

D-1-GN-23-008569

CAUSE NO. _____

THE STATE OF TEXAS,	§	
EX REL. JASON SALAZAR	§	IN THE DISTRICT COURT OF
	§	
Relator-Plaintiff	§	TRAVIS COUNTY, TEXAS
	§	
v.	§	
	§	53RD JUDICIAL DISTRICT
JOSE GARZA, IN HIS OFFICIAL	§	
CAPACITY AS DISTRICT ATTORNEY	§	
OF THE 53rd JUDICIAL DISTRICT	§	455TH, DISTRICT COURT
	§	
Respondent-Defendant	§	

PETITION TO REMOVE
DISTRICT ATTORNEY FOR THE 53RD JUDICIAL DISTRICT JOSE GARZA

TO THE HONORABLE PRESIDING JUDGE OF THE THIRD ADMINISTRATIVE
JUDICIAL REGION:

NOW COMES THE STATE OF TEXAS, by relation of Plaintiff, Jason Salazar (“Plaintiff”), in his capacity as a resident of Travis County, Texas, and hereby files this Petition to Remove District Attorney for the 53rd Judicial District Jose Garza (“Defendant”) pursuant to Texas Constitution, article V, § 24 and Chapter 87, Texas Local Government Code § 87.012, and in support thereof, respectfully submits the following:

I. PARTIES

I. Plaintiff is a resident of Texas who has resided in Travis County, Texas, for over six months. Pursuant to Texas Local Government Code § 87.018(b), Plaintiff is acting in the capacity of relator in this action being brought by the State of Texas. As required by Texas Local Government Code § 87.015(b-1), Plaintiff is not currently charged with a criminal offense in Travis County.

2. Defendant is the current elected district attorney for the 53rd Judicial District, having been elected to that position in 2020. Defendant resides in Travis County.

II. JURISDICTION AND VENUE

3. Pursuant to Texas Local Government Code § 87.015, this cause is being filed in the county of Defendant's residence.

4. The subject matter is within the jurisdiction of this court and all parties are subject to this court's jurisdiction.

5. Pursuant to Rule 47, Plaintiff seeks non-monetary relief that is properly allowed pursuant to article V, § 24 of the Texas Constitution and Chapter 87, Texas Local Government Code.

III. DISCOVERY CONTROL PLAN

6. Discovery will be pursuant to Rule 190.4, Texas Rules of Civil Procedure (Level 3).

IV. INTRODUCTION

7. Plaintiff seeks to remove Defendant from his public office due to incompetency and official misconduct.

8. Since taking office, Defendant has adopted and enforced policies and otherwise acted in violation of legal duties and obligations as follows: (1) Defendant singles-out law enforcement officials by automatically, indiscriminately, presenting charges against them to grand juries; (2) Defendant maintains a "do not call to testify" list of law enforcement officials who he disqualifies from serving as witnesses for the State of Texas; and (3) Defendant refuses to prosecute a class or type of criminal offense under state law.

V. LEGAL AUTHORITY FOR REMOVAL

9. Section 24 of article V of the Texas Constitution authorizes the removal of county officers by district judges for official misconduct and other causes, upon the cause “being set forth in writing and the finding of its truth by a jury.” Section 87.013 of the Texas Local Government Code authorizes removal of a district attorney for specific causes including incompetency and official misconduct.

10. “Incompetency” is defined as “(A) gross ignorance of official duties; (B) gross carelessness in the discharge of those duties; or (C) unfitness or inability to promptly and properly discharge official duties because of a serious physical or mental defect that did not exist at the time of the officer’s election.”¹

11. “Official Misconduct” is defined as “intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law.”² The term includes “an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law”³ and, for prosecuting attorneys, an “adoption or enforcement of a policy of refusing to prosecute a class or type of criminal offense under state law...”⁴

VI. FACTS

12. In 2020, Defendant was the Democratic Party’s nominee for Travis County District Attorney. He campaigned as a Democratic-Socialist and was substantially funded by political groups advocating radical criminal justice reforms. Defendant told voters that he would

¹ Tex. Loc. Gov’t Code §§ 87.011(2).

² Tex. Loc. Gov’t Code § 87.011(3).

³ Tex. Loc. Gov’t Code § 87.011(3)(A).

⁴ Tex. Loc. Gov’t Code § 87.011(3)(B).

“reimagine” the criminal justice system and promised to implement specific policies if elected, including (1) eliminating cash bail; (2) referring all allegations of misconduct against law enforcement officials to grand juries; (3) refusing to prosecute all drug crimes involving one gram or less of illegal drugs; and (4) establishing a “do not call to testify” list for certain law enforcement officials.

