

## LAW REVIEW<sup>1</sup> 26029

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### The Supreme Court Protects Military and Overseas Voting Rights by Upholding State Authority to Count Timely Cast Absentee Ballots.

By John N. Maher,<sup>2</sup> Kevin J. Mikolashek,<sup>3</sup> and Samuel F. Wright<sup>4</sup>

#### 7.1—Military voting rights

***Watson v. Republican National Committee*, 2026 LEXIS 2879 (June 29, 2026).**<sup>5</sup>

The Supreme Court's decision in *Watson v. Republican National Committee* represents one of the Court's most significant recent

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<sup>1</sup> We invite the reader's attention to <https://roa.org/lawcenter/>. You will find more than 2,000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup> John N. Maher, a life member of the Reserve Organization of America (ROA), is the founding partner of Maher Legal Service (MLS), an Illinois law firm with a nationwide practice representing service members and veterans. He served in the Army and Army Reserve and is a retired Lieutenant Colonel, Judge Advocate General's Corps. During the George W. Bush Administration, he served as the General Counsel of the Office of Personnel Management (OPM).

<sup>3</sup> Kevin J. Mikolashek is also a life member of ROA. He served in the Army as a judge advocate and later served for a decade as an Assistant United States Attorney in the Eastern District of Virginia, "the rocket docket," holds an MBA from the University of Virginia Darden School of Business, and served as counsel to the Federal Reserve Board.

<sup>4</sup> Samuel F. Wright, a life member of ROA and the author of most of the "Law Review" articles published on the ROA website, is of counsel at MLS. He served in the Navy and Navy Reserve as a judge advocate. He also served a career as a federal civilian lawyer, including serving for a decade as an attorney for the Department of Labor. He was one of the principal drafters of USERRA.

<sup>5</sup> This is a very recent decision of the United States Supreme Court, released at the end of the Court's 2025-26 term. The decision will be officially published in *United States Reports*. Until official publication, the citation is to LEXIS, a computerized legal research service. We have placed a link to the full text of this case at the end of this article. The three of us (Maher, Mikolashek, and Wright) filed an amicus curiae ("friend of the court") brief in the Supreme Court, on behalf of the National Defense Committee, in support of the State of Mississippi's position that it is not unlawful for Mississippi to count absentee ballots received up to five business days after Election Day. We have placed a link to our brief at the end of this article.

election law decisions affecting military and overseas voters. Although public discussion focused primarily upon domestic absentee voting, the decision also preserves important statutory protections Congress enacted to ensure that members of the Armed Forces and overseas citizens do not lose the franchise because of military service or international mail delays.

### **Service members must be given the opportunity to vote.**

Members of the United States armed forces, by their prowess and their devotion, protect the rights that we all enjoy, including the right to vote in free elections. Military service frequently requires assignments far from home, making personal registration and in-person voting impossible during federal elections. . Because of their service to our country, service members cannot return home to register or to vote on Election Day or during the early voting period immediately before Election Day.

Mail service to Navy and Coast Guard ships at sea and to isolated overseas duty stations, especially under combat conditions, is unavoidably slow and intermittent. As amended in 2009, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires all States to transmit absentee ballots to UOCAVA voters (members of the uniformed services on active duty, voting-age spouses and dependents of service members, and U.S. citizens outside our country temporarily or permanently) by the 45<sup>th</sup> day preceding any primary, general, special, or runoff election for federal offices.<sup>6</sup> The idea is that service members should be able to cast ballots that really do

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<sup>6</sup> See 52 U.S.C. § 20302(a)(8).

get counted, no matter where the service of our country has taken them.

More than 7,000 local election offices (LEOs) administer absentee voting for federal elections. Most LEOs meet the 45-day standard, transmitting ballots to UOCAVA voters by the 45<sup>th</sup> day before Election Day, assuming of course that the voter has applied for the ballot by that day. But some LEOs find it impossible to meet the 45-day standard because of late primaries, ballot access and redistricting lawsuits, and other problems.

