No. 11-1447

In The
Supreme Court of the United States

COY A. KOONTZ, JR.,

Petitioner,

v.

ST. JOHNS RIVER WATER MANAGEMENT DISTRICT,

Respondent.

On Writ Of Certiorari To The Supreme Court Of Florida

BRIEF AMICUS CURIAE OF OWNERS' COUNSEL OF AMERICA IN SUPPORT OF THE PETITIONER

ROBERT H. THOMAS
Counsel of Record
DAMON KEY LEONG KUPCHAK HASTERT
1003 Bishop Street, 16th Floor
Honolulu, Hawaii 96813
(808) 531-8031
rht@hawaiilawyer.com

Counsel for Amicus Curiae Owners' Counsel of America

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OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

This brief addresses the second Question Presented:

Whether the nexus and proportionality tests set out in *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) apply to a land-use exaction that takes the form of a government demand that a permit applicant dedicate money, services, labor, or any other type of personal property to a public use.

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IDENTITY AND INTEREST OF AMICUS CURIAE

Owners' Counsel of America (OCA) is a national, invitation-only network of the most experienced eminent domain and property rights attorneys who seek to advance, preserve and defend the rights of private property owners and thereby further the cause of liberty, because the right to own and use property is "the guardian of every other right" and the basis of a free society. *See* JAMES W. ELY, THE GUARDIAN OF EVERY OTHER RIGHT: A CONSTITUTIONAL HISTORY OF PROPERTY RIGHTS (2d ed. 1998).[1]

As the lawyers on the front lines of takings law, OCA members understand the importance of the issues in this case, and how the rule adopted by the Florida Supreme Court, if allowed to stand, will undermine the check on the unbridled exercise of governmental powers that the Takings Clause provides. An exaction should not be subject to lesser constitutional standards simply because the property demanded in exchange for the surrender of fundamental rights is not land.

OCA brings unique expertise to this task. OCA is a non-profit organization, organized under IRC § 501(c)(6) and sustained solely by its members. Only

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[1] All counsel of record consented to the filing of this brief. This brief was not authored in any part by counsel for either party, and no person or entity other than amicus made a monetary contribution toward the preparation or submission of this brief.

one member lawyer is admitted from each state. Since its founding, OCA has sought to use its members' combined knowledge and experience as a resource in the defense of private property ownership, and to make that opportunity available and effective to property owners nationwide. OCA member attorneys have been involved in landmark property law cases in nearly every jurisdiction nationwide. Additionally, OCA members and their firms have been counsel for a party or amici in many of the takings cases this Court has considered in the past forty years, including *Nollan* and *Dolan*, the two decisions at the heart of the case at bar. *See*, *e.g.*, *Kaiser Aetna v. United States*, 444 U.S. 164 (1979); *Agins v. City of Tiburon*, 447 U.S. 255 (1980); *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1 (1990); *Yee v. City of Escondido*, 503 U.S. 519 (1992); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002); *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005); *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005); *Kelo v. City of New London*, 545 U.S. 469 (2005); *Winter v. Natural Res. Def. Council*, 555 U.S. 7 (2008); *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Protection*, 130 S. Ct. 2592 (2010). Most recently, OCA

filed an amicus brief in *Arkansas Game & Fish Comm'n v. United States*, No. 11-597 (cert. granted Apr. 2, 2012).

