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FEDERAL TRADE COMMISSION

SHOPPING FOR FUNERAL SERVICES
AN FTC WORKSHOP

Thursday, September 7, 2023
9:30 a.m.

Constitution Center
400 7th St SW
Washington DC 20024

FTC Workshop

Shopping for Funeral Services 9/7/2023

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1 PROCEEDINGS

2 MS. PLETT: Okay. I think we can get
3 started. Good morning, everyone. Thank you for
4 everyone who's joining us in person and everyone who's
5 joining us virtually. I'm Rebecca Plett. I'm one of
6 the co-coordinators of the FTC's Funeral Rule, with
7 Melissa Dickey, who is joining us in person here today
8 as well.

9 We have a busy agenda today. We're really
10 excited for some great discussion, but before we get
11 into the substance, I just have to cover a few
12 administrative things before we get going, especially
13 for the folks who are here in person. We are getting
14 the AC cooled down. I know that's been a pain point
15 this morning here in D.C. So that hopefully will kick
16 in more as the morning progresses.

17 First, I just need to make the disclaimer
18 that the views expressed by me or other folks from the
19 FTC today are our own and are not those of the
20 Commission as a whole or any individual commissioner,
21 except, of course, for Commissioner Slaughter's views,
22 which she will be expressing right after I'm done with
23 these administrative items.

24 Please silence any electronic devices. And
25 if you must use them during the workshop, please be

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1 respectful of the panelists and of your fellow
2 audience members.

3 Please also be aware that if you leave the
4 Constitution Center Building entirely, you will have
5 to go back through security. So just plan that in if
6 you're leaving the building. That will take some time
7 to get back in.

8 Most of you received a lanyard with an FTC
9 event security badge. Please wear that throughout the
10 day today just so our security folks know that you're
11 part of this event. But we also reuse these for other
12 events, so please turn it in at the end of the day
13 with the security desk.

14 If an emergency occurs that requires you to
15 leave the auditorium but remain in the building,
16 please follow the instructions over the building PA
17 system. And if an emergency occurs that requires you
18 to leave the building, there will also be a sound and
19 an announcement. Everyone should leave the building
20 in an orderly manner through the main Seventh Street
21 exit. After leaving the building, turn left. You
22 will go down Seventh Street and cross E Street to the
23 FTC emergency assembly area. Remain in that area
24 until instructed to return to the building.

25 If you notice any suspicious activity

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1 throughout the day today, please alert building
2 security.

3 Please be advised that this event may be
4 photographed, webcast, or recorded. By participating
5 in this event, you are agreeing that your image and
6 anything you say or submit may be posted indefinitely
7 at FTC.gov or on one of the Commission's publicly
8 available social media sites.

9 Restrooms are located outside the auditorium
10 if you turn left, and there's also a cafeteria that
11 you can also reach by turning left. I think some
12 folks have already seen that. Breakfast hours are
13 8:00 to 11:00. There's some limited service from
14 11:00 to 11:30 and then lunch is served from 11:30 to
15 1:00.

16 Most importantly, I've been asked to remind
17 everyone that there are no foods or drinks allowed
18 inside the auditorium. The only beverage you're
19 allowed to bring in is water. The building is fairly
20 strict with us, so we will be kind of keeping an eye
21 on that. But I just wanted to remind everyone.

22 So that's all I have. And with that, I'll
23 turn it over to Commissioner Slaughter.

24 Thank you very much for being here,
25 Commissioner Slaughter.

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- 1 (Applause.)
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1 WELCOME AND OPENING REMARKS

2 COMMISSIONER SLAUGHTER: Thank you so much,
3 Rebecca, and thank you to all of you that are here
4 today, and welcome to Shopping for Funeral Services,
5 An FTC Workshop.

6 We at the FTC often select workshop titles
7 that are as punny as can be, but I am personally very
8 relieved that I did not have to deliver a pun about
9 death at 9:30 in the morning.

10 (Laughter.)

11 COMMISSIONER SLAUGHTER: But as somber as
12 our subject today is, I expect we will all enjoy
13 ourselves and maybe even laugh a little as we work
14 through our very packed agenda.

15 Last week, my three-year-old was angsting,
16 as three-year-olds always do, about death. I don't
17 know why it is that at three they start to become very
18 fixated on this, but mine is. And my five-year-old
19 said to her in a very matter of fact tone, death is
20 just a part of life, Hattie; you don't need to worry
21 about it. And she's right. Well, they're both right
22 in a way.

23 Death is a part of life. Nothing in life is
24 more certain than death. But Hattie was also right
25 that it is a cause of worry and the grief and pain

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1 that are associated with death should not be
2 compounded by anxiety about uncertainty and costs and
3 choosing funeral services, which is something that
4 almost every American is going to have to do at some
5 point usually under very difficult circumstances.

6 Death is rarely talked about, cloaked in
7 discomfort or taboos. When a loved one dies, family,
8 friends, and others face many difficult and costly
9 decisions about how to honor the deceased, including
10 choosing funeral providers and services.

11 In 2021, the median cost of a traditional
12 burial in the United States was \$7,848, while the
13 median cost for cremation was \$6,971. That is a very
14 significant expense for most families in America, the
15 equivalent of buying a used car, and far more than
16 most families have in emergency savings.

17 Decisions are often made under pressure to
18 act quickly while people are grieving and dealing with
19 significant stress. In one of my own faith
20 traditions, Judaism, the deceased are supposed to be
21 buried as soon as possible, and in all cases, within
22 72 hours of death. It is difficult to be deliberate
23 and thorough when comparison shopping under such
24 pressures, even in the best of circumstances.

25 The funeral providers and services consumers

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1 choose can have a significant financial impact. A
2 variety of different burial and related funeral
3 services exist. Prices for services, including the
4 same services by different providers, can vary by
5 thousands of dollars. So it is critical that
6 consumers have easy and quick access to information
7 that lets them choose only those services they want
8 and for a price that works for them.

9 That is exactly what the Funeral Rule is
10 intended to ensure. The Funeral Rule includes
11 important disclosures designed to ensure that
12 consumers have the information they need to make
13 purchasing decisions. For example, the Funeral Rule
14 requires funeral providers to give anyone who inquires
15 about services in person a copy of the provider's
16 detailed general price list, which must include a
17 number of common services offered by the funeral
18 provider, such as the cost of a hearse, the cost of a
19 direct cremation, and the cost of an immediate burial.

20 It also requires providers to give people
21 accurate information, including price information over
22 the phone. The Funeral Rule also allows people to
23 select only those services they want and requires
24 providers to let people know what is and isn't a
25 required service. Funeral providers must offer

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1 services individually instead of exclusively through
2 bundles, a practice that was common before the Rule
3 was enacted, which resulted in people paying lots of
4 money for services they did not need or want.

5 I often cite the Funeral Rule as
6 paradigmatic of two things that I love about the work
7 of the FTC. The first is that it is not something
8 that most people think about, other than the people in
9 this room and watching online, on a day-to-day basis
10 and, in fact, most people -- even the people who
11 benefit from its protections probably don't even know
12 it exists. It's not headline-grabbing, it's not front
13 page news, but it is there in the background doing
14 really, really important work to protect consumers
15 just at the moments where they might be the most
16 vulnerable to unfair and deceptive acts and practices.

17 And the second thing I love about the
18 Funeral Rule is that it is a consumer protection rule
19 that has hugely beneficial effects in service of our
20 competition mission. It demonstrates how the FTC's
21 consumer protection and competition missions are
22 closely related. Because distinct options for funeral
23 services are separately priced under the Rule, it
24 promotes competition for each aspect and allows
25 consumers to, say, purchase a casket at a big box or

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1 online store and then other services from a funeral
2 provider.

3 Last year, as part of a standard review of
4 the rule, the FTC sought comments from the public on
5 whether the Funeral Rule, which was enacted in 1984,
6 should be updated or changed. This workshop is meant
7 to help the Commission understand whether and how the
8 Rule can be improved to benefit both consumers and
9 businesses, especially considering changes in
10 technology and shifts in the way we shop for services
11 and care for deceased loved ones.

12 This morning, the first two panels will
13 address whether and how funeral service providers
14 should be required to disclose prices online, not just
15 handed out when someone goes to the funeral home and
16 asks about services or calls in by phone.

17 The first panel will discuss whether such an
18 amendment is needed, including any potential benefits
19 or drawbacks to consumers and competition from pricing
20 information that is easily accessible online. We will
21 also discuss any potential costs, such as such a
22 requirement could impose on businesses.

23 The second panel will discuss practical
24 considerations for online price disclosures if posting
25 were to be required, included where prices could be

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1 posted and other technical challenges and
2 opportunities around online price disclosures.

3 After lunch, the third and fourth panels
4 will delve into whether the Funeral Rule needs other
5 updates to benefit consumers or businesses. For
6 example, updates to the professional services fees
7 that cover funeral provider's overhead costs, updated
8 to clarify disclosures about when embalming is
9 required under state laws, and whether funeral
10 providers should be required to disclose certain
11 additional fees on their price list, such as fees
12 third-party crematories charge the funeral home.

13 The last panel of the day will discuss new
14 ways of caring for a loved ones remains. Most people
15 are generally familiar with burials and cremations,
16 but innovations in the death care industry mean that
17 people now have more choices than ever about what
18 kinds of funeral services they want, from alkaline
19 hydrolysis to natural organic reduction. Yes, the
20 "shroom" burial seems to be here to stay. We will
21 discuss a variety of new forms of disposition and
22 whether the Funeral Rule needs to be updated to
23 account for them.

24 Funerals have always been important to
25 families and communities because, as my daughter

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1 noted, death is a part of life. The Commission's
2 issuance of the Funeral Rule almost 40 years ago began
3 to bring some of the essential aspects of funeral into
4 the public realm for discussion and ultimately for
5 improvement.

6 As became all too clear throughout the
7 devastating COVID-19 pandemic, funerals are sadly an
8 experience with which too many Americans are
9 personally acquainted and I think many see room for
10 improvement. Today's panels will help us identify
11 whether and how to make changes to the Rule.

12 Before we get to the panels, I'd like to
13 thank everyone who made this workshop possible.
14 First, I want to thank all the panelists and all those
15 who have submitted research and comments in advance of
16 this workshop. Second, I'd like to thank FTC staff,
17 Melissa Dickey, Rebecca Plett, Sammi Nachtigal, Joseph
18 Swindal, Dotan Weinman, and Lois Greisman, for
19 planning this event.

20 I also want to thank Brent McPeck, Kelly
21 Ortiz, and Margaret Patterson, who offered valuable
22 insights and assistance during the planning process.
23 In addition, I'd like to thank many other FTC
24 colleagues, including those from the Division of
25 Consumer and Business Education and the Office of

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1 Public Affairs, whose input has been vital.

2 Finally, thank you to everyone who is
3 attending in person or watching online via our live
4 webcast. We encourage you to submit either empirical
5 research or submit a comment with your thoughts. The
6 FTC will continue to accept empirical research and
7 public comments until October 10th, 2023.

8 I'm looking forward to some thought-
9 provoking and frank discussions, and with that, I'll
10 turn it back over to Rebecca to moderate our first
11 panel.

12 Thank you.

13 (Applause.)

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1 PANEL 1: ONLINE DISCLOSURES: IS IT NEEDED?

2 THE PROS/CONS

3 MS. PLETT: Thanks. And just this is a good
4 reminder for myself, but to the panelists, if you can
5 speak towards or into the mic during our panel today,
6 I think that will be helpful for everyone to be able
7 to hear us.

8 Well, thanks to Commissioner Slaughter for
9 her remarks this morning and good morning to our first
10 panel of the day. Thanks, everyone, for being here.

11 The theme of the panel is Online Disclosure:
12 Is it Needed? The Pros and Cons.

13 As a reminder to the audience, for folks who
14 are here in person, if you want to ask the panel a
15 question, you may do so by writing your question on a
16 comment card. We're going to have folks kind of
17 keeping an eye out for those questions and passing
18 through the room to pick them up to get them back up
19 here to us.

20 For folks who are joining us virtually
21 online, you are able to ask questions by emailing our
22 inbox, which is funeralrule@FTC.gov.

23 I'd like to briefly introduce the panelists
24 today. To my right is Lacyn Barton of Service
25 Corporation International.

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1 Beside her is Dr. Hari P. Close, II, of the
2 National Funeral Directors & Morticians Association.

3 Next, we have Chris Farmer from the National
4 Funeral Directors Association.

5 We have Poul Lemasters from the
6 International Cemetery, Cremation & Funeral
7 Association.

8 And then at the end of the table, we have
9 Sarah Pojanowski of Selected Independent Funeral
10 Homes.

11 And joining us virtually is Erin Witte of
12 the Consumer Federal of America.

13 So welcome, everyone. Thanks for being
14 here.

15 So we're about to dig into online price
16 disclosure issues, and just to outline what we're
17 planning on covering in this panel, we will start out
18 with a discussion about whether current price
19 disclosure requirements are sufficient. We'll then
20 talk about how consumers shop for funeral services
21 before we turn to the costs and benefits of online
22 price disclosure.

23 So as an introduction, just so that the
24 audience knows, kind of, everyone's view on the topic
25 generally, I'd like to start with kind of a yes or no

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1 question to all my panelists, and I think I'll just go
2 in the alphabetical order that they're seated in.
3 Should the Funeral Rule be amended to require online
4 price disclosure?

5 So, Lacyn, I'll start with you?

6 MS. BARTON: No, the FTC should not mandate
7 online price disclosure. In my 20 years of experience
8 as a funeral director serving hundreds of families, I
9 know full well that the Funeral Rule works as it
10 stands because the GPL is explained in context when we
11 serve families.

12 MS. PLETT: Dr. Close?

13 DR. CLOSE: I'm going to say, based on my
14 membership, no, and I will say 50 percent have a
15 different perspective. But I will say that, as my
16 colleague already mentioned, that we need to be able
17 to explain that general price list. But later on, I
18 have a different perspective as a individual.

19 MS. PLETT: Sure.

20 And, Chris?

21 MR. FARMER: My answer to that is, no, they
22 shouldn't require posting online. I think that the
23 impact that that would have on the majority of funeral
24 services, who are small businesses, would
25 substantially outweigh any benefit, and I think that

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1 any benefit is unstudied and unknown. Consumers don't
2 shop for funerals by prices. The data shows that;
3 statistics show that. And I don't think that there's
4 any harm to consumers for not posting prices online.
5 I think that that would be -- the harm to a small
6 business would outweigh any benefit.

7 MS. PLETT: And, Poul?

8 MR. LEMASTERS: Yeah, I will -- for the
9 direct question yes or no, because I do think it's
10 more complicated, but I'll say no, specifically as it
11 refers to being required by the FTC. I think that's a
12 harsh fix. I think there are a lot better solutions
13 than requiring every provider to price. And I would
14 also remind that, you know, every state level has
15 their own regulatory schematic and this could easily
16 be left to the states to determine if in their state,
17 their region, if they want to control this, which they
18 could.

19 MS. PLETT: And, Sarah?

20 MS. POJANOWSKI: I'm going to take a
21 slightly different track and say yes in a very limited
22 circumstance. There are certain funeral and cremation
23 providers out there who provide all of the
24 arrangements online and do not have a brick-and-mortar
25 presence. And in that very limited circumstance, I

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1 believe it's necessary to ensure that consumers have
2 access to pricing data before they select the services
3 that they would like to purchase. So in that certain
4 online-only context, I would support a change in the
5 Funeral Rule. Otherwise, the Funeral Rule works very
6 well for the average brick-and-mortar store and I see
7 no problems with it.

8 MS. PLETT: And, Erin?

9 MS. WITTE: So our position would be yes,
10 prices should be available online by funeral
11 providers. It's clear that consumers will shop online
12 if they have the opportunity, but they don't because
13 there isn't consistent price disclosure online. Where
14 consumers shop online more and more every day, this
15 Rule hasn't been updated in ten years and this is the
16 perfect opportunity for the FTC to make the equitable
17 choice and make these prices required to be disclosed
18 online.

19 MS. PLETT: Thank you. Thanks, everyone,
20 for their views in that first round. So I think with
21 that we'll delve more into the first topic of this
22 panel, which is how the current price disclosure
23 requirements are working.

24 So this is going to be a question for Poul
25 and for Lacyn. The question is, Are current price

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1 disclosure requirements in the Funeral Rule adequate
2 for consumers to get price and service information?

3 And, Lacyn, I'll start with you.

4 MS. BARTON: Thank you. Yes, the current
5 Funeral Rule has the disclosure of providing prices at
6 the time of the purchase decision. And during that
7 time, during the arrangement conference, these
8 families make approximately 120 decisions when they're
9 sitting down with the funeral director and it's during
10 a very emotional time. And our general price list at
11 my funeral home has 93 line items. I know going into
12 that funeral arrangement conference that that family
13 is not going to need all 93 items. It's up to me to
14 engage them in a conversation and find out the handful
15 of items that they actually need to get the customized
16 service that they want.

17 And funerals, they're just not commodities.
18 There's so many facets and moving parts to pull
19 together and it's an intricate process, and it
20 requires a trained and licensed professional to guide
21 them through that process. Independent data collected
22 by JD Power indicate that our SCI customers are
23 satisfied with arrangements and, in fact, they
24 indicate that the price is about or even lower than
25 they expected.

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1 MS. PLETT: Thank you.

2 And, Poul, what are your thoughts?

3 MR. LEMASTERS: I would agree. The question
4 is, is it working as is -- meaning the handing out of
5 the GPL, and it is. And we know this in a couple
6 ways. One, from the Sentinel Report, which I think is
7 very telling, the Sentinel Report every year comes out
8 and it tracks not just hundreds or thousands, but
9 millions of consumer complaints across every topic you
10 can imagine. This past Sentinel Report, there were
11 over 5 million complaints that were registered and the
12 funeral services -- and that isn't just handing out
13 prices; that's everything from how much it cost to was
14 it a good funeral, did you get my obit right, I mean,
15 it was every complaint possible -- there were a
16 whopping 1,500. It's .03 percent. So statistically,
17 we know that this is not an issue.

18 I know one of the things we always want to
19 hang our hat on is that we look for prices and they're
20 not there, but, again, from a study we had done with
21 ICCFA and an outside group, over 80,000 families, and
22 they ranked pricing as 8 percent of their factor of
23 what they look for, and only 2 percent even go to the
24 internet to look for statistics. So the idea is, is
25 statistically, is it working? It is.

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1 I also know that the FTC -- every year, we
2 see the sweeps -- well, the FTC will undercover shop
3 funeral homes. And the idea is is that there is, on
4 average, about 20 funeral homes that are cited for
5 failure of handing out the GPL. However, I think it's
6 important to look into that data deeper because most
7 of those are not that they fail to hand out a GPL,
8 it's a timing issue.

9 And it goes to what Lacyn said, is really if
10 we were going to do anything with the Funeral Rule, we
11 need to understand and correct the timing of the price
12 list, not the giving it out, because a lot of those
13 people that were penalized were because the family
14 came in, sat at an arrangement table like this, there
15 happened to be caskets in the room, and they were
16 cited for failure to give out price lists because
17 merchandise was present. Well, that's a very harsh
18 standard when, at that moment, we haven't even talked
19 about what funeral they want, if they even needed a
20 casket.

21 So again, the current price disclosure
22 works, and if we fine-tuned it and worked on the
23 timing, I think you would see that there would be even
24 a higher level of satisfaction and compliance.

25 MS. PLETT: Thank you.

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1 And the next question to Dr. Close and to
2 Erin is what your reactions are to that.

3 And I'll start with you, Dr. Close. What
4 are your views on the current price disclosure
5 requirements?

6 DR. CLOSE: I really think Poul said
7 something that's very clear. I used to be the
8 President of the State Board of Maryland. And the
9 question was, under a former colleague of yours, do we
10 have the general price list at the door when they walk
11 into our facility, do they have it at the arrangement.
12 So I will use -- personally, I emphasize to our
13 members, have it at the front door, even though you
14 have a receptionist, and have a whole package at their
15 arrangement, take one before you walk in. So I think
16 the issue is timing.

17 But at the other part of that, I do agree
18 with my colleague that the majority of us are giving
19 them a price list, but it's about breaking it down,
20 because we know the FTC, when they went and put the
21 general price list, it's a lot of prices. They just
22 wanted the value of what we consider the cost. And I
23 think what happens for the consumer, they get
24 confused.

25 All these distinguished gentlemen and ladies

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1 here, we each run a different type of funeral with
2 different costs. So my general price list is not
3 going to match someone. And I have four facilities
4 within a mile of me. Each of us have a different
5 price structure with different requirements for that
6 particular provider.

7 So it's necessary, but I do agree that we
8 need to educate, educate, educate. Consumers really
9 don't understand. And one day, all of us will be a
10 consumer and our families will be making the same
11 decisions under that same duress.

12 MS. PLETT: And, Erin, what about you? Do
13 you think the current price disclosure requirements
14 are working?

15 MS. WITTE: No. And I have a few things I'd
16 like to respond to in the prior comments. The first
17 is the very accurate description of the fact that this
18 is a highly sensitive and personal decision, and so
19 requiring online price disclosure will amplify the
20 consumer's ability to participate in that conversation
21 in a meaningful and educated way. If they have a
22 sense beforehand of -- before even going into a
23 funeral home, picking which funeral home they may go
24 to, of what questions they can ask and a general sense
25 of what they can expect, certainly they will be a more

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1 educated consumer and be able to protect themselves
2 better and ask better questions. I think that would
3 serve every person in this marketplace.

4 There was also a comment about the lack of
5 complaints or the characterization, I guess, that
6 there's a lack of complaints made to the FTC. And
7 there's a couple reasons I think that this is coming
8 up.

9 First is that consumers just may feel
10 awkward filing complaints about a funeral home. This
11 is a really personal problem. It's a really personal
12 issue. And when a consumer has been through the
13 process of going through the funeral, going through
14 the grieving process, they may not be inclined to file
15 a complaint against a funeral home. So that's one
16 thing. Even if they felt like the price should have
17 been disclosed earlier or they wish they knew more
18 going into it, that might not be the situation where
19 consumers are filing complaints in droves.

20 The second is that consumers probably don't
21 always know that the FTC is the agency to which they
22 can file a complaint about something like this. It's
23 a fairly discrete topic, right? But that speaks to
24 the need for more education, but also more
25 transparency and more disclosure. Requiring online

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1 disclosure will serve all of those purposes. It won't
2 harm these efforts; it will only amplify them.

3 So we certainly think that prices should be
4 made online earlier. And, again, to speak to the
5 timing concerns that folks have, earlier, more often
6 will certainly be better. It will promote one of the
7 main purposes of the Funeral Rule, which is to allow
8 consumers to make informed choices.

9 MS. PLETT: Thank you.

10 And a follow-up question is, are there
11 particular -- and I think this will be to Erin and to
12 Chris maybe -- are there any particular groups of
13 consumers for whom getting price information is
14 particularly challenging?

15 Erin, maybe I'll start with you.

16 MS. WITTE: Sure. There are consumers who
17 may not live near their loved ones for whose funeral
18 they are planning. So someone who lives in California
19 and has to plan a funeral for their mother in Texas,
20 that's going to be extraordinarily difficult to get
21 that information. There's been some research about
22 even calling funeral homes and trying to obtain price
23 lists that way. And it's not easy. So funeral homes
24 don't always provide it. The requirements there are a
25 bit less clear. But requiring these online

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1 disclosures would certainly help with that.

2 There are also consumers who may be
3 homebound, some who are disabled, who are ill. All of
4 these populations of consumers are going to go through
5 this experience at some point, and so we really have
6 to think broadly about how to make this information
7 acceptable to everyone.

8 MS. PLETT: And, Chris, what are your views
9 on Erin's response?

10 MR. FARMER: Well, I think if consumers are
11 calling funeral homes and they're not giving them
12 prices, they're already violating the Rule as it
13 exists. So I think that that's a nonissue as far as
14 calling the funeral home. And the FTC reviewed this
15 back in 1994 and they decided it wasn't proper to
16 require a production of a price list from a phone call
17 anyway.

18 So that's been reviewed and I don't see
19 anything different. I see no statistics that are
20 different. I see no studies to show that there would
21 be any change in the consumers behavior. The NFDA
22 study showed that only 11 percent of funeral consumers
23 contacted more than one funeral home when looking for
24 services. And, in fact, I think that number is
25 extremely reliable because the Consumer Federation of

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1 America's Ipsos study, when they cited it in their
2 publications, said 11 percent, too. So we know -- I
3 think it's a very reliable number to say that only 11
4 percent of consumers are looking at more than one
5 price.

6 And of those, everything that the data
7 shows, all the studies that we have, and I know the JD
8 Power studies and the SCI numbers, all show the
9 numbers that Poul just cited that consumers are not
10 having problems finding prices. It's not an issue. I
11 think that it shows over 90 percent of consumers say
12 they have no problem at all finding prices, and that
13 of the 11 percent in our study that looked online,
14 only 14 percent said that they looked for -- 11
15 percent shopped at more than one location. Only 14
16 percent of that said that they looked online.

17 So we know that it's out there, we know it's
18 a possibility, and consumers just don't shop that way.
19 And so to impose a rule that would have an effect on
20 small business, that doesn't have an effect on the way
21 consumers shop or their availability to find
22 information at all just doesn't make sense to us.

23 MS. PLETT: I'd like to turn next to another
24 question to Sarah and to Chris. Short of online price
25 disclosure requirements, are there ways that price

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1 disclosures, pursuant to the Funeral Rule, could be
2 improved, you know, outside of what we're talking
3 about with online price disclosures?

4 And, Sarah, I'll start with you.

5 MS. POJANOWSKI: Absolutely. I think one
6 key area where we can improve the price disclosure
7 requirements is the timing, as Poul was referencing
8 earlier. When the Commissioners were voting earlier
9 in the spring on whether to reopen the rule, this came
10 up because we were -- certain people had talked about
11 the timing issue and the comments, and it become very
12 clear that the Commissioners' idea of what the timing
13 is in the Funeral Rule is not what has been enforced
14 by FTC staff. And that's a huge gap, a huge problem.

15 We had some very touching testimony at that
16 time. Why is this timing issue a problem? Because
17 families come in and they're distraught. You're there
18 with your family, probably someone you know because a
19 lot of these funeral homes are in very small
20 communities and they're serving families and friends
21 of theirs, and the first thing you want to do when
22 someone comes in grieving is not hand them a price
23 list. It's very insensitive. It makes it look like
24 all you care about is price.

25 Funeral directors are in this because

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1 they're passionate about helping people at the worst
2 time of their life, and they don't want to be seen as
3 that callous, here's a price list before they are able
4 to console the family for a bit, figure out who the
5 person was, what they were interested in, you know,
6 give them condolences. It currently says they can
7 offer condolences, but it doesn't say you can inquire
8 anything else about who the person is and really
9 embrace that with the family to figure out what their
10 needs are before you hand out the price list. And
11 that should absolutely be clarified that it's
12 perfectly fine to have that introductory conversation,
13 and only when you switch to the selection of goods and
14 services should you have to hand out the price list.

15 That's better for consumers because
16 consumers don't want to feel like all you care about
17 is money. It's better for funeral homes because it
18 will be clearer, it can comply with it, and it will be
19 better for the FTC because it will be easier to
20 enforce and to train the people that you send out to
21 do swaps, to do inspections, how it's done, because
22 currently I think there's a lot of confusion about
23 that.

24 I also want to address an earlier point
25 about the FTC's data because I think Lacyn had a point

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1 where she was talking about people don't complain to
2 the FTC. Data comes from a wide variety of sources,
3 including States Attorneys General and consumer
4 protection bureaus. So that's a much broader scope of
5 data than I think she is aware of.

6 MS. WITTE: I'd be happy to respond to that
7 point, Rebecca.

8 MS. PLETT: Sure, Erin.

9 MS. WITTE: About the data. So 22 States
10 Attorneys General actually asked for online disclosure
11 as well. So clearly, they're hearing about these
12 problems and they also have concerns. So certainly,
13 consumers may make complaints there, they may not, but
14 the point is that the AGs who are enforcing some of
15 these protections, who are communicating with the FTC
16 about that, also want online disclosure.

17 Additionally, government agencies are not
18 the only place where consumers talk about these issues
19 and raise them. The Funeral Consumers Alliance, in
20 their comments, pointed to complaints that they
21 receive from consumers. They may not always make it
22 to the FTC or to a government agency. The Sentinel is
23 an enormous resource, it's very helpful, many
24 consumers benefit from that. But in this scenario, I
25 think it's important to recognize that the lack of

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1 complaints or perceptions therefor does not mean
2 absence of a problem.

