LEGAL DOCKET
FALL 2017

The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2016 and 2017.

Immigrants' Rights 1
Environmental Justice 3
Education 4
Racial Justice 5
LGBT Rights 10
Women's Rights 14
Disability Rights 16
Freedom of Speech 18
Religious Freedom 20
Search and Seizure 22
Prisoners' Rights 25
Voting Rights 27
Juvenile Justice 30
Poverty 31
Due Process 32
Open Government 33

IMMIGRANTS' RIGHTS

Iraqis Face Torture or Death if Deported. In June 2017 hundreds of Iraqis in Michigan and throughout the country were arrested by Immigration and Customs Enforcement (ICE), which intended to deport them immediately to Iraq, a country where many had not lived since they were young children. Most have been living in the United States for decades, but were previously ordered removed to Iraq—either for overstaying visas or for previous criminal convictions. As a matter of policy, the United States has not deported people to Iraq because of dangerous country conditions, and because the Iraqi government has refused to issue travel documents. In March 2017, however, Iraq agreed to accept Iraqis deported by the United States back into the country, in exchange for being removed from President Trump's travel ban list. Suddenly, any Iraqi with an open removal order was a target. The ACLU filed a class action lawsuit in federal court to stop the deportations on the grounds that they would likely result in persecution, torture or even death for those deported, either because they are members of minority religions or because they are Western-affiliated. In June 2017 Judge Mark Goldsmith ordered a temporary stay of deportation for Iraqis in Michigan. In July 2017 Judge Goldsmith granted an expanded preliminary injunction barring deportation of Iraqis throughout the country while they access the immigration court system, giving them time to file motions to reopen their immigration cases based on the changed country conditions or legal developments in the decades since their cases were decided. (*Hamama v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Bonsitu Kitaba-Gaviglio and Michael J. Steinberg, and Legal Fellow Juan Caballero; additional attorneys include Lee Gelernt, Judy Rabinowitz and Anand Balakrishnan of the National ACLU, ACLU of Michigan Cooperating Attorneys Margo Schlanger and Sam Bagenstos of U-M Law School and Kimberly Scott and Wendy Richards of Miller Canfield, and co-counsel Nadine Yousif and Nora Youkhana of CODE Legal Aid, Susan Reed of the Michigan Immigrant Rights Center, and William Swor.)

Donald Trump's Muslim Ban. When campaigning for president, Donald Trump called for a ban on Muslims entering the United States. In January 2017, one week after his inauguration, President Trump banned travel for immigrants from seven Muslim-majority countries and halted the refugee resettlement program. His executive order was almost immediately halted by federal courts in lawsuits filed across the country, including by Judge Victoria Roberts in Detroit who enjoined portions of the executive order that prevented lawful permanent residents from the barred countries from returning to the United States. The ACLU of Michigan, together with the Arab American Civil Rights League (ACRL), challenged the order on behalf of individuals whose families were separated due to the ban and on behalf of organizations whose work was impaired and members harmed, including ACRL, ACLU, the American Arab Chamber of Commerce, the Arab American and Chaldean Council, and the Arab American Studies Association. In March 2017 President Trump issued a revised executive order, which, like the first order, was intended to prevent immigration from Muslim countries but attempted to get around the multiple court decisions holding that the executive order violated the Establishment Clause. The litigation in Michigan initially focused on the Trump administration's refusal to turn over key documents that that ACLU sought in discovery, with the administration claiming that the federal court was powerless to order production of presidential papers. Before that issue could be decided, a different case challenging the ban, brought by the ACLU in Maryland,

reached the Supreme Court. In June 2017 Judge Roberts stayed the Michigan case pending a decision on the constitutionality of the ban by the U.S. Supreme Court. (*Arab American Civil Rights League v. Trump*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, and Michael J. Steinberg; Cooperating Attorneys Jason Raofield and Nishchay Maskay of Covington Burling and Margo Schlanger and Samuel Bagenstos of U-M Law School; co-counsel Nabih Ayad, Rula Aoun, Kassem Dakhlallah, Mona Fadlallah, Ali Hammoud, and Natalie Qandah.)

Lawsuit For Muslim Ban Records. When President Trump announced his Muslim ban, chaos erupted at airports and border crossings nationwide. People flying home to their families were detained at airports, lawful permanent residents were stranded outside the country, and the government's interpretation of who was banned kept changing. After multiple federal courts across the country issued injunctions suspending the ban, reports surfaced that the government was flouting the court orders. In February 2017 the ACLU of Michigan, along with 49 other ACLU affiliates, filed Freedom of Information Act (FOIA) requests with local U.S. Customs and Border Protection offices to expose how Trump administration officials interpreted and executed the president's Muslim ban at over 55 international airports across the country, acting in violation of federal courts that ordered a stay on the ban's implementation. We filed a second FOIA request a week later seeking similar information about implementation of the Muslim ban at Michigan's land border with Canada. In April 2017, after the government failed to respond to our FOIA requests, ACLU affiliates across the country, including in Michigan, brought 13 federal lawsuits to obtain the requested records. Although each lawsuit seeks unique and local information regarding how the government implemented the executive orders at specific airports and ports of entry within that jurisdiction, the government sought to transfer and consolidate all of the FOIA cases in the District of Columbia. In August 2017 the Multidistrict Litigation Panel denied the motion to transfer, allowing the ACLU of Michigan case to proceed. The case is pending before Judge Judith Levy. (*ACLU of Michigan v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; Cooperating Attorneys Gabriel Bedoya, Andrew Pauwels, and Andrew Goddeeris of Honigman.)

