

## Timely Overseas Ballots for State Elections in Maryland

*Doe v. Walker (Roger W. Titus, D. Md. 8:10-cv-2646)*

A federal complaint filed forty days before the 2010 general election alleged that absentee ballots had not been sent to overseas voters in time. It turned out that ballots listing only federal offices had already been sent out. The district judge extended the deadline for the state to receive ballots for state offices by ten days to preserve overseas voters' fundamental rights to vote.

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

Forty days before the November 2, 2010, general election, a military voters' rights group and Officer John Doe, who used a pseudonym "to protect his military mission,"<sup>1</sup> filed a federal complaint<sup>2</sup> in the District of Maryland seeking enforcement of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA),<sup>3</sup> as amended by the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act),<sup>4</sup> which requires the sending of absentee ballots to overseas voters forty-five days before an election.<sup>5</sup>

Although the complaint sought preliminary injunctive relief,<sup>6</sup> the plaintiffs did not file a motion for a temporary restraining order or a preliminary injunction.<sup>7</sup> Maryland election officials filed a motion to dismiss the action or for summary judgment on October 9, two weeks and two days after the complaint was filed.<sup>8</sup> On October 13, Judge Roger W. Titus set the case for hearing on October 22.<sup>9</sup> The plaintiffs filed a motion for a temporary re-

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1. *Doe v. Walker*, 746 F. Supp. 2d 667, 671 n.2 (D. Md. 2010).

2. Complaint, *Doe v. Walker*, No. 8:10-cv-2646 (D. Md. Sept. 23, 2010), D.E. 1; *Doe*, 746 F. Supp. 2d at 672; see Andrea F. Siegel, *Guardsmen Sue Over Validity of Maryland's Absentee Ballots*, Balt. Sun, Sept. 27, 2010, at 2A.

3. 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).

4. National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111-84, 123 Stat. 2190, 2318–35.

5. See *Doe*, 746 F. Supp. 2d at 671.

6. Complaint, *supra* note 2, at 15.

7. Scheduling Order, *Doe*, No. 8:10-cv-2646 (D. Md. Oct. 13, 2010), D.E. 7.

8. Motion, *id.* (Oct. 9, 2010), D.E. 6.

9. Scheduling Order, *supra* note 7; see Transcript at 38, *Doe*, No. 8:10-cv-2646 (D. Md. Oct. 22, 2010, filed Nov. 9, 2010), D.E. 25 ("THE COURT: . . . I didn't even know about this case until I saw [the] motion to dismiss and I said, whoops, there's a prayer and that's all for preliminary injunctive relief. If they want it, we've got to get something in front of me.").

Judge Titus died on March 3, 2019. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges); see Bart Barnes, *Leggett's Attorney in Lurid Lawsuit*, Wash. Post, Mar. 8, 2019, at B5.

straining order and a preliminary injunction on October 18.<sup>10</sup>

At the hearing, it was established that the federal statutory claim was moot, because Maryland had sent timely absentee ballots to overseas voters on September 18 listing only federal offices up for election and then sent absentee ballots with all offices later, which overseas voters could cast as replacement ballots.<sup>11</sup> The pressing question was how long after election day did Maryland have to accept the return of absentee ballots to preserve overseas voters' constitutional voting rights.<sup>12</sup>

On October 29, Judge Titus issued a preliminary injunction requiring Maryland to count overseas absentee ballots received by November 22 if sent by election day.<sup>13</sup>

Judge Titus granted a stipulated dismissal of the case on January 3, 2011.<sup>14</sup>

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10. Motion, *Doe*, No. 8:10-cv-2646 (D. Md. Oct. 18, 2010), D.E. 9.

11. Transcript, *supra* note 9; *see Doe v. Walker*, 746 F. Supp. 2d 667, 672 (D. Md. 2010).

12. Transcript, *supra* note 9.

13. *Doe*, 746 F. Supp. 2d 667; *see Reagan*, *supra* note 3, at 25–26.

14. Dismissal, *Doe*, No. 8:10-cv-2646 (D. Md. Jan. 3, 2011), D.E. 34.