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"HUMAN COMPOSTING" AS AN OPTION FOR FINAL DISPOSITION: PUBLIC HEALTH CONSIDERATIONS IN LIGHT OF THE COVID-19 PANDEMIC AND ITS IMPLICATIONS ON THE HUMAN COMPOSTING MOVEMENT

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INTRODUCTION

Death. Natural. Inevitable. One of the only certainties in life. Yet, we become uncomfortable when it comes to discussions around death, and we avoid addressing death as we go on with our busy lives.[1] We fear it because of the uncertainty and the unknown of what comes after death.[2] Our modern society has even been dubbed a "death-denying society."[3] Still, our society has found ways to cope with this discomfort such as through cultural rituals, religious practice, and medical advancement; and in ways, this coping can actually be seen as ways of organizing and planning for death.[4] Nevertheless, regardless of these attitudes towards death, as something that everyone will inevitably face, the law functions to facilitate management of death as it impacts our society.[5] One such area concerning death that the law addresses is the disposal of human bodies—or "final disposition."[6]

As of January 2023, 6,812,798 deaths due to COVID-19 had been reported to the World Health Organization.[7] This unprecedented death toll highlighted existing challenges in regulating final disposition as governing bodies across the world responded by developing and releasing protocols, guidelines, and policies for the management and safe handling of human bodies in order to ensure the health and safety of their communities.[8] Additionally, this death toll further

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[1] *See* Michael Hviid Jacobson & Anders Peterson, *The Return of Death in Times of Uncertainty¾A Sketchy Diagnosis of Death in the Contemporary 'Corona Crisis'*, 9 MDPI SOC. SCI. 1, 1-2 (2020).

[2] *See id.* at 2.

[3] Allan Kellerhear, *Are We A 'Death-Denying' Society? A Sociological Review*, 18 SOC. SCI. & MED. 713, 713 (1984).

[4] *See id.* at 715-16.

[5] *See* TANYA D. MARSH, SELECTED EXCERPTS FROM THE LAW OF HUMAN REMAINS 2 (2015).

[6] *See* Katie M. Alfus, *Better Homes And Scattered Gardens: Why Iowa Should Legalize "Human Composting" As A Method Of Final Disposition*, 106 IOWA L. REV. 325, 326 (2020) (citing Ray D. Madoff, *Mourning in America: What's Law Got to Do with It?*, *in* LAW AND MOURNING 14, 15-17 (Austin Sarat, Lawrence Douglas & Martha Merrill Umphrey eds., 2017)).

[7] *WHO Coronavirus (COVID-19) Dashboard*, WORLD HEALTH ORG., https://covid19.who.int/ (last visited Jan. 31, 2023).

[8] *See, e.g.*, *Postmortem Guidance*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html

increased awareness such that people are now more willing to engage in conversations about death and dying.[9] Moreover, the funeral industry became overwhelmed in the face of this climbing death toll, as morgues began to fill and states turned to makeshift options.[10] These are only some of the consequences and responses to the mass fatality of the COVID-19 pandemic, but in addition to the many other consequences and responses, they highlight the issues for which final disposition management and regulation can address: the growing scarcity of land space, the environmental impacts of final disposition processes, the public health concerns to our community and those who process and manage final disposition, as well as the intersecting considerations in developing final disposition laws and regulations—for example, the environment, morality, and public health.[11]

As the COVID-19 pandemic was declared and raged on, there was a movement toward an alternative method for final disposition: natural organic reduction (NOR)—or "human composting."[12] On May 1, 2019, Washington became the first state to allow NOR as a legally available option for final disposition.[13] Since then, other states have followed suit in legalizing NOR as an available option in addition to the traditional methods of burial and cremation: Colorado, Oregon, Vermont, California, and New York.[14] The trend continues as bills

(Apr. 4, 2022) [hereinafter *CDC Postmortem Guidance*]; *Postmortem Care Workers and Employers*, OCCUPATIONAL SAFETY AND HEALTH ADMIN., https://www.osha.gov/coronavirus/control-prevention/postmortem-care (last visited Jan. 31, 2023) [hereinafter *OSHA Postmortem Care Workers and Employers*].

[9] Ishrat Islam et al., *Before the 2020 Pandemic: An Observational Study Exploring Public Knowledge, Attitudes, Plans, and Preferences Towards Death and End of Life in Wales*, 20 BMC PALLIATIVE CARE 116, 125 (2021).

[10] *See, e.g.*, Jonathan Allen & Laura Strickler, *Texas Requests Five Mortuary Trailers in Anticipation of Covid Deaths*, NBC NEWS (Aug 16, 2021, 5:15 PM), https://www.cnbc.com/2021/08/16/texas-requests-five-mortuary-trailers-in-anticipation-of-covid-deaths.html.

[11] *See* Alfus, *supra* note 6, at 345-52; *Rights and Obligations As To Human Remains and Burial*, L. OFFS. OF STIMMEL, STIMMEL & ROESER, https://www.stimmel-law.com/en/articles/rights-and-obligations-human-remains-and-burial (last visited Jan. 31, 2023) [hereinafter *Rights and Obligations*].

[12] *See* Team Earth, *Tracker: Where Is Human Composting Legal In The US?*, EARTH (Aug. 9, 2022), https://earthfuneral.com/resources/tracker-where-human-composting-legal/ [hereinafter *Team Earth Tracker*].

[13] *Id.*

[14] *Id.*

proposing the legalization of NOR are currently underway in even more states including Delaware, Illinois, Massachusetts, and Minnesota.[15] As an alternative method of final disposition, NOR holds promise in expanding personal options as well as addressing the social issues concerning final disposition management; for instance, it offers not only a solution to the increasing scarcity of physical space as our population grows, but also to global environmental issues such as global climate change.[16] Further, the existing issues surrounding the management and regulation of final disposition, on which the COVID-19 pandemic shed light, can further inform whether states should legalize NOR as an available option for final disposition.[17]

This Comment will explore considerations informing the adoption of NOR as an option for final disposition in the United States, particularly in light of issues raised in the management of corpses during the COVID-19 pandemic. Part I will provide an overview of the handling of human remains, reviewing the history and policy of funeral law as well as public interest and agency regulation in the disposition of human remains. Part II will discuss the movement in the legalization of human composting on the backdrop of conventional options for final disposition. Part III will analyze the adoption and legalization of NOR as an option for final disposition and recommendations for such adoption. Finally, balance of these considerations will lead to this Comment's conclusion that states should follow suit in adopting NOR as an option for final disposition.

I. HANDLING OF HUMAN BODIES

A. History And Policy Of Funeral Law

This section will lay out the history and policy of funeral law as it stands in the U.S. today. This will set the stage for consideration of NOR as an alternative option for final disposition, providing a foundation as to the policies of funeral law and thus provide a backdrop to consider NOR in light of these funeral law policies.

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[15] *Id.*

[16] Angely Mercado, *Composting a Human Body, Explained*, POPULAR SCI. (Aug 7, 2021, 9:00 AM), https://www.popsci.com/environment/composting-body-burial/.

[17] Jacobson & Peterson, *supra* note 1, at 13.

Funeral law, which, also goes by names such as cemetery law, the law of the dead, the law of human remains, and the law of cadavers, is the collection of laws and regulations that govern the management of death.[18] It encompasses the bodies of laws that touch on subjects surrounding death, from the regulation of the funeral industry to trusts and wills management to the treatment and disposition of human remains.[19] Unsurprisingly, as death has been a necessary part of human existence and hence something that societies have always had to address, the foundation of funeral law in the United States derives from common law.[20]

Hence, today, United States funeral law is "essentially defined by state common and statutory law."[21] This includes a mix of mostly state law and some federal law.[22] That said, perhaps because of the universal fear of and unease around the topic of death, funeral law has evolved to be a patchwork of doctrines and statutes.[23] Adding to this patchwork is funeral law's evolution against the dichotomy between person and thing, two categories around which the U.S. legal system is organized.[24] It straggles across this boundary, which, upon death, a person becomes an object, which the law defines as well as the rights and obligations attached to it.[25] Consequently, funeral law faces challenges in addressing the disposition of human bodies, navigating around this boundary defined by the corpse—an object that which the law defines, yet simultaneously something that is so immediately adjacent to a living person whom which functions and actively participates in the law—and balancing the relevant interests thereof.[26]

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[18] *See* MARSH, *supra* note 5, at 2; Tanya D. Marsh, *Rethinking The Law Of The Dead*, 48 WAKE FOREST L. REV. 1327, 1327 (2013); Alfus, *supra* note 6, at 328.

