

ALLIANCE FOR JUSTICE SNAPSHOT

*Trump's Supreme Court Shortlist:*

**Britt Grant**





Trump's Supreme Court Shortlist:

# Britt Grant

*Britt Grant, currently a judge on the U.S. Court of Appeals for the Eleventh Circuit, is on President Trump's shortlist for the Supreme Court. Prior to her nomination, she served as Solicitor General of Georgia and, for less than two years, a justice on the Georgia Supreme Court.*

## Access to Healthcare

Trump has explicitly stated he will nominate judges who are hostile to the Affordable Care Act (ACA). Trump [said](#), "my judicial appointments will do the right thing unlike Bush's appointee John Roberts on ObamaCare." Grant meets this litmus test. As Solicitor General, she challenged the Affordable Care Act, filing a [brief](#) that, had she been successful, would have eliminated critical tax subsidies for millions of Americans in 34 states. The Supreme Court denied certiorari in January 2015.

## Voting Rights

When the Supreme Court was considering [Shelby County v. Holder](#), Grant assisted with an amicus brief for six states, including Georgia, in support of gutting the Voting Rights Act. Ultimately, the Supreme Court struck down a key portion of the Act in a 5-4 decision.

Grant also assisted with a [brief](#) in support of a law that required documentary proof of citizenship in order to register to vote. According to the League of Women Voters, the requirement "harmed voter registration drives and undermined congressional efforts to provide access to the ballot in federal elections[.]" The Tenth Circuit ultimately [ruled](#) in favor of the Election Assistance Commission's decision not to adopt this requirement because it was unnecessary.

## Reproductive Rights

President Trump has said he will only put justices on the Supreme Court who will pass his litmus test of overturning *Roe v. Wade*. Trump [said](#) overturning *Roe* "will happen automatically... because I am putting pro-life

justices on the court.” Grant meets this test.

As Solicitor General, Grant [defended](#) a “fetal pain” law passed by the Georgia legislature in 2012. The law made it illegal for doctors to perform abortion after 20 weeks of pregnancy, with a few exceptions. The ACLU represented three obstetricians who challenged the law, arguing that since a fetus is not viable at 20 weeks, the Georgia law violates the Constitution. A Fulton County judge dismissed the lawsuit. Grant, then Solicitor General, [commented](#) to the judge, “We think your order was correct and we expect it will be upheld.”

While working for the Office of the Georgia Attorney General, Grant also [worked](#) on an amicus brief supporting an Indiana law that blocked Medicaid reimbursements for health providers that provide abortion care. The Seventh Circuit Court of Appeals [blocked](#) enforcement of the law, noting that Medicaid regulations give program participants the power to select their own health care provider.

Grant filed a [brief](#) on behalf of Hobby Lobby in *Sebelius v. Hobby Lobby Stores Inc.* Similarly, Grant assisted with an amicus [brief](#) in *Conestoga Wood Specialties Corp. v. Sebelius* (which was linked with *Hobby Lobby*). The cases sought to establish a right of for-profit corporations to cite religious grounds for denying employees insurance coverage for contraception.

## LGBTQ Equality

As Solicitor General, Grant helped with a brief in [Obergefell v. Hodges](#). According to the [brief](#), defining marriage as between a man and a woman does not violate the Constitution’s guarantee of equal protection because “states may rationally structure marriage around the biological reality that the sexual union of a man and a woman — unique among all human relationships — produces children[,]” and because “States may rationally place the man–woman definition in their constitutions — as many States have done — to ensure that the definition of marriage is altered only through the consensus of their citizens, and not through judicial interpretation.”

Grant also worked on Georgia’s brief in *Gloucester County School Board v. G.G.*, where she challenged the federal government’s guidelines calling for transgender students to be permitted to use facilities that conform to their gender identity.

## Education

When Grant was Solicitor General, she fought against collective bargaining rights for public sector workers, including teachers. In [Friedrichs v. Cal. Teachers Ass’n](#), Grant assisted with an [amicus brief](#) on behalf of Michigan and eight other

states, including Georgia. The brief argued that the Supreme Court should overrule [Abood v. Detroit Board of Education](#), which held that non-members in a public sector union could be assessed union fees to cover the cost of collective bargaining and other union services. Grant's brief noted that "it is time to abandon the meaningless distinction between collective bargaining and other political activity." The Supreme Court affirmed the Ninth Circuit's decision 4–4. It has since overturned *Abood* in [Janus v. AFSCME](#).

