

‘TIL DEATH DOULA-PART: THE UNAUTHORIZED  
PRACTICE OF CARING FOR THE DEAD AND DYING

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## INTRODUCTION

End-of-life doulas provide dying people and grieving families with advice and comfort as they navigate the complicated world of the funeral industry. Although these alternative funeral arrangements are beneficial, state governments around the country are trying to regulate and cease and desist them out of existence. So far, end-of-life doulas in Indiana and California have proven successful in keeping their businesses open against this effort to close them down, but the problem remains that statutory definitions of the practice of funeral services and hefty licensure requirements remain a barrier to end-of-life doulas' comforting work. This Essay considers the anticompetitive and likely unconstitutional statutes that make up the funeral service industry and proposes solutions that maintain public health while allowing end-of-life doulas to continue their businesses.

## I. A LEGAL ISSUE

In August 2023, the State of Indiana gave Lauren Richwine a cease and desist letter and an order to show cause.<sup>1</sup> Instead of the typical reasons for a cease and desist letter like harassment or defamation, the State of Indiana stated that Richwine was engaged in the unauthorized practice of funeral service and that she had to stop immediately.<sup>2</sup> One is probably wondering why the Office of the Indiana Attorney General and the Indiana State Board of Funeral and Cemetery Service would go to such great lengths to stop a small business owner's entire business model.

Richwine, according to the cease and desist letter, never held a funeral director license in Indiana.<sup>3</sup> However, she ran a business called Death Done Differently in Fort Wayne, Indiana, which, according to its website, is an "educational consulting organization and is in no way considered a funeral establishment."<sup>4</sup> Richwine works there as an end-of-life doula.<sup>5</sup> Although she is not a licensed funeral director, her website claims she has "received her training with the Earth Traditions Program" and has also volunteered with a hospice agency.<sup>6</sup> She is currently a member of the National

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1. Complaint for Declaratory and Injunctive Relief, Exhibit E, at 25, *Richwine v. Matuszak*, 707 F. Supp. 3d 782 (N.D. Ind. 2023) [hereinafter Complaint]; *Id.* Exhibit F, at 35.

2. *Id.* Exhibit E, at 29. According to Indiana Code § 25-15-8-24(b), an individual found guilty of the unlicensed practice of funeral service would be guilty of a Class B misdemeanor, which in Indiana is punishable by a minimum of 180 days in jail and up to \$1,000 in fines. IND. CODE § 35-50-3-3 (2024).

3. Complaint, *supra* note 1, Exhibit E, at 1.

4. *Disclaimer*, DEATH DONE DIFFERENTLY (2024), <https://perma.cc/XZ23-U2H6>.

5. *Id.*

6. *About Lauren*, DEATH DONE DIFFERENTLY (2024), <https://perma.cc/J635-2K4T>.

Association of Certified Death Midwives, the National End-of-Life Doula Alliance, the National Home Funeral Alliance, and the Order of the Good Death.<sup>7</sup>

The words “midwives” and “doulas” may draw images of people who are hired to support pregnant people and to advocate on their behalf throughout the birth of a child. This is not the job of an end-of-life doula (as the end-of-life part of the name may suggest). End-of-life doulas, according to the International End-of-Life Doula Association, “provide companionship, comfort, and guidance to those facing a terminal illness or death.”<sup>8</sup> Always sure to emphasize that their role is nonmedical, doulas offer resources to help the dying person and their family make decisions regarding the process of dying and disposing of the body in a supportive manner.<sup>9</sup> There are a number of ways that doulas serve their clients, including “provid[ing] the opportunity to speak openly and frankly about dying, discuss[ing] and support[ing] end-of-life care planning, assist[ing] with physical and practical care to ease the burden on caregivers, [and] guid[ing] people through the early stages of grieving.”<sup>10</sup>

Another word for an end-of-life doula, according to the Order of the Good Death, is a home funeral guide. Not all end-of-life doulas provide services for a home funeral, likely due to state regulations or differing business models, but the terms “end-of-life doula” and “home funeral guide” are typically used interchangeably. A home funeral guide, as the name suggests, guides a family through a home funeral (simple, right?). A home funeral is a modern attempt at reviving the old tradition of having the funeral take place in the home of the deceased instead of having the body immediately whisked away to a funeral home.<sup>11</sup> A home funeral guide is not legally permitted to hold a home funeral in any state, but they provide the types of support and expertise necessary to take as much logistical stress away from the family as possible so that they can properly grieve the deceased.<sup>12</sup>

