AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 8: The New Deal/Great Society Era—Democratic Rights/Free Speech/Public Property, Subsidies, Employees, and Schools

**Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308** (1968)

*Logan Valley Plaza, Inc. owned a shopping center complex in Altoona, Pennsylvania. The shopping center initially consisted of a Sears department store and a Weis grocery store, though additional retail stores eventually opened in the complex. The complex included a large common parking lot, with several access points to adjacent public streets. The supermarket was an enclosed building with a partly covered “porch” running along its front and facing the parking lot for pick-ups and drop-offs. Weis had a nonunion staff.*

*Shortly after Weis opened in December 1965, members of a labor union who worked for competing grocery stores began picketing the store and distributing handbills urging customers to shop elsewhere. The picketing was mostly conducted in the porch pick-up area between the parking lot and the store. The shopping center filed suit in local court seeking an order charging the union with trespassing and moving the picket line to the area adjoining the public street at the other end of the parking lot. The trial court agreed. The state supreme court affirmed that ruling. In a 6-3 decision, the U.S. Supreme Court reversed, holding that the union had a First Amendment right to make use of the private property at the storefront in order to express their grievances with the store.*

JUSTICE MARSHALL delivered the opinion of the Court.

. . . .

We start from the premise that peaceful picketing carried on in a location open generally to the public is, absent other factors involving the purpose or manner of the picketing, protected by the First Amendment. *Thornhill v. Alabama* (1940). To be sure, this Court has noted that picketing involves elements of both speech and conduct, *i. e.,* patrolling, and has indicated that because of this intermingling of protected and unprotected elements, picketing can be subjected to controls that would not be constitutionally permissible in the case of pure speech. Cox v. Louisiana (1965). Nevertheless, no case decided by this Court can be found to support the proposition that the nonspeech aspects of peaceful picketing are so great as to render the provisions of the First Amendment inapplicable to it altogether.

. . . .

The case squarely presents, therefore, the question whether Pennsylvania's generally valid rules against trespass to private property can be applied in these circumstances to bar petitioners from the Weis and Logan premises. It is clear that if the shopping center premises were not privately owned but instead constituted the business area of a municipality, which they to a large extent resemble, petitioners could not be barred from exercising their First Amendment rights there on the sole ground that title to the property was in the municipality. *Lovell v. Griffin* (1938); *Hague v. CIO* (1939). The essence of those opinions is that streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely.

. . . .

This Court has also held, in *Marsh v. Alabama* (1946), that under some circumstances property that is privately owned may, at least for First Amendment purposes, be treated as thought it were publicly held. . . .

It is true that, unlike the corporation in *Marsh,* the respondents here do not own the surrounding residential property and do not provide municipal services therefor. Presumably, petitioners are free to canvass the neighborhood with their message about the nonunion status of Weis Market, just as they have been permitted by the state courts to picket on the berms outside the mall. Thus, unlike the situation in *Marsh,* there is no power on respondents' part to have petitioners totally denied access to the community for which the mall serves as a business district. This fact, however, is not determinative. . . .

We see no reason why access to a business district in a company town for the purpose of exercising First Amendment rights should be constitutionally required, while access for the same purpose to property functioning as a business district should be limited simply because the property surrounding the "business district" is not under the same ownership. Here the roadways provided for vehicular movement within the mall and the sidewalks leading from building to building are the functional equivalents of the streets and sidewalks of a normal municipal business district. The shopping center premises are open to the public to the same extent as the commercial center of a normal town. So far as can be determined, the main distinction in practice between use by the public of the Logan Valley Mall and of any other business district, were the decisions of the state courts to stand, would be that those members of the general public who sought to use the mall premises in a manner contrary to the wishes of the respondents could be prevented from so doing.

Such a power on the part of respondents would be, of course, part and parcel of the rights traditionally associated with ownership of private property. And it may well be that respondents' ownership of the property here in question gives them various rights, under the laws of Pennsylvania, to limit the use of that property by members of the public in a manner that would not be permissible were the property owned by a municipality. All we decide here is that because the shopping center serves as the community business block "and is freely accessible and open to the people in the area and those passing through," the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put.

We do not hold that respondents, and at their behest the State, are without power to make reasonable regulations governing the exercise of First Amendment rights on their property. Certainly their rights to make such regulations are at the very least co-extensive with the powers possessed by States and municipalities, and recognized in many opinions of this Court, to control the use of public property. . . .

