"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. . . . Were this law to be sustained, there could be an endless list of subjects the National Government or the States could single out. . . . [I]t would give government a broad censorial power unprecedented in this Court's cases or in our constitutional tradition."—Justice KENNEDY

"[T]he 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."—Justice ALITO

United States v. Alvarez

567 U.S. ___, 132 S.Ct. 2537, 183 L.Ed.2d 574 (2012)

■ JUSTICE **KENNEDY** announced the judgment of the Court and delivered an opinion, in which **THE CHIEF JUSTICE**, JUSTICE **GINSBURG**, and JUSTICE **SOTOMAYOR** join.

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

In 2007, respondent attended his first public meeting as a board member of the Three Valley Water District Board . . . 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." 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. . . .

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 (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. . . .

II

[I]n 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 (2010). 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.* Among these categories are advocacy intended, and likely, to incite imminent lawless action, see Brandenburg v. Ohio (1969); obscenity, see, e.g., Miller v. California (1973); defamation, see, e.g., New York Times Co. v. Sullivan (1964); Gertz v. Robert Welch, Inc. (1974); speech integral to criminal conduct, see, e.g., Giboney v. Empire Storage & Ice Co. (1949); so-called "fighting words," see Chaplinsky v. New Hampshire (1942); child pornography, see New York v. Ferber (1982); fraud, see Virginia Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc. (1976); true threats, see Watts v. United States (1969); and speech presenting some grave and imminent threat the government has the power to prevent, see Near v. Minnesota ex rel. Olson (1931), although a restriction under the last category is most difficult to sustain, see New York Times Co. v. United States (1971). 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*.

The Government disagrees with this proposition. It cites language from some of this Court's precedents to support its contention that false statements have no value and hence no First Amendment protection. . . . These 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. 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*. . . .

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

As our law and tradition show, then, there are instances in which the falsity of speech bears upon whether it is protected. . . . 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. . . .

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. 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.

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. . . . Were the Court to hold that the interest in truthful discourse alone is sufficient to sustain a ban on speech, absent any evidence that the speech was used to gain a material advantage, it would give government a broad censorial power unprecedented in this Court's cases or in our constitutional tradition. The mere potential for the exercise of that power casts a chill . . . the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.

IV

The previous discussion suffices to show that the Act conflicts with free speech principles. But even when examined within its own narrow sphere of operation, the Act cannot survive. . . . Although the objectives the Government seeks to further by the statute are not without significance, the Court . . . find[s] 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.". . . 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. . . .

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

Yet these interests do not satisfy the Government's heavy burden when it seeks to regulate protected speech. The Government points to no evidence to support its claim that the public's general perception of military awards is diluted by false claims such as those made by Alvarez.

[Furthermore, 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. . . . Once the lie was made public, he was ridiculed online, his actions were reported in the press, and a fellow board member called for his resignation. There is good reason to believe that a similar fate would befall other false claimants. Indeed, the outrage and contempt expressed for respondent's lies can serve to reawaken and reinforce the public's respect for the Medal, its recipients, and its high purpose. . . .

The remedy for speech that is false is speech that is true. This is the ordinary course in a free society. . . . See Whitney v. California (1927) (Brandeis, J., concurring) ("If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the

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

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." 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. . .

[T]here 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.

■ 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. . . .

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. 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). I have used the term "proportionality" to describe this approach. But in this case, the Court's term "intermediate scrutiny" describes what I think we should do. . . .

[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. 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. *Sullivan* ("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, . . . 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*. 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. . . .

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. . . .

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. . . .

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.

[F]ew 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. But it still ranges very broadly. And that breadth means that it creates a significant risk of First Amendment harm. . . .

We must therefore ask whether it is possible substantially to achieve the Government's objective in less burdensome ways. In my view, the answer to this question is "yes.". . . As is indicated by the limitations on the scope of the many other kinds of statutes regulating false factual speech, 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 . . . 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. . . .

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

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

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.

[C]ongress 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. 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.

As Congress recognized, the lies proscribed by the Stolen Valor Act inflict substantial harm. . . : Individuals often falsely represent themselves as award recipients in order to obtain financial or other material rewards, such as lucrative contracts and government benefits. . . . 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. 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.' "

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

Time and again, this Court has recognized that as a general matter false factual statements possess no intrinsic First Amendment value. Consistent with this recognition, many kinds of false factual statements have long been proscribed without " 'rais[ing] any Constitutional problem.' " *Stevens* (quoting *Chaplinsky*). 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., *Beauharnais* (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 statement, even though that tort did not enter our law until the late 19th century. And the Court concluded that the free speech right allows recovery for the even more modern tort of false-light invasion of privacy. . . .

These examples amply demonstrate that false statements of fact merit no First Amendment protection in their own right. It is true, as Justice Breyer notes, 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." But respondent's false claim to have received the Medal of Honor did not fall into any of these categories. . . . Respondent's claim, like all those covered by the Stolen Valor Act, served no valid purpose. . . .

[W]e have recognized that it is sometimes necessary to "exten[d] a measure of strategic protection" to [false statements of fact] in order to ensure sufficient " 'breathing space' " for protected speech. . . .

[T]here 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* (quoting J. Mill, *On Liberty* 15 (R. McCallum ed.1947)). . . .

In stark contrast. . . , 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.

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. . . .

The plurality . . . 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," [e.g.] laws making it a crime to lie about civilian awards. . . .

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. . . . The safeguard against such laws is democracy, not the First Amendment. Not every foolish law is unconstitutional. . . .

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.

EDITORS' NOTES

(1) **Query:** What are the major differences between Justice Kennedy's and Justice Breyer's conceptions of the general framework for First Amendment analysis that the Court has applied? That the Court should apply? Put another way, what are the important differences between what Kennedy calls "exacting scrutiny" and what Breyer calls "intermediate scrutiny" or "proportionality" review? Which approach is more defensible?

(2) **Query:** What are the major differences between Justice Kennedy's and Justice Alito's approaches to false statements of fact? Which is the more defensible account of what the Court has held? What it should hold? Assuming that the Court's concerns about "chilling effect" have considerable force in the context of restrictions on or regulations of political or religious opinion, do they have much force in the context of restrictions on or regulations of what are undoubtedly, objectively, false statements of fact (like Alvarez's lie about being awarded the Congressional Medal of Honor)? Should we worry about laws like the Stolen Valor Act chilling people like Alvarez from lying about military honors? Indeed, would such chilling be a good thing? What would Kennedy and Alito say?

(3) Some Supreme Court opinions justify stringent protection of freedom of speech on grounds of the affirmative good things promoted through protecting it, e.g., enabling self-government, facilitating the search for truth, or permitting the development of individual autonomy. **Query:** Does Kennedy invoke any of these grounds to justify protection of Alvarez's false statements of fact? Or does he instead justify stringent protection of freedom of speech simply on grounds of distrust of governmental regulation as such? And worries about the slippery slope? Are Kennedy's distrust of governmental regulation and worries about the slippery slope sound or overblown? Does Alito have a satisfactory response to Kennedy's concerns about the slippery slope?

(4) **Query:** Can Justice Scalia's joining Justice Alito in dissent here be squared with his opinion of the Court in R.A.V. v. St. Paul (1992; reprinted above, p. **Error! Bookmark not defined.**)? There he accorded stringent protection to arguably false speech out of distrust of governmental regulation (much as Kennedy does here).