

# Supreme Court justices appear ready to rule against California raisin board

By David G. Savage

The Supreme Court justices sounded ready Wednesday to rule in favor of a Fresno raisin farmer by striking down part of a Depression-era law that allows a government-backed board to seize part of a farmer's crop in order to reduce supply and prop up prices.

The court's conservatives characterized the California raisin board's actions as examples of outdated and heavy-handed government regulation that deny farmers their rights to private property.

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"Central planning was thought to work very well in 1937," a skeptical Justice Antonin Scalia told a government lawyer defending the program.

Scalia was referring to the Agricultural Marketing Agreement Act of 1937 in which the New Deal Congress authorized farmers to join cooperative boards which would try to stabilize prices for their products. They could do so by not planting some acres of their land. Or as in the case of California raisin board, they could agree to put some portion of their crop into a "reserve pool" to be sold overseas.



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But Marvin Horne, a disgruntled grower from Fresno, objected to the practice, which he said amounted to the "stealing" of his crop.

In 2003, Horne refused to participate in the board's reserve pool, and instead packed and sold raisins on his own. He was ultimately fined \$695,000 for his actions.

The justices agreed to hear his appeal, and a majority signaled Wednesday they were prepared to rule that the "taking" of his raisins entitles him to "just compensation." The 5th Amendment says "private property (shall not) be taken for public use without just compensation."

While it appeared clear a majority will side with Horne, it is not clear what this means for other farm products, or even what compensation he is due.

A government attorney noted that while reserve pools for farm commodities were once common, they have all but disappeared in the past decade.

Raisin production in California fell in 2010, USDA reported, and the Raisin Administrative Committee has not set aside a reserve pool of raisins for the past five years, the government argued in a court filing.

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Several of the court's liberal justices agreed the USDA program was outdated, and perhaps "ridiculous," according to Justice Elena Kagan. But she and Justice Stephen Breyer wondered whether Horne had actually suffered a loss.

Deputy Solicitor General Edwin Kneedler, defending USDA, said the raisin board is backed by the majority of raisin growers, and it “works for their benefit.” Setting aside some of the crop during bountiful years works to prop up prices, he said.

Breyer appeared to agree. “This program gives you money. It doesn’t take from you,” he told a lawyer for Horne.

More than 1,600 raisin growers from California joined the USDA in defense of the program. They described the Hornes as cheaters and “free riders” who evaded the marketing orders but still benefited from the higher prices.

“Having been caught free-riding at the expense of their competitors, [the Hornes] now seek refuge in high constitutional principle,” the Sun-Maid Growers of California told the court.

But Stanford law professor Michael McConnell, representing Horne, disagreed. He compared the raisin board to a government agency seizing part of an owner’s land.

“The government literally takes possession of the raisins,” he said. “And USDA came after our clients” with heavy fines because they objected.”

This is not the court's first encounter with government-backed marketing orders for farm products. Beginning in the mid-1990s, the court heard several free-speech challenges from growers who resisted paying for generic marketing campaigns to promote, for example, milk or beef.

One of the best-known campaigns featured the California raisins dancing to the tune “I Heard It Through the Grapevine.” The court finally upheld the marketing campaigns in 2005.

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## UPDATE

**10:19 a.m.:** The story was updated to reflect justices' comments during arguments.