

Koontz v. St. Johns River Water Management District (2013)

570 U.S. 595 (2013)

*The estate of Coy Koontz, Sr. sought permits to develop a section of his property from the St. Johns River Water Management District, which, under Florida law, requires permit applicants wishing to build on wetlands to offset the resulting environmental damage. Koontz offered to mitigate the environmental effects of his development proposal by deeding to the District a conservation easement on nearly three-quarters of his property. The District rejected Koontz’s proposal and informed him that it would approve construction only if he (1) reduced the size of his development and deeded to the District a conservation easement on the resulting larger remainder of his property or (2) hired contractors to make improvements to District-owned wetlands several miles away. Believing the District’s demands to be excessive in light of the environmental effects his proposal would have caused, Koontz filed suit under a state law that provides money damages for agency action that is an “unreasonable exercise of the state’s police power constituting a taking without just compensation.” The trial court found the District’s actions unlawful because they failed the requirements of Nollan v. California Coastal Commission (1987) and Dolan v. City of Tigard (1994). Those cases held that the government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of his property unless there is a nexus and rough proportionality between the government’s demand and the effects of the proposed land use. The District Court of Appeal affirmed, but the State Supreme Court reversed on two grounds. First, it held that petitioner’s claim failed because, unlike in *Nollan* or *Dolan*, the District denied the application; and second, it held that a demand for money cannot give rise to a claim under *Nollan* and *Dolan*. Koontz petitioned the Supreme Court, which granted certiorari.*

Opinion of the Court: Alito, Roberts, Scalia, Kennedy, Thomas.

Dissenting opinion: Kagan, Ginsburg, Breyer, Sotomayor.

JUSTICE ALITO delivered the opinion of the Court.

Our decisions in *Nollan v. California Coastal Commission* (1987) and *Dolan v. City of Tigard* (1994) provide important protection against the misuse of the power of land-use regulation. In those cases, we held that a unit of government may not condition the approval of a land-use permit on the owner’s relinquishment of a portion of his property unless there is a “nexus” and “rough proportionality” between the government’s demand and the effects of the proposed land use. In this case, the St. Johns River Water Management District (District) believes that it circumvented *Nollan* and *Dolan* because of the way in which it structured its handling of a permit application submitted by Coy Koontz, Sr., whose estate is represented in this Court by Coy Koontz, Jr. The District did not approve his application on the condition that he surrender an interest in his land. Instead, the District, after suggesting that he could obtain approval by signing over such an interest, denied his application because he refused to yield. The Florida Supreme Court blessed this maneuver and thus effectively interred those important decisions. Because we conclude that *Nollan* and *Dolan* cannot be evaded in this way, the Florida Supreme Court’s decision must be reversed.

I

A

In 1972, petitioner purchased an undeveloped 14.9-acre tract of land on the south side of Florida State Road 50, a divided four-lane highway east of Orlando. The property is located less than 1,000 feet from that road's intersection with Florida State Road 408, a tolled expressway that is one of Orlando's major thoroughfares. . . . Although largely classified as wetlands by the State, the northern section drains well. . . .

In 1984, in an effort to protect the State's rapidly diminishing wetlands, the Florida Legislature passed the Warren S. Henderson Wet-lands Protection Act, which made it illegal for anyone to "dredge or fill in, on, or over surface waters" without a Wetlands Resource Management (WRM) permit. Under the Henderson Act, permit applicants are required to provide "reasonable assurance" that proposed construction on wetlands is "not contrary to the public interest," as defined by an enumerated list of criteria. Consistent with the Henderson Act, the St. Johns River Water Management District, the district with jurisdiction over petitioner's land, requires that permit applicants wishing to build on wetlands offset the resulting environmental damage by creating, enhancing, or preserving wetlands elsewhere.

Petitioner decided to develop the 3.7-acre northern section of his property, and in 1994 he applied to the District for MSSW and WRM permits. Under his proposal, petitioner would have raised the elevation of the northernmost section of his land to make it suitable for a building, graded the land from the southern edge of the building site . . . and installed a dry-bed pond for retaining and gradually releasing stormwater runoff from the building and its parking lot. To mitigate the environmental effects of his proposal, petitioner offered to foreclose any possible future development of the approximately 11-acre southern section of his land by deeding to the District a conservation easement on that portion of his property.

The District considered the 11-acre conservation easement to be inadequate, and it informed petitioner that it would approve construction only if he agreed to one of two concessions. First, the District proposed that petitioner reduce the size of his development to 1 acre and deed to the District a conservation easement on the remaining 13.9 acres. To reduce the development area, the District suggested that petitioner could eliminate the drybed pond from his proposal and instead install a more costly subsurface stormwater management system beneath the building site. The District also suggested that petitioner install retaining walls rather than gradually sloping the land from the building site down to the elevation of the rest of his property to the south.

