Forum for the Common Man:

How *Robins v. Pruneyard* Integrated the Marketplace of Ideas With the Marketplace of Goods

BY MITCHELL KEITER

As the political unrest of recent years reaches levels of disruption and violence not seen since the Vietnam War era, it is worth remembering that consequential expression has often been peaceful. One of the most significant First Amendment cases in California (and American) history commenced when high school students sat in a Santa Clara mall collecting signatures opposing both a U.N. resolution against Zionism and Syria's emigration restrictions. After security guards evicted the students, they took their case all the way to the California Supreme Court, which, in *Robins v. Pruneyard Shopping Center*, upheld their "peaceful and apparently well-received activity."[1]

The case then reached the U.S. Supreme Court in *PruneYard Shopping Center v. Robins*, which confirmed the students were "peaceful" and that their right to speak and petition could supersede the mall's right to evict them.[2] This conflict, between speakers who wish to express ideas and property owners who wish not to host that expression, lies at the core of two cases currently before the nation's highest court. Texas and Florida each enacted statutes that grant social media users rights to speak on these websites and forbid the platforms from refusing to host the speech.[3] Not surprisingly, the high court's *PruneYard* decision was the precedent cited most by these states at oral argument in February in defending the statutes' constitutionality.

Once shopping malls replaced downtown shopping districts as centers of commerce in the decades after World War II, the malls assumed their role as de facto public squares and loci of political expression. Labor unions seeking to picket businesses found the area outside them to be the most effective site of protest,[4] and a broader range of speakers followed, especially those gathering petition signatures (some of which would enable initiatives to reach the California ballot), as no other location could so well enable the requisite physical transaction involved in signing.[5] The *Pruneyard* courts would determine whether "the historic connection between the marketplace of ideas and the market for goods and services" should be preserved.[6]

Above: The Pruneyard courtyard in Los Gatos as pictured in 1970. *Photo: Sandor Balatoni.* Below: The courtyard in 1972. Robins and Marcus set up their table somewhere on its premises. *Times-Saratoga Observer, Aug. 24, 1972.*

The Historical Precedents

The historical connection dated back millennia, and amicus curiae briefing at the U.S. Supreme Court stressed the link to antiquity: "This court should recognize that the twentieth century shopping center is the modern equivalent of the Greek agora and that First Amendment guarantees must be afforded these

1. (1979) 23 Cal.3d 899, 902. The federal litigation shows the name as "*PruneYard.*" The state litigation, like the mall itself, shows the name as "*Pruneyard.*" This article employs the latter, except when citing to specific documents concerning the federal litigation.

2. (1980) 447 U.S. 74, 77, 88.

3. *NetChoice v. Paxton* (U.S. Supreme Ct. docket 22-555); *Moody v. NetChoice* (U.S. Supreme Ct. docket 22-277).

4. See e.g. *Schwartz-Torrance Investment Corp. v. Bakery & Confectionary Workers' Union* (1964) 61 Cal.2d 766, cited in *Food Employees Union v. Logan Valley Plaza* (1968) 391. U.S. 308, 325, fn. 15, overruled in *Hudgens v. NLRB* (1976) 424 U.S. 507, 518–20.

5. *Diamond v. Bland* (1970 3 Cal.3d 653, 663, overruled in *Diamond v. Bland* (1974) 11 Cal.3d 331; see also *Lloyd Corp. Ltd. v. Tanner* (1972) 407 U.S. 551, 583, fn. 7 (dis. opn. of Marshall, J.).

