

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

DARIN WHITTEN, et al

Plaintiffs,

vs.

**ROCHESTER TOWNSHIP REPUBLICAN)
CENTRAL COMMITTEE, et al**

Defendants.

Case No. **21-3023**

Honorable Judge Richard Mills

PLAINTIFFS' EMERGENCY MOTION FOR RECONSIDERATION

NOW COMES Plaintiffs, and, pursuant to Rule 59 of the Federal Rules of Civil Procedure, move this Honorable Court for reconsideration of its Opinion (Dkt. 12), terminating Plaintiffs' motion for injunctive relief and dismissing their Complaint for lack of subject matter jurisdiction and its Judgment (Dkt.13) entered thereon, both entered by this Court on February 1, 2020. In support of this Motion, Plaintiffs state as follows:

1. This Court erred in its construction of *Charchenko v. City of Stillwater*, 47 F.3d 981 (8th Cir. 1995) when it wrote in its Opinion:

A crucial distinction between this case and *Charchenko* is that Plaintiffs here sought the same relief on both counts in state court and federal court--specifically enjoining certification of the purported Republican candidate for Rochester Township Road Commissioner and ordering a second Republican Caucus for nominating a Road Commissioner (candidate).

Dkt. 12, at 11

2. But, in fact, there is no distinction at all between *Charchenko* and the Plaintiffs here because the *Charchenko* plaintiff also sought the same relief in state court and federal court.

3. The U.S. Court of Appeals wrote that, “On August 13, 1990, Charchenko filed suit in Minnesota state court alleging wrongful termination under state law and a Sec. 1983 claim of due process violations and deprivation of a liberty interest in connection with his termination.... [T]he state court dismissed the entire action, determining it had no subject matter jurisdiction....” *id.* at 982.

4. “**Charchenko refiled both his state claims and his Sec. 1983 claims in federal district court**, (emphasis added),” the Court of Appeals wrote. *id.*

5. The U.S. District court dismissed Charchenko’s action, determining it had no subject matter jurisdiction to hear either the state law or the Sec. 1983 claims under the *Rooker-Feldman* doctrine. *id.*

6. In reversing the district court’s dismissal, the U.S. Court of Appeals noted that Charchenko’s state court complaint was dismissed because that state court determined it had no subject matter jurisdiction to hear either his state wrongful termination or Sec. 1983 claims under a Minnesota Supreme Court ruling. That ruling was that a writ of certiorari to the State Appellate Court was the exclusive remedy for a terminated public employee to obtain review of their termination in Minnesota state court. Therefore, the U.S. Court of Appeals concluded that that the state court dismissal stood for the proposition that Minnesota state trial courts do not have subject matter jurisdiction to review a municipality’s decision to terminate a city employee. *id.* at 983.

7. Just like in *Charchenko*, the state court here determined it had no subject matter jurisdiction to hear either Plaintiffs’ state law violation claims or his Sec. 1983 claims on the ground that under the Illinois Election Code, an objector’s petition before the appropriate elec-

toral board was the Plaintiffs' exclusive remedy to challenge procedures used during the Rochester Township Republican Party Caucus. (*See* state court order at Dkt.7, Exhibit 2)

8. The Court of Appeals in determining the U.S. District Court maintained jurisdiction of Charchenko's Sec. 1983 claims despite the state court dismissal for lack of subject matter jurisdiction, wrote:

Thus, *Rooker-Feldman* will bar Charchenko's federal § 1983 suit only if the district court must determine that the state court's decision that it had no subject matter jurisdiction was wrong or that the relief Charchenko requests would effectively void the state court's determination that it has no subject matter jurisdiction. With respect to Charchenko's § 1983 claims, we do not believe the district court need address whether the state court had subject matter jurisdiction over the claims in order for Charchenko to proceed. In fact, we believe the district court could proceed to determine the merits of Charchenko's § 1983 suit under the assumption that the Minnesota state courts lack subject matter jurisdiction over these claims.^[2] The deprivation of state court subject matter jurisdiction in § 1983 suits does not affect the federal district court's original jurisdiction.

Neither the state court decision in *Charchenko* nor *Dietz* (MN Supreme Court ruling) attempts to deprive federal courts of subject matter jurisdiction over § 1983 suits. *Dietz* held that a county employee could not sue the county for wrongful termination in state court; a petition for a writ of certiorari was the exclusive method to obtain review of her termination in state court. The district court has a basis for subject matter jurisdiction over Charchenko's § 1983 suit which does not depend upon the Minnesota state court's jurisdiction. **Section 1983 confers original federal question jurisdiction with federal district courts.** (emphasis added)

id. at 983 & 984.