In the alternative, the District told petitioner that he could proceed with the development as proposed, building on 3.7 acres and deeding a conservation easement to the government on the remainder of the property, if he also agreed to hire contractors to make improvements to District-owned land several miles away. Specifically, petitioner could pay to replace culverts on one parcel or fill in ditches on another. Either of those projects would have enhanced approximately 50 acres of District-owned wet-lands. When the District asks permit applicants to fund offsite mitigation work, its policy is never to require any particular offsite project, and it did not do so here. Instead, the District said that it "would also favorably consider" alternatives to its suggested offsite mitigation projects if petitioner proposed something "equivalent."

Believing the District's demands for mitigation to be excessive in light of the environmental effects that his building proposal would have caused, petitioner filed suit in state court. Among other claims, he argued that he was entitled to relief under Fla. Stat. §373.617(2), which allows

owners to recover “monetary damages” if a state agency’s action is “an unreasonable exercise of the state’s police power constituting a taking without just compensation.”

II

A

We have said in a variety of contexts that “the government may not deny a benefit to a person because he exercises a constitutional right.” *Regan v. Taxation With Representation of Washington* (1983). . . . *Nollan* and *Dolan* “involve a special application” of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits. Our decisions in those cases reflect two realities of the permitting process. The first is that land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than property it would like to take. By conditioning a building permit on the owner’s deeding over a public right-of-way, for example, the government can pressure an owner into voluntarily giving up property for which the Fifth Amendment would otherwise require just compensation. So long as the building permit is more valuable than any just compensation the owner could hope to receive for the right-of-way, the owner is likely to accede to the government’s demand, no matter how unreasonable. Extortionate demands of this sort frustrate the Fifth Amendment right to just compensation, and the unconstitutional conditions doctrine prohibits them.

A second reality of the permitting process is that many proposed land uses threaten to impose costs on the public that dedications of property can offset. Where a building proposal would substantially increase traffic congestion, for example, officials might condition permit approval on the owner’s agreement to deed over the land needed to widen a public road. Respondent argues that a similar rationale justifies the exaction at issue here: petitioner’s proposed construction project, it submits, would destroy wetlands on his property, and in order to compensate for this loss, respondent demands that he enhance wetlands elsewhere. Insisting that landowners internalize the negative externalities of their conduct is a hallmark of responsible land-use policy, and we have long sustained such regulations against constitutional attack.

Nollan and *Dolan* accommodate both realities by allowing the government to condition approval of a permit on the dedication of property to the public so long as there is a “nexus” and “rough proportionality” between the property that the government demands and the social costs of the applicant’s proposal. Our precedents thus enable permitting authorities to insist that applicants bear the full costs of their proposals while still forbidding the government from engaging in “out-and-out . . . extortion” that would thwart the Fifth Amendment right to just compensation. Under *Nollan* and *Dolan* the government may choose whether and how a permit applicant is required to mitigate the impacts of a proposed development, but it may not leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts.

B

The principles that undergird our decisions in *Nollan* and *Dolan* do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so. We have often concluded that denials of governmental benefits were impermissible under the unconstitutional conditions doctrine. In

so holding, we have recognized that regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them.

A contrary rule would be especially untenable in this case because it would enable the government to evade the limitations of *Nollan* and *Dolan* simply by phrasing its demands for property as conditions precedent to permit approval. Under the Florida Supreme Court's approach, a government order stating that a permit is "approved if" the owner turns over property would be subject to *Nollan* and *Dolan*, but an identical order that uses the words "denied until" would not. Our unconstitutional conditions cases have long refused to attach significance to the distinction between conditions precedent and conditions subsequent. To do so here would effectively render *Nollan* and *Dolan* a dead letter.

The Florida Supreme Court puzzled over how the government's demand for property can violate the Takings Clause even though "no property of any kind was ever taken," but the unconstitutional conditions doctrine provides a ready answer. Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not because they take property but because they impermissibly burden the right not to have property taken without just compensation. As in other unconstitutional conditions cases in which someone refuses to cede a constitutional right in the face of coercive pressure, the impermissible denial of a governmental benefit is a constitutionally cognizable injury.

Nor does it make a difference, as respondent suggests, that the government might have been able to deny petitioner's application outright without giving him the option of securing a permit by agreeing to spend money to improve public lands. Virtually all of our unconstitutional conditions cases involve a gratuitous governmental benefit of some kind. Yet we have repeatedly rejected the argument that if the government need not confer a benefit at all, it can withhold the benefit because someone refuses to give up constitutional rights. Even if respondent would have been entirely within its rights in denying the permit for some other reason, that greater authority does not imply a lesser power to condition permit approval on petitioner's forfeiture of his constitutional rights. . . .

