

want to point out one that potentially has been in the White House. He was a general. He spoke at the national convention of the Republican Party. He said, "Lock her up."

But when he filled out his disclosure form to work in the White House, he conveniently left out that he received money from two foreign governments. A former general who defended this Nation did not fill out that he received this money. He sat next to Vladimir Putin for dinner, but did not fill this form out properly.

Mr. Speaker, we are very concerned about Mike Flynn. It is obvious that we in the House of Representatives do something to point out when we see something that is illegal going on.

Mr. Speaker, what comes around goes around. He said, "Lock her up." Well, it looks like he might get locked up.

And that is the way it is gonna be.

#### REMEMBERING JAY DICKEY

(Mr. YOUNG of Alaska asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Speaker, we just had the Arkansas delegation. My colleagues may have noticed that I was with them. Alaska and Arkansas have a great deal of similarity, both starting with an A.

I served with Jay Dickey. I can tell you that that he was my friend.

To his family, even the other day when I heard that he had passed away, I tried to call his cell phone hoping that they would answer it, and it was Jay's voice. Here is a gentleman in this body that was a great basketball player, a good coach, tennis player, and a fine athlete. But more than that, he was a friend to many Congressmen in these Halls.

As was mentioned, he tried to save us all. Some he succeeded with and some he did not. He worked with me for many years and finally accomplished his goal, and I thank him from the bottom of my heart.

I know the Lord is taking care of him because he was a true American. He was a person that cherished his job, served his district well, and was an ally and a friend for those that believed.

I want to thank Jay Dickey for his efforts to make this country better.

#### COMMUNICATION FROM THE DEMOCRATIC LEADER

The SPEAKER pro tempore (Mr. BERGMAN) laid before the House the following communication from the Honorable NANCY PELOSI, Democratic Leader:

APRIL 25, 2017.

Hon. PAUL D. RYAN,  
Speaker of the House of Representatives,  
Washington, DC.

DEAR SPEAKER RYAN: Pursuant to section 4003(e) of the 21st Century Cures Act (Pub. L. 114-255), I am pleased to appoint Dr. Steven Lane of Palo Alto, California to the Health Information Technology Advisory Committee.

Thank you for your attention to this appointment.

Sincerely,

NANCY PELOSI,  
Democratic Leader.

□ 1600

#### REMOVAL OF DAVID PULPHUS' PAINTING FROM THE CANNON TUNNEL

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2017, the gentleman from Missouri (Mr. CLAY) is recognized for 60 minutes as the designee of the minority leader.

#### GENERAL LEAVE

Mr. CLAY. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days to revise and extend their remarks and to include any extraneous material on the subject of my special order.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. CLAY. Mr. Speaker, 10 months ago, I was pleased to welcome David Pulphus, a very talented young constituent of mine from St. Louis, to the U.S. Capitol complex, as we unveiled his painting entitled, Untitled #1, which you see here tonight.

David's work was a unanimous first-place winner in the annual Congressional Art Competition in Missouri's First Congressional District. I have been pleased to sponsor this competition in St. Louis for the last 16 years without interruption and incident.

For those of you who may not know, many other Members of Congress conduct this contest in their districts as well. In fact, this painting was one of more than 400 student entries from across the Nation that were reviewed, accepted, and approved last June for public display in the Cannon tunnel by the Architect of the Capitol. Members of Congress do not select the artists. We do not approve or disapprove of any of the artistic concepts, and we have no role in judging the competition.

We simply provide a public forum for the most talented young artists in our districts to display their winning artwork in the U.S. Capitol complex. Yet, without cause or reasonable process and after being viewed repeatedly by Members of Congress, congressional staffers, and thousands of visitors without incident or concern, my constituent's winning entry was removed in an act of politically motivated, unconstitutional, retroactive censorship.

That injustice was initiated by pressure from certain alternative-right bloggers and Mr. Eric Bolling, a host on FOX News channel, who created a mean-spirited and factually inaccurate media campaign to improve his ratings on the back of a young man, and to ultimately force the painting to be removed by the Architect of the Capitol.

After repeated acts of petty theft by renegade Members of Congress who re-

moved the painting without any authorization and after a storm of right-wing media pressure, the Speaker of the House forced the Architect of the Capitol to trample on the rights of my constituent by ruling that this painting, which he had already approved 10 months ago, was retroactively disqualified.

This unwarranted, arbitrary, and unconstitutional act of censorship will not stand. Now, let me be clear: I do not approve or disapprove of this painting. I did not approve or disapprove the concept of the artwork. I did not judge the competition, but the Architect of the Capitol reviewed, approved, and accepted this student's artwork for public display without incident, comment, or concern, just like every other entry that is displayed in this public exhibition.

Only after the most hateful, intolerant, and reckless media campaign, combined with enormous political pressure from the Speaker and other Members, the Architect of the Capitol miraculously traveled back in time to disqualify the very same painting that he had approved 10 months ago.

Perhaps we should advise the National Academy of Sciences of the Architect of the Capitol's newfound ability to bend the space-time continuum in order to retroactively respond to the most extreme voices in the majority so that they could more easily suppress the rights of my young constituent. It did great harm to an innocent young man who tried to do the right thing.

Because of this outrageous act of censorship, David Pulphus has been subjected to the most vile, racist, and hateful attacks on social media and on talk radio. He has also been deprived of the honor of listing his first place victory in the Congressional Art Competition on his resume. He has even been attacked by the Speaker of the House who called his award winning work "disgusting."

So on top of depriving David of his First Amendment rights, the majority and the Architect of the Capitol have placed a terrible personal burden on this bright, talented young man. David does not deserve that. That is wrong. That is totally unacceptable, and the Speaker and the Architect of the Capitol should be ashamed of themselves.

This shameful decision also sent a chilling message to young Americans. It told young Americans that their views are not valued. Their voices are not respected. Their creativity and passions are not welcome, and that is, sadly, here, in the people's House, their First Amendment rights are no longer protected. That is a terrible precedent to set for future generations who look to us to defend their freedoms.

So my friends, this is really not about a student art competition anymore. It is about defending the Constitution. It is just pathetic that some Republican Members and rightwing media types who constantly refer to

themselves as constitutional conservatives don't think that that same document protects the fundamental free speech rights of my young constituent.

You can be certain that I will fight to defend this young man's right to express himself because his artwork is true for him, and he is entitled to that protection under the law.

