

IN THE
United States Court of Appeals for the Seventh Circuit

FREEDOM FROM RELIGION FOUNDATION, INC., ET AL.,
Plaintiffs-Appellees,

v.

BARACK OBAMA, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court
For the Western District of Wisconsin
Case No. 08-CV-588

The Honorable Judge Barbara B. Crabb

MOTION OF DR. JAMES C. DOBSON, THE FAMILY RESEARCH COUNCIL,
FOCUS ON THE FAMILY ACTION, AMERICAN CIVIL RIGHTS UNION, LET
FREEDOM RING, LIBERTY COUNSEL, INDIANA FAMILY INSTITUTE,
CITIZENS FOR COMMUNITY VALUES, CENTER FOR ARIZONA POLICY, NEW
JERSEY FAMILY POLICY COUNCIL, FLORIDA FAMILY POLICY COUNCIL,
SOUTH DAKOTA FAMILY POLICY COUNCIL, MONTANA FAMILY
FOUNDATION, NORTH DAKOTA FAMILY ALIANCE, FAMILY ACTION OF
TENNESSEE, FAMILY FOUNDATION OF KENTUCKY, CORNERSTONE-
ACTION, WISCONSIN FAMILY ACTION, MISSOURI FAMILY POLICY
COUNCIL, NORTH CAROLINA FAMILY POLICY COUNCIL, KANSAS FAMILY
POLICY COUNCIL, ALASKA FAMILY COUNCIL, OKLAHOMA FAMILY POLICY
COUNCIL, MINNESOTA FAMILY COUNCIL & INSTITUTE, FAMILY POLICY
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COUNCIL, LOUISIANA FAMILY FORUM, ASSOCIATION OF MARYLAND
FAMILIES, THE FAMILY FOUNDATION, PENNSYLVANIA FAMILY
INSTITUTE, FAMILY FIRST, INDEPENDENCE LAW CENTER, AND FAMILY
POLICY COUNCIL OF WEST VIRGINIA AS *AMICI CURIAE*
FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

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Pursuant to Fed. R. App. R 34 and Circuit Rule 34, *Amici Curiae* James Dobson and the Family Research Council et al. respectfully move for leave to participate in oral argument, and for either divided argument or for additional time to be allotted for argument. Federal Defendants oppose this motion.

As set forth in our Brief, this Court has repeatedly held that *Hein v. Freedom From Religion Found. Inc.*, 551 U.S. 587 (2007), is the rule controlling who has standing to bring an Establishment Clause challenge. *E.g.*, *Laskowski v. Spellings*, 546 F.3d 822, 826–27 (7th Cir. 2008). This Court has recently held and reaffirmed in no less than three cases precisely what *Hein* requires for taxpayers to have standing to bring Establishment Clause suits. These precedents foreclose any possibility that Plaintiff-Appellees have standing to bring the instant case.

Surprisingly, the Federal Defendants’ Brief does not rely upon—or even cite—any of these dispositive cases. Our Brief, by contrast, exhaustively discusses and examines these cases, shows that they control the instant case, and that a straightforward application of their rule requires dismissal of the instant case for lack of standing. Because standing is a jurisdictional issue that cannot be waived or forfeited, *United States v. Cotton*, 535 U.S. 625, 630 (2002), one that this Court moreover has an independent duty to fully examine beyond the arguments presented by the parties, *see Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006), this Court would be substantially aided by allowing *Amici Curiae* to participate in oral argument and fully present to the Court the arguments on this controlling issue.

For these reasons, *Amici Curiae* respectfully request that this Court grant leave to participate in oral argument, either (1) through enlarging the time for oral argument and granting *Amici* time in addition to that allotted for the parties, or (2) through dividing time between *Amici* and the Federal Defendants.

Respectfully submitted,

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July 20th, 2010

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Motion of *Amici Curiae* for Leave to Participate in Oral Argument on the following by U.S. mail, first-class postage paid:

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I further certify that on this day I have served electronically a copy of the forgoing Motion on the above-listed counsel via email to rbolton@boardmanlawfirm.com and Lowell.Sturgill@usdoj.gov. This Motion was also filed this day by sending four copies to the Clerk of this Court.

Executed this 20th day of July, 2010.

Kenneth A. Klukowski