

Marked and Missed

The Transit Gap - Suppressing the Military Vote

Donald S. Inbody

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Abstract

Every election cycle, a measurable number of valid military and overseas ballots are rejected for a single reason: the mail is too slow. The federal framework governing absentee voting by uniformed service members and U.S. citizens overseas was built over more than seventy years. It works at the front end. Blank ballots reach voters. The back end works less well. Marked ballots must travel back to county election offices, and the mail does not always move fast enough to complete the round trip within state deadlines. Many states address this through grace periods. A grace period counts a ballot postmarked by Election Day and received within a defined window after. In November 2025 the Supreme Court granted certiorari in *Watson v. Republican National Committee*, a direct challenge to the constitutionality of those grace periods. Oral argument was held in March 2026. A decision is expected by the close of the 2026 term. If the Court eliminates grace periods without providing a substitute, the rejection rate among military and overseas voters will rise. The data make that prediction available with reasonable confidence. This paper reviews the evidence, the litigation, and what should be done.

I. The Problem

One in seven active-duty military voters in 2024 either did not receive a ballot in time or never received one at all.¹ That is progress from 2009, when the figure was one in three. It is still a significant number of service members who cannot vote.

The explanation is physical, not administrative. A ballot must make a round trip. It travels from a county election office to a service member at a forward operating base, a ship at sea, or an overseas post, and then it must come back marked, in time to be counted. The outbound leg is manageable. The return leg is where ballots die. Mail from APO and FPO addresses to the United States is targeted at 7 to 13 days depending on theater, but that is a target, not a guarantee.² A ballot dropped in the military mail from a remote location a week before Election Day faces long odds of arriving at a county courthouse in time.

The Election Assistance Commission has tracked the failure mode across more than a decade of federal elections. When a military or overseas ballot is not counted, the most common explanation is that it arrived after the state's receipt deadline.³ State grace periods, which count ballots postmarked by Election Day and received within some defined number of days after, are the mechanism that compensates for that delay. They are, in practical terms, what makes the federal statute work.

¹ Federal Voting Assistance Program, *State of the Military Voter* (Alexandria, VA: FVAP, 2025), drawing on the Post-Election Voting Survey of Active Duty Military, 2024 cycle.

² U.S. Postal Service, *Publication 38: Postal Agreement with the Department of Defense* (Washington, DC: USPS, current edition); Department of Defense, Military Postal Service Agency, published transit-time standards for APO/FPO mail, <https://www.usps.com> (last accessed May 2026).

³ U.S. Election Assistance Commission, *2010 Uniformed and Overseas Citizens Absentee Voting Act Survey: A Report to the 112th Congress* (Washington, DC: EAC, October 2011), 17–19.

Watson v. Republican National Committee, No. 24-1260, is pending before the Supreme Court.

The Fifth Circuit ruled that Mississippi's grace period conflicts with federal law setting a single Election Day. If the Court affirms that ruling broadly, fourteen or more states may be required to revise their ballot receipt deadlines. The implications for military and overseas voters are direct. Eliminate the compensating mechanism without solving the underlying transit problem, and a predictable number of valid ballots will be rejected that would otherwise have been counted.

This paper sets out the evidence for that prediction, reviews the statutory framework, and addresses what Congress should do.

II. Historical Context

The franchise for military and overseas voters was not built at once. Absentee voting was not a recognized concept in most American jurisdictions before the Civil War. Voting was a local act that assumed the voter's physical presence at the polls. The Civil War forced a partial accommodation. Between 1861 and 1865, nineteen states enacted some form of absentee voting for soldiers in the field. Where soldiers could cast absentee ballots in the 1864 presidential election, roughly 78 percent voted for Lincoln.⁴

Several states repealed their wartime provisions afterward. Voting from the field was treated as an emergency measure rather than a settled feature of the franchise. Federal involvement did not resume until the Second World War, when sixteen million Americans were in uniform. The Soldier Voting Act of 1942 created a federal absentee ballot. Two years later, under pressure from Southern Democrats who feared the federal ballot would bypass state poll

⁴ Donald S. Inbody, *The Soldier Vote: War, Politics, and the Ballot in America* (New York: Palgrave Macmillan, 2016), 22–27; Josiah Henry Benton, *Voting in the Field: A Forgotten Chapter of the Civil War* (Boston: privately printed, 1915), 311–313.

taxes and registration requirements, Congress made it optional and effectively unenforceable.

