

CAUSE NO: 23-2326

THE STATE OF TEXAS	§	
EX REL. AVREY J. ANDERSON	§	
	§	
Relator-Plaintiff	§	
	§	IN THE _____ JUDICIAL DISTRICT COURT
V.	§	HAYS COUNTY, TEXAS
	§	
KELLY HIGGINS	§	
	§	
	§	
<u>In His Official Capacity as</u>	§	
<u>Criminal District Attorney of</u>	§	
<u>Hays County, Texas</u>	§	
	§	
<u>Respondent-Defendant</u>	§	

2nd AMENDED PETITION TO REMOVE HAYS COUNTY CRIMINAL DISTRICT ATTORNEY FROM OFFICE AND JURY DEMAND

TO THE HONORABLE PRESIDING JUDGE FOR THE 3RD ADMINISTRATIVE JUDICIAL REGION:

COMES NOW ,the STATE OF TEXAS, by the relation of AVREY J. ANDERSON, and files this Amended Petition for Removal of Criminal District Attorney Kelly Higgins from Office with a Jury Demand against the Respondent-Defendant Kelly Higgins in his official capacity as Hays County Criminal District Attorney, seeking Kelly Higgin’s removal from his public office pursuant to Chapter 87 of the Local Government Code ,and respectfully shows as follows:

DISCOVERY CONTROL PLAN

1. Discovery will proceed under a Level 3 discovery control plan as set out in Rule 190.4 of the Texas Rules of Civil Procedure.

PARTIES

2. The Plaintiff, Avrey J. Anderson, is a resident of Hays County, Texas. Avrey J. Anderson has resided in Hays County Texas continuously since at least 2011. Pursuant to section 87.018 of the Texas Local Government Code, Avrey J. Anderson is acting in the capacity of relator in this action being brought by the State of Texas. As required by section 87.015(b) of the Texas Local Government Code, Avrey J. Anderson is not nor has he ever been under indictment for any crime in any jurisdiction.

3. The Defendant, Kelly Higgins, is the current officeholder of CRIMINAL DISTRICT ATTORNEY, having been duly elected to that position in 2022. Kelly Higgins resides in Hays County. Kelly Higgins may be served with citation at his place of employment at the Hays County Criminal District Attorney's Office located at 712 S Stagecoach Trail, Unit 2057, San Marcos, Texas 78666 in HAYS COUNTY, TEXAS.

JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter of this action and the parties involved pursuant to the laws of the State of Texas.
5. Pursuant to section 87.015 of the Texas Local Government Code, this cause is being filed in the county of Avrey J. Anderson's residence.
6. All parties are subject to this court's personal jurisdiction

FACTS

7. Kelly Higgins is the current elected Criminal District Attorney for Hays County , Texas. He was duly elected to his position in 2022 and sworn-in in January, 2023.
8. Under Texas law, a Texas Criminal District Attorney or District Attorney is responsible for representing the State in all criminal cases in the district courts of his/her district, and in appeals therefrom.

9. Prior to the implementation of H.B 17 of the 88th legislature section 87.011 of the Texas Local Government Code defined that Official Misconduct “**means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.**” which was effective since the statute was enacted on September 1st of 1987 until September 1st of 2023.
10. Under Sec. 87.018 (g) of the Texas Local Government Code as newly enacted by HB 17 of the 88th legislature of the State of Texas it states that “In a proceeding to remove a prosecuting attorney from office, a prosecuting attorney's public statement establishing that the prosecuting attorney adopted or enforced or intends to adopt or enforce a policy described by Section 87.011(3)(B) or permitted or intends to permit an attorney who is employed by or otherwise under the direction or control of the prosecuting attorney to act as described by Section 87.011(3)(C) creates a rebuttable presumption that the prosecuting attorney committed official misconduct.” .
11. During all relevant times, Kelly Higgins committed the following unlawful actions:
- a. Implementation and execution of a policy or policies of refusing to prosecute a class or type of criminal offense under state law
 - I. Kelly Higgins has made a public declaration that he will not prosecute simple drug possession offenses and that he would divert resources in the prosecution thereof. He made these declarations on his website in 2022 and has talked about it throughout campaigning in 2022. To this date of September 18th, 2023 the public declaration remains on Kelly Higgins’ website.
 - II. Kelly Higgins has made a public declaration that he will not prosecute simple cannabis possession offenses. He made these declarations on his website in 2022 and has

talked about it throughout campaigning in 2022. To this date of September 18th, 2023 the public declaration remains on Kelly Higgins' website.

