No. 15-1366

In The Supreme Court of the United States

COMMON SENSE ALLIANCE,

Petitioner,

v.

SAN JUAN COUNTY, WASHINGTON,

Respondent.

On Petition For Writ Of Certiorari To The Washington State Court Of Appeals

BRIEF OF *AMICI CURIAE* SOUTHEASTERN LEGAL FOUNDATION AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

A San Juan County, Washington, ordinance requires that every shoreline property owner applying for a development permit agree to permanently dedicate a portion of the property as a conservation area to filter pollutants from stormwater that flows from other properties and crosses the shoreline lot. This condition is based on a collection of reports that argue for a broad public need for stormwater filtration, but include no site specific analysis of the area necessary to filter water originating only on the permitted shoreline parcel.

1. Whether such a permit condition, imposed legislatively, is subject to scrutiny under the unconstitutional conditions doctrine as set out in *Koontz v. St. Johns River Water Management District*, 133 S. Ct. 2586 (2013); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and

2. Whether a generalized scientific study, which concludes that preserving shorelines may protect the environment but makes no individualized determination, satisfies the constitutional requirement that the government demonstrate that the permitted use will impact the shoreline before exacting property in exchange for permit approvals, pursuant to the "essential nexus" and "rough proportionality" tests as set out in *Koontz*, *Dolan*, and *Nollan*.

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INTEREST OF *AMICI CURIAE*[1]

Southeastern Legal Foundation (SLF), founded in 1976, is a national non-profit, public interest law firm and policy center that advocates constitutional individual liberties, limited government, and free enterprise in the courts of law and public opinion. SLF drafts legislative models, educates the public on key policy issues, and litigates regularly before the Supreme Court. In particular, SLF advocates for the protection of private property interests from unconstitutional governmental takings. This aspect of its advocacy is reflected in SLF's filing of *amici* briefs in support of property holders in cases such as *Suitum v. Tahoe Regional Planning Authority*, 520 U.S. 725 (1997); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

The National Federation of Independent Business Small Business Legal Center (NFIB Legal Center) is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. The National Federation of Independent Business

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[1] All parties have consented to the filing of this brief in letters on file with the Clerk of Court, and the parties were notified of *amici*'s intention to file this brief at least 10 days prior to the filing of this brief. No counsel for a party has authored this brief in whole or in part, and no person other than *amici*, their members, and their counsel has made a monetary contribution to the preparation or submission of this brief. *See* Sup. Ct. R. 37.

(NFIB) is the nation's leading small business association, representing members in Washington, D.C., and all 50 state capitols. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate and grow their businesses.

NFIB represents 325,000 member businesses nationwide, and its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. While there is no standard definition of a "small business," the typical NFIB member employs 10 people and reports gross sales of about $500,000 a year. The NFIB membership is a reflection of American small business.

To fulfill its role as the voice for small business, the NFIB Legal Center frequently files *amici* briefs in cases that will impact small businesses.

SUMMARY OF ARGUMENT

A government may not require a person to give up a constitutional right in exchange for a discretionary government benefit. Referred to as the "unconstitutional conditions doctrine," this protects property owners from being forced to surrender their Fifth Amendment right to just compensation in order to obtain a building permit, a variance or other government benefit related to their property. Under the test set forth by this Court in *Nollan v. California Coastal Commission*, 483 U.S. 285 (1987) and *Dolan v. City of*

Tigard, 512 U.S. 374 (1994), a "government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz v. St. John's River Water Mgmt. Dist.*, 133 S. Ct. 2586, 2591 (2013).

This Court applies the unconstitutional conditions doctrine to conditions imposed both legislatively and administratively. In fact, the conditions imposed in *Nollan*, *Dolan* and *Koontz* were all legislatively-imposed conditions. *See Nollan*, 483 U.S. at 828-30; *Dolan*, 512 U.S. at 377-78; *Koontz*, 133 S. Ct. at 2591-93. Ignoring this Court's precedent, a growing number of lower courts, including the lower court in this case, refuse to apply the heightened scrutiny mandated by *Nollan* and *Dolan* to legislatively-imposed conditions. The deepening split of authority allows the government to evade proper constitutional review, casts a cloud on governmental actions, and even worse, results in the taking of property without just compensation.

