

# *Penn Central Transportation Co. v. New York City*

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*Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978) was a landmark United States Supreme Court decision on compensation for regulatory takings.

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## Events Leading Up to the Case

### The New York City Landmarks Law

The New York City Landmarks Law was signed into effect by Mayor Robert F. Wagner, Jr., in 1965. This law was passed after New York citizens grew concerned over the loss of culturally significant structures such as the Pennsylvania Station, demolished in 1963. The Landmarks Law's purpose is to protect structures that are significant to the city and still retain their ability to be properly used. This law is enforced by the New York City Landmarks Preservation Commission.<sup>[1]</sup>

### Railroad Decline

## *Penn Central Transportation Co. v. New York City*



### Supreme Court of the United States

**Argued April 17, 1978**

**Decided June 26, 1978**

**Full case name** *Penn Central Transportation Company, et al. v. New York City, et al.*

**Citations** 438 U.S. 104 (*more*)  
98 S. Ct. 2646; 57 L. Ed. 2d 631;  
1978 U.S. LEXIS 39; 11 ERC (BNA) 1801; 8 ELR 20528

**Prior history** Appeal from the Court of Appeals of New York

### Holding

The application of the Landmarks Law to the Terminal property does not constitute a "taking" of appellants' property within the meaning of the Fifth Amendment as made applicable to the States by the Fourteenth Amendment.

### Court membership

#### Chief Justice

Warren E. Burger

#### Associate Justices

William J. Brennan, Jr. • Potter Stewart

Byron White • Thurgood Marshall

Harry Blackmun • Lewis F. Powell, Jr.

William Rehnquist • John P. Stevens

### Case opinions

**Majority** Brennan, joined by Stewart, White, Marshall, Blackmun, Powell

**Dissent** Rehnquist, joined by Burger, Stevens

### Laws applied

U.S. Const. amend. V

Use of railroad systems saw its peak in the 1920s, and began to falter in the mid to late 1930s. World War II revitalized use of the railway systems in the early 1940s and brought the industry back to prior success. While this period saw nearly half of Americans using the railroad systems, by the late 40s there was once again a steep decline in railroad use. This put many of the railroad companies out of business and left others to find new ways to increase revenue. <sup>[2]</sup><sup>[3]</sup>

## **Early Proposals to Replace Grand Central Terminal**

In 1954 New York Central Railroad began to look at proposed plans to replace the Grand Central Terminal. Early designs by William Zeckendorf and I. M. Pei included an ambitious 80-story, 4,800,000-square-foot (446,000 m<sup>2</sup>) tower that would be over 500 feet (150 m) taller than the Empire State Building. <sup>[4]</sup> None of the early designs ever made it past the sketch phase and for the time being all plans to replace Grand Central Terminal were abandoned.

## **The Pan Am Building**

In 1958 Erwin S. Wolfson created proposals to replace Grand Central Terminal's six-story office building just north of the Terminal. Erwin S. Wolfson developed the project in the early 1960's with the assistance of the architects Emery Roth and Sons, Walter Gropius and Pietro Belluschi. <sup>[5]</sup> The Pan Am Building was completed in 1963 and bought Grand Central Terminal more time away from proposed reconstructions.

## **New York Central Railroad Merger with Pennsylvania Railroad**

Despite increased office space, New York Central Railroad found itself facing bankruptcy in 1967 due to continued decline in railway use. Pennsylvania Railroad found itself in a similar position after the offices built following the demolition of Pennsylvania Station were no longer bringing the company sufficient income.

In 1968 New York Central Railroad merged with Pennsylvania Railroad to create the Penn Central Railroad company. The newly formed Penn Central began to look into updating the uses of the Grand Central Terminal in order to increase revenue and save the company from financial straits. <sup>[6]</sup>

## **Plans to Replace Grand Central Terminal**

In mid 1968 Penn Central Railroad unveiled two designs by Marcel Breuer one of which would potentially be built atop Grand Central Terminal. The first design (Breuer I) was a 55-story tall office building to be constructed on top of Grand Central. This building was to be cantilevered above the existing structure allowing Grand Central to maintain its facade. The second design (Breuer II) called for the demolition of one of the sides of Grand Central in order to create a unified facade for a new 53-story office building. Both designs were submitted to the New York City Landmarks Preservation Commission after the structures met city zoning laws. <sup>[7]</sup>

## **NYC Landmarks Preservation Commission's Rejections**

Upon reviewing the submitted designs for Grand Central Terminal the Landmarks Preservation Commission rejected the plans on September 20th, 1968. Penn Central then filed for a Certificate of Appropriateness for both proposals but was again denied. The Landmarks Preservation Commission

summarized their reason for rejecting both plans:

#### Breuer I

“ Breuer I which would have preserved the existing vertical facades of the present structure, received more symptomatic considerations [than Breuer II]. The Commission focused on the effect that the proposed tower would have on on desirable feature created by the present structure and its surroundings: the dramatic view of the Terminal from Park Avenue South. ”

#### Breuer II

“ To protect a Landmark, one does not tear it down. To perpetuate its architectural features, one does not strip them off. ”

“ [We have] no fixed rule against making additions to designated buildings—it all depends on how they are done . . . But to balance a 55-story office tower above a flamboyant Beaux-Arts facade seems nothing more than an aesthetic joke. Quite simply, the tower would overwhelm the Terminal by its sheer mass. The 'addition' would be four times as high as the existing structure and would reduce the Landmark itself to the status of a curiosity.

