No. 25-1322

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 Writ of Certiorari
To The Court of Appeal of the State of California
Second Appellate District, Division One

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The question petitioners purport to present 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

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.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Respondent Alex Salazar states that respondent is an individual and has no parent corporation, and no publicly held corporation owns 10% or more of respondent.

RELATED PROCEEDINGS

This case arises from these proceedings:

- *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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Respondent Alex Salazar respectfully submits that the Court should deny the petition for a writ of certiorari.

INTRODUCTION

Petitioners ask this Court to use an interlocutory state-court preliminary-injunction case to overrule *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980) (*PruneYard*), and to constitutionalize a sweeping federal right of shopping-center owners to exclude peaceful expressive activity that state constitutional law protects on property deliberately opened to the public. The Court should decline that invitation.

The procedural posture of this case renders it a poor fit for certiorari. There has been no development of a factual record in the trial court. The California Court of Appeal reviewed only a preliminary injunction ruling and held that respondent was likely to succeed under settled California constitutional law. Pet. App. 1a. The decision below therefore does not finally determine the scope of any permanent injunction. Nor did the California courts in this matter consider the effect of any reasonable time-place-and-manner restrictions shopping centers are free to impose pursuant to existing California Supreme Court and appellate court precedents. *Robins v. PruneYard Shopping Center*, 23 Cal. 3d 899, 910–11 (1979) (*Robins*). And there was no development of evidence showing the burden on petitioners' property or the importance of access to outdoor gathering places in a state that relies heavily on signature gathering for state and local ballot initiatives.

Petitioners ask this Court to decide broad federal constitutional questions in the abstract, on a preliminary record, and in a case where the state court did what lower courts are supposed to do: apply controlling precedent.

Nor is there any conflict warranting review. Petitioners do not identify a split over the federal constitutionality of *PruneYard*-style state free-speech protections. Instead, they argue that *Pruneyard* has become inconsistent with later decisions of this Court. But this Court has repeatedly had opportunities to displace *Pruneyard* and has not done so. To the contrary, later decisions have distinguished *Pruneyard* on precisely the ground that matters here: a shopping center is a business property held open to the public. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 156–57 (2021); *Horne v. Dep't of Agric.*, 576 U.S. 350, 364 (2015); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 832 n.1 (1987). And on the First Amendment side, the Court's most recent access-compulsion decision again treated *PruneYard* as a distinct case involving a shopping center not engaged in its own expressive activity. *Moody v. NetChoice, LLC*, 603 U.S. 707, 738–40 (2024).

Petitioners' request is therefore not a request to resolve confusion below. It is a request to overrule a longstanding precedent that this Court has repeatedly preserved. This interlocutory case is not an appropriate vehicle for that project.

The Court should deny the petition.

REASONS FOR DENYING THE PETITION

I. This Case Is a Poor Vehicle for Reconsidering *PruneYard*.

A. The interlocutory posture counsels strongly against review.

This case arrives from a preliminary-injunction appeal. The California Court of Appeal held only that respondent was likely to prevail on his state constitutional claim and that petitioners could not defeat that claim by relitigating federal constitutional objections already rejected in *PruneYard*. *Salazar v. Majestic Realty Co.*, 339 Cal. Rptr. 3d 632, 655 (2025), *reh'g denied* (Dec. 23, 2025), *review denied* (Feb. 25, 2026) (*Salazar*). And with regard to any harm petitioners may experience as a result of an injunction, "the court's analysis may change with future motions." Pet. App. 55a. That posture matters. *See Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916) (nonfinal posture "furnished sufficient ground" for denying certiorari). *See also*, *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395–96 (1981) (preliminary injunctions are ordinarily based on less formal procedures and less complete evidence, and it is "generally inappropriate" to render a final merits judgment at that stage).

The questions petitioners present would be far better considered, if at all, after final judgment and a developed record. "[T]he determination whether a state law unlawfully infringes a landowner's property in violation of the Taking Clause … entails inquiry into such factors as the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations." *PruneYard*, 447 U.S. at 82–83 (*citing Armstrong v. United States*, 364 U.S. 40, 48 (1960); *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979)). Other factors to consider are the nature and extent of any access right, the terms of any injunction, the practical burden on the property, and the relationship between the property's public commercial use and the requested access for expressive activity. See *PruneYard*, 447 U.S. at 82–85; *Cedar Point*, 594 U.S. 139.

