LAW OFFICES
THOMPSON O'DONNELL, LLP
1212 NEW YORK AVENUE, N.W.
SUITE 1000
WASHINGTON, D.C. 20005
(202) 289-1133
FACSIMILE (202) 289-0275
www.thompson-odonnell.com

RANDELL HUNT NORTON + *
KENNETH G. STALLARD + *
MATTHEW W. CARLSON * +

KELLY E. TALLINGER ∘ *
KATERINA D. MEDVEDEV * Δ

* ALSO ADMITTED IN MARYLAND
+ ALSO ADMITTED IN VIRGINIA
* ALSO ADMITTED IN WEST VIRGINIA
∘ ALSO ADMITTED IN NEW YORK
Δ ALSO ADMITTED IN WISCONSIN

27 WOOD LANE
ROCKVILLE, MARYLAND 20850
(301) 424-6060

4113 LEE HIGHWAY
ARLINGTON, VIRGINIA 22207
(703) 522-2255

OF COUNSEL
JAMES F. BROMLEY

RETIRED
JOHN JUDE O'DONNELL
JULIAN E. MARKHAM, JR.

J. ROY THOMPSON, JR.
(1911 - 2005)
THOMAS H. MCGRAIL
(1920 - 1996)
JOHN E. LARSON
(1898 - 1995)
HENRY F. HARDING
(1920 - 2008)
JAMES W. GREENE
(1940 - 2009)

March 22, 2013

Helder Gil
Legislative Affairs Specialist
D.C. Department of Consumer and
Regulatory Affairs
Room 5164
1100 4th Street, S.W.
Washington, D.C. 20024

Dear Ms. Gil:

This is respectfully to provide you a comment regarding a particular provision of the Proposed Regulations that will create a new Chapter 7 (Business Organizations) to Title 17 (Business, Occupations and Professions) of the DCMR. I write as counsel to the Air Force Association (AFA) and the AFA Veteran Benefits Association (AFAVBA), two nonprofit corporations formed prior to 1963 that did not elect to avail themselves of the provisions of the D.C. Nonprofit Corporation Act, approved August 6, 1962.

As brief background for my comment, in 2006, by means of Certificates of Amendment of their Certificates of Incorporation, the name of the Air Force Association, formed on February 4, 1946, was changed to "AFA Veterans Benefit Association", and the name of a sister corporation, the Aerospace Education Foundation, Inc., formed in 1956, was changed to the "Air Force Association". These Certificates of Amendment are separate documents, neither superseding or replacing the original Certificates of Incorporation. This letter will refer to the Air Force Association (AFA) as meaning the corporation that was originally formed in 1946 and which today serves as the lodestar of both corporations.

My comment addresses Section 704 of the Proposed Regulations. It is as follows:

That section is entitled "Biennial Reporting for Corporations Formed Prior to January 1, 1963". Subsection 704.1(b) states that the provisions of Section 704 shall apply to "Any domestic or foreign corporation incorporated prior to January 1, 1963, that

has not elected to avail itself of either" the D.C. Business Corporation Act, approved June 8, 1954, or the D.C. Nonprofit Corporations Act, approved August 6, 1962.

Subsection 704.3 provides that a pre-1963 nonprofit corporation may adopt a resolution "pursuant to § 704.4" and thereby be subject to Chapter 4 of the new Nonprofit Corporation Act (D.C. Code § 29-401.01 et seq.)(the New Act). Subsection 704.4 specifies that the resolution required under § 704.3 shall be filed with the Superintendent "together with restated articles of incorporation" (Emphasis supplied).

It is the word "restated" that is the point of my comment. The New Act provides for "Restated articles of incorporation" at D.C. Code, § 29-408.07. That section stands as originally enacted, not amended by the Technical and Harmonizing Amendments Act, Law No. 19-910, effective March 6, 2013. The word "restated" does not appear to be among the words that the New Act specially defines. Its meaning is suggested by subsection (c) of D.C. Code, § 29-408.07, which speaks of "a restatement that consolidates all amendments into a single record". Subsection (d) of § 29-408.07 then provides: "Duly adopted restated articles of incorporation shall supersede the original articles of incorporation and all amendments thereto" (Emphasis supplied).

