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COURT OF APPEALS

NOV 6 2008

TINA M. MERANDA  
BROWN COUNTY CLERK OF COURTS

IN THE TWELFTH DISTRICT COURT OF APPEALS  
BROWN COUNTY, OHIO

STATE OF OHIO, ex rel	)	CASE NO. CA2008-09-06
DENNIS J. VARNAU,	)	
	)	ACCELERATED CALENDAR
Relator/Appellant,	)	
	)	APPELLANT'S MOTION FOR
-vs-	)	RECONSIDERATION
	)	
BROWN COUNTY BOARD OF	)	
ELECTIONS,	)	
	)	
Respondent/Appellee.	)	

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Now comes the Appellant, by and through counsel, pursuant to Ohio R. App. P. 26(A), and moves this Court to reconsider the Opinion filed in this case on October 29, 2008. This Motion calls to the Court's attention an obvious error in its decision, *or* raises an issue for consideration that was either *not considered at all* or *not fully considered* when it should have been. Mathews vs. Mathews (1981), 5 Ohio App.3d 140, 143. Counsel would be remiss in his duties to the Appellant and the Court to not bring such matters to the Court's attention. Reconsideration is requested for the following reasons.

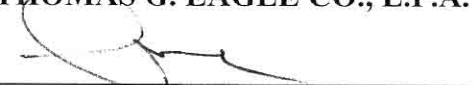
The Court will recall the issue in this case, as decided by the Court, was the adequacy of another remedy alternative to mandamus, if, as this Court put it, this Appellant did not prevail in the November 4 election (he did not). The Court determined there was some other adequate remedy. The Ohio Supreme Court though recently decided State ex rel Deiter vs. McGuire, 119 Ohio St.3d 384, 2008-Ohio-4536 (decided September 18, 2008, and reported at OSBA Report Vol. 81 #43 (Oct. 27, 2008)). In this very recent case several members of a police department filed, at the same time, a *quo*

*warranto* action to remove their police chief, saying the chief was improperly appointed because the City and the Civil Service Commission improperly suspended civil service testing to allow that appointment, and therefore he could not lawfully hold that office; and at the same time filed for a writ of *mandamus* to compel compliance with the testing laws. The case was dismissed on 12(B)(6), the Court finding an adequate remedy at law, etc., as did this Court in this case. The Ohio Supreme Court reversed, holding that there *was no adequate remedy* because the alternatives were not as secure, as timely, etc., and sent the matter back for a trial on the writs. *Id.* at ¶ 24-27. Although those petitioners in fact were simultaneously filing other writs and in fact for declarations and injunctions, nonetheless because of the special setting of employment with public office, mandamus was nonetheless appropriate. Every argument raised here as to why mandamus was not the proper remedy was soundly rejected. There is no more adequate remedy here.

Further, this case is not moot, as a determination that the opponent should not be on the ballot at all, the ultimate determination that was requested, even if determined after the election, can be the grounds for an invalidation of the election, even after the fact. See In Re Election Contest of Democratic Primary Election Held May 4, 1999 (1999), 87 Ohio St.3d 118, 120-121 (dismissal of election contest filed against the May 4, 1999, primary election, reversed and remanded, four months after the election).

WHEREFORE, the Court should reconsider its opinion, reverse the trial court, and either grant the Writ or remand for further proceedings.


**THOMAS G. EAGLE CO., L.P.A.**

  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing was served upon Mary McMullen, Attorney for Respondent/Appellee, 200 East Cherry Street, Georgetown, Ohio, 45121, by ordinary U.S. mail this 6<sup>th</sup> day of November 2008.

  
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**Thomas G. Eagle** (0034492)