

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Type of Case: Other Civil

[Constitutional Claims]

[Declaratory Judgment]

VERLIN STOLL; CRESCENT TIDE, LLC;
HELEN WILLIAMS; and FUNERAL CONSUMERS
ALLIANCE OF MINNESOTA,

Plaintiffs,

v.

Case No.

MINNESOTA DEPARTMENT OF HEALTH,
MORTUARY SCIENCE SECTION;
EDWARD P. EHLINGER, in his official capacity
as Commissioner of the Minnesota Department of Health;
and TIMOTHY J. KOCH, in his official capacity as
Acting Supervisor of the Mortuary Science Section,

Defendants.

CIVIL RIGHTS COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. This lawsuit seeks to vindicate the constitutional right of Plaintiff Verlin Stoll to earn an honest living as a funeral director free from unnecessary regulations that serve no legitimate governmental interest. Plaintiff Stoll owns a funeral home and wishes to expand his business by opening another. But Minnesota arbitrarily requires each funeral establishment to have an embalming room even though the embalming room does not even need to be functional for the purposes of embalming and does not ever have to be used. Building an embalming room costs between \$30,000 and \$50,000. Plaintiff Stoll does not want to invest in needless embalming facilities because doing so will prevent him from keeping his costs low and providing valuable services to all Minnesotans, particularly those who are economically disadvantaged.

This arbitrary requirement deprives Plaintiff Stoll of his right to earn an honest living in violation of the due-process, equal-protection, and unenumerated-rights clauses of the Minnesota Constitution. The arbitrary embalming-room requirement also violates the rights of Plaintiffs Helen Williams and the Funeral Consumers Alliance of Minnesota (FCA-MN), as well as the funeral consumers on whose behalf they advocate, by driving up the cost of funeral services without any legitimate public purpose. The only plausible explanation for the continued existence of the embalming-room requirement is that established funeral homes benefit from both higher prices and a legal requirement that prevents innovative entrepreneurs such as Plaintiff Stoll from expanding a low-price business model.

JURISDICTION AND VENUE

2. Plaintiffs seek to vindicate their rights under §§ 2, 7, and 16 of Article I of the Minnesota Constitution.

3. Plaintiffs seek declaratory and injunctive relief as hereinafter alleged against Defendants pursuant to § 8 of Article I of the Minnesota Constitution, Minn. Stat. §§ 555.01, 555.02, and 555.08, and Minn. R. Civ. P. 65.04.

4. This Honorable District Court has jurisdiction over this matter pursuant to Minn. Stat. § 484.01.

5. Venue is proper in Minnesota's Second Judicial District Court for Ramsey County pursuant to Minn. Stat. §§ 542.03, 542.09, and 542.18.

THE PARTIES

6. Plaintiff Verlin Stoll is a resident of Saint Paul, Ramsey County, Minnesota. Plaintiff Stoll is a Minnesota-licensed funeral director and the sole owner of Plaintiff Crescent Tide, LLC (Crescent Tide), a funeral home located in Saint Paul, Minnesota.

7. Plaintiff Crescent Tide is a Minnesota limited liability corporation in good standing, and the holder of a Minnesota funeral-establishment license.

8. Plaintiff Helen Williams is a resident of Minneapolis, Hennepin County, Minnesota. She has been an advocate for funeral consumers in the African-American community of north Minneapolis since 2006.

9. Plaintiff Funeral Consumers Alliance of Minnesota (FCA-MN) is a 501(c)(3) nonprofit corporation, incorporated in Minnesota, with 2,000 members in this state. FCA-MN is dedicated to protecting a consumer's right to choose a meaningful, dignified, and affordable funeral. It is a state chapter of the Funeral Consumers Alliance, a nonprofit organization headquartered in Burlington, Vermont that provides education and advocacy to consumers nationwide through its state chapters. Neither the national Funeral Consumers Alliance nor its Minnesota chapter, Plaintiff FCA-MN, are affiliated with the funeral industry.

10. Defendant Minnesota Department of Health's Mortuary Science Section is an entity of the State of Minnesota and is charged with developing, adopting, and enforcing laws and rules necessary to carry out the licensing scheme under Minn. Stat. §§ 149A et. seq.

11. Defendant Edward P. Ehlinger is the Commissioner of the Minnesota Department of Health, and is named as a defendant in his official capacity.

12. Defendant Timothy J. Koch is the Acting Supervisor of the Mortuary Science Section of the Minnesota Department of Health, and is named as a defendant in his official capacity.

STATEMENT OF FACTS

Plaintiff Verlin Stoll and the Embalming-Room Requirement

13. Plaintiff Stoll is a Minnesota-licensed funeral director and the owner of Crescent Tide, a funeral home located in Saint Paul, Minnesota.

