

**No. 20-0729**

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**In the Supreme Court of Texas**

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**THE STATE OF TEXAS,**  
*Petitioner,*

**v.**

**CHRIS HOLLINS,**  
**IN HIS OFFICIAL CAPACITY AS HARRIS COUNTY CLERK,**  
*Respondent.*

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**On Appeal from the Fourteenth Circuit Court of Appeals**  
**No. 14-20-00627-CV**

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**RESPONDENT'S BRIEF ON THE MERITS**

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## STATEMENT OF THE CASE

<i>Nature of the Case:</i>	On August 31, 2020, the State of Texas brought this action seeking injunctive relief to block Chris Hollins, in his official capacity as Harris County Clerk, from sending vote-by-mail applications to eligible voters absent request on the theory that doing so is <i>ultra vires</i> and abuses voters' rights under Section 31.005. CR.4, 14.
<i>Trial Court:</i>	Judge R.K. Sandill, 127 <sup>th</sup> Judicial District Court, Harris County, Texas, No. 2020-52383.
<i>Trial Court Disposition:</i>	In lieu of a TRO hearing, the parties entered a Rule 11 agreement that Hollins would not send applications to voters under age 65 until five days after the trial court's ruling on a temporary injunction. CR.24. The trial court held a full evidentiary hearing on September 9. RR.6-192. On September 11, the trial court denied the State's request for a temporary injunction, holding that Hollins has authority under the Election Code to send vote-by-mail applications to all registered voters in Harris County, including those under age 65, and thus these acts would be neither <i>ultra vires</i> nor impede the free exercise of voting rights. App. A, CR.289
<i>Parties in the Court of Appeals:</i>	State of Texas, Appellant; Chris Hollins, in his official capacity as Harris County Clerk, Appellee
<i>Court of Appeals Disposition:</i>	Ordered expedited briefing from the State and Hollins and issued an opinion affirming the denial of injunctive relief, but on the grounds that the State failed to establish irreparable harm to obtain a temporary injunction, namely that the mailer would cause voter confusion leading to felony voter fraud. <i>State v. Hollins</i> , Slip op., No. 14-20-00627-CV (Tex. App. – Houston [14th Dist.] Sept. 18, 2020) (per curiam) (Spain, Hassan, and Possaint, JJ.). App. B.

## **ISSUES PRESENTED**

The Texas Election Code broadly authorizes Chris Hollins, as the “early voting clerk” for Harris County, to “manage” and “conduct” the election with respect to voting by mail and specifically requires Hollins to make “printed” vote-by-mail applications “readily and timely available” to voters.

1. Whether the trial court abused its discretion in denying the State’s request for a temporary injunction where Hollins has authority and discretion under the Election Code to send vote-by-mail applications to all registered voters in Harris County, including those under age 65?

2. Whether the trial court abused its discretion in denying the State’s request for a temporary injunction where the State failed to produce evidence of any imminent irreparable harm resulting from a mailer containing accurate voter education on the legal requirements to vote by mail along with an application?

## INTRODUCTION

Chris Hollins, as “early voting clerk” for Harris County, plans to send registered voters who have not already requested a mail-in ballot a mailer containing detailed educational information about the eligibility criteria for voting by mail along with an application. By providing this educational information and an application together, Hollins will enable each Harris County voter to make an informed decision about his or her entitlement to vote by mail due to a disability or other qualifying reason, consistent with this Court’s decision in *In re State*, 602 S.W.3d 549 (Tex. 2020).

The State of Texas does not want Hollins to proactively send vote-by-mail applications to voters and brought this lawsuit to try to stop him. Yet, the State does not object to Hollins proactively sending applications to voters age 65 and over. The State also has admitted that the educational information in Hollins’s mailer is “very good” and would be helpful to voters in determining whether they are entitled to vote by mail. And in the face of multiple Election Code provisions that confer broad authority upon Hollins to manage and conduct voting by mail and that specifically require him to make printed applications readily and timely available, the State points to no Election Code provision that circumscribes Hollins’s authority to distribute applications to voters. Nevertheless, the State

asserts that sending applications to younger voters absent a request is *ultra vires* and harmful.

As the lower courts held, the State's *ultra vires* claim lacks merit and the State cannot establish any irreparable harm, as is required for a temporary injunction. After a full evidentiary hearing, the trial court denied a temporary injunction, holding that multiple provisions of the Election Code affirmatively confer authority upon Hollins to send applications to all registered voters. The Election Code authorizes Hollins, as early voting clerk, to “manage” and “conduct” early voting both in person and by mail. And the Code specifically requires Hollins to make “printed” vote-by-mail applications “readily and timely available,” but leaves to Hollins’s discretion how to carry out this mandate. The court of appeals unanimously affirmed, holding that the State failed to establish any irreparable harm and that Hollins’s mailer will in fact reduce voter confusion and any potential fraud. Indeed, the notion that educating Texas voters about their legal rights and giving them applications will cause “confusion” or “voter fraud,” as the State contends, is non-sensical. Hollins’s mailer contains prominent warnings — set off by flashing red sirens — that voters should *not* assume they are entitled to vote by mail, and provides detailed information about the eligibility criteria as set forth by this Court. Hollins’s mailer will help Harris County voters

understand the eligibility criteria for voting by mail and will enable voters to timely submit an application if they determine that they meet those criteria.

Of course, there is no legitimate reason for the State to object to any of this, and the State's objection solely with respect to voters under the age of 65 lays bare the true intent of its lawsuit. The State is seeking to obscure and obstruct this Court's holding in *In re State* that Texas voters may determine for themselves whether they are entitled to vote by mail based on a "disability." But dissatisfaction with a decision of this Court is not a valid basis for a temporary injunction.

Because the State has not shown a likelihood of success on the merits or any irreparable harm, the trial court's denial of a temporary injunction should be affirmed. To ensure that this case does not become moot through the passage of time, Hollins respectfully requests that the Court issue its decision as soon as possible, but no later than October 5, with opinion to follow.

## **STATEMENT OF FACTS**

### **A. The Secretary of State Objects to Hollins's Proposed Mailer.**

On August 25, 2020, Hollins announced that he would send vote-by-mail applications to all registered voters in Harris County. CR.232.

Without any prior communications, Keith Ingram, the Secretary of State's Director of Elections, directed Hollins to "immediately halt any plan to send an application for ballot by mail to all registered voters" in an e-mailed letter sent on

August 27. CR.232. The letter asserted that Hollins’s plan to send applications to registered voters (1) would “confuse voters about their ability to vote by mail,” (2) “may cause voters to provide false information on the form,” and (3) would “clog[] up the vote by mail infrastructure.” CR.80; DX6. The letter also stated that sending applications to voters who may not qualify may “cause voters to provide false information on the form” and that Hollins’s “action thus raises serious concerns under Texas Election Code Section 84.0041(a)(1), (2),” a statute that provides felony penalties for knowingly making false statements on a vote-by-mail application or intentionally causing another to provide false information. *Id.*, Tex. Elec. Code § 84.0041.

Hollins responded to Ingram stating that he did not see how Section 84.0041 would be implicated by his plan and asking to discuss the matter with Ingram. CR.85-86, DX7. Ingram rebuffed Hollins’s request for a conversation and the opportunity for Hollins to educate Ingram about the details of preparations to manage mail-in balloting. Ingram instead repeated his demand that Hollins publicly retract his announcement by noon on Monday, August 31. *Id.*, at 83-84.

That Monday, Hollins was hit with two legal actions. First, a direct petition for writ of mandamus in this Court which sought emergency temporary relief. *See In re Hotze*, No. 20-0671. And second, the State of Texas filed the underlying lawsuit here in Harris County.

Hollins's proposed mailer, which the State did not seek to review before filing its lawsuit, contains detailed and accurate educational information about the eligibility criteria for voting by mail and an application. CR.235. The mailer was designed for accuracy in that it will be pre-printed with personalized voter information from the latest most accurate data, sent to those eligible to vote who have not already requested a mail-in ballot, and for ease of processing as it is bar-coded for instant data entry upon return. RR.109:17-110:15, 117:5-119:11. The mailer will be printed on a larger format 10.5" x 17" cardstock and is reproduced on the following page:

Para recibir esta información o la Solicitud de Voto por Correo en Español, comuníquese con:

Để nhận được thông tin này hoặc Đơn Xin Bầu Cử Bằng Thư bằng Tiếng Việt, xin liên lạc:

要接收此信息或中英文的郵遞投票申請表格, 請聯繫:

QUESTIONS? CONTACT:  
vbm@harrisvotes.com  
713-755-6965



# DO YOU QUALIFY TO VOTE BY MAIL?



**READ THIS BEFORE APPLYING FOR A MAIL BALLOT**  
The Harris County Clerk's Office is sending you this application as a service to all registered voters.  
**However, NOT ALL VOTERS ARE ELIGIBLE TO VOTE BY MAIL.**  
**READ THIS ADVISORY TO DETERMINE IF YOU ARE ELIGIBLE BEFORE APPLYING.**



## You are eligible to vote by mail if:

1. You are age 65 or older by Election Day, November 3, 2020;
2. You will be outside of Harris County for all of the Early Voting period (October 13th - October 30th) and on Election Day (November 3rd);
3. You are confined in jail but otherwise eligible to vote;
4. You have a disability. Under Texas law, you qualify as disabled if you are sick, pregnant, or if voting in person will create a likelihood of injury to your health.
  - The Texas Supreme Court has ruled that lack of immunity to COVID-19 can be considered as a factor in your decision as to whether voting in person will create a likelihood of injury to your health, but it cannot be the only factor. You can take into consideration aspects of your health and health history that are physical conditions in deciding whether, under the circumstances, voting in person will cause a likelihood of injury to your health.
  - **YOU DO NOT QUALIFY TO VOTE BY MAIL AS "DISABLED" JUST BECAUSE YOU FEAR CONTRACTING COVID-19. YOU MUST HAVE AN ACCOMPANYING PHYSICAL CONDITION. IF YOU DO NOT QUALIFY AS "DISABLED," YOU MAY STILL QUALIFY IN CATEGORIES 1 - 3 ABOVE.**
  - It's up to you to determine your health status—the Harris County Clerk's Office does not have the authority or ability to question your judgment. If you properly apply to vote by mail under any of the categories of eligibility, the Harris County Clerk's Office must send you a mail ballot.
  - To read guidance from the U.S. Centers for Disease Control and Prevention (CDC) on which medical conditions put people at increased risk of severe illness from COVID-19, please visit: [www.HarrisVotes.com/CDC](http://www.HarrisVotes.com/CDC)

If you have read this advisory and determined that you are eligible to vote by mail, please complete the attached application and return it to the Harris County Clerk's Office! Voting by mail is a secure way to vote, and it is also the safest and most convenient way to vote.

To receive CRITICAL ELECTION UPDATES, sign up at: [www.harrisvotes.com/text](http://www.harrisvotes.com/text)

For Official Use Only: VUID #/County Election Pct #  
1230000000/906

## APPLICATION FOR BALLOT BY MAIL

**CHRIS HOLLINS**



- ☐ Fill in (or verify) your name and address
- ☒ Select your reason for using Ballot By Mail
- ☒ Select your Election(s)
- ☒ Sign your application, affix a stamp, and place in the mail

**PROTECTING YOUR RIGHT TO VOTE**

### 1 APPLICANT'S VOTER REGISTRATION:

Name/Address/City/State/Zip Code  
**JOHN Q. PUBLIC**  
**123 MAIN STREET**  
**HOUSTON, TEXAS 77078-0044**

PHONE NUMBER:  
(Optional)

### PREFERRED MAILING ADDRESS (REQUIRED FOR OUT OF COUNTY & IN JAIL):

Address/City/State/Zip Code



### 2 REASON FOR APPLYING FOR BALLOT BY MAIL:

- ☐ Age 65 or older
- ☐ Have a disability
- ☐ \*\*Outside the county throughout Early Voting & Election Day (Oct. 13 - Oct. 30, 2020 & Nov. 3, 2020)
- ☐ Confined in jail

(\*\*Dates You Will be Outside the County: / / - / / - / /)

### 3 ELECTIONS FOR WHICH YOU ARE APPLYING:

☒ ALL 2020 ELECTIONS

November 3, 2020

SIGN YOUR APPLICATION: If you cannot sign, you must have a person witness your mark. If a person helped you fill out this application you must give the name of that person on the line immediately below your signature. In any single election, it is a Class A misdemeanor for any person to sign a ballot application as a witness for more than one applicant, unless the second and subsequent application are related to the witness as a parent, spouse, child, sibling, or grandparent. If you need additional information call the Texas Secretary of State at: 1-800-252-8683. COMMON CONTRACT CARRIER: You may submit via a common or contract carrier which is a bona fide, for-profit carrier.

### 4 I certify that the information given on this application is true, and I understand that giving false information on this application is a crime. **SIGN HERE X**

### 5 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ASSISTED A VOTER WITH THIS FORM

☐ Check this box if acting as an ASSISTANT

X Signature of Assistant

PRINT FULL NAME of Assistant

Assistant's Address of Residence or Title of Elections Official

Assistant's Relationship to Applicant

### Signature of Applicant As Registered

### 6 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ARE A WITNESS FOR A VOTER WITH THIS FORM

☐ Check this box if acting as a WITNESS

X FOR WITNESS: Applicant, if unable to sign, shall make a mark in the presence of witness. If applicant is unable to make mark, the witness shall check here \_\_\_\_\_

X Signature of Witness

PRINT FULL NAME of Witness

Witness' Address of Residence or Title of Elections Official

Witness' Relationship to Applicant

**B. The State Sued Hollins Challenging All Proactive Application Mailings but Quickly Retreated to Only Contesting Mailing to Voters Under 65.**

The State's petition asserted an *ultra vires* claim and sought a TRO, a temporary injunction, and a permanent injunction.<sup>1</sup> CR.5, 8-12. In lieu of a TRO hearing, the State and Hollins entered into a Rule 11 agreement under which Hollins would not send applications to voters under age 65 until five days after the trial court's ruling on a temporary injunction and which required representatives of the County Clerk and the Secretary of State to discuss the matter that evening. CR.24.