3 MS. PLETT: Thanks, Erin.

4 And, Chris, to turn to the question about
5 other improvements that the Funeral Rule could use.

6 MR. FARMER: Sure. I would just like to
7 comment on the data issue. You know, we have data to
8 rely on, and if the data shows something different,
9 we'd like to see it. But it doesn't. The data is
10 consistent that that is not an issue.

11 There are anecdotes where people have
12 problems, of course, but the data through all of the
13 different methods that we've looked at, different
14 studies, is consistent that consumers don't have a
15 problem with it.

16 Now, back to the timing issue, I agree with
17 what Sarah said and what Poul said and what Lacyn has
18 said about it's a subjective issue when to give the
19 price list. We had a conversation with the FTC
20 staffers a couple months ago, with you all, and it was
21 -- the question was why do we not understand -- why do
22 funeral homes not understand when it needs to be
23 provided. And the issue is -- you know, it's not a
24 binary conversation between a funeral provider and a
25 consumer. The consumer is not sitting there talking

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1 about their dad and then says, okay, then let's stop
2 and talk about funeral goods and services.

3 It is this thing that goes on because, you
4 know, you come in in the middle of the night and
5 you're doing a removal and they -- you know, they're
6 grieving about their family and they -- a story I told
7 was, you know, what if the third cousin's uncle says,
8 hey, do you guys offer cremation. I mean, under some
9 interpretations of the Rule, you've got to stop and
10 give him a general price list right there in the
11 middle of the removal. And that's not about what --
12 what this should be about. There's no context.

13 If the FTC's goal is to provide more
14 information to consumers for their benefit, I think
15 the best thing they could do is give that conversation
16 context. And we've repeatedly proposed, in our
17 submissions, that that context should be when the
18 consumer asks about pricing. That is there's no
19 subjectivity to that, there's on confusion. You know,
20 you're not going to have one investigator citing 20
21 funeral homes and one investigator citing none as we
22 see now because it is did you ask about pricing.

23 If the consumer says how much does it cost,
24 what do you charge, those are clear triggers where the
25 consumer directs the conversation from I don't know

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1 what I want for my dad, you know, he loved fishing, he
2 didn't really know if he wanted to be cremated, to how
3 much do I have to pay for this. That is a clear
4 transition. It makes sense. There's context for
5 that. There's context for the funeral director to
6 have the conversation with the family about that. And
7 when you give them the general price list, you are
8 answering their questions.

9 A simply inquiry about, do you offer
10 cremation, and then you hand them a price list with,
11 you know, direct burial and how much caskets cost, it
12 doesn't make sense to the consumer and it doesn't
13 benefit the consumer. I think the best thing the FTC
14 could do to help benefit the consumer is to give them
15 information in context that makes sense on the
16 conversation of price.

17 MS. PLETT: Thanks.

18 And, Dr. Close, do you have any thoughts on
19 that?

20 DR. CLOSE: A couple things. Let me bring
21 up an old issue and then I'll answer your question.

22 MS. PLETT: Sure.

23 DR. CLOSE: My members feel that if we're
24 going to deal with any type of change, that all
25 segments -- no disrespect to my colleagues here in the

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1 audience, but all segments of the industry should be
2 covered by the Funeral Rule. The perception of the
3 public is when they hear about the violation, they
4 always say "the funeral home." It might not be the
5 funeral home in that segment. So I think we need to
6 address -- let's address that white elephant in the
7 room.

8 Regarding the pricing, my colleague from the
9 Consumer mentioned about the public not being -- or
10 being aware of price. I think that we are doing it
11 better. There's always some bad actors in every
12 industry.

13 And I'd just like to say this and then I
14 hope I will give a direction. We are the only
15 industry in this country that the FTC regulates.
16 Lawyers, attorneys, accountants, doctors, hospitals,
17 accountants, dentists, chiropractors, nursing, any
18 nursing support, nail salons, they don't have to put
19 up any pricing. And I'm not -- as my members
20 expressed to me, we're not complaining that we need to
21 put the pricing, but this is a capitalism system that
22 we need to make sure that we're all the fair game.

23 So I do think that the price list should go
24 forth as it has been, as directed by my membership,
25 and I'll talk about something personally when we come

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1 to that point.

2 MS. PLETT: Sure. Thank you.

3 Well, thanks, everyone, for sharing your
4 views on the current state of the Funeral Rule. I
5 think the next topic that we're going to move to is
6 the way that consumers shop for funeral services. So
7 here I'd like to start with Dr. Close and with Chris.

8 Do consumers shop for funeral services
9 online? Chris, would you like to respond to that
10 first?

11 MR. FARMER: Yeah, and I jumped the gun on
12 you so I apologize for that. But we put forth lots of
13 information and we do studies on an annual basis and
14 we show that -- very clearly, the data shows that,
15 number one, it's not how consumers shop. Consumers
16 are not as price-sensitive to funeral goods and
17 services as I think the FTC believes or as some people
18 would conclude without the data. Again, the 11
19 percent of funeral consumers -- only 11 percent have
20 looked at more than one funeral home for their needs.
21 It's just not how they shop.

22 They look at where did their mom go. They
23 look at where did their grandpa go, where is their
24 friend from the Lions Club, what's close to me, what's
25 convenient, you know, what's the place I drive by

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1 every day, where do I want to go. It's based on those
2 reasons. And price is just not one of those reasons
3 that's the primary driver.

4 Now again, we have Funeral Rule, we have the
5 telephone/verbal price disclosure requirements.
6 People can get that information if they want to, but
7 there is not the requirement. So consumers just don't
8 shop that way. I don't think that there's any data
9 I've ever seen that shows that consumers are asking
10 for more price online disclosures other than
11 anecdotal, and I just think that's -- again, I'm going
12 to go back to the impact that it would have on small
13 business, which is 90 percent of funeral homes, is
14 going to be more severe than any unknown benefit to
15 consumers.

16 MS. PLETT: And, Dr. Close, in your
17 experience, do consumers shop for funeral services
18 online?

19 DR. CLOSE: Well, let me -- to my membership
20 that's probably watching, let me talk as a funeral
21 provider. I was one of those people very hesitant. I
22 have a young team that believe in every electronic
23 internet. About five years ago, maybe six years ago,
24 we put all our general price list on the webpage. My
25 business increased 12 percent.

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1 To come behind Chris, I think it depends on
2 the geographics of this country; I think it depends on
3 the market. I do a lot of international business
4 based on doing online. And as Poul mentioned, we do
5 -- about people who are out-of-state, as Erin
6 mentioned, we do a lot of that. So for me from an
7 economic aspect, it benefitted me.

8 I know what my members are now saying, but
9 there are some of us in this country that do put it
10 online. I might now always agree with my colleagues
11 here. We're going to agree to disagree, but from a
12 personal perspective, it has worked for me.

13 I have a problem that if we're going to
14 require, from my association perspective, firms to
15 have to put their general price list on my website,
16 what about those firms that do not have websites?
17 Then we're going to penalize a firm that might not
18 want a website to get a website.

19 And then the other switch that -- if you've
20 been on a state board, a state board says, as long as
21 there's no casket, there's no flowers, there's no
22 hearse, then why should they be required? Then
23 there's some state boards -- in Maryland, we actually
24 license online businesses. So it opens up a whole
25 Pandora's box that we really need to look at.

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1 I'll go back with what Poul was saying. It
2 should be on the state level because each state level
3 has a different requirement, and even the FTC says, if
4 your state board is -- has higher requirements, then
5 you don't have to follow this.

6 And it goes to another point, when you have
7 a state board, is that state board under the business
8 law or is that state board under the health code?
9 Because if you're under a health code board, you're
10 required more. And I use Maryland. Maryland is a
11 health code board, it's under the health code. The
12 surrounding states are business code. So those boards
13 that are under the health code have more
14 responsibility for protection of the consumer. So
15 that's another factor that the FTC has to go and the
16 Commission has to look at because each board is not
17 run -- I'll use Pennsylvania. The state board doesn't
18 -- no disrespect to the state board, those board
19 members don't make a decision. It's the Attorney
20 General that directs them what to do.

21 So there's so many different levels and
22 layers that we have to really consider and the state
23 level would be better for the protection of the
24 consumer, which is already in place.

25 MS. PLETT: Thank you.

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1 And I think, Chris, you already touched on
2 price, but I'd like to ask Sarah and Erin, do
3 consumers shop for funeral services based on price?

4 And, Erin, maybe I'll start with you.

5 MS. WITTE: So I think that consumers have
6 difficulty shopping based on price because they don't
7 know until they get to a funeral home. I've literally
8 never heard any consumer that I've spoken with,
9 represented when I was in private practice, complain
10 about paying less money or saving money, want to pay
11 more money or be totally fine with paying more money
12 if they had an opportunity to pay less, or if they had
13 an opportunity to see if they could pay less. But
14 that's extraordinarily different to do under the
15 current regime.

16 Maybe consumers don't shop online because
17 they can't. It's really difficult to find that price
18 information, especially if it's not consistently
19 provided in advance. People do it in -- funeral homes
20 do it in different ways. There's a 2020 survey
21 performed by CFA and my colleague, Steve Brobeck,
22 about the fact that 91 percent of consumers said that
23 they would be likely to compare prices of several
24 funeral homes before making a decision if the FTC
25 required this sort of online disclosure. So just

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1 because consumers don't do it now is really no
2 indicator because not every funeral home posts online
3 right now.

4 MS. PLETT: Thanks.

5 And, Sarah, what's your view on whether
6 consumers shop for funeral services based on price?

7 MS. POJANOWSKI: It's my view that some
8 consumers are price-sensitive and are looking for the
9 cheapest option or shopping based on price. But
10 generally speaking, funeral consumers do not shop
11 based on price. They shop based on the things that my
12 colleague, Chris, mentioned earlier. This is the
13 funeral home that their family uses and that's where
14 they want to go and that's who they would like to
15 handle their services. It's about the quality of
16 service and what can be provided by the funeral home.

17 So they would like to go -- like, for
18 instance, my grandmother was very insistent that she
19 go to the funeral home with the embalmer that she
20 liked because that's what was important to her. She
21 wanted to look good. She wanted to look like herself.
22 And, of course, we used that funeral home irrespective
23 of price. It was not even on our radar to even
24 consider anything else because the quality of the
25 service was what was important to my grandmother.

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1 However, there are some people -- the
2 question here is not necessarily like should people
3 post online. I personally recommend my funeral homes
4 to post their prices online and many of them do.
5 Actually, it's like any other service. If I go to the
6 website and the hairdresser doesn't have their prices
7 online, I'm going to assume it's really expensive
8 when, in fact, that might not be the case. So I
9 encourage transparency.

10 The question is, should it be regulated by
11 the FTC that they have to do it? That's a very
12 different question, is it a good business decision.
13 In some respects, I think this is a problem that's
14 going to take care of itself because as funeral homes
15 look and see other funeral homes, like Dr. Close's,
16 who are successful and more successful after they post
17 their prices online, then they're going to want to do
18 the same thing. Consumers will figure this out, that
19 they would like to see it online. They'll go to the
20 funeral homes that are doing it, if that's what they
21 care about, and ultimately the business market will
22 solve this problem. It does not need further
23 regulation by the Federal Trade Commission.

24 MS. PLETT: Thanks.

25 And Dr. Close, I know had touched on what

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1 happened when his home posted their price information
2 line, and this question is for Lacyn. In your
3 experience, what happens when homes post their price
4 information online?

5 MS. BARTON: Well, the short answer is no,
6 people are not coming to our websites for pricing
7 information. And here's the data. SCI has posted
8 pricing for over 1,000 of our funeral home locations
9 and consumers are just not coming for pricing.
10 They're not even looking at it. Less than 2 percent
11 of the visitors to those websites even click through
12 to look at pricing. About 85 percent of our web
13 traffic, they're looking for obituaries, service
14 information, and leaving online condolences.

15 Also, for those locations that have pricing
16 posted online, we see no difference in the amount of
17 time that it takes for the arrangement conference to
18 take place.

19 Now, it's a complicated process with a lot
20 of decisions, you're not just deciding between burial
21 or cremation. You are cultivating an event, venue,
22 participants, music, flowers, what colors should they
23 be, the menu for the memorial reception. All of these
24 decisions are coming together and the general price
25 list is an excellent tool to facilitate that

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1 conversation. But even when a consumer can read the
2 price list ahead of time online, they're still going
3 to need explanations of the terminology and what that
4 means at a particular facility and how it impacts the
5 services that they want.

6 GPLs are not apples-to-apples comparisons,
7 just like hotels and restaurants. We have varying
8 degrees of customer service and facilities and
9 amenities. So those types of nuances cannot be
10 conveyed on a general price list. And, overall, we
11 are not aware of any analogous services, as Dr. Close
12 had mentioned, that is required to post their pricing
13 online. It's just such a customized service that the
14 consultation needs to happen with a licensed and
15 trained professional.

16 MS. PLETT: Thanks for sharing that and also
17 the information about how consumers interact with the
18 websites.

19 This is a question for Poul and for Dr.
20 Close. As consumers who are seeking out funeral
21 services will shift more to, you know, the younger
22 generations and maybe folks who are digital natives,
23 do you expect that the way that consumers shop for
24 funeral services may change?

25 And I'll start with Poul.

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1 MR. LEMASTERS: So kind of a two-part.
2 First, I'm going to do something a little different,
3 and for purposes of my first part of the answer, I'll
4 actually agree with Erin and be the optimist that when
5 this all happens and we put prices online, all of a
6 sudden, consumers will start shopping online. I think
7 that is an optimistic view because the data doesn't
8 support that right now. That's not how -- again,
9 80,000 surveyed that we're aware of, only -- it's 49
10 percent are because of where they went; it's 38
11 percent because of location. The point is -- is price
12 is so far down on the list.

13 But even if we were going to say that after
14 this happens everybody shops online, I have to now put
15 on my lawyer and not be so optimistic and look at it
16 this way. I think it's a disbelief that because
17 pricing online is going to help them become more
18 educated. Again, Erin pointed out that by putting it
19 online, it will amplify all of this pricing
20 information and it will be a win for consumers.

21 Here's where I see the downfall. That's not
22 how the internet works. I see this as a huge
23 detriment to small businesses and small funeral homes
24 and providers because they won't be able to keep up.
25 Consumers don't surf five, six, seven, eight pages for

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1 information. They look at the first page and they
2 look and they can be misleading. And what they will
3 see is the top funeral home in that area and that can
4 be misportrayed.

5 You know, my fear is that funeral -- or that
6 the consumers will now actually -- because if they do
7 shop online, they will see less information, they will
8 not make phone calls, they will not rely necessarily
9 on recommendations or where mom went, and they could
10 be misled and this could create a whole new issue that
11 we aren't even prepared for. And, again, by forcing
12 this and mandating it, it will happen.

13 Now, I'd like to say this just by belief,
14 but actually we have concrete evidence and you all
15 were part of it, and that is the Damiano lawsuit the
16 FTC filed and won. We've already seen this happen.
17 We have seen a provider in death care who basically
18 dominated the web pricings, through SEO became what
19 appears to be a fantastic provider, low cost -- so for
20 people shopping for cost -- and turns out they were
21 far from it. Lawsuits filed in many states, the FTC
22 filed and won against this person.

23 And to Erin's last point, where I will
24 differ, Erin made the comment that she has never dealt
25 with a consumer or anyone who said I wish I would have

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1 paid more or I wish I would have done -- I can tell
2 you for -- lawsuit-for-lawsuit that I've had, that I
3 have had people from that who have literally said I
4 wish I would not have gone with the cheapest provider
5 that was all over the first page of the internet, I
6 would have paid more, but I didn't know.

7 So my fear is requiring pricing online, we
8 are creating a new loophole that could mislead the
9 consumer and we've already seen it happen.

10 MS. PLETT: Dr. Close, what are your
11 perspectives?

12 DR. CLOSE: Well, great discussion. I have
13 a young staff, as I mentioned, so I had to learn how
14 to communicate by text, when they were in meetings and
15 seeing who's on the phone, just like some of them
16 right now in the audience are on television or on the
17 phone. So we have to adapt with new technology.

18 However, new technology can be manipulated
19 and there's no safeguard. And I know this is another
20 subject matter in another panel, but I think that we
21 need to be very cautious how we use it. I mean, I
22 know it's, yes, putting it on the internet, but how
23 many of us have been in meetings on funerals and
24 people are on their mobile and they have no control of
25 it. And that's just to follow up on the great points

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1 that Poul made, that there has to some way we can
2 protect the consumer.

3 And though Erin and I might agree to
4 disagree, you know, I hope that she can teach her
5 members to -- there's a segment of this country, as
6 Sarah has already said, that is price-conscious. Have
7 your budget before you go into that firm, that
8 provider. And, remember, you made the selection, not
9 the funeral home. You said you wanted this after you
10 sat down with a licensee that went through this.
11 Hopefully, all of us are going step-by-step.

12 And I'll be transparent. We do not start
13 talking anything. We go over all the price list
14 immediately. Why? Because I got a warning letter
15 about ten years ago because I didn't provide twice --
16 because I know it's now twice -- the outer burial
17 container. I remember that day like it was yesterday.
18 That person kept asking me, so what is that. Oh, you
19 don't need that. So my staff must go over all prices
20 first. Now, they might not understand all the prices
21 and then we'll talk about what kind of selection you
22 want.

23 But I think that we need to be very cautious
24 because all of us know our webpages might not be
25 controlled -- and I know there's another panel -- and

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1 it's being manipulated. I don't know if you even use
2 a webcast and you'll be having a funeral and you'll
3 have entertainment of other material while the funeral
4 is going on. So I think we need to be very cautious
5 when we're talking about this because it's easy to
6 manipulate if you're one of those brilliant people on
7 the internet, and I think they have degrees for that.

8 So we just need to be very conscious of
9 that. Thank you, Poul.

10 MS. PLETT: Thanks.

11 And I think another topic that Poul touched
12 on and so a question for Erin and Sarah is, would
13 consumers shop online and perhaps comparison shop more
14 if prices were universally available online?

15 And, Erin, I'll start with you.

16 MS. WITTE: Sure. Can I actually go back
17 and make one quick point about something that was said
18 about the manipulation of this information and perhaps
19 people who may use it to actually deceive consumers,
20 people might scrape this data and use it in a way that
21 can harm consumers. I just want to be clear that that
22 will happen in any industry. Any time there is a
23 regulation that requires price transparency, there
24 will always be bad actors who take advantage of that.
25 That's a problem for FTC enforcement.

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1 But what is equally important when
2 developing the rule is making a rule that's durable
3 and enforcement-capable, as well as compliance-
4 friendly. Requiring online price disclosure is much
5 more enforcement-capable than the current regime that
6 we have now. The FTC can investigate that issue, they
7 can research, and they can certainly take whatever
8 action they think is necessary.

9 So with respect to your question, Rebecca,
10 about whether consumers -- I think the question was
11 would more consumers shop online if the prices were
12 available, I alluded to this earlier, but I'm going to
13 point to a survey by my colleague in February of 2020
14 that said 91 percent of consumers surveyed indicated
15 that they would be likely to compare prices of several
16 funeral homes before making a decision if the FTC
17 passes a requirement that enables them to do so.
18 Sixty-one percent said very likely.

19 So I think that certainly, as we get
20 accustomed to this new era of online price disclosure,
21 which will amplify funeral homes' ability to have
22 meaningful conversations, to put things in context,
23 more consumers will be able to do that. But it's
24 really difficult to do that now because they can't.

25 MS. PLETT: Thanks.

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1 And, Sarah, what's your reaction?

2 MS. POJANOWSKI: I would like to actually
3 step back for a second and say that, currently, we're
4 not going to have a new era of online price disclosure
5 because those resources are already out there for
6 consumers. There are third-party providers who go
7 around and ask for GPLs from various funeral homes,
8 from all the funeral homes in the community and post
9 them on their sites. So the GPLs are often out there
10 in almost every community on these websites where you
11 can -- for now, you can shop online, you can compare
12 prices online if you wish to do so. And the fact is
13 that people aren't doing that.

14 So I don't think there's going to be a sea
15 change as a result of this change if it goes forward
16 because the information is already out there for
17 consumers who wish to shop that way.

18 MS. PLETT: Thanks.

19 So the next question and the last question
20 of this section is about if the Commission were to
21 decide to require online price disclosure, who should
22 it apply to. And I will -- this is a question -- I'm
23 sorry, I should have said first -- I think I'll ask
24 Chris, Sarah, Poul, and Erin to respond to this.

25 So, Chris, I'll start with you.

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1 MR. FARMER: I think that if you are a
2 funeral provider who provides the entire arrangement
3 procedure online, if you have the infrastructure, if
4 you've got the technological means, if that's how you
5 interface with the consumer, I think it absolutely
6 makes sense to require production of price lists
7 online. I think it makes sense because they already
8 have the technology there, they have the know-how, and
9 it is part of -- it makes sense within the context of
10 that transaction. So I think that's -- to me, that
11 just is a logical conclusion.

12 The problem that I have is that we have so
13 many different avenues of technological access, right?
14 I mean, we have -- and they're popping up every day.
15 Social media platforms all over the place, there's a
16 million. And we don't control them.

17 I think if -- again, don't think they should
18 be required, but if it is required by the FTC, I think
19 that you should try to keep it as streamlined and
20 rational and focused as possible, and I think that
21 would be for funeral homes that currently have their
22 own website. So it's their own -- it's their URL of
23 their website, they have control over it, they have
24 control as to what goes on there, they have control
25 over changing it, bringing it up, putting it down, and

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1 they have access to that. They've got the
2 technological means to operate that. I think that --
3 if it's going to be required, it should only be
4 required to be produced if a consumer asks for it via
5 that website.

6 I don't want to have, you know, the old
7 MySpace account, if somebody messages you on your
8 MySpace account, your funeral home's MySpace account
9 from 30 years ago, that you have to answer that
10 because who knows the last time you checked that,
11 right? I mean, how many friends do you still have on
12 that? I don't know. I didn't have one, by the way,
13 just as an idea, right? I don't want it to have -- I
14 don't want it to be any kind of social messaging that
15 consumers ask for a price list. To me, that doesn't
16 make sense.

17 The reality is funeral directors don't sit
18 at their computers. Us nerdy lawyers, we sit at
19 computers all day. FTC folks, you all probably do,
20 too. That's how we live our lives. Funeral directors
21 don't do that. They're out serving families. If you
22 get a funeral director at a computer for an hour a
23 day, you're lucky. You might get three hours a week.
24 And so to require them to have -- to be able to
25 respond instantaneously through multiple sources via

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1 computer, it just doesn't make sense. I think the
2 only way it makes sense is if you have the consumer
3 ask for price information through that funeral home's
4 website.

5 It's just -- I mean, I've told this story
6 several times. When I was working for a client
7 looking at acquiring a couple of locations, multiple
8 locations, we said, oh, hey, we'd love to get your
9 contract data, and they said, well, we're going to
10 have to go pull it from the banker boxes in the shed.
11 And we said, well, we can send somebody up to pull it
12 off your computer. They said, you know, we've got a
13 computer, we just haven't started using it yet. And
14 so funeral directors are -- God love them, they're
15 just a different breed.

16 So I think what -- if you're going to impose
17 a rule, it needs to take into account the reality of
18 the way that funeral directors work.

19 MS. PLETT: Sarah, what are your thoughts?

20 MS. POJANOWSKI: Totally echo Chris' points
21 about online-only providers. If you provide all of
22 your services online start to finish, you should
23 absolutely be posting your price list online.

24 A couple extra points about if the Rule goes
25 forward, there are a couple of things that would be

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1 really helpful to keep in consideration because most
2 funeral homes are small businesses. They do not have
3 a tech guy. The funeral director is the tech guy.
4 And you've heard some stories about the tech skills of
5 the funeral director. So we have to take that into
6 consideration.

7 So most funeral homes do not build their own
8 website. They use a third-party provider. So there
9 needs to be a bit of a time period in which they are
10 given to update the price list once they make their
11 changes so that there's a reasonable time period for
12 them to contact their website provider and make that
13 change that's not considered a violation of the
14 Funeral Rule.

15 The other issue is, if we're going to do
16 this, why don't we make it easy for funeral homes,
17 these small, family businesses, who have so many other
18 things they're working on and thinking about. Let's
19 make a safe harbor for where you post your GPL top --
20 front and center on your website, you're good. That
21 would make it -- funeral directors want to comply with
22 the Funeral Rule. They want to consumers what they
23 want. They want to serve families. That's what they
24 do. They're serving people. They don't want to get
25 in trouble with the law. They're not trying to fool

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1 anyone. But sometimes it's confusing the way the
2 Funeral Rule is currently written about how to comply
3 with the Rule.

4 So if we make a situation where this is what
5 you do on your website, you put your GPL, you're good,
6 then we could serve both consumers, who want that
7 pricing information, and these small family businesses
8 who are pulled in so many different directions and
9 just want to do the right thing.

10 MS. PLETT: Thanks.

11 And, Poul, what's your reaction?

12 MR. LEMASTERS: Again, I agree completely.
13 I also think -- along with this, I think this is a
14 great area where there's compromise among all parties,
15 and the reason is is that, again, I think a blanket
16 rule of everybody post online, I think, is extreme and
17 it's not going to fit for every provider out there.
18 There are providers that will struggle with this.

19 There are other providers that are
20 completely online. You can buy everything from the
21 casket to the service. You never even have to set
22 foot in a funeral home. They'll be fine with this.

23 So the idea is -- this idea of the great
24 compromise is if you are online and you're selling
25 anything and they have the ability to pay online,

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1 absolutely, you have to put GPLs online. For anyone
2 else, if they choose to do that, again, it's the safe
3 harbor provision. You know what, I don't have to do
4 it, but I'm going to do it. So by doing that, I'm in
5 a safe harbor, meaning I don't get shocked by the FTC
6 because I am trying to meet the compliance level.

7 Also, if we go down that road of -- then we
8 also are tackling the when because now it matches
9 pricing. And I know we've brought that up a few
10 times, but I think this is an important place to see
11 it. Most people -- and you've heard this -- when they
12 go to a funeral home website, they're not going there
13 looking for pricing, they're looking for obits,
14 they're looking for a service time, they're trying to
15 find out if they can send flowers. So they don't --
16 that business may not want to scream out that, hey,
17 you know, here's our prices before you even look up
18 mom's obit.

19 So the idea is to give them that option and
20 tie this to a pricing because now we answer the
21 pricing question on the when and who online and then
22 match it by people that come to a funeral home. When
23 somebody comes into the funeral home and says, I'm
24 here to talk about services, well, let's talk, what do
25 you want. Well, we're not sure. Have that

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1 discussion. And then when they say, all right, how
2 much, you know, what does cremation -- that's the
3 trigger. It's subjective now, both online and in
4 person, an objective time frame of when and who. And
5 I think that is a great compromise that actually would
6 satisfy consumer advocates and then it would also
7 satisfy the funeral profession.

8 MS. PLETT: Thank you.

9 And, Erin, turning to you, who do you think
10 -- if there were an online price disclosure, who that
11 should apply to?

12 MS. WITTE: Well, so I think -- I want to be
13 clear that CFA certainly does not take the position
14 that funeral homes should have to create a website so
15 that they can comply with any requirements of posting
16 their prices online. We understand that there are
17 many small businesses. My colleague, Steve Brobeck,
18 has personally met with many funeral home providers.
19 This is not their first business. They're a pastor at
20 a church and this is the way they supplement their
21 income. And we certainly don't want to impose
22 burdensome requirements and financially burdensome
23 requirements on those funeral homes that are serving
24 this purpose.

25 But the FTC's study showed that many funeral

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1 homes already have websites and they have fairly
2 sophisticated options on those websites for consumers
3 to interact with. Now, that could be something like
4 sending flowers, making a payment in some way.
5 Certainly, disclosing a PDF of a price list is far
6 simpler than the ability to purchase flowers and have
7 them delivered with a personalized message. So our
8 position is that if a funeral home has a website, they
9 should be required to post that price online.

10 I am not a tech person. I don't fully
11 understand all the ins and outs. I know there's
12 another panel that's going to have this discussion.
13 But certainly, that would alleviate concerns about
14 timing as well. If funeral homes are consistently
15 required on their websites to post that price online,
16 that solves that problem. And like I said previously,
17 this would also make enforcement much easier for the
18 FTC when they're looking at whether funeral homes are
19 actually complying with any requirement to post
20 online.

21 MS. PLETT: Thank you.

22 So I appreciate the discussion on how
23 consumers shop for funeral services. Next, we'll talk
24 more about the costs and benefits, so both to
25 businesses and consumers of only price disclosure and

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1 we'll start by talking about the costs to businesses.

2 And my first question is going to be to
3 Chris, to Dr. Close, and to Sarah, and this is about
4 money. So how much money would it cost businesses to
5 technically implement an online price disclosure?