13. On November 3, 2020, Travis County voters elected Defendant and on January 1, 2021, he took the legally required oath of office and assumed duties as district attorney. Defendant established policies he had advocated as a candidate.⁵

14. To serve as district attorney, a person must be a licensed attorney. Defendant is a licensed Texas attorney. To be licensed, an attorney must swear or affirm a statutorily prescribed oath:

I, _____, do solemnly swear (or affirm) that I will support the Constitutions of the United States, and of this State; that I will honestly demean myself in the practice of law; that I will discharge my duties to my clients to the best of my ability; and, that I will conduct myself with integrity and civility in dealing and communicating with the court and all parties. So help me God.⁶

15. An attorney has a legal responsibility to act ethically. Fundamentally, lawyers are “guardians of the law.”⁷ It is a lawyer’s duty to uphold legal process.⁸ According to the State Bar of Texas, “[l]awyers holding public office assume legal responsibilities going beyond those of

⁵ Qualified voters of Travis County may have declared in favor of Defendant’s fitness for the office but the people of the state have declared, by provision of the constitution, that he is disqualified from holding the office, notwithstanding his election, if he is found incompetent or guilty of official misconduct. Defendant was elected to the office subject to termination. Removal is a proceeding on the part of the state. *See Trigg v. State*, 49 Tex. 645, 669 (1878).

⁶ Texas Gov’t Code § 82.037.

⁷ Texas Disciplinary Rules of Professional Conduct, as amended January 31, 2022, Preamble, par. 1.

⁸ *Id.* at par. 4.

other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of attorney."⁹ An attorney who commits professional misconduct is subject to discipline.¹⁰

16. Before serving as district attorney, a person must swear or affirm a statutorily prescribed oath of office:

I, _____, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of _____ of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.¹¹

The oath of office was administered to Defendant on January 1, 2021.

17. Each district attorney has a statutory duty to represent the State of Texas in all criminal cases in the district courts of his district and in appeals therefrom.¹² By law, the primary duty of all prosecuting attorneys is to see that justice is done, not to convict.¹³

A. DEFENDANT'S INTENTIONAL FAILURE OR NEGLECT TO PERFORM A DUTY IMPOSED BY LAW

18. For intentional, unlawful behavior relating to official duties to constitute official misconduct, behavior must be a violation of a statutory duty or obligation.¹⁴ Defendant intentionally and unlawfully violated a statutory duty or obligation by (1) presenting every allegation of excessive use of force or misconduct by law enforcement officials to a grand jury

⁹ *Id.*, Rule 8.04, Comment 4.

¹⁰ Texas Rules of Disciplinary Procedure (including amendments effective June 15, July 1, and August 27, 2021).

¹¹ Tex. Const. art. 16, § 1(a).

¹² Tex. Code of Crim Proc art. 2.01 (2022).

¹³ *Id.*

¹⁴ See *Stern v. State ex rel. Ansel*, 869 S.W.2d 614,619–23 (Tex. App. - Houston [14th Dist.] 1994), writ denied; *State ex rel. Edwards v. Reyna*, 160 Tex. 404, 333 S.W.2d 832, 836 (Tex. 1960).

without exception; and (2) finding persons guilty of wrongdoing and punishing them with placement on a “do not call to testify” list without due process of law.

1. Presenting every allegation of excessive use of force or misconduct by law enforcement officials to a grand jury without exception

19. On April 13, 2021, Defendant publicly stated, “[w]e will continue to fulfill our promise to you to take all officer involved excessive force cases to the grand jury....” (Exhibit A) Defendant’s reports show that even cases still under investigation are to be presented to a grand jury after investigation, without exception.

20. The policy is nondiscretionary, regardless of probable cause. Defendant admits his policy includes cases without probable cause, stating, “we do not expect every case that we present to result in an indictment, however we do believe it is important that it is the grand jury who decides.”

21. As of April 19, 2023, 79 cases against police officers have been presented to a grand jury since January 1, 2021. A no true bill was returned in 48 of those cases. (Exhibit B)

22. Grand juries inquire into offenses and determine whether there is sufficient evidence to indict an accused or suspected person.¹⁵ Grand jury proceedings are ex parte and secret.¹⁶ The Texas Rules of Evidence, with few exceptions, do not apply to grand jury proceedings.¹⁷ the prosecutor exclusively determines what evidence to present to a grand jury.¹⁸

23. A district attorney has prosecutorial discretion whether to present allegations of criminal conduct to a grand jury. Once a decision is made to present allegations to a grand jury, an

¹⁵ Tex. Code of Crim. Proc. art. 20A.051; art. 20A.301.

¹⁶ *Id.* at art. 20A.202.

¹⁷ Texas Rules of Evidence, art. 1, rule 101(e)(2).

