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

THE CITY OF GREENSBORO Plaintiffs, v. THE GUILFORD COUNTY BOARD OF ELECTIONS, et al., Defendant, MELVIN ALSTON, et al., Defendant-Intervenors.	)	1:15CV559

ORDER

This case is before the court upon Senator Robert A. Rucho, Senator Trudy Wade, Representative John Faircloth, Representative Jon Hardister, Representative Charles Jeter, Representative Tim Moore, Representative David Lewis, and Attorney Erika Churchill's (collectively, "Legislative Respondents") motion for reconsideration. (Docket Entry 92.) For the reasons that follow the court has concluded that the motion should be denied.

While not specifically providing for a motion for reconsideration, the Federal Rules of Civil Procedure Rule 59(e) provides for a motion to alter or amend an order or judgment. Fed. R. Civ. P (59)(e); *McGhee v. Aetna Life Ins. Co.*, No. 3:13-CV-00481-MOC-DS, 2015 WL 509844, at *1 (W.D.N.C. Feb. 6, 2015) (applying test for amending an earlier judgment pursuant to Rule 59(e) to the plaintiff's motion to reconsider); *DIRECTV, INC. v. Hart*, 366 F. Supp. 2d 315, 317 (E.D.N.C. 2004) ("The Federal Rules of Civil Procedure do not specifically address motions to reconsider, although such motions are common in federal

practice.") (internal citations omitted). Since Legislative Respondents' motion seeks to alter the September 8 order, the motion will be treated as one pursuant to Federal Rule 59(e).

A Rule 59(e) motion or motion for reconsideration may not be used to re-litigate the same matters already determined by the court in an earlier order or judgment. *See Dale & Selby Superette and Deli v. United States Dep't of Agric.*, 838 F. Supp. 1346, 1347-48 (D. Minn. 1993). Nor is a Rule 59(e) motion or motion for reconsideration appropriate merely because the movant disagrees with the court's application of the law in a previous order or judgment. *Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir.1993); *McGhee v. Aetna Life Ins. Co.*, No. 3:13-cv-00481-MOC-DSC, 2014 WL 509844, at *4 (W.D.N.C. Feb. 6, 2015). A Rule 59(e) motion or motion for reconsideration may be granted (1) to accommodate intervening change in the law, (2) to account for new evidence not available at trial, (3) to correct clear error of law, or (4) to prevent manifest injustice. *See EEOC v. Lockheed Martin Corp.*, 116 F. 3d 110, 112 (4th Cir. 1997). Having carefully considered Legislative Respondents' motion for reconsideration and the September 8 order, the court finds that none of the foregoing grounds for relief are applicable with respect to the September 8 order, and that Legislative Respondents are not entitled to any relief with respect to such order. Legislative Respondents do not contend that any factors listed above are present. Legislative Respondents assert that producing the privilege log will place an undue burden on them and "will also chill legislative action over concern that communications meant to be confidential . . . could be subpoenaed." (Docket Entry 93 at 3-9.) The court finds Legislative Respondents' arguments unpersuasive. Many state legislators and staff members have been compelled to file a privilege log or produce documents directly to a plaintiff. *Bethune-Hill v. Virginia State Bd.*

of Elections, 114 F. Supp. 3d 323, 345 (E.D. Va. 2015) (requiring information allegedly protected by the legislative privilege to be produced for in camera inspection); *Favors v. Cuomo*, 285 F.R.D. 187, 199 (E.D.N.Y. 2012) (same); *Baldus v. Brennan*, No. 11-CV-1011 JPS-DPW, 2011 WL 6122542, at *1 (E.D. Wis. Dec. 8, 2011), *order clarified*, No. 11-CV-1011 JPS-DPW, 2011 WL 6385645 (E.D. Wis. Dec. 20, 2011) (denying the defendants' motion to quash the plaintiffs' request for information from a legislative aide of the Wisconsin State Senate Majority Leader regarding a redistricting plan); *Rodriguez v. Pataki*, No. 02 CIV. 3239RMBFM, 2003 WL 22109902, at *2 (S.D.N.Y. Sept. 11, 2003), *aff'd*, 293 F. Supp. 2d 313 (S.D.N.Y. 2003) (reviewing documents regarding the development of the Senate majority redistricting plans for in camera inspection); *United States v. Irvin*, 127 F.R.D. 169, 170 (C.D. Cal. 1989) (granting the plaintiff's motion to compel "communications occurring between the [County Board of] Supervisors and their staff members during non-public meetings immediately preceding the plan's adoption"). Legislative Respondents shall produce the requested documents for in camera inspection as well. Thus, Legislative Respondents' motion for reconsideration is denied.

The court further notes that a privilege log will be found insufficient if it "lack[s] the information necessary to determine whether a privilege applies." *Rambus, Inc. v. Infineon Techs. AG*, 220 F.R.D. 264, 273 (E.D. Va. 2004); *Favors*, 285 F.R.D. at 222 ("In assessing the adequacy of privilege logs, courts ask whether, as to each document, the privilege log sets forth specific facts that, if credited, would suffice to establish each element of the privilege) (internal citation and quotation omitted). "In that regard, a notation that merely indicates that a document relates to redistricting issues is insufficient." *Bethune-Hill*, 114 F. Supp. 3d at 345.

The court notes that it initially instructed Legislative Respondents to submit the privilege log within 30 days of the motion hearing held on September 8, 2016. The court now instructs Legislative Respondents to provide the privilege log to the undersigned within 14 days of this order.

IT IS SO ORDERED that Legislative Respondents' motion for reconsideration (Docket Entry 92) be **DENIED** and that Legislative Respondents provide the privilege log to the undersigned within 14 days of this order.

This 1st day of November, 2016.

Joe L. Webster
United States Magistrate Judge