After joining the Eleventh Circuit, Grant [sided](#) with a school that had failed to fully implement an individualized education program ("IEP") for L.J., a middle school student with autism. The Individuals with Disabilities Education Act ("IDEA") requires schools to implement IEPs for students with disabilities. After L.J.'s school stopped following all the sections of his IEP, his mother filed an IDEA claim. An administrative judge sided with L.J.'s mother, finding that the school board was not meeting all the requirements of L.J.'s IEP. On appeal, Grant wrote a 2–1 decision in favor of the school. According to Grant, the school's failure to follow through with all of the sections of L.J.'s IEP was not a violation of the IDEA. As a result of her decision, it will be more difficult for students with disabilities to challenge schools that do not meet their legally protected educational needs.

## Civil Rights

Grant joined a [decision](#) authored by Judge Kevin Newson, another Trump appointee, that makes it much harder for employees to hold businesses accountable for workplace discrimination. The case involved Jacqueline Lewis, a black detective for Union City, Georgia, who was advised by her doctor not to participate in a training on using a Taser gun because it involved receiving a five-second Taser shock and Lewis had recently had a heart attack. As a result, she was placed on unpaid leave and then fired after 21 days. Lewis filed a lawsuit alleging race and gender discrimination. In response to Union City's motion to dismiss, she identified two white men who were given 90 days of leave when they were unable to pass employment training tests. Even though Lewis had met her initial burden by showing that she was treated differently than similarly situated people of a different race and gender, the district court dismissed the case without giving Lewis a chance have her case heard by a jury, and Grant voted to affirm. The dissent highlighted how this decision was contrary to Supreme Court precedent with regard to how courts are supposed to consider civil rights cases. As the dissent noted, it "drops an anvil on the employer's side of the balance."

Grant also voted to [dismiss](#) a lawsuit brought by the NAACP after the state legislature nullified a Birmingham ordinance that raised the local minimum wage from \$7.25 to \$10.10. The lawsuit argued that the state law, passed by a majority-white Alabama legislature, purposefully discriminated against Birmingham's black-majority city council and citizens. After a panel on the

Eleventh Circuit ruled to allow the case to go forward, Grant joined a majority of the full court to reverse the decision on the grounds that the NAACP and other plaintiffs, including two African-American workers who were employed in Birmingham, lacked standing to sue.

Grant [wrote](#) an opinion throwing out civil rights claims brought by a woman who was fired two days after she reported race- and sex-based discrimination to her company's human resources (HR) department. According to Belinda Martin, her boss, Jerry Hogan, would frequently "scream profanities," "kick chairs, throw bottles, and bang on the table" during their meetings together. After one particularly tense meeting, Martin told her HR director that she felt she was being discriminated against because her white male colleagues were not treated this way. When Martin was fired two days later, she brought a lawsuit alleging that she had been retaliated against in violation of Title VII. On appeal, Grant held that there was not enough evidence for a jury to conclude that Hogan had knowledge of Martin's discrimination complaint before he fired her. In dissent, however, Judge Jordan pointed out that there was ample evidence to support this finding, including a previous discrimination complaint that Martin had filed against Hogan with the EEOC, and an email from the vice president of HR to Hogan, which stated that Martin felt "targeted" by him.

As Solicitor General, Grant worked on a [brief](#) in support of the prosecutor who was accused of striking black jurors from the jury pool on the basis of their race in violation of *Batson v. U.S.* Despite the fact that prosecutors had highlighted names of prospective black jurors on the jury list, with a legend indicating that highlighting "represents blacks" and compared black prospective jurors, the brief argued that Timothy Foster had "failed in his burden to show purposeful discrimination in the jurors excusals." In an opinion by Chief Justice Roberts, the Supreme Court held that the Supreme Court of Georgia had [erred](#) by denying the *Batson* claims because Foster had established purposeful discrimination.

