**LLOYD CORP., LTD. v. TANNER ET AL.**

**SUPREME COURT OF THE UNITED STATES**

***407 U.S. 551*; *1972***

**April 18, 1972, Argued**

**June 22, 1972, Decided**

**JUDGES:** Powell, J., delivered the opinion of the Court, in which Burger, C. J., and White, Blackmun, and Rehnquist, JJ., joined. Marshall, J., filed a dissenting opinion, in which Douglas, Brennan, and Stewart, JJ., joined, post, p. 570.

**OPINION**

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the question reserved by the Court in *Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968)*, as to the right of a privately owned shopping center to prohibit the distribution of handbills on its property when the handbilling is unrelated to the shopping center's operations. Relying primarily on *Marsh v. Alabama, 326 U.S. 501 (1946)*, and *Logan Valley*, the United States District Court for the District of Oregon sustained an asserted *First Amendment* right to distribute handbills in petitioner's shopping center, and issued a permanent injunction restraining petitioner from interfering with such right. *308 F.Supp. 128 (1970)*. The Court of Appeals for the Ninth Circuit affirmed, *446 F.2d 545 (1971)*. We granted certiorari to consider petitioner's contention that the decision below violates rights of private property protected by the *Fifth* and *Fourteenth Amendments*. *404 U.S. 1037 (1972)*.

Lloyd Corp., Ltd. (Lloyd), owns a large, modern retail shopping center in Portland, Oregon. Lloyd Center embraces altogether about 50 acres, including some 20 acres of open and covered parking facilities which accommodate more than 1,000 automobiles. It has a perimeter of almost one and one-half miles, bounded by four public streets. It is crossed in varying degrees by several other public streets, all of which have adjacent public sidewalks. Lloyd owns all land and buildings within the Center, except these public streets and sidewalks. There are some 60 commercial tenants, including small shops and several major department stores.

The Center embodies a relatively new concept in shopping center design. The stores are all located within a single large, multi-level building complex sometimes referred to as the "Mall." Within this complex, in addition to the stores, there are parking facilities, malls, private sidewalks, stairways, escalators, gardens, an auditorium, and a skating rink. Some of the stores open directly on the outside public sidewalks, but most open on the interior privately owned malls. Some stores open on both. There are no public streets or public sidewalks within the building complex, which is enclosed and entirely covered except for the landscaped portions of some of the interior malls.

The distribution of the handbills occurred in the malls. They are a distinctive feature of the Center, serving both utilitarian and esthetic functions. Essentially, they are private, interior promenades with 10-foot sidewalks serving the stores, and with a center strip 30 feet wide in which flowers and shrubs are planted, and statuary, fountains, benches, and other amenities are located. There is no vehicular traffic on the malls. An architectural expert described the purpose of the malls as follows:

"In order to make shopping easy and pleasant, and to help realize the goal of maximum sales [for the Center], the shops are grouped about special pedestrian ways or malls. Here the shopper is isolated from the noise, fumes, confusion and distraction which he normally finds along city streets, and a controlled, carefree environment is provided . . . ." 1

1 App. 254.

Although the stores close at customary hours, the malls are not physically closed, as pedestrian window shopping is encouraged within reasonable hours. 2 Lloyd employs 12 security guards, who are commissioned as such by the city of Portland. The guards have police authority within the Center, wear uniforms similar to those worn by city police, and are licensed to carry handguns. They are employed by and subject to the control of Lloyd. Their duties are the customary ones, including shoplifting surveillance and general security.

2 The manager of the Center testified:

"Q. Turning now to the general policy in operation of the Lloyd Center, it's true that the malls and walkways within the center are open 24 hours a day; is that right?

"A. Well, they aren't physically closed such as putting a gate across, no. But, they are not -- when people are there after hours, they are watched. And, if it is too late at night, they are told the places are closed and they should leave.

"Q. If I wanted to walk through the center malls of Lloyd Center at 3:00 in the morning, would anyone stop me?

"A. Depending on who the officer was on duty as to what he is supposed to do. But, they would have made inquiry and followed you to see what you are doing." App. 49.

At a few places within the Center, small signs are embedded in the sidewalk which state:

"NOTICE -- Areas In Lloyd Center Used By The Public Are Not Public Ways But Are For The Use Of Lloyd Center Tenants And The Public Transacting Business With Them. Permission To Use Said Areas May Be Revoked At Any Time. Lloyd Corporation, Ltd."

