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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION
FOUNDATION, INC.,

Plaintiff,

v.

CHIP WEBER and UNITED STATES
FOREST SERVICE,

Defendants.

No. 9:12-CV-00019 DLC

FEDERAL DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT

Date: N/A

Time: N/A

Hon. Dana L. Christensen

Federal Defendants U.S. Forest Service and Chip Weber hereby serve notice that they move for summary judgment in this matter, as provided in the Court's Scheduling Order, ECF No. 31, ¶ 1. In support of their motion, Federal Defendants respectfully direct the Court's attention to the accompanying brief, Statement of Undisputed Fact, and Declaration of Ian Smith,

Respectfully submitted,

DATED: January 18, 2013

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division

/s/David B. Glazer
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Attorneys for Federal Defendant

OF COUNSEL

Alan J. Campbell
Office of General Counsel
U.S. Department of Agriculture

CERTIFICATE OF SERVICE

I, David B. Glazer, hereby certify that I have caused the foregoing to be served upon counsel of record through the Court's electronic service system.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 18, 2013

/s/David B. Glazer
David B. Glazer

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION)	CV 12-19-M-DLC
FOUNDATION, INC., a Wisconsin non-)	
profit corporation,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
CHIP WEBER, Flathead National Forest)	
Supervisor; UNITED STATES FOREST)	
SERVICE, An Agency of the United States)	
Department of Agriculture,)	
)	
Defendants,)	
)	
and)	
)	
WILLIAM GLIDDEN, RAYMOND)	
LEOPOLD, EUGENE THOMAS,)	
NORMAN DeFORREST, and the)	
KNIGHTS OF COLUMBUS)	
(KALISPELL COUNCIL 1328),)	
)	
Defendant-Intervenors,)	
_____)	

Intervenor-Defendants William Glidden, Raymond Leopold, Norman
DeForrest, Eugene Thomas, and Knights of Colombus (Kalispell Council No.

1328) (“Defendants”) have moved to dismiss the complaint of Plaintiff Freedom From Religion Foundation, Inc. (“Plaintiff”) under Federal Rule of Civil Procedure 12(b)(1) (doc. 37). Plaintiff opposed the motion, but alternatively moved to amend its complaint if necessary (docs. 41, 43). Both motions will be denied. Plaintiff’s submission of member William Cox’s affidavit will be considered in determining Defendants’ motion, and its consideration along with the allegations in the complaint establish standing for Plaintiff in this matter.

I. Background

Plaintiff sued the United States Forest Service and its supervisor Chip Weber alleging a violation of the Establishment Clause of the First Amendment to the United States Constitution. (Doc. 1 at 2.) Plaintiff seeks declaratory relief that the Forest Service’s decision to permit the continued presence of a statue of Jesus Christ located on National Forest Service land within Whitefish Mountain Resort violates the Establishment Clause. Plaintiff also seeks injunctive relief ordering Defendant to withdraw approval of the statue and remove it from Forest Service property. (Doc. 1 at 9-10.)

At the preliminary pretrial conference held on June 5, 2012, the Court inquired whether Plaintiff has any members who recreate at Whitefish Mountain Resort and have contact with the statue. (Doc. 37-1 at 7-8.) Plaintiff’s counsel

responded that he would be identifying specific members in an attempt to resolve any standing issues. (Doc. 37-1 at 7-8.) Plaintiff's counsel also stated that he did not believe amendment of the complaint was necessary to establish standing. The deadline for amending pleadings in this case was June 29, 2012. (Doc. 31.) Plaintiff did not amend its complaint prior to the deadline, nor did it provide Defendants or the Court documentation specifying its individual members who had contact with the statue.

Defendants filed their motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) on July 31, 2012, arguing Plaintiff lacks standing because it failed to identify any member who was directly offended by the statue, and the time for amendment had passed. (Docs. 37, 38.) Plaintiff responded by submitting a declaration of William Cox, one of its members who had and will continue to have direct and unwelcome contact with the statue, asserting the affidavit satisfies its evidentiary burden. (Doc. 41 at 2.) Plaintiff alternatively filed a motion to amend its complaint if the Court should determine its affidavit is insufficient to meet the standing requirements. (Docs. 43, 44.) Members of Congress and the American Center for Law and Justice filed an *amici curiae* brief in support of Defendants' motion to dismiss (doc. 51.), to which Plaintiff responded (doc. 54). Defendants Chip Weber and United States Forest Service

took no position on any of these motions. (Doc. 47.)

II. Discussion

“[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy.” *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983). To have standing for injunctive relief under Article III a plaintiff must demonstrate he is under threat of suffering concrete and particularized “injury in fact; the threat must be actual and imminent, not conjectural or hypothetical; it must be fairly traceable to the challenged action of the defendant; and it must be likely that a favorable judicial decision will prevent or redress the injury.” *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Plaintiff has standing because the Court will consider Cox’s affidavit whose allegations bolster the complaint above the standing threshold required for this Establishment Clause challenge.

A. Consideration of the William Cox Affidavit

Although “lack of statutory standing requires dismissal for failure to state a claim, lack of Article III standing requires dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).” *Maya v. Centex Corp.*, 658 F.3d 1060, 1067 (9th Cir. 2011). Review for failure to state a claim

under 12(b)(6) is generally limited to the complaint, attachments to the complaint, and facts of which the Court may take judicial notice. When reviewing for constitutional standing, however, “it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing.” *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 501 (1975)). Additionally, the enhanced pleading standards required by *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) “are ill-suited to application in the constitutional standing context” because the merits of a case are not analyzed in determining constitutional standing. *Id.* at 1068.

The Ninth Circuit Court of Appeals considers declarations or affidavits submitted by members of organizations when determining standing. *See Pacific Rivers Council v. United States Forest Service*, 689 F.3d 1012, 1022 (9th Cir. 2012)(Ninth Circuit found standing based on declarations submitted to district court and determined remand for further development of the record was unnecessary); *Wilderness Soc., Inc. v. Rey*, 622 F.3d 1251, 1256 (9th Cir. 2010)(Ninth circuit considered member declarations in deciding organizational standing issue).

Defendants have moved to dismiss Plaintiff's complaint under 12(b)(1),

alleging a lack of associational standing. (Doc. 37 at 1.) The Court is thus permitted to consider the Cox affidavit Plaintiff submitted with its response to Defendant's motion to dismiss. (Doc. 46.) The Court will do so as a matter of judicial efficiency because Plaintiff's proposed amendment of the complaint is not required and standing exists when the facts set forth in Cox's affidavit are considered.

