

STOLEN VALOR: LIES, DECEPTION AND THE FIRST AMENDMENT

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I. INTRODUCTION

In *United States v. Alvarez*,¹ the U.S. Supreme Court decided that the Stolen Valor Act of 2005, which makes it a crime to falsely claim receipt of military medals or decorations² and provides an enhanced penalty for offenses involving the Congressional Medal of Honor,³ was unconstitutional under the First Amendment. Xavier Alvarez, attending his first public meeting as a member of the Three Valley Water District Board, a government entity headquartered in Claremont, California, introduced himself as a “retired marine of 25 years” who had been awarded the Congressional Medal of Honor.⁴ Because those statements were false, Alvarez was indicted under the Stolen Valor Act for lying about the Congressional Medal of Honor. The Federal District Court rejected his argument the statute violated the First Amendment, and Alvarez pleaded guilty to one count, reserving his right to appeal his First Amendment claim.⁵ The Ninth Circuit Court of Appeals decided the Stolen Valor Act was

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¹ 132 S. Ct. 2537 (2012).

² 18 U.S.C. § 704(b) (2012) (“Whoever falsely represents himself or herself, verbally or in writing, to have been awarded any decoration or medal authorized by Congress for the Armed Forces of the United States, any of the service medals or badges awarded to the members of such forces, the ribbon, button, or rosette of any such badge, decoration, or medal, or any colorable imitation of such item shall be fined under this title, imprisoned not more than six months, or both.”).

³ 18 U.S.C. § 704(c) (2012) (“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.”).

⁴ *U.S. v. Alvarez*, 132 S. Ct. 2537, 2542 (2012).

⁵ *Id.*

unconstitutional under the First Amendment and reversed Alvarez's conviction,⁶ and the U.S. Supreme Court granted certiorari.⁷

The U.S. Supreme Court in a plurality opinion⁸ ruled that the Stolen Valor Act was a content-based restriction on speech and therefore presumably invalid and that the government had the burden of showing its constitutionality.⁹ While the plurality opinion agreed that the Stolen Valor Act supported a compelling government interest of maintaining the integrity of the military honors system,¹⁰ the plurality opinion, applying the exacting scrutiny standard, held that the government failed to meet its "heavy burden" of demonstrating the restriction actually advances the government interest and does so in the least restrictive manner,¹¹ and therefore decided that the Stolen Valor Act was unconstitutional.¹² The concurring opinion opted to apply intermediate scrutiny,¹³ determined the Stolen Valor law lacked "limiting features" to reduce the risk of chilling valuable speech, posed a significant risk of First Amendment harm,¹⁴ and could achieve its objective in a more reasonably tailored manner.¹⁵ Hence, the concurring opinion concluded that the Stolen Valor law "works disproportionate constitutional

⁶ *Id.* See U.S. v. Alvarez, 617 F.3d 1198, 1218 (9th Cir. 2010).

⁷ U.S. v. Alvarez, 132 S. Ct. 2537 (2012). After certiorari was granted, the U.S. Court of Appeals for the Tenth Circuit ruled that the Stolen Valor Act was constitutional, U.S. v. Strandlof, 667 F.3d 1146, 1169 (10th Cir. 2012), adopting many of the arguments advanced by the Government in *Alvarez* and creating a conflict in the Court of Appeals on the question of the Act's validity. *Alvarez*, 132 S. Ct. at 2542.

⁸ The plurality opinion was authored by Justice Kennedy in which Chief Justice Roberts and Justices Ginsburg and Sotomayor joined. *Alvarez*, 132 S. Ct. at 2542. Justices Breyer wrote a concurring opinion in which Justice Kagan joined. *Id.* at 2551. Justice Alito wrote a dissenting opinion in which Justices Scalia and Thomas joined. *Id.* at 2556. In his dissent, Justice Alito took the position that the Stolen Valor law was a narrow statute prohibiting only knowingly false statements about facts within the personal speaker's knowledge, that, because such lies have no value, proscribing them does not violate the First Amendment, and that the *Alvarez* decision breaks sharply with a long line of cases indicating protected speech does not include false statements, which inflict real harm and serve no legitimate interest. *Id.* at 2557, 2560-61. See Bernard J. Pazanowski, *Splintered Supreme Court Shoots Down Stolen Valor Act Under First Amendment*, 81 U.S.L.W. 9, 11 (2012).

