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A Call for the Legalization of Two Sustainable Means of Final Disposition in Ohio

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A CALL FOR THE LEGALIZATION OF TWO SUSTAINABLE MEANS OF FINAL DISPOSITION IN OHIO

AIMEE SHEETZ*

ABSTRACT

Several states currently have laws that allow for alkaline hydrolysis as an alternative to burial or cremation. A few states also allow for the composting of human remains. People are choosing these means of disposition for themselves and their loved ones due to environmental, financial, and societal reasons. Ohio currently does not allow either of these methods to be performed within the state. There have been attempts to legalize alkaline hydrolysis in Ohio. This Note calls for the legalization of both methods of disposition by including them in the Ohio Revised Code. This would provide clarity to the Ohio Board of Embalmers and Funeral Directors as well as to consumers.

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I. INTRODUCTION

“The whole world stands faced with a common threat of climate change. This global threat already affects us all, in particular, the poorest and the most vulnerable.

That alone should move all governments to act.”¹ These were the words of Archbishop Desmond Tutu to global leaders at the United Nations Climate Change Conference in 2009.² Archbishop Tutu was a longtime activist for addressing climate change, pressuring industries and governments, especially in the wealthiest parts of the world, to take action to mitigate this global crisis.³ His dedication is what led the Archbishop and his surviving family to choose an environmentally-friendly method to dispose of his body following his death in December 2021.⁴

Reportedly, Tutu made the decision to have his body aquamated, a process discussed below,⁵ because it is less environmentally harmful than other options and not “ostentatious.”⁶ In making this choice to carry his lifetime values and ethics beyond his death, the Archbishop joined a growing chorus of people seeking alternatives to traditional burial and cremation.⁷ This Note will discuss three alternative means of disposition: (1) green burial, which is legal and practiced in Ohio; (2) aquamation, technically named alkaline hydrolysis; and, (3) body composting. This Note will make the case for changing Ohio law to allow for alkaline hydrolysis and body composting to be performed and regulated within the state.

Options for what we can do with the remains of our loved ones are endless and the funeral industry is constantly innovating.⁸ Until relatively recently, a traditional burial with a casket and embalming of the body was the most common method of body disposition in the United States.⁹ American preferences have shifted to favor cremation, which is expected to be used for fifty-seven and a half percent of Americans who die in 2021, over traditional burial which is on track to account for

¹ Living on Earth, *A Call to Climate Action from Desmond Tutu*, PRX (Jan. 7, 2022), <https://www.loe.org/shows/segments.html?programID=22-P13-00001&segmentID=6>.

² *Id.*

³ See Desmond Tutu, *We Fought Apartheid. Now Climate Change is our Global Enemy*, THE GUARDIAN (Sept. 20, 2014, 7:04 PM), <https://www.theguardian.com/commentisfree/2014/sep/21/desmond-tutu-climate-change-is-the-global-enemy>; Desmond Tutu, *We Do Not Need Climate Change Apartheid in Adaptation*, in HUM. DEV. REP. 2007/2008 166, 166 (United Nations Development Programme, 2007).

⁴ Miriam Berger, *What is Aquamation, the Burial Practice Desmond Tutu Requested Instead of Greenhouse Gas-emitting Cremation?*, THE WASH. POST (Jan. 2, 2022, 3:05 PM), <https://www.washingtonpost.com/world/2022/01/02/what-is-aquamation-burial-practice-desmond-tutu-requested-instead-greenhouse-gas-emitting-cremation/>.

⁵ See *infra* Part I.A.

⁶ Berger, *supra* note 4.

⁷ Jonah Engel Bromwich, *An Alternative to Burial and Cremation Gains Popularity*, THE N.Y. TIMES (Oct. 19, 2017), <https://www.nytimes.com/2017/10/19/business/flameless-cremation.html>.

⁸ Anthony Martin, *From Traditional to Bizarre: How America Wants to be Buried in 2020*, CHOICE MUT. INS. AGENCY, <https://choicemutual.com/funeral-preferences-2020/> (Dec. 30, 2022) [hereinafter *From Traditional to Bizarre*].

⁹ *Id.*

just under thirty-seven percent of dispositions in 2021.¹⁰ The National Funeral Directors Association predicts that by 2040, over three-quarters of body dispositions will be cremations.¹¹

A growing number of Americans making end of life plans, however, are looking for alternative options that may be more sustainable and affordable than either embalming and entombed burial or cremation.¹² Some of these options are: (1) green burial, as detailed below; (2) alkaline hydrolysis; and (3) body composting.¹³

II. BACKGROUND

A. *An Overview of Environmentally Friendly Methods of Disposition*

This Part will give a brief overview of environmentally friendly methods of disposition, focusing on the two that are not yet legalized by statute in Ohio, aquamation and body composting.

“Green burial” is already permitted and practiced in Ohio, as the state imposes no requirement for embalming.¹⁴ There is also no state law requiring that a concrete vault must be used, but individual cemeteries may impose their own requirement for burial containers to prevent the ground from sinking in over graves.¹⁵ Green burial can refer to a number of different circumstances.¹⁶ For example, the Green Burial Council, a non-profit organization that certifies sustainable cemeteries, has a specific set of burial requirements for “[n]atural [b]urial [g]rounds” and “[c]onservation [b]urial [g]rounds.”¹⁷ Both certifications require that bodies be buried without embalming them or embalming them by using only approved nontoxic embalming methods.¹⁸ The bodies are not encased in concrete vaults or other solid, non-biodegradable

¹⁰ *Statistics*, NAT’L FUNERAL DIRS. ASS’N, <https://nfda.org/news/statistics#5> (last visited Nov. 7, 2021).

¹¹ *2020 Cremation & Burial Projects Cremation Rate of 87% by 2040*, NAT’L FUNERAL DIRS. ASS’N (July 6, 2020), <https://nfda.org/news/in-the-news/nfda-news/id/5223/2020-cremation-burial-projects-cremation-rate-of-87-by-2040>.

¹² Anthony Martin, *2022 Survey Results: Americans Are Exploring New Ways to be Buried*, CHOICE MUT. INS. AGENCY, <https://choicemutual.com/funeral-preferences/> (Dec. 30, 2022) [hereinafter *2022 Survey Results*].

¹³ *Id.*

¹⁴ JOSHUA SLOCUM & LISA CARLSON, *FINAL RIGHTS: RECLAIMING THE AMERICAN WAY OF DEATH* 397 (Upper Access, Inc., 2011).

¹⁵ T. Scott Gilligan, *State Law Regulates Most Ohio Cemeteries*, OHIO ST. BAR ASS’N (Nov. 30, 2016), <https://www.ohiobar.org/public-resources/commonly-asked-law-questions-results/estate-planning/state-law-regulates-most-ohio-cemeteries>.

¹⁶ *2022 Survey Results*, *supra* note 12.

¹⁷ *Green Burial Council Cemetery Standards 2020*, GREEN BURIAL COUNCIL (2020), https://www.greenburialcouncil.org/uploads/1/2/4/2/124231485/green_burial_council_cemetery_standards_article.pdf.

¹⁸ *Id.*

containers.¹⁹ There are additional limits on the density of burials per acre for both designations and additional requirements for the maintenance of native plants and habitats for the conservation burial grounds, including limiting the use of pesticides and herbicides in maintenance of the burial grounds.²⁰

One Ohio law that does affect conservation burial grounds, in particular, is that all cemeteries must be laid out in numbered lots to keep track of who is buried in each location.²¹ Cemeteries that allow burial locations to be marked by an unlabeled stone, a tree, or even a patch of wildflowers, can meet this requirement by creating a GPS map.²²

Alkaline hydrolysis, also known as aquamation, resomation, or water cremation, is a process in which a body is rapidly decomposed by being placed in a pressurized and heated chamber with a solution of water and sodium hydroxide or potassium hydroxide.²³ The end product of the process is a non-toxic sterile liquid containing water, salts, sugars, amino acids, and peptides along with bone fragments.²⁴ The liquid is safe to discharge down the drain as a wastewater, or alternately, saved and used as a fertilizer, depending on the wishes of the deceased and their family and the particular laws of the state where the process occurs.²⁵ The bone fragments can be ground into a fine, ash-like powder and returned to the family of the deceased and handled in the same way as cremains from a cremation by fire.²⁶ The amount of bone ash, or “cremains” remaining is about thirty percent greater than that from a fire-based cremation.²⁷ Processing a body via alkaline hydrolysis takes anywhere from three to twelve hours depending on the temperature and pressure at which the individual machine operates.²⁸ This process emits about eighty percent less carbon dioxide than a fire-based cremation and non-organic elements (such as tooth-fillings containing

¹⁹ *Id.*

²⁰ *Id.*

²¹ OHIO REV. CODE ANN. § 517.06 (West 2011).

²² John Campanelli, *Ohio's Only "Green" Cemetery Lets You Rest in Peace, in Nature*, THE PLAIN DEALER (Mar. 20, 2011, 11:00 PM), https://www.cleveland.com/pdq/2011/03/ohios_only_green_cemetery_lets.html.

²³ Philip R. Olson, *Flush and Bone: Funeralizing Alkaline Hydrolysis in the United States*, 39 SCI., TECH., & HUM. VALUES 666, 667–68 (2014).

²⁴ *Alkaline Hydrolysis*, CREMATION ASS'N OF N. AM., <https://www.cremationassociation.org/page/alkalinehydrolysis> (last visited Dec. 4, 2021).

²⁵ *Id.*; see also *infra* Part IV.B (discussing California laws governing the disposal of alkaline hydrolysis waste water).

²⁶ *Alkaline Hydrolysis*, *supra* note 24.

