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Leader Charles Schumer
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Minority Leader Mitch McConnell
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

Dear Leader Schumer and Minority Leader McConnell:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”), I write to support of the nomination of Judge J. Michelle Childs to serve as a judge on the Court of Appeals for the D.C. Court Circuit.

LDF is the country’s first and foremost civil rights law firm. Founded in 1940 by Thurgood Marshall, LDF has been an entirely separate organization from the NAACP since 1957. Through litigation, advocacy, and public education, LDF seeks structural changes to expand democracy, eliminate disparities, and achieve racial justice in a society that fulfills the promise of equality for all Americans. LDF’s mission has always been transformative: to achieve racial justice, equality, and an inclusive society. LDF has been a pioneering force in our nation’s quest for greater equality and will continue to advocate on behalf of African Americans, both in and outside of the courts, until equal justice for all Americans is attained. We have examined and reviewed the record of countless judicial nominees over decades. Our examination of the record of judicial nominees is focused on an assessment of the capacity of a judicial nominee to undertake their work with fairness and impartiality, and with respect for the rights of those who are often most marginalized in our society.

The role of the federal judge is among the most central to maintaining the rule of law and the preservation of our constitutional democracy. Article III judges enjoy lifetime tenure and are subject to the rigorous process of Senate confirmation to



ensure their independence and integrity, and to equip them to hold a position of the highest public trust. As such, it is important that individuals who serve as judges have a demonstrated commitment to fairness and to upholding the law, as well as the professional training and experience to adjudicate claims involving complex issues of law with powerful consequences for the lives of those who will appear before courts seeking justice.

Judge Childs has served as a judge on the federal district court for the District of South Carolina for twelve years. Her reputation for fairness and impartiality, as well as her intellect and depth of experience, render her qualified to serve on the Court of Appeals for the D.C. Circuit.

Judicial Experience

After serving as an associate and partner at Nexsen Pruet, LLC, Deputy Director at the South Carolina Department of Labor, Licensing & Regulation and as Commissioner at the South Carolina Workers' Compensation Commission, Ms. Childs was elected to serve as an at-large Circuit Court judge by the South Carolina General Assembly.¹ Judge Childs served on the South Carolina Circuit Court—the state's trial court of general jurisdiction—from 2006-2010.² In that capacity she presided over a variety of matters ranging from state tort and data privacy law claims to employment law and sentencing cases. .³ During her tenure on the South Carolina Circuit Court, Judge Childs was also appointed to serve as the Chief Administrative Judge for General Sessions—a South Carolina criminal court—for two years. Additionally, upon request from the Chief Justice, Judge Childs on occasion served as an Acting Justice of the South Carolina Supreme Court for civil and criminal matters.⁴ While sitting by designation on the South Carolina Supreme Court, Judge Childs heard arguments in *McCrea v. Gheraibeh*, a case involving an attorney who used a peremptory strike against a Black juror because of “uneasiness”⁵ over the

¹ Judge J. Michelle Childs, *Questionnaire from Judicial Nominee*, Senate Judiciary Committee (last visited Jan. 24, 2022), at 2. Available at

<https://www.judiciary.senate.gov/imo/media/doc/Childs%20SJQ%20Public%20Final.pdf>.

² Id.

³ Id at 59.

⁴ Id.

⁵ *McCrea v. Gheraibeh*, 380 S.C. 183, 669 S.E.2d 333 (S.C. 2008). Available at : <https://law.justia.com/cases/south-carolina/supreme-court/2008/26557.html>

juror's locs when selecting a jury. Judge Childs joined the South Carolina Supreme Court's 3-2 majority in reversing the appeals court's finding that the attorney's reasoning was race-neutral and based on hair rather than race. The majority noted that, because "dreadlocks retain their roots as a religious and social symbol of historically black cultures" the attorney's claims were "insufficient to satisfy the race-neutral requirement in the second step of the trial court's *Batson* analysis."⁶ Judge Childs' sterling reputation, work ethic and commitment to the law were recognized when, in 2009, President Barack Obama nominated her to serve as a United States District Court Judge for the District of South Carolina.⁷ During her nomination process for the district court, Judge Childs was rated *Well Qualified* by the American Bar Association ("ABA").⁸ The ABA has again rated Judge Childs *Well Qualified* for service on the Court of Appeals for the D.C. Circuit, the seat for which she is currently nominated.⁹ Judge Childs was confirmed to the district court by a voice vote in the Senate on August 5, 2010.¹⁰ She was both the third woman and the third African American to become a federal judge in South Carolina.¹¹

As a United States District Court Judge, Judge Childs has presided over 61 trials that have gone to verdict or judgment, including criminal and civil jury trials and bench trials.¹² Judge Childs also has experience presiding over cases at the appellate level. Judge Childs has sat by designation on the United States Court of Appeals for the Fourth Circuit on multiple occasions and wrote four majority opinions for that court.¹³

⁶ Id.

