

# WHY CARING FOR OUR OWN DEAD IS AN ACT OF SOCIAL JUSTICE

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## I. INTRODUCTION

Family-led funerals are on the rise in America and elsewhere in the world where people, through fear, convenience, or ignorance, have been outsourcing the care of their dead to professionals for the past century, who have been drawing upon pseudo-medical-legal authority they do not have.<sup>1</sup> By retaining custody and control of the body throughout the vigil or funeral period, the next-of-kin, and by extension the family, is taking a stand for rights that are neither denied nor bestowed by our legal system but that are innate and fundamental to the human experience. Caring for the bodies of our dead is both a private, intimate, family act and a community undertaking that stands to change cultural customs and social mores. Choosing to conduct a home funeral, in whatever expression that may manifest, is, in today's world, an act of courage that ripples well beyond the simple decision of whether to hire someone to perform services that a family, in many circumstances, may complete entirely by

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1. NAT'L HOME FUNERAL ALL., QUICK GUIDE TO LEGAL REQUIREMENTS FOR HOME FUNERALS IN YOUR STATE 1 (2015), <http://homefuneralalliance.org/wp-content/uploads/2016/01/Quick-Guide-to-Home-Funerals-By-State.pdf>; Jaweed Kaleem, *Home Funerals Grow as Americans Skip the Mortician for Do-It-Yourself After-Death Care*, HUFFINGTON POST (Jan. 25, 2013, 11:56 AM), [https://www.huffingtonpost.com/2013/01/25/home-funerals-death-mortician\\_n\\_2534934.html](https://www.huffingtonpost.com/2013/01/25/home-funerals-death-mortician_n_2534934.html).

themselves. This piece will explore implications of opting not to hire a funeral professional for after-death care. At issue are not only the legal rights to complete all aspects of settling the death—paperwork filing, transporting, arranging services—but also access to accurate legal and body care education, the environmental imperative to care for the dead with noninvasive, eco-responsible procedures, and the lost or forgotten practice of sacred and familial rites and customs that family-directed care of the dead empowers.

## II. WHAT HOME FUNERALS ARE

As American citizens and as human beings, we can care for our own dead. The practice is as old as time, yet we are finding ourselves having to rescue our rights to it not only from a highly regulated, well-funded professional entity but also from a society that has all but forgotten the deep significance of engaging in this vastly comforting act of familial loyalty and care. Home funerals present an opportunity to mend the tear in the fabric of a community created by the loss of a loved one in rich and meaningful ways. Tending to our dead is an innate and fundamental part of our human experience.

And yet, the understanding that we have the privilege, not just the responsibility, of caring for our own dead escapes many. We often need reminding that the first rule of being an informed consumer is to consider not consuming at all—to not make that rushed call for the body to disappear once it has ceased to breathe—but rather to slow things down, gather themselves, and be present. What society would not allow the relatives of the deceased to manage the final affair of a loved one? We are unaccustomed to the notion that death, in and of itself, is not an emergency.

Home funeral participants—both guides and families—are required to know the procedures for dealing with authorities and filing paperwork; for bathing bodies and preparing them for vigil and visits from family, neighbors, co-workers, fellow congregants; for the final transport to church, to cemetery, to crematory.<sup>2</sup>

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2. *Code of Ethics, Conduct, and Practice*, NAT'L HOME FUNERAL ALLIANCE, [http://homefuneralalliance.org/wp-content/uploads/2015/04/NHFA-Code\\_Ethics-Conduct-Practice\\_7-121.pdf](http://homefuneralalliance.org/wp-content/uploads/2015/04/NHFA-Code_Ethics-Conduct-Practice_7-121.pdf) (last visited Oct. 29, 2017).

There are immeasurable healing aspects of rolling up our sleeves and doing the work ourselves, whether it is dressing or shrouding the body, making sure the dog gets walked, or slapping masking tape on the bottom of casserole dishes so they will get back to their owners. Our historical funeral practices carried out in the home by relatives of the deceased carried sway long before professionals started hanging out shingles and postulating about the dangers of dead bodies and our inability to cope.<sup>3</sup> We have stopped *knowing* that these precious, intimate, one-of-a-kind experiences belong to us.

And while not everyone wants to see the body, when disposition takes days due to mandatory wait requirements for cremation<sup>4</sup> or for other reasons, it needs to be situated somewhere. Why not at home? Why spend thousands of dollars to “shelter” a loved one across town, as the industry calls it,<sup>5</sup> without the option to sit quietly nearby, to invite friends to pay last respects, or to simply hold things in place safely in solitude until everyone has gathered, ready for the next step, whatever that may be.

People, even those seeking alternative information, are often shocked to learn that, in fact, it is ok to be with, to touch, to dress, and to sit with someone as long as we need after he or she has died.<sup>6</sup> How in the world have we gotten to a place where we are so fearful that we are willing to hand off these precious, intimate, one-of-a-kind experiences to professionals, often strangers?

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3. Kalcem, *supra* note 1.

4. Josh Slocum & Lee Webster, *Restoring Families' Right to Choose: The Call for Funeral Legislation Change in America*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/wp-content/uploads/2015/04/Restoring-Families-Rights-to-Choose.pdf> (last visited Oct. 29, 2017) (joint publication of the National Home Funeral Alliance and the Funeral Consumers Alliance).

5. See *General Price List*, DRYDEN FUNERAL HOME, [http://www.drydenfuneralhome.com/General\\_Price\\_List\\_258575.html](http://www.drydenfuneralhome.com/General_Price_List_258575.html) (last visited Oct. 29, 2017); *General Price List*, LORI'S FUNERAL HOME & CREMATION SERVS., <http://www.lorisfuneralhome.com/resources/general-price-list> (last visited Oct. 29, 2017); *Respectfully Shelter Remains*, STORKE FUNERAL HOME, <http://storkefuneralhome.com/respectfully-shelter-remains> (last visited Oct. 29, 2017).

6. Slocum & Webster, *supra* note 3, at 11–12.

### III. APPLYING THE PRINCIPLES OF SOCIAL JUSTICE TO FUNERAL SERVICE

Conventional funerals can and should be viewed through the lens of social justice as accepted practices that have (1) created an imbalance of power; (2) restricted access for the increasingly disenfranchised; and (3) imposed undue economic burdens on families during difficult times.<sup>7</sup> Conventional funerals today present social, economic, environmental, and legal quandaries that revolve around these three red flags of concern.

### IV. IMBALANCE OF POWER

The tension between the funeral industry and the public is a highly-cultivated imbalance of power that is fortified by limited access to funeral systems by those charged with the actual responsibility of caring for the dead.<sup>8</sup> The next-of-kin. The family.

