IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON, Plaintiff-Respondent, Petitioner on Review, v. THOMAS EVERETT KURTZ, Defendant-Appellant, Respondent on Review.	Jefferson County Circuit Court No. 05FE0031 Appellate Court No. A132184 Supreme Court No. S058346

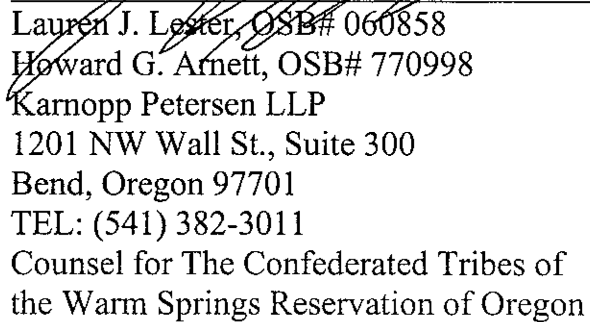
THE CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON, THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, AND THE COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION'S JOINT MOTION - APPEAR *AMICI CURIAE*

The Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs"), the Confederated Tribes of the Umatilla Indian Reservation ("Umatilla"), and the Columbia River Inter-Tribal Fish Commission ("CRITFC") respectfully move this court for an order permitting them to appear and to participate as *amici curiae* in Supreme Court Case No. S058346, *State of Oregon v. Thomas Everett Kurtz.*

Warm Springs, Umatilla, and CRITFC wish to present a position on the merits of this case, which directly affects their private interests. Specifically, the Court of Appeals decision impacts the ability of Warm Springs, Umatilla, and CRITFC to effectively conduct their law enforcement programs, and threatens the personal safety of the tribal law enforcement officers that are an integral part of those programs.

Pursuant to ORAP 8.15(3), this motion is accompanied by the joint brief that Warm Springs, Umatilla and CRITFC seek to file in support of the State of Oregon.

DATED this 8th day of September, 2010.



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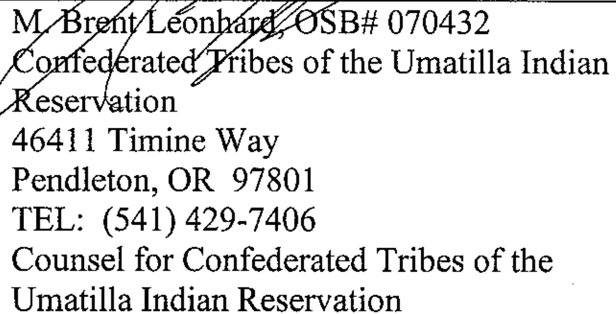

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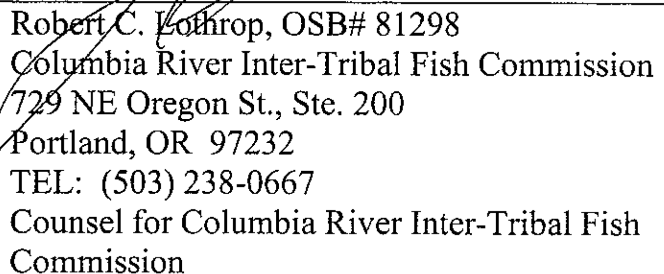

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IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent/Petitioner on Review,

v.

THOMAS EVERETT KURTZ,
Defendant-Appellant/Respondent on Review.

Court of Appeals No. A132184
Supreme Court No. S058346

On Review to the Supreme Court of the State of Oregon

BRIEF OF *AMICI CURIAE* CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, AND COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION

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September, 2010

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INTEREST OF *AMICI CURIAE*

The Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs" or "Warm Springs Tribe") and the Confederated Tribes of the Umatilla Indian Reservation ("Umatilla" or "Umatilla Tribe") are federally recognized Indian tribes occupying reservations in Oregon established by 1855 treaties: respectively, the Treaty with the Tribes of Middle Oregon of June 25, 1855 (12 Stat 963) and the Treaty with the Umatilla, Cayuse and Walla Walla Tribes of June 9, 1855 (12 Stat 945). The Columbia River Inter-Tribal Fish Commission ("CRITFC") is a consortium of four treaty tribes, including Warm Springs and Umatilla, established in 1977 to coordinate the management and regulation of the four tribes' off-reservation treaty fishing activities in and along the Columbia River.