[19] Marsh, *supra* note 18, at 1331-32; Mary C. Joiner & Ryan M. Seidemann, *Rising From The Dead: A Jurisprudential Review Of Recent Cemetery And Human Remains Cases*, 45 OHIO N.U. L. REV. 1, 2 (2019).

[20] MARSH, *supra* note 5, at 2.

[21] *Id*.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 1-2.

[25] MARSH, *supra* note 5, at 1-2; Ellen Stroud, *Law And The Dead Body: Is A Corpse A Person Or A Thing?*, 14 ANN. REV. L. & SOC. SCI. 115, 117 (2018).

[26] MARSH, *supra* note 5, at 1; Stroud, *supra* note 25, at 117.

However, once a person dies—rendering their corpse to the classification of property—for the purposes of final disposition, the general rule is that the possessory right in the corpse falls, not to the person themselves, as they are no longer alive, but to their next of kin.[27] But that is not to say that there is an unrestricted right of the next of kin when it comes to final disposition; disposition of a dead body is "subject to control by law instead of being subject entirely to the desires, whim, or caprice of individuals,"[28] because there is a strong public interest involved in final disposition such as "public health, safety and welfare."[29] Funeral law thus works to respect the personal preferences of the decedent, is sensitive to a decedent's next of kin, and also accounts for issues relevant to the public interest.[30] Hence, there is a tension in U.S. funeral law, not only in the relationships between common and statutory law, and state and federal law, but also in the balancing of relevant private and public interests.[31] Indeed, final disposition "is a task that local, state, and federal governments must plan for and respond to collaboratively with the private sector and faith-based community."[32]

Notably, U.S. common law acknowledges and respects that a decedent may have wishes with regards to their final disposition.[33] Relevant U.S. statutory law was enacted against this backdrop of a decedent's personal preference and, particularly when it comes to state statutory law, this has varied state-by-state.[34] For instance, some state final disposition laws, such as Florida's, confer a general right to explicitly express a personal preference with regards to one's remains.[35]

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[27] *Rights and Obligations*, *supra* note 11 (citing Sherman v. Sherman, 330 N.J. Super. 638 (N.J. Ch. 1999)); MARSH, *supra* note 5, at 11.

[28] *Rights and Obligations*, *supra* note 11 (citing Wolf v. Rose Hill Cemetery Ass'n, 832 P.2d 1007 (Colo. Cy. App. 1991)).

[29] *Id.*

[30] MARSH, *supra* note 5, at 6-7, 11-12.

[31] *See id.* at 2-3, 9, 11.

[32] Rebecca M. Entress et al., *Managing Mass Fatalities during COVID-19: Lessons for Promoting Community Resilience during Global Pandemics*, 80 PUB. ADMIN. REV. UNIV. OF CENT. FLA. 856, 856.

[33] MARSH, *supra* note 5, at 6.

[34] *See id.* at 7.

[35] *Id.*

Meanwhile, other states, such as South Carolina, confer this right implicitly by permitting individuals to "pre-authorize their own cremations, but not to identify any other personal preferences."[36] Moreover, although state statutory law on final disposition appears to reflect these values in a decedent's personal preference, it has also evolved against the development of the for-profit funeral industry.[37] And in a sense, the funeral industry has informed the enactment of state laws, conforming commercial burial customs, limiting choices, and undermining core values.[38]

As with much U.S. law, funeral law has its roots in English law dating back from the seventeenth and eighteenth centuries.[39] At that time, English law of the dead revolved around religious practices, particularly from ecclesiastical law, which is rooted in Anglican church doctrine.[40] Families and the Church of England dictated much of funeral and burial practices and processes.[41] Naturally, deriving from these practices, remnants of these English practices and processes are still prominent in present day U.S. funeral and disposition practices.[42] Such practices include the washing of corpses and subsequent burials of corpses.[43] This illustrates how religious and cultural practices played a key role in shaping funeral law and subsequently conventional funeral practices.[44] Naturally, funeral law and funeral practices adapted as the religious make-up and diversity in the U.S. increased over time.[45] This is because different religions have different customs when it comes to final disposition and honoring the dead.[46] For instance, "[b]urial is the most common form of disposal of the body in

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[36] *Id.* at 7-8.

[37] Marsh, *supra* note 18, at 1331.

[38] *Id.* at 1331-36.

[39] *Id.* at 1329.

[40] *Id.*

[41] *Id.*

[42] *See id.*

[43] Marsh, *supra* note 18, at 1329.

[44] *See* Michael J. Millonig, *Funerals & Burials: Law and Customs*, 25 No. 4 OHIO PROB. L.J., at 2, 4, 2015 WL.

[45] *See id.* at 9.; *Religious Landscape Study*, PEW RESEARCH CENTER, https://www.pewresearch.org/religion/religious-landscape-study/ (last visited Nov. 13, 2022).

[46] *See* Millonig, *supra* note 44, at 5, 2015 WL.

Christian, Jewish and Muslim culture."[47] On the other hand, in Buddhist and Hindu cultures, "cremation is customary," while "[t]raditional Muslims and Orthodox Jews prohibit cremation."[48] As more religions were represented in the U.S., the funeral industry adapted to accommodate applicable customs and practices beyond those of the Church of England, which included adoption of alternative methods of final disposition.[49]

Nonetheless, U.S. funeral law evolved with the times and developed regulations and enacted statutes that accommodated social and practical preferences and needs beyond meeting religious and cultural needs.[50] For instance, embalming practices erupted during the Civil War as men died away from their homes, creating a need to stabilize corpses for safe transportation closer to their families for burial.[51] Following its success in the practical and safe preservation and transportation of corpses during the Civil War, embalming became a social norm in U.S. funeral practice, which is reflected by some state statutes that followed suit.[52] Such statutes include, for example, the enactment of licensure requirements for professional funeral directors, statutes requiring embalming training and disposition permits.[53] This historical account of the development and adoption of embalming in U.S. funeral practice norms and the law's reflection thereof further supports how U.S. funeral law is a combination of common law doctrines informed by English common law and statutory law informed by the funeral industry.[54]

This historical glimpse of U.S. funeral practices demonstrates U.S. funeral law's evolution against the interplay between personal preferences, social preferences and needs, and the public interests.[55] As in the

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[47] *Id.*

[48] *Id.*

[49] *See id.* at 4-5.

[50] *See* Marsh, *supra* note 18, at 1330-1; David Foos, *State Ready-To-Embalm Laws And The Modern Funeral Market: The Need For Change And Suggested Alternatives*, 2012 MICH. STATE L. REV. 1375, 1376 (2012).

[51] Marsh, *supra* note 18, at 1329-30; Foos, *supra* note 50, at 1384.

[52] Marsh, *supra* note 18, at 1330-31; Foos, *supra* note 50, at 1387.

[53] Marsh, *supra* note 18, at 1331.

[54] *Id.*

[55] *See* MARSH, *supra* note 5; Marsh, *supra* note 18, at 1330; Foos, *supra* note 50, at 1385.

example of the adoption of embalming during the Civil War, there was a practical need as well as a public health concern to safely transport corpses, and the American population responded by adopting the practice of embalming as a social norm even following the war setting.[56] This brief history also makes apparent the attempts of U.S. funeral law to keep up with changing preferences and trends in the modern American funeral.[57] These shifting cultural norms and attitudes are continuing to evolve as Americans are introduced to additional methods of human disposition and learn more about related issues such as the environmental and social impacts and implications of currently available methods.[58] The cultural shift is also in response to the interplay of other social factors such as costs, environmental concerns, and religious practices.[59] Just as there was a cultural shift towards embalming taking place in response to a historic event like the Civil War, the U.S. experienced more cultural shifts in preferences around funeral practices and processes in response to the COVID-19 pandemic.[60] As funeral law has worked to reflect emerging preferences in the past, this shows promise for its malleability to adapt to cultural shifts and ability to accommodate new practices such as NOR.[61]

Indeed, there is continued evidence of changing preferences around funeral practices, showing an apparent cultural evolution towards a preference for a range of alternative methods for final disposition.[62] These shifting preferences have found to be in response to various factors related to funerals such as high costs, environmental concerns, and religious and cultural customs and practices.[63] Even more, the National Funeral Directors Association found that in 2022, 60.5% of Americans "would be interested in exploring 'green' funeral options because of their potential environmental benefits, cost

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[56] Marsh, *supra* note 18, at 1329-30.

