

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT COMMITTEE
PUBLIC HEARING

STATE CAPITOL
HARRISBURG, PA

RYAN OFFICE BUILDING
ROOM 205

WEDNESDAY, JUNE 7, 2017
9:03 A.M.

PRESENTATION ON HB 1019 (GILLEN)
ACCESS TO CEMETERIES

BEFORE:

HONORABLE KATE HARPER, MAJORITY CHAIRMAN
HONORABLE GARY W. DAY
HONORABLE RUSS DIAMOND
HONORABLE MATTHEW D. DOWLING
HONORABLE R. LEE JAMES
HONORABLE DAVID M. MALONEY, SR.
HONORABLE THOMAS L. MEHAFFIE III
HONORABLE BRETT R. MILLER
HONORABLE JACK RADER, JR.
HONORABLE PAUL SCHEMEL
HONORABLE PARKE WENTLING
HONORABLE JEFF C. WHEELAND
HONORABLE DAVID H. ZIMMERMAN

* * * * *

Debra B. Miller

dbmreporting@msn.com

BEFORE (continued):

HONORABLE ROBERT FREEMAN, DEMOCRATIC CHAIRMAN
HONORABLE CAROL HILL-EVANS
HONORABLE SID MICHAELS KAVULICH
HONORABLE PATTY KIM
HONORABLE ANITA ASTORINO KULIK
HONORABLE PAM SNYDER
HONORABLE EMILIO A. VAZQUEZ
HONORABLE PERRY S. WARREN

ALSO IN ATTENDANCE:

HONORABLE MARK M. GILLEN

COMMITTEE STAFF PRESENT:

ROB GAERTNER
MAJORITY EXECUTIVE DIRECTOR
THOMAS MILLER
MAJORITY RESEARCH ANALYST
ALEX YOUNG
MAJORITY ADMINISTRATIVE ASSISTANT

JOHN FULTON
DEMOCRATIC EXECUTIVE DIRECTOR
BRIANNA MEDEVICH
DEMOCRATIC RESEARCH ANALYST

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SUBMITTED WRITTEN TESTIMONY

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See submitted written testimony and handouts online under "Show:" at:

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1 P R O C E E D I N G S

2 * * *

3 MAJORITY CHAIRMAN HARPER: Good morning. Welcome
4 to the House Local Government Committee.5 This is a public hearing on House Bill 1019,
6 which is Representative Mark Gillen's bill, and he'll be
7 speaking about that first.8 Although not required, I think we should take the
9 roll and move along. We do have session earlier this
10 morning.

11 Alex.

12

13 (Roll was taken.)

14

15 MAJORITY CHAIRMAN HARPER: Okay? Good.

16 Well, the reason we called a hearing for this
17 morning is, the bill is somewhat unusual, actually. We
18 haven't touched the laws relating to cemeteries in a long
19 time, and this Committee does not usually deal with that
20 and it's an unusual situation.21 So do you have any comments you want to make,
22 Chairman?23 MINORITY CHAIRMAN FREEMAN: No thank you,
24 Madam Chair. I'm looking forward to the testimony.

25 MAJORITY CHAIRMAN HARPER: Great.

1 So Representative Mark Gillen, how about we bring
2 you down here front and center and testify before the
3 Committee.

4 We are recording. Everybody should be aware of
5 that.

6 And the Committee has the packets, which has the
7 information in it from each of the testifiers, if you
8 submitted your testimony in advance, although I'm not
9 seeing it.

10 REPRESENTATIVE GILLEN: Chairman Harper---

11 MAJORITY CHAIRMAN HARPER: Mark, would you like
12 to bring up your other witness now, or would you like to go
13 forward for us?

14 REPRESENTATIVE GILLEN: I'll have Bill sit with
15 me, if you're comfortable doing that now, Bill.

16 Bill Miller and I have the same picture. This
17 morning I stopped by my office and I picked the picture up
18 off my desk, and it's his stepson, Rickey, who passed away
19 when he was 3 years old.

20 I'll preface my remarks by saying, Mr. Miller is
21 currently, and his wife, the mother of Rickey, barred from
22 the cemetery with "No Trespassing" signs. They and dozens
23 of others are not permitted to visit the graves of their
24 loved ones.

25 This is a cemetery, in the way of background,

1 which dates from the 1840s and every conceivable war, from
2 the War of 1812 to the Civil War to more contemporary
3 conflicts, World War II, and we have a number of heroes
4 that are buried in that cemetery.

5 There is a rope restricting access, and they have
6 put signs up indicating that people do not have a right to
7 visitation at the cemetery.

8 I believe this issue is a matter of right and
9 wrong. I think this body has a moral imperative to step
10 forward and peruse House Bill 1019 for the remedies that it
11 offers.

12 I was at a funeral at a nearby cemetery recently.
13 It was one of the most heart-rending moments that I have
14 had at any funeral that I have ever attended, because the
15 woman who passed away, Nina Pruitt, wanted to be buried
16 next to her husband. But despite the fact that she had a
17 receipt and she and her husband had purchased plots, which
18 is known as the Rock Church Cemetery, and he passed away in
19 2002, a decorated World War II and Korean veteran, she did
20 not get her dying wish, so she was buried at another
21 cemetery.

22 They were married for over a half century. Put
23 yourself in this situation. Between them, they had
24 seven children, dozens of grandchildren and dozens of
25 great-grandchildren and indeed four great-great-

1 grandchildren, and she did not get her dying wish to be
2 buried in the cemetery next to her husband, who she was
3 forbidden by the "No Trespassing" signs to even visit.

4 This piece of legislation is very simple, and I
5 want to commend my colleagues for coming in and hearing a
6 little bit more about it. And I want to acknowledge those
7 that submitted testimony and that will be testifying that
8 this bill will embody some of the principles that you have
9 shared in your written testimony and you'll share in oral
10 testimony shortly.

11 This entire situation is a stench in the nostrils
12 of decency. It is appalling that these fine people are not
13 being permitted to visit the graves of their loved ones,
14 nor to be interred next to those they intended to be buried
15 next to.

16 The resting place of the dead is hallowed ground,
17 whether it be Pennsylvania or any other State, and is not
18 subject to the laws of ordinary property.

19 I'm a firm believer in property rights, but the
20 right of exclusion ends at the cemetery gate. This bill
21 very simply allows ingress and egress, reasonable access
22 to burial plots. This bill very simply would insist, by
23 statute, on the honoring of prior agreements and
24 contract and license to access the gravesite of a loved
25 one.

1 If we cannot accomplish that -- and the good
2 Chairlady has made every effort and gave us a vote last
3 fall. If we cannot accomplish this in the Commonwealth of
4 Pennsylvania, I question the validity of our existence if
5 we cannot get this across the finish line.

6 Now, the Executive Director and the Chairwoman
7 and the Minority Chair have been very open in terms of
8 moving this bill forward. If we cannot speak lucidly on
9 behalf of those that have passed away, if we cannot speak
10 on behalf of the dead and the living that wish to access
11 those burial plots, then I find this body -- that is, this
12 institution -- culpable for that deficiency.

13 If statute is lacking and it's not clear enough,
14 then let's make it clear. Let's get it done. Let's honor
15 these people.

16 This is turning into a Dickens novel, and we can
17 put the epilogue on this story so that nobody has to go
18 through what Nina Pruitt went through, knowing that as she
19 drew her last breath, she was not going to get her final
20 wish to be buried next to her husband of over 50 years.

21 I apologize; a little long-winded, a little
22 passionate, but if we can't step forward and represent this
23 type of interest. Nobody in the halls of this building is
24 going to stop you and lobby you on this bill. I speak on
25 behalf of those that have a limited voice and have limited

1 resources, that are battling the powerful on behalf of that
2 which is morally right.

3 With the Chairwoman's permission, I'll take any
4 questions and then turn it over to Bill.

5 MAJORITY CHAIRMAN HARPER: Thank you.

6 Maybe we should hear from Bill first.

7 Mr. Miller, if you have anything you want to say,
8 just grab that mic and press the "on" button so that we can
9 hear you.

