

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION

CHRIS CABRAL and)
NANCY TARSITANO,)
)
Plaintiffs,)
)
v.)
)
CITY OF EVANSVILLE, INDIANA,)
)
Defendant,)
)
WEST SIDE CHRISTIAN CHURCH,)
DOVE CHAPEL BAPTIST)
CHURCH, FAITH CHURCH OF THE)
NAZARENE, FREEDOM BAPTIST)
CHURCH, GOOD SHEPHERD)
ASSEMBLY OF GOD, MARANATHA)
BAPTIST CHURCH, POTTERS WHEEL)
MINISTRIES, ST. JAMES WEST)
UNITED METHODIST CHURCH,)
THE CATHEDRAL, and THE)
CONNECTION CHURCH,)
)
Movant-Intervenors.)
_____)

Cause No. 3:13-cv-00139-SEB-WGH

**MOTION TO INTERVENE OF RIGHT,
OR IN THE ALTERNATIVE, FOR PERMISSIVE INTERVENTION,
AND ALSO TO BE JOINED AS INDISPENSABLE PARTIES**

Movant-Intervenors, West Side Christian Church of Evansville, Indiana; Dove Chapel Baptist Church of Evansville, Indiana; Faith Church of the Nazarene of Evansville, Indiana; Freedom Baptist Church of Owensboro, Kentucky; Good Shepherd Assembly of God of Evansville, Indiana; Maranatha Baptist Church of Newburgh, Indiana; Potters Wheel Ministries of Evansville, Indiana; St. James West United Methodist Church of Evansville, Indiana; The Cathedral of Evansville, Indiana; and The Connection Church of Evansville, Indiana (“the

Churches”), by counsel, under Fed. R. Civ. P. Rules 19(a), 24(a)(2), and 24(b)(2), move for intervention of right, or in the alternative, for permissive intervention, and also for joinder as indispensable parties. The Churches submit their brief in support of the motion contemporaneously with this motion.

The Churches move to intervene as party-defendants because the Plaintiffs in this action are seeking to enjoin and destroy the Churches’ efforts to display up to thirty-one (31) six-foot-tall artistically painted and decorated crosses on public property in the City’s popular Riverfront area, for two (2) weeks in August of 2013. West Side Christian Church, on behalf of the Churches and the other participating churches and faith-based organization, applied for and received a valid “Right of Way Permit” from the City of Evansville, Indiana for the intended display, which is similar in nature to displays in the same public forum by other private parties.

If Plaintiffs succeed in this lawsuit, the Churches will be deprived of the time, effort, money and property expended in creating, permitting, erecting and maintaining the crosses, including their interest in expressing their viewpoint in the public forum known as the Riverfront for a brief two-week period in August of 2013.

The Churches should be granted intervention of right under Fed. R. Civ. P. 24(a)(2) on the following grounds:

1. The Court has jurisdiction of the Churches’ claims under 28 U.S.C. §1331, since their claims arise under the First and Fourteenth Amendments to the United States Constitution. Venue is proper under 28 U.S.C. §1394, since the Churches’ intended private speech will occur in this judicial district and division, and the public forum from which the Churches intend to express their viewpoint is also located here.

2. The Churches' application for intervention is timely being filed less than thirty days after the Complaint was filed;
3. The Churches have unique interests in erecting and maintaining the decorated crosses which are related to the subject of the action;
4. The Churches are so situated that the disposition of the action may, as a practical matter, impair or impede their ability to protect their interest; and
5. The Churches' interest may not be adequately represented by the existing parties to the suit.

Additionally, the Churches should be joined as necessary parties under Fed. R. Civ. P. 19 on the following grounds:

1. Complete relief cannot be accorded without the joinder of the Churches; and
2. A disposition by the court will impair the Churches' substantial interests and may subject the parties to further obligations.

The Churches should alternatively be granted permissive intervention under Fed. R. Civ. P. 24(a)(2) because the Churches' interest in preserving and protecting their right to express their viewpoint through the crosses, and the right to erect and maintain the crosses, and the Plaintiffs' application to have them permanently enjoined involve common questions of law and fact.

The Churches conferred with Plaintiffs' counsel who objects to this motion, and with counsel for Defendant, City of Evansville, who has no objection to this motion.

WHEREFORE, the Churches respectfully request that this Court summarily grant their Motion to Intervene as a party-defendant or set the motion for oral argument.

Respectfully submitted,

s/Michael J. Cork

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ATTORNEYS FOR MOVANT-INTERVENORS

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2013, a copy of the foregoing Motion to Intervene was filed electronically. Service of this filing will be made on all ECF-registered counsel by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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