

## Prompt Delivery of Absentee Ballots by Guam

*United States v. Guam*

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

On October 6, 2010, the Justice Department filed a federal action to enforce Guam's compliance with the Uniformed and Overseas Citizens Absentee Voting Act. Guam filed a notice that it would not oppose the action, and after an October 13 hearing the district court ordered compliance. For elections in 2012, the district court issued a stipulated order of compliance, because Guam had not yet achieved compliance legislatively.

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

The U.S. Department of Justice filed a federal complaint<sup>1</sup> 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 forty-five days before a federal election,<sup>2</sup> as provided by the 2009 Military and Overseas Voter Empowerment (MOVE) Act's<sup>3</sup> amendment to the 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).<sup>4</sup> With its complaint, the department filed a motion for a temporary restraining order and a preliminary injunction.<sup>5</sup>

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.<sup>6</sup> On the third day, Guam filed a notice that it would not oppose the department's motion for injunctive relief,<sup>7</sup> so Judge Tydingco-Gatewood ordered that the October 13 hearing resolve the merits of the action.<sup>8</sup> Judge Tydingco-Gatewood's management of this case was greatly facilitated by the parties' cooperation.<sup>9</sup>

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

2. 52 U.S.C. § 20302(a)(8)(A).

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*, 52 U.S.C. §§ 20301–20311; *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). *See generally* Robert Timothy Reagan, *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act* (Federal Judicial Center 2016).

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.

After the October 13 proceeding,<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> Judge Tydingco-Gatewood, therefore, issued a stipulated order on July 13 requiring Guam to provide UOCAVA voters with email as an electronic option for absentee voting.<sup>13</sup>

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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.

13. *Id.* at 2–5; see Status Update, *id.* (Aug. 1, 2013), D.E. 30 (confirming Guam’s compliance with the order); see also Reagan, *supra* note 4, at 21.