Richwine and Death Done Differently provided a number of services for people close to death and their families. These services included full end-of-life planning (ranging from \$300 to \$500 and including “discussion of funeral options, body disposition, service choices, etc. and assistance with paperwork such as living will, DNR form, and healthcare power of attorney”), advance care planning (ranging from \$100 to \$300 and including “facilitation of conversation concerning desired levels of medical intervention”), facilitation of community death care (ranging from \$500 to \$1,000 and including

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7. *Id.*

8. *What Is a Doula?*, INELDA (2023), <https://perma.cc/J226-X5NZ>.

9. *Id.*

10. *Id.*

11. *What Is a Home Funeral?*, ORDER GOOD DEATH (2024), <https://perma.cc/DE4H-VZZV>.

12. *Id.*

“verbal guidance with loved ones under the direct supervision of a licensed funeral director for moving, bathing, dressing, and arrangement of the deceased”), visits (ranging from \$50 to \$80 per hour), vigils (ranging from \$50 to \$80 per hour), etc.<sup>13</sup>

It was these services that prompted the State of Indiana to send the cease and desist letter to Richwine.<sup>14</sup> Seeking a judge’s input on how to proceed in light of the cease and desist, Richwine filed a Complaint for Declaratory and Injunctive Relief in the United States District Court for the Northern District of Indiana.<sup>15</sup> Richwine filed in federal court because she intended to argue that the cease and desist letter was an infringement on her constitutional right to free speech under the First Amendment.<sup>16</sup> Richwine argued that she filled a space that funeral directors and medical professionals did not, but that the state’s interpretation of the law would not allow her to fill that space.<sup>17</sup> Specifically, Richwine bridged a gap between medical providers and funeral homes; she could help the dying and their families deal with the heavy burden of dying before it happens, and she could do so with the “detachment that comes with somebody who is not herself selling expensive goods and services like a casket or embalming.”<sup>18</sup>

Fortunately for Richwine, Chief Judge Holly Brady of the United States District Court for the Northern District of Indiana granted Richwine’s request for injunctive relief on the grounds that she would likely succeed on her First Amendment argument.<sup>19</sup> While a win for Richwine, the problem remains that almost all states deal with the question of unauthorized practice of funeral service and funeral director licensing differently. With slightly different facts, like different services provided by the end-of-life doula, and slightly different laws, this legal issue of end-of-life doulas may continue to cause rifts in federal circuits and state courts around the country.

## II. REPRESENTATIVE STATES

The disposition of human remains is largely a states’ rights issue. Each state has different sets of laws dictating what a funeral director is, what the authorized practice of funeral service looks like, and what the requirements are to receive a funeral director license and provide

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13. *Pricing*, DEATH DONE DIFFERENTLY (2024), <https://perma.cc/HH9-C37A>.

14. *See* Complaint, *supra* note 1, Exhibit E, at 3–4 (referring to the services listed in the pricing tab as “funeral services,” which is the subject of the cease and desist).

15. Complaint, *supra* note 1, at 1.

16. *Id.* at 2. In fact, Richwine argued that the State’s interpretation of the law was so broad that it imposed a complete gag on discussing death without a funeral license.

17. *See id.* at 5.

18. *Id.*

19. *Richwine v. Matuszak*, 707 F. Supp. 3d 782, 803–06, 808 (N.D. Ind. 2023).

funeral services. Many of these laws were written and have been updated, specifically with the types of services that funeral directors offer in mind.<sup>20</sup> This Essay discusses several representative states to provide an understanding of the variation around the country in how the practice of funeral service is defined and the licensing requirements for funeral directors. Those states include Indiana, California, New York, Texas, and Georgia.

A. *The definition of the “practice of funeral service” in different states varies if it even exists.*

1. *Indiana*

In Indiana, the “practice of funeral service” is defined as follows:

(1) the application of the principles, methods, and techniques of mortuary science to the delivery of funeral services; (2) the counseling of individuals concerning methods and alternatives for the final disposition of human remains; (3) the prevention of the spread of infectious and contagious disease from human remains; and (4) compliance, in the delivery of funeral merchandise and services, with laws relating to health, public safety, and the environment.<sup>21</sup>

End-of-life doulas like Richwine are likely to run afoul of part two of the definition of the practice of funeral service because a large part of their role is the counseling of individuals regarding the disposition of human remains. With the preliminary injunction, some precedent exists to support the idea that this part of the definition (at least in a case with similar facts to that of Richwine’s) can be practiced without a funeral director’s license.

