



2-1-2015

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Recommended Citation

Eric D. Hageman, Case Comment, *The Factual Reality of Koontz v. St. Johns*, 90 Notre Dame L. Rev. Online 54 (2015).

Available at: http://scholarship.law.nd.edu/ndlr_online/vol90/iss2/1

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CASE COMMENT

THE FACTUAL REALITY OF *KOONTZ V. ST. JOHNS*

*Eric Dean Hageman**

INTRODUCTION

The Fifth Amendment of the United States Constitution provides that “private property [shall not] be taken for public use without just compensation.”¹ On its face, this language provides private actors monetary relief for government seizures of their property. For twenty-seven years, the Supreme Court has interpreted the clause more expansively, such that it protects property owners seeking land-use permits.² In particular, the Court has interpreted the clause to limit the type³ and amount⁴ of property a government can demand in exchange for a land-use permit. This protection is considered an application of the unconstitutional conditions doctrine to the field of regulatory takings.⁵ The unconstitutional conditions doctrine provides that a government may not deny a private actor a public benefit in order to incentivize the relinquishment of a constitutional right.⁶ Thus, as a general matter, it acts

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1 U.S. CONST. amend. V. The Supreme Court incorporated this provision against state and local governments. *See* *Chicago, Burlington & Quincy R.R. v. Chicago*, 166 U.S. 226, 255–57 (1897).

2 *See, e.g., Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 837 (1987).

3 *See id.*

4 *See Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

5 *See* Molly Cohen & Rachel Proctor May, Comment, *Revolutionary or Routine? Koontz v. St. Johns River Water Management District*, 38 HARV. ENVTL. L. REV. 245, 249 (2014).

6 *See* *Elrod v. Burns*, 427 U.S. 347, 361 (1976) (plurality opinion) (“The denial of a public benefit may not be used by the government for the purpose of creating an incentive enabling it to achieve what it may not command directly.”); *Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (“[E]ven though a person has no ‘right’ to a valuable governmental

to vindicate private actors' constitutional rights by preventing governments from coercing them to give up those rights.⁷ In vindicating the Fifth Amendment right to just compensation, the Supreme Court protects private actors more than the doctrine would otherwise. In particular, the Court requires that a condition to a land-use permit must bear an "essential nexus" to "the end advanced as the justification for" the condition⁸ and be "rough[ly] proportional[]" to the "impact of the proposed development."⁹

In *Koontz v. St. Johns River Water Management District*,¹⁰ the Court extended the unconstitutional conditions doctrine's protections even further in two respects. First, the Court held that a government's conditions for land-use permits are subject to *Nollan's* and *Dolan's* nexus and proportionality tests "even when the government *denies* the permit."¹¹ Second, the Court subjected such conditions to the same tests when a government demands money instead of real property rights.¹² The Court remanded the case to the Florida Supreme Court for the resolution of an issue of state statutory law.¹³

Writing for four Members of the Court, Justice Kagan dissented.¹⁴ She objected to the second half of the Court's holding, asserting that the extension of *Nollan* and *Dolan* to monetary conditions "r[an] roughshod over" the Court's precedents and "threaten[ed] to subject a vast array of land-use regulations . . . to heightened constitutional scrutiny."¹⁵ She also asserted that the government actor, St. Johns River Water Management District (the District), "never demanded *anything* . . . in exchange for a permit" and that as such, the *Nollan/Dolan* tests should not apply.¹⁶ Finally, she observed that "no taking occurred in this case because [petitioner] Koontz never acceded to a demand . . . and so no property

benefit . . . [the government] may not deny a benefit to a person on a basis that infringes his constitutionally protected interests . . .").

7 See *Planned Parenthood of Ind., Inc. v. Comm'r of the Ind. State Dep't of Health*, 699 F.3d 962, 986 (7th Cir. 2012) ("Understood at its most basic level, the [unconstitutional conditions] doctrine aims to prevent the government from achieving indirectly what the Constitution prevents it from achieving directly.").

8 *Nollan*, 483 U.S. at 837.

9 *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994).

10 133 S. Ct. 2586 (2013).

11 *Id.* at 2603 (emphasis added).

