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IDAHO SUPREME COURT
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ORIGINAL

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE VERIFIED)	
PETITION FOR WRIT OF MANDAMUS.)	Supreme Court Docket
-----)	No. 43169-2015
COEUR D'ALENE TRIBE,)	
)	Ref. 15-249
Petitioner,)	
)	
vs.)	
)	
LAWRENCE DENNEY, Secretary of State)	
of the State of Idaho, in his official capacity,)	
)	
Respondent.)	

**RESPONDENT'S ANSWER TO VERIFIED PETITION
FOR WRIT OF MANDAMUS**

FILED - ORIGINAL

JUN 10 2015

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

FIRST DEFENSE

Respondent Lawrence Denney answers the Verified Petition for Writ of Mandamus (“Petition”) as follows:

1. The “Introduction” to the Petition is legal narrative that requires no answer.
2. Respondent admits in answer to paragraph 1 that this Court has jurisdiction to entertain petition for writs of mandamus in original proceedings. He takes no position as to whether such jurisdiction should be exercised in this matter.
3. Respondent takes no position as to paragraphs 3 through 5.
4. Respondent admits the first two sentences of paragraph 6. He is without knowledge as to the remaining allegations in such paragraph and therefore can neither admit nor deny them.
5. Respondent admits paragraph 7.
6. Respondent admits paragraphs 8 through 10.
7. Respondent admits in answer to paragraph 11 that litigation occurred over the scope of gaming permissible under Idaho law for purposes of the Indian Gaming Regulatory Act but affirmatively alleges that such dispute was resolved conclusively in *Coeur d’Alene Tribe v. Idaho*, 842 F. Supp. 1268 (D. Idaho 1994), *aff’d*, 51 F.3d 876 (9th Cir. 1995) (per curiam).
8. Respondent admits in answer to paragraph 12 that Petitioner and others sponsored Proposition No. 1 that appeared on the 2002 general election ballot. He further answers that Proposition No. 1 spoke for itself.

9. Respondent answers in response to paragraph 13 that Proposition No. 1 spoke for itself and therefore denies its characterization in such paragraph to the extent it purports to derive perceived justifications for its proposal.

10. Respondent admits in answer to paragraph 14 that Proposition No. 1 passed with 57.8 percent of the vote.

11. Respondent admits in answer to paragraph 15 that the 2013 Idaho Legislature enacted Idaho Code § 54-2512A. Respondent is without knowledge or understanding concerning the remaining allegations and therefore can neither admit nor deny them.

12. Respondent admits in answer to paragraph 16 that a bill to repeal Idaho Code § 54-2512A was introduced in the 2015 Legislature but otherwise has no knowledge concerning the allegations in such paragraph and therefore can neither admit nor deny them.

13. Respondent denies the allegations in paragraph 17 to the extent that it alleges that the only facts relevant to the Petition's disposition are attached to as Appendix A thereto.

14. Respondent admits the first sentence in paragraph 18 and states in answer to the remaining allegations in such paragraph that S. 1011 speaks for itself.

15. Respondent has no knowledge concerning the allegations in paragraph 19 and therefore can neither admit nor deny them.

16. Respondent admits paragraph 20 based upon the legislative record.

17. Respondent admits the first sentence in paragraph 21 and states in response to the remaining allegations that Article IV, § 10 speak for itself.

18. Respondent admits paragraph 22.

19. Respondent has no position with respect to the allegations in paragraph 23 and states that the existence of a valid veto is a matter to be determined by this Court.

20. Respondent answers in response to paragraph 24 that Article IV, § 10 speaks for itself.

21. Respondent admits paragraph 25 based upon the legislative record.

22. Respondent admits paragraph 26 based upon the legislative record.

23. Respondent states in answer to paragraphs 27 through 30 that Idaho Code § 67-504 speaks for itself.

24. Respondent states in answer to paragraphs 31 and 32 that the Senate Journal speaks for itself.

25. Respondent admits the first sentence of paragraph 33 accurately quotes from the Senate Journal but otherwise is without knowledge concerning the allegations in such sentence. He states in response to the second sentence that the Senate Journal speaks for itself.

26. Respondent states in response to paragraphs 34 through 42 that the Senate Journal speaks for itself.

27. Respondent states in response to paragraphs 43 and 44 that he takes no position concerning whether the Governor properly vetoed S. 1011 or whether it became law on April 4, 2015.

28. Respondent states in answer to paragraph 45 that the Senate Journal speaks for itself.

29. Respondent states in answer to paragraph 46 that he takes no position concerning whether S. 1011 has become law.

30. Respondent states in answer to paragraphs 47 and 48 that Idaho Code § 67-505 speaks for itself.

31. Respondent states in answer to paragraphs 49 and 51 that the referenced documents speak for themselves.

32. Respondent denies paragraph 52 to the extent that it alleges he was required to certify S. 1011 under Idaho Code § 67-505 as of April 4, 2015.

33. Respondent incorporates the answers to paragraphs 1 through 52 in response to paragraph 53.

34. Respondent states in answer to paragraph 54 that Idaho Code §§ 7-301 to -314 speak for themselves.

35. Respondent states in answer to paragraph 55 that Idaho Code §§ 67-505 and -506 speak for themselves.

36. Respondent states in answer to paragraph 56 that he takes no position as to whether S. 1011 became law on April 4, 2015

37. Respondent denies paragraph 57.

38. Respondent admits paragraphs 58 through 60.

SECOND DEFENSE

The Petition fails to state a claim upon which relief may be granted against Respondent.

WHEREFORE, the Petition should be dismissed as against Respondent.

DATED this 10th day of June, 2015.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
BRIAN KANE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 2015, I caused to be served a true and correct copy of the foregoing by the following method to:

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LAWRENCE DENNEY, Secretary of State)	
of the State of Idaho, in his official capacity,)	
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Respondent.)	

**RESPONDENT'S MEMORANDUM IN SUPPORT OF ANSWER TO VERIFIED
PETITION FOR WRIT OF MANDAMUS**

FILED - ORIGINAL

JUN 10 2015

Supreme Court _____ Court of Appeals _____
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INTRODUCTION

The Secretary of State stands ready to comply with any order of this Court. As explained in greater detail below, neither Article II, § 1, Article IV, § 10 nor any other constitutional or statutory provision permits the Secretary of State to unilaterally demand the delivery of a bill to his office and substitute the discretion of the Secretary of State for that of the Senate in order to certify it as law. Respecting the legislative transaction between the Governor and the Legislature, the Constitution, implementing statutes and case law, allow for three circumstances in which the Secretary of State can certify a bill as law:

1. Authentication by the Governor that the bill becomes law without his signature under Idaho Code § 67-505;
2. Authentication by the originating house that the bill has not been returned in accordance with Article IV, § 10 and thereby becomes law without the Governor's signature; or
3. A court order directing the Secretary of State issue the certification under § 67-505 that S. 1011 becomes law without the Governor's signature.

In the instant case, neither option (1) nor (2) occurred, which leaves only the third option if S. 1011 is to be certified as a bill that has become law. Option 3 is entirely consistent with the role of Judiciary and avoids the constitutional oddity of the Secretary of State serving as arbiter in legislative disputes between the Executive and Legislative Branches. However, as discussed below, such relief is inappropriate here.

