



PACIFIC LEGAL  
FOUNDATION

# Call For Papers

RETHINKING *PENN CENTRAL*

Pacific Legal Foundation seeks papers for a research roundtable on the landmark regulatory takings case, *Penn Central Transportation Company v. City of New York*, to be held in October 2023.

Just over a century ago, Justice Oliver Wendell Holmes announced the “general rule” “that while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” Courts have struggled with the question of how far is “too far” ever since.

*Penn Central*, the landmark case exploring the outskirts of “too far,” laid out a multifactor test giving particular significance to the economic loss caused by the regulation, the degree of interference with the property owner’s investment-backed expectations, and the character of the government action.

The test is now widely regarded as broken. Scholars, practitioners, and judges seem united in viewing the doctrine as murky, unworkable, and subjective. As Justice Thomas observed in a dissent from the denial of review of a case challenging the *Penn Central* formulation:

“As one might imagine, nobody—not States, not property owners, not courts, nor juries—has any idea how to apply this standardless standard.... If there is no such thing as a regulatory taking, we should say so. And if there is, we should make clear when one occurs.”

We are calling for scholars and practitioners to imagine how courts might best “make clear when one occurs.” We seek papers that propose alternatives or changes to the *Penn Central* standard. Papers could address issues like:

1. Can *Penn Central* be salvaged or does it need to be fully replaced?
2. If it is to be replaced, what should the new test be?
3. Alternatively, what improvements can be made to *Penn Central* that would address problems raised by critics without uprooting the test entirely?
4. Is economic loss primarily relevant to compensation owed rather than the threshold question of whether a taking has occurred?

5. Can a more categorical approach, like those taken in cases including *Cedar Point Nursery v. Hassid*, *Hodel v. Irving*, or *Lucas v. South Carolina Coast Council*, adequately address regulatory takings?
6. What insights does the original meaning of the Takings Clause offer regarding how to fix or replace *Penn Central*?
7. Do colonial or English practices or precedents offer insights into a better approach to regulatory takings?
8. How did courts during the ratification and reconstruction periods address regulatory takings prior to Oliver Wendell Holmes’s infamous “too far” statement, and what lessons do those precedents hold for how to fix or replace *Penn Central*?
9. What are the pitfalls that a new test must be careful to avoid?

Please submit a brief proposal that describes your thesis and how your paper will contribute to the legal discussion regarding how to fix or replace the *Penn Central* regulatory takings test.

Proposals should be submitted by July 1 to Ethan Blevins at [eblevins@pacificlegal.org](mailto:eblevins@pacificlegal.org). Early proposal submission is encouraged, however, as proposals will be reviewed on a rolling basis, and approvals will allow authors to begin work early.

## HONORARIUM AND OTHER SUPPORT

Authors of accepted papers will receive a \$2,500 honorarium. Authors will benefit from robust feedback on their research at a workshop in October 2023. Papers will be published as working papers on the PLF website, but not exclusive of other publications.

## RESEARCH ROUNDTABLE

Completed paper drafts are due in mid-October **but need not be in polished or publishable form**. Authors will present their papers at a research roundtable, where they will have the opportunity to get feedback from other legal and academic experts. Each paper author will be expected to offer feedback on others’ papers. The roundtable is tentatively scheduled for the end of October 2023. We will cover the cost of hotel accommodation and reasonable travel expenses to the roundtable.

## CONTACT INFORMATION

For questions regarding the call for papers please contact Ethan Blevins at [eblevins@pacificlegal.org](mailto:eblevins@pacificlegal.org).

Roundtable Schedule		Honorarium and other support
Mid-October 2023	End of October 2023	<ul style="list-style-type: none"> <li>• \$2,500 Honorarium</li> <li>• Robust feedback on your research at a workshop in October 2023.</li> <li>• Papers will be published as working papers on PLF’s website.</li> </ul>
Completed paper drafts are due. Need not be in polished or publishable form.	Roundtable tentatively scheduled for end of October.	