10 Is it on now? Okay. Go ahead.

11 MR. MILLER: Well, my name is Bill Miller, and
12 I'm here for the sole purpose of a mother's promise to her
13 dying child.

14 His name was Rickey. He couldn't survive a third
15 brain tumor. He started going blind. And he asked his
16 mother, when it's your time, will you please be buried
17 beside me? So yeah, of course she said yes, because she
18 knew what was happening. And then, he couldn't see, and he
19 just happened to look up at the corner, and he said,
20 "Mommy, Jesus is coming for me." Her comfort is that
21 somebody was coming for him, to hold him, and with these
22 people buying this cemetery, we can't protect our promise.

23 Oh; private property. What a horrible thing to
24 say when you have no feelings, you have no remorse of a
25 child's wish, anybody's wish, the dead family that are

1 there, family that fought in wars.

2 Oh, we respect the veterans; that's what they
3 claim. We put flags up; oh, nice of you. Private
4 property; stay out; we'll sue you. Words that come: I'll
5 sue; I'll sue. Okay. But we can't afford to win without
6 help. Lawyers cost money. We're running through that
7 now. We're getting almost to the end, as far as our lawyer
8 can hold out, until this law is passed or something is
9 done.

10 And then I talked to people behind me. I have
11 heard other stories of people being chased out of
12 cemeteries at gunpoint. I'm sorry; you'd have to drop me
13 right there. There would be my butt on that stone right
14 there. That would be it. I wouldn't -- why live?

15 I mean, I have made -- police have been called on
16 me. We mowed this cemetery, this particular cemetery, me
17 and my grandson. In between the time it started changing
18 hands, we mowed it for 7 years. The new owners liked it.
19 We were doing it for free. Then suddenly, the police are
20 called. That's what got me started into this.

21 I'm not too appreciative of somebody calling the
22 police on me when it was fine when I was doing it for free.
23 I was trying to teach my grandson something about respect,
24 honoring your own dead. And we took care of the whole
25 cemetery, for everybody there.

1 So this went on. The police called me a pain in
2 the ass. That's fine; I can be that. And then even just
3 the Sunday before Memorial Day, we saw a policeman. They
4 put up cameras now. So we saw a policeman sit up at the
5 high school, which is the hill above the cemetery, and he
6 just slowly turned around and went away, because he knew we
7 were there.

8 REPRESENTATIVE GILLEN: The owners put up the
9 cameras.

10 MR. MILLER: Yeah, the owners, the new owners of
11 the cemetery, which a stickler in the back of my neck for
12 one thing is, how can they own it?

13 A cemetery, when it is supposed to be State law
14 from this State, is that when it changes hands from a
15 church to a private individual, it's supposed to be
16 registered somewhere. Somebody is supposed to know about
17 it. Sure you got to put up funds and whatever, but
18 somebody has to be responsible, and at this point,
19 everybody seemed to have disappeared.

20 Nobody upholds State law that you already have,
21 so now you have to make new law because they got a fancy
22 lawyer that can dig in through and shred this and shred
23 that and all the lies that these people have told.

24 I have had friends that were at this auction of
25 this particular cemetery. Everything was put out in front.

1 There were plots to be filled, finished. There were people
2 that were to visit. This was an active cemetery. Oh,
3 well, we lie; we didn't know it was active. The stones
4 conveyed it. It was active enough.

5 They couldn't stop my wife's aunt's funeral in
6 2012, even though they tried. Of course, when you have a
7 body there and a hole there, you got to fill it, so they
8 couldn't stop it. So they did for Nina. None of the
9 cemetery, or the funeral homes in the area all pass now, so
10 they won't do it. So they had to bury her 5 miles away in
11 the next town, which is a shame, and it's also a shame to
12 the State.

13 And I hear from people behind me where he told me
14 at gunpoint. I couldn't believe that -- at gunpoint in the
15 State of Pennsylvania. I'm not allowed to ride around in
16 the truck with a loaded gun. Somebody has a loaded gun
17 pointed at me? You would've had to drop me right there.

18 But it's just a cancer. I'm hearing other places
19 where people are chased out of.

20 We had this meeting at the township building in
21 Morgantown where people have been chased out with a shotgun
22 or, you know. It's like a cancer, a disease.

23 It's mine; I own it. It's mine. Why? Where's
24 the common decency? humanity? What if your loved ones were
25 buried there?

1 I don't get -- I just don't understand how people
2 can be so rude. I mean, I can understand if I had to cross
3 your front yard; I had to go behind your house to find this
4 cemetery. This is right along the public highway, as is
5 the guy behind me. He talked to me. He said his was along
6 the road, too. It's like, at no time do we have to cross
7 your property until we get on a grave. What is the
8 problem?

9 You can sit there and watch all you want. These
10 people that own our cemetery now, we have been on their
11 cell phones for years, and now they put up cameras? We
12 have been at a township building, a public area, and they
13 drive by with their cell phone in the car window watching
14 us.

15 Some places used to call that harassment. I
16 guess that don't matter anymore either. You call -- you
17 know, the reason I was called the police on me the one time
18 was, our flowers would disappear from the grave. The wife
19 would put them on for her son's grave and her father's
20 grave and they would disappear.

21 Well, after about seven times calling the police,
22 I thought I'd -- well, we put them on earlier that day, and
23 on my way to work, I'd stop and look. Suddenly, here comes
24 a policeman. My flowers are gone; what are you going to do
25 about it? Oh, well, you're a pain in my ass. Well, that

1 may well be; what about my flowers?

2 So they go over to the owner, and the owner,
3 well, we don't allow flowers anymore. What? News to us;
4 you never told us that. You liked me mowing it for free
5 for 7 years, but you never told us that.

6 So then miraculously, later on, the flowers start
7 returning, because I guess they were warned by their lawyer
8 that a few things should happen. They left the graves look
9 ugly for quite a while, until now suddenly, within the last
10 3 weeks, they're starting to attend to mowing the grass
11 right, straightening up the headstones. So they were
12 warned somehow to tidy it up a bit. It looks bad. It
13 makes you look bad.

14 MAJORITY CHAIRMAN HARPER: Thank you, Mr. Miller.

15 REPRESENTATIVE GILLEN: Can I offer a word, just
16 a clarification?

17 MAJORITY CHAIRMAN HARPER: Sure.

18 REPRESENTATIVE GILLEN: Thank you, Mr. Miller. I
19 know how hard that was to do.

20 The property in question here is not an anomaly
21 in Pennsylvania, so we don't want to get too enthralled
22 with the specifics of this. It's happening in other
23 places. When I circulated it in the House of
24 Representatives, I contacted other State Representatives
25 who had similar situations.

1 This is seven-tenths of an acre -- seven-tenths
2 of an acre. There is no lack of clarity in terms of the
3 transfer and the purchase as to what the current owner, who
4 has now formed an LLC, was purchasing. So it changed hands
5 several times. It began as a church cemetery, Rock
6 Mennonite Church, and then it was to be called the Rock
7 Cemetery.

8 So there was a transitional issue relative to the
9 requirements that I would consider a big-box cemetery would
10 be under in terms of perpetual care, and then the church
11 cemetery would be under there, contrasting under State law.
12 And then it moved into private hands. This is where we see
13 the problem occurring, where a private individual owns this
14 cemetery, and we're hoping this bill will be a remedy for
15 that problem.

16 Thank you, Madam Chair.

17 MAJORITY CHAIRMAN HARPER: Thank you.

18 Okay. Now we'll take questions.

19 And I would like to make mention of the fact that
20 Representative Kim and Representative Maloney have joined
21 us.

22 And who else did I miss? Oh; Representative
23 Vazquez is here as well.

24 Okay. So are there questions or comments from
25 the panel?

1 Representative Diamond.

2 REPRESENTATIVE DIAMOND: Thank you, Madam Chair.

3 Thank you, Mr. Miller, for coming today. My
4 heart goes out to you. And as a cosponsor of this bill, I
5 concur with my colleague, Representative Gillen, that this
6 gets moved, gets fast-tracked, so we can take care of this
7 issue.