This memorandum takes no positions regarding the actions of the Governor or the Idaho Senate but simply places those actions before the Court to demonstrate that the Secretary of State could not act unilaterally to interfere with the inter-Branch transaction between the two. One

possible conclusion of this case (and the one that Petitioner should be seeking under its theory of the case) is that, based upon Article IV, § 10 and Idaho Code § 67-505, either the Secretary of the Senate or the Governor is required to authenticate the facts required for the Secretary of State to certify S. 1011 as law. Enforcement of such an order nevertheless would be problematic presently because Petitioner has failed to join those parties in this proceeding.¹

STATEMENT OF FACTS

The relevant facts of this case are taken from the Journal of the Idaho Senate:²

1. S. 1011 passed both houses of the Idaho Legislature.
2. S. 1011 was presented to the Governor on March 30, 2015.
3. Governor Otter returned S. 1011 with his objections to the Idaho Senate.
4. President Pro Tempore Hill, Minority Leader Senator Stennett, and the Secretary of the Senate read letters indicating that S. 1011 was not timely returned to the Senate on April 6, 2015. Apr. 6, 2015 Idaho Senate Journal 1 (4th Order of Business).

¹ The Secretary recognizes that substantial procedural and jurisdictional issues exist in addition to the substantive question of whether he has a ministerial duty to certify S. 1011 as a duly enacted statute. First, the propriety of an original writ is in doubt because a plain, speedy and adequate remedy at law exists in the District Court under the Declaratory Judgments Act and Idaho Code § 7-402. *E.g., Wasden ex rel. State v. Idaho State Bd. of Land Comm'rs*, 150 Idaho 547, 551-52, 249 P.3d 346, 350-51 (2010). Second, that procedural question aside, Petitioner alleges no particularized ongoing injury. There is, for example, no showing that the Tribe is damaged economically by the gambling authorization that S. 1011 would repeal. The Secretary anticipates officials or private entities with a discrete interest in the validity of the Governor's veto will intervene for the purpose of addressing these and other issues.

² The Idaho Senate Journal can be located online at: <http://www.legislature.idaho.gov/sessioninfo/2015/Journals/songoingfinal.pdf> (last visited June 9, 2015). For the Court's convenience a copy of the Journal pages from April 6, 2015 is attached to this brief in the Appendix.

5. The President of the Senate during the 8th Order of Business read a message from the Governor dated April 3, 2015 indicating that S. 1011 was being returned to the Senate without approval, disapproved and vetoed. Apr. 6, 2015 Idaho Senate Journal 2 (8th Order of Business).
6. The Senate without objection reconsidered the returned S. 1011 immediately and failed to override the Governor's veto. Apr. 6, 2015 Idaho Senate Journal 3.
7. S. 1011 and the Governor's Message were ordered to be filed with the Secretary of the Senate. Apr. 6, 2015 Idaho Senate Journal 3.
8. S. 1011 was not delivered to the Secretary of State with authentication for certification as law without signature by either the Governor or the Senate as the originating house under Article IV, § 10. Affidavit of Lawrence Denney, Idaho Secretary of State ("Denney Aff.") ¶ 11.

ARGUMENT

I. NO TIMEKEEPING DUTY IS ASSIGNED THE SECRETARY OF STATE UNDER ARTICLE IV, § 10

The threshold question posed by this Petition is: Is the Secretary of State the timekeeper under Article IV, §10 of the Idaho Constitution? "[T]here is little ... to guide us in our interpretation of article 4, § 10." *Cenarrusa v. Andrus*, 99 Idaho 404, 409, 582 P.2d 1082, 1087 (1978). Nevertheless, for purposes of this proceeding, there are two sentences within Article IV, § 10 that are particularly relevant:

1. Every bill passed by the legislature shall, before it becomes a law, be presented to the governor. If he approve, he shall sign it, and thereupon it shall become a law; but if he do not approve, **he shall return it with his objections to the house in which it originated**, which house shall enter the objections at large upon its journals and proceed to reconsider the bill.
2. **Any bill which shall not be returned by the governor to the legislature within five (5) days (Sundays excepted) after it shall have been presented to him, shall become a law in like manner as if he had signed it**, unless the legislature shall, by adjournment, prevent its return, in which case it shall be filed, with his

objections, in the office of the secretary of state within ten (10) days after such adjournment (Sundays excepted) or become a law.

(Emphasis added.) Idaho's presentment clause, while the Legislature is in session, establishes a straightforward process:

1. Governor is presented with the bill.
2. Governor has three choices—
 - a. Sign into law;
 - b. Return with his objections to originating house (veto); or
 - c. Allow to become law without signature;
3. Governor has five days in which to act not counting Sundays.
4. Upon return, originating house enters objections into journal.
5. Originating house reconsiders bill.

Nowhere in this process is the Secretary of State assigned a responsibility or given any authority. The one scenario in which the Secretary of State has a responsibility is when the legislature has adjourned, in which case the Governor must return the bill with objections (*i.e.*, a veto) to the Secretary of State within ten days after adjournment or it becomes law.

The most straightforward interpretation of Article IV, § 10 is that the originating house sits as the timekeeper on its legislation during the session. Once the Legislature is adjourned *sine die*, there is no originating house to which the bill can be returned, and thus the Secretary of State takes the place of the originating house for purposes of the return of legislation. If the Governor makes return of a bill with a veto during the legislative session, that house must determine whether the veto is timely and, based upon that determination, either (with a timely

veto) proceed to consideration of an override or (with an untimely veto) process the bill as it would had the Governor approved the legislation.

Idaho's statutes reflect this approach as well. Three code provisions are relevant to this situation where an untimely *return* to the originating house is alleged. Idaho Code § 67-503 addresses the passage of a piece of legislation over a gubernatorial veto and requires an authentication by the President of the Senate and the Speaker of the House. Idaho Code § 67-504 addresses the return of bills during an intra-session adjournment (which in common parlance is called a recess) and directs that a bill can be returned to the presiding officer, clerk, or any member of the house provided the Governor notifies the house of such delivery on the first day it "is again in session." Idaho Code § 67-505 addresses bills not returned to the originating house. Section 67-505 provides that a bill not returned by the Governor within five days, thereby becoming law, "is authenticated by the governor causing the fact to be certified thereon by the secretary of state." That section prescribes the *effect* of the Governor making an untimely return; it does (and could) not pretermitt the *process* that must occur when a return (timely or not) *is* made. The Secretary, in other words, must await action on the return by the originating house and transmission of the legislation before certifying it as a law.

In the instant case, the bill was returned to the originating house (the Senate)—as it must have been because the Legislature remained in session. No provision of the Constitution or the Idaho Code authorized the Secretary to bypass the Senate's disposition of the returned bill. If the Senate erred in not transmitting S. 1011 to the Secretary as it would have transmitted any other

approved legislation, the remedy lies in directing that chamber to make the appropriate transmission.