⁹ *Alvarez*, 132 S. Ct. at 2544, citing *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 660 (2004) (declaring the Child Online Protection Act to be a content-based restriction on speech and determining that the government did not meet its burden of demonstrating less pervasive means such as filtering software failed achieve the government objective of protecting minors from sexually explicit materials on the internet).

¹⁰ *Alvarez*, 132 S. Ct. at 2549-50.

¹¹ *Id.*

¹² *Id.* at 2551.

¹³ *Id.* at 2552.

¹⁴ *Id.* at 2555.

¹⁵ *Id.* at 2556.

harm” in achieving its objective, flunks the intermediate scrutiny test, and violates the First Amendment.¹⁶

The crux of the government’s position supporting the constitutionality of the Stolen Valor Act is that false speech contributes little value to society and lacks First Amendment protection. The plurality and concurring opinions reconciled conflicting language in its prior decisions regarding First Amendment protection of false speech, declined to create a new category of speech unprotected by the First Amendment, and ultimately concluded that some false statements may be entitled to First Amendment protection. In doing so, the court “made clear that there is generally a First Amendment right to lie” and “speech cannot be punished just because it is false.”¹⁷

The *Alvarez* decision is an important First Amendment case, because it captures the categories of speech that remain outside the ambit of First Amendment protection, addresses inconsistent prior opinions dealing with First Amendment protection of false speech, declines to add false speech to those categories of speech lacking First Amendment protection, and permits the First Amendment to protect false speech.

II. CATEGORIES OF SPEECH LACKING FIRST AMENDMENT PROTECTION

The plurality opinion in *Alvarez* acknowledges that there are “historic and traditional categories” of expression not entitled to First Amendment protection for which content based restrictions have been permitted, but notes that they “are confined to the few ‘historic and traditional categories [of expression] long familiar to the bar.’”¹⁸ They are: (1) advocacy to incite and likely to incite imminent lawless action¹⁹; (2) obscenity²⁰; (3) defamation of ordinary folks²¹; (4) speech integral to criminal conduct²²; (5) fighting

¹⁶ *Id.*

¹⁷ Erwin Chemerinsky, *The First Amendment and the Right to Lie*, ABA JOURNAL LAW NEWS NOW (September 5, 2012), http://www.abajournal.com/news/article/the_first_amendment_and_the_right_to_lie/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email.

¹⁸ *Alvarez*, 132 S. Ct. at 2544.

¹⁹ *Brandenburg v. Ohio*, 395 U.S. 444, 448 (1969) (statute which purports to punish mere advocacy and to forbid, on pain of criminal punishment, assembly with others merely to advocate the described type of action violates the First Amendment).

²⁰ *Roth v. United States*, 354 U.S. 476, 492 (1957) (obscenity is not protected speech), and *Miller v. California*, 413 U.S. 15, 36-37 (1973) (obscene material is not protected by the First Amendment).

²¹ *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964) (public officials cannot recover damages for a defamatory falsehood relating to official conduct unless they prove that the statement was made with actual malice), and *Gertz v. Robert Welsh, Inc.*, 418 U.S. 323, 347 (1974), deciding that newspaper or broadcaster publishing defamatory falsehoods about

words²³; (6) child pornography²⁴; (7) fraud²⁵; (8) threats to kill or inflict injury on the President of the United States²⁶; and (9) speech creating grave and imminent threat the government has the power to prevent.²⁷ Notably, the plurality opinion emphasized, the nine categories of speech permitting content-based regulation do not and should not include false statements, because 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.”²⁸ Further, while the plurality opinion acknowledges some categories of speech that are historically unprotected by the first amendment may not yet have been identified in case law,²⁹ the Court

an individual who is neither a public official nor a public figure may not claim a constitutional privilege against liability for injury inflicted. “[S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual.” *Id.*

²² *Gibony v. Empire Storage & Ice Co.*, 336 U.S. 490, 504 (1949) (state’s power to regulate and govern how trade practices are carried out trumps the speech rights of the workers). In *Gibony*, the U.S. Supreme Court upheld a Missouri statute prohibiting labor union members from picketing business premises for the purpose of preventing sales to nonunion members and thereby forcing them to join the union. The Court ruled the picketing could be enjoined under Missouri’s anti-trade law, because the union members’ exercise of speech was an illegal restraint of trade under Missouri’s law.

