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Subject: Public Hearing Comments

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From: DoNotReply@delaware.gov

To: HearingComments, DNREC (MailBox Resources)

Comments on Docket #2025-R-P-0017 - State Parks Regulations

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Comments:

I have a question regarding the proposed regulation prohibiting flags containing “obscene material.” Delaware Code 1364 provides a specific three-part definition of what constitutes obscene material. As I understand the statute, all three elements must be met: the material must appeal to prurient interests under contemporary community standards; it must contain patently offensive depictions or descriptions of specified sexual conduct, masturbation, excretory functions, or lewd exhibitions of the genitals; and the work, taken as a whole, must lack serious literary, artistic, political, or scientific value. Can the State clarify whether this existing statutory definition will be the standard used to determine whether a flag contains “obscene material” under the proposed regulation? If so, can the State also explain what objective standards, guidance, or review process will be provided to the individuals responsible for enforcing this provision? I ask because the distinction between obscene material and constitutionally protected speech is extremely important. A flag can be controversial, offensive, or politically unpopular without being obscene. I believe it is important to establish clear standards before this regulation is enforced so that “obscene” does not become a subjective determination based on whether an individual agrees with, is offended by, or dislikes the message being displayed. So, specifically: What exact definition of “obscene material” will enforcement personnel be instructed to use, and what safeguards will ensure that protected political speech and other constitutionally protected expression are not improperly classified as obscene?