Nos. 04-1411, 05-1027, 05-2039, S144753

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IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

FASHION VALLEY MALL, LLC,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITIONER'S REPLY BRIEF ON THE MERITS

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SUPREME COURT
FILED
FEB 16 2007
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INTRODUCTION.

The question certified by the D.C. Circuit[1] requires this Court to determine how a privately owned shopping center may regulate the public use of a *Robins* required forum "to assure that ... [those uses] do not interfere with normal business operations." *Robins v. Pruneyard* (1979) 23 Cal.3d 899, 911. When *Robins* re-opened the doors to privately owned shopping centers, *Robins* expressly warned that it was not giving the public "free reign" to use this private property as a public forum, and expressly authorized the owner's use of regulations to "assure" that the public forum use did not interfere with the owner's intended use of this private property (i.e., normal business operations).

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[1] Petitioner recognizes that the question certified was whether the boycott prohibition Petitioner was using (Rule 5.6.2) was a constitutionally permissible exercise of the *Robins* recognized right to protect Petitioner's intended uses of Fashion Valley as a shopping center. Focusing only on the then-existing rule overlooks a second problem created by the NLRB order. In light of the NLRB'S discussion of the applicable law without criticizing the manner in which Petitioner drafted Rule 5.6.2, the NLRB order appears to intend to prevent the adoption and enforcement of any boycott prohibition, as opposed to only the Rule 5.6.2 statement of a boycott prohibition. (Joint Appendix 497). Since Petitioner could easily fix any drafting problems in the then-existing rule (e.g., it was not clearly enough focused on requests or demands not to purchase goods and services), Petitioner's critical concern was a reading of the order that prevented the use of any boycott prohibition. Petitioner, therefore, requests that this Court also address the broader question raised by the NLRB order of whether a privately owned shopping center can use a boycott prohibition (i.e., a prohibition against the use of the *Robins* required forum to request or demand that people not purchase goods or services from one or more of the businesses in the shopping center) to protect its operation of its property as a shopping center.

Robins struck a balance. The owner of a shopping center could not prohibit any and all uses of its shopping center as a public forum simply because the shopping center was private property. And, the public could not interfere with the owner's intended use of private property simply because they had a constitutionally protected right to use the owner's property as a public forum.

Robins was not the first time this Court held, in a relevant context, that a property owner could protect its intended use(s) of its property from interference arising out of the use of its property as a public forum. *Robins* relied on *Diamond v. Bland* (1970) 3 Cal.3d 653 ("*Diamond I*") and *In re Hoffman* (1967) 67 Cal.2d 845.

In *Hoffman*, Chief Justice Traynor spoke for this Court when it sanctioned a prohibition against any interference with the conduct of a business on the property. *In re Hoffman* (1967) 67 Cal.2d 845, 851 — "Had petitioners in any way interfered with the conduct of the railroad business, they could legitimately have been asked to leave."

In *Diamond I,* Justice Mosk spoke for this Court when it sanctioned regulations calculated to protect business interests, and regulations prohibiting a use of the required public forum in a manner calculated to disrupt normal business operations. *Diamond v. Bland* (1970) 3 Cal.3d 653, 665 — "We impose no unrealistic burden on the operators of shopping centers in insisting that their control over First Amendment rights be exercised … through reasonable regulations calculated to protect their business interests … [R]egulations … can be devised to protect Inland Center from actual or potential danger of First Amendment activities being conducted on its premises in a manner calculated to disrupt normal business operations and to interfere with the convenience of customers."

Nothing in the *Robins* sanction of regulations to "assure" that the public forum did not "interfere with normal business operations" dilutes the clarity of this Court's previous statements. The extension of the California Constitutional protection of speech to private property did not include the right to use that property to interfere with the owner's intended uses of that property.

