

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
V. § TRAVIS COUNTY, TEXAS
TOM DELAY § 331ST JUDICIAL DISTRICT

DEFENDANT TOM DELAY'S
MOTION TO QUASH AND DISMISS INDICTMENT
FOR FAILURE TO STATE AN OFFENSE UNDER TEXAS LAW

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Defendant Tom DeLay, by and through his lead counsel, Dick DeGuerin, and moves the Court to quash and dismiss the indictment herein for failure to state an offense against Texas law, respectfully showing as follows:

1. The Texas Conspiracy Statute, § 15.02 of the Texas Penal Code, does not apply to violations of the Texas Election Code in 2002.
2. The indictment herein alleges a conspiracy to violate sections of the Texas Election Code, said violations alleged to have occurred on or about September 13, 2002. There were no such violations of the Texas Election Code and there was no conspiracy, but these issues will be raised by separate motions.
3. Sec. 1.03 of the Texas Penal Code provides in pertinent part:

“(a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

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TRAVIS COUNTY TEXAS

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(b) The provisions of Titles 1, 2, and 3 apply to offenses defined by other laws, unless the statute defining, the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code." (Emphasis added.)

4. The Texas Conspiracy Statute, § 15.02, is contained in Title 4 of the Texas Penal Code. The Election Code was amended, effective September 1, 2003, by adding Sec. 1.018, which makes Title 4 of the Penal Code applicable to the Election Code. Before September 1, 2002 the Conspiracy Statute was NOT applicable to the Texas Election Code.

5. The indictment does not state an offense under Texas law and should be quashed and dismissed and Defendant so moves.

Respectfully submitted,

DeGUERIN DICKSON & HENNESSY

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of **Defendant Tom DeLay's Motion to Quash and Dismiss Indictment For Failure to State an Offense Under Texas Law** has been served on District Attorney Ronnie Earle by facsimile on this the 3rd day of October, 2005.

Dick DeGuerin (with permission)
Dick DeGuerin

THE STATE OF TEXAS

§ IN THE DISTRICT COURT OF

V.

§ TRAVIS COUNTY, TEXAS

TOM DELAY

§ 331ST JUDICIAL DISTRICT

ORDER

UPON PRESENTATION of the above and foregoing **Defendant Tom DeLay's Motion to Quash and Dismiss Indictment For Failure to State an Offense Under Texas Law**, the same is GRANTED, and the indictment herein is QUASHED and DISMISSED.

SIGNED in Austin, Travis County, Texas on this the ____ day of October, 2005.

JUDGE PRESIDING

DEGUERIN DICKSON & HENNESSY

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DICK DEGUERIN
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TODD WARD
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OF COUNSEL

October 3, 2005

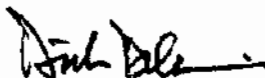
Amalia Rodriguez-Mendoza
Travis County District Clerk
Criminal Justice Center, Criminal Division
509 W. 11th Street
Austin, Texas 78701

Re: *The State of Texas v. Tom DeLay*
Cause No. D1-DC-05-900725
331st Judicial District Court, Travis County

Dear Ms. Rodriguez-Mendoza:

Enclosed for filing please find Defendant Tom DeLay's Motion to Quash and Dismiss Indictment For Failure to State an Offense Under Texas Law as well as a copy of my transmittal letter of the motion to Mr. Earle. Please file among the papers of the case.

Yours truly,



Dick DeGuerin

DD:bls

cc: William White
Stephen Brittain
Richard Keeton
Mark Stephens
Joe Turner

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October 3, 2005

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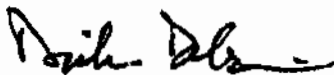
Re: *State of Texas v. Tom DeLay*
Cause No. D1-DC-05-900725
331st Judicial District Court, Travis County

Dear Mr. Earle:

A review of Texas law reveals that the conspiracy statute did not apply to violations of the Texas Election Code in 2002. I am enclosing your copy of a Motion to Quash the Indictment in the *DeLay* case and ask that you and your assistants review this motion and agree to dismiss the indictment right away.

As you are aware, Congressman DeLay was required by Republican Congressional Rules to step down temporarily from his position as Majority Leader simply because of this indictment. Since the indictment charges no offense, and since you have professed not to be politically motivated in bringing this indictment, I request that you immediately agree to dismiss this indictment so that the political consequences can be reversed.

Yours very truly,



Dick DeGuerin

DD:bls
Enclosure

cc: Judge Robert A. Perkins
Criminal District Clerk

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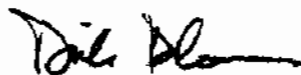
Re: *State of Texas v. Tom DeLay*
Cause No. D1-DC-05-900725
331st Judicial District Court, Travis County

Dear Mr. Earle:

Rumor has it that you are going to try and get another indictment against Tom DeLay.

Please tell the Grand Jury that Mr. DeLay has filed a Notice to Withdraw his Waiver of Statute of Limitations.

Yours very truly,



Dick DeGuerin

DD:bls