

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

SHELIA CHAMPION and THE GOOD EARTH, LLC,)
)

Plaintiffs,)

v.)

MARK N. CRADDOCK; LORENZO WRIGHT; SAMMY SEROYER; BART KIRTLAND; JOHN C. RUDDER; CALVIN MEADOWS; and JASON WYATT, in their official capacities as members of the Alabama Board of Funeral Service,)
)

Defendants.)
_____)

Civil Action No. _____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

INTRODUCTION

1. This constitutional challenge seeks to vindicate the right of Plaintiff Shelia Champion and her fledgling green cemetery, The Good Earth Burial Ground, to sell caskets and burial shrouds to the public. Under Alabama law, Plaintiff Champion cannot sell these harmless items because she is not a state-licensed funeral director. Alabama enforces this prohibition even though a casket is just a box and a shroud is just a piece of fabric. In fact, the Alabama Board of Funeral Service has ruled in response to Plaintiff Champion’s petition for a declaratory ruling that her specific plans to sell caskets and shrouds are illegal.

2. These restrictions on Plaintiffs’ economic liberty are unconstitutional. In four of five cases, federal courts have struck down casket-sales laws under the Due Process and Equal Protection Clauses because there is no rational reason to restrict who can sell a casket. *See St. Joseph Abbey v. Castille*, 712 F.3d 215 (5th Cir. 2013); *Craigmiles v. Giles*, 312 F.3d 220 (6th Cir. 2002); *Casket Royale, Inc. v. Mississippi*, 124 F. Supp. 2d 434 (S.D. Miss. 2000); *Peachtree*

Caskets Direct, Inc. v. Ga. State Bd. of Funeral Servs., 1999 WL 33651794 (N.D. Ga. Feb. 9, 1999). The Tenth Circuit is the sole outlier, having upheld Oklahoma’s casket-sales restriction because special-interest legislation with no public benefit is, in that court’s view, constitutionally permissible. *Powers v. Harris*, 379 F.3d 1208, 1221 (10th Cir. 2004) (“[W]hile baseball may be the national pastime of the citizenry, dishing out special economic benefits to certain in-state industries remains the favored pastime of state and local governments.”). This Court should reject *Powers* and follow the decisions of the federal courts that have struck down casket-sales restrictions in the neighboring states of Tennessee, Georgia, Mississippi, and Louisiana.

JURISDICTION AND VENUE

3. Plaintiffs Shelia Champion and The Good Earth, LLC, bring this civil-rights lawsuit pursuant to: The Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgment Act, 28 U.S.C. § 2201.

4. Plaintiffs seek declaratory and injunctive relief against the enforcement of Alabama’s Funeral Service Laws, Ala. Code §§ 34-13-1 *et seq.*, and against the practices and policies of the Alabama Board of Funeral Service, that deny Plaintiffs the ability to sell burial containers such as caskets, shrouds, and urns directly to the public.

5. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343.

6. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b)(2).

PARTIES

7. Plaintiff Shelia Champion is a United States citizen and a resident of Hazel Green, Alabama.

8. Plaintiff The Good Earth, LLC, is an Alabama limited liability company. It is an environmentally friendly cemetery located in Hazel Green, Alabama that does business as The Good Earth Burial Ground. It is owned and operated by Plaintiff Champion.

9. Defendants Mark N. Craddock, Lorenzo Wright, Sammy Seroyer, Bart Kirtland, John C. Rudder, Calvin Meadows, and Jason Wyatt are members of the Alabama Board of Funeral Service (“State Board”) and are sued in their official capacities.

FACTUAL ALLEGATIONS

Plaintiff Shelia Champion

10. Plaintiff Champion has been interested in alternatives to traditional burial practices since her parents passed away.

11. Plaintiff Champion believes that traditional, full-service funerals are too expensive and leave too great an environmental impact.

12. In the traditional approach to burial, the remains are filled with preservative chemicals as part of the embalming process. The body is then placed in a casket made with treated wood or metal that resists decay (the caskets may also be sealed with a rubber gasket to keep them airtight and watertight as long as possible). In the final step, the casketed remains are often placed in a metal or concrete vault before burial.

13. Plaintiff Champion also believes that traditional, full-service funerals lack intimacy because professionals, rather than the family, handle the care of the dead.

