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(Original Signature of Member)

117TH CONGRESS
2D SESSION

H. R. _____

To amend the Federal Rules of Evidence to limit the admissibility of evidence of a defendant's creative or artistic expression against such defendant in a criminal proceeding, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. JOHNSON of Georgia introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Federal Rules of Evidence to limit the admissibility of evidence of a defendant's creative or artistic expression against such defendant in a criminal proceeding, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Restoring Artistic Pro-
5 tection Act of 2022".

1 **SEC. 2. LIMITATION ON ADMISSIBILITY OF DEFENDANT'S**
2 **CREATIVE OR ARTISTIC EXPRESSION.**

3 (a) IN GENERAL.—Article IV of the Federal Rules
4 of Evidence is amended by adding at the end the following:
5 **“Rule 416. Limitation on admissibility of defendant’s**
6 **creative or artistic expression.**

7 “(a) CREATIVE AND ARTISTIC EXPRESSIONS INAD-
8 MISSIBLE.—Except as provided in subsection (b), evidence
9 of a defendant’s creative or artistic expression, whether
10 original or derivative, is not admissible against such de-
11 fendant in a criminal case.

12 “(b) EXCEPTION.—A court may admit evidence de-
13 scribed in subsection (a) if the Government, in a hearing
14 conducted outside the hearing of the jury, proves by clear
15 and convincing evidence—

16 “(1)(A) if the expression is original, that de-
17 fendant intended a literal meaning, rather than figu-
18 rative or fictional meaning; or

19 “(B) if the expression is derivative, that the de-
20 fendant intended to adopt the literal meaning of the
21 expression as the defendant’s own thought or state-
22 ment;

23 “(2) that the creative expression refers to the
24 specific facts of the crime alleged;

25 “(3) that the expression is relevant to an issue
26 of fact that is disputed; and

1 “(4) that the expression has distinct probative
2 value not provided by other admissible evidence.

3 “(c) **RULING ON THE RECORD.**—In any hearing
4 under subsection (b), the court shall make its ruling on
5 the record, and shall include its findings of fact essential
6 to its ruling.

7 “(d) **REDACTION AND LIMITING INSTRUCTIONS.**—If
8 the court admits any evidence described in subsection (a)
9 pursuant to the exception under subsection (b), the court
10 shall—

11 “(1) ensure that the expression is redacted in
12 a manner to limit the evidence presented to the jury
13 to that which is specifically excepted under sub-
14 section (b); and

15 “(2) provide appropriate limiting instructions to
16 the jury.

17 “(e) **DEFINITION.**—In this section, the term ‘creative
18 or artistic expression’ means the expression or application
19 of creativity or imagination in the production or arrange-
20 ment of forms, sounds, words, movements or symbols, in-
21 cluding music, dance, performance art, visual art, poetry,
22 literature, film, and other such objects or media.”.

23 (b) **CLERICAL AMENDMENT.**—The table of contents
24 for the Federal Rules of Evidence is amended by inserting
25 after the item relating to rule 415 the following:

“416. Limitation on admissibility of defendant’s creative or artistic expression.”.