12 *Id.*

13 *Id.* A Florida statute provided for damages to parties subjected to "an unreasonable exercise of the state's police power constituting a taking without just compensation." *Id.* at 2593 (quoting FLA. STAT. § 373.617(2) (2014)). The Court remanded the case despite the fact that no taking occurred (since the government denied the plaintiff's permit). *Id.*

14 *Id.* (Kagan, J., dissenting).

15 *Id.* at 2603–04.

16 *Id.* at 2604.

changed hands.”¹⁷ From that fact, she concluded that “Koontz therefore [could not] claim just compensation under the Fifth Amendment” and that the Court should have dismissed the case for that reason.¹⁸

The Court’s opinion in *Koontz* has elicited many negative reactions in academia,¹⁹ most of which focus on the expansion of *Nollan* and *Dolan* to monetary exactions.²⁰ Criticisms run the gamut: some scholars argue that the Court was wrong to ignore the environmental impact of land developments,²¹ while others suggest the Court gave the same consideration too much credence.²² These criticisms are likely premature and necessarily speculative, since the Court decided the case less than two years ago.

Scholars have scrutinized this case’s factual and procedural history less closely, and those elements may justify the Court’s holding. Two often-overlooked facts are particularly important. First, the government’s demand was unusually exploitative—the District offered no sufficient justification for the exaction, and it was large in comparison to the

17 *Id.*

18 *Id.* Koontz “brought his claim pursuant to a state law cause of action,” *id.* at 2597 (majority opinion), and as such, the Court remanded the case to Florida’s courts to decide whether his cause of action could survive despite the fact that no actual taking occurred. *Id.* at 2597, 2603.

19 *See, e.g.,* Cohen & Proctor, *supra* note 5, at 253 (noting that the *Koontz* Court failed to realize the breadth of the decision’s impact); Richard A. Epstein, *Modern Environmentalists Overreach: A Plea for Understanding Background Common Law Principles*, 37 HARV. J.L. & PUB. POL’Y 23, 36–37 (2014) (“[*Koontz*] invent[ed] a very large notion of ‘harm,’ and then announc[ed] that some duty of environmental mitigation shall be imposed upon all landowners who have the temerity to want to build on their own land without creating a nuisance to anybody. The performance on every side of this particular argument was lamentably incompetent in terms of the way in which it was organized.” (footnote omitted)); Israel Piedra, Comment, *Confusing Regulatory Takings with Regulatory Exactions: The Supreme Court Gets Lost in the Swamp of Koontz*, 41 B.C. ENVTL. AFF. L. REV. 555, 555 (2014) (“[I]t was unwise for the Court to apply [*Nollan*’s and *Dolan*’s restrictions] to monetary exactions.”); Kristin N. Ward, Comment, *The Post-Koontz Landscape: Koontz’s Shortcomings and How to Move Forward*, 64 EMORY L.J. 129, 129 (2014) (noting that the Court was “unsympathetic to environmental protection at the local level” and “suspicious of local government’s ability to make reasoned land-use decisions without extorting unfair value from property owners”).

20 *See, e.g.,* Cohen & Proctor, *supra* note 5, at 257 (suggesting *Koontz*’s impact will depend on an aspect of the expansion to monetary conditions); Piedra, *supra* note 19, at 562 (describing the expansion of *Nollan* and *Dolan* to monetary conditions as “unwise”).

21 *See, e.g.,* Ward, *supra* note 19, at 147 (“[T]he [*Koontz*] Court makes incorrect and unsupported assertions about environmental policy . . .”); *id.* (pointing out the Court’s description of “local governments as extortionate over-regulators.”).

22 *See, e.g.,* Epstein, *supra* note 19, at 37 (“[T]he danger in [*Koontz*] . . . lies in the ad hoc view that the government somehow owns an environmental easement over all property, which it will waive only if private individuals engage in acts of environmental mitigation.”).

development's value.²³ Second, on remand, the Florida courts read the statute under which Koontz brought his claim to allow for monetary damages,²⁴ despite the plain language of the statute and the dissent's assertion that it could not be read to authorize the damages.²⁵ These two facts, respectively, suggest that the Court's fear of evading *Nollan* and *Dolan* was reasonable, and that the Court's decision to remand the case to Florida courts was prudent. Thus, this Comment will argue that the behind-the-scenes reality of the conflict in *Koontz* justifies the Court's decision.