14. Plaintiff Champion has become an advocate of alternative burial practices such as home funerals in which family and friends care for their deceased loved ones without the assistance of a professional funeral director.

15. Plaintiff Champion is also an advocate of environmentally friendly burial practices that emphasize returning the body to the earth in the quickest, most natural way possible. These practices reject, for example, embalming with toxic, non-biodegradable chemicals, as well as the use of non-biodegradable burial containers such as metal caskets.

16. As she neared retirement age, Plaintiff Champion wanted to open a business to provide a modest income to supplement her retirement savings.

17. Plaintiff Champion also wanted to open a business related to her interest in alternative burial practices.

18. Plaintiff Champion was recently laid off from her position as the contracts manager for a Huntsville-area defense contractor.

19. In March 2016, Plaintiff Champion opened The Good Earth Burial Ground (“The Good Earth”), which she operates through Plaintiff The Good Earth, LLC.

The Good Earth Burial Ground: An Environmentally Friendly Cemetery

20. The Good Earth is a five-acre, environmentally friendly cemetery in Hazel Green, Alabama.

21. The Good Earth consists of two areas for burial.

22. The largest burial area, which covers about 90 percent of the cemetery, is an untended forest in its natural state.

23. Interment in the forest consists of finding an unoccupied spot that the family likes—perhaps beneath the branches of a shade tree—and burying the remains there.

24. The family will be able to install a natural fieldstone to mark the grave (as opposed to a traditional headstone) in order to preserve the naturalness of the forest to the

greatest extent possible. The Good Earth will maintain a detailed map of the location of each grave within the forest.

25. The other burial area is a small meadow with burial plots arranged in traditional rows as one sees at a typical cemetery.

26. The goal of The Good Earth is to return remains to nature in the most natural way possible and as quickly as possible while leaving the smallest environmental footprint. First, to prevent toxic embalming fluids from eventually leaking into the soil, The Good Earth does not allow the burial of remains that have been embalmed, unless embalming chemicals approved by the Green Burial Council are used. The Green Burial Council is a nonprofit organization that establishes standards for manufacturers of green burial products, and for funeral homes and cemeteries willing to offer eco-friendly death care. Next, the cemetery requires burial in caskets, shrouds, or urns made of readily biodegradable material such as untreated cardboard or wood, or natural fabrics such as silk or bamboo. The caskets may not have metal hardware, and no artificial flowers may be placed on graves. Finally, there are no vaults; the casket, shroud, or urn is interred directly in the soil.

27. Plaintiff Champion has hired a local university professor to make recommendations and aid in obtaining Green Burial Council approval for The Good Earth.

28. The Good Earth is a non-sectarian cemetery that is open to the general public. It welcomes those of all faiths or no faith.

29. The Good Earth is large enough for the full-sized remains of over 500 people. There is also room for the cremated remains of many more people, which may be buried or scattered.

30. The Good Earth will also accept the remains of pets.

31. A plot in the cemetery's meadow will cost \$1,750. A plot in the cemetery's wooded area will cost \$1,950. It will cost \$250 to bury cremated remains. There is no charge for scattering remains in the cemetery. A plot for pets will cost \$250.

32. The Good Earth will charge \$600 for opening a grave, but families will be encouraged to dig their own graves and will not have to pay any grave-opening fee if they do so. The Good Earth will charge a separate \$200 interment fee in the event that a family digs its own grave.

33. Bodies will be buried between four and five feet deep. Alabama law suggests, but does not legally require, burying bodies at least 18 inches below the surface. Ala. Dep't of Public Health, *Procedures/Guidelines for Cemetery Development*; see also Ala. Code § 22-20-4. Bodies will be buried at least a foot above the water table, as also suggested, though not strictly required, by Alabama law. *Id.*

Plaintiff Champion's Plans to Sell Caskets, Shrouds, and Urns

34. As part of her cemetery business, Plaintiff Champion wants to sell the biodegradable caskets, shrouds, and urns that The Good Earth will accept.

35. A casket is just a box for human remains. It has a top, bottom, and sides. It can be as simple as a cardboard box.

36. A shroud is just a piece of fabric. It can be as simple as a bedsheet from a department store.

37. An urn is just a container for cremated human remains. It can be a box, or it can be other shapes.

38. Approximately 50,000 people die each year in Alabama. There are 437 funeral homes in the state.

39. As of 2014, the national median cost of a funeral (not including a cemetery plot and grave marker) was \$7,181. If a burial vault is included, something that is typically required by a cemetery, the median cost was \$8,508.

