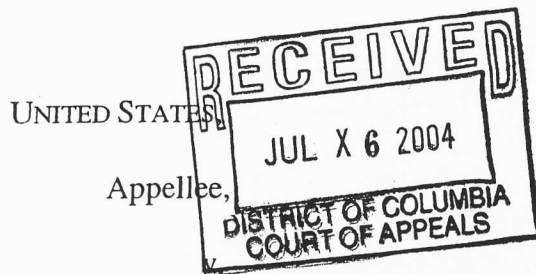


IN THE DISTRICT OF COLUMBIA COURT OF APPEALS



ELENA RUTH SASSOWER,

Appellant.

Case No. 04CM760

**SUPPLEMENTAL BRIEF OF ELENA SASSOWER IN SUPPORT OF
MOTION FOR BAIL PENDING APPEAL**

NOW COMES Appellant Elena Sassower, by counsel, and respectfully moves this Court for leave to submit this BRIEF IN SUPPORT OF A MOTION FOR BAIL PENDING APPEAL to supplement her MOTION FOR A STAY OF SENTENCE AND BAIL PENDING APPEAL. Sassower is “not likely to flee or pose a danger to any other person or to the property of others,” and “the appeal * * * raises a substantial question of law or fact likely to result in a reversal or an order for new trial.” D.C. Code § 23-1325.

1. The crime of which the defendant has been convicted is one that is rarely prosecuted. On May 22, 2003, Elena Sassower attended a hearing at which the Senate Judiciary Committee was considering the nomination of Richard Wesley to the United States Court of Appeals for the Second Circuit. Ms. Sassower contacted the Capitol Police to inform them of her desire to present testimony in opposition to the nomination in advance. After a series of witnesses had testified, the Chairman adjourned the hearing. Although Ms. Sassower remained quiet throughout the lengthy hearing, at that juncture she stood up and forcefully, but civilly, stated that she wished to be heard in opposition to the nomination. Without any warning or opportunity to stop talking, she was immediately arrested, held in the Capitol lockup for over 20 hours, and subsequently charged with disrupting a Congressional proceeding.

2. The statute in question, D.C. Code Section 10-503.16(b)(4), states as follows:

It shall be unlawful for any person or group of persons willfully and knowingly * * * [t]o 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 or the Congress or either house thereof.

a. The appeal will challenge the legal validity of the conviction on several grounds. First, because Ms. Sassower was attempting to exercise her First Amendment right to petition the government for redress of grievances, it can hardly be doubted that the prosecution is treading on constitutionally sensitive grounds. It is Sassower's contention that the statute does not reach her conduct and that, if construed to reach it, may not constitutionally be applied to her conduct. Because the hearing was adjourned

(or at least on the verge of adjourning), Ms. Sassower's request to be heard did not substantially interfere with the ability of Congress, or its committees, to conduct their affairs. It was neither violent in character nor threatening or abusive, and safety and decorum could readily have been assured by less severe measures than arrest and criminal prosecution. Sassower was provided no warning or notice that citizens were prohibited from speaking in the room, and not warned or given any opportunity to stop talking rather than face arrest.

Against this background, serious constitutional issues arise as to whether requests to address a governmental body during a public hearing, on the subject under consideration at that hearing, may be met with severe (or, for that matter, any) criminal sanctions. At a minimum, the statute must be narrowly construed to avoid chilling legitimate First Amendment activity. Sassower's conduct does not come within any acceptable construction of this statute.

b. Constitution aside, the case presents significant issues of statutory interpretation. First, under the *ejusdem generis* principle, the statute's specification of "loud, threatening, or abusive language" indicates that the "disorderly or disruptive conduct" to which it applies must be at least of similar character, which Ms. Sassower's conduct was not. Second, the statute applies only while Congress is in session, and there is a real question whether it may be extended to the current circumstances, where the hearing had been adjourned by the Chairman prior to Ms. Sassower's efforts to be heard on the nomination.

3. The sentence itself raises some significant issues, especially the severe restrictions on Sassower's speech and associational rights on which probation would have been

conditioned. These have been addressed in the original application and will not be further belabored here, except to say that they too render it especially inappropriate that bail pending appeal be denied.

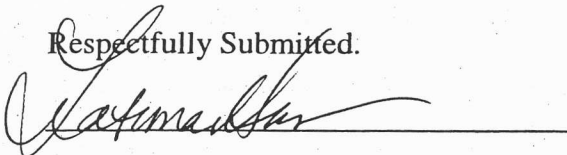
4. Unless bail pending appeal is granted, it seems likely that Sassower will serve her entire sentence before the appeal can be briefed and decided. Given the extraordinary nature of this prosecution and the substantial constitutional interests implicated by the case, it would be a travesty of justice to refuse bail here. This case is one of far more than routine sensitivity, touching upon issues of fundamental importance to the balance between orderly government and vitally important individual rights. There is a very realistic prospect that the prosecution will be found constitutionally defective or otherwise flawed.

In sum, this extraordinary case is one that both on its face, and upon closer examination, cries out for bail. This Court should not cast itself as the Red Queen and require "service of sentence first, review of substantial constitutional issues later."

CONCLUSION

For the foregoing reasons we respectfully request that this Court grant the Motion For A Stay Of Sentence And Bail Pending Appeal.

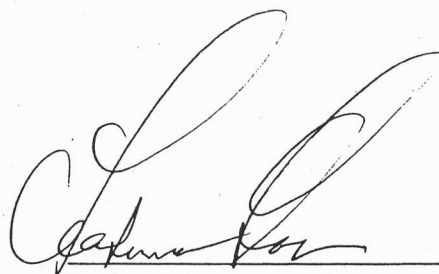
Respectfully Submitted.



Andrew L. Frey (DC Bar No. 30304)
Fatima Goss (DC Bar No. 481051)
MAYER, BROWN, ROWE & MAW LLP
1909 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of July, 2004, I served one copy of the foregoing Supplemental Brief Of Elena Sassower In Support Of Motion For Bail Pending Appeal by mail and fax service on John Fisher, Chief, Appellate Branch, United States Attorney for the District of Columbia, 555 4th St., N.W., Washington, D.C. 20001.

A handwritten signature in black ink, appearing to read 'Fatima Goss', written over a horizontal line.

Fatima Goss
MAYER, BROWN ROWE & MAW LLP
1909 K St., NW
Washington, DC 20006
(202) 263-3000