This Comment proceeds on the premise that the *facts* of particular cases should inform the way courts shape constitutional law. That proposition is up for debate, but it is not one this Comment addresses. Even the most skeptical of readers will find value in knowing more about the real-world impact of Supreme Court jurisprudence.

I. HISTORY

In 1972, Coy Koontz, Sr.,²⁶ purchased over fifteen acres of undeveloped land near the intersection of two highways outside Orlando.²⁷ Koontz's neighbors developed the surrounding land intensely, which caused his property to be "significantly altered from its original state."²⁸ Before or in the midst of that development, the Florida Department of Transportation condemned some of Koontz's property in order to widen one of the intersecting highways, thus reducing Koontz's property to 14.9 acres.²⁹ A 100-foot-wide power line easement divided the remaining property into two portions: approximately 3.7 acres sat north of the easement, with the balance of the property south of it.³⁰ The northern

23 See *infra* Part IV.

24 *St. Johns River Water Mgmt. Dist. v. Koontz (Koontz I)*, No. 5D06-1116, 2014 WL 1703942, at *2 (Fla. Dist. Ct. App. Apr. 30, 2014) (Griffin, J., dissenting) (noting a "\$376,000 award of compensation to Koontz for the District's 'temporary taking'").

25 *St. Johns River Water Mgmt. Dist. v. Koontz*, 133 S. Ct. 2586, 2604 (2013) (Kagan, J., dissenting); see also *infra* Part IV.

26 Coy Koontz, Sr., passed away while this case was being litigated. His son, Coy Koontz, Jr., represented his estate for the remainder of the litigation. *Koontz*, 133 S. Ct. at 2591 & n.1 (majority opinion). Like the Court, *id.*, this Comment will not distinguish between the two men.

27 *St. Johns River Water Mgmt. Dist. v. Koontz (Koontz II)*, 861 So. 2d 1267, 1269 (Fla. Dist. Ct. App. 2003) (Pleus, J., concurring).

28 *Id.*

29 *Id.*

30 *Id.*; see also *id.* at 1272 (portraying a diagram of the property).

section “drain[ed] well; the most significant standing water form[ed] in ruts in an unpaved road used to access the power lines.”³¹

Over the following years, two Florida statutes impacted the property. In the same year that Koontz bought it, Florida passed the Water Resources Act, “which divided the State into five water management districts and authorized each district to regulate ‘construction that connects to, draws water from, drains water into, or is placed in or across the waters in the state.’”³² The Act required landowners interested in developments that fell within the districts’ jurisdiction to obtain a Management and Storage of Surface Water (MSSW) permit, and granted the districts wide discretion to issue or deny those permits.³³ Twelve years later, Florida enacted the Warren S. Henderson Wetlands Protection Act, which required a landowner to obtain a Wetlands Resource Management (WRM) permit to “dredge or fill in, on, or over surface waters.”³⁴ Pursuant to the Act, the St. Johns River Water Management District adopted a policy of “requir[ing] that permit applicants wishing to build on wetlands offset the resulting environmental damage by creating, enhancing, or preserving wetlands elsewhere.”³⁵

In 1994, Koontz decided to develop the northern section of the property.³⁶ To do this, he needed to dredge 3.25 acres of wetlands,³⁷ so he applied to the District for MSSW and WRM permits.³⁸ He offered the District a conservation easement on the southern section of the property to offset his proposal’s environmental effects.³⁹ A District staffer agreed to recommend that the District approve the permit if Koontz (a) deeded the offered conservation easement *and* paid to either replace culverts four and a half miles away from the property or plug a number of drainage canals on property seven miles away, or (b) reduced his development to one acre and deed a conservation easement on the remaining fourteen acres.⁴⁰ The District also indicated it would consider alternatives to the suggested offsite mitigation.⁴¹ In the course of reviewing Koontz’s permit application,

31 *Koontz*, 133 S. Ct. at 2592.

32 *Id.* (quoting FLA. STAT. § 373.403(5) (2014)).

33 *Id.* (“[T]he relevant district . . . may impose ‘such reasonable conditions’ on the permit as are ‘necessary to assure’ that construction will ‘not be harmful to the water resources of the district.’” (quoting FLA. STAT. § 373.413(1))).

