

## Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

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MATAL, INTERIM DIRECTOR, UNITED STATES  
PATENT AND TRADEMARK OFFICE *v.* TAMCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FEDERAL CIRCUIT

No. 15–1293. Argued January 18, 2017—Decided June 19, 2017

Simon Tam, lead singer of the rock group “The Slants,” chose this moniker in order to “reclaim” the term and drain its denigrating force as a derogatory term for Asian persons. Tam sought federal registration of the mark “THE SLANTS.” The Patent and Trademark Office (PTO) denied the application under a Lanham Act provision prohibiting the registration of trademarks that may “disparage . . . or bring . . . into contemp[t] or disrepute” any “persons, living or dead.” 15 U. S. C. §1052(a). Tam contested the denial of registration through the administrative appeals process, to no avail. He then took the case to federal court, where the en banc Federal Circuit ultimately found the disparagement clause facially unconstitutional under the First Amendment’s Free Speech Clause.

*Held:* The judgment is affirmed.

808 F. 3d 1321, affirmed.

JUSTICE ALITO delivered the opinion of the Court with respect to Parts I, II, and III–A, concluding:

1. The disparagement clause applies to marks that disparage the members of a racial or ethnic group. Tam’s view, that the clause applies only to natural or juristic persons, is refuted by the plain terms of the clause, which uses the word “persons.” A mark that disparages a “substantial” percentage of the members of a racial or ethnic group necessarily disparages many “persons,” namely, members of that group. Tam’s narrow reading also clashes with the breadth of the disparagement clause, which by its terms applies not just to “persons,” but also to “institutions” and “beliefs.” §1052(a). Had Congress wanted to confine the reach of the clause, it could have used the

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phrase “particular living individual,” which it used in neighboring §1052(c). Tam contends that his interpretation is supported by legislative history and by the PTO’s practice for many years of registering marks that plainly denigrated certain groups. But an inquiry into the meaning of the statute’s text ceases when, as here, “the statutory language is unambiguous and the statutory scheme is coherent and consistent.” *Barnhart v. Sigmon Coal Co.*, 534 U. S. 438, 450 (internal quotation marks omitted). Even if resort to legislative history and early enforcement practice were appropriate, Tam has presented nothing showing a congressional intent to adopt his interpretation, and the PTO’s practice in the years following the disparagement clause’s enactment is unenlightening. Pp. 8–12.

2. The disparagement clause violates the First Amendment’s Free Speech Clause. Contrary to the Government’s contention, trademarks are private, not government speech. Because the “Free Speech Clause . . . does not regulate government speech,” *Pleasant Grove City v. Summum*, 555 U. S. 460, 467, the government is not required to maintain viewpoint neutrality on its own speech. This Court exercises great caution in extending its government-speech precedents, for if private speech could be passed off as government speech by simply affixing a government seal of approval, government could silence or muffle the expression of disfavored viewpoints.

The Federal Government does not dream up the trademarks registered by the PTO. Except as required by §1052(a), an examiner may not reject a mark based on the viewpoint that it appears to express. If the mark meets the Lanham Act’s viewpoint-neutral requirements, registration is mandatory. And once a mark is registered, the PTO is not authorized to remove it from the register unless a party moves for cancellation, the registration expires, or the Federal Trade Commission initiates proceedings based on certain grounds. It is thus far-fetched to suggest that the content of a registered mark is government speech, especially given the fact that if trademarks become government speech when they are registered, the Federal Government is babbling prodigiously and incoherently. And none of this Court’s government-speech cases supports the idea that registered trademarks are government speech. *Johanns v. Livestock Marketing Assn.*, 544 U. S. 550; *Pleasant Grove City v. Summum*, 555 U. S. 460; and *Walker v. Texas Div., Sons of Confederate Veterans, Inc.*, 576 U. S. \_\_\_, distinguished. Holding that the registration of a trademark converts the mark into government speech would constitute a huge and dangerous extension of the government-speech doctrine, for other systems of government registration (such as copyright) could easily be characterized in the same way. Pp. 12–18.

