

DEREGULATION OF FUNERAL LICENSING AND DISPOSITION OPTIONS IN THE UNITED STATES

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INTRODUCTION

The history of care for the dead body in the United States can be divided into three distinct eras. In the pre-funeral industry era, spanning from the Revolutionary War to the American Civil War, “[f]unerary practices were of a communal, not a commercial, nature.”¹ Prior to the Civil War, funerals were conducted at home, with family and friends preparing and burying the bodies of their loved ones.² The family of the deceased relied only occasionally on an undertaker to build the casket or transport the body to the final resting place.³

In our second era of the funeral industry, spanning from the post-Civil War era to the 1990s, a new profession—funeral directing—emerged, “dedicated to the disinfection of human remains and the facilitation of grief.”⁴ Embalming, performed by a licensed funeral director, became the central component of the offered funeral services. Historically, only men were funeral directors, while women were outright denied jobs or apprenticeships by male-dominated funeral homes.⁵ However, it is important to recognize that while this was true for funeral homes predominately serving white clientele, since the 1800s women have held “a valuable and visible role” in African American funeral homes.⁶

Finally, we reach the era of Reform. Beginning in the 1990s and continuing into the present, we have seen the breakdown of a rigid central power structure in the funeral industry, coupled with the re-emergence of deregulated, deprofessionalized care for the dead body. This is evident in the rise of unlicensed, unregulated death practitioners, family-led death care, and a spate of new disposition options, including natural organic reduction and alkaline hydrolysis. Still, the regulatory and licensing structures of the funeral industry have been slow to adapt to these functional, on-the-ground changes. To put it bluntly, the way the funeral industry is regulated no longer

1. Helen Mitsuko Marsh, Note, *The Green New Death: A Legislative Framework to Promote and Legalize Green Funerary Alternatives*, 12 GEO. WASH. J. ENERGY & ENV'T L. 124, 126 (2021).

2. See Devinne Melecki, *The Potential of Our Decay: Cemeteries That Save the American Landscape*, SMITHSONIAN CTR. FOR FOLKLIFE & CULTURAL HERITAGE (Apr. 17, 2023), <https://perma.cc/JTP5-MRD7>.

3. Tanya D. Marsh, *Regulated to Death: Occupational Licensing and the Demise of the U.S. Funeral Services Industry*, 8 WAKE FOREST J.L. & POL'Y 5, 5 (2018).

4. *Id.* at 5–6.

5. Alison Cathles et al., *The Gender Gap in Funeral Directors: Burying Women with Ready-to-Embalm Laws?*, 48 BRIT. J. INDUS. RELS. 688, 688–89 (2010).

6. Candi K. Cann, *Black Deaths Matter Earning the Right to Live: Death and the African-American Funeral Home*, 11 RELIGIONS 390, 3–4 (2020) (noting that African American funeral homes and other burial societies of ethnic communities across the United States are often quite distinct from the traditional White American funeral establishment).

matches the funeral industry we have today. We are in an entirely new era of funeral care, and the laws and structures that govern this care have not caught up.

Today, burdensome barriers to entry make it difficult to join the funeral industry without substantial financial backing or industry connections. At the same time, funeral homes are in desperate need of new *living* bodies to provide labor.⁷ Ineffective and obtuse state boards often restrict the industry further through anticompetitive practices and outdated licensing regimes, reflecting a past era when embalming was far more widespread.⁸ A lack of accountability throughout the funeral industry overall hurts consumers and is reflected in the pricing and quality of services. As a result of these issues, federal attempts to regulate discrepancies in pricing through the Funeral Rule⁹ are entirely inadequate in their current state.¹⁰

This Essay proposes three reforms necessary to bring regulation up to date with conditions on the ground. Part I calls for a more relaxed licensing regime for persons providing death services, as well as lower barriers to entry. Part II calls for greater inspection of operating funeral homes. Part III explores the legalization of a variety of green—that is, environmentally friendly—death options across the United States. We conclude by proposing that future regulations should be geared toward securing a “good death” for more people, by which we mean an end of life, funeral, and disposition that are more sustainable, more accessible, and—importantly—legal for all.

I. SCHOOLING AND LICENSING BARRIERS TO PROVIDING DEATH CARE MUST BE RELAXED

A. *High barriers to entry discourage potential practitioners.*

At the turn of the twentieth century, funeral directors sought to professionalize. They championed formal education requirements for new funeral directors and a system of state licensing, similar to those

7. Bridget Frame, *More Than 60% of Funeral Directors Nationwide Are About to Retire. Do You Want This Job?*, CAROLINA NEWS & REP. (Apr. 20, 2023), <https://perma.cc/Y24L-4GR2>.

