ODOT Right of Way Manual

Chapter 5. Acquisition

5.650 Signs - Outdoor Advertising and Others

According to Oregon law, a sign cannot be erected or maintained within the right of way of a state highway, other than a traffic control sign or device. Except for outdoor advertising signs (see Glossary for definition), signs are considered real property and the Right of Way Agent must prepare an offer to acquire signs located within the acquisition area, including any signs which will overhang or encroach upon the state highway right of way. Signs may be allowed to overhang or encroach upon easement areas acquired by the Department as long as they are not within the right of way nor interfere with the safety of the motoring public or State's intended use. The Agent is to negotiate the acquisition of a sign with its owner.

Chapter 6. Relocation

6.860 Signs - Outdoor Advertising and Others

6.865 Status as Realty

Except for outdoor advertising signs, signs located within an area of acquisition are considered to be real property and are to be acquired under acquisition procedures. (See 5.650) Outdoor advertising signs, however, are considered to be personal property and are moved under relocation procedures.

6.875 Relocation of Outdoor Advertising Signs

The relocation benefits available to outdoor advertising sign owners are similar to those available to other displaced businesses. An outdoor advertising sign must be included as inventory for moving, and the move of a sign must still be monitored just as any other move. Relocation benefits for signs include the following:

1. Actual reasonable moving expenses as described in 6.555. These may be claimed in the same manner as a regular business move using the business move claim forms. Eligible reimbursable expenses may include costs for the installation of a new base including electrical wiring necessary to operate the sign. Sign move expenses, based on estimates, may be claimed by using The Sign Move Claim, and based on Schedule or Estimates, Form 734-3798.

2. Direct loss of tangible personal property: Outdoor advertising sign owners may be reimbursed for actual direct losses when they are to relocate signs but do not do so. The amount of the loss is the lesser of:
    a. The depreciated reproduction cost of the sign as determined by qualified right of way staff or independent sign appraisers, less the proceeds from its sale; or
    b. The estimated cost of moving the sign, but with no allowance for storage. The sign owner completes Form 734-3800, Sign Loss of Tangible Personal Property Claim to claim this benefit.
3. Expenses in searching for a replacement sign site. (See 6.588.) An outdoor advertising sign owner is not eligible for the Fixed Payment in Lieu of Moving Expenses and is not eligible for the Reestablishment Expense benefit. Payment for a sign move or loss of tangible personal property (sign) claim will not be made until a release of the leasehold interest in that property necessary for Oregon Department of Transportation purposes has been executed.

Subpart D—Outdoor Advertising (Acquisition of Rights of Sign and Sign Site Owners)Authority:23 U.S.C. 131 and 315; 23 CFR 1.32 and 1.48(b).**Source:**39 FR 27436, July 29, 1974, unless otherwise noted.**§ 750.301Purpose.**To prescribe the Federal Highway Administration (FHWA) policies relating to Federal participation in the costs of acquiring the property interests necessary for removal of nonconforming advertising signs, displays and devices on the Federal-aid Primary and Interstate Systems, including toll sections on such systems, regardless of whether Federal funds participated in the construction thereof. This regulation should not be construed to authorize any additional rights in eminent domain not already existing under State law or under 23 U.S.C. 131(g).**§ 750.302Policy.**(a) Just compensation shall be paid for the rights and interests of the sign and site owner in those outdoor advertising signs, displays, or devices which are lawfully existing under State law, in conformance with the terms of 23 U.S.C. 131.(b)(1) Federal reimbursement will be made on the basis of 75 percent of the acquisition, removal and incidental costs legally incurred or obligated by the State.(2) Federal funds will participate in 100 percent of the costs of removal of those signs which were removed prior to January 4, 1975, by relocation, pursuant to the provisions of 23 CFR § 750.305(a)(2), and which are required to be removed as a result of the amendments made to 23 U.S.C. 131 by the Federal-Aid Highway Amendments of 1974, Pub. L. 93-643, section 109, January 4, 1975. Such signs must have been relocated to a legal site, must have been legally maintained since the relocation, and must not have been substantially changed, as defined by the State maintenance standards, issued pursuant to 23 CFR 750.707(b).(c) Title III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4651, *et seq.*) applies except where complete conformity would defeat the purposes set forth in 42 U.S.C. 4651, would impede the expeditious implementation of the sign removal program or would increase administrative costs out of proportion to the cost of the interests being acquired or extinguished.(d) Projects for the removal of outdoor advertising signs including hardship acquisitions should be programed and authorized in accordance with normal program procedures for right-of-way projects.

[39 FR 27436, July 29, 1974; 39 FR 30349, Aug. 22, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.303Definitions.(a) *Sign.* An outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard or other thing which is designed, intended of the advertising or informative contents of which is visible from any place on the main-traveled way of the Interstate or Primary Systems, whether the same be permanent or portable installation.(b) *Lease (license, permit, agreement, contract or easement).* An agreement, oral or in writing, by which possession or use of land or interests therein is given by the owner or other person to another person for a specified purpose.(c) *Leasehold value.* The leasehold value is the present worth of the difference between the contractual rent and the current market rent at the time of the appraisal.(d) *Illegal sign.* One which was erected and/or maintained in violation of State law.(e) *Nonconforming sign.* One which was lawfully erected, but which does not comply with the provisions of State law or State regulations passed at a later date or which later fails to comply with State law or State regulations due to changed conditions. Illegally erected or maintained signs are not nonconforming signs.(f) *1966 inventory.* The record of the survey of advertising signs and junk-yards compiled by the State highway department.(g) *Abandoned sign.* One in which no one has an interest, or as defined by State law.**§ 750.304State policies and procedures.**The State's written policies and operating procedures for implementing its sign removal program under State law and complying with 23 U.S.C. 131 and its proposed time schedule for sign removal and procedure for reporting its accomplishments shall be submitted to the FHWA for approval within 90 days of the date of this regulation. This statement should be supported by the State's regulations implementing its program. Revisions to the State's policies and procedures shall be submitted to the FHWA for approval. The statement should contain provisions for the review of its policies and procedure to meet changing conditions, adoption of improved procedures, and for internal review to assure compliance. The statement shall include as a minimum the following:(a) *Project priorities.* The following order of priorities is recommended.(1) Illegal and abandoned signs.(2) Hardship situations.(3) Nominal value signs.(4) Signs in areas which have been designated as scenic under authority of State law.(5) Product advertising on:(i) Rural interstate highway.(ii) Rural primary highway.(iii) Urban areas.(6) Nontourist-oriented directional advertising.(7) Tourist-oriented directional advertising.(b) *Programing.* (1) A sign removal project may consist of any group of proposed sign removals. The signs may be those belonging to one company or those located along a single route, all of the signs in a single county or other locality, hardship situations, individually or grouped, such as those involving vandalized signs, or all of a sign owner's signs in a given State or area, or any similar grouping.(2) A project for sign removal on other than a Federal-aid primary route basis e.g., a countywide project or a project involving only signs owned by one company, should be identified as CAF-000B( ), continuing the numbering sequence which began with the sign inventory project in 1966.(3) Where it would not interfere with the State's operations, the State should program sign removal projects to minimize disruption of business.(c) *Valuation and review methods*—(1) *Schedules—formulas.* Schedules, formulas or other methods to simplify valuation of signs and sites are recommended for the purpose of minimizing administrative and legal expenses necessarily involved in determining just compensation by individual appraisals and litigation. They do not purport to be a basis for the determination of just compensation under eminent domain.(2) *Appraisals.* Where appropriate, the State may use its approved appraisal report forms including those for abbreviated or short form appraisals. Where a sign or site owner does not accept the amount computed under an approved schedule, formula, or other simplified method, an appraisal shall be utilized.(3) *Leaseholds.* When outdoor advertising signs and sign sites involve a leasehold value, the State's procedures should provide for determining value in the same manner as any other real estate leasehold that has value to the lessee.(4) *Severance damages.* The State has the responsibility of justifying the recognition of severance damages pursuant to 23 CFR 710.304(h), and the law of the State before Federal participation will be allowed. Generally, Federal participation will not be allowed in the payment of severance damages to remaining signs, or other property of a

sign company alleged to be due to the taking of certain of the company's signs. Unity of use of the separate properties, as required by applicable principles of eminent domain law, must be shown to exist before participation in severance damages will be allowed. Moreover, the value of the remaining signs or other real property must be diminished by virtue of the taking of such signs. Payments for severance damages to economic plants or loss of business profits are not compensable. Severance damage cases must be submitted to the FHWA for prior concurrence, together with complete legal and appraisal justification for payment of these damages. To assist the FHWA in its evaluation, the following data will accompany any submission regarding severance:(i) One copy of each appraisal in which this was analyzed. One copy of the State's review appraiser analysis and determination of market value.(ii) A plan or map showing the location of each sign.(iii) An opinion by the State highway department's chief legal officer that severance is appropriate in accordance with State law together with a legal opinion that, in the instant case, the damages constitute severance as opposed to consequential damage as a matter of law. The opinion shall include a determination, and the basis therefor, that the specific taking of some of an outdoor advertiser's signs constitutes a distinct economic unit, and that unity of use of the separate properties in conformity with applicable principles of eminent domain law had been satisfactorily established. A legal memorandum must be furnished citing and discussing cases and other authorities supporting the State's position.(5) *Review of value estimates.* All estimates of value shall be reviewed by a person other than the one who made the estimate. Appraisal reports shall be reviewed and approved prior to initiation of negotiations. All other estimates shall be reviewed before the agreement becomes final.(d) *Nominal value plan.* (1) This plan may provide for the removal costs of eligible nominal value signs and for payments up to $250 for each nonconforming sign, and up to $100 for each nonconforming sign site.(2) The State's procedures may provide for negotiations for sign sites and sign removals to be accomplished simultaneously without prior review.(3) Releases or agreements executed by the sign and/or site owner should include the identification of the sign, statement of ownership, price to be paid, interest acquired, and removal rights.(4) It is not expected that salvage value will be a consideration in most acquisitions; however, the State's procedures may provide that the sign may be turned over to the sign owner, site owner, contractor, or individual as all or a part of the consideration for its removal, without any project credits.(5) Programing and authorizations will be in accord with § 750.308 of this regulation. A detailed estimate of value of each individual sign is not necessary. The project may be programed and authorized as one project.(e) *Sign removal.* The State's procedural statement should include provision for:(1) Owner retention.(2) Salvage value.(3) State removal.

