IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

TEXAS DEMOCRATIC PARTY, et al.,
Plaintiffs,

-vs- **Case No. A-06-CA-459-SS**

TINA J. BENKISER, in her capacity as Chairwoman of the Republican Party of Texas,
Defendant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

BE IT REMEMBERED on the 26th day of June 2006, the Court called the above-styled cause for a hearing on Plaintiffs' Motion for Temporary Restraining Order and Motion for Preliminary Injunction [#8], which was filed on June 19, 2006. On June 21, 2006, Defendants filed a Motion to Consolidate the Preliminary Injunction Hearing with a Trial on the Merits [#17], which the Court granted on June 23, 2006.[1] At the close of the hearing and trial, the Court granted the parties leave to file additional materials until June 30, 2006. Having considered the motions, the responses, both parties' additional briefing, the evidence and testimony at the trial on the merits, the arguments of counsel, the relevant law, and the case file as a whole, the Court now enters the following opinion and orders.

Background

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[1] Federal Rule of Civil Procedure 65(a)(2) provides that "[b]efore or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application." The Court concluded that consolidation was appropriate in this case, and although Plaintiffs initially opposed consolidation and moved for a continuance of the trial, they withdrew their request for a continuance in open court on the morning of the hearing.

Plaintiffs filed this lawsuit in the 201st Judicial District Court of Travis County, Texas on June 8, 2006, seeking declaratory and injunctive relief. Defendant Tina J. Benkiser, Chairwoman of the Republican Party of Texas ("Benkiser") removed the case to this Court on June 15, 2006. She asserts the Court has subject matter jurisdiction over this case under 28 U.S.C. § 1331 because Plaintiffs' principal claims for relief concern Article I, §§ 2, 5 of the United States Constitution.

The live complaint before the Court at this time is Plaintiffs' Second Amended Original Complaint, which the Court granted Plaintiff leave to file at the hearing held on June 26, 2006. Plaintiffs, the Texas Democratic Party and Boyd L. Richie as Chairman of the Texas Democratic Party ("TDP"), assert the following claims for relief: (1) equitable relief for violations of the Texas Election Code and the United States Constitution by Defendant, who seeks to impermissibly declare Tom DeLay ("DeLay") ineligible for election to Congressional District 22 and to take steps to certify an alternative candidate.[2] TDP asserts it would violate the Texas Election Code and the United States Constitution if Benkiser were allowed to declare DeLay ineligible and replace his name with another nominee's name on the general election ballot. TDP asserts it will be irreparably injured by these actions in several ways: (1) TDP will be injured in its own right due to the unfair advantage gained by the Republican Party of Texas ("RPT") and because TDP will have to raise and expend funds and resources to prepare an entirely different campaign; (2) TDP's voters will be injured; (3) TDP's candidate, Nick Lampson, will be injured by the unfair advantage gained by RPT, which has the benefit of hindsight, recent polling data, and opposition research, and because he will have to raise and expend funds and resources to prepare an entirely different campaign.

[2] Tom DeLay won the March 7, 2006 Republican primary election for House District 22.

TDP asserts the public records relied on by Benkiser do not conclusively establish that Tom DeLay is ineligible under Texas Election Code § 145.003(f)(2), which sets forth the exclusive grounds on which a candidate may be declared ineligible under state law. TDP claims that Tom DeLay is not currently ineligible for the United States House of Representatives, even if he has moved to Virginia at present, because under Article I, § 2 of the United States Constitution, inhabitancy must be determined as of election day and cannot be determined before November 7, 2006. U.S. CONST. art. I, § 2, cl. 2. TDP also points to Article I, § 5 of the United States Constitution, which provides that "[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own Members," and claims that only the House of Representatives has the constitutional authority to determine DeLay's eligibility for the office of United States Representative. U.S. CONST. art. I, § 5. Plaintiffs seek permanent injunctive and declaratory relief.

