

Organic almond growers clear hurdle

Appellate court rules producers can go ahead with lawsuit.

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WASHINGTON — California organic almond producers can press ahead with their challenge to federal requirements that they pasteurize or chemically treat their crop, a key appellate court ruled Tuesday.

The ruling is an important, but not final, victory for the organic growers, who say the domestic food-safety requirement shuts them out while leaving a loophole

for foreign producers.

"That requirement largely eliminates the ability of California almond producers to sell raw almonds, and therefore harms those producers' economic well-being," stated Judge Brett Kavanaugh of the U.S. Court of Appeals for the District of Columbia Circuit.

The appellate court, in a 2-1 split decision, did not overturn the food-safety rules first recommended in 2006 by the Modesto-based Almond Board of California. The almond board is an agricultural marketing order that helps the \$2.5 billion-a-year industry regulate itself.

The Agriculture Department imposed the rules in 2007.

The appellate panel did, howev-

er, agree that Fresno-based farmer Nick Koretoff, Livingston-based farmer Cynthia Lashbrook and eight other organic producers can proceed with their legal challenge.

Lashbrook, co-owner of Riverdance Farms, called the decision a good one.

"We need to be able to set our own protocols," Lashbrook said Tuesday afternoon. "It's so silly that we have these laws that keep us out of the market."

The decision overturns a trial judge, who ruled last year that the organic producers weren't technically in a position to sue.

"Producers can sue to challenge agricultural marketing orders," Kavanaugh noted, "but consumers

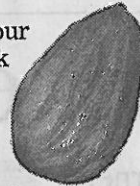
cannot."

This conclusion could have wide-ranging consequences for other farmers and other agricultural marketing orders.

Sometimes called the nation's second most important court, the D.C. Circuit Court of Appeals sets precedent for many challenges to federal government actions.

The 10-member almond board recommended the new safety rules following incidents of salmonella contamination in 2001 and 2004. The new rules required almond handlers to achieve a stricter reduction in bacteria by pasteurizing the nuts be-

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fore shipping.

"While contamination in almonds is not common, the industry determined that aggressive measures were necessary to prevent any other occurrences," the almond board stated at the time the rules were imposed.

Organic producers, though, said the new rules eliminated their ability to sell raw almonds, even as foreign producers were exempt from the pasteurization requirement.

The Obama administration, in defending the almond safety rules, had argued that almond handlers were really the only ones who could challenge industry standards in court.

Kavanaugh, though, noted that the interests of almond producers and handlers may sometimes diverge.

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