



**NATIONAL LATINA
INSTITUTE FOR
REPRODUCTIVE HEALTH**
Salud | Dignidad | Justicia



SPARK
REPRODUCTIVE JUSTICE NOW



SisterLove, Inc.

February 10, 2020

The Honorable Lindsey Graham
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
152 Dirksen Senate Office Building
Washington, D.C. 20510

RE: Reproductive Justice Groups Oppose Confirmation of Andrew Brasher

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate:

We, In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum, the National Latina Institute for Reproductive Health, SPARK Reproductive Justice NOW!, Inc., and SisterLove, Inc. write to express our strong opposition to the confirmation of Andrew Brasher to the United States Court of Appeals for the Eleventh Circuit.

We are Georgia-based organizations (SPARK Reproductive Justice NOW!, Inc. and SisterLove, Inc.) and national organizations (In Our Own Voice: National Black Women's Reproductive Justice Agenda, the National Asian Pacific American Women's Forum,¹ and the National Latina Institute for Reproductive Health) that advocate for reproductive justice.

Reproductive Justice is a framework rooted in the human right to control our bodies, our sexuality, our gender, and our reproduction. Reproductive Justice will be achieved when all people, of all immigration statuses, have the economic, social, and political power and resources to define and make decisions about our bodies, health, sexuality, families, and communities in all areas of our lives, with dignity and self-determination.

Every individual should have the right to make their own reproductive decisions, without facing impossible obstacles. They should be able to make decisions about their health care based on their own living conditions and circumstances. This also means that they should be able to plan whether or when to start or add to their family without outside interference, no matter where they seek care and without discrimination.

¹ NAPAWF has field organizers and an active chapter in Georgia that engage in grassroots organizing and voter engagement efforts in Asian American and Pacific Islander communities.

Given our commitment to Reproductive Justice, we are deeply troubled by Mr. Brasher's nomination. His record shows a legal career built on opposition to issues that are fundamental to Reproductive Justice and support for laws and policies that disproportionately harm people of color. Moreover, as organizations who work to ensure voter engagement and voter protections in communities of color across the country, including in Georgia, Mr. Brasher's record of eroding the voting rights of communities of color is alarming. Mr. Brasher has dedicated his legal career to attacking the Reproductive Justice values for which our organizations fight. In light of this record, we believe he lacks the qualifications to serve with the fairness and impartiality required of a judge.

Attacking Voting Rights and Voter Protections for Communities of Color

One of the most disturbing aspects of Mr. Brasher's legal career is his long standing record of attacking voting rights protections and advocating for laws that suppress the votes of Black communities and other communities of color. Voter suppression efforts disproportionately impact people of color and have historically been wielded to limit the political power of Black communities.²

Most notably, as an attorney in the Alabama Attorney General's office, Mr. Brasher filed an amicus brief in *Shelby County v. Holder* in support of gutting the Voting Rights Act (VRA), claiming that the need for the law had "faded away."³ As a result of the Supreme Court's decision in that case, states with a history of voter suppression are no longer required to receive approval from the Justice Department prior to enacting changes to their voting laws.⁴ Mr. Brasher also defended Alabama's felon anti-voter law,⁵ which disenfranchised 286,000 voters, the majority of whom were Black.⁶ Additionally, Mr. Brasher authored an amicus brief on behalf of Alabama and other states in support of an Arizona law that required voters to show proof of citizenship before voting,⁷ a law which the Supreme Court later held was unconstitutional.⁸

Although Mr. Brasher has claimed that voter protections are no longer necessary, our organizations know that this is far from the truth. The *Shelby County* decision led to the passage of Alabama's strict voter ID law, which was enacted despite evidence that it would disproportionately limit the right of Black communities to vote.⁹

Moreover, because several of our organizations work to ensure voter engagement and protection specifically in Georgia, we understand firsthand the importance of having federal judges in the

2 Theodore R. Johnson and Max Feldman, *The New Voter Suppression*, Brennan Center for Justice (Jan. 16, 2020), <https://www.brennancenter.org/our-work/research-reports/new-voter-suppression>.

