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For High Court, 2 Scoops Of Raisins In This Case

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The U.S. Supreme Court heard — for the second time — the matter of Horne v. U.S. Department of Agriculture on April 22, 2015. The government, defending a program designed to aid raisin producers for the last half-century, faced fierce questioning from the court. Focused on the Takings Clause of the Fifth Amendment, this case was filed by California raisin farmers Marvin and Laura Horne who challenged the USDA's marketing order regulating the handling of raisins produced from grapes grown in California.

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The marketing order requires “handlers” of raisins to set aside a measure of the raisins they obtain from raisin producers and give them to the federal government. The USDA implemented the order in 1949 in an effort to stabilize raisin demand by reserving a percentage of the yearly California raisin crop. The Hornes took the position that, because they grew, processed and packed their own grapes and raisins, they were exempt from the reserve program. In the years at issue in the suit, 2002 and 2003, 47 and 30 percent of the California crop was slated to be reserved. When the Hornes did not reserve the specified quantities of raisins, the government demanded payment in the value of the raisins, plus hefty punitive fines, resulting in a total fine of $700,000.

Posture of the Case

Ultimately, Marvin Horne sued the USDA, claiming the order violates his Fifth Amendment rights against uncompensated takings. The district court found that no taking had occurred, and subsequently, Horne appealed to the Ninth Circuit, which held it lacked jurisdiction to hear the claim, insisting such claims were within the jurisdiction of the Court of Federal Claims. The first time the Supreme Court heard this case, in 2013, the justices disagreed and remanded the case back to the Ninth Circuit. On remand, the Ninth Circuit found for the USDA, holding the reserve did not act as a per se taking as the raisins constitute personal rather than real property (an argument the government neither proffered nor stood upon) and that the order did not equate to a taking because there was a sufficient nexus and rough proportionality between the reserve requirement and specific interest the government seeks to protect — stabilizing raisin prices.

Plaintiffs' Argument

Michael W. McConnell appeared on behalf of the Hornes and presented a simple and focused argument: Because the government physically takes the raisins, which are the personal property of the Hornes, a per se taking has occurred without just compensation. According to McConnell, the Hornes are family farmers who struggle to make a living under the complex and unjust oversight of an antiquated government program.

Justice Ruth Bader Ginsburg asked for clarity regarding whether the Hornes were challenging the volume limitation itself or the actual taking of the raisins. McConnell admitted the volume limitation might be viewed as a use restriction, which might be challenged under the Penn Central test (requiring a nexus between the government's goal and regulation), but stated that the key component to the program at issue is the uncompensated physical possession of the raisins, which amounts to a per se taking.

Justices Sonia Sotomayor and Elena Kagan then asked McConnell to explain how the raisin reserve differed from the oyster shell reserve in Leonard & Leonard v. Earle, 279 US 392 (1929). McConnell argued that because oysters are wild animals and, as such, begin as property of Maryland, the state was free to withhold a portion of the oysters when the oysters were harvested by licensed oystermen. He insisted that because the raisins were not wild animals ("even if they're dancing") they were not property of the state until the government physically took them.

McConnell then rejected Justice Sotomayor's inquiry as to whether the taking of the raisins was a tax, which had justified the oyster shell reserve in Leonard. He stated the tax code does not contemplate the marketing order and, as such, the taking cannot be justified as a tax. Justice Sotomayor responded that the tax code had likewise not contemplated oyster shells, but because the shells were a good in commerce and could survive the Penn Central test due to a nexus between the government's goal and the regulation, the taking was justified.

Justice Antonin Scalia came to McConnell's rescue and hit home his fundamental theme, "I thought that the — what the Constitution required for a taking was just compensation, not — not a reasonable nexus to a — good policy. Am I, am I wrong about that?" Justice Stephen Breyer reasoned compensation had been paid in the form of increased raisin prices. McConnell disagreed because, despite the intentions of the program, by the "secretary's own calculations $63 of [the field price of] $810 is attributable to the volume controls in the program. Only $63."

At the conclusion of McConnell's argument, Justice Breyer stated McConnell had "helped a lot in my thinking." But he was still unsure as to what to do with the fines levied against the Hornes.

Government's Argument

Edwin S. Kneedler argued on behalf of the government and immediately faced rigorous questioning by Justice Scalia. Kneedler argued the reserve was justified because it was simply a government program operating for the benefit of raisin producers and handlers, despite their misgivings about the program. To this rationale, Justice Scalia scoffed, asking "[t]hese plaintiffs are ingrates, right? You're ... really helping them?

Kneedler insisted the program does not amount to a taking and, as such, no just compensation is owed. He further argued raisin producers and handlers make a voluntary choice to enter commerce and if they don't want to participate in the program, they should not enter the business. Justice Samuel Alito

pointed to several “startling” parallels to the raisin reserve program: “Could the government say to a manufacturer of cellphones, you can sell cellphones; however, every fifth one you have to give to us? 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.” Kneedler again insisted that the program is an extremely old one, focused on benefiting the raisin industry.

Chief Justice John Roberts drove home the Hornes’ argument: This is a taking and there are other ways to accomplish the same admirable goal of increasing raisin prices. “[S]ay, look, you can only plant, you know, 63 percent of your acreage this year, or you can only produce, you know, 28 tons. That’s how most of them work, and most of … them thereby are, I presume, analyzed under Penn Central. This is different. This is different because you come up with the truck and you get the shovels and you take their raisins, probably in the dark of night.”

Conclusion

Despite the government’s defense of a decades-old price stabilization plan, the court’s questioning during oral argument leaned toward the plaintiff. If the court’s discussion from the bench is any indication, the reserve program may soon shrivel in the sun. Once the court has chewed over the arguments, the Hornes will have their answer after a decade of litigation.

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