2. *California*

California, unlike Indiana, does not define the “practice of funeral service,” but it does define which activities only licensed professionals may perform. Most of these activities include pricing disclaimers, requirements for entering into contracts with the people planning for a funeral, and the different legalized ways of disposing of remains in California.<sup>22</sup> The absence of a clear definition of “the practice of

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20. During the birth of the modern funeral industry age, funeral directors wanted to be treated as professionals. So, the funeral directors lobbied state legislatures to have the definition of “practice of funeral service” center around “the preparation of human remains for final disposition and to establish educational and training standards centered around the new technology of embalming.” See 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, 7 (2018).

21. IND. CODE § 25-15-2-22 (2024).

22. See CAL. BUS. & PROF. CODE §§ 7600, 7685 (2022).

funeral service” could lead to uncertainty on how end-of-life doulas should operate in the state.

Indeed, this uncertainty came into full view when the California Cemetery and Funeral Board told two end-of-life doulas that they were breaking the law by acting as a funeral establishment without a license.<sup>23</sup> The Institute for Justice, a public interest law firm, took up their case and sued the State of California in federal court.<sup>24</sup> The judge found that the State was restricting the doulas’ free speech and economic liberty rights and allowed them to continue operations.<sup>25</sup>

### 3. *New York*

New York uses two different terms to define aspects of death care: “funeral directing” and “undertaking.” “Funeral directing” is defined as follows:

[T]he care and disposal of the body of a deceased person and/or the preserving, disinfecting and preparing by embalming or otherwise, the body of a deceased person for funeral services, transportation, burial or cremation; and/or funeral directing or embalming as presently known whether under these titles or designations or otherwise.<sup>26</sup>

“Undertaking” is defined as “the care, disposal, transportation, burial or cremation by any means other than embalming of the body of a deceased person.”<sup>27</sup> As reflected by these two definitions, the State of New York understands that the funeral industry has trended away from embalming; still, the state lacks an avenue for end-of-life doulas to operate without a court order like the ones detailed so far.

### 4. *Texas*

In Texas, funeral directing is defined as “acts associated with or arranging for the disposition of a dead human body, performed by a person for compensation, from the time of first call until: (A) inurnment, interment, or entombment services are complete; or (B) the body is permanently transported out of this state.”<sup>28</sup> Funeral directors are required to have a license in order to perform these services.<sup>29</sup> Texas’s explicit definition sets clear limits on when “funeral directing” begins and ends. This clarity enables end-of-life

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23. *Full Circle of Living & Dying v. Sanchez*, No. 20-cv-01306, 2023 WL 373681, at \*4–5 (E.D. Cal. Jan. 24, 2023).

24. *See Lawsuit Challenges Ca. Funeral Directors’ Monopoly on End-of-Life Care*, INST. FOR JUST. (2024), <https://perma.cc/3BRF-STYC>.

25. *Full Circle*, 2023 WL 373681, at \*18.

26. N.Y. PUB. HEALTH LAW § 3400(d) (2024).

27. *Id.* § 3400(e).

28. TEX. OCC. CODE ANN. § 651.001(7) (2023).

29. *Id.* § 651.251(a).

doulas to understand and follow the law without the need for exorbitant licensing requirements.

### 5. *Georgia*

In Georgia, “funeral service’ means any service relating to the transportation, embalming, cremation, and interment of a deceased human being.”<sup>30</sup> Georgia has the shortest of all of the definitions. This definition does not put a time frame on when the practice of funeral service starts, and it does not go into great detail about the types of actions that are reserved only to funeral directors or the duties that funeral directors have to clients.<sup>31</sup> Instead, it is so broad that anyone giving any advice about the disposition of human remains may run afoul of this definition of the practice of funeral service.

