



PREPAID DEATH

Victoria J. Haneman

Frank J. Kellegher Professor of Trusts & Estates

Creighton University School of Law

Twitter & IG @TaxLawProf

Unpacking Four Ideas

1. It is important for the consumer to engage in pre-planning.

2. We need “pay now—die later” arrangements to address funeral poverty.

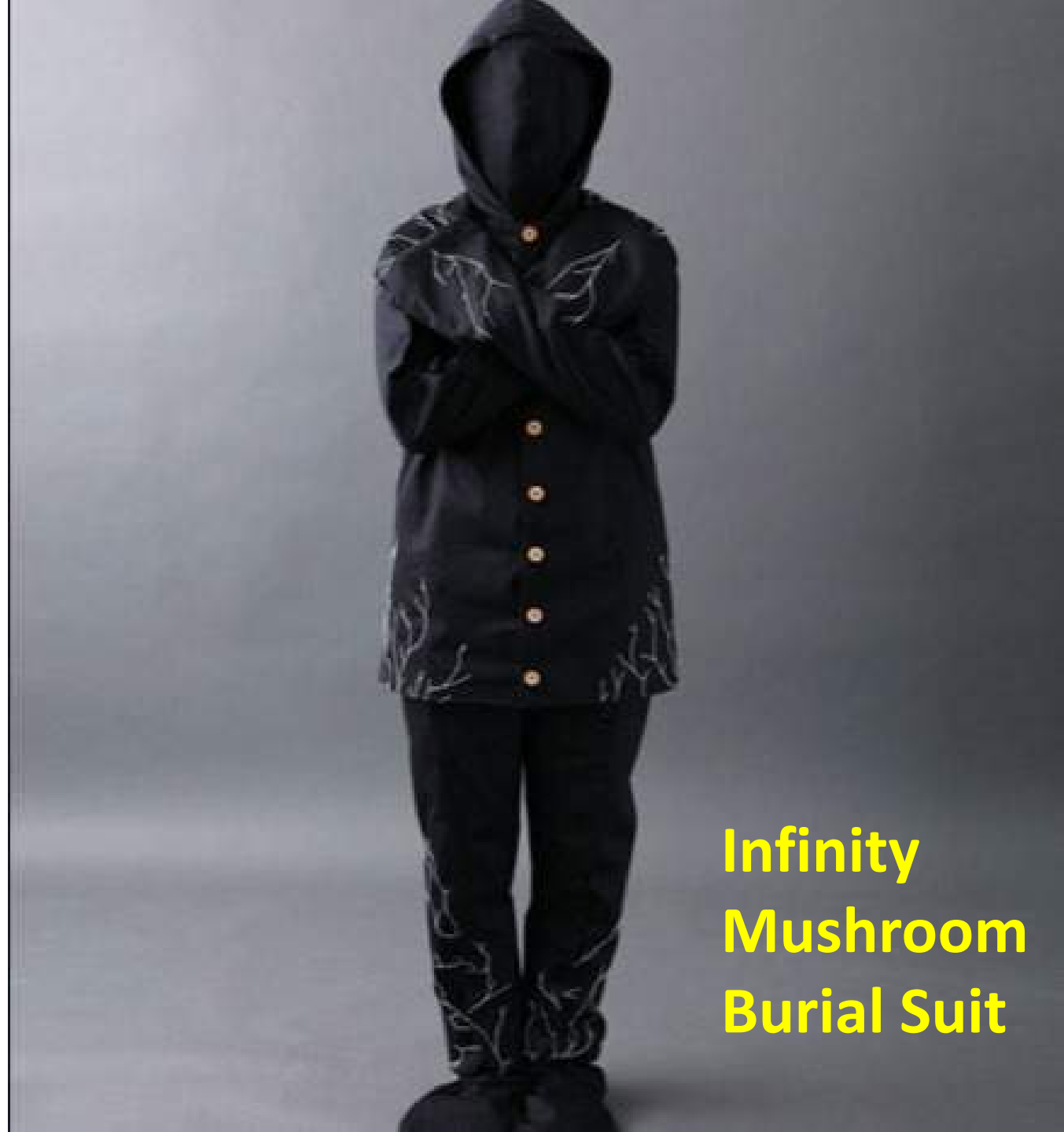
3. The death care industrial complex is entrenched and rent-seeking. There is an incentive to maintain status quo.

