

Church fights to protect cemeteries from O'Hare Airport

by Randy Bright <http://www.tulsabeacon.com/?p=4793>

The next time you fly into Chicago's O'Hare International Airport, you may see two small cemeteries on airport property - at least for now.

The cemeteries, St. Johannes, established in 1837, and Rest Haven, established in 1840, are the resting place for over 1,600 parishioners, many of whom were Civil War veterans.

St. John's United Church of Christ built their original structure on the same grounds in 1849, then in 1873 constructed a much larger building. By 1949, Chicago had purchased much of the land around it for the construction of O'Hare International. Unfortunately, St. John's building and cemetery were in the way and Chicago wanted their land.

The City of Chicago had decided to demolish the church building, but the church decided instead to move the building two miles away. However, it was not possible, nor even necessary at that time, to move the cemeteries, so the City of Chicago agreed that the land where the cemeteries were located would not be included in the airport's future expansions. On that basis, the church continued burials in the two cemeteries for another half century.

But by 2001, O'Hare again wanted to enlarge and relocate its runways, and Chicago made it clear that they were going to take the land where the two cemeteries were located along with a portion of the suburb of Bensenville that included about 500 homes.

By May of 2003, the Becket Fund for Religious Liberty had joined the battle to save the cemeteries, and they, along with other attorneys from Washington, DC and Chicago filed suit to block their relocation. The suit claimed that the church's rights had been violated according to Illinois Religious Freedom Restoration Act, the U.S. Constitution, and the Religious Land Use and Institutionalized Persons Act (RLUIPA). There were serious concerns that without a court order, Mayor Daley would do to the cemeteries as he had recently done to Meig's Field, Chicago's small downtown airport. In that case, Daley sent bulldozers into the airport at two in the morning, without notification to anyone, including the FAA, to destroy the runways.

In response to the suit, Mayor Daley convinced the Illinois Legislature to pass a bill that would take away those rights only from the two cemeteries. Named the "O'Hare Modernization Act (OMA)," then-Governor Rod Blagojevich signed the bill that would take away the protections provided by those and other laws, while leaving those same protections intact for every other cemetery in the state.

The OMA took away the church's rights for the cemeteries from a number of other laws that, according the Becket Fund, included the Illinois Religious Freedom Restoration Act, the Archeological and Paleontological Resources Protection Act, the Human Skeletal Remains

Protection Act, the Illinois Municipal Code, the Vital Records Act, and the Illinois Aeronautics Act.

The church filed a federal lawsuit requesting a temporary restraining order and a preliminary injunction to stop Mayor Daley and the City of Chicago from destroying the cemeteries, which apparently they were willing to do even though they had still not received approvals from the FAA for the expansion. Since Daley had disregarded the FAA in the Meig's Field incident, there was no reason not to believe that he and the City of Chicago would not do so again.

By 2005, the FAA had approved O'Hare's expansion plans, and although admitting that the city's seizure and desecration of the St. Johannes Cemetery (by this time plans to relocate Rest Haven had been dropped) would "substantially burden" the church, it also claimed that there was a governmental "compelling interest" in doing so.

The church again went back to court, and this time they were successful in getting a stay that would allow the courts to continue to review the case.

By 2006, the U.S. Court of Appeals for the D.C. Circuit had ruled against the church, and by 2008, the church had petitioned the U.S. Supreme Court to hear its case on the basis of violation of RLUIPA, but the Court denied the petition in December of 2008, and again denied a petition for a rehearing in February of 2009. It then went back to the Illinois Supreme Court, who recently blocked O'Hare from taking St. Johannes, at least for now.

The question is, what would have happened to RLUIPA had the U.S. Supreme Court agreed to hear it? And what will happen to it if it agrees to hear the case from Boulder County, Colorado regarding Rocky Mountain Christian Church? Given the liberal bent of the Court, especially with the recent liberal additions of Sotomayor and Kagan, it is highly unlikely that RLUIPA will emerge intact, making religious freedom in America all that much more difficult to defend.

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Randy W. Bright, AIA, NCARB, is an architect who specializes in church and church-related projects. You may contact him at 918-582-3972, rwbrightchurcharch@sbcglobal.net or www.churcharchitect.net.

This entry was posted on Wednesday, November 24th, 2010 and is filed under [Columns](#)