

Oral Arguments in the Michigan Supreme Court

Discussion Guide

A Resource
Produced by the
Michigan Supreme Court

Available through the



Michigan Supreme Court Learning Center

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Program Overview

This resource is a companion guide to the video program *Oral Arguments in the Michigan Supreme Court*. The program examines the role of oral argument in the appellate process at the Michigan Supreme Court, using the civil case *Wayne County v Hathcock* 471 Mich 445 (2004) as a case study.

Grade Level, Courses, & Curriculum

The program and accompanying guide are most appropriate for use at the high school level and above. The program and activities complement and enrich the study of civics/government and history. Although the program most directly relates to Michigan history and government, *Wayne County v Hathcock* and the *Poletown Neighborhood Council v Detroit* precedent were State of Michigan court cases of national importance.

High School Content Expectations, Civics: HS – C3.3.4, HS – C3.3.5, HS – C3.3.6, HS – C3.3.7, HS – C3.4.4, HS – C3.4.5, HS – C5.3.3, HS – C5.3.4.

Objectives

After viewing this program and participating in the accompanying activities, students will be able to:

- Identify the Michigan Supreme Court, including its responsibility to resolve disputes and interpret state law.
- Understand the role of oral arguments in the appellate process.
- Discuss how the appellate process reflects core democratic values.

How to Watch Sessions of the Michigan Supreme Court

Introduction

This brief guide is designed to assist viewers of the Michigan Supreme Court oral arguments to understand the nature of the proceedings and their role in the consideration of appeals by Michigan's highest court. All the Court's sessions are broadcast on Michigan Government Television (MGTV). Unedited video recordings of the arguments are available by contacting MGTV at: 111 S. Capitol Ave., Fourth Floor, Romney Bldg., Lansing MI 48909, phone: 517-373-4250, fax: 517-335-7342, email: mgtv@mgtv.org, web: www.mgtv.org/.

The Michigan Supreme Court is the appellate court of last resort in this state. It hears appeals on matters which have begun in the trial courts and then appealed to the Michigan Court of Appeals. Its seven Justices all participate in the decision on each of the more than 2,000 cases which come to the Court each year. The Court hears oral arguments during an annual term, with arguments each month from October through the following May. What follows is a simplified explanation of the procedures in a typical appeal. The oral argument is only one of many steps in the process.

Appeals to the Michigan Supreme Court

An appeal to the Michigan Supreme Court is heard initially on papers filed with the Clerk of the Court. The moving party, called the appellant, files an application for leave to appeal, which attempts to persuade the Court that the decision of the Court of Appeals was incorrect and ought to be overturned. The Court of Appeals has made its judgment on the arguments of the parties concerning events in the trial court such as rulings on the constitutionality of statutes or the admission of evidence. Other parties to the case, called the appellees, have an opportunity to file written responses to the application. These papers and the records of the lower court proceedings are matters of public record and may be inspected in the Clerk's Office. Once the application, the response and the lower court records have been submitted to the Court, the Court's deliberations then proceed in private. If the Court is not persuaded that it should review the case an order denying leave to appeal will enter. That happens in a large percentage of the cases filed. In a much smaller number of cases, the Court will enter an order affirming, reversing or modifying the Court of Appeals decision or remanding the case to a lower court for further consideration.

To assist it in resolving some cases, the Court will either grant leave to appeal or direct that oral argument be presented on the application for leave to appeal. It is these cases which are heard in the Hall of Justice courtroom at the public sessions of the Court.

Oral Argument

The oral argument of cases is the only opportunity the attorneys have to speak directly to the Justices. It would be improper for an attorney to contact a Justice by telephone or in person to have a conversation about the merits of a case. The rules of the Court point out to the attorney that an

oral argument should not be read from a prepared text. The reason is that the Court has already reviewed written legal arguments by the parties. The oral argument is an opportunity for the attorney to emphasize and clarify the arguments already presented, but, more importantly, it is an opportunity to respond to the questions and concerns of the Court about those arguments. The arguments can be confusing if you know nothing about the issues because much of the conversation between the Justices and the attorneys is based upon their common understanding of the facts of the case and the legal issues involved.

