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February 4, 2020

U.S. Senate
Washington, DC 20510

Dear Senator:

On behalf of our 3 million members and the 50 million students they serve, we strongly urge you to VOTE NO on Andrew Brasher’s nomination to the U.S. Court of Appeals for the Eleventh Circuit due to his career-long hostility to civil rights, educational equity, and workers’ rights. Votes associated with this issue may be included in NEA’s Report Card for the 116th Congress.

We are particularly concerned that, if confirmed, Mr. Brasher would:

- **Oppose efforts to promote racial equity in education.** At his district court nomination hearing, Mr. Brasher would not say whether he believes *Brown v. Board of Education* was correctly decided.¹ Although Mr. Brasher later recanted, his initial hesitation reflects a career-long lack of commitment to racial equity. He defended Alabama’s illegal racial gerrymandering schemes in court¹ and fought to eliminate the Voting Rights Act, arguing that racism has “faded away.”²
- **Threaten the civil rights of LGBTQ students and educators.** Mr. Brasher has long advocated against the civil rights of LGBTQ Americans, arguing that states have a legitimate interest in banning same-sex marriages and that businesses should have the right to refuse service to LGBTQ customers.³ He also maintains that “[S]exual relationships between men and women—and only such relationships—have the ability to provide children with both their biological mother and their biological father in a stable family unit.”⁴
- **Undermine immigrant students’ constitutional right to an education.** Mr. Brasher urged the Supreme Court to review a lower court decision striking down an Alabama law that greatly limited the rights of undocumented immigrants—most notably, by

¹ *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015).

² Brief of State of Alabama as Amicus Curiae Supporting Petitioner, p. 1, *Shelby County v. Holder*, 570 US 529 (2013), https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-96_pet_amcu_soa.authcheckdam.pdf.

³ Brief of Alabama, Arizona, Kansas, Michigan, Montana, Oklahoma, South Carolina, and Virginia as Amici Curiae Supporting Petitioner, *Elane Photography v. Willock*, 309 P.3d 53 (N.M. 2013), *cert. denied*, 572 U.S. 1046 (2014), <http://www.adfmedia.org/files/ElaneAmicusStates.pdf>.

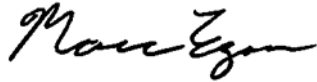
⁴ Brief of Amicus Curiae State of Alabama In Support of Respondents, p. 8, *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015), http://sblog.s3.amazonaws.com/wp-content/uploads/2015/04/14-556_State_of_Alabama.pdf.

unconstitutionally ordering public schools to determine the citizenship status of their students.⁵ Mr. Brasher also displayed animosity toward immigrants when he directed Alabama's efforts to deny noncitizens representation in the U.S. Census.⁶ In addition, he supported an Arizona law, rejected by the Supreme Court, that would have required voters to show proof of citizenship.⁷

- **Limit protections for workers and unions.** As Solicitor General of Alabama, Mr. Brasher defended an Alabama law that retaliated against the Alabama Education Association by conditioning members' ability to pay dues on ceasing to engage in political activity.⁸

For all these reasons, we strongly urge you to VOTE NO on Mr. Brasher's nomination to the U.S. Court of Appeals for the Eleventh Circuit.

Sincerely,



Marc Egan
Director of Government Relations
National Education Association

⁵ Petition for a Writ of Certiorari, *Alabama v. U.S.*, 133 S. Ct. 2022 (2013).

⁶ Complaint, *State of Alabama et al. v. United States Dep't of Commerce*, No. 2: 18-cv-00772-RDP (N.D. Ala.), https://www.brennancenter.org/sites/default/files/legal-work/Alabama_v_Dept-ofCommerce_Complaint.pdf.

⁷ Brief of Alabama, Georgia, Kansas, Michigan, Oklahoma, and Texas as Amici Curiae Supporting Petitioners, *Arizona v. Inter Tribal Council of Arizona*, 133 S. Ct. 2247 (2012), https://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs-v2/12-71_pet_amcu_agkmot.authcheckdam.pdf.

⁸ *Ala. Educ. Ass'n v. Bentley*, 663 F. App'x 766 (11th Cir. 2016), https://www.afj.org/wp-content/uploads/2020/01/Ala.-Educ.-Ass_n-v.-Bentley_-663-Fed.-Appx.-766.pdf.