*B. The licensure requirements for funeral directors around the country range from restrictive and expensive to simple and cost-efficient.*

#### 1. *Indiana*

To qualify for a funeral director license in Indiana, an applicant must meet the following requirements:

- (1) be at least eighteen years old;
- (2) prove that he or she has not been convicted of certain crimes;
- (3) have a high school diploma;
- (4) complete the requisite secondary education;
- (5) pass the funeral director license examination;
- (6) work for one continuous year under the direct supervision of a licensed funeral director; and
- (7) pay the required funeral director licensing fees.<sup>32</sup>

Before even sitting for the exam, the applicant for a funeral director’s license must have successfully completed either thirty semester hours of college work and four academic quarters (or the equivalent) in a mortuary science program or a twenty-one-month program in a mortuary science department.<sup>33</sup>

#### 2. *California*

In contrast to Indiana, California’s licensure requirements are more permissive. To qualify for a funeral director’s license in California,

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30. GA. CODE ANN. § 10-14-3(17) (2024).

31. *Id.*

32. IND. CODE § 25-15-4-3 (2024).

33. *Id.* § 25-15-4-3(4)(A), (B).

[applicants must] be at least 18 years of age, possess an associate of arts or science degree, or the equivalent, or a higher level of education as recognized by the Western Association of Colleges and Universities, or any other nationally recognized accrediting body of colleges and universities, and shall not have committed acts or crimes constituting grounds for denial of licensure.<sup>34</sup>

In addition to these requirements, the applicant must pass an examination that tests on the following matters:

- (a) The signs of death.
- (b) The manner by which death may be determined.
- (c) The laws governing the preparation, burial and disposal of human remains, and the shipment of bodies dying from infectious or contagious diseases.
- (d) Local health and sanitary ordinances and regulations relating to funeral directing and embalming.<sup>35</sup>

Interestingly, California is the only state that does not require an apprenticeship to become a funeral director.<sup>36</sup> This is likely the most time and cost-efficient of the representative states in this Essay and likely in the country.

### 3. *New York*

To be licensed as a funeral director in New York, the applicant must (1) submit to the State of New York evidence of good moral character, (2) be a citizen or a permanent resident of the United States, (3) complete a collegiate funeral science program consisting of at least sixty hours of credits (or the equivalent), and (4) register with the state as a funeral sciences student (and pay a fee of \$50).<sup>37</sup>

Following these requirements, the applicant must pay a fee of \$40 to take an examination prepared by the State to determine their

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34. CAL. BUS. & PROF. CODE § 7619 (2022).

35. *Id.* § 7622.

36. Marsh, *supra* note 20, at 19. Colorado, until recently, did not require funeral directors to be licensed and instead offered a voluntary certification. However, Colorado recently passed Senate Bill 24-173, which adds apprenticeship to the requirements for licensure. This law comes on the heels of a gruesome case in the state involving a funeral home that neglected over 200 bodies in their care. See Wanya Reese & Brandon Richard, *Polis Signs Legislation to Better Regulate Colorado's Funeral Home Industry*, DENVER 7 NEWS (May 25, 2025), <https://perma.cc/4VAD-V3BU>; Emily Olson, *Nearly 200 Bodies Recovered from a Colorado Funeral Home Accused of Improper Storage*, NPR (Oct. 19, 2023), <https://perma.cc/L68Z-7ADF>.

37. N.Y. PUB. HEALTH LAW § 3421(1)–(2) (2024). Students must register “upon entering an approved institution . . . for the purpose of beginning . . . funeral service study.” *Id.* § 3421(2)(c). However, “[d]elay in registering . . . may be excused, in the discretion of the commissioner.” *Id.* § 3421(3).



knowledge of the funeral industry.<sup>38</sup> The examination may test on a litany of subjects:

- (1) The law;
- (2) the State Sanitary Code;
- (3) rules and regulations of the commissioner;
- (4) tests for death;
- (5) hygiene and sanitary science,
- (6) disinfection;
- (7) mortuary law;
- (8) pathology;
- (9) bacteriology;
- (10) anatomy;
- (11) applied chemistry;
- (12) practical embalming;
- (13) restorative art;
- (14) funeral management;
- (15) care and preparation of the human dead for final disposition;
- (16) ethics;
- (17) accounting;
- (18) psychology;
- (19) business English; and
- (20) speech.<sup>39</sup>

After passing this examination, the applicant must then pay a fee of \$125.<sup>40</sup> After this, the applicant is required to “serve[] a one year period as a registered resident in a manner satisfactory to the department.”<sup>41</sup> Finally, after completing this one-year residency, the applicant must pass a second examination on the “New York state laws, rules and regulations relating to funeral directing.”<sup>42</sup> New York’s requirements to apply to be a funeral director are among some of the costliest and time-intensive requirements in the country.

