No. 22-1074

In the Supreme Court of the United States

GEORGE SHEETZ,

Petitioner,

v.

COUNTY OF EL DORADO, CALIFORNIA,

Respondent.

ON WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

BRIEF FOR THE STATES OF CALIFORNIA, ARIZONA, DELAWARE, HAWAIʻI, ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW YORK, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA, VERMONT, WASHINGTON, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

Whether the "essential nexus" and "rough proportionality" standard from *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994), applies to impact fees charged to property developers based on a legislatively determined schedule or formula.

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INTERESTS OF AMICI

Amici curiae are the States of California, Arizona, Delaware, Hawai'i, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, and the District of Columbia. Local governments in Amici States frequently impose fees by legislation as conditions on land-use permits. Often referred to as "impact fees," these fees help fund the construction of roads, schools, sewers, and other infrastructure serving new developments. Amici States have an interest in ensuring that governments retain the ability to set impact fees through legislation establishing reasonable, empirically grounded formulas. In the experience of amici States, setting fees through formulas enacted in legislation is typically more predictable and transparent than setting property-specific fees using case-by-case adjudication. In addition, the use of formulas enables governments to process new development applications quickly, reducing costly permitting delays.

Amici States also have an interest in preventing local governments from imposing excessive mitigation fees, which hinder development and unfairly burden property owners. That is why many States have enacted statutory protections in the form of procedural and substantive requirements for impact fees. This well-developed body of state law should inform the Court's consideration of the federal constitutional issues presented in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court's decisions in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan*

v. City of Tigard, 512 U.S. 374 (1994), "provide important protection against the misuse of the power of land-use regulation." *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 599 (2013). *Nollan* and *Dolan* are premised on the notion that applicants for land-use permits are "especially vulnerable" to "[e]xtortionate demands" for dedications of property or money. *Id.* at 605. At the same time, "many proposed land uses threaten to impose costs on the public," and requiring property owners to offset the costs of these "negative externalities" is "a hallmark of responsible land-use policy." *Id.* "*Nollan and Dolan* accommodate both realities by allowing" the government to "choose whether and how a permit applicant is required to mitigate the impacts of a proposed development," but not to "leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts." *Id.* at 605, 606.

In resolving this case, the Court should maintain that important balance between facilitating responsible planning while preventing extortionate permit conditions. Respondent El Dorado County persuasively explains why the framework established in *Nollan* and *Dolan* should not apply to legislatively imposed impact fees. Amici States agree with that position, and submit this brief to emphasize three principles that should guide the Court's analysis in this case.

First, the Court should be mindful of the robust protections that California and most other States have enacted to prevent governmental entities from imposing permit conditions that are untethered from the impacts of development. Many of these state laws

already call for an analysis similar to *Nollan* and *Dolan* that protects property owners from excessive fees set by legislation. The Court should be wary of further constitutionalizing this issue at the federal level in a manner that would override the carefully crafted approaches States have already developed.

Second, if the Court holds that *Nollan* and *Dolan* do extend to generally applicable impact fees imposed by legislation, the relevant question in that context should be whether the fee has a nexus and rough proportionality to the impacts of the *class* of development projects to which the fee applies. Both this Court's precedent and the weight of relevant state law support that approach. And a contrary rule, requiring governments to demonstrate that a generally applicable fee is proportional to the impacts of each *individual* property, would upend well-established practices in most States. It would effectively force governments to set all impact fees through individualized adjudication rather than through transparent, reasonable formulas established in legislation. That would not only impose significant administrative burdens; it would also likely lead to permitting delays that would ultimately harm both property owners and the public.

Third, while the *Nollan* and *Dolan* framework is undoubtedly important, it is limited in its application. It comes into play only when the government conditions a land-use permit on the applicant's agreement to relinquish some property interest to the government. Even if the Court holds that *Nollan* and *Dolan* apply to legislatively imposed impact fees, it should emphasize that the framework does not extend to traditional land-use regulations or to conditions that would not be a taking if imposed on property owners directly outside the permitting context—such as rent-

control laws, tenant protections, and inclusionary zoning requirements. Nor would it apply to taxes or user fees that are valid under state law, which the Court has repeatedly emphasized are not takings.

ARGUMENT

Amici States agree with respondent El Dorado County that the *Nollan* and *Dolan* framework should not apply to impact fees imposed pursuant to a generally applicable formula set by legislation. As the County explains, fees of that kind would not be takings if imposed on property owners directly, outside the permitting process—so they are not subject to scrutiny under *Nollan* or *Dolan*. Resp. Br. 29-34; *see Koontz*, 570 U.S. at 612. Because the County has comprehensively addressed that issue, amici States focus on three principles that should inform the Court's analysis in this case.

I. STATES HAVE PLAYED A LEADING ROLE IN SETTING LIMITS ON IMPACT FEES TO PREVENT EXTORTIONATE DEMANDS ON PROPERTY OWNERS

First, as this Court has recognized, States "have been dealing with" the question of limitations on land-use-permit conditions "a good deal longer than" the federal courts. *Dolan*, 512 U.S. at 389. And this Court's analysis in *Nollan*, *Dolan*, and *Koontz* drew heavily upon state law. *See Nollan*, 483 U.S. at 839-840; *Dolan*, 512 U.S. at 389-391; *Koontz*, 570 U.S. at 618. In *Koontz*, for example, the Court noted that "state law normally provides an independent check on excessive land use permitting fees," and many States have "applied the standard from *Nollan* and *Dolan* or something like it." *Koontz*, 570 U.S. at 618.

That observation applies not only to impact fees imposed in adjudicative proceedings (as in *Koontz*),

but also to fees imposed through ordinances and other generally applicable legislation. Petitioner acknowledges as much. *See* Pet. Br. 37-44. Indeed, the fee challenged by petitioner in this case was subject to the protections contained in California's Mitigation Fee Act. Pet. App. A20-A27; *see infra* pp. 19-20. That Act, and similar laws enacted by other States, set important limits on legislatively imposed impact fees. Those laws also undercut petitioner's theory that there is a pressing need for this Court to extend the *Nollan* and *Dolan* framework into this setting.

