United States v. Alvarez
132 S. Ct. 2537 (June 28, 2012)

Justice Kennedy announced the judgment of the Court and delivered an opinion, in which The Chief Justice, Justice Ginsburg, and Justice Sotomayor join.

Lying was his habit. Xavier Alvarez lied when he said that he played hockey for the Detroit Red Wings and that he once married a starlet from Mexico. But when he lied in announcing he held the Congressional Medal of Honor, respondent ventured onto new ground; for that lie violates a federal criminal statute, the Stolen Valor Act of 2005.

In 2007, respondent attended his first meeting as a board member of the Three Valley Water District Board. He introduced himself as follows: "I'm a retired marine of 25 years. I retired in 2001. Back in 1987, I was awarded the Congressional Medal of Honor. I got wounded many times by the same guy." None of this was true. For all the record shows, respondent's statements were but a pathetic attempt to gain respect. The statements do not seem to have been made to secure employment or financial benefits or privileges reserved for those who earned the Medal.

Respondent was indicted under the Stolen Valor Act for lying about the Congressional Medal of Honor. Respondent pleaded guilty, reserving the right to appeal on his First Amendment claim. The Ninth Circuit found the Act invalid under the First Amendment and reversed the conviction.

This is the second case in two Terms requiring the Court to consider speech that can disparage, or attempt to steal, honor that belongs to those who fought for this Nation in battle. See Snyder v. Phelps, 131 Sup. Ct. 1207 (2011). Here the statement that the speaker held the Medal was an intended, undoubted lie.

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 contributing to the defense of the nation, have acted with extraordinary honor. This is a legitimate Government objective, indeed a most valued national aspiration and purpose. This does not end the inquiry, however. When content-based speech regulation is in question, exacting scrutiny is required. By this measure, the statutory provisions under which respondent was convicted must be held invalid.

I

Respondent's claim to hold the Congressional Medal of Honor was false. On this premise, respondent violated §704(b); and, because the lie concerned the Medal of Honor, he was subject to an enhanced penalty under subsection (c). Those statutory provisions are as follows:

"(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 . . . shall be fined under this title, imprisoned not more than six months, 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."

Respondent challenges the statute as a content-based suppression of pure speech, speech not falling within any of the categories of expression where content-based regulation is permissible. The Government defends the statute as necessary to preserve the integrity and purpose of the Medal. It argues that false statements "have no First Amendment value in themselves," and thus "are protected only to the extent needed to avoid chilling fully protected speech." Although the statute covers respondent's speech, the Government argues that it leaves breathing room for protected speech, for example speech which might criticize the idea of the Medal or the importance of the military. The Government's arguments cannot save the statute.

II

"[A]s a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." As a result, the Constitution "demands that content-based restrictions on speech be presumed invalid."

In light of the substantial threats to free expression posed by content-based restrictions, this Court has rejected as "startling and dangerous" a "free-floating test for First Amendment coverage . . . [based on] an ad hoc balancing of relative social costs and benefits." Instead, content-based restrictions on speech have been permitted only when confined to the few "historic and traditional categories [of expression] long familiar to the bar." Among these categories are advocacy intended, and likely, to incite imminent lawless action, see Brandenburg v. Ohio, 395 U. S. 444 (1969); obscenity, see Miller v. California, 413 U. S. 15 (1973); defamation, see New York Times Co. v. Sullivan, 376 U. S. 254 (1964) (providing substantial protection for speech about public figures); Gertz v. Robert Welch, Inc., 418 U. S. 323 (1974) (imposing some limits on liability for defaming a private figure); speech integral to criminal conduct, see Giboney v. Empire Storage & Ice Co., 336 U. S. 490 (1949); so-called "fighting words," see Chaplinsky v. New Hampshire, 315 U. S. 568 (1942); child pornography, see New York v. Ferber, 458 U. S. 747 (1982); fraud, see Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc., 425 U. S. 748, 771 (1976); true threats, see Watts v. United States, 394 U. S. 705 (1969) (per curiam); and speech presenting some grave and imminent threat the government has the power to prevent, although a restriction under the last category is most difficult to sustain, see New York Times Co. v. United States, 403 U. S. 713 (1971) (per curiam). These categories have a historical foundation in the Court's free speech tradition. The vast realm of free speech always protected in our tradition can still thrive, and even be furthered, by adherence to those categories and rules.