40. For many families, a funeral is the third largest expenditure they will ever make after a home and a car.

41. The casket accounts for the largest portion of these funeral costs. The average casket price in 2014 was \$2,395. According to the Federal Trade Commission, the casket is “frequently the single most expensive item you may have to buy if you are planning a traditional funeral.” Federal Trade Commission, *Caskets and Burial Vaults* (Nov. 1996). Caskets can often account for one-third to one-half of the total cost of funerals that include burials.

42. Almost 75% of caskets are made of steel. About 3% of caskets are made of more expensive metals such as bronze or copper.

43. Metal caskets range in price from \$800 to over \$10,000.

44. Hardwood caskets of oak, walnut, cherry, and mahogany account for about 15% of casket sales. Less expensive woods, such as particle board and plain pine, account for less than 10% of all casket sales. Wood caskets range in price from \$400 to over \$4,000.

45. Nationally, independent casket retailers offer caskets at discounted prices.

46. Federal law requires funeral homes to allow families to use caskets that they acquire elsewhere. 16 C.F.R. § 453.4(b). Federal law also forbids funeral homes from charging families for using a casket that they acquire elsewhere. *Id.*

47. Plaintiff Champion will not condition burial in her cemetery on buying a casket, shroud, or urn from her or The Good Earth. Where someone purchases a casket, shroud, or urn will have no bearing on whether her loved one can be buried at The Good Earth.

48. The caskets, shrouds, and urns that Plaintiff Champion intends to sell will cost only a fraction of a traditional casket. She hopes to enable families to bury loved ones in a much less expensive manner than is usually possible with a more traditional approach.

49. The caskets Plaintiff Champion intends to sell are biodegradable. They are made of untreated wood, wicker, or cardboard.

50. The shrouds Plaintiff Champion would like to sell are biodegradable. They are made of natural fibers such as cotton, linen, bamboo, or silk.

51. The urns Plaintiff Champion intends to sell are biodegradable. They are made of materials such as untreated wood, cardboard, or cornstarch.

52. Plaintiff Champion plans to obtain caskets, shrouds, and urns recommended by the Green Burial Council. She may also manufacture her own caskets, shrouds, and urns that conform to the rules set forth by the Green Burial Council.

53. The Good Earth will charge an approximately 20% markup on caskets, shrouds, and urns (plus shipping or delivery costs).

54. By contrast, the average markup on caskets at a funeral home is 300 percent.

55. The Good Earth will sell caskets, shrouds, and urns to the loved ones of those being buried at the cemetery and to the general public on an at-need basis. "At-need basis" means that The Good Earth will sell caskets to consumers that want to buy them for the immediate burial of their family members or to take home and store for future use.

56. Plaintiff Champion will not sell funeral merchandise on a pre-need basis, meaning she will not take money in advance from consumers for caskets, shrouds, and urns, and then deliver the merchandise in the future when the person passes away.

Selling Caskets, Shrouds, and Urns Does Not Require Specialized Professional Training

57. It does not take any specialized professional training to sell caskets, shrouds, and urns because these simple, harmless items amount to boxes and bedsheets.

58. Alabama law does not require that human remains be placed in any kind of container for burial. A person can be legally buried directly in the ground.

59. No other state requires, as a general rule, that human remains be placed in any kind of container for burial.

60. Cremated human remains may legally be kept at home or legally scattered outside.

61. As evidenced by the fact that they are not legally necessary for burial, caskets, shrouds, and urns do not serve any public health and safety purpose.

62. Some people make their own caskets, shrouds, or urns for loved ones.

63. Do-it-yourself casket, shroud, and urn plans are readily available on the Internet.

64. Every family that wants to purchase a casket on an at-need basis has a paid funeral director available for consultation. Alabama law requires that “[e]very funeral service, memorial, or interment . . . shall be in the actual charge and shall be under the direct supervision of” an Alabama funeral director. Ala. Code § 34-13-111(b). Because consumers are forced to hire a funeral director every time someone dies, they will always be able to confer with a funeral director about casket purchases, including casket purchases from someone who is not an Alabama-licensed funeral director.

