



Senate State Affairs Committee
May 11th, 2023

HB 17

Relating to official misconduct by and removal of prosecuting attorneys.

Position: Oppose

Introduction/Thank You Section

I want to thank Chairman Hughes and the members of this committee for having me today. My name is Akanksha Balekai, and I am a Criminal Justice Policy Analyst with Texas Appleseed. Our organization is dedicated to fighting unjust laws, and supporting policies that are data driven, safe, and efficient. I am here today to testify in opposition to HB 17, a bill that undermines the will of local voters across our state, and that threatens state officials who are attempting to fulfill their duties to those voters.

Background

HB 17 is Undemocratic and Undermines Local Control

District attorneys in the state of Texas are duly elected to their positions by their constituents. The responsibility an elected prosecutor then takes on is ensuring the safety of their community and seeing that those who cause harm are held accountable for their actions.

Prosecutorial discretion ensures that district and county attorneys can do just this: make suitable decisions for the community that elected them, while continuing to consider that accountability may look different depending on the circumstance. A petition that only needs to be presented by one resident of a county may not in any way be reflective of what most residents in that county believe is best for the public safety of their community. The power to decide which charges to file and which not to is one that has historically

belonged to elected prosecutors, one that has been codified by Texas courts, most recently by the Court of Criminal Appeals in *State v. Stephens*. HB 17 runs counter to this principle, and in doing so violates the Texas Constitution while also dismissing the will of the voters.

Oversight for Elected Prosecutors Already Exists

These concerns about the consequences of HB 17 do not mean district or county attorneys should not be subject to oversight. On the contrary, elected prosecutors are already accountable to the State Bar and district judges, both of which can investigate their actions and subject them to penalties – including removal of their license and office if appropriate. Additionally, Chapter 87 of the Local Government Code can allow for the removal of an elected prosecutor from office “for incompetence or misconduct through the existing removal statute’s provisions, including for “refusal, or neglect of an officer to perform a duty imposed on the officer by law.”

In addition to these safeguards, accountability also rests on voters. If a community is dissatisfied with the elected prosecutor and how they are employing their discretion, they can re-elect one that reflects their best interests every four years. By allowing a single petition to undermine all these authorities, and Texas constituents, the implications of HB 17 are not only unnecessary, but also a violation of due process.

HB 17 is an Intimidation Tactic that Hinders Duty

HB 17 has been introduced and outlined as a vital accountability measure – yet, when considering all the methods of accountability that already exist for prosecutors, it is clear that HB 17 serves as a tool to intimidate elected prosecutors.

Subsection (g) of the bill outlines a presumption that prosecutors could have committed official misconduct based on statements they may have made about their office’s operations. This will cause a number of harms. It implies that a district or county official can be found guilty of misconduct based on statements that can be taken out of context, misconstrued, or misinterpreted – leading to their removal based on scarce evidence or reasoning. In addition, it erodes the existing transparency that exists between elected prosecutors and those who elect them. If prosecutors are unable to discuss the way they are handling cases without fear of retribution, they are put in a position where they may not feel comfortable speaking at all. This is harmful to the integrity of their offices, and to democracy in our state overall.

Conclusion

HB 17, under the guise of upholding the law, threatens those who are attempting to do so. If an elected prosecutor so much as expresses that they are deprioritizing low-level, non-violent, or fine-only cases in the interest of pursuing more serious crimes – a very real possibility in a state that is managing a court backlog – they could risk removal from their office with little to no investigation. This undermines the will of the voters and our state's constitution. For these reasons, I urge the committee to vote against HB 17. Thank you for your time and consideration.

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