1. The California Legislature enacted the Mitigation Fee Act, Cal. Gov't Code § 66000 et seq., "in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects." *Ehrlich v. Culver City*, 12 Cal. 4th 854, 864 (1996). The Act "authorizes local agencies to impose fees on a development project in order to defray the cost of public facilities needed to serve the growth caused by the project, as long as the fees are reasonably related to the burden caused by the development." *Boatworks, LLC v. City of Alameda*, 35 Cal. App. 5th 290, 294 (2019); *see* Cal. Gov't Code § 66001(a)-(b). California courts have applied this "reasonable relationship" test to fees imposed by legislation as well as those imposed by adjudication, with some differences in how the analysis proceeds in the two different settings. *See infra* pp. 14-15; *see, e.g.*, *Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High Sch. Dist.*, 34 Cal. App. 5th 775, 791-792 (2019).

"[M]any other jurisdictions" have also adopted "[s]ome form of the reasonable relationship test," which is closely related to *Dolan*'s "rough proportionality" standard. 512 U.S. at 390; *see id.* at 390-391.

Several States have codified the reasonable-relationship test as the standard governing local governments' imposition of impact fees. *See, e.g.*, Me. Rev. Stat. tit. 30-A, § 4354(2); 45 R.I. Gen. Laws Ann. § 45-22.4-4(d)(1); Wash. Rev. Code Ann. § 82.02.050(4). Other States have adopted standards that use similar language but with some modifications. For example, Florida allows local governments to impose fees that are "proportional and reasonably connected to," or that "ha[ve] a rational nexus with," the impacts of new development. Fla. Stat. Ann. § 163.31801(4)(f)-(g). And Georgia limits impact fees to the "portion of the cost of system improvements which is reasonably related to the service demands and needs" of the new development. Ga. Code Ann. § 36-71-2(16); *see id.* §§ 36-71-2(8); 36-71-3.

Some States use different language, but pursue the same general objective of ensuring that impact fees do not exceed a rough approximation of the costs of providing public services to new developments. *See* Appendix, *infra.*[1] A few States expressly apply the

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[1] *See* Ariz. Rev. Stat. Ann. §§ 9-463.05(B)(3), 11-1102(B)(3); Ark. Code § 14-56-103(a)(3)(A); Colo. Rev. Stat. Ann. § 29-20-104.5(2)(a); Del. Code Ann. tit. 29, § 9122(5)-(6); Haw. Rev. Stat. Ann. §§ 46-141, 46-143(d); Idaho Code Ann. §§ 67-8203(23), 67-8204; 67-8207(1); Ill. Comp. Stat. Ann. §§ 5/5-903–5/5-904; Ind. Code Ann. §§ 36-7-4-1305(a), 36-7-4-1321(b); 605 Md. Code Ann., Local Gov't § 20-701; Minn. Stat. Ann. § 462.358(2c)(a); Mont. Code Ann. § 7-6-1602(7); Nev. Rev. Stat. Ann. § 278B.160(1); N.H. Rev. Stat. Ann. § 674:21(V)(a); N.J. Stat. Ann. §§ 27:1C-7(h), 40:55D-42; N.M. Stat. Ann. § 5-8-1; Okla. Stat. Ann. tit. 62, § 895(B)(1); Or. Rev. Stat. Ann. § 223.304; 53 Pa. Stat. Ann. § 10505-A(a); S.C. Code Ann. § 6-1-990(A); Tex. Loc. Gov't Code Ann. § 395.001(4); Utah Code Ann. § 11-36a-304; Vt. Stat. Ann. tit. 24, §§ 5200, 5202(3); Va. Code Ann. § 15.2-2318; W. Va. Code Ann. § 7-20-4; Wis. Stat. Ann. § 66.0617(6).

"essential nexus" and "rough proportionality" requirements from *Nollan* and *Dolan* to impact fees as a matter of state law. *See, e.g.*, Minn. Stat. Ann. § 462.358(2c)(a); *Anderson Creek Partners, L.P. v. County of Hartnett*, 382 N.C. 1, 32 (2022). Other States draw upon both the reasonable-relationship standard and the framework described in *Nollan* and *Dolan*. For example, the Ohio Supreme Court has fashioned a "dual rational nexus" test that is "based on" *Nollan* and *Dolan,* and requires local governments to demonstrate a "reasonable relationship" between fees and the impacts of new development. *Home Builders Ass'n v. City of Beavercreek*, 89 Ohio St. 3d 121, 128 (2000). In the context of traffic impact fees, this test requires the government to demonstrate that fees are reasonably related to "the increase in traffic generated by new developments." *Id.*

As these authorities demonstrate, States have developed a robust body of law that prevents governments from imposing extortionate permit fees either by adjudication or by legislation. In formulating a federal standard under the Takings Clause, the Court should be wary of "constitutionaliz[ing] this area" in a manner that "would short-circuit" this "prompt and considered legislative response" at the state level. *Dist. Att'y's Off. for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 73 (2009). That is particularly true because "property rights[] and takings claims" are one area in which it is reasonable to expect "local conditions and traditions to affect [States'] interpretation of a constitutional guarantee." Sutton, 51 Imperfect Solutions: States and the Making of American Constitutional Law 17 (2018).

2. Petitioner argues that California's Mitigation Fee Act (and state court precedent applying it) affords

"constitutionally insufficient" protection against excessive impact fees. Pet. Br. 43. But he fails to substantiate that allegation. While California courts have described the Act as "deferential" to the government, Pet. App. A16, they regularly invalidate legislatively imposed fees whose formulas are inadequately tailored to the impacts of new development. Petitioner does not discuss the facts or reasoning of these cases.

To take one illustrative example, in *Boatworks*, the court of appeal concluded that a city impact fee for park facilities violated the Mitigation Fee Act. 35 Cal. App. 5th at 294. The city had sought to justify the fee amount based primarily on the cost of acquiring new parkland. *Id.* But the evidence showed that the city already owned enough land for parks to serve anticipated new development and instead "planned to use the fees to improve existing assets." *Id.* at 299-300. The court explained that "[a] calculation that is based on the cost of buying new land—untethered from whether the City actually plans to do so—is not reasonably related to the burden posed by anticipated new development." *Id.* at 300.

