

SEPARATION OF POWERS IN ACTION

The U.S. Constitution establishes three separate but equal branches of government: the legislative branch (makes the law), the executive branch (enforces the law), and the judicial branch (interprets the law). The Framers structured the government in this way to prevent one branch of government from becoming too powerful, and to create a system of checks and balances.

Under this system of checks and balances, there is an interplay of power among the three branches. Each branch has its own authority, but also must depend on the authority of the other branches for the government to function.

U.S. v. Alvarez is an excellent example of how the three branches each exercise their authority.

In a Nutshell

- **The Legislative Branch** – Congress – passed the Stolen Valor Act of 2005, punishing those who misrepresent that they have received high military honors.
- **The Judicial Branch** – the Supreme Court of the United States – ruled in 2012 that the Act was unconstitutional because it infringed on the right to free speech protected by the First Amendment.
- **The Executive Branch** – the Pentagon and the President – took action within a month of the Supreme Court's decision establishing a government-funded national database of medal citations – phased in over time – to enable verification of military honors.
- **The Legislative Branch** – Congress – is considering legislation that is more narrow than the Stolen Valor Act of 2005. The Stolen Valor Act of 2011 would make it a federal misdemeanor for anyone to benefit financially from false claims about military service, records, or awards. That would include receiving health care benefits, government contracts, or jobs reserved for veterans. The modified version of the law provides punishments for those seeking to profit strictly from false military service. Follow the progress of the Stolen Valor Act of 2011.



IIT CHICAGO-KENT COLLEGE OF LAW

Like

46 people like this. Sign Up to see what your friends like.

UNITED STATES V. ALVAREZ

Term: 2010-2019 › 2011

Facts of the Case

On July 23, 2007, Xavier Alvarez, a member of the Three Valleys Water District Board of Directors, attended a joint meeting with the Walnut Valley Water District Board of Directors at the Board's headquarters. Mr. Alvarez was invited to speak about his background, and he stated, "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." In fact, Mr. Alvarez had not received the Congressional Medal of Honor, nor any other military medal or decoration. He had also had never served in the United States Armed Forces.

The Stolen Valor Act of 2005 makes it a crime to falsely claim receipt of military decorations or medals. On September 26, 2007, Mr. Alvarez was charged in the Central District of California with two counts of falsely representing that he had been awarded the Congressional Medal of Honor in violation the Stolen Valor Act of 2005. Mr. Alvarez moved to dismiss on the grounds that the statute violated his first amendment right to free speech. The district court denied Alvarez's motion to dismiss. The respondent thereafter pleaded guilty, but reserved his right to appeal.

Alvarez appealed to the U.S. Court of Appeals for the Ninth Circuit, and the court reversed and remanded the lower court's decision. It reasoned that the Supreme Court had never held that the government may prohibit speech simply because it is knowingly false and that some knowingly false speech could have affirmative constitutional value. The court of appeals denied the government's request for rehearing. Thereafter, the government appealed the court of appeals' decision.

Question

Does 18 U.S.C. 704(b), the Stolen Valor Act, violate the Free Speech Clause of the First Amendment?

Conclusion

Decision: 6 votes for Alvarez, 3 vote(s) against

Legal provision: First Amendment

Yes. Justice Anthony M. Kennedy, writing for a 6-3 majority, affirmed the Court of Appeals. Content-based restrictions on speech are subject to strict scrutiny and are almost always invalid, except in rare and extreme circumstances. While categories of speech, such as defamation and true threats, present a grave and imminent threat, false statements alone do not present such a threat. Congress drafted the Stolen Valor Act too broadly, attempting to limit speech that could cause no harm. Criminal punishment for such speech is improper.

Justice Stephen G. Breyer concurred, concluding that false statements of fact should be subject to intermediate scrutiny. However, as drafted, the Stolen Valor Act violates intermediate scrutiny because it applies to situations that are unlikely to cause harm. Justice Elena Kagan joined in the concurrence.

Justice Samuel A. Alito dissented. Congress could not draft the Stolen Valor Act more narrowly, while still preventing the substantial harm caused by false statements concerning military decoration. Justice Antonin Scalia and Justice Clarence Thomas joined in the dissent.

Case Basics

Docket No.
11-210

Petitioner
United States

Respondent
Xavier Alvarez

Decided By
Roberts Court (2010-)

Opinion
567 U.S. ____ (2012)

Granted
Monday, October 17, 2011

Argued
Wednesday, February 22, 2012

Decided
Thursday, June 28, 2012

Advocates

Donald B. Verrilli, Jr.
(Solicitor General, Department of Justice, for the petitioner)

Jonathan D. Libby
(for the respondent)