III

We turn to the Florida Supreme Court's alternative holding that petitioner's claim fails because respondent asked him to spend money rather than give up an easement on his land. A predicate for any unconstitutional conditions claim is that the government could not have constitutionally ordered the person asserting the claim to do what it attempted to pressure that person into doing. For that reason, we began our analysis in both *Nollan* and *Dolan* by observing that if the government had directly seized the easements it sought to obtain through the permitting process, it would have committed a per se taking. The Florida Supreme Court held that petitioner's claim fails at this first step because the subject of the exaction at issue here was money rather than a more tangible interest in real property. Respondent and the dissent take the same position. . . .

. . . [I]f we accepted this argument it would be very easy for land-use permitting officials to evade the limitations of *Nollan* and *Dolan*. Because the government need only provide a permit applicant with one alternative that satisfies the nexus and rough proportionality standards, a permitting authority wishing to exact an easement could simply give the owner a choice of either

surrendering an easement or making a payment equal to the easement's value. Such so-called "in lieu of" fees are utterly commonplace, and they are functionally equivalent to other types of land use exactions. For that reason . . . we reject respondent's argument and hold that so-called "monetary exactions" must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*.

* * *

We hold that the government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* even when the government denies the permit and even when its demand is for money. The Court expresses no view on the merits of petitioner's claim that respondent's actions here failed to comply with the principles set forth in this opinion and those two cases. The Florida Supreme Court's judgment is reversed, and this case is remanded for further proceedings not inconsistent with this opinion.

JUSTICE KAGAN, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, dissenting.

In the paradigmatic case triggering review under *Nollan* and *Dolan*, the government approves a building permit on the condition that the landowner relinquish an interest in real property, like an easement. The significant legal questions that the Court resolves today are whether *Nollan* and *Dolan* also apply when that case is varied in two ways. First, what if the government does not approve the permit, but instead demands that the condition be fulfilled before it will do so? Second, what if the condition entails not transferring real property, but simply paying money? . . .

I think the Court gets the first question it addresses right. The *Nollan-Dolan* standard applies not only when the government approves a development permit conditioned on the owner's conveyance of a property interest (i.e., imposes a condition subsequent), but also when the government denies a permit until the owner meets the condition (i.e., imposes a condition precedent). That means an owner may challenge the denial of a permit on the ground that the government's condition lacks the "nexus" and "rough proportionality" to the development's social costs that *Nollan* and *Dolan* require. Still, the condition-subsequent and condition-precedent situations differ in an important way. When the government grants a permit subject to the relinquishment of real property, and that condition does not satisfy *Nollan* and *Dolan*, then the government has taken the property and must pay just compensation under the Fifth Amendment. But when the government denies a permit because an owner has refused to accede to that same demand, nothing has actually been taken. The owner is entitled to have the improper condition removed; and he may be entitled to a monetary remedy created by state law for imposing such a condition; but he cannot be entitled to constitutional compensation for a taking of property. So far, we all agree.

Our core disagreement concerns the second question the Court addresses. The majority extends *Nollan* and *Dolan* to cases in which the government conditions a permit not on the transfer of real property, but instead on the payment or expenditure of money. . . . The boundaries of the majority's new rule are uncertain. But it threatens to subject a vast array of land-use regulations, applied daily in States and localities throughout the country, to heightened constitutional scrutiny. I would not embark on so unwise an adventure, and would affirm the Florida Supreme Court's decision.

I also would affirm for two independent reasons establishing that Koontz cannot get the money damages he seeks. First, respondent St. Johns River Water Management District (District) never demanded anything (including money) in exchange for a permit; the *Nollan-Dolan* standard therefore does not come into play (even assuming that test applies to demands for money). Second, no taking occurred in this case because Koontz never acceded to a demand (even had there been one), and so no property changed hands; as just noted, Koontz therefore cannot claim just compensation under the Fifth Amendment. The majority does not take issue with my first conclusion, and affirmatively agrees with my second. But the majority thinks Koontz might still be entitled to money damages, and remands to the Florida Supreme Court on that question. I do not see how, and expect that court will so rule.

