

A Suit to Prevent a Legislature from Voiding a Close Election

Ford v. Beavers

(Bernice B. Donald, W.D. Tenn. 2:06-cv-2031)

On the day before a state senate was expected to void a senator's election to the senate by a very close special election because of concerns that some votes were fraudulent, a federal district judge enjoined senate action on the matter pending a hearing in a federal case filed by the newly elected senator and three voters who voted for her. Following a hearing, the judge issued a declaratory judgment in the plaintiffs' favor. The senate subsequently removed the senator from office, but at the end of the session the judge enjoined the naming of an interim replacement. The senator won the seat again at the next election, an appeal was deemed moot, and the judge awarded the plaintiffs \$117,263 in attorney fees, costs, and expenses.

Subject: Voting irregularities. *Topics:* Election errors; attorney fees.

State Senator Ophelia Ford and three voters who voted for her in a September 15, 2004, special election filed a federal complaint in the Western District of Tennessee on January 18, 2006, to challenge a senate vote scheduled for the following day on whether her election should be voided.¹

District 29 Democratic Senator Ford won the election by thirteen votes to fill a vacancy created when John Ford, her brother, resigned in advance of his successful federal prosecution for bribery.² Ophelia Ford's Republican challenger in the election pursued an election contest with the senate, which voted on January 17, 2006, to have a final vote on January 19 on whether the election should be voided because some ballots were of questionable validity.³ In the federal complaint, the plaintiffs named as defendants the other thirty-two senators, including Tennessee's lieutenant governor, and Ford's challenger in the election.⁴ The challenger was dismissed as a defendant by agreement on January 27.⁵

1. Complaint, *Ford v. Beavers*, No. 2:06-cv-2031 (W.D. Tenn. Jan. 18, 2006), D.E. 1 [hereinafter *Ford* Complaint]; *Ford v. Wilder*, 469 F.3d 500, 501–02 (6th Cir. 2006); see Second Amended Complaint, *Ford*, No. 2:06-cv-2031 (W.D. Tenn. Jan. 27, 2006), D.E. 26; Amended Complaint, *id.* (Jan. 23, 2006), D.E. 6.

2. *Ford*, 469 F.3d at 501–02; see Richard Locker, *Ford Resigns*, Memphis Com. App., May 29, 2005, at A1; *Longtime Tennessee State Senator Resigns After Bribery Sting*, N.Y. Times, May 29, 2005, at 22.

3. *Ford*, 469 F.3d at 502; see Richard Locker, *Senate Acts to Oust Ford*, Memphis Com. App., Jan. 18, 2006, at A1.

4. *Ford* Complaint, *supra* note 1.

5. Consent Order, *Ford*, No. 2:06-cv-2031 (W.D. Tenn. Jan. 27, 2006), D.E. 22.

On the day that the complaint was filed, following a fifty-minute evening telephone conference with the parties, Judge Bernice B. Donald issued a temporary restraining order against further senate action on the 2004 special election.⁶ She scheduled a hearing for January 25.⁷

According to the *Commercial Appeal*, “The crowded courtroom was packed with Ford’s supporters and political opponents—as well as 15 senators—who listened to a day’s worth of mostly technical testimony on election laws and procedures. Because the courtroom was so crowded, 14 senators sat in the jury box.”⁸

On February 1, Judge Donald granted the plaintiffs a declaratory judgment that the contemplated senate action violated the plaintiffs’ equal-protection and due-process rights, as well as voting rights under Tennessee’s constitution.⁹ “[B]ecause the Tennessee Senate has failed to adopt and articulate a consistent standard that meets the uniformity requirement of the Equal Protection Clause, the Court finds that disenfranchisement of District 29 voters by excluding their votes and voiding the election would raise grave equal protection concerns.”¹⁰ Moreover, “because the Senate’s actions implicate the fundamental right to vote[,] the constituents of Senate District 29 are entitled to adequate notice and opportunity to be heard before any prospective disenfranchisement.”¹¹ And under Tennessee’s constitution, “Defendants are required to conduct election contests by the same standards utilized in each of the State’s districts.”¹²