California courts have also drawn nuanced distinctions between valid and invalid components of impact fees. For instance, *Home Builders Ass'n v. City of Lemoore*, 185 Cal. App. 4th 554 (2010), involved a fire-protection impact fee. The evidence showed that the east side of the city already had sufficient fire-protection facilities to serve anticipated new development, so "the new development will not burden the current facilities," but "a new fire station [would] be required to serve the west side" of the city. *Id.* at 572. The court thus upheld the fee as applied to new development on the west side of the city, but not the east side. *Id.* And in the context of school construction, California courts

have held upheld impact fees as applied to new residential units but not as applied to the reconstruction of existing units, where the evidence showed that "the cause of the District's need for new school facilities is *additional* residential units," not reconstruction of existing units. *Cresta Bella LP v. Poway Unified Sch. Dist.*, 218 Cal. App. 4th 438, 453 (2013); *accord Warmington Old Town Assocs. v. Tustin Unified Sch. Dist.*, 101 Cal. App. 4th 840, 859-861 (2002).[2]

II. IF THE COURT EXTENDS *NOLLAN* AND DOLAN TO LEGISLATIVELY IMPOSED FEES, IT SHOULD NOT REQUIRE ANY PROPERTY-SPECIFIC ANALYSIS

If the Court were to hold that *Nollan* and *Dolan* govern legislatively imposed impact fees, the framework need not—and should not—apply in precisely the same manner as it does in the context of permit conditions imposed by adjudication. In the adjudicative context, when the government seeks to condition a land-use permit on a dedication of money or property, it must typically make an "individualized determination" regarding the impacts of the specific property at issue. *Dolan*, 512 U.S. at 391. Petitioner contends that the same type of individualized analysis should

[2] Similar case law exists in other States. *See, e.g.*, *Bd. of County Comm'rs, Santa Rosa County v. Home Builders Ass'n*, 325 So. 3d 981, 984-985 (Fla. Dist. Ct. App. 2021) (*Santa Rosa County*) (impact fee formula was invalid because it "did not account for the differences between the northern and southern parts of the county" and "resulted in impact fees that were disproportionate to the growth" in these areas); *Robson Ranch Quail Creek, LLC v. Pima County*, 215 Ariz. 545, 551 (Ct. App. 2007) ("genuine issue of material fact" existed regarding whether "sewer connection fees" were reasonably related to the costs of new development in light of county's study finding that "the revenue from connection fees will substantially exceed the money the County needs to offset the burden" caused by new development).

be required for fees imposed through a formula set by legislation. *See* Pet. Br. 11, 22, 27. Amici strongly disagree. In the context of impact fees set by legislation, the relevant question should be whether the fee is appropriately tailored to the impacts of the *class* of development to which it applies—here, to the typical traffic impacts of a new single-family home in petitioner's geographic zone. Federal and state precedent both support that approach. And petitioner's alternative approach would force governments to set impact fees through case-by-case adjudication rather than legislative formula—making the permitting process slower, less transparent, and less predictable for all parties involved.

A. This Court's Precedent Suggests That No Property-Specific Analysis of Legislatively Imposed Fees Is Necessary

"*Nollan* and *Dolan* 'involve a special application'" of the "unconstitutional conditions doctrine." *Koontz*, 570 U.S. at 604. That doctrine reflects "an overarching principle" that "'the government may not deny a benefit to a person because he exercises a constitutional right.'" *Id.* It generally prevents the government from improperly "leverag[ing]" discretionary benefits to achieve unrelated policy goals that infringe on constitutional rights. *Agency for Int'l Dev. v. All. for Open Soc'y Int'l*, 570 U.S. 205, 214-215 (2013). But there is "no . . . established test for analyzing unconstitutional conditions questions" across the variety of settings in which the doctrine applies. Cox & Samaha, *Unconstitutional Conditions Questions Everywhere*, 5 J. Legal Analysis 61, 67 (2013); *see also, e.g.*, Sullivan, *Unconstitutional Conditions*, 102 Harv. L. Rev. 1413, 1419-1421 (1989) (describing at least "three distinct approaches" reflected in this Court's cases). The fact

that the unconstitutional conditions doctrine might apply to a particular type of case thus does not answer the separate question of *how* it would apply in that setting.

This Court has not had any occasion to address how that doctrine might apply to impact fees set by legislation. While petitioner asserts that *Nollan*, *Dolan*, and *Koontz* all involved "legislatively mandated" permit conditions like the fee at issue here, Pet. Br. 14 (capitalization omitted); *see id.* at 14-24, that is not a fair characterization of those cases. It is true that the government's action in each of the three cases was authorized in some way by legislation. But those statutory schemes created an individualized *adjudicative* process that called for the permitting agency to tailor the conditions in each permit to the specific impacts of each proposed development. *See Koontz*, 570 U.S. at 601-602; *Dolan*, 512 U.S. at 379-383; *Nollan*, 483 U.S. at 828. There was no adjudicative proceeding at all in petitioner's case, only a fee set by a legislatively enacted formula. *See* Pet. App. A3-A4. It is one thing to require a property-specific determination when the permitting agency is already conducting an individualized adjudicative proceeding of its own volition. It would be quite another thing to require that type of individualized analysis for fees set by a legislative formula applying to a class of development projects.

Moreover, the core objective of the *Nollan* and *Dolan* framework is to prevent "[e]xtortionate demands" for property or money as a condition of a land-use permit. *Koontz*, 570 U.S. at 605; *accord Nollan*, 483 U.S. at 837; *Dolan*, 512 U.S. at 387. When the government uses an adjudicative proceeding to condition a permit on a particular property owner's dedication of property

or money to the government, that demand may be considered extortionate if it lacks an "essential nexus and rough proportionality to [the] impacts" of that specific development. *Koontz*, 570 U.S. at 606. But when the government sets a fee through a legislatively enacted formula that applies to a class of developments, the relevant question is whether that fee lacks the requisite relationship to the impacts of the *class* of development. If the fee is appropriately tailored as a general matter but fails to account for the particular circumstances of some specific property, that is not extortion; it is just a reflection of the reality that legislation is rarely a perfect fit for every individual case.

Nothing in takings or due process jurisprudence suggests that legislation regulating property must account for the circumstances of each individual owner. Indeed, the Court has repeatedly rejected that theory. For instance, cities may establish zoning ordinances that exclude "all industrial establishments"—including those that are neither "offensive" nor "dangerous." *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926). The Court explained that governments may draw laws "in general terms so as to include individual cases that may turn out to be innocuous in themselves." *Id.* A municipality may also increase the tax valuation of all properties within its jurisdiction by a certain fixed percentage, without providing individualized consideration or hearings. *Bi-Metallic Inv. Co. v. State Bd. of Equalization*, 239 U.S. 441, 443 (1915); *see id.* at 445 ("Where a rule of conduct applies to more than a few people, it is impracticable that everyone should have a direct voice in its adoption.").[3]

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[3] *See also, e.g.*, *United States v. Sperry Corp.*, 493 U.S. 52, 60-61 (1989); *Minn. State Bd. for Cmty. Coll. v. Knight*, 465 U.S. 271, 285 (1984); *Village of Belle Terre v. Boraas*, 416 U.S. 1, 4-5 (1974).

