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 A Writ Of Certiorari
To The Court Of Appeal Of The State Of California
Second Appellate District, Division One

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

As Respondent Alex Salazar (Salazar) acknowledges, the Petition asks this Court to overrule *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), and hold that states violate the Takings Clause and First Amendment when they compel commercial property owners to host expressive activity on their property. *See* Pet. 5; Brief in Opposition (BIO) 1-2. Salazar's opposition brief defends *PruneYard* as correctly decided, and argues that this Court has preserved *PruneYard* by distinguishing it from other takings and First Amendment precedent. BIO 2. But this Court has never addressed *PruneYard*'s continued viability in light of modern takings and First Amendment jurisprudence, and the Court's labored efforts to distinguish *Pruneyard* based on its facts, rather than applying its principles, confirms that *PruneYard* is ripe for reconsideration.

Salazar contends the Court should refrain from review because this case arrives in an "interlocutory" posture, after the grant of a preliminary injunction. The objection lacks merit. This Court has power to grant certiorari from certain lower court decisions that conclusively resolve a federal issue, even when litigation is not fully complete. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 477-86 (1975). Here, the court below held that *PruneYard* is "dispositive," permitting Salazar to promote his views on the Centers' property without offending the Constitution, Pet. App 5, 38a, 42a, and this Court's reversal of that decision would end the litigation. *Cox*, 420 U.S. at 485-86.

The question presented is properly postured and worthy of review. *PruneYard* is irreconcilable with almost every physical takings and compelled speech case the Court has decided since. The Court should grant the Petition and overrule it. *See Trump v. Slaughter*, No. 25-332, 2026 WL 1855612 (U.S. Jun. 29, 2026).

ARGUMENT

I. The Question Presented Is Properly Postured For This Court's Review

Salazar argues that the Court should not review the issues raised by the Petition because the case arrives in an "interlocutory" posture, "from a preliminary-injunction appeal." BIO 3. Salazar suggests that review is not appropriate until after "final judgment and a developed record." *Ibid.* This contention fails.

Under 28 U.S.C. § 1257, this Court has jurisdiction over state court decisions that resolve a federal issue, even when additional litigation may occur. "[T]he Court has recurringly encountered situations in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come." *Cox*, 420 U.S. at 477. In such instances, the Court has often "taken jurisdiction without awaiting the completion of the additional proceedings." *Ibid.* The Court has identified several situations in which a state court decision is subject to review notwithstanding the occurrence of additional litigation, including where: (1) "for one reason or another the federal issue is conclusive," *id.* at 479, or (2) "the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds," "and where reversal of the state court on the federal issue" would end further litigation. *Id.* at 482-83.

Here, the court below found *PruneYard* to be conclusive with respect to whether the Centers can lawfully exclude Salazar's expressive activity on its property. Holding *PruneYard* "dispositive," Pet. App. 38a, and refusing to find it wrongly decided, *id.* at 42a, the court below rejected the Centers' right-to-exclude claim, and the California Supreme Court denied further review. *Id.* at 66a. The decision below is "final" for purposes of this Court's jurisdiction. *Cox*, 420 U.S. at 479; *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 418 n.1 (1971) (reviewing a state court's preliminary injunction order due to its conclusive nature).

Alternatively, the lower court's decision is subject to review because the federal issues have been decided, and the Centers can continue to assert state law defenses in further litigation, but reversal of the decision below on federal constitutional grounds would end the litigation and further federal policy. *Cox*, 420 U.S. at 485-87; *Fort Wayne Books, Inc. v. Indiana*, 489 U.S. 46, 55-56 (1989). Recognizing as much, the trial court in this case stayed further litigation so that the Centers may obtain this Court's review. Reply App. 1.

Nevertheless, Salazar suggests that the Court should not consider the federal takings issue until further development of facts relating to "the character of the [State's] action, its economic impact, and its interference with reasonable investment backed expectations." BIO 3-4 (invoking regulatory takings factors per *Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978)) (quoting *PruneYard*, 447 U.S. at 82-83). But, relying on *PruneYard*, the court below already decided that allowing Salazar's activity does not violate the Takings Clause. Pet. App. 42a. Salazar also argues that before considering the First Amendment issue, the Court should wait for more facts about "attribution," "disclaimers," "property layout," and "whether any expressive activity of Petitioners' own is altered." BIO 4. But again, based on *PruneYard*, the court below already held that permitting Salazar's expression does not violate the Centers' First Amendment rights. Pet. App. 42a. The issues are accordingly primed for review now.