[57] Marsh, *supra* note 18, at 1331; *see* Foos, *supra* note 50, at 1385.

[58] *See* Marsh, *supra* note 18, at 1339-1340; Alfus, *supra* note 6, at 330-332.

[59] Marsh, *supra* note 18, at 1339-1340.

[60] Jacobson & Peterson, *supra* note 1, at 13-14.

[61] *See* Alfus, *supra* note 6, at 329.

[62] Marsh, *supra* note 18, at 1339-1340.

[63] *Id.*

savings" or other reasons.[64] This further demonstrates the need to consider additional alternative options for final disposition as well as the interplay between the various aspects and issues concerning final disposition.

Overall, in addition to the history of funeral law, the policies behind funeral law can also inform the adoption of new practices as it evolves.[65] As previously discussed, funeral law concerns honoring personal preference as well as serving public interests and maintaining public health and safety.[66] Hence, funeral law's evolution to adopt NOR should also consider these interests.

B. Public Interests And Agency Regulation In The Disposition Of Human Bodies

Given the ubiquitous need to dispose of human bodies after death and the relevant public interests, it is only fitting that federal agencies set out regulations, policies and guidelines concerning final disposition.[67]

1. Interested Agencies

Multiple federal agencies speak to the final disposition of human bodies, such as the Federal Trade Commission (FTC), the Centers for Disease Control and Prevention (CDC), the Environmental Protection

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[64] *Statistics*, NAT'L FUNERAL DIRS. ASS'N, https://www.nfda.org/news/statistics (last updated Sept. 12, 2023); *see also* Alex Brown, *More People Want a Green Burial, but Cemetery Law Hasn't Caught Up*, STATELINE (Nov. 20, 2019, 12:00 AM), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2019/11/20/more-people-want-a-green-burial-but-cemetery-law-hasnt-caught-up.

[65] *See Rights and Obligations*, *supra* note 11.

[66] *See id.*

[67] *See* 16 C.F.R. § 453.1 (2022); *Importation of Human Remains into the United States for Burial, Entombment, or Cremation*, CTRS. FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/importation/human-remains.html (Nov. 10, 2021) [hereinafter *CDC Importation*]; *Collection and Submission of Postmortem Specimens from Deceased Persons with Confirmed or Suspected COVID-19*, CTRS. FOR DISEASE CONTROL AND PREVENTION (Apr. 4, 2022), https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-postmortem-specimens.html [hereinafter *CDC Collection*]; *Burial at Sea*, U.S. ENV'T PROT. AGENCY, https://www.epa.gov/ocean-dumping/burial-sea (Apr. 4, 2022); *Rights and Obligations*, *supra* note 11.

Agency (EPA), the Occupational Safety and Health Administration (OSHA), and the Federal Emergency Management Agency (FEMA).[68]

One notable regulation is 16 C.F.R. § 431, commonly known as the Funeral Rule, promulgated by the FTC.[69] The purpose of the Funeral Rule is "to provide detailed information about prices and legal requirements to persons arranging funerals."[70] It sets out requirements to protect consumers, particularly because of the high costs of funerals and that consumers are generally uninformed when it comes to arranging funerals.[71] This is because consumers "lack familiarity with funeral transactions," most having not previously arranged a funeral before.[72] Additionally, consumers must make decisions "under the emotional strain of bereavement" and also within short time constraints following death of the deceased.[73] Thus, without any restrictions or regulations thereof, the funeral industry had opportunity to implement unfair and deceptive practices in response to these states of the average consumer; for example, by requiring consumers to purchase "prepackaged" funerals," and refusing to discuss price information over telephone.[74] It was against this backdrop that the Funeral Rule was promulgated.[75] The Funeral Rule aims to protect consumers from these unfair and deceptive practices, and particularly to "lower existing barriers to price competition in the funeral market and to facilitate informed consumer choice."[76] It does so by ensuring that consumers have sufficient access to information to make informed decisions, are not required to purchase goods and services they do not wish to purchase, and that misrepresentations are not made.[77]

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[68] *See, e.g.*, 16 C.F.R. § 453.1 (2022); *CDC Importation*, *supra* note 67; *CDC Collection*, *supra* note 67; *Burial at Sea*, *supra* note 67; *OSHA Postmortem Care Workers and Employers*, *supra* note 8; *COVID-19 Funeral Assistance*, FED. EMERGENCY MGMT. AGENCY, https://www.fema.gov/disaster/coronavirus/economic/funeral-assistance (Dec. 4, 2023).

[69] 16 C.F.R. § 453.1 (2022).

[70] Trade Regulation Rule; Funeral Industry Practices 47 Fed. Reg. 42,260, 42,260 (Sept. 24, 1982).

[71] *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

Other agencies have also issued regulations and guidance pertaining to the disposition of human remains, such as the EPA's Burial at Sea regulation, authorized under the Marine Protection, Research and Sanctuaries Act (MPRSA).[78] The regulation sets out requirements for obtaining permits and instructions for acceptable burials at sea.[79] The CDC also has guidelines pertaining to final disposition; for instance, the "Importation of Human Remains into the United States for Burial, Entombment, or Cremation,"[80] which sets forth requirements for the safe transportation of human remains from abroad.[81]

These numerous regulations demonstrate the large-scale federal public interest in maintaining safe final disposition and highlight the overarching policies of funeral law, such as honoring personal preferences, including those related to religious and cultural practices, as well as addressing environmental and public health issues.[82]

2. COVID-19 Response In The Management Of Human Bodies

The COVID-19 pandemic posed many issues concerning public health, one of which was how to manage the human remains of the deceased who passed due to COVID-19.[83] At the time of COVID-19's emergence, there was a lot of uncertainty concerning the COVID-19 virus because of its novelty, and although our society tried to keep up with learning more about the virus, infection rates soared and hence communities had to respond quickly to the mass casualties.[84] Communities were faced with challenges in managing the unprecedented volume of dead bodies against the need to contain the infectious virus while also honoring the bodies of the dead and the loved ones of the deceased with respect and dignity.[85]

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[78] *Burial at Sea, supra* note 67.

[79] *Id.*

[80] *CDC Importation, supra* note 67.

[81] *Id.*

[82] *Rights and Obligations, supra* note 11.

[83] Jeff Clyde G. Corpuz, *A Dignified Death: Management of Dead Bodies During COVID-19*, 44 J. OF PUB. HEALTH e281 (2021).

[84] *See id.*

[85] *See id.*

Indeed, the COVID-19 pandemic was not the first public health crisis that involved mass casualties due to infectious disease.[86] Such recent crises include the Zika virus, MERS, and Ebola.[87] Even so, for thousands of years, it has been known that "[d]ead bodies can and do transmit infections to humans."[88] Particularly, "[w]hen a death occurs from a contagious infectious disease, the pathogens on the cadaver can pose a public health threat."[89] Thus, although much was still unknown about the COVID-19 virus and its infectiousness and transmissibility upon death, communities responded against this general background of knowledge that dead bodies can transmit infections to humans.[90]

The death management industry quickly became overwhelmed by the unprecedented death toll that resulted from the COVID-19 pandemic.[91] Indeed, the COVID-19 pandemic has been found to represent a mass fatality incident: "a disaster "situation where there are more bodies than can be handled using existing local resources."[92] Subsequently, communities responded by resorting to mass holding spaces for the bodies of the deceased.[93] For instance, as morgues filled, multiple states such as New York, Louisiana, and Florida, utilized refrigerated trailers as temporary morgues.[94] New York even turned to mass burials to meet the increasing demand for burial sites.[95] That said, mass burials were not a new practice to New York because of the pandemic; in fact, "New York City regularly uses mass graves when the deceased

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[86] Eloisa C. Rodriguez-Dod et al., *Tears in Heaven: Religiously and Culturally Sensitive Laws for Preventing the Next Pandemic*, 66 CATH. UNIV. L. REV. 117, 118 (2016).

