

No.

In the Supreme Court of the United States

MAJESTIC REALTY CO.; REDLANDS JOINT VENTURE,
LLC; AND MOUNTAIN GROVE PARTNERS, LLC,
Petitioners,

v.

ALEX SALAZAR,
Respondent.

*On Petition For A Writ Of Certiorari
To The Court Of Appeal Of The State Of California
Second Appellate District, Division One*

PETITION FOR A WRIT OF CERTIORARI

PETER C. SHERIDAN
STEVE BASILIO
Glaser Weil Fink Howard
Jordan & Shapiro LLP
10250 Constellation Blvd.
19th Floor
Los Angeles, CA 90067

J. DAVID BREEMER
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814
(916) 419-7111
jbreemer@pacificlegal.org

DEBORAH J. LA FETRA
BRIDGET CONLAN
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

Counsel for Petitioners

QUESTION PRESENTED

Petitioners own and operate adjoining shopping centers in Southern California (“the Centers”). The Centers prohibit petitioning and leafletting on their property. Alex Salazar, a self-described “activist,” sought permission to distribute leaflets expressing his belief that “[m]en are not legally and financially responsible for supporting a child that a woman chooses to have,” and “[m]en are not owned by women through their bodies!” Consistent with its policy, the Centers denied his request. Salazar sued, claiming he had a right to engage in expressive activity on the Centers’ property under the California Constitution’s free speech guarantee. In a published decision, the California Court of Appeal agreed. Relying on *Robins v. PruneYard Shopping Center*, 23 Cal. 3d 899 (1979), *aff’d*, 447 U.S. 74 (1980), the court held that Salazar’s activity was protected by the state constitution’s free speech provision and did not violate the Centers’ right to exclude under the Fifth Amendment’s Takings Clause or its right to remain silent under the First Amendment compelled speech doctrine.

The question presented is:

Whether, contrary to *PruneYard*, a State violates the Takings Clause and the First Amendment when it requires the owners of private commercial property to allow unwanted expressive activity on their land?

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioner Majestic Realty Co., a California corporation, was a defendant and respondent below.

Petitioner Redlands Joint Venture, LLC, a California limited liability company, was a defendant and respondent below.

Petitioner Mountain Grove Partners, LLC, a California limited liability company, was a defendant and respondent below.

Majestic Realty Co. is the parent corporation of Redlands Joint Venture, LLC and Mountain Grove Partners, LLC. No public company owns stock in these corporations and none have stock ticker symbols.

Respondent Alex Salazar, a natural person, was the plaintiff and appellant below.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Salazar v. Majestic Realty Co., No. B343420 (Cal. Ct. App. Dec. 4, 2025)

Salazar v. Majestic Realty Co., No. 24PSCV02047 (Cal. Super. Ct., Cnty. of Los Angeles—East District, Dec. 11, 2024)

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PETITION FOR A WRIT OF CERTIORARI

Majestic Realty Co., Redlands Joint Venture, LLC, and Mountain Grove Partners, LLC, own and operate Citrus Plaza and Mountain Grove, two adjoining open-air shopping centers in Redlands, California (“the Centers”). The Centers, which are bounded by public streets, seek to promote a pleasant shopping experience through a policy that prohibits “soliciting, petitions, polling, . . . peddling, political causes, [and] distribution of pamphlets.” App. 5a. Signs posted on the property announce this policy. Those wishing to engage in expressive activity on the property are instructed to “obtain[] the prior written permission of the Centers’ management.” *Ibid.* Management routinely denies permission consistent with its established policy. *Ibid.*

Alex Salazar is an unemployed activist who encourages men to flout child support orders. App. 3a-4a, 50a n.3. He promotes the concept of “eMANcipation” based on his belief “that men have a legal right to decide whether to pay child support for a child born outside of marriage.” App. 3a-4a. His leaflets proclaim, “Men are not owned by women through their bodies!” and “Men are not legally and financially responsible for supporting a child that a woman chooses to have [¶] Learn about men’s eMANcipation and join the fight[,] men. Contact Alex Salazar at [e-mail address omitted]. I hold meetings in Riverside. Email me for meeting details.” App. 4a.

Salazar asked the Centers for permission to distribute these inflammatory flyers on their property. The Centers denied his request, based on their policy prohibiting expressive activities, including leafletting. App. 5a. Salazar sued the Centers in state court,

asserting that their policy violates the California Constitution's liberty of speech provision. App. 6a. Salazar sought a preliminary injunction, App. 6a, which the trial court denied based on Salazar's desire to stand next to store entrances, an area where state law considers the disruption to business to outweigh speech rights on private property. App. 62a.

The California Court of Appeal reversed. In so doing, the court relied heavily on the California Supreme Court's opinion in *Robins v. PruneYard Shopping Center*, 23 Cal. 3d 899, 910 (1979), a decision that was subsequently affirmed by this Court. *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980); App. 2a-3a.

The California Supreme Court's *PruneYard* decision holds that the California Constitution authorizes "speech and petitioning, reasonably exercised, in shopping centers even when the centers are privately owned." *Robins*, 23 Cal. 3d at 910. Concluding that the Centers' policies forbidding expressive activity on their property were unconstitutional under *PruneYard*, the court below held that Salazar was likely to prevail on the merits of his claim. App. 44a. It ultimately granted a preliminary injunction against "the Centers' total ban on expressive activity." App. 46a. In doing so, the court below rejected the Centers' argument that an order enjoining the Centers from excluding Salazar's speech effects an uncompensated taking of its property and/or violates the First Amendment because "the United States Supreme Court rejected similar federal constitutional challenges." App. 42a (citing *PruneYard*, 447 U.S. at 83, 85).

In this Court's *PruneYard* opinion, the Court acknowledged that the California Supreme Court's conclusion that citizens may "exercise free expression and petition rights on shopping center property" meant the shopping center was "physically invaded" and that there had "literally been a 'taking'" of the owner's "right to exclude." 447 U.S. at 82-84. However, applying the multi-factor takings test articulated in *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978), this Court concluded that California's literal taking of the shopping center owner's right to exclude was not unconstitutional because the owner "failed to demonstrate that the 'right to exclude others'" was "essential to the use or economic value of their property." *PruneYard*, 447 U.S. at 84. The Court further held that California's ruling did not compel the shopping centers to speak, in violation of the First Amendment. Justices Powell and White issued concurring opinions highlighting the First Amendment dangers arising from the Court's decision to allow states to compel private property owners to accept unwanted activists and expressive activity on their property. *Id.* at 95-101.

