

in some instances private property is so functionally akin to public property that private owners may not forbid expression upon it. In *Marsh v. Alabama*,¹⁴⁵⁶ the Court held that the private owner of a company town could not forbid distribution of religious materials by a Jehovah's Witness on a street in the town's business district. The town, wholly owned by a private corporation, had all the attributes of any American municipality, aside from its ownership, and was functionally like any other town. In those circumstances, the Court reasoned, "the more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."¹⁴⁵⁷ This precedent lay unused for some twenty years until the Court first indicated a substantial expansion of it, and then withdrew to a narrow interpretation.

First, in *Food Employees Union v. Logan Valley Plaza*,¹⁴⁵⁸ the Court held constitutionally protected the picketing of a store located in a shopping center by a union objecting to the store's employment of nonunion labor. Finding that the shopping center was the functional equivalent of the business district involved in *Marsh*, the Court announced there was "no reason why access to a business district in a company town for the purpose of exercising First Amendment rights should be constitutionally required, while access for the same purpose to property functioning as a business district should be limited simply because the property surrounding the 'business district' is not under the same ownership."¹⁴⁵⁹ "[T]he State," said Justice Marshall, "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."¹⁴⁶⁰ The Court observed that it would have been hazardous to attempt to distribute literature at the entrances to the center and it reserved for future decision "whether respondents' property rights could, consistently with the First Amend-

indicate that the demonstrators were invitees in the stores and that they had never been asked to leave by the owners or managers. *See also* *Frisby v. Schultz*, 487 U.S. 474 (1988) (government may protect residential privacy by prohibiting altogether picketing that targets a single residence).

¹⁴⁵⁶ 326 U.S. 501 (1946).

¹⁴⁵⁷ 326 U.S. at 506.

¹⁴⁵⁸ *Amalgamated Food Employees Union v. Logan Valley Plaza*, 391 U.S. 308 (1968).

¹⁴⁵⁹ 391 U.S. at 319. Justices Black, Harlan, and White dissented. *Id.* at 327, 333, 337.

¹⁴⁶⁰ 391 U.S. at 319–20.