Is All of Michigan a Warrantless Border Zone? Federal law permits United States Border Patrol officers to search vehicles without a warrant within a "reasonable distance" of the border, which outdated regulations define at 100 miles. Border Patrol, by treating the Great Lakes as an international boundary, considers the entire State of Michigan to be within the warrantless 100-mile zone. The ACLU of Michigan and coalition partners filed a Freedom of Information Act (FOIA) request more information about these warrantless searches, but Border Patrol failed to respond. In November 2016 we sued in federal court to obtain the records. The records produced so far are heavily redacted, but nevertheless paint a disturbing picture: almost one in three people processed by Border Patrol are U.S. citizens, and almost 40% are U.S. citizens or foreigners who are legally present in the country; less than 2% of foreign citizens stopped are recorded as having a criminal record; and over 63% were first stopped by another agency, like local police, suggesting significant entanglement between local law enforcement and Border Patrol. Going forward, we will be asking the court to order Border Patrol to produce documents and information it has withheld, such as location information, without which it is impossible to determine how far from the actual border the agency is conducting warrantless searches. (*Michigan Immigrant Rights Center v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; Cooperating Attorneys Samuel Damren and Corey Wheaton of Dykema.)

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. (ACLU Attorney Miriam Aukerman.)

Immigrant Justice Partnership. President Trump has unleashed a deportation force, terrorizing immigrant communities and ripping families apart. Anecdotal reports suggest that immigration agents are engaging in widespread civil rights abuses, including racial profiling and illegal detentions. To document these abuses, identify systemic problems, and hold the government accountable, in February 2017 the ACLU and the Michigan Immigrant Rights Center (MIRC) created the Immigrant Justice Partnership (IJP). IJP sends trained lawyers to assist immigrants who have been arrested, offers Know Your Rights trainings to affected communities, and promotes city policies that welcome immigrants. (ACLU Attorney Miriam Aukerman and Legal Fellow Juan Caballero; MIRC Attorneys Susan Reed, Ruby Robinson, Anna Hill and Christine Suave.)

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, was 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. Judge Lawson granted the ACLU's request for door-to-door bottled water delivery and filter installation, and soon after recommended that the parties enter mediation. In March 2017 we reached an unprecedented settlement for $97 million requiring the state and city to replace all lead and galvanized pipes throughout Flint in the next three years, allocate resources for health and wellness programs, continue door-to-door filter installation and education, and extensively monitor Flint's tap water for lead. (*Concerned Pastors for Social Action v. Khoury*; ACLU Attorneys Michael J.

Steinberg, Brooke Tucker, and Bonsitu Kitaba-Gaviglio; Dimple Chaudhary, Sarah Tallman, and Jared Knicley of NRDC; co-counsel Glenn Simmington.)

Flint Residents May Sue For Constitutional Violations. Flint citizens filed class action lawsuits in both federal and state court for damages caused by the water crisis. In federal court, they brought claims that the malfeasance of government officials violated their constitutional rights. U.S. District Judge John Corbett O'Meara dismissed the federal lawsuit, writing that the residents' constitutional claims were preempted by the federal Safe Drinking Water Act (SDWA). On appeal, the ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a friend-of-the-court brief in the Sixth Circuit arguing that Congress never intended to strip citizens of the right to seek a remedy under the Constitution when it enacted the SDWA. In July 2017 the Sixth Circuit agreed with the ACLU and reinstated the federal damages cases. (*Mays v. Snyder*; ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Dimple Chaudhary, Sarah Tallman, and Jared Knicley of NRDC.)

Paying for Poisoned Water. The people of Flint are charged the highest water rates in the country even though the water flowing through their pipes was unsafe to drink and 40% of residents live below the poverty line. Compounding the trauma, in May 2017 the City of Flint sent approximately 8,000 notices to residents stating that liens would be placed on their homes if water fees from 2015—the height of the water crisis—were not paid. Eventually, if the liens were not lifted, they could be used to seize and foreclose on the residents' homes. Although the mayor said that the city was merely following state law regarding tax liens for unpaid water bills, in fact the city is under no such legal obligation. The ACLU of Michigan and the NAACP Legal Defense and Educational Fund (LDF) wrote a letter to Flint's mayor and city council, calling for a moratorium on liens for unpaid water bills. The letter argued that since the city did not fulfill its duty to provide water fit for drinking, Flint residents should not have to pay for it—much less lose their homes over it. In May 2017 Flint's city council passed a one-year moratorium on the liens. Unfortunately, Flint's Receivership Transition Advisory Board (RTAB), which must approve ordinances that could impact the city's budget, rejected the ordinance in June 2017. The county treasurer, however, announced that she would not foreclose on any homes in Flint over unpaid water bills. (ACLU Attorneys Kary Moss, Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Sherrilyn Ifil, Coty Montag and Ajmel Quereshi of LDF.)

