

Chairman Rush, members of the Sub-Committee, thank you for inviting me here today to testify about Oversight of Cemeteries and Other Funeral Services.

First, let me express my deepest sympathy for the thousands of families and loved ones who are affected by the shocking events at Burr Oak Cemetery. As I met with family members and friends at the cemetery, at Operation Push, and again at a prayer vigil outside the cemetery, I was overwhelmed by the emotional damage that has been caused. The criminals who perpetrated these crimes dishonored and disrespected the dignity and sanctity demanded by a civilized society. Words cannot express the horrific impact this tragedy has had on the victims.

The tragic events at Burr Oak Cemetery serve as a touchstone and a focal point for those of us in public service. It provides a perspective and an orientation that has truly reshaped the debate at every level of government on the regulation of the death care industry. Thanks to recent media reports, the public and policy-makers are now acutely aware of the gaps in the current regulatory system.

Let me begin to describe that system by telling you something you probably already know. Currently, the federal government exercises very little regulatory oversight of the death care industry. The FTC provides some consumer protections when dealing with funeral homes or door-to-door sales. But, generally, regulation is left to the states.

As the members of the Committee explore this issue, you will quickly find that state regulations vary widely. Consumer disclosures, entrustment requirements, licensing, inspections, record-keeping requirements, the nature of the real property interests involved, maintenance standards, public health standards, permits, exemptions for certain types of cemeteries. All these issues are handled in different ways by different states through a combination of state statutes and regulations as well as common law precedents and even local ordinances. There is a fractured and sometimes even contradictory system of rules.

I do not hold myself out as an expert in comparative cemetery law. However, I can speak to my experience in Illinois in trying to address the very real concerns of consumers dealing with the death care industry.

As Comptroller, my office has limited legal authority over cemeteries, specifically focusing on consumer funds accepted by the cemetery that are held in trust with trust earnings to be used for the care of the cemetery. The office also licenses funeral homes and cemeteries that sell pre-need arrangements in advance of death. Under those licenses, the pre-need funds are held in trust until needed to cover funeral and cemetery costs at the time of death. The office requires annual financial reporting and conducts audits to ensure financial compliance. Local

government, religious and fraternal organization cemeteries register with the office, but are not licensed or audited by the office because state law specifically exempts them.

Thus, in Illinois, the office of the state's Chief Fiscal Officer has a limited role overseeing entrustment at a limited number of cemeteries and funeral homes.

The state Department of Financial and Professional Regulation issues licenses for funeral directors and embalmers. The state Department of Health has certain regulations pursuant to the state Vital Records Act concerning permits, death certificates and the like.

However, there is no regulation of most at-need sales. There is no real regulation of cemetery maintenance. There is, at best, minimal oversight of non-trust fund record-keeping.

In short, there is a regulatory vacuum in Illinois. And, I suspect, most other states.

A decade ago, when I was first elected Comptroller, I held hearings around the state about cemetery and funeral home issues. The most common complaint was inadequate or poor maintenance. Thus, when I proposed legislative reforms to address concerns about the death care industry, I included a minimum maintenance standard. Unfortunately, that provision did not make it through the legislative process, largely I believe, because of the influence of special interests at our state capitol. However, we were able to successfully expand some consumer protections within the limited areas of pre-need sales and care fund entrustment.

This past spring I proposed, and the General Assembly passed, legislation to further strengthen trust fund regulation by requiring that all trust funds be held by an independent trustee that is a corporate fiduciary. These trustees are, therefore, regulated either at the state level by the Illinois Department of Financial and Professional Regulation or at the federal level by the Comptroller of the Currency or the Office of Thrift Supervision. That legislation is currently on the Governor's desk awaiting his signature.

Earlier this month, spurred on by the impetus of the tragedy at Burr Oak Cemetery, a broad group of people came together to propose comprehensive legislation to address the regulatory issues involved. Led by my office, we worked with Operation PUSH, the Cook County State's Attorney, Sheriff and Recorder of Deeds, individual legislators, legislative staff and others. Unfortunately, our legislation was not called for a vote in committee.

Let me share the highlights of the legislation we proposed:

- We would require all cemeteries and their staff who sell cemetery plots and other goods to be licensed. Small cemeteries with fewer than 25 annual burials or plot sales would be exempted. The Illinois Department of Financial and Professional Regulation, which

already licenses a wide range of professions, would issue licenses and rules. Licensees would be required to adhere to a code of conduct and undergo continuing education.

- Cemeteries would be required to provide reasonable maintenance based on enforceable standards detailed in both statute and agency rules.
- Cemeteries would be required to keep detailed records and maps, file a copy of those records with the county recorder of deeds and provide the information to consumers.
- Funeral directors would need to provide specific information about burial locations and that information would have to be available on the death certificate on file at the county clerk's office.
- Our legislation would create a consumer bill of rights including requiring cemeteries to provide consumers with a booklet detailing their rights under the law.
- Also, our legislation would extend crime victims assistance eligibility to family members of those who are victims of the crimes charged at Burr Oak Cemetery pursuant to the Crime Victims Compensation Act.
- And finally, the minimum threshold for the state's allowance for indigent burials would be increased, and provide for a cost of living increase every fiscal year

The text of our legislation is contained in Senate Amendment 1 to Senate Bill 662 and is available at the Illinois General Assembly's website.

I realize that criminals are often times not deterred by the laws that we pass. But, I believe that adequate regulations and consumer protections can reduce the chances that we will ever have to deal with another tragedy on the scale of Burr Oak Cemetery.