Plaintiff would be required to have good cause to amend its complaint because it sought leave to amend after the deadline set in the pretrial scheduling order. Fed.R.Civ.P. 16(b); *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). Although Plaintiff's most recent filing suggests it would prefer amending its complaint to proceeding with the current complaint and affidavit (doc. 54 at 10), it does not supply the requisite good cause for doing so. The sole reason Plaintiff has provided for not filing the affidavit or any amendment within the deadline is its attorney's oversight. (Doc. 41 at 2-3.) As Defendants point out, this reason does not meet the good cause standard Rule 16(b) requires. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-09 (9th Cir. 1992)(carelessness does not demonstrate diligence, and a lack of diligence ends the good cause inquiry). Thus, Plaintiff's motion to amend must be denied. If the Court chose not to consider Cox's affidavit, Plaintiff appears to concede it would not have

standing, and its complaint would be dismissed. Plaintiff could then, of course, refile its complaint with sufficient allegations to establish standing. Because this needless delay can properly be avoided by considering Cox's affidavit, the Court will do so.

B. Establishment Clause Standing

An organization has standing on behalf of its members when "its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."

Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., 528 U.S. 167, 181 (2000).

Regarding the first requirement, to demonstrate standing to sue a member of the organization must show that he has repeatedly visited the area at issue, he has concrete plans to visit again, and his recreational or aesthetic interests would be harmed without the relief requested. *Wilderness Soc.*, 622 F.3d at 1256. Spiritual harm resulting from the member's contact with the religious symbol is sufficient to confer standing—avoidance of the symbol is not required. *Vasquez v. Los Angeles County*, 487 F.3d 1246, 1252 (9th Cir. 2007). Cox's declaration meets these requirements. He is a member of FFRF, he lives 15 miles from Whitefish Mountain Resort, he is a frequent skier at the resort who has skied past the statue

many times previously and intends to again this winter, and he is a non-believer who considers the statue religious in nature and offensive. (Doc. 46.) Cox would have standing to sue in his own right if he were a named plaintiff. As to the second requirement, the parties do not dispute that the interests at stake in this matter are germane to Plaintiff's organizational interests.

Regarding the third requirement, individual participation of members is generally not required when the plaintiff only seeks declaratory or injunctive relief. *Warth v. Seldin*, 422 U.S. 490, 515-516 (1975). Indeed, associational standing often rises or falls based on the nature of the relief sought. *Id.* "If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured." *Id.*

Plaintiff only requests declaratory and injunctive relief in this case—not damages. Individual member participation is not likely to be required. Moreover, because no individualized avoidance or particular emotional distress must be proved to establish standing, the injury outlined in the Cox affidavit is redressible by the general equitable relief Plaintiff seeks for all its members. *Vasquez*, 487 F.3d at 1252. The facts underlying the alleged establishment clause violation are not as complex as Defendants would like to make them appear. Members of FFRF

who ski at Whitefish Mountain Resort are offended by the Jesus statue. Cox's allegations are sufficient to confer standing, and extensive discovery into each member's contact with the statue is unnecessary for this associational standing case.

III. Conclusion

In sum, the Court may and will consider Cox's affidavit submitted by Plaintiff in response to Defendants' motion to dismiss. Plaintiff does not establish good cause for missing the amendment deadline so its motion to amend must be denied under Rule 16(b). Plaintiff has standing to proceed in its establishment clause challenge because Cox would have standing to sue in his own right, the interests here are germane to the Plaintiff's purpose, and neither the claim asserted nor the relief requested necessarily requires participation of Plaintiff's individual members.

In accordance with the foregoing, IT IS ORDERED

1. Defendant Intervenor's Motion to Dismiss (doc. 37) is DENIED.
2. Plaintiff's Motion for Leave to File Amended Complaint (doc. 43) is DENIED.

Dated this 27th day of November, 2012.



Dana L. Christensen, District Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION)	CV 12-19-M-DLC
FOUNDATION, INC., a Wisconsin non-)	
profit corporation,)	
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Plaintiff,)	
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vs.)	ORDER
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CHIP WEBER, Flathead National Forest)	
Supervisor; UNITED STATES FOREST)	
SERVICE, An Agency of the United States)	
Department of Agriculture,)	
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Defendants,)	
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and)	
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WILLIAM GLIDDEN, RAYMOND)	
LEOPOLD, EUGENE THOMAS,)	
NORMAN DeFORREST, and the)	
KNIGHTS OF COLUMBUS,)	
)	
Defendant-Intervenors.)	
)	

A preliminary pretrial conference in this case was held on June 5, 2012, in Missoula, Montana. Plaintiff was represented by Martin King, Reid Perkins, and Richard Bolton. The Federal Defendants were represented by David Glazer and Mark Steger Smith. The Defendant-Intervenors were represented by Charles Harball and Eric Baxter. After discussion and upon the agreement of the parties, the following order is entered.

1. The following schedule will govern all further pretrial proceedings:

Deadline for amending pleadings:	June 29, 2012
Disclosure of Liability Experts:	October 1, 2012
Discovery deadline:	November 1, 2012
Deadline for all motions other than motions for summary judgment (fully briefed):	January 4, 2013
Plaintiff files optional opening brief in support of motion for summary judgment:	January 4, 2013
Defendants and Defendant-Intervenors file optional combined opening brief in support of cross-motion for summary judgment and response to Plaintiff's motion:	January 18, 2013
Plaintiff files combined response/reply:	February 1, 2013
Defendants and Defendant-Intervenors file reply:	February 15, 2013

Attorney conference to prepare
Final Pretrial Order:

week of February 25, 2013

E-file Final Pretrial Order,
Proposed Findings of Fact &
Conclusions of Law, and
trial briefs and e-mail
to dlc_propord@mtd.uscourts.gov
(trial briefs are optional):

March 4, 2013

Notice to court reporter of
intent to use real-time:

March 4, 2013

Notice to I.T. supervisor of
intent to use CD-ROM or
video-conferencing:

March 4, 2013

Final pretrial conference:

March 11, 2013 at 8:30 a.m.
Russell Smith Courthouse
Missoula, Montana

Bench trial:

March 11, 2013, immediately following
Final Pretrial Conference¹
Russell Smith Courthouse
Missoula, Montana

Continuance of the above deadlines will not be granted, absent compelling reasons. A continuance of any deadline set by this order does not extend any other deadline, particularly the motions deadline or trial deadline.

