

# **Wisconsin Institute for Law & Liberty: Wisconsin Supreme Court takes WILL case challenging Wisconsin's law prohibiting cemeteries from operating funeral homes**

Posted on Friday, Jan 12, 2018

**>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)**

State law is unconstitutional, an unnecessary impediment to competition, free markets

Milwaukee, WI – The Wisconsin State Supreme Court has decided to take *Porter v. Wisconsin*, a lawsuit challenging Wisconsin's prohibition on joint ownership of cemeteries and funeral homes. This anticompetitive law was passed at the behest of funeral directors during the 1930's to protect themselves from a new form of business: combination firms that operated cemeteries as well as funeral homes. Combination firms are now common in most states, but they are still forbidden from doing business in Wisconsin.

On behalf of Highland Memorial Park, a cemetery in New Berlin, the Wisconsin Institute for Law & Liberty filed a lawsuit 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 in August of 2014. We argue that the facts show that the law is protectionist and does not serve any legitimate governmental purpose. The State supports it by offering mere speculation about some ways in which Wisconsin consumers might be harmed. But combination firms operate almost everywhere without any actual evidence that any of these possible harms have ever actually occurred, anywhere or any time.

WILL President and General Counsel Rick Esenberg noted that “the case is not about judicial activism or asking courts to substitute their judgment for that of the legislature. The state's police power does not allow it to impair the right to earn a living or pursue a lawful business without some reasonable justification. The state has no business favoring one group of competitors over another.”

The law does nothing more than protect funeral directors from competition. It prevents innovation in the funeral services industry and deprives consumers of the benefits that could be achieved by firms that are better able to provide them with the range of services they may need. The law deprives cemetery owners and, for that matter, funeral directors themselves, from freely conducting their businesses in the way they think will best serve their customers.

Case background and documents can be found [here](#).

At the outset of the lawsuit, WILL Senior Counsel Mike Fischer stated, “The funeral services business is a business like any other. The Wisconsin Constitution protects people's right to earn a living and engage in business in the manner of their choosing. And Wisconsin consumers, who spend millions of dollars on funeral services every year, should be able to work with a firm that offers them the comprehensive and innovative services they need. Government cannot limit their choices without demonstrating that a regulation is needed to protect the public health, safety or welfare. These laws are not.”

Oral arguments in the case will be heard this spring with the court issuing a decision this summer.