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Lloyd Corporation v. Tanner, 407 U.S. 551 (1972)

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# Lloyd Corporation v. Tanner, 407 U.S. 551 (1972)

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 [Sergey Tokarev \(http://uscivilliberties.org/user/Sergey+Tokarev/\)](http://uscivilliberties.org/user/Sergey+Tokarev/)  1486

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Four years after its attempt in Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza (<http://uscivilliberties.org/cases/3079-amalgamated-food-employees-union-local-590-v-logan-valley-plaza-391-us-308-1968.html>) (1968) to harmonize the conflict between the First Amendment rights of persons to speak and the rights of private property owners to exclude

individuals from their property, the Court reexamined this question and severely limited the scope of that decision. In *Lloyd Corp.*, five protesters entered a fifty-acre shopping mall and distributed handbills criticizing the Vietnam War. When

threatened with arrests for trespass, the five sued in district court claiming that the distribution of handbills at the shopping center was protected by the First and Fourteenth Amendments under the Court's decisions in *Marsh v. Alabama* and *Logan Valley*.

The Supreme Court distinguished *Lloyd Corp.* from *Logan Valley* in two significant ways. First, the Court stated that in contrast to the hand billing in *Lloyd*, the picketing in *Logan Valley* had been specifically directed at a store in the mall and concerned the policies of that store. Thus, unlike *Lloyd Corp.*, the free speech activity directly related to the use to which the shopping center was being put. Second, the Court stated that the *Logan Valley* pickets had no other reasonable opportunity to reach their intended audience other than by access to private property, because they were specifically targeting the labor policies of a particular store located in the mall. In contrast, the protesters in *Lloyd Corp.* could have exercised their rights to protest the Vietnam War in other locations within the community. The Court in *Lloyd Corp.* took pains to distinguish, but not overrule,

Logan Valley. Although four years later in *Hudgens v. NLRB* (1976), the Court found that the two cases were incompatible and that the holding of *Lloyd* amounted to a total rejection of the earlier case.

Although made shortly after *Lloyd Corp.*, the *Hudgens* decision significantly realigned First Amendment jurisprudence and state action doctrine. The major distinction that the Court's opinion in *Lloyd Corp.* drew from *Logan Valley* was inconsistent with a basic premise of the First Amendment. If free speech rights within a shopping center depended on the connection between the subject of the speech and the purposes to which the shopping center was opened to the public, then the government regulation of speech would depend on its content. Basic to the Court's First Amendment doctrine is a suspicion of content-based regulation, which is often susceptible to control of expression because of the government's preference for or dislike of certain ideas. Accordingly, the Court's holding in *Lloyd Corp.* would have triggered an evaluation of speech rights at odds with fundamental First Amendment principles—a course that the Court recognized and corrected in *Hudgens*.

## References and Further Reading

- Chemerinsky, Erwin. *Constitutional Law Principles and Policies*. 2nd Ed. New York, NY: Aspen, 2002, pp. 498–502.
- Garvey, John H. *What are Freedoms For?* Cambridge, MA: Harvard University Press, 1996, pp. 242–251.
- Tribe, Lawrence H. *American Constitutional Law, 1708–1711*. 2nd Ed., Mineola, NY: Foundation, 1988.

## Cases and Statutes Cited

- [Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza](http://uscivil liberties.org/cases/3079-amalgamated-food-employees-union-local-590-v-logan-valley-plaza-391-us-308-1968.html) (<http://uscivil liberties.org/cases/3079-amalgamated-food-employees-union-local-590-v-logan-valley-plaza-391-us-308-1968.html>), 391 U.S. 308 (1968)
- *Hudgens v. NLRB*, 424 U.S. 507 (1976)
- *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972)

- Marsh v. Alabama, 326 U.S. 501 (1946)

See also First Amendment; Lloyd Corporation v Tanner, 407 U.S. 551 (1972); State Action Doctrine



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- Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, 391 U.S. 308 (1968) (<http://uscivilliberties.org/cases/3079-amalgamated-food-employees-union-local-590-v-logan-valley-plaza-391-us-308-1968.html>)

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