34 *Id.* (quoting 1984 Fla. Laws 204–05).

35 *Id.*

36 *Id.*

37 *Koontz II*, 861 So. 2d 1267, 1269 (Fla. Dist. Ct. App. 2003) (Pleus, J., concurring).

38 *Koontz*, 133 S. Ct. at 2592.

39 *Id.* at 2592–93.

40 *Koontz II*, 861 So. 2d at 1269.

41 *Koontz*, 133 S. Ct. at 2593.

Elizabeth Johnson, the District’s “supervising regulatory scientist,” visited the site.⁴² During her visit, Ms. Johnson observed not a single fish or animal.⁴³ She later acknowledged that the site contained no fish and that she did not perform a wildlife survey of the property.⁴⁴ Nonetheless, Ms. Johnson concluded that Koontz’s development would “adversely affect fish and wildlife.”⁴⁵ As such, the District made its demands, Koontz refused them, the District denied Koontz his permit, and a lawsuit commenced.⁴⁶

Koontz filed an action in state court, claiming, *inter alia*, monetary relief under a Florida statute that provides damages for parties subjected to “an unreasonable exercise of the state’s police power constituting a taking without just compensation.”⁴⁷ The trial court applied *Nollan* and *Dolan* to the offsite-mitigation condition and found that the condition violated both standards.⁴⁸ An intermediate appellate court affirmed, but the Florida Supreme Court reversed, distinguishing the case from *Nollan* and *Dolan* in that (a) the District *denied* Koontz’s application for a permit because he failed to meet its demands, while the government actors in *Nollan* and *Dolan* issued permits with unconstitutional conditions attached, and (b) the District demanded money, while *Nollan* and *Dolan* involved interests in real property.⁴⁹ The United States Supreme Court granted certiorari and reversed the Florida Supreme Court.⁵⁰

II. THE MAJORITY OPINION

Writing for the Court, Justice Alito framed the protection at issue as an application of the unconstitutional conditions doctrine, and then described *Nollan*’s and *Dolan*’s history, purposes, and effects.⁵¹ The Court held that those cases apply to permit denials as well as to permit approvals.⁵² Justice Alito explained that “[t]he principles that undergird . . . *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.”⁵³ The Court found

42 *Koontz II*, 861 So. 2d at 1270.

43 *Id.*

44 *Id.*

45 *Id.*

46 *Koontz*, 133 S. Ct. at 2593.

47 *Id.* (quoting FLA. STAT. § 373.617(2) (2014)).

48 *Id.*

49 *Id.* at 2593–94.

50 *Id.* at 2586.

51 *Id.* at 2594–95.

52 *Id.* at 2603.

53 *Id.* at 2595.

support for this proposition in cases that condemned conditions to denials of other, unrelated public benefits.⁵⁴ The majority also expressed concern that exempting permit denials from *Nollan* and *Dolan* “would enable the government to evade the limitations of [those cases] simply by phrasing its demands for property as conditions precedent to permit approval.”⁵⁵

The majority then explained that *Koontz* suffered a cognizable injury despite the fact that no taking actually occurred. The Florida Supreme Court had held that the government’s demand could not have violated the Takings Clause because “no property of any kind was ever taken.”⁵⁶ The Court clarified that the Taking Clause protects private actors from the actual taking of property and, through the unconstitutional conditions doctrine, from “the impermissible denial of a government benefit.”⁵⁷ The only pertinent difference between conditions that accompany approvals and those that accompany denials is that the Fifth Amendment prescribes a remedy for the imposition of the former conditions: just compensation.⁵⁸ Absent a “consummated taking,” only a separately established cause of action can lead to damages.⁵⁹ A state law created *Koontz*’s cause of action, so the Court passed on what remedies *Nollan* and *Dolan* might justify absent such a cause of action.⁶⁰ The majority left it to the Florida courts to decide whether the state statute that created *Koontz*’s cause of action—which provided monetary damages for “unreasonable exercise[s] of the state’s police power constituting a taking without just compensation”⁶¹—applied to unconstitutional conditions claims.⁶²

The Court then held that *Nollan* and *Dolan* apply to monetary exactions, including the District’s demand for money to pay for offsite mitigation.⁶³ As an initial matter, the majority observed that “it would be very easy for land-use permitting officials to evade” *Nollan* and *Dolan* if

54 *Id.* (citing *Mem’l Hosp. v. Maricopa Cnty.*, 415 U.S. 250 (1974); *Perry v. Sindermann*, 408 U.S. 593 (1972)).