II. THE ORIGINATING HOUSE KEEPS THE CLOCK ON THE RETURN OF ITS LEGISLATION

Based upon Article IV, § 10's requirement that vetoed legislation be returned to the house of origination, the originating house determines whether legislation has been returned in compliance with Article IV, § 10. Article III, § 9 allows each house to determine its own rules of proceedings and sit upon its own adjournment. Article III, § 13 authorizes each house to keep a journal of its proceedings. Petitioner correctly identifies the Senate Journal as the official record of the Senate and the deference properly afforded it by the Judiciary. Petitioner's Brief in Support of Verified Petition for Writ of Mandamus at 11 ("Petitioner's Brief"). It is thus settled that the recitals in the journal are conclusive and cannot be contradicted. *Cohn v. Kingsley*, 5 Idaho 416, 419-20, 49 P. 985, 988 (1897).³

Based upon the record before this Court, S. 1011 passed both houses and was presented to the Governor on March 30, 2015. According to the Senate Journal on April 6, 2015, during 4th Order of Business, Reading of Communications, the President *Pro Tempore* informed the Senate that S. 1011 was returned to his office on April 6, 2015. Similar notices were provided by the Clerk of the Senate and the Minority Leader of the Senate. No other business was conducted in the 4th Order, and according to the Journal, the Senate advanced through the 6th Order of Business to the 8th Order of Business, Messages from the Governor. In the 8th Order of

³ Citing *Burkhart v. Reed*, 2 Idaho 503, 22 P. 1 (1889); Idaho 489, 22 P. 8 (1889); and *Wright v. Kelly*, 4 Idaho 624, 43 P. 565 (1895).

Business, two letters indicating that the Governor had signed pieces of legislation were read. An additional message from the Governor, dated April 3, 2015 was read: "I hereby advise you that I have returned without my approval, disapproved and vetoed, the following Senate Bill, to wit: S.1011."

According to the Journal, no objection was raised to the receipt of this message from the Governor as untimely under Article IV, § 10. Based upon Senate Rule 26, a Senator having the floor can be interrupted for the following purposes:

1. Raising a question of privilege (except personal privilege);
2. Making a parliamentary inquiry;
3. Raising a point of order requiring an immediate ruling;
4. Taking an appeal from a ruling on a point of order;
5. Object to a consideration of a question;
6. Call for a special order; and
7. Inquire if the speaker will yield.

No Senator rose to voice an objection, point of order, or any other purpose that would have recognized the Governor's April 3, 2015 Message as beyond the Article IV, § 10 deadline. Instead, the Governor's April 3, 2015 Message was read in full. At the conclusion of the Message, in compliance with Article IV, § 10, the Senate immediately reconsidered S. 1011. Again, no objection was raised under Rule 26, nor was any motion under Rule 16 (Vetoed Bills)

made.⁴

In sum, the Senate was made aware of the concerns of the Clerk, President *Pro Tempore*, and Minority Leader with regard to the timeliness of the return of S. 1011. But the Senate, being fully apprised of those concerns, voiced no objections, and treated the return of S. 1011 as timely received. S. 1011 was reconsidered, and the veto was sustained. The journal then directs that “S.1011 has failed to become law, the Governor’s veto sustained. **S. 1011 and the Governor’s message will be filed in the office of the Secretary of the Senate.**” [Emphasis supplied.] No legislation was transmitted to the Secretary of State upon which the Secretary could act. Denney Aff. ¶ 11.

Although Petitioner recognizes that the Journal is the official record of the Idaho Senate, Petitioner argues for this Court to require the Secretary of State to rely on facts not reflected in Journal to substitute the Secretary’s discretion for that of the Legislature and Governor to make law. (Petitioner’s Brief at 2, 11-12.) Petitioner argues and asks this Court to recognize the authority of the Secretary of State, an Article IV Executive Branch officer, to override the Idaho Senate, an Article III legislative chamber, by assuming control over S. 1011 and certify it as law. Petitioners cite to no statutory or constitutional authority for this type of Executive Branch interference with the legislative process. Rather than depart from the well settled separation-of-powers principles, the Secretary of State has displayed deference and respect to the legislative transaction between the Senate and the Governor.

⁴ For example, under Rule 16, a motion to postpone reconsideration to a time certain could have been made to determine what steps should be taken, or whether the Senate should have forwarded S. 1011 to the Secretary of State for certification as a law.

III. THE SEPARATION OF POWERS APPROPRIATELY PROHIBITS THE SUBSTITUTION OF THE SECRETARY OF STATE'S DISCRETION FOR THAT OF THE LEGISLATURE

In reviewing legislative enactments, Courts generally review the substance of the statute, but not the proceedings involved in the enactment. *State v. Carley*, 104 So. 577, 580 (Fla. 1925), citing *McCulloch v. State*, 11 Ind. 424 (1859). Courts have recognized that the Journal is dispositive even if it is physically impossible for the bills to have been read section by section. *Id.* The entries in the Journal reflecting these occurrences are accepted as true. *Id.* Assuming that this limitation is provided for by Article II, § 1's separation of powers, the Executive Branch has no greater authority than the Judicial Branch to intrude upon the Legislative Branch and inquire into the validity of the internal proceedings of the Senate.

In this case, no constitutional or statutory mechanism allows the Secretary of State to demand the filing of a bill from either chamber of the Legislature or the Governor. Similarly, upon the filing of all legislation within his office at the conclusion of the session under Idaho Code § 67-902, there is no authorization or requirement that the Secretary of State evaluate each piece of legislation to determine whether its procedural requirements were met.

Although Idaho Code § 67-902 requires all bills and amendments to be filed with the Secretary of State at the conclusion of a session, there is nothing to indicate that the Secretary of State should jeopardize the constitutional balance of powers by substituting his judgment for that of the Senate. The Senate Journal reflects a message of disapproval from the Governor on April 3, 2015. Apr. 6, 2015 Idaho Senate Journal 3. The Journal is consistent with the legislative tracking sheet which states that the bill was disapproved on April 3, 2015 at 2:57 pm.

Denney Aff. ¶¶ 6 and 7, Ex. B. By letter dated April 28, 2015, the Secretary of the Senate transmitted all of the bills introduced but not enacted into law during the session. *Id.* ¶ 4, Ex. A . The second bill number in that list is S. 1011. *Id.* ¶ 5.

Based upon the Senate Journal and supporting documents filed with the Secretary of State's office, there is no basis for him to unilaterally declare the Senate's actions void and certify S. 1011 as law. Certainly, Petitioner has advanced no legal rationale for such a radical departure from well settled principles of the separation of powers under Article II, § 1. The only entity within our system that possesses the power of judicial review is the Judiciary itself.

IV. THERE IS NO POCKET VETO IN IDAHO

Petitioners argue that the instant scenario has created a pocket veto. Nothing of the sort has happened. The Governor returned a bill with his objections to the Senate. The Senate could have deemed the veto untimely and delivered the bill to the Secretary of State for certification but chose not to. The instant scenario does not create a pocket veto. If anything, it reflects precisely the opposite.

The threshold question presented by this case is who oversees the timekeeping function of the originating house under Article IV, § 10. That oversight ordinarily would be performed by the Judiciary. Petitioners would assign that duty to the Secretary of State, although no constitutional or statutory authority so permits. Given Article IV § 10's assignment of timekeeping authority to the originating house, Article II, § 1 *prohibits* the Secretary of State from commandeering that authority. Simply put, it is up to the initiating chamber of the Legislature, not the Secretary, to determine whether a bill has been "authenticated" within the

meaning of Idaho Code § 67-505 where, as here, the Governor has exercised his purported veto authority and returned the bill to the originating house.⁵ It is then for the Judiciary to resolve any claims that the originating house erred.