EDUCATION

Special Education in Flint. In October 2016 we filed a major class action lawsuit against the State of Michigan and local school districts and over the systemic failure to provide an adequate education for children with disabilities in Flint. In the wake of the Flint water crisis, in which the population of an entire city (including approximately 30,000 children) was exposed to lead, our investigation revealed that the public school system lacks the resources, support and expertise needed to properly screen children for disabilities, to address the educational needs of children who have or are at risk of developing disabilities, and to ensure that students with disabilities are not unfairly disciplined, restrained, or excluded from public education. The lawsuit seeks broad systemic reform to make sure that the children in Flint's public schools are not left behind as the city struggles to recover from lead poisoning. Early efforts to settle the case were unsuccessful. In August 2017 Judge Arthur Tarnow heard argument on the defendants' motions to dismiss.

(D.R. v. Michigan Department of Education; ACLU Attorneys Kristin Totten, Dan Korobkin, and Kary Moss; Greg Little, Jessica Levin, and David Sciarra of the Education Law Center; Lindsay Heck and Greg Starner of White & Case.)

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. After the Michigan Supreme Court declined to issue an advisory opinion, we formed a coalition with public school administrators, teachers, and parents to file a lawsuit in March 2017 challenging the constitutionality of the funding. In August 2017 the Michigan Court of Claims issued a preliminary injunction prohibiting the state from funding private schools while the lawsuit proceeds. As of September 2017 the state is seeking leave to appeal the preliminary injunction to the Michigan Supreme Court. (*In re Request for Advisory Opinion Regarding Constitutionality of 2016 PA 249*; *Council of Organizations & Others for Education About Parochiaid (CAP) v. Michigan*; ACLU Attorney Dan Korobkin; Cooperating Attorney Peter Hammer of Wayne State Law School; David Sciarra and Molly Hunter of the Education Law Center, Jeff Donahue of White Schneider, and Brandon Hubbard of Dickinson Wright.)

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 lawsuit against the City of Detroit and Wayne County, asserting violations of the Fair Housing Act and due process. Both the city and the county filed motions to dismiss. In September 2016 the court denied the city's motion to dismiss. As for the county, the court found that the plaintiffs stated a valid claim under the Fair Housing Act but nonetheless granted the county's motion to dismiss on jurisdictional grounds. We appealed the dismissal to the Michigan Court of Appeals, and the case was argued in August 2017. The case against the city continues. (*MorningSide Community Organization v. Sabree*; attorneys include Michael J. Steinberg, Dan Korobkin, Mark Fancher, Brooke Tucker and

Bonsitu Kitaba-Gaviglio of the ACLU; Coty Montag and Ajmel Quereshi of LDF; and Shankar Duraiswamy, Donald Ridings, 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. 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 2014 that outlined why the shutoffs violated the residents' constitutional rights to due process and equal protection. The ACLU and LDF then served as expert consultants in a lawsuit filed in bankruptcy court on behalf of civil rights organizations and residents without water that sought to restore water service to the city's residents and stop future shutoffs. In 2014 Bankruptcy Judge Steven Rhodes dismissed the lawsuit. On appeal, the ACLU of Michigan joined the legal team and ACLU of Michigan Racial Justice Project Staff Attorney Mark Fancher argued the case in the Sixth Circuit. Unfortunately, in November 2016 the Sixth Circuit affirmed the dismissal of the case. Since that time, ACLU staff and volunteer attorneys have continued to represented several individual water customers in administrative proceedings and have used their stories to make a case for a water affordability plan to the Board of Water Commissioners. (*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, John Philo, Sofia Nelson and Lori Lutz.)

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 2013 Morgan Stanley's motion to dismiss the case was denied, allowing the ACLU to proceed with our claim under the Fair Housing Act. Unfortunately, in 2014 the trial judge denied the ACLU's motion to certify a class of approximately 6,000 African American homeowners in Detroit who obtained predatory New

Century Mortgages. The Court of Appeals affirmed the class action ruling in July 2016, and the case was voluntarily dismissed in July 2017. (*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.)

Housing Discrimination in Hamtramck. In 1971 legendary federal judge Damon Keith held that the City of Hamtramck had "intentionally planned and implemented a series of urban renewal projects and other government programs designed to remove a substantial portion of Black citizens from the city, in violation of plaintiffs' federal statutory and constitutional rights." The litigation that generated that ruling has had a long life span, and in 2017 the case found its way before the court again when some of Hamtramck's African American residents filed a motion requesting a court order enforcing a decades-old consent judgment in the case. In their motion, the residents complained that Hamtramck's current tax assessment practices are purposeful efforts to purge African American homeowners from the city. Specifically, they alleged that homes owned by black families have been assessed at elevated rates multiple times during an assessment cycle, making it unreasonably difficult for homeowners to satisfy resulting tax requirements. In February 2017 the ACLU of Michigan filed a friend-of-the-court brief pointing out that historically, taxation has been a convenient tool for placing a special burden on minority populations—particularly when there are efforts to impact a city's racial demographics. We further argued that the alleged tax assessment practices in Hamtramck, if true, are consistent with a pattern of racial exclusion and discrimination occurring in other regions of the country. The residents' motion to enforce the consent judgment remains pending. (*Garrett v. City of Hamtramck*; ACLU of Michigan Attorneys Mark Fancher and Michael J. Steinberg.)

