



# Iowa General Assembly

## 2012 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.supremecourt.gov/opinions/11pdf/11-210d4e9.pdf>

**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### LEGAL UPDATE—FALSELY CLAIMING MILITARY MEDALS

Filed by the United States Supreme Court

June 28, 2012

United States v. Alvarez

No. 11–210

<http://www.supremecourt.gov/opinions/11pdf/11-210d4e9.pdf>

**Facts.** In 2007, the defendant, Xavier Alvarez, made the false claim that he had received the Congressional Medal of Honor during his first meeting as a board member of the Three Valley Water District Board. Mr. Alvarez was indicted under the Stolen Valor Act of 2005, which creates a federal offense for false claims about the receipt of military decorations or medals, and provides heightened penalties for such false claims pertaining to the Medal of Honor. Mr. Alvarez made the following false statements at the meeting, “I’m a retired marine of 25 years. I retired in the year 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy.” (U.S. v. Alvarez, 132 S. Ct. 2537, 2542) The defendant entered a conditional guilty plea to violating the Stolen Valor Act in the United States District Court for the Central District of California, but appealed the decision under the theory that the Act violated content-based speech protections of the First Amendment to the United States Constitution.

**Procedure.** In a divided decision, the Ninth Circuit Court of Appeals reversed the conviction upon finding the Act to be invalid under the First Amendment. The Ninth Circuit declined to hear an appeal en banc, and the United States Supreme Court granted certiorari. A division of the circuits became apparent after certiorari was granted when the Tenth Circuit Court of Appeals found that the Stolen Valor Act was declared constitutional by a divided panel from that circuit in *United States v. Strandlof*, 667 F. 3d 1146 (2012).

**Issue.** Whether the content-based free speech protections of the First Amendment to the United States Constitution protect false claims relating to the receipt of military medals.

**Holding.** The United States Supreme Court held 6-3 that the Stolen Valor Act constituted a content-based restriction on free speech in violation of the First Amendment. The Court noted that the Constitution requires that content-based restrictions on free speech be presumed to be invalid and rejected the government’s contention that false statements do not merit any First Amendment protection. The Court reasoned that if the Act were to be upheld, federal and state governments could find “an endless list” of other subjects involving false statements to regulate and thereby broadly chill the freedom of speech. (*Alvarez* at 2547)

The Court noted, however, that the Act may have been saved from exacting scrutiny if the false claim provisions were conditioned upon elements of fraud or upon the speaker seeking monetary or valuable consideration in making such statements. Without such qualifications, the Court found that the government could resort to employing other methods to protect the integrity of military decorations, stating that a less restrictive method of achieving the government’s objective would be by combatting the false speech with corrective speech. The Court concluded that the broad content-based restrictions of the Stolen Valor Act were not actually necessary to achieve the government’s interest in protecting the integrity of military decorations. The Stolen Valor Act was therefore unable to survive the most exacting scrutiny as applied to content-based restrictions of free speech.

**Concurrence.** Two justices joined in a concurring opinion. The concurrence noted that the government had a legitimate purpose in attempting to protect the honor of military honors, but found that the Stolen Valor Act was unconstitutional based upon what it described as an intermediate scrutiny analysis. Under its analysis, the concurrence opined that false statements about easily verifiable facts are inherently less valuable than false statements regarding history, religion, philosophy, and other broad subject matters where such broad restrictions would also endanger truthful

speech, but still found the Act unconstitutional on the grounds that the government could achieve its legitimate goal of protecting the value of military honors by less restrictive means. Pursuant to this rationale, the concurrence noted that the government could curtail such false claims by providing a website where such claims could either be verified or disproven or that the government could construct a new statute in which the false claim provisions were conditioned upon additional elements such as fraud in order to preclude the broad chilling effect that the Act placed upon free speech.

**Dissent.** Three justices joined in a dissenting opinion. The dissent reasoned that the plurality and concurrence break from established jurisprudence that the First Amendment “does not protect factual false statements that inflict real harm and serve no legitimate interest.” (*Alvarez* at 2557) The dissent opined that the Stolen Valor Act should be upheld since the Act applied to a narrow category of false statements about verifiable facts within the speaker’s personal knowledge, that the Act required proof beyond a reasonable doubt that the speaker was aware of the falsity of such statements, that the Act did not apply to either performance or hyperbole, and was viewpoint neutral. Furthermore, the dissent argued that there was an epidemic of false claims relating to the receipt of military honors and noted that military records were incomplete and could not be reliably used to counter false claims.

**Impact on Iowa Law.** Iowa Code chapter 718B makes it a simple misdemeanor for an individual to impersonate a decorated military veteran in pursuit of any real or anticipated monetary gain. This chapter would likely withstand constitutional scrutiny under a First Amendment analysis for content-based speech as the law is dependent upon elements of fraud to achieve monetary or valuable gain. A court could still, however, find that the Iowa law violates the Supremacy Clause of the United States Constitution if it were to hold that that Iowa law conflicted with federal law surrounding the regulation of military medals or if it were to find that federal law preempted the Iowa law by taking over the field of regulation of military medals.

**Note.** In response to this decision, the United States Department of Defense created a new website to provide a public record of certain medal recipients. The website, [valor.defense.gov](http://valor.defense.gov), provides information on recipients of the Congressional Medal of Honor, the Army Distinguished Service Cross, the Navy Cross, and the Air Force Cross. The website will be expanded to cover Silver Star recipients. The United States Congress has also considered, but has not yet passed, new more narrowly tailored legislation to criminalize fraudulent claims of receiving United States military honors.

*LSA Monitor:* Andrew J. Ward, Legal Services, (515) 725-2251.