

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CIV. - SEITZ

FAY FRIEDMAN, ADAM J. MEYER,
and DANIEL BENHAIM,

04-22787

Plaintiffs,

v.

Case No.

BRENDA SNIPES, in her official capacity
as Broward County Supervisor of Elections
and member of the Broward County
canvassing board; CONSTANCE KAPLAN,
in her official capacity as Miami-Dade County
Supervisor of Elections and member of the
Miami-Dade County canvassing board;
and GLENDA E. HOOD, in her official
capacity as Florida Secretary of State,

**MAGISTRATE JUDGE
BROWN**

Defendants.

COMPLAINT – INJUNCTIVE RELIEF SOUGHT

INTRODUCTION

1. Plaintiffs are registered voters who timely requested absentee ballots. Through no fault of their own, and after repeated attempts to obtain an absentee ballot, each plaintiff either received the ballot on election day or did not receive one at all. Plaintiffs who received the absentee ballot voted the ballot and returned it to the county supervisor of elections on November 2, 2004. Plaintiff Benhaim voted a federal write in ballot with a voter's certificate attesting to his qualification to vote, his request for a ballot and the fact that at the time he voted the federal ballot, he had not received an absentee ballot. Plaintiffs have voted their

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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
D.C.

ballots and sent them to their respective county supervisors of elections on November 2, 2004. Because plaintiffs did not timely receive their ballots, however, they will not be received by the supervisors of election on November 2. Plaintiffs are similarly situated to Florida voters within the United States who timely requested an absentee ballot and were able to have their vote counted because they timely received their ballots. Plaintiffs are also similarly situated to overseas voters who are eligible to vote in Florida and whose ballots will be counted if received by November 12, 2004. Unless enjoined by this court, however, plaintiffs' ballots will not be counted.

JURISDICTION

2. Plaintiffs bring this action pursuant to 42 U.S.C. § 1983 for violation of their his rights under the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(B), and the First and Fourteenth Amendments to the United States Constitution.

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed.R.Civ.P. 65.

PARTIES

4. Plaintiff Fay Friedman is a duly registered Broward County voter currently outside of the state in Pennsylvania..

5. Plaintiff Daniel Benhaim is a duly registered Miami-Dade County voter and a student currently in Orlando, Florida.

6. Plaintiff Adam J. Meyer is a duly registered Miami-Dade County voter currently in Gainesville, Florida.

7. Defendant Brenda Snipes is the Supervisor of Elections for Broward County, Florida, and, *inter alia*, is the final policy maker with regard to absentee ballots. She is also a member of the Broward County canvassing board. She is sued in her official capacity.

8. Defendant Constance Kaplan is the Supervisor of Elections for Miami-Dade County, Florida, and, *inter alia*, is the final policy maker with regard to absentee ballots. She is also a member of the Miami-Dade County canvassing board. She is sued in her official capacity.

9. Defendant Glenda E. Hood is the Florida Secretary of State. As Secretary of State, she is the chief election officer of the state. Fla. Stat. § 97.012. She is sued in her official capacity.

FACTS

10. Plaintiff Friedman requested an absentee ballot from the Broward County Supervisor of Elections office in sufficient time to receive it, vote and return the ballot so that it would be received by the Supervisor on or before November 2, 2004. Plaintiff Friedman's declaration is attached as Exhibit A.

11. Plaintiffs Meyer and Benhaim requested absentee ballots from the Miami-Dade County Supervisor of Elections office in sufficient time to receive them, vote and return them so that they would be received by the Supervisor on or before November 2, 2004. Plaintiff Meyer's declaration is attached as Exhibit B; Plaintiff Benhaim's declaration is

attached as Exhibit C.

12. Plaintiff Friedman received her ballot on November 2, 2004.

13. Plaintiff Meyer received his ballot after the close of business on November 1, 2004.

14. Plaintiffs Friedman and Meyer voted their absentee ballots and returned them to the supervisor, postmarked November 2, 2004.

15. Plaintiff Benhaim voted a federal write-in ballot on November 2, 2004. He received his absentee ballot in the mail after he returned home from sending the federal ballot.

16. By administrative rule, Florida accepts an absentee ballot from an overseas voter if it is signed and dated, or postmarked, by election day and received by the supervisor of election's office no later than 10 days after the date of the election. Fla. Admin. Code 1S-2.013(7).

17. Florida accepts the federal absentee write-in ballot from overseas voters.

18. Each of the plaintiffs, through no fault of their own, will be deprived of their right to vote unless defendants are enjoined to count their ballots if received by the supervisor of election's office no later than 10 days after the date of the election.

