

# Press Release

Washington Legal Foundation  
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## **SUPREME COURT URGED TO REVIEW OREGON DEVELOPMENT FEE CASE** *(Rogers Machinery, Inc. v. City of Tigard)*

The Washington Legal Foundation (WLF) filed a brief with the United States Supreme Court urging the High Court to review and reverse an important development fee ruling from Oregon. That decision implicates the Takings Clause of the Fifth Amendment with respect to the imposition of development or impact fees by state and local governments upon land and business development. A favorable ruling would set a major precedent on the constitutionality of the growing use of impact fees across the country.

In *Rogers Machinery, Inc. v. City of Tigard*, the City of Tigard imposed a so-called traffic impact fee (TIF) of approximately \$32,000 upon Rogers Machinery as a condition for granting the company a building permit to construct a new office building next to its current headquarters to relieve overcrowding. The TIF fee is designed to help the city and county fund road improvements for traffic that would be generated by the new building; however, because no additional employees would be hired by Rogers, the construction of the building would not generate any new traffic.

Rogers Machinery challenged the monetary exaction as a violation of the Fifth Amendment Takings Clause because there was no relation or proportion of the fee to the actual traffic generated by the new building. The Supreme Court decisions in both *Nollan v. California Coastal Council* and *Dolan v. City of Tigard* held that development conditions that require property owners to dedicate land or easements to the government are subject to heightened scrutiny under the Takings Clause. The Oregon courts, however, held that the Takings Clause did not apply here where the fee is imposed pursuant to a general legislative scheme that computes fees based on established criteria. In its brief, WLF argued that the same scrutiny should apply to development fees which simply are methods that monetize the exaction. WLF further argued that the Fifth Amendment applies regardless of whether the impact fee is imposed legislatively across-the-board, or on an ad hoc, adjudicatory basis. Otherwise, state and local governments would be free to avoid judicial scrutiny and impose confiscatory fees on property owners.

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