

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 voters filed a federal complaint 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. The district judge assigned to the case set a status hearing for the following morning, but on the day of the hearing she recused herself at the request of the state's secretary of state because of her husband's legal work for one of the major political parties. The judge to whom the case was reassigned reset the hearing for later that day. The second judge granted a temporary restraining order segregating the ballots in question, but he ultimately denied the plaintiffs a preliminary injunction after an evidentiary hearing.

Subject: Absentee and early voting. *Topics:* Absentee ballots; ballot segregation; recusal; case assignment.

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.¹ With their complaint, at 4:45 p.m.,² the plaintiffs filed a motion for an emergency hearing on a temporary restraining order or a preliminary injunction.³

On the day that 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.⁴

After the election-litigation challenges in Florida of 2000, the court became additionally sensitive to the possibility of emergency filings at election time.⁵ Judges were notified promptly of cases assigned to them, and the court maintained contact information for election officials' attorneys.⁶ It was the

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*, 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 was blessed with a clerk's office of steady rocks and gifted problem solvers).

responsibility of plaintiffs to serve defendants promptly, but chambers or clerk's office staff would typically contact defense counsel to give them a heads up as a way to make sure that the case could progress promptly.⁷

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.⁸ The court reassigned the case to Judge Alan S. Gold,⁹ who reset the hearing for 12:30 p.m.¹⁰

After the first hearing, Judge Gold issued a temporary restraining order requiring the defendants to "segregate and preserve any and all absentee ballots which 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."¹¹ Judge Gold set a preliminary-injunction evidentiary hearing for the following day and further oral arguments for Monday of the following week.¹² At the November 4 evidentiary hearing, the plaintiffs and most of the witnesses testified by telephone.¹³

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.¹⁴ On November 22, Judge Gold closed the case on the plaintiffs' voluntary dismissal.¹⁵

7. *Id.*

8. Recusal Order, *Friedman*, No. 1:04-cv-22787 (S.D. Fla. Nov. 3, 2004), D.E. 10; 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.

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 fifty minutes late); *Friedman v. Snipes*, 345 F. Supp. 2d 1356, 1358 & n.1 (S.D. Fla. 2004); 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 Robert Timothy Reagan, *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act 23* (Federal Judicial Center 2016); 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.