

The Supreme Court Holds the Just Compensation Clause Can Be Used as a Defense

Until this week, it had almost become a truism that the Just Compensation Clause only required that the Government pay for whatever property it took, and imposed no other restrictions. That is, the Just Compensation Clause is a sword, not a shield. Not so anymore. With the Supreme Court's unanimous decision in [Horne v. Department of Agriculture](#), property owners effectively have a taking defense, not just a taking claim, if the Government seeks to take their property.

In *Horne*, two raisin farmers were accused by the Department of Agriculture of failing to comply with an outmoded, New-Deal scheme of regulations issued under the Agricultural Marketing Agreement Act that required them to turn over between 30% and 50% of their yearly raisin crop to the Government, free of charge. After the Hornes were charged almost \$700,000 in fines and assessments, they challenged the fines in federal district court based (in part) on the claim that the regulations violated the Fifth Amendment by taking private property, without just compensation.

The district court held that the Hornes could not use the just compensation clause as a defense against the regulation because all taking claims over \$10,000 must be heard in the U.S. Court of Federal Claims. The Ninth Circuit affirmed, stating flatly:

Nothing in the [Agricultural Marketing Agreement Act] precludes the Hornes from alleging in the Court of Federal Claims that the reserve program injures them in their capacity as producers by subjecting them to a taking requiring compensation. Thus, they may bring the takings claim there under the Tucker Act. And since they may bring a Tucker Act claim, they are required to bring it before we can properly adjudicate the takings issue.

As the Horne's petition for certiorari noted, the Ninth Circuit would have required the Hornes to pay the Government first, then sue the Government in another lawsuit in another court to get that money back.

Justice Thomas, writing for a unanimous Court, rejected this senseless procedure, holding that the comprehensive enforcement scheme that the Department of Agriculture claimed applied to the Hornes displaced the jurisdiction of the Court of Federal Claims and gave jurisdiction to the district court to hear the taking defense:

In the case of an administrative enforcement proceeding, when a party raises a constitutional defense to an assessed fine, it would make little sense to require the party to pay the fine in one proceeding and then turn around and sue for recovery of that same money in another proceeding. . . We are therefore satisfied that the petitioners raised a cognizable takings defense and that the Ninth Circuit erred in declining to adjudicate it.

Incidentally, this is the second unanimous victory at the Supreme Court for property owners this term: [Arkansas Game & Fish Commission](#), rendered on December 4, 2012, also unanimously found for the property owners.

The information and materials on this web site are provided for general informational purposes only and are not intended to be legal advice. The law changes frequently and varies from jurisdiction to jurisdiction. Being general in nature, the information and materials provided may not apply to any specific factual or legal set of circumstances or both.