Analysis

The Court first addresses jurisdiction. Where the resolution of Plaintiffs' claims for relief depends directly on construction of the Constitution, federal jurisdiction is authorized under 28 U.S.C. § 1331. *See Powell v. McCormack*, 395 U.S. 486, 515–16 (1969) (exercising federal subject matter jurisdiction and holding that Congressional resolution was unconstitutional where it imposed qualifications other than the age, citizenship, and residency requirements of Article I, § 2 of the Constitution). Defendant removed this case from state court because federal questions are presented in determining the meaning of "inhabitant" under Article I, § 2 of the United States Constitution and in determining whether the Texas Election Code unconstitutionally adds a qualification for office or usurps the House of Representatives' authority to judge the qualifications of its members. At the hearing, Plaintiffs' counsel conceded the Court had federal question jurisdiction over the case.

Because this case turns on the interpretation of the United States Constitution, the Court finds it has federal question jurisdiction over this matter.

Defendant filed a motion to dismiss for lack of standing based on Plaintiffs' Original and First Amended Complaints; however, at the trial, Defendant's counsel represented to the Court that he did not wish to urge the motion. Because the issue of standing implicates the Court's jurisdiction, however, the Court will briefly discuss it. "The standing requirement stems from the Article III grant of power to the federal courts over cases or controversies. The standing requirement 'tends to assure that the legal questions presented to the court will be resolved, not in the rarified atmosphere of a debating society, but in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action.'" *Friends of the Earth, Inc. v. Chevron Chem. Co.*, 129 F.3d 826, 827 (5th Cir. 1997) (quoting *Valley Forge Christian College v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982)). To have standing, a plaintiff must demonstrate: (1) an "injury in fact"; (2) "a causal connection between the injury and the conduct complained of"; and (3) a likelihood that the injury will be "redressed by a favorable decision." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992).

Political parties have often been determined to have standing to challenge the constitutionality of federal or state election laws. *See Buckley v. Valeo*, 424 U.S. 1, 11–12 (1976) (determining that at least some of the persons and groups, which included political parties, had a sufficient personal stake in determining the constitutional validity of various provisions of the Federal Election Campaign Act to present a real and substantial controversy to maintain the action); *Sandusky County Democratic Party v. Blackwell*, 387 F.3d 565, 573–74 (6th Cir. 2004) (holding that political parties and labor organizations had standing to sue on behalf of their members who would

vote in the upcoming election); *Smith v. Boyle*, 144 F.3d 1060, 1063 (7th Cir. 1998) (holding that suit was justiciable because Illinois Republican Party had standing to challenge rules making it more difficult to elect Republican candidates to the Illinois Supreme Court); *Bay County Democratic Party v. Land*, 347 F. Supp. 2d 404, 422 (E.D. Mich. 2004) (holding that political party had standing to represent the rights of voters and had third-party standing to challenge election directives issued to local elections officials as violating a federal act and Michigan law). Here, TDP has standing because it would be injured if RPT were allowed to declare DeLay ineligible and substitute a different nominee for the general election because TDP would need to raise and expend additional funds and resources to prepare a new and different campaign in a short time frame.[3] Based on the record before the Court, including Plaintiffs' Second Amended Complaint and the representations and evidence heard at trial, the Court finds Plaintiffs have standing to assert the claims raised in this lawsuit.

I. The Qualifications Clause and Ineligibility

The Qualifications Clause of the United States Constitution provides:

> No person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

U.S. CONST. art. I, § 2, cl. 2.

As the Supreme Court explained in *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995), "the text and structure of the Constitution, the relevant historical materials, and, most importantly, the 'basic principles of our democratic system' all demonstrate that the Qualifications Clauses were

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[3] It appears that it was precisely this type of injury that the Texas Legislature foresaw and attempted to prevent by enacting the prohibition on replacing a withdrawing candidate where another political party held a primary election and has a nominee for the office sought by the withdrawing candidate. TEX. ELEC. CODE § 145.036.

intended to preclude the States from exercising any such power and to fix as exclusive the qualifications in the Constitution." *Id.* at 806 (holding that an Arkansas state constitutional provision which precluded persons who had served a certain number of previous terms in Congress from having their names on the ballot violated the Qualifications Clauses of the Constitution). "If the qualifications set forth in the text of the Constitution are to be changed, that text must be amended." *U.S. Term Limits*, 514 U.S. at 783.