[39 FR 27436, July 29, 1974; 42 FR 30835, June 17, 1977, as amended at 50 FR 34093, Aug. 23, 1985]

§ 750.305Federal participation.(a) Federal funds may participate in:(1) Payments made to a sign owner for his right, title and interest in a sign, and where applicable, his leasehold value in a sign site, and to a site owner for his right and interest in a site, which is his right to erect and maintain the existing nonconforming sign on such site.(2) The cost of relocating a sign to the extent of the cost to acquire the sign, less salvage value if any.(3) A duplicate payment for the site owner's interest of $2,500 or less because of a bona fide error in ownership, provided the State has followed its title search procedures as set forth in its policy and procedure submission.(4) The cost of removal of signs, partially completed sign structures, supporting poles, abandoned signs and those which are illegal under State law within the controlled areas, provided such costs are incurred in accordance with State law. Removal may be by State personnel on a force account basis or by contract. Documentation for Federal participation in such removal projects should be in accord with the State's normal force account and contractual reimbursement procedures. The State should maintain a record of the number of signs removed. These data should be retained in project records and reported on the periodic report required under § 750.308 of this regulation.(5) Signs materially damaged by vandals. Federal funds shall be limited to the Federal pro-rata share of the fair market value of the sign immediately before the vandalism occurred minus the estimated cost of repairing and reerecting the sign. If the State chooses, it may use its FHWA approved nominal value plan procedure to acquire these signs.(6) The cost of acquiring and removing completed sign structures which have been blank or painted out beyond the period of time established by the State for normal maintenance and change of message, provided the sign owner can establish that his nonconforming use was not abandoned or discontinued, and provided such costs are incurred in accordance with State law, or regulation. The evidence considered by the State as acceptable for establishing or showing that the nonconforming use has not been abandoned or voluntarily discontinued shall be set forth in the State's policy and procedures.(7) In the event a sign was omitted in the 1966 inventory, and the State supports a determination that the sign was in existence prior to October 22, 1965, the costs are eligible for Federal participation.(b) Federal funds may not participate in:(1) Cost of title certificates, title insurance, title opinion or similar evidence or proof of title in connection with the acquisition of a landowner's right to erect and maintain a sign or signs when the amount of payment to the landowner for his interest is $2,500 or less, unless required by State law. However, Federal funds may participate in the costs of securing some lesser evidence or proof of title such as searches and investigations by State highway department personnel to the extent necessary to determine ownership, affidavit of ownership by the owner, bill of sale, etc. The State's procedure for determining evidence of title should be set forth in the State's policy and procedure submission.(2) Payments to a sign owner where the sign was erected without permission of the property owner unless the sign owner can establish his legal right to erect and maintain the sign. However, such signs may be removed by State personnel on a force account basis or by contract with Federal participation except where the sign owner reimburses the State for removal.(3) Acquisition costs paid for abandoned or illegal signs, potential sign sites, or signs which were built during a period of time which makes them ineligible for compensation under 23 U.S.C. 131, or for rights in sites on which signs have been abandoned or illegally erected by a sign owner.(4) The acquisition cost of supporting poles or partially completed sign structures in nonconforming areas which do not have advertising or informative content thereon unless the owner can show to the State's satisfaction he has not abandoned the structure. When

the State has determined the sign structure has not been abandoned, Federal funds will participate in the acquisition of the structure, provided the cost are incurred in accordance with State law.**§ 750.306Documentation for Federal participation.**The following information concerning each sign must be available in the State's files to be eligible for Federal participation.(a) *Payment to sign owner.* (1) A photograph of the sign in place. Exceptions may be made in cases where in one transaction the State has acquired a number of a company's nominal value signs similar in size, condition and shape. In such cases, only a sample of representative photographs need be provided to document the type and condition of the signs.(2) Evidence showing the sign was nonconforming as of the date of taking.(3) Value documentation and proof of obligation of funds.(4) Satisfactory indication of ownership of the sign and compensable interest therein (e.g., lease or other agreement with the property owner, or an affidavit, certification, or other such evidence of ownership).(5) Evidence that the sign falls within one of the three categories shown in § 750.302 of this regulation. The specific category should be identified.(6) Evidence that the right, title, or interest pertaining to the sign has passed to the State, or that the sign has been removed.(b) *Payment to the site owner.* (1) Evidence that an agreement has been reached between the State and owner.(2) Value documentation and proof of obligation of funds.(3) Satisfactory indication of ownership or compensable interest.(c) In those cases where Federal funds participate in 100 percent of the cost of removal, the State file shall contain the records of the relocation made prior to January 4, 1975.

[39 FR 27436, July 29, 1974, as amended at 41 FR 31198, July 27, 1976]

§ 750.307FHWA project approval.

47.42.102
Compensation for removal of signs — Authorized — Applicability.

(1) Except as otherwise provided in subsection (3) of this section, just compensation shall be paid upon the removal of any sign (pursuant to the provisions of chapter 47.42 RCW), lawfully erected under state law, which is visible from the main traveled way of the interstate system or the primary system.

(2) Such compensation shall be paid for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

(3) In no event, however, shall compensation be paid for the taking or removal of signs adjacent to the interstate system and the scenic system which became subject to removal pursuant to chapter 96, Laws of 1961 as amended by section 55, chapter 3, Laws of 1963 ex. sess. prior to May 10, 1971.

[1975 1st ex.s. c 271 § 2; 1971 ex.s. c 62 § 12.]

47.42.103
Compensation for removal — Action determining amount — Payment — State's share.

(1) Compensation as required by RCW 47.42.102 shall be paid to the person or persons entitled thereto for the removal of such signs. If no agreement is reached on the amount of compensation to be paid, the department may institute an action by summons and complaint in the superior court for the county in which the sign is located to obtain a determination of the compensation to be paid. If the owner of the sign is unknown and cannot be ascertained after diligent efforts to do so, the department may remove the sign upon the payment of compensation only to the owner of the real property on which the sign is located. Thereafter the owner of the sign may file an action at any time within one year after the removal of the sign to obtain a determination of the amount of compensation he or she should receive for the loss of the sign. If either the owner of the sign or the owner of the real property on which the sign is located cannot be found within the state, service of the summons and complaint on such person for the purpose of obtaining a determination of the amount of compensation to be paid may be by publication in the manner provided by RCW 4.28.100.

(2) If compensation is determined by judicial proceedings, the sum so determined shall be paid into the registry of the court to be disbursed upon removal of the sign by its owner or by the owner of the real property on which the sign is located. If the amount of compensation is agreed upon, the department may pay the agreed sum into escrow to be released upon the removal of the sign by its owner or the owner of the real property on which the sign is located.

(3) The state's share of compensation shall be paid from the motor vehicle fund, or if a court having jurisdiction enters a final judgment declaring that motor vehicle funds may not be used, then from the general fund.

[2010 c 8 § 10017; 1984 c 7 § 229; 1971 ex.s. c 62 § 13.]

Notes:

Severability -- 1984 c 7: See note following RCW 47.01.141.

47.42.104
Compensation for removal — Federal share — Acceptance.

The department may accept any allotment of funds by the United States, or any agency thereof, appropriated to carry out the purposes of section 131 of title 23, United States Code, as now or hereafter amended. The department shall take such steps as may be necessary from time to time to obtain from the United States, or the appropriate agency thereof, funds allotted and appropriated, pursuant to section 131, for the purpose of paying the federal share of the just compensation to be paid to sign owners and owners of real property under the terms of subsection (g) of section 131 and RCW 47.42.102, 47.42.103, and 47.42.104.

[1984 c 7 § 230; 1971 ex.s. c 62 § 14.]

Notes:

Severability -- 1984 c 7: See note following RCW 47.01.141.

47.42.105
Unavailability of federal share.

No sign, display, or device shall be required to be removed if the federal share of the just compensation to be paid upon the removal of such sign, display, or device is not available to make such payment.

[1971 ex.s. c 62 § 15.]

47.42.107
Compensation for removal under local authority.

(1) Just compensation shall be paid upon the removal of any existing sign pursuant to the provisions of any resolution or ordinance of any county, city, or town of the state of Washington by such county, city, or town if:

(a) Such sign was lawfully in existence on May 10, 1971 (the effective date of the Scenic Vistas Act of 1971); or

(b) Such sign was erected subsequent to May 10, 1971 (the effective date of the Scenic Vistas Act of 1971), in compliance with existing state and local law.

(2) Such compensation shall be paid in the same manner as specified in RCW 47.42.102(2) for the following:

(a) The taking from the owner of such sign, display, or device of all right, title, leasehold, and interest in such sign, display, or device; and

(b) The taking from the owner of the real property on which the sign, display, or device is located, of the right to erect and maintain such signs, displays, and devices thereon.

[1977 ex.s. c 141 § 1.]

Notes:

Severability -- 1977 ex.s. c 141: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 141 § 2.]

Idaho Statutes

TITLE 40
HIGHWAYS AND BRIDGES
CHAPTER 19
BEAUTIFICATION OF HIGHWAYS

40-1910A. REMOVAL OF OFF-PREMISES OUTDOOR ADVERTISING PROHIBITED WITHOUT COMPENSATION. (1) No governmental entity, including the state, or any municipality, county or other political subdivision shall remove or cause to be removed any legally placed off-premises outdoor advertising without paying compensation in cash or other method of payment mutually agreed upon, to the owner of the off-premises outdoor advertising based upon the fair market value of the off-premises outdoor advertising removed or proposed to be removed.

(2) As used in this section:

(a) "Off-premises outdoor advertising" means any outdoor sign, display, light, device, figure, painting, drawing, message, plaque, poster, billboard or other thing which is designed, intended or used to advertise or inform and which is situated in order to be visible from any highway, or other traveled way and which is located on property which is separate from and not adjoining the premises or property on which the advertised activity is carried out.

(b) "Fair market value of the off-premises outdoor advertising" means the value of the off-premises outdoor advertising which shall include consideration of the income derived from the same and which shall otherwise be determined in the same manner as provided in section 7-711, Idaho Code.

(c) "Legally placed" means, in reference to off-premises outdoor advertising, off-premises outdoor advertising which was erected in compliance with state laws and local ordinances, in effect at the time of erection or which was subsequently brought into compliance with state laws and local ordinances, except that the term does not apply to any off-premises outdoor advertising whose use is modified after erection in a manner which causes it to become illegal. Nothing herein shall require the payment of compensation for the removal by a governmental entity of any off-premises or other outdoor advertising which is, without authorization, erected or located in or upon a public right-of-way unless the same was legally placed thereon prior to the premises becoming a public right-of-way.

(d) "Relocation" means removal of off-premises outdoor advertising and construction within the same market area of new off-premises outdoor advertising to substitute for the off-premises outdoor advertising removed.

(3) It is a policy of this state to encourage governmental entities and owners of off-premises outdoor advertising to enter into relocation agreements in lieu and instead of paying the compensation provided herein, to continue development in a planned manner without expenditures of public funds while allowing continued maintenance of private investment and a medium of public communication. The state, cities, counties and all other political

subdivisions are specifically empowered to enter into relocation agreements on
whatever terms are agreeable to the off-premises outdoor advertising owner and
the governmental entity and to adopt rules, ordinances or resolutions providing for relocation of off-premises outdoor advertising, provided that nothing herein shall require compensation other than the actual cost of relocation unless the said owner is reasonably unable to acquire an alternate permissible location of comparable cost and value within the same market area.
Notwithstanding anything to the contrary herein, this section shall not be construed to prohibit a governmental entity from entering into any relocation agreement upon such terms as shall be otherwise lawful.

(4) The requirement by a local governmental entity that legally placed off-premises advertising be removed as a condition or prerequisite for the issuance or continued effectiveness of a permit, license or other approval for
any use, structure, development or activity other than off-premises outdoor advertising constitutes a compelled removal requiring compensation under this section unless the permit, license or approval is requested for the construction of a building or structure which cannot be built without physically removing the off-premises outdoor advertising.

