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Supreme Court Holds That Legislatively Mandated Development Exactions Can Be Unconstitutional Takings

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***Sheetz v. County of El Dorado*, No. 22-1074** – Decided April 12, 2024 **Today, the Supreme Court held unanimously that land-development permit exactions subject to the Takings Clause must bear an essential nexus and rough proportionality to the expected impacts of the development, even if the exaction is imposed pursuant to legislation**.

> *"The Takings Clause … prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits."*

Justice Barrett, writing for the Court

Background:

The Supreme Court's prior decisions in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard* held that certain land-development exactions violate the Fifth Amendment's Takings Clause unless the government can show that the exaction bears (1) an "essential nexus" and (2) a "rough proportionality" to the expected impacts from the development. George Sheetz applied for a permit from the County of El Dorado, California to build a house on his property. County legislation required Mr. Sheetz to pay a traffic impact mitigation fee as a condition of obtaining a permit, which was set according to a legislatively determined fee schedule that did not account for an individual project's actual impact on roads. Mr. Sheetz challenged the exaction as an unconstitutional taking under *Nollan* and *Dolan*. The California Court of Appeal held that the exaction was immune from constitutional scrutiny because it was authorized by generally applicable legislation, as opposed to an administratively imposed exaction.

Issue:

Is a building permit exaction authorized by legislation exempt from constitutional scrutiny under the test set forth in *Nollan* and *Dolan*?

Court's Holding:

No. The Takings Clause does not distinguish between legislative and administrative land-use permit conditions, and therefore legislatively mandated exactions are not exempt from the "essential nexus" and "rough proportionality" standards established by *Nollan* and *Dolan*.

What It Means:

- The Court's decision means that land-development exactions do not evade review under *Nollan* and *Dolan* merely because they are authorized pursuant to legislation.
- The Court's ruling gives property developers more opportunities to challenge

Related People

Lucas C. Townsend

Bradley J. Hamburger

Brad G. Hubbard

Connie J. Lee

Robert A. Batista

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legislative exactions as unconstitutional takings. The decision could lead to greater predictability in legislative exactions and a reduction in the types and amounts of impact fees and other exactions imposed, as local governments will need to assess whether legislation imposing exaction fees on private property development, if subject to the Takings Clause, comply with *Nollan* and *Dolan*'s mandates.

- The Court's decision unanimously declares that "[t]he Constitution's text does not limit the Takings Clause to a particular branch of government," which is consistent with the conclusion of Justice Scalia's 2010 plurality opinion in *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection* that judicial actions are subject to the Takings Clause.
- Justice Kavanaugh's concurring opinion, joined by Justices Kagan and Jackson, emphasized that the Court today expressly left open the question whether a permit condition imposed on a class of properties is subject to the same standard as a permit condition that targets a particular development. Justice Gorsuch, in another concurrence, offered his answer: *Nollan* and *Dolan* should not operate differently when an alleged taking affects a class of properties rather than a specific development, as neither of those precedents involved the targeting of a particular development.
- Justice Sotomayor's concurring opinion, joined by Justice Jackson, expressed the view that the Court had not decided the threshold question whether the traffic impact fee in this case would be a compensable taking if imposed outside of the permitting context.

The Court's opinion is available here. Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Thomas H. Dupree Jr. +1 202.955.8547 tdupree@gibsondunn.com	Allyson N. Ho +1 214.698.3233 aho@gibsondunn.com	Julian W. Poon +1 213.229.7758 jpoon@gibsondunn.com
Lucas C. Townsend +1 202.887.3731 ltownsend@gibsondunn.com	Bradley J. Hamburger +1 213.229.7658 bhamburger@gibsondunn.com	Brad G. Hubbard +1 214.698.3326 bhubbard@gibsondunn.com

Related Practice: Real Estate

Eric M. Feuerstein +1 212.351.2323 efeuerstein@gibsondunn.com	Alan Samson +44 20 7071 4222 asamson@gibsondunn.com	Jesse Sharf +1 310.552.8512 jsharf@gibsondunn.com

Related Practice: Land Use and Development

Mary G. Murphy +1 415.393.8257 mgmurphy@gibsondunn.com	Benjamin Saltsman +1 213.229.7480 bsaltsman@gibsondunn.com

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