The Burger Court Opinion Writing Database

PruneYard Shopping Center v. Robins

447 U.S. 74 (1980)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 7, 1980

RE: 79-289 - Pruneyard Shopping Ctr.
v. Robins

Dear Bill:

I join. If this is what California wants to declare as California law, so be it.

Regards,

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 24, 1980

RE: No. 79-289 Pruneyard Shopping Center v. Robins

Dear Bill:

I agree.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 21, 1980

Re: 79-289 - Pruneyard Shopping Center v. Robins

Dear Bill:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 28, 1980

Re: 79-289 - PruneYard Shopping Center and Fred Sahadi v. Michael Robins, et al.

Dear Bill,

With the minor change I talked to you about, I join your opinion in this case. I may write or join a concurring opinion.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 29, 1980

Re: 79-289 - Pruneyard Shopping Center
v. Robins

Dear Bill,

With apologies for backing and filling, I ask that this case not come down on Monday. I should like to give further consideration to what Lewis has written.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 2 JUN 1

Recirculated: _____

Re: No. 79-289 - Pruneyard Shopping Center v. Robins

MR. JUSTICE WHITE, concurring in part and concurring in the judgment.

I join MR. JUSTICE POWELL's concurring opinion but with these additional remarks.

The question here is whether the Federal Constitution forbids a State from implementing its own free-speech guarantee by requiring owners of shopping centers to permit entry on their property for the purpose of communicating with the public about subjects having no connection with the shopping center's business. The Supreme Court of California held that in the circumstances of this case the federally protected property rights of petitioner were not infringed. The state court recognized, however, that reasonable time and place limitations could be imposed and that it was dealing with the public or common areas in a large shopping center and not with an individual retail establishment within or without the shopping center or with the property or privacy rights of a homeowner. On the facts before it, "A handful of additional

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 4 JUN 1980

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California.

[June —, 1980]

MR. JUSTICE WHITE, concurring in part and concurring in the judgment.

I join MR. JUSTICE POWELL's concurring opinion but with these additional remarks.

The question here is whether the Federal Constitution forbids a State from implementing its own free-speech guarantee by requiring owners of shopping centers to permit entry on their property for the purpose of communicating with the public about subjects having no connection with the shopping center's business. The Supreme Court of California held that in the circumstances of this case the federally protected property rights of petitioner were not infringed. The state court recognized, however, that reasonable time and place limitations could be imposed and that it was dealing with the public or common areas in a large shopping center and not with an individual retail establishment within or without the shopping center or with the property or privacy rights of a homeowner. On the facts before it, "[a] handful of additional orderly persons soliciting signatures and distributing handbills . . . would not markedly dilute defendant's property rights." 23 Cal. 3d 889, 911, 153 Cal. Rptr. 854, 860–861, 592 P. 2d 341, 347–348 (1979).

I agree that on the record before us there was not an unconstitutional infringement of petitioner's property rights. But it bears pointing out that the Federal Constitution does not require that a shopping center permit distributions or solicita-

25
APR 1980

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79–289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California.

[April —, 1980]

MR. JUSTICE MARSHALL, concurring.

I join the opinion of the Court, but write separately to make a few additional points.

I

In *Food Employees* v. *Logan Valley Plaza,* 391 U. S. 308 (1968), this Court held that the First and Fourteenth Amendments prevented a state court from relying on its law of trespass to enjoin the peaceful picketing of a business enterprise located within a shopping center. The Court concluded that because the shopping center "serves as the community business block" and is open to the general public, "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." *Id.,* at 319. The Court rejected the suggestion that such an abrogation of the state law of trespass would intrude on the constitutionally protected property rights of shopping center owners. And it emphasized that the shopping center was open to the public and that reasonable restrictions on the exercise of communicative activity would be permitted. "[N]o 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." *Id.,* at 324.

STYLISTIC CHANGES THROUGHOUT.

16 MAY 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al.	On Appeal from the Supreme Court of California.

[April —, 1980]

MR. JUSTICE MARSHALL, concurring.

I join the opinion of the Court, but write separately to make a few additional points.