OCA members have also authored treatises, books, and law review articles on regulatory takings, eminent domain, and the exactions issue, including MICHAEL M. BERGER, TAKING SIDES ON TAKINGS ISSUES (Am. Bar Ass'n 2002 (chapter: *What's "Normal" About Planning Delay?*); Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 WASH. U.J.L. & POLICY 99 (2000); Michael M. Berger & Gideon Kanner, *Thoughts on the White River Junction Manifesto: A Reply to the "Gang of Five's" Views on Just Compensation for Regulatory Taking of Property*, 9 LOY. L.A.L. REV. 685 (1986); WILLIAM G. BLAKE, THE LAW OF EMINENT DOMAIN – A FIFTY STATE SURVEY (Am. Bar Ass'n 2012) (editor); LESLIE A. FIELDS, COLORADO EMINENT DOMAIN PRACTICE (2008); JOHN HAMILTON, KANSAS REAL ESTATE PRACTICE AND PROCEDURE HANDBOOK (2009) (chapter on *Eminent Domain Practice and Procedure*); JOHN HAMILTON & DAVID M. RAPP, LAW AND PROCEDURE OF EMINENT DOMAIN IN THE 50 STATES (Am. Bar Ass'n 2010) (Kansas chapter); Gideon Kanner, *Making Laws and Sausages: A Quarter-Century Retrospective of Penn Central Transportation Co. v. City of New York*, 13 WM. & MARY BILL OF RTS. J. 679 (2005); Michael Rikon, *Moving the Cat into the Hat: The Pursuit of Fairness in Condemnation, or, Whatever Happened to Creating a "Partnership of Planning?"*,

4 ALB. GOV'T L. REV. 154 (2011); Randall A. Smith, *Eminent Domain After Kelo and Katrina*, 53 LA. BAR J. 363 (2006); ROBERT H. THOMAS, EMINENT DOMAIN: A HANDBOOK ON CONDEMNATION LAW (Am. Bar Ass'n 2011) (chapters on *Prelitigation Process*, *Flooding and Erosion*); Robert H. Thomas, *et al.*, *Of Woodchucks and Prune Yards: A View of Judicial Takings From the Trenches*, 35 VT. L. REV. 437 (2010).

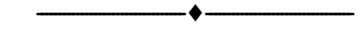
OCA believes that its members' long experience in advocating for property owners and protecting their constitutional rights will provide an additional, valuable viewpoint on the issues presented to the Court.

SUMMARY OF ARGUMENT

It is no great stretch to apply the nexus and proportionality standards to *all* exactions, and not just those demanding land. Like land, money is property, and should be subject to the same rules. Requiring compliance with *Nollan* and *Dolan* when government seeks money or other property in exchange for discretionary permits will not impose a significant burden on land planners, other than the requirement that they, like other officials, follow the Constitution. If the constable must understand the limitations the Constitution places on her powers, so must the planner. *See San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621, 661 n.26 (1981) (Brennan, J., dissenting). The standards for land exactions articulated in *Nollan* and *Dolan* have been

part of the regulatory landscape for nearly two decades, yet planning has not ground to a halt as a result. Indeed, in those jurisdictions in which state and local officials must adhere to the nexus and proportionality standards for all exactions, regulation is robust and the sky has not fallen. Neither will it fall if the nexus and proportionality standards are applicable everywhere else.

This brief makes two points. First, a requirement that owners provide money or make other tribute as a condition of exercising the constitutional right to own and use property is just as much a taking as a requirement that owners donate land, because money, like land, is property protected from uncompensated expropriation. Second, applying heightened scrutiny to monetary and other exactions will not unduly interfere with land-use planning. Indeed, requiring that state and local governments demonstrate a nexus and rough proportionality for land exactions has improved planning by making the rules more concrete and the process more transparent. There is no reason to believe the same will not hold true when applied to all exactions.



ARGUMENT

I. THE FIFTH AMENDMENT PROTECTS ALL PROPERTY, INCLUDING MONEY

In *Dolan*, this Court explained that the "government may not require a person to give up a constitutional right – here the right to receive just

compensation when property is taken for a public use – in exchange for a discretionary benefit conferred by the government where the benefit has little or no relationship to the property." *Dolan*, 512 U.S. at 385. The point of this analysis is not to insure that compensation is paid *post hoc* as in most other circumstances where the Takings Clause is invoked. Rather, the nexus and proportionality requirements serve as proscriptive checks on the exercise of government's police power by forcing regulators to expressly articulate the relationship between the exaction and the owner's proposed use, and by insuring the owner is not being required to bear more than his proportionate share of public burdens. *Compare Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194 (1985) (Takings Clause does not proscribe the taking of property, only takings without compensation) *with Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) (the Takings Clause "stands as a shield against the arbitrary use of governmental power"), *and Babbitt v. Youpee*, 519 U.S. 234, 239 (1997) (affirming district court's invalidation of statute for violation of the Takings Clause because statute "made no provision for the payment of compensation"). *Nollan* and *Dolan* represent a "special application" of the unconstitutional conditions doctrine in the land-use arena. *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 547 (2005). In these situations, the Constitution requires "especially strong justification by the state." Kathleen M. Sullivan, *Unconstitutional Conditions*, 102 HARV. L. REV. 1415, 1419 (1989). Although it is wrong for