²⁷ *Id.*

²⁸ Olson, *supra* note 23, at 686.

mercury) remain undissolved and are not at risk of polluting the air.²⁹ The original use of alkaline hydrolysis was to dispose of laboratory animals in a manner that would not release pathogens or radiation into the environment.³⁰ By the mid-2000s, hospitals in the United States, led by the Mayo Clinic, began using alkaline hydrolysis to dispose of donated human cadavers.³¹ The process was adopted by funeral homes shortly after, as early as 2011 in Florida.³²

Body composting is a new, and as of yet, not widely accepted method of disposition. Washington was the first state to pass legislation allowing for human composting in 2020.³³ So far Colorado and Oregon are the only states to follow suit, with Colorado legalizing the process in September of 2021 and Oregon passing a bill that will allow the process starting in July 2022.³⁴ Body composting, also called recomposition, or natural organic reduction, involves placing the un-embalmed body in a steel vessel with organic materials such as wood chips and straw.³⁵ The body undergoes a decomposition process that is similar to that involved in backyard composting of food and is facilitated by microorganisms.³⁶ The temperature within the decomposition chamber is maintained between 130 and 155 degrees Fahrenheit to kill potentially harmful pathogens and facilitate decomposition.³⁷ The end result is about one cubic yard of compost, weighing several hundred pounds³⁸ which families may take home, subject to certain state-imposed restrictions, or which may, in some cases, be left with the service providers for use as part of a forest conservation

²⁹ Devin Powell, *Dissolve the Dead? Controversy Swirls Around Liquid Cremation*, SCI. AM. (Sept. 7, 2017), <https://www.scientificamerican.com/article/dissolve-the-dead-controversy-swirls-around-liquid-cremation/>.

³⁰ Olson, *supra* note 23, at 672.

³¹ *Id.*

³² *Id.*

³³ Thomas Peipert, *Body Composting a 'Green' Alternative to Burial, Cremation*, U.S. NEWS & WORLD REP. (Sept. 16, 2021, 2:28 PM), <https://www.usnews.com/news/health-news/articles/2021-09-16/body-composting-a-green-alternative-to-burial-cremation>.

³⁴ *Id.*

³⁵ Angely Mercado, *Composting a Human Body, Explained*, POPULAR SCI. (Aug. 7, 2021, 9:00 AM), <https://www.popsoci.com/environment/composting-body-burial/>.

³⁶ *Id.*

³⁷ Destiny Johnson & Katherine Cook, *Oregon Will Allow for Human Composting as a Final Resting Option*, KGW.COM (June 16, 2021, 2:50 PM), <https://www.kgw.com/article/news/local/oregon-will-allow-for-human-composting-as-a-final-resting-option/283-46a27f29-4b4e-41ca-a115-611db29da1c9>.

³⁸ *How to Consider Your Soil Options*, RECOMPOSE, <https://recompose.life/education/soil-options/> (last visited Feb. 16, 2022).

project.³⁹ For example, the Herland Forest Natural Burial Cemetery in Oregon maintains a forest which is also a cemetery for non-embalmed, cremated, or composted individuals.⁴⁰ The presence of human remains in the forest creates legal restrictions on development and land use so the forest will be preserved.⁴¹

B. Comparison of the Environmentally Friendly Options to Traditional Burial and Cremation

This Part will explore some of the reasons that people are turning towards these options and away from the “traditional” methods. There are advantages to these alternate options that are specific to the individuals choosing them for themselves or a loved one as well as general societal advantages of which individuals want to be a part.⁴²

1. Environmental Impacts

One obvious reason for choosing an environmentally-friendly manner of disposition is that people have become more aware of the negative environmental impacts of embalming and burial and want an alternative that has less impact on the environment.⁴³ Standard burials result in up to over 1.6 million tons of concrete, 104,272 tons of steel, thirty million board feet of hardwood, and 800,000 gallons of formaldehyde being placed in the ground every year in the United States.⁴⁴ Formaldehyde can cause respiratory issues and is considered a carcinogen by the United States Environmental Protection Agency.⁴⁵

As noted above, Ohio imposes no legal requirement for embalming⁴⁶ or the use of a burial vault, and, in fact, a body may be buried in a home cemetery rather a privately or publicly owned one.⁴⁷ Funeral providers themselves cannot require embalming in Ohio either as they are prohibited by the Federal Trade Commission from conditioning

³⁹ *Guardianship in Herland*, HERLAND FOREST NAT. BURIAL CEMETERY, <https://www.herlandforest.org/guardianship/> (last visited Nov. 12, 2021).

⁴⁰ *Natural Burial*, HERLAND FOREST NAT. BURIAL CEMETERY <https://www.herlandforest.org/natural-burial-in-herland-forest/> (last visited Jan. 19, 2022).

⁴¹ See *Guardianship in Herland*, *supra* note 39; see also *How to Consider Your Soil Options*, *supra* note 38 (describing the Bells Mountain Conservation Forest in Washington State in which donated soil from human composting is integrated into a legally protected wilderness area).

⁴² See *Statistics*, *supra* note 10; Mercado, *supra* note 35; Olson, *supra* note 23, at 671.

⁴³ Olson, *supra* note 23, at 671.

⁴⁴ Julia Calderone, *Burying Dead Bodies Takes a Surprising Toll on the Environment*, BUS. INSIDER (Nov. 4, 2015, 4:23 PM), <https://www.businessinsider.com/burying-dead-bodies-environment-funeral-conservation-2015-10>.

⁴⁵ *Formaldehyde*, EPA, <https://www.epa.gov/sites/default/files/2016-09/documents/formaldehyde.pdf> (last visited Feb. 18, 2022).

⁴⁶ SLOCUM & CARLSON, *supra* note 14.

⁴⁷ *Id.* at 396.

the furnishing of services or goods upon the purchase of other services or goods that are not required by state and local laws.⁴⁸

The impact of the large amount of land use for burial varies greatly depending on the amount of useable land available in a given country or state.⁴⁹ Of course, a green burial also uses some area of land, possibly even more than other burials due to the maximum density limits imposed by the Green Burial Council for certified green cemeteries.⁵⁰ Some of the concerns about unnecessary land maintenance and cultivation of non-native plants are addressed by the use of conservation cemeteries.⁵¹ The impact of land use by green burial grounds is also somewhat mitigated in those areas certified by the Green Burial Council which are required to conserve or restore at least twenty acres of land for a stand-alone cemetery and five acres for a cemetery adjacent to already protected land.⁵² Human composting eliminates the land-use issue because the decomposition takes place above ground and the resulting soil can be used in a garden or as part of an organized land conservation project.⁵³

Fire-based cremation is, in general, a more environmentally friendly option than burial,⁵⁴ but it has some negative consequences as well. Much of the difference in impact, as compared to burial, is due to the significantly lower amount of land used for cremation.⁵⁵ In a few parameters, the environmental impact of cremation is actually significantly greater than that of burial, including natural resource depletion (through the burning of fossil fuels), marine ecotoxicity, and ozone depletion.⁵⁶

Several air pollutants are released into the atmosphere during the process of cremation, including carbon monoxide, carbon dioxide, particulate matter, nitrogen oxide, and toxic metals including mercury.⁵⁷ Mercury is of particular concern for human health because it is a neurotoxin and nephrotoxin.⁵⁸ The burning of mercury

⁴⁸ 16 C.F.R. § 453.4(b) (1994).

⁴⁹ *Natural Burial FAQ*, GREEN BURIAL COUNCIL, https://www.greenburialcouncil.org/green_burial_defined.html (last visited Feb. 14, 2023).

⁵⁰ *Green Burial Council Cemetery Standards 2020*, *supra* note 17.

⁵¹ *Id.*

⁵² *Id.*

⁵³ *How to Consider Your Soil Options*, *supra* note 38.

⁵⁴ Elisabeth Keijzer, *The Environmental Impact of Activities After Life: Life Cycle Assessment of Funerals*, INT. J. LIFE CYCLE ASSESS 53 (2017) (concluding that cremation has about half the environmental effect of burial).

⁵⁵ *Id.* at 725, 727.

⁵⁶ *Id.* at 724.

⁵⁷ Griselda González-Cardoso et al., *Toxic Atmospheric Pollutants from Crematoria Ovens: Characterization, Emission Factors, and Modeling*, 27 ENV'T SCI. AND POLLUTION RSCH. 43800, 43801 (2020).

⁵⁸ Preben Hörsted-Bindslev, *Amalgam Toxicity-Environmental and Occupational Hazards*, 32 J. OF DENTISTRY 360, 360 (2004).

creates an occupational hazard for crematory workers where the emissions are not regulated.⁵⁹ Additionally, the emissions from crematories have now become a potential environmental justice issue as the cremation facilities are often located in low-income neighborhoods and have recently increased their operating hours to keep up with deaths resulting from the COVID-19 pandemic, therefore increasing exposure time of nearby residents to these emissions.⁶⁰

In contrast, alkaline hydrolysis uses about one-eighth the energy of traditional cremation and emits one-fourth the carbon.⁶¹ No toxins are emitted and inorganic components like mercury tooth fillings and pacemakers are left behind rather than creating a hazard for workers through the risk of explosion or air toxicity.⁶²

2. Financial Considerations

From an individual standpoint, environmentally-friendly options are often less expensive than an embalming, casket, and burial.⁶³ The median cost for a funeral and burial that includes embalming in the United States is \$7,848 without a vault and \$9,420 with a vault.⁶⁴ Of that cost, \$2,500 is for a burial casket and \$775 is for embalming,⁶⁵ both of which are not necessary in either of the alternative options mentioned above.⁶⁶

Cremation is a more affordable option than traditional burial with a median cost of \$6,971 including the funeral.⁶⁷ The cremation process and cremation casket account

⁵⁹ Haley Piago & Reza Afshari, *Mercury from Crematoriums: Human Risk Assessment and Estimate of Total Emissions in British Columbia*, 111 CANADIAN J. OF PUB. HEALTH 1011, 1012 (2020); Anita Vazquez Tibau & Blanche D. Grube, *Mercury Contamination from Dental Amalgam*, 9 J. HEALTH & POLLUTION 1, 6 (2019).

⁶⁰ See Stephen Lee, *Round-the-Clock Cremations Stoke Mercury Fears for Neighborhoods*, BLOOMBERG L. (May 15, 2020, 6:00 AM), <https://news.bloomberglaw.com/environment-and-energy/round-the-clock-cremations-stoke-mercury-fears-for-neighborhoods>.

⁶¹ Emily Atkin, *The Fight for the Right to be Cremated by Water*, THE NEW REPUBLIC (June 14, 2018), <https://newrepublic.com/article/148997/fight-right-cremated-water-rise-alkaline-hydrolysis-america>.

⁶² Olson, *supra* note 23, at 668, 678.

⁶³ Compare *From Traditional to Bizarre*, *supra* note 8, with *Statistics*, *supra* note 10.

⁶⁴ 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>.

⁶⁵ *Id.*

⁶⁶ 2022 Survey Results, *supra* note 12.