The Center is open generally to the public, with a considerable effort being made to attract shoppers and prospective shoppers, and to create "customer motivation" as well as customer goodwill in the community. In this respect the Center pursues policies comparable to those of major stores and shopping centers across the country, although the Center affords superior facilities for these purposes. Groups and organizations are permitted, by invitation and advance arrangement, to use the auditorium and other facilities. Rent is charged for use of the auditorium except with respect to certain civic and charitable organizations, such as the Cancer Society and Boy and Girl Scouts. The Center also allows limited use of the malls by the American Legion to sell poppies for disabled veterans, and by the Salvation Army and Volunteers of America to solicit Christmas contributions. It has denied similar use to other civic and charitable organizations. Political use is also forbidden, except that presidential candidates of both parties have been allowed to speak in the auditorium. 3

3 The manager of the Center, explaining why presidential candidates were allowed to speak, said: "We do that for one reason and that is great public interest. It . . . brings a great many people to Lloyd Center who may shop before they leave." App. 51.

The Center had been in operation for some eight years when this litigation commenced. Throughout this period it had a policy, strictly enforced, against the distribution of handbills within the building complex and its malls. No exceptions were made with respect to handbilling, which was considered likely to annoy customers, to create litter, potentially to create disorders, and generally to be incompatible with the purpose of the Center and the atmosphere sought to be preserved.

On November 14, 1968, the respondents in this case distributed within the Center handbill invitations to a meeting of the "Resistance Community" to protest the draft and the Vietnam war. The distribution, made in several different places on the mall walkways by five young people, was quiet and orderly, and there was no littering. There was a complaint from one customer. Security guards informed the respondents that they were trespassing and would be arrested unless they stopped distributing the handbills within the Center. 4 The guards suggested that respondents distribute their literature on the public streets and sidewalks adjacent to but outside of the Center complex. Respondents left the premises as requested "to avoid arrest" and continued the handbilling outside. Subsequently this suit was instituted in the District Court, seeking declaratory and injunctive relief.

4 The city of Portland has an ordinance which makes it unlawful to trespass on private property. Portland, Ore., Police Code ß 16-613.

I

The District Court, emphasizing that the Center "is open to the general public," found that it is "the functional equivalent of a public business district." *308 F.Supp., at 130*. That court then held that Lloyd's "rule prohibiting the distribution of handbills within the Mall violates . . . *First Amendment* rights." *308 F.Supp., at 131*. In a *per curiam* opinion, the Court of Appeals held that it was bound by the "factual determination" as to the character of the Center, and concluded that the decisions of this Court in *Marsh v. Alabama, 326 U.S. 501 (1946)*, and *Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308 (1968)*, compelled affirmance. 5

5 The Court of Appeals also relied on *Wolin v. Port of New York Authority, 392 F.2d 83 (CA2 1968)*.

*Marsh* involved Chickasaw, Alabama, a company town wholly owned by the Gulf Shipbuilding Corp. The opinion of the Court, by Mr. Justice Black, described Chickasaw as follows:

"Except for [ownership by a private corporation] it has all the characteristics of any other American town. The property consists of residential buildings, streets, a system of sewers, a sewage disposal plant and a 'business block' on which business places are situated. A deputy of the Mobile County Sheriff, paid by the company, serves as the town's policeman. Merchants and service establishments have rented the stores and business places on the business block and the United States uses one of the places as a post office from which six carriers deliver mail to the people of Chickasaw and the adjacent area. The town and the surrounding neighborhood, which can not be distinguished from the Gulf property by anyone not familiar with the property lines, are thickly settled, and according to all indications the residents use the business block as their regular shopping center. To do so, they now, as they have for many years, make use of a company-owned paved street and sidewalk located alongside the store fronts in order to enter and leave the stores and the post office. Intersecting company-owned roads at each end of the business block lead into a four-lane public highway which runs parallel to the business block at a distance of thirty feet. There is nothing to stop highway traffic from coming onto the business block and upon arrival a traveler may make free use of the facilities available there. In short the town and its shopping district are accessible to and freely used by the public in general and there is nothing to distinguish them from any other town and shopping center except the fact that the title to the property belongs to a private corporation." *326 U.S., at 502-503*.

