

No. 11-210

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IN THE  
**Supreme Court of the United States**

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UNITED STATES OF AMERICA,

*Petitioner,*

v.

XAVIER ALVAREZ,

*Respondent.*

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**On Writ of Certiorari to the  
United States Court of Appeals  
for the Ninth Circuit**

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**BRIEF OF *AMICUS CURIAE* THE  
AMERICAN LEGION SUPPORTING PETITIONER**

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**QUESTION PRESENTED**

Whether the Stolen Valor Act, 18 U.S.C. § 704(b), is facially invalid under the Free Speech Clause of the First Amendment.

TABLE OF CONTENTS

INTEREST OF *AMICUS CURIAE* ..... 1

SUMMARY OF ARGUMENT ..... 3

ARGUMENT ..... 5

    I. Throughout History, The United States Government Has Sought To Preserve The Integrity Of Military Honors And To Punish Those Who Falsely Claim Them..... 5

        A. Military Honors Are Intertwined With Our Nation’s Founding..... 5

        B. Congress And The Armed Services Have Long Taken Steps To Safeguard The Integrity Of Military Medals And To Punish Those Who Falsely Claim Them..... 7

            1. After the Civil War, Congress took action to preserve the integrity of military medals and combat rampant fraud..... 7

            2. Congress further reformed the criteria for military medals during World War I..... 10

            3. For nearly a century, federal law has prohibited wearing unauthorized military medals. .... 12

    II. The Stolen Valor Act Advances Congress’s Legitimate Goal Of Fighting Contemporary Medals Fraud. .... 14

        A. The Stolen Valor Act Updates The Historic Prohibition On Medals Fraud By Barring False Written Or Verbal Claims To Medals. .. 14

## TABLE OF CONTENTS — Continued

B.	The Stolen Valor Act Addresses The Current, Well-Documented, And Widespread Problem Of False Claims To Military Honors. ....	15
C.	Criminal Penalties Are Necessary To Deter And Punish False Claims To Military Medals. ....	18
D.	Fraudulent Claims Of Military Medals Distort Military History And Harm Soldiers And Veterans. ....	20
1.	Medals fraud perverts historical accounts of wartime events. ....	20
2.	Medals fraud exacts a substantial toll on society in general. ....	21
3.	Medals fraud dishonors America’s true heroes. ....	23
III.	The First Amendment Does Not Protect False Claims Of Military Valor. ....	24
A.	False Claims Of Military Valor Have Been Historically Condemned And Fall Within A Well-Defined Category Of Speech—False Statements Of Fact—That Lacks First Amendment Protection. ....	25
B.	The Stolen Valor Act Does Not Impinge Upon “High Value” Speech, And It Advances The Critically Important State Interest Of Preserving The Integrity Of The Military Honors System. ....	30
	CONCLUSION .....	32

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Brown v. Entm't Merchs. Ass'n</i> , 131 S. Ct. 2729 (2011) .....	27, 28, 30
<i>Cent. Hudson Gas &amp; Elec. Corp. v. Pub. Serv. Comm'n of N.Y.</i> , 447 U.S. 557 (1980) .....	27
<i>Chaplinsky v. New Hampshire</i> , 315 U.S. 568 (1942) .....	26
<i>Connick v. Myers</i> , 461 U.S. 138 (1983) .....	31
<i>Dun &amp; Bradstreet, Inc. v. Greenmoss Builders, Inc.</i> , 472 U.S. 749 (1985) .....	26, 30
<i>Garrison v. Louisiana</i> , 379 U.S. 64 (1964) .....	26
<i>Gertz v. Robert Welch, Inc.</i> , 418 U.S. 323 (1974) .....	26, 31
<i>Herbert v. Lando</i> , 441 U.S. 153 (1979) .....	26
<i>Holder v. Humanitarian Law Project</i> , 130 S. Ct. 2705 (2010) .....	31

TABLE OF AUTHORITIES — Continued

	Page
<i>Hustler Magazine v. Falwell</i> , 485 U.S. 46 (1988) .....	26
<i>Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.</i> , 538 U.S. 600 (2003) .....	26
<i>Konigsberg v. State Bar of Cal.</i> , 366 U.S. 36 (1961) .....	27
<i>Marsh v. Chambers</i> , 463 U.S. 783 (1983) .....	29
<i>Purcell v. Gonzalez</i> , 549 U.S. 1 (2006) (per curiam).....	24
<i>R.A.V. v. City of St. Paul</i> , 505 U.S. 377 (1992) .....	26
<i>Rostker v. Goldberg</i> , 453 U.S. 57 (1981) .....	32
<i>Snyder v. Phelps</i> , 131 S. Ct. 1207 (2011) .....	30, 31
<i>Time, Inc. v. Hill</i> , 385 U.S. 374 (1967) .....	26, 27
<i>Tinker v. Des Moines Indep. Cmty. Sch. Dist.</i> , 393 U.S. 503 (1969) .....	28, 29

TABLE OF AUTHORITIES — Continued

	Page
<i>United States v. Alvarez</i> , 617 F.3d 1198 (9th Cir. 2010) .....	24, 25
<i>United States v. Alvarez</i> , 638 F.3d 666 (9th Cir. 2011) .....	28
<i>United States v. Ferber</i> , 458 U.S. 747 (1982) .....	27
<i>United States v. Stevens</i> , 130 S. Ct. 1577 (2010) .....	26, 27, 28, 29
<i>Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.</i> , 425 U.S. 748 (1976) .....	26
<b>FEDERAL STATUTES</b>	
10 U.S.C. § 1121 .....	11
10 U.S.C. § 1128 .....	11
10 U.S.C. § 1129 .....	11
10 U.S.C. § 3741 .....	11
10 U.S.C. § 3742 .....	11
10 U.S.C. § 3746 .....	11
10 U.S.C. § 3749 .....	11
10 U.S.C. § 3751 .....	11

TABLE OF AUTHORITIES — Continued

	Page
10 U.S.C. § 6241 .....	11
10 U.S.C. § 6242 .....	11
10 U.S.C. § 6244 .....	11
10 U.S.C. § 6245 .....	11
10 U.S.C. § 8741 .....	11
10 U.S.C. § 8742 .....	11
10 U.S.C. § 8746 .....	11
10 U.S.C. § 8749 .....	11
10 U.S.C. § 8751 .....	11
Stolen Valor Act, 18 U.S.C. § 704 .....	3, 14, 24, 28
Act of Dec. 21, 1861, 12 Stat. 329 .....	7
Act of July 12, 1862, 12 Stat. 623. ....	8
Act of July 16, 1862, 12 Stat. 538. ....	7
Act of Apr. 27, 1916, 39 Stat. 53 .....	10
Act of June 3, 1916, 39 Stat. 166 .....	11
Act of July 9, 1918, 40 Stat. 845 .....	11
Act of Feb. 24, 1923, 42 Stat. 1286.....	12

TABLE OF AUTHORITIES — Continued

	Page
Act of Apr. 21, 1928, 45 Stat. 437 .....	12
Act of June 25, 1948, 62 Stat. 732 .....	12
Act of May 24, 1949, 63 Stat. 489 .....	13
Act of Sept. 13, 1994, 108 Stat. 1796.....	13
Stolen Valor Act of 2005, Pub. L. No. 109-437, § 2, 120 Stat. 3266 (2006).....	14
 STATE STATUTES	
Cal. Penal Code § 532b (2010).....	14
Conn. Gen. Stat. § 53-378 (2007).....	14
720 Ill. Comp. Stat. (2011) .....	14
Iowa Code § 718B.1 (2011) .....	14
Ky. Rev. Stat. Ann. § 434.444(1)(a) (2008).....	14
Mo. Ann. Stat. § 578.510(3) (2007).....	14, 15
Okla. Stat. tit. 72, § 6-1 (2005) .....	14
Tenn. Code Ann. § 58-1-118 (2009).....	14, 15
Utah Code Ann. § 76-9-706 (2008) .....	14
 LEGISLATIVE AND REGULATORY MATERIALS	
32 C.F.R. § 507.12.....	13, 28