Absent from those few categories where the law allows content-based regulation of speech is any general exception to the First Amendment for false statements. This comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee. See Sullivan, supra, at 271 ("Th[e] erroneous statement is inevitable in free debate").

The Government disagrees with this proposition. It cites language from some of this Court's precedents to support its contention that false statements have no value and hence no First Amendment protection. These isolated statements in some earlier decisions do not support the Government's submission that false statements, as a general rule, are beyond constitutional

protection. That conclusion would take the quoted language far from its proper context. For instance, the Court has stated "[f]alse statements of fact are particularly valueless [because] they interfere with the truth-seeking function of the marketplace of ideas," Hustler Magazine, Inc. v. Falwell, 485 U. S. 46, 52 (1988), and that false statements "are not protected in the same manner as truthful statements," Brown v. Hartlage, 456 U. S. 45–61 (1982).

These quotations all derive from cases discussing defamation, fraud, or some other legally cognizable harm associated with a false statement, such as an invasion of privacy. In those decisions the falsity of the speech at issue was not irrelevant to our analysis, but neither was it determinative. The Court has never endorsed the categorical rule the Government advances: that false statements receive no First Amendment protection. Our prior decisions have not confronted a measure, like the Stolen Valor Act, that targets falsity and nothing more.

Even when considering some instances of defamation and fraud, moreover, the Court has been careful to instruct that falsity alone may not suffice to bring the speech outside the First Amendment. The statement must be a knowing or reckless falsehood.

The Government thus seeks to use this principle for a new purpose. It seeks to convert a rule that limits liability even in defamation cases where the law permits recovery for tortious wrongs into a rule that expands liability in a different, far greater realm of discourse and expression. That inverts the rationale for the exception. The requirements of a knowing falsehood or reckless disregard for the truth as the condition for recovery in certain defamation cases exists to allow more speech, not less. A rule designed to tolerate certain speech ought not blossom to become a rationale for a rule restricting it.

The Government then gives three examples of regulations on false speech that courts generally have found permissible: first, the criminal prohibition of a false statement made to a Government official; second, laws punishing perjury; and third, prohibitions on the false representation that one is speaking as a Government official or on behalf of the Government. These restrictions, however, do not establish a principle that all proscriptions of false statements are exempt from exacting First Amendment scrutiny.

The federal statute prohibiting false statements to Government officials, in communications concerning official matters, does not lead to the broader proposition that false statements are unprotected when made to any person, at any time, in any context. The same point can be made about perjury statutes. It is not simply because perjured statements are false that they lack First Amendment protection. Perjured testimony "is at war with justice" because it can cause a court to render a "judgment not resting on truth." Perjury undermines the function and province of the law and threatens the integrity of judgments that are the basis of the legal system. Testimony under oath has the formality and gravity necessary to remind the witness that his or her statements will be the basis for official governmental action, action that often affects the rights and liberties of others. Sworn testimony is quite distinct from lies not spoken under oath and simply intended to puff up oneself. Statutes that prohibit falsely representing that one is speaking on behalf of the Government, or that prohibit impersonating a Government officer, also protect the integrity of Government processes, quite apart from merely restricting false speech.

As our law and tradition show, then, there are instances in which the falsity of speech bears upon

whether it is protected. Some false speech may be prohibited even if analogous true speech could not be. This opinion does not imply that any of these targeted prohibitions are somehow vulnerable. But it also rejects the notion that false speech should be in a general category that is presumptively unprotected.

Although the First Amendment stands against any "freewheeling authority to declare new categories of speech outside the scope of the First Amendment," the Court has acknowledged that perhaps there exist "some categories of speech that have been historically unprotected . . . but have not yet been specifically identified . . . in our case law." Before exempting a category of speech from the normal prohibition on content-based restrictions, however, the Court must be presented with "persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription. The Government has not demonstrated that false statements generally should constitute a new category of unprotected speech on this basis.

