

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

Freedom From Religion Foundation,
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

William Glidden, Raymond Leopold,
Norman DeForrest, Eugene Thomas,
and the Knights of Columbus
(Kalispell Council No. 1328),

Intervenor-Defendants.

**INTERVENORS' MOTION TO DISMISS COMPLAINT
FOR LACK OF STANDING**

Pursuant to Fed. R. Civ. P. 12(b)(1), Intervenor-Defendants William Glidden, Raymond Leopold, Norman DeForrest, Eugene Thomas, and Knights of Columbus (Kalispell Council No. 1328), hereby submit their Motion to Dismiss the Complaint in the above-captioned matter. The Court lacks subject matter jurisdiction in this case because Plaintiff lacks associational standing, both in its own behalf and on behalf of its members.

First, Plaintiff cannot have associational “offended observer” standing on its own behalf, since that form of standing depends entirely on the subjective reactions of offended individuals.

Second, Plaintiff cannot have associational “offended observer” standing on behalf of its members because it has not identified any of its members who has actually seen and been offended by the war memorial, as required to obtain standing. Moreover, even if it did identify such members, it would still fail to have associational standing because the participation of individual members would be required to determine an offended observer standing claim.

Third, without a named individual who has actually seen and been offended by the war memorial, the complaint and the case will only waste the Court’s and the parties’ time.

Intervenors therefore respectfully move that the Plaintiff’s Complaint be dismissed in its entirety. In support of this Motion Intervenors are also filing a Brief in Support.

Counsel for all parties have been contacted regarding this Motion. Plaintiff opposes this Motion and federal Defendants have not taken a position on this Motion.

Dated: July 31, 2012

Respectfully submitted,

/s/ Charles A. Harball

Charles A. Harball

(Montana Bar No. 2841)

Kalispell, MT 59901

Telephone: (406) 758-7709

Facsimile: (406) 758-7758

Eric C. Rassbach (admitted *pro hac vice*)
Eric S. Baxter (admitted *pro hac vice*)
The Becket Fund for Religious Liberty
3000 K St. NW, Suite 220
Washington, DC 20007
Telephone: (202) 955-0095
Facsimile: (202) 955-0090

Counsel for Defendant-Intervenors

CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2012, the foregoing *Brief in Support of Intervenor's Motion to Dismiss* was filed with the Court through the Electronic Case Filing system and will be served by the Electronic Case Filing system on the following counsel of record:

David B. Glazer
U.S. DEPT OF JUSTICE
301 Howard Street
Suite 1050
San Francisco, CA 94105

Mark Steger Smith
OFFICE OF THE U.S. ATT'Y
2929 3rd Ave. North, Ste. 400
P.O. Box 1478
Billings, MT 59103-1478

Martin S. King
Reid Perkins
WORDEN THANE
P.O. Box 4747
Missoula, MT 59806-4747
406-721-3400
Fax: 721-6985

Richard L. Bolton
BOARDMAN & CLARK, LLP
1 South Pinckney Street, 4th Floor
P.O. Box 927
Madison, WI 53701-0927

/s/ Charles A. Harball
Charles A. Harball