IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 16-9070

ORDER WITHDRAWING AND CANCELING REGULAR LICENSE

ORDERED:

The regular license issued to EDWARD ALLEN MALONE is withdrawn and canceled and his name shall be stricken from the roll of attorneys, pursuant to the recommendation contained in the attached Order of the Board of Law Examiners. Edward Allen Malone must surrender his State Bar Card and Texas law license to the Clerk of the Supreme Court immediately; or, file an affidavit with the Court stating why he cannot.

Consequently, Edward Allen Malone is prohibited from the practice of law in the State of Texas. This includes holding himself out as an attorney at law, performing legal services for others, giving legal advice to others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body (whether state, county, municipal, or other), or holding himself out to others or using his name in any manner in conjunction with the designation "Attorney at Law," "Counsel at Law," or "Lawyer."

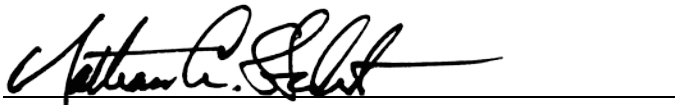
Additionally, Edward Allen Malone must provide immediate, written notification of the cancellation to each of his clients. He shall return any files, papers, unearned monies, and other property in his possession belonging to any client or former client to the client or former client or to another attorney at the client's or former client's request.

Edward Allen Malone shall file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, Post Office Box 12487, Austin, Texas 78711-2487, within thirty (30) days after the date of this Order, an affidavit stating that all current clients have been notified of the cancellation of his license and that all files, papers, monies, and other property belonging to all clients and former clients have been returned.

Finally, Edward Allen Malone shall, within thirty (30) days after the date of this Order, provide written notice of the terms of this Order to each justice of the peace, judge, magistrate, and chief justice of each court in which he has any pending matter and shall therein identify the style and cause number of the pending matter with the name, address, and telephone numbers of each client he represents in court. Edward Allen Malone shall file with the State Bar of Texas, Office of the Chief Disciplinary Counsel, Post Office Box 12487, Austin, Texas 78711-2487, within thirty (30) days after the date of this Order, an affidavit stating that he has provided written notice to each justice of peace, judge, magistrate, and chief justice of each court in which he has any pending matter the style and cause number of the pending matter with the name, address, and telephone numbers of each client he represents in each court.

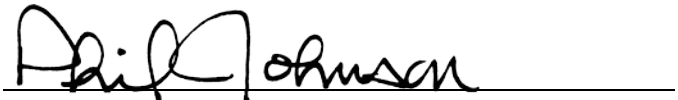
This Order shall be effective immediately.

SIGNED this 7th day of June, 2016.



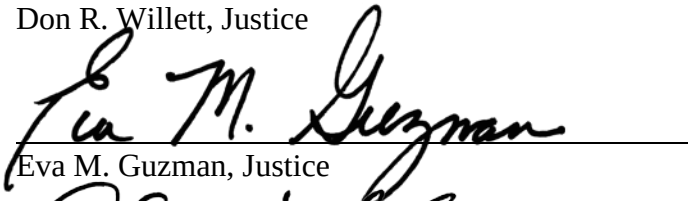
Nathan L. Hecht, Chief Justice

Paul W. Green, Justice

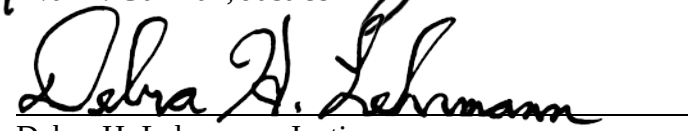


Phil Johnson, Justice

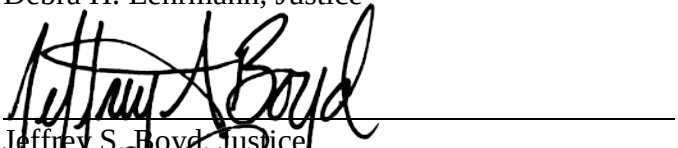
Don R. Willett, Justice



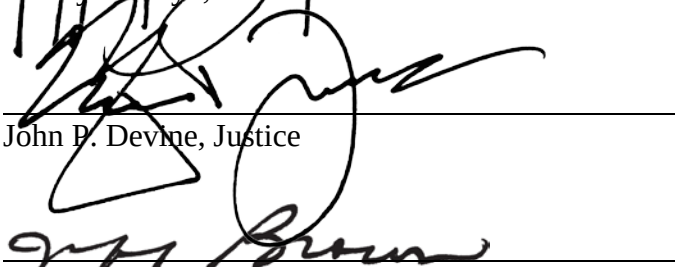
Eva M. Guzman, Justice



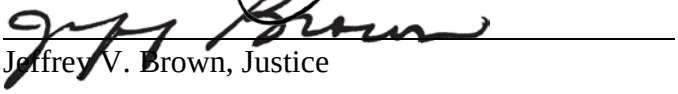
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice

BOARD OF LAW EXAMINERS

IN THE MATTER OF	§	DOCKET NUMBER 04-16-02
	§	
EDWARD ALLEN MALONE	§	AUSTIN, TEXAS

ORDER

On May 13, 2016, a three-member panel of the Board of Law Examiners (Board), with John H. Cayce, Jr. presiding, heard the matter of Edward Allen Malone. Kristin Bassinger, Staff Attorney, represented the Board. Mr. Malone, although advised of his right to counsel, elected to appear *pro se*. The Board considered, among other things, whether to recommend that Mr. Malone's license be canceled pursuant to Rule XVII(b) of the *Rules Governing Admission to the Bar of Texas*.

I.

PROCEDURAL HISTORY

On June 5, 2013, Mr. Malone filed his sworn application for Admission without Examination. Although the application required disclosure of all jurisdictions of admission, Mr. Malone did not disclose his admission to the Virginia State Bar. Although the application required disclosure of all bar discipline, Mr. Malone did not disclose his discipline by the Virginia State Bar. On April 30, 2015, Mr. Malone was licensed to practice law in Texas.

After discovering the above-described non-disclosures, the Board sent Mr. Malone proper and timely notice of a hearing by first class mail and certified mail, return receipt requested. The notice letter stated that Mr. Malone may have obtained his license to practice law in Texas fraudulently or by willful failure to comply with the *Rules Governing Admission to the Bar of Texas*. The notice letter further stated a hearing was set to give Mr. Malone the opportunity to show cause why the Board

should not recommend to the Supreme Court of Texas that his license be withdrawn and canceled and his name be stricken from the roll of attorneys.

II.

JURISDICTION

The Board has jurisdiction over this matter pursuant to Texas Government Code, Sections 82.004, 82.021, 82.022, 82.027, 82.028, and 82.030, as well as Rules I, II, IV, IX, X, XV, XVI, XVII, and XX of the *Rules Governing Admission to the Bar of Texas* (Rules), adopted by the Supreme Court of Texas, including amendments.

III.

FINDINGS OF FACT

After considering the evidence and testimony, the Board finds:

1. On or about March 23, 2016, the Board gave Mr. Malone proper and timely notice of a May 13, 2016 hearing by first class mail and by certified mail with return receipt requested. (B.E.1).

2. On or about June 5, 2013, Mr. Malone filed his sworn Application for Admission to the Bar of Texas and applied for Admission without Examination. (B.E.2).

3. Item 3 of Mr. Malone's application required him to list all state, federal, and/or foreign jurisdictions where he had been licensed or admitted to practice law. In response, Mr. Malone listed only one state jurisdiction, Maryland, with an admission date of December 15, 1999. (B.E.2 at 2). Mr. Malone did not disclose had also been admitted in Virginia since October 14, 1999. (B.E.12 at 1).

4. Item 17(c) of Mr. Malone's application asked, in pertinent part, "Have you ever been … suspended from practice, disciplined, disqualified … or has your license ever been qualified or conditioned in any way, as a member of any profession, licensed occupation, or as the holder of any public office?" Mr. Malone falsely answered, "No." (B.E.2 at 10). Mr. Malone failed to disclose

that he had been disciplined by the State Bar of Virginia and was not in good standing at the time of his application, as detailed below.

5. Because Mr. Malone did not qualify for Admission without Examination status, he elected to convert his application to take the February 2014 Texas Bar Exam. (B.E.3). Mr. Malone took the February 2014 exam and did not pass.

6. On or about May 9, 2014, Mr. Malone filed a Re-Application for Admission to the Bar of Texas and to take the July 2014 bar exam. Although that application inquired about professional licensure and discipline, Mr. Malone did not disclose his State Bar of Virginia admission and disciplinary history. (B.E.4). Mr. Malone took the July 2014 Texas Bar Exam and did not pass.

7. On or about December 5, 2014, Mr. Malone filed a Re-Application for Admission to the Bar of Texas and to take the February 2015 bar exam. Although that application inquired about professional licensure and discipline, Mr. Malone did not disclose his State Bar of Virginia admission and disciplinary history. (B.E.5). Mr. Malone took the February 2015 Texas Bar Exam and did pass. Mr. Malone was licensed to practice law in Texas on or about April 30, 2015. (B.E.7).

8. On or about February 23, 2016, Board staff obtained proof from the Virginia State Bar Clerk's Office that Mr. Malone had been licensed in Virginia on October 14, 1999, was not in good standing, had been administratively suspended from practice in October 2010 and March 2011, and his license was forfeited in March of 2013. (B.E.12).

9. The Virginia State Bar Clerk's Office also forwarded a copy of a February 28, 2011 *District Committee Determination* wherein the committee issued a *Public Reprimand with Terms* against Mr. Malone. The findings of fact listed multiple failures to respond or appear by Mr. Malone after he was given proper and timely notice by Summons and Subpoena *Duces Tecum*. (B.E.12 at 6 - 10). During his Board hearing, Mr. Malone admitted he had notice but intentionally failed to appear or provide responsive documents to the State Bar of Virginia. (Hearing Testimony).

10. Rule X(d) states, in part, that "Any preliminary determination that the Applicant possesses the requisite present good moral character and fitness is issued on the condition that the Applicant has faithfully complied with these Rules."

11. Rule X(e) states, in part, that "The Applicant has a continuing duty to ensure the accuracy and completeness of the Applicant's responses on the Application and to update those responses until the Applicant is certified to the Supreme Court for licensure."

12. Rule XII(b) states that "All law licenses are issued on the condition that the Applicant has faithfully complied with these Rules. If at any time it appears that an Applicant has obtained a license fraudulently or by willful failure to comply with these Rules, after notice and a hearing, the Board may recommend to the Supreme Court that the license be withdrawn and canceled, and the name of the license holder stricken from the roll of attorneys."

13. By letter dated February 10, 2016, Board staff notified Mr. Malone that an investigation of his non-disclosure was underway. The correspondence included copies of Mr. Malone's responses to the bar admission and discipline questions, proof of his State Bar of Virginia admission and disciplinary history, and the text of Rule XVII(b). Mr. Malone was directed to provide a detailed explanation of his failure to disclose his Virginia licensure and discipline. (B.E.10).

14. By letter dated February 25, 2016, Mr. Malone responded, in part:

> I failed to disclose my Virginia license and discipline to the board because I did not read the questions carefully enough. In applying for a Texas law license under the admission by motion program, I planned on using Maryland as the reciprocal state. As such, I did not believe I was required to share my experience practicing law in Virginia. Because I was using Maryland as the reciprocal State, I understood questions 3 and 17(c) asking me if my law license in Maryland had ever been suspended. My understanding of what questions 3 and 17(c) required was probably biased by my apprehension to disclose anything negative about myself. (B.E.11).

15. During the May 13, 2016 hearing, Mr. Malone admitted he had read the questions carefully and knew disclosures of his Virginia admission and discipline were required.

16. Mr. Malone admitted his State Bar of Virginia disciplinary history negatively reflected upon his moral character and could have hindered his admission to

the State Bar of Texas. Mr. Malone testified, "I must have felt the information I withheld was relevant, otherwise I wouldn't have withheld it." (Hearing Testimony).

17. Mr. Malone intentionally misrepresented his bar admission disciplinary history by failing to disclose his State Bar of Virginia admission and disciplinary history, even though such disclosure was required by his applications for admission to the State Bar of Texas.

18. Mr. Malone's misrepresentations were material, were relied upon by the Board, and benefitted Mr. Malone in that he was licensed to practice law in Texas without any opportunity for the Board to make an informed determination regarding Mr. Malone's moral character.

19. Mr. Malone willfully failed to disclose his State Bar of Virginia admission and disciplinary history, as required by his applications for admission to the State Bar of Texas, in violation of the Rules.

20. Mr. Malone obtained his license to practice law in Texas fraudulently or by willful failure to comply with the *Rules Governing Admission to the Bar of Texas*.

IV.

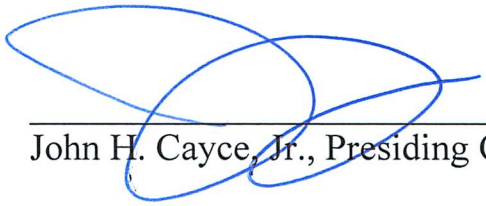
CONCLUSIONS OF LAW

1. There is a clear and rational connection between Mr. Malone's obtaining his license to practice law in Texas fraudulently or by willful failure to comply with the Rules, as found above, and the likelihood he would injure a client, obstruct the administration of justice, or violate the *Texas Disciplinary Rules of Professional Conduct*, if the Board were not to recommend that his license to practice law be withdrawn and canceled.

2. Mr. Malone's license should be withdrawn and canceled and his name should be stricken from the roll of attorneys in Texas, due to his obtaining his license to practice law in Texas fraudulently and by willful failure to comply with the *Rules Governing Admission to the Bar of Texas*.

IT IS THEREFORE ADJUDGED, ORDERED, AND DECREED that the Board shall recommend to the Supreme Court of Texas that Mr. Malone's license be withdrawn and canceled, and that his name be stricken from the roll of attorneys.

SIGNED this 24th day of May, 2016



John H. Cayce, Jr., Presiding Chair

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7/7/2016 6:24:47 PM
tex-11526807
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

IN THE SUPREME COURT OF TEXAS

In re: Edward A. Malone

Misc. Docket No. 16-9070

AFFIDVIT OF EDWARD A. MALONE

This Court has no authority to compel me to do a thing. I am not an officer of this Court nor am I an employee of the State of Texas. Under the 13th Amendment to the United States Constitution, "neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Requiring me to submit memos to judges and then file an affidavit with this Court constitutes involuntary servitude.

This Court has done absolutely nothing to acquire personal jurisdiction over me. No one ever summoned me to appear before this Court, nor had I participated in any proceedings in this Court before the Court issued its June 7, 2016 order. Even if the order of the Supreme Court is deemed to be an injunction or temporary restraining order, this Court has not properly served me with that order. Kristin Bassinger, the staff attorney for the Texas Board of Law Examiners mailed me a copy of the Court's order. That is not proper service. Moreover, even if this Order is deemed an injunction or temporary restraining order, I was not served with the order nor given an opportunity to appear before this Court to vacate the order. How then can this Court compel me to act?

As a decency to my clients and as a courtesy to this Court, however, I am honoring your

request. I hereby notify you that I have indeed contacted all judges before whom I have appeared and notified them of the terms of this Court's unconstitutional order. I have also contacted my clients and informed them about the cancellation of my law license. My clients are very unhappy about this. They believe they have a 6th Amendment right to decide what is best for themselves.

As for my Texas Bar of Texas card, it has been destroyed.

Respectfully submitted,

Edward Malone

Edward A. Malone,
pro se
[redacted]

July 7, 2016

Date

IN THE SUPREME COURT OF TEXAS

In re: Edward A. Malone

Misc. Docket No. 16-9070

MOTION TO VACATE
ORDER WITHDRAWING AND CANCELLING REGULAR LICENSE

COMES NOW the undersigned lawyer, Edward A. Malone, *pro se*, and requests this Court to vacate its order withdrawing and canceling his Texas law license, stating as grounds the following:

1. That on May 27, 2016, the Board of Law Examiners entered a recommendation to withdraw and cancel the law license of undersigned lawyer.

2. That the Board made its recommendation after a three-person panel conducted a hearing in this matter on May 13, 2016.

3. That the three-person panel, rather than the entire Board held the hearing.

4. That after the three-person panel made its decision, neither it nor the Board allowed undersigned lawyer to move the Board for an *en banc* hearing of his matter.

5. That after the three-person panel made its decision, neither it nor the Board allowed undersigned lawyer to move the Board for a new hearing or for reconsideration of its decision.

6. That the Board did not allow undersigned lawyer to petition the Travis County District Court for judicial review of the Board's decision.

7. That the Board did not allow undersigned lawyer to file exceptions to the Board's

recommendation.

8. That the Board did not even provide undersigned lawyer with a Supreme Court docket number or any notice of when the Supreme Court would be hearing this matter.

9. That undersigned lawyer therefore had no means of participating in the proceedings before this Court.

10. That the grant of a professional license is considered to be a vested property interest of the individual, which is protected by due process. See Goldberg v. Kelly, 397 U.S. 254, 262 n.8 (1970).

11. That because professional licenses are property rights,the U.S. Supreme Court has recognized that due process protection applies to license revocation actions by the state. See J. Bruce Bennett, *The Rights of Licensed Professionals to Notice and Hearing in Agency Enforcement Actions*, 7 TEX. TECH ADMIN. L.J. 205, 208 (2006) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 262 n.8 (1970)).

12. That in cases in which an applicant for a law license is aggrieved by a decision of the Board, he or she may have the Board's decision reviewed in the district courts of Travis County within sixty (60) days after the decision is mailed to the applicant or the applicant's attorney. (See also Rule XV(k)).

13. That the court can either affirm the Board's action or remand the matter to the Board for further proceedings. (See also Rule XV(k)).

14. That Section 19 of the Texas states that "no citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land."

15. That the 14th Amendment to the United States Constitution says that a state may not "deprive any person of life, liberty, or property, without due process of law."

16. That the Board's failure to allow undersigned lawyer to petition the District Court of Travis County for judicial review violates Rule XV(k).

17. That if Rule XV(k) should not be interpreted to allow undersigned lawyer judicial review of

the Board's decision, then Rule XV(k) is unconstitutional in that it violates the due process rights of undersigned lawyer as articulated in the Texas Constitution as well as the United States Constitution.

18. That not allowing undersigned lawyer to file exceptions to the Board's recommendation also violates the due process rights of undersigned lawyer as articulated in the Texas Constitution as well as the United States Constitution.

19. That in cases where there is probable cause to believe that an applicant's law license was obtained unlawfully, the Board, after notice and hearing, may recommend to the Supreme Court that the license be withdrawn and canceled. See Rule XVII.

20. That there is nothing in Rule XVII that authorizes a panel or subcommittee to conduct the hearing on behalf of the Board.

21. That not allowing an *en banc* Board hearing violated Rule XVII in that it was a panel -- not the entire Board -- that conducted the hearing.

22. That Article 1, Section 3(a) of the Texas Bill of Rights states that "equality under the law shall not be denied or abridged because of sex, race, color, creed, or national origin".

23. That the Fourteenth Amendment to the United States Constitution provides that no state shall deny to any person within its jurisdiction "the equal protection of the laws".

24. That the Texas Code states that "appointments to the [Board of Law Examiners] shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees" (See Government Code, Title 2. Subtitle G. Chapter 82. Subchapter A).

25. That the current composition of the Board of Law Examiners is all white.

26. That undersigned lawyer is black.

27. That the adjudication of undersigned counsel's matter by an all-white panel followed by a recommendation of an all-white Board was a violation of undersigned's equal protection and due process rights.

28. That the action recommended by the Board was too broad and sweeping.

29. That undersigned lawyer took and passed the Texas Bar Exam in February 2015.

30. That there was nothing about the academic portion of the application of the undersigned that was compromised.

31. That under the Board's recommendation, however, undersigned would be forced to take the Texas Bar Exam all over again.

32. That it would have been more fair for the Board to craft a recommendation which required the undersigned to re-apply for a law license but allowed his recent bar exam results to be recognized.

33. That Rule XVII states that if it appears that an Applicant has obtained a license fraudulently or by willful failure to comply with these Rules, after notice and hearing, the "Board *may* recommend to the Supreme Court that the license be withdrawn and canceled, and the name of the license holder stricken from the roll of attorneys."

34. That the Rule did not state that the Board *must* recommend that the lawyer be stricken from the roll of attorneys.

35. That the Texas Board of Law Examiners Rule X states that in cases where the Board preliminarily reviews the application of a lawyer and determines that the lawyer does not have the requisite character and fitness to practice law in Texas, the Board shall provide the applicant with (1) a detailed analysis of the results of the investigation; and (2) an objective list of actions, if any, which the lawyer may take to correct the deficiencies and become qualified for admission to the bar.

36. That although the procedural posture of this matter is slightly different from that of an applicant whose application is rejected, there is absolutely nothing in the Texas Rules precluded the Board from using the Rule X remedy.

37. That in considering a lawyer's application to practice law in Texas, the Board also has the authority to determine that a lawyer should be granted conditional approval his or her present good moral character and fitness and be required to meet such conditions as the Board deems appropriate; defer a decision until such time as the Board has the opportunity to consider further information,

evaluations, or documentation as deemed necessary by the Board; or in the case of either a temporary or probationary license, recommend to the Supreme Court that the license should be renewed in its present form, renewed with additional or amended conditions. See Rule X.