The Funeral-Industry Licensing Requirements

65. Plaintiff Champion cannot lawfully sell caskets, shrouds, or urns because only Alabama-licensed funeral directors are authorized to sell such items. Likewise, caskets, shrouds,

and urns cannot be sold through The Good Earth because it is not an Alabama-licensed funeral establishment.

66. The relevant funeral licensing requirements are found in Chapter 13 (“Funeral Services”) of Title 34 (“Professions and Businesses”) of the Code of Alabama. The relevant regulations are found in Chapter 395 (“Alabama Board of Funeral Service”) of the Alabama Administrative Code.

67. Pursuant to Ala. Code § 34-13-1(a)(19), the definition of “funeral supplies or funeral merchandise” includes “[c]askets made of any material for use in the burial or transportation of human dead; outer receptacles, when sold by a funeral director, including burial vaults and urns, for cremated human remains.”

68. Pursuant to Ala. Code § 34-13-1(a)(16), the definition of “funeral directing” includes “the sale of [funeral] merchandise or supplies.”

69. Pursuant to Ala. Code § 34-13-1(a)(17), only a “funeral director” may “practice the profession of funeral directing.”

70. Under Alabama law, “[n]o person shall engage in, or attempt to engage in, the practice or profession or business of a funeral director unless licensed to do so by the Alabama Board of Funeral Service.” *Id.* at § 34-13-70(a).

71. Alabama law exempts cemeteries and cemetery authorities from the funeral-licensing laws, provided that cemeteries or cemetery authorities do not “enter into or engage in any funeral home operation or the practice of embalming or funeral directing or any related funeral home or funeral directing activities.” *Id.* at § 34-13-3.

72. Ala. Code § 34-13-72 lists the requirements an applicant must meet in order to engage in the business of funeral directing within Alabama, which include an associate’s or

bachelor's degree in mortuary science, a two-year apprenticeship, and a passing score on the funeral-director's exam.

73. Funeral director apprentices are required to devote at least 30 hours per week to the apprenticeship, *id.* at § 34-13-134(a)(1), and to preside over a minimum of 20 funerals during each of the two years of their apprenticeships. Ala. Admin. Code 395-X-3-.01.

74. The funeral-director exam must cover topics such as mortuary management and administration, mortuary law, basic accounting principles, funeral directing, and other subjects chosen by the Board. Ala. Code § 34-13-73(b).

75. Licensed funeral directors and embalmers must complete at least eight hours of continuing education approved by the State Board every two years. *Id.* at § 34-13-53(c)(1); *see also* Ala. Admin. Code 395-X-2.07(1).

76. Alabama law requires "funeral directing," which includes the sale of merchandise such as caskets, to occur only at a licensed "funeral establishment." Ala. Code § 34-13-1(a)(18); *see also id.* at § 34-13-111.

77. A licensed funeral home must have a fully operational embalming room, a display room for caskets and other funeral supplies, a hearse, a room for viewing bodies, and an office to use for making funeral arrangements. *Id.* at § 34-13-1(a)(18)(a)–(f); *see also* Ala. Admin. Code 395-X-6.

78. Violations of any of the statutory provisions listed above carry a fine between \$500 and \$2,500 per violation. Ala. Admin. Code 395-X-6-.09. They are also punishable as a misdemeanor under Alabama law, which carries a maximum penalty of \$6,000 and one year imprisonment. Ala. Code §§ 34-13-10; 13A-5-7; 13A-5-12.

79. Failure to register as a “funeral establishment” carries a fine of \$500 to \$2,500 for each day the location operates in violation of the statute. *Id.* at § 34-13-116.

80. The Alabama Board of Funeral Service is charged with administering and implementing this statutory licensing system. The State Board has seven members, appointed by the governor, and each member serves a term of two years. *Id.* at § 34-13-20(d); *see also* Ala. Admin. Code 395-X-1-.01. By law, four members of the State Board must be practicing, licensed Alabama embalmers and funeral directors for the last ten consecutive years immediately preceding their appointment. Ala. Code § 34-13-20(d); *see also* Ala. Admin. Code 395-X-1-.01. Three members of the State Board must be operators of Alabama funeral establishments who have been actively engaged in funeral directing in Alabama for the last ten consecutive years preceding their appointment. Ala. Code § 34-13-20(d); *see also* Ala. Admin. Code 395-X-1-.01. Each of the seven members of the State Board represents one of seven geographical districts, which are identical to Alabama’s seven congressional districts. Ala. Code § 34-13-21.

