No.

In the Supreme Court of the United States

THE COALITION FOR FAIRNESS IN SOHO AND NOHO, INC.; KAY POWELL; AMIT SOLOMON; IAN KERNER; LISA RUBISCH; SARA BERSHTEL; JENNIFER PETTIT; LYNN SCHNITZER; ARTHUR SCHNITZER; CATERINA ROIATTI; ROBERT TRABOSCIA,

Petitioners,

v.

CITY OF NEW YORK, ET AL.,

Respondents.

On Petition For A Writ Of Certiorari To The New York Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The New York City neighborhoods of SoHo and NoHo contain 1,636 lofts subject to a highly restrictive and outdated zoning designation limiting occupancy to City-certified artists. But few certified artists remain, leaving the mostly non-artist current residents bereft of qualified buyers. Residents seeking to transition to a standard residential zoning designation must obtain a conversion permit. But to apply for a permit, residents must pay more than $100 per square foot—hundreds of thousands of dollars per home—into a City-administered "Arts Fund."

Residents challenged the fee as an unconstitutional permit condition. Under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), the Fifth Amendment's Takings Clause limits the government's power to demand property from permit applicants in exchange for approval. *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013), recognized that these limits extend to monetary demands. But the New York Court of Appeals refused to apply *Nollan* and *Dolan*. Conflicting with other state high courts, it held that a monetary demand triggers the unconstitutional conditions doctrine only where it is imposed in lieu of a dedication of real property.

The question presented is:

Does the protection the Takings Clause provides to land-use permit applicants encompass monetary demands beyond those imposed in lieu of a dedication of real property?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners were petitioners in the Supreme Court of New York, County of New York, appellants in the Supreme Court of New York, Appellate Division, and respondents in the New York Court of Appeals. The case began in the trial court as an Article 78 petition. This is a mechanism under New York law to challenge decisions of local governments. Petitioners are the Coalition for Fairness in SoHo and NoHo, Inc.; Kay Powell; Amit Solomon; Ian Kerner; Lisa Rubisch; Sara Bershtel; Jennifer Pettit; Lynn Schnitzer; Arthur Schnitzer; Caterina Roiatti; and Robert Traboscia.

Respondents were Respondents in the Supreme Court of New York. They are the City of New York; New York City Department of City Planning; New York City Planning Commission; New York City Council; and Zohran Mamdani, in his official capacity as Mayor of the City of New York.[1]

The Coalition for Fairness in SoHo and NoHo, Inc., does not have a parent corporation, and no publicly held corporation owns more than 10% of its stock. The remaining Petitioners are natural persons.

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[1] Eric Adams was Mayor when the Article 78 petition was filed in the Supreme Court of New York. Zohran Mamdani replaced him on January 1, 2026.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Coalition for Fairness in SoHo & NoHo, Inc. v. City of New York, No. 112 (N.Y. Jan. 13, 2026)

Coalition for Fairness in SoHo & NoHo, Inc. v. City of New York, No. 2023-05338 (N.Y. App. Div. Dec. 5, 2024)

Coalition for Fairness in SoHo & NoHo, Inc. v. City of New York, No. 151255/2022 (N.Y. Sup. Ct. Oct. 6, 2023)

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PETITION FOR A WRIT OF CERTIORARI

New York City is withholding permits for a necessary zoning change to force a group of private property owners in Lower Manhattan to fund public art. App. 81a-82a. Artist-restricted housing in the SoHo and NoHo neighborhoods is an outdated relic of the area's manufacturing history. App. 56a. That is why the City rezoned the area to encourage general residential use, banning the restrictive zoning going forward. App. 81a. But the rezoning comes with a price levied *only* on the residents of designated artist housing. Under the challenged Zoning Resolution, a resident seeking to convert a loft to residential use must obtain a conversion permit. App. 81-82a. Even to apply for this permit, each owner must pay more than $100 per square foot—more than $250,000 for the typical home—into the City's "Arts Fund." *Ibid.*; *see also* App. 28a. When multiplied by the 1,636 artist-restricted homes, the City demands more than $450 million from residents in exchange for a zoning change that is consistent with its general plan.

Because the City demands that residents surrender their property—money—as a condition to obtain a land-use permit, the state intermediate appellate court applied this Court's land-use exactions precedents, *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). App. 55a-57a. Those cases make clear that the Constitution permits the government to demand property in exchange for a land-use permit only if "there is a 'nexus' and 'rough proportionality' between the property that the government demands and the social costs of the applicant's proposal." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S.

595, 605-06 (2013). Under this standard, the New York Supreme Court, Appellate Division, unanimously concluded that the Arts Fund fee is an unconstitutional condition on the residents' permit applications because it is unrelated to any legitimate City interest in denying conversions and does not mitigate any actual impact of the conversions. App. 56a-57a.

The New York Court of Appeals reversed. App. 26a. In sustaining the Arts Fund fee, the Court of Appeals did not challenge the lower court's *Nollan* and *Dolan* analysis. Instead, it adopted a categorical rule excluding monetary exactions from heightened scrutiny altogether. Although *Koontz* held that "the government's demand for property from a land-use permit applicant must satisfy the requirements of *Nollan* and *Dolan* . . . even when its demand is for money," 570 U.S. at 619, the Court of Appeals limited this holding to money demanded in lieu of a requirement that the applicant dedicate real property. App. 20a-25a. Because the City demanded a monetary contribution to the Arts Fund rather than an interest in real property, the Court of Appeals held that the demand did not trigger the protections of *Nollan* and *Dolan*. App. 24a-25a.

Nollan, *Dolan*, *Koontz*, and *Sheetz v. El Dorado County*, 601 U.S. 267 (2024), recognized important limits on the government's power to use its leverage over a land-use permit applicant to force a property owner "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). By excluding monetary exactions from these protections, the decision below creates a roadmap for permitting authorities to evade *Nollan* and *Dolan*. Under its

logic, instead of demanding real property or in-lieu fees to purchase offsite property, governments could simply impose an extortionate fee to support any public purpose—even condemnation of public easements otherwise unlawful under *Nollan* and *Dolan*. *See Koontz*, 570 U.S. at 612 (without heightened scrutiny for monetary exactions, "it would be very easy for land-use permitting officials to evade the limitations of *Nollan* and *Dolan*"); David A. Dana, *Land Use Regulation in an Age of Heightened Scrutiny*, 75 N.C. L. Rev. 1243, 1260 n.88 (1997) (if *Nollan* and *Dolan* do not extend to monetary conditions, governments "could rely on monetary conditions to reach the same objectives they previously achieved by means of non-monetary conditions"). Consequently, *Nollan* and *Dolan* would cease to be effective limits on the government's permitting power.

