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Application for Pretrial Writ of Habeas Corpus

Presented By
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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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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 violate Governor Perry's official capacity. Forcing Texas' head of state to stand trial on charges based on 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 required to stand trial on charges based on statutes that are unconstitutional in some circumstances, for reasons of constitutional magnitude, including the separation of powers doctrine, the 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 unconstitutional on their face or as applied, the facts alleged by the State still fail on their face to show

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