Landmarks cannot be divorced from their settings — particularly when the setting is a dramatic and integral part of the original concept. The Terminal, in its setting, is a great example of urban design. Such examples are not so plentiful in New York City that we can afford to lose any of the few we have. And we must preserve them in a meaningful way — with alterations and additions of such character, scale, materials and mass as will protect, enhance and perpetuate the original design rather than overwhelm it. ”

The Landmarks Preservation Commission did offer Penn Central the Transfer of Development Rights (TDRs) which would allow them to sell the air space above Grand Central Terminal to other Developers for their own use. Penn Central felt this was not enough to be considered just compensation for the loss of their land use. <sup>[8]</sup>

## The Supreme Court Case

### Penn Central Files Suit with New York Court of Appeals

After the New York City Landmark Preservation Commission rejected Penn Central's proposals for new use of the Grand Central Terminal, Penn Central filed a suit with the New York Court of Appeals against the city. In the suit they claimed the city's enactment of the Landmark Preservation Law was a regulatory taking under the Fifth Amendment and Fourteenth Amendment. Because Penn Central felt the City had taken their land and air rights away, they were looking to receive just compensation for the City's actions. The New York Court of Appeals ruled that Penn Central was not due just compensation on the grounds that the city had not taken the use of the property out of the hands of Penn Central. It was determined that Penn Central could maintain previous use of the site without any damaging effects. Penn Central appealed the ruling, which led to the Supreme Court Case.

### The Supreme Court Decision

On April 17, 1978 the case was argued in front of the United States Supreme Court. As previously mentioned, Penn Central stated that the Fifth and Fourteenth Amendment should uphold their rights and allow for the city's actions to be considered a regulatory taking. If it was ruled that these actions were indeed a taking, then Penn Central would be entitled to just compensation for their loss. The city further bolstered their argument stating that Penn Central had shown no proof that they could not continue to use the current property to their benefit.

On June 26, 1978 the Supreme Court, like the New York Court of Appeals, found that the city's restrictions on land use for Grand Central Terminal was not a taking and therefore did not require just compensation.

### Cited Cases and Reasoning in the Decision

- The Court stated that there was no set formula in dealing with the Fifth Amendment and affirmed that cases involving the rights of said Amendment varied depending on the situation.
  - *Armstrong v. United States*, 438 U.S. 104, 124 (1960)
  - *United States v. Central Eureka Mining Co.*, 357 U.S. 155, 168 (1958)
- While Penn Station cited several cases in which air right restrictions led to compensation, the Court did not consider the citations applicable to the case because Grand Central Terminal was a landmark site.
  - *Goldblatt v. Hempstead*, 369 U.S. 590 (1962)
  - *Gorieb v. Fox*, 274 U.S. 603 (1927)
- In the debate of the air space above Grand Central Terminal being taken from the city, the Court cited several cases in which the land owners were indeed due just compensation.
  - *United States v. Causby*, 328 U.S. 256 (1946)
    - In this case a farmer was no longer able to use his land as a chicken farm due to air traffic that was developed just over the farm. Because this destroyed the farmer's present use, it was ruled a taking.
  - *Portsmouth Co. v. United States*, 260 U.S. 327 (1922)
    - The United States military installed a firing range within earshot of a land owner. This new found noise disruption was found to be a taking.
  - With these citations in mind, the Court pointed out that in the present case, no current use of the land was being damaged as a result of the restrictions.
- Penn Central cited *Euclid v. Ambler Realty Co.* showing how blocking the industrial usage of the land cost Ambler Realty Co. dearly. The Supreme Court found the case irrelevant, stating that the restrictions imposed on zoning and land use are the same across the entire city, and not varying as in the case of *Euclid*.
  - *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926)
  - *Gorieb v. Fox*, 274 U.S. 603, 608 (1927)
  - *Welch v. Swasey*, 214 U.S. 91 (1909)

The case is perhaps best summarized in Section II-C of the Opinion of the Court.

“ Unlike the governmental acts in *Goldblatt*, *Miller*, *Causby*, *Griggs*, and *Hadacheck*, the New York City law does not interfere in any way with the present uses of the Terminal. Its designation as a landmark not only permits but contemplates that appellants may

continue to use the property precisely as it has been used for the past 65 years: as a railroad terminal containing office space and concessions. So the law does not interfere with what must be regarded as Penn Central's primary expectation concerning the use of the parcel. More importantly, on this record, we must regard the New York City law as permitting Penn Central not only to profit from the Terminal but also to obtain a "reasonable return" on its investment.

—Court Justice William J. Brennan, Jr.<sup>[9]</sup>

The dissent says that regulations in the nature of “zoning” are acceptable because they produce a net gain for society over a broad swath of affected properties and property owners. Instead, the dissent argues in this case that there is a big net transfer from the station owners to the people of the city who are meant to benefit. The dissent says it’s not fair to have the entire burden of preserving Grand Central fall on its owners. That cost is the opportunity cost of not developing the airspace over the terminal.

## See also

- List of United States Supreme Court cases, volume 438
- Grand Central Terminal
- Penn Central
- *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency* (2002)

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Categories: United States Supreme Court cases | Takings Clause case law | United States land use case law | 1978 in United States case law | History of New York City

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