The Intervenor's review of why *Robins* extended the California constitutional protection of speech to private property adds nothing to the discussion of the specific question before this Court and the more fundamental question of how the owner of a shopping center can exercise the *Robins* recognized right to assure that the public forum uses do not interfere with the owner's intended uses of its shopping center. Petitioner does not claim that members of the public do not have a constitutionally protected right to use Fashion Valley as a public forum. Petitioner provides the *Robins* required forum because *Robins* has extended the California constitutional protection of speech to privately owned shopping centers.

Intervenor refuses to acknowledge that *Robins* did *not* include, within the admittedly broad protection of speech afforded by the California Constitution, the right to use the shopping center to interfere with the owner's intended uses of its shopping center. *Robins* did not find that the social forces driving the need to require privately owned shopping centers to provide a public forum justified the use of privately owned shopping centers in a manner[2] that interfered with the owner's intended uses of its property. Rather, *Robins* specifically recognized that the owner could regulate the

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[2] Or, according to Chief Traynor, *in any manner* that interfered with the business of the stores in the shopping center. *In re Hoffman* Id., at 851.

public forum use "to assure that ... [the public forum use did] not interfere with normal business operations." *Robins v. Pruneyard* (1979) 23 Cal.3d 899, 911.

LEGAL DISCUSSION

I.
INTERVENOR IGNORES THIS COURT'S DEFINITION OF CONTENT-NEUTRALITY IN *LOS ANGELES ALLIANCE FOR SURVIVAL.*

Intervenor ignores this Court's definition of content-neutrality in *Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352. Intervenor repeatedly categorizes the subject boycott prohibition as content-based regulation without once discussing and applying the *Los Angeles Alliance for Survival* standard for determining when a regulation is content-neutral.

The subject boycott prohibition is nothing more than a prohibition against the use of the *Robins* required forum to ask shoppers[3] not to do

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[3] Petitioner uses the term "shoppers," instead of the generic terms "public" or "members of the public" to describe the subject audience. The "members of the public" to whom speakers on the shopping property would be talking or writing are not people who might, or might not, be on their way to buy something at one of the stores in the shopping center.

The people driving vehicles on the streets next to the public sidewalks surrounding Fashion Valley should be described as "members of the public." They may not be on their way to shop at one or more of the stores in Fashion Valley.

But, the people walking through the shopping center are the members of the public that either the owner, manager, or one or more stores have succeeded in attracting to Fashion Valley. These people are on their way to

exactly what the owner has invited them to do —shop at one or more of the stores in the shopping center. This prohibition is unconditionally and without exception[4] viewpoint neutral — it covers any and all of the reasons why a speaker might ask shoppers not to shop at a store in the shopping center, and covers anything and everything a speaker might hope to accomplish by keeping shoppers out of a store in the shopping center.

Intervenor repeatedly ignores the fact that the subject boycott prohibition does not prevent a discussion and debate of uncomplimentary information about a store in the shopping center or the shopping center itself. In the words this Court used in *Los Angeles Alliance for Survival*,[5] the subject boycott prohibition only prevents an inherently intrusive kind of speech — asking shoppers not to do exactly what the owner has invited them to do.

The subject boycott prohibition does not use a blanket proscription against all requests for shopper action to prevent one inherently intrusive request. The subject boycott prohibition allows the speaker to ask that shoppers communicate their respective opinions to the people responsible for the operation of the shopping center or any store in the shopping center.

The subject boycott prohibition does not use a blanket proscription against all boycotts to prevent one inherently intrusive boycott. The subject

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shop at one or more of the stores in the shopping center, and, as long as speakers can request locations as near as possible to the targeted stores, these people probably are on their way to shop at the targeted store. For this reason, the subject audience should be described as "shoppers," not simply members of the public.

[4] No speaker, under any condition, is permitted to ask the shoppers not to shop at one or more of the stores in the shopping center.

[5] *Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, 355.

boycott prohibition allows the speaker to ask shoppers not to shop at stores that the owner of the shopping center is not in the business of promoting (i.e., a business that does not have a store located in the shopping center).