From the ambitious and highly successful industry marketing machine of the 1930s to today, the pressure to outsource funerals has become overwhelming, to the point where people deeply fear being left alone in a room with someone who is dead because they are afraid they are doing something wrong or illegal.<sup>9</sup> They assume that they are “allowed” time with the deceased, not that they are in charge, and that others have some authority to dictate the amount of time they can spend, where, and how.<sup>10</sup> This sense of wrong-doing is now ingrained in us through years of viewing funerals as business rather than a family-directed event.<sup>11</sup> It is less about fear of death so much as the vague notion that some imaginary funeral police are somehow monitoring them, watching for healthy versus complicated grief

7. Ismat Sarah Mangla & Lisa Gibbs, *When Putting a Loved One to Rest, Avoid These Misleading Sales Tactics*, MONEY (Nov. 9, 2012), <http://time.com/money/2793582/avoid-misleading-funeral-and-cemetery-sales-tactics>.

8. Max Alexander, *The Surprising Satisfaction of a Home Funeral*, SMITHSONIAN MAG. (Mar. 2009), <https://www.smithsonianmag.com/arts-culture/the-surprising-satisfaction-of-a-home-funeral-53172008>; Rachel Zimmerman, *DIY Death: Natural, At-Home Funerals and Their Boomer Appeal*, WBUR.ORG (Nov. 22, 2013, 9:26 AM), <http://commonhealth.legacy.wbur.org/2013/11/diy-death-natural-home-funerals>.

9. Slocum & Webster, *supra* note 4, at 12.

10. *See generally id.* (noting the historical context of home funerals and describing present anecdotal evidence).

11. *Id. See generally* Kaleem, *supra* note 1 (describing the common routine of preparing a body for a funeral burial).

behaviors, and getting ready to step in and help move things along when all the mourner may be doing is acting out of an organic response to grief that is as old as human experience.

This question of who has real and binding authority over dead bodies is all-pervasive, whether talking to families, institutions, law enforcement, or funeral directors. The funeral industry has long jockeyed for a position as part of the pseudo-medical-legal community, and it works hard to cultivate this image.<sup>12</sup> In fact, it has no such authority.<sup>13</sup> Funeral directors are not doctors. The main medical-like procedure they perform is embalming, which is the exchange of blood and body fluids for toxic chemicals and unnecessary disinfectants that endanger embalmer's lives in very real ways.<sup>14</sup> And since the Centers for Disease Control, Center of Infectious Disease, the Pan American Health Organization, and the World Health Organization all agree that dead bodies do not pose a public health risk in general,<sup>15</sup> embalming is finally being understood for what it is: a cosmetic procedure that actually causes more health issues than it falsely purports to avert.<sup>16</sup>

This understanding is supported in part by statistics claiming that funeral directors and embalmers have a higher risk of acquiring myeloid leukemia than the general public<sup>17</sup> and a three-times higher risk of contracting amyotrophic lateral sclerosis ("ALS"), also known as Lou Gehrig's Disease.<sup>18</sup> Funeral directors

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12. *Frequently Asked Questions About Home Funerals*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/about/faq> (last visited Oct. 29, 2017).

13. *Id.*

14. Andrew Martin, *Despite Risk, Embalmers Still Embrace Preservative*, N.Y. TIMES, July 21, 2011, at B1.

15. See WHO: *Corpses Pose Little Threat*, CNN (Dec. 29, 2004, 6:06 PM), <http://www.cnn.com/2004/WORLD/asiapcf/12/29/quake.corpses/index.html> ("A person who dies is not, in themselves, a health threat to people around . . . [A]fter a number of hours, the pathogens inside the dead person's body become not dangerous." (quoting Dr. David Nabarro, executive director for sustainable development and healthy environments at the World Health Organization)).

16. See K. S. CREELY, INST. OCCUPATIONAL MED., INFECTION RISKS AND EMBALMING, 9–10 (2004), <http://www.ifa.us/images/Article.IOM.InfectionRisksAndEmbalming.pdf> (noting that occupational exposure to the blood of decedents may actually pose a risk to embalmers).

17. Michael Hauptmann et al., *Mortality from Lymphohematopoietic Malignancies and Brain Cancer Among Embalmers Exposed to Formaldehyde*, 101 J. NAT'L CANCER INST. 1696 (2009).

18. Andrea L. Roberts et al., *Job-Related Formaldehyde Exposure and ALS Mortality in the USA*, 87 J. NEUROLOGY, NEUROSURGERY, & PSYCHIATRY 786 (2016); Dennis Thompson,

also have a significantly increased risk of early death caused by cancer, respiratory, and neurological diseases, all of which stem from formaldehyde exposure.<sup>19</sup>

#### V. RESTRICTED ACCESS

Funeral directors are not lawyers, law enforcement officials, or members of the court. However, the public is convinced—along with institutional authorities, including policymakers, and even lawmakers—that a funeral director is the only go-to for things like body removal.<sup>20</sup> Often hospice, hospital, and care facility policies, in direct opposition to the law, defer to professionals who they perceive to have the authority.<sup>21</sup> Ask any ER nurse responsible for releasing a deceased patient about fear of liability. Ask the nursing home staff in a care facility responsible for sneaking a dead body out in the dark of night so as not to disturb the residents. They will probably assert that they have no authority to release a body to a family member, despite the family member bearing a valid transport permit, because institutional policies state that release may only be made to a funeral director.<sup>22</sup> One wonders how these policies were written without respect for the law.

“What funeral director would you like us to call?” they ask. Never: “How can we help you prepare to bring your loved one home?” This is despite the fact that the next-of-kin always has initial custody and control of the body, barring a coroner’s case, and even then, resumes custody thereafter.<sup>23</sup>

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*Funeral Directors May Face Greater Risk of ALS (Lou Gehrig’s Disease)*, CBS NEWS (July 13, 2015, 7:18 PM), <http://www.cbsnews.com/news/funeral-directors-risk-als-lou-gehrigs-disease>.

19. Richard B. Hayes et al., *Mortality of U.S. Embalmers and Funeral Directors*, 18 AM. J. INDUS. MED. 641, 643 (1990); *Formaldehyde and Cancer Risk*, NAT’L CANCER INST., <https://www.cancer.gov/about-cancer/causes-prevention/risk/substances/formaldehyde/formaldehyde-fact-sheet> (last visited Oct. 29, 2017).

20. See *What to Do When Families’ Home Funeral Rights Are Challenged*, NAT’L FUNERAL HOME ALLIANCE, <http://homefuneralalliance.org/the-law/nhfa-fca-legal-obstacles/what-to-do-when-rights-are-challenged> (last visited Oct. 29, 2017) (noting people in positions of authority in regard to the decedent’s body may be “uninformed about the rights of families to care for their own dead”).

21. See *id.* (advising family members to point out the difference between law and policy, and encouraging them to firmly explain their rights).

22. *Id.*

23. *Albrecht v. Treon*, 889 N.E.2d 120, 127–29 (Ohio 2008).