The Court covered much of this ground in *Koontz*, which applied the logic of *Nollan* and *Dolan* to monetary exactions. But the Court of Appeals' decision opened a split over whether *Koontz* applies broadly to all monetary exactions, or, as the Court of Appeals held, only to those monetary exactions explicitly imposed in lieu of a demand for real property. *Compare* App. 20a-25a *with Anderson Creek Partners, L.P. v. Cnty. of Hartnett*, 876 S.E.2d 476, 496 (N.C. 2022) (concluding that "the 'monetary exactions' with which *Koontz* was concerned were not limited to 'in lieu of' fees and, instead, encompassed a broader range of governmental demands for the payment of money as a precondition for the approval of a land-use permit"). Certiorari is warranted to resolve this conflict, which has implications for land-use permitting nationwide.

Certiorari is also warranted because the Court of Appeals' analysis conflicts with this Court's traditional understanding of the unconstitutional conditions doctrine. Specifically, the Court of Appeals' assumption that the Arts Fund fee could not trigger the doctrine because it is a mere financial obligation cannot be reconciled with this Court's consistent recognition that the government violates the Takings Clause when it seizes money tied to a particular property interest. *See, e.g.*, *Webb's Fabulous Pharmacies v. Beckwith*, 449 U.S. 155, 163-65 (1980); *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 236, 240 (2003). Indeed, *Koontz* cited these precedents, along with cases recognizing the seizure of a lien as a taking, for the proposition that a monetary obligation may trigger *Nollan* and *Dolan*. 570 U.S. at 613, 616-17 (citing *Armstrong*, 364 U.S. at 44-49, and *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 601-02 (1935)). Relatedly, the court below mistakenly focused on the residents' lack of entitlement to conversion, App. 18a-19a, something that is never relevant in this Court's unconstitutional conditions precedent because there is no need to apply for something to which one is automatically entitled.

This case presents a clean vehicle to resolve these important conflicts. The New York Court of Appeals addressed only whether *Nollan* and *Dolan* apply where the permitting agency demands money not in lieu of a demand that the applicant cede a real property interest. There is no credible argument that the Arts Fund fee is a tax or user fee. So, much like *Koontz* and *Sheetz*, this petition presents only the predicate question of law: whether the City must satisfy the nexus and proportionality tests before it can force selected residents to subsidize public art in

exchange for a conversion permit. Whether the Arts Fund fee can satisfy these tests will be left to the lower courts on remand. Here, the Court need only answer a pure question of law that has percolated in the lower courts for more than a decade. A clear answer would provide much-needed certainty to landowners and permitting authorities confronted with monetary conditions applied to millions of land-use permits sought each year across America.

OPINIONS BELOW

The opinion of the New York Court of Appeals (App. 1a) will be reported and is currently available at 2026 WL 88133. The opinion of the Appellate Division (App. 54a) is reported at 233 A.D. 3d 433. The opinion of the Supreme Court of New York (App. 58a) is unpublished, but available at 2023 WL 6535289.

JURISDICTION

The judgment of the New York Court of Appeals was entered on January 13, 2026. This Court has jurisdiction under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part, "nor shall private property be taken for public use, without just compensation."

New York City Zoning Resolution 143-13, in relevant part, is reprinted at App. 81a.

STATEMENT OF THE CASE

A. History of Land Use in SoHo and NoHo

SoHo and NoHo are lower Manhattan neighborhoods centered around Houston Street.[1] Between the Civil War and World War II, both neighborhoods were important manufacturing centers. App. 4a. But manufacturing began to decline in the postwar years, and by the 1960s the neighborhoods contained many vacant buildings. *Ibid.* These abandoned cast-iron lofts, with their large floor plans, high ceilings, and sturdy floors, attracted many artists to the area. *Ibid.* But SoHo and NoHo were still zoned for manufacturing use, so artists living and working in the lofts were engaged in a nonconforming use. *See* App. 4a, 50a.

To rectify this situation, in 1971 the state legislature enacted Article 7-B of the Multiple Dwelling Law. The law established a new designation—"joint living-work quarters for artists," or JLWQA—and allowed artists to convert manufacturing lofts to JLWQA to legalize their occupancy as long as they met certain health and safety standards. N.Y. Mult. Dwell. §§ 275-278. Gradually, the legislature allowed conversion of different types of manufacturing units to JLWQA. *See, e.g.*, *id.* §§ 280-287.

New York City continued to zone the areas for manufacturing use, prohibiting general residential

[1] SoHo is short for "South of Houston Street;" NoHo for "North of Houston Street." *See* App. 3a.

and retail use. Envision at 36.[2] City zoning law permitted only those who were certified as artists by the Department of Cultural Affairs, and their families, to occupy JLWQA homes. App. 4a-5a, 60a. The JLWQA restriction was legally designated as a manufacturing use.[3] It sought to balance legalizing the artists' residences with the City's desire to protect the neighborhoods' remaining manufacturing jobs from large-scale residential and retail development. Envision at 40.

Yet the City never effectively enforced the artist restriction. By 1983, a Department of City Planning survey showed that certified artists occupied only 30% of JLWQA units. Envision at 39. In 1986 the City passed an "interim" measure that allowed non-artists to remain in their homes and permitted family members of certified artists to remain there when the artists moved out or died. *See* App. 6a. Meanwhile, the number of artists the City certified each year plunged, effectively eliminating any legal market for JLWQA-designated homes. Envision at 39. The City's non-enforcement of the JLWQA restriction combined with a lack of eligible artist-buyers rendered the JLWQA designation obsolete. App. 56a (acknowledging the Envision Report's conclusion that the JLWQA restriction is "outdated"). Consequently,

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[2] The Department of City Planning's November 2019 "Envision SoHo/NoHo" Report was part of the record below and referenced in the court's opinions. *See, e.g.*, App. 4a-6a. It is cited as "Envision" here for clarity. It is available at https://tinyurl.com/3873s7ew (last visited Apr. 6, 2026).