8. See Marsh, *supra* note 3, at 7–9; see also Cathles et al., *supra* note 5, at 701.

9. The Funeral Rule requires funeral service providers to give consumers “accurate, itemized price information and various other disclosures about funeral goods and services.” Violation of the Funeral Rule can lead to monetary penalties on the service provider of “up to \$51,755 per violation.” FED. TRADE COMM’N, *COMPLYING WITH THE FUNERAL RULE* (2024), <https://perma.cc/6N4Y-8TA9>.

10. See Victoria J. Haneman, *Funeral Poverty*, 55 U. RICH. L. REV. 387, 428 (2021); Brandon Pizzola & Alexander Tabarrok, *Occupational Licensing Causes a Wage Premium: Evidence from a Natural Experiment in Colorado’s Funeral Services Industry*, 50 INT’L REV. L. & ECON. 50, 59 (2017).

for doctors or lawyers.¹¹ Today, each state implements minimum standards of education and training.¹² The practice of embalming—the draining of the dead body’s blood and replacing it with preservative chemicals—continues to play an enormous role in this training, with nearly all states operating under Single or Dual-Track Licensure regimes.¹³ The twenty-seven Single-Track Licensure states combine funeral directing and embalming into one profession.¹⁴ These states are also called “ready-to-embalm” states, because their rationale is that all funeral directors should be “ready to embalm” a body at a moment’s notice.¹⁵ Dual-Track Licensure states allow for the licensing of funeral directors and embalmers as separate professions; twenty-three states follow this approach.¹⁶

Following the outdated belief that dead bodies pose a public health risk, funeral directors were mandated to train in embalming.¹⁷ We now know that dead bodies do not commonly spread disease, and embalming persists largely for cosmetic and preservation purposes.¹⁸ An embalming requirement in mortuary science education creates a significant barrier to entry, particularly when it appears in the prerequisites as a required number of embalmings, or hours practicing embalming, before a candidate can even apply for a funeral director license.¹⁹ Data shows that in ready-to-embalm states, “funeral directors are 24 per cent less likely to be women.”²⁰ Certain religious and ethnic groups, such as Muslims or Jews, that abstain from embalming are also categorically excluded from becoming funeral directors in ready-to-embalm states.²¹

Barriers to entry for funeral directing are especially troubling considering the profession itself is stagnating.²² Funeral homes have

11. See Marsh, *supra* note 3, at 6; Emily A. Solley, Comment, *Death Will Have His Day: Overly Restrictive Funeral Director Licensing Statutes Harm the Public and Violate the Constitution*, 57 WAKE FOREST L. REV. 829, 832 (2022).

12. See Solley, *supra* note 11, at 832–33 (noting that Colorado is the only state that does not require funeral directors to obtain a license). In May of 2024, Colorado enacted a new law requiring the licensing of funeral directors in the state. COLO. REV. STAT. § 12-135-501 (2024). This mandate becomes effective on January 1, 2027. *Id.*

13. Solley, *supra* note 11, at 833.

14. *Id.*; Cathles et al., *supra* note 5, at 688–89.

15. Cathles et al., *supra* note 5, at 689.

16. *Id.*; Solley, *supra* note 11, at 833.

17. Cathles et al., *supra* note 5, at 692–94.

18. *Id.* at 694; Hope M. Babcock, *The High Environmental Cost of Dying and What If Anything Can Be Done About It*, 40 VA. ENV’T L.J. 152, 154–55 (2022).

19. Marsh, *supra* note 3, at 18–19.

20. Cathles et al., *supra* note 5, at 701.

21. *Id.* at 690–91.

22. See, e.g., Frame, *supra* note 7; Lindsay Marchello, *Is the Funeral Business a Dying Industry?*, CAROLINA J. (Oct. 31, 2017), <https://perma.cc/7BBN-WFND>; An Ailing Industry the Expected Shortage of Morticians Puts Those in the

for decades operated as family businesses, generally passed down father to son.²³ This is rapidly changing. Today, women make up more than 75 percent of new student enrollees, and only 10 percent of new student enrollees have a parent working in the funeral industry.²⁴ Breaking into the industry as a newcomer—especially in ready-to-embalm states that require all of the tools and supplies for embalming and hours of apprenticing—can cost thousands or tens of thousands of dollars.²⁵ Moreover, overhead costs of running a funeral home are high, while the number of people opting for cremations and cheaper funerals—instead of full-service funerals and burials—is soaring, leading to many funeral establishments “struggl[ing] to break even, let alone profit.”²⁶

Statistically, even with so many open jobs in funeral service, many of these newcomers—for financial, educational, or emotional reasons—will end up dropping out of the funeral industry either before graduating or a short time after they begin working in the field, making it difficult for the many funeral directors who are of retirement age to transition out.²⁷ There are more jobs in the funeral industry than there are licensed practitioners to fill them.²⁸ With so many current practitioners preparing to leave,²⁹ and demographics in the United States leading to higher total deaths every year, this licensing requirement must be relaxed or changed altogether.

