



The Federal Raisin Ripoff -- Will The Court Or Congress Revoke This License To Steal?

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Americans are still yoked to many policies that go back to the New Deal era, when it was the intellectual fashion to “fix” the economy’s ailments by substituting bureaucratic coercion for property rights and market competition. It didn’t work then and is just as bad today.

In agriculture, the New Dealers’ idea was that prices were too low, but if the government could raise them, prosperity would return to the farming sector, which would then revitalize the rest of the country. That was the origin of the U.S. Department of Agriculture’s (USDA) numerous “marketing orders” and production quotas, some of which are still in existence. Perhaps the most egregious instance is in raisin growing.

Under a USDA marketing order decreed in 1949, American raisin growers are required to hand over to their bureaucratic overseers (a.k.a. the Raisin Administrative Committee) a large percentage of their yearly crop, currently 47 percent. In return, they receive no guaranteed compensation at all, but merely a vague promise that some money might be returned to them after the Committee has sold the raisins and has covered all its costs. (The costs of the growers are immaterial.)

The effects of this are harmful to consumers. Prices in the U.S. are driven higher by the USDA’s artificial scarcity and it is not uncommon for California raisins to be less expensive in Europe than in America.

You might think that between the Democrats, who profess to care about consumer welfare and the Republicans who say they’re for free enterprise and private property rights, we would long ago have gotten rid of this governmental abomination. Nope.

You might also think, if you're familiar with the Constitution, that this exercise in legal plunder would have been struck down by the courts. The Fifth Amendment is unambiguous, stating that when government takes private property for a public use, *it must pay just compensation*. Putting aside the objection that the seized raisins are hardly put to any public use, under this scheme producers are forced to give up their property and then receive little or no compensation. How can that be tolerated under the Fifth Amendment?

One California raisin grower, Marvin Horne, has been in a legal war with the USDA over this nasty business, which he argues is unconstitutional. His case reached the infamously statist (and frequently reversed) Ninth Circuit in 2012, but he lost when the court ruled *en banc* that it lacked jurisdiction. The U.S. Supreme Court [unanimously disagreed](#) with that holding, so the case went back.

On remand, the Ninth Circuit came up with a new defense for the government's license to steal. The court held that the Fifth Amendment's just compensation requirement *only applies to real estate*. That astounding and constitutionally baseless decision has been appealed to the Supreme Court, which has yet to decide whether to review the case, *Horne v. U.S. Department of Agriculture*. Again.

A powerful [amicus brief](#) supported by a host of the usual opponents of governmental overreach and oppression (Cato Institute, National Federation of Independent Business, Institute for Justice, Center for Constitutional Jurisprudence, Reason Foundation and Southeastern Legal Foundation) should easily convince at least four justices (the number necessary for the Court to grant certiorari) that the Ninth Circuit needs yet another reversal.

As the brief says, "The Takings Clause makes no distinction between 'real' and 'personal' property – it states categorically that 'private property' shall not be 'taken for public use without just compensation.'"

If the drafters of the Bill of Rights had meant for the takings clause to apply only to real estate, they would have said so. The notion that James Madison *et al* would have had no complaint over uncompensated governmental seizures of personal property is quite absurd. The whole point of the Revolution was to escape from the clutches of high-handed government that could treat people like serfs.

I will be shocked if the Court doesn't decide to review *Horne*. The Ninth Circuit's view of the government's power to take private property is indefensible. I'll be much more than shocked if the Supreme Court were to uphold its view. But even if the Court were to do so, the real solution is not judicial, but rather legislative. Congress should pull the plug on not only the raisin marketing order, but all such USDA price meddling.

While at it, Congress ought to rethink the whole Department of Agriculture. Farming would do just fine without it and the taxpayers would save lots of money. The august members of the Raisin Administrative Committee and many other bureaucrats would have to find useful work to do.

The nation's last big challenge was getting rid of governmental segregation and discrimination, which obstructed so many people from living their lives without having government impede them. Our next big challenge will be getting rid of the great many laws and regulations like the Raisin Marketing Order that waste resources, harm consumers, and diminish our freedom.

Any presidential candidate who would make that a cornerstone of his – or her – campaign in 2016 would stand out from the crowd. It might even spark the political competition America really needs – competition to do the most to liberate the people from arbitrary and unconstitutional government power.