Amici writes separately because the division among the lower courts "shows no signs of abating." *Cal. Bldg. Industry Ass'n v. City of San Jose*, 136 S. Ct. 928, 928 (2016) (Thomas, J., concurring in denial of certiorari). The conflict among the lower courts leaves property owners struggling to ascertain the level of scrutiny applicable to legislatively-imposed conditions and provides state and local government with a roadmap for evading the Constitution. By granting certiorari, this Court has an opportunity to resolve this

split. Resolution that, regardless of the condition's origin, will ensure that those property rights guaranteed by the Fifth Amendment are protected.

ARGUMENT

I. Introduction.

The Fifth Amendment to the United States Constitution prohibits the government from taking one's property without just compensation. U.S. Const., amend. V. Through a series of cases developed over the last three decades, this Court has made clear that the Fifth Amendment not only protects one from a physical taking, but also from governments that misuse the power of land-use regulations. *Koontz*, 133 S. Ct. at 2591; *see generally Dolan*, 512 U.S. 374; *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825. Known as the "unconstitutional conditions doctrine," it is well-settled that "the government may not require a person to give up a constitutional right . . . in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property." *Dolan*, 512 U.S. at 385.

Through those cases, this Court laid out the test for determining whether a condition violates the unconstitutional conditions doctrine and thus, the Fifth Amendment. Under the *Nollan* and *Dolan* test, a "government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of

his property unless there is a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use." *Koontz*, 133 S. Ct. at 2591. In reaffirming the applicable test, this Court made clear that it applies "whether the government approves a permit on the condition that the applicant turn over property or *denies* a permit because the applicant refuses to do so." *Id*. at 2595.

Here, as in *Nollan*, *Dolan*, and *Koontz*, the "condition" imposed by the government comes in the form of a dedication of property for a public use. And, as in *Nollan*, *Dolan*, and *Koontz*, the "condition" here is imposed through a legislative act. *See Nollan*, 483 U.S. at 828-30 (*state law* requiring dedication of beachfront property for a public access point as a condition to obtain a development permit); *Dolan*, 512 U.S. at 377-78 (*city land-use planning ordinance* requiring dedication of property for a bike path and greenway as a condition to obtain a permit); *Koontz*, 133 S. Ct. at 2591-93 (*state law* requiring an in lieu fee as a condition to obtain a development permit for land designated as wetlands).

A property owner's constitutional right should not hinge on whether that right is being violated through a legislative act versus an administrative one. To be sure, the Court has always applied the unconstitutional conditions doctrine just the same when reviewing conditions imposed by a statute. *See, e.g.*, *44 Liquormart Inc. v. Rhode Island*, 517 U.S. 484, 512-13 (1996) (striking down a statute conditioning the right to do business on waiver of constitutional rights);

United States v. Am. Library Ass'n, Inc., 539 U.S. 194 (2003) (conditioning receipt of government funds on waiver of rights). Indeed, in the seminal unconstitutional conditions case, this Court struck down a California statute that unconstitutionally conditioned the right of commercial carriers to operate on public highways. *Frost & Frost Trucking Co. v. Railroad Comm'n*, 271 U.S. 583, 594 (1926). ("It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.").

Ignoring this Court's well-established precedent, the lower court here refused to apply the unconstitutional conditions doctrine simply because the condition at issue was legislatively imposed. The Washington court is not the first to make this improper distinction and ignore this Court's takings jurisprudence. Rather, it is one of many contributing to an ever-deepening split of authority on this issue.

II. A deep split of authority exists regarding legislatively-imposed conditions and only this Court can provide the clarity needed to protect the right to just compensation.