government to force someone to choose between surrendering their rights in order to receive a government *benefit*, it is even more odious to force this choice on someone who seeks to exercise a *fundamental civil right* – in this case, the right to use her own land. *Nollan*, 482 U.S. at 833 n.2 ("the right to build on one's own property . . . cannot remotely be described as a 'governmental benefit'"). *Cf. Sherbert v. Verner*, 374 U.S. 398 (1963) (state may not refuse unemployment benefits to person who rejects job requiring him to work on day when his religion requires him to rest); *Pickering v. Board of Educ.*, 391 U.S. 563 (1968) (school may not discharge teacher for exercising his First Amendment right to free speech).

Contrary to the Florida court's assertion, neither *Nollan* nor *Dolan* – nor any of this Court's subsequent decisions – establish an artificial distinction between exactions of land and all other demands. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 77 So. 3d 1220, 1230 (Fla. 2011) ("Moreover, in *Del Monte Dunes* and *Lingle*, the United States Supreme Court specifically limited the scope of *Nollan* and *Dolan* to those exactions that involved the dedication of real property for a public use."). Such a distinction would require this Court to conclude that money is not a property interest protected by the Takings Clause. This Court, however, repeatedly has concluded that money is a property interest. *See*, *e.g.*, *Brown v. Legal Found. of Washington*, 538 U.S. 216, 235 (2003) (interest earned on principal is property); *Eastern Enterprises v. Apfel*, 524 U.S. 498, 523 (1998)

(plurality) (assets); *Phillips v. Washington Legal Found*., 524 U.S. 156, 167 (1998) ("the principal held in . . . trust accounts is the 'private property' of the client"); *Webb's Fabulous Pharmacies*, 449 U.S. at 164 (1980) (interest earned on principal is property). This Court has also recognized other varied interests as property. *See*, *e.g*., *Hodel v. Irving*, 481 U.S. 704 (1987) (right of descent and devise is property); *Ruckleshaus v. Monsanto*, 467 U.S. 986, 1002 (1984) (intellectual property); *Andrus v. Allard*, 444 U.S. 51 (1979) (eagle feathers); *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (mortgages); *Kimball Laundry Co. v. United States*, 338 U.S. 1, 9-11 (1949) (business goodwill); *Lynch v. United States*, 292 U.S. 571, 579 (1934) (contracts). In *Nollan*, this Court held "[w]e view the Fifth Amendment's Property Clause to be more than a pleading requirement, and compliance with it to be more than an exercise in cleverness and imagination." *Nollan*, 483 U.S. at 839. Yet, enshrining a distinction between land and all other property interests would do just that.

This Court has not "specifically limited" *Nollan* and *Dolan* as the Florida court concluded, and should now confirm that the nexus and proportionality standards govern all exactions, because the dynamics in the case at bar are precisely the same as those compelling the *Nollan* and *Dolan* requirements. Those requirements are designed to restrain government's temptation to take advantage of an owner seeking development permissions to force the owner

to shoulder a greater burden than her proposed use is shown to cause. Forcing the owner to bear an excess burden violates the Takings Clause. *See Armstrong*, 364 U.S. at 49 (Takings Clause is designed "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."). A government demand for money should not be subject to lesser standards than demands for other forms of property because *Armstrong*'s rationale applies whether the excess burden is measured in square feet or in dollars.

