



# Invasion of Private Property on the Supreme Court Docket

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On March 22, significant property-rights issues are at stake as the Pacific Legal Foundation argues before the U.S. Supreme Court on behalf of Cedar Point Nursery in *Cedar Point Nursery v. Hassid*.

The owners of Cedar Point Nursery are challenging a California regulation that allows union organizers to come onto their property without warning for three hours per day, 120 days per year. This regulation dates from an era when workers lived on their employers' property, rarely accessing the outside world. As one can imagine, current Cedar Point employees live off-site and are not cut off from the world or the union.

At first glance, this case might seem remote from the circumstances of the average citizen. At stake, however, is the right not only of growers but also of all Americans to choose who enters their property. Without the right to exclude unwanted third parties, private property is no longer "private" in nature. Imagine if a state passed a law allowing people to enter one's home 120 days per year. Depending on the Court's ruling, that possibility is not far-fetched.

Fifteen amicus briefs have been filed to urge the court to rule in favor of Cedar Point Nursery. These briefs advance five important arguments.

- First, the briefs of the United States, New England Legal Foundation, Institute for Justice, and a brief from 11 states reinforce PLF's primary argument that the access regulations should be viewed as a *per se* taking rather than a regulatory taking. Consequently, PLF argues, the government must compensate the property owner for a taking of property, regardless of whether that taking is limited in time or not.
- Second, the briefs of Mountain States Legal Foundation; the Western Growers Association; the Pelican Institute; Americans for Prosperity Foundation; the Cato Institute and NFIB Small Business Legal Center; and the Buckeye Institute discuss the fundamental nature of the right to exclude.
- Third, the brief of the U.S. Chamber of Commerce compares the access regulation in question to laws allowing government inspectors to access certain commercial facilities. The Chamber argues that this access regulation is a far greater encroachment on the property owner's right to exclude.

- Fourth, the briefs of the American Farm Bureau Federation and the Center for Constitutional Jurisprudence argue that this is invalid taking due to its failure to comply with the “public use” requirement specified by the Fifth Amendment.
- Finally, the California Farm Bureau Federation and Liberty Justice Center point out that union organizers have many other ways of reaching workers to convince them to join the union without invading private property.

These friend-of-the-court briefs highlight the importance of this case in safeguarding private property rights, and flesh out the issues at stake.

The Supreme Court’s decision later this summer could clarify a major point of the law—namely, has a taking occurred when the government does not take property outright, but rather seriously interferes with ownership via regulations that allow access by third parties? Ultimately, the matter at stake is the fundamental right of a property owner to choose who enters his or her property. A regulation that prevents owners from excluding others from their property constitutes total interference with that right.