Mr. Speaker, I yield to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Speaker, I want to thank Mr. CLAY for his discussion here. I think it is courageous and necessary. To begin with, the painting's removal by the Architect of the Capitol was an infringement on the free speech rights of the artist and on the Congressman, yourself, Mr. CLAY, from Missouri.

The First Amendment of the United States Constitution provides that: "Congress shall make no law . . . abridging the freedom of speech. . . ." And it is undisputed that the First Amendment's free speech guarantee extends to artistic expression, including visual arts. This is true even when such expression may be offensive to many people or to some people.

While Members who removed the artist's painting may have acted based on their belief that the artwork's viewpoint was offensive, that belief cannot trump the free-speech rights of the artist and of you, yourself, Congressman CLAY. I congratulate you for putting this discussion into the RECORD.

Mr. Speaker. This past January within the very confines of the Capitol complex, we witnessed a direct assault against the First Amendment when several Republican Members of Congress unilaterally removed a painting by high school senior David Pulphus from the 2016 Congressional Art Competition display in the Cannon Tunnel.

The painting, sponsored by our colleague—Representative WILLIAM LACY CLAY—had been displayed in the Cannon Tunnel along with more than 400 winners of the Art Competition for nearly 7 months without incident or comment.

And, rather than upholding the artist's right to free expression and Representative CLAY's prerogative to sponsor student artwork from his district, the Architect of the Capitol capitulated to political pressure generated by the right-wing media outlets and ratified these Members' acts of vigilante censorship by having the painting permanently removed from the Congressional Art Competition display in the Cannon Tunnel.

This artwork, seemingly inspired by the events in Ferguson, Missouri in 2014 and other incidents that sparked tension between police and minority communities, depicts a protest, with two police officers and a young man facing each other in a standoff, all of three which have animalistic features.

In the background, protesters look on and a young man of color appears to be depicted in a crucifixion tableau.

Whatever message one draws from this painting, several things are quite clear.

To begin with, the painting's removal by the Architect of the Capitol was an infringement on the free speech rights of Mr. Pulphus and Representative CLAY.

The First Amendment of the United States Constitution provides that "Congress shall make no law . . . abridging the freedom of speech."

And, it is undisputed that the First Amendment's free speech guarantee extends to artistic expression, including visual art.

This is true even when such expression may be deeply offensive to many people.

As the Supreme Court recognized in *F.C.C. v. Pacifica Foundation*, the "fact that society may find speech offensive is not a sufficient reason for suppressing it. Indeed, if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection."

While the Members who removed Mr. Pulphus's painting may have acted based on their belief that the artwork's viewpoint was offensive, that belief cannot trump the free speech rights of the artist and Representative CLAY.

Nor does it justify the Architect's removal of the painting in response to pressure from these and other Members who found the painting offensive.

Once the House established the Congressional Art Competition and opened the Cannon Tunnel to display artwork sponsored by each individual Member office, it created a limited public forum.

Having created such a forum, individual House Members and the Architect cannot then constitutionally discriminate against expression within that forum based on the viewpoint expressed.

Yet, that is precisely what happened here.

Unfortunately, the painting's removal was part of a broader pattern of behavior by the Majority to undermine the fundamental right of free expression in the House.

For instance, in January the House adopted an unconstitutional gag rule that would allow the imposition of fines of up to \$2,500 on a Member for using an electronic device to record, post, or live-stream activity on the House floor.

This rule was a thinly-veiled response to the protest undertaken last year by Democratic Members on the House floor with regard to the Majority's failure to consider comprehensive gun reform.

The rule is a direct attack against the Minority's right to political expression and it is clearly intended to stifle the American public's ability to access that expression.

While it is easy to think that these matters concern only one young artist or a group of House Members, every American should be deeply concerned about such kinds of censorship.

Tyranny starts in small ways. Censor a painting here, a poem there. Ban photos in some instances, videos in others.

When such seemingly minor acts go unanswered, it invites more oppressive conduct in the future.

Ensuring freedom requires vigilance and a willingness to push back vigorously against every instance of censorship.

This is why I applaud the federal lawsuit filed by Mr. Pulphus and Representative CLAY seeking to vindicate their free speech rights though it is shameful that they were forced to go to court at all.

And, while the trial court incorrectly concluded that the First Amendment does not protect Mr. Pulphus and Representative CLAY, I

am confident this conclusion will be overturned on appeal.

All Americans must be free to speak truth to power.

Therefore, it is imperative that we draw a line in the sand now, lest we encourage further and even more troubling acts of censorship in the future.

Mr. CLAY. Mr. Speaker, I thank my friend from Michigan, the ranking member of the House Judiciary Committee.

At this time, I yield to the gentlewoman from North Carolina (Ms. ADAMS), my friend, an art education Ph.D., a gallery owner and artist, and member of the Congressional Arts Caucus.

Ms. ADAMS. Mr. Speaker, I want to, first of all, thank my colleague from Missouri, Representative CLAY, for his concern, for his courage, for standing up and speaking up to ensure that his constituents' and others' First Amendment rights are protected by this Congress, and for organizing this Special Order hour this evening.

I appreciate very much the opportunity to join Representative CLAY, and I proudly stand with him and my other colleagues to speak in defense of the First Amendment rights afforded to citizens of the Constitution of the United States.

As the 12th District Representative from North Carolina, as a practicing professional artist and art educator, as a curator, as a retired 40-year college arts professor, I am pleased to join with Representative CLAY in expressing my support for freedom of visual expression and creativity, especially when it comes to supporting talented young students.

I have learned through my professional arts education and management careers that, yes, the arts are nice, but, beyond being nice, they are absolutely necessary and essential in helping enrich our lives. The arts are unique to our being, and they are what make us human.

Artists connect the past to the present, they convey our unique experiences, and they are presented in many forms—sometimes familiar, other times unfamiliar. The arts are a universal language that speak to people everywhere to help them to understand diversity, cultures, and some of the most complicated of issues. Therefore, having the freedom to make art is essential to creative expression.

Freedom of expression is everyone's freedom. And our Founding Fathers enshrined the expressions of freedom of speech in all forms—in music, in written and spoken word, in theater, and through visual imagery and composition—in the Bill of Rights.