6 And I'll start by turning it to Sarah.

7 MS. POJANOWSKI: It's going to vary
8 significantly from funeral home to funeral home. As I
9 said, most funeral homes use a third-party provider,
10 whether that's a local tech company in their area or
11 one of the larger casket companies. They often
12 provide web services for funeral homes as part of
13 their arrangements. So the costs may not be
14 significant in terms of adding the GPL to the website.

15 However, I know there are many funeral homes
16 out there that are concerned about the cost to the
17 family because they don't understand the GPL. So it's
18 the opportunity cost of being able to explain the
19 document to the family that concerns many funeral
20 homes, because as we've talked about before, the GPL
21 is quite confusing. And different GPLs for different
22 funeral homes depending on your market, as Dr. Close
23 was talking about earlier, can look very different.

24 So not being able to sit down with the
25 family, have that conversation about what they want,

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1 what services they would like to connect, even though
2 the dollar sign for posting the GPL is not high, the
3 opportunity costs for missing out on connecting with
4 that family and being able to have the family walk
5 away feeling like, I understand that, I know what's
6 going on here, I feel like I chose what I wanted,
7 that's a significant burden on some funeral homes.

8 MS. PLETT: Dr. Close, what are your
9 thoughts?

10 DR. CLOSE: Well, that's not my area. Also,
11 like Erin, I'm not a techie. It really wouldn't
12 really be that much cost to give a third party --
13 that's part of their process. But I like -- we keep
14 on talking about small businesses and let me clarify.
15 Usually in the United States, when we talk about small
16 business, we're talking about 500 to 50 employees. A
17 small business in the funeral business is five to ten
18 employees. That's a small business, which is what
19 built this great country, okay? And we're using that
20 term because it's entrepreneurship that keeps this
21 country going. So that's a small business.

22 I have had many times -- and some of my
23 funeral directors will say the family has one thought
24 they want, they do not want to hear everything on that
25 general price list. And we say, it's a state

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1 requirement and it's also a federal requirement and
2 it's for the protection of you. So sometimes you're
3 going over all the details and they're not hearing you
4 and they're sitting at the table. So imagine if
5 you're online and you're really not hearing us. So we
6 sometimes have to have someone else come behind and
7 repeat what that person already said to make sure that
8 we're all on the same page.

9 So from a cost aspect, I don't think it's
10 that much cost. It's just that -- the issue of what
11 it costs that individual to expose their prices.

12 And let me say this to my -- talk to my
13 association members. Your colleagues, your competitor
14 if you want to use that, already has your prices, as
15 Sarah has already said. So if you're using that
16 issue, if the direction is to have that, that you
17 don't want your competitor -- I don't believe we're
18 competitors; I think we're colleagues. I'm competing
19 against myself; I'm not competing against the people
20 in my community. Your colleague has it. You run your
21 business.

22 My prices are my prices. I'm not comparing
23 with this firm or that firm because you can't beat my
24 service. And that's what we're providing. We're
25 providing a service. And I think sometimes we forget

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1 this is a service-based profession.

2 Thank you.

3 MS. PLETT: Thank you.

4 And, Chris, what are your thoughts on the
5 cost?

6 MR. FARMER: Well, I think there's a couple
7 elements you've got to look at. Number one is the
8 pure dollar value, right? And, you know, Dr. Close
9 knows funeral homes very well and, you know, I mean, I
10 know locations that have one employee, right? I mean,
11 that's just the way they operate. They're very lean.
12 The statistics we've shown, I think that they've
13 raised prices an average of 6 percent over the last 20
14 years and inflation has gone up like 10.

15 So there is a very, very thin margin you're
16 working with. So even adding on \$10-, \$20,000 is a
17 huge, huge difference for the vast majority of funeral
18 homes out there.

19 I've heard a lot of -- you know, just to
20 take everything on context, I've heard a lot of tech
21 companies in the funeral industry, who are a lot of my
22 friends, and they're advocating for online pricing.
23 They're not doing it because they're going to make a
24 little bit amount of money. I mean, they're doing it
25 because they're going to make a lot of money from

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1 this.

2 And so the overall impact on the profession
3 is to be -- you know, to be considered, to be -- the
4 impact on small business is not insignificant and, you
5 know, any time you get regulation and increased
6 requirements, you know, I've never heard of prices
7 going down because of that. And those costs are going
8 to be passed on to the consumer and it's going to make
9 an effect on that. So that's going to be a cost for
10 the consumer.

11 The other thing I think you have to think
12 about and we've talked -- I think we've all hinted at
13 it in some way or the other -- is the law of
14 unintended consequences with this, you know, beyond
15 dollars. I think you're looking at an issue of -- and
16 I think it was pointed out as far as, you know, we
17 don't want to turn it into a commodity because it's
18 not a commodity. And I've used this analogy
19 several times. You know, some people want to buy a
20 Porsche and some people want to buy a Hyundai. And if
21 you look online and you see two prices next to each
22 other without really any context of the relationship -
23 - how good that funeral director is or how good that
24 embalmer is or how beautiful that chapel is, people
25 are not going to know what they're buying for that

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1 black-and-white price, and that's going to hurt the
2 consumer.

3 And the other element is you think about why
4 do we have funeral director licenses. Why does -- I
5 mean, we know states that require a four-year degree
6 to be a funeral director. Why? Because it's
7 important that they know how to help that family,
8 because it's important that they know how to serve
9 that family.

10 And if a consumer sees nothing but a black-
11 and-white price, they're not going to get the benefit
12 of that, that relationship is not going to be there,
13 they're not going to have that, and they're just going
14 to be buying -- if that's what happens, then it's
15 going to be buying based on a number and I think it's
16 going to ultimately hurt consumers and it's going to
17 hurt the relationship, and, you know, I think the law
18 of unintended consequences needs to be considered
19 because the repercussions go far beyond how much is it
20 going to cost to put up a cheap website.

21 MS. PLETT: Thank you.

22 And just for the panelists up here -- I
23 apologize to the audience -- we have a clock sitting
24 up here that's counting down. I think because we
25 started a little early, we actually have more than ten

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1 minutes left. So I just wanted to give everyone that
2 heads-up, that we're not going to get cut off.

3 So next, turning back to costs to businesses
4 and, in particular, time, and this is a question for
5 Poul and for Lacyn. How much time would homes need to
6 invest to implement an online price disclosure and
7 keep it up-to-date?

8 And I'll start with Lacyn.

9 MS. BARTON: Thank you. Well, while I work
10 for SCI now, I was a funeral director all over the
11 country for 13 years working for independent funeral
12 homes, and I can tell you that there is significant
13 nonmonetary costs when it comes to updating and
14 maintaining websites because someone has to do that
15 work, and for a long time, probably as the youngest
16 person on the payroll and presumably the most tech
17 savvy, that person was me. So there was significant
18 opportunity cost, as Sarah was saying.

19 The time I was investing in updating and
20 maintaining our website was time I could have better
21 used serving the families that entrusted me with their
22 care.

23 MS. PLETT: Thank you.

24 And, Poul, what's your reaction?

25 MR. LEMASTERS: So I think it's interesting

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1 -- and I'm going to address time, but, you know, one
2 of the interesting things I think about is when we
3 talk about the costs and time and all that, I think
4 there's two things that are tied to this. One, we --
5 I think what everybody's trying to get across is that
6 it's minimal cost. And I think everybody sitting
7 here, depending on the size of the business and all
8 that, I don't know that we can really argue that.

9 But I think the one thing that everybody has
10 been -- not looked at and I think we have to have eyes
11 wide open, it's not how minimal the cost is, how much
12 can I spend. And that is where small providers are
13 going to lose this fight. And this is not meant to
14 protect the business, this is meant to protect the
15 consumer.

16 And I don't know what this looks like to the
17 audience out there, but when I do this, there's a
18 giant screen above us, so I'm pointing to somebody. I
19 feel that could be lost outside.

20 Anyway, but there's a giant cost to the
21 consumer, too, because, again, while we sit here and
22 go, oh, you could do it for virtually nothing, I think
23 is what was stated at one point, yeah, but what if I
24 am able to spend \$100,000 to do this, what if I can
25 dominate, what if I can control not only the top five,

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1 but what if I can control the first five pages of the
2 internet. Well, I'm not helping the consumer now, I'm
3 harming them. And if you don't think this will be
4 done, it will absolutely be done. And now, all of a
5 sudden, the cost is -- there's going to be small
6 businesses that will not be able to keep up. They
7 will be lost in this.

8 And, again, I have to throw this out there,
9 I don't have to pretend that this could happen, we've
10 seen it. The Damiano case showed us that this can and
11 has happened. And when we put everything in that same
12 marketplace, you're just going to force people to do
13 it. And there will be large providers that will be
14 able to dominate this.

15 And then the other thing, we talk about
16 time, I think there is a compliance side to this. We
17 have to address the regulatory side. And, you know,
18 we have spent 40 years teaching death care, the right
19 way to do this. I know many of us -- I publicly
20 speak, I am a funeral director, I have known the
21 Funeral Rule since I went to mortuary school. I have
22 taught it across the country. We pound our fists, we
23 shout it, we -- and we have to relearn something and
24 this isn't like teaching five people, this is teaching
25 tens of thousands because it's not licensed funeral

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1 directors -- and that was a great point, by the way --
2 that are doing this.

3 The Funeral Rule applies to all providers,
4 meaning if I walk into a funeral home and I say, hey,
5 I'm curious if you have cremation, if that
6 receptionist says, yes, we do, and technically doesn't
7 give them a price list, that's a violation because
8 they specifically asked and we haven't been giving
9 that. We have to teach tens of thousands of funeral
10 professionals and providers what this all means. And
11 that will be a huge -- no pun intended -- undertaking.
12 Somebody had to do it.

13 And so I just think we have to have eyes
14 wide open, and I think simpler is better and I think
15 we can compromise on all of this.

16 MR. FARMER: If I could add just to Poul
17 real fast, I apologize. Not only is the cost going to
18 go up as far as, you know, if you're looking at SEO
19 costs, you're looking at advertising, not only that,
20 but where is that money going to come from. It's
21 going to come from salaries, it's going to come from
22 updating your cars, it's going to come from updating
23 your chapel. It is a zero sum game when it comes to
24 that, right?

25 And so they're going to have to take that

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1 money -- they're going to say, if this is an online
2 pricing, that's how we're going to be forced to play
3 this game, then they're going to say I'm not going to
4 have consumers coming in to look at how beautiful it
5 is and see how awesome my people are, I just got to
6 get those people online. And so they're going to take
7 money away from that, which, again, will ultimately
8 hurt the consumer.

9 MS. PLETT: Thanks.

10 And one other issue that I'd like to ask
11 about -- and this is a question for Lacyn and for
12 Chris -- is about whether posting price information --
13 actually, I'm getting ahead of myself.

14 So I'd like to ask actually -- and this is a
15 question for Lacyn -- are there reasons that providing
16 price information -- and I think you've touched on
17 this some -- that providing price information online
18 could lead to confusion among customers?

19 MS. BARTON: I wouldn't say that confusion
20 is the right word when describing posting general
21 price lists online. I would say that posting them
22 online without context would be the issue. And this
23 is why I think the current Funeral Rule works, because
24 it requires the provision of a GPL at the time of
25 arrangements when they can consult with a trained and

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1 licensed professional.

2 The GPL is a document that has, you know,
3 components that come together to create this highly
4 customized celebration of someone's life and it's best
5 done in that consultation environment.

6 Now, like I've said, I've directly served
7 hundreds of families over 20 years as a funeral
8 director and that GPL is an important tool to
9 facilitate that conversation. And that's why most
10 states require a trained and licensed professional to
11 help guide families through that process.

12 MS. PLETT: Thanks.

13 And, Erin, I'd like to turn to you. What
14 are your thoughts to that or do you have thoughts on
15 whether there would be solution to that?

16 MS. WITTE: Well, I think I want to point
17 out -- perhaps I'm having some difficulty reconciling
18 some of the comments of my colleagues because it seems
19 like the concern about online disclosure, price
20 sensitivity, and things like that, has a lot to do
21 with the fact that consumers want to go where they
22 want to go, right? They want to go where they know
23 they want their parents or their family members to
24 have the best experience. I know there were some
25 things shared about that, but then there were comments

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1 about how if we post prices online, that won't happen,
2 we're going to eliminate that ability.

3 But that doesn't really seem to be what's
4 happening and especially in light of some of the
5 comments that funeral homes are already providing
6 price lists online, certainly not as many as we'd like
7 and not as consistently as we'd like. But I think
8 there's a lot of anecdotal information about these
9 catastrophic consequences that we just assume. That's
10 not the trend that we're seeing given this minimal
11 online disclosure requirement.

12 Certainly, regulations have a cost to
13 businesses. That is how it goes. That's not unique
14 to the funeral industry. That is every single
15 industry that is subject to regulation. And that's
16 not just funeral homes. The FTC has also proposed a
17 regulation that would require transparency when
18 purchasing a vehicle by car dealers. It's the same
19 thing. Car dealers would love to have the opportunity
20 to speak with consumers, to individualize that
21 experience, see what you want, categorize that, But
22 having more information in advance of the time the
23 consumer goes to a dealership, goes to a funeral home
24 to decide what they want to purchase, they've selected
25 that funeral home because it's where they want to go,

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1 it's just ultimately a more informed consumer and the
2 benefits to a consumer far outweigh the costs to a
3 funeral home.

4 There was a reference to a \$10,000 cost for
5 a funeral home -- a small funeral home being really
6 burdensome and very substantial. That's not much
7 higher than the average cost of a funeral for a
8 consumer. And one of the studies that CFA has
9 performed is comparing the effect on prices of online
10 price disclosure, whether prices are lower for funeral
11 homes that disclose in advance or disclose their
12 prices online, and the evidence from that study was
13 that prices were 30 to 40 percent lower in the
14 instances where the prices were post online.

15 This is an extraordinary benefit to a
16 consumer and certainly outweighs the cost to the
17 funeral homes of providing that information in
18 advance.

19 MS. PLETT: Thank you.

20 And to our panelists, we have about seven
21 minutes remaining. The clock is counting us down.
22 But I think I'd like to turn to the costs and benefits
23 to consumers in the time that we have remaining. And
24 I'd like to start with a question to Dr. Close and to
25 Sarah.

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1 In your view, do consumers benefit from
2 online price disclosures? And I'll start with Dr.
3 Close.

4 DR. CLOSE: Well, I'm going to say because
5 I've just reinforced, I think they do from my
6 perspective. I also understand for those who are at
7 home from my association and their point of view, so I
8 can go back into that office.

9 But I think they do, but I really do want to
10 emphasize something my colleagues emphasized. It's
11 about making sure you're talking to the right person
12 to educate them. There's a lot of items on there.
13 And many times people say, I don't understand, can you
14 say that again? So I think the one-on-one is
15 important, but we know when we're online -- I had to
16 learn how to make arrangements with Zoom, especially
17 during COVID, and the State of Maryland approved it,
18 which was great. And we've kind of kept it, but we've
19 made sure, even though it's online, I still email it
20 and they have to confirm they've received it so that
21 we can go step-by-step. That way, I know they
22 physically have the documents in their hand.

23 So I think they do, but as long as we all
24 agree that you have a trained licensed professional
25 walking them through and answering their questions and

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1 explaining -- because many people, when you talk about
2 cremation, there's so many options. I'll use that for
3 an example. And people will say, well, I didn't know
4 that. Only a trained professional is going to walk
5 you through, give you your options, and then we just
6 be quiet and listen.

7 I used to teach for 14 students. I used to
8 tell my students, walk out of that room, don't sit in
9 there while they're discussing it among themselves so
10 they can feel like they are making the decision. You
11 can't do that online. You've got to sit there and try
12 to ask them. You don't want to walk out of the room
13 when you're online or doing a Zoom because it's
14 considered rude. My staff reminds me that's
15 considered rude. And no capital letters, that's like
16 yelling at someone. So I had to learn those
17 technologies. So I think it does if you have the
18 right person.

19 MS. PLETT: Sarah, what about you, do you
20 think there are benefits to online price disclosure to
21 consumers?

22 MS. POJANOWSKI: I do think there are
23 benefits. That's why I encourage my funeral homes to
24 do that. I think it's -- it's always good to have
25 transparency. However, there's a big gap between

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1 seeing what's on the GPL and the consumer
2 understanding it, as we've talked about before. I
3 think of it in terms of a lot of us are lawyers.
4 People get a contract and you get the wheretofore and
5 all of that. And your average consumer walking in
6 looks at that and they're just like just sign it, I'm
7 not even -- I don't even read it because I don't know
8 what it's saying, it's lawyer-speak, it's a different
9 language.

10 And in some ways, the GPL is very similar to
11 that. There's lots of terms of art that consumers
12 aren't familiar with. They don't understand what's
13 required, what isn't required, what they need, the
14 different options that are available to them, and so
15 having the licensed professional to walk them through
16 that.

17 You have to consider, also, the frame of
18 mind of the consumer. Consumers are generally in this
19 situation because they're going through a very
20 troublesome time in their life. They have a lot of
21 stress, a lot of grief. They want things to be easy.
22 They don't want you making things harder for them.
23 And just being faced with this document, I think, a
24 lot of times consumers will look at the price and
25 they'll look at that and they'll just be like, ugh,

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1 I'm just going to go to the funeral director, I want
2 to talk to a person, I don't want to -- I don't know
3 what's going on here.

4 So having the price available, always good,
5 but then the next step is come in and talk to me and I
6 can help you, I can make this easy for you. And so,
7 you know, the more that we can do to encourage
8 families to say, yes, here's our price list, but then
9 come and talk to us and we can help you understand the
10 price list is really important.

11 MS. PLETT: Thanks.

12 And a question for Poul, Lacyn, and Erin,
13 kind of what your reaction is to that, whether there
14 are benefits to price disclosure for consumers.

15 And I'll start with Lacyn.

16 MS. BARTON: Well, what I want to comment on
17 is that 91 percent of consumers might say on a survey
18 that they will look at the prices online, but our data
19 shows that less than 2 percent click through and
20 access that pricing on our websites. But with having
21 the pricing online, that is a valuable tool for
22 consumers insomuch as that it gives them the
23 terminology they're going to be hearing and using in
24 the actual arrangement conference with a licensed and
25 trained professional. So there's the benefit there.

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1 MS. PLETT: And, Poul, what about you?

2 MR. LEMASTERS: I do believe there's a
3 benefit if it's done properly. Again, I think this
4 idea of just everybody put your prices online, that
5 will solve it all, I think that's just -- that's very
6 optimistic. And I think you have to allow not only
7 the business to decide.

8 Back to an earlier point, I think this is
9 already happening. You know, I think the other
10 benefit is, you know, we are seeing technological
11 advances. I mean, we did not really see or hear of,
12 you know, virtual arrangements and then, you know,
13 COVID, and then here we are.

14 So there are some benefits here and
15 technologically this will be, but it's got to be done
16 right. And we have to be aware of a lot of things,
17 size of market, you know, what your offerings are, are
18 you really selling on line or are you literally just a
19 platform for obits.

20 And the other thing -- and, again, I want to
21 end with this last thought is let's not forget about
22 the state regulatory schemes. One of my fears out of
23 this is there are states that say only a licensed
24 individual can talk about purchasing or funeral goods
25 and services. By opening up the federal side to say

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1 everybody put prices online, well, now what happens?
2 Now, consumers say, hey, I'm seeing prices and --
3 well, now we have to have state disclosure saying,
4 well, we can't talk about these and we can't do these
5 online. I mean, in other words, we're creating a
6 possible conflict on state and federal. More reason
7 to allow a broader scheme and let states decide how
8 they want to handle this, if it's needed in their
9 region.

10 MS. PLETT: Thanks.

11 And, Erin, turning to you, what do you think
12 are the benefits or do you think there are benefits
13 for consumers for online price disclosure?

14 MS. WITTE: Absolutely. Like I said before,
15 our research has shown that prominent price
16 disclosures have a strong correlated effect of
17 lowering prices. Our position is that this is a
18 causal relationship, right? Because those prices are
19 disclosed, competition is present and that ultimately
20 has a beneficial market effect in this country of
21 lowering prices.

22 One of the stated purposes of the FTC in
23 adopting this rule, maintaining this rule, viewing
24 this rule is lowering barriers to price competition.
25 This is an extraordinarily easy way to do that based

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1 on data.

2 Additionally are just the benefits that I
3 talked about before, informed consumer choice, which
4 is the other purpose of the FTC's rule-making here.

5 And a third point is making this available
6 -- making this information available for policymakers
7 to evaluate pricing and to see how prices compare to
8 each other. The survey that I mentioned before also
9 asked consumers whether they would look at a service
10 like Consumer Reports, a pretty well known
11 organization that posts very legitimate information.
12 They can't do it because they can't compare all of
13 those prices. So making this information more widely
14 available in a comparable way will serve that purpose
15 of allowing third parties to evaluate it, to make
16 policy decisions, to inform regulators, and things
17 like that.

18 MS. PLETT: Thank you so much.

19 And that's all the time we have for this
20 panel. I'd like to thank all my panelists for
21 joining, for the great discussion we had today. And
22 we have a break until 11:15. So thanks, everyone.

23 (Applause.)

24

25

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1 PANEL 2: ONLINE DISCLOSURES:

2 PRACTICAL CONSIDERATIONS

3 MS. DICKEY: Well, good morning, everyone.

4 This panel is going to address whether -- if the
5 Commission decides to adopt an online disclosure
6 statement requirement, what should that look like in
7 practice. And we put together a great panel who is
8 going to help us answer that question.

9 I'm going to introduce them just briefly.
10 We have Effie Anolik from Afterword; Jim Bates from
11 the Funeral Consumer Alliance of North Texas; Layng
12 Guerriero from AskTheDirector.com and FuneralKinetics.
13 com; Barbara Kemmis from the Cremation Association of
14 North America; and Isabel Knight from the National
15 Home Funeral Alliance.

16 Before we get started, I just want to remind
17 everyone if folks want to submit questions, for people
18 participating virtually, they can submit those at
19 funeralrule@FTC.gov, and for people in attendance in
20 the room, if you filled out a comment card and want
21 that question to be asked, please wave it up in the
22 air and someone will come around and collect it from
23 you.

24 Okay. So before we dig into the details, I
25 would like to ask all the panelists to briefly provide

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1 an overview about whether, in your view, the Funeral
2 Rule should be amended to include an online disclosure
3 requirements for some or all funeral providers.

4 And, Effie, I'll start with you.

5 EFFIE ANOLIK: Sure. I do believe that it
6 should be amended and that prices should be online.
7 The very first thing that I did when I planned my
8 dad's funeral in 2018 was pull out my cell phone and
9 Google two things. I Googled how to plan a funeral
10 and next I Googled how much it would cost, and it was
11 mainly because I had no baseline, I had no idea if it
12 was going to be \$2,000, if it was going to be \$25,000.
13 I had no idea.

14 And it's interesting because the panel
15 before this, a few panelists said time and time again
16 that price was not the most -- the item that people
17 made decisions based on and it was a tool. And I
18 agree that you should just take a moment to think
19 about the last big purchase that you did. Did you go
20 online? Did you pick the cheapest option? You
21 probably looked at reviews and you probably picked
22 something that built trust for you; you didn't pick it
23 based on price.

24 And the last thing that I'll say is that
25 regardless of age or generation, there will always be

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1 people who want to meet someone face-to-face and have
2 a discussion, but there are others, like me, who want
3 to make these decisions online and the industry just
4 isn't supporting them yet.

5 MS. DICKEY: Thank you.

6 Jim?

7 MR. BATES: I definitely think that the FTC
8 should require online price disclosure. I've been a
9 consumer advocate for 30 years with the Funeral
10 Consumer Alliance. I've made direct contact with
11 thousands of people. And for the past 20 years, I've
12 taught at the local junior college in the seniors
13 program. So I know very clearly that this is a
14 control issue, that the consumers feel they have no --
15 little -- very little control in the process and that
16 the industry, I think, it's pretty obviously that they
17 want to maintain that control.

18 In one class, say, I speak to just a -- like
19 an AARP outfit, I can teach people in one hour to gain
20 control of that experience. And it's very obvious in
21 six one-hour sessions in the junior college curriculum
22 that I teach, I see the smiles come across people's
23 face. The homework is to go to as many funeral homes
24 as they want to and get a GPL, bring it back to class,
25 get comfortable with the language, understand what it

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1 is, and basically do what they could do online if they
2 had a website.

3 So we're talking -- again, it's just -- it's
4 a serious -- to me, it's a very serious emotional
5 event that I've dealt with so many people for so long
6 and really would like to see -- the Funeral Consumer
7 Alliance would like to see the control balanced in
8 that consumer decision.

9 MS. DICKEY: Thank you.

10 Layng?

11 MR. GUERRIERO: I'm not a fan of mandates.
12 I think mandating disclosure is one thing, but also
13 imagine if you were to require a wedding planner to
14 tell me how much a wedding is. It's very complicated.
15 It could be \$50 if you go to the courthouse, it could
16 be \$50,000. Same with a funeral home. It's very
17 difficult.

18 I do believe that the industry itself is
19 starting to move in that direction because consumers
20 are already asking -- on the fringes, to ask for
21 pricing. And it depends on age and it depends on a
22 lot of factors. People sometimes -- probably 20
23 percent or less want to feel like price -- I think
24 they said 11 percent earlier. It's probably a little
25 larger than that. But I would say that, just

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1 generally, that's a -- it's a growing group of people,
2 but there's still a majority of people who are looking
3 for things like proximity, value, service. It is the
4 funeral service industry, not the funeral products
5 industry.

6 So I think price is coming. Whether or not
7 the FTC mandates this or not, it's still going to
8 happen. But over time, I think what happens if it is
9 mandated, that it will speed up this natural process
10 that's happening in many industries rather than just
11 funeral.

12 MS. DICKEY: Barbara?

13 MS. KEMMIS: Thanks, Melissa.

14 Representing CANA, no one likes to be told
15 what to do, right? Nobody likes a mandate. That
16 said, our members have been operating within the
17 Funeral Rule this whole time and they've been doing it
18 well. And so we -- in preparation for this panel, I
19 surveyed our members and asked them a few questions.
20 100 percent of them have websites. We actually looked
21 at each of their websites to see. And when we asked
22 them how they respond to pricing, a little over 40
23 percent already had pricing on their websites, and
24 everybody responded obviously with -- to in-person
25 inquiries, but phone inquiries, delivered by email --

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1 this was true before the pandemic, it's true now.

2 So our members are businesses, right? They
3 want to serve consumers. They want -- and it is a
4 service business. So however they're requested to
5 deliver information, they will comply with that.

6 I'm a very data-driven person so I'm going
7 to have other statistics to share as we talk, but just
8 to give a little more context, CANA is the smallest of
9 the national associations that you heard from on the
10 earlier panel, and we're focused primarily on
11 cremation, but our members provide all -- the whole
12 gamut of funeral services. We represent about a
13 quarter of the funeral homes in the United States that
14 the FTC regulates.

15 MS. DICKEY: Isabel?

16 MS. KNIGHT: Yeah. So I am -- I wear two
17 hats. So I'm the president of the National Home
18 Funeral Alliance and I'm also on the board of my local
19 funeral consumers alliance. And for those of you who
20 may not know, one of the main things that we do at the
21 funeral consumers alliance is call funeral homes to
22 ask for their prices and post them on our website.

23 We would not spend hours doing this if we
24 didn't think that this was super important for
25 consumers to be able to have access to prices online

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1 and, frankly, I would love to not have to spend hours
2 doing that.

3 So to this point, around, you know, other
4 industries don't have to post their prices online and
5 be mandated to do that. I would say that the funeral
6 -- a funeral is the third most expensive thing that the
7 average consumer buys after a house and a car, but
8 funeral consumers are far less familiar with the
9 prices to expect when shopping for a funeral. And so
10 -- and of those goods, a funeral is the only one of
11 those things that they are legally required to buy.
12 You can't dump a body in the woods. Like you are
13 required to get either a form of disposition, whether
14 it's a burial, a cremation, or an alternative
15 disposition method, and you are not required to go to
16 the dentist, you're not required to buy a house or a
17 car.

18 Legally, this is the -- it's a very unique
19 consumer good and so, yes, I would advocate very
20 strongly for having prices be required to be posted
21 online.

22 MS. DICKEY: Thank you.

23 So let's turn to talking about funeral
24 providers who already have a website, but those who do
25 not sell their services online. So there's no process

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1 where they select their services online and then they
2 complete the purchase online.

3 In your view, what is the optimal way or
4 ways for funeral providers to make those price lists
5 available to consumers on their already existing
6 website?

