

2020-DCL-01255

CAUSE NO. 2020-DCL-\_\_\_\_\_

THE STATE OF TEXAS EX REL.  
LUIS V. SAENZ

V.

DR. SYLVIA P. ATKINSON., IN  
HER OFFICIAL CAPACITY AS A  
BROWNSVILLE ISD SCHOOL  
BOARD MEMBER

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IN THE DISTRICT COURT

Cameron County - 107th District Court

\_\_\_\_\_ JUDICIAL DISTRICT

CAMERON COUNTY, TEXAS

**PETITIONERS' ORIGINAL PETITION FOR REMOVAL OF**  
**BROWNSVILLE INDEPENDENT SCHOOL DISTRICT BOARD**  
**MEMBER SYLVIA P. ATKINSON**

TO THE HONORABLE JUDGE PRESIDING:

COMES NOW, the State of Texas, by and through Cameron County District Attorney Luis V. Saenz, and files this Petition for the Removal of Brownsville Independent School District Board Member Sylvia P. Atkinson and respectfully shows this Honorable Court the following:

1. PARTIES

1.1. Petitioners

- a. Petitioners are the State of Texas by and through the  
Cameron County District Attorney Luis V. Saenz.

1.2. Respondent is Sylvia P. Atkinson (hereinafter referred to as  
"Respondent").

- a. Respondent is the elected official for the Brownsville

Independent School District (hereinafter referred to as “BISD”) Board of Trustee Position 1.

- b. Respondent may be served via her counsel of record, Mr. Noe Garza, at 854 E. Van Buren St., Brownsville, Texas, 78520.

## 2. JURISDICTION & VENUE

- 2.1. Jurisdiction and Venue are proper as Respondent is a resident of Cameron County, Texas. Actions for removal of elected officials are to be filed in a district court of the county in which the officer resides. *See* Tex. Loc. Gov't Code § 87.015(a) (West 2020).

## 3. CONDITIONS PRECEDENT

- 3.1. Any resident of this state who has lived for at least six months in the county in which the petition is to be filed and who is not currently under indictment in the county may file the petition. Tex. Loc. Gov't Code §57.015(b) (West 2020).
- 3.2. At least one of the parties who files the petition must swear to it at or before the filing. Tex. Loc. Gov't Code Ann. § 87.015. *See* Verification included herein.

## 4. DISCOVERY LEVEL

- 4.1. Discovery in this case is intended to be conducted under a Level 2

control plan as provided for by Rule 190 of the Texas Rules of Civil Procedure.

5. CAUSE OF ACTION – CHAPTER 87 OF THE LOCAL  
GOVERNMENT CODE

- 5.1. Under Subchapter B of Chapter 87 of the Texas Local Government Code a “district judge may... remove from office...a member of the board of trustees of an independent school district.” §87.012(12) (West 2020).
- 5.2. Pursuant to Local Government Code 87.013 a school board trustee may be removed for official misconduct. §87.013 (a)(2)(West 2020).
- 5.3. “Official misconduct,” for the purposes of chapter 87 of the Local Government Code, is “intentional unlawful behavior relating to official duties by an officer entrusted with the administration of justice or the execution of the law.” Tex. Loc. Gov't Code § 87.011(3)(West 2020). This “term includes an intentional or corrupt failure, refusal, or neglect of an officer to perform a duty imposed on the officer by law.” *Id.*

***Overt Acts & Indictment***

- 5.4. On or about December 11, 2019, Respondent was indicted by a

federal grand jury for federal charges of conspiracy and corruption. Specifically:

- a. Count 1: Conspiracy 18 USC 371;
- b. Count 2: Bribery Concerning Programs Receiving Federal Funds 18 USC 666 (a)(1)(B) and (2);
- c. Count 3: Travel Act-State Law Bribery 18 USC 1952 and 2;
- d. Count 4: Travel Act-State Law Bribery 18 USC 1952 and 2;
- e. Count 5: Travel Act-State Law Bribery 18 USC 1952 and 2;
- f. Count 6: Travel Act-State Law Bribery 18 USC 1952 and 2;
- g. Count 7: Travel Act-State Law Bribery 18 USC 1952 and 2;  
and,
- h. Count 8: Travel Act-State Law Bribery 18 USC 1952 and 2.

