

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

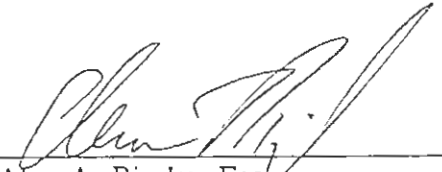
IN RE ESTATE OF)
HOWARD BRAND)
LATE OF ESSEX JUNCTION,) CHITTENDEN PROBATE COURT
VERMONT) DOCKET NO. 28473
)

MOTION TO INTERVENE

NOW COMES the Coalition to Save Brand's Horses, by and through its attorney Alan A. Bjerke, Esq., and pursuant to V.R.P.P. 24 petitions the court for permission to intervene in the above captioned proceeding upon the grounds and for the reasons more particularly set forth in the accompanying memorandum.

DATED AT Burlington, Vermont, this 21st day of February, 1999.

COALITION TO SAVE BRAND'S HORSES



Alan A. Bjerke, Esq
72 Cherry Street
P.O. Box 59
Burlington, Vermont 05402
(802) 864-7058

cc: Thomas E. McCormick, Esquire

C:\S\Ingham\mo to intervene.wpd

STATE OF VERMONT
CHITTENDEN COUNTY, SS.

IN RE ESTATE OF)
HOWARD BRAND)
LATE OF ESSEX JUNCTION,) CHITTENDEN PROBATE COURT
VERMONT) DOCKET NO. 28473
)

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

PRELIMINARY STATEMENT

Howard H. Brand, by his last will and testament, has directed his Executor to destroy any animals which he owns at the time of his death.¹ The estate is believed to include as many as four horses and one mule. The Coalition to Save Brand's Horses is an unincorporated association which includes: Mary Ingham, a Williston resident who has spent significant time with the animals in question and is a prior owner of one of the animals in question; The Vermont Humane Federation, Inc., a membership organization whose members include all of Vermont's Humane Societies; the Vermont Volunteer Services for Animals Humane Society, an organization recognized by Vermont statute² to appoint agents with the lawful authority to interfere with acts of cruelty to animals; The Humane Organization for Retired Standardbred Equines, Vermont Chapter (hereinafter Vermont H.O.R.S.E.), an organization that screens applicants for and provides post-placement monitoring of rescued horses in Vermont; and, the

¹Third Codicil of Howard H. Brand. Article Tenth C. "If at the time of my death I am still the owner of any animals, including any horses and/or a mule, I direct my Executor to have such animals destroyed."

² 13 V.S.A. §351 *et seq.*

Student Animal Legal Defense Fund, a Vermont-based affiliate of the national organization located at the Vermont Law School.

The Coalition requests leave to intervene for the specific purposes of assisting the Court with respect to legal issues raised by article "TENTH C," stated in the will of Howard Brand, as well as preventing a potential harm of cruelty to the animals of Mr. Brand's estate.

THIS COURT ENJOYS BROAD DISCRETION IN DETERMINING WHETHER TO PERMIT INTERVENTION

Vermont Rule of Probate Procedure 24(b) establishes the criteria for permissive intervention:

RULE 24 INTERVENTION

(b) **Permissive Intervention.** On timely motion, a person shall be permitted to intervene in a probate proceeding:

- (1) When a statute confers a conditional right to intervene;
- (2) When the moving party has a legal interest, the protection of which involves a question of law or fact in common with the probate proceeding; or
- (3) When a party to the proceeding relies upon any statute or executive order administered by a federal or state governmental office or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the office or agency may be permitted to intervene in the proceeding.

In Exercising its discretion, the court shall consider whether the intervention will unduly delay the proceeding or prejudice the interests of the original parties.

The Vermont Supreme Court has recognized the probate court's broad discretion in deciding whether or not to permit intervention by a third party that is neither an heir, legatee

or creditor. "As in other matters of this kind, the ruling thereon is not to be revised in the absence of proof that the Court's discretion has been abused or withheld."³ When an application for intervention pursuant to V.R.P.P. 24(b) is addressed to the discretion of the court, "the ruling will not be revised in the absence of proof that the court's discretion was abused or withheld."⁴

While the reported cases discussing this topic are sparse in Vermont, the Rule at issue is nearly identical to and is based upon Rule 24 of the Federal Rules of Civil Procedure which may be referred to for additional explanation and guidance.⁵ The United States Supreme Court has held that Fed. R. Civ. P. 24(b)(2) plainly dispenses with any requirement that the intervenor shall have a direct personal or pecuniary interest in the subject of the litigation.⁶ The standard for permissive intervention has been held to be "simply, as lying within the discretion of the court"⁷ and "wholly discretionary."⁸ Under the federal rule, "if a case or controversy exists as between the original parties, an applicant for permissive intervention under F.R.C.P. 24(b) need not show standing to assert his proposed claim."⁹ The Second

³ In re: Callahan's Estate, 114 Vt. 252, 254 (1945)

