

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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Counsel for Relators

This Court's September 17, 2025 Merit Decision denying mandamus relief rests on an erroneous foundation that Nelsonville did not point to a statutory duty imposed on the Athens County Board of Elections. Nelsonville did—its own ordinance. This Court appears to have failed to consider that argument. For the reasons outlined in the following Memorandum, it should have. And thus, Relators, the City of Nelsonville, Ohio and the Nelsonville City Council (together "Nelsonville"), by and through counsel, respectfully request reconsideration of the mandamus claim pursuant to S.Ct.Prac.R. 12.08(B) and 18.02.

Respectfully submitted,

/s/ Thomas N. Spyker

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*Counsel for Relators*

## **MEMORANDUM IN SUPPORT**

With respect, the Court neglected to analyze its own well-established and long-standing precedent in reaching its decision. To be sure, the Court's decision denying mandamus was based upon a finding that "Nelsonville points to no statutory authority" which required the Board of Elections to remove elections for statutory offices at this stage. *See* 2025-Ohio-4363, ¶13. But this Court has repeatedly held that city ordinances have statutory duties which can create an obligation for mandamus relief. *See State ex rel. Bedford v. Bd. Of Elections*, 62 Ohio St.3d 17, 21 (1991). In fact, under the Ohio Constitution, municipal ordinances carry *greater* weight in creating these duties because they trump any conflicting Revised Code sections. *Pennington v. Bivens*, 2021-Ohio-3134, ¶ 11.

Here, Nelsonville repeatedly pointed to Ordinance 54-25 as the source of the statutory duty imposed on the Board of Elections. But despite that argument, and this Court's longstanding prior precedent, the Court did not consider 54-25 as the potential statutory enactment requiring mandamus relief. The practical result is that on January 1, 2026, the Nelsonville agencies—including the police department—will likely be unsure as to who to take direction from: the current Charter City Council or the government that is on the ballot in November. To be clear, with 54-25 in place, the statutory elections are illegal under Nelsonville's law, and the charter positions would continue until properly replaced. *See* R.C. 3.01. So, after the election, and absent some action here, there will be two competing governments purporting authority in Nelsonville.

The City—*an institution that must survive in one form or another*—does not seek reconsideration just to reargue a case that it lost. Nelsonville seeks reconsideration because it properly framed a legal question this Court should engage with and answer. All the parties here (and more importantly the nearly 5,000 citizens of Nelsonville) deserve clear and final certainty in the upcoming election and the future of their local government after that election.

At bottom, this Court has also been clear that *when a material issue was not fully considered* reconsideration is proper. *State v. Braden*, 2019-Ohio-4204, ¶36 (Kennedy, J. dissenting). Here, Ordinance 54-25 *is the material issue to consider*, and it is properly framed in mandamus for the Court to consider it. And since 54-25 was not considered, this Motion should be granted.

Respectfully submitted,

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### **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 September 19, 2025.

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