ACLU OF MICHIGAN LEGAL DOCKET

FALL 2016

The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2015 and 2016.

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ENVIRONMENTAL JUSTICE

Safe Water for the People of Flint. After the State of Michigan stripped the residents of Flint of their ability to elect local representatives, state-appointed officials decided to use the Flint River as a water source without adding corrosion controls. As a result, lead leached from the water pipes and poisoned the drinking water, causing untold harm to the people of Flint. After ACLU of Michigan investigative journalist Curt Guyette helped to expose the water crisis, the ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a federal lawsuit against state and city officials seeking a court order requiring them to comply with the Safe Drinking Water Act. The goal of the lawsuit, filed in January 2016, is to require the state and the city to replace the lead pipes and, in the meantime, ensure that officials deliver safe drinking water. In July 2016 Judge David Lawson denied the state and local governments' motions to dismiss. In September 2016 we presented evidence at a hearing on why the court should order the government to deliver bottled water to vulnerable residents and conduct a door-to-door audit to make sure that all resident have properly working water filters. (*Concerned Pastors for Social Action v. Khoury*; Michael J. Steinberg and Brooke Tucker of the ACLU of Michigan; Dimple Chaudhary and Sarah Tallman of NRDC; co-counsel Glenn Simmington.)

POVERTY

Modern-Day Debtors' Prisons. The Supreme Court ruled decades ago that it is unconstitutional to jail a person for failure to pay a debt that she or he cannot afford. However, until recently, numerous judges throughout Michigan were jailing poor people on "pay or stay" sentences—sentences where individuals who are found guilty of a crime are sent to jail if they cannot immediately pay large fines and costs imposed by the court. In order to document and draw attention to this problem, the ACLU of Michigan has engaged in repeated court-watching efforts and has appealed pay-or-stay sentences for indigent individuals in select cases that typify the problem. In July 2015 we filed a lawsuit asking an appellate court to take "superintending control" of the district court in Eastpointe, which routinely imposed pay or stay sentences; that case was resolved in March 2016 when the lower court judge agreed to an order prohibiting the practice. In October 2015 we also wrote to the Department of Justice calling for an investigation after David Stojcevski died in the Macomb County Jail where he was incarcerated because he was too poor to pay $772 in fines associated with traffic tickets. All of these ongoing efforts to end debtors' prisons have been part of a larger campaign for new court rules requiring hearings on a person's ability to pay before the individual can be sent to jail for non-payment. In May 2016, after years of advocacy by the ACLU and other groups, the Michigan Supreme Court adopted new rules requiring such hearings. We will now be monitoring compliance with those standards. (*People v. Rockett*; *People v. Milton*; *In re Anderson*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellow Sofia Nelson.)

Food Assistance Cut Off Without Due Process. The Michigan Department of Health and Human Services (DHHS) cut off food assistance to Walter Barry, a low-income, developmentally disabled adult, because Mr. Barry's identity had been used by someone else who committed a crime. Under a DHHS policy that automatically denies food assistance to

anyone with an outstanding felony warrant, Mr. Barry's benefits were terminated, even after he proved at an administrative hearing that the warrant was based on a crime that was committed by someone else. Under federal food assistance law, states cannot terminate assistance based on outstanding warrants unless the state first determines that the person receiving benefits is in fact fleeing from justice. In 2013 the Center for Civil Justice and the ACLU of Michigan filed a class action lawsuit seeking to ensure that individuals like Mr. Barry do not go hungry due to the state's unlawful policy. In January 2015 Judge Judith Levy issued a decision ruling that DHHS could not deny benefits to people like Mr. Barry and certifying a class of approximately 20,000 people who are eligible for retroactive or future assistance as a result of the case. The state appealed, and in August 2016 the Sixth Circuit affirmed Judge Levy's decision, clearing the way to restore an estimated $60 million in retroactive food assistance benefits owed to low-income households. (*Barry v. Lyon*; ACLU Attorney Miriam Aukerman and Legal Fellow Sofia Nelson; Jacqueline Doig, Katie Linehan and Elan Nichols of the Center for Civil Justice.)

EDUCATION

The Right To Read. If the right to a public education means anything, it means that students should be taught to read. In a groundbreaking case that has garnered national attention, the ACLU of Michigan filed a class action in 2012 on behalf of students in the Highland Park Public Schools who were the victims of outrageously poor oversight, management and teaching controls on both the state and local levels. This failure on the part of state and local actors has left a generation of children reading as many as five grade levels below the levels to which they should have progressed. Many students were rendered functionally illiterate while still being passed along from one grade to the next. We argued that both the State of Michigan and the Highland Park School District are violating state law and the Michigan Constitution by allowing students to fall far behind in basic literacy skills and reading proficiency. In 2013 the Wayne County Circuit Court denied all defendants' motions to dismiss the case, stating that there is a "broad compelling state interest in the provision of an education to all children." In November 2014, however, the Michigan Court of Appeals reversed by a vote of 2-1. The majority held that the Michigan Constitution "merely 'encourages' education, but does not mandate it." In dissent, Judge Douglas Shapiro rejected as "miserly" the majority's view of the education constitutionally due Michigan's children, writing that the state is legally required "to provide some baseline level of adequacy of education." Unfortunately, in September 2015 the Michigan Supreme Court decided that it would not hear our appeal. (*S.S. v. State of Michigan*; ACLU Attorneys Kary Moss, Shana Schoem, Rick Haberman, Mark Fancher, Amy Senier and Michael J. Steinberg; Cooperating Attorneys Mark Rosenbaum of U-M Law School, Steve Guggenheim, Doru Gavril and Joni Ostler of Wilson Sonsini, and Jennifer Salvatore, Edward Macey and Nakisha Chaney of Nacht Law.)

Taxpayer Money Appropriated for Private Schools. For nearly fifty years, Michigan's Constitution has strictly prohibited taxpayer funding of private and religious schools. However, in 2016 the legislature appropriated $2.5 million to "reimburse" private and parochial schools for complying with mandates that all schools in Michigan must abide by. The ACLU of Michigan opposed the legislation, and although Governor Snyder recognized that it was constitutionally suspect, he refused to exercise his veto power. Instead, he signed the appropriation into law and simultaneously asked the Michigan Supreme Court to issue an "advisory opinion" on whether it

was constitutional. In August 2016 we filed a friend-of-the-court brief arguing that the appropriation should be struck down because it violates the state constitutional requirement that reserves public education funding exclusively for public schools. (*In re Request for Advisory Opinion Regarding Constitutionality of 2016 PA 249*; ACLU Attorney Dan Korobkin; Cooperating Attorney Peter Hammer of Wayne State Law School; David Sciarra and Molly Hunter of the Education Law Center.)

RACIAL JUSTICE

Discriminatory Tax Foreclosures. African Americans in Wayne County are suffering from a tax foreclosure crisis more severe than any this region has seen since the Great Depression. But unlike the Great Depression, thousands of homeowners today are at risk of losing their homes for taxes they never should have been required to pay in the first place. Even though taxes in Michigan must be based on the true cash value of a home, the City of Detroit failed to reduce the tax assessments to match the plummeting values following the Great Recession. Also, although homeowners who meet the federal poverty guidelines are excused from paying poverty taxes, Detroit's process for obtaining the poverty exemption is so convoluted that few people who qualify actually receive the benefit. These policies have a gross disparate impact on African American homeowners, who are ten times more likely to lose their homes than non-African Americans. In July 2016 the ACLU of Michigan, the NAACP Legal Defense and Educational Fund (LDF), and the Covington & Burling law firm filed a Fair Housing Act lawsuit against the City of Detroit and Wayne County. In September 2016 the judge denied the city's motion to dismiss the case. (*MorningSide Community Organization v. Sabree*; attorneys include Michael J. Steinberg, Kimberly Buddin, Dan Korobkin, Mark Fancher, Brooke Tucker and Linda Jordan of the ACLU; Coty Montag, Ajmel Quereshi and Josh Rosenthal of LDF; and Shankar Duraiswamy, Wesley Wintermyer, Sarah Tremont, Jason Grimes and Amia Trigg of Covington and Burling.)

Water Shutoffs in Detroit. In 2014 the Detroit Water and Sewage Department (DWSD) commenced the largest residential water shutoff in U.S. history and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents' health needs or ability to pay. DWSD's internal documents revealed that due to its sloppy billing practices, it had not charged many customers for sewer service for several years. In January 2014 DWSD demanded a lump sum payment from its customers for those sewer charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residential customers with delinquent accounts were frequently billed for charges incurred by previous tenants. Due to the lack of notice provided to these customers before the shutoffs, as well as the fact that DWSD's commercial customers with delinquent accounts were not similarly targeted for service termination, the ACLU and NAACP Legal Defense Fund (LDF) wrote a joint letter to DWSD in July 2014 that outlined why the shutoffs violated the residents' constitutional rights to due process and equal protection. The ACLU and LDF served as expert consultants in a lawsuit filed in bankruptcy court on behalf of civil rights organizations and residents without water that seeks to restore water service to the city's residents and stop future shutoffs. In September 2014 Bankruptcy Judge Steven Rhodes dismissed the lawsuit. Judge Rhodes' decision was appealed, and the ACLU of Michigan joined the legal team handling the appeal. In August 2016 ACLU of Michigan Racial Justice Project Staff Attorney Mark Fancher

argued the case in the Sixth Circuit, and we are awaiting a decision. (*Lyda v. City of Detroit*; ACLU Attorneys Kary Moss, Mark Fancher and Brooke Tucker; Monique Lin-Luse and Veronica Joice of LDF; and Alice Jennings, Jerry Goldberg, Kurt Thornbladh, Julie Hurwitz and John Philo.)

Wall Street's Predatory Mortgages in Detroit. In 2012 the ACLU filed a groundbreaking class action on behalf of African American Detroit homeowners against the Wall Street bank Morgan Stanley for its role in shaping the high-risk predatory loans that contributed to the foreclosure crisis and the collapse of once-vibrant Detroit neighborhoods. The ACLU represents five African American homeowners who are facing foreclosure due to the risky and abusive loan terms they received through the now-bankrupt subprime lender New Century. Between 2004 and 2007, Morgan Stanley purchased loans from New Century and, as its most significant customer, shaped New Century's lending irresponsible and destructive practices. By 2007, Detroit was number one of the hundred largest metropolitan areas with the highest foreclosure rates. Nearly 45,000 homes stood vacant by 2008, creating virtual wastelands in Detroit. Moreover, this devastation had a clear racial character: New Century's African American customers in the Detroit area were 70 percent more likely to get a subprime loan than white borrowers with similar financial characteristics. The lawsuit is the first of its kind, brought on behalf of homeowners, seeking to hold a Wall Street bank accountable under the Fair Housing Act for the devastation to communities of color. In July 2013 Morgan Stanley's motion to dismiss the case was denied, allowing the ACLU to proceed with our claim under the Fair Housing Act. After engaging in extensive discovery, the ACLU filed a motion in June 2014 to certify a class of approximately 6,000 African American homeowners in Detroit who obtained predatory New Century Mortgages. Unfortunately, in May 2015 the trial court denied the motion for class certification, and in July 2016 but the Court of Appeals affirmed. The case on behalf of the named plaintiffs continues. (*Adkins v. Morgan Stanley*; attorneys include Brooke Tucker, Sarah Mehta and Michael J. Steinberg of the ACLU of Michigan; Larry Schwartztol, Dennis Parker and Rachel Goodman of the National ACLU; Stuart Rossman of the National Consumer Law Center; and Elizabeth Cabraser of Leif Cabraser Heimann & Bernstein.)

American Woman Profiled, Removed from Plane and Strip Searched. On September 11, 2011, a woman of Middle Eastern and Jewish descent named Shoshana Hebshi was sitting in the same row as two men of Indian descent on a Frontier Airlines flight from Denver to Detroit. When the Indian men got up to use the bathroom, someone reported their behavior as suspicious. After the plane landed in Detroit, armed federal officials took not only the two men, but also Ms. Hebshi into custody at the airport jail. Although she had never met the two men and had done nothing to arouse suspicion, Hebshi was strip-searched in the jail and held for four hours before being interrogated and released. In 2013 the ACLU filed a federal lawsuit against Frontier Airlines, the Wayne County Airport Authority (WCAA), the United States, and various individual officers alleging that the detention and search violated Hebshi's constitutional rights. In 2014 Judge Terrence Berg denied the airline and government's motions to dismiss the case, stating that there is no "suspected terrorist activity exception" to the Constitution. Judge Berg ruled that if the facts alleged in the lawsuit are true, Ms. Hebshi's rights to be free from racial discrimination and her right to be free of unreasonable searches were clearly violated. The case settled in 2015. Under the settlement terms that can be disclosed, the federal government paid damages to Ms. Hebshi and Frontier amended the discrimination provisions of its handbook and instituted training. During the course of the litigation, the WCAA independently implemented

changes to its policies and training that addressed many of Hebshi's concerns. (*Hebshi v. United States*; ACLU of Michigan Attorneys Michael J. Steinberg and Sarah Mehta; National ACLU Attorneys Rachel Goodman and Dennis Parker; Cooperating Attorneys Shelli Calland, Arjun Sethi and Sarah Tremont of Covington & Burling, and Bill Goodman, Julie Hurwitz and Miriam Nemeth of Goodman & Hurwitz.)

Employment Discrimination at Quicken Loans. Many employers require job applicants to disclose past convictions on their job applications. Although this information may sometimes be relevant to a job qualification, some employers refuse to even consider an applicant with a felony conviction even if the offense took place in the distant past and is not relevant to job performance. Such a practice can have particularly devastating consequences for communities of color, who are overrepresented in the criminal justice system as a result of racial profiling, the misguided War on Drugs, and other biases. The Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing employment discrimination laws, has warned that when employers categorically refuse to consider applicants with felony convictions, such a practice likely runs afoul of Title VII the federal Civil Rights Act because of its disparate impact on people of color. The ACLU of Michigan represented two African American men whose job applications were rejected by Quicken Loans, a large corporation with headquarters Detroit, because of their felony convictions. In both cases, their convictions occurred in the distant past and would not compromise their ability to perform the job for which they applied. In 2015 we filed complaints on their behalf with the EEOC. The EEOC conducted an investigation, and in April 2016 issued a determination that there was reasonable cause to believe that Quicken had violated Title VII by categorically refusing to consider applications based on a past conviction. In response, Quicken Loans has stated that it plans to revise its hiring policies. (ACLU Attorneys Mark Fancher, Brooke Tucker, Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellow Sofia Nelson.)