55 *Id.*

56 *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1225 (Fla. 2011).

57 *Koontz*, 133 S. Ct. at 2596. “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.” *Id.*

58 *Id.* at 2597.

59 *Id.*; *see also id.* (“[W]hether money damages are available is not a question of federal constitutional law but of the cause of action . . . on which the landowner relies.” (emphasis added)).

60 *Id.*

61 FLA. STAT. § 373.617(2) (2014).

62 *Koontz*, 133 S. Ct. at 2598.

63 *Id.* at 2603.

demands to spend money were not subjected to their limitations.⁶⁴ In expanding *Nollan* and *Dolan*, Justice Alito distinguished this case from an unfavorable precedent. A four-Justice plurality previously held in *Eastern Enterprises v. Apfel* that the United States government's retroactive imposition on a former mining company of an obligation to pay for retired employees' medical benefits "was so arbitrary that it violated the Takings Clause."⁶⁵ But in the same case, five Justices—one of whom concurred in the result and four of whom dissented—concluded that "the Takings Clause does not apply to government-imposed financial obligations that 'd[o] not operate upon or alter an identified property interest.'"⁶⁶ In *Koontz*, the District argued that because five Justices concluded in *Apfel* that the Takings Clause could not apply to a monetary burden, the District's demand for money to pay for offsite mitigation could not be a violation of the unconstitutional conditions doctrine. The Court acknowledged that "[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,"⁶⁷ but distinguished this case in that, unlike *Apfel*, "the monetary obligation burdened petitioner's ownership of a specific parcel of land."⁶⁸ The Court compared the District's hypothetical exaction of Koontz's money to the taking of a lien or of the "right to receive income from land."⁶⁹ The majority asserted that "[t]he fulcrum this case turns on is the direct link between the government's demand and a specific parcel of real property."⁷⁰

The Court also addressed several of the dissent's concerns. First, Justice Alito turned to the District's and the dissent's arguments that the extension of *Nollan* and *Dolan* to monetary exactions allows for "no principled way of distinguishing impermissible land-use exactions from property taxes."⁷¹ The Court offered a twofold defense: first, the problem of distinguishing taxes from takings is not unique to the context of land use;⁷² and second, distinguishing taxes from takings is easier in practice than it is in theory.⁷³ To support these points, the Court cited two types of monetary seizures previously invalidated as takings: interest on funds held

64 *Id.* at 2599.

65 *Id.* (citing *E. Enters. v. Apfel*, 524 U.S. 498, 529–37 (1998) (plurality opinion)).

66 *Id.* (quoting *Apfel*, 524 U.S. at 540 (Kennedy, J., concurring)).

67 *Id.* at 2598.

68 *Id.* at 2599.

69 *Id.* at 2600.

70 *Id.*

71 *Id.*

72 *Id.* at 2600–01.

73 *Id.* at 2601.

in escrow⁷⁴ and liens.⁷⁵ The Court also suggested state law will often answer the question of what is or is not a tax.⁷⁶ For example, Florida's statutes "greatly circumscribe[]" how various government entities can go about taxation.⁷⁷

The Court declined to offer guidance regarding the point at which land-use permitting charges rise to the level of taxation, though the opinion alluded to a deciding factor being the fee's arbitrariness.⁷⁸ The Court was careful to preserve governments' abilities "to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners."⁷⁹

III. THE DISSENT

Writing for four Justices, Justice Kagan dissented, departing from the Court's extension of *Nollan* and *Dolan* to monetary exactions.⁸⁰ Justice Kagan voiced two fundamental objections to the expansion of *Nollan* and *Dolan*: it violated a valid Court precedent⁸¹ and would unduly restrict local governments.⁸² The dissent agreed with the Court that *Nollan* and *Dolan* apply to permit denials as well as conditional approvals,⁸³ but asserted that even on the majority's terms, the case should have been dismissed instead of remanded.⁸⁴

The dissent asserted that the Court's extension of *Nollan* and *Dolan* to monetary exactions violated *Apfel*, arguing that the Justices' consensus—that the Takings Clause did not apply to monetary exactions—controlled the issue.⁸⁵ Justice Kagan suggested the Court should have resolved Koontz's claim under the regulatory takings doctrine governed by *Penn Central Transportation Co. v. New York City*.⁸⁶ The *Penn Central* doctrine

74 *Id.* (citing *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 232 (2003)).