. . . .

It is therefore clear that the restraints on picketing and trespassing approved by the Pennsylvania courts here substantially hinder the communication of the ideas which petitioners seek to express to the patrons of Weis. The fact that the nonspeech aspects of petitioners' activity are also rendered less effective is not particularly compelling in light of the absence of any showing, or reliance by the state courts thereon, that the patrolling accompanying the picketing sought to be carried on was significantly interfering with the use to which the mall property was being put by both respondents and the general public. As we observed earlier, the mere fact that speech is accompanied by conduct does not mean that the speech can be suppressed under the guise of prohibiting the conduct. Here it is perfectly clear that a prohibition against trespass on the mall operates to bar all speech within the shopping center to which respondents object. Yet this Court stated many years ago, "[O]ne is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. State* (1939).

The sole justification offered for the substantial interference with the effectiveness of petitioners' exercise of their First Amendment rights to promulgate their views through handbilling and picketing is respondents' claimed absolute right under state law to prohibit any use of their property by others without their consent. However, unlike a situation involving a person's home, no meaningful claim to protection of a right of privacy can be advanced by respondents here. Nor on the facts of the case can any significant claim to protection of the normal business operation of the property be raised. Naked title is essentially all that is at issue.

. . . .

*Reversed*.

JUSTICE DOUGLAS, concurring.

Picketing on the public walkways and parking area in respondents' shopping center presents a totally different question from an invasion of one's home or place of business. While Logan Valley Mall is not dedicated to public use to the degree of the "company town" in *Marsh*, it is clear that respondents have opened the shopping center to public uses. They hold out the mall as "public" for purposes of attracting customers and facilitating delivery of merchandise. Picketing in regard to labor conditions at the Weis Supermarket is directly related to that shopping center business. Why should respondents be permitted to avoid this incidence of carrying on a public business in the name of "private property"? It is clear to me that they may not, when the public activity sought to be prohibited involves constitutionally protected expression respecting their business.

Picketing is free speech *plus,* the *plus* being physical activity that may implicate traffic and related matters. Hence the latter aspects of picketing may be regulated. Thus, the provisions of the injunction in this case which prohibit the picketers from interfering with employees, deliverymen, and customers are proper. . . .

JUSTICE BLACK, dissenting.

. . . .

It seems clear to me, in light of the customary way that supermarkets now must operate, that pickup zones are as much a part of these stores as the inside counters where customers select their goods or the check-out and bagging sections where the goods are paid for. I cannot conceive how such a pickup zone, even by the wildest stretching of *Marsh* could ever be considered dedicated to the public or to pickets. . . .

. . . . It would be just as sensible for this Court to allow the pickets to stand on the checkout counters, thus interfering with customers who wish to pay for their goods, as it is to approve picketing in the pickup zone which interferes with customers' loading of their cars. . . .

. . . . Logan has improved its property by putting shops and parking spaces thereon for the use of business customers. Now petitioners contend that they can come onto Logan's property for the purpose of picketing and refuse to leave when asked, and that Logan cannot use state trespass laws to keep them out. The majority of this Court affirms petitioners' contentions. But I cannot accept them, for I believe that, whether this Court likes it or not, the Constitution recognizes and supports the concept of private ownership of property. The Fifth Amendment provides that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." This means to me that there is no right to picket on the private premises of another to try to convert the owner or others to the views of the pickets. It also means, I think, that if this Court is going to arrogate to itself the power to act as the Government's agent to take a part of Weis' property to give to the pickets for their use, the Court should also award Weis just compensation for the property taken.

In affirming petitioners’ contentions the majority opinion relies on *Marsh* and holds that respondents' property has been transformed to some type of public property. But *Marsh* was never intended to apply to this kind of situation. *Marsh* dealt with the very special situation of a company-owned town, complete with streets, alleys, sewers, stores, residences, and everything else that goes to make a town. . . . There are no homes, there is no sewage disposal plant, there is not even a post office on this private property which the Court now considers the equivalent of a "town." . . .

. . . . The question is, Under what circumstances can private property be treated as though it were public? The answer that *Marsh* gives is when that property has taken on *all* the attributes of a town, *i. e.,* "residential buildings, streets, a system of sewers, a sewage disposal plant and a `business block' on which business places are situated." I can find nothing in *Marsh* which indicates that if one of these features is present, *e. g.,* a business district, this is sufficient for the Court to confiscate a part of an owner's private property and give its use to people who want to picket on it.