Families choosing to remove a body themselves typically must have the death certificate filed in order to obtain a transport permit to be able to move the body, in some circumstances within only a couple of hours.<sup>24</sup> Perfectly understandable. But this causes home funeral families to panic in search of registrars or town clerks willing and able to come in during off-hours to enter the data necessary.<sup>25</sup> This is done electronically in most states, via the Electronic Death Registration System (“EDRS”).<sup>26</sup> It is a great system—if you have access to it.

In some rural communities of the country, it is common for the local town clerk to work on Tuesday afternoon from two o’clock to four o’clock from her dining room table. Good luck if somebody dies on a Wednesday. Or a Thursday. Or a Friday. Or, more commonly, early on a Saturday morning, requiring that the body be held over the weekend somewhere—usually at a funeral home under similar cool room conditions as would be typical at home, as many do not have expensive refrigeration units—defeating the opportunity for a home vigil entirely. Few states have alternative provisions for families trying to transport a body in a timely manner.<sup>27</sup>

However, funeral directors usually can transport any time, paperwork or no.<sup>28</sup> They have direct access to the electronic filing system.<sup>29</sup> It makes sense, of course. It is their stock in trade. For families who have to hire them to meet facility removal deadlines, funeral directors and their privileged access are a godsend. And many funeral directors are genuinely sympathetic to the red tape home funeral families often have to fight their way through, charging reasonable rates for limited services, such as transportation or paperwork filing only.<sup>30</sup> They are rare and

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24. *Frequently Asked Questions About Home Funerals*, *supra* note 12.

25. *Electronic Death Registration System: How Does Your State Rate?*, NAT’L FUNERAL HOME ALLIANCE, <http://homefuneralalliance.org/the-law/electronic-filing> (last visited Oct. 29, 2017).

26. *Id.*

27. See generally NAT’L HOME FUNERAL ALL., *supra* note 1, at 2–6 (noting states that require embalming or refrigeration of the body within twenty-four hours).

28. Sarah Maslin Nir, *Transporting the Dead, Sometimes with Just a Driver’s License Required*, N.Y. TIMES, Aug. 10, 2016, at A15.

29. *Electronic Death Registration System*, *supra* note 25.

30. *Funeral Directors Can Support Home Funerals*, NAT’L HOME FUNERAL ALLIANCE, [http://homefuneralalliance.org/the-law/authorities\\_policymakers/funeraldirectors](http://homefuneralalliance.org/the-law/authorities_policymakers/funeraldirectors) (last visited Oct. 29, 2017).

valued partners. And they are part of a growing number of funeral professionals who are dedicating themselves and their work to empowering families while still managing to make a living.<sup>31</sup> It can be done.

But how many families have been forced to hire the most expensive Uber ever to move their loved one across town or down the street to their own home? Or have had to provide personal demographic information through a paid middle-man to be able to get a transport permit, which, with access, would have been a direct filing without paying a penny?

Ten states—Alabama, Connecticut, Illinois, Iowa, Indiana, Louisiana, New York, Michigan, Nebraska, and New Jersey—compel families to spend thousands of dollars for a funeral director to sign, among other tasks, the death certificate,<sup>32</sup> a bureaucratic gesture that magically makes acceptable what has already been attested to by a licensed physician and by the next-of-kin who has been appointed by the law to be the responsible party. Over the past ten years, the number of restrictive states has nearly doubled, going further toward state-controlled funerals and further away from family-controlled ones.<sup>33</sup> One state—Alabama—has poorly-worded language that ostensibly requires that a funeral director be hired if the family has so much as a memorial barbeque in their backyard.<sup>34</sup>

Along with blocked access to death certificate filing, home funeral families, even with all the requisite paperwork, are routinely barred from negotiating with crematories and cemeteries whose policies forbid receiving a body from anyone other than a funeral director.<sup>35</sup> Often a home funeral can be conducted entirely by the family right up to the point of disposition.<sup>36</sup> Cemeteries and crematories may have understandings, bylaws, or policies that require they receive a

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31. *Find a Home-Friendly Funeral Director*, NAT'L FUNERAL HOME ALLIANCE, <http://homefuneralalliance.org/get-assistance/find-a-home-friendly-funeral-director> (last visited Oct. 29, 2017).

32. *Ten Restrictive States*, NAT'L FUNERAL HOME ALLIANCE, <http://homefuneralalliance.org/the-law/problem-states> (last visited Oct. 29, 2017).

33. Slocum & Webster, *supra* note 4.

34. *Funeral Restrictions in Alabama*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/the-law/problem-states/alabama> (last visited Oct. 29, 2017).

35. See generally Slocum & Webster, *supra* note 4 (lamenting the various cost impositions of families arranging a loved one's funeral).

36. *Id.*



body only from a licensed funeral director. Even with the appropriate paperwork and proper physical care of the body, and even when following whatever facility requirements are otherwise necessary, home funeral families may be turned away and compelled to hire a funeral director just to get them in the door.<sup>37</sup> Cemeteries requiring and providing vaults contract with funeral directors to manage the sale, with the funeral director receiving a mark-up.<sup>38</sup> This back-scratching agreement, backed up with seemingly legitimate policies and bylaws, excludes people wishing to do business directly.<sup>39</sup>

Adding to this exclusion is the fact that manufacturers of rigid transport containers choose not to sell to anyone outside the industry for fear of creating ill will.<sup>40</sup> Access to goods and services for home funeral families is stymied by a closed system that often only operates by internal referral.<sup>41</sup> Companies that manufacture funeral goods, such as alternative containers, caskets, urns, body bags, vaults and other items necessary to completing a funeral and disposition generally refuse to sell to anyone outside the trade.<sup>42</sup> This means that families must pay what is often more than a 400% mark-up on goods, if the funeral home will even sell it to them directly, without also charging a non-declinable fee that usually runs in the thousands of dollars.<sup>43</sup> Many will not sell products until the buyer agrees to purchase services on-site as part of a funeral agreement.<sup>44</sup> A family looking for a thirty dollar wholesale alternative container to decorate at home prior to the death or as part of their funeral activities may have a tough time finding what they need.

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37. See generally NAT'L HOME FUNERAL ALLIANCE, *supra* note 1, at 2–6 (noting states that require a funeral director to be hired).

38. *Frequently Asked Questions About Home Funerals*, *supra* note 12.

39. *Id.*

40. NAT'L HOME FUNERAL ALL., *supra* note 1 at 2–6.

41. *Frequently Asked Questions About Home Funerals*, *supra* note 12.

42. *Id.*

43. See Terry Sheridan, *10 Facts Funeral Directors May Not Tell You*, FOX BUS. (Apr. 11, 2013), <http://www.foxbusiness.com/features/2013/04/11/10-facts-funeral-directors-may-not-tell.html> (noting that all customers must pay a “basic service fee” covering professional services of the funeral director).