III

The probable, and adverse, effect of the Act on freedom of expression illustrates the reasons for the Law's distrust of content-based speech prohibitions. The Act by its terms applies to a false statement made at any time, in any place, to any person. It can be assumed that it would not apply to, say, a theatrical performance. Still, the sweeping reach of the statute puts it in conflict with the First Amendment. Here the lie was made in a public meeting, but the statute would apply with equal force to personal, whispered conversations within a home. The statute seeks to control and suppress all false statements on this one subject in almost limitless times and settings. And it does so entirely without regard to whether the lie was made for the purpose of material gain.

Permitting the government to decree this speech to be a criminal offense, whether shouted from the rooftops or made in a barely audible whisper, would endorse government authority to compile a list of subjects about which false statements are punishable. That governmental power has no clear limiting principle. Our constitutional tradition stands against the idea that we need Oceania's Ministry of Truth. See G. Orwell, Nineteen Eighty-Four (1949) (Centennial ed. 2003). Were this law to be sustained, there could be an endless list of subjects the government could single out. Where false claims are made to effect a fraud or secure moneys or other valuable considerations, it is well established that the Government may restrict speech without affronting the First Amendment. But the Stolen Valor Act is not so limited. Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give government a broad censorial power unprecedented in this Court's cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.

IV

The previous discussion suffices to show that the Act conflicts with free speech principles. But even when examined within its own narrow sphere of operation, the Act cannot survive. In assessing content-based restrictions on protected speech, the Court has applied the "most exacting scrutiny." Although the objectives the Government seeks to further by the statute are not without significance, the Court must find the Act does not satisfy exacting scrutiny.

The Government is correct when it states military medals "serve the important public function of recognizing and expressing gratitude for acts of heroism and sacrifice in military service," and also " 'foste[r] morale, mission accomplishment and esprit de corps' among service members." These interests are related to the integrity of the military honors system in general, and the Congressional Medal of Honor in particular. The Medal, which is the highest military award for valor against an enemy force, has been given just 3,476 times. The Government's interest in protecting the integrity of the Medal of Honor is beyond question.

But to recite the Government's compelling interests is not to end the matter. The First Amendment requires that the Government's chosen restriction on the speech at issue be "actually necessary" to achieve its interest. There must be a direct causal link between the restriction imposed and the injury to be prevented. The link between the Government's interest in protecting the integrity of the military honors system and the Act's restriction on the false claims of liars like respondent has not been shown. Although appearing to concede that "an isolated misrepresentation by itself would not tarnish the meaning of military honors," the Government asserts it is "common sense that false representations have the tendency to dilute the value and meaning of military awards." It must be acknowledged that when a pretender claims the Medal to be his own, the lie might harm the Government by demeaning the high purpose of the award, diminishing the honor it confirms, and creating the appearance that the Medal is awarded more often than is true. Furthermore, the lie may offend the true holders of the Medal.

Yet these interests do not satisfy the Government's heavy burden when it seeks to regulate protected speech. The Government points to no evidence that the public's general perception of military awards is diluted by false claims such as those made by Alvarez. As one of the amici notes "there is nothing that charlatans can do to stain [the Medal winners'] honor." This general proposition is sound, even if true holders of the Medal might experience anger and frustration.

The lack of a causal link between the Government's interest and the Act is not the only way in which the Act is not necessary to achieve the Government's interest. The Government has not shown, and cannot show, why counterspeech would not suffice to achieve its interest. The facts of this case indicate that the dynamics of free speech, of counterspeech, of refutation, can overcome the lie. Respondent lied at a public meeting. Even before the FBI began investigating him "Alvarez was perceived as a phony." Once the lie was made public, he was ridiculed online, his actions were reported in the press, and a fellow board member called for his resignation. There is good reason to believe that a similar fate would befall other false claimants. Indeed, the outrage and contempt expressed for respondent's lies can serve to reinforce the public's respect for the Medal, its recipients, and its high purpose. The acclaim that recipients of the Medal of Honor receive also casts doubt on the proposition that the public will be misled by the claims of charlatans or become cynical of those whose heroic deeds earned them the Medal by right.