In allowing the trespass here, the majority opinion indicates that Weis and Logan invited the public to the shopping center's parking lot. This statement is contrary to common sense. Of course there was an implicit invitation for customers of the adjacent stores to come and use the marked off places for cars. But the whole public was no more wanted there than they would be invited to park free at a pay parking lot. Is a store owner or are several owners together less entitled to have a parking lot set aside for customers than other property owners? To hold that store owners are compelled by law to supply picketing areas for pickets to drive store customers away is to create a court-made law wholly disregarding the constitutional basis on which private ownership of property rests in this country. . . . These pickets do have a constitutional right to speak about Weis' refusal to hire union labor, but they do not have a constitutional right to compel Weis to furnish them a place to do so on its property. . . .

JUSTICE HARLAN, dissenting.

. . . .

JUSTICE WHITE, dissenting.

The reason why labor unions may normally picket a place of business is that the picketing occurs on public streets which are available to all members of the public for a variety of purposes that include communication with other members of the public. The employer businessman cannot interfere with the pickets' communication because they have as much right to the sidewalk and street as he does and because the labor laws prevent such interference under various circumstances; the Government may not interfere on his behalf, absent obstruction, violence, or other valid statutory justification, because the First Amendment forbids official abridgment of the right of free speech.

In *Marsh*, the company town was found to have all of the attributes of a state-created municipality and the company was found effectively to be exercising official power as a delegate of the State. In the context of that case, the streets of the company town were as available and as dedicated to public purposes as the streets of an ordinary town. The company owner stood in the shoes of the State in attempting to prevent the streets from being used as public streets are normally used.

The situation here is starkly different. . . . The public is invited to the premises but only in order to do business with those who maintain establishments there. The invitation is to shop for the products which are sold. There is no general invitation to use the parking lot, the pickup zone, or the sidewalk except as an adjunct to shopping. No one is invited to use the parking lot as a place to park his car while he goes elsewhere to work. The driveways and lanes for auto traffic are not offered for use as general thoroughfares leading from one public street to another. Those driveways and parking spaces are not public streets and thus available for parades, public meetings, or other activities for which public streets are used. . . . Even if the Plaza has some aspects of "public" property, it is nevertheless true that some public property is available for some uses and not for others; some public property is neither designed nor dedicated for use by pickets or for other communicative activities. The point is that whether Logan Valley Plaza is public or private property, it is a place for shopping and not a place for picketing.

The most that can be said is that here the public was invited to shop, that except for their location in the shopping center development the stores would have fronted on public streets and sidewalks, and that the shopping center occupied a large area. But on this premise the parking lot, sidewalks, and driveways would be available for all those activities which are usually permitted on public streets. It is said that Logan Valley Plaza is substantially equivalent to a business block and must be treated as though each store was bounded by a public street and a public sidewalk. This rationale, which would immunize nonobstructive labor union picketing, would also compel the shopping center to permit picketing on its property for other communicative purposes, whether the subject matter concerned a particular business establishment or not. Nonobstructive handbilling for religious purposes, political campaigning, protests against government policies—the Court would apparently place all of these activities carried out on Logan Valley's property within the protection of the First Amendment, although the activities may have no connection whatsoever with the views of the Plaza's occupants or with the conduct of their businesses.

Furthermore, my Brother BLACK is surely correct in saying that if the invitation to the public is sufficient to permit nonobstructive picketing on the sidewalks, in the pickup zone, or in the parking area, only actual interference with customers or employees should bar pickets from quietly entering the store and marching around with their message on front and back.

It is not clear how the Court might draw a line between "shopping centers" and other business establishments which have sidewalks or parking on their own property. Any store invites the patronage of members of the public interested in its products. I am fearful that the Court's decision today will be a license for pickets to leave the public streets and carry out their activities on private property, as long as they are not obstructive. I do not agree that when the owner of private property invites the public to do business with him he impliedly dedicates his property for other uses as well. I do not think the First Amendment, which bars only official interferences with speech, has this reach. . . .

If it were shown that Congress has thought it necessary to permit picketing on private property, either to further the national labor policy under the Commerce Clause or to implement and enforce the First Amendment, we would have quite a different case. But that is not the basis on which the Court proceeds. . . .