East County Democratic Club

November 26, 2007

To: Westfield Parkway Plaza Shopping Center
Attn: Adrian Bergeron
Fax: 619-579-1280

From: Raymond Lutz
Fax Number: 630-604-1179
Telephone: 619-820-5321

Re: Voter Registration at Westfield Parkway Plaza

Hello:

My name is Raymond Lutz, and I am the President of the East County Democratic Club.

I am attaching the Supreme Court decision, commonly known as the "Pruneyard" case, which will allow our club to set up a table so that we can perform voter registration at the Westfield Parkway mall.

Since our primary election has been moved up to February 5th, it is necessary that we offer voter registration during the holiday shopping season.

Out of courtesy, we are approaching you first so that you may suggest location choices for our table. Of course, we will appreciate being within the mall itself, and not in a back corner or poorly visited area. The Supreme Court supported the use of the central courtyard, we ask you to respect the law and allow us similar access. We would rather be able to allow the shoppers to approach our table and that will work the best if we are in a relatively busy part of the mall. Please respond to our request by Wednesday, November 28. If you decline to suggest a location, we will assume that you consider any place as good as any other, and so we will choose a place ourself.

We will be approaching mall visitors and distributed leaflets, as well as registering voters, as that is explicitly allowed as well by the Supreme Court case.

Thank you for your kind cooperation with this request. Please call my cell phone at 619-820-5321 if you should have any questions.

Thanks!

--Raymond Lutz

TEXT OF THE PRUNEYARD DECISION:
PRUNEYARD SHOPPING CENTER ET AL. v. ROBINS ET AL.
No. 79-289

SUPREME COURT OF THE UNITED STATES

447 U.S. 74; 100 S. Ct. 2035; 1980 U.S. LEXIS 129; 64 L. Ed.2d 741

March 18, 1980, Argued June 9, 1980, Decided

OPINION: MR. JUSTICE REHNQUIST delivered the opinion of the Court:
Appellant Prune Yard is a privately owned shopping center in the city of Campbell, Cal. It covers approximately 21 acres -- 5 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 Prune Yard 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 Prune Yard is owned by appellant Fred Sahadi. Appellees are high school students who sought to solicit support for their opposition to a United Nations resolution against "Zionism." On a Saturday afternoon they set up a card table in a corner of Prune Yard's central courtyard. They distributed pamphlets and asked passersby to sign petitions, which were to be sent to the President and Members of Congress. Their activity was peaceful and orderly and so far as the record indicates was not objected to by Prune Yard's patrons. Soon after appellees had begun soliciting signatures, a security guard informed them that they would have to leave because their activity violated Prune Y ard regulations. The guard suggested that they move to the public sidewalk at the Prune Yard's perimeter. Appellees immediately left the premises and later filed this lawsuit in the California Superior Court of Santa Clara County. They sought to enjoin appellants from denying them access.

THE CALIFORNIA SUPREME COURT [HELD] THAT THE CALIFORNIA CONSTITUTION PROTECTS "SPEECH AND PETITIONING, REASONABLY EXERCISED, IN SHOPPING CENTERS EVEN WHEN THE CENTERS ARE PRIVATELY OWNED." 23 Cal. 3d 899,910,592 P. 2d 341,347 (1979). IT CONCLUDED THAT APPELLEES WERE ENTITLED TO CONDUCT THEIR ACTIVITY ON PRUNEYARD PROPERTY.

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 Taking Clause. There is nothing to suggest that preventing appellants from prohibition this sort of activity will unreasonably impair the value or use of

their property as a shopping center.

The Prune Yard is a large commercial complex that covers several city blocks, contains numerous separate business establishments, and is open to the public at large.

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 have "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, 291 U.S. 502 (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....

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. There consequently is no danger of governmental discrimination for or against a particular message. 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. Such signs, for example, could disclaim any sponsorship of the message and could explain that the persons are communicating their own messages by virtue of state law. We conclude that neither appellants' federally recognized property rights nor their First Amendment rights have been infringed by the California Supreme Court's decision recognizing a right of appellees to exercise state protected rights of expression and petition on appellants' property. The judgement of the Supreme Court of California is therefore Affirmed.

THE EXERCISE OF FREE SPEECH AT SHOPPING CENTERS
In 1980, in Robins v. Pruneyard Shopping Center, the California Supreme Court held that the California Constitution protects speech and petitioning, reasonably exercised, in privately owned shopping centers because the modern shopping center is a "public forum." Large retail malls, it reasoned, are the modern-day equivalent of town squares, and owners of such facilities cannot both invite the public and exclude those who wish to communicate with them.

The Pruneyard decision, however, does not stand for the blanket proposition that every large retail establishment must permit unregulated expressive activity on its property. The Pruneyard court itself limited the obligations of shopping center owners, and subsequent California cases have further trimmed back the Pruneyard holding.