A Jehovah's Witness undertook to distribute religious literature on a sidewalk near the post office and was arrested on a trespassing charge. In holding that *First* and *Fourteenth Amendment* rights were infringed, the Court emphasized that the business district was within a company-owned town, an anachronism long prevalent in some **[\*\*\*137]** southern States and now rarely found. 6

6 In commenting on the necessity for citizens who reside in company towns to have access to information, the Court said: "Many people in the United States live in company-owned towns. These people, just as residents of municipalities, are free citizens of their State and country. Just as all other citizens they must make decisions which affect the welfare of community and nation. To act as good citizens they must be informed." *326 U.S., at 508*.

In *Logan Valley* the Court extended the rationale of *Marsh* to peaceful picketing of a store located in a large shopping center, known as Logan Valley Mall, near Altoona, Pennsylvania. Weis Markets, Inc. (Weis), an original tenant, had opened a supermarket in one of the larger stores and was employing a wholly nonunion staff. Within 10 days after Weis opened, members of Amalgamated Food Employees Union Local 590 (Union) began picketing Weis, carrying signs stating that it was a nonunion market and that its employees were not receiving union wages or other union benefits. The picketing, conducted by nonemployees, was carried out almost entirely in the parcel pickup area immediately adjacent to the store and on portions of the adjoining parking lot. The picketing was peaceful, with the number of pickets varying from four to 13.

Weis and Logan Valley Plaza, Inc., sought and obtained an injunction against this picketing. The injunction required that all picketing be confined to public areas outside the shopping center. On appeal the Pennsylvania Supreme Court affirmed the issuance of the injunction, and this Court granted certiorari. In framing the question, this Court stated:

"The case squarely presents . . . the question whether Pennsylvania's generally valid rules against trespass to private property can be applied in these circumstances to bar petitioners from the Weis and Logan premises." *391 U.S., at 315*.

The Court noted that the answer would be clear "if the shopping center premises were not privately owned but instead constituted the business area of a municipality." *Ibid*. In the latter situation, it has often been held that publicly owned streets, sidewalks, and parks are so historically associated with the exercise of *First Amendment* rights that access to them for purposes of exercising such rights cannot be denied absolutely. *Lovell v. Griffin, 303 U.S. 444 (1938)*; *Hague v. CIO, 307 U.S. 496 (1939)*; *Schneider v. State, 308 U.S. 147 (1939)*; *Jamison v. Texas, 318 U.S. 413 (1943)*.

The Court then considered *Marsh v. Alabama, supra*, and concluded that:

"The shopping center here is clearly the functional equivalent of the business district of Chickasaw involved in *Marsh* ." *391 U.S., at 318*.

But the Court was careful not to go further and say that for all purposes and uses the privately owned streets, sidewalks, and other areas of a shopping center are analogous to publicly owned facilities:

"All we decide here is that because the shopping center serves as the community business block 'and is freely accessible and open to the people in the area and those passing through,' *Marsh v. Alabama, 326 U.S., at 508*, the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their *First Amendment* rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put." *Id., at 319-320*.

The Court noted that the scope of its holding was limited, and expressly reserved judgment on the type of issue presented in this case:

"The picketing carried on by petitioners was directed specifically at patrons of the Weis Market located within the shopping center and the message sought to be conveyed to the public concerned the manner in which that particular market was being operated. We are, therefore, not called upon to consider whether respondents' property rights could, consistently with the *First Amendment*, justify a bar on picketing which was not thus directly related in its purpose to the use to which the shopping center property was being put." *Id., at 320 n. 9*.

The Court also took specific note of the facts that the Union's picketing was "directed solely at one establishment within the shopping center," *id., at 321*, and that the public berms and sidewalks were "from 350 to 500 feet away from the Weis store." *Id., at 322*. This distance made it difficult "to communicate [with] patrons of Weis" and "to limit [the] effect [of the picketing] to Weis only." *Id., at 322, 323*. 7 *Logan Valley* was decided on the basis of this factual situation, and the facts in this case are significantly different.

7 The Court also commented on the increasing role of shopping centers and on the problem which they would present with respect to union activities if picketing were totally proscribed within shopping center areas: "Business enterprises located in downtown areas [on public streets and sidewalks] would be subject to on-the-spot public criticism for their [labor] practices, but businesses situated in the suburbs could largely immunize themselves from similar criticism by creating a *cordon sanitaire* of parking lots around their stores." *391 U.S., at 324-325*. The concurring opinion of MR. JUSTICE DOUGLAS also emphasized the related purpose of the picketing in *Logan Valley*: "Picketing in regard to labor conditions at the Weis Supermarket is directly related to that shopping center business." *391 U.S., at 326*.

