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SCOTUS Opinion: Law Allowing Labor Unions Access To Private Land Deemed An Unconstitutional Taking

24 Jun 2021

California enacted a regulation allowing labor organizations a limited duration right to access private farms to solicit support from farm workers thereon. Two such farmers filed suit seeking an injunction, arguing that the regulation was an unconstitutional *per se* physical taking without compensation. The district court and Ninth Circuit denied relief on the basis that the regulation did not allow public access in a permanent and continuous manner.

The Court, in a 6-3 decision by Chief Justice Roberts, reversed, holding that the regulation constituted a *per se* physical taking that was unconstitutional under the Fifth Amendment's Takings Clause as applied against the States through the Fourteenth Amendment. Because the farmers were denied the right to exclude labor organizers from their property, the regulation was a physical taking, and the fact that it was not permanent or continuous did not matter. Justice Kavanaugh filed a concurrence arguing that the result in *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956) also strongly supported the result in this case. Justice Breyer, joined by Justice Sotomayor and Kagan, dissented, arguing that the regulation was a permissible, temporary invasion of private property.

A link to the opinion in *Cedar Point Nursery v. Hassid* is here:
https://www.supremecourt.gov/opinions/20pdf/20-107_ihdj.pdf

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TAGGED: Fourteenth Amendment, Fifth Amendment, Takings Clause, per se physical taking, NLRB v. Babcock & Wilcox Co., Cedar Point Nursery v. Hassid