

The Burger Court Opinion Writing Database

Penn Central Transportation Co. v. New York City

438 U.S. 104 (1978)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 5, 1978

Dear Bill:

77-444

Re: Penn Central Transportation Co. v. City of New

I join your dissent.

Regards,



Mr. Justice Rehnquist

cc: The Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

1st Draft

SUPREME COURT OF THE UNITED STATES

No. 77-444

From: Mr. Justice Brennan

Circulated: 6-2-78

Penn Central Transportation
Co., et al, Appellants
v.
The City of New York, et al.

On Appeal from the
Court of Appeals
of the State of
New York

[June __, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

The question presented is whether a City may, as part of a comprehensive program to preserve historic landmarks and historic districts, place restrictions on the development of individual historic landmarks--in addition to those imposed by applicable zoning ordinances--without effecting a "taking" requiring the payment of "just compensation". Specifically, we must decide whether the application of New York City's Landmark Preservation law to the parcel of land occupied by Grand Central Terminal has "taken" its owners' property in violation of the Fifth and Fourteenth Amendments.

I.

A.

Over the past 50 years, all 50 states and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or

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To: The Chief Justice
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

Cases Held for No. 77-444--Penn Central v. New York.

Donahue Constr. Co. v. Montgomery County Council, No. 77-1312.

From: Mr. Justice Brennan

Circulated: 6-16-78

Recirculated: _____

This case presents the question whether the cumulative effect of a series of acts of several county and state agencies amounted to a taking of petr's property. The case involves two lots in Friendship Heights, upon which were located two single family residences. When petr purchased these lots in 1973, the applicable zoning law would have permitted the construction of an office building, but the local planning commission had before it a plan to rezone the parcels so as to prohibit their commercial use. After acquiring them, petr sought to obtain a building permit for a 14 story office tower, but because the Washington Suburban Sanitary Commission--which is not a party to this suit--had imposed a sewer moratorium, the permit was denied. Thereafter, the Commission downzoned the property in accordance with the plan that had been before it at the time of the parcel's acquisition, thus prohibiting the proposed construction. The Commission also recommended that the entire parcel be acquired for a community recreation center. When condemnation proceedings were not instituted within 6 months, petr instituted this suit. The District Court held a taking had occurred, but CA4 reversed.

Petr contends that the actions of resps were all

STYLISTIC CHANGES throughout

See 1-5, 7-12, 14-15, 17,
22, 25, 26, 31

New Footnote 19; footnotes
renumbered

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-444

Penn Central Transportation
Company et al.,
Appellants,
v.
City of New York et al.

On Appeal from the Court of
Appeals of New York,

[June —, 1978]

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The question presented is whether a city may, as part of a comprehensive program to preserve historic landmarks and historic districts, place restrictions on the development of individual historic landmarks—in addition to those imposed by applicable zoning ordinances—without effecting a “taking” requiring the payment of “just compensation.” Specifically, we must decide whether the application of New York City’s Landmark Preservation law to the parcel of land occupied by Grand Central Terminal has “taken” its owners’ property in violation of the Fifth and Fourteenth Amendments.

I

A

Over the past 50 years, all 50 States and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance.¹ These nationwide legislative efforts have been

¹ See National Trust for Historic Preservation, A Guide to State Historic Preservation Programs (1976); National Trust for Historic Preservation, Directory of Landmark and Historic Commissions (1976). In addition to these state and municipal legislative efforts, Congress has determined that

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

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Recirculated: 6/21/78

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Re: 77-444--Penn Central v. New York City

In addition to the changes marked in the draft circulated today, June 21st, I plan, absent dissent, to make the following additional changes:

- (1) Add the following language to footnote 27:

Similarly, Welch, Goldblatt, and Gorieb illustrate the fallacy of appellants' related contention that a "taking" must be found to have occurred whenever the land use restriction may be characterized as imposing a "servitude" on the claimant's parcel.