The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. The response to the unreasoned is the rational; to the uninformed, the enlightened; to the straight-out lie, the simple truth. See Whitney v. California (1927) (Brandeis, J., concurring) ("If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence"). The

theory of our Constitution is "that the best test of truth is the power of the thought to get itself accepted in the competition of the market," Abrams v. United States (1919) (Holmes, J., dissenting). The First Amendment itself ensures the right to respond to speech we do not like, and for good reason. Freedom of speech and thought flows not from the beneficence of the state but from the inalienable rights of the person. And suppression of speech by the government can make exposure of falsity more difficult, not less so. Society has the right and civic duty to engage in open, dynamic, rational discourse. These ends are not well served when the government seeks to orchestrate public discussion through content-based mandates.

The American people do not need a government prosecution to express their high regard for military heroes. Only a weak society needs government intervention before it pursues its resolve to preserve the truth. Truth needs neither handcuffs nor a badge for its vindication.

In addition, when the Government seeks to regulate protected speech, the restriction must be the "least restrictive means among available, effective alternatives." There is, however, at least one less speech-restrictive means by which the Government could likely protect the integrity of the military awards system. A Government-created database could list Congressional Medal of Honor winners. Were a database accessible through the Internet, it would be easy to verify and expose false claims. It appears some private individuals have already created databases similar to this. The Solicitor General responds that although Congress and the Department of Defense investigated the feasibility of establishing a database in 2008, the Government "concluded that such a database would be impracticable and insufficiently comprehensive." Without more explanation, it is difficult to assess the Government's claim, especially when at least one database of Congressional Medal of Honor winners already exists.

One of the costs of the First Amendment is that it protects the speech we detest as well as the speech we embrace. Though few might find respondent's statements anything but contemptible, his right to make those statements is protected by the Constitution's guarantee of freedom of speech. The Stolen Valor Act infringes upon speech protected by the First Amendment.

Justice Breyer, with whom Justice Kagan joins, concurring in the judgment.

I agree with the plurality that the Stolen Valor Act of 2005 violates the First Amendment. But I do not rest my conclusion upon a strict categorical analysis. Rather, I base that conclusion upon the fact that the statute works First Amendment harm, while the Government can achieve its legitimate objectives in less restrictive ways.

I

In determining whether a statute violates the First Amendment, this Court has often found it appropriate to examine the fit between statutory ends and means. In particular, it has taken account of the seriousness of the speech-related harm the provision will likely cause, the importance of the provision's countervailing objectives, the extent to which the provision will achieve those objectives, and whether there are less restrictive ways of doing so. Ultimately the Court has to determine whether the speech-related harm is out of proportion to its justifications.

Sometimes the Court has referred to this approach as "intermediate scrutiny," sometimes as

"proportionality" review, sometimes as an examination of "fit," and sometimes it has avoided any label at all. Regardless of the label, some such approach is necessary if the First Amendment is to offer proper protection in the many instances in which a statute adversely affects constitutionally protected interests but warrants neither near-automatic condemnation (as "strict scrutiny" implies) nor near-automatic approval (as is implicit in "rational basis" review). But in this case, the Court's term "intermediate scrutiny" describes what I think we should do.

As the dissent points out, "there are broad areas in which any attempt by the state to penalize purportedly false speech would present a grave and unacceptable danger of suppressing truthful speech." Laws restricting false statements about philosophy, religion, history, the social sciences, the arts, and the like raise such concerns, and in many contexts have called for strict scrutiny. But this case does not involve such a law. The dangers of suppressing valuable ideas are lower where, as here, the regulations concern false statements about easily verifiable facts that do not concern such subject matter. Such false factual statements are less likely than are true factual statements to make a valuable contribution to the marketplace of ideas. And the government often has good reasons to prohibit such false speech. But its regulation can nonetheless threaten speech-related harms. Those circumstances lead me to apply "intermediate scrutiny" here.