CalTrans Outdoor Advertising Act and Regulations

California Compensation Statute

§ 5412. Displays; removal or limitation of use; compensation; application of section; relocation Notwithstanding any other provision of this chapter, no advertising display which was lawfully erected anywhere within this state shall be compelled to be removed, nor shall its customary maintenance or use be limited, whether or not the removal or limitation is pursuant to or because of this chapter or any other law, ordinance, or regulation of any governmental entity, without payment of compensation, as defined in the Eminent Domain Law (Title 7 (commencing with Section 1230.010) of Part 3 of the Code of Civil Procedure), except as provided in Sections 5412.1, 5412.2, and 5412.3. The compensation shall be paid to the owner or owners of the advertising display and the owner or owners of the land upon which the display is located. This section applies to all displays which were lawfully erected in compliance with state laws and local ordinances in effect when the displays were erected if the displays were in existence on November 6, 1978, or lawfully erected after November 6, 1978, regardless of whether the displays have become nonconforming or have been provided an amortization period. This section does not apply to on–premise displays as specified in Section 5272 or to displays which are relocated by mutual agreement between the display owner and the local entity. "Relocation," as used in this section, includes removal of a display and construction of a new display to substitute for the display removed. It is a policy of this state to encourage local entities and display owners to enter into relocation agreements which allow local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication. Cities, counties, cities and counties, and all other local entities are specifically empowered to enter into relocation agreements on whatever terms are agreeable to the display owner and the city, county, city and county, or other local entity, and to adopt ordinances or resolutions providing for relocation of displays.

CODE OF CIVIL PROCEDURE SECTION 1263.310-1263.330

1263.310. Compensation shall be awarded for the property taken. The measure of this compensation is the fair market value of the property taken.

1263.320. (a) The fair market value of the property taken is the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being

Dept of Revenue Rule 150-308.115 Billboards as Real Property

All billboards that are erected upon the land or affixed to buildings or other permanent structures shall be classified as real property.

(1) The person or persons who are responsible for paying the taxes on the billboard must file annually with the assessor's office a Real Property Return for all billboards within the county.

(2) Either of the following procedures may be used by the assessor in assessing billboards.

(a) Establish one "A1-improvement only" account for each billboard based upon location; or

Excerpts from the Majority Opinion are:

The case involved a lawsuit by the Hornes, who are raisin growers and producers, and who sought relief in federal court, ". . . arguing that the reserve requirement established by the Department of Agriculture was an unconstitutional taking of their property under the Fifth Amendment. On remand from this Court over the issue of jurisdiction, Horne v. Department of Agriculture , 569 U. S. ___, the Ninth Circuit held that the reserve requirement was not a Fifth Amendment taking. That court determined that the requirement was not a per se taking because personal property is afforded less protection under the Takings Clause than real property and because the Hornes, who retained an interest in any net proceeds, were not completely divested of their property. The Ninth Circuit held that, as in cases allowing the government to set conditions on land use and development, the Government imposed a condition (the reserve requirement) in exchange for a Government benefit (an orderly raisin market). It held that the Hornes could avoid relinquishing large percentages of their crop by "planting different crops." 730 F. 3d 1128, 1143."

"Held: The Fifth Amendment requires that the Government pay just compensation when it takes personal property, just as when it takes real property. Any net proceeds the raisin growers receive from the sale of the reserve raisins goes to the amount of compensation they have received for that taking—it does not mean the raisins have not been appropriated for Government use. Nor can the Government make raisin growers relinquish their property without just compensation as a condition of selling their raisins in interstate commerce. Pp. 4–18.

(a) The Fifth Amendment applies to personal property as well as real property. The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home. Pp. 4–9.
(1) This principle, dating back as far as Magna Carta, was codified in the Takings Clause in part because of property appropriations by both sides during the Revolutionary War. This Court has noted that an owner of personal property may expect that new regulation of the use of property could "render his property economically worthless." Lucas v. South Carolina Coastal Council , 505 U. S. 1003, 1027–1028. But there is still a "longstanding distinction" between regulations concerning the use of property and government acquisition of property. Tahoe-Sierra Preservation Council, Inc. Tahoe Regional Planning Agency , 535 U. S. 302, 323. When it comes to physical appropriations, people do not expect their property, real or personal, to be actually occupied or taken away. Pp. 4–8.

(2) The reserve requirement imposed by the Raisin Committee is a clear physical taking. Actual raisins are transferred from the growers to the Government. Title to the raisins passes to the Raisin Committee. The Committee disposes of those raisins as it wishes, to promote the purposes of the raisin marketing order. The Government's formal demand that the Hornes turn over a percentage of their raisin crop without charge, for the Government's control and use, is "of such a unique character that it is a taking without regard to other factors that a court might ordinarily examine." Loretto Teleprompter Manhattan CATV Corp., 458 U. S. 419, 432. Pp. 8–9.

(b) The fact that the growers are entitled to the net proceeds of the raisin sales does not mean that there has been no taking at all. When there has been a physical appropriation, "we do not ask . . . whether it deprives the owner of a ll economically valuable use" of the item taken. Tahoe-Sierra Preservation Council, 535 U. S., at 323. The fact that the growers retain a contingent interest of indeterminate value does not mean there has been no taking, particularly

when that interest depends on the discretion of the taker, and may be worthless, as it was for one of the two years at issue here. Andrus v.Allard , 444 U. S. 51, distinguished. Once there is a taking, as in the case of a physical appropriation, any payment from the Government in connection with that action goes, at most, to the question of just compensation. Pp. 9–12.

(c) The taking in this case also cannot be characterized as part of a voluntary exchange for a valuable government benefit. In one of the years at issue, the Government insisted that the Hornes part with 47 percent of their crop for the privilege of selling the rest. But the ability to sell produce in interstate commerce, although certainly subject to reasonable government regulation, is not a "benefit" that the Government may withhold unless grower s waive constitutional protections. Ruckelshaus v. Monsanto Co. , 467 U. S. 986, distinguished. Leonard & Leonard v. Earle , 279 U. S. 392, distinguished. Pp. 12–14.

(d) The Hornes are not required to first pay the fine and then seek compensation under the Tucker Act. See Horne, 569 U. S., at ___. Because they have the full economic interest in the raisins the Government alleges should have been set aside for its account— i.e., they own the raisins they grew as well as the raisins they handled, having paid the growers for all of their raisins, not just their free-tonnage raisins—they may raise a takings-based defense to the fine levied against them. There is no need for the Ninth Circuit to calculate the just compensation due on remand. The clear and administrable rule is that "just compensation normally is to be measured by 'the market value of the property at the time of the taking.' " United States v. 50 Acres of Land , 469 U. S. 24, 29. Here, the Government already calculated that amount when it fined the Hornes the fair market value of the raisins. Pp. 14–18. 750 F. 3d 1128, reversed."

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HORNE ET AL. v. DEPARTMENT OF AGRICULTURE

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 14–275. Argued April 22, 2015—Decided June 22, 2015

The Agricultural Marketing Agreement Act of 1937 authorizes the Secretary of Agriculture to promulgate "marketing orders" to help maintain stable markets for particular agricultural products. The marketing order for raisins established a Raisin Administrative Committee that imposes a reserve requirement—a requirement that growers set aside a certain percentage of their crop for the account of the Government, free of charge. The Government makes use of those raisins by selling them in noncompetitive markets, donating them, or disposing of them by any means consistent with the purposes of the program. If any profits are left over after subtracting the Government's expenses from administering the program, the net proceeds are distributed back to the raisin growers. In 2002–2003, raisin growers were required to set aside 47 percent of their raisin crop under the reserve requirement. In 2003–2004, 30 percent. Marvin Horne, Laura Horne, and their family are raisin growers who refused to set aside any raisins for the Government on the ground that the reserve requirement was an unconstitutional taking of their property for public use without just compensation. The Government fined the Hornes the fair market value of the raisins as well as additional civil penalties for their failure to obey the raisin marketing order.

The Hornes sought relief in federal court, arguing that the reserve requirement was an unconstitutional taking of their property under the Fifth Amendment. On remand from this Court over the issue of jurisdiction, Horne v. Department of Agriculture, 569 U. S. ___, the Ninth Circuit held that the reserve requirement was not a Fifth Amendment taking. The court determined that the requirement was not a per se taking because personal property is afforded less protection under the Takings Clause than real property and because the

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Hornes, who retained an interest in any net proceeds, were not completely divested of their property. The Ninth Circuit held that, as in cases allowing the government to set conditions on land use and development, the Government imposed a condition (the reserve requirement) in exchange for a Government benefit (an orderly raisin market). It held that the Hornes could avoid relinquishing large percentages of their crop by "planting different crops." 730 F. 3d 1128, 1143.

Held: The Fifth Amendment requires that the Government pay just compensation when it takes personal property, just as when it takes real property. Any net proceeds the raisin growers receive from the sale of the reserve raisins goes to the amount of compensation they have received for that taking—it does not mean the raisins have not been appropriated for Government use. Nor can the Government make raisin growers relinquish their property without just compensation as a condition of selling their raisins in interstate commerce. Pp. 4–18.

(a) The Fifth Amendment applies to personal property as well as real property. The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home. Pp. 4–9.

(1) This principle, dating back as far as Magna Carta, was codified in the Takings Clause in part because of property appropriations by both sides during the Revolutionary War. This Court has noted that an owner of personal property may expect that new regulation of the use of property could "render his property economically worthless." Lucas v. South Carolina Coastal Council, 505 U. S. 1003, 1027–1028. But there is still a "longstanding distinction" between regulations concerning the use of property and government acquisition of property. Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U. S. 302, 323. When it comes to physical appropriations, people do not expect their property, real or personal, to be actually occupied or taken away. Pp. 4–8.

(2) The reserve requirement imposed by the Raisin Committee is a clear physical taking. Actual raisins are transferred from the growers to the Government. Title to the raisins passes to the Raisin Committee. The Committee disposes of those raisins as it wishes, to promote the purposes of the raisin marketing order. The Government's formal demand that the Hornes turn over a percentage of their raisin crop without charge, for the Government's control and use, is "of such a unique character that it is a taking without regard to other factors that a court might ordinarily examine." Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 432. Pp. 8–9.

(b) The fact that the growers are entitled to the net proceeds of the

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raisin sales does not mean that there has been no taking at all. When there has been a physical appropriation, "we do not ask . . . whether it deprives the owner of all economically valuable use" of the item taken. Tahoe-Sierra Preservation Council, 535 U. S., at 323. The fact that the growers retain a contingent interest of indeterminate value does not mean there has been no taking, particularly when that interest depends on the discretion of the taker, and may be worthless, as it was for one of the two years at issue here. Andrus v. Allard, 444 U. S. 51, distinguished. Once there is a taking, as in the case of a physical appropriation, any payment from the Government in connection with that action goes, at most, to the question of just compensation. Pp. 9–12.

(c) The taking in this case also cannot be characterized as part of a voluntary exchange for a valuable government benefit. In one of the years at issue, the Government insisted that the Hornes part with 47 percent of their crop for the privilege of selling the rest. But the ability to sell produce in interstate commerce, although certainly subject to reasonable government regulation, is not a "benefit" that the Government may withhold unless growers waive constitutional protections. Ruckelshaus v. Monsanto Co., 467 U. S. 986, distinguished. Leonard & Leonard v. Earle, 279 U. S. 392, distinguished. Pp. 12–14.

