duct alone will simply deter police departments from making rules of conduct at all, because of their fear of imposing unnecessary civil liability."[36] These organizations believe that internal regulations are vitally important to controlling police misuse of force.[37]

The *Peterson* majority recognized a need to protect the rights of suspects and control the discretion of the police[38] and apparently felt that the threat of civil liabilty for violations of department firearms rules would effectively deter police misconduct.[39] Police departments throughout the nation will be looking at this decision and its implications. We should know soon whether this decision acts as a deterrent or merely discourages internal rule-making.

CONSTITUTIONAL LAW—FIRST AMENDMENT—STATE CONSTITUTION MAY GUARANTEE BROADER RIGHTS OF FREE SPEECH AND EXPRESSION THAN THOSE RIGHTS PROTECTED BY THE FEDERAL CONSTITUTION. *Robins v. Pruneyard Shopping Center*, 23 Cal. 3d 899, 592 P.2d 341, 153 Cal. Rptr. 854, *cert. granted*, 100 S. Ct. 419 (1979) (No. 79-289). Owners of a private shopping center denied appellants, who were soliciting signatures on a petition concerning foreign policy, access to the center.[1] Appellants sought to enjoin enforcement of the

36. *Id.* at 246 n.7, 594 P.2d at 481 n.7, 155 Cal. Rptr. at 364 n.7.

37. *Accord,* K. DAVIS, ADMINISTRATIVE LAW TEXT § 6.06, at 150 (3d ed. 1972); Caplan, *The Case for Rulemaking by Law Enforcement Agencies*, 36 L. & CONTEMP. PROB. 500 (1971); Safer, *Deadly Weapons In The Hands of Police Officers, On Duty and Off Duty*, 49 J. URB. L. 565, 572 (1971).

38. 24 Cal. 3d at 244-46 & n.7, 594 P.2d at 480-81 & n.7, 155 Cal. Rptr. at 363-64 & n.7. In its zeal to protect these rights, the supreme court decided this case on an issue that plaintiff had, as the dissent notes, abandoned on appeal. Plaintiff accepted the trial court's ruling that the doctrine of negligence "per se" was not invoked. *Id.* at 249, 594 P.2d at 483, 155 Cal. Rptr. at 366 (Richardson, J., dissenting).

39. In imposing liability the court usurped the function of the legislature.

> The formulation of a policy governing use of deadly force by police officers is a heavy responsibility involving the delicate balancing of different interests: the protection of society from criminals, the protection of police officers' safety, and the preservation of all human life if possible. This delicate judgment is best exercised by the appropriate legislative and executive officers.

Long Beach Police Officers Ass'n v. City of Long Beach, 61 Cal. App. 3d 364, 371, 132 Cal. Rptr. 348, 351-52 (1976).

1. Robins v. Pruneyard Shopping Center, 23 Cal. 3d 899, 902-03, 592 P. 2d 341, 342, 152 Cal. Rptr. 854, 855, *cert. granted,* 100 S. Ct. 419 (1979) (No. 79-289).

shopping center's prohibition of all publicly expressive behavior inside the center.[2] Appellants claimed that the California constitution[3] guarantees the right to petition at such facilities, and asked the court to overrule *Diamond v. Bland*,[4] which refused to recognize this right.[5] The Superior Court denied the injunction; the California Supreme Court reversed and *held:* The California constitution protects the right to reasonably[6] petition in privately owned shopping centers.[7]

The right to free speech and expression on another person's private property is a frequent subject of litigation.[8] Litigants have traditionally asserted free speech claims under the federal constitution's guarantees,[9] but restrictions on federal rights to free speech on private property ap-

2. 23 Cal. 3d at 902-03, 592 P.2d at 342, 152 Cal. Rptr. at 855.

3. CAL. CONST. art. 1, §§ 2-3. "Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." *Id.* § 2. "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good." *Id.* § 3.