## Criminal Justice

Grant assisted with an [amicus brief](#) on behalf of Indiana and several other states, including Georgia, which argued that a trial court could not consider juror testimony after two jurors reported that a third juror made a number of biased statements about the defendant's Mexican ethnicity. Grant's brief claimed that "states with no-impeachment rules permissibly trust the deliberative process to expose and address bias, rather than unrealistically seek to perfect deliberations by undoing verdicts based on juror testimony." In an opinion by Justice Kennedy, the Supreme Court [held](#) that "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment requires that the no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee."



As Solicitor General, Grant worked on a [brief](#) in which Georgia supported Oklahoma's execution method, involved in the botched execution of Clayton Lockett, who for 43 minutes after being injected with a drug suffered in excruciating pain before dying. The brief argued that Oklahoma's method was "practically painless," even though evidence suggested that, in Justice Kagan's words, it felt "like being burned alive."

During her brief stint on the Georgia Supreme Court, Grant also issued a number of troubling decisions on criminal justice issues. In [City of Richmond Hill v. Maig](#), Grant ruled for a police officer who shared photographs of Sydney Sanders' attempted suicide with his daughter, who then shared them at school. Sanders, who was 14 years old, was distraught at the photos being circulated, and later committed suicide. The victim's family filed a wrongful death suit against the police officer, and Grant ruled that the case could not even go before a jury, even though the officer knew of the prior suicide attempt. Judge Clarence Seeliger dissented, arguing that "a jury could find that [the police officer] should have known that if the pictures of Sanders's self-inflicted wounds were disseminated that it was 'probable' that Sanders would again attempt suicide, especially given that she had attempted suicide just the previous month."

In [Barnett v. Caldwell](#), Grant ruled that a teacher was entitled to immunity from a wrongful death suit filed by the parents of a student who had died during "horseplay" after the teacher left her classroom unsupervised. Grant authored the majority opinion, finding that the parents could not prove that the school's policy of never leaving students alone in the classroom unsupervised was not "so clear, definite, and certain in directing [the teacher's] actions that it established a ministerial duty requiring no exercise of discretion whatsoever." In a footnote, Grant went far beyond the facts of the case, stating, "A duty is either discretionary or not, and an official cannot alter that fact by performing it well, poorly, or not at all." Judge Melton concurred in the decision, writing separately to criticize Grant's dicta in the footnote, noting that "[f]ar reaching (and, in this case, overly broad) rules like the one proposed by the majority should not be created in dicta, especially in an area of the law that requires an in-depth consideration of the law and facts on a case-by-case basis."

Once confirmed to the Eleventh Circuit, Grant continued to issue troubling criminal justice decisions. In [U.S. v. Johnson](#), she reversed a decision that barred the use of evidence that had been unlawfully seized by the police. The police had stopped Paul Johnson and searched him. Under *Terry v. Ohio*, law enforcement can stop an individual without probable cause or a warrant and frisk them, but their search is limited to dangerous weapons. In this case, the police did not find a dangerous weapon on Johnson, but they did recover a bullet. They later recovered a weapon and brought charges against him. A district court and an Eleventh Circuit panel both agreed that the bullet was the result of an unlawful search; however, Grant later joined a majority to reverse the decision. A strongly worded dissent pointed out that the majority had eviscerated the narrow Supreme Court exception for allowing pat downs for

weapons without probable cause.

Grant also has a troubling record when it comes to holding law enforcement officers accountable for acts of excessive violence. In one case, she cast the deciding vote to [rule](#) that prison supervisors could not be held liable for an officer's excessive violence against a man who had just been arrested, even though they knew that the officer had rage issues. After Dennis Quinette was arrested, Officer Dilmus Reed passed him by the door of the County jail's intake cell. As Reed walked by, he attempted to close the door on Quinette, who put his hands up. Without warning, Reed then shoved Quinette to the ground, causing him to break his hip. He then dragged the injured Quinette back to his feet, causing him severe pain. Even though Reed's supervisors knew that Reed had a tendency to use inappropriate and excessive force, Grant found that they were protected by qualified immunity. In another case, Grant voted to [uphold](#) a decision that denied a prisoner the right to seek damages after he was touched in a sexually inappropriate manner by a prison guard and then placed in segregation when he threatened to file a complaint.