#### 4. *Texas*

As a dual license state, Texas separately licenses funeral directors and embalmers.<sup>43</sup> An applicant for a funeral director’s

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38. *Id.* § 3421(2).

39. N.Y. COMP. CODES R. & REGS. tit. 10, § 77.2(e) (2024).

40. N.Y. PUB. HEALTH LAW § 3421(4)(b).

41. *Id.* § 3421(4)(c).

42. *Id.* § 3421(4)(d).

43. *See* TEX. OCC. CODE ANN. § 651.251(a) (2023) (“Funeral directing may be performed only by a funeral director or a provisional license holder or qualified mortuary student under the supervision and direction of a funeral director. A person may not engage or profess to be engaged in the business of funeral directing or hold the person out to the public as a funeral director unless the person is licensed as a funeral director.”); *see also id.* § 651.251(b) (“Embalming may be performed only by an embalmer or a provisional license holder or qualified mortuary student under the supervision and direction of an embalmer.”).

license must submit a written application and pay the required application fee.<sup>44</sup> Generally, the applicant must be eighteen years old or older, have either graduated from an accredited high school or passed an examination given by the Texas Education Agency, hold a college degree in mortuary sciences, and complete a provisional license program.<sup>45</sup> Finally, the applicant must pass a state examination and the National Board Examination.<sup>46</sup> Texas does not require a funeral director applicant to also apply for and receive a license as an embalmer.<sup>47</sup> It does, however, maintain the requirement that an applicant receive a mortuary sciences degree. The degree requirement significantly restricts many people's ability to enter the field of funeral service.<sup>48</sup>

### 5. Georgia

Georgia is also a dual license state, but it requires an individual to become an embalmer before the state is even allowed to issue the applicant a license as a funeral director.<sup>49</sup> Applicants must also furnish an affidavit that lists the names of fifty funerals with which they have assisted as an apprentice.<sup>50</sup> In addition, applicants for a funeral director license must be eighteen years of age or older, be of good moral character, and have a high school degree or equivalent.<sup>51</sup> They must also have a college degree in funeral sciences and have

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A person may not engage or profess to be engaged in the business of embalming or hold the person out to the public as an embalmer unless the person is licensed as an embalmer.”).

44. *Id.* § 651.252. Currently the application fee is \$175. *See* 22 TEX. ADMIN. CODE § 204.1(a)(1) (2024).

45. TEX. OCC. CODE ANN. § 651.253(a)(1)–(4). The provisional license program means that you have worked at least 17 hours a week for a licensed funeral establishment while also being enrolled in or a graduate of a mortuary sciences program according to the Texas Funeral Service Commission Initial Funeral Director and Embalmer License Application. *See Initial Funeral Director and Embalmer License Application*, TEX. FUNERAL SERV. COMM'N (2024), <https://perma.cc/H7AZ-B6SW>.

46. TEX. OCC. CODE ANN. § 651.253(a)(2). Subjects that might be tested include the “art and technique of funeral directing,” “the signs of death,” “the manner by which death may be determined,” “sanitation and hygiene,” “mortuary management and mortuary law,” “business and professional ethics,” “laws applicable to vital statistics pertaining to dead human bodies,” and “local and state rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies.” *Id.* § 651.255.

47. *Id.* § 651.253.

48. *Id.* § 651.253(a)(3).

49. GA. CODE ANN. § 43-18-41(c) (2024) (requiring that “an applicant for a funeral director’s license shall have, prior to the issuance of said license, a valid embalmer’s license”).

50. *Id.*

51. *Id.* § 43-18-41(a).

completed a minimum of 3,120 hours of an apprenticeship.<sup>52</sup> After all of that, they must then pass a state board examination that tests the laws of the state relating to funeral directors.<sup>53</sup>

Georgia's requirement that a funeral director receive an embalmer's license before applying for a funeral director license goes against the modern trends of the funeral industry. According to the Cremation Association of North America, in 2022, around 59% of people were cremated.<sup>54</sup> By 2027, the number could rise to as high as 65.2%.<sup>55</sup> Georgia's requirement raises the cost of obtaining a funeral director's license and bars entry to the profession in a way that could be seen as anticompetitive without a clear public policy objective, and, as seen in multiple cases around the country, a potential restriction of commercial speech.

