

February 7, 2020

Dear Senators:

We, the undersigned organizations in the Eleventh Circuit, write to you in strong opposition to the confirmation of Andrew Brasher to be a U.S. Circuit Judge for the Eleventh Circuit Court of Appeals. Mr. Brasher is an extreme ideologue and has devoted much of his career to attempting to restrict voting rights and other critical civil and human rights. If elevated from the district court to the circuit court, his rulings would impact the 37 million residents of the three states within the Eleventh Circuit – Alabama, Florida, and Georgia.

The country is gearing up for a presidential election and the 2018 midterm elections provided a snapshot of the challenges that voters will face at the polls in 2020. Voters across the entire country are facing poll closures, cuts to early voting, disparate fines and fees, rampant voter purges, and many other voter suppression tactics that disproportionately impact our country's most vulnerable communities. Litigation to combat these types of voter suppression tactics is moving through the courts and Mr. Brasher's record demonstrates a hostility to voting rights and an inability to act impartially in such cases.

Mr. Brasher's record on voting rights is clear. In the infamous *Shelby County v. Holder* case, Mr. Brasher filed an amicus brief in which he asked the Supreme Court to gut the Voting Rights Act. He argued that "Congress violated the Constitution" when it reauthorized the Voting Rights Act in 2006, and he asserted that Alabama no longer engaged in voter discrimination.¹ In her *Shelby County* dissent, Justice Ginsburg refuted that argument, writing "Although circumstances in Alabama have changed, serious concerns remain. Between 1982 and 2005, Alabama had one of the highest rates of successful §2 suits, second only to its VRA-covered neighbor Mississippi. In other words, even while subject to the restraining effect of §5, Alabama was found to have denied or abridged voting rights on account of race or color more frequently than nearly all other States in the Union."² Mr. Brasher's support of the Supreme Court's devastating holding in this case is deeply disturbing.

In another important voting rights case, *Thompson v. Alabama*, Mr. Brasher argued that the court should dismiss a class action suit by plaintiffs who were denied the right to vote even after completing their prison sentence. They were denied this right because they had committed certain felonies and could not afford to pay the fines and fees associated with their conviction. One study estimated that the law disenfranchised more than 286,000 people, nearly 8 percent of Alabama's voting age population.³ In another Alabama case, *Alabama Legislative Black Caucus v. Alabama*, Mr. Brasher argued that Alabama's consideration of race in redistricting was constitutional because it was not the predominating factor.⁴ The Supreme Court rejected that argument, stating that "there is strong, perhaps overwhelming, evidence that race did predominate as a factor when the legislature drew the boundaries of Senate District 26."⁵

¹ https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_soa_authcheckdam.pdf

² https://www.supremecourt.gov/opinions/12pdf/12-96_6k47.pdf

³ https://www.al.com/news/index.ssf/2017/10/too_poor_to_vote_how_alabamas.html

⁴ <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/05/13-1138-Joint-Motion-to-Affirm-ADC-final.pdf>

⁵ https://www.supremecourt.gov/opinions/14pdf/13-895_o7jq.pdf

And in *Arizona v. Inter Tribal Council of Arizona*, Mr. Brasher defended a restrictive Arizona voting law that required proof of citizenship when registering to vote. The Supreme Court rejected his arguments in a 7-2 decision written by Justice Scalia and struck down the Arizona law because it was pre-empted by the National Voter Registration Act, which only requires a registrant to assert they are a citizen under penalty of perjury.

Mr. Brasher's failure to acknowledge the reality of this country's history of voting rights violations and the prevalence of voter suppression today is extremely troubling and indicates he would not have an open mind in such critical civil rights cases.

We urge you to oppose the confirmation of Andrew Brasher to be a U.S. Circuit Court Judge for the Eleventh Circuit Court of Appeals. Thank you for your consideration of our views.

Sincerely,

Alabama AFL-CIO
Alabama State Conference of the NAACP
Central Alabama Fair Housing Center
Florida Faith Advocacy Office
Florida AFL-CIO
Georgia Equality
Georgia NAACP
LatinoJustice PRLDEF
National Association of Social Workers – Florida Chapter
National Asian Pacific American Women's Forum (NAPAWF)
National Association of Social Workers
National Congress of Black Women, Inc.
National Council of Jewish Women Atlanta Section
National Council of Jewish Women Greater Miami Section
National Council of Jewish Women Kendall (Florida) Section
National Council of Jewish Women Miami Section
National Council of Jewish Women Palm Beach Section
National Council of Jewish Women SE Atlantic (Florida) Section
SisterLove, Inc.
SPARK Reproductive Justice NOW!
Vision Movement 2020