¹ Pursuant to 18 U.S.C. § 3161(h) and Fed.R.Crim.P. 50, criminal matters take priority over civil matters in the event of a conflict. Accordingly, all civil trial settings are subject to the Court's criminal calendar.

IT IS FURTHER ORDERED:

2. Local Rules and electronic filing. All counsel shall take steps to register in the Court's electronic filing system ("CM-ECF"). All counsel must show cause if they are not filing electronically. Further information is available on the Court's website, www.mtd.uscourts.gov, or from the Clerk's Office. See also L.R. 1.4.

3. Service by e-mail for parties not filing electronically. Parties not filing electronically may consent to be served by e-mail, pursuant to Fed. R. Civ. P. 5(b)(2)(E), by agreeing to such service in writing. See L.R. 1.4(c)(3).

4. Stipulations. Pursuant to Fed. R. Civ. P. 16(c)(2)(C), the following facts are admitted and agreed upon:

- a. The memorial is privately owned and maintained by residents of the Kalispell area.
- b. Wintersports, Inc., which is a privately owned entity, operates the Whitefish Mountain Resort.
- c. The upper end of the Whitefish Mountain Resort Ski Area, where the memorial stands, is on public land.
- d. Defendant Chip Weber is the Forest Service Supervisor for the Flathead National Forest, with his principal office located at 650 Wolf Pack Way, Kalispell, Montana, 59901.

- e. The office of Defendant Weber is located within the geographic authority of the District Court for the District of Montana.
- f. Tom Tidwell is the United States Forest Service Chief.
- g. Tom Vilsack is the Secretary of the United States Department of Agriculture.
- h. The Flathead National Forest, including Big Mountain, is located west of the Continental Divide and south of the Canadian border, within the Rocky Mountains.
- i. The Flathead National Forest receives visitors.
- j. In 1953, the Knights of Columbus submitted an application to the Forest Service for a permit to use National Forest land.
- k. A permit was issued by the Forest Service to the Knights of Columbus in 1953.
- l. A monument including a statue depicting Jesus Christ was placed on the site in 1954.
- m. The special use permit was renewed in 1990 and 2000 for ten year terms. AR A-25, A-27.
- n. In 2010 the Knights of Columbus sought another ten year renewal of the permit authorizing the monument.

- o. On August 24, 2011, the Forest Service sent the Knights of Columbus a letter denying their request for renewal of the special use permit.
AR A-18.
- p. On October 21, 2011, the Forest Service withdrew its earlier decision denying the special use permit and stated its intent to “formally seek public comment on a proposed action for reissuing the permit in the next few weeks.” AR A-12.
- q. The request for comments on the special use permit renewal generated extensive public comment and interest. The Forest Service received approximately 95,000 comments during the comment period from October 19, 2011, to December 8, 2011. AR A-05.
- r. In a “Decision Memo” dated January 31, 2012, the Forest Service issued a new decision to re-authorize the Knights of Columbus Special Use Permit for a period of ten years. AR A-04.

5. Discovery exhibits. During discovery, the exhibits shall be numbered seriatim.

Numbers used for exhibits during discovery shall be identically used at trial.

6. Foundation & authenticity of discovery items. Pursuant to Fed. R. Civ. P.

16(c)(2)(C), the parties stipulate to the foundation and authenticity of all discovery items produced in pre-trial disclosure and during the course of discovery.

However, if counsel objects to either the foundation or the authenticity of a particular discovery item, then counsel must make a specific objection to opposing counsel, in writing, prior to the deadline for the close of discovery. If a discovery item is produced and the producing party objects either to its foundation or authenticity, the producing party shall so state, in writing, at the time of production. All other objections are reserved for trial

7. Supplementation of discovery responses. Pursuant to Fed. R. Civ. P. 26(e), the parties have an affirmative obligation to supplement all discovery responses, as necessary, throughout the course of the litigation.

8. Experts. The parties informed the Court that they expect to engage experts in the following areas: Historian.

Experts, if engaged, must be disclosed in accordance with the time limits set forth in paragraph 1.

9. Expert disclosure.

(a) Retained or Specially Employed

Each party is responsible for ensuring that expert reports for any witness who is retained or specially employed to provide expert testimony in the case, or whose duties as an employee of a party involve giving expert testimony, are complete, comprehensive, accurate, and tailored to the issues on which the expert

is expected to testify. Expert reports must satisfy the specific requirements of Fed. R. Civ. P. 26(a)(2)(B). Objections to the timeliness or sufficiency of a Rule 26(a)(2)(B) report must be made within 14 days of the disclosure date set forth in paragraph 1, or the objection will be deemed waived. An inadequate report or disclosure may result in exclusion of the expert's opinions at trial even though the expert has been deposed. In this regard, a treating physician is not considered an expert witness unless the testimony offered by the treating physician goes beyond care, treatment and prognosis. If the treating physician's testimony goes beyond care, treatment and prognosis then there must be full compliance with the discovery requirements of Fed. R. Civ. P. 26(a)(2)(B).

(b) Other Witnesses Who Will Present Expert Testimony.

With respect to those expert witnesses not required to provide a written report under Rule 26(a)(2)(B), a party must serve a disclosure, identifying the evidence and stating:

- (i) the subject matter on which the witness is expected to present evidence under Fed. R. Civ. Evid. 702, 703, or 705; and
- (ii) a summary of the facts and opinions to which the witness is expected to testify.

10. Rebuttal experts. Any evidence intended solely to contradict or rebut

evidence on the same subject matter identified by another party as testimony or evidence to be offered by a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of a party in the case involve giving expert testimony, must be disclosed within thirty (30) days of the date set forth in paragraph 1 for expert disclosure. Fed. R. Civ. P. 26(a)(2)(D)(ii).

11. Supplementation of incomplete or incorrect expert reports. Supplemental disclosures by a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of a party in the case involve giving expert testimony, whose report or deposition is incomplete or incorrect, must be disclosed no later than ninety (90) days before the date set for trial set forth in paragraph 1.

12. Motions. Pursuant to Fed. R. Civ. P. 16(b)(3)(A), all motions other than motions for summary judgment shall be fully briefed by the date set forth in paragraph 1. “Fully briefed” means that the brief in support of the motion and the opposing party’s response brief are filed with the court. The parties are not required to filed cross-motions for summary judgment, but if they choose to do so, those motions will be governed by the briefing schedule set forth in Paragraph 1.

