

## **Daily Mail editorial: Free speech survives another battle**

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In a fight that seems to be part of an ongoing assault on the First Amendment, the U.S. Supreme Court this week upheld the right of free speech, dealing a blow to those who want the government to further evolve into a Nanny State.

The high court struck down part of a law that bans offensive trademarks, ruling that the 71-year-old trademark law barring disparaging terms infringes free speech rights, [The Associated Press](#) reported.

The ruling is a victory for the Asian-American rock band called The Slants.

Slants' founder Simon Tam tried to trademark the band name in 2011, but the U.S. Patent and Trademark Office denied the request on the grounds that it disparages Asians. A federal appeals court in Washington, D.C., later said the law barring offensive trademarks is unconstitutional. The Supreme Court on Monday agreed.

“It offends a bedrock First Amendment principle: Speech may not be banned on the ground that it expresses ideas that offend,” Justice Samuel Alito said in his opinion for the court.

The problem with trying to regulate speech is: Who decides whether the speech is offensive? What if it is offensive to some but not to others? And what if the one with the power to decide uses that power for political gain or political harm to someone else?

“Government officials cannot be trusted to ‘neutrally’ identify speech that disparages,” wrote syndicated columnist [George Will](#) in a January 2017 column.

Will referred to a court brief filed by the Cato Institute in the case. “Besides, ‘disparaging speech has been central to political debate, cultural discourse, and personal identity’ throughout American history,” Will wrote, quoting Cato.

“The brief notes 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,” Will wrote.

Justice Anthony Kennedy said the ban on disparaging trademarks was a clear form of viewpoint discrimination that is forbidden under the First Amendment.

“A law that can be directed against speech found offensive to some portion of the public can be turned against minority and dissenting views to the detriment of all,” Kennedy said.

Another problem with the trademark law — as if being unconstitutional was not problem enough — was its inconsistent application by the U.S. Patent and Trademark office.

The trademark office for years raised no concerns about the name of the Washington Redskins NFL team, registering the name in 1967, 1974, 1978 and 1990. But the office canceled the registrations in 2014.

It just goes to show what the founders intended when they insisted the Bill of Rights be included in the new Constitution more than 225 years ago. It’s up to the people, not the government, to decide what we can say and how we can say it.