

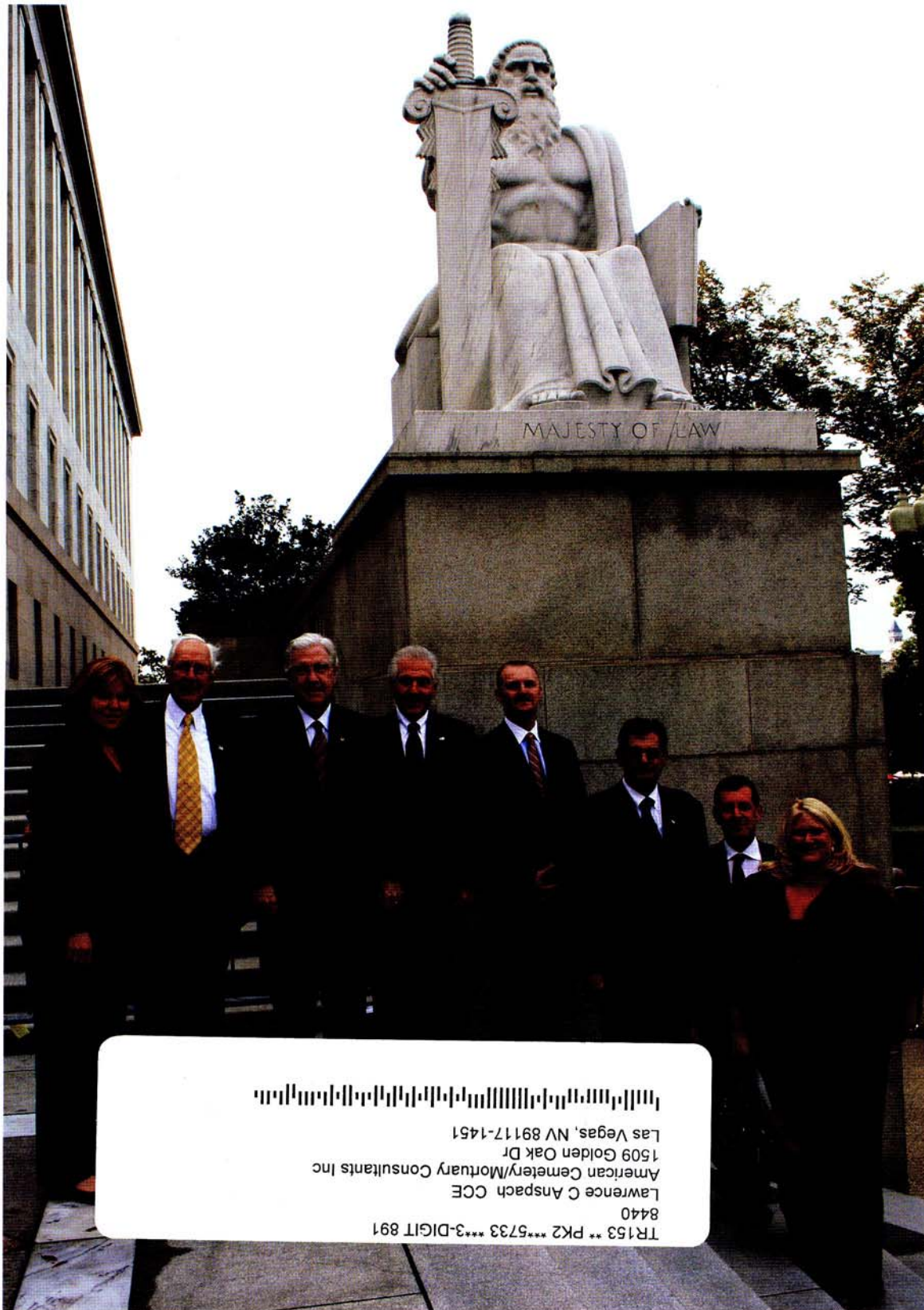
ICCFA[®] MAGAZINE

August - September 2010

CEMETERY

CREMATION

FUNERAL



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Lawrence C Anspach CCE
American Cemetery/Mortuary Consultants Inc
1509 Golden Oak Dr
Las Vegas, NV 89117-1451



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the human touch



Rep. Shelley Berkley (D-NV), in red, who has sponsored bills to restore the plot allowance and marker allowance for veterans who choose to be interred in private or religious cemeteries, meets with ICCFA members. Clockwise, from her right: ICCFA General Counsel Bob Fells; Ed Horn; Jennifer Frew, partially hidden; Steve Schacht; Bob Gordon Sr., CCFE; Sam Saxton, CCE; Jay Brammer; and Larry Anspach, CCE.