Professor Denied Housing Based on Old Criminal Record. Clifford Washington, an associate professor and human resources professional, was excited when he and his wife found the perfect home. But when they tried to buy it, Sun Homes, which owned the property, turned them away on the grounds that Mr. Washington has an old criminal record. The ACLU of Michigan wrote to Sun Homes informing them that a blanket policy denying housing to people with criminal records violates the federal Fair Housing Act because disproportionate numbers of African Americans, like Mr. Washington, have criminal convictions. In response, Sun Homes agreed to change their policies and allowed the Washingtons to purchase the home. (ACLU Attorney Miriam Aukerman.)

Fair Chance Ordinance for Detroit. Each year the City of Detroit provides hundreds of thousands of dollars in development incentives in the form of tax credits, abatements, and/or grants to businesses and housing developers. Many of these companies and housing providers maintain blanket policies and practices that exclude individuals with criminal records from obtaining housing and employment. In April 2016 the ACLU of Michigan, working with a coalition of advocacy groups and community leaders, proposed that the city adopt a comprehensive ordinance to limit how and when private employers and housing providers receiving aid or incentives from the city can consider an individual's criminal record. The ordinance will ultimately prohibit these entities automatically denying people employment or housing based on a past conviction. The proposed ordinance follows EEOC guidelines and best

practices for considering a criminal record in making hiring or tenancy determinations, including prohibiting a criminal record check until after a conditional offer, conducting an individualized assessment, and offering the opportunity to explain or provide evidence of rehabilitation. We are working collaboratively with the Detroit City Council to finalize specific language for the ordinance before it is formally introduced for a vote. (ACLU Attorneys Michael J. Steinberg, Miriam Aukerman, Mark Fancher and Brooke Tucker, and Legal Fellow Kimberly Buddin.)

Saginaw Homeless Man Faces Death By Police Firing Squad. In a brutal execution-style killing captured on video in July 2012, eight Saginaw police officers took the life of Milton Hall, a 49-year-old, African American, mentally ill homeless man. Mr. Hall found himself alone in the middle of an empty parking lot after a verbal altercation with a store clerk. Police were summoned to respond to his erratic behavior. After the officers formed a semi-circle around Mr. Hall, they continued to give him a very wide berth—far beyond Hall's reach. Six officers raised rifles and aimed them in Mr. Hall's direction. Another officer held the leash of a police dog that was allowed to bark and snap at Hall. When Mr. Hall displayed and waved a small pen knife, the officers shot 46 bullets at him, continuing to shoot even after he had collapsed. The entire incident was captured by the officers' dashboard cameras and by video footage taken by civilians. After the Saginaw County prosecutor's office declined to bring criminal charges against the police officers, the U.S. Department of Justice launched an investigation. However, in February 2014 the Justice Department stated that there was not enough evidence of criminal wrongdoing by the officers to warrant a prosecution under federal civil rights laws. Deeply disappointed with the decision, the ACLU of Michigan wrote a letter to the Justice Department asking that they reconsider, but this request was unsuccessful. In October 2014 the ACLU appeared before the Organization of American States' Inter-American Commission on Human Rights to provide oral testimony and written information about the Hall killing. Produced in connection with that appearance was a video featuring the footage of the killing as well as an interview with Mr. Hall's mother. We are currently researching prospects for bringing this case to the attention of the United Nations Special Rapporteur for Summary Executions. (ACLU of Michigan Attorneys Mark Fancher and Michael J. Steinberg; National ACLU Attorney Jamil Dakwar.)

Fatal Police Shooting in Ann Arbor. Late one evening in November 2014, Ann Arbor police officers were summoned to the home of Aura Rosser, a 40-year-old African American woman. According to police, she had been engaged in a protracted argument with her boyfriend, and when two officers entered the house, Ms. Rosser approached them with a knife. One of the officers fired a taser, but the other officer confronting the same threat fired his gun, killing Ms. Rosser. After reviewing the results of a state police investigation, the county prosecutor announced that no charges would be brought against the officer who shot Ms. Rosser, concluding that he fired his gun in self-defense. After conducting our own analysis of the incident based on the available facts and documents, the ACLU of Michigan issued a report in March 2015 that sets forth concerns about the prosecutor's analysis and how the police officers responded. The report includes recommendations for reform, including review by independent prosecutors who do not work closely with the local police whose conduct they are investigating, and new training protocols for police officers on the use of force and dealing with citizens who suffer from mental illness. (ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

Multi-Jurisdictional Task Force Violence. In April 2015, law enforcement officers representing a task force that includes the Detroit Police Department, the Social Security Administration, the Bureau of Alcohol, Tobacco and Firearms, and U.S. Immigration and Customs Enforcement (ICE), entered the Detroit home of 20-year-old Terrance Kellom to arrest him because of his fugitive status. By the end of the encounter, Kellom had been shot ten times by an ICE officer who had a record of violence, including criminal charges related to an incident when his ex-wife alleges he held his service weapon to her head. The ACLU of Michigan, along with the Detroit Coalition Against Police Brutality, the Michigan Immigrant Rights Center (MIRC), Michigan United and CAIR Michigan, sent a letter to U.S. Attorney General Loretta Lynch in May 2015. The letter called for suspension of task force operations pending a full investigation, an investigation by an independent prosecutor, implementation of a body camera requirement, mental health and substance abuse screening for all officers, and standardized deadly force protocols. (ACLU Attorney Mark Fancher; Susan Reed of MIRC.)

Racially Disproportionate Traffic Stops in Ferndale. After receiving multiple complaints from African American motorists who felt that they had been the targets of racial profiling by police officers conducting traffic stops in Ferndale, the ACLU of Michigan requested traffic stop data from the Ferndale Police Department pursuant to the Freedom of Information Act. The documentation we received showed that black motorists are being issued traffic citations in numbers grossly disproportionate to their presence in the local population. Although blacks are less than 10 percent of the Ferndale population, African American motorists received 60 percent of traffic citations written during an 18-month period in 2013 and 2014. Alarmed by these statistics, we wrote a letter to Ferndale's chief of police in September 2014, asking that the department hire independent experts to investigate the racial disparities and recommend reforms. Although Ferndale's police chief and city manager emphatically denied that their officers engage in racial profiling, they agreed to meet with the ACLU and consider a process for reviewing policies and practices. Unfortunately, it is unclear whether, or to what extent, the Ferndale police have committed to implementing reforms, and the most recent traffic stop data in Ferndale show no significant changes. We continued to monitor the situation and collect data in 2015 and 2016. (ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Gillian Talwar and Lisa Schmidt.)

Racial Profiling on Campus. Dr. Glennard Smith is a 50-year-old African American obstetrician-gynecologist who practically grew up on the campus of Michigan State University because his mother is a long-time professor there. In June 2015 he chose one of the university buildings as a study venue as he prepared for professional recertification. Late one evening, university police officers made a bee-line to the place where he was seated and began to interrogate him, claiming that he fit the description of a homeless man who had been stealing electronic devices. Dr. Smith was dressed in fashionable clothing and was working on an expensive laptop computer. He asked whether the officers were profiling him. One responded by asking, "What is profiling?" Later in the encounter, the officers were heard laughing about Dr. Smith's profiling inquiry. The ACLU of Michigan wrote a letter to the chief of police at MSU expressing serious concern about this disturbing incident and submitted requests under Freedom of Information Act seeking documents about Dr. Smith's encounter as well as any other allegations of racial profiling by MSU police within recent years. In January 2016 we met with university officials to discuss the incident, and they are developing a series of policies,

plans and programs intended to address racial profiling and similar concerns. (ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

Traffic Stop Quotas Create Racial Profiling Hazard. After a state trooper complained to the department of civil rights, the Michigan State Police issued a public statement in March 2016 admitting that troopers are evaluated in part on whether they make at least 70 percent of the collective average number of traffic stops made at the post to which they are assigned. After discussing the matter with police officials to learn more about the practice, the ACLU of Michigan wrote to the director of the Michigan State Police in August 2016 urging that this policy be terminated because of the risk that it would lead to racial profiling. Because of the policy, troopers with an insufficient number of stops facing imminent evaluation are more likely to target for groundless or arbitrary stops individuals whom they perceive to be powerless to effectively complain, which disproportionately includes people of color. Additionally, we inquired about whether troopers record the racial identities of drivers stopped, and whether there are procedures in place to monitor racial patterns of stops and to remedy practices that are racially discriminatory. We are awaiting a response from police officials. (ACLU Attorney Mark Fancher.)

Slavery Reenactment Activity Traumatizes Children. YMCA camps in Jackson, Michigan featured an activity for elementary school students called "Underground Railroad." The intended purpose of the activity was to educate children about slavery, and to that end the students were directed to engage in role-play. But according to reports, students stood on an auction block to be sold, adult actors shouted at the children and insulted them as part of the simulation, and "escaping" children were even chased through the woods by adults on horseback. One 10-year-old African American participant was traumatized by the experience, and she and her mother complained to the ACLU of Michigan about the activity. In February 2016 we wrote a letter to the YMCA's national president that not only requested an end to the activity and others like it across the country, but also cited opinions of scholars and professionals about how the subject of slavery should be presented to young children. The letter explained the importance of teaching children about slavery, and it explained as well that it is equally important to avoid the trivialization of the experience of the enslaved by making it a camp activity. The YMCA immediately responded to our letter by permanently terminating the activity. (ACLU Attorney Mark Fancher.)

Racially Hostile Educational Environment in Plymouth-Canton. In response to concerns expressed by students and parents, the ACLU of Michigan directed a public records request to the Plymouth-Canton school district for documents related to any incidents of racial harassment and bullying. The request yielded numerous reports that detailed vile and hateful race-based harassment. In July 2014 the ACLU of Michigan sent a letter to the school district's superintendent that listed many of the more disturbing racial incidents and explained why the school district might be in violation of Title VI of the Civil Rights Act, which prohibits schools from subjecting children to a racially hostile educational environment. Further, the letter specified a series of steps the ACLU of Michigan expected the school district to take in order to remedy the problem. The school district responded quickly and comprehensively by revising reporting and record-keeping practices for racial incidents, creating procedures for following up with victims and helping offenders to learn from their mistakes, requiring all teachers in the school district to undergo training regarding race, human relations and effective educational

methods, adjusting the curriculum and instruction methods to ensure that students learn about the historical contributions and accomplishments of all races and civilizations, and other initiatives. The ACLU has continued to monitor racial incident trends using the data collected by school district administrators, and there are plans to develop a case study of the school district's experience. (ACLU Attorney Mark Fancher.)

Hostile Educational Environment in Bloomfield Hills. In March 2015 students at the University of Oklahoma captured the country's attention when they were caught on video singing racist songs on a bus. Among those who saw and were affected by these antics were a few white students at Bloomfield Hills Middle School who were inspired to search out and repeat racist jokes and slurs on their own school bus. The target of their harassment was a 13-year-old African American student who had the presence of mind to record their behavior on his phone. When his experience was reported in the media, other families of color stepped forward to complain of what they described as pervasive racism in the school district. After the ACLU of Michigan met with some of these families and then with school administrators, in July 2015 we wrote a letter to the school district recommending a series of reforms, including training for staff, monitoring and tracking of student behavior, curriculum changes, and increasing diversity of personnel. (ACLU Attorney Mark Fancher.)

Racist School Mascot. In response to community concerns, Eastern Michigan University wisely abandoned its offensive use of a Native American "Huron" as a mascot for the school in 1991. However, in 2012 the Huron logo reappeared on the school's marching band uniforms, hidden beneath a flap on the jackets. Members of the Native American Student Organization (NASO) complained repeatedly to former University President Susan Martin to no avail. Meanwhile, the controversy sparked a series of related incidents of racial harassment on campus. One of the more serious involved the ridicule and assault of an older Native American man by students dressed in "red-face" and feathers who claimed to be Hurons. In June 2015 the ACLU of Michigan and representatives from the U.S. Department of Justice attended a meeting with NASO and President Martin. The meeting was tense and the ACLU urged removal of the logo from the band uniforms, but there was steadfast refusal to yield. The ACLU followed up with a public records request for all documents related to the decision to return the logo to the uniforms, as well as documents related to other incidents of harassment. After President Martin left EMU to assume a new position at a university in California, EMU's interim president announced in August 2015 that the logo would be removed from the uniforms and the Huron mascot permanently retired. (ACLU Attorney Mark Fancher.)

FREE SPEECH

The Juggalos Are Not a Gang. In 2014 the ACLU of Michigan filed a federal lawsuit against the FBI for stigmatizing all fans of a popular hip hop and rap group as a "gang." Dedicated fans of the music group Insane Clown Posse (ICP) refer to themselves as "Juggalos," much like dedicated fans of the Grateful Dead are known as "Deadheads." At concerts and week-long gatherings during the summer, Juggalos from all over the country come together to bond over their shared interest in ICP's music and a nonconformist counter-culture that has developed around this group. Many Juggalos also proudly display ICP logos and symbols on their clothing, jewelry, bumper stickers, and as tattoos. Based on a few criminal incidents involving Juggalos,

the federal government has officially designated the Juggalos as a "gang." As a result, completely innocent Juggalos who are not involved in criminal activity are being harassed by police, denied employment, and otherwise stigmatized because of the clothing and tattoos that they use to identify themselves. Among the supporters of almost any group—whether it be a band, sports team, university, political organization, or religion—there will always be some people who violate the law. But that does not mean the government can designate the entire group as a criminal enterprise. In June 2014 Judge Robert Cleland dismissed our case on standing grounds, but in September 2015 the Sixth Circuit reversed, holding that Juggalos and ICP have standing to challenge the gang designation. The case is now back before Judge Cleland on the FBI's motion to dismiss the case on alternative grounds. (*Parsons v. U.S. Department of Justice*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Saura Sahu, Emily Palacios, Ray Fylstra and James Boufides of Miller Canfield; Howard Hertz and Farris Haddad.)