### III. THE PROBLEM

In the context of end-of-life doulas, there are two major problems with many states' licensure requirements and definitions of funeral service. First, the definitions and licensure requirements have become so broad that they likely overlap with the work of end-of-life doulas and, in doing so, have an anticompetitive effect with no benefit. Second, these definitions are usually an unconstitutional restriction on commercial speech.

*A. The definitions and licensure requirements have become so broad that they overlap with the work of end-of-life doulas.*

The state of the funeral industry and the services that it typically provides are not changing to meet consumer desires.<sup>56</sup> Specifically, new forms of disposition are increasingly common, with cremation overtaking burial as the dominant form of disposition of human remains.<sup>57</sup> Importantly, the work of end-of-life doulas is not new. For centuries around the world, and certainly before the creation of the modern funeral home, individuals have undertaken the work of assisting a family grieving a loved one and supplying them with resources for the disposition of human remains.<sup>58</sup> However, once the modern funeral industry became mainstream, the work of end-of-life doulas became treated as an alternative means for planning for the disposition of human remains.

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52. *Id.* § 43-18-41(b).

53. *Id.* § 43-18-41(c).

54. CREMATION ASS'N OF N. AM., CANA ANNUAL STATISTICS REPORT 22 (2024).

55. *Id.*

56. Rebecca Mead, *Our Bodies, Ourselves*, NEW YORKER (Nov. 30, 2015), <https://perma.cc/CL6U-NNYF>.

57. *Why Do Funeral Homes Close?*, FRAZER CONSULTANTS BLOG (Sept. 15, 2016), <https://perma.cc/J83L-79CC>.

58. *What Is a Death Doula and How Do You Become One?*, ORDER GOOD DEATH (2024), <https://perma.cc/6Q6W-4ZF8>.

Considering the purpose of funeral director licenses and regulations gives insight into whether current definitions are overbroad. There are two predominant purposes for licensing and regulating funeral directors. First, licenses and regulations help protect public health.<sup>59</sup> The importance of funeral homes to public health was especially evident during the COVID-19 pandemic.<sup>60</sup> Christine Pepper, the CEO of the National Funeral Directors Association, wrote to then-President Donald Trump about the importance of funeral homes to public health, saying, “During a pandemic, such as COVID-19, or any mass-fatality disaster, deathcare represents a critical part of the public/private partnership that will help our nation heal and recover.”<sup>61</sup> Our country’s infrastructure for the funeral industry was put in full view during the COVID-19 pandemic, and the importance of funeral homes for public health cannot be overstated.

Even so, the current definitions for funeral services and the current licensure regimes are too broad. They include service providers, like end-of-life doulas, in a way that becomes anticompetitive with no real benefit. End-of-life doulas, just like any other alternative funeral service provider, are competition for funeral homes, but their services do not impact public health in a way that needs to be regulated out of existence. End-of-life doulas are not an industry default in the way that funeral homes are, and instead are an opt-in service that helps families assess their individual needs and advocates for families when it comes to the disposition of human remains.

The second purpose of licensing and regulating funeral directors is to protect consumers. Simply put, by regulating the funeral industry, state and federal governments can ensure that providers do not unknowingly charge hefty prices to vulnerable consumers. With that said, a tenet of the end-of-life doula regime is to provide affordable and compassionate death care to people in the vulnerable state of losing a loved one.<sup>62</sup> Therefore, the exclusion of end-of-life doulas from the funeral industry through regulations would not achieve the purposes of the definitions and licensure regimes.

Court cases involving end-of-life doulas have revealed that their work does technically fall within the definitions of funeral services that only licensed funeral directors are allowed to perform (especially in regard to advising clients about options for funeral care). Since the work of end-of-life doulas and funeral directors overlaps

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59. See Corky Siemaszko, *Funeral Workers Provide Critical Service but Are at High Risk of Exposure to the Coronavirus*, NBC NEWS (Mar. 25, 2020), <https://perma.cc/KMM9-26XC>.

