

Condemnation ruling's impact muted in state

Poletown reversal used as example of states limiting power

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A U.S. Supreme Court decision that said governments can condemn private property for economic development doesn't mean it will become easier to do so in Michigan, officials and lawyers said.

The decision last week, which was based on a case in New London, Conn., said that economic development is a legitimate government reason to invoke eminent domain but said that states can set their own restrictions on condemnation that give greater protection to property owners.

Writing for the 5-4 majority, Justice John Paul Stevens cited a 2004 Michigan Supreme Court decision that reversed the state's long-standing Poletown ruling as an example of how states can set stricter standards on government takings.

Called *Wayne County v. Hathcock*, the July 29 ruling unanimously overturned a 1981 Michigan Supreme Court decision that said economic devel-

opment corporations formed by cities could use eminent domain powers.

The 1981 Poletown decision had allowed the city of Detroit to clear 1,200 homes, six churches and a hospital for construction of the **General Motors Corp.** Poletown assembly plant on the city's border with Hamtramck.

The court's 2004 reversal of Poletown came in a lawsuit filed by property owners fighting Wayne

County's plan to take their land to create a 1,300-acre business and technology project south of **Detroit Metropolitan Airport** to be called **Pinnacle Aeropark**.

Eminent-domain lawyer Alan Ackerman, of Troy-based **Ackerman & Ackerman P.C.**, applauds that ruling, saying that condemnation was never intended to "let the bigger guys be taking from the smaller guys."

He said the Hathcock ruling means "there should be no takings for private beneficiaries. But blight clearance is still allowed, and governments can assemble land that's blighted or contaminated." Ackerman said governments and developers have many options in open market negotiations through which land can be assembled.

But some officials and lawyers, like Wayne County Executive Robert Ficano, see Michigan at a

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Ackerman

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competitive disadvantage because it's one of the few states with a more restrictive approach about the use of condemnation for economic development.

"If most of the other states have the ability to use condemnation as set by the U.S. Supreme Court to assemble land, then they have a more friendly environment to attract business development," he said.

"To be competitive, we have to be able to put together large tracts, not using condemnation as a sledgehammer, but as a last resort, another arrow in our quiver," Ficano said. "Historically, we've found that businesses want quick answers about whether we can assemble land or whatever incentives we offer.

"Otherwise, it would be as though all other states could abate taxes, and Michigan could not," he said.

Don Jakeway, president and CEO of the **Michigan Economic Development Corp.**, said Michigan's more stringent law may make it more difficult to convince a developer to

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come in and work on a project.

"It may not make the state totally noncompetitive with other places, but it certainly could make a specific project in a specific location noncompetitive, from the standpoint that some developer could say ... you can't provide me with the land within the scope of the agreement," Jakeway said.

"Developers only want to know one thing: Do you have control of the property ... and what kind of development do you want me to do? And eminent domain gives you that."

Other, more fundamental factors that can make Michigan uncompetitive, he said, are costs related to taxes, health care and wages.

Patrick Wright, senior legal analyst for the Midland-based **Mackinac Center for Public Policy**, said he doubts that the U.S. court ruling would lead to efforts to amend Michigan's constitution and move the state closer to the federal standard.

"I just don't see that happening," Wright said. "I think that this decision is going to be met with quite a bit of hostility from the American public in general. And I think to the extent that any state changes laws ... it would be to enact more protections."

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