From: Oliver Orjiako
To: Jeffrey Delapena
Subject: FW: THE GOVERNMENT CAN'T HOLD THE RIGHT TO USE YOUR PROPERTY HOSTAGE IN ORDER TO EXTRACT EXORBITANT FEES. THAT'S AKIN TO EXTORTION.
Date: Wednesday, July 17, 2024 8:15:11 AM
Attachments: image002.png
image003.emz
image004.png

Hi Jeff:

For the comp plan index of record. Thanks.

From: Clark County Citizens United, Inc. <cccuinc@yahoo.com>
Sent: Tuesday, July 16, 2024 9:46 PM
To: Gary Medvigy <Gary.Medvigy@clark.wa.gov>; Karen Bowerman <Karen.Bowerman@clark.wa.gov>; Michelle Belkot <Michelle.Belkot@clark.wa.gov>; Glen Yung <Glen.Yung@clark.wa.gov>; Sue Marshall <Sue.Marshall@clark.wa.gov>; Kathleen Otto <Kathleen.Otto@clark.wa.gov>; Oliver Orjiako <Oliver.Orjiako@clark.wa.gov>; Jose Alvarez <Jose.Alvarez@clark.wa.gov>
Subject: THE GOVERNMENT CAN'T HOLD THE RIGHT TO USE YOUR PROPERTY HOSTAGE IN ORDER TO EXTRACT EXORBITANT FEES. THAT'S AKIN TO EXTORTION.

- **TO THE CLARK COUNTY COUNCIL FROM CLARK COUNTY CITIZENS UNITED, INC.**
  JULY 16, 2024
- **FOR THE PUBLIC RECORD AND THE COMPREHENSIVE PLAN**
- **THE GOVERNMENT CAN'T HOLD THE RIGHT TO USE YOUR PROPERTY HOSTAGE IN ORDER TO EXTRACT EXORBITANT FEES. THAT'S AKIN TO EXTORTION.**
- **PERMIT FEES MUST BE PROPORTIONAL TO THE PUBLIC COSTS IMPOSED BY NEW DEVELOPMENT. OTHERWISE, THE GOVERNMENT MAY LEVERAGE THE PERMIT PROCESS TO TAKE PROPERTY IT IS NOT ENTITLED TO, SKIRTING THE CONSTITUTION'S FIFTH AMENDMENT PROHIBITION AGAINST TAKING PRIVATE PROPERTY WITHOUT JUST COMPENSATION.**
- **SINGLING OUT SOME PROPERTY OWNERS TO PAY A DISPROPORTIONATE SHARE OF THE COST OF PUBLIC AMENITIES THAT ARE USED BY EVERYONE IS UNFAIR, AND THE SUPREME COURT HAS REPEATEDLY SAID IT'S UNCONSTITUTIONAL.**
- **CALIFORNIA'S AND SOME OTHER COURTS HAVE EVADED SUPREME COURT PRECEDENT BY ALLOWING LEGISLATIVE BODIES, LIKE CITY COUNCILS, TO CHARGE EXCESSIVE PERMIT FEES THAT WOULD BE PLAINLY UNCONSTITUTIONAL IF CHARGED BY LAND USE BUREAUCRATS. WE'RE ASKING THE SUPREME COURT TO REAFFIRM THAT PROPERTY RIGHTS DON'T GET LESS PROTECTION DEPENDING ON WHICH BRANCH OF GOVERNMENT VIOLATES THEM.**

TIMELINE - PACIFIC LEGAL FOUNDATION

Won: Supreme Court unanimously says legislatures can't impose extortionate fees as a condition for obtaining a building permit.

CASE RESOURCES

- **Development impact fees: Frequently asked questions**
- **Photo gallery**
- **Learn about *Nollan v. California Coastal Commission*, PLF's first Supreme Court win**

"[T]here is no basis for affording property rights less protection in the hands of legislators than administrators," Justice Amy Coney Barrett wrote in the decision. "The Takings Clause applies equally to both—which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits."

George Sheetz built a career and livelihood as an engineering contractor and

consultant in Northern California. In 2016, he began preparing for retirement and bought a vacant lot in rural El Dorado County for a small, manufactured home where he and his wife would live and raise their grandson.

He got his home, but it came with permit fees so exorbitant, he made a federal case out of it—a case that went the Supreme Court of the United States.