II

False factual statements can serve useful objectives, for example: in social contexts, where they may prevent embarrassment, protect privacy, shield a person from prejudice, provide the sick with comfort, or preserve a child's innocence; in public contexts, where they may preserve calm in the face of danger; and even in technical, philosophical, and scientific contexts, where (as Socrates' methods suggest) examination of a false statement (even if made to mislead) can promote a form of thought that ultimately helps realize the truth. Moreover, as the Court has often said, the threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements, thereby "chilling" speech that lies at the First Amendment's heart.

Further, the pervasiveness of false statements, made for better or for worse motives, made thoughtlessly or deliberately, made with or without accompanying harm, provides a weapon to a government broadly empowered to prosecute falsity without more. And those who are unpopular may fear that the government will use that weapon selectively, say by prosecuting a pacifist who supports his cause by (falsely) claiming to have been a war hero, while ignoring members of other political groups who might make similar false claims.

I also must concede that many statutes and common-law doctrines make the utterance of certain kinds of false statements unlawful. Those prohibitions, however, tend to be narrower than the statute before us, in that they limit the scope of their application, sometimes by requiring proof of specific harm to identifiable victims; sometimes by specifying that the lies be made in contexts in which a tangible harm to others is especially likely to occur; and sometimes by limiting the prohibited lies to those that are particularly likely to produce harm.

Fraud statutes, for example, typically require proof of a misrepresentation that is material, upon which the victim relied, and which caused actual injury. Defamation statutes focus upon statements that harm the reputation of another or deter third parties from association with the victim. Torts involving the intentional infliction of emotional distress concern falsehoods that

tend to cause harm to a specific victim of an emotional-, dignitary-, or privacy-related kind.

Perjury statutes prohibit a particular set of false statements—those made under oath—while requiring a showing of materiality. Statutes forbidding lying to a government official (not under oath) are typically limited to circumstances where a lie is likely to work particular and specific harm by interfering with the functioning of a government department, and those statutes also require a showing of materiality.

While this list is not exhaustive, it is sufficient to show that few statutes, if any, simply prohibit without limitation the telling of a lie. Instead, in virtually all these instances limitations of context, requirements of proof of injury, and the like, narrow the statute to a subset of lies where specific harm is more likely to occur. The limitations help to make certain that the statute does not allow its threat of liability or criminal punishment to roam at large, discouraging the telling of the lie in contexts where harm is unlikely or the need for the prohibition is small.

The statute before us lacks any such limiting features. It ranges very broadly. And that breadth means that it creates a significant risk of First Amendment harm. As written, it applies in family, social, or other private contexts, where lies will often cause little harm. It also applies in political contexts, where the risk of censorious selectivity by prosecutors is high. Further, given the potential haziness of individual memory along with the large number of military awards covered, there remains a risk of chilling that is not completely eliminated by mens rea requirements; a speaker might still be worried about being prosecuted for a careless false statement, even if he does not have the intent required to render him liable. And so the prohibition may be applied where it should not be applied, for example, to bar stool braggadocio or, in the political arena, subtly but selectively to speakers that the Government does not like. These considerations lead me to believe that the statute as written risks significant First Amendment harm.

Like both the plurality and the dissent, I believe the statute nonetheless has substantial justification. It seeks to protect the interests of those who have sacrificed their health and life for their country. To permit those who have not earned those honors to claim otherwise dilutes the value of the awards. Thus, the statute risks harming protected interests but only in order to achieve a substantial countervailing objective.

We must therefore ask whether it is possible substantially to achieve the Government's objective in less burdensome ways. In my view, the answer to this question is "yes." For example, not all military awards are alike. Congress might determine that some warrant greater protection than others. And a more finely tailored statute might insist upon a showing that the false statement caused specific harm or at least was material, or focus its coverage on lies most likely to be harmful or on contexts where such lies are most likely to cause harm.