[3] The purpose of JLWQA was "to protect residences from an undesirable environment and to ensure the reservation of adequate areas for industrial development." Zoning Resolution 41-11 (1971), https://tinyurl.com/3r9npb78.

SoHo and NoHo grew into the mixed-use neighborhoods they are today.

B. The Rezoning and the Arts Fund Fee

This situation persisted until 2018, when the City finally endeavored to update the zoning in SoHo and NoHo. In the Envision SoHo/NoHo Report, the Department of City Planning recognized that "[p]olicies enshrined in zoning and other regulations in the early 1970's have become ineffective tools to manage and support the vibrant mixed-use environments that define the neighborhoods today." Envision at 11. It recognized that "many residents who are not certified artists are caught in legal limbo," while "residents who are themselves certified artists have a limited ability to sell, rent, and grant units." Envision at 40. Particularly due to the dearth of certified artists—fewer than five per year in some recent years—"owners of market-rate rental buildings struggle with finding certified artist tenants to comply with legal requirements." *Ibid.* The report concluded that the JLWQA restriction was "outdated." Envision at 62.

But rather than simply permitting residential use of JLWQA homes, the City proposed a "conversion" process. To convert a JLWQA home to residential use, an owner would have to apply for a permit and pay into a City-administered Arts Fund. Despite overwhelming public opposition—including a 36-1 nay vote from the local Community Board—the City ultimately approved the rezoning conversion process with the mandatory Arts Fund fee. *See* App. 30a-31a.

Under the 2021 Zoning Resolution, general residential and retail uses are permitted as of right in SoHo and NoHo *except* for existing JLWQA residents.

See App. 56a. The Zoning Resolution bans new JLWQA units and effectively requires existing non-artist residents of such units to apply for a permit to convert their homes to general residential use. App. 81a-82a.[4] Conversion serves no health and safety purpose because JLWQA homes are already certified as fit for occupation by the City's Department of Buildings.[5]

Before applying for a conversion permit, applicants must pay "a non-refundable contribution" to the "SoHo-NoHo Arts Fund" in the amount of "$100 per square foot of floor area to be converted." App. 81a-82a.[6] The City has no specific plans for its windfall

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[4] As written, the City's rezoning effectively forced JLWQA residents who are not certified artists (nearly all of them) to convert or remain subject to fines or other enforcement for maintaining a nonconforming use. *See* New York City Dep't of Buildings, *Converting from JLWQA to Residential Use*, https://tinyurl.com/3wa3j2xm (last visited Apr. 6, 2026) (listing potential enforcement mechanisms). State law now permits each resident living in a JLWQA home on the date of the rezoning to remain there as if he or she were a certified artist. *See* App. 62a. This removed the immediate threat of displacement, but not the eventual need to convert.

[5] The parties stipulated in the trial court that conversions are essentially ministerial undertakings because "the building regulations applying to JLWQA and Residential UG2 are similar." *Coalition for Fairness in SoHo & NoHo, Inc. v. City of New York*, Supreme Court, New York County, Index No. 151255/2022, NYSCEF Doc. No. 171, at 4 (June 16, 2023).

[6] The amount increases annually to account for inflation. Each additional dollar per square foot increases the overall fee about $2,500. The current fee stands at $115.76 per square foot. New York City Dep't of City Planning, *Rules for Special Areas*, https://tinyurl.com/3ymyv2yw (last visited Apr. 6, 2026). Thus, the cost to apply for a conversion permit now approaches $300,000 for most homes.

and only the vaguest constraints on how it is spent. According to the City, the fee is designed to "support arts programming, projects, organizations, and facilities that promote the public presence of the arts" in lower Manhattan and "extend[] the cultural legacy of SoHo and NoHo generally." App. 31a (quoting Zoning Resolution § 143-002).

Conversions are theoretically voluntary. But in practice, JLWQA residents have little choice but to pay the fee and seek conversion eventually. *See supra* n.4. Because so few certified artists remain, the market for artist-restricted housing is extremely limited. *See* Envision at 39-40. And the current residents will not live forever—when a present JLWQA owner dies, someone will have to pay the Arts Fund fee. Eventually, all 1,636 units will have to be converted. This will net the City a windfall of more than $450 million, with nearly boundless discretion on how to spend it.

C. The Lawsuit

Petitioners are JLWQA residents and a nonprofit association representing them ("Residents"). They challenged the Arts Fund fee in New York state court.[7] Among other things, the Residents argued the fee was an unconstitutional monetary exaction that could not satisfy *Nollan* and *Dolan*. App. 71a. The Supreme Court, New York County, upheld the Arts Fund fee. In its view, a conversion permitting process

[7] The Residents brought an Article 78 petition in the Supreme Court of New York. *See* App. 59a-60a. An Article 78 petition is a "special proceeding[] in which a petitioner may obtain speedy review of state administrative action." *Whitfield v. City of New York*, 96 F.4th 504, 511 (2d Cir. 2024).

does not involve "a land use decision which conditioned approval of development on the dedication of property to public use." App. 75a. Characterizing the Arts Fund fee as a standalone monetary exaction not related to a demand for real property, the state trial court refused to apply *Nollan* and *Dolan*. App. 77a.

The Appellate Division unanimously reversed. The five-member intermediate appellate panel held that "[t]he Arts Fund fee constitutes a permit condition for which the 'two-part test modeled on the unconstitutional conditions doctrine' applies." App. 55a-56a (quoting *Sheetz*, 601 U.S. at 270-71, 274-76). It then held that the Arts Fund fee could not satisfy either *Nollan* or *Dolan*. As for *Nollan*'s nexus requirement, the Appellate Division held that the Arts Fund fee "is not related to any land use interest" and does not "promote the asserted legitimate end of preserving JLWQA stock for certified artists." App. 56a-57a. And the fee failed *Dolan*'s rough proportionality test because "the conversion of [JLWQA] units imposes no increased costs to the artistic community." App. 57a. Without evidence of impact flowing from the conversions, no exaction could satisfy proportionality.