⁶⁷ *Id.*

for \$1,678 of that cost.⁶⁸ Similarly, the average cost of alkaline hydrolysis is \$1,695.⁶⁹ Because this is a relatively new option, this cost could potentially drop if more funeral providers begin offering it.⁷⁰

The cost of a service with body decomposition varies among the few providers currently offering it as an option. “Recompose,” a Washington company offers the composting process along with a virtual funeral ceremony for \$5,500⁷¹ while The Natural Funeral in Colorado charges \$10,000 which includes an in-person ceremony with an officiant and a portion of the cost to be used for land preservation.⁷² It is difficult to predict what the costs of human composting will be if and when it becomes available in regions other than the Western United States. Note though that the average cost of a burial in Washington is over \$1,500 more than a burial in Ohio,⁷³ so the costs associated with human composting, once such a facility is operating in the state, are likely to be lower for the Midwest region as well.⁷⁴

Both alkaline hydrolysis and human composting avoid one form of potential financial cost associated with both traditional and green burial, the endowment fund.⁷⁵ Ohio, and many other states require cemeteries to maintain an endowment fund to pay

⁶⁸ 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>.

⁶⁹ Sara Marsden-Ille, *Aquamation or Resomation: A ‘Green’ Alternative to the Traditional Funeral*, US FUNERALS ONLINE (June 30, 2021), https://www.us-funerals.com/aquamation-or-resomation/#.YY_-hmDMLIU.

⁷⁰ See Lindsay Scott, *What is Aquamation? Flameless Cremation Guide*, FUNERAL CIRCLE, <https://funeralcircle.com/aquamation/> (last updated Nov. 1, 2021).

⁷¹ *General Price List*, RECOMPOSE, <https://recompose.life/wp-content/uploads/2022/08/General-Price-List-GPL-Updated-for-2022.08.12.pdf> (last updated Jan. 29, 2023).

⁷² *General Price List*, THE NATURAL FUNERAL, https://www.thenaturalfuneral.com/wp-content/uploads/2021/03/General-Price-List-TNF-7_19_22.pdf (last updated July 19, 2022).

⁷³ *Average Funeral Cost by State 2023*, WORLD POPULATION REV., <https://worldpopulationreview.com/state-rankings/average-funeral-cost-by-state> (last visited Jan. 5, 2023).

⁷⁴ Compare Alan Cole, *The Real Value of \$100 in Each State*, TAX FOUND. (Aug. 4, 2016), <https://taxfoundation.org/real-value-100-each-state-2016/> (showing that goods are more expensive in Washington than Ohio in 2016), with Jenifer Taylor, *The Real Value of \$100 in Every State*, GO BANKING RATES (Feb. 25, 2022), <https://www.gobankingrates.com/money/economy/real-value-of-100-dollars-each-state/> (showing that goods are more expensive in Washington than Ohio in 2022).

⁷⁵ See Scott, *supra* note 70 (noting that not having to buy a casket for aquamation may provide for lower costs); *Faqs: How Does the Cost of Human Composting Compare to Other Options?*, RECOMPOSE, <https://recompose.life/faqs/how-does-the-cost-of-human-composting-compare-to-other-options/> (last visited Jan. 25, 2023).

for future maintenance of the cemetery grounds.⁷⁶ In Ohio, this applies to all cemeteries except for those owned by individuals or religious organizations and requires that at least ten percent of the proceeds from the sale of a burial plot be placed in the endowment.⁷⁷ A conservation cemetery is subject to the endowment requirement even though the goal may be to maintain the grounds in a natural state that requires much less extensive maintenance than a traditional cemetery.⁷⁸ By returning the cremains or soil to the family of the deceased, the need for any kind of burial can be eliminated.

3. Societal Interests

Beyond financial and environmental concerns, there are societal shifts leading many individuals to want a simpler end of life plan for themselves or their loved ones.⁷⁹ The rapid acceptance and increase of cremations in the United States is illustrative of a move away from the complicated, ritual-heavy tradition of funerals towards a quicker and more affordable model.⁸⁰ Once the technology becomes more common and service providers begin to offer it as an option, alkaline hydrolysis will likely be able to fill a similar role to flame cremation in both cost and simplicity.⁸¹ There is no reason that disposition by alkaline hydrolysis cannot also fulfill all of the ceremonial rituals retained by those who choose flame cremation.⁸² The ashes from either process can still be scattered, retained in an urn, or buried along with a full funeral service according to the preferences of the family.⁸³ Some people prefer the

⁷⁶ OHIO REV. CODE ANN. § 1721.21 (West 2022); Alex Brown, *More People Want a Green Burial, but Cemetery Law Hasn't Caught Up*, PEW TRUSTS (Nov. 20, 2019), <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>.

⁷⁷ OHIO REV. CODE ANN. § 1721.21 (West 2022).

⁷⁸ See Brown, *supra* note 76.

⁷⁹ *What is Human Composting? Giving Back To The Earth*, CARING PLACES MGMT., <https://www.caringplaces.com/what-is-human-composting-giving-back-to-the-earth/> (last visited Jan. 25, 2023) (providing a benefit to the family; allowing them to do what they want with soil—perhaps grow a garden); see Scott, *supra* note 70 (noting the different social benefits of aquamation).

⁸⁰ See HAKAN CENGIZ & DENNIS W. ROOK, *Voluntary Simplicity in the Final Rite of Passage*, in *DEATH IN A CONSUMER CULTURE* 123, 125–31 (Susan Dobscha, ed., 2016).

⁸¹ See Scott, *supra* note 70 (noting that once aquamation becomes widely used, the costs will be similar to typical cremation).

⁸² See *id.* (noting the similarity between the two cremation methods).

⁸³ See *id.* at 126 (listing some of the death-related ceremonial products and services consumers may purchase).

option of alkaline hydrolysis over cremation because they view the dissolving of a body as gentler than burning, like a warm bath compared to a fire.⁸⁴

The demand for human composting is related to that for natural burial, which is already permitted in Ohio.⁸⁵ Along with the general desire for “greener” funerals that do less damage to the environment, many funeral-product consumers have a desire for their body to return to the earth rather than being shut away and “protected” in a sealed concrete vault.⁸⁶ The shift away from traditional embalming and burial is part of a change in viewpoint in which many people are seeing dead bodies as a natural entity to be returned to the earth rather than as a danger to public health.⁸⁷

III. PROPOSAL: OHIO’S LAWS SHOULD BE CHANGED TO EXPLICITLY INCLUDE ENVIRONMENTALLY FRIENDLY BODY DISPOSITION OPTIONS

Burial of un-embalmed bodies is already allowed in Ohio and practiced at several cemeteries or in sections of cemeteries in the state.⁸⁸ Alkaline hydrolysis and body composting are not explicitly prohibited by any Ohio legislation, nor are they mentioned in any Ohio statutory law.⁸⁹ The Ohio Department of Health, however, previously quashed the first attempt by a funeral provider to conduct alkaline hydrolysis as a service within the state by issuing a notice in 2011 instructing local registrars to not issue burial permits or file death certificates when the means of disposition listed on the death certificate is “alkaline hydrolysis.”⁹⁰

Because alkaline hydrolysis and human composting are methods of disposition increasingly favored by Americans and because they have the potential to significantly reduce the environmental impacts of the funeral industry, these methods should be included in the Ohio Revised Code within the definition of “final disposition.”⁹¹ Until the law can be updated to explicitly include those methods as a means of final

⁸⁴ Shannon Palus, *How to be Eco-Friendly When You’re Dead*, THE ATLANTIC (Oct. 30, 2014), <https://www.theatlantic.com/technology/archive/2014/10/how-to-be-eco-friendly-when-youre-dead/382120/>.

⁸⁵ *GBC-Certified Cemeteries in the United States, Canada and Central America*, GREEN BURIAL COUNCIL, <https://www.greenburialcouncil.org/cemeteries.html> (last visited Jan. 25 2023).

⁸⁶ See CARING PLACES MGMT., *supra* note 79 (allowing the family to return loved ones to earth).

⁸⁷ Olson, *supra* note 23, at 677.

⁸⁸ See GREEN BURIAL COUNCIL, *supra* note 85.

⁸⁹ See generally OHIO REV. CODE ANN. § 3705.01(J) (West 2022) (noting the absence of alkaline hydrolysis or human composting in the “final disposition” definition).

⁹⁰ *Edwards Funeral Serv. v. State*, No. 11CVH03-3772, 2011 Ohio Misc. LEXIS 2475, at *1 (Ct. Com. Pl. Oct. 12, 2011).

⁹¹ See NAT’L FUNERAL DIRS. ASS’N, *supra* note 64 (showing that an increased number of Americans are interested in green funeral options); see also OHIO REV. CODE ANN. § 3705.01(J) (West 2022) (defining the term “final disposition”).

disposition, Ohio courts should interpret the term “other authorized disposition” to include alkaline hydrolysis and human composting.

IV. COMPARING CURRENT OHIO LAWS RELATING TO THE DISPOSITION OF HUMAN REMAINS WITH THOSE OF OTHER STATES

It is largely the role of individual states and local governments to control the disposition of human bodies.⁹² Federal laws regulating the funeral industry are limited to fairly weak consumer protection and environmental laws set by the Federal Trade Commission (“FTC”) and Environmental Protection Agency (“EPA”), respectively.⁹³ The FTC laws require funeral providers to supply accurate price lists and prohibits them from requiring consumers to purchase non-necessary services and items like embalming, a vault, or a casket when the body will be cremated.⁹⁴ The EPA requires that, for a burial at sea, remains be scattered at least three nautical miles from shore and a non-cremated body be released at the same distance but in water at least 600 feet deep with precautions taken to ensure the body sinks.⁹⁵ The EPA also regulates the storage and disposal of unused embalming fluid because it contains formaldehyde, which is a hazardous substance under the Resource Conservation and Recovery Act.⁹⁶ However, once the embalming fluid is flushed through the body (its intended use), it is no longer considered a hazardous waste.⁹⁷ Other attempts at federal regulation of the funeral industry have been unsuccessful.⁹⁸

A. Overview of Relevant Ohio Laws

Ohio has laws regulating the funeral industry that include restrictions on the means of disposition of bodies both to protect public health and to financially protect consumers from the funeral industry.⁹⁹ For example, funeral directors, embalmers, and crematories must all be licensed by the Ohio Board of Embalmers and Funeral Directors (the “Funeral Board”) and meet certain training and education

⁹² *What are the Laws on Scattering Ashes*, NEPTUNE SOC’Y, <https://www.neptune.society.com/cremation-information-articles/what-are-the-laws-on-scattering-ashes> (last visited Jan. 25, 2023).