- (2) Rewrite footnote 30 to read as follows:

Appellants attempt to distinguish these cases on the ground that, in each, Government was prohibiting a "noxious" use of land and that in the present case, in contrast, appellants' proposed construction above the Terminal would be beneficial. We observe that the uses in issue in Hadacheck, Miller, and Goldblatt were perfectly lawful in themselves. They involved no "blameworthiness, . . . moral wrongdoing, or conscious act of dangerous risk-taking which induce[d society] to shift the cost to a particular individual." Sax, 74 Yale L.J. 36, 50 (1964). These cases are better understood as resting not on any supposed "noxious" quality of the prohibited uses but rather on the ground that land use controls may be imposed, without just compensation, when the restrictions are reasonably related to the implementation of a policy--like historic preservation--that can be expected to produce a widespread public benefit.

Nor, correlatively, can it be asserted that the destruction or fundamental alteration of a historic landmark is "beneficial." The suggestion that the beneficial quality of appellant's proposed construction is established by the fact the construction would have been consistent with applicable zoning laws ignores the development in sensibilities and ideals reflected in landmark legislation like New York City's. Cf. West Brother Brick Co. v. Alexandria, 169 Va. 271, 282-283, appeal dismissed for want of a substantial federal question, 302 U.S. 658 (1937).

WJB, Jr.

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1978

77-444, Penn Central v. New York

Dear Bill,

I am glad to join your opinion
for the Court.

Sincerely yours,

P.S.
1.1

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

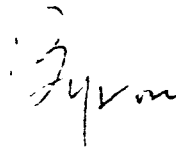
June 2, 1978

Re: 77-444 - Penn Central Transporta-
tion Co., v. City of NY

Dear Bill,

I agree.

Sincerely yours,



Mr. Justice Brennan

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 5, 1978

Re: No. 77-444 - Penn Central Transp. Co. v.
City of New York

Dear Bill:

Please join me.

Sincerely,

JM.

T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

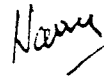
June 15, 1978

Re: No. 77-444 - Penn Central Transportation Co.
v. City of New York

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

cc: The Conference

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 14, 1978

No. 77-444 Penn Central v. New York

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

No. 77-444 Penn Central Transp. Co. v. City of New York JUN 2 1978

Circulated: _____
Reirculated: _____

MR. JUSTICE REHNQUIST, dissenting.

Of the over one million buildings and structures in the City of New York, appellees have singled out 400 for designation as official Landmarks.^{1/} The owner of a building might initially be pleased that his property has been chosen by a distinguished committee of architects, historians and city planners for such a singular distinction. But he may well discover, as appellant Penn Central Transportation Co. did here, that the Landmark designation imposes upon him a substantial cost, with little or no offsetting benefit. The question in this case is whether the cost associated with the City of New York's desire to preserve a limited

— JM
Pp. 1-4, 6-8, 14 & 20.
Fns. 1-2 & 13-14.
Other Fns. renumbered

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: JUN 13 1979

No. 77-444 Penn Central Transp. Co. v. City of New York

MR. JUSTICE REHNQUIST, with whom the Chief Justice

joins, dissenting.

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P.1

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: JUN 1 1978

Recirculated: _____

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-444

Penn Central Transportation
Company et al.,
Appellants,
v.
City of New York et al.

On Appeal from the Court of
Appeals of New York.

[June —, 1978]

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE
joins, dissenting.

Of the over one million buildings and structures in the city of New York, appellees have singled out 400 for designation as official Landmarks.¹ The owner of a building might initially be pleased that his property has been chosen by a distinguished committee of architects, historians and city planners for such a singular distinction. But he may well discover, as appellant Penn Central Transportation Co. did here, that the Landmark designation imposes upon him a substantial cost, with little or no offsetting benefit except for the

¹ A large percentage of the designated Landmarks are public structures (such as the Brooklyn Bridge, City Hall, the Statue of Liberty and the Municipal Asphalt Plant) and thus do not raise Fifth Amendment taking questions. See Landmarks Preservation Commission of the City of New York, Landmarks and Historic Districts (1977 and January 10, 1978 Supplement). Although the Court refers to the New York ordinance as a *comprehensive* program to preserve *historic* landmarks, *ante*, at 1, the ordinance is not limited to historic buildings and gives little guidance to the Landmarks Preservation Commission in its selection of Landmark Sites. Section 207.1.0 (n) of the Landmarks Preservation Law requires only that the selected Landmark be at least 30 years old and possess "a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation."

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 16, 1978

Re: 77-444 - Penn Central v. New York

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,



Mr. Justice Rehnquist
Copies to the Conference