Actual Decline in felony drug possession cases following the implementation of said unlawful policies

- I. An excessive amount of felony possession causes are being declined for random and nonspecific reasons even after September 1st the earliest date past that date being September 6th and spanning in a variety of excuses for decline up until September 11th .
- II. An excessive amount of felony possession causes have been declined for random and nonspecific reasons since January of 2023 to September 11th.

CAUSE OF ACTION: OFFICIAL MISCONDUCT

12. The foregoing facts are incorporated in this section, as if set out fully herein.
13. Pursuant to section 87.013 of the Texas Local Government Code, a district attorney may be removed from office for official misconduct.
14. The same statute in section 87.011 of the Texas Local Government Code defines Official Misconduct as “(A) an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law;”
and or
“(B) a prosecuting attorney's adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law or instructing law enforcement to refuse to arrest individuals suspected of committing a class or type of offense under state law”
Before September 1st, 2023 Official Misconduct was defined under the same code as

“Text of subdivision effective until September 01, 2023

(3) "Official misconduct" means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.

Acts 1987, 70th Leg., ch. 149, Sec. 1, eff. Sept. 1, 1987.”

15. During the time of the foregoing facts, Kelly Higgins was engaged in official duties as the elected Criminal District Attorney.
16. His conduct demonstrates not only an intentional corrupt failure, refusal and neglect of duties imposed on the officer in his official capacity by law; but his conduct also demonstrates an adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law.
17. Allowing him to continue as District Attorney undermines the very laws of our state that he swore to uphold. These same laws were laws that he was charged to defend and instead he abused his official capacity to counteract our legislature thus undermining our process itself.

CONCLUSION

18. Kelly Higgins’ public declaration to not prosecute certain classes of crime has created a rebuttable presumption that he created the implementation of a policy of refusing to prosecute a class or type of criminal offense under state law and therefore evidence of official misconduct under section 87.011 of the Texas Local Government Code.
19. The fact that section 87.011 of the Texas Local Government Code stated prior to September 1st of 2023 that official misconduct “**means intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The**

term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.” means that his actions prior to September 1st of 2023 show a continued pattern of violation of Texas law.

20. Kelly Higgins’ official misconduct clearly disqualifies him from continuing in his elected position.
21. Under the circumstances, Kelly Higgins has demonstrated that he should be removed from the office to which he was elected.

JURY DEMAND

22. As required by section 87.018 of the Texas Local Government Code, a jury trial is demanded.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the State of Texas through relator, Avrey J. Anderson, respectfully requests that:

23. The Court order that citation and a certified petition be served on Kelly Higgins;
24. The court temporarily suspend Kelly Higgins and appoint another person to perform the duties of the office, in accordance with section 87.017 of the Texas Local Government Code;
25. After service of citation, Defendant Kelly Higgins be summoned to answer this suit within the time required by law;
26. After trial on the merits, a jury finding be entered that Kelly Higgins committed official misconduct, thereby warranting removal from office pursuant to Chapter 87 of the Local Government Code, and that Kelly Higgins be so removed; and
27. The Court award court costs to the State and/or Relator and any other relief to which it may be entitled.

Respectfully submitted,

/s/ Avrey J. Anderson
AVREY J. ANDERSON
Relator
1000 Springlake Drive
Dripping Springs, TX, 78620
936-730-5122
inventor0520@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition for Removal from Office has been served on the Defendant, Kelly Higgins, Criminal District Attorney at 712 S Stagecoach Trail Unit 2057, San Marcos, Texas 78666, by electronic means on even date with the filing hereof.

/s/ Avrey J. Anderson
AVREY J. ANDERSON

UNSWORN DECLARATION

My name is Avrey James Anderson, my
(First) (Middle) (Last)

date of birth is **05/20/2003**, and my address is
1000 Springlake Drive, Dripping Springs, Texas, 78620,
(Street) (City) (State) (Zip Code)
and United States of America.

(Country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in **Hays** County, State of **Texas**, on the **18th**
day of **September, 2023**_____.

(Month) (Year)

/s/ Avrey J. Anderson

Declarant"

Automated Certificate of eService

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Filing Description: 2nd Amended Petition

Status as of 9/18/2023 11:59 AM CST

Associated Case Party: Kelly Higgins

Name	BarNumber	Email	TimestampSubmitted	Status
Kelly Higgins		kelly.higgins@co.hays.tx.us	9/18/2023 11:42:25 AM	SENT