TABLE OF AUTHORITIES — Continued

	Page
63 Fed. Reg. 27208 (May 18, 1998).....	13
152 Cong. Rec. H8819-01 (daily ed. Dec. 6, 2006) .....	14
H. Rep. No. 1484, 67th Cong., 4th Sess. 1 (1923) .....	12
Office of the Under-Sec’y of Def., Dep’t of Def., Report to the Senate and House Armed Service Committees on a Searchable Military Valor Decorations Database (March 2009).....	18
Senate Comm. on Veterans’ Affairs, 93d Cong., 1st Sess., Medal of Honor Recipients 1861-1973 (1973).....	8, 9, 10, 11
<b>BOOKS</b>	
<i>Above and Beyond: A History of the Medal of Honor from the Civil War to Vietnam</i> (Boston Pub. Co. ed., 1985) .....	10
Fred L. Borch, <i>For Military Merit: Recipients of the Purple Heart</i> (2010).....	6
Edward C. Boynton ed., <i>General Orders of George Washington Issued at Newburgh on the Hudson 1782-1783</i> (1883; reprint 1909).....	4, 5, 6, 28
B.G. Burkett & Glenna Whitley, <i>Stolen Valor: How the Vietnam Generation was Robbed of Its Heroes and History</i> (1998) .....	3, 15, 17, 18, 19, 20, 21, 22

TABLE OF AUTHORITIES — Continued

	Page
J. Worth Carnahan, <i>Manual of the Civil War and Key to the Grand Army of the Republic and Kindred Societies</i> (1897).....	8
Thomas Fox, <i>Drummer Boy Willie McGee, Civil War Hero and Fraud</i> (2008).....	8, 9
Henry Mark Holzer & Erika Holzer, <i>Fake Warriors: Identifying, Exposing, and Punishing Those Who Falsify Their Military Service</i> (2003) .....	15, 16, 17, 22
George Lang, et al., <i>Medal of Honor Recipients 1863-1994</i> (1995).....	7, 11
Allen Mikaelian, <i>Medal of Honor: Profiles of America’s Military Heroes from the Civil War to the Present</i> (2002).....	9, 10
Edward F. Murphy, <i>Vietnam Medal of Honor Heroes</i> (2005).....	23
John J. Pullen, <i>A Shower of Stars: The Medal of Honor and the 27th Maine</i> (1996).....	11
Theo. F. Rodenbaugh, <i>Uncle Sam’s Medal of Honor</i> (1886).....	7
Larry Smith, <i>Beyond Glory: Medal of Honor Heroes in Their Own Words</i> (2003) .....	8, 23

TABLE OF AUTHORITIES — Continued

	Page
 ARTICLES	
Benjamin Alexander-Bloch, <i>Groom Gets Feds to Snap to Attention: Fake Navy Uniform Worn at Wedding</i> , New Orleans Times-Picayune, Oct. 2, 2008, at 1 .....	15
Allen G. Breed, <i>POW Benefits Being Taken by Non-Deserving</i> , Deseret Morning News, April 12, 2009, at A10 .....	21
George Brennan, <i>Cape Cod, Mass.-Area Tribal Chairman Steps Down Amid Scandal</i> , Cape Cod Times, Aug. 25, 2007 .....	17
Stella M. Chavez, <i>'Hero' Pleads Guilty to Lies About War Honors</i> , Dall. Morning News, August 11, 2007, at 1B.....	19
Edward Collimore, <i>Pinning Crime on Fake Heroes: N.J. Agent Helps Expose and Convict Those with Bogus U.S. Medals</i> , Phila. Inquirer, Feb. 11, 2004, at A1 .....	3, 16, 17, 22
John Crewdson, <i>False Courage: Claims for Top Military Honors Don't Hold Up</i> , Chi. Trib., Oct. 26, 2008, at 1 .....	16, 19
David Dishneau, <i>Man Charged With Faking War Wounds</i> , Charleston Daily Mail, Sept. 22, 2009, at 8A.....	22

TABLE OF AUTHORITIES — Continued

	Page
Dan Frosch, <i>A Leader of Veterans is Exposed as a Fraud</i> , N.Y. Times, May 15, 2009, at A14.....	23
<i>Half of MOH Entries in Library of Congress Project are Incorrect</i> , Army Times, Oct. 1, 2007, at 18 .....	21
Peter Hecht, <i>Medal Liars Face New Sanctions</i> , Sacramento Bee, Dec. 27, 2007, at A3.....	29
Patty Henetz, <i>S. L. Man’s Military Memoir Questioned</i> , Deseret Morning News, Apr. 18, 2004, at B03 .....	20
Lisa Hoffman, <i>Phony Iraq Warriors Marching Up: Fakes Seen as Losers Trying to Boost Image</i> , Memphis Com. Appeal, Mar. 27, 2005, at A11.....	19
Mike Hudson, <i>Real War Veterans Increasingly Uncover Truths of ‘Wannabes,’</i> Roanoke Times, Nov. 16, 2003, at A4 .....	16
Alex Kuffner, <i>Fake Medal Tarnishes a Heroic Past</i> , Providence J. Bull., July 24, 2003, at 1. ....	17
Adrienne Lu, <i>Ex-N.J. Veterans Director Lied About War Record</i> , Phila. Inquirer, Dec. 7, 2008, at B01 .....	17

TABLE OF AUTHORITIES — Continued

	Page
Daniel Monteverde, <i>False Heroes Hide Behind Honor Plates</i> , Dall. Morning News, Aug. 23, 2008, at 1A.....	17, 22, 23
Michael L. Nunnally, <i>Sole Survivor: Frauds, Imposters and the Battle of the Little Bighorn</i> , 21 Res. Rev., J. Little Big Horn Assocs. (2007) .....	9
Megha Satyanarayana, <i>Another Accused of Faking Medals</i> , Sun Herald, Apr. 2, 2008, at A7 .....	19
Kevin Simpson, <i>Man Unmasked as Fake Military Hero in Springs Reappears as “Lawyer” in the Highlands</i> , Denver Post, July 24, 2011, at B01 .....	19
Larry Sklenar, <i>Theodore W. Goldin: Little Big Horn Survivor and Winner of the Medal of Honor</i> , 80 Wis. Mag. Hist. 106 (1996-1997).....	8
Russell Working, <i>Veteran Fraud Cases on the Rise</i> , Chi. Trib., Oct. 8, 2007, at 1 .....	22
Gregg Zoroya, <i>Frauds Put Up A Decorated Front Hero: Mail-Order Medals Let Phonies Play Hero</i> , USA Today, June 21, 2006, at 3A .....	13

TABLE OF AUTHORITIES — Continued

	Page
WEBSITES	
Congressional Medal of Honor Society, History, <a href="http://www.cmohs.org/medal-history.php">http://www.cmohs.org/medal-history.php</a> .....	9
U.S. Attorney’s Office, W.D. Wa., Press Release, Northwest Crackdown on Fake Veterans in “Operation Stolen Valor”: Phony Vets Scam more than \$1.4 Million and Damage Image of Honorable Veterans (Sept. 21, 2007), available at <a href="http://www.justice.gov/usao/waw/press/2007/sep/operationstolenvalor.html">http://www.justice.gov/usao/waw/press/2007/ sep/operationstolenvalor.html</a> . ....	22
U.S. Attorney’s Office, W.D. Va., Press Release, Former Dickenson County Commissioner of Revenue Sentenced on Defrauding Department of Veterans Affairs and Lying About Military Service (July 12, 2011), <a href="http://www.justice.gov/usao/vaw/news/2011/rob&lt;br/&gt;bins_12jul2011.html">http://www.justice.gov/usao/vaw/news/2011/rob bins_12jul2011.html</a> .....	17

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**BRIEF OF *AMICUS CURIAE* THE  
AMERICAN LEGION SUPPORTING PETITIONER**

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**INTEREST OF *AMICUS CURIAE*<sup>1</sup>**

The American Legion is a nonpartisan, not-for-profit organization that was chartered and incorporated by Congress in 1919. It is the nation's largest veterans service organization. It is committed to mentoring and sponsorship of community youth programs, advocating

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<sup>1</sup> All counsel of record consented to the filing of this *amicus* brief. *Amicus* states that no portion of this brief was authored by counsel for a party and that no person or entity other than *amicus* or its counsel made a monetary contribution to the preparation or submission of this brief.

patriotism and honor, promoting a strong national defense, and continued devotion to service members and veterans.

The Legion offers a number of programs and activities that reflect its commitment to America's veterans. The Heroes to Hometowns program is the only nationwide reintegration assistance service for wounded veterans from Iraq and Afghanistan. Additionally, millions of dollars in donations have been given to veterans and their families in times of grief, and various scholarship opportunities advance the future success of America's youth.

