



March 14, 2025

**Statement of Pacific Legal Foundation before the Colorado House Agriculture,  
Water & Natural Resources Committee in support of SB25-128, *Agricultural  
Worker Service Providers Access Private Property***

Chair McCormick and members of the Committee:

My name is Jaimie Cavanaugh, and I am Legal Policy Counsel at Pacific Legal Foundation (PLF). PLF is a nonprofit public interest law firm dedicated to defending Americans' liberties when threatened by government overreach and abuse. Since our founding 50 years ago, we have been helping Americans fight for their constitutional rights in courthouses and legislatures across the country. We have won 18 cases at the United States Supreme Court—17 defending property rights—and helped enact more than three dozen laws in legislatures across the country.

In its current form, C.R.S. § 8-13.5-202 violates the Takings Clause of the Fifth Amendment to the U.S. Constitution. This bill, SB25-128 cures this violation. PLF represented the clients in a 2021 case before the U.S. Supreme Court, *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 162 (2021). In this case, the Court held that granting labor organizations a right of access to an agricultural company's property for up to three hours per day and 120 days per year violates the Fifth Amendment's takings clause. The Court described this access regulation as a classic per se physical taking: "The access regulation ... appropriates for the enjoyment of third parties the owners' right to exclude."

The Court compared the access regulation to other laws that had been held to violate the takings clause, including: overflights by low-flying aircraft, *United States v. Causby*, 328 U. S. 256 (1946), requiring public access to a private marina, *Kaiser Aetna v. United States*, 444 U. S. 164, 175 (1979), or exacting a beach access easement in exchange for a building permit, *Nollan v. California Coastal Comm'n*, 483 U. S. 825, 831 (1987). In each of these cases, the U.S. Supreme Court said the government may not enact such an access regulation unless it is willing to pay just compensation to the private property owner.

Colorado's agricultural access regulation (C.R.S. § 8-13.5-202) is only different from the California regulations struck down in *Cedar Point* in that it is worse. It allows access without time limits and for any purpose, entirely appropriating the agricultural employer's right to exclude for "the enjoyment of third parties." This is a per se physical taking without just compensation.

There are many government-authorized physical invasions that will not amount to takings because they are consistent with longstanding background restrictions on property rights. These include regulations that require owners to abate a nuisance on their property—because there is never a right to maintain the nuisance in the first place.

Similarly, traditional common law privileges to access private property to avert an imminent public disaster or prevent serious harm are not takings. These background exceptions also apply to things like making an arrest, enforcing the criminal law, or conducting a reasonable search under certain circumstances. Government health and safety inspections will generally also not constitute takings because there is a close nexus and rough proportionality between the inspections and a permit, license, or registration.

As amended, SB25-128 takes a scalpel to the problem and protects private property rights, while also ensuring agricultural workers have access to key service providers. It is a balanced approach that respects the Constitution and workers.

Thank you for the opportunity to testify. I am happy to answer any questions; my contact information is listed below.

Respectfully,



Jaimie Cavanaugh

Legal Policy Counsel

[jcavanaugh@pacificlegal.org](mailto:jcavanaugh@pacificlegal.org)

248-895-1555