4. We can leverage federal tax incentives to help consumers.



Point 1

**Why is it important for
the consumer to
preplan death care?**



**Infinity
Mushroom
Burial Suit**

Median Costs 2021



Adult funeral with a vault (not a green burial)

\$9,420

* not including cemetery costs

Adult funeral with cremation

\$6,970

Average for direct cremation

\$1,000-\$2,200

* not including urn or interment



Only spend 4 hours shopping.

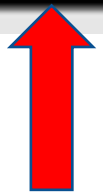
Do no price comparisons with other dealers.

Rely entirely upon the advice of one car salesperson.

And do all of this when you are traumatized and/or grieving.

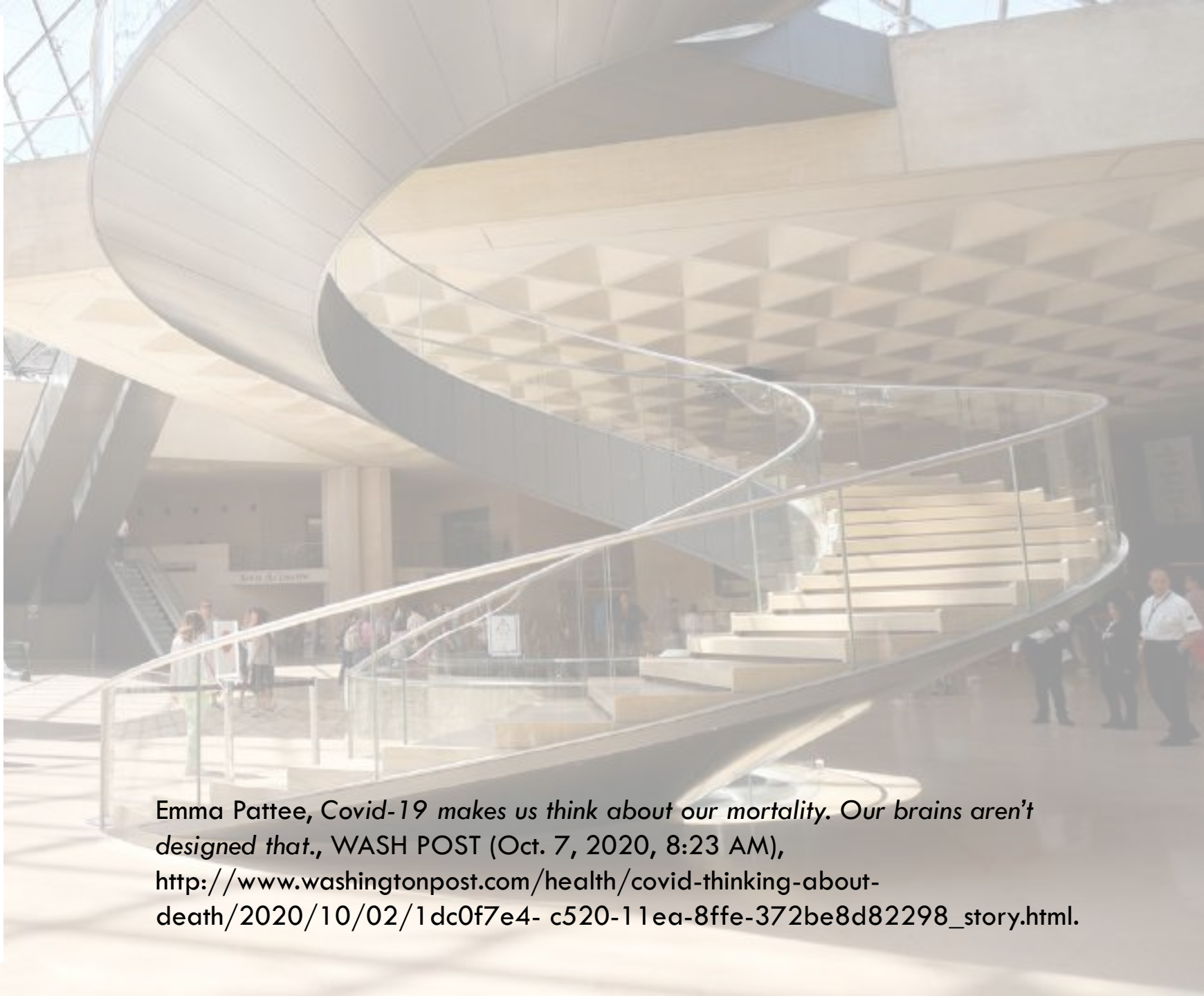


“Pre-need” purchasing



**“At need”
purchasing**

[T]o function as a conscious being, it's imperative that you be in denial about your impending death. How else would you go about the mundane aspects of your daily life — cleaning the gutters, paying the bills, sitting in traffic — if you were constantly aware of the inevitability of your own death? 