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DISTRICT OF COLUMBIA  
COURT OF APPEALS

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DISTRICT OF COLUMBIA COURT OF APPEALS

2004 JUN 28 P 5:03

Re: -Elena Ruth Sassower, Appellant :

Crim No. M 4113-03

: ADMINISTRATIVE SERVICE DIVISION  
: Appeal No.

04 6/27/04

MOTION FOR STAY PENDING APPEAL  
AND FOR APPELLANTS RELEASE

JUN 29 2004

Appellant Elena Ruth Sassower respectfully moves this Court, pursuant to D.C. App. R. 8

for a stay pending appeal of the trial court's sentencing which occurred on June 28, 2004, and

for release pursuant to DC Code Sec 23-1325(c)

Appellant will be simultaneously filing a notice of appeal in this case. A stay of the

sentence is necessary to prevent irreparable injury to Ms. Sassower, pending this Court's determination on the merits of the underlying appeal.

ARGUMENT

The standard for evaluating stay requests is set forth in Virginia Petroleum Jobbers Association v. Federal Power Commission, 259 F. 2d 921 (D.C. Circ. 1958). In order to obtain a stay, the movant must demonstrate that he/she 1) is likely to prevail on the merits of the underlying appeal; 2) he will be irreparably injured if a stay is not granted; 3) a stay would not substantially harm other interested parties, and 4) a stay would serve the public interest. Appellant refers this Court to her Petition for Writ of Mandamus and Prohibition filed earlier in this case for a full factual summary of the case. A short summary, however is that on May 22, 2003, Appellant was arrested at the Dirksen Senate Office Building for speaking at a congressional hearing concerning the Senate Judiciary Committee's hearing on the nomination of Richard Wesley to the Second Circuit Court of Appeals. Appellant was charged with violating DC Code Sec. 10-503.16 (b)(4). That statute carries a maximum jail sentence of six months in jail and a

maximum fine of \$500. After lengthy pre-trial litigation, including the writ of mandamus, Appellant argued that she spoke after the Hearing was adjourned and respectfully requested to testify in opposition to Judge Wesley.

The Government argued that she spoke before the Hearing was adjourned and disrupted Congress by her speaking from the crowd inside the Hearing room.

Appellant is likely to succeed on the merits of the appeal of the sentence in that the Sentence given was an abuse of discretion, and reflected the anger of the trial judge towards the defendant, who is a judicial reform activist, who had moved for the trial judge's recusal based on his demonstrated bias against her.

At sentencing, the trial judge on June 28 sentenced Ms. Sassower to 92 days in Jail, gave her credit for the time she already served, and Suspended Execution of the Sentence, as to the remaining time. He then placed her on two years probation, ordered her to pay a \$500 fine and \$250 to the Victims Fund. If she left the jurisdiction for more than 2 weeks, she had to notify her probation officer. She had to work 40 hours a week at a minimum, and if she did not keep her self-employment as coordinator of the judicial reform non-profit that she co-founded, the Center for Judicial Accountability [www.judgewatchers.org](http://www.judgewatchers.org), then she would have to get other employment. She was required to submit daily time records to 1/10 of an hour, signed time sheets, to the Court, attesting to her employment.

She was ordered to perform 300 hours of community service; 200 in her home state of New York and 100 in D.C. Additional hours of work beyond her regular hours with her own non-profit would not satisfy the Court. She would have to submit to medical, mental health and drug screening and comply with testing and treatment.

She would be required to attend Anger management therapy as determined by Court services (CSOSA).

She was ordered to stay away from the United States Capitol Complex, which includes All Capitol Buildings, Grounds, Library of Congress, Capitol Power Plant, Dirksen, Hart, and all other capitol buildings. She was ordered to have no verbal, electronic or written contact for 2 years with Senator Hillary Rodham Clinton, her New York Senator, Tamara Luzzato (Senator Clinton Staffer), Leecia Eve (Senator Clinton staffer), Josh Albert (Senator Clinton Staffer), Senator Saxby Chambliss, Michael Tobin (Senate Staffer) Senator Orrin Hatch, Senator Patrick Leahy, Senator Schumer (her New York Senator), and Capitol Police Officers Jennings, Lippay, Zimmerman and Bignotti. She was also ordered to stay away from Judge Wesley. The trial judge recognized that Senators Clinton and Schumer were her Senators so allowed her to have written contact with them.

The Judge then ordered her to write letters of apology- despite the fact that she took the witness stand and did not express remorse for requesting to testify, and did not agree to the Presentence report writer's request for her statement of remorse. The judge ordered her to write letters of apology to Senator Hatch, Senator Leahy, Senator Chambliss, Senator Schumer, Senator Clinton, and Judge Wesley.

In the letter, the judge ordered her to express remorse , to explain that she was convicted, and to apologize to the for the inconvenience caused by her actions, with copies to the Court.

The Court then asked Ms. Sassower if she agreed to accept Probation under those terms. She briefly conferred with undersigned counsel, and she then spoke as a pro se:

She said she did not accept probation and she requested a stay of sentencing. Judge Holzman denied the STA.

The judge then ordered her immediately incarcerated for 6 months, and ordered her to pay a \$500 fine and \$250 to the Victims Fund.

Given that she is likely to prevail on the merits of the underlying appeal, including but not limited to the fact that her probation infringes on constitutionally protected freedom of speech, association, and rights to petition Government, particularly for a judicial reform activist whose livelihood often takes her to correspond with Capitol officials, who have the constitutional obligation to confirm Judicial Appointees. Constitutional rights are not automatically suspended upon the conviction for a misdemeanor charge of disrupting Congress-during which no violence or property damage occurred.

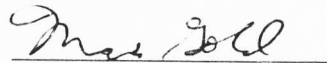
In addition, she will be irreparably injured in that she will spend six months in jail while the appeal is pending, and the stay<sup>and release</sup> will not harm anybody, as the Government did not ask for jail time or even a stay away order in their sentencing memorandum, and the US Capitol Police or Senate Judiciary did not put in papers requesting jail time. CSOSA did not recommend jail time. She has not been arrested again since her May 2003 arrest, attended every court hearing, is not a flight risk, and is not a danger to the community.

A stay would serve the public interest as it is not in the public interest to sentence someone to 6 months in jail, for truthfully stating that she did not accept the Courts unconstitutional and vindictive sentence, which was only imposed after she rejected the terms of the initial probation, and back up time was only expected to be 92 days. By rejecting the terms of the probation, and speaking honestly, she got a 6 month jail sentence.

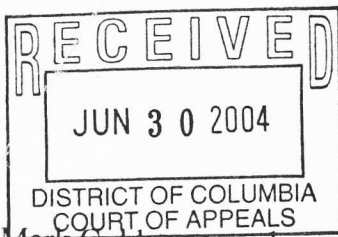
#### CONCLUSION

For the reasons set forth above, and in the pleadings earlier submitted on the Writ of Mandamus, this Court should stay the sentence of the trial court, immediately order her release, and not compel Ms. Sassower to abide by the conditions of her probation, pending appellate review in this case.

Respectfully submitted,

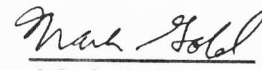


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CERTIFICATE OF SERVICE

I, ~~Mark Goldstone~~, undersigned counsel, hereby certify that on this 30<sup>TH</sup> day of June, 2004, I hand-served a copy of the foregoing Emergency Motion upon John Fisher, Esq. Chief, Appellate Branch, United States Attorney for the District of Columbia, 555 4<sup>th</sup> St., N.W., Washington, D.C. 20001.

  
Mark Goldstone