Cedar Point Nursery v. Hassid: The United States Supreme Court's Latest Pronouncement on Unconstitutional Takings

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HASSID

Last summer, the U.S. Supreme Court issued its decision in *Cedar Point Nursery v. Hassid,* 141 S. Ct. 2063 (2021), holding that any governmental grant of physical access to real property, no matter how time-limited or functionally constrained, constitutes a *per se* taking unless one of the Court's articulated exceptions applies.

THE DISPUTE

- California law allows union organizers onto agricultural properties for up to three hours per day, 120 days per year, to recruit members.
- Two growers challenged as a *per se* physical taking.

THE DISPUTE

District court and 9th Circuit held no *per se* taking because the physical access authorized by the California law was not permanent access, reasoning that such sporadic access did not merit categorical treatment as a *per se* taking.

S. CT. OPINION

Chief Justice Roberts authored the majority opinion reversing the Ninth Circuit, which Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett joined. Over the dissent of Justice Breyer, joined by Justices Sotomayor and Kagan, the majority ruled that California's access regulation constitutes a *per se* physical taking that required compensation. .

THE ISSUE: Regulatory Taking vs. a Physical Taking

- Distinguishing physical takings from regulatory takings is critical because the Supreme Court applies different standards to each takings category.
- The task at hand for the Court was to determine under what standard it would review a non-permanent intrusion, authorized by the government, onto private property - - as a regulatory taking or a physical taking.

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