I

In *Food Employees* v. *Logan Valley Plaza*, 391 U. S. 308 (1968), this Court held that the First and Fourteenth Amendments prevented a state court from relying on its law of trespass to enjoin the peaceful picketing of a business enterprise located within a shopping center. The Court concluded that because the shopping center "serves as the community business block" and is open to the general public, "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." *Id.*, at 319. The Court rejected the suggestion that such an abrogation of the state law of trespass would intrude on the constitutionally protected property rights of shopping center owners. And it emphasized that the shopping center was open to the public and that reasonable restrictions on the exercise of communicative activity would be permitted. "[N]o 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." *Id.*, at 324.

May 8, 1980

Re: No. 79-289 - PruneYard Shopping Center v. Robins

Dear Bill:

I wonder if you would consider the following minor changes in your draft of April 29:

1. On page 12, at the very end of the third line, the insertion of the words "for or".

2. In footnote 7, on page 7, the elimination of the first five lines, and, if you wish, the inclusion of the Monongahela Navigation Co. within the following "See" citation. I make this suggestion because I think Monongahela has been limited by subsequent decisions, and I am not sure that your quotation adequately reflects the impact of this subsequent limitation. See footnote 6 on page 9 of my slip opinion dissent to Kaiser Aetna v. United States.

3. In the first line on page 9, the insertion of the words "state created" after the word "define".

I feel that these suggested changes would not lessen the force of your opinion in PruneYard. If you can see your way clear to make at least the first two suggested changes, you have my joinder. I realize that I am "dealing from weakness," for you already have an overwhelming Court.

Sincerely,

HAB

Mr. Justice Rehnquist

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1980

Re: No. 79-289 - Pruneyard Shopping Center v. Robins

Dear Bill:

As you know from our prior correspondence, I am favorably disposed toward your draft opinion in this case, which now has an overwhelming Court behind it. I have expressed my willingness to join it with two suggested changes that you have accommodated in the recirculation of May 12. On the third of my suggestions, however, we have not been able to agree. Although I have no desire, particularly at this time of year, to belabor the inconsequential, I am sufficiently at sea on this one point that I thought it might deserve a further exchange.

Your opinion presently includes the following sentence on pp. 8-9: "Nor as a general proposition is the United States, as opposed to the several States, possessed of residual authority that enables it to define 'property' in the first instance." The sentence appears in the context of a discussion of Kaiser Aetna v. United States, and appears to be offered as a distinction between that case and the one now before the Court.

I confess that I am puzzled by this sentence. Since Kaiser Aetna involved an application of the Takings Clause of the Fifth Amendment, the context appears to suggest that the proposition stated is intended to have constitutional moorings. It seems to me, then, to suggest that the Constitution places limitations on the power of the United States (presumably including Congress) to create and define property rights that it does not also apply to the States.

If this reading is at all accurate, then I doubt that the sentence is fully in accord with prior decisions that have recognized federally created property rights, extending from broadcasting licenses and social security

benefits to continued employment in civil service jobs. Moreover, since the power of the Federal Government to legislate property interests is not implicated in this case, the statement seems unnecessary to the decision.

On the other hand, if my reading of the sentence is inaccurate, then I am unsure what else it might mean. Perhaps it is intended to signify only that state-created property rights are defined in the first instance by state law. But if so, in my view the language chosen sweeps more broadly than the intent.

There may be some other meaning of which I am unaware, and if so I would be grateful for enlightenment.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 14, 1980

Re: No. 79-289 - Pruneyard Shopping Center v. Robins

Dear Bill:

Your response to my letter of May 13 confirms that your intent with respect to the sentence over which we have disagreed is to state a proposition far broader than any I find implicated in the case. As I am presently advised, you wish to convey the thought that, while a State constitutionally has the power, so long as it gives just compensation, to declare that henceforth no private property interests would be recognized under its law, Congress would be precluded by the Constitution from exercising a similar power. I do not find this to be a self-evident proposition of law, and I am not prepared, at this juncture, to go along with this view concerning the constitutional limitations on Congress vis-a-vis the States with respect to the creation, alteration, or taking of private property.

The hypothetical question you raised, whether "Congress could simply legislate that in none of the 50 states could there be any private property, although it would pay for existing rights at the time it enacted that legislation," is obviously not presented on this record. Accordingly, the conclusion that Congress could not is one to which I am presently unwilling to subscribe, even in dictum of a general nature. Nor am I prepared to agree with your apparent suggestion that the States have greater power to withdraw property rights than Congress. That thought may come closer to the issues in this case, but it is a matter we need not decide, since, as your opinion persuasively argues, the California courts have not gone anywhere near the extreme examples that you have posed.

