

No. 14-20-00627-CV

**In the Court of Appeals
for the Fourteenth Judicial District
Houston, Texas**

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
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CHRISTOPHER A. PRINE
Clerk

THE STATE OF TEXAS,

Appellant,

v.

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

Appellee.

On Appeal from the
127th Judicial District Court, Harris County

**APPELLANT’S REPLY IN SUPPORT OF EMERGENCY
MOTION FOR RELIEF UNDER RULE 29.3 OR IN THE
ALTERNATIVE FOR A WRIT OF INJUNCTION**

TO THE HONORABLE FOURTEENTH COURT OF APPEALS:

Appellee Chris Hollins’s response to the State’s emergency motion only confirms that this Court should enter temporary relief and preserve the status quo to protect its jurisdiction. The State’s motion is predicated on the proposition that Hollins intends to unlawfully distribute applications to vote by mail as soon as two days from now, and that should he do so, the Court will lose jurisdiction over this appeal. Hollins now concedes both points. He admits that he intends to “immediately” begin the process of mailing over two million ABBMs. Opp. at 4 (“Given the various steps necessary to timely provide applications to voters, Hollins

must begin work *immediately*.”). And Hollins does not dispute that there is no way to undo his unlawful actions if the State were to prevail in this appeal. In light of those concessions, it would be an abuse of discretion not to grant Rule 29.3 relief to maintain the status quo and protect this Court’s jurisdiction. *H & R Block, Inc. v. Haese*, 992 S.W.2d 437, 438 (Tex. 1999).

Instead of engaging the Rule 29.3 question now before the Court, Hollins focuses almost entirely on the merits. But the merits are not at issue in this motion. *E.g., Tex. Gen. Land Office v. City of Houston*, 03-20-00376-CV, 2020 WL 4726695, at *2 (Tex. App.—Austin July 31, 2020, no pet. h.) (“[O]ur task is to determine whether a temporary order will best preserve the parties’ rights until the disposition of the appeal, not to determine the merits of the appeal.”); *Oryon Techs., Inc. v. Marcus*, 429 S.W.3d 762, 767 (Tex. App.—Dallas 2014, no pet.).¹ The only issue before the Court today is whether emergency relief is necessary to maintain the status quo and protect this Court’s jurisdiction. Hollins’s brief confirms the answer is yes. Whether the trial court abused its discretion is a topic for another day.

In any event, even if the merits were relevant to this motion, Hollins misunderstands Texas law. He insists that he can conduct the mail-in-ballot process in any way he wishes so long as no statute “forbids” him from doing so. Resp. at 19. For a century, the Supreme Court has held the opposite: Officials like Hollins lack

¹ Hollins misunderstands *Texas Black Iron, Inc. v. Arawak Energy International Ltd.*, 527 S.W.3d 579, 584 (Tex. App.—Houston [14th Dist.] 2017, no pet.). *Texas Black Iron* involved a merits appeal from a temporary injunction; in that posture, the merits are very much at issue. *Texas Black* does not address the standards for an order to protect the Court’s ability to *reach* the merits.

power unless it is specifically granted. *E.g.*, *Town of Lakewood v. Bizios*, 493 S.W.3d 527, 536 (Tex. 2016); *Wills v. Potts*, 277 S.W.2d 622, 625 (Tex. 1964); *Foster v. City of Waco*, 255 S.W. 1104, 1106 (Tex. 1926). Nothing grants Hollins the power to send unsolicited applications to vote by mail to every voter in Harris County. And Hollins’ myopic focus on section 1.010(a) overlooks the very next subsection, 1.010(b), which provides that an “authority shall furnish forms in a reasonable quantity to a person *requesting them.*” Tex. Elec. Code § 1.010(b) (emphasis added). The State thus will succeed in establishing on appeal that the trial court abused its discretion. The merits deserve full briefing and oral argument at the appropriate time—but they are not before the Court today.²

² In addition to misunderstanding the law, Hollins misstates the record in various ways. For example, he claims (at 8) that the State has agreed that his educational materials are entirely accurate. The State did no such thing, because they are not. Mot. at 13; *accord* App. J at 93 (agreeing only that Hollins’s materials are less inaccurate than “the third party mailers that are out there”). The State will address these and other misstatements at the appropriate time.

PRAYER

To maintain the status quo and preserve its jurisdiction, the Court should grant relief under Rule 29.3 directing Hollins not to send (or cause to be sent) any unsolicited mail-in ballot applications pending resolution of this appeal. The Court should further grant expedited consideration of this appeal.

Respectfully submitted.

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CERTIFICATE OF SERVICE

On September 14, 2020, this document was served electronically on Susan Hays, lead counsel for Chris Hollins, via hayslaw@me.com.

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CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this brief contains 694 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Kyle D. Hawkins
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