In *Los Angeles Alliance for Survival v. City of Los Angeles* (2000) 22 Cal.4th 352, this Court replaced the literal or absolute standard for determining whether a regulation is content-neutral with a standard that permits nondiscriminatory prohibitions against a kind of inherently intrusive speech. Intervenor twice cites *Los Angeles Alliance for Survival.* The first time, Intervenor was simply noting the Ninth Circuit Court's reference to this Court's decision in support of the Ninth Circuit's statement that the first step[6] is to decide whether the regulation is content-neutral or content based.[7] The second and last time Intervenor refers to *Los Angeles Alliance for Survival*, Intervenor points out that a regulation that restricts speech must be justified without reference to the content of the regulated speech.[8] Intervenor, however, avoids any discussion of when, under the *Los Angeles Alliance for Survival* standard for content-neutrality, a regulation is justified without reference to the content of the regulated speech.

Why is Intervenor avoiding the *Los Angeles Alliance for Survival* standard for content-neutrality? *Los Angeles Alliance for Survival* is another decision in which this Court recognized that the protection of speech afforded by the California Constitution did not justify interfering with the property owner's intended uses of its property — "[t]he state may ...

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[6] In *Clark v. Burleigh* (1992) 4 Cal.4th 474, 482, this Court said that the relevant review should begin with a "forum analysis" which puts the regulator's property into one of three categories. *Clark v. Burleigh* (1992) 4 Cal.4th 474, 482.

[7] Answering Brief 14.

[8] Answering Brief 26.

reasonably and narrowly regulate solicitations in order … to prevent … interference with the business operations being conducted on the property."[9]

For the reasons explained in more detail in the [Corrected] Brief For Petitioner Fashion Valley Mall, LLC,[10] a prohibition against the speaker requesting that shoppers do exactly what the owner has invited them to do is content-neutral under the *Alliance for Survival* standard. This prohibition does not discriminate based on the speaker's point of view, is narrowly drawn to protect Petitioner's interest in promoting sales in its shopping center, and permits speakers to engage in a broad range of expressive activities, including criticism of a store in the shopping center or the shopping center itself.[11]

The NLRB asked the D.C. Circuit, and the Intervenor is asking this Court, to apply the old, no longer used "literal approach to determining content neutrality." This Court discussed in *Los Angeles Alliance for Survival* the inherent conflict between the "literal approach to determining content neutrality" and the U.S. Supreme Court's general desire for the "narrow tailoring" of restrictions on the exercise of otherwise constitutionally protected speech. Consistent with the expectation that restriction be narrowly tailored, this Court adopted the U.S. Supreme Court's defining a regulation as constitutionally "content-neutral" if the regulation prohibits one kind of speech while leaving other kinds of speech untouched, so long as the regulation predominantly addresses the inherently intrusive and potentially coercive nature of the prohibited kind of speech, and not the content of the speech. This Court adopted the U.S. Supreme Court's

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[9] *Alliance for Survival*, Id. at 364.
[10] Opening Brief 40-53.
[11] *Alliance for Survival*, Id. at 369-370.

approval of a regulation as "content-neutral" even though the prohibited kind of speech is more disruptive only because of its content and the reactions provoked by its content.[12]

II.
THE INTERVENOR'S SUPPORTERS WERE NOT ENGAGED IN A CONSUMER BOYCOTT.

Intervenor misstates the record. Intervenor asserts that Petitioner excluded Union supporters because they were violating the subject boycott prohibition. This statement ignores the D.C. Circuit's reversal of the ALJ's finding that the Union supporters were asking shoppers to boycott one of the stores in Fashion Valley.