Numerous state courts are in accord. For example, the Colorado Supreme Court held that damage awards are property because a money judgment "is substantially equivalent to . . . money itself." *Kirk v. The Denver Publishing Co*., 818 P.2d 262, 269 (Colo. 1991). The court held that a statute which mandated payment to the state of one-third of certain judgments worked a taking:

> Our conclusion derives from the nature of an exemplary damages award as a private property right, the confiscatory character of the "taking" mandated by the statute, and the manifest absence of a reasonable nexus between the statutory taking of one-third of the exemplary damages award and the cost of any governmental services[.]

Id. at 265. Applying the *Armstrong* rationale, the court concluded the statute was a taking because it "has the effect of forcing a select group of citizens –

persons who obtain a judgment for exemplary damages and are successful in collecting on the judgment – to bear a disproportionate burden of funding the operations of state government, which, 'in all fairness and justice, should be borne by the public as a whole.'" *Id*. at 271-72 (quoting *Webb's Fabulous Pharmacies*, 449 U.S. at 163; *Armstrong*, 364 U.S. at 49).

See also Ehrlich v. Culver City, 911 P.2d 429, 447 (Cal. 1996) ("when . . . a government imposes special, discretionary permit conditions on development," the Fifth Amendment governs "whether they consist of possessory dedications or monetary exactions"); *Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 135 S.W.3d 620, 635 (Tex. 2004) (condition requiring improvements to abutting streets could be a taking because by requiring action, the condition is not a use restriction, but "is much closer to a required dedication of property – that being the money to pay for the required improvement."); *Home Builders Ass'n v. City of Beavercreek*, 729 N.E.2d 349, 354-58 (Ohio 2000) (applying the *Nollan* and *Dolan* requirements to impact fee); *Trimen Dev. Co. v. King County*, 877 P.2d 187, 189-90 (Wash. 1994) (park development fee requirement is a taking of property); *Smith v. Price Dev. Co*., 125 P.3d 945, 953 (Utah 2005) (taking of money is a taking of property).

Nor was it the rationale in *Nollan* and *Dolan* that the easements demanded in those cases were subject to heightened scrutiny because they required public access to the owners' land, and thus were

takings subject to the "physical invasion" *per se* rule. This Court rejected that distinction in *Brown*, holding that the transfer of money (in that case, Interest on Lawyers Trust Accounts) was "akin to the occupation of a small amount of rooftop space" at issue in *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 441 (1982) (affirming "traditional rule that a permanent physical occupation of property is a taking"). *See Brown*, 538 U.S. at 235.

From the viewpoint of property owners, it makes little difference whether the government demands land, or the exaction is labeled an "in-lieu fee," an "impact fee," a "set-aside," a "housing linkage fee," a "community fee," a "fair share fee," or a "workforce housing requirement." This is so because the worth of the property demanded in return for permission to build is ultimately measured in money, at least from a constitutional standpoint; underlying the Just Compensation Clause is the idea that justice is determined by the amount of money to which an owner is entitled when property is taken. *See* John Fee, *The Takings Clause as a Comparative Right*, 76 S. CAL. L. REV. 1003, 1038 (2003) (money "is the currency with which government pays for property interests under the Takings Clause").

Absent a determination that money is property protected by the Takings Clause, economic difficulties that municipalities around the nation are presently experiencing may tempt these governments to view appropriative demands as shortcuts to paying for needed or desired public benefits. *Dolan*, 512 U.S. at

374 ("A strong public desire to improve the public condition [does not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.") (citation omitted).

A hypothetical highlights the absurdity of different constitutional tests for land exactions and for demands for money or other property interests. A requirement that a property owner provide a public easement on his land in return for development approvals would be subject to the nexus and proportionality requirements of *Nollan* and *Dolan*. Under the rationale of the Florida court, however, a local government's demand for cash would not be, even if it would wildly exceed any impact the proposed use may have. It would be valid as long as the government "could rationally have decided" that the exaction "might achieve" a legitimate objective. *See Nollan*, 483 U.S. at 843 (Brennan, J., dissenting) (quoting *Minnesota v. Clover Leaf Creamery Co*., 449 U.S. 456, 466 (1981)). In this scenario, nothing would prevent the government from exacting the cash, then exercising eminent domain to take the public easement at fair market value, then pocketing the excess while avoiding the nexus and proportionality requirements for the easement. In that case, the unchecked monetary exaction approaches an "out-and-out plan of extortion," not a rational system of land-use planning. *Nollan*, 483 U.S. at 837. Only by confirming a rule that all exactions must have an essential nexus and be roughly proportional to the burdens a proposed use will have can this scenario be avoided.