Salazar's claim that the aforementioned facts should be developed prior to review confirms that the question presented is best addressed now, rather than later. After all, the Centers' argument is that *PruneYard* is wrong and that the State's allowance of Salazar's expressive activity on its property is a *per se* taking, *i.e.*, a taking "*without regard to other factors*." Pet. 16 (emphasis added) (quoting *Horne v. Dep't of Agric.*, 576 U.S. 350, 360 (2015) (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432 (1982))). If true (and it is), there is no need to develop facts relating to "economic impact" and "investment-backed expectations." Similarly, the Centers contend that forcing them to provide any part of their property for Salazar's objectionable expressive activity violates the First Amendment, without regard to whether (1) the Centers are engaged in speech, (2) the speech is likely to be misattributed to the Centers, or (3) the Centers' ability to disavow the message. If true (and it is), there is no need to develop facts pertaining to these considerations. Thus, granting "immediate rather than delayed review" is not only jurisdictionally proper, it avoids "'the mischief of economic waste and of delayed justice.'" *Cox*, 420 U.S. at 477-78 (citation omitted).

II. The Takings Issue Is Primed For Review On The Merits

With respect to the takings question, Salazar contends that *PruneYard* correctly holds that states do not effect an unconstitutional taking by authorizing members of the public to invade private commercial property to engage in unwanted expressive activity. Salazar specifically claims that *PruneYard* does not conflict with this Court's subsequent *per se* physical takings precedent, because *PruneYard* involved property that was "open to the public." BIO 7. Salazar believes this characterization preserves *PruneYard* and shields this case from the *per se* takings analysis in *Cedar Point*, *Nollan*, and other cases. Salazar is mistaken.

The Court has emphasized that the right to exclude others is the "sine qua non" of private property. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 150 (2021). "Stated simply, the right to exclude means that members of the public may not enter privately owned property without the consent of the owner. To do so would be a trespass." *Wolford v. Lopez*, No. 24-1046, 2026 WL 1825723, at *23 (U.S. Jun. 25, 2026) (Jackson, J., dissenting); *id.* at *7 (majority noting "default rule" at common law). Thus, the Court's post-*PruneYard* precedent holds that state actions allowing third parties to invade private land, frustrating the owner's right to exclude others, are a *per se* taking; *i.e.*, an unconstitutional taking without regard to other factors. This means that, unlike at the time of *PruneYard*, such actions are not analyzed under *Penn Central*'s balancing test. *Cedar Point*, 594 U.S. at 156-57.

It is true that this Court has occasionally distinguished *PruneYard*'s refusal to find a taking because the property was "open to the public."[1] *See Cedar Point*, 594 U.S. at 156-57. But these statements do not carve out an exception from *per se* taking standards for state actions that authorize would-be speakers to invade private property. They simply recognize that the publicly "open" nature of the *PruneYard* property was relevant to *PruneYard's* *Penn Central*-based result. *See id.* at 148, 156 (explaining that *PruneYard* "applied the *Penn Central* factors); Bethany Berger, *Property and the Right to Enter*, 80 Wash. & Lee L. Rev. 71, 127 (2023) ("*PruneYard* relied on [the 'open' factor] only to find that access did not interfere with the owner's 'reasonable investment-backed expectations,' a core ad hoc factor—not to find that there was no physical invasion at all."). But, again, this Court's subsequent precedent makes clear that *PruneYard*'s *Penn Central*-based approach no longer applies to a physical invasion case like this one. Instead, a *per se* test controls. *Cedar Point*, 594 U.S. at 147-48.

To the extent the "open to the public" justification for *PruneYard* implies that shopping center owners forfeit their right to exclude when they open their

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[1] None of the petitioners in cases that distinguish *PruneYard* asked the Court to overrule it, an omission remedied in this Petition. *Cf. T.M. v. Univ. of Md. Med. Sys. Corp.*, No. 25-197, 2026 WL 1751823, at *10 (U.S. Jun. 18, 2026).

doors for business, it is simply wrong. The owners allow the public to enter their property for a limited purpose: to buy or view products. "Consent to enter property is often referred to as a 'license' . . . [a]nd a license is a *privilege*, revocable at the will of the property owner," upon due notice. *Wolford*, 2026 WL 1825723, at *23 (Jackson, J., dissenting); *id.* at *7 (majority opinion). Opening property for business does not waive an owner's right to exclude those engaged in behavior inconsistent with their license to enter for business, such as broadcasting political or social viewpoints; owners retain that right. *Lloyd Corp. v. Tanner*, 407 U.S. 551, 569 (1972) ("[P]roperty [does not] lose its private character merely because the public is generally invited to *use it for designated purposes*.") (emphasis added); Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* 65 (1985) ("Whatever the status of others, there is no invitation to these plaintiffs [seeking to engage in political expression at a shopping mall]."). *PruneYard*'s refusal to uphold the shopping center's "right to exclude" takings defense, including its reliance on the fact the center was open for commerce, is incorrect, obsolete, and should be overruled.

