

## MEMORANDUM

To: Pyoca Camp Working Group

From: Greg Pemberton and Dave Frangos

Date: November 2, 2021

Re: Religious vs. Public Benefit Corporation

The question has been raised regarding the designation of an Indiana corporation as “religious” versus a “public benefit” corporation. This memorandum attempts to clarify this question and comment on whether this distinction makes any real difference.

Under Indiana corporate law (I.C. 23-17 et al), a nonprofit corporation may be designated a “mutual benefit” corporation or a “religious” corporation. A mutual benefit corporation is generally the most common designation and the vast majority of Indiana nonprofit entities are so designated.

A religious corporation is a status first added to corporate Indiana law in 1991 and is based on the title from the Uniform Nonprofit Corporate Act. It is a special designation reflecting both historic and constitutional roots and is designed to allow a nonprofit corporation to create a vehicle that reflects religious doctrine in certain limited ways. In short, an Indiana religious corporation is no different than any other Indiana nonprofit except that certain rights and obligations otherwise affecting nonprofits are either reduced, limited, or created. What follows is a summary of those matters.

A religious corporation may not purchase its own memberships. It may limit the rights of members to call meetings, to inspect or copy records, to remove directors, to vote on certain matters (mergers, dissolution, and such), and to obtain annual financial statements. A religious corporation member may rely on religious authorities to avoid personal liability. Finally, a general statement applies to religious corporations. “If religious doctrine or practice governing the affairs of a religious corporation is inconsistent with this article (the Indiana nonprofit corporate statute), the religious doctrine or practice control to the extent required by the Constitution of the United States or the Constitution of the State of Indiana.” I.C. 23-17-30-2.

As should be clear from the above, a religious corporation has certain procedural, non-substantive differences in how it does business except as it relates to “religious doctrine or practice.” A religious and a public benefit corporation have the same powers, authority, and limitations. It is only upon matters of doctrine (and the limited procedural points mentioned above) that the two types of corporations differ under Indiana corporate law. In short, the two types of Indiana corporations are the same in all important respects.

### The Covenant Language.

The Covenant among the Presbyteries and the newly formed Pyoca Camp corporation uses the phrases “non-profit Indiana religious corporation” to describe all three entities. This is

understandable as each arises from and is a constituent part of the greater Presbyterian faith. Each has similar corporate purposes and is “cut from the same cloth” by any application of that phrase.

However, one cannot strictly read the covenant language to **require** each of the three entities to be designated as a religious or as a public benefit corporation under the Indiana statute. In fact, both Presbyteries were incorporated in the early seventies and they have operated ever since under the Indiana code. While the code changed in the early nineties to permit designation of a corporation as a “public benefit” or “religious” corporation, neither Presbytery has seen fit to declare itself as a religious corporation although they have had thirty years to do so. They are no less religious for having not made a corporate filing to that effect.

In that same way, the Pyoca corporation did designate its status as a public benefit corporation in its corporate filing in the summer of 2021. However, it is no less religious in purpose and in function than the Presbyteries themselves. Hence, the use of the phrase “religious corporation” in the Covenant cannot be construed to be a corporate law designation at all, but merely an expression of the spirit or genesis of the new Pyoca corporation. The three entities are no less religious, howsoever they are designated under Indiana corporate law.

It should be mentioned that the Pyoca corporation’s use of the public benefit designation is helpful in its fund-raising efforts. Some funders are on record as being open to general charitable grantees (with admittedly religious tendencies) while being reluctant to give to church-based organizations. Whatever small advantage this provides to Pyoca’s fund-raising, it is helpful to maintain.

#### Conclusion.

Based on the foregoing, the designation of the Pyoca corporation as a public benefit corporation in no way impairs its commitment to Presbyterian ideals and to the common mission of it and the Presbyteries.