To: Board of Directors of CCRA

From: Elena Cappella, Chair of the Ad Hoc Committee on the Bylaws

Date: January 8, 2021

Re: Bylaw Issues for the January Board meeting

Bylaw proposals scheduled for consideration at the January 12th meeting are described in this memo. (The actual text of the proposed amendments will be distributed for final vote of the Board in early spring.) The memo is lengthy but we ask that you please read it in advance of Tuesday's meeting so that the limited time allocated to the Bylaws at the meeting can be fully devoted to comments, questions, discussion, and tentative decision. Unless noted otherwise below, the proposals here have the unanimous support of the Ad Hoc Committee (composed of myself, Maggie Mund, Jeff Braff, Matt Schreck, and Rick Speizman).

Let me preface the memo by stating our primary goals in revising CCRA's Bylaws. They are to:

(i) Update them in accord with legal requirements and modern "best practices" in nonprofit governance
(ii) Clarify or simplify confusing or ambiguous provisions;
(iii) Make them consistent with current CCRA practices where that is prudent and desirable;
(iv) Resolve internal inconsistencies in substance or terminology;
(v) Substitute simpler and user-friendly terminology for more archaic and legalistic diction; and
(vi) Move from the Bylaws matters that need not be there and would benefit from regular review and revision as experience grows and as the needs, activities, and objectives of the organization evolve. Those matters could better be addressed in other governance materials – such as Board rules and resolutions or committee charters adopted by the Board – which can be more efficiently reviewed and revised than can the Bylaws be amended.

The comprehensive review and revision that we are undertaking is a big task. It can't be done quickly and, like similar multifaceted tasks, the end product is unlikely to satisfy everyone or, frankly, to be flawless. I appreciate the time, attention, and guidance of my colleagues in this process and welcome yours as well.

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§A. Past Presidents. The current Bylaws grant lifetime ex-officio Director status to all past Presidents regardless of the length of their presidential tenure (so long as they are still residential members).

Proposed changes:

1. **Past Presidents must have served as President for at least 12 months to be eligible for ex-officio Director status following their presidency.**
2. **Past Presidents' ex-officio Director status will be limited to two years, except that those whose presidency (of at least 12 months) ended before the effective date of the Bylaw change may serve ex-officio on the Board for two years regardless of how long they may have already served as a Past President.**
3. **After becoming term-limited as an ex-officio Director, a Past President could, after one year off the Board, seek a regular seat through the usual nomination and election process.**

Reasons for the proposed changes: Lifetime Board status for former presidents of nonprofit organizations is not recommended by governance experts and is almost unheard of. We agree with that wisdom. Why?

a. Because boards benefit from periodic turnover of their members.
b. Because new blood brings fresh ideas and needed diversity.
c. Because there are less enduring yet still effective ways for boards to benefit from the experience, energy, and expertise of former leaders without giving them lifetime director status.
d. Because ex-officio director status isn't just honorary (though it is that too).

What do I mean that it's not "just honorary"? CCRA's Past Presidents on the Board have all the legal duties and other obligations of Board membership, including paying adequate attention to financial and other important matters that come before the Board. As noted in a 2011 letter to CCRA's leadership from *The Nonprofit Center* at La Salle University, CCRA's Past Presidents "are responsible for the board's decisions regardless of their level of their participation." Although some CCRA Past Presidents have been (and still are) highly engaged, even exceeding Board obligations and expectations, some have not. The Board should not be compelled to keep Past Presidents on the Board indefinitely. (Yes, they could resign and, yes, if they have three unexcused absences in a FY, that should, under the Bylaws, be deemed a resignation, but that has not been our practice.)

Finally, our proposal doesn't mean that interested, energetic, and informed Past Presidents should disappear from CCRA's midst. Once they are term-limited in their ex-officio capacity, any Past Presidents who would like to return to the Board would be free, after a one-year gap, to seek nomination as an elected (i.e., not ex-officio) Director. And during that gap year, other CCRA positions of interest to them might be open and leadership would, without very good reason, hardly turn away an experienced, energetic, and cooperative volunteer.