6. *Bock v. Westminster Mall Co.* (Colo. 1991) 819 P.2d 55, 62.

modern-day public forums."[7] The Greek social centers had developed in the Homeric era, though they started as sites for exchanging ideas and only later developed their commercial function. (The reverse sequence would define California's shopping malls.) There was no clear line separating the agora's multiple roles as civic center and market. Aristotle advocated (unsuccessfully) for a strict separation between agorai devoted to trading ideas and those devoted to trading goods. He called for a "Free Square [which] should be clear of all merchandise; and no mechanic, farmer, or other such person should be permitted to enter, except on the summons of the magistrates. . . . The market-square for buying and selling should be separate from the public square, and at a distance from it." The proposal portended a strict class divide: "The public square, on its higher ground, is assigned to . . . leisure: The market square belongs to the business activities . . . ."[8]

It was such a class-based exclusion from public discourse that alarmed the U.S. Supreme Court in *Marsh v. Alabama*.[9] World War II had fostered an egalitarian ethos, as millionaires and paupers shared foxholes, tanks, and planes, and trusted each other with their lives. Aaron Copland's *Fanfare for the Common Man* premiered in 1943, and just months later Judge Learned Hand celebrated the wisdom of crowds in language the high court would later adopt: "[R]ight conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection."[10] Perhaps the most vivid depiction of the egalitarian ethos was Norman Rockwell's iconic painting *Freedom of Speech*, which depicted a Vermont town hall: Two white-collared men in suits and ties twist their heads to better hear a blue-collared speaker in a leather jacket. Its enduring message was that if "mechanics" could share in the risks of war, they could share in the privilege of democratic self-government.[11]

Marsh concerned an Alabama town owned by the Gulf Shipbuilding Corporation. Such company-owned towns used to be common; half of all coal miners lived in these towns in the early 1920s.[12] Though the town had a business district, open and available to visitors, it resembled Aristotle's lower square, as the corporate owner permitted the trading of only goods, not ideas. When Grace Marsh tried to distribute religious literature, she was arrested and convicted of trespassing.[13]

The *Marsh* court reversed her conviction and vindicated her First Amendment right to speak. Democratic self-government demanded the civic participation of the trading/working class, the court held: "Residents of company-owned towns, like other citizens, must make decisions which affect the welfare of community and nation. To act as good citizens they must be informed."[14] The imperative of an informed citizenry existed regardless of whether land was publicly or privately owned: "Whether a corporation or a municipality owns or possesses the town, the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free."[15]

In midcentury America, the automobile created a "fifth freedom,"[16] the freedom of movement.[17] It finished off company towns, as employees no longer needed to live so close to their workplace.[18] It further enabled the growth of suburbia — and the shopping center.[19] Both the U.S. and California supreme courts would have to address whether *Marsh*'s speech protections should extend to these institutions.

Birth of the Mall

The 1950s saw not only a baby boom but a shopping mall boom: The U.S. had 75 in 1949, and 4,000 by 1960.[20] The two trends were related. Whereas downtown districts served the single shopper on weekdays, suburban shopping centers catered to entire families and were open evenings and weekends.[21] Rejecting Aristotle's bifurcation, these malls had ambitions beyond just selling goods. As architect Victor Gruen described his vision for Minne-

7. Brief of the American Jewish Congress and the Synagogue Council of America as Amicus Curiae, *PruneYard v. Robins* (U.S. Supreme Ct. docket 79–289), cited in Paul William Davies, *American Agora:* Pruneyard v. Robins *and the Shopping Mall in the United States* (unpub. Ph.D. diss., Univ. of Calif., Berkeley, 2001) (*American Agora*).

8. Aristotle, *Politics*, Book VII, Chapter 12 (Ernest Barker, trans.) Oxford: Clarendon Press, 1946, 310.

9. (1946) 326 U.S. 501.

10. *United States v. Associated Press* (S.D.N.Y. 1943) 52 F.Supp. 362, 372, aff'd (1945) 326 U.S. 1, cited in *New York Times v. Sullivan* (1964) 376 U.S. 254, 270.

11. *See* Norman Rockwell Museum, *https://www.nrm.org/2012/01/norman-rockwells-four-freedoms/* [as of Mar. 20, 2024].

12. *Marsh*, *supra* 326 U.S. 508, n. 5.