Hollins and Ingram discussed by phone Hollins's plan and Ingram's objections. CR.232. Ingram stated that the Secretary of State does not object to Hollins proactively sending vote-by-mail applications to all registered voters in Harris County age 65 and over. *See* CR.232. The Secretary of State also does not object to Hollins proactively sending educational information about the eligibility criteria for voting by mail to all registered voters, including those under age 65. CR.232. And there is no serious dispute that the educational information set forth in Hollins's mailer is accurate and would be helpful to Harris County voters in determining for themselves whether they are entitled to vote by mail this

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<sup>1</sup> The State's petition also invoked Section 31.005, Texas Election Code, as an additional ground for waiver of sovereign immunity, and argued the same harms as in Ingram's letter, but has since abandoned its Section 31.005 claim.

November. RR.76:15-16; RR.93:14-15. The Secretary of State objects *only* to Hollins proactively sending vote-by-mail applications to voters under age 65. CR.232.

On September 2, in the separate *Hotze* proceeding, this Court entered an order mirroring the Rule 11 agreement. CR.118. The trial court held an evidentiary hearing on September 9. Before the hearing, the parties submitted joint stipulated facts. CR.232-37. Both Ingram and Hollins testified at the hearing. RR.1-194. The State provided argument and testimony about the alleged harms the proactive mailer would cause including inducing voters to commit felony voter fraud. *E.g.*, RR.52:9-53:7, 98:9-99:6. Hollins testified and argued that the mailer was carefully worded to explain Texas law on the criteria to vote by mail and carefully designed so that a voter would have to see the instructions before opening the tri-fold card to see the application itself. *E.g.*, RR.116:6-119:11, 148:18-149:8.

On September 11, the trial court denied the State’s motion for a temporary injunction. App. A, CR.291. The court rejected the State’s *ultra vires* claim, holding that Hollins has authority, as “early voting clerk,” to send vote-by-mail applications to all registered voters in Harris County. *Id.* The court explained that “the Election Code gives Mr. Hollins a broad grant of authority to conduct and manage mail-in voting, subject only to any express limitation on that power by the Legislature.” *Id.* The court further held that “[t]here are a number of code

provisions that demonstrate the Legislature’s desire for mail voting applications to be freely disseminated,” including § 1.010(a) which “mandates” that Hollins “make the applications ‘readily and timely available.’” *Id.*

The court rejected the State’s argument that § 84.012 prohibits Hollins from sending unsolicited applications, explaining that § 84.012 “contains no prohibitive language whatsoever” and “does not preclude the clerk from providing an application absent a request.” *Id.* The State’s reading of § 84.012, the court concluded, “would read into the statute words that do not exist and would lead to the absurd result that any and every private individual or organization may without limit send unsolicited mail voting applications to registered voters, but that the early voting clerk, who possesses broad statutory authority to manage and conduct the election, cannot.” *Id.*

The court also rejected the State’s assertion that Hollins’s mailer would “foster[] confusion over voter eligibility to vote by mail.” *Id.* “The State offered no evidence to support such a claim, and the document Mr. Hollins intends to send to voters ... accurately and thoroughly informs them of Texas law concerning mail-in voting.” *Id.* The court further explained that under this Court’s decision in *In re State*, “the decision to apply for a ballot to vote by mail is within the purview of the voter,” and “Harris County voters are capable of reviewing and

understanding the document Mr. Hollins proposes to send and exercising their voting rights in compliance with Texas law.” CR.295.

Lastly, the trial court noted the “irony and inconsistency of the State’s position in this case” — in particular, that the State objects to Hollins sending vote-by-mail applications to registered voters under age 65, but not to registered voters age 65 and over. *Id.* As the court explained, “[t]he State offers no evidence or compelling explanation for its arbitrary and selective objection to the mailing of vote by mail applications to registered voters under the age of 65.” *Id.*

On September 18, after ordering expedited briefing, the court of appeals affirmed the denial of a temporary injunction, holding that the State failed to establish irreparable harm. The court rejected the State’s argument that the State need not show irreparable harm to obtain a temporary injunction. App. B at 7. The court also found that the State’s claims that Hollins’s mailer will cause “confusion” and “voter fraud” are “based on mere conjecture,” “at best speculative,” and supported by “no proof” “in this record.” *Id.* at 9. Indeed, the court found that “a voter would be less likely to engage in fraud using the application sent by the County Clerk because it has an official imprimatur, contains extensive explanations for what qualifies a voter to receive a mail ballot under the law, and is accompanied by text and red-siren graphics traditionally associated with danger and caution in general.” *Id.* at 9. Lastly, the court held that the principle of

“judicial non-intervention” in elections counseled against interfering with Hollins’s conduct of the election. *Id.* at 10.

### **SUMMARY OF THE ARGUMENT**

The State takes the remarkable position that an early voting clerk charged with managing and conducting voting by mail — during a pandemic no less — cannot send voters educational information on the vote-by-mail rules along with an application should they decide, after reviewing the information, that they are qualified to do so. Reflective of the lack of the merit to its claim, the State has dramatically shifted its theory of its case during the short course of this litigation. The State initially claimed that Section 84.012 implicitly prohibits early voting clerks from proactively distributing vote-by-mail applications. Now, the State backs away from its reliance on Section 84.012 and argues only that no provision affirmatively allows Hollings to send the mailers, despite several provisions of the Election Code that clearly empower Hollins to do so. And while the State initially invoked a litany of harms — including felony voter fraud — that would result from the mailer reaching voters, the State now claims that it need not show any concrete harm at all to obtain a temporary injunction. This Court cannot expand the power of the State so broadly without running afoul of the plain text of the Election Code.

The Election Code authorizes Hollins, as early voting clerk, to “manage” and “conduct” early voting both in person and by mail. And the Code specifically

requires Hollins to make “printed” vote-by-mail applications “readily and timely available,” but leaves to Hollins’s discretion how to carry out this mandate. Other provisions of the Code reinforce that applications should be made freely and widely available, including a provision authorizing any “individuals or organizations” to “distribut[e]” applications to “voters,” without limitation. Consistent with these provisions, an application form is available on both the Harris County Clerk’s website and the Secretary of State’s website, where anyone can download and print it in any quantity. The widespread, unrestricted distribution of vote-by-mail applications comports with this Court’s holding in *In re State* that the Election Code empowers Texas voters to decide for themselves whether they meet the criteria to vote by mail and, if so, whether to do so.

The State misconstrues Election Code § 84.012, which requires Hollins to send an application to any voter who requests one. Under basic principles of statutory interpretation and the Code Construction Act, Hollins’s *duty* to send an application to a voter upon request in no way constitutes an implicit *prohibition* on sending applications to voters absent a request. The State’s position also would lead to absurd, nonsensical results. Under the State’s theory, *any* private individual or organization can distribute vote-by-mail applications to any and all voters, but the county elections officer charged with managing and conducting the mail-voting process cannot. That makes no sense and finds no support in the Election Code.

Nor can the State show irreparable harm that would support a temporary injunction. In arguing that the State need not show irreparable harm here, the State conflates the requirements for standing with those for obtaining a temporary injunction. While the State need not show imminent irreparable harm to have standing to assert an *ultra vires* claim, it must show such harm to obtain a temporary injunction, just as any other litigant. And it is hard to fathom how Hollins’s mailer could cause actual harm. Political campaigns and other private groups already widely distribute vote-by-mail applications to voters — as does the Secretary of State on her website — without educational information on vote-by-mail criteria. More fundamentally, Hollins’s mailer plainly without not cause any purported “confusion.” To the contrary, it will reduce confusion, by providing prominent warnings — set off by flashing red sirens — that voters should *not* assume they are entitled to vote by mail, and giving detailed information about the eligibility criteria as set forth by this Court.

### **ARGUMENT**

“To obtain a temporary injunction, the applicant must plead and prove three specific elements: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). Here, the State has not established a probable right to the relief sought (as the trial court

held), nor has the State established a probable, imminent, irreparable injury (as the court of appeals held). The trial court’s denial of a temporary injunction accordingly was correct and should be affirmed.

**I. The State Must Prove the Lower Courts Committed a Clear Abuse of Discretion.**

“In suits for temporary injunctions, the trial judge is endowed with broad discretion to grant or deny the injunction.” *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589, 589 (Tex. 1962). “Accordingly, the scope of appellate review in such cases is limited to the narrow question of whether the action of the trial judge in granting or denying the temporary injunction constitutes a clear abuse of discretion.” *Id.* “The reviewing court must not substitute its judgment for the trial court’s judgment unless the trial court’s action was so arbitrary that it exceeded the bounds of reasonable discretion.” *Butnaru*, 84 S.W.3d at 204.

**II. The State Is Unlikely to Succeed on the Merits Because Multiple Provisions of the Election Code Confer Authority Upon Hollins to Send Vote-By-Mail Applications to All Registered Voters.**

The trial court’s decision rejecting the State’s *ultra vires* claim was not an abuse of discretion — indeed, it was manifestly correct. A government official acts *ultra vires* only if the official “acted without legal authority or failed to perform a ministerial act.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). In determining whether the official acted in such a manner, courts must consider the statute as a whole. *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39,

51 (Tex. 2014). And the State has acknowledged that Hollins has all the authority “specifically granted or necessarily implied” by the Election Code. State Br. at xiv (emphases omitted). The district court correctly held that multiple provisions of the Election Code confer authority upon Hollins, as early voting clerk, to send vote-by-mail applications to all registered voters in Harris County.

**A. Early Voting Clerks Conduct and Manage Voting By Mail.**

As the Harris County Clerk, Hollins serves as Harris County’s “early voting clerk.” Tex. Elec. Code § 83.002(1).<sup>2</sup> In his role as Harris County’s “early voting clerk,” Hollins has the authority and duty to “conduct the early voting,” which includes early voting both in person and by mail. Tex. Elec. Code §§ 83.001, 83.002. As early voting clerk, Hollins maintains “the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting.” *Id.* § 83.001(c). Thus, with respect to voting by mail, Hollins is “in charge of and responsible for the management and conduct of the election.” *Id.* § 32.071. And within this broad charge, the Election Code assigns Hollins certain specific duties related to voting by mail, including that Hollins “shall make printed [vote-by-mail applications] readily and timely available.” *Id.* § 1.010(a).

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<sup>2</sup> Depending on the jurisdiction the “early voting clerk” may be the county clerk, a statutory Elections Administrator, a city secretary, or other local jurisdiction official. Tex. Elec. Code §§ 31.031, 83.001-.007.

To vote by mail, a voter must first submit an application; a voter who does not submit an application cannot receive a mail ballot. Tex. Elec. Code § 84.001(a), (f). The Election Code permits voters to vote by mail if they meet one of several criteria: (1) if the voter is age 65 or older, or (2) if the voter is under age 65 and (a) will be out of the county throughout the election period, (b) is in jail but otherwise eligible to vote, or (c) has a “disability,” defined broadly as a “a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or of injuring the voter’s health.” *Id.* §§ 82.001-82.004.

This Court has held that “[t]he decision to apply to vote by mail based on a disability is the voter’s, subject to a correct understanding of the statutory definition of ‘disability.’” *In re State*, 602 S.W.3d 549, 550, 560-61 (Tex. 2020). On the definition of “disability,” the Court held that while “a voter’s lack of immunity to COVID-19, without more, is not a ‘disability’ as defined by the Election Code,” “a voter can take into consideration aspects of his health and his health history that are physical conditions in deciding whether, under the circumstances, to apply to vote by mail because of a disability.” *Id.* at 550, 561.

Once a voter submits an application to vote by mail, the early voting clerk must review the application, and if it is properly filled out, the early voting clerk must send the voter a mail ballot. Tex. Elec. Code § 86.001(b); *In re State*, 602

S.W.3d at 561. The early voting clerk must mail the ballot within seven days after the application is accepted. *Id.* § 86.004(a). After receiving the ballot in the mail, the voter makes her selections and then returns the ballot either by mail, common carrier, or hand delivery. *Id.* § 86.006.

**B. The Election Code Grants Hollins the Authority as Early Voting Clerk to “Manage” and “Conduct” Voting by Mail and Requires He Make “Printed” Applications “Readily and Timely Available” to Voters.**

The State suggests that Hollins and the trial court relied exclusively on the absence of any statute forbidding Hollins from sending vote-by-mail applications to voters under age 65 absent a request. According to the State, “the trial court held that because no statute expressly forbids early-voting clerks from sending unsolicited mail-in ballots, they must have the authority to do so.” State Br. xiv; *see also, e.g., id.* at 8. Those assertions fundamentally misrepresent the trial court’s decision and Hollins’s position. Consistent with Texas law that county officials have all the authority “specifically granted or necessarily implied” by statute, *id.* at xiv, the trial court correctly concluded that several provisions of the Election Code *affirmatively* “give[] Mr. Hollins a broad grant of authority to conduct and manage mail-in voting,” and that other provisions authorize Hollins, in managing and conducting the mail-voting process, to send vote-by-mail applications to all registered voters. CR.291-92.