[87] *Id.* at 118-19.

[88] *Id.* at 131.

[89] *Id.* at 132.

[90] *See* Yaacoub et al., *Safe Management of Bodies of Deceased Persons with Suspected or Confirmed COVID-19: A Rapid Systemic Review*, 5 BMJ GLOBAL HEALTH (2020).

[91] *See* Entress et al., *supra* note 32, at 856.

[92] *Id.* (quoting David A McEntire, DISASTER RESPONSE AND RECOVERY: STRATEGIES AND TACTICS FOR RESILIENCE (2007)).

[93] Entress et al., *supra* note 32, at 857.

[94] *Id.*

[95] *Id.*; Meg Anderson, *Burials On New York Island Are Not New, But Are Increasing During Pandemic*, NPR (Apr. 10, 2020, 3:36 PM), https://www.npr.org/sections/coronavirus-live-updates/2020/04/10/831875297/burials-on-new-york-island-are-not-new-but-are-increasing-during-pandemic.

does not have family members or cannot afford a funeral."[96] In addition to this capacity constraint for holding dead bodies, there were also constraints in the delivery of dead bodies to loved ones.[97] For example, families' receipt of their loved one's ashes post-cremation were delayed and there were miscommunications in the location and storage of the deceased.[98] These responses to the constraints in the deathcare industry only added to an already emotional and stressful process for the loved ones of the deceased.[99] Furthermore, many cultural and religious practices had to be foregone as a way to prevent the spread of COVID-19, which further exacerbated the stress and anxiety around the mourning and grieving process.[100] From this, it can be seen that communities were challenged with containing infection rates throughout the community while finding ways to physically meet the demands of the rising death toll, but at the expense of limiting mourning and grieving practices.[101]

As the U.S. community learned more about COVID-19, relevant U.S. agencies were able to further expand on guidance.[102] For instance, on the federal level, OSHA issued and updated guidance for Postmortem Care Workers and Employers.[103] The guidance outlines safe protocols, practices and controls, for workers who come into contact with "the remains of people who have died of COVID-19, or complications resulting from it."[104] The guidance also makes references to various guidelines promulgated by the CDC.[105] The CDC also provides guidelines around postmortem activities, for instance within its Postmortem Guidance under its umbrella COVID-19 site.[106] The CDC's postmortem guidance "provides specific interim recommendations for the

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[96] Entress et al., *supra* note 32, at 857.

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *See id.* at 857-58.

[102] *See OSHA Postmortem Care Workers and Employers, supra* note 8.

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] *CDC Postmortem Guidance, supra* note 8.

collection and submission of postmortem specimens from deceased persons with confirmed or suspected COVID-19,"[107] and particularly "for biosafety and infection control practices during specimen collection and handling, including during autopsy procedures."[108]

Beyond these efforts to limit the spread of the disease itself, other agencies have also responded to other issues related to final disposition that have arisen from the COVID-19 pandemic.[109] For example, FEMA instated a funeral assistance fund to address the financial costs of a COVID-19 funeral and increase the ability and accessibility for loved ones of the deceased to hold funerals and honor applicable funeral practices.[110] These various agency efforts further demonstrate the interrelation between the relevant issues and interests pertaining to final disposition as a result of the COVID-19 pandemic.[111] Here, OSHA's guidance for Postmortem Care Workers and Employers and the CDC's Postmortem Guidance addresses the public health concern of limiting COVID-19 infections amongst deathcare workers and the wider community thereafter while FEMA's funeral assistance fund addresses the socioeconomic concerns around funeral costs and ensuring the ability to adequately honor the deceased.[112]

As the COVID-19 pandemic was a global pandemic, the international response to addressing final disposition and the mass fatality is also informative.[113] Notably, the World Health Organization (WHO) issued an interim guidance for "Infection Prevention and Control for the safe management of a dead body in the context of COVID-19."[114] The guidance provides key considerations and recommendations for handling bodies of those who have died of suspected or confirmed COVID-19, and highlights these against a background of common final

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[107] *Id.*

[108] *Id.*

[109] *See COVID-19 Funeral Assistance, supra* note 68.

[110] *Id.*

[111] *See CDC Postmortem Guidance, supra* note 8; *COVID-19 Funeral Assistance, supra* note 68.

[112] *See OSHA Postmortem Care Workers and Employers, supra* note 8; *CDC Postmortem Guidance, supra* note 8; *COVID-19 Funeral Assistance, supra* note 68.

[113] *See* WORLD HEALTH ORG., INFECTION PREVENTION AND CONTROL FOR THE SAFE MANAGEMENT OF A DEAD BODY IN THE CONTEXT OF COVID-19 1 (2020) [hereinafter WHO INFECTION PREVENTION].

[114] *Id.*

disposition methods.[115] For example, the guidance particularly provides that embalming, which is common in preparing a body for burial, "is not recommended to avoid excessive manipulation of the body."[116] The guidance provides further practical recommendations to ensure safe handling of the bodies of persons who have died from suspected or confirmed COVID-19 by deathcare workers, such as Personal Protective Equipment (PPE) recommendations while performing autopsies and environmental controls and measures in spaces where dead bodies are handled including mortuaries and rooms where autopsies are performed.[117]

Moreover, the WHO's guidance also contemplates other issues beyond the practical activities in preparing the dead body for and carrying out final disposition.[118] For example, the guidance recommends funeral homes and mortuaries to give family of the deceased "clear instructions *not* to touch or kiss the [dead] body" if they wish to view the body and not touch the body.[119] Furthermore, the guidance recommends that "[a]uthorities should manage each situation on a case-by-case basis, balancing the rights of the family, the need to investigate the cause of death, and the risks of exposure to infection."[120] This further supports the importance of the various issues—here, the concern in containing infection as well as the families' abilities to honor and mourn the death of their loved ones—surrounding final disposition and ensuring that they are considered in implementing guidelines and regulations.[121]

Overall, these international and domestic responses to the mass fatality incident that the COVID-19 pandemic represented further highlight the various interrelated issues surrounding final disposition, which help to inform the adoption of alternative options for final disposition, namely, NOR, in the U.S.

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[115] *Id.* at 1-2.

[116] *Id.* at 1.

[117] *Id.* at 1-2, 5-6.

[118] *See id.* at 1-3, 5.

[119] WHO INFECTION PREVENTION, *supra* note 113, at 1-3 (emphasis added).

[120] *Id.* at 1.

[121] *See id.* at 1-2.

II. LEGALIZATION OF HUMAN COMPOSTING

This section will discuss the legalization of NOR in the United States, considering the current conventional methods as well as the current legal landscape of the NOR as it stands today in the U.S.

NOR is conventionally known as "human composting."[122] It is also known as "recomposition,"[123] and is encompassed under categories of "green burials" and "natural burials."[124] The Green Burial Council defines green burials as those with "no embalming, no liners or vaults, and using biodegradable containers, whether caskets, shrouds or nothing at all."[125] Green burials have also been described as a way to lay bodies to rest "in a way that has the smallest impact on the earth."[126] NOR in particular "requires little to no material, fossil fuel or space."[127] Hence, NOR as an alternative method for final disposition clearly presents an option that addresses environmental issues, particularly, global climate change.[128] But even more, further consideration of the processes and implications of NOR shows how it can also address the issues raised in the previous discussion related to the policies behind funeral law, as well as the public health, social, and economic issues surrounding final disposition as highlighted by the response to the mass fatality incident that was the COVID-19 pandemic.