I recognize that in some contexts, particularly political contexts, such a narrowing will not always be easy to achieve. In the political arena a false statement is more likely to make a behavioral difference (say, by leading the listeners to vote for the speaker) but at the same time criminal prosecution is particularly dangerous (say, by radically changing a potential election result) and consequently can more easily result in censorship of speakers and their ideas. Thus, the statute may have to be significantly narrowed in its applications. I would also note, like the plurality, that in this area more accurate information will normally counteract the lie. And an

accurate, publicly available register of military awards, easily obtainable by political opponents, may well adequately protect the integrity of an award against those who would falsely claim to have earned it. And so it is likely that a more narrowly tailored statute combined with such information-disseminating devices will effectively serve Congress' end.

The Government has provided no convincing explanation as to why a more finely tailored statute would not work. In my own view, such a statute could significantly reduce the threat of First Amendment harm while permitting the statute to achieve its important protective objective. That being so, I find the statute as presently drafted works disproportionate constitutional harm. It consequently fails intermediate scrutiny, and so violates the First Amendment.

Justice Alito, with whom Justice Scalia and Justice Thomas join, dissenting.

The Court strikes down the Stolen Valor Act of 2005, which was enacted to stem an epidemic of false claims about military decorations. These lies, Congress reasonably concluded, were undermining our country's system of military honors and inflicting real harm on actual medal recipients and their families. By holding that the First Amendment nevertheless shields these lies, the Court breaks sharply from a long line of cases recognizing that the right to free speech does not protect false factual statements that inflict real harm and serve no legitimate interest. I would adhere to that principle and would thus uphold the constitutionality of this valuable law.

I

Properly construed, this statute is limited in five significant respects. First, the Act applies to only a narrow category of false representations about objective facts that can almost always be proved or disproved with near certainty. Second, the Act concerns facts that are squarely within the speaker's personal knowledge. Third, a conviction requires proof beyond a reasonable doubt that the speaker actually knew that the representation was false. Fourth, the Act applies only to statements that could reasonably be interpreted as communicating actual facts; it does not reach dramatic performances, satire, parody, hyperbole, or the like. Finally, the Act is strictly viewpoint neutral. The false statements proscribed by the Act are highly unlikely to be tied to any particular political message. In the rare cases where that is not so, the Act applies equally to all false statements, whether they tend to disparage or commend the Government or the military.

Both the plurality and Justice Breyer argue that Congress could have preserved the integrity of military honors by means other than a criminal prohibition, but Congress had ample reason to believe that alternative approaches would not be adequate. The alternative that is recommended is a database of actual medal recipients. This remedy, unfortunately, will not work. The Department of Defense has explained that the most that it can do is to create a database of recipients of certain top military honors awarded since 2001. Because a comprehensive database is not practicable, lies about military awards cannot be remedied by "counterspeech."

The plurality and the concurrence also suggest that Congress could protect the system of military honors by enacting a narrower statute. The plurality recommends a law that would apply only to lies that are intended to "secure moneys or other valuable considerations." But much damage is caused, both to award recipients and to the system of military honors, by false statements that are not linked to any tangible reward. There is no basis for distinguishing between the Stolen Valor

Act and the alternative statutes that the plurality and concurrence appear willing to sustain.

II

Time and again, this Court has recognized that as a general matter false factual statements possess no intrinsic First Amendment value. Consistent with this recognition, many kinds of false factual statements have long been proscribed without " 'rais[ing] any Constitutional problem.' " Laws prohibiting fraud, perjury, and defamation, for example, were in existence when the First Amendment was adopted, and their constitutionality is now beyond question.

We have also described as falling outside the First Amendment's protective shield certain false factual statements that were neither illegal nor tortious at the time of the Amendment's adoption. The right to freedom of speech has been held to permit recovery for the intentional infliction of emotional distress by means of a false statement, even though that tort did not enter our law until the late 19th century. And the Court concluded that the free speech right allows recovery for the even more modern tort of false-light invasion of privacy.

In line with these holdings, it has long been assumed that the First Amendment is not offended by criminal statutes with no close common-law analog. The most well known of these is probably 18 U. S. C. §1001, which makes it a crime to "knowingly and willfully" make any "materially false, fictitious, or fraudulent statement or representation" in "any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States." Still other statutes make it a crime to falsely represent that one is speaking on behalf of, or with the approval of, the Federal Government. There are more than 100 federal criminal statutes that punish false statements made in connection with areas of federal agency concern.

