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IN THE SUPREME COURT OF THE STATE OF IDAHO

COEUR D'ALENE TRIBE,	)	
	)	Supreme Court Docket No. 43169-2015
Petitioner,	)	
	)	MEMORANDUM IN OPPOSITION TO
vs.	)	PETITIONER'S MOTION TO DENY
	)	APPEARANCE OF AMICUS CURIAE
LAWERENCE DENNEY, Secretary of	)	
State of the State of Idaho, in his official	)	
capacity,	)	
	)	
Respondent.	)	
_____	)	

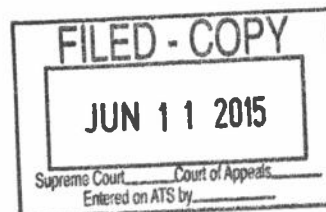
COMES Now proposed Amicus Curiae Coeur d' Alene Racing, Ltd., by and through David H. Leroy, its attorney at law and replies, pursuant to Rule 32, I.A.R. to the Coeur d' Alene Tribe's Motion to Deny the requested participation in briefing and argument as follows:

I.

AMICUS CURIAE CAN SIGNIFICANTLY CONTRIBUTE TO THE BROAD PERSPECTIVE  
CONSIDERATION OF ESSENTIAL PUBLIC POLICY ISSUES

The criterion for deciding whether to permit filing of an amicus brief is typically whether such a document will assist the court by presenting arguments, theories, insights, facts or data that are not found in the parties' briefs. Voices for Choices v. Illinois Bell Telephone Co., 339 F

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3d 542, 56 Fed R Serv. 3d 322, (7<sup>th</sup> Cir. 203). Amicus facilitate “informed judicial consideration.” In Re Marriage Cases, 43 Cal 4<sup>th</sup> 757, 183 P3d 384 (2008). The Petitioner’s statement that the Respondent Secretary of State’s “interest is already well represented in this case and need not be duplicated” ignores the fact that the Secretary’s narrow perspective does not encompass that of either the legislature or the governor on this question of veto procedure. In fact, as of this time, with a mere six days before opening briefs are due, both of said interests are unrepresented before the Court. Coeur d’ Alene Racing can help give “arguments, theories and insights” on this vital matter of constitutional balance.

## II.

### COEUR D’ ALENE RACING WILL COMPLY WITH ANY EXISTING OR AMENDED SCHEDULE IMPOSED BY THE COURT

In its two page Motion, the Coeur d’ Alene Tribe speculates that “allowing the amicus to intervene threatens the schedule.” (Motion, page 2) As noted below, Coeur d’ Alene Racing sought amicus status, rather than proceeding as a purported intervener, to assure its ability to comply with the existing schedule.

Predictably, even intervention is now sought by a like-interested party. Coeur d’ Alene Racing assures all parties and the Clerk that it will comply with all schedules set by this Court.

## III.

### COEUR D’ ALENE RACING DOES NOT WISH OR PROPOSE TO ARGUE THE UNDERLYING MERITS OF S.B. 1011 AND ITS EFFECT

Wrongly, the Petitioner also asserts that “The proposed amicus apparently wishes to be

heard on the merits of S.B. 1011 and the repeal of Idaho Code Section 15-2514A.” (Motion, page 2) The Petitioner has drawn a mistaken assumption from the text of the standing-type, identifying information which is required to be stated by Rule 8 in seeking amicus argument. Coeur d’ Alene Racing proposes to brief and argue only the lack of merits of the Petitioner’s contentions and to ask this Court to accord proper public policy interpretations to the Governor’s veto authority and to the legislative journal entry rule.

