Pruneyard Shopping Center v. Robins

Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980), was a U.S. Supreme Court decision issued on June 9, 1980 which affirmed the decision of the California Supreme Court in a case that arose out of a free speech dispute between the Pruneyard Shopping Center in Campbell, California, and several local high school students (who wished to solicit signatures for a petition against United Nations General Assembly Resolution 3379).[1]

1 Case

In American constitutional law, this case is famous for its role in establishing two important rules:

- under the California Constitution, individuals may peacefully exercise their right to free speech in parts of *private* shopping centers regularly held open to the public, subject to reasonable regulations adopted by the shopping centers
- under the U.S. Constitution, states can provide their citizens with broader rights in their constitutions than under the federal Constitution, so long as those rights do not infringe on any federal constitutional rights

This holding was possible because California's constitution contains an *affirmative* right of free speech which has been liberally construed by the Supreme Court of California, while the federal constitution's First Amendment contains only a *negative* command to Congress to not abridge the freedom of speech. This distinction was significant because the U.S. Supreme Court had already held that under the *federal* First Amendment, there was no implied right of free speech within a private shopping center.[2] The *Pruneyard* case, therefore, raised the question of whether an implied right of free speech could arise under a state constitution without conflicting with the federal Constitution. In answering yes to that question, the Court rejected the shopping center's argument that California's broader free speech right amounted to a "taking" of the shopping center under federal constitutional law.

Footnote two of the decision quotes the relevant portions of the California Constitution, which states in Article 1, § 2

and Article 1, § 3

A typical "Please Do Not Contribute" sign at a California shopping center.

The vote to uphold the California decision was unanimous, although four justices disagreed with part of the reasoning in Justice William Rehnquist's opinion for the majority. Justices Thurgood Marshall, Byron White, and Lewis Powell filed separate concurring opinions. Justice Harry Blackmun filed a brief "statement" indicating that he was joining in all of Justice Rehnquist's opinion except for one sentence.

Because of the *Pruneyard* case, people who visit shopping centers in California may regularly encounter people seeking money or attention for various causes, including charitable solicitations, qualifying petitions for amendments to the state constitution, voter registration drives, and sometimes a beggar. In turn, many shopping centers have posted signs to explain that they do not endorse the views of people exercising their right to free speech, and that if patrons do not give them money, the speakers will go away.

2 Subsequent developments

Although 39 other states have free speech clauses in their constitutions that look like California's – indeed, California borrowed its clause from a similar one in the New York Constitution – at least 13 of those states have declined to follow California in extending the right of free speech into private shopping centers.[3] In refusing to follow *Pruneyard*, the state supreme courts of New York and Wisconsin both attacked it as an unprincipled and whimsical decision.[4] In 2003, the European Court of Human

Rights also considered and refused to follow *Pruneyard*, in a United Kingdom case.[5] Only New Jersey, Colorado, and Massachusetts have followed California, albeit with some reservations. In a 2000 decision, Puerto Rico (a U.S. territory) also adopted *Pruneyard's* right of free speech, although the case was complicated by the presence of a branch office of a government agency (Puerto Rico Telephone, since privatized) in the shopping center (the Mayagüez Mall).[6] Some commentators have suggested the *Pruneyard* rule could be applied to speech on the Internet, including speech activities in virtual worlds, like Linden Labs' *Second Life,* although the courts have not addressed this theory.[7]

In the decades since *Pruneyard* was decided, the Supreme Court of California has become much more conservative, especially after three liberal justices (including Chief Justice Rose Bird) were removed by the electorate in 1986 for their opposition to the death penalty.[8]

In the 2001 *Golden Gateway* decision, a 4–3 majority of the Court significantly narrowed *Pruneyard* by holding for a variety of reasons that California's free speech right does not apply to private apartment complexes – yet they also refused to overrule *Pruneyard*.[9] Thus, California's right of free speech in private shopping centers still survives.