81. No law forbids activities falling under the definition of “funeral directing” from taking place on the property of a cemetery in Alabama. For example, Memory Chapel Funeral Home in Tuscaloosa, Alabama, was the first cemetery and funeral home combination in Alabama. It was established in 1966 and still operates.

Injury to Plaintiffs

82. On their face and as interpreted and enforced by Defendants, the applicable funeral-directing and funeral-establishment laws and regulations require individuals who sell caskets, shrouds, and urns, but engage in no other activity within the definition of “funeral directing,” to obtain a funeral director’s license and sell those items at a licensed funeral establishment. Hence, as a condition of selling caskets, shrouds, and urns to the public,

individuals must obtain hours of costly training in skills that are wholly unnecessary to the task of selling caskets, shrouds, and urns; they must serve as an apprentice in the funeral business; pass the funeral-director licensing exam; they must subject themselves to continuing education requirements; and they must incur the expense of constructing, licensing, and maintaining a funeral establishment.

83. Plaintiff Champion wants to sell caskets, shrouds, and urns directly to the public through her cemetery. These items are very easy and inexpensive for her to obtain wholesale. There is an active market among the clients of her cemetery and among other members of the general public for the caskets, shrouds, and urns that Plaintiff Champion wants to sell.

84. Plaintiff Champion is irreparably harmed insofar as she cannot sell caskets, shrouds, and urns because Alabama law forbids her from doing so unless she is an Alabama-licensed funeral director, which she is not.

85. Plaintiff Champion is irreparably harmed insofar as she cannot sell caskets, shrouds, and urns for the additional reason that Alabama law requires such items to be sold only at an Alabama-licensed funeral establishment, which her cemetery, The Good Earth Burial Ground, is not.

86. Plaintiff Champion is irreparably harmed for the additional reason that it is not realistic for her to become an Alabama-licensed funeral director merely to sell caskets, shrouds, and urns directly to the public. Plaintiff Champion is a grandmother and nearing retirement age. It would be irrational for her to obtain a mortuary-science degree and devote two additional years to a full-time apprenticeship in order to become an Alabama-licensed funeral director for the purpose of selling inexpensive caskets, shrouds, and urns. Tuition and fees at Bishop State Community College in Mobile, Alabama for their Funeral Service Education program are

approximately \$5,000 per year. All of the money and time required to become an Alabama-licensed funeral director, including four years of foregone income, would be wasted because no specialized professional training is necessary to sell caskets, shrouds, and urns.

87. Plaintiff Champion is irreparably harmed for the additional reason that it is not realistic for her to construct and open an Alabama-licensed funeral establishment merely to sell inexpensive caskets, shrouds, and urns. As noted above, Plaintiff Champion is a grandmother and nearing retirement age. It would be irrational for her to spend hundreds of thousands of dollars building a full-service funeral establishment—including facilities for embalming—that she would never use to sell caskets, shrouds, and urns. All of the money and time spent constructing an Alabama-licensed funeral establishment would be wasted because the facilities of a full-service funeral establishment are not necessary to sell caskets, shrouds, and urns. Moreover, Plaintiff Champion does not want to engage in services such as funeral directing and embalming.

88. There is no possible way, as a matter of time and money, for Plaintiff Champion to operate The Good Earth Burial Ground while simultaneously trying to obtain irrelevant funeral-director and funeral-establishment licensure. For all practical purposes, the current law is an absolute bar to her selling inexpensive caskets, shrouds, and urns directly to the public.

89. Defendants, who compose the Alabama Board of Funeral Service, actively enforce Alabama funeral law, including funeral-director and funeral-establishment licensure, against anyone and any entity that violates Alabama's funeral laws.

90. Defendants actively require those who wish to engage in activities within Alabama that meet the statutory definition of "funeral directing" to comply with the requirements of funeral-director licensure under Alabama law. Defendants continuously process

applications for funeral-director licensure under Alabama law. Defendants maintain a list of people who possess an Alabama funeral director's license. Defendants ensure that those who have been authorized to practice funeral directing in Alabama satisfy the requirements of license renewal. Defendants also ensure that those who have not been authorized to practice funeral directing in Alabama do not do so. Defendants have the authority under Alabama funeral law to petition a court of competent jurisdiction to restrain anyone who violates Alabama funeral law. Ala. Code § 34-13-26. Defendants actually exercise this authority against those who violate Alabama funeral law with respect to funeral-director licensing.