⁷ Id at 2.

⁸ American Bar Association, Standing Committee on the Federal Judiciary, *Ratings of Article III Judicial Nominees*, 112th Congress (last updated Dec. 03, 2010), https://www.americanbar.org/content/dam/aba/administrative/federal_judiciary/ratings111.pdf.

⁹ American Bar Association, Standing Committee on the Federal Judiciary, *Ratings of Article III Judicial Nominees*, 117th Congress (last updated Apr. 20, 2022), https://www.americanbar.org/content/dam/aba/administrative/federal_judiciary/ratings111.pdf

¹⁰ *PN1320 — J. Michelle Childs — The Judiciary*, 111th Congress (2009-2010) <https://www.congress.gov/nomination/111th-congress/1320>

¹¹ Lyn Riddle, *Marriage case judge Childs known as hard worker*, Greenville Online (Oct. 16, 2014), <https://www.greenvilleonline.com/story/news/local/2014/10/14/marriage-case-judge-childs-known-hard-worker/17274333/>.

¹² Questionnaire at 59.

¹³ Id at 93.

In 2020, Judge Childs also presided over *Middleton v. Andino*,¹⁴ a case in which South Carolina voters and the South Carolina Democratic Party sued the South Carolina State Election Commission arguing that a state election law with a provision requiring voters to sign absentee-ballot envelopes in the presence of a witness for the November 2020 election, was unconstitutional. Judge Childs found the severity of the COVID-19 pandemic, and the magnitude of burden the law would place on voters and their health outweighed the state's interests in investigating voter fraud and as such found the witness requirement unconstitutional. Judge Childs' decision was affirmed by the full Fourth Circuit, but ultimately overturned by the Supreme Court.

Judge Childs has an exemplary record as a state and federal judge. Her breadth and depth of judicial experience demonstrate her clear qualification for service on the federal appellate bench.

Conclusion

Since the establishment of the federal judiciary, only twelve Black women have ever served on the federal appellate bench.¹⁵ If confirmed, Judge Childs will be only the fourth Black woman to serve on the Court of Appeals for the D.C. Circuit.¹⁶ When the federal judiciary is reflective of the diversity of the nation, it increases public trust, confidence, and fairness in the justice system.¹⁷ Judge Childs' elevation to the Court of Appeals for the D.C. Circuit would bring much-needed lived and professional experience to the federal bench.

¹⁴ *Middleton v. Andino*, 488 F. Supp. 3d 261 (D.S.C. 2020).

¹⁵ They are: Janice Rogers Brown, Bernice Bouie Donald, Allyson Kay Duncan, Amalya Lyle Kearse, Johnnie B. Rawlinson, Judith Ann Wilson Rogers, Ojetta Rogeriee Thompson, Ann Claire Williams, Ketanji Brown Jackson, Candace Jackson-Akiwumi, Tiffany Cunningham, and Eunice Lee. Advanced Search--Biographical Directory of Article III Federal Judges, 1789-present, Federal Judicial Center (last visited Jan. 24, 2022), <https://www.fjc.gov/history/judges/search/advancedsearch>

¹⁶ Judges Janice Rogers Brown, Judith Ann Wilson Rogers, and Judge Ketanji Brown Jackson are the only Black women to ever serve on the Court of Appeals for the D.C. Circuit. Advanced Search--Biographical Directory of Article III Federal Judges, 1789-present, Federal Judicial Center (last visited Apr. 26, 2021), <https://www.fjc.gov/history/judges/search/advanced-search>.

¹⁷ Ruthie Ashley, *Does a diverse bench really matter?*, American Bar Association (Oct. 18, 2018), https://www.abajournal.com/news/article/does_a_diverse_bench_really_matter; Maya Sen, *Diversity, Qualifications, and Ideology: How Female and Minority Judges Have Changed, or Not Changed, Over Time*, 2017 Wis. L. Rev. 367 (2017).



Ms. Childs' record demonstrates her impartial commitment to justice, fairness, and the rule of law. Her extensive judicial experience spans criminal, civil, state, and federal issue areas. She is undoubtedly qualified to serve on the Court of Appeals for the D.C. Circuit. We urge the Senate to confirm Judge J. Michelle Childs to the Court of Appeals for the D.C. Circuit without delay.

Sincerely,

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