Cases *Cont'd from page 35*

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 violated 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, 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."

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

Incumbent Sheriff Has Qualified Immunity in Firing Deputy Who Ran Against Him

Basing its decision significantly on North Dakota law which provides that sheriffs have broad latitude in maintaining order in their departments, the Eight Circuit has reversed a lower court's denial of qualified immunity for an incumbent sheriff who fired his deputy after a contested election. Although the deputy made statements during the campaign that would generally be considered matters of public concern, the statements were challenged as untrue and gave rise to a reasonable assumption by the sheriff that he could fire his subordinate without violating an established constitutional right.

In 2010 Ron Nord, the deputy sheriff of Walsh County, North Dakota, ran for sheriff against the incumbent, Lauren Wild. Wild won the general election and the next day informed Nord he was terminated because of an "unwritten rule" that deputy sheriffs who run against sheriffs will be fired. Sheriff Wild also said he fired Nord for specific statements he made during the campaign.

Nord sued Walsh County and Sheriff Wild, alleging he was fired in retaliation for statements he made during the campaign that were protected First Amendment speech. The District Court denied Wild's qualified immunity claim. Wild appealed.

HELD: The Eighth Circuit reversed, holding Wild was entitled to qualified immunity.

DISCUSSION: Qualified immunity requires a two-step analysis, wherein courts ask "(1) whether the facts shown by the plaintiff make out a violation of a constitutional or statutory right, and (2) whether that right was clearly established at the time of the defendant's alleged misconduct." *Winslow v. Smith*, 696 F.3d 716, 731 (8th Cir. 2012). Nord had stated he was running because Wild's health was "bad," that Wild's wife did not want him to run, and that Wild was going to resign in a couple years to run for a state senate seat. Wild conceded that Nord's First Amendment rights may have been violated, but he was nevertheless entitled to qualified immunity because terminating Nord did not violate a clearly established constitutional right that Wild, as a reasonable person, would have been aware of.

The majority evaluated whether Nord's speech was protected by the First Amendment under the *Pickering/Connick* balancing test. This test required balancing "Nord's First Amendment rights against Wild's state government employer prerogatives" and involved four issues – "(1) the general authority and responsibilities of the employing government entity, (2) the nature and character of the specific employer-employee relationship, (3) the speech involved and (4) evidence tending to establish the speech's impact on the efficient operation of the government entity." The Eighth Circuit noted the North Dakota supreme court had held that a deputy sheriff's official acts are acts of the sheriff, that the deputy is "the deputy of the sheriff, not of the office of sheriff," and that as an official with no original power, the deputy sheriff is the agent of the sheriff, who is the principal.

The Circuit Court also relied on a state attorney general opinion for the principle that absent some type of restraint on an employee, employees in North Dakota are at-will employees, and that in light of the abovementioned state supreme court law, it was reasonable for the sheriff to consider his deputy an at-will employee whom he could fire without cause.

Finally, the Court looked to its own Circuit precedent for the principle that it gives broad latitude to law enforcement officers in executing their duties, especially the management of subordi-