6. Temporary Restraining Order, *id.* (Jan. 18, 2006), D.E. 2; Docket Sheet, *id.* (Jan. 18, 2006) [hereinafter *Ford* Docket Sheet] (minutes, D.E. 4); *Ford*, 469 F.3d at 502; see Chris Conley, *Both Parties Favored Donald*, Memphis Com. App., Feb. 1, 2006, at B1 (reporting also, “When a clerk used a Rolodex-type gadget to spin cards with the names of the district’s four judges on them, it stopped at U.S. Dist. Judge Bernice Donald.”); Bonna de la Cruz, *Judge Gives Ford Week’s Reprieve*, Nashville Tennessean, Jan. 19, 2006, at 1B; Richard Locker, *Judge Halts Senate Vote on Ford*, Memphis Com. App., Jan. 19, 2006, at A1.

Judge Donald was elevated to the court of appeals on September 8, 2011, and she retired on January 20, 2023. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

7. *Ford* Docket Sheet, *supra* note 6 (D.E. 4); see *id.* (minutes, D.E. 25); *Ford*, 469 F.3d at 502; see also Bonna de la Cruz, *3 Lawmakers Get Court Summons in Ford Case*, Nashville Tennessean, Jan. 24, 2006, at 4B; Richard Locker, *Ford’s Court Hearing Today*, Memphis Com. App., Jan. 25, 2006, at A1.

8. Chris Conley, *No Rush to Judgment*, Memphis Com. App., Jan. 26, 2006, at A1; see Bonna de la Cruz, *Senate Ouster of Ford on Hold at Least a Week*, Nashville Tennessean, Jan. 26, 2006, at 1A (“Nearly half the Senate—13 Republicans and two Democrats—attended the daylong hearing at the Clifford Davis Federal Building in Memphis.”).

9. Opinion, *Ford*, No. 2:06-cv-2031 (W.D. Tenn. Feb. 1, 2006), D.E. 30 [hereinafter *Ford* Declaratory-Judgment Opinion]; *Ford*, 469 F.3d at 501–02.

10. *Ford* Declaratory-Judgment Opinion, *supra* note 9, at 19.

11. *Id.* at 23.

12. *Id.* at 27.

On April 19, the senate removed Senator Ford from office.¹³ On the day before, Judge Donald determined that “the record [was] not so compelling that [the] Court should step in.”¹⁴ On April 25, the plaintiffs sought to void the senate’s action with a third amended complaint filed as a new case.¹⁵ At a May 16 hearing, observing that the legislative session was concluding, Judge Donald granted a preliminary injunction against the appointment of an interim replacement for Senator Ford.¹⁶

Senator Ford won her seat back on November 7.¹⁷

On November 22, the court of appeals dismissed as moot an appeal from the declaratory judgment.¹⁸

The second case was dismissed by consent on July 16, 2007.¹⁹ On October 24, 2008, Judge Donald awarded the plaintiffs \$117,263 in attorney fees, costs, and expenses.²⁰

On April 27, 2007, John Ford was convicted of bribery by a Western District of Tennessee jury.²¹ Judge J. Daniel Breen sentenced him to five years and

13. *Ford*, 469 F.3d at 503; see Theo Emery, *Senate Voids Election*, N.Y. Times, Apr. 20, 2006, at A18; Richard Locker, *Senate Ousts Ford*, Memphis Com. App., Apr. 20, 2006, at A1; Travis Loller, *Election Won by Memphis Democrat “Incurably Uncertain,”* Nashville Tennessean, Apr. 20, 2006, at 1A.

14. *Ford* Docket Sheet, *supra* note 6 (minutes, D.E. 53); see *Ford*, 469 F.3d at 503; see also Lawrence Buser, *Senate Gets Nod for Ford Vote Today*, Memphis Com. App., Apr. 19, 2006, at A1.

