No. 25-1187

In the Supreme Court of the United States

THE COALITION FOR FAIRNESS IN SOHO AND NOHO, INC., ET AL.,

Petitioners,

v.

CITY OF NEW YORK, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Certain properties in the New York City neighborhoods of SoHo and NoHo have long been occupied under a distinctive regulatory scheme that makes residential occupancy unlawful except for Joint Living-Work Quarters for Artists (JLWQAs). In 2021, the City of New York created a new option for owners to convert these artist-only spaces to unrestricted residential use. Owners may pursue this option if they provide alternative support to local artists by making a limited, one-time monetary contribution to a municipal arts fund.

The questions presented are:

1. Did the New York Court of Appeals correctly apply state and local law to hold that owners of historically restricted JLWQAs lacked a property interest in unrestricted residential use, such that creating a voluntary opportunity to add that new property interest was not a taking?

2. Alternatively—and independently—did the New York Court of Appeals correctly hold that the standalone nature of the monetary fee for converting a JLWQA into an unrestricted residential unit defeated the takings claim?

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INTRODUCTION

Petitioners own properties in New York's SoHo and NoHo neighborhoods subject to a distinctive program established pursuant to long-standing state and local law, which prohibits residential use unless a property operates as Joint Living-Work Quarters for Artists (JLWQA). Petitioners do not challenge that background restriction here. Rather, they challenge a recent law giving them the opportunity to lift the restriction for a fee. On two independent grounds, the New York Court of Appeals rejected their claim that the new law is subject to the exactions analysis of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). First, the Court held that pursuant to the state and local law establishing JLWQA usage, JLWQA owners lack a property interest under New York law in unrestricted residential use, and thus the new, optional path to augment their JLWQA interest is categorically not a taking subject to *Nollan* and *Dolan*. Second, and alternatively, the Court held that no exactions analysis was required because the optional fee was not sought in lieu of a demand for an interest in the property. This Court should deny certiorari.

First, the petition addresses only the New York court's second and alternative holding, skipping past the fact-bound and independently dispositive lead holding. That lead holding is not remotely cert-worthy, as petitioners seem to recognize, for it arises from the unusual background status of petitioners' preexisting property interests under New York's JLWQA laws and implicates no division of authority among the courts. Moreover, because the lead holding is prior to and not fairly encompassed in petitioners' question presented, petitioners' attempt to secure review of the alternative holding amounts to a bid for an advisory opinion. Thus, even if the alternative holding were on a cert-worthy question—and it is not—this case would present an uncommonly poor vehicle for resolving that issue.

Second, petitioners' theory turns on further factual disputes intertwined with state law, where the New York court's resolution is binding on this Court. For example, while petitioners challenge the JLWQA restrictions based on a supposed inability to transfer their properties without paying the fee, the New York court rejected the view that state or local law compelled payment prior to a transfer. The New York Court of Appeals also determined, based on the record before it and its authoritative interpretation of New York law, that conversion is a voluntary option—both legally and practically. As a result, this petition asks this Court to wade into a fact-bound dispute, and to second-guess the New York court's determinations on questions of state law that were properly resolved against petitioners.

Third, the New York court's alternative holding does not present a cert-worthy question even on its own terms. While petitioners would prefer that this Court extend the application of *Nollan* and *Dolan* to standalone monetary conditions for obtaining development permits, they fail to identify any substantial conflict on this point warranting the Court's review. They rely primarily on a single decision from North Carolina's highest court that did not address the issues posed by JLWQA ownership, which is a peculiar creature of New York law. And petitioners' scattered references to other lower court cases only confirm that this issue has not percolated sufficiently to warrant a grant of certiorari.

Fourth, the New York court's decision is correct. The court soundly applied this Court's established precedent in concluding that the fee at issue, as applied to these unique, restricted properties, was not subject to an exactions analysis. For this reason, too, further review is unwarranted.

STATEMENT OF THE CASE

I. The evolution of state and local law creating artist-protected properties in New York City

The Manhattan neighborhoods of SoHo and NoHo are now considered two of the most exclusive, sought-after residential and commercial enclaves in New York City (Pet. App. 3a). But that was not always so.

