

December 1, 2020

Dear Members of the Virginia FOIA Council:

We are writing to express our support for two changes regarding electronic meetings.

**First, we urge you to approve the codification of authority for public bodies during a Governor-declared emergency to address any subject while meeting electronically.**

**Second, we also want to express our support for removing the Commonwealth-imposed limit on individual electronic participation by members of a public body when a physical quorum is present.** As you know, the law applies not only to elected officials, but also to the many residents who serve on advisory boards.

That said, we recognize that you may choose to recommend a more modest change, such as the Subcommittee's recommendation of allowing electronic participation in up to 25% of the meetings held per calendar year. **If you choose that option, we strongly urge you to also remove the word "serious" in reference to a family member's medical condition that qualifies for an allowable reason for electronic participation.** The definition of "serious" is unclear. We believe that members of public bodies should be able to care for family members when needed.

***These adjustments still retain accountability to FOIA and continue to permit public bodies to allow and govern participation with additional guidelines suited to their circumstances.***

We believe it is crucial that all FOIA requirements be met. Indeed, meeting such requirements has been proven possible throughout this difficult pandemic year in Virginia.

Furthermore, existing law *does* protect against abuse: in order for a member to participate electronically, [§ 2.2-3708.2](#) of the Code of Virginia requires: a physical quorum in the room; the public body to have adopted an electronic participation policy; and the inclusion in the minutes of the specific nature of the personal matter cited by the member and the location from which they participate. These requirements serve to ensure that the meeting is still open and accessible to the public and to hamper any potential excessive use of this policy. Voters retain their power to remove us and hold us accountable for the actions of those we appoint. Additionally, the public body must have a written electronic participation policy "allowing for and governing participation." **Thus, public bodies do not have to allow electronic participation, and they already have the authority to govern electronic participation by adopting additional guidelines or restrictions suited to their circumstances and community.**

***Increasing flexibility decreases barriers and allows more residents – especially women - to directly participate in their government.***

While we value meeting in-person, we also see the value of affording flexibility that recognizes different life circumstances and experiences. Members of public bodies have families, including children or aging parents, who may need care. We note that many of us are considered "part time" elected officials and need other employment to be able to afford to live. This is similarly difficult for our advisory body members who are generally uncompensated. Current meeting rules that grant only two virtual attendances do not reflect these ubiquitous circumstances. It has become clear to us that the law creates unnecessary barriers to participation.

It especially serves to negatively impact the participation of women given the well-documented fact that women continue to shoulder the burden of caretaking in our society.<sup>1</sup> As such, flexibility to attend

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<sup>1</sup> Some examples: <https://www.usatoday.com/in-depth/news/nation/2019/05/09/working-moms-motherhood-stress-parenting-good-mom-childcare-daycare-costs-maternity-leave-gender-gap/3586366002/>; <https://www.nytimes.com/2019/08/29/business/economy/labor-family-care.html>;

meetings virtually is incredibly important to us to encourage greater participation in public service, so that we may achieve more representative, effective public policy. We want our governmental bodies to reflect the diversity of voices and lived experiences within our communities and firmly believe that the public benefits when their government better reflects its population.

***There is broad support for changes that increase flexibility for electronic meeting participation***

The Subcommittee received an overwhelming amount of public support for even broader changes in the name of equity, especially from women. We believe the Commonwealth should listen to those who sacrifice to serve their communities in non-elected and elected government positions.

Virginia would not be alone in allowing flexibility for electronic participation – it has been proven possible by the overwhelming majority of states that allow individual electronic participation without restrictions.<sup>2</sup> We believe it is time to join them and reap the benefits technology provides to make public service more accessible. The public is also better served when the elected or appointed officials who represent them are enabled to participate, rather than barred from doing so, when they cannot physically attend.

As you finalize your recommendation to the General Assembly, we ask you to please help us move Virginia forward.

Thank you for your consideration.