The Pruneyard court specified that owners of "modest real estate establishments" that were not performing the "quasi-town square" function would not need to permit such expressive activity. In addition, it made clear that property owners may reasonably regulate expressive activity as to time, place, and manner. Subsequent decisions have further defined and narrowed the original Prunevard ruling.

Limiting Free Speech Rights. In 1999, in Trader Joe's Co. v. Progressive Campaigns, Inc., a California appellate court held that an 11,000 square foot Trader Joe 's store did not constitute a public forum that required Trader Joe 's to permit solicitation of signatures from customers and employees without Trade Joe 's consent. This Trader Joe 's was a stand-alone structure that was not part of a shopping center and did not share property with any other retailer. The store had a parking lot containing 68 spaces for the exclusive use of Trader Joe 's patrons and employees.

Using the balancing test cited in Pruneyard, the appellate court held that Trader Joe 's constitutionally protected property interests outweighed the public's interest in using the grocery store as a forum for free speech and petitioning activity. The court determined that Trader Joe 's invitation to the public to visit its store was more limited than the invitation made by a large, regional shopping center. Trader Joe 's invited people to come and shop for food and food-related items, not to meet friends, to eat, to rest or to be entertained, or to congregate. It contained no plazas, walkways or central courtyard where patrons could congregate and spend time together. Further, because the store was a stand-alone structure, there could be no contention that its relationship to other establishments transformed it into a public forum. The court determined that Trader Joe 's was not a public meeting place, and society had no special interest in using it as such.

Similarly, in Costco Coso v. Gallant (2002), the California appellate court determined that the public was invited to Costco's stand-alone stores solely for the purpose of purchasing goods and services and, unlike customers of a large regional shopping center, Costco
customers did not come to its stores with the expectation they will meet friends, be entertained, dine or congregate. Accordingly, because Costco's stand-alone stores were not essential forums for the general exercise of free speech, the court upheld a prohibition on expressive activity at Costco's stand-alone stores.

This public-purposes approach was made even more clear in Albertson's, Inc. v. Young (2003), in which the court held that the walkway at the entrance to Albertson's grocery store was not a public forum requiring Albertson's to permit expressive activity, even though Albertson's grocery store contained 44,237 square feet, had a large parking lot in front of its store, and was part of a shopping

center that contained 10 retail stores (including a 37,000 square foot hardware store), five restaurants and five service businesses (including a travel agency, photo store, video library and mail box rental). The court's reasoning was that, despite the store's size and setting in a large shopping center, the store was a single structure, single-use grocery store that contained no plazas,

walkways, or courtyards for congregating. Further, the physical layout of the center was not under unified ownership and had no common areas that would invite the public to meet, congregate, or engage in other activities typical of a public forum that would distinguish the Albertson\'s store from an ordinary stand-alone grocery store.

Reasonable Regulation of Expressive Activity. Even where privately-owned retail establishments may be required to permit expressive activity, California courts have also upheld reasonable regulations for limiting the time, place and .manner of that activity.

In the Costco case, the court determined that Costco could impose the following regulations at its stores that share a parking lot with other retailers: (a) no expressive activities on 34 of Costco's busiest days during the year, (b) no individual or organization may use Costco property for expressive activity on more than five days within any 30 day period, (c) no individual or group may use Costco facilities on consecutive weekends, (d) expressive activities may occur only within designated areas in front of Costco stores, (e) only three participants may engage in expressive activity at anyone time, after identifying themselves, and (f) individuals or groups must complete an application at least three days in advance of any expressive activity.

The court found that these regulations were narrowly tailored to protect Costco\'s substantial interests in the smooth operation of its stores. Because the 34-day ban was content neutral, such days were during times when Costco had legitimate reasons to wish to avoid disruption, and more than 300 other days remained in the calendar year in which expressive activity was permitted, the court was satisfied the requirements were a valid regulation of time, place and manner. In addition, the court permitted Costco to enforce its 5 days out of 30 restriction so long as such enforcement was performed on a uniform basis or on the basis of some objective, content-neutral standards.

Likewise, in Lushbaugh v. Home Depot (2003) the California appellate court upheld Home Depot's written policy guidelines allowing non-commercial speech activities in a designated area, on a first-come, first-served basis and upon written application to store management, concluding that such regulations complied with any duty it may have had to provide public access by enforcing reasonable time, place and manner rules.

The emerging trend from these cases is that the crucial element in balancing private property rights against free speech rights is the nature of the premises and the extent to which they have been opened up to the public for congregation and other public purposes, as opposed to strictly directed commercial purposes. In each of these cases, the retailers did not create an environment that encouraged the public

to gather for any purpose other than to purchase goods. However, these cases leave open the question as to how the courts might treat other retail settings that do invite the public to congregate for purposes other than just to buy merchandise or services, as, for example, a large bookstore that (along with its bookselling) invites people to gather and meet in, and even offers performance space in, its cafe.