⁹³ 16 C.F.R. § 453.2 (2023) (providing one example of an FTC rule regulating the funeral industry); 40 C.F.R. § 229.1 (2023) (showing one EPA regulation for the cremating industry).

⁹⁴ 16 C.F.R. §§ 453.2–453.5 (2023); *see also* Ann M. Murphy, *Please Don’t Bury Me Down in that Cold Ground: The Need for Uniform Laws on the Disposition of Human Remains*, 15 ELDER L.J. 381, 390 (2007).

⁹⁵ 40 C.F.R. § 229.1 (2023).

⁹⁶ ENVTL. PROT. AGENCY OF THE U.S., Comment Letter on RCRA Input to Region IV Inquiry: UIC Well Inventory Update (1985), <https://rcrapublic.epa.gov/files/12406.pdf>.

⁹⁷ *Id.*

⁹⁸ *See* Murphy, *supra* note 94, at 391–93.

⁹⁹ OHIO REV. CODE ANN. § 517.21 (West 2022).

requirements.¹⁰⁰ The Funeral Board is composed of seven members appointed by the governor, five of which must be practicing funeral directors, and four of which must also be licensed embalmers.¹⁰¹ The authority of the Funeral Board is limited both by individuals' religious rights and by public health concerns.¹⁰² Their licensing and decision making is not to interfere with religious ceremonies or customs nor with an employee from the state or local board of health handling a body affected by a communicable disease.¹⁰³ Further consideration for public health and for individual property rights is demonstrated in an Ohio statute preventing cemetery associations from locating a cemetery within one hundred yards of a home without the permission of the homeowner.¹⁰⁴

Some power to regulate burials is also granted at a more local level.¹⁰⁵ Ohio Revised Code Section 517.21, for example, grants township boards of trustees the discretion to remove and rebury remains from a public or private cemetery when they determine that the cemetery has been abandoned or that, in its current location, the cemetery is detrimental to public health or welfare.¹⁰⁶ The Seventh District Court of Appeals cited that statute in enforcing a contract against the Board of Township Trustees for the York Township in Medina County. The Court agreed to allow the disinterment and relocation of remains and headstones from an apparently abandoned small private cemetery in order to allow a coal company to access coal under the cemetery.¹⁰⁷ In a different case, the Ohio Supreme Court has held that while this law does apply to religious organizations, it does not prevent individuals from locating private cemeteries in close proximity to dwellings.¹⁰⁸ In fact, as long as an individual obtains a proper death certificate and burial permit,¹⁰⁹ there are no laws preventing a home burial.¹¹⁰

B. Ohio Court Case Addressing the Legality of Alkaline Hydrolysis

Current Ohio statutes do not mention body composting or alkaline hydrolysis but the Franklin County Court of Common Pleas did address alkaline hydrolysis in 2011

¹⁰⁰ OHIO REV. CODE ANN § 4717.06(A)(1) (West 2022) (listing the licensing requirements for embalmers and funeral directors).

¹⁰¹ OHIO REV. CODE ANN § 4717.02(A) (West 2022).

¹⁰² OHIO REV. CODE ANN § 4717.12 (West 2022).

¹⁰³ *Id.*

¹⁰⁴ OHIO REV. CODE ANN § 1721.03 (West 2022).

¹⁰⁵ OHIO REV. CODE ANN § 4717.06 (West 2022).

¹⁰⁶ OHIO REV. CODE ANN § 517.21 (West 2022).

¹⁰⁷ *Carpenter v. Cravat Coal Co., Inc.*, No. 1282, 1979 Ohio App. LEXIS 11875, at *7 (Ohio Ct. App. 7th July 31, 1979).

¹⁰⁸ *Jackson v. Claxton*, 61 Ohio St. 2d 283, 284 (1980).

¹⁰⁹ OHIO REV. CODE ANN. §§ 3705.16–3705.17 (West 2022).

¹¹⁰ *See* CARLSON & SLOCUM, *supra* note 14, at 396.

after the Ohio Department of Health instructed registrars not to file death certificates or issue burial permits when alkaline hydrolysis was listed on the death certificate as the means of disposition.¹¹¹ Local registrars are tasked with issuing burial and cremation permits at the request of funeral directors or others who are disposing of human remains.¹¹² The Department of Health's action was in response to the one funeral director in Ohio who had already used alkaline hydrolysis for two months within the state.¹¹³ The Department of Health alleged, at the time of the trial, that it was acting on advice from an "opinion letter" issued by the Funeral Board stating that alkaline hydrolysis was not an authorized form of disposition.¹¹⁴ The plaintiff funeral director challenged the authority of the Department of Health and the Funeral Board to determine what an "authorized" form of disposition is.¹¹⁵ Indeed, while the Funeral Board has authority over the licensing and operation of funeral homes, crematories, and embalmers, there is no explicit legislation suggesting that it has the power to authorize or prevent any other means of disposition.¹¹⁶

The case of *Edwards Funeral Serv. v. State* did not proceed further than the Franklin County Court of Common Pleas, where the Court denied each of the State's Motions to Dismiss for lack of subject matter jurisdiction, lack of standing, and failure to state a claim upon which relief may be granted.¹¹⁷ The court also allowed the plaintiff to proceed with an argument for estoppel based on the fact that the Department of Health knowingly allowed the plaintiff to conduct alkaline hydrolysis within the state for two months, suggesting that to do so was in accordance with the law and it should be estopped from now arguing that alkaline hydrolysis is not an authorized means of disposition.¹¹⁸ The Court's Agreed Judgment Entry and Final Order, however, granted the Department of Health's motion for a directed verdict and held that the Ohio Department of Health and the Funeral Board do have the authority to determine what is an authorized means of disposition for a dead body.¹¹⁹

In 2012, though, the Funeral Board expressed its willingness to "work with" the Ohio Funeral Directors Association ("OFDA") on drafting legislation to authorize and regulate alkaline hydrolysis in Ohio and noted that a change in legislation would be their preferred method over issuing a rule that alkaline hydrolysis is considered an

¹¹¹ *Edwards Funeral Serv. v. State*, No. 11CVH03-3772, 2011 Ohio Misc. LEXIS 2475, at *1 (Ct. Com. Pl. Oct. 12, 2011).

¹¹² OHIO REV. CODE ANN. § 3705.17 (West 2022).

¹¹³ *See Edwards Funeral Serv.*, 2011 Ohio Misc. LEXIS 2475, at *6.

¹¹⁴ *Id.* at *1–2.

¹¹⁵ *Id.* at *2.

¹¹⁶ OHIO REV. CODE ANN. § 4717.04 (West 2022).

¹¹⁷ *See Edwards Funeral Serv.*, 2011 Ohio Misc. LEXIS 2475, at *3–7.

¹¹⁸ *Id.* at *6–7.

¹¹⁹ *See id.*; *see also Edwards Funeral Serv. v. Wymyslo*, No. 11 CVH03-3772, 2012 Ohio Misc. LEXIS 1298 (Ct. Com. Pl. Mar. 2, 2012).

“authorized method.”¹²⁰ This suggests that the Funeral Board’s letter to the Ohio Board of Health was the result of a reluctance to act without express legislative approval rather than any substantive concerns over the safety or appropriateness of alkaline hydrolysis.¹²¹

Soon after the court’s decision, OFDA introduced legislation into the Ohio House of Representatives that included provisions for the authorization of alkaline hydrolysis as a regulated manner of final disposition.¹²² The provision of the bill authorizing alkaline hydrolysis was removed before the bill passed.¹²³ The OFDA attributed the removal of that provision directly to the criticism of the Catholic Conference of Ohio in the form of a letter that included the statement: “[d]issolving bodies in a vat of chemicals and pouring the resultant liquid down the drain is not a respectful way to dispose of human remains.”¹²⁴ This opposition will be explored further below.¹²⁵ Because there are currently no statutes in Ohio dealing with these two methods of disposition, this next Part will survey the laws of some of the states that do have such legislation.

C. Comparison to Laws in Other States

Alkaline hydrolysis is currently a legal means of final disposition in twenty states.¹²⁶ Minnesota was the first state to legalize the procedure for the disposal of human remains, which it did in 2003 to facilitate the Mayo Clinic’s use of alkaline hydrolysis on donated cadavers.¹²⁷ Another midwestern state, Illinois, legalized the process in 2012¹²⁸ by adding alkaline hydrolysis to the definition of “cremation” in the state’s public health statutes.¹²⁹ There are funeral providers in Illinois that now

¹²⁰ *Board Minutes February 27-28, 2012*, STATE OF OHIO BD. OF EMBALMERS AND FUNERAL DIRS., <https://funeral.ohio.gov/Portals/0/MINUTES/2012%20Minutes/2012%2002.pdf> (last visited Jan. 29, 2023).

¹²¹ *Id.* (showing reluctance to act without challenging the Board’s authority later).

¹²² John T. McGough, *Legislative Update*, OHIO FUNERAL DIRS. ASS’N (Jan. 11, 2013), https://www.ofdaonline.org/aws/OFDA/pt/sd/news_article/68639/blank/blank/true.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Infra* Part IV.A.

¹²⁶ Adina Soloman, *More States Legalize Dissolving Bodies in Water*, U.S. NEWS & WORLD REPORT (Mar. 12, 2020, 2:53 PM), <https://www.usnews.com/news/best-states/articles/2020-03-12/more-states-legalize-alkaline-hydrolysis-dissolving-dead-bodies-in-water>.

¹²⁷ Olson, *supra* note 23, at 672.

¹²⁸ Ed Defort, *Nineteen States Now Permit Alkaline Hydrolysis*, ARIZ. FUNERAL, CEMETERY AND CREMATION ASS’N (June 13, 2019), <https://azfcca.org/19-states-now-permit-alkaline-hydrolysis/>.