'You would be overwhelmed with potentially debilitating existential terror'.....



Emma Pattee, *Covid-19 makes us think about our mortality. Our brains aren't designed that.*, WASH POST (Oct. 7, 2020, 8:23 AM), http://www.washingtonpost.com/health/covid-thinking-about-death/2020/10/02/1dc0f7e4-c520-11ea-8ffe-372be8d82298_story.html.

Tactics to Exploit the Vulnerable

- **Fictional representations**

("your loved one will be preserved *forever*")

- **Grief exploitation**

("I would want my *own* mother or father to only have the best")

- **Manipulation of death fears**

("This casket will prevent any bugs or worms from getting in")

- **Religious misdirection**

("If Jesus had been cremated, He would not have risen on the third day")

- **Patent bullying**

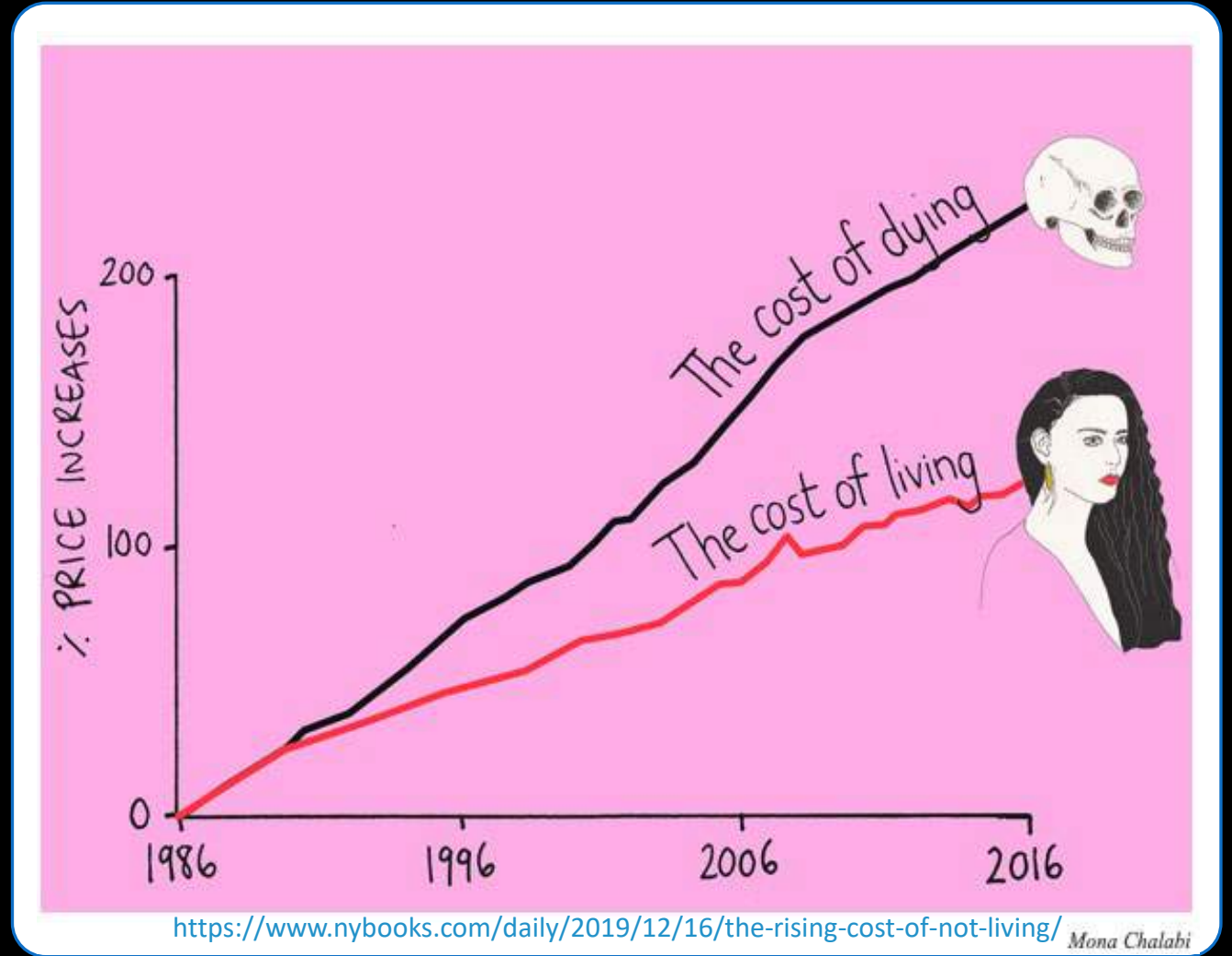
("No one's husband would want to be buried in a plain wood casket").