Cases applying the unconstitutional conditions doctrine to legislative enactments confirm that no property-specific analysis should be required in that context. When the Court has concluded that a statute violates the unconstitutional conditions doctrine, it has framed its holding in terms of the statute's application as a whole—not as applied to a plaintiff's individual circumstances. In *Alliance for Open Society*, for example, the Court held that a statutory requirement that organizations "have a policy explicitly opposing prostitution and sex trafficking" to be eligible for certain federal grants "violates the First Amendment." 570 U.S. at 208, 221.[4] The "relevant distinction" in that case was "between conditions that define the limits of the government spending program" (which are permissible) and "conditions that seek to leverage funding to regulate speech outside the contours of the program itself" (which are not). *Id.* at 214-215. The particular circumstances of any individual potential grant recipient were immaterial. And when the Court has rejected unconstitutional conditions claims, it has analyzed the statute in the same way—not by conducting an individualized assessment of the statute's effects on a particular plaintiff. *See, e.g.*, *Rust v. Sullivan*, 500 U.S. 173, 196-198 (1991); *Regan v. Taxation With Representation*, 461 U.S. 540, 545-546 (1983).

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[4] *See also, e.g.*, *FCC v. League of Women Voters*, 468 U.S. 364, 381 (1984) ("the restraint imposed by § 399" violates the First Amendment); *Mem'l Hosp. v. Maricopa County*, 415 U.S. 250, 269 (1974) ("[t]he Arizona durational residence requirement" impermissibly "impinges on the right of interstate travel"); *Frost v. R.R. Comm'n*, 271 U.S. 583, 599 (1926) ("the act under review" places an "unconstitutional condition" on "the privilege of using the public highways of California").

Petitioner emphasizes that the Court has "often invalidated legislation that imposed unconstitutional conditions." Pet. Br. 34-35; *see id.* at 33-37. But he is not asking this Court to invalidate any legislation, or arguing that the County's fee formula is unlawful as a general matter. (The state courts rejected that theory and petitioner is no longer pursuing it. *Infra*, p. 20.) He instead seeks an "individualized determination" regarding whether the County's fee is roughly proportional to "the actual impacts of [his] 1,800-square-foot home." Pet. Br. 27. He fails to cite any case in which this Court has held that the unconstitutional conditions doctrine requires the government to conduct an individualized analysis of the effects of generally applicable legislation on a particular plaintiff.

B. State Law Generally Does Not Mandate Any Property-Specific Analysis of Legislatively Imposed Fees

This Court has repeatedly looked to state law in developing the relevant federal constitutional framework, including when *Dolan* drew upon the "reasonable relationship" test as a basis for its "rough proportionality" standard. 512 U.S. at 391; *see supra* p. 4. Here, state law also supports evaluating legislatively imposed fees at the class-wide level. *See* Resp. Br. 45-47.

California's "reasonable relationship" test requires a property-specific analysis in the adjudicative context, but not in the legislative context. For legislatively imposed fees, the Mitigation Fee Act requires a "reasonable relationship" between the fee and "the type of development project on which the fee is imposed." Cal. Gov't Code § 66001(a)(3); *see also id.* § 66001(a)(4). California courts have reasoned that this statutory

reference to a "type" of development "defeats any argument that some nexus must be found between the fee and a *particular* project on which it is imposed." *Tanimura & Antle*, 34 Cal. App. 5th at 791. It is sufficient if the fee is "reasonably related to projected development impacts" of the relevant "class of development." *Id.* at 792; *accord* Pet. App. A20-A21. In the context of fees imposed through case-by-case adjudication, by contrast, the Act requires "a reasonable relationship between the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed." Cal. Gov't Code § 66001(b). That involves an analysis of the impacts of the "individual project" at issue. *Tanimura & Antle*, 34 Cal. App. 5th at 792; *see also Garrick Dev. Co. v. Hayward Unified Sch. Dist.*, 3 Cal. App. 4th 320, 335-336 (1992).

Courts in other States evaluate impact fees set by legislation in the same way: asking whether the fee is appropriately tailored to the impacts of the relevant class of development, not to the impacts of any specific property. Even courts that apply the *Nollan* and *Dolan* framework ("or something like it," *Koontz*, 570 U.S. at 618) to legislatively imposed impact fees follow this approach. The Ohio Supreme Court upheld a city's traffic mitigation fee because the "methodology" the city used to set the fee was "reasonable" and "a reasonable relationship existed" between the fee amount and "the benefits accruing to developers" generally—not to any specific developer or property. *City of Beavercreek*, 89 Ohio St. 3d at 131; *see id.* at 129-131. The Illinois Supreme Court upheld an ordinance that used a fee formula "based upon generally accepted traffic engineering practices," even though the ordinance did not "consider[] the particular characteristics of a specific development." *N. Ill. Home Builders Ass'n v. County*

of Du Page, 165 Ill. 2d 25, 36 (1995) (emphasis omitted). And the Minnesota Supreme Court recently concluded that "[a] city can justify its imposition of a percentage-based formula on a particular class of properties if it can show" that the fee "reflects, or is roughly proportional, to the amount necessary to counter the impact of the expected developments" in the aggregate, not at the "individual property" level. *Puce v. City of Burnsville*, 997 N.W.2d 49, 59 (Minn. 2023).[5]

Petitioner invokes a number of cases to support his argument that it would be "workable" for courts to review legislatively imposed impact fees at the individual-property level. Pet. Br. 37; *see id.* at 37-43. But only two of those cases—both involving the same unusual tree-removal ordinance enacted by a Michigan township—arguably struck down an impact fee under *Nollan* and *Dolan* because it did not adequately account for the impacts of specific property owners. *See F.P. Dev., LLC v. Charter Twp. of Canton*, 16 F.4th 198, 206-208 (6th Cir. 2021); *Charter Twp. of Canton v. 44650, Inc.*, No. 354309, 2023 WL 2938991, at *10-14 (Mich. Ct. App. Apr. 13, 2013). Even there, the Sixth

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[5] *See also, e.g.*, *Zander v. Orange County*, 890 S.E.2d 793, 800-801 (N.C. Ct. App. 2023) (county was permitted to "estimate the total cost of improvements *by category*" without any property-specific analysis (alteration omitted)); *Charleston Trident Home Builders, Inc. v. Town Council*, 369 S.C. 498, 505-511 (2006) (upholding impact fee in light of capital improvements plan evaluating effects of development in the aggregate, with no property-specific analysis); *City of Olympia v. Drebick*, 156 Wash. 2d 289, 307, 309 (2006) (impact fee is valid if it is "reasonably related to the demand for new capacity improvements *considered as a whole*"; local governments are not required to "mak[e] individualized assessments of [each] development's" specific impacts).