The Election Code provisions relied upon by the trial court plainly grant Hollins such authority. In empowering early voting clerks to “manage” and “conduct” early voting, the Texas Legislature has given Hollins broad authority and discretion to carry out the mail-voting process. In interpreting a statute, the plain text must control. *Univ. of Texas Health Sci. Ctr. at Houston v. Rios*, 542 S.W.3d 530, 539 (Tex. 2017). And this Court must look to the “common, ordinarily meaning” of words in interpreting the plain text. *Jaster v. Comet II Const., Inc.*, 438 S.W.3d 556, 563 (Tex. 2014). As relevant here, the verb “conduct” means “to direct or take part in the operation or management of,” and to “manage” means “[t]o exercise executive, administrative, and supervisory direction of.” Merriam-Webster’s Dictionary. Accordingly, as the trial court explained, “the Election Code gives Mr. Hollins a broad grant of authority to conduct and manage mail-in voting, subject only to any express limitation on that power by the Legislature.” CR.291. In other words, *the Legislature* gave Hollins broad authority over the mail-voting process, and thus a restriction on such authority must also come from the Legislature.

Hollins testified as to specific ways in which proactively sending vote-by-mail applications will help him manage and conduct early voting. For instance, Hollins testified that the applications he is sending each have a bar code unique to each registered voter. RR.117:10-25. If the voter returns Hollins’s application, the

bar code will enable Hollins's staff to avoid having to manually input all of the voter's personal information, as must occur if the voter returns any other application, saving the office substantial time and avoiding ministerial or typographical errors that invariably occur from such manual entries. *Id.* And by helping people understand their legal rights with respect to voting by mail, Hollins's mailer will "make our system a lot safer even for in-person voters." RR.126:24-127:4. Every Harris County voter who lawfully exercises his or her right to vote by mail is "one less person who ... could potentially ... expose others to COVID-19" at the polls and "one less person who could themselves be exposed to COVID-19." *Id.*

Hollins also provided evidence that proactively sending a mailer to voters during the July primary runoff was quite successful in that a large number were returned, far more than from other sources, enabling staff to process the applications much more quickly. RR.118:22-119:1, 120:16-25, 122:10-13, SRR.DX10.

Sending vote-by-mail applications also furthers specific duties that the Election Code assigns Hollins within his broad charge to "manage" and "conduct" the mail-voting process. In particular, because vote-by-mail applications must be "submitted or filed" with the County Clerk's Office, Hollins "shall make *printed* [vote-by-mail applications] *readily and timely available*." Tex. Elec. Code § 1.010(a) (emphases added). The Election Code does not specify how early voting clerks must make printed vote-by-mail applications "readily and timely

available.” Rather, the Election Code leaves that determination to the discretion of each early voting clerk in exercising his or her statutory authority over the “management and conduct” of the mail-voting process. *Id.* §§ 32.071, 83.001(a).

As Hollins testified, the pandemic has inhibited traditional methods of making printed vote-by-mail applications “readily and timely available.” For example, the Harris County Clerk’s Office building is largely closed to the public due to the pandemic. RR.127:17-128:13. It is therefore not useful or adequate right now to have “an application sitting in a county office,” as the State unhelpfully suggests. State Br. 26. In this context, Hollins has chosen to make vote-by-mail applications “readily and timely available” pursuant to § 1.010(a) by sending applications to all registered voters, accompanied by detailed and accurate educational information about the eligibility criteria for voting by mail. This approach falls squarely within Hollins’s authority to “manage” and “conduct” early voting under §§ 32.071, 83.001, 83.002, including his discretion to determine how to make printed vote-by-mail applications “readily and timely available” to voters during the pandemic.

The State argues that making forms “readily and timely available” can never encompass actually *providing* forms to people. State Br. 24-28. For that bizarre proposition, the State points to a different provision that states: “The authority shall furnish forms in a reasonable quantity to a person requesting them for the purpose

of submitting or filing the document or paper.” Tex. Elec. Code § 1.010(b). The State argues that making a form “available” under § 1.010(a) cannot include providing the form to people, because § 1.010(b) dictates that an official shall “furnish” a form upon request. *See id.* In other words, in the State’s view, § 1.010(b) precludes an official from *ever* providing any form unless a person requests it. *See id.*

The State’s interpretation is divorced from the text of the statute and is simply untenable. Sections 1.010(a) and 1.010(b) are separate provisions that each impose their own requirements. Section 1.010(a) requires an official to make forms “readily and timely available” while leaving the official discretion in how to do so. Section 1.010(b) applies only in a situation where a person requests a form, and requires an official to furnish the form if requested. Nothing in § 1.010(b) limits the scope or meaning of § 1.010(a). Indeed, if the State’s interpretation were correct, § 1.010(a) would be surplusage, contrary to settled principles of statutory interpretation. *See Tafel v. State*, 536 S.W.3d 517, 521 (Tex. 2017) (“When interpreting a statute, we presume the Legislature intended the entire statute to be effective and none of its language to be surplusage.”).

The State asserts that Hollins’s interpretation would make both § 1.010(b) and § 84.012 surplusage. *See State Br. 26* (asserting that “[i]f making applications ‘available’ as required by section 1.010(a) meant delivering them to voters, there

would be no need for section 1.010(b)’’); *id.* at 20-21 (similar with respect to § 84.012). That is obviously incorrect. While early voting clerks *may* exercise their discretion to proactively send forms under § 1.010(a), nothing *requires* them to do so. Sections 1.010(b) and 84.012 serve as backstops by requiring officials to provide forms upon request. Sections 1.010(b) and 84.012 thus are not surplusage at all whenever the relevant official does not proactively distribute the forms.

Nor can the State reconcile its theory with its concession that, like many other county clerks (and the Secretary of State), Hollins lawfully makes a vote-by-mail application form available on the County Clerk’s Office website, where any person may download and print in any quantity.<sup>3</sup> Even though no provision of the Election Code specifically deals with posting vote-by-mail applications on county clerk websites, the State has never objected to this routine practice.<sup>4</sup> The State tries to square this fact with its theory by arguing that “[t]he application is not ‘furnished’ — that is, provided — until the website user clicks on the link—that is, makes an electronic request.” State Br. 26. This is “interpretive jiggery-pokery.”

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<sup>3</sup> Harris County Clerk, Voting Information, Application for Ballot by Mail, <https://www.harrisvotes.com/Docs/VotingInfo/Ballot%20By%20Mail%20Application%20-%20English.pdf>.

<sup>4</sup> Indeed, the Election Code requires local election authorities who maintain a website to include polling place locations and hours on it. Tex. Elec. Code § 31.125. But the State does not claim that this provision implicitly prohibits also including a vote-by-mail application on the website as many counties do. *E.g.*, Carson County Clerk, Application for Ballot by Mail, <http://www.co.carson.tx.us/upload/page/1423/APPLICATION%20FOR%20BALLOT%20BY%20MAIL%201.pdf>

*ETC Mktg., Ltd. v. Harris Cty. Appraisal Dist.*, 528 S.W.3d 70, 92 (Tex. 2017) (Brown, J., concurring) (quoting *King v. Burwell*, 576 U.S. 473, 506 (2015) (Scalia, J., dissenting)). County clerks (and the Secretary of State) obviously are “providing” the application to people by posting it on their public websites for anyone with Internet access to download and print in any quantity.

Even under the State’s linguistic gymnastics, the State would still lose. If an application “is not ‘furnished’” until a person “requests” it by clicking on a link on a publicly available website, as the State contends (Br. at 26), then the application in Hollins’s mailer is not “furnished” until the recipient “requests” it as well. As Hollins testified, the mailer comes folded closed, and the voter must choose to “open it up” to read the educational information at the top, and then must “unfold” and detach the bottom portion of the mail to access the application. RR.115:6-117:4. Just as voters may choose whether or not to click on a click, they may choose to open the mailer and access the application or simply throw it away. In other words, if clicking on an internet link constitutes “requesting” an application, then taking the multiple steps necessary to access the application in Hollins’s mailer certainly does as well.

Hollins’s mailer also comports with both the letter and spirit of this Court’s decision in *In re State*. This Court held that Texas law “place[s] in the hands of the voter the determination” of whether the voter is entitled to vote by mail “due to a

physical condition,” *i.e.*, a “disability,” “subject to a correct understanding of the statutory definition.” 602 S.W.3d at 550, 561. The U.S. Court of Appeals for the Fifth Circuit recently confirmed that, “[a]lthough lack of immunity [to COVID-19] alone is not a Section 82.002 disability, *In re [State]* shows that voters with an underlying physical condition ... may apply to vote by mail under that section,” and thus “at-risk voters *of any age* can utilize the Texas Election Code’s disability provision to mitigate the risk of COVID-19.” *Tex. Democratic Party v. Abbott*, \_\_ F.3d \_\_, 2020 WL 5422917, at \*16 (5th Cir. Sept. 10, 2020) (emphasis added).

Hollins’s mailer does precisely what this Court held is appropriate: it “place[s] in the hands of the voter” detailed information about the statutory criteria that enables the voter to determine whether he or she is entitled to vote by mail along with the application to complete if the voter determines that he or she meets the eligibility criteria. While the State now quibbles with information in the mailer, *see* State Br. 30, even the State’s own witness, Mr. Ingram, testified that “*I’ve read this full mailer and I think it’s very good.*” RR.76:15-16 (emphasis added). The State’s counsel went even further, saying that “[t]he information that’s educational we, in fact, encourage the county to provide.” RR.169:9-16. In distributing such educational information and applications to voters in a single packet, Hollins is helping empower Harris County voters to make their own

determinations of whether they can and will apply to vote by mail, just as the Legislature intended.

Many voters under age 65 may determine that they do in fact meet the statutory definition of disability. According to the Centers for Disease Control and Prevention, “people of any age” with certain medical conditions are at increased risk for severe illness from COVID-19. CR.233; SRR.DX11. Based on the Health of Houston Survey, substantial numbers of Harris County residents ages 18 and 64 have one or more of these underlying medical conditions identified by the CDC. *Id.* For instance, 32.4% of Harris County residents ages 18 and 64 are obese, 28.3% are daily smokers, 24.2% have high blood pressure, 6.9% have asthma, 4.2% have cancer, and 2.2% have chronic obstructive pulmonary disease. *Id.*

While the State misleadingly asserts that only “6.4%” of Harris County residents under age 65 “has a disability,” CR.8, this 6.4% statistic is both over and under broad. First it is based on federal census data that uses an entirely different — and much narrower — definition of “disability” than Texas Election Code § 82.002. *See* U.S. Census Bureau, How Disability Data are Collected from the American Community Survey, <https://tinyurl.com/vwvencf>. Second, it may include people with disabilities who are able to appear in person without a likelihood of harming their health. The Attorney General recognizes that different definitions of “disability” in other contexts do not limit whether a Texas voter is

entitled to vote by mail based on a “disability” under § 82.002. Tex. Att’y Gen. Op., No. KP-0009 (2015). In addition, neither the word “disability” nor the word “disabled” appears in the text of the statute itself. Tex. Elec. Code § 82.002(a). In short, the Census disability statistic is completely irrelevant.

To support its claim that only a small number of Texas voters meet the Texas Election Code’s definition of “disability,” the State asserts that, “historically, between 1.0% and 2.6% of voters requesting vote-by-mail applications have listed ‘disability’ as the reason.” State Br. 7. But that is because Texas voters have little access to accurate information about the meaning of § 82.002 and have never encountered a historic pandemic which makes it unsafe for many thousands of people with underlying medical conditions to vote in person while the modern Election Code was in effect.<sup>5</sup>

In short, the State’s assertion that a “vast majority” of voters receiving the application will not be entitled to vote by mail is simply false and was not proven in the trial court. Moreover, it is not for the early voting clerks nor the State to decide whether a voter qualifies to apply; it is for the voter to decide subject to an understanding of the statutory qualifications. *See In re State*, 602 S.W.3d at 560.

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<sup>5</sup> At the hearing in trial court, the State’s counsel suggested that a voter is likely not “disabled” under § 82.002 if “you’ve been swimming every day” and warned the “Secretary of State can investigate that” [or] “the sheriff can investigate that.” RR.36:3-8. But many people with underlying medical conditions putting them at increased risk from COVID-19, such as cancer or a suppressed immune system, are nonetheless able to go swimming, and certainly should not be “investigated” by the government for voting by mail.

As Hollins testified below, he cannot know exactly which voters will be out of the county, identify as disabled, or have a qualifying condition, then ultimately decide they qualify and should vote by mail. Thus, he made the management decision as early voting clerk to send the application to all eligible voters so they would know what the law is, know their rights, and make decisions about their own medical health and physical safety. RR.145:3-13, 146:23-147:4, 166:17-21.

Little information about the statutory definition of the “disability” category is available to voters in large part because of the failure of the State to educate voters. The Secretary of State’s official form contains no information at all. *See* <https://webservices.sos.state.tx.us/forms/5-15f.pdf>. And the Secretary’s website fails to educate voters on the “disability” category — the most complicated of the four categories. DX4. The State contributes to this confusion by persisting in describing the category as when “the voter ‘has a sickness or physical condition’ that prevents the voter from voting in person.” State Br. 4. This describes the category as it existed before a 1985 substantive revision of the Election Code expanded the disability category.<sup>6</sup> The Attorney General falsely tells the public that “Election officials have a duty to reject mail-in ballot applications from voters

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<sup>6</sup> Act of April 19, 1979, 66th Leg., R.S., ch. 91, § 1, 1979 Tex. Gen. Laws 167 (H.B. 434)(“because of sickness or physical disability . . . cannot appear in the polling place”), *repealed by* Act of May 13, 1985, 69<sup>th</sup> Leg., R.S., ch. 211, §§ 1, 9, 1985 Tex. Gen. Laws 898, 1076 (S.B. 616) (enacting modern Election Code).

who are not eligible to vote by mail.”<sup>7</sup> Yet, this Court has just held that election officials do not have a duty to look beyond the application itself, after the State conceded as much, nor are voters required to declare the nature of their “disability” as the law was amended to longer require a physician’s certificate of “sickness or disability” in the early 1980s.<sup>8</sup> *In re State*, 602 S.W.3d at 561.