13. *Id.* at 503–04.

14. *Id*. at 508.

15. *Id.* at 507.

16. President Franklin D. Roosevelt articulated the "four freedoms" in his State of the Union address to Congress on Jan. 6, 1941. In addition to Freedom of Speech, the other three were Freedom of Religion, Freedom from Fear, and Freedom from Want. *See* "FDR and the Four Freedoms Speech," Franklin D. Roosevelt Presidential Library and Museum, *https://www.fdrlibrary.org/four-freedoms* [as of Mar. 20, 2024].

17. *American Agora*, *supra* n. 7, at 149, quoting J. Ross McKeever, "Shopping Centers Re-Studied: Emerging Patterns and Practical Experiences," *Urban Land Institute–Technical Bulletin*, No. 30, Part One, Washington, D.C.: Urban Land Institute, 1957, 19, in turn quoting Austin Tobin, Port of New York Authority.

18. Aayush Singh, "The Rise and Fall of Company Towns," *Econ Focus*, Federal Reserve Bank of Richmond, 2023.

19. *American Agora*, *supra* n. 7, at 149.

20. *Id*. at 127, 139.

21. *Id*. at 152–53, citing David C. Melnicoff, "The Marketing Revolution" (Apr. 1954) 30 *Chain Store Age*, 23.

Left to right: Plaintiffs Michael Robins and Ira Marcus, and plaintiffs' attorney Philip L. Hammer. *San Jose Public Library*.

apolis' Southdale mall, which in 1956 opened as the first fully enclosed mall in America, the project would "fill the vacuum created by the absence of social, cultural, and civic crystallization points in our vast suburban areas. . . . Humans want to mingle with other humans. At a center like Southdale they will be able to attend fashion shows, concerts and exhibits of everything from new cars to paintings."[22]

Fred Sahadi planned to get in on this building boom. Still in his early 30s, he purchased a former apricot orchard in 1968 off Bascom Avenue in Campbell, and opened it as the Pruneyard mall on Christmas Day 1969.[23] By 1973, the mall had 63 stores, together exceeding $10 million in aggregate revenues.[24] Pruneyard would be the only mall Sahadi ever developed, and it broke the mold in several ways.[25] Though most new malls were enclosed, the Pruneyard, like the Stanford Shopping Center, was not.[26] (The area's near-perfect weather made a controlled climate less essential than it was in Minnesota winters or Texas summers.) The Pruneyard also had no "anchor" tenants (usually large department stores) and few national chain stores.[27]

Pruneyard in the Trial Court

Though the *Pruneyard* litigation would last more than four years, the facts underlying the plaintiffs' cause of action lasted barely five minutes. On November 16, 1975, Temple Emanu-El students and teachers, including lead plaintiffs Michael Robins, Ira Marcus, and teacher Roberta Bell-Klinger, went to the Pruneyard to collect signatures for petitions urging President Gerald Ford to support Syrian Jews and oppose the United Nations' resolution condemning Zionism as racist.[28] The California Supreme Court would describe their activity as "peaceful and apparently well-received by Pruneyard patrons," several of whom signed, but the group was told it could not continue and would have to depart.[29] After leaving, they attempted to collect signatures at another mall, and met the same fate.[30]

They reported these events to the temple's board, whose only lawyer was the immediate past president, Philip L. Hammer. When Hammer could not resolve the issue with Pruneyard manager Kevin Salmon, his childhood friend, he requested and received the board's support for legal action.[31] Hammer would work pro bono, with the assistance of first-year associate Ann Miller Ravel (who would later serve as Santa Clara County Counsel and chair of the Federal Election Commission), and then on appeal with law student Matthew McAlerney. This would be Ravel's first trial, just as it would eventually be Hammer's first — and only — U.S. Supreme Court appearance.

