

No. 06-50812

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

**TEXAS DEMOCRATIC PARTY and BOYD L. RICHIE,
in his capacity as Chair of the Texas Democratic Party,
Plaintiff-Appellee**

v.

**Tina J. Benkiser,
in her capacity as Chairwoman of the Republican Party of Texas,
Defendant-Appellant.**

**Appeal from the United States District Court
for the Western District of Texas**

MOTION TO EXPEDITE

Defendant-Appellant, Tina J. Benkiser, in her capacity as Chairwoman of the Republican Party of Texas (“Benkiser” or “RPT”), by counsel, respectfully moves this Court, pursuant to 5th Cir. R. 34.5, to expedite the appeal in this matter. In support of said motion, RPT shows the Court as follows:

1. On July 6, 2006, the district court entered a permanent injunction in favor of Plaintiffs-Appellees, Texas Democratic Party and Boyd L. Richie, in his capacity as Chairman of the Texas Democratic Party (collectively “TDP”)

MOTION TO EXPEDITE

and against RPT prohibiting RPT from declaring Tom DeLay ineligible and replacing him as the Republican Nominee for Texas Congressional District 22 in the 2006 general election because it held that Texas Election Code § 145.003 which allows administrative declarations of ineligibility, as applied to federal elections, adds an unconstitutional qualification for office.

2. In the district court, the Texas Secretary of State filed an amicus letter explaining the hardship on the State if this case is not finally decided in the most expeditious manner possible. A true and accurate copy of the *Amicus Letter*, filed June 23, 2006, is attached hereto as Exhibit A. Specifically, the State explains that the Texas Supreme Court decision in *In Re Francis*, – S.W. 3d –, 2006 WL 197976 (Tex. 2006), which required “changes to the official ballot” and “was handed down . . . some 18 days after the deadline for the parties to certify names for the March Primary Ballot,” resulted in a scramble to “reprint[] ballots less than three weeks before early voting [was to begin],” a “delay[in] the mailing of ballots to military and overseas voters” and “several Texas counties not having accessible voting machines available for use for voters with disabilities during early voting for the primaries as required by HAVA.” (*Amicus Letter* at 1-2.)

3. Therefore, this Court should be aware that August 25, 2006, is the “deadline for declaration of ineligibility” and that August 29, 2006, is the “deadline for party executive committee to deliver certification of a replacement nominee to the Secretary of State.” (*Amicus Letter* at 2.) However, “[i]f a district executive committee fails to name a replacement nominee by August 29, the state executive committee may cure the failure by certifying a replacement nominee and delivering that certification no later than September 1.” (*Amicus Letter* at 2.)
4. However, in order to meet those deadlines, RPT and its county committees, which may only call the appropriate meetings in accord with their bylaws, will need at least two weeks to choose its nominee. If that nominee happens to also be someone who is already on the November ballot, it will need another week to nominate a new person to fill that vacancy. Thus, should this Court reverse the decision of the district court, RPT would need to have that decision in hand approximately three weeks prior to the September 1 deadline so that it could replace DeLay on the ballot without causing undue hardship on the State. (*See Amicus Letter* at 3 (“The orderly running of the election, including key issues such as mailing of ballots to overseas military personnel, . . . depends heavily on the ballot’s certification on September 6, 2006. If the

Republican Party is to be given the opportunity to certify a replacement nominee, it must do so by September 1, 2006, *at the very latest.*”) (emphasis added).)

5. Because of the importance of deciding this case as quickly as possible, RPT proposes the following briefing schedule:
 - a. RPT’s opening brief be filed by July 14, 2006;
 - b. TDP’s response brief be filed by July 21, 2006;
 - c. RPT’s reply brief be filed by July 26, 2006.
 - d. Oral argument to be held July 31, 2006.

6. Raeanna S. Moore has contacted opposing counsel, Chad Dunn and Cris Feldman, on July 10th and 11th, regarding this motion and they agree that the case should be expedited but disagree as to the proposed briefing schedule and to suggesting a date for oral argument.

WHEREFORE, Defendant-Appellant RPT respectfully moves this Court to GRANT its Motion to Expedite and set an appropriate briefing and oral argument schedule.

Dated: July 11, 2006

Respectfully Submitted,

/s James Bopp, Jr by RSM

James Bopp, Jr.

Raeanna S. Moore

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Tina J. Benkiser, in her capacity as

Chairwoman of the Republican Party

of Texas

CERTIFICATE OF INTERESTED PERSONS

TEXAS DEMOCRATIC PARTY and
BOYD L. RICHIE, in his capacity as
Chairman of the Texas Democratic Party,
Plaintiffs-Appellees,

v.

No. 06-50812

TINA J. Benkiser, in her capacity as
Chairwoman of the Republican Party
of Texas,
Defendant-Appellant

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Texas Democratic Party, Plaintiff-Appellee
2. Boyd L. Richie, in his capacity as Chairman of the Texas Democratic Party, Plaintiff-Appellee
3. Tina J. Benkiser, in her capacity as Chairwoman of the Republican Party of Texas, Defendant-Appellant
4. Republican Party of Texas and its affiliated local organizations because the injunction against its Chair has a direct impact on their ability to have a candidate on the ballot for Texas Congressional District 22.
5. Roger Williams, Secretary of State, State of Texas, enjoined by district court order, though not a party to this action.

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Chairwoman of the Republican Party
of Texas*

CERTIFICATE OF SERVICE

I, Raeanna S. Moore, certify that today, July 11, 2006, a copy of the above Motion to Expedite, were served upon the following persons at the following addresses via first class mail and e-mail:

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/s Raeanna S. Moore _____
Raeanna S. Moore