Finally, the State’s arguments that Hollins lacks authority to proactively send vote-by-mail applications to voters is undermined by its acquiescence to Hollins and other local election officials sending unsolicited vote-by-mail applications to voters age 65 and over. As the State and Hollins jointly stipulated in the trial court, “[t]he Secretary of State does not object to the sending of unsolicited vote-by-mail applications to voters aged 65 and older.” CR.232. The State does not explain how, under its interpretation of the Election Code, Hollins may lawfully send such unsolicited applications if Section 84.012 implicitly forbids it.

Instead, the State contends that its acquiescence to sending unsolicited applications to voters age 65 and over is of no moment because Hollins cannot raise “selective enforcement” as a “defense” as though the State is charging

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<sup>7</sup> AG Paxton Sues Harris County Clerk to Prevent Him from Unlawfully Sending Out Millions of Unsolicited Mail-In Ballot Applications, Aug. 31, 2020, <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-sues-harris-county-clerk-prevent-him-unlawfully-sending-out-millions-unsolicited-mail>.

<sup>8</sup> Act of May 26, 1981, 67<sup>th</sup> Leg., R.S., ch. 301, § 1, 1981 Tex. Gen. Laws 854 (S.B. 531).

Hollins with a crime. State Br. 32. But Hollins is not raising selective enforcement as a “defense.” And contrary to the State’s claim, Hollins is not focused only on the fact that “the State did not sue when Hollins’s office distributed unsolicited applications to Harris County voters over 65 years of age earlier this year.” *Id.* at 31. The salient fact, rather, is the State’s *affirmative consent* to Hollins sending unsolicited applications to all voters age 65 and older *in this case*, and how that undercuts the State’s *statutory interpretation* that the Election Code does not authorize Hollins to proactively send applications to voters. The State affirmatively agreed in the parties’ joint stipulated facts that “[t]he Secretary of State does not object to the sending of unsolicited vote-by-mail applications to voters aged 65 and older in Harris County because these voters are eligible to vote by mail.” CR.232. Thus, if this Court were to hold that the Election Code prohibits Hollins from proactively sending vote-by-mail applications, as the State asserts, it would mean the State has openly consented to unlawful conduct by government officials in this very case. That simply cannot be. CR.295 (trial court noting the “irony and inconsistency” of the State’s position).

The State’s argues that because the Harris County early voting clerk is a county official, then the Election Code should be read strictly to only allow early voting clerks to do what the Code specifies and no more. But an “early voting clerk” may be a city official too. And, home rule cities often contract with county

clerks or elections administrators to conduct and manage their elections. *See* Tex. Elec. Code § 31.091-.100. If the State’s theory of the Election Code is correct, then some early voting clerks have more power than others despite those powers deriving from the exact same statutory language. *See* State Br. 1, 29. Nor does the State explain whether cities that contract with county officials to run elections are contracting away their broader early voting clerk powers when they do so, or may those powers be shared as part of the contractual arrangement? Indeed, the Harris County Clerk is currently conducting and managing elections under such contracts for multiple home rule cities given the postponement of the May elections. *See* RR.130:14-17.

**C. The Election Code Permits Any “Individuals or Organizations” to Distribute Unsolicited Vote-by-Mail Applications to “Voters.”**

In addition to the Election Code’s conferral of authority upon Hollins to broadly “manage” and “conduct” mail voting and to make printed vote-by-mail applications “readily and timely available,” other provisions of the Election Code further “demonstrate the Legislature’s desire for mail voting applications to be freely disseminated.” CR.292. Notably, § 84.013 broadly authorizes *any* individual or organization to distribute vote-by-mail applications to voters, without limitation:

The secretary of state shall maintain a supply of the official application forms for ballots to be voted by mail and shall furnish the forms in

reasonable quantities without charge to individuals or organizations requesting them for distribution to voters.

Tex. Elec. Code § 84.013. This provision expressly permits any “individuals or organizations” to “distribut[e]” vote-by-mail applications to “voters,” full stop.

Section 84.013 in fact facilitates widespread distribution of vote-by-mail applications to voters — regardless whether they have requested them — by requiring the Secretary of State to make application forms available “without charge.” And neither § 84.013 nor any other provision of the Election Code restricts this “distribution” only to voters who are entitled to vote by mail, or who requested an application, or who are age 65 and over.

The Election Code does not define “individual” or “organization.” “When, as here, a statute does not define a term, we typically apply the term’s common, ordinary meaning, derived first from applicable dictionary definitions, unless a contrary meaning is apparent from the statute’s language.” *City of Fort Worth v. Rylie*, 602 S.W.3d 459, 466 (Tex. 2020). Hollins is an “individual” in any ordinary sense, and the County Clerk’s Office is an “organization.”

The State suggests that § 84.013 authorizes only “private” individuals and organizations to distribute unsolicited vote-by-mail applications, *see* State Br. 23-24, but neither the word “private” nor any reference to such a distinction appears in the statutory text. The State also asserts that “[t]he only term in section 84.013 that empowers further action is the term ‘furnish,’ which the Secretary must do without

charge on request.” *Id.* at 22. But the State ignores the term “distribution” in § 84.013, which is not an appropriate method of interpreting statutes. Section 84.013 permits “individuals or organizations” to engage in the “distribution to voters” of vote-by-mail applications, which is exactly what Hollins proposes to do.

Even setting aside whether § 84.013 applies directly to Hollins or the County Clerk’s Office, the fact that the Election Code permits *any* private individual, political campaign, or other organization to send unsolicited vote-by-mail applications to any and all voters strongly undercuts the State’s position that the Code *prohibits* Hollins from doing so. Political organizations like the Republican Party of Texas have been broadly distributing vote-by-mail applications to voters this election cycle. CR.74-78, DX5. The Republican Party of Texas’s mailer instructs voters to “[m]ake a plan today to fill out one of the attached Absentee Ballot Request forms,” but contains no guidance or information for voters about the legal definition of “disability.” *See id.* Further, Mr. Ingram incorrectly testified that this mailer targets only those who are definitely entitled to vote because they are over 65, when the mailer in fact is addressed to a “household” or “current resident” which is to say it is not targeted at all. RR.75:23-76:3; DX5.

Numerous other groups also participate in vote-by-mail application programs, with the encouragement of federal, state, and local organizations such as non-profits or political campaigns. *See* CR.108-113. These applications constitute

about half of those the Harris County Clerk’s Office received during the primary runoff earlier this year. *See* CR.108-113. While the State suggests that private individuals and groups do not “routinely” distribute applications to voters under age 65, its witness Mr. Ingram testified that at least “two campaigns [] have sent unsolicited vote-by-mail applications to persons under 65” this election cycle. State Br. 23. And he testified that for prior election cycles, “I don’t know about every third party organization.” RR.58:16-59:4.

As the trial court explained, the State’s position “would lead to the absurd result that any and every private individual or organization may without limit send unsolicited mail voting applications to registered voters, but that the early voting clerk, who possesses broad statutory authority to manage and conduct the election, cannot.” CR.293. That would make no sense and cannot be correct. *See El Paso Educ. Initiative, Inc. v. Amex Properties, LLC*, 602 S.W.3d 521, 531 (Tex. 2020) (courts should avoid “absurd or nonsensical results”).

**D. Election Code § 84.012 Requires Hollins to Send Applications to All Voters Who Request Them But Does Not Address Sending Applications Absent a Request.**

As the trial court correctly found after identifying the provisions of the Election Code that affirmatively confer broad authority upon Hollins to send vote-by mail-applications, “[t]here is no code provision that limits an early voting

clerk’s ability to send a vote by mail application to a registered voter.” CR.492.

Indeed, the State itself has admitted that no such provision exists. RR.81:1-9.

In the trial court, the State argued that Election Code § 84.012 implicitly prohibits Hollins from sending unsolicited applications to voters under age 65. CR.202-03 (asserting that “[§ 84.012] expressly conditions Defendant’s authority to mail applications on Defendant receiving a request from a voter”). Section 84.012 provides: “The early voting clerk shall mail without charge an appropriate official application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form.” In the court of appeals and again before this Court, the State has backed away from its reliance on § 84.012, although its current position on the relevance of this provision is a moving target. *Compare* State Br. 20 (State claiming that it is *not* arguing that “section 84.012 prohibits unsolicited mailings”), *with id.* at 27-28 (State arguing that “section 84.012 ... governs over section 1.010”).

To whatever extent the State relies on § 84.012, its reliance is badly misplaced. On its face, § 84.012 imposes a duty on Hollins to take an affirmative act — namely, if a voter requests a vote-by-mail application, Hollins “shall” mail them one. This interpretation is clear from both the plain text of § 84.012 and the Code Construction Act, which governs the meaning of terms in the Election Code. *See* Tex. Elec. Code § 1.003. Under the Code Construction Act, the word

“‘[s]hall’ imposes a duty.” Tex. Gov’t Code § 311.016(2). By using the word “shall” in § 84.012, the Legislature imposed a duty on Hollins to send an application to any voter who requests one. But that duty in no way constitutes an implicit prohibition on Hollins sending applications to voters who have not requested them. If the Legislature had wanted to impose such a prohibition, it could easily have done so as the Code Construction Act specifies how to do so. *See id.* § 311.016(5) (“‘May not’ imposes a prohibition and is synonymous with ‘shall not.’”). But the Legislature did not add prohibitory language to § 84.012. *Cf.* Tex. Elec. Code § 13.046(c) (“A high school deputy registrar may distribute registration application forms to ... students and employees of the school *only*.” (emphasis added)).

Indeed, the State’s discussion of the powers of a “presiding election judge” demonstrates that the Legislature clearly knows how to limit an election official’s authority specifically with respect to how to “manage” and “conduct” an election. The State points out that a presiding judge’s authority to manage and conduct regular voting would not permit the presiding judge to “increase the number of election clerks, [Tex. Elec. Code] § 32.033, even though he is given the power to appoint such clerks, *id.* § 32.02.” State Br. 18-19. But that is because the Legislature *explicitly* mandated that “[t]he authority that appoints the election judges [i.e., the commissioner’s court] shall prescribe the *maximum number* of

clerks that each presiding judge may appoint for each election,” and the Legislature in turn directed each presiding judge to appoint however many “clerks, *within the prescribed limit*, as are necessary for the proper conduct of the election.” Tex. Elec. Code § 32.033(a)-(c) (emphases added). As these provisions illustrate, when the Legislature wants to limit the authority of a presiding judge (or likewise an early voting clerk), it clearly knows how to do so.

The State’s interpretation of “shall” in § 84.012 as imposing an implicit prohibition also would lead to bizarre results under other provisions of the Election Code. For instance, § 85.067 provides that, if a county clerk maintains a website, the branch voting schedule “shall be posted on” the clerk’s website. Tex. Elec. Code § 85.067. This provision surely does not prohibit a county clerk from also posting public notice elsewhere, such as in newspapers or from posting additional helpful information on the county website such as the criteria to vote by mail or precautions voters should take while voting in person during the pandemic. But under the State’s view that a duty also constitutes an implicit prohibition, § 85.067 would oddly bar county clerks from publicizing the branch voting schedule anywhere other than their websites or posting other helpful information. Additional examples abound. Election officers “shall” periodically remove sample ballots or other written communications left by voters from the voting stations, but

that does prohibit clerks from removing other trash such as discarded PPE. Tex. Elec. Code § 61.011.

Drive through voting is an added example of acts a local elections authority may take that is not explicitly prohibited by the Election Code. On appeal the State seems to confuse it with curbside voting. State Br. 30. Curbside voting must be offered to those who cannot easily walk inside the polling place at every voting location. Tex. Elec. Code § 64.009. Drive through voting is a pandemic-driven innovation offered at certain locations and that Mr. Ingram testified was “a creative approach” that was permissible legally so long as it complied with the Election Code by being associated with a building and not limited to just those in cars. RR.71:19-72:5.

In sum, as the trial court explained, “Section 84.012 contains no prohibitive language whatsoever, but rather, requires the early voting clerk to take affirmative action in the instance a voter does request an application to vote by mail.” CR.292. “That the clerk must provide an application upon request does not preclude the clerk from providing an application absent a request.” *Id.* Contrary to settled principles of statutory interpretation, “the State’s interpretation of section 84.012 ... would read into the statute words that do not exist.” CR.293; *see ExxonMobil Pipeline Co. v. Coleman*, 512 S.W.3d 895, 899 (Tex. 2017) (“[W]ords not included were purposefully omitted.”)

