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MEDIA COALITION APPLAUDS SUPREME COURT'S PRINCIPLED DEFENSE OF FREE SPEECH IN REJECTING "STOLEN VALOR" ACT

Law Aimed at Lies About Military Honors Would Have Given the Government Broad Powers as a Censor

WASHINGTON, D.C., June 28, 2012—The Supreme Court today [held](#) that the Stolen Valor Act, a federal law that makes it a crime to lie about having received military honors, violates the free speech protections of the First Amendment.

"Fundamental constitutional principles require that laws enacted to honor the brave must be consistent with the precepts of the Constitution for which they fought," Justice Kennedy wrote in a plurality decision.

David Horowitz, Executive Director of Media Coalition, Inc., a trade association that defends the First Amendment rights of mainstream media, welcomed the ruling. "Ultimately, the question before the Court was whether the government has the power to prosecute people who tell lies, even if there is no harm and no fraud involved. As Justice Kennedy acknowledged, the best way to counter false speech is always more speech – not censorship, and certainly not criminal prosecution," Horowitz said.

In a [friend-of-the-court brief](#) filed in the case, Media Coalition argued that while defamation and fraud are recognized historic exceptions to the First Amendment, there has never been an exception for false speech. In his opinion, Justice Kennedy wrote, "The Court has never endorsed the categorical rule the Government advances: that false statements receive no First Amendment protection. Our prior decisions have not confronted a measure, like the Stolen Valor Act, that targets falsity and nothing more."

Xavier Alvarez, a local official in California, was prosecuted for claiming that he received the Congressional Medal of Honor. Alvarez's claim was false—as were his claims (not

the subject of the prosecution) that he had played hockey for the Detroit Red Wings and had married a Mexican starlet. But, the Court held there is no “general exception to the First Amendment for false statements.” Justice Kennedy reasoned, “Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give government a broad censorial power unprecedented in this Court’s cases or in our constitutional tradition.”

Justice Kennedy’s plurality opinion was joined by Chief Justice Roberts, Justice Ginsburg, and Justice Sotomayor. In a separate opinion, Justice Breyer, joined by Justice Kagan, agreed that the Act was unconstitutional, primarily because of the breadth of its coverage, noting “the potential haziness of individual memory along with the large number of military awards covered (ranging from medals for rifle marksmanship to the Congressional Medal of Honor).” Justice Breyer’s opinion, which was critical to obtaining a majority of the Court to hold the act unconstitutional, thus turned on one of the arguments made in Media Coalition’s amicus brief—that the Court “should not sustain Alvarez’s conviction unless it also would be prepared to sustain the conviction of a veteran who falsely told a grandchild of having won the Navy Expert Rifleman Medal.”

“The free speech marketplace would not work if government were to act as a truth police,” said Michael A. Bamberger, lead counsel for Media Coalition. “The Supreme Court’s decision recognizes that, with only defined historic exceptions such as defamation and fraud, we must tolerate false speech because the principle of unfettered discourse defines our society.”

The Media Coalition amicus brief was filed on behalf of American Booksellers Foundation for Free Expression, American Federation of Television and Radio Artists, Association of American Publishers, Inc., Comic Book Legal Defense Fund, Entertainment Merchants Association, Freedom to Read Foundation, PEN American Center, Village Voice Media Holdings, LLC, and Writers Guild of America, West, Inc.

The case was argued before the Supreme Court on February 22, 2012. The media groups are represented by Mr. Bamberger and Richard M. Zuckerman of SNR Denton US LLP, general counsel to Media Coalition, and Jonathan Bloom of Weil Gotshal & Manges LLP.

Read more at mediacoalition.org.

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