

## Testimony of Steve McKay in Opposition to Bill No. 18-25

I support stronger ethics rules. In fact, I've stood here at the dais on a number of occasions arguing for stronger regulations, typically dealing with the State law concerning Frederick County. My arguments always involve actions – not thoughts or words. That's where my view differs on this bill. Personally, I think I understand the motivations behind this bill but I'm not going to dwell on that here. I'm going to focus on what you've brought forward, not why.

I'll start by commending Council member Chmelik for recognizing that his original bill represented a blatant infringement of the First Amendment. The problem is that this new version is still right there in First Amendment territory. Let's look at paragraph three of the opening remarks. This is important stuff – it provides a guide for the legislative intent of the bill. Here we find the following, referencing the Planning Commission and the Board of Zoning Appeals:

“...precludes them from participating in or expressing personal opinion on matters of public interest that may come before them...”

That “may” term is the big problem here. It involves speculation, rather than fact. You ask these commission members to guess at what may come before them, sacrificing their ability to voice personal opinions on matters that they may have no knowledge of, and certainly no control over, coming before them in their official capacity.

We see this repeated in the bill language:

Paragraph B.2 – references a case, controversy, or issue that is “likely” to come before the Member.

Paragraph B.3 – imposes limitations on member statements on matters either pending or “impending” before the Member.

All of these instances require the Commission or Board member to guess or speculate at what may or may not come before them. Guess wrong, speak their mind, and they may violate this law. Their only course may be to silence their personal voices, just to avoid the chance of an unexpected matter coming before them. If that doesn't represent a chilling affect on these members First Amendment rights, I don't know what does.

Now let's address a more fundamental objection to this bill. During its presentation, I've heard Council member Chmelik repeatedly justify and rationalize this bill on the fact that each of these members are often asked to act in a quasi-judicial function. The analogy of them being like judges has been used. However, the Council member overlooks a key point. Each of you, and the Council as a body, also have a quasi-judicial role on certain issues. Contrary to Council member Chmelik's prior assertions, the fact that you are considered politicians, does not alleviate your responsibility to address such issues from an objective, unbiased, and fact-based manner. In this regard, your responsibilities are absolutely no different than members of the Planning Commission and the Board of Zoning Appeals.

That leads to a question – if you think these restrictions are good for them, why aren't they also good enough for you? I wonder what would happen if you were similarly muzzled at expressing your personal views on matters that “may” or are “likely” to come before you? For one thing, I think Council members comments would be a lot shorter for some of you! More importantly, it's just wrong.

If you want stronger ethics legislation – great, I'm there with you. But let's focus on actions, not words, and in the process, let's try to keep our First Amendment rights intact.