### **III. The State Failed to Establish Imminent, Irreparable Harm and Must Do So to Obtain Injunctive Relief.**

The State has failed to establish any irreparable harm that will result from Hollins sending his mailer to voters under age 65. In arguing that the State need not show irreparable harm here, the State conflates the requirements for standing with those for obtaining a temporary injunction. While the State need not show imminent irreparable harm to have standing to assert an *ultra vires* claim, it must show such harm to obtain a temporary injunction, just as any other litigant. Beyond that, the State's claim that Hollins's mailer will cause "confusion" and "voter fraud" is rank speculation at best, as the State's own witness admitted. It is also belied by the prominent warnings and detailed, accurate educational information in the mailer as well as Hollins's extensive testimony at the hearing. The State's purported concerns about "confusion" or "fraud" are further undermined by the fact that political campaigns and other private groups widely distribute unsolicited vote-by-mail applications to voters under age 65, without providing any educational information at all about the eligibility criteria for voting by mail. And the Secretary of State's own website provides an application form without providing any information or guidance on the meaning of the "disability" category. Hollins's educational mailer will eliminate, not cause, confusion. As the court of appeals held, the State has failed to establish that sending Hollins's mailer

will cause any irreparable harm, independently requiring the denial of a temporary injunction.<sup>9</sup>

The court of appeals correctly rejected the State’s theory that it “need only establish that Hollins’s plan would be *ultra vires*” to obtain a temporary injunction. App. B at 6-7. The State’s theory improperly conflates the State’s “standing to assert an *ultra vires* claim” with the normal requirement that any litigant seeking a temporary injunction must establish irreparable harm. *Id.* at 6. None of the cases cited by the State support a theory that the State is exempt from needing to show imminent, irreparable harm for a temporary injunction. *Yett v. Cook*, 281 S.W. 837 (Tex. 1926), did not involve a temporary injunction at all. Rather, the language upon which the State relies was dicta in a superfluous analysis of whether the state has standing to bring a mandamus action against public officials who abuse their power. 281 S.W. at 842; *see* State Br. xiv, 6-7. And *Texas Association of Business v. City of Austin*, 565 S.W.3d 425 (Tex. 2018), held only that the State suffered irreparable harm where the challenged municipal ordinance violated the Texas Constitution because it was preempted by the Texas Minimum Wage Act adopting without analysis the State’s urging of *Abbott v. Perez* to support the notion that a

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<sup>9</sup> The State falsely asserts that, in the trial court, “Hollins did not contest that if the State is right on the law, it will suffer an irreparable injury absent immediate relief.” State Br. 8. The issue of irreparable harm was hotly contested at the hearing. *E.g.*, RR.185:14-187:5. And Hollins’s post-hearing submission included an entire section titled, “The State Has Not Established Probable, Imminent, and Irreparable Injury.” CR.281-82. Over five paragraphs, that section thoroughly explained why the State cannot show irreparable harm. *Id.*

theoretical violation of the law is enough irreparable harm for the state to show to obtain injunctive relief. 565 S.W.3d at 441; *see* State Br. xiv, 1, 2.

*Abbott v. Perez* in turn relied on authorities that do not support the State’s sweeping proposition that the government is free to obtain injunctive relief without any showing of irreparable harm because failure to enforce a law — as the State interprets it — is harm enough. That analysis conflates the second and third prongs of the injunctive relief test. *Abbott* was a 5-4 redistricting decision declaring a court-drawn plan appealable under 28 U.S.C. § 1253. *Abbott v. Perez*, 138 S. Ct. 2305 (2018). A law was not being enforced by injunction, but Texas’s redistricting plan was being altered by a lower court on the eve of an election. The unaltered quote is from a footnote and reads: “the inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State.” 138 S. Ct. at 2324, n.17;<sup>10</sup> *see* State Br. 37-38.

None of these cases — nor any other — relieves the State of its obligation to show imminent, irreparable harm to obtain a temporary injunction under Texas law. The State is asking this Court to create new law to grant the Attorney General new extraordinary power to decide what the law is and sue local government

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<sup>10</sup> This judicial aside in turn relies on a one-justice order on a stay. *See Maryland v. King*, 567 U.S. 1301, 133 S. Ct. 1 (2012) (Roberts, C.J., in chambers).

officials for violating the State’s version of the law without showing any irreparable harm.

In its Statement of Jurisdiction, the State cites these three cases as providing it with additional powers to bring lawsuits against local election authorities and micromanage the conduct of the elections, claiming the court of appeals opinion creates a “fundamental shift in the balance of power between the State and its constituent local governments.” State Br. at xiv. It is the State that seeks a fundamental shift. When the Legislature enacted the modern Election Code, it chose a comprehensive statutory scheme that empowers early voting clerks to manage and conduct early voting. When such broad powers are given, local election authorities are free to engage in day-to-day management decisions, so long as they are within the broad parameters of the Code and do not run contrary to any prohibition or impede voting rights. *See* Tex. Elec. Code § 31.005.

The courts below also correctly rejected the State’s assertions that Hollins’s mailer will cause “confusion” and “voter fraud.” App. B at 7-10. As the trial court found, “[t]he State offered no evidence to support such a claim.” CR.293. The court of appeals likewise found that the State’s claims are “based on mere conjecture,” “at best speculative,” and supported by “no proof” “in this record.” App. B at 9. Indeed, the State’s own witness, Mr. Ingram, candidly admitted that the State relies entirely on “speculation” that Hollins’s mailer will lead to

confusion. RR.85:11. As the court of appeals stated, “[a]n injunction is not proper when the claimed injury is merely speculative; fear and apprehension of injury are not sufficient to support a temporary injunction.” App. B at 10.

What is more, the lower courts correctly found that Hollins’s mailer in fact will do “the opposite” of causing confusion or fraud. App. B at 7. “[T]he mailer includes information that helps voters determine whether they are disabled under Texas law for the purposes of voting by mail, including important details about the Texas Supreme Court’s ruling clarifying the qualifications for a disability that would allow a registered voter to vote by mail.” *Id.* at 8; *see also* CR.293 (similar finding by trial court). Even the State’s own witness testified that “I’ve read this full mailer and I think it’s very good.” RR.76:15-16. And the State’s counsel stated that Hollins “is more than welcome to put the front half of that sheet of paper in everyone’s mailbox in Harris County” — “[t]he information that’s educational we, in fact, encourage the county to provide.” RR.169:9-16; *see also* RR.78:5-7 (State’s counsel stating: “The issue is sending the application with the mailer not so much the mailer. By mailer I mean the directions.”).

The mailer on its face refutes any other conclusion. In between large flashing red sirens, the mailer prominently displays warnings in bold, red typeface: **“READ THIS BEFORE APPLYING FOR A MAIL BALLOT,”** and **“NOT ALL VOTERS ARE ELIGIBLE TO VOTE BY MAIL.”** CR.294. The mailer

then sets forth extensive information on the eligibility criteria for voting by mail, including warning voters in bold, red typeface: **“YOU DO NOT QUALIFY TO VOTE BY MAIL AS ‘DISABLED’ JUST BECAUSE YOU FEAR CONTRACTING COVID-19. YOU MUST HAVE AN ACCOMPANYING PHYSICAL CONDITION.”** *Id.* As the court of appeals explained, “when a voter sees an application sent by the County Clerk with its official imprimatur, red sirens, and directions regarding when a voter is and (more importantly) is not qualified to receive a mail-in ballot ..., it is more likely a voter would know to take this application seriously, to read all warnings, and to follow all stated precautions.” App. B at 8.

The State repeatedly asserts that its evidence of confusion and voter fraud was “unrebutted.” State Br. 2, 38, 43-44. That is demonstrably false. The State’s own counsel asked Hollins if he “disagree[d]” with Ingram’s testimony about confusion, and Hollins responded, “Yes.” RR.148:5-9. Hollins elaborated that “there’s no basis in fact or evidence that in any way demonstrates that claim or that concern.” RR.148:10-20. Hollins explained that “when you get this [mailer] and you open it you don’t even know that there’s an application in there,” because “[w]hat you first see before you open it fully is advisory guidance” and “you actually have to, like, take interest in what’s in here before you even notice that there was an application at the bottom.” RR.148:22-149:2. As Hollins testified, “it

would be a very bizarre outcome and a highly unlikely outcome that somehow someone would unfold this fully, go to the very bottom, rip it off and think [‘]I need to fill this out[‘] without having ever looked up here [at the advisory guidance].” RR.149:3-8. In other words, “it is impossible to see what’s down here and get to this application without first seeing the advisory with big red sirens and bold red capitalized ink that’s informing the voter about his or her rights and eligibility.” RR.149:9-18.

Hollins further testified, extensively and unequivocally, that the educational information in the mailer would be helpful to Harris County voters in making an informed decision of whether they are entitled to vote by mail. RR.136:4-139:15. He described in detail precisely how the “red sirens” and accompanying bold warnings make clear to voters the eligibility criteria, including the meaning of “disability.” RR.115:13-116:12. Hollins testified that providing the information in the mailer along with the application will enable some people to vote by mail who otherwise would not vote at all. RR.145:16-146:5. And he testified that sending the mailer will make in-person voting safer by enabling more people who are entitled to vote by mail to choose that option. RR.138:6-23.

The State’s purported concerns about “confusion” and “voter fraud” are also undermined by the fact that political campaigns and other private groups can and do send unsolicited vote-by-mail applications to voters under age 65. The State

fails to adequately explain why Hollins's distribution of applications with detailed instructions to these voters will cause confusion or fraud, but the mass distribution of applications by political campaigns and other private groups would not. *See* DX.5, SRR.DX10 (listing multiple sources of applications received by the Clerk's office).

In fact, under the State's theory, the Secretary of State's own website would lead to far more "confusion" than Hollins's mailer. A vote-by-mail application form is on the Secretary of State's website for any member of the public to access and download. CR.71-72; DX4. As the court of appeals observed, "the testimony at the injunction hearing revealed that the Secretary of State's website itself does not define disability, leaving voters without guidance." App. B at 8; *see* CR.71-72, DX.4. Thus, while the State contends that Hollins's mailer will have the "imprimatur" of a government official, the Secretary of State's website certainly has that imprimatur, CR.11, and Hollins's mailer is far less likely to sow confusion compared to the Secretary's distribution of applications via the Internet without guidance as to the content of the disability category.

Throughout this litigation, the State has repeatedly asserted that Hollins's mailer would encourage felony voter fraud. *See, e.g.*, RR.52:11-22; RR.53:23-54:18; RR.69:3-4; RR.70:15-19; RR.157:9-12; RR.163:15-164:1; RR.168:1-21; RR.181:14-15. These naked attempts to intimidate Hollins and voters flout this

Court’s decision and the plain text of the criminal statute at issue. This Court held that “the decision to apply to vote by mail based on a disability is the voter’s, subject to a correct understanding of the statutory definition of ‘disability.’” *In re State*, 602 S.W.3d at 559. And the criminal statute applies only if a voter “*knowingly* provides false information on an application.” Tex. Elec. Code § 84.0041(a)(1) (emphasis added). A voter could not possibly violate this prohibition by reading Hollins’s mailer and determining that he or she is entitled to vote by mail under the Election Code as construed by this Court. *See* App. B at 8 (court of appeals discussing lack of evidence concerning *mens rea* element). Indeed, as the court of appeals found, “a voter would be less likely to engage in fraud using the application sent by the County Clerk because it has an official imprimatur, contains extensive explanations for what qualifies a voter to receive a mail ballot under the law, and is accompanied by text and red-siren graphics traditionally associated with danger and caution in general.” *Id.* at 9.

The State’s assertion that Hollins’s mailer would “harm the very voters that he claims to be trying to help” is both incorrect and offensive. State Br. 30. It is incorrect because, as described above, the mailer will obviously help voters in determining for themselves whether they are entitled to vote by mail. And it is offensive because Hollins is attempting in good faith to help people vote safely during the pandemic and the State cynically responded by threatening to criminally

prosecute him and the voters he is trying to help, and by bringing this baseless lawsuit, all in a transparent effort to prevent younger Texans who have a qualifying “disability” under the Texas Election Code from voting by mail.

Finally, voting is an individual right not a collective one. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). As the early voting clerk charged by the Legislature with managing and conducting the election during a pandemic, it is Hollins duty to ensure all eligible voters have practical access to voting in a manner that best suits that individual’s circumstances and health status. The mailer is a key piece to ensure the universality of the franchise and protect the health of voters during the pandemic. Under Texas law, courts do not construe election laws to limit those rights. *Owens v. State ex rel. Jennett*, 64 Tex. 500, 509 (1885) (“All statutes tending to limit the citizen in his exercise of this right [of suffrage] should be liberally construed in his favor.”).

### **PRAYER**

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing instrument was served on all parties of record via eFiling on September 25, 2020.

*/s/ Susan Hays*\_\_\_\_\_

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this brief contains 11,098 words, excluding the portions of the brief exempted by Rule.

*/s/ Susan Hays*\_\_\_\_\_

**No. 20-0729**

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**In the Supreme Court of Texas**

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**THE STATE OF TEXAS,**  
*Petitioner,*

**v.**

**CHRIS HOLLINS,**  
**IN HIS OFFICIAL CAPACITY AS HARRIS COUNTY CLERK,**  
*Respondent.*

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**On Appeal from the Fourteenth Circuit Court of Appeals**  
**No. 14-20-00627-CV**

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# TAB A

CAUSE NO. 2020-52383

THE STATE OF TEXAS,  
Plaintiff,

vs.

CHRIS HOLLINS, in his official  
Capacity as Harris County Clerk,  
Defendant.

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§  
§

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

127<sup>TH</sup> JUDICIAL DISTRICT

**ORDER ON TEMPORARY INJUNCTION APPLICATION**

**Background**

On August 25, 2020, the Harris County Clerk, Chris Hollins, tweeted the following:



Two days later, Keith Ingram, the Elections Director for the Secretary of State, sent a letter to Mr. Hollins asking him to “immediately halt any plan to send an application for ballot by mail to all registered voters.”

Ingram and Hollins spoke by phone on August 31 and discussed Hollins’s plan and Ingram’s objections. The State of Texas filed its Application for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction on that same day. The Parties agreed to litigate the issues at a temporary injunction hearing on September 9.

The State seeks to restrain Hollins pursuant to section 31.005 of the Texas Election Code, which states:

Sec. 31.005. PROTECTION OF VOTING RIGHTS.

(a) The secretary of state may take appropriate action to protect the voting rights of the citizens of this state from abuse by the authorities administering the state's electoral processes.