Petitioners' compelled speech theory similarly depends on factual questions about attribution, disruption, disclaimers, property layout, and whether any expressive activity of Petitioners' own is altered or impaired. *See PruneYard*, 447 U.S. at 87–88; *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Grp. of Boston*, 515 U.S. 557, 573–79 (1995); *Moody*, 603 U.S. at 738–40. At this early stage in the litigation, none of the facts underlying these issues have been developed fully, if at all.

The decision below does not impose a limitless right of occupation. California's *PruneYard* doctrine has always permitted reasonable time, place, and manner regulation. *Robins,* 23 Cal. 3d at 910. And California courts have meaningfully constrained the right to engage in expressive activity by limiting *PruneYard* to large shopping centers with attributes of traditional public fora. *See Ralphs Grocery Co. v. United Food & Com. Workers Union Loc. 8*, 55 Cal. 4th 1083, 1104 (2012) ("[T]he public forum portion [of shopping centers] is limited to those areas that have been designed and furnished to permit and encourage the public to congregate and socialize at leisure.");

Van v. Target Corp., 66 Cal. Rptr. 3d 497, 498 (2007) ("The *Pruneyard* holding does not apply to the area immediately surrounding the entrance of an individual retail store that does not itself possess the characteristics of a public forum.").

The precise scope of any permissible rules here remains a matter for further proceedings. The court of appeal specifically ruled that, at least at the preliminary stage, "[t]he injunction would not preclude defendants from imposing appropriate time, place, and manner rules as to expressive activity. *Salazar*, 339 Cal. Rptr. 3d at 657. Petitioners have asked this Court to declare that their total ban on expressive activity violates the Takings Clause with no development of a factual record to determine the degree to which implementing a total ban decreases any burden on the shopping centers, compared to the burden when reasonable time, place, and manner restrictions are implemented as California law permits.

The Court should not rely on this preliminary record to decide whether every application of California's *PruneYard* approach is unconstitutional.

B. The court below did not create a conflict.

The court of appeal faithfully applied *PruneYard*––it did not announce a novel federal rule––and "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *See* Sup. Ct. R. 10; *Salazar-Limon v. City of Houston*, 581 U.S. 946 (2017) (Alito, J., concurring in the denial of certiorari) ("[W]e rarely grant review where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular case.").

To be sure, Petitioners' principal complaint is that the lower court refused to declare *PruneYard* obsolete. Of course, lower courts cannot overrule this Court's decisions, and the petition therefore depends entirely on persuading this Court to overturn settled precedent. But "overruling precedent is never a small matter," and *stare decisis* is the "preferred course." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015). "[O]verturning a long-settled precedent … require[s] 'special justification,' not just an argument that the precedent was wrongly decided." *Halliburton Co. v. Erica P. John Fund, Inc.*, 573 U.S. 258 (2014) (quoting *Dickerson v. United States*, 530 U.S. 428, 443 (2000)). Petitioners offer no such justification, especially considering this Court's repeated affirmance of *PruneYard* in cases where it distinguished its facts from authentic constitutional takings or genuine compelled speech.

Petitioners identify no federal court of appeals split. They identify no disagreement among state courts on the federal question of whether *PruneYard* remains binding. At most, they point to the fact that some States interpret their own constitutions to protect expressive activity on certain privately owned commercial properties while others do not. Pet. at 22–25. That is not a federal conflict. It is federalism.

PruneYard itself recognizes that states may adopt broader speech protections under state law, so long as they do not violate the U.S. Constitution. *PruneYard*, 447 U.S. at 81 ("[A] State in the exercise of its police power may adopt reasonable restrictions on private property so long as the restrictions do not amount to a taking without just compensation or contravene any other federal constitutional provision.").

C. This Court has repeatedly preserved *PruneYard*.

Petitioners' central theory is that later takings and compelled-speech decisions have silently undermined *PruneYard*. But those later decisions did not overrule *PruneYard*. They distinguished it.

In *Cedar Point*, the Court held that a California regulation granting union organizers access to agricultural employers' property effected a per se taking. *Cedar Point*, 594 U.S. at 152. But the Court expressly distinguished *PruneYard* because shopping centers are "open to the public," while the agricultural property in *Cedar Point* was not. *Id*. at 156–57 ("Unlike the growers' properties, the PruneYard was open to the public, welcoming some 25,000 patrons a day."). "Limitations on how a business generally open to the public may treat individuals on the premises are readily distinguishable from regulations granting a right to invade property closed to the public." *Id*. at 157 (citing *Horne*, 576 U.S. at 364; *Nollan*, 483 U.S. at 832, n.1).

