MILLER STARR REGALIA

SEPTEMBER 16, 2021

Keep Out And Stay Out: The Cedar Point Decision And The Landowner's Sine Qua Non Right To Exclude Others (Maybe Sometimes Even A Government Official)

Related Lawyers:

Related Practices: **Land Use & CEQA**, **Land Use - Litigation**, **Eminent Domain & Inverse Condemnation**

The latest United States Supreme Court decision in the contested ground of Fifth Amendment takings law, Cedar Point Nursery v. Hassid, is yet another chapter in the long-standing argument regarding the distinction between "regulation" of the use of private property by its owner, and "physical invasion" or "appropriation" of property by the government. As the summary of the Cedar Point decision in the Case Notes section of this issue of the Newsalert indicates (see page 44, below), a 6-3 majority of the Supreme Court ruled that a regulation of the California Agricultural Labor Relations Board requiring agricultural employers to permit union representatives to enter their property to meet with employees on-site was in violation of the Takings Clause. The ALRB rule required the growers to allow union organizers access for one hour before and one hour after each workday, as well as during lunch hour. The Court held that this regulatory requirement was a per se "taking," because although each such entry by itself was in some sense episodic, temporary, or transitory, by denying the owner the fundamental right to exclude others from the property, the regulation effectively deprived the owner of a protected property interest, namely, that same right to exclude others. This right to exclude, the Court said, is "one of the most essential sticks in the bundle of rights that are commonly characterized as property," which some have characterized as '' 'the sine qua non of property.' ''

READ ARTICLE

© 2026 Miller Starr Regalia. All Rights Reserved. Attorney Advertising.