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Koontz v. St. Johns River Water Management District

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***Koontz v. St. Johns River Water Management District*, ___ U.S. ___, 133 S.Ct. 2586, 186 L. Ed. 2d 697 (2013).**[1]

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I. ABSTRACT

Koontz extends the application of *Nollan* and *Dolan,* which require exactions of real property for land-use permits to share a "nexus" and be "roughly proportional" to the regulation to be constitutional. A divided United States Supreme Court held that "monetary exactions," potentially including building permit fees or impact fees, must satisfy the *Nollan* and *Dolan* requirements even if the government denies the permit. The Court did not reach the merits of the petitioner's appeal.

II. INTRODUCTION

The State of Florida has a statutory scheme to manage water and wetlands within the state. The St. Johns River Water Management District (District) is one of several districts, which regulate development in Florida that impacts wetlands through regulations, by requiring permits for the dredge or fill of surface waters. A Developer challenged the District's tailored mitigation suggestions for his proposed development, which included a request to fund off-site mitigation work and to place the unused portion of his parcel in a conservation easement.[2] The Developer believed the District's suggested mitigation was "an unreasonable exercise of the state's police power constituting a taking without just compensation," for which Florida state law provides monetary damages.[3] A divided Supreme Court reversed and remanded, holding that exactions, even if solely monetary, must be consistent with *Nollan* and *Dolan*.[4]

III. FACTUAL BACKGROUND

[1](Kagan, Ginsburg, Breyer, and Sotomayor, JJ., dissenting).
[2] *Koontz v. St. Johns River Water Mgt. Dist.*, 133 S. Ct. 2586, 2592–2593 (2013).
[3]*Id.* at 2589, 2594.
[4]*Id.* at 2603.

In 1994, the Developer applied to the District for the necessary permits to commercially develop 3.7 acres of his 14.9 acre property. In order to mitigate the development's environmental impacts, the District suggested: a reduction in the size of the development to one acre, a deeded conservation easement on the remaining acreage in addition to what the Developer had offered, and a variety of specific drainage and retaining works on the property. Alternatively, the Developer could fund offsite mitigation work and develop the full 3.7 acres with a conservation easement dedication on the remaining acreage.[5]

IV. PROCEDURAL BACKGROUND

The lower court found that improvements and impacts created by an adjacent commercial development made the District's suggested exactions a taking under *Nollan* and *Dolan*. The appellate court affirmed, but Florida's Supreme Court reversed. The Florida Supreme Court's holding was based on two independent grounds. First, the Court concluded that a demand for money did not give rise to cause of action under either *Nollan* or *Dolan*, which had both involved a demand for an interest in real property. Second, because the District had only suggested the mitigation and not denied the permit, the Court determined that a taking had yet to occur and the Developer's cause of action was not ripe.[6]

V. ANALYSIS

The Fifth Amendment of the U.S. Constitution prevents the government from taking private property for public use without just compensation.[7] *Nollan* and *Dolan* are specific takings protections pertinent to the unique nature of the land use permitting process.[8] In *Nollan* and *Dolan* the Court noted that applicants for land-use permits are vulnerable to coercion—from

[5] *Id.* at 2593.
[6] *Id.* at 2593-2594.
[7] *Id.* at 2591.
[8] *Id.* at 2594.

regulatory officials for demands for concessions (exactions) that "can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation."[9]

Both cases evolved from the practice of conditioning building or development permit approval on the dedication of an easement. Because the taking was cloaked in the land-use permit approval process, the demanded exaction was not readily apparent as a *per se* taking that would demand compensation under the Fifth Amendment.[10] The resulting vulnerability of land-use permit applicants, led the Court to hold that an illegal taking would occur if the demanded exaction did not share a "nexus and rough proportionality between the property that the government demands and the social costs of the applicant's proposal."[11]

