AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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

Supplementary Material

Chapter 9: Liberalism Divided—Democratic Rights/Free Speech/Public Property, Subsidies, Employees, and Schools

**PruneYard Shopping Center v. Robins, 447 U.S. 74** (1980)

*PruneYard Shopping Center is a large, open-air commercial shopping center in Santa Clara county, California. A group of high school students went to the shopping center seeking to collect signatures on a petition against a United Nations resolution on Zionism. PruneYard maintained a policy against any expressive activity on the premises and asked the students to leave, suggesting that they set up on the public sidewalk outside the shopping center instead. They subsequently filed suit in state court to enjoin PruneYard from enforcing the policy in the future. They lost in trial court, but the California Supreme Court reversed, holding that the California state constitution required the shopping center to accommodate the students in order to realize their right to speech and petition. The owner of the shopping center appealed to the U.S. Supreme Court, arguing that their property rights had been violated by the California court decision.*

*In a unanimous decision authored by Justice William Rehnquist, the U.S. Supreme Court affirmed the ruling of the California Supreme Court. Although the federal First Amendment did not require the shopping center to serve as a forum for public expression, the California requirement did not violate either the property rights or the speech rights of the shopping center owners. Why might Justice Rehnquist support this restriction on property rights by the California court? How limited is this right of access recognized in this case?*

JUSTICE REHNQUIST delivered the opinion of the Court.

. . . .

. . . . It is well established that a State in the exercise of its police power may adopt reasonable restrictions on private property so long as the restrictions do not amount to a taking without just compensation or contravene any other federal constitutional provision. . . . *Lloyd Corp. v. Tanner* (1972) held that when a shopping center owner opens his private property to the public for the purpose of shopping, the First Amendment to the United States Constitution does not thereby create individual rights in expression beyond those already existing under applicable law.

Appellants next contend that the right to exclude others underlies the Fifth Amendment guarantee against the taking of property without just compensation and the Fourteenth Amendment guarantee against the deprivation of property without due process of law.

It is true that one of the essential sticks in the bundle of property rights is the right to exclude others. And here there has literally been a “taking” of that right to the extent that the California Supreme Court has interpreted the State Constitution to entitle its citizens to exercise free expression and petition rights on shopping center property. But it is well established that “not every destruction or injury to property by governmental action has been held to be a ‘taking’ in the constitutional sense.” Rather, the determination whether a state law unlawfully infringes a landowner’s property in violation of the Takings Clause requires an examination of whether the restriction on private property “[forces] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong v. United States* (1960). . . .

Here the requirement that appellants permit appellees to exercise state-protected rights of free expression and petition on shopping center property clearly does not amount to an unconstitutional infringement of appellants’ property rights under the Takings Clause. There is nothing to suggest that preventing appellants from prohibiting this sort of activity will unreasonably impair the value or use of their property as a shopping center. . . . The decision of the California Supreme Court makes it clear that the PruneYard may restrict expressive activity by adopting time, place, and manner regulations that will minimize any interference with its commercial functions. Appellees were orderly, and they limited their activity to the common areas of the shopping center. In these circumstances, the fact that they may “physically invaded” appellants’ property cannot be viewed as determinative.

. . . .

There is also little merit to appellants’ argument that they have been denied their property without due process of law. In *Nebbia v. New York* (1934), this Court stated:

“[Neither] property rights nor contract rights are absolute . . . . Equally fundamental with the private right is that of the public to regulate it in the common interest . . .”

. . . .

Appellants finally contend that a private property owner has a First Amendment right not to be forced by the State to use his property as a forum for the speech of others. . . . Most important, the shopping center by choice of its owner is not limited to the personal use of appellants. It is instead a business establishment that is open to the public to come and go as they please. The views expressed by members of the public in passing out pamphlets or seeking signatures for a petition thus will not likely be identified with those of the owner. Second, no specific message is dictated by the State to be displayed on appellants’ property. . . . Finally, as far as appears here appellants can expressly disavow any connection with the message by simply posting signs in the area where the speakers or handbillers stand. . . .

. . . .

The judgment of the Supreme Court of California is therefore

*Affirmed*.

JUSTICE MARSHALL, concurring.

. . . .

I continue to believe that *Food Employees v. Logan Valley Plaza* (1968) was rightly decided, and that Lloyd [was] an incorrect interpretation of the First and Fourteenth Amendments. State action was present in both cases. . . . [S]hopping center owners had opened their centers to the public at large, effectively replacing the State with respect to such traditional First Amendment forums as streets, sidewalks, and parks. The State had in turn made its laws of trespass available to shopping center owners, enabling them to exclude those who wished to engage in expressive activity on their premises. Rights of free expression are illusory when a State has operated in such a way as to shut off effective channels of communication. . . .

. . . . Quite serious constitutional questions might be raised if a legislature attempted to abolish certain categories of common-law rights in some general way. Indeed, our cases demonstrate that there are limits on governmental authority to abolish "core" common-law rights, including rights against trespass, at least without a compelling showing of necessity or a provision for a reasonable alternative remedy.

That "core" has not been approached in this case. The California Supreme Court's decision is limited to shopping centers, which are already open to the general public. The owners are permitted to impose reasonable restrictions on expressive activity. There has been no showing of interference with appellants' normal business operations. The California court has not permitted an invasion of any personal sanctuary. No rights of privacy are implicated. In these circumstances there is no basis for strictly scrutinizing the intrusion authorized by the California Supreme Court.

JUSTICE POWELL, concurring.

. . . .

JUSTICE WHITE, concurring.

. . . .

Because appellants have not shown that the limited right of access held to be afforded by the California Constitution burdened their First and Fourteenth Amendment rights in the circumstances presented, I join the judgment of the Court. I do not interpret our decision today as a blanket approval for state efforts to transform privately owned commercial property into public forums. Any such state action would raise substantial federal constitutional questions not present in this case