Under the First Amendment, all art forms and all artistic expressions are constitutionally protected. Our Founding Fathers who created our country and launched our Nation as the world's role model in democracy believed that freedom of speech and freedom of the press were important enough to guarantee protection in our country's

founding documents. If our Founding Fathers, the brightest minds of that generation, thought that artistic expression was important enough to protect in our Bill of Rights, then what right do we have to take this way and censor the artistic community?

The ACLU said: “. . . a free society is based on the principle that each and every individual has the right to decide what art or entertainment he or she wants—or does not want—to receive or create. Once you allow the government to censor someone else, you cede to it the power to censor you, or something you like. Censorship is like poison gas: A powerful weapon that can harm you when the wind shifts.”

As a nation, we face many threats, both internally and externally. We are a Nation of diverse thought, diverse people, and strong diverse principles. However, when we stand by and allow our artistic community to be censored or allow threats to silence our press, we become our own greatest threat. And when we reject facts and censor artistic expression just because it makes us uncomfortable or because we don't like it, we are becoming the tyrants that our Founding Fathers risked their lives to protect and escape from.

So the question of what is appropriate art is not a new question. Since the beginning of our country, our citizens have wrestled with what to do when they are offended by a work or art in any form. Court case after court case has tested governmental censorship of artistic expression, and the Supreme Court has continued to uphold our founding principles of freedom of expression and speech.

In the 1931 case, *Stromberg v. California*, the Supreme Court ruled that symbolic speech is protected by the First Amendment. The ruling ensured that all art forms, music, paintings, plays, and other artistic expressions are protected by the First Amendment.

In the 1982 decision, the Board of Education v. Pico, the Supreme Court ruled that local school boards may not remove books from school library shelves simply because they disliked the ideas contained in those books. Like the removal of the books from libraries, the removal of Mr. Pulphus' painting was a blatant violation of his First Amendment rights.

The First Amendment guarantees that our government cannot make substantive decisions about the content of a work of art. Expression can only be limited if, and only if, that expression will cause direct and imminent harm such as yelling “fire” in a crowded theater.

□ 1615

Our government's role is not to censor but to ensure that artists are able to freely express themselves without fear of censorship. Our government did not protect this young man's First Amendment rights. Instead, it acted as a retroactive censor on his work.

Here is an example of our government making a decision based on con-

tent they disapproved of and preventing this work because of its subject and because some legislators weren't knowledgeable enough about it to understand it from being displayed in a public place.

Justice Louis Brandeis, in his defense of free speech, wrote:

It is hazardous to discourage thought and hope and imagination; that fear breeds repression, and that repression breeds hate, and that hate menaces stable government. The path to safety lies in the opportunity to discuss freely supposed grievances and proposed remedies.

Justice Brandeis' words were written in 1927, 90 years ago, almost a century, but they still echo true today. Censorship out of fear, out of misunderstanding or pain or dislike of a work is fundamentally anti-American and unconstitutional.

For more than 4 decades as a visual arts professor, I taught my students that you are going to see a lot of art throughout your lifetime. Some images you will like and some you won't especially like. And some will be disturbing and some confusing. But I reminded my students that their responsibility as viewers was to make every attempt to be able to say that you don't like it because you at least understand it.

Mr. Speaker, knowledge is power. Mr. Pulphus' work did not create direct or imminent harm, but his work did depict an uncomfortable reality that is pervasive across our country.

Unfortunately, violence is a way of life in many communities throughout America. As a matter of fact, it is too prevalent. But for this young man, violence in his community was a life that he knew most of his life. It was a life he was intrinsically as an artist compelled to visually talk about on his canvases.

As a matter of fact, he had a right to talk about it, and, in reality, he needed to talk about it. I admire him for his courage. As a teacher, I can tell you that, visually, his utilization of compositional elements and principles and forms showed an extraordinary talent.

In my estimation, we failed as viewers to do our part, and we didn't make an effort to really see, but we just merely looked at the work. But most especially, we didn't seize the opportunity to learn so that we could enhance our capacity to build and reinforce positive relationships in our community.

This painting offered us a chance to have a real conversation about race and police and community violence and institutional racism. But instead of seizing this opportunity, we have to continue to fight to protect this young artist's First Amendment rights.

Heated debate and discussion is the hallmark of our democracy. However, when arguments are censored, when the artists are told what they are able to produce, when expression is silenced, our democracy is then threatened.

And since this incident, as you have heard, the Congressional Institute has

changed the rules for the Congressional Art Competition. Work submitted to the competition depicting contemporary political controversy or sensationalist or gruesome nature are not allowed.

But I am not here to criticize the work of the Congressional Institute, but as a professional artist myself, only to ask this question: What benefit can come from limiting our young artists from creating?

A democracy works when people stay engaged, when people participate. But by censoring what is in our public spaces, we are creating barriers for political discourse and we are creating fear of retaliation.

Artists are visual storytellers and we are entrusted with a unique responsibility to use the power of the arts to inform, to educate, and to empower our communities.

Noted African-American artist and scholar Dr. Samella Lewis of California said that “African-American artists have a primary obligation to community, to understand, and to use the elements of their cultural heritage to produce an art that is diverse, reflecting our diverse interests, materials techniques, and to communicate those messages to the audiences we want to reach.”

Removing this young man's work was a degrading and insensitive action, which signaled to this young, aspiring, gifted student that his work is valueless, that his story is not worthy to be told. But most especially, it put into question the right and the responsibility that he has as an artist to express himself in visual imagery and symbolic competition.

It is not up to the government to decide what work has value or whose story should be told. The removal of Mr. Pulphus' work sets a dangerous precedent. Congress is now making content decisions on works displayed in the U.S. Capitol and is limiting what types of art will be exhibited. To some, this issue may not seem important, but the scope of the actions that have taken place in the U.S. Capitol is tremendous.

Just because somebody's sensibility is offended doesn't give that person the right to ban or censor a work. In fact, the First Amendment prevents that.

However, as this gross overreach of power in removing his work proves, just because the Constitution prevents something doesn't always mean that it won't happen. But it is our duty to hold our government responsible for protecting the sanctity of the Constitution and the Bill of Rights.

That is why I am honored, as a 40-year arts educator, as a member of the Congressional Art Caucus, and as a professional artist to join Representative CLAY and all of my colleagues in speaking today about the importance of the First Amendment as it relates to the creative and the professional obligations and rights of the visual artist.