14. A funeral director cares for human remains from the time that they are removed from the place of death until final disposition.

15. Funeral directors make funeral arrangements in which people pay the funeral director for their funeral arrangements in advance; remove remains from the place of death and transfer them to a funeral home; care for the deceased, including washing, hairdressing, cosmetology, and embalming; consult with the family to discuss specific arrangements for the funeral; file death certificates; make arrangements with clergy, speakers, and musicians to perform at the funeral; coordinate with the cemetery or crematorium for disposition of the remains; deliver ashes to the family; and sell caskets, urns, memorial books, and other merchandise.

16. Plaintiff Stoll's first business was a third-party embalming business, Twin Cities Trade Service, LLC, which provided embalming services to area funeral homes on a contract basis.

17. Embalming involves the use of preservative chemicals to delay the decomposition of human remains for the purposes of public viewing.

18. Because Twin Cities Trade Service did not have any facilities of its own, Plaintiff Stoll used the embalming facilities of the funeral home for which he was providing third-party embalming.

19. After selling Twin Cities Trade Service, Plaintiff Stoll opened Crescent Tide funeral home in April 2011 with the vision of providing “the new generation of service,” meaning low-cost, high-quality funeral services without all of the extra costs that bigger funeral homes impose.

20. Crescent Tide has a Minnesota funeral-establishment license, which every funeral home or funeral-services sales office must have in order to operate legally in Minnesota. Minn. Stat. § 149A.50. Plaintiff Crescent Tide is located in an industrial section of Saint Paul on Transfer Road. His funeral home includes an office, a room for displaying caskets and other funeral merchandise, a conference room, and an embalming room.

21. Crescent Tide offers the lowest prices for funeral services in the Twin Cities because Plaintiff Stoll’s business model is based on competing on price. Crescent Tide’s basic service fee is \$250, his funeral with graveside service costs \$1,650, and his direct cremation price is \$750. By comparison, the Twin Cities’ largest funeral-home chain, Washburn McReavy, charges \$2,585 as a basic service fee, \$4,690 for a funeral with graveside service, and \$1,395 for a direct cremation. Other funeral homes in the Twin Cities charge between \$1,995 and \$2,948 for the basic services fee, between \$1,995 and \$5,484 for a funeral with graveside service, and between \$1,395 and \$3,887 for a direct cremation.

22. Plaintiff Stoll publishes his basic services fee on his website.

23. Most area funeral homes decline to publish their general price list and basic services fee online and require customers to either go to the funeral home or call in order to obtain the price list.

24. Plaintiff Stoll reduced the overhead operating costs for his funeral home by not building a dedicated space for public visitations, funerals, or memorial services. Instead, he

contracts with outside chapels, churches, and cemeteries for those services. Plaintiff Stoll has passed those savings on to his customers.

25. Building an embalming room at Crescent Tide cost Plaintiff Stoll about \$20,000. It was the single biggest expense of opening his funeral home.

26. By law, an embalming room must have nonporous flooring, an exhaust fan, an aspirator to extract bodily fluids, an eye-wash station, and a quick-drench shower. Minn. Stat. § 149A.92.

27. Plaintiff Stoll did not want to build an embalming room at Crescent Tide because not having to invest in an embalming room would have lowered the amount of capital needed to start his business, thereby better enabling him to maintain the lowest prices in the Twin Cities funeral market. Plaintiff Stoll would have preferred to avoid building an embalming room in his funeral home to save money, just as he avoided building a chapel in his funeral home to save money.

28. Plaintiff Stoll built an embalming room at Crescent Tide only because Minnesota law requires every funeral home to have an embalming room in order to obtain an establishment license. Minn. Stat. § 149A.50.

29. Instead of building an embalming room, Plaintiff Stoll wanted to outsource his embalming services to a third-party embalming company such as the one he used to own, Twin Cities Trade Service.

30. There are third-party embalming businesses throughout Minnesota, such as Twin Cities Trade Service, that remove and embalm bodies full time.

31. The use of third-party embalming businesses is legal in Minnesota.

32. Many Minnesota funeral homes use the services of third-party embalming businesses.

33. There are funeral homes in Minnesota that rely exclusively on third-party embalmers to provide embalming services for those funeral homes' customers.

34. Defendants have no evidence that the use of third-party embalmers presents any danger to the public that would not exist if funeral homes were required to perform their embalming in house.

35. Third-party embalming businesses could have handled all of Plaintiff Stoll's embalming work on a contract basis because only seven families, which is roughly ten percent of the families he has served, have requested embalming since Plaintiff Stoll opened Crescent Tide in 2011.