13. Unopposed motions. Unopposed motions shall be accompanied by a

proposed order, separate from the motion. The proposed order shall be a Word Perfect document with 14-point Times New Roman font, and there shall be no code or formatting in the case caption in the proposed order. The proposed order shall be e-filed under the heading "Text of Proposed Order" and e-mailed to dlc_propord@mtd.uscourts.gov. Failure to comply with this procedure will result in delayed resolution of the unopposed motion.

14. Hearings & oral arguments. Parties shall provide an alphabetized index of cases expected to be referenced, with citations, to the Court Reporter immediately prior to any oral argument or hearing.

15. Bench trial. Bench trial of this case shall be conducted in Missoula, Montana, before the Honorable Dana L. Christensen.

16. Attorney conference for trial preparation. If the case does not settle, counsel for the plaintiff shall convene an attorneys' conference during the week indicated in paragraph 1, or before, to complete the Final Pretrial Order, to exchange exhibits and witness lists, and to complete or plan for the completion of all items listed in L.R. 16.5(b). The Final Pretrial Order shall comply with the form prescribed by Fed. R. Civ. P. 26(a)(3)(A)(i)-(iii) and Local Rule 16.4. Except for relevancy, objections to the use or designation of deposition testimony are waived if they are not disclosed on the opposing party's witness list, and

objections to exhibits are waived if they are not disclosed on the opposing party's exhibit list. See generally Forms D, E, and F, Local Rules Appendix C.

17. Trial Exhibits.

(a) Counsel shall electronically exchange exhibits (by CD, DVD, e-mail, or other agreed upon method) with opposing counsel prior to the final pretrial conference. Counsel must provide a binder of paper copies of the exhibits upon request of opposing counsel.

(b) Each exhibit must show the number of the exhibit. If paper copies of the exhibits are exchanged, the binders must bear an extended tab showing the number of the exhibit. The exhibit list must identify those exhibits the party expects to offer and those the party may offer if the need arises. Fed. R. Civ. P. 26(a)(3)(A)(iii); Form F, Local Rules Appendix C.

(c) Exhibits marked for use at trial that have not been numbered in discovery shall be marked by plaintiffs using an agreed upon range of arabic numbers and by defendants using a different agreed upon range of arabic numbers.

(d) Each exhibit must be paginated, including any attachments thereto. Exhibits shall not be duplicated. An exhibit may be used by either of the parties.

(e) Counsel shall file with the Court a CD or DVD of the exhibits, as well as one paper copy of the exhibits. The paper copy shall be formatted as

described in (b), above. The electronic files and paper copy shall be delivered to the chambers of Judge Dana L. Christensen on or before the date of the final pretrial conference.

(f) Failure to comply with (a) through (e) above may result in the exclusion of the exhibit at trial.

18. Final pretrial order. The parties should e-file the proposed Final Pretrial Order and e-mail a copy in Word Perfect format to dlc_propord@mtd.uscourts.gov. Once filed and signed by the Court, the Final Pretrial Order supersedes all prior pleadings and may not be amended except by leave of court for good cause shown.

19. Final pretrial conference. Counsel for the parties shall appear before the Court in chambers at Missoula, Montana, for the final pretrial conference on the date and time set forth in paragraph 1. Each party should bring Judge Christensen's copy of its trial exhibits if a copy has not already been delivered to chambers.

20. Trial briefs. Trial briefs are optional but if filed must be received by the court on the date indicated in paragraph 1.

21. Proposed Findings of Fact & Conclusions of Law.

(a) The parties shall jointly prepare one copy of proposed Findings of

Fact upon which they agree, with citations to the record for each Finding of Fact.

Each party may also prepare a separate proposed Findings of Fact with citations to the record for each Finding of Fact for matters upon which parties cannot reach agreement.

(b) The parties shall jointly prepare one copy of proposed Conclusions of Law upon which they agree, with appropriate citations for each Conclusion of Law. Each party may also prepare a separate proposed Conclusions of Law with appropriate citations for each Conclusion of Law for matters upon which parties cannot reach agreement.

The parties should e-file the Proposed Findings of Fact & Conclusions of Law and e-mail a copy in Word Perfect format to dlc_propord@mtd.uscourts.gov on the date indicated in paragraph 1.

22. Calling witnesses at trial.

When a witness is called to testify at trial, counsel shall provide to the Clerk of Court four (4) copies of a single page document, see Form I, Local Rules Appendix C, providing the following information about the witness:

- a) the full name and current address of the witness;
- b) a brief description of the nature and substance of the witness's testimony;
- c) date witness was deposed or statement taken; and

d) a listing of each exhibit to which the witness may refer during direct examination.

DATED this 13th day of June, 2012.



Dana L. Christensen, District Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION
FOUNDATION, INC., a Wisconsin
non-profit corporation,

Plaintiff,

v.

CHIP WEBER, Flathead National
Forest Supervisor, and UNITED
STATES FOREST SERVICE, an
agency of the United States Department
of Agriculture,

Defendants,

and

WILLIAM GLIDDEN, RAYMOND
LEOPOLD, EUGENE THOMAS,
NORMAN DeFORREST, and the
KNIGHTS OF COLUMBUS,

Defendant-Intervenors.

Case No. CV 12-19-M-DLC

**PARTIES' STIPULATED
FACTS**

Plaintiff Freedom From Religion Foundation, Inc., ("Plaintiff"), Defendants
Chip Weber and the United States Forest Service ("Federal Defendants"), and
Defendant-Intervenors Knights of Columbus (Kalispell Council No. 1328),

William Glidden, Raymond Leopold, Norman DeForrest, and Eugene Thomas (“Intervenors”), by and through their respective counsel of record, and as instructed by the Court at the preliminary pretrial conference, hereby stipulate and agree that the following facts are deemed to be true and need not be proven at trial or supported in motions practice by additional proof:

1. Defendant Chip Weber is the Forest Service Supervisor for the Flathead National Forest, with his principal office located at 650 Wolf Pack Way, Kalispell, Montana, 59901.
2. The office of Defendant Weber is located within the geographic authority of the District Court for the District of Montana.
3. Tom Tidwell is the United States Forest Service Chief.
4. Tom Vilsack is the Secretary of the United States Department of Agriculture.
5. The Flathead National Forest, including Big Mountain, is located west of the Continental Divide and south of the Canadian border, within the Rocky Mountains.
6. The Flathead National Forest receives visitors.
7. In 1953, the Knights of Columbus submitted an application to the Forest Service for a permit to use National Forest land.

