

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Civil Action No. 1:20-cv-457

DEMOCRACY NORTH CAROLINA, *et al.*, )  
 )  
 )  
 Plaintiffs, )  
 v. )  
 )  
 THE NORTH CAROLINA STATE )  
 BOARD OF ELECTIONS; *et al.*, )  
 )  
 Defendants, )  
 )  
 and )  
 )  
 PHILIP E. BERGER, etc., *et al.*, )  
 Intervenor. )

**STATE DEFENDANTS’ RESPONSE  
TO POLITICAL COMMITTEES’  
MOTION TO RECONSIDER  
[DE 52]**

**NOW COME** defendants—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, Jeff Carmon III, and David C. Black, in their official capacities as Members 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 (collectively “the State defendants”)—and hereby respond to the Motion to Reconsider filed on 26 June 2020 by the Republican National Committee (“RNC”), the

National Republican Senatorial Committee (“NRSC”), the National Republican Congressional Committee (“NRCC”), and the North Carolina Republican Party (“NCRP”) (collectively the “Political Committees”). [DE 52].

Plaintiffs filed this action on 22 May 2020. Through it, they challenge various provisions of North Carolina election law, alleging that in the context of the COVID-19 pandemic, those election law provisions infringe on their rights under the United States Constitution and federal statutes. Plaintiffs filed their First Amended Complaint [DE 8] and their Motion for Preliminary Injunction [DE 9] on 5 June 2020.

On 10 June 2020, President *Pro Tempore* of the North Carolina Senate, Phillip E. Berger, and Speaker of the North Carolina House of Representatives, Timothy K. Moore, (collectively “the legislative intervenors”) moved to intervene in this action. [DE 16] The State defendants did not take a position on the legislative intervenors’ motion. [DE 23] The Court granted the legislative intervenors’ motion on 15 June 2020. [DE 26]

On 18 June 2020, plaintiffs, with the consent of the State defendants and the legislative intervenors, filed their Motion for Leave to File a Second Amended Complaint. [DE 27] The Court granted the motion that same day [DE 29], whereupon plaintiffs filed their Second Amended Complaint [DE 30] and their Amended Motion for Preliminary Injunction. [DE 31] Soon after, also on 18 June 2020, the Political Committees filed their Motion to Intervene. [DE 32]. The Motion to Intervene was denied by Order dated 24 June 2020. [DE 48]. On 26 June 2020, the Political Committees filed a Motion for Reconsideration and Alternative Motion for Leave to File Amici Curiae Brief. [DE 52]. Plaintiffs filed their Response to the Political Committees Motion to Intervene on 28 June

2020. [DE 55].

For the following reasons, the State defendants oppose the Political Committees' Motion to Reconsider.

### ARGUMENT

#### **I. THE POLITICAL COMMITTEES ARE ATTEMPTING TO RELITIGATE PREVIOUS ARGUMENTS REJECTED BY THIS COURT IN THE DENIAL OF PLAINTIFFS' MOTION TO INTERVENE.**

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.” Fed. R. Civ. P. 54(b). District courts in the Fourth Circuit, in analyzing the merits of a Rule 54 motion, look to the standards of motions under Rule 59 for guidance. *See Ashmore v. Williams*, No. 8:15-cv-03633, 2017 U.S. Dist. LEXIS 234, 2017 WL 24255, at \*2 (D.S.C. Jan. 3, 2017) (collecting cases). Pursuant to Rule 59, reconsideration under Rule 54(b) is appropriate on the following grounds: (1) to account for an intervening change in controlling law; (2) to account for newly discovered evidence; or (3) to correct a clear error of law or prevent manifest injustice. *See Beyond Sys., Inc. v. Kraft Foods, Inc.*, No. PJM-08-409, 2010 U.S. Dist. LEXIS 78689, 2010 WL 3059344, at \*2 (D. Md. Aug. 4, 2010). However, a motion to reconsider an interlocutory order should not be used to rehash arguments the court has already considered merely because the movant is displeased with the outcome. *See Ashmore*, 2017 U.S. Dist. LEXIS 234, 2017 WL 24255, at \*3; *Sanders v. Wal-Mart Stores E.*, No. 1:14-cv-03509-JMC, 2016 U.S. Dist. LEXIS 143250, 2016 WL 6068021, at \*3

(D.S.C. Oct. 17, 2016) (citing *U.S. Home Corp. v. Settlers Crossing, LLC*, No. DKC 08-1863, 2012 U.S. Dist. LEXIS 150160, 2012 WL 5193835, at \*3 (D. Md. Oct. 8, 2012)). Nor should such a motion be used to raise new arguments or evidence that could have been raised previously. See *Nationwide Mut. Fire Ins. Co. v. Superior Solution, LLC*, No. 2:16-cv-423-PMD, 2016 U.S. Dist. LEXIS 155998, 2016 WL 6648705, at \*2 (D.S.C. Nov. 10, 2016); *Regan v. City of Charleston*, 40 F. Supp. 3d 698, 701 (D.S.C. 2014).

Here, the Political Committees offer no change in controlling law or newly discovered evidence to support reconsideration of the denial of their Motion to Intervene. For the reasons stated in State defendants' previous Response to Motion to Intervene, State defendants continue to oppose intervention by the Political Committees. State defendants are at the Court's pleasure as to whether the Political Committees should be allowed to file an amicus brief.

## CONCLUSION

For the foregoing reasons, the Political Committees' Motion to Reconsider should be denied.

This the 29<sup>th</sup> day of June, 2020.

JOSHUA H. STEIN  
Attorney General

/s/ Alexander McC. Peters  
Alexander McC. Peters  
N.C. State Bar No. 13654  
Chief Deputy Attorney General  
Email: [apeters@ncdoj.gov](mailto:apeters@ncdoj.gov)

Kathryne E. Hathcock  
N.C. State Bar No. 33041  
Assistant Attorney General  
Email: [khathcock@ncdoj.gov](mailto:khathcock@ncdoj.gov)

N.C. Dept. of Justice  
Post Office Box 629  
Raleigh, NC 27602  
Telephone: (919) 716-6900  
Facsimile: (919) 716-6763

**CERTIFICATE OF WORD COUNT**

Pursuant to Local Rule 7.3(d)(1) and the Order entered by the Court on 11 June 2020 [DE 21], the undersigned counsel hereby certifies that the foregoing Memorandum, including body, headings, and footnotes, contains 862 words as measured by Microsoft Word.

This the 29th day of June, 2020.

/s/ Alexander McC. Peters  
Alexander McC. Peters  
Chief Deputy Attorney General