IN THE DISTRICT OF COLUMBIA COURT OF APPEALS

Appel. Nos. 04-CM-760 and 04-CO-1600

ELENA RUTH SASSOWER

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

On Appel from D.C. Superior Ct. Crim. No. M-4113-03, Brian F. Holeman, J.

AMICUS BRIEF OF THE DISTRICT OF COLUMBIA NATIONAL LAWYERS GUILD, IN SUPPORT OF APPELLANT

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INTRODUCTION

Amicus District of Columbia National Lawyers Guild ("DC Guild"), through undersigned counsel, hereby urges the reversal of Appellant's conviction and of her sentence, for the following reasons.

ARGUMENT

A. D.C. Code § 10-503.16(b)(4) is Unconstitutionally Vague and Overbroad

Appellant was convicted under D.C. Code § 10-503.16(a)(4) ("Section (b)(4)") . which makes it unlawful:

> To utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any deliberations of, any committee or subcommittee of the Congress or either House thereof.

Id.

Section (b)(4) is unconstitutionally vague and overbroad. *Ashcroft v. Free Speech Coalition,* 535 U.S. 234, 257 (2002) (confirming that the First Amendment is violated by overly vague and overbroad regulations of expression). In particular, Section (b)(4)'s language about "loud, threatening, or abusive language" is too vague and overbroad as to chill First-Amendment-protected activity. *Id.* at 257. In other words: 'The provision abridges the freedom to engage in a substantial amount of lawful speech. For this reason, it is overbroad and unconstitutional." *Id.* (overturning criminal prohibitions against virtual child pornography as overbroad).

Such precedents of this Court as *Armfield v. U.S.*, 811 A.2d 792 (D.C. 2002) do not sufficiently analyze Section (b)(4) for vagueness and overbreadth. *Ashcroft v. Free Speech Coalition,* 535 U.S. at 257. Based on the foregoing discussion, now is the right time for this Court to declare Section (b)(4) void for being overbroad and overly vague in violation of the First Amendment. *Id.*

B. Section (b)(4) Was Applied Unconstitutionally

The Capitol belongs to the public, and is a critical symbol of participatory democracy. The Capitol building is not a sacred sanctuary or tomb, which was the case with the Kremlin.

By the government's own concession, proceedings were wrapped up by the time Appellant made her comments that are the basis of this criminal action. Appellant's Appendix at 676-76 (the government's opening statement). Moreover, the government's own eyewitness, Roderick Jennings, confirmed as much. *Id.* at 901-02. To uphold Appellant's conviction will be to drape the Senators who were present in the courtroom in the cloaks of royalty at best, and the sinister protections of the Kremlin at worst. The Capitol, however, is the center of the federal democracy, and the elected senators have no right nor business to so cloak themselves.

Moreover, a critical distinction between this case and *Armfield v. U.S.*, 811 A.2d 792, is that in *Armfield*, the defendant engaged in his actions while the Congressional proceedings was still ongoing and nowhere near concluded. In Appellant's situation, proceedings had already wrapped up.

C. The Evidence Was Insufficient to Convict Appellant

For the reasons argued in § B, *supra*, the evidence was insufficient to convict Appellant, where the proceedings had already wrapped up. Moreover, insufficient evidence was presented at trial to show that there was disorder or disruption caused by Appellant, other than the chairperson hitting his gavel. Disorder, disruption, and disturbance are critical elements of the charges against Appellant. None have been shown. In fact, Appellant's words were so mild as to pale in comparison to the usual rough and tumble in the floor debates in the House and Senate.

D. Appellant's Sentence is Unconstitutional

Appellant's sentence is unconstitutional for two main reasons. *First*, the sentence was unfair, partial, and vindictive for imposing a sentence that even exceeded the suspended jail time first announced by the lower court. For the trial court to have imposed six months of active incarceration after having announced a suspended sentence of just over two months stretches justice beyond the breaking point.

Second, to have required Appellant, as a condition of probation, to apologize for her actions not only violates Appellant's First Amendment right to maintain her own political and personal views -- and not to be forced by a court to state contrary views -- but also violates Appellant's right to maintain her innocence, particularly seeing that at all times she had the right to appeal for a retrial (which is one of the forms of relief available to her in this appeal), and for her to have written the

apologies made a condition of probation would have flown in the face of her right to maintain her innocence at any retrial after appeal.

CONCLUSION

Appellant was convicted under an unconstitutional law, and was forced to endure an unconstitutional sentence. The damage done by her unconstitutional conviction and sentence makes tidal waves well beyond Appellant's case, in that there is no symbol of democracy and free speech greater than the Capitol building where so many opposing views get aired. It now is time to vindicate those rights that were so sorely violated below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the foregoing Amicus Brief was mailed by first-class mail, postage prepaid, to each of the following parties, this 23rd day of January,, 2006:

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