V. CASE LAW IS CONSISTENT WITH THIS APPROACH

The scenario in this matter stands in stark contrast to that in *Cenarrusa v. Andrus*. In *Cenarrusa*, the Legislature had adjourned *sine die* and the legislation was filed under Article IV, § 10 with the Secretary of State. 99 Idaho 404, 405-06, 582 P.2d 1082, 1083-84 (1978). Additionally, there the Attorney General informed the Secretary of State that since ten days had passed since adjournment, the Governor no longer had veto power over bills acted upon prior to April 1, 1976. *Id.* The key component in the *Cenarrusa* case is that the legislation was filed with the Secretary of State, thus triggering his responsibility to take some action with respect to the legislation. Here, in contrast, after the legislation was reconsidered by the Senate, it was filed in the Office of the Secretary of the Senate, where presumably it remains. Apr. 6, 2015 Senate Journal at 4. Petitioner has identified no authority for the Secretary of State to demand that the legislation be forwarded to him for certification as law and inclusion in the session laws.

Review of the *Cenarrusa* case with regard to the interplay between the Governor and the Legislature as to the in-session return process reveals that the Secretary of State plays no role. The Court specifically recognized the presentment, veto, and reconsideration of legislation as a

⁵ A second question beyond this threshold question is whether the originating house's determination that a veto was or was not timely returned is judicially reviewable. That question is not presented by the Petition because judicial reviewability of the originating house's decision has nothing to do with the responsibilities of the Secretary of State, the only respondent presently before this Court.

transaction between equal and coordinate branches of government. *Id.* at 409, 582 P.3d at 1087. Nowhere does the Constitution or the statutes require that the Secretary of State insert himself into this transaction. Only upon adjournment *sine die*, does the Secretary of State step into the shoes of the originating house for the return of bills.

Wheeler v. Gallet is of limited assistance as well. In simplest terms, it establishes that the Governor can only veto an item, not amend it. 43 Idaho 175, 179, 249 P. 1067, 1067-68 (1926). In *Wheeler*, the Governor timely filed the bill with the Secretary of State within the 10 days following adjournment *sine die*, but had partially disapproved a line item, reducing an appropriation from \$101,250 to \$80,700. Instead of a veto, this was tantamount to a legislative amendment rendering the attempted veto a nullity. The deadline in Article IV, § 10 was never at issue. Instead *Wheeler* addressed the substantive scope of the Governor’s line item veto power under Article IV, § 11.

Petitioner’s reliance on two non-Idaho cases is misplaced. *State ex rel. Putnam v. Holm* lends no credence to the theory that that the Secretary of State has unilateral authority to certify as law a bill returned beyond the deadline during a legislative session. 215 N.W. 200 (Minn. 1927). Instead, the case is consistent with the reasoning in *Cenarrusa* that discusses the issue as a transaction between the governor and the originating house (and with no discussion of the secretary of state).⁶ Frank E. Putnam, the identified plaintiff, was a Minnesota state senator who brought the action to require the secretary of state to certify as law a bill that the governor

⁶ In reviewing the case, the named parties are followed by “*et al.*” However, nothing indicates who the “others” are. The writ is directed to be awarded—but the opinion is silent as to who is responsible for what actions with regard to the mandate.

returned to the lieutenant governor, as president of the senate, beyond the three-day deadline for a veto. *Id.* No mention in the factual scenario is made as to whether the state senate reconsidered the veto. The case thus dealt not only with a different state constitution but also with a different set of facts.

Johnson City v. Tennessee Eastern Electric Co. can be distinguished by comparing the Governor's message in that case, dated May 4, 1915—33 days after presentment—with Idaho Senate Journal entries here, which shows the Governor's message as dated April 3, 2015 and within the five days of Article IV, § 10. Compare *Johnson City v. Tenn. E. Elec. Co.*, 182 S.W. 587, 588 (Tenn. 1916) (message from Governor Rye set forth), with Apr. 6, 2015 Idaho Senate Journal at 2-3. Importantly, uncontested in *Johnson City* was the fact that the veto was beyond the five-day limit. What *was* contested was the definition of adjournment for purposes of whether the return of the bill was prevented and thus the time for return enlarged. *Id.* at 588-89. *Johnson City* does not resolve the core question in the present case of who the timekeeper is for purposes of Article IV, § 10 and the relevant Idaho Code provisions.

ATTORNEY FEES

As indicated above, the Secretary of State lacks the constitutional and statutory authority to act independently and insert himself under Article IV, § 10. Article II, §1 prohibits him for substituting his judgment with regard to the legislative process for that of the Senate's. Article III, § 9 permits the Legislature to set its own rules of proceeding without oversight by the Secretary of State. As an Article IV, §1 Executive Branch official, the Secretary of State is exempt from an attorney fee award because the Constitution directly limits his authority. This

brief demonstrates that the Secretary of State has reasonably deferred to coequal and coordinate branches and their officials based upon existing law and the unique facts here. No plausible claim of unreasonableness can be made.

CONCLUSION

The Secretary of State lacks the independent authority to serve as the timekeeper under Article IV, § 10 when the Legislature is in session. In order to certify as law a bill without the Governor’s signature, the Secretary of State requires one of three things:

1. Authentication by the Governor that the bill becomes law without his signature under Idaho Code § 67-505;
2. Authentication by the originating house that the bill has not been returned in accordance with Article IV, § 10 and thereby becomes law without the Governor’s signature; or
3. A court order directing the Secretary of State issue the certification under 67-505 and the bill becomes law without the Governor’s signature.

This approach affords proper deference to the Constitution, and the branches of government under Article II, § 1. It also treats with dignity the separate and coequal status of the Legislature and Governor within the legislative and presentment constitutional process in which the Secretary of State has no role. The Secretary of State will, of course, abide by any order of this Court.


///

///

///

DATED this 10th day of June, 2015.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By 
BRIAN KANE
Deputy Attorney General

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 10th day of June, 2015, I caused to be served a true and correct copy of the foregoing by the following method to:

Deborah A. Ferguson
Craig H. Durham
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: (208) 906-8663
- Electronic Mail: daf@fergusondurham.com
chd@fergusondurham.com

David H. Leroy
Attorney at Laws
1130 E. State Street
Boise, ID 83712

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: (208) 342-4200
- Electronic Mail: dave@dleroy.com


BRIAN KANE
Deputy Attorney General

APPENDIX A

SENATE JOURNAL

SENATE JOURNAL
OF THE
IDAHO LEGISLATURE

FIRST REGULAR SESSION
SIXTY-THIRD LEGISLATURE

EIGHTY-FIFTH LEGISLATIVE DAY
MONDAY, APRIL 6, 2015

Senate Chamber

President Little called the Senate to order at 1:30 p.m.

Roll call showed all members present except Senator McKenzie, absent and formally excused by the Chair; and Senators Buckner-Webb, and Nonini, absent and excused.

Prayer was offered by Chaplain Brent Adamson.

The Pledge of Allegiance was led by Joshua Price, Page.

The Senate advanced to the Third Order of Business.

Reading and Correction of the Journal

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of April 2, 2015, was read and approved as corrected.