38. That the Board failed to demonstrate that allowing undersigned lawyer to remain a Texas attorney posed a danger to the community.

39. That undersigned counsel attaches his letter to the Board of Law Examiners and asks this Court to consider them exceptions to the Board's recommendation.

WHEREFORE, for the above reasons, the undersigned requests this Court to VACATE its June 7, 2016 order canceling the law license of Edward A. Malone.

Respectfully submitted,

Edward Malone

Edward A. Malone,
pro se

[redacted]

June 14, 2016
Date

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served to Kristin Bassinger, Esq, Attorney for Board of Law Examiners.

Edward Malone

Edward A. Malone

June 14, 2016
Date

VIRGINIA STATE BAR

CERTIFICATE OF GOOD STANDING

THIS IS TO CERTIFY THAT ***EDWARD ALLEN MALONE*** *IS AN ACTIVE MEMBER OF THE VIRGINIA STATE BAR IN GOOD STANDING.* ***MR. MALONE*** *WAS LICENSED TO PRACTICE LAW IN VIRGINIA ON* ***OCTOBER 14, 1999,*** *AFTER SUCCESSFULLY PASSING THE BAR EXAMINATION GIVEN BY THE VIRGINIA BOARD OF BAR EXAMINERS.*

Issued June 8, 2016

KAREN A. GOULD
EXECUTIVE DIRECTOR AND
CHIEF OPERATING OFFICER

Edward A. Malone

[redacted]

June 7, 2016

Via Facsimile and U.S. Mail: (512) 463-5300

John H. Cayce, Presiding Chair
Texas Board of Law Examiners
P.O. Box 13486
Austin, TX 78711-3486

Dear Mr. Cayce and the Board of Law Examiners:

I am in receipt of your May 24, 2016 recommendation, and I write you to respond.

Yes, I did withhold information asked of me by the Board of Law Examiners. I withheld certain information about my past because I believed that you would unfairly use that information against me in a hearing. I did not believe my misconduct in Virginia rendered me unfit to practice law in Texas, but that was not my call to make. For taking the law into my own hands, I was wrong. I admit that. But I suggest to you that the punishment ought to fit the offense.

I ask you to reconsider the remedy you chose to correct the situation. Rule XVII states that if it appears that an Applicant has obtained a license fraudulently or by willful failure to comply with these Rules, after notice and hearing, the "Board *may* recommend to the Supreme Court that the license be withdrawn and canceled, and the name of the license holder stricken from the roll of attorneys." The Rule did not state that the Board *must* recommend that the lawyer be stricken from the roll of attorneys.

Texas Board of Law Examiners Rule X states that in cases where the Board preliminarily reviews the application of a lawyer and determines that the lawyer does not have the requisite character and fitness to practice law in Texas, the Board shall provide the applicant with (1) a detailed analysis of the results of the investigation; and (2) an objective list of actions, if any, which the lawyer may take to correct the deficiencies and become qualified for admission to the bar. Although the procedural posture of my case is slightly different from that of an applicant whose application is rejected, there is absolutely nothing in the Texas Rules precluded the Board from using the Rule X remedy.

In considering a lawyer's application to practice law in Texas, the Board also has the authority to determine that a lawyer should be granted conditional approval of his or her present good moral character and fitness and be required to meet such conditions as the Board deems appropriate; defer a decision until such time as the Board has the opportunity to consider further information, evaluations, or documentation as deemed necessary by the Board; or in the case of either a temporary or probationary license, recommend to the Supreme Court that the license should be renewed in its present form, renewed with additional or amended conditions. Although these other, less extreme remedies were at your disposal, you chose the most extreme action, a complete cancellation of my law license.

If the Supreme Court approves the recommendation of the Board, then it would have been as if I were never a Texas attorney to begin with. The criminal defendants that I represented who were either convicted or who pleaded guilty will now have grounds to file for a writ of *habeas corpus* in federal court. Their convictions would have to be invalidated on grounds that they were never really represented by a licensed attorney in the first place. Those clients with whom I am presently engaged -- some of which have pending trials -- will now have to abruptly hire another lawyer. A prospective remedy from the Board rather than the retroactive one you are now recommending would better serve the public interest.

Despite what you say in your recommendation, there is absolutely no clear or rational connection between my improperly obtaining my law license in Texas and the likelihood that I would injure a client, obstruct justice or violate a Texas Disciplinary Rule. There is absolutely no evidence that I am or have ever been a danger to the Texas general public. I have practiced law in Texas for over a year, and nothing has gone wrong. The public is satisfied with my services.

The residents of San Augustine County and the Deep East Texas region, many of whom are poor and black, do not care about what I did in Virginia almost 10 years ago. All they care about is whether I will fight for them as their advocate.

My misrepresentation only became an issue when a District Attorney, who routinely brokers plea bargains in the San Augustine and Sabine County jails with Defendants without assistance of counsel, came forward and complained to the Board after I begin to expose and challenge his unconstitutional practices. This district attorney -- the real obstructor of justice -- will probably continue to practice law and abuse the 6th Amendment rights of the accused. Where is the protection of the general public in that?

What is also problematic with your recommendation is that implementation of it would force me to take the Texas Bar exam all over again. Yet, there was nothing about the academic portion of my application that was compromised. I indeed attended an ABA approved law school. I indeed took the MPRE test. I indeed took the Texas bar exam. No one sat in that room in Pasadena on my behalf. I

did it myself. If a couple buys a house and acquires $100,000 in equity and then default upon mortgage payments, the couple does not get to keep the house, but they also do not walk away with nothing. They are at least entitled to keep their equity minus certain costs and penalties. In my case, the Board is forcing me to walk away with nothing, as if I never took and passed the bar exam to begin with. This is not fair.

I have also spent thousands of dollars and dozens of hours on continuing legal education courses. As it now stands, I have enough Texas CLE credits to carry me over until 2020. But with one strike of ink from your Board, all of these classes will be for naught. Forcing me to retake the bar exam, vacate all of my continuing Texas legal education credit and start all over again has no rational relationship to any legitimate public interest.

And no, I did not obtain a Texas law license by fraud. The use of the word fraud implies something unjust or undeserved. And it also implies that someone was cheated. However, I graduated from an accredited law school just like every other attorney and passed the bar exam like every one else. Yes, I withheld information from you that you might have deemed disqualifying, but that does not mean my licensing was unjust.

You stated that my misrepresentations "benefitted [sic] Mr. Malone", suggesting that I did all of this for self-gain. This is also not true. Many of my friends, family members, clergy, and other members of the community asked me to apply for a Texas law license and practice law in San Augustine. When I was admitted last year, I became the first black lawyer in history to practice law in the County of San Augustine. No, I did not apply to be an attorney in the State of Texas for personal gain. To quote from former boxing champion Larry Holmes who was attempting to break the record of Rocky Marciano for most undefeated fights, "I was giving my people something to look forward to in our lifetime".

The commencement of my law practice not only provided a sense of pride for the black community, but it provided relief from the scarcity of local private attorneys from which *all* the people in San Augustine are suffering. A search of the Texas attorney roll shows that there are only six attorneys licensed to practice law in San Augustine County, Texas. Out of these six attorneys, one attorney is the District Court judge, two other attorneys are prosecutors, one attorney works for a law firm in Nacogdoches county, another one is retired, and yet another one is in his sixties, has recently vacated his office building and is winding down his law practice. This leaves me as the last man standing.

Supreme Court Justice Rufus W. Peckham once said, "The liberty of contract relating to labor includes both parties to it; the one has as much right to purchase as the other to sell labor". I ask you to reconsider depriving the residents of San Augustine of the ability to hire their only full-time private attorney.

Finally, I disagree with your statement that I admitted that my disciplinary history from the Commonwealth of Virginia "negatively reflected upon [my] moral character". I said no such thing. All I said was that I believed the Texas Board would have found my misconduct in Virginia relevant. I

was simply acknowledging that your board might find my past mistake as a disqualifying factor in my Texas admission. I was not saying that it ought to have been a disqualifying factor.

In no way was I admitting that my mistake in Virginia was a stain on my moral character. In the legal case giving rise to the disciplinary action against me in Virginia, I was trying to help someone. I may have made errors in my legal representation of the client, but my heart was in the right place. I did nothing for my own pecuniary gain or with intent to injure anyone.

If you will recall during the May 13, 2016 hearing, I attempted to explain the circumstances surrounding the Virginia matter and Mr. Cayce interrupted me and refused to allow me to continue. He stated that it was not the purpose of this hearing to rehash the Virginia incident.

Your board refused to allow me to present mitigating testimony concerning the Virginia matter, yet you boldly report to the Texas Supreme Court that I admitted that this Virginia incident is a stain on my moral character. This is simply not fair. You may think that my Virginia mishap is a negative reflection on my moral character based upon your definition of moral character, but this is not my opinion and it is certainly not what I said.

As it stands today, I have completed all the required conditions for my reinstatement as a Virginia attorney. As of June 2, 2015, I am once again an active member of the Virginia State Bar.

There were other less sweeping remedies you could have chosen which would have vindicated your interest in protecting the sovereignty of the Board as well as the interests of the public without disrupting the disposition of criminal cases and attempting to destroy my life. I therefore ask you to: 1) please amend your recommendation to the Texas Supreme Court and call for less extreme measures to be taken against me; 2) conduct an *en banc* board review of this matter; or 3) allow me to file exceptions to your recommendation with the Supreme Court of Texas.

Sincerely,

Edward Malone
Edward A. Malone

PS: Because lawyers are often called upon to help protect unalienable rights bestowed upon people by God, articulated in the Declaration of Independence and recognized by the Texas and United States Constitutions, a delegation of lawyers all across Texas and in other parts of the United States will be reading the Declaration of Independence on the steps of their respective county courthouse on the morning of July 1, 2016. This year, I have been invited to read the Declaration of Independence in San Augustine County, Texas. I have agreed to participate in this program, and I will be joining my learned colleagues across America in reading the Declaration of Independence. Not because I am perfect, but because I remain dedicated to this fight for liberty!

My MCLE Page

Welcome Edward A. Malone !

EDWARD A. MALONE
State Bar of Texas

[redacted]

Edit Profile

Texas Bar College
Professionalism Through Education

Eligibility

2018 MCLE Compliance Information (Current Year)

CHANGE YEAR

REPORT NEW HOURS:

Membership Status: **ACTIVE**

MCLE Reporting Status: **REGULAR**

Compliance Dates: **3/1/2015 thru 2/28/2018**

MCLE Compliance Status: **IN COMPLIANCE**

Non-Compliance Fee Owed: **$0.00**

Your MCLE Hours

2018 CLE SUMMARY INFORMATION

Carried Forward From 2017

Accredited	*Self-Study*	*Total*
CLE: 0.00	***Hours:*** 0.00	***Hours:*** 0.00
Ethics: 0.00	***Ethics:*** 0.00	***Ethics:*** 0.00

Hours Earned During 2018

Accredited	*Self-Study*	*Total*
CLE: 110.25	***Hours:*** 5.50	***Hours:*** 115.75
Ethics: 10.75	***Ethics:*** 0.00	***Ethics:*** 10.75

Hours Applied Toward 2018

Accredited	*Self-Study*	*Total*
CLE: 12.00	***Hours:*** 3.00	***Hours:*** 3.00
Ethics: 3.00	***Ethics:*** 0.00	***Ethics:*** 0.00

Hours Needed For 2018

Accredited	*Self-Study*	*Total*
CLE: 0.00	***Hours:*** 0.00	***Hours:*** 0.00
Ethics: 0.00	***Ethics:*** 0.00	***Ethics:*** 0.00

CLE Hours Reported

Employment Law in Canada

Credits: 1.50 ***Ethics:*** 0.00 5/23/2016

Veteran Benefits Update: Maximizing Benefits for Service

Credits: 1.00 ***Ethics:*** 0.00 5/23/2016

Federal Responses to State Medical Marijuana Laws

Credits: 1.50 ***Ethics:*** 0.00 5/11/2016

Aviation Litigation: The View From 30,000 Feet

Credits: 1.75 ***Ethics:*** 0.00 5/11/2016

Attorney Escrow Accounts, IOLA and Ethics: What Every New La

Credits: 1.00 ***Ethics:*** 1.00 5/10/2016

An Attorney's Guide to Ethically Advising Start-Ups: 2015 Up

Credits: 1.00 ***Ethics:*** 1.00 5/10/2016

Reporter's Privilege and the Proper Representation of Report

Credits: 1.00 ***Ethics:*** 0.00 5/10/2016

IP Issues in Canada & Canada's Anti-Spam Laws

Credits: 1.50 ***Ethics:*** 0.00 5/6/2016

Data Breaches in the Retail Industry

Credits: 1.50 ***Ethics:*** 0.00 5/6/2016

Other Self-study

Credits: 2.00 ***Ethics:*** 0.00 5/3/2016

Civil Rights Litigation Part I: Case Intake and Evaluation

Credits: 1.00 ***Ethics:*** 0.00 5/3/2016

October Term 2015: The Death of Justice Antonin Scalia -

Credits: 1.00 ***Ethics:*** 0.00 5/2/2016

Video Game Law: Innovative Law for an Innovative Industry

Credits: 1.00 ***Ethics:*** 0.00 4/15/2016

Incubator Boot Camp: Tools for New Lawyers Looking to Go

Credits: 6.00 ***Ethics:*** 1.00 4/15/2016

Revisions to HIPAA: Modifications to the Privacy Act

Credits: 1.00 ***Ethics:*** 0.00 4/5/2016

State and Federal Marijuana Laws: A Practical Approach to De

Credits: 1.50 ***Ethics:*** 0.00 4/4/2016

Moral Rights for Artists in the U.S.

Credits: 1.00 ***Ethics:*** 0.00 4/4/2016

Ethically Representing the Cannabis Client

Credits: 1.00 ***Ethics:*** 1.00 3/29/2016

A Practical Approach to Medical Malpractice Litigation (Upda

Credits: 1.50 ***Ethics:*** 0.00 3/20/2016

Winning the Tough Case by Embracing the Negative (Update)

Credits: 1.50 ***Ethics:*** 0.00 3/20/2016

UAS Export Control Regulation: A Practical Guide

Credits: 1.50 ***Ethics:*** 0.00 3/20/2016

U.S. Patent Office Post-Grant Proceedings: Strategies for Im

Credits: 1.50 ***Ethics:*** 0.00 3/18/2016

Doing Business in UAS-Related Transactions: What to Include

Credits: 1.50 ***Ethics:*** 0.00 3/18/2016

Strategies For Defending Against NPE Suits

Credits: 1.00 ***Ethics:*** 0.00 3/18/2016

Obtaining Disability Compensation Benefits for Disabled Mili

Credits: 1.00 ***Ethics:*** 0.00 3/18/2016

An Associate's Guide (Part 4): Reducing Your Risk of an Esta

Credits: 1.50 ***Ethics:*** 0.00 3/17/2016

Taking on the Terrorists: How to Use Civil Lawsuits to Bankr

Credits: 1.00 ***Ethics:*** 0.00 3/17/2016

Medicare and Medicaid Overpayments: Meeting the Refund and R

Credits: 1.50 ***Ethics:*** 0.00 3/17/2016

Other Self-study

Credits: 2.00 ***Ethics:*** 0.00 3/16/2016

Watching the Clock: Wage and Hour Risks in the Retail Indust

Credits: 1.00 ***Ethics:*** 0.00 3/16/2016

FAA Regulation of UAS: A Primer for Business and Commercial

Credits: 1.50 ***Ethics:*** 0.00 3/16/2016

Credit and Credit Reports: Practical Information for Attorne

Credits: 1.00 ***Ethics:*** 0.00 3/16/2016

The Sale of Stock in a Closely-Held Business to an"ESOP"

Credits: 1.50 ***Ethics:*** 0.00 3/15/2016

Outsourcing Agreements: Pricing and Financial Structures

Credits: 1.50 ***Ethics:*** 0.00 3/15/2016

Civil Insurance Fraud: From Claims to Litigation

Credits: 1.50 ***Ethics:*** 0.00 3/14/2016

Updates to Whistleblowing and Retaliation: Sarbanes-Oxley, D

Credits: 2.00 ***Ethics:*** 0.00 3/14/2016

Sexual Orientation Asylum: 2015 Update

Credits: 1.00 ***Ethics:*** 0.00 3/14/2016

Qui Tam Litigation and Healthcare Fraud Update

Credits: 1.50 ***Ethics:*** 0.00 3/14/2016

Considerations in Yoga Teacher and Yoga Studio Representatio

Credits: 1.50 ***Ethics:*** 0.00 3/13/2016

The New NLRB 'Quickie' Elections and Other New NLRB Rules

Credits: 1.50 ***Ethics:*** 0.00 3/13/2016

A Practical Guide to Hiring, Performance Management, and Ter

Credits: 1.50 ***Ethics:*** 0.00 3/13/2016

Developments in Private Litigation and Regulatory Enforcemen

Credits: 1.50 ***Ethics:*** 0.00 3/13/2016

Getting Mobile: What You Need to Know to Interact with Consu

Credits: 1.50 ***Ethics:*** 0.00 3/11/2016

Medical Legal Issues in Health and Fitness Clubs

Credits: 1.00 ***Ethics:*** 0.00 3/11/2016

An Update to "What Makes D&O Liability Insurance Unique?"

Credits: 1.50 ***Ethics:*** 0.00 3/11/2016

Advanced Practice Techniques in Front of the TTAB (Update)

Credits: 2.00 ***Ethics:*** 0.00 3/11/2016

UAS Privacy, Data Protection, and Property Rights Issues

Credits: 1.50 ***Ethics:*** 0.00 3/11/2016

Effectively Using Experts in Personal Injury Cases

Credits: 1.00 ***Ethics:*** 0.00 3/10/2016

Other Self-study

Credits: 1.50 ***Ethics:*** 0.00 3/10/2016

White Collar Criminal Mitigation: 2015 Update

Credits: 1.00 ***Ethics:*** 0.00 3/10/2016

The Intersection Between Medical Malpractice and Hospital, N

Credits: 1.50 ***Ethics:*** 0.00 3/9/2016

Avoiding Contested Adoptions & Limiting Attorney Liability

Credits: 1.50 ***Ethics:*** 0.00 3/8/2016

After Detroit: What You Need to Know about the New Face of C

Credits: 1.00 ***Ethics:*** 0.00 3/8/2016

ADA Compliance in the Retail Industry

Credits: 1.00 ***Ethics:*** 0.00 3/7/2016

Mastering Legal Malpractice Insurance

Credits: 1.00 ***Ethics:*** 0.00 3/6/2016

Ethics for Patent Attorneys and Patent Agents

Credits: 1.00 ***Ethics:*** 1.00 3/6/2016

The Anatomy of a National Transportation Safety Board (NTSB)

Credits: 1.50 ***Ethics:*** 0.00 3/6/2016

Practicing before the Trademark Trial & Appeal Board (TTAB)

Credits: 2.00 ***Ethics:*** 0.00 3/6/2016

Who Owns Your Workout? IP Issues and Challenges in the Healt

Credits: 1.00 ***Ethics:*** 0.00 3/6/2016

Hot Topics in Special Education Law

Credits: 1.00 ***Ethics:*** 0.00 3/6/2016

Alcohol 101: Alcohol Beverage and Distribution Law

Credits: 1.50 ***Ethics:*** 0.00 3/5/2016

The Criminalization of School Rules and the School to Prison

Credits: 1.50 ***Ethics:*** 0.00 3/5/2016

Technological Considerations in Trade Secret Litigation:

Credits: 2.00 ***Ethics:*** 0.00 3/5/2016

Computer Security for Today's Law Office

Credits: 2.00 ***Ethics:*** 0.00 3/5/2016

Protecting Free Expression and the First Amendment at our Na

Credits: 1.00 ***Ethics:*** 0.00 3/4/2016

The Lawyer's Role in Emergency Preparedness, Response and Ac

Credits: 1.50 ***Ethics:*** 0.00 3/4/2016

Employment Law and the Arts

Credits: 1.00 ***Ethics:*** 0.00 3/4/2016

Business and Legal Issues in Documentary Filmmaking

Credits: 1.00 ***Ethics:*** 0.00 3/3/2016

You are not Going to Believe This!: Deception,

Credits: 1.00 ***Ethics:*** 0.00 3/2/2016

Crisis Management for the In-House Counsel: Brand

Credits: 1.50 ***Ethics:*** 0.00 3/2/2016

Litigating a Child Sex Abuse Case

Credits: 1.00 ***Ethics:*** 0.00 3/2/2016

Corporate Political Activity Law: Insights for General Couns

Credits: 1.00 ***Ethics:*** 0.00 3/2/2016

Ethical Issues and the Tripartite Relationship: Having Two M

Credits: 1.00 ***Ethics:*** 1.00 3/2/2016

Ethical Issues Associated with Internal Investigations

Credits: 1.00 ***Ethics:*** 1.00 3/1/2016

Innovation or Exploitation: The Limits of Computer Trespass

Credits: 1.75 ***Ethics:*** 0.00 2/16/2016

Avoiding Ethical Violations and Malpractice Suits (Update)

Credits: 1.00 ***Ethics:*** 1.00 2/16/2016

Ethical Issues of Contemporary Criminal Justice

Credits: 1.75 ***Ethics:*** 1.75 2/16/2016

Workforce Analytics: Hidden Gold or Smoking Gun?

