

# Supreme Court rules in favor of dissident raisin growers

By Michael Doyle Bee Washington  
Bureau

The Supreme Court has pruned a long-running federal raisin supply management program and called its future into question, with a ruling that the government must pay for raisins kept out of the marketplace.

In a victory for Fresno County grower Marvin Horne and other dissident California raisin producers, the court said Monday the program that compels some raisins to be held back in a reserve is subject to the just compensation commands of the Fifth Amendment.

“Raisins are private property, the fruit of the growers’ labor, not public things subject to the absolute control of the state,” Chief Justice John Roberts, Jr. wrote. “Any physical taking of them for public use must be accompanied by just compensation.”

The decision will reshape the contours of the decades-old raisin program. While part of a long-running challenge to federal regulation of various agricultural markets, the ruling Monday also broadens the government’s responsibilities to private property owners.

“The government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home,” Roberts wrote, adding that the Fifth Amendment “protects ‘private property’ without any distinction between different types.”

If you want my raisins, pay for them.

Fresno County grower Marvin Horne

The Fifth Amendment states that private property cannot be taken “for public use without just compensation.” It is frequently a subject of dispute, leading the National Federation of Independent Business on Monday to call the new decision “a very important case for small business owners.”

The most immediate impact, though, will be felt in the raisin program.

One of Horne’s attorneys, Clovis-based Brian Leighton, has launched many related legal fights against marketing orders and promotion programs. The attorney who successfully argued Horne’s case at the Supreme Court, Stanford Law School Professor Michael McConnell, is a former federal appellate judge who has represented Horne pro bono.

“I’m elated,” Horne said in a telephone interview Monday morning. “The monkey is off my back. I think it’s a great ruling for everybody; if you want my raisins, pay for them.”

Attorney John C. O’Quinn, who is also with McConnell’s firm of Kirkland & Ellis, likewise praised what he called a “great decision.”

Officials with the Fresno-based Raisin Administrative Committee declined to comment Monday morning, referring calls to the Agriculture Department, which had no immediate reaction.

Concentrated in the 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. Initiated by industry members and authorized by Congress, marketing orders in general are designed to help maintain quality standards and provide stable

markets. They cover crops from almonds to walnuts.

Only some marketing orders authorize volume control. [The raisin order is among them](#), and until now it has been supported by a majority of farmers who believe it helps the industry.

The raisin order regulates handlers, who pack and process the raisins. The order says 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.

\$725 million value of raisin crop in 2012

The raisin supply management system is designed to keep prices steady even in times of surplus. The growers may be paid for the reserve supplies if they're sold to government programs, but at less than fair-market value.

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

Horne and his allies formed 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 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, and the court on Monday agreed.

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Supreme Court Chief Justice John Roberts Jr.

“The reserve requirement imposed by the Raisin Committee is a clear physical taking,” Roberts wrote. “Actual raisins are transferred from the growers to the government.”

Roberts added that “the Hornes should simply be relieved of the obligation to pay the fine and associated civil penalty they were assessed when they resisted the government's effort to take their raisins.”

Four other justices joined Roberts' majority opinion, while several justices dissented in part and concurred in part. Only Justice Sonia Sotomayor opposed the entire decision, noting that the raisin program allows for at least some payment in exchange for set-aside raisins.

“A reduction in the value of property is not necessarily equated with a taking,” Sotomayor wrote.

[Two years ago](#), the court unanimously gave him an important procedural green light to pursue his case in conventional federal court.

Even without the high court's latest ruling, the raisin supply management program could be drying up.

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