

Wisconsin Institute for Law & Liberty: Statement on State Supreme Court decision in Porter v. State of Wisconsin

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Legislature should make clear government does not have unlimited power over the right of citizens to work, engage in otherwise lawful business

June 27, 2018 – Milwaukee, WI – The Wisconsin Supreme Court issued a decision Wednesday in the case of Porter v. State of Wisconsin.

WILL President and General Counsel Rick Esenberg said:

“We are deeply disappointed in today’s result. The right of a citizen to pursue a legitimate calling is not something that merely exists at the sufferance of the government. As Justice Rebecca Grassl Bradley put it, “Wisconsin’s constitutional guarantee of liberty deserves more respect – a lot more.”

We will not give up on fighting for the protections of liberty afforded by our state constitution. All Wisconsin residents should be secure in the knowledge that backroom deals and special interests are unable to benefit from blatant economic protectionism.”

Wisconsin law prohibits owners of cemeteries from owning and operating a funeral home and even goes so far as to prohibit cemetery owners from allowing an independently operated funeral home to be located on cemetery property.

On behalf of E. Glen Porter, owner of Highland Memorial Park, a cemetery in New Berlin, WILL filed a lawsuit in 2014 in Waukesha County against the State of Wisconsin, the Secretary of the Department of Safety and Professional Services, and the Wisconsin Funeral Directors Examining Board. The lawsuit asked the court to declare Wisconsin's overly restrictive laws unconstitutional.

WILL's client Glen Porter, owner of Highland Memorial Park, said:

"I am disappointed that the Wisconsin Supreme Court did not find in our favor. Despite their statements to the contrary, maintaining the prohibition against the joint ownership of cemeteries and funeral homes will continue to limit consumer choices and increase consumer costs."

If the courts won't or can't act, then the legislature and the people should. Whether by statute or constitutional amendment, Wisconsin should make clear that politicians do not have unlimited power over the right of citizens to work or to engage in an otherwise lawful business. It should make clear that, when the government seeks to restrict that right, it has to have a good reason.