



# J. Michelle Childs

## Nominee for the United States Court of Appeals for the District of Columbia Circuit

On January 10, 2022, President Joe Biden [nominated](#) Judge J. Michelle Childs to the United States Court of Appeals for the District of Columbia Circuit. She is nominated to the seat being vacated by Judge David Tatel, who is retiring. Judge Childs has most recently distinguished herself as a judge on the U.S. District Court for the District of South Carolina. Before taking the bench, Judge Childs established expertise on labor and employment law in both private practice and state government. She also served as a state court judge in Columbia, South Carolina.

At the time of her confirmation to the District Court, Judge Childs was the third woman and third Black American to become a federal judge in South Carolina. If confirmed to the District of Columbia Circuit, she will bring a wealth of legal experience and important demographic diversity to the court.

### **Early Life and Education**

Judge Childs was born in Detroit, Michigan, in 1966. At age 13, she moved to South Carolina with her mother. She was the first person in her family to attend college, earning scholarships for both college and law school. She received her B.S. from the University of South Florida Honors College, cum laude, in 1988, and her J.D. from the University of South Carolina School of Law in 1991. Judge Childs also holds a M.A. from the University of South Carolina School of Business and an LL.M. from Duke University School of Law.

### **Legal Experience**

After law school, Judge Childs began her career as an Associate at Nexsen Pruet, LLC. Her primary practice areas included general litigation, employment and labor law, and domestic relations. Judge Childs represented clients ranging from individuals to governmental agencies and corporations and participated in approximately 25 trials during her tenure at the firm. She was named partner within nine years, becoming the first Black woman partner in a major law firm in the state of South Carolina.

Thereafter, Judge Childs received two gubernatorial appointments from Governor James H. Hodges. From 2000 to 2002 she served as Deputy Director for the South Carolina Department of Labor, Licensing and Regulation's Division of Labor. In this role, she administered the following programs: wages and child labor, Occupational Safety Health Administration (OSHA), OSHA voluntary programs, labor-management mediation, elevators and amusement rides, and migrant labor. From 2002 to 2006, Judge Childs served as Commissioner on the South Carolina Workers' Compensation Commission. As Commissioner,

Judge Childs adjudicated issues related to compensability, medical treatment, temporary disability benefits, and partial or permanent disability awards for employees who sustained workplace injuries. She also reviewed appeals from other commissioners' orders. Judge Childs' experience working for two state government agencies will suit her well on the D.C. Circuit, which features a heavy administrative law docket.

### **Judicial Experience**

From 2006 to 2010, Judge Childs served as a South Carolina Circuit Court Judge, the state's trial court of general jurisdiction. She was elected to serve as an at-large Circuit Court judge by the South Carolina General Assembly in 2006 and fulfilled the remaining three years of her predecessor's unexpired term. In 2009, the General Assembly re-elected her to the Circuit Court. Judge Childs distinguished herself on the state bench, serving as the Chief Administrative Judge for General Sessions, the state's Criminal Court, and a Chief Administrative Judge for the state's Business Court. In the state's criminal court, she initiated an effort to help clear a backlog of criminal charges that had languished for as long as three years without going to trial. Judge Childs also occasionally served as an Acting Justice for the South Carolina Supreme Court.

On December 22, 2009, President Obama [nominated](#) Judge Childs to a seat on the U.S. District Court for the District of South Carolina. Judge Childs' nomination garnered support from people across the ideological spectrum, including the support of both of South Carolina's Republican Senators, Lindsey Graham and Jim DeMint. She was eventually [confirmed](#) by the Senate by voice vote on August 5, 2010.

During her time on the District Court, Judge Childs has presided over nearly 5,000 cases and authored more than 2,500 opinions. Appeals have been filed in approximately 500 of those matters. In the vast majority of those appeals, the U.S. Court of Appeals for the Fourth Circuit has either dismissed the appeal or affirmed Judge Childs' decision. Her decisions have either been reversed or vacated in less than one percent of the cases she has presided over. Judge Childs has also presided over 61 trials that have gone to verdict or judgment. Of these trials, 50 were jury trials (25 criminal and 25 civil) and 11 were bench trials (two criminal and nine civil). Judge Childs has sat by designation on the Fourth Circuit several times, writing the majority opinions on several occasions.

Judge Childs' record on the District Court demonstrates that she is a fair, impartial jurist, dedicated to protecting the due process and fundamental rights of all litigants. The following cases are illustrative of her record.

### **CIVIL RIGHTS**

As a District Court Judge, Judge Childs has made key decisions protecting civil rights. For example, in [Bradacs v. Haley](#), Judge Childs ruled in favor of two women who sued to have South Carolina recognize their marriage performed in Washington, D.C. Judge Childs ruled the state's failure to recognize their marriage was unconstitutional. This was a landmark decision for marriage equality in South Carolina, even before the Supreme Court's *Obergefell*

decision legalized same-sex marriage throughout the country.