44. See generally Todd Sperry, *Undercover Funeral Home Sting Turns Up ‘Significant Violations’*, CNN (Apr. 19, 2012, 9:21 PM), <http://www.cnn.com/2012/04/19/us/ftc-funeral-home-sting/index.html> (noting that an undercover FTC operation found violations in twenty-three of the 102 funeral homes investigated).

Law enforcement officers and doctors who are otherwise empowered to assist families with filing sometimes refuse to help, citing “solidarity” with funeral directors, a word usually reserved to describe taking a stance in support of the downtrodden, the disadvantaged, and the disenfranchised.<sup>45</sup> If anyone is disempowered in this arena, it is the family, not funeral professionals or their corporations. It is these types of roadblocks that shut down grieving home funeral families and taint the industry’s reputation.

## VI. UNDUE ECONOMIC BURDEN

Social justice has to do with distinguishing between fairness (getting what we each need) and equality (getting the same thing everybody else gets), as well as determining which applies in any given situation. Families left with no choice but to hire out full or limited care of the deceased are getting neither. When faced with a general price list of bundled packages, many people are overwhelmed, choosing whatever sounds closest to what they think they should purchase, not necessarily what they want or can afford.<sup>46</sup> They are often woefully uninformed about staging and paying for funerals.<sup>47</sup> In many cases, people actually believe they are required to have a conventional funeral, usually involving mahogany and the Bette Midler version of *Wind Beneath My Wings*, and are totally unprepared for the option of doing it themselves.<sup>48</sup>

Statistics show that the majority of states with the highest median incomes<sup>49</sup> and education levels<sup>50</sup> choose cremation more

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45. See generally Slocum & Webster, *supra* note 4 (describing the difficulties home funeral families face).

46. See Marion Callahan, *The Cost of Dying is Steep for the Unprepared*, FUNERALS360 (Aug. 21, 2016), <https://www.funerals360.com/blog/company-news/the-cost-of-dying-is-steep-for-the-unprepared> (discussing the costs associated with a typical funeral service).

47. See Robert Benincasa, *You Could Pay Thousands Less for a Funeral Just by Crossing the Street*, NPR (Feb 7, 2017, 4:02 PM), <http://www.npr.org/2017/02/07/504020003/a-funeral-may-cost-you-thousands-less-just-by-crossing-the-street> (investigating pricing and marketing in the funeral business and the “confusing, unhelpful system that seems designed to be impenetrable by average consumers, who must make costly decisions at a time of grief and financial stress”).

48. See Sheridan, *supra* note 43 (warning consumers of the cost and sales tactic employed by funeral directors to sell as much as they can).

49. See *infra* Table 1.

50. *Id.*

than any others,<sup>51</sup> although it is the least expensive disposition option.<sup>52</sup> In an inverse relationship, states with the lowest median income and education levels invariably choose full burial with all the fixings.<sup>53</sup> Put another way: the people who can least afford it frequently sign on to spend the most on funerals during times of extreme stress, often taking out loans similar to exorbitant wedding loans that can take a decade or more to pay off.<sup>54</sup>

Incidentally, the chart also makes clear one of the economic truths about the funeral industry that has created the high cost of professionally assisted funerals. With 23,400 funeral homes in the United States as of 2010 vying for business, and only the need for 13,119 of them to cover the actual number of people who die each year, it is no wonder the price per funeral becomes more expensive.<sup>55</sup> Out of all fifty states, only three indicate that they may be underserved by ratio of deaths to funeral homes.<sup>56</sup> In all fairness, geography has a great deal to do with evaluating the need for more or fewer providers, but as a general rule, markets saturated with providers who serve a finite population are going to support higher costs per case, reflecting the scarcity of demand in relation to the supply. Families looking for an affordable solution often gravitate to the least expensive option offered by the funeral home—direct cremation—rather than trying to navigate the fine print on a General Price List or, even more foreign to them if not aware prior to the death, exploring the idea of doing more themselves.<sup>57</sup>

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51. *Id.*

52. NAT'L FUNERAL DIRS. ASS'N, 2015 NFDA CREMATION AND BURIAL REPORT: RESEARCH, STATISTICS AND PROJECTIONS 1, 7 (2015), <https://iogr.memberclicks.net/assets/docs/2015%20nfda%20cremation%20and%20burial%20report.pdf>.

53. *See infra* Table 1.

54. *See generally* Rachel Zeldin, *Paying for a Funeral*, FUNERALS360 (Mar. 25, 2014), <https://www.funerals360.com/blog/body-and-organ-donation/paying-for-a-funeral-what-do-i-do-if-i-cant-afford-a-funeral> (listing various options available to pay for a funeral, including personal loans).

55. LISA CARLSON & JOSH SLOCUM, FINAL RIGHTS: RECLAIMING THE AMERICAN WAY OF DEATH 36 (2011).

56. *Id.*

57. *See* Sheridan, *supra* note 43 (describing ways to save on funeral costs and noting an increase in cremations in the U.S.); *see, e.g.*, Kara Kenny, *Cost of Living: More Hoosiers Turn to Cremation to Cut Funeral Costs*, THEINDYCHANNEL (Oct. 19, 2017, 8:54 PM), <http://www.theindychannel.com/news/call-6-investigators/cost-of-living-more-hoosiers-turn-to-cremation-to-cut-costs> (reporting on a local and national increase in cremations).

Table 1: Funeral Statistics by State<sup>58</sup>

	Funeral Homes <sup>59</sup>	Needed	% More than Needed	Cremation Rates 2015 <sup>60</sup>	Burial Rates 2015	Median Income <sup>61</sup>	Academic Ranking <sup>62</sup>
Ala.*	460	188	59%	24.5%	74.5%	46th	47th
Alaska	26	14	46%	67.1%	25.9%	2nd	37th
Ariz.	161	180	(89%)	66.9%	24.5%	30th	41st
Ark.	349	114	67%	34.2%	61.7%	48th	36th
Cal.	960	919	4%	64.8%	30.2%	3rd	34th
Colo.	186	124	33%	70.3%	21.4%	15th	10th
Conn.*	296	114	61%	52.2%	44.8%	4th	4th
Del.	70	31	56%	47.8%	46.0%	11th	29th
D.C.	40	19	52%	41.7%	53.1%	4th	N/A
Fla.	852	677	21%	63.4%	25.5%	37th	46th
Ga.	703	267	62%	38.8%	56.0%	33rd	38th
Haw.	18	39	(46%)	73.3%	20.5%	8th	50th
Idaho	85	44	48%	58.2%	29.1%	40th	35th
Ill.*	1232	395	68%	44.6%	50.7%	18th	15th
Ind.*	649	222	66%	38.1%	55.9%	31st	32nd
Iowa*	600	110	82%	44.3%	51.3%	24th	8th
Kan.	383	94	75%	46.1%	49.0%	26th	6th
Ky.	497	162	67%	25.7%	70.1%	47th	31st
La.*	400	160	60%	27.3%	70.2%	44th	43rd
Me.	151	50	67%	71.7%	23.8%	32nd	19th
Md.	294	174	41%	41.5%	52.5%	1st	20th

58. States with asterisks require the hiring of a funeral director. One variable that may impact the costs—and number of businesses—is the difference between families being legally required to hire a professional as opposed to states where it is optional. Some states, such as Wyoming and other western states, whose population centers are scattered over large expanses of terrain, may require more funeral homes due to distance. When a market is saturated with providers for a service population that is finite, high costs per case reflect the scarcity of demand in relation to supply. States in red require the hiring of a funeral director. One variable that may impact the costs—and number of businesses—is the difference between families being legally required to hire a professional as opposed to states where it is optional. Depending on regional pricing and personal choice, funerals with burials average \$10,000 and cremations \$2000. When looking at median income levels in states, note the relationship between funerals with burials and cremations to income.