§B. Election of Officers. CCRA members who are eligible to vote at and who attend the annual meetings held in odd-numbered years (ones where officers are elected), have had, under current Bylaws (and, thus, will again this spring), the right to elect the officers. Essentially, they approve the Nominating Committee's slate of officer candidates, and since the uniform practice (certainly in recent times) has been to present only one name per office, the members' "decision" is hardly in doubt; indeed the "vote" is often taken orally and decided by unanimous consent. Although most mid-term vacancies in an office are filled by Board appointment, vacancies may be and are sometimes filled at an annual meeting, again with members present voting on the one candidate offered by the Nominating Committee. (I should point out here that the current Bylaws do give the members the right, at the annual meeting, to nominate other candidates for office and also for the Board. See §C, below, for an important issue regarding floor nominations for the Board.)

Proposed change: Only the Board, and not CCRA's membership (or the Executive Committee) has the right (and duty) to elect CCRA's officers, including those elected for full terms and those elected to fill vacancies.

Reasons for the proposed change:

a. Simply this: CCRA's Directors are in a much better position than our membership at large to understand the qualifications, skills, experience, energy level, and depth of commitment that are necessary or desirable for fulfilling the important duties of the various officers.
b. Since many officer candidates would have served with the then-Directors in other capacities (perhaps as an elected Director or in a different office or role), the Board will have had experience with those individuals' strengths, having been able to observe and assess their qualifications for election to a specific office.

c. Interested CCRA members would still be able to offer themselves, or suggest other names, to the Nominating Committee for consideration for nomination to an office. (Indeed, the charter of the Nominating Committee should make solicitation of such offers a duty of the committee.)
d. Finally, the vote of officers at the annual meeting is simply a vote to approve candidates selected by the Nominating Committee, a committee composed of all or a majority of Board members. There could be, at the meeting, discussion of or questioning of the nominees, but that has not been the practice. Nor are we aware of any annual meeting where (i) other officer candidates were nominated from the floor (although the Bylaws now do give that right to the members at the meeting) or (ii) where any candidate on the offered slate was not elected. (Note: We do not propose that the CCRA membership should lose their right to elect Directors, only the right to elect officers.)

§C. Nomination of Director Candidates on the Floor of the Annual Meeting. The current Bylaws provide that the Nominating Committee presents, at each annual meeting, a slate of candidates for election to the Board. The slate does not generally include (and perhaps has never included) competing candidates; e.g., with seven seats to fill, the tradition, not mandated by the Bylaws, is for no more than seven names to be on the slate. However, the current Bylaws do give CCRA members the right to nominate, from the floor of the annual meeting, other candidates for election to the Board. Any such nomination must be seconded and the additional nominee must be eligible to serve on the Board, must be present at the annual meeting, and must there state willingness to serve if elected.

Proposal of our Committee (split 3 to 2): Abolish the right of CCRA members to nominate Director-candidates from the floor of the annual meeting. (Jeff, Maggie, and Rick favor abolition of the current and long-held right; Matt and Elena favor its retention.

I. Reasons for abolishing the right of CCRA members to nominate candidates for Director from the floor of the annual meeting (these reasons were prepared by Jeff Braff):