¹²⁹ Cremation is now defined in Illinois as, “. . . the technical process, using heat and flame, or *alkaline hydrolysis* that reduces human remains to bone fragments. The reduction takes place through heat and evaporation or *through hydrolysis*. Cremation shall include the processing,

offer alkaline hydrolysis both for Illinois residents and for out-of-state clients who are willing to transport their deceased relative to Illinois for access to this option.¹³⁰

Similarly, Missouri legalized the process in 2016¹³¹ by defining “cremation” as “a final disposition of dead human remains; the mechanical process which reduces remains to bone fragments through heat, evaporation, and/or an alkaline hydrolysis chemical process.”¹³² Unlike Illinois, however, Missouri authorized the technique by inclusion in an administrative rule, rather than a legislative statute.¹³³ Currently, the one funeral provider in Ohio who offers alkaline hydrolysis as part of a funeral package transports bodies to a facility in Missouri because Ohio legislation does not yet allow the process to be performed within the state.¹³⁴ This interstate transportation contributes significantly to the cost of water cremation over flame cremation for that funeral service provider,¹³⁵ a cost that could be significantly reduced by legalization in Ohio because the funeral provider already has the equipment to perform alkaline hydrolysis on site in Columbus, Ohio.¹³⁶

Body composting is a much newer option and is currently only legal in three states although California also passed a bill in September 2022, allowing for natural organic reduction to take place within the state beginning in 2027.¹³⁷ There are currently also bills in the Vermont House Committee on General, Housing, and Military Affairs and the Delaware House Committee on Health and Human Development that would authorize body composting within those states respectively.¹³⁸

and may include the pulverization, of the bone fragments.” (emphasis added). 410 ILL. COMP. STAT. ANN. 18/5 (West 2022).

¹³⁰ See, e.g., *Testimonials*, AQUA GREEN DISPOSITIONS LLC, <https://www.aquagreendispositions.com/what-sets-us-apart-testimonials/> (last visited Jan. 27, 2023).

¹³¹ See Defort, *supra* note 128.

¹³² MO. CODE REGS. ANN. tit. 20, § 2120-1.040(7) (2022).

¹³³ *Id.*

¹³⁴ *Aquamation Packages*, EDWARDS FUNERAL SERV., <https://www.edwardsfuneralservice.com/aquamation-packages> (last visited Jan. 27, 2023).

¹³⁵ Compare *id.* (aquamation package with no funeral service for \$1,995.00), with *Cremation Packages*, EDWARDS FUNERAL SERV., <https://www.edwardsfuneralservice.com/cremation-packages> (last visited Jan. 27, 2023) (cremation package with no funeral service for \$999.00).

¹³⁶ EDWARDS FUNERAL SERV., *supra* note 134.

¹³⁷ Assemb. B. 351, 2021 Leg., 2021-2022 Reg. Sess. (Cal. 2022).

¹³⁸ Vt. Gen. Assembly, *H.244—Status*, <https://legislature.vermont.gov/bill/status/2022/H.244> (last visited Feb. 5, 2022); H.244, 2021-2022 Gen. Assemb., Reg. Sess. (Vt. 2021); Delaware General Assembly, *House Bill 165*, <https://legis.delaware.gov/BillDetail/58585> (last visited Jan. 29, 2023).

Washington, the first state to legalize human body composting,¹³⁹ does so by requiring licensing¹⁴⁰ and inspection¹⁴¹ of what is referred to as “natural organic reduction” facilities in its revised code.¹⁴² Additionally, the Washington Revised Code specifically lists the only methods of disposition for human bodies within the state.¹⁴³ Those are: burial, cremation, alkaline hydrolysis, and natural organic reduction.¹⁴⁴ Washington also grants authority to local health officers and medical examiners to determine whether a contagious disease may be a public health hazard requiring that natural organic reduction be disallowed for bodies infected by that disease.¹⁴⁵ Interestingly, the Washington Administrative Code puts the imperative to halt the natural organic reduction procedure in such cases on the funeral director, embalmer, or other person preparing the body to prohibit natural organic reduction from continuing under such conditions.¹⁴⁶ It seems that in cases where the only parties involved are the natural organic reduction facility and the persons buying the facility’s services for their decedent, the facility would have the duty to enforce this rule against itself by refusing to accept bodies that are disqualified by the conditions mentioned.¹⁴⁷ The website for the first human composting provider in the United States, Recompose, does note that it does not accept bodies affected by Ebola, prion diseases, and tuberculosis or those containing any organ implanted with a radiation seed.¹⁴⁸

¹³⁹ See Johnson & Cook, *supra* note 37.

¹⁴⁰ “A license or endorsement issued under this chapter or chapter 68.05 RCW is required in order to operate a crematory, alkaline hydrolysis, or natural organic reduction facility or conduct a cremation, alkaline hydrolysis, or natural organic reduction.” WASH. REV. CODE ANN. § 18.39.217 (West 2022).

¹⁴¹ “The director must appoint an agent whose title is ‘inspector of funeral establishments, crematories, alkaline hydrolysis, and natural organic reduction facilities, funeral directors, and embalmers of the state of Washington.’” WASH. REV. CODE ANN. § 18.39.170 (West 2022).

¹⁴² See § 18.39.217; *see also* § 18.39.170.

¹⁴³ WASH. REV. CODE ANN. § 68.50.110 (West 2022).

¹⁴⁴ *Id.*

¹⁴⁵ WASH. ADMIN. CODE § 264.500.030 (2022).

¹⁴⁶ “A funeral director, embalmer, or other person assisting in the preparation of human remains for final disposition shall prohibit activities otherwise allowed under subsection (2)(d) [Reducing by natural organic reduction] of this section if the human remains are confirmed to have or suspected of having one or more of the following conditions” *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ FAQ: *What Happens to Diseases During Human Composting?*, RECOMPOSE, <https://recompose.life/faqs/what-happens-to-diseases-during-human-composting/> (last visited Jan. 27, 2023).

The three states that currently allow human body composting are all on the west coast,¹⁴⁹ as is California, where human composting is set to be legalized in 2027.¹⁵⁰ This makes the option unobtainable for the majority of the country and particularly for those who cannot afford to travel across the country to seek out that option. Also, transporting a deceased family member such a long distance by vehicle or airplane would largely defeat the purpose of choosing a “green” funeral option when greenhouse gas emissions from travel are accounted for.¹⁵¹ For this reason, along with the others discussed in this Note, both alkaline hydrolysis and human body composting should be permitted in Ohio.

V. OPPOSITION

There has been some opposition to the legalization of alkaline hydrolysis in Ohio and to both alkaline hydrolysis and human composting in some other states.¹⁵² This pushback has mainly come from religious organizations and religious leaders.¹⁵³ Some opponents have also expressed public health and safety concerns for these relatively new means of disposition.¹⁵⁴

A. *Religious and Moral Concerns*

In opposing a bill to legalize alkaline hydrolysis in Ohio, the Catholic Conference of Ohio stated that the process is not a “respectful way to dispose of human remains.”¹⁵⁵ Notably, the Catholic Church also opposed cremation up until 1963.¹⁵⁶ Now, the Catholic Church permits cremation for adherents but still expresses a strong preference for burial.¹⁵⁷ According to a Vatican publication, cremation is now permitted by the Church for reasons such as sanitary, economical, and social concerns as long as the reasons are not “contrary to Christian doctrine” and do not violate the

¹⁴⁹ See Johnson & Cook, *supra* note 37.

¹⁵⁰ Assemb. B. 351, *supra* note 137.

¹⁵¹ John Wihbey, *Evolving Climate Math of Flying vs. Driving*, YALE CLIMATE CONNECTIONS (Sept. 2, 2015), <https://yaleclimateconnections.org/2015/09/evolving-climate-math-of-flying-vs-driving/>.

¹⁵² See McGough, *supra* note 122.

¹⁵³ *Id.*

¹⁵⁴ See Washington State Catholic Conference, *Human Composting Bill Signed by Washington Governor*, CATHOLIC CEMETERIES AND FUNERAL SERV. OF THE WEST (May 22, 2019), <https://www.ccfwest.org/industry-news/new-form-of-disposition-in-washington-will-go-into-effect-may-2020/> [hereinafter *Human Composting Bill*].

¹⁵⁵ See McGough, *supra* note 122.

¹⁵⁶ Press Release, Pope Francis, *Instruction Ad Resurgendum cum Christo Regarding the Burial of the Deceased and the Conservation of the Ashes in the Case of Cremation*, HOLY SEE PRESS OFFICE (Oct. 25, 2016), <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2016/10/25/161025c.pdf>.

¹⁵⁷ *Id.*

known or probable wishes of the decedent.¹⁵⁸ The Church still places a restriction on cremation that the ashes be buried in a cemetery or kept in another “sacred place” rather than scattered or retained by family members.¹⁵⁹ A bill to relegalize alkaline hydrolysis introduced in New Hampshire faced similar opposition. The Catholic Diocese of Manchester argued that “. . . alkaline hydrolysis fails to provide New Hampshire citizens with the reverence and respect they should receive at the end of their lives.”¹⁶⁰

Leaders in the Jewish faith have also expressed a preference for burial over cremation or other alternatives, but for reasons practically opposite of those expressed by the Catholic Church.¹⁶¹ Scholars have said that the Torah can be interpreted as favoring natural decomposition when God says to Adam: “You are dust and to dust you will return.”¹⁶² Jewish scholars have shown less staunch opposition to alternative disposition methods than the Catholic Church.¹⁶³ On whether alkaline hydrolysis is a respectful way to treat a body, one Rabbi noted that “the propriety of mortuary methods depends at least partly on mourners’ intentions.”¹⁶⁴

The view that alkaline hydrolysis is not an appropriate or respectful way to treat a human body is certainly not universal.¹⁶⁵ In Hawaii, a bill has been introduced to legalize alkaline hydrolysis because it aligns with the cultural preference and tradition of some native Hawaiians to bury the skeletal remains of their ancestors as a way to maintain a genealogical link between generations.¹⁶⁶ Alkaline hydrolysis produces intact long bones that can be returned to the family for burial.¹⁶⁷ This method is

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Meredith P. Cook, *Re: HB 1577 (Relative to Regulating Alkaline Hydrolysis for the Disposal of Human Remains)*, DIOCESE OF MANCHESTER (Jan. 28, 2014), <https://www.catholicnh.org/assets/Documents/Community/Current-Issues/HB1577-AlkalineHydrolysis.pdf>.

¹⁶¹ *Jewish Cremation Beliefs*, TULIP CREMATION, <https://tinyurl.com/Jewish-Leaders> (last visited Jan. 27, 2023).

¹⁶² See Jeremy Kalmanofsky, *Alternative Kevura Methods*, RABBINICAL ASSEMBLY (June 7, 2017), <https://www.rabbinicalassembly.org/sites/default/files/public/halakhah/teshuvot/2011-2020/alternative-burial.pdf>; *Genesis* 3:19 (New International Version).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ Mililani Trask, *Water Cremation is a Culturally Appropriate Way to Leave this Planet*, HONOLULU CIVIL BEAT (Dec. 23, 2021), <https://www.civilbeat.org/2021/12/water-cremation-is-a-culturally-appropriate-way-to-leave-this-planet/> (showing an appropriate reason for Hawaiians choosing aquamation).