B. The current licensing regime harms practitioners and consumers.

The current occupational licensing regime makes it more difficult for newcomers to enter a field. It also hurts consumers.³⁰ The aforementioned embalming requirement is an example of a state licensing requirement that prohibits entrance and innovation in the

Funeral Business on Crisis Alert, CHI. TRIB. (Aug. 20, 2021), <https://perma.cc/U598-4V7V>.

23. Marsh, *supra* note 3, at 15 n.66; Frame, *supra* note 7.

24. *Maybe the Word Is Getting Out . . . It's Honorable and Rewarding*, FUNERAL DIR. DAILY (May 25, 2023), <https://perma.cc/B5XY-U8C6>.

25. Marsh, *supra* note 3, at 20–21; Frame, *supra* note 7.

26. Marsh, *supra* note 3, at 14; Marchello, *supra* note 22 (“While people may be spending less at the funeral home, Marsh says the cost of entering the funeral service industry hasn’t changed in decades.”).

27. *Lack of Work-Life Balance May Cause Headaches at the Funeral Home*, FUNERAL DIR. DAILY (June 8, 2023), <https://perma.cc/D83V-4YVB>.

28. Solley, *supra* note 11, at 854.

29. See Frame, *supra* note 7.

30. Rebecca Haw Allensworth, *Foxes at the Henhouse: Occupational Licensing Boards Up Close*, 105 CALIF. L. REV. 1567, 1569 (2017) (“Their power to raise price, to create service scarcity, and to limit gainful employment is apparent only in the aggregate: together, they cost American consumers an estimated \$116 billion dollars a year.”).

funeral services industry.³¹ As represented by the green death industry's rapid growth, many consumers are no longer interested in embalming for themselves.³²

A requirement that all licensed funeral *directors* spend years studying and apprenticing in embalming practices, or for all licensed funeral *homes* to be equipped with expensive embalming equipment, when embalming as a practice is rapidly declining, is simply unprofitable.³³ This is especially true when the average annual salary for funeral directors is only roughly \$50,000.³⁴ “The traditional business models used in the funeral industry no longer align with consumer demand, and operators are scrambling to compete in the modern environment.”³⁵

Over-restrictive licensing not only creates a poor, slow to evolve business model, but also hinders competition in the market and prohibits a diversity of services.³⁶ Extremely broad categorizations included in the licensing statutes can have the effect of forcing consumers to purchase most or all funeral merchandise, such as coffins and urns, solely from funeral homes, despite cheaper alternatives readily available online.³⁷ There is currently a circuit split on whether non-funeral directors can actually produce and sell funeral merchandise.³⁸ As such, occupational licensing regimes can create a severely insular market.³⁹

This insularity affects prices for services as well as goods. Even though, as mentioned, humans have cared for their dead individually and at home for centuries, modern licensing regimes have made it

31. Marsh, *supra* note 3, at 26.

32. *Id.*; Solley, *supra* note 11, at 857; *see also* Tanya D. Marsh & Quincey J. Pyatt, *Maybe It's Time to Let the Old Ways Die: New Data on Consumer Preferences in Death Care*, 59 WAKE FOREST L. REV. 909, 916 (2024).

33. *See* Marsh, *supra* note 3, at 19–21.

34. Marchello, *supra* note 22.

35. *How to Win in the Modern Funeral Industry*, GLOB. BRONZE (Aug. 10, 2016), <https://perma.cc/F5VB-LTVL>.

36. Marchello, *supra* note 22.

37. Solley, *supra* note 11, at 841–42, 844; *How to Win in the Modern Funeral Industry*, *supra* note 35.

38. Solley, *supra* note 11, at 841–47 (summarizing the circuit split). In *Craigmiles v. Giles*, the Sixth Circuit found no rational connection in requiring all “who sell funeral merchandise to be licensed funeral directors.” 312 F.3d 220, 225 (6th Cir. 2002). In *Powers v. Harris*, the Tenth Circuit held there was a rational basis on the grounds that the licensing protocol was not “wholly irrelevant” to consumer protection due to the necessity of protecting at-need casket buyers. 379 F.3d 1208, 1215–16 (10th Cir. 2004). In *St. Joseph Abbey v. Castille*, the Fifth Circuit determined there was neither a public health argument nor a consumer protection argument that warranted requiring a funeral director's license in order to sell caskets. 712 F.3d 215, 222–23 (5th Cir. 2013).

