



**Testimony of Nathan J. Romagnola
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February 9, 2023

**New York State Senate and Assembly Hearings on the
Proposed FY2024 New York State Executive Budget**

**Comments in Opposition to
Transportation, Economic Development and Environmental Conservation
Article VII Legislation, Part V, Natural Organic Reduction**

Albany, New York

Greetings to the distinguished members of the State Senate and Assembly. Thank you for the opportunity to present testimony regarding Governor Hochul's proposed budget plan which will unintentionally allow for the unraveling of New York's delicate balance of consumer protections related to the final disposition of human remains, for the families our community of non-profits serve each and every day.

My name is Nathan Romagnola, and I have the privilege of serving as president of the New York State Association of Cemeteries (NYSAC). I also serve in the administration of White Haven Memorial Parks based in Pittsford, New York.

For nearly 100 years, NYSAC has been dedicated to the furtherance of effective cemetery management and operation to better serve our communities. Our hundreds of non-profit member cemeteries represent every corner of New York State and are committed to providing professional services to our neighbors. We are proud of our legacy of working with members of the New York State Legislature to provide comprehensive and ever-evolving consumer protections and services which are viewed as national models in caring for families and honoring the deceased.

The NYSAC strongly disagrees with the policy language inserted in the Executive Budget that would reverse decades of beneficial state policy by turning over final disposition of New York's family members to for-profit death care corporations and out of state corporate chains.

The natural organic reduction (NOR) proposal inserted in the budget¹ contradicts the consumer protection public policy goals in existing statutes, findings in hearings and reports, as well as findings of the Legislature.

NYSAC respectfully requests the Legislature reject this policy reversal and insertion in the Executive Budget.

This legislation would irrevocably and negatively impact the fragile existence of our community non-profit cemeteries. This new budget language, previously rejected by the Legislature, is detrimental to the families we serve. The residents of New York have come to expect, and frankly deserve, the greatest consumer protections we can offer at one of the most difficult times of their lives.

Specifically, this budget language would enable for-profit funeral corporations and funeral chain operations to provide final disposition of human remains by operating natural organic reduction facilities. NOR is a process that accelerates the biological decomposition of human remains in an above ground system that naturally converts human remains to soil. Essentially, this is an accelerated process as what would be found in a natural burial in a cemetery.

NOR is final disposition of human remains.

Final disposition of human remains is handled by cemetery corporations in New York which are required by law and tradition to be non-profit entities.

Public cemeteries in New York State are regulated by the New York State Cemetery Board and Division of Cemeteries within the Department of State. The New York State Cemetery Board and the current statutory and regulatory scheme for cemeteries was created following numerous scandals and public outrage culminating in a 1949 report of the New York's Attorney General that highlighted abuses in the death care industry that included for-profit entities taking advantage of consumers and non-profit operations. New York non-profit cemeteries are also considered quasi-government entities because of their unique public purpose in final disposition of human remains.

Further action by the Legislature occurred in 1998, after even more concerns about out of state for-profit funeral chain operations in New York, along with reports by the state, City of New York, and state regulators. In response, the state passed the Anti-Combination Statute² which prohibits any for-profit entity from controlling the entire process of final disposition. The Legislature found, and testimony and reports confirmed, the opportunities for abuse of New York consumers in a process whereby one entity controls costs, disclosures, and the process of handling human remains.

New York's Anti-Combination statute protects against one entity controlling the entire arena of final disposition of human remains. It doesn't control one form or other of final disposition. The entire purpose of the law and New York's death care regulatory environment is to protect consumers, prevent price fixing, and the public purpose of the appropriate disposition of a loved one's remains.

¹ Transportation, Economic Development and Environmental Conservation Article VII Legislation, Part V

² Chapter 560 of the Laws of 1998

The Anti-Combination Law has defined the important parameters of non-profit cemetery operations and for-profit funeral directors. However, the proposal in the Executive Budget would unintentionally upend New York's progressive consumer protections and allow for-profit funeral chains, to have sole determination of the final disposition process in complete contradiction to decades of beneficial state policy and regulatory schemes.

New Yorkers are actively seeking additional environmentally sustainable alternatives to traditional burial and cremation. NOR contributes to the options available to New York families. As evidenced by this budget language, NOR's recent passage and signing into law are already under threat before these final disposition alternatives may even be provided.