¹⁸ Tex. Code of Crim. Proc. art. 20A.104.

indictment is not difficult to obtain. The full power of the state is brought to bear against an accused.

24. Defendant's policy violates a legal obligation not to present cases to grand juries not supported by probable cause.¹⁹ Referral of all cases involving law enforcement persons to a grand jury is prejudicial and necessarily includes cases that lack probable cause.

25. Furthermore, Defendant's policy violates a legal duty not to discriminate. Defendant's policy only refers to one class of persons. For all others, he makes his own probable cause determination before taking a case to a grand jury. Identifying a class of persons for different treatment denies members of that class the same treatment afforded others similarly situated.

26. Government officials have a legal duty to not violate constitutional requirements when acting in their official capacity. The Texas Constitution and United States Constitution guarantee due process and the equal application of laws.²⁰ Defendant's policy violates an official duty imposed by law, memorialized by both statutory oaths taken by Defendant to uphold the Constitutions of the United States and Texas.

2. Finding misconduct and placing a person on a "Do Not Call to Testify" list without affording due process of law

27. Defendant announced the creation of a "do not call to testify" list for law enforcement officers in an official memorandum dated January 29, 2021. (Exhibit C) Under the caption "Civil Rights," Defendant states he is unilaterally placing law enforcement officers on this list when his office has "evidence that an officer's conduct calls into question the integrity of any

¹⁹ Tex. Code Crim. Pro. art 2.01 (2022); Texas Disciplinary Rules of Professional Conduct, Rule 3.09 ("The prosecutor in a criminal case shall: (a) refrain from prosecuting or threatening to prosecute a charge that the prosecutor knows is not supported by probable cause...."). Texas Disciplinary Rules of Professional Conduct, Preamble, par. 4 ("A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others.").

²⁰ Tex. Const. art. 1, §§ 3, 19; U.S. Const. amend. XIV.

case they have previously handled.” Criteria considered by Defendant are not disclosed. Officers determined to have acted wrongfully and placed on the list only have a right to be heard *after* a decision is made and they are added to the list.

28. Any officer placed on the list is effectively deprived from performing authorized law enforcement duties because they will be barred from testifying no matter how credible or material their testimony may be.

29. Law enforcement officials have a right to due process²¹ and a right not to be deprived of life, liberty, property, privileges or immunities, or in any manner disenfranchised, except by the due course of the law.²² Defendant’s unilateral deprivation of the opportunity to perform authorized law enforcement duties without notice and a prior opportunity to be heard violates these constitutionally protected rights.

B. DEFENDANT’S POLICY OF REFUSING TO PROSECUTE A CLASS OR TYPE OF CRIMINAL OFFENSE

30. In his written policy announcement dated January 29, 2021, Defendant states that his office adopted a blanket non-prosecution policy for some drug offenses. Specifically, he states he is “not prosecuting people who are in possession of a state jail amount of drugs.” Cases of distribution of so-called “small amounts” of drugs also would not be prosecuted “unless there is a threat to public safety, apparently only those where violent conduct is involved. These policies make no distinction for the drugs involved, including fentanyl. A lethal dose of fentanyl is a very small amount, estimated to be 0.002 grams.

²¹ U.S. Const., amend. XIV.

²² Tex. Const. art. 1, § 19; Tex. Code of Crim. Proc. art. 1.04.

31. On June 24, 2022, Defendant released a statement on the Supreme Court decision in *Dobbs v. Jackson Women's Health Organization*²³ reversing *Roe v. Wade*²⁴ and *Planned Parenthood of Southeastern Pennsylvania v. Casey*.²⁵ Defendant implored people to flout state abortion laws and act “no matter what the law says.” (Exhibit D) He assured the public that abortion laws would not be enforced in Travis County. Using the power and prestige of his office, Defendant intends and expects the public to rely on his policy.

32. On June 27, 2022, Defendant stated publicly “we here in Travis County will not be prosecuting women who seek abortions or medical professionals who provide abortions.”²⁶ On July 2, 2022, Defendant reiterated his policy in a television interview.²⁷ The interviewer reported that Texas district attorneys critical of the *Dobbs* decision announced that they would determine whether to prosecute abortion cases on a case-by-case basis. He apparently assumed Defendant’s position was the same and inquired as to what factors he would weigh in making these decisions. Defendant rejected the premise of the question, asserting “we will not be prosecuting those cases.” When given the opportunity to clarify his response, Defendant remained resolute and reiterated that no one would be prosecuted in Travis County. There was no equivocation whatsoever.

33. Recognizing that Defendant’s policy conflicts with acts of the legislature, the television interviewer asked Defendant if he anticipated any “blowback” from it. Defendant’s response reveals that he *knowingly* defied the state legislature: “I think there is deep concern on

²³ 597 U.S. ___ (2022).