Mr. CLAY. Mr. Speaker, I thank the gentlewoman from North Carolina for

her thoughts, her words, as well as her expertise in the field of art. She is probably the only qualified art critic serving in Congress today. So thank I thank her so much.

Mr. Speaker, at this time I yield to the gentleman from Tennessee (Mr. COHEN), my friend, an attorney and former legal adviser to the Memphis Police Department.

Mr. COHEN. Mr. Speaker, I, indeed, also enjoyed the remarks that just preceded me and that Mr. CONYERS made and Mr. CLAY made concerning this issue.

I rise today in support of art, freedom of expression, freedom of speech, but also Black Lives Matter and police officers who follow the rules, which 98 percent or more do, who treat citizens appropriately and risk their lives to keep us safe. And I mourn each officer that loses their life or is injured in protecting us and having ordered liberty.

But I rise in opposition to censorship, which is anathema to me, and police officers who go beyond the law—that percentage that do—and soil the badge they wear and use deadly force inappropriately, which has occurred too many times sometimes because they just don't react properly in the heat of battle, sometimes for other reasons, too often upon Black people, which does tend to indicate a prejudice that exists in certain people's minds. Black lives do matter, and people haven't recognized that, and we need to.

The removal of David Pulphus' painting from the Cannon tunnel is troubling on many levels. It raises serious questions about Congress' commitment to the First Amendment, which guarantees the freedom of expression. We take an oath to support the Constitution and should do so in our actions as well as our words, as well as in our oath.

Benjamin Franklin warned us that freedom of speech is a principal pillar of a free government. When this support is taken away, the constitution of a free society is dissolved.

Secondly, it raises serious questions about censorship. Unfortunately, in my hometown of Memphis, we have a history that is sometimes not so good on particular cases of race and free expression.

That long history of artistic censorship oftentimes related to race as well as sex, and for nearly 3 decades, in the early part of the 20th century, Memphis had a censor, a public censor, appointed by the government named Lloyd T. Binford. He served as the chairman of the Memphis Board of Censors. They banned movies. They banned movies like "Curley" in the 1940s because it showed White and Black children in school together.

He prevented Memphians from seeing major celebrities like Lena Horne, Duke Ellington, Nat King Cole, Cab Calloway in our local movie theaters. He was a racist. "Binfordizing" became a word. Artistic words that were wrong and Congress must be ever mindful of the slippery slope of censorship.

Thirdly, and perhaps most important, this painting raises serious questions about public policy. Congress should be debating questions of public policy, not banning expressions of them.

The events that took place in Ferguson, Missouri, which are well expressed by this painting, were a wake-up call to many in our Nation about police use of deadly force, injustice in our inner cities, and turmoil rising in our inner cities.

Sobering questions about the fairness of our criminal justice system and about race were raised. And a painting such as this that reflects those issues is most appropriate for display in the hallway where these paintings and artworks are shown because it is representative of a major slice of America in that year.

That, more than most other paintings and artworks there, show something that is relevant to what is happening today and has occupied the news in a major way.

For too long, justice has seemed too lacking, and we saw it in Ferguson. Mr. CLAY and I have worked together for display of this artwork. I questioned some professors on another issue, lawyers that specialize in First Amendment issues, speech issues in the Judiciary Committee, and to a one they said it appeared to be censorship and was wrong and was violative.

Of course there is some talk that, well, it is government speech and maybe that is different. But you know some of the same people that have opposed this painting are the same people that say the rules should apply to Congress. Whatever laws we pass should apply to Congressmen the same as they apply to other people, and we shouldn't have special privileges. But those people decided on their own to exempt a painting they found distasteful which wouldn't have been prohibited anywhere else because of free speech. They violated their own precepts; the same precepts they may be violating today in other rooms where they are discussing a health bill that will exempt them from the health bill sanctions or requirements and not require them, if they live in a State, to not have the essential benefits of the Affordable Care Act.

So I rise today to commend Congressman CLAY for his work, to thank him for his work with me and Senator DUCKWORTH on the Police Training and Independent Review Act, which the need for is expressed here in this artwork. That is why it is so important.

This communicates a story. Beauty is wonderful, and a lot of the artwork is photographs and beauty. Nice. Fine. Places, fine. Content and ideas are more important. It is always more important to have artwork that challenges your mind and makes you think: What is this about?

As I look at this painting and I think about it, sure, there are a couple of police officers—two police officers in par-

ticular—in a certain manner of being displayed. But there is a third police officer on the right that is not shown this same way. And if you look at this painting, you can see this painting says: not all police officers are the same. Some are questionable, some aren't. It revolved around a major incident in our city, St. Louis, Ferguson, but the arch is in there and expresses that well.

This painting should not have been removed. Congressman CLAY is right to stand up for the First Amendment and for his constituent.

Mr. Speaker, I urge my colleagues to help restore this painting to its rightful place in the Cannon tunnel and to allow people to see it and make their own decisions.

Mr. Speaker, I thank you and appreciate being a part of this.

Mr. CLAY. Mr. Speaker, let me also thank my friend from Tennessee who happens to be a member of the House Judiciary Committee. As he stated, we are working together on police reform legislation. I appreciate his services.

Mr. COHEN. And I am an art critic.

Mr. CLAY. Mr. Speaker, he is an art critic.

Mr. Speaker, at this time I yield to the gentleman from Maryland (Mr. RASKIN), my friend, a Constitutional scholar and professor.

Mr. RASKIN. Mr. Speaker, I thank Mr. CLAY for convening us this evening to discuss this very important matter.

Why is it so important?

Well, we live in a time of rampant official lawlessness and disrespect for the Constitution of the United States.

But I am not here to talk about the Emoluments Clause or the power of Congress to declare war, or about equal protection. I am here to join my colleagues in talking about an incident of artistic discrimination committed by this institution, an assault on the First Amendment.

Why is it so important?

I was thinking about a professor I had who wrote a book about broken windows. The thesis of the book basically was that if windows are broken in the neighborhood and nothing is done about it, it sends the message that you can go on to bigger and better things. In other words, petty crimes and misdemeanors unaddressed go on to become high crimes and misdemeanors.

When we started the 115th Congress, unfortunately, within the first week or two, we started with a broken Constitutional window, Mr. CLAY, because we allowed, we tolerated, and we countenanced an act of vigilante discrimination and censorship by certain Members against speech by the constituents of other Members.

