

July 1, 2022

Jose Garza, District Attorney
Travis County District Attorney Office
P.O. Box 1748
Austin, TX 78767

Dear Mr. Garza:

On June 24, 2022, you publicly announced that you would not enforce state law pertaining to abortion in Travis County. Specifically, you informed the public that persons who violate Texas' "trigger law" would not be prosecuted because it "will not only fail to promote or protect public safety but will also lead to more harm." You direct women to act how they want "[n]o matter what the law says."

The only rationale for your official action is a public policy argument. Without presenting any factual support, you claim threats of prosecution will only drive women to seek out dangerous alternatives and avoid necessary medical care even though alternatives to abortion exist, abortion services are available in other states and abortion services are allowed in Texas when the life and health of the mother are jeopardized by pregnancy. The only authority you reference is "discretion as the District Attorney."

The trigger law which broadly prohibits elective abortions supersedes the Texas "heartbeat" law which prohibits non-emergency abortions after a heartbeat is detected. Your official position is to ignore not only post-*Dobbs* Texas law but pre-*Dobbs* law, including restrictions which were lawful under *Roe v. Wade*. Your stated position is to not "interfere" in "personal healthcare and reproductive decisions." Implicitly, you are refusing enforcement of state criminal law even if conduct was not constitutionally protected before *Dobbs*. In effect, you are expanding the right that was recognized by the Court in *Roe* to allow termination of unborn life on demand for any reason and at any time during pregnancy.

Although prosecutors are trusted to exercise discretion when making decisions in specific cases, a district attorney does not have the authority to refuse to enforce state law in all cases. In fact, such a policy *denies* prosecutors discretion. Courts have so ruled. Nevertheless, you promised as a candidate that you would not prosecute persons who unlawfully possess, use or distribute illicit drugs in the amount of one gram or less. Also, you stated an intention to never seek the death penalty when it is authorized by law. Now, you have officially proclaimed a refusal to enforce other state law.

Determining public policy is the domain of the legislature, not the district attorney. The legislature is democratically elected. Members draft legislation, hold hearings and debate the merits of proposed laws. Experts are consulted and the public has an opportunity to support or oppose legislation as it is considered. As a result of this deliberative process the laws you oppose were passed and then signed by the chief executive officer of the state, the governor.

Your decision not to enforce state law and not to prosecute violations of state law, however, effectively repeals law enforceable in Travis County in contravention of the democratic process by which it was adopted. Announced the same day as the Supreme Court overruled *Roe*, your decision was not preceded by, or predicated on, any opportunity for Texans to be heard. The decision was unilateral, personal and without any apparent fact-finding to support the public policy argument for it.

As a Texas attorney, you took an oath to support the Constitutions of the United States and Texas. Before assuming your current position, you took an oath to “faithfully execute” the duties of your office and to the best of your ability “preserve, protect, and defend the Constitution and laws of the United States and of this State.” As district attorney, you represent the State of Texas in all criminal cases before the district courts of Travis County.

In a bizarre statement, you joined four other district attorneys to assert that your duty to uphold the rule of law is the reason for your decision to *ignore* Texas law. The claim of plenary power to ignore law you are duty-bound to preserve, protect and defend is illogical on its face and without any limiting principle whatsoever. Affording this power to one means affording it to all DA’s, denying equal treatment under the law for Texans.

Arguably, such unequal enforcement of law in Texas would constitute unlawful state action because there is no rational basis for it. Further, such unequal application of law violates political rights of Texans and discrimination is apparent. A claim of absolute authority for district attorneys to not enforce law categorically for a whole class of cases cannot be reconciled with the Texas Constitution or U.S. Constitution.

Moreover, a claim of absolute authority to decide not to enforce law categorically for a whole class of cases and a failure to represent the State of Texas lawfully cannot be reconciled with the statutory definition of “official misconduct.” Official misconduct is “intentional, unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law. The term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.” District attorneys are specifically subject to removal from office on these grounds.

For the foregoing reasons, I urge you to disavow your June 24, 2022, statements and to reverse official actions effectuating them.

Sincerely,

A handwritten signature in black ink that reads "Martin Harry". The signature is written in a cursive, flowing style.

Martin Harry
Attorney at Law
(512) 636-1428
maharry@martinharry.com

Cc: Gov. Greg Abbott
Lt. Gov. Dan Patrick
A.G. Ken Paxton
Speaker Dade Phelan
Texas Right to Life
State Bar of Texas