In the 1860s, this area was a manufacturing and industrial hub covered in hundreds of loft buildings with spacious floorplans and high ceilings (Pet. App. 4a). After World War II, manufacturing activity fell off. Many lofts were vacated, and an influx of artists illegally occupied them as joint living-and-work spaces (Pet. App. 4a).

In 1971, the City exercised zoning authority granted by the State to legalize that use, designating the properties as Joint Living-Work Quarters for Artists (JLWQA) (Pet. App. 4a). *See* N.Y. Mult. Dwell. Law (MDL) §§ 275–278; N.Y.C. Zoning Resolution (ZR) § 12-10; 1964 N.Y. Laws ch. 939. Those engaged in "fine arts" as defined by state law could obtain a certification to legally occupy these spaces, enhancing the City's cultural life and enabling artists of limited means to pursue their craft in appropriate spaces (Pet. App. 4a–5a). No other residential uses were permitted as of right, thus preserving the area's industrial character, and subsequent occupants would also be subject to artist certification requirements (Court of Appeals Appendix ("A") 108, 206, 264, 1349, 1617).

From the 1970s through the 1980s, the City certified hundreds of new artists each year for new JLWQA occupancy (A205). But as the need for housing in the City grew alongside SoHo and NoHo's greater desirability, ensuing decades saw increasing numbers of illegal non-artist residents (A109, 197). By 1983, about a third of the estimated 3,900 JLWQA residences in SoHo lacked a JLWQA-certified artist or a household member who could become one (A24, 27, 264).

The City responded in multiple ways over the years. As relevant here, in 1986, to avoid large-scale displacement of existing occupants, the City enacted a zoning amendment that allowed those existing occupants to legally register for occupancy regardless of artist status and established JLWQA succession rights (Pet. App. 6a). Reflecting the City's continued interest in supporting local artists, however, that amendment retained the JLWQA designation, which continued to run with the property (*id.*).

Soon thereafter, the rate at which new artists sought JLWQA certification fell significantly, though the City has continued to process applications every year and most recently certified four artists in 2025 (Pet. App. 7a). By 2022, local legislators estimated that most JLWQA spaces were occupied by nonconforming households (Pet. App. 7a; A1203). And, over time, SoHo and NoHo became one of the wealthiest and least diverse areas in New York City, with monthly rents running into the tens of thousands of dollars and asking sales prices averaging $6.6 million (A111, 200, 206, 325–27, A641–42, 1452–55).

II. The new residential conversion option balancing artist protections with other community needs

In 2015, following years of study and public engagement, the City proposed replacing SoHo and NoHo's existing industrial zoning with a special use district that better supported a dynamic mix of residential, commercial, manufacturing, and community uses (A31–38, 160–61, 194–95, 202, 314–15, 321–22, 328, 639–40, 644–46, 1316). In approving the rezoning, the City Council emphasized that the new rules would "broaden" housing choices while "sustain[ing] SoHo/NoHo's cultural legacy and support[ing] New York City's creative economy." ZR § 143-00.

In doing so, the rezoning addressed widely divergent public opinions on the future of the JLWQA designation (A86). Recognizing the historic role that artist-residents have played in enhancing SoHo and NoHo, the rezoning retained the JLWQA designation, and existing occupants saw "no change" to their rights (A57, 88, 1634). But to balance other uses in the area, the rezoning prohibited new JLWQA spaces and created the option for owners to convert existing ones to residential use. ZR § 143-13. Lawful JLWQA residents, including those occupancies legalized via amnesty, were not required to convert to remain in their homes or to sell them (A1005, 1349). Instead, the rezoning empowered owners to decide for themselves whether to convert, which would expand the legal market for these properties by allowing residential occupancy by anyone, not just certified artists, and thereby further enhancing the real estate's already high market values (A86, 320, 481, 1629, 1634).

For those choosing to remove this artist protection, residential conversion would require a one-time contribution to the SoHo/NoHo Arts Fund (A320, 340). The fee amount was set by law at $100 per square foot of floor area to be converted, adjusted for inflation, around half of the expected increase in market value from conversion based on an analysis of over a decade's worth of JLWQA and non-JLWQA sales in the area (A57, 320, 340, 649, 992).[1]

The Arts Fund is to award grants to support the arts—including capital improvements and new spaces for local artists, in SoHo, NoHo, and adjacent neighborhoods—based on artistic merit and feasibility as determined by a panel of local artists and arts professionals (A270–72, 340–41, 485, 537-538, 649-650, 1189; *see* A87). ZR § 143-02. In doing so, the Fund will "extend" SoHo and NoHo's "cultural legacy" and "support arts programming, projects, organizations, and facilities that promote the public presence of the arts." ZR § 143-02.