4. Diamond v. Bland (Diamond II), 11 Cal. 3d 331, 334-35, 521 P.2d 460, 463, 113 Cal. Rptr. 468, 471, *cert. denied,* 419 U.S. 885 (1974). In *Diamond II* the California Supreme Court reversed its holding in Diamond v. Bland, 3 Cal. 3d 653, 477 P.2d 733, 91 Cal. Rptr. 501 (1970), *cert. denied,* 402 U.S. 988 (1971), and held that private property interests of the shopping center outweighed claimants' first amendment rights to petition. 11 Cal. 3d at 334-35, 521 P.2d at 463, 113 Cal. Rptr. at 471.

5. 23 Cal. 3d at 904, 592 P.2d at 343, 153 Cal. Rptr. at 856.

6. *Id.* at 910, 592 P.2d at 347, 153 Cal. Rptr. at 860. "By no means do we imply that those who wish to disseminate ideas have free rein." *Id.*

7. *Id.*

8. Individuals asserting claims against owners of private property have met with varying degrees of success. *See, e.g.,* Hudgens v. NLRB, 424 U.S. 507 (1976) (although first amendment does not guarantee right to picket store in private shopping center, that right may be extended by statute); Lloyd Corp. v. Tanner, 407 U.S. 551 (1972) (antiwar protestors denied access to shopping center for purpose of distributing handbills); Food Employees Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968) (union picketing of store in private shopping center held constitutionally protected); Marsh v. Alabama, 326 U.S. 501 (1946) (successful assertion of right to distribute religious material in company-owned town); *In re* Lane, 71 Cal. 2d 872, 457 P. 2d 561, 79 Cal. Rptr. 729 (1969) (right to free speech extended to privately owned sidewalk adjacent to store); *In re* Hoffman, 67 Cal. 2d 845, 434 P.2d 353, 64 Cal. Rptr. 97 (1967) (antiwar protestors granted access to privately owned railway station to distribute handbills); Schwartz-Torrance Inv. Corp. v. Bakery & Confectionary Workers' Local 31, 61 Cal. 2d 766, 394 P.2d 921, 40 Cal. Rptr. 233 (1964) (union has right to picket store in private shopping center); Sutherland v. Southcenter Shopping Center, Inc., 3 Wash. App. 833, 478 P.2d 792 (1970) (petitioning allowed on privately owned sidewalk when property is functionally equivalent to sidewalk in public business district).

9. *See, e.g.,* Lloyd Corp. v. Tanner, 407 U.S. 551 (1972); Marsh v. Alabama, 326 U.S. 501 (1946).

parently[10] compelled appellants in *Robins* to allege deprivation of state-guaranteed rights.[11]

The first[12] and the fourteenth[13] amendments to the United States Constitution guarantee freedom of speech and expression. The first amendment prohibits Congress from restricting the right to "petition government for a redress of grievances."[14] The fourteenth amendment extends this prohibition to deprivations resulting from a "state action."[15] Courts initially held the fourteenth amendment inapplicable to

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10. The restrictions are the most obvious reason for appellants' decision to allege deprivation of state-guaranteed rights. *See* notes 11, 17-18 *infra*.

11. 23 Cal. 3d at 903, 592 P.2d at 342, 153 Cal. Rptr. at 855. The state action requirement of the fourteenth amendment compelled appellants to assert their claims under the state, rather than the federal, constitution. "It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject matter of the amendment." The Civil Rights Cases, 109 U.S. 3, 11 (1883). For further discussion of the state action requirement, see note 17 *infra*.

12. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." U.S. CONST. amend. I.

13. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. CONST. amend. XIV, § 1, cl. 2.

14. U.S. CONST. amend. I. *See* United States v. Cruikshank, 92 U.S. 542, 552 (1875). "The very idea of government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for redress of grievances." *Id.*

