



Supreme Court to Hear Case Challenging Stolen Valor Act

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ABC News on February 21, 2012 released the following:

By ARIANE de VOGUE

Jonathan D. Libby does not dispute the fact that his client, Xavier Alvarez, told a “whopping” lie when he announced publicly that he had been awarded the Congressional Medal of Honor.

Alvarez was one of the first people to be prosecuted under the federal Stolen Valor Act, a 2006 law that makes it a crime to lie about receiving military awards.

Alvarez was prosecuted because, as an elected member of the board of directors of the Three Valley Water District Board in California, he introduced himself in 2007 to the audience by saying, “I’m a retired Marine of 25 years. I was awarded the Congressional Medal of Honor.”

Alvarez had never even served in the military.

But Libby, a deputy federal public defender, argues that Alvarez’s speech was a lie, not a crime. The U.S. Supreme Court will take up Alvarez’s case Wednesday and his argument that the Stolen Valor Act is unconstitutional under the First Amendment.

“Exaggerated anecdotes, barroom braggadocio and cocktail party puffery

have always been thought to be beyond the realm of government reach and to pass without fear of criminal punishment,” Libby writes in court papers.

He says that unlike other categories of speech such as defamation and fraud, his client’s false factual speech is protected by the First Amendment.

The Obama administration argues that the law fits into a “discrete and narrow” category of speech that is unprotected by the First Amendment: “knowingly false representations that a reasonable observer would understand as a factual claim that the speaker has been awarded a military honor.”

Solicitor General Donald B. Verrilli Jr. says the law is necessary to protect the military awards system against claims that undercut its purpose to confer honor and foster morale in the armed forces. He says the law does not chill truthful and other fully protected speech.

“Prohibiting those false statements,” Verrilli writes, “poses little risk of chilling any protected speech or allowing the government to punish disfavored viewpoints or act as the arbiter of truth and falsity on matters subject to public debate.”

Libby says Congress’ effort in passing the law was “laudable but does not warrant the intrusion on speech it causes,

and thus goes farther than necessary.”

A lower court ruled in favor of Alvarez saying that while society would be “better off if Alvarez would stop spreading worthless, ridiculous, and offensive untruths” the law was “unconstitutionally applied to make a criminal out of a man who was proven to be nothing more than a liar, without more.”

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