39. Solley, *supra* note 11, at 841, 844–46.

extremely difficult to hold funerals at home today.⁴⁰ Many states actively criminalize “the practice of funeral directing” without a license; however, they often include in the definition of “funeral directing” a multitude of simple actions involving care for the dead body.⁴¹

Individuals without this license can face misdemeanor charges, fines, or even jail time for actions like washing, preparing, or combing the hair of a deceased person, or preserving their body with ice packs to extend the time of a home vigil period.⁴² Though such punishments are rarely enforced,⁴³ they can deter or intimidate people from engaging in such practices. Death doulas, who provide “emotional, spiritual, and physical support” to dying people and their families and guide them through the process of dying at home, are in danger of violating the licensing statutes of many states.⁴⁴

Moreover, occupational licensing boards, including most state funeral boards, are almost entirely self-regulating. Over time this lack of oversight can lead to “professional self-dealing.”⁴⁵ Recently, in *North Carolina Board of Dental Examiners v. FTC*,⁴⁶ the Supreme Court of the United States held that state boards, where “a controlling number of decision makers are active market participants in the occupation the board regulates,” must have active state supervision or else face antitrust litigation.⁴⁷ Despite this case involving a state dental board, the ruling will be felt in every profession that relies on occupational licensing.⁴⁸ State funeral boards should begin to heed the Supreme Court’s warning and start to dismantle the current over-restrictive licensing regime.

Easing the path for new workers into the funeral services industry would be a positive step for the industry and its consumers alike. But deregulating the licensing structure of the funeral services industry does not mean deregulating every aspect of the industry.

40. See, e.g., MO. REV. STAT. § 333.021 (2024); NEB. REV. STAT. § 71-605 (2024); OKLA. STAT. tit. 59, § 396.3a (2024).

41. See, e.g., MO. REV. STAT. § 333.021; NEB. REV. STAT. § 71-605; OKLA. STAT. tit. 59, § 396.3a.

42. See, e.g., MO. REV. STAT. § 333.261; NEB. REV. STAT. §§ 38-1423, -1118; OKLA. STAT. tit. 59, § 396.12d.

43. See AMY HOLLEMAN, S.C. DEP’T OF LAB., LICENSING, & REGUL., THE FUNERAL HOME INSPECTION PROCESS IN SOUTH CAROLINA: IS IT ADEQUATE, ACCURATE, AND IN COMPLIANCE WITH THE PRACTICE ACT? 3 (2019) (“[T]here is . . . little to no action taken when an inspection uncovers violations.”).

44. Solley, *supra* note 11, at 833, 839.

45. Allensworth, *supra* note 30, at 1570.

46. 574 U.S. 494 (2015).

47. *Id.* at 511–12; Allensworth, *supra* note 30, at 1570–71 (“Because few states even arguably supervise their boards, and because, as my research reveals, ‘active market participants’ control almost every board, states are confronting a serious threat to their coffers and to the way they regulate millions of workers.”).

48. Allensworth, *supra* note 30, at 1571.

There are actual public health and consumer protection concerns in all areas of funeral practice, and those demand more oversight, not less. However, if the funeral industry plans to die on the hill of embalming, there will likely be no one around to care for them when they do. Part II implores states to flip the system entirely with more inspection and regulation on actual practices, instead of over-restrictive barriers to entry in schooling and licensing.

II. INSPECTING FUNERAL ESTABLISHMENTS SHOULD BE THE NORM

In 2023, a Colorado funeral home made national news after close to 200 dead bodies were found stacked in piles around the property.⁴⁹ Some of the deceased had been at the home since 2019—never cremated or buried.⁵⁰ In some cases, people received ashes that were not actually their loved ones.⁵¹ Large publications like *The Guardian* were quick to point out that Colorado is the only state without a state board to oversee funeral practitioners, stating, “It exposed the particularly weak oversight Colorado has over its funeral homes—the state does not require routine inspections or minimum requirements for operators.”⁵² In fact, Jon Hallford, who operated the home with his wife, was a licensed funeral director and embalmer prior to opening their new “green” funeral home, and they had worked in the industry for years.⁵³ An extra thirty hours of embalming practice would not have prevented the catastrophe in Colorado; however, regular state inspections would have.

While state funeral boards may create minimum standards that all funeral establishments must abide by in order to remain operational, there is little enforcement.⁵⁴ Rather than initiating proceedings against monks building affordable caskets by hand after Hurricane Katrina as a violation of the state licensing restrictions—yes, that did happen⁵⁵—state funeral boards should implement regular inspections of the homes under their watch.

49. Ramon Antonio Vargas, *How Couple’s Arrest Revealed Terrible Secret of Colorado Funeral Home*, GUARDIAN (Nov. 12, 2023), <https://www.theguardian.com/us-news/2023/nov/12/colorado-funeral-home-decaying-bodies-couple-arrested>.

50. *Id.*

51. *Id.*

52. *Id.*

53. Audrey Jensen, *Green Funeral Home Opens in Southern Colorado*, COLO. SPRINGS BUS. J. (Sept. 22, 2017), https://issuu.com/csbj01/docs/csbj_0922_digital. Jon’s “green” funeral home still offered all of the traditional merchandise and services of a traditional funeral home, including cremation and embalming. *Id.*

54. See HOLLEMAN, *supra* note 43, at 2–3.

55. Solley, *supra* note 11, at 845–46; see also David G. Savage, *Monks in Louisiana Win Right to Sell Handcrafted Caskets*, L.A. TIMES (Oct. 19, 2013), <https://www.latimes.com/nation/la-xpm-2013-oct-19-la-na-court-caskets-20131020-story.html>.