75 *Id.* (citing *Armstrong v. United States*, 364 U.S. 40 (1960); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555 (1935)).

76 *Id.*

77 *Id.*

78 *Id.* at 2602 (declining to comment on the point at which "a land-use permitting charge denominated by the government as a 'tax' becomes 'so arbitrary . . . that it [is] not the exertion of taxation but a confiscation of property'" (quoting *Brushaber v. Union Pac. R.R.*, 240 U.S. 1, 24 (1916))).

79 *Id.* at 2601.

80 *Id.* at 2603 (Kagan, J., dissenting).

81 *Id.* at 2603–04.

82 *Id.* at 2604.

83 *Id.* at 2603.

84 *Id.* at 2609.

85 *Id.* at 2603–04.

86 438 U.S. 104 (1978).

generally prohibits governments from “unduly restricting the *use* of property.”⁸⁷

Justice Kagan’s second major objection was to the decision’s practical effects. She predicted that, absent any meaningful constraints, the majority’s view would lead to unnecessary judicial commandeering of local law.⁸⁸ She also criticized the Court’s refusal to explain how one might distinguish taxes from exactions.⁸⁹ The dissent concluded that “the majority’s analysis seems to grow out of a yen for a prophylactic rule” that would prevent governments from evading *Nollan* and *Dolan*, but that there was no real problem to be prevented.⁹⁰ Justice Kagan also commented on the dearth of empirical evidence that local governments routinely evade *Nollan* and *Dolan* when given the chance.⁹¹

The issue of monetary exactions aside, Justice Kagan would have dismissed the case on two separate grounds: first, that the District’s negotiations with Koontz never rose to the level of “demands,”⁹² and second, that since no taking occurred, the Takings Clause provided Koontz with no remedy.⁹³ As to her first argument, Justice Kagan asserted that “*Nollan* and *Dolan* apply only when the government makes a ‘demand[]’ that a landowner turn over property in exchange for a permit.”⁹⁴ She found support for that requirement—that there be a *demand* over and above a mere condition—in the majority’s view that the unconstitutional conditions doctrine “rests on the fear that the government may use its control over benefits (like permits) to ‘coerc[e]’ a person into giving up a constitutional right.”⁹⁵ Justice Kagan predicted that unless *Nollan* and *Dolan* were limited to “unequivocal” demands, mere negotiations between localities and developers would come under judicial scrutiny and thus, “no local government official with a decent lawyer would have a conversation with a developer.”⁹⁶ Citing Koontz’s “refus[al]” to return to the negotiating table

87 *Koontz*, 133 S. Ct. at 2604 (Kagan, J., dissenting) (emphasis added).

88 *Id.* at 2607 (noting that the majority’s decisions might lead to “[t]he Federal Constitution . . . decid[ing] whether one town is overcharging for sewage, or another is setting the price to sell liquor too high”).

89 *Id.*

90 *Id.* at 2608.

91 *Id.* (“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.”).

92 *Id.* at 2609 (“[T]he District never *demand*ed that Koontz give up anything . . . as a condition for granting him a permit.” (emphasis added)).

93 *Id.*

94 *Id.* at 2609–10 (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 546 (2004)).

95 *Id.* at 2610 (quoting *id.* at 2594 (majority opinion)).