15. U.S. CONST. amend. XIV. *See* Edwards v. South Carolina, 372 U.S. 229, 235 (1962) (fourteenth amendment permits freedom to petition for redress of grievances); DeJonge v. Oregon, 299 U.S. 353, 364 (1936) (rights to peaceably assemble and to petition for redress of grievances are fundamental principles of liberty and justice embodied in fourteenth amendment). The Supreme Court has held that the fourteenth amendment precludes state invasion of all first amendment rights. *See, e.g.*, New York Times Co. v. Sullivan, 376 U.S. 254, 276-77 (1964) (although first amendment was originally only a limit on federal government, adoption of fourteenth amendment extended application to states); West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 637-39 (1943) (fourteenth amendment requires states to perform functions within constraints of Bill of Rights); Palko v. Connecticut, 302 U.S. 319, 324-25 (1937) ("[s]pecific pledges of particular amendments have been found to be implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment become valid as against the states"); Gitlow v. New York, 268 U.S. 652, 666 (1925) ("For present purposes we may and do assume that freedom of speech and the press—which are protected by the First Amendment from abridgement by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the fourteenth amendment from impairment by the States."); cases cited note 16 *infra*; Note, *State Action: Theories for Applying Constitutional Restrictions to Private Activity*, 74 COLUM. L. REV. 656 (1974); Note, *Shopping Centers and the Fourteenth Amendment: Public Function and State Action*, 33 U. PITT. L. REV. 112 (1971).

claims against private parties.[16] That interpretation no longer prevails; actions by private entities may satisfy the state action requirement,[17] thereby subjecting those entities to fourteenth amendment restrictions.

The standard to determine satisfaction of the state action requirement of the fourteenth amendment has varied throughout the history of cases involving competing claims of free speech and private property.[18] In *Lloyd Corp. v. Tanner*[19] the Supreme Court held that a privately owned shopping center is not subject to fourteenth amendment restrictions because of its invitation to the public to enter for designated pur-

16. *See, e.g.*, The Civil Rights Cases, 109 U.S. 3, 13 (1883) (fourteenth amendment is a prohibition against state laws and acts performed under state authority); United States v. Harris, 106 U.S. 629, 638-39 (1882) (fourteenth amendment is not a "guaranty against the commission of individual offences"); *Ex parte* Virginia, 100 U.S. 339, 346-47 (1879) (judicial selection of jurors is ministerial function and done in the capacity of state agent; therefore, fourteenth amendment is applicable); Virginia v. Rives, 100 U.S. 313, 318 (1879) (fourteenth amendment refers to state actions exclusively); United States v. Cruikshank, 92 U.S. 542, 554 (1875) (fourteenth amendment "adds nothing to the rights of one citizen against another").

17. *See* cases cited note 18 *infra*. The Supreme Court in Marsh v. Alabama, 326 U.S. 501 (1946), discussed the fourteenth amendment's applicability to actions by private entities. "Ownership does not always mean absolute dominion. 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." *Id.* at 506.

18. As noted previously, courts originally held the fourteenth amendment inapplicable to claims against private parties. *See* note 16 *supra*. Courts have since used various tests to determine whether the fourteenth amendment is applicable to private entities. *See, e.g.*, Lloyd Corp. v. Tanner, 407 U.S. 551 (1972) (mere showing that shopping center invites public to shop therein does not satisfy state action requirement); Food Employees Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968) (shopping center held to be functional equivalent of public property; thus, state action requirement met); Evans v. Newton, 382 U.S. 296, 299 (1965) ("[w]hen private individuals or groups are endowed by the state with powers or functions governmental in nature, they become agencies or instrumentalities of the state and subject to its constitutional limitations."); Burton v. Wilmington Parking Auth., 365 U.S. 715 (1961) (challenged action is not purely private if state has become the equivalent of joint participant); Marsh v. Alabama, 326 U.S. 501 (1946) (company-owned town is equivalent of public property); Huff v. Notre Dame High School, 456 F. Supp. 1145 (D. Conn. 1978) (recognized existence of three state action theories: (1) state action; (2) state likeness; (3) state entanglement); State v. Martin, 35 Conn. Supp. 555, —, 398 A.2d 1197, 1201 (Super. Ct. 1978) ("Government or state action will not be found where government involvement is insignificant."); State v. Miller, 280 Minn. 566, 159 N.W.2d 895 (1968) (per curiam) (shopping center with many diverse business concerns is open to the public in general; thus, state action requirement is met); Sutherland v. Southcenter Shopping Center, Inc., 3 Wash. App. 833, 478 P.2d 792 (1970) (where private property is the functional equivalent of a business district, state action requirement is satisfied). For a discussion of the various tests used by the courts, see Heneley, *Property Rights and First Amendment Rights, Balance and Conflict*, 62 A.B.A.J. 77 (1976).

