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MEMORANDUM

May 18, 2025

SUBJECT: Religious corporations (Work Order No. 34-LS1005\A)

TO: Representative Neal Foster
Attn: Paul LaBolle

FROM: Conran H. Gunther 
Legislative Counsel

Attached is your requested bill draft giving nonprofit corporations with a religious purpose and religious corporations an indefinite period to reinstate after involuntary dissolution. Please review the following constitutional concern and drafting note.

Equal protection. This bill draft raises concerns under the state and federal equal protection clauses.¹ The Alaska Supreme Court has said, "[i]n considering state equal protection claims based on the denial of an important right we ordinarily must decide first whether similarly situated groups are being treated differently."² In *Malabed v. North Slope Borough*, the Court summarized the equal protection test as follows:

[T]he Alaska Constitution's equal protection clause affords greater protection to individual rights than the United States Constitution's Fourteenth Amendment. To implement Alaska's more stringent equal protection standard, we have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit.³

¹ Art. I, sec. 1, of the Constitution of the State of Alaska; Amend. XIV, sec. 1, cl. 2, of the United States Constitution.

² *Alaska Inter-Tribal Council v. State*, 110 P.3d 947, 966 (Alaska 2005) (internal citations omitted).

³ 70 P.3d 416, 420 - 21 (Alaska 2003).

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A law based on a suspect classification will survive this standard if it is necessary to achieve a compelling state interest.⁴ "Religion is a suspect class" under the federal equal protection clause,⁵ so the Alaska Supreme Court is likely to determine that religion is a suspect class under the state equal protection clause as well.

Both secs. 10.20.325(b) and 10.40.150(c) of this bill draft provide the ability for certain corporations to reinstate indefinitely after they are involuntarily dissolved and provide that ability because of the corporation's religious associations. The threshold issue for whether equal protection requirements apply to these sections is whether nonprofit corporations with a religious purpose under AS 10.20 and religious corporations under AS 10.40 are similarly situated to other corporations that don't receive the same reinstatement privileges provided under this bill draft.

It seems likely that a court would consider nonprofit corporations with a religious purpose under AS 10.20 to be similarly situated to other nonprofit corporations with other permissible purposes under that chapter. Because religious corporations under AS 10.40 are already regulated separately from other corporations under AS 10.06, it is arguable whether they are similarly situated. It is, therefore, likely that sec. 10.20.325(b) of the bill draft will be subject to equal protection requirements and there is a chance that sec. 10.40.150(c) of the bill draft will be subject to equal protection requirements. As such, due to the religious interests affected in this bill draft, you should be prepared to build a legislative record that demonstrates that the differential treatment that secs. 10.20.325(b) and 10.40.150(c) grant to nonprofit corporations with a religious purpose and religious corporations is necessary to achieve a compelling government interest.

Practical concerns. Unlike corporations organized under AS 10.06,⁶ AS 10.20 and AS 10.40 do not currently contain provisions allowing for the reinstatement of nonprofit and religious corporations that involuntarily dissolve. As such, I recommend having the commissioner of commerce, community, and economic development review this bill draft to determine if it may cause any unintended consequences or practical concerns with the administration of AS 10.20 and AS 10.40.

Please let me know if you have any questions.

CHG:boo
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Attachment

⁴ *Squires v. Alaska Bd. of Architects, Engineers & Land Surveyors*, 205 P.3d 326, 341 (Alaska 2009).

⁵ *Al Saud v. Days*, 50 F.4th 705, 710 (9th Cir. 2022) (citing *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976)).

⁶ AS 10.06.633(e).