LODGE, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

Senator Nonini was recorded present at this order of business.

Senators Buckner-Webb and McKenzie were recorded present at this order of business.

The Senate advanced to the Fourth Order of Business.

Reading of Communications

April 6, 2015

The Honorable Brad Little
President
Idaho State Senate

Dear President Little:

This communication reflects that Senate Bill 1011 was returned to my office at 8:52 am on April 6, 2015. To the best of my knowledge no earlier return was attempted to my office, nor was I asked to receive such a return at any earlier time. The return of S 1011 being due at 4:54 pm on April 4, 2015 and such deadline having passed, the provisions of Article IV, §10 of the Idaho Constitution and Idaho Code §67-504 and 505 appear to apply.

Sincerely,
/s/ Brent Hill
President Pro Tempore

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 6, 2015

The Honorable Brad Little
President
Idaho State Senate

Dear Mr. President:

This communication reflects that S 1011 was not returned to my office by 4:54 p.m. on April 4, 2015 in my capacity as the Secretary of the Senate. Other correspondence of legislation were slipped under my door and returned in accordance with Article IV, §10 and Idaho Code §§67-504 & 505. Correspondence of legislation is routinely returned to me in this fashion. To the best of my knowledge no earlier return was attempted to my office, nor was I asked to receive such a return at any earlier time.

Sincerely,
/s/ Jennifer L. Novak
Secretary of the Senate

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 6, 2015

The Honorable Brad Little
President
Idaho State Senate

Dear President Little:

This communication reflects that Senate Bill 1011 was returned to the Senate Pro Tem's office at 8:52 am on April 6, 2015. To the best of my knowledge no earlier return was attempted or effectuated to the Senate, nor was anyone asked to receive such a return at any earlier time. The return of S1011, being due at 4:54 pm on April 4, 2015, and such deadline having passed, S1011 is law pursuant to the provisions of Article IV, Section 10 of the Idaho Constitution and Idaho Code Sections 67-504 and 67-505.

Sincerely,
/s/ Michelle Stennett
Senate Minority Leader

The correspondence was ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

Reports of Standing Committees

April 6, 2015

The JUDICIARY AND RULES Committee reports that S 1192 has been correctly printed.

LODGE, Chairman

S 1192 was referred to the Finance Committee.

April 2, 2015

The JUDICIARY AND RULES Committee reports that S 1098, as amended in the House, has been correctly engrossed.

LODGE, Chairman

S 1098, as amended in the House, was filed for first reading.

April 2, 2015

The JUDICIARY AND RULES Committee reports that S 1171, S 1172, S 1175, S 1176, S 1152, S 1154, as amended, S 1170, S 1169, SCR 103, SCR 117, SCR 118, SCR 121, and SCR 119 have been correctly enrolled.

LODGE, Chairman

The President signed Enrolled S 1171, S 1172, S 1175, S 1176, S 1152, S 1154, as amended, S 1170, S 1169, SCR 103, SCR 117, SCR 118, SCR 121, and SCR 119 and ordered them transmitted to the House for the signature of the Speaker.

April 2, 2015

The JUDICIARY AND RULES Committee reports that Enrolled S 1104, as amended in the House, S 1073, as amended in the House, and S 1069, as amended, as amended, as amended in the House, were delivered to the Office of the Governor at 10:35 a.m., April 2, 2015.

LODGE, Chairman

The report was ordered filed in the office of the Secretary of the Senate.

April 2, 2015

The TRANSPORTATION Committee reports out H 312 with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

BRACKETT, Chairman

There being no objection, H 312 was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eighth Order of Business.

Messages from the Governor

April 2, 2015

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bill, to wit:

S 1076

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 3, 2015

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I have the honor to inform you that I have signed today and am transmitting to the Secretary of State the following Senate Bills, to wit:

S 1025, S 1030, S 1040, as amended, S 1053,
as amended, S 1056, as amended, S 1072, as
amended, S 1088, as amended in the House,
S 1091, S 1109, S 1120, S 1121, S 1148,
S 1149, S 1150, S 1151, S 1157, S 1158,
S 1160, S 1161, S 1162, S 1163, S 1164, and
S 1166

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The correspondence was ordered filed in the office of the Secretary of the Senate.

April 3, 2015

The Honorable Brad Little
President of the Senate
Idaho Legislature

Dear Mr. President:

I hereby advise you that I have returned without my approval, disapproved and vetoed, the following Senate Bill, to wit:

S 1011

within the time limited by law, the same having arrived in the Office of the Governor at the hour of 4:54 p.m. on March 30, 2015.

When the Legislature legalized pari-mutuel betting on historical horse races during its 2013 session, it was my hope that it would serve as a supplement, a shot in the arm for a struggling industry. I neither expected nor desired it to supplant live horse racing in Idaho, and it is my firm intention to limit and restrict this type of gambling in Idaho to race tracks.

Unfortunately, a beleaguered industry eager to get back on its feet financially expanded historical horse racing too quickly and without adequate safeguards to withstand inevitable scrutiny and criticism - not out of any enmity against a beloved Idaho tradition, but rather against the insidious specter of gambling's expansion unchecked in Idaho communities.

However, I do not believe it is too late to fulfill the promise of 2013 and refocus our attention on limiting and more effectively regulating rather than eliminating historical horse racing. In my view, a precious part of Idaho's western culture is at stake.

There are some actions that can be taken, even in the waning days of this legislative session, to salvage something for the many Idahoans whose livelihoods and lifestyles are tied to traditional horse racing. For instance, legislators still could act quickly to restrict historical horse racing to existing tracks as was envisioned in 2013. I also would welcome creation of a Gaming Commission to help fulfill the Legislature's constitutional responsibility to oversee pari-mutuel racing.

Meanwhile, I have directed the Racing Commission to issue a moratorium on licensing new facilities to conduct historical horse racing or introducing additional historical horse racing terminals (see attached letter) until a Gaming Commission has been created and established operating rules that are sensitive to both community and industry concerns.

In the interim, the Racing Commission must more carefully and stringently regulate historical racing operations to ensure their consistency with legislative intent. Indeed, the Commission has opportunity this very day to ensure that legislative intent is recognized in its reconsideration of an off-track facility's proposed operation in Idaho Falls.

And in an effort to establish definitively what so far has been the subject of opinion and speculation, I would ask the Legislature to join with me in appointing a special outside investigator as soon as possible to assess the legality of machines used at every facility that now conducts historical racing.

In vetoing this bill, what I'm seeking is an alternative capable of restoring public confidence in horse racing as a legitimate and even ennobling industry that is tied directly and irrevocably to race tracks, to stalls and starting gates, to paddocks and jockeys, and to people who love the sport.

I would also welcome working with the Legislature toward a more comprehensive and holistic review of the laws and policies governing all gaming in Idaho. Through that process, it is my hope that stakeholders and interested citizens will come together in a spirit of broader agreement on the proper limits to gambling in our state.

As Always - Idaho, *Esto Perpetua*
/s/ C.L. "Butch" Otter
Governor of Idaho

The question being, "Shall S 1011 become law, the Governor's veto notwithstanding?"

