

STOLEN VALOR ACT OF 2013

MAY 20, 2013.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GOODLATTE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 258]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 258) to amend title 18, United States Code, with respect to fraudulent representations about having received military declarations or medals, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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Purpose and Summary

H.R. 258 amends the Federal criminal code to narrow the scope of the current prohibition on falsely holding oneself out to be a recipient of certain military decorations. Specifically, H.R. 258 amends the current statute to only subject those who, *with intent to obtain money, property, or other tangible benefit*, fraudulently

hold themselves out to be a recipient of certain military decorations to a fine or up to 1 year in prison. The bill limits the application of this penalty to fraudulent claims related to only the Congressional Medal of Honor and those decorations or medals listed in subsection (d) of section 704 of Title 18. The bill amends subsection (a) of 704 to remove the term “wears” and amends subsection (d) of 704 to add “combat badges” and a definition of such term to the list of decorations and medals.

Background and Need for the Legislation

Congress enacted the Stolen Valor Act of 2005 on December 20, 2006, to expand the existing prohibition against wearing, manufacturing, or selling military decorations or medals without legal authorization. The bill imposed penalties for falsely representing oneself as a recipient of any medal or honor authorized by Congress for the armed services and imposed increased penalties for violations involving the Congressional Medal of Honor, a distinguished service cross, an Air Force Cross, a Navy Cross, a silver star, or a purple heart.

The Act responded to a proliferation of false claims by imposters claiming to be decorated war heroes. In Illinois, one man attended numerous Marine Corp functions, military funerals, and fund-raisers posing as a retired Marine Corp colonel. He claimed to have been awarded the Purple Heart eight times, the only Marine to earn such distinction, as well as the Navy Cross. It turns out he never served a single day as a Marine.

In St. Louis, Federal authorities arrested a man at a local Marine Corp event who claimed to be a decorated officer. He had previously been spotted at the annual Marine Corp birthday ball wearing the Navy Cross, two Silver Stars, four Bronze Stars, along with numerous other medals. He too has never served a single day as a Marine.

In 2003, 642 Virginia residents falsely indicated on tax forms to be the recipient of a Medal of Honor, which afforded them an exemption from state tax on military retirement income.¹ This, despite the fact that, at the time, there were only four living Medal of Honor recipients in Virginia and 132 nationwide.

In 2006, the Justice Department and Department of Veterans’ Affairs Office of Inspector General launched Operation Stolen Valor—a year-long operation that culminated in a number of arrests and convictions. In the Northwest, a dozen cases resulted in fraud totals of more than \$1.4 million.²

In November 2012, a 70-year-old man was sentenced to more than 7 years following his guilty plea to numerous counts of defrauding the Federal Government. Warren Parker admitted to lying about his receipt of three Silver Stars and three Purple Hearts during the Vietnam War to obtain in excess of \$7 million in government contracts awarded to small businesses owned by service-disabled veterans.³

¹ Colimore, *Pinning Crime on Fake Heroes: N. J. Agent Helps Expose and Convict Those with Bogus U. S. Medals*, PHILADELPHIA INQUIRER, Feb. 11, 2004, available at http://articles.philly.com/2004-02-11/news/25374213_1_medals-military-imposters-distinguished-flying-cross.

² *Northwest Crackdown on Fake Veterans in “Operation Stolen Valor,”* U.S. DEPT. OF JUSTICE, Sept. 21, 2007, available at <http://www.justice.gov/usao/waw/press/2007/sep/operationstolenvalor.html>.

³ *Fake war hero gets 7-year sentence for fraud*, ASSOC. PRESS, Nov. 5, 2012.