¹⁶⁶ S.B. 982, 31st Legislature (Haw. 2021).

¹⁶⁷ Trask, *supra* note 165.

preferable to flame cremation because the bones come out cleaner, similar to the results of the traditional practice of treating the body with steam in an earthen oven.¹⁶⁸

Human composting has been met with some similar criticisms as alkaline hydrolysis.¹⁶⁹ An official for the Washington State Catholic Conference stated that the practice “. . . fails to show enough respect for the body of the deceased.”¹⁷⁰ In Washington, that opposition was not enough to prevent the state from legalizing both alkaline hydrolysis and human composting.¹⁷¹ As it was with alkaline hydrolysis, the viewpoint of some Jewish leaders on human composting is less severe.¹⁷² Rabbi Kalmanofsky also considered an early prototype to the current method of composting and found the idea of using a dead human body for the “tangible benefit” of growing plants to be objectionable.¹⁷³

The opinion statements by religious organizations and leaders, while important to many, are not necessarily dispositive of the issue. Ohio has probate laws allowing Ohioans to direct their means of final disposition through assigning a representative and leaving written directions.¹⁷⁴ Such laws allow a person morally opposed to these options to avoid being subjected to them.

B. Public Health and Safety Concerns

Protecting the public from the spread of disease is one of the historical justifications for embalming, but the efficacy of embalming in preventing the spread of disease from corpses has since been disproven.¹⁷⁵ Much of the false information about the public health benefits of embalming derives from within the funeral industry.¹⁷⁶ Recall that burial with embalming is one of the most expensive options offered.¹⁷⁷ In fact, for Creutzfeldt-Jakob Disease, an admittedly rare brain disease, the Centers for Disease Control and Prevention (“CDC”) recommends special precautions for embalming those who have died with the disease.¹⁷⁸ The CDC notes that

¹⁶⁸ *Id.*

¹⁶⁹ Richard Read, *Washington State Braces For Eco-friendly ‘Human Composting’*, L.A. TIMES (May 13, 2019, 3:00 AM), <https://www.latimes.com/nation/la-na-human-composting-washington-green-burial-inslee-20190513-story.html>.

¹⁷⁰ *Id.*

¹⁷¹ See Peipert, *supra* note 33.

¹⁷² See Kalmanofsky, *supra* note 162, at 20.

¹⁷³ *Id.* at 21–22.

¹⁷⁴ See OHIO REV. CODE ANN. § 2108.70(B) (West 2022).

¹⁷⁵ See Olson, *supra* note 23, at 61–63.

¹⁷⁶ *Id.* at 62–63.

¹⁷⁷ See discussion, *supra* Part I.B.2.

¹⁷⁸ *Cruetzfeldt-Jakob Disease, Classic (CJD) Information for Funeral and Crematory Practitioners*, CDC, <https://www.cdc.gov/prions/cjd/funeral-directors.html> (last visited Jan. 29, 2023).

embalming is not sufficient to destroy the prions that cause Creutzfeldt-Jakob, but studies show that sodium hydroxide, which is used in alkaline hydrolysis can inactivate the prions.¹⁷⁹

Interestingly, it was the Washington State Catholic Conference who also raised concerns about the public safety effects of these two methods of disposition.¹⁸⁰ The main safety issue raised about alkaline hydrolysis is the alkaline nature of the effluent liquid that is disposed of in municipal water systems at the end of the process.¹⁸¹ This can be solved simply by the addition of acid to the effluent or by bubbling carbon dioxide through the liquid before disposal.¹⁸² California lawmakers have dealt with this concern by requiring alkaline hydrolysis facilities to obtain permits from city and/or county agencies or having the liquid removed by a biological waste company and imposing other water quality testing requirements that are more stringent than those of the other states that permit alkaline hydrolysis.¹⁸³

For human composting, the concern is that the process has not been thoroughly researched and may not eliminate some harmful pathogens the way that cremation or isolating the body in a casket would.¹⁸⁴ A study by researchers at Washington State University did look into the safety of the process and determined that it met standards for microbial communities and toxic metals, including mercury, set by the U.S. EPA and by the State of Washington.¹⁸⁵ Washington also has laws in place that disallow human composting in certain instances including when a body is or is suspected to be infected with a prion disease, tuberculosis, the Ebola virus, or any other potentially infectious disease as determined by a local health officer or medical examiner.¹⁸⁶ Persons treated with certain radioactive or nuclear medications and treatments are also not eligible for human composting under Washington law.¹⁸⁷ There has also been a suggestion to have the use of human compost regulated at the federal level by the U.S. EPA under Title 40 of the Code of Federal Regulations which deals with protection of

¹⁷⁹ *Id.*

¹⁸⁰ *See Human Composting Bill*, *supra* note 154.

¹⁸¹ *See id.*

¹⁸² *See id.*

¹⁸³ CAL. BUS. & PROF. CODE § 7639.10 (West 2022); *see also* Helen Mitsuko Marsh, Note, *The Green New Death: A Legislative Framework to Promote and Legalize Green Funerary Alternatives*, 12 GEO. WASH. J. ENERGY & ENV'T L. 124, 132–33 (2021).

¹⁸⁴ *See Marsh*, *supra* note 183, at 129.

¹⁸⁵ *Soil Research Pilot Study*, RECOMPOSE, <https://recompose.life/soil-research-pilot-study/> (last visited Jan. 26, 2023) (This research was funded by the country's first human composting facility but had the approval of Washington State University's Office of Research).

¹⁸⁶ *See* WASH. ADMIN. CODE § 246.500.030 (2022).

¹⁸⁷ *Id.*

the environment.¹⁸⁸ Research into the safety of this method is likely to continue as more states consider legalizing it.

VI. ALKALINE HYDROLYSIS AND HUMAN COMPOSTING SHOULD BE EXPRESSLY ALLOWED BY LEGISLATION IN OHIO SO THAT THE LEGALITY OF THESE MEASURES IS CLEAR TO BOTH PROVIDERS AND CONSUMERS IN THE FUNERAL INDUSTRY

Current Ohio statutes do not mention body composting or alkaline hydrolysis but the Ohio Department of Health did instruct local registrars in 2011 not to issue death certificates or burial permits for cases of alkaline hydrolysis.¹⁸⁹ Rather than leaving this determination to the Department of Health, alkaline hydrolysis and body composting should both be explicitly included in the Ohio Revised Code so that it is clear to the registrars issuing burial certificates, to funerary service providers in the state, and to consumers, that these are legal means of disposition within Ohio.

A. *Authority of the Ohio Board of Embalmers and Funeral Directors*

As discussed above, the Funeral Board is the body that issues licenses for embalmers and funeral directors in Ohio.¹⁹⁰ The Funeral Board would also, most likely, be the entity to license alkaline hydrolysis and human composting facilities if those options were legalized.¹⁹¹ The Funeral Board has already expressed a preference for having legislation added to the Ohio Revised Code to clearly permit alkaline hydrolysis as a means of disposition rather than the quicker solution of authorizing it by a rule change.¹⁹²

The concerns of the Funeral Board about adding language to the Ohio Revised Code are valid, because the Code grants the Funeral Board the authority to license embalmers and funeral directors and to make rules regarding licensing and education requirements for those facilities and individuals specifically.¹⁹³ There is no language in the administrative rules provision for the Funeral Board that suggests they can make

¹⁸⁸ See Marsh, *supra* note 183, at 135 (although the author's suggestion to regulate human compost in a category with "sewage sludge" would be likely to cause significant offense and pushback to the federal legalization process).

¹⁸⁹ *Edwards Funeral Serv. v. State*, No. 11CVH03-3772, 2011 Ohio Misc. LEXIS 2475, at *1 (Ct. Com. Pl. Oct. 12, 2011).

¹⁹⁰ *Supra* Part III.A.

¹⁹¹ *Id.*; see generally *Alkaline Hydrolysis Laws in Your State*, NOLO, <https://www.nolo.com/legal-encyclopedia/alkaline-hydrolysis-laws-your-state.html> (last visited Jan. 4, 2023).

¹⁹² See *Board Minutes February 27-28, 2012*, *supra* note 120; Kelli Wynn, *Controversial Liquid Cremation Sought in Ohio*, DAYTON DAILY NEWS (June 29, 2019), <https://tinyurl.com/5u7nv6pn>; State of Ohio Board of Embalmers and Funeral Directors, *Meeting Minutes Feb. 27, 2012* (Feb. 27, 2012) funeral.ohio.gov/Portals/0/minutes/2012%20Minutes/2012%2002.PDF (then Assistant Attorney General, Jennifer Croskey advised the Board, "[t]he safest route is to do a law change, because if you authorize by only rule then someone down the road could challenge the Board's authority").

¹⁹³ See generally OHIO REV. CODE ANN. § 4717.04 (West 2022).

rules regarding any means of disposition other than embalming or cremation.¹⁹⁴ The fact that the administrative rules only cover embalmers, funeral directors, and crematories also means that not every disposition in Ohio is necessarily subject to rules set by the Funeral Board.¹⁹⁵ In 2007, then Attorney General, Marc Dann issued an opinion clarifying that neither a board of township trustees nor a local board of health can prohibit the burial of family members in a family cemetery on private property.¹⁹⁶ A municipality, however, can set laws prohibiting burials.¹⁹⁷ A family cemetery is one containing “human remains of persons, at least three-fourths of whom have a common ancestor or who are the spouse or adopted child of that common ancestor.”¹⁹⁸

People burying a relative on their own private property do not need to be licensed funeral directors as long as they submit a death certificate and the landowner of the family cemetery receives a burial permit in accordance with Ohio Revised Code Section 3705.17.¹⁹⁹ It would be wise to get legislation in place requiring providers of alkaline hydrolysis and human composting to obtain licensing from the Funeral Board so those methods are not subject to the same legal loophole.²⁰⁰ This is particularly relevant for human composting because, unlike alkaline hydrolysis, there has been no indication from the Board of Health or the Funeral Board that it is not an authorized means of disposition.²⁰¹

¹⁹⁴ OHIO REV. CODE ANN. § 4717.04(B) (West 2022).

¹⁹⁵ See OHIO REV. CODE ANN. § 4717.04(C) (West 2022) (specifying that while the board does not regulate cemeteries, it is enumerated with the power to license and regulate funeral homes, embalming facilities, and crematory facilities).