That distinction controls this case. Respondent sought to engage in leafletting at shopping centers petitioners intentionally opened to the public for commercial purposes. Pet. App. 39a–40a. Whatever limits may apply to that activity as a matter of reasonable regulation, the case falls on *PruneYard*'s side of the line—not *Cedar Point*'s.

The same is true under the First Amendment. In *Moody*, the Court held that the First Amendment protects entities engaged in expressive activity from being compelled to alter or distort that expression. 603 U.S. 707. But *Moody* also distinguished *PruneYard* because the shopping center in *PruneYard* was not itself engaged in expression that the access rule altered. *Id*. at 738–40. Petitioners' shopping centers are commercial venues, not newspapers, *PruneYard*, 447 U.S. at 88 (distinguishing a shopping center from the newspaper at issue in, *Miami Herald Publ'g Co. v. Tornillo*, 418 U.S. 241 (1974)), parade organizers, *Hurley*, 515 U.S. at 579–80, social-media feeds, *Moody*, 603 U.S. at 703, 739, or other expressive editors. Requiring them to comply with a content-neutral state-law access rule does not compel petitioners to speak.

II. The Takings Question Does Not Warrant Review.

A. *PruneYard* controls.

PruneYard rejected the same basic takings argument petitioners raise here. 447 U.S. at 82–85. The owner there argued that California's state constitutional protection for expressive activity on shopping-center property deprived it of the right to exclude. *Id*. This Court disagreed. *Id*. It recognized the importance of the right to exclude but held that, in the context of a large shopping center open to the public, the limited recognition of peaceful expressive activity did not amount to an unconstitutional taking. *Id*. at 83 ("[S]tate-protected rights of free expression and petition on shopping center property clearly [do] not amount to an unconstitutional infringement of appellants' property rights under the Taking Clause.").

Petitioners do not offer a meaningful basis for treating this case differently. Like *PruneYard*, this case involves privately owned shopping-center property held open to the public. Like *PruneYard*, it involves peaceful leafletting or petitioning activity. Like *PruneYard*, the owner remains free to operate the property as a shopping center, to impose reasonable regulations, and to disavow any message with which it disagrees. *PruneYard*, 447 U.S. at 87. The alleged invasion is not an occupation of closed private land; it is a limitation on the owner's ability to exclude a member of the public from engaging in protected expressive activity on property already opened to the public. *Id.* at 94–95 (Marshall, J., concurring).

B. *Cedar Point* does not overrule *PruneYard*.

Petitioners rely heavily on *Cedar Point*, but *Cedar Point* is not this case. *Cedar Point* involved a regulation granting union organizers a right to enter agricultural employers' property—property not generally open to the public. 594 U.S. at 144, 156. The regulation appropriated a right to invade closed property for a purpose unrelated to any invitation the owners had extended. *Id.*

This case involves a different category of property and a different legal rule. Petitioners operate two large adjacent shopping centers open to the public that "contain a 'turf area near the food court' that "provide[s] an inviting space for food court patrons to go while they eat meals purchased from the food court."' Pet. App. 39a (quoting the petitioners' senior property manager's deposition testimony). "'[C]ertain spaces (for example, the turf area in the food court) are sometimes used for events (for example, music performances) . . . .'" *Id.* California law regulates the terms on which such publicly accessible commercial property may exclude peaceful expressive activity. *Salazar*, 339 Cal. Rptr. 3d at 654 (citing *Robins*, 153 Cal.Rptr. 854; *Ralphs Grocery Co. v. United Food & Com. Workers Union Loc. 8*, 150 Cal. Rptr. 3d 501 (2012). That is the basis upon which *Cedar Point* distinguished *PruneYard* rather than overruling it. *Cedar Point*, 594 U.S. at 156–57.

Petitioners' proposed rule would collapse that distinction. In their view, any state-law limit on exclusion from publicly accessible commercial property becomes a per se physical taking. Pet. 12–20. That theory would call into question ordinary public-accommodation rules and other longstanding limits on arbitrary exclusion from businesses open to the public. *Cedar Point* did not adopt such a rule. It reaffirmed that property held open to the public may be subject to regulations governing the treatment of persons on the premises. *Cedar Point*, 594 U.S. at 156–57.