The City appealed to the New York Court of Appeals, which reversed in a divided opinion. The majority refused to apply *Nollan* and *Dolan* because it found that the Residents "failed to identify any compensable property interest within the meaning of the Takings Clause that the [Arts Fund] Fee affects." App. 17a. According to the majority, the fee itself could not trigger the unconstitutional conditions doctrine as a categorical matter, because it "is not requested 'in lieu of' a transfer of a private property interest, and thus it would not constitute a

compensable taking if it were imposed directly rather than as a condition of receiving a conversion permit." App. 17a-18a; *see also* App. 20a-25a (reading *Koontz* to extend *Nollan* and *Dolan* only to fees demanded in lieu of a dedication of real property).

Judge Halligan concurred. She agreed with the majority's reading of *Koontz* "as applying only to monetary conditions which are offered as an alternative to a condition that would be a *per se* taking if imposed directly." App. 27a. But she recognized that applying *Nollan* and *Dolan* to monetary exactions "has some merit, and it may well eventually prevail." *Ibid.* And she cast doubt on some of the majority's rationales, writing that she was "not persuaded that the lack of any entitlement to conversion or diminishment in the value of a JLWQA unit resolves the question before us." App. 26a.

Judge Garcia dissented. In his view, *Koontz* requires that "such monetary exactions as conditions on permit approvals be examined under the *Nollan*/*Dolan* standard." App. 41a. Judge Garcia explained that *Koontz* itself did not involve an in-lieu fee and nothing in the opinion limits it to such fees. App. 41a-42a. Instead, a monetary exaction triggers the unconstitutional conditions doctrine because the demand is "linked to a specific identifiable property interest such as . . . parcel of real property," which renders the fee itself the predicate taking. App. 44a (quoting *Koontz*, 570 U.S. at 614). Proceeding to apply *Nollan* and *Dolan*, Judge Garcia agreed with the Appellate Division that the Arts Fund fee failed both tests and is an unconstitutional condition. App. 51a-53a.

REASONS FOR GRANTING THE PETITION

The New York Court of Appeals' categorical holding that the unconstitutional conditions doctrine does not reach monetary exactions unless they are imposed in lieu of a dedication of real property squarely conflicts with the decisions of the North Carolina Supreme Court and several other state courts interpreting *Koontz*. It also diverges from pre-*Koontz* precedent applying heightened scrutiny to monetary demands. Left uncorrected, the Court of Appeals' rule threatens to swallow the protections the Fifth Amendment provides land-use permit applicants against extortionate government demands. Clarity on this point is essential because land-use permitting is ubiquitous across all jurisdictions, affecting millions of landowners. This case presents a clean vehicle to resolve the split. The Court should grant the petition.

I. The Decision Below Opens a Split Among State High Courts Over Whether Monetary Exactions Trigger the Unconstitutional Conditions Doctrine

The New York Court of Appeals' decision exacerbates confusion in the lower courts as to which monetary exactions are subject to *Nollan*/*Dolan* scrutiny. The majority below held that the unconstitutional conditions doctrine provides land-use permit applicants no protection against extortionate fees unless the government imposes the fee in lieu of requiring a dedication of real property. App. 17a-25a. By contrast, the North Carolina Supreme Court in *Anderson Creek* held that "the 'monetary exactions' with which *Koontz* was concerned were not limited to 'in lieu of' fees and, instead, encompassed a broader

range of governmental demands for the payment of money as a precondition for the approval of a land-use permit." 876 S.E.2d at 496.

The existing split harkens back to the one this Court addressed more than a decade ago in *Koontz*. After *Nollan* and *Dolan* established limits on the government's power to use the permitting process to extract property concessions from applicants, several state high courts applied these protections to purely monetary exactions. *See N. Ill. Home Builders Ass'n, Inc. v. Cnty. of Du Page*, 165 Ill. 2d 25, 30-33 (1995) (traffic impact fee); *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 859, 862, 874-76 (1996) (recreation and art fees); *Home Builders Ass'n of Dayton & the Miami Valley v. Beavercreek*, 89 Ohio St. 3d 121, 124, 128 (2000) (traffic impact fee); *Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 135 S.W.3d 620, 622, 639-40 (Tex. 2004) (traffic impact fee). Others disagreed. *See Krupp v. Breckenridge Sanitation Dist.*, 19 P.3d 687, 691, 697 (Colo. 2001) (plant investment exaction not subject to *Nollan* and *Dolan*); *McCarthy v. City of Leawood*, 257 Kan. 566, 568, 580 (1995) (refusing to apply *Dolan* to a traffic impact fee on the ground that "[t]here is nothing in the opinion . . . which would apply the same conclusion to Leawood's conditioning certain land uses on payment of a fee"); *Home Builders Ass'n of Cent. Ariz. v. City of Scottsdale*, 187 Ariz. 479, 480, 486 (1997) (refusing to apply *Dolan* to a water resources fee, distinguishing it on the ground that a fee is a "considerably more benign form of regulation" than a real property exaction).

Koontz also involved a purely monetary exaction. The permitting agency refused to issue a development permit unless Mr. Koontz agreed to finance improvements to government land miles away. 570 U.S. at

601-02. The Florida Supreme Court sided with those courts that limited *Nollan* and *Dolan* to demands for real property. It held the unconstitutional conditions doctrine inapplicable because the government "did not condition approval of the permits on Mr. Koontz dedicating any portion of his interest in real property in any way to public use." *St. Johns River Water Mgmt. Dist. v. Koontz*, 77 So. 3d 1220, 1231 (Fla. 2011). In short, the Florida Supreme Court held that Mr. Koontz could not claim the protection of *Nollan* and *Dolan* because the government demanded money, not real property, in exchange for a permit grant.

This Court granted certiorari to resolve the split among state high courts over whether *Nollan* and *Dolan* "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." Petition for Writ of Certiorari, *Koontz v. St. Johns River Water Mgmt. Dist.*, No. 11-1447, 2012 WL 1961402, at *i-ii (U.S. May 30, 2012). It answered yes, holding that *Nollan* and *Dolan* protect land-use permit applicants against extortionate demands "even when [the] demand is for money." *Koontz*, 570 U.S. at 619.