36. Defendants have no evidence that forcing Plaintiff Stoll to build an embalming room at Crescent Tide has conferred a benefit on the public that would not exist had Minnesota law permitted Plaintiff Stoll to build Crescent Tide without an embalming room, and instead, to rely on third-party embalming businesses.

37. Plaintiff Stoll's business is growing and Plaintiff Stoll intends to open a branch office in Saint Louis Park, a western suburb of Minneapolis, in order to expand his business to a different community.

38. Plaintiff Stoll has no intention of conducting embalming at this second location in Saint Louis Park, Minnesota.

39. Minnesota law does not require Plaintiff Stoll to conduct embalming at this second location.

40. Plaintiff Stoll does not wish to build an embalming room at this proposed second location because building an unnecessary room that he will never use is a waste of money and a benefit to no one.

41. Plaintiff Stoll intends to accommodate customers purchasing embalming services from his proposed Saint Louis Park location by either: (a) conducting the embalming himself in his Saint Paul location; or (b) paying third-party embalmers to embalm for him at a separate embalming facility.

42. For Plaintiff Stoll to conduct all embalming services purchased at his Saint Louis Park location in his Saint Paul location would be completely legal.

43. For Plaintiff Stoll to pay third-party embalmers to conduct all embalming services purchased at Plaintiff Stoll's Saint Louis Park location at a separate embalming facility would be completely legal.

44. Funeral-home businesses with multiple locations are required by law to have an embalming room at each location, but it is legal to centralize embalming at a single location.

45. Washburn McReavy Funeral Chapels, which is the largest funeral-home chain in Minnesota, has 17 locations and 17 embalming rooms, but only uses one embalming room for all of its embalming.

46. Defendants have no evidence that the public is harmed when multi-branch funeral-home businesses centralize their embalming at a single location rather than conduct embalming at each location.

47. Even though Plaintiff Stoll has no intention of using his proposed second embalming room and even though it is perfectly legal in Minnesota for him not to use the embalming room at his proposed second location, Plaintiff Stoll is required by law to build an

embalming room at his proposed second location in order to be able to obtain a funeral establishment license.

48. Defendants have no evidence that the public will benefit by Minnesota's licensure requirement to construct an embalming room that Plaintiffs Stoll and Crescent Tide have no intention of using and that Plaintiff Stoll is permitted by law never to use in the course of his responsibilities as a funeral director.

49. The embalming-room requirement increases the average cost of a traditional burial by \$546 and of a cremation by \$313.

Plaintiff Stoll's Partnership with Plaintiff Williams

50. Plaintiff Helen Williams has been an advocate for funeral consumers in the Minneapolis African-American community since 2006.

51. She became interested in funeral-consumer advocacy when her son lost two life-long friends to gang violence. Plaintiff Williams helped the grief-stricken families plan the funerals. She was shocked when the funeral expenses for each family amounted to \$8,000 and pledged from then on to help African-American families and other families that have suffered the loss of a loved one to violence get low-cost, high-quality funerals with as little emotional turmoil as possible.

52. Plaintiff Williams has become an expert on planning low-cost funerals and has helped plan, free of charge, over 1,000 funerals. In particular, Plaintiff Williams helps families navigate the funeral industry and Hennepin County's Burial Assistance Program.

53. When a qualifying person dies, Hennepin County provides \$2,100 to pay for the funeral while the family is permitted to pay up to \$1,400 for burial-related services, a total of \$3,500.

54. Plaintiff Williams helps families obtain the County's assistance and finds funeral homes that will perform the entire funeral, including the basic services fee, removal of the body, embalming, casket, memorial service, cemetery plot, and opening and closing of the grave, for \$3,500.

55. Through her experience helping families plan funerals, Plaintiff Williams has become disheartened with the high price of funerals, the massive mark-ups on caskets and embalming, and the difficulty in planning a dignified, quality funeral for the County's set price for burials. This experience has led Plaintiff Williams to encourage the families to go to Plaintiffs Stoll and Crescent Tide for their funeral needs.

56. Plaintiff Williams recommends to people in her community that they use the funeral services provided by Plaintiff Stoll. Plaintiff Williams and Plaintiff Stoll have a relationship whereby whenever someone approaches Plaintiff Williams about needing help planning a funeral, as part of her volunteer work, she directs that person to Crescent Tide and Plaintiff Stoll. Plaintiff Williams believes that she refers as many as one to three prospective funeral cases a week to Plaintiff Stoll.

57. Plaintiff Stoll and Plaintiff Williams have developed a special package of services for families who seek financial support from Hennepin County, under the County's Burial Assistance Program. Under their package, Plaintiff Stoll provides a full burial, complete with removal, embalming, a metal casket, and the opening and the closing of the grave for \$3,500, the amount permitted by Hennepin County.