Legionnaires' sense of obligation to their community, state, and nation drives an honest advocacy for veterans in Washington and in the courts. The Legion works tirelessly to promote veterans' rights and quality of life. To this end, the Legion has long supported legislative efforts, such as the Stolen Valor Act, to protect veterans and their families from the negative effects of false claims concerning military medals. Those false claims diminish the sacrifices of America's military heroes and allow imposters to reap undeserved benefits that should be reserved for those who earned them. The court of appeals' decision removed the protection against such harms afforded by the Stolen Valor Act. Because the court of appeals misinterpreted the First Amendment as a shield for damaging falsehoods that have historically been censured, it should be reversed.

### SUMMARY OF ARGUMENT

The Constitution does not guarantee freedom; that's a piece of paper. The only thing that guarantees your rights is the willingness of citizens to stand up against our enemies. And one of the only things they get is decorations—62 cents of material, but they're the esteem of the nation bestowed upon you. When it's desecrated, it weakens our resolve. It's an emotional thing . . . and you can't understand the depth of that emotion unless you were there.

— Lt. B.G. Burkett, U.S. Army (ret.), recipient of the Bronze Star and author of *Stolen Valor: How the Vietnam Generation Was Robbed of Its Heroes and History* (1998).<sup>2</sup>

The medals and decorations awarded to members of the United States Armed Forces are evidence of the valor and sacrifice of those who receive them. They are bestowed by grateful Americans upon those who have heroically fought, suffered, and in many cases given their lives for the cause of freedom. Those who receive such medals are rightfully honored.

This case involves a statute designed to prevent imposters from tarnishing the medals and decorations of America's military heroes. The Stolen Valor Act, 18 U.S.C. § 704(b), prohibits, *inter alia*, persons from falsely representing that they were awarded "any decoration or medal authorized by Congress for the Armed Forces of the United States." Violating the Act is a criminal offense.

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<sup>2</sup> Quoted in Edward Collimore, *Pinning Crime on Fake Heroes: N.J. Agent Helps Expose and Convict Those with Bogus U.S. Medals*, Phila. Inquirer, Feb. 11, 2004, at A01 (hereinafter, *Bogus U.S. Medals*).

That these lies are punishable is entirely appropriate. Persons who fraudulently claim military medals steal from a centuries-old store of goodwill built by the sacrifice of America's soldiers. When they lie, imposters reap substantial benefits, including increased social and political standing, honor, and even financial rewards. For those who have received military honors, as well as for the families of those who paid the ultimate price for freedom, the effect of such fraudulent claims is devastating.

The First Amendment does not bar the United States from punishing imposters who lie about receiving military medals. This Court has repeatedly stated that false statements of fact, standing alone, deserve no First Amendment protection. Lies about receiving military medals fit squarely within that category of unprotected speech and have been subject to censure since the founding moments of our nation. None other than George Washington warned: "Should any who are not entitled to the honors, have the insolence to assume the badges of them, they shall be severely punished." *General Orders of George Washington Issued at Newburgh on the Hudson 1782-1783* 34 (Edward C. Boynton ed., 1883; reprint 1909) (hereinafter, *General Orders*).

Washington's injunction has been enshrined in law and custom for centuries. Beginning in the nineteenth century, Congress enacted a series of statutes setting forth detailed criteria for military decorations, prohibiting the fraudulent wearing of decorations, and limiting their sale. The Stolen Valor Act is only the most recent congressional effort to preserve the integrity of military decorations by combating fraudulent claims to them. This deep and rich history counsels against clothing false claims of military honors with constitutional protection.

Regulating these lies poses no threat to constitutional values—such as freedom of the press, political speech, religious speech, or the advocacy of ideas. Rather, the

Stolen Valor Act targets a specific untruth that is easy to identify and that disserves the interests of all Americans. False claims to valor have warped historical accounts of America's military endeavors, diluted the honor due to true military heroes, and caused untold pain to service members, veterans, and their families. The Stolen Valor Act is a necessary tool to preserve vital military honors and ensure that America's true heroes receive the quiet recognition to which they are entitled.

The American Legion respectfully submits this brief to offer an historical overview of laws combating fraudulent claims to medals and to provide a definitive statement by America's largest veterans service organization concerning the acute harm that flows from such claims. The historical evidence shows that false claims of military honor have never been viewed as protected speech, and that government has always pursued its legitimate interest in suppressing this uniquely pernicious species of fraud. The harm that this fraud causes to America's military and to society as a whole counsels deference to Congress's historically rooted determination that a narrowly tailored prohibition is necessary.

## **ARGUMENT**

### **I. Throughout History, The United States Government Has Sought To Preserve The Integrity Of Military Honors And To Punish Those Who Falsely Claim Them.**

#### **A. Military Honors Are Intertwined With Our Nation's Founding.**

On August 7, 1782, General George Washington announced the creation of the first U.S. military decoration, "the figure of a heart in purple cloth." *General Orders, supra*, at 35. It would be awarded to recognize a "singularly meritorious action," "instances of unusual gallantry," or "extraordinary fidelity and essential service."

*Ibid.* To guard against erroneous awards, Washington required that the decoration be conferred only after a showing of “incontestable proofs” of merit, and he directed that “the name and regiment of the person, with the action so certified, are to be enrolled in the Book of Merit which will be kept at the Orderly Office.” *Ibid.*

At the same time, Washington also announced the creation of two lesser decorations: honorary badges to be given to those “who have served more than three years with bravery, fidelity and good conduct” and to those who have served for more than six years with “equal distinction.” *General Orders, supra*, at 34. By recognizing such levels of valor and service, Washington hoped to “cherish a virtuous ambition in his soldiers” and “encourage every species of military merit.” *Id.* at 35. Because the decorations were not reserved solely for officers, General Washington added: “The road to glory in a patriot army and a free country is thus opened to all.” Fred L. Borch, *For Military Merit: Recipients of the Purple Heart 2* (2010).

Washington recognized the value of these newly created decorations and the temptation to falsely claim them. He warned: “Should any who are not entitled to the honors, have the insolence to assume the badges of them, they shall be severely punished.” *General Orders, supra*, at 34. Washington subsequently issued an order to prevent “misapplication” of the decorations. *Id.* at 35. He clarified that retired soldiers were ineligible, and that he would not bestow “any honorary distinction” on a disgraced or punished soldier, “unless he shall have wiped away the stain his reputation has suffered by some very brilliant achievement.” *Id.* at 35–36.

Early Congresses also took an active role in promoting military achievement by awarding special medals to recognize outstanding service and commemorate important victories. The Continental Congress instructed Benjamin Franklin to employ the best Parisian artists to strike

Congressional medals during the Revolutionary War. Theo. F. Rodenbaugh, *Uncle Sam's Medal of Honor* 407 (1886). The first medal struck was a silver medal for Lieutenant-Colonel Fleury, a French officer who entered the American army and led an assault in 1779 at the Battle of Stony Point. *Id.* at 407-408. With the medal, Congress thanked him for “his zeal, activity, military genius and gallantry.” *Id.* at 408. Other special congressional medals were awarded after major victories to General Horatio Gates, General Anthony Wayne, General Daniel Morgan, General Nathaniel Greer, General Henry Lee, and Captain John Paul Jones. George Lang, et al., *I Medal of Honor Recipients 1863-1994* xiii (1995) (hereinafter, Lang). Congress continued to vote special medals for generals during the War of 1812 and the Mexican-American War, a practice that continues today. *Ibid.*

**B. Congress And The Armed Services Have Long Taken Steps To Safeguard The Integrity Of Military Medals And To Punish Those Who Falsely Claim Them.**

**1. After the Civil War, Congress took action to preserve the integrity of military medals and combat rampant fraud.**

On December 21, 1861, President Abraham Lincoln signed a bill authorizing the Secretary of the Navy to prepare 200 “medals of honor” to be bestowed on “such petty officers, seamen, landsmen, and marines as shall distinguish themselves by gallantry in action and other seamanlike qualities during the [Civil War].” Act of Dec. 21, 1861, ch. 1, § 7, 12 Stat. 329, 330. President Lincoln subsequently authorized promotion, a gratuity of \$100, and a Medal of Honor for all seamen who distinguished “themselves in battle, or by extraordinary heroism in the line of their profession.” Act of July 16, 1862, ch. 183, § 10, 12 Stat. 538, 584. President Lincoln also authorized

Medals of Honor for Army personnel “as shall most distinguish themselves by their gallantry in action, and other soldier-like qualities, during the present insurrection.” Act of July 12, 1862, Res. No. 52, 12 Stat. 623. The War Department proceeded to award 1,520 Medals of Honor for actions taken during the Civil War. Larry Smith, *Beyond Glory: Medal of Honor Heroes in Their Own Words* xiii (2003) (hereinafter, *Beyond Glory*).