JUSTICE ALITO, joined by THE CHIEF JUSTICE, JUSTICE THOMAS, and

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JUSTICE BREYER, concluded in Parts III–B, III–C, and IV:

(a) The Government’s argument that this case is governed by the Court’s subsidized-speech cases is unpersuasive. Those cases all involved cash subsidies or their equivalent, *e.g.*, funds to private parties for family planning services in *Rust v. Sullivan*, 500 U. S. 173, and cash grants to artists in *National Endowment for Arts v. Finley*, 524 U. S. 569. The federal registration of a trademark is nothing like these programs. The PTO does not pay money to parties seeking registration of a mark; it requires the payment of fees to file an application and to maintain the registration once it is granted. The Government responds that registration provides valuable non-monetary benefits traceable to the Government’s resources devoted to registering the marks, but nearly every government service requires the expenditure of government funds. This is true of services that benefit everyone, like police and fire protection, as well as services that are utilized by only some, *e.g.*, the adjudication of private lawsuits and the use of public parks and highways. Pp. 18–20.

(b) Also unpersuasive is the Government’s claim that the disparagement clause is constitutional under a “government-program” doctrine, an argument which is based on a merger of this Court’s government-speech cases and subsidy cases. It points to two cases involving a public employer’s collection of union dues from its employees, *Davenport v. Washington Ed. Assn.*, 551 U. S. 177, and *Ysursa v. Pocatello Ed. Assn.*, 555 U. S. 353, but these cases occupy a special area of First Amendment case law that is far removed from the registration of trademarks. Cases in which government creates a limited public forum for private speech, thus allowing for some content- and speaker-based restrictions, see, *e.g.*, *Good News Club v. Milford Central School*, 533 U. S. 98, 106–107; *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 831, are potentially more analogous. But even in those cases, viewpoint discrimination is forbidden. The disparagement clause denies registration to any mark that is offensive to a substantial percentage of the members of any group. That is viewpoint discrimination in the sense relevant here: Giving offense is a viewpoint. The “public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.” *Street v. New York*, 394 U. S. 576, 592. Pp. 20–23.

(c) The dispute between the parties over whether trademarks are commercial speech subject to the relaxed scrutiny outlined in *Central Hudson Gas & Elect. v. Public Serv. Comm’n of N. Y.*, 447 U. S. 557, need not be resolved here because the disparagement clause cannot withstand even *Central Hudson* review. Under *Central Hudson*, a restriction of speech must serve “a substantial interest” and be “nar-

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rowly drawn.” *Id.*, at 564–565 (internal quotation marks omitted). One purported interest is in preventing speech expressing ideas that offend, but that idea strikes at the heart of the First Amendment. The second interest asserted is protecting the orderly flow of commerce from disruption caused by trademarks that support invidious discrimination; but the clause, which reaches any trademark that disparages *any person, group, or institution*, is not narrowly drawn. Pp. 23–26.

JUSTICE KENNEDY, joined by JUSTICE GINSBURG, JUSTICE SOTOMAYOR, and JUSTICE KAGAN, agreed that 15 U. S. C. §1052(a) constitutes viewpoint discrimination, concluding:

(a) With few narrow exceptions, a fundamental principle of the First Amendment is that the government may not punish or suppress speech based on disapproval of the ideas or perspectives the speech conveys. See *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U. S. 819, 828–829. The test for viewpoint discrimination is whether—within the relevant subject category—the government has singled out a subset of messages for disfavor based on the views expressed. Here, the disparagement clause identifies the relevant subject as “persons, living or dead, institutions, beliefs, or national symbols,” §1052(a); and within that category, an applicant may register a positive or benign mark but not a derogatory one. The law thus reflects the Government’s disapproval of a subset of messages it finds offensive, the essence of viewpoint discrimination. The Government’s arguments in defense of the statute are unpersuasive. Pp. 2–5.

(b) Regardless of whether trademarks are commercial speech, the viewpoint based discrimination here necessarily invokes heightened scrutiny. See *Sorrell v. IMS Health Inc.*, 564 U. S. 552, 566. To the extent trademarks qualify as commercial speech, they are an example of why that category does not serve as a blanket exemption from the First Amendment’s requirement of viewpoint neutrality. In the realm of trademarks, the metaphorical marketplace of ideas becomes a tangible, powerful reality. To permit viewpoint discrimination in this context is to permit Government censorship. Pp. 5–7.

ALITO, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and III–A, in which ROBERTS, C. J., and KENNEDY, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined, and in which THOMAS, J., joined except for Part II, and an opinion with respect to Parts III–B, III–C, and IV, in which ROBERTS, C. J., and THOMAS and BREYER, JJ., joined. KENNEDY, J., filed an opinion concurring in part and concurring in the judgment, in which GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. GORSUCH, J., took no part in the consideration or decision of the case.