

provided the proper forum for Treasure Valley Racing to protect those interests. The same can be said of the Coeur D'Alene Tribe. The Coeur D'Alene Tribe was similarly well represented in the proceedings before the Idaho Legislature on S.B. 1011, but it nevertheless contends that as a "primary proponent" of the failed legislation, it is entitled to bring this action against the Secretary of State. Alternatively, the Tribe contends that Treasure Valley Racing's interests will be fully represented by the Secretary of State and the Governor, but the interests of those offices are in protecting their constitutional and statutory authorities and privileges, not in the preservation of Treasure Valley Racing's business interests. For these reasons, Treasure Valley Racing has fully satisfied the requirements of Idaho Appellate Rules 5(a), and 7.1, and Idaho Rule of Civil Procedure 24(a), and the Tribe's Motion to deny intervention to Treasure Valley Racing should be denied.

II. ARGUMENT

Treasure Valley Racing, LLC, ("TVR") incorporates herein, as set forth in whole, its Petition for Intervention Pursuant Idaho Appellate Rules 5(a) and 7.1.

A. Treasure Valley Racing's Interests Will Be Impaired by the Tribe's Requested Relief, and Intervention is Warranted and Necessary to Protect Those Interests:

Appellate Rule 7.1 and Idaho Rule of Civil Procedure 24(a) provide that a property party for intervention is one who is a "real party in interest," and "is so situated that the disposition of the action may as a practical matter impair or impede applicant's ability to protect that interest." Id. App. R. 7.1, and Id. R. Civ. P. 24(a). Where a petitioner makes such a showing, intervention "shall" be granted as a matter of right. Id. R. Civ. P. 24(a). Here the Tribe concedes that TVR's interests will, as a practical matter, be impaired by the outcome of this proceeding, but nevertheless contends that TVR should be denied intervention because TVR's interests "were

fully aired during the legislative process and are not relevant to the legal issues before this court.” See Tribe’s Memorandum in Opposition to TVR’s Petition for Intervention, p. 3.

TVR has demonstrated that its’ interest in this proceeding is not to argue or justify the legality of historic horse racing to this Court pursuant to I.C. § 54-2512A, but rather to protect its’ interests in the outcome of the Tribe’s challenge to the legitimacy of the Governor’s veto of S.B. 1011, the same interest the Tribe has in attempting to overthrow the Governor’s veto, and the Senate’s sustentation vote of that veto. If TVR’s interests were already fully vetted during the legislative process, then the Tribe, by its own logic, is equally left without an opportunity to argue its position to this Court, because its’ position too was “fully aired during the legislative process and [is] not relevant to the legal issues before this court.” See Memorandum in Opposition to TVR’s Petition for Intervention, p. 3.

TVR has provided ample evidence to the Court through its Verified Petition for Intervention demonstrating its substantial interests that will be impaired if the relief requested by the Tribe is granted.

Rule 24(a) permits intervention as a matter of right when the applicant claims an interest relating to the transaction at issue and the applicant’s ability to protect that interest may be impaired by the disposition....To deny it the opportunity to appear and be heard would be repugnant of our concepts of fairness and due process.

City of Boise v. Ada County, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009). The Tribe’s argument that participation and representation during the legislative process, leading up the Governor’s veto of SB 1011 precludes participation before this Court as a party-intervenor is specious. Under that same analysis the Tribe lacks authority to pursue its claims in the proceeding.