The shopping center industry strongly "detests" the *Pruneyard* decision since it has resulted in numerous test cases by protesters in California and elsewhere trying to find the boundaries of the *Pruneyard* rule.[10] Shopping centers have regularly imposed restrictions on unwanted solicitors and appealed the resulting legal cases in the hope of convincing the California judiciary that *Pruneyard* should be overturned, or at least limited.[10] Since *Golden Gateway*, decisions by the intermediate Courts of Appeal have generally limited the scope of the *Pruneyard* rule to the facts of the original case. For example, starting in 1997, the parking lots of many Costco warehouse club stores in California became sites of conflict involving a large number of political activist groups who had gradually become aware of their rights under *Pruneyard*. In 1998, Costco's management imposed several restrictions, including a complete ban on soliciting at stand-alone stores, a rule that no group or person could use Costco premises for free speech more than 5 days out of any 30, and the complete exclusion of solicitors on the 34 busiest days of the year.

In 2002, these restrictions were upheld as reasonable by the Court of Appeal for the Fourth Appellate District, and the Supreme Court of California denied review.[11] Costco's stand-alone stores lacked the social congregation attributes of the multi-tenant shopping center at issue in *Pruneyard*. As for the restrictions on the stores in shopping centers, they were held to be reasonable because Costco had developed a strong factual record at trial which proved that hordes of unwanted solicitors had significantly interfered with its business operations – they had damaged its reputation, obstructed access to its stores, and traumatized Costco employees.

In 2007, the Supreme Court of California confronted the *Pruneyard* decision once more, in the context of a complex labor dispute involving San Diego's Fashion Valley Mall and the *San Diego Union-Tribune*. On December 24, 2007, a 4–3 majority of a sharply divided court once again refused to overrule *Pruneyard*, and instead, ruled that under the California Constitution, a union's right of free speech in a shopping center includes the right to hand out leaflets urging patrons to boycott one of the shopping center's tenants.[12] Justice Ming Chin, in his dissent joined by Justices Marvin Baxter and Carol Corrigan, expressed his sympathy with several of the most common critiques of the *Pruneyard* decision:

> "*Pruneyard* was wrong when decided. In the nearly three decades that have since elapsed, jurisdictions throughout the nation have overwhelmingly rejected it. We should no longer ignore this tide of history. The time has come for us to forthrightly overrule *Pruneyard* and rejoin the rest of the nation in this important area of the law. Private property should be treated as private property, not as a public free speech zone."[13]

In the aftermath of the *Fashion Valley* case, the California Courts of Appeal briefly began to apply *Pruneyard* more broadly. In 2010, the Court of Appeal for the Third Appellate District, in an opinion authored by then-Justice Tani Cantil-Sakauye (now Chief Justice of California), held that it is unconstitutional under *Pruneyard* for shopping mall giant Westfield Group to promulgate rules discriminating in favor of commercial speech in its malls and against noncommercial speech.[14] The plaintiff had been detained by Westfield security after attempting to discuss the principles of his Christian faith with strangers at the Westfield Galleria at Roseville.

In 2011, the Court of Appeal for the Second Appellate District disagreed with the Fourth Appellate District's analysis of blackout days in the *Costco* case, and held that it was unreasonable for Westside Pavilion to prohibit animal rights protesters from protesting on certain blackout days and to require them to protest out of aural and visual range of the targeted tenant (an alleged retailer for puppy mills).[15]

On December 27, 2012, the Supreme Court of California reaffirmed *Pruneyard* but narrowed its applicability to the facts of the original case.[16] The entire court concurred in Associate Justice Joyce Kennard's holding that *Pruneyard* applies *only* to "common areas" of shopping centers that are designed and furnished to encourage shoppers to linger, congregate, relax, or converse at leisure, but does not apply to any other open portions of shopping centers merely intended to facilitate the efficient movement of shoppers in and out of tenants, including con-

crete aprons and sidewalks which shoppers simply walk across as they move between parking lots and big-box stores. In other words, the court effectively immunized most (but not all) strip malls and shopping centers from *Pruneyard*, except for those with areas analogous to public gathering areas such as plazas, atriums, or food courts. Miriam Vogel, a former Court of Appeal justice who argued for the shopping center tenant (Kroger subsidiary Ralphs), characterized the decision "a great victory for retailers as far as putting another nail in the *Pruneyard* coffin."[17] However, the decision was not a complete loss for free speech advocates, as the court separately upheld the right of a union to protest on the employer's premises under the state Moscone Act by a 6–1 majority (the majority, though, was badly split as to *why*).