You will note that the arguments are different from other courtroom proceedings you may have seen:

- The appellant, the party attempting to persuade the Court that the Court of Appeals decision is wrong, speaks first and can reserve a portion of the time allotted for rebuttal, that is, an opportunity to speak after the other side has argued. The moving party always gets the last word.
- Only the attorneys sit at the counsel tables inside the railing. Because the arguments concern matters already established by the records of the proceedings below, there is no need for the attorneys to consult with their clients.
- No witnesses are called to testify and no exhibits are offered; those events have already occurred in the proceedings below.
- The attorney has been advised in advance that the first five minutes of the argument may proceed without interruption by questions from the Court.
- The arguments are timed, with the lights on the podium indicating that time is almost expired (yellow light) or that the speaker is out of time (red light).
- The attorney may refer to what is called an “appendix.” This is the document on file in which the important parts of the record below have been assembled under one cover for the convenience of the Court. Typically such a reference is to a page number, followed by the letter “a.” The rules require that all references to the record in the briefs on appeal and during argument be made to the appropriate page in the appendix.
- Unlike proceedings in the trial courts, the arguments are never interrupted by the opposing attorney. Each side in turn has the undivided attention of the Court.
- At the conclusion of the arguments, no decision is rendered by the Court. The process of the Court’s arriving at a decision is just under way.

Case Decision

When the arguments are concluded for the day, the Court retires to its conference room to discuss the cases and register their tentative votes. Those votes will be the basis for random distribution of opinion writing assignments to the Justices. Once an initial opinion has circulated, one or more of the Justices may write opinions agreeing or disagreeing with the first opinion. When the writings are completed, the opinions are discussed at the Court’s weekly conference and are approved for release. The Clerk’s Office sends the opinions to the parties and releases them for publication in the official Reports of decisions.

Case Study: *Wayne County v Hathcock*

Wayne County v Hathcock, 471 Mich 445 (2004), included nine cases. Oral arguments were heard April 21, 2004. The Michigan Supreme Court's decision, which was released July 30, 2004, received national attention.

At Issue

In *Wayne County v Hathcock*, the Michigan Supreme Court was asked to consider: Under what circumstances can the government take land from a private owner? According to the Michigan Constitution of 1963, the government can take private property by eminent domain if it offers just compensation (a fair payment) and if the taking is for a "public use."

In considering the case, the Michigan Supreme Court had to decide what "public use" meant. Is a large economic development project a public purpose? And is it a public purpose if the property is ultimately to be sold to private entities?

Prior to this case, decisions in state courts had been based on *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981), a case that allowed the City of Detroit to take land for an automobile manufacturing plant. *Wayne County v Hathcock* enabled the Court to reconsider its earlier decision.

Background

Wayne County assembled a large tract of land, about 1,300 acres, near Detroit Metropolitan Airport to develop a major commercial, industrial, and hotel development known as the Pinnacle Aeropark project. The county hoped that the project would create thousands of jobs and yield millions of dollars in tax revenue. The county had obtained 98 percent of the land it sought.

Nine landowners owned the remaining 2 percent and did not wish to sell to the county; therefore, the county took the matter to court to settle the dispute. The landowners argued that taking their land would not be for a public purpose, partly because the property would later be sold to private entities. The Wayne County Circuit Court ruled in favor of the county, relying on the *Poletown* case as precedent. The Michigan Court of Appeals agreed with the circuit court, but two Court of Appeals judges questioned the *Poletown* decision. The defendants appealed to the Michigan Supreme Court.

Oral Argument

Attorneys for the county and the landowners appeared before the Michigan Supreme Court. The attorney for the county argued that the project should be defined as "public use." The project would benefit the public because it would create thousands of jobs and yield millions of dollars in tax revenue. Therefore, the constitution permitted the county to take the privately owned land,

as long as the county paid the landowners for their property. The attorneys for the landowners said that taking the land would not be for a “public use” as the constitution requires. Instead, the land sale would benefit the private companies that were involved in the Pinnacle Aeropark project.