19. The failure of elections officials to timely send absentee ballots in time for plaintiffs to vote and return them by November 2, 2004, is an error or omission that is not material to plaintiffs' qualification to vote under state law.

20. Plaintiffs are similarly situated to Florida voters within the United States who

timely requested an absentee ballot and were able to have their vote counted because they timely received their ballots.

21. Plaintiffs are similarly situated to overseas voters whose ballots, for what ever reason, are received by a supervisor of elections within 10 days after election day.

22. Unless plaintiffs receive immediate injunctive relief, they will be deprived of their right to vote in the November 2, 2004 election even though they requested absentee ballots in a timely manner. Plaintiffs will be irreparably harmed.

23. Plaintiff has no adequate remedy at law because the denial of plaintiff's right to vote cannot be remedied through legal relief after the election has passed.

24. The actions of defendant complained of are under color of state law and were taken pursuant to municipal custom, practice and policy.

FIRST CAUSE OF ACTION

25. The failure of defendant supervisors of elections to get absentee ballots to qualified voter plaintiffs in time for them to vote and return them by election day, and the failure to count absentee ballots postmarked on or before November 2, 2004, deprives plaintiffs of their rights under 42 U.S.C. § 1971(a)(2)(B) and is actionable pursuant to 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION

26. Defendants' policies and state law has deprived, and will continue to deprive, plaintiffs of the right to vote, in violation of the First and Fourteenth Amendments to the

United States Constitution. This deprivation may be redressed pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

27. Defendants' acceptance of overseas' ballots signed and dated, or postmarked, by November 2, 2004, if received by November 12, 2004, while rejecting plaintiffs' ballots deprives plaintiffs of the right to equal protection, in violation of the Fourteenth Amendment to the United States Constitution. This deprivation may be redressed pursuant to 42 U.S.C. § 1983.

WHEREFORE, plaintiffs respectfully requests this Court:

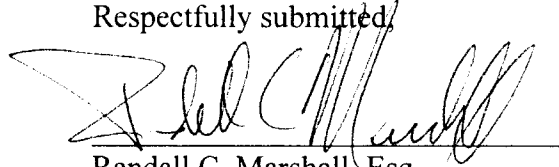
A. enter a declaratory judgment that the rejection of plaintiffs' ballots, and those of other qualified voters, if postmarked by November 2, 2004, and received by November 12, 2004, violates the Civil Rights Act of 1964, 42 U.S.C. §1971(a)(2)(B), and the First and Fourteenth Amendments to the United States Constitution;

B. enter a preliminary and permanent injunction enjoining defendant supervisors of elections to count plaintiffs' ballots, and those of other qualified voters, if postmarked by November 2, 2004 and received by November 1, 2004;

C. award plaintiffs the costs and expenses of this action together with reasonable attorneys' fees; and

D. retain jurisdiction of this case and grant plaintiffs such other and further relief as may, in the discretion of this Court, be just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randall C. Marshall", written over a horizontal line.

Randall C. Marshall, Esq.

ACLU FOUNDATION OF FLORIDA, INC.

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jonel@floridalegal.org

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305-576-9664 facsimile

Attorneys for Plaintiff

DECLARATION OF FAY FRIEDMAN

I, Fay Friedman, declare under penalty of perjury, that the following is true:

1. My name is Fay Friedman. I am a United States citizen and registered voter in Broward County, Florida. My address in Broward County is 10382 NW 24th Place, Building 207, apartment 407, Sunrise, FL 33322. I am 86 years old.
2. Although I spent the summer of 2004 in McKeesport, PA., I had intended to return to Sunrise, FL to vote in person on November 2, 2004. However, I injured myself so that I could not travel. Therefore, on Friday, October 22, 2004, I telephoned the office of the Broward Supervisor of Elections ("BSOE"), using its general number, and requested that I be sent an absentee ballot at my summer address, 1017 McCleary Street, McKeesport, PA, 15132. The clerk I talked to took down my summer address and informed me that an absentee ballot would be sent to me at that address.
3. When I had not received my absentee ballot by the following Thursday, October 28, 2004, I telephoned BSOE's general number again, spoke to a different clerk, and was told that my absentee ballot had been sent to me by mail on Monday October 25, 2004.
4. The next day, Friday, October 29, 2004, I received in the mail at my McKeesport, PA, address a card from the Broward County Democratic Executive Committee, thanking me for requesting an absentee ballot, as well as a piece of campaign literature with respect to a Florida proposed-constitutional amendment. A copy of these two pieces of mail are attached as Exhibit A. Upon receiving this mail, I knew that the BSOE had logged in my request for an absentee ballot because I had not used my McKeesport address except when I requested the absentee ballot. I did not, however,

1

Ex A

receive my absentee ballot with that delivery of mail.