Others may have a different understanding of the language I have questioned. But your explanation leaves me with a strong preference for some change in the

sentence we have been discussing that would reflect a less ambitious thesis. In light or your letter, of course, I recognize that your present intention is to stand firm.

If you do so, and at the risk of being accused of retreating, would you please add the following at the end of your opinion:

> "MR. JUSTICE BLACKMUN joins the opinion of the Court except that sentence thereof, ante, at 8-9, which reads 'Nor as a general proposition is the United States, as opposed to the several States, possessed of residual authority that enables it to define "property" in the first instance.'"

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
LEWIS F. POWELL, JR.

April 24, 1980

No. 79-289 PruneYard Shopping Center v. Robins

Dear Bill:

Please join me.

It is possible that I may write a brief concurring opinion, particularly if there is other writing.

Sincerely,

Lewis

Mr. Justice Rehnquist

LFP/lab

Copies to the Conference

5/28/80

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: MAY 28 1980

Recirculated: _____

FIRST DRAFT

No. 79-289, PruneYard Shopping Center v. Robins

Mr. JUSTICE POWELL, concurring in part and in the judgment.

Although I join the judgment, I do not agree with all of the reasoning in Part V of the Court's opinion. I join Parts I-IV on the understanding that our decision is limited to the type of shopping center involved in this case. Significantly different questions would be presented if a State were to authorize strangers to picket or leafleteer in privately-owned, free-standing stores and commercial premises. Nor does our decision today apply to all "shopping centers." This generic term may include retail establishments that vary widely in size, location, and other relevant characteristics. Even large establishments may be able to show that the number or type of persons wishing to speak on their premises would create a substantial annoyance to customers that could only be eliminated by elaborate, expensive, and possibly unenforceable time, place,

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

5-30-80 Stylistic Changes Throughout.

From: Mr. Justice Powell

1st PRINTED DRAFT

Circulated: MAY 30 1980

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California.

[June —, 1980]

MR. JUSTICE POWELL, concurring in part and in the judgment.

Although I join the judgment, I do not agree with all of the reasoning in Part V of the Court's opinion. I join Parts I–IV on the understanding that our decision is limited to the type of shopping center involved in this case. Significantly different questions would be presented if a State authorized strangers to picket or leafleteer in privately owned, freestanding stores and commercial premises. Nor does our decision today apply to all "shopping centers." This generic term may include retail establishments that vary widely in size, location, and other relevant characteristics. Even large establishments may be able to show that the number or type of persons wishing to speak on their premises would create a substantial annoyance to customers that could be eliminated only by elaborate, expensive, and possibly unenforceable time, place, and manner restrictions. As the Court observes, state power to regulate private property is limited to the adoption of reasonable restrictions that "do not amount to a taking without just compensation or contravene any other federal constitutional provision." *Ante*, at 6.

I

Restrictions on property use, like other state laws, are invalid if they infringe the freedom of expression and belief protected by the First and Fourteenth Amendments.

P.1

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

6-3-80

2nd DRAFT

From: Mr. Justice Powell

Circulated:

Recirculated: JUN 3 1980

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California.

[June —, 1980]

MR. JUSTICE POWELL, with whom MR. JUSTICE WHITE joins, concurring in part and in the judgment.

Although I join the judgment, I do not agree with all of the reasoning in Part V of the Court's opinion. I join Parts I–IV on the understanding that our decision is limited to the type of shopping center involved in this case. Significantly different questions would be presented if a State authorized strangers to picket or leafleteer in privately owned, freestanding stores and commercial premises. Nor does our decision today apply to all "shopping centers." This generic term may include retail establishments that vary widely in size, location, and other relevant characteristics. Even large establishments may be able to show that the number or type of persons wishing to speak on their premises would create a substantial annoyance to customers that could be eliminated only by elaborate, expensive, and possibly unenforceable time, place, and manner restrictions. As the Court observes, state power to regulate private property is limited to the adoption of reasonable restrictions that "do not amount to a taking without just compensation or contravene any other federal constitutional provision." *Ante*, at 6.

I

Restrictions on property use, like other state laws, are invalid if they infringe the freedom of expression and belief protected by the First and Fourteenth Amendments.

Pf 2,3,5,10,11

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: APR 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California.