Following the rezoning, the State Legislature extended another amnesty legalizing all permanent JLWQA occupancies whose residencies preceded the rezoning, irrespective of artist status (A1276, 1325, 1652–53). MDL § 276. This measure was intended to

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[1] The analysis—based on data from over 800 sales and unchallenged by petitioners at any stage of this case—showed that the median sales price for unrestricted properties was $222 per square foot higher than for artist-protected properties, and that converting to residential use would increase average market values by $189 per square foot (A416, 483–84, 664, 1316, 1532).

promote additional stability for long-term residents, who may have had difficulty qualifying as certified artists (A1276).

III. Petitioners' state-court challenge

Petitioners, a collection of non-artist owners and residents subject to JLWQA restrictions and an organization purporting to represent the community, brought this lawsuit in New York state courts, initially seeking to halt the rezoning entirely (A1218, 1226, 1232). Eventually, petitioners withdrew most of their claims, retaining only a Takings Clause challenge to the Arts Fund fee. In doing so, petitioners stipulated that JLWQA owners are "not responsible for converting a JLWQA to residential use prior to sale" and thus that conversion is a voluntary option under the rezoning (A1349).

Supreme Court, New York County, rejected petitioners' claim on grounds that the Arts Fund fee was not a taking (Pet. App. 58a–80a). The Appellate Division, First Department reversed, holding that the fee was subject to and did not satisfy the "exactions" test set forth in *Nollan* and *Dolan* (Pet. App. 54a–57a).

After granting leave to appeal, the New York Court of Appeals reversed the Appellate Division and dismissed petitioners' claim. The court reached that conclusion for two reasons, either of which is independently sufficient to conclude that the Arts Fund fee does not trigger *Nollan*/*Dolan* scrutiny.

First, the court held, petitioners "failed to identify any compensable property interest within the meaning of the Takings Clause that the [f]ee affects" (Pet. App. 17a). As the court explained, petitioners had "knowingly assumed a property interest in JLWQA-restricted spaces" as defined by state and local law (Pet. App. 4a, 18a). JLWQA owners thus lack any property interest "that could be surrendered or infringed" by paying a fee "to convert their unit from JLWQA status to an unrestricted use residential unit" (Pet. App. 18a).

And so, as the court put it, petitioners through conversion sought to "transform the property into a wholly different type of interest" free of the JLWQA use designation that had previously encumbered their property (Pet. App. 18a). That "opportunity to relinquish one form of property to acquire another, in exchange for a monetary payment to an arts fund" does not "eliminate or burden" petitioners' limited property interest under state and local law and is "not a taking" (Pet. App. 18a–19a). Nor does the fee "diminish[] without justification the value of the property"; to the contrary, the court found that the record demonstrated that "JLWQA units remain marketable in a highly desirable geographic area of New York City," whether the fee is paid or not (Pet. App. 18a–19a (quoting *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 614 (2013))).

Second, the New York court separately concluded that the Arts Fund fee does not require an "exactions" analysis because it is not "'functionally equivalent' to a compensable land use exaction" (Pet. App. 20a (quoting *Koontz*, 570 U.S. at 612)). That condition exists where payment is demanded "'in lieu of' non-monetary property," such as "a transfer of a conservation easement on a portion of the petitioner's land," as in *Koontz*. (Pet. App. 21a–22a (citing *Koontz*, 570 U.S. at 614)). By contrast, because the Arts Fund fee is a standalone fee—not required as "an alternative to, or 'in lieu of,' a condition that would be a *per se* taking if imposed directly"—the fee does not implicate the Takings Clause and *Nollan*/*Dolan* do not apply (Pet. App. 24a–25a).

Five judges joined the majority opinion in full, with one judge concurring only in the alternative holding (Pet. App. 27a, 53a), and one judge dissenting (Pet. App. 29a).