(b) If the secretary determines that a person performing official functions in the administration of any part of the electoral processes is exercising the powers vested in that person in a manner that impedes the free exercise of a citizen's voting rights, the secretary may order the person to correct the offending conduct. If the person fails to comply, the secretary may seek enforcement of the order by a temporary restraining order or a writ of injunction or mandamus obtained through the attorney general.

TEX. ELEC. CODE § 31.005.

The State also contends that Hollins is acting *ultra vires* under the State's interpretation of Election Code section 84.012, which reads, "[t]he early voting clerk shall mail without charge an appropriate official application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form." *Id.* § 84.012. In the State's view, section 84.012 prohibits the clerk from sending an application for mail ballot unless and until the voter has requested one.<sup>1</sup>

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<sup>1</sup> Voting by mail is a multi-step process. First, a registered voter must submit to the early voting clerk an application indicating the basis on which the voter is qualified to vote by mail. TEX. ELEC. CODE §§ 84.001, 84.007-.009. The early voting clerk must then process the application and mail a ballot to the voter. *Id.* at § 86.001. Finally, the voter must return the marked ballot to the early voting clerk within the statutorily prescribed deadlines. *Id.* at §§ 86.006, 86.007. Importantly, Mr. Hollins plans to send only applications, not ballots, to all registered voters.

Having considered the evidence and arguments presented by the Parties, the Court finds that Mr. Hollins's contemplated action is not *ultra vires* and does not impede the free exercise of voting rights. No writ shall issue.

## **Analysis**

### **1. *Ultra Vires* Claim**

A government official acts *ultra vires* if the official “acted without legal authority or failed to perform a ministerial act.” *City of El Paso v. Heinrich*, 284 S.W.3d 366, 372 (Tex. 2009). Here, the Court must determine whether the statutory provisions of the Texas Election Code permit the conduct contemplated by Mr. Hollins. The Court's primary objective in construing a statute is to ascertain the Legislature's intent. *City of Rockwall v. Hughes*, 246 S.W.3d. 621, 625 (Tex. 2008). To do so, the Court reads the statute as a whole, not individual provisions in isolation. *Union Carbide Corp. v. Synatzske*, 438 S.W.3d 39, 51 (Tex. 2014).

As County Clerk, Mr. Hollins serves as the “early voting clerk” for the November 2020 election in Harris County. TEX. ELEC. CODE § 83.002. The early voting clerk has “the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting . . .” *Id.* at § 83.001(c). Thus, as it relates to early voting, Mr. Hollins “is in charge of and responsible for the management and conduct of the election . . .” *Id.* at § 32.071. In Texas, early voting is conducted in person and by mail. *Id.* at § 81.001. Accordingly, the Election Code gives Mr. Hollins a broad grant of authority to conduct and manage mail-in voting, subject only to any express limitation on that power by the Legislature. *See Chambers-Liberty Counties Navigation District v. State*, 575 S.W.3d 339,

352 (Tex. 2019) (finding officials' conduct to be *ultra vires* where the conduct conflicted with statutes circumscribing an otherwise broad grant of authority).

The Legislature has spoken at length on the mechanisms for mail-in voting. There are no fewer than 42 Election Code provisions on the subject. *See* TEX. ELEC. CODE, Chs. 84, 86 & 87. In those provisions, the Legislature has made clear that in order to vote by mail a voter first “must make an application for an early voting ballot.” *Id.* at § 84.001. But, as to how the voter is to obtain the application, the Election Code is silent.

There is no code provision that limits an early voting clerk's ability to send a vote by mail application to a registered voter. Section 84.012 contains no prohibitive language whatsoever, but rather, requires the early voting clerk to take affirmative action in the instance a voter does request an application to vote by mail. That the clerk must provide an application upon request does not preclude the clerk from providing an application absent a request.

Indeed, there are a number of code provisions that demonstrate the Legislature's desire for mail voting applications to be freely disseminated. For example, section 1.010 mandates that a county clerk with whom mail voting applications are to be filed (*e.g.*, Mr. Hollins) make the applications “readily and timely available.” *Id.* at § 1.010. In addition, section 84.013 requires that vote by mail applications be provided “in reasonable quantities without charge to individuals or organizations requesting them for distribution to voters.” *Id.* at § 84.013. Further, the Court notes that, consistent with these provisions, both the Secretary of State and the County make the application for a mail ballot readily available on their respective websites.

Against the backdrop of this statutory scheme, the Court cannot accept the State's interpretation of section 84.012. To do so would read into the statute words that do not exist and would lead to the absurd result that any and every private individual or organization may without limit send unsolicited mail voting applications to registered voters, but that the early voting clerk, who possesses broad statutory authority to manage and conduct the election, cannot. Mr. Hollins's contemplated conduct does not exceed his statutory authority as early voting clerk and therefore is not *ultra vires*.

## **2. Section 31.005 Claim**

With respect to the State's invocation of section 31.005 — a statute intended to *protect* Texans' exercise of the right to vote — as a basis to restrain Mr. Hollins, the Court is confounded. It appears the State contends that Mr. Hollins's actions “may impede[] the free exercise of a citizen's voting rights,” *id.* at § 31.005, by fostering confusion over voter eligibility to vote by mail. That contention rings hollow, however. The State offered no evidence to support such a claim, and the document Mr. Hollins intends to send to voters, as set forth below, accurately and thoroughly informs them of Texas law concerning mail-in voting.

Para recibir esta información o la Solicitud de Voto por Correo en Español, comuníquese con:

Để nhận được thông tin này hoặc Đơn Xin Bầu Cử Bằng Thư bằng Tiếng Việt, xin liên lạc:

要接收此信息或中英文的郵遞投票申請表格，請聯繫：

QUESTIONS? CONTACT:  
vbm@harrisvotes.com  
713-755-6965



# DO YOU QUALIFY TO VOTE BY MAIL?



**READ THIS BEFORE APPLYING FOR A MAIL BALLOT**  
The Harris County Clerk's Office is sending you this application as a service to all registered voters.  
**However, NOT ALL VOTERS ARE ELIGIBLE TO VOTE BY MAIL.**  
**READ THIS ADVISORY TO DETERMINE IF YOU ARE ELIGIBLE BEFORE APPLYING.**



## You are eligible to vote by mail if:

1. You are age 65 or older by Election Day, November 3, 2020;
2. You will be outside of Harris County for all of the Early Voting period (October 13th - October 30th) and on Election Day (November 3rd);
3. You are confined in jail but otherwise eligible to vote;
4. You have a disability. Under Texas law, you qualify as disabled if you are sick, pregnant, or if voting in person will create a likelihood of injury to your health.
  - The Texas Supreme Court has ruled that lack of immunity to COVID-19 can be considered as a factor in your decision as to whether voting in person will create a likelihood of injury to your health, but it cannot be the only factor. You can take into consideration aspects of your health and health history that are physical conditions in deciding whether, under the circumstances, voting in person will cause a likelihood of injury to your health.
  - **YOU DO NOT QUALIFY TO VOTE BY MAIL AS "DISABLED" JUST BECAUSE YOU FEAR CONTRACTING COVID-19. YOU MUST HAVE AN ACCOMPANYING PHYSICAL CONDITION. IF YOU DO NOT QUALIFY AS "DISABLED," YOU MAY STILL QUALIFY IN CATEGORIES 1 - 3 ABOVE.**
  - It's up to you to determine your health status—the Harris County Clerk's Office does not have the authority or ability to question your judgment. If you properly apply to vote by mail under any of the categories of eligibility, the Harris County Clerk's Office must send you a mail ballot.
  - To read guidance from the U.S. Centers for Disease Control and Prevention (CDC) on which medical conditions put people at increased risk of severe illness from COVID-19, please visit: [www.HarrisVotes.com/CDC](http://www.HarrisVotes.com/CDC)

If you have read this advisory and determined that you are eligible to vote by mail, please complete the attached application and return it to the Harris County Clerk's Office! Voting by mail is a secure way to vote, and it is also the safest and most convenient way to vote.

To receive CRITICAL ELECTION UPDATES, sign up at: [www.harrisvotes.com/text](http://www.harrisvotes.com/text)

For Official Use Only: VUID #/County Election Pct #  
1230000000/906

## APPLICATION FOR BALLOT BY MAIL

**CHRIS HOLLINS**



- ☐ Fill in (or verify) your name and address
- ☒ Select your reason for using Ballot By Mail
- ☒ Select your Election(s)
- ☒ Sign your application, affix a stamp, and place in the mail

**PROTECTING YOUR RIGHT TO VOTE**

### 1 APPLICANT'S VOTER REGISTRATION:

Name/Address/City/State/Zip Code

JOHN Q. PUBLIC  
123 MAIN STREET  
HOUSTON, TEXAS 77078-0044

PHONE NUMBER:  
(Optional)

### PREFERRED MAILING ADDRESS (REQUIRED FOR OUT OF COUNTY & IN JAIL):

Address/City/State/Zip Code



### 2 REASON FOR APPLYING FOR BALLOT BY MAIL:

- ☐ Age 65 or older
- ☐ Have a disability
- ☐ \*\*Outside the county throughout Early Voting & Election Day (Oct. 13 - Oct. 30, 2020 & Nov. 3, 2020)
- ☐ Confined in jail

(\*\*Dates You Will be Outside the County: / / - / /)

### 3 ELECTIONS FOR WHICH YOU ARE APPLYING:

- ☐ ALL 2020 ELECTIONS
- ☐ November 3, 2020

SIGN YOUR APPLICATION: If you cannot sign, you must have a person witness your mark. If a person helped you fill out this application you must give the name of that person on the line immediately below your signature. In any single election, it is a Class A misdemeanor for any person to sign a ballot application as a witness for more than one applicant, unless the second and subsequent application are related to the witness as a parent, spouse, child, sibling, or grandparent. If you need additional information call the Texas Secretary of State at 1-800-252-8683. COMMON CONTRACT CARRIER: You may submit via a common or contract carrier which is a bona fide, for profit carrier.

**4 I certify that the information given on this application is true, and I understand that giving false information on this application is a crime. SIGN HERE X**

### 5 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ASSISTED A VOTER WITH THIS FORM

☐ Check this box if acting as an ASSISTANT

X Signature of Assistant

PRINT FULL NAME of Assistant

Assistant's Address of Residence or Title of Elections Official

Assistant's Relationship to Applicant

### 6 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ARE A WITNESS FOR A VOTER WITH THIS FORM

☐ Check this box if acting as a WITNESS

X FOR WITNESS: Applicant, if unable to sign, shall make a mark in the presence of witness. If applicant is unable to make mark, the witness shall check here \_\_\_\_\_.

X Signature of Witness

PRINT FULL NAME of Witness

Witness' Address of Residence or Title of Elections Official

Witness' Relationship to Applicant

The Texas Supreme Court has instructed that the decision to apply for a ballot to vote by mail is within the purview of the voter. *In re State of Texas*, 602 S.W.3d 549 (Tex. 2020). This Court firmly believes that Harris County voters are capable of reviewing and understanding the document Mr. Hollins proposes to send and exercising their voting rights in compliance with Texas law.

Finally, the irony and inconsistency of the State's position in this case is not lost on the Court. The State has stipulated that it has no objection to unsolicited mail ballot applications being sent to voters age 65 or over. But being 65 or older is only one of four statutorily permitted bases for voting by mail in Texas, the others being disability,<sup>2</sup> absence and incarceration. TEX. ELEC. CODE §§ 82.001-.004. The State offers no evidence or compelling explanation for its arbitrary and selective objection to the mailing of vote by mail applications to registered voters under the age of 65.

The Court DENIES the State of Texas's application for temporary injunction.

Signed on September 11, 2020.



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R.K. Sandill  
Judge, 127<sup>th</sup> District Court  
Harris County, Texas

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<sup>2</sup> The Parties dedicated a great deal of briefing and argument to the issue of whether and to what degree Texas voters may qualify to vote by mail under the disability category during the COVID-19 pandemic. This issue, however, is not before this Court, having been decided by the Texas Supreme Court in *In Re State of Texas*, 602 S.W.3d 549 (Tex. 2020).

**TAB B**

**Affirmed and Memorandum Opinion filed September 18, 2020.**



**In The**

***Fourteenth Court of Appeals***

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**NO. 14-20-00627-CV**

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**THE STATE OF TEXAS, Appellant**

**V.**

**CHRIS HOLLINS, IN HIS OFFICIAL CAPACITY AS HARRIS COUNTY  
CLERK, Appellee**

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**On Appeal from the 127th District Court  
Harris County, Texas  
Trial Court Cause No. 2020-52383**

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**MEMORANDUM OPINION**

This is an accelerated appeal from an interlocutory order denying appellant's application for temporary injunction. Appellant, the State of Texas, contends the trial court abused its discretion in denying its application for temporary injunction. We conclude the State did not meet its burden of proof and affirm the order of the trial court denying the State's application for temporary injunction.

## **I. Background**

On August 25, 2020, the Harris County Clerk, Chris Hollins, posted a public message on the verified Twitter account of the “Harris County Clerk,” stating that the Harris County Clerk’s Office would be mailing every registered voter an application to vote by mail. Two days later, Keith Ingram, the Director of Elections for the Secretary of State, sent a letter to Hollins stating that Hollins’s proposed plan constituted an abuse of voters’ rights under Election Code section 31.005.<sup>1</sup> Ingram directed Hollins to “immediately halt any plan to send an application for ballot by mail to all registered voters.”

Ingram and Hollins spoke by telephone on August 31 wherein Hollins informed Ingram he declined to conform to Ingram’s request. On that same day, the State filed an application for temporary restraining order, temporary injunction, and permanent injunction in the district court seeking to prohibit Hollins from mailing out vote-by-mail applications to all Harris County registered voters. The State’s complaint was that Hollins’s proposed plan was an ultra vires act not connected to his official duties as the Harris County Clerk and that such conduct would result in irreparable harm to Texas citizens.