Point 2

The easiest way to bear an unexpected expense is to render it expected and allocate payment over time.

The ability to prepay is important in any conversation about “funeral poverty.”





Replying to [@michellekhan](#) [@michellekhan](#) and [@AOC](#)

My Mom died in December & b/c it was COVID, med school donation was unavailable. The funeral home wouldn't make arrangements beyond cremation unless I paid upfront. Her cremains are sitting just inside my front door in a \$35 cardboard box b/c there's nothing else I can afford

1:50 AM · Jan 30, 2021 · Twitter Web App



I quit photography because I said I fell out of love with it
But deep down its really because I had to help pay for my dad's funeral cost and make ends meet since I'm the only one working
Thinking I want another camera but don't think I'll be able to afford one for a long time

9:22 PM · Jan 27, 2021 · Twitter for Android



trade

44m · 📷

Omaha Buy-sell or

I'm selling these items to pay for my fathers funeral expenses. I'm open to negotiation on these items. Lmk if interested and I'm here to answer any questions :)

One of the belly ring packages has 1 taken out. Nothing was used and the others have never been open.



\$5 · OMAHA, NE
Jewelry and misc

MESSAGE



Significant spending on funerals by those of more modest means is not without historical precedent.

One historian notes that funerals were an important display of status for the working class in Edwardian and Victorian England.

Opportunities for bourgeois conspicuous consumption were far and few between for the common man of the day, and perhaps poor and working-class communities rely more upon social capital generated by performative displays of grief.



A market failure is the failure of a market to produce optimal outcomes.

Markets are not always perfect. And it is not fair to expect that they will always remain in equilibrium. But an efficient market requires robust competition—and monopolistic behavior can lead to any number of market failures (one organization has concentrated power and erects barriers to entry for all others).





