Written by **Bob Adelmann** on January 31, 2022

White House: J. Michelle Childs Being Considered to Replace Justice Breyer

The White House confirmed on Thursday that one of the nominees being considered to replace Justice Stephen Breyer is present U.S. District Judge J. Michelle Childs. Childs was nominated to her current position by then-President Barack Obama in 2009 and then nominated by Joe Biden to move to the U.S. Court of Appeals last December.

AP Images
2010 photo of J. Michelle Childs

Biden said he'd been studying the backgrounds of a number of candidates, provided that each of them first fulfill his campaign promise that they be female and black:

> While I've been studying candidates' backgrounds and writings, I've made no decision except one: the person I will nominate will be someone of extraordinary qualifications, character, experience and integrity, and that person will be the first black woman ever nominated to the United States Supreme Court.

Nothing was said about how she might view the Constitution of the United States, or the historic (and controversial) decision made in 1803 in *Marbury v. Madison* what the high court's primary responsibility is, in the words of then-Supreme Court Chief Justice John Marshall:

> The particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void, and that courts, as well as other departments, are bound by that instrument. The rule must be discharged.

Nothing was said about any "law repugnant to the Constitution is void" when she responded in 2010 to then-Senator Jeff Sessions' question during her nomination hearings as to how she would "ensure the fair administration of justice":

> The "fair administration of justice" requires that judges act as fair and impartial arbiters, treat all litigants courteously, assess the particular facts and evidence presented in individual cases, make deliberate and well-reasoned decisions based on established legal precedent, and abide by the judicial canons and ethical standards of conduct.

So, by that light, her decision in *Bradacs v. Haley* in 2014 was bereft of any concern over the Constitution or its 10th Amendment. Instead, in the lawsuit brought by a lesbian couple who wanted South Carolina to recognize their marriage in the state, she ruled that "valid marriages of same-sex couples entered into in other states or jurisdictions [they were "married" in the District of Columbia in 2013] meet the prerequisites for marriage in the State of South Carolina," completely ignoring the right of the state, under the 10th Amendment, to make its own such rules and establish its own "prerequisites."

When the Supreme Court ruled in June 2015 that the case of "marriage" of same-sex couples was now a federal matter and not of the states, then-Justice Antonin Scalia voiced his dissent:

> Today's decree says that my ruler, and the ruler of 320 million Americans coast-to-coast, is a majority of the nine lawyers on the Supreme Court.
>
> The opinion … is the furthest extension in fact — and the furthest extension one can even imagine — of the court's claimed power to create "liberties" that the Constitution and its amendments neglect to mention.

The best any Senator could produce following Biden's racist and discriminatory selection of Childs as one of the "black and female only" selections he is considering for the high court position was this from Senator Roger Wicker (R-Miss.), who called it "affirmative action":

> The irony is that the Supreme Court is at [this] very time hearing cases about this sort of affirmative action racial discrimination while adding someone who is the beneficiary of this sort of quota.

No matter whom Biden selects, he will further enrage the electorate. The latest poll from ABC News/Ipsos finds that his decision to use race and gender as primary qualifiers for the high post is opposed by more than three out of four of those polled.

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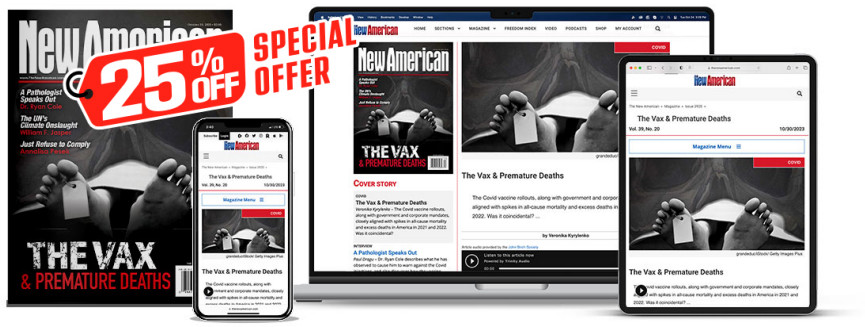

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