

**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' REPLY TO DEFENDANT CHARD'S RESPONSE TO PLAINTIFFS'
EMERGENCY MOTION FOR RECONSIDERATION**

NOW COMES Plaintiffs, and, for their Reply to Defendant Chard's Response To Plaintiffs' Emergency Motion For Reconsideration (Doc. 15) state as follows:

1. Defendant Chard argued that in the instant case the Sangamon County Circuit Court determined Plaintiffs were first required to exhaust their administrative remedies prior to bringing suit in state court, and their failure to do so deprived that court of subject matter jurisdiction. Defendant Chad then asserted: "This was not the situation that the court was faced with in *Charchenko (v. City of Stillwater*, 45 F.3d 981 (8th Cir. 1995))." *Response* at 3.

2. In fact, the U.S. Distict Court in *Charchenko* was faced with almost exactly the same situation as this Court. Any differences are without distinction.

3. In this case the Sangamon County Circuit Court explained its lack of subject matter jurisdiction for both the Plaintiffs' state and federal claims thusly:

Pursuant to the Election Code, Plaintiffs are first required to raise any objections before the appropriate election board. Thereafter, Plaintiffs may seek judicial review of the Board's decision....As a result, this Court lacks jurisdiction to hear Plaintiffs complaint (containing both state and federal claims) because Plaintiffs claims are not brought pursuant to judicial review of an election board's decision.

Sang. Co. No. 20-CH-201, Order 1/5/21 (Doc. 7, Exhibit 2)

4. Similarly, in *Charchenko*, that state court dismissed Charchenko's state court complaint, containing both state and federal claims, for lack of subject matter jurisdiction because the Minnesota Supreme Court had held that a writ of certiorari was the exclusive method for a terminated public employee to obtain review of her termination in Minnesota state court. *id.* at 983.

5. In both cases the state courts held they lacked subject matter jurisdiction of both state and federal claims because the plaintiffs failed to exercise a first step they were required to take to obtain state court relief: in *Charchenko* it was filing a writ of certiorari; and in the instant case it was filing an objector's petition.

6. Thus, the situation in both cases was the same: failure to take a necessary first step blocked the state court from exercising jurisdiction over the state and federal claims, but had nothing to do with the federal court's jurisdiction over the federal claims.

7. Defendant Chard next argues that, in order for this matter to move forward this U.S. District Court must in effect overrule the Sangamon County Circuit Court

8. That is no more true here than it was in *Charchenko*, where the 8th Circuit ruled the U.S. District Court did have jurisdiction even though the state court had ruled it lacked jurisdiction of both state and federal claims because the plaintiff failed to take a necessary first step to obtain state court relief. "The divestment of state court jurisdiction does not affect the other al-

ternative available: the federal forum. Accordingly, *Rooker-Feldman* does not bar Charchenko's Sec. 1983 suit." *id.* at 964.

10. Thus, here, just like in *Charchenko*, the District Court does not in effect have to overrule the Sangamon County Circuit Court for this matter to move forward. If the US. District Court in *Charchenko* had to overrule the state court for that District Court case to move forward, it would have been barred by *Rooker-Feldman*, but the 8th Circuit held it was not. Therefore, Defendant Chard is incorrect when she asserts this Court would in effect have to overrule the Sangamon County Circuit Court for this matter to move forward.

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 its prior Opinion and Judgment (Dkts. 12 & 13).
- C. Issue a temporary restraining order and/or preliminary injunction (i) enjoining the Sangamon County Clerk from printing Darrell Maxheimer's name on the ballot as the Republican Candidate for Rochester Township Highway Commissioner at the April 6, 2021 Consolidated Election unless he gets the majority of votes in the caucus re-vote requested in below; 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 10th Day of February, 2021

/s/ DARIN WHITTEN, ET AL.,

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 10, 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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