C. Petitioners' "right to exclude" theory proves too much.

Although the right to exclude is a fundamental attribute of property, it is not absolute. The Court has repeatedly rejected takings challenges to laws that limit exclusion where the owner has opened property to the public or voluntarily invited others onto the property. *See PruneYard*, 447 U.S. at 82–84; *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 258–61 (1964) (rejecting takings challenge to Title II's prohibition on racial discrimination in public accommodations, despite motel owner's asserted right to choose customers); *Katzenbach v. McClung*, 379 U.S. 294, 298–305 & n.1 (1964) (upholding Title II as applied to restaurant and noting *Heart of Atlanta* disposed of Fifth Amendment challenges); *Yee v. City of Escondido*, 503 U.S. 519, 527–32 (1992) (no per se physical taking where owners voluntarily rented property and law regulated landlord-tenant relationship, even though owners claimed reduced ability to choose incoming tenants). Indeed, *Cedar Point* itself distinguished "limitations on how a business generally open to the public may treat individuals on the premises" from compelled access to property closed to the public. 594 U.S. at 157.

Thus, owners who open commercial property to the public necessarily accept lawful limits on how they may treat entrants. A retail store, hotel, theater, restaurant, or shopping center may remain private property while still being subject to generally applicable rules governing public access, nondiscrimination, safety, and other conditions of operation.

PruneYard readily fits within that tradition. California has not transferred possession of petitioners' property to respondent. It has not required petitioners to dedicate an easement across closed land. It has not authorized permanent occupation by a third party. It has recognized a limited state constitutional right of peaceful expressive activity on a shopping center's common areas, and allows shopping centers to impose reasonable time, place, and manner restrictions on such use. That is not the sort of compelled physical occupation that triggers *Cedar Point*'s per se rule.

III. The First Amendment Question Does Not Warrant Review.

A. *PruneYard* also controls the compelled-speech argument.

PruneYard rejected the argument that California's shopping-center speech rule compels the owner to speak. 447 U.S. at 85–88. The Court reasoned that the shopping center was open to the public, that members of the public would not likely attribute leafletters' views to the owner, that the State did not prescribe any particular message, and that the owner remained free to disavow any connection with the speech. *Id.*

Those same points apply here. Respondent seeks to distribute his own leaflets. Pet. App. 4a. Nothing in the record suggests he purports to speak for petitioners or that California requires petitioners to endorse respondent's views. The State has not dictated any message petitioners must carry as their own. And petitioners remain free to post signs or otherwise state that speakers on the property speak only for themselves. And they do just that. Pet. App. 5a.

B. Petitioners are not expressive editors.

The compelled-speech cases on which petitioners rely involve materially different settings: newspapers "exercise[ing] editorial control and judgment, *Tornillo*, 418 U.S. at 258, parade organizers forced to include unwanted expressive contingents, *Hurley*, 515 U.S. at 579–80, utilities compelled to carry advocacy messages in their own billing envelopes, *Pac. Gas & Elec. Co. v. Pub. Utils. Comm'n of California*, 475 U.S. 1, 9–12 (1986), or platforms alleged to curate and present user speech through expressive editorial judgments *Moody*, 603 U.S. at 738–40. Those cases protect entities engaged in their own expression from being forced to alter, host, or subsidize speech in a way that changes their own message. *Pac. Gas & Elec.*, 475 U.S. at 12. ("Notably absent from *PruneYard* was any concern that access to this area might affect the shopping center owner's exercise of his own right to speak.").

Petitioners operate shopping centers. Their business is retail commerce, not expression. They do not allege that they curate a message through the composition of speakers in their common areas. They do not claim respondent's leaflets alter an editorial product of their own.

Moody, one of this Court's most recent compelled speech cases, confirms the distinction. This Court has

> repeatedly faced the question whether ordering a party to provide a forum for someone else's views implicates the First Amendment. And [the Court has] repeatedly held that it does so if, though *only if, the regulated party is*

> *engaged in its own expressive activity, which the mandated access would alter or disrupt.*

603 U.S. at 728 (*emphases added*). Thus, "a First Amendment claim will not succeed when the entity objecting to hosting third-party speech is not itself engaged in expression." *Id.* at 731 (*citing Rumsfeld v. F. for Acad. and Institutional Rts., Inc.*, 547 U.S. 47 (2006)). Shopping centers, unlike newspapers, parades, and expressive platforms, do not become speakers merely by admitting the public for commercial purposes.

The First Amendment protects petitioners' right to speak or not speak, but it does not convert every objection to the presence of a third-party speaker on publicly accessible commercial property into compelled speech.

C. No one would reasonably attribute respondent's views to petitioners.

Petitioners emphasize that respondent's views may be controversial or offensive. Pet. 5, 20, 32. That is irrelevant to the federal question. California's rule is content neutral; it protects expressive activity without regard to whether a shopping-center owner approves of the message. The fact that petitioners dislike respondent's message does not transform respondent's speech into petitioners' speech any more than it would if they agreed with the message. Further, while there is evidence in the limited record that free speech activity has occurred at petitioners' shopping centers, there is no evidence that any customer has ever complained about any such activity. Pet. App. 57a.