59. CARLSON & SLOCUM, *supra* note 55, at 36.

60. NAT'L FUNERAL DIRS. ASS'N, *supra* note 52.

61. Median income figures from the U.S. CENSUS BUREAU, *Selected Economic Characteristics 2010-2014 Survey 1-Year Estimates*.

62. Philip Bump, *Actually, Mr. Trump, Iowa Is One of the Smartest States in the Union*, WASH. POST: THE FIX (Nov. 13, 2015), [https://www.washingtonpost.com/news/the-fix/wp/2015/11/13/actually-mr-trump-iowa-is-one-of-the-smartest-states-in-the-union/?utm\\_term=.3bdd7b547339](https://www.washingtonpost.com/news/the-fix/wp/2015/11/13/actually-mr-trump-iowa-is-one-of-the-smartest-states-in-the-union/?utm_term=.3bdd7b547339).

2018]

## CARING FOR OUR OWN DEAD

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Mass.	644	207	68%	45.0%	48.1%	5th	1st
Mich.*	729	343	53%	56.7%	41.5%	34th	21st
Minn.	558	152	73%	59.3%	37.7%	9th	2nd
Miss.	450	112	75%	19.1%	79.2%	50th	48th
Mo.	681	218	68%	41.5%	53.3%	36th	16th
Mont.	74	35	53%	74.6%	22.2%	38th	22nd
Neb.*	287	59	79%	46.0%	50.9%	22nd	12th
Nev.	59	78	(76%)	77.8%	19.1%	27th	49th
N.H.	105	41	61%	71.7%	23.8%	6th	3rd
N.J.*	724	270	63%	41.8%	46.2%	10th	9th
N.M.	76	61	20%	60.5%	32.4%	43rd	40th
N.Y.*	1878	582	69%	41.0%	51.0%	16th	17th
N.C.	751	308	59%	41.6%	55.6%	39th	42nd
N.D.	109	24	78%	36.5%	61.3%	20th	14th
Ohio	1167	427	63%	43.9%	50.4%	35th	18th
Okla.	414	142	66%	41.2%	55.4%	41st	30th
Or.	193	125	35%	75.2%	16.9%	29th	27th
Pa.	1664	495	70%	44.9%	49.1%	23rd	26th
R.I.	93	38	59%	47.7%	46.7%	17th	27th
S.C.	557	151	73%	39.3%	54.9%	42nd	45th
S.D.	101	28	72%	37.2%	54.7%	28th	11th
Tenn.	548	231	58%	29.5%	66.8%	45th	33rd
Tex.	1339	645	52%	41.2%	50.1%	25th	39th
Utah	98	57	42%	32.4%	58.2%	14th	24th
Vt.	70	20	71%	68.8%	19.6%	19th	7th
Va.	488	234	52%	37.8%	58.4%	7th	13th
Wash.	237	192	19%	76.8%	18.1%	12th	23rd
W.Va.	309	84	73%	28.9%	59.8%	49th	44th
Wis.	549	181	67%	54.2%	38.4%	21st	5th
Wyo.	35	17	51%	68.1%	26.4%	13th	25th

Another phenomenon rising in America is families stretched for cash to pay for funerals initiating crowdsourcing campaigns, such as GoFundMe.<sup>63</sup> This has become a routine way to raise funds for the funeral that families believe they must provide in order to show love for their relative.<sup>64</sup> At the same time, the number of requests for outright charity from funeral-based nonprofits is also staggering.<sup>65</sup> Calls to funeral nonprofits often

63. *Raise Money for Memorials & Funerals*, GOFUNDME, <https://www.gofundme.com/f/uneral-memorial-fundraising> (last visited Oct. 29, 2017).

64. Jodi Helmer, *Crowdfunding Funeral Costs for a Loved One*, FORBES (Aug. 21, 2014, 12:43 PM), <https://www.forbes.com/sites/nextavenue/2014/08/21/crowdfunding-funeral-costs-for-a-loved-one/#1ed553384901>.

65. See John Raby, *Can't Afford to Bury Loved Ones? Often, States Can't Help*, U.S. NEWS (Apr. 2, 2017, 10:32 AM), <https://www.usnews.com/news/best-states/west-virginia/article>

come from hospice personnel searching for an alternative to sending families to their town or city indigent funds office, which may pay for a portion of a direct cremation and nothing more.<sup>66</sup>

It all begs the question: What will it take to change our personal expectations to meet our means when they are no longer in alignment? And even more importantly—when did we become a nation of people who believe that we are automatically entitled to, if not the same \$12,000 funeral, at least something similar, regardless of our ability to pay, and regardless of our actual needs? How can open policies and access, combined with basic funeral education, benefit these families and society in general?

## VII. ENVIRONMENTAL CONCERNS

Funeral industry practices that have negative environmental implications have often been discounted with the argument that each death, embalming, and disposition is a one-time event.<sup>67</sup> How much can the environment be affected if each person only pollutes once in this way during their entire lifetime, or, more accurately, on the occasion of his or her one and only death? The answer is: quite a bit when you add it all up.

Chinese steel and exotic rainforest woods shipped from South America to make elaborate caskets in the breadbasket of the United States and subsequently shipped out to all corners of the country pose devastating, long-term environmental dangers.<sup>68</sup> The fossil fuel consumption to haul all of this material across continents and oceans, the damage to reefs and ocean life from shipping, and the materials used to build expensive caskets are all part of the environmental picture.<sup>69</sup> The leachate from these products once placed in the ground include iron, copper, lead,

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s/2017-04-02/cant-afford-to-bury-loved-ones-often-states-cant-help (describing the fiscal difficulty some states have in maintaining their Burial Assistance Programs).

66. *Id.*; see also Owen Toy, *Funeral Assistance for Those Who Need It*, FUNERAL360 (Mar. 11, 2014), <https://www.funerals360.com/blog/funeral-costs/funeral-assistance-for-those-who-need-it> (listing the Burial Assistance Programs and their eligibility requirements).

67. *Exploring the Environmental Impact of Death*, CORPSE PROJECT (June 5, 2016), <http://www.thecorpseproject.net/2016/06/environmental-impact-of-death/> (last visited Oct. 20, 2017).

