

June 19, 2018

Dear Senator,

On behalf of Alliance for Justice, a national association representing 130 groups committed to justice and civil rights, I write to oppose the confirmation of Britt Grant to the United States Court of Appeals for the Eleventh Circuit.

Like a vast majority of Trump's nominees, Grant is a member of the Federalist Society, where she serves on the Atlanta Chapter Executive Board. While Grant has just over one year of judicial experience on the Georgia Supreme Court, her record working at the Office of the Attorney General, including as Solicitor General of Georgia, shows that, if confirmed, she will undermine critical rights and legal protections.

Grant is on President Trump's short list for the Supreme Court which guarantees she meets the President's litmus test of someone who will "automatically" overturn *Roe v. Wade*. As Solicitor General of Georgia, Britt Grant fought to restrict women's reproductive health by expressing support for a "fetal pain" law passed by the Georgia legislature that made it illegal for doctors to perform abortions pre-viability. She also joined states challenging the Affordable Care Act and worked to eliminate access to contraception for millions of women.

Moreover, she opposed equality for LGBTQ Americans, fighting marriage equality and efforts to protect transgender students. She also worked to undermine the Voting Rights Act and fought collective bargaining for public sector workers.

Illustrative of Grant's efforts to undermine the Constitution, in a case before the Supreme Court her office, under her leadership, defended purposeful racial discrimination in jury selection. In the case of Timothy Foster, prosecutors had highlighted names of prospective black jurors on the jury venire and compared black prospective jurors, noting "if it comes down to having to pick one of the black jurors, [this one] might be okay." Prosecutors also had a document titled "Church of Christ" and a notation that said "NO. No Black Church." The questionnaires that had been completed by several black jurors all had the juror's race circled. Not surprisingly, prosecutors got their all-white jury. The prosecutor then told that all-white jury at trial to vote for the death penalty for Foster "to deter other people out there in the projects."

In a 7-1 opinion, written by Chief Justice Roberts, the Supreme Court reversed the conviction. The Chief Justice explicitly called out the Georgia's prosecutors' "shifting explanations, the misrepresentations of the record, and the persistent focus on race in [their] file." Roberts was "left with the firm conviction that" the removal of African Americans was "motivated in substantial part by discriminatory intent" and said that "[t]wo peremptory strikes on the basis of race are two more than the Constitution allows."

Justice Kagan said at oral argument- “Isn’t this as clear a *Batson* violation as a court is ever going to see?” As Solicitor General, Grant could have admitted error, stood for the Constitution, as articulated in *Batson* and insisted that Mr. Foster receive a fair trial consistent with the equal protection of our laws. But, instead she was so untroubled by the prosecutor's actions that she approved defending the case going to the Supreme Court.

As the Senate Judiciary Committee reviews the troubling positions Grant took in the attorney general’s office, it’s important to note that Senate Republicans have previously articulated their belief that legal work done in an official government capacity is entirely subject to scrutiny as part of the judicial nomination process. As now-Judiciary Committee Chairman Chuck Grassley said in opposing Caitlin Halligan, then Solicitor General of New York, to be a judge on the D.C. Circuit, “Some of my colleagues have argued that we should not consider this aspect of [Caitlin] Halligan’s record, because at the time she was working as the Solicitor General of New York. But, no one forced Ms. Halligan to approve and sign this brief.”

Likewise, as Sen. Ted Cruz stated in May 2018, opposing Mark Bennett’s nomination to the Ninth Circuit based on Bennett’s work as Hawaii Attorney General, “[Bennett’s] record as Attorney General of Hawaii, I believe, represents an advocacy position that is extreme and inconsistent with fidelity to law.”

As detailed more fully in our report on her nomination issued prior to her hearing, which can be found at the following link, <https://www.afj.org/our-work/nominees/britt-grant>, Grant’s record in the attorney’s general’s office represents an “advocacy position that is extreme.” We ask the Judiciary Committee to oppose Britt Grant for the Eleventh Circuit Court of Appeals.

Sincerely,



Nan Aron