Free Speech Rights in Privately Managed Public Spaces. Originally created in the early 1800s, Campus Martius is a public park in downtown Detroit that advertises itself as "Detroit's Gathering Place." However, the city outsourced management of this space to a private organization that did not allow citizens to engage in classic First Amendment activity such as silent marches to protest war, handing out leaflets about political events, and collecting signatures on petitions. When the anti-foreclosure group Moratorium Now! attempted to circulate a petition and distribute political leaflets in Campus Martius criticizing the Detroit bankruptcy, they were prevented from doing so by private security guards and the Detroit police. Similarly, when the anti-war group Women in Black attempted to march silently through Campus Martius and distribute leaflets describing their anti-war principles, they were stopped by a private security guard who had been hired to patrol the area. In January 2015 the ACLU of Michigan filed suit, arguing that the First Amendment applies in all publicly owned parks regardless of whether they are managed by a private entity and patrolled by private security guards. In December 2015 the Detroit City Council agreed to enact an ordinance that expands the right to leaflet, petition and march throughout the city, including in Campus Martius and all privately managed public parks. The case settled in January 2016 when the city agreed to pay damages and attorneys' fees. (*Moratorium Now! v. Detroit 300 Conservancy*; ACLU Attorneys Brooke Tucker and Michael J. Steinberg; Cooperating Attorney Christine Hopkins.)

Busking Is a First Amendment Right. College students Chris Waechter and Gabe Novak were told by Saugatuck police officers and other city officials that they are prohibited from playing music, or "busking," on public sidewalks. When Gabe told police in July 2014 that he believed his activity was protected by the First Amendment, he was arrested, hauled off to jail for the weekend, and charged with a felony. Although Chris and Gabe had both performed on sidewalks in a handful of Michigan cities without incident, Saugatuck officials insisted that they must obtain a "license" to play their music. The local licensing ordinance, which normally applies to established businesses that provide public entertainment, would require Chris and Gabe to apply for a license at least 60 days before performing, pay a licensing fee, obtain liability insurance and a corporate surety bond, and even provide toilet facilities and off-street parking for those who wish to listen to their music. In December 2014 the ACLU of Michigan filed a lawsuit on behalf of these musicians, claiming that requiring them to obtain licenses before performing on a public sidewalk is an unconstitutional prior restraint in violation of the First Amendment. In March 2015 the city agreed to a consent judgment prohibiting Saugatuck

from enforcing its ordinance against buskers. We then sent a letter to ten other Michigan cities who have similar laws, advising them that busking is a First Amendment right. (*Waechter v. City of Saugatuck*; ACLU Attorneys Michael J. Steinberg and Miriam Aukerman, and Legal Fellow Marc Allen.)

Complete Ban on Truthful Advertising. Psychologists with master's degrees in Michigan are "limited licensed psychologists," which means they may provide therapy under the supervision of a fully licensed psychologist. Like nearly all providers of services available to the general public, they need to advertise in order to maintain a client base that will support their work. However, a Michigan statute and administrative rule completely banned limited license psychologists from advertising their services. This ban contravened the long-standing recognition that the First Amendment protects truthful, non-misleading advertising, and the ACLU's position that the public has a right to know about important services that are available to them. In February 2015 the ACLU of Michigan filed suit on behalf of two therapists who were forced by state officials to take down their ads and were in danger of losing their practice because of their inability to advertise. The case was settled in August 2015 after the state agreed to issue an administrative ruling allowing advertising and pay damages and attorneys' fees. (*Seldin v. Zimmer*; ACLU Legal Director Michael J. Steinberg and Legal Fellow Linda Jordan; Cooperating Attorney Andrew Nickelhoff of Sachs Waldman.)

Puppy Mill Protesters. Pam Sordyl leads "Puppy Mill Awareness," a group of concerned citizens who peacefully demonstrate on public property near pet stores to educate the public about the mistreatment of dogs in the commercial breeding industry. Puppy Mill Awareness believes that the only way to end this form of animal cruelty is to end the sale of commercially bred puppies in local pet stores. In September 2013 a pet store owner in Macomb County tried to take out a personal protection order against Ms. Sordyl the week before she planned a peaceful protest on public property, alleging that the protest would interfere with her business. The ACLU of Michigan successfully represented Ms. Sordyl to ensure that the judicial process would not be abused to squelch peaceful free speech. In January 2014 Pam and her group found themselves the target of legal action once again, this time in a defamation lawsuit brought by a pet store in Oakland County called Woof Woof Puppies. Such lawsuits have a chilling effect on First Amendment rights and are known as "SLAPP Suits"—strategic lawsuits against public participation. The ACLU has a tradition of defending groups and individuals whose First Amendment rights are threatened by baseless defamation lawsuits, and we represented Puppy Mill Awareness and its members in this case. In October 2014 the Oakland County Circuit Court dismissed the majority of the pet store's claims, and in January 2015 the pet store dropped its lawsuit completely. (*Meyers v. Sordyl*; *Woof Woof Puppies & Boutique v. Sordyl*; ACLU Attorney Dan Korobkin; Cooperating Attorneys Jill Schinske and Susan Kornfield, Jonathan Young, Jim Carty and Jim Walsh of Bodman.)

Academic Freedom Threatened by Subpoena in Defamation Case. PubPeer.com is an online forum for scientific discussion and critique of published research. Many of its participants comment anonymously so that they need not fear professional retribution if they criticize the scholarship of their peers, colleagues and future potential employers. Based on that anonymity, PubPeer's users have highlighted problems with important research papers, often leading to corrections or retractions to the benefit of the scientific community. In October 2014 a prominent scientist at Wayne State University filed a defamation lawsuit against anonymous

commenters who had criticized his research on PubPeer's website. Using the court's subpoena power, he demanded that PubPeer disclose any information it had that could help identify the commenters. Since the days of the *Federalist Papers* and *Common Sense*, anonymous speech has been recognized as central to the free-speech tradition. Although truly defamatory speech is not protected by the First Amendment, negative opinions and rhetorical commentary are not defamatory and are entitled to First Amendment protection. The ACLU is representing PubPeer in arguing that the website has a First Amendment right not to disclose the identity of its anonymous users unless and until it can be proved that their speech is not constitutionally protected. We filed a motion to quash the subpoena in December 2014. In March 2015 the Wayne County Circuit Court granted our motion in part, but ordered PubPeer to disclose identifying information about one of the online comments. Both sides have appealed, and oral argument is scheduled for October 2016. (*Sarkar v. Doe*; National ACLU Attorney Alex Abdo and Brennan Fellows Samia Hossain and Benjamin Good; ACLU of Michigan Attorney Dan Korobkin; Co-Counsel Nicholas Jollymore.)

The Heckler's Veto. When someone exercises their First Amendment right to free speech, the government is not allowed to shut down the speech just because other people don't like the message that is being conveyed. This is known as the rule against a "heckler's veto." At the 2012 Arab International Festival in Dearborn, a group of Christian evangelists marched down a public street expressing their beliefs with offensive words and disturbing images that they knew would be upsetting to many members of the local community. Although most people turned away or told the evangelists that they were unwelcome, a small group of onlookers became violent, throwing objects at the evangelists and threatening them with physical harm. The police then told the evangelists that because their presence was causing a violent reaction, they would have to leave or face arrest. The evangelists sued the police for violating their rights under the First Amendment, but their lawsuit was dismissed by the trial court and the dismissal was affirmed by a 2-1 vote on appeal, with the majority ruling that the evangelists "incited" the crowd to violence. After the full U.S. Court of Appeals for the Sixth Circuit voted to rehear the appeal "en banc," the ACLU of Michigan filed a friend-of-the-court brief in December 2014. We argued that in order to protect freedom of speech for all, the First Amendment does not allow the police to shut down a lawful demonstration just because a small crowd reacts violently to an extremely offensive message. In October 2015 the full Sixth Circuit reversed, agreeing with the ACLU's position that the police violated the First Amendment by ejecting the evangelists based on others' violent reactions to their highly offensive speech. As a concurring judge wrote: "The beauty of our First Amendment is that it affords the same protections to all speakers, regardless of the content of their message. If we encroach on the free-speech rights of groups that we dislike today, those same doctrines can be used in the future to suppress freedom of speech for groups that we like." (*Bible Believers v. Wayne County*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Julie Carpenter of Jenner & Block.)

The Pledge of Allegiance. Marcus Patton is an African American student at Lincoln Park Middle School who refuses to stand for the daily classroom recitation of the pledge of allegiance. After watching seemingly endless media coverage of black victims killed and brutalized by police, Marcus concluded that the promises and ideals recited in the pledge are not true, and he could not in good conscience participate in the ritual. Teachers admonished him, expressed their disapproval by referencing family members in the armed forces risking their lives for the country, and threatened to write him up for disciplinary action. In April 2016 the ACLU of

Michigan wrote a letter to the principal and the superintendent explaining that Marcus has a constitutional right to remain seated. The attorney for the school district acknowledged that the ACLU was correct, and Marcus was permitted to exercise his right to remain seated during the pledge. (ACLU Attorney Mark Fancher.)

Political Speech and Youth Curfews on the Detroit RiverWalk. The public walkway and parkland along the Detroit River in Detroit is managed by a private non-profit called the Detroit RiverFront Conservancy. However, until recently, the Conservancy was treating the land as private property. In September 2013 the ACLU of Michigan wrote a letter explaining that because the Conversancy is performing a public function in running a public park, it is bound by the First Amendment. In response, the Conservancy allowed a peace and justice group called Women in Black to march and claimed that it would amend its policies. However, in 2015 the Conservancy denied several individuals and small groups the right to petition, walk with signs or gather on public grounds without a permit. Additionally, it instituted a year-round 6 p.m. curfew for all minors unaccompanied by parents or guardians. The ACLU wrote another demand letter in August 2015 and, in response, the Conservancy agreed to lift its youth curfew and adopt better free speech policies. (ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Syeda Davidson.)

Censorship of Toni Morrison. In response to calls to remove Toni Morrison's *The Bluest Eye* from the Northville Public Schools AP English curriculum, the ACLU of Michigan wrote a letter in April 2016 warning against censorship and highlighting the importance of studying the themes of race, poverty and oppression raised by the critically acclaimed novel. In response, the Board of Education voted unanimously to permit the use of the book. (ACLU Legal Director Michael J. Steinberg; Board President Loren Khogali.)

Criminalizing "Malicious Communications." In September 2015 the ACLU of Michigan wrote to the Plymouth Township Board of Trustees urging them to reconsider a proposed "malicious communications" speech code that would have made it a crime to make a phone call or send a text message with the intent to "annoy any other person" by, among other things, "using vulgar, indecent . . . or offensive language." The letter explained that the vague ordinance would criminalize protected speech and that there were other constitutional methods to address bullying, which was the purpose of the ordinance. The township decided not to adopt the ordinance. (ACLU Legal Director Michael J. Steinberg.)

The Right to Pass Out "Know Your Rights" Leaflets. In June 2013 Joe Marogil was passing out leaflets at the Fulton Street Farmers Market in Grand Rapids about upcoming ACLU "Know Your Rights" events. The market director told him to leave and threatened to have him arrested if he continued. The ACLU of Michigan contacted city officials and asked to meet with them regarding the First Amendment right to distribute non-commercial flyers in public areas. After lengthy negotiations, in February 2015 the city agreed to change its policies and allow petitioning, leafleting and other free speech activities in designated areas of the market. (ACLU Attorney Miriam Aukerman, Legal Fellow Marc Allen, and Legal Intern Allie Freed; Cooperating Attorneys Joe Marogil and Alex Gallucci.)

LGBT RIGHTS

Supreme Court Rules in Favor of Marriage Equality. A non-ACLU lawsuit was filed in federal court on behalf of two lesbian mothers who were denied the ability to jointly adopt their three special-needs children. The suit alleged that to deny gay parents the right to jointly adopt children violates the equal protection rights of both parents and children. After Judge Bernard Friedman suggested that the case is really about same-sex marriage equality, the plaintiffs amended their complaint to challenge the denial of their right to marry as well. The ACLU filed a friend-of-the-court brief in support of the plaintiffs, arguing that the Constitution's guarantee of equal protection under the law protects the rights of same-sex couples both to adopt and to marry. The case went to trial in February 2014, and the ACLU provided assistance to the plaintiffs' counsel in cross-examining the state's expert witnesses. In March 2014 Judge Friedman held that Michigan's ban on same-sex couples marrying was unconstitutional. On appeal to the Sixth Circuit, a conservative panel reversed Judge Friedman's decision by a vote of 2-1 in November 2014. The U.S. Supreme Court took the case and ruled in June 2015 that it is unconstitutional for states to deny same-sex couples the right to marry, clearing the way for marriage equality nationwide. (*DeBoer v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg; National ACLU Attorneys Rose Saxe and Leslie Cooper.)

Defending Michigan Marriages. On March 21, 2014, Judge Bernard Friedman entered a final judgment in *DeBoer v. Snyder* (see above paragraph), declaring Michigan's ban on marriage for same-sex couples unconstitutional and enjoining the state from prohibiting such marriages. The following day, approximately 300 same-sex couples got married in Michigan before the Sixth Circuit issued an order staying Judge Friedman's decision. Because Michigan's marriage ban had been enjoined and the injunction had not yet been stayed, the federal government recognized that these 300 marriages were completely legal under Michigan law. Governor Snyder, however, announced that Michigan would not recognize the validity of these marriages or provide these couples with any of the legal benefits associated with marriage. In April 2014 the ACLU filed suit in federal court on behalf of eight of the 300 couples, arguing that the Sixth Circuit's stay of the *DeBoer* decision does not allow the state to retroactively cancel the 300 marriages that were legal when entered into, and that these 300 couples are constitutionally entitled to remain legally married regardless of the ultimate outcome of the *DeBoer* appeal. In January 2015 Judge Mark Goldsmith ruled in our favor, holding that it was unconstitutional for Michigan to deny recognition to the 300 couples who were legally married in Michigan. The state chose not to appeal and agreed to a permanent consent judgment in February 2015. (*Caspar v. Snyder*; Cooperating Attorney Julian Davis Mortenson of U-M Law School; ACLU of Michigan Attorneys Jay Kaplan, Dan Korobkin, Brooke Tucker and Michael J. Steinberg, and Legal Fellows Sofia Nelson, Sofia Rahman and Marc Allen; National ACLU Attorneys John Knight and Joshua Block.)