PruneYard has always been difficult to square with this Court's jurisprudence, but, over the last four decades, this tension has exploded into full-blown conflict. *PruneYard* is plainly incompatible with this Court's subsequent takings precedent establishing that a government-authorized invasion of private property by third parties is a *per se* taking because it eviscerates the owner's fundamental right to exclude others. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149-52 (2021).

Under the “physical takings” doctrine, a government-authorized physical invasion of property is a taking “without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner.” *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 423, 434-35 (1982). *PruneYard*’s conclusion that granting third parties a right of “speech access” on a private shopping center is not a taking because it will not “unreasonably impair the value or use of their property,” 447 U.S. at 83, is irreconcilable with the Court’s modern takings doctrine. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005); Gregory C. Sisk, *Returning to the PruneYard: The Unconstitutionality of State-Sanctioned Trespass in the Name of Speech*, 32 Harv. J.L. & Pub. Pol’y 389, 413 (2009) (“[C]ase law has long since superseded the odd case out of *PruneYard*. Today, the governmentally encouraged physical invasion by strangers onto private property for speech, distribution of flyers, or any other purpose that the owner does not authorize is a classic example of a *per se* taking.”).

Since *PruneYard*, this Court’s First Amendment jurisprudence has also developed to more clearly and firmly protect the individual right to refrain from speaking. In particular, *Janus v. American Federation of State, County, and Municipal Employees, Council 31*, 585 U.S. 878, 894 (2018), holds that the “compelled subsidization of private speech seriously impinges on First Amendment rights.” *PruneYard*’s conclusion that California can require shopping center owners to subsidize speech by providing their property as a platform for unwanted speech by third parties is incompatible with the modern compelled speech doctrine.

In this case, the Centers are barred from excluding an individual who seeks to use their property to promote his troubling belief that “[m]en are not legally and financially responsible for supporting a child that a woman chooses to have.” App. 4a. Recognizing its offensiveness to many, the Centers object to this speech on their property. Record On Appeal at 118 (Declaration of Sara Bombardier ¶ 20) (confidential unredacted version). But the reality is that the Centers do not want *any* non-business expressive activity occurring on the property. The Takings Clause and First Amendment should not remain impotent while California requires the Centers to open their private property to activists who want to promote their views, objectionable or not. See *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 813 (2019) (“The Constitution does not disable private property owners and private lessees from exercising editorial discretion over speech and speakers on their property.”).

The Court should grant the Petition to hold that states violate the First and Fifth Amendments to the Constitution by authorizing third parties to use private property for unwanted expressive activity, overruling *PruneYard*.

OPINIONS BELOW

The published decision of the California Court of Appeal is reported at 116 Cal. App. 5th 813 (2025) and reprinted at App. 1a-46a. The unpublished trial court order denying the motion for preliminary injunction is reprinted at App. 47a-64a.

JURISDICTION

The decision of the California Court of Appeal, App. 1a-46a, was issued on December 4, 2025. The California Supreme Court denied review on February 25, 2026. App. 66a. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in relevant part: “Congress shall make no law . . . abridging the freedom of speech”

The Fifth Amendment to the United States Constitution provides in relevant part: “private property [shall not] be taken for public use, without just compensation.”

STATEMENT OF THE CASE

1. Petitioners own and operate adjacent shopping centers, both of which prohibit “soliciting, petitions, polling, . . . peddling, political causes, [and] distribution of pamphlets” on their property. App. 5a. The Centers maintain signs at their entrances that recite the Centers’ policy and state, “All offenders will be prosecuted to the fullest extent of the law.” *Ibid.* (some capitalization omitted). The Centers also have a code of conduct. Section 34 of this code states: “All non-commercial expressive activity must be in compliance with the Centers’ rules for such activities including, but not limited to, obtaining the prior written permission of the Centers’ management.” *Ibid.* In practice, the Centers do not grant permission for noncommercial expressive activity. *Ibid.*

Salazar is “an activist with a strong interest in increasing dialogue about men’s reproductive rights and responsibilities.” App. 3a. Salazar seeks to communicate to others that “men have a legal right to decide whether to pay child support for a child born outside of marriage, a movement which he has coined men’s “eMANcipation.” App.3a-4a. Salazar wishes to “bring[] people together to discuss the issue,” and has “created a 12-point, hour-long[] presentation on the topic.” App. 4a.

Salazar distributes flyers at shopping centers to inform people about his views and meetings. One of the flyers states, “Men are not owned by women through their bodies!” and “Men are not legally and financially responsible for supporting a child that a woman chooses to have, for women’s reproductive decisions that only a woman can make with her female body, and for what women do with their bodies. And a man has the right to choose to support a child for any child born outside of marriage. [¶] Learn about men’s eMANcipation and join the fight[,] men.” App. 4a. The flyer instructs people to “Contact Alex Salazar at [e-mail address omitted]. I hold meetings in Riverside. Email me for meeting details.” “Learn the truth. Learn your rights. Learn that you are not owned by women through their bodies.” *Ibid.* A second flyer “mirrors the first apart from many misspellings.” *Ibid.*

2. Salazar contacted the Centers, seeking permission to distribute his flyers at the Centers. The Centers denied the request pursuant to their policy prohibiting political activity and distribution of leaflets. App. 5a. Salazar repeated his request through counsel, but the Centers again denied his request. *Ibid.*

Plaintiff then sued the Centers. The operative complaint alleges that the Centers' policy prohibiting "expressive activity, including distributing flyers and gathering signatures" violates the California Constitution's liberty of speech provision. App. 6a. The complaint also asserts that section 34 of the Centers' code of conduct violates the California Constitution by giving the Centers "unfettered discretion" to deny or allow expressive activity. Salazar's complaint sought a declaration that the Centers' prohibition on expressive activity violates the California Constitution, an injunction prohibiting the Centers from enforcing their ban on expression, and damages. *Ibid.*

In his subsequent motion for a preliminary injunction, Salazar contended that the Centers' properties were public fora under *PruneYard* and that its policies barring expressive activity and authorizing the Centers to prohibit such activity at their discretion were unconstitutional, facially and as applied to Salazar. App. 6a-7a. Believing that Salazar's plans for leafletting at the Centers went beyond what is allowed by the California Supreme Court's *PruneYard* decision, and therefore, that he was unlikely to prevail on the merits, the trial court denied the preliminary injunction. Salazar appealed. App. 56a-62a.