Case Decision

On July 30, 2004, the Michigan Supreme Court issued its opinion. All seven justices voted to overrule the earlier *Poletown* decision. The Court’s lead opinion outlined the definition of “public use” at the time the Michigan constitution of 1963 was drafted. The opinion said that in order to be defined as public use, the situation had to be one:

- (1) Where ‘public necessity of the extreme sort’ requires collective action;
- (2) Where the property remains subject to public oversight after transfer to a private entity; and
- (3) Where the property is selected because of ‘facts of independent public significance,’ rather than the interests of the private entity to which the property is eventually transferred.

According to the opinion, none of those elements applied to the Pinnacle Aeropark project. The opinion went on to say that the *Poletown* case was wrongly decided because the “economic benefit” rationale would allow the use of eminent domain on behalf of almost any private entity.

The Michigan Supreme Court’s ruling in *Wayne County v Hathcock* received national attention. The Court overruled the influential *Poletown* decision, which so many courts, even those in other states, had used in their own decisions.

The case syllabus, a synopsis of the opinion, is included on the following pages. The *Wayne County v Hathcock* 471 Mich 445 (2004) opinion is published in its entirety in the *Michigan Reports*, which are available at law libraries and other libraries holding legal materials. Opinions can also be accessed online at <http://courtofappeals.mijud.net/resources/opinions.htm>. The easiest way to find the opinion is to search by the docket number, 124070, or by entering “Hathcock” in a text search.

After *Wayne v Hathcock*

Wayne County v Hathcock received national media attention. Press coverage included numerous news stories and editorials from all types of news outlets. Many articles, representing a variety of opinions, are accessible online and can be found through internet search engines.

In 2005, the U.S. Supreme Court decided a similar case. In *Kelo v New London* 545 U.S. 469 (2005), the federal court found that the city’s proposed disposition of petitioners’ property qualifies as a “public use” within the meaning of the Takings Clause. Much has been written about this case, which can be used as a comparison.

Syllabus

Chief Justice:
Maura D. Corrigan

Justices:
Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman

This syllabus was prepared by the Reporter of Decisions.

Reporter of Decisions
Danilo Anselmo

WAYNE COUNTY v HATHCOCK
WAYNE COUNTY v SPECK
WAYNE COUNTY v AUBINS SERVICE, INC.
WAYNE COUNTY v JEFFREY KOMISAR
WAYNE COUNTY v WARD
WAYNE COUNTY v GRIZZLE
WAYNE COUNTY v STEPHANIE KOMISAR
WAYNE COUNTY v GOFF
WAYNE COUNTY v FINAZZO

Docket Nos. 124070-124078. Argued April 21, 2004 (Calendar No. 7). Decided July 30, 2004.

Wayne County brought nineteen condemnation actions in the Wayne Circuit Court against Edward Hathcock and other parcel owners who rejected the county's offer to purchase their lands for use in a new private development near Detroit Metropolitan Airport. The court, Michael F. Sapala, J., denied the defendants' motion for summary disposition. The Court of Appeals, O'CONNELL, P.J., and MURRAY, and FITZGERALD, JJ., in an unpublished opinion per curiam, a concurring opinion by MURRAY, J., and an opinion by FITZGERALD, J., concurring with MURRAY, J., affirmed. MURRAY and FITZGERALD, JJ., affirmed solely on the basis of the binding precedent of *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981). O'CONNELL, P.J., determined that the county was authorized by MCL 213.21 *et seq.* to use the power of eminent domain to take the disputed lands, that the project was sufficiently far along to believe that the project would come to fruition so the taking was necessary, and that the taking of the lands was not for the primary intention of conferring a private use or benefit, although specific private interests would eventually benefit from the project. Judge O'CONNELL also noted the diversity of private interests to be benefited by the project rather than the sole private beneficiary involved in *Poletown* (Docket Nos. 239438, 239563, 240184, 240187, 240189, 240190, 240193-240195). Several defendants appealed.

In an opinion by Justice YOUNG, joined by Chief Justice CORRIGAN, and Justices TAYLOR and MARKMAN, the Supreme Court *held*:

The county is without constitutional authority to condemn the properties. The proposed condemnation is consistent with MCL 213.23, but does not advance a "public use" as required by Const 1963, art 10, § 2. *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981), which was predicated on an erroneous construction of the "public use" requirement in art 10, § 2, is overturned. The overruling of *Poletown* shall have retroactive effect.

