

117TH CONGRESS  
2D SESSION

# H. R. 8531

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.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 27, 2022

Mr. JOHNSON of Georgia (for himself and Mr. BOWMAN) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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.”.

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

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

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