Changing Gender Markers on Driver's Licenses. In May 2015 the ACLU filed a federal lawsuit challenging the Michigan Secretary of State's policy making it extremely burdensome and in some cases impossible for a transgender person to get the gender marker on their driver's license changed. Michigan's policy required an amended birth certificate showing the correct gender. For persons born in Michigan, changing the birth certificate requires "sexual reassignment surgery," which many transgender people either choose not to undergo, or cannot undergo due to its high costs or possible medical complications. For persons born in other states

where birth certificates cannot be amended, changing their Michigan driver's license was impossible. Prior to filing suit, we spent years attempting, unsuccessfully, to convince the Secretary of State to change her policy, explaining that it was irrational, violated the privacy and dignity of transgender persons by "outing" them whenever they are required to show their driver's license, and was out of step with the majority of states and federal agencies, most of which allow a change of gender marker based on an affidavit that a person is being treated or has been treated for gender dysphoria. In November 2015 Judge Nancy Edmunds denied the state's motion to dismiss, ruling in a published decision that Michigan's policy was likely unconstitutional. In response, the state changed its policy. Now, if a transgender individual first gets a U.S. passport with the correct gender on it, Michigan will match the gender on the passport. Because a U.S. passport can be obtained without surgery or an amended birth certificate, the new policy is a vast improvement for most transgender individuals who were previously unable to change the gender on their driver's license. We continued to argue that correcting a Michigan driver's license should not require transgender individuals to pay for and obtain a passport they might not want or need, but in August 2016 Judge Edmunds ruled that the state's new policy met our clients' needs and dismissed our lawsuit as moot. (*Love v. Johnson*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight and Chase Strangio; Cooperating Attorneys Steven Gilford, Michael Derksen and Jacki Anderson of Proskauer Rose.)

Equitable Parenthood. Deanna Mabry and Johanna Mabry were in a committed same-sex relationship for 15 years during the time when gay couples were being unconstitutionally denied the right to marry in Michigan. Despite not being legally married, Deanna and Johanna had a commitment ceremony, signed a *ketubah* (a Jewish marriage contract), took the same last name, and bought a home together. They also decided to raise children together as co-parents, with Johanna as the biological mother. After their relationship ended in 2010, Deanna sought joint custody and visitation with their children. Under the "equitable parent" doctrine, non-biological parents may petition for custody and visitation when they have a parenting relationship to the child. However, based on a decades-old precedent involving a heterosexual couple who chose not to marry, lower courts in Michigan have ruled that the equitable parent doctrine is limited to cases where the non-biological parent was married to the biological parent—a legal impossibility in cases involving same-sex couples in Michigan before 2015. The ACLU of Michigan has been working to overturn this restrictive and discriminatory definition of equitable parenthood by representing non-biological co-parents seeking custody and visitation with their children and by filing friend-of-the-court briefs in trial and appellate courts. In one case, the Michigan Court of Appeals ruled in November 2015 that if a couple was married in Canada or another state that had marriage equality, the equitable parent doctrine would apply even if the couple's marriage was not previously recognized in Michigan. But in another case, the Court of Appeals ruled in July 2016 that if the couple was not married in any jurisdiction, the non-biological parent did not have standing to seek custody or visitation under the equitable parent doctrine. In January 2016 we asked the Michigan Supreme Court to take Deanna Mabry's case and rule that the equitable parent doctrine can be invoked by co-parents who were in same-sex relationships that bore all the hallmarks of marriage during the time when Michigan was unconstitutionally prohibiting same-sex couples from marrying. We argued that excluding Deanna from the equitable parent doctrine compounded and extended the constitutional violation of having denied same-sex couples the right to marry in the first place. Unfortunately, in August 2016 the Supreme Court declined to take the case. Justice McCormack, joined by Justice Bernstein, issued a dissenting

opinion. (*Stankevich v. Milliron*; *Lake v. Putnam*; *Mabry v. Mabry*; ACLU Attorneys Jay Kaplan, Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Sarah Zearfoss, Naomi Waloshin, John Shea and Christine Yared.)

Same-Sex Partners Can Keep Health Insurance. In 2011 the Michigan legislature passed, and Governor Snyder signed, a mean-spirited bill that made it illegal for most public employers to voluntarily provide health insurance coverage to same-sex domestic partners of employees. The ACLU challenged the law in federal court on behalf of several couples, arguing that it denied them equal treatment under the law. In June 2013 Judge David Lawson granted a preliminary injunction stopping the law from going into effect. In his 51-page opinion, Judge Lawson concluded that the legislature, in passage the law, was motivated primarily by discriminatory animus against gays and lesbians. In November 2014 Judge Lawson issued a final judgment striking down the law, declaring that it unconstitutionally discriminates against same-sex couples in violation of their rights to equal protection under the law. The state decided not to appeal, and we reached a settlement on attorneys' fees in February 2015. (*Bassett v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg; National ACLU Attorneys John Knight and Amanda Goad; Cooperating Attorney Amy Crawford of Kirkland & Ellis.)

Funeral Home Director Fired for Being Transgender. Aimee Stephens worked as director of a Detroit-area funeral home for six years, responsible for preparing and embalming bodies. Although she is transgender, she initially hid her female appearance and identity from her employer during her employment, presenting as male. When Ms. Stephens informed her employer that she had been diagnosed with gender dysphoria and would begin presenting as female at work, she was fired. The ACLU of Michigan represented Ms. Stephens in filing a complaint with the Equal Employment Opportunity Commission (EEOC), arguing that the funeral home, by firing her for presenting as female, engaged in unlawful gender stereotyping in violation of Title VII of the Civil Rights Act. After investigating the case, the EEOC concluded that Ms. Stephens' employer had violated her rights under Title VII and in September 2014 filed a lawsuit on her behalf in federal court. This case, along with another filed the same day in Florida, is the first time the EEOC has challenged discrimination against transgender employees under Title VII. In April 2015 Judge Sean Cox denied the funeral home's motion to dismiss the lawsuit. The funeral home then retained counsel from the Alliance Defense Fund and, for the first time, asserted that it had a "religious freedom" right to fire Ms. Stephens. Following discovery, both parties filed motions for summary judgment, and the ACLU filed a friend-of-the-court brief, explaining that courts have long held that a person's religious beliefs do not give employers, businesses and universities a free pass to violate our civil rights laws. Unfortunately, in August 2016 Judge Cox accepted the funeral home's religious freedom defense. Judge Cox ruled that the funeral home had violated the Civil Rights Act by firing Ms. Stephens, but that a separate federal law known as the Religious Freedom Restoration Act immunized the funeral home from liability. The ACLU has urged the EEOC to appeal. (*EEOC v. Harris Funeral Home*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight and Brian Hauss.)

Social Security Benefits for Legally Adopted Child. Although same-sex couples often have difficulty jointly adopting children in Michigan, some judges have allowed second-parent adoptions, where a non-biological parent joins with a biological parent to adopt a child they are raising together. T.J. McCant adopted the biological child of her same-sex partner in this way in

2005, receiving a valid order of adoption from a Shiawassee County judge. Recently, T.J. became disabled and applied for Social Security benefits that any disabled parent can receive to help raise his or her legal child. An administrative law judge in the Social Security Administration denied benefits, stating that T.J.'s adoption is invalid because unmarried couples are not permitted to jointly adopt children under Michigan law. The ACLU of Michigan represented T.J. in appealing this decision to the Social Security Appeals Council in January 2014. We argued that unmarried couples are allowed to adopt, and in any event once a valid adoption order is issued by a state judge, the child is entitled to the same benefits that would be due to a legally adopted child in any other family. In November 2014 the Appeals Council remanded the case to the local field office for reconsideration of its initial decision, and the case remains pending. (ACLU Attorney Jay Kaplan.)

Spousal Benefits Denied by Private Employer. Karen Hannant and her partner were one of the 300 couples legally married in Michigan on March 21, 2014, when Michigan's ban on same-sex marriage was ruled unconstitutional (see above). Hannant's employer Heritage Academies provides spousal benefits for its married employees, including health insurance coverage. When Hannant requested that her spouse be covered, Heritage told her that they would only recognize marriages between opposite-sex couples. In March 2015 the ACLU of Michigan filed a complaint on behalf of Hannant with the Equal Employment Opportunity Commission (EEOC), arguing that Heritage's refusal to provide benefits to Hannant's spouse was unlawful sex discrimination by an employer in violation of Title VII of the Civil Rights Act. After the U.S. Supreme Court ruled in favor of marriage equality in June 2015, Heritage agreed to provide benefits to the same-sex spouses of its employees. The EEOC issued a financial settlement proposal to the parties in June 2016. (ACLU Attorney Jay Kaplan.)

Transgender Health Insurance Discrimination. Jenna Sehl, a transgender woman, has health insurance coverage with Priority Health, which participates in the health insurance marketplace under the federal Patient Protection and Affordable Care Act (ACA). Although the ACA prohibits discrimination on the basis of sex and gender identity, Priority Health is one of several health insurance companies with a policy of not covering any transgender health-related services, including hormone replacement therapy and gender confirmation surgery, even when a physician determines that they are medically necessary treatments for a diagnosis of gender dysphoria. In April 2015 the ACLU of Michigan filed a complaint with the Michigan Department of Insurance and Financial Services (DIFS), challenging Priority Health's policy as discriminatory, but DIFS upheld the denial of coverage. In July 2015 we filed a complaint with the Office for Civil Rights of the United States Department of Health and Human Services (HHS), alleging that Priority Health's denial of coverage is unlawful discrimination in violation of federal regulations governing the ACA. We have also filed discrimination complaints with HHS on behalf of several other transgender persons who have been denied coverage by their insurance agencies. The complaints remain under investigation and review. (ACLU Attorney Jay Kaplan.)

Hormone Therapy for Transgender Prisoner. Josie Mills is a prisoner in the custody of the Michigan Department of Corrections (MDOC). Although classified by MDOC as male, she has identified as female since she was a child. Prior to her incarceration she was diagnosed with gender dysphoria and was prescribed estrogen. When Josie entered Michigan's prison system, however, her hormone therapy was abruptly terminated. MDOC's own doctors confirmed her gender dysphoria diagnosis, but MDOC refused to authorize continued female hormone therapy

for Josie even though that is the widely accepted standard treatment for gender dysphoria within the medical community. This failure to provide appropriate treatment took a serious toll on Josie's medical and mental health, and in November 2015 she castrated herself in prison and was hospitalized for several days. Even after this terrible incident, MDOC continued to refuse estrogen treatment, at one point even offering testosterone therapy instead, which is clearly contrary to accepted medical standards. Beginning in January 2016 the ACLU of Michigan began advocating on Josie's behalf, urging MDOC to undertake a comprehensive review and reconsideration of its treatment of Ms. Mills. MDOC responded by eventually reversing its position, and Josie was able to begin female hormone therapy in August 2016. (ACLU Staff Attorney Jay Kaplan.)

WOMEN'S RIGHTS

Emergency Room Health Care Governed by Religious Doctrine. In 2013 the ACLU filed a first-of-its-kind lawsuit against the U.S. Conference of Catholic Bishops (USCCB) after a Catholic hospital in Muskegon refused to provide Tamesha Means with necessary treatment or information as she was suffering a miscarriage. The hospital, like all Catholic hospitals, adheres to the bishops' "Ethical and Religious Directives for Catholic Health Care Services," which prohibits the majority of pregnancy termination procedures, even when a woman's health or life is at risk. In Ms. Means's situation, after her water broke at 18 weeks of pregnancy, the safest course of treatment was an immediate termination of the pregnancy. Because the hospital refused to provide treatment and information about the safest available treatment options, Ms. Means suffered extreme pain and emotional trauma and contracted two significant infections. Our lawsuit claims that the USCCB was negligent in promulgating directives that increased the risk of patient harm. In a separate lawsuit filed in July 2015 against Trinity Health Corporation, the Catholic health care system that runs the hospital, the ACLU sought an injunction against Trinity's continuing adherence to the bishops' religious directives governing patient care, arguing that Trinity is violating a federal law called the Emergency Medical Treatment and Active Labor Act (EMTALA). These lawsuits are part of a nationwide campaign to eradicate a growing problem of women being denied necessary treatment and information in the area of reproductive health as a wave of hospital mergers has resulted in one in six hospital beds being Catholic-affiliated. A public health educator in Michigan discovered that at one of Trinity's hospitals alone, at least five women who were suffering from miscarriages and needed urgent care were denied that care because of the Catholic directives. Unfortunately, in June 2015 Judge Robert Holmes Bell dismissed the USCCB lawsuit, and in September 2016 the Sixth Circuit affirmed. The Sixth Circuit did not rule on the legality of using religious directives to govern healthcare, but instead ruled that USCCB could not be sued in Michigan and that Ms. Means did not demonstrate that she was physically injured. In April 2016 Judge Gershwin Drain dismissed the Trinity lawsuit as well. As with the USCCB case, Judge Drain did not reach the question of whether the hospital system's policies violate EMTALA, but instead determined that we lacked standing to sue. Our motion for reconsideration was denied in August 2016. (*Means v. U.S. Conference of Catholic Bishops*; *ACLU v. Trinity Health Corporation*; ACLU of Michigan Attorneys Brooke Tucker, Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Louise Melling, Jennifer Dalven, Brigitte Amiri, Alexa Kolbi-Molinas and Alyson Zureick; Cooperating Attorneys Don Ferris, Heidi Salter, and Jennifer Salvatore.)

