



April 21, 2022

United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Durbin, Ranking Member Grassley, and Committee Members:

On behalf of our 1.5 million supporters nationwide, People For the American Way supports the nomination of Judge J. Michelle Childs to the D.C. Circuit Court of Appeals. She is an experienced judge who will make an excellent addition to this crucially important court.

Childs was born in Detroit and raised by her mother, who moved the family to South Carolina when she was 13. She became the first person in her family to have a college degree, graduating with honors from the University of South Florida Honors College. She went on to study law and business, graduating from both the University of South Carolina School of Law and USC's School of Business in 1991. She initially pursued private practice at the firm of Nexsen Pruet, one of the biggest firms in South Carolina. While there, she engaged in general litigation, employment and labor law, and domestic relations for individuals, governmental agencies, and corporations. Her skills and successes there led to her becoming a partner there – not only the first Black woman partner at that firm, but also the first woman partner at any prominent firm in the state.

In 2000, South Carolina Governor Jim Hodges appointed her Deputy Director of the Division of Labor of the South Carolina Department of Labor, Licensing, and Regulation. Two years later, he appointed her to the South Carolina Workers' Compensation Commission.

In 2006, she was elected by the state legislature to be a judge on the South Carolina Circuit Court, the state's trial court of general jurisdiction. She earned the admiration of Democrats and Republicans alike, and in 2009, the legislature voted unanimously to elect her to another term. Among the most notable of her cases during this time was one in which she sat as an acting justice of the South Carolina Supreme Court. One of the attorneys in a civil lawsuit had used a peremptory strike against a Black juror because of "uneasiness" about the juror's locs. The South Carolina trial judge allowed this as race-neutral, because precedent allows peremptory challenges based on jurors' hair. On appeal, a divided state supreme court (with Childs in the majority) reversed the lower court, ruling that the attorney had made an impermissible race-based strike.ⁱ

When President Obama nominated Childs to be a federal district judge in 2010, South Carolina Sen. Lindsey Graham spoke at her confirmation hearing about her skill and integrity:

[E]very lawyer that I know of who's appeared before her, regardless of their political persuasion or philosophy, has nothing but great things to say about Judge Childs as being fair, smart, courteous to lawyers, and those who appear before her feel like they're getting not only a fair experience, but it's been a rewarding experience. She will do a great job for the people of South Carolina as a District Court judge and we're just very proud of her.

She was confirmed by the Senate by voice vote in August 2010. In the more than ten years since then, Judge Childs has presided over nearly 5,000 cases, with fewer than one percent of them reversed on appeal. Her cases have been both criminal and civil, often of extreme complexity. For instance, she is currently presiding over multidistrict class action litigation in a data breach case involving 34 named plaintiffs from 20 states, alleging violations of numerous state and federal laws.ⁱⁱ In one notable case during the 2020 elections, South Carolina responded to the threat of COVID-19 by expanding access to absentee voting to all voters, but required that a witness be present and sign that voter's absentee voter envelope. Noting that this required voters to risk their health to exercise their right to vote absentee, Judge Childs blocked enforcement of the witness provision.ⁱⁱⁱ In another notable case, she ruled that South Carolina had a constitutional obligation to recognize out-of-state marriages of same-sex couples.^{iv}

Judge Childs has never lost sight of the vital role the judge plays in the lives of the American people. As she told a group of graduating USC students last year:

The beauty of the law is that it is at the center of every fundamental right and significant issue in our society. On a daily basis, my decisions directly affect the lives, liberties, and property of all parties appearing before me.^v

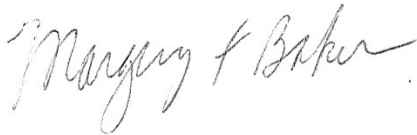
As one way to help ensure that everyone in her court has a fair hearing, Judge Childs seeks to reduce the damage caused by implicit racial bias in the courtroom. She has researched what judges can do at various stages in the trial process to detect and reduce implicit racial bias. Sharing her insights with other federal judges, she has stated:

A solid understanding of how and where implicit biases operate within the justice system is crucial in the effort to develop policies, practices, and strategies aimed at identifying and reducing their effects in the legal context.

Implicit biases are pervasive, meaning that they are held by everyone. They are held by liberals and conservatives; they are also held by the young, the middle-aged, the elderly, and by everyday citizens from all regions of the United States.^{vi}

Judge Childs has 30 years of experience as a private sector litigator, a state regulator, a state judge, and a federal district court judge. Her understanding of the law and her respect for litigants has earned her respect from across the political spectrum. We urge the Senate to confirm her to the D.C. Circuit.

Sincerely,

A handwritten signature in cursive script that reads "Marge Baker".

Marge Baker
Executive Vice President

ⁱ *McCrea v. Gheraibeh*, 380 S.C. 183 (2008).

ⁱⁱ *In re Blackbaud, Inc., Customer Data Sec. Breach Litig.* MDL No. 2972, No. 3:20-mn-02972-JMC (D.S.C.).

ⁱⁱⁱ *Middleton v. Andino*, No. 3:20-cv-01730-JMC (D.S.C.).

^{iv} *Bradacs v. Haley*, 58 F. Supp. 3d 514 (D.S.C. 2014).

^v "The Judges and Graduates," University of South Carolina commencement speech by Judge J. Michelle Childs, May 8, 2021, reproduced in Childs' Judiciary Committee Questionnaire Attachments at 223.

^{vi} "Implicit Bias in the Courtroom," presentation by Judge J. Michelle Childs, 24th Annual New York University Employment Law Workshop for Federal Judges, Federal Judicial Center (virtual event), April 28, 2021, reproduced in Questionnaire Attachments at 230.