

# Supreme Court Reinvigorates Property Rights of Employers

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## Article

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Union organizing often collides with an employer's private property rights. In a decision issued this month, Cedar Point Nursery v. Hassid, the United States Supreme Court ruled in favor of the right to protect private property against intrusion by union organizers. Although involving a unique California law, the Supreme Court's decision could apply to broader situations and reminds employers of the importance of taking steps to preserve private property rights.

## Access to California Farms

A few years ago in California, an employer's operations were seriously disrupted by union organizers who entered the premises, used loudspeakers to grab the attention of employees who were working, and caused some to stop working and leave the worksite. That was a major disruption for the employer, a strawberry farmer, but a frequent occurrence because of a unique California law allowing farmworker union organizers the "right to take access" on an agricultural employer's property for up to three hours per day, 120 days per year. The strawberry farmer filed a federal lawsuit challenging the California law on Constitutional grounds.

The farmer's lawsuit relied on the United States Constitution's Fifth Amendment, which provides in part: "private property cannot be taken for public use, without just compensation." The farmer lost and ultimately appealed to the Supreme Court, which ruled for the farmer. In Cedar Point Nursery, the Supreme Court concluded that the California statute granting union organizers a right to invade the farmer's property was a per se physical taking of private property and violated the farmer's constitutional rights.

## Potential Implications

What does the Cedar Point Nursery decision mean for employers? The answer varies according to the point of view and underlying facts. For example:

**Farmers:** For farmers, especially those in California, their private property rights have been upheld against unions seeking access to farmworkers. Unionization of farmworkers is governed by state law, not federal law (i.e. National Labor Relations Act). Unlike California, most states do not have laws protecting or encouraging the unionization of farmworkers. Generally speaking, farmers can assert their property rights and prohibit trespassers, including union organizers, depending on the situation. Farmers in California now share that same right, at least until California law changes in the wake of Cedar Point Nursery.

**Other employers:** Of course, private property rights extend to non-farm employers too. Employers have long used private property rights to stop non-employees, including union organizers, from entering the premises. The Cedar Point Nursery decision reinforces an employer's private property rights, but not without limits. Most employers are subject to the NLRA. The Court has long held that an employer can prohibit on-site access by non-employees, including union organizers, subject to unusual circumstances such as where employees are "beyond the reach of reasonable union efforts" or certain businesses that are open to the public.

## Next Steps for Employers

For employers who want to protect their private property rights, the following are some possible steps to consider:

- Understand the nature and scope of the private property rights by reviewing the related documents, such as the property deed. For leaseholders, carefully review the terms and rights supplied through the lease, which often allow the leaseholder to assert certain private property rights.
- Confirm the perimeter of the property, using property records and plats. Identify public right-of-ways, including sidewalks. Preserve copies of the related documents.
- Display appropriate notices, such as "No Trespassing," along the property's borders.
- Consult with legal counsel and security professionals to develop a site security plan.
- Evaluate security measures, such as identification procedures, visitor access, video monitoring, or on-site security personnel, appropriate for the site.
- Consider ingress and egress issues where employees, visitors, vendors access or leave the property. For at least construction sites, designate one or more gates for certain suppliers.
- Establish or update written policies and procedures preserving private property rights, including solicitation and distribution policies.
- Consistently communicate and enforce policies preserving property rights.

## Conclusion

Given the Supreme Court's re-invigoration of private property rights, employers should review and update how they are protecting those rights.