

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

DEMOCRACY NORTH CAROLINA, THE
LEAGUE OF WOMEN VOTERS OF NORTH
CAROLINA, DONNA PERMAR, JOHN P.
CLARK, MARGARET B. CATES, LELIA
BENTLEY, REGINA WHITNEY EDWARDS,
ROBERT K. PRIDDY II, WALTER HUTCHINS,
AND SUSAN SCHAFFER,

Plaintiffs,

v.

THE NORTH CAROLINA STATE BOARD OF
ELECTIONS; DAMON CIRCOSTA, in his
official capacity as CHAIR OF THE STATE
BOARD OF ELECTIONS; STELLA
ANDERSON, in her official capacity as
SECRETARY OF THE STATE BOARD OF
ELECTIONS; KEN RAYMOND, in his official
capacity as MEMBER OF THE STATE BOARD
OF ELECTIONS; JEFF CARMON III, in his
official capacity as MEMBER OF THE STATE
BOARD OF ELECTIONS; DAVID C. BLACK, in
his official capacity as MEMBER OF THE
STATE BOARD OF ELECTIONS; KAREN
BRINSON BELL, in her official capacity as
EXECUTIVE DIRECTOR OF THE STATE
BOARD OF ELECTIONS; THE NORTH
CAROLINA DEPARTMENT OF
TRANSPORTATION; J. ERIC BOYETTE, in his
official capacity as TRANSPORTATION
SECRETARY; THE NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN
SERVICES; MANDY COHEN, in her official
capacity as SECRETARY OF HEALTH AND
HUMAN SERVICES,

Defendants,

Civil Action No. 20-cv-00457

**MEMORANDUM IN
SUPPORT OF MOTION FOR
RECONSIDERATION OF
ORDER DENYING
PROPOSED REPUBLICAN
COMMITTEE
INTERVENORS' MOTION TO
INTERVENE AND
ALTERNATIVE MOTION
FOR LEAVE TO FILE
RESPONSE AS AMICI
CURIAE TO PLAINTIFFS'
AMENDED MOTION FOR A
PRELIMINARY INJUNCTION**

and

PHILIP E. BERGER, in his official capacity as
PRESIDENT PRO TEMPORE OF THE NORTH
CAROLINA SENATE; AND TIMOTHY K.
MOORE, in his official capacity as SPEAKER OF
THE NORTH CAROLINA HOUSE OF
REPRESENTATIVES,

Intervenor-Defendants.

**MEMORANDUM IN SUPPORT OF REPUBLICAN COMMITTEES’
MOTION FOR RECONSIDERATION AND
ALTERNATIVE MOTION FOR LEAVE TO FILE AMICI CURIAE BRIEF**

INTRODUCTION

Proposed Intervenor-Defendants the Republican National Committee (“RNC”), National Republican Senatorial Committee (“NRSC”), National Republican Congressional Committee (“NRCC”), and North Carolina Republican Party (“NCRP”) (collectively the “Republican Committees”) move for reconsideration of the court’s June 24, 2020 order denying the Republican Committees’ motion to intervene. First, Defendants and the Legislative Intervenors are not organizations engaged in voter education, registration, and get-out-the-vote activities. By denying the Republican Committees’ request for intervention, there is currently no party in the case that can provide arguments in opposition to Plaintiffs League of Women Voters and Democracy North Carolina, which engage in the same activities. Second, the denial of permissive intervention was based on concern that the Committees’ participation would cause delay, even though they had timely filed a motion to intervene and committed to meeting scheduling deadlines. Accordingly, the Republican Committees urge the Court to reverse its ruling and grant them intervention in this case.

Alternatively, the Republican Committee request leave to file a response in opposition to Plaintiffs’ amended motion for a preliminary injunction as amici curiae.

BACKGROUND

On June 19, 2020, the Republican Committees moved to intervene by right and by permissive intervention in order to uphold the North Carolina election laws challenged by Plaintiffs and prevent the diversion of financial and personnel resources to address abrupt changes to voting procedures only months before an election. Mot. to Intervene at 4 (Dkt.

No. 33). As stated in their motion, the Republican Committees committed to file their response to Plaintiffs' motion by the deadline specified by the court, and represented they would not attempt to alter that schedule in any way. *See* Republican Committees' Br. at 5 (Dkt. No. 33).

On June 24, the court denied the motion to intervene on both grounds. The Court held that the Republican Committees had no right to intervention because their interest in "the current lawfully enacted requirements" would be adequately represented by the parties already in the case. Order at 4 (Dkt. No. 48). With respect to permissive intervention, the court determined that granting the Republican Committees' motion to intervene would "likely unnecessarily extend fact-finding, discovery, and evidentiary hearings, thereby resulting in inefficiencies and undue delay of the resolution of these matters." *Id.* at 7.

ARGUMENT

I. THE REPUBLICAN COMMITTEES' HAVE UNIQUE INTERESTS SUPPORTING INTERVENTION AND THEIR PARTICIPATION WILL NOT HINDER PROGRESS IN THE CASE.