19. Lloyd Corp. v. Tanner, 407 U.S. 551 (1972). For further discussion of this case, see Note, Lloyd Corporation v. Tanner: *The Demise of* Logan Valley *and the Disguise of* Marsh, 61 GEO. L.J. 1187 (1973); Note, *First Amendment Rights vs. Private Property Rights—The Death of the "Functional Equivalent"*, 27 U. MIAMI L. REV. 219 (1972).

poses.[20] *Lloyd* indicated that claimants asserting first amendment rights to petition must prove that the center is open to the public, that the expressive activity is related directly to the purpose for which the center operates,[21] and that adequate alternative channels of communication do not exist.[22]

Rather than attempting to satisfy the rigorous *Lloyd* standard, appellants in *Robins* circumvented the state action requirement by alleging infringement of California constitutional rights.[23] The California constitution contains guarantees of free speech and expression similar to first amendment rights, but it does not restrict application to state-inflicted deprivations.[24]

The California Supreme Court held that the state constitution's liberty of speech provision guaranteed appellants' asserted rights to petition inside a private shopping center.[25] The court overruled *Diamond v. Bland*[26] and found that California could provide greater protection of free expression than the first and the fourteenth amendments guarantee.[27] The court noted that in interpreting the state's liberty of speech

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20. 407 U.S. at 564-65, 570. The Court held that the invitation to enter was limited in scope. It was not an invitation to exercise first amendment rights therein. *Id.* at 564-65.

21. *Id.* at 564. The Court distinguished *Lloyd* from Food Employees Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968). In *Logan* the Court held that a shopping center is the functional equivalent of public property, and thus recognized the right of a union to picket a store within a private center. *Id.* at 313-15. The *Lloyd* Court distinguished *Logan* in part by asserting that the relationship of claimants' activity to the purpose for which the center operated was a determinative factor in that case. 407 U.S. at 564.

22. "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." 407 U.S. at 567.

23. 23 Cal. 3d at 904, 592 P.2d at 343, 153 Cal. Rptr. at 856.

24. The text of the applicable sections of the California constitution appears in note 3 *supra*.

25. 23 Cal. 3d at 902, 592 P.2d at 342, 153 Cal. Rptr. at 855.

26. Diamond v. Bland, 11 Cal. 3d 331, 521 P.2d 460, 113 Cal. Rptr. 468, *cert. denied*, 419 U.S. 885 (1974).

27. 23 Cal. 3d at 907-10, 592 P.2d at 346-47, 153 Cal. Rptr. at 859-60. Relying on Wilson v. Superior Court, 13 Cal. 3d 652, 532 P.2d 116, 119 Cal. Rptr. 468 (1975), the court held that the California constitutional guarantee of free speech is more definitive and inclusive than that of the first amendment. *Id.* at 658, 532 P.2d at 120, 119 Cal. Rptr. at 472. For a discussion of the California free speech provisions, see Note, *Rediscovering the California Declaration of Rights*, 26 HASTINGS L.J. 481 (1974). *Cf.* Falk, *Foreword* to *The Supreme Court of California 1971-1972, The State Constitution: A More Than "Adequate" Nonfederal Ground*, 61 CALIF. L. REV. 273, 284 (1973) ("the American constitutional system neither requires nor prefers that state judges conform their interpretation of state constitutions to the United States Supreme Court's interpretation of the federal charter"); Paulsen, *State Constitutions, State Courts and First Amendment Freedoms*, 4

provision, "[f]ederal principles are relevant but not conclusive so long as federal rights are protected."[28]

Appellee Pruneyard argued that a state-guaranteed right to petition inside a private shopping center deprived the owners of property without due process in violation of the fifth[29] and the fourteenth[30] amendments to the United States Constitution.[31] Appellee contended that *Lloyd* recognized fifth and fourteenth amendment rights of shopping centers to prevent use of their premises as a forum for public expression.[32] Appellee further asserted that the principle of supremacy established in the California[33] and federal[34] constitutions precluded the court from recognizing broader rights to petition inside a private center

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VAND. L. REV. 620, 642 (1951) ("Although state constitutions contain full statements of our civil liberties, on the whole the record of state court guardianship of 'First Amendment Freedoms' is disappointing."). *Contra,* Lenrich Assocs. v. Heyda, 264 Or. 122, 504 P.2d 112 (1972) (state may not recognize broader rights of free speech under *Lloyd*).

