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

April 20, 2009

**to:** The Honorable Vicki Walker, Senator, District Seven, Oregon, and the members of the Senate Health Care and Veterans' Affairs Committee

## SB 796 CONTAINS UNCONSTITUTIONAL LIMITS ON FREE SPEECH THAT MUST BE STRICKEN FROM THE BILL

Dear Senator Walker,

I write to you as the executive director of Funeral Consumers Alliance, a national, nonprofit federation of consumer information societies founded in 1963. Our local chapter, the FCA of Oregon, has been advocating for funeral consumer rights in your state in a nonprofit capacity since 1961.

We are alarmed at the provision in SB 796 that impermissibly restricts the right of free speech guaranteed by the US and Oregon Constitutions:

"An individual may not practice as a death care consultant unless the individual is licensed as a death care consultant under section 4 of this 2009 Act. Regardless of any title used by the individual, an individual practices as a death care consultant if the individual offers, for payment, consultations or workshops to individuals or groups regarding funeral or final disposition services."

No lawmaking body has the authority to demand that citizens pass a test and register with the state before offering informational workshops. Neither does charging a fee to attendees strip a citizen of his right to offer them. Read plainly, this provision would make it illegal for ordinary citizens, consumer advocates such as those of us in FCA, or business owners in Oregon, to address a group of people on topics relating to funeral planning, cost-saving alternatives, building one's own casket, or any similar topic. To be candid, we are astonished that any lawmaker would contemplate such unconstitutional restrictions.

Even if this provision were legally enforceable, what alleged public protection purpose would it serve? As you may know, there are between 10 and 20 women in Oregon — some call themselves death midwives or doulas, others call themselves home funeral guides — who help demystify the funeral process by giving the public information on the legalities and practicalities of family-directed, mortuary-free funerals. Far from being a threat to consumer welfare, these women are a breath of fresh air in an industry that has for too long choked off consumer choice. They are the individual embodiment of what organizations like FCA do: empower the public to make reasonable funeral choices by explaining the process in plain terms so families feel confident and capable to carry out this final office.

In stark contrast, much of the conventional funeral industry (with some notable exceptions) is a bottomless well of misinformation. Twenty-five years after helping pass the Federal Trade Commission's Funeral Rule, Funeral



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Consumers Alliance routinely catches conventional funeral homes violating its core tenets. A startling number of funeral homes mislead the public about nonexistent legal requirements for caskets or embalming, fail to give customers clear, accurate printed price lists, etc. Yet the death midwives with whom we've interacted go out of their way to research relevant state laws (including by consulting with FCA) before they present information to families to ensure their work is accurate. Which parties are concerned enough about their activities to suggest such draconian legislation? Where is the evidence of harm to consumers that could justify considering this provision?

If this provision of SB 796 were already law, the following would have been illegal:

- All the presentations given at the April 18, 2009 convention of the Oregon Funeral Directors Association, including talks by exhibitors on the marketing of cremation products and services and the state of the prepaid funeral business.
- My fall, 2007 address to the Funeral Consumers Alliance of Oregon, at which I discussed funeral choices and consumers' legal rights when making funeral arrangements (some of which the organization I work for helped establish at the federal level), and for which I was offered a small honorarium.
- The Funeral Consumers Alliance National Biennial Conference in Portland in 2000, at which delegates from our nationwide federation gathered and participated in workshops after paying an entrance fee.

Clearly, this would be absurd, and does not represent the intent behind the bill. But the language plainly makes illegal these examples of speech unless licensed by the state of Oregon. We must respectfully insist this provision be deleted immediately. Not only is that the *right thing to do*, it will prevent a near-certain legal challenge on First Amendment grounds.

There is an important conversation to be had by regulators, lawmakers, businesspeople, and consumer advocates, about how, and whether, to regulate new offerings in funeral service. In-home funerals, sometimes with limited assistance by home funeral guides, are increasingly popular. FCA believes (and I think home funeral guides would agree) that it's appropriate and necessary to examine potential regulation in light of these changes. That examination should be conducted carefully, deliberately, and with input from all interested parties. It should be transparent. FCA will be glad to participate in that process as a voice for consumer concerns. But the importance of that topic in no way justifies an ill-advised attempt to restrict free speech. We hope this provision will be quickly dispensed with so we can all move forward in good faith on important public policy matters.

Sincerely,

Joshua Slocum
Executive Director