

Exhibit 1

HHawley v. City of Cleveland
N.D.Ohio, 1991.

Only the Westlaw citation is currently available.

United States District Court, N.D. Ohio, Eastern
Division.

Jane HAWLEY, et al., Plaintiffs,

v.

CITY OF CLEVELAND, et al., Defendants.

No. 83CV-3402.

July 19, 1991.

Gordon Beggs, American Civil Liberties Union of Cleveland Foundation, Inc., Cleveland, Ohio, Joshua Kancelbaum, Lyndhurst, Ohio, Lester Potash, Beachwood, Ohio, William Marshall, CWRU Law School, Cleveland, Ohio, for plaintiffs.

Edward J. Maher, Edward J. Maher Co., Douglas J. Paul, Chatman, Moss, Chatman, Garfield Friedlander, Bernard H. Niehaus, Bernard H. Niehaus, Co., Cleveland, Ohio, for Catholic Diocese of Cleveland, Bishop Anthony M. Pilla.

Robert M. Wolff, Mark J. Valponi, Cleveland, Ohio, for City of Cleveland, George F. Dougherty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

WHITE, District Judge.

*1 This action was tried before the Court and the Court having heard the testimony of witnesses, having examined the exhibits and having considered the proposed findings of fact of conclusions of law submitted by the parties, makes the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

FINDINGS OF FACT

1. The plaintiffs are citizens of the United States and resident taxpayers of the City of Cleveland.
2. The defendants include the City of Cleveland, its Director of Port Control, the Catholic Diocese of Cleveland and Bishop Anthony M. Pilla.
3. Cleveland Hopkins International Airport (the "Airport"), is a major, modern airport facility

currently served by 16 airlines, providing non-stop service to over 60 major U.S. cities, and connecting service to points all over the world.^{FNI} The Airport occupies an 18,000 acre site. The passenger terminal measures 690,000 square feet. At Hopkins can be found nearly 5,000 parking spaces; 12 passenger elevators, 8 speedwalks and 13 escalators. There are also 5,000 airline and other tenant employees based at Hopkins.

4. To serve the employees, patrons and passengers at this major transportation facility and solely to accommodate persons using the Airport, there are various commercial establishments including newsstands, book stores, flower stores, country stores, candy shops, restaurants, cafeterias, bars, and baking and hotel facilities. In addition, Hopkins has five rental car companies and eleven freight companies. There are also non-profit service establishments such as the U.S.O. and a Travelers' Aid center, as well as the Chapel, which is the subject of this litigation.

5. Pursuant to Ordinance Nos. 843-82, 2124-82, and 1607-83, duly passed by Cleveland City Council, the Director of Port Control, on behalf of the City of Cleveland, entered into an agreement, effective August 1, 1983, with Anthony M. Pilla, Bishop of the Catholic Diocese of Cleveland for the use of approximately 2,733 square feet of space located in the terminal building of the Airport for the operation of a Chapel. The Airport Chapel was intended by the City to provide services to the traveling public and employees at the airport.

6. City of Cleveland Ordinance No. 843-82, introduced by Councilmen Ciolek and Forbes, by Department Request, "Authorizing the Director of Port Control to enter into an Agreement with Anthony M. Pilla, Bishop of Cleveland, for use of certain space at Cleveland Hopkins International Airport", was read for the first time in the Cleveland City Council on April 19, 1982. The legislation was referred to the Director of Port Control, who approved it on April 21, 1982, the Director of Finance, who noted his approval on April 30, 1983, and the Law Director of the City of Cleveland, who found "no legal objection to the passage of the within ordinance", on May 2, 1982. The legislation was also referred to the Committee on

Aviation, Lakefront Development and Transportation, which recommended passage on May 3, 1982, and the Committee on Finance, which recommended passage on May 13, 1982. The ordinance had a second and third reading on May 17, 1982, and May 24, 1982, respectively. Ordinance 843-82 was signed by the Mayor on May 28, 1982.