Many service members, disproportionately Black service members, were unable to vote in 1944.⁵

The Cold War changed the calculus. A large peacetime force made the soldier vote a permanent administrative question. The Federal Voting Assistance Program was established in 1955. The Uniformed and Overseas Citizens Absentee Voting Act followed in 1986 and provided the first comprehensive federal framework for absentee voting by uniformed service personnel, their dependents, and overseas civilians. I reviewed that history at length in earlier work.⁶ This paper updates the analysis for current mail performance, current election-administration data, and the legal landscape as it stands in 2026.

III. The Current Statutory Framework

UOCAVA, as amended by the Military and Overseas Voter Empowerment Act of 2009, sets out the core obligations of states to military and overseas voters.⁷ The statute requires states to accept registration and ballot requests through the Federal Post Card Application, to transmit blank ballots at least 45 days before each federal election, to permit electronic transmission of blank ballots, to provide ballot tracking, and to accept the Federal Write-in Absentee Ballot as a backup.⁸

The 45-day transmission requirement is the operational center of the statute.⁹ Congress chose that figure as a reasonable estimate of the time needed for a ballot to reach a voter

⁵ Inbody, *Soldier Vote*, 56–73. The 1944 Soldier Voting Act amendments are discussed in detail at 65–71.

⁶ Inbody, *Soldier Vote*, 13–18.

⁷ Uniformed and Overseas Citizens Absentee Voting Act, Pub. L. No. 99–410, 100 Stat. 924 (1986), codified as amended at 52 U.S.C. § 20301 et seq.

⁸ Military and Overseas Voter Empowerment Act, subtit. H of the National Defense Authorization Act for Fiscal Year 2010, Pub. L. No. 111–84, §§ 575–589, 123 Stat. 2190, 2318–2335 (2009).

⁹ 52 U.S.C. § 20302(a)(8)(A).

overseas, be marked, and return for the count. The estimate assumes the mail will move on schedule. When it does not, 45 days is not enough. I argued in 2015 that even with the MOVE Act in place, the return of the marked ballot in time to be counted remained the principal problem.¹⁰ Nothing in the decade since has altered that conclusion.

IV. The Evidence on Rejected Ballots

The Election Assistance Commission, under the Help America Vote Act, conducts a biennial Election Administration and Voting Survey covering UOCAVA ballots transmitted, returned, counted, and rejected. The EAVS data, together with the Federal Voting Assistance Program's post-election survey series, provide the most authoritative picture available of how the system performs in practice.

In 2010, roughly 93 percent of UOCAVA ballots submitted for counting were counted. Of the 14,824 rejected, 32 percent were rejected because the ballot was not received by the state's deadline. Late arrival was the single most common reason for rejection.¹¹ Drawing on the EAC's 2012 data in an *Election Law Journal* article published in 2015, I estimated that more than a quarter of a million UOCAVA voters who attempted to vote did not have their ballots counted, with late arrival the principal cause.¹²

The pattern has held. The EAC's 2024 Comprehensive Report found that more than 96 percent of returned UOCAVA ballots were counted, and that the most common reason for

¹⁰ Donald S. Inbody, "Voting by Overseas Citizens and Military Personnel," *Election Law Journal: Rules, Politics, and Policy* 14, no. 1 (March 2015): 54–59.

¹¹ U.S. Election Assistance Commission, *2010 Uniformed and Overseas Citizens Absentee Voting Act Survey: A Report to the 112th Congress* (Washington, DC: EAC, October 2011), 17–19.