So I want to tell the story to the people of America, especially the young people of America, who have open minds and open hearts, and I am delighted that so many young people are in the chamber tonight to hear about what happened here because this is a very important moment in the history of this institution.

□ 1630

Now, I am a professor of constitutional law by training. I did that for 25 years before I came to Congress, and I teach, also, the First Amendment.

There are six rights contained in the First Amendment, and I hope all of you learn the six rights. They are: the right to petition for a redress of grievances; the free exercise of religion; the right of assembly; the right of free press; the right of no establishment of religion; and then, last but certainly not least, the right of freedom of speech.

Here in Congress, since 1982, we have had a Congressional Arts Competition. It is a magnificent statement of American values. We invite Members from every district in America—there are 435 districts here, plus five Delegates who come from territories or the District of Columbia—so there are a total of 440 that are eligible.

Each one impales a group of artists. They have a whole process, and the best artwork is adjudicated and then brought to Washington. You can find them in the tunnel connecting the Cannon House Office Building to the Capitol Building, to the Chamber where we are right now. There are hundreds of beautiful, extraordinary, interesting, vivacious, controversial paintings done by the young people of America.

So what is the issue? Well, we are living in a time of political correctness. Let's say it plain. Sometimes the political correctness comes from the left. It happened recently at Berkeley in California, where the college canceled a planned appearance by Ann Coulter, a rightwing commentator whose views are totally anathema to me, but they canceled her speech.

Now, in fairness to Berkeley, they said there had been violence there and they thought there might be violence again. But there was such a storm of outrage about this example of a kind of leftwing political correctness, they reversed the decision and they said she could come. They understood it was their responsibility to make sure that her speech could proceed without being disrupted and broken up, so they did the right thing.

What are we experiencing here right where you sit in the Congress of the United States, in the House of Representatives? We are experiencing an example of a rightwing political correctness run amok. It is rightwing political censorship because some people didn't like somebody else's expression. Instead of walking on to the next painting, they decided to take it down, remove it, and return it to the office of Congressman CLAY. Not once, not twice, not three times, not four times, but five times they took this painting down.

Congressman CLAY and I wrote a letter to Speaker RYAN protesting this act of vigilante censorship right here in the Congress of the United States. Speaker RYAN, instead of standing up for the First Amendment, instead of standing up for the Speech and Debate

Clause, instead of standing up for artistic expression, instead of standing up for freedom and teaching a lesson to the young people of America, he called the painting disgusting and then initiated an official process whereby they censored it. For the first time in the history of this competition going back to 1982, 35 years, they censored a painting.

Now, luckily they have made this young artist one of the most famous artists in America now, and we can all wish him nothing but magnificent fortune as he goes ahead to develop his skills and his artistic voice. They were not able, I hope, to crush the spirit of this young man, but they did something really deeply injurious to the Republic of the United States. They engaged in an act of naked viewpoint discrimination against a work of art.

Now, what are the constitutional values here that need to be vindicated for artists like David Pulphus or the winner from my district last year, Alannah Van Horn, who did a self-portrait?

Let's just be clear about one thing: these paintings hung for 6 months before the vigilante censors in the House of Representatives decided to come and take them down. For 6 months, they didn't harm anybody, they didn't hurt anybody, they didn't cause a riot, they didn't cause a ruckus, nothing—until they decided somehow that this painting ran afoul of their political correctness litmus test for what is acceptable in Congress.

So what is really at stake here? Well, first of all, it is the rights of the Member who sponsored this painting.

I want to say I am so impressed by the courage and the strength and the determination of Representative CLAY to stand with his constituent and his constituency as well as with the Constitution here.

He brought a First Amendment lawsuit with Mr. Pulphus not for money, not for damages, but for a preliminary and permanent injunction against congressional censorship of this painting. So they went to court.

They had a very simple argument. The First Amendment says Congress shall make no law abridging the freedom of speech. That is it. That is one of the six rights that I referenced when I opened my speech. Congress can't censor speech.

Congress just censored speech.

The judge in the case, Judge Bates of the United States District Court, rendered a fascinating opinion. He found that this was indeed a clear case of viewpoint discrimination. It was censorship based on the views or the perspective of the artist. There was little doubt, he said, the government was engaged in a blatant act of viewpoint discrimination.

There are lots of cases that make clear that viewpoint discrimination is unacceptable in the United States, like *Rosenberger v. University of Virginia*, which said that UVA could not set up a

program for young journalists and newspapers and magazines at UVA and exclude those from a religious point of view. The Court said, if you are going to set up a forum for speech like that, you can't single out one point of view and then suppress it.

It was the same idea in *Texas v. Johnson* in 1995, when the Supreme Court said that the right to burn a flag as a political protest is constitutionally protected. You don't have to agree with it, but other people have the right to burn the flag if it is their flag. That is their property.

The Court pointed out also that, in America, flag burning is the proper mode of flag disposal. If you look at the flag treatment protocol, Boy Scouts and Girl Scouts burn flags all the time. So, if you punish someone for burning a flag, you are punishing them for a thought crime; you are not punishing them for an action which is done all the time in the United States.

In any event, the Court says viewpoint discrimination is unacceptable. Nonetheless, Judge Bates said that Congressman CLAY doesn't win. Why? It is because of where it took place. He said that the hallway in the Cannon House Office Building leading to the Capitol is not a public forum of any kind. It is not a traditional public forum like a street or park. It is not a limited public forum, something that is set up for the expression of speech, which is precisely what you would think it is. It is not even a nonpublic forum, Judge Bates says. Judge Bates says that the 440 paintings down there are government speech.

Now, that doesn't make any sense. We have lots of people who are in the gallery tonight, and I assume you passed by these paintings on the way over. If you didn't, check them out.

I challenge anybody in America to go down to the tunnel and look at the paintings and regard the magnificent diversity of views and perspectives embodied in this one painting, for example, and say that it is government speech. In fact, the reason it was censored is because it wasn't government speech.

Yet, the court got it wrong. Now, I am not going to say really nasty things about him. I am not President of the United States. I am not going to say that he is a nonjudge or a so-called judge. I think that he made a serious mistake. I think the D.C. Circuit will reverse it. I think the U.S. Supreme Court would reverse it.