II. COMPLIANCE WITH THE CONSTITUTION MAKES FOR BETTER PLANNING

The Florida court concluded it was "necessary and logical" to exempt demands for cash or other property from heightened scrutiny because applying the nexus and proportionality standards to those exactions would curtail the ability of local governments to bargain with property owners. *Koontz*, 77 So. 3d at 1231. This rationale fails for at least two reasons.

First, even assuming it were true, curtailment of government's bargaining power by adherence to the Constitution is not a legitimate concern. This Court twice has rejected fears that its takings rules would unduly hinder local land-use planners. In *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304 (1987), the dissenting Justices argued against the requirement of compensation for temporary takings because it might have chilled the fervor of local governments: "[c]autious local officials and land-use planners may avoid taking any action that might later be challenged and thus give rise to a damages action. Much important regulation will never be enacted, even perhaps in the health and safety area." *Id*. at 340-41 (Stevens, J., dissenting) (footnote omitted). Similarly, in *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), Justice Stevens argued that adoption of a *per se* takings rule "will, I fear, greatly hamper the efforts of local officials and planners who must deal with increasingly complex problems in land-use and environmental

regulation." *Id*. at 1070 (Stevens, J., dissenting). These concerns were discounted at the time, and have, in retrospect, proven overblown. *See First English*, 482 U.S. at 321 ("We realize that even our present holding will undoubtedly lessen to some extent the freedom and flexibility of land-use planners and governing bodies of municipal corporations when enacting land-use regulations."). Fidelity to the Constitution is more important than a local government's freedom to bargain. *First English*, 482 U.S. at 321 (many of the provisions of the Constitution are designed to limit the flexibility and freedom of government authorities").

Second, the nexus and proportionality tests do not prohibit exactions, but merely condition imposition on the government first articulating its justifications. Contrary to the Florida court's conjecture, land-use planning is more likely to benefit from clear rules. As Justice Brennan noted:

> Even if I were to concede a role for policy considerations, I am not so sure that they would militate against requiring payment of just compensation. Indeed, land-use planning commentators have suggested that the threat of financial liability for unconstitutional police power regulations would help to produce a more rational basis of decisionmaking that weighs the costs of restrictions against their benefits. . . . Such liability might also encourage municipalities to err on the constitutional side of police power regulations, and to develop internal

> rules and operating procedures to minimize overzealous regulatory attempts. . . . After all, a policeman must know the Constitution, then why not a planner? In any event, one may wonder as an empirical matter whether the threat of just compensation will greatly impede the efforts of planners.

San Diego Gas & Elec., 450 U.S. at 661 n.26 (Brennan, J., dissenting) (citations omitted). Justice Brennan's wonderment was confirmed by an empirical study of "the ways in which the new constitutional standards established by *Nollan* and a follow up case, *Dolan v. City of Tigard*, have affected municipal planning behavior" in California, a jurisdiction in which nexus and proportionality are required by *Ehrlich*, 911 P.2d at 433, and the state's Mitigation Fee Act, CAL. GOV'T CODE § 66601(a) (West 2012). *See* Ann E. Carlson & Daniel Pollack, *Takings on the Ground: How the Supreme Court's Takings Jurisprudence Affects Local Land Use Decisions*, 35 U.C. DAVIS L. REV. 103, 105 (2001) (footnote omitted). This study concluded that despite initial "fears about the potentially chilling effects on land use practices . . . [t]he decisions seem to have nudged many localities into more systematic, comprehensive planning through the preparation of reports and studies justifying and documenting the rationale for exacting money or land from developers." *Id*. The study noted it was "surprising and counterintuitive" that planners actually accepted the nexus and proportionality requirements:

> Contrary to initially negative reactions to the Court decisions, we found that an overwhelming percentage of California planners now view the *Nollan* and *Dolan* cases not as an encroachment upon their planning discretion but instead as establishing "good planning practices."