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[122] *See* Alfus, *supra* note 6, at 327; Brendan Kiley, *COVID moves Recompose, the human-composting alternative to burial and cremation, into smaller space, accelerated timeline,* THE SEATTLE TIMES (Aug. 7, 2020, 6:00 AM), https://www.seattletimes.com/life/covid-moves-recompose-the-human-composting-alternative-to-burial-and-cremation-into-smaller-space-accelerated-timeline/; *Team Earth Tracker, supra* note 12.

[123] Alfus, *supra* note 6, at 327.

[124] *Other Disposition Options*, GREEN BURIAL COUNCIL, https://www.greenburialcouncil.org/other_disposition_options.html (last visited Nov. 12, 2022).

[125] *Criteria and Characteristics of Green Burial*, GREEN BURIAL COUNCIL, https://www.greenburialcouncil.org/greenburialdefined.html (last visited Nov. 12, 2022).

[126] Sarah Donahue, *Green Burials Adapt to Protect 'Death Care' Workers in the Time of Pandemic*, THE FAIRFIELD SUN TIMES (May 9, 2020), https://www.fairfieldsuntimes.com/news/national/green-burials-adapt-to-protect-death-care-workers-in-the-time-of-pandemic/article_f85706ea-927c-11ea-9b85-5faa6e40955f.html.

[127] Evan Bush, *'I've always wanted to be a tree': Human Composting Starts to Catch On*, NBC NEWS (Sept. 27, 2022, 2:00 PM), https://www.nbcnews.com/science/science-news/ve-always-wanted-tree-human-composting-starts-catch-rcna48653.

[128] Alfus, *supra* note 6, at 347.

In fact, as a preliminary example of the promise that green burials, and specifically NOR, hold in addressing these issues is how green burials were attuned to protect deathcare workers during the COVID-19 pandemic.[129] As previously discussed, the WHO's guidance on Infection Prevention and Control for the safe management of a dead body in the context of COVID-19 does not recommend embalming.[130] Although embalming came to be routine practice based on a belief that it prevented the spread of disease during the Civil War, growing knowledge over time has revealed that the process actually "creates a danger to the embalmer by exposing them" to pathogens that may be present.[131] This is because embalming involves "removing bodily fluid and replacing them with chemical solutions for the purpose of preservations."[132] Further, a key characteristic that distinguishes green burials from traditional burials is the absence of embalming in green burials.[133] Hence, green burials presented an option that would have addressed safe management practices of dead bodies and protection of deathcare workers during the COVID-19 pandemic in addition to addressing the general environmental issues to which were previously alluded.[134]

Furthermore, adoption of NOR as an alternative method for final disposition has been considered as an option that would promote "efficient land use, environmental protection, consumer welfare, public health, and social equality."[135] This section explores NOR as a method for final disposition and its legalization against a backdrop of current conventional methods for final disposition in the U.S, which will help to inform the adoption of NOR as an alternative method for final disposition.

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[129] Donahue, *supra* note 126.

[130] *See* WHO INFECTION PREVENTION, *supra* note 109, at 1.

[131] Millonig, *supra* note 44, at 4, 2015 WL.

[132] Donahue, *supra* note 126.

[133] *Id.*

[134] *Id.*

[135] Alfus, *supra* note 6, at 325.

A. Conventional Methods For Final Disposition

Today, the two most common methods for final disposition in the U.S. are cremation and burial.[136] In fact, according to the National Funeral Directors Association 2021 Cremation and Burial Report, 94.1% of U.S. final dispositions were by either cremation or burial.[137]

A traditional burial in the U.S. today "involves a preparation and embalming of the body by a funeral home."[138] Particularly, coming out of the Civil War, the practice of embalming is unique to the routine funeral practices in the U.S. and Canada while it is not in other countries.[139] Embalming is the process of sterilizing a dead body and protecting it from decay.[140] This process involves draining blood and cavity fluid from the body, and replacing it with chemical solutions and preservatives.[141] Preparation of the body for a traditional burial also includes subsequently placing the body in a casket, which is then "transported to a cemetery for burial with a headstone or other grave markers."[142] With regards to cemeteries in the U.S., there are various types of cemeteries such as "churchyards, municipal cemeteries, rural cemeteries, and lawn cemeteries (also known as memorial parks)."[143] And over time, a growing population along with urban sprawl has increased the need for rural cemeteries and additional methods, for instance, the mass burial sites in New York City previously discussed.[144]

Different aspects of the process of traditional burials contribute to the toll that traditional burials take on the environment.[145] Primarily, the process of embalming itself, which, as mentioned, has become a

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[136] *Id.* at 328.

[137] *See Statistics*, *supra* note 64.

[138] Millonig, *supra* note 44.

[139] *Id.*

[140] *Embalming*, ENCYCLOPAEDIA BRITANNICA, https://www.britannica.com/topic/embalming, (Oct. 21, 2023).

[141] *Id.*

[142] Millonig, *supra* note 44.

[143] Alfus, *supra* note 6, at 329.

[144] *Id.*; Anderson, *supra* note 95.

[145] Julia Calderone, *Burying dead bodies takes a surprising toll on the environment*, Bus. INSIDER (Nov. 4, 2015, 3:23 PM), https://www.businessinsider.com/burying-dead-bodies-environment-funeral-conservation-2015-10.

perceived-required step in the traditional U.S. burial practice, involves a number of chemicals that are toxic to the environment as well as the health and safety of those handling the embalming process.[146] Such chemicals include "formaldehyde, phenol, methanol, and glycerin."[147] Moreover, traditional burials involve a large amount of materials and natural resources, for example, copper, bronze, and/or wood, for building caskets.[148] Furthermore, as alluded to above, traditional burials take up a lot of physical space in the form of cemeteries and graveyards.[149] That said, it is not only the physical space of cemeteries and graveyards that is an environmental concern but also the resources involved in maintaining those areas.[150] Such resources, for example, include tons of "water, chemical fertilizers, and pesticides" to maintain the pristine lawns that are frequently seen in these areas.[151]

In 2021, the median cost of a funeral with a traditional burial was approximately $7,848.[152] This price includes nondeclinable basic services fee, removal/transfer of remains to funeral home, embalming, other preparation of the body, use of facilities/staff for viewing and funeral ceremony, transportation services including hearse and service car/van, printed materials (for basic memorial package), and metal burial casket.[153] Notably, this does not include other aspects associated with a traditional burial such as the burial vault, burial plot, and headstone/grave markers.[154] These additional items increase the cost of the traditional burial; for example, the median cost of a vault is $1,575,

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[146] *Id.*; MILTON FIELDS, *Why Convesntional Burial Harms the Environment*, https://miltonfieldsgeorgia.com/conventional-burial-harms-environment/ (last visited Jan. 26, 2023); Sonya Vatomsky, *Thinking About Having a 'Green' Funeral? Here's What to Know*, N.Y. TIMES (Mar. 22, 2018), https://www.nytimes.com/2018/03/22/smarter-living/green-funeral-burial-environment.html.

[147] Calderone, *supra* note 145.

[148] *Id.*

[149] *Id.*

[150] *Id.*

[151] *Id.*

[152] *Statistics*, *supra* note 64.

[153] *2021 NFDA General Price List Study Shows Funeral Costs Not Rising as Fast as Rate of Inflation*, NAT'L FUNERAL DIRS. ASS'N (Nov. 4, 2021), https://nfda.org/news/media-center/nfda-news-releases/id/6182/2021-nfda-general-price-list-study-shows-funeral-costs-not-rising-as-fast-as-rate-of-inflation [hereinafter *2021 NFDA General Price List*].

[154] *See id.*

bringing the overall median price of funeral total with vault to $9,420.[155] And the average price of a burial plot ranges between $1,000 and $4,500.[156] This illustrates how the expenses for a traditional burial can quickly add up and increase the burden on the deceased loved ones.