It is clear to the Court that the three qualifications listed above are exclusive and may not be changed or expanded in any way by the states. *See Campbell v. Davidson*, 233 F.3d 1229, 1235 (10th Cir. 2000) (holding that Colorado's candidate registration statute requiring unaffiliated candidates to be registered to vote violated the Qualifications Clause); *Schaeffer v. Townsend*, 215 F.3d 1031, 1039 (9th Cir. 2000) (holding California's residency requirement which required that United States House of Representatives candidates be residents at the time of filing nomination papers rather than when elected to be unconstitutional under the Qualifications Clause).

Here, Defendant asserts she has already determined Tom DeLay to be "ineligible" to be a candidate for the general election on November 7, 2006 for United States House District 22 because he moved to Virginia in April of 2006. Benkiser testified she was notified of DeLay's move to Virginia by a letter sent from DeLay to her in late May 2006. Two drafts of the same letter were submitted into evidence at the trial; Plaintiff's Exhibit 16 is a letter from DeLay to Benkiser dated May 25, 2006[4] and marked "DRAFT," and Plaintiff's Exhibit 17 is a letter from DeLay to Benkiser dated May 30, 2006. The May 30, 2006 letter states in relevant part as follows:

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[4] The May 25, 2006 letter contains a facsimile machine heading at the top that reads "APR-30-1996 18:53." Pls.' Ex. 16. Benkiser testified that this date was wholly incorrect and that she actually received the draft copy on Friday, May 26, 2006.

> As you are aware, I have recently made the decision to pursue new opportunities from outside the arena of the U.S. House of Representatives. The majority of these new opportunities will exist in Washington, D.C. Therefore, this past April, I changed my residency and voter registration from Texas to Virginia to begin the next step in my career. As a result of this change, I am no longer eligible to remain on the electoral ballot for the 2006 November general election. Please see the attached documents reflecting my Virginia residency and voter registration status.
> . . .
> Sincerely,
>
> Tom DeLay
> Member of Congress
>
> Attachments:
> (1) Virginia driver's license
> (2) Virginia voter registration card
> (3) Virginia tax withholding

Pls.' Ex. 17. No party has contested the authenticity of the documents attached to the letter. The Virginia driver's license attached was issued to Thomas Dale DeLay on April 27, 2006, and indicates an Alexandria, Virginia address. Pls.' Ex. 17, Attach. 1. The voter registration card issued on May 8, 2006, indicates DeLay is a registered voter in Virginia and has an Alexandria, Virginia address. Pls.' Ex. 17, Attach. 2. Finally, the income tax withholding form indicates DeLay authorized the United States House of Representatives to begin withholding Virginia state income tax from his income beginning on April 27, 2006. Pls.' Ex. 17, Attach. 3.

Benkiser testified that after receiving this letter and documents, she made an administrative declaration that Tom DeLay was ineligible as a general election candidate for House District 22 on June 7, 2006 because he was no longer an "inhabitant" of Texas.[5] Benkiser further testified that

[5] The draft letter was sent by DeLay to Benkiser, reviewed, revised by Benkiser in her own hand and returned to DeLay for the preparation and mailing of the May 30, 2006 letter, although Benkiser denied the review of the draft was intended to ensure the ability to name a replacement nominee. DeLay candidly testified the draft was approved by the Republican Party of Texas's lawyers. The official letter was prepared and mailed after consultation with party members and lawyers with the goal of naming a new candidate for the general election and to avoid the consequences of the Texas election laws related to withdrawal from the

since June 7, 2006, she has not yet taken further steps to certify a replacement nominee for the general election ballot.[6]

The procedure for declaring a candidate administratively ineligible is contained in Texas Election Code § 145.003 which provides as follows:

> (a) Except for a judicial action in which a candidate's eligibility is in issue, a candidate may be declared ineligible only as provided by this section.
> (b) A candidate in the general election for state and county officers may be declared ineligible before the 30th day preceding election day by:
>
> (1) the party officer responsible for certifying the candidate's name for placement on the general election ballot, in the case of a candidate who is a political party's nominee;
>
> . . .
> (f) A candidate may be declared ineligible only if:
>
> (1) the information on the candidate's application for a place on the ballot indicates that the candidate is ineligible for the office; or
> (2) *facts indicating that the candidate is ineligible are conclusively established by another public record.*

TEX. ELEC. CODE § 145.003 (emphasis added). Benkiser asserts that the three documents provided to her are "public records" which "conclusively establish" that DeLay is ineligible to be the Republican candidate for House District 22 in the general election. The documents submitted may well be public records;[7] however, the Court is not convinced that they conclusively establish DeLay's ineligibility. There is simply no evidence before the Court that DeLay is ineligible under

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race.

[6] Texas Election Code § 145.036 sets forth the procedure for selecting a new nominee after a candidate has been declared administratively ineligible. If a candidate's name is to be omitted from the ballot because he has been declared administratively ineligible, "the political party's state, district, county, or precinct executive committee . . . may nominate a replacement candidate to fill the vacancy in the nomination." TEX. ELEC. CODE § 145.036(a); *see also* TEX. ELEC. CODE § 145.037 (governing certification of a replacement nominee for placement on ballot).

[7] Although the definition of "public records" as used in the statute is subject to interpretation, Plaintiffs have not argued that the documents in question do not qualify as public records.

the United States Constitution and certainly no conclusive evidence that DeLay will be ineligible on November 7, 2006.

The Texas Election Code defines the "eligibility requirements for public office" in § 141.001; however, these requirements expressly do not apply to a candidate for the United States House of Representatives.[8] Therefore, DeLay's eligibility can only be determined by looking at the three qualifications set out under Article I, Section 2, Clause 2 of the United States Constitution as set forth above.

In deciding election disputes, "[a]ny constitutional or statutory provision which restricts the right to hold office must be strictly construed against ineligibility." *Wenthworth v. Meyer,* 839 S.W.2d 766, 767 (Tex. 1992) (citing *Brown v. Meyer*, 787 S.W.2d 42 (Tex. 1990)); *see also In re Jackson*, 14 S.W.3d 843, 846 (Tex. App.–Waco 2000, orig. proceeding) (holding that city secretary exceeded her authority in declaring candidate ineligible for city council position based on candidate's having voted in a different precinct within 12 months of the election).

Thus, the Court is faced with the ultimate question of whether DeLay is in fact "ineligible" to be a candidate for House District 22 in the upcoming general election. Both parties admit DeLay's eligibility must be determined based on the inhabitancy requirement of Article I, Section 2, Clause 2 of the United States Constitution. As discussed above, the Court finds the Texas Election Code may not increase or change the inhabitancy requirement for a member of the United States House of Representatives.

The Court must now interpret the terms "inhabitant" and "when elected" to determine whether or not Tom DeLay remains eligible for the upcoming general election. In determining the

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[8] "Subsection (a) does not apply to an office for which the federal or state constitution or a statute outside this code prescribes exclusive eligibility requirements." TEX. ELEC. CODE § 141.001(c).

meaning of "inhabitant," the Court looks to the intent of the Framers of the United States Constitution. *Jones v. Bush*, 122 F. Supp. 2d 713, 718 (N.D. Tex. 2000) (discussing the term "inhabitant" in analyzing the Twelfth Amendment requirement that the President and Vice President must be "inhabitants" of different states). The definition of "inhabitant," as understood at the time the Twelfth Amendment was written, "closely parallel[ed] the modern concept of domicile." *Id.* at 719. The *Jones* court therefore held that "a person is an 'inhabitant' of a state, within the meaning of the Twelfth Amendment, if he (1) has a physical presence within that state and (2) intends that it be his place of habitation." *Id.* at 719–20.

