

*Expanded Background Summary*  
*Fashion Valley Mall, LLC v. National Labor*  
*Relations Board et al. (S144753)*

A federal appeals court asked the California Supreme Court to answer the following question to help it decide this case: May a shopping mall prohibit persons on its property from urging customers to boycott a store in the mall?

A union that represents employees at a newspaper handed out leaflets in front of the Robinson-May department store at the Fashion Valley Mall in San Diego. The leaflets said that the newspaper treated its employees unfairly and noted that the department store advertised in the newspaper; it asked the customers to call the newspaper. The mall generally allows such protests on mall property, but only if the protesters apply for a permit and agree to abide by the mall's rules, which include promising not to urge customers to boycott any of the stores in the mall. The mall forced the protesters to leave because they did not have a permit.

The union complained to the National Labor Relations Board (NLRB) that the mall had violated its right to conduct union activity. The NLRB ruled that the union had a right to hand out leaflets on mall property and did not have to apply for a permit, because California law did not allow the mall to make the union promise not to urge customers to boycott any of the stores in the mall as a condition to permitting free speech activities on mall property. The federal appeals court asked the California Supreme Court whether it is correct that California law does not allow the mall to enforce a rule prohibiting persons on mall property from urging customers to boycott a store in the mall.

The United States Supreme Court has interpreted the First Amendment to the United States Constitution as not extending free speech rights to private property such as the shopping mall in this case. The California Constitution, however, contains its own free speech provision, which is worded differently than that of the United States Constitution. In *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899 (*Pruneyard*), the California Supreme Court applied what is sometimes called "independent state grounds" and interpreted the California Constitution as extending free speech rights to shopping malls like Fashion Valley Mall. The court noted that large shopping centers to which the public is invited can provide an essential and invaluable forum for exercising free speech rights. Specifically, the court held that persons could gather signatures on a political petition on the mall's property and explain their views to customers inside the mall.

The issue in this case concerns how far *Pruneyard's* free speech rights extend and to what extent, if any, a mall may limit free speech activities on its

private property. The union argues that it should be permitted to urge customers to boycott stores within the mall just as *Pruneyard* permitted persons to gather signatures and express their views on mall property. It argues that urging a boycott would be less effective if it were forced to do so outside the shopping center, which might be far away from the store being boycotted. The mall argues that at least it may forbid persons on its own private property from urging a boycott of its own tenants, because a boycott would interfere with the intended purpose of the mall.