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High court tussles with false heroics: Free speech or felony?

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Walter "Joe" Marm Jr. risked his life and suffered serious facial wounds in Vietnam to protect members of his company from enemy fighters in 1965.

Now Marm, the only living Medal of Honor recipient from Western Pennsylvania, wants the Supreme Court to protect the honor and dignity of those who earned top military awards by upholding the Stolen Valor Act of 2005 -- a law that made it a federal felony to lie about receiving awards such as the Medal of Honor and Purple Heart.

Justices on Wednesday heard arguments about whether the law violates constitutional free-speech rights.

"It should be a crime," said Marm, 70, a Washington County native who lives in Fremont, N.C. "It's a slap in the face of veterans who have paid the price and earned their medals."

First Amendment experts express divided opinions over how the court will rule. A decision is expected by late June. Legislation is pending in Congress to make it a crime to benefit from lying about a military record should the court overturn the law.

"Most of the justices seem to be looking for a way to (uphold) it but try not to give the government too much power," said Arthur Hellman, a law professor at the University of Pittsburgh.

Although the Supreme Court recently rejected government attempts to regulate free speech on issues such as violent video games and animal cruelty videos, the Stolen Valor Act addresses such a narrow subject that Hellman said the justices might uphold it.

"If this was the only case Congress was allowed to do this, I don't see where this would be a big harm to free speech," Hellman said.

Those who attempted to ban the burning of the American flag, which the Supreme Court rejected in 1989, tried using the same narrow-scope argument, said Christina Wells, a law professor at the University of Missouri.

"I think the Supreme Court should overturn the Stolen Valor Act, and my sense is they probably will," Wells said. "It's not been a question of whether lying is wrong. People do all sort of things that aren't moral. But should it be criminalized?"

Wells raised the same point that several justices did: whether punishing people for lies about military medals could lead to laws prohibiting such things as lying about the Holocaust, an extramarital affair or a high school diploma.

"Where do you stop?" Chief Justice John Roberts asked the government's attorney.

Justice Anthony Kennedy appeared supportive of the law.

"Here it does seem to me that you can argue that this is something like a trademark, a medal in which the government and the armed forces have a particular interest, and we could carve out a narrow exception for that," Kennedy said. "I think we would have to do that."

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In this Sept. 15, 2010 file photo, Medal of Honor recipient, former U.S. Marine Sgt. Dakota Meyer, wears his Congressional Medal of Honor after it was awarded to him by President Barack Obama, during a ceremony in the East Room of the White House in Washington.

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The Supreme Court case involves a California man who became one of the first people prosecuted for violating the Stolen Valor Act, enacted in 2006. Pomona, Calif., water authority member Xavier Alvarez claimed at a public meeting that he was a wounded war veteran and a Medal of Honor recipient. Neither was true.

The federal appellate court in San Francisco struck down the Stolen Valor Act in Alvarez's case, although the federal appeals court in Denver upheld the law in another case concerning a defendant's false claim to military valor.

Pittsburgh attorney Sumner Parker, who served in the Marines, said such claims should be crimes. "It is reprehensible," Parker said. "If you haven't earned it and you haven't done something to deserve it, there definitely should be some kind of penalty -- especially if you are doing it for some kind of personal gain."

Parker in 2006 represented one of two Western Pennsylvania men federal authorities prosecuted for wearing military medals, uniforms and insignia for honors and ranks they never achieved. Impersonating military officers and wearing unearned medals long has been a federal crime.

In establishing military medals for gallantry or meritorious conduct in 1782, George Washington noted that people who make false claims to such honors should be "severely punished."

"It's not intellectual. It's not political. It's not religious," said Thomas J. Cottone Jr., a former FBI agent who specialized in investigating false claims about military medals and ranks. "It's false, and it's fraudulent. And I hope the Supreme Court agrees."

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