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# Supreme Court will divine the legal stakes in California raisin wars

By: Michael Doyle – March 15, 2013

Dissident California raisin growers will soon get their day in the Supreme Court sun, with a case that's juicier than it seems.

Libertarians are weighing in. So, from the other side, is Sun-Maid, the largest single marketer of raisins in the world. Texas is siding with the dissidents, as is the U.S. Chamber of Commerce.

Add it up and the case with roots in raisin-rich Fresno County will put the nine Supreme Court justices on the spot Wednesday morning. The eventual outcome will have consequences well beyond the vineyard and the packing shed.

"Give the little farmer a chance," grower Marvin D. Horne said an interview. "We haven't done anything wrong."

The case, scheduled for an hour-long oral argument, pits Marvin and Laura Horne, proprietors of Raisin Valley Farms, and their allies against the U.S. Department of Agriculture. More broadly, the case is the latest front in a series of long-running disputes between farmers who like to go their own way and farmers who prefer to unite for collective action.

Previous fights, played out in both state and federal courts, have challenged programs like the mandatory industry fees that fund advertising for tree fruit, mushrooms and beef. Opponents call the fees a "speech tax" that violates the First Amendment's free speech guarantees, though the Supreme Court has ultimately upheld them.

Several of the attorneys representing the Hornes, Clovis, Calif.-based lawyer Brian Leighton and Michael McConnell, a Stanford Law School professor and former federal judge, have long track records in opposing certain Agriculture Department programs.

With their headquarters in the Fresno County town of Kerman, the Hornes have been producing raisins in Fresno and nearby Madera counties since 1969. Marvin Horne, now 67, said he didn't set out to be a rebel.

"All we want to do is pack our raisins and sell them," Horne said. "The only thing I wanted, along with my group, was to be free."

But Sun-Maid Growers of California, along with the Justice Department and others, say that the Hornes shouldn't be rewarded for breaking the rules.

“Unlike (the Hornes), who have attempted to evade longstanding regulatory requirements to gain a competitive advantage, Sun-Maid has always played by the regulatory rules,” the company declared in a legal brief.

The underlying legal challenge, though not the precise issue that will be heard by the Supreme Court, involves the raisin marketing order. Authorized by Congress, and approved by industry, marketing orders can undertake various actions to boost demand and stabilize prices, including regulating how much product enters the open market.

The raisin marketing order requires “handlers” who process and pack raisins to place part of their product in reserve during certain years, with the industry-run Raisin Administrative Committee deciding how much handlers will be paid for this set-aside tonnage. Raisin handlers set aside 47 percent of their crop during the 2002-03 season and 30 percent for 2003-04, but they were paid for only part of what they surrendered.

The set-aside raisins may be sold for purposes such as the federal school-lunch program.

The Hornes grew disillusioned and helped organize other growers into the Raisin Valley Farms Marketing Association, which took care of the packing. By identifying themselves as producers rather than as handlers, the group’s members reasoned, they were exempt from the set-aside requirement imposed on handlers.

The Obama administration, however, termed this a “scheme” designed to avoid legal requirements, and the Agriculture Department subsequently ordered the Hornes and their coalition to pay more than $650,000 in fees and penalties.

“(The Hornes) repeatedly failed to pay any assessments . . . to have inspections of incoming raisins performed, to allow USDA access to their records, despite being served by the agency with two subpoenas, and to hold raisins in reserve,” the Justice Department stated in a legal brief.

The dissident growers, in turn, call the raisin set-aside as well as the fees and penalties a “taking” of property. Under the Fifth Amendment, takings require just compensation by the government.

“We’ve been subject to lots of harassment by USDA,” Horne said.

The Supreme Court won’t decide on the wisdom of the raisin program. Rather, the court essentially will decide when and where the takings claims can be raised.

The Hornes want the 9th U.S. Circuit Court of Appeals to rule on the takings claim, while the government wants the farmers to file a separate lawsuit seeking to get their money back through the U.S. Court of Federal Claims.

Here is where the case gets both technical and broader-reaching.

Libertarians with the Washington-based Cato Institute and business leaders with the Chamber of Commerce want the Hornes to win because that could mean other property owners could raise the takings claim as a defense against government-imposed fines or penalties.

The alternative – forcing property owners to file a separate claims court lawsuit – would cause them to "incur needless time, expense and uncertainty," the Chamber of Commerce argued in a legal brief. Texas makes a similar argument on the Hornes' behalf.

"We've always thought that justice would prevail," Horne said.