



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
- After his confirmation hearing, it was revealed that Talley had failed to disclose more than 16,000 blog posts on a University of Alabama sports fan site, TideFans.com. Many of the posts were inflammatory, but the following were especially notable:
 - Talley wrote, "While I can point to any number of decisions, both at the Supreme Court level and below, that I believe are wrong, very few of them are indefensible when it comes to an interpretation of the Constitution. *Roe v. Wade* and *Miranda* are probably the worst of the offenders, but that court is long gone, thank God."¹²
 - Of the since-disproven 2015 allegations against Planned Parenthood and the accompanying discredited videos, Talley said, "I watched the videos for the first time recently. I was stunned. I expected them to be bad, but they are stunningly so. And the whole 'they were edited' thing is a lie. You can watch the entire videos without any problem."¹³
 - In a post about the death penalty, he wrote, "death row cases with an actual innocence claim are kind of like abortions based on rape, incest, or the life of the mother. They certainly happen, but the whole debate shouldn't turn on them."¹⁴

- Of equal marriage, Talley wrote, “It’s an absurd constitutional argument that the court is going to accept anyway.” He continued, “It’s amazing to me that a position which a decade ago was well in the minority and which just three years ago Barack Obama (supposedly) opposed is now going to be declared an inviolable right enshrined in the constitution [sic], presumably in a 14th Amendment that was ratified over a hundred years ago. It boggles the mind.”¹⁵
- Talley is a member of the conservative Federalist Society.¹⁶

November 21, 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 Mark Joseph Stern, *Trump Judicial Nominee Brett Talley Appears to Have Called Roe v. Wade Indefensible*, SLATE, Nov. 15, 2017, at http://www.slate.com/blogs/the_slatest/2017/11/15/trump_judicial_nominee_brett_talley_appears_to_reject_roe_v_wade.html (last visited Nov. 21, 2017).

¹³ Mark Joseph Stern, *Trump Judicial Nominee Brett Talley Appears to Have Called Roe v. Wade Indefensible*, SLATE, Nov. 15, 2017, at http://www.slate.com/blogs/the_slatest/2017/11/15/trump_judicial_nominee_brett_talley_appears_to_reject_roe_v_wade.html (last visited Nov. 21, 2017).

¹⁴ Jeremy Stahl, *Trump Nominee Brett Talley's Apparent Thoughts on Capital Punishment: "Just Shoot Them,"* SLATE, Nov. 20, 2017, at http://www.slate.com/blogs/the_slatest/2017/11/20/trump_nominee_brett_talley_s_apparent_thoughts_on_capital_punishment_just.html (last visited Nov. 21, 2017).

¹⁵ Brett Talley (username BamainBoston), *Re: Jeb Bush, Constitution doesn't grant a "right" to gay marriage*, TIDEFANS.COM, May 20, 2015, at <https://www.tidefans.com/forums/showthread.php?t=246862> (last visited Nov. 21, 2017).

¹⁶ U.S. Senate Committee on the Judiciary Questionnaire for Brett Joseph Talley, at 5.