The public held Civil War heroes in the highest esteem. Senate Comm. on Veterans’ Affairs, 93d Cong., 1st Sess., *Medal of Honor Recipients 1861-1973* 4-5 (1973) (hereinafter, *Medal of Honor Report*). On April 23, 1890, Congress created the Medal of Honor Legion, which was dedicated to the Medal and its recipients. *Id.* at 5. The Medal of Honor Legion would later become the Legion of Valor of the United States of America. *Ibid.*

Unfortunately, the popularity of the Medal of Honor led to the appearance of imitation medals. J. Worth Carnahan, *Manual of the Civil War and Key to the Grand Army of the Republic and Kindred Societies* 66–68 (1897). Worse, false claims of valor became commonplace. Notable offenders included William McGee and Theodore Goldin, who misrepresented their war records in order to obtain Medals of Honor and undeserved public acclaim. Thomas Fox, *Drummer Boy Willie McGee, Civil War Hero and Fraud* (2008) (hereinafter, *Willie McGee*); Larry Sklenar, *Theodore W. Goldin: Little Big Horn Survivor and Winner of the Medal of Honor*, 80 *Wis. Mag. Hist.* 106, 119-123 (1996-1997).<sup>3</sup>

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<sup>3</sup> Ironically, fraud was so rampant at this time that another would-be hero pretended to be McGee for years. See *Willie McGee, supra*, at 204-205. Much like Alvarez, McGee’s misdeeds were not limited to fraudulently procuring a Medal of Honor. McGee also claimed to be the sole survivor of Custer’s Last Stand, gaining him a second, short-lived burst of notoriety and a mitigating factor at a criminal sentence-

In response to abuses like these, Congress and the armed services took action to limit fraud and “protect the dignity of the original medal.” *Medal of Honor Report, supra*, at 4. In 1869, the military began releasing lists of Medal of Honor recipients for private publication. *Id.* at 5. Just before World War I, Congress created an official “Medal of Honor Roll.” *Id.* at 8-9. Following World War II, the United States Army and Navy also began publishing books listing Medal of Honor recipients in their respective services. *Id.* at 5. And in 1968 and 1973, the Senate published updated lists of all Medal of Honor recipients, as well as a history of the laws governing the Medal of Honor—a 1,200-page publication. *Id.* at v.

Congress and the War Department also made substantial efforts to refine the criteria and processes for awarding military decorations to ensure that decorations retained prestige and were not given to the undeserving. In 1876, the War Department moved away from the informality that attended early awards of medals and appointed a review board to evaluate all applications for Medals of Honor stemming from the Battle of the Little Bighorn. Allen Mikaelian, *Medal of Honor: Profiles of America’s Military Heroes from the Civil War to the Present* xx (2002) (hereinafter, *Profiles*). This *ad hoc* board heightened the criteria for medals by requiring “conspicuous acts of gallantry,” a higher standard than mere good conduct or success in battle. Congressional Medal of Honor Society, History, <http://www.cmohs.org/medal-history.php> (last visited Dec. 7, 2011) (hereinafter, CMOHS History). The board

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ing for manslaughter. *Id.* at 5, 208-210, 217-218. McGee was one of approximately 300 men who falsely claimed to be the sole survivor of Custer’s Last Stand. See Michael L. Nunnally, *Sole Survivor: Frauds, Imposters and the Battle of the Little Bighorn*, 21 Res. Rev., J. Little Big Horn Assocs. 25 (2007).

also established that the Medal of Honor would be awarded for individual accomplishment and not on a group-wide basis. *Profiles, supra*, at xx.

In 1897, the War Department barred soldiers from applying for medals to recognize their own accomplishments—a practice that had been a chronic source of fraud. *Medal of Honor Report, supra*, at 1125. The War Department also began requiring Medal of Honor recommendations to include specific eyewitness descriptions of the meritorious action, as well as “official reports of the action, record of events, muster rolles, and returns, and descriptive lists.” *Ibid.* This reduced the number of recommendations, and “subsequent citations became longer and more complete.” *Above and Beyond: A History of the Medal of Honor from the Civil War to Vietnam* 122 (Boston Pub. Co. ed., 1985).

That same year, the War Department began controlling the manufacture of Medals of Honor much more closely. For example, when the War Department ordered new ribbons for the Medal of Honor from Tiffany & Company, it warned the company against their unauthorized sale. *Medal of Honor Report, supra*, at 1125.

## **2. Congress further reformed the criteria for military medals during World War I.**

In 1916, Congress passed legislation strengthening the criteria for the Medal of Honor and requiring that all Medals of Honor be earned by action involving actual conflict with an enemy, distinguished by conspicuous gallantry or intrepidity, at the risk of life, above and beyond the call of duty. Act of Apr. 27, 1916, ch. 88, 39 Stat. 53; *Medal of Honor Report, supra*, at 8-9. Congress also empowered a board of retired generals to review all previously awarded Medals of Honor and to rescind those medals “issued for any cause other than distinguished conduct \* \* \* involving actual conflict with an enemy.”

Act of June 3, 1916, ch. 134, § 122, 39 Stat. 166, 214. Importantly, the Act made it a misdemeanor offense for anyone to wear or publicly display a Medal rescinded by the board. *Ibid.*<sup>4</sup>

In 1918, Congress created the “Pyramid of Honor.” Act of July 9, 1918, ch. 143, 40 Stat. 845, 870-873. The Pyramid recognized the supremacy of the Medal of Honor and arranged other military medals in a hierarchy below the Medal of Honor. The statutes creating the medals of the Pyramid of Honor, as amended, are the basis for today’s military decorations, including the Medal of Honor, 10 U.S.C. § 3741 (Army); *id.* § 6241 (Navy and Marine Corps); *id.* § 8741 (Air Force), the Distinguished-Service Cross, *id.* § 3742 (Army), the Air Force Cross, *id.* § 8742, the Navy Cross, *id.* § 6242, the Silver Star, *id.* § 3746 (Army); *id.* § 6244 (Navy and Marine Corp.); *id.* § 8746 (Air Force), the Distinguished Flying Cross, *id.* § 3749 (Army); *id.* § 6245 (Navy and Marine Corps); *id.* § 8749 (Air Force), Service Medals, *id.* § 3751 (Army); *id.* § 8751 (Air Force), the Legion of Merit, *id.* § 1121, the Purple Heart, *id.* § 1129, and the Prisoner-of-War Medal, *id.* § 1128. Each statute sets forth specific criteria that must be satisfied before the relevant medal or decoration may be conferred.

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<sup>4</sup> On February 15, 1917, the Army Medal of Honor Board struck 911 names from the Medal of Honor Roll, including six civilians, the 29 members of President Lincoln’s funeral guard, and the entire 27th Maine Volunteer Infantry Regiment, who had been offered Medals of Honor in return for extending their enlistments by four days to guard Washington, D.C. while the Battle of Gettysburg raged. *Medal of Honor Report, supra*, at v, 9-10; Lang, *supra*, at xv, xvii. The problematic award of Medals to the 27th Maine had been compounded by a clerical error awarding Medals even to those members of the regiment who had refused to defend Washington; this scandal caused society to condemn the regiment’s members whenever they tried to wear their Medals. John J. Pullen, *A Shower of Stars: The Medal of Honor and the 27th Maine* 128-130, 140-144 (1996).

**3. For nearly a century, federal law has prohibited wearing unauthorized military medals.**

After World War I, Congress again faced the problem of ensuring that the Medal of Honor and other service medals were not counterfeited or fraudulently claimed. When the Medal of Honor's patent expired on November 21, 1918, its design became "subject to public use." H. Rep. No. 1484, 67th Cong., 4th Sess. 1 (1923). The Secretary of War and the Judge Advocate General of the Army were thus anxious to "block [all] avenues [of unauthorized reproduction] that lead inevitably to cheapening the decorations in question." *Ibid.* They declared: "[i]f the decorations of honor and the service medals awarded by the War Department are to continue to serve the high purpose for which they are intended, they are worthy of being protected." *Id.* at 2.