REASONS FOR DENYING THE PETITION

I. The independently dispositive holding that petitioners lack a relevant state-law property interest warrants denying certiorari.

The New York Court of Appeals charted two independent paths to reach its holding that the Arts Fund fee is not a taking requiring an exactions analysis, yet petitioners all but ignore the court's primary basis for that conclusion. That holding raises a threshold question that is narrower in scope than—and at right angles to—the secondary holding on the fee's monetary nature that petitioners seek to challenge. The petition thus faces significant vehicle problems at minimum. Even if petitioners' blinkered question presented were otherwise cert-worthy—and as we show below, it is not—the primary ground for the New York court's judgment does not warrant review.

As the court explained, owing to the distinctive nature of JLWQA units under New York law, petitioners never possessed a property interest in unrestricted residential use that the challenged law could burden. JLWQA units were created decades ago after an influx of artists illegally occupied spaces set aside for manufacturing, for which all residential use was then prohibited. Rather than evict or otherwise punish these unlawful occupants, the City adopted the JLWQA program pursuant to state law, granting a selective reprieve for certified artists alone. Subsequent owners, including petitioners, took possession of these properties with full knowledge that any property interest was still restricted by state law—which, despite amnesties granted by the State Legislature, continues to otherwise prohibit residential occupancy except by certified artists.

The challenged fee merely serves as an optional gateway to remove this longstanding, preexisting encumbrance from restricted-use properties, transforming them into something else entirely. The fee operates on the peculiar web of state and local laws governing JLWQA units, granting petitioners an entirely new opportunity to enhance their rights for a fee, which cannot be construed as burdening anything that they already owned. Offering that opportunity does not take anything from petitioners: as the New York court determined, they remain free to reject conversions without "eliminat[ing] or burden[ing]" their "existing property interest" (Pet. App. 19a). Standing alone, that distinction forecloses any takings claim.

Yet petitioners do not even attempt to show that this dispositive holding is cert-worthy. Nor could they. This holding implicates no conflict in authority, raises no recurring issue, and has no nationwide significance. This Court's exactions jurisprudence has certainly never considered anything like the artist-restricted properties here—a unique creature of state and local law—or a law that unambiguously enlarges property rights. Nor is the City aware of any other court that has addressed an analogous circumstance under the exactions doctrine.

This Court's leading cases all involve challenges to governmental action that imposed a new burden on property owners' existing rights that could not be evaded except by forgoing the desired development of the land. *See Nollan*, 483 U.S. at 828 (permit to replace residence with new one conditioned on easement); *Dolan*, 512 U.S. at 379–80 (permit to replace commercial facilities conditioned on property dedication); *see Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 272 (2024) (permit to build house on land already classified as residential). Indeed, in *Koontz*, "land-use laws permitted [the petitioner] to make full use of his property" before the government imposed new conditions on his right to do so. Petitioner's Brief on the Merits at 3, *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013) (No. 11-1447), 2012 WL 5940280, at *3. The through-line is unmistakable: each petitioner already owned property rights to use the land in the way they wished, but the government's permit conditions hampered the exercise of that preexisting right.

By contrast, as the New York court observed, what petitioners seek is to add a *new* stick to their bundle of rights—the right to unrestricted residential occupancy—which is something they never owned and which they remain free to forgo. The problem with petitioners' claim is not that they lacked an "entitlement" to conversion (Pet. 25). The City fully recognizes that *Nollan* and *Dolan* are about policing how the government wields its discretion in granting land-use permits to which the owner has no legal entitlement. Instead, the problem for petitioners here is that their property was subject to a preexisting *prohibition* on the use they now desire, with no discretionary avenue for relief available. A new law unambiguously *relaxing* that state of affairs does not burden their property rights. *Nollan* and its progeny did not address that circumstance, nor have petitioners identified any other case that has. There is no reason to grant certiorari in this case where there is no split on a controlling issue for the Court to address.

What's more, this Court's precedent fully supports the conclusion that no taking occurs where "the nature of the owner's estate shows that the proscribed use interests were not part of his title to begin with." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1027 (1992). In fact, to the extent that "background principles" of a state's property laws "independently restrict the owner's intended use of the property," compensation is not required even for what would otherwise be a *per se* taking. *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 538 (2005) (quoting *Lucas*, 505 U.S. at 1026–32); *see also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160 (2021) (even "physical invasions" that are "consistent with longstanding background restrictions on property rights" are not takings). As the New York court recognized, the unchallenged artist protection encumbering these properties was baked into petitioners' estate rights from the time they took title, dispelling any notion of a taking.

