



October 23, 2017

The Honorable Charles Grassley
Chairman, Senate Judiciary Committee
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Judiciary Committee
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein,

I write in opposition to the nomination of Brett Talley to serve on the U.S. District Court for the Middle District of Alabama.

President Trump has vowed to use federal-court appointments to elevate and cement in place his extreme agenda, and we see him doing just that—once again—with this nomination. A qualified nominee must believe in and uphold our fundamental constitutional rights, including reproductive freedom. Talley does not.

In fact, Talley has expressly opposed reproductive and women's rights. In his short legal career, Talley defended state statutes regulating abortion procedures; however, a federal district court found that both statutes were unconstitutional and enjoined the state from enforcing them. In opinion pieces he has written since he was in law school—only a decade ago—Talley has continually expressed a bias against reproductive freedom. For example, he wrote a blog in support of elevating anti-choice Judge Bill Pryor of the Eleventh Circuit Court of Appeals,ⁱ an activist juror who opposes legal abortion even cases of rape or incest,ⁱⁱ and called *Roe* the "worst abomination in the history of constitutional law,"ⁱⁱⁱ to the Supreme Court. Talley minimized the impact of a radical Pryor nomination by arguing that it would simply be replacing one conservative for another: "For instance, if same-sex marriage came to the court again, the vote count would be exactly the same."^{iv} However, in his nomination hearing, he stated he only was expressing support for a fellow Alabama native. In interviews, Talley has acknowledged having "a lot of sympathy" for "the pro-life camp"^v and disagreeing with marriage equality.^{vi}

Reproductive rights are under intense attack in Congress and in the states. In 2017 alone, states so far have enacted 54 new anti-choice measures. Now, more than ever, women must be able to rely on the courts to protect their constitutional rights. But even Talley's slight record shows he will undermine, not protect, the freedoms Americans depend on.

This nominee would put reproductive freedom in danger. I urge you to vigorously oppose the nomination of Brett Talley to serve on the U.S. District Court for the Middle District of Alabama.

Sincerely,



Ilyse G. Hogue

ⁱ Brett Talley, "Who Donald Trump should appoint to the Supreme Court," CNN Opinion, available at <http://www.cnn.com/2016/11/14/opinions/who-trump-should-appoint-supreme-court-talley/index.html> (last visited at Oct. 10, 2017).

ⁱⁱ In response to NARAL Pro-Choice America's Survey of Attorneys General choice positions for the publication *Who Decides? A State-by-State Review of Abortion & Reproductive Rights*, Pryor responded that the statement that best reflects his views was, "Abortion should be legal only when the life of the woman is endangered," although he had the option to select the statement, "Abortion should be legal only when the life of the woman is endangered or in cases of rape or incest." On file with NARAL Pro-Choice America.

ⁱⁱⁱ Bill Pryor, Federalism and the Court: Do Not Uncork the Champagne Yet, Remarks before the National Federalist Society, Washington D.C., Oct. 16, 1997.

^{iv} Brett Talley, "Who Donald Trump should appoint to the Supreme Court," CNN Opinion, available at <http://www.cnn.com/2016/11/14/opinions/who-trump-should-appoint-supreme-court-talley/index.html> (last visited at Oct. 10, 2017).

^v "Ask the Author," GoodReads, available at https://www.goodreads.com/author/show/4994753.Brett_J_Talley (last visited Oct. 10, 2017).

^{vi} Ben Terris, "Meet the ghost hunter and horror novelist who writes Sen. Rob Portman's speeches," *Washington Post* (Dec. 8, 2014), available at https://www.washingtonpost.com/lifestyle/style/meet-the-ghost-hunter-and-horror-novelist-who-writes-sen-rob-portmans-speeches/2014/12/08/64b8bad2-7bd0-11e4-84d4-7c896b90abdc_story.html?utm_term=.bc0770068378 (last visited Oct. 10, 2017).



Brett Joseph Talley

President Trump nominated Brett Talley to serve on the U.S. District Court for the Middle District of Alabama on September 7, 2017. Talley is anti-choice.

Career

- Bachelor of Arts, University of Alabama, 2004
- Juris Doctorate, Harvard Law School, 2007
- Associate, Gibson, Dunn & Crutcher, 2007-2008
- Clerk, Judge L. Scott Coogler, U.S. District Court for the Northern District of Alabama, 2008-2010
- Clerk, Judge Joel Dubina, U.S. Court of Appeals for the Eleventh Circuit, 2010-2012
- Senior writer and researcher, Romney for President, 2012
- Speechwriter, Office of U.S. Senator Rob Portman (R-OH), 2013-2015
- Deputy Solicitor General, Office of the Alabama Attorney General Luther Strange, 2015-2017
- Deputy Assistant Attorney General, Office of Legal Policy, U.S. Department of Justice, 2017-present

Record on Choice-Related Issues

Court Cases

- During his short legal career, Talley participated in a case defending several anti-choice Alabama laws: a measure that subjected abortion providers to burdensome restrictions not applied to other medical professionals, a measure prohibiting the state from issuing a health center license to any abortion clinic within 2,000 feet of a public school, and a ban on the most common method of second-trimester abortion without an adequate exception to protect women's health.¹ The district court enjoined the state from enforcing all three.