But their inexperience may have served Hammer, Ravel, and McAlerney well. As a constitutional matter, the law seemed to foreclose the challenge. After the U.S. Supreme Court had held there is no First Amendment right to speak in privately owned malls,[32] the California Supreme Court had followed suit and reversed its own prior precedent protecting such speech.[33] Hammer and Ravel therefore focused less on constitutional doctrine than on the social effects of privatizing communal gathering places.[34] Pruneyard's counsel characterized the case narrowly as a simple trespass that infringed Sahadi's property rights. To the contrary, Hammer and Raval characterized it broadly, launching a sweeping attack on

22. Sterling Soderlund, "Architect says Southdale Planned as 'Cultural Center' for its Patrons," *Minneapolis Tribune* (Mar. 14, 1954), quoted in *American Agora*, *supra* n. 7, at 245.

23. *American Agora*, *supra* n. 7, at 30–31.

24. *Id*. at 31–32, 118.

25. *Id*. at 123.

26. *Id*. at 113.

27. *Id*. at 114.

28. *Robins*, *supra* 23 Cal.3d 899, 902; *American Agora*, *supra* n. 7, at 355–56.

29. *Robins*, *supra* 23 Cal.3d at 902.

30. *American Agora*, *supra* n. 7, at 356.

31. *Id*. at 357–60.

32. *Lloyd*, *supra* 407 U.S. 551, 568, 570.

33. In *Diamond*, *supra* Cal.3d 653, 665–66, the court found the plaintiff had a First Amendment right to solicit signatures concerning an initiative petition and to distribute corresponding leaflets at the defendant's shopping center. Thereafter, in *Diamond II*, 11 Cal.3d 331, 334–35, in light of the high court's decision in *Lloyd, supra* 407 U.S. 551, that a mall owner could prohibit distribution of anti-war leaflets on its property, the California Supreme Court reversed its own 1970 decision in *Diamond* and followed the high court's holding in *Lloyd*.

34. *American Agora*, *supra* n. 7, at 377.

the diminution of public space in Santa Clara County, and its potential to constrict the expression of ideas needed for self-government to thrive.[35] "[W]here there are no adequate public forums, the shopping center must take on the role of the defunct downtown, so that the extremely important need in our society for the dissemination of ideas by individual citizens does not become impossible."[36]

Santa Clara Superior Court Judge Homer Thompson ruled in favor of the mall, as both sides expected he would.[37] But he offered a silver lining to the plaintiffs in expressing a conclusion that the mall was not dedicated to "public use," which would "entitle plaintiffs" to protection "under the Constitution of the State of California."[38] Hammer had relied exclusively on the federal Constitution's First Amendment, and never had alleged any independent violation of the state charter.[39] Yet after Judge Thompson's reference to the issue, it would become the centerpiece of Hammer's appellate briefing.[40]

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In light of the controlling precedents, Hammer was not surprised when the Court of Appeal affirmed, as it was bound to follow those prior decisions. But the Supreme Court could re-examine its own precedent, and in the five years after the controlling 1974 *Diamond* decision, a majority of the court had turned over. Chief Justice Rose Bird and Associate Justices Wiley Manuel, Frank Newman, and Frank Richardson had replaced Chief Justice Donald Wright and Associate Justices Louis Burke, Marshall McComb, and Raymond Sullivan. Only Justice William Clark remained from the *Diamond* majority.

The California Supreme Court's Decision

When the Supreme Court granted review, both counsel realized the tables had turned. The Supreme Court had the authority to construe the California Constitution to provide more protection than the First Amendment, and it would not have granted review merely to confirm *Diamond*.