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We postponed jurisdiction of this appeal from the Supreme Court of California to decide the important federal constitutional questions it presented. Those are whether state constitutional provisions, which permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited, violate the shopping center owner's property rights under the Fifth and Fourteenth Amendments or his free speech rights under the First and Fourteenth Amendments.

I

Appellant PruneYard is a privately owned shopping center in the city of Campbell, Cal. It covers approximately 21 acres—five devoted to parking and 16 occupied by walkways, plazas, sidewalks, and buildings that contain more than 65 specialty shops, 10 restaurants, and a movie theater. The PruneYard is open to the public for the purpose of encouraging the patronizing of its commercial establishments. It has a policy not to permit any visitor or tenant to engage in any publicly expressive activity, including the circulation of petitions, that is not directly related to its commercial purposes. This policy has been strictly enforced in a nondiscriminatory fashion. The PruneYard is owned by appellant Fred Sahadi.

STYLISTIC CHANGES THROUGHOUT

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 24 APR 80

pp 5, 6, 9, 12
Footnotes Renumbered

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. } On Appeal from the Supreme Court of California.

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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I

Appellant PruneYard is a privately owned shopping center in the city of Campbell, Cal. It covers approximately 21 acres—five devoted to parking and 16 occupied by walkways, plazas, sidewalks, and buildings that contain more than 65 specialty shops, 10 restaurants, and a movie theater. The PruneYard is open to the public for the purpose of encouraging the patronizing of its commercial establishments. It has a policy not to permit any visitor or tenant to engage in any publicly expressive activity, including the circulation of petitions, that is not directly related to its commercial purposes. This policy has been strictly enforced in a nondiscriminatory fashion. The PruneYard is owned by appellant Fred Sahadi.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 23 APR 1980

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California.

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We postponed jurisdiction of this appeal from the Supreme Court of California to decide the important federal constitutional questions it presented. Those are whether state constitutional provisions, which permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited, violate the shopping center owner's property rights under the Fifth and Fourteenth Amendments or his free speech rights under the First and Fourteenth Amendments.

I

Appellant PruneYard is a privately owned shopping center in the city of Campbell, Cal. It covers approximately 21 acres—five devoted to parking and 16 occupied by walkways, plazas, sidewalks, and buildings that contain more than 65 specialty shops, 10 restaurants, and a movie theater. The PruneYard is open to the public for the purpose of encouraging the patronizing of its commercial establishments. It has a policy not to permit any visitor or tenant to engage in any publicly expressive activity, including the circulation of petitions, that is not directly related to its commercial purposes. This policy has been strictly enforced in a nondiscriminatory fashion. The PruneYard is owned by appellant Fred Sahadi.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 9, 1980

Re: No. 79-289 PruneYard Shopping Center v. Robins

Dear Harry:

Naturally getting and keeping a "Court" for one's opinions is a necessity for survival around here, but I have tried to review your proposed suggestions on their merits, without regard to your statement that you are "dealing from weakness". I feel I can accommodate some, but not all of your suggestions, and this letter is an effort to explain the extent to which I think I can go in doing so and why.

1. I have no problem with your first suggestion to insert the words "for or" on page 12 at the very end of the third line, and will recirculate with that change included.

2. Here I can go part way with you in your suggestion with regard to the treatment of Monongahela Navigation Co. v. United States; my reason for being unable to go all the way is that I could not find any statement of the purpose of the just compensation clause of the Fifth Amendment which I thought was as good as the one contained in that case. My proposal here would be to change the introduction to footnote 7 leading up to the quotation from Monongahela so as to read:

> "Thus, as this Court stated in Monongahela Navigation Co. v. United States, 148 U.S. 312, 325 (1893), a case which has since been characterized as resting primarily on 'estoppel', see, e.g., United States v. Rands, 389 U.S. 121, 126 (1967), the Fifth Amendment 'prevents . . . .

3. As presently advised, I am not willing to make the

third change which you propose in your letter of May 8th. I am wondering if there is any possibility that you may not have seen the third draft with its change in the bottom two lines of page 8, which were made in response to a request from Byron. He asked that the words "general proposition" be inserted in the penultimate line on page 8, and my third draft shows this change. I may, of course, be entirely wrong in thinking that you're proposed third change stems from the same concern as his did.