The D.C. Circuit found that "there is no substantial evidence the Union intended to boycott any of the Mall's tenants."[13] *Fashion Valley v. N.L.R.B. (2006)* 451 F.3d 241. The Concurring Opinion specifically observed that the Union's leafleting did not run afoul of the subject boycott prohibition because the Majority Opinion had reversed the ALJ's finding that the Union was engaged in a consumer boycott.[14]

Petitioner asked the Union supporters to leave the shopping center because they had not applied for and secured the required permit. And, assuming the Union had applied for a permit to do what the Union

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[12] *Alliance for Survival*, Id, at 373-374.
[13] In fact, there was no evidence. Ignoring the leaflet that the Intervenor's supporters were distributing (Opening Brief 10-11; Joint Appendix 29-36, 64-66, and 207), Intervenor's counsel argued that Intervenor was requesting that shoppers not shop at a department store in Fashion Valley (Joint Appendix 261).
[14] *Fashion Valley*, Id. at 247.

supporters were doing when Petitioner asked them to leave, the subject boycott provision would not have prevented the issuance of a permit because the Union supporters were not requesting a boycott of a store in Fashion Valley.[15]

A careful review of the subject leaflet[16] discloses that it does not run afoul of the narrow restrictions in the subject boycott prohibition. While possibly critical of, and certainly not applauding, the department store for advertising in the targeted employer's newspaper (which was not located in the shopping center), the leaflet does not ask shoppers to boycott the department store, which is the only request for consumer action that the subject boycott rule prohibits.

To the extent this fact is relevant at the present time, attacking the constitutionality of the subject boycott prohibition did not become the ground for avoiding Petitioner's application and permit procedure until the D.C. Circuit rejected the NLRB's use of what the NLRB referred to as California real property law to avoid the *Robins* restrictions on public access in *Waremart Foods v. NLRB*, (2004) 354 F.3d 870. Prior to *Waremart Foods*, the NLRB claimed that the owner's *Robins* sanctioned right regulating the use of a privately owned shopping center as a public forum was superseded by real property law that gave labor unions what was effectively an unregulated, restricted right to use any commercial property.[17]

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[15] Opening Brief 54-56; Joint Appendix 103.
[16] Opening Brief 10-11; Joint Appendix 29-36, 64-66, and 207.
[17] In its complaints about Petitioner's application and permit procedure, the NLRB was attempting to avoid the *Robins* sanctioned right to regulate public access. In its complaints about the *Waremart Foods* exclusion of labor protestors, the NLRB was attempting to avoid the *Robins* limitation on public access to shopping centers.

Waremart Foods held that (1) *Robins* was the controlling case, and (2) the NLRB's interpretation of California real property law represented an unconstitutional content-based discrimination in favor of labor speech under the First Amendment.

Having lost the battle to avoid the *Robins* restrictions on public access, the NLRB grabbed the Ninth Circuit's decision in *Glendale Associates, Ltd. v. NLRB*, (2003) 347 F.3d 1145, off the shelf even though there are obvious, significant differences between any unconditional prohibition of consumer boycotts and the Glendale Galleria's conditional prohibition against identifying a store in the shopping center or the owner or manager of the shopping center as summarized in the next point.

III.

THE NINTH CIRCUIT COURT'S REJECTION OF THE GLENDALE GALLERIA REGULATION ADDS NOTHING TO THE QUESTION BEFORE THIS COURT.

Without attempting to explain why, Intervenor claims that the Glendale Galleria regulation "was essentially identical to" the subject boycott prohibition.[18] The two regulations do share a common objective — the *Robins* sanctioned objective of avoiding a disruption of normal business operations. However, Intervenor's claim that the two regulations attempt to achieve that objective in an essentially identical manner ignores the obvious and extraordinarily significant differences between the two regulations.

Intervenor acknowledges that the Glendale Galleria regulation prohibits any reference to the name of a store, or the owner or manager of

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[18] Answering Brief 12.

the shopping center as a means of preventing a disruption of ordinary business operations.[19] The subject boycott regulation, on its face, includes no such restriction. And, the evidence shows that Petitioner did not interpret the subject boycott prohibition as preventing the identification of a store in the shopping center, etc. The leaflet the Intervenor's supporters were distributing mentioned the name of a department store in Fashion Valley,[20] and, had Intervenor requested a permit to distribute that leaflet, Petitioner would have permitted the distribution of the leaflet.[21]