a. **Demonstration of strong interest in CCRA and in a Director position.** Candidates for Director positions are gathered in two ways: (1) through suggestions of Board members; and (2) as a result of solicitations to the general membership through: (i) the *Center City Quarterly; (ii)* multiple editions of CCRA's weekly eNewsletter; and (iii) CCRA's social media. Any member who is even paying mild attention to CCRA activities cannot miss these numerous solicitations to the general membership. It is hard to argue that someone who is genuinely interested in the organization will not have seen at least one of them. And what conclusion should be reached if they have seen a solicitation but chose not to respond? Who is more likely to be an asset to the Board, someone who responds to the general membership solicitation (either directly or through the coaxing of a friend) or someone who does not?
b. **Vetting by the Nominating Committee.** With the exception of anyone nominated from the floor, all Director candidates submit to the Nominating Committee a statement of interest and a resume or curriculum vitae, and they also complete and submit a Skills Survey Form prepared by the Committee. These are reviewed by the Committee members in advance of a 25-minute interview (conducted in person except during pandemics), and referenced during the course of the interview. Occasionally, follow-up questions are directed to the candidate afterwards. Finally, prior to presenting its slate to the membership, the Committee shares the names of the candidates with the Board, and, either formally or informally, Board members have the opportunity to weigh in with respect to them. None of this vetting is possible with respect to nominations from the floor.
c. **Advance notice to general membership.** The current Bylaws provide that written notice of the annual meeting, which must be sent to CCRA members at least ten days in advance, include the slate of candidates for election as Directors. This allows ample time for those who feel strongly about particular candidates or about the slate as a whole to arrange their schedule to be able to

attend the meeting, perhaps to speak as well as to vote. The opportunity to plan to attend the meeting for that purpose cannot be afforded with respect to candidates nominated from the floor.

d. **Possibility of rogue directors.** Since the annual meeting is not very well attended (usually garnering an attendance of barely more than the 50-person quorum requirement), although it has never happened a relatively small but organized group could nominate their own-slate of Director-candidates and vote them in over any or all of the candidates presented by the Nominating Committee. At a minimum, there are seven openings every year, but in many years the membership is presented with candidates for additional slots due to vacancies caused by resignations or moves outside the CCRA district. A well-organized group could conceivably vote in a majority or all of the next fiscal year's new Directors. And the "establishment" (i.e., the existing CCRA Board) would not even have an opportunity to prepare (such as by working to ensure attendance by a sufficient number of "loyalists") since they would have no idea this was a possibility, given the absence of an advance notice requirement for floor nominations.

II. *Reasons for dissenting from the proposal in favor of retaining the current right (provided by Elena)*:

a. **"No harm, no foul."** The right of members to nominate from the floor has been in CCRA's Bylaws for many years, if not from the founding of the organization, and has never, to our knowledge, caused the slightest issue or controversy, let alone the problem envisioned as a possibility in ¶I.d., above. Given the extremely remote (and unprecedented) problem, there is no reason – when we are already taking from the membership, for very good reason, the right to elect the officers – to also take from the membership the right to nominate Director-candidates at the annual meeting. Taking that away leaves precious little "action" for CCRA's membership to take at our annual meetings: basically, they can rubber stamp the slate of Director-candidates presented to them, or they can vote against one or more names on the slate but ultimately that would be an ineffectual protest vote given that only a majority and not unanimity is needed to win, and the protesting member would not be able to offer an alternative candidate. And maybe once every three to eight years, our members are asked to vote on Bylaw amendments (and only if proposed by 2/3 of the Board). The right to nominate from the floor hasn't been abused and shouldn't be eliminated.

b. **Candidates nominated from the floor could be sufficiently vetted**. The notice of the annual meeting, which contains the slate of candidates (usually with a short bio for each), could request any members who plan to nominate another candidate at the meeting to bring a bio of that candidate to distribute or read at the meeting or otherwise to be prepared to state, at the meeting, reasons for the nomination, including a brief description of the characteristics, skills, and experience the candidate would bring to the Board. Then at the meeting, if the mover doesn't adequately address those matters, members of the Nominating Committee, as well as others, should be permitted ask questions of the mover or directly of the new candidate (who must be present), in order to solicit the type of information that would be useful or necessary for informed decision-making by those voting at the meeting. Candidates on the slate might also be subject to questioning at the meeting. If it plays out this way (and past experience suggests that would be rare if ever), the membership would have a meaningful and informed choice to make. Isn't that a good thing?