3. The California Court of Appeal reversed, declaring that Salazar was likely to prevail on his claim that the Centers' exclusionary policy violates the California State Constitution. App. 45a-46a. Crucially, the court determined it was bound by this Court's decision in *PruneYard* as well as the California Supreme Court's underlying decision. App. 42a ("In effect, defendants are arguing that these cases from our state and federal high courts were

wrongly decided. Disagreeing with decisions of courts of higher jurisdiction is not within our wheelhouse . . .”). The California Supreme Court subsequently denied review. App. 66a.

REASONS FOR GRANTING THE PETITION

I. *PruneYard* conflicts with this Court’s subsequent physical takings precedent

A. The *PruneYard* decision

In *PruneYard*, this Court considered whether state constitutional provisions, which permit individuals to exercise free speech and petition rights on the property of a privately owned shopping center, 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. 447 U.S. at 76-77. The case involved a large, privately owned shopping center, called “The PruneYard,” that included “walkways, plazas, sidewalks, and buildings that contain more than 65 specialty shops, 10 restaurants, and a movie theater.” *Id.* at 77. The shopping center was “open to the public for the purpose of encouraging the patronizing of its commercial establishments,” and had “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.” *Ibid.* The PruneYard center strictly enforced this policy.

A group of high school students sought to solicit support for their opposition to a United Nations resolution against “Zionism” by “set[ting] up a card table in a corner of PruneYard’s central courtyard.” *Ibid.* The group distributed pamphlets and asked

people to sign their petitions. A shopping mall security guard asked the group to leave because their activity violated the shopping center's policies. The group left, then sued to enjoin the shopping center from preventing their activity. *Ibid.*

When the case reached the California Supreme Court, it held that the shopping center could not bar the group's expressive activity because the California Constitution protects "speech and petitioning, reasonably exercised, in shopping centers even when the centers are privately owned." *PruneYard*, 23 Cal. 3d at 910. The court rejected the shopping center's contention that this ruling violated its federally protected property rights. *Id.* at 905-06.

This Court affirmed. The Court began by addressing the shopping center's claim that the California Supreme Court's decision deprived it of its right to exclude others, in violation of the Takings Clause. The Court acknowledged that "*there has literally been a 'taking' of that right* to the extent that the California Supreme Court has interpreted the State Constitution to entitle its citizens to exercise free expression and petition rights on shopping center property." 447 U.S. at 82 (emphasis added). The Court also acknowledged that the property had been "physically invaded." *Id.* at 84. However, explaining that "not every destruction or injury to property" violates the Takings Clause, the Court declared that whether such a "restriction" on property is unconstitutional depends on "such factors as the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations." *Id.* at 82-83 (citations omitted).

Applying this approach, the Court concluded that “[t]here is nothing to suggest that preventing [the shopping center] from prohibiting this sort of activity will unreasonably impair the value or use of their property.” *Id.* at 83. Thus, the fact that the center was “physically invaded” for expressive purposes was not “determinative” of the takings claim. *Id.* at 84. Indeed, the Court held the shopping center “failed to demonstrate that the ‘right to exclude others’ [was] so essential to the use or economic value of their property that the state-authorized limitation of it amounted to a ‘taking.’” *Ibid.*

Finally, the Court addressed the shopping center’s claim that it had “a First Amendment right not to be forced by the State to use [its] property as a forum for the speech of others.” *Id.* at 85. The Court distinguished *Wooley v. Maynard*, 430 U.S. 705 (1977), which holds that the First Amendment prohibits a State from compelling an individual to display an ideological message on a vehicle’s license plate, as “a case in which the government itself prescribed the message, required it to be displayed openly on appellee’s personal property that was used ‘as part of his daily life,’ and refused to permit him to take any measures to cover up the motto.” 447 U.S. at 87.

In contrast, the *PruneYard* Court explained, “the shopping center by choice of its owner is not limited to the personal use of [the owner]. It is instead a business establishment that is open to the public to come and go as they please.” 447 U.S. at 87. Moreover, “[t]he 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.” *Ibid.* The Court further explained that, because “no specific message is dictated by the State”

on the shopping center’s property, there “is no danger of governmental discrimination for or against a particular message.” *Ibid.* The shopping center could “disavow any connection with the message by simply posting signs in the area where the speakers or hand-billers stand.” *Ibid.* Therefore, neither the shopping center’s “federally recognized property rights nor their First Amendment rights have been infringed by the California Supreme Court’s decision recognizing a right . . . to exercise state-protected rights of expression and petition on appellants’ property.” *Id.* at 88.

B. *PruneYard* is irreconcilable with later precedent adopting a *per se* taking test for physical invasions of property

PruneYard’s conclusion that California did not affect a taking of property by requiring a private shopping center to allow the public to use its property for expressive purposes cannot be reconciled with this Court’s “physical takings” precedent. Under that precedent, a government-authorized physical invasion of private property by third parties is a *per se* taking “however minimal the economic cost it entails” because it “eviscerates the owner’s right to exclude others from entering and using her property—perhaps the most fundamental of all property interests.” *Lingle*, 544 U.S. at 539; *see also*, *Cedar Point*, 594 U.S. at 153.

1. To understand the extent to which *PruneYard* departs from this Court’s takings jurisprudence, it is necessary to recognize that there was no *per se* takings test for physical invasions of property when *PruneYard* was decided. Frederick W. Schoepflin, *Speech Activists in Shopping Centers: Must Property*

Rights Give Way to Free Expression?, 64 Wash. L. Rev. 133, 153 (1989) (“The Court had not yet developed the analysis strictly protecting private property from an uncompensated taking for use by others when it decided *PruneYard*.”). Instead, at the time of *PruneYard*, this Court analyzed takings claims of all varieties, including those that involved physical invasions of property, under the multi-factor balancing test articulated in *Penn Central*, 438 U.S. at 124. That test weighs “the economic impact of the regulation,” its interference with reasonable investment-backed expectations, and the character of the government action. The “character” factor itself considers whether the challenged government action has caused a “physical invasion” of property. *Ibid.* See also, *Kaiser-Aetna v. United States*, 444 U.S. 164, 175 (1979).