58. Plaintiff Stoll is the only funeral director in the Twin Cities who performs a complete funeral, including casket and burial, for the Hennepin County Burial Assistance price, accepting \$2,200 for his services and merchandise, which includes the \$2100 Hennepin County

contributes plus a \$100 contribution from the family. This frees families to spend the remainder of their share, \$1300, on the cost of obtaining a cemetery plot and the opening and closing of that gravesite.

59. Plaintiff Stoll could better serve and would receive more business from the north Minneapolis community, as well as other communities, if he had a funeral office located closer to that community.

Plaintiff Funeral Consumers Alliance of Minnesota

60. Plaintiff, the Funeral Consumers Alliance of Minnesota (FCA-MN) is a 501(c)(3) nonprofit corporation, incorporated in Minnesota, and dedicated to protecting a consumer's right to choose a meaningful, dignified, and affordable funeral. Its parent organization, the Funeral Consumers Alliance, was established in 1963 and is a national organization, headquartered in Burlington, Vermont. The Funeral Consumers Alliance has chapters across the country, including one in Minnesota. FCA-MN has its offices in the Unitarian Society building at 900 Mount Curve, Minneapolis, Minnesota 55403. FCA-MN has seven volunteer board members, including the Chair of the Board, Wendy Jerome. It has 2,000 members.

61. One of Plaintiff FCA-MN's main functions is to educate its member on the prices that Minnesota funeral homes charge for basic funeral services and to formalize relationships with lower-cost funeral homes, thereby obtaining discounts for its members.

62. Currently, Plaintiff FCA-MN sends its members to two funeral homes: the Twin Cities Cremation Services (where members receive a discount due to the long-standing relationship Plaintiff FCA-MN has developed with Twin Cities Cremation Services) and Plaintiff Stoll's funeral home, Crescent Tide.

63. The majority of the inquiries that Plaintiff FCA-MN receives from its members and potential members relate to pricing issues and the interest of its members in finding low-cost funeral services.

64. As part of its mission to educate its members and determine whether there are any other low-cost funeral homes it would recommend to its members, Plaintiff FCA-MN conducts surveys of funeral-home prices.

65. Plaintiff FCA-MN has conducted a price survey of funeral homes in Duluth and Rochester. Plaintiff FCA-MN received several price lists but also failed to hear back from several funeral homes. From what they did collect, Plaintiff FCA-MN was unable to find any funeral homes in either Duluth or Rochester that offered sufficiently low prices that they would be willing to recommend those funeral homes to their members.

66. Plaintiff FCA-MN is also in the process of sending price surveys to funeral homes in the Twin Cities and hopes to find more funeral homes that charge sufficiently low prices that Plaintiff FCA-MN would recommend those funeral homes to its members.

The Embalming Process and Burial or Cremation

67. There are three main approaches to final disposition: traditional burials (meaning the body is embalmed), non-traditional burials (meaning the body is not embalmed), and cremation.

68. There is no legal requirement in Minnesota that a body be embalmed simply because someone has died.

69. A body must be embalmed if it is being transported by common carrier. Minn. Stat. § 149A.91.

70. It is legal for an unembalmed body to be publicly viewed for as long as four days after death provided that dry ice is used primarily as a coolant. The dry-ice method of cooling bodies is a specific method that can either be used separately or in conjunction with refrigeration. Minn. Stat. § 149A.91.

71. It is legal for an unembalmed body to be viewed publicly for up to six days as long as it is refrigerated. Minn. Stat. § 149A.91. Refrigeration means placing the body in a refrigerator, typically cooled to 37 to 41 °F, as opposed to placing it on dry ice.

72. With a traditional burial, embalming occurs after removal from the place of death. First, the funeral director sets the features of the body, shutting the eyes, closing the mouth, and making sure the facial expression looks appropriate for public viewing. Next, embalming fluid (a chemical preservative) is injected into an artery and the blood is drained.

73. After embalming, the funeral director applies makeup to the face, neck, and hands, washes and styles the hair, trims the nails, and puts clothes on the body.

74. After the body is embalmed and makeup has been applied, it is placed in a casket, which comes in a variety of materials and prices.

75. A traditional burial typically consists of a funeral presided over by clergy or another individual with emotional significance to the family at a place of worship and/or a cemetery. During the funeral, organists, soloists, or other musicians might play and spiritual or significant readings may occur. Finally, the body is buried.

76. Several non-traditional variations on burial exist. Families can select a green burial in which their loved one is buried in the ground with no embalming and no casket. This type of burial occurs in nearly all Muslim deaths.

77. Families can also choose a simple burial with a casket but no embalming. This type of burial is the most common form of burial among Jews.

