mesothelioma.

Park, arguing on behalf of the Chamber of Commerce on appeal, sought to reverse the juries' judgments for the plaintiffs. He suggested that "is it not clear that a manufacturer is under no obligation, morally or legally, to warn of risks presented by products entirely designed, manufactured, distributed, and controlled by others [emphasis

added]?" He added that even if harms were foreseeable and manufacturers had an opportunity to warn, they should not have such a duty – a duty which "would not enhance scarce resources but rather would waste them." Park dismissed the legitimate concerns of Dummitt and Suttner – and numerous other Americans who have had health issues as a result of exposure to asbestos – as being pawns of trial lawyers: "[A]sbestos may be the product area where tort plaintiffs most need new industrial defendants to pay for their injuries." In an endnote, he added, "Amicus does not mean to impugn Plaintiff's [sic] motives in this regard. Members of the plaintiff's bar owe a duty to pursue every plausible possibility on behalf of their clients. But in considering questions of social policy, this Court must keep its eyes open to the realities."

As the New York State Trial Lawyers Association noted, "the inflexible rule" that Crane and Park "seek[] to have implemented in New York…would immunize even those manufacturers that knew of the dangers of its products and still failed to act."

On appeal, the New York Court of Appeals agreed with lower courts and found Crane liable for failing to warn customers about the danger of asbestos insulation. It articulated the following rule: "[T]he manufacturer of a product has a duty to warn of the danger arising from the known and reasonably foreseeable use of its product in combination with a third-party product which, as a matter of design, mechanics or economic necessity, is necessary to enable the manufacturer's product to function as intended."

WHILE SERVING ON THE SECOND CIRCUIT

JLM Couture, Inc. v. Gutman

In a case that received considerable media attention, Park authored an opinion upholding the Southern District of New York's decision to enforce a noncompete clause against a well-known bridal dress designer and social media influencer. JLM Couture, a bridal dress company, sued a bridal dress designer and social media influencer, Hayley Paige Gutman, alleging that Gutman breached a noncompete clause through certain posts on her social media accounts.

The district court issued a preliminary injunction giving JLM Couture control over disputed Instagram and Pinterest accounts, and a preliminary enforcement of the five-year noncompete clause, prohibiting Gutman from identifying herself as the designer of certain goods. The district court also held Gutman in civil contempt for a series of social media posts found to be "marketing" in violation of an earlier version of the preliminary injunction.
Park's majority opinion dismissed Gutman's appeal and affirmed the district court's refusal to dissolve its preliminary injunction. It vacated in part the district's order modifying the preliminary injunction for erring in determining the ownership of the disputed social media accounts and failing to assess the reasonableness of the five-year noncompete restraint on Gutman.

The Gutman/JLM Couture dispute received significant media coverage given Gutman's fame. Gutman signed with JLM Couture in 2011 when she was 25 years old. Between 2015 and 2019, Gutman appeared on the TV show "Say

Yes to the Dress" and a spinoff called "Say Yes to America." In 2019, Gutman's Instagram account reached 1.1 million followers. On July 30, 2024, Gutman appeared as a witness in front of the Senate Committee on Banking, Housing, and Urban Affairs. Gutman was invited by Senator Elizabeth Warren and testified about her dispute with JLM Couture.

Murray v. UBS Securities, LLC

Trevor Murray, a former employee of UBS Securities, claimed that he was fired in retaliation for reporting alleged fraud on shareholders to his supervisor. Murray was a strategist at UBS and was required by Securities and Exchange Commission ("SEC") regulations to certify that his reports were produced independently and that they reflected his own views. Murray claimed that two leaders of UBS's trading desk pressured him to skew his research in support of their business strategies, and Murray reported this conduct to his supervisor on multiple occasions. After one such occasion, Murray's supervisor emailed his own supervisor recommending that UBS fire Murray or move him to a role unregulated by the SEC. Murray was ultimately fired. Murray sued under the whistleblower protection provision of the Sarbanes-Oxley Act ("SOX"). After Murray prevailed at trial, UBS appealed.

Park's opinion stated that the appeal presented the question as to whether the SOX antiretaliation provision requires a whistleblower-employee to prove retaliatory intent, and the Second Circuit reviewed this question de novo. Park held that the SOX antiretaliation provision required retaliatory intent and vacated the lower court's jury verdict and remanded for a new trial. The Supreme Court overruled Park's decision unanimously, stating that a whistleblower only needs to prove that his protected activity contributed to the unfavorable personnel action alleged in the complaint, not that the employer acted with retaliatory intent.