Warm Springs and Umatilla exercise primary criminal jurisdiction over their reservations and, in part through the CRITFC law enforcement program, over fishing sites along the Columbia River designated under federal law and over treaty fishing activities on the Columbia River. Warm Springs, Umatilla and CRITFC operate law enforcement programs, which include police officers certified by the Oregon Department of Public Safety Standards and Training, to maintain public safety and enforce tribal criminal laws within their respective jurisdictions. Out of necessity, tribal police officers are also called on to enforce state criminal laws with respect to non-Indians who commit criminal acts in the presence of tribal officers. Indeed, this case arose when an officer employed and commissioned by *amicus curiae* Warm Springs Tribe pursued a non-

Indian resident of the Warm Springs Indian Reservation outside of the boundaries of the reservation for committing a traffic infraction while driving through the reservation.

The tribes' law enforcement efforts extend to the Columbia River and the Indian country[1] located there—specifically, to the tribes' treaty reserved fishing sites along the Columbia River designated by the Act of March 2, 1945, 59 Stat 22, and Title IV of Public Law 100-581, 102 Stat 2938 (1988). *See U.S. v. John,* 437 US 634, 649, 98 S Ct 2541, 57 L Ed 2d 489 (1978); *U.S. v. Pelican,* 232 US 442, 449, 34 S Ct 396, 58 L Ed 676 (1914); *U.S. v. Sohappy*, 770 F2d 816, 822 (9th Cir 1985), *cert den*, 477 US 906, 106 S Ct 3278, 91 L Ed 2d 586 (1986); *Settler v. Lameer*, 507 F2d 231, 239 (9th Cir 1974); *see also* 25 CFR §§ 247.1, 247.2, 248.1 (2010). CRITFC carries out the Warm Springs and Umatilla tribe's law enforcement efforts on the Columbia River and at treaty fishing sites.

SUMMARY OF ARGUMENT

The Court of Appeals' interpretation of the terms "police officer" and "peace officer" as used in ORS 811.540 (fleeing or attempting to elude police officer) and ORS 162.315 (resisting arrest) leads to an unreasonable result because it threatens the ability of tribal police officers to maintain public safety in Indian country. Under the Court of

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[1] "Indian country" is defined by 18 USC section 1151, and includes all lands within the limits of any Indian reservation under the jurisdiction of the United States, all "dependent Indian communities" within the borders of the United States, and all lands that the United States holds in trust for the benefit of individual Indians (*i.e.*, "Indian allotments"). Generally speaking, primary jurisdiction over Indian country lands rests with the federal government and the Indian tribe that inhabits the lands—not with the states. *See Alaska v. Native Village of Venetie Tribal Government*, 522 US 520, 527 n 1, 118 S Ct 948, 140 L Ed 2d 30 (1998).

Appeals' reading of these statutes, non-Indian criminal offenses against state-certified tribal police officers cannot be prosecuted under tribal, state, or federal law, creating a jurisdictional "void." The public and personal safety risks created by this void were not intended by the legislature when it defined the terms "police officer" in ORS 801.395 and "peace officer" in ORS 161.015. The Court of Appeals decision is also contradictory to and disrupts 25 years of practice along the Columbia River where CRITFC police officers have routinely enforced state law.

As illustrated by CRITFC's long-standing law enforcement efforts on behalf of the tribes, the Court of Appeals' concerns regarding ORS 810.410 are misplaced. As an incidence of their inherent sovereign powers, tribes may already pursue and detain individuals outside of Indian country in hot pursuit of crimes committed within Indian Country. Reaffirming that tribal officers have the ability to arrest and cite individuals for traffic infractions outside of Indian country under ORS 810.410 enhances public safety and is consistent with actual practice along the Columbia River.

ARGUMENT

I. BACKGROUND: CRIMINAL JURISDICTION AND LAW ENFORCEMENT ON THE WARM SPRINGS AND UMATILLA INDIAN RESERVATIONS AND IN THE COLUMBIA RIVER TREATY INDIAN FISHERY