On September 9, 2020, the 127th District Court held a hearing on the State’s

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<sup>1</sup> Section 31.005 of the Election Code provides:

- (a) The secretary of state may take appropriate actions to protect the voting rights of the citizens of this state from abuse by the authorities administering the state’s electoral processes.
- (b) If the secretary determines that a person performing official functions in the administration of any part of the electoral processes is exercising the powers vested in that person in a manner that impedes the free exercise of a citizen’s voting rights, the secretary may order the person to correct the offending conduct. If the person fails to comply, the secretary may seek enforcement of the order by a temporary restraining order or a writ of injunction or mandamus obtained through the attorney general.

Tex. Elec. Code Ann. § 31.005.

application in which Ingram and Hollins both testified. During the hearing, the State argued that Hollins’s proposal was outside the scope of Hollins’s authority as early voting clerk and would cause confusion among voters, ultimately inducing some voters to commit felony voter fraud. Ingram testified that by sending the application to voters who might not qualify to vote by mail, the clerk was “walking them into a felony.” Ingram explained that section 84.0041 of the Election Code provides that if a voter knowingly or intentionally submits false information on an application to vote by mail, that voter is subject to prosecution for a state jail felony. *See* Tex. Elec. Code Ann. § 84.0041. The State did not take issue with Hollins sending the applications to voters aged 65 years or older because, it argued, there is no chance of confusion with these voters as their age alone (with no other personal determination by the voter) qualifies them to vote by mail.<sup>2</sup> In response, Hollins emphasized the educational nature of the materials sent with the applications, specifically, the red-siren graphics accompanying a warning that, despite receiving the application, not all voters are eligible to vote by mail. Hollins’s proposed mailer is depicted below:

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<sup>2</sup> Section 82.003 of the Election Code qualifies all registered voters over the age of 65 on election day to vote by mail. *See* Tex. Elec. Code Ann. § 82.003.

Para recibir esta información o la Solicitud de Voto por Correo en Español, comuníquese con:

Để nhận được thông tin này hoặc Đơn Xin Bầu Cử Bằng Thư bằng Tiếng Việt, xin liên lạc:

要接收此信息或中英文的郵遞投票申請表格，請聯繫：

QUESTIONS? CONTACT:  
vbm@harrisvotes.com  
713-755-6965



# DO YOU QUALIFY TO VOTE BY MAIL?



**READ THIS BEFORE APPLYING FOR A MAIL BALLOT**  
The Harris County Clerk's Office is sending you this application as a service to all registered voters.  
**However, NOT ALL VOTERS ARE ELIGIBLE TO VOTE BY MAIL.**  
**READ THIS ADVISORY TO DETERMINE IF YOU ARE ELIGIBLE BEFORE APPLYING.**



## You are eligible to vote by mail if:

1. You are age 65 or older by Election Day, November 3, 2020;
2. You will be outside of Harris County for all of the Early Voting period (October 13th - October 30th) and on Election Day (November 3rd);
3. You are confined in jail but otherwise eligible to vote;
4. You have a disability. Under Texas law, you qualify as disabled if you are sick, pregnant, or if voting in person will create a likelihood of injury to your health.
  - o The Texas Supreme Court has ruled that lack of immunity to COVID-19 can be considered as a factor in your decision as to whether voting in person will create a likelihood of injury to your health, but it cannot be the only factor. You can take into consideration aspects of your health and health history that are physical conditions in deciding whether, under the circumstances, voting in person will cause a likelihood of injury to your health.
  - o **YOU DO NOT QUALIFY TO VOTE BY MAIL AS "DISABLED" JUST BECAUSE YOU FEAR CONTRACTING COVID-19. YOU MUST HAVE AN ACCOMPANYING PHYSICAL CONDITION. IF YOU DO NOT QUALIFY AS "DISABLED," YOU MAY STILL QUALIFY IN CATEGORIES 1 - 3 ABOVE.**
  - o It's up to you to determine your health status—the Harris County Clerk's Office does not have the authority or ability to question your judgment. If you properly apply to vote by mail under any of the categories of eligibility, the Harris County Clerk's Office must send you a mail ballot.
  - o To read guidance from the U.S. Centers for Disease Control and Prevention (CDC) on which medical conditions put people at increased risk of severe illness from COVID-19, please visit: [www.HarrisVotes.com/CDC](http://www.HarrisVotes.com/CDC)

If you have read this advisory and determined that you are eligible to vote by mail, please complete the attached application and return it to the Harris County Clerk's Office! Voting by mail is a secure way to vote, and it is also the safest and most convenient way to vote.

To receive CRITICAL ELECTION UPDATES, sign up at: [www.harrisvotes.com/text](http://www.harrisvotes.com/text)

For Official Use Only: VJD #County Election Pct #  
1230000000/906

## APPLICATION FOR BALLOT BY MAIL

**CHRIS HOLLINS**



- ☐ Fill in (or verify) your name and address
- ☒ Select your reason for using Ballot By Mail
- ☒ Select your Election(s)
- ☒ Sign your application, affix a stamp, and place in the mail

PROTECTING YOUR RIGHT TO VOTE

**1 APPLICANT'S VOTER REGISTRATION:**  
Name/Address/City/State/Zip Code  
**JOHN Q. PUBLIC**  
123 MAIN STREET  
HOUSTON, TEXAS 77078-0044

**PREFERRED MAILING ADDRESS (REQUIRED FOR OUT OF COUNTY & IN JAIL):**  
Address/City/State/Zip Code

**PHONE NUMBER:**  
(Optional)

1230000000

## 2 REASON FOR APPLYING FOR BALLOT BY MAIL:

- ☐ Age 65 or older
- ☐ Have a disability
- ☐ \*\*Outside the county throughout Early Voting & Election Day (Oct. 13 - Oct. 30, 2020 & Nov. 3, 2020)
- ☐ Confined in jail

(\*Dates You Will be Outside the County: / / - / /)

## 3 ELECTIONS FOR WHICH YOU ARE APPLYING:

- ☐ ALL 2020 ELECTIONS
- ☐ November 3, 2020

SIGN YOUR APPLICATION: If you cannot sign, you must have a person witness your mark. If a person helped you fill out this application you must give the name of that person on the line immediately below your signature. In any single election, it is a Class A misdemeanor for any person to sign a ballot application as a witness for more than one applicant, unless the second and subsequent application are related to the witness as a parent, spouse, child, sibling, or grandparent. If you need additional information call the Texas Secretary of State at 1-800-551-8003. COMMON CONTRACT CLARIFIER: You may submit via a common or contract carrier which is a bona fide, for-profit carrier.

## 4 I certify that the information given on this application is true, and I understand that giving false information on this application is a crime. SIGN HERE X

**5 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ASSISTED A VOTER WITH THIS FORM**  
Check this box if acting as an ASSISTANT

X Signature of Assistant

PRINT FULL NAME of Assistant

Assistant's Address of Residence or Title of Elections Official

Assistant's Relationship to Applicant

**6 OPTIONAL - FILL OUT THIS SECTION ONLY IF YOU ARE A WITNESS FOR A VOTER WITH THIS FORM**  
Check this box if acting as a WITNESS

X FOR WITNESS: Applicant, if unable to sign, shall make a mark in the presence of witness. If applicant is unable to make mark, the witness shall check here \_\_\_\_\_

X Signature of Witness

PRINT FULL NAME of Witness

Witness' Address of Residence or Title of Elections Official

Witness' Relationship to Applicant

The mailer containing the application states, “DO YOU QUALIFY TO VOTE BY MAIL?” in large capital letters and bold font, and specifically instructs the voter to “READ THIS BEFORE APPLYING FOR A MAIL BALLOT.” The mailer then lists the four categories of voters that are qualified to vote by mail pursuant to the Election Code. *See* Tex. Elec. Code Ann. §§ 82.001-82.004. The mailer explains the disability qualification by citing language from the Texas Supreme Court’s opinion in *In re State*, 602 S.W.3d 549 (Tex. 2020). While Ingram commended Hollins on the informational nature of the mailer, stating, “I’ve read this full mailer and I think it’s very good,” he disapproved of including an application in the mailer.

The trial court denied the State’s motion for temporary injunction. This interlocutory appeal followed.

## **II. Analysis**

### **A. Applicable Law and Standard of Review**

“A temporary injunction’s purpose is to preserve the status quo of the litigation’s subject matter pending a trial on the merits.” *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002); *Conrad Constr. Co., Ltd. v. Freedman’s Town Pres. Coal.*, 491 S.W.3d 12, 15 (Tex. App.—Houston [14th Dist.] 2016, no pet.). “A temporary injunction is an extraordinary remedy and does not issue as a matter of right.” *Butnaru*, 84 S.W.3d at 204. To obtain a temporary injunction, the applicant must plead and prove: (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) a probable, imminent, and irreparable injury in the interim. *Id.*; *Conrad Constr.*, 491 S.W.3d at 15. The applicant bears the burden of production to offer some evidence of each of these elements. *Conrad Constr.*, 491 S.W.3d at 15.

Whether to grant or deny a temporary injunction rests within the trial court's sound discretion. *Butnaru*, 84 S.W.3d at 204; *Conrad Constr.*, 491 S.W.3d at 16. We should reverse an order on injunctive relief only if the trial court abused that discretion. *Butnaru*, 84 S.W.3d at 204.

**B. The State failed to meet its burden to prove “probable, imminent, and irreparable injury.”**

In its brief, the State articulates a single issue:

For over a century, the Supreme Court has held that county officials have only those powers specifically granted or necessarily implied by the Legislature. Contrary to that well-established law, the trial court held that because no law forbids election clerks from sending unsolicited mail-in ballots, they must have authority to do so. The issue presented is whether this was a misinterpretation of the law and therefore an abuse of discretion.

The temporary injunction applicant, here the State, bears the burden to offer some evidence on each element of a temporary injunction. *Conrad Constr.*, 491 S.W.3d at 15. The State alleged the following to show harm: (1) inherent harm to the State in its sovereign capacity and (2) voter confusion leading to felony voter fraud. We address these in turn.

**1. Harm in the Sovereign Capacity**

The State argues that under *Yett v. Cook*, it need only establish that Hollins's plan would be ultra vires to establish an injury. *See Yett v. Cook*, 281 S.W. 837, 842 (Tex. 1926). *Yett* merely establishes that the State has standing to assert an ultra vires claim in a mandamus proceeding, not that an ultra vires action is harmful by its very nature. *See id.* at 220-221. The State also cites to *Texas Association of Business v. City of Austin*, for the proposition that its alleged ultra vires claim results in automatic harm to the State. *See Tex. Assoc. of Bus. v. City of Austin*, 565 S.W.3d 425, 441 (Tex. App.—Austin 2018, pet, denied). In that case,

the Austin Court of Appeals found the State would suffer harm if a proposed municipal ordinance that was directly preempted by a state law was put into effect. *See id.* at 441. There was no claim of ultra vires conduct in that case. We are not persuaded by the State’s argument that ultra vires conduct automatically results in harm to the sovereign as a matter of law.

## **2. Voter Confusion**

At the preliminary injunction hearing, Ingram testified that, “We don’t allow or disallow counties to do anything. Counties are the ones that run elections in Texas, we assist and advise. The limited exception to that is whenever a county election official is abusing voters by misleading them and walking them into a felony.” Thus, the State reveals its ultra vires argument is reduced to a single proposition: that the Harris County Clerk, by sending an informational brochure with an application to vote by mail, is misleading voters and potentially “walking them into a felony.”

The thrust of the State’s argument regarding harm resulting from voter confusion is that voters will be unable to follow the directions on the mailer, erroneously designate themselves qualified to vote by mail, and thus become subject to prosecution for felony voter fraud under section 84.0041 of the Election Code. *See* Tex. Elec. Code Ann. § 84.0041. The State emphasizes that the application sent by the Harris County Clerk (as opposed to applications sent by third-party groups, such as the League of Women Voters) connotes a certain level of official imprimatur that would lead voters to believe they have been sanctioned and approved to fill out the application. However, this argument supports the opposite conclusion. For example, when a voter sees an application sent by the County Clerk with its official imprimatur, red sirens, and directions regarding when a voter is and (more importantly) is not qualified to receive a mail-in ballot

(instructions that are not required to be sent with third-party unsolicited mail-in ballot applications), it is more likely a voter would know to take this application seriously, to read all warnings, and to follow all stated precautions.

Further, the testimony at the injunction hearing revealed that the Secretary of State's website itself does not define disability, leaving voters without guidance. Conversely, the mailer includes information that helps voters determine whether they are disabled under Texas law for the purposes of voting by mail, including important details about the Texas Supreme Court's ruling clarifying the qualifications for a disability that would allow a registered voter to vote by mail.

When the trial court asked Ingram how many Chapter 84 indictments had been prosecuted in the last 20 years, Ingram responded (on multiple occasions) that he did not know. Further, when the trial court questioned Ingram about the mens rea elements of section 84.0041, Ingram confirmed that a voter would need to act intentionally or with knowledge of his or her fraudulent conduct to be found liable under that section. A mere accidental misinterpretation of "disability," for example, would not subject a voter to liability. When Hollins's counsel questioned Ingram how a voter would knowingly and intentionally violate the statute given all the information on the mailer, Ingram replied:

I don't know the answer to that question. I mean, for most voters, I agree this is sufficient, but not for all of them. And if they have the attitude, well, I'm not really disabled, but nobody is checking so I'm going to do it then that is exactly what 84.0041 is. And I've got the application in my hand and the Clerk sent it to me.