II

The courts below considered the critical inquiry to be whether Lloyd Center was "the functional equivalent of a public business district." 8 This phrase was first used in *Logan Valley*, but its genesis was in *Marsh*. It is well to consider what *Marsh* actually decided. As noted above, it involved an economic anomaly of the past, "the company town." One must have seen such towns to understand that "functionally" they were no different from municipalities of comparable size. They developed primarily in the Deep South to meet economic conditions, especially those which existed following the Civil War. Impoverished States, and especially backward areas thereof, needed an influx of industry and capital. Corporations attracted to the area by natural resources and abundant labor were willing to assume the role of local government. Quite literally, towns were built and operated by private capital with all of the customary services and utilities normally afforded by a municipal or state government: there were streets, sidewalks, sewers, public lighting, police and fire protection, business and residential areas, churches, postal facilities, and sometimes schools. In short, as Mr. Justice Black said, Chickasaw, Alabama, had "all the characteristics of any other American town." *326 U.S., at 502*. The Court simply held that where private interests were substituting for and performing the customary functions of government, *First Amendment* freedoms could not be denied where exercised in the customary manner on the town's sidewalks and streets. Indeed, as title to the entire town was held privately, there were no publicly owned streets, sidewalks, or parks where such rights could be exercised.

8 *308 F.Supp. 128, 130, 132 (Ore. 1970)*; *446 F.2d 545, 546 (CA9 1971)*.

*Logan Valley* extended *Marsh* to a shopping center situation in a different context from the company town setting, but it did so only in a context where the *First Amendment* activity was related to the shopping center's operations. There is some language in *Logan Valley*, unnecessary to the decision, suggesting that the key focus of *Marsh* was upon the "business district," and that whenever a privately owned business district serves the public generally its sidewalks and streets become the functional equivalents of similar public facilities. 9 As Mr. Justice Black's dissent in *Logan Valley* emphasized, this would be an incorrect interpretation of the Court's decision in *Marsh*: 10

"*Marsh* was never intended to apply to this kind of situation. *Marsh* dealt with the very special situation of a company-owned town, complete with streets, alleys, sewers, stores, residences, and everything else that goes to make a town. The particular company town involved was Chickasaw, Alabama, which, as we stated in the opinion, except for the fact that it 'is owned by the Gulf Shipbuilding Corporation . . . has all the characteristics of any other American town. The property consists of residential buildings, streets, a system of sewers, a sewage disposal plant and a "business block" on which business places are situated.' *326 U.S., at 502*. Again toward the end of the opinion we emphasized that 'the town of Chickasaw does not function differently from any other town.' *326 U.S., at 508*. I think it is fair to say that the basis on which the *Marsh* decision rested was that the property involved encompassed an area that for all practical purposes had been turned into a town; the area had all the attributes of a town and was exactly like any other town in Alabama." *391 U.S., at 330-331*.

9 *Amalgamated Food Employees Union v. Logan Valley Plaza, 391 U.S. 308, 319 (1968)*.

10 As Mr. Justice Black was the author of the Court's opinion in *Marsh*, his analysis of its rationale is especially meaningful.

The holding in *Logan Valley* was not dependent upon the suggestion that the privately owned streets and sidewalks of a business district or a shopping center are the equivalent, for *First Amendment* purposes, of municipally owned streets and sidewalks. No such expansive reading of the opinion of the Court is necessary or appropriate. The opinion was carefully phrased to limit its holding to the picketing involved, where the picketing was "directly related in its purpose to the use to which the shopping center property was being put," *391 U.S., at 320 n. 9*, and where the store was located in the center of a large private enclave with the consequence that no other reasonable opportunities for the pickets to convey their message to their intended audience were available.

Neither of these elements is present in the case now before the Court.

