AFJ OPPOSES



G. Todd Butler

Nominee to the U.S. Court of Appeals for the Fifth Circuit

COURT
Circuit Court

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October 1, 2026

Introduction

On October 1, 2026, Trump nominated Gregory Todd Butler to the U.S. Court of Appeals for the Fifth Circuit to fill the seat previously held by Butler's former boss and mentor, Judge Leslie Southwick. Butler has spent his career as the go-to lawyer for police departments and jails in small cities and municipalities throughout Mississippi when they need a defense attorney in the wake of violating fundamental constitutional and civil rights.

Butler has also served as general counsel to the insurance pools that defend Mississippi's cities and police and he proudly boasts about the dozens of Section 1983 civil rights suits that he's gotten dismissed throughout his career. Butler has even taken his arguments all the way to the Supreme Court, arguing that a street preacher should be barred from challenging a speech ordinance that he was prosecuted under. Even the billionaire-bought Court rejected his extreme position, siding with the preacher in a 9–0 decision.

Butler has spent decades putting obstacles in the way of everyday people's ability to hold government officials accountable: He's urged courts to make civil rights plaintiffs who lose pay the other side's attorney's fees, which would undoubtedly make it harder for a harmed person to vindicate their rights in court. He's also encouraged jails to resist court-ordered reforms and to treat civil rights organizations and the Department of Justice as adversaries. And Butler's even helped persuade the Mississippi Supreme Court to void a voter-approved ballot measure.

The Fifth Circuit hears appeals from Texas, Louisiana, and Mississippi, and its decisions shape the daily lives of tens of millions of people. The circuit already has a reputation for closing the courthouse doors on people harmed by government officials, making it a notoriously difficult part of the country to try and litigate civil rights violations. If Butler were confirmed to the Fifth Circuit, he'd make it even harder for everyday people to access the justice they deserve after they're harmed by the very institutions that are supposed to protect and serve them.

Biography

Butler was born in 1983 and is from Morton, Mississippi. He graduated from Mississippi College School of Law in 2008. Directly after law school, Butler clerked for Southwick on the Fifth Circuit, the judge whose seat he has now been nominated to fill. After his clerkship, Butler joined the law firm Phelps Dunbar LLP, where he still works as a

managing partner focusing on appellate, constitutional, and employment issues, advising big companies and government institutions on how to avoid accountability for the harms they cause. Butler has also worked as an adjunct law professor and is the past chairman of the Mississippi Bar's appellate practice section. He's been a member of the Federalist Society for over a decade.

In his time at Phelps Dunbar, Butler has served as general counsel for the Mississippi Municipal Service Company, the Mississippi Municipal Liability Plan, and the Mississippi Municipal Workers' Compensation Group, groups that insure and defend Mississippi's cities and their police. Butler's career has been focused entirely on civil matters, and he has never served as the first chair on a trial. In fact, Butler has only participated in three jury trials (all as second chair), and two of those trials settled during trial before a final verdict.

Closes Courtroom Doors On Civil Rights Plaintiffs

Butler has routinely argued that people whose rights were violated should not be allowed to have their day in federal court. For example, Butler served as lead counsel for the City of Brandon, Mississippi in *Olivier v. City of Brandon*, a case surrounding whether a street preacher whose First Amendment rights were violated should be allowed to bring his case in federal court. Street preacher Gabriel Olivier was arrested under a 2019 ordinance that confined "protests" near its amphitheater to a designated zone. Olivier was arrested for violating the ordinance and paid the fine. He subsequently challenged the law in federal court. Butler served as the city's defense counsel and argued that, because Olivier had a conviction under the same statute he was challenging, principles established in the case *Heck v. Humphrey* barred Olivier from asking the court to stop the city from enforcing the ordinance against him in the future. Butler even argued his extreme position to the Supreme Court in oral arguments for the case.

In March 2026, the Supreme Court unanimously rejected Butler's position. Penning the 9–0 decision, Justice Kagan held that Butler's fringe argument was built on a misinterpretation of *Heck v. Humphrey* and had no bearing on a suit like Olivier's. Had Butler's argument won, however, those who had been convicted of even a minor offense under an unconstitutional law could have been locked out of federal court with no ability to challenge the law to avoid being arrested again.

Olivier's case wasn't the first time Butler tried to press *Heck* to its limits. In *Wilson v. Midland County*, a Fifth Circuit case, Butler "successfully advanced the position" of police and sheriffs' organizations, including the National Association of Police Organizations. In the case, Butler convinced the far-right Fifth Circuit to use *Heck* to bar Wilson's suit, even though the prosecutor who convicted her was secretly also working as a law clerk for the Midland County district judges, a level of misconduct that a panel of the court called "utterly bonkers."

Shields Police and Local Governments from Accountability

Butler's firm biography proudly lists at least fifteen Fifth Circuit cases in which Butler was able to convince the court to dismiss important civil rights cases or apply the controversial doctrine known as qualified immunity to shield government actors for their wrongdoing. Qualified immunity is a legal doctrine that allows public officials to skirt accountability for violations of civil rights if they were not "clearly established" at the time the incident occurred. Qualified immunity dissuades victims from bringing civil rights cases and reduces police accountability. It regularly shields police officers from consequences for even their most egregious behavior (e.g., shooting a child at a birthday

party). Still, Butler regularly uses qualified immunity to help his clients escape liability for abuses of power they inflict on everyday people.

