

Late Overseas Ballots in Michigan

United States v. Michigan
(Robert J. Jonker, W.D. Mich. 1:12-cv-788)

One week before Michigan's 2012 federal primary election, upon learning that a substantial number of election jurisdictions were not in compliance, the Justice Department filed a complaint to enforce a requirement that absentee ballots be sent to overseas voters at least forty-five days in advance of an election. Four days before the election, the court approved a stipulated order extending the deadline for receipt of cast overseas ballots by the number of days that they were sent late.

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

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 forty-five days before 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 before 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

1. 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).

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.

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

9. Stipulated Order, *id.* (Aug. 6, 2012), D.E. 16; *see* Reagan, *supra* note 1, at 10; *Deadline Pushed for Late Ballots*, Detroit News, Aug. 7, 2012, at A6.