George knows the ropes and red tape involved in new construction, and he figured the process would be easier for a manufactured home because it's already built and had passed necessary government inspections.

Once his land was ready and all George needed was a county building permit, he was stunned when told he could have his permit, but only if he paid a so-called traffic impact fee of more than $23,000.

The County claimed it was bound by law to charge the fee for roadwork his project might cause, although it provided no evidence tying any future roadwork to any public cost or impact imposed by George's project.

The government's fee was nothing more than an exorbitant ransom to pay for permission to build a small, manufactured home. It unfairly imposed costs that had nothing to do with his project.

George weighed the immense cost against the hard work he put into his land and his yearning for a retirement home, and he paid the fee under protest. The County ignored his protest, so George sued, arguing the fees constituted an unconstitutional permit condition under three Supreme Court decisions—including two PLF victories.

The Supreme Court's 1987 decision in *Nollan v. California Coastal Commission* struck down certain government demands for land in exchange for a permit as "out-and-out plan of extortion." The ruling, PLF's first Supreme Court win, determined that all permit conditions imposed on land development must relate to actual harm caused by the development. The Court expanded Nollan's scope in 1994, ruling in *Dolan v. City of Tigard* that

government demands must be sufficiently proportional to the actual impacts of the proposed use.

Then in 2013, the Court extended the precedents set in both *Nollan* and *Dolan* to permit fees in another PLF case, *Koontz v. St. Johns River Water Management District*. That is, the government cannot weaponize the permitting process to extort more land or money from property owners than is appropriate.

As powerful as the precedent trio has been in curbing unconstitutional permitting conditions, however, some lower courts found a legal loophole for state and local governments. Rather than focusing on the legal doctrine established by *Nollan*, *Dolan*, and *Koontz*, some courts focused on the fact that the permit conditions at issue in those cases were ultimately imposed by bureaucrats as part of a permit review process. Those courts, which include the California courts, adopted a rule that limited the nexus and proportionality tests to conditions imposed administratively—exempting legislative demands from the constitutional doctrine. That loophole is critical because El Dorado County imposed its permit fees legislatively, as part of a countywide land use overhaul adopted in 2004.

Supreme Court precedent recognizes that, while local governments can charge fees to mitigate for actual public impacts caused by a private project, demanding property in an amount that goes above and beyond that mitigation standard is a taking. This is true whether imposed by bureaucrats *or* lawmakers, but until George brought his case, the Supreme Court had yet to say so.

On April 12, 2024, the Supreme Court unanimously ruled in George's favor. "[T]here is no basis for affording property rights less protection in the hands of legislators than administrators," Justice Amy Coney Barrett wrote in the decision. "The Takings Clause applies equally to both—which means that it prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits."

Sheetz v. El Dorado County was originally filed and litigated by former PLF

attorney Paul Beard II, who successfully argued *Koontz*. Paul is now a partner at Pierson Ferdinand and argued the case at the Supreme Court, with PLF attorneys as co-counsel.

- **Photo gallery**
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CASE STORY

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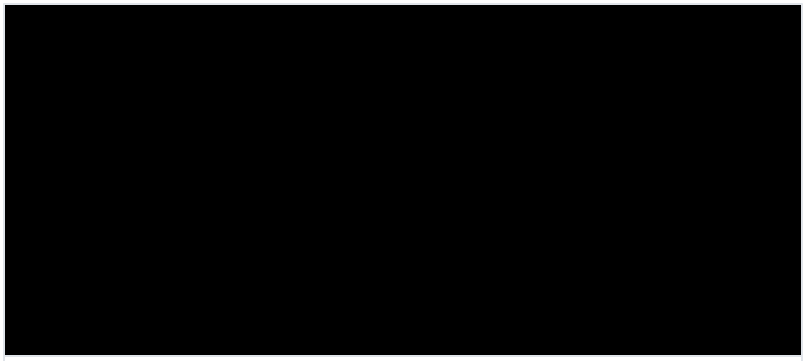

St. Johns River Water Management District v. Koontz

Coy A. Koontz sought to develop commercial land, most of which lies within a riparian habitat protection zone in...

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Clark County Citizens United, Inc. P.O. Box 2188 Battle Ground, Washington 98604
E-Mail cccuinc@yahoo.com