Credits: 1.00 ***Ethics:*** 0.00 2/15/2016

Pleasing G-d and the Taxman: Religious Non-Profit Organizati

Credits: 1.00 ***Ethics:*** 0.00 2/15/2016

Key Provisions in Restaurant Leases

Credits: 1.00 ***Ethics:*** 0.00 2/15/2016

Hot Topics in Social Media Law

Credits: 2.00 ***Ethics:*** 0.00 2/15/2016

Prevention, Detection and Treatment of Mental or Physical

Credits: 1.00 ***Ethics:*** 0.00 2/15/2016

Federal & State Tax Laws: Poe v. Seaborn - A Contrarian View

Credits: 1.00 ***Ethics:*** 0.00 2/15/2016

Legal Ethics in Black and White: An Interstitial Exploration

Credits: 1.00 ***Ethics:*** 1.00 2/15/2016

Crafting Effective Documents for e-Filing

Credits: 0.50 ***Ethics:*** 0.00 2/9/2016

TOTAL CLE HOURS REPORTED ***Credits:*** **115.75** ***Ethics:*** **10.75**

YOUR MCLE RECORD SHOWS YOU HAVE COMPLETED ALL OF THE REQUIRED CLE FOR THIS MCLE COMPLIANCE YEAR. UNLESS THE INFORMATION ON THIS REPORT IS INCORRECT, NO FURTHER ACTION ON YOUR PART IS REQUIRED. FOR QUESTIONS REGARDING YOUR RECORD, CONTACT MCLE AT 1-800-204-2222, EXT. 1806.

Virginia State Bar
An agency of the Supreme Court of Virginia

Member Area

Edward Allen Malone (Active / IGS)

VSB ID Number: 44309

[redacted]

All active members must certify attendance at 12.0 hours of CLE including 2 Ethics hours and 4 Live Interactive hours.
MCLE Reporting Period (November 1 - October 31).
See Frequently Asked Questions.

Mandatory Continuing Legal Education Compliance Report

Course ID		Sponsor	Course Name	Type	Attend Date	CLE Hours	Ethics Hours	Live Hours
			Carry Over Hours From Prior Year 2015			**0.0**	**0.0**	**0.0**
NDD0254		Lawline.com	Legal Ethics in Black and White: An Interstitial Exploration	PR	02/14/16	0.5*	0.5*	0.0*
NDD0448		Lawline.com	Workforce Analytics: Hidden Gold or Smoking Gun?	PR	02/15/16	0.0*	0.0*	0.0*
NDD0199		MCLEZ.COM	Hot Topics in Social Media Law	PR	02/15/16	0.0*	0.0*	0.0*
NDD0055		Lawline.com	Avoiding Ethical Violations and Malpractice Suits (Update)	PR	02/16/16	1.0	1.0	0.0
NDD0022		Lawline.com	Common Ethical Issues in Virginia in the Trial of Employment Cases	PR	03/02/16	0.0*	0.0*	0.0*
NDD0065		Lawline.com	Ethical Issues Associated with Internal Investigations	PR	03/02/16	1.0	1.0	0.0
NDD0234		Lawline.com	Ethical Issues and the Tripartite Relationship: Having Two Masters Can Crea	PR	03/02/16	1.0	1.0	0.0
NDD0157		Lawline.com	Litigating a Child Sex Abuse Case	PR	03/02/16	0.0*	0.0*	0.0*
MDDD146		LexisNexis	You Are Not Going to Believe This: Deception, Misdescription, and Materiali	PR	03/02/16	0.0*	0.0*	0.0*
NDD0629		Lawline.com	Corporate Political Activity law: Insights for General Counsel	PR	03/02/16	0.0*	0.0*	0.0*
MDDD117		LexisNexis	Crisis Management for In-House Counsel: Brand Protection in High Exposure L	PR	03/02/16	0.0*	0.0*	0.0*
NDD0158		Lawline.com	Business and Legal Issues in Documentary Filmmaking	PR	03/03/16	0.0*	0.0*	0.0*
NDD0250		Lawline.com	The Virginia Concealed Carry Weapon Law (Update)	PR	03/03/16	0.0*	0.0*	0.0*
NDD0250		Lawline.com	The Virginia Concealed Carry Weapon Law (Update)	PR	03/03/16	0.0*	0.0*	0.0*
NDD0051		Lawline.com	Protecting Free Expression and the First Amendment at Our Nation's Colleges	PR	03/04/16	0.0*	0.0*	0.0*
NDD0217		Lawline.com	Adult Entertainment Law: Legal Issues in the XXX World	PR	03/04/16	0.0*	0.0*	0.0*

NDD0160	Lawline.com	Employment Law and the Arts	PR	03/04/16	0.0*	0.0*	0.0*
NDD0622	Lawline.com	The Limited Liability Company and the Series LLC	PR	03/04/16	0.0*	0.0*	0.0*
NDD0632	Lawline.com	Gamblification: The Legal Status of Gambling Mechanics in Interactive Enter	PR	03/04/16	0.0*	0.0*	0.0*
NDD0225	Lawline.com	The Lawyer's Role in Emergency Preparedness, Response and Accident Investig	PR	03/04/16	0.0*	0.0*	0.0*
NDD0246	Lawline.com	Technological Considerations in Trade Secret Litigation: What Every Trade S	PR	03/05/16	0.0*	0.0*	0.0*
NDD0252	MCLEZ.COM	Computer Security for Today's Law Office	PR	03/05/16	0.0*	0.0*	0.0*
NDD0229	Lawline.com	Alcohol 101: Alcohol Beverage and Distribution Law	PR	03/05/16	0.0*	0.0*	0.0*
NDD0154	Lawline.com	The Criminalization of School Rules and the School to Prison Pipeline	PR	03/05/16	0.0*	0.0*	0.0*
NDD0200	MCLEZ.COM	Mastering Legal Malpractice Insurance	PR	03/06/16	0.0*	0.0*	0.0*
NDD0153	Lawline.com	Who Owns Your Workout? IP Issues and Challenges in the Health and Fitness I	PR	03/06/16	0.0*	0.0*	0.0*
NDD0155	Lawline.com	Hot Topics in Special Education Law	PR	03/06/16	0.0*	0.0*	0.0*
NDD0260	Lawline.com	The Anatomy of a National Transportation Safety Board (NTSB) Accident Inves	PR	03/06/16	0.0*	0.0*	0.0*
NDD0046	Lawline.com	Practicing Before the Trademark Trial & Appeal Board (TTAB) (Update)	PR	03/06/16	0.0*	0.0*	0.0*
IDD0682	Beverly Hills Bar Assoc	Substance Abuse, Trauma, and Alternative Sentencing	PR	03/06/16	0.0*	0.0*	0.0*
NDD0057	Lawline.com	Liens in VA Personal Injury and Malpractice Cases: Ethical Considerations	PR	03/07/16	0.0*	0.0*	0.0*
NDD0227	Lawline.com	ADA Compliance in the Retail Industry	PR	03/07/16	0.0*	0.0*	0.0*
NDD0342	Lawline.com	After Detroit: What You Need to Know About the New Face of Chapter 9	PR	03/08/16	0.0*	0.0*	0.0*
NDD0061	Lawline.com	Avoiding Contested Adoptions & Limiting Attorney Liability	PR	03/08/16	0.0*	0.0*	0.0*
NDD0062	Lawline.com	The Intersection Between Medical Malpractice and Hospital, Nursing Home, an	PR	03/09/16	0.0*	0.0*	0.0*
NDD0063	Lawline.com	Medical Malpractice Claims Overview	PR	03/09/16	0.0*	0.0*	0.0*
NDD0056	Lawline.com	Effectively Using Experts in Personal Injury Cases	PR	03/09/16	0.0*	0.0*	0.0*
NDD0626	Lawline.com	Legal Fundamentals of Impact Investing: A Rapidly Growing World	PR	03/09/16	0.0*	0.0*	0.0*
NDD0547	Lawline.com	Getting Mobile: What You Need to Know to Interact with Consumers and Employ	PR	03/11/16	0.0*	0.0*	0.0*
NDD0300	Lawline.com	White Collar Criminal Mitigation: 2015 Update	PR	03/11/16	0.0*	0.0*	0.0*
NDD0230	Lawline.com	An Update to "What Makes D&O Liability Insurance Unique?"	PR	03/11/16	0.0*	0.0*	0.0*
NDD0452	Lawline.com	Comparative Employment Law: Virginia, DC and Maryland	PR	03/11/16	1.0*	0.0*	0.0*
NDD0249	Lawline.com	UAS Privacy, Data Protection, and Property Rights Issues	PR	03/11/16	1.5	0.0	0.0
NDD0020	Lawline.com	Medical Legal Issues in Health and Fitness Clubs	PR	03/11/16	0.0*	0.0*	0.0*
NDD0060	Lawline.com	Advanced Practice Techniques in Front of the TTAB (Update)	PR	03/11/16	0.0*	0.0*	0.0*
NDD0161	Lawline.com	The New NLRB 'Quickie' Elections and Other New NLRB Rules	PR	03/13/16	1.5	0.0	0.0
NDD0204	Lawline.com	Considerations in Yoga Teach and Yoga Studio Representation	PR	03/13/16	1.5	0.0	0.0

NDD0226		Lawline.com	A Practial Guide to Hiring, Performance Management, and Termination of Empl	PR	03/13/16	1.5	0.0	0.0
NDD0534		Lawline.com	Developments in Private Litigation and Regulatory Enforcement Stemming From	PR	03/13/16	1.5	0.0	0.0
NDD0631		Lawline.com	Updates to Whistleblowing and Retaliation: Sarbanes-Oxley, Dodd-Frank and T	PR	03/14/16	2.0	0.0	0.0
NDD0344		Lawline.com	Qui Tam Litigation and Healthcare Fraud Update	PR	03/14/16	1.5	0.0	0.0
NDD0294		Lawline.com	Sexual Orientation Asylum: 2015 Update	PR	03/14/16	1.0	0.0	0.0
NDD0159		Lawline.com	Civil Insurance Fraud: From Claims to Litigation	PR	03/14/16	1.5	0.0	0.0
NDD0040		Lawline.com	The Sale of Stock in a Closely-Held Business to an "ESOP (Employee Stock Ow	PR	03/15/16	1.5	0.0	0.0
NDD0243		Lawline.com	Outsourcing Agreements: Pricing and Financial Structures	PR	03/15/16	1.5	0.0	0.0
NDD0237		Lawline.com	Handling Contested Adoptions	PR	03/15/16	1.5	0.0	0.0
IDD0684		Beverly Hills Bar Assoc	Significant Developments in Legal Law	PR	03/15/16	2.0	0.0	0.0
IDD0685		Beverly Hills Bar Assoc	Kill the Bias, Resolve the Conflict	PR	03/15/16	1.0	0.0	0.0
NDD0251		Lawline.com	Watching the Clock: Wage and Hour Risks in the Retail Industry	PR	03/16/16	1.0	0.0	0.0
NDD0235		Lawline.com	FAA Regulation of UAS: A Primer for Business and Commercial UAS Operations	PR	03/16/16	1.5	0.0	0.0
NDD0058		Lawline.com	Credit and Credit Reports: Practical Information for Attorneys	PR	03/16/16	1.0	0.0	0.0
NDD0059		Lawline.com	Thinking Outside the Box: Creative Lawyering	PR	03/16/16	1.0	0.0	0.0
NDD0215		Lawline.com	Taking on the Terrorists: How to Use Civil Lawsuits to Bankrupt the Bad Guy	PR	03/17/16	1.0	0.0	0.0
NDD0367		Lawline.com	Hot Topics in International Tax Law: Navigating FBAR and FATCA's Enchanced	PR	03/17/16	1.5	0.0	0.0
NDD0343		Lawline.com	Medicare and Medicaid Overpayments: Meeting the Refund and Reporting Obliga	PR	03/18/16	1.5	0.0	0.0
NDD0371		Lawline.com	US Patent Office Post-Grant Proceedings: Strategies for Improving Outcomes	PR	03/18/16	1.5	0.0	0.0
NDD0231		Lawline.com	Doing Business in UAS-Related Transactions: What to Include in Your Deals a	PR	03/18/16	1.5	0.0	0.0
NDD0233		Lawline.com	Drug and Medical Device Product Liability (And Related) Claims	PR	03/18/16	1.5	0.0	0.0
NDD0050		Lawline.com	Obtaining Disability Compensation Benefits for Disabled Military Veterans (	PR	03/18/16	1.0	0.0	0.0
NDD0045		Lawline.com	Strategies for Defending Against NPE Suits	PR	03/18/16	1.0	0.0	0.0
NDD0523		Lawline.com	Legal and Practical Considerations for Corporate Bring Your Own Device Prog	PR	03/19/16	1.5	0.0	0.0
NDD0248		Lawline.com	UAS Export Control Regulation: A Practical Guide	PR	03/20/16	1.5	0.0	0.0
NDD0042		Lawline.com	Winning the Tough Case by Embracing the Negative (Update)	PR	03/20/16	1.5	0.0	0.0
NDD0044		Lawline.com	A Practical Approach to Medical Malpractice Litigation (Update)	PR	03/20/16	1.5	0.0	0.0
IDD0615		Flordia Bar CLE Committee	Practicing with Professionalism	LV	03/24/16	1.5*	0.0*	1.5*
IDD0615		Flordia Bar CLE Committee	Practicing with Professionalism	LV	03/24/16	1.5*	0.0*	1.5*
NDD0789		Lawline.com	Ethically Representing the Cannabis Client	PR	03/29/16	1.0	1.0	0.0

NDD0815	Lawline.com	Legal Ethics and State Marijuana Laws	PR	03/30/16	1.0	0.0	0.0
NDD0791	Lawline.com	Ethics in Advocacy: Instinct. Insight, and Competing Obligations	PR	03/30/16	1.0	1.0	0.0
IDD0688	Beverly Hills Bar Assoc	How to Avoid Improper Billing Practices	PR	03/31/16	1.5	0.0	0.0
IDD0687	Beverly Hills Bar Assoc	And The Oscar Goes To...An Attorney	PR	04/01/16	1.0	0.0	0.0
IDD0686	Beverly Hills Bar Assoc	Nuts and Bolts of Contract Drafting	PR	04/01/16	1.5	0.0	0.0
NDD0839	Lawline.com	State and Federal Marijuana Laws: A Practical Approach to Defending Your Cl	PR	04/04/16	1.5	0.0	0.0
NDD0048	Lawline.com	Moral Rights for Artists in the US	PR	04/04/16	1.0	0.0	0.0
NDD0836	Lawline.com	Revisions to HIPAA: Modifications to the Privacy Act	PR	04/05/16	1.0	0.0	0.0
VSDD006	Virginia State Bar	Harry L. Carrico Professionalism Course	LV	04/07/16	1.0*	1.0*	1.0*
VSDD006	Virginia State Bar	Harry L. Carrico Professionalism Course	LV	04/07/16	1.0*	1.0*	1.0*
IDD0706	The State Bar of CA	Ethics Symposium - Moving Forward, Looking Back	LV	04/09/16	0.0*	0.0*	0.0*
IDD0706	The State Bar of CA	Ethics Symposium - Moving Forward, Looking Back	LV	04/09/16	0.0*	0.0*	0.0*
NDD0961	Lawline.com	Legal Issues with mHealth Applications	PR	04/14/16	1.5	0.0	0.0
NDD0746	Lawline.com	Representing Professionals in Healthcare Fraud Matters	PR	04/14/16	1.5	0.0	0.0
NDD1081	Lawline.com	Stemming the Onslaught of Wage & Hour Actions: Understanding the Legal Envi	LV	04/14/16	1.5	0.0	1.5
NDD0450	Lawline.com	Workforce Audits: What Attorneys Need to Know	PR	04/14/16	1.0	0.0	0.0
PLDD1119	PLI	Incubator Boot Camp: Tools for New Lawyers Looking to Go Solo	LV	04/15/16	4.0	1.0	4.0
NDD0849	Lawline.com	Video Game Law: Innovative Law for an Innovative Industry	PR	04/15/16	1.0	0.0	0.0
NDD1062	Lawline.com	eDiscovery: Trends and TAR	PR	04/28/16	1.0	0.0	0.0
NDD1064	Lawline.com	Don't Give Up Five Minutes Before the Miracle	PR	04/28/16	1.0	0.0	0.0
WMDD076	ACC Nat'l Capital Region	Contract Drafting - Lessons Learned From Litigation	LV	05/03/16	1.5	0.0	1.5
NDD0766	Lawline.com	Civil Rights Litigation Part I: Case Intake and Evaluation	PR	05/03/16	1.0	0.0	0.0
NDD0811	Lawline.com	IP Issues in Canada & Canada's Anti-Spam Laws	PR	05/06/16	1.5	0.0	0.0
NDD0773	Lawline.com	Data Breaches in the Retail Industry	PR	05/06/16	1.5	0.0	0.0
NDD0756	Lawline.com	Attorney Escrow Accounts, IOLA and Ethics: What Every New Lawyer Needs to K	PR	05/10/16	1.0	1.0	0.0
NDD0834	Lawline.com	Reporter's Privilege and the Proper Representation of Reporters	PR	05/10/16	1.0	0.0	0.0
NDD0753	Lawline.com	An Attorney's Guide to Ethically Advising Start-Ups: 2015 Update	PR	05/10/16	1.0	1.0	0.0
PLDD992	PLI	Working with Immigrants: The Intersection of Basic Immigration, Housing, an	LV	05/10/16	2.0*	0.0*	2.0*
NDD0797	Lawline.com	Federal Responses to State Medical Marijuana Laws	PR	05/11/16	1.5	0.0	0.0
NDD0757	Lawline.com	Aviation Litigation: The View from 30,000 Feet	PR	05/11/16	2.0	0.0	0.0
MSDD072	Maryland State Bar Assoc	2016 Hot Tips in Worker's Compensation	LV	05/12/16	2.0*	0.0*	2.0*

MSDD072		Maryland State Bar Assoc	2016 Hot Tips in Worker's Compensation	LV	05/12/16	2.0*	0.0*	2.0*
NDD0786		Lawline.com	Employment Law in Canada	PR	05/23/16	1.5	0.0	0.0
PLDD1251		PLI	Veteran Benefits Update: Maximizing Benefits for Service Members Discharged	LV	05/23/16	1.0	0.0	1.0
PLDD1090		PLI	Prison Litigation 2016: Practical Strategies	LV	06/02/16	3.0	0.0	3.0
			Total Hours For 2016			**98.0**	**10.5**	**22.0**
			Required Hours			**12.0**	**2.0**	**4.0**

MCLE Courses Pending Approval

Sponsor	Course ID	Course Name	Status
Beverly Hills Bar Assoc	IDD0951	Mastering Escrow Instructions and Title Insurance Coverage	5/17/2016 - I - IN PROCESS
Beverly Hills Bar Assoc	IDD0952	Nuts and Bolts of Discovery for Litigators: The Art of Written Discovery	5/17/2016 - I - IN PROCESS
Beverly Hills Bar Assoc	IDD0953	Obamacare's Impact on Small and Middle Market Businesses, and Planning for	5/17/2016 - I - IN PROCESS
Louisiana Association of	IDD1072	Law & All That Jazz Seminar	6/3/2016 - I - IN PROCESS
Beverly Hills Bar Associa	IDD1073	But What About the Company? Alternative When Business Ownership is a Princi	6/3/2016 - I - IN PROCESS
Beverly Hills Bar Associa	IDD1074	Fraud Awareness: What Every Business and Criminal Defense Lawyer Must Know	6/3/2016 - I - IN PROCESS
Colorado Bar Association	IDD1075	Practicing With Professionalism	6/3/2016 - I - IN PROCESS
State Bar of Texas	IDD1076	Texas Minority Attorney Program	6/3/2016 - I - IN PROCESS
Illinois State Bar Assoc	IDD0716	The Story of a Mechanics Lien Claim: From Client Meeting to Trial	6/8/2016 - P - Pending Board Review
Beverly Hills Bar Associa	IDD1115	Spirit in the Sky: Where does my Facebook page go when I die?	6/10/2016 - I - IN PROCESS
Beverly Hills Bar Ass'n.	IDD0504	The First Amendment Bubble: How Privacy & Papparazzi Threaten a Free Press	6/10/2016 - P - Pending Board Review

* Hours for this course have been applied to previous CLE year(s) to satisfy compliance

(T) denotes teaching credit

Course Types: LV = Live Interactive, PR = Pre-recorded (limited to 8.0 hours per compliance period)

If total is less than 12.0 CLE hours including (2.0) Ethics hours and 4 Live Interactive hours or does not list all coursework taken during the reporting period:

- You may certify your attendance at Virginia approved courses online , or submit your attendance to the MCLE office.
- Submit Form 3 - Certification of Teaching to the MCLE office for processing.
- Submit Form 4 - Application for Course Approval for any non-accredited course
- Schedule your MCLE courses to be attended by **October 31** to avoid the $100 Non-Compliance Fee
- *Whether attended for compliance or carry over credit, you must report your attendance by the MCLE deadline to avoid the $100 Late Filing Fee. - Make checks payable to Treasurer of VA*

Questions? Contact the MCLE office by email: mcle@vsb.org or at (804)775-0577 or by mail at 1111 East Main Street, Richmond VA, 23219-0026

(804)775-0500 | TDD/Voice Line (Hearing-Impaired): 804-775-0502
Office Hours: Mon.-Fri. 8:15 a.m. to 4:45 p.m. (excluding holidays)
The Clerk's Office does not accept filings after 4:45 p.m.