Hospital Policy Banning Tubal Sterilizations Based on Religion. Jessica Mann is a woman with a life-threatening brain tumor. In September 2015 Jessica was scheduled to give birth by caesarean section delivery at Genesys Hospital in Grand Blanc. Jessica's doctors advised her also to undergo tubal ligation/sterilization at the time of her delivery because another pregnancy would increase the risks to her posed by her tumor, as would forcing her to undergo an additional procedure after the delivery. Tubal sterilization is the most common form of permanent birth control in the world, and it is most safely administered during a C-section. However, because Genesys is a Catholic-affiliated hospital, its policies are driven by religious directives (see above paragraph) rather than what is safest and medically appropriate for women. Due to Genesys's ban on this medical procedure, women who give birth at this hospital may now be forced to wait until they are healed from their C-section and then find another facility where they will undergo a second surgery that involves more risks and more healing time. In Jessica's case, she was forced to switch hospitals to a new doctor—one who has no relationship with her and no experience treating her serious medical condition—with less than a month left in her pregnancy. In 2014 and 2015 the ACLU of Michigan wrote letters to the Michigan Department of Licensing and Regulatory Affairs urging state authorities to take action against Genesys because its policy violates the standard of care required of licensed health care providers under state and federal law. In June 2016 state officials informed us that they would not take enforcement action. (ACLU Attorney Brooke Tucker.)

Pregnancy Discrimination at Work. In 2009 the ACLU of Michigan successfully lobbied for an amendment to Michigan's Elliott-Larsen Civil Rights Act that prevents employers from treating pregnant employees differently from other employees who are similarly situated in their ability or inability to work. Despite this provision, Hope Healthcare Center refused to accommodate Asia Myers, a pregnant employee with physician-imposed temporary restrictions due to pregnancy complications, even though it routinely provides accommodations to non-pregnant employees with similar restrictions. Due to Hope Healthcare's failure to provide reasonable accommodations, Ms. Myers was forced to take leave for thirty days, without pay or health benefits, until her physician lifted the restrictions. In October 2013 the ACLU filed a lawsuit on behalf of Ms. Myers alleging the employer's conduct violated the Elliott-Larsen Civil Rights Act as well as the federal Pregnancy Discrimination Act and the Americans with Disabilities Act. In August 2015 we reached a favorable settlement that included an agreement by Hope Healthcare Center to change its policy to treat pregnant employees the same as other employees who are similar in their ability or inability to work. (*Myers v. Hope Healthcare Center*; ACLU of Michigan Attorney Brooke Tucker; National ACLU Attorney Ariela Migdal; Cooperating Attorney Cary McGehee of Pitt McGehee.)

Domestic Violence Victim Faces Eviction. In December 2013 the Inkster Housing Commission attempted to evict Allison Ben, who was nine months pregnant, because her abuser caused a disturbance when he attacked Ms. Ben in her apartment. Working with Legal Aid and the Fair Housing Center, the ACLU of Michigan wrote a letter to the housing commission warning that the eviction of a domestic violence survivor under these circumstances violated the Fair Housing Act and the Violence Against Women Act. Fortunately for Ms. Ben and her family, we were able to halt the eviction. We also helped Ms. Ben in 2014 and 2015 with subsequent criminal and restraining order proceedings involving the abuser and his girlfriend. (*Inkster Housing Commission v. Ben*; ACLU Legal Director Michael J. Steinberg and Wayne Law Clinic Student Pamela Wall; Cooperating Attorneys Christine Hopkins and Haralambos

Mihas; Pamela Kisch of the Fair Housing Center of Southeastern Michigan; Robert Day of the Legal Aid & Defender Association.)

Jail Denies Lactating Mom Use of Breast Pump. Christina Milliner is the mother of a premature infant whom she breastfeeds every few hours based upon the advice of her doctor. She is also on probation, and after missing several probation appointments due to problems finding childcare she was ordered by a judge to spend two weekends in the Ingham County Jail in August 2016. Christina told jail officials that she needed to pump milk for her baby on a regular schedule or would suffer excruciating pain, but her pleas were ignored and her breast pump was taken away. The ACLU of Michigan immediately sent a letter to the jail, warning officials that allowing Christina to suffer in this way constituted cruel and unusual punishment in violation of the Eighth Amendment and put her at risk of a serious infection that could endanger her own health as well as that of her child. Upon receiving our letter jail officials immediately promised that they would allow Christina to pump milk while in jail and store it for her family to pick up and give to her baby. They also promised to issue a directive to make all staff aware that mothers must be permitted to pump milk while in jail. (ACLU of Michigan Attorneys Miriam Aukerman and Dan Korobkin; National ACLU Attorney Galen Sherwin.)

Breastfeeding Accommodations at the Bar Exam. Taking the bar exam is stressful for everyone. But it can be physically painful for women who are breastfeeding. Without the opportunity to express breast milk, many breastfeeding women taking the test will likely experience extreme pain and discomfort, causing serious distraction that could negatively impact their test results, and posing a risk to their health. In July 2015 the ACLU of Michigan wrote to the Michigan State Board of Law Examiners asking them to revise their public information and policies to make clear that nursing moms can seek breastfeeding accommodations while taking the bar exam. The Board of Law Examiners has agreed to do so by posting accommodations information on its website. The Board will also consider requests from breastfeeding test-takers for special seating or “stop the clock” break time, so that they can pump during the exam if medically necessary. (ACLU of Michigan Attorney Miriam Aukerman; National ACLU Attorneys Galen Sherwin and Lenora Lapidus; Sabrina Andrus of Law Students for Reproductive Justice.)

The Right to Wear Dress Pants at Graduation. Paula Shea, a senior at Oakridge High School in Muskegon, wanted to wear dress pants to her high school graduation. When she was told she couldn’t, she did some research, found that requiring girls to wear dresses violates federal civil rights laws and the Constitution, and convinced her principal that she has a right to wear pants. Paula asked the ACLU of Michigan to help other young people like her who don’t want to be forced to choose their clothes based on outdated stereotypes about what is right for girls and what is right for boys. So in May 2015 we released a student toolkit, which includes a legal memo and sample letter students can use to challenge antiquated dress codes. (ACLU Attorney Miriam Aukerman and Legal Fellow Linda Jordan.)

DISABILITY RIGHTS

Five-Year-Old Denied Right To Bring Service Dog to School. The U.S. Supreme Court has agreed to hear the ACLU’s appeal on behalf of Ehlena Fry, a young girl with cerebral palsy who

was barred from bringing her service dog to school. Because of her disability, Ehlena needs assistance with many of her daily tasks. Thanks in part to the contributions of parents at Ehlena's elementary school, Ehlena's family raised $13,000 to acquire a trained, hypoallergenic service dog named Wonder. Wonder performed several tasks for Ehlena, assisted her with balance and mobility, and facilitated her independence. Nonetheless, her school district refused to allow Wonder in the school. The ACLU of Michigan initially negotiated an agreement with the district to allow Ehlena to bring Wonder to school on a trial period for a couple of months; however, the district required Wonder to sit in the back of the classroom away from Ehlena and was not allowed to accompany Ehlena to recess, lunch, library time, and other activities. The ACLU then filed a complaint with the U.S. Department of Education's Office for Civil Rights, which ruled that the school district violated Ehlena's rights under the Americans with Disabilities Act. Ehlena's family ultimately made the difficult decision to transfer to a new school where Wonder would be welcome. In 2012 the ACLU filed a federal lawsuit against her former school district. Judge Lawrence Zatkoff dismissed the case, reasoning that the Frys could not bring a lawsuit because they did not first exhaust administrative remedies, and in 2015 the Sixth Circuit affirmed in a 2-1 decision. The Supreme Court agreed to hear our appeal, and oral argument will be held in October 2016. (*Fry v. Napoleon Community Schools*; Cooperating Attorney Sam Bagenstos of U-M Law School; ACLU of Michigan Legal Director Michael J. Steinberg; National ACLU Attorneys Susan Mizner and Claudia Center; Cooperating Attorneys Peter Kellett, James Hermon, Jill Wheaton and Brandon Blazo of Dykema, and Gayle Rosen and Denise Heberle.)

Seven-Year-Old Handcuffed at School. In October 2015 a "school resource officer" working in Flint handcuffed a seven-year-old student with ADHD when the student did not immediately respond to the officer's instruction. The student was not a threat to himself or others and was handcuffed for nearly an hour solely on account of his disability-related behavior. In March 2016 the ACLU wrote a letter on behalf of the family seeking wholesale policy changes to ensure that no more children are handcuffed at school. We are continuing to work with Flint in an attempt to resolve the matter. (ACLU of Michigan Attorneys Amy Senier, Michael J. Steinberg and Mark Fancher; Cooperating Attorney Mark Finnegan; National ACLU Attorneys Susan Mizner and Claudia Center.)

Lawsuit for Special Education Records. Ever since the State of Michigan created the controversial Education Achievement Authority (EAA) to take over failing schools in Detroit, there have been complaints that students with disabilities are not receiving adequate special education services. The EAA outsourced special education services to a for-profit company called Futures Education of Michigan, paying the company millions of taxpayer dollars to serve our most vulnerable children. Details regarding this private company's actual services, however, have remained elusive. After the EAA failed to provide public records regarding its contract with and oversight over Futures, the ACLU of Michigan filed a lawsuit under the Freedom of Information Act in April 2015 to obtain the documents. The EAA failed to respond to the lawsuit, and a judge ordered the EAA to turn over the requested records. Only some of the requested records were produced, and the lawsuit remains pending. (*Tolbert v. Michigan Education Achievement Authority*; Cooperating Attorney Ralph Simpson.)

PRISONERS' RIGHTS

Mistreatment of Women at the Muskegon County Jail. At the Muskegon County Jail, male guards routinely view naked or partially naked female inmates while they are showering, dressing, or using the toilet; the women are denied feminine hygiene products, so that they bleed into their clothes; and female prisoners are rarely if ever allowed any exercise outside of their cells. After attempting for almost two years to work with Muskegon County to resolve these systemic problems, in December 2014 the ACLU of Michigan filed a federal class action lawsuit to bring the jail into compliance with constitutional standards. Judge Janet Neff denied the jail's motion to dismiss the women's cross-gender viewing and exercise claims, and discovery on those claims is ongoing. However, Judge Neff ruled against the women on the feminine hygiene claim, and the ACLU has appealed that issue to the Sixth Circuit. (*Semelbauer v. Muskegon County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Marc Allen and Sofia Nelson; Cooperating Attorney Kevin Carlson.)

Retaliation for Reporting Abuse and Neglect. Sharee Miller, a prisoner at Huron Valley Women's Prison, was fired from her job at the prison for seeking help for mentally ill women prisoners who were being abused and neglected by the guards. Ms. Miller's job at the prison was to keep watch over prisoners who were at risk of suicide or self-harm. On multiple occasions she saw guards abuse mentally ill women by leaving them hogtied and naked for hours, depriving them of water, and refusing to advise medical authorities even when a prisoner was foaming at the mouth. Ms. Miller's internal complaints within the prison were ignored, so she ultimately alerted outside organizations such as the Department of Justice and advocacy groups. When she did so, she was punished for violating "confidentiality" rules. In November 2015 the ACLU of Michigan filed a lawsuit to prevent the prison from punishing prisoners who report abuse and neglect. The state's motion to dismiss is scheduled for a hearing in September 2016. (*Miller v. Stewart*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Daniel Quick, Jerome Crawford, Chelsea Smialek and Kathleen Cieslik of Dickinson Wright.)

Abuse at Huron Valley Women's Prison. In 2014 the ACLU of Michigan began to receive extremely disturbing reports (see above paragraph) of mentally ill inmates being mistreated at Huron Valley Correctional Facility, the only women's prison in Michigan. According to reports from multiple individuals who witnessed these events first-hand, mentally ill prisoners were being placed in solitary confinement and denied water and food, "hog tied" naked for many hours, left to stand, sit or lie naked in their own feces and urine, denied showers for days, and tasered. Other reports indicated that women with serious medical and mental health conditions were not receiving proper treatment and in some cases were being punished for seeking help. Additionally, when healthy inmates who witnessed these events contacted individuals outside the facility to report what was happening, they were punished for doing so. In July 2014 the ACLU of Michigan led a coalition in writing a strongly worded letter to the Michigan Department of Corrections (MDOC) to raise these concerns, and we also asked the U.S. Department of Justice to investigate. After meeting with state officials and touring the facility we wrote a second letter to MDOC in November 2014 suggesting a specific series reforms based on successful policies that had been implemented in other states. Unfortunately, MDOC did not respond to our letter with a willingness to make serious changes needed to protect prisoners from unconstitutional abuse and mistreatment. However, in March 2016 we obtained public records revealing that our

advocacy had resulted in the expansion of a U.S Department of Justice investigation into the facility, yielding findings from federal experts highly critical of Huron Valley's treatment of mentally ill prisoners. The Department of Justice continued its oversight over the facility until reforms were made. (ACLU Attorney Dan Korobkin and Legal Fellow Sofia Nelson; U-M Law School Professors Margo Schlanger, Kimberly Thomas and Paul Reingold.)

"Postcard-Only" Mail Policies. In a disturbing new trend that has been sweeping the country, some jails are prohibiting inmates from sending or receiving any mail unless it is written on one side of a small postcard. Although most jails say they are trying to prevent contraband, few have documented any serious contraband problems with the mail system because they are already allowed to open and search all envelopes and packages that enter or exit the jail. Such severe restrictions on inmates' ability to communicate with their families and loved ones is also counterproductive to public safety since studies have shown that prisoners are less likely to re-offend when they are able to maintain close ties with families and other support networks in the community. In 2012 the ACLU of Michigan filed a friend-of-the-court brief in a federal lawsuit challenging the Livingston County Jail's postcard-only policy. The case remains pending before Judge Denise Page Hood. (*Prison Legal News v. Bezotte*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Nakisha Chaney.)