Circuit suggested that the township could have "satisfie[d] the nexus and rough proportionality test" if it had "introduc[ed] some evidence relating to the 'methodology and functioning'" of its formula at a general level. *F.P. Dev.*, 16 F.4th at 207-208 (citing *City of Beavercreek*, 89 Ohio St. 3d at 129-131).

None of petitioner's remaining cases required any property-specific analysis of impact fees set pursuant to a legislative formula. Several did not involve impact fees set by legislation at all, but exactions of real property imposed through individualized adjudicative proceedings. *See B.A.M. Dev., L.L.C. v. Salt Lake County*, 282 P.3d 41, 43 (Utah 2012); *Amoco Oil Co. v. Village of Schaumburg*, 277 Ill. App. 3d 926, 927, 929 (1995); *Bd. of Supervisors v. Fiechter*, 129 Pa. Cmwlth. 537, 539 (1989); *Goss v. City of Little Rock*, 151 F.3d 861, 862 (8th Cir. 1998). Two of the cases invalidated municipal ordinances under *Nollan* and *Dolan*, but without conducting or requiring any property-specific analysis. *See Knight v. Metro. Gov't of Nashville*, 67 F.4th 816, 836-837 (6th Cir. 2023); *Levin v. City & County of San Francisco*, 71 F. Supp. 3d 1072, 1082-1089 (N.D. Cal. 2014).[6] And two *upheld* impact fees set pursuant to a legislative formula, again without requiring any property-specific analysis. *See N. Ill. Home Builders Ass'n*, 165 Ill. 2d at 34-37; *Mira Mar Dev. v. City of Coppell*, 421 S.W.3d 74, 97 (Tex. Ct. App. 2013).

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[6] The Ninth Circuit later dismissed the appeal in *Levin* as moot. *Levin v. City & County of San Francisco*, 680 F. App'x 610 (9th Cir. 2017) (memorandum). In light of the Ninth Circuit's subsequent decision in *Ballinger v. City of Oakland*, 24 F.4th 1287, 1299-1300 (9th Cir. 2022), *cert. denied*, 142 S. Ct. 2777 (2022), it is doubtful whether the district court decision in *Levin* remains good law. *See infra* p. 21.

C. Practical Considerations Also Counsel Against Requiring Any Property-Specific Analysis of Legislatively Imposed Fees

As petitioner acknowledges, requiring governments to justify legislatively imposed impact fees at the individual-property level would effectively prohibit governments from "adopt[ing] a predetermined schedule of fees." Pet. Br. 42. They instead would be obligated to establish a "mechanism for addressing the . . . impacts" of each individual development. *Id.* In this case, for example, petitioner maintains that the County was required to consider the specific impacts of his "1,800 square foot home." *Id.* at 27.

That requirement for individualized, property-specific evaluations would work a sea change in American land-use regulation. Impact fees exist in all 50 States, and are one of the most common ways for local governments to finance capital improvements necessary to support new development—such as new roads, schools, parks, fire stations, and sewer systems. Nicholas & Juergensmeyer, *Market Based Approaches to Environmental Preservation*, 43 Nat. Resources J. 837, 839 (2003); *see* Am. Planning Ass'n Br. 11-14. Impact fees offer several important advantages compared to alternative methods of financing: they "provide a stable source of infrastructure capital"; they can help overcome "objection[s] to new residential growth"; and, when they are properly calculated, they are economically efficient because they "impose the true marginal costs of using public facilities upon new growth." Rosenberg, *The Changing Culture of American Land Use Regulation*, 59 S.M.U. L. Rev. 177, 210 (2006); *see also id.* at 215 (discussing efficiency-related benefits of impact fees).

Most jurisdictions impose impact fees using a formula set by legislation, not through case-by-case adjudication.[7] Setting impact fees by legislative formula is more "transparent [and] predictable" than doing so through adjudication, and is less "time-consuming" and administratively burdensome. Fenster, *Takings Formalism and Regulatory Formulas*, 92 Cal. L. Rev. 609, 646-647 (2004); *see* Am. Planning Ass'n Br. 13-17. The Court should not adopt any rule that would force governments to forgo those benefits.

The facts of this case illustrate how an appropriate analysis could proceed. El Dorado County adopted a formula that sets the relevant traffic impact fee based on the geographic zone in which the property is located and the type of development at issue (single-family residential, multi-family residential, commercial, etc.). Pet. App. A3. The traffic-impact fee the County assessed here ($23,420) is the same fee that applies to every other new single-family home in petitioner's geographic zone. *See id.*

California law, like that of other States, allows property owners to challenge this type of fee on the ground that it is not a fair approximation of the actual traffic impacts caused by a typical single-family home. *Cf. Boatworks*, 35 Cal. App. 5th at 299-300; *Robson Ranch*, 215 Ariz. at 551. Or they may challenge the fee on the ground that it does not account for relevant differences between geographic zones. *Cf. City of Lemoore*, 185 Cal. App. 4th at 572; *Santa Rosa County*, 325

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[7] *See, e.g.*, Nicholas & Juergensmeyer, *supra*, 43 Nat. Resources J. at 844-845; *N. Ill. Home Builders Ass'n*, 165 Ill. 2d at 36-37 (evidence showed that "a majority of impact fee ordinances nationwide use averages to predetermine impact fees"); *City of Beavercreek*, 89 Ohio St. 3d at 129 (describing widely accepted methodology for calculating impact fees by formula).

So. 3d at 984-985. To the extent petitioner and some amici contend that impact fees in California are excessive as a general matter, *see, e.g.*, Pet. Br. 43-44; Cal. Bldg. Indus. Ass'n Br. 29, no individualized or property-specific analysis is required to evaluate that kind of claim.