8 Representative Gillen, you related a story about
9 a wife who couldn't be buried next to her husband. Did you
10 actually say that they had made the arrangements for her to
11 be buried there and they had paperwork on that to begin
12 with?

13 REPRESENTATIVE GILLEN: Thank you for the
14 question.

15 I have a copy of the receipt. She and her
16 husband -- her husband was buried there in 2002 -- were
17 holders of a receipt and a plot to be buried there for a
18 number of years.

19 There had not been arrangements made with the
20 funeral home to bury her there; however, we were in contact
21 with the funeral home, and they were not able to do that
22 without the permission of the cemetery owners.

23 REPRESENTATIVE DIAMOND: Okay.

24 And from your point of view, before we hear from
25 all the other testifiers, how is that skipped over when a

1 land transfer takes place?

2 REPRESENTATIVE GILLEN: Well, it's not a deed as
3 such. It's a license, relative -- and we have an attorney
4 here who is going to speak more on the subject. It is a
5 license, and my own belief, based on case law, would
6 support there's an implied access to that particular site.
7 So they don't actually own the land, but you may ingress
8 and egress, as you would in any other cemetery plot.

9 My good friend, who will be testifying, is going
10 to indicate that he believes this House Bill will be
11 curative in terms of some of the lack of clarity in statute
12 in Pennsylvania law.

13 But Pennsylvania case law, if you go back to
14 *Brown, I believe v. Lutheran Church* in 1854, clearly
15 assents to the right to access a cemetery, and that
16 common law dates back for centuries.

17 It's unfortunate that we're having this situation
18 today with perhaps a slightly different moral code in the
19 21st century. There had been very little debate up until
20 this point in time as to the rights of those that had
21 family members in the cemetery to visit, to gain reasonable
22 access to the cemetery. Now we're going to have to put it
23 in print.

24 REPRESENTATIVE DIAMOND: Okay. Thank you so
25 much.

1 Thank you, Madam Chair.

2 MAJORITY CHAIRMAN HARPER: Thank you.

3 Representative Zimmerman.

4 REPRESENTATIVE ZIMMERMAN: Thanks, Madam Chair.

5 Did I understand that this was actually sold at
6 public auction?

7 REPRESENTATIVE GILLEN: Most recently it was
8 purchased at public auction, that's correct, in 2010.

9 REPRESENTATIVE ZIMMERMAN: So do we know what the
10 intent of the buyers were? If it's not, you know, if
11 they're no longer allowing people to---

12 REPRESENTATIVE GILLEN: I think it's a natural
13 question, but it's beyond the purview of this bill or our
14 discussion here today whatever their intent would happen to
15 be.

16 Just a little background on that seven-tenths of
17 an acre. There is a building, and it had been rented out
18 by prior owners in the past, if I'm not mistaken, Bill? It
19 fronts a country road, and I'm not going to speculate on
20 what they might want to do with the building. Their
21 history in purchasing property in the area is they buy
22 things and they leave them wilt on the vine.

23 REPRESENTATIVE ZIMMERMAN: Okay. Thank you.

24 MAJORITY CHAIRMAN HARPER: Okay.

25 I would like to point out that Representative

1 Kulik, Representative Day, and Representative Evans have
2 all joined us.

3 And we have a question from Representative
4 Miller.

5 REPRESENTATIVE MILLER: Thank you, Madam Chair.

6 Thank you, Representative Gillen, and thank you,
7 Mr. Miller, for your testimony, both your stories here.

8 I also, like Representative Diamond, am a
9 cosponsor of this and think this is what we should be
10 doing.

11 A question for you: Do you have any estimate
12 about how many types of cemeteries that this would apply to
13 across the Commonwealth that there are? Any estimate of
14 that number?

15 REPRESENTATIVE GILLEN: The Cemetery Association
16 is going to be testifying, and they have 450 member
17 cemeteries. I think they probably have more of a canvas to
18 paint on this than I do.

19 Though in the course of my desk-to-desk
20 intersection with my colleagues in the House, I ran into
21 three or four Members who said, I have a similar situation
22 going on, and we ran into one in the Senate. I had a
23 meeting in the Senate yesterday.

24 Clearly, the environment is ripe for more of it
25 happening based on what we think is some stiffening up of

1 Pennsylvania law that is necessary.

2 REPRESENTATIVE MILLER: Thank you.

3 MAJORITY CHAIRMAN HARPER: Anybody else?

4 Thank you very much. You can take a seat and
5 listen to the rest of the testimony.

6 And next up, we have Mark Mohn from the Realtors.
7 Is he here? Yes. Thank you. Thank you for coming.

8 I think the Committee Members can follow along.
9 We should have your testimony in our packets, but the rest
10 of the audience may not.

11 MR. MOHN: Sure.

12 MAJORITY CHAIRMAN HARPER: So please feel free to
13 go ahead when you're ready.

14 MR. MOHN: Good morning, Chair Harper, Chair
15 Freeman, and Members of the House Local Government
16 Committee. Thank you for the opportunity to speak about
17 House Bill 1019 today.

18 My name is Mark Mohn. I currently serve as the
19 Chair of the Pennsylvania Association of Realtors
20 Legislative Committee. I am a practicing realtor with
21 RE/MAX of Reading in Wyomissing.

22 I'm here today on behalf of the 30,000 members of
23 the Pennsylvania Association of Realtors. We would like to
24 offer some recommendations on House Bill 1019 introduced by
25 Representative Gillen.

1 The transfer of private property can be
2 challenging. Those challenges are made even greater when
3 there are unique circumstances affecting both the previous
4 owners and the new property owners. And as such,
5 Realtors understands the importance of thoroughly
6 researching the current status of a property prior to any
7 transaction.

8 The Pennsylvania Association of Realtors
9 empathizes with families who wish to pay respect to loved
10 ones and understand this may be impossible when an owner
11 denies access to the gravesite. However, we also respect
12 the fact that the property is owned privately and support
13 the rights of the owner to limit access to the property.

14 We have no desire whatsoever to add to the burden
15 of bereaved families. The Association believes that
16 requiring the disclosure of cemeteries on private
17 residential properties will not have the outcome that the
18 State Legislature and that the families would prefer. The
19 Seller Disclosure Law is designed to reveal material
20 defects with the property, not necessarily make known
21 unique characteristics of the property.

22 Pennsylvania has a long history of
23 multigenerational family-owned properties. As property is
24 transferred from generation to generation, information
25 about that property may be lost or forgotten. In those

1 instances, requiring disclosure on the seller's disclosure
2 form would not achieve the desired outcome.

3 Through no fault of their own, many current
4 property owners are unaware of the location and condition
5 of burial plots on large tracts of family-owned property.
6 As a result, this information would not be disclosed to the
7 next property owner.

8 After reviewing and discussing the proposed
9 legislation, the Pennsylvania Association of Realtors would
10 like to make the following recommendations:

11
12 • The Association recommends that the bill be
13 amended to require that burial plots in private
14 cemeteries be subject to easements and/or deed
15 restrictions. By permanently adding an easement onto
16 the title of the property, it would ensure the desired
17 outcome. The easement or deed restriction would
18 provide the family access to this portion of the
19 property and, more importantly, would be discoverable
20 on a title search, thereby notifying potential buyers
21 of the existence of the burial plots and the owner's
22 responsibility. Any undisclosed deed restriction or
23 easement would be uncovered through a title search
24 without amending the Seller Disclosure Law. This
25 would be beneficial when the property is transferred

1 in the future and provide a searchable record of the
2 location of the burial plot.

3 • Additionally, the Association recommends
4 removing any reference to a commercial disclosure law,
5 as that does not exist. An easement and deed
6 restriction would be applicable to commercial
7 transactions as well.

8
9 Thank you again for the opportunity to discuss
10 this legislation. We look forward to working with you on
11 amendments to strengthen the legislation and to strike a
12 balance between the bereaved families and private property
13 owners in Pennsylvania.

