The Slants will finally have their day in court

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On Wednesday the Supreme Court will hear oral arguments in the trademark denial case of The Slants, a band which is far more famous for their ostensibly offensive name than any of their hits on the Billboard charts. (If you read the linked article you will learn that The Slants have gained the coveted endorsement of *Dykes on Bikes*.) This case has been brewing for a while and potentially has a direct impact on the Washington Redskins team name debate because both involve the approval of trademarked names by the U.S. Patent and Trademark Office. The Slants were turned down because their name was deemed to be offensive and racist.

As has happened with other applicants in the past, this could be decided on a single instance basis, essentially getting a line judge's ruling as to whether this one name is indeed too offensive to be allowed or if their trademark should be granted. That would be shortsighted, however, since the court has the opportunity to tackle a much larger question. In his column this week, George Will explores what the real poison in the well here is and how the Supremes might address it. He begins by referencing the only partly humorous friend-of-the-court filing named, "Brief of the Cato Institute and a Basket of Deplorable People and Organizations." (Washington Post)

The U.S. Patent and Trademark Office is empowered, by the "disparagement clause" of a 1946 law, to protect American sensitivities by denying trademark protection to "immoral, deceptive or scandalous" trademarks. These have included those that a substantial portion of a particular group perceives as disparaging that group — an ethnic, religious, national or other cohort. The office has canceled the trademark registrations of entities named Mormon Whiskey, Abort the Republicans, Democrats Shouldn't Breed, Marriage Is For Fags, and many more.

The Cato/Deplorables brief urges compassionate libertarianism: "This Court should make the jobs of the employees at the . . . [Patent and Trademark Office] much easier and put an end to the disparagement clause." Government officials cannot be trusted to "neutrally" identify speech that disparages. Besides, "disparaging speech has been central to political debate, cultural discourse, and personal identity" throughout American history. The brief notes that a donkey became the Democratic Party's symbol because someone called Andrew Jackson a "jackass" and he, whose default mode was defiance, put the creature on campaign posters. Entire American professions — e.g., newspaper columnists — exist in part to disparage.

One of the larger problems I have with this case is the fact that people keep pointing out that all of the members of the Slants are Asian. Not only should that be besides the point, it sort of

defeats the entire purpose of arguing against this line of reasoning. This debate tactic opens the door to saying that it's okay for "some people" to use a certain term, but not others who may be engaged in, at a minimum, *cultural appropriation* if not outright racism.

The demographic profile of the speaker has no place in a discussion of free speech. That's sort of the point after all, isn't it? This is also why this case speaks strongly to the ongoing debate over trademarks for the name of the Washington Redskins, as I wrote here before. I'm fairly sure that none of the owners or coaching staff of the Redskins grew up on a reservation, nor did many (if any) of the players. But what if they had? If we're going to have *good words and bad words* they have to be "good or bad" for everyone or nobody. That's inherent to the nature of free speech.

There absolutely should be limits on offensive speech and, in fact, there already are. Those limits are set by the approval or disavowal of speech by consumers in a free, capitalist system. If you invent a radically improved new technology for flat screen televisions, your new brand may not be around very long if you decide to call it *the 60" Diagonal Hitler Douchebag* because most people aren't going to want it in their house.

With all of this in mind, I hope the Supreme Court will find it appropriate to not simply rule on whether or not "The Slants" or the "Redskins" have names which are so offensive that the government needs to intervene, but rather that it's not the business of the U.S. Patent and Trademark Office to make that determination. Particularly in the increasingly toxic environment brewed up by social justice warriors, you can find somebody who will be offended by *literally anything* if you ask around long enough. Continuing to play this game means that we're leaving one relatively obscure office of the federal government in charge of determining whose feelings can't be hurt and who needs to learn to deal with their disappointment. Further, they will continue to impose rules of what is or is not "offensive" speech while the social goalposts for that objective are continually moving.

George Will sums it up nicely, calling for the court do do away with, "*the belief that speech should be regulated hither and yon in order to preserve the serenity of those Americans who are most easily upset*." It's a job for which the government is almost uniquely unsuited and such judgements should be returned to the sensibilities of the public at large.