*2 7. City of Cleveland Ordinance No. 2142-82, introduced by Councilmen Ciolek and Forbes, by Departmental Request, "To amend Section 1 of Ordinance No. 843-82, passed May 24, 1982, relating to the use of certain space at Cleveland Hopkins International Airport", was read for the first time in the Cleveland City Council on September 27, 1982. The legislation was referred to the Director of Port Control, who approved it on September 29, 1982, the Director of Finance, who noted his approval, and the Law Director of the City of Cleveland, who found "no legal objection to the passage of the within ordinance", on October 4, 1982. The legislation was also referred to the Committee on Aviation, Lakefront Development and Transportation, which recommended passage on October 25, 1982. The ordinance had a second and third reading on December 6, 1982. Ordinance 2124-82 was signed by the Mayor on December 8, 1982.

8. City of Cleveland Ordinance No. 1607-83, introduced by Councilmen Ciolek, Johnson, Woods and Forbes, by Departmental Request, "To amend Section 1 of Ordinance No. 843-82, passed May 24, 1982, as amended by Ordinance No. 2142-82, passed December 6, 1982, authorizing the Director of Port Control to enter into an Agreement with Anthony M. Pilla, Bishop of Cleveland, for use of certain space at Cleveland Hopkins International Airport", was read for the first time in the Cleveland City Council on May 23, 1983. The legislation was referred to the Director of Port Control, who approved it on May 24, 1983, the Director of Finance, who noted his approval on May 27, 1983, the Law Director of the City of Cleveland, who found "no legal object to the passage of the within ordinance", on June 20, 1983. It was approved by the City Planning Commission on June 17, 1983. The legislation was also referred to the Committees on Aviation, Lakefront Development and Transportation, the Committee on Real Property, the Committee on City Planning, and the Committee on Finance, all of which recommended passage on June 20, 1983. The ordinance had a second and third reading on June 20,

1983. Ordinance 1607-83 was signed by the Mayor on June 23, 1983.

9. The legislation authorizing the lease between the City of Cleveland and the Diocese of Cleveland for the Airport Chapel took over 14 months to be approved by the Cleveland City Council.

10. Cleveland Hopkins International Airport is an entirely self sustaining unit in the economic sense and receives not a cent from the tax-supported general fund of the City of Cleveland. Airport operations, development and expansion is paid exclusively by bond proceeds, airline rentals, airport user fees, landing fees, concession fees and other operating revenue. The bonds which finance airport activities are secured by the airlines. If, at year's end, airport expenses exceed revenue, this loss is adjusted by charging the airlines under the formula set forth in the Agreement and Lease between the airlines and the City. Likewise, year end revenue is credited to the airlines. The Airport is, therefore, not supported by or dependent upon any municipal or state tax dollars.

*3 11. As an incentive to the City to provide good management for the Airport System, an incentive compensation payment is provided which is paid from Airport Revenues to the General Fund of the City. Such amounts, if any, are determined for each year by a formula located in Section 8.06(b) of the Agreement and Lease between the Airlines and the City. There were no incentive compensation payments made in the years 1984, 1986 and 1988, but such payments were made in 1985 and 1987. Even if the Chapel's rent were \$60,000 per year, this amount would have no impact whatsoever on the incentive payment calculations. It would neither produce an incentive payment when there otherwise was none, nor would it increase what otherwise was paid in 1985 and 1987. In fact, calculations performed by the City and accepted into evidence, demonstrate that the incentive payments for those years would have actually been reduced had the Diocese been paying more rent for the Airport Chapel space.

12. The Administration of the Airport makes its decision as to the appropriateness of particular uses of space at the Airport based upon passenger usage, the public nature of the service provided, the needs of the airlines and their employees and the prevailing practice at other airports in the nation. The Airport has

conducted studies about the need for particular uses at the Airport.