Indeed, petitioner attempted to raise such arguments in the court of appeal below. *See* Pet. App. A25-A27. Based on the evidentiary record here, the court properly rejected them. It reasoned that the County had calculated the fee "after consideration of a variety of factors, including the expected increase in traffic volumes . . . from each type of new development." *Id.* at A26. The County relied on a technical report, several studies, and "data published in the Institute of Transportation Engineers Trip Generation Manual." *Id.* The "limited portions of the record" petitioner cited in challenging his fee calculation did not call the County's formula into question. *Id.* at A27.

Petitioner does not dispute that conclusion in this Court. He instead contends that *Nollan* and *Dolan* require a property-specific analysis. That approach would open a Pandora's box of Takings Clause challenges to impact fees set by legislative formula. Each of the millions of property owners subject to such a fee could argue that the formula does not adequately reflect their particular circumstances. Individuals who commute by bicycle rather than by car could seek a reduction of traffic-impact mitigation fees; families without children could seek a reduction of school-construction fees. Requiring governments to evaluate each of those claims individually would eliminate much of the transparency and predictability offered by statutory formula. It would also delay the permitting process, increasing costs for homebuyers and tenants.

See Fenster, *supra*, 92 Cal. L. Rev. at 644. Neither this Court's precedents nor the principles underlying *Nollan* and *Dolan* require that outcome.

III. *NOLLAN* AND *DOLAN* APPLY ONLY TO LAND-USE PERMIT CONDITIONS REQUIRING A DEDICATION OF PROPERTY OR MONEY TO THE GOVERNMENT

Finally, while *Nollan* and *Dolan* "provide important protection against the misuse of the power of land-use regulation," *Koontz*, 570 U.S. at 599, they do not apply to all government actions affecting property rights. The Court has previously identified several notable limitations on the *Nollan* and *Dolan* framework, and any decision extending those cases to legislatively imposed fees should reiterate those limitations.

First, *Nollan* and *Dolan* only come into play "when owners apply for land-use permits." *Koontz*, 570 U.S. at 604; *accord Lingle v. Chevron USA Inc.*, 544 U.S. 528, 546-548 (2005). They are premised on "realities of the permitting process" that are specific to the land-use context—principally, that "land-use permit applicants are especially vulnerable to the type of coercion that the unconstitutional conditions doctrine prohibits" due to the government's "broad discretion to deny" valuable permits. *Koontz*, 570 U.S. at 604-605; *see id.* at 619 (noting the "special vulnerability of land use permit applicants to extortionate demands"). The framework in *Nollan* and *Dolan* is not designed or well-suited to address situations outside that unique context. Thus, when the relevant government action does not "conditionally grant or regulate" a land-use permit, *Nollan* and *Dolan* do not apply. *See, e.g.*, *Ballinger*, 24 F.4th at 1299-1300 (rejecting challenge to ordinance requiring landlords to pay tenant relocation fee upon termination of lease).

Second, *Nollan* and *Dolan* prohibit only those government demands for property or money that would constitute takings "outside the exactions context." *Lingle*, 544 U.S. at 547; *accord Nollan*, 483 U.S. at 831. If a permit condition involves a requirement that the government could impose "directly" by regulation without resulting in a taking, the permit condition is lawful. *Koontz*, 570 U.S. at 612. For example, "'statutes regulating the economic relations of landlords and tenants are not *per se* takings.'" *Yee v. City of Escondido*, 503 U.S. 519, 529 (1992) (quoting *FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987)). The government may thus impose such regulations as conditions on development permits without triggering scrutiny under *Nollan* and *Dolan*. *See, e.g.*, *Cal. Bldg. Indus. Ass'n v. City of San Jose*, 61 Cal. 4th 435, 461 (2015), *cert. denied*, 577 U.S. 1179 (2016) (rejecting challenge to ordinance requiring developer to sell 15 percent of units at a price affordable to low- or moderate-income households or pay an equivalent in-lieu fee).

Third, "[i]t is beyond dispute that taxes and user fees are not takings." *Koontz*, 570 U.S. at 615 (internal quotation marks and alterations omitted). *Nollan* and *Dolan* thus do not "affect the ability of government to impose property taxes, user fees, and similar laws and regulations that may impose financial burdens on property owners." *Id.*; *see, e.g.*, *McClain v. Sav-On Drugs*, 9 Cal. App. 5th 684, 703 (2017) (rejecting challenge to denial of tax refund); *Sperry Corp.*, 493 U.S. at 60 (rejecting challenge to user fee reflecting a "fair approximation of the cost of benefits supplied" to property owners). Like the other limitations on the *Nollan* and *Dolan* framework the Court has identified, this rule strikes an appropriate balance between protecting property owners from extortionate demands while allowing governments to function effectively.

CONCLUSION

The judgment of the California Court of Appeal should be affirmed.

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APPENDIX

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Appendix – Relevant State Laws.............................. 1a

APPENDIX

Alabama (Ala. Code §§ 45-2-243.80 et seq.)[1]

"IMPACT FEE. A charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of governmental infrastructure necessitated by and attributable directly to the new development." Ala. Code § 45-2-243.81(2).

Arizona (Ariz. Rev. Stat. Ann. § 9-463.05 (cities); Ariz. Rev. Stat. Ann. § 11-1102 (counties))

"The development fee shall not exceed a proportionate share of the cost of necessary public services, based on service units, needed to provide necessary public services to the development." Ariz. Rev. Stat. Ann. § 9-463.05(B)(3); *see also* Ariz. Rev. Stat. Ann. § 11-1102(B)(3).

Arkansas (Ark. Code § 14-56-103)

"'Development impact fee' means a fee or charge imposed by a municipality or by a municipal service agency upon or against a development in order to generate revenue for funding or for recouping expenditures of the municipality or municipal service agency that are reasonably attributable to the use and occupancy of the development." Ark. Code § 14-56-103(a)(3)(A).

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[1] Alabama's statute applies only to Baldwin County. *See* Ala. Code § 45-2-243.80.

California (Cal. Gov't Code §§ 66001 et seq.)

"In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following . . . (3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed; (4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed." Cal. Gov't Code § 66001(a)(3)-(4).

