

## EXHIBIT NO. 5

## WIKIPEDIA

# United States v. Causby

*United States v. Causby*, 328 U.S. 256 (1946), was a United States Supreme Court Decision related to ownership of airspace above private property. The Court held that title to land includes domain over the lower altitudes. The United States Government claimed a public right to fly over Causby's farm, while Causby argued such low-altitude flights entitled the property owner to just compensation under the takings clause of the Fifth Amendment.<sup>[1]</sup> The findings were two-fold. The court rejected the United States Government's assertion to "possess" and "control" airspace down to ground level, and it nullified the doctrine that property extends indefinitely upward.

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## Background

Thomas Lee Causby was a land owner less than a half mile from the end of the runway of Lindley Field, an airstrip in Greensboro, North Carolina.<sup>[2]</sup> During World War II, the United States military flew planes into the airstrip and as low as 83 feet (25 m) above Causby's Farm<sup>[2]</sup> thereby interfering with the productive use of the Causby farm. Vibrations and sounds caused by the aircraft prevented use of property as a chicken farm, killing over 150 chickens. After losing in lower courts, the Government maintained their claims to fly through all the airspace with impunity.

Under common law, a person who owns the soil also owns the space indefinitely upward, "ad coelum or to the heavens".<sup>[3][4][5][6][7]</sup>

## United States v. Causby



### Supreme Court of the United States

Argued May 1, 1946

Decided May 27, 1946

**Full case name** *United States v. Causby*

**Citations** 328 U.S. 256 (<https://supreme.justia.com/us/328/256/case.html>) (*more*)  
66 S. Ct. 1062; 90 L. Ed. 1206

### Case history

**Prior** 104 Ct. Cls. 342, 60 F. Supp. 751, reversed and remanded.

### Holding

'a landowner's domain includes the lower altitude airspace, but that property does not extend "ad coelum" (indefinitely upward).

### Court membership

#### Chief Justice

*vacant*

#### Associate Justices

Hugo Black · Stanley F. Reed

Felix Frankfurter · William O.

Douglas

Frank Murphy · Robert H.

Jackson

Wiley B. Rutledge · Harold H.

Burton

### Case opinions

**Majority** Douglas, joined by Reed, Frankfurter, Murphy, Rutledge

**Dissent** Black, Burton

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The US referenced the 1926 *Air Commerce Act* in which the US government claimed to 'possess' all airspace.<sup>[8]</sup>

Jackson took no part in the consideration or decision of the case.

An appellate court ruled that a land owner's domain includes the airspace above it, and ruled that Causby was entitled to just compensation for the government having 'Taken' his property by allowing overflights through the airspace above his property.

The United States appealed this ruling against them, and the Supreme Court agreed to review the case, regarding the contradiction between the common laws of property ownership (without any height limit) against the assertion of a federal claim to possess **all** airspace above the United States down to ground level.<sup>[9]</sup>

## Holding

The United States Supreme Court rejected the government's claim to 'possess' the space down to ground level.<sup>[10]</sup> The Court held low altitude flights to be "a direct invasion of [the landowner's] domain",<sup>[11]</sup> and that a "servitude has been imposed upon the land" by the occupancy of the private space.<sup>[12]</sup> The Court also recognized that a claim of property ownership indefinitely upward "has no place in the modern world."<sup>[13][14][15]</sup> Thereby rejecting "ad coelum"

The court held the public's right of flight does not extend downward to the earth's surface, finding "**if the landowner is to have full enjoyment of the land, he must have exclusive control of the immediate reaches of the enveloping atmosphere. Otherwise, buildings could not be erected, trees could not be planted, and even fences could not be run**" ... "**The fact that he does not occupy [space] in a physical sense -- by the erection of buildings and the like -- is not material. As we have said, the flight of airplanes, which skim the surface but do not touch it, is as much an appropriation of the use of the land as a more conventional entry upon it.**"<sup>[16][17]</sup>

On remand, the Court of Claims was tasked with defining the value of the "property interests" that had been taken from Causby by flyovers. Because the lowest plane flew at 83 feet (25 m), and because flights above 365 feet (111 m) were considered within the public easement declared by congress, the Court needed to determine the value owed the Farmer for public use of his airspace between 83 and 365 feet (25 and 111 m). The Court did not need to compensate the farmer for use below 83 feet (25 m), because the planes did not fly below that height.<sup>[18]</sup> Compensation was owed based on the occupancy of the property and not damage to chickens.