Roll call resulted as follows:

AYES—Bair, Buckner-Webb, Burgoyne, Cameron, Davis, Den Hartog, Heider, Hill, Jordan, Lacey, Lakey, Martin, McKenzie, Mortimer, Schmidt, Siddoway, Stennett, Thayn, Tippets. Total - 19.

NAYS—Bayer, Brackett, Guthrie, Hagedorn, Johnson, Keough, Lee, Lodge, Nonini, Nuxoll, Patrick, Rice, Souza, Vick, Ward-Engelking, Winder. Total - 16.

Total - 35.

Less than two-thirds having voted in the affirmative, the President declared that S 1011 has failed to become law, the Governor's veto sustained. S 1011 and the Governor's message will be filed in the office of the Secretary of the Senate.

The Senate advanced to the Ninth Order of Business.

Messages from the House

April 2, 2015

Dear Mr. President:

I transmit herewith H 320, H 321, and H 319, which have passed the House.

ALEXANDER, Chief Clerk

H 320, H 321, and H 319 were filed for first reading.

April 2, 2015

Dear Mr. President:

I return herewith SCR 112, S 1168, S 1155, and S 1177, which have passed the House.

ALEXANDER, Chief Clerk

SCR 112, S 1168, S 1155, and S 1177 were referred to the Judiciary and Rules Committee for enrolling.

April 2, 2015

Dear Mr. President:

I transmit herewith Enrolled H 291, H 298, H 300, H 301, H 302, H 308, HCR 8, HCR 24, HJM 9, and HJM 10 for the signature of the President.

ALEXANDER, Chief Clerk

The President signed Enrolled H 291, H 298, H 300, H 301, H 302, H 308, HCR 8, HCR 24, HJM 9, and HJM 10 and ordered them returned to the House.

April 2, 2015

Dear Mr. President:

I return herewith Enrolled S 1159, S 1165, S 1071, as amended, S 1041, as amended, S 1136, S 1062, as amended, as amended, S 1066, S 1113, and S 1047, which have been signed by the Speaker.

ALEXANDER, Chief Clerk

Enrolled S 1159, S 1165, S 1071, as amended, S 1041, as amended, S 1136, S 1062, as amended, as amended, S 1066, S 1113, and S 1047 were referred to the Judiciary and Rules Committee for transmittal to the Office of the Governor.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

Introduction, First Reading, and Reference of Bills, House Petitions, Resolutions, and Memorials

S 1098, as amended in the House, by Resources and Environment Committee, was read the first time at length and filed for second reading.

H 320 and H 321, by Appropriations Committee, were introduced, read the first time at length, and referred to the Finance Committee.

H 319, by State Affairs Committee, was introduced, read the first time at length, and referred to the State Affairs Committee.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

Miscellaneous Business

On motion by Senator Davis, seconded by Senator Stennett, by voice vote, the Senate adjourned at 5:35 p.m. until the hour of 10:30 a.m., Tuesday, April 7, 2015.

BRAD LITTLE, President

Attest: JENNIFER NOVAK, Secretary

RECEIVED
IDAHO SUPREME COURT
COURT OF APPEALS

2015 JUN 10 PM 1:26

LAWRENCE G. WASDEN
ATTORNEY GENERAL

BRIAN KANE, ISB #6264
Assistant Chief Deputy Attorney General
MICHAEL S. GILMORE, ISB #1625
CLAY R. SMITH, ISB #6385
Deputy Attorneys General
954 W. Jefferson Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0010
Telephone: (208) 334-2400
Facsimile: (208) 854-8071
Attorneys for Respondent Denney

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF IDAHO

IN THE MATTER OF THE VERIFIED)	
PETITION FOR WRIT OF MANDAMUS.)	Supreme Court Docket
-----)	No. 43169-2015
COEUR D'ALENE TRIBE,)	
)	Ref. 15-249
Petitioner,)	
)	
vs.)	
)	
LAWRENCE DENNEY, Secretary of State)	
of the State of Idaho, in his official capacity,)	
)	
Respondent.)	

**AFFIDAVIT OF IDAHO SECRETARY OF STATE
LAWRENCE DENNEY**

FILED - ORIGINAL

JUN 10 2015

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

I, Lawrence Denney, Idaho Secretary of State, being first duly sworn, depose and say:


1. I am the Secretary of State of the State of Idaho.
2. I have personal knowledge of the information contained herein.
3. Under Idaho Code § 67-902 and Senate Rule 7(E), all bills and amendments introduced in both houses are filed with my office.
4. With the transmittal of bills under Idaho Code § 67-902, the Secretary of the Senate includes all bills that were introduced but not enacted into law. Attached to this affidavit as Exhibit A is a true and correct copy of the transmittal letter, dated April 28, 2015.
5. S. 1011 is the second bill listed in the transmittal of bills introduced but not passed by the legislature. *See* Ex. A.
6. Also transmitted is S. 1011 attached to its official tracking slip. A true and correct copy of S. 1011 and tracking slip is attached hereto as Exhibit B.
7. On S. 1011's tracking slip, S.1011 is reflected as being disapproved by the Governor on April 3, 2015 at 2:57 pm.
8. Attached hereto as Exhibit C is a true and correct copy of the Governor's Message to the President of the Idaho Senate, Brad Little, disapproving S. 1011.
9. The Senate Journal indicates that a message from the Governor dated April 3, 2015 was read on April 6, 2015 returning disapproved S. 1011.

10. The Senate Journal reflects that the Senate reconsidered S. 1011 on April 6, 2015, and the Governor's veto was sustained

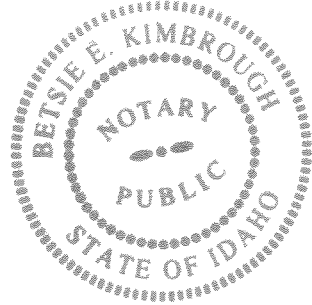
11. No representative of the Senate including the President of the Senate, the President Pro Tempore, the Minority Leader, or the Secretary of the Senate attempted to file S. 1011 with the Office of the Secretary of State for certification as law without signature under Idaho Code § 67-505.

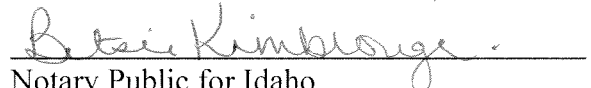
Further your affiant sayeth naught.

DATED this 10 day of June, 2015.


LAWRENCE DENNEY
Idaho Secretary of State

SUBSCRIBED AND SWORN TO before me this 10 day of June, 2015.