Salazar frets that recognizing *PruneYard* as incorrectly decided in light of this Court's physical takings/"right to exclude" precedent would mean that "public-accommodation rules and other longstanding limits on arbitrary exclusion from businesses open to the public" would be takings. BIO 10. Not so. Longstanding and well-accepted rules, such as public accommodations laws, qualify as "background principles" that are exempt from the Takings Clause. *Cedar Point*, 594 U.S. at 162. The fact that "[l]imitations on how a business generally open to the public may treat individuals," such as public accommodations laws, "are readily distinguishable" from most takings, *id.* at 157, hardly means that different laws allowing activists to enter and use commercial properties for self-expression are not takings. *See* Br. Am. Curiae of Manhattan Institute 12. Just as "a State may not adopt property-law rules that violate the freedom of speech," *Wolford*, 2026 WL 1825723, at *11 n.13, a State may not adopt speech-access rules that take property without just compensation. *PruneYard* failed to enforce this principle. The Court should grant review to overrule *PruneYard*'s aberrational holding.

III. The First Amendment Compelled Speech Issue Is Primed For Review

Salazar also contends that *PruneYard* correctly holds that requiring a shopping center owner to provide its property as a platform for unwanted speech does not unconstitutionally compel speech. BIO 12-17. The argument is meritless, and highlights the fact that the First Amendment issue in this case is ripe for review on the merits.

In defense of *PruneYard*, Salazar argues that First Amendment compelled speech protections do not apply to those who are not involved in expressive activity themselves. BIO 13-14. Because shopping center owners are engaged in "retail commerce, not expression," Salazar believes that requiring them to provide their land as a platform for expression does not amount to compelled speech. *Id.* at 13.

This is incorrect, as the Petition and Amici demonstrate. *See* Pet. 29; Br. Am. Curiae of Cato Institute and National Federation of Independent Business Small Business Legal Center, Inc. 14-17.

First Amendment protections against compelled speech apply when someone wishes *not to speak at all*, just as they apply to one engaged in expression. This principle is evident throughout the Court's First Amendment jurisprudence, and has been solidified by the Court's post-*PruneYard* "speech subsidization" cases, which hold that it is unconstitutional to require a non-speaker to fund the speech of others. *Janus v. AFSCME, Council 31*, 585 U.S. 878, 893 (2018). There is no good reason for a different result when, as here, the government requires a non-speaker to provide real property, rather than money, to support those engaged in speech. David B. Gaebler, *First Amendment Protection Against Government Compelled Expression and Association*, 23 B.C. L. Rev. 995, 1002 (1982).[2] This Court's precedent does not paradoxically compel people who own property to speak before they incur protection from compelled speech mandates. In suggesting otherwise, *PruneYard* is wrong and should be overruled.

IV. *Stare Decisis* Principles Support The Petition

Ultimately, Salazar contends that the Court should not grant certiorari because principles of *stare decisis* support the retention of *PruneYard*. But Salazar has it backwards. *Stare decisis* principles confirm that review, and overruling, is warranted.

"Every factor—the 'quality' of [*PruneYard*'s] reasoning, its 'consistency' with our other cases, the

[2] Requiring land subsidies is the converse of government demands for fees in lieu of land. Whether land or cash, the takings analysis remains the same. *See Knight v. Metro. Gov't of Nashville & Davidson Counties*, 67 F.4th 816, 828 (6th Cir. 2023).

'workability' of its rule, and the interests of those who have 'reli[ed]' on it"—indicates that the Court should reconsider and overrule *PruneYard*. *Trump v. Slaughter*, 2026 WL 1855612, at *15 (quoting *Knick v. Twp. of Scott*, 588 U.S. 180, 203 (2019)). From the start, *PruneYard*'s reasoning conflicted with the rationale of prior decisions such as *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), *Kaiser-Aetna v. United States*, 444 U.S. 164 (1979), and *Wooley v. Maynard*, 430 U.S. 705 (1977). *See PruneYard*, 447 U.S. at 97 (Powell, J., concurring) (noting tension between *Wooley* and *PruneYard*); Richard A. Epstein, *Takings, Exclusivity and Speech: The Legacy of* Pruneyard v. Robins, 64 U. Chi. L. Rev. 21, 36 (1997) ("*PruneYard* strips away the exclusive right of use and converts a private shopping center into a limited commons. In light of *Kaiser Aetna*, that conversion of property from wholly private to partially public is, prima facie, a compensable taking."); *see also* Br. Am. Curiae of Washington Legal Foundation 10.