A

The handbilling by respondents in the malls of Lloyd Center had no relation to any purpose for which the center was built and being used. 11 It is nevertheless argued by respondents that, since the Center is open to the public, the private owner cannot enforce a restriction against handbilling on the premises. The thrust of this argument is considerably broader than the rationale of *Logan Valley*. It requires no relationship, direct or indirect, between the purpose of the expressive activity and the business of the shopping center. The message sought to be conveyed by respondents was directed to all members of the public, not solely to patrons of Lloyd Center or of any of its operations. Respondents could have distributed these handbills on any public street, on any public sidewalk, in any public park, or in any public building in the city of Portland.

11 The injunction issued against Lloyd is comprehensive. It enjoins Lloyd (and others in active concert or participation with it) from "preventing or interfering with the distribution of non-commercial handbills in a peaceful and orderly manner in the malls and walkways within Lloyd Center at times when they are open to general public access." There is no limitation as to type of literature distributed except that it must be "non-commercial." Nor, indeed, is there any limitation in this injunction as to the number of persons participating in such activities or the frequency thereof. Irrespective of how controversial, offensive, distracting, or extensive the distributions may be, Lloyd has been ordered to allow all noncommercial handbilling which anyone desires to undertake within its private premises.

Respondents' argument, even if otherwise meritorious, misapprehends the scope of the invitation extended to the public. The invitation is to come to the Center to do business with the tenants. It is true that facilities at the Center are used for certain meetings and for various promotional activities. The obvious purpose, recognized widely as legitimate and responsible business activity, is to bring potential shoppers to the Center, to create a favorable impression, and to generate goodwill. There is no open-ended invitation to the public to use the Center for any and all purposes, however incompatible with the interests of both the stores and the shoppers whom they serve.

MR. JUSTICE WHITE, dissenting in *Logan Valley*, noted the limited scope of a shopping center's invitation to the public:

"In no sense are any parts of the shopping center dedicated to the public for general purposes . . . . The public is invited to the premises but only in order to do business with those who maintain establishments there. The invitation is to shop for the products which are sold. There is no general invitation to use the parking lot, the pickup zone, or the sidewalk except as an adjunct to shopping. No one is invited to use the parking lot as a place to park his car while he goes elsewhere to work. The driveways and lanes for auto traffic are not offered for use as general thoroughfares leading from one public street to another. Those driveways and parking spaces are not public streets and thus available for parades, public meetings, or other activities for which public streets are used." *391 U.S., at 338*.

It is noteworthy that respondents' argument based on the Center's being "open to the public" would apply in varying degrees to most retail stores and service establishments across the country. They are all open to the public in the sense that customers and potential customers are invited and encouraged to enter. In terms of being open to the public, there are differences only of degree -- not of principle -- between a free-standing store and one located in a shopping center, between a small store and a large one, between a single store with some malls and open areas designed to attract customers and Lloyd Center with its elaborate malls and interior landscaping.

B

A further fact, distinguishing the present case from *Logan Valley*, is that the Union pickets in that case would have been deprived of all reasonable opportunity to convey their message to patrons of the Weis store had they been denied access to the shopping center. 12 The situation at Lloyd Center was notably different. The central building complex was surrounded by public sidewalks, totaling 66 linear blocks. All persons who enter or leave the private areas within the complex must cross public streets and sidewalks, either on foot or in automobiles. When moving to and from the privately owned parking lots, automobiles are required by law to come to a complete stop. Handbills may be distributed conveniently to pedestrians, and also to occupants of automobiles, from these public sidewalks and streets. Indeed, respondents moved to these public areas and continued distribution of their handbills after being requested to leave the interior malls. It would be an unwarranted infringement of property rights to require them to yield to the exercise of *First Amendment* rights under circumstances where adequate alternative avenues of communication exist. Such an accommodation would diminish property rights without significantly enhancing the asserted right of free speech. In ordering this accommodation the courts below erred in their interpretation of this Court's decisions in *Marsh* and *Logan Valley*.

12 The Court's opinion in *Logan Valley* described the obstacles resulting from the location of the Weis store in the shopping center, and its relation to public streets and sidewalks: "Petitioners' picketing was directed solely at one establishment within the shopping center. The berms surrounding the center are from 350 to 500 feet away from the Weis store. All entry onto the mall premises by customers of Weis, so far as appears, is by vehicle from the roads alongside which the berms run. Thus the placards bearing the message which petitioners seek to communicate to patrons of Weis must be read by those to whom they are directed either at a distance so great as to render them virtually indecipherable -- where the Weis customers are already within the mall -- or while the prospective reader is moving by car from the roads onto the mall parking areas via the entrance ways cut through the berms. In addition, the pickets are placed in some danger by being forced to walk along heavily traveled roads along which traffic moves constantly at rates of speed varying from moderate to high. Likewise, the task of distributing handbills to persons in moving automobiles is vastly greater (and more hazardous) than it would be were petitioners permitted to pass them out within the mall to pedestrians." *391 U.S., at 321-322*.