9. Just like in *Charchenko*, the district court here does not need to address whether the state court had subject matter jurisdiction over the claims in order for Whitten and his co-plaintiffs to proceed. In fact, just like in *Charchenko*, this district court could proceed to determine the merits of the Whitten Plaintiffs' Sec. 1983 suit under the assumption that the Illinois state courts lack subject matter jurisdiction over these claims. As in *Charchenko*, the deprivation here of Illinois state court subject matter jurisdiction in Sec. 1983 suits does not affect this federal district court's original jurisdiction.

10. Just as in *Charchenko*, neither the state court decision here, nor the Illinois Supreme and Appellate Court cases relied on by Defendant Chard (*Geer v. Kadera*, 173 Ill.2d 398, 671 N.E.2d 692 (1996) & *Hough v. Will Cnty. Bd. Of Elections*, 338 Ill.App.3d 1092, 789 N.E.2d 795 (3d Dist. 2003)) attempt to deprive federal courts of subject matter jurisdiction over the instant Plaintiffs' Sec. 1983 suit.

11. *Geer* held that it is the electoral boards, and not the state courts, which have original jurisdiction over objections to nomination papers. *Geer*, 671 N.E.2d, and *Hough* held that Illinois courts do not have inherent authority to hear election cases, but may only exercise jurisdiction over such cases when provided for by statute. *Hough*, 789 N.E.2d at 796. These holdings are analogous to the Minnesota Supreme Court holding in *Dietz* pertaining to Charchenko.

12. Just as in *Charchenko*, the District Court here has a basis for subject matter jurisdiction over the instant Plaintiffs' Sec. 1983 suit, which does not depend on the Illinois state court's jurisdiction. Section 1983 confers original federal jurisdiction with this federal district court, as it did in *Charchenko*.

13. This Court noted in its Opinion that "The Eighth Circuit found (in *Charchenko*) that although *Rooker-Feldman* precluded plaintiff's state law claims in federal court because she had not first obtained a writ of certiorari, her Sec. 1983 claims were not barred. *See id.* at 984." (Dkt. 12 at 10)

14. Because the instant case is on all fours with *Charchenko* and there is no distinction between them, this Court should reach the same result here: that the Whitten Plaintiffs' state law claims are barred because they did not initially file an objector's petition with the electoral board, but that their Sec. 1983 claims are not barred.

15. It seems clear that this court was bothered by the egregious violations of the basic and fundamental constitutional rights that were violated by the total usurpation of the democratic election process by the actions under color of state law of the officials running the rigged and deeply flawed caucus, by this Court's statement that **"If the Plaintiffs' allegations are true, it appears there were major issues with the December 1, 2020 Rochester Township Republican Caucus."** (emphasis added) Dkt. 12 at 11.

16. Less than two months ago the Illinois Appellate Court held that federal constitutional rights were implicated by how a party township caucus, like the one Defendants mismanaged here, is run. *Somer v. Bloom Twp. Democratic Org.*, 2020 IL App(1st) 201182 at PP 22.

17. This Court has a long history of protecting the constitutional rights of citizens of the Central District of Illinois, including the First Amendment rights of panhandlers. (*Norton v. City of Springfield*, No. 15-3276, Dkts. 38 & 44).

18. This case cries out for relief from this Court, and this Court has the jurisdiction to grant such relief under the Eight Circuit's precedent in *Charchenko*.

19,. This Court should protect the democratic rights of the citizens of the Central District, exercise its clear jurisdiction and authority, and grant Plaintiffs' appropriate relief.

20.. The Plaintiffs reiterate their arguments from their previous filings and request an expedited briefing schedule and emergency hearing on this motion

PRAYER FOR RELIEF

For all the reasons set forth above and in their previous filings, the Plaintiffs respectfully request that this Court:

- A. Assume original jurisdiction over this matter;
- B. Reconsider and vacate it's prior Opinion and Judgment (Dkts. 12 & 13).

- C. Issue a temporary restraining order and/or preliminary injunction (i) enjoining the Sangamon County Clerk from certifying Darrell Maxheimer as the Republican Candidate for Rochester Township Highway Commissioner at the April 6, 2021 Consolidated Election or printing his name on said ballot as a candidate for said office; and (ii) ordering the Rochester Township Republican Central Committee to hold 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 Whittten for the Republican nomination for Highway Commissioner;
- D. Order Defendants to pay to Plaintiffs their costs and reasonable attorneys's fees under 42 U.S.C Sec. 1988(b); and
- E. Grant such other relief as this Court deems appropriate.

Respectfully submitted this 4th Day of February, 2021

/s/ DARIN WHITTEN, ET AL.,

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 5, 2021, I caused to be electronically filed the foregoing with the Clerk of Court using the CM/ECF that will send notification and by emailing it to the persons listed below with email address and by mailing them by U.S. Mail to those without emails.

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