Sincerely,

Mr. Justice Blackmun

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 12 MAY 1980

P. 7, 12

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79–289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California.

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We postponed jurisdiction of this appeal from the Supreme Court of California to decide the important federal constitutional questions it presented. Those are whether state constitutional provisions, which permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center to which the public is invited, violate the shopping center owner's property rights under the Fifth and Fourteenth Amendments or his free speech rights under the First and Fourteenth Amendments.

I

Appellant PruneYard is a privately owned shopping center in the city of Campbell, Cal. It covers approximately 21 acres—five devoted to parking and 16 occupied by walkways, plazas, sidewalks, and buildings that contain more than 65 specialty shops, 10 restaurants, and a movie theater. The PruneYard is open to the public for the purpose of encouraging the patronizing of its commercial establishments. It has a policy not to permit any visitor or tenant to engage in any publicly expressive activity, including the circulation of petitions, that is not directly related to its commercial purposes. This policy has been strictly enforced in a nondiscriminatory fashion. The PruneYard is owned by appellant Fred Sahadi.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 13, 1980

Re: No. 79-289 PruneYard Shopping Center v. Robins

Dear Harry:

With respect to your letter of May 13th, my interpretation of the meaning of the sentence with respect to which we are still not in accord is that it is state law in the first instance that creates property rights; that is, as I understand it, if a brand new state were to come into the Union, and simply say that this was to be a state in which there was no recognition of private property, so long as it complied with the just compensation clause of the Fifth Amendment with respect to existing property rights, it would not be in violation of any constitutional provision. I do not think the same can be said to be true of the federal government, which at its inception was conceived to be one of limited powers: I don't think that under the Commerce Clause, for example, Congress could simply legislate that in none of the 50 states could there be any private property, although it would pay for existing property rights at the time it enacted that legislation under the Just Compensation Clause.

If you don't disagree with this statement of the law, I will be happy to consider sharpening up the language in any manner that you suggest; if you do disagree with it, or have some other legal point in mind which you sense that I am not apprehending, I would be happy to discuss it; but so far as the elimination of the language to change the meaning of the law as I understand it, I thought the matter through as thoroughly as I was capable of doing when I responded to your letter, and am fairly firm in the view I have stated.

Sincerely,

Mr. Justice Blackmun

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

15 MAY 1980

Recirculated: _____

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-289

PruneYard Shopping Center and Fred Sahadi, Appellants, *v.* Michael Robins et al. | On Appeal from the Supreme Court of California,

[April —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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HAB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Cases Held for No. 79-289 - PruneYard Shopping Center v. Robins

There is one case held for PruneYard: Sears, Roebuck & Co. v. Carpenters, No. 79-735. I will vote to deny.

This case involves the refusal of the California Supreme Court to issue an injunction in a trespass action by petitioner employer against respondent Union for picketing that is arguably prohibited or protected by federal law. In 1973 respondent determined that certain carpentry work was being performed at petitioner's store by men who had not been dispatched from the union hiring hall. After petitioner failed to respond to a request that petitioner use union carpenters, respondent establshed picket lines on petitioner's property.

Petitioner's store is located in the center of a large rectangular lot. It is surrounded by walkways and a large parking area. A concrete wall at one end separates the lot from residential property; the other three sides adjoin public sidewalks, which are adjacent to public streets. The pickets patrolled either on the privately owned walkways next to the building or in the parking area a few feet away. They carried signs indicating that they were sanctioned by the "Carpenters Trade Union". The picketing was peaceful and orderly.

Petitioner filed suit in the Superior Court of California to enjoin the continuing trespass by the pickets. The California Supreme Court held that the National Labor Relations Act (NLRA) had preempted state action because the picketing was arguably protected activity under § 7 and arguably prohibited activity under § 8 of the NLRA.

This Court reversed. Sears, Roebuck & Co. v. Carpenters, 436 U.S. 180 (1978). In so doing, we presumed that the picketing was a continuing trespass in violation of state law. Id., at 185. We stated, however, that the state Supreme Court was not precluded from considering on remand the Union's argument that the state Superior Court and Court of Appeal had erred in concluding that the Union's activity violated state

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 21, 1980

Re: 79-289 - Prune Yard Shopping Center
v. Robins

Dear Bill:

Please join me.

Respectfully,

Mr. Justice Rehnquist

Copies to the Conference