78. Several philosophies and religious traditions prohibit embalming, including Islam and Judaism.

79. Some people disapprove of embalming because they believe that embalming fluid has a negative effect on the environment.

80. In cremation, intense heat reduces the body to a few pounds of small fragments and ashes, and the ashes are placed in a container to be given to the deceased's family.

81. Cremation services differ from traditional burial in that very few funeral homes have crematories on-site. Consequently, when a funeral home provides cremation services, the funeral home almost always sends the body off-site to a crematory.

82. The family can choose to see the unembalmed body before it is cremated and can have a ceremony with a public viewing. The family can also opt to have the body embalmed, have a ceremony with a public viewing, and then have the body cremated. This is popular among members of the Hindu community in the Twin Cities. For other families, the cremation can be conducted so that the family never sees the deceased but simply makes cremation arrangements with the funeral home and then arrives later to pick up the ashes.

83. While traditional burial was once the most common method of final disposition, that practice is in decline as cremation becomes more popular. In 2009, according to the Minnesota Mortuary Science Section, there were 37,851 deaths in Minnesota with 17,723 or 46.8% cremations, whereas ten years prior, in 1999, there were 38,696 deaths in Minnesota with 10,953 or 28.3% cremations. The national trend is the same. According to the National Funeral Directors Association, in 2005, there were 2,432,000 deaths with 778,025 or 30.88% cremations

in the United States. In 2010, the National Funeral Director's Association estimates that there were 38.15% cremations with 2025 cremation projections at 51.12%.

The Irrationality of the Embalming-Room Requirement

84. Once licensed as a funeral director, no funeral director is required to perform embalming. A funeral director may always provide embalming services to a client by having someone else perform the embalming.

85. Once licensed as a funeral establishment, no funeral home is legally required to have embalming occur onsite. Minnesota does not require an embalming to occur at any particular funeral home.

86. A funeral-home business may legally open a sales office solely for the purpose of making funeral arrangements. No human remains need ever be brought to the sales office.

87. Nevertheless, under Minnesota law, even a funeral-sales office where human remains are never brought needs an establishment license and must, therefore, have an embalming room in order to obtain that license.

88. Both Washburn McReavy and the nation's largest cremation provider, the Neptune Society, have opened such sales offices within the past two years.

89. Both companies' sales offices are required to have embalming rooms and do in fact have embalming rooms.

90. Defendants have no evidence that the public benefits when a funeral-sales office where human remains are never brought is legally required to have an embalming room.

91. Defendants do not subject funeral-sales offices where no human remains are ever brought to heightened inspections or scrutiny on the basis of any belief on the part of Defendants

that funeral sales offices where no human remains are ever brought present a heightened danger to the public.

92. Minnesota law does not require an embalming room to be in a functional state for the purposes of embalming. If a funeral home has no intention of using its designated “embalming room” for embalming, Minnesota law does not require the funeral home to stock the embalming room with all of the chemicals and equipment that are necessary for the embalming process.

93. Minnesota law acknowledges that some embalming rooms will not be used for embalming by specifying different requirements for functional embalming rooms and non-functional embalming rooms. The language in the statute regulating embalming rooms reads, “...where embalmings are actually performed in the room...” Minn. Stat. § 149A.92.

94. If a funeral home has no intention of using its embalming room for embalming, Minnesota law allows the designated “embalming room” to be used as a staff break room, a storage room, office, or any other purpose. Minn. Stat. § 149A.92.

95. There are funeral homes in Minnesota where the designated “embalming room” is never used for embalming but is instead legally used for some other purpose such as storage.

96. Defendants have no evidence that the public benefits by forcing a funeral-home business to construct an embalming room that is then legally used for some purpose other than embalming.

97. Defendants have no evidence that the public is harmed when a funeral-home business is forced by law to construct an embalming room, but then uses that designated “embalming room” for some purpose wholly unrelated to embalming.

98. When a funeral home uses its designated “embalming room” for a purpose wholly unrelated to embalming, Defendants do not subject that funeral home to heightened inspections or scrutiny on the basis of any belief on the part of Defendants that a funeral home where the designated embalming room is used for a purpose other than embalming presents a heightened danger to the public.

99. Third-party embalming businesses that do nothing but remove bodies and embalm human remains may legally obtain an establishment license even if the third-party embalming business has no facilities of its own, including no embalming facilities, and must instead lease embalming facilities from another funeral home.

100. A funeral home that has no intention of embalming human remains must have an embalming room in order to obtain an establishment license.

101. Multi-branch funeral-home businesses may legally centralize all embalming at a single location, but are nevertheless legally required to have an embalming room at each location in order to obtain an establishment license for each location.