These examples amply demonstrate that false statements of fact merit no First Amendment protection in their own right. Respondent and others who join him in attacking the Stolen Valor Act take a different view. Respondent's brief features a veritable paean to lying. According to respondent, his lie about the Medal of Honor was nothing out of the ordinary for 21st-century Americans. "Everyone lies," he says. "We lie all the time." "[H]uman beings are constantly forced to choose the persona we present to the world, and our choices nearly always involve intentional omissions and misrepresentations, if not outright deception." An academic amicus tells us that the First Amendment protects the right to construct "self-aggrandizing fabrications such as having been awarded a military decoration."

This radical interpretation of the First Amendment is not supported by any precedent of this Court. The lies covered by the Stolen Valor Act have no intrinsic value and thus merit no First Amendment protection unless their prohibition would chill other expression that falls within the Amendment's scope. I now turn to that question.

While we have repeatedly endorsed the principle that false statements of fact do not merit First Amendment protection for their own sake, we have recognized that it is sometimes necessary to "exten[d] a measure of strategic protection" to these statements in order to ensure sufficient " 'breathing space' " for protected speech. Thus, to prevent the chilling of truthful speech on matters of public concern, we have held that liability for the defamation of a public official or figure requires proof that defamatory statements were made with knowledge or reckless disregard

of their falsity. This same requirement applies when public officials and figures seek to recover for intentional infliction of emotional distress. These requirements inevitably have the effect of bringing some false factual statements within the protection of the First Amendment, but this is justified in order to prevent the chilling of other, valuable speech.

These examples by no means exhaust the circumstances in which false factual statements enjoy a degree of instrumental constitutional protection. There are broad areas in which any attempt to penalize false speech would present a grave danger of suppressing truthful speech. Laws restricting false statements about philosophy, religion, history, the social sciences, the arts, and other matters of public concern would present such a threat. The point is not that there is no such thing as truth or falsity in these areas or that the truth is always impossible to ascertain, but rather that it is perilous to permit the state to be the arbiter of truth.

Even where there is a wide scholarly consensus concerning a particular matter, the truth is served by allowing that consensus to be challenged. Today's accepted wisdom sometimes turns out to be mistaken. And in these contexts, "[e]ven a false statement may be deemed to make a valuable contribution to public debate, since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error.' " New York Times Co. v. Sullivan, 376 U. S. 254, 279, n. 19 (1964) (quoting J. Mill, On Liberty 15 (R. McCallum ed. 1947)).

Allowing the state to proscribe false statements in these areas also opens the door for the state to use its power for political ends. If some false statements about historical events may be banned, how certain must it be that a statement is false before the ban may be upheld? And who should make that calculation? While our cases prohibiting viewpoint discrimination would fetter the state's power to some degree, the potential for abuse of power in these areas is simply too great.

In stark contrast to hypothetical laws prohibiting false statements about history, science, and similar matters, the Stolen Valor Act presents no risk that valuable speech will be suppressed. The speech punished by the Act is not only verifiably false and entirely lacking in intrinsic value, but it also fails to serve any instrumental purpose that the First Amendment might protect.

The two opinions endorsed by the majority appear to be based on the concern that the Act suffers from overbreadth. But to strike down a statute on the basis that it is overbroad, it is necessary to show that the statute's overbreadth is substantial. The plurality and the concurrence do not even attempt to make this showing.

The plurality additionally worries that a decision sustaining the Stolen Valor Act might prompt Congress and the state legislatures to enact laws criminalizing lies about "an endless list of subjects." This concern is likely unfounded. With very good reason, military honors have traditionally been regarded as quite different from civilian awards. Nearly a century ago, Congress made it a crime to wear a military medal without authorization; we have no comparable tradition regarding such things as Super Bowl rings, Oscars, or Phi Beta Kappa keys.

Congress was entitled to conclude that falsely claiming to have won the Medal of Honor is qualitatively different from even the most prestigious civilian awards and that misappropriation of that honor warrants criminal sanction. The Stolen Valor Act is a narrow law enacted to address an important problem, and it presents no threat to freedom of expression.