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The Hon. George W. Bush
President of the United States
1600 Pennsylvania Avenue, NW
Washington, DC 20500

By Facsimile and First Class Mail

**Re: FAA Decision to Approve Seizure and Desecration of
Private Sacred Ground**

Dear Mr. President:

We write to you as concerned members of the religious and civil rights community who wish to assure that the protections of the federal Religious Freedom Restoration Act and the First Amendment are vigorously enforced by this Administration. In particular, we request your assistance to halt the decision by the Federal Aviation Administration to approve a plan for expanding Chicago's O'Hare International Airport that would desecrate and irreparably destroy an active, religious burial ground in the name of reducing flight delays.

You may be aware of the O'Hare Modernization Project that will expand and reconfigure the runways of O'Hare. What you likely don't know is that the plan put forth by the City of Chicago for FAA approval and funding (to the tune of \$800 million in federal funds) includes the seizure and destruction St. Johannes cemetery, the final resting place of over 1300 members from St. John's United Church of Christ.

Established in 1849, St. Johannes cemetery is an active, private, religious cemetery where 1,300 plus members of the Church and their relatives are buried, and where living members plan to be buried. Among those buried at St. Johannes are heroes of the civil war, members of the Underground Railroad, and many families that hosted President Lincoln during his frequent visits to his home state. Not surprisingly, St. Johannes is eligible for listing on the National Register of Historic Places. Aside from its historical significance, the desecration of the cemetery would be a savage affront to the congregation's beliefs. The congregation believes that removing the remains of their fellowbelievers from their final resting place at St. Johannes to await the day of resurrection would be a desecration of holy ground.

Accordingly, after Chicago first announced its plans in 2001 to expand O'Hare by destroying St. Johannes, the Church and its members invoked the provisions of Illinois laws that protect religious (and other) cemeteries from

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President George W. Bush

September 29, 2005

Page 2 of 5

seizure and desecration. In response, the City lobbied the Illinois legislature to pass the O'Hare Modernization Act to quash St. Johannes' existing legal rights as a cemetery, and as a religious institution. The Act amends state law to strip St. Johannes *uniquely* of legal protections from seizure and desecration that all other religious institutions and cemeteries in the state currently enjoy, thereby removing all state law barriers to the City's plan to destroy St. Johannes.

However, the City of Chicago must still obtain federal approval for its airport expansion plan. Specifically, Chicago is required to obtain federal approval for its airport expansion plan. Moreover, the City plans to seek over \$800 million in grants from the federal government for the airport and federal authorization to raise an additional \$3 billion through passenger fees.

It was our expectation that this Administration would obey the commands of the federal Religious Freedom Restoration Act (RFRA), 42 U.S.C. § 2000bb et seq., and the First Amendment and use its regulatory authority to ensure that religious exercise would not be a casualty of the airport expansion. Instead, the FAA stands poised to grant final approval and federal funds to an airport plan that would dig up the graves at St. Johannes, despite the availability of feasible options that would address flight delays at O'Hare *and* save the cemetery. Most upsetting, the FAA is about to do this despite its concession that the desecration of St. Johannes would substantially burden the religious exercise of the Church and those who have family and friends buried in St. Johannes' sacred ground.

In other words, the FAA has *admitted* that its actions establish a prima facie violation of the Church's rights under RFRA, but insists that reducing flight delays justifies this burden.

This decision by the FAA sets a dangerous precedent for every federal work project where religious property stands in the way. By approving an airport plan that will desecrate a private religious burial ground, the FAA and this Administration send a very public signal that when it comes to federal work projects, *nothing is sacred*. The unmistakable message will be that the Administration is willing to sacrifice the sanctity of consecrated ground (whether it be a place of worship, a religious school, or even a religious cemetery) for the sake of efficiency in any federal aviation project, highway project, or other construction project.

Simply put, if this Administration were to decide that a desire to reduce flight delays is more important than preserving private property that is also sacred ground, it would turn on its head the principle of religious liberty guaranteed by the First Amendment and RFRA. In fact, we are not aware of a single case from any jurisdiction in the United States in which a court has upheld the government seizure and destruction of an active, private, religious cemetery.

What we ask is simple: do not approve or fund any O'Hare expansion plan that would desecrate the graves of St. Johannes and claim religious liberty as a victim.

Respectfully,



Anthony R. Picarello,
President & General Counsel
The Becket Fund for Religious Liberty

President George W. Bush
September 29, 2005
Page 3 of 5

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President George W. Bush
September 29, 2005
Page 4 of 5

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President George W. Bush

September 29, 2005

Page 5 of 5

cc: Hon. Norman Y. Mineta, Secretary of Transportation (By first class mail and facsimile)
Andrew Card, Chief of Staff (By first class mail and facsimile)
James Towey, Assistant to the President and Director, Office of Faith-Based and
Community Initiatives (By first class mail and facsimile)