²³ *Chaplinsky v. State of New Hampshire*, 315 U.S. 568, 572 (1942) (“the insulting or ‘fighting’ words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace [are] of slight social value” and are not entitled to First Amendment protection).

²⁴ *New York v. Ferber*, 458 U.S. 747, 763 (1982) (child pornography, like obscenity, is unprotected by the First Amendment).

²⁵ *Va. Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.* 425 U.S. 748, 771 (1976) (“Untruthful speech, commercial or otherwise, has never been protected for its own sake.”); see also *Illinois ex. rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 623-24 (2003), in which the U.S. Supreme Court ruled states may pursue fraud actions against deliberate misrepresentations designed to deceive potential donors during the solicitation process about how their donations will be used.

²⁶ *Watts v. United States*, 394 U.S. 705, 707 (1969) (*per curiam* opinion upholding constitutionality of 18 U.S.C. § 871(a) making it a felony to threaten the life of the President, President-elect, Vice President or other officer next in the order of succession to the office of President or Vice President).

²⁷ *Near v. Minnesota ex. rel. Olson*, 283 U.S. 697, 716 (1931) (prior restraints may be employed by the government in exceptional cases such as when a nation is at war and the utterance hinders its war effort or threatens its troops). *Near* has been substantially curtailed by *New York Times Co. v. United States*, 403 U.S. 713, 714 (1971) (*per curiam*) (“Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.”).

²⁸ *Alvarez*, 132 S. Ct. at 2544.

²⁹ *Id.* at 2547, citing *U.S. v. Stevens*, 559 U.S. 460, 472 (2010) (“Maybe there are some categories of speech that have been historically unprotected, but have not yet been specifically identified or discussed as such in our case law. But if so, there is no evidence that ‘depictions of animal cruelty’ is among them.”) In *Stevens*, the U.S. Supreme Court ruled that a state

should not do so in the absence of “persuasive evidence that a novel restriction on content is part of a long (if heretofore unrecognized) tradition of proscription.”³⁰ Because the government did not meet that burden, the plurality opinion declined to recognize false statements as a new category of unprotected speech.

While acknowledging the existence of language in some of the Court’s precedents stating false statements have no value and lack First Amendment protection,³¹ the plurality opinion maintains those statements are taken out of their proper context and do not support the proposition that false statements are beyond constitutional protection.³² Rather, the plurality opinion stresses, the Court never endorsed or confronted the categorical rule advanced by the Government: that false statements receive no First Amendment protection.”³³ The concurring opinion agreed, stating language in prior decisions saying or implying false statements enjoy little First Amendment protection “cannot be read to mean ‘no protection at all.’”³⁴

Both the plurality and concurring opinions acknowledge the existence of criminal prohibitions against making false statements to a Government official, perjury, false representations that one is acting as a government official, false claims of terrorist attacks, lies about the commission of crimes

statute prohibiting depictions of animal cruelty violated the First Amendment because it was overbroad. *Id.* at 482.

³⁰ *Alvarez*, 132 S. Ct. at 2547, citing *Brown v. Entm’t Merch. Assn.*, 131 S. Ct. 2729, 2734 (2011) (overturning a California statute restricting sales and requiring the labeling of violent video games as impermissibly creating a category of unprotected speech without persuasive evidence the content restriction was part of a long tradition of proscription).