5.5. This indictment has been styled the *United State of America v. Sylvia P. Atkinson* and has been assigned to Federal District Judge Fernando Rodriguez Jr. under Cause No. 1:19-CR-01097. See Exhibit 1, Indictment for Cause No. 1:19-CR-01097 and Exhibit 2, Amended Indictment for Cause No. 1:19-CR-01097.

5.6. The United States of America alleges the respondent participated in:

a long-running criminal scheme to solicit bribes from vendors seeking to obtain contracts with BISD and Rio Hondo ISD. The contracts would provide various goods and services to the school districts, including computer tablets, medical teleconferencing services and tutorial services, according to the indictment... Atkinson also allegedly solicited and received a \$10,000 bribe from an undercover agent related to a film crew's potential use of BISD facilities for filming a purported Hollywood movie.

See <https://www.justice.gov/usao-sdtx/pr/bisd-vp-indicted>.

5.7. On or about December 19, 2018, an individual cooperating with an investigation conducted by law enforcement paid Respondent \$4,000 in “exchange for Defendant placing the film project proposal on the agenda for a future BISD Board of Trustees Meeting.” See Exhibit 2, pg. 5 ¶20.

5.8. On or about February 19, 2019, an individual cooperating with an investigation conducted by law enforcement paid Respondent “the remaining \$6000 bribe, which Defendant confirmed was the amount she was owed.” *Id.* pg. 6, ¶26.

### ***Penal Code Official Misconduct – Bribery***

5.9. A person commits an offense if s/he intentionally or knowingly... solicits, accepts, or agrees to accept from another

- (1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter; [or]
- (2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding..

Tex. Penal Code §36.02 (West 2020). This statute imposes a legal duty on public servants to not accept consideration for the exercise of their official discretion.<sup>1</sup>

5.10. The Respondent solicited, and accepted, \$10,000 from an individual the respondent knew was interested in or likely to become interested in a transaction involving her official discretion. Moreover, the paying of said \$10,000 was conditioned on the Respondent supporting an initiative to permit a private party to use BISD Property for private gain and the Respondent did indeed support the initiative. This constitutes a bribe as defined by §36.02 of the Texas Penal Code. She has been instructed by law not to do this, and did so anyway. Therefore, Respondent's

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<sup>1</sup> An exception to the application of the noted statute is that that the benefit received by the public official is a political contribution as defined by Title 15, Election Code, or an expenditure made and reported in accordance with Chapter 305, Government Code. Tex. Pen. Code § 36.02(d)(West 2020).

conduct in soliciting and accepting the aforementioned bribe constitutes official misconduct and thus justifies her removal from office as provided for by chapter 87 of the Local Government Code.

***Penal Code Official Misconduct – Gift to a Public Servant***

5.11. A public servant<sup>2</sup> commits an offense if said public servant “exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits” and said public servant “***solicits, accepts, or agrees to accept any benefit*** from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.” Tex. Pen. Code § 36.08(d)(West 2020)(Gift to Public Servant by Person Subject to His Jurisdiction).

5.12. The law instructs public servants to refrain from accepting gifts from those likely to become interested in a given transaction.

Likewise, the law discourages public servants from entering into contracts involving exercise of discretion. Nevertheless,

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<sup>2</sup> A “public servant” is any person, elected, selected, appointed, employed, or otherwise designed as an officer employee, or agent of government. Tex. Penal Code §1.07(41)(West 2020). “Government” means the “state; a county, municipality, or political subdivision of the state; or any branch or agency of the state, a county, municipality, or political subdivision.” *Id.* (24).

Respondent solicited and/or accepted a gift from a person subject to her jurisdiction as prohibited by Texas Penal Code §36.08. This conduct constitutes Official Misconduct as defined by Chapter 87 of the Local Government Code. Therefore, Respondent's is subject to removal under Chapter 87 of the Local Government Code.

***Local Government Code Official Misconduct***

- 5.13. Under certain circumstances a local government officer<sup>3</sup> is required to file a Conflict of Interest Disclosure Statement.
- 5.14. A Conflict of Interest Disclosure Statement is required when a local government officer has received regulated enrichment from an actor that is seeking to enter or has entered into a contract with the local government entity of which the local government officer is an officer. Regulated enrichment consists of
- i. income from the actor that exceeds \$2,500 from the actor or

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<sup>3</sup> A "local government officer" is defined as: (A) a member of the governing body of a local governmental entity; (B) a director, superintendent, administrator, president, or other person designated as the executive officer of a local governmental entity; or (C) an agent of a local governmental entity who exercises discretion in the planning, recommending, selecting, or contracting of a vendor. Tex. Loc. Gov't Code § 176.001(4)(West 2020). The definition of "Local governmental entity" includes a school district. *Id.* (3).



