No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JOHN MARON NASSIF,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

On Petition for Writ of Certiorari to the United States Court of Appeals for the D.C. Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

At issue here is whether the First Amendment allows Congress to criminally prohibit viewpoint expression in the buildings that make up the seat of our representative government. In 1967, on the heels of civil rights demonstrations, Congress passed legislation banning all parading, picketing, and demonstrating in the Capitol Buildings. The D.C. Circuit has now held that 40 U.S.C. § 5104(e)(2)(G)'s criminal prohibition on "demonstrating" reaches members of the public who "draw[ ] attention to themselves" in order "to express support for or disapproval of an identified action or viewpoint" anywhere in the Capitol Buildings. *United States v. Nassif*, 97 F.4th 968, 980 (D.C. Cir. 2024). The question presented is:

Whether 40 U.S.C. § 5104(e)(2)(G), which targets and criminalizes core First Amendment expression, is unconstitutionally overbroad.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner is John Maron Nassif, defendant-appellant below. Respondent is the United States of America, plaintiff-appellee below. Petitioner is not a corporation.

RELATED PROCEEDINGS

United States v. Nassif, No. 23-3069 (D.C. Cir.); 1:21-cr-00421 (D.D.C).

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PETITION FOR A WRIT OF CERTIORARI

John Nassif respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the D.C. Circuit in this case.

ORDER AND OPINION BELOW

The district court denied Mr. Nassif's Motion to Dismiss, (Appendix A), and entered a judgment, adjudicating Mr. Nassif guilty of demonstrating in the Capitol Buildings in violation of 40 U.S.C. § 5104(e)(2)(G). (Appendix B). The D.C. Circuit affirmed the district court's judgment. *United States v. Nassif*, 97 F.4th 968 (D.C. Cir. 2024). (Appendix C).

JURISDICTION

Pursuant to 28 U.S.C. §1291, the D.C. Circuit Court of Appeals had jurisdiction to review the final order of the district court. The D.C. Circuit Court of Appeals issued its opinion on April 9, 2024. This Court has jurisdiction over this timely filed petition under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. Amend. I.:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

40 U.S.C § 5104 (e)(2):

(e) Capitol Grounds and Buildings security.--

(2) Violent entry and disorderly conduct.--An individual or group of individuals may not willfully and knowingly--

(A) enter or remain on the floor of either House of Congress or in any cloakroom or lobby adjacent to that floor, in the Rayburn Room of the House of Representatives, or in the Marble Room of the Senate, unless authorized to do so pursuant to rules adopted, or an authorization given, by that House;

(B) enter or remain in the gallery of either House of Congress in violation of rules governing admission to the gallery adopted by that House or pursuant to an authorization given by that House;

(C) with the intent to disrupt the orderly conduct of official business, enter or remain in a room in any of the Capitol Buildings set aside or designated for the use of—

(i) either House of Congress or a Member, committee, officer, or employee of Congress, or either House of Congress; or

(ii) the Library of Congress;

(D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a

hearing before, or any deliberations of, a committee of Congress or either House of Congress;
(E) obstruct, or impede passage through or within, the Grounds or any of the Capitol Buildings;
(F) engage in an act of physical violence in the Grounds or any of the Capitol Buildings; or
(G) parade, demonstrate, or picket in any of the Capitol Buildings.

INTRODUCTION

Mr. Nassif's facial challenge is before the Court because 40 U.S.C. § 5104(e)(2)(G) targets and criminally prohibits core First Amendment expression that is in no way disruptive. Importantly, although this case arises out of the events of January 6, 2021, § 5104(e)(2)(G) criminalizes protected expression that bears no resemblance to the conduct that has made that day infamous. A denial of certiorari will mean that anyone who "gather[s] or individually draw[s] attention to themselves inside the Capitol buildings to express support for or disapproval of an identified action or viewpoint" will risk imprisonment. D.C. Cir. Op. at 18-19.

