

# LOCAL NEWS



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## Judge overturns Pa. funeral regulations

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A federal district judge sitting in Harrisburg has thrown out decades-old state regulations governing Pennsylvania funeral homes, saying they held down competition while substantially boosting costs.

Judge John E. Jones III, ruling in a four-year-old lawsuit that a York-area funeral director and others brought against individual members of the Pennsylvania State Board of Funeral Directors, essentially endorsed the plaintiffs' allegations that regulators walled the funeral business off from competition by restricting the entry of out-of-state operators, imposed rules that made it difficult for funeral homes to operate efficiently, and even went so far as to improperly impose restrictions on funeral home names.

"The time for relying on antiquated and ever changing interpretations of [the law], which constitute nothing more than thinly veiled attempts to maintain the status quo for established funeral directors and their families, or to confuse those honestly seeking to comply with the law, has passed," Jones said in his opinion.

The decision was criticized by the Pennsylvania Funeral Directors Association, which said Jones had "gutted" laws governing funeral homes. It urged the funeral directors board to appeal the decision to the U.S. Court of Appeals for the Third Circuit in Philadelphia.

"The best word to sum it up is surprise," said Kathleen Ryan, general counsel of the Pennsylvania Funeral Directors Association.

"To make such a sweeping ruling is pretty unprecedented."

Judge Jones threw out regulations that he said stifled competition, but he gave the funeral directors board 90 days to draw up new regulations that respond to his ruling.

York-based funeral home operator Ernest Heffner and other funeral home operators filed suit, alleging that the funeral directors board had violated both the U.S. and Pennsylvania constitutions with a series of anticompetitive regulations. They accused the trade association of advocating policies aimed at protecting their businesses, and charged that they had developed an "incestuous relationship" with regulators.

"The relationship between the state board and PFDA has developed to such an extent that the relationship is the quintessential example of a trade association's regulatory capture of its state regulatory agency," the lawsuit said.

The plaintiffs contended that efforts by the funeral board to restrict out-of-state operators from purchasing funeral homes in Pennsylvania violated the commerce clause of the U.S. Constitution. They alleged that the board's unannounced inspections also violated their constitutional rights, and Jones agreed in a 159-page opinion issued May

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8, finding that in some industries such surprise visits might serve to improve performance and adherence to the law, but that there was little reason to believe they had a beneficial impact on funeral homes.

Jones also sided with the plaintiffs in finding that regulations restricting out-of-state operators from owning homes in Pennsylvania, except in rare cases where they are able to purchase a license, breached the law and discriminated against out-of-state businesses.

"We find that plaintiffs have presented sufficient factual evidence to demonstrate that the purpose or effect of the ownership restrictions ... is to discriminate against out-of-state competitors," Jones said.

Although the trade association was critical, some in the industry praised the decision.

"I think it is good for consumers; that's the bottom line," said Gary Buss, president of Arlington Cemetery in Drexel Hill.

Jones also took issue with state regulations that bar non-licensed people from owning funeral homes but permit unlicensed widows and widowers of licensed funeral directors to own them.

"The reality that the [law] permits such individuals to operate a funeral establishment by employing a full time licensed funeral director to act as a supervisor, but prohibits other individuals or entities from doing the same demonstrates that the restriction on ownership to licensees is not rationally related to the legitimate state interest of ensuring competency and accountability in the funeral industry," Jones wrote.

He also said that a requirement that each home be supervised by a full-time licensed director "makes little sense," and that a requirement that each home be equipped with an embalming preparation room, costing anywhere from \$190,000 to \$220,000, restricts competition and thus violates the commerce clause of the Constitution. Jones said that state regulations restricting the use of brand names by funeral homes, which regulators have justified as a means of clearly identifying funeral home ownership, were also illegal.

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