The current criminal jurisdiction of the Warm Springs and Umatilla tribes is the product of federal statutes, case law, and the tribes' inherent sovereignty. The tribes have criminal jurisdiction over all offenses committed by Indians in each tribe's respective Indian country lands, including offenses committed on off-reservation lands such as the

tribes' fishing sites designated by federal law. *See* 59 Stat 22 (1945); Pub L 100-581, tit IV, 102 Stat 2938 (1988). The federal government has jurisdiction over Indian country criminal offenses committed by non-Indians against Indians pursuant to the General Crimes Act, 18 USC section 1152, and the Assimilative Crimes Act, 18 USC section 13. Those statutes incorporate criminal offenses set forth under state law. The State of Oregon has exclusive jurisdiction over criminal offenses occurring within Indian country that involve only non-Indians.[2] *U.S. v. McBratney*, 104 US 621, 624, 1881 WL 19853, 26 L Ed 869 (1881); *Draper v. U.S.*, 164 US 240, 247, 17 S Ct 107, 41 L Ed 419 (1896); *Solem v. Bartlett,* 465 US 463, 465 n 2, 104 S Ct 1161, 79 L Ed 2d 443 (1984). Tribes do not have criminal jurisdiction over non-Indians who commit crimes in Indian country. *Oliphant v. Suquamish Indian Tribe*, 435 US 191, 212, 98 S Ct 1011, 55 L Ed 2d 209 (1978).

II. THE APPELLATE COURT'S RULING LEADS TO AN UNREASONABLE AND ABSURD RESULT BY CREATING A JURISDICTIONAL GAP.

The decision of the Court of Appeals in this case would effectively decriminalize non-Indian offenses against tribal law enforcement officers regardless of where the incident occurs. Within the context of the current state of criminal jurisdiction in Indian

[2] In 1953 Congress enacted Public Law 280 (67 Stat 588), which extended state criminal jurisdiction to all "Indian country" in six states, including Oregon, but with the express exception of the Warm Springs Reservation. 18 USC § 1162(a). Public Law 280 was later amended to allow states to retrocede criminal jurisdiction to the federal government, which Oregon did with respect to the Confederated Tribes of the Umatilla Indian Reservation on December 16, 1980. 25 USC § 1323; Notice, Umatilla Indian Reservation, Oregon's Acceptance of Retrocession of Jurisdiction, 46 Fed Reg 2195-02 (Jan 8, 1981).

country, the lower court's ruling creates a jurisdictional void for offenses by non-Indians against tribal police officers in which the victim's status as a "police officer" or "peace officer" is an essential element of the crime. *See, e.g.*, ORS 811.535 (failure to obey police officers); ORS 811.540 (fleeing or attempting to allude police officers); ORS 807.620, ORS 162.385 (giving false information to a police officer or peace officer); ORS 162.315 (resisting arrest); ORS 162.367 (criminal impersonation of peace officer). Therefore, the state and federal governments could only prosecute such a non-Indian for offenses applicable to the general public.

Treating crimes against tribal police officers on par with those against the general public undermines the seriousness of the offenses and degrades respect for law and order in Indian country. Moreover, it endangers the lives of tribal police officers. The statutory provisions defining the terms "police officer" in ORS 801.395 and "peace officer" in ORS 161.015 do not compel such a reading. Holding otherwise leads to an unreasonable result.

In determining whether the legislature intended the statutes at issue in this case, ORS 801.395 and ORS 161.015, to include tribal law enforcement officers, the court must review the text of the statutes in context and in light of relevant legislative history. ORS 174.020; *State v. Gaines*, 346 Or 160, 171-72, 206 P3d 1042 (2009). *Amici curiae* agree with the State of Oregon that an examination of the text and legislative history of the statutes reveals that the legislature intended to include tribal police officers when it defined the terms "police officer" in ORS 801.395 and "peace officer" in ORS 161.015.

If, however, the court determines that the statutes remain ambiguous after reviewing the text of the statutes in context and the relevant legislative history, the court may turn to the general canons of statutory construction to assist the court in discerning the legislature's intent. *Gaines,* 346 Or at 172. Specifically, in the event that a statute has more than one plausible meaning, "the court will refuse to adopt the meaning that would lead to an absurd result that is inconsistent with the apparent policy of the legislation as a whole." *State v. Vasquez-Rubio*, 323 Or 275, 282-83, 917 P2d 494 (1996); *see also State v. Cervantes*, 232 Or App 567, 587, 223 P3d 425 (2009) ("We assume that the legislature did not intend an unreasonable result.").

