
- 5-4 Decision In Favor of Landowner
- Easily one of the most significant Supreme Court decisions on land use law in recent years.

Takings Background

- 5th Amendment
- Categories
  - Eminent Domain
  - Inverse Condemnation (Regulatory Takings)
    - Total Take (Lucas)
    - Physical Occupation (Loretto)
  - Ad Hoc Test (Penn Central)
  - Exactions (Nollan/Dolan)
Exactions...

- Open Questions:
  - What if the permit is denied?
  - Does Nollan/Dolan only apply to physical exactions?

- *Koontz v. St. Johns River Water Mgnt. Dist.* addresses both of these questions.

---

**Koontz v. St. Johns River Water Mgnt. Dist.**

- **Facts**
  - Koontz owned land east of Orlando that consisted, in part, of wetlands.
  - He proposed a conservation easement to the St. Johns River Water Management District with his development permit application.
  - The District rejected his proposal, informing him that his permit would be denied unless he agreed to do one of two things: (1) scale back his planned development and give the District a larger conservation easement; or (2) maintain the proposal, but also hire contractors to make improvements to separate land owned by the District.
    - Option #2 called for payment of money.
  - The District offered to consider alternative approaches as well.

---


- Koontz found the District’s demands unreasonable, and he sued under a state law governing the water districts that permits property owners to recover money damages based on an alleged unconstitutional taking.
  - State Law Claim → Fla. Stat. § 373.617(2)
  - After a trial and appeal, the Florida Supreme Court held that the suit must be dismissed because a takings claim was not an appropriate response to the District’s conduct. Specifically, the Court held that Nollan/Dolan does not apply in this case for two reasons:
    - 1. Those cases dealt with conditions on land use accompanying a permit that was approved, while in this case, the permit was denied.
    - 2. This case did not involve a taking of a particular property interest — for example, a piece of land — but instead only a demand for money (to pay the contractors).
  - The Supreme Court reversed on both points.

• Issues
  • Does Nollan/Dolan apply only to cases where government approves a permit and actually gets the demanded exactions?
  • Does Nollan/Dolan apply only to physical exactions?


• Holding (First Question)
  • Unanimously held Nollan/Dolan equally applies to situations where government denies a permit.
  • A contrary result would “draw a map to circumvent Nollan and Dolan.”
  • NOTE: No takings claim with permit denial. Why?


• Holding (Second Question)
  • Nollan/Dolan extended to requirements that the property owner pay money as a condition for permit approval.
  • This is the aspect of the decision that has potentially far reaching implications.
  • Where to draw the line?
**Koontz v. St. Johns River Water Mgmt. Dist.**

**Holding (Second Question)**

- The Court observed that “the fulcrum this case turns on is the direct link between the government’s demand and a specific parcel of real property.”
- But, still, no clear test.
- Chilling Effect?

---

**Applicability to South Carolina Practice**

- Additional Scrutiny Over Development Review and “Negotiations”
- Legal Claims:
  - Equal protection
  - Substantive Due Process
  - Gross Negligence Under Tort Claims Act
  - S.C. Code 15-78-60(12)

---

End.