91. Defendants actively require those who wish to engage in activities within Alabama that meet the statutory definition of "funeral directing" to conduct those activities—after being individually licensed—at a place of business that complies with the requirements of funeral-establishment licensure under Alabama law. Defendants continuously process applications for funeral-establishment licensure under Alabama law. Defendants maintain a list of Alabama-licensed funeral establishments. Defendants ensure that Alabama-licensed funeral establishments satisfy the requirements of license renewal. Defendants also ensure that funeral directing is not conducted in Alabama at a place of business that is not an Alabama-licensed funeral establishment. Defendants have the authority under Alabama funeral law to petition a court of competent jurisdiction to restrain anyone who violates Alabama funeral law. *Id.* at § 34-13-26. Defendants actually exercise this authority against those who violate Alabama funeral law with respect to funeral-establishment licensing.

92. As part of their responsibilities for enforcing Alabama's funeral laws, Defendants, as the members of the Alabama Board of Funeral Service, have issued a binding opinion under Alabama law specifically against Plaintiff Champion stating that her specific plan to sell caskets,

shrouds, and urns is illegal under Alabama funeral law. On January 11, 2016, the Alabama Board of Funeral Service, in response to a formal petition for a declaratory ruling submitted by Plaintiff Champion pursuant to Ala. Code § 41-22-11 on December 16, 2015, issued a declaratory ruling stating its conclusion that the specific plans of Plaintiffs Champion and The Good Earth to sell caskets, shrouds, and urns are illegal under Alabama's funeral laws. This declaratory ruling is attached as Exhibit A to this Complaint.

93. The declaratory ruling states that "it is the ruling of the Alabama Board of Funeral Service that only licensed funeral directors by the Board can sell caskets, urns, and burial shrouds in Alabama." Ex. A, Declaratory Ruling of the Ala. Bd. of Funeral Serv., at 2.

94. Under Alabama administrative law, this declaratory ruling is binding on the State Board. Ala. Code § 41-22-11(b).

95. There is a credible threat of imminent enforcement. If Plaintiff Champion began to sell caskets, shrouds, and urns directly to the public without becoming an Alabama-licensed funeral director, and without licensing The Good Earth as an Alabama funeral establishment, Defendants would take immediate steps under the law to force her to stop that specific conduct, which Defendants have already identified as illegal in her specific case.

96. But-for the funeral-director and funeral-establishment licensing requirements, Plaintiff Champion would immediately sell caskets, shrouds, and urns directly to the public through her cemetery, the Good Earth Burial Ground.

97. But-for Defendants' enforcement of Alabama funeral law, especially the funeral-director and funeral-establishment licensing requirements, Plaintiff Champion would immediately sell caskets, shrouds, and urns directly to the public through her cemetery, The Good Earth Burial Ground.

98. But-for Defendants' formal Declaratory Ruling that Plaintiff Champion's specific plans are illegal under Alabama law, Plaintiff Champion would immediately sell caskets, shrouds, and urns directly to the public through her cemetery, The Good Earth Burial Ground.

99. The current funeral-director and funeral-establishment licensing laws have the intent and effect of establishing and maintaining a cartel of state-licensed funeral directors who are alone authorized to sell burial containers such as caskets, shrouds, and urns within Alabama. The State Board, which is composed entirely of Alabama-licensed funeral directors, actually enforces Alabama laws and practices related to the control of the funeral-director cartel over funeral merchandise.

100. This anti-competitive cartel limits the lawful sale of funeral merchandise to those who provide all other funeral services, while preventing individuals who do not wish to provide funeral services from directly offering funeral merchandise for sale to the public. The funeral-director and funeral-establishment licensing scheme erects excessive and unreasonable barriers to the most basic economic opportunities and serves no legitimate government interests.

101. Through the arbitrary acts of Defendants as listed above, Plaintiffs are injured irreparably by the past, present, and future deprivation of their substantive due-process right to earn an honest living free from arbitrary and irrational government interference and their right to equal protection of the laws.

CONSTITUTIONAL VIOLATIONS

Count I **(Due Process)**

102. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 101 of this Complaint as if fully set forth herein.

103. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects every American's right to pursue legitimate occupations, subject only to regulations that are rationally related to a valid government purpose.