LEGAL & LEGISLATIVE UPDATE

Guides might resolve these concerns.

Some people say that the \$16,000 FTC fines are not automatic and the FTC can give warnings. Can't alleged violators also opt into FROP (Funeral Rule Offenders Program) to avoid the statutory fines?

It's true the FTC can issue warnings instead of automatically imposing fines, but this approach is rather arbitrary and subjective. As Clint Eastwood used to say, "The question you have to ask yourself is, 'Do I feel lucky today?'"

As for FROP, it is a good program, but the FTC is not required to continue it or extend it should the Rush bill become law. And FROP does have its critics, who dislike the fact that the funeral homes who opt for it avoid both paying fines and having their names publicly disclosed.

So would the FTC agree to expand FROP to cemeteries, crematories, monument dealers and other retailers? I don't think anybody has even thought about this yet.

What was the reaction from other industry trade associations, both state and national, to the Rush bill?

Generally, it seems that a group's support for the bill was directly related to the extent its members would be affected by it.

For example, the NFDA assured its members that the Rush bill would have a marginal effect on them, so they actively lobbied for the bill. The ICCFA realized that our members, including funeral homes, would be dramatically impacted by the bill, so we opposed it for the reasons I just stated.

I think it's easy to support added regulations when you believe they will only affect your competitors and not you. I think more than a few legislators picked up on the cynicism involved.

Whether or not the Rush bill would significantly affect funeral homes has been a point of contention. Would it?

The main focus of the Rush bill is cemeteries, but the bill also would establish

some new disclosure requirements for funeral homes.

Our concern is that while the FTC would be required by the Rush bill to establish a "Funeral Rule II," there is nothing to prevent it from expanding the new regulations beyond the mandates of the Rush bill. It seems reasonable to assume that a rulemaking proceeding would involve participation from AARP and the Funeral Consumer Alliance, among other consumer advocates, and they would certainly encourage the FTC to take an expansive approach to the rulemaking.

As you know, consumer groups have been dissatisfied for years that the Funeral Rule does not regulate funeral homes enough. The FTC has appeared reluctant to expend its resources on expanding the Funeral Rule, but if it were mandated by Congress to do so, why shouldn't they make a comprehensive job of it?

So the NFDA and other industry groups are in effect waving a red flag at a bull and hoping that it doesn't charge toward

Government & Legal Fund, PAC separate but equally important

Two of your favorite topics are the Government and Legal Fund and the ICCFA PAC. Given the economic times, how are they doing?

Irwin Shipper: Each fund serves a different purpose, but both are “issue sensitive.” In other words, member support in terms of contributions is directly related to the issues pending at the moment rather than the overall financial condition of the industry.

Our PAC is the more restricted of the two funds due to government regulations. PAC funds can be used only to support candidates for election to Congress (and PAC expenses). However, all contributions to the PAC must be from personal funds, without reimbursement from the employer.

Our PAC is not large compared to many others out there, but we have raised in excess of \$100,000 over the last few years and this has enabled us to show our sup-

port for members of Congress who have been helpful to our industry.

A big misconception about PACs is that they somehow garner access to a member of Congress in an unsavory sort of way. This is not true. The real purpose of a PAC is to show support of candidates in a public manner with full disclosure. This in turn helps us to be treated seriously by candidates.

The Government and Legal Fund serves a totally different purpose than our PAC, but it does pay the PAC’s expenses, thereby allowing every dollar raised by the PAC to be used for supporting candidates to Congress.

Also, the Government and Legal Fund can accept corporate contributions, and the proceeds have the flexibility to underwrite a wide number of projects that affect our members.

