Gap Campaign 2001: Legal Guidelines

Purpose: *Print this up and take it with you when you leaflet at shopping malls, and show it to Mall Security and/or police if they attempt to intimidate you into leaving. It contains the (favorable) opinion of the US Supreme Court on the California State Supreme Court's decision to uphold First Amendment rights (speech, petition signature gathering, and leafleting) in shopping malls, with an additional legal memorandum by a civil rights attorney at the end—also good for waving under the noses of undemocratically-inclined "authorities" you may encounter.*

Priorities. Remember, your first objective is to stay and leaflet, so being polite and accommodating even when you are in the right may be to your benefit (police can arrest you or threaten to arrest you illegally; their actions can subsequently be found illegal in court; however, it's a hassle and your leafleting will have been cut short).

US Supreme Court's Opinion on the CA State Supreme Court's "Pruneyard Decision." (http://www.empowermentzone.com/leaflet.txt)

PRUNEYARD SHOPPING CENTER ET AL. v. ROBINS ET AL.

No. 79-289

SUPREME COURT OF THE UNITED STATES

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

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

OPINION: MR. JUSTICE REHNQUIST delivered the opinion of the Court:

Appellant PruneYard is a privately owned shopping center in the city of Campbell, Cal. It covers approximately 21 acres -- 5 devoted to parking and 16 occupied by walkways, plazas, sidewalks, and buildings that contain more than 65 specialty shops, 10 restaurants, and a movie theater. The PruneYard is open to the public for the purpose of encouraging the patronizing of its commercial establishments. It has a policy not to permit any visitor or tenant to engage in any publicly expressive activity, including the circulation of petitions, that is not directly related to its commercial purposes. This policy has been strictly enforced in a nondiscriminatory fashion. The PruneYard is owned by appellant Fred Sahadi.

Appellees are high school students who sought to solicit support for their opposition to a United Nations resolution against "Zionism." On a Saturday afternoon they set up a card table in a corner of PruneYard's central courtyard. THEY DISTRIBUTED PAMPHLETS and asked passersby to sign petitions, which were to be sent to the President and Members of Congress. Their activity was peaceful and orderly and so far as the record indicates was not objected to by PruneYard's patrons.

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Soon after appellees had begun soliciting signatures, a security guard informed them that they would have to leave because their activity violated PruneYard regulations. The guard suggested that they move to the public sidewalk at the Prune Yard's perimeter. Appellees immediately left the premises and later filed this lawsuit in the California Superior Court of Santa Clara County. They sought to enjoin appellants from denying them access.

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

Here the requirement that appellants permit appellees to exercise state-protected rights of free expression and petition on shopping center property clearly does not amount to an unconstitutional infringement of appellants' property rights under the Taking Clause. There is nothing to suggest that preventing appellants from prohibition this sort of activity will unreasonably impair the value or use of their property as a shopping center. The PruneYard is a large commercial complex that covers several city blocks, contains numerous separate business establishments, and is open to the public at large.

THE DECISION OF THE CALIFORNIA SUPREME COURT MAKES IT CLEAR THAT THE PRUNEYARD MAY RESTRICT EXPRESSIVE ACTIVITY BY ADOPTING TIME, PLACE, AND MANNER REGULATIONS THAT WILL MINIMIZE ANY INTERFERENCE WITH ITS COMMERCIAL FUNCTIONS. APPELLEES WERE ORDERLY, AND THEY LIMITED THEIR ACTIVITY TO THE COMMON AREAS OF THE SHOPPING CENTER. In these circumstances, the fact that they may have "physically invaded" appellants' property cannot be viewed as determinative.

There is also little merit to appellants' argument that they have been denied their property without due process of law. In Nebbia v. New York, 291 U.S. 502 (1934), this Court stated:

"[NEITHER] PROPERTY RIGHTS NOR CONTRACT RIGHTS ARE ABSOLUTE.... EQUALLY FUNDAMENTAL WITH THE PRIVATE RIGHT IS THAT OF THE PUBLIC TO REGULATE IT IN THE COMMON INTEREST....

The shopping center by choice of its owner is not limited to the personal use of appellants. It is instead a business establishment that is open to the public to come and go as they please. The views expressed by members of the public IN PASSING OUT PAMPHLETS or seekin gsignatures for a petition thus will not likely be identified with those of the owner. Second, no specific message is dictated by the State to be displayed on appellants' property. There consequently is no danger of governmental discrimination for or against a particular message. Finally, as far as appears here appellants can expressly disavow any connection with the message by simply posting

signs in the area where the speakers or HANDBILLERS stand. Such signs, for example, could disclaim any sponsorship of the message and could explain that the persons are communicating their own messages by virtue of state law.