You know what? It doesn't make any difference, because everyone who has the honor of serving in this Chamber takes an oath to the Constitution of the United States. We have got to uphold the First Amendment. That is a responsibility that we have got. And we can't just say, "Oh, we will let a court deal with it." We have got to deal with the First Amendment.

And it is very clear—the court said it itself—this was viewpoint discrimination. That is unacceptable. And we

should say that, yes, the Constitution applies in the Congress of the United States. We don't hold ourselves exempt from it. We don't say, if we set up a forum for young artists to bring their paintings in, that we are speaking. That doesn't make any sense. They are the ones speaking.

So where do we go from here?

Well, we are appealing to Speaker RYAN and to our friends in the majority to back off of the regime of right-wing political correctness. Just like it was wrong for Berkeley to try to censor Ann Coulter, as much as many of us abhor everything she says and stands for, it is equally wrong for the Republican majority here to censor Mr. Pulphus for your subjective interpretation of what his painting means.

One of the reasons why the Supreme Court has always said you can't censor art is because art is polysemous. What does that mean? It means it is open to multiple possible significances. Who is to say what this painting means or what *Guernica* means?

*Guernica*, by the way, would certainly be censored under the principles that are being advanced here because it is sensationalistic or it deals with contemporary controversy. I mean, what art doesn't deal with contemporary controversy? I mean, it just doesn't make any sense what they are saying.

So I think that the majority should really rethink whether it wants to be in the business of censorship. This is not Russia. This is not Azerbaijan. This is not Saudi Arabia. This is not Iran. This is the United States of America.

People have a right to paint the painting that they want. If you don't like the painting, you go to the next painting. You don't take it down, especially in the Congress of the United States where we should be setting an example. Justice Brandeis said government is the omnipresent teacher to the people of the constitutional values of the whole society.

Now, we have got one other serious problem I want to mention before I go because, you see, before they engaged in this act of censorship against this young artist who was from St. Louis who was obviously upset about what happened in Ferguson, Missouri, and painted this painting which I think is actually a very interesting, captivating painting that reminds me of Picasso's *Guernica* and clearly evokes themes from George Orwell's "Animal Farm," before they did that, you didn't have to agree with any particular painting or sculpture or artwork in the Capitol complex, right?

We have great champions of freedom and justice in the Republic who are portrayed all over the Capitol complex, like Abraham Lincoln, for example, like Rosa Parks, like Martin Luther King, like Lyndon Johnson, like Sojourner Truth.

You know what? We also have people who are traitors to the country, people who were Confederate conspirators against the United States, like John

Breckinridge, a guy who served as a U.S. Senator and as Vice President of the United States and then defected from the Union, took up arms against the United States of America, and was declared a traitor and stripped of his titles as a former Vice President and a former Senator.

There is Jefferson Davis, the President of the Confederacy. There is a statue of him up. Robert E. Lee, obviously the general for the Confederacy during the Civil War. There is John C. Calhoun, who defected from the Union and took up arms against us.

So we have these portraits, statues, and busts of great Americans who stood for freedom, justice, and equality in America and the Constitution. And we have people who got themselves into trouble and, I think, brought disgrace to themselves with what they did. But they were all up together.

Now that we are entering into a new area of authoritarian thought control and censorship and political correctness in Congress, how can we have a statue of John Breckinridge up in the Capitol complex? How can we have Jefferson Davis up in the Capitol complex?

If this is government speech, now we are going to have to litigate each one of these artistic displays to see whether or not they are actually consistent with the values of the United States Congress and consistent with the values of the U.S. Constitution. Is that where we want to go?

I invite my colleagues—I beseech my colleagues—don't take us there. Reverse this act of censorship against this young man. Don't set out to crush his spirit. Don't step on the First Amendment. Show America that we believe in the Constitution. Otherwise, we are going to be engaged in some very interesting discussions about the kinds of artwork that are found all over the Capitol campus.

I just want to salute, again, Congressman CLAY for bringing us together and all of my colleagues who have come forward to stand up for the First Amendment tonight.

□ 1645

Mr. CLAY. Mr. Speaker, let me thank my friend from Maryland who, as we heard, his 25 years of knowledge on the U.S. Constitution bodes well for this entire body, and I appreciate his friendship and his support.

Mr. Speaker, I yield to the gentlewoman from Illinois (Ms. SCHAKOWSKY), a member of the Energy and Commerce Committee.

Ms. SCHAKOWSKY. Mr. Speaker, I was sitting in my office watching this debate, and I really appreciate the opportunity to come down. I ran down the stairs because I wanted to speak to this issue.

Now, it really doesn't matter what anybody in here thinks about what I think is a pretty amazing piece of art. Under the banner of artistic discovery—that is the competition that we have, artistic discovery—we are in-

viting young people, high school students, to express themselves, sometimes to find themselves in the artwork that they do, to clarify ideals for themselves and to challenge people. What is art about, if not that?

So, in my office right now, we are putting together the artwork that has been submitted from the high schools in our district. We take very great pride in our artistic discovery contests, and so we are collecting that artwork.

But as we looked at the instructions before we did it, we saw this new addition that just came up, first time. How long is this? Thirty-two years we have been doing this? This is the first year that it includes suitability guidelines, and it makes very clear that subjects of contemporary political controversy are not allowed.

Then we have to sign, each Member of Congress will be required to submit a letter of support for their work of art. This letter is to ensure that the Member has seen the artwork before it is submitted, has taken responsibility for the content, and has certified that the artwork, in the Member's opinion, adheres to the suitability guidelines.

Now, of course it says: "While it is not the intent to censor any artwork, we do wish to avoid artwork that is potentially inappropriate for display in this highly traveled area leading to the Capitol."

What the heck does that really mean? Does that mean that people are not—you know, we have to worry about is somebody going to take offense at something or say, "Ooh, I don't like that picture"? They are entitled to do it, and the artist is entitled to put it out here.

Now, it so happens that none of the pieces that were submitted, I think, were unsuitable, but who the heck knows anymore? Who makes the decision about what is unsuitable? I don't know.

Some of the—if you look down the hall and look at some of them, some of those self-portraits, I don't know, these kids look troubled to me. Is that something that ought to be taken down? No. Absolutely no.

This young person lived through a traumatic incident in his community and I think, quite artistically, decided to express his feelings about it. I think it is absolutely an outrage. We already heard about the violation of the Constitution, but each and every American should be offended by that and about these suitable guidelines. I am sorry. I object. I hope you do too.