102. The common practice of the funeral industry is to centralize all embalming to a single location for economic and practical reasons.

103. Defendants have no evidence that the public benefits when multi-branch funeral-home businesses that embalm at a central location are nevertheless legally required to maintain an embalming room at each location.

104. In the case of a multi-branch funeral home that centralizes its embalming at a single location, Defendants do not subject funeral-home branch locations where no embalming occurs to heightened inspections or scrutiny on the basis of any belief on Defendants’ part that funeral homes where no embalming occurs present a heightened danger to the public.

105. There are funeral homes in Minnesota that did not have an embalming room when the statutory embalming-room requirement became effective in 1997. Those funeral homes are able to renew their establishment licenses under a grandfather provision that exempts those funeral homes from the embalming-room requirement. Minn. Stat. § 149A.92.

106. Defendants have no evidence that a grandfathered funeral home without an embalming room presents a danger to the public as a result of not having an embalming room.

107. Defendants do not subject a grandfathered funeral home that lacks an embalming room to heightened inspections or scrutiny on the basis of any belief on the part of Defendants that the absence of an embalming room at a grandfathered funeral home presents a heightened danger to the public.

Steps Taken by Plaintiff Stoll to Open His Proposed Saint Louis Park Location

108. Because Plaintiff Stoll wants to expand his business to new consumers who live closer to Minneapolis, Plaintiff Stoll plans to open a second funeral office in that area. Plaintiff Stoll entered into a tenant-representation agreement with a commercial real estate agent. This real estate agent has assisted Plaintiff Stoll by helping him find a suitable location for his second funeral office near Minneapolis.

109. In order to find an appropriate location for his second office, Plaintiff Stoll told his commercial real estate agent of several neighborhoods he was interested in, his square footage requirements, and other specifications. Plaintiff Stoll asked the real estate agent to find a location in a commercial zone in neighborhoods near Minneapolis, where it would draw foot and drive-by traffic.

110. The commercial real estate agent reviewed Plaintiff Stoll's preferences and responded with a list of properties that generally matched Plaintiff Stoll's criteria for a new

location. Plaintiff Stoll visited four separate locations in cities near Minneapolis in Hopkins and St. Louis Park, exploring the neighborhoods to assess foot traffic, considering how far the locations were from Plaintiff Williams' community, noting the surroundings, and determining whether the locations were of sufficient size and appearance.

111. After visiting each location, Plaintiff Stoll decided that 5812 Excelsior Blvd., Saint Louis Park, Minnesota, best fit his needs. Plaintiff Stoll entered into a letter of intent with the commercial real estate agent to lease office space at 5812 Excelsior Blvd. in Saint Louis Park, Minnesota.

112. Plaintiff Stoll has received quotes from contractors assessing the costs that building a funeral home with an embalming room at 5812 Excelsior Blvd., Saint Louis Park, Minnesota would cost. The contractors have quoted a minimum of \$20,000 but up to \$100,000, if extensive plumbing work is necessary, on top of what it would cost to build the funeral home itself.

113. If Plaintiff Stoll is successful in this litigation, he will lease this space and open his second funeral establishment. If the space is no longer available, he will lease a different space in the same area.

HARM TO PLAINTIFFS

114. Plaintiff Stoll was forced by law to build an embalming room in his current location in Saint Paul in order to obtain an establishment license for Plaintiff Crescent Tide even though fewer than ten percent of Crescent Tide's customers purchase embalming services and he could meet that demand by outsourcing embalming to third-party trade embalmers.

115. Plaintiff Stoll was forced by law to build an embalming room at his current location in Saint Paul in order to obtain an establishment license for Plaintiff Crescent Tide even though Minnesota law does not require him to embalm anyone there.

116. Plaintiff Stoll's plan to expand his business by opening a new funeral home without an embalming room is impossible because the defendants will not license his new funeral home as a "funeral establishment" without an embalming room.

117. It is futile to seek establishment licensure for a funeral home without an embalming room because the Department of Health, Mortuary Science Section actively enforces the embalming-room requirement for new funeral homes and there is no provision in the law or administrative code for exceptions to the embalming-room requirement.

118. Nor could Plaintiff Stoll build his new funeral home with an embalming room and, after securing an establishment license for Plaintiff Crescent Tide, dismantle the embalming room and use that space for a productive purpose apart from embalming because funeral establishments are inspected by the Department of Health every year and a condition of license renewal is the presence of an embalming room. Minn. Stat. §149A.51.

119. But for the arbitrary embalming-room requirement, Plaintiff Stoll would implement construction of a new branch office of Plaintiff Crescent Tide funeral home in Saint Louis Park, Minnesota without an unnecessary embalming room.