Id. See also id. at 142 ("[A] very large percentage of municipal planners view the Supreme Court takings precedents favorably [and] . . . 74 percent of city planners and 83 percent of county planners either mostly or strongly agree that *Nollan* and *Dolan* amount to good planning practice."). The nexus and proportionality requirements have not held back local governments:

> Many speculated in the post-*Nollan* environment that the takings rulings would restrain the regulatory hand of local governments. Our evidence shows, however, that *Nollan* and *Dolan* have in many cases had a different effect altogether. When municipalities pay greater attention to nexus and rough proportionality, and engage in more systematic, long-range planning they often can justify *higher* fees than they previously charged.

Id. at 122 (emphasis original).

Application of the nexus and proportionality requirements to all exactions may also spur local governments and property owners to contract for development, a much more predictable and stable

planning environment. *Nollan* and *Dolan* appear to have had this effect. *See* Steven P. Frank, *Yes in My Backyard: Developers, Government and Communities Working Together Through Development Agreements and Community Benefit Agreements*, 42 IND. L. REV. 227, 227 (2009) ("[D]irect negotiations between developers and local government are growing in prominence as a means of dispute resolution."); David L. Callies & Julie A. Tappendorf, *Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After* Nollan *and* Dolan, 51 CASE W. RES. L. REV. 663, 663 (2001) ("Formal agreements between landowners and local government respecting the use of land have increased substantially over the past twenty-five years."); Carlson & Pollack, *Takings on the Ground*, 35 U.C. DAVIS L. REV. at 107 ("the *Nollan* and *Dolan* cases appear to encourage many jurisdictions to shift away from demanding land exactions from developers and toward imposing fees"). There is no reason to believe that application of the nexus and proportionality standards to all exactions would not be similarly viewed and have similar consequences. Indeed, since money is fungible and easier to tailor to any impacts which may be the result of a proposed use of property – both in relationship and in scale – the nexus and proportionality standards should be easier to apply than land exactions. *See id*.

In the absence of rules, local governments may be drawn to regulatory excess because there is little

incentive for restraint, especially when money is tight and officials feel the pressures of a down economy. *See* Carlson & Pollack, *Takings on the Ground*, 35 U.C. DAVIS L. REV. at 120 ("Jurisdictions with significant unfunded infrastructure need and little developable land appear to face the greatest temptation to impose excessive exactions."). Take, for example, the notorious attempts in the 1980s by the City and County of Honolulu to impose a $100 million impact fee on golf course development. *See* DAVID L. CALLIES, PRESERVING PARADISE: WHY REGULATION WON'T WORK 45 (1994). *See also* Jose F. Vera, *Sometimes an Impact Fee is Not Just an Impact Fee: The Possible Inequitable Application of Hawaii's Impact Fee Statute to Foreign Investors*, 3 PAC. RIM LAW & POLICY J. 465, 467 (1995) ("In 1990, a Japanese golf course developer agreed to pay an $111 million impact fee for a recently completed golf course and further agreed to pay $200 million in community impact fees for permission to build two more Oahu golf courses."). Under the Florida court's formulation, neither of these would be subject to serious review, even though it is difficult to square such *ad hoc* exactions with the comprehensive land use planning regime which forms the foundation of judicial deference. *See Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). The answer is not that monetary exactions are immune from *Nollan*'s and *Dolan*'s modest requirements that the government articulate a connection between a proposed use and the property surrendered and show the exaction is scaled to the impacts of the use. Unchecked power to impose exactions is deleterious to a system in

which private property forms the basis of a free society.

CONCLUSION

The judgment of the Florida Supreme Court should be reversed.

Respectfully submitted,

ROBERT H. THOMAS
Counsel of Record
DAMON KEY LEONG KUPCHAK HASTERT
1003 Bishop Street, 16th Floor
Honolulu, Hawaii 96813
(808) 531-8031
rht@hawaiilawyer.com

Counsel for Amicus Curiae
Owners' Counsel of America