The Glendale Galleria regulation also permitted two exceptions to the prohibition from referring to the name of a store, or the owner or manager of the shopping center. The Ninth Circuit used the existence of these exceptions as the basis for rejecting Glendale Galleria's claim that it was properly exercising a *Robins* recognized right to avoid a disruption of the tenant's business as authorized by *Robins*.[22] The Ninth Circuit held that a rule which only prevented some speakers from identifying a store, etc., was an impermissible content-based regulation of speech.[23] The Ninth Circuit also criticized the Glendale Galleria's elimination of the speaker's ability to communicate (and, therefore, to discuss) derogatory information about a store or the shopping center. Glendale Galleria argued that, if it did not prohibit non-commercial literature[24] that disclosed a tenant's name, this

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[19] Answering Brief 12.
[20] Opening Brief 10-11; Joint Appendix 29-36, 64-66, and 207.
[21] Opening Brief 13; Joint Appendix 110-114, 208-211, and 254-259.
[22] *Glendale Associates, Ltd.* Id. at 1156-1157.
[23] *Glendale Associates, Ltd.* Id. at 1158.

[24] The Glendale Galleria obviously expected a protestor to distribute derogatory information and tried to avoid the risk that the derogatory

literature would discourage the public from patronizing the named tenants.[25] The Ninth Circuit held that, "[i]n restricting ... critical speech about their tenants, owners, or managers, ... the [Glendale Galleria's] rule contravenes the purpose of California free speech protections: the preservation of discussion of issues even when they are contrary to a regulating party's belief or interest ... [W]e believe that it is ... a robust exchange of ideas that the free speech provisions of the California Constitution was designed to promote ... The California Constitution does not permit censorship of contrary ideas."[26]

The subject boycott prohibition, in addition to permitting no exceptions, does not deprive speakers of a public forum to communicate derogatory information about a store or the shopping center. As pointed out above, Petitioner would have permitted Intervenor to distribute a leaflet that identified a department store in Fashion Valley even though the leaflet could be read as criticizing the store for advertising in the target employer's newspaper.

IV.

THE *ROBINS* REQUIRED FORUM MUST BE PLACED IN THE "NON-PUBLIC FORUM" CATEGORY.

Intervenor grossly misconstrues the meaning and purpose of this Court's comment in *Golden Gateway Center v. Golden Gateway Tenants Association* (2001) 26 Cal.4th 1013, that *Robins* implicitly approved the

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information would discourage the public from shopping at a store in the shopping center.

[25] *Glendale Associates, Ltd.* Id. at 1156.

[26] *Glendale Associates, Ltd.* Id. at 1158.

reasoning in *Logan Plaza.*[27] For the reasons explained below, all this Court said in *Golden Gateway Center* was that *Robins* had approved the *Logan Plaza* conclusion that a shopping center should be considered as publicly owned for the purpose of applying California's free speech clause because the owner had given the public unrestricted free access to the shopping center property.

In *Golden Gateway Center,* this Court answered the question "whether California's free speech clause protects against only state action or also against private conduct."[28] *Golden Gateway Center* found that *Robins* had relied heavily on the "functional equivalence" of the shopping center to a traditional public forum. "Functional equivalence" in this context meant nothing more than that there was an "open and unrestricted invitation to the public to congregate freely" in both the shopping center and a traditional public forum. *Golden Gateway Center*, therefore, concluded "that the actions of a private property owner constitutes state action for purposes of California's free speech clause only if the property is freely and openly accessible to the public."[29] It was in this context that *Golden Gateway Center* held:

> "[T[he reference in *Robins* to California cases relying on *Marsh* and *Logan Plaza* suggests an implicit approval of the reasoning in these federal decisions … *Logan Plaza* held that a shopping mall should be treated as publicly owned for First Amendment

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[27] Answering Brief 20.
[28] *Golden Gateway Center*, Id. at 1020.
[29] *Golden Gateway Center*, Id. at 1032-1033.

purposes because, among other things, the public had "unrestricted access to the mall property."[30]