Section 5104(e)(2)(G) has been used against hundreds of January 6 defendants who clearly violated the larger statutory scheme, which prohibits a range of conduct, including "disruptive conduct" in the Capitol Buildings, *see* § 5104(e)(2)(D). However, its origin can be traced, at least in part, to a desire to silence particular viewpoints. A peaceful sit-in by the Freedom Democratic Party of Mississippi—the group supported by Dr. Martin Luther King, Jr, and formed during Freedom Summer—was cited as a reason such far-reaching legislation was needed to "protect the

Capitol."[1] Representative Colmer described them as "an extreme leftist group." Congressional Record at 29388. He complained that "small minority groups" are "never satisfied," stating that they were "continuously attacking our Government and its institutions." *Id.* Floor statements make clear that animus toward certain viewpoints perceived as critical of the government—such as those advocating for equal rights for Black American citizens—was a motivating factor in advancing the legislation.[2]

The overbreadth of the law was a concern from the start. One legislator warned against passing "legislation which flatly prohibits all demonstrations and which may, by its broadly restrictive terms, limit the rights of those wishing to make their case to Congress[.]" Congressional

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[1] 113 CONG. REC. 22, 29388 (October 19, 1967), *available at* https://www.govinfo.gov/content/pkg/GPO-CRECB-1967-pt22/pdf/GPO-CRECB1967-pt22-2-1.pdf (last accessed April 30, 2024) (hereinafter "Congressional Record").

[2] Representative Colmer noted that he could not discuss the problems the statute aimed to fix without "us[ing] pigmentation of the skin," although he did say that "this movement is not confined to the Negroes," noting that "some ultra-left-wing white people" were also part of it. Congressional Record at 29388.

Record at 29395. They considered it "a case of using a shotgun to eliminate a gnat." *Id.* Nevertheless, the bill became law.

The broad ban on demonstrating in the Capitol Buildings was unconstitutional in 1967, and it remains unconstitutional today, no matter who it is used against or why.

STATEMENT OF THE CASE

I. Factual Background

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol in order to certify the 2020 Presidential Election votes. After a large crowd began to enter the building, members of the United States House of Representatives and United States Senate evacuated the chambers, effectively suspending the proceedings. Mr. Nassif was not part of the mob that forced the evacuation. It was nearly an hour later that Mr. Nassif entered the Capitol Building, surrounded by a densely packed crowd of people. The district court concluded that, while inside the building, he beckoned to other demonstrators who were attempting to make their way through the crowded entrance. Mr. Nassif entered the Rotunda, but he never went farther than the foyer and entrance area of the Capitol Building.

Approximately nine minutes after he entered the building, Mr. Nassif exited via the East Rotunda doors.

II. District Court Proceedings

Mr. Nassif was charged by information with four misdemeanor counts: entering or remaining in a restricted building, in violation of 18 U.S.C. § 1752(a)(1) (Count One); disorderly or disruptive conduct in a restricted building, in violation of § 1752(a)(2) (Count Two); disorderly or disruptive conduct in a Capitol Building, in violation of 40 U.S.C. § 5104(e)(2)(D) (Count Three); and parading, demonstrating, or picketing in a Capitol Building, in violation of § 5104(e)(2)(G) (Count Four). He moved to dismiss Count Four, arguing that it failed to state an offense and challenging the facial validity of the statute under the First Amendment. Mr. Nassif contended that, because the statute flatly prohibits all parading, demonstrating, and picketing in the Capitol Buildings, a substantial number of its applications are unconstitutional relative to its plainly legitimate sweep. Although the district court determined that the statute applies to all organized conduct advocating a viewpoint, it denied the motion to dismiss.

The case proceeded to a bench trial. After the government rested, defense counsel moved for a judgment of acquittal on all four counts and renewed the motion to dismiss Count Four. The district court denied Mr. Nassif's motion, and Mr. Nassif was convicted of all four counts. The district court sentenced Mr. Nassif to 7 months in prison, with 12 months' supervised release to follow.

III. The Appeal

On appeal, although the D.C. Circuit acknowledged that the statute criminalizes even nondisruptive viewpoint expression, the court rejected Mr. Nassif's overbreadth challenge. The D.C. Circuit's analysis proceeded in three parts. First, the court categorized the Capitol Buildings as a nonpublic forum. In doing so, it rejected D.C. Court of Appeals authority concluding that the Capitol Rotunda was a public forum and a "unique situs for demonstration activity" and derided the D.C. Court of Appeals cases as "deriv[ing] more from an imprecise daisy chain of reasoning than from a considered assessment of the Capitol Rotunda's history." D.C. Cir. Op. at 14.