68. Tony Rehagen, *Green Burials Are Forcing the Funeral Industry to Rethink Death*, BLOOMBERG (Oct. 27, 2016), <https://www.bloomberg.com/features/2016-green-burial>.

69. *Id.*

zinc, cobalt, and petroleum by-products.<sup>70</sup> Embalming fluid contains, among other things, formaldehyde, methanol, dyes, hydrochloric acid, disinfectants, humectants, sulfur dioxide, and even benzene.<sup>71</sup>

In contrast to professional funerals, home funerals aspire to private, intimate, noninvasive, environmentally-responsible, organic care of the body, kept cool by natural means, such as opening a window on a cool day or using various forms of ice.<sup>72</sup> Eyes are closed with gentle pressure instead of pronged eye caps, and mouths are closed with a scarf or other simple means until they hold. No sewing jaws and teeth shut with metal wire, no lips closed with Krazy glue. No disinfectant spray baths; just a basin and lavender, washed by loving hands or by ritual religious societies, such as the Jewish *Chevre Kadisha* or Muslim *Janazah*. Shrouds made of cotton or linen and caskets made of indigenous materials such as pine or other soft woods are the norm in home funerals. Many are homemade, but most people may again be subject to restricted access to readymade goods available only through professional channels, by lack of opportunity to purchase or inability to pay.

#### VIII. LEGAL IMPEDIMENTS

On the legal side, it may come as no surprise that a fair number of state legislators are funeral directors.<sup>73</sup> In fact, the legislator who nearly added Virginia to the list of restrictive states in 2016 is one.<sup>74</sup> As policymakers, funeral directors have a unique perspective that is well-served by the deep pockets and influence of the funeral industry lobby that represents a \$20 billion per-year

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70. See *id.* (noting that 115 million tons of casket steel is placed into the soil each year).

71. *Id.* (approximately 800,000 gallons of formaldehyde are used per year).

72. Kaleem, *supra* note 1.

73. See generally Steve Esack, *Funeral Director/Legislator Pushing Bill that Would Up His Profits*, MORNING CALL (Feb. 20, 2016, 7:26 PM), <http://www.mcall.com/news/nationworld/pennsylvania/mc-pa-tomlinson-legislature-funeral-home-cemetery-politics-20160220-story.html> (discussing a Pennsylvania bill ushered by a senator who owns a funeral home).

74. Luanne Rife & Alicia Petska, *Bill's Aim Isn't to Kill Funeral Homes, General Assembly Lawmakers Says*, ROANOKE TIMES (Feb. 23, 2016), [http://www.roanoke.com/business/news/bill-s-aim-isn-t-to-kill-home-funerals-general/article\\_678383ab-b280-51de-bc2d-300c7b8b5ba1.html](http://www.roanoke.com/business/news/bill-s-aim-isn-t-to-kill-home-funerals-general/article_678383ab-b280-51de-bc2d-300c7b8b5ba1.html).

industry,<sup>75</sup> just as other professionals in lawmaking bodies no doubt enjoy in their own spheres of influence. In this case, however, policies regarding funeral practice rarely consider access by the public, with industry-leaning legislation promulgated under the guise of “the common good” and “public health and safety,”<sup>76</sup> old laws that no longer hold up under scrutiny by anyone making any effort at all to learn the truth.

Some states require that a funeral director be present simply to witness the final disposition.<sup>77</sup> Compelling families to hire professionals to supervise doing something the law not only allows but supports by way of empowering next-of-kin is irrational and even unconstitutional.<sup>78</sup> Restrictive state laws do not serve the interests of the country or its people, whatever the cultural or religious tradition of those involved. These laws have impeded meaningful family-centered and family-led after-death activities for years and have placed undue burdens on select populations, changing the social conscience and cultural fabric of our after-death practices out of all recognition. When families are obstructed from caring for their own dead for no logical reason, they are victims of coercion: forcing the bereaved to pay for something they might willingly do themselves, were they to understand the home funeral as a legitimate, safe, loving, and supported option.

Other laws enacted by individual states make little sense on the surface yet have enormous consequences for those subject to them. Case in point, some state requirements force embalming for bodies transported out of state, regardless of cause of death.<sup>79</sup> This

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75. *Economics of the Funeral Industry*, PBS, <http://www.pbs.org/pov/homegoings/economics-of-the-funeral-industry> (last visited Oct. 29, 2017).

76. Anthony B. Sanders, *Exhumation Through Burial: How Challenging Casket Regulations Helped Unearth Economic Substantive Due Process in Craigmiles v. Giles*, 88 MINN. L. REV. 668, 682 (2004).

77. See, e.g., Sara J. Marsden, *Arranging a Funeral or Cremation in Nebraska*, US FUNERALS ONLINE, <http://www.us-funerals.com/funeral-articles/funerals-and-cremations-in-nebraska.html#Wet4JzLMzox> (last visited Oct. 29, 2017). Nebraska requires a funeral director to witness the disposition, even if the family intends to conduct a home burial. *Id.*

78. See Sanders, *supra* note 76, at 670–71 (discussing the doctrine of economic substantive due process).

79. See, e.g., ALA. CODE § 22-19-2 (LexisNexis 2015) (making it “unlawful for any person, firm or corporation to take, carry, transport or remove from within the confines of this state any dead human body unless said body has been embalmed or cremated” but allowing the exportation of “unembalmed dead human body . . . disposed for the purpose



is one of the major myths that prevent the uninformed from taking matters into their own hands. Only two states, Arkansas and Alabama, require embalming before a body may leave the state, despite there being no conceivable health benefit whatsoever.<sup>80</sup> There is anecdotal evidence that in Alabama, it has to do with professional jealousy and an effort to keep Alabamans in the state for the full funeral, therefore keeping Alabama's funeral money in the pockets of funeral directors in Alabama.<sup>81</sup> Families wishing to use a funeral home or get to their own personal residence literally across the street in Mississippi may be out of luck and in for a dunking, forced to pay for an invasive, toxic, and expensive procedure for no health or other rational reason.<sup>82</sup>

Several other states require embalming for bodies being transported by common carrier who, more often than not, would be willing to waive the requirement in lieu of a well-constructed, airtight casket. The problem is that it has nothing to do with public safety and everything to do with avoiding litigation should someone fail the transit process.<sup>83</sup> Funeral professionals and certainly airlines are more afraid of being sued than they are of proactively educating those in positions of power, resulting in the removal of the threat of being sued and better service to families.<sup>84</sup>

## IX. ACCESS TO EDUCATION

The concern is not about the right of funeral directors to make a living. Of course they have that right. It is about the lack of access to unbiased education about funeral decision-making. Home funeral educators serve the public with accurate information, but without the knowledge to ask for it, the public

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of advancement of medical science, or for the replacement of diseased or worn out parts of other humans. . . .").

