



## 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<sup>1</sup>

- Bachelor of Arts, Samford University, 2002
- Juris Doctorate, Harvard Law School, 2006
- Law Clerk, Hon. William Pryor, U.S. Court of Appeals for the Fifth Circuit, 2006-2007
- 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> He also suggested that clinics could pay doctors more.<sup>5</sup> 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.<sup>6</sup>
  - He also claimed that if clinics shut down, women in Alabama could just travel to Georgia to access abortion care.<sup>7</sup> 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.<sup>8</sup> 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.”<sup>9</sup> 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.”<sup>10</sup>
- 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.<sup>11</sup> 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.<sup>12</sup>
- Brasher donated to Lawrence VanDyke’s campaign for Supreme Court in Montana.<sup>13</sup> VanDyke has endorsed dangerous and discredited conversion therapy an, 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.”<sup>14</sup>
- 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."<sup>15</sup>

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 clerked for vehemently anti-choice and anti-LGBTQ Judge Bill Pryor.<sup>16</sup>
- Brasher is a member of the conservative, anti-choice Federalist Society. He is vice president of his local chapter.<sup>17</sup>
- 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.<sup>18</sup> 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."<sup>19</sup>

### **Record on Other Key Issues**

- Brasher is an opponent of equal marriage. He defended Alabama's ban on same-sex marriage in court<sup>20</sup> and filed a brief opposing marriage equality in *Obergefell v. Hodges*.<sup>21</sup>
- 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.<sup>22</sup> Brasher got the outcome he argued for in the case, but it has had devastating impacts on voters from marginalized communities.<sup>23</sup>

- Brasher represented the state of Alabama in *Miller v. Alabama*, in which he argued in favor of mandatory life sentences without parole for minors.<sup>24</sup>

May 10, 2018

---

<sup>1</sup> *Questionnaire for Judicial Nominees: Andrew Brasher*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Brasher%20SJQ.pdf>

<sup>2</sup> *Reproductive Health Services v. Strange*, No. 2:14-cv-01014 (M.D. Ala. 2014), *appeal docketed*, No. 17-13561 (11th Cir. Aug. 8, 2017)

<sup>3</sup> *Planned Parenthood Southeast v. Bently*, 951 F.Supp.2d 1280 (M.D. Ala. 2013)

<sup>4</sup> Mary Sell, *Abortion law struck down*, THE DECATUR DAILY (July 29, 2014)

<sup>5</sup> *Ruling by end of July in Alabama abortion law*, LEGAL MONITOR WORLDWIDE (June 12, 2014)

<sup>6</sup> *Ruling by end of July in Alabama abortion law*, LEGAL MONITOR WORLDWIDE (June 12, 2014)

<sup>7</sup> Brian Lyman, *Federal court hears abortion debate*, THE MONTGOMERY ADVERTISER (Feb. 8, 2014)

<sup>8</sup> *False Witnesses*, REWIRE NEWS, <https://rewire.news/false-witnesses/#john-thorp> (last visited May 16, 2018); Andrea Grimes, *State Witnesses in Texas Abortion Law Trial Defend Targeted Regulations of Abortion Providers*, REWIRE NEWS (Aug. 6, 2014), <https://rewire.news/article/2014/08/06/state-witnesses-texas-abortion-law-trial-defend-targeted-regulations-abortion-providers/>

<sup>9</sup> *Planned Parenthood Southeast v. Strange*, 33 F.Supp.3d 1381 (M.D. Ala. 2014)

<sup>10</sup> *Planned Parenthood Southeast v. Strange*, 33 F.Supp.3d 1381 (M.D. Ala. 2014)

<sup>11</sup> *West Alabama Women's Center v. Miller*, 2017 WL 4843230 (M.D. Ala. 2017), *appeal docketed*, No. 17-15208 (11th Cir. Nov. 22, 2017)

<sup>12</sup> *Eternal World Television Network v. Burwell*, 26 F.Supp.3d 1228 (S.D. Ala. 2014)

<sup>13</sup> Miranda Blue, *Right Quietly Pours Money Into Montana, Hoping to 'Flip' Pivotal State Supreme Court*, RIGHT WING WATCH (Oct. 15, 2014), <http://www.rightwingwatch.org/post/right-quietly-pours-money-into-montana-hoping-to-flip-pivotal-state-supreme-court/>

<sup>14</sup> Brandon Moseley, *Lawmakers Addresses Pro-Life Rally*, ALABAMA POLITICAL REPORTER (Feb. 26, 2014), <http://www.alreporter.com/2014/02/26/lawmakers-addresses-pro-life-rally/>

<sup>15</sup> *Capitol Journal*, ALABAMA PUBLIC TELEVISION (Aug. 8, 2014) at 2:40

<sup>16</sup> *Questionnaire for Judicial Nominees: Andrew Brasher*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Brasher%20SJQ.pdf>

<sup>17</sup> *Questionnaire for Judicial Nominees: Andrew Brasher*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Brasher%20SJQ.pdf>

<sup>18</sup> *Questionnaire for Judicial Nominees: Andrew Brasher*, UNITED STATES SENATE COMMITTEE ON THE JUDICIARY, <https://www.judiciary.senate.gov/imo/media/doc/Brasher%20SJQ.pdf>

<sup>19</sup> Carrie Severino, *Congratulations to Andrew Brasher for Appointment as Solicitor General of Alabama*, JUDICIAL CRISIS NETWORK (Feb. 21, 2014), <https://judicialnetwork.com/congratulations-andrew-brasher-appointment-solicitor-general-alabama/>

<sup>20</sup> *Strawser v. Strange*, 307 F.R.D. 604 (S.D. Ala. 2015)

<sup>21</sup> *Brief of Amicus Curiae State of Alabama in Support of Respondents*, *Obergefell v. Hodges*, 135 S.Ct. 2584 (U.S. 2015)

<sup>22</sup> *Brief of State of Alabama as Amicus Curiae Supporting Petitioner*, *Shelby County v. Holder*, 133 S. Ct. 2612 (U.S. 2013)

<sup>23</sup> Matt Ford, *The Entirely Preventable Battles Raging Over Voting Rights*, THE ATLANTIC (April 14, 2017), <https://www.theatlantic.com/politics/archive/2017/04/shelby-county-v-holder-voting-rights-supreme-court/522867/>

<sup>24</sup> *Miller v. Alabama*, 132 S. Ct. 2455 (U.S. 2012)