Colorado (Colo. Rev. Stat. Ann. § 29-20-104.5)

"A local government shall quantify the reasonable impacts of proposed development on existing capital facilities and establish the impact fee or development charge at a level no greater than necessary to defray such impacts directly related to proposed development." Colo. Rev. Stat. Ann. § 29-20-104.5(2)(a).

Delaware (Del. Code Ann. tit. 29, §§ 9121 et seq.)

"(5) 'Impact fee'" means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development;

(6) 'Proportionate share' means that portion of the cost of system improvements that is reasonably related to the service demands and needs of the project[]." Del. Code Ann. tit. 29, § 9122(5)-(6).

Florida (Fla. Stat. Ann. § 163.31801)

"At a minimum, each local government that adopts and collects an impact fee by ordinance . . . must . . .

Ensure that the impact fee is proportional and reasonably connected to, or has a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

Ensure that the impact fee is proportional and reasonably connected to, or has a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction." Fla. Stat. Ann. § 163.31801(4)(f)-(g).

Georgia (Ga. Code Ann. §§ 36-71-1 et seq.)

"'Development impact fee' means a payment of money imposed upon development as a condition of development approval to pay for a proportionate share of the cost of system improvements needed to serve new growth and development. . . .

'Proportionate share' means that portion of the cost of system improvements which is reasonably related to the service demands and needs of the project within the defined service area." Ga. Code Ann. § 36-71-2(8), (16)

Hawaii (Haw. Rev. Stat. Ann. §§ 46-141 et seq.)

"'Proportionate share' means the portion of total public facility capital improvement costs that is reasonably attributable to a development." Haw. Rev. Stat. Ann. § 46-141

"An impact fee shall be substantially related to the needs arising from the development and shall not exceed a proportionate share of the costs incurred or to be incurred in accommodating the development." Haw. Rev. Stat. Ann. § 46-143(d).

Idaho (Idaho Code Ann. §§ 67-8201 et seq.)

"'Proportionate share' means that portion of the cost of system improvements determined pursuant to section 67-8207, Idaho Code, which reasonably relates to the service demands and needs of the project." Idaho Code Ann. § 67-8203(23).

"A development impact fee shall not exceed a proportionate share of the cost of system improvements." Idaho Code Ann. 67-8204(1).

Illinois (605 Ill. Comp. Stat. Ann. §§ 5/5-901 et seq.)

"'Specifically and uniquely attributable' means that a new development creates the need, or an identifiable portion of the need, for additional capacity to be provided by a road improvement." 605 Ill. Comp. Stat. Ann. § 5/5-903.

"An impact fee payable by a developer shall not exceed a proportionate share of costs incurred by a unit of local government which are specifically and uniquely attributable to the new development paying the fee in providing road improvements." 605 Ill. Comp. Stat. Ann. § 5/5-904.

Indiana (Ind. Code Ann. §§ 36-7-4-1300 et seq.)

"As used in this series, 'impact fee' means a monetary charge imposed on new development by a unit to defray or mitigate the capital costs of infrastructure that is required by, necessitated by, or needed to serve the new development." Ind. Code Ann. § 36-7-4-1305(a).

"As used in this section, 'impact costs' means a reasonable estimate, made at the time the impact fee is assessed, of the proportionate share of the costs incurred or to be incurred by the unit in providing infrastructure of the applicable type in the impact zone that are necessary to provide the community level of service for the development." Ind. Code Ann. § 36-7-4-1321(b).

Louisiana (La. Stat. Ann. § 33:3091)[2]

"'Impact fee' means a charge or assessment imposed in order to generate revenue for funding and recouping the costs of capital improvements or facility expansions necessitated by or attributable to new development." La. Stat. Ann. § 33:3091(B)(4).

Maine (Me. Rev. Stat. tit. 30-A, § 4354)

"The amount of the fee must be reasonably related to the development's share of the cost of infrastructure improvements made necessary by the development or, if the improvements were constructed at municipal expense prior to the development, the fee must be reasonably related to the portion or percentage of the

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[2] Louisiana's statute applies only to the village of Folsom. *See* La. Stat. Ann. § 33:3091(A).

infrastructure used by the development." Me. Rev. Stat. tit. 30-A, § 4354(2)

Maryland (Md. Code Ann., Local Gov't §§ 20-701 et seq.)[3]

"By public local law, the county commissioners of a code county may impose development impact fees to finance any of the capital costs of additional or expanded public works, improvements, and facilities required to accommodate new construction or development." Md. Code Ann., Local Gov't § 20-701.

Minnesota (Minn. Stat. Ann. § 462.358)

"There must be an essential nexus between the fees or dedication imposed . . . and the municipal purpose sought to be achieved by the fee or dedication. The fee or dedication must bear a rough proportionality to the need created by the proposed subdivision or development." Minn. Stat. Ann. § 462.358(2c)(a).

[3] Maryland's statute applies only to six counties, not the entire State. *See* Md. Code Ann., Local Gov't § 20-701.1 (Baltimore County); Md. Code Ann., Local Gov't § 20-702 (Carroll County); Md. Code Ann., Local Gov't § 20-703 (Frederick County); Md. Code Ann., Local Gov't § 20-704 (Garrett County); Md. Code Ann., Local Gov't § 20-705 (Harford County); Md. Code Ann., Local Gov't § 20-706 (St. Mary's County).

Montana (Mont. Code Ann. §§ 7-6-1601 et seq.)

"The amount of the impact fee must be reasonably related to and reasonably attributable to the development's share of the cost of infrastructure improvements made necessary by the new development. . . .

The impact fees imposed may not exceed a proportionate share of the costs incurred or to be incurred by the governmental entity in accommodating the development." Mont. Code Ann. § 7-6-1602(7)(a)-(b).

Nevada (Nev. Rev. Stat. Ann. §§ 278B.160 et seq.)

"A local government may by ordinance impose an impact fee in a service area to pay the cost of constructing a capital improvement or facility expansion necessitated by and attributable to new development." Nev. Rev. Stat. Ann. § 278B.160(1)(a)

New Hampshire (N.H. Rev. Stat. Ann. § 674:21)

"The amount of any such fee shall be a proportional share of municipal capital improvement costs which is reasonably related to the capital needs created by the development, and to the benefits accruing to the development from the capital improvements financed by the fee." N.H. Rev. Stat. Ann. § 674:21(V)(a).

