

*Sheetz v. County of El Dorado (2024)*

601 U.S. 267

*George Sheetz wanted to build a small, prefabricated home on his empty residential parcel of land. To obtain a building permit, the County of El Dorado, California, required Sheetz to pay a \$23,420 “traffic impact fee.” Sheetz sued on the ground that the fee constituted an unconstitutional “exaction” in violation of the Takings Clause. The California Supreme Court held that exactions were illegal only when applied on an individual and discretionary basis by administrators, but not when applied to a broad class of property owners through legislation.*

Opinion of the Court: Barrett, Roberts, Thomas, Alito, Sotomayor, Kagan, Gorsuch, Kavanaugh, Jackson.

Concurring opinions: Sotomayor, Jackson; Gorsuch; Kavanaugh, Kagan, Jackson.

**JUSTICE BARRETT delivered the opinion for a unanimous Court.**

George Sheetz wanted to build a small, prefabricated home on his residential parcel of land. To obtain a permit, though, he had to pay a substantial fee to mitigate local traffic congestion. Relying on this Court's decisions in *Nollan v. California Coastal Comm'n* (1987), and *Dolan v. City of Tigard* (1994), Sheetz challenged the fee as an unlawful “exaction” of money under the Takings Clause. The California Court of Appeal rejected that argument because the traffic impact fee was imposed by legislation, and, according to the court, *Nollan* and *Dolan* apply only to permit conditions imposed on an ad hoc basis by administrators. That is incorrect. The Takings Clause does not distinguish between legislative and administrative permit conditions.

El Dorado County, California is a rural jurisdiction that lies east of Sacramento and extends to the Nevada border. Much of the County's 1,700 square miles is backcountry. It is home to the Sierra Nevada mountain range and the Eldorado National Forest. Those areas, composed mainly of public lands, are sparsely populated. Visitors from around the world use the natural areas for fishing, backpacking, and other recreational activities. . . .

In recent decades, the County has experienced significant population growth, and with it an increase in new development. To account for the new demand on public services, the County's Board of Supervisors adopted a planning document, which it calls the General Plan, to address issues ranging from wastewater collection to land-use restrictions. The Board of Supervisors is a legislative body under state law, and the adoption of its General Plan is a legislative act.

To address traffic congestion, the General Plan requires developers to pay a traffic impact fee as a condition of receiving a building permit. The County uses proceeds from these fees to fund improvements to its road system. The fee amount is determined by a rate schedule, which takes into account the type of development (commercial, residential, and so on) and its location within the County. The amount is not based on “the cost specifically attributable to the particular project on which the fee is imposed.” . . .

When the government wants to take private property to build roads, courthouses, or other public projects, it must compensate the owner at fair market value. The just compensation requirement comes from the Fifth Amendment's Takings Clause, which provides: “nor shall private property be taken for public use, without just compensation.” By requiring the

government to pay for what it takes, the Takings Clause saves individual property owners from bearing “public burdens which, in all fairness and justice, should be borne by the public as a whole.”

The Takings Clause's right to just compensation coexists with the States' police power to engage in land-use planning. (Though at times the two seem more like in-laws than soulmates.) While States have substantial authority to regulate land use, the right to compensation is triggered if they “physically appropriat[e]” property or otherwise interfere with the owner's right to exclude others from it. That sort of intrusion on property rights is a per se taking. Different rules apply to State laws that merely restrict how land is used. A use restriction that is “reasonably necessary to the effectuation of a substantial government purpose” is not a taking unless it saps too much of the property's value or frustrates the owner's investment-backed expectations.

Permit conditions are more complicated. If the government can deny a building permit to further a “legitimate police-power purpose,” then it can also place conditions on the permit that serve the same end. Such conditions do not entitle the landowner to compensation even if they require her to convey a portion of her property to the government. Thus, if a proposed development will “substantially increase traffic congestion,” the government may condition the building permit on the owner's willingness “to deed over the land needed to widen a public road.” We have described permit conditions of this nature as “a hallmark of responsible land-use policy.” The government is entitled to put the landowner to the choice of accepting the bargain or abandoning the proposed development.

