



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

**Testimony on Behalf of Funeral Consumers Alliance, Inc.
submitted to the House Committee on Energy and Commerce,
Subcommittee on Consumer Protection
re: HR 3655
January 27, 2010**

Prepared by Joshua Slocum, Executive Director, FCA, Inc.

To the Honorable Representatives:

Funeral Consumers Alliance has been informed there may be some concerns about the effect of HR3655, The Bereaved Consumers Protection Act of 2009, on religiously owned or operated cemeteries. As you know, the bill directs the Federal Trade Commission to enact rules holding cemeteries (among other entities) to the same standards that funeral homes have had to follow since 1984. Under HR3655, religious and nonprofit cemeteries will also be subject to these minimum standards, the most important of which are the requirements for cemeteries to give consumers accurate written prices, plus the cemetery's rules and regulations, before the sale is completed.

Bringing all cemeteries—for-profit, non-profit, and religious—under the same minimum consumer protection standards is vital. Regardless of how a cemetery is legally incorporated, and regardless of its faith affiliation, *all grieving consumers are entitled to the same minimum protections*. Whether Jewish, Lutheran, Catholic, or Muslim, all these families are grieving, and all of them are entering into a *commercial transaction* at a time of sorrow and stress. Whether a cemetery is incorporated as a nonprofit operation, or owned by a religious organization, does not change the fact that burying a loved one is often costly and confusing.

Funeral Consumers Alliance can find no legal, ethical, or financial reason why a cemetery's corporate or religious status should allow it to avoid furnishing itemized prices and clear disclosures to purchasers. We know of no religious tenet or practice that would be violated by a requirement to offer accurate information to grieving people before a burial contract is signed. We cannot see how such requirements would financially burden such a cemetery—the cost of printing and distributing a few sheets of paper containing prices, consumer disclosures, and cemetery rules would not exceed a few cents per burial.

We are also concerned about the potentially greater vulnerability of religious consumers when the time comes to choose a cemetery. Members of a congregation of any sort have a natural

tendency to want to be buried “among their own,” and the religious affiliation of a cemetery is a common reason consumers choose a burial ground (choosing a veterans’s cemetery, or a burial ground that’s physically convenient are also common reasons).

Some religious cemeteries are quite explicit in appealing to feelings of religious duty in congregants. The Catholic Archdiocese of Los Angeles states on its website:

The final expression of our faith as Catholics is the blessed and sacred burial in a Catholic cemetery. It is our opportunity to rest among fellow believers, awaiting the resurrection to life everlasting in union with God.

Burial in a Catholic Cemetery is an act of reverence and respect for the body which has housed our soul during our life in fellowship with Christ. Heavenly glory is the destiny for which God intends us. Death is not the end, but a rite of passage to eternal life, to full union with God. It is the sacred right, privilege and loving **duty** of every Catholic to choose such a burial [emphasis added].

The church, of course, is well within its rights to characterize its preferred burial in this fashion. But Catholic or not, it should be clear to any reader that significant theological pressure is being brought to bear on parishioners’ burial choices.

A similar allegiance can be found among members of certain fraternal organizations. The Odd Fellows, for example, operate cemeteries in many parts of the country, and a significant number of members would be expected to choose burial within these properties.

Families committed to burial in a cemetery owned by their church or fraternal organization are especially vulnerable to misleading or unethical sales tactics. Since such families may feel a religious or ethical duty to be buried there, they may feel their choice of cemeteries is limited. It’s easy to see why it’s especially important that such families be given clear, itemized price lists— if they cannot shop around *between* various cemeteries, they can at least shop around *within* the cemetery.

Religious or Nonprofit Status Is Not a Guarantee of Ethical Cemetery Practices

When we hear the terms “church burial yard,” “Jewish cemetery,” or “nonprofit cemetery,” they conjure up images of cemeteries maintained as a religious benefit, a “public good” for congregants, without regard to commerce. Sadly, that is not necessarily so. In fact—and largely unknown even to most parishioners—the largest Catholic Archdiocese in the country runs its burial operations in a partnership with the second-largest, for-profit, Wall Street-traded funeral and cemetery chain in the nation. In 1997, the LA Archdiocese (which operates 11 cemeteries) announced it would allow Stewart Enterprises, Inc. to build and operate for-profit mortuaries in

its cemeteries. Operating under the name “Catholic Mortuary Services,” Stewart Enterprises today operates six funeral homes on the grounds of the LA Archdiocese’s nonprofit cemeteries.¹

While the Archdiocese and Stewart Enterprises have characterized this partnership as offering convenient, one-stop arrangements to minister to the funerary needs of Catholics, promotional materials suggest there may be additional motivations. A Glendale, California man sent Funeral Consumers Alliance a direct mail letter he received urging him to prepay for funeral and burial through “Catholic Mortuary Services.” The letterhead includes a stylized Christian cross, and lists the names of six Catholic cemeteries in the Los Angeles Archdiocese: All Souls, Calvary, Holy Cross, Queen of Heaven, Resurrection, and San Fernando Mission. The letter states, in part:

In order to serve the needs of Catholic families better, the Archdiocese of Los Angeles has authorized the construction of mortuaries on land leased at six of its cemeteries Most importantly, families like yours can now preplan [*that is to say, “prepay”- ed.*] your funeral arrangements . . . We will be happy to discuss with you in further detail the benefits of preplanning and how the new mortuaries will mean better service for Catholic families.