III

The basic issue in this case is whether respondents, in the exercise of asserted *First Amendment* rights, may distribute handbills on Lloyd's private property contrary to its wishes and contrary to a policy enforced against *all* handbilling. In addressing this issue, it must be remembered that the *First* and *Fourteenth Amendments* safeguard the rights of free speech and assembly by limitations on *state* action, not on action by the owner of private property used nondiscriminatorily for private purposes only. The *Due Process Clauses of the Fifth* and *Fourteenth Amendments* are also relevant to this case. They provide that "no person shall . . . be deprived of life, liberty, or property, without due process of law." There is the further proscription in the *Fifth Amendment* against the taking of "private property . . . for public use, without just compensation."

Although accommodations between the values protected by these three Amendments are sometimes necessary, and the courts properly have shown a special solicitude for the guarantees of the *First Amendment*, this Court has never held that a trespasser or an uninvited guest may exercise general rights of free speech on property privately owned and used nondiscriminatorily for private purposes only. Even where public property is involved, the Court has recognized that it is not necessarily available for speaking, picketing, or other communicative activities. Mr. Justice Black, speaking for the Court in *Adderley v. Florida, 385 U.S. 39 (1966)*, said:

"The State, 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. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this 'area chosen for the peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate . . . .' Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases petitioners rely on, *Cox* v. *Louisiana*, [379 U.S.], at 554-555 and 563-564. We reject it again. The United States Constitution does not forbid a State to control the use of its own property for its own lawful nondiscriminatory purpose." *385 U.S., at 47-48*.

Respondents contend, however, that the property of a large shopping center is "open to the public," serves the same purposes as a "business district" of a municipality, and therefore has been dedicated to certain types of public use. The argument is that such a center has sidewalks, streets, and parking areas which are functionally similar to facilities customarily provided by municipalities. It is then asserted that all members of the public, whether invited as customers or not, have the same right of free speech as they would have on the similar public facilities in the streets of a city or town.

The argument reaches too far. The Constitution by no means requires such an attenuated doctrine of dedication of private property to public use. The closest decision in theory, *Marsh v. Alabama, supra*, involved the assumption by a private enterprise of all of the attributes of a state-created municipality and the exercise by that enterprise of semi-official municipal functions as a delegate of the State. 13 In effect, the owner of the company town was performing the full spectrum of municipal powers and stood in the shoes of the State. In the instant case there is no comparable assumption or exercise of municipal functions or power.

13 Mr. Justice Black, dissenting in *Logan Valley*, emphasized the distinction between a privately owned shopping center and the "company town" involved in *Marsh*, which he said had assumed "*all* the attributes" of a municipality. *391 U.S., at 332*. (Original emphasis.)

Nor does property lose its private character merely because the public is generally invited to use it for designated purposes. Few would argue that a free-standing store, with abutting parking space for customers, assumes significant public attributes merely because the public is invited to shop there. Nor is size alone the controlling factor. The essentially private character of a store and its privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center. This is not to say that no differences may exist with respect to government regulation or rights of citizens arising by virtue of the size and diversity of activities carried on within a privately owned facility serving the public. There will be, for example, problems with respect to public health and safety which vary in degree and in the appropriate government response, depending upon the size and character of a shopping center, an office building, a sports arena, or other large facility serving the public for commercial purposes. We do say that the *Fifth* and *Fourteenth Amendment* rights of private property owners, as well as the *First Amendment* rights of all citizens, must be respected and protected. The Framers of the Constitution certainly did not think these fundamental rights of a free society are incompatible with each other. There may be situations where accommodations between them, and the drawing of lines to assure due protection of both, are not easy. But on the facts presented in this case, the answer is clear.

We hold that there has been no such dedication of Lloyd's privately owned and operated shopping center to public use as to entitle respondents to exercise therein the asserted *First Amendment* rights. Accordingly, we reverse the judgment and remand the case to the Court of Appeals with directions to vacate the injunction.

*It is so ordered*.