Rule 54(b), which "provides that 'any order . . . that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties . . . may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.'" *Parker v. John Moriarty & Assocs.*, 221 F. Supp. 3d 1, 2 (D.D.C. 2016) (quoting Fed. R. Civ. Proc. 54(b)). Although reconsideration is not granted liberally, it is appropriate when necessary to "correct manifest errors of law or fact." *Georgia-Pacific Consumer Prods. v. Von Drehle Corp.*, 815 F. Supp. 2d 927, 929 (E.D.N.C. 2011) (quoting *Wiseman v. First Citizens Bank & Trust Co.*, 215 F.R.D. 507 (W.D.N.C. 2003)).

That standard is satisfied here. First, the Court’s order denying intervention by right misconstrued the Republican Committees’ interests in opposing Plaintiffs’ motion for a preliminary injunction. The Court denied intervention on the ground that the existing parties adequately represent the interest in “current lawfully enacted [voting] requirements.” Order at 4 (Dkt. No. 48). But as specified in their Reply and supporting Declaration, the Committees seek to preserve North Carolina’s voting laws to prevent disruption to the Committees’ “voter registration, voter education, and ‘get-out-the-vote’ (‘GOTV’) activities up to and on election day.” Those are the same activities carried out by Plaintiffs Democracy North Carolina and the League of Women Voters, and which they claim the statutes at issue suppress. Defendants and Intervenors do *not* fund or engage in such electioneering programs and cannot adequately represent the interests of the Republican Committees.

Second, although finding the Republican Committees’ request for permissive intervention timely and that their answer (filed with the motion) “shared common questions of law and fact with the main action,” the Court denied permissive intervention because their involvement might “unnecessarily extend fact-finding, discovery, and evidentiary hearings, thereby resulting in inefficiencies and undue delay of the resolution of these matters.” Order at 7 (Dkt. No. 48). But the Republican Committees committed to adhere to the schedule in the case, filed an Answer with their motion, and herewith submit a brief in opposition (tendered either as a brief in intervention or, alternatively as an amicus brief). With respect, there is no basis for the Court to question the commitment of the Republican Committees to conform to the existing schedule, or to otherwise disrupt the case. Weighing

against any minimal additional burden would be the nationwide experience with election laws and procedures the Committees' can bring to the case. Accordingly, the Republican Committees respectfully request that the Court reconsider its ruling and enter an order granting intervention in sufficient time for the Committees to participate in any hearing on Plaintiffs' motion.

II. ALTERNATIVELY, REPUBLICAN COMMITTEES REQUEST APPROVAL TO PARTICIPATE AS AMICI CURIAE.

In the event the court adheres to its order denying intervention, the Republican Committees seek leave to file the accompanying conditional friend of the court brief. The Republican Committees have substantial interests in the outcome of Plaintiffs' motion for a preliminary injunction and the litigation as a whole. The Republican Committees comprise national committees and a state political party organization of the Republican Party. Each is dedicated to supporting Republican candidates in North Carolina through fundraising, voter education and registration, get-out-the-vote drives, and other campaign activities. In light of these programs and the expenses necessary to administer them, the Republican Committees oppose Plaintiffs' amended motion for a preliminary injunction because the requested relief would create voter confusion, increase the risk of voter fraud, and require the Republican Committees to divert money, staff, and volunteer resources to communicate to voters about the proposed changes. Further, certain changes advocated by Plaintiffs (such as extending the voter registration deadline or allowing private entities to collect ballots) would directly affect the Republican Committees' electioneering efforts by requiring competitive responses. Accordingly, the Republican Committees seek to defend

the challenged North Carolina voting laws and support the Defendants and Legislative Intervenor-Defendants in this matter. Based on their decades of experience with voting activities in North Carolina and across the country, the Republican Committees have substantial expertise in political campaigns and voting practices and procedures, and their perspectives on election laws and procedures will assist the Court.

CONCLUSION

For the foregoing reasons, the RNC, NRSC, NRCC, and NCRP urge the Court to grant their motion for reconsideration and admit them as intervenors with all the rights of a defendant in this litigation. Alternatively, the RNC, NSRC, NRCC, and NCRP request permission to file the attached brief as amici curiae in accordance with the Court's June 24, 2020 order. *See* Order at 7 (Dkt. No. 48).

Dated: June 26, 2020

Respectfully submitted,

/s/ Bobby R. Burchfield
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CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.3(d)(1), the undersigned certifies that the word count for this Memorandum is 1,177 words. The word count excludes the case caption, signature lines, cover page, and required certificates of counsel. In making this certification, the undersigned has relied upon the word count of Microsoft Word, which was used to prepare the brief.

/s/ Bobby R. Burchfield
Bobby R. Burchfield

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on June 26, 2020, I electronically filed the foregoing Memorandum in Support of Republican Committees' Motion for Reconsideration and Alternative Motion for Leave to File Amici Curiae Brief with the Clerk of the Court using the CM/ECF system.

/s/ Bobby R. Burchfield
Bobby R. Burchfield