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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

COEUR D'ALENE TRIBE

Petitioner,

v.

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

Respondent.

No. 43169 - 2015

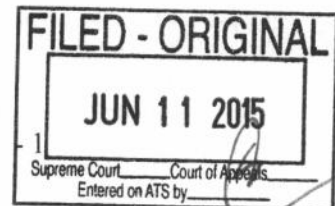
**PETITIONER'S  
MEMORANDUM IN  
OPPOSITION TO TREASURE  
VALLEY RACING, LLC'S  
VERIFIED PETITION FOR  
INTERVENTION PURSUANT  
TO APPELLATE RULES 5(a)  
AND 7.1**

Treasure Valley Racing, LLC, ("TVR"), seeks to intervene as a party in this original proceeding under Idaho Appellate Rules 5 and 7.1. For the reasons that follow, Petitioner Coeur d'Alene Tribe respectfully requests that the Court deny the TVR's petition to intervene.

**LEGAL STANDARDS**

Idaho Appellate Rule 7.1 permits any person "whose interest would be affected by the outcome of an appeal or proceeding under these rules [to] file a verified petition with the Supreme Court asking for leave to intervene as a party to the appeal or

MEMORANDUM IN OPPOSITION TO TREASURE VALLEY RACING'S VERIFIED PETITION FOR INTERVENTION PURSUANT TO APPELLATE RULES 5(a) and 7.1



proceeding ...” Idaho Appellate Rule 5(a) also implies that intervention is permissible in an original proceeding on a petition for writ of mandamus, as the Rule requires “motions seeking to intervene in such petitions” to be served by mail on all affected parties. I.A.R. 5(a).

Although this is not a typical civil action filed in the district court, the Idaho Rules of Civil Procedure provide further guidance to the Court in resolving TVR’s request for intervention. Under Rule 24, a court may grant either permissive intervention or intervention as a matter of right. Here, TVR is claiming a right to intervene. *See* Brief in Support of Verified Petition for Intervention Pursuant to Idaho Appellate Rules 5(a) and 7.1, p. 4-5 (“TVR’s Brief in Support”).

A party shall be permitted to intervene as a matter of right only (1) when a statute provides a right to intervene, or (2) when the applicant claims an interest relating to the subject of the action and the applicant is so situated that disposition of the action may impair the applicant’s ability to protect that interest, “unless the applicant’s interest is adequately represented by existing parties.” I.R.C.P. 24(a); *see also American Falls Res. District No. 2 v. Idaho Department of Water Resources*, 143 Idaho 862, 881-82, 154 P.3d 452-53 (2007).

## DISCUSSION

There is no statute that grants TVR a right to intervene in this matter, so TVR necessarily relies on the second clause of Rule 24(a) to support its request for intervention, claiming that it has an interest in the subject of the action that will not be adequately represented by the existing parties. *See* TVR’s Brief in Support, pp. 4-7. TVR states that it wishes to “provide this Court with information the Court will require to

understand the harms that will result if this Court grants the relief requested by Petitioners.” *Id.* at 1.

The policy implications and potential consequences of S.B. 1011, however, were fully aired during the legislative process and are not relevant to the legal issues before this Court. These issues are instead limited to whether the Governor’s purported veto of S.B. 1011 was invalid and, if so, whether the Secretary of State has a duty to certify the bill as law. Whether TVR will be harmed financially is not germane or helpful to the Court in resolving the questions raised in this action, as TVR surely cannot claim that the validity of the veto or the Secretary’s duties turn on the magnitude of harm that a repeal of Idaho Code § 54-2512A would have on it or others. It is true that the Tribe was a proponent of S.B. 1011 and that it has an interest in seeing that S.B. 1011 be recognized as the law that it now is. But the Tribe has also stepped forward in this action to vindicate larger principles related to the people’s right to have duly enacted laws enforced when governmental actors appear to lack the ability or will to do so.

Next, the Respondent Secretary of State has entered an appearance through the Office of the Idaho Attorney General, arguing while he stands ready to implement any order from this Court, he lacks the authority to certify S.B. 1011 as law under the facts and circumstances of this case. *See* Respondent’s Memorandum in Support of Answer to Verified Petition for Writ of Mandamus, pp. 1-2. Because the Secretary contends that relief should be denied, TVR’s interest in maintaining the status quo is aligned with an existing party. TVR has made no showing that the Secretary, through his counsel, cannot adequately represent that position. Moreover, the Governor has recently filed a Petition to Appear as Amicus Curiae. If the Court grants the Governor’s request, then his view that

he successfully vetoed the bill will likewise be adequately presented to the Court.

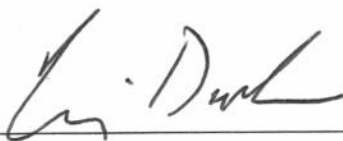
This proceeding is on an expedited track, and allowing TVR to intervene will add complexity and additional work for the Court and for the parties, and could cause unnecessary delay.

Finally, another private entity that has a potential interest in the outcome of the case, Coeur d'Alene Racing, Ltd., has requested to appear as an amicus. If that request is granted, then the Court should also limit TVR, which is similarly situated to Coeur d'Alene Racing, to amicus status.

WHEREFORE, Petitioner Coeur d'Alene Tribe moves this Court to deny Treasure Valley Racing's Petition for Intervention Pursuant to Idaho Appellate Rules 5(a) and 7.1.

Dated: June 11<sup>th</sup>, 2015

Respectfully submitted,



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COEUR D'ALENE TRIBE

**CERTIFICATE OF SERVICE**

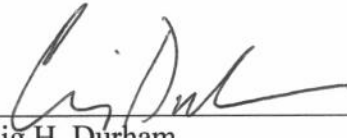
I hereby certify that on this 11<sup>th</sup> day of June, 2015, I caused a true and correct copy of the foregoing Petitioner's Memorandum in Opposition to Treasure Valley Racing, LLC's Verified Petition for Intervention Pursuant to Idaho Appellate Rules 5(a) and 7.1 to be sent to the following, via United States mail and email:

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