We conclude that neither appellants' federally recognized property rights nor their First Amendment rights have been infringed by the California Supreme Court's decision recognizing a right of appellees to exercise state-protected rights of expression and petition on appellants' property. The judgement of the Supreme Court of California is therefore Affirmed.

Legal Memorandum on Petitioning Rights in Public Places. This is a legal brief prepared for activists petitioning to get a third party on the ballot. This form of political expression may be slightly more protected than whatever one may be petitioning/flyering for. (http://www.envirolink.org/issues/system/activism/mallflyrs.html)

LEGAL MEMORANDUM (August, 1996)

There have been several reports over the past few weeks (including my own experience at having a "run-in" with City Police) that many folks are having problems with store management, park management, police, and other entities that would enjoy kicking us out of certain areas of the planet when we petition.

Some things to keep in mind and some key jargon to give to these folks when they approach.

1. The Supreme Court has ruled several times on which property is open to the public and which is not. In recent years, they have narrowed this interpretation, but the base has remained the same, namely that the Court now engages in a "forum" approach. First, they classify the area that is disputed as a certain kind of "forum" - then the activities that allowed follows automatically from that designation. Some practical examples:
   a. Traditional Public Forums: Those areas that are traditionally held places in which democratic conversation and solicitation have taken place. These include public sidewalks and public parks.
      Activities Allowed: Any as long as they do not interfere with public health or safety. These public forums would be open for any type of petitioning, especially because the courts have been especially careful to safeguard "political speech" which goes to the core of the beliefs of our government - open and accessible political systems.
   b. Limited Public Forums: These are areas in which the local government or agency has chosen to make available as a "forum" area, and has opened up the area to other groups and individuals.
      Activities Allowed: Petitioning would be allowed in these areas, if these areas have been opened up to other speakers or other petitioners. An example would be the KKK requesting

the use of a school cafeteria in which to hold a rally at night. This would have to be allowed if the school regularly opens the cafeteria up for the use of other groups and organizations. In other words, if the forum is opened up to one group, it must be opened to all groups - to do otherwise would be an infringement on free speech rights of the group that is denied access.

c. Nonpublic forums: Any area not traditionally opened up for public use, and any area not designated as a public forum. I.E. if the area does not qualify for the above, then it falls into this category.
Activities Allowed: Only those which are not excluded by regulations. These regulations must pass a simple test: they must be "viewpoint neutral" (not discriminatory) and must only regulate the time, place, and manner of the speech. Petitioning would probably not be allowed in these areas.

2. Legal Jargon - The only thing that really needs to be remembered is that sidewalks that run along public streets, and public parks are completely and utterly open to petitioners. How do we know? Because the Supreme Court has said so:
   a. United States v. Kokinda, 497 U.S. 3115 (1990) (sidewalks)
   b. Board of Airport Commissioners v. Jews for Jesus, 482 U.S. 569 (1987)(airport terminals as nonpublic forums, supporting forum analysis)
   c. Ward v. Rock Against Racism, 491 U.S. 781 (1989) (public parks)
   d. Niemotko v. Maryland, 340 U.S. 268 (1951) (bible talks in public park)

   The importance of Political Free Speech:
   a. Clark v. Community for Creative Non-Violence, 468 U.S. 288 (1984) (demonstration in Lafayette Park and the D.C. Mall)
   b. United States v. O'Brien, 391 U.S. 367 (1968) (burning draft certificate)
   c. Tinker v. Des Moines Independent Community School District, 393 U.S. 503(1969) (wearing of black armbands against Vietnam by high school students)

AND NOW - to my personal advice:

1. Clearly state that you have a right to petition in that location because it is a traditional public forum under the United States Supreme Court declarations. Pull out the above list of case law to give yourself an additional bonus.
2. Carry voter registrations with you while petitioning [if this applies] - voter registration drives are protected even more than petitioning for candidates is.
3. If they persist in having you removed, tell them that they must provide you with an "equal and standard" alternative to the current location. For example, an offer for you to stand on a dead-end street across from a public park is NOT an "equal and standard" alternative.

4. If really committed, force them to arrest you (they will issue you a citation) and place the burden of removing you on Their shoulders.
   Note: Check on the penalty for such an arrest first before taking this route. Also check on the availability of local legal assistance before taking this route, although a strong defense could be made without an attorney since most judges find this type of thing to be "common sense"
5. Use the arrest or dislocation for publicity from the city or other area to publicize the fact that fewer and fewer areas are available for this type of political activity.
6. In short, the first goal should be to:
   1. remain and collect signatures, spending the least amount of time arguing, and
   2. if unable to do this, push the issue and force them to remove you.

Hope that these comments are helpful - also never underestimate the ability of the citing of a legal case to help the effort. Usually, the owners of a location don't want this type of publicity and will not tangle with lawyers or citizen-lawyers.

Keep up the good work,

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