

At Supreme Court, raisin rules get scoopful of arguments

By Michael
Doyle



California Raisins TISH WELLS — McClatchy

WASHINGTON — A decades-old program for managing surplus California raisin production might be in jeopardy, following a heated Supreme Court argument Wednesday.

With a blend of skeptical questions and scornful asides, conservative justices in particular voiced doubts about the program, which can require raisin handlers to set aside a portion of the crop for a reserve. By keeping some raisins off the free market, the program is supposed to stabilize prices.

“Central planning was thought to work very well in 1937,” Justice Antonin Scalia said, “and Russia tried it for a long time.”

Chief Justice John Roberts Jr. and Justice Samuel Alito likewise grimaced at the set-aside program, which is part of the overall California raisin-marketing order.

“Could the government say to a manufacturer of cellphones, ‘You can sell cellphones. However, every fifth one you have to give to us?’” Alito asked. “Or a manufacturer of cars, ‘You can sell cars in the United States, but every third car you have to give to the United States?’”

Deputy Solicitor General Edwin S. Kneedler called the circumstances “very different,” but the overall tone of the [hourlong oral argument](#) appeared most favorable to Kerman, Calif.-based raisin producer Marvin Horne and his fellow dissidents.

Tellingly, several justices confirmed that the raisin reserve program opposed by Horne and his allies hasn't been used in several years. A handful of other marketing orders, for crops that include almonds and walnuts, also authorize, but haven't recently used, reserve programs. This disuse would appear to set the stage for justices to end one old program with roots in the [New Deal](#) without disrupting an entire industry.

"This is a historical quirk that you have to defend," Roberts told Kneeder, adding that "we are not going to jeopardize the Agriculture Department's marketing order regime."

Concentrated in California's sunny but currently drought-stricken San Joaquin Valley, raisin production spanned more than 200,000 acres and reached a value of over \$725 million in 2012.

A federal marketing order has governed the raisin industry since 1949. The order regulates handlers, who pack and process the raisins. Among other provisions, the order says handlers may have to withhold part of their crop for a "reserve tonnage" managed by the [Raisin Administrative Committee](#) in Fresno, Calif. The set-aside raisins may be sold for purposes such as federal nutrition programs.

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.

Horne, in protest, helped organize about 60 other growers into the [Raisin Valley Farms Marketing Association](#), which took care of the packing. By identifying themselves as producers rather than handlers, the group's members reasoned, they were exempt from the set-aside requirement.

The Obama administration termed this a "scheme" and the Agriculture Department subsequently ordered Horne and his coalition to pay more than \$650,000 in fees and penalties. Horne, in turn, calls the program a "taking" of his property.

The Raisin Administrative Committee, "which is an agent of the Department of Agriculture, actually takes possession, ownership of the raisins," attorney Michael W. McConnell, a professor at Stanford Law School, told the justices. "It is not any less of a taking, even if there is a benefit."

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.

The argument Wednesday marked a return to the Supreme Court for the case called *Horne v. Department of Agriculture*. 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.

Several dozen farmers and family members joined the 70-year-old Horne; his wife, Laura; and Clovis, Calif.-based attorney Brian Leighton in the courtroom Wednesday. Underscoring the cautious optimism voiced by several of the farmers following the argument, Leighton noted that raisin industry leader Sun-Maid Growers of California has itself now challenged the set-aside reserve program.

In a lawsuit filed in Washington on April 6, Sun-Maid Growers declared that "volume regulation has inhibited industry development" and "it is no longer needed to promote industry stability." Sun-Maid wants the Agriculture Department to initiate the "rule-making" that could eventually result in eliminating the reserve program.

"The ridiculousness or sensibleness of a program is really not for us to decide," noted Justice Elena Kagan.

Justice Clarence Thomas, in keeping with his customary practice, was the only one of the nine justices not to speak or ask questions Wednesday. A decision is expected by the end of June.

Email: mdoyle@mcclatchydc.com; Twitter: [@MichaelDoyle10](#).

