

A REPORT

CONCERNING THE TAX-EXEMPT STATUS AND REORGANIZATION
PLANS OF THE EXECUTIVE BOARD OF

CHESS JOURNALISTS OF AMERICA

By: Caleb S. Brown

January 27, 2024

A Letter to the Membership

Fellow members,

Your Executive Board is committed to the pursuit of growth. It envisions a future where this organization serves a far greater share of the chess community than it can today while remaining true to its mission. It imagines a world where the common good is advanced through robust institutions and extensive resources supporting journalism and scholarship in chess at all levels. It dreams of vast, freely available archives that serve the needs of chess researchers and meaningful, educational programs that encourage the public to engage in the important work of chess journalism.

These hopes will not fulfill themselves. They rest upon the efforts of our volunteers. Yet, if this vision is to be feasible, this organization will require a more stable and efficient foundation, one that will allow us to take CJA to the next level and adapt as the organization grows.

In consideration of these ambitions and other concerns, your Executive Board has decided that it is in the best interests of CJA to apply to become a 501(c)(3) tax-exempt organization. Similarly, it has also determined that it is best for this organization to incorporate under the laws of Texas and replace the current, antiquated constitution and bylaws with new bylaws that will more fully serve the needs of our members.

Your Executive Board has determined that it has the necessary authority, as the governing body of an unincorporated association, to make these decisions independently of the membership and that it is the best interests of the association to do so for the sake of efficiency. However, it would nevertheless like to seek the input of the membership considering the importance of these measures and so it submits the same for discussion at the February 4th meeting. Our intention is to put these measures into execution as soon as practicable after the adjournment of the meeting. Your candid opinion in these regards is appreciated.

If you have any questions, please do not hesitate to inquire. Thank you for your time and attention!

Sincerely,

Caleb S. Brown

Webmaster

A. Tax-Exempt Status

Immediately upon my election to the Executive Board this past August, I made inquiries into the tax-exempt status of our organization. After consultations with the President and Treasurer-Secretary, I concluded that CJA may have been a 501(c)(7) organization at some point in the past but that any such status surely would have been automatically revoked by the Internal Revenue Service due to failure to file required annual returns for three consecutive years.

This is a problem. If CJA is not exempt from tax under some provision of the Internal Revenue Code, then it is an association taxed as a corporation and must pay federal income taxes just like a for-profit corporation. Considering that CJA would have very little taxable income after deducting business expenses, it is not necessarily at risk of IRS audits accessing delinquent taxes now or in the immediate future. However, the uncertainty about the tax obligations of this organization could cause huge problems as the organization expands and accumulates cash reserves.

The solution to the problem is to apply for status as an organization exempt from tax under Section 501(c)(3) of the Internal Revenue Code. Operationally, CJA meets the requirements for 501(c)(3) status. For example, it operates for educational purposes (i.e., one of the exempt purposes under Section 501(c)(3) of the Code) and there are no officers, members or private stockholders receiving dividends or other prohibited inurement from the organization. Rather, only certain organizational changes, such as revising the purpose article in our governing documents to comply with the Internal Revenue Code, are needed to apply.

In addition to ensuring that CJA's income is exempt from federal income taxes, one very large benefit of becoming a 501(c)(3) is that donors will be able to reduce their federal (and possibly state) tax bills by deducting donations to CJA from their income if they itemize deductions.¹ This also means that donors who have donated money or other property to donor advised funds will be able to advise grants to CJA. Therefore, as CJA starts new programs and needs to fundraise to support those efforts, it will be able to more readily secure the resources it needs through the generosity of the membership base and the broader donating public.

It should also be noted that, as an educational 501(c)(3), CJA will be eligible for substantial discounts on postage for the prizes of the awards program and anything else that might need to be mailed. Lastly, CJA's exemption from tax will also extend to sales, property and other state taxes depending on the laws of the state concerned.

B. Incorporation

Presently, CJA is an unincorporated association. As a national organization, however, this is a problem because it is not clear which state's laws govern our internal affairs, thereby creating legal uncertainty that unnecessarily burdens the operations of the Executive Board. A corollary of this uncertainty is that it is not clear what limited liability protection, if any, protects the membership (and even more so, the officers).

On the contrary, if CJA was to become a nonprofit corporation, it would choose a particular state and be subject to its laws. This would provide much-needed clarity and legal protection as CJA grows. It would also remove certain complications with the 501(c)(3) filing brought about by the fact that CJA may have been a 501(c)(7) in the past.

The Executive Board has decided to incorporate under the laws of Texas. It considered other possible domiciles but concluded that the nonprofit corporate law of Texas would best serve the needs of CJA. Notable benefits include the convenience of not having to file periodic reports with the state (unless the state expressly asks for it, and then only once every four years) and the ability of a board majority to transact business by email without unanimous consent.