Estle v. International Business Machines Company

IBM terminated a group of employees, all of whom were 56 or 57 years old, as part of a reduction in force. IBM offered a severance package that included one month's salary, six to 12 months of health and life insurance, and other benefits. In exchange, each employee agreed to sign a separation agreement that contained a collective-action waiver. The employees then sued, seeking (1) a declaration that the collective-action waiver was invalid under the Age Discrimination in Employment Act of 1967 ("ADEA"); and (2) an injunction barring IBM from enforcing it.

The employees claimed that the waivers were not "knowing and voluntary" because IBM failed to make certain disclosures as required for the waiver of "any right or claim" under the ADEA. IBM moved to dismiss for failure to state a claim, and the district court granted the motion. The district court relied on *14 Penn Plaza LLC v. Pyett*, which held that in this context "right" means "substantive right" and that the right to bring collective action is not a substantive right. Accordingly, the district court found that the collective action waiver did not waive a right under the ADEA.

Park's opinion affirmed the district court's opinion, stating, "[w]e see no reason to deviate from the [district court's] unambiguous interpretation…which is consistent with the decision of every court of appeals to consider the issue."

Lively v. WAFRA Investment Advisory Group, Inc.

Francis Lively was terminated by his former employer, WAFRA, for violating company policies prohibiting sexual harassment. At the time, Lively was around 63 years old and had worked at WAFRA for 21 years and was considered a "top performer." Lively was suspended then terminated for violating WAFRA's policies and code of ethics prohibiting sex discrimination and harassment in the workplace. Lively sued, claiming that WAFRA's reason was pretext and that the real reasons for his dismissal were age discrimination and retaliation, in violation of ADEA. Lively claimed that the complainant had "regularly and voluntarily solicited Lively's involvement in her personal and professional life" and that "he had no reason to believe that their interactions were anything but welcomed by" the complainant. WAFRA claimed that Lively "repeatedly confessed his romantic feelings towards" the complainant between 2012 and 2016, and that Lively acknowledged that the complainant did not reciprocate these feelings. Lively also claimed that he was discriminated against for his age based on multiple comments from his supervisor about Lively being too old.

The district court granted WAFRA's motion to dismiss and Lively appealed. Park's opinion affirmed because Lively's complaint failed to plead that either his age or protected speech were but-for causes of his termination.

Health Care

After Congress unsuccessfully tried to repeal the Affordable Care Act, Trump, during his first term, tried to use the courts to undermine the ACA. Trump's Justice Department attacked the law that ensures insurance companies cannot deny coverage or charge higher rates to people with pre-existing conditions. Prior to joining the federal bench, and while working as a private attorney, Park also filed an amicus brief arguing that the Affordable Care Act was unconstitutional. The legal attack Park supported would reportedly take health care away from 52 million Americans, including cancer survivors, people with diabetes, and pregnant women.

Environmental Justice and Consumer Protections

PRIVATE PRACTICE

As a private attorney, Park actively challenged the Clean Water Rule, which expanded protection for two million miles of streams and 20 million acres of wetlands. The rule would have helped ensure access to clean water for all Americans. Park represented the U.S. Chamber of Commerce in a lawsuit against the EPA and U.S. Army Corps of Engineers seeking to overturn the Clean Water Rule. In *Nat'l Ass'n of Manufacturers v. U.S. Dep't of Def.* (2018), he again represented the Chamber of Commerce in their arguments to be able to challenge the Clean Water Rule. Park also hosted a Federalist Society teleforum to discuss the litigation.

On behalf of the Chamber of Commerce, Park also fought FTC enforcement action against LabMD, a medical-testing laboratory, after the company's inadequate data security practices allowed sensitive private medical and financial data for 9,300 patients to be exposed to millions of internet users and downloaded. According to the FTC, the

company had "amassed a vast store of medical and other sensitive personal information for more than 750,000 patients on its computer system." But "it systematically failed to use basic security measures to secure the data from unauthorized access." Park argued that the FTC lacked the authority to regulate cybersecurity generally or to bring actions against companies that fail to prevent sensitive information from being released in data breaches.

WHILE SERVING ON THE SECOND CIRCUIT

Calcano v. Swarovski North America Limited

A group of individuals with disabilities sued a group of stores under the Americans with Disabilities Act for failing to carry braille gift cards. These individuals argued that failing to carry braille gift cards was the same as denying access to goods and services in violation of the ADA. Each individual had called the defendant's customer service offices to try to purchase gift cards and to ask if the stores sold gift cards containing braille.

The case was unanimous, with Park authoringthe opinion and one concurrence. Park's opinion affirmed the Southern District of New York's dismissal for lack of standing and failure to state a claim. Park called the individuals allegations "boilerplate" and stated, "missing from these conclusory allegations is any explanation of how Plaintiffs were injured by the unavailability of braille gift cards or any specificity about Plaintiffs' prior visits to Defendants' stores that would support an inference that Plaintiffs intended to return."