13. There are airport chapels existing in at least 16 other airports in the Continental United States. There had long been a small space designated as a Chapel in the plans of the Airport. However, that space did not effectively function as a chapel prior to the building of the existing Chapel by the Diocese and the appointment of Monsignor Blair as Chaplain.

14. Rental fees at Hopkins are based upon the nature of the entity seeking space and the desirability of the space itself. Commercial entities are typically charged a base rental rate plus a percentage of the gross receipts of the operation of such entity at the airport. Non-profit entities, including Travelers Aid and U.S.O. are charged \$1.00 per year for the space they occupy, and some political and religious groups are given temporary space, free of charge, to solicit for their causes.

15. There is no obligation upon the Airport to charge a market rate for any of the space at the Airport and it is common for airports to charge non-profit tenants less than full market rent.

16. Pursuant to the Agreement between the Bishop and the City, the Chapel is located at the base of Concourse B in the Airport's passenger terminal building. The Chapel site is not prime, or even desirable commercial airport space. The area is in the passageway leading to the least traveled concourse at the Airport, accounting for only 20% of the total passengers using the Airport.

17. The space leased to the Diocese in 1983 was at the time the Lease was entered into, in a state of disrepair and in need of permanent improvements to render it functional. It had never before been rented. Not a single commercial enterprise had ever expressed any interest in leasing this space for commercial purposes. Indeed, the only use of this space was as an emergency medical center for internal airport purposes. The premises leased by the Diocese had been used for storage by custodial workers and lockers since 1979 and remained unused entirely during the 1970's.

*4 18. The bank location next door to the location of the Chapel at the Airport has been vacated and has not yet been re-rented. Since prior to the execution of the

lease for the Chapel, there has continuously been vacant space at the Airport. Some of the space at the Airport which was vacant at the time that the Chapel lease was entered into is still vacant.

19. The Catholic Diocese of Cleveland constructed an addition to the Airport, at the sole cost and expense of the Catholic Diocese of Cleveland, wherein Twenty-Seven Hundred Thirty-Three (2,733) square feet of space at the base of Concourse B in the airport passenger terminal building is used by the Diocese of Cleveland as and for a Chapel providing aid and comfort, as well as rendering service to the air traveling public, and to airport patrons and employees of the Airport and tenants at the Airport. The construction of the Airport Chapel was done in complete conformity with the architectural design of the Airport, and is not visually seen to be a Chapel from either the outside of the Airport nor by walking down Concourse B.

20. In the construction of the Chapel facility at Cleveland Hopkins International Airport, the Diocese of Cleveland, through voluntary contributions, spent Two Hundred Eighty-Seven Thousand Three Hundred Nine Dollars (\$287,309.00), including monies to actually expand the rentable space at the Airport, plus Seventeen Thousand Eight Hundred Ninety-Nine Dollars (\$17,899.00) in architectural and engineering service fees, and Thirty-Three Thousand One Hundred Twenty-Eight Dollars (\$33,128.00) in interior furnishings, for a total expenditure of Three Hundred Thirty-Eight Thousand Three Hundred Thirty-Six Dollars (\$338,336.00). The Airport Chapel at Cleveland Hopkins International Airport opened in February, 1986.

21. The exterior of the Airport Chapel, outside of a sign indicating that it is a Chapel, displays no religious symbols or other indications of religious purpose to those passing nearby on the Concourse.

22. Although the interior of the Airport Chapel contains statuary and other symbols of the Catholic faith, the only thing which is not easily removable is the tabernacle and that can be, and has been, screened off from view to accommodate other religious organizations and individuals desiring to use the Airport Chapel.

23. Prayer cards of several religious faiths, including

Baha'i, Jewish (in Hebrew and English), Protestant, and Catholic, are available to the public at the Airport Chapel and are provided at the sole cost and expense of the Diocese.