96 *Id.*

with the District, Justice Kagan concluded that “the District never made a demand or set a condition.”⁹⁷

Justice Kagan’s final ground for dissent was that because there was no real taking, Koontz’s only available method of relief was invalidation of the condition.⁹⁸ Koontz’s hope for monetary relief depended on judicial construction of the Florida statute that established his cause of action; for him to recover, the Court would have to read the statute to allow for relief “beyond just compensation.”⁹⁹ Where the majority remanded the question of relief under the Florida statute to the Florida Supreme Court,¹⁰⁰ Justice Kagan observed that the statute’s plain language “authorize[d] damages only for ‘an unreasonable exercise of the state’s police power constituting a taking without just compensation,’” and she concluded that since no taking occurred, Koontz could not possibly recover.¹⁰¹

IV. ANALYSIS: WHY THE FACTS JUSTIFY THE COURT

A behind-the-scenes analysis of *Koontz* reveals two important observations. First, the District’s actions were less justified than either the Court or the dissent recognized, suggesting that the majority’s fear of localities evading *Nollan* and *Dolan* was reasonable. Second, on remand, the Florida courts did in fact read the statute under which Koontz brought his claim to allow for monetary damages, justifying the Court’s decision to remand the case.

A thorough reading of the lower courts’ opinions reveals that the District’s actions were cause for serious concern. Concurring with an intermediate appellate court’s decision to dismiss the District’s appeal for lack of jurisdiction, Judge Robert Pleus wrote a short description of the District’s actions in “hope that upon remand to the District, it [would] . . . stop the extortionate demands on property owners which this case demonstrate[d].”¹⁰² Judge Pleus also described the expert testimony regarding the environmental value of the property Koontz wanted to develop—a crucial aspect of the case, given that the District’s permit-granting power came from environmental legislation. A 2001 “environmental audit” of the property indicated that its environmental

97 *Id.* at 2611.

98 *Id.*

99 *Id.*

100 *Id.* at 2603 (majority opinion).

101 *Id.* at 2612 (Kagan, J., dissenting) (quoting FLA. STAT. § 373.617(2) (2014)).

102 *Koontz II*, 861 So. 2d 1267, 1268–69 (Fla. Dist. Ct. App. 2003) (Pleus, J., concurring).

value was already diminished¹⁰³ and that the environmental impact of the proposed development would be “minimal.”¹⁰⁴ Two other experts’ testimonies supported that finding,¹⁰⁵ one noting that the suggested “offsite mitigation was unnecessary and ‘very excessive.’”¹⁰⁶ At trial, the District offered the testimony of Elizabeth Johnson, its in-house “supervising regulatory scientist” who, despite observing not a single fish or animal on the site, “concluded that the proposed development would adversely affect fish and wildlife.”¹⁰⁷ The rest of the Florida courts’ opinions and orders contain a shocking dearth of evidence that Koontz’s development would have a cognizable environmental impact.¹⁰⁸

Judge Pleus’s description sheds light on the Supreme Court’s decision, not because of the ridiculousness of the District’s assertion that Koontz’s development would have a real environmental impact,¹⁰⁹ but because it highlights that the District’s actions demonstrated incompetence, if not malice. It is shocking that in twenty years—from the litigation’s commencement in 1994 through its final disposition in 2014¹¹⁰—the District was unable to prove that the development would have any cognizable environmental impact. The Supreme Court’s discussion of this aspect of the case is short and mild,¹¹¹ but the concern that refusing to expand *Nollan* and *Dolan* to monetary conditions “would enable the government to evade” those standards “simply by phrasing its demands for property as conditions precedent to permit approval”¹¹² might be quite

103 See *id.* at 1269 (explaining that an expert witness testified that the property “had been impacted by surrounding roads, a drainage ditch, a power line easement and urbanization”).

104 *Id.*

105 *Id.* at 1269–70.

106 *Id.* at 1270.

107 *Id.*

108 See, e.g., *St. Johns River Water Mgmt. Dist. v. Koontz (Koontz IV)*, 5 So. 3d 8, 9–10 (Fla. Dist. Ct. App. 2009) (discussing the entirety of the case’s factual and procedural history, with no mention of any environmental impact the development may have threatened); *Koontz v. St. Johns River Water Mgmt. Dist.*, No. CI 94-5673, 2002 WL 34724740, at 873–74 (Fla. Cir. Ct. Oct. 30, 2002) (noting that the District failed to satisfy *Nollan* and *Dolan*, with no mention of environmental impact); *Koontz v. St. Johns River Water Mgmt. Dist.*, No. CI 94-5673, 1997 WL 34854535, at 514 (Fla. Cir. Ct. Oct. 29, 1997) (dismissing Koontz’s original complaint, with no mention of environmental impact).

109 By itself, that information would only inform a *Dolan* rough proportionality inquiry, and the question before the Court was whether *Dolan* should apply at all.