As an example, in 2019, the South Carolina Department of Labor, Licensing and Regulation (the Department) performed an in-depth analysis of its state funeral board inspectors.⁵⁶ After reviewing 578 funeral establishments in the state, the Department found “there is little to no documentation of what they do when they inspect establishments, little to no action taken when an inspection uncovers violations, and no real guidance from the Board on what constitutes a passing inspection or a failed inspection.”⁵⁷ Further, the inspections passing criteria almost entirely depended on the person conducting the inspection, and, when funeral establishments did fail an inspection, “there was no procedure in place for the Board to be able to act.”⁵⁸

If state funeral boards are unable to enforce the mandatory requirements they articulate for funeral establishments, then inspections become superfluous. Flipping the system as it stands would help eliminate the barriers to entering the profession, while encouraging funeral board action in areas where harm is most likely. Part III explores the current state of the death care industry—one that is green and growing.

III. LEGALIZING A GREEN DEATH, OR RATHER, RE-LEGITIMIZING A GREEN DEATH

The choices for final disposition in the United States are often a fork in the road for the grieving family: cremation or conventional American burial.⁵⁹ While the choice of a simple, or “direct” cremation is less expensive, the commercialized traditional American funeral remains incredibly expensive for the consumer, as well as the environment.⁶⁰ In 2021, the median cost of a funeral was around \$7,000 for a funeral ending in cremation, or \$8,000 for a funeral ending in burial, according to the National Funeral Directors Association (NFDA).⁶¹ Notably, this estimate does not account for the various cemetery costs included in a traditional burial, such as a plot, a vault, a headstone, or a casket.⁶² In total, the U.S. funeral service industry reaps approximately \$20.7 billion every year.⁶³

56. HOLLEMAN, *supra* note 43, at 3.

57. *Id.*

58. *Id.* at 6.

59. See Katie M. Alfus, *Better Homes and Scattered Gardens: Why Iowa Should Legalize “Human Composting” as a Method of Final Disposition*, 106 IOWA L. REV. 325, 328 (2020) (“A conventional burial is commonly understood as the placement of a corpse in a casket, six feet underground.”); see also Marsh, *supra* note 1, at 124 (noting that 95 percent of Americans are either buried or cremated).

60. See Marsh, *supra* note 1, at 127.

61. Kristen Rogers, *How Human Composting Could Reduce Death’s Carbon Footprint*, CNN (Nov. 7, 2022), <https://perma.cc/XLS3-8NJ7>.

62. *Id.*

63. Marchello, *supra* note 22.

Further, both traditional burial and cremation have “a profound environmental impact.”⁶⁴ Cemeteries are a resting place for more than just bodies, as a variety of metals and chemicals, like the formaldehyde commonly used in embalming, leach into the ground as the bodies decay, poisoning the surrounding earth.⁶⁵ Likewise, cremation requires an abundance of energy, resulting “in millions of tons of annual carbon dioxide emissions.”⁶⁶ Importantly, these are not the only options for consumers seeking a “good death,” as a number of green death alternatives are gaining traction.⁶⁷

Unfortunately, legal barriers make it difficult for every American to access green funerary options. As discussed below, the growing interest in funeral options with substantially less environmental impacts often clashes with the reality of outdated funeral and cemetery laws. Legalization of green death options allows consumers more freedom of choice, but it also opens up these options to more government regulation. This is not necessarily a bad thing, as proper regulation of green funeral innovations would likely assuage opponents of these practices.

A. *Green death is gaining momentum.*

1. *Alkaline Hydrolysis*

There are a variety of green death options beyond fire-based cremation or traditional burial. These options are becoming available state by state as regulations evolve. Alkaline hydrolysis,⁶⁸ also known as “water cremation” or “aquamation,” refers to a process in which a human corpse is liquified through the addition of alkaline and water, combined with pressure and heat, breaking down the body into effluent and bone fragments.⁶⁹ This can take anywhere from three to sixteen hours.⁷⁰ The bone fragments, similar to ashes from a cremation, are returned to the family, while the small amount of effluent, or liquid waste, is sterilized by the process and contains no

64. Marsh, *supra* note 1, at 126.

65. Babcock, *supra* note 18, at 154–55. (“[T]here are about 800,000 gallons of formaldehyde-based embalming fluids buried in U.S. cemeteries every year.”).

66. *Id.* at 155.

67. See Michael J. Coren, *Comparing Green Funeral Options, from Composting to Natural Burial to Water Cremation*, WASH. POST (Jan. 31, 2023), <https://www.washingtonpost.com/climate-environment/2023/01/31/green-funeral-options-cremation-burial/>; Rogers, *supra* note 61; *Natural Burial FAQ*, GREEN BURIAL COUNCIL (2024), <https://perma.cc/739Q-7A9W>.