This is not a surprise since a handful of **for-profit** businesses, including out of state big business funeral chains, have been fighting to prevent New York consumers from utilizing alternative forms of green burial and cremation for years unless they could infiltrate the final disposition arena.

Every attempt to expand new and modern forms of green burial and alternative cremation in recent years has been opposed by corporate interests that argue for the violation of New York non-profit law to build their own profits at the expense of consumers. NOR is just the latest piece of pro-consumer, non-profit operations which is the target of this desire to increase corporate profits and usurp services outside regulated statutory authority.

In recent legislative battles to prevent the erosion of the Anti-Combination statute, these for-profit interests have made the argument that: "...our strong opposition is based **solely on the fact** that this [NOR] legislation, in its current form, would allow these facilities solely to operate as cemetery corporations, fully precluding the State's funeral homes from owning and/or operating one of them in the same way that a cemetery could. We believe this is unjustified as a matter of basic fairness..."³

The fact is that New York law bars funeral homes from conducting all aspects of disposition of human remains.⁴ In fact, the funeral home industry **advocated for** the law that prevents them from offering these services as they **hailed it as a way to protect consumers by preventing combinations** of funeral home and cemetery services.⁵

These for-profit corporate interests of the funeral industry even fought in U.S. District Court to uphold this prohibition of the combination of services.⁶

These for-profit companies and funeral chains continue to allege that by being prohibited from providing NOR "...would set an unfair and uncompetitive precedent that could then be used to prohibit funeral homes from offering any other new form of innovative disposition process that may be developed."

There is nothing unfair and uncompetitive from these statutory guidelines. Funeral entities are already prohibited by state law from providing final disposition services. **They fought for this prohibition.** The highly regulated process represented in existing law, recently reinforced in laws as late as December 2022

³ NYSFDA 2022 Memorandum in Opposition, S.5535/A.382

⁴ Chapter 560 of the Laws of 1998

⁵ NYSFDA letter to Governor's Counsel to sign legislation, July 27, 1998

⁶ See *New York State Association of Cemeteries v. Fishman*, 99-CV-00664 (N.D.N.Y. Jan. 27, 2004).

have state oversight of pricing and disclosures and all the consumer protections provided, just as in standard cremation processes.

In the words of the for-profit funeral industry, the combination of disposition services would: “...represent poor public policy in that they are inherently anti-competitive and anti-consumer...”⁷ Additionally, “...[t]hese combination operations can lead very easily to sales practices which may very well be illegal but are most certainly improper and unethical.”⁸

This proposed budget language is another attempt at ongoing efforts by the for-profit death services industry to press for restrictions on non-profit cemetery revenues streams for their own financial benefit. This at a time when final disposition has been left as one of the only ways that cemeteries may raise funds to prevent their abandonment to local governments.⁹

We have also heard for-profit funeral chains argue that NOR being offered by cemeteries only in New York “...then NYS would be the only state to prohibit funeral homes from offering this new process and service even if they wanted to...”

The fact is that other states where such options are offered are combination states where for-profit funeral homes may control all aspects of funeral home operations and cemetery operations. In New York, this is not permitted, as we have a highly regulated pro-consumer death care system that has evolved from the recent memories of widespread price gouging, market manipulation, and corporate monopolies, with a focus on the corporate profits, rather than care for New York’s dead.^{10 11}

NYSAC supports the interests of consumers and non-profits over corporate profits and out-of-state corporations.

NYSAC stands with the families we serve.

Again, I thank you for the opportunity to present testimony. I would be pleased to offer any other insight you might require from our Association’s members and leadership.

⁷ NYSFDA letter in support of Anti-Combination Statute, July 27, 1998

⁸ NYSFDA letter in support of Anti-Combination Statute, July 27, 1998

⁹ NYSFDA letter in support of Anti-Combination Statute, July 27, 1998

¹⁰ *Rising prices and consumer deception in the funeral industry: proposals for reform*; J. Polonetsky, NYC Dept. of Consumer Affairs, February 11, 1999.

¹¹ *Policy Issues Impacting New York State Cemeteries*, February 14, 1997