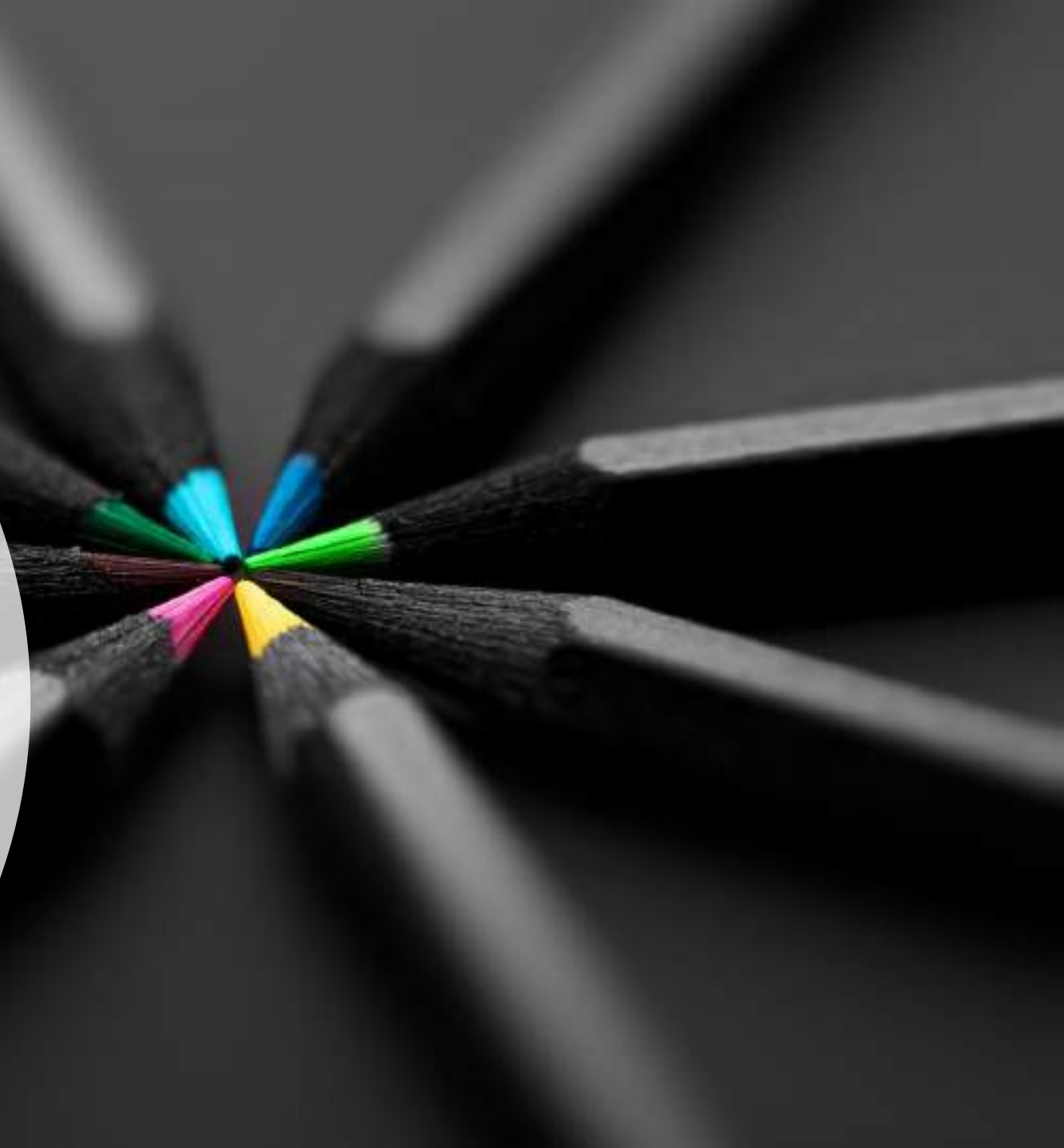
Point 3

We are dealing with an industry that is entrenched.

There is an incentive to maintain status quo.

**This is a conversation
about regulatory
capture.**

**It is a conversation about an
industry that may have gained
excessive influence over the
industry that is responsible
for regulating it.**



Regulatory capture

1. Criticisms of lobby-strength & practices since the 1950s.

2. Funeral rule provides limited (and arguably outdated) federal regulation.

3. State regulatory boards usually comprised of industry professionals.

4. Caselaw.

Median Cost of Funeral by Region

W. N. Central (NE, SD, ND, IA, MN, KS, MO)	\$8500
Mid Atlantic (NJ, NY, PA)	\$8093
New England (CT, ME, MA, NH, RI, VT)	\$7881
E. S. Central (IL, MI, IN, OH, WI)	\$7868
S. Atlantic (DE, FL, MD, GA, NC, SC, WV, VA)	\$7800
W. S. Central (AR, OK, LA, TX)	\$7334
E. S. Central (AL, KY, MS, TN)	\$7271
Pacific (CA, AK, HI, OR, WA)	\$7225
Mountain (CO, AZ, ID, MT, NV, NM, UT, WY)	\$6888





Secondhand Finds

1h · 🌐

▶ Weird



Please welcome Radcliff to my collection of full urns saved from the goodwill bins. This one is the smallest but I love him so.