I

. . . Koontz claims that the District demanded that he spend money to improve public wetlands, not that he hand over a real property interest. I assume for now that the District made that demand (although I think it did not). The key question then is: Independent of the permitting process, does requiring a person to pay money to the government, or spend money on its behalf, constitute a taking requiring just compensation? Only if the answer is yes does the *Nollan-Dolan* test apply. . . . [But] a requirement that a person pay money to repair public wetlands is not a taking. Such an order does not affect a “specific and identified propert[y] or property right”; it simply “imposes an obligation to perform an act” (the improvement of wetlands) that costs money. To be sure, when a person spends money on the government’s behalf, or pays money directly to the government, it “will reduce [his] net worth”—but that “can be said of any law which has an adverse economic effect” on someone. Because the government is merely imposing a “general liability” to pay money—and therefore is “indifferent as to how the regulated entity elects to comply or the property it uses to do so”—the order to repair wetlands, viewed independent of the permitting process, does not constitute a taking. And that means the order does not trigger the *Nollan-Dolan* test, because it does not force Koontz to relinquish a constitutional right. . . .

The majority’s approach . . . threatens significant practical harm. By applying *Nollan* and *Dolan* to permit conditions requiring monetary payments—with no express limitation except as to taxes—the majority extends the Takings Clause, with its notoriously “difficult” and “perplexing” standards, into the very heart of local land-use regulation and service delivery. Cities and towns across the nation impose many kinds of permitting fees every day. Some enable a government to mitigate a new development’s impact on the community, like increased traffic or pollution—or destruction of wetlands. Others cover the direct costs of providing services like sewage or water to the development. Still others are meant to limit the number of landowners who engage in a certain activity, as fees for liquor licenses do. All now must meet *Nollan* and *Dolan*’s nexus and proportionality tests. The Federal Constitution thus will decide whether one town is over-charging for sewage, or another is setting the price to sell liquor too high. And the flexibility of state and local governments to take the most routine actions to enhance their communities will diminish accordingly. That problem becomes still worse because the majority’s distinction between monetary “exactions” and taxes is so hard to apply. The majority acknowledges, as it must, that taxes are not takings. But once the majority decides that a simple demand to pay money—the sort of thing often viewed as a tax—can count as an impermissible “exaction,” how is anyone to tell the two apart? . . .

At bottom, the majority’s analysis seems to grow out of a yen for a prophylactic rule: Unless *Nollan* and *Dolan* apply to monetary demands, the majority worries, “land-use permitting officials” could easily “evade the limitations” on exaction of real property interests that those decisions impose. But that is a prophylaxis in search of a problem. No one has presented evidence that in the many States declining to apply heightened scrutiny to permitting fees, local officials routinely short-circuit *Nollan* and *Dolan* to extort the surrender of real property interests having no relation to a development’s costs. And if officials were to impose a fee as a contrivance to take an easement (or other real property right), then a court could indeed apply *Nollan* and *Dolan*. That situation does not call for a rule extending, as the majority’s does, to all monetary exactions. Finally, a court can use the *Penn Central* framework, the Due Process Clause, and (in many places) state law to protect against monetary demands, whether or not imposed to evade *Nollan* and *Dolan*, that simply “go too far.”

In sum, *Nollan* and *Dolan* restrain governments from using the permitting process to do what the Takings Clause would otherwise prevent—i.e., take a specific property interest without just compensation. Those cases have no application when governments impose a general financial obligation as part of the permitting process. . . . By extending *Nollan* and *Dolan*’s heightened scrutiny to a simple payment demand, the majority threatens the heartland of local land-use regulation and service delivery, at a bare minimum depriving state and local governments of “necessary predictability.” That decision is unwarranted—and deeply unwise. I would keep *Nollan* and *Dolan* in their intended sphere and affirm the Florida Supreme Court. . . .

III

Nollan and *Dolan* are important decisions, designed to curb governments from using their power over land-use permitting to extract for free what the Takings Clause would otherwise require them to pay for. But for no fewer than three independent reasons, this case does not present that problem. First and foremost, the government commits a taking only when it appropriates a specific property interest, not when it requires a person to pay or spend money. Here, the District never took or threatened such an interest; it tried to extract from Koontz solely a commitment to spend money to repair public wetlands. Second, *Nollan* and *Dolan* can operate only when the government makes a demand of the permit applicant; the decisions’ prerequisite, in other words, is a condition. Here, the District never made such a demand: It informed Koontz that his applications did not meet legal requirements; it offered suggestions for bringing those applications into compliance; and it solicited further proposals from Koontz to achieve the same end. That is not the stuff of which an unconstitutional condition is made. And third, the Florida statute at issue here does not, in any event, offer a damages remedy for imposing such a condition. It provides relief only for a consummated taking, which did not occur here. The majority’s errors here are consequential. The majority turns a broad array of local land-use regulations into federal constitutional questions. It deprives state and local governments of the flexibility they need to enhance their communities—to ensure environmentally sound and economically productive development. It places courts smack in the middle of the most everyday local government activity. As those consequences play out across the country, I believe the Court will rue today’s decision. I respectfully dissent.