Accordingly, Congress enacted legislation prohibiting wearing, manufacturing, or selling an unauthorized military medal or badge. Act of Feb. 24, 1923, Pub. L. No. 67-438, 42 Stat. 1286. The legislation provided that "the wearing, manufacture, or sale of the congressional medal of honor, distinguished service cross, distinguished service medal, or any of the service medals or badges awarded by the War Department, or the ribbon, button, or rosette thereof \* \* \* is prohibited, except when authorized under such regulations as the Secretary of War may prescribe." *Ibid.* Offenders were subject to punishment with a fine of up to \$250 and imprisonment not to exceed six months. *Ibid.*

Congress later amended the statute to name additional medals, including the Distinguished Flying Cross. Act of Apr. 21, 1928, ch. 392, 45 Stat. 437. Congress amended the statute in 1948 to cover the Navy's decorations and medals, Act of June 25, 1948, ch. 645, 62 Stat. 732, and amended it again in 1949, to cover all service

decorations of every branch of the Armed Forces, Act of May 24, 1949, ch. 139, § 16, 63 Stat. 489, 492. Concerned about lax enforcement of laws prohibiting fraudulent wearing of the Medal of Honor, in 1994 Congress increased the penalties for selling or wearing an unauthorized Medal of Honor. Act of Sept. 13, 1994, Pub. L. No. 103-322, § 320109, 108 Stat. 1796, 2113.<sup>5</sup>

In 1998, the Department of the Army issued a final rule revising its policy “governing the manufacture, sale, reproduction, possession, and wearing of military decorations.” *Manufacture, Sale, Wear, Commercial Use and Quality Control of Heraldic Items*, 63 Fed. Reg. 27208, 27208 (May 18, 1998). The rule created 32 C.F.R. § 507.12(a), which provides: “The wearing of any decoration, service medal, badge, service ribbon, lapel button, or insignia prescribed or authorized by the Department of the Army and the Department of the Air Force by any person not properly authorized to wear such device, or the use of any [such device] to misrepresent the identification or status of the person by whom such is worn is prohibited.” The rule also promulgated 32 C.F.R. § 507.12(b), which provides: “Mere possession by a person of [decorations, service medals, and ribbons, except for the Medal of Honor] is authorized provided that such possession is not used to defraud or misrepresent the identification or status of the individual concerned.”

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<sup>5</sup> The 1994 law was a response to the efforts of retired Medal of Honor recipient Mitchell Paige, who tracked people falsely claiming to have received the Medal of Honor. Gregg Zoroya, *Frauds Put Up A Decorated Front Hero: Mail-Order Medals Let Phonies Play Hero*, USA Today, June 21, 2006, at 3A. Due in part to Paige’s efforts, H.L.I. Lordship Industries, a government contractor manufacturing Medals of Honor, was punished for illegally selling 300 medals. *Ibid.*

## **II. The Stolen Valor Act Advances Congress’s Legitimate Goal Of Fighting Contemporary Medals Fraud.**

### **A. The Stolen Valor Act Updates The Historic Prohibition On Medals Fraud By Barring False Written Or Verbal Claims To Medals.**

The Stolen Valor Act is a continuation of Congress’s long-running effort to preserve the integrity of military honors and combat fraudulent claims to those awards. Records of floor debate reveal that Congress considered the Act a successor to earlier laws against false claims of valor, including Washington’s Revolutionary War orders. 152 Cong. Rec. H8819-01 (daily ed. Dec. 6, 2006). The Act was passed by unanimous consent in the Senate and by a voice vote in the House, following well-documented reports of extensive medals fraud. *Ibid.* Congress found that widespread fraudulent claims to medals “damage the reputation and meaning of such decorations and medals,” that “[f]ederal law enforcement officers have limited ability to prosecute fraudulent claims of receipt of military decorations” and medals, and that legislative action was needed “to permit law enforcement officers to protect the reputation and meaning of military decorations and medals.” Stolen Valor Act of 2005, Pub. L. No. 109-437, § 2, 120 Stat. 3266, 3266 (2006), codified at 18 U.S.C. § 704(b).<sup>6</sup>

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<sup>6</sup> Following passage of the Stolen Valor Act, a number of states enacted laws prohibiting false claims to military honors. Like the Stolen Valor Act, these state laws punish those who misrepresent, orally or in writing, that they have been awarded military medals or decorations. *E.g.*, Conn. Gen. Stat. § 53-378 (2007); Tenn. Code Ann. § 58-1-118 (2009); Utah Code Ann. § 76-9-706 (2008); Mo. Ann. Stat. § 578.510(3) (2007); 720 Ill. Comp. Stat. 5/17-2(e) (2011). Other state laws add an express “intent to defraud” requirement to the proscription against falsely representing the award of a medal or decoration. *E.g.*, Cal. Penal Code § 532b (2010); Ky. Rev. Stat. Ann. § 434.444(1)(a) (2008); Iowa Code § 718B.1 (2011); Okla. Stat. tit. 72,

The Stolen Valor Act forms a necessary bulwark against the modern problem of medals fraud. Unlike prior statutes, which targeted imposters who physically wore unearned medals, the Stolen Valor Act enables law enforcement officials to prosecute those who make false oral and written claims to medals. While those claims serve the same purpose and had the same pernicious effect as falsely donning medals—a form of symbolic speech—law enforcement was powerless to prosecute those who kept their phony medals hidden from view.

**B. The Stolen Valor Act Addresses The Current, Well-Documented, And Widespread Problem Of False Claims To Military Honors.**

The namesake for the Stolen Valor Act is B.G. Burkett and Glenna Whitley’s award-winning book, *Stolen Valor: How the Vietnam Generation was Robbed of Its Heroes and History* (1998) (hereinafter, *Stolen Valor*). Burkett and Whitley described more than 1,700 people who falsified or exaggerated their military service. Burkett, now a consultant on military fraud for various federal law enforcement agencies, exposed for the first time “the largely unknown fact that the Fake Warrior phenomenon is real, it is pernicious, it is widespread, and that imposters come from every imaginable strata of our contemporary society.” Henry Mark Holzer & Erika Holzer, *Fake Warriors: Identifying, Exposing, and Punishing Those Who Falsify Their Military Service* 8, 15-25 (2003) (hereinafter, *Fake Warriors*); Benjamin Alexander-Bloch, *Groom Gets Feds to Snap to Attention: Fake Navy Uniform Worn at Wedding*, New Orleans Times-Picayune, Oct. 2, 2008, at 1.

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§ 6-1 (2005). Some of the laws, like the Stolen Valor Act, levy increased penalties if the perpetrator has laid false claim to certain highly valued medals. *E.g.*, Mo. Ann. Stat. § 578.510(3); Tenn. Code Ann. § 58-1-118(b)(2)(c).

Investigators estimate that there are tens of thousands of imposters. *Bogus U.S. Medals, supra*, at A1; *Fake Warriors, supra*, at 5. Mike Sanborn, a former Marine and an FBI agent who investigates violations of the Stolen Valor Act, described fraudulent claims to military medals as “rampant.” John Crewdson, *False Courage: Claims for Top Military Honors Don’t Hold Up*, Chi. Trib., Oct. 26, 2008, at 1 (hereinafter, *False Courage*). Mark Bowden, author of *Black Hawk Down*, a best-selling book about the 1993 U.S. Army Ranger engagement in Somalia, termed the number of false claims to military medals as “mind-boggling,” causing him to “doubt[] anyone who tells me a war story.” Mike Hudson, *Real War Veterans Increasingly Uncover Truths of ‘Wannabes,’* Roanoke Times, Nov. 16, 2003, at A4 (hereinafter, Hudson).

