

No. 03-22-00110-CV

**IN THE THIRD COURT OF APPEALS
AUSTIN, TEXAS**

IN RE LINDA ANTHONY, *Relator,*

ORIGINAL PROCEEDING FOR WRIT OF MANDAMUS

**REAL PARTY IN INTEREST'S RESPONSE TO RELATOR'S
MOTION FOR EMERGENCY TEMPORARY RELIEF**

TO THE HONORABLE THIRD COURT OF APPEALS:

Relator Linda Anthony's Motion for Emergency Temporary Relief (the Emergency Motion) asks this Court to compel Respondent Stephanie Mills, the City Secretary for the City of West Lake Hills, to violate the Election Code. Contrary to Ms. Anthony's contentions, the Emergency Motion does not seek to protect this Court's jurisdiction. Instead, Ms. Anthony asks the Court to grant her ultimate relief on an emergency basis without affording Real Party in Interest Jeffery Taylor a full and fair opportunity to respond to the merits of Ms. Anthony's election contest.

Ms. Anthony’s three “emergency” requests are all aimed at placing her name on the ballot, which is the relief Ms. Anthony ultimately requests in her Petition for Writ of Mandamus. If this Court wishes to consider Ms. Anthony’s Petition on an expedited schedule, it has the power to do so. But the Court should not grant Ms. Anthony any advance relief on the merits without first providing Mr. Taylor the opportunity to respond on the merits. *See* Tex. R. App. P. 52.4.

Accordingly, The Court should deny Ms. Anthony’s motion for emergency relief and separately decide whether the Court wishes to request a response from Mr. Taylor to Ms. Anthony’s Petition.

SUMMARY OF THE ARGUMENT

The Texas Election Code is clear: a ballot application *must* contain the candidate’s occupation. Ms. Anthony failed to write anything in the blank for her occupation on her application for a place on the ballot for mayor of the City of West Lake Hills in the May 7, 2022 general election. By rejecting Ms. Anthony’s ballot application, the City Secretary complied with her specific obligations under the Election Code.

Each of Ms. Anthony's requests for emergency relief would require this Court to order the City Secretary and the City to violate the Election Code. Because Ms. Anthony did not submit a ballot application that complied with the Election Code, ordering the City Secretary to conduct a ballot drawing that includes Ms. Anthony, enjoining the City Secretary or the City from declaring Mr. Taylor the only candidate for mayor, or enjoining the City and the City Secretary from printing a ballot that contains only Mr. Taylor's name would each violate the plain language of the Election Code. This Court should therefore deny Ms. Anthony's request for emergency relief.

ARGUMENT

I. Ms. Anthony has not requested any temporary relief to protect this Court's jurisdiction.

This Court may grant temporary relief pending the Court's action on an accompanying petition for writ of mandamus. Tex. R. App. P. 52.10. But when a party asks this Court to exercise its original jurisdiction to grant injunctive relief on an emergency basis, such as Ms. Anthony has done here, the Court's injunctive power is limited to relief necessary to protect the Court's jurisdiction. *See* Tex. Gov't Code

§ 22.221(a). Indeed, a court of appeals “has no original jurisdiction to grant writs of injunction, except to protect its jurisdiction over the subject matter of a pending appeal, or to prevent an unlawful interference with the enforcement of its judgments and decrees.” *Ott v. Bell*, 606 S.W.2d 955, 957 (Tex. Civ. App.—Waco 1980, no writ). As a result, “an injunction will not lie in the courts of appeals merely to preserve the status quo pending appeal or to prevent damage to an appellant.” *EMW Mfg. Co. v. Lemons*, 724 S.W.2d 425, 426 (Tex. App.—Fort Worth 1987, orig. proceeding).

Here, Ms. Anthony has not requested emergency relief to protect this Court’s jurisdiction. Instead, Ms. Anthony asks this Court to decide the merits of her mandamus petition by way of her Emergency Motion. Specifically, Ms. Anthony requests this Court to: (1) require the City Secretary to immediately conduct a ballot drawing to determine the order of Ms. Anthony and Mr. Taylor’s names on the May 7, 2022 ballot; (2) enjoin the City Secretary from certifying that Mr. Taylor is an unopposed candidate for Mayor and enjoining the City from declaring Taylor elected; and (3) prohibit the City Secretary and the

City from approving or printing a final ballot that does not contain Ms. Anthony's name. *Emergency Motion* at 2-3. Ms. Anthony's request far exceeds any relief necessary to protect this Court's jurisdiction and necessarily requires this Court to reach the merits of the pending mandamus petition.

The posture of this case also differs from the more common emergency requests this Court receives to stay proceedings in a trial court. *See In re Bates*, 429 S.W.3d 47, 53 (Tex. App.—Houston [1st Dist.] 2014, orig. proceeding) (explaining that, under Rule 52.10, appellate courts may stay underlying proceedings in a trial court pending the resolution of an accompanying mandamus petition). In this case, there is no underlying trial court proceeding. Ms. Anthony filed an original mandamus petition under the Election Code. *See* Tex. Elec. Code § 273.061(a) (“[A] court of appeals may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election[.]”). But after filing her mandamus petition, Ms. Anthony filed the Emergency Motion, asking the Court to exercise its separate and limited original jurisdiction to grant injunctive

relief and effectively grant Ms. Anthony the ultimate relief she seeks in her mandamus petition. Accepting Ms. Anthony's conflation of the Court's distinct jurisdictional powers would deprive Mr. Taylor the opportunity to fully respond to the merits of Ms. Anthony's mandamus petition.