In this case, the exclusion of tribal police officers from the definitions of "police officer" and "peace officer" in ORS 801.395 and ORS 161.015 leads to an unreasonable result by effectively precluding prosecution of non-Indians for committing certain offenses against tribal police officers in any forum. Had the legislature considered the jurisdictional void created by the exclusion of tribal police officers from the definitions at issue, it would have intended that the definitions be construed broadly enough to include tribal police officers. *See PGE v. Bureau of Labor and Industries*, 317 Or 606, 612, 859 P2d 1143 (1993). In sum, application of the canons of statutory construction clarifies that the Court of Appeals erred in reversing the trial court by narrowly construing ORS 801.395 and ORS 161.015 to exclude tribal police officers.

Under the Court of Appeals' interpretation of ORS 801.395 and ORS 161.015, tribal law enforcement officers, whether Indian or non-Indian, are not protected by state, tribal, or federal law in the event of an offense committed by a non-Indian against the

officer. An examination of the jurisdictional rules applicable to an offense committed by a non-Indian against an Indian tribal police officer and a non-Indian tribal police officer illustrates the void created by the Court of Appeals ruling.

A. Tribal Police Officers are not Protected by State Law.

Under the Court of Appeals ruling, an offense by a non-Indian against a non-Indian tribal police officer would carry no greater consequence under state law than any offense against a private citizen. Evading arrest would carry no consequence at all. Furthermore, absent a federal statute of nationwide applicability, such incidents are within the sole jurisdiction of the state. *McBratney*, 104 US at 624.

Crimes committed by a non-Indian against an Indian in Indian country come under the General Crimes Act. By its terms, "the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States * * * shall extend to the Indian country." 18 USC § 1152. The General Crimes Act makes the Assimilative Crimes Act applicable to crimes in Indian country.

The Assimilative Crimes Act provides that:

> "[w]hoever within [the territorial jurisdiction of the United States] is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State * * * in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment."

18 USC § 13(a). The effect of this statute, by way of the General Crimes Act, is to permit the United States to prosecute non-Indians who commit crimes against Indian tribal police officers in federal court pursuant to Oregon's criminal laws.

Overlaying this patchwork jurisdiction on the present matter, if an offense involves an Indian tribal police officer it would be exclusively within the federal government's criminal jurisdiction under *Oliphant* and subject to prosecution under the state's laws by way of the Assimilative and General Crimes Acts. But, the Court of Appeals ruling excludes tribal police officers from the state law's reach and thus the Assimilative and General Crimes Acts. Consequently, a non-Indian who commits an offense against a tribal police officer in Oregon can only be prosecuted if there is a separate federal crime of nationwide applicability.

B. Tribal Officers are not Protected by a Federal Law of Nationwide Applicability.

A federal statute of nationwide applicability makes it a crime for a person to forcibly assault, resist, oppose, impeded, intimidate, or interfere with a federal official designated in 18 USC section 1114 when that official is performing their duties. 18 USC § 111(a).

In *U.S. v. Schrader*, the Eighth Circuit Court of Appeals held that when the Bureau of Indian Affairs ("BIA") has entered into an agreement with a tribe pursuant to 25 USC section 2804, tribal police officers will be considered federal officials for purposes of 18 USC section 111(a). 10 F3d 1345, 1350-51 (8th Cir 1993). Despite the language of *Schrader*, and as made clear by recent amendments to Section 2804, the

agreements contemplated are Special Law Enforcement Commissions ("SLECs"). 25 USC § 2804(a)(3). The BIA, however, has routinely failed to enter into such agreements with *amici curiae.* Indeed, neither Warm Springs, Umatilla, nor CRITFC have federally employed police officers, and, despite past and current efforts to obtain them, none have officers with SLEC cards issued by the BIA.

Consequently, no federal law of nationwide applicability would protect a Umatilla, Warm Springs or CRITFC officer in the event of an assault by a non-Indian. In short, if the Court of Appeals ruling is upheld, but for unilaterally revocable deputation agreements with local sheriffs, tribal police officers are not protected by the laws of the tribe, state or federal government. The legislature surely did not intend this result.

III. THIS JURISDICTIONAL GAP ENDANGERS THE LIVES OF TRIBAL POLICE OFFICERS.

Every day law enforcement officers encounter situations in which the threat of injury or death is genuine. Few vocations have the need to record the deliberate assaults and murders committed against their membership. Law enforcement is one of the few that does. The FBI's Uniform Crime Report for 2008 presents the grim statistical reality of the high number of police officers assaulted and killed in the line of duty. This report makes all too clear the need to treat crimes against officers seriously, let alone treat offenses against officers as distinct from crimes against the general public.