Notable Information

- In a CNN op-ed before the 2016 presidential election, Talley urged support for Donald Trump “if you want justices who adhere to the Constitution [and] laws that respect unborn life.” Talley argued that “Hillary Clinton has committed acts that would have resulted in the prosecution of ordinary citizens” and supporting her would signify “support [for] late-term abortion on demand.”² Following the election, Talley urged Trump to appoint anti-choice Judge Bill Pryor of the Eleventh Circuit Court of Appeals,³ an activist juror who opposes legal abortion even cases of rape or incest⁴ and called *Roe* the “worst abomination in the history of constitutional law,”⁵ to the Supreme Court. Talley minimized the impact of a radical Pryor nomination by arguing that it would simply be replacing one conservative for another: “For instance, if same-sex marriage came to the court again, the vote count would be exactly the same.”⁶

- As president of Harvard Law School Republicans, Talley wrote several editorials critical of reproductive rights and marriage equality. In 2007, Talley wrote an editorial for the student newspaper in support of the presidential campaign of Massachusetts Governor Mitt Romney. Talley argued that Romney supported “family values,” noting that “Romney believes in the sanctity of life and has worked tirelessly to protect the institution of marriage from activist judges.”⁷ Talley also wrote an editorial after the 2006 elections where he argued that Democratic candidates only won by embracing conservative themes: “Where was the talk of... abortion, gay marriage, and feminism? It was not to be heard, replaced with pledges to eliminate the marriage penalty, slash the Alternative Minimum Tax, and balance the budget.”⁸

- In promoting one of his short stories, “The Reborn,”⁹ Talley acknowledged having “a lot of sympathy” for “the pro-life camp.”¹⁰ In another interview, Talley acknowledged that he did not support marriage equality.¹¹

- Talley is a member of the conservative Federalist Society.¹²

October 10, 2017

Notes

¹ *West Alabama Women’s Center v. Miller*, 217 F.Supp.3d 1313, 1318 (M.D.Ala. 2016).

² Brett Talley, “Trump, a vote for the forgotten people,” CNN Opinion (Oct. 20, 2016), available at <http://www.cnn.com/2016/10/20/opinions/clinton-trump-third-debate-roundup/index.html> (last visited Oct. 10, 2017).

³ Brett Talley, "Who Donald Trump should appoint to the Supreme Court," CNN Opinion, available at <http://www.cnn.com/2016/11/14/opinions/who-trump-should-appoint-supreme-court-talley/index.html> (last visited at Oct. 10, 2017).

⁴ In response to NARAL Pro-Choice America's Survey of Attorneys General choice positions for the publication *Who Decides? A State-by-State Review of Abortion & Reproductive Rights*, Pryor responded that the statement that best reflects his views was, "Abortion should be legal only when the life of the woman is endangered," although he had the option to select the statement, "Abortion should be legal only when the life of the woman is endangered or in cases of rape or incest." On file with NARAL Pro-Choice America.

⁵ Bill Pryor, *Federalism and the Court: Do Not Uncork the Champagne Yet*, Remarks before the National Federalist Society, Washington D.C., Oct. 16, 1997.

⁶ Brett Talley, "Who Donald Trump should appoint to the Supreme Court," CNN Opinion, available at <http://www.cnn.com/2016/11/14/opinions/who-trump-should-appoint-supreme-court-talley/index.html> (last visited at Oct. 10, 2017).

⁷ Brett Talley, "Mitt Romney: Proven Conservative Leadership," *The Harvard Law Record* (Feb. 8, 2007), available at <http://hlrecord.org/2007/02/mitt-romney-proven-conservative-leadership/> (last visited Oct. 10, 2017).

⁸ Brett Talley, "Conservative Values Triumph In Spite of Democratic Inroads," *The Harvard Law Record* (Nov. 9, 2006), available at <http://hlrecord.org/page/133/?p=9920> (last visited Oct. 10, 2017).

⁹ Brett Talley, "The Reborn," in *JournalStone's DoubleDown Series Book 4* (2014).

¹⁰ "Ask the Author," GoodReads, available at https://www.goodreads.com/author/show/4994753.Brett_J_Talley (last visited Oct. 10, 2017).

¹¹ Ben Terris, "Meet the ghost hunter and horror novelist who writes Sen. Rob Portman's speeches," *Washington Post* (Dec. 8, 2014), available at https://www.washingtonpost.com/lifestyle/style/meet-the-ghost-hunter-and-horror-novelist-who-writes-sen-rob-portmans-speeches/2014/12/08/64b8bad2-7bd0-11e4-84d4-7c896b90abdc_story.html?utm_term=.bc0770068378 (last visited Oct. 10, 2017).

¹² U.S. Senate Committee on the Judiciary Questionnaire for Brett Joseph Talley, at 5.