8. A permit was issued by the Forest Service to the Knights of Columbus in 1953.

9. A monument including a statue depicting Jesus Christ was placed on the site in 1954.

10. The special use permit was renewed in 1990 and 2000 for ten year terms. AR A-25, A-27.

11. In 2010 the Knights of Columbus sought another ten year renewal of the permit authorizing the monument.

12. On August 24, 2011, the Forest Service sent the Knights of Columbus a letter denying their request for renewal of the special use permit. AR A-18.

13. On October 21, 2011, the Forest Service withdrew its earlier decision denying the special use permit and stated its intent to “formally seek public comment on a proposed action for reissuing the permit in the next few weeks.” AR A-12.

14. The request for comments on the special use permit renewal generated extensive public comment and interest. The Forest Service received approximately 95,000 comments during the comment period from October 19, 2011, to December 8, 2011. AR A-05.

15. In a "Decision Memo" dated January 31, 2012, the Forest Service issued a new decision to re-authorize the Knights of Columbus Special Use Permit for a period of ten years. AR A-04.

Dated this 12th day of June, 2012.

/s/ Martin S. King

Martin S. King
Worden Thane P.C.

/s/ Richard L. Bolton

Richard L. Bolton, Esq.
Boardman & Clark LLP

Attorneys for Plaintiff

Dated this 12th day of June, 2012.

/s/ David B. Glazer

David B. Glazer
Environment & Natural Resources Division
United States Department of Justice

Attorneys for Federal Defendants

Dated this 12th day of June, 2012.

/s/ Charles A. Harball

Charles A. Harball

/s/ Eric S. Baxter

Eric C. Rassbach

Eric S. Baxter

The Becket Fund For Religious Liberty

Attorneys for Defendant-Intervenors

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

Freedom From Religion Founda-
tion, Inc.,

Plaintiff,

v.

Case No. 9:12-cv-19-DLC

Chip Weber, Flathead National
Forest Supervisor; and

United States Forest Service, an
Agency of the United States
Department of Agriculture

Defendants,

and

Knights of Columbus (Kalispell
Council No. 1328), William Glid-
den, Raymond Leopold, Norman
DeForrest, and Eugene Thomas,

Defendant-Intervenors.

ANSWER OF DEFENDANT-INTERVENORS

Defendant-Intervenors Knights of Columbus (Kalispell Council No.
1328), William Glidden, Raymond Leopold, Norman DeForrest, and Eu-

gene Thomas (hereafter, "Intervenors") respond to Plaintiff's complaint as follows:

1. Paragraph 1 of the Complaint contains a description of Plaintiff's claims to which no response is required.

2. Paragraph 2 of the Complaint contains a description of Plaintiff's requests for relief to which no response is required. To the extent a further response is necessary, Intervenors deny that Plaintiffs are entitled to any relief whatsoever.

3. Paragraph 3 of the Complaint contains legal conclusions to which no response is required. To the extent a further response is necessary, Intervenors deny that Plaintiff is entitled to any relief whatsoever, and specifically deny that Plaintiff can be afforded any relief in this action under 28 U.S.C. § 1343.

4. Paragraph 4 of the Complaint contains legal conclusions to which no response is required.

5. Paragraph 5 of the Complaint contains legal conclusions to which no response is required.

6. Intervenors lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 6 of the Complaint and therefore deny the same.

7. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 7 of the Complaint and therefore deny the same.

8. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 8 of the Complaint and therefore deny the same.

9. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 9 of the Complaint and therefore deny the same.

10. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 10 of the Complaint and therefore deny the same.

11. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 11 of the Complaint and therefore deny the same.

12. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 12 of the Complaint and therefore deny the same.

13. Intervenor's admit the allegations set forth in Paragraph 13 of the Complaint.

14. Intervenor's admit the allegations set forth in Paragraph 14 of the Complaint.

15. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 15 of the Complaint and therefore deny the same.

16. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 16 of the Complaint and therefore deny the same.

17. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 17 of the Complaint and therefore deny the same.

18. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 18 of the Complaint and therefore deny the same.

19. Intervenor's admit that the Knights of Columbus applied for a permit to erect a monument overlooking a Big Mountain ski run in 1953. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations regarding the ownership and administration of Big Mountain set forth in Paragraph 19 of the Com-

plaint and therefore deny the same. Intervenor deny the remaining allegations set forth in Paragraph 19 of the Complaint.

20. Paragraph 20 of the Complaint contains a description of a document that speaks for itself and is the best evidence of its content. Intervenor deny any allegations in Paragraph 20 of the Complaint that are inconsistent with the plain language and context of that document.

21. Intervenor admit that the Knights of Columbus carried out the idea for placing a monument on Big Mountain. Intervenor lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 21 of the Complaint and therefore deny the same.

22. Intervenor admit that membership in the Knights of Columbus is open only to men 18 years of age or older who are practicing Catholics in union with the Holy See and that Church-related activities are central to its work as an organization of Catholic laymen. Intervenor deny any remaining allegations set forth in Paragraph 22 of the Complaint.

23. Intervenor admit that membership in the Knights of Columbus is open only to men 18 years of age or older who are practicing Catholics in union with the Holy See, and who accept the teaching authority of

the Catholic Church on matters of faith and morals, aspire to live in accord with the precepts of the Catholic Church, and are in good standing in the Catholic Church. Intervenor deny any remaining allegations set forth in Paragraph 23 of the Complaint.

24. Intervenor admit that the Knights of Columbus have placed monuments at locations throughout the United States, including on its own real estate holdings. Intervenor deny any remaining allegations set forth in Paragraph 24 of the Complaint.

25. Intervenor admit that on October 15, 1953, the United States Forest Service granted the application by the Knights of Columbus to erect a monument on Big Mountain without requiring a payment. Intervenor deny any remaining allegations set forth in Paragraph 25 of the Complaint.

26. Intervenor admit that the Forest Service has allowed the statue of Jesus overlooking the Big Mountain ski run to remain since 1954. Intervenor deny any remaining allegations set forth in Paragraph 26 of the Complaint.