Yet petitioners' question presented ignores this threshold holding entirely. This Court "ordinarily do[es] not consider questions outside those presented in the petition for certiorari." *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992). Review is thus limited to issues "fairly included" in the question presented, *see* Sup. Ct. R. 14.1(a), which does not include those that are merely "related" or "complementary," *Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 31–32 (1993); *Wood v. Allen*, 558 U.S. 290, 304 (2010) (discussing issue in petition for certiorari held insufficient to raise issue). Instead, "fairly included" questions are those that are a "'predicate to an intelligent resolution' of the question presented." *Ohio v. Robinette*, 519 U.S. 33, 38 (1996).

Here, petitioners' question presented asks this Court to review only whether "the protection the Takings Clause provides to land-use permit applicants encompass[es] monetary demands beyond those imposed in lieu of a dedication of real property" (Pet. i). In other words, petitioners ask this Court to consider whether the Arts Fund fee is exempt from an exactions analysis only because of its monetary nature. But that question ignores the New York court's threshold holding that the limited nature of petitioners' existing ownership rights—and the fact that the challenged law merely gives them a new option to add to those rights—separately foreclose a *Nollan/Dolan* analysis, regardless of the type of condition imposed (Pet. App. 2a–3a, 18a–19a).

As a result, petitioners' question presented seeks an advisory opinion that would leave in place that independent holding. *See Lewis v. Continental Bank Corp.*, 494 U.S. 472, 477 (1990) (courts should not "decide questions that cannot affect the rights of litigants in the case before them"); *Yee*, 503 U.S. at 537–38 (question raising regulatory taking did not permit review of other takings theories).

Accordingly, the New York court's lead holding is not challenged in the petition, is not cert-worthy, and is well grounded in the Court's precedents. This Court's review is unwarranted.

II. Factual disputes embedded in the application of state law weigh against certiorari.

Record issues also counsel against granting certiorari in this matter. The takings theory advanced by petitioners is rooted in the notion that paying the Arts Fund fee for conversion is somehow mandatory. But since the New York court construed state and local law as making conversion optional, concluding otherwise is beyond this Court's power. And the idea that market forces effectively require conversion as a practical matter raises factual issues that muddy any legal question petitioners could hope to raise. For these reasons too, certiorari is inappropriate. *See* Sup. Ct. R. 10.

To begin, the New York court squarely rejected any suggestion that the law required conversion, and that determination is binding here. *See Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 44 (2018) (state law as established by "the State's highest court" is "binding on the federal courts"). As the court explained, the rezoning here "creat[ed] an opportunity for owners of these units to *voluntarily* convert" their property (Pet. App. 26a (emphasis added)). This "optional pathway" did not "extinguish[] or diminish[] petitioners' property rights in their JLWQA units" (Pet. App. 3a), and the fee "d[id] not affect owners and residents in their current use and enjoyment" of the properties (Pet. App. 26a; *see id.* at 9a). Separately, petitioners also stipulated that (a) JLWQA restrictions "limit only occupancy, and not sale;" and (b) JLWQA owners "are not responsible for converting a JLWQA [unit] to residential use prior to sale" (Pet. App. 9a (alteration in original)). They thus admitted that conversion is not required before the property may be sold. *See also Orr v. Orr*, 440 U.S. 268, 283–84 (1979) (stipulation's effect is question of state law).

Petitioners nevertheless argue that, as a practical matter, they have "little choice" but to pay the Arts Fund fee for conversion to residential use because transferring artist-protected properties is otherwise practically impossible, and thus all JLWQA units must "[e]ventually" be converted (Pet. 9–10 & n.4; *see also* Brief for Respondents ("Resp. Br.") 22, *Coal. for Fairness in SoHo & NoHo, Inc. v. City of N.Y.*, No. APL-2025-00028 (N.Y. June 12, 2025)). For that reason, according to petitioners, applying the exactions doctrine is necessary to prevent the City from "extracting" a fee from petitioners merely because they "need something from the government" (Resp. Br. 21–22).