110 See *Koontz V*, No. 5D06-1116, 2014 WL 1703942, at *2 (Fla. Dist. Ct. App. Apr. 30, 2014) (affirming the trial court’s disposition).

111 See *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2591–93 (2013).

112 *Id.* at 2595.

strong in the face of a state agency that evidently felt no need to justify exacting up to \$150,000 from a private citizen.¹¹³ Perhaps this history indicates nothing but incompetence or a bureaucratic oversight. But if the District's actions were malicious or manipulative—or indicated a larger movement towards the unjustified exaction of private money in the permitting process to serve policy goals—they may provide a novel defense of the majority's opinion.

Second, the Florida courts' resolution of the case on remand indicates that the majority was right not to dismiss the case. Justice Kagan colorfully asserted that the State of Florida is not the “inside-out, upside-down universe” in which “a law authorizing damages only for a ‘taking’ also provide[s] damages when (as all agree) no taking has occurred.”¹¹⁴ Alas, there remains an argument that the State of Florida is precisely that universe. On remand from the United States Supreme Court, the Florida Supreme Court in turn remanded the case to the intermediate appellate court.¹¹⁵ The appellate court affirmed \$376,000 in damages¹¹⁶ to Koontz for the taking that all nine Supreme Court Justices agree never occurred. Dissenting from the appellate court's affirmation, Judge Griffin observed that in accordance with the United States Supreme Court's decision, “[b]ecause there was no ‘taking’ . . . the question remain[ed] whether Koontz ha[d] a damages remedy under” the Florida statute.¹¹⁷ However, neither the appellate court nor the Florida Supreme Court expressly reviewed that question,¹¹⁸ and after the smoke cleared, the \$376,000 award still stood.¹¹⁹

Surely the award indicates that Justice Alito was right to remand the case. If the Florida appellate court interpreted the statute *sub silentio* to allow for monetary damages in situations like Koontz's, dismissing the case would have gravely intruded on a state's right to interpret its own laws. Whether the Florida appellate court was right to interpret (or not interpret) the statute as it did is beyond the scope of this Comment—the

113 See *Koontz v. St. Johns River Water Mgmt. Dist.*, No. CI-94-5673, slip op. at 868 (Fla. Cir. Ct. Oct. 29, 2002), available at 2002 WL 34724740 (noting that the offsite mitigation “could cost between \$90,000.00 and \$150,000.00,” but also acknowledging “there is evidence it could cost as little as \$10,000.00”).

114 *Koontz*, 133 S. Ct. at 2612 (Kagan, J., dissenting).

115 *St. Johns River Water Mgmt. Dist. v. Koontz*, 129 So. 3d 1069, 1069 (Fla. 2013).

116 *Koontz V*, No. 5D06-1116, 2014 WL 1703942, at *2 (Fla. Dist. Ct. App. Apr. 30, 2014) (Griffin, J., dissenting) (noting the still-valid “\$376,000 award of compensation to Koontz for the District's ‘temporary taking’”).

117 *Id.* at *4.

118 See *id.* at *2 (majority opinion) (summarily adopting and reaffirming *Koontz IV* in response to the Supreme Court's decision); see also *Koontz IV*, 5 So. 3d 8, 10 (Fla. Dist. Ct. App. 2009) (acknowledging the award of damages for the alleged taking).

119 *Koontz V*, 2014 WL 1703942, at *2 (affirming the trial court's disposition).

point is that Justice Alito's decision to remand demonstrated restraint, wisdom, and laudable sensitivity to federalism concerns. Far from an empty formality, the decision had a six-digit impact on the litigants.

CONCLUSION

The behind-the-scenes reality of *Koontz*—in particular, the extortionate actions of St. Johns River Water Management District and the Florida courts' decision to award monetary damages—indicates that the Court was right to dispose of the case as it did. In particular, the District's behavior may have justified the majority's concern that localities would evade the constitutional requirements of *Nollan* and *Dolan*, and the award of damages, notwithstanding the Florida statute's clear language, shows that the majority was right to remand the case. The effects of expanding *Nollan* and *Dolan* to monetary exactions remain to be seen, but the Court's resolution of the facts before it was certainly justified, if not admirable.