



Supreme Court to take up Calif. raisin case for 2nd time

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Monday, January 19, 2015

For the second time, California farmer Marvin Horne will argue to the Supreme Court in April that the government is violating the Constitution by forcing him to turn over his raisins without paying him.

On Friday, the justices agreed to review Horne's challenge to a Depression-era program for setting raisin prices that the central California farmer claims amounts to an unconstitutional taking without the just compensation required by the Fifth Amendment.

The case concerns the 1937 Agricultural Marketing Agreement Act, which Supreme Court Justice Elena Kagan jokingly referred to as "the world's most out-of-date law" two years ago.

It requires the Department of Agriculture to stabilize prices for raisins, nuts and other crops by controlling the amount of product entering the market. California raisins account for 99 percent of the domestic supply and 40 percent of the world's.

Every year, USDA has issued a Raisin Marketing Order that requires "handlers" of raisins -- but importantly, not "producers," or bulk farmers -- to turn over a percentage of their crop yield. Those raisins are used in school lunches and other programs.

The government has historically paid varying amounts for those raisins.

In 2000, Horne, whose family has farmed raisins in Fresno and Madera counties for more than half a century, reorganized his operation to sidestep the "handler" label. By purchasing his own packaging equipment, he sought to package his farmed raisins himself in an attempt to qualify as a "producer" and be exempt from the government program.

Two years later, he stopped turning over any raisins to the government. USDA intervened, saying he still qualified as a handler.

At issue are raisins from 2002-03 and 2003-04, when USDA required transfer of 47 percent and 30 percent of Horne's crop, respectively. USDA brought an enforcement action against Horne's farm, Raisin Valley Farms, noting that he was processing, or handling, raisins from several farms, not just his. Horne was hit with about \$700,000 in penalties and fines.

Horne challenged the government action in court. He noted that for the 2003-04 crop, USDA paid other farmers less than the price of production. For the 2002-03 crop, the government paid nothing.

"The regulations at issue are, in short, a textbook case of an uncompensated taking," Horne's attorney, former federal appellate judge Michael McConnell, wrote in court documents.

The case first reached the Supreme Court two years ago and garnered attention because of the bizarre aspects of the USDA program. It was featured on Comedy Central's "The Daily Show."

In a unanimous ruling, the court in June 2013 sidestepped the constitutional taking issue. It held that Horne has a right to challenge the program in federal court -- he didn't have to go to the federal court of claims first -- and sent the case back to the San Francisco-based 9th U.S. Circuit Court of Appeals (*Greenwire*, June 10, 2013).

On remand, the 9th Circuit again rejected Horne's claims last May. A three-judge panel acknowledged that Horne's "impatience with a regulatory program" that may be "out-dated and perhaps disadvantageous to smaller agricultural firms is understandable."

But the panel held that the program didn't amount to a taking because Horne never technically turned over any raisins, so nothing was physically taken. Horne, the court said, also failed to prove the program amounted to a regulatory taking.

The court also upheld the government's penalties, saying they were justly proportional and there was a nexus between the fines and what the program requires.

"At bottom, the reserve requirement is a use restriction applying to the Hornes insofar as they voluntarily choose to send their raisins into the stream of interstate commerce," the court wrote. "The Secretary did not authorize a forced seizure of the Hornes' crops, but rather imposed a condition on the Hornes' use of their crops by regulating their sale" (*Greenwire*, May 14, 2014).

Several groups, including the U.S. Chamber of Commerce and libertarian Cato Institute, have filed briefs in support of Horne's efforts to overturn that ruling.

The court will rule on *Horne v. USDA* by the end of June.