14 Thank you.

15 MAJORITY CHAIRMAN HARPER: Thanks.

16 I'll lead off the questions, if you don't mind,
17 with one of my own.

18 MR. MOHN: Absolutely.

19 MAJORITY CHAIRMAN HARPER: I think an easement is
20 a really great idea, and a deed restriction, I agree with
21 you a title company would pick that up.

22 MR. MOHN: Mm-hmm.

23 MAJORITY CHAIRMAN HARPER: Who would you propose
24 to do that? Because, and I'm sure this is also true in
25 your area, Pennsylvania has been around for 300 years or

1 more, and there are an awful lot of family plots here and
2 there.

3 Most of the time, the succeeding property owners
4 respect them, know they're there. They might have a little
5 wall around them or some grave markers or something like
6 that. But who would put the easement or deed restriction
7 on, and what would be the incentive to make somebody do
8 that?

9 MR. MOHN: Well, that's a great question, and
10 unfortunately, the details of that process we really
11 haven't gotten into.

12 The challenge that we had when discussing the
13 bill is basically that, you know, simply requiring a
14 seller's disclosure, disclosure questions are basically,
15 "are you aware of" or "are you not aware of."

16 MAJORITY CHAIRMAN HARPER: Right.

17 MR. MOHN: So proving whether somebody is aware
18 of the location and condition of burial plots that may be
19 in the back corner of a property, you know, it's hard to
20 determine how verifiable that information is from
21 generation to generation, whereas a permanent easement, you
22 know, that transcends time. There is not going to be a
23 reliance on a seller's disclosure form which is open to
24 that person's knowledge, that person's ability to recall
25 whether or not there is that information there.

1 So the details of how to get those easements and
2 deed restrictions on current properties is a large hurdle
3 that we're well aware of.

4 MAJORITY CHAIRMAN HARPER: Right.

5 MR. MOHN: There is going to be significant work
6 put into that. However, we believe that is the best
7 possible way to achieve the desired outcome to ensure that
8 families like the Millers are going to be able to have
9 perpetual access to those properties through someone else's
10 private property.

11 MAJORITY CHAIRMAN HARPER: Okay.

12 On the seller's disclosure form, which I agree
13 with you only applies to residential properties, although
14 we could, it seems to me, as a matter of statute require
15 that commercial property owners disclose the existence of
16 something like a private burial ground. I think we can do
17 that. I mean, we require disclosure of other things in
18 certain ways.

19 But I guess my question to you is, isn't it
20 better for Realtors if the seller's disclosure requires it?

21 MR. MOHN: Well, we won't have an issue with
22 having the sellers disclose any known---

23 MAJORITY CHAIRMAN HARPER: Of which they are
24 aware.

25 MR. MOHN: That's correct.

1 MAJORITY CHAIRMAN HARPER: It depends on how you
2 write it. But right, true, that's what most of them say.

3 MR. MOHN: Now, we consistently recommend to our
4 clients, our selling clients, disclosure is their friend.

5 MAJORITY CHAIRMAN HARPER: Right.

6 MR. MOHN: The more that they can disclose to
7 potential buyers, the better off everyone is in the
8 transaction.

9 The challenge---

10 MAJORITY CHAIRMAN HARPER: I'm a lawyer. It
11 stops litigation later---

12 MR. MOHN: Absolutely.

13 MAJORITY CHAIRMAN HARPER: ---if they know about
14 it before. Right.

15 MR. MOHN: The challenge comes when perhaps that
16 person is not, you know, is not aware, and how do you prove
17 whether they are aware or not?

18 In this particular instance, now certainly it's
19 obvious that the property owners are aware that there's a
20 cemetery on their property. But there are many other
21 instances where there are burial plots that are not marked
22 by walls, not readily accessible to a country lane, and
23 those would be discernible through the deed restrictions
24 and easements.

25 MAJORITY CHAIRMAN HARPER: Right.

1 No, I agree with that, but I just want to point
2 out that the bill itself says "if known" the location of a
3 burial site.

4 MR. MOHN: Right.

5 MAJORITY CHAIRMAN HARPER: So if there were a
6 property disclosure, it would be like the other property
7 disclosures, where if you know that the basement floods or
8 something like that---

9 MR. MOHN: Sure.

10 MAJORITY CHAIRMAN HARPER: ---you have got to
11 report it.

12 MR. MOHN: Sure.

13 MAJORITY CHAIRMAN HARPER: Okay. Thanks.

14 Chairman Freeman.

15 MINORITY CHAIRMAN FREEMAN: Thank you, Madam
16 Chair.

17 Thank you for your testimony.

18 I'm still a bit confused as to who you are
19 proposing is trying or who would be responsible for
20 obtaining the deed restriction or the easement.

21 MR. MOHN: Well, and again, that's going to be
22 determinable through the statute as to how that process
23 would work.

24 We don't have the details on how to make that
25 outcome achieved. We just know or we just firmly believe

1 that that is the best way to ensure that this issue is not
2 going to be ongoing beyond this point in time.

3 We want to see the desired outcome come to
4 fruition, that bereaving families have that ability to
5 access those burial plots, whether it's this generation or
6 five generations from now.

7 MINORITY CHAIRMAN FREEMAN: Well, that touches on
8 another issue, too.

9 I mean, it strikes me that you have already
10 purchased the plot.

11 MR. MOHN: Mm-hmm.

12 MINORITY CHAIRMAN FREEMAN: That transaction took
13 place a long time ago.

14 MR. MOHN: Sure.

15 MINORITY CHAIRMAN FREEMAN: That's an obligation
16 contractually. Now, under your proposal, are you laying
17 out the possibility that the family that owns the plot has
18 to go after getting the easement or getting the deed
19 restriction?

20 MR. MOHN: Again, we did not discuss any of that
21 information. It is simply stating the best outcome that we
22 can foresee is whatever party is required to obtain that
23 deed restriction and/or easement, however that process
24 occurs, that's the best way to make sure that this is a
25 perpetual bill in your legal law.

1 MINORITY CHAIRMAN FREEMAN: I understand your
2 legal standpoint as far as having that sort of solidified,
3 but I think it's an undue burden if we ask the family to go
4 and proceed to get a deed restriction on someone else's
5 property or to get an easement when the bottom line is,
6 they already purchased the plot. That is their property,
7 in essence, through that purchase process.

8 MR. MOHN: Well, and again to that, in effect,
9 then, if you're looking at a property, they have the plot
10 in the cemetery, but where is the documentation that they
11 have access through the rest of the private property to get
12 to that plot, and that's the concern we're looking to
13 overcome.

14 MINORITY CHAIRMAN FREEMAN: Well, we already
15 provide under real estate law that if you have a flag lot,
16 you have to have access to that plot or to that piece of
17 land. You can't own a piece of land that has no access to
18 a public road. The owner of the surrounding land has to
19 give you the ability to access your property, even though
20 it might be surrounded by someone else's property.

21 MR. MOHN: Okay.

22 MINORITY CHAIRMAN FREEMAN: That's an established
23 principle.

24 MR. MOHN: Okay. Then is that an easement or is
25 that -- because that sort of access then needs to be

1 documented so that there aren't issues of providing access
2 to those sorts of plots.

3 MINORITY CHAIRMAN FREEMAN: I see where you're
4 coming from from a legal standpoint, but I really think
5 it's an undue burden on the families that are just simply
6 trying to access the family plots.

7 MR. MOHN: Sure.

8 MINORITY CHAIRMAN FREEMAN: And I think---

9 MAJORITY CHAIRMAN HARPER: We do have a lawyer
10 coming up, a couple of them.

11 MINORITY CHAIRMAN FREEMAN: To speak.

12 MAJORITY CHAIRMAN HARPER: Hopefully.

13 MR. MOHN: Just to clarify that, that's outside
14 my purview.

15 MINORITY CHAIRMAN FREEMAN: But I do think
16 having the disclosure in the purchase is probably the best
17 way of ensuring that everyone knows what is on the
18 property.

19 I can't imagine anyone buying a property and not
20 recognizing that there is a cemetery there, even if it's
21 rather obscure, even if it's rather old.