¹² Inbody, "Voting by Overseas Citizens and Military Personnel," 55.

rejection of the remainder was again late arrival.¹³ FVAP's 2024 research confirms that the timing of ballot receipt and return remains the principal obstacle for military voters. Fifteen percent of active-duty military voters in 2024 reported that they either did not receive the ballot in time or never received it.¹⁴

For overseas civilians the gap is larger. In 2024 the domestic vote rate was 76.1 percent. The estimated rate among voting-age U.S. citizens living abroad was 11 percent. FVAP attributes roughly a fifth of that 65-point gap to real or perceived obstacles in the voting process itself.¹⁵

Across more than a decade of federal elections, the failure mode has been consistent. When a military or overseas ballot is not counted, the explanation is most often that the mail did not move fast enough to bridge the distance between voter and election office within the window state law allows.

V. The Transit Problem

Military and overseas voters return marked ballots through one of two channels. Military voters use the Military Postal Service through APO, FPO, and DPO addresses. Civilian overseas voters use the host country's postal system together with the U.S. Postal Service. Neither channel operates on a timeline well matched to election deadlines.

The Department of Defense, in conjunction with the Postal Service, publishes target transit times for APO/FPO mail. First-Class and Priority Mail to the European and Atlantic theaters is targeted at 7 to 9 days. Mail to the Pacific theater is targeted at 7 to 13 days.¹⁶ These

¹³ U.S. Election Assistance Commission, *Election Administration and Voting Survey: 2024 Comprehensive Report* (Washington, DC: EAC, June 2025), chap. 4.

¹⁴ Federal Voting Assistance Program, *State of the Military Voter* (Alexandria, VA: FVAP, 2025), drawing on the Post-Election Voting Survey of Active Duty Military, 2024 cycle.

¹⁵ Federal Voting Assistance Program, *State of the Overseas Voter* (Alexandria, VA: FVAP, 2025).

¹⁶ U.S. Postal Service, *Publication 38: Postal Agreement with the Department of Defense*

are targets. Transit times vary with operational conditions, theater, and the remoteness of the receiving unit.

Performance against the targets degrades under wartime conditions. During Operation Iraqi Freedom, the Government Accountability Office reported that the Army's wartime standard of 12 to 18 days was being met in the aggregate, but that nearly 25 percent of test letters took more than 18 days to be delivered, and that the underlying methodology systematically understated actual delivery times.¹⁷ The unlucky quarter in the right tail of the distribution is the population that misses state deadlines. Earlier scholarship by Alvarez, Hall, and Roberts examined the same problem and reached the same conclusion: the structural mismatch between mail performance and election deadlines is the central obstacle to military and overseas voting.¹⁸

Civilian overseas voters face a different version of the same problem. International mail from many countries to the United States has grown slower in recent years. My own correspondence is illustrative. A postcard from Argentina took six weeks to reach Texas, and a postcard from China took four. Those are one-way trips. A ballot must make the round trip. A civilian voter in Buenos Aires or Beijing faces a structural transit cost the 45-day window does not generously accommodate.

The Postal Service Office of Inspector General has documented persistent operational issues in international mail processing, including scanning deficiencies, processing delays at

(Washington, DC: USPS, current edition); Department of Defense, Military Postal Service Agency, published transit-time standards for APO/FPO mail, <https://www.usps.com> (last accessed May 2026).

¹⁷ U.S. Government Accountability Office, *Operation Iraqi Freedom: Long-standing Problems Hampering Mail Delivery Need to Be Resolved*, GAO-04-484 (Washington, DC: GAO, April 2004), 11–14.

¹⁸ R. Michael Alvarez, Thad E. Hall, and Brian F. Roberts, "Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transit Problem," *Fordham Urban Law Journal* 34, no. 3 (2007): 935–996.

International Service Centers, and tracking messages that misrepresent package location.¹⁹ A voter in a remote location who cannot verify whether the ballot has even departed the United States has no operational recourse if it has not.