²⁴ 410 U.S. 113 (1973).

²⁵ 505 U.S. 833 (1992).

²⁶ <https://youtu.be/Yiaz41cZfWQ>.

²⁷ <https://youtu.be/Hf6xYoFjOqA>.

the part of the legislature that they are increasingly out of touch with the overwhelming majority of people who live in our state.”

34. Defendant confided that he had already spoken with law enforcement leadership in Travis County about the nonenforcement policy. Accordingly, a policy consistent with his on-air statements had been firmly established by Defendant before the interview.

35. On June 6, 2023, Gov. Greg Abbott signed into law HB17, which was passed in the legislature with bipartisan support. HB17 expressly makes categorical policies not to enforce state laws, such as Defendant’s refusal to prosecute drug and abortion offenses, *official misconduct* and grounds for removal from office. The law took effect September 1, 2023.

36. A prosecutor’s public statement that the prosecutor adopted or enforced, or intends to do so, a policy described by Section 87.011(3)(B) creates a rebuttable presumption that the prosecutor committed official misconduct. Changes in the law effective on September 1, 2023, apply only to an action or statement made on or after that date.

37. Defendant’s policy memorandum dated January 29, 2021, stating Defendant’s refusal to prosecute certain drug offenses, and policy statement dated June 24, 2022, stating Defendant’s policy on abortion cases, remained publicly posted on September 1, 2023. Neither policy has been rescinded by Defendant. Defendant’s stated policies on September 1, 2023, create a rebuttable presumption of official misconduct.

**C. DEFENDANT’S SUBVERSION OF THE CRIMINAL JUSTICE SYSTEM AND
USURPATION OF LEGISLATIVE AUTHORITY WHEN REPRESENTING
TEXAS IS INCOMPETENCE**

38. Plaintiff incorporates the preceding paragraphs as if fully repeated here.

39. “Incompetency” is defined, in part, as “gross ignorance of official duties and gross carelessness in the discharge of those duties.”²⁸ Unlike for official misconduct, a violation of a statutory duty or legal obligation is not required to show incompetency.²⁹

40. Defendant swore an oath to faithfully execute the duties of his office and, to the best of his ability, to preserve, protect and defend the Constitution and laws of the United States and of Texas. Defendant’s official conduct conflicts with his ethical and legal obligations to represent the State of Texas in Travis County courts. Instead of enforcing laws of the state, he promises to ignore them. Instead of prosecuting violations of laws, he encourages defiance of laws. Instead of the equal application of the law, Defendant discriminates. Instead of respecting the separation of power Texans established, Defendant usurps it. This conduct demonstrates gross ignorance or gross carelessness in the discharge of his law enforcement duties as district attorney.

VII. CONCLUSION

41. As a lawyer with a duty to represent the State of Texas and as district attorney having a duty to faithfully preserve, protect and defend the Constitutions and laws of the United States and Texas, Defendant’s conduct constitutes official misconduct and incompetency.

42. Because Defendant’s conduct makes him unqualified to serve as district attorney, he should be removed from office.

DECLARATION OF PLAINTIFF

43. Plaintiff swears to the filing of this petition as required by Texas Local Government Code § 87.015(b). Plaintiff’s signed verification form is attached as Exhibit E.

PRAYER FOR RELIEF

²⁸ Tex. Loc. Gov’t Code § 87.011(2)(A)-(B).

²⁹ *Stern v. State*, Ansel, 869 S.W.2d 614, 623 (Tex. App. 1994) (“No violation of a statutory provision is necessary to support a finding of incompetency.”).

WHEREFORE, PREMISES CONSIDERED, the State of Texas through Relator, Jamie Hammonds, respectfully requests that:

- a. The assigned district judge order that citation and a certified copy of the petition be served on Defendant;
- b. The assigned district judge enter an order temporarily suspending Defendant from the public office of district attorney for the 53rd Judicial District during the pendency of this case and appoint another person to perform the duties of that office during that suspension;
- c. The assigned district judge, upon the jury trial of this cause, enter a finding that Defendant is incompetent and committed official misconduct, and enter a final judgment permanently removing Defendant from office as district attorney for the 53rd Judicial District; and
- d. The assigned district judge award court costs to the State and Relator and any other relief to which it may be entitled.

Respectfully submitted,

JASON RYAN SALAZAR

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing document has been delivered to Travis County District Attorney Jose Garza, 416 W. 11th St., Austin, TX 78701, on **November 30**, 2023, via electronic means and by hand delivery.

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JASON RYANSALAZAR		JASON.R.SALAZAR@PROTON.ME	11/30/2023 5:27:40 AM	SENT

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Associated Case Party: JOSEPGARZA

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