TIM JAMES
ATTORNEY AT LAW
BOARD CERTIFIED-CRIMINAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
NATIONAL BOARD OF TRIAL ADVOCACY

JAMES & HIGHTOWER
ATTORNEYS AT LAW
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(F) 936-560-5600

SEAN HIGHTOWER
ATTORNEY AT LAW
seanhightower@yahoo.com
tjameslawyer@hotmail.com
thegoodlawyer.com

Facsimile Cover Sheet

Date: May 24, 2016
To: Edward Malone
Regarding: Declaration of Independence Reading
Number of Pages: 13 (including cover)
Fax Number: 888-852-2385
Comments:

Mr. Malone,

I am faxing your office about the possibility of you doing the Declaration of Independence reading in San Augustine County. In the past, we here in Nacogdoches have gotten three or four local lawyers and we split up the reading and have received really nice press from the TV and the newspaper.

It looks like this year the Texas Criminal Defense Lawyers Association will be able to read in virtually every county in Texas. This, in and of itself, is going to be a big deal and should generate a lot of favorable publicity for the rights of those accused.

Would you please give me a call at (936) 560-3300 to let me know if you would be able to do this so we can help TCDLA achieve its goal of all 254 counties?

I have attached hereto copies of information from Robert Fickman in Houston who is heading up the statewide effort.

We do not normally read the names of the signers but just the declaration itself. It is pretty inspirational to actually participate in that although I did not think so when I first undertook to do it. By the time we get to the last paragraph I promise you we all have goose bumps.

We are going to do this on July 1, 2016 around the State at or near the lunch hour.

I look forward to hearing from you.

Yours truly,

Tim James

Print Close

Shelby or San Augustine

From: **Robert Fickman** (rfickman@gmail.com)
Sent: Mon 5/23/16 10:34 PM
To: tjameslawyer@hotmail.com (tjameslawyer@hotmail.com)

Tim- hope you are well. We have Readings in 243 counties. We are 11 shy of the entire state. Do you know anyone in Nacadoches who would do a Reading in Shelby or San Agustine? If so please let me know. I'm doing 5 Readings, I guess I could do 7 but..

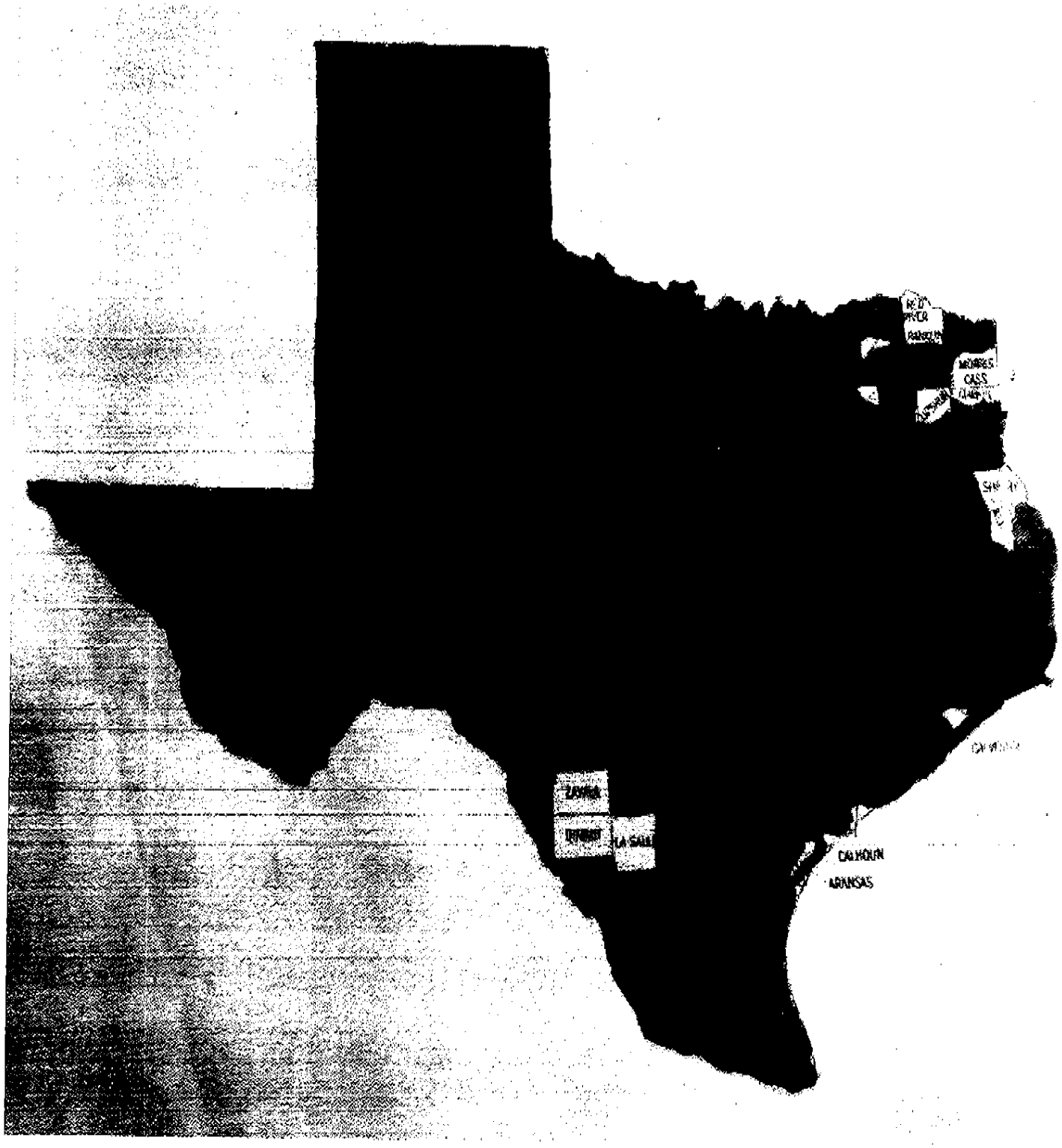
Thanks for any help

Robb

Robert J. Fickman
Attorney at Law

440 Louisiana St. Suite 200
Houston, Texas 77002
(713) 655-7400 (o)
(713) 224-2815 (f)
www.fickmanlaw.com

AV Preeminent Rated - Martindale-Hubbell Peer Review Ratings
AVVO 10.0 Superb Rating
2013 Justice Award - Texas Criminal Defense Lawyers Association
2012 Member of the Year - Harris County Criminal Lawyers Association
2006-2007 President - Harris County Criminal Lawyers Association


MORRIS
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ROBERT J. FICKMAN
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440 Louisiana, Suite 200
Houston, Texas 77002

(713) 655-7400
Fax: (713) 224-2815

May 17, 2016

2016 TCDLA ANNUAL READING OF THE DECLARATION OF INDEPENDENCE

HANDY TIP SHEET

1. **GOAL**- Our sole goal is to encourage the reading of the Declaration by the Criminal Defense Bar. We started in Houston in 2010. This TCDLA event is not connected to any political organization or movement. I think it's important to remind people about the meaning of July 4th. That's why I am involved. To watch a video from last year please go to http://www.tcdla.com.

2. **VOLUNTEER ORGANIZER**- If you are reading this, that is probably you. One person needs to be in charge of organizing this event in each jurisdiction.

3. **TIME**-Schedule the Reading for a time & date, that best suits your jurisdiction. I think it makes sense to do the Reading on the last business day before July 4th, at a time when you know people will be at the Courthouse. Statewide we are asking local leaders to do the Readings in the morning on Friday July 1, 2016. But if that does not work for you, do what works best for you.

4. **LOCATION**- Please do the Reading right in front of the courthouse. That draws attention, and it sends a message to those inside the courthouse.

5. **READERS**-Get fellow defense lawyers committed ahead of time to come to the Reading and to read. All defense lawyers have good egos, so promise reading parts and make people commit to come and they will come.

6. **DEFENSE BAR ATTENDANCE**- Email or otherwise send an invite out to your entire defense bar. Welcome defense lawyers to bring staff & family.

7. **OTHER INVITEES**- Invite the judiciary, the das, court personnel, and press to attend.

8. **PRESS RELEASE**- If you think appropriate, send a press release prior to the reading to your local press. Even if they don't show up, they will know the defense bar is doing something positive. You may give your own reasons for being involved. We all read for our own reasons. Please remember this is a TCDLA event and only the President and his designees speak for TCDLA. A sample press release is included with your materials.

9. **WHO GETS TO READ**- From my perspective, I believe only criminal defense lawyers and staff from criminal defense bar associations should read. This is a defense lawyer event. Family members or criminal defense lawyer's staff may also be included.

   This is an opportunity to unify the defense bar.

10. **WHY I DON'T INVITE JUDGES TO READ**- My own suggestion is that judges or das should not be allowed to read. Allowing them to read, might be nice, but it dilutes this event from being a criminal defense attorney event. It also might irritate fellow defense lawyers when they see a mean judge being allowed to read the Declaration and pretend they believe what it says. So my strong suggestion is not to let any judge or prosecutors read. Each jurisdiction has to decide this for themselves. I realize that in smaller jurisdictions, it may be impossible not to invite the judges. If that is the case, I would ask that the defense bar do their utmost to make sure that this event maintains its identity as a TCDLA Criminal Defense Event.

11. **HOW TO DO THE READING**- I have sent you a copy of the Declaration. The copy I have is divided into 38 parts. That allows for 38 readers. If you have fewer than 38 readers, just assign people more than one part. Make sufficient copies for all of your readers. Then on the morning of the Reading, hand out the numbered copies of the Declaration to the readers. Tell each reader what section they are reading. Before you start the Reading, call out numbers, having each person with the corresponding number answer present. If there is a large crowd, have the readers come forward and stand at the center of the crowd. Tell them to read loud. You may want them to face all in the same direction or form a circle. Whatever you think is best. If you anticipate a large crowd bring a microphone and speaker.

12. **THE BEST SECTIONS**-In my opinion, the best parts are the first and last. I give those to the people I think are most deserving.

13. **BAD LINE ALERT**-There is a line in the Declaration that refers to American Indians as "savages". When I hear the line it makes me cringe. However, we cannot re-write the Declaration to make it politically correct. We just read it, without comment.

14. **BRING EXTRA COPIES**- I would bring extras copies of the Declaration to hand out to people who are not reading. In Houston last year we brought about 100 extras copies of the Declaration. I hand these out to the people who are not reading.

15. **OPENING REMARKS**- Just before we read the Declaration, whoever is in charge, usually makes some brief remarks. No long speeches. I think it is very important to recognize in these remarks the historic significance of the Declaration. It is quite understandable that not everyone admires Jefferson given the fact he owned slaves. I think we owe it to the Black community to acknowledge in a sensitive manner that the Declaration did not set one slave free. The Declaration was a historic first step in what remains an ongoing fight for liberty; a fight that I think we as defense lawyers continue.

16. **STARTING THE READING**-Once the Organizer makes preliminary remarks, Each designated reader in turn reads their section. Individuals reading different sections loudly and with firm

resolve is powerful and I believe it was how it was intended to be read.

17. **EACH LOCATION SHOULD DECIDE WHAT WORKS BEST FOR THEM-** These are merely my suggestions. I think it is best for each locale to develop their own traditions. In each city and town, people will know what works best for them. This event is sponsored by TCDLA and that should be mentioned. No matter where you are at, I would ask that you announce that your Reading is part of a statewide effort by the defense bar that we will be doing each year.

18. **VIDEO & PHOTOS- Please Make sure someone takes photos during the reading. I usually ask my legal assistant to do that. Please post your photo on social media and identify the location. In a follow up e-mail I will give you a precise location to post your photo.**

19. **CREATING A TRADITION-** It's a good idea for the Organizer to Thank everyone for coming and wish them a Happy July 4th. It is also a good idea to tell them, we will be back here next year to do this again. That helps establish this as a tradition.

20. **FOLLOW UP-** Between now and July 1, I will send you a couple of updates. Expect an update about two weeks before the event and just before the event.

Thank you all. Without Texas criminal defense lawyers such as yourselves, this event would not succeed. It will be a success thanks to all of you.

Best wishes,

Robb Fickman
Houston

The Declaration of Independence

1 WHEN in the Course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another and to assume among the powers of the earth, the separate and equal stations to which the Laws of Nature and of Nature's God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.

2 We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness -- That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, --

3 That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

4 Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shown that mankind are more disposed to suffer, while evils are sufferable than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security –

5 Such has been the patient sufferance of these Colonies; and such is now the necessity which constrains them to alter their former Systems of Government. The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

6 He has refused his Assent to Laws, the most wholesome and necessary for the public good.

He has forbidden his Governors to pass Laws of immediate and pressing importance, unless suspended in their operation till his Assent should be obtained; and when so suspended, he has utterly neglected to attend to them.

7 He has refused to pass other Laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

8 He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

9 He has refused for a long time, after such dissolutions, to cause others to be elected, whereby the Legislative Powers, incapable of Annihilation, have returned to the People at large for their exercise; the State remaining in the mean time exposed to all the dangers of invasion from without, and convulsions within.

10 He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

Ross

He has obstructed the Administration of Justice by refusing his Assent to Laws for establishing Judiciary Powers.

11 He has made Judges dependent on his Will alone for the tenure of their offices, and the amount and payment of their salaries.

He has erected a multitude of New Offices, and sent hither swarms of Officers to harass our people and eat out their substance.

12 He has kept among us, in times of peace, Standing Armies without the Consent of our legislatures.

He has affected to render the Military independent of and superior to the Civil Power.

13 He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his Assent to their Acts of pretended Legislation;

For quartering large bodies of armed troops among us:

14 For protecting them, by a mock Trial from punishment for any Murders, which they should commit on the Inhabitants of these States:

For cutting off our Trade with all parts of the world:

15 For imposing Taxes on us without our Consent:

For depriving us in many cases, of the benefit of Trial by Jury:

For transporting us beyond Seas to be tried for pretended offences:

16 For abolishing the free System of English Laws in a neighbouring Province, establishing therein an Arbitrary government, and enlarging its Boundaries so as to render it at once an example and fit instrument for introducing the same absolute rule into these Colonies:

17 For taking away our Charters, abolishing our most valuable Laws and altering fundmentally the Forms of our Governments:

For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

18 He has abdicated Government here, by declaring us out of his Protection and waging War against us.

He has plundered our seas, ravaged our coasts, burnt our towns, and destroyed the lives of our people.

19 He is at this time transporting large Armies of foreign Mercenaries to compleat the works of death, desolation, and tyranny, already begun with circumstances of Cruelty & Perfidy scarcely paralleled in the most barbarous ages, and totally unworthy the Head of a civilized nation.

20 He has constrained our fellow Citizens taken Captive on the high Seas to bear Arms against their Country, to become the executioners of their friends and Brethren, or to fall themselves by their Hands.

21 He has excited domestic insurrections amongst us, and has endeavoured to bring on the inhabitants of our frontiers, the merciless Indian Savages whose known rule of warfare, is an undistinguished destruction of all ages, sexes and conditions.

22

In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.

23

Nor have We been wanting in attentions to our British brethren. We have warned them from time to time of attempts by their legislature to extend an unwarrantable jurisdiction over us. We have reminded them of the circumstances of our emigration and settlement here. We have appealed to their native justice and magnanimity, and we have conjured them by the ties of our common kindred to disavow these usurpations, which would inevitably interrupt our connections and correspondence.

24

They too have been deaf to the voice of justice and of consanguinity. We must, therefore, acquiesce in the necessity, which denounces our Separation, and hold them, as we hold the rest of mankind, Enemies in War, in Peace Friends.

25

We, therefore, the Representatives of the united States of America, in General Congress, Assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the Name, and by Authority of the good People of these Colonies, solemnly publishe and declare, That these united Colonies are, and of Right ought to be Free and Independent States, that they are Absolved from all Allegiance to the British Crown, and that all political connection between them and the State of Great Britain, is and ought to be totally dissolved; and that as Free and Independent States, they have full Power to levy War, conclude Peace, contract Alliances, establish Commerce, and to do all other Acts and Things which Independent States may of right do. -- And for the support of this Declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our Lives, our Fortunes, and our sacred Honor.

26

Georgia:
Button Gwinnett
Lyman Hall
George Walton

27

North Carolina:
William Hooper
Joseph Hewes
John Penn

28

South Carolina:
Edward Rutledge
Thomas Heyward, Jr.

Thomas Lynch, Jr.
Arthur Middleton

29

Massachusetts:
John Hancock
Samuel Adams
John Adams
Robert Treat Paine
Elbridge Gerry

30

Maryland:
Samuel Chase
William Paca
Thomas Stone
Charles Carroll of Carrollton

31

Virginia:
George Wythe
Richard Henry Lee
Thomas Jefferson
Benjamin Harrison
Thomas Nelson, Jr.
Francis Lightfoot Lee
Carter Braxton

32

Pennsylvania:
Robert Morris
Benjamin Rush
Benjamin Franklin
John Morton
George Clymer
James Smith
George Taylor
James Wilson
George Ross

33

Delaware:
Caesar Rodney
George Read
Thomas McKean

34

New York:
William Floyd
Philip Livingston
Francis Lewis
Lewis Morris

35

New Jersey:
Richard Stockton
John Witherspoon
Francis Hopkinson
John Hart
Abraham Clark

36

New Hampshire:
Josiah Bartlett
William Whipple
Matthew Thornton

37

Rhode Island:
Stephen Hopkins
William Ellery

39

Connecticut:
Roger Sherman
Samuel Huntington
William Williams
Oliver Wolcott

The Supreme Court of Texas

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

July 19, 2016

Edward A. Malone
[redacted]

Re: Misc. Docket No. 16-9070, In the Matter of Edward Allen Malone

Mr. Malone:

The Court has considered your "Motion to Vacate Order Withdrawing and Cancelling Regular License." The motion is denied.

Sincerely,

Blake A. Hawthorne

Blake A. Hawthorne
Clerk

FILED
16-9070
1/5/2017 1:40:15 PM
tex-14580081
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

IN THE SUPREME COURT OF TEXAS

In re: Edward A. Malone

_____

Misc. Docket No. 16-9070

_____

MOTION TO MODIFY
ORDER WITHDRAWING AND CANCELLING REGULAR LICENSE

COMES NOW the undersigned lawyer, Edward A. Malone, *pro se*, and requests this Court to modify its order withdrawing and canceling his Texas law license, stating as grounds the following:

1. That on June 7, 2016, this Court withdrew and canceled the law license of Edward Malone.

2. That the order not only prohibited undersigned from practicing of law in the State of Texas, it prohibited undersigned from "holding himself out as an attorney at law . . . or holding himself out to others or using his name in any manner in conjunction with the designation "Attorney at Law," "Counsel at Law," or "Lawyer."

3. That undersigned is indeed a lawyer, having graduated from George Mason University School of Law with a Doctorate of Jurisprudence in May 1999.

4. That undersigned is licensed to practice law and in good standing with the Commonwealth of Virginia, State of Maryland, United States District Court for the Eastern District of Texas, United States District Court for the Western District of Texas, United States District Court for the Northern

District of Illinois, United States District Court for the Central District of Illinois, United States District Court for the Eastern District of Virginia, United States District Court for the Western District of Virginia, United States District Court for the District of Maryland, United States District Court for the District of Columbia, and several United States bankruptcy courts.

5. That this provision of the Supreme Court Order enjoining undersigned from calling himself a lawyer violates the freedom of speech of undersigned as recognized by Article 1, § 8 of the Texas Constitution and the 1st Amendment to the United States Constitution.

6. That this provision in the Supreme Court Order enjoining undersigned from calling himself a lawyer also violates the commerce clause of the United States Constitution in that it fails to take into account the fact that undersigned is licensed to practice law and in good standing with Commonwealth of Virginia and the State of Maryland and that a lawyer could be hired for purposes other than practicing law.

7. That this provision in the Supreme Court Order enjoining undersigned from calling himself a lawyer also contradicts Texas Penal Code § 38.122 which also prohibits a non-lawyer from calling himself a lawyer but provides that an out-of-state lawyer may call himself a lawyer if he or she is licensed and in good standing in another jurisdiction.

8. That this provision in the Supreme Court Order enjoining undersigned from calling himself a lawyer also contradicts Texas Penal Code § 38.122 which only enjoins those who falsely hold themselves out as an attorney for economic benefit.

9. That the First Amendment to the United States Constitution, as applied through the Fourteenth Amendment, prohibits states from abridging freedom of speech.

10. That Article 1, § 8 of the Texas Constitution provides that "[e]very person shall be at liberty

to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press".

11. That the Supreme Court Order – which absolutely bars undersigned from calling himself a lawyer, making no distinction between calling oneself a lawyer in economic and non-economic contexts – does not merely regulate conduct; it regulates speech.

12. That calling one's self a lawyer -- outside of a commercial context -- is protected expression under both the Texas and U.S. Constitutions.

13. That calling one's self a lawyer in a hortatory context is protected free expression under both the Texas and U.S. Constitutions.

14. That the Stolen Valor Act made it a crime to falsely claim receipt of military decorations or medals and provides an enhanced penalty if the Congressional Medal of Honor is involved. 18 U. S. C. §§704 (b), (c).