80. NAT'L HOME FUNERAL ALL., *supra* note 1, at 2.

81. *Alabama Caskets: Burying Alabama's Casket-Sales Cartel*, INST. FOR JUST., <http://ij.org/case/alabama-caskets> (last visited Oct. 29, 2017).

82. Green burial cemetery owner, home funeral guide, and legislative activist Shelia Champion reported to the author ongoing attempts to solicit sponsorship of a bill that removes the embalming restriction in Alabama. It was initially met with enthusiastic interest by several potential sponsors, which ended abruptly as the 2017 legislative session neared.

83. *See generally* Nir, *supra* note 28 (discussing the issues around the transportation of dead bodies).

84. *See generally id.*

will not come calling. Without inclusive education around funerals and after-death options, the public will not have the wherewithal to ask a fundamental social justice question: Will our needs be met willingly or voluntarily by an institution or is it up to us to seek our own consensus of what is right, or necessary, or fair?

If you go to a restaurant, you are not likely to order what is not on the menu. Asking for advice on home funerals or environmentally sensitive disposition options from most funeral directors is probably not going to result in a fair and unbiased recitation of all the options, any more than the saleswoman at Nordstrom's is going to direct you to the fabric section at Wal-Mart and suggest that you make your own dress. Despite efforts by consumer groups and even the federal government, funeral directors are not required to disclose a myriad of helpful information to consumers, primarily the fact that their services are not necessary in every circumstance.<sup>85</sup>

Ensuring access to goods and services by choice, not compulsion, is essential to restoring fairness *and* equality. Educating the American public to re-envision our relationship and responsibility to our dead is a growing movement that, at its heart, seeks to shift the balance of power back to the family, back to the next-of-kin, and the circle of care back to communities and neighborhoods and churches.<sup>86</sup>

These shifts are happening all over the country and around the world in places where people have tried to emulate the American way of death. Spiritual communities are educating themselves to assist in caring for one another when the majority of the deceased's family is far away, or to serve as designated agents when the deceased's surrogate family members are those they have shared a pew with for the past twenty years.<sup>87</sup> Community threshold groups are springing up all over the country to be ready to assist fellow group members when the call comes to their town

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85. See *Paying Final Respects—Your Rights When Buying a Funeral*, FUNERAL CONSUMERS ALLIANCE, <https://funerals.org/?consumers=paying-final-respects-rights-buying-funeral> (last visited Oct. 29, 2017) (offering advice to the funeral consumer and listing important rights and considerations).

86. See *Families First: Home Funerals and the National Home Funeral Alliance*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/our-work/our-point-of-view/families-first> (last visited Oct. 29, 2017) [hereinafter *Families First*] (describing the family-centric view of home funerals).

87. See *id.* (offering community and spiritual care group training to home funeral guides).

or neighborhood.<sup>88</sup> Home funeral guides are training to be ready to teach others the hard legal requirements, the soft skills of body care, and how to connect to local clergy and celebrants, town clerks and registrars, and crematory or cemetery operators.<sup>89</sup>

## X. HOME FUNERAL GUIDES

Organizations like the National Home Funeral Alliance (“NHFA”) and the Funeral Consumers Alliance stand for fair choice and offer facts and information that enable others to perform funeral services themselves, not create another profession that mimics or perpetuates the current hierarchical system.<sup>90</sup> Home funeral guides at their best stand in solidarity with families otherwise disenfranchised by the standard operation of the funeral industry.

But what does it mean that the home funeral movement is being promoted and underwritten primarily by older white American women of means?<sup>91</sup> This dynamic is fraught with potential pitfalls across social, racial, economic, and cultural lines. While educating the general public to their rights to care for their own dead, the movement has not begun to brave the depths of disparity in the African American, Asian, Hispanic, Native American, and other underserved or at-risk communities.<sup>92</sup> It has not specifically addressed the issues of poverty, lack of education, or cultural norms that may contribute to the lack of basic services that provide affordable and meaningful family and community-

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88. See generally Ann Zaniewski, *Having a Funeral at Home, Not at a Funeral Home*, USA TODAY (Jan. 12, 2015, 8:20 AM), <https://www.usatoday.com/story/news/nation/2015/01/12/more-choosing-at-home-funerals/21622039> (noting the growing number of people seeking home funerals for reasons other than cost).

89. *Clearly Defined: Matching Our Terminology to Our Intentions*, NAT’L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/resources/what-are-we-called> (last visited Oct. 29, 2017).

90. *Families First*, *supra* note 86.

91. *2016 Year End Reports*, NAT’L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/about/board-of-directors/2016-year-end-reports> (last visited Oct. 29, 2017).

92. See Mel Jones, *Why So Many Minority Millennials Can’t Get Ahead*, ATLANTIC (Nov. 29, 2015), <https://www.theatlantic.com/business/archive/2015/11/gifts-debts-inheritance/417423> (observing that the “primary reason why people of color are unable to save as adults is because they give financial support to close family,” including towards unexpected funeral costs).

driven after-death opportunities.<sup>93</sup> Nor has the issue of eschewing professional care in unbroken religious traditions been thoroughly explored and disseminated.<sup>94</sup> The home funeral movement is young—barely twenty years old, with the national organization only eight years old.<sup>95</sup> Some might argue that there has not been enough time or person-power to work at becoming a more inclusive organization, but the fact is that the movement must cross all barriers and demographic lines in support of all people in need.

The root social justice concern involving home funeral guides has to do with an imbalance of power that escapes many people who self-identify as home funeral guides. Some come into the work from an advocacy or educational point of view, others from a business angle. Either way, and in varying degrees, home funeral guides are entering into relationships in which they hold the knowledge, and consequently, the power. What often motivates them is a genuine desire to help,<sup>96</sup> but “helping”—as opposed to “partnering”—inherently creates a top-down dynamic rather than an equal standing.

Even if the purpose of entering into the home funeral vocation is to alleviate suffering, the home funeral movement is also a minefield of exchanges of power that, managed well, can end well. Handled poorly—doing for others what needs to be done *by* them—home funeral guides could endanger not only their own credibility, but draw legal challenges and unfairly undermine the authority of the family. Instead of helping, it could create a slippery slope to a different kind of damage—and social injustice—than professional service might.

Another piece of the social justice puzzle as it pertains to home funeral guides circles back to the fact that the majority of

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93. *Articles, Podcasts, Magazines, Books*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/resources/home-funeral-information/articles-magazines-books> (last visited Oct. 29, 2017); *Documentaries, Online Videos, Interviews, Blogs*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/resources/home-funeral-information/documentaries-online-videos-interviews-blogs> (last visited Oct. 29, 2017).

94. *Articles, Podcasts, Magazines, Books*, *supra* note 93; *Documentaries, Online Videos, Interviews, Blogs*, *supra* note 93.

95. *How the NHFA Was Formed*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/about/history> (last visited Oct. 29, 2017).