104. Alabama's funeral-licensing laws and regulations violate Plaintiffs' right to due process of law under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983 on their face and as applied to the extent that Alabama law requires individuals to be licensed funeral directors merely to engage in the retail sale of caskets, shrouds, and urns; and to the extent that Alabama law requires entities to be licensed funeral establishments in order to engage in the retail sale of caskets, shrouds, and urns.

105. There is no rational basis for prohibiting anyone or any entity from selling a casket, shroud, or urn directly to the public.

106. Unless Defendants are enjoined from committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

Count II
(Equal Protection)

107. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in paragraphs 1 through 106 of this Complaint as if fully set forth herein.

108. By requiring the sellers of simple, biodegradable caskets, shrouds, and urns to comply with an arbitrary and irrelevant licensing scheme that is not rationally related to any legitimate public health and safety or anti-consumer-exploitation concerns, but is instead designed for another profession, Defendants, their agents, and employees are treating two distinct and different occupations as the same and therefore violating the rights of Plaintiffs to equal protection as guaranteed by the Fourteenth Amendment.

109. Unless Defendants are enjoined from committing the above-described constitutional violations of the Fourteenth Amendment, Plaintiffs will continue to suffer great and irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request relief as follows:

A. A declaration that Ala. Code § 34-13-1(a)(16) is unconstitutional on its face to the extent that it includes the selling of caskets, shrouds, and urns within the definition of “funeral directing”;

B. A declaration that Ala. Code § 34-13-1(a)(16) is unconstitutional as applied to Plaintiffs, who only wish to sell caskets, shrouds, and urns and engage in no other activities that fall under the definition of “funeral directing”;

C. A declaration that Ala. Code § 34-13-1(a)(17) is unconstitutional on its face to the extent that it includes the selling of caskets, shrouds, and urns within the definition of “funeral director”;

D. A declaration that Ala. Code § 34-13-1(a)(17) is unconstitutional as applied to Plaintiffs, who only wish to sell caskets, shrouds, and urns and engage in no other activities that fall under the definition of “funeral directing”;

E. A declaration that Al. Code § 34-13-3 is unconstitutional on its face to the extent that it includes the selling of caskets, shrouds, and urns within the definition of “funeral directing or any related funeral home or funeral directing activities”;

F. A declaration that Al. Code § 34-13-3 is unconstitutional as applied to Plaintiffs, who only wish to sell caskets, shrouds, and urns and engage in no other activities that fall under the definition of “funeral directing”;

G. A declaration that Ala. Code § 34-13-1(a)(18) is unconstitutional on its face to the extent it includes a business selling caskets, shrouds, and urns to the public within the definition of “funeral establishment”;

H. A declaration that Ala. Code § 34-13-1(a)(18) is unconstitutional as applied to Plaintiffs, who only wish to sell caskets, shrouds, and urns and engage in no other activities that fall under the definition of “funeral directing”;

I. A declaration that Ala. Code § 34-13-1(a)(18)(a)–(f) and the practices of the State Board, as applied to Plaintiffs, are unconstitutional;

J. A declaration that Ala. Code § 34-13-1(a)(19) is unconstitutional on its face to the extent it includes caskets, shrouds, and urns within the definition of “funeral supplies or funeral merchandise”;

K. A declaration that Ala. Code § 34-13-1(a)(19) is unconstitutional as applied to the selling of caskets, shrouds, and urns by one who is not a state-licensed funeral director;

L. A declaration that Ala. Code § 34-13-70(a) is unconstitutional as applied to Plaintiffs, who only wish to sell caskets, shrouds, and urns and engage in no other activities included in “the practice or business of a funeral director”;

M. A declaration that Ala. Code § 34-13-72(a)(1)–(5) and the practices of the State Board, as applied to Plaintiffs, are unconstitutional;

N. An injunction permanently enjoining Defendants from enforcing these laws, regulations, and policies in a manner that impairs the opportunities of Plaintiffs to sell caskets, shrouds, and urns to the public; prohibiting the imposition of fines or criminal penalties; and prohibiting Defendants from harassing Plaintiffs;

O. For an award of attorneys' fees, costs, and expenses in this action pursuant to 42 U.S.C. § 1988; and

P. All further legal and equitable relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED this 4th day of April, 2016.

/s/ Charles B. Paterson

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**Motion for Admission Pro Hac Vice Pending*

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