5. A short time after the delivery of my mail on Friday, October 29, 2004, I again telephoned BSOE's general number to inquire as to why I had not received my absentee ballot. Despite an hour wait on hold, I did not get through to talk to any person.

6. Later on Friday, October 29, 2004, my daughter, Diane Finston, who had also been calling the BSOE on my behalf from her home in California, telephoned me and gave me an "internal number" to reach BSOE. Using that number, I telephoned again and, this time, spoke to another clerk who informed me that she would fax my absentee ballot to me right away. I gave her the fax number of my son, Gary Friedman in Pittsburgh (412-481-9949), which is not too far from my summer home in McKeesport, and waited. After some time had passed and no fax arrived, I telephoned the same internal number again, and spoke to yet another clerk, who verified the fax number I had given and told me that the fax would be coming soon. No fax ever arrived.

7. At the end of the business day on Friday, October 29, 2004, my daughter telephoned me again and informed me that she had just spoken to BSOE and was assured that my absentee ballot had been sent out to me via Federal Express that day.

8. My absentee ballot did not arrive on Saturday, October 30, 2004, or on Monday, November 1, 2004.

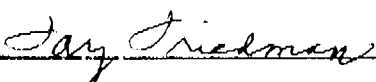
9. On Monday, November 1, 2004, my daughter, using a special telephone number she had obtained from the office of a U.S. Senator in Florida, was able to reach a BSOE administrator named Coriss Ellis. Ms. Ellis confirmed to my daughter that my request for an absentee ballot had been received on October 22, 2004 and stated that my absentee ballot had been sent to me on Friday October 29, 2004, via Federal Express.

However, because my absentee ballot had not yet arrived, Ms. Ellis agreed to use my daughter's Federal Express account number to send me my absentee ballot again that day. My daughter made the arrangements directly with Federal Express, which picked up my absentee ballot on Monday afternoon for delivery to me before 10:30 a.m. on Tuesday, November 2, 2004.

10. On Tuesday, November 2, 2004, Federal Express arrived with my absentee ballot, I filled it out, and I immediately sent it back to BSOE by return Federal Express, again using my daughter's account. It is expected to arrive at BSOE on Wednesday, November 3, 2004.

11. If the court does not order the Supervisor of Elections to count my absentee ballot I will have lost my right to vote in this election, despite all of my efforts to ensure that I would be able to exercise that right, all because of the failure of BSOE to send me my absentee ballot on time.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 2, 2004.



Fay Friedman

Amendment 3 Is Another Giveaway for Big Insurance Companies

Amendment 3

Amendment 3 is a trick by big insurance companies. The fine print is bad for Florida families:

***Compensation Amendment:** This determines how much you have to spend if you ever have to sue an insurance company.

***Claimant:** Any person who files an insurance claim (this means you).

***Medical liability:** What an insurance company owes someone who is injured by a wrongful act, including criminal behavior or gross misconduct.

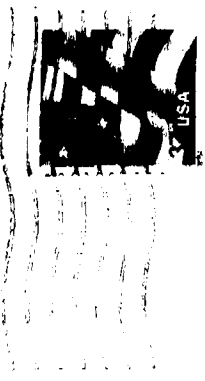
Amendment 3

Reference:
Article 1, Section 26
Ballot Title:
The Medical Liability Compensation Amendment
Ballot Summary:
Compensation for injured persons
and families
injured by
wrongful
acts

Full Text
of
Amendment 3
to
the
Florida
Constitution
is
available
at
www.flsos.com

6027M

FRIEDMAN, FAY
1017 MC CLEARY ST
MC KEESPORT PA 15132



pd. adv. sponsored and paid for by Floridians for Patient Protection, POB 1365, Tallahassee, FL 32302

Vote NO on Amendment 3 and send big insurance companies a message.

When big insurance companies get their way, Florida families refuse to pay legitimate homeowner and health care costs. Now they want to make it nearly impossible to hold big insurance companies pay critical medical liability claims.

Amendment 3 – Bad for Florida:

- Weakens our ability to hold insurance companies accountable when they deny medical liability claims.
- Forces claimants to pay a set amount in legal fees if we try to take an insurance company to court.
- Fails to do anything about reducing rates or solving Florida's health care crisis.