22 MR. MOHN: Mm-hmm.

23 MINORITY CHAIRMAN FREEMAN: Hopefully before you
24 purchase a piece of property, you surveyed the land and you
25 see what's there.

1 MR. MOHN: Again, that's the likelihood in most
2 cases. Given the fact that we have cemeteries that date
3 back prior to the 1700s in this State---

4 MINORITY CHAIRMAN FREEMAN: Mm-hmm.

5 MR. MOHN: ---there are possibilities that there
6 are cemeteries that are in existence, transferred on large
7 tracts of land, that are buried deep in woods that people
8 are not aware of that they are there.

9 MINORITY CHAIRMAN FREEMAN: I guess I would
10 contend that's rather obscure compared to the situation we
11 have before us today.

12 MR. MOHN: And again, I just want to make it
13 clear that the Pennsylvania Association of Realtors is not
14 opposed to allowing bereaved families to have access to
15 their cemetery plots.

16 MINORITY CHAIRMAN FREEMAN: No; I understand. I
17 understand.

18 MR. MOHN: You know, we are very supportive of
19 that. We just want to make sure it's the cleanest, easiest
20 possible way to do so, and that we have some concerns that
21 adding to -- that requiring it solely on the seller's
22 disclosure may not achieve the full desired outcome.

23 MINORITY CHAIRMAN FREEMAN: Okay. Thank you for
24 your testimony.

25 MR. MOHN: You're welcome.

1 MAJORITY CHAIRMAN HARPER: Representative
2 Diamond.

3 REPRESENTATIVE DIAMOND: Thank you, Madam Chair.

4 And I'll give you a disclosure here: I have no
5 idea about real estate law. I'm not a realtor, although I
6 bought and sold property, but I have seen the stack of
7 papers I have to sign when I do that.

8 MR. MOHN: Right.

9 REPRESENTATIVE DIAMOND: So I want to go back to
10 both Chairmen's comments about the easement or restriction.
11 Somebody is going to have to pay for that. I imagine it
12 costs something. Are they going to have to hire an
13 engineer to come out or a surveyor to come out and
14 actually, you know, stake this out or---?

15 What's the cost? I mean, when we're talking
16 about undue burden, what exactly would be the cost of
17 having an easement or a deed restriction filed? Because
18 when we're thinking about burdening someone with that
19 obligation, we need to know how much of a burden that's
20 going to be.

21 MR. MOHN: Sure.

22 And the challenge is, the best possible answer
23 that can be given to you is, it depends. It depends on the
24 circumstances; the location of the cemetery; how far into
25 the property the said cemetery is; what the size of the

1 cemetery is. All those factors go into it.

2 You know, if you're providing access to a flag
3 lot or to a landlocked piece of land that somebody has
4 bought as hunting property and then you're providing access
5 to that through an easement, again, all the costs just
6 depend on the specific details of that property and the
7 adjacent property.

8 REPRESENTATIVE DIAMOND: Well, would it be safe
9 to say this is in the hundreds to thousands of dollars
10 range?

11 MR. MOHN: Again, I can't go through the
12 specific numbers of it, but, you know, I would certainly
13 expect so.

14 REPRESENTATIVE DIAMOND: Okay. Thank you.

15 MAJORITY CHAIRMAN HARPER: Representative
16 Maloney.

17 REPRESENTATIVE MALONEY: Thank you, Madam
18 Chair.

19 There is interesting discussion here, and I
20 believe that the Chairman brought up a point of concern
21 that I saw with respect to landlocked land. And I think,
22 Mark -- thanks for being here -- that you just mentioned
23 that, with respect to the fact that somebody has to be able
24 to access a landlocked piece of property. So to the point
25 of it could be deep into the woods, to use your analogy, I

1 guess is some of the agreement that has to be made.

2 But I'm going to go to a practical sense here
3 where I would like to paint a picture of, how do we
4 practically and what would be your opinion -- and maybe the
5 attorney that's coming up might want to be prepared for
6 this in this respect. But I actually have a private, if
7 you want to call it a private cemetery adjacent to my
8 property at home that goes back to the original farmstead
9 from William Penn, who the Weller family kind of settled
10 there. And I understand there was an X-ray of the property
11 and that there are three bodies in the ground. I didn't
12 see those facts, but that's what I understand.

13 There is a monument there, so I guess one of my
14 questions is, I just had the property surveyed a couple
15 years ago, and it is clearly up against the corner of my
16 property, but it's really not identified with a deed. So
17 one of my questions was, when I had it surveyed is, do I
18 assume that property? Is that on my land?

19 And so my question on a practical sense would be,
20 if a person was to say, hey, look, that little fence that's
21 around there and dilapidated and it's 100 years old and
22 metal, I'm going to tear that down and I'm going to remove
23 the monument and I'm going to plow that field. Is there
24 something that would stop me from doing that?

25 MR. MOHN: Well, that goes into some of the

1 cemetery laws that the Chair was speaking about that have
2 not been reviewed for many times before the Legislature.

3 And again, this issue that Representative Gillen
4 has brought forth speaks to the fact that more review of
5 the current statute needs to take place in these matters to
6 have a better understanding of just those sorts of
7 circumstances.

8 So I can't speak to the specifics of that sort of
9 thing. That would be determined by what statute currently
10 allows.

11 REPRESENTATIVE MALONEY: So to the point of, I
12 believe, Mr. Miller who was here that maintained a piece
13 of property for so long, is there a troubling fact that he
14 has invested a certain amount of maintenance to that
15 property that now becomes a question of almost who is
16 responsible for maintaining this property, and was there
17 value that he had invested there?

18 MR. MOHN: Yeah. Those, unfortunately, sound to
19 me like legal questions that I unfortunately cannot answer
20 because I don't have that expertise.

21 REPRESENTATIVE MALONEY: All right.

22 Thank you, Madam Chair.

23 REPRESENTATIVE GILLEN: Madam Chairman, with your
24 permission, it sounds like what is being referred---

25 MAJORITY CHAIRMAN HARPER: Sure. Briefly.

1 REPRESENTATIVE GILLEN: ---referred to is a
2 historic burial place. The cemetery is over 100 years old.
3 There hasn't been burials for 50 years. I would just
4 suggest you purview a different section of the law.

5 Thank you.

6 MAJORITY CHAIRMAN HARPER: Are you saying that
7 your bill would not apply to a cemetery that old?

8 REPRESENTATIVE GILLEN: No; in fact it would,
9 but the standards are slightly different in terms of the
10 law.

11 REPRESENTATIVE MALONEY: But just for
12 clarification with something that was said earlier, does
13 that mean that a specific parcel of land has to have been
14 identified, certified, and registered for that to have
15 validity?

16 MAJORITY CHAIRMAN HARPER: No. I mean, that is
17 the witness's point. The witness's point is, if there were
18 an easement or some other covenant running with the land
19 that could be recorded at the courthouse, everybody would
20 know it.

21 REPRESENTATIVE MALONEY: Correct. But if there
22 wasn't---

23 MAJORITY CHAIRMAN HARPER: Unfortunately, we seem
24 to have dozens, if not hundreds of family burial plots or
25 other privately owned or perhaps owned by a church at one

1 point---

2 MR. MOHN: Sure.

3 REPRESENTATIVE MALONEY: Yeah.

4 MAJORITY CHAIRMAN HARPER: ---that are no longer
5 active that way.

6 MR. MOHN: Yeah.

7 MAJORITY CHAIRMAN HARPER: So the gentleman is
8 correct. If it had an easement on it or some other deed
9 restriction, we'd all know it. The question I had for him
10 was, whose obligation would it be to put it on?

11 MR. MOHN: Absolutely.

12 MAJORITY CHAIRMAN HARPER: And that goes back to
13 Representative Diamond's question, who would pay for it,
14 you know?

15 All right. Other questions of this witness,
16 because we do have a number of others, including lawyers
17 and things like that, so.