VI. The Role of Grace Periods

Many states address the transit problem by extending the receipt deadline for ballots postmarked on or before Election Day. A ballot postmarked by Election Day and received within some defined window after is counted. The window is commonly 5 to 10 days, and in some jurisdictions longer. The voter's deadline does not change. The ballot must still be marked and mailed by Election Day. What changes is the receipt deadline at the election office. As of early 2026, fourteen states had such windows applying to all mail ballots, ranging from one day in Texas to twenty-one days in Washington. Thirty states, the District of Columbia, and three U.S. territories had some form of grace period in effect for UOCAVA ballots specifically.²⁰

For UOCAVA voters in remote locations, the grace period is the mechanism that lets the 45-day rule actually function. A ballot transmitted 45 days before the election, received by the voter ten days later, marked promptly, and dropped in the military mail on October 25 may not reach the county election office by Election Day. Without the extra window it is rejected. With it the ballot is counted.

UOCAVA also provides a backup for voters whose state-issued ballots do not arrive in time. The Federal Write-in Absentee Ballot is a blank ballot pre-positioned at U.S. embassies, consulates, and military installations worldwide.²¹ A UOCAVA voter who has made a timely

¹⁹ U.S. Postal Service, Office of Inspector General, *U.S. Postal Service International Mail Operations and Performance Data*, Report No. 21–197–R22 (June 2, 2022).

²⁰ National Conference of State Legislatures, “Table 11: Receipt and Postmark Deadlines for Absentee/Mail Ballots,” updated 2026, <https://www.ncsl.org/elections-and-campaigns>.

²¹ 52 U.S.C. § 20303 (Federal Write-in Absentee Ballot).

ballot request but has not received it may use the FWAB to vote for federal offices. The FWAB is a safety valve, and a limited one. It applies only to federal offices. It does not permit participation in state, local, or ballot-measure contests. The FWAB itself remains subject to the same return transit problem as the regular ballot. Research published by the Institute for Veterans and Military Families at Syracuse University in 2024 found that fewer than half of active-duty military respondents rated themselves knowledgeable about it.²²

VII. The Current Litigation

The grace-period mechanism is no longer settled law. It is the subject of active litigation, much of it brought by the Republican National Committee, and is before the Supreme Court.

The leading case is *Watson v. Republican National Committee*. The dispute originated in a 2024 RNC challenge to Mississippi's grace-period statute, which permits ballots postmarked by Election Day and received within five business days thereafter to be counted. In October 2024, a panel of the U.S. Court of Appeals for the Fifth Circuit ruled that the Mississippi statute conflicts with federal law setting a single Election Day for federal elections.²³ The Supreme Court granted certiorari on November 10, 2025. Oral argument was held on March 23, 2026.²⁴

The United States filed an amicus brief in support of the RNC. The Solicitor General argued that the federal election-day statutes preempt state grace periods generally, and treated

²² Institute for Veterans and Military Families, Syracuse University, *Military Families: Perceptions, Challenges, and Barriers to Voting Participation and Absentee Voting* (Syracuse, NY: IVMF, January 2024), 14–16.

²³ *Republican National Committee v. Wetzel*, 120 F.4th 200 (5th Cir. 2024); rehearing en banc denied, *RNC v. Wetzel*, 132 F.4th 775 (5th Cir. 2025).

²⁴ *Watson v. Republican National Committee*, No. 24-1260, cert. granted November 10, 2025 (U.S.); oral argument held March 23, 2026. A decision is expected by the close of the October 2025 term.

UOCAVA as a narrow statutory exception for the defined class of voters Congress addressed, not as a license for broader state extensions.²⁵

If the Court affirms the Fifth Circuit, the ruling could require fourteen or more states to revise their mail-ballot receipt deadlines, depending on the scope of the decision. Nothing in the text of the statutes at issue guarantees a UOCAVA-specific carve-out, and the government's position points the opposite direction. UOCAVA defines its own narrow exception and does not validate state grace periods for any wider population. Several states have not waited. Ohio, Kansas, North Dakota, and Utah repealed their grace periods in 2024 or 2025.