¹⁹⁶ Op. Ohio Att’y Gen. 2007–05, 36 (2007).

¹⁹⁷ *Id.* at 40.

¹⁹⁸ OHIO REV. CODE ANN. § 4767.02(D) (West 2022).

¹⁹⁹ OHIO REV. CODE ANN. § 3705.17 (West 2022) (“No person in charge of any premises in which interments or cremations are made shall inter or cremate or otherwise dispose of a body, unless it is accompanied by a burial permit.”).

²⁰⁰ See T. Scott Gilligan, *Ohio Court Rules Against Alkaline Hydrolysis*, OHIO FUNERAL DIRS. ASS’N (Feb. 14, 2012), <https://tinyurl.com/upfywhf> (granting OAG request to dismiss funeral home claims that alkaline hydrolysis was acceptable disposition method despite 19 previous death certificates recognizing it as such).

²⁰¹ Team Earth, *Tracker: Where is Human Composting Legal in the US?*, EARTH FUNERAL (Aug. 9, 2022), <https://earthfuneral.com/resources/tracker-where-human-composting-legal/>.

B. Need for Clarity

As demonstrated in *Edwards*,²⁰² there has already been a controversy over the legality of alkaline hydrolysis in Ohio that could have been avoided by clear legislation.²⁰³

There is further potential for confusion because “other authorized disposition” is not defined within the Ohio Revised Code and it is not clear whether alkaline hydrolysis could be included in the definition of “cremation” which is an authorized and regulated means of disposition.²⁰⁴ Section 3705 of the code pertains to vital statistics including the issuance of burial permits, which are also required for cremation. It defines cremation as “. . . the reduction to ashes of a dead body.”²⁰⁵ On its face, this definition could include alkaline hydrolysis because just like in a flame-based cremation, the body is reduced to ashes.²⁰⁶

In contradiction though, the section of the code that authorizes the Funeral Board to license and regulate the funeral industry defines cremation as “. . . the technical process of using heat and flame to reduce human or animal remains to bone fragments or ashes or any combination thereof.”²⁰⁷ This definition excludes alkaline hydrolysis because the process uses heat but not flames.²⁰⁸ Based on these definitions, within Ohio, alkaline hydrolysis is cremation as far as the issuance of burial permits is concerned but is not cremation for the purposes of regulation of the cremation industry by the Funeral Board.²⁰⁹

VII. A PERSON’S DESIRES ABOUT THE DISPOSITION OF THEIR BODY AFTER DEATH
SHOULD BE RESPECTED AND PROTECTED BY LEGISLATION

The Order of the Good Death is an education and advocacy organization that promotes the education of people in their legal rights surrounding death and funerals, open communication in the funerary industry, and environmentally friendly body

²⁰² *Edwards Funeral Service v. State*, No. 11CVH03-3772, 2011 Ohio Misc. LEXIS 2475 (Franklin Cnty. Ct. Com. Pl. 2011).

²⁰³ *See supra* Part III.B.

²⁰⁴ *Edwards Funeral Service v. State*, No. 11CVH03-3772, 2011 Ohio Misc. LEXIS 2475 (Franklin Cnty. Ct. Com. Pl. 2011).

²⁰⁵ OHIO REV. CODE ANN. § 3705.01(L) (West 2014).

²⁰⁶ Kent Hansen, *Choosing to Be Flushed Away: A National Background on Alkaline Hydrolysis and what Texas Should Know about Regulating “Liquid Cremation”*, 5 EST. PLAN. AND CMTY. PROP. L. J. 145, 150.

²⁰⁷ OHIO REV. CODE ANN. § 4717.01(M) (West 2017).

²⁰⁸ *Process, Waste Materials, Costs*, BIOSAFE LIFE SCIENCE SOLUTIONS, <https://biosafeeng.com/divisions/life-science/resources/alkaline-hydrolysis/process-waste-materials-costs/> (last visited Jan. 3, 2023) (describing how the process of alkaline hydrolysis uses heat and liquid to break down chemical bonds).

²⁰⁹ Hansen, *supra* note 206.

disposition options.²¹⁰ The Order of the Good Death’s “Death Bill of Rights” provides a guideline for what legislators should consider and aspire to when engaging in law-making with regards to the deceased.²¹¹ These include, “the right to determine who has the legal right and responsibility over your body after your death, the right to a decent burial or cremation, the right to determine how your remains are disposed of, [and] the right to donate your remains.”²¹²

Ohio law satisfies the first right by allowing a person of sound mind to execute a declaration naming a representative to direct the manner, location, and conditions of the person’s bodily remains.²¹³ The declarant can, and should, also leave directions in the document directing their representative of their wishes for final disposition and telling them what factors to consider in deciding on the manner of disposition, such as the declarant’s religion.²¹⁴ This creates a built in protection against people having their remains disposed of in ways that they do not feel are dignified or in line with their religion.²¹⁵ This allows the person’s desires to be respected and avoids the issue that the Catholic Church and others have raised about means of disposition such as alkaline hydrolysis being disrespectful.²¹⁶ In the absence of a directive for disposition of a decedent’s remains, the decision will typically be made by a close relative.²¹⁷ So, even a decedent who dies unexpectedly or has not executed a directive is unlikely to have their remains disposed of in a way that they would strongly disagree with.²¹⁸ A close relative of the decedent is likely to be aware of the decedent’s religious beliefs and choose a disposition in accordance with those beliefs.²¹⁹

²¹⁰ *Our Story*, THE ORDER OF THE GOOD DEATH, <https://www.orderofthegooddeath.com/our-story/> (last visited Feb. 14, 2022).

²¹¹ *Death Bill of Rights*, THE ORDER OF THE GOOD DEATH, www.orderofthegooddeath.com/resources/Death-bill-of-rights/ (last visited Feb. 14, 2022).

²¹² *Id.*

²¹³ OHIO REV. CODE ANN. § 2108.70(B) (West 2023).

²¹⁴ OHIO REV. CODE ANN. § 2108.72 (West 2010).

²¹⁵ OHIO REV. CODE ANN. § 4717.12 (West 2013).

²¹⁶ *See supra* Part IV.A.

²¹⁷ *See* OHIO REV. CODE ANN. § 2108.81(B) (West 2022) (assigning the right of disposition to a surviving spouse, child, parent, sibling, grandparent, and so on in an order based on kinship with the decedent).

²¹⁸ § 4717.12; Maureen P. Keeley, *Family Communications at End of Life*, 7 BEH. SCIS. 1 (2017).

²¹⁹ *Right and Obligations as to Human Remains and Burial*, STIMMEL, STIMMEL & ROESER, stimmel-law.com/articles/rights-and-obligations-human-remains-and-burial (noting the decedent’s preferences will be given priority in determining burial arrangements as determined by surviving family members).

The right to a “decent burial or cremation” is satisfied for most people by the legality and easy availability of those methods within the state.²²⁰ For “indigent” individuals with no family able to pay for the services, the township or municipality in which the deceased resided or where their body was found, has a duty to either bury or cremate the deceased at the expense of the township.²²¹ The right to donate one’s remains is also protected by Ohio law.²²²

That leaves the “right to determine how your remains are disposed of”²²³ as the area most in need of improvement.²²⁴ People’s reasons for wanting to use environmentally friendly methods of disposition have already been discussed.²²⁵ For many people, these desires are based on well-established value systems favoring the environment and a desire for their body to become a part of the Earth upon death, rather than being sealed away from the outside world.²²⁶ These values are at least as valid as the desire to preserve the body though sealing it in an airtight vault or to maintain the body’s appearance through the funeral by embalming.²²⁷ There is no reason they should not be given equal respect under the law when it comes to carrying out the final wishes of the deceased. Legalizing alkaline hydrolysis and human composting would allow for such protection of these values and meet the right of determining how one’s remains are disposed of.²²⁸

VIII. EXPLICITLY INCLUDING SUSTAINABLE OPTIONS IN LEGISLATION WILL LESSEN THE ENVIRONMENTAL IMPACT OF THE FUNERAL INDUSTRY IN OHIO BY ENCOURAGING FUNERAL PROVIDERS TO OFFER THEM AND CONSUMERS TO PURSUE THEM

Making it clear in the legislation that these methods are available within the state will encourage funeral service providers to begin obtaining the necessary equipment and undergoing the training required so that they can offer these options to consumers.²²⁹ This is important so that people who are determined to take advantage of these methods can do so in Ohio rather than transporting the bodies of loved ones

²²⁰ *Death Bill of Rights*, *supra* note 211.

²²¹ OHIO REV. CODE ANN. § 9.15(A) (West 2016).

²²² *See generally* OHIO REV. CODE ANN. § 2108.01–.29 (West 2009).

²²³ *Death Bill of Rights*, *supra* note 211.

²²⁴ *See generally* STIMMEL, STIMMEL, & ROESER, *supra* note 219.

²²⁵ *See supra* Part I.B.

²²⁶ Tom Clynes, *Back to the Land*, ENV’T DEFENSE FUND (May 18, 2022), edf.org/article/back-land (“People are coming to understand that the intimate decisions they make about the end of their lives can reinforce their connection to the land, and help to protect what’s important to them.”).

²²⁷ Brown, *supra* note 76.

²²⁸ *Id.*

²²⁹ *Id.* (noting that though “the whole industry is set up to accommodate [environmentally conscious] burial . . . some rules and statutes become hurdles”).

out of state for the processes.²³⁰ In the case of human composting, the only states currently allowing it are in the north eastern United States, so it is likely that Ohioans seeking an environmentally friendly option would settle for something like a natural un-embalmed burial rather than transporting a body that far.²³¹ However, the State of New York may soon legalize human composting, which will make it a much more obtainable option for Ohioans.²³² As noted in Part III of this Note, there is a funeral home in Ohio offering alkaline hydrolysis as a means of disposition by transporting the bodies out of state to do so legally.²³³

It is unclear what the demand for alkaline hydrolysis or human composting would be in Ohio if the options were offered within the state, making them more accessible and affordable to consumers. Note, though that in 2019, a survey showed that over half of Americans are interested in exploring “green” funeral options both for environmental and financial reasons.²³⁴ Also, although the funeral industry is often seen as very traditional and slow to change, the cremation rate in Ohio has seen a fairly rapid increase from 35.5 percent in 2010 to 54.7 percent projected in 2021 while the burial rate has decreased proportionally.²³⁵ There is already enough demand for sustainable funeral options in Ohio to support at least the seven existing cemeteries or burial grounds that are certified as “green burial sites” by the Green Burial Council.²³⁶

For the environmental advantages discussed in Part I, it is important for Ohio to set laws in place to allow the state to transition to these more sustainable burial options.²³⁷ Along with the issue of toxins from embalming going into the ground,²³⁸

²³⁰ *Cost of Transporting the Body*, EVERPLANS, <https://www.everplans.com/articles/how-to-transport-a-body-via-ground> (last visited Jan. 4, 2023) (noting the cost of transporting remains between states includes forwarding and receiving fees plus additional costs totaling on average \$1,800 to \$5,500).