The Attorney General of the United States has the authority and responsibility to sue any State or local election official who violates UOCAVA, such as by failing to transmit absentee ballots to UOCAVA voters in time to enable them to receive, mark, and return the ballots in time for those ballots to be counted.<sup>7</sup> If an election official has failed to transmit ballots by the 45<sup>th</sup> day before Election Day, the only possible remedy is a court order mandating an extension on the deadline for the receipt of absentee ballots received from outside the United States, including Army Post Office (APO) and Fleet Post Office (FPO) addresses. If the Supreme Court had affirmed the decision of the United States Court of Appeals for the 5<sup>th</sup> Circuit, there would have been no available remedy in situations where election officials missed the 45-day deadline.

President Harry S. Truman understood the problem more than seventy

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<sup>7</sup> See 52 U.S.C. § 20307.

years ago. Writing to Congress during the Korean War, President Truman observed:

About 2,500,000 men and women in the Armed Forces are of voting age at the present time. Many of those in uniform are serving overseas, or in parts of the country distant from their homes. They are unable to return to their States either to register or to vote. Yet these men and women, who are serving their country and in many cases risking their lives, deserve above all others to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve.<sup>8</sup>

Captain Harry S. Truman was one of the founders of the Reserve Officers Association in 1922. As President, in 1950, he signed our congressional charter. We believe that President Truman's words are as true today as they were 76 years ago. It is most important that members of the United States armed forces have the opportunity to vote, and to have their votes count, no matter where the service of our country has taken them. We call upon Congress, the State legislatures, and the nation's state and local election officials to ensure that the ballots of service members are not thrown out because of untimely transmission of absentee ballots and mail delays that are entirely out of the control of the individual service member.

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<sup>8</sup> President Harry S. Truman, Message to Congress, Special Committee on Service Voting of the American Political Science Association, March 28, 1952 (available at <https://www.trumanlibrary.gov/library/public-papers/96/letter-secretary-defense-voting-servicemen>).

## **Background of *Watson v. Republican National Committee***

Three sections of the United States Code require that elections for President, United States Senator, and United States Representative be conducted on the first Tuesday after the first Monday in November.<sup>9</sup>

In 2024, the Mississippi Legislature amended the State's election law and provided that an absentee ballot that is postmarked on or before Election Day is to be counted if it is received up to 5 business days after Election Day.<sup>10</sup>

The Republican National Committee (RNC), along with the Mississippi Republican Party and several individuals, sued Mississippi Secretary of State Michael Watson (in his official capacity) and several local election officials in the United States District Court for the Southern District of Mississippi.

The Libertarian Party of Mississippi filed a similar lawsuit, and that lawsuit was consolidated with the RNC lawsuit. The plaintiffs contend that the three election day statutes mean that it is unlawful, under federal law, for Mississippi or any other State to count absentee ballots that are received after Election Day, even if those ballots were postmarked on or before Election Day.

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<sup>9</sup> See 2 U.S.C. §§ 1 and 7; 3 U.S.C. § 1.

<sup>10</sup> See Mississippi Code § 23-15-713. Five business days means seven days, because the Saturday and Sunday after the Tuesday election are not business days. In some years, the Veterans Day holiday (November 11) will fall within the post-election counting period. In that situation, the post-election counting period will be eight days.

This was a question of statutory interpretation case and was decided on cross motions for summary judgment. By that, we mean that the facts were never in dispute. One legal question determines the outcome of this case: Do the election day statutes mean that absentee ballots received after Election Day must be set aside and not counted (at least with respect to federal offices)?

The United States District Court answered that question in the negative and granted summary judgment for Mississippi.<sup>11</sup> The RNC and the other plaintiffs appealed to the United States Court of Appeals for the 5<sup>th</sup> Circuit.<sup>12</sup> The three-judge panel of the 5th Circuit reversed the summary judgment for Mississippi and granted judgment for the plaintiffs.<sup>13</sup> Mississippi applied for rehearing and rehearing en banc, but the 5<sup>th</sup> Circuit denied that request.<sup>14</sup>

### ***Watson v. Republican National Committee in the Supreme Court.***

In the federal courts, the final appellate step is to apply for a writ of certiorari. Certiorari is denied in approximately 99% of the cases where it is sought. If four or more Justices vote for certiorari, the case is set for new briefs and a new oral argument in the Supreme Court. If certiorari is denied, the decision of the Court of Appeals is final and the case is over. Mississippi applied for certiorari and the Supreme Court granted it.<sup>15</sup>

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<sup>11</sup> See *Republican National Committee v. Wetzel*, 742 F. Supp. 3d 587, 601-02 (S.D. Miss. 2024).