7 Effie, do you want to start us off?

8 EFFIE ANOLIK: Sure. I think to touch on
9 what the earlier panel kept referring to, which was
10 that pricing needs to be explained by a licensed
11 professional, and technology has come a really far way
12 and there are many, many ways that you can use videos
13 or you can use language to really explain what type of
14 services you're providing and really guide families
15 through all of their options.

16 I was having a conversation just before this
17 about how I spoke to a funeral director face-to-face
18 because that was my only option when planning my
19 dad's, and to this day, there are many things that I
20 learned about like, ah, I wish I knew that, I would
21 have picked that. And so I do think that had I had
22 the opportunity to look through their website, educate
23 myself, I could have picked things that were more
24 applicable to what I would have wanted to do to
25 commemorate my dad.

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1 And it's just important to note that it's
2 not just your GPL, and I know that there's another
3 conversation to talk about adjusting the GPL so that
4 families understand it, it's really around education.
5 And there's a lot of tools out there to help you do
6 that now.

7 MS. DICKEY: Jim?

8 MR. BATES: Yeah. On the -- you know,
9 developing a rule to put online pricing, I think it
10 needs to be tight. The language needs to be tight and
11 descriptive as far as where and what words are to be
12 put in the -- on the websites and also -- and I've got
13 some examples here. At the right time, I can show
14 you.

15 MS. DICKEY: Yeah, whenever you're ready,
16 Jim.

17 MR. BATES: Okay, all right.

18 MS. DICKEY: Just say the word "next," and
19 it will pop up magically I've been told.

20 MR. BATES: Okay, all right. So slide 1,
21 please.

22 All right. When I got the call to talk to
23 FTC, I propose that I put together a quick website
24 mockup just to help us all have something to look at,
25 you know, create discussion on how to do this if it's

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1 made a rule.

2 I've been a web developer for over -- since
3 1995. A lot of the time was in the corporate world
4 with almost unlimited funds, and then as I retired and
5 segued to the nonprofit world -- I wasn't in it prior
6 to that -- did web development with almost no money.
7 So I know pretty well both ends of it.

8 So I put this thing together. We're not
9 able to see the website live, but you'll get some
10 screen shots of it. But anyway, it's up and running.
11 You can go to it if you want to look at it and get
12 your hands on it. It's at acmefuneralretailer.com.
13 So if you can go there, just take -- it's very simple
14 and all that.

15 So next slide, please.

16 So what the mockup is showing there is what
17 to deal with as far as writing the rule itself is --
18 what's suggested in here is up there at the very top
19 to have the term "consumer pricing" in the main menu
20 so that it's quickly seen by anybody looking at the
21 webpage.

22 Another reason for doing that is when you
23 flip on -- and most people will be looking at a
24 website on their phone in a hospital, nursing home,
25 stuff like that. So you can't really predict exactly

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1 how a software is going to flip from the web -- you
2 know, the vertical -- I mean, the horizontal on the
3 screen, the computer screen to the vertical on the
4 phone. So by putting that consumer pricing name up at
5 the top in that top mini bar and having a consistent
6 terminology, then wherever it goes on the phone, it
7 will still be fairly prominent.

8 So that's the terminology and the webpage
9 location. So that's a suggested place to put that.

10 Next slide, please.

11 MS. DICKEY: Oh, next slide after that,
12 sorry.

13 MR. BATES: Okay. And then the second page,
14 this would be defined in the rule, too, as requested,
15 would be to have -- this will be a consumer pricing
16 page, the terminology and the location, and it's a
17 beginning page. And the reason for this is to have
18 this next page after consumer pricing, is to give
19 something to the consumer that they can comprehend in
20 seven seconds. Out there in the web world and design,
21 you have -- that's pretty much the agreed target. You
22 have seven seconds to get someone's attention or else
23 they move on.

24 So as a consumer advocacy group, we are
25 wanting it to give them some reinforcement, to give

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1 them a prize, you know, to get their attention to an
2 abridged price list. And what is in there that's in
3 this mockup, you can't see all of it, but it's the
4 GPL, the casket price list, and the outer burial
5 container, just a short version of those things so
6 that the consumer, while they're crying and hurting
7 and everything else going on in circles around their
8 mind, they can at least find something to focus on to
9 go to figure out -- start getting oriented and figure
10 out what to do.

11 And then, also, in there is circled -- and I
12 know it's hard to see or impossible to see from where
13 you're at -- is -- but it's circled on there, is a
14 link to the full GPL, which is the subsequent screen.

15 But you've got some other -- something else
16 you wanted to do or do I keep going?

17 MS. DICKEY: Well we do have -- maybe we
18 should finish off with the rest of the panel and then
19 come back to you if there's time. I know you've got
20 some other slides to show later on, perhaps, or do you
21 want to cover them now.

22 MR. BATES: I'll just go now. It will be
23 quick.

24 MS. DICKEY: Okay, great.

25 MR. BATES: Okay. Next slide, please.

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1 Okay. Then the next one would be a GPL
2 navigation page, real short and sweet, a lot of white
3 space, again, allowing focus for the consumer to go to
4 that GPL.

5 And next slide please -- and a link to that
6 -- and then there's that GPL and hoping that the rule
7 can be written, that that GPL would be like a PDF
8 format that could be viewed online or downloaded and
9 that is an exact copy of the paper GPL that is handed
10 out in the funeral establishment.

11 And that's it. Thank you.

12 MS. DICKEY: Thank you, Jim.

13 MR. BATES: Mm-hmm.

14 MS. DICKEY: Layng?

15 MR. GUERRIERO: So I'm a big fan of Wile E.
16 Coyote, but I'm not a big fan of calling funeral
17 service providers Acme funeral retailer. I don't
18 appreciate that because I know they don't appreciate
19 that. This is a funeral service business. And I
20 think the more we commoditize the profession, the
21 worse it is for the consumer.

22 The other thing that's a -- as a website
23 developer, you would also know that when you say
24 consumer pricing, that's a lot of text. If you're
25 going to have a mobile application, you have a very

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1 limited amount of space. So you've got to give -- if
2 you're going to mandate this, you've got to give the
3 developers options to make it smaller, fee, sort of
4 words because they have other navigation on there they
5 want.

6 The other thing is, as a funeral service
7 provider, there's not a story there about how they're
8 going to help create a memorable service, a meaningful
9 service for your dad or your mom. It's all about
10 pricing. I don't think that's fair. I think
11 consumers need to see the entire picture and not just
12 the nuts and bolts of the funeral home.

13 MS. KEMMIS: Yeah, I agree Layng. As we
14 were reviewing CANA member websites, and over half of
15 them have already -- are posting pricing online in
16 three main categories. The first is, sure, they'll
17 post their GPL online in a downloadable PDF or maybe
18 it's a page with package pricing and then a link to a
19 downloadable PDF, and certainly the minority, but
20 there are those out there that are completing the
21 sales of funeral goods and services. Some of that's
22 limited by the state level, but those who are
23 completing sales obviously have pricing both
24 downloadable displayed throughout the shopping cart
25 process and then at the end. Those are the three kind

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1 of methods that we saw where that pricing was
2 displayed.

3 And most often, that pricing information was
4 discoverable through maybe a drop-down menu on the
5 main navigation or in the foot -- the footer of a -- I
6 keep wanting to say the footnote -- the footer of the
7 website. But as we know, most people find websites by
8 a search anyway. So if they're searching for pricing,
9 they're going to find the pricing page. So sure,
10 navigation and clear and conspicuous is something we
11 talked about in preparation for this panel. All of
12 those things, you know, hit clear and conspicuous.

13 But when we asked our members how often
14 people go to pricing, talked about this a little bit
15 on the earlier panel, and with so many thousands of
16 members posting pricing on their website and the
17 response being a third of 1 percent or half of a
18 percentage point up to a percentage, 1 percent, of
19 visitors to their website looking for pricing. That
20 means 99.9 percent of visitors to those websites are
21 finding them through search for the most part.

22 And what are they searching? Obituaries,
23 right? They're searching information -- service
24 information, they're leaving online condolences. So
25 99.9 percent of visitors to the website are looking

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1 for an address of where to show up for the service,
2 where to order flowers from, how to leave a message,
3 and reading more about that person. And maybe they're
4 linking to that from social media or search as I
5 mentioned.

6 Interestingly, too, we -- I just think this
7 is a fascinating statistic and it's been durable for
8 the last four years. For that percentage of CANA
9 members who are completing or facilitating the
10 complete sale of funeral goods and services online,
11 there's a remarkably high number of abandoned shopping
12 carts.

13 So imagine this, you go to the funeral home
14 website, you are planning ahead, perhaps it's pre-
15 need, perhaps it's at-need. You know what you want.
16 You're going through, you're selecting. So initially
17 what happens is you have the option to download or
18 have the GPL emailed to you. Different people do
19 different things. It's a business decision, right,
20 how they want to guide you through this. You're
21 nodding your head, Isabel, like you've experienced
22 some of this, right, by looking at them.

23 You go through the shopping cart experience.
24 You're picking the different things you need. And 85
25 to 95 percent of those shopping carts are abandoned.

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1 That means that they have the opportunity to enter
2 their credit card information, right?

3 Now, that seems like it would be bad news
4 for the funeral provider. It's not, because you've
5 also entered some of your information throughout that.
6 These are actual leads in sales terms, right? These
7 are people. But why are they abandoned online? Why?
8 Because this is a complex process, right?

9 I would imagine -- and the providers who
10 provide these services report that when these people
11 are followed up with and asked, why did you abandon
12 the shopping cart, answers range from, well, I'm not
13 the only one paying, multiple family members are
14 contributing to the payment of this funeral, or I just
15 really wanted to get a sense and put together a budget
16 before going into the funeral home because it's not
17 just me making the decision, there's multiple people
18 making the decision.

19 And so, you know, 85 to 95 percent of sales
20 are not completed at the time of looking online, but
21 those consumers who were looking at things do have
22 tools to then take to the decision-makers.

23 MS. ANOLIK: Can I add something to that
24 after --

25 MS. DICKEY: Um, if that's --

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1 MS. ANOLIK: Go ahead.

2 MS. DICKEY: -- okay with you, Isabel.

3 MS. KNIGHT: Sure.

4 MS. ANOLIK: Okay. Sorry. There are just
5 two stats that I thought were interesting, the one
6 that -- thank you for already describing that, you
7 know, 99 percent of people coming to the website in
8 this scenario are looking for a service, they're
9 looking for an obituary, but the other panel also
10 mentioned a really low stat for the website traffic
11 looking for pricing. We should actually be looking
12 for the data for that 1 percent.

13 Like what are the 1 percent who are not
14 coming for an obituary doing on your website? Are
15 they going to the obit? Are they looking at your
16 services? Are they looking for price? We can't just
17 look at hey, 1 percent of website visitors are looking
18 for price. We actually don't know that. It could be
19 90 percent of that 1 percent and it's just important
20 to note that we split that data and that's actually
21 okay. That's all. Thanks.

22 MR. GUERRIERO: I agree with that. I do.

23 MS. ANOLIK: Yeah, they're just really
24 important.

25 MR. GUERRIERO: One percent is -- actually,

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1 1 percent is the death rate essentially for the whole
2 country.

3 MS. ANOLIK: Oh, actually, sorry, I have one
4 more comment for that. Sorry. Also, the stat about
5 90 percent of online shoppers are dropping off, it's
6 also important to note -- and I know there's another
7 panel for this that's going to talk about how GPLs are
8 written in funeral speak and not in terms that
9 families really understand. A lot of the current
10 tools for online planning are very similar. Pick
11 three packages. Do you want option A, option B,
12 option C? And they are written in the same format as
13 a GPL. Families don't understand that, of course,
14 they need to call the funeral home to ask you, hey, it
15 looks like I have this alternate container, what is
16 that, why do I have to pay for it?

17 And so it's important to note that we just
18 need to do -- as vendors, do a better job building
19 tools for that. And the same for all of the forms you
20 are giving them, here's all the vital information. Of
21 course, people aren't going to drop off and have
22 someone try to help them with that.

23 MS. KEMMIS: But let me be clear that they
24 weren't citing confusion --

25 MS. ANOLIK: Right.

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1 MS. KEMMIS: -- as a reason for abandonment.
2 They were citing collaborative planning or pooling
3 money to make that decision. It was more complex. I
4 mean, they weren't confused.

5 MS. ANOLIK: Yeah.

6 MS. KEMMIS: They understood what their
7 options were. They needed more time or it was a
8 phased process.

9 MS. ANOLIK: Yeah, I do believe that
10 software can be built in a way to help families do
11 both of those things.

12 MS. KNIGHT: Yeah, I think that's a really
13 good point, like there is a way to show a GPL in a way
14 that is not confusing and it just requires explanation
15 of each of the individual items the same way that you
16 would explain in person, right?

17 So from the perspective of trying to figure
18 out how we can make this as accessible as possible,
19 with respect to the question around how we should
20 implement this, I do think that as opposed to just
21 having guidelines that say things like "clear and
22 conspicuous," I think that we should have very clear
23 specifications around the GPL needs to be in the top
24 line navigation, it needs to use consumer-friendly
25 words like "pricing." It should use very readable

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1 language, ideally at a third- or fourth-grade reading
2 level, and there absolutely is a way to accomplish all
3 of those things.

4 Another thing that I wanted to point out
5 around the search is that the one state that has
6 implemented a requirement for online prices to be
7 displayed for funeral homes is California. And one of
8 the things that we have seen in California is that
9 there are ways for funeral homes to try to sort of get
10 around that by, for example, taking the price lists
11 that they do list on the website out of their -- I'm a
12 web developer, so this is a little bit of jargon, but
13 what's known as their robots.txt file, which is what
14 Google and other search engines used to find the price
15 list when you search on Google.

16 So one thing that I would recommend is make
17 sure that the price list is indexable by search
18 engines since that's where a lot of people are going
19 to -- a lot of that traffic is going to be coming
20 directly from search engines, and on the flip side,
21 ensure that it's also available in a human readable
22 format.

23 So for example, you can technically have a
24 price list listed on your website that's machine-
25 readable that Google could find, but it's in white

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1 text at the bottom of the page so that a human can't
2 actually read it. So we need to satisfy both of those
3 requirements. It needs to be both searchable and
4 machine-readable, and then it also needs to be
5 actually readable by a human being.

6 MS. DICKEY: Thank you.

7 Shifting gears, this is a question for
8 Effie, Jim, and Layng. Is there a preferred format
9 that the price list should appear on the website and,
10 specifically, I think we've talked about that there
11 are pros and cons between posting them in PDF format
12 versus having the text of the GPL available in the
13 website.

14 Effie, do you want to start us off?

15 MS. ANOLIK: Sure. Yeah, PDFs are great
16 because they are the universal digital format, but --
17 and they're easy to -- arguably easy to create.
18 Though I would say they're -- I wouldn't say that
19 they're best choice for putting it online because you
20 should be thinking about all the different devices
21 that people are accessing this. So try to open a PDF
22 on your phone, in a lot of cases, it will be really
23 hard to read. It will also, in a lot of cases, be
24 many, many pages. So you really -- it's not easy to
25 navigate through. I think it should be built into the

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1 website in a more clear way and it should also provide
2 some guidance.

3 So for example, if someone -- this can be
4 done through questions. If someone's looking for, you
5 know, a Hindu service, for example, then we should be
6 showing them a funeral service with a cremation and
7 only showing them the services that are relevant to
8 them, so they're not sifting through, you know, a big
9 PDF.

10 MR. BATES: Yeah, from a programming and
11 developer view, the PDF is definitely the best way to
12 go, especially like earlier talking about the smaller
13 funeral homes with limited resources, it's fairly easy
14 to turn whatever they document they've got into a PDF.
15 It's also -- it entwines really well with the search
16 engines out there to dig down into the -- a drill-down
17 through search and find something like, you know,
18 vault or whatever, you know, something like that it
19 will drill down into -- in there.

20 To try to come up with a format, again,
21 looking at it from a programmer/designer standpoint,
22 to define an FTC code, how exactly to change that
23 format or to have it -- something beyond like the
24 simplified price list on here could be bad. It just
25 could be really tough, you know, to -- if you asked me

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1 to write it, I'd go uh-uh. So it just gets around the
2 PDF thing.

3 And I do understand, you know, what you're
4 saying about going to the phone and a PDF. That's a
5 tough one. But it's like that with pretty much
6 everything you get on the phone. You get to a
7 contract or something that's got a lot of words on it,
8 you're going to need to find a printer and print that
9 thing out. So PDF is -- I think is the way to go.

10 MR. GUERRIERO: PDF is the best way. But
11 the real problem is the GPL, it's already confusing.
12 So whatever format you choose, it's taking them to
13 something that's already confusing.

14 The other thing on the PDF is the naming --
15 the naming of it. If you have a PDF -- if you're
16 going to play pin the tail on the donkey and you're
17 going to specifically -- be that specific, I think you
18 should also think about making sure that the name of
19 the document is defined, because if you have a PDF
20 with the year at the end of the name of it, you're
21 going to have all of these PDFs all over the internet
22 as opposed to just replacing that one file. And there
23 will be old GPLs floating everywhere.

24 So maybe just one and call it the Johnson
25 Funeral Home price list and that's it. And then they

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1 just replace that file and not make all these
2 different price lists that are floating everywhere.

3 MR. BATES: Yeah, that's a very good point
4 to have some sort of document control title in the
5 rule so that the customer, the consumer, and the
6 business are looking at the same document. Very good.
7 Thank you.

8 MS. DICKEY: So for Layng, Effie, and
9 Barbara, what is the cost to funeral homes that
10 already have a website to post a general price list on
11 that website and then keep it updated?

12 And, Barbara, I'll start with you for this
13 one.

14 MS. KEMMIS: Thank you. So, you know,
15 again, we researched this, right? We asked. We asked
16 our members and we asked suppliers, and as we
17 discussed in the previous panel, you know, the
18 question that was posed was how much does it cost to
19 post a PDF. And, realistically, not much. The third-
20 party providers who support funeral home websites now
21 will make a way to do that. And will it be an add-on,
22 will it be incorporated into the fees or marketing
23 services or other services that are provided?
24 Probably. Prices typically don't go down with these
25 third-party providers. They only go up. So we can

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1 anticipate that.

2 But I just want to reemphasize points that
3 the previous panel made about staffing and about
4 opportunity costs of having that pricing on there
5 without context. That's real. Our members tend to be
6 some of the largest providers in funeral service.
7 They average 300 cremation calls per year. So that
8 can be anywhere from, you know, 300 calls per year to
9 thousands of calls per year if their cremation
10 percentage is low.

11 These are big businesses and they're still a
12 fraction of what the FTC considers a small business.
13 They all have staffing below 50 people, the members
14 I'm talking about. Even the big corporations, when it
15 comes to the locations, they have lower staffing. So
16 there's -- we're concerned because we don't know what
17 the unintended consequences will be of this.

18 The other thing we learned from our research
19 is the people who use third-party providers can
20 sometimes get what are called free websites in
21 exchange for marketing services or other services,
22 they spend a minimal amount of money a year on domain
23 names and, you know, other things like that. That's
24 polarized on one end. They're posting obituaries,
25 they're posting service information. Those examples

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1 of websites tend not to have pricing on them. That's
2 not the purpose of their website.

3 I don't mean this in a disparaging way, but
4 imagine an online brochure with, you know, obituaries
5 accessible, right? All the key information is there.
6 Then it's polarized the other way. So that's \$2,500
7 or less CANA members are spending and then it's
8 \$10,000 or more. And these are websites that are
9 highly customized. They want to differentiate from
10 their competitors. Unlike the example that Jim
11 showed, there are obituaries present, there are video,
12 there is maybe a video tour of the facility, every --
13 there's lots and lots of pictures, lots and lots of
14 examples of service that that provider has conducted
15 in the past, and they want to, you know, stand apart.
16 And they also may have an e-commerce function on there
17 as well.

18 So chances are they've already invested in
19 it. So is there going to be an increase? No, they're
20 going to stand out that much more. So I hope that
21 gets at your question.

22 MS. DICKEY: Thank you.

23 Layng?

24 MR. GUERRIERO: I think the cost is minimal,
25 but then it could be very prohibitive at the same

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1 time. The cost is -- to put a PDF is nothing, but in
2 funeral home communities -- when there's communities
3 and funeral homes are competing, they're a very "me,
4 too" kind of business. Like my competitor is now
5 doing it, I should do that. And I think what you'll
6 see is the funeral homes with more resources will
7 build these funnels, these purchase funnels, and
8 they'll be very expensive. And they'll feel like they
9 have to have more than that PDF to stay in business
10 and that's where the cost really starts to rise.

11 MS. DICKEY: Effie?

12 MS. ANOLIK: Yeah, I agree with everything
13 that they said, so I won't repeat it, but I'll say as
14 one of the vendors on these panels today, it's a
15 shared responsibility for us to also help support you
16 comply with these rules. So if you're with a website
17 provider that's going to charge you a ton to add a PDF
18 or to make it in a readable way, find a vendor that
19 will help you for a nominal cost because websites
20 should not cost you a lot. It's the -- you know,
21 every funeral home should have a website and you
22 shouldn't be spending 5 to 10 grand on it.

23 MS. DICKEY: I'd like to shift gears here
24 and talk about funeral providers who are selling their
25 services online. And I know we're running a little

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1 bit short on time here, but if folks have views on
2 this, I think I'd be interested in hearing if, in your
3 view, the rule should require funeral providers who
4 are selling their services online, that they should be
5 required to post their price list on whatever platform
6 they're selling those services.

7 So for example, if someone has an app and
8 they're selling their services on an app, meaning the
9 consumer goes through the complete process on that
10 app, should that app also have to have a price list?

11 MS. KEMMIS: So my understanding from
12 suppliers who kind of -- again, there's some people
13 who build a proprietary website to do this. I mainly
14 focused on the CANA supplier members who support this
15 and they -- they're doing it. They're disclosing the
16 pricing. How can you sell and complete sales of the
17 services without disclosing the pricing. And, again,
18 typically -- typically, it happens in three parts.

19 You can download a GPL; you can request it
20 to be emailed to you. Then you go through the
21 shopping process and you see the pricing throughout.
22 And then at the end, you get a statement of goods and
23 services summarizing what you've selected. So that's
24 happening already.

25 I forgot the second part of your question.

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1 MS. DICKEY: Well, I think you covered my
2 question --

3 MS. KEMMIS: Okay. Excellent.

4 MS. DICKEY: -- right there. Well, I
5 suppose the question would be should the rule require
6 them to have that price list on whatever platform that
7 they're selling it. But I think you might have --

8 MS. KEMMIS: Yeah, I think this is -- I
9 think the solution is already there. I'm not sure a
10 requirement is necessary because how are we going to
11 do it without doing it?

12 MR. GUERRIERO: Yes.

13 MS. ANOLIK: Also yes.

14 MR. BATES: Yeah, if it's on an app, there
15 should be price disclosure. Yeah, there's some detail
16 in there that's going to be really tough to right a
17 rule for it. But, yeah, it's got to be there. What I
18 can imagine a bad thing happening would be a funeral
19 outfit would have a webpage and it just says get the
20 app. And then you go to the app and if it's not very
21 well defined by the rule what to do in there, then
22 that's not too good.

23 But anyway, I'm thinking that natural
24 evolution on the app, like you're saying, would get
25 the pricing out there. The competition to get the

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1 consumer's attention with clarity and brevity of
2 message will pay for the business and help the
3 consumer as well.

4 MS. KEMMIS: One more comment about apps, I
5 think -- I'll confess, I didn't know. When we talked
6 about this to prepare for the panel, I thought I have
7 apps on my phone, I know what apps are, right? But
8 the apps I have on my phone are things I use
9 frequently, purchases I make frequently. Funeral
10 service is not, thankfully, something I've had to
11 arrange frequently.

12 And so the one app, I was able to discover
13 provider by a supplier member of CANA's is actually --
14 they call it an app. They license it as an app, but
15 it's actually website. It's mobile-friendly. It
16 works fantastic. But it's not an app in the sense
17 that you download it to your phone and it operates
18 independent of a website. And I think that's key to
19 note with this because I learned, you know,
20 nomenclature matters, right? Words matter.

21 It is quite possible -- and I'm not aware of
22 them now; I'm sure they exist -- there are some
23 companies out there that are starting to provide
24 concierge services or third-party services. So a
25 funeral provider can pay them, right, to list the

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1 goods and services and then that concierge can work
2 with the grieving family and make -- pick and choose
3 from all sorts of places, right? That exists; that's
4 happening; that's likely to grow. It's still not app-
5 based in the sense of my American Airlines app or
6 whatever. That is not a commercial.

7 So I -- yeah.

8 MS. ANOLIK: I was going to jump in actually
9 before you jumped in to exactly say don't build an app
10 for this. There are some things you do not need an
11 app for. And if you're thinking about -- a family
12 needs the information when they need the information
13 in the least -- in the easiest way possible. And so
14 requiring them to download an app in any format to try
15 to navigate this experience is maybe not the best
16 idea. So don't build an app.

17 MS. DICKEY: I think we have two more
18 questions I'd like to try to cover in the six minutes
19 we have left. So the first is social media, if a
20 funeral provider is on social media, should they post
21 their price list on social media and is it even
22 feasible to do so? How would that work?

23 MS. KEMMIS: I would love -- go ahead,
24 Isabel.

25 MS. KNIGHT: Okay. So what I would say to

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1 this is that, in my ideal world, we just require
2 funeral homes to have websites and not have a
3 requirement around putting prices on social media.
4 But if that doesn't end up happening, my next best
5 case would be if, for example, a funeral home only has
6 a Facebook page, for example, that they are then
7 required to post the prices on that Facebook page or
8 whatever their social media page is.

9 MS. KEMMIS: And I would add that when we
10 surveyed our members, again, 100 percent have
11 websites, and the social media activities they perform
12 are primarily like their Google business page or a
13 Facebook page, maybe a LinkedIn page. There's no
14 functionality to post a PDF. They could post a photo
15 or photos and sometimes do, but in most cases, it all
16 goes back to their website because the functionality
17 they need on their website, obituary posting,
18 services, even pricing if they choose to do that, is
19 -- it serves better on their website.

20 A Google business page is, are you open,
21 where are you located, how's parking, reviews, those
22 kinds of things. So I just don't think it's feasible,
23 first of all, nor necessary.

24 MS. ANOLIK: Yeah, we need to be thinking
25 about where families are finding information and where

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1 they're shopping, and so they're not likely going to
2 your Facebook page and then making their purchasing
3 decisions there. So I don't think it's necessary.
4 You can link to a PDF, but I really don't think it's
5 necessary. We just need to think about where they're
6 searching for information and I may make that I think
7 every funeral home should definitely have a website.

8 MR. GUERRIERO: I think the website only
9 because that's what they control, and if they have a
10 problem and they can't figure out the password, they
11 could just call that vendor. You can't call Facebook.
12 So sometimes, often, you'll see these Google,
13 Facebook, other platforms where someone who used to
14 work there had it and set it up, but nobody knows
15 where that person is. So they're trying to comply
16 with the rule and they can't even get access to it.

17 MR. BATES: Yeah, social media is a real
18 tough one. It's got -- yeah, it's got so many
19 tentacles and all that to it. So all I can think of
20 really is just to have -- require a reference, you
21 know, a little link to go to that PDF GPL is the app
22 is part of a funeral establishment that has a website.
23 Keep it simple.

24 MS. DICKEY: So turning back to funeral
25 providers who sell their services online, I would love

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1 your views on whether the rule should contain specific
2 requirements about where the price list should be
3 disclosed as part of that shopping process. So should
4 -- it has to be, for example, emailed at the start of
5 the shopping process to the consumer so they know they
6 received a price list.

7 Is there any other sort of rule provisions
8 that should be put in place to dictate where it should
9 be given, understanding that in that circumstance,
10 consumers may not be able to go to a funeral home and
11 meet with a funeral provider to get all their
12 questions answered?

13 MS. KNIGHT: I think having the option to
14 have the price list emailed to you is a good one, but
15 I don't think that should be a requirement to get
16 access to the price list because I don't believe that
17 consumers should have to divulge any of their own
18 personal information to get access to prices as
19 they're going through the shopping process.

20 MS. KEMMIS: I mean, the current status is
21 more that you can download it before, obviously
22 experience the pricing as you go through the process,
23 and then receive that summary at the end of what
24 you've selected and purchased with the disclosures, et
25 cetera. I'm not going to argue for requirements. I

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1 think that this is -- it's impossible to predict the
2 future and it's just so interesting to see how
3 technology is serving funeral consumers now as far as
4 what they can find. And the business models that are
5 -- that are evolving, it's fascinating.

6 I mean, and so I would -- I think that
7 there's a risk of being overly restrictive. I mean, I
8 think, you know, one of my concerns which hasn't been
9 mentioned, but would be silly because I think we can
10 all on this panel agree that pop-ups are really
11 annoying, so how terrible would it be if you had to
12 visit a funeral home website and a pop-up with the
13 pricing link came up, I mean, given what we know about
14 who visits websites?