28. 23 Cal. 3d at 909, 592 P.2d at 346, 153 Cal. Rptr. at 859. The court found evidence in prior decisions of the importance of free speech in California. *Id.*; *see, e.g., In re* Lane, 71 Cal. 2d 872, 457 P.2d 561, 79 Cal. Rptr. 729 (1969); *In re* Hoffman, 67 Cal. 2d 845, 434 P.2d 353, 64 Cal. Rptr. 97 (1967); Schwartz-Torrance Inv. Corp. v. Bakery & Confectionary Workers' Local 31, 61 Cal. 2d 766, 394 P.2d 921, 40 Cal. Rptr. 233 (1964).

29. "Nor [shall any person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

30. "Nor shall any state deprive any person of life, liberty, or property without due process of law." U.S. CONST. amend. XIV. The fifth amendment restricts only actions of the federal government, Barron v. Baltimore, 32 U.S. (7 Pet.) 243, 250 (1833), but the fourteenth amendment prohibits states from inflicting deprivations similar to those outlawed by the fifth amendment. *See, e.g.,* Carroll v. Greenwich Ins. Co., 199 U.S. 401, 410 (1905); Hibben v. Smith, 191 U.S. 310, 325 (1903). The word "person" in the fourteenth amendment includes corporations. Santa Clara County v. Southern Pac. R.R., 118 U.S. 394, 396 (1886); Graham, *The "Conspiracy Theory" of the Fourteenth Amendment,* 47 YALE L.J. 371 (1937-1938).

31. 23 Cal. 3d at 903-04, 592 P.2d at 343, 153 Cal. Rptr. at 856.

32. *Id.* The *Lloyd* Court addressed the need to accommodate interests protected by the first, fifth, and fourteenth amendments. The Court concluded that in *Lloyd* the result of such an accomodation was clear and that claimants were not entitled to exercise first amendment rights in the center. "Such an accommodation would diminish property rights without significantly enhancing the asserted right of free speech." Lloyd Corp. v. Tanner, 407 U.S. 551, 567-68, 570 (1972).

33. "The State of California is an inseparable part of the United States of America, and the United States Constitution is the supreme law of the land." CAL. CONST. art. III, § 1.

34. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the judges in every state shall be bound thereby, any Thing in the Constitutions of Laws of any State to the Contrary notwithstanding.

U.S. CONST. art. VI., cl. 2.

than rights guaranteed by the first and fourteenth amendments.[35]

The court rejected appellee's due process and supremacy arguments, finding that *Lloyd* did not recognize an impenetrable right of centers to deny access to individuals seeking to exercise free speech rights.[36] The court interpreted the refusal of the *Lloyd* Court to allow petitioning in a private center as a result of claimants' inability to satisfy the fourteenth amendment state action requirement, and not as a result of the center's inpregnable rights.[37] This interpretation of *Lloyd* circumvented appellee's supremacy clause argument, because California's expanded protection of free expression did not conflict with either federal law or the Constitution.[38]

The court justified its encroachment on the rights of private property owners as a legitimate exercise of a state's power to regulate uses of private property for the benefit of society.[39] The court also based its holding on the extreme importance of the right to petition under California's governmental scheme,[40] on the tremendous growth in the number and popularity of private shopping centers,[41] and on the poten-

35. 23 Cal. 3d at 903-04, 592 P.2d at 343, 153 Cal. Rptr. at 856; *see* Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824) (federal constitution and laws made in pursuance thereof are supreme law of the land; state laws must yield to conflicting federal edicts.).

36. 23 Cal. 3d at 910, 592 P.2d at 347, 153 Cal. Rptr. at 860. *See generally* 86 HARV. L. REV. 1592 (1972).

37. 23 Cal. 3d at 904, 592 P.2d at 343, 153 Cal. Rptr. at 856. The court found support for this interpretation of *Lloyd* in Eastex, Inc. v. NLRB, 437 U.S. 556 (1978), and in Hudgens v. NLRB, 424 U.S. 507 (1976).