<sup>12</sup> The 5<sup>th</sup> Circuit is the intermediate federal appellate court that sits in New Orleans and hears appeals from district courts in Louisiana, Mississippi, and Texas.

<sup>13</sup> See *Republican National Committee v. Wetzel*, 120 F.4<sup>th</sup> 200, 215 (5<sup>th</sup> Cir. 2024).

<sup>14</sup> See *Republican National Committee v. Wetzel*, 132 F.4<sup>th</sup> 775, 777 (5<sup>th</sup> Cir. 2025).

<sup>15</sup> *Watson v. Republican National Committee*, 607 U.S/ 1020 (2025).

On 6/29/2026, the penultimate day of the Court's 2025-26 term, the Supreme Court reversed the decision of the 5<sup>th</sup> Circuit and held that the election day statutes do not preclude Mississippi or any other State from counting absentee ballots that were postmarked on or before Election Day and received within a few days later.

Justice Amy Coney Barrett wrote the majority decision. She was joined by Chief Justice John Roberts, Justice Sonia Sotomayor, Justice Elena Kagan, and Justice Ketanji Brown Jackson. Justice Samuel Alito wrote the dissenting opinion and was joined by Justice Clarence Thomas and Justice Neil Gorsuch. Justice Brett Kavanaugh wrote a separate dissent.

In the opening paragraph of the majority opinion, Justice Barrett summarized the Court's decision as follows:

Three federal statutes set the day for the election of Representatives, Senators, and the President. A Mississippi law permits the counting of absentee ballots postmarked by election day but received up to five days later. We must decide whether the federal election-day statutes preempt Mississippi's law. They do not.<sup>16</sup>

The Court therefore rejected the Fifth Circuit's interpretation and preserved each State's authority to count absentee ballots postmarked by Election Day but received during a reasonable post-election counting period authorized by state law.

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<sup>16</sup> [Watson v. Republican Nat'l Comm.](#), 2026 U.S. LEXIS 2879, \*7-8.



In a press released distributed on 6/30/2026, John N. Maher, Esq., the founding partner of Maher Legal Services, wrote the following:

**Maher Legal Services Contributes to United States Supreme Court Victory Protecting the Voting Rights of America's Military and Overseas Citizens**

**WHEATON, ILLINOIS — June 29, 2026**

Maher Legal Services, P.C. is pleased to announce that the Supreme Court of the United States today issued its decision in *Watson v. Republican National Committee*, reversing the judgment of the United States Court of Appeals for the Fifth Circuit and preserving the authority of States to count absentee ballots timely cast by military and overseas voters when those ballots are postmarked on or before Election Day and received within the period authorized by state law. The Court's decision represents an important reaffirmation of the protections Congress enacted for America's servicemembers and overseas citizens through the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”).

On January 9, 2026, Maher Legal Services attorneys John N. Maher, Kevin J. Mikolashek, and Samuel F. Wright filed an amicus curiae brief in the Supreme Court on behalf of the National Defense Committee in support of the Mississippi Secretary of State. The brief traced more than 160 years of military absentee voting, beginning with the Civil War and continuing through World Wars I and II, the Korean War, the enactment of the Federal Voting Assistance Act, and ultimately Congress’s adoption and expansion of UOCAVA. The brief explained that Congress deliberately created a statutory framework ensuring that military and overseas voters would not lose their fundamental right to vote because of the

unavoidable realities of military service, overseas assignments, or delays inherent in military and international mail systems.