Section 29-408.07 does not appear, therefore, to require nonprofit corporations to restate their articles of incorporation, but recognizes they may do so if they wish. That such is the intent is found in subsection (a), which states: "The board of directors of a nonprofit corporation may restate its articles of incorporation at any time . . ." (Emphasis supplied). Subsection (c) provides: "A nonprofit corporation that restates its articles of incorporation shall deliver to the Mayor for filing articles of amendment under § 29-408.06 which includes a statement that the articles of amendment are a restatement that consolidates all amendments into a single record".

The Technical and Harmonizing Amendments Act, Law No. 19-910, amended D.C. Code, § 29-107.01, which is the part of the New Act that provides for pre-1963 corporations to be subject to the New Act. In its amended form, subsection (b)(2) of § 29-107.01 provides: that pre-1963 corporations file their articles of incorporation without requiring that their articles be "restated".[1]

Section 704.4(b) of the Proposed Regulations, however, requires that pre-1963 corporations file "restated" articles of incorporation. There is no option other than that they be "restated". This is in contrast to D.C. Code, § 29-107.01(b)(2) that requires pre-1963 corporations to file "a copy of the corporation's articles of incorporation" but does not impose a requirement that the articles be "restated". Section 704.4(b) appears to be in tension with this section of the New Act. It requires something which § 29-107.01(b)(2) of the New Act does not require.

AFA, as I intend this singular reference to denote both AFAVBA and AFA, considers its "Certificate of Incorporation" recorded on February 4, 1946, to be of

---

[1] It may be noted that neither did § 29-107.01(b), as originally enacted, require that the articles of incorporation be restated. It referred simply to "articles of incorporation".

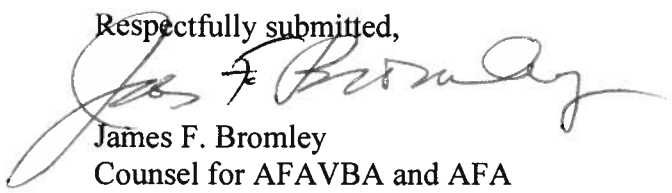
precious historical value, preserving and recalling, and in those ways memorializing, its pride in being formed so very close to the birthday of the U.S. Air Force. The three signers of the Certificate were the originators and early leaders of AFA, and the wording of the Certificate expresses foundational sentiments that are everlasting. The provenance of the Certificate is that it is typewritten on long paper and bearing the recording number and the date and time of recording and certified by Eleanore Lee Dague, then Second Deputy, Recorder of Deeds.

This setting has a very deep, perpetuating effect; it is unique and irreplaceable. AFA does not want to be forced to "restate" its Certificate of Incorporation causing it to be "superseded" and, in that manner, having no present or future effect. The 2006 Certificate of Amendment of the original Certificate of Incorporation preserves the original, whereas "restating" the Certificate would terminate its separate, distinct existence. We should believe that AFA is probably not the only pre-1963 nonprofit corporation who likewise and just as strongly would wish that its original certificate or articles of incorporation be preserved.

Accordingly, this is respectfully to suggest that the word "restated" be deleted from § 704.4(b) or that the section be amended to permit pre-1963 nonprofit corporations to file, at their option, either their original articles of incorporation or their restated articles of incorporation. Such an amendment will resolve the conflict that otherwise exists between § 704.4(b) and § 29-107.01(b)(2) of the New Act. If it might be helpful, a possible amendment of § 704.4(b) might read: "(b) Be filed with the Superintendent together with the original articles of incorporation or restated articles of incorporation". Amending that section in this manner would allow pre-1963 nonprofit corporations to adopt and file restated articles of incorporation, but would protect those pre-1963 nonprofit corporations for whom their original articles are vitally meaningful such that restating and thereby superseding them would cause them a grievous, even fatal, sense of loss of being. I do not imagine that to be the intention or purpose of the Proposed Regulations.

Please let me know if you have any questions or if we may be of any assistance to you in relation to this comment. We very much appreciate the opportunity your office has provided that you will entertain comments from those affected by the Proposed Regulations.

Respectfully submitted,



James F. Bromley
Counsel for AFAVBA and AFA