(d) The Hornes are not required to first pay the fine and then seek compensation under the Tucker Act. See Horne, 569 U. S., at ___. Because they have the full economic interest in the raisins the Government alleges should have been set aside for its account—i.e., they own the raisins they grew as well as the raisins they handled, having paid the growers for all of their raisins, not just their free-tonnage raisins—they may raise a takings-based defense to the fine levied against them. There is no need for the Ninth Circuit to calculate the just compensation due on remand. The clear and administrable rule is that "just compensation normally is to be measured by 'the market value of the property at the time of the taking.'" United States v. 50 Acres of Land, 469 U. S. 24, 29. Here, the Government already calculated that amount when it fined the Hornes the fair market value of the raisins. Pp. 14–18.

750 F. 3d 1128, reversed.

ROBERTS, C. J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, and ALITO, JJ., joined, and in which GINSBURG, BREYER, and KAGAN, JJ., joined as to Parts I and II. THOMAS, J., filed a concurring opinion. BREYER, J., filed an opinion concurring in part and dissenting in part, in which GINSBURG and KAGAN, JJ., joined. SOTOMAYOR, J., filed a dissenting opinion.

SUPREME COURT OF THE UNITED STATES

No. 14–275

MARVIN D. HORNE, ET AL., PETITIONERS v. DEPARTMENT OF AGRICULTURE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 22, 2015]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

Under the United States Department of Agriculture's California Raisin Marketing Order, a percentage of a grower's crop must be physically set aside in certain years for the account of the Government, free of charge. The Government then sells, allocates, or otherwise disposes of the raisins in ways it determines are best suited to maintaining an orderly market. The question is whether the Takings Clause of the Fifth Amendment bars the Government from imposing such a demand on the growers without just compensation.

I

The Agricultural Marketing Agreement Act of 1937 authorizes the Secretary of Agriculture to promulgate "marketing orders" to help maintain stable markets for particular agricultural products. The marketing order for raisins requires growers in certain years to give a percentage of their crop to the Government, free of charge. The required allocation is determined by the Raisin Administrative Committee, a Government entity composed largely

of growers and others in the raisin business appointed by the Secretary of Agriculture. In 2002–2003, this Committee ordered raisin growers to turn over 47 percent of their crop. In 2003–2004, 30 percent.

Growers generally ship their raisins to a raisin "handler," who physically separates the raisins due the Government (called "reserve raisins"), pays the growers only for the remainder ("free-tonnage raisins"), and packs and sells the free-tonnage raisins. The Raisin Committee acquires title to the reserve raisins that have been set aside, and decides how to dispose of them in its discretion. It sells them in noncompetitive markets, for example to exporters, federal agencies, or foreign governments; donates them to charitable causes; releases them to growers who agree to reduce their raisin production; or disposes of them by "any other means" consistent with the purposes of the raisin program. 7 CFR §989.67(b)(5) (2015). Proceeds from Committee sales are principally used to subsidize handlers who sell raisins for export (not including the Hornes, who are not raisin exporters). Raisin growers retain an interest in any net proceeds from sales the Raisin Committee makes, after deductions for the export subsidies and the Committee's administrative expenses. In the years at issue in this case, those proceeds were less than the cost of producing the crop one year, and nothing at all the next.

The Hornes—Marvin Horne, Laura Horne, and their family—are both raisin growers and handlers. They "handled" not only their own raisins but also those produced by other growers, paying those growers in full for all of their raisins, not just the free-tonnage portion. In 2002, the Hornes refused to set aside any raisins for the Government, believing they were not legally bound to do so. The Government sent trucks to the Hornes' facility at eight o'clock one morning to pick up the raisins, but the Hornes refused entry. App. 31; cf. post, at 11

(SOTOMAYOR, J., dissenting). The Government then assessed against the Hornes a fine equal to the market value of the missing raisins—some $480,000—as well as an additional civil penalty of just over $200,000 for disobeying the order to turn them over.

When the Government sought to collect the fine, the Hornes turned to the courts, arguing that the reserve requirement was an unconstitutional taking of their property under the Fifth Amendment. Their case eventually made it to this Court when the Government argued that the lower courts had no jurisdiction to consider the Hornes' constitutional defense to the fine. Horne v. Department of Agriculture, 569 U. S. ___ (2013) (Horne I). We rejected the Government's argument and sent the case back to the Court of Appeals so it could address the Hornes' contention on the merits. Id., at ___ (slip op., at 15).

On remand, the Ninth Circuit agreed with the Hornes that the validity of the fine rose or fell with the constitutionality of the reserve requirement. 750 F. 3d 1128, 1137 (2014). The court then considered whether that requirement was a physical appropriation of property, giving rise to a per se taking, or a restriction on a raisin grower's use of his property, properly analyzed under the more flexible and forgiving standard for a regulatory taking. The court rejected the Hornes' argument that the reserve requirement was a per se taking, reasoning that "the Takings Clause affords less protection to personal than to real property," and concluding that the Hornes "are not completely divested of their property rights," because growers retain an interest in the proceeds from any sale of reserve raisins by the Raisin Committee. Id., at 1139.

The court instead viewed the reserve requirement as a use restriction, similar to a government condition on the grant of a land use permit. See Dolan v. City of Tigard, 512 U. S. 374 (1994); Nollan v. California Coastal

Comm'n, 483 U. S. 825 (1987). As in such permit cases, the Court of Appeals explained, the Government here imposed a condition (the reserve requirement) in exchange for a Government benefit (an orderly raisin market). And just as a landowner was free to avoid the government condition by forgoing a permit, so too the Hornes could avoid the reserve requirement by "planting different crops." 750 F. 3d, at 1143. Under that analysis, the court found that the reserve requirement was a proportional response to the Government's interest in ensuring an orderly raisin market, and not a taking under the Fifth Amendment.

We granted certiorari. 574 U. S. ___ (2015).

II

The petition for certiorari poses three questions, which we answer in turn.

A

The first question presented asks "Whether the government's 'categorical duty' under the Fifth Amendment to pay just compensation when it 'physically takes possession of an interest in property,' Arkansas Game & Fish Comm'n v. United States, 133 S. Ct. 511, 518 (2012), applies only to real property and not to personal property." The answer is no.

1

There is no dispute that the "classic taking [is one] in which the government directly appropriates private property for its own use." Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U. S. 302, 324 (2002) (brackets and internal quotation marks omitted). Nor is there any dispute that, in the case of real property, such an appropriation is a per se taking that requires just compensation. See Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 426–435 (1982).

Nothing in the text or history of the Takings Clause, or our precedents, suggests that the rule is any different when it comes to appropriation of personal property. The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home.

The Takings Clause provides: "[N]or shall private property be taken for public use, without just compensation." U. S. Const., Amdt. 5. It protects "private property" without any distinction between different types. The principle reflected in the Clause goes back at least 800 years to Magna Carta, which specifically protected agricultural crops from uncompensated takings. Clause 28 of that charter forbade any "constable or other bailiff" from taking "corn or other provisions from any one without immediately tendering money therefor, unless he can have postponement thereof by permission of the seller." Cl. 28 (1215), in W. McKechnie, Magna Carta, A Commentary on the Great Charter of King John 329 (2d ed. 1914).

The colonists brought the principles of Magna Carta with them to the New World, including that charter's protection against uncompensated takings of personal property. In 1641, for example, Massachusetts adopted its Body of Liberties, prohibiting "mans Cattel or goods of what kinde soever" from being "pressed or taken for any publique use or service, unlesse it be by warrant grounded upon some act of the generall Court, nor without such reasonable prices and hire as the ordinarie rates of the Countrie do afford." Massachusetts Body of Liberties ¶8, in R. Perry, Sources of Our Liberties 149 (1978). Virginia allowed the seizure of surplus "live stock, or beef, pork, or bacon" for the military, but only upon "paying or tendering to the owner the price so estimated by the appraisers." 1777 Va. Acts ch. XII. And South Carolina authorized the seizure of "necessaries" for public use, but provided that "said articles so seized shall be paid for agreeable to the

prices such and the like articles sold for on the ninth day of October last." 1779 S. C. Acts §4.

Given that background, it is not surprising that early Americans bridled at appropriations of their personal property during the Revolutionary War, at the hands of both sides. John Jay, for example, complained to the New York Legislature about military impressment by the Continental Army of "Horses, Teems, and Carriages," and voiced his fear that such action by the "little Officers" of the Quartermasters Department might extend to "Blankets, Shoes, and many other articles." A Hint to the Legislature of the State of New York (1778), in John Jay, The Making of a Revolutionary 461–463 (R. Morris ed. 1975) (emphasis deleted). The legislature took the "hint," passing a law that, among other things, provided for compensation for the impressment of horses and carriages. 1778 N. Y. Laws ch. 29. According to the author of the first treatise on the Constitution, St. George Tucker, the Takings Clause was "probably" adopted in response to "the arbitrary and oppressive mode of obtaining supplies for the army, and other public uses, by impressment, as was too frequently practised during the revolutionary war, without any compensation whatever." 1 Blackstone's Commentaries, Editor's App. 305–306 (1803).

Nothing in this history suggests that personal property was any less protected against physical appropriation than real property. As this Court summed up in James v. Campbell, 104 U. S. 356, 358 (1882), a case concerning the alleged appropriation of a patent by the Government:

> "[A patent] confers upon the patentee an exclusive property in the patented invention which cannot be appropriated or used by the government itself, without just compensation, any more than it can appropriate or use without compensation land which has been patented to a private purchaser."

Prior to this Court's decision in Pennsylvania Coal Co. v. Mahon, 260 U. S. 393 (1922), the Takings Clause was understood to provide protection only against a direct appropriation of property—personal or real. Pennsylvania Coal expanded the protection of the Takings Clause, holding that compensation was also required for a "regulatory taking"—a restriction on the use of property that went "too far." Id., at 415. And in Penn Central Transp. Co. v. New York City, 438 U. S. 104, 124 (1978), the Court clarified that the test for how far was "too far" required an "ad hoc" factual inquiry. That inquiry required considering factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action.

Four years after Penn Central, however, the Court reaffirmed the rule that a physical appropriation of property gave rise to a per se taking, without regard to other factors. In Loretto, the Court held that requiring an owner of an apartment building to allow installation of a cable box on her rooftop was a physical taking of real property, for which compensation was required. That was true without regard to the claimed public benefit or the economic impact on the owner. The Court explained that such protection was justified not only by history, but also because "[s]uch an appropriation is perhaps the most serious form of invasion of an owner's property interests," depriving the owner of the "the rights to possess, use and dispose of" the property. 458 U. S., at 435 (internal quotation marks omitted). That reasoning—both with respect to history and logic—is equally applicable to a physical appropriation of personal property.

The Ninth Circuit based its distinction between real and personal property on this Court's discussion in Lucas v. South Carolina Coastal Council, 505 U. S. 1003 (1992), a case involving extensive limitations on the use of shorefront property. 750 F. 3d, at 1139–1141. Lucas recognized

that while an owner of personal property "ought to be aware of the possibility that new regulation might even render his property economically worthless," such an "implied limitation" was not reasonable in the case of land. 505 U. S., at 1027–1028.