3 References

[1] Linda Greenhouse, "Petitioning Upheld at Shopping Malls: High Court Says States May Order Access to Back Free Speech," *New York Times*, 10 June 1980, A1.

[2] *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972).

[3] Mulligan, Josh (2004). "Finding A Forum in the Simulated City: Mega Malls, Gated Towns, and the Promise of *Pruneyard*". *Cornell Journal of Law and Public Policy*. **13**: 533, 557. ISSN 1069-0565. → This article is an excellent overview of *Pruneyard's* progeny.

[4] See *SHAD Alliance v. Smith Haven Mall*, 488 N.E.2d 1211 (N.Y. 1985) and *Jacobs v. Major*, 407 N.W.2d 832 (Wis. 1987).

[5] *Appleby and Others v. the United Kingdom* [2003] ECHR 222, (2003) 37 EHRR 38 (6 May 2003)

[6] *Empresas Puertorriqueñas de Desarrollo, Inc. v. Hermandad Independiente de Empleados Telefónicos*, 150 D.P.R. 924 (2000).. The court's decision turned on the fact that the PRT branch office in the mall was the only local PRT facility in the entire municipality where the unions could publicly demonstrate against the governor's privatization proposal.

[7] Barger, James (July 2010). "Extending Speech Rights Into Virtual Worlds" (PDF). *The SciTech Lawyer*. **7** (1): 18–22. ISSN 1550-2090. Retrieved 2011-03-08. In this new world, long-established property law and state constitutions may provide the best protection for a user's right to express himself in sometimes controversial ways.

[8] Culver, John H. (1998). "The transformation of the California Supreme Court: 1977–1997". *Albany Law Review*. **61** (5): 1461–90. ISSN 0002-4678.

[9] *Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n*, 26 Cal. 4th 1013 (2001).

[10] Joseph R. Grodin, Calvin R. Massey, and Richard B. Cunningham, *The California State Constitution: A Reference Guide* (Westport, CT: Greenwood Press, 1993), 26.

[11] *Costco Companies, Inc. v. Gallant*, 96 Cal. App. 4th 740 (2002).

[12] *Fashion Valley Mall, LLC, v. National Labor Relations Board*, 42 Cal. 4th 850 (2007).

[13] *Id.* at 870.

[14] *Snatchko v. Westfield, LLC*, 187 Cal. App. 4th 469 (2010).

[15] *Best Friends Animal Society v. Macerich Westside Pavilion Property LLC*, 193 Cal. App. 4th 168 (2011).

[16] *Ralphs Grocery Co. v. United Food and Commercial Workers Union Local 8*, 55 Cal. 4th 1083 (2012).

[17] Scott Graham, "Justices Limit Shopping Mall Speech Rights, But Unions Can Still Picket," *The Recorder*, 27 December 2012.

4 Further reading

- Alexander, M. C. (1999). "Attention, Shoppers: The First Amendment in the Modern Shopping Mall". *Arizona Law Review*. **41**: 1. ISSN 0004-153X.
- Epstein, Richard A. (1997). "Takings, Exclusivity and Speech: The Legacy of *PruneYard v Robins*". *University of Chicago Law Review*. The University of Chicago Law Review. **64** (1): 21–56. doi:10.2307/1600196. JSTOR 1600196.

5 External links

- Cornell University Collection – U.S. Supreme Court decision
- California Continuing Education of the Bar Collection – California Supreme Court decision
- California Constitution from Official California Legislative Information Site – Article 1, Section 2, Declaration of Rights (the section challenged in *Pruneyard*)
- Past Presidents Series – The Temple Goes to Court – Account by the attorney who represented the signature gatherers

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