³¹ *Alvarez*, 132 S. Ct. at 2545. *See also* *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.”); *Brown v. Hartlage*, 456 U.S. 45, 60(1982) (“[D]emonstrable falsehoods are not protected by the First Amendment in the same manner as truthful statements.”); *Va. Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. at 771 (“Nor is there any claim that prescription drug price advertisements are forbidden because they are false or misleading in any way. Untruthful speech, commercial or otherwise, has never been protected for its own sake.”); *Gertz v. Welsh*, 418 U.S. at 339 (“[Intentional lies and careless errors] belong to that category of utterances which ‘are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.’”); *Herbert v. Lando*, 441 U.S. 153, 171 (1979) (“Spreading false information in and of itself carries no First Amendment credentials.”); *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.”).

³² *Alvarez*, 132 S. Ct. at 2545.

³³ *Id.*

³⁴ *Id.* at 2553.

or catastrophes, and trademark infringements,³⁵ and the concurring opinion acknowledges the existence of statutes and common-law doctrines making false statements unlawful, such as fraud, defamation, and false light invasion of privacy.³⁶ Those prohibitions on false statements, however, are inapplicable to the recognition of a category of unprotected speech, just as the Court's decision in *Alvarez* does not support a challenge to the constitutionality of those prohibitions.³⁷ Further, as Justice Breyer notes in his concurring opinion, those statutes include "limitations of context" and "proof of injury" that narrow their reach and "help make certain that the statute does not allow its threat of liability or criminal punishment to roam at large" prohibiting the telling of lies in family and social settings where harm is unlikely and the need is small.³⁸

III. CONSTITUTIONALITY OF STOLEN VALOR ACT

Having determined that deceptive statements do not and should not constitute a category of speech not entitled to First Amendment protection, the plurality and concurring opinion proceeded to determine whether or not the Stolen Valor Act passed muster under the First Amendment. As noted above, the plurality opinion utilized strict scrutiny and the concurring opinion applied intermediate scrutiny to resolve the issue.

A. Plurality Opinion and Strict Scrutiny

The plurality opinion initiated its discussion of the constitutionality of the Stolen Valor Act by noting the importance of military medals in recognizing and expressing gratitude for acts of heroism and fostering morale and *esprit de corps* within the military, and the importance of maintaining integrity of the military honors system in supporting those compelling interests.³⁹ The plurality opinion determined, however, there was no causal link "between the restriction imposed and the injury to be prevented," because the Government failed to provide evidence the public's perception of military awards is diluted by false claims such as those made by Alvarez, and

³⁵ *Id.* at 2545, 2554.

³⁶ *Id.* at 2555.

³⁷ *Id.* at 2547 ("This opinion does not imply that any of these targeted prohibitions are somehow vulnerable."); see Jonathan D. Varat, *Deception and the First Amendment: A Central, Complex and Somewhat Curious Relationship*, 53 U.C.L.A. L.R. 1107, 1108 (2006) ("In many circumstances the First Amendment is no bar to government measures condemning deceptions by statement or concealment, whether government or private parties are the deceivers or the deceived.").

³⁸ *Alvarez*, 132 S. Ct. at 2555. See Pazanowski, *supra* note 8, at 11.

³⁹ *Id.* at 2548.

did not show why counterspeech was insufficient to achieve its interest.⁴⁰ Following his lie at the public meeting, Alvarez “was perceived as a phony,” “ridiculed online,” and asked to resign from the board.⁴¹ Such public reaction to Alvarez’s lies serves “to reawaken and reinforce the public’s respect for the Medal, its recipients, and its high purpose,”⁴² and “there is good reason to believe that a similar fate would befall other false claimants.”⁴³ Further, the plurality opinion determined that there was one less speech restrictive means to attain its objective, namely creating a database accessible through the internet listing the recipients of military honors and medals to verify and expose false claims to military honors.⁴⁴ Hence, Alvarez’s false statements, while contemptible, were protected by the First Amendment.⁴⁵

B. *Concurring Opinion and Intermediate Scrutiny*

The concurring opinion initiated its analysis by expressing wariness about applying the strict scrutiny test to statutes that adversely affect constitutionally protected rights, because strict scrutiny, as its name implies, invariably results in “near automatic condemnation,” just as the rational basis test results in “near automatic approval.”⁴⁶ Because statutes like the Stolen Valor Act restrain communication of false statements, which are “less likely

⁴⁰ *Id.* at 2549.