In *PruneYard*, the Court applied the *Penn Central* test, balancing the destructive impact of California’s authorization of third-party speech on the private shopping center’s right to exclude against other considerations. *Cedar Point*, 594 U.S. at 156 (noting that the *PruneYard* Court was “[a]pplying . . . *Penn Central*”). This approach led the Court to conclude that the physical invasion in *PruneYard* was not a taking, despite its damaging effect on the shopping center’s right to exclude, because of the absence of demonstrable economic harm. *PruneYard*, 447 U.S. at 82-84.

Yet, the Court undercut *PruneYard*’s takings analysis just two years later when it carved out government-authorized physical invasions of property as a distinct, automatically compensable species of taking in *Loretto v. Teleprompter Manhattan CATV Corp.* In *Loretto*, a landlord asserted that a New York

law effected a taking by authorizing a private cable company to install cable boxes on rental property, without just compensation. 458 U.S. at 423. The Court agreed. Identifying the right to exclude others as “one of the most treasured” property rights, *id.* at 435, the Court held that a taking results from “permanent physical occupation of property” “without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner.” *Id.* at 434-35. *Loretto* emphasized that “an owner suffers a special kind of injury when a *stranger* directly invades and occupies the owner’s property,” *id.* at 436, as such an invasion “is qualitatively more severe than a regulation of the *use* of property, . . . since the owner may have no control over the timing, extent, or nature of the invasion.” *Ibid.*

Loretto thus adopted a new, bright line takings test for cases involving a physical invasion of private property, *Cedar Point*, 594 U.S. at 149; *Ark. Game & Fish Comm’n v. United States*, 568 U.S. 23, 31 (2012), while reserving *Penn Central*’s multi-factor test for “regulatory” takings cases involving other restrictions on private property. R.S. Radford & Luke A. Wake, *Deciphering and Extrapolating: Searching for Sense in Penn Central*, 38 Ecology L.Q. 731, 736-37 (2011) (“*Loretto* established *per se* takings liability for permanent physical invasions, thereby placing them outside the *Penn Central* inquiry altogether.”).

A few years later, in *Nollan v. California Coastal Commission*, 483 U.S. 825, 831-33 (1987), the Court solidified and expanded *Loretto*’s *per se* rule for takings claims challenging a physical invasion of property. *Nollan* involved a California agency’s demand that a property owner dedicate a public

access easement across their property as a condition of obtaining a building permit. As in *Loretto*, the Court emphasized that “the right to exclude [is] ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property.’” *Id.* at 831 (citing *Loretto*, 458 U.S. at 433 (quoting *Kaiser Aetna*, 444 U.S. at 176)). The Court concluded that a “permanent physical occupation” occurs for the purposes of applying *Loretto*’s *per se* test “where individuals are given a permanent and continuous right to pass to and fro” on private property, so that the property “may continuously be traversed, even though no particular individual is permitted to station himself permanently upon the premises.” *Id.* at 832. In dissent, Justice Brennan argued that imposition of public access should be (1) gauged under *Penn Central*’s multi-factor test, and (2) found constitutional under *PruneYard*’s application of that test because “physical access to private property in itself creates no takings problem if it does not ‘unreasonably impair the value or use of [the] property.’” *Id.* at 853-55 (Brennan, J., dissenting). The majority rejected that approach. *Id.* at 831.

More recently, in *Cedar Point*, this Court held that the *per se* takings test for physical invasions of property applies even when the government authorizes third parties to access private property at only certain times. 594 U.S. at 154 (The “fact that a right to take access is exercised only from time to time does not make it any less a physical taking.”). Since the access imposition in *Cedar Point* appropriated “the owners’ right to exclude,” by granting third parties a “right to invade” the property, the Court treated it as a “*per se* physical taking.” *Id.* at 149.

The upshot of this line of cases is that the government is liable for a compensable taking when it authorizes itself or third parties to invade private property, “no matter how minute the intrusion, [] no matter how weighty the public purpose,” *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1015 (1992), and without regard to the property owner’s “economic loss.” *Cedar Point*, 594 U.S. at 151; *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 535 U.S. 302, 330 n.25 (2002) (when a physical taking occurs it is “irrelevant whether a property owner maintained 5% of the value of her property”). Put another way, due to the destructive effect of physical invasions on the owner’s right to exclude, such invasions are treated as a taking “without regard to other factors.” *Horne v. Dep’t of Agric.*, 576 U.S. 350, 360 (2015) (citing *Loretto*, 458 U.S. at 432). A necessary corollary to this doctrine is that, unlike at the time of *PruneYard*, *Penn Central*’s multi-factor balancing test no longer has a role in deciding whether a physical invasion is a taking. *Cedar Point*, 594 U.S. at 149; *Knight v. Metro. Government of Nashville & Davidson Cnty.*, 67 F.4th 816, 827 (6th Cir. 2023) (“direct interference with the property owner’s right to exclude would fall under the Court’s automatic-taking rule, not *Penn Central*’s balancing test”) (citing *Cedar Point*, 594 U.S. at 149).

2. Given the foregoing, there can be no doubt that *PruneYard* is out of alignment with the Court’s takings jurisprudence. Schoepflin, 64 Wash. L. Rev. at 153 (“In light of the analyses set forth in *Loretto* and *Nollan*, the continued viability of *PruneYard* is suspect.” (footnotes omitted)); Lee Anne Fennell, *Escape Room: Implicit Takings After Cedar Point Nursery*, 17 Duke J. Const. L. & Pub. Pol’y 1, 34-37

(2022) (discussing tension between *PruneYard* and the physical takings analysis in *Cedar Point*). While this Court’s decisions establish that a physical invasion of property is an unconstitutional taking without regard to economic or other factors, *Horne*, 576 U.S. at 363 (when there is a physical taking, “we do not ask . . . whether it deprives the owner of all economically valuable use”) (quoting *Tahoe-Sierra Pres. Council*, 535 U.S. at 323); *Loretto*, 458 U.S. at 426, 441, *PruneYard* holds that an invasion of property that “literally” took the shopping center owner’s right to exclude was not a taking because of countervailing economic factors. 447 U.S. at 82. In short, *PruneYard* held that a burden on property rights that is clearly a compensable taking under this Court’s modern precedent was not. Sisk, 32 Harv. J.L. & Pub. Pol’y at 408 (“In the light of the principles established over the past quarter-century, an invasion sanctioned by the coercive power of state government into the physical space of a shopping center fits the definition of a compensable taking to a ‘T.’”).