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.)

Felony Employment Exclusion. Isaac Calland was a longtime, respected employee of New Light Recovery Center in Detroit where he counseled substance abusers. In March 2017 the State of Michigan directed the recovery center to terminate Mr. Calland's employment because of a state law that prohibits anyone convicted of Medicaid fraud from working for a Medicaid provider. As part of our work opposing overbroad felony employment bans due their unjustified disparate impact on people of color (see above paragraph), the ACLU of Michigan investigated Mr. Calland's case and found that his only conviction was for unlawful receipt of food stamps, an offense that has nothing to do with Medicaid fraud. In April 2017 we wrote a letter to the state highlighting its error, and Mr. Calland was reinstated to his position. (ACLU of Michigan Attorney Mark Fancher.)

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. The ordinance was introduced to Detroit City Council in September 2016, but has been delayed waiting a final review by the city's legal department. In the meantime, we are working collaboratively with coalition partners and the mayor's Workforce Development Office to explore potential city-wide programs to address the issue. (ACLU Attorneys Michael J. Steinberg, Miriam Aukerman, Mark Fancher and Brooke Tucker, and Policy Counsel Kimberly Buddin.)

Employment Discrimination in the Detroit Police Department. In January 2017 Detroit Police Chief James Craig was provided with the report of the Committee on Race and Equality (CORE), a special investigative committee he had established in response to complaints of discrimination within the department. The report found that high-ranking command staff had engaged in racial discrimination, intimidation, and retaliation, that the department had a "racial problem," and that racism was directed from command staff to the rank and file. Chief Craig rejected the findings of the report, however, and suspended CORE's work. Just days later, Johnnie Strickland, an African American police officer who had been with the department for ten years, was confronted, accosted, handcuffed and detained without cause by a white officer. Strickland was off-duty and inadvertently entered a suspected crime scene under investigation. Although Strickland identified himself as a police officer, the white officer continually screamed profanities in Strickland's face and sarcastically ridiculed Strickland's tenure on the police force. Among other things, the officer called Strickland "stupid," "dumb," and an "idiot." The ACLU of Michigan is representing Strickland in proceedings before the Equal Employment Opportunity Commission (EEOC), alleging racial discrimination, a racially hostile work environment, and retaliation. (ACLU Attorney Mark Fancher.)

EMU Students Protesting Racist Graffiti Threatened With Expulsion. In 2016 racial slurs were repeated spray-painted on Eastern Michigan University buildings and dorms, including statements promoting the KKK and calls for black students to leave the university. In the best American tradition, students of color and allies began to organize and demonstrate in a peaceful manner. One of the protests involved an evening sit-in in the student center, where the students chanted for a short period and then settled in to do homework and talk. When the student center closed, half the students left at the request of the campus police and the others stayed until morning without incident and then left. In response to this harmless protest against hate and intolerance, EMU singled out four African American students who helped organize the sit-in for expulsion proceedings. The ACLU of Michigan wrote a letter and engaged in other advocacy on behalf of the students until the university president eventually agreed to drop the charges. (ACLU Attorneys Michael J. Steinberg and Mark Fancher.)

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. In response to the ACLU's concerns, the Michigan State Police acknowledged that troopers have the capacity to record the racial identities of persons stopped, but it has been such an irregular practice that the agency lacks reliable information about the race of the drivers it stops. In January 2017 the law enforcement agency revised its policies to require that state troopers record the race of all drivers that they stop. The ACLU is monitoring the stop patterns of the troopers. (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.)

LGBT RIGHTS

Changing Gender Markers on Driver's Licenses. In 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.)

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 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 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 EEOC appealed. On appeal, the ACLU moved to intervene on behalf of Ms. Stephens, arguing that there is reason to believe that the EEOC under the Trump Administration will not continue to represent Ms. Stephens' interests. In March 2017 the Sixth Circuit granted our motion to intervene. We have filed briefs on Ms. Stephens' behalf, and oral argument is scheduled for October 2017. (*EEOC v. Harris Funeral Home*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight and Brian Hauss.)

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.)

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 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. In June 2017 MDOC issued a new policy improving transgender health care. Under the new policy, hormone therapy may be made available to prisoners based on an evaluation by an MDOC medical team with expertise in gender dysphoria. (ACLU Staff Attorney Jay Kaplan.)