⁴¹ *Id.*

⁴² *Id.* at 2549-50.

⁴³ *Id.* at 2550-51.

⁴⁴ *Id.* at 2551. The federal government launched a new website on which it publishes information about those who were awarded the two highest awards for valor, Medals of Honor and Service Crosses since September 11, 2011. Jake Tapper, *Fighting ‘Stolen Valor,’ President Obama Announces New Website to Combat Those Falsely Claiming Military Medals*, ABC NEWS (July 23, 2012), <http://abcnews.go.com/blogs/politics/2012/07/fighting-stolen-valor-president-obama-announces-new-website-to-combat-those-falsely-claiming-military-medals/>.

⁴⁵ *Alvarez*, 132 S. Ct. at 2551.

⁴⁶ *Id.* at 2552. Justice Breyer presaged his uneasiness with the strict scrutiny and rational basis tests in his concurring and dissenting opinion in *Ysursa v. Pocatello Educ. Ass’n*, 555 U.S. 353 (2009), in which the majority opinion decided Idaho’s ban on public employee payroll deductions for political activities did not restrict public employees right to engage in speech and passed constitutional muster under the rational basis test. Justice Breyer agreed with the majority opinion’s view that strict scrutiny did not apply, but disagreed with the majority’s view that no First Amendment interest was at stake. Rather, Justice Breyer maintained, the refusal to permit payroll deductions for political activities restricted a channel through which financial support for speech might flow. That restriction, Justice Breyer insisted, should be viewed under the intermediate scrutiny test, which evaluates the proportionality of the restriction on the First Amendment right and the interest the government seeks to achieve. In doing so, he characterized the strict scrutiny test as almost always proving fatal to the law in question and the rational basis test as almost always resulting approval of the restriction. *Id.* at 367.

than are true factual statements to make a valuable contribution to the marketplace of ideas,” and the government has good reasons to proscribe such speech even at the cost of some speech related harms, the concurring opinion opted to apply the intermediate scrutiny test as a better gauge to balance the benefits and harms triggered by the statute.⁴⁷

While recognizing the Stolen Valor Act has substantial justification in protecting the honor of those awarded military recognition and preserving the value of those awards, Justices Breyer and Kagan were troubled by the breadth of the Act:

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.⁴⁸

Moreover, the concurring opinion determined that the government could achieve its objective in a far less burdensome manner by a “more finely tailored statute,” which, for example, did not treat all military awards alike or required a demonstration of a specific harm.⁴⁹ Because the Government failed to provide “a convincing explanation as to why a more finely tailored statute would not work” and because the Stolen Valor Act could achieve its objective with significantly less damage to First Amendment protections, the concurring opinion concluded the statute “works disproportionate

⁴⁷ *Alvarez*, 132 S. Ct. at 2552.

⁴⁸ *Id.* at 2555 (emphasis in original).

⁴⁹ *Id.* at 2556. A revised version of the Stolen Valor Law, limiting punishment to lying about decorations and medals for “tangible benefit or personal gain,” passed the Senate on December 3, 2012. A different version previously passed in the U.S. House of Representatives, and the two bills must now be reconciled. Bryant Jordan, *Stolen Valor Law 2.0 Passes in Senate*, MILITARY.COM NEWS (December 4, 2012), <http://www.military.com/daily-news/2012/12/04/stolen-valor-law-20-passes-in-senate.html>.

constitutional harm,” fails the intermediate scrutiny test, and violates the First Amendment.⁵⁰

IV. SIGNIFICANCE OF *ALVAREZ*

The *Alvarez* decision is important in a number of respects. First, while it does not break new ground, the decision reinforces the Court’s prior ruling in *Snyder v. Phelps*,⁵¹ decided in the previous term, that unpopular and even repugnant speech can be protected by the First Amendment.⁵² Second, the decision brings some clarity to the conflicting statements in prior U.S. Supreme Court opinions as to whether false speech can be protected under the First Amendment. *Alvarez* makes clear that “speech cannot be punished just because it is false.”⁵³ Third, the Court declined the invitation to create a tenth category of speech that is not protected by the First Amendment and limited future attempts to do so unless there is persuasive evidence that such an exception is part of a long-standing tradition. Finally, the U.S. Supreme Court resisted the invitation to use the myriad statutes and regulations prohibiting lies and deceptions as justification for denying First Amendment protection to untruthful speech.⁵⁴

⁵⁰ *Alvarez*, 132 S. Ct. at 2556.