Justice Newman, who would write the majority opinion, was familiar to both Hammer and Pruneyard's counsel, Tom O'Donnell, as they had studied administrative law under him at UC Berkeley.[41] Newman's opinion construed the high court's decision in *Lloyd*[42] — which had concluded that a mall owner could prohibit distribution of anti-war leaflets on its property — as holding that the First Amendment does not provide a right to engage in political expression inside a privately owned mall. Yet Newman's opinion noted that *Lloyd* did not hold that mall owners had an affirmative property right to *exclude* unwanted speakers.[43] Accordingly, *Lloyd* did "not preclude law-making in California which requires that shopping center owners permit expressive activity on their property."[44] The three dissenting justices construed *Lloyd* more broadly: "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.' "[45]

Not only *could* California provide greater speech protection than the First Amendment, but the majority found the wording of article I, section 2 of the California Constitution[46] indicated that it *did*.[47] Justice Newman's opinion further cited California precedents that protected speech more broadly than their federal counterparts and emphasized Robins' statistics demonstrating the social changes wrought by suburbanization.[48]

The United States Supreme Court's Decision

After the loss at the California Supreme Court, Sahadi decided he had invested enough time and energy in the matter and declined to pursue the matter with the U.S. Supreme Court.[49] But there were other interested parties, and the International Council of Shopping Centers prevailed upon him to continue the case, with the ICSC's funds — and counsel.[50] At the same time, Hammer was also getting assistance from new counsel. The Office of United States Solicitor General Wade McCree contacted Hammer, and indicated its interest in filing an amicus curiae brief and appearing at oral argument to support

35. *Id*. at 117, 377.

36. Plaintiffs' brief 5, *Robins v. Pruneyard* (Santa Clara Superior Court, No. 349363, filed June 23, 1976), quoted in *American Agora*, *supra* n. 7, at 391.

37. *American Agora*, *supra* n. 7, at 392.

38. *Id*. at 393, quoting Proposed Findings of Fact and Conclusions of Law, *Robins v. Pruneyard* (Santa Clara Superior Court, No. 349363) Sept. 14, 1976, 3.

39. *Id.* at 393.

40. After Ravel left the firm, Hammer brought in Santa Clara law student McAlerney to assist with the appeal. *Id*. 402.

41. *Id*. *at* 404.

42. 407 U.S. 551.

43. *American Agora*, *supra* n. 7, at 404.

44. *Robins*, *supra* 23 Cal.3d at 905.

45. *Robins*, *supra* 23 Cal.3d at 914 (dis. opn. of Richardson, J.).

46. That section 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 the speech or press."

47. *Robins*, *supra* 23 Cal.3d at 910.

48. *Id*. at 907–10.

49. *American Agora*, *supra* n. 7, at 406.

50. *Id*. at 406–07.

his position.[51] Attorneys from that office gave Hammer substantive and procedural advice, and assured him that if Justice Potter Stewart left the bench during argument, it would not reflect negatively on his advocacy; Stewart was simply a chain smoker who sometimes would leave and listen to argument over a speaker behind a curtain.

Hammer continued to promote his broader, sociological argument. He defended the California Constitution's exceptional speech protection as properly "responsive" to California's exceptional car and mall culture.[52] "The scene in California is really quite different as compared to this beautiful city," he told the court.[53] "The people in many of our areas of California are rarely found on public property. They are in their homes and workplaces, their automobiles and their privately owned shopping centers. They are rarely on the public streets."[54]

This theme received support from an amicus brief filed by the AFL-CIO, principally authored by San Francisco labor lawyer Marsha Berzon (now a senior judge on the U.S. Court of Appeals for the Ninth Circuit), with whom Hammer consulted regarding both briefing and argument. "California has determined that modern-day land use patterns — principally the increasing suburbanization of which shopping centers are both a cause and an effect — require shopping centers to permit expressive activity if the public dialogue is to be maintained. The felt need to respond to a novel form of land use and the problems that use creates is similar to the dynamic which led, when the trend was not suburbanization but urbanization, to comprehensive zoning ordinances."[55] In other words, if the state could regulate property usage to limit the traffic of autos, it could regulate it to protect the traffic of ideas.