A growing number of lower courts are dispensing with *Nollan* and *Dolan* simply because the condition at issue is imposed by a legislative act rather than through an administrative process. Despite the fact that the "distinction between sweeping legislative

takings and particularized administrative takings appears to be a distinction without a constitutional difference," *Parking Ass'n of Ga., Inc. v. City of Atlanta*, 515 U.S. 1116, 1117-18 (1995) (Thomas, J., joined by O'Connor, J., dissenting from denial of certiorari), the rejection of *Nollan* and *Dolan*'s heightened scrutiny creates several conflicts that warrant the attention of this Court.

The first and most obvious is the direct conflict with this Court's precedent set forth in *Nollan* and *Dolan*, and recently reaffirmed in *Koontz* – cases which all involved conditions imposed through a legislative act. The second is the conflict with this Court's precedent as it relates to the unconstitutional conditions doctrine generally, and the lack of support for distinguishing between legislative and adjudicative acts.[2] The third is the growing conflict among the lower courts, both state and federal.

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[2] This Court has consistently applied the unconstitutional conditions doctrine to both legislatively- and administratively-imposed conditions without regard to the condition's origin. *See, e.g.*, *Rumsfeld v. Forum for Academic & Inst. Rights, Inc.*, 547 U.S. 47, 59-60 (2006) (applying doctrine to a legislatively-imposed condition without regard to its origin); *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 545 (1983) (same); *Perry v. Sindermann*, 408 U.S. 593 (1972) (applying doctrine to administratively-imposed condition without regard to its origin).

A. A growing number of lower courts improperly refuse to apply *Nollan* and *Dolan* scrutiny simply because the condition at issue is imposed by a legislative act rather than through an adjudicatory process.

In 1995, just one year after this Court's opinion in *Dolan*, in a dissent from a denial of certiorari, Justice Thomas acknowledged that the lower courts were already "in conflict over whether [*Dolan*'s] test for property regulation should be applied in cases where the alleged taking occurs through an act of the legislature." *Parking Ass'n of Ga.*, 515 U.S. at 1117. Within just a few months after *Dolan* at least four lower courts disagreed as to its application, with two applying the nexus and rough proportionality tests to legislative takings and two refusing to do so. *Compare Harris v. City of Wichita*, 862 F. Supp. 287, 294 (D. Kan. 1994) (denying motion for reconsideration) (declining to apply *Dolan* because case involved legislative regulatory taking rather than an adjudicative one) and *Parking Ass'n of Ga.*, 450 S.E.2d 200, 203 (Ga. 1994) (same), with *Trimen Dev. Co. v. King County*, 877 P.2d 187, 194 (Wash. 1994) (applying *Dolan* even though challenged ordinance was a legislative enactment) and *Manocherian v. Lenox Hill Hosp.*, 643 N.E.2d 479, 483 N.Y. 1994), *cert. denied*, 514 U.S. 1109 (May 15, 1995) (Nos. 94-1555, 94-1560).

In *Trimen Development*, a developer challenged a local ordinance requiring developers to dedicate land for open space or pay a fee in lieu of the dedication as

a condition to obtaining subdivision plat approval. 877 P.2d at 188. Less than one month after *Dolan*, the court applied this Court's rule and found a rough proportionality between the dedication or in lieu fee and the impact of the proposed development. *Id*. at 194.

One month later in *Manocherian*, the court reviewed a property owner's challenge of a city ordinance that required property owners to offer renewal leases to not-for-profit hospitals. 643 N.E.2d at 479. In doing so, the court applied *Nollan* and *Dolan*, explaining that through them, this Court "establish[ed] a constitutional minimum floor of protection which [it] lacks authority to diminish under the Supremacy Clause." *Id*. at 482. It continued, noting that there is no evidence "for concluding that the Supreme Court decided to apply different takings tests" and that this Court's takings jurisprudence "suggests and supports a uniform, clear and reasonably definitive standard of review in takings cases." *Id*. at 483.

