

.....
(Original Signature of Member)

118TH CONGRESS
1ST 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, 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, 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 2023” or the “RAP Act of 2023”.

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.

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)(A) in a criminal case, that the creative ex-
24 pression refers to the specific facts of the crime al-
25 leged; or

1 “(B) in a civil case, that the creative expression
2 refers to the specific facts alleged in the complaint;

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

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

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

11 “(d) **REDACTION AND LIMITING INSTRUCTIONS.**—If
12 the court admits any evidence described in subsection (a)
13 pursuant to the exception under subsection (b), the court
14 shall—

15 “(1) ensure that the expression is redacted in
16 a manner to limit the evidence presented to the jury
17 to that which is specifically excepted under sub-
18 section (b); and

19 “(2) provide appropriate limiting instructions to
20 the jury.

21 “(e) **DEFINITION.**—In this section, the term ‘creative
22 or artistic expression’ means the expression or application
23 of creativity or imagination in the production or arrange-
24 ment of forms, sounds, words, movements or symbols, in-

1 cluding music, dance, performance art, visual art, poetry,
2 literature, film, and other such objects or media.”.

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

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