18 Thank you very much.

19 MR. MOHN: Thank you very much.

20 MAJORITY CHAIRMAN HARPER: We appreciate your
21 coming.

22 MR. MOHN: Yep.

23 MAJORITY CHAIRMAN HARPER: Do you want to
24 stay and we'll give you the last word at the end,
25 Mr. Miller?

1 MR. MILLER: I just have one particular point.
2 Just one point.

3 MAJORITY CHAIRMAN HARPER: Okay. Go ahead. Come
4 on up and give us your particular point.

5 MR. MILLER: What Mr. Maloney talked about is if
6 it was never registered.

7 In our particular cemetery, there are several
8 graves that were registered by several other families. We
9 were never told we needed to.

10 MAJORITY CHAIRMAN HARPER: Right.

11 MR. MILLER: But back in the early 1870s, '80s,
12 some of these other people were, you know, well to do and
13 their family ran the local stone quarry, so they did
14 register at the courthouse.

15 So there are some cemetery plots here that are
16 registered, so anybody could have looked if they chose to.
17 But---

18 MAJORITY CHAIRMAN HARPER: Okay. So the point
19 you're making, which is also a very good one: We could
20 have private cemeteries where some of the property owners
21 have deeds and some do not.

22 MR. MILLER: Well, the word "deed," they never
23 had them. They're registered with the courthouse---

24 MAJORITY CHAIRMAN HARPER: No. And a cemetery
25 plot is not registered the same way a fee simple deed is.

1 MR. MILLER: Yeah. They're registered with the
2 courthouse, because back then they did gentleman's
3 agreements and things were different then.

4 MAJORITY CHAIRMAN HARPER: And there were
5 gentlemen then. But anyway---

6 Thank you very much. I'm kidding, of course.
7 There are gentlemen now.

8 Can we have Arnold Kogan, please?

9 We had reached out to the Pennsylvania Bar
10 Association, which did not have time to opine, and we
11 understand that.

12 MR. KOGAN: Right.

13 MAJORITY CHAIRMAN HARPER: But we reached out to
14 the Bar Association, recognizing that there are many legal
15 issues and real estate issues involving this.

16 If that light is green---

17 MR. KOGAN: Yeah. Does that mean it's on?

18 MAJORITY CHAIRMAN HARPER: You're ready to go;
19 right.

20 MR. KOGAN: Great.

21 MAJORITY CHAIRMAN HARPER: So Mr. Kogan, I
22 appreciate your coming today and testifying before the
23 Committee.

24 MR. KOGAN: Thank you.

25 Good morning, Chairperson Harper, Chairperson

1 Freeman, and Members of the Committee.

2 My name is Arnold B. Kogan. I am an attorney
3 with the Harrisburg firm of Goldberg Katzman and a past
4 Chair of the Pennsylvania Bar Association's Section of
5 Real Property, Probate, and Trust Law. The views I present
6 today are my own, as the Pennsylvania Bar Association, as
7 Chairman Harper has pointed out, has not taken a position
8 on this bill. It takes us time, too, to act on various
9 proposals.

10 In preparation, however, I did look at the bill
11 and news articles that Representative Gillen's office had
12 sent me applicable to the Pennsylvania statutes and
13 reported cases. And I also looked at some of the other
14 States, not, you know, a full survey, but some of it is
15 cited as footnotes for your staff to look at if they need
16 to follow up on some of these things.

17 Generally, as has been discussed here, the right
18 to use a burial plot is considered real property interest
19 but is in the form of a license or easement rather than in
20 the form of a deed. This license often gives a person, the
21 holder, to bury oneself or another in the site and by
22 implication comes their right of access rather than a
23 specific statement.

24 Now, there are some that, you know, whether it's
25 maybe large or there's a mausoleum, where they do get very

1 specific as to the rights of access. And then you get to
2 the broader rights of landlocked properties, which
3 obviously the owner of the cemetery or the seller can't
4 guarantee around the area unless there is some law or
5 something that forces the surrounding property to grant
6 that access.

7 Let's see.

8 Although the license for the burial plot is not
9 recorded in the recorder of deeds, the cemetery company is
10 required to keep records on the burial site and to whom the
11 licenses were issued and used. Here, of course, the
12 problem is, we have private sites that are not cemetery
13 companies.

14 And quite candidly, my comment was focused on
15 what is obvious, that a regular cemetery has those kinds of
16 records. They can be lost. But you get into the more
17 difficult ones, and I was thinking of the technology, you
18 know, with the GPS and the phones. You may be able to
19 identify a location much easier than you would have under
20 our old, you know, where we had to deal with, you know,
21 hand surveys. So there may be a way for technology in
22 there.

23 And I could, maybe if you are interested in
24 proceeding, I have colleagues in the GPS community that
25 might be willing to give a little bit of time, not a whole

1 lot, but, you know, for possible technology solutions to
2 that identification problem. Not necessarily leaps and
3 bounds, but at least, you know, what we call the centroid
4 or the center of attention where the gravesites are. So
5 there might be a solution on that. I do think, though,
6 that the recording is something that ought to be pursued.

7 Now, who to do it, obviously it has to be the
8 owner of the property initially to record, because that's
9 the one who is granting the easement. So you can't force
10 the recipient. They can be sure that when they get it, you
11 know, the burial right, that something is recorded.

12 Now, it wouldn't be on each individual one,
13 because then I think you get into a real burden. But the
14 fact that there is, you know, for each individual
15 gravesite. But there should be something with respect to,
16 in general, that, you know, here's the location from a
17 GPS-coordinate point of view and that there is something on
18 that property; on the parcel, you know, on the deed.

19 So I have just another minor thing, but it's now
20 being more evident to me that it's worth doing, because
21 there was talk of other statutes that we have. You may
22 want to consolidate everything under the Consolidated
23 Statutes, and I think there's a benefit to that. Maybe you
24 don't have time now because you're trying to get this bill
25 through, but that's something you ought to look at on

1 Title 9, because we have half in the Unconsolidated area
2 and half in the Consolidated area, and it would be easier
3 for everybody, especially if you have attorneys that are
4 knowledgeable in this area.

5 And I wasn't that knowledgeable when I started
6 this to realize that there are two different groups, and I
7 looked at both of them. Now, you know, some of it deals
8 with the abandonment, you know, the re-interment and
9 things like that. It might be better to put them all
10 together.

11 And I noticed this bill is broad on the
12 visitation. Now, I support that, but I just wanted to
13 point out to the Committee some of the other States.
14 Virginia is listed mainly because some of the leading
15 commentators say that's one of the more detailed statutes.
16 And I'm not saying that's better than what you drafted,
17 but---

18 MAJORITY CHAIRMAN HARPER: Well, we're going to
19 pull it and take a look just to see.

20 MR. KOGAN: Yeah.

21 But, you know, the sites in two is where it was
22 identified to me, in my footnote in two, those two
23 articles, that that was the more detailed one. And on case
24 law, I guess Texas had the more detail.

25 Texas's statute, though, is pretty close to you.

1 You know, it was in '93. That's pretty close to what you
2 have, a very broad right of visitation, which I think is
3 more realistic.

4 You can't have, you know, owners going into who
5 -- I mean, when it's burial, that's a different story, but
6 -- you know, for proof. But when it's actual visitation, I
7 think your bill's language is much better than getting down
8 to all these details of who might have a right to come onto
9 the property. Unless it gets abusive; then you may have to
10 change the law, you know, get to a more restrictive
11 viewpoint.

12 And the other area that I thought was -- and
13 maybe this is the best you can do right now as you say with
14 respect to residential property. I gave you an example
15 because it was close by. I grew up near the cemetery that
16 I cited in the footnote. That's why it just stuck in my
17 mind, where they sliced off a part of it, and are they on
18 the site or not? You may want to clarify some of your
19 language, because it's a little bit more restrictive.

20 And I understand you don't want somebody, you
21 know, where someone lives there, you don't want to have a
22 lot of intrusion onto their site. They want to be able to
23 control it. But as to what is on the site and what isn't,
24 you may want to think about how you want to define that.

25 And that's basically, and, you know, finally, we

1 know that as mentioned here, even more detail because of
2 what the Representative did in checking with his
3 colleagues. I just picked up a couple of cases, you know,
4 that are in litigation now, one in Federal court over, you
5 know, these kinds of issues.