Despite the "uniform, clear and reasonably definitive standard," a few months later, a district court expressly declined to apply *Dolan* because the condition at issue was legislative in nature rather than applied on an ad hoc administrative basis. *Harris*, 862 F. Supp. at 294. Shortly thereafter, the Supreme Court of Georgia followed suit and refused to apply the stricter scrutiny to a group's challenge of a city ordinance requiring owners of surface parking lots to dedicate portions of their property to create barrier curbs and landscaping areas. *Parking Ass'n of Ga.*, 450 S.E.2d at 201. The

court rejected plaintiff's reliance on *Dolan*, opting instead to apply a significant detriment test. *Id*. at 203 n.3. Notably, Justice Sears, joined by Chief Justice Hunt and Justice Carley, wrote a strong dissent expressing their belief that the court erred in failing to follow this Court's taking jurisprudence as set forth in *Nollan* and *Dolan*. *Id*. at 203-04 (Sears, J., dissenting).

This almost immediate split of authority following *Dolan* provided state and local governments with a roadmap to evade constitutional scrutiny – impose conditions on one's constitutional right to just compensation through legislative enactments rather than through administrative procedures. When legislative exactions were challenged, governmental defendants could, from the beginning, convince reviewing courts to side with the District Court of Kansas and the Georgia Supreme Court and apply a lower level of scrutiny.

B. Unless this Court provides the lower courts with additional guidance on the applicability of *Nollan* and *Dolan* to legislatively-imposed conditions, the split will continue to deepen.

Over the last two decades, the split has deepened and local and state governments continue to evade the Constitution. For example, rejection of the *Nollan* and *Dolan* test in favor of application of an improper lower level of scrutiny simply because the government imposed the condition through legislation rather than administratively has contributed to lower courts finding

the following conditions valid despite the lack of just compensation:

- Ordinances requiring dedication of affordable housing units. *See Cal. Bldg. Indus. Ass'n v. City of San Jose*, 61 Cal. 4th 435, 459 n.11 (2015); *Alto Eldorado Partners v. City of Santa Fe*, 634 F.3d 1170, 1179 (10th Cir. 2011); *Mead v. City of Cotati*, 389 Fed. App'x 637, 639 (9th Cir. 2010);
- A county ordinance imposing an agricultural and open space easement on subdivision applicants. *See San Mateo Coastal Landowners' Ass'n v. County of San Mateo*, 38 Cal. App. 4th 523, 546-49 (Cal. Ct. App. 1995);
- An ordinance imposing landscaping and street maintenance requirements as a condition to obtain a permit and/or certificate of occupancy. *Spinell Homes, Inc. v. Municipality of Anchorage*, 78 P.3d 692, 702 (Alaska 2003);
- Ordinances conditioning permit approvals on requirements to pay impact fees. *See St. Clair County Home Builders Ass'n v. City of Pell City*, 61 So.3d 992, 1007 (Ala. 2010);
- An ordinance requiring developers to pay a sanitation permit fee as a condition for development approval. *See Krupp v. Breckenridge Sanitation Dist.*, 19 P.3d 687, 695-96 (Colo. 2001);
- A city ordinance imposing a water resources development fee on all new realty developments. *See Home Builders Ass'n of Cent. Ariz.*

v. Scottsdale, 930 P.2d 993, 996 (Ariz. 1997), *cert. denied*, 521 U.S. 1120 (1997);

- A city ordinance requiring mobile home park owners who close their parks to pay displaced tenants. *See Arcadia Dev. Corp. v. City of Bloomington*, 552 N.W.2d 281, 286 (Minn. Ct. App. 1996); and
- A city ordinance imposing a fee on hotel owners as a condition for a permit to reconfigure business to no longer provide rooms to long-term renters. *See San Remo Hotel L.P. v. City and County of San Francisco*, 41 P.3d 87, 105 (Cal. 2002).

Had those very conditions been administratively-imposed, those courts would have applied *Nollan* and *Dolan* scrutiny and many of those conditions would have, arguably, been invalidated.