Lucas, however, was about regulatory takings, not direct appropriations. Whatever Lucas had to say about reasonable expectations with regard to regulations, people still do not expect their property, real or personal, to be actually occupied or taken away. Our cases have stressed the "longstanding distinction" between government acquisitions of property and regulations. Tahoe-Sierra Preservation Council, 535 U. S., at 323. The different treatment of real and personal property in a regulatory case suggested by Lucas did not alter the established rule of treating direct appropriations of real and personal property alike. See 535 U. S., at 323. (It is "inappropriate to treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking,' and vice versa" (footnote omitted)).

2

The reserve requirement imposed by the Raisin Committee is a clear physical taking. Actual raisins are transferred from the growers to the Government. Title to the raisins passes to the Raisin Committee. App. to Pet. for Cert. 179a; Tr. of Oral Arg. 31. The Committee's raisins must be physically segregated from free-tonnage raisins. 7 CFR §989.66(b)(2). Reserve raisins are sometimes left on the premises of handlers, but they are held "for the account" of the Government. §989.66(a). The Committee disposes of what become its raisins as it wishes, to promote the purposes of the raisin marketing order.

Raisin growers subject to the reserve requirement thus lose the entire "bundle" of property rights in the appropriated raisins—"the rights to possess, use and dispose of"

them, Loretto, 458 U. S., at 435 (internal quotation marks omitted)—with the exception of the speculative hope that some residual proceeds may be left when the Government is done with the raisins and has deducted the expenses of implementing all aspects of the marketing order. The Government's "actual taking of possession and control" of the reserve raisins gives rise to a taking as clearly "as if the Government held full title and ownership," id., at 431 (internal quotation marks omitted), as it essentially does. The Government's formal demand that the Hornes turn over a percentage of their raisin crop without charge, for the Government's control and use, is "of such a unique character that it is a taking without regard to other factors that a court might ordinarily examine." Id., at 432.

The Government thinks it "strange" and the dissent "baffling" that the Hornes object to the reserve requirement, when they nonetheless concede that "the government may prohibit the sale of raisins without effecting a per se taking." Brief for Respondent 35; post, at 12 (SOTOMAYOR, J., dissenting). But that distinction flows naturally from the settled difference in our takings jurisprudence between appropriation and regulation. A physical taking of raisins and a regulatory limit on production may have the same economic impact on a grower. The Constitution, however, is concerned with means as well as ends. The Government has broad powers, but the means it uses to achieve its ends must be "consist[ent] with the letter and spirit of the constitution." McCulloch v. Maryland, 4 Wheat. 316, 421 (1819). As Justice Holmes noted, "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way." Pennsylvania Coal, 260 U. S., at 416.

B

The second question presented asks "Whether the gov-

ernment may avoid the categorical duty to pay just compensation for a physical taking of property by reserving to the property owner a contingent interest in a portion of the value of the property, set at the government's discretion." The answer is no.

The Government and dissent argue that raisins are fungible goods whose only value is in the revenue from their sale. According to the Government, the raisin marketing order leaves that interest with the raisin growers: After selling reserve raisins and deducting expenses and subsidies for exporters, the Raisin Committee returns any net proceeds to the growers. 7 CFR §§989.67(d), 989.82, 989.53(a), 989.66(h). The Government contends that because growers are entitled to these net proceeds, they retain the most important property interest in the reserve raisins, so there is no taking in the first place. The dissent agrees, arguing that this possible future revenue means there has been no taking under Loretto. See post, at 2–6.

But when there has been a physical appropriation, "we do not ask . . . whether it deprives the owner of all economically valuable use" of the item taken. Tahoe-Sierra Preservation Council, 535 U. S., at 323; see id., at 322 ("When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner, regardless of whether the interest that is taken constitutes an entire parcel or merely a part thereof." (citation omitted)). For example, in Loretto, we held that the installation of a cable box on a small corner of Loretto's rooftop was a per se taking, even though she could of course still sell and economically benefit from the property. 458 U. S., at 430, 436. The fact that the growers retain a contingent interest of indeterminate value does not mean there has been no physical taking, particularly since the value of the interest depends on the discretion of the taker, and may be worthless, as it was for one of the two years at issue here.

The dissent points to Andrus v. Allard, 444 U. S. 51 (1979), noting that the Court found no taking in that case, even though the owners' artifacts could not be sold at all. Post, at 6. The dissent suggests that the Hornes should be happy, because they might at least get something from what had been their raisins. But Allard is a very different case. As the dissent recognizes, the owners in that case retained the rights to possess, donate, and devise their property. In finding no taking, the Court emphasized that the Government did not "compel the surrender of the artifacts, and there [was] no physical invasion or restraint upon them." 444 U. S., at 65–66. Here of course the raisin program requires physical surrender of the raisins and transfer of title, and the growers lose any right to control their disposition.

The Government and dissent again confuse our inquiry concerning per se takings with our analysis for regulatory takings. A regulatory restriction on use that does not entirely deprive an owner of property rights may not be a taking under Penn Central. That is why, in PruneYard Shopping Center v. Robins, 447 U. S. 74 (1980), we held that a law limiting a property owner's right to exclude certain speakers from an already publicly accessible shopping center did not take the owner's property. The owner retained the value of the use of the property as a shopping center largely unimpaired, so the regulation did not go "too far." Id., at 83 (quoting Pennsylvania Coal Co., 260 U. S., at 415). But once there is a taking, as in the case of a physical appropriation, any payment from the Government in connection with that action goes, at most, to the question of just compensation. See Suitum v. Tahoe Regional Planning Agency, 520 U. S. 725, 747–748 (1997) (SCALIA, J., concurring in part and concurring in judgment). That is not an issue here: The Hornes did not receive any net proceeds from Raisin Committee sales for the years at issue, because they had not set aside any

reserve raisins in those years (and, in any event, there were no net proceeds in one of them).

C

The third question presented asks "Whether a governmental mandate to relinquish specific, identifiable property as a 'condition' on permission to engage in commerce effects a per se taking." The answer, at least in this case, is yes.

The Government contends that the reserve requirement is not a taking because raisin growers voluntarily choose to participate in the raisin market. According to the Government, if raisin growers don't like it, they can "plant different crops," or "sell their raisin-variety grapes as table grapes or for use in juice or wine." Brief for Respondent 32 (brackets and internal quotation marks omitted).

"Let them sell wine" is probably not much more comforting to the raisin growers than similar retorts have been to others throughout history. In any event, the Government is wrong as a matter of law. In Loretto, we rejected the argument that the New York law was not a taking because a landlord could avoid the requirement by ceasing to be a landlord. We held instead that "a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." 458 U. S., at 439, n. 17. As the Court explained, the contrary argument "proves too much":

> "For example, it would allow the government to require a landlord to devote a substantial portion of his building to vending and washing machines, with all profits to be retained by the owners of these services and with no compensation for the deprivation of space. It would even allow the government to requisition a certain number of apartments as permanent government offices." Ibid.

As the Court concluded, property rights "cannot be so easily manipulated." Ibid.

The Government and dissent rely heavily on Ruckelshaus v. Monsanto Co., 467 U. S. 986 (1984). There we held that the Environmental Protection Agency could require companies manufacturing pesticides, fungicides, and rodenticides to disclose health, safety, and environmental information about their products as a condition to receiving a permit to sell those products. While such information included trade secrets in which pesticide manufacturers had a property interest, those manufacturers were not subjected to a taking because they received a "valuable Government benefit" in exchange—a license to sell dangerous chemicals. Id., at 1007; see Nollan, 483 U. S., at 834, n. 2 (discussing Monsanto).

The taking here cannot reasonably be characterized as part of a similar voluntary exchange. In one of the years at issue here, the Government insisted that the Hornes turn over 47 percent of their raisin crop, in exchange for the "benefit" of being allowed to sell the remaining 53 percent. The next year, the toll was 30 percent. We have already rejected the idea that Monsanto may be extended by regarding basic and familiar uses of property as a "Government benefit" on the same order as a permit to sell hazardous chemicals. See Nollan, 483 U. S., at 834, n. 2 (distinguishing Monsanto on the ground that "the right to build on one's own property—even though its exercise can be subjected to legitimate permitting requirements—cannot remotely be described as a 'governmental benefit'"). Selling produce in interstate commerce, although certainly subject to reasonable government regulation, is similarly not a special governmental benefit that the Government may hold hostage, to be ransomed by the waiver of constitutional protection. Raisins are not dangerous pesticides; they are a healthy snack. A case about conditioning the sale of hazardous substances on disclo-

sure of health, safety, and environmental information related to those hazards is hardly on point.

Leonard & Leonard v. Earle, 279 U. S. 392 (1929), is also readily distinguishable. In that case, the Court upheld a Maryland requirement that oyster packers remit ten percent of the marketable detached oyster shells or their monetary equivalent to the State for the privilege of harvesting the oysters. But the packers did "not deny the power of the State to declare their business a privilege," and the power of the State to impose a "privilege tax" was "not questioned by counsel." Id., at 396. The oysters, unlike raisins, were "feræ naturæ" that belonged to the State under state law, and "[n]o individual ha[d] any property rights in them other than such as the state may permit him to acquire." Leonard v. Earle, 155 Md. 252, 258, 141 A. 714, 716 (1928). The oyster packers did not simply seek to sell their property; they sought to appropriate the State's. Indeed, the Maryland Court of Appeals saw the issue as a question of "a reasonable and fair compensation" from the packers to "the state, as owner of the oysters." Id., at 259, 141 A., at 717 (internal quotation marks omitted).

Raisins are not like oysters: they are private property—the fruit of the growers' labor—not "public things subject to the absolute control of the state," id., at 258, 141 A., at 716. Any physical taking of them for public use must be accompanied by just compensation.

III

The Government correctly points out that a taking does not violate the Fifth Amendment unless there is no just compensation, and argues that the Hornes are free to seek compensation for any taking by bringing a damages action under the Tucker Act in the Court of Federal Claims. See 28 U. S. C. §1491(a)(1); Monsanto, 467 U. S., at 1020. But we held in Horne I that the Hornes may, in their capacity

as handlers, raise a takings-based defense to the fine levied against them. We specifically rejected the contention that the Hornes were required to pay the fine and then seek compensation under the Tucker Act. See 569 U. S., at ___ (slip op., at 13–14) ("We . . . conclude that the [Agricultural Marketing Agreement Act] withdraws Tucker Act jurisdiction over [the Hornes'] takings claim. [The Hornes] (as handlers) have no alternative remedy, and their takings claim was not 'premature' when presented to the Ninth Circuit.").

As noted, the Hornes are both growers and handlers. Their situation is unusual in that, as handlers, they have the full economic interest in the raisins the Government alleges should have been set aside for its account. They own the raisins they grew and are handling for themselves, and they own the raisins they handle for other growers, having paid those growers for all their raisins (not just the free-tonnage amount, as is true with respect to most handlers). See supra, at 2–3; Tr. of Oral Arg. 3–4. The penalty assessed against them as handlers included the dollar equivalent of the raisins they refused to set aside—their raisins. 750 F. 3d, at 1135, n. 6; Brief for Petitioners 15. They may challenge the imposition of that fine, and do not have to pay it first and then resort to the Court of Federal Claims.

