Supreme Court Blocks Access to Company Property for Agricultural Union Organizing Absent Just Compensation

Insights
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In an opinion authored by Chief Justice John Roberts, the Supreme Court today issued a ruling that should result in a decrease in union organizing efforts for agricultural workers. In a 6-to-3 ruling in *Cedar Point Nursery v. Hassid*, the Court ruled that California's law permitting union organizing access to private agricultural land constitutes a per se physical taking under the Fifth and Fourteenth Amendments, regardless of if it is temporary, and therefore just compensation is required. What do agricultural employers across the country need to know about this pivotal ruling – and what should you do as a result?

California's Access Regulation Faced Legal Challenge

Since 1975, California law has allowed union organizers access to agricultural employees at their worksite under limited circumstances "for the purpose of meeting and talking with employees and soliciting their support." This Access Regulation was originally designed to provide union organizers with access to those employees who live on the farmer's property in farm-provided housing and thus were generally not reachable by regular means. Specifically, access onto an agricultural employer's property shall be available for up to 120 days each year, but no more than three hours each day. Prior to accessing the agricultural worksite, unions simply need to file a Notice of Intent to Take Access with the California Labor Relations Board and are not required to get employer consent.

The Petitioners in this case, two agricultural employers doing business in California, decided to challenge this state law. Cedar Point Nursery is an Oregon-based company that raises and sells strawberries in California, while Fowler Packing Company is a California company and is one of the nation's largest growers of produce.

The Lower Court Proceedings

In early 2016, the Petitioners sued the California Labor Relations Board in federal court alleging the access requirement constituted a "taking" without just compensation in violation of the Fifth Amendment to the Constitution. The "takings clause" states in relevant part, "nor shall private property be taken for public use, without just compensation." The clause is most commonly invoked when the government wants to permanently and physically impose on private property, such as

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installing cable lines or providing a public easement.

Cedar Point and Fowler also alleged the law amounted to an unreasonable seizure in violation of the Fourth Amendment. In sum, they argued that the Access Regulation "imposes an easement across the private property of Cedar Point and Fowler for the benefit of union organizers." They pointed out that none of their employees lived on their property and therefore the union had access to these employees when they were not at work.

The companies sought declaratory and injunctive relief, seeking to prevent the Board from enforcing the regulation against them. The lower court granted the Board's motion to dismiss on the grounds that the companies failed to state a plausible takings claim. Following the dismissal, Cedar Point and Fowler filed an appeal with the 9th Circuit Court of Appeals, which also held that the access regulation was not unconstitutional and affirmed the district court's ruling. The appeals court noted, among other things, that the easement was not a "classic taking in which government directly appropriates private property." It also noted that although the regulation places limits on employers' rights to exclude union organizers from their own property, this was insufficient to constitute a taking under the "permanent physical occupation" test.

The companies filed a final appeal to the U.S. Supreme Court, which today granted them the relief they sought.

SCOTUS: Access Regulation, Without Just Compensation, Goes Too Far

The main legal question the Justices were asked to decide was whether the regulation constitutes a "taking" under the Fifth Amendment. Answering that question in the affirmative, the Court concluded that the regulation imposes a limitation on property rights such that compensation is constitutionally owed because "the access regulation grants labor organizations a right to invade the grower's property." The Court noted that its precedence establishes "that compensation is mandated when a leasehold is taken and the government occupies property for its own purposes, even though that use was temporary."

What Should You Do as a Result of Today's Ruling?

In finding that the Regulation constitutes a "taking" under the Fifth Amendment, the Supreme Court has clarified that a "taking" does not require permanence or even an extended appropriation. It is possible that courts may now be open to hearing more challenges along these same lines in the future regarding other government impositions on private property, using this case as precedent. If your business is subject to such a local, state, or federal regulation, you may want to consult with your legal counsel to determine your options.

As for the specific Access Regulation at issue here, California agricultural employers may now refuse to permit union organizers on their property absent compensation from the State. This may lead to challenges of other laws and regulations (like requirements for union access under labor peace agreements), since the government provides for various similar intrusions onto private property not unlike the ones at issue in this case without compensation.

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If you have any questions about how to handle union attempts to gain access to your property and your employees, please contact your Fisher Phillips attorney or the authors of this Supreme Court Alert. Fisher Phillips will continue to monitor further developments and provide updates as necessary, so make sure you are subscribed to Fisher Phillips' Insight System to gather the most up-to-date information.

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