Andrew Brasher

President Trump nominated Andrew Brasher to serve on the U.S. District Court for the Middle District of Alabama on April 10, 2018. Brasher is anti-choice.

Career

- Bachelor of Arts, Samford University, 2002
- Juris Doctorate, Harvard Law School, 2006
- Associate, Bradley Arant Boult Cummings LLP, 2007-2011
- Deputy Solicitor General, Office of the Alabama Attorney General, 2011-2014
- Solicitor General, Office of the Alabama Attorney General, 2014-present

Record on Choice-Related Issues

Court Cases

- Brasher is currently defending an offensive and absurd Alabama law that drastically alters the state’s judicial bypass procedure by effectively putting young women seeking abortion care on trial. The law allows a judge to appoint an attorney for the fetus and allows the district attorney to call witnesses to testify regarding the young woman’s maturity. A district court judge struck down the law and Brasher is currently representing the state on appeal.

- Brasher defended Alabama’s unconstitutional Targeted Regulation of Abortion Providers (TRAP) law in the courts. The law in question subjected abortion providers to burdensome restrictions not imposed on other medical professionals. A district court struck down the law and Brasher initially appealed, but withdrew the appeal after the Supreme Court struck down Texas’ similar TRAP law in 2016.
  - In defending the law, Brasher suggested that the Alabama clinics that would have been forced to close had the law gone into effect hadn’t tried hard enough to recruit providers with admitting privileges. He also suggested that clinics could pay doctors more. As an ACLU attorney pointed out, these suggestions completely ignore the dangerous reality for abortion providers in Alabama, which makes it difficult to recruit local providers.
  - He also claimed that if clinics shut down, women in Alabama could just travel to Georgia to access abortion care. This statement completely disregards the
burdens on women, financial and otherwise, that requiring them to travel out of state in order to access healthcare would impose.

- Brasher also brought in two “expert witnesses” to defend the law, James Anderson and John Thorp. Both Anderson and Thorp are known for traveling around the county to testify in favor of abortion restrictions. Judge Myron Thompson heavily criticized their involvement in the Alabama case in a supplemental opinion after striking down the law. Of Thorp, Thompson wrote that he “displayed a disturbing apathy toward the accuracy of his testimony” and noted that his research “seemed to be driven more by a bias against abortion and a desire to inflate complication rates than by a true desire to reach an accurate estimate of the dangerousness of abortion.” Of Anderson, Thompson wrote that his reliance on anti-choice activist Vincent Rue, who wrote the entire supplemental report that Thompson submitted to the court, made clear that Anderson either “lacks judgement, is dishonest, or is profoundly colored by his [anti-choice] bias.”

- Brasher defended an Alabama law that prohibited the state from licensing any abortion clinic within 2,000 feet of a public school and imposed criminal penalties on providers who performed D&E abortion procedures, the most common method of second-trimester abortion. The district court held that both provisions constituted an undue burden on access to abortion. The case is currently on appeal before the Eleventh Circuit.

- Brasher represented Alabama in its challenge to the Affordable Care Act’s contraceptive-coverage policy, the greatest advancement in reproductive healthcare in a generation.

- Brasher donated to Lawrence VanDyke’s campaign for Supreme Court in Montana. VanDyke has endorsed dangerous and discredited conversion therapy and, as Montana’s Solicitor General, took anti-abortion and anti-LGBTQ positions on behalf of the state.

Notable Information

- Brasher addressed a “pro-life” rally on behalf of then-Attorney General Luther Strange at the Alabama State House. Brasher spoke of Alabama’s efforts to defend so-called pro-life legislation and stated that “the ACLU and Planned Parenthood want a fight and we will give them one.”

- In an interview after a district court struck down Alabama’s TRAP law, Brasher minimized the decision and spoke dismissively about the landmark Planned Parenthood v. Casey decision: “The judge’s ruling relies on a 1992 decision from the Supreme Court called Casey, and the Supreme Court actually has not entered into this
area of the law since 1992. The Eleventh Circuit, which is the federal circuit that
governs Georgia, Alabama and Florida, also has not talked about this area of the law
either. So all that to say is this is an uncertain area of the law. It’s not exactly clear
what the standard should be.”

To suggest that an area of law is “uncertain” because the Supreme Court and Circuit
Courts haven’t ruled in that area recently reveals an extremely troubling view of legal
precedent. Some of our most fundamental rights and freedoms were affirmed
by Supreme Court cases decades ago. In fact, the longer a precedent has been in place,
the more significant the reliance interests on that precedent.

- In his personal capacity, Brasher volunteered for the political campaigns of two anti-
  choice candidates in Alabama: Rep. Bradley Byrne’s campaign for governor and Luther
  Strange’s campaign for attorney general.


- Brasher is a member of the conservative, anti-choice Federalist Society. He is vice
  president of his local chapter.

- Brasher wrote a letter to the Senate Judiciary Committee Chairman Grassley and
  Ranking Member Feinstein in support of the nomination of Brett Talley to an Alabama
  District Court. Talley withdrew his nomination after 16,000 blog posts were
  uncovered in which he called Roe v. Wade “indefensible” and defended the KKK.

- The conservative, anti-choice Judicial Crisis Network celebrated Brasher’s promotion
to solicitor general, saying: “He is known as a strong supporter of limited
constitutional government, and he joins a great group of like-minded SGs from all
across the country. We are pleased that Attorney General Luther Strange has
recognized the importance of this office and empowered such an excellent candidate.
We look forward to seeing the results of Brasher’s advocacy.”

**Record on Other Key Issues**

- Brasher is an opponent of equal marriage. He defended Alabama’s ban on same-sex
  marriage in court and filed a brief opposing marriage equality in Obergefell v.
  Hodges.

- Brasher filed an amicus brief in Shelby County v. Holder in favor of overturning crucial
  protections for minority voters in areas with histories of egregious voter
discrimination. Brasher got the outcome he argued for in the case, but it has had
devastating impacts on voters from marginalized communities.
• Brasher represented the state of Alabama in Miller v. Alabama, in which he argued in favor of mandatory life sentences without parole for minors.24

May 10, 2018

1 Questionnaire for Judicial Nominees: Andrew Brasher, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, https://www.judiciary.senate.gov/imo/media/doc/Brasher%20SJQ.pdf
4 Mary Sell, Abortion law struck down, THE DECATUR DAILY (July 29, 2014)
5 Ruling by end of July in Alabama abortion law, LEGAL MONITOR WORLDWIDE (June 12, 2014)
6 Ruling by end of July in Alabama abortion law, LEGAL MONITOR WORLDWIDE (June 12, 2014)
7 Brian Lyman, Federal court hears abortion debate, THE MONTGOMERY ADVERTISER (Feb. 8, 2014)
15 Capitol Journal, ALABAMA PUBLIC TELEVISION (Aug. 8, 2014) at 2:40
22 Brief of State of Alabama as Amicus Curiae Supporting Petitioner, Shelby County v. Holder, 133 S. Ct. 2612 (U.S. 2013)