## Dissent

Justice Black, joined by Justice Burton, dissented with the decision.<sup>[19]</sup> Black wrote that the majority opinion created "an opening wedge for an unwarranted judicial interference with the power of Congress to develop solutions for new and vital national problems." The minority opinion was predicated on interference with private property being resolved at the State Court level through tort law, rather than in Federal Court under a Constitutional review. However, the US government filed the appeal based upon an assertion of ownership to low altitude airspace, which the court roundly

rejected, and any case filed by the federal government becomes a federal court issue.<sup>[19]</sup> The dissenting opinion would have force the issue of compensation into State court, which was later rejected in *Griggs v. Allegheny*, 369 US 84,(1962).

## See also

- [Air rights](#)
- [Cuius est solum, eius est usque ad coelum et ad inferos](#)
- [Energy law](#)
- [List of notable United States Supreme Court cases](#)
- [List of United States Supreme Court cases, volume 328](#)
- [Property law](#)
- [Takings clause](#)


## References

1. Huebert, Jacob H. (2011-04-18) [Who Owns the Sky?](http://mises.org/daily/5205/Who-Owns-the-Sky) (<http://mises.org/daily/5205/Who-Owns-the-Sky>), [Mises Institute](#)
2. Nagy, John A. "Airport Noise Issue Not New: Chicken Farm Case Set Legal Precedent in 1946 Court Ruling". *Greensboro News and Record* (Greensboro, North Carolina). October 10, 1998.
3. Thomas Merrill, *Establishing Ownership: First Possession versus Accession*, p. 14, fn. 22-23, Law and Economics Workshop (University of California, Berkeley 2007 Paper 3), found at [CDLib website](http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1174&context=berkeley_law_econ) ([http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1174&context=berkeley\\_law\\_econ](http://repositories.cdlib.org/cgi/viewcontent.cgi?article=1174&context=berkeley_law_econ)). Retrieved September 17, 2008.
4. *Cjus est solum, ejus est usque ad coelum et ad inferos*. This has been translated as "To whomever the soil belongs, he owns also to the sky and the depths." [Black's Law Dictionary](#) (6th ed. 1990). From Merrill, fn. 22, *q.v.*.
5. "*Cujus est solum, ejus est usque ad coelum, is the maxim of the law, upwards; therefore no man may erect any building, or the like, to overhang another's land: ... the word "land" includes not only the face of the earth, but every thing under it, or over it.*" 28 Am. Jur.2d 618, 2 Blackstone Commentaries Book, 2, p. 18 (1836).
6. [United States v. Causby](#), 328 U.S. 256, 260 261 (1946), citing I Coke, Institutes, 19th Ed. 1832, ch. 1, § 1(4a); 2 Blackstone, Lewis Ed. 1902, bk 2, p. 18.
7. 3 Kent, Commentaries, Gould Ed. 1896, p. 621
8. *id* 260
9. "To Sift 'Noisy Plane' Case: Supreme Court to Review Man's Right to Collect Damages". *Associated Press*. The New York Times. April 2, 1946. p. 21.
10. *id* 266
11. *id* 266
12. *id* 267.
13. *United States v. Causby*, 328 U.S. 256, 261 (1942).
14. [328 U.S. 256](https://supreme.justia.com/cases/federal/us/328/256/) (<https://supreme.justia.com/cases/federal/us/328/256/>) (1946). From Merrill, fn. 23, *q.v.*
15. *id* 261
16. *id* 264
17. [US v Causby](https://scholar.google.com/scholar_case?case=17209011020287234065) ([https://scholar.google.com/scholar\\_case?case=17209011020287234065](https://scholar.google.com/scholar_case?case=17209011020287234065)).

18. *Causby v U.S.* ([https://scholar.google.com/scholar\\_case?case=18417830911449345480](https://scholar.google.com/scholar_case?case=18417830911449345480)) 75 F.262 Ct.Cl (1948).
19. "High Court Upholds Award Against Low-Flying Planes". *Associated Press*. The **Baltimore Sun**. **May 28, 1946**. p. 1.

## External links

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-  Works related to *United States v. Causby* at Wikisource
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