



# Beth Robinson

## Nominee for the United States Court of Appeals for the Second Circuit

*On August 5, 2021, President Biden nominated Beth Robinson, currently a justice on the Vermont Supreme Court, to the United States Court of Appeals for the Second Circuit, to replace Judge Peter Hall, who passed away earlier this year. Before her near decade on the Vermont Supreme Court, Robinson was one of the leading litigators in the state. She was also a pathbreaking attorney in the marriage equality movement. As part of this effort, Robinson served as lead litigator on one of the movement's first legal victories which led to Vermont becoming the first state to recognize civil unions. If confirmed, Robinson would be the first openly lesbian Court of Appeals Judge in the nation's history.*

### **Background**

Justice Robinson is a graduate of Dartmouth University and University of Chicago Law School, where she graduated Order of the Coif. After law school, Robinson clerked for Judge David Sentelle of the D.C. Circuit. Robinson then spent a short time at Skadden Arps's D.C. Office.

### **Legal Experience**

In 1993, Robinson relocated to Vermont and joined the law firm of Langrock Sperry & Wool, where she would spend the majority of her legal career and would eventually become a Partner. At Langrock, Robinson practiced family law, personal injury, employment law, and workers' compensation. Exemplary of her work, Robinson represented Paula Wood, a nurse at Fletcher Allen Health Care (FAHC), who was injured on the job and received disability benefits. After Wood became pregnant, FAHC tried to discontinue disability payments, arguing her inability to work was due to the decision to postpone surgery to address the workplace injury (her doctor recommended the surgery be postponed until the birth of her son). The Vermont Supreme Court ultimately ruled in favor of Wood, noting that the "work injury, not the pregnancy . . . accounted for her continuing disability." In 1995, Robinson also represented Robert Dalury, who sustained serious injuries when he collided with a metal pole that formed part of the control maze for a ski lift line. The ski resort Dalury sued tried to enforce a liability waiver on the back of his ski pass. However, Robinson was successful at convincing the Vermont Supreme Court that the waiver was not enforceable. The court held that "agreements which defendants require skiers to sign, releasing defendants from all liability resulting from negligence, are void as contrary to public policy." Robinson also served on the Vermont Department of Labor Workers' Compensation Advisory Board while with Langrock.

During her time at the firm, Robinson, pro bono, worked to advance LGBTQ+

rights in the state. In 1999, Robinson, on behalf of three same-sex couples who had been denied civil unions in Vermont – Stan Baker and Peter Harrigan, Holly Puterbaugh and Lois Farnham, and Nina Beck and Stacy Jolles – brought the seminal *Baker v. Vermont/Baker v. State* case that was one of the marriage equality’s first legal victories. She argued the case before the Vermont Supreme Court at age 34. The Court held for the couples, ruling that the state must provide the same benefits and protections to same-sex couples as heterosexual couples. Following the decision, the Vermont legislature recognized civil unions between gay couples, the first in the country. Robinson, who has also written extensively on LGBTQ+ equality, also successfully litigated cases involving [“second-parent adoption, the rights of nonbiological parents to child custody, and the custody rights of transgender parents.”](#) Langrock received the ABA’s Human Rights Hero award from the ABA for Robinson’s pathbreaking work.

In 2011, Robinson served as Counsel to Vermont Governor Peter Shumlin, advising the Governor and cabinet members on a range of legal issues including drafting and analyzing legislation, state regulations, requests for pardons, and ethical concerns. Gov. Shumlin then nominated Robinson to be a Justice on the Vermont Supreme Court and she was unanimously confirmed by the State Senate. Prior to her appointment, Robinson had also served as a Justice of the Peace in her hometown of Ferrisburgh, Vermont for eight years.

### ***Judicial Decisions***

Beth Robinson was sworn into the Vermont Supreme Court on November 28, 2011. Because Vermont has no intermediate appellate court, Justice Robinson has heard nearly 1,800 appeals during her decade on the Court. During this time, Robinson has had the opportunity to consider a wide variety of legal issues both criminal and civil. Illustrative of her record on the Court:

#### **CRIMINAL LAW**

In her time on the bench, Justice Robinson has adjudicated a significant number of criminal appeals where she has impartially and fairly applied the law while protecting the rights of defendants under the U.S. and Vermont Constitutions. For example, in [State v. Medina](#), Robinson, along with a majority of the Court, held that a Vermont statute requiring individuals arraigned on felony charges to provide DNA samples violated the Vermont Constitution’s search and seizure protections. In [State v. Bovat](#), Justice Robinson joined a dissenting opinion that would have held that law enforcement’s observation of a truck through a garage window fell outside of the plain view exception to the U.S. Constitution’s warrant requirement and thus should have been suppressed at trial. In [State v. Congress](#), Justice Robinson upheld a murder conviction, holding that a trial judge “correctly declined to instruct the jury that it could consider the evidence of defendant’s psychological condition as a basis for convicting [the defendant] of voluntary manslaughter.” In 2018, the Vermont Supreme Court became the first State Supreme Court to address the constitutionality of a statute criminalizing the disclosure of nonconsensual pornography (“revenge porn”). Justice Robinson wrote for a divided court, holding that Vermont’s law did

not violate the First Amendment. The Court applied a limiting construction to the statute and held that the law was narrowly tailored to advance the compelling governmental interest of protecting the privacy of individual's harmed by the nonconsensual disclosure. Ultimately, however, the case was remanded for the trial court to consider whether there was a *prima facie* violation of the statute in light of the Supreme Court's ruling.

Most recently in February, Justice Robinson joined the Court's *per curiam* [State v. Misch](#) decision holding that Vermont's Constitution recognizes an individual right to bear arms "not tied . . . to the context of a state militia." Max Misch was charged under a Vermont statute with two counts of unlawfully possessing a large-capacity magazine. As part of his defense, Misch argued that state's ban on large-capacity magazines violated the Vermont Constitution. While the Court agreed with Misch's contention that the state constitution protected individual gun ownership, the Court ultimately held that the Vermont regulation was a "reasonable regulation of the right of the people to bear arms for self-defense."

## **EMPLOYMENT LAW**

Her years of experience practicing employment law have informed her service on the Vermont Supreme Court and enriched the court's judicial decision making. Justice Robinson wrote for a unanimous court in [Town of Bennington v. Knight](#), ruling in favor of police officer Clay Knight in a suit against his former employer: Bennington, VT. Officer Knight's employment agreement required that, in exchange for being trained as an officer, he would repay his salary and benefits to the city if he failed to remain with Bennington's police department for three years. The Court held that his employment agreement directly conflicted with the salary provisions of the collective bargaining agreement between the City and Defendant's union and was thus unenforceable. In [Boynton v. ClearChoiceMD](#), Justice Robinson dissented from the Court's dismissal of Dawn Boynton's law suit against her former employer, ClearChoice MD. Ms. Boynton was fired from her job after she reported that her supervisor told her that it "would have been better to let [a suicidal patient] get hit by traffic." Her suit alleged that she was wrongfully terminated in a violation of ClearChoiceMD's covenant of good faith and fair dealing with its employees. The court dismissed the suit because the plaintiff was an at-will employee and had not shown the firing violated a public policy. Robinson would have held that there was an implied covenant in the company handbook for at-will employees to not be fired for reporting the behavior of supervisors.

## **ENVIRONMENT**

Vermont's rural character and conservation history has provided the state Supreme Court with many environmental law disputes in the last decade. In [In re Vermont Gas Systems, Inc.](#), Justice Robinson, writing for a majority of the Court, upheld a state board's decision to allow an installation of a natural gas pipeline through a public park as within the scope of the Board's authority and in line with the prior public use doctrine. In [In Re](#)

[Champlain Parkway Wetland Conditional Use Determination \(Fortieth Burlington LLC\)](#), Justice Robinson dissented from the majority opinion that dismissed a suit brought by a citizen group seeking a redetermination of the construction of a parkway that would affect local wetlands. Justice Robinson wrote that the majority's reading of the administrative determination at issue in the suit was "nonsensical" and the challenged provisions should be read jointly as to require a redetermination of the construction project's impact on the environment.

### ***Professional Activities and Accolades***

Alongside her litigation work for the marriage equality movement, Justice Robinson founded and directed a number of organizations dedicated to LGBTQ+ advancement, including the Vermont Freedom to Marry Task Force, Vermonters for Civil Unions, and the Vermont Fund for Families. Many of these organizations dissolved after Vermont legalized gay marriage in 2009 and Justice Robinson began serving in government.

Justice Robinson was recently inducted as a member of the prestigious American Law Institute as an adviser to the Restatement Third of the Law, Torts: Defamation and Privacy. She has also lectured at her alma mater Dartmouth College on family law and the Constitution.

Robinson has been involved in her local community by serving as President of the Addison County Humane Society and on the Vermont Girl Scout Council. She has also coached basketball at local elementary and middle schools and has volunteered with Vermont's Hospice program.