120. But for the arbitrary embalming-room requirement, Plaintiff Stoll would be able to obtain an establishment license for Plaintiff Crescent Tide for the new branch office even though it would not contain an embalming room because the new branch of Crescent Tide would satisfy all other criteria for funeral-establishment licensure.

121. But for the arbitrary embalming-room requirement, Plaintiff Stoll would expand his business to the Minneapolis community to serve more low-income clients with his low-cost funeral package.

122. But for the arbitrary embalming-room requirement, Plaintiff Stoll would seek to hire more employees for his expanding business. Plaintiff Stoll has received inquiries from several funeral directors who are interested in employment at Crescent Tide and is eager to hire another funeral director in order to provide Plaintiff Stoll with more freedom.

123. But for the arbitrary embalming-room requirement, consumers, such as those represented by Plaintiff Williams and Plaintiff FCA-MN, would spend less on funerals and cremation.

124. But for the arbitrary embalming-room requirement, Plaintiff Williams, the families she helps out, and FCA-MN members would have more funeral options.

FIRST CAUSE OF ACTION

(MINNESOTA STATE CONSTITUTION, ART. I, § 7: DUE PROCESS)

125. Plaintiff incorporates and realleges the allegations contained in paragraphs 1 through 124 of this Complaint as if set forth herein.

126. Section 7 of Article I of the Minnesota Constitution, the Due Process Clause, provides in relevant part:

No person shall be . . . deprived of life, liberty or property without due process of law . . .

127. Section 7 of Article I of the Minnesota Constitution includes the right to pursue a chosen livelihood and operate a lawful business without unreasonable government interference.

128. Minnesota Statute § 149A.50 arbitrarily and irrationally requires Plaintiffs Stoll and Crescent Tide to build and maintain an embalming room in each funeral establishment. Minnesota may not compel Plaintiffs Stoll and Crescent Tide to build an unnecessary embalming room when Plaintiff Stoll can legally perform all of his responsibilities as a state-licensed funeral director without an on-site embalming room, and when there is no plausible basis for concluding that the absence of an on-site embalming room at his proposed new location presents any risk to the public. In being arbitrary and irrational, the embalming-room requirement is not reasonably related to any legitimate public purpose, and thus deprives Plaintiffs Stoll and Crescent Tide of due process of law as guaranteed by Section 7 of Article I of the Minnesota Constitution.

129. The substantive due-process violation of Plaintiffs Stoll and Crescent Tide's rights, as described above, also constitutes a substantive due-process violation of the rights of Plaintiffs Williams and FCA-MN insofar as the arbitrary and irrational embalming-room requirement causes Plaintiffs Stoll and Crescent Tide, as well as funeral-services providers in general, to charge consumers more than consumers would be charged in the absence of the embalming-room requirement.

130. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

131. Unless Minnesota Statute § 149A.50 is declared unconstitutional and permanently enjoined as applied to Plaintiffs, Plaintiffs will continue to suffer great and irreparable harm.

SECOND CAUSE OF ACTION

(MINNESOTA STATE CONSTITUTION, ART. I, § 2: EQUAL PROTECTION)

132. Plaintiffs incorporate and reallege the allegations contained in paragraphs 1 through 131 of this Complaint as if set forth fully herein.

133. Section 2 of Article I of the Minnesota Constitution, the Rights and Privileges Clause, provides in relevant part:

No member of this state shall be disfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers . . .

134. The statutory distinction between a funeral establishment without an embalming room, which is unlawful, and a funeral establishment with an embalming room, which is lawful, is not genuine and substantial. There is no natural and reasonable basis to make this statutory distinction that justifies the embalming room requirement of Minnesota Statute § 149A.50 as applied to the peculiar conditions and needs that the statute addresses.

135. The distinction between a funeral establishment without an embalming room and a funeral establishment with an embalming room is not genuine or relevant to the purpose of the statute because there is no connection between ensuring that human remains are embalmed in a proper facility and requiring every funeral establishment to have an embalming facility. The absence of any connection is evident in the fact that Minnesota law does not require embalming rooms to be in a functional state for the purposes of embalming in order to pass inspection. The absence of any connection is further evident in the fact that third-party embalmers may secure a funeral-establishment license, and embalm human remains, without owning any embalming room and simply leasing access to embalming rooms at other funeral homes.

136. The statutory distinction between a funeral establishment with an embalming room and a funeral establishment without an embalming room lacks any real and substantial connection to any legitimate public purpose actually meant to be served by the statute.