Defendant argued at trial that the three public records discussed above, along with DeLay's testimony, prove DeLay has a physical presence in Virginia and intends Virginia to be his place of residence. Plaintiffs offered conflicting evidence, including a property tax record of DeLay's home in Fort Bend County, the fact that his wife still resides in their jointly-owned home in Fort Bend County, and the fact that he was recently served with a subpoena at that home, to show that DeLay may in fact still qualify as an inhabitant of Texas. Additionally, DeLay testified that his new residence in Virginia is a condominium, which he has owned and occupied for twelve years, and to which he moved no furniture or personal effects besides one motor vehicle upon making it his new residence. However, notwithstanding this disputed factual issue, the Court assumes without deciding that DeLay is presently an "inhabitant" of Virginia.

After the smoke clears, it appears the real issue in this case is whether the Republican Party can avoid DeLay's de facto withdrawal from the race by declaring him ineligible for the general election in order to replace him with another Republican candidate on the general election ballot. Under these circumstances, it seems clear the Texas elections laws would prohibit such a

replacement after the primary election if the winning candidate withdrew from the general election. The Court must decide whether the Constitution permits Defendant to divine or predict where DeLay will be an inhabitant on November 7, 2006 based on facts available in June of 2006. The Court finds that the Constitution does not permit such speculative determinations where the election of a United States Representative is at issue, specifically because Benkiser's prediction of future eligibility based on current inhabitancy would amount to an imposition of an unconstitutional pre-election residency requirement.

To the extent Defendant cites *Nixon v. Slagle*, 885 S.W.2d 658 (Tex. App.–Tyler 1994, orig. proceeding), for the proposition that a change in voter registration alone is enough to provide conclusive proof of a change of residence sufficient to declare a candidate ineligible, the Court does not find that case controlling here, because *Nixon* involved a candidate for state senate, an office for which there is a one-year, in-district residency requirement under the Texas Constitution. Because the only residency requirement for a United States Representative is on election day, the *Nixon* case does not apply to the facts before this Court.

Both DeLay and Benkiser testified at the trial that DeLay could move back to Texas before the general election and could not testify regarding where DeLay might be living in November 2006. None of the documents Benkiser purported to rely on, nor even DeLay's accompanying letter, indicates how long DeLay plans to continue living in Virginia, much less that he intends to continue living there until after the general election. The plain language of Article I, Section 2, Clause 2 contemplates inhabitancy only at the time "when elected," and the Court finds no ambiguity in this language. *See Schaefer*, 215 F.3d at 1036 ("This specific time at which the Constitution mandates residency bars the states from requiring residency before the election."); *Campbell*, 233 F.3d at

1234. However, historical materials also support a literal reading of "when elected" to mean on election day itself. The *Schaefer* court recounts the Framers' interpretation of the "when elected" language as follows:

> The Framers discussed and explicitly rejected any requirement of in-state residency before the election. The Records of the Federal Convention show that the Framers intended to preclude any further requirement of residency prior to the date of election. Debate on the matter of an in-state residency requirement was touched off when John Rutledge (South Carolina) proposed a seven-year requirement. Others thought a one-year or three-year period sufficient. George Read (Delaware), opposing any period of previous residence, "reminded [Mr. Rutledge] that we were now forming a Natil. Govt. and such a regulation would correspond little with the idea that we were one people." James Wilson (Pennsylvania) concurred. Mercer suggested that "such a regulation would present a greater alienship among the States than existed under the old federal system. It would interweave local prejudices & State distinctions in the very Constitution which is meant to cure them." Hugh Williamson (North Carolina) opined that "[n]ew residents if elected will be most zealous to Conform to the will of their constituents, as their conduct will be watched with a more jealous eye." Still others argued against the in-state residency requirement for other reasons. Madison suggested that the newly formed States in the West could not have representation if the Constitution included a residency requirement. Wilson was concerned that legislators residing at the seat of Congress would be disqualified for not residing in their state. Those favoring the restriction expressed concern that a nonresident would not have adequate familiarity with the affairs of the state represented. The delegates voted down in turn three-year and one-year requirements of in-state residence. The Framers thus drafted the Constitution having explicitly rejected any residency requirement.