15 Maybe everybody wouldn't agree, but anyway,
16 I just -- we don't want something that interrupts the
17 consumer. Any requirements that interrupt the
18 shopping experience or annoy the consumer, I just
19 think we have to remember that funeral providers are
20 businesses who want to service grieving families.
21 They do. So they are going to make decisions that
22 help them. And if they don't make decisions that help
23 those families, they're not going to be in business
24 very long. The market will prevail.

25 MR. GUERRIERO: I think if you create and

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1 end-to-end application or funnel to take someone from
2 a website to a completed purchase, I think it should
3 mimic the Funeral Rule and it should be part of the
4 funnel, and there should be some portion in there
5 where they have to get the disclosure, a checkbox or
6 some kind of "I agree, I've read this," just like a
7 funeral director, but a robot.

8 MR. BATES: Yeah, if the consumer comes in
9 to a website or an app or whatever and is hit with a
10 chat button, say they don't see the pricing link on
11 there, right, then it's tough as to how to, you know,
12 still comply with the Rule. So maybe something could
13 be written in the Rule that says any electronic
14 presentation from the vendor that has to do with
15 pricing, there must be a direct link to pricing,
16 something like that.

17 MS. ANOLIK: Yeah, it's interesting that the
18 stat is 31 percent of funeral homes that have any sort
19 of pricing on their website have it in a prominent
20 place. So what I mean by that is above the fold, in
21 the navigation. The footer is not a prominent place
22 because you have to go through the entire website in
23 order to get to it. And we do just have to remember
24 that we want to make it easy for families to find the
25 information that they need. That's why your

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1 obituaries are usually right, front, and center.

2 Same as pricing and services. That should
3 all also be in a prominent location. So I do think
4 that we should -- I'm not sure mandate or suggest, but
5 it should definitely be in a prominent place because
6 consumer behavior is changing.

7 I planned a funeral much earlier than most
8 of my peers and I went looking for that information
9 and couldn't find it. I don't live where my parents
10 live. So people are going to go to your website, and
11 if they don't find the information they need, they're
12 just going to leave your website. So it's also to
13 your benefit to put it in a place they can find it.

14 MS. KNIGHT: And can I just add really
15 quickly, I think that when we talk about the
16 statistics of, oh, we have websites, but no one is
17 actually going to the pricing page, in a lot of those
18 cases, as I've seen, as I've been trying to, you know,
19 find prices on funeral homes' websites, it might not
20 be in a prominent place enough for people to actually
21 find, and that might be the source of some of that
22 data that we're hearing.

23 MS. ANOLIK: That's a good point.

24 MS. DICKEY: Well, we are out of time.

25 Thank you all so much for your time. This has been a

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1 great discussion and I very much appreciate it.

2 So we are now heading to the lunch break.

3 We will be reconvening at 12:45. Thank you all.

4 (Applause.)

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1 POST-LUNCH INTRODUCTION

2 MR. WEINMAN: All right. Good afternoon,
3 everyone. My name is Dotan Weinman. I'm part of the
4 FTC team that oversees the Funeral Rule. Welcome back
5 to the workshop. And I know that it's always the most
6 exciting part that comes after lunch.

7 (Laughter.)

8 MR. WEINMAN: So after very good
9 discussions, very informative discussions about price
10 disclosure online, we're going to move to the basic
11 service fee. That will be our first panel. It's an
12 issue that we get a fair amount of question about. I
13 think it's going to be an interesting discussion and
14 very important for us.

15 And then we're going to discuss mandatory
16 disclosures in the general price list in another
17 panel, and we're going to finish it with a discussion
18 of novel methods of disposition, which I think it's a
19 great way to cap an event like this.

20 Another reminder, not that I see anybody
21 that needs it, but no food and drink other than water
22 in this auditorium.

23 And for those people who are joining us
24 virtually, you can submit questions via email,
25 funeralrule@FTC.gov. And we are looking at every

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1 comment, every email that comes in. So please send
2 them away.

3 With that, I'll hand it over to Rebecca in
4 our next panel about basic service fee.

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1 PANEL 3: BASIC SERVICE FEE

2 MS. PLETT: Great. And just --

3 (Laughter.)

4 MR. LEMASTERS: For the record, I suggested
5 we sit beside each other. She said, no way, the
6 further apart, the better. I mean, we look like we
7 are just sworn enemies right now.

8 MS. PLETT: Yeah, yeah.

9 MR. LEMASTERS: This is fantastic.

10 MS. PLETT: Yeah, no, I -- just to clarify,
11 this is a hybrid panel, so we have a virtual
12 participant joining us. Erin is joining us. And so
13 to avoid us turning around every time she speaks, I
14 suggested we have this set-up, although, yeah, it does
15 feel a little unnatural.

16 But we so appreciate that both Poul and Erin
17 are joining us again for this very important next
18 panel. It's a short one, but I think we'll have a
19 great discussion about the basic services fee or the
20 professional services fee, as it's also know. And I
21 think it's a fairly technical topic. So to start out,
22 I'm just going to go over what the fee is and some of
23 the history behind both the reason for including the
24 basic services fee in the original rule and also some
25 of the Staff Advisory Opinions we've issued since.

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1 So with that -- oh, and I should also say, I
2 know Dotan announced that we get questions from folks
3 online via our email inbox, funeralrule@FTC.gov. But
4 for folks who are here in person, feel free to write
5 your question on the comment cards, hold it up and
6 wave it. We have someone in the back who's keeping an
7 eye out for that and who will collect your card and
8 will get those questions to us.

9 So with that, the basic services fee is a
10 fee that, in the Funeral Rule, is defined as the basic
11 services that are furnished by a funeral provider in
12 arranging any funeral, such as conducting the
13 arrangements conference, planning the funeral,
14 obtaining necessary permits, and placing obituary
15 notices.

16 So it's a fee which funeral providers are
17 not required to charge under the Funeral Rule, but
18 which they can charge to recover some of their
19 overhead expenses that they may incur in arranging any
20 funeral. And if a funeral home decides to charge this
21 fee, they can make it nondeclinable so that consumers
22 are required to pay it.

23 One of the purposes of the Funeral Rule when
24 it was enacted was to allow consumers to pick only the
25 services that they want. So under the Funeral Rule,

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1 consumers can pick only -- can decline goods or
2 services that they don't want and a funeral home
3 cannot condition the purchase of one good on the
4 purchase of another, other than things that may be
5 required by law or this basic services fee, which
6 funeral homes can make nondeclinable.

7 And the way that funeral homes can charge
8 their basic services fee is to list it separately as a
9 line item on the GPL, on the general price list, or
10 they can also add it to the cost of caskets. Those
11 are kind of two options.

12 For certain minimal services, such as direct
13 cremation, immediate burial, forwarding or receiving
14 remains from another funeral home, the basic services
15 fee must be included already in the price that's
16 disclosed on the GPL.

17 And so since the rule was enacted, staff
18 have issued certain opinions to clarify some issues
19 around the basic services fee, and there's a staff
20 opinion that sets out that in most situations funeral
21 homes must charge all consumers the same basic
22 services fee and can't discount it in some situations,
23 but not others. So some of the reasoning behind that
24 was that the basic services fee of overhead expenses
25 can't be used to encourage consumers to purchase

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1 things they don't want by discounting it in some
2 places and not others. I think, in particular, at the
3 time that the staff opinion was issued, there was a
4 concern about caskets.

5 Staff has since issued additional advisory
6 opinions that homes may, but do not have to, charge a
7 reduced basic services fee, so a discounted basic
8 services fee for situations that use comparatively
9 less overhead than a full funeral service. So for
10 example, your direct cremation, immediate burial,
11 those kinds of services.

12 So with that, that's kind of an overview of
13 the basic services fee and I'll dive right in into an
14 overview, some of the kind of headline questions. And
15 so the first question is, does the basic services fee
16 still serve a purpose?

17 And I'll start with Poul. What are your
18 thoughts on that

19 MR. LEMASTERS: It does. It's part of the
20 pricing structure that we set up 40 years ago. It
21 clearly defines, again, this portion that every
22 consumer can expect and, again, it's just -- the
23 problem is it's what we have and, you know, it has now
24 become literally a defining item on the GPL.

25 And so it's 40 years of funeral homes

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1 building their business off of this and it does allow
2 businesses, providers, to take a proportion of certain
3 fees and set them aside so that a family isn't paying
4 \$6,000 for a visitation, you know. And, again, part
5 of this comes from the idea that we have to itemize
6 all of our prices. So in order to do that, you need
7 this portion that can be allotted out.

8 MS. PLETT: Erin, what do you think? Does
9 the basic services fee still serve a purpose?

10 MS. WITTE: Well, I'd like to actually echo
11 a lot of the sentiments of my colleague, Poul. It's
12 the system that we have. But the context for this
13 system we have is really important, that the reason
14 why we have the basic services fee was the result of
15 this unbundling and allowing consumers to pick and
16 choose what they want and the basic services fee arose
17 sort of as a concession to funeral homes to say, we
18 understand that if we're going to have this itemized
19 price list, there are fees and services which may
20 accrue to the funerals that you have across the board
21 and so you can charge this fee -- you can recover
22 those amounts through charging this fee.

23 Note that you can, you don't have to. So
24 it's not a requirement; it's an option. And I
25 completely agree with Poul, the industry has developed

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1 and moved forward around this structure, but it's not
2 perfect. So the question is whether it serves a
3 purpose. And I would sort of push back and say that
4 the question is really is the purpose that it serves
5 or achieves consistent with the purpose of the Funeral
6 Rule. And what the Funeral Rule's statement and
7 purpose says, which I alluded to a few times in the
8 first panel is lowering barriers to price competition
9 and consumer choice.

10 So with respect to price competition, we
11 want lower prices for consumers, and a real problem
12 with the basic services fee is that the prices have
13 gone up. There are comments that identify basic
14 services fees which are sometimes as high as \$5,000.
15 There's also a broad range oftentimes of basic
16 services fees that are imposed by funeral homes.

17 So price competition, I think it's not
18 exactly clear that the basic services fee really
19 furthers that purpose of the Funeral Rule itself.

20 With respect to informed consumer choice,
21 another thing that commenters have raised, including
22 CFA and the Funeral Consumers Alliance, is the
23 confusion that consumers have about this exact fee.
24 It's not clear what they're paying for.

25 It seems that [connection issue] should be

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1 intuitive on a general price list because it doesn't
2 use fancy terms of art. I know that folks have talked
3 before about how complicated some of these concepts
4 can be, like using phrases of caskets and containers
5 and things like that. Basic services feels like it
6 should be basic, but it's really not. What we see and
7 what we've heard from consumers is that they're
8 confused about this.

9 So I think that when we're sorting through
10 does it serve a purpose, the question should be is it
11 furthering the purposes of the Funeral Rule. And it's
12 just -- it's complicated; it's not easy.

13 MS. PLETT: Thanks. Yeah, I think it is a
14 fairly complicated issue.

15 If the Commission decides to retain the
16 basic services fee as it is now, should the Rule be
17 updated to adopt the advisory opinions, the staff
18 opinions that allow reduced basic services fees in
19 certain situations, like the four limited services
20 that are in the staff opinion.

21 And maybe for this one, I'll start with you,
22 Erin.

23 MS. WITTE: Yes, sorry, I just have to
24 unmute every time I talk.

25 So yes, I definitely agree that funeral

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1 homes should be permitted to reduce their basic
2 services fees and we completely agree with the reason
3 that I think a lot of funeral homes have asked or
4 raised concerns about, which is that they're charging
5 a very high fee for very limited services in these
6 special circumstances, the four circumstances that
7 were raised in the Staff Advisory Opinion.

8 So we would definitely agree that there
9 should be permission for those -- the basic services
10 fees to be reduced in those scenarios.

11 MS. PLETT: Poul, what do you think?

12 MR. LEMASTERS: I agree. So this is good,
13 Erin. See, we're -- right now, we're all agreeing.

14 And actually, of all topics, I think there
15 is, again, I believe there's commonality in all of
16 this and we just have to find it. The basic service
17 fee, I agree, the issue is it is complicated and it's
18 outdated. You know, when the Rule was originally
19 written -- and you used this term yourself -- it was
20 arranging any funeral and it was meant to serve as a
21 guideline for those services that you provided to the
22 majority of all your families.

23 We don't have that family anymore. There is
24 no cookie-cutter funeral arrangement anymore. We now
25 have families that only want cremation. We have

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1 families that bring their own casket. We have --
2 there are families now that go do a cremation one
3 place and then show up to another facility and say, I
4 just want to use your facility for a service. And
5 none of this was ever comprehended at the time.

6 So I agree that we should allow this limited
7 service exception, but I think it's just a beginning.
8 I think really the easier thing to do here is to
9 create a variable basic service fee. And it really
10 flows in line with what -- this would be for consumers
11 and everyone. The idea is what we arbitrarily did was
12 say, the basic service fee, whatever that number is --
13 and I know we're not allowed to talk dollars and
14 cents, but let's just make up -- you said \$5,000, so
15 I'm going to use your number, Erin.

16 Well, I'm a funeral director as well. A lot
17 of people might not know that, but I've met with
18 thousands of families back in my day, and one of the
19 most difficult things was to tell a family, here's our
20 basic service fee, it's \$5,000. And the family says,
21 we just want direct cremation. And you say, well, we
22 have a discounted option for that, it's actually 995.
23 And they go, well, that's fantastic. And then we talk
24 and the family says, you know, I think mom would have
25 wanted just a little bit more, you know. What if we

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1 all get together after the direct cremation and just
2 have a memorial service, I noticed on your price list
3 that's an extra \$500.

4 And then as a provider, as a funeral
5 director, I have to tell that family, actually, no, I
6 can't add that \$500 on because under the term-of-art
7 definitions that we all agree are simply complicated,
8 that is no longer a direct cremation. So I now have
9 to go and take the \$5,000 to start with and add all of
10 the itemized items that we haven't created, but the
11 FTC Funeral Rule has created, add them but explain to
12 a family that by adding a memorial service to that
13 995, it's not 1,495, it is now 5,000, plus the 500,
14 plus the cremation, plus the removal, plus the
15 transport -- it's 8,000.

16 And as a provider, I will tell you it's one
17 of the most difficult conversations you can ever have
18 because I can't even explain it. And what is amazing
19 about that is it's not what a provider wants to do,
20 it's required. So enter the idea of a variable rate.
21 The basic service fee should be the cap. No different
22 than a hotel.

23 Consumer groups, and I'm not picking on you,
24 they use hotels as examples all the time when they
25 compare our profession. And they say, you know, hey,

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1 you know, I've looked around and, you know, they have
2 different rates and they do and -- but the idea is is
3 hotels have a maximum rate that they're allowed to
4 charge. And as a funeral provider, I should have
5 that. \$5,000, that is the maximum I can charge, but
6 then allow me, the provider, to have packages that
7 align with that, never going over. Because right now,
8 we have an artificial, basically floor, of direct
9 cremation, 995, and then I can't have another funeral
10 until it goes above 5,000.

11 Now, think about how that affects a
12 consumer. There is no middle ground. A family either
13 wants direct cremation or they're going over \$5,000 at
14 that funeral home and it's not what that funeral home
15 wants to do. So allow me to say, hey, we have a
16 limited cremation service and it is a -- it's a
17 cremation with memorial service, you may like that.
18 Now, it's not 995, but it's not 5,000 either. It's
19 actually 2,000.

20 Because, again, to your point, Erin, you're
21 right. I think how that number was created originally
22 was meant to encompass all that basic overhead. The
23 problem is is we don't -- back in those days -- I'm
24 not that old, so I've talked to people about back in
25 those old days, but I do remember working at funeral

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1 homes and it was two days of visitation and a service
2 on the third day, and that was the standard. Every
3 funeral was like that. So it was very easy to say
4 this is our -- now, again, we don't know what the
5 overhead will be. So allow each provider to determine
6 what that is.

7 And as long as it's disclosed on the price
8 list, which is what we're all talking about, I think
9 it's a fair allowable item for the funeral home,
10 because, right now, it is a penalizing -- not only for
11 funeral providers, but really consumers. There is no
12 middle ground.

13 MS. PLETT: Erin, would you like --

14 MS. WITTE: So I think --

15 MS. PLETT: -- to respond to that? Yeah.

16 MS. WITTE: Yeah. I want to bring up
17 something that I actually saw in some of the comments
18 about this idea of a variable basic services fee, and
19 one major problem with this is that it makes FTC
20 enforcement very difficult. It's granting pretty
21 broad discretion to funeral homes about the amount
22 that they can charge. So going from this flat fee to
23 broad discretion about when it can be discounted and
24 in what circumstances could be quite amorphous for the
25 FTC to review and evaluate to see whether prices are

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1 being charged unfairly or things like that.

2 I think there are several ways to approach
3 this problem. Certainly, I think, Poul, one of the
4 suggestions -- I hear your suggestions about that, but
5 there are ways to get at this. I don't know what the
6 best one is, but certainly they're worth talking
7 about. Poul, I think that you alluded perhaps to
8 amending the definition of the service that
9 encompasses this limited viewing or a limited
10 graveside service or something like that, allowing a
11 different fee structure for that different definition.
12 That could cause an overall higher price for those
13 services. If you have a cap, it sometimes can be a
14 race to the top. But it also could limit the
15 discretion about variable basic service fees to those
16 set-forth scenarios within the Rule.

17 The FTC suggested adding a provision that
18 identifies the scenarios that were set forth in the
19 Staff Advisory Opinion and saying, in these scenarios,
20 the funeral home can charge a reduced basic services
21 fee. And then there were also some comments about
22 permitting disclosure of a separate price just for
23 those additional limited services. So a set price for
24 a limited viewing or a limited graveside service or
25 something like that.

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1 All of these have positives and negatives,
2 right? Certainly, we love more transparency with
3 being more clear about prices, but the way that the
4 basic services fee has a cascading effect on other
5 parts of the Rule and compliance with the provisions
6 of the Rule, I think is also something to think about.

7 MR. LEMASTERS: So just to -- because you're
8 right, but I guess I'll -- two things. One, I do not
9 think this would be hard to regulate at all, and the
10 reason is is because we're already doing it, meaning
11 when I look at GPLs -- and I know when they are
12 checked, what they do is they look, they say, is there
13 any package that is lower than the direct cremation?
14 If there is, there's a violation somewhere because you
15 can't go lower.

16 And the idea is -- what I don't like is,
17 again, us sitting here, the FTC, you, even me, trying
18 to determine and decide every possible limiting
19 package that a family may choose. Again, as we sit
20 here today, if you would have told me ten years ago
21 somebody is going to show up at your funeral home and
22 just bring in an urn and want you to do a memorial
23 service, I'd say, you're crazy, we don't do that, they
24 would have gone to the first place. But it's
25 happening.

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1 So where does that fit. And the idea is we
2 should, as a business, of all things we decide today,
3 of all things, at least allow a business to set its
4 own prices. That is the consumer and the business
5 deciding. That is nowhere the Government should
6 regulate. As long as I fall in and it's disclosed,
7 fair, it's got to be disclosed, but I may want to sit
8 there and tell a family, look, if you do your funerals
9 all on Wednesday, because we're never busy on
10 Wednesday, and it's all in one, basically two hours,
11 because I have staff and all that, I should be able to
12 do that and discount my basic service fee.

13 One of the things that was said at the very
14 beginning was that one of the rules -- one of the
15 goals, you said it yourself, was to lower pricing for
16 consumers. Of all the things out here, we have an
17 opportunity to make a variable basic service fee that
18 will actually crush your goal. It's what you're
19 asking for and now you're saying, no, we can't
20 regulate it, it's too confusing. It's all confusing.
21 This is the one thing I can easily tell you every
22 provider could comply, it would be simple, you could
23 regulate it because it would be disclosed. And it's
24 an ultimate win for funeral homes and consumers.

25 Yeah, I've struggled on this and thought,

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1 you know, to me this is such an easy one to be on the
2 same page, and here it is where I do it -- and what's
3 ironic about it, last point, is that the FTC, in their
4 opinions, have given funeral homes permission to
5 absolutely charge more. In other words, there's an
6 opinion -- again, it's just what's out there.
7 Somebody wrote an opinion, can I charge more for an
8 obese body, right, because it's the world we live in.
9 And the FTC said, absolutely, you can charge a family
10 more, you just have to disclose it.

11 The FTC has allowed us to create packages in
12 death care. We can discount a visitation and a
13 memorial service and a funeral basically to zero as
14 long as we never drop below that basic service fee.
15 Why not quit skirting around all this, allow providers
16 to create meaningful packages based on where they
17 live, what their demographics want, and allow them to
18 have these options? It's the ultimate win. Of all
19 the things that we're here for today, this is
20 absolutely the easiest thing we can fix.

21 MS. PLETT: And, Erin, briefly, I know we're
22 almost out of time, but do you have a response to
23 that?

24 MS. WITTE: Yeah. I just want to say that
25 we have to keep in mind how we got here. By bundling

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1 these packages and not giving consumers choices about
2 what should be included in that is why we have this
3 basic services fee and the approach that we're taking
4 now. And so, you know, I want to point back from a
5 Staff Advisory Opinion from the FTC that talks about a
6 potential unintended consequence of reducing or
7 discounting basic services fees with respect to
8 caskets that led to unintended or indirect casket
9 handling fees, which is absolutely prohibited.

10 So certainly we advocate for lower prices.
11 We don't want consumers to be paying more for things
12 that they're not getting. I think, frankly, another
13 weakness of the basic services fee is it subsidizes
14 more expensive funerals for lower-income consumers who
15 don't want that much.

16 But we have to keep in mind that this is an
17 industry that we don't know a lot about, right? I
18 mean, we know the practices that led to the reasons
19 why we have this fee today and I think it's just wise
20 to keep that in mind.

21 Now, all of this assumes that we maintain
22 the basic services fee, right, that the FTC decides to
23 keep it. I don't -- we're not advocating today for a
24 total elimination of the basic services fee for a lot
25 of the reasons that we've discussed and, Poul, that

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1 you've alluded to. The industry has formulated around
2 it. It's really hard to pull that back. But this is
3 unique for the funeral home industry. Most other
4 market places, most other industries don't get the
5 opportunity to put this fee for overhead expenses,
6 general costs separately. It's normally spread out
7 across other products and services and things like
8 that. So this is a bit unique. And I just want to
9 make sure that we're highlighting that point as we
10 have these discussions.

11 MR. LEMASTERS: You're right, it is unique.
12 But I want to, again, add one thing. It's unique and
13 everybody here, consumer groups especially, you keep
14 saying that this is such a unique business and that's
15 why we have to have the Funeral Rule in the first
16 place. So I'm going to give you -- you're right,
17 we're unique, but then you allow us this, and the idea
18 is is this is just an opportunity. It's a benefit
19 because it's more packages, it's more options for
20 families, which is what you're after. Again, I just
21 think if we can just make a variable rate, allow
22 businesses to decide what's right for them.

23 And the other thing you brought up are the
24 caskets. It's not really an issue anymore. Back in
25 the day when the Rule was written, there were not

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1 other options. We have online distributors, funeral
2 homes across the board, they do not rely on the sale
3 of a casket, a vault, a monument, or anything anymore.
4 So some of the concerns that built that Rule that you
5 point out, they're not even here anymore. That's why
6 the basic service fee should just be variable, that
7 they control as a cap.

8 MS. PLETT: Thank you so much. That's all
9 the time we have, but thanks to both of you for
10 delving into this topics.

11 MR. LEMASTERS: Thanks, Erin.

12 MS. WITTE: Thank you.

13 (Applause.)

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1 PANEL 4: GENERAL PRICE LIST UPDATES:
2 FEE DISCLOSURES AND MANDATORY EMBALMING DISCLOSURES

3 MS. DICKEY: Good afternoon, everyone.
4 We're now going to turn to a panel that will discuss
5 whether the price disclosure requirements in the
6 Funeral Rule should be updated.

7 The panelists who will help me answer that
8 question are as follows: We have Chris Farmer from
9 the National Funeral Directors Association; Barbara
10 Kemmis from the Cremation Association of North
11 America; Isabel Knight from the National Home Funeral
12 Alliance; Sarah Pojanowski from the Selected
13 Independent Funeral Homes; Wendy Wiener from WRW
14 Legal; and Erin Witte, from the Consumer Federation of
15 America.

16 And I don't see Erin up there just yet, but
17 hopefully she'll be up soon.

18 Okay. We've been told we should hold for
19 one second. Apparently, we're having technical
20 difficulties.

21 (Pause.)

22 MS. DICKEY: We'll go ahead and get started.
23 And I'm going to apologize because I'm going to start
24 off by talking about the mandatory embalming
25 disclosure, and I was hoping to have a PowerPoint

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1 slide up so you didn't have to listen to me, but I'm
2 going to go ahead and read currently what the Rule
3 requires with respect to the mandatory embalming
4 disclosure.

5 So currently, every general price list must
6 state that, "Except in certain special cases,
7 embalming is not required by law. Embalming may be
8 necessary, however, if you select certain funeral
9 arrangements, such as a funeral with a viewing. If
10 you do not want embalming, you usually have the right
11 to choose an arrangement that does not require you to
12 pay for it, such as direct cremation or immediate
13 burial."

14 And the Rule also says that the phrase,
15 "'except in certain special cases,' need not be
16 included in this disclosure if state or local law in
17 the areas where the provider does business does not
18 require embalming under any circumstances."

19 Okay. Erin, in your view, does this
20 disclosure work as drafted or should it be improved?

21 MS. WITTE: I definitely think it should be
22 improved. It's quite confusing to consumers about
23 when it's required and in what circumstances it's
24 required and who's requiring it. I think it's
25 important to remember that the requirements are

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1 usually a policy of the funeral home, not necessarily
2 a requirement of the state, that a body be embalmed.

3 So I'll answer future questions about the
4 ways to do that, but just to answer the bare basic
5 question, we definitely think it should be improved.

6 MS. DICKEY: Isabel, what are your thoughts
7 on this?

8 MS. KNIGHT: Yes, I agree that it could be
9 improved. I think my main issue is basically with
10 that second sentence that says, "it may be necessary,"
11 because I think a lawyer might look at that sentence
12 and understand that embalming is not required by law,
13 but the average consumer might not be able to
14 understand that based on the way it's currently
15 worded.

16 So I would love for there to be an
17 improvement such that people understand that in most
18 cases, there is simply a preservation requirement,
19 which means that consumers may also opt for
20 refrigeration if that is available, and if it's not
21 available, then that should also be -- they should be
22 made aware that that is the situation that is causing
23 the funeral home's policies to require that embalming
24 is required.

25 And so I think that basically, if it were up

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1 to me, I would just take that part out and let the
2 funeral homes describe the situations that their
3 policies require. I think that the main thing that
4 they need to know is that it is not required by law.

5 MS. DICKEY: Chris, what are your thoughts
6 on this?

7 MR. FARMER: Well, I think it's important to
8 focus -- to refocus the conversation a little bit
9 because I don't think we're talking about making a
10 decision. The FTC is not looking into whether or not
11 they should prohibit funeral homes from making their
12 own policies on whether or not embalming is required
13 with certain circumstances. That's been left up to
14 the states and the states can address that issue.

15 And I think it's important, also, to notice
16 that if you include other forms of preservation, like
17 refrigeration, almost 80 percent of states require
18 that deceased human remains either embalmed or
19 refrigerated within a certain amount of time span,
20 whether it's 24 to 72 hours, are preserved in some
21 way.

22 And so the NFDA's proposal that we've set
23 forth, we actually think it should be changed by
24 adding refrigeration to that. So essentially, it
25 would say -- I'm not going to read it out either

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1 because, you know, read the whole thing, but accept as
2 noted below, embalming and refrigeration are not
3 required by law, and then embalming or refrigeration
4 may be necessary because that kicks it up to 80
5 percent of the states where that would apply. And so
6 that makes a lot more sense, I think. It gives the
7 consumers more information.

8 And then the proposal that NFDA has put
9 forth talks a little bit more about -- goes into a
10 little detail to allow the explanation of what the
11 state law is and whether or not it's the state law or
12 whether it's the funeral home's policy. But, you
13 know, seeing enough bad embalming cases, at least
14 alleged, you know, I think it's important that
15 consumers be given the opportunity to know, hey, we
16 require embalming, it's important, and here's why.
17 And so I think there are ways we can clean it up. I
18 think it's better for consumers. I think it's better
19 for the funeral homes and more accurate. So I think
20 there are some changes that we can make.

