The Grapes of Wrath: U.S. Supreme Court Holds that Takings Claim Can be Raised as an Affirmative Defense to Enforcement Action Against Raisin Handlers

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In a unanimous opinion written by Justice Thomas, the Supreme Court held that California raisin handlers could assert a takings claim as an affirmative defense to an enforcement action filed by the United States. *Horne v. Department of Agriculture*, No. 12-123 (June 10, 2013). Although the Supreme Court declined to address the actual merits of the takings claim, the decision is noteworthy as it potentially represents a crack in prior Supreme Court precedent through which a swarm of regulatory takings claims may flood.

The Statutory Scheme

The history underlying this litigation began a long, long time ago, back when the Great Depression was still in full force, and John Steinbeck had just finished his first commercially successful novel, *Tortilla Flat*. It was during this time that Congress enacted the Agricultural Marketing Agreement Act of 1937 ("AMAA"), and the Secretary of Agriculture promulgated the California Raisin Marketing Order (the "Marketing Order").

The intent behind these regulations was to insulate farmers from competitive market forces that resulted in unreasonable fluctuations in supplies and price. In an effort to stabilize the market, the AMAA and Marketing Order impose a number of regulatory obligations on "raisin handlers," including limiting the quantity of raisins sold by the handlers in the domestic competitive market by requiring any additional raisins to be maintained in a "reserve pool." If a raisin handler fails to comply with any of its obligations, it is subject to a civil penalty. If a raisin handler fails to comply with the reserve requirement, the penalty equals the cash value of the "excessive" raisins sold on the market, rather than held in reserve.

The Hornes' Raisin Empire
Flash forward to 1969. That year the first men walked on the moon, the "Miracle Mets" won the World Series, and Marvin and Laura Horne, the eventual petitioners in this saga, began producing raisins in California. For the next 30 years, the Hornes produced their raisins in relative anonymity. Eventually, however, the Hornes, disillusioned with the AMAA, decided to try and avoid the limitations imposed by the AMAA and Marketing Order by entering into a partnership with Laura Horne's parents. Instead of just producing raisins, the partnership purchased equipment to clean, stem, sort, and package raisins. It then contracted with more than 60 other raisin growers to clean, stem, sort, and in some cases, box and stack their raisins for a fee.

In 2001, the United States Department of Agriculture notified the Hornes that the partnership was operating as a "raisin handler" under the AMAA, and therefore was subject to the reserve requirements and assessments. The Hornes disagreed. They refused to comply with the reservation requirements, pay any assessments, or otherwise conform to any of the requirements imposed on "raisin handlers." As a result, the Administrator for the Agriculture Marketing Service (the "Administrator") initiated an enforcement action against the Hornes.

The Enforcement Action
The Administrator alleged that the Hornes were "handlers" under the AMAA, and that the Hornes failed to comply with numerous requirements of the AMAA and Marketing Order. The Hornes denied the allegations and asserted that they were not "handlers." The Hornes also claimed that even if they were "handlers," the Marketing Order violated the Fifth Amendment's prohibition against taking private property without just compensation.

In 2006, an Administrative Law Judge held that the Hornes were "handlers," and that they had violated the AMAA. The Administrative Law Judge denied the takings claim, finding that as handlers the Hornes did not have a property right that permitted them to market their crop free of regulatory control. The Hornes appealed, but the decision was affirmed. The Hornes were ordered to pay in excess of $200,000 in civil penalties, in excess of $8,000 in assessments, and almost $500,000 for their failure to hold the necessary raisins in reserve.

The Lawsuit
The Hornes filed a complaint in Federal District Court seeking to set aside the order. The District Court sided with the Administrative Law Judge, holding that substantial evidence supported the decision that the Hornes were "handlers" subject to the Marketing Order. As for the takings claim, the District Court held that the reserve requirements did not constitute a taking. Rather, the reserve qualified instead as an "admission fee" for marketing raisins.

