

Supreme Court Could Protect the Right to Vote for Military and Overseas Voters

The Brennan Center is urging the Court to uphold Mississippi's law providing grace periods for mail ballots.



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[Voting & Elections](#)

The Supreme Court is currently considering a case that could impact the voting rights of millions of Americans. Thirty states, the District of Columbia, and three U.S. territories have “grace period” laws that allow at least some voters’ mail ballots to count when they are sent by Election Day and arrive within a few days — a time period especially

important to the four million U.S. service members and other Americans living overseas. The Court will soon hear a challenge to Mississippi’s grace period law, but both legal precedent and long-accepted election practices call for grace periods to be upheld.

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In 2024, a federal appeals court — breaking from a long history of such state practices — ruled that century-old federal laws setting a “day for the election” prohibit states’ mail ballot grace periods. That ruling, resulting from a lawsuit filed by the Republican National Committee, ignores the clear text of the federal laws and history of state ballot counting practices. The Supreme Court should reverse it.

The Brennan Center and co-counsel Covington & Burling recently filed a friend-of-the-court brief in the case, [Watson v. Republican National Committee](#) [\[link-4\]](#). The brief is on behalf of 55 individuals and 8 organizations representing military and overseas voters and explains how the outcome could affect the mail ballots those voters in this year’s election.

Some state laws providing grace periods for mail ballot receipt date back to the Civil War, while others have been in place for decades. Many of the 30 state laws currently on the books were passed with bipartisan support, but an adverse ruling from the Court could negate all of them.

Citizens living overseas or outside their home state face hurdles other voters do not, including extra steps to register to vote, to request and receive a ballot, and to return their ballot. Laws like Mississippi’s, which give a little more time for a timely cast mail ballot to arrive, can help ensure voters who have worked hard to participate can cast a ballot that counts.

The challenges that military and overseas voters face are unfortunately common. During the spring 2024 Texas primary, a military couple in Germany mailed their ballots from their Army Post Office three weeks before the

election. Their ballots did not arrive until the day after Election Day. Voters in countries including Australia, Italy, Kenya, the United Kingdom, and Vietnam have spent \$50 or more to mail their ballots by private courier. Even when things go smoothly, mail takes time. Military voters in Japan, for instance, say their mail can take six to eight weeks to arrive from the United States.

These hurdles contribute to low participation rates for Americans voting from abroad. Deployed military and overseas Americans participate in elections far less than their domestic counterparts: only about 8 percent of eligible overseas voters cast ballots in the 2020 election, compared to almost 80 percent of domestic voters. Among overseas citizens who didn't vote in 2020, 82 percent reported that they wanted to but were unable to complete the process.

A bad Supreme Court decision that burdens military and overseas voters would be the opposite of what federal law intends. Congress has protected voting access for these citizens in statutes such as the Uniformed and Overseas Citizens Absentee Voting Act of 1986 and Military and Overseas Voter Empowerment Act of 2009. In doing so, lawmakers specifically incorporated state ballot receipt rules into those federal policies. Why would Congress have done so if it believed those laws had no effect? Congress has never imposed a uniform, national deadline for receiving ballots even though it could have.

The nearly 20 other briefs filed in support of Mississippi's grace period law provide concrete examples of how an adverse ruling would harm communities across the country. Briefs from civil rights groups, for example, discuss how voters with disabilities, rural voters,

voters of color, and more benefit from grace period laws. Briefs from state and local governments explain how these laws help election officials manage elections, and members of Congress and legal scholars lay out the many flaws in the lower court's ruling.

With the midterms around the corner and the first primaries just a

couple of months away, a decision striking down grace periods would cause confusion for voters and election officials. The Supreme Court should affirm the validity of state grace period laws and protect the rights of voters in Mississippi and nationwide.

Links

link-1: Voter Suppression <https://www.brennancenter.org/topics/voting-elections/voter-suppression>

link-2: Supreme Court Cases </taxonomy/term/66>

link-3: The Benchmark </taxonomy/term/73>

link-4: Watson v. Republican National Committee <https://www.brennancenter.org/our-work/research-reports/watson-v-republican-national-committee>