24. The Airport Chapel is a non-profit service enterprise, whose purposes are exclusively for aid, comfort and service to the air traveling public, as well as airport patrons and employees, in furtherance of the public purpose of the Airport. City Council determined that the Diocese should be treated similar to the other non-profit organizations with space at the Airport. The Diocese of Cleveland pays One Hundred Dollars (\$100.00) per month, or Twelve Hundred Dollars (\$1,200.00) per year, rental, in addition to the payment of all utilities. However, if the cost of the construction of the Chapel is included, the effective rental rate being paid by the Diocese for the premises is \$14.91 per square foot. Article IV. of the Lease Agreement between the City of Cleveland and the Diocese of Cleveland requires that the Airport Chapel be made available to other religious groups and individuals "regardless of the religious content of their worship activities."

*5 25. The City of Cleveland regularly allows religious groups to use space at the Airport, to confront people directly, and to distribute literature if such other religious groups wish to do so. This may be done in public areas with direct access to the public, as opposed to being within a confined area. The Airport Chapel is available for use by persons of all religious persuasions, for meditation, reflection, prayer, and quiet time throughout the day and early evening, and for more formal worship services.

26. The Diocese of Cleveland, through Monsignor Robert C. Blair, Chaplain of the Airport Chapel, has taken numerous steps to publicize the availability of the Airport Chapel for use by persons of all faiths and denominations, including letters directed to 22 leader of major denominations in the Cleveland area, sent within the first month after the opening of the Chapel.

27. The Airport Chapel has been used by several other religious groups and organizations of widely different faiths, both Christian and non-Christian. No one has ever been denied the opportunity to use the Airport Chapel.

28. The Airport Chapel is open to the public each day

until 8:30 P.M. Monsignor Robert C. Blair is available at the Airport on a full-time basis, and is on-call virtually around-the-clock to assist and serve the needs of the Airport's patrons and employees, and also the air traveling public. He is part of, and has participated in drills in connection with, the Airport's emergency disaster relief network. On innumerable occasions, Monsignor Robert C. Blair, Chaplain at the Airport Chapel, has rendered, and continues to render, invaluable secular service to Cleveland Hopkins International Airport, its officers and representatives, the employees located at the airport and the air traveling public.

29. Over the years, many thousands of people have visited the Airport Chapel and made, in many instances, favorable comments concerning its availability, and assistance to them. The Visitors' Books show that the Airport Chapel has been visited by air travelers from most of the countries in Europe, South America and Asia, as well as people of the United States of America. Over Fifteen Thousand (15,000) people have signed the Visitor's Books.

30. Travellers and airport and airline employees, both Catholic and non-Catholic, regularly use the Chapel as a source of solitude where they can collect their thought, meditate, or work through problems which are troubling them. Employees of the airlines and other tenants of the Airport have used the Chapel to fulfill their own personal religious obligations when the circumstances of their employment would have made it difficult to do so otherwise.

31. On the weekend immediately preceding trial of this matter, approximately 128 people fulfilled their Sunday Mass obligation by attending the regularly scheduled services at the Airport Chapel.

32. Several airline representatives have written letters thankful for, and in support of, the services and facilities provided at the Airport Chapel.

CONCLUSIONS OF LAW

*6 1. Where the City permits, for secular purposes, the operation of a Chapel at Cleveland Hopkins International Airport, and it has a secular effect and does not involve the government in any excessive entanglement with religion, it does not violate the establishment clause of the First Amendment. *Lemon*

v. Kurtzman, 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745 (1971).

2. Reasonable accommodation of religious activities does not violate the Establishment Clause so long as there is no endorsement of religion in purpose or effect. County of Allegheny v. ACLU Greater Pittsburgh Chapter, 492 U.S. 573, 109 S.Ct. 3086, 106 L.Ed.2d 472, 494 (1989).

