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How 38 Monks Took on the Funeral Cartel and Won

By *Conor Friedersdorf*

Their victory in federal court means they can sell caskets without a license -- and has implications for entrepreneurs all over the United States



After Hurricane Katrina, the 38 monks at Saint Joseph Abbey in Covington, Louisiana had a problem: they'd long supported themselves by harvesting trees on their woodland property, but damage done by the storm made continuing to do so impossible. If the community was going to survive as a place of communal prayer, education, and simple labor, it needed to find an acceptable new source of steady income. But what would it be?

Abbot Justin Brown thought selling caskets might be the answer. For generations, the monks had buried their dead in simple wooden boxes that they made on site. During the 1990s, two Louisiana bishops had been buried in caskets from the abbey, generating a bit of publicity, and even years later,

the monks got occasional inquiries from folks who sought something similarly austere for a funeral.

Surveying the market, the monks knew that they could produce and sell caskets much cheaper than local funeral parlors, where grieving consumers paid a substantial markup, or were forced into package deals that obscured the actual price of the casket. Thus a small business was born: the monks invested \$200,000, converted an old cafeteria building into a professional woodshop, and opened St. Joseph's Woodworks in 2007 on All Saints Day. Little did they know that they were about to be threatened with fines, or even jail time, unless they abandoned their plans. Or that they'd have to fight in federal court for the right to sell their simple caskets (a wooden box, a lid, and two metal handles), a case that they won Thursday when the U.S. District Court in Eastern Louisiana ruled that their constitutional rights had been violated.

If the case is appealed and reaches the Supreme Court, a real possibility according to the Institute for Justice, the public interest law firm representing the monks, a suit waged on behalf of folks who hold all their possessions in common may rank among the most consequential economic freedom cases in a generation, and determine how far states and localities can go to regulate entrepreneurs in their jurisdictions.

In order to understand why, it's probably best to start back in 1914, when legislators in Baton Rouge passed a law to regulate the local death industry. Intending "to prevent the spread of infectious and contagious disease," and "to regulate the practice of embalming and the business of undertaking," they created the aptly named Louisiana State Board of Embalmers and Funeral Directors. Over the years, it's mostly been run by industry insiders -- current board members include owners or executives from at least four different funeral homes.

Skip ahead to 2007.

In the Archdiocese of New Orleans, there's an official newspaper, The Clarion Herald. Tipped off that nearby monks were launching a casket business, its staff published a small feature. In the death industry, the news spread quickly. A start-up was encroaching on the local monopoly funeral homes had on burial boxes, which were sometimes being sold at four times the wholesale price! The monks threatened those margins. And soon, they received a warning letter from the Board of Embalmers and Funeral Directors, informing them that they were in violation a regulation they'd never before encountered. It stated that only state-licensed funeral directors may engage in the retail sale of caskets.

Getting licensed as a funeral director is neither easy nor compatible with monastic life, as the monks would soon discover. Applicants must have a high school diploma, earn 30 hours of college credit, and apprentice full time in the industry for one year, learning how to handle and embalm dead bodies. As a requirement for building a rectangular box with a lid, affixing handles, and selling it without even seeing a dead body, that struck the monks as excessive. And even if they met those burdens, they'd have to convert their monastery into a "funeral establishment," a designation that would require a layout parlor for 30 people, a display room for six caskets, and body embalming equipment, among other things.

Had building and selling wooden boxes ever been so onerous?

Challenging the law would be tough too.

In order to prevail, the monks would have to prove Louisiana's regulation failed to meet a level of scrutiny that is most favorable to the government. In other words, if the state had any "rational basis" for requiring casket entrepreneurs to meet the standards of funeral home directors -- if doing so might even plausibly benefit consumers or safeguard public health -- the law would be upheld.

Despite that hurdle, attorneys for IJ were optimistic due to certain details of the case. Consumers in Louisiana are permitted to buy caskets from retailers other than funeral homes if they're purchased from outside the state -- for example, it's perfectly possible to buy a casket on Amazon.com. So keeping unlicensed monks out of the business didn't seem like it could afford any extra protection to consumers. Nor is there any requirement in Louisiana that a casket meet certain construction standards, or even a law saying dead bodies must be buried in caskets, facts that would undercut any attempt to argue that public health justified the regulation.

Recognizing the problems those factors posed for its case, Louisiana tried to get the matter dismissed using a different argument. As the judge put it in his ruling, "defendants moved to dismiss based on the legal issue of whether protecting a discrete interest group from economic competition constitutes a sufficient legitimate government purpose." Put more simply, it's as if they said, *Our purpose here is to protect profits in the funeral industry, these regulations are a rational way to do that, and we're allowed to pick market winners and losers if we so desire -- after all, its only intrastate commerce we're talking about.*

Would that argument pass muster in the 5th Circuit?

It was impossible to know for sure.

The monks argued that the controlling precedent was established in the 2002 case *Craigsmiles v. Giles*. In that matter, the Institute for Justice represented Nathaniel Craigsmiles, the owner of a casket store, when he challenged a Tennessee law that required a funeral director's license to sell caskets. The 6th Circuit Court of Appeals found in his favor. "We invalidate only the General Assembly's naked attempt to raise a fortress protecting the monopoly rents that funeral directors extract from consumers," the decision stated. "This measure to privilege certain businessmen over others at the expense of consumers is not animated by a legitimate governmental purpose and cannot survive even rational basis review."

As precedent for its position, Louisiana cited *Powers v. Harris*, a 2004 case decided in the 10th U.S. Circuit Court of Appeals. It pitted an entrepreneur who wanted to sell caskets online against the state of Oklahoma, where a license was required. The state won. "While baseball may be the national pastime of the citizenry," the decision stated, "dishing out special economic benefits to certain in-state industries remains the favored pastime of state and local governments."

On Thursday, the judge in the 5th circuit, which has never weighed in on this matter before, decided to follow the precedent in *Craigmiles v. Giles*, where the entrepreneur won, rather than the decision in *Powers v. Harris*. In other words, the judge ruled that the legislature has no business picking winners and losers in intrastate commerce. If Louisiana appeals, there's a decent chance that the case will make it all the way to the Supreme Court, which more often agrees to hear a case when various district court opinions are in conflict with one another.

Jeff Rowes, one of the Institute for Justice lawyers who worked on the case, is hoping it goes that far. It's easy to see why. Plaintiffs don't get any more sympathetic than carpenter monks, Louisiana's professional licensing regime has nothing to argue in its favor save the claim that protectionism is a legitimate state function, and repudiating that argument in the land's highest court would make it easier for entrepreneurs in industries all over America to challenge regulations with no other purpose than privileging the entrenched players with the best lobbyists.

Louisiana has 30 days to decide whether it will appeal.

Image credit: Institute for Justice

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