

THE ORANGE COUNTY REGISTER

A bumper crop of property rights violations in California

Adam B. Summers

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A man's home may be his castle, and the protection of private property may have been one of the foundational principles of the revolution upon which this nation was built, but, regrettably, property rights have been continually eroded over the years. From the U.S. Supreme Court's horrendous *Kelo v. City of New London* eminent domain abuse decision to numerous zoning, environmental, labor and other regulations that prevent, restrict or substantially increase the cost of property ownership and use, property rights have suffered a long-term decline.

But even many of these abuses are not so blatant and invasive as those suffered by California farm and other agricultural property owners.

At 5:00 a.m., United Farm Workers of America representatives entered the property of Cedar Point Nursery, a family-owned strawberry farm in Dorris, Calif., on October 29, 2015, during the busy harvest season. According to Cedar Point's legal complaint, the UFW members "disrupted work by moving through the trim sheds with bullhorns, distracting and intimidating workers."

But the union's actions are completely legal in California, thanks to the Agricultural Labor Relations Act of 1975. Interestingly, when the law was being crafted, the UFW and its supporters had lobbied for a provision that would allow union organizers to gain access to workers on their employers' private property but the Legislature decided not to include such a stipulation, notes the Pacific Legal Foundation, a nonprofit, public-interest law organization that fights for private property rights and individual liberty, which is representing Cedar Point and fellow plaintiff Fowler Packing Co. of Fresno. However, the Act also created the Agricultural Labor Relations Board, which then "did what the state Legislature could not accomplish and decreed an access regulation immediately," PLF asserted in a blog post.

The regulation allows union representatives to access property by merely filling out a Notice of Intent to Take Access form and presenting it to the board and the employer in advance. The union may then access the property for up to three hours a day and up to four 30-day periods per calendar year.

The plaintiffs allege that this allows the union to impair their Fifth Amendment rights by taking their property without just compensation, and violate their Fourth Amendment rights by engaging in unlawful seizures of their property.

The U.S. District Court in Fresno rejected Cedar Point and Fowler's claims, prompting them to appeal the case to the U.S. Court of Appeals for the Ninth Circuit. The Cato Institute recently filed an amicus brief in support of the plaintiffs.

The Cato brief offers numerous legal citations going back even before the nation's founding confirming the vital importance of property rights to our liberties as a whole, and how the ability to exclude others from our property is at the heart of those rights. To that end, it includes one of my favorite property rights quotes. In a speech before Parliament, William Pitt who was a staunch supporter of the American colonies, told the House of Commons in 1763: "The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake, the wind may blow through it, the storm may enter, the rain may enter — but the King of England cannot enter! All his force dares not cross the threshold of the ruined tenement."

Had the Siskiyou County Sheriff's Department been the ones coming onto Cedar Point's property with bullhorns, the Cato brief contends, "this would constitute, at the very least, a Fourth Amendment seizure. That the Legislature deputized union organizers to do the same thing changes nothing."

For those skeptical of the merits of the argument, the brief offers a challenge: "[O]pen up your house for three hours a day, 120 days a year — as the Access Regulations dictate — and see if it 'meaningfully interferes' with your rights."

How far we have come since the days of John Locke, William Pitt and the Founding Fathers. There have been many welcome advances in civil liberties since then, of course, but property rights have, sadly, gone in the opposite direction. Yet, civil liberties, property rights and economic liberties are all forms of the requisite human freedom that we need to make the most of our lives and live in peace. Only when we offer all of them ultimate — and equal — protection may we fulfill the promise of America's founding.