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## SCOTUS Hears Pivotal Property Rights Case

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On March 22, 2021 the Supreme Court of the United States heard oral arguments in *Cedar Point Nursery v. Hassid*, a case that could have significant impacts in the areas of agricultural, eminent domain, and labor law. At issue is whether a state regulation that requires an owner to grant access to others over their private property some, but not all of the time, will always constitute a taking (in legal terms, is it a per se taking?).

The dispute stems from a California regulation (enacted pursuant to the Agriculture Labor Relations Act) providing union organizers a right to access agricultural employers' private property to meet with employees and solicit members. Under the regulation, union organizers, upon providing adequate notice, possess a right of access over the private property for 120 days each year for three hours a day. The growers filed suit, claiming that the regulation violated their rights under the Fifth Amendment, which prohibits the government from taking private property without just compensation. The growers argued that the regulation amounts to a per se taking of their property because the access is a permanent physical invasion of the property.

Both the Eastern District Court of California and the Ninth Circuit held that that the regulation did not constitute a governmental taking. The Ninth Circuit reasoned that because the union organizers were not permitted to enter the private property on a continuous basis, the regulation was not a permanent physical invasion of the property. The court also reasoned that a regulation that affects just one of the rights in an owner's bundle of property rights – here, the right to exclude – is not the type of permanent physical invasion that is a taking per se. A dissenting judge disagreed, finding that the regulation constitutes a physical taking because it impaired the right to exclude, "one of the most fundamental sticks" in the bundle of property rights. The dissenting judge also reasoned that the access granted was unreasonable because the workers did not live on the private property and the unions had access to them elsewhere.

At the Supreme Court, the American Farm Bureau Federation, the California Farm Bureau Federation, the Western Growers Association, and the Chamber of Commerce of the United States all submitted briefs supporting the growers' position. These organizations focused on: the importance of the right to exclude others from private property; the disruption that the access regulation can have on a workplace; the unreasonableness of the access regulation when the unions can have access to the workers when they leave the agricultural property; and, the narrowness of the holding in the forty-year-old case primarily relied on by the Ninth Circuit below.

At oral argument, the justices' questions largely focused on how they should draw lines in this case. In other words, if a regulation granting access over private property is not a per se taking because it is not continuous, at what point does the access become so substantial as to constitute a taking? Several justices also questioned whether they could resolve the case by finding that a private landowner may not be forced to provide access for unions when the unions have the ability to reach the workers through normal channels.

Beyond the important issues outlined above, this case's significance may be magnified because it will signal how the current Court, with an influx of new members, will respond to property rights disputes to come. In fact, the breadth of the Court's opinion may be as telling as the holding itself in indicating how this Court will weigh private property rights against other public interests.