DISCUSSION: The Ninth Circuit first dealt with the District Court ruling on summary judgment that it could not consider the plaintiff's vagueness challenge since it was not in the first amended complaint. The court held this was an abuse of discretion because the lower court should have granted the plaintiffs' request to amend. Noting that leave to amend should be granted freely and this policy should be "applied with extreme liberty," the court pointed out there are five factors courts use to determine whether an amendment should be granted. The factors include bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has already amended the complaint. The Ninth Circuit found none of these factors were an issue, and thus the lower court should have allowed the plaintiff's to amend their complaint a second time.

The court easily found the ordinance failed to provide fair notice such that citizens could conduct themselves accordingly. It did not define "living quarters" and did not set forth how long one must be using a car in this undefined fashion before breaking the law. As the Circuit Court put it, people "are left guessing as to what behavior would subject them to citation . . . . Is it impermissible to eat food in a vehicle? Is it illegal to keep a sleeping bag? Canned food? Books? What about speaking on a cell phone? Or staying in the car to get out of the rain? These are all actions plaintiffs were taking when arrested . . . all of which are otherwise perfectly legal."

The Ninth Circuit also found the ordinance unconstitutional for failing to provide any discernable guidelines to limit police discretion. The court found "arbitrary and discriminatory enforcement is exactly what occurred," given that the law is clearly broad enough to apply to anyone, but the police only targeted the homeless. The City argued that individuals were all cited and arrested because of health and safety concerns and that it was unsafe for them to be living in their vehicles. The court conceded that might well have been true, but the plaintiffs' conduct in each case "mimick[ed] the everyday conduct of many Los Angeles residents," and only the homeless were cited and arrested. The City also argued that it had legitimized an otherwise vague ordinance with limiting constructions given to the police, but the court rejected this argument, pointing out that the internal memo that was supposed to guide officers was completely ignored by the police and that the task force leader stated in his deposition that he did not favor that limiting construction and directed the task force members not to follow it.

http://cdn.ca9.uscourts.gov/datastore/opinions/2014/06/19/11-56957.pdf (last accessed July 5, 2014).

Procedure: Where City Declines to Appeal Injunction Against Religious Display, Non-Party Church Does Not Have Standing to Appeal As Intervenor

Cabral v. City of Evansville, 13-2914 (7th Cir. June 25, 2014).

Where residents enjoined a city from permitting a church to erect a large religious display, the church, which had not been a party to the injunction suit, did not have standing to appeal the injunction.

The West Side Christian Church applied to Evansville, Indiana to construct "Cross the River," a display consisting of thirty-one, six-foot tall crosses covering four blocks of public riverfront. The City approved the application, but two residents filed suit to stop the display, claiming it violated the First Amendment's Establishment Clause. The District Court held for the residents and enjoined Evansville from permitting the display. The City did not appeal. However, West Side Christian Church appealed as an intervenor, arguing the display did not violate the Establishment Clause.

HELD: The Seventh Circuit held West Side Christian Church lacked standing to bring the appeal because any injury it may have suffered as a result of the lower court's injunction was not fairly traceable to Evansville.

DISCUSSION: Article III standing requires a litigant show "(1) it has suffered an actual or imminent concrete and particularized "injury in fact"; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." The Seventh Circuit looked to the redressability prong of the analysis and determined that, because the only party bound by the injunction was Evansville, any injury West Side suffered as a result of that party being bound under the lower court's order was only "derivative" – not direct. It noted even if the injunction was reversed, that order would only allow Evansville – a third party – to review the application again, if it chose to do so, and after that potential review, potentially change West Side's position. As a result, the Circuit Court could only speculate as to whether the relief it ordered would redress West Side's asserted injury.

The second problem with West Side's position was the fact that Evansville had not appealed. The Circuit Court noted "it is basic appellate procedure that a judgment will not be altered on appeal in favor of a party who did not appeal [even if] the interests of the party not appealing are aligned with those of the appellant." *Albedyll v. Wis. Porcelain Co. Revised Ret. Plan*, 947 F.2d 246, 252 (7th Cir. 1991). Moreover, adjudicating the rights of a party that consciously decided not to appeal a decision would create a "free-rider problem": it would incentivize non-appealing parties to evaluate, in every case, whether their rights are closely enough aligned with those of an appealing party such that they should share in the benefits of an appellate judgment.

West Side countered that it should have standing because the injunction violates its First Amendment rights and, essentially, left the church in the same position as if the City had simply denied its permit application. The Seventh Circuit not only disagreed with this argument, but said it epitomized why West Side did *not* have standing--had the City denied its permit because then the Church would absolutely have suffered an injury directly traceable to the City's actions. Under the facts however, the City did not deny the application – in fact it permitted the display – meaning the City did not "injure" West Side. The proper path forward, the Circuit Court directed, was for the church to re-apply in the future and, if denied a permit, file a Section 1983 suit alleging a First Amendment violation. However, the Circuit Court cautioned that "West Side's road ahead might not necessarily get any easier if it ever attains standing to challenge the injunction. We question whether a reasonable observer would be put on notice that the "Cross the River" display is strictly private speech given the sheer magnitude of a display that takes up four blocks and has two signs alerting citizens that it is a private display."

http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2014/D06-25/C:13-2914:J:Williams:aut:T:fnOp:N:1369638:S:0 (last accessed July 7, 2014).