215 F.3d at 1036 (internal citations omitted) (quoting 2 RECORDS OF THE FEDERAL CONVENTION 216 (M. Farrand ed.) (1911), *reprinted in* 2 THE FOUNDERS' CONSTITUTION at 71–72 (Philip B. Kurland & Ralph Lerner eds.) (1987)); *see also Sundry Electors v. Key*, Case XXVIII, 10th Cong., Cl. & H. El. Cas. 224, 233 (1808) (deciding that Key, who had moved to Maryland two weeks before the election, was an inhabitant of Maryland as of election day and was therefore qualified to serve in the United States House of Representatives).

In accordance with the case law and the historical evidence, the Court concludes that no determination as to DeLay's eligibility due to present inhabitancy in Virginia can be made at this time or at any time prior to election day because construing the Texas Election Code to permit such a declaration of ineligibility based on inhabitancy at this time would be an unconstitutional application of state law. The Court holds that allowing Benkiser to declare DeLay ineligible at this time would amount to a de facto in-state residency requirement in violation of the United States Constitution. The Court specifically holds DeLay is not ineligible and shall remain on the ballot for the general election on November 7, 2006 as the Republican candidate for House District 22.[9]

II. The Time, Place, and Manner Clause

Article I, Section 4, Clause 1 provides: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." U.S. CONST. art. I, § 4, cl. 1. Defendant argues DeLay can be declared ineligible based on his out-of-state residency in Virginia because a determination of ineligibility based on residency falls under the state's authority to set the times, places, and manner of holding elections. It is clear to the Court that Defendant is arguing that this determination falls under the "manner" of elections, as no determination of the time or place of the November 7, 2006 general election is at issue here.

The "manner" of elections "encompasses matters like 'notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of

[9] The simple fact is DeLay, for personal reasons, decided to withdraw his candidacy for the general election after the voters elected him in the Republican primary election. DeLay is entitled to withdraw from the race for House District 22 before the general election; however, Texas law specifies the manner of the withdrawal and its consequences.

inspectors and canvassers, and making and publication of election returns.'" *Cook v. Gralike*, 531 U.S. 510, 523–24 (2001) (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)). Defendant has not convinced the Court of her position on this issue, in no small part because Defendant has not brought forward any cases indicating that a party representative has the power to expand the inhabitancy requirement for a member of the United States House of Representatives to apply earlier than election day. The Court therefore rejects this argument. Were the Court to adopt Defendant's position, either political party could and would be able to change candidates after the primary election and before the general election simply by an administrative declaration of ineligibility by the party chair based on a candidate's "move" to another state. This would be a serious abuse of the election system and a fraud on the voters, which the Court will not condone.

III. Injunctive Relief

The Court must consider the following factors in deciding whether to issue a permanent injunction: "whether the plaintiff will be irreparably harmed if the injunction does not issue; whether the defendant will be harmed if the injunction does issue; whether the public interest will be served by the injunction;" and whether the plaintiff has actually prevailed on the merits. *ICEE Distribs., Inc. v. J&J Snack Foods Corp.*, 325 F.3d 586, 597 n.34 (5th Cir. 2003) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 392 (1981)). In this case, Plaintiffs have prevailed on the merits, as discussed above, have demonstrated an irreparable injury, and have demonstrated that the requested injunction furthers the public interest. Although the defendant will no doubt be injured by this injunction, the Court opines that the defendant is at least partially responsible for her own injury and that this one factor does not outweigh the other three factors established by Plaintiffs. Accordingly, the Court will issue a permanent injunction in favor of Plaintiffs.

Conclusion

Political acumen, strategy, and manufactured evidence, even combined with a sound policy in mind, cannot override the Constitution. The evidence presented in this case provides no basis for Benkiser's declaration that Tom DeLay was not eligible to remain the nominee of the Republican Party under state or federal law. There is no evidence DeLay is not eligible to be elected to the United States House of Representatives in the upcoming general election at this time. There is testimony and evidence in the record that he has moved to Virginia and has taken certain steps to become a resident of Virginia, such as obtaining a Virginia driver's license, registering to vote and voting in the Virginia primary, and executing an income tax withholding form for Virginia.[10] However, there is no evidence that DeLay will still be living in Virginia tomorrow, let alone on November 7, 2006, the only day that matters under the Qualifications Clause of the United States Constitution. DeLay himself testified that he does not know what will happen with his life in November, stating only that he plans to continue living in Virginia "indefinitely."