15. That a Defendant was charged under this Act and admitted to falsely claiming that he had received the Medal of Honor, reserving his right to appeal his claim that the Act is unconstitutional.

16. That the United States Court of Appeals for the Ninth Circuit as well as the U.S. Supreme Court found the Act invalid under the First Amendment.

17. That Justice Kennedy noted, "In 2007, respondent attended his first public meeting as a board member of the Three Valley Water District Board. The board is a governmental entity with headquarters in Claremont, California. He introduced himself as follows: “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. I got wounded many times by the same guy.” 617 F. 3d 1198, 1201–1202 (CA9 2010). None of this was true. For all the record shows, respondent’s statements were but a pathetic attempt to gain respect that

eluded him. The statements do not seem to have been made to secure employment or financial benefits or admission to privileges reserved for those who had earned the Medal."

18. That Kennedy continued, "[t]he Act seeks to control and suppress all false statements on this one subject in almost limitless times and settings 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 would endorse government authority to compile a list of subjects about which false statements are punishable . . . 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. See, e.g., *Virginia Bd. of Pharmacy*, 425 U. S., at 771 (noting that fraudulent speech generally falls outside the protections of the First Amendment). But the Stolen Valor Act is not so limited in its reach. 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, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom".

19. That Kennedy went on to state that there are other ways to deal with those who make false statements about their achievements, saying, "While the Government's interest in protecting the integrity of the Medal of Honor is beyond question, the First Amendment requires that there be a direct causal link between the restriction imposed and the injury to be prevented. Here, that link has not been shown. The Government points to no evidence supporting its claim that the public's general perception of military awards is diluted by false claims such as those made by respondent. And it has

not shown, and cannot show, why counterspeech, such as the ridicule respondent received online and in the press, would not suffice to achieve its interest. In addition, when the Government seeks to regulate protected speech, the restriction must be the "least restrictive means among available, effective alternatives." Ashcroft, 542 U. S., at 666. Here, the Government could likely protect the integrity of the military awards system by creating a database of Medal winners accessible and searchable on the Internet."

20. That if the defendant prosecuted under the Stolen Valor Act has a constitutional right to imply that he had won medals of honor – an objective assertion which can easily be affirmed or disproved, how much more of a constitutional right does undersigned have to say that he is a lawyer, a somewhat subjective assertion that reasonable minds can disagree upon.

21. That although the purpose of the Supreme Court Order may have been to enjoin undersigned from falsely holding himself out to be lawyers in order to practice law for economic gain, the practical effect of this Order was to chill the free speech of undersigned.

22. That the Supreme Court Order emboldened San Augustine County District Attorney J. Kevin to indict undersigned for simply calling himself a lawyer in a non-economic, hortatory context.

23. That on July 1, 2016, undersigned, along with two other lawyers, read the Declaration of Independence on the law on the San Augustine County Courthouse.

24. That this reading of the Declaration of Independence was part of a statewide project in which criminal defense lawyers read the Declaration at their respective courthouses in all 254 counties in Texas.

25. That prior to this reading of the Declaration of Independence, a press release was sent to the San Augustine Tribune newspaper announcing the reading of the Declaration of Independence

and inviting people to show up to watch the reading.

26. That the press release referred to Edward Malone as a "lawyer in San Augustine".

27. That the Declaration of Independence reading was an event open to the public and free of charge.

28. That Malone gave away free bottled water, soft drinks, cupcakes, and other refreshments at the Declaration of Independence reading event.

29. That Malone wore a red, white, and blue suit to the Declaration of Independence reading event.

30. That some of the refreshments at the Declaration of Independence reading event were decorated with American flag theme colors.

31. That the Declaration of Independence reading events in most -- if not all -- of the other counties did not feature refreshments.

32. That the decorations and trappings and giving away of refreshments at the Declaration of Independence reading event in San Augustine made the reading in San Augustine stand out from the Declaration of Independence readings in other counties.

33. That Malone is an open opponent of the prosecutorial practices of Dutton.

34. That Malone also opposed Dutton's refusal to release the video of an alleged police brutality incident that took place at the San Augustine County jail.

35. That Malone became an enemy of Dutton because of Malone's professional and political opposition to Dutton.

36. That Dutton knew about the cancellation of Malone's Texas law license, and was responsible for providing the Board of Law Examiners with the tip that launched

the investigation that led to the cancellation.

37. That the June 29, 2016 issue of the *San Augustine Tribune* newspaper ran a front-page story announcing the reading and placing a photo of Malone on its front page.

38. That the newspaper also referred to Edward Malone, as a "lawyer."

39. That the information given to the San Augustine Tribune for its news story was not given for the purpose of obtaining any economic benefit for Malone.

40. That the information given to the San Augustine Tribune was not given for the purpose of inducing any person to hire Malone to perform legal services.

41. That the information given to the San Augustine Tribune consisted of the time and location of the reading, a history of the reading project, and commentary from the project's founder, Robert Fickman.

42. That the information given to the San Augustine Tribune was given for the purpose of announcing the upcoming public reading of the Declaration of Independence in San Augustine, Texas, and encouraging people to attend.

43. That the statement referring to Edward A. Malone as a "lawyer in San Augustine" was an introductory and incidental statement not essential to the purpose of the invitation itself.

44. That rather than be happy that San Augustine -- one of the poorest counties in Texas – stood out from other counties, District Attorney James Kevin Dutton decided to investigate the San Augustine Declaration of Independence reading event and its local sponsor, his enemy, Edward A. Malone.

45. That District Attorney James Kevin Dutton wrote a letter to the Texas Board of Law Examiners, enclosing a copy of the *San Augustine Tribune* news story.

46. That in an assault upon freedom of the press, District Attorney James Kevin Dutton also wrote a letter to the publisher of the *San Augustine Tribune* demanding that the newspaper reveal what Malone told the newspaper.

47. That District Attorney James Kevin Dutton did not have a court order or a subpoena authorizing him to make such a request.

48. That the *San Augustine Tribune* yielded to Dutton's intimidation and revealed its sources to Dutton.

49. That because the information provided to the San Augustine Tribune referred to Malone as a "lawyer in San Augustine", Dutton decided to charge Malone with falsely holding himself out to be a lawyer, a felony.

50. That on August 8, 2016, a grand jury returned an indictment against Malone, alleging that "Edward Allen Malone . . . on or about the 1st day of July, A.D. 2016 . . . with the intent to obtain an economic benefit for himself, hold himself out as a lawyer, to wit: by stating in the local paper that he was a defense attorney in San Augustine, Texas, and the defendant was not then and there in good standing with the State Bar of Texas and the state bar [sic] of Virginia, where defendant was licensed to practice law."

51. That District Attorney Dutton as well as members of the media are well aware that undersigned counsel is licensed to practice law in two other states.

52. That although the Texas statute exempts lawyers licensed to practice law in other jurisdictions, the Order of the Supreme Court does not provide such an exemption.

53. That although the Texas statute limits its injunction to those who falsely hold themselves out for economic benefit, the Order of the Supreme Court sweepingly enjoins Edward Malone from

calling himself a lawyer for any reason.

54. That the news media, in reporting the indictment, are placing emphasis on the Order of the Supreme Court rather than the statute under which Malone was indicted.

55. That the emphasis that the news media is placing on the Supreme Court Order is giving the public the impression that Malone was indicted for violating the Court order rather than violating the statute.

56. That the Order is more restrictive than the statute.

57. That a person who is led to believe that the Order is controlling rather than the statute would erroneously believe that Malone was guilty of the crime in which he is accused.

58. That the Order of the Supreme Court poses a chilling effect upon the free speech of undersigned, who ought to be able to call himself a lawyer for the purpose of being hired for a job that does *not* require a Texas law license and for which the employer may actually desire a non-practicing lawyer, such as an adjunct law professor, social studies teacher, ombudsperson, law clerk, or paralegal.

59. That whether a person is licensed and in good standing in Texas is a matter of fact.

60. That whether a person is a lawyer is a matter of opinion – not fact.

61. That Court Order has the effect of banning speech that is *not* misleading and that may be made for the purpose of engaging in *legal* activity.

62. That although most cases prosecuted under Texas Penal Code § 38.122 involved defendants who clearly lied about their Texas law license status and who actually practiced law or attempted to practice law for hire, District Attorney James Kevin Dutton has chosen to prosecute a case against Edward A. Malone in which there is no evidence of deception concerning his Texas law license status

and no evidence of an intent to illegally practice law.

63. That this indictment was enabled by the Order of the Supreme Court of Texas.

64. That because the Order prohibited Malone from holding himself out as an attorney, District Attorney J. Kevin Dutton and others erroneously believed that Malone was in "bad standing" with the State of Texas.

65. That because the Order prohibited Malone from holding himself out as an attorney, District Attorney J. Kevin Dutton and others erroneously believed that Malone's license had been revoked or suspended.

66. That Malone's license was not revoked or suspended and he is not in "bad standing" because his license was withdraw and canceled.

67. That the jurisdiction of the Texas Supreme Court does not reach beyond Texas.

68. That the right of Edward Malone to call himself a lawyer was not something that the Supreme Court gave to Edward Malone.

69. That the right of Edward Malone to call himself a lawyer was something that he earned 15 years before ever moving to Texas, having earned a doctorate of jurisprudence and a two law licenses in two other states in 1999.

70. That the Order of the Supreme Court should have more accurately stated that undersigned is prohibited from holding himself out as a Texas lawyer.

71. That the Supreme Court of Texas was only authorized to take away what it gave Edward Malone, namely a law license.

72. That if the Supreme Court of Texas were to take away from undersigned more than what it gave him, then undersigned would have been entitled to due process of law.

73. That the Supreme Court of Texas did not suspend or revoke the law license of undersigned; it canceled the law license.

74. That Malone was never disciplined, suspended, or disbarred by the Supreme Court of Texas.

75. That a cancellation of one's Texas law license is quite different from a suspension or revocation.

76. That the affect of the Texas Supreme Court's June 7, 2016 cancellation of Edward Malone's license is that the legal status of undersigned is as if he were never licensed in the Texas state court system in the first place.

77. That if disciplinary actions had been commenced against Edward Malone, then he would have been afforded certain procedural safeguards that he was not afforded during the cancellation proceedings.

78. That disciplinary matters are commenced by the grievance committee of the Texas State Bar.

79. That cancellation matters, by contrast, are commenced by the Texas Board of Law Examiners.

80. That in disciplinary proceedings, the licensee is allowed the option of transferring his or her case to a district court with the option of a trial by jury.

81. That Edward Malone's cancellation case, by contrast, was heard by a three-person panel of the Texas Board of Law Examiners.

82. That a search of attorneys in Texas does not produce the name of Edward Malone with a revocation or suspension; a search of attorneys in Texas does not produce the name Edward

Malone at all.

83. That the Texas State Bar maintains a list of attorneys who are disbarred, suspended, or otherwise prohibited from practicing law in the State of Texas.

84. That the Texas State Bar updates this list daily and places it on its website.

85. That the name of Edward Malone is not on this list.

86. That if Edward Malone so chose, he could legally practice law as a visiting attorney in the State of Texas *pro hac vice*, provided that he met the residency requirement and paid the $250 per case fee.

87. That Edward Malone, therefore, was not disciplined or "disbarred" by the Supreme Court of Texas.

88. That Edward Malone, therefore, has never been in "bad standing" with the bar of the State of Texas.

89. That the legal effect of the cancellation of Malone's Texas law license was to essentially changed Edward Malone's status from one of a licensee back to that of an applicant.

90. That Edward A. Malone is eligible to practice law in Texas as a visiting attorney *pro hac vice* if he so pleases.

91. That the provision prohibiting Edward Malone from holding himself out as a lawyer, therefore, is not applicable to Edward Malone and should not have been included in the Supreme Court Order.

92. That the provision prohibiting a lawyer form holding himself out as a lawyer or using the title lawyer is the customary language used in Texas Supreme Court orders revoking or suspending a lawyer's license.

93. That this Court – in drafting the June 7, 2016 order withdrawing and canceling Edward Malone's license – probably borrowed (or even copied and pasted) language from its previous Court orders revoking and suspending the licenses of lawyers.

94. That it is fundamentally unfair, however, to label the proceedings against Edward Malone a "cancellation" and deny him the procedural safeguards of a suspension or revocation only to turn around later and issue a Supreme Court Order that has the same affect as a suspension or revocation.

95. That Article Art. I, § 8 of the United States Constitutions declares that "Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

96. That this constitutional grant of power to Congress implies a negative converse—a restriction prohibiting a state from discriminating against interstate commerce or unduly burdening interstate commerce, even in the absence of federal legislation regulating the activity.

97. That this constitutional grant of power to Congress also confers "rights, privileges, or immunities" within the meaning of 42 U.S. C. § 1983.

98. That the Supreme Court Order does not merely enjoin Edward Malone, an out-of-state lawyer, from stating that he is a lawyer for the purpose of engaging in activity reserved for Texas-barred lawyers; the Order goes so far as to enjoin Malone from calling himself a lawyer for any purpose.

99. That the Order, therefore, does not merely regulate the practice of law; it regulates economic activity in general.

100. That the Order does merely prohibit Edward Malone from practicing law, attempting to practice law, or attempting to induce someone to hire him to practice law, but from merely calling

himself a "lawyer".

101. That the Order punishes a lawyer with out-of-state licenses who may call himself a "lawyer" for the purpose of being hired for a job that does *not* require a Texas law license and for which the employer may actually desire a non-practicing lawyer, such as an adjunct law professor, social studies teacher, ombudsperson, law clerk, or paralegal.

102. That the Order, therefore, is not rationally related to the State of Texas' legitimate interests in regulating the practice of law within the State.

103. That the Order, therefore, places a burden on interstate commerce that outweighs any benefit this Order may provide.

WHEREFORE, for the above reasons, the undersigned requests this Court to MODIFY its June 7, 2016 order canceling the law license of Edward A. Malone.

Edward Malone requests a hearing on this motion.

Respectfully submitted,

Edward Malone

Edward A. Malone,
pro se
[redacted]

January 5, 2017
Date

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served to Kristin Bassinger, Esq, Attorney for Board of Law Examiners.

Edward Malone

Edward A. Malone

January 5, 2017
Date

San Augustine man indicted for practicing law after license taken away

Thursday, August 11th 2016, 4:46 pm CDT
Thursday, August 11th 2016, 4:46 pm CDT

By Caleb Beames, Multi-Media Journalist CONNECT

Edward Malone (Source: EdwardMalone.com)

SAN AUGUSTINE COUNTY, TX (KTRE) - A San Augustine County man has been indicted by a grand jury after allegations surfaced that he had continued practicing law despite having his law license taken away from him in June.

Edward Malone was booked into the San Augustine County Jail on Wednesday after being served the indictment.

According to paperwork from the Texas Supreme Court, which suspended his license on June 7, Malone had lied about past discipline from the Virginia State Bar.

According to the paperwork, Malone is prohibited from the practice of law in the State of Texas. This includes holding himself out as an attorney at law, performing legal services for others, giving legal advice to others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body whether state, county, municipal, or other, or holding himself out to others or using his name in any manner in conjunction with the designation "Attorney at Law," "Counsel at Law," or "Lawyer."

The ruling also stated Malone must provide immediate, written notification of the cancellation to each of his clients. He shall return any files, papers, unearned monies, and other property in his possession belonging to any client or former client to the client or former client or to another attorney at the client's or former client's request.

The court alleged that Malone filed a sworn application for admission without examination on June 5, 2013. The court stated Malone did not disclose previous discipline from the Virginia State Bar. On April 30, 2015, Malone was licensed to practice law in Texas.

In their argument, the court said Malone was licensed in Virginia on October 14, 1999 but was not in good standing and had been administratively suspended from practice in October 2010 and March 2011 and his license was forfeited in March of 2013.

In the packet provided by the Texas Supreme Court, Malone responded and deemed it an "unconstitutional order" by the court.
In his motion to vacate Malone listed 39 points to his arguments. Those included claims that the board of Law Examiners is all white and that the adjudication of his matter by an all-white panel followed by and all-white board was a violation of his equal protection and due process rights.

Malone also alleged that the case was brought up to the board by District Attorney Kevin Dutton who he claimed that was upset at him over issues Malone brought up about alleged plea deals Dutton was working out with defendants.

Dutton declined to comment on the matter until the case is taken up in court.

San Augustine Tribune

SAISD Discusses Athletic Facility Bond

Short Agenda at Commissioner's Court

Newton Mil
"The Rest

Attorneys to Hold Independence Day Event


SAN
COURT


Hostess
RED, WHITE & BLUE!
Twinkies
Hostess
RED, WHITE & BLUE!
Twinkies


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COMMEMORATE INDEPENDENCE DAY - San Augustine Attorney Edward Malone is pictured above at the podium as he reads the last part of the Declaration of Independence to a small crowd that gathered last Friday afternoon on the courthouse lawn. In the background are Nacogdoches attorneys Sean Hightower (L) and Tim James (R) who read the first part of the Declaration of Independence. The event was sponsored by the Texas Criminal Defense Lawyers Association and intended to bring attention to rights articulated in the Declaration of Independence. Similar events were held in all 254 counties in Texas by criminal defense lawyers.

Tribune Photo

Office of

DISTRICT ATTORNEY

First Judicial District of Texas

Sabine and San Augustine Counties

N DUTTON
T ATTORNEY
dy

Bryan
tive Assistant

amilton
tive Assistant

P.O. B
San Augustine, Texas
Phone: (936) 27
Fax: (936) 27

July 7, 2016

Mr. Stephen Hays
San Augustine Tribune

VIA Fax: (936) 275-0572

Dear Mr. Hays:

Please provide my office with copies of any and all correspondence that the San Augustine Tribune has received from Mr. Edward Malone since June 1, 2016.

Sincerely,

J. Kevin Dutton
District Attorney

JKD/jb

No. CR-16-8707

Bond $ 5,000.00

The State of Texas vs. EDWARD ALLEN MALONE

Charge: Falsely Holding Oneself Out as a Lawyer §38.122 TPC

Court: District

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

THE GRAND JURY, for the County of San Augustine, State of Texas, duly selected, impaneled, sworn, charged, and organized as such at the Spring Term A.D. 2016 of the First Judicial District Court for said County, upon their oaths present in and to said court at said term that EDWARD ALLEN MALONE hereinafter styled Defendant, on or about the 1st day of July, A.D. 2016, and before the presentment of this indictment, in the County and State aforesaid, did then and there with intent to obtain an economic benefit for himself, hold himself out as a lawyer, to-wit: by stating in the local paper that he was a defense attorney in San Augustine, Texas, and the defendant was not then and there in good standing with the State Bar of Texas and the state bar of Virginia, where the defendant was licensed to practice law,

FILED
AT 12:30 O'CLOCK P M
8-8 20 16
JEAN STEPTOE District Clerk
SAN AUGUSTINE, TEXAS
BY

inst the peace and dignity of the State.

(a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

VIRGINIA STATE BAR

CERTIFICATE OF GOOD STANDING

THIS IS TO CERTIFY THAT ***EDWARD ALLEN MALONE*** *IS AN ACTIVE MEMBER OF THE VIRGINIA STATE BAR IN GOOD STANDING.* ***MR. MALONE*** *WAS LICENSED TO PRACTICE LAW IN VIRGINIA ON* ***OCTOBER 14, 1999****, AFTER SUCCESSFULLY PASSING THE BAR EXAMINATION GIVEN BY THE VIRGINIA BOARD OF BAR EXAMINERS.*

Issued June 8, 2016

KAREN A. GOULD
EXECUTIVE DIRECTOR AND
CHIEF OPERATING OFFICER

Court of Appeals of Maryland

Annapolis, MD

CERTIFICATE OF GOOD STANDING

STATE OF MARYLAND, ss:

I, Bessie M. Decker, Clerk of the Court of Appeals of Maryland, do hereby certify that on the fifteenth day of December, 1999,

Edward Allen Malone

having first taken and subscribed the oath prescribed by the Constitution and Laws of this State, was admitted as an attorney of said Court, is now in good standing, and as such is entitled to practice law in any of the Courts of said State, subject to the Rules of Court.

In Testimony Whereof, *I have hereunto set my hand as Clerk, and affixed the Seal of the Court of Appeals of Maryland, this tenth day of March, 2015.*

Bessie M. Decker

Clerk of the Court of Appeals of Maryland

Jackie Jones

August 12 at 1:27 PM · KTRE ·

Us black people

San Augustine man indicted for practicing law after license taken away

A San Augustine County man has been indicted by a grand jury after allegations surfaced that he had co...

ktre.com

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Professional Licensing Report

28 mins ·

In early August, a grand jury in Texas indicted a licensed attorney for continuing to practice after a suspension. The state had suspended the license of the attorney, Edward Malone, in June for failing to report past discipline in Virginia when he applied for a Texas license. The unlicensed-practice charges were filed after authorities received word that Malone had not ceased practicing. From "San Augustine man indicted for practicing law after license taken away," by Caleb Beames, KRTE.

http://www.professionallicensingreport.org/jail-time-for-practicing-with-a-suspended-license/

Professional Licensing Report

8 hrs ·

In early August, a grand jury in Texas indicted a licensed attorney for continuing to practice after a suspension. The state had suspended the license of the attorney, Edward Malone, in June for failing to report past discipline in Virginia when he applied for a Texas license. The unlicensed-practice charges were filed after authorities received word that M... See More

Jail time for practicing with a suspended license

In early August, a grand jury in Texas indicted a licensed...

professionallicensingreport.org

Edward A. Malone

September 29, 2016

Via Facsimile and U.S. Mail: (334) 206-1555

Rebecca Bryan, Vice President and General Counsel
Raycom Media
RSA Tower, 20th Floor
201 Monroe Street
Montgomery, AL 36104

Re: KTRE News story

Dear Ms. Bryan:

I write you in response to the news story written about me written by Caleb Beames for your affiliate KTRE in Pollok, Texas. The news story suggests that I continued to practice law after losing the right to practice law in Texas and that I was indicted and arrested for this offense.