- ii. a gift that exceeds \$100.<sup>4</sup>

This reporting requirement is ongoing and applies to the 12 month period preceding the date the local government officer becomes aware of the actor's contractual relationship with the local government entity or the possibility of a contractual relationship with the local government entity. *See* Local Government Code 176.003(a) (West 2020).<sup>5</sup>

5.15. A local government officer is required to file the Conflict of Interest Disclosure Statement with the records administrator of the local entity no later than 5 pm on the seventh business day after the date on which the officer becomes aware of the facts requiring the disclosure. *Id.* (b). Mrs. Pat Perez, the Board Administrative Secretary for BISD Board of Trustees, has confirmed that Respondent has never filed a Conflict of Interest Disclosure Statement.

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<sup>4</sup> A local government official is not required to file a conflicts disclosure statement in relation to a gift accepted by the officer or a family member of the officer if the gift is a political contribution as defined by Title 15, Election Code. Tex. Loc. Gov't Code § 176.003(a-1)(1)(West 2020).

<sup>5</sup> The BISD Board Policy Manual directs that "[t]rustees shall not directly or indirectly accept or solicit any benefit from persons or entities who: [a]re seeking to obtain or retain a business relationship with the District; or [h]ave any interest or transaction that may be affected by action of the Board." *See* BBFA Local – Ethics: Conflict of Interest Disclosures.

5.16. Respondent received \$10,000 from an actor who sought to enter into, and did enter into, an agreement with BISD. Respondent is an officer of the BISD Board of Trustees. In accepting a gift greater than \$100 or earning money greater than \$2,500 from an actor seeking to enter into an agreement with BISD and by subsequently failing to file the proper Local Government Code 176 Disclosure, the Respondent violated a duty imposed on her by law. This is official misconduct as defined by Chapter 87 of the Local Government code. Consequently, Respondent is subject to and should be removed under chapter 87 of the Local Government Code.

## 6. SUSPENSION

- 6.1. Pursuant to Ch. 87 of the Texas Local Government Code the presiding judge of a removal action may suspend an elected official pending the outcome of an action.
- 6.2. As a condition of her bond the Respondent has been instructed not to engage in any business with BISD and/or on behalf of BISD. Respondent has not attended any BISD function or BISD Board Meeting since her arrest.

6.3. This Honorable Court should summarily suspend the Respondent and appoint a temporary appointee for the pendency of this immediate cause or, in the alternative, set the issue of suspension as prayed for in this petition for a hearing so a temporary appointee may be named to carry out the duties for the BISD Board of Trustee Position 1.

## 7. PRAYER

7.1. FOR THESE REASONS STATED HEREIN the State prays this Honorable Court:

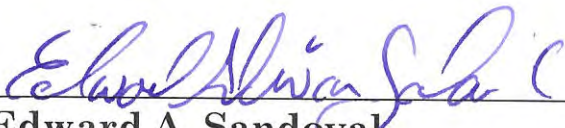
- a. Take notice of this petition;
- b. After issuance of citation:
  - i. Summarily suspend the Respondent from her duty as a School Board Trustee for BISD and appoint a temporary appointee to serve for the pendency of this action; or
  - ii. in the alternative, set the issue of suspension for a hearing;
- c. On a trial on the merits find that:
  - i. the Respondent committed official misconduct by committing bribery, accepting a prohibited gift, and/or

failed to file a proper conflict disclosure form, and is therefore subject to removal under Chapter 87 of the Texas Local Government Code and enter an order of removal;

- ii. Grant all relief the Petitioners are entitled to in law and equity; and,
- iii. Tax all costs of court to Respondent.

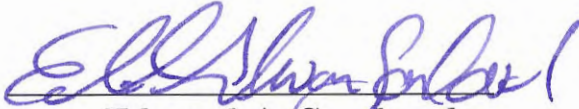
Respectfully submitted,

LUIS V. SAENZ  
County and District Attorney

  
**Edward A. Sandoval**  
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DISTRICT ATTORNEY  
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### Certificate of Service

I hereby certify that a true and correct copy of the foregoing Petition has been delivered to Respondent's Counsel Noe Garza via electronic mail on this 4<sup>th</sup> day of March 2020.

  
Edward A. Sandoval