27. Intervenor admit that, as of February 3, 2000, the Forest Service authorized the presence of the statue authorized in the 1953 Special Use Permit. The remaining allegations set forth in Paragraph 27 of

the Complaint appear to quote from an unidentified document, which speaks for itself and is the best evidence of its content. Intervenor's deny any allegations in Paragraph 27 of the Complaint that are inconsistent with the plain language and context of that document.

28. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 28 of the Complaint and therefore deny the same.

29. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 29 of the Complaint and therefore deny the same.

30. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 30 of the Complaint and therefore deny the same.

31. The allegations set forth in Paragraph 31 of the Complaint purport to characterize the Forest Service's August 24, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence of its content. Intervenor's deny any allegations in Paragraph 31 of the Complaint that are inconsistent with the plain language and context of that document.

32. Intervenor's admit that the Forest Service's August 24, 2011 letter to the Knights of Columbus engendered public response and that United States Representative Danny Rehberg expressed interest in the matter. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the remaining allegations set forth in Paragraph 32 of the Complaint and therefore deny the same.

33. Intervenor's lack knowledge or information sufficient to form a belief about the first clause of Paragraph 33 and therefore deny the same. Intervenor's admit that on October 21, 2011, the Forest Service withdrew its August 24, 2011 decision. The remaining allegations set forth in Paragraph 33 purport to describe the Forest Services' October 21, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence for its content. Intervenor's deny any allegations that are inconsistent with the plain language and context of that document.

34. Intervenor's lack knowledge or information sufficient to form a belief about the allegations set forth in Paragraph 34 of the Complaint and therefore deny the same.

35. Intervenor's deny the allegations set forth in Paragraph 35 of the Complaint.

36. The allegations set forth in Paragraph 36 of the Complaint purport to characterize the Forest Service's October 21, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence of its content. Intervenorors deny any allegations in Paragraph 36 of the Complaint that are inconsistent with the plain language and context of that document.

37. Intervenorors lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 37 of the Complaint and therefore deny the same.

38. Intervenorors lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 38 of the Complaint and therefore deny the same.

39. Intervenorors lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 39 of the Complaint and therefore deny the same.

40. Intervenorors lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 40 of the Complaint and therefore deny the same.

41. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 41 of the Complaint and therefore deny the same.

42. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 42 of the Complaint and therefore deny the same.

43. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 43 of the Complaint and therefore deny the same.

44. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 44 of the Complaint and therefore deny the same.

45. Intervenor's admit that, on January 31, 2012, the Forest Service issued a new decision concerning the statue. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in the first clause of Paragraph 45 of the Complaint and therefore deny the same. The final clause of Paragraph 45 purports to characterize the Forest Service's January 31, 2012 decision, which speaks for itself and is the best evidence of its content. Intervenor's deny

any allegations that are inconsistent with the plain language and context of that document.

46. Intervenor's admit that the Forest Service's January 31, 2012 decision reauthorized the presence of the statue. The remaining allegations set forth in Paragraph 46 of the Complaint purport to characterize the January 31, 2012 decision, which speaks for itself and is the best evidence of its content. Intervenor's deny any allegations that are inconsistent with the plain language and context of that document.

47. The allegations set forth in Paragraph 47 of the Complaint purport to characterize the Forest Service's January 31, 2012 decision, which speaks for itself and is the best evidence of its contents. Intervenor's deny any allegations that are inconsistent with the plain language and context of that document.

48. Paragraph 48 of the Complaint contains legal conclusions to which no response is required.

49. Intervenor's deny the allegations set forth in Paragraph 49 of the Complaint.

50. Intervenor's deny the allegations set forth in Paragraph 50 of the Complaint.

51. Intervenorors deny the allegations set forth in Paragraph 51 of the Complaint.

52. Intervenorors deny the allegations set forth in Paragraph 52 of the Complaint.

53. Intervenorors deny the allegations set forth in Paragraph 53 of the Complaint.

54. Intervenorors deny the allegations set forth in Paragraph 54 of the Complaint.

55. Paragraph 55 of the Complaint contains legal conclusions to which no response is required. Intervenorors lack knowledge or information sufficient to form a belief about the truth of the remaining allegations set forth in Paragraph 55 of the Complaint and therefore deny the same.

56. Paragraph 56 contains legal conclusions to which no response is required. To the extent a further response may be necessary, Intervenorors deny the allegations set forth in Paragraph 56 of the Complaint.

57. Intervenorors lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 57 of the Complaint and therefore deny the same.

58. Intervenor's lack knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 58 of the Complaint and therefore deny the same.

59. Intervenor's deny the allegations set forth in Paragraph 59 of the Complaint.

In response to Plaintiff's prayers for relief, Intervenor's deny that Plaintiff is entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
2. This Court lacks subject matter jurisdiction over Plaintiff's claims.
3. Plaintiff lacks Article III standing.
4. Plaintiff lacks prudential standing.

Dated: May 29, 2012

Respectfully submitted,



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Counsel for Proposed Intervenors

CERTIFICATE OF SERVICE

I hereby certify that, on May 29, 2012, I served the foregoing *Answer of Defendant-Intervenors* via Federal Express on the following:

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Respectfully submitted,



Marie Peralta

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION)	CV 12-19-M-DLC
FOUNDATION, INC., a Wisconsin non-)	
profit corporation,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
CHIP WEBER, Flathead National Forest)	
Supervisor; UNITED STATES FOREST)	
SERVICE, An Agency of the United States)	
Department of Agriculture,)	
)	
Defendants,)	
)	
and)	
)	
WILLIAM GLIDDEN, RAYMOND)	
LEOPOLD, EUGENE THOMAS,)	
NORMAN DeFORREST, and the)	
KNIGHTS OF COLUMBUS,)	
)	
Defendant-Intervenors.)	
_____)	

Before the Court is a motion to intervene in this matter filed by the Knights of Columbus and four individual members of Kalispell Council 1328 of the Knights of Columbus (collectively, the “Knights of Columbus”). The Knights of Columbus hold the special use permit issued by the United States Forest Service for the placement on Forest Service land of the statue representing Jesus Christ that is at the center of this litigation. They seek to intervene as a matter of right or, in the alternative, permissively under Fed. R. Civ. P. 24(a) and (b). Plaintiff Freedom From Religion Foundation, Inc., does not oppose the motion. The Federal Defendants would not take a position on the motion when contacted by counsel for the Knights of Columbus, but apparently advised that they are likely to file a statement of non-opposition in the near future.