1. The Court does not determine a case on constitutional grounds if the case can legitimately be decided on other grounds. In this case, Wayne County, as a public corporation, is authorized by MCL 213.23 to condemn property, subject to other constitutional and statutory limitations. The county's goal of drawing commerce to the metropolitan Detroit area by converting the subject properties to a state-of-the-art technology and business park is consistent with statutory requirements in MCL 213.23.

2. Const 1963, art 10, § 2 requires that condemnations fulfill a "public use." The only support in this Court's jurisprudence for the proposed condemnations is *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981). In *Poletown*, the Court held that art 10, § 2 permitted the Detroit Economic Development Corporation to condemn private residential properties and subsequently convey those properties to a private corporation because of the generalized economic benefits that would follow that corporation's use of the property. The *Poletown* decision was predicated on a misconstruction of the "public use" requirement in art 10, § 2. "Public use" is a term that has been a part of Michigan constitutions since 1835. At the time the current Constitution was ratified, "public use" had acquired a specialized meaning which the people understood to be a legal term of art. Therefore, this phrase must be interpreted according to its construction in this Court's jurisprudence prior to the ratification of the 1963 Constitution. A generalized economic benefit stemming from the private use of condemned land is not a "public use" as that term was interpreted in this Court's pre-1963 eminent domain jurisprudence.

3. "Public use," as a legal term of art in the 1963 Constitution, permitted condemnations in which private land is transferred by the condemning authority to a private entity in one of three situations. The first involves a private enterprise generating public benefits whose very existence depends on the use of land that can be assembled only by the coordination central government alone is capable of achieving. The second involves a private entity that remains accountable to the public in the use of the transferred property. The third involves a situation in which the selection of land to be condemned is based on public concern rather than private interest, i.e., selection based on facts of independent public significance. None of these situations obtains in this instance, where the purpose of the condemnations at issue in this case is a general economic benefit based on another private owner's use of the condemned properties.. Thus, the proposed condemnations do not advance a public use as required by Const 1963, art 10, § 2.

4. The overruling of the rule in *Poletown* has retroactive effect, applying to all pending cases in which a challenge to *Poletown* has been raised and preserved. This retroactivity is necessary to vindicate our Constitution, to protect the people's property rights, and to preserve the legitimacy of the judicial branch as the expositor of fundamental law.

Justice WEAVER, joined by Justice CAVANAGH only with respect to section I, concurring in part and dissenting in part, concurred with the majority's result and its decision to overrule

Poletown. *Poletown* wrongly abandoned the expressed constitutional limitation on the exercise of the power of eminent domain when it held that land can be taken by the government and transferred to a private entity upon the mere showing that the economy will generally benefit from the condemnation. For the reasons stated by the majority, the decision to overrule *Poletown* should be applied retroactively.

Justice WEAVER, however, dissents from the majority's reliance on its rule of constitutional interpretation that gives constitutional terms such as the "public use" limitation on the exercise of eminent domain of Const 1963, art 10, § 2 the meaning that those "versed" and "sophisticated in the law" would have given it at the time of the Constitution's ratification. She also dissents from the majority's application of its rule to the facts of this case. The majority's rule perverts the long-established and primary rule that constitutional terms are to be interpreted as they were commonly understood by the citizens who ratified the Constitution. Constitutional terms that are embedded in law and history, like the term "public use," are familiar to and commonly understood by the people.

Justice CAVANAGH, joined by Justice KELLY, concurring in part and dissenting in part with the majority and concurring with section I of Justice WEAVER's opinion, stated that he concurred with the majority in overruling *Poletown Neighborhood Council v Detroit*, 410 Mich 616 (1981), but dissented with respect to the retroactive application of the majority's decision.

With prospective application, the defendants would have to accept just compensation in exchange for their properties. However, Wayne County has spent about \$50 million on this project in reliance on *Poletown*. The majority agrees that the county's reliance is clear. Wayne County and its taxpayers should not be penalized for the county following the Court's prior direction. A key factor in overruling a previous case is the extent of reliance on the old rule, which is substantial in this case. In determining retroactivity, this reliance must be balanced to minimize chaos and maximize justice. Prospective application would be appropriate.