In 2008 alone, 58,792 officers (11.3 percent) were assaulted while performing their duties. Federal Bureau of Investigation, *Uniform Crime Reports, Law Enforcement Officers Assaulted, 2008, available at* http://www.fbi.gov/ucr/killed/2008/documents/

assaults.pdf (released Oct 2009; last visited Sept 7, 2010). These assaults resulted in injuries to 15,366 officers (26.1 percent). *Id.*, *available at* http://www.fbi.gov/ucr/killed/2008/data/table_66.html. Forty-two percent of officer assaults between 1999 and 2008 occurred while the officer was conducting a traffic stop, making an arrest, or transporting a suspect. *Id.*, *available at* http://www.fbi.gov/ucr/killed/2008/data/figure_04.html. In 2008, forty one law enforcement officers were murdered in the line of duty. *Id.*, *available at* http://www.fbi.gov/ucr/killed/2008/feloniouslykilled.html. Approximately 42 percent of officer murders between 1999 and 2008 occurred during a traffic stop or in an arrest situation. *Id.*

The risk of assault and murder is a very real and very significant hazard for tribal police officers. This is especially true where the situation involves a traffic stop or arrest as occurred in the present case. These types of stops are also the most common type of encounters tribal police officers have with non-Indian suspects. The Court of Appeals decision heightens the risks to tribal police officers conducting such stops because offenders cannot be prosecuted for committing certain offenses against those officers. Furthermore, the Court of Appeals decision precludes officers employed by *amici curiae*—in particular CRITFC—from effectively carrying out their law enforcement duties.

IV. THE COURT OF APPEALS DECISION DISRUPTS 25 YEARS OF PRACTICE ALONG THE COLUMBIA RIVER.

Until the Court of Appeals issued its opinion in this case, CRITFC relied on an interpretation of ORS 181.610(14) that tribal officers had the legal status as "police officers" under Oregon law, and could accordingly carry out enforcement activities consistent with that status.[3] That interpretation was not challenged during more than 25 years of CRITFC's enforcement efforts on and along the Columbia River. Those efforts have included successful prosecution by the State of Oregon of crimes committed by non-Indians for violations of state law based on citations issued by CRITFC officers.

The Court of Appeals specifically rejected the interpretation of ORS 181.610(14) relied on by CRITFC (and the State of Oregon). *State v. Kurtz,* 233 Or App 573, 589-90, 229 P3d 583 (2009). Consequently, CRITFC officers may no longer carry out their law enforcement efforts on and along the Columbia River without receiving deputations from the local sheriffs.

The practical disruptions of the court's ruling to tribal law enforcement are significant. In CRITFC's situation, not only must CRITFC seek voluntary and discretionary deputation agreements with seven counties, which are logistically difficult to obtain, but the court's ruling also casts a cloud of uncertainty over the accustomed field practices of tribal police officers. Since the court's ruling, CRITFC has entered into deputation agreements with Hood River, Wasco, Sherman, and Umatilla counties.

[3] ORS 181.610(14) defines "police officer" for the purposes of the public safety standards and training statutes, and expressly includes "an officer, member or employee of a law enforcement unit who is employed full-time as a peace officer commissioned by a[n] * * * Indian reservation[.]"

CRITFC is still seeking deputation agreements from Gilliam, Morrow, and Multnomah counties. Negotiation of these agreements has been facilitated by the tribes' and CRITFC's working relationship with these counties. But nothing compels any county to offer a deputation agreement to CRITFC, Umatilla, or Warm Springs. Because such agreements are entirely discretionary, considerations wholly independent from law enforcement needs can impede an agreement.

In the absence of such an agreement, the ability of officers to deal with non-Indians generally and Indians outside of Indian country is clouded.[4] At the field level such uncertainty is dangerous, where the failure to take enforcement action may be more consequential than enforcing state law proactively. This is particularly true in remote areas where tribal law enforcement often must operate.

V. CONCERN OVER APPLICATION OF ORS 810.410 IS MISPLACED.

The Court of Appeals improperly characterized *dictum* in *State v. Pamperien,* 156 Or App 153, 967 P2d 503 (1998), as concluding that tribal police officers were not "police officers" as defined by ORS 801.395. *State v. Kurtz,* 233 Or App at 581 (quoting

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[4] From time to time, *amici curiae* Warm Springs Tribe and Umatilla Tribe have entered into agreements with local sheriff's offices to have tribal officers deputized as sheriff's deputies. Indeed, in response to the Court of Appeals decision in this case, Warm Springs recently entered into new deputation agreements with both the Jefferson and Wasco county sheriffs. Both agreements are revocable by the county sheriffs at will, however, and Warm Springs has not had a deputation agreement with either of the bordering counties for most of the past twenty years. Similarly, Umatilla currently has a deputation agreement with the Umatilla County Sheriff, but the agreement is revocable by the sheriff at will.