Insurance Coverage for Medical Necessity. Jasmine Glenn is a transgender woman who is a Medicaid recipient. Her Michigan Medicaid plan is Priority Health, which in the past has denied all coverage for transgender related health care. However, as a result of the non-discrimination provisions of the Affordable Care Act, Priority revised its plan to provide coverage for both hormone therapy and gender confirmation surgery. Jasmine has been approved for gender confirmation surgery, but her physicians are requiring that she undergo electrolysis as a medically necessary prerequisite for the surgery. Priority Health refuses to pay for the electrolysis, considering it to be cosmetic. This means that Jasmine is unable to have the surgery. Jasmine's physicians have also certified that facial feminization surgery is medically necessary for her. Priority Health also denied coverage for that procedure, deeming it to be cosmetic as well. The ACLU of Michigan filed internal appeals with Priority Health, arguing that medical experts have determined these procedures to be medically necessary and that Priority may not discriminate against Ms. Glenn with regards to coverage for medically necessary services because she is transgender. The internal appeals were unsuccessful and in June 2017 the ACLU filed an appeal with the Michigan Department of Insurance and Financial Services (DIFS) requesting a review of Priority Health's denials. In August 2017 DIFS issued a decision in Jasmine's favor on electrolysis treatment, ruling that it is not cosmetic, but medically necessary, and ordering Priority to cover this procedure. Unfortunately, DIFS upheld priority's decision not to cover facial feminization surgery; we plan to file a petition for judicial review of this issue. (ACLU Attorney Jay Kaplan.)

Transgender Athlete on the Girls' Track Team. Justice Prins is a middle school student in the Western School District in Parma. In Fall 2016, her parents requested that she be able to run on the girls' cross country track team. The school district refused, stating that because she is transgender she would have an unfair competitive advantage on the track team. In April 2017 the ACLU of Michigan sent a letter to the district explaining that according to medical and scientific experts Justice would not have an unfair advantage, and warning that excluding Justice from the girls' track team violates her rights under Title IX of the Civil Rights Act and the Equal Protection Clause of the Constitution. The district responded in July 2017 by amending its policy to require consideration of medical information when making decisions regarding transgender student participation in gender segregated sports. Under the new policy, Justice will run with the girls' team for the Fall 2017 season. (ACLU Attorney Jay Kaplan).

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 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. 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. Following EEOC investigation and mediation, the parties reached a financial settlement in June 2016. (ACLU 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' 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 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.)

Discriminatory Health Care. In December 2016 we joined a friend-of-the-court brief defending the Affordable Care Act (ACA), otherwise known as Obamacare. The ACA contains a provision that prohibits healthcare providers who receive federal funds from discriminating against patients because they seek reproductive care or because they are transgender. A group of religiously affiliated healthcare organizations, including a healthcare center in Alma, Michigan, is suing the federal government to challenge this provision. The healthcare organizations claim that the anti-discrimination provision of ACA is itself discriminatory because it violates their religious beliefs. In our brief, the ACLU argued that everyone is entitled to their religious beliefs, but healthcare providers who receive federal funds are not entitled to discriminate against patients. In August 2017 the case was stayed while the Trump Administration considers whether and how it intends to enforce the antidiscrimination provisions at issue. (*Religious Sisters of Mercy v. Burwell*; ACLU of Michigan Attorneys Michael J. Steinberg, Dan Korobkin, and Jay Kaplan; National ACLU Attorneys Brian Hauss, Louise Melling, Brigitte Amiri, Josh Block, James Esseks, and Dan Mach.)

Hospital Policy Banning Tubal Sterilizations Based on Religion. Jessica Mann is a woman with a life-threatening brain tumor. In 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. In October 2016 the ACLU filed an administrative complaint on Jessica's behalf with the Office for Civil Rights of the U.S. Department of Health and Human Services. Following the change in presidential administration, however, we voluntarily withdrew the complaint in February 2017. (ACLU of Michigan Attorneys Brooke Tucker and Dan Korobkin; National ACLU Attorneys Julia Kay and Brigitte Amiri.)

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.)

DISABILITY RIGHTS

Five-Year-Old Denied Right To Bring Service Dog to School. In a sweeping decision that should tear down barriers to justice for students with disabilities across the country, the ACLU of Michigan won a unanimous victory in the U.S. Supreme Court 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. The Supreme Court agreed to hear our appeal, and in February 2017 the Supreme Court reversed, ruling 8-0 in favor of Ehlena. The case has been remanded to the trial court for further proceedings before Judge Sean Cox. (*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.)

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,

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 2015 to obtain the documents. The EAA failed to respond to the lawsuit, and in July 2015 a judge ordered the EAA to turn over the requested records. Only some of the requested records were produced, however, and the litigation continued. In April 2017 the court ruled again in the ACLU's favor, ordered the EAA to turn over additional documents, and awarded the ACLU attorneys' fees. (*Tolbert v. Michigan Education Achievement Authority*; Cooperating Attorney Ralph Simpson.)