New Jersey (N.J. Stat. Ann. §§ 27:1C-2 et seq. (traffic development); N.J. Stat. Ann. § 40:55D-42 (water, sewer, drainage))

"Development fees shall be reasonably related to the added traffic growth attributable to the development which is subject to the assessment and the maximum amount of fees for transportation improvements that may be charged to any development by the State, county or municipality pursuant to this act or any other law shall not exceed the property owner's 'fair share' of such improvement costs. 'Fair share' means the added traffic growth attributable to the proposed development or phase thereof." N.J. Stat. Ann. § 27:1C-7(h).

"Contribution for off-tract water, sewer, drainage, and street improvements. The governing body may by ordinance adopt regulations requiring a developer, as a condition for approval of a subdivision or site plan, to pay the pro-rata share of the cost of providing only reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, located off-tract but necessitated or required by construction or improvements within such subdivision or development." N.J. Stat. Ann. § 40:55D-42.

New Mexico (N.M. Stat. Ann. §§ 5-8-1 et seq.)

"'[I]mpact fee' means a charge or assessment imposed by a municipality or county on new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development." N.M. Stat. Ann. § 5-8-2(I).

North Carolina

The North Carolina Supreme Court has held that impact fees must "satisfy both the 'essential nexus' and 'rough proportionality requirements'" from *Nollan* and *Dolan*. *Anderson Creek Partners, L.P. v. County of Hartnett*, 382 N.C. 1, 32 (2022).

Ohio

The Ohio Supreme Court has held that impact fees must satisfy a "dual rational nexus" test, which considers: "(1) whether there is a reasonable connection between the need for additional capital facilities and the growth in population generated by the subdivision; and (2) if a reasonable connection exists, whether there is a reasonable connection between the expenditure of the funds collected through the imposition of an impact fee, and the benefits accruing to the subdivision." *Home Builders Ass'n v. City of Beavercreek*, 89 Ohio St. 3d 121, 126 (2000).

Oklahoma (Okla. Stat. Ann. tit. 62, § 895)

"Development fees shall not exceed a clear, ascertainable, and reasonably determined proportionate share of the cost of capital improvement to the public infrastructure system attributable to the expansion or increase in functional service capacity generated, or to be generated by, the development being charged the fee. There shall be a clearly established functional nexus between the purpose and amount of the development fee being charged and the development against which the fee is charged." Okla. Stat. Ann. tit. 62, § 895(B)(1).

Oregon (Or. Rev. Stat. Ann. §§ 223.297 et seq.)

"The methodology for establishing or modifying a reimbursement fee must . . .

Promote the objective of future system users contributing no more than an equitable share to the cost of existing facilities." Or. Rev. Stat. Ann. § 223.304(1)(b)(A).

Pennsylvania (53 Pa. Stat. Ann. §§ 10505-A et seq.)

"The impact fee for transportation capital improvements shall be based upon the total costs of the road improvements included in the adopted capital improvement plan within a given transportation service area attributable to and necessitated by new development within the service area as calculated pursuant to section 504-A(e)(1)(iv)(C)." 53 Pa. Stat. Ann. § 10505-A(a)(1).

Rhode Island (45 R.I. Gen. Laws Ann. §§ 45-22.4-1 et seq.)

"The collection and expenditure of impact fees must be reasonably related to the benefits accruing to the development paying the fees." 45 R.I. Gen. Laws Ann. § 45-22.4-5(a).

South Carolina (S.C. Code Ann. §§ 6-1-940 et seq.)

"The impact fee imposed upon a fee payor may not exceed a proportionate share of the costs incurred by the

governmental entity in providing system improvements to serve the new development." S.C. Code Ann. § 6-1-990(A).

Tennessee

One intermediate state appellate court has held in an unpublished decision that the dual rational nexus test applies to impact fees, requiring a local government to prove: '(1) that there is "a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated' by the new development and (2) that there is 'a reasonable connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to" the new development. *Home Builders Ass'n. v. Williamson County*, No. M201900698COAR3CV, 2020 WL 1231386, at *4 (Tenn. Ct. App. Mar. 13, 2020).

Texas (Tex. Loc. Gov't Code Ann. §§ 395.001 et seq.)

"'Impact fee' means a charge or assessment imposed by a political subdivision against new development in order to generate revenue for funding or recouping the costs of capital improvements or facility expansions necessitated by and attributable to the new development." Tex. Loc. Gov't Code Ann. § 395.001(4).

Utah (Utah Code Ann. §§ 11-36a-101 et seq.)

Local governments must analyze "whether or not the proportionate share of the costs of public facilities are

reasonably related to the new development activity." Utah Code Ann. § 11-36a-304(2).

Vermont (Vt. Stat. Ann. tit. 24, §§ 5200 et seq.)

"'Impact fee' means a fee levied as a condition of issuance of a zoning or subdivision permit that will be used to cover any portion of the costs of an existing or planned capital project that will benefit or is attributable to the users of the development or to compensate the municipality for any expenses it incurs as a result of construction. The fee may be levied for recoupment of costs for previously expended capital outlay for a capital project that will benefit the users of the development." Vt. Stat. Ann. tit. 24, § 5201(3).

Virginia (Va. Code Ann. §§ 15.2-2317 et seq.)

"'Impact fee' means a charge or assessment imposed against new development in order to generate revenue to fund or recover the costs of reasonable road improvements benefiting the new development." Va. Code Ann. § 15.2-2318.

Washington (Wash. Rev. Code Ann. §§ 82.02.050 et seq.)

"'Impact fee' means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for

facilities that reasonably benefit the new development." Wash. Rev. Code Ann. § 82.02.090(3).

West Virginia (W. Va. Code Ann. §§ 7-20-1 et seq.)

"Such [impact] fees shall not exceed a proportionate share of such costs required to accommodate any such new development. Before requiring payment of any fee authorized hereunder, it must be evident that some reasonable benefit from any such capital improvements will be realized by any such development project." W. Va. Code Ann. § 7-20-4.

Wisconsin (Wis. Stat. Ann. § 66.0617)

"Impact fees imposed by an ordinance enacted under this section:

Shall bear a rational relationship to the need for new, expanded or improved public facilities that are required to serve land development.

May not include amounts for an increase in service capacity greater than the capacity necessary to serve the development for which the fee is imposed.

May not exceed the proportionate share of the capital costs that are required to serve land development, as compared to existing uses of land within the municipality." Wis. Stat. Ann. § 66.0617(6)(a)-(b)