Ingram's response informs this court that "most" voters will have enough information to decide whether to apply to vote by mail, and only a select few, if any, will knowingly choose to break the law and falsify their application. A voter who intends to engage in fraud may just as easily do so with an application

received from a third-party as it would with an application received from the Harris County Clerk. Mr. Ingram testified at the hearing that, “definitely some mailers have that kind of language [regarding qualifications to vote by mail] on them but not all of them -- not very many of them.” As discussed above, a voter would be less likely to engage in fraud using the application sent by the County Clerk because it has an official imprimatur, contains extensive explanations for what qualifies a voter to receive a mail ballot under the law, and is accompanied by text and red-siren graphics traditionally associated with danger and caution in general.

The State failed to meet its burden of showing that mailing the applications will result in irreparable injury. The injury alleged by the State is at best speculative. The State’s argument is based on mere conjecture; there is, in this record, no proof that voters will intentionally violate the Election Code and no proof that voters will fail to understand the mailer and intentionally commit a felony, or be aided by the election official in doing so. Ingram’s conclusory testimony at the temporary injunction hearing cannot carry the burden the State was required to prove to show actual harm. Conclusory testimony does not raise a genuine issue of material fact. *Elizondo v. Krist*, 415 S.W.3d 259, 264 (Tex. 2013) (“A conclusory statement of an expert witness is insufficient to create a question of fact to defeat summary judgment.”) (internal quotations and citation omitted); *Davis v. Knott*, No. 14-17-00257-CV, 2019 WL 438788, at \*9 (Tex. App.—Houston [14th Dist.] Feb. 5, 2019, pet. denied) (“A conclusory statement is one that expresses a factual inference without providing underlying facts in support of the conclusion.”) (citing *Arkoma Basin Expl. Co. v. FMF Assocs. 1990-A, Ltd.*, 249 S.W.3d 380, 389 n.32 (Tex. 2008) and *Dolcefino v. Randolph*, 19 S.W.3d 906, 930 & n.21 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (holding affidavit’s statement that “this was false and defamatory and has injured me in my profession”

was conclusory)).

An injunction is not proper when the claimed injury is merely speculative; fear and apprehension of injury are not sufficient to support a temporary injunction. *Fox v. Tropical Warehouses, Inc.*, 121 S.W.3d 853, 861 (Tex. App.—Fort Worth 2003, no pet.). Accordingly, the trial court properly denied the State’s application for temporary injunction.

Further, the temporary injunction applicant bears the burden of producing some evidence on each element of a temporary injunction. *Conrad Constr.*, 491 S.W.3d at 15. Because the State fails to produce evidence of irreparable injury, we need not address the State’s arguments regarding cause of action or probable success on the merits. *See id.*

We overrule the State’s sole issue.

### **C. Judicial Non-Intervention**

“The rule is well established in Texas that the equitable powers of the courts may not be invoked to interfere with public officials in taking any of the steps involved in an election.” *Ellis v. Vanderslice*, 486 S.W.2d 155, 159 (Tex. Civ. App.—Dallas 1972, no writ) (citing *City of Dallas v. Dallas Consol. Elec. St. Ry. Co.*, 105 Tex. 337, 341–42, 148 S.W. 292, 294 (1912); *Leslie v. Griffin*, 25 S.W.2d 820, 821 (Tex. Comm’n App. 1930); and *Winder v. King*, 1 S.W.2d 587, 589 (Tex. Comm’n App. 1928). “The question is not simply whether a statutory contest is an adequate remedy for irregularities in the process. The question is rather whether the entire election process is immune from judicial interference until the result is declared. The above authorities establish that it is.” *Id.* at 160.

### **III. Conclusion**

Because we conclude the State failed to meet its burden in the temporary injunction hearing, we hold the trial court did not abuse its discretion in denying the State's application for a temporary injunction. Accordingly, the order of the trial court is affirmed.

PER CURIAM

Panel consists of Justices Spain, Hassan, and Poissant.

**TAB C**

**Sec. 1.010. AVAILABILITY OF OFFICIAL FORMS.** (a) The office, agency, or other authority with whom this code requires an application, report, or other document or paper to be submitted or filed shall make printed forms for that purpose, as officially prescribed, readily and timely available.

(b) The authority shall furnish forms in a reasonable quantity to a person requesting them for the purpose of submitting or filing the document or paper.

(c) The forms shall be furnished without charge, except as otherwise provided by this code.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

**TAB D**

**Sec. 31.005. PROTECTION OF VOTING RIGHTS.** (a) The secretary of state may take appropriate action to protect the voting rights of the citizens of this state from abuse by the authorities administering the state's electoral processes.

(b) If the secretary determines that a person performing official functions in the administration of any part of the electoral processes is exercising the powers vested in that person in a manner that impedes the free exercise of a citizen's voting rights, the secretary may order the person to correct the offending conduct. If the person fails to comply, the secretary may seek enforcement of the order by a temporary restraining order or a writ of injunction or mandamus obtained through the attorney general.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986.

# TAB E

**Sec. 32.071. GENERAL RESPONSIBILITY OF PRESIDING**

**JUDGE.** The presiding judge is in charge of and responsible for the management and conduct of the election at the polling place of the election precinct that the judge serves.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1997, 75th Leg., ch. 864, Sec. 26, eff. Sept. 1, 1997.

**TAB F**

**Sec. 83.001. EARLY VOTING CLERK GENERALLY.** (a) The early voting clerk shall conduct the early voting in each election.

(b) The clerk is an officer of the election in which the clerk serves.

(c) The clerk has the same duties and authority with respect to early voting as a presiding election judge has with respect to regular voting, except as otherwise provided by this title.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.06; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991.

**TAB G**

**Sec. 83.002. COUNTY CLERK AS EARLY VOTING CLERK.** The county clerk is the early voting clerk for the county in:

- (1) the general election for state and county officers and any other countywide election held at county expense;
- (2) a primary election; and
- (3) a special election ordered by the governor.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.06; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991.

**TAB H**

**Sec. 84.0041. FRAUDULENT USE OF APPLICATION FOR BALLOT BY MAIL.** (a) A person commits an offense if the person:

(1) knowingly provides false information on an application for ballot by mail;

(2) intentionally causes false information to be provided on an application for ballot by mail;

(3) knowingly submits an application for ballot by mail without the knowledge and authorization of the voter; or

(4) knowingly and without the voter's authorization alters information provided by the voter on an application for ballot by mail.

(b) An offense under this section is a state jail felony.

(c) An offense under Subsection (a)(4) does not apply to an early voting clerk or deputy early voting clerk who receives and marks an application for administrative purposes only.

(d) An offense under this section is increased to the next higher category of offense if it is shown on the trial of an offense under this section that:

(1) the defendant was previously convicted of an offense under this code;

(2) the offense involved a voter 65 years of age or older; or

(3) the defendant committed another offense under this section in the same election.

Added by Acts 1987, 70th Leg., ch. 472, Sec. 22, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.07; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 565, Sec. 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, Sec. 4, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 393, Sec. 9, eff. Sept. 1, 2003.

Amended by:

Acts 2017, 85th Leg., 1st C.S., Ch. 1 (S.B. [5](#)), Sec. 4, eff. December 1, 2017.

# TAB I

**Sec. 84.012. CLERK TO MAIL APPLICATION FORM ON REQUEST.** The early voting clerk shall mail without charge an appropriate official application form for an early voting ballot to each applicant requesting the clerk to send the applicant an application form.

Acts 1985, 69th Leg., ch. 211, Sec. 1, eff. Jan. 1, 1986. Amended by Acts 1991, 72nd Leg., ch. 203, Sec. 2.07; Acts 1991, 72nd Leg., ch. 554, Sec. 1, eff. Sept. 1, 1991; Acts 1997, 75th Leg., ch. 864, Sec. 73, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1381, Sec. 6, eff. Sept. 1, 1997.

**TAB J**

**Cause No. 2020-52383**

<b>THE STATE OF TEXAS,</b>	§	<b>In the District Court of</b>
<i>Plaintiff,</i>	§	
	§	
<b>v.</b>	§	<b>Harris County, Texas</b>
	§	
<b>CHRIS HOLLINS, in his official capacity</b>	§	
<b>as Harris County Clerk</b>	§	
<i>Defendant.</i>	§	<b>127th Judicial District</b>

**Joint Stipulation of Facts**

Plaintiff the State of Texas and Defendant Chris Hollins, in his official capacity as Harris County Clerk, hereby stipulate to the following:

1. Chris Hollins is Harris County Clerk. He is the county's chief elections officer and early voting clerk.
2. On August 25, 2020, Hollins announced that he would send vote-by-mail applications to all registered voters in Harris County.
3. In a letter dated August 27, 2020, Keith Ingram, the Secretary of State's Director of Elections, directed Hollins to "immediately halt any plan to send an application for ballot by mail to all registered voters."
4. On August 31, 2020, Hollins and Ingram spoke by phone and discussed Hollins's plan and Ingram's objections to it.
5. The Secretary of State does not object to the sending of unsolicited vote-by-mail applications to voters aged 65 and older in Harris County because these voters are eligible to vote by mail.
6. The Secretary of State objects to the sending of unsolicited vote-by-mail applications to voters under 65 in Harris County for the reasons stated in Ingram's August 27, 2020 letter to Hollins.
7. The Secretary of State does not object to Hollins's sending of unsolicited educational materials regarding the eligibility criteria for voting by mail to all registered voters in Harris County, including those under 65.
8. The Secretary of State maintains a PDF of the vote-by-mail application on her website.
9. Hollins maintains a PDF of the vote-by-mail application on his website.

10. Any person may download the application from either website.
11. According to the Centers for Disease Control and Prevention (CDC) people of any age with **certain underlying medical conditions** are at increased risk for severe illness from COVID-19. People of any age with the following conditions **are at increased risk** of severe illness from COVID-19:
  - Cancer
  - Chronic kidney disease
  - COPD (chronic obstructive pulmonary disease)
  - Immunocompromised state (weakened immune system) from solid organ transplant
  - Obesity (body mass index [BMI] of 30 or higher)
  - Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies
  - Sickle cell disease
  - Type 2 diabetes mellitus

COVID-19 is a new disease. Currently there are limited data and information about the impact of underlying medical conditions and whether they increase the risk for severe illness from COVID-19. Based on what we know at this time, people with the following conditions **might be at an increased risk** for severe illness from COVID-19:

- Asthma (moderate-to-severe)
- Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- Cystic fibrosis
- Hypertension or high blood pressure
- Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines
- Neurologic conditions, such as dementia
- Liver disease
- Pregnancy
- Pulmonary fibrosis (having damaged or scarred lung tissues)
- Smoking
- Thalassemia (a type of blood disorder)
- Type 1 diabetes mellitus

The list of underlying conditions is meant to inform clinicians to help them provide the best care possible for patients, and to inform individuals as to what their level of risk may be so they can make individual decisions about illness prevention. We are learning more about COVID-19 every day. This list is a living document that may be updated at any time, subject to potentially rapid change as the science evolves.

12. Based on the Health of Houston Survey, in Harris County among people aged 18-64:

- a. 4.2% or slightly more than one in twenty-four have had, or currently have, cancer;
  - b. 6.9% or slightly more than one in fifteen currently have asthma;
  - c. 32.4% or about one in three are obese (body mass index (“BMI”) of 30 or greater);
  - d. 24.0% or slightly more than one in four have high blood pressure;
  - e. 5.7% or slightly more than one in eighteen have cardiovascular disease, including heart attack, stroke, coronary heart disease, or angina;
  - f. 8.5% or slightly more than one in twelve have type 2 diabetes;
  - g. 2.2% or slightly more than one in forty-six have chronic obstructive pulmonary disease (“COPD”); and
  - h. 14.3% or slightly more than one in seven are smokers.
- 13. According to the United States Census, an estimated 6.7% of Harris County was disabled under the Census Bureau’s definition of that term as of July 1, 2019.
  - 14. The Secretary of State believes this measure of disability supports her belief that a large majority of voters under 65 are not eligible under the disability category.
  - 15. The election results for the primaries, primary run-offs, and general elections for 2016, 1-2018, and 2020 to date as provided on Joint Stipulated Defendant’s Exhibit 19.
  - 16. The mailer Hollins intends to send to all registered voters is reproduced on the following page and is Defendant’s Exhibit 1:

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system.  
The filer served this document via email generated by the eFiling system  
on the date and to the persons listed below:

Susan Hays  
Bar No. 24002249  
hayslaw@me.com  
Envelope ID: 46598027  
Status as of 9/25/2020 5:01 PM CST

Associated Case Party: Texas State Conference of the NAACP

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan		lindsey.cohan@dechert.com	9/25/2020 4:56:15 PM	SENT

Associated Case Party: Anti-Defamation League Southwest Region

Name	BarNumber	Email	TimestampSubmitted	Status
Lindsey Cohan		lindsey.cohan@dechert.com	9/25/2020 4:56:15 PM	SENT

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Kyle Hawkins		kyle.hawkins@oag.texas.gov	9/25/2020 4:56:15 PM	SENT
Maria Williamson		maria.williamson@oag.texas.gov	9/25/2020 4:56:15 PM	SENT
Natalie Thompson		natalie.thompson@oag.texas.gov	9/25/2020 4:56:15 PM	SENT
Wolfgang PHirczy de Mino		wphdmphd@gmail.com	9/25/2020 4:56:15 PM	SENT
Susan Hayes		hayslaw@me.com	9/25/2020 4:56:15 PM	SENT
Lanora Pettit		lanora.pettit@oag.texas.gov	9/25/2020 4:56:15 PM	SENT
Beau Carter		Beau.Carter@oag.texas.gov	9/25/2020 4:56:15 PM	SENT

Associated Case Party: League of Women Voters of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Thomas Buser-Clancy		tbuser-clancy@aclutx.org	9/25/2020 4:56:15 PM	SENT