

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE DISTRICT COURT OF GUAM
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM; THE GUAM
ELECTION COMMISSION; and JOHN F.
BLAS, its Executive Director, in his official
capacity,

Defendants.

CIVIL CASE NO. 10-00025

**ORDER GRANTING UNITED
STATES DECLARATORY
AND PERMANENT INJUNCTIVE
RELIEF**

This matter comes before the court on the United States' Motion for Temporary Restraining Order and Preliminary Injunction and the trial on the merits.¹ After reviewing the Motion and hearing from both parties, the court declares that the Defendants violated Sections 102(a)(8)(A) and 102(f)(1) of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), as amended by the Military and Overseas Voter Empowerment Act, and hereby ORDERS that:

- (1) To ensure that Guam's UOCAVA voters will have the option to receive an absentee ballot by electronic transmission for the November 2, 2010 Federal general election, the Defendants shall take the

¹ On October 8, 2010, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, the court consolidated the trial on the merits with the preliminary injunction hearing. *See* Docket No. 15.

1 following actions: (a) The Defendants shall establish email as Guam's
2 electronic transmission option for UOCAVA voters; (b) The
3 Defendants shall contact each UOCAVA voter by email for those
4 voters for whom they have email addresses on file and by telephone
5 for all other UOCAVA voters for whom they have telephonic contact
6 information on file, and inform each UOCAVA voter of the option to
7 request to receive an absentee ballot by email transmission, and
8 provide electronic email and cost-free telephonic contact information
9 to such voters so that those voters may make the request to the Guam
10 Election Commission; and (c) The Defendants shall promptly transmit
11 an absentee ballot by email to all UOCAVA voters who request it as
12 provided above.

13 (2) To ensure that Guam's UOCAVA voters will have sufficient
14 opportunity under Federal law to receive absentee ballots they have
15 requested and submit marked absentee ballots in time to be counted for
16 the November 2, 2010 Federal general election, Defendants shall count
17 as validly cast ballots in the November 2, 2010 Federal general
18 election all those ballots cast by absent uniformed services voters and
19 overseas voters qualified to vote in Guam pursuant to UOCAVA,
20 including ballots that were transmitted to the voter by email and
21 Federal Write-in Absentee Ballots, provided such ballots are executed
22 and sent by November 2, 2010, received by November 15, 2010, and
23 are otherwise valid.
24

1 (3) To ensure that UOCAVA voters who received a ballot by mail and by
2 email will have their ballot validly counted, the Defendants shall
3 establish a procedure providing which ballot shall be counted if both
4 ballots are returned, and notify all UOCAVA voters of these rules.

5 (4) The Defendants shall take such steps as are necessary to afford
6 UOCAVA voters eligible to participate in Guam's November 2, 2010
7 Federal general election a reasonable opportunity to learn of this
8 Court's order by sending a notice to every UOCAVA voter.

9 Defendants shall provide the notice by email or telephonically if such
10 information is available. The notice shall, at minimum: (a) explain
11 that the deadline for the ballot to be executed and sent is November 2,
12 2010; (b) explain that the deadline for receipt of the ballot has been
13 extended to November 15, 2010; (c) explain the rules for counting the
14 ballots referenced in the preceding paragraph; and (d) provide
15 appropriate contact information at the Guam Election Commission for
16 assistance.

17 (5) Upon the entry of this Order, the Defendants shall issue a press
18 statement for immediate release, posted immediately on Guam's
19 election information website, and distributed to the Federal Voting
20 Assistance Program; International Herald Tribune
21 (<http://www.ihf.com>); USA Today International
22 (<http://www.usatoday.com>); Military Times Media Group
23 (cvinch@militarytimes.com); Overseas Vote Foundation
24 (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes

1 (www.estripes.com); and any other appropriate newspaper or news
2 media in Guam. The news release shall, at a minimum: (a) announce
3 that UOCAVA voters may request to receive their absentee ballots by
4 email and explain how such a request should be made; (b) summarize
5 this order, including a notice that the deadline for receipt of the ballot
6 has been extended to November 15, 2010; and (c) provide appropriate
7 contact information at the Guam Election Commission for assistance.

8 (6) The Defendants shall provide a report to the United States Department
9 of Justice no later than three business days following entry of this
10 order concerning the transmittal of UOCAVA absentee ballots. The
11 report shall (a) certify that absentee ballots were transmitted no later
12 than October 1, 2010 to all qualified UOCAVA voters whose
13 applications for ballots have been received and approved by that date;
14 and (b) indicate the number of requests received and the number of
15 UOCAVA absentee ballots transmitted, and the method of transmittal
16 thereof.

17 (7) The Defendants shall file a report with this Court no later than
18 December 17, 2010 concerning the number of UOCAVA absentee
19 ballots received and counted for the November 2, 2010 general
20 election for Federal office. The report will set forth the following
21 information, categorized by uniformed services overseas voters,
22 uniformed services voters within the United States, and overseas
23 civilian voters:
24

1 a. The number of absentee ballots from UOCAVA voters
2 received before the close of the polls on November 2, 2010 and
3 counted;

4 b. The number of absentee ballots from UOCAVA voters
5 received and counted after the close of the polls on November
6 2, 2010 but prior to the close of business on November 15,
7 2010;

8 c. The number of absentee ballots from UOCAVA voters
9 received later than the close of business on November 15,
10 2010; and

11 d. The number of absentee ballots from UOCAVA voters
12 that were not counted in the general election for Federal office,
13 for reasons other than late receipt.

14 (8) The Defendants shall take such actions as are necessary to assure
15 that UOCAVA voters shall have a fair and reasonable opportunity
16 to participate in future Federal elections, including proposing
17 legislation and taking any administrative actions needed to fully
18 remedy the potential future UOCAVA violations arising from
19 Guam's election schedule and practices. The parties agree to
20 confer on the progress of these efforts, and Defendants shall
21 provide a status report to the United States by March 31, 2011.

22 The Court shall retain jurisdiction over this action through December 31, 2012 to enter
23 such further relief as may be necessary for the effectuation of the terms of this Order and to enter
24 such relief as may be necessary to abate any UOCAVA violation with respect to future Federal

1 elections caused by Guam's election practices.

2 This order shall apply exclusively to federal elections conducted on Guam and shall not
3 be construed to have any bearing upon Guam's local elections for local offices.

4 **SO ORDERED.**



/s/ Frances M. Tydingco-Gatewood
Chief Judge
Dated: Oct 13, 2010