



*SCOTUS Reaffirms Bedrock Principle that any Government-Compelled Physical Occupation of Private Property, Irrespective of Whether the Occupation is Permanent or Temporary, Effects a Taking in Violation of the Fifth Amendment*

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The United States Supreme Court has consistently held that any government-compelled occupation of private property constitutes a *per se* taking under the Fifth Amendment, necessitating the payment of “just compensation.” In *Cedar Point Nursery v. Hassid*, decided on June 23, 2021, the Supreme Court once again reaffirmed this bedrock principle in the context of a California regulation (Cal. Code Regs., tit. 8, § 20900(3)(1)(C)) which authorized union personnel to “take access” to the premises of agricultural employers for the purpose of meeting with employees and soliciting union support. The regulation granted labor organizations the right to take access “for up to four 30-day periods in one calendar year.”

Writing for the majority of the Court, Justice Roberts noted that the limited duration of the compelled occupancy (i.e., the restriction on the total time union representatives could “take access” to private property) was irrelevant to the question of whether a taking has occurred. As he explained, the Supreme Court has previously made clear that “a physical appropriation is a taking whether it is permanent or temporary.”

The holding in *Cedar Point Nursery* certainly has wider implications extending beyond the particular regulation at issue in the case. Indeed, any government compelled occupation of private property by either the government or third parties would likely invoke application of this *per se* rule. Although the physical-occupation rule for takings *liability* is fairly straightforward in application, *Cedar Point Nursery* is virtually silent on the *remedy* for the taking other than alluding to the required monetary payment of “just compensation.” Past Supreme Court authority has demonstrated some hostility towards “invalidating” the law or regulation effecting a taking and, thus, the likely remedy would be a monetary payment of “just compensation” stemming from the physical occupation.

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