

Late Overseas Ballots in Michigan

United States v. Michigan

(*Robert J. Jonker, W.D. Mich. 1:12-cv-788*)

One week in advance of Michigan's 2012 federal primary election, the Justice Department filed a federal complaint in the Western District of Michigan to enforce a requirement of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA),¹ as amended by the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act),² that absentee ballots be sent to overseas voters at least 45 days in advance of a federal election.³ The complaint alleged a report, based on 71% of Michigan's 1,517 election jurisdictions, that "62 cities and townships reported that they failed to send all of their UOCAVA ballots by the June 23, 2012 deadline."⁴ The government filed with its complaint a motion for a temporary restraining order and a preliminary injunction.⁵ The court assigned the case to Judge Robert J. Jonker,⁶ who denied without prejudice a temporary restraining order on a conclusion that the government had made no effort to satisfy the procedural requirements for such relief.⁷

Following an August 3 hearing,⁸ four days in advance of the election, Judge Jonker approved a stipulated order on August 6 that, among other things, (1) gave overseas voters extensions beyond election day equal to the number of days late their jurisdictions sent out overseas absentee ballots and (2) permitted Michigan jurisdictions to certify results that could not be affected by outstanding overseas ballots.⁹

1. Pub. L. No. 99-410, 100 Stat. 924.

2. National Defense Authorization Act for Fiscal Year 2010, [Pub. L. No. 111-84](#), 123 Stat. 2190, 2318–35.

3. Complaint, [United States v. Michigan](#), No. 1:12-cv-788 (W.D. Mich. July 31, 2012), D.E. 1; *see Ballot Deadline Missed*, Port Huron Times Herald, Aug. 1, 2012, at A1; *Lawsuit Possible in Late Ballots*, Detroit News, July 28, 2012, at A4.

4. Complaint, *supra* note 3, at 4.

5. Motion, [United States v. Michigan](#), No. 1:12-cv-788 (W.D. Mich. July 31, 2012), D.E. 2.

6. Notice, *id.* (July 31, 2012), D.E. 5.

7. Order, *id.* (July 31, 2012), D.E. 7.

8. Transcript, *id.* (Aug. 3, 2012, filed Aug. 6, 2012), D.E. 14; Minutes, *id.* (Aug. 3, 2012), D.E. 17.

9. Stipulated Order, *id.* (Aug. 6, 2012), D.E. 16; *see Deadline Pushed for Late Ballots*, Detroit News, Aug. 7, 2012, at A6.