Second, the court addressed whether the statute is reasonable in light of the purpose served by the forum. The court opined that

> Congress reasonably decided that parades, pickets, or demonstrations inside the Capitol buildings would interfere with those buildings' intended use. After all, congressmembers and their staffs require secure and quiet places to work on legislative proposals and meet with colleagues and constituents. They need to traverse the Capitol halls to attend committee hearings and legislative sessions. And Capitol Police officers must prioritize safeguarding the building and protecting the individuals who work therein—not policing pickets and demonstrations.

D.C. Cir. Op. at 16.

Third, and finally, the court addressed Mr. Nassif's argument that "5104(e)(2)(G)'s blanket prohibition is unconstitutional because it criminalizes a substantial amount of protected speech that would not as a practical matter disrupt Congress's activities." D.C. Cir. Op. at 17. The court stated that "[r]ead in context, the prohibition on 'demonstrat[ing]' reaches people gathering or individually drawing attention to themselves inside the Capitol buildings to express support for or disapproval of an identified action or viewpoint." D.C. Cir. Op. at 18-19. The court did not explain what it found to be the plainly legitimate sweep of the statute, nor did it appear to find that § 5104(e)(2)(G) only reaches an insubstantial amount of protected expression. Nevertheless, the court held that "the potential unconstitutional applications of section

5104(e)(2)(G) are not so disproportionate 'to the statute's plainly legitimate sweep' as to merit facial invalidation." D.C. Cir. Op. at 21-20.

REASONS FOR GRANTING THE WRIT

I. This case presents a question of exceptional importance.

This Court established long ago that First Amendment rights "certainly include the right in a peaceable and orderly manner to protest by silent and reproachful presence, in a place where the protestant has every right to be." *Brown v. State of La.*, 383 U.S. 131, 142 (1966). The validity of a law that criminally prohibits such expression anywhere is a question of great importance. Here, where the law bans that expression in the publicly accessible buildings that make up the seat of our representative government, the importance is monumental.

The United States Capitol is both "a national historical shrine and the political centerpiece of the Republic," and it "may not be declared off limits to the people." *United States v. Nicholson*, 97 Daily Wash. L. Rptr. 1213 (July 17, 1969), *aff'd*, 263 A.2d 56 (D.C. 1970) (*appended to Dellums v. Powell*, 566 F.2d 167, 197 (1977), *cert denied*, 438 U.S. 916 (1978)). From the Senate Reception Room, which has provided a public gathering place for constituents to informally lobby lawmakers for more than 100

years,[3] to the Rotunda, where Dr. Martin Luther King, Jr., and John Lewis took their iconic walk to make their demands heard before the 1963 March on Washington,[4] the Capitol Buildings have long served as a place for the people to participate in self-government and to make themselves heard. However, as the D.C. Circuit has explained, § 5104(e)(2)(G) criminalizes "gathering or individually drawing attention to [oneself] inside the Capitol buildings to express support for or disapproval of an identified action or viewpoint." D.C. Cir. Op. at 18-19.

Simply put, under § 5104(e)(2)(G), members of the public are criminally prohibited from engaging in expression designed to "attract notice" anywhere in the Capitol Buildings. D.C. Cir. Op. at 18. Thus, in the Capitol Buildings, to wear the black arm bands famously protected by *Tinker*[5] is to commit a crime. A college student choosing to wear a "Black Lives Matter" shirt in the Capitol Visitor Center would risk six

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[3] *See About Historic Rooms: Senate Reception Room*, UNITED STATES SENATE, https://www.senate.gov/about/historic-buildings-spaces/rooms/reception-room.htm (last accessed May 31, 2024).

[4] *See Photo of A. Philip Randolph and other civil rights leaders on their way to Congress during the March on Washington, 1963*, LIBRARY OF CONGRESS, *available at* https://www.loc.gov/item/2013649707/ (last accessed May 6, 2024).