21 MS. DICKEY: Erin, what are your thoughts on
22 how the Rule can be improved?

23 MS. WITTE: Well, like I said, I think it
24 needs to be a little bit more clear to the consumer
25 about if it's required or if there's a policy, because

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1 those are two very different things. If the funeral
2 home's policy requires it, that's certainly very
3 different than if the state law requires it, which in
4 most cases it does not. I think, in fact, in all
5 cases, embalming is not required by the state.

6 So if we are considering language or ways to
7 make this more clear to a consumer, we have to keep in
8 mind exactly what the consumer is confused about. Is
9 this required by law? No. Is it the policy of the
10 funeral home? Yes. Does the consumer have the
11 opportunity to decline this service? Yes. But is it
12 the policy of the funeral home? I think that keeping
13 the emphasis on the opportunity to decline it and the
14 fact that it is the funeral home's policy are things
15 that should be emphasized in language about the
16 embalming disclosure.

17 MS. DICKEY: So, Chris, Isabel, and Erin,
18 this is a question for you. The Commission has sought
19 comment regarding whether the mandatory embalming
20 disclosures should be amended to state when embalming
21 is required under state law, state what the funeral
22 home's policy is with respect to embalming, and state
23 whether the funeral home offers refrigeration. Is
24 this a good solution?

25 Isabel, I'll start with you.

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1 MS. KNIGHT: Yes, I think that having those
2 additions to the embalming disclosure would be helpful
3 to allow consumers to understand the exact sort of
4 level of requirement. Basically, is it an actual law
5 or is it a policy? So that they -- the point is to
6 make sure they understand that if they don't want
7 embalming, for example, they can go to a different
8 funeral home. And that is something that we allow
9 for, for example, for religious exemptions, but that's
10 something that should be allowed for every consumer.
11 Every consumer should have the option and should have
12 the understanding of what they're allowed to decline
13 and what they cannot.

14 MS. DICKEY: Chris?

15 MR. FARMER: I think that if we -- I think
16 we're probably a lot closer together, I think, than it
17 sounds like we are right now, the three of us, at
18 least. And, again, I would say go back and look at
19 NFDA's proposal. It addresses that -- the first
20 sentence addresses whether it's required by law or
21 not. The second sentence addresses what the funeral
22 home's policy is, and then it also adds refrigeration
23 in there and it also says, you know, if it is
24 required, except as noted below. So then you would
25 have the requirement of identifying the state law

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1 below if it is required.

2 So I think that we're probably all kind of
3 in the same ballpark on that and I would invite you to
4 check out NFDA's proposed revisions to that because I
5 think that will address everyone's concerns that I've
6 heard so far.

7 MS. DICKEY: Erin, what are your thoughts?

8 MS. WITTE: Yeah, I think I would just
9 repeat my comments from earlier about -- and that echo
10 a lot of what Isabel said as sort of explaining the
11 reason for the potential for embalming and whether or
12 not it's required, who requires it, and whether it's
13 the funeral home's policy.

14 Like Isabel said, the consumer should know
15 that they have the ability to decline and they could
16 go to a different funeral home where that's not a
17 policy of that funeral home. It's a significant and
18 expensive transaction. And so if someone has the
19 opportunity and the desire to avoid it, they shouldn't
20 feel defeated or pressured by difficult-to-understand
21 language in a mandatory disclosure. I then think it's
22 no longer serving the purpose of really educating
23 consumers about what their choices are.

24 MS. KNIGHT: The only other thing that I
25 would add is that in terms of the actual mandatory

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1 requirement, I think that it might be almost -- like I
2 don't necessarily know if it even necessarily makes
3 sense to put the funeral home's actual policies as
4 part of the mandatory disclosure. I think that they
5 could feasibly be able to explain that themselves
6 without having that regulation. But I do think that
7 having more options where people can understand that
8 they are allowed to decline is our goal.

9 MS. WITTE: And I would add to that, Isabel,
10 that if we're thinking about this holistically -- and
11 the first half of the day was about online disclosure
12 and what information is being provided to the consumer
13 in advance so that they can make an informed choice --
14 to the extent that the information about the funeral
15 home's policy is also part of this mandatory
16 disclosure, which is being provided online and in
17 advance, that consumer could then quickly say, well,
18 I'm going to look at a different funeral home that
19 doesn't have this policy.

20 MS. KNIGHT: And, actually, if I could add
21 one more thing, I would love to also see a disclosure
22 that lets them know that if they choose to, they can
23 -- they are -- it is their legal right to do a funeral
24 at home, in which they can just use ice and that can
25 avoid some of those embalming or refrigeration costs,

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1 and that is legal in every state.

2 MR. FARMER: I just think we're getting into
3 some state law issues, some health and safety issues
4 that the state law cover and, you know, it's -- I
5 appreciate everyone's input on this. I just think
6 that if we're going to talk about the disclosure --
7 the embalming disclosure, you know, I would say let's
8 try to find some specific solutions to that one issue.

9 MS. DICKEY: Well, thank you, everyone.
10 Let's shift gears and talk about the disclosure of
11 third-party crematory fees. And just to make sure
12 we're all on the same page, I'm going to start off by
13 providing a little background about what the law
14 requires right now.

15 So currently, if a funeral provider uses a
16 third-party crematory to conduct cremations, consumers
17 have to pay two cremation fees. They have to pay one
18 to the funeral home and one to the crematory, and
19 that's legal. And many funeral homes currently
20 combine both of those fees into one direct cremation
21 fee. In the comments that we've received during the
22 rule-making, we received comments suggesting that 22
23 to 40 percent of funeral homes who use third-party
24 crematory don't do that. So their price list will
25 lists the cremation charge of the funeral home, but

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1 not the cremation charge of the crematory.

2 And the result of that is that consumers may
3 review the price list, they may reasonably assume that
4 the direct cremation fee is the total amount they'll
5 have to pay for cremation, and not discover until the
6 end of the arrangements process that they also have to
7 pay a second cremation fee. This practice is
8 permissible under the current Rule. The Rule says
9 that any third-party charges are cash-advance items.
10 So they don't have to be disclosed in the general
11 price list. They only have to be disclosed in the
12 statements of goods and services that's provided at
13 the end of the arrangements conference.

14 The FTC has issued guidance that if the cost
15 of cremation is not included in the direct cremation
16 price, that that needs to be disclosed, but that is
17 not currently required by the Rule as drafted.

18 My question for all the panelists is, is
19 this a problem and should the Rule be amended?

20 And, Wendy, I'll start with you.

21 MS. WIENER: Sure, thank you.

22 It is a problem. Unfortunately, the way
23 that that disclosure is written, as contemplated in
24 the Rule, really does make it unclear to consumers,
25 unfortunately. So my clients generally and I agree

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1 that there should be clarification when there is a
2 third-party crematory fee that is required. However,
3 including that fee on the general price list in terms
4 of numbers strongly disagree with that. That is a
5 cash-advance item.

6 And I'm afraid that over the course of the
7 discussions about what's on the general price list and
8 what's not, it's -- the fact that the consumer knows
9 what the estimate of that fee is before they sign
10 their contract is known to them for every cash-advance
11 item that is included in a contract. And if the
12 crematory fee is required to be included, then that
13 crematory fee would go on the contract as a cash-
14 advance item. On the statement of funeral goods and
15 services, there would be a dollar figure there. So
16 the consumer, the purchaser, the family knows what
17 they're paying for, or at least an estimate of what
18 they're paying for, and that really solves the
19 problem.

20 It's not a hidden fee. And I feel like over
21 the course of talking about the idea of the general
22 price list, there's been this idea that somehow that's
23 a hidden fee when, in fact, it is disclosed every time
24 to a consumer.

25 MS. DICKEY: Sarah?

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1 MS. POJANOWSKI: I always, when I'm talking
2 with people who are not in the funeral profession,
3 come back to the sort of bizarre nature that if you
4 buy -- if you have a price for a direct cremation, it
5 doesn't include the cremation. People don't
6 understand it. Consumers don't understand it. It is
7 misleading.

8 You know, addressing it later in the
9 process, fine, they disclose it, that's fine, but when
10 the consumer comes in and sees the price for a direct
11 cremation, they generally think they're going to get a
12 cremation. And I think it's -- we obviously need to
13 update this rule so we're all on the same playing
14 field.

15 Where this comes into practice is with low-
16 end advertising. You'll have these scenarios where
17 you'll see a billboard or the cremation for 695 or
18 whatever and that doesn't include the cremation. But
19 the price that the consumer thinks that they're going
20 to pay is not the actual price. At the end of the
21 day, it's significantly higher because it has those
22 cash-advance items added on at the end. That also
23 penalizes people who own their own crematory, who have
24 invested in the process of having a crematory because
25 there, they do not have a third-party cash-advance

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1 item. So it's not comparing apples to apples; it's
2 comparing -- you know, their price has to include the
3 entire price and then they advertise.

4 So if we look at it from the perspective of
5 the consumer, who's not necessarily saying, well, fees
6 added up over the course of when I was choosing what I
7 wanted and, you know, everybody knows it's going to
8 cost more, you know, if you have an advertised price,
9 that should be the advertised price plus tax for a
10 direct cremation, in my opinion.

11 MS. KNIGHT: Yeah, I think it should
12 definitely be required to have the third-party
13 crematory fees disclosed on the general price list.
14 It doesn't make sense to have them in in two different
15 places. When someone is handed a price list, their
16 assumption is that these are going to be the prices.
17 They're going to wind up on my bill. And if they see
18 an additional price on the bill and it doesn't match
19 up with that original conversation where they were
20 talking about the general price list, that's a
21 problem, right? There's a lot of people who feels as
22 if that is sort of predatory behavior.

23 And so I think even from the perspective of
24 the funeral homes, if there are funeral homes that are
25 avoiding putting that third-party crematory fee on

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1 their price list, they're going to look way more
2 competitive than the funeral homes that do. So I
3 think having that standardization would be helpful
4 both from a consumer standpoint to know what is
5 actually going to wind up on their bill at the end of
6 the day and then also from the industry standpoint.

7 And it's not difficult to disclose third-
8 party crematory fees. Like you, I think, should be on
9 top of the third-party prices in the first place. And
10 if they change their prices, they should be notifying
11 you what those prices are.

12 MS. DICKEY: Barbara?

13 MS. KEMMIS: I think -- I think a lot -- I
14 agree with a lot of what's been said. When consumers
15 call CANA, we've learned over the years that direct
16 cremation has become a package in their mind. It's
17 all they need. Direct cremation is all they need, but
18 there's really at least five elements, right? There's
19 removal of the deceased from the place of death.
20 There's secure, refrigerated storage because
21 cremations don't happen the same day. Consumers think
22 it does; it doesn't. And so then there's the
23 cremation itself and then there's the return of
24 cremated remains, and that's not even counting any
25 kind of service or identification, viewing, or

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1 anything that might be involved in that.

2 And so I think the way I want to address
3 this question is let's unbundle this package that has
4 happened because I think we need to be cautious about
5 how we approach this. It's really -- there's
6 marketing strategies. As you've said, Melissa, both
7 are legal. Well, I think that's what I -- how I
8 understand you.

9 There's business models and, right now,
10 there are 3,451 crematories in the United States. As
11 of the end of 2022, about half are owned by funeral
12 homes, about half are owned by cemeteries and third-
13 party businesses. That's a lot of consumers that are
14 -- or funeral providers who are engaging with third-
15 party crematories. Five states by statute -- the
16 District of Columbia doesn't allow crematories in
17 their jurisdiction; the City of Chicago doesn't, where
18 I live. So there's a lot of variance. And we don't
19 want the unintended consequence of a preference for
20 one business model or one marketing tactic over
21 another.

22 So I understand the dilemma, but I think
23 there's other ways to get at this by perhaps
24 standardizing direct cremation and unpacking it a bit.

25 MS. DICKEY: Chris?

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1 MR. FARMER: I think everybody has made some
2 very good points. You know, my perspective is that if
3 someone advertises a direct cremation price and
4 doesn't make it clear that the cremation cost is not
5 included in that, I think that's probably violating
6 the Funeral Rule as being fraudulent, and I think it's
7 probably violating a lot of state laws as being
8 fraudulent, right? I mean, if you say this is the
9 cost and don't make it clear that there's other cost,
10 if you say this is the direct cremation cost and it's
11 not, I think that's a problem. So I think that it
12 does need to be made clear whether or not the cost is
13 included.

14 I agree with Wendy that it is disclosed in
15 the statement of goods and funeral services, and I
16 understand that, you know, consumers want to know.
17 But as long as they -- they can ask the question at
18 the time if they identify it's not included.

19 The problem I have with disclosing third-
20 party costs is we don't know what they are. We cannot
21 be responsible for what third parties charge, and it's
22 not as simple as just knowing what it is. I have lots
23 of clients who use multiple crematories. I have
24 clients that use no third-party crematories and yet
25 they may have to if their machine goes down, right?

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1 So you may -- you won't know that until it happens.

2 There's just so many scenarios that I can
3 think of that are problematic for requiring a funeral
4 home to post -- a funeral provider to post somebody
5 else's prices. I just don't think it's feasible, I
6 don't think it's possible. I think it's a trap for,
7 you know, someone who -- oh, well, sorry, I forgot to
8 tell you, I raised my fees today. Oh, well, now I
9 have, you know, 10,000 or 5,000 copies of my general
10 price list printed off and those are all trash now
11 because you changed it.

12 We've seen the problem that comes in when
13 vendors provide or -- all of a sudden, hey, we're
14 having a rough year, we're having a rough quarter.
15 We're going to give you a surcharge. Well, the FTC
16 said you can't tack surcharges on your GPL. So you
17 have to go back and reprice everything. You've got to
18 change your GPL. You've got to make all those
19 changes.

20 So I understand the consumers need to know
21 whether or not the price of the cremation is included
22 in there. I totally agree, it should be very clear.
23 In my mind, it -- the Rule requires it. It needs to
24 know what the cost of the cremation is and what's
25 included. So I think you have to disclose whether or

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1 not it's included in the cremation cost or not, but I
2 don't think it's possible to be compliant every day
3 with the way the changing prices, changing vendors,
4 surcharges, fuel surcharges, and the time and
5 investment that you have in preparing your GPL, and
6 then to go back and change that. And now if you
7 require posting online, then you've got to go back and
8 change your GPL online, too.

9 So I think there are just too many variables
10 for a business to be required to keep up with another
11 business' prices.

12 MS. DICKEY: Erin?

13 MS. WITTE: Thank you. So we do think that
14 this should be changed and it is an extreme issue of
15 confusion and deception for consumers about whether or
16 not this fee is included, that this fee exists at all,
17 and that they're actually not getting a cremation for
18 the advertised price of a cremation.

19 There's been some discussion about whether
20 fees are hidden or disclosed, and I would suggest that
21 it's not really that simple. Disclosing a fee at the
22 end of the process in a conversation with a consumer
23 where they've made arrangements, they think they've
24 gotten to the point where they know what they want,
25 and then they're hit with a fee that they expected to

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1 be included initially and rightfully so, that doesn't
2 mean that it's not hidden. Disclosing it at the end
3 is not the same thing as a consumer making an informed
4 choice about that service and the cost of that
5 service.

6 I would also suggest that consumers who are
7 considering direct cremation are often price-
8 conscious. This is not the most expensive, certainly,
9 service that they could be provided with or that
10 they're choosing, and so this crematory fee of \$250,
11 \$300, \$350 is going to be a big expense. And that's
12 something that funeral homes are absolutely in a
13 position to know some information and, in fact, much
14 information about -- that that fee exists, how much it
15 is or may be, and that consumers should expect that at
16 the beginning.

17 And, again, tying this into the conversation
18 about online disclosures, if that fee is disclosed to
19 the consumer early and often in the process, they are
20 in a much better position to be able to ask questions
21 about it, to engage with the funeral home provider
22 about their options, what's included and what's not.

23 And I would be remiss if I didn't point out
24 the national conversations that we're having about the
25 disclosure of fees. It's apparent that this is a pain

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1 point for consumers. So many people can identify with
2 the issue of a fee not being disclosed until too late
3 in the process. Virtually, every federal agency --
4 this administration is dealing with this problem that
5 has really been an issue for consumers across
6 industries. This is just a pretty discrete example
7 within this industry of how it could be made better
8 and a little bit less deceptive for consumers.

9 MS. DICKEY: Barbara, in practice, can you
10 tell us a little bit about what the typical
11 relationship is between funeral homes and third-party
12 crematories?

13 MS. KEMMIS: Yes, yeah. So in addition to
14 the statistics I gave for the crematories that aren't
15 owned by a funeral home and may work with multiple
16 funeral homes, there is -- at least CANA teaches that
17 there ought to be an annual contract in place, that
18 those funeral directors should inspect that crematory
19 and not merely trust that the cremations are taking
20 place, and that here should be adequate insurance in
21 place and protection for all parties included and we
22 get into a little bit more detail with that.

23 But the reality, as it plays out, is much
24 like Chris described. You're not -- depending on your
25 service area, you may have contracts with multiple

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1 crematories. That pricing may change depending on how
2 much volume of business you send those crematories,
3 whatever fuel surcharges or other things. We've seen
4 so many additional fees charged to the funeral homes
5 over the past few years.

6 And it also is true, the crematories are
7 equipment. They need maintenance. They need to be
8 rebuilt every so often. They're very durable. They
9 last decades. But still there can be downtime. And
10 when there's downtime, even a funeral home that owns
11 their crematory, may be seeking a third-party
12 crematory for the first time. So all things going
13 well, contracts are in place, prices are known, but we
14 have to discuss all the contingencies here.

15 So it's not quite a Wild West, that third-
16 party crematories are charging whatever they feel
17 like, but there is significant variance, and that's
18 why they belong as cash-advance items. It's similar
19 to death certificate fees. We can't control what the
20 government entities charges or what the florists
21 charge or those kinds of things. So I just don't see
22 a way that it -- unless it's a marketing practice,
23 that it could be disclosed elsewhere.

24 MR. FARMER: If I might add in, a survey of
25 -- an NFDA survey of its members, 70 percent of

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1 funeral homes use third-party crematories.

2 MS. KEMMIS: Your members? Yeah, yeah.

3 MR. FARMER: Yeah, from our side. So you
4 gave the breakdown of funeral home owners, so it's --
5 there's a lot of it out there. And, again, it's a --
6 being able to keep up with that and then updating
7 everything and keeping everything going, it's just a
8 trap. I mean, you could -- you miss one day and
9 that's when your secret shopper comes in, you know,
10 you could have a violation right there because your
11 price was different than what it was in the GPL.

12 MS. WIENER: Melissa, can I just add, before
13 we move away from this topic, I think one thing is
14 abundantly clear, that -- well, to me, anyway, and I
15 think to a lot of the people on this panel. I do
16 think we need some clarification.

17 While Chris is right, the rule does require
18 disclosure, in the guidance in complying with the
19 Funeral Rule materials, the only way that someone
20 would know that they were not buying the actual
21 crematory fee was if the words "and cremation" were
22 not included in the definition. That is truly
23 misleading.

24 I mean, it's hard. I totally agree with the
25 consumer advocates and everyone on the panel that says

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1 if I buy a direct cremation and there's going to be
2 another mandatory fee that has to be paid, I should
3 know about that when I buy it, not necessarily the
4 figure, but I'm going to get an estimate because
5 that's going to be on the statement of funeral goods
6 and services, but absolutely let me know that there's
7 going to be another fee. Otherwise, we do end up with
8 the 695 versus 995 because one includes and one
9 doesn't and how is one consumer to compare.

10 So I think we're all basically in alignment
11 on that.

12 MS. POJANOWSKI: May I add something as
13 well? I think it's -- my issue with the cash advance
14 aspect of the third-party crematory is this isn't like
15 a \$10 death certificate fee. This is a significant
16 fee. It's a significant portion of the direct
17 cremation. Businesses price things all the time that
18 they buy from wholesalers or services that they buy
19 from other people. It's not impossible to price a
20 third-party cremation. There are techniques to do
21 this. There are ways to average it out if you are
22 using multiples. There are ways of saying, I'll do 70
23 percent of this and 30 of the other, and charge
24 somewhere in the middle to your consumer to pass that
25 on.

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1 You know, there's -- pricing is possible in
2 this scenario. I don't think it's like, oh, they
3 might change, we can't price the thing because -- it
4 just seems to me disingenuous a bit.

5 MS. KNIGHT: And if there is downtime, you
6 can list those things -- for example, if you have to
7 go to a different crematory and you have, you know,
8 two or three crematories in your area that would be
9 the possible crematory you go to if your main
10 crematory is down, you can put that on the GPL as
11 well.

12 MS. DICKEY: So let me ask Wendy and Chris.
13 You both have mentioned that there might be
14 circumstances where the funeral home can't predict
15 that they might have to use a different crematory. Is
16 there a middle ground here? So for example, could
17 funeral homes disclose a range of possible fees, their
18 average fees, or the fee of the crematory that they
19 typically use? Would any of those solutions work?

20 MS. WIENER: I think the problem with any
21 of those solutions is that they, themselves, might
22 lead to some misleading information being given to
23 consumers at the time that they're making the
24 arrangements. The fact of the matter is that the FTC
25 was wise when it allowed for cash-advance item prices

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1 not to be included in the general price list. I mean,
2 there's sound thinking with regard to that and that
3 sound thinking should prevail today.

4 It's just too slippery of a slope. When do
5 we -- like when does that stop? Do I -- now, do I
6 need to have a flower price list from the three
7 florists in the area? What if they want to order
8 flowers from the internet? Whose prices am I going to
9 be responsible to provide and when and how will I keep
10 them up? And if I'm a small business, as many of my
11 clients are, when will I have to update my general
12 price list again and print -- most of my small
13 business clients don't have 10,000 copies of their
14 GPL, but, you know, when are they going to have to
15 print 500 more or put another updated general price
16 list online, and then, oh, wait, what about one of
17 those other cash-advance items that might change.

18 So I think that disclosing even a range of
19 possibilities on the general price list is not
20 necessary because it imperils the small businesses and
21 even the large businesses that might get it wrong
22 because there's a change. But, remember, before the
23 arrangements are made -- yes, it might be later in the
24 process, but before the arrangements are made, an
25 estimate of what that consumer can expect to pay has

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1 been provided and it has been agreed to.

2 And if our goal is for consumers to have
3 choices, if they look at the statement of funeral
4 goods and services in front of them or on their screen
5 and they say, oh, I didn't know I had to pay that fee,
6 what's that fee. And they go, well, that's the fee
7 for the estimated cost of the crematory fee, it might
8 be higher or lower at the time of need, they can say,
9 you know what, I don't want to go through with this
10 process, and there are other funeral homes that will
11 serve them.

12 MR. FARMER: I would agree with what Wendy
13 said. I think that it is a slippery slope and I think
14 if the range is -- I think that would be preferable
15 than requiring the specific number, but still I think
16 it's imprecise. I think it's going to cause confusion
17 with consumers and I think, you know, if you have --
18 the slippery slope issue just, to me, is the same
19 thing. The FTC has looked at this and they said, hey,
20 this doesn't make sense, we understand you don't have
21 control over them and it should -- we don't have it
22 updated.

23 I mean, I would say that my guess is I don't
24 think funeral homes, on average, I don't think they
25 update their GPLs maybe every four to five years. I

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1 don't know. They don't do it very often, maybe three.
2 And so they do print in batches. Maybe not 10,000, I
3 agree with you on that. I was just pulling a number
4 out there. But it's not something that they update
5 regularly and it does involve real cost, not to
6 mention manpower and those things.

7 And the other thing I would say is -- I'm
8 going to go back to my it's a trap for regulatory
9 enforcement. If you're looking at a \$46,000, \$48,000
10 violation because you didn't know that your crematory
11 changed their pricing, I mean, that doesn't seem fair
12 and I don't think it's going to help consumers.

13 MS. KEMMIS: Yeah, I don't know. We didn't
14 ask our members how frequently they update their GPLs.
15 So I don't know if it's -- how frequently it is. But
16 I wouldn't think it would be more than annual, let's
17 just say, you know, as they hear from their vendors or
18 understand price increases.

19 But to answer your question, Isabel, in the
20 scenario where a crematory goes down and can't be
21 used, in that situation, they've already finalized the
22 contract with the consumer and now they're holding the
23 cremation, right? So it's not like they can go back
24 to them and say, you paid for this and we intended to
25 use our crematory, but -- I mean, they could,

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1 obviously, do that. They could, obviously, do that.
2 But as a matter of practice -- and this is anecdotal;
3 I also did not ask my members this question -- they
4 don't. They eat the extra cost. They don't pass it
5 on to the consumer. Because, in good faith, they
6 thought their crematory was going to be up and running
7 and they offer that.

8 And I think that's part of the challenge
9 here is that in the consumer's mind, direct cremation
10 is just all-in-one. I choose that, I get everything,
11 and I don't really want to know the details. We try
12 to, you know, encourage consumers who contact us to
13 ask for those five elements to compare against
14 different business models and different marketing
15 practices and it's revelatory. They do, you know,
16 respond to us and tell us that that's useful.

17 So an informed consumer helps with this,
18 too. But, yeah, it's a cash-advance item. I just --
19 I have a really hard time imagining it otherwise. So
20 thank you.

21 MS. DICKEY: Well, one idea we've heard
22 today is that the FTC should standardize the
23 definition of direct cremation to only -- so that --
24 currently, as the way the rule is written, the price
25 lists have to state what the direct cremation

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1 includes, but it doesn't necessarily have to state
2 what it doesn't include. So you might have different
3 providers providing defining direct cremation
4 differently.

5 Should the FTC define direct cremation to
6 include certain things? And if so, what should be
7 included in the definition of direct cremation?

8 Chris?

9 MR. FARMER: Well, you know, I think the
10 definition of direct cremation is already
11 standardized. It's in the CFR as what direct
12 cremation is. And so I -- you know, whether -- I
13 understand the purpose of the question would be would
14 it be a mandatory disclosure on the price list. But,
15 again, I'm going to circle back and say, I think it
16 has to be disclosed. I think if the crematory fee is
17 in there, if the cremation is included in the cost,
18 it's got to be disclosed. If the crematory fee is not
19 in there, it's got to be disclosed because the
20 definition of direct cremation includes cremation.
21 And so if you offer a direct cremation package, to me,
22 that means you have to include that, because it is a
23 defined term in the CFR.

24 So I would circle back around again and say,
25 you know, maybe there's some clarification as to what

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1 it currently calls for, but in my reading of it, it's
2 very clear it's got to be included and either tell you
3 whether the price is -- that's included in the price
4 or not because direct cremation includes cremation.

5 MS. KEMMIS: I would argue for a more
6 radical change, which is to move toward a disposition-
7 neutral Funeral Rule and delete direct cremation. My
8 rationale for that is the Funeral Rule was designed
9 when burial was the dominant practice and direct
10 cremation was an add-on. So there was one mention of
11 cremation in the Funeral Rule, as I understand it, and
12 now we have multiple forms of disposition. I'm
13 foreshadowing the next panel. But I think this is a
14 real opportunity to -- and I don't know the details
15 and I'm not actually asking for more regulation, I'm
16 asking for less in this case, that let disposition be
17 disposition.

18 And the things related to those dispositions
19 -- because, you know, I'll use burial, for example,
20 which is odd for me to do, but we've been talking
21 about embalming disclosures as if all burials are
22 embalmed. And burial is a continuum now between green
23 or natural burial with an unembalmed body all the way
24 to an embalmed body with a visitation and that sort of
25 thing.

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1 So it's more of a continuum and I would -- I
2 don't know, because I don't have any data to back this
3 up, but my hunch is as a profession, we're talking
4 less about disposition first and we're talking more
5 about memorialization first. We should be. In my
6 opinion, we should be talking about how you want to
7 celebrate this life lived, how do you want to
8 memorialize this person, and then, okay, body
9 preparation, disposition, related goods and services.

10 And I would argue for that because I think
11 it will sort out then and it won't be this assumption
12 that all cremation is direct and is cheap and doesn't
13 require staffing or doesn't create liability for the
14 funeral provider. It should be exactly what the
15 consumer wants. It doesn't have to be fit into this
16 small definition.

17 MS. KNIGHT: I would say that, overall, I
18 would love for there to be standardization including,
19 as you mentioned, alternative disposition methods, and
20 I think that if there is going to be a -- I would love
21 for there to be disclosure of the actual number. I
22 think that if the prices change, you know, you have to
23 update your general price list and you have to print
24 more. I feel like that's a very reasonable ask.

25 But overall, I would love for there to be --

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1 as everyone has been mentioning, it's very difficult
2 to read a general price list for the average consumer,
3 right? And so I would love for there to be an
4 initiative to try to standardize the language such
5 that it's readable, it's actually understandable for
6 consumers, and they don't necessarily need somebody to
7 have to sit down with you for an hour to explain
8 everything. I think that that is absolutely possible.

