

# The Burger Court Opinion Writing Database

## *United States v. 564.54 Acres of Monroe and Pike County Land*

441 U.S. 506 (1979)

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

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CHAMBERS OF  
THE CHIEF JUSTICE

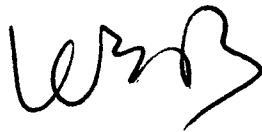
May 8, 1979

Dear Thurgood:

Re: 78-488 U.S. v. 564.54 Acres of Land, Etc.

I join.

Regards,



Mr. Justice Marshall

cc: The Conference

①

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 3, 1979

RE: No. 78-488 United States v. 564.54 Acres of Land

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

3 (12)

CHAMBERS OF  
JUSTICE POTTER STEWART

May 3, 1979

Re: 78-488 - United States v. 564.54 Acres of Land

Dear Thurgood:

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.  
/

Mr. Justice Marshall

Copies to the Conference

Mr. Justice Brennan  
 Mr. Justice Stewart  
 ✓ Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell  
 Mr. Justice Rehnquist  
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: 10 MAY 1979

1st DRAFT

Recirculated: \_\_\_\_\_

**SUPREME COURT OF THE UNITED STATES**

No. 78-488

United States, Petitioner,  
 v.  
 564.54 Acres of Land, More or Less,  
 situated in Monroe and Pike  
 Counties, Pennsylvania,  
 et al.

On Writ of Certiorari  
 to the United States  
 Court of Appeals for  
 the Third Circuit.

[May —, 1979]

MR. JUSTICE WHITE, concurring in the opinion and the judgment.

The Court rejects the claim that the measure of compensation in this case is the cost of substitute facilities rather than the fair market value of the taken property, here a camp owned by a private, nonprofit corporation. I am in full agreement. The substitute facilities doctrine is unrelated to fair market value and does not depend on whether fair market value is readily ascertainable; rather, it unabashedly demands additional compensation over and above market value in order to allow the replacement of the condemned facility.<sup>1</sup> In those cases where it has been applied, primarily where public facilities have been condemned, the basic premise is that the condemnee is under some obligation to continue the functions performed on the taken property.<sup>2</sup> But I do not understand

<sup>1</sup> See 576 F. 2d 983, 991 (CA3 1977), quoted *ante* n. 4; *United States v. Streets, Alleys & Public Ways*, 531 F. 2d 882 (CA8 1976); *United States v. Certain Property in Borough of Manhattan*, 403 F. 2d 800 (CA2 1968); *United States v. Certain Land in Borough of Brooklyn*, 346 F. 2d 690 (CA2 1965); *United States v. Board of Education*, 253 F. 2d 690 (CA4 1958); National Conference of Commissioners on Uniform State Laws, Uniform Eminent Domain Code, § 1004 (b).

<sup>2</sup> See, *e. g.*, *United States v. Certain Land in Borough of Brooklyn*, *supra*, at 694; 576 F. 2d, at 992-995.

- Mr. Justice Brennan
- Mr. Justice Stewart
- ✓ Mr. Justice Marshall
- Mr. Justice Blackmun
- Mr. Justice Powell
- Mr. Justice Rehnquist
- Mr. Justice Stevens

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From: Mr. Justice White

Circulated: \_\_\_\_\_

Recirculated: 11 MAY 1979

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

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2 MAY 1979

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-488

United States, Petitioner, v. 564.54 Acres of Land, More or Less, situated in Monroe and Pike Counties, Pennsylvania, et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.
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[May —, 1979]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

At issue in this case is the proper measure of compensation when the Government condemns property owned by a private nonprofit organization and operated for a public purpose. In particular, we must decide whether the Just Compensation Clause of the Fifth Amendment<sup>1</sup> requires payment of replacement cost rather than fair market value of the property taken.

I

Respondent, the Southeastern Pennsylvania Synod of the Lutheran Church in America, operates three nonprofit summer camps along the Delaware River. In June 1970, the United States initiated a condemnation proceeding to acquire respondent's land for a public recreational project. Before trial, the Government offered to pay respondent \$485,400 as the fair market value of its property. Respondent rejected the offer and demanded approximately \$5.8 million, the asserted cost of developing functionally equivalent substitute facilities

<sup>1</sup> The Fifth Amendment of the Constitution provides in pertinent part: "nor shall private property be taken for public use, without just compensation."

215,011

4 MAY 1979

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 78-488

United States, Petitioner, <i>v.</i> 564.54 Acres of Land, More or Less, situated in Monroe and Pike Counties, Pennsylvania, et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Third Circuit.
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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

May 3, 1979

Re: No. 78-488 - United States v. 564.64 Acres of Land

Dear Thurgood:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

May 3, 1979

78-488 U.S. v. 564.54 Acres

Dear Thurgood:

Please show on the next draft of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

*Lewis*

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

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CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

May 4, 1979

Re: No. 78-488 - United States v. 564.54 Acres of Land

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

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

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CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

May 4, 1979

Re: 78-488 - United States v. 564.54  
Acres of Land

Dear Thurgood:

Please join me.

Respectfully,



Mr. Justice Marshall

Copies to the Conference