Cremation is the most common method for final disposition in the U.S.[157] Conventional "[c]remation is the process of burning the body at high temperatures in a crematorium furnace."[158] This is essentially a combustion process that requires temperatures between 1,400 and 1,600 degrees Fahrenheit.[159] The cremation process itself can take anywhere from thirty minutes to two hours to complete.[160] This process also includes "the pulverization of the bone fragments."[161] Thereafter, the resulting cremains can be buried, "stored permanently at a crematory, kept by a decedent's family in an urn," or scattered.[162]

Because cremation appears to utilize less resources than a traditional burial, it has been marketed as an environmentally-friendlier final disposition option.[163] Notably, a traditional burial requires the use of chemicals formaldehyde and taking physical space for the burial itself while cremation does not.[164] However, it has become increasingly apparent that there are still some environmental implications of a conventional cremation to consider.[165] Particularly, "[c]remation requires

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[155] *Id.*

[156] Geoff Williams, *What to Know Before Buying a Burial Plot*, U.S. NEWS (Oct. 13, 2021, 11:10 AM), https://money.usnews.com/money/personal-finance/family-finance/articles/what-to-know-before-buying-a-burial-plot.

[157] *See Statistics*, *supra* note 64.

[158] Millonig, *supra* note 44.

[159] *Cremation Process*, CREMATION ASS'N. OF N. AM., https://www.cremationassociation.org/page/CremationProcess (last visited Nov. 13, 2022).

[160] *Id.*

[161] *Id.*

[162] Alfus, *supra* note 6, at 330.

[163] Becky Little, *The environmental toll of cremating the dead*, NAT'L GEOGRAPHIC (Nov. 5, 2019), https://www.nationalgeographic.com/science/article/is-cremation-environmentally-friendly-heres-the-science.

[164] *See id.*

[165] *See id.*

a lot of fuel, and it results in millions of tons of carbon dioxide emissions per year."[166]

There are also indirect environmental implications; for instance, in India, "Hindus have a long tradition of cremating relatives on an open-air pyre," which requires clearing of trees and which process "contributes to air and river pollution since most pyre cremations occur near water."[167] Returning the focus to U.S. cremation practices also points to the additional environmental concerns when it comes to conventional cremation.[168] In contrast to the Hindu cremation practice on open-air pyres, "all cremations happen indoors at crematoriums" in the U.S. and involve a great amount of energy and resulting carbon dioxide emissions.[169] And even though these crematoriums are built with filtration systems, these filtration systems "are focused on reducing metals and particulate matter and nitrous oxide," and "do not neutralize the [carbon dioxide] generated by cremating a body."[170] Indeed, it has been estimated that "cremations in the U.S account for about 360,000 metric tons of [carbon dioxide] emissions each year."[171] Moreover, while it is noted that cremation addresses the scarcity of space issue involved with cemeteries and graveyards in traditional burials, by the resulting ashes, "cremated ashes are sterile and do not supply nutrients back into the earth."[172]

In 2021, the average cost of a funeral with cremation was approximately $6,971.[173] This price includes the nondeclinable basic services fee, removal/transfer of remains to funeral home, embalming, other preparation of the body, use of facilities/staff for viewing and funeral ceremony, transportation services including hearse and service car/van, printed materials (for basic memorial package), cremation fee, cremation casket, and urn.[174]

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[166] *Id.*

[167] *Id.*

[168] *See id.*

[169] *Id.*

[170] *Id.*

[171] *Id.*

[172] Calderone, *supra* note 145.

[173] *Statistics*, *supra* note 64.

[174] *2021 NFDA General Price List*, *supra* note 153.

Other less common traditional methods for final disposition include anatomical gift, burial at sea, funeral pyre, and mummification.[175] Furthermore, there are additional unusual and new methods including alkaline hydrolysis, cryonic preservation, promession, eternal reefs, diamond, space burial, and notably, green burials including NOR.[176] That said, although there are multiple additional methods beyond the conventional methods of burial and cremation, these alternative methods are not legal options nor does the funeral industry accommodate such options everywhere.[177] What these options make apparent and further supports, however, is the growing demand and the cultural shift in changing preferences for alternative options for final disposition.[178]

B. Background And Current Status Of Human Composting As An Alternative For Final Disposition

This subsection will provide a background on the processes of NOR that will set up an analysis between NOR and the two previously discussed most common conventional methods of final disposition. Such analysis will also be based on a backdrop of the current legality and feasibility of NOR within the U.S., that which will also be considered and presented in the next subsection.

As noted, NOR is commonly referred to as "human composting."[179] This follows as, at the most basic level, the method of NOR is essentially the breaking down of unembalmed remains, converting them into soil.[180] A look at the NOR method conducted by Seattle, Washington-based Recompose, the first full-service human-composting funeral home, helps to present the NOR process.[181] Its method involves placing the deceased body with organic materials such as "straw, alfalfa, and wood chips," inside an enclosure, which

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[175] Millonig, *supra* note 44, at 4-5, 2015 WL.

[176] *Id.*

[177] *See id.*

[178] *See* Marsh, *supra* note 18, at 1339-40; *see* Millonig, *supra* note 44, at 2-5, 2015 WL.

[179] *See, e.g.*, Mercado, *supra* note 16; Alfus, *supra* note 6, at 327; Team Earth, *supra* note 12.

[180] Mercado, *supra* note 16.

[181] *Our Model*, RECOMPOSE, https://recompose.life/our-model/#the-process (last visited Jan. 22, 2023).

Recompose calls a "vessel," and allowing time for the transformation into soil.[182] The overall process occurs over several weeks.[183] This involves the decomposition process itself, which occurs over approximately thirty days, the screening of the resulting soil for non-organic items such as hip implants, and subsequent drying and curing of the resulting soil, which adds an additional two to six weeks.[184]

Though this description of the process seems impersonal and detached, it is not as such as procedures are implemented to ensure that the deceased body is handled with care and that the needs of the deceased' loved ones are honored and met.[185] For instance, Recompose has employees closely monitoring the decomposition process while the deceased body is in the vessel decomposing.[186] Additionally, there is a "laying-in ceremony," which "is similar to a graveside service or green funeral," to which loved ones are able to join to honor their loved ones.[187] Moreover, Recompose staff also keep loved ones updated of pivotal moments throughout the entire several weeks of transformation into soil process.[188] Finally, once the soil is complete, "families can either take it home for use on trees and plants, or donate it to conservation efforts."[189] Markedly, this soil is nutrient-rich and "can be used to enrich garden beds, planted with a tree" among other productive uses.[190]

Beyond these steps and processes immediately discussed above, also available is a "Cedar Room," a private space where loved one can perform hands-on care for the deceased person, such as fulfilling "religious/spiritual needs for ritual bathing."[191] Relatedly, other aspects of the overall death care process can be accommodated to support

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[182] Mercado, *supra* note 16.

[183] *Id.*; *Our Model*, *supra* note 178.

[184] *Our Model*, *supra* note 178.

[185] *Id.*

[186] *Id.*

[187] *About the Laying-In Cremony*, RECOMPOSE, https://recompose.life/education/about-the-laying-in/ (last visited Jan. 22, 2023).

[188] *Death Care*, RECOMPOSE, https://recompose.life/death-care/#our-services (last visited Jan. 22, 2023).

[189] *Our Model*, *supra* note 181.

[190] *Id.*

[191] *Id.*

individual cases and meet spiritual needs; for instance, it is noted that "many members of the Jewish faith are often buried the same day after their passing," and Recompose can work with families to respect and meet this personal need.[192]

The cost of NOR varies and ranges from $5,000 to $7,000, with Recompose in particular offering NOR for a price of $7,000.[193] However, other full-service human-composting funeral homes have since been established and offer different prices.[194] There is, for example, Return Home, based in Auburn, Washington, setting their NOR services at a price of $4,950, and Earth, based in Portland, Oregon and Auburn, Washington, setting their NOR services at prices ranging from $5,000 and $6,000.[195] Notably, these NOR prices include all services involved, starting from the handling of the deceased body through the decomposition and ultimate transformation into soil.[196] Such services, specifically for Recompose, for example, include the support from the Recompose staff, transportation of the body, death certificate filing, an online obituary, the transformation into soil itself, and the resulting soil.[197]

Review of the overall NOR process shows that NOR can address the many functions of and policy behind funeral law as well as the issues of concern presented by the conventional methods of final disposition of traditional burial and conventional convention. These functions and issues have been, as previously discussed throughout this Comment, recognized through the history and evolution of funeral law but also particularly highlighted as a result of the mass fatality incident that was the COVID-19 pandemic. This includes the environmental, socioeconomic, and cultural and spiritual issues concerning final disposition.

