

Accommodating Overseas Voters in a Special Election

*DuPage County Board of Election Commissioners
v. Illinois State Board of Elections
(Ruben Castillo, N.D. Ill. 1:08-cv-232)*

Election officials filed a federal complaint seeking relief from the time constraints imposed by a special election to fill a seat in the U.S. House of Representatives set to coincide with a presidential primary election, because the schedule did not give them enough time to provide overseas voters with their ballots on time. The district judge granted the officials departures from statutory deadlines to accommodate the special-election dates. The judge modified time deadlines for overseas voters and authorized the use of blank absentee ballots.

Subject: Absentee and early voting. *Topics:* Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); intervention.

Election officials for seven northern Illinois counties and the City of Aurora filed a federal complaint in the Northern District of Illinois on Thursday, January 10, 2008, seeking relief from time requirements for a special election to fill a vacancy created by the resignation of U.S. Representative Dennis Hastert.¹ They claimed that a March 8 election with a February 5 primary election—the day of Illinois’s Super Tuesday presidential primary election—did not give the election officials enough time to comply with various state time requirements or the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA).² On the following day, the plaintiffs filed a motion for an emergency hearing.³

Illinois law required a special election within 115 days of a writ issued by the governor within five days of the congressional vacancy.⁴ The March 8 date was ninety-six days after the writ was issued and thirty-two days after the primary election.⁵

1. Complaint, *DuPage Cty. Bd. of Election Comm’rs v. Ill. State Bd. of Elections*, No. 1:08-cv-232 (N.D. Ill. Jan. 10, 2008), D.E. 1; see Steve Lord, *Election Dates Cause Worries*, *Chi. Sun-Times*, Jan. 14, 2008, at 18; Lisa Smith, *Special Election Will Be Headache for Officials*, *Chi. Daily Herald*, Dec. 1, 2007, at 4.

2. Complaint, *supra* note 1; see Pub. L. No. 99-410, 100 Stat. 924, *as amended*, 52 U.S.C. §§ 20301–20311. See generally Robert Timothy Reagan, *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act* (Federal Judicial Center 2016).

3. Emergency Motion, *DuPage Cty. Bd. of Election Comm’rs*, No. 1:08-cv-232 (N.D. Ill. Jan. 11, 2008), D.E. 13.

4. 10 Ill. Comp. Stat. 5/25-7; see Calendar Order at 2, *DuPage Cty. Bd. of Election Comm’rs*, No. 1:08-cv-232 (N.D. Ill. Jan. 18, 2008), D.E. 32.

5. See Calendar Order, *supra* note 4, at 5.

On Monday, January 14, the federal government sought permission to participate in the case as an amicus curiae to protect the federal rights of overseas voters.⁶

Judge Ruben Castillo heard the case on Wednesday.⁷ He granted the federal government's motion to participate and continued the plaintiff's motion until two days later.⁸ On January 18, Judge Castillo issued an order specifying a calendar of time requirements, including departures from normal statutory deadlines, to accommodate the scheduled election dates.⁹

With respect to overseas ballots, Judge Castillo ordered that they be counted for the primary election if postmarked by February 4 and received by February 8.¹⁰ Overseas ballots for the March 8 election would be accepted if postmarked by March 7 and received by March 29.¹¹ An important difficulty in providing overseas voters with timely ballots was the short time between the two elections, so Judge Castillo authorized the use of blank absentee ballots.¹²

6. Amicus Curiae Motion, *DuPage Cty. Bd. of Election Comm'rs*, No. 1:08-cv-232 (N.D. Jan. 14, 2008), D.E. 10.

7. Minutes, *id.* (Jan. 16, 2008), D.E. 27.

Judge Castillo retired on September 27, 2019. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

8. Minutes, *supra* note 7.

9. Calendar Order, *supra* note 4; *see* Reagan, *supra* note 2, at 4–5.

10. Calendar Order, *supra* note 4, at 17.

11. *Id.* at 18.

12. *Id.* at 18–20.