In [Middleton v. Andino](#) six registered South Carolina voters and the South Carolina Democratic Party sued the South Carolina State Election Commission, arguing that various state law election provisions were unconstitutional. Judge Childs struck down a law requiring voters to sign absentee-ballot envelopes in the presence of a witness for the November 2020 election, citing the severity of the COVID-19 pandemic. She reasoned that the challengers were “substantially likely” to be able to show that the combination of the witness requirement and the “unique risks posed by the COVID-19 pandemic” infringe on the challengers’ constitutional right to vote. Childs directed the state to “immediately and publicly inform” voters that the witness requirement is not in effect, including on websites and through social media. On appeal to the full [Fourth Circuit](#), a majority of the court upheld Childs’ decision. However, the Supreme Court ultimately overturned Judge Childs’ ruling, but made an exception for ballots cast before it acted and received within two days.

## **CONSTITUTIONAL LAW**

Judge Childs’ demonstrated command of nuanced constitutional law issues will be an asset to the D.C. Circuit. [S.C. Elc. & Gas Co. v. Randall](#) involved the failed construction by South Carolina Electric & Gas Company of two nuclear reactors. The company filed a lawsuit against the commissioners of the South Carolina Public Service Commission alleging various constitutional violations occurred when the South Carolina General Assembly passed legislation that eliminated the rate increases the company received to offset the construction costs. Judge Childs refused to enjoin the state law after determining the company could not show a likelihood of success on the merits of its constitutional claims. On appeal, the Fourth Circuit affirmed Judge Childs’ decision. As a result, the law went into effect and power bills fell by an average of more than \$22 per month for more than 700,000 South Carolina electric customers.

In [South Carolina v. United States](#), South Carolina sued the U.S. Department of Energy alleging violation of statutory obligations, which required the federal government to either (1) construct a mixed-oxide fabrication facility at the Savannah River Site and achieve specified production results or (2) remove metric tons of toxic plutonium from the site and provide assistance payments to the state. Judge Childs ordered the federal government to remove one metric ton of plutonium within two years, an important ruling protecting the environment. On appeal, the Fourth Circuit affirmed Judge Childs’ decision.

[Cahaly v. LaRosa](#) challenged South Carolina’s law prohibiting unsolicited consumer and political calls made by Automatic Dialing and Announcing Devices (ADAD). Judge Childs ruled that the anti-robocall statute was a content-based restriction on speech and therefore unconstitutional in violation of the First Amendment. On appeal to the Fourth Circuit, the court agreed that the statute was a content-based restriction and struck down

South Carolina's robocall prohibitions.

In [\*Rhoades v. Savannah River Nuclear Solutions\*](#), Judge Childs protected the health and safety of more than 5,000 workers by denying a motion to block a COVID-19 vaccine requirement enacted by the Savannah River Nuclear Solutions. In denying the motion, Judge Childs explained that the vaccine rules did not equate to the unlawful practice of medicine in South Carolina — a pillar of the plaintiffs' argument — and emphasized that no one was being forcibly vaccinated. Moreover, the plaintiffs did not meet the necessary burden to award a preliminary injunction.

## **CRIMINAL LAW**

During her time on the bench, Judge Childs has also adjudicated a significant number of criminal cases where she impartially and fairly applied the law while protecting the rights of defendants under the Constitution. For instance, in [\*United States v. Ceja-Rangel\*](#) Judge Childs expertly presided over a cartel kidnapping conspiracy case. Judge Childs conducted an 11-day jury trial, which resulted in a mistrial because the jury foreperson refused to convict either defendant. She then conducted a nine-day trial, resulting in a verdict of guilty on all counts. Both defendants appealed to the Fourth Circuit, which affirmed Judge Childs' sentencing.

## ***Professional Activities and Pro Bono Work***

Judge Childs is active with various local, state, and national bar organizations, as well as community organizations. She served as chair of the American Bar Association's Judicial Section, secretary of the Labor and Employment Section, and as a member of the Litigation Section's Committee on the American Judicial System. Judge Childs is a member of the American Law Institute, having served as an Advisor to the Restatement (Third) of Employment Law. Throughout her career as a practicing attorney and judge, she has lectured and served frequently on panels regarding litigation and trial techniques, courtroom practices and procedures, e-discovery, expert witnesses, evidence, and various topics for new lawyers.

As a District Court Judge, Judge Childs has mentored elementary, secondary, and law students from all walks of life. Additionally, she helped create the BRIDGE Program in the Columbia Division of the District of South Carolina, which provides rehabilitative services to federal defendants with substance abuse issues. As a practicing attorney, Judge Childs regularly represented individuals on a pro bono basis and provided legal advice at free legal clinics dedicated to promoting access to justice.