

WHY RAISINS & WETLANDS SHOULD GIVE CATTLE RANCHERS HOPE

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Before reading this article, please take your boots off and put your feet up. Then enjoy the saga of two property owners – a California raisin grower and a Florida landowner - who became fed up with government regulation and control and challenged the system. Their legal journeys as reported through two recent U.S. Supreme Court cases should make you smile.¹ Cattle ranchers are, after all, hardworking owners and operators of their land and often experience the heavy hand of government regulation. By the time you finish reading, I hope you will shout “ooh-rah” for the good guys.

The first case is *Horne v. U.S. Dept. of Agriculture*.² Mr. and Mrs. Horne have been producing raisins in California since 1969. Over many years they became frustrated with a Federal depression-era program designed to stabilize raisin prices by controlling the amount of raisins sold in the market. The U.S.D.A. issued regulations through the California Raisin Marketing Order which required all California raisin handlers to essentially donate a significant portion of their crop to the government. In addition, raisin growers must store and segregate the donated raisins on their property and pay a fee for administering the program. The Hornes were obligated to donate 47% of their crop harvested in 2003 and 30% of their crop in 2004. Fed up with the scheme, the Hornes refused to

comply and complained to the Secretary of Agriculture:

“[W]e are growers that will pack and market our raisins. We reserve our rights under the Constitution of the United States... [T]he Marketing Order Regulating Raisins has become a tool for grower bankruptcy, poverty, and involuntary servitude. The Marketing Order Regulating Raisins is a complete failure... We will not relinquish the crop. We put forth the money in an effort to grow it, not the Raisin Administrative Committee. This is America, not a communist State.”³

The Department of Agriculture was not sympathetic and filed a lawsuit that demanded the Hornes pay the value of the raisins which were not turned over, approximately \$483,843.53, plus a fine of \$202,600.00. The Hornes countered by claiming that the 5th Amendment of the U.S. Constitution precluded the government from taking their property without paying for the raisins:

“No person shall...be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation.”⁴

Adding to the pressure, the government

argued that the Hornes could not sue the government for wrongfully taking their property (the raisins) without first paying the money owed to the government. The Hornes lost their claim at administrative hearings and at the trial court level.

What happened at the U.S. Supreme Court was marvelous. Justice Scalia commented during the oral arguments that the government was stealing from a property owner. In his words, the government was telling the raisin growers, “Your raisins, or your life, right?”⁵ The government’s lawyer attempted to correct Justice Scalia, and said, “It’s not a choice.”⁶ The Supreme Court was not persuaded and unanimously determined that the taking of the Hornes’ property (the raisins) without paying for them was a viable 5th Amendment claim and sent the case back to give the Hornes their day in court. Ooh-rah!

The second case is *Koontz v. St. Johns River Management District*⁷ out of the State of Florida. Under general land use law, when a property owner requests the government to approve a permit for developing property, it is legal under the correct circumstances to request that the owner dedicate a portion of the land toward public improvements that will be required to support the development. However, a government is not supposed to condition its granting of the permit upon

the property owner relinquishing a portion of the property, unless there is a nexus and rough proportionality between the government's demand and the effects of the proposed land use. The River District in Florida got caught being greedy.

Mr. Koontz owned approximately 15 acres of undeveloped wetlands. He desired to develop 3.7 acres and offered to grant a conservation easement over the remaining 11.3 acres to the River District. Not satisfied with Mr. Koontz's offer, the River District countered with two options: either reduce your development down to 1 acre and grant the conservation easement on the remaining 14 acres, or pay for the cost of certain improvements located miles away which had nothing to do with his planned development. Mr. Koontz refused and filed a lawsuit.

The U.S. Supreme Court explained in its majority opinion that the government cannot overreach like this with a property owner. Justice Alito criticized government strong-arming in the area of discretionary land use permits by stating that the Court's

precedents "...still forbid the government from engaging in 'out-and-out...extortion' that would thwart the 5th Amendment right to just compensation."⁸ Mr. Koontz succeeded and the River District could not force him to pay for very expensive, unrelated public improvements or accept a drastically reduced development. Ooh-rah!

Why are these cases important to cattle ranchers in Arizona? Because land ownership and the right to use privately owned land is not a privilege that is granted by the government. It is a fundamental right in the United States. As you finish reading this article and watch your cattle graze on your land, consider the words of Arthur Lee, a colonial patriot in 1775:

"The right of property is the guardian of every other right, and to deprive a people of this, is in fact to deprive them of their liberty."⁹

Anthony Misseldine joined the firm in 2011 and is a shareholder for Jackson White. He has been practicing law since 1987

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Footnotes:

- 1 I have intentionally simplified the legal issues for the two cases in order to make the article more enjoyable.
- 2 133 S.Ct. 2052 (2013).
- 3 Slip Opinion p.5, fn 5. p.3.
- 4 U.S. Constitution Amendment 5
- 5 Oral Argument March 20, 2013
- 6 Oral Argument March 20, 2013
- 7 133 S.Ct 2586 (2013)
- 8 133 S.Ct. at 2593.
- 9 Arthur Lee, An Appeal to the Justice and Interests of the People of Great Britain, in the Present Disputes with America (London: Printed for J. Almon, Opposite Burlington-House, 1775), 19.

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