### III.

#### THE COURT IS NOT NOW NOR YET PRESENTED WITH AN EXCESS OF PARTIES OR VIEWS SUPPORTING THE PROPRIETY OF THE GOVERNOR’S VETO

At this date, no party has stepped forward to fully support the validity of the Governor’s veto of S.B. 1011. Even the Respondent’s Answer by the Secretary of State states in Paragraph 27 thereof that “he takes no position concerning whether the Governor properly vetoed S.B. 1011 or whether it became law on April 4, 2015.” (Answer, page 4) Treasure Valley Racing is now seeking entrance as an intervening party, but its Verified Petition does not yet address these critical issues. The Governor has not yet responded. Both the proposed brief and oral argument sought by Coeur d’ Alene Racing are appropriate and necessary perspectives for this Court’s consideration.

### IV.

#### THIS COURT HAS A RICH HISTORY OF WELL UTILIZING AMICUS POINTS OF VIEW

Only last year in its decision in Western Home Transport, Inc. vs Idaho Department of Labor, Supreme Court Docket No. 40462 (2014), the Idaho Supreme Court utilized much of the

argument and public policy insight supplied by the Idaho Motor Transport Association which appeared as Amicus Curiae by permission. With those ideas, the Court was compelled to reverse its own six year old holding in Gilter, Inc. vs Idaho Department of Commerce, 145 Idaho 425, 179 P3d 1071 (2008). Upon occasion, this Court has even recognized that amici can occasionally carry the primary burden of explanation to the point of commending their participation and awarding costs and fees incurred on appeal to such a non-party. Mendenhall v. Caine, 101 Idaho 628 619 P2d 146 (1980). Coeur d' Alene Racing wishes to participate in that same tradition.

V.

IN THE ALTERNATIVE, COEUR D' ALENE COULD HAVE SOUGHT AND MAY STILL SEEK INTERVENTION AS A REAL PARTY IN INTEREST UNDER IAR 7.1

The Court has now been presented with the Verified Petition for Intervention by Treasure Valley Racing, LLC, seeking entrance into this litigation as a party vitally interested in and greatly affected by the outcome of this original action. Coeur d' Alene Racing's basis for affect and interest are identical to that of Treasure Valley and both certainly pass the test of IAR 7.1 to show that their businesses will be potentially eliminated by the outcome sought by Petitioner in this case.

In lieu of seeking intervention, and in deference to the expedited schedule envisioned currently by both the Court and the Petitioner, Coeur d' Alene Racing elected only to seek briefing and argument privileges as an Amicus Curiae. Should this limited permission be denied, it may well elect to attempt to refile as a well-qualified intervener.

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VI.

NO OTHER PARTY OBJECTS TO COEUR D' ALENE RACING AMICUS REQUEST

The Coeur d' Alene Tribe should not be allowed to dictate and truncate the extent of opposing points of view before this Court. Upon information and belief, after communication with all yet-known relevant counsel, and noting the absence to date of any other filed opposition motion, no actual or potential party, including the Secretary of State and the Governor of Idaho, except the Tribe opposes hearing Coeur d' Alene Racing's point of view. It has retained counsel who is experienced in both legislative matters and executive actions. Mr. Leroy served both as President of the Idaho State Senate for four years and as Acting Governor of Idaho for some 254 days between 1983 and 1987. Coeur d' Alene Racing believes that it can substantially sharpen the perspective of this Court by briefing and arguing as to the balancing of legislative and executive needs and duties in the veto process.

VII.

CONCLUSION

For each and all of the above mentioned reasons, Coeur d' Alene Racing, Ltd. hereby respectfully requests that its Petition to Appear as Amicus be granted forthwith.

DATED This 16th day of June, 2015.

  
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David H. Leroy,  
Attorney for Coeur d' Alene Racing

**CERTIFICATE OF SERVICE**

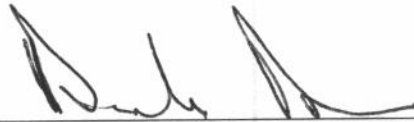
I hereby certify that on this 11<sup>th</sup> day of June, 2015, I caused a true and correct copy of the foregoing Memorandum In Opposition to Petitioners Motion to Deny Appearance of Amicus Curiae to be sent by U.S. Mail to the following:

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Davalee Davis, Executive Assistant