3 Brief of Alabama as Amicus Curiae, *Shelby County v. Holder*, 570 U.S. 529 (2013).

4 *Shelby County v. Holder*, 570 U.S. 529 (2013).

5 *Thompson v. Alabama*, 293 F. Supp. 3d 1313 (M.D. Ala. 2017).

6 Connor Sheets, *Too poor to vote: How Alabama's 'new poll tax' bars thousands of people from voting* (Oct. 04, 2017), https://www.al.com/news/2017/10/too_poor_to_vote_how_alabamas.html.

7 Brief of Alabama, Georgia, Kansas, Michigan, Oklahoma, and Texas as Amici Curiae, *Arizona v. The Inter Tribal Council of Arizona*, 570 U.S. 1 (2013).

8 *Arizona v. The Inter Tribal Council of Arizona* 570 U.S. 1 (2013).

9 Myrna Pérez and Vishal Agraharkar, *If Section 5 Falls: New Voting Implications*, Brennan Center for Justice and Analysis, https://www.brennancenter.org/sites/default/files/2019-08/Report_Section_5_New_Voting_Implications.pdf.

Eleventh Circuit that will ensure that communities of color can exercise their right to vote. Georgia has a troubling history of voter suppression, particularly the suppression of Black voters. For instance, in 2018, Georgia’s “exact match” voter registration verification system led to over 53,000 voter registration statuses being placed on “hold.”¹⁰ Nearly 70% of these registrations were for Black voters, while African Americans make up 32% of Georgia’s population.¹¹

In the same election, voters in Gwinnett County, Georgia’s second largest county, experienced high rates of denials of absentee ballots, largely correlated with racial disparities—absentee ballots filed by Asian Americans were rejected at a rate of 14.8%, 8% for those filed by Black voters, and 4.3% for those filed by Latinx voters, in comparison to 2.5% for White voters.¹² Voting rights and protections are critical for communities of color to be able to make decisions about our lives, families, and communities. Voting rights are a reproductive justice issue, and Mr. Brasher’s record shows that he will not uphold this vital right that communities of color have fought for.

Undermining Reproductive Rights and Health Care Access

Mr. Brasher’s record of undermining reproductive rights and health care access is also disturbing. In addition to making statements directly hostile to the holdings in *Roe v. Wade*,¹³ Mr. Brasher has defended laws that place unnecessary burdens on abortion providers with the intention of leading to clinic closure,¹⁴ argued for employer exemptions from the Affordable Care Act’s contraception mandate,¹⁵ and defended laws that criminalize a common method of administering abortions.¹⁶ Mr. Brasher’s work has led to increased barriers to accessing abortion care and birth control. These barriers are disproportionately harmful towards people of color, who already face numerous barriers to accessing reproductive health care, including financial barriers, due to historical and ongoing racism and structural inequities.

As advocates for reproductive justice, we are deeply troubled by Mr. Brasher’s work to undermine reproductive agency. People of color, historically and presently, have faced reproductive oppression through policies, laws, and structures that have limited their ability to make their own reproductive decisions. Given this historical and ongoing oppression, it is critical to our communities that our courts uphold our most basic and fundamental rights.

Supporting the Targeting of Immigrant Communities

We are also concerned by Mr. Brasher’s record on immigrant rights. On behalf of Alabama, Mr. Brasher signed a brief urging the Supreme Court to review the Eleventh Circuit’s decision to

10 The Associated Press, *Georgia Gubernatorial candidate Brian Kemp sued over voter registrations* (Oct. 12, 2018), <https://apnews.com/afs:Content:2340770331>.

11 *Id.*

12 Brentin Mock, *Where Voter Suppression Hits Hardest in Georgia*, City Lab (Oct. 18, 2018), <https://www.citylab.com/equity/2018/10/where-voters-color-are-suppressed-hardest-georgia/573367/>.