An applicant for intervention as of right must demonstrate the following:

(1) it has a significant protectable interest relating to the property or transaction that is the subject of the action; (2) the disposition of the action may, as a practical matter, impair or impede the applicant’s ability to protect its interest; (3) the application is timely; and (4) the existing parties may not adequately represent the applicant’s interest.

United States v. Alisal Water Corp., 370 F.3d 915, 919 (9th Cir. 2004); see also Fed. R. Civ. P. 24 (a). The Knights of Columbus have satisfied these requirements. As the holder of the special use permit authorizing the current placement of the statute, they have a significant protectable interest in the subject

matter of this action. Should the Plaintiff obtain the relief it seeks, the resulting removal of the statute from federal land would constitute a serious impairment of the ability of the Knights of Columbus to protect their interest in the special use permit. This matter has not been set for trial and no pretrial schedule is yet in place; thus, the application to intervene is timely.

Finally, there exists a possibility that the Federal Defendants may not adequately represent the interests of the Knights of Columbus. In fact, the Forest Service initially declined to renew the special use permit for the statue in 2011, before ultimately reversing itself and approving the permit. Ex. 3 to Glidden Decl. (Doc. 15-1 at 13). The stated reason for the Forest Service's initial denial of the renewal was that the statute is a religious shrine and that its current placement is an "inappropriate use of public land" under the Establishment Clause of the First Amendment. Id. at 15. Although the Forest Service eventually relented and renewed the special use permit, under the circumstances the Court has no difficulty finding that the Knights of Columbus have a perspective that is socially and legally distinct from that of the Federal Defendants, and that the Federal Defendants may not adequately represent the interests of the Knights of Columbus in this matter, particularly as it relates to First Amendment issues.


Accordingly, IT IS HEREBY ORDERED that the motion to intervene filed

by the Knights of Columbus (Doc. No. 14) is GRANTED, and the caption is modified as reflected above. The Clerk of this Court is directed to file the lodged Answer of Defendant-Intervenors.

IT IS FURTHER ORDERED that the Knights of Columbus shall file separate motions for each individual attorney for which they seek admission *pro hac vice*. The motion for *pro hac vice* admission currently lodged with the Court will not be filed.

IT IS FURTHER ORDERED that the Defendant-Intervenors shall file a preliminary pretrial statement addressing all matters listed in Local Rule 16.2(b)(1) on or before June 4, 2012.

DATED this 31st day of May, 2012.



Dana L. Christensen, District Judge
United States District Court

IGNACIA S. MORENO
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

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Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FREEDOM FROM RELIGION
FOUNDATION, INC.,

Plaintiff,

v.

CHIP WEBER and UNITED STATES
FOREST SERVICE,

Defendants.

No. 9:12-CV-00019 DLC

FEDERAL DEFENDANTS'
ANSWER TO THE COMPLAINT

Date: N/A

Time: N/A

Hon. Dana L. Christensen

Federal Defendants Chip Weber and United States Forest Service (“Forest Service”) hereby plead and assert defenses to the Complaint [Dkt. #1] as follows. Except as expressly admitted, all allegations are denied.

1. The allegations set forth in this paragraph consist of Plaintiff’s characterization of its claims, to which no response is required.

2. The allegations set forth in this paragraph consist of Plaintiff’s characterization of its requested relief, to which no response is required. Federal Defendants deny that Plaintiff is entitled to the requested relief or any relief whatsoever.

3. The allegations set forth in this paragraph consist of conclusions of law, to which no response is required; to the extent that a further response is necessary, Federal Defendants deny that Plaintiff is entitled to any relief in this action and specifically deny that 28 U.S.C. § 1343 affords any basis for relief.

4. The allegations set forth in this paragraph consist of conclusions of law, to which no response is required; to the extent that a further response is necessary, Federal Defendants aver that Defendant Weber resides in this judicial district, that the Flathead National Forest is located in this judicial district, and that Plaintiff generally complains of actions or omissions alleged to have occurred in this judicial district, but otherwise deny the allegations of this paragraph.

5. The allegations set forth in this paragraph consist of conclusions of law, to which no response is required.

6. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

7. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

8. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

9. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

10. Admit.

11. Admit.

12. The allegations set forth in this paragraph consist of conclusions of law, to which no response is required; to the extent that a further response is necessary, Federal Defendants admit that Chip Weber is an employee of the U.S. Forest Service, which is an agency of the U.S. Department of Agriculture, and has been authorized and delegated authority to take certain actions concerning the administration of the Flathead National Forest. The remaining allegations set forth in this paragraph are too vague to permit the Federal Defendants to either admit or deny them, and the Federal Defendants therefore deny them.

13. Admit.

14. Admit.

15. The allegations set forth in this paragraph consist of conclusions of law, to which no response is required; to the extent that a further response is necessary, Federal Defendants aver that the Forest Service manages designated public lands of the United States pursuant to various congressional authorizations, but otherwise deny the allegations set forth in this paragraph.

16. The allegations set forth in this paragraph consist of conclusions of law, to which no response is required; to the extent that a further response is necessary, Federal Defendants aver that the Forest Service manages the Flathead National Forest, which consists of public lands of the United States, but otherwise

deny the allegations set forth in this paragraph.

17. The Federal Defendants admit that the Flathead National Forest, including Big Mountain, is located west of the Continental Divide and south of the Canadian Border, within the Rocky Mountains; the remaining allegations set forth in this paragraph are too vague to permit the Federal Defendants to either admit or deny them, and the Federal Defendants therefore deny them.

18. Federal Defendants admit that the Flathead National Forest receives visitors. The remaining allegations set forth in this paragraph appear to characterize the contents of an unidentified document or other statement, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document or statement.

19. Federal Defendants admit that Big Mountain has been managed as part of the Flathead National Forest since at least 1953 and that the Knights of Columbus applied for a permit to erect a statue of Jesus in an area overlooking the Big Mountain Ski run in 1953, but otherwise deny the allegations set forth in this paragraph.

20. The allegations set forth in this paragraph purport to characterize the 1953 application for Special Use Permit, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

21. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

22. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

23. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

24. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

25. Federal Defendants admit that on October 15, 1953, it granted the application for Special Use Permit submitted by the Knights of Columbus and did not require payment for that authorization, but otherwise deny the allegations set forth in this paragraph.