Just as Hammer had added the state constitutional argument when he appealed the trial court ruling, Pruneyard's lawyers introduced a new theory before the U.S. Supreme Court, contending that hosting unwanted speech would infringe not only Pruneyard's Fifth Amendment property rights but also its own First Amendment free speech protections. "If Mr. Sahadi could not be forced to sign a petition condemning Syria," likewise "he cannot be required to devote his private property to appellee's cause."[56] Pruneyard cited "compelled speech" cases, including *Wooley v. Maynard*[57] and *West Virginia St. Bd. of Educ. v. Barnette*.[58] The court ultimately addressed Pruneyard's claim 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," but rejected it.[59]

In *Wooley*, a New Hampshire driver successfully objected to the state's demand that he display the state's "Live Free or Die" motto on his license plate as a condition of driving.[60] Though the driver, like the mall, was ordered to host unwanted speech on his property, the court distinguished the two cases. The views of speakers at the mall would not be attributed to its owner, and the government was not prescribing any particular message.[61] The court found that *Barnette*, in which a student had been compelled to affirm allegiance to the flag, was inapposite because the mall owner was not obligated to affirm any message.[62]

Although there were several opinions, each reflecting the justices' competing understandings of federal precedents, no justice dissented. In his only trip to the U.S Supreme Court, Phil Hammer won 9 to 0. Sahadi would suffer a greater loss than his judicial defeat in 1991, when he defaulted on a $45.5 million loan and lost the mall, which fell into federal regulators' hands until it was bought by a San Mateo developer.[63]

The Post-*Pruneyard* Environment

After 1980, some states followed California in protecting speech in private shopping centers, but most did not.[64] As one commentator presciently foretold, the debate would move to an entirely different forum, which did not yet even exist. "As American society continues to evolve, it is foreseeable that a totally new public forum may arise which cannot be pinpointed precisely today. Just as the Supreme Court in 1946 probably did not envision the results in *Pruneyard* when it decided *Marsh*, so the U.S. Supreme Court today cannot envision a subsequent public forum, but one is nevertheless likely to appear within the next few decades."[65]

51. *Id*. at 419. McCree was the first African American Solicitor General and his office expressed concern that a broadly construed "right to exclude" could jeopardize important anti-discrimination protections. Elinor Hadley Stillman argued the case for the United States, using 10 of Hammer's 30 minutes. *PruneYard*, *supra* 447 U.S. 74, 76.

52. *Id*. at 3.

53. *Id*. at 2.

54. *Id*. at 2–3.

55. *American Agora*, *supra* n. 7, at 416, quoting Brief Amicus Curiae of the American Federation of Labor Congress of Industrial Organizations at 10 (*PruneYard v. Robins* U.S. Supreme Court docket 79–289).

56. Brief of Appellants at 21, *PruneYard v. Robins* (U.S. Supreme Ct. docket 79-289), quoted in *American Agora*, *supra* n. 7, at 412.

57. (1977) 430 U.S. 705.

58. (1943) 319 U.S. 624.

59. *PruneYard*, *supra* 447 U.S. at 85 (italics added).

60. *Wooley*, *supra* 403 U.S. at 707, 717.

61. *PruneYard*, *supra* 447 U.S. at 87.

62. *Id*. at 88.

63. *American Agora*, *supra* n. 7, at 476.

64. *Id*. at 428–34.

65. Stephen G. Opperwill, "Shopping for a Public Forum: *Pruneyard Shopping Center v. Robins*, Publicly Used Private Property, and Constitutionally Protected Speech Case" (1981) 21 *Santa Clara L. Rev*. 801, 841.

Shopping center politicking 'right'

SAN FRANCISCO (UPI) — The State Supreme Court has held that [illegible] the right to circulate

Center petitioners supported by court

By HARRY F. ROSENTHAL
Associated Press Writer

WASHINGTON (AP) — The Supreme Court ruled unanimously today that a California shopping center did not have the right to prohibit petitioning on its premises by a group of high school students.