Jail Won't Let ACLU Send Letters to Inmates. The Livingston County Jail has a postcard-only policy (see above paragraph), but there is supposed to be an exception for legal mail. In February 2014 the ACLU of Michigan wrote letters to several inmates at the Livingston County Jail advising them of their legal options regarding the postcard-only policy and encouraging them to contact the ACLU about a possible court challenge. Although the ACLU's letters were marked as legal mail and sent by an attorney, the jail refused to deliver them—and did not even inform the ACLU that our letters were being rejected. In March 2014 we filed a federal lawsuit against the jail, and in May 2014 Judge Denise Page Hood issued a preliminary injunction ordering the jail to deliver the ACLU's mail to inmates. In August 2015 the injunction was upheld on appeal by the Sixth Circuit, which ruled in a published opinion that the ACLU's letters to inmates were legal mail. The jail then asked all 15 judges on the Sixth Circuit to re-hear the case "en banc," and even petitioned for review by the U.S. Supreme Court; both requests were denied. In August 2016 we reached a tentative settlement that would require the jail to fix its policies on legal mail and pay our attorneys' fees. (*ACLU Fund of Michigan v. Livingston County*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Tara Mahoney and John Rolecki of Honigman.)

Prison Health Care on Trial. In a longstanding ACLU lawsuit against the Michigan Department of Corrections (MDOC), a federal judge strongly criticized its failure to provide adequate medical and mental health care. In 2006, following the death from dehydration of a mentally ill prisoner who had been chained naked to a concrete slab for four days in an unventilated cell, Judge Richard Enslen ruled that MDOC was practicing torture in violation of the Eighth Amendment. The judge appointed an independent medical monitor and threatened a fine of one million dollars plus $10,000 per day if the MDOC did not fill staff vacancies to provide basic medical and mental-health care to prisoners. After Judge Enslen retired, the case was reassigned to Judge Robert Jonker, who ruled in 2009 that prison officials were no longer "deliberately indifferent" to prisoners' serious medical and mental-health needs. In 2011 the Sixth Circuit upheld his decision. The district court then resumed jurisdiction over the case and

in June 2013 held a two-week trial on the state's motion to terminate the case in its entirety. Over the course of trial the plaintiffs presented chilling evidence of what life is like in prison for the ever-expanding population of sick and elderly prisoners who need prescription medications and multiple appointments with nurses and doctors, suffer from chronic health conditions, are facing end-of-life care, and are otherwise dealing with extremely grave and complex medical conditions that a prison system is generally ill-equipped to handle. In September 2015 Judge Jonker ruled that the medical care the state was providing to Michigan prisoners had improved and was no longer unconstitutional. The decision effectively brought an end to federal oversight over medical care in Michigan's prisons. (*Hadix v. Caruso*; ACLU Attorney Dan Korobkin; co-counsel Elizabeth Alexander and Patricia Streeter.)

Prisoners Excluded From Civil Rights Act. A civil rights lawsuit was filed in state court on behalf of young men who had been sent to adult prisons in Michigan when they were under the age of 18 and were sexually assaulted by adult male prisoners and female prison guards. The state moved to dismiss the case, arguing that prisoners are not protected by Michigan's civil rights law, known as the Elliott-Larsen Civil Rights Act (ELCRA), because in 1999 the Michigan legislature amended ELCRA to specifically remove prisoners from the protections of that law. The trial court denied the state's motion to dismiss because the 1999 amendment had been struck down as unconstitutional in an earlier case, and the state had not appealed that ruling. The Michigan Court of Appeals reversed by a vote of 2-1, holding that the state was not bound by the earlier ruling and the 1999 amendment to ELCRA was not unconstitutional. In February 2016 the ACLU of Michigan helped lead a coalition of ten civil rights organizations in filing a friend-of-the-court brief in the Michigan Supreme Court, urging review and reversal of the Court of Appeals' decision. We argued that targeting an unpopular group of people (in this case, prisoners) for removal from the general coverage of our state's civil rights laws was unconstitutional and dangerous. We also argued that once a law is struck down as unconstitutional and that ruling becomes final, the state is bound by that ruling if it participated in the previous case. In March 2016 the Michigan Supreme Court decided the appeal on other grounds, but vacated the parts of the Court of Appeals' decision that we challenged in our brief. (*Doe v. Department of Corrections*; ACLU Attorney Dan Korobkin; Cooperating Attorney Rick Hills of NYU Law School.)

RELIGIOUS FREEDOM

"Prayer Station" in Warren City Hall. Since 2009, a local church has been using space in the public atrium of Warren's city hall to operate a "prayer station." Volunteers at the prayer station distribute religious literature, discuss their religious beliefs with passersby, and offer to pray with interested members of the public. In order to provide visitors with an alternative point of view to the prayer station, Warren resident Douglas Marshall asked for a small space in the atrium to set up what he calls a "reason station," where he would distribute atheist literature and offer to discuss his philosophical beliefs with members of the public who wish to learn more about freethought. The mayor of Warren wrote Mr. Marshall a letter rejecting his request because, according to the mayor, Mr. Marshall's belief system "is not a religion" and is not entitled to the constitutional protections guaranteed for religious belief. The ACLU filed a lawsuit on Mr. Marshall's behalf in August 2014, arguing that expressions of religious belief and non-belief must be treated equally under the First Amendment. In December 2014 Judge Marianne Battani

denied the city's motion to dismiss, ordered expedited discovery, and scheduled the case for trial. In March 2015 the city backed down and agreed to a permanent injunction allowing Mr. Marshall to operate a reason station on the same terms as the church was permitted to have its prayer station. (*Marshall v. City of Warren*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg, and Legal Fellow Marc Allen; National ACLU Attorney Dan Mach; Cooperating Attorney Bill Wertheimer; Alex Luchenitser and Ayesha Khan of Americans United for Separation of Church and State; and Patrick Elliott and Rebecca Markert of Freedom From Religion Foundation.)

Muslim Inmates Deprived of Halal Food and Other Religious Liberties. In 2009 the ACLU of Michigan agreed to represent Muslim prisoners in a religious freedom class action in federal court. Although the Michigan Department of Corrections (MDOC) accommodated Jewish inmates by providing kosher meals and allows them to congregate for a Passover meal, it denied Muslim inmates halal meals and the opportunity to have the religious Eid meal at the end of Ramadan. Further, although inmates are excused from their prison jobs for many reasons—including doctor appointments, therapy and visitation—MDOC would not release them from work on their Sabbath. In August 2013 Judge Avern Cohn ruled that MDOC was violating the religious freedom rights of Muslim inmates by not allowing them to attend Eid meals and refusing to accommodate their need to attend weekly prayer services. In November 2013 a court-ordered settlement was reached requiring MDOC to provide halal meals. The ACLU continues to monitor compliance with the settlement and has intervened in 2014 and 2015 to ensure that Eid meals have been provided as required. (*Dowdy-El v. Caruso*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Daniel Quick, Doron Yitzchaki, Trent Collier and Michael Cook of Dickinson Wright.)

Jewish Inmates Deprived of Kosher Food. In 2013 the Michigan Department of Corrections stopped ordering pre-packaged kosher meals into the prison for Jewish inmates. Instead, it adopted a "one size fits all" vegan diet that it claimed met the religious requirements of all religions. However, the vegan food is prepared in the same kitchen as non-kosher food and is served using the same utensils that are used for non-kosher food. This "cross-contamination" violates kosher laws. In 2016 the ACLU of Michigan and the Civil Rights Clinic at Michigan State University College of Law agreed to represent a Jewish inmate who is challenging the denial of a kosher diet as a violation of the Religious Land Use and Institutionalized Persons Act. (*Arnold v. Heyns*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Patricia Selby; MSU Civil Rights Clinic Director Daniel Manville.)

Accommodating Religion at College. A student at Eastern Michigan University who has been a practicing Wiccan since age 14 contacted the ACLU of Michigan when the public safety department refused to allow him to keep his *athame* on campus. Wicca is a pagan religion, and an *athame* is a ceremonial blade used in Wiccan ritualistic exercises to channel psychic energy and demarcate the boundaries of a magic circle. In November 2015 we wrote a letter to EMU officials warning them that their failure to accommodate the student's religious practices violated the Michigan Constitution. We then arranged a meeting with EMU officials during which we were able to dispel various misconceptions about the *athame* and Wicca. In December 2015 an agreement was reached allowing the student to keep the item in a locked box in his room when it was not being used during a ceremony. (ACLU Attorneys Dan Korobkin and Michael J. Steinberg, and volunteer Carl Bookstein.)

Public School District Seeks Christian Superintendent. In March 2015 the ACLU of Michigan received a complaint that the McBain public school system in northern Michigan was seeking to hire a new superintendent with a "strong Christian background and philosophy." This requirement was listed among the job criteria in an official job announcement posted online, and the board of education had approved the language of the ad before it was posted. The job announcement, moreover, had been written by a professional consultant with over thirty years of experience working in public schools. We wrote a letter to the school board explaining that the job posting, in addition to being unconstitutional and violating numerous federal and state laws, sent the wrong message to students and their families, as well as teachers and staff, about religious tolerance and inclusiveness. The school board immediately confessed that it had made a mistake and removed the Christianity requirement from its job posting. (ACLU Attorney Dan Korobkin and Legal Fellow Marc Allen; Cooperating Attorney Steve Morse.)

Christian Prayer at Public School Graduation Ceremony. In 2014 the ACLU of Michigan received several complaints that the graduation ceremony at a public high school in Zeeland featured Christian prayers approved by school officials. We wrote a letter to the superintendent and principal explaining that the constitutional prohibition on school-sponsored prayer at graduation is a vital safeguard of individual religious freedom. In February 2015 the school district informed us that prayer during the graduation ceremony would be discontinued. (ACLU Legal Fellow Marc Allen; Cooperating Attorney Peter Armstrong.)

SEARCH AND SEIZURE

Police Arresting Innocent People for Trespassing. For years, the Grand Rapids Police Department has solicited business owners to sign "Letters of Intent to Prosecute Trespassers." These letters do not articulate a business owner's desire to keep a specific person off their property and are not directed at any particular person. Instead, police officers use these generalized letters to decide for themselves who does not "belong" on premises that are generally open to the public. In many cases, the police arrest people who have done nothing wrong, including patrons of the business. In 2013 the ACLU brought a federal lawsuit to enjoin the practice of using these letters to make arrests without the individualized probable cause required by the Fourth Amendment. The plaintiffs include Jacob Manyong, who allegedly "trespassed" when his vehicle entered a business parking lot for several seconds as he pulled out of an adjacent public parking lot, and Kirk McConer, who was arrested for "trespassing" when he stopped to chat with a friend as he exited a store after buying a soda. An expert commissioned by the ACLU to analyze trespass incidents in Grand Rapids found that African Americans are more than twice as likely to be arrested for trespassing than whites. Both parties filed motions for summary judgment in October 2014 and we are awaiting a decision from Judge Paul Maloney. (*Hightower v. City of Grand Rapids*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg, and Legal Fellow Marc Allen; National ACLU Attorney Jason Williamson; Cooperating Attorneys Bryan Waldman and Julia Kelley.)

Forfeiture Case with Impossible Bond Requirement. When police officers in Alpena searched Carmen Villeneuve's house in August 2014 because they believed she was selling marijuana, they seized all of Ms. Villeneuve's money—every last penny. Although forfeiture laws allow the government to confiscate assets that are tied to illegal activity, Ms. Villeneuve

says the money in question came from her disability payments and a car accident settlement, not drug activity. The problem is that under Michigan law, Ms. Villeneuve could not even make this argument in court unless she first posted a bond equal to 10 percent of the value of the seized property. Because the state was in possession of all her assets, she was unable to post the bond, and the court ordered her property forfeited to the state without ever considering whether the government could prove that the money it had taken was tied to illegal activities. The ACLU of Michigan argued on Ms. Villeneuve's behalf that the mandatory bond requirement is unconstitutional because it deprives indigent individuals of their property without due process of law. In February 2015 the Alpena County Circuit Court rejected the ACLU's arguments, but after the ACLU appealed, the prosecutor agreed that Ms. Villeneuve could have a hearing. (*In re Forfeiture of $19,940*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg.)

Cars Seized for Going to an Art Gallery. In 2010 the ACLU of Michigan filed a federal lawsuit challenging the Detroit Police Department's 2008 raid of a fundraising event at the Contemporary Art Institute of Detroit. During the raid more than a hundred innocent people were detained, searched, and charged with loitering because, unbeknownst to them, the gallery did not have the proper license for the late-night event. In addition, more than 40 legally parked cars were seized and not released until their owners paid nearly $1000. In December 2012 Judge Victoria Roberts ruled that the detention of the CAID's patrons and seizure of their cars was unconstitutional. The city appealed, and the appeal was placed on hold in July 2013 when the City of Detroit filed for bankruptcy. In March 2015 the remainder of the case was settled for damages and attorneys' fees. (*Mobley v. City of Detroit*; ACLU Attorneys Dan Korobkin, Sarah Mehta and Michael J. Steinberg; Cooperating Attorneys Bill Goodman, Julie Hurwitz and Kathryn James of Goodman & Hurwitz.)

Police Photograph and Fingerprint African American Youth Over Toy Truck. Keyon Harrison, an African American 16-year-old, was walking home from school when he saw another youth with a model truck and paused to look at it. Grand Rapids police, who later claimed that two youth looking at a toy truck is so suspicious that it justifies a police investigation, stopped Keyon, took his picture, and fingerprinted him. Even though Keyon did nothing more than admire a toy, his picture and fingerprints are now in a police database. The Grand Rapids police have used this "photograph and print" procedure on about 1000 people per year, many of whom are African American youth. Keyon and another African American youth who was similarly printed and photographed sued to end the practice. In November 2015 the Kent County Circuit Court decided that the "photograph and print" procedure is a legal way for police to identify people on the street. In August 2016 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals arguing that allowing police to seize biometric data when no crime is committed is a dangerous erosion of the Fourth Amendment. (*People v. Harrison*; *People v. Johnson*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Ted Becker and Margaret Hannon of U-M Law School.)

