

# The Frederick News-Post

## Band that won U.S. Supreme Court case performs, presents at Flying Dog's speaker series

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Simon Tam, the most recent host of Flying Dog Brewery's First Amendment Speaker Series, was no stranger to the venue. Better still, he came with his own musical act.

As the bassist and founder of a self-described "Chinatown dance rock" band made up of Asian American musicians and the winner of a freedom of speech case before the U.S. Supreme Court in 2017, Tam was uniquely suited to both entertain and inform the audience of about 30 or 40 people gathered on the brewery's patio area Sunday afternoon. Speaking between performances of some of the band's most recent songs, Tam set the groundwork for a discussion later on about the court case, which revolved around the name of his band, The Slants.

After a brief introduction by brewery CEO Jim Caruso and Ilya Shapiro, a constitutional studies director at the Cato Institute, to introduce the series and the topic, Tam, who was born in San Diego to Chinese immigrants to United States, quickly opened the floor up to a question and answer session with the audience.

Shawn Adams, who lives in Baltimore but was born and raised in Frederick, asked Tam about whether he knew what he was getting into when he filed a trademark for The Slants with the U.S. Patent and Trademark Office in 2009.

"Oh, no! I had no idea," Tam replied with a laugh, explaining how he simply viewed the move as a logical next step to market his band, which was gradually growing in popularity and influence in local music scenes. "... So it was shocking to hear from the federal government saying, 'Oh, well, Asian Americans have a problem with your [band's] name, even though we can't find a single person saying that.'"

Tam and his fellow bandmates at the time chose to call themselves The Slants, a derogatory word for Asian Americans, intentionally as a way to "take back" the word, Tam said.

At first, the argument fell on deaf ears, Tam said, telling the audience how dumbfounded he was when the government's first examples of "proof" that the name was unsuitable because it was disparaging to people of Asian descent came from humor websites, rather than actual people, let alone any community members that the band had played for.

"The government kept doubling down and their only evidence was [UrbanDictionary.com](http://UrbanDictionary.com), this joke website," Tam said, referring to a website that unofficially documents slang terms, both innocent and derogatory, from different countries and cultures around the world.

Tam also described what it was like to get push back from people who were afraid that, if he won his case, legal precedent would be established to defend the use of offensive words and terms in the trademarked names by individuals or businesses with less noble intentions than Tam's to reclaim a hateful term.

At the time of the case, concerns centered around examples like the Washington Redskins, a National Football League team based in Washington, D.C., whose name is considered by many Native Americans to be racist.

Another audience member, who declined to give her name when approached by The Frederick News-Post, asked Tam what he would think if a band formed of men decided to trademark themselves as a band using a name referring to a particularly derogatory term for women that used lyrics and songs aimed at degrading and insulting women.

Tam's reply was measured in both nuance and emotion, but ultimately remained true to his stance on the First Amendment's protection of free speech.

"Ethically, I would say that's messed up," Tam said. "But legally I would say that they have the right to do that. ... At the end of the day, you don't want anyone telling you what you can and can't say, especially if it has the weight of the government behind it."

After the speech, Caruso, no stranger himself to First Amendment legalese, expanded further. While those with hateful intent may have the legal right to peddle their music, it should be left up to the audience and consumers — not the federal government — to decide whether or not to support the message endorsed by the group.

Tam's case bore some similarities to the case that spawned the First Amendment Speakers series at Flying Dog, which went to court in two different states over its marketing slogans and the name of a beer. In the second case, the brewery won a dispute that began when the state of Michigan refused to distribute one of the brewery's beers, a Belgian-style India pale ale called "Raging Bitch."

The brewery ultimately won the case.

"Michigan had no case, so they settled," Caruso said, summing up the case after Tam's speech. "They had [also] committed a crime, so they paid damages and I took that money and went ahead and founded the First Amendment Society. ... I'd say we're the 'free speech' brewery."

Earlier in the question and answer, Adams' girlfriend, Virginia resident Gabrielle Larson, asked Tam whether the court case ultimately benefited his band.

While Tam admitted some initial discontent that the Supreme Court case had overshadowed the music and messages he was trying to promote, he said he had come to terms with the path he chose after seeing his band's continued success. The ability to join that success in with an expansion of free speech rights to his country's trademark law just added to the honor.

Relaxing at a table on the brewery's patio, Caruso summed it up nicely, saying he saw in Tam's struggle the same thing he witnessed firsthand with his own company's initial slogan: "Good beer, no shit" — the same catchphrase that launched the brewery into its first major legal foray in Colorado.

“By the time we’re defending the core First Amendment [rights], it’s too late,” Caruso said. “It seems to me that, when it comes to the First Amendment, ... more conversation about the constitution and our government in general is lacking. ... We want to make sure we continue that conversation here with series and speakers like this.”