The fact that Petitioner's operation of Fashion Valley as a shopping center is "state action" subject to the constraints imposed by the California Constitution on government regulation of public property does not define the nature of the *Robins* required forum. In *Clark v. Burleigh* (1992) 4 Cal.4th 474, Justice Mosk spoke for this Court as follows:

> "Nothing in the Constitution requires the Government freely to grant access to all who wish to exercise their right to free speech on every type of Government property without regard to the nature of the property or to the disruption that might be caused by the speaker's activities ... *Recognizing that the Government, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated,* the [U.S. Supreme] Court has adopted a forum analysis as a means of determining when the Government's interest in limiting the use of its property to its intended purpose outweighs the interest of those wishing to use the property for other purposes. Accordingly, the extent to which the Government can control access depends on the nature of the relevant forum."[31]

Intervenor belittles Petitioner's explanation of why the *Robins* required public forum must be put in the "non-public forum" category. Intervenor argues that the *Robins* required public forum must be put in the

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[30] *Golden Gateway Center*, Id. at 1032-1033.
[31] *Clark* Id. at 482. (Emphasis added).

"traditional public forum" category. For the reasons summarized below,[32] the *Robins* required public forum is not a "traditional public forum" nor is it a "designated public forum." The *Robins* required public forum must be placed in the "non-public forum" or "non-traditional public forum" category.

For the purposes of deciding what power the owner has to preserve property under its control for a use to which it is lawfully dedicated, what is a "traditional public forum"? A "traditional public forum" is "a place that by long tradition has been used by the public at large for the free exchange of ideas." The laws regulating the content of speech in "traditional public fora" are subject to "strict scrutiny" because the "principal purpose of traditional public fora is the free exchange of ideas."[33] This last point bears repeating. Since the principal purpose of a "traditional public forum" is the free exchange of ideas, it is very difficult to find any reason why the free exchange of ideas would interfere with the intended use of a property for which the principal purpose is the free exchange of ideas.

In the same context, what is a "non-public forum"? The property put in this forum category is not a "forum" in the sense that it is a "meeting place or medium for open discussion." A "nonpublic forum" is "simply property that is not a public forum by tradition or design."[34]

The third forum category is a "designated public forum." This is property that the owner has intentionally dedicated to expressive activity.[35]

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[32] Petitioner discusses the applicable law in more detail in its Opening Brief 26-40. Petitioner also discusses the applicable law in its [Corrected] Reply Brief for Petitioner Fashion Valley Mall, LLC 20-26.
[33] *Clark* Id. at 482.
[34] *Clark* Id. at 484.
[35] *Clark* Id. at 483.

Justice Mosk's discussion in *Clark* of the applicable U.S. Supreme Court decisions leaves no doubt that the *Robins* required forum must be placed in the "non-public forum" category. As the creation of a relatively recent California Supreme Court decision, it is not a product of a long tradition of public use for the free exchange of ideas. The U.S. Supreme Court, for the same reason, held that modern air terminals could not be considered a "traditional public forum."[36]

The *Robins* required forum cannot be placed in the "designated public forum" category because the owner creates a "designated public forum" by intentionally opening a nontraditional forum for public discourse. A nontraditional public forum does not become a designated public forum because the owner allowed the communication of certain information or ideas. To create a "designated public forum" the owner must intend to open the property "for expressive activity in general," or must grant permission as a matter of course to all who seek to communicate information. Evidence that the owner had used extensive admission criteria to selectively limit access prevents the placement of its property in the "designated public forum" category. Merely allowing groups to leaflet or speak, and even adopting a regulation preventing intrusive leafleting or speech, does not create a "designated public forum." Rather, the owner must expressly dedicate the property to the free speech activities in question, which in the relevant context would be asking shoppers not to shop in the shopping center. *Clark* Id. at 485-489.

Petitioner has argued that the *Robins* required forum should be put in the non-public forum category. Nothing in *Robins* nor *Hoffman* nor

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[36] *Clark* Id. at 488.