After *Koontz*, courts initially acknowledged that a monetary demand could serve as the predicate taking to trigger the protections of the unconstitutional conditions doctrine. Describing *Koontz*, a unanimous Utah Supreme Court wrote that "[u]ntil relatively recently," this Court applied *Nollan* and *Dolan* "only where the government demanded a real property right in exchange for a land-use permit." *Alpine Homes, Inc. v. City of W. Jordan*, 424 P.3d 95, 103 (Utah

2017).[8] "But in *Koontz*, the Court examined a fact pattern in which the government essentially demanded money in exchange for a land-use permit." *Ibid.* As a result, the court explained that *Koontz* held "a demand for money in exchange for a land-use permit is an unconstitutional condition under the takings clause unless the government can show an essential nexus and rough proportionality between the amount of money requested and the social costs of the proposed development." *Id.* at 104.

But the story did not end there. Seeking to pare back *Nollan* and *Dolan*, permitting authorities began to argue that *Koontz* extended their protections only to demands made in lieu of a required dedication of real property. The government tried this in *Anderson Creek*, defending an ordinance that required "developers to pay one-time water and sewer 'capacity use' fees associated with each lot that they wish to develop" in exchange for the necessary permit approvals. 876 S.E.2d at 479, 506; *see id.* at 491-92 (summarizing the government's in-lieu argument). But the North Carolina Supreme Court rejected it, holding that "the 'monetary exactions' with which *Koontz* was concerned were not limited to 'in lieu of' fees and, instead, encompassed a broader range of governmental demands for the payment of money as a precondition for the approval of a land-use permit." *Id.* at 496; *see also Charter Twp. of Canton v. 44650, Inc.*, 12 N.W.3d 56, 75 (Mich. Ct. App. 2023) ("*Koontz* did not limit the applicability of the unconstitutional-conditions doctrine to money demands in lieu of dedication"); *Levin v. City & Cnty. of San Francisco*,

[8] The court ultimately ordered dismissal of the takings claims on procedural grounds. *Id.* at 101.

71 F. Supp. 3d 1072, 1082-83 (N.D. Cal. 2014) (applying *Nollan* and *Dolan* to a tenant relocation fee charged in exchange for a permit to remove a unit from the rental market).

Then came this Court's decision in *Sheetz*. Like many pre-*Koontz* exactions cases cited above, *Sheetz* involved a traffic impact fee. The Court unanimously reversed the California Court of Appeal's holding that *Nollan* and *Dolan* do not apply to legislatively-imposed permit conditions, 601 U.S. at 271, explaining that "there is no basis for affording property rights less protection in the hands of legislators than administrators." *Id.* at 279. But Justice Sotomayor's concurrence observed that, in dismissing Mr. Sheetz's claim on the pleadings, the California courts had not determined whether the County's traffic impact fee would be a taking if demanded outside the permitting context—a necessary finding to trigger the unconstitutional conditions doctrine. *Id.* at 280-81 (Sotomayor, J., concurring).

That observation caused further confusion, as some read it to suggest that whether impact fees are subject to *Nollan* and *Dolan* remains an open question. Relying in part on that reading, the New York Court of Appeals below diverged from *Anderson Creek* to hold that the protections of *Nollan* and *Dolan* do not apply to all monetary exactions, but only to those imposed in lieu of a required dedication of real property. *See* App. 16a-17a (relying on Justice Sotomayor's *Sheetz* concurrence). It read *Koontz* as a case where "[t]he unconstitutional conditions doctrine was invoked to prevent the government from coercing the landowner into giving up not the money itself, but instead the easement that the fee was demanded in lieu of." App. 21a. With this understanding, it

categorically limited *Koontz* to in-lieu fees.[9] Many other courts have followed *Anderson Creek*'s reasoning. Most prominently, after remand in *Sheetz*, El Dorado County for the first time raised the argument that *Koontz* applies only to in-lieu fees.[10]

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[9] The Court of Appeals' divergence was at least in part due to its misunderstanding of the facts of *Koontz*. *Koontz* did not involve an in-lieu fee. The Florida courts understood the demand as a pure monetary exaction. *St. Johns River Water Mgmt. Dist. v. Koontz*, 5 So. 3d 8, 12 (Fla. Dist. Ct. App. 2009) (observing that the condition "did not involve a physical dedication of land but instead a requirement that Mr. Koontz expend money to improve land belonging to the District"). Had the exaction been an in-lieu fee, it would have been subject to heightened scrutiny under Florida's long-established exactions doctrine. *See*, *e.g.*, *Hollywood, Inc. v. Broward Cnty.*, 431 So. 2d 606, 611-12 (Fla. Dist. Ct. App. 1983). Under those circumstances, the dispute likely never would have reached the Florida Supreme Court. Thus, this Court's discussion of in-lieu fees in *Koontz*, 570 U.S. at 612, is best understood not as "limiting the reach" of the decision but "simply being a response to the Florida Supreme Court's conclusion that a governmental demand for money rather than an interference in tangible property rights did not constitute a taking." *Anderson Creek*, 382 N.C. at 28.

[10] The posture of *Sheetz* is another example of how Justice Sotomayor's concurrence triggered confusion. Before this Court's decision, the parties and the courts assumed the traffic impact fee was an exaction that would trigger the unconstitutional conditions doctrine if it had been imposed administratively. *Sheetz v. Cnty. of El Dorado*, 84 Cal. App. 5th 394, 405 (2022) ("A land use exaction occurs when the government demands real property or money from a land use permit applicant as a condition of obtaining a development permit."); County of El Dorado Response Br., *Sheetz v. Cnty. of El Dorado*, No. C093682, 2022 WL 1570886, at *31-39 (Cal. Ct. App. Apr. 14, 2022) (acknowledging that "development fees" are exactions). That's because California precedent had long acknowledged impact fees triggered *Nollan* and *Dolan*. *See Ehrlich*, 12 Cal. 4th at 874-76; *All. for Responsible Plan. v. Taylor*, 63 Cal. App. 5th 1072, 1085, 1087 (2021).