Finally, the Government briefly argues that if we conclude that the reserve requirement effects a taking, we should remand for the Court of Appeals to calculate "what compensation would have been due if petitioners had complied with the reserve requirement." Brief for Respondent 55. The Government contends that the calculation must consider what the value of the reserve raisins would have been without the price support program, as well as "other benefits . . . from the regulatory program, such as higher consumer demand for raisins spurred by enforcement of quality standards and promotional activi-

ties." Id., at 55–56. Indeed, according to the Government, the Hornes would "likely" have a net gain under this theory. Id., at 56.

The best defense may be a good offense, but the Government cites no support for its hypothetical-based approach, or its notion that general regulatory activity such as enforcement of quality standards can constitute just compensation for a specific physical taking. Instead, our cases have set forth a clear and administrable rule for just compensation: "The Court has repeatedly held that just compensation normally is to be measured by 'the market value of the property at the time of the taking.'" United States v. 50 Acres of Land, 469 U. S. 24, 29 (1984) (quoting Olson v. United States, 292 U. S. 246, 255 (1934)).

JUSTICE BREYER is concerned that applying this rule in this case will affect provisions concerning whether a condemning authority may deduct special benefits—such as new access to a waterway or highway, or filling in of swampland—from the amount of compensation it seeks to pay a landowner suffering a partial taking. Post, at 5 (opinion concurring in part and dissenting in part); see Bauman v. Ross, 167 U. S. 548 (1897) (laying out of streets and subdivisions in the District of Columbia). He need not be. Cases of that sort can raise complicated questions involving the exercise of the eminent domain power, but they do not create a generally applicable exception to the usual compensation rule, based on asserted regulatory benefits of the sort at issue here. Nothing in the cases JUSTICE BREYER labels "Bauman and its progeny," post, at 5, suggests otherwise, which may be why the Solicitor General does not cite them.*

*For example, in United States v. Miller, 317 U. S. 369, 377 (1943), the Court—in calculating the fair market value of land—discounted an increase in value resulting from speculation "as to what the Govern-

In any event, this litigation presents no occasion to consider the broader issues discussed by JUSTICE BREYER. The Government has already calculated the amount of just compensation in this case, when it fined the Hornes the fair market value of the raisins: $483,843.53. 750 F. 3d, at 1135, n. 6. The Government cannot now disavow that valuation, see Reply Brief 21–23, and does not suggest that the marketing order affords the Hornes compensation in that amount. There is accordingly no need for a remand; the Hornes should simply be relieved of the obligation to pay the fine and associated civil penalty they were assessed when they resisted the Government's effort to

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ment would be compelled to pay as compensation" after the land was earmarked for acquisition. In United States v. Sponenbarger, 308 U. S. 256, 265 (1939), the Court determined there was no taking in the first place, when the complaint was merely that a Government flood control plan provided insufficient protection for the claimant's land. McCoy v. Union Elevated R. Co., 247 U. S. 354, 363 (1918), similarly involved a claim "for damages to property not actually taken." So too Reichelderfer v. Quinn, 287 U. S. 315 (1932). There the Court held that claimants who had paid a special assessment when Rock Creek Park in Washington, D. C., was created—because the Park increased the value of their property—did not thereby have the right to prevent Congress from altering use of part of the Park for a fire station 38 years later. In Dohany v. Rogers, 281 U. S. 362 (1930), the law authorizing the taking did "not permit the offset of benefits for a railroad," and therefore was "not subject to the objection that it fails to provide adequate compensation . . . and is therefore unconstitutional." Id., at 367, and n. 1 (quoting Fitzsimons & Galvin, Inc. v. Rogers, 243 Mich. 649, 665, 220 N. W. 881, 886 (1928)). And in Norwood v. Baker, 172 U. S. 269 (1898), the issue was whether an assessment to pay for improvements exceeded a village's taxing power. Perhaps farthest afield are the Regional Rail Reorganization Act Cases, 419 U. S. 102, 153 (1974), which involved valuation questions arising from the Government reorganization of northeast and midwest railroads. The Court in that case held that the legislation at issue was not "merely an eminent domain statute" but instead was enacted "pursuant to the bankruptcy power." Id., at 151, 153.

take their raisins. This case, in litigation for more than a decade, has gone on long enough.

The judgment of the United States Court of Appeals for the Ninth Circuit is reversed.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 14–275

MARVIN D. HORNE, ET AL., PETITIONERS v.
DEPARTMENT OF AGRICULTURE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 22, 2015]

JUSTICE THOMAS, concurring.

I join the Court's opinion in full. I write separately to offer an additional observation concerning JUSTICE BREYER's argument that we should remand the case. The Takings Clause prohibits the government from taking private property except "for public use," even when it offers "just compensation." U. S. Const., Amdt. 5. That requirement, as originally understood, imposes a meaningful constraint on the power of the state—"the government may take property only if it actually uses or gives the public a legal right to use the property." Kelo v. New London, 545 U. S. 469, 521 (2005) (THOMAS, J., dissenting). It is far from clear that the Raisin Administrative Committee's conduct meets that standard. It takes the raisins of citizens and, among other things, gives them away or sells them to exporters, foreign importers, and foreign governments. 7 CFR §989.67(b) (2015). To the extent that the Committee is not taking the raisins "for public use," having the Court of Appeals calculate "just compensation" in this case would be a fruitless exercise.

SUPREME COURT OF THE UNITED STATES

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[June 22, 2015]

JUSTICE BREYER, with whom JUSTICE GINSBURG and JUSTICE KAGAN join, concurring in part and dissenting in part.

I agree with Parts I and II of the Court's opinion. However, I cannot agree with the Court's rejection, in Part III, of the Government's final argument. The Government contends that we should remand the case for a determination of whether any compensation would have been due if the Hornes had complied with the California Raisin Marketing Order's reserve requirement. In my view, a remand for such a determination is necessary.

The question of just compensation was not presented in the Hornes' petition for certiorari. It was barely touched on in the briefs. And the courts below did not decide it. At the same time, the case law that I have found indicates that the Government may well be right: The marketing order may afford just compensation for the takings of raisins that it imposes. If that is correct, then the reserve requirement does not violate the Takings Clause.

I

The Takings Clause of the Fifth Amendment provides that "private property [shall not] be taken for public use, without just compensation." The Clause means what it says: It "does not proscribe the taking of property; it proscribes taking without just compensation." Williamson

County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U. S. 172, 194 (1985) (emphasis added). Under the Clause, a property owner "is entitled to be put in as good a position pecuniarily as if his property had not been taken," which is to say that "[h]e must be made whole but is not entitled to more." Olson v. United States, 292 U. S. 246, 255 (1934).

On the record before us, the Hornes have not established that the Government, through the raisin reserve program, takes raisins without just compensation. When the Government takes as reserve raisins a percentage of the annual crop, the raisin owners retain the remaining, free-tonnage, raisins. The reserve requirement is intended, at least in part, to enhance the price that free-tonnage raisins will fetch on the open market. See 7 CFR §989.55 (2015); 7 U. S. C. §602(1). And any such enhancement matters. This Court's precedents indicate that, when calculating the just compensation that the Fifth Amendment requires, a court should deduct from the value of the taken (reserve) raisins any enhancement caused by the taking to the value of the remaining (free-tonnage) raisins.

More than a century ago, in Bauman v. Ross, 167 U. S. 548 (1897), this Court established an exception to the rule that "just compensation normally is to be measured by 'the market value of the property at the time of the taking.'" United States v. 50 Acres of Land, 469 U. S. 24, 29 (1984) (quoting Olson, supra, at 255). We considered in Bauman how to calculate just compensation when the Government takes only a portion of a parcel of property:

> "[W]hen part only of a parcel of land is taken for a highway, the value of that part is not the sole measure of the compensation or damages to be paid to the owner; but the incidental injury or benefit to the part not taken is also to be considered. When the part not taken is left in such shape or condition, as to be in it-

> self of less value than before, the owner is entitled to additional damages on that account. When, on the other hand, the part which he retains is specially and directly increased in value by the public improvement, the damages to the whole parcel by the appropriation of part of it are lessened." 167 U. S., at 574.

"The Constitution of the United States," the Court stated, "contains no express prohibition against considering benefits in estimating the just compensation to be paid for private property taken for the public use." Id., at 584.

The Court has consistently applied this method for calculating just compensation: It sets off from the value of the portion that was taken the value of any benefits conferred upon the remaining portion of the property. See Regional Rail Reorganization Act Cases, 419 U. S. 102, 151 (1974) ("[C]onsideration other than cash—for example, any special benefits to a property owner's remaining properties—may be counted in the determination of just compensation" (footnote omitted)); United States v. Miller, 317 U. S. 369, 376 (1943) ("[I]f the taking has in fact benefitted the remainder, the benefit may be set off against the value of the land taken"); United States v. Sponenbarger, 308 U. S. 256, 266–267 (1939) ("[I]f governmental activities inflict slight damage upon land in one respect and actually confer great benefits when measured in the whole, to compensate the landowner further would be to grant him a special bounty. Such activities in substance take nothing from the landowner"); Reichelderfer v. Quinn, 287 U. S. 315, 323 (1932) ("Just compensation . . . was awarded if the benefits resulting from the proximity of the improvement [were] set off against the value of the property taken from the same owners"); Dohany v. Rogers, 281 U. S. 362, 367–368 (1930) (a statute that "permits deduction of benefits derived from the construction of a highway" from the compensation paid to landowners "afford[s]

no basis for anticipating that . . . just compensation will be denied"); Norwood v. Baker, 172 U. S. 269, 277 (1898) ("Except for [state law], the State could have authorized benefits to be deducted from the actual value of the land taken, without violating the constitutional injunction that compensation be made for private property taken for public use; for the benefits received could be properly regarded as compensation pro tanto for the property appropriated to public use").

The rule applies regardless of whether a taking enhances the value of one property or the value of many properties. That is to say, the Government may "permi[t] consideration of actual benefits—enhancement in market value—flowing directly from a public work, although all in the neighborhood receive like advantages." McCoy v. Union Elevated R. Co., 247 U. S. 354, 366 (1918). The Federal Constitution does not distinguish between "special" benefits, which specifically affect the property taken, and "general" benefits, which have a broader impact.

Of course, a State may prefer to guarantee a greater payment to property owners, for instance by establishing a standard for compensation that does not account for general benefits (or for any benefits) afforded to a property owner by a taking. See id., at 365 (describing categories of rules applied in different jurisdictions); Schopflocher, Deduction of Benefits in Determining Compensation or Damages in Eminent Domain, 145 A. L. R. 7, 158–294 (1943) (describing particular rules applied in different jurisdictions). Similarly, "Congress . . . has the power to authorize compensation greater than the constitutional minimum." 50 Acres of Land, supra, at 30, n. 14 (1984). Thus, Congress, too, may limit the types of benefits to be considered. See, e.g., 33 U. S. C. §595. But I am unaware of any congressional authorization that would increase beyond the constitutional floor the compensation owed for a taking of the Hornes' raisins.