Perhaps the most egregious example of this fraud was perpetrated by a 10-year Navy sergeant who secured \$66 million in security contracts from the military based upon fictitious combat experience in Panama and Somalia and fabricated Silver Stars, Purple Hearts, Bronze Stars and Air Medals. Upon learning of the man's non-existent combat record, the military revoked the contracts but by then the sergeant had fled the United States for Australia.⁴

On June 28, 2012, the Supreme Court struck down the Stolen Valor Act as unconstitutional under the First Amendment. Justice Kennedy, writing for the majority, described the Act as a law that “targets falsity and nothing more.”⁵ The simple act of lying—even about receipt of a military decoration—is, by itself, protected speech. “The Court has never endorsed the categorical rule the Government advances: that false statements receive no First Amendment protection.”⁶

Rather, “content-based restrictions on speech have been permitted, as a general matter, only when confined to the few ‘historic and traditional categories [of expression] long familiar to the bar.’”⁷ These include speech intended—and likely—to incite violence, obscenity, defamation, speech integral to criminal conduct, so-called “fighting words,” child pornography, fraud, true threats, and speech presenting a grave and imminent threat the government has the authority to prevent.⁸

The Court acknowledged a legitimate government objective in honoring valor by our military men and women. “It is right and proper that Congress, over a century ago, established an award so the Nation can hold in its highest respect and esteem those who, in the course of carrying out the ‘supreme and noble duty of contributing to the defense of the rights and honor o the nation,’ have acted with extraordinary honor. And it should be uncontested that this is a legitimate Government objective, indeed a most valued national aspiration and purpose.”⁹

Although the “Government’s interest in protecting the integrity of the Medal of Honor is beyond question . . . “[t]here must be a direct causal link between the restriction imposed and injury to be prevented.”¹⁰ And harm to the status of a military decoration or to its true recipients is not sufficient to overcome the deference afforded protected speech under the First Amendment.¹¹

The Court does describe, however, instances in which a false claim of military honors would extend beyond the protections of the First Amendment. “Where false claims are made to effect a fraud or secure moneys or other valuable considerations, say offers of employment, it is well established that the Government may restrict speech without affronting the First Amendment.”¹²

⁴Ross, *Marine With Phony Record Dupes Pentagon*, ABC NEWS, July 7, 2004, available at http://abcnews.go.com/WNT/Investigation/story?id=131753&page=1#_UBbMdqC8heg.

⁵*United States v. Alvarez*, 567 U.S. _____, 132 S.Ct. 2537, Slip Op. 11–210 at 7 (June 28, 2012).

⁶*Id.*

⁷*Id.* at 5.

⁸*Id.*

⁹*Id.* at 2–3 (citation omitted).

¹⁰*Id.* at 13.

¹¹*Id.* at 14.

¹²*Id.* at 11.

In his concurrence, Justice Breyer builds upon the concept hinted at by the majority that false claims made in furtherance of fraud would be unprotected and, therefore, appropriately subject to government restriction. Justice Breyer identified several modifications to narrow the application of the Act, including: (1) require knowledge of falsity, (2) identify those medals Congress is most interested in protecting, and (3) limit the statute to those lies most likely to cause harm.¹³

H.R. 258 rewrites subsection (b) of section 704 to make it a crime to fraudulently hold oneself out to be a recipient of the Congressional Medal of Honor or other enumerated military decoration with the intent to obtain money, property or other tangible benefit. The term “fraudulently” incorporates the necessary knowledge requirement. Black’s Law Dictionary defines “fraud” as “a knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her injury.”¹⁴

The amendment adds an additional element of specific intent, namely that the fraud was committed for the purpose of obtaining money, property or other tangible benefit. The term tangible benefit is intended to cover those “valuable considerations” beyond money or property, such as offers of employment, which Justice Kennedy identified as appropriately prohibited benefits to a fraud.¹⁵ The amendment limits the application of the 1-year penalty to false claims involving the Medal of Honor and those military decorations and medals listed in the statute, such as the Navy Cross, Silver Star and Purple Heart. The amendment adds “combat badges” to the list of decorations and medals protected under the Stolen Valor Act.