👍👎🗨️ 288

153 Comments

Point 4

Federal tax incentives can be leveraged to sidestep issues of regulatory capture at the state and local level.

The classic example of a precommitment strategy comes from the story of the Sirens of Homer's Odyssey.

Odysseus knew that if any man heard the Sirens' song, he would fall under their spell.

His precommitment strategy? He forced his crew to put beeswax in their ears so they could row past the Sirens without hearing. He did not have wax in his ears, but he had his crew bind him to the mast of the ship.

Odysseus alone could hear the song without realizing the associated level of risk.



Success of 529 Plans

- **State and federal tax incentives**
- **Flexibility (both with contribution minimums & limits)**
- **Low costs**
- **Simplicity**



Section 529 of the Internal Revenue Code

Section 529 authorizes two types of plans:

Type 1:

A prepaid tuition program and permits the user to prepay tuition at in-state post-secondary schools.

Type 2:

This discussion focuses on Type 2, which is a state-administered tax-deferred investment account.



529 Plan Advantage

No other investment vehicle except the 529 Plan (and the Roth IRA) allows for both tax-deferral and tax-free withdrawals: income earned on the 529 assets is not subject to federal income tax, and if withdrawn and used for qualified educational expenses, it will *never* be subject to federal income tax.





Non-qualified reimbursement

The recipient pays taxes on any earnings of the 529 plus a penalty of 10% (subject to some exceptions).

Qualified reimbursement

The recipient never pays any taxes on the earnings of the 529. **It is completely tax-sheltered.**

Why are tax-sheltered options timely?

Because we live in a society that has an uneasy relationship with providing safety-net assistance to the relatively poor, or the working families for whom everyday life is a struggle but not necessarily a sharply defined ongoing tragedy.



Is use of a tax expenditure appropriate?

A tax expenditure is a surreptitious and indirect form of government spending.

A common criticism is that they are crude, opaque, and context oblivious.



Preservation of Tattoos After Death

Remember,
our purpose is
twofold here:

To incentivize
preneed planning

To carve a path
through or around
state-level regulatory
capture.



Use of a tax expenditure can benefit the consumer in several ways:

1. The Code has an important telegraphing function, which is useful when informational restraint is a market barrier.



Use of a tax expenditure can benefit the consumer in several ways:

1. The Code has an important telegraphing function, which is useful when informational restraint is a market barrier.
2. The Code can “nudge” a taxpayer towards desirable behaviors.



Use of a tax expenditure can benefit the consumer in several ways:

1. The Code has an important telegraphing function, which is useful when informational restraint is a market barrier.
2. The Code can “nudge” a taxpayer towards desirable behaviors.
3. There has been a substantial amount of private sector investment driven by environmental tax credits.





**In 2019, the solar industry
attributed the following to a tax
subsidy:**

**10,000% increase in solar
capacity**

Quarter-million new jobs

\$140B in investment

Fair Criticisms of the Plan

Economists may present 2 objections aka questions:

- What about the distributional inequity of the benefits flowing from the subsidy?
- Will the incentive produce the desired result?



Book Proposal

“An Affordable Death”

Explores the modern issue of funeral poverty.

Considers reform in three areas:

- 1. State regulation**
- 2. Federal regulation**
- 3. Tax incentives**
(for prepayment and saving)

Two Examples

1. Ready to Embalm Laws

23 states require that funeral directors be licensed embalmers + have expensive embalming rooms. But 71% of death care will be cremations by 2030 and the majority of cremations do not involve embalming.

2. Abuse of Corpse Laws

Unnecessary barriers to block new death tech?



"Liquid Cremation" Machine