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ACLU OF RI POSITION: AMEND

TESTIMONY ON 22-S 2425, AN ACT RELATING TO FALSE REPRESENTATION OF MILITARY STATUS March 9, 2022

This bill would make it a crime to knowingly and fraudulently represent oneself as a member of the military in order to obtain “money, property, or another tangible benefit.”

The ACLU of Rhode Island fully appreciates the intent behind this bill, but we have a specific concern about its reach to cover undefined “tangible benefits.” Ten years ago, in *United States v. Alvarez*, 567 U.S. 709 (2012), the U.S. Supreme Court ruled unconstitutional a federal “stolen valor” law that made it a crime to falsely claim receipt of military decorations or medals. The Court held that even falsehoods have First Amendment protection in a variety of contexts.

In an attempt to address that ruling, this legislation requires an additional step: that the falsehood be tied to a fraudulent attempt to seek something of value, such as money or property. Our only concern is with the bill’s reach to other undefined “tangible” benefits. That word is very broad and, according to Black’s Law Dictionary, includes not just obvious material things like property, but also something that is capable of being “realized” or “understood by the mind.”

As a result, the bill’s reference to “tangible benefits” could encompass such things as a person using their falsehood about their military service to give them greater standing in a community, for example. But use of this law to cover such conduct would, we believe, run afoul of the limitations set out by the Supreme Court in the *Alvarez* case. While we recognize this term also appears in the revised federal statute that was passed after the *Alvarez* decision, it has not yet been subject to a legal challenge, and we believe it is ripe for such a challenge in the appropriate case.

In order to avoid constitutional issues and any ambiguity about the bill’s scope, we would therefore urge removal of the term “tangible benefits” from the bill. Doing so would, we believe, still maintain the core intent of the legislation.

Thank you for considering our views.