

## Update on the Supreme Court “Stolen Valor” Decision

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

Update on Sam Wright

### 10.2—Other Supreme Court decisions

#### ***United States v. Alvarez*, 567 U.S. 709 (2012).**<sup>3</sup>

As Rachel M. Kelly and I explained in Law Review 12121 (December 2012), the United States Supreme Court struck down as unconstitutional the Stolen Valor Act (SVA)<sup>4</sup>, which made it a criminal offense to claim falsely that one has earned the Medal of Honor or another military medal for valor. The Supreme Court held that such a claim amounts to constitutionally protected speech under the First Amendment of the United States Constitution, even if false, unless the false claim was made with the intent to obtain some tangible benefit to which the liar is not entitled. In 2013, Congress amended the SVA to limit the criminal offense to

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<sup>1</sup> I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 1700 “Law Review” articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1500 of the articles.

<sup>2</sup> BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General’s Corps officer and retired in 2007. I am a life member of ROA. I have dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans’ Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for more than 34 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org) or by telephone at 800-809-9448, ext. 730. I will provide up to one hour of information without charge. If you need more than that, I will charge a very reasonable hourly rate. If you need a lawyer, I can suggest several well-qualified USERRA lawyers.

<sup>3</sup> This is a decision of the United States Supreme Court that was released on June 28, 2012. The citation means that you can find this decision in Volume 567 of *United States Reports*, starting on page 709.

<sup>4</sup> The Reserve Officers Association (ROA) joined with several other military associations in filing an amicus curiae (friend of the court) brief in the Supreme Court, urging the Court to reverse the United States Court of Appeals for the Ninth Circuit and uphold the constitutionality of the SVA, but unfortunately the Supreme Court did not do so.

circumstances wherein the defendant made the false claim with the intent to obtain such a tangible benefit.

The majority decision, striking down the SVA, was written by Justice Anthony Kennedy. In our 2012 “Law Review” article, Ms. Kelly and I wrote:

Finally, in four places in his opinion, Justice Kennedy referred to “winners” of the Medal of Honor. ROA wrote a letter to the Reporter of Decisions of the Supreme Court, with a copy to the Clerk of the Supreme Court (a retired Major General and former Judge Advocate General of the Army), urging that the word “recipients” be substituted for “winners,” since those who receive the award are deemed to have earned it, not won it.

The Reporter of Decisions responded, saying she will endorse our wording suggestion to Justice Kennedy when the decision is published officially.

When the Supreme Court releases a decision, the text of the decision is available within hours from various unofficial sources, but official publication in *United States Reports* does not occur until several years later. The *Alvarez* decision has now been published officially, and I am most pleased to report that our wording suggestion was implemented. The objectionable references to “winners” of the Medal of Honor have been removed from the majority decision.

I congratulate Rachel M. Kelly, who drafted the eloquent and succinct letter that ROA sent to the Supreme Court Reporter of Decisions. During the summer of 2012, when the *Alvarez* decision was released, Rachel was our unpaid “summer associate” at the Service Members Law Center (SMLC), operated by ROA. She was between her first year and second year at William & Mary School of Law at the time. The Washington Scholars organization, founded and supported by ROA life member Rear Admiral James J. Carey, sent her to us, and she was enormously helpful to me—the SMLC Director at the time. Rachel is now an attorney in Virginia and is married to an active duty Navy officer.