Parents With Disabilities. In October 2016 we joined the National Disability Rights Network, the Arc Michigan and the Arc of the United States in filing a friend-of-the-court brief in the Michigan Supreme Court in a case the involves the termination of parental rights where the parent is known to have a cognitive or developmental disability. When the state takes custody of a child, it cannot permanently terminate a parent's legal rights without first making reasonable efforts to safely reunify the family by developing a case "service plan" for the parent to follow. In this case, a mother made the painful decision to relinquish her children into foster care after her family support system fell apart, leaving her homeless and overwhelmed. The mother was also cognitively impaired, and she received a full diagnosis along with recommendations for specialized services with an organization that help parents with such disabilities. However, the Michigan Department of Health and Human Services (DHHS) refused to follow these recommendations and demanded that the mother follow a standard service plan that failed to take into consideration her disability. When the mother failed to show improvement in the standard service plan, the trial court terminated her parental rights. On appeal, we argued that DHHS violated the Americans with Disabilities Act (ADA) by failing to make any effort to accommodate the mother through a service plan that would have provided her with the specialized services tailored to her disability. In May 2017 the Michigan Supreme Court issued a decision agreeing with our position, ruling that the state, in attempting to reunify the family, was obligated to modify its standard procedures in ways that are reasonable necessary to accommodate the mother's disability under the ADA. (*In re Hicks*; ACLU Attorneys Michael J. Steinberg and Dan Korobkin; Jill Wheaton and Courtney Kissell of Dykema.)

Seven-Year-Old Handcuffed at School. In 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.)

FREEDOM OF 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 2014 Judge Robert Cleland dismissed our case on standing grounds, but in 2015 the Sixth Circuit reversed, holding that Juggalos and ICP have suffered injury and therefore have standing to challenge the gang designation. In 2016 Judge Cleland dismissed the case again on similar grounds, holding that the Juggalos did not suffer "legal consequences" and therefore could not challenge the designation under the Administrative Procedures Act. We have appealed and oral argument in the Sixth Circuit is scheduled for October 2017. (*Parsons v. U.S. Department of Justice*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Saura Sahu, Emily Palacios and Ray Fylstra 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 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.)

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 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 represented PubPeer in arguing that the website had a First Amendment right not to disclose the identity of its anonymous users because their speech was 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 appealed. In December 2016 the Michigan Court of Appeals ruled in PubPeer's favor, holding that the First Amendment protects the identity of the anonymous commenters from disclosure. In January 2017 Dr. Sarkar decided to drop his lawsuit. (*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.)

"True Threats" Case. Under the First Amendment, the "true threats" doctrine holds that allegedly threatening speech cannot be punished unless the government can prove that the speaker meant to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual. In July 2016 racial tension over unjustified police violence against young black men was at an apex, when Alton Sterling and Philando Castile were fatally shot by police officers in Louisiana and Minnesota, respectively. In a moment of anger, an African American man named Nheru Littleton, a military veteran and factory worker in Detroit, posted the following statement on his Facebook page: "All lives won't matter until black lives matter! Kill all white cops!" When the police investigated, Mr. Littleton apologized, explained that he had been drinking when he posted the statement, and had no intent to harm anyone. Wayne County Prosecutor Kym Worthy declined to press charges, explaining that the statement was very offensive but was protected by the First Amendment. In a highly unusual move Attorney General Bill Schuette overruled Worthy and directed his office to prosecute Littleton for "terrorist threats," a felony offense that carries up to 20 years in prison. In February 2017 the ACLU of Michigan filed a friend-of-the-court brief in Wayne County Circuit Court in support of Littleton's motion to dismiss the criminal prosecution. We argued that although Mr. Littleton's statement was offensive and upsetting, it was political speech and was not a "true threat." The judge disagreed and scheduled the case for trial. Littleton appealed, and in May 2017 we filed another friend-of-the-court brief in the Michigan Supreme Court. After receiving our brief, the Supreme Court put Littleton's trial on hold while it considers our First Amendment arguments. (*People v. Littleton*; ACLU Attorney Dan Korobkin.)

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 2013 the ACLU of Michigan wrote a letter explaining that because the Conservancy 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 anyone under 18 years old who was not accompanied by parents or guardians even though the general curfew for 16- and 17-year-olds in Detroit is generally 11 p.m. The ACLU wrote another demand letter and, in response, the Conservancy agreed to lift its general youth curfew and adopt better free speech policies. However, the Conservancy had still not removed the unconstitutional rules from its website by the summer of 2017. Following a meeting with representatives of the ACLU, the Conservancy posted the new free speech policies on its website, but has thus far insisted that it is going to enforce the youth curfew. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Cooperating Attorneys Syeda Davidson and Ralph Simpson.)

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.)

RELIGIOUS FREEDOM

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 allowing 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 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 (RLUIPA). (*Arnold v. Heyns*; ACLU Legal Director Michael J. Steinberg; MSU Civil Rights Clinic Director Daniel Manville; Cooperating Attorney Patricia Selby.)

