

NOW COME Plaintiffs, DARREN WHITTEN, *et. al.*, by and through counsel, and pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure move this Court for an Emergency Temporary Restraining Order, Preliminary or Permanent Injunction against the Defendants. In support of this Motion, the Plaintiffs incorporate by reference their previously filed Verified Complaint ((Dkt. 001), the exhibits attached to the Verified Complaint, as well as their Memorandum of Law in Support of this motion, and hereby state as follows:

1. **NOTICE TO DEFENDANTS:** Pursuant to Rule 65 of the Federal Rules of Civil Procedure, undersigned counsel for the Plaintiffs respectfully certifies to the Court that on January 18, 2021, Plaintiffs provided a copy of the Verified Complaint, this Motion, and on January 19, 2021 the supporting Memorandum to the following attorneys and non-represented parties via email, and the non-represented parties without an email by U.S. Mail:

- Attorney Dylan P. Grady for Township Clerk Lynn Chard
dgrady@bhslaw.com
- Attorney Richard Frazier for Darrell Maxheimer
frazier@springfieldlawfirm.com
- State's Attorney Dan Wright and ASA Dan Mosher for County Clerk Don Gray
Dan.Wright@co.sangamon.il.us & Dan.Mosher@co.sangamon.il.us
- Thomas K. Munroe for himself and Rochester Tshp. Repub. Central Comm.
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- Anthony Saputo for himself
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- Mark C. White for himself
113 E. Main, Rochester, IL 62563
- David L. Armstrong for himself
215 Cumberland Drive, Rochester, IL 62563
- Matthew Butcher for him self
609 Burberry Lane, Rochester, IL 62563

2. As established by the Memorandum in Support of this Motion, and the documents and pleadings referenced therein, the Plaintiffs are entitled to immediate declaratory and injunctive relief because 1) they are likely to succeed on the merits; 2) no adequate remedy at law exists; 3) they are suffering, and will continue to suffer, irreparable harm in the absence of preliminary relief, 3) the balance of equities tips in the Plaintiffs' favor, and 4) because an injunction is in the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008), and *Bambenek v. White*, May 1, 2020 Order, p. 3 & 4 and cases cited therein. (U.S. Dist. Ct., CDIL No. 3:20-cv-3107)

3. The Plaintiffs request oral arguments on their motion in person; via the Court's remote Cisco Systems video conferencing; or by telephone conference.

4. The Plaintiffs also request a waiver of any bond requirement.¹

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Assume original jurisdiction over this matter;
- B. Issue a temporary restraining order, followed by preliminary and permanent injunctions, against Defendants and all those acting in concert, **a)** enjoining the Rochester Township Clerk and Sangamon County Clerk from certifying Darrell Maxheimer as the Republican Candidate for Rochester Township Road Commissioner at the April 6, 2021 Election or printing his name on said ballot as a candidate for said office; and **b)** ordering the Rochester Township Republican Central Committee to hold a second Republican Caucus

¹ *See Doctor John's, Inc. v. City of Sioux City*, 305 F.Supp.2d 1022, 1043-44 (N.D. Iowa 2004) (“[R]equiring a bond to issue before enjoining potentially unconstitutional conduct . . . simply seems inappropriate, because the rights potentially impinged by the governmental entity's actions are of such gravity that protection of those rights should not be contingent upon an ability to pay”).

for the purpose of nominating a candidate for Road Commissioner that complies with the U.S. and Illinois Constitutions and the Illinois Township Code, **or in the alternative**, a re-vote for 1 or 2 hours on a week-day evening, where voters could come to the Township Hall and cast a secret paper ballot containing the names of Maxheimer and Whitten for the Republican nomination for Road Commissioner.

- C. Order Defendants to pay to Plaintiffs their costs and reasonable attorneys' fees under 42 U.S.C. § 1988(b);
- D. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 19th day of January, 2021.

/s/ DARRIN WHITTEN, ET AL.,

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