

# U.S. Supreme Court arguments set in challenge to raisin-price regulation

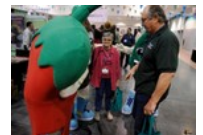
By Michael  
Doyle



Fresno County raisin grower Marvin Horne is heading back to the Supreme Court to challenge a decades-old system for managing raisin supplies. Horne and his allies won an important procedural victory the first time around, in [a unanimous 2013 ruling](#) that allowed them to pursue their legal challenge through federal court. This time, justices will squarely address the raisin program itself. GARY KAZANJIAN — Associated Press

- 
- 

WASHINGTON — Supreme Court justices will unpack many different arguments when they consider a surprisingly big California raisin case.



With briefs filed in recent days, parties ranging from the state of Texas and the U.S. Chamber of Commerce to a bunch of independent raisin growers from the San Joaquin Valley have challenged a decades-old system for managing raisin supplies. More than one wrinkled fruit is on the line.



“This case potentially has ramifications that extend far beyond the marketing order at issue,” attorney Jessica Ring Amunson said.

Based in Washington, the Harvard Law School-educated Amunson [filed a brief on behalf](#) of 33 self-identified

“independent raisin growers” unhappy with the Fresno-based Raisin Administrative Committee and the marketing order it runs.

In particular, the challengers oppose a supply management program that can require growers to surrender part of their crops or pay a penalty. The court will decide whether this amounts to a taking of property for which compensation is due.

The supply management system is designed to keep prices steady even in times of surplus. When growers are required to turn over a percentage of their crops, it goes into a reserve that’s not sold on the open market. The growers may be paid for the reserve supplies if they’re sold to government programs, but at less than fair-market value.

Underscoring the broader consequences, a dozen friend-of-the-court briefs were filed to meet a Monday deadline. These cover only one side of the argument. Briefs for the other side, effectively supporting the raisin marketing order, will be filed in several weeks, setting the stage for an oral argument April 22 that might cover considerable ground.

“Governments owe their citizens a duty to protect their private property interests,” Texas Solicitor General Scott A. Keller wrote in the [amicus brief for Texas](#), Arizona and North Dakota.

The case called *Horne v. Department of Agriculture* is returning to the Supreme Court. Fresno County grower Marvin Horne and his allies won an important procedural victory the first time around, in [a unanimous 2013 ruling](#) that allowed them to pursue their legal challenge through federal court.

This time, justices will address the raisin program itself.

“The raisin marketing order (under) challenge has been in effect and stabilized the raisin market for 65 years,” the Obama administration’s lawyers argued in a brief, adding that “raisin farmers generally perceive themselves to be advantaged by the order’s stabilization of raisin prices.”

The administration, represented by the legal team under Solicitor General Donald Verrilli Jr., further called it telling that relatively few of California’s roughly 3,000 raisin growers have joined an amicus brief siding with the challengers.

Sun-Maid Growers of California, whose farmer-members process about 30% of the U.S. raisin crop, filed an amicus brief siding with the raisin program during the last Supreme Court case.

“That system benefits the entire raisin industry ... by avoiding price volatility that was endemic prior to promulgation of the raisin marketing order,” Sun-Maid’s brief argued in the prior case.

On Friday, Sun-Maid President Barry Kriebel said the organization would file an amicus brief in the latest case.

Still, the dissident raisin growers who were joined in the newly filed amicus brief by a civil libertarian group called the DKT Liberty Project include some with deep roots in the San Joaquin Valley’s fertile soil.

Jack Blehm has been producing raisins for 43 years. His family has been in the business since 1942. Arleen G. Daggs’ family has farmed in the Fresno area since 1917, while Gregory and Donna Patterson, who operate an 80-acre vineyard called Abba’s Acres, have them both beat for familial seniority.

“They have been producing raisins for 43 years, and their family has been in the raisin growing business for 103 years,” the amicus brief reports.

Amunson, the attorney who filed the amicus brief, explained that “Horne assisted us in identifying other independent raisin growers, and we collected surveys from those who were interested in participating.”

Raisin Administrative Committee leaders were traveling Friday and couldn’t be reached to comment.

The marketing order under fire regulates handlers, who pack and process the raisins. Among other provisions, the order requires that handlers may have to withhold part of their crop for a “reserve tonnage” managed by the Raisin Administrative Committee. The set-aside raisins may be sold for purposes such as federal nutrition programs.

Raisin handlers set aside 47% of their crops during the 2002-03 season and 30% for 2003-04, but they were paid for only part of what they surrendered.

Under the Fifth Amendment, government must pay “just compensation” when private property is “taken for public use.” One key question is whether a crop counts as property, like real estate. Another question is whether the forced surrendering of raisins counts as a taking even though farmers might eventually be paid something for it.

“When the government takes possession of property, it must pay the owner — full stop,” Horne’s attorneys, Brian C. Leighton and Stanford Law School professor Michael W. McConnell, [wrote in an initial brief](#).

Contact Michael Doyle: (202) 383-0006, [mdoyle@mcclatchydc.com](mailto:mdoyle@mcclatchydc.com) or [@MichaelDoyle10](https://twitter.com/MichaelDoyle10) on Twitter. Read more on federal legal issues on his blog, “Suits & Sentences,” at [www.mcclatchydc.com/suits-sentences](http://www.mcclatchydc.com/suits-sentences).