## Immigrants' Rights

As Solicitor General, Grant worked on amicus briefs in [U.S. v. Texas](#), which challenged expansions to Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans (DAPA). After the Fifth Circuit ruled in favor of the state of Texas, Georgia joined Texas's [brief](#) opposing Supreme Court review, which claimed that "respondents seek to protect their citizens from economic discrimination in favor of DAPA recipients[.]" After the Supreme Court granted certiorari, Grant worked on a [brief](#) that the state of Georgia signed onto warning that "DAPA will impose significant education, healthcare, and law enforcement costs on plaintiffs because it will cause additional aliens to remain in the country and consume these costly services."

On the Eleventh Circuit, when a citizen of Uzbekistan requested asylum and protection under the Convention Against Torture because his government considered him a terrorist and would subject him to torture as a result of his family's political ties, Grant [rejected](#) his request to reopen his case.

Grant also [affirmed](#) the denial of a U.S. citizen's request to sponsor his wife, ruling that she did not have jurisdiction to review the case even though there was clear precedent supporting her authority to do so. She similarly dissented from a decision that delayed the removal of an immigrant who had not been informed of his relief options by his immigration judge as required by law. In yet another case, she [denied](#) the asylum claim of a woman from El Salvador who fled to the U.S. after MS-13 killed her brother-in-law and threatened to kill her and the rest of her family.

## Gun Safety

After the Seventh Circuit [held](#) that a city ordinance prohibiting possession of AR-15 style weapons or large-capacity magazines did not violate the Second Amendment, Georgia joined other states and filed an [amicus brief](#) urging the Supreme Court to review the case. Grant's brief argued, "In case after case, the lower federal courts have steadily undermined *Heller*, and the time has come for this Court to intervene[]," and, "Each case that upholds a ban, however, poses an increasing threat to the policy in most States by suggesting that a federal ban could be constitutional. This Court's involvement is needed to reaffirm *Heller* and the efforts in most States to protect the Second Amendment rights of their citizens." Ultimately, the Supreme Court [denied](#) certiorari, with Judge Clarence Thomas, joined by Justice Antonin Scalia, dissenting.

## Environment

As Solicitor General, Grant helped lead several challenges against Environmental Protection Agency (EPA) safeguards that protect clean air and clean water. In 2016, Grant helped draft a [brief](#) in the D.C. Circuit case *West Virginia v. EPA*, challenging the Obama Administration's Clean Power Plan. As environmental advocates [explained](#), the CPP was projected to "cut the electric sector's carbon pollution by 32 percent nationally" and in addition "[e]conomists believe[d] that in 2030, the Clean Power Plan could save the country \$20 billion in climate related costs and deliver \$14 billion to \$34 billion in health benefits." This included preventing over 90,000 asthma attacks in children.

Grant also helped lead Georgia's challenge to an EPA effort to expand the definition of "waters of the United States." The EPA announced in 2015 that it was broadening the definition of "Waters of the United States" so that more bodies of water were protected by the CWA. The expansion only effected around [3%](#) of the nation's waterways. The [purpose](#) of the rule was to protect vital streams and wetlands that provide drinking water for over 117 million Americans, filter pollution, and reduce the impacts of flooding and erosion.

As Solicitor General, Grant repeatedly challenged designations under the Endangered Species Act. After the Ninth Circuit [upheld](#) the designation of sturgeon habitats, Grant assisted with an [amicus brief](#) that the state of Georgia joined in support of petitioners. The brief contended that the "Ninth Circuit's decision declaring certain critical habitat decisions immune from judicial review threatens to undermine the important cost-benefit analysis Congress built into the Endangered Species Act." The Supreme Court denied the petition for certiorari.

In another case, after the Ninth Circuit [held](#) that the designated critical habitat for polar bear denning was not overly broad, Grant worked on an [amicus brief](#) in support of petitioner's request for Supreme Court review. The brief argued that



the “Ninth’s Circuit’s expansive reading [of the Endangered Species Act] will impose significant costs on the States while doing little to nothing to conserve threatened and endangered species.” In 2017, the Supreme Court denied cert.