The California Court of Appeal rejected it, instead confirming that a government conditioning a building permit on the payment of a traffic impact fee must satisfy *Nollan* and *Dolan*. *Sheetz v. Cnty. of El Dorado*, 335 Cal. Rptr. 3d 316, 331 (Ct. App. 2025) (opinion on remand subsequently ordered depublished), *petition for writ of certiorari pending*, No. 25-958.[11] Other courts agreed, whether explicitly or by implication. *See, e.g.*, *225 Northport, LLC v. Vill. of Northport*, No. 24-CV-2967, 2025 WL 2782360 (E.D.N.Y. Sep. 30, 2025) ("as *Koontz* makes clear, building permit fees must satisfy *Nollan* and *Dolan*"); *Tap House Real Est., LLC v. City of Rochester*, No. 22-cv-492, 2024 WL 3470824 (D. Minn. Jul. 19, 2024) (applying *Nollan* and *Dolan* to traffic-impact fee permit condition and denying motion to dismiss).

Underscoring the stark divide that now exists, both *Anderson Creek* and the decision below drew spirited dissents. The opinions debate whether *Koontz* involved an in-lieu fee. *Compare* App. 40a-41a (Garcia, J., dissenting), *with Anderson Creek*, 876 S.E.2d at 507-08 (Earls, J., dissenting). They also delve into the implications of applying the limitations of *Nollan* and *Dolan* to monetary exactions. *See* App. 23a (majority opinion) (expressing fear that "every fee imposed by the government in connection with a land-use permit would constitute a taking and would need to be 'properly tailored to pass the *Nollan*/*Dolan* test.'" (quoting App. 44a (Garcia, J., dissenting))); *Anderson Creek*, 876 S.E.2d at 507 (Earls, J., dissenting) (calling

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[11] The court ultimately held the fee satisfied *Nollan* and *Dolan*. *See id.* at 333. This demonstrates the difference between finding a monetary exaction *subject* to *Nollan* and *Dolan* and actually invalidating it as an unconstitutional condition.

the application of *Nollan* and *Dolan* to monetary exactions "an unwarranted and unwise expansion of the scope of the Takings Clause that will engender frequent litigation and may ultimately diminish the capacity of municipalities to recoup fees to offset the costs of maintaining vital public infrastructure"). Only this Court can resolve this conflict.

Ultimately, in diverging from the consensus and limiting the reach of *Nollan* and *Dolan*, the New York Court of Appeals decision echoes what the Florida Supreme Court did in *Koontz*. The Court should likewise grant this petition.

II. The Decision Below Conflicts with Multiple Strands of This Court's Precedent and Creates an End Run Around *Nollan* and *Dolan*

In holding that *Nollan* and *Dolan* do not apply to a monetary demand in exchange for a permit, the New York Court of Appeals misapplied two lines of this Court's precedent to create a new categorical defense to unconstitutional conditions claims predicated on the Takings Clause. *Cf. Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 31-32 (2012) (admonishing against such creation of new categorical defenses). If the majority's reasoning below proliferates, these mistakes will undermine the Fifth Amendment's vital protection against government extortion in land-use permitting. The Court of Appeals' decision is a road map for permitting authorities to avoid the constitutional limits on their power—limits this Court has zealously guarded for four decades.

A. The decision below incorrectly assumed that a monetary obligation can never be the object of a takings claim

Key to the Court of Appeals' holding that a monetary exaction cannot trigger the unconstitutional conditions doctrine was the majority's assumption, contrary to *Koontz*, that a monetary obligation can never be a taking. The majority correctly explained that a landowner must demonstrate the challenged permit condition would be a taking on its own to trigger the doctrine. *See* App. 17a. But it was wrong to conclude that a monetary exaction like the Arts Fund fee can never be the predicate taking.

Outside the exactions context, it is well settled that, in some circumstances, money can be the property interest supporting a takings claim. In *Webb's Fabulous Pharmacies*, this Court unanimously held that Florida could not take the interest from an interpleader account simply by declaring the principal to be public property because it was in the state court's possession. 449 U.S. at 164. In *Brown*, too, the Court recognized that the transfer of interest in an IOLTA account would be a *per se* physical taking "akin to the occupation of a small amount of rooftop space in *Loretto* [*v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982)]." 538 U.S. at 217-18. And in *Village of Norwood v. Baker*, the Court found a taking when the government demanded money to pay the public's cost to condemn an owner's property for new roads, holding that "the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking." 172 U.S. 269, 279 (1898).

On the other hand, in *Eastern Enterprises v. Apfel*, the Court considered an Act of Congress that imposed a "severe, disproportionate, and extremely retroactive burden" on some coal companies to pay retirement benefits for miners and their dependents. 524 U.S. 498, 538 (1998) (plurality opinion). Four justices would have held that such a burden effected a taking. *Id.* But Justice Kennedy's controlling opinion held that even the imposition of a "staggering financial burden" is not a taking if it "does not operate upon or alter an identified property interest." *Id.* at 540 (Kennedy, J., concurring in the judgment and dissenting in part). He instead found the Act's retroactive liability violated the Due Process Clause, providing the fifth vote to invalidate it. *Id.* at 547.

Koontz reconciled these disparate strands. It held that a permit condition demanding money is different than a stand-alone monetary obligation because the permit condition "operate[s] upon . . . an identified property interest" when it "direct[s] the owner of a particular piece of property to make a monetary payment" as a condition of receiving a permit. *Koontz*, 570 U.S. at 613-14. The *Koontz* Court viewed the monetary demand in exchange for a permit as a taking just like the money from the specific accounts in *Brown* and *Webb's*, or "cases holding that the government must pay just compensation when it takes a lien—a right to receive money that is secured by a particular piece of property." *Id.* at 612-13 (citing *Armstrong*, 364 U.S. at 44-49; *Louisville Joint Stock Land Bank*, 295 U.S. at 601-02; *United States v. Sec. Indust. Bank*, 459 U.S. 70, 77-78 (1982).