9 And, honestly, if we're talking about
10 disclosures, I think that literally every single thing
11 that's part of the Funeral Rule should be a
12 disclosure, right? Because at the National Home
13 Funeral Alliance, we try to educate consumers and I do
14 all kinds of presentations about what people's rights
15 are. I do that for the Funeral Consumers Alliance, as
16 well. And as much as I like to think that those
17 efforts are meaningful, there's just not enough people
18 who are going to come out to the library to watch a
19 presentation about their funeral rights. They need
20 that information at the point of sale, at the time
21 where that information is actually going to be
22 relevant to them.

23 And so I would go even further than just
24 having the embalming disclosure and having the current
25 disclosures. I would say every single element that

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1 consumers need to know as to what their rights are
2 under the Funeral Rule should be a disclosure and it
3 should be printed in the same font size and it should
4 be next to the relevant item that is -- it is
5 referring to so they can know that are allowed to
6 legally get an outside casket, they know that they're
7 allowed to do funerals at home. Every single element,
8 I think, should be a disclosure.

9 And to go even further, I would say they
10 should also -- there should also be a disclosure for
11 how to report violations of the Funeral Rule to the
12 FTC so that consumers know that as well, because
13 that's another thing we need to educate people about.
14 And it's super time-consuming and that would be the
15 perfect location to let them know what their rights
16 are as a consumer.

17 MS. WITTE: Can I add something about the --
18 I'm sorry, I didn't mean to go out of turn here, but I
19 wanted to add something about the standardization of
20 the definition of direct cremation. I think the
21 suggestion by Chris was to disclose in the definition
22 whether or not that third-party fee is included within
23 the definition. And like Isabel, I would certainly
24 push for standardization, but it should include that
25 number.

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1 I think it is unrealistic to accept the
2 proposition that funeral homes don't know how much a
3 third-party crematory fee is going to cost.
4 Certainly, any funeral home that is creating a general
5 price list, that is advertising these services to
6 consumers is not operating in the dark. They know, or
7 at least they have a reasonable estimate, of what that
8 cost is going to be.

9 And I want to point out one suggestion that
10 was made by a commenter about disclosing the highest
11 price. But the highest price in the disclosures,
12 charge the actual price if it's less. That ensures
13 consumers are actually -- they have some measure of
14 what it's going to be. It takes it out of this
15 conversation about a range, which can be quite
16 unrealistic for some consumers, but disclose the
17 highest price, at least let consumers know what they
18 can expect and find out later on that the prices may
19 be lower than what was actually disclosed. I don't
20 think that any consumer would really have a problem
21 with that.

22 MS. DICKEY: Sarah?

23 MS. WITTE: And, sorry, I think -- one other
24 thing I just wanted to add here is the element of
25 competition. The more that we disclose up-front and

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1 the more these prices can be evaluated in advance, it
2 only serves to benefit one of the stated purposes of
3 the Funeral Rule, which is to prohibit barriers to
4 price competition.

5 MS. POJANOWSKI: So I'm going to meander
6 back to the original question again about whether
7 direct cremation should be standardized, and I
8 absolutely think that the Rule, as Chris said, mostly
9 does standardize it. The variable in that question
10 is, is the cremation included or isn't it with that
11 "and cremation" language that Wendy was talking about?

12 I absolutely think we should include the
13 cremation price and the cremation. The "and
14 cremation" should become standard. You've already got
15 it set up, it works for the industry. And then we do
16 away with the cash advance of that direct cremation.
17 The additional crematory fee, I think it's possible to
18 price. Funeral homes are already pricing it if they
19 own a crematory because that's really, you know, that
20 they've vertically integrated that cremation business
21 into their business model. The cremation isn't free
22 if you do it yourself. It's what -- you know, the
23 costs to your funeral home are still there and you're
24 probably still making a little profit on that or you
25 wouldn't do it.

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1 So it's already happening. And I think it
2 would be easy to solve this problem just by taking
3 that "and cremation" option and making it permanent.

4 MS. WIENER: So I want to talk about two
5 things, standardizing the definition of cremation --
6 or direct cremation, rather, being the second one --
7 but I just want to remind everyone about what happened
8 when COVID was here. Crematory fees went crazy. No
9 funeral home could have seen what was happening in
10 certain communities with regard to the fees being
11 charged for cremations, because crematories were
12 running around the clock.

13 There would have been no way to say -- so to
14 the idea of including the highest price and coming
15 downward, I have clients who paid like \$2,000
16 crematory fees during COVID. It was not that long
17 ago. None of us predicted it. It's back. None of us
18 know what's going to be next. It's just a cash
19 advance. If it's not mine, I shouldn't have to
20 disclose its fee except to give a good faith estimate
21 on my contract.

22 As to standardizing the definition of
23 cremation, there's something else that we're not
24 talking about here, which is that consumers want to
25 buy what consumers want to buy. And, today, that

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1 largely means that they want to buy a cremation and
2 maybe some kind of a service or a visitation with the
3 human remains present.

4 And to Chris' and Poul's prior discussion on
5 the panel regarding the basic services fees, there's
6 really only, in my estimation at this time, two ways
7 to address this, and that is either to keep a
8 definition of direct cremation as it is, but to allow
9 for a reduced basic services fee when providing those
10 certain kinds of direct disposition or direct limited
11 services, or to revise the definition of direct
12 cremation to exclude that reference to services with
13 the human remains present or with the body present.
14 And I don't remember exactly what it says, but it, in
15 essence, says, we can't have a service with the
16 remains there or else you're back to your basic
17 services fee and your whole panoply of prices.

18 So I think when we're talking about
19 standardizing the definition -- and I fully support
20 Barbara's idea that we convert to a direct disposition
21 and I think a lot of the industry agreed on that, I
22 think what we have to keep in mind is that consumers
23 want to be able to buy a package that includes some
24 method of direct disposition, but also some other
25 things perhaps with the human remains present, not

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1 just the cremated remains.

2 So it's really important that in whatever
3 revisions to the Rule occur, we give the capacity for
4 that to happen.

5 MR. FARMER: If I can briefly can kind of --
6 there's a lot to unpack from all that.

7 MS. DICKEY: There is a lot to unpack.

8 MR. FARMER: Okay.

9 MS. DICKEY: I completely agree, Chris. But
10 we only have five minutes and there's a couple other
11 topics we need to cover. So let me move on to those.
12 And as everyone knows, there's an open comment period.
13 So, you know, please feel free to add that in your
14 comment.

15 MR. FARMER: Absolutely.

16 MS. DICKEY: Thank you.

17 Okay. So one topic we haven't talked about
18 yet is other fees charged by the funeral provider with
19 respect to direct cremation. Should the funeral
20 provider have to disclose those fees on the general
21 price list, as well as other fees that are commonly
22 charged with respect to cremation that aren't charged
23 by the funeral home?

24 So in certain states, for example, there's a
25 mandatory medical examiner's fee that has to be

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1 charged and it's something that is required by the
2 consumer -- that they have to pay. Should that be
3 something that has to be disclosed on the general
4 price list, either the existence of that charge or the
5 amount of that charge?

6 And I know that's a big question, but we've
7 got 3 minutes and about 48 seconds left and I'm sure
8 we can cover both.

9 So, Chris, please go ahead.

10 MR. FARMER: I think the Rule requires that
11 if you're going to provide a direct cremation and it's
12 a fee you charge, it's got to be charged in the
13 package price. I think that the Rule already requires
14 that. You know, that's what I always tell my clients
15 when they call, if that's the one price, if it's --
16 that's the one nondeclinable price for direct
17 cremation. If there's other options, then that's a
18 different issue. But if it's a charge from the
19 provider, it has to be in that price. That seems -- I
20 think the Rule requires that.

21 As for the third-party charges, I'm going to
22 go back around to everything everyone said. I think
23 that it's a slippery slope and we've already taken two
24 more steps down the slope. You know, I think that
25 it's got to be -- it's something that is -- if it's

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1 something that is a state fee, it's knowable, then I
2 think it should be disclosed in there. It should be
3 what it has to be. But if it's something that's a
4 variable fee that's unknown, then I don't think they
5 should be required to talk about it.

6 You know, with regard to standardization, I
7 think standardization is as possible as standardizing
8 a funeral. There is not a standardized funeral,
9 right? I mean, we have -- you can't standardize --
10 you can't give every disclosure because consumers
11 would be getting something this thick and only two
12 pages may apply to them.

13 I have a client -- somebody was talking
14 about a -- they wanted to do a natural burial, and the
15 question was, hey, do I have to give them a casket
16 price list and an outer burial container price list,
17 even though we don't offer them? The Rule doesn't say
18 that that's an exception, you know. While there's
19 certain things where the Rule very clearly says if you
20 don't offer it, you don't have to provide it, it
21 doesn't say that for those.

22 And so the more you try to standardize
23 things, the more confusing it's going to be for
24 consumers, the less information they're going to
25 actually absorb because they're going to be giving

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1 them more information that doesn't apply to them and
2 they're going to tune it out. So I think you need to
3 focus on what's important as far as standardization
4 and realize that it's not going to apply in all
5 situations because funerals are -- there is no
6 standard funeral anymore.

7 MS. KEMMIS: The only thing I'll add as a
8 final comment is that the fines for violation are so
9 steep and third-party -- you know, cash-advance items,
10 third-party fees are outside of the funeral providers
11 control and, yet, they're liable for a violation. And
12 that's just something I really ask you to take into
13 consideration with this because I think transparency
14 is good and I think fees that the funeral provider
15 charges for cremation, whatever those may be, if it's
16 within their control, should be disclosed because they
17 control those, they do control those. But it is an
18 issue of control.

19 MS. KNIGHT: I'm just going to go back to
20 disclose everything and I don't know what this concept
21 is of an unknowable fee. If you don't know it, text
22 them and ask them and write it on the general price
23 list. Like it's not hard to do that. So, yeah, you
24 know my opinion.

25 MS. POJANOWSKI: I think there's some

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1 limitations on the ability to disclose everything that
2 goes into the entire aspect of the Funeral Rule in the
3 price list, because it becomes -- it's already a quite
4 long document. If you've ever been handed a general
5 price list, it's often several pages.

6 If you start adding multiple disclosure on
7 top of that, you get into -- what are they called,
8 COLAs or something -- where you have an agreement --
9 you know, there's this really, really long agreement
10 on the internet that says you're going to abide by
11 every single rule imaginable and by ability and all
12 this stuff and you just want access to the hotel WiFi,
13 and you're like, yep, got that, no one is going to
14 read it and understand it, it's going to go right past
15 them and they'll have, in fact, less information about
16 what the actual prices are because it's hidden within
17 this other information about rights and this and that
18 and reporting.

19 And, you know, I strongly -- I respect the
20 work that consumer groups do. I think you should
21 continue doing it, do more of it. Make sure those
22 consumers know what they're getting into. Educate
23 them. Absolutely, we wholly support that. But not in
24 the GPL. There's a place to do that. That's not the
25 right place. But we highly respect that work.

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1 MS. WIENER: Agree.

2 MS. DICKEY: Erin?

3 MS. WITTE: Yeah, similar to Isabel, we
4 think that more disclosure is better. But I do
5 identify with the comments made by my colleagues about
6 sometimes over-disclosure and things getting lost.
7 And so the really important components of this are
8 what should be prioritized, and I think that's sort of
9 where we may have some disagreement, is where
10 standardization is so important because of its place
11 within the industry and what consumers are likely to
12 suggest.

13 So I think it's correct to be mindful of
14 that concern. I reference the four car dealers which
15 are the epitome of forwarding people many, many
16 documents that they don't have the opportunity to read
17 or understand. But, again, it would also bring this
18 back to the context of online disclosures and ensuring
19 that it's not just disclosing the fee, it's disclosing
20 it online. And it's just not disclosing the fee
21 online, but there are also educational efforts that
22 will be extraordinarily helpful. So if you use these
23 things together and make it easier for the funeral
24 homes to comply, for consumers to understand and to
25 give them that opportunity, we just -- we have to

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1 think about these things all together, not necessarily
2 in a vacuum.

3 MS. DICKEY: All right. Well, we,
4 unfortunately, are out of time, but thank you everyone
5 for participating. This has been a great discussion.

6 We are going to head on a break next. So
7 thank you.

8 (Applause.)

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1 PANEL 5: ALKALINE HYDROLYSIS, NATURAL ORGANIC
2 REDUCTION, AND OTHER NEW TRENDS IN THE
3 FUNERAL INDUSTRY

4 MS. NACHTIGAL: All right. We're going to
5 go ahead and get started on the final panel today.

6 All right. Panel 5 today is about alkaline
7 hydrolysis, natural organic reduction, and other new
8 trends in the funeral industry. This panel is to
9 discuss new trends in the funeral industry and whether
10 and how the Funeral Rule should be amended to account
11 for these new trends.

12 Today's panelists include some folks that
13 will be joining us virtually. I'm going to start with
14 who's with us in person today, Tanya Marsha, from Wake
15 Forest University School of Law; and Sarah Chavez from
16 the Order of the Good Death; Katrina Spade from
17 Recompose; and Beverly Tryk from People's Memorial
18 Association.

19 To start off, especially if there's some
20 folks that are listening and who are not quite sure
21 what we mean by alternative methods of disposition,
22 we're going to discuss what that is. So starting with
23 Katrina, who is joining us on the screen, what is
24 natural organic reduction and how is it different from
25 methods specifically stated in the Funeral Rule,

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1 including burial, immediate burial, cremation, and
2 direct cremation?

3 MS. SPADE: Thank you. Good morning. All
4 right. So the formal definition and legal definition
5 of natural organic reduction is the contained
6 accelerated conversion of human remains to soil. And
7 what that means at Recompose is we place a body into a
8 vessel, which is a large container, surrounded by
9 plant materials, such as wood chips, alfalfa, and
10 straw, and over the next two to three months, the body
11 decomposes naturally. We're providing air into that
12 vessel and the process is technically composting.

13 So that is the service that Recompose
14 offers. We charge a fee of \$7,000 for that
15 disposition method.

16 MS. NACHTIGAL: All right. I'll turn to
17 Beverly now. In addition to natural organic
18 reduction, Washington State, where you're located, has
19 legalized several other alternative disposition
20 methods. What are those methods and how are they
21 different from each other and from dispositions
22 specifically stated in the Rule?

23 MS. TRYK: Well, in Washington, we have what
24 I like to call a sort of embarrassment of riches. We
25 do have five different legal options for what you can

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1 do with your body when you die. Of course, we are
2 very proud to have natural organic reduction in
3 Washington. Of course, we also have classical burial,
4 we have cremation, which is far and away the most
5 popular choice amongst Washingtonians.

6 We also do have alkaline hydrolysis, which
7 is a water-based form of cremation that's growing in
8 popularity with folks especially up here in
9 Washington, who are really enthusiastic
10 environmentalists, a great alternative that's a little
11 more environmentally-friendly, and also, of course, we
12 also have anatomical donation, which is also a very
13 popular choice here in Washington.

14 MS. NACHTIGAL: Sarah, what are death doulas
15 and home funerals? That's an area we haven't hit yet.
16 How are they different than the funeral services that
17 were contemplated when the Rule was enacted?

18 MS. CHAVEZ: So I just want to preface this
19 by saying that while the titling on our panel refers
20 to these options as new trends, that's not
21 appropriate. I think it's important to note that with
22 the exception of aquamation and composting, that these
23 practices have been in use for as long as people have
24 been dying.

25 So for example, death doulas, they carry on

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1 an ancient practice that's integral to many cultures.
2 Similar to a birth doula to give support during an
3 infant birth, a death doula provides support to dying
4 individuals and their families while on medical
5 support through the death and dying process. Their
6 primary mission is to educate and guide others and
7 assist with [connection issue] and all of this in an
8 effort towards helping people define what their idea
9 of death is and how they can go about achieving that.

10 And then for what we call -- what we refer
11 to as home funerals, these are what we [connection
12 issue] funerals since all death care and funerals used
13 to take place in the home and was carried out by the
14 family and by the community. So today, a home funeral
15 means keeping at home the body from a few hours to a
16 few days, depending upon what the family wants, during
17 which time they can provide those [connection issue]
18 of care for their person and have whatever type of
19 funeral service they want or ritual they want at home.
20 And caring for our dead in these ways are really
21 always the fundamental part of [connection issue].

22 MS. NACHTIGAL: Thank you.

23 And, Tanya, are there any alternative
24 disposition methods or new death care trends or death
25 care trends that we're returning to in the case of

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1 home funerals that haven't been mentioned yet or are
2 there important differences to bring out?

3 MS. MARSH: Sure. So I don't think there
4 are any currently commercially viable and legally
5 permissible methods of disposition other than those
6 which have just been mentioned. But I wanted -- I
7 have more to say on that, but let me circle back for a
8 second to the questions that you asked Katrina and
9 Beverly about the difference between NOR and alkaline
10 hydrolysis and the definitions of burial, cremation,
11 immediate burial, and direct cremation.

12 So the definitions in the CFR are very
13 specific. Like cremation is defined as -- and I
14 didn't memorize it or write it down -- but
15 incineration. It uses the word "incineration." So
16 NOR and alkaline hydrolysis can both involve heat, but
17 they are using other biological mechanisms to break
18 down human remains. And so there -- I think in an
19 ideal world there should be -- and Katrina mentioned
20 the legal definition that's been used by the states
21 that have legalized NOR, which is seven at this point,
22 and counting, and it is being defined as a separate
23 process. So I think we'll talk more about that in
24 future questions.

25 As far as other things that we should keep

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1 in mind, I think -- and this has been sort of alluded
2 to by a number of different people on different panels
3 -- but, you know, when the Funeral Rule -- well, when
4 the FTC first did its investigation on the late '70s,
5 and then the Rule was drafted in '82, and then the
6 Rule was finally promulgated in '84, we were a society
7 that embalmed our dead, we had open casket viewings in
8 a chapel, at a funeral home, and then we buried our
9 dead. And so the cremation rate in 1984, when the
10 final rule was put in place, was still only 13
11 percent.

12 Now, we're at almost 60 percent. We're on
13 track to get to 70 percent, and four states, including
14 Washington, which two of our folks here are from, is
15 over 80 percent or at -- or nearly 80 percent. So
16 that's a fundamental shift in not only custom and
17 practice and how people are relating to their dead,
18 but also in the fundamental economics of the funeral
19 industry. And so I think that not only do these new
20 trends make us reconsider how the Funeral Rule sort of
21 functions and its relationship to the industry, but
22 just the rise of cremation alone has to make us think
23 about that. So I don't want to lose track of that.

24 MS. NACHTIGAL: No, that's great, and that
25 previews kind of the next area of discussion. It is

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1 about consumer response and changing expectations.
2 This is a question for the whole panel. How are
3 consumers responding to new trends, including alkaline
4 hydrolysis, natural organic reduction, green burials,
5 home funerals, and others? How have consumer
6 expectations around death care generally changed since
7 the Funeral Rule was first enacted?

8 I'll start with Sarah.

9 MS. CHAVEZ: So people have always wanted
10 their deaths to reflect the values that they have in
11 life. And while that definitely remains here today,
12 those values and beliefs are changing and we're seeing
13 that reflected in the way people do funerals. People
14 want more control, they want authenticity, and they're
15 seeking out and willing to pay more for an eco-
16 friendly option. And we see these changes reflected
17 in death care.

18 So for example, for the first time in our
19 history, more than half our population is choosing
20 cremation over a standard burial. The National
21 Funeral Directors Association has predicted that by
22 2035, that number is going to rise to 80 percent. And
23 while it would be logical to assume that this choice
24 is primarily driven by lower costs, that might not be
25 the whole picture.

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1 Between 2017 and 2020, researchers at the
2 University of Bath did a study on families who had
3 chosen direct cremation. And what they found that
4 cost wasn't even a factor, families were choosing it
5 because it afforded them more control over the funeral
6 itself and who was in attendance, and also because not
7 having a funeral at the time of cremation was
8 consistent with their beliefs and values. And, yes, I
9 know that it was not a U.S. study, but in a similarly
10 kind of Westernized country where societal trends
11 often are shared, I think it's still a valuable
12 consideration. And aquamation meets this growing need
13 by providing an eco-friendly alternative.

14 Also according to the NFDA, 60 percent of
15 Americans are interested in greener funeral options.
16 And one of the ways we see this reflected is through
17 the growth of green burial grounds. In 2015, there
18 was a total of 105 green burial grounds in the U.S.
19 And today, that number has tripled to 355.

20 In speaking with folks at places like the
21 Green Burial Council and then individual stewards of
22 these spaces, they've all stated to me that consumer
23 demand was a primary catalyst for them opening a green
24 burial ground.

25 But, of course, nothing has gotten people

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1 more engaged and interested in learning and talking
2 about death care and what's possible than human
3 composting. Thank you. Thank you, Katrina.

4 And while it's clearly a choice that really
5 resonates with people, we have to ask then if this is
6 -- the interest is really translating to business and
7 providers. So I reached out to a number of providers
8 -- not Katrina, though, because she's here and can
9 speak to Recompose -- and they all confirmed that,
10 yes, this was the case. So one of the larger
11 providers, they provided service for 250 immediate
12 need families and have 2,800 others who have completed
13 or are finalizing their pre-need plans for the
14 process.

15 Another provider shared with me that they
16 have been operating at capacity over the past year and
17 a half since they opened and noted that composting
18 services are driven by demand.

19 In Colorado, a smaller funeral home owner,
20 Seth Viddal, told me that they've already served 110
21 families since March of last year, and that composting
22 is the fastest-growing segment of his funeral home
23 with over 35 percent of families choosing composting
24 over all of the other options that they offer, which
25 is everything. And then also adding that body

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1 composting is the single-most requested service for
2 pre-planning families.

3 These composting providers also shared that
4 funeral homes in states where the process hasn't been
5 legalized yet have been reaching out to create
6 partnerships with composting providers to meet the
7 demand for their own local families. So I think it's
8 really evident that consumers are interested in not
9 just these options, but reimagining how they're doing
10 death and funerals.

11 MS. NACHTIGAL: Thank you, Sarah.

12 And I'll turn now to Beverly for your
13 response.

14 MS. TRYK: No, I'm really glad that Sarah
15 mentioned some of those statistics because here in
16 Washington, People's Memorial Association has been
17 conducting a statewide price survey of all the funeral
18 homes here for decades. The earliest record I could
19 find was from 1978. And we just conducted it this
20 past fall. And that would have been the first price
21 survey since the legalization of alkaline hydrolysis
22 and natural organic reduction here in Washington.

23 Since 2020, we have found that 27 percent of
24 Washington funeral homes are offering alkaline
25 hydrolysis and 20 percent are offering natural organic

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1 reduction through business-to-business partnerships
2 with one of the four primary providers of NOR here in
3 Washington, which if we know anything in the advocacy
4 space, it's that the funeral industry can be one of
5 the slowest to respond to developments in death care.
6 And so the fact that these changes are already
7 happening, that so many are opting this in Washington,
8 is incredibly promising for the increase in options.

9 This shows consumers want this. We know
10 it's resonating with them. You know, that might be
11 colored a little bit by the fact that the West Coast
12 does tend to adopt changes in death care a little bit
13 faster than other parts of the country as we've seen,
14 but I think that's largely because we do have a less-
15 embedded death culture than places like the South or
16 the Atlantic Region. But it's really exciting and I
17 think there's a -- what I've noticed, this is a really
18 great sort of transition into more a participatory
19 death care model.

20 You know, here in Washington, we have lots
21 of folks that strongly identify as environmentalist,
22 so they're excited about options where they see
23 themselves giving back to the environment and
24 returning to the earth in cyclical ways and they're
25 looking for opportunities to touch and to contribute,

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1 you know, not always in like the full-on, country,
2 granola, kind of hippie way where you're, you know,
3 doing everything yourself, you're digging the grave,
4 you're preparing the body, the whole experience where
5 you're talking control of all of it, which is
6 absolutely a right protected by law, you know, folks
7 are doing that, but also it's in the small things.

8 More consumers are interested in
9 participating in the washing of their loved one.
10 They're more interested in, you know, coming in and
11 cosmetizing their loved one themselves or they're
12 looking for opportunities to be involved in carrying
13 caskets or lowering the grave or filling the grave.
14 And I would attribute this, in part at least, to
15 COVID-19. There have been so many times where we have
16 gone through extreme emotional distress in the last
17 few years and we've been so distant from each other
18 that when we're experiencing repeated loss the way so
19 many of us have in the light of the pandemic, that we
20 had to change the way we grieved.

21 And now that we're getting more of that
22 access back, we want tangibility, we want contribution
23 and we want community. And I think this is a really
24 wonderful return to -- like Sarah and Katrina both
25 have alluded to, that, you know, we're not looking at

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1 like filling new death care options. These are really
2 returns to the more community-based death care that
3 was more the standard in the U.S. prior to the Civil
4 War.

5 You know, the way that we have done death
6 care hasn't always been the case, you know. Tanya
7 mentioned back when the Funeral Rule was passed, there
8 was a pretty standard way that folks did things. But
9 we really only developed that standard in the fairly
10 recent history. And so it's really exciting to see
11 the way that consumers are starting to see themselves
12 as part of the death care continuum, not just as a
13 thing that they hand off to some professionals and,
14 you know, those folks take care of everything. If
15 that's what they want, obviously, they should
16 absolutely continue to have access to that, but it's
17 really beautiful to see the way that people are
18 starting to want more connection.

19 MS. NACHTIGAL: Thank you, Beverly.

20 And I'll turn to Katrina. If you could talk
21 specifically about what you're seeing at Recompose as
22 far as consumer interest and how the industry is
23 changing.

24 MS. SPADE: Certainly. So I think my past
25 anecdotal evidence of this change is -- has to do with

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1 the tours we give of our physical plant, of our
2 facility. We have about 70 people coming through each
3 month, all walks of life, all ages, coming to see what
4 it is that Recompose offers, what is natural organic
5 reduction, what are these vessels we've seen on the
6 news.

7 And there's a great curiosity around the end
8 of life, a curiosity around the disposition of one's
9 body, and I think a relief and a general enthusiasm
10 that there are new disposition options coming. It, to
11 me, seems to go back also to this idea of a renewed
12 sense of intentionality around the end of life. So
13 whereas before, as Beverly pointed out, we would keep
14 it at an arm's length and pass it off simply to
15 professionals, there's more of an interest in having
16 an intentional choice around what happens to our
17 bodies, how we approach that, you know, moment, event
18 in life. And providers who are giving something a
19 little bit unique or more approachable, I think, are
20 finding a lot of consumer interest.

21 MS. NACHTIGAL: Thank you.

22 And, Tanya, if you could add your response?

23 MS. MARSH: Sure. And just a couple things
24 to follow up, because they all made great points.

25 So first on NOR, you know, cremation was

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1 legalized in this country for the first time in what,
2 the 1870s, 1880s, and it took 100 years to hit double
3 digits in terms of what the cremation rate was.

4 NOR went from Katrina's master's thesis to
5 legalized in seven states in what, less than a decade?
6 About that. So that unbelievable. I mean,
7 unbelievable rapidity of adoption of this method of
8 disposition. And I think one of the most interesting
9 things about it is how consumer-driven it has been.

10 So Katrina led the effort in Washington
11 State to get it legalized in the first state, but
12 there's been a number of -- I mean, every once in a
13 while we'll chat and it's like, did you know it was
14 pending in front of legislature in state X? No, they
15 haven't talked to anybody. They haven't talked to
16 anybody who's involved in the movement thus far and
17 they just -- it became -- it was organic and an
18 organic effort to take it to the legislature, which is
19 really interesting and cool and also sort of raises
20 some regulatory drafting problems that we can talk
21 about.

22 The second point that I just wanted to echo
23 -- and I think Chris sat here a couple -- a panel or
24 two ago and said there is no standard funeral anymore,
25 right? So to the continuum of choices, that is, I

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1 think, one of the big consumer changes in behavior in
2 the last several decades is the level of customization
3 and personalization of what they want is -- they feel
4 empowered to do it and then they want to be seeing the
5 providers reflecting back to them the level of
6 personalization that they really want, which I think
7 exposes sort of this false binary that's baked into
8 the Funeral Rule which, again, dates back to the world
9 in which it was created in, the difference between
10 burial and immediate burial, cremation and direct
11 cremation.

12 We don't have two binary choices. We have a
13 continuum of choices. And that has, I think, a lot of
14 implications.

15 MS. NACHTIGAL: Thank you.

16 Moving now to talking about explicitly
17 including new methods of disposition in the Funeral
18 Rule. I'm going to start with Beverly. I hope that
19 you can talk to us a little bit about alkaline
20 hydrolysis and whether including alkaline hydrolysis
21 under the cremation or direct cremation definitions in
22 the Rule makes sense or should it be separately
23 defined and set out?