Among other things, the fund pays retainers for three specialist attorneys and one CPA to provide telephone consultation advice to our members without charge to our members (see “Your team of experts,” page 14).

The fund underwrites staffing; electronic monitoring of Congressional legislation, federal regulations and court decisions; and a variety of other projects through the oversight of the Government and Legal Affairs Committee.

We don’t have a large “war chest” because the contributions are put to work almost as soon as they are received. We rely on the voluntary support by ICCFA members, and through the years most members have contributed at least once. But just as we face new issues each year, we need the continued support of our members every year. □

LEGAL & LEGISLATIVE UPDATE

agreement on this issue. We thought we were about three minutes away from having the bill approved when Congressman Rush spoke up to say that he was opposed to any exemptions.

This seemed to throw the meeting into disarray and a five-minute recess was called. The committee never reconvened that day, and we learned that Rep. Rush had withdrawn his bill rather than see an exemption added. Needless to say, we were quite pleased with this development.

What made the breakdown in voting on the bill so unexpected?

In one sense, it shouldn’t have been unexpected. We had cautioned the committee staff back in September before the bill was introduced that including religious and even municipal cemeteries would create problems. I don’t think staff took us seriously, so they kept those entities in the legislation despite our valid concerns.

As it turned out, that inclusion made a relatively “no-brainer” bill suddenly controversial. We understand that some members of the committee received calls from their own clergy expressing opposition to the bill during the May 5 hearing.

In politics, you can never be sure which bills are innocuous and which are controversial until they have their 15 minutes of fame at a hearing.



Above, Rep. Dina Titus (D-NV) and Larry Anspach, CCE, also of Nevada. ICCFA members help industry colleagues and the association not only by contacting their con-



gressional representatives about their concerns but also by helping set up meetings with legislators when the ICCFA delegation comes to Washington. Left, Sam Saxton, CCE, of Pennsylvania, and Rep. Charlie Dent (R-PA).

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industry at war with ourselves. Earlier I said that most would agree the public and the media see us all as one industry, as one business.

Yet too many of our trade associations that represent only one segment of our industry are too insular and fail to understand that an increase in federal regulation for one segment of our industry would impact all of us. I think the rank and file members of these trade associations understand this reality better than their leadership.

As I've said before, the ICCFA is not afraid of new laws, but we are afraid of bad laws.

A third lesson is that every association member needs to speak up by contacting his or her Congressional representatives when the need arises.