6 So it is certainly something that's going to get
7 more prevalent over the years. And you have an outflow of
8 people, so some cemeteries, you know, lose -- you know, the
9 millennials are moving out and so there are a lot of
10 issues, that now is the time to deal with this. It's good
11 timing to try to wrestle with these issues.

12 And that's all I have.

13 MAJORITY CHAIRMAN HARPER: Thank you very
14 much.

15 I'll start off.

16 I think the idea of a deed or an easement that
17 was raised by the Realtors may only be possible if we
18 required people who sold plots---

19 MR. KOGAN: Right.

20 MAJORITY CHAIRMAN HARPER: ---to record a deed
21 saying that human people are buried here, okay?

22 MR. KOGAN: Right.

23 MAJORITY CHAIRMAN HARPER: Because then they
24 would, you know, if they're selling plots---

25 MR. KOGAN: Right.

1 MAJORITY CHAIRMAN HARPER: But most of those
2 people, property owners, are probably churches.

3 MR. KOGAN: Mm-hmm.

4 MAJORITY CHAIRMAN HARPER: So we're going to have
5 to burden them with that. But that doesn't solve the
6 problem in which we find ourselves.

7 MR. KOGAN: Right.

8 MAJORITY CHAIRMAN HARPER: Which is where it
9 wasn't done by whoever sold the plot, and now we have a
10 situation where the law is ambiguous.

11 MR. KOGAN: Right.

12 MAJORITY CHAIRMAN HARPER: Right? So I
13 appreciate the research, and we are going to pull the
14 Virginia statute and see if that has anything that we can
15 borrow.

16 MR. KOGAN: Right.

17 MAJORITY CHAIRMAN HARPER: So I think that's a
18 good idea.

19 And I still think the easement is a good idea. I
20 just don't think it's practical in these places where you
21 buy a piece of ground that actually was first plotted out
22 in William Penn's time and it happens to have somebody
23 buried on it. That's just -- that's actually normal in
24 Pennsylvania, I think. So that makes it a little more
25 difficult.

1 But I think we should look into the possibility
2 of requiring people who sell burial plots to record some
3 kind of a deed restriction saying they have done so. So
4 that's a good idea.

5 MR. KOGAN: Mm-hmm.

6 MAJORITY CHAIRMAN HARPER: Any other questions
7 for this witness?

8 And I do want to point out that several people
9 have come and left, that 10 o'clock is a very popular time
10 for committee meetings that are voting meetings. So
11 several Members have left to go to voting meetings of other
12 committees.

13 However, Representative James came, so that's
14 always a good thing.

15 Representative Gillen, do you have a question?

16 REPRESENTATIVE GILLEN: Thank you, Madam
17 Chairman. Very briefly.

18 Thank you very much for testifying.

19 I see you footnoted *Brown v. Lutheran Church* as
20 well.

21 MR. KOGAN: Yeah.

22 REPRESENTATIVE GILLEN: And in your testimony you
23 indicated by "implication" rather than "specific"
24 statements in the law.

25 MR. KOGAN: Right.

1 considerably.

2 REPRESENTATIVE GILLEN: Thank you, Madam Chair.

3 MAJORITY CHAIRMAN HARPER: Thanks. Good

4 question, good answer. Thank you very much.

5 Anybody else? Questions for this witness?

6 Thank you for coming---

7 MR. KOGAN: Sure.

8 MAJORITY CHAIRMAN HARPER: ---and thank you for
9 taking the time to research the law for us. We appreciate
10 that.

11 I would also like to next invite up, we have a
12 panel from the Pennsylvania Cemetery, Burial and Funeral
13 Association. If you could all come up, and we need a few
14 more chairs, Alex, for our friends here.

15 How many -- we have three testifiers? Okay; we
16 have enough.

17 Make sure you use the mic, because we are
18 recording and it's much easier when you use the mic.

19 Can I ask you first to introduce the panel,
20 somebody, and then we'll take it in whatever order you
21 would like to present your testimony.

22 MR. GRABOWSKI: Good morning, Madam Chair and
23 Members of the Committee.

24 My name is Frank Grabowski. I am the owner and
25 manager of Schuylkill Memorial Park in Schuylkill Haven,

1 and also the Vice President of the Pennsylvania Cemetery,
2 Cremation and Funeral Association.

3 With me today, from my right, is Harry Neel, who
4 is the President of Jefferson Memorial Cemetery, Funeral
5 Home and Crematory in Pittsburgh, and to my left is
6 Jason Benion, who is an attorney with the law firm of
7 Post & Schell and who is also the Association's counsel.

8 MAJORITY CHAIRMAN HARPER: Great. Thank you very
9 much. Go ahead.

10 MR. GRABOWSKI: Okay.

11 We thank you for the opportunity to be here today
12 to express our support for House Bill 1019.

13 Our membership includes about 450 cemeteries
14 across Pennsylvania. Our organization was established
15 85 years ago to provide leadership in setting and
16 maintaining the highest ethical standards in the death-care
17 industry. We believe that House Bill 1019 helps to achieve
18 that goal.

19 When consumers purchase the right of interment in
20 a cemetery, they deserve to know that that right will be
21 honored when they die, even if the cemetery is later
22 transferred to a new owner. This legislation gives
23 consumers confidence that their wishes will be followed at
24 death by requiring the new owner to honor purchases of
25 burial plots made before the transfer of ownership.

1 But the right to be buried in a cemetery loses
2 a lot of its value if no one can visit your grave.
3 House Bill 1019 gives consumers and their next of kin peace
4 of mind by requiring cemeteries to grant reasonable access
5 to burial plots for the purpose of visitation. This is
6 something that nearly all cemeteries in Pennsylvania are
7 already doing, with a very small number of unfortunate
8 exceptions.

9 We believe that by providing for reasonable
10 visitation rights, the bill strikes an appropriate balance
11 between ensuring the next of kin can mourn and remember
12 their loved ones and maintaining the dignity and safety of
13 the cemetery.

14 Importantly, the protections found in House Bill
15 1019 are not new. The bill simply codifies rights that
16 have been recognized in Pennsylvania law for a century or
17 more.

18 We would like to propose one minor technical
19 change to the bill. In Section 1, the bill uses the word
20 "guaranteed" in defining the term "burial plot." That word
21 is a term of art that has a particular meaning in the
22 industry. A "guaranteed contract" is one where the price
23 is guaranteed not to change between the date of the
24 contract and the date of death. On the other hand, a
25 "non-guaranteed contract" is one where the price may

1 fluctuate depending on changes over time in the price of
2 goods and services purchased.

3 Using the word "guaranteed" in the definition may
4 suggest that the bill applies only to some purchases of
5 burial plots and not others. Therefore, we suggest
6 avoiding that word in the definition. Instead, we suggest
7 defining "burial plot" as real property in which an
8 individual has a right to be interred when the individual
9 dies, but title to ownership of which is not acquired by
10 the individual. This is very similar to the current
11 definition but avoids using a term of art that may cause
12 confusion about the scope of the bill.

13 The Association applauds Representative Gillen
14 and the cosponsors of this legislation for their tireless
15 work on this important topic, and we are proud to support
16 House Bill 1019.

17 We thank you again for this opportunity to be
18 here today, and we would be happy to take any questions you
19 might have.

20 MAJORITY CHAIRMAN HARPER: Does anybody else have
21 a prepared statement that they want to give first?

22 MR. GRABOWSKI: No, but they can -- they'll
23 answer questions.

24 MAJORITY CHAIRMAN HARPER: Right. Okay. Well,
25 we do have questions, so maybe whoever is the most

1 familiar---

2 MR. GRABOWSKI: Right. That's the idea.

3 MAJORITY CHAIRMAN HARPER: ---or comfortable to
4 answer the question can do that.

5 Representative Maloney, you have a question,
6 don't you?

7 REPRESENTATIVE MALONEY: Yeah; I do.

8 Thank you, Madam Chair.

9 You know, I appreciate your testimony and you
10 fellows' experience and your, really, support in the fact
11 of the rights to a burial plot and so on.

