

**Congress of the United States**  
**Washington, DC 20515**

January 11, 2017

The Honorable Paul Ryan  
Speaker of the House  
H-232 U.S. Capitol  
Washington, D.C. 20515

Dear Speaker Ryan:

In America we don't arrest artwork. As the Member who sponsored the art work at issue and a Member who is a First Amendment constitutional scholar, we write to express our grave concern that you may follow up on an act of vigilante censorship in the House of Representatives by taking formal steps to remove a painting by St. Louis Cardinal Ritter College Prep High School Senior David Pulphus from display on a wall in the tunnel between the Cannon House Office Building and the Capitol.

The young man's painting, which appears to be influenced by Picasso's violent dreamscape in *Guernica* and George Orwell's dystopian parable *Animal Farm*, depicts a scene involving police officers pointing their guns at an African-American man, with the two officers and the African-American man all appearing to have animal-like facial features. The painting appears to show protesters in the background. We believe that removing this work – which has been on display for six months as one of more than 400 winning high school entries selected from each congressional district through the annual Congressional Art Competition – would be a violation of First Amendment free speech rights. Removing Mr. Pulphus's painting now – although undoubtedly good for his budding artistic career – would be a naked and unprecedented act of censorship and thought control in the student arts program that would expose our body to serious First Amendment litigation. At a time when our democracy and freedoms are under real attack by Vladimir Putin and Russian agents, this outburst of grown-up political correctness toward the artwork of an adolescent seems, frankly, absurd.

Why would we launch our new Congress with this experiment in artistic thought control? It is well-established that the First Amendment protects not only verbal speech but artistic expression too.<sup>1</sup> This is true even when such expression may be deeply offensive to some people. As the Supreme Court's majority put it in *Texas v. Johnson* (1989) in a famous opinion that drew the support of Justice Antonin Scalia as well as Justice William Brennan, "If there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

Critics of Mr. Pulphus's painting are calling for censorship precisely because it addresses a matter of public concern in a powerful and artistically vivid way. This is core artistic and political expression that the First Amendment protects. Over the last several years, news reports about police shootings of unarmed African Americans have generated protest and debate. One of

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<sup>1</sup> See, e.g., *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46 (1988) (holding that First Amendment protected publication of an advertisement parody where target was a public figure).

the most high-profile incidents occurred in Ferguson, Missouri, in Representative William Lacy Clay's district, near where Mr. Pulphus attends school. It was Representative Clay's office that presented Mr. Pulphus' work for display in the Cannon Tunnel.

There can be little doubt that Members who have personally had Mr. Pulphus's painting removed in recent days did so because they are offended by what they believe to be the viewpoint being expressed in the painting. At least four different Members have now personally removed the painting on three different occasions, forcing Representative Clay to re-hang the painting each time. (The Capitol Police refused to accept Rep. Clay's efforts to file a police report on these incidents.) It is also important to note that the painting had hung without incident until "a conservative website Independent Journal Review, wrote about it, and a Fox News personality highlighted in on air in late December."<sup>2</sup> The fact that you might now endorse vigilante efforts by individual Members to make an illegal "citizen's arrest" of this art work is completely embarrassing to our body.

The argument that the First Amendment does not protect Mr. Pulphus in this case because his painting violates the rules of the Congressional Art Competition or because the House may enforce decorum is unavailing. We have no power to censor citizens based on their political viewpoint in the name of official "decorum." By opening the Cannon tunnel (not the floor of the House) to the display of privately-created artwork by high school students in each Member's district, the House has made the Cannon tunnel a limited public forum for these purposes, reserving the tunnel for a particular group (in this case, the selected student artists whose work has been so installed) to express themselves. As the Supreme Court has made clear, once the government "has opened a limited forum . . . [it] must respect the lawful boundaries it has itself set. [It] may not exclude speech where its distinction is not reasonable in light of the purpose served by the forum . . . nor may it discriminate against speech on the basis of its viewpoint."<sup>3</sup> Indeed, "viewpoint discrimination" is the most "egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction."<sup>4</sup>

This painting had already been selected and approved for display under the existing rules and procedures set by the House for the Congressional Art Competition. It passed the only legitimate screen, which is one of artistic merit and esthetic excellence. It has been on display for six months and has not harmed a single person over the course of that time. Stripping it from the competition under the guise of protecting "decorum" is an obvious pretext for violating Mr. Pulphus's freedom of expression as an American. The after-the-fact selective enforcement of the art competition's "suitability guidelines," which the painting has already met, would therefore be unconstitutional as applied in this case based on the foregoing facts. Indeed, we note that other works on display in the Cannon tunnel include other possible "subjects of contemporary political

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2 Mike DeBonis, *House Battle over Controversial Student Painting Spirals out of Control*, Washington Post, Jan. 10, 2017, available at [https://www.washingtonpost.com/news/powerpost/wp/2017/01/10/house-battle-over-controversial-student-painting-spirals-out-of-control/?utm\\_term=.3fb7af151a2c](https://www.washingtonpost.com/news/powerpost/wp/2017/01/10/house-battle-over-controversial-student-painting-spirals-out-of-control/?utm_term=.3fb7af151a2c).

3 *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995).

4 *Id.* (denial of funding to cover costs of student newspaper because of its religious viewpoint violated free speech right in context of limited public forum of the disbursement of money to campus groups from student activity fund).

controversy,” such as a portrait of Bernie Sanders, a portrait of President Obama, and a depiction of two white police officers harassing an African American playing checkers. Removing the painting of this young artist, a St. Louis native who rode his bike several miles to receive his recognition in this competition, seems baffling and mean-spirited.

The arguments raised by Representative Reichert in his letter earlier today to Stephen Ayers, the Architect of the Capitol, in no way change our analysis. Rep. Reichert argues that Mr. Pulphus’s work violates the guidelines against works “depicting subjects of contemporary political controversy or a sensationalistic or gruesome nature.” As we noted, Mr. Pulphus’s work was already submitted and was put on display pursuant to the rules governing the Congressional Art Competition and was displayed for six months with no objection. Moreover, other works arguably would also run afoul of these guidelines, yet Representative Reichert does not seek to have them removed retroactively. Such discriminatory treatment based on the viewpoint expressed in the art work is precisely what is prohibited by the First Amendment.

Please don’t undermine the Congressional Art Competition or violate the First Amendment in this way. In America, if you don’t like a painting you see in a display, you simply move on to the next one. You don’t take it down.

Thank you for your thoughtful consideration of freedom of artistic expression at this juncture. We look forward to your prompt response.

Sincerely,

  
Wm. Lacy Clay  
Member of Congress

  
Jamie Raskin  
Member of Congress

Cc: The Honorable Nancy Pelosi, Democratic Leader, U.S. House of Representatives and Member of the House Office Building Commission

The Honorable Kevin McCarthy, Majority Leader, U.S. House of Representatives and Member of the House Office Building Commission

The Honorable Joe Wilson, Co-chair for the 2016 Congressional Art Competition

The Honorable Kyrsten Sinema, Co-chair for the 2016 Congressional Art Competition

Stephen T. Ayers, Architect of the Capitol

Matthew R. Verderosa, Chief of the U.S. Capitol Police