It is true that the Court has occasionally attempted to distinguish *PruneYard*’s refusal to find a taking from its modern physical takings precedent by emphasizing that the shopping center was already “open to the public, welcoming some 25,000 patrons a day.” *Cedar Point*, 594 U.S. at 156-57; *Horne*, 576 U.S. at 364 (explaining that *PruneYard* involved “an already publicly accessible” business); *Nollan*, 483 U.S. at 832 n.1 (same). However, while inviting the public onto private property for a specific purpose may play into *Penn Central*’s balancing test, it has little relevance to a *per se* takings claim premised on destruction of the right to exclude. Thus, in *Loretto*, the first physical takings case decided under a *per se*

test, the Court held that a state could not justify a physical invasion intended to benefit tenants on the basis that a building owner opened their property to the renters. 458 U.S. at 439 n.17 (“[A] landlord’s ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation.”); *see also*, *Lloyd Corp. Ltd. v. Tanner*, 407 U.S. 551, 569 (1972) (Property does not “lose its private character merely because the public is generally invited to use it for designated purposes.”);¹ *Horne*, 576 U.S. at 364-65 (concluding that requiring a property owner to “relinquish specific, identifiable property as a ‘condition’” of the commercial use of property “effects a per se taking”). The anomalous outcome in *PruneYard* is explained by the Court’s disposition of the takings claim under a *Penn Central* balancing test that no longer applies to physical takings, not the subsidiary fact that the shopping center was open to the public.

The “already open to the public” justification for *PruneYard* is not only inconsistent with the Court’s physical takings precedent, it makes little sense on its own terms. Shopping centers allow people in for a specific purpose—to shop—thereby effectively

¹ *PruneYard* rejected the shopping center’s reliance on *Lloyd*, on the ground that *Lloyd* “does not *ex proprio vigore* limit the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.” *PruneYard*, 447 U.S. at 81. But *PruneYard* did not disavow *Lloyd*’s conclusion that a shopping center doesn’t “lose its private character merely because the public is generally invited to use it for designated purposes,” and that “[t]he essentially private character of a store and its privately owned abutting property does not change by virtue of being large.” *Lloyd*, 407 U.S. at 569.

granting them a revocable license. *See, e.g., Harden v. Hillman*, 993 F.3d 465, 475 (6th Cir. 2021); *MidlevelU v. ACI Info. Group*, 989 F.3d 1205, 1217 (11th Cir. 2021) (a business “licenses the general public to enter the premises for business purposes,” an entry that would otherwise constitute a trespass); Jon W. Bruce & James W. Ely, Jr., *The Law of Easements & Licenses in Land* § 11:2 (2026 update); *see also* Restatement (Second) of Torts § 330(e) (Am. Law Inst. 1965) (“a person could not infer permission beyond the customary scope of a license”); Thomas M. Cooley, *A Treatise on the Law of Torts or the Wrongs Which Arise Independently of Contract* § 169 at 322 (students’ ed. 1907) (explaining that “[e]very retail dealer impliedly invites the public to enter his shop for the examination of his goods, that they may purchase them if they see fit” but that “the invitation is limited by the purpose” and a trespass occurs if one abuses the implied license). The notion that the *PruneYard* Court’s failure to find an unconstitutional taking was justifiable because the shopping center was “open” to the public ignores the very limited basis on which a shopping center allows people to enter and occupy its property. *See Verlo v. Martinez*, 820 F.3d 1113, 1146 (10th Cir. 2016); *Goldstein v. Chestnut Ridge Volunteer Fire Co.*, 218 F.3d 337, 355 (4th Cir. 2000); *Jacobs v. Major*, 139 Wis. 2d 492, 523 (1987) (A shopping mall “concerns itself only with one facet of its patrons’ lives—how they spend their money.”).

Further, there is no logical limiting principle to the “open to the public” rationale. “[I]f public invitation and size were the relevant criteria [for allowing speech access to private property], it could well be asked how shopping centers could be legally distinguished from places such as sport stadiums,

convention halls, theaters, county and state fairs,” and similar places. *Southcenter Joint Venture v. Nat’l Democratic Policy Comm.*, 113 Wash. 2d 413, 433 (1989); see also Mark Kelman, *Staying in the Takings Lane: The Compensation Issue in Cedar Point Nursery*, 2022 Cardozo L. Rev. 129, 134 (“Determining when an entity is sufficiently open to the public to permit this sort of regulation without compensation will plainly pose serious administrative challenges even if one ignores the degree to which it is a substantively irrelevant basis to distinguish among fundamentally commercial enterprises.”).

The takings analysis in *PruneYard* is wrong, and without *PruneYard*, the decision below cannot stand under this Court’s modern takings precedent. Here, California has granted uninvited activists and others a perpetual right to access and use the Centers’ property to air their political and social views, including those, like Salazar’s, that are offensive. This state action authorizes a physical occupation of the Centers’ property and destroys the Centers’ right to exclude and attendant right to limit access to their property to those engaged in commercial activity. Such a burden on its property rights is a taking. *Lingle*, 544 U.S. at 539.

C. *PruneYard* continues to eviscerate the right to exclude in California and other states

Although *PruneYard* is an outdated aberration, it continues to have a destructive effect on constitutionally protected property rights, including the right to exclude others. This is most obvious in California, where state courts continue to rely on *PruneYard* to allow third parties to access commercial property for

expressive purposes, against the owner’s wishes. For instance, in *Fashion Valley Mall, LLC v. National Labor Relations Board*, 42 Cal. 4th 850, 855 (2007), the California Supreme Court held that “the right to free speech granted by . . . the California Constitution includes the right to urge customers in a shopping mall to boycott one of the stores in the mall.” The case involved dozens of union members distributing leaflets to customers “entering and leaving” a department store inside the mall, urging customers to boycott the store. Mall officials informed the union members that they were trespassing because they lacked a permit and violated a mall policy prohibiting expressive activity “[u]rging, or encouraging in any manner, customers not to purchase the merchandise or services offered by any one or more of the stores or merchants in the shopping center.” *Id.* at 856. The California Supreme Court followed its own *PruneYard* decision to hold that the California Constitution prohibited the mall from excluding the union members. *Id.* at 862 (“the California Constitution protects the right to free speech in a shopping mall, even though the federal Constitution does not”). Justice Chin dissented, urging the court to “forthrightly overrule *Pruneyard*,” or at a minimum, at least acknowledge that “[u]rging a boycott of those businesses contradicts the very purpose of the shopping center’s existence. It is wrong to compel a private property owner to allow an activity that contravenes the property’s purpose.” *Id.* at 870 (Chin, J., dissenting). *Cf. Ctr. for Bio-Ethical Reform, Inc. v. Irvine Co., LLC*, 37 Cal. App. 5th 97, 107-10 (2019) (requiring a shopping mall that promoted a family-

friendly experience to host anti-abortion protesters who display gruesome images of aborted fetuses).