But the New York court's well-supported factual determinations establish otherwise, further counseling against certiorari. Petitioners ignore that while JLWQA protections have always limited new occupants to certified artists or their successors—which the rezoning did nothing to change—purchasers have lined up for years to buy these properties for millions of dollars. In fact, petitioners never disputed the record evidence that typical 2,500-square-foot JLWQA lofts sold for roughly $4 million on average in the years leading up to this case, without conversion and with artist protections in place (A484). Nearly 700 such multimillion-dollar sales took place between 2010 and 2020, demonstrating a robust market for artist-restricted properties well before conversion became possible (A414, 484). The challenged law only enhanced those market values, even for current owners who decline to convert.[2] The

[2] To see this, recall that the unchallenged analysis in the record concludes that conversion increases a property's market value by an average of $189 per square foot. Yet the conversion fee is $100 per square foot. Thus, even if a current owner opts not to convert, prospective buyers should be willing to pay a premium to acquire the property plus the option to convert at some point after the purchase.

record demonstrates that petitioners' notion of compelled conversion is unfounded.

Nor is there any merit to the contention that the City's artist-certification practices have created an "extremely limited market" that forces owners to convert (Pet. 10). The sales described above occurred notwithstanding that relatively fewer new artists have sought certification in recent years. The City also stands ready and able to certify more artists for JLWQA occupancy and does so every year. *See* 58 R. City of N.Y. § 1-02 (City regulations requiring certification committee to meet several times per year to review applications). Indeed, the relative scarcity of certification likely has more to do with the lack of affordable artist-restricted units on the market, plus intervening amnesties, than anything else. And petitioners certainly presented no proof that a healthy artist-only market could not exist in the future once new occupants seek residence without amnesties.

Accordingly, review of a central premise of petitioners' argument—that owners of artist-protected properties *must* convert and *must* pay the Arts Fund fee—is in part foreclosed as a matter of state law and otherwise presents a fact-bound question on which petitioners lack record support. These are additional reasons to deny certiorari.

III. There is no conflict justifying certiorari on the application of the exactions doctrine to monetary fees.

All the above problems aside, petitioners' attempt to elevate the secondary holding from the New York court does not warrant certiorari on its own terms. For one thing, petitioners failed to demonstrate a conflict justifying this Court's review of their preferred issue. The primary case on which they rely, *Anderson Creek Partners, L.P. v. County of Harnett*, 382 N.C. 1 (2022), at best shows a difference of opinion between the highest courts of New York and just one other state. Petitioners identify no conflict at all with any federal court of appeals. They hardly frame a well-developed split of authority ripe for this Court's consideration.[3]

Even leaving that aside, petitioners overstate the conflict that they derive from *Anderson*. That case concerned impact fees as defined by North Carolina law that were imposed as a condition of receiving a

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[3] Petitioners also cite *Alpine Homes, Inc. v. City of West Jordan*, 424 P.3d 95 (Utah 2017) (Pet. Br. 15–16), but they rightly do not argue that this case presents a conflict. In *Alpine Homes*, the petitioner never argued that the fees demanded "constituted unconstitutional conditions," and instead argued that how those fees were later spent violated their rights. 424 P.3d at 104–05. And the Utah Supreme Court concluded that *Nollan*/*Dolan* did not apply to such a claim. *Id.* at 105.

development permit. *Anderson*, 382 N.C. at 17–19. That is a far cry from the fee associated with augmenting petitioners' property rights as established by the unique JLWQA laws at issue here, which narrowly legalized once-unlawful artist occupancies and continues to prohibit residential use except by certified artists pursuant to state and local law. Nothing about *Anderson* contradicts the New York court's analysis that creating a means for JLWQA owners to obtain an entirely new right to unrestricted residential use cannot support a takings claim.

