

Publications

U.S. Supreme Court Defends Agricultural Employers' Fundamental Private Property Rights

Related Attorneys

Thomas H. Fusonie

Daniel P. Shinkle

Related Services

Litigation

Related Industries

Agriculture

CLIENT ALERT | 6.25.2021

On June 23, 2021, the Supreme Court of the United States delivered a decision championing property rights that may have an impact on numerous fronts. The case at issue, *Cedar Point Nursery et al. v. Hassid et al.*, involved a California regulation that required agricultural employers to grant union organizers access to their properties on an intermittent basis. The Court was tasked with determining whether the regulation constituted a governmental taking warranting compensation. In a 6-3 opinion, the majority of the Court responded to that question with a resounding “yes.”

The majority held that California’s access regulation constituted a *per se* physical taking because the regulation “appropriated a right to invade” growers’ properties. The majority emphasized the importance of a property owner’s right to exclude and explained it is “one of the most treasured rights of property ownership.” The Court found that its past rulings involving government-authorized physical invasions supported the notion that California had appropriated a right of access to the growers’ properties by providing union organizers with access for three hours a day, 120 days a year. Accordingly, the Court found that the growers had stated a claim for an uncompensated taking.

Three dissenting Justices, however, found that the regulation did not rise to the level of a *per se* taking. The majority found the dissenting Justices’ arguments unpersuasive and issued a telling opinion. This case further indicates a majority of the Court’s willingness to protect property rights from governmental intrusion without compensation. It could also have broad implications given governments in various ways grant or impose third party use rights on private property without compensation.