The Supreme Court agreed that the federal election-day statutes do not prohibit States from counting absentee ballots timely cast on or before Election Day but received thereafter within a state-authorized counting period. In doing so, the Court rejected the contrary interpretation adopted by the Fifth Circuit and reaffirmed that UOCAVA operates alongside state election laws to protect—not diminish—the voting rights of military and overseas citizens.

Although much of the public discussion surrounding *Watson* has focused upon domestic absentee voting, Maher Legal Services approached the case through a different lens. The central concern presented in the amicus brief was the protection of those serving the Nation in uniform. Military personnel stationed aboard ships at sea, deployed to combat zones, assigned to remote overseas installations, or otherwise serving far from their homes frequently encounter delays entirely beyond their control. Congress recognized those realities when it enacted UOCAVA and later strengthened those protections through the Military and Overseas Voter Empowerment (“MOVE”) Act. The Supreme Court's decision preserves the practical effectiveness of those protections by ensuring that timely cast ballots are not automatically discarded solely because military mail or overseas delivery systems require additional time.

Maher Legal's amicus brief likewise explained that UOCAVA establishes more than an administrative procedure. It reflects Congress's longstanding commitment that Americans answering the Nation's call to military service should never be deprived of their voice in democratic

government because of the very service they render on behalf of their fellow citizens. From Civil War soldiers voting from the battlefield to modern servicemembers deployed throughout the world, federal law has consistently sought to ensure that military service strengthens—not forfeits—the franchise.

The decision also reflects a principle that has guided Maher Legal Services since its founding: those who defend the Constitution should receive the full protection of the laws enacted for their benefit.. Whether representing servicemembers under the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniform Code of Military Justice (UCMJ), federal constitutional provisions, or UOCAVA, the Firm remains committed to protecting the legal rights of members of the Armed Forces, veterans, reservists, National Guard personnel, military families, and overseas American citizens.

Maher Legal Services extends its appreciation to the National Defense Committee for the opportunity to participate in this significant matter before the Supreme Court of the United States. The Firm likewise congratulates the Mississippi Secretary of State and all counsel whose advocacy contributed to this important decision protecting the voting rights of those serving the Nation around the world.

More than a century after Captain Harry S. Truman joined fellow officers to establish the Reserve Officers Association, the principles that animated that organization remain unchanged. Citizens who answer the Nation’s call to military service should not surrender the fundamental rights they serve to protect. *Watson* reinforces that enduring principle by preserving practical protections that enable military and overseas voters



to participate fully in the democratic process regardless of where duty requires them to serve.

For additional information concerning the Firm's amicus brief, the Supreme Court's decision in *Watson*, or Maher Legal Services' military and constitutional law practice, please contact:

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**Q: Where can I find a lawyer or law firm that fully understands laws like the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?**

**A:** As of 5/1/2026, Samuel F. Wright came out of retirement and joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom



have served as Army judge advocates for many years. These attorneys and this firm have a great record, and Sam is proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

### **Join the Organization That Fights for You.**

This article is one of more than 2,000 "Law Review" articles available at <https://roa.org/lawcenter/> — a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.



Beyond this library of legal resources, ROA files amicus curiae ("friend of the court") briefs in the Supreme Court and federal courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

**Your membership makes the mission possible.**

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants of past or present service members, so families can stand with those who serve. Join online at <https://members.roa.org/join/person/mbrtype.html?action=join> or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America  
1 Constitution Ave. NE  
Washington, DC 20002



**Here is a link to the entire text of the Supreme Court decision:**

**[https://www.supremecourt.gov/opinions/25pdf/24-1260\\_g3cn.pdf](https://www.supremecourt.gov/opinions/25pdf/24-1260_g3cn.pdf)**

**Here is a link to the amicus brief that John N. Maher, Kevin J. Mikolashek, and Samuel F. Wright filed in the Supreme Court:**

**[https://www.supremecourt.gov/DocketPDF/24/24-1260/391325/20260109152101573\\_Watson%20Amicus%20Brief%20Filed%20SCOTUS%201%209%202026.pdf](https://www.supremecourt.gov/DocketPDF/24/24-1260/391325/20260109152101573_Watson%20Amicus%20Brief%20Filed%20SCOTUS%201%209%202026.pdf)**