The bargain takes on a different character when the government withholds or conditions a building permit for reasons unrelated to its land-use interests. Imagine that a local planning commission denies the owner of a vacant lot a building permit unless she allows the commission to host its annual holiday party in her backyard (in property speak, granting it a limited-access easement). The landowner is “likely to accede to the government's demand, no matter how unreasonable,” so long as she values the building permit more. So too if the commission gives the landowner the option of bankrolling the party at a local pub instead of hosting it on her land. Because such conditions lack a sufficient connection to a legitimate land-use interest, they amount to “an out-and-out plan of extortion.”

Our decisions in *Nollan* and *Dolan* address this potential abuse of the permitting process. There, we set out a two-part test modeled on the unconstitutional conditions doctrine. First, permit conditions must have an “essential nexus” to the government's land-use interest. The nexus requirement ensures that the government is acting to further its stated purpose, not leveraging its permitting monopoly to exact private property without paying for it. Second, permit conditions must have “rough proportionality” to the development's impact on the land-use interest. A permit condition that requires a landowner to give up more than is necessary to mitigate harms resulting from new development has the same potential for abuse as a condition that is unrelated to that purpose. This test applies regardless of whether the condition requires the landowner to relinquish property or requires her to pay a “monetary exactio[n]” instead of relinquishing the property.

The California Court of Appeal declined to assess the County's traffic impact fee for an essential nexus and rough proportionality based on its view that the *Nollan/Dolan* test does not

apply to “legislatively prescribed monetary fees.” That was error. Nothing in constitutional text, history, or precedent supports exempting legislatures from ordinary takings rules.

The Constitution's text does not limit the Takings Clause to a particular branch of government. The Clause itself, which speaks in the passive voice, “focuses on (and prohibits) a certain ‘act’: the taking of private property without just compensation.” It does not single out legislative acts for special treatment. Nor does the Fourteenth Amendment, which incorporates the Takings Clause against the States. On the contrary, the Amendment constrains the power of each “State” as an undivided whole. § 1. Thus, there is “no textual justification for saying that the existence or the scope of a State's power to expropriate private property without just compensation varies according to the branch of government effecting the expropriation.” Just as the Takings Clause “protects ‘private property’ without any distinction between different types,” it constrains the government without any distinction between legislation and other official acts. So far as the Constitution's text is concerned, permit conditions imposed by the legislature and other branches stand on equal footing.

The same goes for history. In fact, special deference for legislative takings would have made little sense historically, because legislation was the conventional way that governments exercised their eminent domain power. Before the founding, colonial governments passed statutes to secure land for courthouses, prisons, and other public buildings. . . .

During and after the Revolution, governments continued to exercise their eminent domain power through legislation. States passed statutes to obtain private land for their new capitals and provided compensation to the landowners. At the national level, Congress passed legislation to settle the Northwest Territory, which likewise required the payment of compensation to dispossessed property owners. Two years later, the Fifth Amendment enshrined this longstanding practice. Against this background, it is little surprise that early constitutional theorists understood the Takings Clause to bind the legislature specifically. . . .

Precedent points the same way as text and history. A legislative exception to the Nollan/Dolan test “conflicts with the rest of our takings jurisprudence,” which does not otherwise distinguish between legislation and other official acts. That is true of physical takings, regulatory takings, and the unconstitutional conditions doctrine in which the Nollan/Dolan test is rooted. . . .

**JUSTICE KAVANAUGH, with whom JUSTICE KAGAN and JUSTICE JACKSON join, concurring.**

I join the Court's opinion. I write separately to underscore that the Court has not previously decided—and today explicitly declines to decide—whether “a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.” Importantly, therefore, today's decision does not address or prohibit the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property. Moreover, as is apparent from the fact that today's decision expressly leaves the question open, no prior decision of this Court has addressed or prohibited that longstanding government practice. Both Nollan and Dolan considered permit conditions tailored to specific parcels of property. Those decisions had no occasion to address permit conditions, such as impact fees, that are imposed on permit applicants based on reasonable formulas or schedules that assess the impact of classes of development.