Diamond I, required the owner of a privately owned shopping center to abandon the use of the shopping center property as a shopping center. Rather, *Robins* expressly sanctioned the owner's adoption of regulations to protect the shopping center's normal business operations, and that is exactly what *Clark* says the owner of a non-public forum may do. *Clark* says the owner of a non-public forum may exclude speakers who wish to address a topic not encompassed within the purpose of the forum, and who do or say something that is incompatible with the owner's intended use of the property.[37] It is difficult to imagine something more incompatible with the normal business of a shopping center than asking or demanding that shoppers not shop at one or more of the stores in that shopping center.

CONCLUSION

Without any doubt, the NLRB was trying to free labor speech from the restrictions *Robins* imposed on the exercise of free speech rights on private property. Ignoring the clear and decisive rejection of its argument in the *Union of Needletrades* decision, the NLRB nevertheless steadfastly advanced an unconstitutionally discriminatory argument that labor speech was not subject to the *Robins* restrictions until the D.C. Circuit rejected its argument as both an incorrect statement of as well as an unconstitutional content-based interpretation of California law.

The Intervenor is still pursuing the same objective, and is still ignoring the simple fact that labor speech, like all other speech, is subject to the *Robins*-imposed restrictions on the exercise of free speech rights on

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[37] *Clark* Id. at 491-493.

private property. When *Robins* re-opened the door to the use of private property as a public forum, *Robins* did not open private property to public forum uses that interfered with the owner's intended, private use of its property. Quite the opposite, *Robins* held that it was the absence of interference with the owner's intended, private use of its property that prevented the owner, after inviting the public to use its property, from prohibiting public debate.

Neither the speaker's right to use privately owned shopping centers as a public forum, nor the owner's right to prevent interference with its private, intended use of the shopping center, rise and fall, or expand or contract, with the perceived social, political, religious, or economic significance of what the speaker has to say or might accomplish by interfering with the private, intended use of the shopping center. All speakers have an equally protected constitutional right to use the shopping center as a public forum. And no speaker has a constitutional right to interfere with an owner's private, intended uses of its property as a shopping center as a means of achieving a socially, politically, religiously, or economically desirable end.

The question is not whether the owner of a privately owned shopping center has a right to prohibit efforts that interfere with normal business operations. The question is whether the owner has narrowly worded the regulation to only eliminate speech or conduct that interferes with the operation of its property as a shopping center.

The existence of the requisite interference may not be self-evident with some speech or conduct and, therefore, may require evidence proving the requisite interference. The requisite interference, however, is self-evident when the speech is an explicit request that the public do something that would directly interfere with normal business operations. The list of

conduct that would directly interfere with normal business operations includes asking or demanding that shoppers not shop at one or more store(s) in the shopping center. Petitioner, therefore, submits that the subject boycott prohibition narrowly seeks to prohibit self-evident efforts to interfere with the operation of Fashion Valley as a shopping center.

DATED: February 15, 2007

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Fashion Valley Mall, LLC.

CERTIFICATE OF WORD COUNT

In compliance with California Rules of Court 14(c)(1), the undersigned hereby certifies that Microsoft Word reports the PETITIONER'S REPLY BRIEF contains 4,161 words.

DATED: February 15, 2007

Law Offices of W. McLin Lines
3838 Carson Street, Suite 102
Torrance, California 90503

By _____
W. M. Lines
Theodore R. Scott
Attorneys for Petitioner,
Fashion Valley Mall, LLC.

CERTIFICATE OF SERVICE

The undersigned certifies:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 3838 Carson Street, Suite 102, Torrance, California 90503. On February 15, 2007, I served document described as **PETITIONER'S REPLY BRIEF** on all interested parties in this action:

Mark J. Langer, Clerk
United States Court of Appeals
For the District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001-2866

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X (By Mail) I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Torrance, California. I am "readily familiar" with the firm's practice for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection, in the ordinary course of business.

X I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Torrance, California on February 15, 2007.

Carolyn Regan

Carolyn Regan