Pamperien, 156 Or App at 157 n 3). The majority of the court in *Pamperien* did not reach the issue, writing:

> "Regardless of our resolution of defendant's state statutory argument, [the tribal police officer] had unquestioned authority under federal law to perform the traffic stop. Accordingly, we would not reverse the trial court based on defendant's state statutory arguments, and we see no benefit in addressing them."

156 Or App at 156-57. Judge Landau's concurring opinion moreover concluded that ORS 801.395 includes tribal police officers within its reach: "The statutory definition of 'police officer' states a nonexclusive list of what is included within the meaning of the term. ORS 801.395. It does not state the exclusive limits of the term." *Pamperien*, 156 Or App at 159.[5]

The Court of Appeals' improper reliance on *dictum* contained in a footnote in *Pamperien* is the unsupportable basis for its suggestion that inclusion of tribal police officers within the reach of ORS 810.410 "would represent a grant of authority to tribal officers far in excess of anything mandated by tribal sovereignty." *Kurtz*, 233 Or App at 581-82 (quoting *Pamperien*, 156 Or App at 157 n 3).[6] The Court of Appeals' concern is misplaced and its assessment of the reach of tribal sovereignty is inaccurate.

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[5] At the time *Pamperien* was decided, ORS 801.395 defined "police officer" as "includ[ing] a member of the Oregon State Police, a sheriff, a deputy sheriff or a city police officer."

[6] The court's concern appears to stem from the fact that the term "police officer" defined in ORS 801.395 is used in multiple contexts in the Oregon Vehicle Code, not merely to define offenses that involve some interaction with a police officer. *Kurtz*, 233 Or App at 578-79.

ORS 810.410 (1) provides that "[a] police officer may arrest or issue a citation to a person for a traffic crime at any place within or outside the jurisdictional authority of the governmental unit by which the police officer is authorized to act[.]" Consequently, if a tribal police officer is included within the scope of ORS 801.395, tribal police officers would be authorized by statute to arrest or cite a person for a traffic crime outside of Indian country. This is by no means troublesome in practice, and in fact, in certain circumstances, is within the reach of tribal sovereignty.

As the court in *Pamperien* noted, "the power to maintain public order by investigating violations of state law on the reservation * * * is clearly an incident of general tribal sovereignty." 156 Or App at 158. The United States Supreme Court has recognized the "authority of tribal police to patrol roads within a reservation, including rights of way made part of a state highway, and to detain and turn over to state officers nonmembers stopped on the highway for conduct violating state law." *Strate v. A-1 Contractors*, 520 US 438, 456 n 11, 117 S Ct 1404, 137 L Ed 2d 661 (1997). Part and parcel of this inherent sovereign power to enforce laws in Indian country is the necessary means to actualize that authority. *See Settler v. Lameer,* 507 F.2d at 238 ("The power to regulate is only meaningful when combined with the power to enforce."); *Barrett v. Union Bridge Co.*, 117 Or 566, 576, 245 P 308 (1926) ("It is a familiar principle of law that every grant of power carries with it the use and necessary means of its exercise.").

The hot pursuit doctrine permits a police officer to perform an arrest outside of their jurisdiction without otherwise violating a defendant's constitutional rights. *See Welsh v. Wisconsin,* 466 US 740, 750, 104 S Ct 2091, 80 L Ed 2d 732 (1984). The Ninth

Circuit has determined that "[u]nder the doctrine of hot pursuit, a police officer who observes a traffic violation within his jurisdiction to arrest may pursue the offender into Indian country to make the arrest." *U.S. v. Patch,* 114 F3d 131, 134 (9th Cir 1997), *cert den,* 522 US 983, 118 S Ct 445, 139 L Ed 2d 381 (1997). Certainly, there is no practical difference between a state police officer pursuing an individual into Indian country and a tribal police officer pursing an individual who is fleeing Indian country. As a necessary means to enforce law in Indian country, tribal police officers must have the inherent authority to pursue and arrest suspects fleeing Indian country in fresh pursuit of crimes that occurred within Indian country. If the case were otherwise, every criminal being pursued by tribal law enforcement would be encouraged to run for the border to avoid arrest.

