

**United States Supreme Court Affirms a Treasured Right of Landownership: The Right to Exclude**

A regulation in California allows labor organizations a “right to take access” to an agricultural employer’s property to solicit support for unionization. The regulation requires agricultural employers to allow union organizers onto their property three hours per day, 120 days per year. Agricultural employers filed suit against the Agricultural Labor Relations Board (the “Board”) in district court, asserting that this regulation appropriated an easement for union organizers to enter their property without compensation—constituting “an unconstitutional *per se* physical taking under the Fifth and Fourteenth Amendments.” The employers sought declaratory and injunctive relief proscribing the Board from enforcing the regulation against them.

The district court denied the employers’ motion for a preliminary injunction and granted the Board’s motion to dismiss. It rejected the employers’ argument that the regulation constituted a *per se* physical taking, reasoning that the regulation did not “allow the public to access their property in a permanent and continuous manner for whatever reason.”

The Court of Appeals for the Ninth Circuit affirmed this ruling. It identified three categories of regulatory takings actions: “regulations that impose permanent physical invasions, regulations that deprive an owner of all economically beneficial use of his property, and the remainder of regulatory actions.” The court stated that regulations in the first two categories constitute *per se* takings. The regulation did not fall into the first category because it did not “allow random members of the public to unpredictably traverse [the growers’] property 24 hours a day, 365 days a year.” Further, given that the employers did not argue that the regulation deprived them of all economically beneficial use of their property, the regulation did not fall into the second category.

The United States Supreme Court granted certiorari. The Court stated that the essential question is whether the government has “physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner’s ability to use his own property.” Because the access regulation appropriates a right to invade the employers’ property, they are deprived of their right to exclude. The Court ultimately held that California’s access regulation constitutes a *per se* physical taking, reasoning that the regulation appropriates the owners’ right to exclude third parties from their land—“one of the most treasured rights” of property ownership.