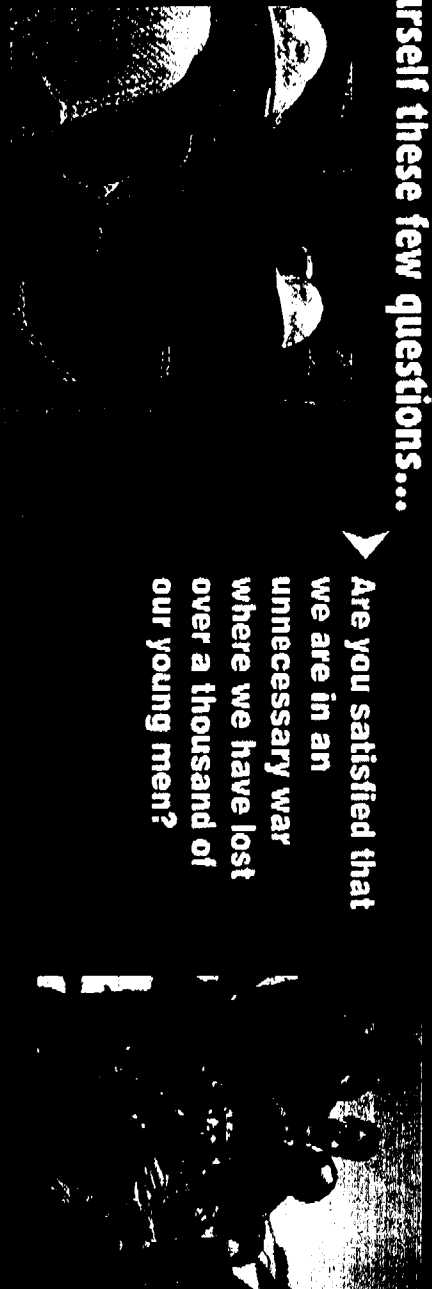
8662A

When They Win -- We Lose Vote Against Big Insurance Companies

Vote NO on Amendment 3

Before you cast your ballot ask yourself these few questions...

- Are you better off today, than you were four years ago?
- Do you know that we have lost over 2 million jobs, many of them due to outsourcing and going overseas?



- Are you satisfied that the cost of prescription drugs is getting much costlier every year and another 17.5% is also being deducted from social security checks?

- Are you satisfied that we are in an unnecessary war where we have lost over a thousand of our young men?
- Are you satisfied that this country has in the huge surplus and turned it into the biggest depression? This deficit is so huge that your grandchildren, and yes, even your great grandchildren will have to pay for it.

Let's Build A Better America. Let's Vote For DEMOCRATS

We Can Be Stronger At Home And Respected in The World



NO POSTAGE
NECESSARY IF
MAILED IN
THE UNITED STATES

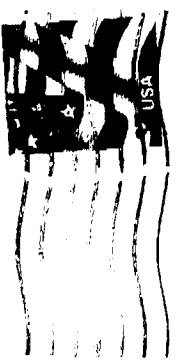
Thank You For Requesting An Absentee Ballot

Aboard The DEMOCRATIC EXPRESS

Destination: Whitehouse

Whitehouse

Country



Broward County Democratic
Executive Committee
1824 N. University Drive
Plantation, Florida 33322





FedEx Tracking Number 849736124882

From [redacted] Date [redacted] Sender's Name [redacted] Company [redacted] Address [redacted] City [redacted] State [redacted] ZIP [redacted]

Your Internal Billing Reference

To Recipient's Name [redacted] Company [redacted] Recipient's Address [redacted] Address [redacted] City [redacted] State [redacted] ZIP [redacted]



FedEx Tracking Number 841664277028

From Please print and date here Date 11/2/04 Sender's FedEx Account Number [redacted] Sender's Name Jay Friedman Phone (412) 673-9568 Company [redacted] Address 1017 Mc Cleary St. Dept./Floor/Suite/Room [redacted] City Mc Keesport State Pa. ZIP 15132

Your Internal Billing Reference

To Recipient's Name Supervisor of Elections Company [redacted] Address 115 South Andrews Ave - Room # 102 Dept./Floor/Suite/Room [redacted] City St. Louis State Ill. ZIP 63301

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4a Express Package Service Packages up to 150 lbs. FedEx Priority Overnight, FedEx Standard Overnight, FedEx First Overnight, FedEx 2Day, FedEx Express Saver

4b Express Freight Service Packages over 150 lbs. FedEx 1Day Freight, FedEx 2Day Freight, FedEx 3Day Freight

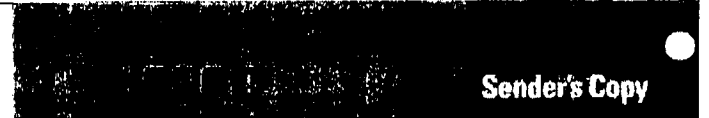
5 Packaging FedEx Envelope, FedEx Pak, FedEx Box, FedEx Tube, Other

