***Cedar Point Nursery v. Hassid,* No. 20-107**

Today, the Supreme Court held that a 1975 California regulation that grants labor organizations a "right to take access" to an agricultural employer's property to solicit support for unionization constitutes a *per se* physical taking.

Background: In 2015, Cedar Point Nursery, an Oregon corporation that raises strawberry plants for producers in California, claimed that organizers from the United Farm Workers entered its property without prior notice and harassed its workers. The organizers entered the property pursuant to a California regulation, which mandates that agricultural employers allow union organizers onto their property for up to three hours per day, 120 days per year. Cedar Point and other growers filed an unsuccessful complaint with the California Agricultural Labor Relations Board, and then sued Board members. Cedar Point argued that the regulation appropriated without compensation an easement for union organizers to enter their property, and therefore constituted a *per se* physical taking in violation of the Fifth and Fourteenth Amendments.

The district court dismissed the complaint, holding that the regulation did not constitute a *per se* physical taking because it did not allow the public to access the growers' property in a permanent and continuous manner. The Ninth Circuit affirmed.

Issue: Whether the uncompensated appropriation of an easement that is limited in time constitutes a *per se* physical taking under the Fifth and Fourteenth Amendments.

Court's Holding: In an opinion authored by Chief Justice Roberts, and joined by Justices Thomas, Alito, Gorsuch, Kavanaugh, and Barrett, the Court held that the regulation constitutes a *per se* physical taking. The Court explained that the regulation does not just restrain the growers' use of their property; it *physically appropriates* the growers' right to exclude people from their property. Thus, the regulation is a government-authorized physical invasion that constitutes a taking and requires just compensation. The Court rejected the argument that the regulation cannot qualify as a *per se* taking because it does not allow for permanent and continuous access, concluding that the duration of the appropriation bears only on the amount of compensation due, not on whether it is a physical appropriation that constitutes a taking.

Justice Kavanaugh wrote separately to address *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956), in which the Court ruled that a right under federal law to enter property to communicate with employees applied only when organizers had no other reasonable means of reaching the employees.

Justice Breyer filed a dissenting opinion, in which Justices Sotomayor and Kagan joined, arguing that limited rights of access to private property should be evaluated as regulatory, rather than *per se*, takings.

Read the opinion here.