

IN THE SUPREME COURT OF OHIO

STATE *ex rel.* THE CITY OF
NELSONVILLE, OHIO, et al.

Relators,

v.

THE ATHENS COUNTY BOARD
OF ELECTIONS, et al.

Respondents.

Case No. 2025-1061

Original Action in
Mandamus and Prohibition

Expedited Election Matter
Under S.Ct.Prac.R.12.08

RELATORS' MOTION FOR RECONSIDERATION

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This Court's August 2019, 2025, Merit Decision appears to have been made in error, based on a miscalculation of the operative deadline. As such, Relators, the City of Nelsonville, Ohio and the Nelsonville City Council (together "Nelsonville"), by and through counsel, respectfully request reconsideration pursuant to S.Ct.Prac.R. 12.08(B) and 18.02 of the Court's August 19, 2025 Merit Decision Without Opinion, dismissing this case for failure to prosecute. *See 08/19/2025 Case Announcements # 4, 2025-Ohio-2957.* A Memorandum in Support is attached hereto.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

*Justice is served by the consistent and methodical application of the law.*¹

This cause was dismissed in violation of Rule 3.03(B)(2)(b)(iii). To be sure, the Court dismissed this action because Relators did not file a merit brief by August 18, 2025. But with respect, *that was not the deadline under the Rules*. Once Relators filed a timely request for extension, the August 18 deadline was “automatically” extended until this Court ruled on the request. *See* Rule 3.03(B)(2)(b)(iii). So, when this Court denied the extension request on August 19, under the Rules, *that was the deadline to file. Id.* However, Relators were prevented from filing their brief within the actual deadline because this Court dismissed the entire case, in the same order it denied the extension request. And filing a brief at that point, post dismissal, would have been against the Rules.

This Court holds litigants and their attorneys to strict standards when it comes to the Rules of Practice, especially in expedited cases. And rightfully so because as this Court has cautioned the preamble to those Rules warns us all that “to ensure compliance with the rules, the ***complete text of the relevant rules*** should also be reviewed before documents are submitted for filing.” *Snyder v. Capizzi, 07/24/2024 Case Announcements # 2, 2024-Ohio-2782, ¶ 6* (Kennedy, C.J., concurring) (emphasis

¹ *See Ricksecker v. Thomson, 2022-Ohio-4798, ¶ 14* (Kennedy, Fisher, and DeWine, JJ., dissenting) (discussing the importance of applying the Rules of Practice consistently) (cleaned up).

added); *see also Berkheimer v. REKM, L.L.C.*, 2024-Ohio-5741, ¶ 8 (Fischer, J., concurring) (discussing the importance of strictly applying the Rules of Practice).

But a consistent application is the necessary bookend to that strict standard. *See Ricksecker*, at ¶ 14 (Kennedy, Fisher, and DeWine, JJ., dissenting); *Brandt v. Pompa*, 168 Ohio St.3d 1489, 2022-Ohio-4786, 200 N.E.3d 286, ¶ 9 (Fisher J., dissenting) *see also State ex rel. Brown v. Yost*, 2024-Ohio-3025, ¶ 25 (Brunner J., dissenting) (discussing the consequences of even the perceived inconsistent application of the Rules).

Relators followed the Rules. To the letter. And at every stage Relators exercised the utmost diligence. This dismissal should be reconsidered because Relators respectfully submit that it rests on an erroneous foundation contrary to this Court's Rules of Practice. And even if Relators have misinterpreted the Rules or made some micro-technical mistake, justice still demands reconsideration. On review, the application of the Rules used here is inconsistent with how this Court has approached these issues in the past.

STANDARD FOR RECONSIDERATION

*Reconsideration exists for a very good reason; we should not employ it lightly, but we neglect our duty if we do not employ it to right wrongs when necessary.*²

Motions for reconsideration are governed by S.Ct.Prac.R. 18.02. Motions for reconsideration in expedited election cases are expressly permitted within three days of a decision. *See* S.Ct.Prac.R. 12.08(B). A Motion for Reconsideration should be

² *State v. Gonzales*, 2017-Ohio-777, ¶ 20 (DeWine, J., concurring) (emphasis added).

granted to “correct decisions which, upon reflection, are deemed to have been made in error.” *Berkheimer*, at ¶ 2 (Fischer, J., concurring) (citing *State ex rel. Ohio Presbyterian Retirement Servs., Inc. v. Indus. Comm.*, 2017-Ohio-7577, ¶ 2). And it is the duty of this Court to grant reconsideration when something was wrongly decided. *See State v. Gonzales*, 2017-Ohio-777, ¶ 20 (DeWine, J., concurring)

Further, this Court routinely grants reconsideration, even sua sponte, when it recognizes a case has erroneously been dismissed for a *perceived* failure to prosecute. *See State ex rel. Baker v. Allen Cty. Sheriff's Office*, 2024-Ohio-1994; *State v. Cruz*, 2025-Ohio-2217.

