

Exhibit H

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, **CIV - 88 - 1444** P

Plaintiff,

CIVIL ACTION NO.

v.

STATE OF OKLAHOMA; OKLAHOMA STATE
ELECTION BOARD; and LANCE D. WARD,
SECRETARY OF THE OKLAHOMA STATE
ELECTION BOARD,

Defendants.

CONSENT DECREE

FILED

AUG 22 1988

U.S. DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
MUSKOGEE

A. STIPULATIONS OF THE PARTIES

The United States of America, plaintiff, and the State of Oklahoma, the Oklahoma State Election Board, and Lance D. Ward, Secretary of the State Election Board of the State of Oklahoma, defendants, stipulate and agree solely for the purpose of the August 23, 1988 primary that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff et seq.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973ff-4 and 28 U.S.C. 1345.

3. The Uniformed and Overseas Citizens Absentee Voting Act provides that United States citizens living abroad, both military

and civilian, have the right to register and vote absentee in any federal election in the state in which they last resided. The Act provides that in order to allow overseas citizens a fair opportunity to vote by absentee ballot in a primary election for federal office, state or local election officials must mail the ballots to the voters on a date sufficiently in advance of election day to allow the voter to receive the ballot, cast his or her vote, and return the ballot to the appropriate election official by the state deadline for return of absentee ballots.

4. Defendant Oklahoma State Election Board is an agency of the Defendant State of Oklahoma with general authority to regulate elections in the State of Oklahoma. It has the authority to certify the results of primaries and elections for state and federal office.

5. Defendant Lance D. Ward, sued in his official capacity as Secretary of the State Election Board of the State of Oklahoma, is the chief administrative officer of the Oklahoma State Election Board with supervisory authority over the several county election boards.

6. The United States, by this action, seeks injunctive relief to ensure that United States citizens living abroad, who are qualified to vote in the federal primary election to be held in the State of Oklahoma on August 23, 1988, and who have filed timely applications for absentee ballots, will be given a reasonable opportunity to execute and return such ballots and thus to have their ballots counted.

7. On August 23, 1988, a primary election for federal office will be conducted in Oklahoma. This primary election is part of the process for selecting a nominee for the United States House of Representatives.

8. Election officials of the State of Oklahoma have received some timely requests for absentee ballots from civilian and military citizens who are overseas and entitled to vote pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act.

9. Under Oklahoma statutes, absentee ballots received after 7:00 p.m. on the date of the election are rejected. Okla. Stat. Ann. tit. 26, §14-104 (West Supp. 1988).

10. The practices and procedures in Oklahoma relating to the distribution of absentee ballots for military personnel may prove to make it difficult for the defendants to distinguish the absentee ballots cast by military personnel overseas from those cast by military personnel who are not overseas.

11. The complaint alleges that the United States Postal Service and the United States Department of State estimate that a period of 10 to 14 days is a reasonable benchmark from the time of posting to the time of delivery of international mail. Thus, under these estimates, ballots must be mailed to the overseas voters at least 20 to 28 days prior to the deadline for their return. The complaint also alleges that the Military Postal Service Agency estimates that 30 to 35 days are necessary for mail to make a complete round trip to and from an overseas

locale. The defendants do not stipulate to the accuracy of these estimates.

12. In numerous counties in Oklahoma, election officials did not mail absentee ballots to overseas citizens (who have filed timely requests) on a date sufficiently in advance of August 23, 1988, in light of the estimates of the time it takes for mail to make a complete round trip to and from an overseas locale, to allow such voters to receive the ballot, cast a vote and return the ballot to election officials by 7:00 p.m., August 23, 1988.

13. A failure to mail absentee ballots to overseas citizens on a date sufficiently in advance of August 23, 1988 so as to allow the voting and return of ballots by 7:00 p.m. on that date may deprive United States citizens living overseas of an opportunity to have their votes counted in the August 23, 1988 federal primary election.

14. To ensure that all citizens located abroad, protected under the Uniformed and Overseas Citizens Absentee Voting Act and qualified to vote in Oklahoma, have a reasonable opportunity to have their ballots counted in the August 23, 1988 primary election, it is necessary for this Court to enter an order extending by ten days the deadline for receipt of absentee ballots from overseas citizens and military personnel. Under this extension, absentee ballots from overseas citizens and military personnel received by the close of business on September 2, 1988, will be accepted and tabulated in the final election

results in the primary election for Representative in Congress. However, this will not prevent the defendant Oklahoma State Election Board from declaring the successful candidate in a congressional primary race prior to the final tabulation of those ballots if the total number of absentee ballots sent to military personnel and overseas citizens could not, with a mathematical certainty, affect the outcome of the election.

15. This consent decree is final and binding as to all issues resolved herein.

B. ORDER

WHEREFORE, the parties having freely given their consent, and the terms of the decree being fair, reasonable, and consistent with the requirements of the Uniformed and Overseas Citizens Absentee Voting Act,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The defendants shall take all steps necessary to ensure that all ballots cast in the August 23, 1988, primary for Representative in Congress by military personnel and citizens located abroad pursuant to the Uniformed and Overseas Citizens Absentee Voting Act and received before the close of business on September 2, 1988, by the appropriate election officials, are counted as validly cast ballots, so long as the ballots would have been counted if they had been received by 7:00 p.m., Tuesday, August 23, 1988.

2. The defendants will not be prevented from declaring the successful candidate in a congressional primary prior to the

final tabulation of the ballots that are to be counted pursuant to paragraph 1, if the number of absentee ballots mailed to military personnel and overseas citizens would not affect the outcome of the election, with a mathematical certainty.

3. The defendants shall notify the Director of the United States Department of Defense's Federal Voting Assistance Program (FVAP) as soon as this decree has been signed and request that the FVAP take such action as is necessary to notify overseas voters of the extension of time for receipt by Oklahoma election officials of such ballots. The state shall assist the FVAP in whatever way necessary to publicize such extension of time.

4. Within 45 days after August 23, 1988, defendants shall file a report with this Court, with respect to the August 23, 1988, primary election, which sets forth the following information:

(a) the dates on which each county in the State of Oklahoma began and completed the process of mailing ballots to citizens located abroad;

(b) the number of valid absentee ballots received by each county before 7:00 p.m., Tuesday, August 23, 1988, from citizens living abroad;

(c) the number of absentee ballots, by county, received and counted after 7:00 p.m., August 23, 1988, but prior to the close of business, September 2, 1988, from citizens living abroad; and

(d) the number of absentee ballots, by county, received from citizens located abroad later than the close of business, September 2, 1988, and for that reason not counted.

5. The Court retains jurisdiction of this action for the purpose of enforcing the foregoing provisions.

ORDERED this day of August, 1988.


CAYN R. PHILLIPS


United States District Judge

The undersigned agree to the entry of this Decree.

For the Plaintiff United States of America:

For Defendants State of Oklahoma, the Oklahoma State Election Board and the Secretary of the Election Board of the State of Oklahoma:


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