⁵¹ 131 S. Ct. 1207 (2011). In *Snyder*, protesters simultaneously delivered their message that God is offended by, and punishes the United States for its tolerance of, homosexuality, particularly in the military, and that God kills soldiers as retribution for that tolerance during the funeral of person who died in military service.

⁵² Chemerinsky, *supra* note 17.

⁵³ *Id.*; see Pazanowski, *supra* note 8, at 10.

⁵⁴ As eloquently stated by one commentator:

We live in a world filled with deception. We frequently observe or experience deception in politics, business, religion, education, our personal lives, and virtually every other realm of human existence. Human deceptions run the gamut from the seemingly benign practice of convincing children of the existence of Santa Claus, or of lying to make a surprise birthday party successful, to malicious assertions falsely denying that the Holocaust occurred; from intentionally concealing one’s identity in order to conduct undercover operations, maintain privacy, ward off retaliation for unpopular belief, or disguise who is really funding a candidate or a ballot measure, to fraudulent statements designed to cheat others of their money or goods; from deceptive commercial advertising in order to promote demand, to deceptive political statements aimed at gaining or exercising government power; from historical fiction like *The Da Vinci Code* that may mislead its readers about the history of the Roman Catholic Church, to filing a false report about police or prison guard misconduct.

Almost as pervasive and varied as deception itself are government efforts to control deception in the interest of protecting from serious harm our people, our institutions, and our very form of self-governing representative democracy. Deception may mislead consumers to financial or medical ruin. It may ravage

Following *Alvarez*, the starting point in determining whether a lie is protected by the First Amendment is to assume that lies are safeguarded by the First Amendment at least to some extent.⁵⁵ How much protection is accorded depends on the approach taken. According to the plurality opinion, if the speech regulation is content-based, strict scrutiny will be applied unless the speech fits into one of the previously carved out categories of speech.” According to the concurring opinion, there is no pre-commitment to protected speech and a sliding scale is employed in looking at the protection given to the speech. According to the dissent, speech must have some value before the First Amendment applies.⁵⁶

reputations. It may distort politics and undermine the proper functioning of our representative democracy. It may threaten corruption of our government and the effective functioning of our economy. No wonder our laws contain so many restrictions on false, deceptive, and misleading communications. Imposing sanctions for perjury, false statements under oath, fraud, defamation, deceptive commercial or political advertising, false statements and omissions of material facts in stock offerings or corporate performance generally, withholding or concealing information about financial or other support for causes or candidates, and the like, is almost inevitably the product of a natural and legitimate impulse on the part of government to control the various and significant kinds of havoc that deceptive communications otherwise might wreak.

Varat, *supra* note 37, at 1108-09.

⁵⁵ Pazanowski, *supra* note 8, at 11. . Because all lies are presumably protected by the First Amendment, *Alvarez* may be applied to cases in which courts are asked to remove defamatory posts from internet blogs. *Id.* at 9. *Alvarez* also throws into question the laws of twenty states barring false or misleading statements in political campaigns. Debra Cassens Weiss, *The Mud Is Flung Despite State Laws Barring Political Lies; Does First Amendment Offer Protection?*, ABA JOURNAL WEEKLY NEWSLETTER (October 31, 2012), http://www.abajournal.com/news/article/the_mud_is_flung_despite_state_laws_barring_political_lies_first_amendment/?utm_source=maestro&utm_medium=email&utm_campaign=weekly_email.

⁵⁶ Pazanowski, *supra* note 8, at 11.