THE GROUNDS FOR RECONSIDERATION

Relators followed the Rules and exercised the utmost diligence here. On the surface, this reads like a straightforward deadline computation error that merits an uncontroversial reconsideration under this Court’s Rules. However, Relators are cognizant that the Court’s Order dismissed the cause for missing a deadline and further found that they have “therefore failed to prosecute this cause with the requisite diligence.” *See 08/19/2025 Case Announcements # 4*, 2025-Ohio-2957.

On review, the “requisite diligence” language included in the Order is not strictly speaking, part of this Court’s standard dismissal for want of prosecution. But that language is very familiar in election related matters. Thus, out of an abundance of caution, Relators address the deadline and diligence issues separately.

I. Relators complied with the Court’s Rules and did not miss their deadline to file a merit brief.

A. Under the Rules of Practice Relators’ merit brief was originally due August 18, 2025.

Nelsonville filed this original action in mandamus and prohibition on Wednesday, August 13, 2025, under the Court’s expedited elections rules since the election at issue was within 90 days. (*See generally* Ver. Compl. for Mandamus and Prohibition). On Friday, August 15, 2025, Respondent, the Athens County Board of Elections, filed its answer. (*See generally* Ans. of Resp.).³

Post-answer, Relators had three days to file evidence and a brief. S.Ct.Prac.R. 12.08(A)(2)(a). So, under the Rules, the original due date for any merit brief was Monday, August 18, 2025. *Id.* at 12.08(A)(2)(a). Under the relevant e-filing Rules, Relators had until 11:59:59 pm to file that material. *Id.* at 3.03(A)(1),

B. On August 18, 2025, Relators filed a request for an extension of their deadline.

On Sunday August 17, 2025, Ms. Andrea Hashman filed a Motion to Intervene and Proposed Answer. (*See generally* Mot. to Intervene as Resp.; Proposed Ans.). That Motion hit the docket at 8:40 am the next day, August 18, 2025. (*Id.*). At 12:36 pm, this Court instructed Nelsonville and the Athens County Board of Elections to “file a response, if any, to Andrea Nicole Thompson Hashman’s motion to intervene as respondent no later than 1:00 p.m. on Tuesday, August 19, 2025.” *08/18/2025 Case Announcements # 2, 2025-Ohio-2938.*

³ Notably, the Answer admitted nearly all of Relator’s factual allegations.

Twenty-four minutes later, the docket reflected Nelsonville and Athens County Board of Elections’ joint notice indicating that they did not intend to oppose the intervention. (*See* Joint Notice at 2). Relators anticipated this issue, and understanding the diligence with which the Court expects in these matters, Relators had submitted the joint notice at 12:26 pm—ten minutes before they received, or were aware of, the Court’s Order to address this issue. (*See generally id.*).

In that same document—filed August 18, 2025—Relators requested an extension of the deadline to file their brief, specifically seeking “three days to file Evidence and a Brief from the date the Court rules on the Motion to Intervene...” (*Id.* at 2). At 3:50 pm on August 18, 2025, the Court ordered that “proposed intervenor shall file a response, if any, to the request to establish a modified briefing schedule no later than 9:00 a.m. on Tuesday, August 19, 2025.” *See 08/18/2025 Case Announcements # 3, 2025-Ohio-2948*. The same day, Proposed Intervenor filed a notice that she did not object to the proposed schedule. (*See* Hashman Resp. to Court Order). The Court took no further action on the request on August 18, 2025. Stated differently, Relators’ request for an extension remained pending into August 19, 2025.

C. Relators’ request for an extension automatically extended the original August 18, 2025, deadline until the Court ruled on the request.

Understandably, this Court does not allow stipulated extensions of time in expedited election cases. S.Ct.Prac.R. 3.03(B)(2)(a)(i). Instead, parties may request one extension, not to exceed 10 days, for good cause so long as that request is filed “within the time prescribed by the rules for filing the brief...” *Id.* at 3.03(B)(2)(b)(i).

Here, such a request was timely made—at 12:50 pm on August 18, 2025—eleven hours and nine minutes before any brief was due under the relevant Rules. Under this Court’s Rules, in an expedited election case, a request for an “extension of time ***automatically*** extends the time for filing the document for which the extension is sought *until the Supreme Court rules on the request.*” *Id.* at 3.03(B)(2)(b)(iii) (emphasis added).

