



CATHOLIC
CEMETERY
CONFERENCE

April 26, 2010

The Honorable Henry A. Waxman
Committee on Energy and Commerce
United States House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Re: Concerns about H.R. 3655

Dear Chairman Waxman and Members of the Committee,

We write on behalf of the Catholic Cemeteries Conference in the United States. Our members are 6,288 Catholic cemeteries spread across all fifty states, potentially ministering to 68 million Catholics nationwide. In our religious tradition, and religious Law, a cemetery is a sacred space. The burial and care of the resting places of the deceased is a Corporal Work of Mercy, and the cemetery is consecrated ground, like a house of worship. Since 1949, the Conference helps the leadership and staffs of Catholic Cemeteries, large and small, carry out their ministry to the deceased and their bereaved survivors through education, service, and mutual support. When necessary, the Conference also speaks to issues of public policy that affect Catholic cemeteries as part of the larger Church.

We write to urge the Committee not to approve H.R. 3655, the Bereaved Consumer's Bill of Rights Act, in its present form. Let us put our request in the context of our members.

H.R. 3655 ("the bill") was introduced by Congressman Bobby Rush last year after a terrible and shocking incident at the Burr Oak Cemetery, in Illinois. All of us condemn the unscrupulous behavior of that cemetery and others like it. We are pleased to report that no religious cemetery has been the cause of any such scandal. In fact, State and local officials turned to the Catholic Cemeteries in the Archdiocese of Chicago to operate Burr Oak while it was an active crime scene. They then enlisted the local Catholic Cemetery director to oversee the long process of locating the correct grave for family members whose loved ones were buried at Burr Oak.

The bill does not aim to rectify what happened at Burr Oak. Rather, it is directed at consumer notices, record-keeping, and other administrative actions through a set of comprehensive rules to be developed by the Federal Trade Commission ("FTC") for all cemeteries, expressly *including* religious cemeteries, which are not and have never been at the heart of any regulatory concerns. To do so, the bill would pre-empt all "inconsistent" state law -- effectively wiping out all religious exemptions in all states in favor of this federalization. It injects the government into the internal operation of a religious ministry, creating needless expenditure of limited time and scarce resources better spent, in our charitable works, on mission and the public. In the context in which our members serve, "consumer" actually is a misnomer. Those we assist are members of our faith community, and our work is ministry.

Chairman Waxman and Members of the Committee
 April 26, 2010
 Page 2



CATHOLIC
 CEMETERY
 CONFERENCE

Issues of concern for Religious Cemeteries include these –

- H.R. 3655 opens all religious cemeteries (except the very smallest) to new, previously unknown, and comprehensive federal regulation. This adds a layer of diverted time, expense and human resources away from mission. Costs are added without justification.
- H.R. 3655 does this by *pre-empting* religious accommodations and exemptions developed through state and local legislative and regulatory processes.
- H.R. 3655 displaces well-considered state laws, balancing and protecting consumer and religious rights, for federalization of local religious operations.
- FTC regulation is expanded to require certain disclosures to all persons seeking burial and comprehensive records “in such manner and form as the [FTC] may prescribe.” Costs of compliance under a new regulatory regime aside, FTC therefore is policing what religious organizations say to their members.
- FTC has plenary authority to review all records and enforce compliance. FTC therefore now has oversight into internal operations of religious services.
- Failure to follow the FTC rules is treated as “unfair or deceptive acts or practices”, triggering new federal penalties. Penalties could be as much as \$16,000 per offense. The only alternative to payment, directly or through an enforcement process, is litigation – likely to be more expensive. These expenses also drain resources from mission and service.

We are aware that the Subcommittee in mark-up has removed doubt that the provisions of the federal Religious Freedom Restoration Act will apply. That is an improvement but only a slight one. RFRA (1) only applies against the FTC and not against state governments that are given newly expansive power under the bill and (2) requires that religious cemeteries, that operate not for profit, litigate each case. Newly empowered state regulators would be able to take action against all religious cemeteries in their areas, the bill having wiped out otherwise applicable accommodations. As a matter of law RFRA does not operate against state and local governments. It would be fairer and better were the bill to continue the familiar framework that persists at state and local levels which already accommodate religious rights without sacrificing consumer protection.

We are not objecting to “telling consumers the truth.” We already do that. We never needed a federal regulator to make us do what is right. But this regime is a bold federalization of religious works, without basis and without precedent. While some industries may warrant oversight by the FTC we do not feel the operation of a religious cemetery qualifies as one. The extensive intrusion into operations and the increased costs will only take away from our primary purpose – to provide a reverent place for those in eternal rest.

Chairman Waxman and Members of the Committee
April 26, 2010
Page 3



CATHOLIC
CEMETERY
CONFERENCE

We are grateful for the attention the members of the Committee give to our concerns and we pray that these may serve as the basis for reconsideration and withdrawal of the bill. We would welcome the opportunity to discuss these issues with the Committee, individual members and the staff.

Sincerely,

Most Rev. John M. Quinn
Bishop of Winona
Episcopal Moderator

Reverend Patrick J. Pollard
President
Catholic Cemetery Conference