

LONE STAR PROJECT

Fighting Back... with Facts



(202) 547-7610 - Fax (202)547-8258

April 4, 2006

Contact: Matt Angle

On the web at www.LoneStarProject.net

Tom DeLay: A Bully Takes a Coward's Exit

Lone Star Project Sorts through Texas Election Code
Regarding DeLay Replacement

"It's just so contrary to what Texas is all about, to turn tail and run and not fight for what you believe in."-Tom DeLay, (*El Paso Times*, May 14, 2003) in a now ironic comment criticizing Texas House members who broke quorum to block his redistricting scheme.

Tom DeLay will apparently leave Congress in the same shameful way he exercised power, acting like a bully who is above the law and a coward who wants to rig one last election. DeLay will leave the State of Texas bitterly divided along partisan lines, led by corrupt leaders like House Speaker Tom Craddick and Governor Rick Perry. From Sam Rayburn to George W. Bush, Texans crossed party lines to do what was best for our state and its people. First in Washington and then in Austin, Tom DeLay destroyed traditional bipartisanship and now leaves Texas in worse shape than he found it. As a result of DeLay's corrupt redistricting scheme and the ethics scandal that surrounds him, Texas lost almost 100 years of seniority and high leadership positions in both parties. Now, rather than face the judgment of the voters in a race against an accomplished and ethical opponent, Tom DeLay has decided to "turn tail and run."

Replacing a resigning Member of Congress is not a straightforward task. Below are the sections of the Texas Election Code that apply to DeLay's circumstance.

What We Know: The Law Regarding a DeLay Replacement

Under Sections [145.003](#) and [145.036](#) of the Texas Election Code, as a Republican nominee, Tom DeLay cannot be replaced on the ballot if he simply withdraws from his congressional race because the "other party" has a nominee who will be on the ballot. He can however, be replaced on the ballot under these

circumstances:

- He is declared medically unable to serve due to catastrophic illness ([Sec 145.036\(b\)\(1\)\(A\)](#));
- He is elected or appointed to fill a vacancy in another elective office or becomes the nominee for another office ([Sec 145.036\(b\)\(3\)](#));
- A nominee's death or withdrawal left no party that nominates by primary election with a candidate on the general election ballot ([Sec 145.036\(b\)\(2\)](#))
- Facts indicate that the candidate is ineligible are conclusively established by another public record. ([Sec 145.003\(f\)\(2\)](#)) This includes:
 - (The candidate must) have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities: ([Sec 141.001\(a\)\(4\)](#))
 - **DeLay Scenario**-(The candidate must) satisfy any other eligibility requirements prescribed by law for the office. ([Sec 141.001\(a\)\(6\)](#))
 - In this case Article 1, Section 2 of the Constitution declares that "No Person shall be a Representative... who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." ([U.S. Constitution Article 1. Section 2](#))

What Happens Next?

It appears, no official action can be taken by the Governor regarding a special election or by the Republican Party to name a replacement on the November ballot until DeLay resigns and is no longer serving as a Member of Congress. This is because he cannot hold his seat unless he maintains his status as a Texas resident according to the Constitution and he cannot be taken off the ballot until he moves out of the state. Thus, if reports that Delay intends to serve in Congress for as long as two more months are true, all official action will be frozen for that length of time.

The Governor's Special Election Options

Under [Section 204.021](#) and [Section 203.004](#) of the Texas Election Code, the Governor could:

- Call a special election for the next uniform election day - May 13 or the November general election date (Sec 41.001 (a)) - at least 36 days after the election is ordered
- Declare an emergency and call the election for a Tuesday or Saturday that falls between the 36th and the 50th day after the election is ordered, ([Sec 41.0011](#)) which he cannot do until DeLay formally steps down and he is officially notified of a vacancy in office.

This indicates:

- Initial reports that a special election may be held on May 13 would require DeLay to formally resign and vacate his position by this Friday April 7, 2006, to meet the 36 day window, which conflicts with reports that he plans to serve for two more months.
- The Governor would almost certainly declare an emergency when DeLay formally vacates his seat, setting up a summer special election, meaning Texas taxpayers will have to foot the bill for another costly special election courtesy of Tom DeLay's cowardly post-primary resignation.

The Republican Party's Nominee Replacement Process

Again, no replacement nominee for DeLay's seat could be named until he has formally left the Congress and established residency outside the State of Texas, thus allowing the State Party Chair to establish his ineligibility. As long as DeLay continues to serve in Congress, he must be, by definition, a Texas resident who is eligible to serve and be on the ballot. To replace DeLay:

- Under [Section 145](#) of the Texas Election Code, the Republican Party's District Executive Committee would have first shot at naming a replacement nomination.
- Under [Section 171.054](#) of the Texas Election Code, because District 22 includes no whole counties, the district committee would include a precinct chair from each county elected from and by the precinct chairs in those parts of Ft. Bend, Harris, Brazoria and Galveston counties in District 22, leaving four Republican Party officials to choose a nominee instead of the voters for whom Tom DeLay has shown such blatant disregard.
- Should the District Executive Committee fail to name a replacement; the Republican Party's State Executive Committee could name a replacement nominee.

The Lone Star Project is an activity of the Lone Star Fund.

Contributions or gifts to the Lone Star Fund are not tax deductible. All contributions are subject to the prohibitions and limitations of the Federal Election Campaign Act. Federal Law requires us to use best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year.

Paid for by The Lone Star Fund, 6 E St, SE, Washington, DC 20003.
Not authorized by any candidate or candidate's committee.

Lone Star Fund
6 E Street, SE
Washington, DC 20003