

ACLU

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Appeals Panel Rules Airport Chapel Challenge Must Be Heard

The U.S. Sixth Circuit Court of Appeals has reversed a Cleveland Federal District Court dismissal of a "taxpayer challenge" to the rental of space at the Cleveland Hopkins International Airport to the Catholic Diocese of Cleveland for use as an airport chapel.

Five Cleveland taxpayers who regularly use the airport facility brought suit under the Establishment Clause of the First Amendment to enjoin the leasing of space to the Catholic Diocese. The district court had ruled that taxpayers lacked standing, and dismissed the lawsuit without hearing the merits of the challenge.

The case was argued before the Sixth Circuit by ACLU Cooperating Attorney Joshua Kancelbaum of Cleveland, and has been co-counseled by ACLU of Cleveland staff attorney Gordon Beggs.

The appellate court's ruling indicates that the lower court misconstrued current case law on the question of standing in Establishment Clause and other suits seeking to enjoin governmental actions asserted to be injurious to economic and non-economic interests of those bringing the actions.

In particular, the court noted a 1983 decision in which the ACLU and five individuals "brought suit alleging that the maintenance of a large, illuminated latin cross in a Georgia state park violated the Establishment Clause." All plaintiffs were Georgia residents, but only one had actually seen the cross. Two of the plaintiffs testified that they camped in the park regularly, and all testified "that they would not use the state park as long as the cross remained there,

because of both its physical and metaphysical impact." Noting the various circumstances of the different plaintiffs, and that their standing to challenge the action based on "demonstrated particularized and personalized noneconomic injury" had been granted, the Sixth Circuit found "persuasive authority for the proposition that a plaintiff challenging sectarian use of public property for impairing his actual use and enjoyment of that property has standing to challenge the impermissible activity."

The appellate panel went on to note that "plaintiffs here are residents of Cleveland or Cuyahoga County and are taxpayers in the City of Cleveland; they regularly use Cleveland Hopkins International Airport. Even if they can avoid the chapel area by utilizing different concourses or stairways, this impingement on their right to use the airport is sufficient to confer standing since it would 'force them to assume special burdens' to avoid 'unwelcome religious exercises'."

The decision also dealt with allegations of adverse economic impact to taxpayers under what seems to be a "sweetheart" arrangement under the terms of the lease. The twenty-year lease, approved in 1983 by Cleveland City Council, requires the diocese to pay the City rent of \$1200 per year for 2,733 square feet of space — about 44¢ per square foot. "Since the average rental rate for space in the airport terminal is approximately \$20 per square foot," the Sixth Circuit noted, "the chapel rental rate constitutes an apparent subsidy by the City to the diocese."