

## Late Absentee Ballots in Florida

*Friedman v. Snipes (Patricia A. Seitz and Alan S. Gold,  
S.D. Fla. 1:04-cv-22787)*

On the day of the 2004 general election, three Florida voters filed a federal complaint in the Southern District of Florida's Miami courthouse claiming that although they requested absentee ballots on time they did not receive them in time to cast them without a risk that the ballots would not be counted.<sup>1</sup> With their complaint, at 4:45 p.m.,<sup>2</sup> the plaintiffs filed a motion for an emergency hearing on a temporary restraining order or a preliminary injunction.<sup>3</sup>

On the day the case was filed, Judge Patricia A. Seitz set a status hearing for 9:30 a.m. on the following morning and ordered service of the complaint and motion on all defendants by 9:00 p.m. on election day.<sup>4</sup>

Since the election litigation challenges in Florida of 2000, the court has become additionally sensitive to the possibility of emergency filings at election time.<sup>5</sup> Judges are notified promptly of cases assigned to them, and the court maintains contact information for election officials' attorneys.<sup>6</sup> It is the responsibility of plaintiffs to serve defendants promptly, but chambers or clerk's office staff will typically contact defense counsel to give them a heads up as a way to make sure that the case can progress promptly.<sup>7</sup>

On the day of hearing, Judge Seitz recused herself at the request of Florida's secretary of state; Judge Seitz's husband had provided legal work for the Democratic Party.<sup>8</sup> The court reassigned the case to Judge Alan S. Gold,<sup>9</sup> who reset the hearing for 12:30 p.m.<sup>10</sup>

After the first hearing, Judge Gold issued a temporary restraining order requiring the defendants to "segregate and preserve any and all absentee ballots which

1. [Complaint](#), *Friedman v. Snipes*, No. 1:04-cv-22787 (S.D. Fla. Nov. 2, 2004), D.E. 1; [Friedman v. Snipes](#), 345 F. Supp. 2d 1356, 1358–59 (S.D. Fla. 2004); see [Amended Complaint](#), *Friedman v. Snipes*, No. 1:04-cv-22787 (S.D. Fla. Nov. 4, 2004), D.E. 18; see also Alan Gomez, *Suit Seeks to Extend Voting Period for Absentees*, Palm Beach Post, Nov. 3, 2004, at 3B; Ann W. O'Neill & Brittany Wallman, *Unlike 2000, a Slow Day for Challenges*, S. Fla. Sun-Sentinel, Nov. 3, 2004, at 2B.

2. [Order](#), *Friedman*, No. 1:04-cv-22787 (S.D. Fla. Nov. 3, 2004), D.E. 11 [hereinafter Judge Gold's First Order].

3. [Motion](#), *id.* (Nov. 2, 2004), D.E. 2; [Friedman](#), 345 F. Supp. 2d at 1358–59.

4. [Order](#), *Friedman*, No. 1:04-cv-22787 (S.D. Fla. Nov. 2, 2004), D.E. 7; see Gomez, *supra* note 1; O'Neill & Wallman, *supra* note 1.

Tim Reagan interviewed Judge Seitz for this report by telephone on October 2, 2012.

5. Interview with Hon. Patricia A. Seitz, Oct. 2, 2012.

6. *Id.* (noting that the court is blessed with a clerk's office of steady rocks and gifted problem solvers).

7. *Id.*

8. [Order](#), *Friedman*, No. 1:04-cv-22787 (S.D. Fla. Nov. 3, 2004), D.E. 10 [hereinafter Recusal Order]; [Minutes](#), *id.* (Nov. 4, 2004), D.E. 25; see Ann O'Neill, *Judge Orders 2 Counties Not to Destroy Absentee Ballots*, S. Fla. Sun-Sentinel, Nov. 4, 2004, at 7B.

9. [Recusal Order](#), *supra* note 8.

10. [Judge Gold's First Order](#), *supra* note 2.

were postmarked by November 2, 2004 and which were received by their respective offices between 7 p.m. on November 2, 2004 and midnight on November 12, 2004.”<sup>11</sup> Judge Gold set a preliminary injunction evidentiary hearing for the following day and further oral arguments for Monday of the following week.<sup>12</sup> At the November 4 evidentiary hearing, the plaintiffs and most of the witnesses testified by telephone.<sup>13</sup>

On November 9, Judge Gold determined that the plaintiffs were not entitled to preliminary injunctive relief; the statutory deadline for receipt of cast absentee ballots was sufficiently reasonable.<sup>14</sup> On November 22, Judge Gold closed the case on the plaintiffs’ voluntary dismissal.<sup>15</sup>

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11. [Order](#), *Friedman*, No. 1:04-cv-22787 (S.D. Fla. Nov. 3, 2004), D.E. 15; [Minutes](#), *id.* (Nov. 3, 2004), D.E. 16 (noting that the hearing began 50 minutes late); *Friedman*, 345 F. Supp. 2d at 1358 & n.1; see O’Neill, *supra* note 8.

12. [Order](#), *Friedman*, No. 1:04-cv-22787 (S.D. Fla. Nov. 3, 2004), D.E. 13; [Order](#), *id.* (Nov. 4, 2004), D.E. 21.

13. Transcript, *id.* (Nov. 4, 2004, filed Nov. 9, 2004), D.E. 38.

14. *Friedman*, 345 F. Supp. 2d 1356; see Ann W. O’Neill, *Federal Judge Rules Against Counting Late Absentee Ballots*, S. Fla. Sun-Sentinel, Nov. 10, 2004, at 2B.

15. [Order](#), *Friedman*, No. 1:04-cv-22787 (S.D. Fla. Nov. 22, 2004), D.E. 42.