"The shopping center by choice of its owner is ... a business establishment that is open to the public to come and go as they please," the court said.

"The views expressed by members [illegible] suspected of committing a crime. The case involves stopping a camper carrying illegal aliens from Mexico.

— Decided unanimously that a person who aids and abets a federal crime may be convicted even though the principal defendant has been acquitted.

The shopping center controversy goes back to a Saturday afternoon, Nov. 17, 1975, when a group of high school students showed up at the Pruneyard Shopping Center in suburban

Above: *The Press Democrat,* Apr. 1, 1979. Below: *The Desert Sun,* June 9, 1980.

The postwar shopping mall boom has certainly crested. There were only 700 malls open in 2022 (down from a peak of 25,000 in the 1980s), and the number is expected to decline further.[66] Many shoppers — and ensuing constitutional debates — have moved online.

Both Florida and Texas passed laws in recent years that prescribe viewpoint-neutral access to privately owned social media platforms, much as the *Pruneyard* decisions protected speakers' access to shopping centers. Not surprisingly, the states have emphasized the *Pruneyard* precedents to establish the constitutionality of these laws. NetChoice, the consortium of platforms that is challenging them, contends that platforms deserve editorial discretion to exclude unwanted speech, and that the *Pruneyard* decisions have no effect on the case because the mall owner did not advance any expressive interest — which, as shown above, is not exactly true.

At the core of the controversy is the role of property ownership in assigning speech rights. On one hand, *Wooley* could support the position of malls and platforms that because they own the property, they may choose not to host unwanted messages, as that case holds. Under that view, states may not "constitutionally require an individual to participate in the dissemination of an ideological message by displaying it *on his private property* in a manner and for the express purpose that it be observed and read by the public."[67] On the other hand, the U.S. Supreme court's *PruneYard* decision distinguished *Wooley*, which had expressed concern that the license plate's message would be "readily associated" with the driver,[68] on the ground that the messages of mall pamphleteers and signature gatherers "will not likely be identified with those of the owner."[69] The conflict between the ownership and attribution factors would exist clearly if an individual posted a bumper sticker on a car he was leasing, and the titleholder demanded its removal.

The *NetChoice* cases may well turn on whether the court finds that hosting on one's property the speech of another resembles expressing that speech directly, or whether the speech remains attributable to the speaker, not the host. If the former, then the high court may find it to be unconstitutionally compelled speech; if the latter, the *Pruneyard* decisions may help the statutes survive the high court's review.

However the court decides the constitutional issues, there is wisdom in architect Victor Gruen's dictum that "Humans want to mingle with other humans." The Pruneyard mall was not only *where* Michael Robins and his companions acted peacefully in expressing their views, but part of the reason *why* they did. Teenagers in the 1970s had the opportunity to interact with many fellow mall patrons, and they developed the capacity to get along with a wide range of people. Today's teens, however, shop and socialize online, where they are often anonymous, and interact with individuals whom they may never meet in person. Moreover, platforms' viewpoint-based exclusions (which the Texas and Florida laws seek to prevent) have led to digital echo chambers, where students never hear competing perspectives, and thus come to believe the worst about their ideological adversaries. Instead of developing habits of persuasion, contemporary disconnection has generated political activity that is more violent, angry, and disruptive. In a pluralistic society, it won't be possible to achieve unanimity on all contentious issues, but a shared Orange Julius at the food court could do much to lower the political temperature. ✯

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66. Avery Hartmans, "The rise and fall of the American shopping mall," *Business Insider*, Jan. 6, 2023; Tim Levin, "The decline of the American mall has left just 700 still standing. Soon there may be just 150 left," *Business Insider*, Oct. 12, 2022.

67. *Wooley*, *supra* 430 U.S. at 713 (italics added).

68. *Id*. at 717, fn. 15.

69. *PruneYard*, *supra* 447 U.S. at 87.