[5] *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969).

months in jail for doing so. *Cf. Potts v. United States*, 919 A.2d 1127, 1130 (D.C. 2007) (explaining that demonstrators' symbolic clothing was designed to bring public notice to and convey a particularized message). The broad ban apparently prohibits children from singing a patriotic song in the Rotunda,[6] a tour group from audibly praying for legislators to vote a certain way before having lunch in the Capitol Café, veterans from wearing "abolish the draft" t shirts in the visitor's center, lobbyists from asserting their organization's interests to Congress members in an elevator, and students from taking a stand on issues after debating them in Exhibition Hall. Indeed, as the government argued following the district court's *Nassif* opinion, "demonstrating" reaches even "silent and reproachful presence," as well as "merely showing up at a place that was the focal point of their beliefs," "regardless of how quiet or peaceful." *United States v. Ballenger*, Case 1:21-cr-00719-JEB, Gov't Mem. in Opp., Doc. 112 at 11-12 (May 9, 2023).

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[6] This is not speculative; the demonstrating ban has been used to stop children from singing the National Anthem despite a Congressperson's invitation. *See Capitol Police stopped a children's choir from singing the national anthem. Why?* ASSOCIATED PRESS, *available at* https://thehill.com/homenews/4033807-capitol-police-stopped-a-childrens-choir-from-singing-the-national-anthem-why/ (last accessed May 6, 2024).

Criminalizing viewpoint expression within the public buildings that make up the seat of our representative government is fundamentally incompatible with the First Amendment, which "was 'fashioned to assure the unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271–72 (1971) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)). As the Capitol website explains, "No other building so strongly symbolizes the freedom to speak one's mind."[7] The Capitol Buildings are the site of the only branch of our government that is designed to answer directly to the people. The firm conviction that the people must be able to express their views to and through representatives is the reason for the Capitol Buildings' existence. To suggest that people may not express themselves there in a way that attracts notice is an affront to the Capitol's status "as a monument to freedom and a reminder of the power of the people."[8]

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[7] *Evolution of the Capitol*, U.S. CAPITOL VISITOR CENTER, https://www.visitthecapitol.gov/education-resource/evolution-capitol (accessed April 15, 2024).

[8] *See supra* n.7.

It is no answer to say that viewpoint expression is permitted elsewhere, such as on the sidewalks outside the Capitol Buildings. "Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots." *Tinker*, 393 U.S. at 513. Freedom of expression is important in large part because it creates an environment "'whereby oppressive officers are shamed or intimidated, into more honourable and just modes of conducting affairs.'" *Roth v. United States*, 354 U.S. 476, 484 (1957) (quoting 1 Journals of the Continental Congress 108 (1774)). The Capitol Buildings are often a place of last resort for demonstrators, and they provide unique access to the legislators who are charged with representing the will of the people.

"Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339 (2010). A law permitting the jailing of people merely for voicing their disapproval of elected legislators while in the Capitol Buildings is a cancer on First Amendment freedoms, and permitting them to express their viewpoints elsewhere cannot cure it. "'For a representative democracy ceases to exist the moment that the

public functionaries are by any means absolved from their responsibility to their constituents; and this happens whenever the constituent can be restrained in any manner from speaking, writing, or publishing his opinions upon any public measure, or upon the conduct of those who may advise or execute it.'" *New York Times Co. v. Sullivan*, 376 U.S. 254, 297 (1964) (Black, J., concurring) (quoting 1 Tucker, Blackstone's Commentaries (1803), 297 (editor's appendix)). The validity of this law, which silences the voice of the people in the Capitol Buildings, is a question of exceptional importance.

II. The D.C. Court of Appeals and the D.C. Circuit are in direct conflict as to whether restrictions on speech in the publicly accessible parts of the Capitol Buildings must be narrowly tailored.

Following the D.C. Circuit's decision in *Nassif*, there is a conflict as to whether publicly accessible portions of the Capitol Buildings, such as the Capitol Rotunda, are public fora for which speech restrictions must be narrowly tailored.[9] As the government recently put it, "[i]n *Nassif*, the

[9] If a person "demonstrates" in a Capitol Building, they can be arrested by Capitol Police and prosecuted by the United States Attorney's Office in either the D.C. courts or the United States courts located in the District of Columbia. Which court they are prosecuted in will depend on whether the United States chooses to prosecute them under § 5014(e)(2)(G) or the identically-worded D.C. Code § 10-503.16(b)(7).