Please note that I am not being charged with continuing to practice law after cancellation of my Texas law license. I am being charged with continuing to call myself a lawyer. All of this despite the fact that I still have a law license in Virginia, Maryland, and a half dozen United States District and Bankruptcy Courts.

The transaction and occurrence giving rise to my indictment was my participation in a reading project sponsored by the Texas Criminal Defense Lawyers Association in which lawyers all across Texas read the Declaration of Independence outside their respective courthouses in all 254 counties in Texas.

I along with two other lawyers read the Declaration of Independence on the courthouse square of San Augustine County on July 1, 2016. It was a free event. I even offered bottled water and refreshments to the attendees. The *San Augustine Tribune* covered this event both before and afterwards. When the event made the front page of the paper and the paper referred to me as a "San Augustine attorney", District Attorney J. Kevin Dutton then decided to indict me.

The indictment itself alleges that I falsely represented myself to be a lawyer for economic gain by telling a local newspaper that I was a "lawyer in San Augustine".

That is a far cry from saying – as KTRE did – that "allegations surfaced that he had continued practicing law despite having his law license taken away from him in June".

I contacted KTRE through its Facebook page on August 23, 2016 and asked the station to correct its story. The representative offered to interview me but said nothing about correcting the news story. I also contact Mr. Beames himself through Facebook for the same purpose and on the same day. Although Faceook confirms that Mr. Beames has seen my message, Mr. Beams has not responded.

If KTRE had correctly framed the charges against me as that of holding myself out to be an attorney by supposedly telling the *San Augustine Tribune* that I was a lawyer, then the public might be more sympathetic toward me, especially if you had informed them that I am licensed to practice in two other states. The public might have perceived these charges as being petty and vindictive. But thanks to KTRE, members of the public think that I somehow kept practicing law after Texas canceled my law license.

I therefore beg Raycom Media to please correct this story about me.

Sincerely

Edward Malone

RAYCOM Media

Lindzy McQueen
Corporate Counsel

October 7, 2016

Mr. Edward A. Malone
[redacted]

Re: KTRE Takedown Request

Dear Mr. Malone:

Raycom Media, Inc. is the parent company of KTRE, LLC ("KTRE"). I am in receipt of your September 29, 2016 letter to KTRE, requesting the takedown of an August 11th story concerning you (the "Letter"). We have reviewed the Letter and investigated the matter. We decided to correct the story. I have enclosed a copy for your convenience. If you have any questions, please feel free to contact me.

Sincerely,

Lindzy McQueen

RSA Tower, 20th Floor • 201 Monroe Street • Montgomery, AL 36104 • Ph. (334) 229-0342 • Fax. (334) 833-7103
• e-mail lmcqueen@raycommedia.com •

HURRICANE MATTHEW HUGGING FLORIDA'S COASTLINE

San Augustine man indicted for violating legal order from Texas Supreme Court

Published: Thursday, August 11th 2016, 4:46 pm CDT
Updated: Friday, October 7th 2016, 2:54 pm CDT

By Caleb Beames, Multi-Media Journalist CONNECT

SAN AUGUSTINE COUNTY, TX (KTRE) - A San Augustine County man has been indicted by a grand jury after allegations he identified himself as an Attorney at law in violation of a direct order from the Texas Supreme Court. Mr. Malone's license to practice law in Texas was taken away from him in June.

Edward Malone was booked into the San Augustine County Jail on Wednesday after being served the indictment.

According to paperwork from the Texas Supreme Court, which suspended his license on June 7, Malone had lied about past discipline from the Virginia State Bar.

According to the paperwork, Malone is prohibited from the practice of law in the State of Texas. This includes holding himself out as an attorney at law, performing legal services for others, giving legal advice to others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas court or before any Texas administrative body whether state, county, municipal, or other, or holding himself out to others or using his name in any manner in conjunction with the designation "Attorney at Law," "Counsel at Law," or "Lawyer."

The ruling also stated Malone must provide immediate, written notification of the cancellation to each of his clients. He shall return any files, papers, unearned monies, and other property in his possession belonging to any client or former client to the client or former client or to another attorney at the client's or former client's request.

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Dutton declined to comment on the matter until the case is taken up in court.

October 7, 2016

Via Facsimile and U.S. Mail: (334) 206-1555

Rebecca Bryan, Vice President and General Counsel
Raycom Media
RSA Tower, 20th Floor
201 Monroe Street
Montgomery, AL 36104

Re: KTRE News story (Revised)

Dear Ms. Bryan:

I am in receipt of a facsimile which attached an October 7, 2016 revised news story concerning my recent indictment in San Augustine County. I am pleased to see that your news story has been revised to remove any suggestions that I continued to practice law without a Texas license. I thank you for your responsiveness.

I still, however, take issue with much of the things written in your revised article.

Your headline states that I was indicted for violating an order of the Texas Supreme Court. This is simply not true. I was not indicted for violating a court order. Your headline accompanied with out-of-context quotes from my affidavit to the Supreme Court implies that I intentionally defied the Supreme Court of Texas.

Please note that I was indicted for allegedly violating a Texas statute. Enforcement of any order from the Texas Supreme Court lies with the Supreme Court itself, not with Kevin Dutton, the prosecutor for San Augustine County. If the Supreme Court believed I had violated its order, the remedy would be to hold me in contempt of court. Please also note that the indictment itself says nothing about the Supreme Court order.

The essence of my case is that I was indicted for impersonating a lawyer after participating in a

reading project sponsored by lawyers after the Texas Supreme Court had canceled my Texas license, still leaving me with law licenses in two other states.

Notably absent from your revised article is any mention of my participation in the Declaration of Independence reading project. The indictment itself alleges that I violated a Texas statute by stating to the local newspaper that I was "an attorney in San Augustine." Your readers ought to know that reading the Declaration of Independence was the real reason I was indicted.

Your article also fails to mention that I am licensed in two other states. Is this not relevant? Reporting that a lawyer licensed in two other states was indicted for calling himself a lawyer is quite different from reporting that a "disbarred" lawyer was indicted for violating the court order that canceled his license.

Your article also fails to mention that the statute under which I was indicted criminalizes only those false statements made "to obtain an economic benefit." Moreover, your article does not assure the public that no one was charged any fee to watch me read the Declaration of Independence or that there is no absolutely no evidence that I intended to obtain any economic benefit.

If KTRE would correctly tell its readers that I was really indicted for reading the Declaration of Independence, then the public might correctly perceive these charges as being petty and vindictive. But thanks to KTRE, members of the public still think that I somehow defied the Supreme Court of Texas. Rather than having your readers see that Edward Malone – a lawyer licensed in several other state and federal courts – was indicted for reading the Declaration of Independence, your readers are still left to believe that Edward Malone was somehow trying to "buck" the system.

In unfairly reporting my case, you are not only defaming me, but you are doing a disservice to the good people of the State of Texas. Rather than trying to embarrass a lawyer who has defended the rights of people the best he could for 16 years; has not harmed a single person; but who made one mistake and has already paid for his mistake by losing his Texas license; and poses no threat to anyone, why not direct your attention toward exposing a corrupt criminal justice system in San Augustine County and a vengeful prosecutor who bullies the press into revealing its sources and investigates and indicts his political enemies?

Once again, I beg Raycom Media to please accurately and fairly report this news story.

Sincerely

Edward Malone

Edward Malone

RAYCOM Media

Lindzy McQueen
Corporate Counsel

October 12, 2016

Mr. Edward A. Malone

[redacted]

Re: KTRE Takedown Request

Dear Mr. Malone:

I am in receipt of your second letter, dated October 7, 2016, that continues to take issue with KTRE's August 11th story concerning you. Raycom and KTRE find the complaints in this second letter meritless. The Texas Supreme Court Order that withdrew and cancelled your license forms the basis of the indictment. But for the Order, you would not have been indicted. Furthermore, the Order specifically states that you are not to hold yourself out as an attorney.

As for your other complaints, it is not KTRE's job to make or argue your case. KTRE reported the facts. The absence of facts you deem noteworthy neither alters the facts as presented by KTRE nor supports a defamation or any other claim. In sum, Raycom and KTRE deny your request for further correction of the story.

Sincerely,

Lindzy McQueen

RSA Tower, 20th Floor • 201 Monroe Street • Montgomery, AL 36104 • Ph. (334) 229-0342 • Fax. (334) 833-7103
• e-mail lmcqueen@raycommedia.com •

Edward A. Malone

October 12, 2016

Via Facsimile and Electronic Mail: (334) 206-1555

Lindzy McQueen
Raycom Media
RSA Tower, 20th Floor
201 Monroe Street
Montgomery, AL 36104

Re: KTRE News story (Revised)

Dear Ms. McQueen:

I am in receipt of your letter dated October 12, 2016. I am very disappointed in your response. The Supreme Court order withdrawing my Texas license was not the basis of the indictment. There is no such thing as indicting someone for violating a Court order. If a person violates a court order, the remedy is to move to hold that person in contempt of court. A person may only be indicted for violating a criminal statute.

Please also note that the indictment itself alleges that I falsely held myself out to be an attorney in violation of § 38.122 of the Texas Penal Code. It does not state that I falsely held myself out to be an attorney in violation of an order of the Supreme Court of Texas. Your news story's headline stating that I was indicted for violating a court order is false and it patently demonstrates your station's ignorance of the law. That is unless KTRE is intentionally misrepresenting the facts.

Another important difference between the court order and the statute is that while the Supreme Court order is silent about my law licenses in other states, the Texas statute under which I was indicted does provide an "out" for a lawyer licensed in other states. Could this be the real reason why KTRE insists upon emphasizing the court order rather than the statute?

You correctly state that it is not KTRE's job to make or argue my case. But it is not KTRE's job to

make or argue the prosecution's case, either.

What would be wrong with simply noting that I am licensed to practice law in two other states? That is not an argument. That is simply a true statement of fact.

What would be wrong with simply noting that the alleged instance of me falsely holding myself out was a press release inviting people to hear me read in the Declaration of Independence? Again, that is not an argument. That is simply a true statement of fact.

What would be wrong with simply noting that a conviction under § 38.122 of the Texas Penal Code requires the accused to have falsely held himself or herself out "to obtain an economic benefit?" That is not "arguing my case". That is simply "reporting the facts".

You article had no problem calling me a liar and explaining why my Texas license was canceled in the first place. Those things have absolutely nothing to do with my guilt or innocence of the crime of which I am accused, but you had no problem including it in your story.

I once again ask you to please tell the true. Rather than selectively reporting those facts which embarrass me, why not give your readers a full story? Rather than attempting to meet a bare minimum professional standard to escape civil liability, why not aspire to be a thorough, fair and just source of news. KTRE's selectively reporting of the facts may not rise to the level of defamation, but continuing to selectively report those facts in the face of new facts which expose the weakness of your story certainly demonstrates the moral depravity of Mr. Beames, KTRE, and Raycom, and it makes you a bigger liar than I ever was.

Please reconsider what you are doing.

Sincerely

Edward Malone

Edward Malone

PS: While you graciously replaced the original headline to your story, an internet search for your story still yields a headline stating that I was indicted for practicing law after losing my license. I beg you to please correct this situation.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* ALVAREZ

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 11–210. Argued February 22, 2012—Decided June 28, 2012

The Stolen Valor Act makes it a crime to falsely claim receipt of military decorations or medals and provides an enhanced penalty if the Congressional Medal of Honor is involved. 18 U. S. C. §§704 (b), (c). Respondent pleaded guilty to a charge of falsely claiming that he had received the Medal of Honor, but reserved his right to appeal his claim that the Act is unconstitutional. The Ninth Circuit reversed, finding the Act invalid under the First Amendment.

Held: The judgment is affirmed. Pp. 3–18.

617 F. 3d 1198, affirmed.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE, JUSTICE GINSBURG, and JUSTICE SOTOMAYOR, concluded that the Act infringes upon speech protected by the First Amendment. Pp. 3–18.

(a) The Constitution "demands that content-based restrictions on speech be presumed invalid . . . and that the Government bear the burden of showing their constitutionality." *Ashcroft* v. *American Civil Liberties Union,* 542 U. S. 656, 660.

Content-based restrictions on speech have been permitted only for a few historic categories of speech, including incitement, obscenity, defamation, speech integral to criminal conduct, so-called "fighting words," child pornography, fraud, true threats, and speech presenting some grave and imminent threat the Government has the power to prevent.

Absent from these few categories is any general exception for false statements. The Government argues that cases such as *Hustler Magazine, Inc.*, v. *Falwell*, 485 U. S. 46, 52, support its claim that false statements have no value and hence no First Amendment protection. But all the Government's quotations derive from cases dis-

cussing defamation, fraud, or some other legally cognizable harm associated with a false statement. In those decisions the falsity of the speech at issue was not irrelevant to the Court's analysis, but neither was it determinative. These 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 or fraud, the Court has instructed that falsity alone may not suffice to bring the speech outside the First Amendment; the statement must be a knowing and reckless falsehood. See *New York Times* v. *Sullivan*, 376 U. S. 254, 280. Here, the Government 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.

The Government's three examples of false-speech regulation that courts generally have found permissible do not establish a principle that all proscriptions of false statements are exempt from rigorous First Amendment scrutiny. The criminal prohibition of a false statement made to Government officials in communications concerning official matters, 18 U. S. C. §1001, does not lead to the broader proposition that false statements are unprotected when made to any person, at any time, in any context. As for perjury statutes, perjured statements lack First Amendment protection not simply because they are false, but because perjury undermines the function and province of the law and threatens the integrity of judgments. Finally, there are statutes that prohibit falsely representing that one is speaking on behalf of the Government, or prohibit impersonating a Government officer. These examples, to the extent that they implicate fraud or speech integral to criminal conduct, are inapplicable here.

While there may exist "some categories of speech that have been historically unprotected," but that the Court has not yet specifically identified or discussed, *United States* v. *Stevens,* 559 U. S. ___, ___, the Government has not demonstrated that false statements should constitute a new category. Pp. 3–10.

(b) The Act seeks to control and suppress all false statements on this one subject in almost limitless times and settings 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 would endorse government authority to compile a list of subjects about which false statements are punishable. That governmental power has no clear limiting principle. Pp. 10–11.

(c) The Court applies the "most exacting scrutiny" in assessing content-based restrictions on protected speech. *Turner Broadcasting System Inc.* v. *FCC,* 512 U. S. 622, 642. The Act does not satisfy that

scrutiny. While the Government's interest in protecting the integrity of the Medal of Honor is beyond question, the First Amendment requires that there be a direct causal link between the restriction imposed and the injury to be prevented. Here, that link has not been shown. The Government points to no evidence supporting its claim that the public's general perception of military awards is diluted by false claims such as those made by respondent. And it has not shown, and cannot show, why counterspeech, such as the ridicule respondent received online and in the press, would not suffice to achieve its interest.

In addition, when the Government seeks to regulate protected speech, the restriction must be the "least restrictive means among available, effective alternatives." *Ashcroft,* 542 U. S., at 666. Here, the Government could likely protect the integrity of the military awards system by creating a database of Medal winners accessible and searchable on the Internet, as some private individuals have already done. Pp. 12–18.

JUSTICE BREYER, joined by JUSTICE KAGAN, concluded that because the Stolen Valor Act, as presently drafted, works disproportionate constitutional harm, it fails intermediate scrutiny, and thus violates the First Amendment. Pp. 1–10.

(a) In determining whether a statute violates the First Amendment, the Court has often found it appropriate to examine the fit between statutory ends and means, taking into account the seriousness of the speech-related harm the provision will likely cause, the nature and importance of the provision's countervailing objectives, the extent to which the statute will tend to achieve those objectives, and whether there are other, less restrictive alternatives. "Intermediate scrutiny" describes this approach. Since false factual statements are less likely than true factual statements to make a valuable contribution to the marketplace of ideas, and the government often has good reason to prohibit such false speech, but its regulation can threaten speech-related harm, such an approach is applied here. Pp. 1–3.

(b) The Act should be read as criminalizing only false factual statements made with knowledge of their falsity and with intent that they be taken as true. Although the Court has frequently said or implied that false factual statements enjoy little First Amendment protection, see, *e.g., Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 340, those statements cannot be read to mean "no protection at all." False factual statements serve useful human objectives in many contexts. Moreover, the threat of criminal prosecution for making a false statement can inhibit the speaker from making true statements, thereby "chilling" a kind of speech that lies at the First Amendment's heart. See *id.,* at 340–341. And the pervasiveness of false factual

Syllabus

statements provides a weapon to a government broadly empowered to prosecute falsity without more. Those who are unpopular may fear that the government will use that weapon selectively against them.

Although there are many statutes and common-law doctrines making the utterance of certain kinds of false statements unlawful, they tend to be narrower than the Act, in that they limit the scope of their application in various ways, for example, by requiring proof of specific harm to identifiable victims. The Act lacks any such limiting features. Although it prohibits only knowing and intentional falsehoods about readily verifiable facts within the personal knowledge of the speaker, it otherwise ranges broadly, and that breadth means that it creates a significant risk of First Amendment harm. Pp. 3–8.

(c) The Act nonetheless has substantial justification. It seeks to protect the interests of those who have sacrificed their health and life for their country by seeking to preserve intact the country's recognition of that sacrifice in the form of military honors. P. 8.

(d) It may, however, be possible substantially to achieve the Government's objective in less burdensome ways. The First Amendment risks flowing from the Act's breadth of coverage could be diminished or eliminated by a more finely tailored statute, for example, a statute that requires a showing that the false statement caused specific harm or is focused on lies more likely to be harmful or on contexts where such lies are likely to cause harm. Pp. 8–10.

KENNEDY, J., announced the judgment of the Court and delivered an opinion, in which ROBERTS, C. J., and GINSBURG and SOTOMAYOR, JJ., joined. BREYER, J., filed an opinion concurring in the judgment, in which KAGAN, J., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 11–210

UNITED STATES, PETITIONER *v.* XAVIER ALVAREZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[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, the respondent here, 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. 18 U. S. C. §704.

In 2007, respondent attended his first public meeting as a board member of the Three Valley Water District Board. The board is a governmental entity with headquarters in Claremont, California. He introduced himself as follows: "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. I got wounded many times by the same guy." 617 F. 3d 1198, 1201–1202 (CA9 2010). None of this was true. For all the record shows, respondent's statements were but a pathetic attempt to gain respect that eluded him. The statements do not seem to have been made to secure

employment or financial benefits or admission to privileges reserved for those who had earned the Medal.

Respondent was indicted under the Stolen Valor Act for lying about the Congressional Medal of Honor at the meeting. The United States District Court for the Central District of California rejected his claim that the statute is invalid under the First Amendment. Respondent pleaded guilty to one count, reserving the right to appeal on his First Amendment claim. The United States Court of Appeals for the Ninth Circuit, in a decision by a divided panel, found the Act invalid under the First Amendment and reversed the conviction. *Id.*, at 1218. With further opinions on the issue, and over a dissent by seven judges, rehearing en banc was denied. 638 F. 3d 666 (2011). This Court granted certiorari. 565 U. S. ___ (2011).

After certiorari was granted, and in an unrelated case, the United States Court of Appeals for the Tenth Circuit, also in a decision by a divided panel, found the Act constitutional. *United States* v. *Strandlof*, 667 F. 3d 1146 (2012). So there is now a conflict in the Courts of Appeals on the question of the Act's validity.

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*, 562 U. S. ___ (2011) (hateful protests directed at the funeral of a serviceman who died in Iraq). 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 carrying out the "supreme and noble duty of contributing to the defense of the rights and honor of the nation," *Selective Draft Law Cases,* 245 U. S. 366, 390 (1918), 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. This does not end the inquiry, however. Fundamental constitutional principles require that laws enacted to honor the brave must be consistent with the precepts of the Constitution for which they fought.

The Government contends the criminal prohibition is a proper means to further its purpose in creating and awarding the Medal. When content-based speech regulation is in question, however, exacting scrutiny is required. Statutes suppressing or restricting speech must be judged by the sometimes inconvenient principles of the First Amendment. By this measure, the statutory provisions under which respondent was convicted must be held invalid, and his conviction must be set aside.

I

Respondent's claim to hold the Congressional Medal of Honor was false. There is no room to argue about interpretation or shades of meaning. On this premise, respondent violated §704(b); and, because the lie concerned the Congressional 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 few 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, an integrity and purpose it contends are compromised and frustrated by the false statements the statute prohibits. 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." Brief for United States 18, 20. 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 suffice to 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." *Ashcroft* v. *American Civil Liberties Union*, 535 U. S. 564, 573 (2002) (internal quotation marks omitted). As a result, the Constitution "demands that content-based restrictions on speech be presumed invalid . . . and that the Government bear the burden of showing their constitutionality." *Ashcroft* v. *American Civil Liberties Union*, 542 U. S. 656, 660 (2004).