Mr. CLAY. Mr. Speaker, I yield to the gentlewoman from Ohio (Ms. KAPTUR), my friend and dean of the Ohio delegation.

Ms. KAPTUR. Mr. Speaker, I thank Congressman CLAY for organizing this Special Order, and the people of Ohio in my district stand with him and with the young artist I will discuss in a moment.

The United States of America and this Capitol stand as a symbol of American values and our freedoms. It just so



happens I represent a district that contains 2 of the 10 finest museums in America, at Cleveland and Toledo. We know a little bit about artistic expression.

Here in the Capitol, we have created a place to gather and celebrate our Nation's highest ideals, and first and foremost among these is the right of every citizen to freely express themselves as equal citizens.

A recent act of censorship here at the Capitol placed this American right under threat, and it is important that all Americans think about this and know about it. I speak to say this action cannot be tolerated. I stand with my distinguished colleagues and with the American people to speak out against the removal of David Pulphus' award-winning painting from the United States Capitol.

There was a famous French artist named Edgar Degas, who said: "Art is not what you see, but what you make others see." Surely, surely, David Pulphus' painting does this. And I support Mr. Pulphus' continued efforts to appeal a preliminary decision by the District of Columbia Federal Circuit Court that rejected his First Amendment legal claims, and that case will move forward.

In May 2016, his extraordinary acrylic painting that reveals deep meaning, which he named *Untitled #1*, was awarded the prestigious honor to represent Missouri's First Congressional District in the Congressional Arts Competition.

I have entered, for three decades, works from my district in this competition; and just like the other 434 pieces selected to represent a congressional district in the annual competition, *Untitled #1* was approved and accepted by the Architect of the Capitol for public display inside our Capitol.

For over 26 weeks, *Untitled #1* hung in the underground tunnel between the Capitol and the Cannon House Office Building. For over 180 days there was no controversy. And for more than half a year, citizens and Members of Congress, congressional staff, thousands and thousands of international and national visitors passed by and viewed it with no concern.

But that changed abruptly when, in fact, a Member from the Republican side of the aisle, I think, likely violated the law and pulled it off the wall in the Capitol of the United States. It didn't belong to him, but he did that. And, I dare say, that gentleman missed the deeper meaning of what this young man has portrayed.

There was an added twist of irony in that the censorship moment occurred 1 day after our national holiday honoring civil rights icon Reverend Dr. Martin Luther King, Jr.

The censorship sent a woeful and chilling message to our Nation and one that says that our young people's voices and their thoughts are not respected. I say that is un-American. Their views and experiences and perspectives must be valued.

When we look at what was done, his freedom of expression, even when expressed through a juried competition, is not protected in the top site of liberty's essence, the legislative branch inside the United States Capitol Building.

So Members of Congress have to take a stand. We must demand that the creative contributions of Americans, young and old, in the arts are embraced, including inside this Capitol. We cannot tolerate actions that directly and unjustly stifle or threaten an artist's artistic point of view. That is what America is all about.

David Pulphus' painting won the honor to represent Missouri's First Congressional District because it reflects an important, compelling message. His work reminds us of the value of the arts in a free society.

The painting was inspired by the civil unrest that occurred in Ferguson, Missouri, in 2014, and it depicts the racial confrontation that ensued with police after that fatal shooting of the unarmed teen, Michael Brown, Jr.

This is a complex work and it does not deserve anyone's rejection. It tells us about ourselves and our society so that we face it fully. And if you look at it, there are serious messages in here that say, "Stop Killing," "Racism Kills." It talks about "History."

And if you really look at it, you see that some of those involved in the killing, there is no right side. One of the perpetrators is portrayed as a wolf. It is very interesting to study the deeper meaning. This painting includes challenging images: a man being crucified, wearing a graduation cap, holding the scales of justice.

This is a young man, he is not even 20 years old, thinking about this.

There is a horned beast in a police uniform tangling with a devil with a pointed tail—looks like a wolf—and demonstration signs that read "History" and "Stop Killing."

Simply put, this commanding work of art from a teenager is a true testament to the power and immeasurable significance of our Nation's young artists who express us.

The debate sparked by its removal from the Capitol is about something larger than the artwork itself. It is about defending our fundamental First Amendment freedom. This right to artistic expression is considered objectionable by a few and applauded by the vast majority of Americans who understand what free expression in this society is about.

Neither the Architect of the Capitol nor a Member of Congress has the right to censor, self-censor citizens based on their political points of view, whether in the name of official decorum or because they find it offensive or because they fail to grasp its deep meaning.

In America, if you do not like a painting you see in a display, you simply move on to the next one. You don't take it down. It doesn't belong to you.

Nevertheless, as a painter myself and citizen who deeply reveres our con-

stitutional rights, I am confident that in this case justice ultimately will prevail and *Untitled #1* will soon resume its rightful place inside our Capitol because a young man with this depth of expression is proudly an American. If it doesn't come back, I fear for the slippery slope the Architect of the Capitol has begun, and it is not worthy of us as Americans.

I want to thank Congressman CLAY so very much for standing by this young American who is not even 18 years old yet, I don't think, and who managed to put this complex piece of art together. I am so proud of him; I am so proud of our country; and I just know that, working together, we are going to get it right for artistic expression here in the House of Representatives.

Mr. CLAY. Mr. Speaker, I thank the gentlewoman from Ohio. I certainly appreciate her support.

In closing, let me say that the student artist in question, my constituent, David Pulphus, is a great young man. He is academically gifted, artistically talented, and is now a freshman in college. He is doing everything that we encourage young Americans to do to become successful citizens.

His winning entry is a colorful, symbolic representation of the great anger, pain, frustration, and deep deficit in trust for local law enforcement that many young African Americans feel in their hearts. The painting also reflects generations of struggle, sacrifice, abuse of power, and tenuous relationships between minorities and a system of justice that still provides equal justice for some, but not for all.

□ 1700

So the larger, much more fundamental question is: Why does this young American feel that way, and what can we do as leaders of a compassionate and just nation to finally remedy that?

I am so thankful for the remarkable public service of my exceptional pro bono legal team who are guiding this case, including Dr. Laurence Tribe of Harvard University School of Law, Dr. Erwin Chemerinsky of the University of California, Irvine School of Law, and others. As a Member of Congress who reveres the Constitution, I am confident that freedom and justice will prevail.