In short, "when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or

parcel of real property, a 'per se [takings] approach' is the proper mode of analysis under the Court's precedent." *Koontz*, 570 U.S. at 614 (quoting *Brown*, 538 U.S. at 235). This is the key characteristic that connects the dots; the reason why a pure monetary exaction may be the predicate taking supporting an unconstitutional conditions claim. "[U]nlike in *Eastern Enterprises*," a monetary exaction "burden[s] . . . ownership of a specific piece of land." *Id.* at 613. Unconstitutional conditions scrutiny attaches because of "the direct link between the government's demand and a specific parcel of real property." *Id.* at 614. It is this link that "implicates the central concern of *Nollan* and *Dolan*"—that the government will abuse its discretion over permitting to extort property from the permit applicant unrelated to the government's legitimate interest in mitigating the impact of the applicant's land use. *Ibid.*

Despite this, the New York Court of Appeals adopted a categorical rule that a monetary permit demand can never serve as the predicate taking unless it operates in lieu of a demand for real property. The bright line rule allowed the Arts Fund fee to sidestep *Nollan/Dolan* scrutiny even though the intermediate appellate court unanimously found the fee lacks any connection to a legitimate land-use interest. App. 56a-57a. And the fee avoided scrutiny despite the substantial impact it has on the Residents' ownership of their homes. Put simply, the connection between the monetary demand and the use and ownership of the burdened property exists whether the demand is for money or real property. Both are subject to the coercive, extortionate demands that the unconstitutional conditions doctrine protects against. *Nollan*, 483 U.S. at 837 (California Coastal Commis-

sion's exaction requirement was an "out-and-out plan of extortion") (citation omitted); *Koontz*, 570 U.S. at 606 (majority opinion) (same); *Sheetz*, 601 U.S. at 275 ("Our decisions in *Nollan* and *Dolan* address this potential abuse of the permitting process.").

The Court of Appeals' failure to recognize these key principles led it to embrace a categorical rule that threatens to eviscerate the Fifth Amendment's protections for land-use permit applicants and upend decades of precedent in many jurisdictions holding fees subject to *Nollan* and *Dolan*. The majority below recognized no practical limit on how much money the government may demand in exchange for a land-use permit.[12] But money is property. That it is fungible does not remove it from the protection of the Takings Clause. There is no practical difference between this result and the outcomes the Court sought to prevent in *Nollan*, *Dolan*, and *Koontz*.[13] This Court's review

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[12] The concurring opinion below gestured towards potential limits imposed by the Due Process Clause. But as the opinion itself recognized, prevailing on a due process theory would require a showing that the fee is "wholly arbitrary." App. 28a; *see also Koontz*, 570 U.S. at 629 n.3 (Kagan, J., dissenting) ("[T]he Due Process Clause provides an additional backstop against excessive permitting fees by preventing a government from conditioning a land-use permit on a monetary requirement that is 'basically arbitrary.'" (quoting *Eastern Enterprises*, 524 U.S. at 557-58 (Breyer, J., dissenting))). This is not a meaningful limit on the government's permitting leverage. Very rarely will a court find that an ordinance is "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare." *Vill. of Euclid v. Ambler Realty*, 272 U.S. 365, 395 (1926).

[13] This doesn't mean that permit review fees would trigger *Nollan*/*Dolan* scrutiny. Unlike exactions ostensibly designed to mitigate some impact of the permitted land use, application fees

is necessary to ensure the continuing vitality of its land-use exactions precedent.

B. The decision below incorrectly assumed that application of the unconstitutional conditions doctrine depends upon the owner's entitlement to the land use

The Court of Appeal's decision also rests on a fundamental "misunderstanding of how the unconstitutional conditions doctrine operates." App. 48a (Garcia, J., dissenting). The majority defends limiting *Nollan* and *Dolan* with an observation that "Petitioners knowingly assumed a property interest in JLWQA-restricted spaces." App. 18a. The crux of this point is that the Residents are not entitled to conversion. *See also* App. 26a (Halligan, J., concurring) ("I am not persuaded that the lack of any entitlement to conversion . . . resolves the question before us"). But lack of entitlement does not matter in the unconstitutional-conditions analysis. This was true long before this Court applied the doctrine to land-use permitting in *Nollan*. By design, the doctrine protects those who had no preexisting right to the permit, license, or benefit they sought from being coerced into surrendering a constitutional right. *See* William W. Van Alstyne, *The Demise of the Right-*

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are user fees calculated to offset the administrative costs of processing a permit. Under New York law, these fees "must be . . . reasonably necessary to the accomplishment of the regulatory program." *Suffolk Cnty. Builders Ass'n, Inc. v. Suffolk Cnty.*, 46 N.Y.2d 613, 619 (1979). New York City, of course, does not claim that the six-figure fees demanded in this case were necessary to defray the cost of administering conversion permits. *Nollan* and *Dolan* apply only to conditions relating to the proposed land use.

Privilege Distinction in Constitutional Law, 81 Harv. L. Rev. 1439, 1445-47 (1968) (collecting cases).

The roots of the unconstitutional conditions doctrine stretch back more than a century. In the nineteenth century, it was generally accepted that if one had no right to a particular benefit, the government could condition receipt of the benefit on anything it would like. In one famous case, Justice Holmes wrote that a policeman fired for his political speech "may have a constitutional right to talk politics, but he has no constitutional right to be a policeman." *McAuliffe v. City of New Bedford*, 29 N.E. 517, 517 (Mass. 1892). But even then, some began to argue that "[t]he argument used, that the greater always includes the less, and, therefore, if the State may exclude the appellees without any cause, it may exclude them for a bad cause, is not sound." *Doyle v. Cont'l Ins. Co.*, 94 U.S. (4 Otto.) 535, 543-44 (1876) (Bradley, J., dissenting).

This view eventually won out. Since then, the Court has applied the unconstitutional conditions doctrine to protect the exercise of many constitutional rights. For example, even though individuals have no right to continued government employment, they generally cannot be fired for exercising their First Amendment right to speak on a matter of public concern. *See Connick v. Myers*, 461 U.S. 138, 142 (1983) ("For at least 15 years, it has been settled that a state cannot condition public employment on a basis that infringes the employee's constitutionally protected interest in freedom of expression."). Even though nonprofit organizations have no right to government funding, the government cannot "seek to leverage funding" it provides to a nonprofit organization "to regulate speech outside the contours of the

program itself." *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214-15 (2013). And although there is no federal right to receive public assistance, this Court has long held that the government cannot leverage an applicant's benefits application by requiring the applicant to give up his constitutional right to travel. *Shapiro v. Thompson*, 394 U.S. 618 (1969) (invalidating one-year waiting period for new residents of a jurisdiction to receive public assistance); *Graham v. Richardson*, 403 U.S. 365 (1971) (invalidating state statute requiring resident aliens to reside in the state for 15 years before receiving public assistance); *Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250 (1974) (invalidating state statute requiring an individual to reside in a county for a year as a condition on the receipt of nonemergency medical care at the county's expense).