P.S. Mail the postcard in no later than November 26 to receive a preconstruction discount of \$200 off preplanned funeral services.

But the letter **did not say** that Catholic Mortuary Services is a trade name of the for-profit Stewart Enterprises. For all any parishioner would know, this letter, with its religious symbolism, came directly from the church.

Recently, another Los Angeles Catholic sent us a similar flier. Co-branded “Catholic Cemeteries” and “Catholic Mortuaries”—again featuring a stylized cross—the bold headline reads “Preplan Your Catholic Heritage.” The flier features discounts on plots, crypts, and other property, with the exhortation “Buy now for BEST LOCATION.” And, the discounts are good “till November only!!!” One hardly sees the 6-point type that reads “A subsidiary of Stewart Enterprises.”

Again, the church may run its cemeteries as it sees fit, but it is important to acknowledge the commercial aspect; religiously owned cemeteries may not be solely spiritual endeavors. For some churches, the operation of a cemetery is an important revenue stream. While there is nothing wrong with this, it would be naïve to assume the ordinary consumer abuses that attend commercial transactions would somehow never occur just because the transaction is called “religious.”

¹ Full disclosure: Funeral Consumers Alliance named Stewart Enterprises as one of four defendants in a case we brought alleging funeral and casket industry collusion to limit competition and raise casket prices for consumers in violation of anti-trust laws. The suit was filed in 2005 and remains ongoing. Funeral Consumers Alliance, as the lead “association plaintiff” is not seeking, and is not entitled to, any monetary damages. Nine individual consumer members join us as plaintiffs.

Given the Los Angeles Archdiocese's "encouragement" to parishioners to choose one of their cemeteries, grieving families are also unwittingly being encouraged (by direct mail, and by the very presence of a "Catholic Mortuary Services" funeral home on cemetery grounds) to spend their funeral dollars at a national chain noted for high prices. Ironically, the for-profit mortuaries on the grounds of these cemeteries must abide by the Funeral Rule. Who could plausibly argue that the family doesn't deserve written prices, itemized choices, and truthful disclosures when they leave the funeral home and step into the cemetery to meet with its staff?

These problems are not restricted to one church, of course; these are merely examples of what can occur at any cemetery, regardless of its affiliation. Similarly, cemeteries that are legally incorporated as nonprofits may actually operate more like big business. In researching her 1998 book documenting funeral and cemetery problems, former FCA executive director Lisa Carlson found two large, national funeral chains had purchased cemeteries in Wisconsin, even though all cemeteries in that state must be "nonprofit" by law. In her 1999 testimony before the Federal Trade Commission (on behalf of FCA), Carlson noted "In Oklahoma, all cemeteries by statute must be run not-for-profit, yet SCI and Loewen [at the time, the 1st and 2nd largest publicly traded funeral chains] own approximately 25 cemeteries in that state."

Settled American Jurisprudence Allows Regulation of Religious Cemeteries

There is no question that the government may enact regulations for the general welfare of the public, even if those regulations apply to religious organizations. The US Supreme Court has established this doctrine in a string of decisions dating back to at least 1879. In plain terms, the court has consistently held that regulations which are enacted neutrally, and which apply generally to everyone, do not violate the First Amendment's "free exercise" clause. The only exceptions, the Court has noted, are when laws are enacted with the specific intent of limiting a religious practice or interfering with its free exercise. This is a small sampling from the Court's opinions:

Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. . . . Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. — Reynolds v. United States, 98 U.S. 145 (decided 1879)

Respondents urge us to hold, quite simply, that when otherwise prohibitable conduct is accompanied by religious convictions, not only the convictions but the conduct itself must be free from governmental regulation. We have never held that, and decline to do so now. — Employment Div., Oregon Dept. of Human Resources v. Smith, 494 U.S. 872 (decided 1990)

We have never held that an individual's religious beliefs [494 U.S. 872, 879] excuse him from compliance with an otherwise valid law prohibiting conduct that the State is free to

regulate. On the contrary, the record of more than a century of our free exercise jurisprudence contradicts that proposition — Ibid.

HR3655, with its direction to the FTC to require all cemeteries to distribute itemized price lists and to give consumers free choice in purchase, is clearly of general applicability. It interferes with no religious practice or belief.

Funeral Consumers Alliance believes in the rights of individuals to freely choose a funeral or burial that is meaningful and affordable. For many families, that means a burial in a cemetery aligned with their religious beliefs. FCA has advocated fiercely for the rights of religious individuals and groups to be free from unnecessary and improper state interference with their private funeral and burial practices. But in those cases, state regulatory authorities had improperly applied commercial licensing law to the private, *commerce-free* actions of religious individuals and voluntary associations.²

HR3655 would not have this effect. It merely requires that all cemeteries that sell goods and services to consumers abide by important, easy-to-implement consumer protection requirements. Grieving families of all faiths or no faith are all in the same situation; they are confused, they are in sorrow, and they are faced with spending a significant amount of money. All the bereaved deserve the same minimal level of protection.

Respectfully submitted,



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² These cases typically had to do with state regulatory boards attempting to prevent voluntary burial committees from preparing and burying their own dead without hiring a commercial funeral home. In each case, there was no commercial aspect; no money changed hands. Volunteers offered families the service of private burial, free of charge. In each case, the state regulatory boards were attempting to overstep their statutory authority: such boards are typically empowered by statute to regulate only the commercial practice of funeral service (*selling* funerals to the public), not the private, non-commercial activities of families, friends, and church groups.