AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

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

**Robins v. PruneYard Shopping Center, 23 Cal. 3d 899** (CA 1979)

*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. The students appealed to the California Supreme Court, arguing that they had a state constitutional right to collect signatures for their petition at the shopping center.*

*In a 4-3 decision written by Justice Frank Newman, a former dean of Berkeley law school and expert in international human rights law, the California Supreme Court reversed the trial court. Overturning its own earlier precedents, the California Supreme Court held that the state constitution’s free speech provision guaranteeing that that “every person may freely speak . . . on all subjects,” imposed an obligation on the shopping center to serve as a public forum for expressive activities. The U.S. Supreme Court refused to overturn the state supreme court’s decision in* PruneYard Shopping Center v. Robins *(1980), concluding that federal property rights were not violated by this state regulation on their use. Two decades later, the California Supreme Court questioned whether* Robins *had been rightly decided under the state constitution, but adhered to its core principles as a matter of stare decisis in* Golden Gateway Center v. Golden Gateway Tenants Association*, 26 Cal. 4th 1013 (2001).*

*The California court determined that there was no state action requirement in the state constitutional guarantee of free speech. Why would private property owners be obliged to facilitate public speech under the state constitution but not under the federal Constitution? How far might the speech right outlined in* Robins *extend?*

JUSTICE NEWMAN delivered the opinion for the Court.

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*Lloyd Corp. v. Tanner* (1972) held that a shopping center owner could prohibit distribution of leaflets when they communicated no information relating to the center’s business and when there was an adequate, alternative means of communication. The [U.S. Supreme Court] stated, “We hold that there has been no such dedication of Lloyd’s privately owned and operating shopping center to public use as to entitle respondents to exercise therein the asserted First Amendment rights.”

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. . . . Members of the public are rightfully on Pruneyard’s premises because the premises are open to the public during shopping hours. *Lloyd* . . . does not preclude law-making in California which requires that shopping center owners permit expressive activity on their property. . . . “[All] private property is held subject to the power of the government to regulate its use for the public welfare.” (*Agricultural Labor Relations Board v. Superior Court* (CA 1976)).

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The *Agricultural Labor Relations Board* opinion further observes that the power to regulate property is not static; rather it is capable of expansion to meet new conditions of modern life. Property rights may be “redefined in response to a swelling demand that ownership be responsible and responsive to the needs of the social whole.”

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To protect free speech and petitioning is a goal that surely matches protecting health and safety, the environment, aesthetics, property values and other societal goals that have been held to justify reasonable restrictions on private property rights.

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No California statute prescribes that shopping center owners provide public forums. But article I, section 2 of the state Constitution reads: “Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.” Though the framers could have adopted the words of the federal Bill of rights they chose not to do so. . . .

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. . . . A closer look at *Lloyd Corp*. has revealed that it does not prevent California’s providing greater protection than the First Amendment now seems to provide. We conclude that section 2 and 3 of article I of the California Constitution protect speech and petitioning, reasonably exercised, in shopping centers even when the centers are privately owned.

By no means do we imply that those who wish to disseminate ideas have free rein. [Our cases endorse] time, place, and manner rules. Further, . . . “It bears repeated emphasis that we do not have under consideration the property or privacy rights of an individual homeowner or the proprietor of a modest retail establishment. . . . A handful of additional orderly persons soliciting signatures and distributing handbills in connection therewith, under reasonable regulations adopted by the defendant to assure that these activities do not interfere with normal business operations would not markedly dilute defendant’s property rights.”

*Reversed*.

JUSTICE RICHARDSON, dissenting.

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. . . [T]he trial court expressly concluded as matters of law that there had been no dedication of the center’s property to public use, that the center is not the “functional equivalent” of a municipality, and that “There are adequate, effective channels of communication for plaintiffs other than soliciting on the private property of the Center.” . . .

With due deference, I suggest that the able trial court’s judgment was not only entirely proper, but was compelled by the holdings in *Lloyd Corp. v. Tanner* (1972). The present majority . . . attempts to circumvent Lloyd by relying on the “liberty of speech clauses” of the California Constitution. I believe that such an analysis is clearly incorrect, because the owners of defendant Pruneyard Shopping Center possess *federally* protected property rights which do not depend upon the varying and shifting interpretations of state constitutional law for their safeguard and survival. . . .

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. . . . Contrary to the majority’s thesis, *Lloyd* cannot be distinguished. It was, and is, a *property rights case of controlling force* in the litigation before us.

Recognizing the “special solicitude” owed to the First Amendment guarantees, the high court in *Lloyd* nonetheless noted that “this Court has never held that a trespasser or an uninvited guest may exercise general rights of free speech on property privately owned and used nondiscriminately for private purposes only.” . . .

The lesson to be learned from *Lloyd* is unmistakable and irrefutable: A private shopping center owner is protected by the *federal* Constitution from unauthorized invasions by persons who enter the premises to conduct general “free speech” activities unrelated to the shopping center's purposes and functions. Nor is the foregoing principle in any way diminished or affected by the fact that the claimed free speech rights are purportedly sanctioned by the California Constitution, given the overriding supremacy of the federal Constitution.

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