If we apply Bauman and its progeny to the marketing order's reserve requirement, "the benefit [to the free-tonnage raisins] may be set off against the value of the [reserve raisins] taken." Miller, supra, at 376. The value of the raisins taken might exceed the value of the benefit conferred. In that case, the reserve requirement effects a taking without just compensation, and the Hornes' decision not to comply with the requirement was justified. On the other hand, the benefit might equal or exceed the value of the raisins taken. In that case, the California Raisin Marketing Order does not effect a taking without just compensation. See McCoy, supra, at 366 ("In such [a] case the owner really loses nothing which he had before; and it may be said with reason, there has been no real injury"); Brown v. Legal Foundation of Wash., 538 U. S. 216, 237 (2003) ("[I]f petitioners' net loss was zero, the compensation that is due is also zero"). And even the Hornes agree that if the reserve requirement does not effect a taking without just compensation, then they cannot use the Takings Clause to excuse their failure to comply with the marketing order—or to justify their refusal to pay the fine and penalty imposed based on that failure. See Brief for Petitioners 31 ("The constitutionality of the fine rises or falls on the constitutionality of the Marketing Order's reserve requirement and attendant transfer of reserve raisins" (internal quotation marks omitted)).

II

The majority believes the Bauman line of cases most likely does not apply here. It says that those cases do "not create a generally applicable exception to the usual compensation rule, based on asserted regulatory benefits of the sort at issue here." Ante, at 16. But it is unclear to me what distinguishes this case from those.

It seems unlikely that the majority finds a distinction in the fact that this taking is based on regulatory authority. Cf. Chrysler Corp. v. Brown, 441 U. S. 281, 295 (1979) ("It

has been established in a variety of contexts that properly promulgated, substantive agency regulations have the force and effect of law" (internal quotation marks omitted)). It similarly seems unlikely that the majority intends to distinguish between takings of real property and takings of personal property, given its recognition that the Takings Clause "protects 'private property' without any distinction between different types." Ante, at 5. It is possible that the majority questions the Government's argument because of its breadth—the Government argues that "it would be appropriate to consider what value all of the raisins would have had in the absence of the marketing order," and I am unaware of any precedent that allows a court to account for portions of the marketing order that are entirely separate from the reserve requirement. But neither am I aware of any precedent that would distinguish between how the Bauman doctrine applies to the reserve requirement itself and how it applies to other types of partial takings.

Ultimately, the majority rejects the Government's request for a remand because it believes that the Government "does not suggest that the marketing order affords the Hornes compensation" in the amount of the fine that the Government assessed. Ante, at 17. In my view, however, the relevant precedent indicates that the Takings Clause requires compensation in an amount equal to the value of the reserve raisins adjusted to account for the benefits received. And the Government does, indeed, suggest that the marketing order affords just compensation. See Brief for Respondent 56 ("It is likely that when all benefits and alleged losses from the marketing order are calculated, [the Hornes] would have a net gain rather than a net loss, given that a central point of the order is to benefit producers"). Further, the Hornes have not demonstrated the contrary. Before granting judgment in favor of the Hornes, a court should address the issue in light of all

of the relevant facts and law.

* * *

Given the precedents, the parties should provide full briefing on this question. I would remand the case, permitting the lower courts to consider argument on the question of just compensation.

For these reasons, while joining Parts I and II of the Court's opinion, I respectfully dissent from Part III.

SUPREME COURT OF THE UNITED STATES

No. 14–275

MARVIN D. HORNE, ET AL., PETITIONERS v. DEPARTMENT OF AGRICULTURE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[June 22, 2015]

JUSTICE SOTOMAYOR, dissenting.

The Hornes claim, and the Court agrees, that the Raisin Marketing Order, 7 CFR pt. 989 (2015) (hereinafter Order), effects a per se taking under our decision in Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419 (1982). But Loretto sets a high bar for such claims: It requires that each and every property right be destroyed by governmental action before that action can be said to have effected a per se taking. Because the Order does not deprive the Hornes of all of their property rights, it does not effect a per se taking. I respectfully dissent from the Court's contrary holding.

I

Our Takings Clause jurisprudence has generally eschewed "magic formula[s]" and has "recognized few invariable rules." Arkansas Game and Fish Comm'n v. United States, 568 U. S. ___, ___–___ (2012) (slip op., at 6–7). Most takings cases therefore proceed under the fact-specific balancing test set out in Penn Central Transp. Co. v. New York City, 438 U. S. 104 (1978). See Arkansas Game and Fish Comm'n, 568 U. S., at ___ (slip op., at 7); Lingle v. Chevron U. S. A. Inc., 544 U. S. 528, 538–539 (2005). The Hornes have not made any argument under Penn Central. In order to prevail, they therefore must fit

their claim into one of the three narrow categories in which we have assessed takings claims more categorically.

In the "special context of land-use exactions," we have held that "government demands that a landowner dedicate an easement allowing public access to her property as a condition of obtaining a development permit" constitute takings unless the government demonstrates a nexus and rough proportionality between its demand and the impact of the proposed development. Lingle, 544 U. S., at 538, 546; see Dolan v. City of Tigard, 512 U. S. 374, 386, 391 (1994); Nollan v. California Coastal Comm'n, 483 U. S. 825, 837 (1987). We have also held that a regulation that deprives a property owner of "all economically beneficial us[e]" of his or her land is a per se taking. Lucas v. South Carolina Coastal Council, 505 U. S. 1003, 1019 (1992) (emphasis in original). The Hornes have not relied on either of these rules in this Court. See Brief for Petitioners 42, 55.

Finally—and this is the argument the Hornes do rely on—we have held that the government effects a per se taking when it requires a property owner to suffer a "permanent physical occupation" of his or her property. Loretto, 458 U. S., at 426. In my view, however, Loretto—when properly understood—does not encompass the circumstances of this case because it only applies where all property rights have been destroyed by governmental action. Where some property right is retained by the owner, no per se taking under Loretto has occurred.

This strict rule is apparent from the reasoning in Loretto itself. We explained that "[p]roperty rights in a physical thing have been described as the rights 'to possess, use and dispose of it.'" Id., at 435 (quoting United States v. General Motors Corp., 323 U. S. 373, 378 (1945)). A "permanent physical occupation" of property occurs, we said, when governmental action "destroys each of these rights." 458 U. S., at 435 (emphasis in original); see ibid., n. 12

(requiring that an owner be "absolutely dispossess[ed]" of rights). When, as we held in Loretto, each of these rights is destroyed, the government has not simply "take[n] a single 'strand' from the 'bundle' of property rights"; it has "chop[ped] through the bundle" entirely. Id., at 435. In the narrow circumstance in which a property owner has suffered this "most serious form of invasion of [his or her] property interests," a taking can be said to have occurred without any further showing on the property owner's part. Ibid.

By contrast, in the mine run of cases where governmental action impacts property rights in ways that do not chop through the bundle entirely, we have declined to apply per se rules and have instead opted for the more nuanced Penn Central test. See, e.g., Hodel v. Irving, 481 U. S. 704 (1987) (applying Penn Central to assess a requirement that title to land within Indian reservations escheat to the tribe upon the landowner's death); PruneYard Shopping Center v. Robins, 447 U. S. 74, 82–83 (1980) (engaging in similar analysis where there was "literally . . . a 'taking' of th[e] right" to exclude); Kaiser Aetna v. United States, 444 U. S. 164, 174–180 (1979) (applying Penn Central to find that the Government's imposition of a servitude requiring public access to a pond was a taking); see also Loretto, 458 U. S., at 433–434 (distinguishing PruneYard and Kaiser Aetna). Even governmental action that reduces the value of property or that imposes "a significant restriction . . . on one means of disposing" of property is not a per se taking; in fact, it may not even be a taking at all. Andrus v. Allard, 444 U. S. 51, 65–66 (1979).

What our jurisprudence thus makes plain is that a claim of a Loretto taking is a bold accusation that carries with it a heavy burden. To qualify as a per se taking under Loretto, the governmental action must be so completely destructive to the property owner's rights—all of them—as to render the ordinary, generally applicable protections of

the Penn Central framework either a foregone conclusion or unequal to the task. Simply put, the retention of even one property right that is not destroyed is sufficient to defeat a claim of a per se taking under Loretto.

II

A

When evaluating the Order under this rubric, it is important to bear two things in mind. The first is that Loretto is not concerned with whether the Order is a good idea now, whether it was ever a good idea, or whether it intrudes upon some property rights. The Order may well be an outdated, and by some lights downright silly, regulation. It is also no doubt intrusive. But whatever else one can say about the Order, it is not a per se taking if it does not result in the destruction of every property right. The second thing to keep in mind is the need for precision about whose property rights are at issue and about what property is at issue. Here, what is at issue are the Hornes' property rights in the raisins they own and that are subject to the reserve requirement. The Order therefore effects a per se taking under Loretto if and only if each of the Hornes' property rights in the portion of raisins that the Order designated as reserve has been destroyed. If not, then whatever fate the Order may reach under some other takings test, it is not a per se taking.

The Hornes, however, retain at least one meaningful property interest in the reserve raisins: the right to receive some money for their disposition. The Order explicitly provides that raisin producers retain the right to "[t]he net proceeds from the disposition of reserve tonnage raisins," 7 CFR §989.66(h), and ensures that reserve raisins will be sold "at prices and in a manner intended to maxim[ize] producer returns," §989.67(d)(1). According to the Government, of the 49 crop years for which a reserve pool was operative, producers received equitable distributions

of net proceeds from the disposition of reserve raisins in 42. See Letter from Donald B. Verrilli, Jr., Solicitor General, to Scott S. Harris, Clerk of Court (Apr. 29, 2015).

Granted, this equitable distribution may represent less income than what some or all of the reserve raisins could fetch if sold in an unregulated market. In some years, it may even turn out (and has turned out) to represent no net income. But whether and when that occurs turns on market forces for which the Government cannot be blamed and to which all commodities—indeed, all property—are subject. In any event, we have emphasized that "a reduction in the value of property is not necessarily equated with a taking," Andrus, 444 U. S., at 66, that even "a significant restriction . . . imposed on one means of disposing" of property is not necessarily a taking, id., at 65, and that not every "'injury to property by governmental action'" amounts to a taking, PruneYard, 447 U. S., at 82. Indeed, we would not have used the word "destroy" in Loretto if we meant "damaged" or even "substantially damaged." I take us at our word: Loretto's strict requirement that all property interests be "destroy[ed]" by governmental action before that action can be called a per se taking cannot be satisfied if there remains a property interest that is at most merely damaged. That is the case here; accordingly, no per se taking has occurred.

Moreover, when, as here, the property at issue is a fungible commodity for sale, the income that the property may yield is the property owner's most central interest. Cf. Ruckelshaus v. Monsanto Co., 467 U. S. 986, 1002 (1984) (noting that the "nature" of particular property defines "the extent of the property right therein"). "[A]rticles of commerce," in other words, are "desirable because [they are] convertible into money." Leonard & Leonard v. Earle, 279 U. S. 392, 396 (1929). The Hornes do not use the raisins that are subject to the reserve requirement—which are, again, the only raisins that have

allegedly been unlawfully taken—by eating them, feeding them to farm animals, or the like. They wish to use those reserve raisins by selling them, and they value those raisins only because they are a means of acquiring money. While the Order infringes upon the amount of that potential income, it does not inexorably eliminate it. Unlike the law in Loretto, see 458 U. S., at 436, the Order therefore cannot be said to have prevented the Hornes from making any use of the relevant property.