Notary Public for Idaho
My Commission Expires: Oct. 18, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of June, 2015, I caused to be served a true and correct copy of the foregoing by the following method to:

Deborah A. Ferguson
Craig H. Durham
FERGUSON DURHAM, PLLC
223 N. 6th Street, Suite 325
Boise, ID 83702

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: (208) 906-8663
- Electronic Mail: daf@fergusondurham.com
chd@fergusondurham.com

David H. Leroy
Attorney at Laws
1130 E. State Street
Boise, ID 83712

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: (208) 342-4200
- Electronic Mail: dave@dleroy.com

Brian Kane / cks
BRIAN KANE
Deputy Attorney General

EXHIBIT A

**TRANSMITTAL LETTER DATED
APRIL 28, 2015**



Idaho State Senate

Office of the Secretary
P.O. Box 83720
Boise, Idaho 83720-0081

April 28, 2015

The Honorable Lawrence Denney
Secretary of State

VIA HAND DELIVERY

Pursuant to Idaho Code Section 67-902 and Senate Rule 7(E), I have the honor of transmitting to you the Senate Bills introduced and did not become law during the First Regular Session of the Sixty-third Legislature, to wit:

S 1005	S 1084	S 1124
S 1011	S 1085	S 1134
S 1017	S 1089	S 1137
S 1019	S 1090	S 1147
S 1022	S 1092	S 1153
S 1032	S 1093	S 1156
S 1033aa	S 1094	S 1167
S 1038	S 1095aa	S 1173
S 1039	S 1096aa	S 1179
S 1048	S 1101	S 1180
S 1049	S 1102	S 1181
S 1055	S 1103	S 1191
S 1060	S 1105	S 1193
S 1061aa	S 1106	
S 1064	S 1107	
S 1065	S 1108aa	
S 1067	S 1111	
S 1068	S 1115	
S 1070aa	S 1122	
S 1083	S 1123	

Handwritten signature of Julie Goff in cursive.

Respectfully Yours,

Handwritten signature of Jennifer Novak in cursive.

Jennifer Novak

Secretary of the Senate

EXHIBIT B

S. 1010 AND TRACKING SLIP

SENATE BILL NO. 1011

2015 BY State Affairs

1/23 INTRODUCED, Read 1st time, Referred for printing

1/26 REPORTED PRINTED
Referred to Committee on: STATE AFFAIRS

2/13 REPORTED OUT OF COMMITTEE, recommend:
Do Pass, filed for 2nd Reading
Refer to the 14th Order for amendment
14th ORDER
W/O recommendation, filed for 2nd Reading
Refer to Committee on:

2/16 2nd READING
Read 2nd time, Filed for 3rd Reading

RULES SUSPENDED

RETAINED on 3rd Reading Calendar
Date Certain:

2/17 3rd READING
Read 3rd time in full 9 in full AA
Ayes 43 Nays 1 Absent & excused
Passed, Title approved, Transmitted to House
Failed, Filed in Office of Secretary of Senate
Recommitted to Committee on:
((Reconsideration))-->

2/27 REPORTED RETURNED FROM THE HOUSE
Passed, Referred for enrolling
Passed AAH
Referred to Committee on:
Referred to 10th Order
FOR CONCURRENCE
Failed, Filed in Office of Secretary of Senate
REPORTED ENROLLED 6:45 a.m.
Transmitted to the House for signature of the Speaker
REPORTED RETURNED FROM THE HOUSE having been
signed by the Speaker, ordered delivered to the
Governor
(If Vetoed) -->

SENATE RECORD

14th ORDER
Referred to the 14th Order
Committee of the Whole:
Reported out as amended, w/o recommend
Amendments referred for printing
Reported out without amendment:
Filed for 2nd Reading
Referred to
REPORTED ENGROSSED, Amendments reported
printed, Filed for 1st Reading AA,
1st READING AA, Filed for 2nd Reading AA
2nd READING AA, Filed for 3rd Reading AA
((3rd READING))

FOR CONCURRENCE
Reported out of committee, recommend:
Concur Not Concur
SENATE CONCURRED, Referred for engrossing
REPORTED ENGROSSED, Filed for 1st Reading AAH,
1st READING AAH, Filed for 2nd Reading AAH
2nd READING AAH, Filed for 3rd Reading AAH
RULES SUSPENDED
3rd READING in full AAH
Ayes Nays Absent & excused
Passed, Title approved, Filed for enrolling AAH
Failed, Filed in Office of Secretary of Senate
Senate DID NOT CONCUR in House amendments
Conference committee appointed
Reported out with recommendation:
for further amendment no agreement Referred
Conference report Adopted Referred
Referred to the 14th Order
Filed in Office of Secretary of Senate

Reconsideration
Notice served, Held for possible reconsideration
Motion to reconsider Passed Failed
Reconsideration Vote
Ayes Nays Absent & excused
Passed, Title approved, Transmitted to House
Failed, Filed in Office of Secretary of Senate
Reported received from the Governor
Governor's Veto: Sustained Overridden
4/6
4/6
Vote 5:30 19 ays 16 nays

HOUSE RECORD

REPORTED RECEIVED FROM THE SENATE
Filed for 1st Reading, Introduced, Read 1st time,
Referred to Committee on:
STATE AFFAIRS
Filed for 2nd Reading

REPORTED OUT OF COMMITTEE, recommend:
Do pass, filed for 2nd Reading
Refer to General Orders for amendment
GENERAL ORDERS
W/O recommendation, filed for 2nd Reading
Refer to Committee on:

3/23 2nd READING
Read 2nd time, Filed for 3rd Reading

RETAINED on 3rd Reading Calendar
Date Certain:

RULES SUSPENDED

3/24 3rd READING
Read 3rd time in full 31 in full AAH
Ayes 31 Nays 0 Absent & excused
12:57 a.m. Passed AAH, Title approved
Failed
Returned to the Senate
((Reconsideration))-->

REPORTED RECEIVED FROM THE SENATE having been
signed by the President
To the Speaker for signature
Returned to the Senate

HOUSE RECORD

GENERAL ORDERS
Referred to General Orders
Committee of the Whole:
Reported out as amended, w/o recommend
Amendments referred for printing
Reported out without amendment:
Filed for 2nd Reading
Referred to
Amendments reported/ printed
READ 1st time AAH, Filed for 2nd Reading AAH
2nd READING
Read 2nd time AAH, Filed for 3rd Reading AAH
((3rd READING))

Reconsideration
Notice served, Held for possible reconsideration
Time expired
Motion to Reconsider Passed Failed
Reconsideration vote
Ayes Nays Absent & excused
Passed Failed
Returned to the Senate



