



May 22, 2018

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Grassley, Ranking Member Feinstein, and Committee Members:

On behalf of the hundreds of thousands of members of People For the American Way, we write with deep concerns about the nomination of Britt Cagle Grant of Georgia to be a circuit judge on the Eleventh Circuit Court of Appeals. Despite her youth and relatively short time practicing law, she has been added to President Trump's list of potential Supreme Court nominees.ⁱ Therefore, it is critically important for the committee to use this opportunity to question her about her record, her approach to interpreting the law, and her willingness and ability to prevent her personal ideological views from affecting her judicial decisions.

As a threshold matter, Grant's presence on Trump's Supreme Court list raises concerns about her qualifications, since the president promised to apply a litmus test to any high court nominee: opposition to *Roe v. Wade* and the constitutional right to abortion.ⁱⁱ Senators should determine what conversations, if any, Grant has had about her views on reproductive rights with the president, any member of his administration, or individuals who advise the administration on judicial nominees (such as members of the Federalist Society).

Our nation's courts exist to protect our legal rights, and they are perhaps never more important than when a majority seeks to curtail a core constitutional right. Those to whom we entrust the solemn responsibility of a lifetime judicial position must recognize that the liberty protected by the Fifth and Fourteenth Amendments is expansive—and that it includes the right of women to make their own reproductive choices.

Senators must also ascertain how Grant would approach a variety of other important legal issues. President Trump's judicial nominees all testify that they will follow precedent but refuse to elaborate in any meaningful way on *how* they would approach that task. Important legal cases are rarely identical to the relevant precedents, and judges who apply the same precedent in a case often disagree on the result nonetheless. Similarly, judges can and do disagree on what “the plain meaning” of a statute is.

Especially because Grant could be the next Supreme Court nominee before the Judiciary Committee, it is particularly important that senators not accept evasive answers to questions that past nominees have answered.

Grant is only 40 years old, and she graduated from law school only 11 years ago, making her consideration for the Supreme Court surprising and unusual. However, given this administration's crusade to transform our federal judiciary into a bastion of far right ideology, it

could very well be that they have reason to expect Grant's judicial decisions to be consistent with the very conservative legal positions she has taken during her career.

Like all judicial nominees, she must prove to the Senate that she is qualified for the position. A substantial part of that task is providing evidence that she will not use the bench to advance her clear ideological agenda, and that she will be independent of partisan interests.

Grant has spent a significant portion of her career using her legal training and abilities to further a sharply conservative legal agenda. She spent several years with the Georgia attorney general's office, first as counsel for legal policy and then as solicitor general.ⁱⁱⁱ Through that office, she helped the state, either through litigation or amicus briefs:

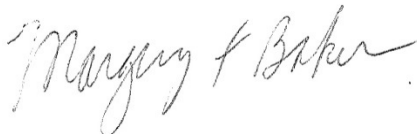
- support industry's efforts to weaken the Endangered Species Act;^{iv}
- defend a state law prohibiting abortion after 20 weeks;^v
- argue that same-sex couples' right to marry is not protected by the U.S. Constitution;^{vi}
- argue that Title IX permits schools to discriminate against transgender children;^{vii}
- attack the legality of President Obama's Deferred Action for Parents of Americans (DAPA) program;^{viii}
- claim that the coverage formula for preclearance under the Voting Rights Act violated the Constitution;^{ix} and
- support Arizona's discriminatory proof of citizenship requirement for voter registration.^x

In 2017, Grant was appointed to one of two new seats on the Georgia Supreme Court created by the Appellate Jurisdiction Reform Act of 2016, which was criticized as a partisan politicization of the state judiciary: By creating new judgeships, the Republican legislature and governor were able to make Republican-appointed justices a majority on the court.^{xi}

And now President Trump, who showed his disdain for an independent judiciary even before he was elected, has selected Grant for a prestigious seat on the Eleventh Circuit.

We are very concerned about her nomination, and we hope to learn more about her record and her approach to the law at her hearing.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ "President Donald J. Trump's Supreme Court List," White House, Nov. 17, 2017, <https://www.whitehouse.gov/briefings-statements/president-donald-j-trumps-supreme-court-list>.

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- ⁱⁱ "Trump promises to appoint anti-abortion Supreme Court justices," The Hill, May 11, 2016, <http://thehill.com/policy/healthcare/279535-trump-on-justices-they-will-be-pro-life>.
- ⁱⁱⁱ Britt Grant Questionnaire for Judicial Nominees, Senate Judiciary Committee, <https://www.judiciary.senate.gov/download/grant-sjq>.
- ^{iv} Id. at 43, citing Building Industry Association of the Bay Area v. Department of Commerce, 792 F.3d 1027 (9th Cir. 2015) and Alaska Oil & Gas Association v. Jewell, 815 F.3d 544 (9th Cir. 2016).
- ^v "Judge rejects challenge to state's 'fetal pain' abortion law," Atlanta Journal-Courier, Aug. 13, 2016, <https://www.ajc.com/news/local/judge-rejects-challenge-state-fetal-pain-abortion-law/rOWQw1E7Wb50EGPIrMNWMJ>.
- ^{vi} Questionnaire at 42, citing Obergefell v. Hodges, 135 S. Ct. 2584 (2015).
- ^{vii} Id. at 43, citing Gloucester County School Board v. G.G., certiorari denied 137 S. Ct. 1239 (2017).
- ^{viii} Id. at 42, citing United States v. Texas, 136 S. Ct. 2271 (2016).
- ^{ix} Id. at 41, citing Shelby County v. Holder, 570 U.S. 529 (2013).
- ^x Id., citing Kobach v. U.S. Election Assistance Commission, 772 F.3d 1183 (10th Cir. 2014).
- ^{xi} "Republicans are Using Long-Forbidden Tactics to Chip Away at Judicial Independence," Ian Millhiser, ThinkProgress, Feb. 9, 2018, <https://thinkprogress.org/gop-war-judicial-independence-b4a306122cca>.