D.C. Circuit rejected the argument that the Capitol Building is a public forum, and specifically refused to follow D.C. Court of Appeals decisions to the contrary." *Mahoney v. United States Capitol Police Bd.*, No. 21-cv-2314-JEB (D.D.C.), Gov't Reply to Pl.'s Opp. to Mot. for Summ. J., Doc. 108 at 6.

The D.C. Court of Appeals has explained that "[i]t is well established in this jurisdiction that the United States Capitol Rotunda, which is at the very heart of the United States Capitol Building, is a 'unique situs for demonstration activity' and 'a place traditionally open to the public . . . to which access cannot be denied broadly or absolutely." *Berg v. United States*, 631 A.2d 394, 397–98 (D.C. 1993) (quoting *Wheelock v. United States*, 552 A.2d 503, 506 (D.C. 1988). Accordingly, the D.C. Court of Appeals has held that statutes that curtail expressive conduct in the Rotunda must be narrowly tailored to serve a significant government interest. *Hasty v. United States*, 669 A.2d 127, 130 (D.C. 1995). Moreover, the D.C. Court of Appeals has clarified that, even if some restricted areas of the Capitol Buildings are nonpublic fora, people are free to express themselves "elsewhere in the public square, including within the Capitol Rotunda or just outside the Capitol building." *Grogan v. United States*,

271 A.3d 196, 209 (D.C.), *cert. denied*, 143 S. Ct. 191, 214 L. Ed. 2d 66 (2022).

In *Nassif*, the D.C. Circuit rejected the conclusions of the D.C. Court of Appeals on this issue, rejecting them as "an imprecise daisy chain of reasoning."[10] D.C. Cir. Op. at 14. Thus, the only courts in the position of reviewing restrictions on speech in the United States Capitol Buildings are in direct conflict as to whether those restrictions must be narrowly tailored to serve a compelling government interest. Only this Court can resolve the conflict and answer this important First Amendment question.

[10] At first glance, the D.C. Circuit's opinion might seem to suggest that its conclusion was based on the record before the district court, stating that the district court "properly held, then, that—at least on the present record—the Capitol buildings are a nonpublic forum." D.C. Cir. Op. at 15. However, the district court based its decision not on any evidence in the record supplied by either party, but solely on the conclusion of *Bynum v. U.S. Capitol Police Board*, 93 F. Supp. 2d 50 (D.D.C. 2000), which determined that the interior of the Capitol Buildings are nonpublic fora. *See* Dist. Ct. Op. at 8. The fact that the district court based its forum conclusion on a prior district court case highlights the conflict between the D.C. courts and the United States courts located in the District of Columbia.

III. The D.C. Court of Appeals and the D.C. Circuit are in direct conflict as to whether the prohibition of nondisruptive viewpoint expression in the Capitol Buildings violates the First Amendment.

The D.C. Court of Appeals has long held that, within the Capitol Buildings, "conduct cannot constitute the basis for penalizing the exercise of [ ] constitutional rights unless it interfere[s] with the rights of others to a greater degree than tourists do." *Wheelock*, 552 A.2d at 508. "The D.C. Court of Appeals has imposed th[is] 'tourist standard' in cases involving the U.S. Capitol Rotunda in order 'to save content-neutral statutes regulating the time, place, and manner of expression from unconstitutionality in their application.'" *Hodge v. Talkin*, 949 F. Supp. 2d 152, 170 (D.D.C. 2013), *rev'd*, 799 F.3d 1145 (D.C. Cir. 2015) (citing *Berg*, 631 A.2d at 398).

The D.C. Circuit, in contrast, has "never 'held' that the tourist standard 'governs' the constitutionality 'of arrests for demonstration activity on the Capitol Grounds.'" *Lederman v. United States*, 291 F.3d 36, 47 (D.C. Cir. 2002). And in *Nassif*, the D.C. Circuit concluded that the statute "prohibit[s] demonstrations beyond those that are most likely to disrupt the business of Congress" and that it does not "require[e] case-specific proof of actual or imminent disruption." D.C. Cir. Op. at 19. The

statute bans members of the public from "drawing attention to themselves" in order "to express support for or disapproval of an identified action or viewpoint" anywhere in the Capitol Buildings, regardless of whether their conduct is more disruptive than that of an ordinary tourist. D.C. Cir. Op. at 18-19.