For example, in *Jones v. Gammage*, Butler defended Grenada police officers after they killed a young man, Robert Loggins, who was experiencing mental health issues. Loggins, who had a history of mental health problems, had stumbled onto a stranger's yard and cried for help. When police arrived, they found him lying face down with his hands beneath him. They ordered him to show his hands, and when Loggins asked why, they tased him multiple times as he lay on his hands. One officer also hit him with a flashlight. The officer's unacceptable behavior did not stop there. Later at the jail, the officers piled on Loggins for nearly three minutes. Directly before the officers did so, a sergeant had evaluated Loggins and told the officers he should be sent to hospital because of his condition. The sergeant noted there was blood coming from Loggin's mouth. Still, while Loggins was face down on the floor, the officers piled on him, with one officer pressing on his neck, and another, Butler's client, crushing Loggins to keep him from moving. Within minutes, the officers killed Loggins. Butler argued for qualified immunity for his client at each stage. The court rejected it both times, finding the law was "clearly established" and that the force the officers used was "grossly disproportionate" to what was needed and contrary to police training. Sadly, Loggins's mom also died at the hands of police.

Butler also defended police officers who arrested a Black third grader for urinating outside a lawyer's office after he was told he could not use the restroom in *Eason v. City of Senatobia*. The officers admitted that they noticed the young boy's mother's car had been connected to a recent burglary and arrested the boy to guarantee she would come to the station for questioning. Butler successfully argued that the officers had qualified immunity.

As a young adult, Butler wrote a note for a law school journal where he sided with Justice Breyer's dissent in *Hudson v. Michigan*, which pointed out that civil lawsuits aren't a sufficient deterrent for police misconduct because police are so often shielded by qualified immunity. Even though Butler clearly identified qualified immunity as the reason civil suits fail to deter police misconduct in his note, Butler has still spent his career using the doctrine to help shield officers from accountability for horrible misconduct.

Wants to Increase Barriers to Justice for Everyday People

While most of the time the American justice system requires each party to pay their own attorney's fees, there are special provisions in civil rights laws that allow successful plaintiffs to recover attorney's fees. This acts as both a way to lower the financial barriers for victims to bring important civil rights suits and as a deterrent for civil rights offenders, who are responsible for even more costs if they are found to have violated the law. As the law currently stands, defendants who win can recover fees from civil rights plaintiffs only when the suit was frivolous.

Butler wants to change that. In *Hoyle v. City of Hernando*, he pressed a theory that would require plaintiffs who lose to pay for the defendant's attorney's fees. If Butler's view prevailed, every civil rights plaintiff who lost, including those with sympathetic claims that simply failed, would risk enormous bills. Undoubtedly, the chilling effect on civil rights enforcement would be enormous.

Treats Civil Rights Groups and the DOJ as Enemies

From 2020 through 2023, Butler was a repeat speaker at JAILCON, the National Institute for Jail Operations conference (SJQ, pg. 16). His presentations provide insight into how he views the people and organizations who advocate for basic civil rights and oversight in prisons and jails.

Butler's presentations regularly name the Southern Poverty Law Center, the ACLU National Prison Project, the National Disability Rights Network, federally funded protection and advocacy agencies in all 50 states, and the U.S. Department of Justice (DOJ) as adversaries. (SJQ, pg. 16). The presentations describe how these groups "develop client relationships with inmates," file lawsuits challenging conditions, use experts to assess jails, and "use consent decrees to control operations." These organizations exist to enforce federal statutory rights, to monitor facilities for abuse of people with disabilities, and to ensure that these governmental institutions are living up to their constitutional mandates. Yet Butler frames this lawful, congressionally created oversight as a threat to be managed. His presentations also dismiss incarcerated people and their claims. One of his presentations included a slide titled "Inmates Keep Doing Inmate Things," in which he notes that "[s]ome never get tired of trying to disrupt operations." In another slide, he tells his audience that "[a]llegations are just that, alleged 'facts.'"

Butler also uses his presentations to dismiss and criticize consent decrees, the main tool by which the DOJ and civil rights lawyers address unconstitutional conditions in prisons and jails, often used after incarcerated people die from poor prison conditions. Butler's presentations provide a guide to jails and prisons on how to "escape" these critical civil rights tools, giving tips on how to avoid consent decrees and describing them as dangerous and never a "win-win" situation. As a Fifth Circuit judge, Butler would hear appeals on exactly these motions to enter, enforce, and terminate decrees. Considering Butler's track record and views on these agreements, there is no way he could act as a neutral decisionmaker in these kinds of cases.

Helped Void a Voter-Approved Ballot Measure

In November 2020, a strong majority of Mississippi voters approved Initiative 65, a medical marijuana measure placed on the ballot through the state's citizen-initiative process. After the initiative was already approved, Butler served as the lead amicus counsel for the Mississippi State Department of Health in a brief that urged the Mississippi Supreme Court to throw the measure out because of a technicality. Butler's brief argued that the court should follow an inane reading of a state constitutional rule, encouraging textualism despite a precedent of reading the state rule with a purpose-based lens. Unfortunately, the sharply divided Mississippi Supreme Court agreed, voiding the measure 6–3. The ruling left the citizen-initiative process unusable and erased everyday people's ability to engage in democracy. Butler encouraged rigid textualism to override the will of the people, a strategy he will undoubtedly reach for again if confirmed to the Fifth Circuit.

Conclusion

Todd Butler has spent his career keeping people whose rights were violated by police, jails, and local governments from getting their day in court. He has argued that people should not be allowed to challenge unconstitutional laws, that civil rights plaintiffs who lose should pay the other side's lawyers, that jails should resist court-ordered reform and regard civil rights groups and the Department of Justice as opponents, and that voters' own choices at the ballot box can and should be undone by a technicality.

The people of Texas, Louisiana, and Mississippi deserve a judge who will thoroughly consider the injustices they've experienced, not one who has made a career of keeping everyday people out of court. Butler is unfit to serve the people of the Fifth Circuit and should not be confirmed.