"The Constitution 'nullifies sophisticated as well as simple-minded modes' of infringing on constitutional protections." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 829 (1995) (quoting *Lane v. Wilson*, 307 U.S. 268, 275 (1939)). Although it may seem trivial to determine that a party nominee who has moved to another state is still eligible for the general election ballot, this Court is charged with the duty of interpreting and upholding constitutional rights and powers, no matter how large or small. DeLay was chosen as the Republican nominee by the voters in the Republican primary, and he is still eligible to be the party's nominee. He may, of course, withdraw, as is his

[10] DeLay also testified he has applied for hunting and fishing licenses in Virginia.

right,[11] but neither political parties, state legislatures, secretaries of state, nor the federal courts may rewrite the United States Constitution.

In accordance with the foregoing:

IT IS ORDERED that Plaintiffs' Motion to Amend the Complaint [#22] is GRANTED as unopposed.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Continuance and Request for Reset [#23] is DISMISSED AS MOOT.

IT IS FURTHER ORDERED that Defendant's Motion to Dismiss [#13] is DENIED.

IT IS FURTHER ORDERED that the Motion to Quash Subpoena Duces Tecum Served on Christine DeLay [#28] and the Motion to Quash Subpoena Duces Tecum Served on Fort Bend County Clerk [#29] are DISMISSED AS MOOT.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Temporary Restraining Order and Motion for Preliminary Injunction [#8] is GRANTED and having conducted a trial on the merits the Court enters a permanent injunction as follows:

IT IS HEREBY ORDERED THAT Defendant and anyone acting in concert with her, on her behalf, or at her direction is permanently enjoined and restrained from:

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[11] The Court suspects that the only reason DeLay did not simply withdraw from the race is that the Texas Election Code prohibits the substitution of a replacement nominee in a withdrawal based on these facts. *See* TEX. ELEC. CODE § 145.036(b).

1. Declaring Tom DeLay ineligible as the Republican candidate for the general election ballot for United States House of Representatives from Texas District 22 to be held on November 7, 2006;

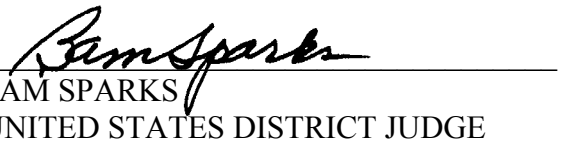
2. Certifying to the Texas Secretary of State any candidate other than Tom DeLay to appear on the ballot in the 2006 general election as the Republican Party nominee for the United States House of Representatives from Texas District 22; and

3. Certifying to the Texas Secretary of State that Tom DeLay is ineligible to be the Republican Party nominee for the United States House of Representatives from Texas District 22, or if she has already done so, Defendant is enjoined to withdraw any certification that Tom DeLay is ineligible.

IT IS FURTHER ORDERED that the Court declares Tom DeLay is not ineligible to be the Republican Party nominee for the United States House of Representatives from Texas District 22 and that any previous declaration of ineligibility made by Benkiser is void.

IT IS FINALLY ORDERED that the Texas Secretary of State or any other official shall not remove or cause to be removed the name of Tom DeLay as the Republican candidate for District 22 of the United States House of Representatives from the ballot for the general election to be held on November 7, 2006 unless Tom DeLay withdraws as a candidate pursuant to Texas Election Code § 145.001 or upon further order of this Court. Plaintiffs are ordered to serve a copy of this order on the Texas Secretary of State and to file with the Court a return confirming such service.

SIGNED this the 6th day of July 2006.



SAM SPARKS
UNITED STATES DISTRICT JUDGE