The *Watson* case did not arise in isolation. Before the 2024 election, the RNC and affiliated litigants filed challenges to UOCAVA voting procedures in Michigan, North Carolina, and Pennsylvania. The Michigan and North Carolina trial-court challenges were dismissed in October 2024.²⁶ A separate proceeding in North Carolina arising out of the November 2024 state Supreme Court election produced a 2025 state-court ruling restricting two categories of overseas voters from state and local contests, leaving them eligible only for federal races.²⁷ The combined effect has been to inject procedural uncertainty into a system in which the voters affected have little capacity to absorb it.

²⁵ Brief for the United States as Amicus Curiae Supporting Respondents, *Watson v. Republican National Committee*, No. 24-1260 (U.S., filed February 17, 2026). The Solicitor General argued that the federal election-day statutes preempt state grace periods and treated UOCAVA as a narrow statutory exception for the defined class of voters it covers.

²⁶ Voting Rights Lab, "150 Years of Military and Overseas Voting Now Under Threat," October 22, 2025, <https://votingrightslab.org>; *Republican National Committee v. Genetski* (Mich. Ct. Cl. October 25, 2024); *Republican National Committee v. North Carolina State Board of Elections* (N.C. Super. Ct. October 21, 2024).

²⁷ *Griffin v. North Carolina State Board of Elections*, consolidated proceedings concluding spring 2025. Subsequent procedural changes restricted overseas non-resident voters in North Carolina to federal contests beginning with the 2026 election cycle.

The empirical question raised by the litigation is whether eliminating grace periods would reduce the count of valid UOCAVA ballots. The data in Section IV answer it. If late arrival is the principal reason UOCAVA ballots are rejected with grace periods in effect, removing those periods will convert ballots currently counted into ballots rejected. Proponents of the litigation argue that Election Day receipt deadlines provide cleaner administration and reduce opportunities for ballot manipulation. They have produced no evidence that grace periods have contributed to ballot manipulation in any specific instance. Opponents argue that elimination would disenfranchise a measurable share of military and overseas voters. The rejection data support the second position.

VIII. The Security Dilemma

Why not return marked ballots electronically? Blank ballots are routinely transmitted to UOCAVA voters by email and through state online portals. The asymmetry has a reason.

The cybersecurity community has reached a consistent conclusion. Electronic return of marked ballots, at the scale and under the threat environment of a U.S. federal election, is not yet adequately secure. The 2018 National Academies report *Securing the Vote: Protecting American Democracy* concluded that no current technology guarantees the secrecy, security, and verifiability of a marked ballot transmitted over the Internet, and recommended that states not permit electronic return of marked ballots in federal elections.²⁸ In 2020 a joint risk assessment by the Cybersecurity and Infrastructure Security Agency, the Election Assistance Commission, the Federal Bureau of Investigation, and the National Institute of Standards and Technology

²⁸ National Academies of Sciences, Engineering, and Medicine, *Securing the Vote: Protecting American Democracy* (Washington, DC: National Academies Press, 2018), 101–105 and recommendation 5.11.

classified electronic ballot return as high risk, finding significant risks to confidentiality, integrity, and availability, with potential adverse impacts at scale.²⁹

Independent academic review has reached similar conclusions. A blue-ribbon panel convened by the Center for Security in Politics at the University of California, Berkeley reported in late 2022 that creating standards for online ballot return that would be both secure and private is not presently feasible.³⁰ NIST itself, in a 2022 report on accessibility for voters with disabilities, declined to recommend electronic ballot return even in that context, citing the same unresolved concerns.³¹

The relevant adversary in this analysis is the state actor with the resources and motivation to disrupt or manipulate an election outcome. Until that threat can be reliably countered, electronic ballot return remains a vulnerability.