Knock and Talk. When the police don't have enough evidence to get a search warrant, they sometimes employ a procedure they have nicknamed "knock and talk" to investigate further. Courts have ruled that a police officer has the same right as an everyday citizen (for example, a Girl Scout selling cookies) to visit your house, knock on your front door, and ask to speak with you. Unfortunately, abuses of the "knock and talk" technique are now rampant. In one case,

when no one answered the front door, the police started walking around the property knocking on back doors and side doors until they spotted some marijuana through a window in the back of the house. In December 2015 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Supreme Court, arguing that the police need a warrant before they roam around your back yard peering into your windows. In July 2016 we filed another friend-of-the-court brief in a similar case before the Michigan Supreme Court, arguing that a so-called "knock and talk" violates the Fourth Amendment when it is conducted in the middle of the night. (*People v. Radandt*; *People v. Frederick*; *People v. Van Doorne*; ACLU Attorney Dan Korobkin; Cooperating Attorneys David Moran of U-M Law School and Christine Pagac; John Minock and Brad Hall of CDAM.)

Lawsuits for Information About Multi-Agency Task Force Raids. The ACLU of Michigan has worked to expose and address Fourth Amendment abuses by inter-agency police task forces and police raids. In October 2014 we learned that a task force involving the Highland Park police and federal immigration agents raided a late-night dance and music event in Detroit, resulting in numerous arrests, forfeitures and allegations of mental and physical abuse by law enforcement officers. When we sent the Highland Park Police Department a public records request in an attempt to learn more about the incident, they failed to provide the requested documents. Similarly, in mid-2015 we learned that another multijurisdictional task force operating in Hamtramck, Ecorse and Highland Park was seizing people's cars for having invalid insurance, even when the cars' owners were victims of a fraudulent insurance scam and had no idea their insurance was invalid. The task force was reportedly snatching cars from people's driveways without a warrant and refusing to return the cars unless the owner paid hundreds of dollars in fees. We sent the Hamtramck Police Department a public records request in an attempt to learn more about the task force's operations, but our request was denied without explanation. Following these blatant violations of the Freedom of Information Act, we filed two separate lawsuits to obtain the requested records. In the Highland Park case, the court ruled in our favor in August 2016, but Highland Park has filed an appeal. In the Hamtramck case, the city's motion to dismiss our lawsuit is scheduled for hearing in November 2016. (*Steinberg v. City of Highland Park*; *ACLU of Michigan v. City of Hamtramck*; ACLU Attorney Dan Korobkin and Legal Fellow Linda Jordan; Cooperating Attorney Ralph Simpson.)

Daily Searches at Public School. In July 2016 a 13-year-old student was forced to withdraw from a summer school program run by a public school district because he did not consent to a daily pat-down frisk and a search of his backpack. The teenager's father had recently passed away, and his mother was unable to locate a firearm that had been legally owned and registered in the father's name. Although there was no evidence that their son had taken the gun or posed any danger to the school, school administrators insisted on searching the 13-year-old as a condition of his entering the school building each morning. The ACLU of Michigan wrote a letter to the school district warning that such searches were a violation of the student's Fourth Amendment rights unless they were based on reasonable suspicion that he was violating a law or school rule and that their search would uncover evidence of such a violation. To pass constitutional muster, suspicion must be particularized and grounded in fact; mere speculation or a generalized fear could not justify singling a student out for such invasive and stigmatizing treatment. In response to our letter the school district agreed that the student would no longer be subject to the searches when he returned to school in the fall. (ACLU Attorney Dan Korobkin; Cooperating Attorney Lisa Schmidt.)

DUE PROCESS

Retroactive Application of Sex Offender Registration Law. In a groundbreaking ruling, the Sixth Circuit Court of Appeals ruled that the severe restrictions imposed by the Michigan legislature on former sex offenders long after they were convicted violated the Constitution. In 2006 and 2011 the Michigan legislature amended Michigan's sex offender registration law by barring current and future registrants from living and working in a large portion of the state, restricting use of the internet, forbidding attendance of church if children were present, requiring compliance with onerous reporting requirements, and extending the amount of time they remained on the registry. The ACLU of Michigan, working with the University of Michigan's clinical law program, challenged the law in federal court on behalf of six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens, one of whom he has since married. In 2015 Judge Robert Cleland ruled that the law's geographic ill-defined exclusion zones, "loitering" prohibition and several reporting requirements could not be enforced because they are unconstitutionally vague. In August 2016 the Sixth Circuit went further, ruling that that the retroactive application of all of the amendments to those convicted before 2006 violates the U.S. Constitution's rule against ex post facto laws. Judge Alice Batchelder, writing for a unanimous court, held that "a regulatory regime that severely restricts where people can live, work, and 'loiter,' that categorizes them into tiers ostensibly corresponding to present dangerousness without any individualized assessment thereof, and that requires time-consuming and cumbersome in-person reporting, all supported by—at best—scant evidence that such restrictions serve the professed purpose of keeping Michigan communities safe," is a form of punishment that cannot be retroactively imposed. (*Doe v. Snyder*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Sofia Nelson and Marc Allen; U-M Clinical Law Professor Paul Reingold; Cooperating Attorney William Swor.)

Sex Offender Registration for Dismissed Charges. In 1993, when Boban Temelkoski was 19 years old, he touched the breasts of an underage girl. He was permitted to plead guilty under the Holmes Youthful Trainee Act (HYTA), a diversion program for young offenders that promises youth who successfully complete probation that their cases will be dismissed without a conviction and their records sealed. Although Mr. Temelkoski held up his end of the bargain, the Michigan legislature later amended the Sex Offender Registry Act requiring him to register as a sex offender more than a decade after his criminal case was dismissed and his records sealed. In 2012 Mr. Temelkoski filed a motion in state court to be removed from the registry. The trial judge granted the motion, but in October 2014 the Michigan Court of Appeals reversed, ordering Mr. Temelkoski back on the registry. The Michigan Supreme Court has now agreed to hear the case, and the ACLU of Michigan is co-counseling his appeal. We are arguing that the state, by requiring Mr. Temelkoski to register, is violating his right to due process by breaking the promises it made to him when he pleaded guilty as a teenager decades ago. (*People v. Temelkoski*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; co-counsel David Herskovic.)

Mike's Hard Lemonade Case. Christopher Ratté, a University of Michigan professor, took his 7-year-old son, Leo, to a Detroit Tigers game in Comerica Park. Before they took their seats, Christopher purchased what he thought was lemonade from a stand advertising "Mike's Lemonade," and, not knowing that it contained alcohol, gave it to his son. During the ninth

inning, a security guard saw Leo with a Mike's Hard Lemonade and alerted the police. Although a blood test revealed that Leo had no alcohol in his system and the police recognized that Christopher had made an honest mistake, they turned Leo over to Child Protective Services. The agency then refused to release Leo to either his mother, who was not even at the game, or to Leo's aunt, who was a social worker and licensed foster parent. Rather, Leo was placed in a foster home for three days until attorneys from the University of Michigan were able to intervene. The ACLU of Michigan filed a lawsuit in 2011 on behalf of the family to challenge the constitutionality of Michigan's child removal law, which permits the government to take custody of children without having to prove that the child is in immediate danger. In 2012 the Michigan legislature passed "Leo's Law" that addressed some, but not all, of the problems that led to this case. In addition to suing city and state officials, we sued the chief judge of the Wayne County Family Court after a court official testified that the judge had a policy of pre-signing child removal orders and instructing the on-duty clerk to simply fill in the blanks in the order based on police allegations. Judge Avern Cohn ruled that the case against the family court judge could proceed because it was unconstitutional for the judge to allow the government to take a child from his parents without any judicial scrutiny, and that portion of the case was settled in April 2014. In 2015 the family settled with the City of Detroit. (*Ratté v. Corrigan*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Amy Sankaran and Matthew Lund, Adam Wolfe and Alice Rhee of Pepper Hamilton.)

Mass Suspension of Student Athletes. In the wake of an on-field brawl that involved only some members of the football teams of Detroit's Cody and Martin Luther King High Schools, school officials summarily suspended all players on the teams' rosters from school. In October 2015 the ACLU of Michigan sent a letter to the school district about the denial of due process for the affected students. The students were not provided with hearings or other opportunities to hear any evidence against them and to defend themselves against the accusations. The letter also highlighted the overuse of suspensions in maintaining the school-to-prison pipeline, and we urged officials to consider use of restorative justice practices in addressing disciplinary issues of this nature. (ACLU Attorneys Mark Fancher, Amy Senier and Michael J. Steinberg.)

Access to Police Reports. The Supreme Court has ruled that just as the Constitution guarantees the right to an attorney, the Constitution also guarantees the right to represent yourself if you do not want an attorney. If you are representing yourself in a criminal case, the most basic document you need to prepare your defense is a police report, which is a public record in all but the most unusual circumstances. In Grand Rapids, the ACLU of Michigan received repeated complaints that the city was routinely denying defendants who were representing themselves the ability to see police reports in their own cases, even though criminal defense attorneys were freely given access to police reports about their clients. In March 2015 we wrote a letter to the Grand Rapids City Attorney asking her to ensure that unrepresented defendants have access to police reports on the same terms as criminal defense attorneys. The city eventually agreed and changed its policy. (ACLU Attorney Miriam Aukerman and Legal Fellow Marc Allen; Cooperating Attorney Pete Walsh.)

JUVENILE JUSTICE

Kids Sentenced To Die in Prison. The United States is the only country in the world that

sentences juveniles to life in prison without the possibility of parole. This inhumane practice is condemned throughout the world and is prohibited by international law. Yet, in Michigan, there are over 360 prisoners serving life without parole for offenses committed before the age of 18, including some who were as young as 14. These cases even include individuals who did not actually commit the homicide, but were convicted as an aider-and-abettor or under the "felony murder" doctrine. In 2011, the ACLU filed a lawsuit in federal court challenging the practice as unconstitutional cruel and unusual punishment. In 2012 the U.S. Supreme Court ruled in *Miller v. Alabama* that mandatory laws that impose automatic life-without-parole punishments on juveniles are unconstitutional. In Michigan, however, the state refused to apply the *Miller* ruling to juveniles who are already in prison, insisting that they are not entitled to resentencing and must never even have their cases reviewed by a parole board. In 2013 Judge John Corbett O'Meara agreed with the ACLU and ruled that all juveniles serving mandatory life sentences must be given parole hearings. The state appealed to the Sixth Circuit, which heard arguments in 2015. While the appeal was pending, the U.S. Supreme Court ruled in *Montgomery v. Louisiana* that its *Miller* ruling was retroactive. The *Montgomery* decision triggered into effect a new law that been passed by the Michigan legislature in anticipation that *Miller* might be declared retroactive. The new law provided for retroactive resentencings that would allow some youth to be resentenced to life without the possibility of parole, and set a harsh mandatory sentencing range for everyone else. In light of these new developments, the Sixth Circuit remanded the case back to the district court in May 2016 so that we could amend our complaint to challenge the new law. We immediately amended our complaint and, in July 2016, asked for a preliminary injunction to stop the resentencings from going forward until the court could rule on the constitutionality of the new statute. Unfortunately, Judge O'Meara denied the preliminary injunction, and our motion for reconsideration of that decision is pending. The state has also filed a motion to dismiss our amended complaint. (*Hill v. Snyder*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Steven Watt, Ezekiel Edwards and Brandon Buskey; co-counsel Deborah LaBelle and Ron Reosti.)

Lawsuit Needed To Get Suspension and Expulsion Data. As part of our school-to-prison pipeline work, the ACLU of Michigan filed a public records request with the Detroit Public Schools seeking, among other things, data about student suspensions and expulsions, referrals of students to law enforcement, and policies and procedures for disciplinary hearings. After the school district refused to provide numerous documents and demanded excessive fees for the documents it did agree to provide, we filed suit based on these violations of the Freedom of Information Act. The lawsuit prompted the district to hand over the documents that it was required under law to provide in the first place. Although the trial court then dismissed the lawsuit based on the school district's representation that it did not understand our original records request, the Michigan Court of Appeals reversed and ruled that the district had violated the Freedom of Information Act. The case was resolved in May 2016 when the school district agreed to pay our attorneys' fees. (*Monts v. Detroit Public Schools*; Cooperating Attorney Ralph Simpson.)

6 p.m. Curfew for Minors. Each year since 2012, the Detroit City Council had passed "emergency" ordinances making it a crime for minors to leave their homes without their parents after 6 p.m. on the annual Fireworks Night in late June. Although the ordinances had been adopted to prevent problems during the Independence Day celebration on the Detroit River, the curfew applied everywhere within Detroit's 139 square miles. Further, there were no exceptions

for minors engaging in First Amendment-protected activities such as attending church or attending youth group meetings, and parents could not even give their 17-year-old permission to walk down the block to visit friends or relatives or go to the fireworks with a grandparent. The ACLU of Michigan sent a letter in 2014 advising the city that the curfew was overbroad and unconstitutional, yet the city was poised to re-enact the ordinance in 2015 for not only the night of the fireworks, but also during the three days leading up to Fireworks Night. We mobilized a successful lobbying campaign in June 2015, meeting with city council members, community leaders and the press, and encouraging dozens of youth and community members to speak at a council meeting. The council voted down the expanded curfew, limited the curfew to just the riverfront area after 8 p.m. on Fireworks Night, and added numerous favorable exceptions to the general 11 p.m. curfew ordinance for such things as youth exercising First Amendment freedoms and youth accompanied by adults other than their parents. (ACLU Legal Director Michael J. Steinberg, Legal Interns Aadika Singh and Jessica Frisina, and Wayne State Law School Civil Rights Clinic Students Joshua Zeman and Zainab Sabbagh.)

Attempted Expulsion of Ten-Year-Old. After a ten-year-old Detroit Public Schools student with special needs was accused of throwing toilet paper, she was dragged to the principal's office and placed in handcuffs by a police officer. The girl panicked, and as she struggled she allegedly kicked the officer. The child was accused of assaulting school personnel and designated for expulsion on those grounds as the 2016 school year was drawing to a close. Counsel from the ACLU of Michigan attended the expulsion hearing in August 2016 and urged that she not be expelled, as such a severe punishment would prevent the enrollment of the child in all Michigan school districts. The hearing officer decided to reclassify the offense to one that does not carry expulsion as a penalty. (ACLU Attorney Mark Fancher.)