The gap between *PruneYard* and this Court's precedent has only worsened over time. "[A]s free speech and takings jurisprudence has matured during the past twenty-five years, the constitutional legitimacy of state-sanctioned trespass in the name of speech has become increasingly difficult to sustain." Gregory Sisk, *Returning to the Pruneyard: The Unconstitutionality of State-Sanctioned Trespass in the Name of Speech*, 32 Harv. J.L. & Pub. Pol'y 389, 393 (2009). *PruneYard*'s inconsistency with this Court's modern jurisprudence is widely recognized. Mark Cordes, *Property and the First Amendment*, 31 U. Rich. L. Rev. 1, 38 (1997) (noting tension between *PruneYard* and physical takings principles); Frederick Schoepflin, Comment, *Speech Activists in*

Shopping Centers: Must Property Rights Give Way to Free Expression?, 64 Wash. L. Rev. 133, 153 (1989) (questioning *PruneYard*'s viability after "the analyses set forth in *Loretto* and *Nollan*")); Lee Anne Fennell, *Escape Room: Implicit Takings After* Cedar Point Nursery, 17 Duke J. Const. L. & Pub. Pol'y 1, 34-37 (2022) (discussing tension between *PruneYard* and *Cedar Point*); Catherine Fisk & Erwin Chemerinsky, *Political Speech and Association Rights after* Knox v. SEIU, Local 1000, 98 Cornell L. Rev. 1023, 1052 (2013) (noting "real tension" between *PruneYard* and *Knox*).

PruneYard is also unworkable. It provides no principle for determining what types of commercial property fall under *PruneYard*'s permissive speech access rule and how "open to the public" they must be. Courts have struggled for decades with these questions. *See Cologne v. Westfarms Assocs.*, 469 A.2d 1201, 1208-10 (Conn. 1984); Curtis Berger, Pruneyard *Revisited: Political Activity on Private Lands*, 66 N.Y.U. L. Rev. 633, 634-35 (1991) ("questions continue to vex the courts," including "the suitable limits of a state law that permits access onto private land without the owner's consent"); *see also* Br. Am. Curiae of Goldwater Institute 5-7.

Finally, no meaningful reliance interests support *PruneYard*. The internet has buried the notion that shopping centers are needed for speech. Gregory Sisk, *Uprooting the Pruneyard*, 38 Rutgers L.J. 1145, 1198-99 (2007) ("[T]he internet has empowered average citizens in ways never before imagined, expanding opportunities for exchange of ideas far beyond the geographically-fixed and temporal limitations of the traditional public market or town square."). Without taking property, people "can voice their opinions today more readily and more accessibly in more places and in more formats than ever before in human history." *N.J. Coal. Against War in the Middle East v. J.M.B. Realty Corp.*, 650 A.2d 757, 796 (N.J. 1994) (Garibaldi, J., dissenting); *see also* Loren Selznick & Carolyn LaMacchia, *#Mall Ruckus Tonight: Should Mall Owners Be Forced to Provide a Stage for Expression in the Virtual Age?*, 53 Willamette L. Rev. 239, 276 (2017) ("The time has come to revisit the foundational premises for requiring private shopping malls to provide a forum for expression. In those states, courts relied on the explosion of shopping malls in suburbia and the lack of an inexpensive alternative for reaching a substantial number of people. Neither of these conditions still exists.").

CONCLUSION

The Court should grant the Petition.

Respectfully submitted,

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Appendix

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SUPERIOR COURT OF THE
STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES
— EAST DISTRICT

ALEX SALAZAR, Plaintiff, v. MAJESTIC REALTY CO.; REDLANDS JOINT VENTURE, LLC; and MOUNTAIN GROVE PARTNERS, LLC, Defendants.	Case No. 24PSCV02047 *Unlimited Jurisdiction* Assigned to the Honorable Christian R. Gullon Department: O Action Filed: June 26, 2024 Trial Date: None Set

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[~~PROPOSED~~] ORDER

Plaintiff Alex Salazar ("Plaintiff" or "Salazar") and defendants Majestic Realty Co., Redlands Joint Venture, LLC, and Mountain Grove Partners, LLC (collectively, "Defendants" and, together with Plaintiff, the "Parties"), having stipulated and agreed that all trial court activity in this matter, with exception of the Preliminary Injunction entered in this matter and any motion practice required to enforce that Preliminary Injunction, is stayed pending resolution of Defendants' Petition for Writ of Certiorari to the U.S. Supreme Court and any resulting proceedings on the merits before the U.S. Supreme Court.

IT IS HEREBY ORDERED.

DATED: 05/18/2026

/s/ Christian R. Gullon
Hon. Christian R. Gullon
Judge of the Superior Court
Christian R. Gullon/Judge