Following *PruneYard*'s lead, other states also interpret their state constitutional speech provisions to allow people to access private property for expressive purposes. See, e.g., *New Jersey Coal. Against War in the Middle East v. J.M.B. Realty Corp.*, 138 N.J. 326, 371 (1994) ("Other jurisdictions that have addressed this issue have similarly relied on the federal *PruneYard* decision" to allow speech on private commercial property.). In *New Jersey Coalition Against War*, anti-war protestors sought to engage in leafletting inside ten shopping malls. When many of the malls refused, the protestors sued, claiming they had a free speech right under the state constitution to leaflet inside the malls against the owners' wishes. The New Jersey Supreme Court agreed based on *PruneYard* and rejected the mall owners' claim that requiring them to host large-scale anti-war leafletting violated their own federally protected property rights and free speech rights. *Ibid.* New Jersey continues to authorize third parties to enter shopping malls and other types of private, commercial property for expressive purposes. *Guttenberg Taxpayers & Rentpayers Ass'n v. Galaxy Towers Condo. Ass'n*, 297 N.J. Super. 404, 409 (Ch. Div. 1996) (authorizing citizens' group to enter condominium association's private property to distribute political literature); *Green Party of N.J. v. Hartz Mountain Indus., Inc.*, 164 N.J. 127, 148-49, 157 (2000) (applying a sliding scale balancing test to decide that activists were entitled to engage in political speech inside a mall without proof of insurance); see also, *Schmid v. New Jersey*, 84 N.J. 535, 568 (1980) (authorizing uninvited individuals to

enter and occupy Princeton University grounds to pass out political literature, in part because “the required accommodation of [] expressional and associational rights, otherwise reasonably exercised, would not constitute an unconstitutional abridgment of Princeton University’s property rights”) (citing *PruneYard*).

Colorado also relies on *PruneYard* to prevent malls from excluding political activists. In *Bock v. Westminster Mall Co.*, 819 P.2d 55 (Colo. 1991), members of a political association known as “The Pledge of Resistance” sought permission from a shopping mall to distribute pamphlets and gather protest signatures inside the mall. After the mall denied their request, they sued in state court. Ultimately, the Colorado Supreme Court held that the mall could not prohibit the activist’s conduct. Invoking language and themes similar to the California Supreme Court’s *PruneYard* opinion, the court engaged in a balancing test, considering the mall’s general operations and common areas to declare that the activists’ “activities can be conducted without interfering with the Mall’s normal operations and therefore will not affect the Company’s property rights.” *Id.* at 62-63 (citing *PruneYard*, 23 Cal. 3d at 909-12).

Massachusetts goes even further, authorizing uninvited and unwelcome activists to enter and use the private property of free-standing supermarkets to engage in political speech. In *Glovsky v. Roche Bros. Supermarkets, Inc.*, 469 Mass. 752 (2014), a would-be political candidate sought to solicit signatures on the property of a free-standing supermarket in the hopes of getting his name on the ballot for an upcoming election. When the supermarket refused permission,

the candidate sued. The Massachusetts Supreme Judicial Court held that “allowing individuals to solicit nominating signatures in the area outside the Westwood supermarket building would not unduly burden [the market’s] property interests.” *Id.* at 759. Citing *PruneYard* and numerous California cases, the court refused to consider that the shopping center “would be identified with the views expressed by a person soliciting nominating signatures merely because the person does so on premises owned by Roche Bros. but open to the general public.” *Id.* at 760. Dissenting Justice Cordy argued that *PruneYard* has allowed California and other states to completely disrupt the “balance between the rights of property owners and the rights of those whom they invite to use their property, and creates serious consequences for property owners who miscalculate their obligations despite their best intentions.” *Id.* at 765 (Cordy, J., dissenting).

PruneYard has accordingly stripped many commercial property owners of their fundamental right to exclude others from their property, or obtain compensation, by allowing states to grant third parties a right of perpetual speech access on their property. Stanley H. Friedelbaum, *Private Property, Public Property: Shopping Centers and Expressive Freedom in the States*, 62 *Alb. L. Rev.* 1229, 1262 (1999) (“That private property rights in the historic sense have been substantially impaired in the surge of a few activist state courts to expand the role of shopping centers is difficult to refute.”). This case provides yet another example of *PruneYard*’s destructive and unjustified impact on private property rights. The Court should grant certiorari to hold that states effect an unconstitutional taking of private

property when they authorize the public to enter and use private shopping center property for expressive activities, thereby overruling *PruneYard*.

II. *PruneYard* conflicts with this Court's compelled speech precedent

A. The compelled speech doctrine

The First Amendment not only protects the right to speak, under the “compelled speech” doctrine it also protects the right *not* to speak. *See, e.g., Wooley*, 430 U.S. at 714 (freedom of expression “includes both the right to speak freely and the right to refrain from speaking at all”); *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 559 (1985) (The First Amendment right to speak includes a “concomitant freedom *not* to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect.” (citation omitted)).

Many of the early cases articulating the compelled speech doctrine involved governmental attempts to compel those engaged in their own expressive activity to change their speech or promote others’ opinions. *See Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974); *Pacific Gas & Elec. Co. v. Public Util. Comm’n of Cal.*, 475 U.S. 1, 16-17 (1986). However, the Court’s more recent precedent establishes that compelled speech protections extend to cases in which the government forces those not engaged in expressive activity to support the speech of others. For instance, *Keller v. State Bar of California*, 496 U.S. 1 (1990), considered whether the California State Bar could use mandatory bar dues to fund the Bar’s lobbying and other political and ideological activities. The answer was no; “[c]ompulsory dues may not be expended to

endorse or advance” political or ideological speech. *Id.* at 16.

