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Raisin Law Shrivels Before Supreme Court

By: Conan Milner – June 4, 2013

When raisin farmer Marvin Horne refused to give the government one-half of his crop, he was slapped with a nearly \$700,000 fine.

The government's demands stem from the Raisin Marketing Order (RMO)—a Depression-era policy designed to provide stability for crop prices. However, small farmers like Horne believe that the penalty far outweighs any benefit.

Horne has disputed the bill for years, and now the U.S. Supreme Court will decide whether or not he must pay.

“They don't pay you anything for the raisins they take,” Horne said in a phone interview. “You've already paid all the production costs, brought it to harvest, and paid all the harvesting costs. But as soon as you get it they say, ‘Oh no, those are not your raisins anymore.’”

Under the RMO, the U.S. Department of Agriculture (USDA) can claim up to one-half of the annual raisin supply in the interstate market. Don't pay up, and the government expects the dollar equivalent. Several fruit and nut crops were once subject to similar claims, but the unpopular policy was eventually abandoned.

Raisins, however, remain tied to the reserve system, and according to Horne, this is why so many small farmers have left the business.

“We used to have 5,000 ethnically diverse raisin growers in California,” he said. “But with the advent of the reserve program getting a bigger and bigger percentage of our crop, we now have about 2,500 growers left.”

“We lost that many,” he added. “They converted to tree fruit or went completely out of business.”

As part of a 1937 agriculture act, the RMO was born of New Deal designs for a strong market. By removing a portion of the nation's raisin crop, the marketing reserve creates a calculated scarcity so that prices stay higher.

According to the USDA, this scarcity-influenced price push is compensation enough for the raisins they take. The government-acquired fruit are funneled to consumers outside the American raisin market in school lunch programs and overseas, and the proceeds go back into the USDA's pocket.

The Supreme Court decision hinges on whether Horne followed proper procedure in his dispute of the regulatory scheme, but Justices could not resist poking at the law itself.

“That’s a crazy statute,” said Justice Antonin Scalia during oral arguments on March 20.

“I can’t believe that Congress wanted the taxpayers to pay for a program that’s going to mean they have to pay higher prices as consumers,” added Justice Stephen Breyer.

Producer Or Handler?

When it comes to raisins, California is king. The Golden State produces 99.5 percent of domestic supply, and almost one-half of the world’s.

A good one-third of this supply comes from the Sun-Maid Growers of California cooperative—a popular brand known for its trademark bonnet-clad maiden. In an amicus brief to the Supreme Court, Sun-Maid supports the RMO and condemns Horne for not playing by the rules.

The company stated that, unlike Horne who has “attempted to evade long-standing regulatory requirements to gain a competitive advantage, Sun-Maid has played by the regulatory rules,” and has an interest in making sure competitors also comply.

According to Sun-Maid, “The key that unlocks this case is the statutory distinction between ‘producers’ and ‘handlers.’” However, the legal tangle involved with these terms left justices scratching their heads.

Breyer compared the search for answers to Abbott and Costello’s comedy routine, “Who’s On First,” where new questions only bring more confusion.

Under the RMO, producers—essentially farmers that grow and dry grapes—are not beholden to the government’s raisin seizure. Handlers, on the other hand—those who stem, sort, and box—must transfer a share of the raisins they acquire to the USDA.

One of the reasons that Horne’s operation has been so difficult for courts to identify is because his farm performs both functions.

“I’m a producer. I’m not a handler,” Horne said. “I don’t buy raisins. I just pack my own.”

Most of the confusion lies in the government’s prosecutorial strategy. The USDA is fining Horne as a handler, but is challenging him in court as a producer—an identification that undercuts his legal standing.

A number of libertarian groups have lent their support to Horne’s case, advocating for a ruling where the government’s raisin grab presents a violation of the Fifth Amendment. According to a statement from the Cato Institute, the RMO runs counter to the constitutional provision in which “private property shall not be taken for public use without just compensation.”

The Epoch Times contacted the Raisin Administrative Committee—the body that oversees the RMO—to get a better idea of what purpose the program serves but received

no response by press time. However, the benefits to the government are clear—the program more than pays for itself, and the surplus subsidizes inspection efforts of other departments.

According to Horne, a large part of the industry also has a stake in keeping the marketing reserve afloat, which is a big reason why previous efforts to overthrow the RMO have failed. He said that Sun-Maid and the Raisin Bargaining Association make sure that the statute stays in place because it will bring them even more control once small-scale competition shrivels.

“When the small guys are gone, they’re going to turn around and raise the prices up, I imagine,” said Horne.

The Supreme Court is expected to make a decision later this month.