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[192] Mercado, *supra* note 16.

[193] *Death Care*, *supra* note 188; Sophie Hirsh, *Human Composting Can Actually Be More Affordable Than a Traditional Burial*, GREEN MATTERS (Oct. 31, 2022, 4:58 PM), https://www.greenmatters.com/sustainable-living/how-much-is-human-composting.

[194] Hirsh, *supra* note 193.

[195] *Id.*

[196] *Id.*

[197] *Id.*

C. Current Legal Landscape Of NOR In The U.S.

As of January 2023, NOR has been legalized in at least six U.S. states.[198] As noted, Washington became the first state to legalize NOR as an alternative method for final disposition in 2019.[199] The five states that have followed suit in the legalization of NOR include Colorado and Oregon in 2021, and most recently, Vermont, California, and New York in 2022.[200] And there are an additional four states—Delaware, Illinois, Massachusetts, and Minnesota—where bills proposing legalization of NOR have been introduced or are in process.[201] This progression of bill introduction and subsequent successful bill passing across the states provides evidence of the increasing movement towards the legalization of NOR and response to shifting cultural preferences for final disposition across the U.S.[202] That said, it is noted that there are two states where bills proposing legalization of NOR were introduced but did not pass.[203] These two states are Hawaii and Maine.[204]

A look at some of the active laws that permit NOR as an alternative option for final disposition can provide insight in how the law operates to make NOR possible and how regulators and the funeral industry can respond to enable its successful implementation.[205] Particularly, these laws incorporate language that broadens the options for final disposition.[206] Looking to the first law that legalized NOR in the nation, the Washington law expanded final disposition by incorporating more generalized terms throughout the relevant chapter.[207] This was done, for instance, by "removing the term "cremated" so that the term "human remains" can include those processed by a

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198 James Bickerton, *Human Composting is Legal In These Six States*, NEWSWEEK (Jan. 2, 2023, 9:01 AM), https://www.newsweek.com/human-composting-legal-these-six-states-1770699.

199 *Id.*

200 Bickerton, *supra* note 198; Team Earth, *supra* note 12.

201 Team Earth, *supra* note 12.

202 Marsh, *supra* note 18; *see also* Millonig, *supra* note 44.

203 Team Earth, *supra* note 12.

204 *Id.*

205 *See* WASH. ADMIN. CODE §§ 246-500.055 (2021); H.B. 20-1060, 72d Gen. Assemb., 2d Reg. Sess. (Colo. 2020).

206 *See* ADMIN. §§ 246-500.055; H.B. 20-1060.

207 *See* S.B. 5001, 2019 Reg. Sess. (Wash. 2019).

new method," and by incorporating the broader term of "final disposition" in place of specific terms referring to traditional methods such as "burial" or "cremation."[208]

Similarly, the enacted Colorado law that legalizes NOR replaces specific terms of "burial, cremation, interment, and entombment" in the former law with the broader term of "final disposition," giving more flexibility not only to personal choice of final disposition but also in expanding the scope of other laws that address final disposition.[209] Such other laws include, for instance, life insurance statutes, the "Colorado Probate Code," the "Disposition of Last Remains Act," and the "Revised Uniform Anatomical Gift Act."[210] As such, these laws are able to reach alternative options of final disposition beyond those traditional conventional modes that were explicitly specified in the previous version of the law, that is, "burial, cremation, internment, and entombment."[211]

Bills, in other states, that proposed legalization of NOR and have been recently passed follow a similar trend of incorporating generalized language regarding final disposition.[212] Most recently, the bill in New York introduced "Natural Organic Reduction" and applicable processing requirements of performing NOR in handling human remains.[213] The bill also made broadening adjustments, replacing "creamains" with "remains," as seen similarly in the Colorado and Washington bills.[214]

These similarities between the passed bills in the different states can suggest that there are similar issues that states are aiming to address in making these changes. Additionally, it makes apparent the growing demand to broaden options in final disposition to reflect the cultural shift and changing preferences across the states.[215] Furthermore, the broadening language may also further underscore the

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[208] Alfus, *supra* note 6, at 344; S.B. 5001.

[209] H.B. 20-1060.

[210] *Id.*

[211] *See id.*

[212] *See* S.B. 5535, 2021-2022 Reg. Sess. (N.Y. 2021).

[213] *Id.*

[214] *Id.*

[215] *See* Marsh, *supra* note 18, at 1339; Millonig, *supra* note 44.

interdisciplinary nature of funeral law. Take for example the previously discussed incorporation of the more general term "final disposition" in the Colorado law in expanding the scope to other relevant laws; this points to the need to ensure that all laws pertaining to final disposition reach the newly legalized option of NOR.[216] It follows that state legislatures acknowledge these different issues pertinent to funeral law and the adoption of NOR may help to address such issues.

Additionally, these state laws legalizing NOR make reference to the regulation and processes of final disposition, demonstrating another previously alluded to aspect of the interdisciplinary nature of final disposition law.[217] For example, the Colorado bill notes that "[n]atural reduction is added to statutes that regulate funeral establishments, and this addition will result in the regulation of the natural reduction process."[218] This suggests that the laws and regulations work together in the functioning of final disposition law and that states should legislate in light not only of enacted law but also on the backdrop of established regulations. This includes state regulations as well as those federal regulations, some of which were previously presented in Section I, B, 1 of this Comment.

III. ADOPTION OF NATURAL ORGANIC REDUCTION (NOR) ADDRESSES FUNERAL LAW POLICY AND PARTICULARLY THOSE ISSUES HIGHLIGHTED BY COVID-19

Consideration of the above presented issues throughout this Comment inform the adoption of NOR as an alternative option for final disposition. This section will bring together these presented issues to justify the adoption of NOR across the U.S. This section will also explore how other states can learn from the states in which NOR has already been legalized in successfully incorporating NOR. The main issues of focus will include those of environmental, public health, socioeconomic, and cultural and spiritual concerns. As noted, these issues were further highlighted during the COVID-19 pandemic and as such, consideration of these issues in light of the COVID-19 pandemic

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[216] *See* H.B. 20-1060, 72d Gen. Assemb., 2d Reg. Sess. (Colo. 2020).

[217] *See, e.g.*, S.B. 5001, 2019 Reg. Sess. (Wash. 2019); H.B. 20-1060; S.B. 5535.

[218] H.B. 20-1060.

will shed more light in advancing the argument for the adoption of NOR.

A. Environmental Issues

The environment appears to be the major driver in conversations advancing the consideration around proposing alternatives for final disposition.[219] Specifically, NOR is promising in addressing the environmental concerns resulting from the conventional methods of final disposition.[220] The major environmental issues include those related to increasing land scarcity and chemical emissions.[221] Evidently, the COVID-19 pandemic posed this issue of land scarcity in its response to unprecedented volume of deaths over a short span of time.[222] As noted, communities responded through the creation of makeshift morgues and mass burial sites.[223]

But even before the crisis that was the COVID-19 pandemic, there existed a prevailing concern with regards to the growing population increasing the demand for space for cemeteries and graveyards.[224] Not only does the traditional burial create this environmental concern around depleting physical space for cemeteries and efficient land use, but it also creates environmental concerns pertaining to resource consumption in preserving and maintaining those lands as well as in the building of items such as caskets.[225] Furthermore, the toxins involved

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[219] *See, e.g.*, Kari Paul, *Human Composting: California Clears Way for Greener Burial Method*, THE GUARDIAN (Sept. 19, 2022, 5:47 PM), https://www.theguardian.com/us-news/2022/sep/19/human-composting-california-human-remains-green-burial; Paul Shukovsky, *Human Composting Now a Climate Fighting Final Wish in Washington*, BLOOMBERG L. (May, 21, 2019, 6:33 PM), https://news.bloomberglaw.com/environment-and-energy/human-composting-now-a-climate-fighting-final-wish-in-washington=; Keshia Clukey, *Human Composting for 'Green' Burials Closer to Law in New York*, BLOOMBERG L. (June 3, 2022, 9:26 AM), https://news.bloomberglaw.com/environment-and-energy/human-composting-for-green-burials-closer-to-law-in-new-york.

