

# Supreme Court weighs arguments in Stolen Valor case

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The Reporters  
Committee for  
Freedom of the  
Press

February 22, 2012

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The U.S. Supreme Court heard oral [arguments](#) Wednesday in a case that questions the constitutionality of a statute which criminalizes false statements about the receipt of military medals.

At issue for the court in *United States v. Alvarez* is whether such false statements are protected as free speech under the First Amendment. Plaintiff Xavier Alvarez was an elected member of a California water district board who claimed at a board meeting that he was a Marine who was awarded the Congressional Medal of Honor. Alvarez never served in the military.

Under the [Stolen Valor Act](#), which was enacted in 2006, it is a criminal offense to make statements "falsely representing oneself as having been awarded any decoration or medal authorized by Congress for the Armed Forces or any of the service medals or badges."

The government,

represented by Solicitor General Donald B. Verrilli, Jr., argued that, because the act's language was specific, it did not have a chilling effect on speech.

"I guess the chilling effect seems to me, at least, to be materially different than in a situation like this one, where what we're talking about is a very specific pinpoint thing, one thing: Have you been awarded a military honor or not?" Verrilli said before the court. "And a statement that is about yourself only, not about somebody else, and is supported by a quite strong particularized interest in ensuring the integrity of the military honor."

A few justices stated that the limitations placed on speech by the Stolen Valor Act could be used to place limits on other areas of speech, such as lying about extramarital affairs.

"I think it's a sweeping proposition to say that there's no value to falsity. Falsity is a way in which we contrast what is false and what is true," said Justice Anthony M. Kennedy.

Justice Antonin Scalia expressed similar sentiments.

"Now this doesn't mean that every

falsehood can be punished, because in — in punishing some falsehoods you — you risk deterring, deterring truth," Scalia said.

Jonathan D. Libby, deputy federal public defender who represented Alvarez, said that falsity does not fall under a class of historically unprotected speech, such as defamation.

"So the government seems to start from the presumption that it's not fully protected speech, whereas, of course, what we should be starting with is the presumption that it is fully protected speech unless this court has previously said it's in one of these historical categories of unprotected speech," he said.

Libby also argued that lies about military service do not cause harm to the government, and therefore there is not a state interest that justifies restrictions on the speech. This could present a slippery slope for unprotected speech, according to Justice Samuel Alito.

"You acknowledge that the First Amendment allows the prohibition or the regulation of false speech if it causes at least

certain kinds of harms. And the problem I have with your argument is determining which harms you think count and which harms don't count," Alito said.

Justice Sonia Sotomayor acknowledged that emotional harm may not be enough to validate limiting speech, even though it is false.

"What I'm trying to get to is, what harm are we protecting here? I thought that the core of the First Amendment was to protect even against offensive speech," Sotomayor said. "We have a legion of cases that said your emotional reaction to offensive speech is not enough. If that is the core of our First Amendment, what I hear, and that's what I think the court below said, is you can't really believe that a war veteran thinks less of the medal that he or she receives because someone's claiming fraudulently that they got one. They don't think less of the medal. We're reacting to the fact that we're offended by the thought that someone's claiming an honor they didn't receive."

A federal trial court in Iowa found the statute to be an unconstitutional content-based restriction on

speech, while a Virginia federal trial court upheld the law. In October, the Supreme Court agreed to hear *United States v. Alvarez*, in which the U.S. Court of Appeals in San Francisco (9th Cir.) [ruled](#) that the Stolen Valor Act was unconstitutional because of the severe limitations it places on the First Amendment.

The Reporters Committee for Freedom of the Press and 23 other news media organizations filed a [friend-of-the-court brief](#) in *Alvarez*, stating that criminalizing false speech would weaken the freedom of the press and "would open the door for broad new classes of unprotected speech in which the only limiting principle is whatever degree of 'instrumental protection' the government believes is enough to protect 'speech that matters.'"