Age Discrimination at Movie Theater. The Emagine movie theater in Birmingham wanted to create an "upscale" atmosphere. After an incident in which a group of teenagers became loud during a movie and were asked to leave, the theater's owner announced a ban on all teenagers—unless they were accompanied by their parents or their family paid a pricey $350 "membership" fee. But Michigan's public accommodations law prohibits discrimination based on age, which includes discrimination against youth as well as discrimination against the elderly. The ACLU of Michigan wrote a letter to the theater's owner, explaining that the new policy violated state law and also sent the wrong message about stereotyping and income inequality. In response, Emagine agreed to change its policy and no longer bans youth. (ACLU Attorney Dan Korobkin; Cooperating Attorney Gillian Talwar.)

IMMIGRANTS' RIGHTS

Racial Profiling by Immigration Officers. The ACLU of Michigan represented two Latino residents of Grand Rapids, Telma and Luis Valdez, who were detained and assaulted by agents from U.S. Immigration and Customs Enforcement (ICE) even though Luis is a U.S. citizen and Telma is a lawful permanent resident. The mother and son drove to a relative's house to show their six-year-old cousin their new puppy when ICE agents pulled into the driveway demanding ID. Even though they both produced a Michigan driver's license, they were handcuffed at gunpoint. One agent banged Telma's head against the car while yelling at her to admit that she was someone else. The ACLU of Michigan filed a federal lawsuit on behalf of the Valdezes

against the federal government and the six ICE agents responsible. In November 2014 Judge Robert Jonker dismissed part of the case in a summary judgment ruling. In March 2015 the case concluded when Telma's claim against the ICE agents for using excessive force against her was settled. (*Valdez v. United States*; ACLU Attorney Miriam Aukerman and Legal Fellows Marc Allen and Sofia Rahman; Cooperating Attorneys Rhett Pinsky and Maura Hagen; Susan Reed, Katie D'Adamo and Anna Hill of the Michigan Immigrant Rights Center.)

Poisoned Families Should Not Be Deported. When toxic, lead-laced water flowed through the pipes in Flint, immigrant families were among the most severely impacted. Because public health information was not initially made available in languages other than English, many immigrants—and the children of immigrants—drank, cooked and bathed in the toxic water long after the state admitted the water was unsafe. For a brief period of time, state-run water distribution centers even denied water to individuals who did not have identification documents. In February 2016 the ACLU led a coalition of more than 60 children's rights, public health, and immigrant advocacy organizations in sending a joint letter to the Department of Homeland Security and the Department of Health and Human Services urging them to offer relief from deportation and suspend all immigration-related enforcement activity in Flint. In response, federal immigration officials announced that they will not conduct enforcement operations at or near locations distributing clean water. Efforts to obtain immigration relief for poisoned families continue. (ACLU Attorney Miriam Aukerman, in partnership with attorneys representing multiple coalition partners.)

Promoting Healthy Relationships Between Police and Immigrant Communities. Local police can best protect their communities if they have strong relationships with those communities. Unfortunately, some police departments undermine trust in immigrant neighborhoods by acting as proxy deportation agents, even though the Supreme Court has made clear that local police cannot arrest and detain individuals for civil immigration violations. Local police who become entangled with immigration enforcement are not only likely to engage in racial profiling, but may illegally detain people based simply on requests from immigration authorities, rather than on the necessary judicial warrants. In order to educate local law enforcement about the important policy concerns and the complicated legal issues that arise when police act as immigration officers, the ACLU of Michigan and the Michigan Immigrant Rights Center developed an issue brief on these questions and distributed it to every sheriff's department in the state in July 2016. (ACLU Attorney Miriam Aukerman; Susan Reed and Anna Hill of the Michigan Immigrant Rights Center.)

VOTING RIGHTS

Emergency Manager Law. Public Act 436 gives unelected "emergency managers" sweeping, far-reaching powers to displace or in some cases even dissolve local governments and school districts. A coalition of civil rights groups challenged the law in federal court, and the state filed a motion to dismiss. In 2013 the ACLU of Michigan filed a friend-of-the-court brief explaining that under international law, the declaration of a state of emergency allowing the suspension of political rights is permissible only when there is an emergency that "threatens the life of the nation." In other countries where that standard has been met, there have been terrorist activities, general strikes, natural disasters, economic anarchy, civil war and other events on a comparable

scale that have essentially shut down the government or the economy. Notwithstanding their economic challenges, Detroit and other Michigan cities under emergency management continue to function; the nature and quality of the "emergencies" in those cities pale in comparison to those that justify the suspension of political rights under international law. Additionally, the implementation of the emergency manager law runs afoul of international law's prohibition of practices that have the "purpose or effect" of racial discrimination. The installation of emergency managers in cities like Pontiac, Flint, Benton Harbor, River Rouge, Highland Park, and of course Detroit disproportionately impact the political rights of people of color. In 2014 Judge George Caram Steeh granted the state's motion to dismiss the majority of the case. He allowed one claim to go forward: equal protection under the law. In order to ultimately prevail on this claim, however, the plaintiffs would have to marshal evidence to prove that Public Act 436's disproportionate impact on communities of color was the product of intentional race discrimination. The ACLU of Michigan joined the legal team litigating the case, and after a period of discovery it was decided that the equal protection claim would be voluntarily dismissed without prejudice so that Judge Steeh's dismissal of the remainder of the claims could be immediately appealed. Unfortunately, in September 2016 the Sixth Circuit affirmed the dismissal. (*Phillips v. Snyder*; ACLU Attorneys Mark Fancher and Michael J. Steinberg; additional co-counsel include the Sugar Law Center, the Center for Constitutional Rights, Constitutional Litigation Associates, Herbert Sanders, Goodman & Hurwitz, and Miller Cohen.)

Retaliatory Election Fraud Prosecution. Rev. Edward Pinkney is a longtime community activist in Benton Harbor who has waged crusades against gentrification and what he regards as abuses of power by the Whirlpool Corporation and emergency managers assigned to the city. His activities have earned him the animosity of the local power structure, and he has been the target of criminal prosecutions for acts alleged to have occurred while engaged in politics. Several years ago, for example, the ACLU of Michigan represented Rev. Pinkney when he was sent to prison for writing a newspaper editorial that criticized a local judge and condemned the criminal justice system as racist. Most recently, Rev. Pinkney helped coordinate a campaign to recall the city's mayor, whom Rev. Pinkney and others believed to be a stooge of the emergency manager and the other forces Rev. Pinkney has challenged through the years. Although enough signatures were collected on recall petitions to put the issue on the ballot, the election was cancelled based on allegations that the dates next to the petitions' signatures were illegally changed. The finger was pointed at Rev. Pinkney, and in 2014 he was tried and convicted of election fraud by an all-white jury that was permitted to hear irrelevant and inflammatory evidence of Rev. Pinkney's political activities. In 2015 the ACLU of Michigan filed a friend-of-the-court brief in the Court of Appeals arguing that Rev. Pinkney's conviction should be reversed, and in 2016 we participated in oral argument. We argued that that allowing the jury to hear irrelevant evidence about Rev. Pinkney's controversial but legal political activism violated the First Amendment and his right to due process, and that Rev. Pinkney was charged with engaging in conduct that was never clearly defined by the law as constituting a felony offense. Unfortunately, in July 2016 the Court of Appeals affirmed Rev. Pinkney's conviction. He is seeking leave to appeal to the Michigan Supreme Court. (*People v. Pinkney*; ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg.)

DRUG LAW REFORM

Unemployment Benefits for Medical Marijuana Patients. When Rick Braska's employer required him to take a drug test, the results came back positive for traces of marijuana. Mr. Braska was immediately fired under the employer's "zero tolerance" policy—even though he is a registered medical marijuana patient, was obeying the Michigan Medical Marijuana Act (MMMA), and never used marijuana in the workplace or showed up to work under the influence. The state then refused to pay Mr. Braska unemployment benefits. In January 2014 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals arguing that the MMMA prohibits the state from denying unemployment benefits to medical marijuana patients if they are fired solely for a positive drug test. In October 2014 the Court of Appeals agreed with the ACLU, ruling in favor of Braska and several other medical marijuana patients whose cases presented the same issue. In November 2015 the Michigan Supreme Court denied the state's request for further review. (*Braska v. Challenge Manufacturing Co.*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Rick McHugh of the National Employment Law Project and Steve Grey of the Michigan Unemployment Insurance Project.)

Decriminalizing Grand Rapids. In 2012 Grand Rapids became one of several cities in Michigan where the voters have chosen to decriminalize the possession and use of marijuana. Although marijuana remains illegal under state law, decriminalization at the local level allows local police agencies to focus their resources on combating more serious crime. In response to the decriminalization initiative in Grand Rapids, the Kent County Prosecuting Attorney filed a lawsuit to have the measure struck down, claiming that it is preempted by state law. The trial court rejected the prosecutor's claims and dismissed the lawsuit, but the prosecutor appealed. The ACLU of Michigan filed a friend-of-the-court brief with the Michigan Court of Appeals in 2013, arguing that the decriminalization measure is not preempted because localities have discretion to allocate their limited law enforcement resources as they see fit. The ACLU also directed the court's attention to new data showing that racial disparities in marijuana arrests are higher in Kent County than almost anywhere else in the country, thereby providing voters in Grand Rapids with another good reason to place reasonable restrictions on local law enforcement. In January 2015 the Court of Appeals agreed with us and affirmed the dismissal of the prosecutor's lawsuit. In December 2015 the Michigan Supreme Court denied the prosecutor's request for further review. (*Kent County Prosecuting Attorney v. City of Grand Rapids*; ACLU Attorneys Dan Korobkin and Miriam Aukerman; Cooperating Attorney Joslin Monahan.)

PRIVACY AND TECHNOLOGY

Cell Phone Location Tracking Without a Warrant. In the age of smart phones, information that is automatically collected by cell phone towers has the potential to reveal an enormous amount of personal information about our whereabouts, including the types of doctors we see, how often we attend church, and whose houses we sleep in at night. In March 2015 the ACLU led a coalition of public interest groups in filing a friend-of-the-court brief in the Sixth Circuit Court of Appeals arguing that such information should not be available to law enforcement unless it is obtained through a search warrant signed by a judge. Unfortunately, in April 2016 the Sixth Circuit, in a split decision, rejected our argument, holding that the government did not

conduct a "search" for Fourth Amendment purposes when it obtained cell phone location information from wireless carriers, and therefore did not need a warrant. (*United States v. Carpenter*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Nathan Wessler and Ben Wizner; Rachel Levinson-Waldman and Michael Price of the Brennan Center; Gregory Nojeim of the Center for Democracy and Technology; Hanni Fakhoury of the Electronic Frontier Foundation; Kristina Supler of the National Association of Criminal Defense Lawyers.)

Local Government Transparency on Surveillance. Given the rapid pace of technological change, it can be hard for citizens to know what surveillance equipment is being used by their local governments, particularly police departments. Too often, new surveillance technologies are purchased and used without adequate consideration of the privacy implications, leaving policymakers scrambling to retroactively design limits when abuses come to light. To address these issues, the ACLU's West Michigan Lawyers Committee worked with the City of Grand Rapids to develop a proactive city privacy policy. The policy, which was adopted in March 2015, requires city departments that acquire new surveillance equipment to obtain prior City Commission approval and to develop operational and data management protocols that spell out why the surveillance technology is needed, how it will be used, what the privacy implications are, and for how long data will be retained. (ACLU Attorney Miriam Aukerman and Legal Fellow Marc Allen; Cooperating Attorneys Peter Armstrong, Joe Marogil and Diann Landers.)

OPEN GOVERNMENT

Legislating Behind Closed Doors. Senior Judge and Detroit legend Damon Keith once wrote, "Democracy dies behind closed doors." In an event that is believed to be unprecedented in Michigan history, public access to the Capitol building was closed off on December 6, 2012 just as a highly controversial right-to-work law was being introduced. For over four hours, members of the public—including union members, journalists, lobbyists, and other concerned citizens—were prevented from going inside as debates were occurring and votes were cast. Although law enforcement claimed that protesters had caused overcrowding, video and photographic evidence showed that there was plenty of room inside. It was later discovered that Republican legislative staffers were ordered to occupy seats in the public galleries to make sure that union members and other interested citizens could not attend. Working with a coalition of labor unions, the ACLU of Michigan filed a lawsuit in January 2013 based on the legislature's violation of the Open Meetings Act, which requires all public bodies in Michigan to deliberate and cast votes in open sessions that are accessible to the public. The Ingham County Circuit Court denied the state's motion to dismiss the case in 2013, and the Michigan Court of Appeals rejected the state's application for an immediate appeal, allowing the ACLU's claims to go forward. Unfortunately, after the case was transferred to the Michigan Court of Claims, the court granted summary disposition to the state in February 2015, ruling that there was not enough evidence of an Open Meetings Act violation for the case to proceed to trial. (*Cook v. State of Michigan*; ACLU Attorneys Kary Moss, Michael J. Steinberg and Dan Korobkin, and Legal Fellow Christina Thacker; Cooperating Attorneys Bryan Waldman, Genevieve Scott, and Michael Pitt and Kevin Carlson of Pitt McGehee; Art Przybylowicz, Jeff Donahue, Michael Shoudy, John Canzano and Andrew Nickelhoff.)

Police Misconduct Complaints Are Public Records. Evan Stivers is a Michigan State University student who felt he had been mistreated by the East Lansing police officers who arrested him at a party after a noise complaint. Suspecting that his experience was not unique, he submitted a public records request for other citizen complaints that had been filed against the officers who were involved in his arrest. The East Lansing Police Department refused to disclose the complaints, arguing that they were "personnel records" exempt from disclosure under Michigan's Freedom of Information Act. The ACLU of Michigan filed a lawsuit on Evan's behalf in March 2016, arguing that transparency in police misconduct complaints is both required by law and an important component of strong police-community relations. To settle the case, the police agreed to implement a new policy whereby all citizen complaints would be disclosed to the public upon request. They also provided Evan with the records he requested and paid our attorneys' fees. (*Stivers v. City of East Lansing*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; MSU Civil Rights Clinic Director Daniel Manville and Clinic Student Anne Puluka.)