

A fresh victory in the battle for personal property rights

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by [Randy Bright](#)



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On June 25, after nearly 20 years, a victory for personal property rights was finally won in the U.S. Supreme Court when it ruled in favor of a property owner in the *Koontz v. St. Johns River Management District* case.

The story actually began in 1972 when Coy A. Koontz, Sr., purchased 14.9 acres of land east of Orlando, Florida. Later, the state enacted water management regulations (the 1972 Water Resources Act and the 1984 Warren S. Henderson Wetlands Protection Action) that reclassified all but 1.4 acres of the land as a Riparian Habitat Zone. Under the new law, land classified as such could not be developed without a permit from the St. Johns River Management District (SJRMD).

In 1994, Koontz wanted to develop 3.7 acres of his property, but SJRMD refused the permit unless Koontz would concede to one of two conditions.

The first condition was that he would deed the remaining 11.2 acres as a conservation area, and to conduct “mitigation” by replacing either drainage culverts four and one-half miles away from his property or block some drainage canals that were seven miles away.

The second condition was even worse. It required him to only develop one acre of his property and deed the remaining 13.9 acres as a conservation area.

When Koontz refused to accept either condition, SJRMD denied the permit. As a result, Koontz sued SJRMD claiming that the denial of the use of his property constituted an exaction, or a form of taxation, by not allowing him to enjoy the economic benefits of his property.

Koontz’s legal counsel argued that the precedent set in two previous cases, *Nollan* and *Dolan*, should apply, meaning that the government had conducted an unlawful taking of property. Although SJRMD did not actually take possession of his property, the effect was the same. Denial of use of his property essentially gave SJRMD what it wanted, which was to leave the property in its natural state.

Koontz won his case in the first round, and was awarded \$376,154 for the temporary taking of his property. SJRMD appealed to the Fifth District Court, who upheld the lower court. Then it appealed to the Florida Supreme Court, who overturned the decision. SJRMD argued that since Koontz never dedicated any land to them and never spent money on the off-site improvements it demanded, that Nollan and Dolan did not apply, so no compensation was due.

At some point, Koontz, Sr. had passed away, and his son continued the case, taking it to the U.S. Supreme Court.

When the US Supreme Court took the case, it was to essentially decide if the constitutional standards that came about with the Nollan and Dolan precedents would apply, holding a government liable for damages for an unlawful taking. More specifically, if a government demands concessions of money, labor, services or actual property as a condition for a development permit, would that constitute an exaction, or unlawful taking of property, even if the permit was never given or the property actually taken.

The cases of Nollan (Nollan v. California Coastal Comm'n) and Dolan (Dolan v. City of Tigard) held that unless there was a "nexus and rough proportionality" between the demands made upon property owners by government and the effects of the land use proposed, that government cannot condition the approval of a permit upon surrender of personal property.

The U.S. Supreme Court said, "We have often concluded that denials of governmental benefits were impermissible under the unconstitutional conditions doctrine. In so holding, we have recognized that regardless of whether the government ultimately succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them."

While this is certainly a victory for the Constitution and property rights, it was a slim victory due to the 5-4 decision of the justices. Land planners and other governmental agencies are already lamenting the decision because it takes away from them a great deal of power to enforce regulations, especially those that have administrative instead of legislative origins. It may also affect other cases in which people have been coerced into concessions of real property.

The real effect of this decision is yet to be seen, because those who want to take personal property for environmental or other reasons, including corruption, are not about to stop. We face a long protracted battle to preserve property rights.

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Randy W. Bright, AIA, NCARB, is an architect who specializes in church and church-related projects. You may contact him at 918-582-3972, rwbrightchurcharch@sbcglobal.net or www.churcharchitect.net.

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