Legislative Prayer. The Jackson County Board of Commissioners opens its public meetings with an invocation delivered by one of its nine commissioners. The commissioners all deliver overtly Christian prayers, often in the name of Jesus Christ, and do not allow members of other faiths to lead the prayer. Citizens who attend the meetings have little choice but to participate, even if doing so violates their conscience. When Peter Bormuth rose during the public-comment period at a board meeting and asked the commission to alter its prayer practice, at least one commissioner turned his back on him. After Bormuth filed suit, arguing that this prayer practice violated the Establishment Clause, one of the commissioners publicly referred to him as a "nitwit." Another warned against allowing invited guests to give invocations for fear that they would express non-Christian religious beliefs. The trial court dismissed his lawsuit, a split panel of the Sixth Circuit reversed, and the full Sixth Circuit agreed to re-hear the case "en banc." In March 2017 the ACLU joined a friend-of-the-court brief filed in the Sixth Circuit, arguing that the Jackson County Commission's practice of opening all its meetings with exclusively Christian prayers violates the Establishment Clause. Unfortunately, in September 2017 the full Sixth Circuit ruled against Bormuth and upheld the commission's legislative prayer practice. (*Bormuth v. County of Jackson*; ACLU of Michigan Attorneys Dan Korobkin and Michal J. Steinberg; National ACLU Attorneys Dan Mach and Heather Weaver; Richard Katskee and Bradley Girard of Americans United for Separation of Church and State.)

Only Christians May Own Homes in Northern Michigan Community. Bay View Association near Petoskey owns more than 300 acres of land on Lake Michigan with 30 public buildings, 450 cottages, and two inns. Under Michigan law, Bay View is a unit of government vested with governmental powers, including the power to levy and collect taxes, the power to deputize law enforcement officials, and the power to make and enforce civil and criminal laws. But Bay View allows only practicing Christians to own the cottages—thereby excluding Jews, Muslims and all those not active in a church. In February 2017 the ACLU of Michigan wrote to Bay View explaining that its discriminatory housing policy is unconstitutional and urged it, consistent with the will of the majority of Bay View residents, to open up home ownership to all. The Association refused and the residents have sued. (ACLU Legal Director Michael J. Steinberg.)

Bible Distribution to Public School Students. In March 2017 the ACLU of Michigan received a complaint that representatives of Gideons International were permitted to enter Union City Middle School to distribute bibles and "Life Books" with religious teachings to fifth grade students in their classrooms. Throughout the country, federal courts have consistently held that the distribution of Gideon Bibles in public school classrooms during school hours is

unconstitutional because it is a governmental endorsement of religion in violation of the Establishment Clause of the First Amendment. The ACLU wrote a letter to the superintendent requesting that the school district immediately put an end to the practice. In response, the superintendent assured the ACLU that the practice would not continue. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio.)

SEARCH AND SEIZURE

Cell Phone Location Tracking Without a Warrant. The United States Supreme Court has agreed to hear our Fourth Amendment case challenging law enforcement access to cell phone location data 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 2015 the ACLU led a coalition of public interest groups in filing a friend-of-the-court brief in a federal criminal appeal before 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. In October 2015 the ACLU was permitted to participate in oral argument. In April 2016 the Sixth Circuit issued a split decision rejecting 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. We then assumed direct representation of the defendant and asked the U.S. Supreme Court to take the case. In June 2017 the Supreme Court granted our petition. Argument will take place in late 2017 or early 2018. (*United States v. Carpenter*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Nathan Freed Wessler, Ben Wizner, and David Cole; co-counsel Jeffrey Fisher of Stanford Law School and Harold Gurewitz.)

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 challenge the use of 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. In addition to the federal case, the ACLU filed a friend-of-the court brief in the Michigan Court of Appeals on behalf of Demetrius Maggit, who had been unlawfully arrested under the same policy. In May 2017 the Michigan Court of Appeals agreed with the ACLU and held that the City's use of the letters was unconstitutional. In June 2017 Grand Rapids announced that they would no longer use the letters as a basis for trespass arrests. In the federal case, both parties filed motions for summary

judgment in 2014 and we are awaiting a decision from Judge Paul Maloney. (*Hightower v. City of Grand Rapids*, *People v. Maggit*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg, and Legal Fellow Marc Allen; National ACLU Attorney Jason Williamson; Cooperating Attorneys Julia Kelley, Bryan Waldman, and David Moran of U-M Law School.)

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 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. In May 2017 the Court of Appeals issued a decision holding that the city was not liable because its policy only allowed, but did not require, the police to take photographs and fingerprints—a decision that could make it much harder to hold municipalities accountable for civil rights violations in state court. The ACLU is now representing the two youths in asking the Michigan Supreme Court to hear the case. Our application for leave to appeal was filed in July 2017. (*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.)

