



Terrible Trademarks

Immoral, Scandalous and
Disparaging Marks in the
United States





Statutory Framework

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it consists of or comprises immoral, deceptive, or scandalous matter or matter which may disparage... persons living or dead or bring them into disrepute.

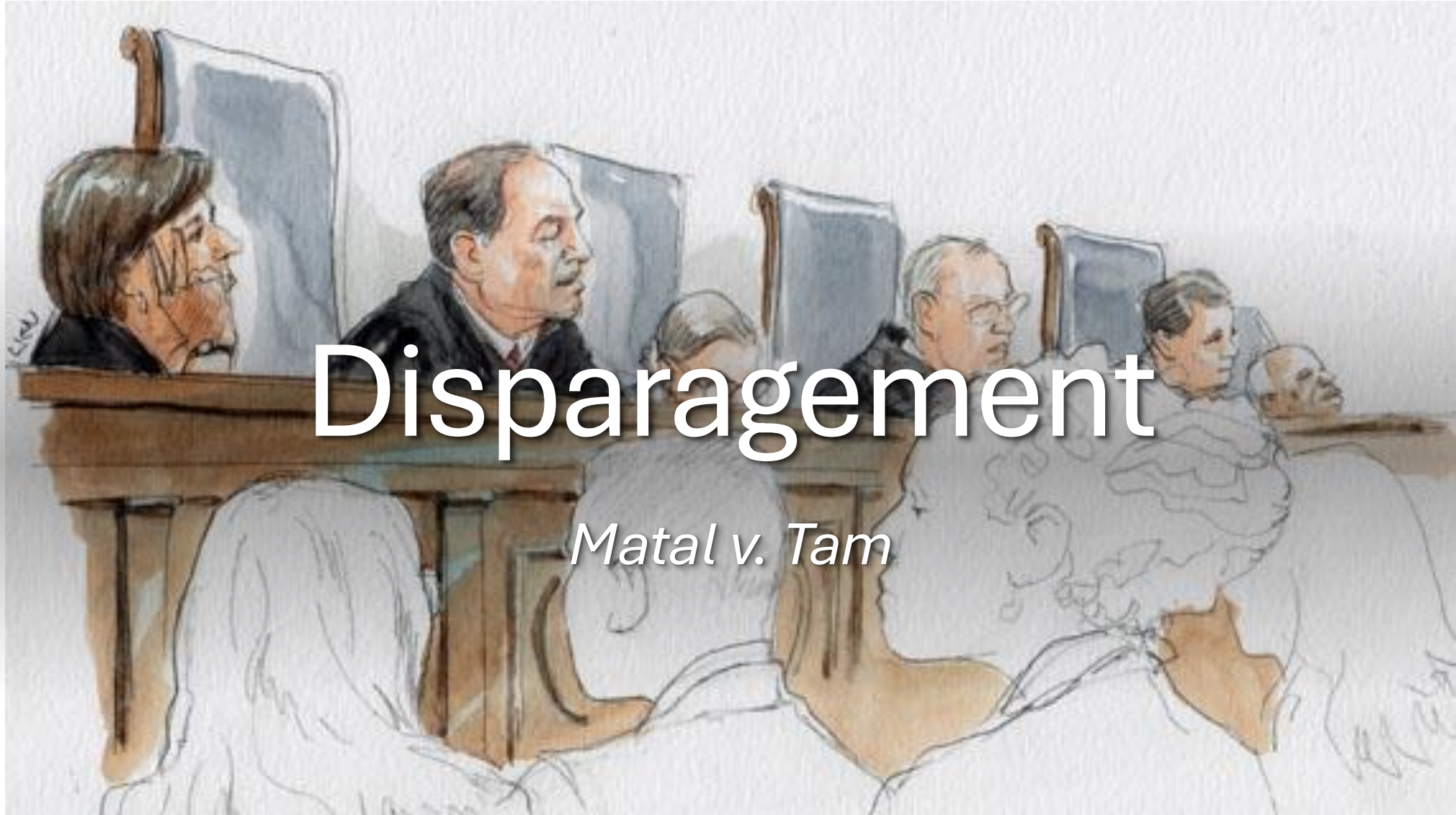
We the People

of the United States

Article 1

Free Speech

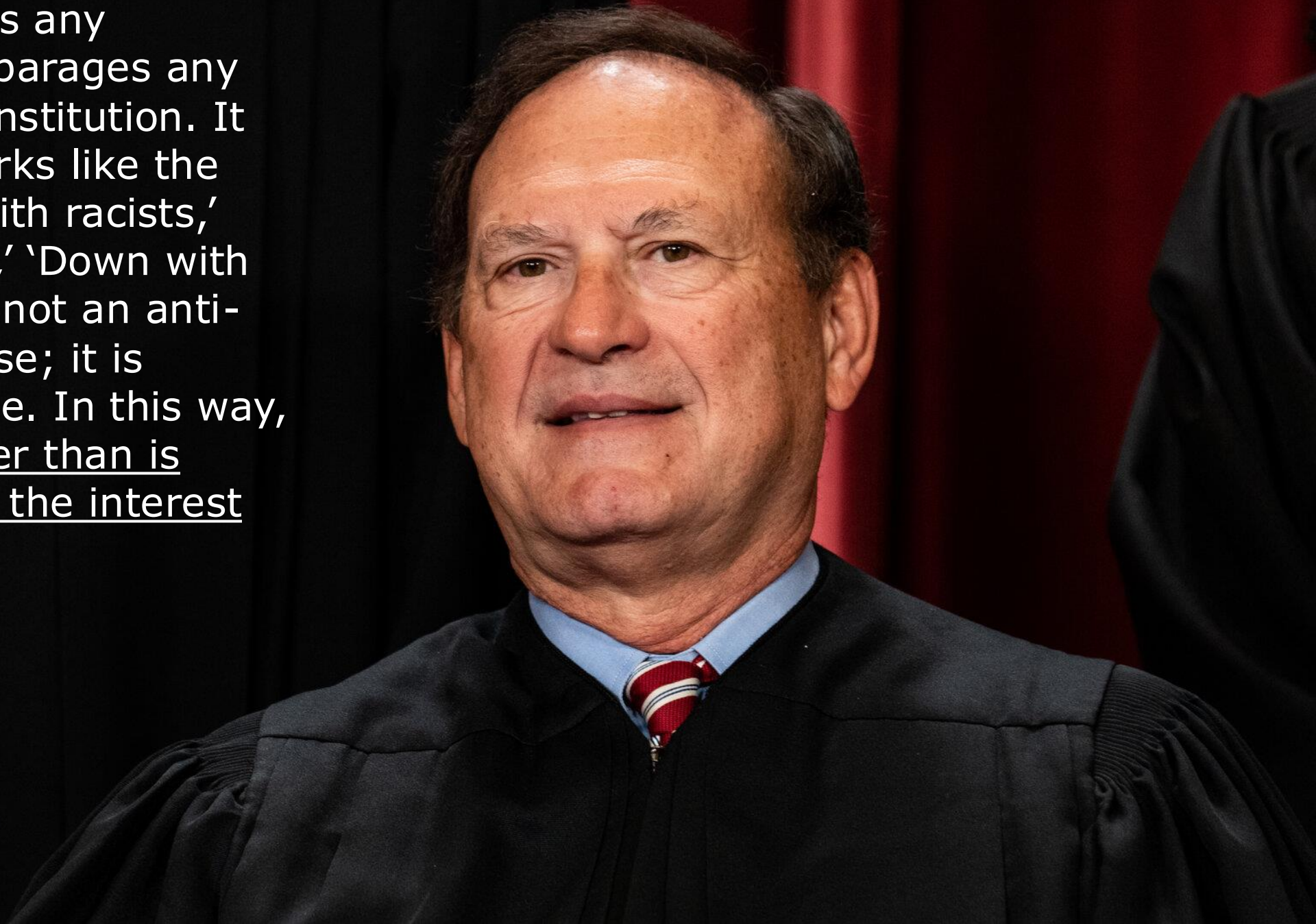
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances



Disparagement

Matal v. Tam

“The clause reaches any trademark that disparages any person, group, or institution. It applies to trademarks like the following: ‘Down with racists,’ ‘Down with sexists,’ ‘Down with homophobes.’ It is not an anti-discrimination clause; it is a happy-talk clause. In this way, it goes much further than is necessary to serve the interest asserted.”



Immoral & Scandalous

Iancu v. Brunetti





“Put the pair of overlapping terms [immoral and scandalous] together and the statute, on its face, distinguishes between two opposed sets of ideas: those aligned with conventional moral standards and those hostile to them; those inducing societal nods of approval and those provoking offense and condemnation. The statute favors the former, and disfavors the latter. ‘Love rules’? ‘Always be good’? Registration follows. ‘Hate rules’? ‘Always be cruel’? Not according to the *Lanham Act’s* ‘immoral and scandalous’ bar.”

2025



“We conclude the Board failed to provide sufficient precision in its rationale for why some commonplace words can serve as a mark, but others, such as F*&K, cannot. The Board’s lack of clarity in this regard is especially troubling given the increasing number of failure-to-function refusals in recent years.”

Principles for Registering Immoral, Scandalous and Disparaging TMs:

- File whatever filthy, vulgar, offensive, disgusting, shocking word or symbol a client desires, so long as it's distinctive.
- High likelihood of a failure-to-function refusal, so prepare evidence of:
 - Use (e.g., specimens, sales figures, number of customers)
 - Recognition as source identifier (Consumer survey; Declarations from applicant, customers, industry professionals)
 - Exclusivity
 - Media coverage