IN THE SENATE

SENATE BILL NO. 1011

BY STATE AFFAIRS COMMITTEE

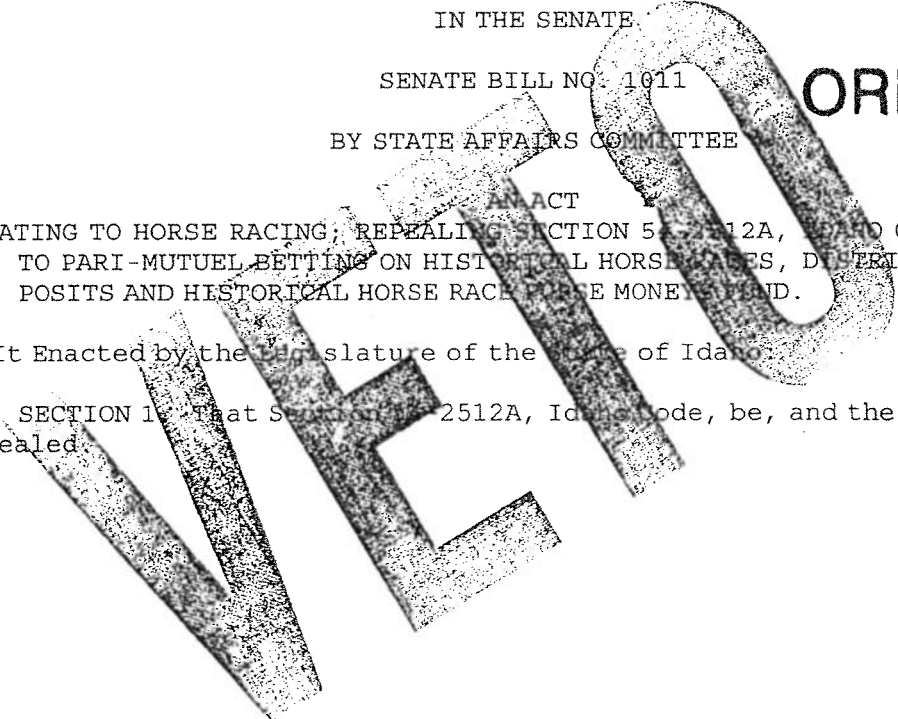
ORIGINAL

1
2
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7

AN ACT
RELATING TO HORSE RACING; REPEALING SECTION 5-2512A, IDAHO CODE, RELATING
TO PARI-MUTUEL BETTING ON HISTORICAL HORSE RACES, DISTRIBUTIONS OF DE-
POSITS AND HISTORICAL HORSE RACE PURSE MONEY FUND.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 5-2512A, Idaho Code, be, and the same is hereby
repealed.



STATEMENT OF PURPOSE

RS23345

The proposal repeals § 54-2512A, Idaho Code, enabling legislation adopted in 2013 authorizing the Idaho Racing Commission to promulgate rules to implement wagering on historical horse races at various facilities throughout the state.

FISCAL NOTE

There is no fiscal impact.

Contact:

Bill Roden
(208) 343-1231

DO NOT WRITE ON ORIGINAL BILL

THIS BILL PASSED THE SENATE ON THE 17th DAY OF February, 2015.

PRESIDENT OF THE SENATE

THIS BILL PASSED THE HOUSE OF REPRESENTATIVES ON THE 17th DAY OF March, 2015.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

I HEREBY CERTIFY THAT THE SENATE BILL NO. 2011 ORIGINATED IN THE SENATE DURING THE FIRST REGULAR SESSION OF THE SIXTY-THIRD LEGISLATURE OF THE STATE OF IDAHO.

WET

JENNIFER L. NOVAK, SECRETARY OF THE SENATE

THIS BILL RECEIVED BY THE GOVERNOR ON THE 30th DAY OF March, 2015, AT 4:54^p M. O'CLOCK, AND ~~APPROVED~~ Disapproved ON THE 3rd DAY OF April, 2015, AT 2:57^p M. O'CLOCK.

C. L. "BUTCH" OTTER, GOVERNOR

EXHIBIT C

**GOVERNOR'S MESSAGE TO THE PRESIDENT
OF THE IDAHO SENATE, BRAD LITTLE**



2015 APR -9 AM 9: 12

SECRETARY OF STATE
STATE OF IDAHO

C.L. "BUTCH" OTTER
GOVERNOR

April 3, 2015

The Honorable Brad Little
President
Idaho Senate
State Capitol
Boise, ID 83702

Dear Mr. President,

I hereby advise you that I have returned without my approval, disapproved and vetoed, the following Senate Bill, to wit:

S1011

within the time limited by law, the same having arrived in the Office of the Governor at the hour of 4:54 p.m. on March 30, 2015.

When the Legislature legalized pari-mutuel betting on historical horse races during its 2013 session, it was my hope that it would serve as a supplement, a shot in the arm for a struggling industry. I neither expected nor desired it to supplant live horse racing in Idaho, and it is my firm intention to limit and restrict this type of gambling in Idaho to race tracks.

Unfortunately, a beleaguered industry eager to get back on its feet financially expanded historical horse racing too quickly and without adequate safeguards to withstand inevitable scrutiny and criticism – not out of any enmity against a beloved Idaho tradition, but rather against the insidious specter of gambling's expansion unchecked in Idaho communities.

However, I do not believe it is too late to fulfill the promise of 2013 and refocus our attention on limiting and more effectively regulating rather than eliminating historical horse racing. In my view, a precious part of Idaho's western culture is at stake.

There are some actions that can be taken, even in the waning days of this legislative session, to salvage something for the many Idahoans whose livelihoods and lifestyles are tied to traditional horse racing. For instance, legislators still could act quickly to restrict historical horse racing to existing tracks as was envisioned in 2013. I also would welcome creation of a Gaming Commission to help fulfill the Legislature's constitutional responsibility to oversee pari-mutuel racing.

The Honorable Brad Little

April 3, 2015

Page 2

Meanwhile, I have directed the Racing Commission to issue a moratorium on licensing new facilities to conduct historical horse racing or introducing additional historical horse racing terminals (see attached letter) until a Gaming Commission has been created and established operating rules that are sensitive to both community and industry concerns.

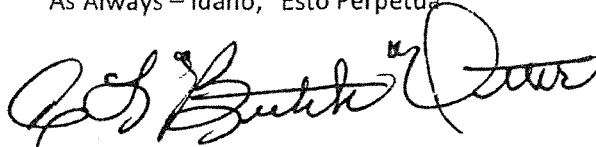
In the interim, the Racing Commission must more carefully and stringently regulate historical racing operations to ensure their consistency with legislative intent. Indeed, the Commission has the opportunity this very day to ensure that legislative intent is recognized in its reconsideration of an off-track facility's proposed operation in Idaho Falls.

And in an effort to establish definitively what so far has been the subject of opinion and speculation, I would ask the Legislature to join with me in appointing a special outside investigator as soon as possible to assess the legality of machines used at every facility that now conducts historical racing.

In vetoing this bill, what I'm seeking is an alternative capable of restoring public confidence in horse racing as a legitimate and even ennobling industry that is tied directly and irrevocably to race tracks, to stalls and starting gates, to paddocks and jockeys, and to people who love the sport.

I also would welcome working with the Legislature toward a more comprehensive and holistic review of the laws and policies governing all gaming in Idaho. Through that process, it is my hope that stakeholders and interested citizens will come together in a spirit of broader agreement on the proper limits to gambling in our state.

As Always – Idaho, "Esto Perpetua"

A handwritten signature in black ink, appearing to read "C.L. Butch Otter". The signature is stylized and cursive, with a large initial "C" and "O".

C.L. "Butch" Otter
Governor of Idaho



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SECRETARY OF STATE
STATE OF IDAHO

C.L. "BUTCH" OTTER
GOVERNOR

April 3, 2015

Paul J. Schneider, Chairman
Idaho State Racing Commission
700 S. Stratford Dr.
Meridian, ID 83642

Dear Chairman Schneider,

As soon as legally possible, I ask that the Idaho State Racing Commission officially impose an indefinite moratorium on the licensing of any new facilities for pari-mutuel betting on historical horse racing.

I also ask that the Racing Commission similarly impose an indefinite moratorium on any additional historic horse racing terminals being located at existing licensed facilities.

Please contact my legal counsel, Tom Perry, at (208) 334-2100 or via email at tom.perry@gov.idaho.gov if you have any questions about my intentions or how to proceed. Thank you for your prompt consideration.

As Always – Idaho, "Esto Perpetua"

A handwritten signature in black ink, appearing to read "C.L. Butch Otter".

C.L. "Butch" Otter
Governor of Idaho

CLO/mw