[220] *See* Alfus, *supra* note 6, at 347.

[221] *Id*.

[222] *See* Entress et al., *supra* note 32, at 857.

[223] *Id*.

[224] Alfus, *supra* note 6, at 347; Anderson, *supra* note 95.

[225] Calderone, *supra* note 145.

in the conventional embalming process creates another layer of environmental concern.[226]

When it comes to cremation, there is the environmental concern around the emissions released during the process, contributing to water and air pollution, and furthermore that the resulting ashes do not supply nutrients back into the earth.[227] NOR mitigates these environmental concerns; namely, NOR does not require land for burial as resulting soil is returned to the earth; the decomposition process involved in NOR does not use and emit fossil fuels to the same extent as traditional cremation; the resulting soil from NOR is useful, for instance, in contributing to forest growth, when returned to the earth.[228] Hence, NOR holds promise in addressing the environmental concerns that arise from traditional burial and cremation.

B. Public Health Issues

The handling of human remains of those who died of COVID-19 during the COVID-19 pandemic highlighted the public health concerns as it relates to the spread of disease from dead bodies.[229] As noted, regulatory authorities responded rapidly to contain the virus and prevent any potential infection through deceased bodies.[230] Particularly, there was an urgent response in protecting those working in the deathcare industry by implementing safe protocols and guidances as communities learned more about the COVID-19 virus.[231]

These public health issues are also relevant outside of the COVID-19 pandemic context; for instance, as previously noted, although the practice of embalming came out of a concern to prevent the spread of disease, it actually endangers the embalmer through exposure to disease-causing organisms that may be present in addition to the toxic

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[226] *Id.*

[227] Little, *supra* note 159; Calderone, *supra* note 142.

[228] Mercado, *supra* note 16.

[229] *See* Yaacoub et al., *supra* note 90.

[230] *See, e.g.*, *CDC Postmortem Guidance*, *supra* note 8; *OSHA Postmortem Care Workers and Employers*, *supra* note 8.

[231] *See, e.g.*, *CDC Postmortem Guidance*, *supra* note 8; *OSHA Postmortem Care Workers and Employers*, *supra* note 8.

chemicals involved in the process.[232] As for the method of conventional cremation; the pollution resulting therefrom can contribute to the pollution-related public health consequences, such as an increase in risk of respiratory infections.[233] Thus, NOR offers a promising alternative to address these public health concerns through elimination of the embalming practice, contribution of less pollution, and use of natural organic materials.

That said, it is noted that the spread of disease can still be a concern in NOR because resulting soil may have pathogens; "NOR may not be right for certain people with diseases like tuberculosis or who have undergone treatments like radiation treatments a month before passing," and would not be eligible under state safety regulations.[234] Consequently, while NOR does serve to address some public health concerns that stem from the conventional methods of final disposition, state legislatures, in adopting NOR, should also consider these implications and work with applicable regulatory authorities to promulgate effective regulations to ensure public health in this space.

C. Socioeconomic Issues

The response to final disposition by regulatory bodies in the areas related to the economy makes apparent the need to address soecioeconomic issues when considering final disposition. Particularly, as noted, FEMA's response in establishing a funeral assistance fund during the COVID-19 pandemic highlights the issue of growing costs of funerals and the death industry.[235] The need for a fund suggests that the costs of funerals can be burdensome and this may be due to the large costs and multiple items that go into the conventional methods of final disposition. Outside of the COVID-19 context, the Funeral Rule promulgated by the FTC further points to the general socioeconomic

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[232] *See* Millonig, *supra* note 44.

[233] *Health consequences of air pollution on populations*, WORLD HEALTH ORG. (Nov. 15 2019), https://www.who.int/news/item/15-11-2019-what-are-health-consequences-of-air-pollution-on-populations#:~:text=What%20are%20the%20health%20consequences,heart%20disease%20and%20lung%20cancer.

[234] Mercado, *supra* note 16.

[235] *See COVID-19 Funeral Assistance*, *supra* note 68.

concerns as it relates to final disposition on the day-to-day context and the need to regulate the for-profit funeral industry.[236]

Moreover, the added factor that deaths may be unexpected can leave loved ones strapped with a large bill to adequately honor the deceased. As noted, the median cost of a traditional burial was approximately $7,848 in 2021, and could easily costs more when factoring in other items such as burial vaults and plots.[237] Also as noted, the conventional cremation costs approximately $6,971.[238] NOR offers an alternative cheaper option, with prices ranging from $5,000 to $7,000, and address this soceioeconomic issue.[239] Additionally, making available another option for final disposition can give consumers more options to alleviate the economic burden in final disposition.[240]

D. Cultural and Spiritual Issues

A common theme in funeral law is the need to meet the cultural and spiritual aspects in honoring and respecting the dead. As discussed, like most law in the U.S., U.S. funeral law stemmed from English law, which has strong roots in ecclesiastical law.[241] And since then, as the U.S. population diversified, funeral law has adapted to enable these diverse practices.[242] As discussed previously, the cultural and religious make up of the U.S. has increased greatly.[243] Thus, where funeral law stemmed directly from English ecclesiastical law, U.S. funeral law has diverged to reflect the diverse landscape.[244] Even more, that U.S. funeral law has its roots in religion, that is, the Church of England, further shows the importance of religious practice in considering methods of final disposition.[245]

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[236] *See* 16 C.F.R. § 453.1 (2022); Marsh, *supra* note 18, at 1331.

[237] *Statistics*, *supra* note 64.

[238] *Id.*

[239] Hirsh, *supra* note 193.

[240] *See id.*; *see also The High Cost of Death – and What We Can Do About It*, EMPATHY (Mar. 3, 2022), https://www.empathy.com/blog/cost-of-dying.

[241] Marsh, *supra* note 18, at 1328.

[242] *See* Millonig, *supra* note 44; *Religious Landscape Study*, *supra* note 45.

[243] *Id.*

[244] *Id.*

[245] Marsh, *supra* note 18.

Religious and cultural practices pertaining to final disposition has always been considered even in times of crisis; as noted, religious practice was set aside during COVID-19 however this impacted mental health, as forgoing such practices increased stress and anxiety.[246] This increase on stress and anxiety can also be seen as a public health concern related to mental health, and further shows the interdisciplinary nature between the concerns arising out of final disposition.[247] Thus, it is important to ensure such practices can be accommodated when adopting alternative options for final disposition. NOR makes room for this as NOR full-service funeral homes are able to work with loved ones to accommodate cultural and religious practices through the process.[248] Notably, these NOR full-service funeral homes are implementing services that enable personalized final disposition services.[249]

Overall, NOR presents an option that addresses the interrelated issues that concern final disposition in the U.S. Moreover, the activity of legislators and regulators in states where NOR has been legalized have made clear that NOR is a viable alternative that can be implemented effectively.

CONCLUSION

Death. Natural. Inevitable. Returning to the idea that death is natural, it is only fitting that NOR be adopted as an alternative method for final disposition. After consideration of the concerns that stem out of the processing and regulation of final disposition, and particularly in light of the response to handling of human remains during the COVID-19 pandemic, NOR offers a promising alternative in advancing final disposition as it stands in the U.S. today. It addresses a cross-section of issues pertaining to the policies behind funeral law, including those issues related to the environment, public health, socioeconomics, and culture and religion. Introducing NOR as an available option will expand personal options as well as address the social issues concerning final disposition management.

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[246] Entress et al., *supra* note 32, at 858.

[247] *See id.*

[248] Mercado, *supra* note 16.

[249] *Our Model*, *supra* note 181.

As death is something that is certain and ingrained in our society, it follows that final disposition touches multiple aspects of our society. As such, adopting alternative options for final disposition such as NOR may have rippling effects. However, the history of funeral law makes apparent its malleability and ability to evolve and adapt to changing preferences to reflect the social landscape in the U.S. The legal landscape in addition to the diverse demographic of the U.S. only further lends to the adoption of NOR and paves a way for NOR to be incorporated as an effective alternative for final disposition. States that have already legalized NOR have paved the way for the movement towards NOR's legalization and regulation across the nation.