The Tribe has argued that its primary interest in this proceeding is as “a proponent of 2015 Idaho Senate Bill 1011.” *See* Verified Petition for Writ of Mandamus, p. 13; *also see* Petitioner’s Brief in Support of Verified Petition for Writ of Mandamus, p. 4; *also see* Memo in Opposition to TVR’s Verified Petition for Intervention, p. 3. A generalized interest in the outcome of legislation does confer upon a person or entity the authority to invoke the original jurisdiction of this Court. It must be able to demonstrate that it is a “beneficially interested” party, pursuant to Idaho Appellate Rule 5(c). If the Court were to extend original jurisdiction to take up the Tribe’s mandamus petition, then any proponent of any failed piece of legislation would be entitled to petition this Court for a writ of mandamus to compel a different legislative result. Rather, the party must demonstrate that it “is the person who will be entitled to the benefits of the action if successful, one who is actually and substantially interested in the subject matter.” *Taylor v. Maile*, 142 Idaho 253, 258, 127 P.3d 156, 161 (2005), (explaining that a “beneficially interested party” is one who is a “real party in interest” to a proceeding.) Here, Treasure Valley Racing will suffer concrete and measurable harm by the granting of the Tribe’s requested relief, something that the Tribe has failed to even allege. The Tribe additionally ignores that “[i]t is generally recognized that ‘courts should look with favor on intervention in a proper case, and....be liberal in permitting parties to intervene under the proper circumstances.’ If there is any doubt as to whether intervention is appropriate, a motion to intervene should usually be granted.” *City of Boise v. Ada County*, 147 Idaho 794, 803, 215 P.3d 514, 523 (2009).

For these reasons, Treasure Valley Racing is entitled to Intervention as a matter of right pursuant to Idaho Appellate Rule 7.1 and Idaho Rule of Civil Procedure 24(a).

B. Neither the Governor nor the Secretary of State Adequately Represent TVR’s Interests:

TVR's interest in this proceeding is not adequately represented by either the Secretary of State, or the office of the Governor. The fact that the interests of the Secretary of State and the Governor may align as Respondents in this proceeding does not equate to a determination that their arguments and representative interests in this proceeding, or that the veto and corresponding action of the Senate represented valid actions by the executive and legislative branches of Idaho's government, will protect the interests of the TVR. The Respondent Secretary of State has asserted that he is indifferent to the outcome of this action. One can hardly say the same for TVR. In fact, the Secretary of State's brief filed on June 10, 2015 states that it "recognizes that substantial procedural and jurisdictional questions exist in addition to the substantive question of whether he has a ministerial duty to act," but that he "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." See Respondent's Memorandum in Support of Answer to Verified Petition for Writ of Mandamus, p. 2, n. 1. It is clear that Secretary of State has anticipated TVR's intervention and intentionally not argued positions that are important to the outcome of this action.

Likewise, the Governor, in his Petition to Appear as Amicus, alleges that his interest in this proceeding is in seeing the policy actions set forth in his veto message be protected and carried out, a position that TVR agrees with but that does not cover the scope of argument that is required to protect the interests of TVR in this action. Further, courts routinely have determined that private parties whose interests may be concretely effected by the outcome of a proceeding, are proper intervenors in similar matters posing questions of governmental propriety in order to protect their interests. *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392 (9th Cir. 1995), *Wilderness Society v. U.S. Forest Service*, 630 F.3d 1173 (9th Cir. 2011). Neither the Secretary of

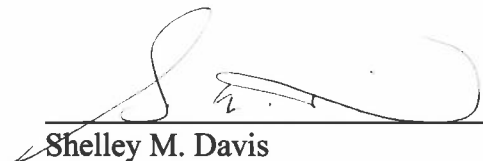
State nor the Governor have a direct, tangible and concrete interest in the eventual outcome of this litigation similar to Treasure Valley Racing's, and its' interests will be impacted and impaired if the Tribe's requested relief is granted. Treasure Valley Racing should be granted intervention as a matter of right.

III. CONCLUSION

THEREFORE and ACCORDINGLY, Treasure Valley Racing, LLC, has demonstrated that it meets the requirement for intervention, and hereby requests that its' Petition to Intervene Pursuant to Idaho Appellate Rules 5(a), 7.1 and Idaho Rule of Civil Procedure 24(a) be GRANTED.

Dated this 12th day of June, 2015.

BARKER ROSHOLT & SIMPSON LLP



Shelley M. Davis
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of June, 2015, I caused to be served a true and correct copy of the foregoing **REPLY MEMORANDUM TO PETITIONER COEUR D' ALENE TRIBE'S MEMORANDUM IN OPPOSITION TO TREASURE VALLEY RACINGS, LLC'S VERIFIED PETITION FOR INTERVENTION PURSUANT TO APPELLATE RULES 5(a) AND 7.1** by the method indicated below, and addressed to each of the following:

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