

STOLEN VALOR ACT OF 2012

SEPTEMBER 10, 2012.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SMITH of Texas, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 1775]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1775) to amend title 18, United States Code, to establish a criminal offense relating to fraudulent claims about military service, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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**The Amendments**

The amendments are as follows:  
 Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Stolen Valor Act of 2012”.

**SEC. 2. FRAUDULENT REPRESENTATIONS ABOUT RECEIPT OF MILITARY DECORATIONS OR MEDALS.**

(a) IN GENERAL.—Section 704 of title 18, United States Code, is amended—

- (1) in subsection (a), by striking “wears,”; and
- (2) so that subsection (b) reads as follows:

“(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.”

(b) ADDITION OF CERTAIN OTHER MEDALS.—Section 704(d) of title 18, United States Code, is amended—

- (1) by striking “If a decoration” and inserting the following:

- “(1) IN GENERAL.—If a decoration”;
- (2) by inserting “a combat badge,” after “1129 of title 10,”; and
- (3) by adding at the end the following:

“(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.”

(c) CONFORMING AMENDMENT.—Section 704 of title 18, United States Code, is amended in each of subsections (c)(1) and (d) by striking “or (b)”.

Amend the title so as to read:

A bill to amend title 18, United States Code, with respect to fraudulent representations about having received military decorations or medals.

### **Purpose and Summary**

H.R. 1775 amends the Federal criminal code to 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 to expand the existing prohibition against wearing, manufacturing, or selling military decorations or medals without legal authorization. The Act 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 Corps functions, military funerals, and fund-raisers posing as a retired Marine Corps 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 Corps event who claimed to be a decorated officer. He had previously been spotted at the annual Marine Corps 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.<sup>1</sup> 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.<sup>2</sup>

Perhaps the most egregious example of this fraud was perpetrated by a 10-year Marine Corps 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.<sup>3</sup>

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.”<sup>4</sup> 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.”<sup>5</sup>

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’.”<sup>6</sup> 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.<sup>7</sup>

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

<sup>1</sup> 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](http://articles.philly.com/2004-02-11/news/25374213_1_medals-military-imposters-distinguished-flying-cross).

<sup>2</sup> *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>.

<sup>3</sup> Ross, *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](http://abcnews.go.com/WNT/Investigation/story?id=131753&page=1#_UBbMdqC8heg).

<sup>4</sup> *United States v. Alvarez*, 567 U.S. \_\_\_\_\_, Slip Op. 11–210 at 7 (June 28, 2012).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *Id.*

this is a legitimate Government objective, indeed a most valued national aspiration and purpose.”<sup>8</sup>

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.”<sup>9</sup> 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.<sup>10</sup>

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.”<sup>11</sup>

In his concurrence, Justice Breyer builds upon the concept hinted to 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.<sup>12</sup>

The substitute amendment adopted by the Committee during markup 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.”<sup>13</sup>

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.<sup>14</sup> 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

<sup>8</sup> *Id.* at 2–3 (citation omitted).

<sup>9</sup> *Id.* at 13.

<sup>10</sup> *Id.* at 14.

<sup>11</sup> *Id.* at 11.

<sup>12</sup> *Alvarez*, Slip Op. 11–210, Breyer, J. concurring opinion at 9.

<sup>13</sup> BLACK’S LAW DICTIONARY 267 (6th ed. 1991).

<sup>14</sup> *Alvarez*, 567 U.S. \_\_\_\_\_, Slip Op. 11–210 at 11.

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**

There were no hearings held on H.R. 1775.

### **Committee Consideration**

On August 1, 2012, the Committee met in open session and ordered the bill H.R. 1775 to be reported favorably with an amendment in the nature of a substitute, by voice-vote, a quorum being present.

### **Committee Votes**

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that no roll-call votes occurred during the Committee’s consideration of H.R. 1775.

### **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. 1775, 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, August 23, 2012.*

Hon. LAMAR SMITH, 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. 1775, the “Stolen Valor Act of 2012.”

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

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**H.R. 1775—Stolen Valor Act of 2012.**

As ordered reported by the House Committee on the Judiciary  
on August 1, 2012.

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CBO estimates that implementing H.R. 1775 would have no significant cost to the Federal Government. Enacting the bill could affect 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. 1775 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. 1775 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. 1775 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 of the relatively small number of cases likely to be affected.

H.R. 1775 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 new 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 (\$146 million in 2012, 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 Peter H. Fontaine, Assistant Director for Budget Analysis.

**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. 1775 ensures

the integrity of certain medals awarded to military heroes by reinstating a penalty for misrepresenting the receipt of those medals.

### **Advisory on Earmarks**

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 1775 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 2012.”

#### *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 *italic*, existing law in which no change is proposed is shown in roman):

## **TITLE 18, UNITED STATES CODE**

### **PART I—CRIMES**

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#### **CHAPTER 33—EMBLEMS, INSIGNIA, AND NAMES**

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#### **§ 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 serv-

ice 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.

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**(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.*

\* \* \* \* \*