15. Complaint, *Ford v. Wilder*, No. 2:06-cv-2241 (W.D. Tenn. Apr. 25, 2006), D.E. 1; *Ford*, 469 F.3d at 503 & n.5; see Amended Complaint, *Ford*, No. 2:06-cv-2241 (W.D. Tenn. May 16, 2006), D.E. 12; Injunction Motion, *id.* (Apr. 26, 2006), D.E. 4; see also Chris Conley, *Ford Sues Senate to Regain Her Seat*, Memphis Com. App., Apr. 26, 2006, at A1; *Ousted Senator Sues*, N.Y. Times, Apr. 27, 2006, at A23.

16. Preliminary Injunction, *Ford*, No. 2:06-cv-2241 (W.D. Tenn. filed May 30, 2006), D.E. 17; Docket Sheet, *id.* (Apr. 25, 2006) (D.E. 15, 17); *Ford*, 469 F.3d at 503; see Chris Conley, *Judge Grants Ford’s Request*, Memphis Com. App., May 17, 2006, at A1.

17. *Ford*, 469 F.3d at 503 & n.4.

18. *Id.* at 507.

One judge would have also vacated the declaratory judgment. *Id.* at 507–08 (Circuit Judge John M. Rogers, concurring and dissenting).

19. Consent Dismissal, *Ford*, No. 2:06-cv-2241 (W.D. Tenn. July 16, 2007), D.E. 47; see *Federal Judge Tosses Lawsuit Over Ford’s Expulsion*, Knoxville News-Sentinel, July 17, 2007, at 8.

20. Opinion, *Ford v. Beavers*, No. 2:06-cr-2031 (W.D. Tenn. Oct. 24, 2008), D.E. 73, 2006 WL 4724371; see *Ford*, 469 F.3d at 501, 507 (remanding for an award of attorney fees); see also Richard Locker, *Judge Orders Ford’s Bill Paid*, Memphis Com. App., Oct. 31, 2008, at B4.

21. Jury Verdict, *United States v. Ford*, No. 2:05-cv-20201 (W.D. Tenn. Apr. 27, 2007), D.E. 107; see Jury Instructions at 27, *id.* (filed May 2, 2007), D.E. 110; see also *United States v. Ford*, 639 F.3d 718, 719 (6th Cir. 2011); Lawrence Buser, *Ford Denied Appeal of 5½-Year Sentence*, Memphis Com. App., Aug. 27, 2009, at B1; *Ex-Tennessee Lawmaker Is Guilty of Bribery*, N.Y. Times, Apr. 28, 2007, at A14; Marc Perrusquia, *John Ford Verdict—CONVICTED*, Memphis Com. App., Apr. 28, 2007, at A1; *USA vs. John Ford*, Memphis Com. App., Apr. 8, 2007, at A4.

six months.²² On April 14, 2011, the court of appeals reversed a July 18, 2008, Middle District conviction for failure to disclose financial interests.²³

22. Redacted Amended Judgment, *Ford*, No. 2:05-cr-20201 (W.D. Tenn. Mar. 4, 2008), D.E. 172, *aff'd*, 344 F. App'x 167 (6th Cir. 2009); see *Ex-Lawmaker Sentenced*, N.Y. Times, Aug. 29, 2007, at A17; see also www.bop.gov (noting a release date of February 8, 2013, reg. no. 20286-076); Marc Perrusquia, *John Ford Enters Memphis Halfway House*, Memphis Com. App., Aug. 21, 2012, at 1.

23. *Ford*, 639 F.3d 718 (finding no federal jurisdiction over disclosure obligations); see Judgment, *United States v. Ford*, No. 3:06-cr-235 (M.D. Tenn. Sept. 30, 2008), D.E. 268 (noting a sentence of fourteen years); Jury Verdict, *id.* (July 18, 2008), D.E. 245; see also Lawrence Buser, *Ruling Key to Freedom for Ford*, Memphis Com. App., Apr. 15, 2011, at A1; *Ex-Lawmaker Guilty*, N.Y. Times, July 19, 2008, at A13; *New Indictment Against Former State Senator*, N.Y. Times, Dec. 19, 2006, at A28.