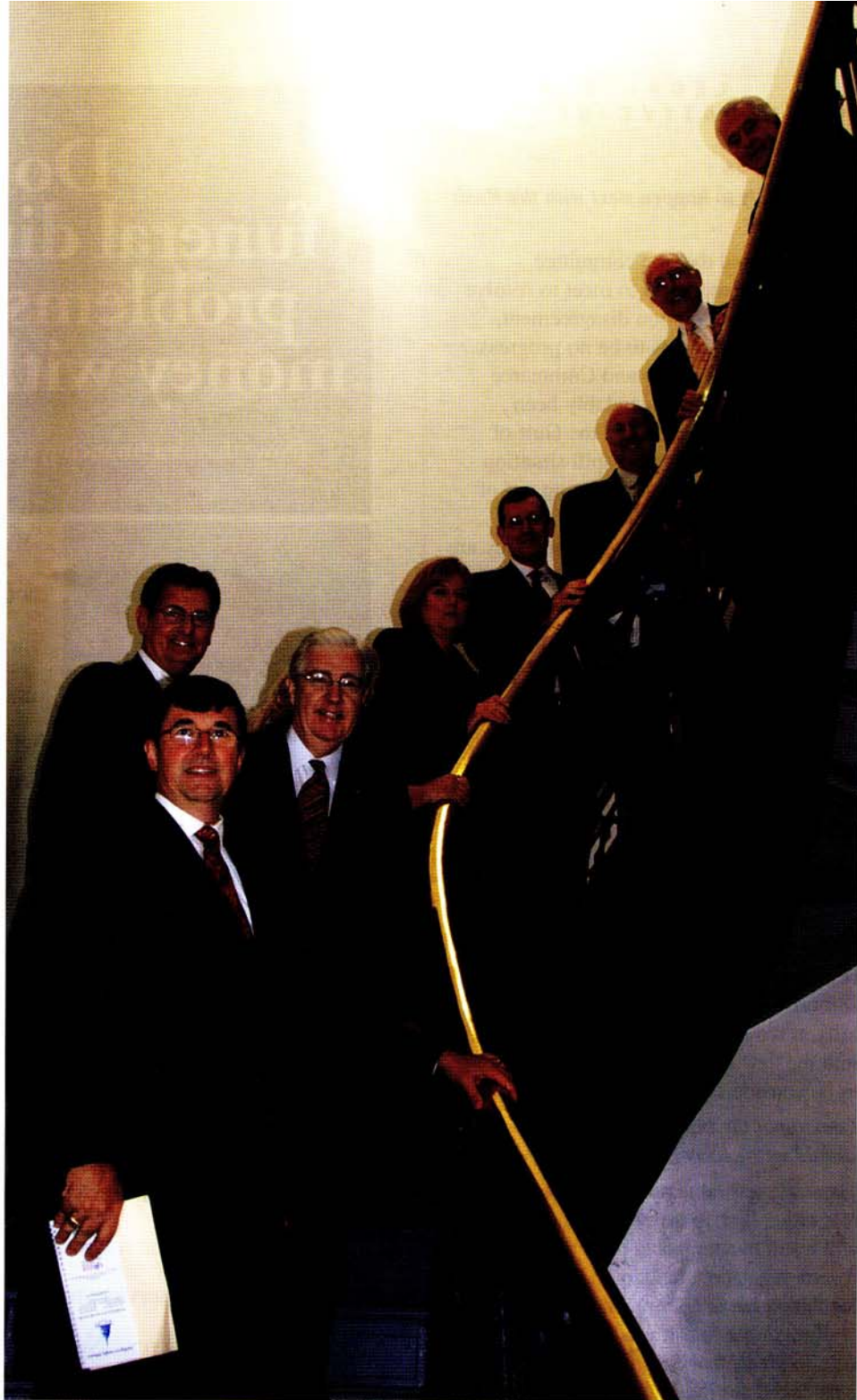
One of our biggest obstacles in our lobbying efforts against the Rush bill involved members of Congress telling us they hadn't heard of any opposition to it from industry members in their districts. In other words, the lack of communication created the impression that many of us favored the Rush bill.

I know some of our members believe that "somebody else" is taking care of the lobbying, but each of us is the "somebody" who needs to do it. For example, one congressman on the Energy and Commerce Committee, Ed Whitfield (R-KY), said that he supported the Rush bill because he didn't know of any funeral directors in his district who opposed it. So our silence can send out a very misleading message.

You mentioned that future industry problems could be a catalyst for federal legislation. At this point, how do you think the Arlington National Cemetery investigation will affect the industry?

Arlington Cemetery is operated by the Department of the Army so it is not appropriate private sector activity. Regardless, Congressman Rush has already issued a press release stating that the situation at Arlington "proves" the need for his legislation.

I think this conclusion is highly questionable, especially when you consider the idea of the FTC regulating the U.S. Army. Also, since Arlington does not sell anything to consumers, almost the entire bill is irrelevant to its operations.



Some ICCFA members in a Congressional stairwell, between visits to representatives and senators. From left: Bob Gordon Sr., CCFE; Jay Brammer; ICCFA General Counsel Bob Fells; Caressa Hughes; Ed Horn, CCE; Larry Anspach, CCE; Sam Saxton, CCE; and Steve Schacht.

But politicians will exploit events if they can. Since Arlington is funded by Congress, unlike private cemeteries, it should have had the resources necessary to operate properly. The fact that it was mismanaged should not be used as justification to enact legislation to regulate the private sector.

However, this is the type of event that we are going to have to respond to, quickly and effectively. I wish we could depend on other industry trade associations to join us in a common cause, but our experiences over the last few years with Dodd, Rush, and the proposed expansion of the Funeral Rule back in the late '90s, have all shown