



★ VIRGINIA ★  
STATE BOARD *of* ELECTIONS

# PUBLIC HEARING

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Tuesday, August 06, 2019

Senate Room 3

Virginia State Capitol

Richmond, VA

2:30 P.M.

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SBE Public Hearing Working Papers



**PUBLIC HEARING FOR  
1VAC 20-90-30  
AGENDA**

*DATE: Tuesday, August 06, 2019*  
*LOCATION: Senate Room 3*  
*Virginia State Capitol*  
*Richmond, VA*  
*TIME: 2:30 PM*

**I. CALL TO ORDER**

*Robert Brink, Chairman*

**II. Presentation of 1VAC 20-90-30**

*Arielle A. Schneider*  
*Policy Analyst*

**III. PUBLIC COMMENT**

**IV. ADJOURNMENT**

**NOTE:** All materials provided to the Board are available for public inspection under the Virginia Freedom of Information Act upon request.



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# IVAC 20-90-30

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BOARD WORKING PAPERS  
State Board of Elections

Arielle A. Schneider  
Policy Analyst



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DEPARTMENT *of* ELECTIONS

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**Memorandum**

**To:** State Board of Elections  
**From:** Arielle A. Schneider, Policy Analyst  
**Date:** August 6, 2019  
**Re:** Public Hearing for Proposed Regulation 1VAC 20-90-30

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**Background**

On May 21, 2018 the State Board of Elections voted unanimously to submit this revised definition of express advocacy to the public for comment as required by the Virginia Administrative Process Act. The members of the State Board of Elections recommended that the public be informed and provided opportunities to comment through the regulatory process.

The regulation was published as a Notice of Intended Regulatory Action (NOIRA) in the October 29, 2018 *Virginia Register*. The 30-day comment period for the NOIRA stage ended November 28, 2018. We received no comments during this phase. Following another round of review and approval from multiple entities within the Executive Branch, including the Office of the Attorney General, Governor's Office, and the Department of Planning and Budget, the regulation was published as a Proposed Regulation in the June 10, 2019 *Virginia Register*. The 60-day comment period is underway and will end on August 9, 2019. Thus far, we have received no comments during this phase.

**Regulation Text**

**1VAC20-90-30. Express advocacy.** When used in Chapter 9.3 (§ 24.2-945 et seq.) and Chapter 9.5 (§ 24.2-955 et seq.) of Title 24.2 of the Code of Virginia, "expressly advocating" or any variation thereof shall mean any communication that uses phrases such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject," or any variation thereof or any communication when taken as a whole and with limited reference to external events, such as the proximity to the election, that could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidates because (i) the electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning and (ii) reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidates.

**Next Steps**

Following the receipt of comments at the August 6, 2019 public hearing, the regulation will enter the final stage. During the Final stage, the new regulation is published in the *Virginia Register*. A 30-day waiting period takes place before the regulation becomes effective.

Based on the publication schedule provided by the Register of Regulations, the regulation could be published in the September 2, 2019 *Virginia Register* and become effective 30 days later, should we receive no additional substantive comments.



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# Public Comment

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