137. The State of Minnesota cannot hope to achieve any legitimate public purpose by requiring Plaintiffs Stoll and Crescent Tide to build a needless embalming room at the proposed

second location because building a needless embalming room will have absolutely no effect on their ability to provide embalming lawfully at the existing Saint Paul location or through a third-party embalmer. The only effect of the embalming room requirement, as applied to Plaintiffs Stoll and Crescent Tide, and others similarly situated, is to force them to make unnecessary investments and force the consumer to bear the cost of this unnecessary investment. It is irrational to impose costs on entrepreneurs and consumers with no conceivable public benefit. This irrational statutory classification violates Plaintiffs' rights and privileges to equal protection under the law as guaranteed by Section 2 of Article I of the Minnesota Constitution.

138. The equal-protection violation of the rights of Plaintiffs Stoll and Crescent Tide, as described above, also constitutes an equal-protection violation of the rights of Plaintiffs Williams and FCA-MN insofar as the arbitrary and irrational embalming-room requirement causes Plaintiffs Stoll and Crescent Tide, as well as funeral-services providers in general, to charge consumers more than consumers would be charged in the absence of the embalming-room requirement.

139. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

140. Unless Minnesota Statute § 149A.50 is declared unconstitutional and permanently enjoined as applied to Plaintiffs and other similarly situated, Plaintiffs will continue to suffer great and irreparable harm.

THIRD CAUSE OF ACTION

(MINNESOTA STATE CONSTITUTION, ART. I, § 16: UNENUMERATED RIGHTS)

141. Plaintiffs incorporate and reallege the allegations contained in paragraphs 1 through 140 of this Complaint as if set forth fully herein.

142. Section 16 of Article I of the Minnesota Constitution, the Rights and Privileges Clause, provides in relevant part:

The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people...

143. Minnesota Statute § 149A.50, as applied to Plaintiffs Stoll and Crescent Tide, requires Plaintiff Stoll to build an embalming room in all of his funeral establishments, but there is no real and substantial relationship between such requirement and any legitimate public purpose meant to be advanced by the statute.

144. Minnesota Statute § 149A.50, as applied to Plaintiffs Stoll and Crescent Tide, arbitrarily restricts Plaintiff Stoll's right to pursue his chosen livelihood as a funeral director and to conduct his business and deprives him of his rights and privileges as guaranteed by Section 16 of Article 1 of the Minnesota Constitution.

145. The unenumerated rights violation of Plaintiffs Stoll and Crescent Tide's rights, as described above, also constitutes an unenumerated violation of the rights of Plaintiffs Williams and FCA-MN insofar as the arbitrary and irrational embalming-room requirement causes Plaintiffs Stoll and Crescent Tide, as well as funeral-services providers in general, to charge consumers more than consumers would be charged in the absence of the embalming-room requirement.

146. Plaintiffs have no other legal, administrative, or other remedy by which to prevent or minimize the continuing irreparable harm to their constitutional rights.

147. Unless Minnesota Statute § 149A.50 is declared unconstitutional and permanently enjoined as applied to Plaintiffs, Plaintiffs will continue to suffer great and irreparable harm.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

A. That this Honorable Court enter a judgment declaring that the requirement that each funeral establishment have an embalming room in order to obtain a funeral-establishment license under Minn. Stat. § 149A.50 (1) does not bear a real and substantial or a rational relationship to any legitimate public interest, and (2) is an unconstitutional violation of Sections 2, 7, and 16 of Article I of the Minnesota Constitution;

B. That this Honorable Court permanently enjoin Defendants, their successors, agents, servants, employees and representatives, from enforcing Minn. Stat. § 149 A.50 as amended or supplemented from time to time, in a manner that restricts Plaintiffs Verlin Stoll and Crescent Tide, and those similarly situated, from operating a funeral establishment without an embalming room and from denying a license to operate a funeral establishment to Plaintiffs Verlin Stoll and Crescent Tide, or those similarly situated, for a funeral establishment lacking an embalming room.

C. That this Honorable Court award nominal damages of \$1.00 to each Plaintiff;

D. That this Honorable Court award such other further legal relief as the Court deems equitable, just, and proper.

E. That this Honorable Court award all such attorneys' fees and costs to which Plaintiffs are justly entitled.

RESPECTFULLY SUBMITTED this 19th day of January, 2012.

**INSTITUTE FOR JUSTICE
MINNESOTA CHAPTER**

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*Application for Admission *Pro Hac Vice*
to be filed

ACKNOWLEDGMENT

I acknowledge that I am familiar with the terms of Minn. Stat. § 549.211, and that costs, disbursements and reasonable attorney and witness fees may be awarded to the opposing party pursuant to subd. 2 thereof, in the event a party or an attorney acts in bad faith; asserts a claim or defense that is frivolous and that is costly to another party; asserts an unfounded position solely to delay the order and course of the proceedings or to harass; or commits a fraud upon the Court.

By _____
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