3. Renting a space in an airport to a religious organization for a secular purpose does not constitute an endorsement of religion in purpose or effect. Christian Science Reading Room Jointly Maintained v. City and County of San Francisco, 784 F.2d 1010 (9th Cir.1986), cert. denied, 479 U.S. 1066, 107 S.Ct. 953, 93 L.Ed.2d 1002 (1987).

4. So long as the goal remains secular, and so long as there is equality of treatment, the government may utilize the services of religious organizations among other public service organizations to further its secular purpose. Bowen v. Kendrick, 487 U.S. 589, 108 S.Ct. 2562, 101 L.Ed.2d 520 (1988).

5. State action that confers only an incidental benefit to a religion or results in incidental costs to the state does not constitute a violation of the Establishment Clause. Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 771 93 S.Ct. 2955, 2964, 37 L.Ed.2d 948 (1973), Widmar v. Vincent, 454 U.S. 263, 273-274, 102 S.Ct. 269, 276, 70 L.Ed.2d 440 (1981).

6. A municipal airport may not deny equal access on a space available basis to community organizations, including religious organizations. Christian Science Reading Room Jointly Maintained v. City and County of San Francisco, 784 F.2d at 1014.

7. The mere desire to maintain separation of church and state is a constitutionally inadequate justification for discrimination against a religious group that would otherwise be entitled to access. Widmar, 454 U.S. at 270-71, 102 S.Ct. at 274.

8. The lease for this Chapel meets the reasonable basis test established by the Supreme Court for the use of a non-public forum. Cornelius v. NAACP Legal Defense Fund, Inc., 473 U.S. 788, 808, 105 S.Ct. 3439, 3452,

87 L.Ed.2d 567 (1985).

9. A denominational preference occurs only when one religious sect is given privilege while others are affirmatively denied those same privileges. Larson v. Valente, 456 U.S. 228, 244, 102 S.Ct. 1673, 1683, 72 L.Ed.2d 33 (1982).

10. The First Amendment requires that a statute must be invalidated if it is entirely motivated by a purpose to advance religion. Wallace v. Jaffree, 472 U.S. 38, 56 105 S.Ct. 2479, 2489, 86 L.Ed.2d 29 (1985).

11. The Plaintiffs cannot demonstrate that the lease agreement between the City of Cleveland and Bishop Pilla violates the Establishment Clause of the First Amendment. It does not constitute a state indorsement of religion or involve excessive entanglement. At most, the lease conveys only an incidental benefit to religion. Based upon its policy toward other non-profit service organizations, the City cannot deny equal access to the Diocese. The fact that some or all of the Plaintiffs may take offense at the exercise by the Diocese of its rights under the lease does not provide a justification for suppressing that exercise. The Plaintiffs' case being completely without merit, it must be dismissed.

*7 12. Providing space for the erection of a religious chapel is merely an accommodation to serve the convenience of those who use the Airport. The Airport does not sponsor, subsidize or interfere with the Diocese which operates the Chapel. The Airport does not establish religion by its actions in connection with leasing of space to the Diocese or the erection of the Chapel. Such actions did not show "governmentally established religion or governmental interference with religion". Brashich v. Port Authority of New York and New Jersey, 484 F.Supp. 697 (S.D.N.Y.1979).

13. Accordingly, judgment is hereby rendered for defendants.

IT IS SO ORDERED.

ORDER

Pursuant to this Court's Findings of Fact and Conclusions of Law filed contemporaneously with this Order,

Not Reported in F.Supp.
Not Reported in F.Supp., 1991 WL 193518 (N.D.Ohio)
(Cite as: Not Reported in F.Supp., 1991 WL 193518 (N.D.Ohio))

IT IS ORDERED that this case is dismissed.

IT IS SO ORDERED.

FN1. In 1983, for example, the Airport served 5.1 million passengers and recorded over 200,000 landings and take-offs. In 1989 the Airport served 8.2 million passengers and recorded over 250,000 landings and take-offs.

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