Further, the severity of the split of authority is readily apparent when one compares the aforementioned cases and conditions with those that follow. Despite the similarities in the legislatively-imposed conditions, the courts evaluating the following ordinances all followed this Court's precedent and applied *Nollan* and *Dolan* scrutiny regardless of the condition's origins.

- Ordinance requiring dedication of affordable housing units. *Commercial Builders of N. Cal.*

v. City of Sacramento, 941 F.2d 872, 875 (9th Cir. 1991);[3]

- Ordinances conditioning permit approvals on requirements to pay impact fees. *See City of Portsmouth v. Schlesinger*, 57 F.3d 12, 16 (1st Cir. 1995); *Home Builders Ass'n of Dayton and Miami Valley v. City of Beavercreek*, 729 N.E.2d 349, 355-56 (Ohio 2000);
- A town ordinance imposing road improvement requirements as a condition to obtain a development permit. *See Town of Flower Mound v. Stafford Estates Ltd. P'ship*, 135 S.W.3d 620, 641 (Tex. 2004);
- A town ordinance imposing an easement for fire prevention purposes as a condition for subdivision approval. *See Curtis v. Town of South Thomaston*, 708 A.2d 657, 660 (Me. 1998);
- State statutes and local ordinances imposing transportation impact fees on new developments. *See N. Ill. Home Builders Ass'n, Inc. v. County of Du Page*, 649 N.E.2d 384, 397 (Ill. 1995);
- A city ordinance requiring property owners to pay a lump sum to displaced tenants as a condition for withdrawing rent-controlled property from the rental market. *Levin v. City and*

[3] The Ninth Circuit only applied *Nollan* to the affordable housing ordinance at issue in *Commercial Builders* because the case was decided several years before this Court heard *Dolan*.

County of San Francisco, 71 F. Supp. 3d 1072, 1089 (N.D. Cal. 2014); and

- An ordinance requiring a cash proffer in exchange for a favorable action on rezoning applications. *Nat'l Ass'n of Home Builders v. Chesterfield County*, 907 F. Supp. 166, 168-69 (E.D. Va. 1995).

Not only has the split deepened, but as Justice Thomas noted earlier this year in his concurring opinion in support of the Court's denial of certiorari, the "division shows no signs of abating." *Cal. Bldg. Indus. Ass'n v. City of San Jose*, 136 S. Ct. at 928. For over two decades, since *Dolan*, "lower courts have divided over whether the *Nollan/Dolan* test applies in cases where the alleged taking arises from a legislatively imposed condition rather than an administrative one." *Id*. And, while this Court has recognized that there is no "precise mathematical calculation," *Dolan*, 512 U.S. at 395, for determining when an adjustment of rights has reached the point when "fairness and justice," *id*. at 384, requires compensation, until this Court "decide[s] this issue, property owners and local governments are left uncertain about what legal standard governs legislative ordinances and whether cities can legislatively impose exactions that would not pass muster if done administratively." *Cal. Bldg. Indus. Ass'n*, 136 S. Ct. at 929. As Justice Kagan explained in *Koontz*, the split of authority "casts a cloud on every decision by every local government to require a person seeking a permit to pay or spend money." *Koontz*, 133 S. Ct. at 2608 (Kagan, J., dissenting).

III. The lower court's refusal to apply *Nollan* and *Dolan* to legislatively-imposed conditions undermines this Court's takings jurisprudence.

The deep and irreconcilable split of authority which cannot be resolved without this Court's clarification also significantly impacts the place of property rights in the constitutional hierarchy. The right to just compensation is part of the Fifth Amendment, which also provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; . . . .

U.S. Const., amend. V.

This Court has built strong protections around such Fifth Amendment rights as the prohibition against self-incrimination and double jeopardy. If the State of Washington were to claim that, because of budget constraints, it could no longer provide for grand jury indictments of those accused of environmental crimes, federal courts would be swift to announce that neither an admirable concern for the environment nor the realities of fiscal problems would justify deprivation of a basic right. The response would be similar to infringements on other rights, such as free speech or

the right to counsel, no matter how loudly the state proclaimed the desire to protect the environment.