Investigative journalists have uncovered staggering amounts of medals fraud. In 2008, the Chicago Tribune investigated every biography in *Who’s Who* that listed a military medal. *False Courage, supra*, at 1. Over one-third of the 333 people who claimed a medal had not received one. *Ibid.* “The men whose obituaries or profiles in *Who’s Who* make these claims are mainly individuals of note and accomplishment: lawyers, physicians, clergymen, CEOs, business executives, company presidents, university professors, career military officers, teachers, policemen, elected officials, even a psychiatrist.” *Ibid.* The same investigation found that over 80% of 273 recent obituaries had inaccurately attributed military decorations to the deceased. *Ibid.* “The Tribune also found bogus decorations, including at least two Medals of Honor, engraved on headstones in military cemeteries across the country.” *Ibid.* It uncovered a total of 84 Medals of Honor, 119 Distinguished-Service Crosses, 99 Navy Crosses, five Air Force Crosses and 96 Silver Stars, all bogus. *Ibid.*

The Chicago Tribune investigation is one of many reports detailing the widespread problem of medals fraud. Other reports have uncovered false claims to military medals by a broad cross-section of people, including the former mayor of Atlantic City, the former director of veterans programs for New Jersey, an elected Massachusetts tribal leader, a county Commissioner of Revenue, a senior ROTC instructor, a policeman, judges, a Transportation Security Administration baggage handler, a prominent speechwriter and press secretary for a presidential candidate, a consultant to the Fox News Channel on the war in Afghanistan, the first vice president of the Dallas-area NAACP, an ordained Episcopal priest, a business executive contracting with a major company, a Pittsburgh oil man, a financier, a Marine judge advocate, a civilian lawyer, a real estate agent, a general contractor, a private investigator and would-be hit man, the president of an elite airborne division association, a director of a Youth Challenge Program, nurses, a nursing home volunteer, a saloonkeeper and commander of a veterans color guard, and an elderly woman described as a “sweet little old lady.” *Stolen Valor, supra*, at 183-186; *Fake Warriors, supra*, at 16-21; George Brennan, *Cape Cod, Mass.-Area Tribal Chairman Steps Down Amid Scandal*, Cape Cod Times, Aug. 25, 2007; Daniel Monteverde, *False Heroes Hide Behind Honor Plates*, Dall. Morning News, Aug. 23, 2008, at 1A (hereinafter, *False Honor Plates*); *Bogus U.S. Medals, supra*, at A1; Alex Kuffner, *Fake Medal Tarnishes a Heroic Past*, Providence J. Bull., July 24, 2003, at 1; Adrienne Lu, *Ex-N.J. Veterans Director Lied About War Record*, Phila. Inquirer, Dec. 7, 2008, at B01; U.S. Attorney’s Office, W.D. Va., Press Release, *Former Dickenson County Commissioner of Revenue Sentenced on Defrauding Department of Veterans Affairs and Lying About Military Service* (July 12, 2011),

[http://www.justice.gov/usao/vaw/news/2011/robbins\\_12jul2011.html](http://www.justice.gov/usao/vaw/news/2011/robbins_12jul2011.html) (last visited Dec. 7, 2011).

**C. Criminal Penalties Are Necessary To Deter And Punish False Claims To Military Medals.**

Prior to 2005, federal law barred only the wearing of an unauthorized military medal or decoration. There was no prohibition on false oral or written claims to medals. This loophole was frequently exploited. Those who wished to fraudulently represent themselves as medal recipients could avoid prosecution simply by claiming to have won medals without actually wearing them. Few want to challenge those who claim to be medal recipients by demanding that they produce the medal or decoration in question. And imposters frequently copy details for their stories from reports of real medal recipients, further complicating detection. *Stolen Valor, supra*, at 519-521. Even when grounds for doubt exist, “[m]edals fraud succeeds because skeptics are usually too polite to challenge liars.” *Id.* at 359.

The public’s lack of ready access to information also facilitates false claims to military decorations. Verifying a military record often involves Freedom of Information Act requests, time, and diligence. Recent efforts to consolidate information about medal recipients have failed. In 2009, the Department of Defense completed a congressionally requested report on whether it would be possible to create a public database of all recipients of military medals. The Department of Defense concluded that such a database, while laudable, would not reduce fraud because the Privacy Act precluded publishing the personally identifiable information necessary to verify military awards. Office of the Under-Sec’y of Def., Dep’t of Def., Report to the Senate and House Armed Service Committees on a Searchable Military Valor Decorations Database (March 2009).

When challenged and asked to produce evidence of their claims, imposters frequently explain away the lack of documentation for their awards, often by citing an accident or natural disaster, or by claiming that their medals were awarded for secret, or “black,” operations that are still highly classified—at once making their purported service seem dangerous and immunizing it from scrutiny. *Stolen Valor*, *supra*, at 189-190, 490; Megha Satyanarayana, *Another Accused of Faking Medals*, Sun Herald, Apr. 2, 2008, at A7. If necessary to substantiate a false claim, imposters can easily (and, in most cases, legally) purchase military decorations online from collectors. *False Courage*, *supra*, at 1; Lisa Hoffman, *Phony Iraq Warriors Marching Up: Fakes Seen as Losers Trying to Boost Image*, Memphis Com. Appeal, Mar. 27, 2005, at A11.

Many imposters continue lying even after being exposed. Some rebuild their fake persona in new communities, or assume a new false identity. One well known imposter, Rick Glen Strandlof, was charged under the Stolen Valor Act for masquerading as a decorated Iraq War veteran named “Rick Duncan,” and later resurfaced as ex-Marine and Iraq War veteran “Rick Gold” after the charges were dismissed on First Amendment grounds. Kevin Simpson, *Man Unmasked as Fake Military Hero in Springs Reappears as “Lawyer” in the Highlands*, Denver Post, July 24, 2011, at B01. Watchdog groups readily admit that they are unable to keep up with the seemingly endless number of imposters. Stella M. Chavez, *‘Hero’ Pleads Guilty to Lies About War Honors*, Dall. Morning News, August 11, 2007, at 1B.

Congressional action was necessary to deter and punish such persistent and evasive fraudsters.

**D. Fraudulent Claims Of Military Medals Distort Military History And Harm Soldiers And Veterans.**

**1. Medals fraud perverts historical accounts of wartime events.**

Persons who have fraudulently claimed medals have been responsible for an untold number of distortions of American history. Their imagined representations of various conflicts have displaced true accounts and introduced uninformed, sensational exploits into books, television, and movies. As a result, inaccurate wartime accounts exist in countless newspapers, magazines, books, photographs, and documentaries, many of which are available in libraries across the country for generations to come.

Imposters fraudulently claiming medals have foisted fictional accounts of wartime events on Hollywood producers, New York Times journalists, respected book publishers, historians, authors, government officials, and veterans' groups. *Stolen Valor, supra*, at 385-434, 457-461, 503-506, 516-523, 584-587. One man, while incarcerated for the brutal murder of a hitchhiker, convinced a major publisher to release his memoir, complete with papers for his phony medals. *Id.* at 418-420. Another imposter became a guest history lecturer at the University of California. *Id.* at 431-433. One attorney's award-winning memoir, published through an academic press, recounted an entirely fictional tale of how he received a Silver Star for actions taken in Vietnam. Patty Henetz, *S. L. Man's Military Memoir Questioned*, *Deseret Morning News*, Apr. 18, 2004, at B03.

Shelby Stanton, one of the best-known Vietnam War historians, boasted of receiving numerous valor awards while serving as a Green Beret in Vietnam. *Stolen Valor, supra*, at 435-437. He was a distinguished lecturer, edi-

tor, and academic fellow, as well as the author of the U.S. Department of Defense's analysis of Agent Orange exposure. *Id.* at 435. Research by *Stolen Valor* author B.G. Burkett revealed that Stanton had never served in Vietnam, and that nearly all of his claims to medals were fraudulent. *Id.* at 437-438. In fact, Stanton had stolen, plagiarized, destroyed, and fabricated hundreds of documents for his books, often misrepresenting the facts of the Vietnam War in the process. *Id.* at 438-443. Nevertheless, even after Stanton's exposure, his publisher continued to sell his latest book, and the U.S. Attorney's office decided his prosecution was not a priority. *Id.* at 442-443.

Even the Library of Congress has fallen prey to medals fraud. At one time, the Library of Congress's oral history project website listed 24 phony Medals of Honor, 47 nonexistent service crosses, and 45 invented prisoner-of-war claims. *Half of MOH Entries in Library of Congress Project are Incorrect*, *Army Times*, Oct. 1, 2007, at 18.