Wheelock and its progeny are irreconcilable with the D.C. Circuit's decision in *Nassif*. In *Wheelock*, the D.C. Court of Appeals found that a demonstration in which fifty people sat on the floor of the Capitol Rotunda, prayed, and chanted did not run afoul of the tourist standard. 552 A.2d at 505-06. And in *Hasty v. United States*, the court reasoned that, although fifteen demonstrators blocked "the direct route of the Rotunda," the evidence did not conclusively show that the "conduct was more disruptive than that of an ordinary tourist." 669 A.2d 127, 134 (D.C. 1995). In holding that the failure to instruct the jury on the tourist standard was erroneous, the court explained that "[t]he prohibition of any speech which simply 'intrudes upon the senses of those within earshot or eyesight,' as the trial court instructed, encompasses many forms of expression. Such an overbroad interpretation of the nature of

the conduct prohibited can impermissibly infringe upon First Amendment rights." *Hasty*, 669 A.2d at 135.

The D.C. Court of Appeals has continued to hold that the ban on demonstrating in the Capitol Buildings needs a limiting construction to save its constitutionality. It has indicated that, without the tourist standard, innocuous expression "such as a nun bowing her head or a spectator wearing an armband to convey a political message" would violate the statute. *Grogan v. United States*, 271 A.3d 196, 211 (D.C.), *cert. denied*, 143 S. Ct. 191, 214 L. Ed. 2d 66 (2022). In sharp contrast, the D.C. Circuit has concluded that § 5104(e)(2)(G) permissibly criminalizes all viewpoint expression that draws attention in the Capitol Buildings, regardless of whether it is disruptive. Until this Court steps in, this conflict will persist, and the First Amendment rights of all members of the public who visit the Capitol Buildings will hang in the balance.

IV. The D.C. Circuit wrongly concluded that § 5104(e)(2)(G) is facially constitutional.

Regardless of whether the Capitol Buildings should be categorized as a nonpublic forum, the D.C. Circuit was wrong to conclude that § 5104(e)(2)(G) is not facially overbroad. "The overbreadth doctrine

prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process." *Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002).

Like any overbroad ban on expressive conduct, § 5104(e)(2)(G)'s demonstrating ban incidentally reaches some unprotected speech. However, it clearly prohibits substantial amounts of protected speech relative to any legitimate sweep. As the D.C. Circuit acknowledged, the statute criminalizes virtually all attention-drawing expression of constituent viewpoints in the Capitol Buildings. That language seemingly reaches religious vestments, slogan-bearing t-shirts, political campaign buttons, and cause awareness ribbons—all of which draw attention to an action or viewpoint—even when only worn by a single individual. *Cf. United States v. Grace*, 461 U.S. 171, 176 (1983) (noting that "almost any sign or leaflet carrying a communication . . . would be 'designed or adapted to bring into public notice [a] party, organization or movement'").

Although the D.C. Circuit acknowledged the language's broad reach, it nevertheless concluded it was not unconstitutionally overbroad, treating its determination that the Capitol Buildings are a nonpublic

forum as dispositive on the overbreadth question. D.C. Cir. Op. at 19-20. But even in a nonpublic forum, restrictions on speech must be "reasonable in light of the purpose served by the forum." *See Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 806 (1985). The D.C. Circuit found that "Congress was entitled to decide that opening the Capitol doors to parading, demonstrating, or picketing would detract from the efficacy of the Capitol buildings as the workplaces of the legislative branch." D.C. Cir. Op. at 19. But "in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression." *Tinker*, 393 U.S. at 508. And the obvious purpose of the Capitol Buildings is to enable the members of the Legislative Branch to represent the people of the United States. To ban the people from expressing viewpoints within the Capitol walls is not only unreasonable in light of the purpose served by the forum; it actively *undermines* the purpose of the forum. The D.C. Circuit was wrong to conclude otherwise.

CONCLUSION

For the above reasons, Mr. Nassif respectfully requests that this Court grant the petition for a writ of certiorari.

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