68. See Marsh & Pyatt, *supra* note 32, at 930 (“Nearly half of our participants were willing to consider water cremation . . .”).

69. *Alkaline Hydrolysis*, CREMATION ASS’N N. AM. (2024), <https://perma.cc/6N86-YY9W>.

70. *Id.*

identifiable DNA traces before it is released into a public water system.⁷¹

Used since the nineteenth century to dispose of livestock carcasses, alkaline hydrolysis was adapted in the early 2000s for use on medical research cadavers.⁷² However, this process has not been without critique—some wildly, and willfully, misinformed.⁷³ Adversaries of alkaline hydrolysis have compared it to “flushing human remains down the drain”; that is, an undignified and inhumane way to treat the dead.⁷⁴ Others believe the process may be unsanitary, as the wastewater of these facilities will ultimately be combined with the rest of the city’s wastewater.⁷⁵ Religious opposition to water cremation has echoed objections to embalming in the late 1800s, and cremation in the mid-1900s—that these processes are sacrilegious, or offensive to Christian sensibilities.⁷⁶

Yet, just as increasing public demand paved the way for acceptance of embalming and fire-based cremation in the American psyche, public awareness and acceptance of water cremation is growing.⁷⁷ For the environmentally conscious, it is notable that alkaline hydrolysis consumes five times less energy than traditional fire-based cremation, and greenhouse gas emissions are similarly negligible.⁷⁸ With roughly 54 percent of Americans contemplating greener death options in 2018, it is unsurprising that alkaline hydrolysis is gaining traction.⁷⁹ As of July 2023, twenty-eight states legalized alkaline hydrolysis, with six more contemplating bills to legalize it in the years to come.⁸⁰ Despite growing legalization, water cremation is still not widely available and can be more expensive than

71. *Alkaline Hydrolysis, or Liquid Cremation, Does Not Mean Human Remains Are Fed to the Living*, REUTERS (Mar. 30, 2023), <https://www.reuters.com/article/fact-check/alkaline-hydrolysis-or-liquid-cremation-does-not-mean-human-remains-are-fed-t-idUSL1N3621X5>.

72. Kent Hansen, *Choosing To Be Flushed Away: A National Background on Alkaline Hydrolysis and What Texas Should Know About Regulating “Liquid Cremation,”* 5 EST. PLAN. & CMTY. PROP. L.J. 145, 152 (2012).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.* at 152–53; Marsh, *supra* note 1, at 127.

77. *Alkaline Hydrolysis*, *supra* note 69.

78. Valerie Keene, *Water Cremation and Aquamation Laws in Your State*, NOLO (Aug. 13, 2024), <https://perma.cc/D5MU-SCR5>.

79. *See* Babcock, *supra* note 18, at 158; *see also* Rogers, *supra* note 61 (“A recent National Funeral Directors Association survey that found 60.5% of respondents were interested in exploring ‘green’ funeral options because of potential environmental benefits, cost savings or other reasons.”).

80. Andrew McGee, *Where Is Aquamation Legal? What States Have Legalized Aquamation or Bio Cremation?*, US FUNERALS ONLINE (July 8, 2023), <https://perma.cc/MA52-U8DA>.

traditional fire-based cremation.⁸¹ We can reasonably expect wider access to bring down these costs.

2. *Natural Organic Reduction*

Natural organic reduction,⁸² also known as human composting, is currently less popular than alkaline hydrolysis but represents another potentially transformative green alternative to traditional American final disposition options.⁸³ This process involves placing a human body in a special receptacle, along with a mixture of woodchips, straw, and other natural organic materials.⁸⁴ The receptacle “heats up from active microbes” that begin to break down the organic material.⁸⁵ After a month or more of allowing oxygen into the vessel, rotating the receptacle, grinding down any remaining bone fragments, and curing the remaining soil, families are presented with roughly a cubic yard of nutrient-rich compost.⁸⁶

Natural organic reduction—birthed from the overarching principles of natural and green burials—was originally developed by Katrina Spade, who founded Recompose in Washington.⁸⁷ In 2019, Washington became the first state to legalize human composting. As of June 2024, eleven other states have followed their lead.⁸⁸ According to Recompose, thirteen more states have introduced legislation to legalize the process in the years to come.⁸⁹

Like each of the aforementioned death care innovations, natural organic reduction has been stigmatized.⁹⁰ Opponents have argued that using human compost in gardens is akin to cannibalizing loved

81. Allie Yang, *Rest in . . . Compost? These ‘Green Funerals’ Offer an Eco-Friendly Afterlife*, NAT’L GEOGRAPHIC (Feb. 24, 2023), <https://perma.cc/WA2U-R296>.

82. See Marsh & Pyatt, *supra* note 32, at 933 (noting that 48.8 percent of surveyed respondents indicated that they would consider natural organic reduction).