Yet, the Washington court and a growing number of state courts and lower federal courts allow the government to deprive a man of his property in the name of environmentalism or public welfare. This decision short-changes one of our basic personal liberties. Property rights are certainly as important as every other civil right, and should be treated as such.

In fact, property well may be considered the foundation for the other civil rights that we enjoy. John Locke, whose writings influenced the leaders of the American Revolution and the Framers of the Constitution more than any other single philosopher, described the preservation of property as "the end of government, and that for which men enter into society." John Locke, *Two Treatises of Government* § 138, at 213 (C. Baldwin, London 1824), *available at* https://archive.org/stream/twotreatisesgov00lockgoog#page/n218/mode/2up. Locke even went so far as to say, "lives, liberties, and estates, which I call by the general name, property." Locke, *Two Treatises of Government* § 123, at 204, *available at* https://archive.org/stream/twotreatisesgov00lockgoog#page/n210/mode/2up.

Locke's view found its way into both the English common law and the Enlightenment that generated our government. Private property and a free society were "so intimately connected as to be all but equivalent." Roger Pilon, *Property Rights, Takings, and a Free Society*, 6 Harv. J. L. & Pub. Pol. 165, 168 (1983).

This Court has recognized the interplay between property rights and other civil rights. "The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a 'personal' right, whether the 'property' in question be a welfare check, a home, or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other." *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972).

Like other civil rights, property rights include the authority to dominion and use as one sees fit. "There is nothing which so generally strikes the imagination, and engages the affections of mankind, as the right of property; or that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." W. Blackstone, *Commentaries* 2 (1765). Those rights of dominion, however, always have been limited by "the laws of the land," *id*., to the extent that those laws are legitimate.

Government exercise of power, in a representative government, is legitimate only so long as it is compatible with the source of its authority – the individuals whom the government rules. As Locke expressed it, a legislature is "but the joint power of every member of the society given up to that person or assembly." Locke, *Two Treatises of Government* § 135, at 209, *available at* https://archive.org/stream/twotreatisesgov00lockgoog#

page/n214/mode/2up. Thus, a government has no more power than individuals can transfer to it.

Eminent domain is an exception to that general principle. When the government takes private property for public use, it is a forced transaction, pure and simple. It cannot be justified under any traditional powers of government. A person whose property is taken is rarely harming others; he is simply enjoying property that, because of location or other factors, the government happens to want. And, in those exceptional cases, such raw exercises of power are made palatable only by just compensation from the majority to the minority for the lost rights:

> The government may take personal or real property whenever its necessities, or the exigencies of the occasion, demand. So the contention that the government had a paramount right to appropriate this property may be conceded, but the Constitution in the Fifth Amendment guarantees that when this governmental right of appropriation – this asserted paramount right – is exercised it shall be attended by compensation.

United States v. Lynah, 188 U.S. 445, 465 (1903).

Just as the government may not physically take one's property without just compensation, it also may not deny a benefit to a person because he exercises his Fifth Amendment right to just compensation. "Extortionate demands for property in the land-use permitting context run afoul of the Takings Clause not

because they take property but because they impermissibly burden the right not to have property taken without just compensation." *Koontz*, 133 S. Ct. at 2596.

The tests propounded by this Court in *Nollan* and *Dolan* and reaffirmed by this Court in *Koontz*, protect those property rights guaranteed by the Fifth Amendment and provide for the free society Locke so insightfully wrote about. Ignoring this Court's jurisprudence, a growing number of lower courts refuse to apply a heightened level of scrutiny to legislative exactions. The refusal to apply *Nollan* and *Dolan* to legislative exactions diminishes the Fifth Amendment and banishes property rights to the bottom of the constitutional hierarchy.

CONCLUSION

For the foregoing reasons, and those stated by the Petitioner in the Petition for Certiorari, *amici* respectfully request that this Court grant the writ of certiorari, and on review, reverse the decision of the Washington State Court of Appeals.

Respectfully submitted,

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