Auxiliary to the *Nollan* and *Dolan* protections, the Court set forth standards in *Penn Central Transp. Co. v. New York City* defining when governmental regulations constitute a taking.[12] The *Penn Central* framework had, until *Koontz*, potentially provided protections from excessive government regulations or monetary exactions. *Koontz* directs that "when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel of real property" that a *per se* taking has occurred.[13]

Against the *Penn Central,* and *Nollan* and *Dolan* frameworks, *Koontz* represents a new protection from governmental actions that relate to land use. *Koontz* holds that "government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan*

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[9] *Id.* at 2594 (quoting *Dolan v. City of Tigard*, 512 U.S. 384, 377 (1994); *Nollan v. California Coastal Com'n*, 483 U.S. 825, 831 (1987)).
[10] *Koontz,* 133 S.Ct. at 2605.
[11] *Id.* at 2595.
[12] *Id.*at 2604 ("Under *Penn Central,* courts examine a regulation's 'character' and 'economic impact,' asking whether the action goes beyond "adjusting the benefits and burdens of economic life to promote the common good" and whether it "interfere[s] with distinct investment-backed expectations." Citing *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (2005).)
[13] *Koontz,* 133 S.Ct. at 2600.

and *Dolan* even when the government denies the permit and even when its demand is for money."[14] Justice Kagan, in her dissent, characterizes the *Koontz* holding as both an expansion of what constitutes a taking and an expansion of those regulatory actions that are now subject to a *Nollan* and *Dolan* analysis.[15]

The Court's expansion of *Nollan* and *Dolan* to monetary exactions is rooted in an effort to close a perceived loophole: allowing local governments to evade *Nollan* and *Dolan* by offering "in lieu of" fees. Since these fees provide the developer with one permit alternative that does not invoke *Nollan* or *Dolan* (monetary exactions), in the majority's view, local governments have been able to evade *Nollan* and *Dolan.*[16]

The Court also supports its reasoning by classifying monetary exactions as a potential taking instead of a regulation subject to *Penn Central's* protections. The Court previously held, outside the land use context, that the "relinquishment of funds linked to a specific, identifiable property interest such as a bank account or parcel or real property" is a *per se* taking.[17] Therefore, a monetary exaction related to land use can be classified as a *per se* taking, and not a regulation, and the *Nollan* and *Dolan* protections should apply—instead of *Penn Central*.

The majority appears to disagree that its holding is so expansive, but the decision establishes no clear limit of its application. There are two primary bases for expansion. First, the Court does not define which governmental actions are "land use" and which are not. Second, there is no guidance to differentiate between a demand for money and a regulatory tax.[18]

Both the majority and the dissent agree that the *Nollan* and *Dolan* apply regardless if the government's property exaction is a rejection, approval, or conditional approval of a permit

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[14] *Id.* at 2603.
[15] *Id.* at 2606–2607 (Kagan, J., dissenting)
[16] *Id.* at 2599 (majority).
[17] *Koontz,* 133 S.Ct. at 2601 (citing *Brown v. Legal Foundation of Wash.*, 538 U.S. 216, 235 (2003)).
[18] *Koontz,* 133 S.Ct. at 2601.

application.[19] This is a unanimous reversal of the Florida Supreme Court's holding that a condition precedent for the filing of permit application was not subject to *Nollan* and *Dolan*, regardless of its substance. That holding appeared to require that the government actually took property, and not just imposed conditions precedent or subsequent that resulted in an exaction.[20]

The controversy in *Koontz* dealt only with suggestions and proposals between the developer and the District. The decision could cultivate fertile ground to expand when a governmental taking has occurred in contexts outside the land use process, depending on the remedies available in state law.[21]

[19] *Id.* at 2596 ("Our unconstitutional conditions cases have long refused to attach significance to the distinction between conditions precedent and conditions subsequent.") *Id.* at 2603 (Kagan, J., dissenting).
[20] *Id.* at 2595-2596.
[21] *Id.* at 2597 (majority) ("While the unconstitutional conditions doctrine recognizes that this burdens a constitutional right, the Fifth Amendment mandates a particular remedy—just compensation—only for takings.")