²³¹ *See id.* (noting “that some states require that a body be embalmed if it will leave the state” or to gain entry to a state, which also blocks decedents of certain religions from being transported between states).

²³² Rebecca C. Lewis, *Dust to Dust*, CITY & STATE N.Y. (May 4, 2021), <https://www.cityandstateny.com/policy/2021/05/dust-to-dust/182904/>.

²³³ *Aquamation Packages*, *supra* note 134; Lauren Oster, *Could Water Cremation Become the New American Way of Death?*, SMITHSONIAN MAG. (July 27, 2022), <https://tinyurl.com/4v8h56va>.

²³⁴ *Consumers Moving Past Tradition for Funerals, Survey Says*, NFDA NEWS RELEASES (Oct. 15, 2019), <https://nfda.org/news/media-center/nfda-news-releases/id/4703/consumers-moving-past-tradition-for-funerals-survey-says>.

²³⁵ *2021 NFDA Cremation & Burial Report*, NAT’L FUNERAL DIRS. ASS’N 9 (July 2021), <https://dailymontan.com/wp-content/uploads/2021/09/2021-nfda-cremation-and-burial-report.pdf>.

²³⁶ *GBC-Certified Cemeteries in the United States, Canada, and Central America*, GREEN BURIAL COUNCIL, greenburialcouncil.org/cemeteries.html (last visited Jan. 4, 2023).

²³⁷ Clynes, *supra* note 226.

²³⁸ *Id.*

resource use for coffins and burial vaults,²³⁹ and fossil fuels used for flame-based cremations,²⁴⁰ there is the issue of land use by cemeteries²⁴¹ that could be partially mitigated by alkaline hydrolysis and human composting.²⁴² The population of Ohio is rapidly aging. Over a quarter of Ohioans are expected to be over age sixty by 2030, a 33.4% increase over 2010.²⁴³ With an average life expectancy of 73.2 years, it will become vital to address these issues in the coming decades as older Ohioans prearrange for their final disposition or their relatives decide what to do with their remains after death.²⁴⁴ Alkaline hydrolysis would help alleviate the land use issue in the same way that cremation does, but without the harmful emissions.²⁴⁵ Human composting can use either no designated cemetery land, as the composted remains can be scattered in the garden or other property of the decedent's family, or the remains can be incorporated into a conservation burial area.²⁴⁶

Remains from human composting can be incorporated into natural burial grounds that are already used for conservation purposes.²⁴⁷ A traditional cemetery mainly serves the purpose of storage of bodies although they can be places for gathering and grieving and some serve as scenic parks.²⁴⁸ A conservation burial ground serves the

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ See Louise Canning & Isabelle Szmigin, *Death and Disposal: The Universal, Environmental Dilemma*, 26 J. OF MKTG. MGMT. 1129, 1133–34 (2010) (describing environmental impacts of cemeteries including restricting use for other activities that impede “farming, industrial, residential, and leisure activities”).

²⁴² *Other Disposition Options*, GREEN BURIAL COUNCIL, greenburialcouncil.org/other_disposition_options.html (last visited Jan. 4, 2023).

²⁴³ *2020 Summary Assessment of Older Ohioans*, OHIO DEP'T OF AGING (Jun. 1, 2020), <https://aging.ohio.gov/wps/wcm/connect/gov/4e3041b1-f49a-4164-9ed0-c6d7b39e5f7b/SAPA-Summary-Assessment-of-Older-Ohioans-Executive-Summary.pdf?MOD=AJPERES&CVID=ncWcvoc>.

²⁴⁴ *New Study Shows Dramatic Differences between Average Age of Death in Ohio Counties*, OHIO UNIV. (Dec. 1, 2020), <https://www.ohio.edu/news/2020/12/new-study-shows-dramatic-differences-between-average-age-death-ohio-counties> [hereinafter *Average Age of Death in Ohio*].

²⁴⁵ Chris Raymond, *How Alkaline Hydrolysis Works*, VERY WELL HEALTH (Mar. 12, 2020), <https://www.verywellhealth.com/what-is-alkaline-hydrolysis-1131908>.

²⁴⁶ See *Our Model: FAQ: How Can Human Composting Soil Be Used?*, RECOMPOSE, <https://recompose.life/our-model/#faq> (last visited Dec. 5, 2021) (describing ecological benefits of nutrient rich soil produced by human composting soil).

²⁴⁷ Kristen Rogers, *How Human Composting Could Reduce Death's Carbon Footprint*, CNN (Nov. 7, 2022), [cnn.com/2022/11/07/world/human-composting-natural-organic-reduction-scen-lbg/index.html](https://www.cnn.com/2022/11/07/world/human-composting-natural-organic-reduction-scen-lbg/index.html).

²⁴⁸ Les Fee, *The Importance of Cemeteries to the Community*, FEE AND SONS FUNERAL HOME & CREMATORIUM (Apr. 27, 2016), <https://tinyurl.com/yp3ffhmk> (noting the historical, memorial, and community benefits of cemeteries).

further purpose of conserving land in a natural state with native plants, as opposed to the traditional cemetery that is usually more of a manicured park often with decorative plants and requiring extensive lawn care.²⁴⁹ Like naturally buried bodies, composted remains can be incorporated into conservation projects serving a purpose beyond housing dead bodies.²⁵⁰

IX. CONCLUSION

There is a need for states to address the growing demand for environmentally friendly means of final disposition. People want options that are both sustainable and affordable and that reflect their personal values.²⁵¹ The relatively new methods of alkaline hydrolysis and human composting are two options that meet those demands.²⁵² Ohio should implement a legislative solution to address this desire by legalizing both of these methods and having them regulated by the Ohio Board of Embalmers and Funeral Directors.

It is important that these methods be specifically legalized and regulated to avoid confusion and litigation over whether they are authorized methods of disposition in the state. Such legalization will demonstrate respect for the values of individuals who prefer to continue adhering to the environmental ideals they hold beyond their natural lives on into death.²⁵³ Allowing such methods will also decrease the burden of the funeral and burial industry on the environment by reducing the amount of resources expended and the toxins and air pollutants released.²⁵⁴ Additionally, these methods will reduce the amount of land required for burials in the face of an aging population within Ohio.²⁵⁵

Ohio should look to the legislation passed in other states as a guide to incorporating alkaline hydrolysis and body composting into state laws. As discussed in the previous Part of this Note, Missouri has legalized alkaline hydrolysis by including it in the

²⁴⁹ See Brown, *supra* note 76.

²⁵⁰ See, e.g., *The Forest*, <https://recompose.life/our-model/#the-forest> (describing the 700-acre land trust in Washington where the soil of composted bodies is used to restore the formerly clear-cut fields to a legally protected forested conservation area).

²⁵¹ See Brown, *supra* note 76 (citing 2019 funeral directors' association survey finding "52% of Americans expressed interest in green-burial options" for personal, environmental, or financial reasons).

²⁵² Kevin Snyder, *5 Eco-Friendly Options for Your Body After Death*, SNYDER LAW (May 1, 2022), <https://www.snyderlawpc.com/eco-friendly-burial-cremation-options-for-deceased/>.

²⁵³ Mark Harris, *Natural Burial and the Law: Are There Legal Matters Regarding Natural Burial?*, NORTHWOODS CASKET CO. (Oct. 27, 2014), <https://tinyurl.com/mrzt4ck>.

²⁵⁴ World Funeral News, *Cremation v. Burial: Which One Leaves a Larger Ecological Footprint?*, WORLD FUNERAL NEWS (Feb. 1, 2021), <https://news.wfuneralnet.com/en/cremation-vs-burial-environment/>.

²⁵⁵ *Average Age of Death in Ohio*, *supra* note 244; *Ohio's Changing Population*, MIAMI U. SCRIPPS GERONTOLOGY, CTR. <https://miamioh.edu/cas/academics/centers/scripps/research/ohio-population/index.html> (last visited Jan. 20, 2023).

definition of cremation.²⁵⁶ This could work in Ohio by altering the definition of cremation to “the technical process of using heat and flame *or alkaline hydrolysis* to reduce human or animal remains to bone fragments or ashes or any combination thereof.”²⁵⁷ Body composting does not fit so easily within any existing definitions so it would most likely need to be defined separately with provisions added to authorize the Funeral Board to license and regulate funeral providers using this method in the same way they already do for embalming and cremation.²⁵⁸ Because alkaline hydrolysis and human composting involve far more complicated processes than simply burying an un-embalmed body, it would be prudent to have the facilities where the processes take place and the providers of the services be licensed and regulated by the Funeral Board in the same manner they license and regulate embalming and cremation.²⁵⁹

The more legal options that are available in the state, the more likely it is that each individual will find an option that matches with their personally held beliefs and values. Concerns over the safety of the methods can be addressed through the licensing and training requirements set by the Funeral Board, the same way they already do for embalming and cremation.²⁶⁰

Several other states have successfully legalized alkaline hydrolysis, and a few have legalized human composting.²⁶¹ By legalizing both of these methods, Ohio can ensure that its residents have access to a greater variety of funerary options that serve the broad range of desires and needs in the population.

²⁵⁶ *Alkaline Hydrolysis Laws in Your State*, *supra* note 191.

²⁵⁷ See OHIO REV. CODE ANN. § 4717.01(M) (West 2017); *see supra* Part VII.

²⁵⁸ *See supra* Part V.A.

²⁵⁹ Hansen, *supra* note 206 (showing that “alkaline hydrolysis is a complex process with potential to harm consumers, competitors, or the environment if not properly regulated”).

²⁶⁰ OHIO REV. CODE ANN. § 4717.06 (West 2022).

²⁶¹ *Alkaline Hydrolysis Laws in Your State*, *supra* note 191; James Bickerton, *Human Composting is Legal in These Six States*, NEWSWEEK (Jan. 2, 2023), <https://www.newsweek.com/human-composting-legal-these-six-states-1770699>.