83. Katie M. Alfus, Note, *Better Homes and Scattered Gardens: Why Iowa Should Legalize “Human Composting” as a Method of Final Disposition*, 106 IOWA L. REV. 325, 342–43 (2020).

84. *Id.*, at 342.

85. Yang, *supra* note 81.

86. Sara Marsden-Ille, *Human Composting as a New Death Care Alternative: A Guide to NOR*, US FUNERALS ONLINE (May 11, 2024), <https://perma.cc/4494-N34R>; Yang, *supra* note 81.

87. *Our Model*, RECOMPOSE (2024), <https://perma.cc/F8WJ-5XGD>; Yang, *supra* note 81.

88. *Human Composting Advocacy*, RECOMPOSE (2024), <https://perma.cc/C652-K2G3>.

89. *Id.*

90. Alfus, *supra* note 83, at 360.

ones, is unsanitary, or poses a potential public health hazard.⁹¹ There is no evidence for this argument. A similar process for composting livestock carcasses is already in use on farms, where remains are treated with heat to kill off any potential contagions left behind.⁹²

Alkaline hydrolysis and natural organic reduction join fire-based cremation in speeding up the process of destruction of the dead human body. It is worth noting that conventional American burials, taking place in perpetual care cemeteries, attempt to ward off a swift destruction of the corpse. The bodies of human beings are not permanent. They grow, age, die, and disappear. Many of the oldest cemeteries in the United States are, in some sense, ‘empty’: the bodies placed in them have returned to the Earth, leaving behind nothing but soil.⁹³ Innovations like human composting exist to accelerate this process.

3. *Green Burial*

Green burial follows an entirely different path than the green death alternatives discussed above and, in many ways, is the oldest disposition available.⁹⁴ A green burial is the simple act of laying an un-embalmed body to rest directly in the ground, sometimes in a biodegradable shroud or in a plain wooden box.⁹⁵ Unlike alkaline hydrolysis or natural organic reduction, green or simple burial is not a revolution of final disposition practices, but rather, a return.⁹⁶ Most burials were green burials until the advent of embalming and other industrial funeral practices in the mid-nineteenth century, and many Jewish, Muslim, and Native communities have always followed green burial practices.⁹⁷

Over half of Americans are contemplating greener death options; certainly, many of us have heard a relative opine, “Just put me in a hole in the ground and be done with it.”⁹⁸ Beyond its sheer simplicity of practice, green burial is less expensive than a traditional American burial.⁹⁹ With no embalming, vaults, or caskets, the cost can decrease by thousands of dollars.¹⁰⁰ Further, simple, direct burials do not

91. Richard Read, *Washington State Braces for Eco-friendly ‘Human Composting,’* L.A. TIMES (May 13, 2019), <https://www.latimes.com/nation/la-na-human-composting-washington-green-burial-inslee-20190513-story.html>.

92. Alfus, *supra* note 83, at 352.

93. See Melecki, *supra* note 2.

94. Marsh & Pyatt, *supra* note 32, at 918 (noting that 57.7 percent of respondents surveyed would consider a green burial).

95. Yang, *supra* note 81.

96. *Green Burial & Other Environmentally Friendly Choices*, FUNERAL CONSUMERS ALL. (2024), <https://perma.cc/EWZ3-V6UX>.

97. *Id.*; Yang, *supra* note 81.

98. See Babcock, *supra* note 18, at 158; see also Rogers, *supra* note 61.

99. *Green Burial & Other Environmentally Friendly Choices*, *supra* note 96.

100. *Id.*

contribute to the “over 30 million board feet of hardwood and 90,000 tons of steel in caskets, 17,000 tons of steel and copper in vaults, and 1.6 million tons of reinforced concrete in vaults” used in the traditional American burial, nor does it contribute to the roughly “5.3 million gallons of embalming fluid . . . used every year.”¹⁰¹

Another factor separating green burial from the green options above is that green burial is technically legal in all fifty states.¹⁰² No states require a body to be embalmed prior to burial; however, there are laws and regulations that may require a body to be placed in a biodegradable container, like a shroud.¹⁰³ Often, it is the cemetery itself that regulates the burial sites, requiring vaults or other grave liners and the use of coffins or caskets.¹⁰⁴

Largely due to the originators of the modern funeral industrial complex, there are misconceptions surrounding green burials. Embalming, vaults, and more, do not inherently make a body safer to go into the ground.¹⁰⁵ Contrary to common belief, placing a dead human being into the ground will not instantaneously poison your drinking water.¹⁰⁶ Except for a few rare cases, when a person dies, most viral or bacterial agents will die.¹⁰⁷ Further, green burials are still subject to the regulations concerning all burials—that bodies are placed at a certain depth and away from known water sources—in order to protect the water table and prevent animals from reaching the corpses.¹⁰⁸ It also begs the question: If a corpse were considered dangerous, should the 800,000 gallons of formaldehyde leached into the Earth through embalmed bodies every year be considered dangerous, as well?¹⁰⁹

B. The paradox of outright legalization.

Government regulation or intervention can “reinforce[] values and influence[] conduct” on a major scale.¹¹⁰ Permitting alternative disposition methods not only provides options to consumers, but also alerts industry providers that change is imminent.¹¹¹ This allows

101. *Id.*

102. *What States Allow Natural Burial or Green Burial?*, RETURN HOME (May 16, 2023), <https://perma.cc/6DYB-FQZG>.