13 Brandon Moseley, *Lawmakers Address Pro-Life Rally*, Alabama Political Reporter (Feb. 26, 2014), <https://www.alreporter.com/2014/02/26/lawmakers-addresses-pro-life-rally/>.

14 *Planned Parenthood of Southeast v. Bentley*, 951 F. Supp. 2d 1280 (M.D. Ala. 2013).

15 *Eternal World Television Network v. Burwell*, 26 F. Supp. 3d 1228 (S.D. Ala. 2014).

16 *West Alabama Women’s Center v. Miller*, 217 F. Supp. 3d 1313 (M.D. Ala. 2016).

strike down an Alabama law targeting immigrant communities.¹⁷ The law required that police detain any person who was stopped by police for any reason and could not produce proof of legal presence in the United States, required public schools to determine students' citizenship status, and criminalized undocumented immigrants for seeking work.¹⁸

As advocates for reproductive justice, we recognize that immigrant justice is integral to achieving reproductive justice. Anti-immigrant laws that advance racial profiling and place huge barriers on immigrants accessing resources to meet basic needs, such as housing and education, threaten the safety and stability of immigrant communities. Such laws are directly contrary to the reproductive justice principle that all people regardless of immigration status have the right to live and nurture their families in safe and healthy environments.

Opposing Economic Justice

In an amicus brief on behalf of Alabama and Georgia, Mr. Brasher also argued in support of a Florida law that required individuals receiving Temporary Assistance for Needy Families (TANF) to pay for their own mandated drug tests.¹⁹ The majority of people who received TANF in Florida were people of color.²⁰ The law, which was ultimately found to be unconstitutional, effectively imposed a fee on people deemed to qualify for public benefits due to their inability to meet their family's basic needs. Mr. Brasher's advocacy for such a dehumanizing and offensive law that directly harms communities of color and communities with low incomes further demonstrates that he is unfit to serve as a judge on one of our nation's highest courts.

* * *

For people of color, threats to voting rights, reproductive rights, immigrant rights, and economic justice are threats to our bodily autonomy and undermine our ability to make decisions about our own lives and families. People of color rely on the protections enforced by courts, yet Mr. Brasher has repeatedly demonstrated a career-long commitment to rolling back the rights that determine our health, freedom, and well-being. As a judge in the Eleventh Circuit, Mr. Brasher will have the power to decide many cases involving critical legal protections for groups and civil rights he has long worked against. We cannot support a nominee who will disregard the daily realities and needs of communities of color. For the foregoing reasons, we urge you to strongly oppose the confirmation of Andrew Brasher to the U.S. Court of Appeals for the Eleventh Circuit.

Sincerely,

17 *U.S. v. Alabama*, 691 F.3d 1269 (11th Cir. 2012), cert. denied, 2013 WL 1802127 (U.S. Jan. 15, 2013) (No. 12-884).

18 American Civil Liberties Union, *Analysis of HB 56, "Alabama Taxpayer and Citizen Protection Act,"* <https://www.aclu.org/other/analysis-hb-56-alabama-taxpayer-and-citizen-protection-act>.

19 Brief for the States of Alabama and Georgia as Amicus Curiae, *Lebron v. Florida Dept. of Children and Families*, 772 F.3d 1352 (11th Cir. 2014).

20 Dept. of Health and Human Services, Administration for Children and Families, *Characteristics and Financial Circumstances of TANF Recipients Fiscal Year 2014*, https://www.acf.hhs.gov/sites/default/files/ofa/tanf_characteristics_fy2014.pdf.

In Our Own Voice: National Black Women's Reproductive Justice Agenda

National Asian Pacific American Women's Forum

National Latina Institute for Reproductive Health

SPARK Reproductive Justice NOW!, Inc.

SisterLove, Inc.