24 MS. TRYK: Oh, absolutely. So I think one
25 of the things -- I've been watching all the panels

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1 today. I woke up super early and got my Starbucks to
2 tune in for what Sarah's team really aptly called the
3 Super Bowl for us death care folks. And I heard the
4 phrase "disposition neutral" in a previous panel and
5 it was just like, ugh, that's a terrible term, I'm
6 very much against it.

7 And I think that there's some really
8 wonderful evidence in Washington to demonstrate how
9 important it's going to be that we absolutely don't
10 embrace a disposition neutral sort of language in this
11 legislation.

12 So the world has meaningfully changed since
13 this law was enacted and it's made a lot of wonderful
14 changes and a lot of things about the world have
15 changed and improved and we've seen that in a lot of
16 the discussions surrounding methods of communication
17 and ways that we're talking about things. And, you
18 know, we talked in some of our meetings with the FTC
19 representatives about how hard it's going to be for us
20 to anticipate what's the world going to look like in
21 another 40 years. Maybe those folks down in
22 Scottsdale are finally going to sort out how to do the
23 freeze-dried thing where you can revive people with
24 cryogenics. Like maybe we're going to see some big
25 developments, but it's going to be impossible to

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1 anticipate.

2 For the time being, though, we do already
3 have alkaline hydrolysis and natural organic reduction
4 being embraced in a number of states. Last I checked,
5 alkaline hydrolysis was legalized now in, I think, 22
6 states, and I've seen estimates saying that this is
7 going to reduce the carbon footprint as compared to
8 conventional fire-based cremation by between one-sixth
9 to one-tenth. People are really excited about the
10 lack of greenhouse gases emitted, the lack of heavy
11 metals that are being vaporized during the process,
12 which makes it so much safer for the operators who are
13 caring for these bodies over their long careers to
14 stay healthier by not dealing with those occupational
15 hazards. It's really exciting.

16 And there's a lot of people that are
17 thinking -- you know, looking at Washington, for
18 example, that in the next 20 years, we could see
19 alkaline hydrolysis supplant a conventional cremation
20 as the option of choice in areas like the Pacific
21 Northwest, where people are heavily motivated by
22 environmental decisions, because we know that the
23 number two reason that people choose cremation behind
24 its affordability -- that's the number one reason with
25 a bullet while people choose cremation, its

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1 affordability -- we know that people are opting for
2 that because they perceive it to be the most
3 environmentally friendly option.

4 And now that we've expanded those options so
5 consumers have more choices, when that is a priority
6 for them, we know that they're going to look at all
7 their options equally -- it seems we have a guest.

8 So that's -- one of the things that we found
9 really exciting when we did our statewide price survey
10 this past fall was that of the 209 funeral homes that
11 we contacted for pricing information, that the average
12 cost of a cremation across the state was hovering at
13 about \$1,500, whereas the average cost of an alkaline
14 hydrolysis was only \$1,600. So Washington's going to
15 see some exciting changes.

16 Excuse you.

17 So I think that one of the things that's
18 really challenging, though, when we're looking towards
19 the future of how do we make these options more widely
20 available so that the consumers that are enthusiastic
21 about it have access, one of the things that's really
22 challenging for us in Washington right now is that the
23 law is vague enough so that providers that are looking
24 to create access to alkaline hydrolysis or natural
25 organic reduction are still grouped under the same law

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1 as cremation, and we have a notoriously bureaucratic
2 process here in Washington for businesses that are
3 looking to open either an actual crematory or an
4 alkaline hydrolysis facility. The legislative
5 barriers -- or not legislative, but the bureaucratic
6 barriers are -- they're a little bit exhausting.

7 We've been doing some reach on our own to
8 kind of have an understanding of what that flow looks
9 like because businesses are excited about it. Right
10 now, there are only two alkaline hydrolysis machines
11 in the State of Washington, and everyone that offers
12 it has got to partner up with one of those businesses,
13 and only one of them is operational.

14 So people that are looking at this explosion
15 and enthusiasm and trying to increase access to
16 everyone are coming up against these same barriers
17 where the application process and the licensure
18 process for opening a crematory, even though this
19 isn't technically a crematory, are still being held up
20 for multiple years. As if it weren't enough of a
21 challenge to deal with the capital costs associated
22 with opening a business like this that has so many up-
23 front costs, these folks are sitting in this sort of
24 bureaucratic purgatory for a number of years because
25 they're still considered crematories under the law.

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1 If these folks had some legal distinction in
2 the State of Washington that shows that their business
3 is run differently, that the environmental and
4 occupational concerns were different and that these
5 are fundamentally different business, this process
6 could be a little bit easier because we know that
7 people are just sitting waiting, and we're finding
8 that there's a lot of bottlenecking with death care in
9 Washington as a consequence of this. Even people
10 looking to open up more conventional crematories are
11 finding that it's a multi-year process.

12 If something were to happen in some of the
13 core crematories in the state that are third-party
14 providers to multiple businesses, when they lose
15 staffing, when a machine goes down for either regular
16 maintenance or for repairs, that bottlenecks multiple
17 funeral homes throughout the region and slows down the
18 access to death care and meaningfully impacts the
19 quality of care businesses can offer to consumers.
20 And it seems like alkaline hydrolysis could be a big
21 solution to that if more businesses were able to open.

22 But we know that people are waiting and
23 waiting, and even once these applications are
24 approved, sometimes the sort of fine print on them is
25 a little bit ridiculous. We know of a business out on

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1 the Olympic Peninsula that, once they were finally
2 approved for their crematory license, has a limit of
3 400 pounds of people they're allowed to cremate per
4 day. That's like three, maybe two-and-a-half
5 modestly-sized adults. That's not enough to sustain a
6 business.

7 So just grouping all of these things
8 together in a disposition neutral way is impacting
9 access to quality care for consumers. These are not
10 -- in a lot of ways, these are analogous services, but
11 when it comes to the law we know that just assuming
12 things are scooped together is already not serving
13 consumers. This isn't working already and so we need
14 to be more explicit.

15 You know, People's Memorial was really
16 heavily involved in the original passage of the
17 Funeral Rule and I thought it was really such a great
18 reminder watching a lot of the earlier panel
19 contributions that there was a priest that testified
20 in the '70s to the original process who said that if
21 you don't believe that consumers are uniquely
22 vulnerable during this time to exploitation, you know,
23 to the power differential that exists between death
24 care providers and the bereaved, then you absolutely
25 deserve to be regulated. We know that when we give

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1 folks an inch, they take a mile.

2 MS. NACHTIGAL: Beverly, I'm going to move
3 on and I'm going to ask Katrina to talk about whether
4 NOR needs to be separately listed and/or defined or if
5 it can be incorporated into some all-encompassing
6 language like direct disposition.

7 MS. SPADE: Thank you.

8 So, yeah, I believe that NOR and each
9 disposition option, cremation, alkaline hydrolysis, et
10 cetera, that's available on the market should be
11 listed and defined separately. To me, the overall
12 term that those go under is simply "disposition,"
13 which is what happens to the body. So every body gets
14 a disposition. So that's a great overall term. And
15 then defining each option separately, I believe, is
16 important and Recompose believes is important.

17 I also don't think that listing direct in
18 front of a disposition option is very meaningful or
19 helpful to consumers. We've never done that at
20 Recompose. We have a price for the disposition, which
21 is the NOR. And then clients can choose to add on
22 different products or services, such as a ceremony or
23 extra NOR containers, which are analogous to urns for
24 cremated remains. But, to me, that's much clearer
25 than calling one thing a direct NOR and one thing

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1 another kind of NOR.

2 So, yeah, that's my answer there. Thank
3 you.

4 MS. NACHTIGAL: Thank you, Katrina.

5 And, Sarah and Tanya, I'm going to ask you
6 to both respond to this question. Should the Funeral
7 Rule be modified to explicitly include new methods of
8 disposition, and if so, how can the FTC best modify
9 the Rule to account for new methods that might crop up
10 in the future?

11 And I'll start with Sarah.

12 MS. CHAVEZ: It seems only logical that the
13 Funeral Rule would include all forms of legal
14 disposition, which, of course, includes all of the
15 forms we're talking about today. I think inclusion by
16 a trusted institution like the FTC that works in the
17 best interest of consumers helps to not only reassure
18 them, but also helps to inform about their choices,
19 because many Americans are still unaware of some of
20 these more eco-friendly options.

21 They're all part of the funeral industry.
22 So I think amending the embalming disclosure to
23 clarify that it's not a legal requirement and state
24 cases in which it is, so there's no cause for
25 confusion or misunderstanding on the part of the

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1 consumer, and adding that, in some institutions, like
2 pre-burial or for cultural or religious reasons, there
3 may be a requirement that bodies are not embalmed, as
4 well.

5 So while I hope that all of our current
6 choices, including embalming and standard casket and
7 burial, will always be available to families that want
8 them, these alternative options are the future of
9 death care. Including them now will only serve to
10 strengthen the Funeral Rule and benefit consumers in
11 the years to come.

12 MS. NACHTIGAL: Thank you, Sarah.

13 And, Tanya?

14 MS. MARSH: Yes. I think we should define
15 alkaline hydrolysis and natural organic reduction in
16 the Funeral Rule, and then if a funeral home offers
17 those services, they should be on the GPL. I don't
18 think you need to worry about other things that
19 haven't come in front of state legislatures yet
20 because we'll have warning because they have to go in
21 front of the state legislatures before they become a
22 thing. And so I wouldn't -- I wouldn't try to write
23 the Rule so broadly, like creating some overarching
24 definition of disposition that you would include
25 everything that might be invented in the future, I'd

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1 just deal with the concrete things that we have now.

2 And to Beverly's point, they are different
3 from one -- and to Katrina's point, they're different
4 from one another. They have different requirements,
5 embalming not permitted and now NOR is permitted and
6 AH and cremation, right? They're not interchangeable
7 with one another, even though none of them are burial.

8 MS. NACHTIGAL: Thank you.

9 And this segues well into our final
10 discussion area, which is about the specifics --
11 specific requirements in the Funeral Rule that should
12 be modified in response to the new trends.

13 I'm going to start actually with you, Tanya.
14 What requirements of the Funeral Rule are out of sync
15 with new forms of disposition and how should the
16 Funeral Rule be modified to better serve consumers
17 shopping for alternative disposition services?

18 MS. MARSH: So I'm going to reframe the
19 question a little bit because I think, as I mentioned
20 before and has been mentioned before, the Funeral Rule
21 was written for a world that doesn't exist anymore and
22 it was written -- and this is true of all funeral and
23 cemetery law, that when legislatures write laws and
24 agencies promulgate regulations, they are describing
25 that which exists at that time that they put the rule

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1 into place. So that totally makes sense. But we have
2 seen such rapid change and are continuing to see such
3 rapid change in terms of what consumers want. So I'm
4 afraid that the Funeral Rule sets up this sort of
5 binary choice and sort of preserves some of these
6 outdated ideas.

7 I mean, baked into the basic services fee,
8 what are basic services, right? The basic services in
9 1984 may or may not be the basic services today. So
10 maybe if you want to keep that idea -- and I'm not a
11 fan of the basic services fee -- maybe you need to
12 realign it with what are truly the basic services.
13 Everybody needs a death certificate and burial transit
14 permit. Okay? That's a basic service. Is the body
15 even going to come to the funeral home, right? Is
16 there going to be removal? Maybe, but maybe not,
17 especially if you're dealing with a third-party
18 provider who's dealing with some of the -- providing
19 some of these other methods of disposition.

20 So I was also struck that, on the first two
21 panels, so many people said something along these
22 lines. I stopped writing it down. That basically
23 that GPLs are so complicated that you need a licensed
24 person to explain them to the consumer. Well, I would
25 suggest that maybe then GPLs are too complicated,

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1 right? And so maybe we need to -- instead of saying,
2 well, that's the reason you shouldn't have them
3 online, instead you should say, well, what can we do
4 to make the GPL more straightforward and more
5 understandable to consumers.

6 So here's my modest proposal to deal with
7 the new forms of disposition and sort of that
8 complication factor. It seems to me there's three
9 buckets of things that funeral providers offer, right?
10 They offer ceremonies, they offer methods of
11 disposition or access to methods of disposition,
12 right? Because the cemetery is really providing the
13 burial. Perhaps an outside crematory is really
14 providing the cremation. And then they provide
15 preparation of the body.

16 So if you broke the funeral -- if you broke
17 the GPL down into those buckets and started the
18 conversation with, well, what do you want in terms of
19 memorialization, do you want to have a ceremony, do
20 you not want to have a ceremony at all, do you want to
21 have it offsite, do you want the body to be present,
22 not present, right? There may be 120 questions that
23 families have to answer and make decision about during
24 an arrangements conference, but they can be
25 categorized.

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1 And then disposition, the method of
2 disposition does not drive answers to all those other
3 questions. And I think that's kind of the false
4 certainty that the definitions of direct cremation and
5 immediate burial sort of lead us to.

6 So what I don't want to do is, if we're
7 adding AH and NOR to the Funeral Rule, to like
8 continue down that path, because I think that making
9 it more complicated in sort of false ways is not going
10 to be helpful to the industry in terms of how to price
11 or how to offer things to consumers.

12 MS. NACHTIGAL: Thank you, Tanya.

13 MS. MARSH: Mm-hmm.

14 MS. NACHTIGAL: Sarah, what requirements do
15 you think are out of sync with new forms of
16 disposition and what modifications should be made, and
17 if you could speak specifically about how the Rule
18 could be amended to accommodate consumers interested
19 in home funerals and death doulas?

20 MS. CHAVEZ: So one of the main barriers I
21 hear about from people who are looking into having a
22 home funeral is this inherent fear that they're doing
23 something illegal because the language around
24 embalming is so confusing and even misleading to the
25 average consumer. We see this not just amongst

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1 families, but other professionals in hospitals and
2 hospices.

3 So over the years at Order, we've had dozens
4 of emails from people whose person died at the
5 hospital or in a hospice facility and when the family
6 says that they are planning to take their person home,
7 which is usually within their rights, instead of
8 support, they're being faced with people in positions
9 of authority who are misinformed and tell them that
10 they are breaking the law or they make statements that
11 uphold the myth that a dead body poses a risk to
12 public health and must immediately be embalmed.

13 We know home funerals are a safe and legal
14 choice for families in communities in every U.S.
15 state, but the way that our current death care
16 structures are set up, they limit a family's access to
17 their dead. They're restricted. Clear and
18 transparent information is also limited. These things
19 limit information and limit access, and, in turn,
20 they're limiting their rights. Home funerals and death
21 doulas can kind of help shift some agency back to the
22 families by providing unbiased information and
23 education.

24 Amending and clarifying the Funeral Rule's
25 embalming disclosure and including all options would

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1 really empower consumers with the information that
2 they need to make the choices and decisions about the
3 best and most affordable death care for themselves.

4 MS. NACHTIGAL: Thank you, Sarah.

5 Katrina, what requirements of the Funeral
6 Rule are out of sync with natural organic reduction?

7 MS. SPADE: Yeah. So at Recompose, we are a
8 funeral home. We offer only one disposition option.
9 That's NOR. We don't sell caskets and we, in fact,
10 can't offer the service of embalming because embalming
11 directly impedes the process of NOR. So on our price
12 list, we're required to have several federal
13 disclosures which mention caskets, of course, and
14 embalming as well.

15 And the way we've sort of managed that issue
16 is we have the federal disclosure and then we have a
17 note to our consumers about why we had to have this
18 federal disclosure, even though we don't sell caskets
19 and we don't provide the service of embalming. And as
20 you can just imagine, that's confusing potentially.
21 Even though we're trying to undo the confusion with
22 the note, the fact that we have to have that
23 disclosure and then put that note here can be super
24 confusing and makes the price list unnecessary longer
25 than it needs to be.

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1 So of course, I just -- I don't think that
2 if a funeral home -- unless a funeral home offers
3 caskets or the service of embalming, they shouldn't
4 have to have those disclosures on their price list. I
5 don't think consumers are helped by having items on
6 the price list for a funeral home if that funeral home
7 isn't offering those items.

8 That said, I do believe that if a funeral
9 home is offering embalming, I think it's still
10 important, in the way the industry works today, to
11 have that embalming disclosure and likewise for
12 caskets. But if you're not offering those services or
13 products, those disclosures shouldn't be in the price
14 list.

15 MS. NACHTIGAL: Thank you, Katrina.

16 And, Beverly, you know, I'm inviting your
17 response to what has been said in this kind of
18 question round, but also with your work for PMA, you
19 review a lot of GPLs. Have there been issues you've
20 seen on GPLs that are a source of confusion for
21 funeral homes that offer alternative dispositions?

22 MS. TRYK: Yeah, absolutely. I've got a
23 couple notes of some patterns I've noticed. As a part
24 of our price survey, I've read a couple hundred GPLs,
25 mostly Washington-based, but a couple other folks

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1 around the country, and these are newer disposition
2 options and I feel as though it's not uncommon for the
3 funeral homes offering them to just not understand the
4 processes perhaps as well as they do things like
5 cremation.

6 And so I don't think that any funeral homes
7 at this point are trying to mislead people, but it
8 does seem as though they are struggling to comply with
9 some of the existing language that is in the Funeral
10 Rule, like looking at something like package pricing.
11 I've noticed that a lot of the -- or at least a
12 percentage of the funeral homes that are offering NOR
13 through a business-to-business partnership with a
14 licensed funeral home are frequently framing it as
15 though it is a package service and it's not as clear
16 as it could be about what the individual costs are
17 going into that item.

18 I see this especially looking at things like
19 a laying-in ceremony, which is something that we talk
20 about really frequently when we do community education
21 about NOR. And it's one of the things about the
22 process that resonates the most with consumers, that
23 they love the most about it, and are most eager to
24 participate in. But it's unclear frequently in the
25 pricing whether or not that service is actually

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1 included in the cost of the care.

2 And then with respect to alkaline hydrolysis
3 -- and I'm -- you know, I like to say that if I'm
4 reading a GPL and I don't understand what's going on,
5 that's a real problem because it's a huge part of my
6 job and it's been nearly impossible for me to suss out
7 whether out or not funeral providers in Washington
8 that are offering alkaline hydrolysis are including
9 the cost of an urn in the cost of the care.

10 When are you offering cremation, you have to
11 be clear on there whether or not the cost of a
12 standard black plastic urn or a cardboard urn is
13 included in the cost of care and consumers certainly
14 have that protected right to furnish their own
15 container should they like or purchase that item
16 directly from the funeral home. And it's a reasonable
17 expectation on the part of a consumer that when
18 accessing alkaline hydrolysis that it's going to be
19 provided to them in a container. So why aren't we
20 seeing that same level of granularity on these items
21 as we have come to expect from other disposition
22 options?

23 And I don't think this is born out of an
24 intent to deceive consumers. I think it's just that
25 they don't quite know how to talk about it yet and so

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1 this is an indication that could use some guidance on
2 how to break these costs down a little bit more to
3 make it clearer to consumers and to help manage those
4 expectations.

5 Like I said, I was sitting in one of the
6 panels and I found it really fascinating to hear --
7 like Tanya said, I was taking notes about the number
8 of times that people said that, oh, gosh, GPLs are so
9 confusing. And to me, it kind of feels like funeral
10 homes telling on themselves. If your GPL is
11 confusing, write a better GPL. PMA has a member-owned
12 funeral home and that GPL is crystal clear. It's not
13 hard to include a little bit of explanation about what
14 a service is. It's not hard to explain what an outer
15 burial container is. That's the point of the GPL, is
16 to do that education.

17 And I'm sure that Sarah's probably
18 experienced this a lot because we both do a lot of
19 community death care education, but if we were to ever
20 produce educational materials that left people with
21 that many questions about what we meant, that were
22 designed to make every person that read them call us
23 for clarification, that would be an indication we were
24 really bad at our jobs.

25 Why are we allowing funeral homes to display

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1 this level of learned helplessness about how confusing
2 the language is? It's their responsibility to educate
3 the community on what it is they're offering and it
4 sounds like a form of learned helplessness that
5 they're saying, gosh, it's just so confusing, we've
6 got to counsel people on an individual basis to make
7 sure they understand it. But it's our job as death
8 care providers.

9 And like I said, I'm on both sides of this,
10 as an educator and also I'm the communications manager
11 for that funeral home. We know it's possible to do
12 this well, to do this clearly, and to not impact the
13 quality of care provided to members or the business
14 side. We know that NFDA members report that they
15 serve an average of 150 or so families per year. The
16 co-op funeral home serves 860 per year and they do so
17 with a crystal clear GPL. It doesn't seem to be
18 hurting their business any to be open, honest, and up-
19 front and use readable, consumable language, like
20 Isabel suggested earlier.

21 It's a smart business choice. And it's
22 really concerning to see some -- I've sat in on some
23 webinars lately that are helping to sensitize funeral
24 homes to the potential updates that their websites are
25 going to need should the online disclosures be passed,

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1 and I'm concerned about the fact that it seems like
2 they're coaching people to place them in inconspicuous
3 places, was one of the terms I heard in a webinar
4 recently. And even the attendees, the funeral homes
5 that were there were saying, are you suggesting that
6 we hide this information. And the presenter said, oh,
7 no, that's certainly not it. But they did suggest
8 like here are some ways that you can technically
9 comply with the word of the law, but undermine the
10 spirit of it.

11 We know that this is what consumers want.
12 They want honest information. They're already using
13 so much of their bandwidth on this incredible loss and
14 it's our job to support them through that as educators
15 and as funeral professionals. So it's just -- I find
16 it a little bit exhausting to hear how many people
17 were complaining that the current law is already
18 asking too much. But if this were meeting the needs
19 of consumers, memorial associations like ours and the
20 other 50 other associations around the country
21 wouldn't be necessary. Sarah and I could retire. So
22 could the entire Funeral Consumers Alliance, you know.

23 Consumers feel that their interests aren't
24 being well represented and they feel like they're on
25 the defensive and that's -- it's less than ideal. So

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1 we know that we need to spell these things out and
2 offer more guidance. So that's some of what I've
3 noticed in the intense amount of GPL research that
4 comes with my job. There's a lot of room for
5 improvement, I've noticed.

6 MS. NACHTIGAL: Thank you, Beverly.

7 We do have just a few more minutes. Unless
8 there are any question cards available from the
9 audience, I'm going to turn to just generally for the
10 panel to weigh in on. Like I said, there's only a few
11 more minutes. But what is something you wish more
12 people, including but not limited to the Federal Trade
13 Commission, understood about alternative dispositions?

14 I'll start with Tanya -- or, I guess, anyone
15 can jump in. This is a free round, I guess. But,
16 Tanya, since you are sitting next to me.

17 MS. MARSH: I think I already said it, but
18 I'll just reiterate it. I think that there -- that
19 I've seen in state legislatures that are trying to
20 legalize both alkaline hydrolysis and NOR, that they
21 think that the easy way to do that is to just redefine
22 cremation to include all three processes and that
23 doesn't help anybody because the processes are very
24 different.

25 So I think people -- you know, these

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1 alternative methods are coming. They are in states
2 like Washington, which already have them both. We can
3 sort of see how quickly they are becoming popular.
4 And so people just need to understand that they are
5 different from one another.

6 MS. NACHTIGAL: Thanks, Tanya.

7 Anyone joining us remotely want to chime in
8 on what's something you wish that people understood
9 more about alternative dispositions?

10 MS. SPADE: I'd just echo what Tanya said
11 and mention that one of the reasons to treat them
12 differently is that they actually can play pretty
13 nicely together. So this isn't something that
14 Recompose currently offers, but there are funeral
15 homes out there that offer alkaline hydrolysis,
16 cremation, burial, and NOR, and to be able to offer
17 that menu of choices for your clients is pretty
18 special.

19 So I think, especially if you're doing that,
20 you want those to be treated differently. At the very
21 base level, we want to be tracking the numbers out
22 there and knowing how many consumers are treading
23 towards these new disposition options and how many are
24 still doing cremation. If we had it all under
25 cremation, the potential for that confusion is pretty

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1 great, to have everything counted as cremation. We're
2 not understanding how the industry is changing over
3 time, and I think all of us do want to understand how
4 the industry is changing over time.

5 So whether it's a funeral home out there
6 that eventually licenses our system from Recompose and
7 places it, you know, adjacent to their crematory or if
8 it's another provider out there that starts with their
9 own system, I think, again, it benefits all funeral
10 homes and all providers to have things listed
11 separately.

12 MS. TRYK: I think one thing that I would
13 like to make sure that everybody knows, and I'm always
14 trying to yell it from the rooftops, is that sometimes
15 it seems like a lot of the organized efforts against
16 the legalization of these alternative options or the
17 roadblocks placed in terms of accessing green burial
18 or home funerals is that people are worried that we're
19 trying to replace their death care traditions. And at
20 least at PMA, our position is that there is no right
21 death care choice. Like the only wrong one is an
22 uninformed one. And so the idea, at least from our
23 perspective, is that we are trying to add to the
24 pantheon of options so that every consumer is finding
25 something that's resonating with them.

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1 The reason that we need folks like Katrina
2 advocating for expanding these options is because the
3 existing options aren't meeting everyone's needs. So
4 I think that that is some of the fear that we're
5 encountering in terms of educating people about these
6 options and seeing some of the pushback from different
7 lobbying groups in other states, is that we think that
8 everyone's going to roll in and aquamate their
9 grandmas. But the fact of the matter is that's not
10 what any of us want. We just want to make sure that
11 you're seeing something that's resonating with you
12 personally.

13 We know that there's an incredibly rich
14 burial culture in the South and it's probably going to
15 stay that way for a long time and it should because
16 it's meaningful to those people. But for people in
17 other parts of the country or even down in the South
18 where they're not seeing traditions or care options
19 that resonate with them personally and certainly that
20 might be out of reach for them financially, those
21 folks deserve better options. It's not good enough.

22 So I think that's an important thing to make
23 sure that's always clear, is that no one is trying to
24 replace cremation, to replace conventional burial. If
25 embalming's meaningful to you, go ahead and do it.

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1 But we just don't want you being pressured into those
2 decisions.

3 MS. NACHTIGAL: Thank you.

4 And we are out of time. Sarah, I invite
5 you, if you have a response to this last question to
6 please submit a comment, as well as everyone else, by
7 the due date, October 10th.

8 And I will turn it over to Lois here to give
9 us our closing remarks.

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1 CLOSING REMARKS

2 MS. GREISMAN: Thanks, Sammi. And good
3 afternoon, everyone.

4 At the outset, my deep thanks to all
5 panelists, a tremendous job, and to everyone involved
6 on the FTC staff side for making this happen,
7 particularly our three moderators, Sammi, Melissa, and
8 Rebecca.

9 (Applause.)

10 MS. GREISMAN: A couple of thoughts, so when
11 you talk about the death care industry, it is a very
12 lively topic of conversation, whether you're talking
13 about the industry itself, consumer angles, or the
14 Funeral Rule. And, you know, this was not designed to
15 reach agreement on anything. It was designed to dig
16 into some issues that are very pressing.

17 We did see some consensus about concerns.
18 Basic services fees, not so good. The disclosure of
19 third-party fees, particularly crematory fees,
20 problems there. And embalming disclosure,
21 problematic.

22 Then, though, we hit a little bit of a more
23 raw nerve about whether or not to do online
24 disclosures, pros and cons; whether to mandate;
25 whether to not mandate; what's going on now. Is

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1 what's going on now useful to consumers? Do they
2 care? Are they looking? If they're looking, can they
3 find it? Is it prominent? Do they know to look
4 online?

5 And then sort of a shift to some of the
6 challenges of, you know, if you were to disclose, what
7 does it look like? Where do you place it? Again, the
8 issue of prominence, cost. Well, there's some real
9 suggestion it's not so costly, but who's going to bear
10 those costs and what are the ramifications going to be
11 to the industry as a whole, to competition --
12 competition in the industry, especially when you look
13 at small businesses. No shortage of disagreement on
14 those issues. And then the fascinating discussion of
15 this last panel, reimagining the death care industry,
16 choices, options, innovations.

17 So where do we go from there? What's next?
18 The comment period is open until October 10. Please
19 take advantage of it. I know a good number of you
20 here and outside of the room have not hesitated to
21 express your views with some vigor. There is an open
22 regulatory review. It is not a formal rule-making.
23 The Commission has not initiated that. What happens
24 is all those comments come into FTC staff and we
25 digest and we make recommendations based upon them and

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1 the recommendation goes to the Commission and then the
2 Commission is the ultimate decider of any next steps.

3 So basically, what I can say is stay tuned.
4 You know how to reach all of us. Don't hesitate to.
5 Again, please take advantage of the comment period. I
6 am enormously grateful for those here in person and
7 for those who have been listening on the webcast.

8 Thank you.

9 (Applause.)

10 (The Shopping for Funeral Services Workshop
11 concluded.)

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