

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FREEDOM FROM RELIGION)
FOUNDATION, STEVE KRISTOFF,)
and RENANA GROSS,)
)
Plaintiffs,)
)
v.)
)
FRANKLIN COUNTY, INDIANA,)
)
Defendant.)

No. 1:14-cv-2047-TWP-DML

NOTICE CONCERNING RELIEF

COME NOW Plaintiffs, by their counsel, and respectfully notify the Court and all other parties as follows:

1. This case arises as a challenge to the display of a nativity scene on the lawn outside the Franklin County Courthouse in Brookville, Indiana. Following the initiation of this case and the filing of the plaintiffs’ Motion for Preliminary Injunction (ECF No. 6), the parties reached an agreement (memorialized at ECF No. 26) where the nativity scene at issue would be removed from the Courthouse lawn no later than December 26, 2014.
2. On January 6, 2015, the plaintiffs filed their Amended Complaint for Declaratory and Injunctive Relief and Nominal Damages (“Amended Complaint”) in this cause. The Amended Complaint challenges the display of a nativity scene on the lawn of the Franklin County Courthouse as violative of the Establishment Clause of the First Amendment to the United States Constitution. As is pertinent at present, the Amended Complaint seeks an injunction “enjoining the defendant from displaying the nativity

scene on the lawn of the . . . Courthouse” and also seeks an award of the plaintiffs’ nominal damages.

3. On January 12, 2015, the Franklin County Board of Commissioners passed Ordinance No. 2015-02 (“the Ordinance”) (ECF No. 34, at 3-10), which regulates the use of the Courthouse lawn and which permits some persons to apply to erect displays on the lawn. The plaintiffs do not concede that this Ordinance satisfies the Free Speech Clause in all respects, nor do they concede that any religious display erected pursuant to the process described in the Ordinance satisfies the Establishment Clause. Nonetheless, they acknowledge that the passage of the Ordinance may affect the number or type of display(s) erected on the Courthouse lawn in the winter of 2015.
4. Of course, “Establishment Clause jurisprudence” is “delicate and fact-sensitive.” *Lee v. Weisman*, 505 U.S. 577, 597 (1992). Given this, the plaintiffs believe that this Court no longer has jurisdiction to address their claims for injunctive relief. This is so regardless of whether their injunctive claim is viewed as unripe or whether the passage of the Ordinance is interpreted as rendering this claim incapable of repetition such that an exception to the mootness doctrine is inapplicable.
5. The plaintiffs, however, intend to proceed with their request for nominal damages. They also reserve their right to challenge any and all future displays on the Courthouse lawn through separate litigation.

WHEREFORE, the plaintiffs provide the Court and all other parties with this Notice, and request all proper relief.

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Attorneys for the plaintiffs

CERTIFICATE OF SERVICE

I hereby certified that a true copy of the foregoing was filed electronically on this 6th day of February, 2015. Parties may access the filing through the Court's electronic system. A copy will be served on all ECF-registered persons by operation of the Court's electronic system.

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