Lower court decisions are reversed and the case is remanded to the circuit court for entry of orders of summary disposition for the defendants.

Background: *Poletown Neighborhood Council v Detroit*

The 1960s and 1970s were difficult times for the City of Detroit. Much of the city's population moved to the suburbs, and automotive factories closed during these decades. By the late 1970s, many looked upon Detroit as a dying city. To change this trend, the city and General Motors collaborated on a plan to bring industry back to Detroit. The city government would use its power of eminent domain to acquire land where General Motors would build a state-of-the-art auto plant. The city believed that citizens would benefit from the thousands of jobs and tax revenue that the factory would create.

The city decided to acquire land in Poletown, a neighborhood on the city's east side, and clear the land to build an automotive factory. The plan required the demolition of 1,300 homes, 140 businesses, six churches, and a hospital. Although some residents agreed to allow the city to take their land with just compensation, others objected. They were proud of their neighborhood, which had been home to generations of Polish immigrants and Polish Americans as well as more recent arrivals, including Albanians, Yugoslavs, Yemenis, Filipinos, and African Americans. Those who fought the city's plan formed the Poletown Neighborhood Council.

The Poletown Neighborhood Council received national attention for its efforts, which included demonstrations and a civil lawsuit against the City of Detroit. The neighborhood council argued that eminent domain did not allow the city to convey the Poletown property to General Motors. The Wayne County Circuit Court ruled that the proceedings were legal, so the neighborhood council continued its legal battle to the Michigan Court of Appeals and the Michigan Supreme Court. In March 1981 the Michigan Supreme Court ruled in a 5-2 decision that Detroit could take the land by eminent domain for the General Motors factory.

The ruling, sometimes known as *Poletown*, set a new precedent. "Public use" could include the transfer of land to private entities. Because the Michigan Supreme Court had spoken on this case, lower courts in the state had to follow this ruling when deciding similar cases. In addition, courts in other states often cited the *Poletown* case when making similar decisions.

Key Words

Appeal. A review of the decision of a lower court.

Appellant. In a case on appeal, the party who appealed the lower court's decision.

Appellate court. A court that reviews the decisions of lower courts.

Appellee. In a case on appeal, the party who did not appeal the lower court's decision.

Appendix. A document on file in which the important parts of the record have been assembled under one cover for the convenience of the Court.

Application for leave to appeal. A request to an appellate court for an appeal.

Brief. A written statement prepared by the counsel arguing a case in court. It contains a summary of the facts of the case, the pertinent laws, and an argument of how the law applies to the facts supporting the counsel's position.

Chief Justice. A Justice who leads the Supreme Court. In Michigan, the Justices appoint one of their colleagues to serve as Chief Justice for a two-year term.

Common good. Involves individual citizens having the commitment and motivation (that they accept as their obligation) to promote the welfare of the community (even if they must sacrifice their own time, personal preferences, or money) to work together with other members for the greater benefit of all.

Eminent domain. The power of the government to take possession of land (soil), either temporarily or permanently, for the common good of its citizens. Article 10, Sec. 2 of the Michigan constitution provides that "private property shall not be taken for public use without just compensation therefor being first made or secured in a manner prescribed by law." *Example:* The government proposes to build a new road for the benefit of anyone who wishes to use it. The government pays the property owners a fair amount in exchange for their land.

Just compensation. Payment that is fair to the public and to the owner.

Justice. A judge of the Supreme Court. Seven Justices sit on the Michigan Supreme Court. They are elected for eight-year terms.

Opinion. The written statement by a judge or court of the decision reached in a case, describing the law as applied to the case and the reasons upon which the judgment is based.

Precedent. A court decision that serves as an example for identical or similar cases. Courts attempt to decide cases on principles based in prior cases that are close in facts or legal principles.