During oral argument, Justices Kennedy and Ginsburg challenged the statute’s prohibition on the unauthorized wearing of a military medal. If one wears a military medal—even if he or she is not the recipient of such medal—is it any less expressive speech and any less protected than a false claim? Although the Court does not affirmatively address this issue in its ruling, it’s clear from the argument that this type of expressive conduct is very likely to enjoy First Amendment protection. The amendment, therefore, strikes “wears” from subsection (a) of section 704. It does so with the confidence that the act of fraudulently wearing a military medal to obtain money, property or other tangible benefit will continue to be prohibited under the revised subsection (b).

Hearings

The Committee on the Judiciary held no hearings on H.R. 258.

Committee Consideration

On March 14, 2013, the Committee met in open session and ordered the bill H.R. 258 favorably reported without amendment, by voice vote, a quorum being present.

¹³ *Alvarez*, 567 U.S. ___, 132 S.Ct. 2537, Slip Op. 11–210, Breyer, J. concurring opinion at 9.

¹⁴ BLACK’S LAW DICTIONARY 267 (6th ed. 1991).

¹⁵ *Alvarez*, 567 U.S. ___, 132 S.Ct. 2537, Slip Op. 11–210 at 11.

Committee Votes

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that there were no recorded votes during the Committee's consideration of H.R. 258.

Committee Oversight Findings

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

New Budget Authority and Tax Expenditures

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

Congressional Budget Office Cost Estimate

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 258, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 19, 2013.

Hon. BOB GOODLATTE, CHAIRMAN,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 258, the "Stolen Valor Act of 2013."

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,

DOUGLAS W. ELMENDORF,
DIRECTOR.

Enclosure

cc: Honorable John Conyers, Jr.
Ranking Member

H.R. 258—Stolen Valor Act of 2013.

As ordered reported by the House Committee on the Judiciary
on March 14, 2013.

CBO estimates that implementing H.R. 258 would have no significant cost to the Federal Government. Enacting the bill could af-

fect direct spending and revenues; therefore, pay-as-you-go procedures apply. However, CBO estimates that any effects would be insignificant for each year.

H.R. 258 would make changes to the current Federal offenses relating to fraudulent claims about military service. As a result, the government might be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that H.R. 258 would apply to a relatively small number of additional offenders, however, so any increase in costs for law enforcement, court proceedings, or prison operations would not be significant. Any such costs would be subject to the availability of appropriated funds.

Because those prosecuted and convicted under H.R. 258 could be subject to civil and criminal fines, the Federal Government might collect additional fines if the legislation is enacted. Civil and criminal fines are recorded as revenues. Criminal fines are deposited in the Crime Victims Fund and later spent. CBO expects that any additional revenues and direct spending would not be significant because relatively few cases would likely be affected.

H.R. 258 contains no intergovernmental mandates, as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments. The bill contains a private-sector mandate as defined in UMRA by prohibiting individuals from claiming to have received a military medal or decoration with intent to obtain money, property, or other tangible benefits. CBO estimates that the cost of the mandate to such individuals would fall below the annual threshold established in UMRA (\$150 million in 2013, adjusted annually for inflation).

The CBO staff contacts for this estimate are Mark Grabowicz (for Federal costs) and Elizabeth Bass (for the private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

Duplication of Federal Programs

No provision of H.R. 258 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

Disclosure of Directed Rule Makings

The Committee estimates that H.R. 258 specifically directs to be completed no specific rule makings within the meaning of 5 U.S.C. 551.

Performance Goals and Objectives

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 258 remedies constitutional infirmities identified by the Supreme Court in *U.S. v. Alvarez* and ensures the integrity of certain decorations and medals awarded to military heroes by preserving a criminal prohibition for misrepresentation of the receipt of such decorations and medals in furtherance of a fraud.

Advisory on Earmarks

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 258 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of Rule XXI.