Subsequently, in *Knox v. Service Employees International Union, Local 1000*, 567 U.S. 298 (2012), the Court considered whether a public sector union violated the First Amendment by requiring objecting non-members to pay a fee to fund electoral campaigns, without providing the non-members with a meaningful “opt-out” opportunity. Applying “exacting” scrutiny,” *id.* at 310, the Court reiterated “[t]he general rule—[that] individuals should not be compelled to subsidize private groups or private speech.” *Id.* at 321. The Court then held that the challenged assessment violated the First Amendment rights of objectors. *Id.* at 322.

Similarly, in *Harris v. Quinn*, 573 U.S. 616 (2014), the Court held that a state violated the First Amendment by treating personal homecare assistants as public employees who must pay a fee to a public sector union they did not support. The Court held that “[t]he First Amendment prohibits the collection of an agency fee from personal assistants . . . who do not want to join or support the union.” *Id.* at 656. The Court observed that allowing the state’s action would “violat[e] . . . the bedrock principle that, except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support.” *Ibid.*

Finally, and most recently, in *Janus*, 585 U.S. at 892, the Court considered whether a public sector union violated the First Amendment when it required non-consenting employees to pay a partial amount of member dues to subsidize collective bargaining

efforts, lobbying, and other activities. Overruling *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), and applying *Knox*'s "exacting scrutiny" standard, the Court held that the union payment requirement was unconstitutional under the compelled speech doctrine. In reaching this conclusion, the *Janus* Court emphasized that:

Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding "involuntary affirmation" of objected-to beliefs would require "even more immediate and urgent grounds" than a law demanding silence. Compelling a person to *subsidize* the speech of other private speakers raises similar First Amendment concerns.

585 U.S. at 893 (citations omitted).

B. *PruneYard* conflicts with the Court's compelled speech precedent, including its speech subsidy cases

PruneYard's conclusion that California can require shopping center owners to host unwanted expressive activity on their property without violating the First Amendment is in manifest tension with the foregoing precedent. See Catherine L. Fisk & Erwin Chemerinsky, *Political Speech and Association Rights after Knox v. SEIU, Local 1000*, 98 Cornell L. Rev. 1023, 1052 (2013) (noting "real tension" between *PruneYard* and *Knox*). Forcing a shopping center to provide part of its property to advance the speech of

others is an in-kind speech subsidy requirement,² yet *PruneYard* applied nothing like “exacting scrutiny” to this mandated burden. Under exacting scrutiny, speech subsidy requirements must “serve a compelling state interest that cannot be achieved through means significantly less restrictive.” *Janus*, 585 U.S. at 894 (citation omitted). *PruneYard* never considered whether California had a compelling interest in forcing shopping centers to offer their property as a forum for political speech and other expressive activity. Nor did it consider whether the state could achieve its goals through less restrictive means.

PruneYard did find California’s action permissible in part because the Court believed that any unwanted speech on the shopping center’s property would not likely be attributed to the owner. The Court cited two grounds for the perceived low misattribution risk: (1) the center was open to the public, and (2) the owners could post notices disclaiming any speech on the property. 447 U.S. at 87. But *PruneYard*’s reliance on a purportedly low misattribution risk as a basis for requiring the shopping center to support speech is inconsistent with the Court’s other compelled speech jurisprudence. For instance, in *Moody v. NetChoice, LLC*, 603 U.S. 707, 744 (2024), the Court held that a low risk of misattribution does not justify the government in compelling even potential association with unwanted opinions. *Moody* considered whether a law that required social media companies “to carry and promote user speech that

² Cf. *Campaign Legal Ctr. v. F.E.C.*, 31 F.4th 781, 790 (D.C. Cir. 2022) (subsidizing space for speech (e.g., internet subscription expenses) is effectively an in-kind contribution enabling such speech).

they would rather discard or downplay” violated the First Amendment. *Id.* at 728. Answering in the affirmative, the *Moody* Court emphasized that it has “never hinged” the platforms’ “First Amendment protection on the risk of misattribution.” *Id.* at 739. In short, “major social-media platforms do not lose their First Amendment protection just because no one will wrongly attribute to them the views in an individual post.” *Ibid.*

PruneYard rests, at least in part, on the opposite principle, i.e., that a purportedly low risk of misattribution justifies a state requirement that commercial property owners must host others’ expressive activity. It is true that the *Moody* Court distinguished the analysis in *Moody* from *PruneYard* on the basis that shopping centers were not “engaged in any expressive activity,” implying that those not personally engaged in speech are subject to lesser First Amendment protections. However, that distinction cannot be reconciled with this Court’s recent “speech subsidization” cases, which demonstrate that compelled speech protections are at least as strong when a non-speaker is forced to subsidize others’ speech, as when speakers must alter their speech to accommodate other views. *Janus*, 585 U.S. at 894; see also *Harris*, 573 U.S. at 656 (“except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support”); *PruneYard*, 447 U.S. at 100 (Powell, J., concurring) (First Amendment compelled speech principles apply to a property owner that “may oppose ideological activities ‘of any sort’”) (quoting *Abood*, 431 U.S. at 213).

Whether people are engaged in speech or trying to avoid speaking, compelled speech mandates force

them to associate with speech they would otherwise avoid. Low misattribution risks do not negate that First Amendment violation. *McClendon v. Long*, 22 F.4th 1330, 1337 (11th Cir. 2022) (rejecting the argument that “a compelled government speech claim requires a finding that a reasonable third party would view the speech as ‘endorsed’ by the plaintiff”). Put another way, if misattribution risk is irrelevant when one engaged in speech seeks to vindicate the First Amendment right not to express others’ opinions, it should be just as irrelevant when one who is silent seeks to vindicate their constitutional right to remain silent.

Further, even if misattribution risk is relevant, the Court’s primary basis for finding the risk low in *PruneYard*—that the property owner could “disavow any connection with the message by simply posting signs”—exacerbates rather than ameliorates the First Amendment problem facing property owners subject to speech mandates. While disavowing state-mandated speech on shopping center premises might lower the danger that the speech is imputed to the center, it does not restore the “right to refrain from speaking at all,” since the act of disassociation itself requires speech. *PruneYard*, 447 U.S. at 99 (Powell, J., concurring) (quoting *Wooley*, 430 U.S. at 714); *McClendon*, 22 F.4th at 1337 (rejecting the contention that a plaintiff could neutralize the adverse effects of compelled government signage on their private property by erecting their own signs because this “ignores” that the harm is to the “right to refrain from speaking at all”) (quoting *Wooley*, 430 U.S. at 714). Requiring shopping center owners to host third-party speech creates a First Amendment Catch-22: owners must associate with, and indeed subsidize, the speech

of others, or they must speak to disassociate from that expression, thereby giving up their right to stay silent. Either way, the First Amendment has been violated. *Janus*, 585 U.S. at 892 (“The right to eschew association for expressive purposes is likewise protected.”); *Wooley*, 430 U.S. at 71 (“The right to speak and the right to refrain from speaking are complementary components of the broader concept of ‘individual freedom of mind.’”) (quoting *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 637 (1943)).