Public Use. The understanding of this term has been shaped by court decisions. Article 10, Section 2 of Michigan's Constitution provides that private property may be taken by the government for a "public use." Accordingly, the meaning of the term "public use" is central to a case involving eminent domain. In *Poletown v City of Detroit*, the Michigan Supreme Court defined "public use" to include projects that promoted a "public purpose," such as creating jobs or improving the

economy. Taking private land and giving it to an auto company served a “public purpose” and was therefore a “public use,” the Court concluded.

But in *County of Wayne v Hathcock*, the Michigan Supreme Court rejected that concept of “public use,” saying that it was too broad. To be for “public use,” a taking of private property had to fall into one of three categories, the Court said. First, it could be a taking for a necessary public project, such as a highway. Second, it could be a taking of property that would then be transferred to private entities with continuing government oversight and public benefit, such as a hospital. Third, it could be a taking where there are “facts of independent public significance” beyond the private recipients’ interest. A taking of property to build affordable housing in a severely blighted neighborhood could fall into this third category.

Trial court. A lower court, such as district court, circuit court, or probate court.

Other Resources

Books

Wylie, Jeanie. *Poletown: Community Betrayed*. Urbana: University of Illinois Press, 1989.

Web

Michigan Judicial Institute. *Handbook of Legal Terms*.
<http://courts.michigan.gov/mji/resources/holt/holt.htm>

Michigan Supreme Court. *Wayne County v Hathcock*.
http://courtofappeals.mjud.net/DOCUMENTS/OPINIONS/FINAL/SCT/20040730_S124070_176_wayne_co7apr04_op.pdf

Activities

This program is designed to be completed over two class periods. Extension activities are opportunities for further assessment or study.

Day 1

1. Introduce the roles of Michigan’s judicial branch of government, including its responsibility to resolve disputes and to interpret state law in light of the Michigan Constitution. Describe how a case proceeds through the court system from the trial courts to the Michigan Court of Appeals to the Michigan Supreme Court.
2. Discuss the government’s power of eminent domain, including the terms “public use” and “just compensation.”
3. Introduce *Wayne County v Hathcock*, including the facts in the case, the sides, the arguments, and the *Poletown* precedent. Use the black-line masters of *Wayne County v Hathcock* in the Michigan Court System and the courtroom.
4. It is recommended that you show the entire program the first time. You may wish to show portions of the video, especially the oral arguments or the decision several times. The program is approximately 20 minutes in length.