26. Federal Defendants admit that since 1954, it has continued to authorize the presence of the statue authorized in the 1953 Special Use permit and that it has not required payment for that authorization, other than assessing applicable processing fees. Except as expressly admitted, Federal Defendants deny the allegations of paragraph 26.

27. Federal Defendants admit that, as of February 3, 2000, the Forest Service authorized the presence of the statue authorized in the 1953 Special Use permit. The remaining allegations set forth in this paragraph appear to quote from an unidentified document, which speaks for itself and is the best evidence of its contents. Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

28. Federal Defendants admit that in an August 24, 2011 letter to the Knights of Columbus, the Forest Service conveyed its determination that it did not at that time view the presence of the previously authorized statue to be an appropriate use of National Forest System lands and that the statue should be removed, but otherwise deny any allegations inconsistent with the plain language and context of that document and deny the implications conveyed by the first clause of this

paragraph.

29. The allegations set forth in this paragraph purport to characterize the Forest Service's August 24, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

30. The allegations set forth in this paragraph purport to characterize the Forest Service's August 24, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

31. The allegations set forth in this paragraph purport to characterize the Forest Service's August 24, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

32. Federal Defendants admit that the Forest Service's August 24, 2011 letter to the Knights of Columbus engendered public response and that Rep. Rehberg expressed interest in the matter; the Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the remaining allegations set forth in this paragraph and therefore deny them.

33. Federal Defendants deny the implications conveyed by the first clause of paragraph 33. Federal Defendants admit that in an October 21, 2011 letter to the Knights of Columbus, the Forest Service withdrew its earlier August 24, 2011 decision. The remaining allegations set forth in this paragraph purport to characterize the Forest Service's October 21, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

34. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph, which appears to quote an unidentified document or statement; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document or statement. The document or statement attributed to Rep. Rehberg further appears to be a statement of the author's opinion, which requires no further response by Federal Defendants.

35. Deny.

36. The allegations set forth in this paragraph purport to characterize the Forest Service's October 21, 2011 letter to the Knights of Columbus, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

37. The allegations set forth in this paragraph purport to characterize the Forest Service's September 1, 2011 letter to the Montana State Historic Preservation Office, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

38. The allegations set forth in this paragraph purport to characterize the Forest Service's September 1, 2011 letter to the Montana State Historic Preservation Office, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

39. The allegations set forth in this paragraph purport to characterize the Forest Service's September 1, 2011 letter to the Montana State Historic Preservation Office, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

40. The allegations set forth in this paragraph purport to characterize the Forest Service's September 1, 2011 letter to the Montana State Historic Preservation Office, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

41. The allegations set forth in this paragraph purport to characterize the Forest Service's September 1, 2011 letter to the Montana State Historic Preservation Office, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

42. The allegations set forth in this paragraph appear to characterize the Montana State Historic Preservation Office's September 19, 2011 letter to the Forest Service, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

43. Federal Defendants admit that it received from the American Center for Law and Justice a list of approximately 70,000 names of persons identified as supporters of the statue and approximately 10,000 comments conveyed by Rep. Rehberg, but otherwise lack information sufficient to enable them to either admit or deny the remaining allegations set forth in this paragraph and therefore deny them.

44. Federal Defendants admit that the Forest Service received a number of comments opposing the statue, including from Plaintiff Freedom From Religion Foundation; the remaining allegations set forth in this paragraph purport to characterize those comments, which speak for themselves and are the best evidence of their contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of those documents.

45. Federal Defendants admit that on January 31, 2012, the Forest Service issued a new decision concerning the statue. The remaining allegations set forth in this paragraph purport to characterize the January 31, 2012 decision, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document and specifically deny the allegations of the first clause of this paragraph.

46. The Federal Defendants admit that the January 31, 2012 decision reauthorized the presence of the statue. The remaining allegations set forth in this paragraph purport to characterize the January 31, 2012 decision, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

47. The allegations set forth in this paragraph purport to characterize the January 31, 2012 decision, which speaks for itself and is the best evidence of its contents; the Federal Defendants deny any allegation inconsistent with the plain language and context of that document.

48. The allegations set forth in this paragraph consist of legal conclusions to which no response is required; to the extent that a further response is necessary, Federal Defendants deny the allegations to the extent that they purport to characterize the Federal Defendants' actions as alleged by the Plaintiff. The Federal Defendants also deny that they have violated the Establishment Clause or any other provision of law.

49. The allegations set forth in this paragraph consist of legal conclusions to which no response is required; to the extent that a further response is necessary, Federal Defendants deny the allegations. Federal Defendants deny that they have violated the Establishment Clause or any other provision of law.

50. The allegations set forth in this paragraph consist of legal conclusions to which no response is required; to the extent that a further response is

necessary, Federal Defendants deny the allegations.

51. The allegations set forth in this paragraph consist of legal conclusions to which no response is required; to the extent that a further response is necessary, the Federal Defendants deny the allegations.

52. Deny.

53. The allegations set forth in this paragraph consist of legal conclusions to which no response is required; to the extent that a further response is necessary, Federal Defendants deny the allegations.

54. The allegations set forth in this paragraph consist of legal conclusions to which no response is required; to the extent that a further response is necessary, Federal Defendants deny the allegations.

55. The allegations set forth in this paragraph consist of legal conclusions to which no response is required; to the extent that a further response is necessary, Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the factual allegations set forth in this paragraph and therefore deny them.

56. The allegations set forth in this paragraph consist of legal conclusions to which no response is required.

57. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

58. Federal Defendants lack knowledge or information sufficient to enable them to either admit or deny the allegations set forth in this paragraph and therefore deny them.

59. Deny.

RESPONSE TO PRAYER FOR RELIEF

The remaining paragraphs of Plaintiff's Complaint set forth Plaintiff's request for relief and do not require a response. To the extent that a further response is necessary, Federal Defendants deny that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

Plaintiff may lack either Article III or prudential standing, or both.

WHEREFORE, Federal Defendants request that the Court dismiss Plaintiff's Complaint or enter judgment in favor of the Federal Defendants and grant such other relief as may be appropriate.

DATED: April 23, 2012

Respectfully submitted,

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Environment & Natural Resources Division

/s/David B. Glazer
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CERTIFICATE OF SERVICE

I, David B. Glazer, hereby certify that I have caused the foregoing to be served upon counsel of record through the Court's electronic service system.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 23, 2012

/s/David B. Glazer
David B. Glazer