60. *Id.*

61. Letter from Christine Pepper, CEO, Nat’l Funeral Dirs. Ass’n, to President Donald J. Trump (Mar. 20, 2020), <https://perma.cc/L48W-DV8A>.

62. *What Is a Death Doula and How Do You Become One?*, *supra* note 58.

definitionally, and since excluding end-of-life doulas does not fit the goals of licensing and regulating funeral directors, this problem will persist without meaningful statutory reform. Additionally, the constant rise of new techniques for the disposition of human remains will only exacerbate this problem.

*B. The definitions of funeral services and licensure requirements are usually an unfair restriction on commercial speech.*

Cases regarding definitional and licensure requirements already exist and will likely serve as persuasive authority around the country. In granting Lauren Richwine of Death Done Differently’s preliminary injunction, Chief Judge Brady allowed Richwine to keep her business open while her First Amendment case against the Indiana Attorney General made its way through the court system.<sup>63</sup> The order stated that the State of Indiana stopped Richwine from performing two of an end-of-life doula’s essential tasks: (1) educating and advising clients about their plan for their death and (2) advertising her services on a website.<sup>64</sup>

In her opinion, Chief Judge Brady discussed the potential application of strict scrutiny to Richwine’s case. Importantly, she pointed out, the Supreme Court remarked in *Holder v. Humanitarian Law Project* that “the government cannot escape the First Amendment by claiming it is regulating conduct when the supposed ‘conduct triggering coverage under the statute consists of communicating a message.’”<sup>65</sup> This is even more true considering *National Institute of Family & Life Advocates v. Becerra*.<sup>66</sup> There, the Supreme Court held that states cannot have “unfettered power to reduce a group’s First Amendment right by simply imposing a licensing requirement.”<sup>67</sup> After an analysis of the facts and relevant case law, Judge Brady was satisfied that Richwine had shown a likelihood of success on her First Amendment claims. With an understanding that funeral director licensure and practice requirements do not serve their intended purpose and are likely an unconstitutional restriction on the commercial speech of end-of-life doulas, we look to proposed solutions to this continued national issue.

#### IV. THE SOLUTION

The solution to this problem is a simple one that will not upend the funeral service industry as we know it. As laid out previously, there are vital reasons for funeral homes and funeral directors to be

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63. Richwine v. Matuszak, 707 F. Supp. 3d 782, 808 (N.D. Ind. 2023).

64. *Id.* at 798.

65. *Id.* at 800 (quoting *Holder v. Humanitarian L. Project*, 561 U.S. 1, 28 (2010)).

66. 138 S. Ct. 2361 (2018).

67. *Id.* at 2375.

licensed and regulated. Public health must be maintained and enforced, especially in times of pandemic and when funeral homes may neglect their duties to the public.<sup>68</sup> Additionally, consumers must be protected from exploitation in commercial transactions.

State governments have options to further these goals. First, they can simply exclude the activities of end-of-life doulas from the definitions of funeral services. All of the representative states discussed in this Essay, either explicitly through statute, impliedly through statute, or through their actions against end-of-life doulas, have stated that even discussing funeral plans with a family or in any way handling the body of the deceased can only be done by a licensed funeral director. These statutes can be updated to balance important public health considerations regarding the preparation of a body and the disposition of that body with the reality that professionals who are not funeral directors are still able to competently counsel bereaved families.

States could also lower barriers to becoming a funeral director. Of course, it makes sense for the government to have some oversight over the funeral industry because it deals with such vulnerable customers. If the barriers to becoming a funeral director could be decreased while also ensuring that the sensitive task of funeral planning remains regulated in a way that protects consumers, both funeral homes that provide traditional burial methods and alternative funeral arrangements could thrive without fear of anticompetitive government interference.

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68. Just this year, a funeral home in Colorado was found having nearly 200 bodies stacked up and rotting while families had already spread ashes that did not belong to their deceased family members. Colorado lawmakers then passed a bipartisan bill that would create licensure requirements and bring them up to date with other states. Jesse Bedayn, *Colorado Governor Signs Bill Regulating Funeral Homes After Discovery of 190 Rotting Bodies*, ASSOCIATED PRESS (May 24, 2024), <https://apnews.com/article/funeral-home-decomposing-bodies-colorado-regulations-219e6603ea99a1ab4fb3f1b78627611d#>.