

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO. 21-CR-244 (CKK)
 :
 :
 ANTHONY GRIFFITH :

DEFENDANT GRIFFITH'S MOTION TO
DISMISS COUNTS 2-5 AS MULTIPLICITOUS WITH
INCORPORATED MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW Defendant, Anthony Griffith, by and through undersigned counsel, and hereby respectfully moves this Honorable Court for the entry of an Order dismissing Counts 2 through 5 of the Indictment as multiplicitous.

As grounds, the following is stated:

1. **Background** - Mr. Griffith is charged in Counts 2-5 with violations of:
Count 2 – 18 U.S.C. §1752(a)(1) (Knowingly Entering or Remaining in any Restricted Building or Grounds Without Lawful Authority).
Count 3 – 18 U.S.C. §1752(a)(2) (Disorderly and Disruptive Conduct in a Restricted Building or Grounds).
Count 4 - 40 U.S.C. §5104 (e)(2)(D) (Disorderly Conduct in a Capitol Building).
Count 5 – 40 U.S.C. §5104(e)(2)(G) (Parading, Demonstrating, or Picketing in a Capitol Building).

2. **18 U.S.C. §1752 charges**

The respective elements for the violations of the various subsections of 18 U.S.C. §1752 as alleged in Griffith's indictment are as follows:

- a. 18 U.S.C. §1752 (a)(1): (1) the defendant entered or remained in a restricted building without lawful authority to do so; and (2) the defendant did so knowingly.¹
- b. 18 U.S.C. §1752 (a)(2): (1) the defendant engaged in disorderly or disruptive conduct in, or in proximity to, any restricted building; (2) the defendant did so knowingly, and with the intent to impede or disrupt the orderly conduct of government business or official functions; and (3) the defendant's conduct occurred when, or so that, his conduct in fact impeded or disrupted the orderly conduct of government business or official functions.²

2. **40 U.S.C. § 5104(e)**

- a. 40 U.S.C. § 5104(e)(2)(D): (1) the defendant engaged in disorderly or disruptive conduct in any of the United States Capitol Buildings; (2) the defendant did so with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress; and (3) the defendant acted willfully and knowingly³
- b. 40 U.S.C. §5104(e)(2)(G). (1) the defendant paraded, demonstrated, or picketed in any of the United States Capitol Buildings; and (2) the defendant acted willfully and knowingly.

¹ See *United States v. Rivera*, 2022 WL 2187851, *5 (D.D.C., June 17, 2022) (Kollar-Kotelly, J.)

² *Rivera*, 2022 WL 2187851 at *5.

³ *Rivera*, 2022 WL 2187851 at *5

3. The conduct alleged in Counts 2-5 of the Indictment arises out of the same alleged criminal conduct by Mr. Griffith, that is his presence in the Capitol on January 6th, without any indication that Congress intended that conduct to be punishable under multiple subsections of 40 U.S.C. §5104(e) and 18 U.S.C. §1752(a)(1) and (2).

4. Convictions for all these counts would violate the Double Jeopardy Clause of the U.S. Constitution. Moreover, the unnecessary multiplication of counts will prejudice a jury against Mr. Griffith. Multiplicity arises when “an indictment charges the same offense in more than one count.” *United States v. Mahdi*, 598 F.3d 883, 887 (D.C. Cir. 2010), quoting *United States v. Weathers*, 186 F.3d 948, 951 (D.C. Cir. 1999). The Double Jeopardy Clause of the Constitution protects against “multiple punishments for the same offense.” *Weathers*, 186 F.3d at 951, cert. denied, 529 U.S. 1005 (2000); U.S. Const. amend. V, cl. 2. Also, courts have recognized that charging the same offense in multiple counts can “unfairly increas[e] a defendant’s exposure to criminal sanctions” because a jury may conclude that given the number of charges, the defendant must be guilty of something. *United States v. Clarke*, 24 F.3d 257, 261 (D.C. Cir. 1994), quoting *United States v. Harris*, 959 F.2d 246, 250 (D.C. Cir. 1992), abrogated on other grounds, *United States v. Stewart*, 246 F.3d 728 (D.C. Cir. 2001); see also *United States v. Morrow*, 102 F. Supp. 3d 232, 246 (D.D.C. 2015) (multiplicitous charges may suggest to a jury “that a defendant has committed not one but several crimes”), quoting *United States v. Reed*, 639 F.2d 896, 904 (2d Cir. 1981); *United States v. Phillips*, 962 F. Supp. 200, 202 (D.D.C. 1997).

The counts of the indictment expose the defendant to double, and even triple jeopardy for the same alleged acts. That is, the act of being inside the Capitol and its grounds on January 6, 2021, an area the government contends was restricted that day. The Double Jeopardy Clause protects criminal defendants against both successive punishments and prosecutions for the same

criminal offense. *United States v. Dixon*, 509 U.S. 688, 696 (1993) (citing *North Carolina v. Pearce*, 395 U.S. 711 (1969)); see also *United States v. Davenport*, 519 F.3d 940, 943 (9th Cir. 2008); *United States v Mancuso*, 718 F.3d 780, 791 (9th Cir. 2013). When two different criminal statutes are violated, “the double jeopardy prohibition is implicated when both statutes prohibit the same offense or when one offense is a lesser included offense of the other.” *Rutledge v. United States*, 517 U.S. 292, 297 (1996)).

WHEREFORE, for the foregoing reasons and such other reasons that may appear just and proper, Mr. Griffith requests this Court to grant this motion and dismiss Counts 2 through 5 of the Indictment, as repetitive counts.

Defendant Griffith requests a hearing on this motion.

Respectfully Submitted,

Kira Anne West

/s/

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Certificate of Service

I certify that a copy of the forgoing was filed electronically on ECF for all parties of record on this 28th day of November, 2022.

/s/

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