Nor is there any serious risk of attribution. Over forty years ago, this Court held in *PruneYard* that "[t]he views expressed by members of the public in passing out pamphlets or seeking signatures for a petition … will not likely be identified with those of the owner [of a large shopping center]." 447 U.S. at 87. Since then, leafleteers, petition circulators, and activists have regularly interfaced with the general public at large shopping centers in California and members of the public are even less likely to believe those activities are associated with or endorsed by the shopping center.

And these activities are a crucial part of California civic life and government. "Over the last century, particularly the last four decades, initiatives [which require signatures to get on the ballot] have shaped nearly every facet of life in California." See Miriam Pawel, Opinion, *California Ballot Initiatives Are Powerful. The Powerful Have Noticed*, N.Y. Times (Nov. 5, 2016), https://www.nytimes.com/2018/11/05/opinion/california-ballot-initiatives-direct-democracy.html (on file with author). Thus, the public does not ordinarily assume a shopping-center owner endorses every person who hands out a flyer or solicits a signature in a common area. And if petitioners are concerned about confusion, they may continue to disclaim sponsorship or endorsement as they have in the past. Pet. App. 5a.

D. A disclaimer option does not create a constitutional problem.

Petitioners argue that the availability of disclaimers worsens the First Amendment issue because it requires them to speak. Pet. 30–31. In support of this argument, they claim "the Court's primary basis for finding the risk low in *PruneYard* [was] that the property owner could 'disavow any connection with the message by simply posting signs.'" Pet. 30. That's not true.

In *PruneYard*, the Court offered three bases upon which its facts could be distinguished from *Wooley v. Maynard*, 430 U.S. 705 (1977), where "[the] Court concluded that a State may not constitutionally require an individual to participate in the dissemination of an ideological message [on a license plate] by displaying it on his private property in a manner and for the express purpose that it be observed and read by the public." *PruneYard*, 447 U.S. at 86–87.

> Most important, 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 seeking signatures for a petition thus will not likely be identified with those of the owner.

Id. at 87. Thus, it was the public nature of the shopping center that made it unlikely that the speech would be attributable to the shopping center—not the ability of the owner to disclaim the message. The Court identified the fact that the shopping center "could disclaim any sponsorship," unlike the plaintiff in *Wooley* who the government prohibited from covering up the government message, a as a separate basis for distinguishing *Wooley*—along with an additional basis that in *PruneYard*, unlike *Wooley*, "no specific message is dictated by the State to be displayed on appellants' property." *Id.*

The point is not that petitioners must disclaim respondent's speech. The point is that unlike the compelled speech in *Wooley*, they remain free to do so if they believe it is necessary. A party is not compelled to speak merely because it has the option to clarify that a third party's speech is not its own, should they so choose.

The First Amendment prevents the government from forcing petitioners to affirm, endorse, or disseminate a message as their own. It does not give petitioners a federal constitutional veto over peaceful expression that state law protects on publicly accessible commercial property.

IV. This Case Is a Poor Candidate for Overruling a Longstanding Precedent.

Petitioners ultimately seek overruling, not clarification. That is reason to deny review, not grant it. *PruneYard* is a longstanding precedent at the intersection of federal constitutional law, state constitutional law, and property regulation. States, especially California, have relied on it in defining the relationship between private shopping centers and expressive activity protected by state law. Property owners have likewise operated against the backdrop of *PruneYard* for decades. This Court has repeatedly cited and distinguished *PruneYard* without overruling it. *Cedar Point,* 594 U.S. at 156–57; *Horne*, 576 U.S. at 364; *Nollan*, 483 U.S. at 832, n.1; *Hurley*, 515 U.S. at 579–80; *Moody*, 603 U.S. at 738–40. Petitioners identify no intervening development that requires this Court to abandon that settled framework in an interlocutory case.

Nor is *PruneYard* unworkable. The rule is narrow. It applies to large shopping centers under state constitutional law. It permits reasonable time, place, and manner restrictions. It does not require endorsement. It does not apply to closed private property. And it leaves states free to decide, as a matter of state constitutional law, whether to protect speech in privately owned spaces that function as public gathering places.

Petitioners may disagree with California's constitutional judgment. But *PruneYard* holds that California may make that judgment without violating the Federal Constitution. Nothing about this preliminary-injunction case justifies revisiting that holding.

CONCLUSION

For all these reasons, the Court should deny certiorari.

June 26, 2026

Respectfully submitted,

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