The dilemma is plain. The security community recommends against the technology that would otherwise solve the transit problem. The transit problem persists. The grace period has been the policy mechanism that bridges the two. Eliminate the grace period without solving the security problem, and military and overseas voters are left with a paper channel that does not reliably meet deadlines and no faster channel to use instead.

²⁹ Cybersecurity and Infrastructure Security Agency, U.S. Election Assistance Commission, Federal Bureau of Investigation, and National Institute of Standards and Technology, *Risk Management for Electronic Ballot Delivery, Marking, and Return* (May 2020; updated 2024).

³⁰ University of California, Berkeley, Center for Security in Politics, *Report of the Blue Ribbon Commission on the Future of Election Security* (Berkeley, CA: CSP, December 2022).

³¹ National Institute of Standards and Technology, *Promoting Access to Voting: Recommendations for Addressing Barriers to Private and Independent Voting for People with Disabilities* (Gaithersburg, MD: NIST, 2022).

IX. Conclusions and Recommendations

Several conclusions follow. The transit gap is the binding constraint on military and overseas voting. Statute has done most of what statute can do. Distance and time do the rest. Across more than a decade of EAC and FVAP data, late arrival has been the dominant cause of UOCAVA ballot rejection. Nothing in current postal performance suggests that pattern will change on its own.

Grace periods are what make the 45-day rule work in practice. They convert a nominal statutory guarantee into an operational one. If they are struck down without a replacement, the rejection rate among military and overseas voters will rise. Electronic return is not yet a substitute and will not be one soon. The cybersecurity consensus across the National Academies, the CISA/EAC/FBI/NIST interagency assessment, and independent academic review points in the same direction. Paper remains the only viable return channel, and grace periods are what make paper viable.

The recommendations that follow are addressed to Congress, to state legislatures, and to the agencies responsible for administering military and overseas voting.

The 45-day transmission requirement under UOCAVA should be preserved as a floor. For voters in remote locations, round-trip transit time can equal or exceed 45 days under normal mail conditions. Any change that compresses the window should be rejected.

Congress should enact a federal UOCAVA grace period by statute. Whatever the Court does in *Watson*, the question should not be left to inference. A statutory window of no fewer than ten days after Election Day, with a postmark requirement, enacted under Congress's express authority over the manner of holding federal elections, would resolve the matter for the

UOCAVA population. The Solicitor General's position in *Watson* already treats UOCAVA as a narrow statutory exception. Congress should make that exception explicit and adequate.

Paper should remain the return channel. Electronic return should not be adopted as a substitute until the security objections are resolved. Reasonable interim measures include continued investment in faster blank-ballot transmission, in ballot tracking, and in voter education about the FWAB. Fewer than half of active-duty respondents in 2024 rated themselves knowledgeable about it. FVAP outreach, voting assistance officer training, and command-level emphasis remain the relevant levers.

Military and overseas voters are best understood, in election-law design, as a population defined by distance from their county of legal voting residence. Rules drafted without that distance in mind tend to fall hardest on them. Drafters and legislators should treat that distance as a design constraint, not an afterthought.

X. Closing

The franchise of the American service member and the American citizen abroad has been a project of more than a century and a half. What remains is operational and physical. A piece of paper must move from a forward operating base, a ship at sea, or an embassy compound to a county courthouse in the United States, and it must do so within the window state law allows. The mail does not move as fast as the law assumes. State grace periods have been how the system compensated.

I testified to that effect before the Presidential Commission on Election Administration in 2013 and elaborated the argument in subsequent work.³² The intervening years have not changed

³² Donald S. Inbody, Statement before the Presidential Commission on Election Administration, public hearing, Orlando, FL, June 28, 2013.

the underlying physics or the underlying data. They have brought sustained legal challenge to the compensating mechanism, and that challenge is now before the Supreme Court. Whatever the Court decides, Congress retains the authority to provide an adequate UOCAVA-specific solution. The argument of this paper is that it should.