

The United States Supreme Court today ended a David-and-Goliath-style, 10-year legal battle between a pair of California raisin growers and the federal government, declaring that the government triggered a compensable taking of the growers' private property when a federally-controlled agricultural board ordered seizure of a portion of their crop. The Court's decision can be accessed [here](#).

Chief Justice Roberts' majority opinion found the U.S. Department of Agriculture's Depression-era system of "marketing orders," which are designed to maintain stable markets for certain agricultural products, unconstitutional when applied to California growers Marvin and Laura Hornes' raisins. Under that program, the government required the Hornes to set aside a percentage of their raisin crop in a government-controlled account. They refused, federal officials commenced enforcement proceedings against them, and the Hornes sought relief in federal court.

The Court's decision today upholds the Hornes' takings claim in five critical respects:

- The *per se* rule that physical takings are compensable under the Fifth Amendment applies equally to real property (i.e., land) and to personal property such as the Hornes' raisin crop.
- The reserve requirement imposed by the federal government represents "a clear physical taking" of the Hornes' private property.
- The government cannot shield itself from takings liability by reserving to the growers a contingent financial interest in a portion of the seized raisin crop.
- Nor can the government avoid a compensable taking by conditioning the Hornes' ability to grow and sell raisins upon their willingness to dedicate a portion of their crop to the government-controlled account. That, said the majority, is an "unconstitutional condition" that's violative of established Takings Clause principles.
- Finally, the Hornes are not required to first pay the administrative fine levied by the government and only then seek compensation in federal court for an unconstitutional taking.

Justice Breyer wrote a concurring and dissenting opinion, in which Justices Ginsburg and Kagan joined, agreeing with the Chief Justice as to all but the last holding summarized above. Justice Sotomayor penned a solitary dissent, in which she concluded that the Hornes' claim should be viewed as a *regulatory* taking, rather than a *per se* compensable *physical* seizure of their property.

Today's decision in *Horne v. Department of Agriculture* adds a great deal of grist to the takings mill. I'll follow up this post with another in the next few days analyzing how

the *Horne* case is likely to affect Fifth Amendment takings law generally.