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Application for Pretrial Writ of Habeas Corpus

Presented By
David M. Gonzalez

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NO. D1DC14-100139

EX PARTE

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IN THE DISTRICT

§

§

OF TRAVIS COUNTY

§

JAMES RICHARD "RICK" PERRY

§

390TH JUDICIAL DISTRICT

APPLICATION FOR PRETRIAL WRIT OF HABEAS CORPUS

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INDEX TO APPLICATION FOR PRETRIAL WRIT OF HABEAS CORPUS

I.	Nature Of Relief Sought
II.	What Is At Stake In This Case
III.	Jurisdiction And Restraint.....
IV.	Claims For Relief.....
	A. Claims As To Count I Of The Indictment
	B. Claims As To Count II Of The Indictment.....
V.	Procedural History
VI.	The Indictment Violates The Constitutional Separation Of Powers ..
VII.	The Indictment Violates The Speech Or Debate Clause
VIII.	Section 36.03(a)(1) Is Unconstitutional On Its Face
	A. Section 36.03(a)(1) Is Unconstitutionally Overbroad
	B. Section 36.03(a)(1) Is Void for Vagueness
	1. The vagueness of the statute is highlighted by the fact that a threat to do a legal act does not constitute duress or coercion
	2. Section 36.03(a)(1)'s lack of scienter requirement renders it vague
	3. The vagueness of Section 36.03(a)(1) is further illustrated by other statutes in the same chapter of the

X.	Section 39.02(a)(2)Is Unconstitutional As Applied
XI.	Conclusion
XII.	Prayer For Relief.....
XII.	Verification
XIII.	Certificate Of Service.....
	Exhibit 1: Indictment & Redacted Personal Bond.....
	Exhibit 2: Text Of Relevant Penal Code Provisions.....
	Exhibit 3: June 14, 2013 Proclamation (Veto & Veto Statement).....
	Exhibit 4: June 10, 2013 Austin American Statesman Article

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TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, APPLICANT, JAMES RICHARD "RICK" PERRY, by and through his undersigned

counsel of record, David L. Botsford,¹ and pursuant to Texas Code of Criminal Procedure, Article 17.02, *seq.*, presents this Application For Pretrial Writ of Habeas Corpus, and as grounds therefor, respectfully show this Honorable Court the following:

I.

NATURE OF RELIEF SOUGHT

This is a pretrial application for writ of habeas corpus seeking to set aside Applicant's conviction and sentence. Applicant, Governor James Richard "Rick" Perry, on multiple constitutional grounds, respectfully shows this Honorable Court that his conviction and sentence are void.

Some of these grounds relate to defects apparent on the face of the indictment and the evidence presented at trial, and others relate to constitutional violations that occurred during the trial and sentencing proceedings.

parte Weise, 55 S.W.3d 617, 620 (Tex. Crim. App. 2001) (defendant is entitled to habeas relief when he alleges “that the statute under which he or she is prosecuted fails on its face; consequently, there is no valid statute and the charging instrument is void”).

In addition, *both* Section 36.03(a)(1) and Section 39.02(a) are void as applied to this case, and that is true regardless of whether they might pass constitutional muster in other circumstances. The statements and actions alleged in the indictment, if true, would strip Governor Perry of his official capacity. Forcing Texas’ head of state to stand trial under provisions that are clearly unconstitutional as applied to any Governor would have a deleterious impact on the efficient operation of state government, now and in the future. Even if he is forced to stand trial on charges based on statutes that are unconstitutional in some reasons of constitutional magnitude, including the separation of powers doctrine, in a democratic system of government, Governor Perry should have the same right to be released through habeas corpus in this case if the provisions are merely void as applied to him as they were facially unconstitutional.

Even if the statutes under which the Governor is indicted were not void on their face or as applied, the facts alleged by the State still fail on their face to show

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