



J. Michelle Childs

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 South Carolina 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), 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. 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 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.

While on the South Carolina Circuit Court, Judge Childs also occasionally served as an Acting Justice for the South Carolina Supreme Court. For instance, she was an Acting Justice in [McCrea v. Gheraibeh](#), a civil lawsuit involving an attorney who exercised a peremptory strike against a Black juror because of "uneasiness" over the juror's dreadlocks. The trial judge determined the attorney's reason for striking the juror was race-neutral because of precedent allowing peremptory challenges based on jurors' hair. On appeal, a divided South Carolina Supreme Court — with Judge Childs joining the 3-2 majority — held that this was a race-based strike that violated Batson.

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 civil and 25 criminal) and 11 were bench trials (nine civil and two criminal). 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 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. Judge Childs explained that, "because the character and magnitude of the burdens imposed on the Plaintiffs in having to place their health at risk during the COVID-19 pandemic likely outweigh[s] the extent to which the Witness Requirement advances the state's interests in investigating voter fraud." 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. 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 the nuances of constitutional law will be an asset to the D.C. Circuit. [S.C. Elec. & Gas Co. v. Randall](#) involved South Carolina Electric & Gas Company's failed construction 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 electricity 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 that the federal government had violated its 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 violated the First Amendment. On appeal, the Fourth Circuit agreed with Judge Childs that the state's law violated the First Amendment.

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 request, 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. For instance, in [United States v. Ceja-Rangel](#) Judge Childs 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. In *Heyward v. Price*, an incarcerated individual, Mr. Heyward, brought a Section 1983 claim alleging excessive force by a correctional officer who sprayed him with pepper spray. Judge Childs accepted the magistrate judge's [recommendation](#), denying Mr. Heyward's motion for summary judgment and granting the correctional officer's motion for summary judgment. On appeal, the Fourth Circuit [affirmed in part and vacated in part](#), concluding that Judge Childs failed to consider whether the pepper spray amounted to more than de minimis force. The court remanded the case with instructions to apply the de minimis force standard. It has since been dismissed following a settlement.

In [Halcomb v. Ravenal](#), an incarcerated individual alleged due process violations when he was not given notice of a hearing before a correctional disciplinary committee. Judge Childs denied the prison official's motion for summary judgment based on qualified immunity. However, the Fourth Circuit [reversed](#), disagreeing with Judge Childs' conclusion that a state prisoner is entitled to fair notice of a security detention hearing. In [United States v. Goodwin](#),

Judge Childs determined at sentencing that Mr. Goodwin's prior convictions for possession with intent to distribute marijuana did not qualify as "controlled substance offenses" and declined to sentence him as a career offender. After Mr. Goodwin had already been sentenced, the Fourth Circuit decided [United States v. Furlow](#), which held that distribution of crack cocaine conviction constitutes a predicate for the armed career criminal and career offender enhancements under the sentencing guidelines. Based on Furlow, the Fourth Circuit [held](#) that Mr. Goodwin's prior marijuana convictions qualified as predicate offenses for purposes of the career offender guidelines and vacated Judge Childs' judgment.

In *United States v. Jackson*, Judge Childs sentenced Mr. Jackson as a career offender based on prior convictions for robbery and attempted robbery. He was sentenced to a term of 140 months of imprisonment. The Fourth Circuit [vacated and remanded](#), finding Judge Childs applied the incorrect standard to determine if the career offender sentencing enhancement should be applied and that Mr. Jackson's prior offenses were not "crimes of violence." On remand, Judge Childs re-sentenced Mr. Jackson to a term of 50 months of imprisonment. In *United States v. Whaley*, Judge Childs sentenced Mr. Whaley to a term of 262 months of imprisonment after he pleaded guilty to knowingly possessing firearms in furtherance of drug trafficking crimes. Subsequently, Mr. Whaley filed a motion to vacate his convictions, raising claims of ineffective assistance of counsel. Judge Childs denied the motion without a hearing. On appeal, the Fourth Circuit [held](#) that Judge Childs incorrectly dismissed the ineffective assistance of counsel claim without first holding an evidentiary hearing. Pursuant to the Fourth Circuit's ruling, Judge Childs held an evidentiary hearing and re-sentenced Mr. Whaley to the same term of imprisonment indicated in the original judgment. The Fourth Circuit dismissed Mr. Whaley's subsequent appeal.

Professional Activities and Pro Bono Work

Judge Childs' work outside the courtroom evinces an abiding commitment to the legal profession and her local community. 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 also a member of the American Law Institute, having served as an Advisor to the Restatement (Third) of Employment Law. Throughout her legal career, she has frequently presented on a variety of legal matters including courtroom practices and trial techniques e-discovery, and evidentiary hearings.

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.