The *PruneYard* Court also concluded that California could constitutionally authorize unwanted speech on shopping center property because the state did not dictate a “specific message” on the property and, thus, there was “no danger of governmental discrimination for or against a particular message.” 447 U.S. at 87. Yet, this reasoning also ignores the shopping center’s right to say nothing at all. *Wooley*, 430 U.S. at 714; *cf. Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (“Freedom of association . . . plainly presupposes a freedom not to associate.”). That a compelled speech requirement on private property allows all types of messages, rather than a particular message, hardly preserves the owner’s right to remain silent; instead, it confirms an infringement of that right. *PruneYard*, 447 U.S. at 98 (Powell, J., concurring) (“[E]ven when no particular message is mandated by the State, First Amendment interests are affected by state action that forces a property owner to admit third-party speakers.”); *Tornillo*, 418 U.S. at 258 (newspaper cannot be required to respond to candidates’ arguments when it might prefer to be silent).

Finally, some of the Court's post-*PruneYard* decisions try to ground *PruneYard*'s troubling result on the fact that the shopping centers did not sufficiently object to the speech activity on their property. But whether one explicitly objects to the content of state-authorized third-party speech on their property or instead remains silent about the message should have no bearing on the issue of whether the requirement violates the First Amendment. *See, e.g., Harris*, 573 U.S. at 626 (finding that a public sector union fee violated the First Amendment where the subject workers lodged a general objection to paying a fee to a union they do not support). Again, requiring one to explicitly object to the content of speech they are forced to support before they receive full First Amendment protection requires a person to speak, and thereby paradoxically submit to an infringement of their right to stay silent to protect that right. Compelled speech protections turn on a person's autonomy rights, including the right to entirely eschew speech, not on how loudly one protests. *Sisk*, 32 Harv. J.L. & Pub. Pol'y at 397 (The right to refrain from speaking rings "hollow if a landowner must make his property a platform for expression he finds offensive.").

Absent *PruneYard*, the lower court's conclusion that an activist could use the Centers' property as a means to tell men to stop paying child support cannot be reconciled with this Court's compelled speech jurisprudence. The Centers object to Salazar's activity as "offensive" to their tenants and customers. But they do not want to pick and choose speech; they simply want to avoid all noncommercial expressive activity on their property. By requiring the Centers to perpetually provide their property as a platform for

others' opinions, the decision below compels the Centers to associate with speech and to cede their right to refrain from speaking. *PruneYard*, 447 U.S. at 97-98 (Powell, J., concurring) ("A person who has merely invited the public onto his property for commercial purposes cannot fairly be said to have relinquished his right to decline 'to be an instrument for fostering public adherence to an ideological point of view he finds unacceptable.'") (quoting *Wooley*, 430 U.S. at 715); Sisk, 32 Harv. J.L. & Pub. Pol'y at 404-05 ("[C]ompelling a private landowner to provide a perpetual forum for the expression of political ideas is difficult to square with modern appreciation for robust rights of speech and association.").

The Centers seek to stay silent for a very good reason: to avoid alienating any portion of their customer base by exposing them unwillingly to provocative activism. This is an entirely reasonable concern. Some customers faced with unwanted speech activity at a shopping center will decrease their visits and spending. See *Costco Companies, Inc. v. Gallant*, 96 Cal. App. 4th 740, 751 (2002) (Costco received complaints from customers because of the speakers' presence); *Lam v. Ngo*, 91 Cal. App. 4th 832, 838-39 (2001) (demonstrators in restaurant parking lot challenging property owner's political views caused the restaurant to suffer a 40 percent decline in revenues); Anna M. Taruschio, Note, *The First Amendment, the Right Not To Speak and the Problem of Government Access Statutes*, 27 Fordham Urb. L.J. 1001, 1039 (2000).

Further, expressive activity on shopping center property can result in controversial political speech and/or boycotts that can be highly disruptive to normal business operations. Loren F. Selznick &

Carolyn LaMacchia, *#Mall Ruckus Tonight: Should Mall Owners Be Forced to Provide a Stage for Expression in the Virtual Age?*, 53 Willamette L. Rev. 239 (2017) (discussing a large Black Lives Matter demonstration that shut down the Mall of America during Christmas week). Given these problems, shopping malls must “assume the burdens of security for political protests, [] allocate limited space to competing special interest groups, [and] [] suffer potential liability if patrons are injured by disruptive activists.” Gregory C. Sisk, *Uprooting the Pruneyard*, 38 Rutgers L.J. 1145, 1191 (2007); *see also Cologne v. Westfarms Associates*, 192 Conn. 48, 54-56 (1984) (noting risk of violence created by unwelcome demonstrators); *Costco*, 96 Cal. App. 4th at 752 (noting “loss of time and morale among its employees and direct interference with conduct of its business on those occasions when conflicts arose between petition gatherers and those opposed to their views. The conflicts also exposed Costco to the risks of liability to its customers, employees and petition gatherers themselves.”). “It is unreasonable to burden shopping centers with an obligation to provide platforms for the dissemination of views with which the owners may disagree, when expressive activity represents no part of shopping centers’ business functions.” Schoepflin, 64 Wash. L. Rev. at 144.

The Court should grant the petition to hold that requiring property owners to provide their property as a forum for unwanted speech violates the First Amendment, thereby overruling the portion of *PruneYard* rejecting the shopping center’s compelled speech claim.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

PETER C. SHERIDAN
STEVE BASILIO
Glaser Weil Fink Howard
Jordan & Shapiro LLP
10250 Constellation Blvd.
19th Floor
Los Angeles, CA 90067

J. DAVID BREEMER
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814
(916) 419-7111
jbreemer@pacificlegal.org

DEBORAH J. LA FETRA
BRIDGET CONLAN
Pacific Legal Foundation
3100 Clarendon Blvd.
Suite 1000
Arlington, VA 22201

Counsel for Petitioners

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