Petitioners' efforts to buttress their petition by citing various lower court decisions only demonstrate that the question presented requires further development before the Court should consider weighing in. Petitioners rely on a California intermediate appellate case that was ordered to be unpublished and thus has no precedential effect (*see* Pet. 19; Pet. App. 20a–21a n.5 (citing Cal. Rules of Ct. 8.1115 (unpublished opinions lack precedential effect))).[4] Of the federal district court cases they cite, one of them did not consider the "threshold question"

[4] *See Sheetz v. Cnty. of El Dorado*, 335 Cal. Rptr. 3d 316 (Cal. Ct. App. 2025).

of *Nollan*/*Dolan*'s application to fees at all,[5] another still has not reached final judgment,[6] and the reasoning of the third was repudiated on appeal.[7]

Petitioners are left with a few cases predating both *Koontz* and *Sheetz* (Pet. 14). Those cases, of course, lacked the benefit of this Court's expanded analysis in recent cases, including the clarification that applying *Nollan*/*Dolan*—like other unconstitutional conditions claims—requires a threshold demonstration that the condition would be a taking if imposed on its own, and that "property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners" do not qualify. *Koontz*, 570 U.S. at 612, 615. The question presented thus lacks sufficient percolation, even aside from the other serious problems noted above.

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[5] *See Tap House Real Estate, LLC v. City of Rochester*, No. 22-cv-492, 2024 WL 3470824, at *9 n.7 (D. Minn. July 19, 2024).

[6] *See 225 Northport, LLC v. Vill. of Northport*, No. 24-CV-2967, 2025 WL 2782360, at *10 (E.D.N.Y. Sept. 30, 2025) (defendant raised issue only on reply).

[7] *Compare Levin v. City & Cnty. of S.F.*, 71 F. Supp. 3d 1072, 1082–83 (N.D. Cal. 2014) *with Ballinger v. City of Oakland*, 24 F.4th 1287, 1295–97 (9th Cir. 2022).

IV. There is no error requiring this Court's review.

Finally, the judgment of the New York court is correct. Even if error correction on its own were an appropriate ground for certiorari, the unique nature of the JLWQA artist-protected properties at issue here functionally limits the reach of the decision below. Petitioners all but ignore that the idiosyncratically restricted nature of their property interest was integral to this case's outcome. As demonstrated above, the New York court correctly concluded that offering the option to exit the JLWQA program for a fee, thereby augmenting their ownership with the right to unrestricted residential use, does not burden owners' existing rights and cannot be a taking subject to an exactions analysis. It is by no means clear that any court will confront land-use laws that implicate properties for which state and local laws similarly curtail owners' property interests. A decision from this Court in this case is thus unlikely to have broad nationwide utility.

In any event, the New York court also faithfully applied this Court's takings jurisprudence on monetary fees. As the court recognized, *Koontz* explained which types of fees in connection with real property should be considered takings subject to an unconstitutional conditions analysis: those imposed "'in lieu of' the landowner ceding a property interest to the government" (Pet. App. 12a). By contrast, the Arts Fund fee contemplates a "simple" obligation to pay money without any connection to a demand for land, and so the fee could not be considered "functionally equivalent" to a taking (Pet. App. 20a). And because the fee is not a taking, that ended the unconstitutional conditions analysis.

This reading aligns with this Court's analysis in *Koontz*. In that case, the Court confronted a permit condition in which the applicant was given a choice: either reduce the size of the development and increase the size of a public easement, or keep the proposal unchanged and pay for improvements to other government land. *Koontz*, 570 U.S. at 601–02. Contrary to petitioners' contention that the New York court misunderstood *Koontz*'s facts (Pet. 18 n.9), this Court made clear that the monetary obligation there was imposed as "a substitute for [the landowner's] deeding to the public a conservation easement on a larger parcel of undeveloped land"—i.e., a *per se* taking. *Id.* at 617.

And it is that related demand for a *per se* taking that formed the "direct link" between the otherwise monetary condition in *Koontz* and a "specific parcel of property" that made the condition "functionally equivalent" to a taking (Pet. App. 15a–16a, 20a–

21a). Physical occupations of land typically require exacting scrutiny, *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982), and this Court expressly noted that declining to apply *Nollan/Dolan* to a monetary fee demanded "in lieu of" such a property dedication would allow authorities to evade that heightened scrutiny merely by requiring owners to either grant the easement or pay its value. *Koontz*, 570 U.S. at 612, 619.

