



## Burial laws raised in Tsarnaev matter

[David Frank 05-7-2013](#)

The question about what to do with the body of suspected Boston Marathon bomber Tamerlan Tsarnaev has sparked interest in the state's laws concerning cemeteries and burials. Tsarnaev died after an April 18 confrontation with law enforcement that ended in Watertown. A medical examiner listed the Cambridge resident's cause of death as gunshot wounds and blunt trauma to the head and torso.

To date, no cemetery has agreed to take his remains, prompting heated debate about what, if anything, the Worcester funeral home where Tsarnaev's body has been kept can do.

"The difficult and stressful efforts of the citizens of the city of Cambridge to return to a peaceful life would be adversely impacted by the turmoil, protests, and widespread media presence at such an interment," Cambridge City Manager Bob Healy said in a written statement to the press. "The families of loved ones interred in the Cambridge Cemetery also deserve to have their deceased family members rest in peace."

The city's position seems to contradict a number of statutes, including G.L.c. 114, §10, which requires every town to "provide one or more suitable places for the interment of persons" domiciled within its limits at the time of death.

Although there aren't many lawyers who specialize in funeral law, John J. Cloherty III of Pierce, Davis & Perritano in Boston handled a 2003 Appeal Court case that touched on some of the same issues.

Cloherty says the cemeteries in the Tsarnaev matter appear to be on solid legal ground.

In *LaCava v. Lucander*, a pro se plaintiff serving a life sentence for murdering his wife sought a burial plot next to her in Westminster. The woman's children opposed the request on grounds that they would suffer severe mental anguish if the inmate were buried next to their mother.

Cloherly's clients, the defendant cemetery commissioners, denied the inmate's request, arguing that the family's sentiments provided them with a rational basis for doing so.

And Appeals Court Judge Andre A. Gelinas agreed.

"[W]e [do not] think that the right to be buried in a cemetery of one's choosing is a fundamental right for purposes of equal protection, such that the commission's actions here would be subject to the strict scrutiny required when fundamental rights are violated," the judge wrote.

"Fundamental rights generally are those that stem explicitly from or are implicitly guaranteed by the Constitution."

Cloherly says the court's analysis in LaCava continues to be good law.

"Unless you are a suspect class or a fundamental right is at stake, you don't get strict scrutiny review," Cloherly says. "The court found that the family's wishes would support a minimal rational basis for supporting my clients' actions."

Suspect classes for equal protection purposes include classifications based on race, religion, alienage, national origin and ancestry, and certain quasi suspect classes, based on gender and illegitimacy.

"In the [Tsarnaev] case, the cemeteries could say that as long as they have a rational basis to deny this guy a burial plot, they can do so," Cloherly notes. "The mental anguish that could come from having him buried in the same town where people injured in the blast live could certainly serve to be a rational basis."

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