In light of the substantial and expansive 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." *United States* v. *Stevens*, 559 U. S. ___, ___ (2010) (slip op.,

at 7). Instead, 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,'" *Id.,* at ___ (slip op., at 5) (quoting *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.*, 502 U. S. 105, 127 (1991) (KENNEDY, J., concurring in judgment)). Among these categories are advocacy intended, and likely, to incite imminent lawless action, see *Brandenburg* v. *Ohio*, 395 U. S. 444 (1969) *(per curiam);* obscenity, see, *e.g., Miller* v. *California*, 413 U. S. 15 (1973); defamation, see, *e.g., 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, *e.g., 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, see *Near* v. *Minnesota ex rel. Olson*, 283 U. S. 697, 716 (1931), 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 and thought 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. See also Brief for Eugene Volokh et al. as *Amici Curiae* 2–11. 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 by the First Amendment in the same manner as truthful statements," *Brown* v. *Hartlage*, 456 U. S. 45, 60–61 (1982). See also, *e.g., Virginia Bd. of Pharmacy*, *supra*, at 771 ("Untruthful speech, commercial or otherwise, has never been protected for its own sake"); *Herbert* v. *Lando*, 441 U. S. 153, 171 (1979) ("Spreading false information in and of itself carries no First Amendment credentials"); *Gertz*, *supra*, at 340 ("[T]here is no constitutional value in false statements of fact"); *Garrison* v. *Louisiana*, 379 U. S. 64, 75 (1964) ("[T]he knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection").

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 or the costs of vexatious litigation. See Brief for United States 18–19. 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. See *Sullivan*, *supra*, at 280 (prohibiting recovery of damages for a defamatory falsehood made about a public official unless the statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not"); see also *Garrison*, *supra*, at 73 ("[E]ven when the utterance is false, the great principles of the Constitution which secure freedom of expression . . . preclude attaching adverse consequences to any except the knowing or reckless falsehood"); *Illinois ex rel. Madigan* v. *Telemarketing Associates, Inc.*, 538 U. S. 600, 620 (2003) ("False statement alone does not subject a fundraiser to fraud liability").

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, 18 U. S. C. §1001; 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, see, *e.g.,* §912; §709. 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 punishes "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government . . . makes any materially false, fictitious, or fraudulent statement or representation." §1001. Section 1001's prohibition on false statements made 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 what the Court has confirmed is the "unquestioned constitutionality of perjury statutes," both the federal statute, §1623, and its state-law equivalents. *United States* v. *Grayson*, 438 U. S. 41, 54 (1978). See also *Konigsberg* v. *State Bar of Cal.*, 366 U. S. 36, 51, n. 10 (1961). 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." *In re Michael*, 326 U. S. 224, 227 (1945). Perjury undermines the function and province of the law and threatens the integrity of judgments that are the basis of the legal system. See *United States* v. *Dunnigan*, 507 U. S. 87, 97 (1993) ("To uphold the integrity of our trial system . . . the constitutionality of perjury statutes is unquestioned"). Unlike speech in other contexts, testi-

mony 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. Title 18 U. S. C. §912, for example, prohibits impersonating an officer or employee of the United States. Even if that statute may not require proving an "actual financial or property loss" resulting from the deception, the statute is itself confined to "maintain[ing] the general good repute and dignity of . . . government . . . service itself." *United States* v. *Lepowitch*, 318 U. S. 702, 704 (1943) (internal quotation marks omitted). The same can be said for prohibitions on the unauthorized use of the names of federal agencies such as the Federal Bureau of Investigation in a manner calculated to convey that the communication is approved, see §709, or using words such as "Federal" or "United States" in the collection of private debts in order to convey that the communication has official authorization, see §712. These examples, to the extent that they implicate fraud or speech integral to criminal conduct, are inapplicable here.

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," *Stevens*, 559 U. S., at ___ (slip op., at 9), the Court has acknowledged that perhaps there exist "some categories of speech that have been historically unprotected . . . but have not yet been specifically identified or discussed . . . in our case law." *Ibid.* 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," *Brown* v. *Entertainment Merchants Assn.,* 564 U. S. ___, ___ (2011) (slip op., at 4). 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, in a fundamental way, the reasons for the Law's distrust of content-based speech prohibitions.

The Act by its plain 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. See *Milkovich* v. *Lorain Journal Co.*, 497 U. S. 1, 20 (1990) (recognizing that some statements nominally purporting to contain false facts in reality "cannot reasonably be interpreted as stating actual facts about an individual" (internal quotation marks and brackets omitted)). Still, the sweeping, quite unprecedented 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. See *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U. S. 522, 539–540 (1987) (prohibiting a nonprofit corporation from exploiting the "commercial magnetism" of the word "Olympic" when organizing an athletic competition (internal quotation marks omitted)).

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 National Government or the States could single out. 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. See, *e.g., Virginia Bd. of Pharmacy*, 425 U. S., at 771 (noting that fraudulent speech generally falls outside the protections of the First Amendment). But the Stolen Valor Act is not so limited in its reach. 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, 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 not adopted a free-wheeling approach, see *Stevens*, 559 U. S., at ___ (slip op., at 7) ("The First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits"), but rather has applied the "most exacting scrutiny." *Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 642 (1994). Although the objectives the Government seeks to further by the statute are not without significance, the Court must, and now does, 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." Brief for United States 37, 38. General George Washington observed that an award for valor would "cherish a virtuous ambition in . . . soldiers, as well as foster and encourage every species of military merit." General Orders of George Washington Issued at Newburgh on the Hudson, 1782–1783 (Aug. 7, 1782), p. 30 (E. Boynton ed. 1883). Time has not diminished this idea. In periods of war and peace alike public recognition of valor and noble sacrifice by men and women in uniform reinforces the pride and national resolve that the military relies upon to fulfill its mission.

These interests are related to the integrity of the military honors system in general, and the Congressional Medal of Honor in particular. Although millions have served with brave resolve, the Medal, which is the highest

military award for valor against an enemy force, has been given just 3,476 times. Established in 1861, the Medal is reserved for those who have distinguished themselves "conspicuously by gallantry and intrepidity at the risk of his life above and beyond the call of duty." 10 U. S. C. §§3741 (Army), 6241 (Navy and Marine Corps), 8741 (Air Force), 14 U. S. C. §491 (Coast Guard). The stories of those who earned the Medal inspire and fascinate, from Dakota Meyer who in 2009 drove five times into the midst of a Taliban ambush to save 36 lives, see Curtis, President Obama Awards Medal of Honor to Dakota Meyer, The White House Blog (Sept. 15, 2011) (all Internet materials as visited June 25, 2012, and available in Clerk of Court's case file); to Desmond Doss who served as an army medic on Okinawa and on June 5, 1945, rescued 75 fellow soldiers, and who, after being wounded, gave up his own place on a stretcher so others could be taken to safety, see America's Heroes 88–90 (J. Willbanks ed. 2011); to William Carney who sustained multiple gunshot wounds to the head, chest, legs, and arm, and yet carried the flag to ensure it did not touch the ground during the Union army's assault on Fort Wagner in July 1863, *id.,* at 44–45. The rare acts of courage the Medal celebrates led President Truman to say he would "rather have that medal round my neck than . . . be president of the United States." Truman Gives No. 1 Army Medal to 15 Heroes, Washington *Post,* Oct. 13, 1945, p. 5. 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. *Entertainment Merchants Assn.*, 564 U. S., at ___ (slip op., at 12). There must be a direct causal link between the restriction imposed and the injury to be prevented. See *ibid.*

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," Brief for United States 49, 54. 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. From one perspective it insults their bravery and high principles when falsehood puts them in the unworthy company of a pretender.

Yet these interests do not satisfy the Government's heavy burden when it seeks to regulate protected speech. See *United States* v. *Playboy Entertainment Group, Inc.*, 529 U. S. 803, 818 (2000). The Government points to no evidence to support its claim that the public's general perception of military awards is diluted by false claims such as those made by Alvarez. Cf. *Entertainment Merchants Assn., supra,* at ___–___ (slip op., at 12–13) (analyzing and rejecting the findings of research psychologists demonstrating the causal link between violent video games and harmful effects on children). As one of the Government's *amici* notes "there is nothing that charlatans such as Xavier Alvarez can do to stain [the Medal winners'] honor." Brief for Veterans of Foreign Wars of the United States et al. as *Amici Curiae* 1. 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 stated interest and the Act is not the only way in which

the Act is not actually necessary to achieve the Government's stated 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 for his false statements "Alvarez was perceived as a phony," 617 F. 3d, at 1211. Once the lie was made public, he was ridiculed online, see Brief for Respondent 3, his actions were reported in the press, see Ortega, Alvarez Again Denies Claim, Ontario, CA, Inland Valley Daily Bulletin (Sept. 27, 2007), and a fellow board member called for his resignation, see, *e.g.,* Bigham, Water District Rep Requests Alvarez Resign in Wake of False Medal Claim, San Bernardino Cty., CA, The Sun (May 21, 2008). There is good reason to believe that a similar fate would befall other false claimants. See Brief for Reporters Committee for Freedom of the Press et al. as *Amici Curiae* 30–33 (listing numerous examples of public exposure of false claimants). Indeed, the outrage and contempt expressed for respondent's lies can serve to reawaken and reinforce the public's respect for the Medal, its recipients, and its high purpose. The acclaim that recipients of the Congressional 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. See, *e.g.,* Well Done, Washington *Post,* Feb. 5, 1943, p. 8 (reporting on President Roosevelt's awarding the Congressional Medal of Honor to Maj. Gen. Alexander Vandegrift); Devroy, Medal of Honor Given to 2 Killed in Somalia, Washington *Post,* May 24, 1994, p. A6 (reporting on President Clinton's awarding the Congressional Medal of Honor to two special forces soldiers killed during operations in Somalia).

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*, 274 U. S. 357, 377 (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*, 250 U. S. 616, 630 (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.

Expressing its concern that counterspeech is insufficient, the Government responds that because "some military records have been lost . . . some claims [are] unverifiable," Brief for United States 50. This proves little, however; for without verifiable records, successful criminal prosecution under the Act would be more difficult in any event. So, in cases where public refutation will not serve the Government's interest, the Act will not either. In addition, the Government claims that "many [false claims] will remain unchallenged." *Id.,* at 55. The Government provides no support for the contention. And in any event, in order to show that public refutation is not an adequate alternative, the Government must demonstrate that unchallenged claims undermine the public's perception of the military and the integrity of its awards system. This showing has not been made.

It is a fair assumption that any true holders of the Medal who had heard of Alvarez's false claims would have been fully vindicated by the community's expression of outrage, showing as it did the Nation's high regard for the Medal. The same can be said for the Government's interest. The American people do not need the assistance of a government prosecution to express their high regard for the special place that military heroes hold in our tradition. Only a weak society needs government protection or 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." *Ashcroft*, 542 U. S., at 666. 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, see Brief for Respondent 25, and at least one database of past winners is online and fully searchable, see Congressional Medal of Honor Society, Full Archive, http://www.cmohs.org/recipient-archive.php. 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." Brief for United States 55. 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.

The Government may have responses to some of these criticisms, but there has been no clear showing of the

necessity of the statute, the necessity required by exacting scrutiny.

* * *

The Nation well knows that 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 and expression. The Stolen Valor Act infringes upon speech protected by the First Amendment.

The judgment of the Court of Appeals is affirmed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 11–210

UNITED STATES, PETITIONER *v.* XAVIER ALVAREZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 28, 2012]

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. *Ante,* at 4–10. 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 doing so, it has examined speech-related harms, justifications, and potential alternatives. In particular, it has taken account of the seriousness of the speech-related harm the provision will likely cause, the nature and importance of the provision's countervailing objectives, the extent to which the provision will tend to achieve those objectives, and whether there are other, less restrictive ways of doing so. Ultimately the Court has had to determine whether the statute works speech-related harm that 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 the application of any label at all. See, *e.g., Turner Broadcasting System, Inc.* v. *FCC*, 512 U. S. 622, 641–652 (1994) (intermediate scrutiny); *Randall* v. *Sorrell*, 548 U. S. 230, 249 (2006) (plurality opinion) (proportionality); *Board of Trustees of State Univ. of N. Y.* v. *Fox*, 492 U. S. 469, 480 (1989) (requiring a "fit" between means and ends that is "'in proportion to the interest served'"); *In re R. M. J.*, 455 U. S. 191, 203 (1982) ("[I]nterference with speech must be in proportion to the [substantial governmental] interest served"); *Pickering* v. *Board of Ed. of Township High School Dist. 205, Will Cty.*, 391 U. S. 563, 568 (1968).

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). See, *e.g., Turner Broadcasting System, Inc.*, *supra*, at 641–652 ("must-carry" cable regulations); *Central Hudson Gas & Elec. Corp.* v. *Public Serv. Comm'n of N. Y.*, 447 U. S. 557, 566 (1980) (nonmisleading commercial speech); *Burdick* v. *Takushi*, 504 U. S. 428, 433–434 (1992) (election regulation); *Pickering*, *supra,* at 568 (government employee speech); *United States* v. *O'Brien*, 391 U. S. 367, 377 (1968) (application of generally applicable laws to expressive conduct). I have used the term "proportionality" to describe this approach. *Thompson* v. *Western States Medical Center*, 535 U. S. 357, 388 (2002) (dissenting opinion); see also *Bartnicki* v. *Vopper*, 532 U. S. 514, 536 (2001) (concurring opinion); *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 402–403 (2000) (concurring opinion). 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." *Post,* at 14. 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. See *infra,* at 5–7 (listing examples of statutes and doctrines regulating false factual speech). But its regulation can nonetheless threaten speech-related harms. Those circumstances lead me to apply what the Court has termed "intermediate scrutiny" here.

II

A

The Stolen Valor Act makes it a crime "falsely" to "represen[t]" oneself "to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States." 18 U. S. C. §704(b). I would read the statute favorably to the Government as criminalizing only false factual statements made with knowledge of their falsity and with the intent that they be taken as true. See *Staples* v. *United States*, 511 U. S. 600, 605 (1994) (courts construe statutes "in light of the background rules of the common law, . . . in which the requirement of some *mens rea* for a crime is firmly embedded"); cf. *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 279–280 (1964) (First Amendment allows a public official to recover for defama-

tion only upon a showing of "'actual malice'"). As so interpreted the statute covers only lies. But although this interpretation diminishes the extent to which the statute endangers First Amendment values, it does not eliminate the threat.

I must concede, as the Government points out, that this Court has frequently said or implied that false factual statements enjoy little First Amendment protection. See, *e.g., BE&K Constr. Co.* v. *NLRB*, 536 U. S. 516, 531 (2002) ("[F]alse statements may be unprotected for their own sake"); *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 52 (1988) ("False statements of fact are particularly valueless"); *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 340 (1974) ("[T]he erroneous statement of fact is not worthy of constitutional protection").

But these judicial statements cannot be read to mean "no protection at all." False factual statements can serve useful human 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 stop a panic or otherwise 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 deliberately to mislead) can promote a form of thought that ultimately helps realize the truth. See, *e.g.,* 638 F. 3d 666, 673–675 (CA9 2011) (Kozinski, J., concurring in denial of rehearing en banc) (providing numerous examples); S. Bok, Lying: Moral Choice in Public and Private Life (1999) (same); *New York Times Co.*, *supra,* at 279, n. 19 ("Even 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'" (quoting J. Mill, On Liberty 15 (Blackwell ed. 1947))).

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" a kind of speech that lies at the First Amendment's heart. See, *e.g., Gertz*, *supra,* at 340–341. Hence, the Court emphasizes *mens rea* requirements that provide "breathing room" for more valuable speech by reducing an honest speaker's fear that he may accidentally incur liability for speaking.

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. See Restatement (Second) of Torts §525 (1976). Defamation statutes focus upon statements of a kind that harm the reputation of another or deter third parties from association or dealing with the victim. See *id.*, §§558, 559. Torts involving the

intentional infliction of emotional distress (like torts involving placing a victim in a false light) concern falsehoods that tend to cause harm to a specific victim of an emotional-, dignitary-, or privacy-related kind. See *id.*, §652E.

Perjury statutes prohibit a particular set of false statements—those made under oath—while requiring a showing of materiality. See, *e.g.,* 18 U. S. C. §1621. 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. See, *e.g.,* §1001.

Statutes prohibiting false claims of terrorist attacks, or other lies about the commission of crimes or catastrophes, require proof that substantial public harm be directly foreseeable, or, if not, involve false statements that are very likely to bring about that harm. See, *e.g.,* 47 CFR §73.1217 (2011) (requiring showing of foreseeability and actual substantial harm); 18 U. S. C. §1038(a)(1) (prohibiting knowing false statements claiming that terrorist attacks have taken, are taking, or will take, place).

Statutes forbidding impersonation of a public official typically focus on *acts* of impersonation, not mere speech, and may require a showing that, for example, someone was deceived into following a "course [of action] he would not have pursued but for the deceitful conduct." *United States* v. *Lepowitch*, 318 U. S. 702, 704 (1943); see, *e.g.,* §912 (liability attaches to "[w]hoever falsely assumes or pretends to be an officer or employee acting under the authority of the United States . . . and *acts as such*" (emphasis added)).

Statutes prohibiting trademark infringement present, perhaps, the closest analogy to the present statute. Trademarks identify the source of a good; and infringement causes harm by causing confusion among potential

customers (about the source) and thereby diluting the value of the mark to its owner, to consumers, and to the economy. Similarly, a false claim of possession of a medal or other honor creates confusion about who is entitled to wear it, thus diluting its value to those who have earned it, to their families, and to their country. But trademark statutes are focused upon commercial and promotional activities that are likely to dilute the value of a mark. Indeed, they typically require a showing of likely confusion, a showing that tends to assure that the feared harm will in fact take place. See 15 U. S. C. §1114(1)(a); *KP Permanent Make-Up, Inc.* v. *Lasting Impression I, Inc.*, 543 U. S. 111, 117 (2004); see also *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U. S. 522, 539–540, 548 (1987) (upholding statute giving the United States Olympic Committee the right to prohibit certain *commercial and promotional uses* of the word "Olympic").

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, even a lie about one particular matter. 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 or forbidding 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 may be construed to prohibit only knowing and intentional acts of deception about readily verifiable facts within the personal knowledge of the speaker, thus reducing the risk that valuable speech is chilled. *Supra,* at 3–4. But it still 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 although such lies are more likely to cause harm, the risk of censorious selectivity by prosecutors is also high. Further, given the potential haziness of individual memory along with the large number of military awards covered (ranging from medals for rifle marksmanship to the Congressional Medal of Honor), 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.

B

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. The statute serves this interest by seeking to preserve intact the country's recognition of that sacrifice in the form of military honors. To permit those who have not earned those honors to claim otherwise dilutes the value of the awards. Indeed, the Nation cannot fully honor those who have sacrificed so much for their country's honor unless those who claim to have received its military awards tell the truth. Thus, the statute risks harming protected interests but only in order to achieve a substantial countervailing objective.

C

We must therefore ask whether it is possible substan-

tially to achieve the Government's objective in less burdensome ways. In my view, the answer to this question is "yes." Some potential First Amendment threats can be alleviated by interpreting the statute to require knowledge of falsity, etc. *Supra,* at 3–4. But other First Amendment risks, primarily risks flowing from breadth of coverage, remain. *Supra,* at 4–5, 7–8. As is indicated by the limitations on the scope of the many other kinds of statutes regulating false factual speech, *supra,* at 5–7, it should be possible significantly to diminish or eliminate these remaining risks by enacting a similar but more finely tailored statute. 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, as other kinds of statutes prohibiting false factual statements have done, 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. Some lower courts have upheld the constitutionality of roughly comparable but narrowly tailored statutes in political contexts. See, *e.g., United We Stand America, Inc.* v. *United We Stand, America New York, Inc.*, 128 F. 3d 86, 93 (CA2 1997) (upholding against First Amendment challenge application of Lanham Act to a political organization); *Treasure of*

the Committee to Elect Gerald D. Lostracco v. *Fox*, 150 Mich. App. 617, 389 N. W. 2d 446 (1986) (upholding under First Amendment statute prohibiting campaign material falsely claiming that one is an incumbent). Without expressing any view on the validity of those cases, 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. See *ante,* at 17–18. 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.

For these reasons, I concur in the Court's judgment.

SUPREME COURT OF THE UNITED STATES

No. 11–210

UNITED STATES, PETITIONER *v.* XAVIER ALVAREZ

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 28, 2012]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

Only the bravest of the brave are awarded the Congressional Medal of Honor, but the Court today holds that every American has a constitutional right to claim to have received this singular award. 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.

Building on earlier efforts to protect the military awards system, Congress responded to this problem by crafting a narrow statute that presents no threat to the freedom of speech. The statute reaches only knowingly false statements about hard facts directly within a speaker's personal knowledge. These lies have no value in and of themselves, and proscribing them does not chill any valuable speech.