The conclusion that the Order does not effect a per se taking fits comfortably within our precedents. After all, we have observed that even "[r]egulations that bar trade in certain goods" altogether—for example, a ban on the sale of eagle feathers—may survive takings challenges. Andrus, 444 U. S., at 67. To be sure, it was important to our decision in Andrus that the regulation at issue did not prohibit the possession, donation, or devise of the property. See id., at 66. But as to those feathers the plaintiffs would have liked to sell, the law said they could not be sold at any price—and therefore categorically could not be converted into money. Here, too, the Hornes may do as they wish with the raisins they are not selling. But as to those raisins that they would like to sell, the Order subjects a subset of them to the reserve requirement, which allows for the conversion of reserve raisins into at least some money and which is thus more generous than the law in Andrus. We held that no taking occurred in Andrus, so rejecting the Hornes' claim follows a fortiori.

We made this principle even clearer in Lucas, when we relied on Andrus and said that where, as here, "property's only economically productive use is sale or manufacture for sale," a regulation could even "render [that] property economically worthless" without effecting a per se taking. Lucas, 505 U. S., at 1027–1028 (citing Andrus, 444 U. S., at 66–67; emphasis added). The Order does not go nearly that far. It should easily escape our approbation, at least

where a per se takings claim is concerned.

B

The fact that at least one property right is not destroyed by the Order is alone sufficient to hold that this case does not fall within the narrow confines of Loretto. But such a holding is also consistent with another line of cases that, when viewed together, teach that the government may require certain property rights to be given up as a condition of entry into a regulated market without effecting a per se taking.

First, in Leonard & Leonard v. Earle, 279 U. S. 392, we considered a state law that required those who wished to engage in the business of oyster packing to deliver to the State 10 percent of the empty oyster shells. We rejected the argument that this law effected a taking and held that it was "not materially different" from a tax upon the privilege of doing business in the State. Id., at 396. "[A]s the packer lawfully could be required to pay that sum in money," we said, "nothing in the Federal Constitution prevents the State from demanding that he give up the same per cent. of such shells." Ibid.[1]

Next, in Ruckelshaus v. Monsanto Co., 467 U. S. 986, we held that no taking occurred when a provision of the Federal Insecticide, Fungicide, and Rodenticide Act required companies that wished to sell certain pesticides to first submit sensitive data and trade secrets to the Environmental Protection Agency as part of a registration process. Even though the EPA was permitted to publicly disclose

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[1] The Court attempts to distinguish Leonard & Leonard because it involved wild oysters, not raisins. Ante, at 14. That is not an inaccurate factual statement, but I do not find in Leonard & Leonard any suggestion that its holding turned on this or any other of the facts to which the Court now points. Indeed, the only citation the Court offers for these allegedly crucial facts is the Maryland Court of Appeals' opinion, not ours. See ante, at 14.

some of that submitted data—which would have had the effect of revealing trade secrets, thus substantially diminishing or perhaps even eliminating their value—we reasoned that, like the privilege tax in Leonard & Leonard, the disclosure requirement was the price Monsanto had to pay for "'the advantage of living and doing business in a civilized community.'" 467 U. S., at 1007 (quoting Andrus, 444 U. S., at 67; some internal quotation marks omitted). We offered nary a suggestion that the law at issue could be considered a per se taking, and instead recognized that "a voluntary submission of data by an applicant" in exchange for the ability to participate in a regulated market "can hardly be called a taking." 467 U. S., at 1007.[2]

Finally, in Yee v. Escondido, 503 U. S. 519 (1992), we addressed a mobile-home park rent-control ordinance that set rents at below-market rates. We held the ordinance did not effect a taking under Loretto, even when it was considered in conjunction with other state laws regarding eviction that effectively permitted tenants to remain at will, because it only regulated the terms of market participation. See 503 U. S., at 527–529.

Understood together, these cases demonstrate that the

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[2]The Court claims that Monsanto is distinguishable for three reasons, none of which hold up. First, it seems, the Court believes the degree of the intrusion on property rights is greater here than in Monsanto. See ante, at 13. Maybe, maybe not. But nothing in Monsanto suggests this is a relevant question, and the Court points to nothing saying that it is. Second, the Court believes that "[s]elling produce in interstate commerce" is not a government benefit. Ante, at 13. Again, that may be true, but the Hornes are not simply selling raisins in interstate commerce. They are selling raisins in a regulated market at a price artificially inflated by Government action in that market. That is the benefit the Hornes receive, and it does not matter that they "would rather not have" received it. United States v. Sperry Corp., 493 U. S. 52, 62–63 (1989). Third, the Court points out that raisins "are not dangerous pesticides; they are a healthy snack." Ante, at 13. I could not agree more, but nothing in Monsanto, or in Andrus for that matter, turned on the dangerousness of the commodity at issue.

Government may condition the ability to offer goods in the market on the giving-up of certain property interests without effecting a per se taking.[3] The Order is a similar regulation. It has no effect whatsoever on raisins that the Hornes grow for their own use. But insofar as the Hornes wish to sell some raisins in a market regulated by the Government and at a price supported by governmental intervention, the Order requires that they give up the right to sell a portion of those raisins at that price and instead accept disposal of them at a lower price. Given that we have held that the Government may impose a price on the privilege of engaging in a particular business without effecting a taking—which is all that the Order does—it follows that the Order at the very least does not run afoul of our per se takings jurisprudence. Under a different takings test, one might reach a different conclusion. But the Hornes have advanced only this narrow per se takings claim, and that claim fails.

III

The Court's contrary conclusion rests upon two fundamental errors. The first is the Court's breezy assertion that a per se taking has occurred because the Hornes "lose the entire 'bundle' of property rights in the appropriated raisins . . . with the exception of" the retained interest in

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[3] The Court points out that, in a footnote in Loretto v. Teleprompter Manhattan CATV Corp., 458 U. S. 419 (1982), we suggested that it did not matter for takings purposes whether a property owner could avoid an intrusion on her property rights by using her property differently. See ante, at 12 (quoting 458 U. S., at 439, n. 17). But in Yee v. Escondido, 503 U. S. 519 (1992), we clarified that, where a law does not on its face effect a per se taking, the voluntariness of a particular use of property or of entry into a particular market is quite relevant. See id., at 531–532. In other words, only when a law requires the forfeiture of all rights in property does it effect a per se taking regardless of whether the law could be avoided by a different use of the property. As discussed above, the Order is not such a law.

the equitable distribution of the proceeds from the disposition of the reserve raisins. Ante, at 8–9. But if there is a property right that has not been lost, as the Court concedes there is, then the Order has not destroyed each of the Hornes' rights in the reserve raisins and does not effect a per se taking. The Court protests that the retained interest is not substantial or certain enough. But while I see more value in that interest than the Court does, the bottom line is that Loretto does not distinguish among retained property interests that are substantial or certain enough to count and others that are not.[4] Nor is it at all clear how the Court's approach will be administrable. How, after all, are courts, governments, or individuals supposed to know how much a property owner must be left with before this Court will bless the retained interest as sufficiently meaningful and certain?

One virtue of the Loretto test was, at least until today, its clarity. Under Loretto, a total destruction of all property rights constitutes a per se taking; anything less does not. See 458 U. S., at 441 (noting the "very narrow" nature of the Loretto framework). Among the most significant doctrinal damage that the Court causes is the blurring of this otherwise bright line and the expansion of this

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[4] The Court relies on Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency, 535 U. S. 302, 322 (2002), for the proposition that "'[w]hen the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner, regardless of whether the interest that is taken constitutes an entire parcel or merely a part thereof.'" Ante, at 10. But all that means is that a per se taking may be said to have occurred with respect to the portion of property that has been taken even if other portions of the property have not been taken. This is of no help to the Hornes, or to the Court, because it in no way diminishes a plaintiff's burden to demonstrate a per se taking as to the portion of his or her property that he or she claims has been taken—here, the reserve raisins. As to that specific property, a per se taking occurs if and only if the Loretto conditions are satisfied.

otherwise narrow category. By the Court's lights, perhaps a 95 percent destruction of property rights can be a per se taking. Perhaps 90? Perhaps 60, so long as the remaining 40 is viewed by a reviewing court as less than meaningful? And what makes a retained right meaningful enough? One wonders. Indeed, it is not at all clear what test the Court has actually applied. Such confusion would be bad enough in any context, but it is especially pernicious in the area of property rights. Property owners should be assured of where they stand, and the government needs to know how far it can permissibly go without tripping over a categorical rule.

The second overarching error in the Court's opinion arises from its reliance on what it views as the uniquely physical nature of the taking effected by the Order. This, it says, is why many of the cases having to do with so-called regulatory takings are inapposite. See ante, at 9–12. It is not the case, however, that Government agents acting pursuant to the Order are storming raisin farms in the dark of night to load raisins onto trucks. But see Tr. of Oral Arg. 30 (remarks of ROBERTS, C. J.). The Order simply requires the Hornes to set aside a portion of their raisins—a requirement with which the Hornes refused to comply. See 7 CFR §989.66(b)(2); Tr. of Oral Arg. 31. And it does so to facilitate two classic regulatory goals. One is the regulatory purpose of limiting the quantity of raisins that can be sold on the market. The other is the regulatory purpose of arranging the orderly disposition of those raisins whose sale would otherwise exceed the cap.

The Hornes and the Court both concede that a cap on the quantity of raisins that the Hornes can sell would not be a per se taking. See ante, at 9; Brief for Petitioners 23, 52. The Court's focus on the physical nature of the intrusion also suggests that merely arranging for the sale of the reserve raisins would not be a per se taking. The rub for the Court must therefore be not that the Government is

doing these things, but that it is accomplishing them by the altogether understandable requirement that the reserve raisins be physically set aside. I know of no principle, however, providing that if the Government achieves a permissible regulatory end by asking regulated individuals or entities to physically move the property subject to the regulation, it has committed a per se taking rather than a potential regulatory taking. After all, in Monsanto, the data that the pesticide companies had to turn over to the Government was presumably turned over in some physical form, yet even the Court does not call Monsanto a physical takings case. It therefore cannot be that any regulation that involves the slightest physical movement of property is necessarily evaluated as a per se taking rather than as a regulatory taking.

The combined effect of these errors is to unsettle an important area of our jurisprudence. Unable to justify its holding under our precedents, the Court resorts to superimposing new limitations on those precedents, stretching the otherwise strict Loretto test into an unadministrable one, and deeming regulatory takings jurisprudence irrelevant in some undefined set of cases involving government regulation of property rights. And it does all of this in service of eliminating a type of reserve requirement that is applicable to just a few commodities in the entire country—and that, in any event, commodity producers could vote to terminate if they wished. See Letter from Solicitor General to Clerk of Court (Apr. 29, 2015); 7 U. S. C. §608c(16)(B); 7 CFR §989.91(c). This intervention hardly strikes me as worth the cost, but what makes the Court's twisting of the doctrine even more baffling is that it ultimately instructs the Government that it can permissibly achieve its market control goals by imposing a quota without offering raisin producers a way of reaping any return whatsoever on the raisins they cannot sell. I have trouble understanding why anyone would prefer that.

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Because a straightforward application of our precedents reveals that the Hornes have not suffered a per se taking, I would affirm the judgment of the Ninth Circuit. The Court reaches a contrary conclusion only by expanding our per se takings doctrine in a manner that is as unwarranted as it is vague. I respectfully dissent.