Mr. Speaker, I yield back the balance of my time.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 1694, FANNIE AND FREDDIE OPEN RECORDS ACT OF 2017; PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES; AND WAIVING A REQUIREMENT OF CLAUSE 6(A) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED FROM THE COMMITTEE ON RULES

Mr. WOODALL (during the Special Order of Mr. CLAY), from the Committee on Rules, submitted a privileged report (Rept. No. 115-96) on the resolution (H. Res. 280) providing for consideration of the bill (H.R. 1694) to require additional entities to be subject to the requirements of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; providing for consideration of motions to suspend the rules; and waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

#### ISSUES OF THE DAY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 3, 2017, the gentleman from Texas (Mr. GOHMERT) is recognized for 60 minutes as the designee of the majority leader.

Mr. GOHMERT. Mr. Speaker, President Trump recently signed an executive order that made abundant sense for those who are in the world of common sense where good sense is common, which at least is not the case in the Federal courthouse in San Francisco.

Our friend, Andrew McCarthy, has written an op-ed for National Review regarding the decision of the oligarch masquerading in the Federal courthouse in San Francisco. Judge William H. Orrick III is amazing. In fact, his arrogance is only exceeded by his ignorance.

It is an excellent article. Normally I wouldn't read an entire article, it is not that long, but this is so well written by the prosecutor of The Blind Sheikh that it bears hearing the words from Andrew McCarthy.

He said: "A showboating Federal judge in San Francisco has issued an injunction against President Trump's executive order cutting off Federal funds from so-called sanctuary cities. The ruling distorts the E.O. beyond recognition, accusing the President of usurping legislative authority despite the order's express adherence to 'existing law.' Moreover, undeterred by the inconvenience that the order has not been enforced, the activist court—better to say, the fantasist court—dreams up harms that might befall San Francisco and Santa Clara, the sanctuary

jurisdictions behind the suit, if it were enforced. The court thus flouts the standing doctrine, which limits judicial authority to actual controversies involving concrete, nonspeculative harms.

"Although he vents for 49 pages, Judge William H. Orrick III gives away the game early, on page 4. There, the Obama appointee explains that his ruling is about . . . nothing.

"That is, Orrick acknowledges that he is adopting the construction of the E.O. urged by the Trump Justice Department, which maintains that the order does nothing more than call for the enforcement of already existing law. Although that construction is completely consistent with the E.O. as written, Judge Orrick implausibly describes it as 'implausible.'"

I would interject at this point, Mr. Speaker, that upon hearing President Trump's executive order requiring sanctuary cities such as San Francisco, where their heart is so calloused on the side figuratively facing people like Kate Steinle, innocent people who are just trying to live freely their own lives, and is greatly softened on the side of those criminals who have come into the United States illegally who would tend to shoot lovely, law-abiding daughters like Kate.

So it seemed eminently reasonable what I had read was in the order. I didn't read the whole order originally, but it made eminent sense, of course, the President of the United States saying that he is authorized by the Constitution in carrying out enforcement and by Congress in carrying out enforcement, saying we are not sending Federal money to sanctuary cities—to any cities—that are refusing to use the money for the purpose for which it is intended. That makes eminent sense, because if you are not going to follow Federal law, if it is made clear to the whole world that you would rather see people like Kate Steinle shot and killed dead so that you can have criminals committing the worst kinds of violence on law-abiding citizens. That makes sense to these people who are ruling in San Francisco. One ruler is Judge Orrick who we reference here.

There was a time in America when people in power thought it was a good idea for everyone to follow the law. But we have devolved in some areas of the country where we are no longer a nation of laws, where at least at one time there was a goal of pursuing absolute fairness where everyone could live under the same laws following the same laws. There was that time.

Yet we have people who are educated far beyond their mental ability to absorb education since it has used up all the gigabytes that might have otherwise been used for wisdom for cluttered knowledge that has prevented this judge and others from being able to use common sense to follow the law to protect people who are counting on the courts and law enforcement officers to follow and enforce the law themselves.

There was that time when Manifest Destiny was being pursued, people were moving West. The areas West were not actual States within the United States. There was a lawlessness. People were yearning in those territories to be States so that they could count on the Federal Government to provide fairness—ultimate fairness—and provide a life that would be lived under the United States Constitution. They felt, in those days, if we could just get the Federal Government to have a Federal marshal here and a Federal Court here, wow, life would be so much better. Now we have seen it has lived beyond the usefulness it once had and has become quite a burden to overcome in reaching fairness and constitutionality.

So, Mr. Speaker, before I continue with Andy McCarthy's piece, I want to point out we are in preparation of a bill that would eliminate any Federal district court or circuit court from having jurisdiction over matters regarding immigration. Certainly, we had that power. In fact, we have the power to eliminate the Ninth Circuit Court of Appeals altogether. We have a bill that would, in fact, limit the Ninth Circuit Court of Appeals to California, and all of the other States that comprise the Ninth Circuit would be part of a new 12th Circuit. In that new 12th Circuit, whoever the current President is when the law is passed would appoint the entire banc of judges for the 12th Circuit Court of Appeals.

Following the Reid rule in the Senate, if we were to get that passed through the House and Senate, I feel sure President Trump would sign it into law, and then President Trump would have an entire circuit where he appoints the judges, where people would know they would have judges of the quality of Judge Gorsuch—at least the quality he is supposed to represent—and people would know they weren't going to get oligarchs as judges, they were going to get people who at least maintain some semblance of trying to follow the Constitution and trying to live up to the oath that they took to defend the Constitution—just support the Constitution for goodness' sake.

McCarthy goes on. He says: "Since Orrick ultimately agrees with the Trump Justice Department, and since no enforcement action has been taken based on the E.O., why not just dismiss the case? Why the judicial theatrics?"

"There appear to be two reasons.

"The first is Orrick's patent desire to embarrass the White House, which rolled out the E.O. with great fanfare. The court wants it understood that Trump is a pretender: For all the hullabaloo, the E.O. effectively did nothing. Indeed, Orrick rationalizes his repeated misreadings of what the order actually says by feigning disbelief that what it says could possibly be what it means. Were that the case, he suggests, there would have been no reason to issue the order in the first place.

"Thus, taking a page from the activist leftwing judges who invalidated