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

The Stolen Valor Act makes it a misdemeanor to "falsely represen[t]" oneself as having been awarded a medal, decoration, or badge for service in the Armed Forces of the United States. 18 U. S. C. §704(b). 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, as the Government maintains, see Brief for United States 15–17, and both the plurality, see *ante,* at 7, and the concurrence, see *ante,* at 3 (BREYER, J., concurring in judgment), seemingly accept, a conviction under the Act requires proof beyond a reasonable doubt that the speaker actually knew that the representation was false.[1] 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.[2] Finally,

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[1] Although the Act does not use the term "knowing" or "knowingly," we have explained that criminal statutes must be construed "in light of the background rules of the common law . . . in which the requirement of some *mens rea* for a crime is firmly embedded." *Staples* v. *United States*, 511 U. S. 600, 605 (1994). The Act's use of the phrase "falsely represents," moreover, connotes a knowledge requirement. See Black's Law Dictionary 1022 (8th ed. 2004) (defining a "misrepresentation" or "false representation" to mean "[t]he act of making a false or misleading assertion about something, usu. with the *intent to deceive*" (emphasis added)).

[2] See Black's Law Dictionary, *supra*, at 1327 (defining "representation" to mean a "presentation of fact"); see also *Milkovich* v. *Lorain Journal Co.*, 497 U. S. 1, 20 (1990) (explaining that the Court has protected "statements that cannot 'reasonably [be] interpreted as stating actual facts' about an individual" so that "public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation" (quoting *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 50 (1988); alteration in original)).

the Act is strictly viewpoint neutral. The false statements proscribed by the Act are highly unlikely to be tied to any particular political or ideological 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, the military, or the system of military honors.

The Stolen Valor Act follows a long tradition of efforts to protect our country's system of military honors. When George Washington, as the commander of the Continental Army, created the very first "honorary badges of distinction" for service in our country's military, he established a rigorous system to ensure that these awards would be received and worn by only the truly deserving. See General Orders of George Washington Issued at Newburgh on the Hudson, 1782–1783, p. 35 (E. Boynton ed. 1883) (reprint 1973) (requiring the submission of "incontestible proof" of "singularly meritorious action" to the Commander in Chief). Washington warned that anyone with the "insolence to assume" a badge that had not actually been earned would be "severely punished." *Id.*, at 34.

Building on this tradition, Congress long ago made it a federal offense for anyone to wear, manufacture, or sell certain military decorations without authorization. See Act of Feb. 24, 1923, ch. 110, 42 Stat. 1286 (codified as amended at 18 U. S. C. §704(a)). Although this Court has never opined on the constitutionality of that particular provision, we have said that §702, which makes it a crime to wear a United States military uniform without authorization, is "a valid statute on its face." *Schacht* v. *United States*, 398 U. S. 58, 61 (1970).

Congress passed the Stolen Valor Act in response to a proliferation of false claims concerning the receipt of military awards. For example, in a single year, *more than 600* Virginia residents falsely claimed to have won the

Medal of Honor.[3] An investigation of the 333 people listed in the online edition of Who's Who as having received a top military award revealed that fully a third of the claims could not be substantiated.[4] When the Library of Congress compiled oral histories for its Veterans History Project, 24 of the 49 individuals who identified themselves as Medal of Honor recipients had not actually received that award.[5] The same was true of 32 individuals who claimed to have been awarded the Distinguished Service Cross and 14 who claimed to have won the Navy Cross.[6] Notorious cases brought to Congress' attention included the case of a judge who falsely claimed to have been awarded *two* Medals of Honor and displayed counterfeit medals in his courtroom;[7] a television network's military consultant who falsely claimed that he had received the Silver Star;[8] and a former judge advocate in the Marine Corps who lied about receiving the Bronze Star and a Purple Heart.[9]

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[3] Colimore, Pinning Crime on Fake Heroes: N. J. Agent Helps Expose and Convict Those with Bogus U. S. Medals, Philadelphia Inquirer, Feb. 11, 2004, http://articles.philly.com/2004-02-11/news/25374213_1_medals-military-imposters-distinguished-flying-cross (all Internet materials as visited June 25, 2012, and available in Clerk of Court's case file).

[4] Crewdson, Claims of Medals Amount to Stolen Valor, Chicago Tribune, Oct. 26, 2008, http://www.chicagotribune.com/news/local/chi-valor-oct25,0,4301227.story?page=1.

[5] Half of MOH Entries in Oral History Project Are Incorrect, Marine Corps Times, Oct. 1, 2007, 2007 WLNR 27917486.

[6] *Ibid.*

[7] Young, His Honor Didn't Get Medal of Honor, Chicago Tribune, Oct. 21, 1994, http://articles.chicagotribune.com/1994-10-21/news/9410210318_1_congressional-medal-highest-fritz.

[8] Rutenberg, At Fox News, the Colonel Who Wasn't, N. Y. Times, Apr. 29, 2002, http://www.nytimes.com/2002/04/29/business/at-fox-news-the-colonel-who-wasn-t.html?pagewanted=all&src=pm.

[9] B. Burkett & G. Whitley, Stolen Valor: How the Vietnam Generation Was Robbed of Its Heroes and Its History 179 (1998).

As Congress recognized, the lies proscribed by the Stolen Valor Act inflict substantial harm. In many instances, the harm is tangible in nature: Individuals often falsely represent themselves as award recipients in order to obtain financial or other material rewards, such as lucrative contracts and government benefits.[10] An investigation of false claims in a single region of the United States, for example, revealed that 12 men had defrauded the Department of Veterans Affairs out of more than $1.4 million in veteran's benefits.[11] In other cases, the harm is less tangible, but nonetheless significant. The lies proscribed by the Stolen Valor Act tend to debase the distinctive honor of military awards. See Stolen Valor Act of 2005, §2, 120 Stat. 3266, note following 18 U. S. C. §704 (finding that "[f]raudulent claims surrounding the receipt of [military decorations and medals] damage the reputation and meaning of such decorations and medals"). And legitimate award recipients and their families have expressed the harm they endure when an imposter takes credit for heroic actions that he never performed. One Medal of Honor recipient described the feeling as a "'slap in the face of veterans who have paid the price and earned their medals.'"[12]

It is well recognized in trademark law that the proliferation of cheap imitations of luxury goods blurs the "'signal'

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[10] Indeed, the first person to be prosecuted under the Stolen Valor Act apparently "parlayed his medals into lucrative security consulting contracts." Zambito, War Crime: FBI Targets Fake Heroes, New York Daily News, May 6, 2007, http://www.nydailynews.com/news/crime/war-crime-fbi-targets-fake-heroes-article-1.249168.

[11] Dept. of Justice, Northwest Crackdown on Fake Veterans in "Operation Stolen Valor," Sept. 21, 2007, http://www.justice.gov/usao/waw/press/2007/sep/operationstolenvalor.html.

[12] Cato, High Court Tussles With False Heroics: Free Speech or Felony? Pittsburg Tribune Review, Feb. 23, 2012, http://triblive.com/usworld/nation/1034434-85/court-military-law-false-medals-supreme-valor-act-federal-free.

given out by the purchasers of the originals." Landes & Posner, Trademark Law: An Economic Perspective, 30 J. Law & Econ. 265, 308 (1987). In much the same way, the proliferation of false claims about military awards blurs the signal given out by the actual awards by making them seem more common than they really are, and this diluting effect harms the military by hampering its efforts to foster morale and esprit de corps. Surely it was reasonable for Congress to conclude that the goal of preserving the integrity of our country's top military honors is at least as worthy as that of protecting the prestige associated with fancy watches and designer handbags. Cf. *San Francisco Arts & Athletics, Inc.* v. *United States Olympic Comm.*, 483 U. S. 522, 539–541 (1987) (rejecting First Amendment challenge to law prohibiting certain unauthorized uses of the word "Olympic" and recognizing that such uses harm the U. S. Olympic Committee by "lessening the distinctiveness" of the term).

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 chief alternative that is recommended is the compilation and release of a comprehensive list or database of actual medal recipients. If the public could readily access such a resource, it is argued, imposters would be quickly and easily exposed, and the proliferation of lies about military honors would come to an end.

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. See Office of Undersecretary of Defense, Report to the Senate and House Armed Services Committees on a Searchable Military

Valor Decorations Database 4–5 (2009).[13]

Because a sufficiently comprehensive database is not practicable, lies about military awards cannot be remedied by what the plurality calls "counterspeech." *Ante,* at 15. Without the requisite database, many efforts to refute false claims may be thwarted, and some legitimate award recipients may be erroneously attacked. In addition, a steady stream of stories in the media about the exposure of imposters would tend to increase skepticism among members of the public about the entire awards system. This would only exacerbate the harm that the Stolen Valor Act is meant to prevent.

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." *Ante*, at 11. In a similar vein, the concurrence comments that "a more finely tailored statute might . . . insist upon a showing that the false statement caused specific harm." *Ante,* at 9 (opinion of BREYER, J.). But much damage is caused, both to real award recipients and to the system of military honors, by false statements that are not linked to any financial or other tangible reward. Unless even a small financial loss—say, a dollar given to a homeless man falsely claiming to be a decorated veteran—is more important in the eyes of the First Amendment than the damage caused to the very integrity of the military awards system, there is no basis for distinguishing between the Stolen Valor Act and the alternative statutes that the plurality and concurrence appear willing to sustain.

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[13] In addition, since the Department may not disclose the Social Security numbers or birthdates of recipients, this database would be of limited use in ascertaining the veracity of a claim involving a person with a common name. Office of Undersecretary of Defense, Report, at 3–4.

JUSTICE BREYER also proposes narrowing the statute so that it covers a shorter list of military awards, *ante,* at 9 (opinion concurring in judgment), but he does not provide a hint about where he thinks the line must be drawn. Perhaps he expects Congress to keep trying until it eventually passes a law that draws the line in just the right place.

II

A

Time and again, this Court has recognized that as a general matter false factual statements possess no intrinsic First Amendment value. See *Illinois ex rel. Madigan* v. *Telemarketing Associates, Inc.*, 538 U. S. 600, 612 (2003) ("Like other forms of public deception, fraudulent charitable solicitation is unprotected speech"); *BE&K Constr. Co.* v. *NLRB*, 536 U. S. 516, 531 (2002) ("[F]alse statements may be unprotected for their own sake"); *Hustler Magazine, Inc.* v. *Falwell*, 485 U. S. 46, 52 (1988) ("False statements of fact are particularly valueless; they interfere with the truth-seeking function of the marketplace of ideas, and they cause damage to an individual's reputation that cannot easily be repaired by counterspeech, however persuasive or effective"); *Keeton* v. *Hustler Magazine, Inc.*, 465 U. S. 770, 776 (1984) ("There is 'no constitutional value in false statements of fact'" (quoting *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 340 (1974))); *Bill Johnson's Restaurants, Inc.* v. *NLRB*, 461 U. S. 731, 743 (1983) ("[F]alse statements are not immunized by the First Amendment right to freedom of speech"); *Brown* v. *Hartlage*, 456 U. S. 45, 60 (1982) ("Of course, demonstrable falsehoods are not protected by the First Amendment in the same manner as truthful statements"); *Herbert* v. *Lando*, 441 U. S. 153, 171 (1979) ("Spreading false information in and of itself carries no First Amendment credentials"); *Virginia Bd. of Pharmacy* v. *Virginia Citizens*

Consumer Council, Inc., 425 U. S. 748, 771 (1976) ("Untruthful speech, commercial or otherwise, has never been protected for its own sake"); *Gertz*, *supra,* at 340 ("[T]he erroneous statement of fact is not worthy of constitutional protection"); *Time, Inc.* v. *Hill*, 385 U. S. 374, 389 (1967) ("[T]he constitutional guarantees [of the First Amendment] can tolerate sanctions against *calculated* falsehood without significant impairment of their essential function"); *Garrison* v. *Louisiana*, 379 U. S. 64, 75 (1964) ("[T]he knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection").

Consistent with this recognition, many kinds of false factual statements have long been proscribed without "'rais[ing] any Constitutional problem.'" *United States* v. *Stevens*, 559 U. S. ___, ___ (2010) (slip op., at 6) (quoting *Chaplinsky* v. *New Hampshire*, 315 U. S. 568, 571–572 (1942)). Laws prohibiting fraud, perjury, and defamation, for example, were in existence when the First Amendment was adopted, and their constitutionality is now beyond question. See, *e.g., Donaldson* v. *Read Magazine, Inc.*, 333 U. S. 178, 190 (1948) (explaining that the government's power "to protect people against fraud" has "always been recognized in this country and is firmly established"); *United States* v. *Dunnigan*, 507 U. S. 87, 97 (1993) (observing that "the constitutionality of perjury statutes is unquestioned"); *Beauharnais* v. *Illinois*, 343 U. S. 250, 256 (1952) (noting that the "prevention and punishment" of libel "have never been thought to raise any Constitutional problem").

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 state-

ment, see *Falwell*, *supra,* at 56, even though that tort did not enter our law until the late 19th century, see W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts §12, p. 60, and n. 47. (5th ed. 1984) (hereinafter Prosser and Keeton). And in *Hill*, *supra,* at 390, the Court concluded that the free speech right allows recovery for the even more modern tort of false-light invasion of privacy, see Prosser and Keeton §117, at 863.

In line with these holdings, it has long been assumed that the First Amendment is not offended by prominent 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." Unlike perjury, §1001 is not limited to statements made under oath or before an official government tribunal. Nor does it require any showing of "pecuniary or property loss to the government." *United States* v. *Gilliland*, 312 U. S. 86, 93 (1941). Instead, the statute is based on the need to protect "agencies from the perversion which *might* result from the deceptive practices described." *Ibid.* (emphasis added).

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. See, *e.g.,* 18 U. S. C. §912 (making it a crime to falsely impersonate a federal officer); §709 (making it a crime to knowingly use, without authorization, the names of enumerated federal agencies, such as "Federal Bureau of Investigation," in a manner reasonably calculated to convey the impression that a communication is approved or authorized by the agency). We have recognized that §912, like §1001, does not require a showing of pecuniary or property loss and that its purpose is to "'maintain the general good repute and dignity'" of Gov-

ernment service. *United States* v. *Lepowitch*, 318 U. S. 702, 704 (1943) (quoting *United States* v. *Barnow*, 239 U. S. 74, 80 (1915)). All told, there are more than 100 federal criminal statutes that punish false statements made in connection with areas of federal agency concern. See *United States* v. *Wells*, 519 U. S. 482, 505–507, and nn. 8–10 (1997) (Stevens, J., dissenting) (citing "at least 100 federal false statement statutes" in the United States Code).

These examples amply demonstrate that false statements of fact merit no First Amendment protection in their own right.[14] It is true, as JUSTICE BREYER notes,

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[14] The plurality rejects this rule. Although we have made clear that "[u]ntruthful speech . . . has never been protected for its own sake," *Virginia Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U. S. 748, 771 (1976), the most the plurality is willing to concede is that "the falsity of speech bears upon whether it is protected," *ante,* at 9. This represents a dramatic—and entirely unjustified—departure from the sound approach taken in past cases.

Respondent and his supporting *amici* attempt to limit this rule to certain subsets of false statements, see, *e.g.,* Brief for Respondent 53 (asserting that, at most, only falsity that is proved to cause specific harm is stripped of its First Amendment protection), but the examples described above belie that attempt. These examples show that the rule at least applies to (1) specific types of false statements that were neither illegal nor tortious in 1791 (the torts of intentional infliction of emotional distress and false-light invasion of privacy did not exist when the First Amendment was adopted); (2) false speech that does not cause pecuniary harm (the harm remedied by the torts of defamation, intentional infliction of emotional distress, and false-light invasion of privacy is often nonpecuniary in nature, as is the harm inflicted by statements that are illegal under §§912 and 1001); (3) false speech that does not cause detrimental reliance (neither perjury laws nor many of the federal false statement statutes require that anyone actually rely on the false statement); (4) particular false statements that are not shown in court to have caused specific harm (damages can be presumed in defamation actions involving knowing or reckless falsehoods, and no showing of specific harm is required in prosecutions under many of the federal false statement statutes); and (5) false speech that does not cause harm to a specific individual (the purpose of many of the federal

that many in our society either approve or condone certain discrete categories of false statements, including false statements made to prevent harm to innocent victims and so-called "white lies." See *ante*, at 4. But respondent's false claim to have received the Medal of Honor did not fall into any of these categories. His lie did not "prevent embarrassment, protect privacy, shield a person from prejudice, provide the sick with comfort, or preserve a child's innocence." *Ibid.* Nor did his lie "stop a panic or otherwise preserve calm in the face of danger" or further philosophical or scientific debate. *Ibid.* Respondent's claim, like all those covered by the Stolen Valor Act, served no valid purpose.

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. Brief for Respondent 10. "We lie all the time." *Ibid.* "[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." *Id.,* at 39. 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." Brief for Jonathan D. Varat as *Amicus Curiae* 5.

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.

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false statement statutes is to protect government processes).

B

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. *Gertz*, 418 U. S., at 342 (quoting *NAACP* v. *Button*, 371 U. S. 415, 433 (1963)). Thus, in order 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. See *New York Times Co.* v. *Sullivan*, 376 U. S. 254, 279–280 (1964) (civil liability); *Garrison*, 379 U. S., at 74–75 (criminal liability). This same requirement applies when public officials and figures seek to recover for the tort of intentional infliction of emotional distress. See *Falwell*, 485 U. S., at 55–56. And we have imposed "[e]xacting proof requirements" in other contexts as well when necessary to ensure that truthful speech is not chilled. *Madigan*, 538 U. S., at 620 (complainant in a fraud action must show that the defendant made a knowingly false statement of material fact with the intent to mislead the listener and that he succeeded in doing so); see also *BE&K Constr.*, 536 U. S., at 531 (regulation of baseless lawsuits limited to those that are both "objectively baseless *and* subjectively motivated by an unlawful purpose"); *Hartlage*, 456 U. S., at 61 (sustaining as-applied First Amendment challenge to law prohibiting certain "factual misstatements in the course of political debate" where there had been no showing that the disputed statement was made "other than in good faith and without knowledge of its falsity, or . . . with reckless disregard as to whether it was false or not"). All of these proof 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. On the contrary, 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 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 without fear of reprisal. 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.'" *Sullivan*, *supra*, at 279, n. 19 (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. Statements about history illustrate this point. 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, see *R. A. V.* v. *St. Paul*, 505 U. S. 377, 384–390 (1992) (explaining that the First Amendment does not

permit the government to engage in viewpoint discrimination under the guise of regulating unprotected speech), 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 at all 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. Tellingly, when asked at oral argument what truthful speech the Stolen Valor Act might chill, even respondent's counsel conceded that the answer is none. Tr. of Oral Arg. 36.

C

Neither of the two opinions endorsed by Justices in the majority claims that the false statements covered by the Stolen Valor Act possess either intrinsic or instrumental value. Instead, those opinions appear to be based on the distinct concern that the Act suffers from overbreadth. See *ante,* at 10 (plurality opinion) (the Act applies to "personal, whispered conversations within a home"); *ante,* at 8 (BREYER, J., concurring in judgment) (the Act "applies in family, social, or other private contexts" and in "political contexts"). 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*, not only in an absolute sense, but also relative to [its] plainly legitimate sweep." *United States* v. *Williams*, 553 U. S. 285, 292 (2008); see also *ibid.* (noting that this requirement has been "vigorously enforced"). 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." *Ante,* at 11. The plurality apparently fears that we will see laws making it a crime to lie about civilian awards such as college degrees or certificates of achievement in the arts and sports.

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.

In any event, if the plurality's concern is not entirely fanciful, it falls outside the purview of the First Amendment. The problem that the plurality foresees—that legislative bodies will enact unnecessary and overly intrusive criminal laws—applies regardless of whether the laws in question involve speech or nonexpressive conduct. If there is a problem with, let us say, a law making it a criminal offense to falsely claim to have been a high school valedictorian, the problem is not the suppression of speech but the misuse of the criminal law, which should be reserved for conduct that inflicts or threatens truly serious societal harm. The objection to this hypothetical law would be the same as the objection to a law making it a crime to eat potato chips during the graduation ceremony at which the high school valedictorian is recognized. The safeguard against such laws is democracy, not the First Amendment. Not every foolish law is unconstitutional.

The Stolen Valor Act represents the judgment of the people's elected representatives that false statements about military awards are very different from false statements about civilian awards. Certainly this is true with respect to the high honor that respondent misappropriated. Respondent claimed that he was awarded the Medal of Honor in 1987 for bravery during the Iran hostage crisis. This singular award, however, is bestowed only on those

members of the Armed Forces who "distinguis[h] [themselves] conspicuously by gallantry and intrepidity at the risk of [their lives] above and beyond the call of duty." 10 U. S. C. §3741; see also §§6241, 8741. More than half of the heroic individuals to have been awarded the Medal of Honor after World War I received it posthumously.[15] 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 the 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. I would sustain the constitutionality of the Act, and I therefore respectfully dissent.

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[15] See U. S. Army Center of Military History, Medal of Honor Statistics, http://www.history.army.mil/html/moh/mohstats.html.

The Supreme Court of Texas

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January 23, 2017

Edward A. Malone
[redacted]

Re: Misc. Docket No. 16-9070, In the Matter of Edward Allen Malone

Mr. Malone:

The Court has considered your "Motion to Modify Order Withdrawing and Cancelling Regular License." The motion is denied.

Sincerely,

Blake Hawthorne

Blake A. Hawthorne,
Clerk