Far from being what the Court of Appeals characterized as a grant of authority "far in excess of anything mandated by tribal sovereignty," *Kurtz*, 233 Or App at 581-82 (quoting *Pamperien*, 156 Or App at 157 n 3), it is clearly within the inherent sovereign authority of tribes to pursue and arrest individuals fleeing Indian country in hot pursuit of crimes having occurred within their jurisdiction. Furthermore, these are the types of incidents where a tribal police officer is likely to make an arrest or issue a citation outside of Indian country.

In the unusual circumstance that a tribal police officer may make an arrest or issue a citation for violation of state traffic law outside of Indian country that does not involve hot pursuit, there is no reason to suppose the legislature intended a different result or that a different result would be desired. On this point, the current president of the Oregon

State Sherriff's Association wrote the following in lamenting the Court of Appeals decision:

> "This decision has affected several counties in our state to include my county, Wasco County, where a large portion of the Warms Springs reservation is located. In the past, tribal officers have assisted deputies by handling accidents on highways just off the reservation when the nearest deputy is an hour away. Other counties along the Columbia River have the Inter-Tribal Police who enforce fishing and hunting regulations associated with the Confederated Tribes on the Columbia River."

Oregon State Sheriff's Association, *President's Message, available at* http://www.oregonsheriffs.org/pres_message.shtml (last visited Sept 7, 2010).

The reality is not that including tribal police officers within the scope of ORS 810.410 would lead to tribal police officers inappropriately roaming outside of Indian country making arrests for violations of state traffic laws in the jurisdiction of county or city officers. Rather, inclusion allows them to assist neighboring jurisdictions when tribal police officers are the nearest available responders or additional law enforcement personnel are otherwise needed in an emergency situation.

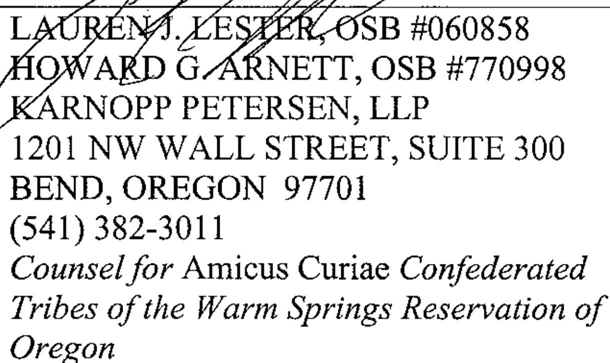
CONCLUSION

Effectively decriminalizing non-Indian offenses against tribal police officers and reversing 25 years of practice along the Columbia River would further exacerbate the hazards tribal law enforcement officers face in the line of duty, ultimately endangering their lives and negatively impacting current expectations and practices of state and tribal law enforcement offices. This is certainly not what the legislature intended when it defined the term "police officer" in ORS 801.395 or "peace officer" in ORS 161.015.

Excluding tribal police officers from the scope of those definitions would lead to this unreasonable and dangerous result.

Dated this 8th day of September, 2010.

Respectfully submitted,



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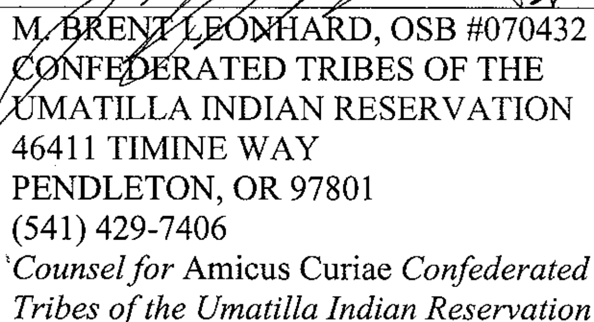

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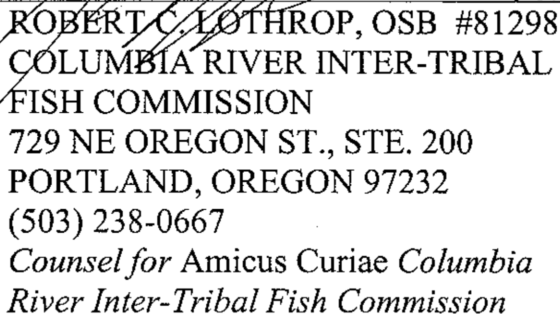

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