Incorporation will be achieved through a non-statutory conversion. This means that the officers (with myself as the organizer) will create a nonprofit corporation in Texas under the same name as CJA. Once the certificate of formation has been approved by the Secretary of State, we will meet by Zoom for an organizational board meeting, adopt the new bylaws and elect ourselves as the initial officers of the new entity. Lastly, the assets of the old CJA would be transferred to the new CJA. As a result, the unincorporated association known as CJA would become defunct and CJA for all practicable purposes would endure as the nonprofit corporation. As soon as possible after completing the incorporation process, we would then file for 501(c)(3) status.

¹ Contribution limits and other limitations may apply. This report is not intended to provide tax advice to potential donors or other persons.

C. Governing Documents

At the moment, CJA's governing documents are its Constitution and Bylaws, which were originally adopted in 1980 and most recently amended in 2006. To accommodate incorporation and applying for 501(c)(3) status, at least some changes are required. Considering that much has changed since the last revision so much so that the Constitution is in many ways outdated, I took the time to prepare a general revision of these governing documents which have been approved by the Executive Board with changes.

One change brought about by incorporation is that, instead of a constitution and bylaws, CJA will have a certificate of formation and bylaws. As the certificate of formation is filled with the state and fees must be paid whenever it is amended, it will be kept to the bare minimum required for incorporation and 501(c)(3) status. Rules about how CJA is to be governed will be almost entirely established in the bylaws.

Comparing the existing Constitution with the new bylaws, it will be found that the governance of this organization remains fundamentally intact. CJA will remain a democratic organization. Officers will continue to be elected by the membership for two-year terms and the annual membership meeting will continue to be held as heretofore done.

However, several changes have been made to eliminate practices that have long been neglected, allow business to be transacted more efficiently and generally adopt best practices of nonprofit governance. These changes include:

- Abolish the outdated distinction between Regular, Associate and Foreign Members
- Separate the offices of Treasurer and Secretary
- Elect officers on an alternating basis (i.e., the President, Secretary and Webmaster will be elected in odd years while the Vice President, Treasurer and Editor will be elected in even years)
- Empower the winter membership meeting to transact business
- Eliminate the requirement to print the mailing addresses of members in *The Chess Journalist*
- Allow the Bylaws to be amended with a two thirds vote of the membership and advance notice

As the certificate of formation is based on a form provided by the Secretary of State's office, much of it is formalities such as state-mandated text and addresses of officers, etc. A simplified version of this form has been provided on the following page for the avoidance of confusion. The bylaws will also be provided in full as a separate attachment.

Certificate of Formation

Article I

The entity being formed is a nonprofit corporation. The name of the entity is Chess Journalists of America.

Article II

The initial registered agent is an individual resident of the state whose name is Caleb S. Brown. The business address of the registered agent and the registered office address is 275 Lost Hunters Canyon, China Spring, TX, 76633.

Article III

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

- Caleb S. Brown
- Jon Edwards
- Joshua Anderson
- Mark Capron

Article IV

The nonprofit corporation shall have members.

Article V

The nonprofit corporation is organized for the following purpose or purposes: To promote the study and knowledge of chess as a journalistic and scholarly endeavor among the people of the United States.

Notwithstanding anything in this certificate to the contrary, the corporation is formed exclusively for one or more purposes described in section 501(c)(3) of the Internal Revenue Code of 1986 (hereinafter referred to as "the Code") and shall not engage in any activities which may not be carried on by corporations exempt from tax under section 501(c)(3) of the Code.

No part of the net earnings of the corporation shall inure to any officer, director or member of the corporation, or any private individual, except as reasonable compensation for services rendered and as distributions in pursuance of the purposes for which this corporation is formed.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the corporation shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

In the event of the dissolution of the corporation, the assets of the corporation, after making provision for the debts and expenses thereof, shall be distributed to the United States of America Chess Federation, or if at such time the Federation shall fail to qualify as exempt from tax under section 501(c)(3) of the Code, to one or more organizations exempt from tax under section 501(c)(3) of the Code. Any assets not so disposed shall be disposed of by a court of competent jurisdiction by distributing said assets, as said court shall determine, to one or more organizations exempt from tax under section 501(c)(3) of the Code.

References to the Code in this certificate refer to the Code as amended, corresponding provisions of future tax codes, and the regulations thereunder.

A governing person of the corporation shall not be liable to the corporation or its members for monetary damages for an act or omission by the person in the person's capacity as a governing person other than as provided by Section 7.001(c) of the Texas Business Organizations Code.

The power of the Board of Directors to amend the bylaws of the corporation is expressly denied and instead shall vest solely in the membership as may be provided in the bylaws; provided that, until the first meeting of the membership is held, the Board of Directors may adopt bylaws and amend the same.

Amendments to this certificate may be submitted to a vote of the membership by the Board of Directors, and when so submitted, shall be adopted if approved by a three-fourths vote at an annual meeting or a special meeting called for the purpose.