In sum, this Court should deny Ms. Anthony's request for emergency relief because granting such relief would amount to resolving the merits of Ms. Anthony's mandamus petition in an emergency motion.

II. Granting Ms. Anthony her requested relief would compel the City Secretary to violate the Election Code.

The Texas Election Code sets forth the specific requirements for a ballot application. *See generally* Tex. Elec. Code Ch. 141. "A candidate's application for a place on the ballot . . . must . . . include . . . the candidate's occupation." Tex. Elec. Code § 141.031(a). If a candidate fails to include her occupation on the ballot application, the authority charged with conducting the election "shall reject the application and immediately deliver to the candidate written notice of the reason for the rejection." *Id.* § 141.032(e).

The City Secretary is charged with conducting municipal elections for the City of West Lake Hills. *Id.* § 52.002. As a result, the City Secretary is responsible for preparing the official ballot for the May 7, 2022 general election. *Id.* Under the Election Code’s express requirements, the City Secretary may only place on the official ballot the “name of each candidate . . . who has filed with the authority an application for a place on the ballot that complies with the requirements as to **form, content, and procedure** that the application must satisfy for the candidate’s name to be placed on the ballot. *Id.* § 52.003 (emphasis added). This Court has held that a candidate must strictly adhere to the Election Code’s requirements to appear on the ballot. *See In re Falgout*, No. 03-17-00852-CV, 2017 WL 6757065, at *2 (Tex. App.—Austin Dec. 22, 2017) (orig. proceeding) (concluding that local election official properly rejected a candidate’s ballot application that failed to comply with the Election Code’s requirements).

Here, the City Secretary strictly complied with her statutory duties under the Election Code. Ms. Anthony submitted a ballot

application that failed to include her occupation. *Id.* § 141.031(a). After Mr. Taylor challenged Ms. Anthony’s application on this basis, the City Secretary “reject[ed] the application and immediately deliver[ed] to [Ms. Anthony] written notice of the reason for the rejection.” *Id.* § 141.032(e). Accordingly, the City Secretary fulfilled her obligations under the Election Code.

In her Emergency Motion, Ms. Anthony asks this Court to undo the City Secretary’s compliance with the Election Code and to force the City Secretary and the City to violate the Election Code. Ordering the City Secretary to conduct a ballot drawing that includes a candidate whose ballot application failed to comply with the Election Code’s requirements would violate section 52.094 of the Election Code. *See id.* § 52.094(a) (“[F]or an election at which the names of more than one candidate for the same office **are to appear on the ballot . . .** the order of the candidates’ names shall be determined by a drawing.”) (emphasis added). Here, Ms. Anthony’s name is *not* “to appear on the ballot,” because she failed to comply with the ballot application requirements. Similarly, enjoining the City Secretary and the City

from declaring Mr. Taylor as the only candidate for mayor or from printing a ballot that does not include Ms. Anthony would violate the Election Code's specific requirement that only candidates who have submitted a completed and compliant ballot application may appear on the ballot.

Because Ms. Anthony's Emergency Motion asks this Court to order the City Secretary and the City to violate the Election Code, this Court should deny the Emergency Motion.

PRAYER

For the foregoing reasons, Real Parties in Interest respectfully pray this Court deny Relator's Motion for Emergency Temporary Relief.

Respectfully submitted,

BUTLER SNOW LLP

By: /s/ Amanda G. Taylor

Amanda G. Taylor
State Bar No. 24045921
Amanda.taylor@butlersnow.com
Marshall A. Bowen
State Bar No. 24096672
Marshall.bowen@butlersnow.com
1400 Lavaca Street, Suite 1000
Austin, Texas 78701

(737) 802-1800 (Phone)
(737) 808-1801(Fax)

COUNSEL FOR REAL PARTY IN INTEREST,
JEFFERY TAYLOR

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2022 the forgoing Response to Relators' Motion for Emergency Temporary Relief was electronically served on all parties below by the Electronic Filing Service Provider, if registered; otherwise by email, as follows:

Doug W. Ray
State Bar No. 16599200
300 Beardsley Lane, Suite B-100
Austin, Texas 78746
(512) 328-8877 (Tel)
(512) 328-1156 (Fax)
dray@raywoodlaw.com

COUNSEL FOR RELATOR

Alan J. Bojorquez
Alan@TexasMunicipalLawyers.com
Cristian Rosas-Grillet
Cristian@texasmunicipallawyers.com
BOJORQUEZ LAW FIRM, PC
11675 Jollyville Road, Suite 300
Austin, Texas 78759

COUNSEL FOR RESPONDENT

/s/ Amanda G. Taylor
Amanda G. Taylor

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. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Envelope ID: 62375156
Status as of 3/7/2022 5:01 PM CST

Associated Case Party: Stephanie Mills

Name	BarNumber	Email	TimestampSubmitted	Status
Alan Jacob Bojorquez	796224	info@texasmunicipallawyers.com	3/7/2022 4:58:01 PM	SENT
Cristian Rosas-Grillet	24088328	cristian@texasmunicipallawyers.com	3/7/2022 4:58:01 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Sas Schraub		sas.schraub@butlersnow.com	3/7/2022 4:58:01 PM	SENT
Doug W. Ray	16599200	dray@raywoodlaw.com	3/7/2022 4:58:01 PM	SENT

Associated Case Party: Jeffrey Taylor

Name	BarNumber	Email	TimestampSubmitted	Status
Amanda Garrett Taylor	24045921	amanda.taylor@butlersnow.com	3/7/2022 4:58:01 PM	SENT
Marshall Bowen	24096672	marshall.bowen@butlersnow.com	3/7/2022 4:58:01 PM	SENT