

DANIEL WHYTE
BRENDAN BEATTY
Special Assistant Attorneys General
MONTANA DEPARTMENT OF REVENUE
Legal Services Office
125 North Roberts Street
PO Box 7701
Helena, MT 59604-7701
Telephone: (406) 444-3340; (406) 444-1602
Email: dwhyte@mt.gov; bbeatty@mt.gov

Attorneys for the Department

**MONTANA ELEVENTH JUDICIAL DISTRICT COURT,
FLATHEAD COUNTY**

KENDRA ESPINOZA, JERI ELLEN ANDERSON, and JAIME SCHAEFER,)	Cause No.: DV-15-1152A
)	
Plaintiffs,)	MOTION TO DISMISS PLAINTIFFS’
)	COMPLAINT FOR DECLARATORY
vs.)	AND INJUNCTIVE RELIEF FOR LACK
)	OF STANDING
)	
MONTANA DEPARTMENT OF REVENUE, and MIKE KADAS, in his official capacity as DIRECTOR of the MONTANA DEPARTMENT OF REVENUE,)	
)	
Defendants.)	

The Montana Department of Revenue (Department) appears now, by and through its counsel of record, and moves this Court for an Order dismissing the Plaintiffs’ Complaint for Declaratory and Injunctive Relief on the grounds that the Plaintiffs lack standing pursuant to Rule 12(b), M.R.Civ.P.

Plaintiffs have alleged that the Department’s implementation of an administrative rule is in violation of the Montana and U.S. Constitutions and that the rule is *ultra vires*. However, these

issues cannot be considered by this Court for the reason that none of the Plaintiffs has suffered injury from the Department's actions, and therefore each lacks standing to bring the claims asserted. For the reasons set forth in separate briefing, Defendants respectfully request that the Court dismiss this matter.

Dated this 15th day of February, 2016.

MONTANA DEPARTMENT OF REVENUE



DANIEL WHYTE
BRENDAN BEATTY
Special Assistant Attorneys General

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of February, 2016, I served true and accurate copies of the foregoing *Motion to Dismiss for Lack of Standing* by the method(s) indicated below, addressed as follows:

William W. Mercer
Holland & Hart LLP
401 North 31st Street, Suite 1500
P.O. Box 639
Billings, MT 59103-0639
wwmerc@hollandhart.com
Attorney for Plaintiffs

U.S. Mail, Postage Prepaid
 Federal Express, Billed to Sender
 Hand Delivery
 E-Mail
 Fax to _____

Richard D. Komer
Erica Smith
Institute for Justice
901 North Glebe Road, Suite 900
Arlington, VA 22203
dkomer@ij.org
esmith@ij.org
Attorney for Plaintiffs

U.S. Mail, Postage Prepaid
 Federal Express, Billed to Sender
 Hand Delivery
 E-Mail
 Fax to _____