At the same time, *Koontz* cautioned against extending this analysis to other types of monetary conditions (Pet. App. 23a). As this Court emphasized, its decision in *Koontz* "d[id] not affect the ability of governments to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners." *Id.* at 615. And because the Arts Fund fee lacked the features that this Court found critical in *Koontz*, the New York court here properly concluded that *Nollan/Dolan* did not apply (Pet. App. 23a; *see* Pet. App. 27a). That view is also consistent with this Court's jurisprudence outside the exactions context holding that general payment obligations typically are not takings.[8]

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[8] *See, e.g.*, *Tyler v. Hennepin Cnty.*, 598 U.S. 631, 637 (2023) ("taxes on property … are not themselves a taking"); *United States v. Sperry Corp.*, 493 U.S. 52, 60–62 & n.9 (1989)

Nor did the New York court merely assume that "a monetary obligation can never be a taking," as petitioners assert (Pet. 21). On the contrary, the court repeatedly observed otherwise, explicitly recognizing that "the government's … monetary exaction from a property owner in lieu of a transfer of their private property interest" presents "a typical Takings Clause case" (Pet. App. 3a; *see also* Pet. App. 12a, 15a–16a, 20a, 25a). And as the court expressly acknowledged, nothing about its decision undermined the well-established law that a taking may include a monetary demand targeting a vested property interest, such as a bank account or other identifiable pot of money (Pet. App. 24a–25a). *See, e.g.*, *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163–65 (1980) (interpleader fund); *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 240 (2003) (IOLTA account). And while petitioners also suggest a conflict with this Court's decision in *Village of*

(deducting funds from monetary award is not a taking); *Houck v. Little River Drainage Dist.*, 239 U.S. 254, 264–65 (1915) (taxes and "special assessments" addressed to property owners are not "uncompensated taking[s]," even if based on real property interest); *Cnty. of Mobile v. Kimball*, 102 U.S. 691, 703–04 (1880) (no takings violation from requiring residents of single county to pay costs of improvements that benefit entire State); *E. Enters. v. Apfel*, 524 U.S. 498, 540–41 (1998) (Kennedy, J., concurring in judgment) (joining with four dissenting Justices in concluding that an obligation to pay benefits is not a taking).

Norwood v. Baker, 172 U.S. 269 (1898), that case too involved an attempt to take land without compensation. *See id.* at 274–75, 278–79 (rejecting special assessment imposed in connection with condemnation of plaintiff's land). Accordingly, the New York court read *Koontz* squarely in line with this Court's precedent.

Indeed, it is petitioners and their amici who seek to impose an untenable categorical rule, not the New York court. According to petitioners, "money is property," and therefore any demand for it in the land-use context is subject to a *Nollan*/*Dolan* analysis (Pet. 24). As the court here recognized, that view "works a sweeping doctrinal expansion," while giving rise to "an intractable line-drawing problem" in light of this Court's admonition that taxes, user fees, and "similar" laws imposing "financial burdens on property owners" do not trigger an exactions analysis (Pet. App. 23a). And while petitioners half-heartedly contend that they would draw the line at "permit review fees" and "application fees" (Pet. 24–25 n.13), nothing about their interpretation of *Koontz* indicates a principled reason for that line.

Excluding the Arts Fund fee from a *Nollan*/*Dolan* analysis hardly suggests that there is no limit to the fees that governments may charge. For one thing, the political process is always available, and petitioners made good use of it here by securing a state-level amnesty for all JLWQA occupants, ensuring that none of them will have to pay the fee at issue unless they choose to convert. In the courts, a regulatory takings claim may challenge truly onerous fees affecting landowners. *See Penn Cent. Transp. Co. v. City of N.Y.*, 438 U.S. 104, 124 (1978). Other constitutional backstops, too, protect property owners' interests, as well as state law remedies. *See, e.g.*, *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 563–64 (2000) (equal protection); *Bower Assocs. v. Town of Pleasant Valley*, 2 N.Y.3d 617, 626–28 (2004) (due process); *Pecoraro v. Bd. of Appeals*, 2 N.Y.3d 608, 613 (2004) (arbitrary and capricious review). Petitioners are therefore wrong to suggest that only the application of *Nollan* and *Dolan* may prevent government overreach.

The petition here ignores the New York court's lead holding and hinges on fact-bound assertions that lack record support. Even on its own terms, the question presented is not cert-worthy. Nor is the court's judgment erroneous.

CONCLUSION

The petition for a writ of certiorari should be denied.

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