

Prompt Delivery of Absentee Ballots by Guam

United States v. Guam

(Frances M. Tydingco-Gatewood, D. Guam 1:10-cv-25)

The Justice Department filed a federal complaint¹ against Guam in the district court in Hagåtña on October 6, 2010, to enforce the federal requirement that absentee ballots be sent to overseas voters at least 45 days before a federal election,² as provided by the 2009 Military and Overseas Voter Empowerment (MOVE) Act's³ amendment to the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).⁴ With its complaint, the Department filed a motion for a temporary restraining order and a preliminary injunction.⁵

On the following day, Judge Frances M. Tydingco-Gatewood issued an order to show cause on October 13 why the court should not grant the Department injunctive relief.⁶ On the third day, Guam filed a notice that it would not oppose the Department's motion for injunctive relief,⁷ so Judge Tydingco-Gatewood ordered that the October 13 hearing resolve the merits of the action.⁸ Judge Tydingco-Gatewood's management of this case was greatly facilitated by the parties' cooperation.⁹

After the October 13 proceeding,¹⁰ Judge Tydingco-Gatewood (1) ordered compliance with UOCAVA, (2) ordered that cast absentee ballots sent by November 2 and received by November 15 be counted for the congressional delegate race, and (3) ordered Guam to provide the court with reports on its compliance efforts.¹¹

For the 2012 elections—a September 1 primary election and the November 6 general election—Guam had still not enacted legislation that was compliant with UOCAVA.¹² Judge Tydingco-Gatewood, therefore, issued a stipulated order on

1. [Complaint](#), *United States v. Guam*, No. 1:10-cv-25 (D. Guam Oct. 6, 2010), D.E. 1.

2. [42 U.S.C. § 1973ff-1\(a\)\(8\)\(A\)](#) (2012).

3. [Pub. L. No. 111-84 § 579\(a\)](#), 123 Stat. 2318, 2322 (part of the National Defense Authorization Act for Fiscal Year 2010, 123 Stat. 2189).

4. [Pub. L. No. 99-410](#), 100 Stat. 924, *as amended*, [42 U.S.C. §§ 1973ff to 1973ff-7](#); see Erin Thompson, *GEC Holds Special Meeting*, Pac. Daily News, Sept. 30, 2010 (reporting that Guam missed the September 18 deadline for sending out absentee ballots).

5. [Motion](#), *United States v. Guam*, No. 1:10-cv-25 (D. Guam Oct. 6, 2010), D.E. 2.

6. [Order](#), *id.* (Oct. 7, 2010), D.E. 9.

Tim Reagan interviewed Judge Tydingco-Gatewood for this report by telephone on November 16, 2012.

7. [Notice](#), *United States v. Guam*, No. 1:10-cv-25 (D. Guam Oct. 8, 2010), D.E. 12.

8. [Order](#), *id.* (Oct. 8, 2010), D.E. 15.

9. Interview with Hon. Frances M. Tydingco-Gatewood, Nov. 16, 2012.

10. [Minutes](#), *United States v. Guam*, No. 1:10-cv-25 (D. Guam Oct. 13, 2010), D.E. 18.

11. [Order](#), *id.* (Oct. 13, 2010), D.E. 19; see *Election Commission to Manually Count Absentee Ballots Today*, Pac. Daily News, Nov. 16, 2010, B.

12. [Order](#) at 2, *United States v. Guam*, No. 1:10-cv-25 (D. Guam July 13, 2012), D.E. 27.

July 13 requiring Guam to provide UOCAVA voters with email as an electronic option for absentee voting.¹³

13. *Id.* at 2–5; see [Status Update](#), *id.* (Aug. 1, 2013), D.E. 30 (confirming Guam’s compliance with the order).