12 I guess for me trying to figure out a way in
13 which these folks would be guaranteed a way to visit
14 something, I keep coming back to what seems to be gray to
15 me about the right to the property, this registered plot,
16 if you will, and I think the Chairwoman brought up a good
17 point. But I want to keep going back to some of the
18 ancient history that we have here, and I'll go back to a
19 practical sense of my own property.

20 So is there anything -- and I did used to know
21 some of this in the past, but I seem to have put it aside
22 in the data processor. Could I utilize this plot at my
23 property or make another one and create my own burial plots
24 for me and my family?

25 MAJORITY CHAIRMAN HARPER: The question that he

1 had asked earlier was, under current law, could he take
2 this plot that just happens to be on his or near his land,
3 a piece of which, move the headstones, and just plow it
4 under---

5 REPRESENTATIVE MALONEY: Or---

6 MAJORITY CHAIRMAN HARPER: Or---

7 REPRESENTATIVE MALONEY: Create my own burial
8 lots.

9 MAJORITY CHAIRMAN HARPER: ---or create more
10 of them? Do you know what the current law would be on
11 that?

12 MR. GRABOWSKI: I think probably Jason would be a
13 better one, because that would probably fall under Title 9,
14 and there are certain references there. But I'll let Jason
15 answer that.

16 MAJORITY CHAIRMAN HARPER: Right; I agree. It's
17 a lawyer question, so we'll give it to Jason.

18 I do want to make the point that I think
19 everybody realizes the problem is not with cemeteries such
20 as you gentlemen run and that it's not with people who are
21 members of your association who are doing this as a matter
22 of course.

23 We do appreciate that you are supporting the
24 bill. That's important to us.

25 Okay. But would the lawyer like to answer

1 Representative Maloney's questions?

2 MR. BENION: I'll try.

3 And Madam Chairman, thank you for that, and we
4 are happy to be here to support the bill.

5 And as Frank said, the overwhelming majority of
6 cemeteries in this Commonwealth are granting the kind of
7 access that this bill requires. So I think we're there
8 99 percent of the time.

9 MAJORITY CHAIRMAN HARPER: If you would pull that
10 mic closer to you and then answer Representative Maloney's
11 questions.

12 MR. BENION: I'll give you the horrible lawyer
13 answer: It depends.

14 REPRESENTATIVE MALONEY: Yeah. And you get paid
15 for that.

16 MR. BENION: I'm on the clock right now.

17 REPRESENTATIVE MALONEY: All right. That's what
18 I thought.

19 MR. BENION: There are some statutes that may
20 address it. If it qualifies as a historic cemetery, there
21 might be some restrictions on what you can and can't do.

22 On the other hand, if it's a cemetery where
23 someone had a right to be interred there but hasn't
24 exercised that right over an incredibly long period of
25 time, you may be able to extinguish that right.

1 I guess as a very broad, general matter, there is
2 no statute that addresses how you can use your own
3 personal, private property for burial.

4 REPRESENTATIVE MALONEY: Yeah. And it's one of
5 the reasons I bring it up in the light of the clarity I
6 think that is needed, I think the clarity and the
7 sacredness of the subject at hand.

8 But I think in the complication of life that we
9 seem to find ourselves in many a times, there is also this
10 right-of-way question I have, and that is, you know, this
11 particular cemetery is also close to a township road, and
12 so what kind of an authority does a township now usurp if
13 they want to broaden the road? And where does the sacred
14 ground not become sacred if they can do it but we can't do
15 it?

16 And so I think when I see this problem, it looks
17 to me as, it has some conflict here. And I frankly wonder
18 about, when you say somebody has "the right" there, what
19 gives us "the right," and how do we then say, okay, I have
20 the right to bury myself here or have my family and/or me
21 be buried here also?

22 And so that's why it comes up to me in the fact
23 that you might be assuming that you'll be able to inter
24 there, but then you find out later, oh, you didn't have the
25 right there or there was a right-of-way issue, and that's

1 why I think we're having this hearing. But in the same
2 respect, those questions come up to me about, you know, and
3 trying to make it practical in the light that I literally
4 could have this issue, because there is no deed to this
5 cemetery next to my property.

6 MR. BENION: And I don't think that would be
7 unusual. And even in the more typical case where you're
8 going to a clearly marked operating cemetery, you may or
9 may not get a deed to the plot that you are purchasing.
10 Even if you do, you're not getting a deed in the
11 traditional sense that you own that piece of land.

12 REPRESENTATIVE MALONEY: Okay. So I think what I
13 want to just do is full circle in the fact that if we have
14 an operating cemetery, a place of organized respect, we're
15 obviously seeing something that has been taking place for
16 quite a while.

17 Bringing up the other questions that I did was
18 trying to bring the challenge of the gray area, but yet
19 those that don't seem to be very gray, we have a problem.
20 So it seems to me that this would be a good fix to
21 something that has been determined.

22 MAJORITY CHAIRMAN HARPER: Thank you.

23 REPRESENTATIVE MALONEY: Thank you.

24 MAJORITY CHAIRMAN HARPER: Now, as to your road
25 question, because I serve on Transportation.

1 REPRESENTATIVE MALONEY: Yeah. I threw that in
2 there for you special.

3 MAJORITY CHAIRMAN HARPER: Yeah.

4 There are Federal restrictions on what you can
5 use Federal money for that may impact the cemetery. It
6 might not, but it might.

7 In my own area, there was a very valuable corner
8 on Bethlehem Pike at 202 right near the Montgomery Mall,
9 where there was a pretty little church and a little
10 cemetery. And the Burger King wanted to buy that corner,
11 because it was a really good corner for a Burger King.
12 They actually paid the church to move all those people to
13 the church's new location.

14 So, you know, I think these things are getting
15 worked out one way or the other. But it is true, the law
16 is not clear. And those issues may not be solvable with
17 this bill, but we'll work on them.

18 REPRESENTATIVE MALONEY: Thank you.

19 MAJORITY CHAIRMAN HARPER: Anything you want to
20 add? No?

21 Okay. Other questions for these witnesses?

22 All right. Thank you very much. We appreciate
23 your being here and appreciate your support and your
24 suggestions, which we will look at as an amendment, okay?
25 Thanks.

1 MR. BENION: Thank you.

2 MR. GRABOWSKI: Thank you.

3 MAJORITY CHAIRMAN HARPER: Those were our last
4 testifiers. Thank you very much.

5 I want to ask Representative Gillen or Mr. Miller
6 if there's something that you would like to add.

7 REPRESENTATIVE GILLEN: No, besides thank you.

8 Thank you, Frank and your team, for coming here.
9 Thank you to each of the testifiers.

10 I wanted to also acknowledge the presence -- he
11 was here -- of Elam Herr from PSATS, and he left us with
12 some written testimony in addition.

13 MAJORITY CHAIRMAN HARPER: You're right. That
14 should be in your packets. He has made some suggestions as
15 to how we write the definitions.

16 REPRESENTATIVE GILLEN: And Frank, you didn't
17 want us using the word "guaranteed," from what I
18 understand. So I guarantee you -- I mean, I promise you
19 we'll take a look at that.

20 Thank you very much, Madam Chair.

21 MAJORITY CHAIRMAN HARPER: Right.

22 And I also want to thank Representative Maloney
23 and all of the Members who participated for asking good
24 questions and clarifying the fact that the law is not clear
25 and that that's why we probably should enact some new

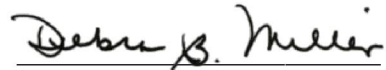
1 legislation to cover the rights of people to visit their
2 loved ones and to be buried in places that they have
3 purchased a contract to be buried in, okay?

4 So thank you very much, and that will close the
5 hearing.

6

7 (At 10:13 a.m., the public hearing adjourned.)

1 I hereby certify that the foregoing proceedings
2 are a true and accurate transcription produced from audio
3 on the said proceedings and that this is a correct
4 transcript of the same.

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7 

8 *Debra B. Miller*

9 *Transcriptionist*

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24 *DBM Reporting*

25 dbmreporting@msn.com