Section-by-Section Analysis

Section 1. Short Title.

This section cites the short title of the Act as the “Stolen Valor Act of 2013.”

Section 2. Fraudulent Representations about Receipt of Military Decorations or Medals.

This section amends subsection (b) of 704 to rewrite the provision to prohibit fraudulently holding oneself out to be a recipient of certain military decorations or medals with the intent to obtain money, property or other tangible benefit. This section limits the application of this penalty to fraudulent claims related to only the Congressional Medal of Honor (as that term is defined in subsection (c) of 704) and those decorations or medals listed in subsection (d) of 704.

This section amends subsection (a) of 704 to remove the term “wears” and amends subsection (d) of 704 to add “combat badges” and a definition of such term to the list of decorations and medals.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 18, UNITED STATES CODE

* * * * *

PART I—CRIMES

* * * * *

CHAPTER 33—EMBLEMS, INSIGNIA, AND NAMES

* * * * *

§ 704. Military medals or decorations

(a) IN GENERAL.—Whoever knowingly [wears,] purchases, attempts to purchase, solicits for purchase, mails, ships, imports, exports, produces blank certificates of receipt for, manufactures, sells, attempts to sell, advertises for sale, trades, barter, or exchanges for anything of value any decoration or medal authorized by Congress for the armed forces of the United States, or any of the service medals or badges awarded to the members of such forces, or the ribbon, button, or rosette of any such badge, decoration or medal, or any colorable imitation thereof, except when authorized under

regulations made pursuant to law, shall be fined under this title or imprisoned not more than six months, or both.

[(b) FALSE CLAIMS ABOUT RECEIPT OF MILITARY DECORATIONS OR MEDALS.—Whoever 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, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both.]

(b) FRAUDULENT REPRESENTATIONS ABOUT RECEIPT OF MILITARY DECORATIONS OR MEDALS.—Whoever, with intent to obtain money, property, or other tangible benefit, fraudulently holds oneself out to be a recipient of a decoration or medal described in subsection (c)(2) or (d) shall be fined under this title, imprisoned not more than one year, or both.

(c) ENHANCED PENALTY FOR OFFENSES INVOLVING CONGRESSIONAL MEDAL OF HONOR.—

(1) IN GENERAL.—If a decoration or medal involved in an offense under subsection (a) **[or (b)]** is a Congressional Medal of Honor, in lieu of the punishment provided in that subsection, the offender shall be fined under this title, imprisoned not more than 1 year, or both.

(2) CONGRESSIONAL MEDAL OF HONOR DEFINED.—In this subsection, the term “Congressional Medal of Honor” means—

(A) a medal of honor awarded under section 3741, 6241, or 8741 of title 10 or section 491 of title 14;

(B) a duplicate medal of honor issued under section 3754, 6256, or 8754 of title 10 or section 504 of title 14; or

(C) a replacement of a medal of honor provided under section 3747, 6253, or 8747 of title 10 or section 501 of title 14.

(d) ENHANCED PENALTY FOR OFFENSES INVOLVING CERTAIN OTHER MEDALS.—[If a decoration]

(1) IN GENERAL.—If a decoration or medal involved in an offense described in subsection (a) [or (b)] is a distinguished-service cross awarded under section 3742 of title 10, a Navy cross awarded under section 6242 of title 10, an Air Force cross awarded under section 8742 of section 10, a silver star awarded under section 3746, 6244, or 8746 of title 10, a Purple Heart awarded under section 1129 of title 10, a combat badge, or any replacement or duplicate medal for such medal as authorized by law, in lieu of the punishment provided in the applicable subsection, the offender shall be fined under this title, imprisoned not more than 1 year, or both.

(2) COMBAT BADGE DEFINED.—In this subsection, the term “combat badge” means a Combat Infantryman’s Badge, Combat Action Badge, Combat Medical Badge, Combat Action Ribbon, or Combat Action Medal.

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