

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>	§	

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 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. Under Sec. 87.018 (g) as newly enacted by HB 17 of the 88th legislature of the State of Texas it states that “A public declaration or announcement by a district attorney or a county attorney of an intent to prohibit the enforcement of any criminal offense is prima facie evidence of an adoption or implementation of a formal or stated policy for purposes of this chapter.”.

10. 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.
 - II. Kelly Higgins has made a public declaration that he will not prosecute simple cannabis possession offenses.
 - III. Kelly Higgins has made a public declaration that he will not prosecute illegal procedures committed by a licensed physician in the case that they are illegally treating transgenders.
 - IV. Kelly Higgins has made a public declaration that he will not prosecute illegal procedures committed by a licensed physician in the case that they are performing unlawful abortions (technically murder) under the law.
 - b. Actual Decline in felony drug possession cases following the implementation of said unlawful policies
 - I. An excessive amount of felony possession of cannabis causes are being declined for random and nonspecific reasons.
 - II. An excessive amount of felony possession of Meth-amphetamine causes are being declined for random and nonspecific reasons.
 - III. An excessive amount of felony possession of Cocaine causes are being declined for random and nonspecific reasons.

CAUSE OF ACTION: OFFICIAL MISCONDUCT

11. The foregoing facts are incorporated in this section, as if set out fully herein.
12. Pursuant to section 87.013 of the Texas Local Government Code, a district attorney may be removed from office for official misconduct.
13. 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”
14. During the time of the foregoing facts, Kelly Higgins was engaged in official duties as the elected Criminal District Attorney.
15. 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.
16. 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

17. Kelly Higgins' public declaration to not prosecute certain classes of crime is prima facie evidence that he created the implementation of a policy of refusing to prosecute a class or type of criminal

offense under state law and therefore prima facie evidence of official misconduct under section 87.011 of the Texas Local Government Code.

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

JURY DEMAND

20. 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:

21. The Court order that citation and a certified petition be served on Kelly Higgins;
22. 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;
23. After service of citation, Defendant Kelly Higgins be summoned to answer this suit within the time required by law;
24. 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
25. 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

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Status as of 9/12/2023 1:30 PM CST

Associated Case Party: Kelly Higgins

Name	BarNumber	Email	TimestampSubmitted	Status
Kelly Higgins		kelly.higgins@co.hays.tx.us	9/12/2023 12:55:36 PM	SENT