## **2. Medals fraud exacts a substantial toll on society in general.**

Imposters who pose as medal recipients frequently do so to obtain social and economic benefits. Someone who successfully pretends to be a wounded combat veteran can obtain a 100% disability rating, worth more than \$35,000 a year in tax-free VA benefits, plus Social Security disability payments, full health coverage and educational benefits for himself and his family. Allen G. Breed, *POW Benefits Being Taken by Non-Deserving*, *Deseret Morning News*, Apr. 12, 2009, at A10. One investigation revealed that false claims of military medals enabled twelve men alone to defraud the U.S. Department of Veterans Affairs out of more than \$1.4 million in veteran's benefits. U.S. Attorney's Office, W.D. Wa., Press Release, Northwest Crackdown on Fake Veterans in "Op-

eration Stolen Valor”: Phony Vets Scam more than \$1.4 Million and Damage Image of Honorable Veterans, (Sept. 21, 2007), available at <http://www.justice.gov/usao/waw/press/2007/sep/operationstolenvalor.html> (last visited Dec. 7, 2011) (hereinafter, *Phony Vets*).

Imposters can also obtain other benefits, including tax breaks, free special license tags, free hunting and fishing licenses, military funerals, and grave markers. *Fake Warriors, supra*, at 42-45; *Bogus U.S. Medals, supra*, at A1; *False Honor Plates, supra*, at 1A. In 2003 in Virginia, 642 people claimed on their tax forms that they received the Medal of Honor, which exempts military retirement income from state taxes. But at the time there were “only four living recipients in Virginia and 132 in the country.” *Bogus U.S. Medals, supra*, at A1.

Imposters have appropriated a variety of intangible benefits, such as media attention, *Stolen Valor, supra*, at 477-480, invitations to lead parades, Russell Working, *Veteran Fraud Cases on the Rise*, Chi. Trib., Oct. 8, 2007, at 1, and invitations to preside over weddings, funerals, and baptisms, *Phony Vets, supra*. In 2008, a Marine sergeant faked post-traumatic stress and bluffed his way into the National Naval Medical Center in Bethesda, Maryland. Once there, he “wore unauthorized medals and accepted VIP invitations to rock concerts, major-league baseball games, banquets and other events meant to fete wounded warriors.” David Dishneau, *Man Charged With Faking War Wounds*, Charleston Daily Mail, Sept. 22, 2009, at 8A.

Numerous veterans’ groups have been misled into accepting imposters as members, speakers, and even leaders. *Stolen Valor, supra*, at 502-506, 516-519. Rick Glen Strandlof, who posed as a war hero and recipient of the Purple Heart and Silver Star, employed his deceptions to found a veterans’ group and campaign for candidates for

political office. Dan Frosch, *A Leader of Veterans is Exposed as a Fraud*, N.Y. Times, May 15, 2009, at A14.

### 3. Medals fraud dishonors America's true heroes.

Over 55% of the Medals of Honor awarded between World War I and 2005 have been posthumous. Edward F. Murphy, *Vietnam Medal of Honor Heroes* 5 (2005). “During the Korean and Vietnam Wars nearly 70 percent were posthumous.” *Ibid.* For this reason, “[t]hose who hold the Medal of Honor do not like to be called ‘winners.’ They feel that the actions for which they have been recognized have nothing to do with anything that might be interpreted as a contest. Therefore, they are ‘recipients’ to whom the Medal has been awarded.” *Beyond Glory, supra*, at xv.

Medal of Honor recipient Mitchell Paige, who has exposed more than 500 different military imposters, embodied that ethos of sacrifice and duty. *Beyond Glory, supra*, at 17. When asked about his exploits, he observed: “I always mention the fact that this [honor] doesn’t belong to me. It belongs to thirty-three other guys, too. \* \* \* I don’t know how else to tell it, because, after all, they were there and fought with me, but they didn’t get anything but Purple Hearts. And half of them died. The last thing I ever thought about was a medal.” *Id.* at 18.

Those who cheaply and casually lay claim to honor reserved for brave warriors dishonor the courage and sacrifice of those who have received the Medal of Honor, the Purple Heart, and other military decorations. For true heroes and recipients, “it’s akin to a slap across the face when false heroes take credit—and receive benefits—for actions they never performed.” *False Honor Plates, supra*, at 1A. Our nation’s finest soldiers now must endure skepticism about their valor, rather than enjoying the

unalloyed thanks of a grateful nation. See Hudson, *supra*, at A4.

As the largest U.S. veterans service organization, the American Legion unequivocally states that medals fraud harms veterans. It creates suspicion of valid award recipients and it dilutes the precious and hard-won recognition that should rightly be accorded only to those who went above and beyond the call of duty. Cf. *Purcell v. Gonzalez*, 549 U.S. 1, 7 (2006) (per curiam) (reasoning that voter fraud “debas[es]” and “dilut[es]” the votes of qualified voters, making them “feel disenfranchised”).

### **III. The First Amendment Does Not Protect False Claims Of Military Valor.**

The Stolen Valor Act penalizes anyone who “falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States[.]” 18 U.S.C. § 704(b). The Act proscribes a type of speech—false statements of fact—that, taken alone, is not entitled to protection under the Free Speech Clause of the First Amendment. Moreover, the Act prohibits a specific type of false statement of fact—fraudulent claims to military medals—that historically has been prohibited. The Stolen Valor Act carefully targets that highly disfavored subset of unprotected fraudulent speech without any risk to high-value political, religious, or other “speech that matters.”

The court of appeals erroneously concluded that the Stolen Valor Act must be evaluated using strict scrutiny because it “does not fit neatly into any of those ‘well-defined’ and ‘narrowly limited’ classes of speech previously considered unprotected” by the First Amendment *United States v. Alvarez*, 617 F.3d 1198, 1214 (9th Cir. 2010). The court of appeals grounded that conclusion on its determination that “false factual speech, as a general

category unto itself,” is not among the “historical and traditional categories” of speech that merit no First Amendment protection. *Id.* at 1206. Rather, according to the court of appeals, the “historical and traditional categories of unprotected false factual speech have thus far included only certain *subsets* of false factual statements,” such as defamation and fraud. *Id.* at 1213.

The court of appeals ignored that fraudulent claims to military medals and decorations have been condemned throughout American history and have been sanctioned in various forms since Washington issued his injunction against them in 1782. The universal opprobrium reserved for false claims of valor arises from the recognition that such claims inflict incalculable harm on members of the military and veterans, their family members, and the nation as a whole. The prohibition of such claims mitigates that harm while posing no threat to high value speech on matters of public concern. The court of appeals’ ruling should be reversed.

**A. False Claims Of Military Valor Have Been Historically Condemned And Fall Within A Well-Defined Category Of Speech—False Statements Of Fact—That Lacks First Amendment Protection.**

The Stolen Valor Act is an important part of the military honors system. It advances the longstanding Congressional objective of safeguarding military decorations against dilution by deterring and punishing those who would falsely claim them. In so doing, the Act prohibits a specific type of speech—knowingly false claims to have been awarded a military medal—that has been subject to various forms of regulation and prohibition for over two centuries. The speech barred by the Stolen Valor Act merits no First Amendment protection.

“Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances.” *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571 (1942). “From 1791 to the present’ \* \* \* the First Amendment has ‘permitted restrictions upon the content of speech in a few limited areas,’ and has never include[d] a freedom to disregard these traditional limitations.” *United States v. Stevens*, 130 S. Ct. 1577, 1584 (2010) (quoting *R.A.V. v. City of St. Paul*, 505 U.S. 377, 382-383 (1992)). Content-based regulations of speech that fall within these limited and historically-recognized areas are not subject to strict scrutiny.

The Court has consistently characterized false statements of fact as a category of speech that, as a general matter, merits no First Amendment protection. See *Hustler Magazine v. Falwell*, 485 U.S. 46, 52 (1988) (“False statements of fact are particularly valueless.”); *Herbert v. Lando*, 441 U.S. 153, 171 (1979) (“Spreading false information in and of itself carries no First Amendment credentials.”); *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 (1976) (“Untruthful speech, commercial or otherwise, has never been protected for its own sake.”); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974) (“[T]here is no constitutional value in false statements of fact.”); *Time, Inc. v. Hill*, 385 U.S. 374, 390 (1967) (“[T]he knowingly false statement and the statement made with reckless disregard of the truth do not enjoy constitutional protection.” (quoting *Garrison v. Louisiana*, 379 U.S. 64, 75 (1964))).

