

[The U.S. Supreme Court today decided \*Koontz v. St. Johns River Water Management District\*](#). But unlike the previous two, unanimous Takings Clause rulings issued this Term by the justices in *Arkansas Game and Fish Commission v. United States* and *Horne v. Department of Agriculture*, the decision in *Koontz* reflected a sharply divided Court, in a 5-4 vote. *Koontz* also appears to be the most significant of the Supreme Court's three takings decisions this year.

As previewed in earlier Legal Planet posts authored by my colleagues and me, the *Koontz* case raises two important legal issues under the so-called "unconstitutional conditions" corner of regulatory takings law: 1) whether the *Nollan/Dolan* standard, which requires that government-imposed project conditions have a nexus to and rough proportionality with the projected effects of a proposed project, applies to project *denials* as well as project approvals; and 2) if the *Nollan/Dolan* test applies to *monetary* exactions as well as government's compelled dedications of real property.

Justice Alito—who has emerged in recent years as the Court's most conservative justice on property rights issues—wrote for the majority in *Koontz*. His opinion reverses a ruling by the Florida Supreme Court that had found in favor of local government regulators on both of the above issues. Alito's majority opinion was joined by the conservative wing of the Court: Chief Justice Roberts, Justices Scalia and Thomas and—critically—Justice Kennedy. Justice Kagan authored a dissenting opinion in *Koontz*, joined by Justices Breyer, Ginsburg and Sotomayor. Critically, Kagan's dissent is limited to the second issue raised by the case: whether monetary exactions are subject to the *Nollan/Dolan* test. The dissenters agreed with the majority that the unconstitutional conditions rule applies fully to project denials, just as it does to private project approvals.

It remains to be seen whether the Supreme Court majority is correct in its prediction that today's decision in *Koontz* "will not work a revolution in land use law or unduly limit the discretion of local land use authorities to implement sensible land use regulations." What is clear is that property owners have achieved a clean sweep in the three Takings Clause cases decided by the Supreme Court this Term.