38. 23 Cal. 3d at 910, 592 P.2d at 347, 153 Cal. Rptr. at 860.

39. *Id.* at 905-07, 592 P.2d at 344-45, 153 Cal. Rptr. at 857-58. The court cited numerous precedents to support this conclusion, including Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926) (state zoning power); Agriculture Labor Relations Bd. v. Superior Court, 16 Cal. 3d 392, 546 P.2d 687, 128 Cal. Rptr. 183 (1976); Miller v. Board of Pub. Works, 195 Cal. 477, 234 P. 381 (1925). *See* Powell, *The Relationship Between Property Rights and Civil Rights*, 15 HASTINGS L.J. 135 (1963). The court also supported its position by noting the power of a state to regulate natural resources. 23 Cal. 3d at 906, 592 P.2d at 344, 153 Cal. Rptr. at 857.

40. 23 Cal. 3d at 907-08, 592 P.2d at 345-46, 153 Cal. Rptr. at 858-59. The right to petition is especially important in California because it provides the process by which citizens bring about change in government through initiative, referendum, and recall. CAL. CONST. art. II, § 8.

41. 23 Cal. 3d at 907, 592 P.2d at 345, 153 Cal. Rptr. at 858. The court reviewed evidence showing the tremendous growth of centers and the importance of private shopping centers as public forums. *Id. See* Note, *The Public Forum from* Marsh *to* Lloyd, 24 AM. U.L. REV. 159, 159-61 (1974); Note, *Constitutional Law—Free Speech on Premises of Privately Owned Shopping Centers*, 1973 WIS. L. REV. 612.

> Modern day shopping centers perform the public function of providing society with the necessities of life, and are not only the modern suburban counterpart of the town business districts, but are also eliminating them. The result: suburban shopping centers

tial impact of shopping centers as public forums.[42]

Robins v. Pruneyard Shopping Center[43] continues a trend toward further restrictions on private property ownership rights.[44] Courts have often balanced the competing interests of free expression and private property.[45] Changing social and economic conditions assure that if courts continue to employ this balancing test both the right of free expression and property rights will remain in flux.[46] *Robins* demonstrates that state guarantees of free expression are expandable and that litigants may possibly circumvent the state action requirement of the fourteenth amendment by asserting claims under state constitutions.

LANDLORD & TENANT—RETALIATORY EVICTION—HAWAII RECOGNIZES COMMON-LAW RETALIATORY EVICTION DEFENSE SUPPLEMENTARY TO STATE STATUTE. *Windward Partners v. Delos Santos*, 59 Hawaii 104, 577 P.2d 326 (1978). Windward Partners petitioned the State Land Use Commission to rezone its land from "agricultural" to "urban" as a first step in a plan to develop the area into a residential community.[1] Four residential and four nonresidential tenants who occupied the land attended a statutorily required public land-use hearing[2] and vigorously opposed the rezoning. After the Commission denied the petition, the landowners terminated the tenants' month-to-month tenancies. When the tenants refused to vacate, the owners instituted eviction proceedings. The trial court refused as a matter of law to al-

in the nation's 21 largest metropolitan areas account for 50 percent of the retail trade, while the innercity downtowns are dying.

Id. at 618 (footnotes omitted).

42. 23 Cal. 3d at 907-08, 592 P.2d at 345-46, 153 Cal. Rptr. at 858-59.

43. 23 Cal. 3d 899, 592 P.2d 341, 153 Cal. Rptr. 854, *cert. granted*, 100 S. Ct. 419 (1979) (No. 79-289).

44. For an excellent discussion of the changing nature of property rights in the United States, see Powell, *supra* note 39.

45. *See* Lloyd Corp. v. Tanner, 407 U.S. 551 (1972). The balancing test employed by the courts appears in Heneley, *supra* note 18.

46. Agriculture Labor Relations Bd. v. Superior Court, 16 Cal. 3d 392, 404, 546 P.2d 687, 694-95, 128 Cal. Rptr. 183, 190-91 (1976) (power of government to regulate uses of property must be adaptable to changing environment).

1. Windward Partners v. Delos Santos, 59 Hawaii 104, 577 P.2d 326 (1978).

2. HAWAII REV. STAT. § 205-4(e) (1976).