c. **Advance notice of nominees so one can plan to attend (really???)** As for giving all CCRA members advance notice of all Director candidates, while that might be ideal, it is almost ludicrous to believe that any CCRA member plans to attend (or skip) an annual meeting based on the names that are on or that are missing from the slate of Board candidates distributed in advance of the meeting. Sure, it's possible, but our members are much more likely to decide to attend for other reasons, like to hear our fascinating speaker; meet other members; learn more about achievements and challenges of the past year and plans for the next; partake of a social and networking opportunity to visit an interesting venue; or maybe just have an excuse to get out of the house.

d. **Potentially unwarranted and detrimental exclusions.** The most important reason for allowing nominations from the floor is this. The Nominating Committee is hand-selected by the President. Even if the appointment process were changed, the then-current leadership of the organization would retain – and rightly so – a very strong influence on who sits on that committee. Therein lies dangers that have befallen many an organization due to the exclusion of certain people for political or other questionable reasons. Organizations have become entrenched, in-bred, lacking in useful diversity, even irrelevant and ineffective when the then-current leadership and board have essentially unfettered power to select all board members. Good candidates might be excluded for dubious reasons. Maybe they just aren't well-known by leadership; maybe they have voiced criticism of past activities of or positions taken by the organization; maybe they want to nudge the organization in some new directions, beyond the tried and true; maybe they are just "different" and the fear is they might not work well with "us" or share "our" values or "fit in" our group or structure. What chance do such members – not "rogue" folks, but ones committed to the good of the organization and willing to work to advance its mission and important objectives – what chance do such outsiders have of getting nominated for a seat on the Board by a committee picked by the then-current leadership that either intentionally wants to keep them out or just prefers to bring into their inner circle those more familiar to them? In short, our fear should not be of "rogue Directors" out to destroy or take over the organization or so dramatically change it that it's unrecognizable; those people (if they exist) would still have to persuade a majority of CCRA members at the annual meeting to vote *for* their nominee(s) and *against* nominee(s) on the slate; that's a pretty heavy pull, and even if successful at one annual meeting in getting all seven of their competing "slate" elected to the Board, CCRA has a very large Board (over 30 members), so the "organized group" would have to sustain their organization and hope to succeed over other, perhaps several, annual meetings to gain a majority of Board seats. No, the more realistic fear is that if we were to close an avenue that's always been there – and never been abused – someday, when we could use it to help ensure that CCRA's Board is beneficially diverse and welcoming to new people and new ideas, it won't be available.

§D. Directors and Officers who Move from CCRA's District. The current Bylaws provide that Directors who move mid-term from our district but stay in the city can remain on the Board until the end of the fiscal year in which the move occurs; if they move outside the city, they are deemed to have resigned upon moving. Certain officers who move – namely President and all VPs – are deemed to have resigned upon moving (even if still in the city). But there is some disagreement or at least ambiguity over whether other officers who move can remain in office through the end of the then-current fiscal year. We propose to change the current rule with regard to Directors and to clarify the rule with regard to officers.

Proposed change and clarification: All Directors and officers who move outside of CCRA's district are deemed to have resigned as of date of the move (regardless of where they move).

Reason: The leaders – i.e., officers and directors – of a resident-based nonprofit community organization should be residents of the community, period! The credibility of the officers and directors demand as much. The specter of a board decision on an important matter on behalf of its residents, or an officer's speaking or taking important actions on behalf of the entire organization (advocating before a public agency; approving payments, signing contracts, filing legally required forms, et al.) when the officer or some members of the board don't live in the defined community would be embarrassing at best and, at worst, could expose the organization to public criticism and even to legal challenge. Does that mean CCRA would have to lose contact with those who move – or would be unable to benefit from their interest, energy, wisdom, and experience once they're off the Board or out of office? Not at all. As non-resident participants in CCRA, they could still volunteer for certain committees and activities; they could be consulted informally for

advice; they could even informally offer unsolicited advice or more formally be asked for their advice. They just no longer can hold office or serve on the Board.

§E. Residential Household and Entity Memberships. The Bylaws currently define various classes of CCRA memberships, some of which do not include the rights to vote and to serve as an officer or Director. We plan to move those types of non-voting relationships with CCRA out of the Bylaws (and into another governing document adopted by the Board) and include in the Bylaws only memberships that include those rights, such as the usual individual resident membership. (The PA statute limits its definition of "members" of nonprofit organizations to those with voting rights.) Here are two of the proposals we plan to make to the membership Bylaw Article.