96. Jennifer Luxton, *What's a Death Midwife? Inside the Alternative Death Care Movement*, YES! MAG. (Sept. 3, 2015), <http://www.yesmagazine.org/inside-the-alternative-death-care-movement-20150807>.

them are women.<sup>97</sup> Historically critical in death care until it was co-opted by males creating the profession, women recently have been seeking validation by exploring certification and remuneration.<sup>98</sup> The exchange of money for services further complicates the delicate balance between helpers and the receivers of help. Money, in essence, is a form of energetic exchange. When money changes hands for home funeral goods and services, even education and information, the energy shifts, with a balance difficult to maintain for several reasons.

First, there is no precedent for this particular commercial agreement.<sup>99</sup> Prior to the evolution of the funeral industry, neighbors, friends, church mates and midwives might have volunteered to assist.<sup>100</sup> Even after skilled women were co-opted by the industry to make house calls before being phased out entirely in the early years of professional funeral practice, there was little money involved, if any.<sup>101</sup> Asking for and accepting money to help care for someone else's dead may create a more complex relationship than the one licensed professionals already offer. The NHFA seeks to protect families and home funeral guides from potential ethical infractions, including ones informed by commerce, in its *NHFA Codes for Ethics, Conduct and Practice*.<sup>102</sup>

Second, without standards of care, there is no basis for ascertaining a just amount to charge for eligible services. There has been a great deal of discussion among home funeral guides to justify developing certification as a means of making them more marketable.<sup>103</sup> The NHFA has adopted the following stance in regard to certification of home funeral guides in a clear effort to avoid creating another profession that perpetuates the current

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97. CARLSON & SLOCUM, *supra* note 55, at 130.

98. Randy Hallman, *Not Just a Man's Job: More Women Are Funeral Home Directors*, RICHMOND TIMES-DISPATCH (Dec. 13, 2015), [http://www.richmond.com/business/local/not-just-a-man-s-job-more-women-are-funeral/article\\_41ef08e2-4b7a-5bbd-94f8-740c6665f488.html](http://www.richmond.com/business/local/not-just-a-man-s-job-more-women-are-funeral/article_41ef08e2-4b7a-5bbd-94f8-740c6665f488.html).

99. *History of Women in the Funeral Industry*, MYSENDOFF.COM, <https://mysendoff.com/2011/06/history-of-women-in-the-funeral-industry-2> (last visited Oct. 29, 2017); *How the Funeral Industry Has Evolved*, FUNERAL WISE, <https://www.funeralwise.com/learn/industry> (last visited Oct. 29, 2017) (tracing the history of the funeral industry).

100. See generally *How the Funeral Industry Has Evolved*, *supra* note 99.

101. *Id.*

102. *Code of Ethics, Conduct, and Practice*, *supra* note 2.

103. *Position on Licensure, Standards, and Certification*, NAT'L HOME FUNERAL ALLIANCE, <http://homefuneralalliance.org/wp-content/uploads/2017/10/NHFA-Position-on-Licensure-and-Certification.pdf> (last visited Oct. 29, 2017).

hierarchical system in a different form that could have dire ramifications for home funerals and home funeral families:

The NHFA's position regarding potential required home funeral guide licensure and certification is based on the following observations:

- Requiring licensure or certification would force guides into becoming industry professionals, which is in direct opposition to what home funeral guides stand for, specifically keeping the care of the deceased in the hands of the family and not in the realm of industry professionals.

- Guides view themselves differently in different parts of the country according to their beliefs, and as their work (such as hospice) informs their vocation. Guides do not provide a uniform type of service, making it impossible for the State(s) to regulate. In addition, regulating standards would create a hardship for families whose inherent right it is to care for their own dead without being required to pay an outsider/professional.

- By requiring home funeral guides to pay to obtain licensure or certification, individuals would be compelled to pay for courses, exam fees, etc., potentially placing them under financial duress, which could force them into charging fees when many offer their services for free as a public service.

- Most importantly, licensure and mandatory certification could each have the ripple effect of curtailing families' rights by implying that someone with credentials is required to be involved in order to have a home funeral, a concept that would undoubtedly meet with resistance by any American concerned with keeping their legal rights intact.<sup>104</sup>

Instead of emulating the current professional model, home funeral movement leaders are encouraging guides to stay in their wheelhouse of education and advocacy by sharing information to

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104. *Id.*

empower families rather than profiting from a lack of knowledge.<sup>105</sup> Efforts are underway to provide consistent, quality content standards for home funeral teachers and instructors.<sup>106</sup> In this way, information disseminated through public presentations, workshops, practicums, and other educational forums will have the foundational approval from experts in the field.<sup>107</sup> Ensuring appropriate educational content to all who choose to teach, rather than attempting to certify individuals who complete a course on a scale of untested merit,<sup>108</sup> translates into fair access for both the guide and the public served.

It is important to understand that the issues of pay and certification underline a fundamental desire to be validated as credible, trustworthy, and knowledgeable, and for the experts to be paid fairly. With the usual avenues closed due to the regulatory requirements of the funeral profession, guides are continuing not only to reimagine home death care itself but the systems that inform it.<sup>109</sup> In order for home funeral guide work to continue, those involved will need to develop a new model for achieving the validation and just compensation for labor that they seek.

At the crux of the certification conundrum are the very issues already identified: finding new ways to assist families who have lost a loved one by (1) creating a culture of shared power; (2) opening access for the increasingly disenfranchised; and (3) developing and implementing practices that relieve families of undue economic burdens during difficult times. The last thing home funeral guides should be doing is adding to an already unjust system and to the layers of false authority, or worse, promoting an ethic that threatens the removal of power from the family in any way.

## XI. CONCLUSION

Social justice in the world of after-death care has multiple challenges that need addressing, not only in the regulated industry but also in the alternative family-centered world. Systems

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105. *Families First*, *supra* note 86.

106. *Id.*

107. *Id.*

108. *Position on Licensure, Standards, and Certification*, *supra* note 103.

109. *Families First*, *supra* note 86.

that have been in effect for a century are no longer working, requiring an overhaul that puts people at its core, people of all races, ethnicities, cultural mores and customs, and all economic means and spiritual convictions. This will take time and skill, based on an open exchange of ideas that begins with a sense of fairness and equality.

We must re-imagine a universal process that meets the needs of the state for statistical data collection, protects those releasing the body from liability, and ensures the legally responsible party access and cooperation with authorities. Imagine families free to bury or cremate without paying someone to watch. Imagine a system that empowers choice rather than reinforcing a monopoly of access and power over our dead, and encourages free trade of funeral goods. Imagine a system for those choosing to care for their own that reduces anxiety instead of adding to it.

Everyone is looking for an affordable exit these days, but many are also looking for one that meets the criteria of ethical social justice. Rectifying the current issues of power and access and economic duress by removing impediments that disenfranchise families would bring about opportunities for socially just family and home-based death practices that allow us to experience the best of our shared humanity.