

Protecting a consumer's right to choose meaningful, dignified, and affordable funerals since 1963

May 14, 2010

To the Honorable Members of the United States House Energy and Commerce Committee

## SUPPORT FOR HR3655 IN ITS CURRENT FORM

Dear Representatives,

As the executive director of the nation's oldest and largest nonprofit protecting America's grieving consumers, I urge you to support HR3655 without excluding religious cemeteries from basic standards of fairness and transparency. The April 26 letter from the Catholic Cemetery Conference (CCC) contains misleading and alarmist claims about HR3655, made in an attempt to gain exemption from this landmark consumer protection bill. HR3655 will not impose any measurable financial cost on religious cemeteries. It does not interfere with religious practices or burial rites. It merely gives all cemetery consumers—all grieving families of every faith the right to fair, honest treatment at a time of great sorrow and expense. We cannot imagine why any cemetery would object to providing families clear and timely prices, notification of cemetery rules, and accurate information about legal and cemetery requirements.

It is important to correct some of the misinformation in the CCC's letter:

"[HR3655] injects the government into the internal operations of a religious ministry. . . "

No, it does not. HR3655 merely requires consumer disclosures in the business transaction that occurs when any cemetery—religious or not—sells interments to the public.

"In the context in which our members serve, 'consumer' is actually a misnomer. Those we assist are members of our faith community, and our work is a ministry."

To the contrary, the term "consumer" is quite appropriate. One can be simultaneously a member of a religious community, and a consumer, as all Catholics are when they purchase cemetery goods and services. This use of the term "ministry" is novel. "Ministry" ordinarily refers to charitable works provided to individuals without cost. Catholic cemeteries do not routinely give away graves, monuments, graveliners and associated services for free. Catholics buy these goods and services; surely they deserve the same protections as all other grieving consumers.

"HR3655 opens all religious cemeteries (except the very smallest) to a new, previously unknown, and comprehensive federal regulation. This adds a layer of diverted time, expense, and human resources away from mission [sic]. Costs are added without justification."

This bill would merely direct the FTC to extend 26-year-old consumer protection regulations to cemeteries. Even though it has not applied to them before, the Funeral Rule is well known in the burial business. The Funeral Rule has applied to the nation's 21,000 funeral homes since 1984, and would impose minuscule costs to cemeteries; the price of a few sheets of paper listing the cemetery prices and the time it takes to tell their staff to give prices and a copy of rules and regulations to all prospective customers.

"HR3655 displaces well-considered state laws, balancing and protecting consumer and religious rights, for federalization of local religious operations."

HR3655 does not "federalize" "religious operations," and it's deliberately provocative to make such a hyperbolic statement. State laws regarding cemeteries are not, in fact, "well-considered." They are a patchwork of weak to non-existent statutes that do almost nothing to protect bereaved consumers. To the extent they exempt religious cemeteries from basic standards, state laws leave Catholics, Protestants, Jews, and other religious families without the consumer protections they would otherwise enjoy. We cannot believe any religious community would want to claim that people of faith don't deserve honest treatment.

"Costs of compliance under a new regulatory regime aside, FTC is therefore policing what religious organizations say to their members."

It is disturbing that the Catholic Cemetery Conference is willing to dishonestly invoke the specter of government policing religious speech. The bill would only empower the FTC to prescribe basic, minimal disclosures to consumers about the prices they pay for graves, merchandise, and services, as well as rules and regulations of the cemetery. This is not "religious speech," it's ordinary commercial speech. What tenet of any religion prohibits a cemetery from truthfully disclosing the costs and rules associated with buying a burial?

The government is not "policing religious speech" when it requires Catholic hospital to disclose patients' rights under HIPAA. The government is not "policing religious speech" when states and localities require Catholic-run daycare centers to abide by statutes that license daycare providers and that require minimum safety standards. Catholic-run hospitals and daycare centers must follow these laws for the safety of consumers, which are far more complex and costly than the very minimal price and rule disclosure requirements under HR3655.

"Penalties [under HR3655] 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."

Not true. The FTC has, if anything, been rather mild in enforcing the existing Funeral Rule. The Commission has the authority to send warning letters to violators of the current Rule, which Commission staff will confirm is the most common course of action. To our knowledge, the FTC has not litigated a Funeral Rule complaint, nor assessed the maximum fine, since the 1990s. Funeral Consumers Alliance has worked with—and sometimes critiqued—the FTC for decades. We find they are more interested in educating funeral providers in how to come into compliance with legal standards than they are interested in filing suit.

"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."

While no doubt many cemeteries do tell the truth, there are always upsetting exceptions. How could the CCC know that its 6,288 cemeteries are all fully disclosing prices and rules and regulations? Even if this claim were true, why would the organization object to codifying behavior it claims it already engages in and that it recognizes as ethical? If this is true, why does Funeral Consumers Alliance have multiple complaints on file from parishioners and consumers who've used some of the largest and most well known Catholic cemeteries in the country?

Death in America is inevitably a commercial transaction, and one of the most costly any family will face. The religious character of a cemetery does not change this fact. There is no evidence that religious cemeteries charge less for their wares, or that they permit wider consumer choice than other cemeteries. Since members of a religious community often feel a sacred duty to be buried among fellow adherents, they are in a particularly vulnerable position if they are faced with choosing between what they feel is their duty to God, and what they can reasonably afford. It is wrong to deny them the minimal information they need to prepare for this final expense.

No cemetery—religious or secular—need worry about the costs associated with new consumer disclosure rules. As a 501(c)(3) nonprofit organization, FCA offers an act of charity: we will work, **free of charge**, with the CCC to develop a clear, plain-language guide to complying with any new consumer protection rules from the FTC, including a model price list and pamphlet describing rules and regulations. Funeral Consumers Alliance has worked with FTC on such projects, and we have developed similar guides to aid funeral homes in complying with the existing Funeral Rule.

Respectfully submitted on behalf of FCA's 400,000 consumer members nationwide,

Joshua Slocum

**Executive Director** 

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