Here, this Court denied the request for an extension on August 19, 2025. *See 08/19/2025 Case Announcements #4, 2025-Ohio-2957.* In doing so, the Court also found that Relators failed to file “a merit brief, due August 18, 2025.” *Id.* But the August 18 deadline had been automatically extended pursuant to the Rules. *See S.Ct.Prac.R. 3.03(B)(2)(b)(iii).* In denying the request on August 19, the Court ended the automatic extension afforded by Rule 3.03(B)(2)(b)(iii) on that day, not the day before, while it was still pending.

But instead of applying Rule 3.03(B)(2)(b)(iii), On August 19, this Court imposed an already passed August 18 deadline. Relators had no notice and no recourse—other than requesting reconsideration. Absent more specific instructions from the Court, the deadline upon denial of the requested extension should have been 11:59:59 pm on the day of denial, August 19. *See id.* But Relators were denied that opportunity because the same order that denied the requested extension also dismissed the cause for failure to comply with the backdated deadline. *See 08/19/2025 Case Announcements #4, 2025-Ohio-2957.*

To be clear, Relators would have filed their evidence and merit brief on August 19, by 11:59:59 pm, had the Court just denied the requested extension that day. Indeed, the only reason that Relators have not already submitted the material is because now that the Court has issued a merit decision *submission would be against the Rules*. See S.Ct.Prac.R. 3.02(B). Even attaching the brief as an exhibit to this motion is improper at this stage. See *State v. Green*, 81 Ohio St.3d 1519 (1998)(striking an attached merit brief to a motion for reconsideration).

Given the above, Relators respectfully submit that they have complied with the Rules of Practice and that any dismissal for want of prosecution was premature, and contrary to the Rules. Accordingly, Relators respectfully request reconsideration.

D. Even if Relators misinterpret the Rules, reconsideration should still be granted.

Relators have made every good faith effort to follow the Rules here. Yet, Relators allow for the possibility that the mistake here is their own, perhaps in some inadvertent misinterpretation of those Rules along the way. But if that is the case, Relators respectfully submit reconsideration should still be granted because their interpretation of the Rules was reasonable and this Court has not applied the Rules in such a harsh manner before. Relators here deserve the same consideration under the Rules that this Court has given past litigants. After all, *that is what justice demands*. *Ricksecker*, 2022-Ohio-4798, ¶ 14.

To begin, as this Court has often held, “[t]he spirit of our Rules of Practice, much like the Rules of Civil Procedure, is the resolution of cases upon their merits...” *State ex rel. Crossman Communities of Ohio v. Greene Cty. Bd. of Elections*, 87 Ohio

St.3d 132, 135 (1999) (overturned in part on unrelated ground) (citation omitted). In *Crossman*, this Court rejected the notion that an expedited election case should be dismissed for want of prosecution after a missed filing deadline under a strict interpretation of the Rules where the relators had a reasonable interpretation of the same rule. *Id.* The facts of that case were unique, as they are here, but the point stands.

And on a review of more recent cases, this Court has not typically addressed the issue of missed deadlines in the manner it has here. Even in expedited election cases. Two examples from last year's election cycle are illustrative of this point. In *State ex rel. Dennis W. Schreiner v. Erie County Board of Elections*, an expedited election case filed 69 days before the March primary, this Court sua sponte ordered the respondent to file their answer by January 16, 2024, and that the rest of the deadlines follow per the Rules. *See 01/11/2024 Case Announcements # 3, 2024-Ohio-91*. The respondents filed early on Friday, January 12, 2024. (Ans. of Resp., 2024-0052). And so, per the strict construction of the Rule, which was further reinforced by order of this Court, a brief was due three days later, on the following Monday. *See 01/11/2024 Case Announcements # 3, 2024-Ohio-91; S.Ct.Prac.R. 12.08(A)(2)(a)*. Yet no brief was filed until a day later, on Tuesday, January 16, 2024. The late filing stood, and this Court heard that case. *See generally State ex rel. Schreiner v. Erie Cnty. Bd. of Elections, 2024-Ohio-290*.

Similarly, in *State ex rel. City of New Carlisle v. Clark County Board of Elections*, relator filed an expedited election case 82 days before the May primary.

(Ver. Compl. for Mandamus, 2025-0247). Relator then filed an amended complaint, which respondents answered the next day. (Ans. of Resps. to Am. Compl., 2025-0247). Without moving for leave, or any extension of time, relator filed its merit brief *four days* after respondents’ answer—one day out of Rule. (Rel. Merit Brief, 2025-0247); see S.Ct.Prac.R. 12.08(A)(2)(a). Again, the late filing stood, and this Court heard that case. *See generally State ex rel. New Carlisle v. Clark Cnty. Bd. of Elections*, 2025-Ohio-814.