Day 2

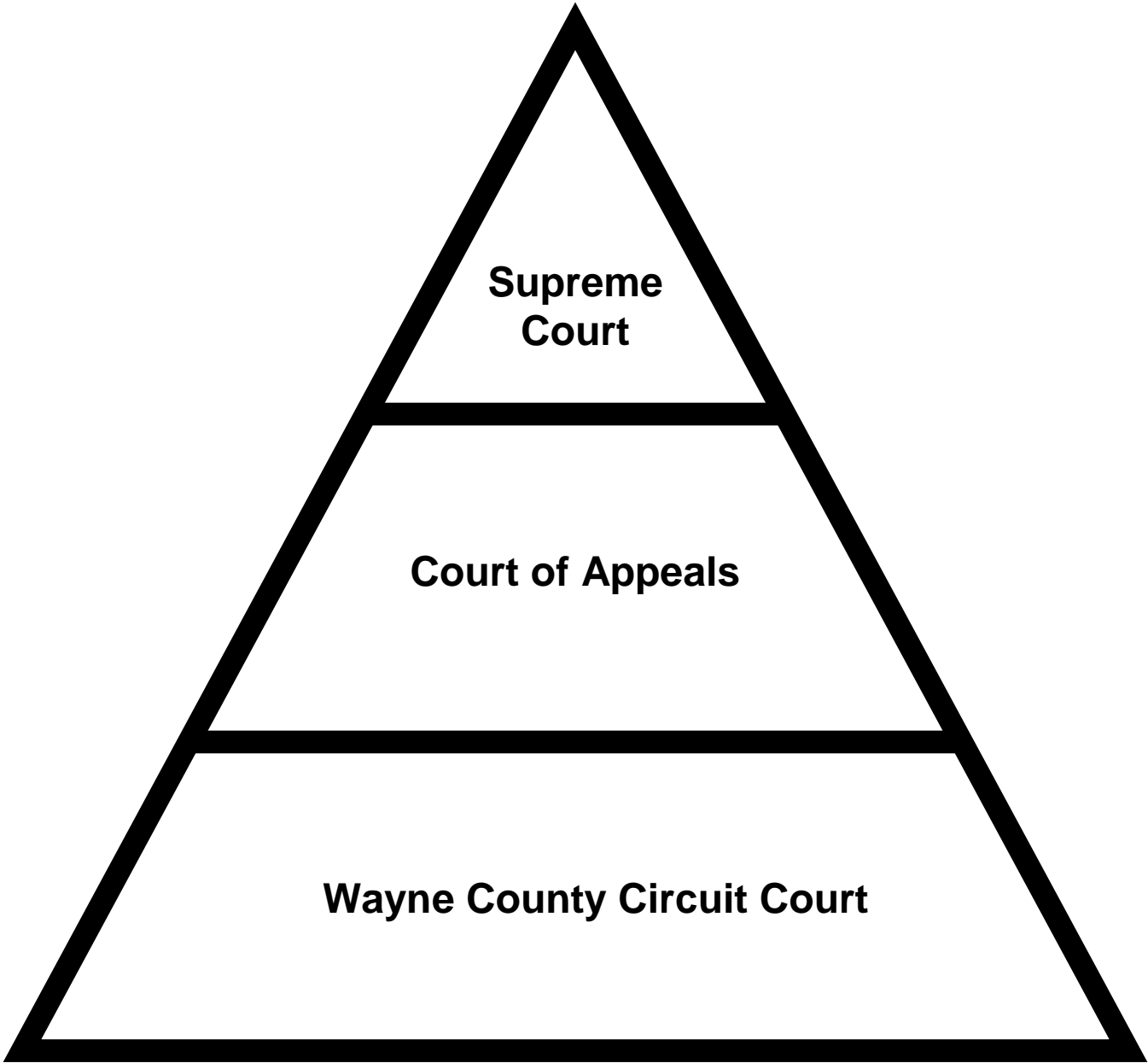
1. Review the facts of the case, who is involved, and the arguments presented. Show excerpts from the oral arguments or decision again, if necessary.
2. Discuss the importance of oral arguments. Questions might include:
 - Why is it important for the Court to limit the attorneys’ access to the Justices to written briefs and oral arguments?
 - What did the Justices learn during oral arguments?
 - What do you notice about the presentations of the different attorneys? What about their styles makes their arguments more or less persuasive?
3. Discuss what the Michigan Supreme Court decided in the *Wayne County v Hathcock* case. Questions might include:
 - Why did the Court overturn the *Poletown* decision?
 - Do you agree or disagree with the decision? Why or why not?
 - How does the decision reflect core democratic values?
4. Demonstrate how does this decision affects the everyday lives of Michigan citizens.
5. Divide the class into small groups; ask each group to represent one of three groups: government, homeowners/small business owners, and large private entities.

6. Ask each group to develop a list of possible situations where the taking of land would be to that group's best interest and how it might impact the other groups.
7. With the entire class, talk about the situations and create a Venn diagram to demonstrate where interests overlap and where they differ. Be sure to discuss how each group feels about the land taking.
8. Apply the three-part test to determine which of the situations qualify as "public use."
 - Where 'public necessity of the extreme sort' requires collective action;
 - Where the property remains subject to public oversight after transfer to a private entity; and
 - Where the property is selected because of 'facts of independent public significance,' rather than the interests of the private entity to which the property is eventually transferred.

Extension Activities

1. Write a diary entry from the perspective of a government official, a developer, or a homeowner, describing your participation in the case.
2. Write an essay describing why you agree or disagree with the decision. Support your answer with information you know about the case and with core democratic values.
3. Interview someone who was alive during *Poletown*. Find out how the decision affected him or her directly or indirectly. Were people generally for or against the plan? The decision? Examine, summarize, and report on the evidence you collected.
4. Read editorials and letters to the editor about the case. Write a letter to the editor outlining your opinion why you agree or disagree with the decision.

Wayne County v Hathcock
in the
Michigan Court System



The Michigan Supreme Court Courtroom

(Courtroom Seating Chart)

