

**Case No. 17-003
SUPREME COURT**

STATE v. WICKES and PETERS

Parties: **Appellants - Sarah Wickes and Erika Peters**
 Respondent - State of Minnesota

Issues:

- (1) Whether the free speech protection granted under the Minnesota Constitution should apply to peaceful protests within a shopping mall.
- (2) Whether the Mall of America's curfew restrictions for minors impermissibly restricts the rights of minors.

Facts:

Appellants seek dismissal of their conviction for misdemeanor trespass under Minnesota Statute §609.605 and Bloomington city ordinances. Appellant Peters also challenges the mall's curfew restrictions.

The criminal charges arose after Appellants, while protesting the sale of athletic shoes made in Vietnam, refused to exit the Mall of America after being asked to do so by mall security guards. The trial court rejected Appellants' argument that the mall was a public forum for purposes of the free speech provision in the Minnesota Constitution under Article I, Section 3. The trial court refused to consider Peters' challenge to the mall's curfew. The Minnesota Court of Appeals affirmed the trial court and upheld the convictions and also declined to consider Peters' separate challenge of the curfew.

Appellants Wickes and Peters, along with a group of approximately ten others, entered the Mall of America in Bloomington, Minnesota on Saturday evening, February 14, 2010. Wickes was 16 years old at that time. Peters, Wickes' neighbor, was 14 years old. Wickes met Peters and the others after first buying some jeans at Old Navy after her shift at work there ended. The group went to the mall to protest the sale of Nike athletic shoes made in Vietnam. The shoes are allegedly made by children earning low wages in factories where human rights violations are routine.

The group marched in the hall outside the interior entrance to Foot Locker. The protestors did not enter Foot Locker nor did they prevent customers from leaving or entering the store. The protestors did not decrease the sales to the Foot Locker or any other store. The group held protest signs and handed out leaflets to passersby. Peters asked people to sign a petition protesting Nike's manufacturing practices. The petition was addressed to Nike CEO Mark Parker, United States Senators Amy Klobachar and Al Franken, and Governor Tim Pawlenty. Several mall visitors signed the petition.

The protestors had been present for about ten minutes when a mall security guard informed them that it was against mall policy to allow protesters in the mall. The guard also asked Peters to leave because she was an unescorted minor and therefore in violation of the mall's curfew policy. The security guard asked the group to leave the mall and advised them they could take their protest outside, on the sidewalk in front of the mall. The protestors ignored the guard and continued with their protest. When advised that the Bloomington police had

been called, most of the protestors left. Wickes and Peters remained. When the police arrived, Wickes and Peters were both cited for trespassing and told to leave. Wickes argued she had a right to be at the mall because she had been working there and shopping. Peters claimed she was going to go shopping later. Because they refused to leave and stop protesting, the police arrested the two. The trespass citation issued to Peters also referenced her presence at the mall in violation of their curfew policy.

The Mall of America is a privately-owned facility. The Bloomington Port Authority and City of Bloomington have invested approximately \$186 million into the development of the mall. The mall was developed through the use of tax-increment financing. The mall employs a full-time security staff and uses some services of Bloomington police officers. The mall's rotunda and other areas are used for a variety of public and private activities. On Friday and Saturday evenings, the mall prohibits unescorted minors from visiting or shopping at the mall.

The trial court noted that a shopping mall is the equivalent of city streets or a public park because of the number of people it draws to it. It also noted the City of Bloomington helped to finance the mall. Despite believing that Appellants' free speech rights were violated, the trial court felt constrained by U.S. Supreme Court precedent and did not believe it should interpret the Minnesota Constitution to provide broader protection. The Minnesota Court of Appeals affirmed the trial court's decision, but also expressed a similar sentiment concerning the free speech rights of Wickes and Peters.

Authorities:

The following is a brief summary of some things you should think about and keep in mind when you read the cases and as you prepare your briefs and arguments. You are not limited to these points. Instead, they are just good starter questions to think about. You will also notice some cases are available on the YIG website. These cases represent some of the materials you can use to begin your research. Other case citations are below but are not provided—you will need to seek out these case materials to complete your briefs and oral arguments (denoted by **).

Restrictions:

Participants may not refer to or rely upon the cases of State of MN v. Wicklund or Cologne v. Westfarms Associates as they prepare their case briefs or oral arguments. Participants should only use the cases cited in the "Cases and Related Materials" section of this packet.

Summary:

Issue #1 -- Free Speech Protection

- Did mall security deny the Appellants' constitutional rights of free speech and assembly?
- Did the Bloomington police deny those constitutional rights?
- Was the mall considered a "public" place, in the sense of allowing for the rights of assembly?
- Is mall management obligated to allow for any and all public assembly or can it choose which gatherings it permits to use mall facilities?
- Should the Minnesota Constitution be interpreted more broadly than the federal constitution to allow for greater free speech rights?

Issue #2 -- Curfew Restrictions

- Does the mall's escort policy violate the constitutional rights of juveniles?
- Does the mall have the right to set a curfew for juveniles?

Cases and Related Materials:

State v. Scholberg, 412 N.W.2d 339 (Minn. Ct. App. 1987), pet. for rev. denied
(Minn. Nov. 13, 1987)

New Jersey Coalition Against War in the Middle East v. J.M.B. Realty Corp., 138 N.J. 326,
650 A.2d 757 (1994)

Robins v. Pruneyard Shopping Center, 23 Cal.3d 899, 153 Cal.Rptr. 854, 592 P.2d 341
(1979)

Southcenter Joint Venture v. National Democratic Policy Comm., 113 Wash.2d 413 780 P.2d
1282 (1989)

**State v. Davidson, 481 N.W.2d 51 (Minn. 1992)

**State v. Fuller, 374 N.W.2d 722 (Minn. 1985)

**Bock v. Westminster Mall Co., 819 P.2d 55 (Colo. 1991)

**Minnesota Statute §609.605

**Minnesota Constitution, Article I, Section 3