103. *Id.*

104. *What It Means to Be Green*, NAT'L FUNERAL DIRS. ASS'N (2024), <https://perma.cc/M8ZT-94NG>.

105. *See Natural Burial FAQ*, *supra* note 67.

106. *Id.*

107. *Technical Notes on Drinking-Water, Sanitation and Hygiene in Emergencies*, WORLD HEALTH ORG. (2013), <https://perma.cc/FXG7-WLYK>; *Natural Burial FAQ*, *supra* note 67.

108. *Natural Burial FAQ*, *supra* note 67.

109. Melecki, *supra* note 2.

110. Michael H. Shapiro, *Regulation as Language: Communicating Values by Altering the Contingencies of Choice*, 55 U. PITT. L. REV. 681, 684 (1994).

111. *Id.* at 690.

funeral service providers to adapt and better serve their consumer base.¹¹² Currently, each state individually regulates the disposition of human remains with very little federal law on the topic.¹¹³ This creates a web of inconsistencies for death care providers, as each state's laws and regulations can vary substantially.¹¹⁴

Legalizing alkaline hydrolysis, natural organic reduction, or other innovative methods of disposition is not the same as mandating alternative disposition methods: All Americans will not suddenly be mandated to turn their remains to soil and nourish a local tree when they die.¹¹⁵ Legalization provides choice; it can also provide safety. Many of the concerns that detractors of green death options purport often are related to public health and safety.¹¹⁶ Widespread legalization may lead to more government involvement in aspects of the funeral service industry; however, that very involvement could assuage public health and safety concerns.

Further, legalization does not have to look like the federal government taking a massive hammer to state funerary laws. Recall, fire-based cremation was once an innovative method of disposition that became legalized over time until all fifty states ultimately permitted cremation's use.¹¹⁷ Each state legislature holds the power to give its people a choice—or a multitude of choices. The more knowledgeable that Americans become on green funeral alternatives—and the more green funeral alternatives are sought after and even demanded—the more states will legalize them.

CONCLUSION

Presently, the schooling and licensing regime for death care providers harms both practitioners and consumers, creating superfluous barriers to entry and a lack of choice for consumers. States must flip the current system, requiring more inspection and regulation of funeral establishments, rather than over-restrictive barriers to entry in schooling and licensing. Flipping the system encourages funeral boards to take corrective action in areas where

112. Aimee Sheetz, *A Call for the Legalization of Two Sustainable Means of Final Disposition in Ohio*, 71 CLEV. ST. L. REV. 915, 941 (2023) (“Making it clear in the legislation that these methods are available . . . will encourage funeral service providers to begin obtaining the necessary equipment and undergoing the training required so that they can offer these options to consumers.”).

113. Marsh, *supra* note 1, at 125.

114. Jacob Steele, Comment, *Watery Grave: One of the Death Care Industry's Greenest Options Is Still Illegal in Thirty-One States and That Needs to Change*, 11 ENV'T & EARTH L.J. 1, 3 (2021).

115. See Alfus, *supra* note 59, at 359; Daniela Fortino, *How the Mushroom Burial Suit Works and What Does It Cost*, EIRENE (Feb. 7, 2024), <https://perma.cc/CAG3-25JJ>.

116. Hansen, *supra* note 72, at 152; Read, *supra* note 91.

117. Melecki, *supra* note 2.

harm is most likely—everyday interaction with consumers and the dead body.

Further, states must legalize more green death options. Interest in green death options is only growing, as new and innovative methods of dispositions, like alkaline hydrolysis and natural organic reduction, are brought to market. Similarly, green burial marks a return to tradition, as people seek out inexpensive, environmentally neutral ways to return to the Earth. Consumers are ready for this death care revolution. Instead of repeating the same tired objections, it is time for the funeral industry to welcome green funeral alternatives. Broad legalization is inevitable. Funeral professionals should prepare to offer a variety of services—rather than contributing to a rift between consumers and practitioners.

The Reform era of the funeral industry is already upon us. The present structure involves redundant and excessive reliance on embalming and a combative attitude towards progress. These features are only harming the dying industry. Deregulating funeral licensing and embracing green death alternatives will allow the funeral industry to progress as a profession. Change will happen—the question is whether the funeral industry will acclimate and thrive, or entrench and deteriorate in the process.