Sincerely,

The Honorable Walter Alcorn, Board Member, Fairfax County  
The Honorable Meagan Alderton, School Board Member, Alexandria City Public Schools  
The Honorable Dr. Ricardy Anderson, School Board Chair, Fairfax County Public Schools  
The Honorable Cindy Anderson, School Board Chair, Alexandria City Public Schools  
The Honorable Chuck Anderson, Council Member, Town of Vienna  
The Honorable Andrea Bailey, Board Member, Prince William County  
The Honorable Elizabeth Bennett-Parker, Vice Mayor, City of Alexandria  
The Honorable Kelly Burk, Mayor, Town of Leesburg  
The Honorable John Taylor Chapman, Council Member, City of Alexandria  
The Honorable Laura Jane Cohen, School Board Member, Fairfax County Public Schools  
The Honorable Linda Colbert, Mayor, Town of Vienna  
The Honorable Lauren Colliver, Council Member, Town of Blacksburg  
The Honorable Marybeth Connelly, Vice Mayor, City of Falls Church  
The Honorable Karen Corbett Sanders, School Board Member, Fairfax County Public Schools  
The Honorable Katie Cristol, Board Member, Arlington County  
The Honorable Dr. Lorita Copeland Daniels, School Board Member, Spotsylvania County  
The Honorable Michelle Davis-Younger, Mayor-Elect and Council Member, City of Manassas  
The Honorable Laurie DiRocco, Former Mayor, Town of Vienna  
The Honorable Laura Downs, School Board Member, Falls Church City Public Schools  
The Honorable John W. Foust, Board Member, Fairfax County  
The Honorable Margaret Franklin, Board Member, Prince William County  
The Honorable Signe Friedrichs, Council Member, Town of Herndon  
The Honorable Karl Frisch, School Board Member, Fairfax County Public Schools  
The Honorable Libby Garvey, Board Chair, Arlington County

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<https://www.nytimes.com/interactive/2020/03/04/opinion/women-unpaid-labor.html>

<sup>2</sup> Alaska; Arizona; Arkansas; California; Colorado; Connecticut; Idaho; Iowa; Kansas; Kentucky; Maryland; Michigan; Mississippi; Missouri; Montana; Nevada; New York; North Carolina; North Dakota; Oregon; Pennsylvania; South Carolina; South Dakota; Tennessee; Texas; Utah; Vermont; Washington; West Virginia; and Wisconsin all allow without restrictions or qualifications imposed by the state. Illinois; Massachusetts; New Mexico and New Hampshire allow electronic participation if it is difficult or not practical to attend in person. Florida's AG has opined with similar language. Indiana requires members to physically attend at least one meeting per year. Only Virginia, Georgia, and Minnesota place a numerical limit on electronic participation.

The Honorable Ramee Gentry, School Board Member, Alexandria City Public Schools  
The Honorable Jacinta Greene, School Board Member, Alexandria City Public Schools  
The Honorable Letty Hardi, Council Member, City of Falls Church  
The Honorable Heather Hill, Council Member, City of Charlottesville  
The Honorable Debbie Hiscott, Council Member, City of Falls Church  
The Honorable Amy Jackson, Council Member, City of Alexandria  
The Honorable Tamara Derenak Kaufax, School Board Member, Fairfax County Public Schools  
The Honorable Karen Keys-Gamarra, School Board Member, Fairfax County Public Schools  
The Honorable Shannon Litton, School Board Member, Falls Church City Public Schools  
The Honorable Margaret Lorber, School Board Member, Alexandria City Public Schools  
The Honorable Sena Magill, Vice Mayor, City of Charlottesville  
The Honorable Andria McClellan, Council Member, City of Norfolk  
The Honorable Jeffrey C. McKay, Board Chair, Fairfax County  
The Honorable Megan McLaughlin, School Board Member, Fairfax County Public Schools  
The Honorable Melanie Meren, School Board Member, Fairfax County Public Schools  
The Honorable Lisa Merkel, Mayor, Town of Herndon  
The Honorable Selonia Miles, Council Member, Town of Dumfries  
The Honorable Janice Miller, Council Member, City of Fairfax  
The Honorable Cydny Neville, Council Member, Town of Dumfries  
The Honorable Monaé Nickerson, Vice Mayor, Town of Dumfries  
The Honorable Veronica Nolan, School Board Vice Chair, Alexandria City Public Schools  
The Honorable Abrar Omeish, School Board Member, Fairfax County Public Schools  
The Honorable Jennifer Passey, Former Council Member, City of Fairfax  
The Honorable Dalia Palchik, Board Member, Fairfax County  
The Honorable Stella Pekarsky, School Board Vice Chair, Fairfax County Public Schools  
The Honorable Atoosa Reaser, School Board Vice Chair, Loudoun County Public Schools  
The Honorable Dr. Michelle Rief, School Board Member, Alexandria City Public Schools  
The Honorable Pamela Sebesky, Vice Mayor, City of Manassas  
The Honorable Mohamed Seifeldein, Council Member, City of Alexandria  
The Honorable Rachna Sizemore Heizer, School Board Member, Fairfax County Public Schools  
The Honorable Kathy L. Smith, Board Member, Fairfax County  
The Honorable Edward A. Somers, Council Member, Town of Vienna  
The Honorable Christopher Suarez, School Board Member, Alexandria City Public Schools  
The Honorable Elaine Tholen, School Board Member, Fairfax County Public Schools  
The Honorable Heather Thornton, School Board Member, Alexandria City Public Schools  
The Honorable Justin Wilson, Mayor, City of Alexandria  
The Honorable Lisa Zargapur, School Board Member, Prince William County Public Schools