

**Legal Alert: Recent Supreme Court Decisions Supporting CHIP/RSA Federal
Lawsuit
June 29, 2021**

The United States Supreme Court recently decided two cases that may have a substantial impact on rent regulations in New York State: *Cedar Point Nursery v. Hassid* (decided June 23, 2021 and available [here](#)) and *Packdel v. City and County of San Francisco* (decided June 28, 2021 and available [here](#)).

In [Cedar Point Nursery v. Hassid](#), the Supreme Court struck down, under the Fifth and Fourteenth Amendments to the US Constitution, a California regulation that required landowners to permit union organizers access to their property intermittently, holding that the regulation effected a taking of the owner's property, even though it was intermittent, because "[r]ather than restraining the growers' use of their own property, the regulation appropriates for the enjoyment of third parties the owners' right to exclude."

The Supreme Court further held that "The right to exclude is 'one of the most treasured' rights of property ownership" and "We cannot agree that the right to exclude is an empty formality, subject to modification at the government's pleasure. On the contrary, it is a 'fundamental element of the property right', that cannot be balanced away."

The decision thus calls into question the constitutionality of New York's rent regulation of residential tenancies, especially with regard to mandatory renewal leases because mandatory renewals take away an owner's right to exclude.

It appears that *Cedar Point Nursery* is beneficial to landlords seeking to challenge rent stabilization on federal constitutional grounds as a governmental taking, since it supports the landlords' claims in the current lawsuit challenging the constitutionality of rent regulation in New York State. In New York, the entire rent regulatory framework has appropriated the owners' property rights for the benefit of third parties, namely tenants, because, "[r]ather than restraining the [owners'] use of their own property, the regulation appropriates for the enjoyment of third parties the owners' right to exclude."

In [Packdel v. City and County of San Francisco](#), the City required an owner to agree to give a tenant a lifetime lease in exchange for being given permission to convert the property to condominium ownership. The owners requested that the city either excuse them from executing the lifetime lease or compensate them for the lease. The city refused both requests. The owners sued in federal court, challenging the lifetime lease requirement as being a taking under the Fifth Amendment. The Ninth Circuit affirmed the District Court's ruling that the owners failed to exhaust their administrative remedies under state law. The US Supreme Court reversed the Ninth Circuit and remanded the case for further proceedings, holding "In this case, there is no question about the city's position: Petitioners must 'execute the lifetime lease' or face an 'enforcement action.' *** And there is no question that the government's 'definitive position on the issue [has]

inflict[ed] an actual, concrete injury’ of requiring petitioners to choose between surrendering possession of their property or facing the wrath of the government. *** Whatever policy virtues this doctrine might have, administrative ‘exhaustion of state remedies’ is not a prerequisite for a takings claim when the government has reached a conclusive position.”

We will be monitoring the *Packdel* case to see what happens on remand. If the owner’s challenge to the lifetime lease is successful on the merits, it could give additional support for the CHIP/RSA lawsuit challenging rent stabilization.