6 Special Handling SATURDAY Delivery, HOLD Weekday at FedEx Location, HOLD Saturday at FedEx Location

7 Payment Bill to: Sender, Recipient, Third Party, Credit Card, Cash/Check

Summary table with columns: Total Packages, Total Weight, Total Declared Value, Total Charges

8 Sign to Authorize Delivery Without a Signature



4a Express Package Service Packages up to 150 lbs. FedEx Priority Overnight, FedEx Standard Overnight, FedEx First Overnight, FedEx 2Day, FedEx Express Saver

4b Express Freight Service Packages over 150 lbs. FedEx 1Day Freight, FedEx 2Day Freight, FedEx 3Day Freight

5 Packaging FedEx Envelope, FedEx Pak, Other

6 Special Handling SATURDAY Delivery, HOLD Weekday at FedEx Location, HOLD Saturday at FedEx Location

7 Payment Bill to: Sender, Recipient, Third Party, Credit Card, Cash/Check

Summary table with columns: Total Packages, Total Weight, Total Declared Value

8 Release Signature

DECLARATION OF PLAINTIFF ADAM J. MEYER

I, Adam J. Meyer, declare under penalty of perjury, that the following is true:

1. My name is Adam J. Meyer. I am a United States Citizen over the age of 18. I am a registered voter and qualified to vote in the November 2004 election. I am presently residing in Gainesville where I attend Santa Fe Community College. My permanent residence is in Miami-Dade County.

2. On or about October 20, 2004 I completed a form requesting an absentee ballot. The next day, on or about October 21, 2004, I mailed the completed request to elections officials in Miami-Dade County, Florida.

3. I had previously asked elections officials in Miami-Dade County when I could expect to receive my absentee ballot. They informed me that absentee ballots are mailed out on a daily basis as the requests are received. Because mail between Gainesville and Miami generally takes only two days, I expected to receive my absentee ballot during the week of October 25, 2004.

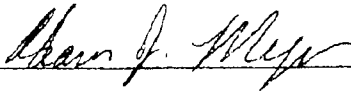
4. I did not receive my absentee ballot until 7:00 pm on Monday, November 1, 2004. This did not provide me with sufficient time to return it to the elections office so that it would be received on November 2, 2004.

5. I have mailed the absentee ballot to the Miami-Dade elections office, postmarked November 2, 2004.

6. If the court does not order Miami-Dade elections officials to count my absentee ballot, my vote will not be counted.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 2, 2004.



Adam J. Meyer

DECLARATION OF DANIEL BENHAIM

I, Daniel Benhaim, declare under penalty of perjury, that the following is true:

1. My name is Daniel Benhaim. I am a United States citizen and registered voter in Miami-Dade County, Florida. My address in Miami-Dade County is 21160 NE 20th Ave, Miami Beach, FL 33179. I have lived there during most of my life. I am 20 years old.

2. I am currently a student at University of Central Florida in Orlando, Florida. I was unable to leave school to return home on election day. Therefore, in early October, I requested an absentee ballot from the office of the Miami-Dade County Supervisor of Elections, and asked for an absentee ballot to be sent to my college address, 1908 Cuesta Dr, Orlando, Florida, 32826

3. My application was returned to me in mid-October with a notice saying that one of the signatures was incomplete. I completed the application and sent it back immediately, on or around October 20, 2004.

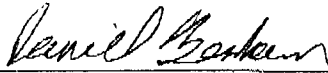
4. When I had not received my absentee ballot by October 29, I called the office of the Supervisor of Elections, and they said they would send me the absentee ballot by overnight mail.

5. My absentee ballot did not arrive on Saturday, October 30, 2004, or on Monday, November 1, 2004.

6. Based on advice I received from the Election Protection Hotline, 1-866-OUR VOTE, I downloaded a federal write-in ballot from www.fvap.gov and filled it out and mailed it on November 2, 2004. I did not know of any other way to protect my right to vote, since I never received the absentee ballot and was unable to travel to Miami-Dade

County to vote on November 2. On the envelope, I wrote "Absentee Ballot – mailed November 2, 2004." If the court does not order the Supervisor of Elections to count my absentee ballot I will have lost my right to vote in this election, despite all of my efforts to ensure that I would be able to exercise that right, all because of the failure of the Supervisor of Elections to send me my absentee ballot on time.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 2, 2004.

 11.2.04

Daniel Benhaim