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## Michigan Supreme Court to revisit 1981 Poletown decision

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DETROIT (AP) -- In a case that could redefine the power of Michigan governments to take property for development projects, the state Supreme Court is revisiting its landmark 1981 decision that allowed the clearing of the city's Poletown neighborhood to make way for a General Motors Corp. plant.

The court is scheduled to hear arguments April 21 about an effort by Wayne County to acquire land for a planned 1,300-acre industrial and commercial project near Detroit Metropolitan Airport. The case has drawn the attention of Michigan communities and advocacy groups from across the country.

"This will be an important decision in terms of how the court views the right of a governmental entity to take property by eminent domain," said lawyer Mark J. Zausmer, who represents the county in the dispute. "Michigan has traditionally had a very expansive view of that power."

The county in 2001 sued landowners who refused to sell property for its Pinnacle Aeropark project in Romulus and Huron Township. Lower courts sided with the county, which argues that it has the right to buy the remaining land -- about 2 percent of the project site -- under Michigan law and the Poletown precedent.

The state's high court, in agreeing to hear the case, told lawyers not only to consider whether Michigan law allows the property to be taken but also to address whether the Poletown decision should stand.

"Are we going to have unlimited government ability to take property?" asked lawyer Alan T.

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Ackerman, who argues for the landowners that the Poletown decision should be struck down retroactively. "We are built on a society where the constitution contemplates limited government."

Many Polish immigrants were drawn to southeast Michigan, particularly in the first two decades of the 20th century, because of auto industry work. An area on the east side of Detroit became known as Poletown, but it was razed -- displacing several thousand residents -- so the city could acquire land for GM.

Theodore Bolema, an assistant professor in Central Michigan University's Department of Finance and Law, said the state Supreme Court has been reluctant in some recent decisions to give government the leeway offered in the Poletown case for projects that aren't exclusively public development efforts.

"The facts are rather similar ... as they were in the Poletown case," Bolema said of the Wayne County case, which the Michigan Court of Appeals ruled on by heavily relying on the Poletown precedent. "The main government interest seems to be promoting an industrial park and the jobs that come along with that."

Some argue that Michigan law should be clarified so that eminent domain can be used only for public projects. Others, such as the city of Detroit, argue against reversing the Poletown decision because it says viable alternatives don't exist. And the Michigan Municipal League, which represents cities and villages, says overturning Poletown could force projects like Pinnacle to be abandoned.

"The evidence Wayne County presented ... overwhelmingly demonstrated that the public would reap a clear and significant benefit from the Pinnacle Project in the form of economic stability and development," the Michigan Municipal League wrote in its brief, "and therefore these takings are for a public purpose."

The county is awaiting the high court's ruling so

it can move forward with the Pinnacle Project. If completed, the county estimates it would create nearly 19,000 jobs in its first full year of operation.

But in another brief, the Mackinac Center for Public Policy, a free market think tank based in Midland, and the Institute for Justice, a Washington, D.C.-based libertarian public interest law firm, argued that the economic benefits touted by governments for such projects rarely pan out.

"There are many laudable goals that could be more efficiently achieved without the constraints of law," they write. "Criminal prosecutions, for instance, would no doubt be much easier without constitutional constraints. ... But Michigan's constitution does not sacrifice individual rights in the name of expediency."

A reversal of the Poletown decision could disrupt current projects where Michigan governments are selling land to private owners that was taken under eminent domain, said James Geoffrey Durham, a professor of law at University of Dayton. Current and new cases in Michigan courts also could be affected.

"The Michigan Supreme Court appears to be getting ready to carve a different line," Durham said.

But even if Poletown is struck down retroactively, he added, there likely wouldn't be punitive damages for past cases.

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On the Net:

American Civil Liberties Union of Michigan:  
<http://www.aclumich.org>

City of Detroit: <http://www.ci.detroit.mi.us>

Institute for Justice: <http://www.ij.org>

Mackinac Center for Public Policy:

<http://www.mackinac.org>

Michigan Municipal League:  
<http://www.mml.org>

Michigan Supreme Court:  
<http://www.courts.michigan.gov/supremecourt>

Pacific Legal Foundation:  
<http://www.pacificlegal.org>

Wayne County: <http://www.waynecounty.com>

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