Permissible prohibitions on false statements of fact address specific types of falsehoods that are traditionally recognized as having no constitutional value. See, e.g., *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 617 (2003) (fraud); *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 760–761 (1985)

(defamation); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 565-566 (1980) (false and misleading commercial speech); *Time*, 385 U.S. at 388-390 (1967) (false light invasion of privacy); *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 49 n.10 (1961) (perjury). Similarly, several federal statutes punish specific types of false factual statements. See Brief of the United States at 29-33. The Court has observed that “it is not rare that a content-based classification of speech has been accepted because it may be appropriately generalized that within the confines of the given classification, the evil to be restricted so overwhelmingly outweighs the expressive interests, if any, at stake, that no process of case-by-case adjudication is required.” *United States v. Ferber*, 458 U.S. 747, 763-764 (1982).

While holding that certain types of historically-sanctioned speech fall outside the ambit of First Amendment protection, the Court has rejected the notion that Congress has a “free-floating” power to prohibit speech based on a “categorical balancing of the value of the speech against its societal costs.” *Stevens*, 130 S. Ct. at 1585. Accordingly, this Court has cautioned against “recognizing new categories of unprotected speech” based on legislative conclusions that “certain speech is too harmful to be tolerated.” *Brown v. Entm’t Merchs. Ass’n*, 131 S. Ct. 2729, 2734 (2011). Instead, First Amendment protection should be found lacking only upon “persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription.” *Ibid.*

Both *Stevens* and *Brown* addressed statutes placing “novel restriction[s] on [the] content” of speech. Neither depictions of animal cruelty nor violent images had historically been treated as unprotected speech. Rather, the statutes that were invalidated were truly *sui generis*

prohibitions on speech that lacked any “historical warrant” for their existence. See *Brown*, 131 S. Ct. at 2734.

Unlike laws prohibiting depictions of animal cruelty and regulating violent video games, the Stolen Valor Act easily satisfies the test of history and tradition articulated in *Brown* and *Stevens*. Much like laws against fraud, defamation, and false commercial speech, the Stolen Valor Act targets a narrow subset of false factual speech that has long been subject to varying forms of government regulation.<sup>7</sup> Beginning with General Washington and continuing through the present day, the United States government has sought to preserve the value of military decorations (and the honor system of which they are a critical component) by punishing those who possess the “insolence to [falsely] assume the badges of them.” *General Orders*, *supra*, at 34.

For nearly 90 years, federal law has subjected to criminal penalty those who knowingly wear a military medal without authorization and for the purpose of misrepresenting their status. See 18 U.S.C. § 704(a); 32 C.F.R. § 507.12(a); *supra*, at Pt. I.B.3. The prohibition has been expanded and refined by Congress on multiple occasions, all without generating a judicial ruling that the prohibition trampled on First Amendment freedoms. See *supra*, at Pt. I.B.3. This Court has recognized that items worn on one’s person may constitute speech protected by the First Amendment. *E.g.*, *Tinker v. Des*

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<sup>7</sup> Judge Kozinski’s parade of horrors described in his opinion concurring in the denial of rehearing *en banc* invokes the types of “white lies” that, in his view, are a necessary component of daily living. See *United States v. Alvarez*, 638 F.3d 666, 674–675 (9th Cir. 2011). Of course, assuming that they could even be characterized as false statements of fact, the various statements that he describes (*e.g.*, “I gave at the office”) have no deeply-rooted historical warrant for regulation or prohibition. Nor would their regulation advance even the most cursory governmental interest.

*Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 505 (1969). Wearing an unauthorized medal sends a clear, distinct message: “I performed acts of heroism that satisfy the statutory requirements for earning this medal.” That false message, which has been prohibited for nearly a century, is precisely the same false message banned by the Stolen Valor Act.<sup>8</sup>

Those long standing prohibitions on fraudulently wearing unearned medals, in turn, grew out of an even older tradition of defending military medals against false claims and dilution. For nearly 150 years, Congress and the military have formally sought to restrict the award of military medals to the truly deserving. See *supra*, at Pt. I. And over two centuries ago, our nation’s first President had no reservation about punishing those who falsely laid claim to military decorations. See *supra*, at Pt. I.A. As president of the Constitutional Convention and President of the United States when the Bill of Rights was ratified, Washington’s view that medals fraud is not protected speech should be given great weight. Cf. *Marsh v. Chambers*, 463 U.S. 783, 790 (1983) (recognizing that acts of the First Congress, “many of whose members had taken part in framing [the Constitution], is contemporaneous and weighty evidence of its true meaning” (citation omitted)).

The unbroken history of American military decorations is inseparable from efforts to deter and punish those who would fraudulently claim them. This rich tradition amply satisfies the Court’s requirement in *Stevens*

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<sup>8</sup> The respondent has conceded by his own actions that false medals claims are properly subject to government sanction. When the Three Valleys Municipal Water District voted to censure him for his false military service claims, Alvarez, who still sat on the board, voted to censure himself. Peter Hecht, *Medal Liars Face New Sanctions*, Sacramento Bee, Dec. 27, 2007, at A3.

and *Brown* that the government provide a “historical warrant” to exclude speech from the First Amendment’s protective arc.

**B. The Stolen Valor Act Does Not Impinge Upon “High Value” Speech, And It Advances The Critically Important State Interest Of Preserving The Integrity Of The Military Honors System.**

The Stolen Valor Act regulates only historically unprotected speech and poses no risk to high value speech, such as the advocacy of ideas or debate on matters of public interest and importance. The Act therefore affords adequate “breathing space” for “speech that matters.” In addition, the Act advances the important government interest of preventing the harm caused by false claims to medals and preserving the military honors system that has been fostered by Congress and the United States Armed Services for over 200 years.

Knowingly false assertions that the speaker was awarded a military medal, taken collectively, have a significant harmful effect upon American’s active duty military, veterans, military families, and the military honors system as a whole. What is more, they comprise extremely low-value speech on matters of private concern. They assert only that the individual speaker performed valorous acts sufficient to achieve recognition with a military medal. “[W]here matters of purely private concern are at issue, First Amendment protections are often less rigorous.” *Snyder v. Phelps*, 131 S. Ct. 1207, 1215 (2011). When speech on purely private matters is regulated, “there is no threat to the free and robust debate of public issues; there is no potential interference with a meaningful dialogue of ideas’; and the ‘threat of liability’ does not pose the risk of ‘a reaction of self-censorship’ on matters of public import.” *Id.* at 1215–1216 (quoting *Dun & Bradstreet*, 472 U.S. at 760).

Because the Stolen Valor Act regulates purely private speech that falls within a traditional category of speech unprotected by the First Amendment, it poses no risk to other forms of protected speech, such as speech “relating to any matter of political, social, or other concern to the community.” *Snyder*, 131 S. Ct. at 1216 (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983)). Unlike political, religious, or other speech concerning issues of public importance, the purely private speech that the Act regulates has no social utility or benefit. Rather, it is a form of fraudulent conduct aimed at stealing from the deep reservoir of goodwill and admiration earned by the blood and sacrifice of true American heroes. Accordingly, there is no need to cabin the reach of the Stolen Valor Act—much less invalidate it entirely—because it does not impair any constitutionally valued “speech that matters.” See *Gertz*, 418 U.S. at 341. Rather, it is “carefully drawn to cover only a narrow category of speech” that the government may permissibly regulate. See *Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2723 (2010).

The Stolen Valor Act serves an important national interest by preventing harm to soldiers, veterans, military families, the military honors system, and society as a whole. The Act serves several salutary purposes. It deters imposters from diluting the integrity and value of military medals and decorations by making them appear more common than they truly are. It prohibits imposters from trading on false claims of valor to receive economic, reputational, and other social benefits. It safeguards the historical record, which may otherwise be compromised by imposters who are unafraid of prosecution. And, perhaps most importantly, it honors America’s true war heroes by formally prohibiting false claims that unjustly tarnish their reputation by subjecting their honor to doubt. These objectives are worthy of deference as they

lie within the special competence of Congress to regulate matters touching on “military affairs.” See *Rostker v. Goldberg*, 453 U.S. 57, 64–65 (1981).

### CONCLUSION

The people of the United States, whether active duty service member, veteran, or civilian, have a strong interest in protecting the United States military’s historic system of awards. Congress passed the Stolen Valor Act to combat an increasing threat posed to this system, and the benefits it conveys, by imposters who say they have received medals or decorations when they have not. Because the Stolen Valor Act is constitutional under the First Amendment, the American Legion respectfully requests that the judgment of the court of appeals be vacated and the case remanded for further proceedings.

Respectfully submitted.

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