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U.S. Supreme Court to Decide Whether Legislatively-Authorized Land-Use Exaction Constitutes Unconstitutional Condition

On September 29, the U.S. Supreme Court granted a property owner's petition for writ of certiorari in *Sheetz v. County of El Dorado*. Although the Court declined to take up the same issue seven years ago, *Sheetz* presents the issue of whether "a building-permit exaction is exempt from the unconstitutional-conditions doctrine … because it is authorized by legislation." The Court will decide this question during its current term.

The facts of *Sheetz* are simple. The plaintiff, George Sheetz, sought a building permit from El Dorado County, California, to "build a [1,854-square-foot] manufactured house on his property." The County required Sheetz to pay, as a condition of approving his building permit, a "monetary exaction of $23,420" under the County's Traffic Impact Mitigation (TIM) Fee Program legislation. The TIM Fee is imposed based on a legislatively-set schedule. The fee imposed on a specific project is based on its geographic location and type of construction (such as single-family or multi-family residential, office, and so on), rather than based on the project's "nature or extent of …actual impacts on existing roads or on the need to construct new ones in the County." In fact, in *Sheetz*, the County performed no study to make an individualized determination of the traffic impacts that may be caused by Sheetz's new home.

The California trial and intermediate appellate courts took no qualm with this exaction and held that it is exempt from the unconstitutional-conditions doctrine simply because the exaction was enshrined by county legislation. The California Supreme Court declined to hear the case.

The reader may be familiar with the Court's exposition of the unconstitutional-conditions doctrine as it relates to land use and takings issues in its *Nollan* and *Dolan* precedents. Under those decisions, governments may condition land-use approvals on either monetary payments or property dedications for public use only if the government proves an "essential nexus" and "rough proportionality" exist between the project's impacts and the exaction demanded. If the government fails to make this showing, the Court has concluded governments engage in "an out-and-out plan of extortion."

Since the *Nollan* and *Dolan* decisions, state and federal courts have split on the issue facing the Court in *Sheetz*. Notably, Arizona and Colorado (in both of which Spencer Fane has a significant presence), as well as Maryland, Oregon, and Washington have followed California's lead in finding that land-use exactions are exempt from *Nollan* and *Dolan* if enshrined in legislation. On the other hand, Florida, Texas, Illinois, Ohio, and North Carolina take the contrary view.

Perhaps vexingly to California residents, the U.S. Court of Appeals for the Ninth Circuit recently disagreed with California state courts finding that Oakland, California's legislatively-enacted exaction was an unconstitutional condition under *Nollan* and *Dolan*. Other federal courts, such as the U.S. District Court for the Northern District of California and U.S. District Court for the Southern District of Florida, have agreed with the Ninth Circuit. On the other hand, the U.S. Court of Appeals for the Tenth Circuit, U.S. District Court for the Middle District of Tennessee, and U.S. District Court for the District of Kansas federal courts have held that legislatively-imposed land-use exactions are exempt from the unconstitutional-conditions doctrine.

By agreeing to hear *Scheetz*, the Supreme Court is posed to resolve this conflict and the outcome will have important ramifications regardless of the side the Court takes. So, landowners, developers, builders, and governments alike will want to watch this one closely.

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