Relators acknowledge that this Court’s interpretation of its own rules trumps Relators’ to the extent they differ. And if Relators did make a mistake here, they humbly and earnestly apologize to the Court, while also asking for equal treatment and consideration under the Court’s interpretations of the Rules.

II. Relators prosecuted this case with the utmost diligence and made every effort to present this issue to the Court in a concise and orderly fashion.

The term “requisite diligence” does not, itself, appear in this Court’s Rules of Practice. Yet, the Court found that Relators failed to prosecute this case with the requisite diligence required. And that term is very familiar in election cases. Accordingly, and out of an abundance of caution, Relators briefly, and separately address their diligence here. Relators respectfully submit that they acted with the utmost diligence in prosecuting this action.

Apart from the Court’s Rules, this Court has repeatedly held that “[e]xtreme diligence and promptness are required in elections related matters.” *State ex rel. Ohio Democratic Party v. LaRose*, 2024-Ohio-4953, ¶ 22 (quoting *State ex rel. Clark v.*

Twinsburg, 2022-Ohio-3089, ¶ 11). This analysis most frequently comes up in the context of laches. *Id.* And for a finding of laches to bar an expedited election matter under this Court’s precedent, there must be “prejudice to the opposing party” and “the prejudice must be material.” *Id.* Here, Relators respectfully submit there is no prejudice. Specifically, both Respondent and the proposed Intervenor consented to the extension requested by Relators.

Moreover, Relators here have prosecuted this action with *more diligence* than this Court usually requires. In fact, *State ex rel. Shawn P. Valentine v. Fritz Schoen*, provides an illustrated example of how the timing at play here is nonprejudicial, and how a reasonable timeline for adjudication in this matter is still easily achievable. That case stands out because it was filed on August 14, 2024—one year and one day before this case was filed. In that matter, relators’ merit brief was not filed until August 26, 2024. (*See* Docket, 2024-1174).

And as it happens, the merit brief in that matter was also filed a day late, without any pending motion for extension or leave of court. (*See* Docket, 2024-1174). Yet, this Court did not find the relators in that matter lacked diligence, instead, the matter was fully submitted to the Court by August 30, 2024, and this Court issued a Decision. That timeline is achievable here.

And the reason that this case was on a much faster track than *Valentine*, was because of Relators’ diligence. Indeed, at every stage, Relators worked to get service on the appropriate parties and coordinate with the parties as new developments

presented themselves, so that this case could be presented to the Court in the most concise, organized, and efficient fashion possible.

Granted, this may not be apparent from the docket because much of it was done in coordination before things were brought to the Court. On the day that Relators filed this matter, the undersigned emailed a service copy to counsel for Respondent Athens County Board of Elections. (See Aug. 13, 2025 service email from T. Spyker, attached hereto as Ex. A). Respondent filed its answer quickly, the same day counsel began coordinating on a joint stipulation of facts that Relators could file with their merit brief.

Notably, the Rules do not require such informal expedited service of the initial petition. See Rule 12.08(C) (excluding initiating documents from expedited service requirements). Notably, the formal service of summons was achieved on August 19, 2025, the same day this Court dismissed the case. Ironically, had Relators not informally served the petition; their case would likely still be active, and would be waiting on an Answer.

Relators respectfully submit that they prosecuted this matter with the utmost diligence. They should not be penalized for that.

CONCLUSION

At bottom, Relators made every effort to prosecute this case in a diligent and orderly fashion under this Court's Rules. Relators respectfully ask for reconsideration. But if the Court still finds some fault here, the undersigned earnestly and respectfully asks for a published decision explaining that fault in more

detail because it appears from the Court's decision it is taking a fundamentally new approach than it has in prior similar cases, even very recent ones.

Respectfully submitted,

/s/ Thomas N. Spyker

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Counsel for Relators

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on counsel for Respondents pursuant to Supreme Court Rule of Practice 12.08 on August 21, 2025.

/s/ Thomas Spyker
Thomas N. Spyker (0098075)

From: [Thomas N. Spyker](#)
To: [Timothy Warren](#)
Cc: [Jonathan Robe](#); [Mrinali Sethi](#); [Chloe E Schelhaas](#); [T'Lisa Dent](#);
Subject: Emergency Election Mandamus Filed
Attachments: [Writ of Mandamus Combined for Filing.pdf](#)
Sent: 8/13/2025 5:21:52 PM



TL,

Following up on the call we just had, here is a service copy of the mandamus we just filed. Because we filed it after 5:00 pm, I do not immediately have the timestamped copy, but we will forward that first thing in the morning.

Please do not hesitate to call my cell with any questions or concerns.

Best,

-Tom

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