On appeal, the United States Courts of Appeals for the Ninth Circuit, like the District Court, held that the Hornes were "handlers" subject to the Marketing Order. As for the takings claim, however, the Ninth Circuit held that it lacked jurisdiction to adjudicate the claim because it was being brought on behalf of the Hornes as "producers," rather than as "handlers." Specifically, the Ninth Circuit held that because the AMAA only applied to "handlers," the Tucker Act applied, and therefore the Hornes were required to first assert their challenge in the Court of Federal Claims.

The Supreme Court Decision
After granting the Hornes' petition for certiorari, the U.S. Supreme Court reversed the Ninth Circuit's jurisdictional ruling, essentially applying the old adage that if it looks like a duck, walks like a duck, and

quacks like a duck, it is likely a duck. In this case, Justice Thomas explained:

> It is undisputed that the Marketing Order imposes duties on petitioners only in their capacity as handlers. As a result, any defense raised against those duties is necessarily raised in that same capacity. . . The Ninth Circuit confused petitioners' statutory argument (*i.e.,* "we are producers, not handlers") with their constitutional argument (*i.e.,* "assuming we are handlers, fining us for refusing to turn over reserve-tonnage raisins violates the Fifth Amendment").

Justice Thomas then turned to the ripeness argument, concluding that the Hornes were not required to first assert their takings claim in the Court of Federal Claims. In reaching this conclusion, Justice Thomas distinguished *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* (1985) 473 U.S. 172. Justice Thomas explained that in *Williamson County*, the Court held that a takings claim was not ripe because the plaintiff had not yet obtained a final decision regarding the application of a zoning ordinance, and the plaintiff had not exhausted the established State procedures for seeking compensation. In this case, however, the Hornes were subject to a final agency order imposing concrete fines and penalties, and the Hornes proceeded through the AMAA, which provides a comprehensive remedial scheme that withdraws Tucker Act jurisdiction. In simpler terms, the Hornes had already jumped through the necessary procedural hoops in order to argue their takings claim in Federal District Court. Key to this conclusion was the fact that the AMAA provides a comprehensive recovery scheme exempting the Hornes from having to first assert their takings claim in the Court of Claims under the Tucker Act.

Finally, the Court held that in the context of an enforcement proceeding initiated by the Administrator, a handler may raise a takings-based affirmative defense. Accordingly, the Supreme Court reversed the judgment of the Ninth Circuit, and remanded the case so that the lower courts could consider whether the imposition of fines and civil penalties violated the Fifth Amendment.

Lessons Learned

So what do we glean from the *Horne* decision?
First, I suppose, is the realization that raisin handlers have been getting squeezed for a really, really long time. Despite the peppy ads many of us remember from the 1980s – who can forget the "California Raisins" 1986 version of *I Heard it Through the Grapevine*? – this has been a regulated, contested market for more than 75 years.

Second, and perhaps more to the point, the decision confirms at the highest level that takings claims may not always require a "real property" interest. Whether viewed as the raisins themselves or the penalties imposed for failure to comply with the reserve requirements, the Hornes have the standing to claim that a taking occurred.

Third, and perhaps what will become the most far-reaching aspect of the decision, is the conclusion that not all takings claims are subject to the harsh exhaustion rule in *Williamson County*, a case that has thwarted countless takings claims over the past 25 years, confounding plaintiffs that could not find a way to navigate their claims to ensure that they were both ripe (i.e., that they had met their state-court or other exhaustion prerequisites under *Williamson County*) and timely (i.e., that the statute of limitations had not run on the federal lawsuit before they could get through the other proceedings).

Finally, it is worth noting again that the decision does not establish any new substantive law on what qualifies as a taking. No court has yet found that the Hornes were subjected to an unconstitutional taking; rather, the Supreme Court merely held that the jurisdictional argument relied on by the Ninth Circuit was

contrary to law. As such, a final decision on the merits may be years away, if one is even in the cards. It is possible that the lower courts may find some other jurisdictional basis to reject the claim without reaching the merits.