Proposals:

1. **"Household Resident Memberships" will be limited to four persons living in a single household in the CCRA district (whether or not they are married or otherwise related or regard themselves as a "family"). The Household Membership's rights to vote and serve as an officer or Director will be limited to two adults in the household that the household so authorizes.**
2. **"Entity Resident Memberships" will be open to any entity (including commercial, public, and nonprofit) that engages in substantial activities from a physical space that the entity occupies within CCRA's district. Such memberships are entitled to one vote, which may only be exercised by a natural person authorized by the entity to vote and that person need not reside in CCRA's district. However, only an authorized person who does live in CCRA's district may serve as an officer or Director.**

§F. Actions of the Board (or Executive Committee?) Taken Without Meeting. The Board of CCRA, as a Pennsylvania nonprofit corporation, is required by law to have unanimous written consent for any action it takes outside of a Board meeting. The official comments on that provision in the American Bar Assn's *Model Nonprofit Corporation Act* states as an underlying theory that: "the consultation and exchange of views is an integral part of the functioning of the board." Another reason that has been given for the rule is that board members with concerns, questions, or disagreements with a proposed action should be able to voice those to the other board members, engage them in discussion, and perhaps persuade enough to defeat or satisfactorily amend the proposal. If there is no meeting, potential dissenters have little opportunity for that type of effective "give and take." Whatever one thinks of the rule or the reasons for it, the rule applies to CCRA and we propose putting it into our Bylaws.

But we are still considering whether the Executive Committee, when taking important actions that would normally be for the Board (e.g., making a major commitment of funds or committing the organization to a contract or to a public position on impending legislation) – should also be required to take the action either at a meeting of the Committee by majority vote of those in attendance, or without a meeting with the written consent of all (or perhaps a super-majority) of Committee members. The statute itself is silent on whether the unanimous consent provision should or must apply to Board committees that are delegated extensive Board power to act for the organization.

We seek the Board's view on whether the unanimous consent rule (or perhaps a super-majority rule) should apply to actions of the Executive Committee without meeting, and, if so, whether such a rule should be stated in the Bylaws or only in the Committee charter. (Just so you know, we will also propose that the Bylaws be amended to require the Board to adopt a charter for each standing committee.

Charters are useful to committee chairs and members and give the Board the ability to amend and update a committee's duties, powers, and procedures relatively quickly and easily, as desirable.)

Some of us think the rule should apply to CCRA's Executive Committee, not for minor and largely ministerial "actions" like choosing among available dates for an event, but for major actions typically made by the Board, like voicing disagreement with proposed legislation or committing major funds to a program or to an employee or other agent. We note that with technologies conveniently available today (and evolving at lightning speed) – including old-fashioned conference calls and newer Zoom-type meetings – a meeting in which members can all hear (and sometimes even see) each other can often be arranged on short notice regardless of where the members are physically located. And if time for action is of the essence and a meeting cannot be scheduled in time, the use of emailed ballots – marked urgent and with a clear mandate that every member must return a vote (or an abstention) by reply email on a short deadline – would ease the burden of compliance with a rule to either act at a meeting or to act by unanimous consent.

We should also note that the PA statute provides that the written consents to an action without meeting can be submitted even after the effective date of the action. But, of course, there's a real danger of committing to an action without getting consents in advance: the risk that a member may disagree with the action. If that risk is very likely to be miniscule, the risk may be worth taking even if one or two members have yet to respond. But if the risk of dissent is not small or if there is reason to think that not every member would favor the action, then the better procedure would be either to wait for all responses or to hold an emergency meeting on short notice using a convenient technology, at which, so long as a quorum attends, the action can be taken, even over dissent, if the majority (or other required proportion) of those present approve the action.

We look forward to a thoughtful discussion of these proposals with you on Tuesday.