Nollan and *Dolan* are heirs to this tradition. The exactions cases "'involve a special application' of this doctrine that protects the Fifth Amendment right to just compensation for property the government takes when owners apply for land-use permits." *Koontz*, 570 U.S. at 604 (quoting *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 547 (2005)). And just like the other applications, *Nollan*, *Dolan*, *Koontz*, and *Sheetz* are not concerned with whether a permit applicant is otherwise entitled to the permit. Nor do they care whether the permit applicant knew about the permitting limitation upon acquisition of the property. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 629 (2001) (explaining that the *Nollan* Court rejected the dissenting argument that the owner's unconstitutional conditions claim should have failed because he was on notice of the Coastal Commission's policy requiring permit applicants to dedicate a lateral

access easement). On the contrary, the entire premise of these cases is that the government *can deny the permit*.[14] It is the government's power to say "no" that gives it the leverage to impose conditions in the first place.

Nor is there any support in this Court's precedent for the Court of Appeals' related assumption that the government may attach unrelated conditions to a permit on the ground that receipt of the permit adds substantial value to the applicant's property. *See* App. 18a; *but see Nollan*, 483 U.S. at 837 & n.5 ("While a ban on shouting fire can be a core exercise of the State's police power to protect the public safety, and can thus meet even our stringent standards for regulation of speech, adding the unrelated condition alters the purpose to one which, while it may be legitimate, is inadequate to sustain the ban."). On the contrary, *Koontz* understood that it is precisely because "the government often has broad discretion to deny a permit that is worth far more than property it would like to take" that "applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits." 570 U.S. at 604-05.

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[14] To be sure, "the right to build on one's own property—even though its exercise can be subjected to legitimate permitting requirements—cannot remotely be described as a 'governmental *benefit*.'" *Nollan*, 483 U.S. at 833 n.2. But the Nollans took title to the property subject to the Coastal Commission's permitting jurisdiction, and this Court assumed the Commission's power to deny the permit. *Id.* at 837. Under the City's theory, by applying for a permit the Nollans sought to extend their property rights rather than exercise their existing rights. *Cf.* App. 18a-19a. Yet the unconstitutional conditions doctrine protected them all the same.

Of course, the high value of a land-use permit to the applicant is also a strong indication that the permit would confer upon the landowner the ability to use his property in a way he couldn't without a permit. In all four of this Court's exactions cases, the value of the permitted activity far exceeded the cost of the exaction. *See Nollan*, 483 U.S. at 827-29 (permit approved for the improvement of a condemned bungalow into a modern home); *Dolan*, 512 U.S. at 379 (permit approved to double the size of a hardware store and expand the parking area); *Koontz*, 570 U.S. at 601-02 (seeking a permit to improve a vacant parcel of land for commercial use); *Sheetz*, 601 U.S. at 272 (granting a permit to build a family home on a vacant parcel). Far from removing the urgency, it is *because* the value of the permit on offer often exceeds the value of a coercive and unconstitutional demand that heightened scrutiny is necessary. *Koontz*, 570 U.S. at 604-05.

In short, the Court of Appeals' categorical rule is inconsistent with the nature of the unconstitutional conditions doctrine. The conversion permits at the center of this case are not meaningfully different from the land-use permits sought in *Nollan*, *Dolan*, *Koontz*, or *Sheetz*. If permit applicants had to show a pre-existing entitlement to the permit to trigger the unconstitutional conditions doctrine, the doctrine's protections for property owners would amount to little.

III. This Case Is an Excellent Vehicle to Address a Question of Nationwide Importance

More than a million building permits are issued each year in the United States.[15] Monetary exactions like impact fees are "ubiquitous." *See* Brief for Amici Curiae City & Cnty. of San Francisco, et al., *Sheetz v. Cnty. of El Dorado*, No. 22-1074, 2023 WL 8869700, at *8 (U.S. Dec. 19, 2023). Resolution of the question presented will determine whether permitting authorities seeking these exactions must honor the protections of *Nollan* and *Dolan* against extortionate demands. This is outcome determinative in many cases, including this one, where refusal to apply *Nollan* and *Dolan* triggered reversal of a unanimous Appellate Division ruling.

New York alone saw more than 46,000 building permits issued in 2024. *See supra* n.15. Cash-hungry localities now face only theoretical limits in imposing extortionate fees. Without the protections of *Nollan* and *Dolan*, little exists to stop them from demanding more and more—say, rather than $100 per square foot into an Arts Fund, $250 per square foot into the general fund, which would amount to nearly $1 billion. And the New York Court of Appeals has always been one of the most influential state high courts nationwide, influencing state and federal courts alike. *See* Lawrence M. Friedman et al., *State Supreme Courts: A Century of Style and Citation*, 33 Stan. L. Rev. 773, 804-06 (1981) (showing historical influence); *In re Black Diamond Min. Co., LLC*, 507 B.R. 209, 217 (E.D. Ky. 2014) ("federal courts often

[15] *See* Nat'l Ass'n of Home Builders, *Building Permits by State and Metro Areas*, https://tinyurl.com/562wfmbv (last visited Apr. 6, 2026).

look to the New York Court of Appeals' influential opinion in *Sage Realty* as persuasive authority on the scope of federal privilege"). The decision below invites permitting authorities to evade the Fifth Amendment's protections in the many jurisdictions where the law is unsettled. Only this Court's intervention can settle the law nationwide.

This case presents a clean vehicle to do so. The contours of New York City's permitting regime are clear and undisputed. The case arrives from a final judgment of the state's highest court, after which 12 state appellate judges—five of the Appellate Division and the seven Court of Appeals judges—divided 6-6 on the question presented. Perhaps most importantly, resolving the question presented would not require the Court to delve into fact-intensive questions to determine whether the Arts Fund fee could satisfy *Nollan* and *Dolan*. Like in *Koontz*, that work would be left for the state courts on remand. *See St. Johns River Water Mgmt. Dist. v. Koontz*, 183 So. 3d 396 (Fla. Dist. Ct. App. 2014) (Florida Court of Appeals ruling on remand after *Koontz*).

Courts across the country have weighed in on the important question presented, including divided opinions from the high courts of New York and North Carolina. The time is ripe for this Court to decide it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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