⁴ Helm v. Helm, 139 Vt. 225 (1981). (See also: Federal Land Bank v. Govette, 123 Vt. 400 (1963))

⁵ See Reporter's Notes to V.R.P.P. 24 and V.R.C.P. 24

⁶ Securities & Exchange Com. v. United States Realty & Improv. Co., 310 U.S. 434, 459 (1940)

⁷ Pierce v. Mackay Radio & Tel. Co., 154 F.Supp. 157 (D.C.Mass., 1957)

⁸ United States Postal Service v. Brennan, 579 F.2d. 188, 191 (1978)

⁹ Moore, Federal Practice § 59:338

Circuit Court of Appeals has likewise held that "the existence of a case or controversy having been established as between [the plaintiff and defendant], there was no need to impose the standing requirement upon the proposed intervenor."¹⁰ Furthermore, the discretion of the court under Rule 24(b) exists regardless of the stated basis for intervention.¹¹

**THE COALITION SATISFIES THE CRITERIA
FOR INTERVENTION PURSUANT TO V.R.P.P. 24(b)**

Members of the Coalition, as well as the Coalition as a whole share a legal interest, the protection of which involves a question of law or fact in common with this proceeding. The Coalition, as represented by the majority of its members has a recognized interest in the protection of animals and the prevention of cruelty to animals. Specifically, two members of the Coalition are entities recognized in Vermont law as having "the lawful authority to interfere with acts of cruelty to animals,"¹² to appoint Humane Officers, and the statutorily conferred power to enforce Chapter 8 of Title 13 relating to the *Humane and Proper Treatment of Animals*.¹³ Vermont law in fact, confers on Humane Officers the power to accept animals voluntarily surrendered,¹⁴ apply for and obtain a search and seizure warrant authorizing the officer to seize an animal believed to be subject to cruel treatment¹⁵ and in some instances,

¹⁰ United States Postal Service v. Brennan, 579 F.2d. at 190.

¹¹ Wright & Miller, Federal Practice and Procedure § 1913.

¹² 13 V.S.A. §351(5)

¹³ 13 V.S.A. §354(b)

¹⁴ 13 V.S.A. §354(b)(1)

¹⁵ 13 V.S.A. §354(b)(2)

seize an animal without a warrant,¹⁶ such as when the animal's life is in jeopardy. In as much as the directive of Article "Tenth C" of the proposed will in this estate places the lives of the subject animals in jeopardy, the movants assert that they have a recognized legal interest in common with the probate proceeding and accordingly satisfy the requirements of V.R.P.P. 24(b)(2). Furthermore, since Vermont Statute confers upon the petitioners, through its members, the power to intervene directly in any attempt to put the life of the animals in jeopardy, they also satisfy the criteria established in V.R.P.P. 24(b)(1) relating to a statutorily conferred conditional right to intervene and V.R.P.P. 24(b)(3) relating to agencies permitted to intervene.

**INTERVENTION BY THE PETITIONERS WILL NOT
UNDULY DELAY THE PROCEEDINGS OR
PREJUDICE THE INTERESTS OF THE ORIGINAL PARTIES**

The Coalition does not seek to intervene in order to disrupt the proceedings, but rather to assist the Court in reaching a well-reasoned and equitable result on an issue of controversy in the probate of Mr. Brand's estate. Intervention is permitted where a party has something to contribute to the lawsuit and whose presence will not unduly complicate the case.¹⁷ Allowing intervention in this case will neither unduly delay the probate proceeding, nor prejudice the interests of the original parties. The assets in the estate are not related to the destruction of the animals, and none of the beneficiaries (with the possible exception of the residuary legatee)

¹⁶ 13 V.S.A. §354(b)(3)

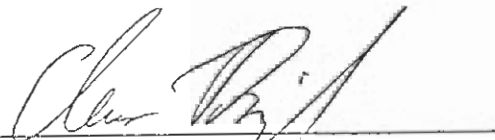
¹⁷ General Motors Corporation v. Burns, 50 F.R.D. 401, 406 (1970).

have a pecuniary interest in the animals. On the other hand, movants, in seeking to determine the validity and enforceability of a testamentary provision involving estate property, will contribute to the proceeding. By permitting the movants to intervene, the court will enjoy the benefit of the wealth of knowledge represented by the members of the Coalition, including comprehensive legal analysis on an issue which may be one of first impression in Vermont, standards and practices conventionally applied in decisions surrounding the euthanasia of animals, as well as the availability and suitability of private animal placements in Vermont.

WHEREFORE, The Coalition to Save Brand's Horses respectfully requests that the court grant its Motion to Intervene.

DATED AT Burlington, Vermont, this 21st day of February, 1999.

COALITION TO SAVE BRAND'S HORSES



Alan A. Bjerke, Esq.
72 Cherry Street
P.O. Box 59
Burlington, Vermont 05402
(802) 864-7058

cc: Thomas E. McCormick, Esquire