Police Brutality in Taylor. In April 2016 white police officers in Taylor pulled over Calvin Jones, a 26-year-old African American man, purportedly for running a stop sign. Jones' wife and younger brother were also in the car at the time of the stop. During the encounter, the officers shattered Jones' window, violently wrestled him from his car, and held him in a dangerous chokehold until he blacked out. After his arrest, Mr. Jones was stripped to his underwear and detained for several hours in a cold holding cell. These events began when Jones demanded an explanation for the stop before he would produce his license and registration. Although the officers were not legally obligated to provide an explanation at the time of the stop, doing so is widely considered proper police procedure in order to avoid escalation and reduce tension. After learning of the incident, the ACLU of Michigan arranged for Jones' criminal defense, and his charges were dismissed. The ACLU also obtained disturbing dashboard camera footage of the entire episode. In May 2017 we filed an internal affairs complaint against the officers involved and publicly released the video footage. In August 2017 the internal affairs complaint concluded with no finding of fault on the part of the officers, but the department revised its policies to require its police officers to advise all drivers they pull over of the basis for the stop. In addition, the department has instituted mandatory officer training on appropriate demeanor during a traffic stop and how to avoid confrontational situations. (*People v. Jones*; ACLU Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorneys Victoria M. Burton-Harris and John Shea.)

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 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 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 filed an appeal, which remains pending. In the Hamtramck case, the case was settled in March 2017 after Hamtramck turned over the records we requested and agreed to pay our attorneys' fees. (*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.)

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 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, however, the Supreme Court dismissed the appeal without deciding the issue. That same month 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. In June 2017 the Michigan Supreme Court agreed with us and held that the police were trespassing, and therefore violating the Fourth Amendment, when they woke up suspects and their families in the middle of the night to interrogate them in their homes. (*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.)

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 Fall 2016. (ACLU Attorney Dan Korobkin; Cooperating Attorney Lisa Schmidt.)

PRISONERS' RIGHTS

Mistreatment of Women at the Muskegon County Jail. At the Muskegon County Jail, male guards have routinely viewed naked or partially naked female inmates while they are showering, dressing, or using the toilet; the women have been denied feminine hygiene products, so that they bleed into their clothes; and female prisoners have rarely if ever been allowed any exercise outside of their cells. After attempting for almost two years to work with Muskegon County to resolve these systemic problems, in 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; she ruled against the women on the feminine hygiene claim, but that issue was appealed. In July 2017 we reached a settlement involving for damages, attorneys' fees, and policy reforms. Jail guards must now announce themselves before entering housing units of the opposite sex, and the entry of male staff and trustees into female housing units will be limited (such as not during shower times); feminine hygiene products will regularly be distributed at the same time as medication; women will be able to request gym access; and cell lock-downs will be limited to 15 hours. (*Semelbauer v. Muskegon County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Marc Allen, Juan Caballero and Sofia Nelson; Cooperating Attorneys Stephen Drew, Adam Sturdivant and Robika Garner of Drew, Cooper & Anding, and 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 2015 the ACLU of Michigan filed a lawsuit to prevent the prison from punishing prisoners who report abuse and neglect. In March 2017 Judge Sean Cox denied the state's motion to dismiss, allowing the case to proceed. (*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 several restrictive mail policies at the Livingston County Jail, including its postcard-only policy. In May 2017 the case settled and several reforms were made, but the postcard-only policy was not eliminated. (*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 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 September 2016 we reached a settlement that required 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.)

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.)

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. In March 2017 we asked the U.S. Supreme Court to take the case, and our petition is pending. (*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, Miller Cohen, and Sam Bagenstos of U-M Law School.)

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. Rev. Pinkney then sought leave to appeal with the Michigan Supreme Court, and the court scheduled oral argument and ordered additional briefing in the case on the two issues that the ACLU had advanced in the Court of Appeals. In June 2017 we filed supplemental briefs further developing those arguments. Meanwhile, Rev. Pinkney returned home after serving 30 months in prison. (*People v. Pinkney*; ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Richard Friedman of U-M Law School.)

Voters with Disabilities. In April 2017 the ACLU filed a friend-of-the-court brief in the Sixth Circuit in support of a lawsuit that would prohibit discrimination against blind voters. In several states, such as Oregon, Wisconsin and New Hampshire, an online ballot-marking tool allows blind voters to mark absentee ballots privately and independently, without forcing them to rely on sighted individuals to cast their ballot for them. Our brief argues that this accommodation is

legally required under the Americans with Disabilities Act (ADA). Argument is scheduled for October 2017. (*Hindel v. Husted*; attorneys include ACLU of Michigan Legal Director Michael J. Steinberg and National ACLU Attorneys Sophia Lin Larkin and Claudia Center.)

Voter Registration at MSU. Students at Michigan State University contacted the ACLU of Michigan when they discovered that university rules interfered with their ability to register students to vote in their dorms. ACLU representatives and student voting rights advocates met with university administrators in January 2016 to explain the problem. We worked together to craft a policy that allows students to exercise their First Amendment rights while keeping dorm residents safe. The new policy allows students to (1) conduct voter registration door-to-door on the residence halls if they were accompanied by a member of the dorm; (2) register students at tables in public places of the dorms; (3) post literature on community bulletin boards about voter registration without seeking prior authorization; and (4) distribute voter registration literature addressed to students in the student mailboxes. (ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Alison Hirschel.)

Misleading Information About Voter ID. In Michigan, registered voters may vote without showing a photo ID if they do not have photo ID or if they did not bring one to the polls. All they have to do is sign a statement identifying themselves, and they can vote just like those with photo ID. Unfortunately, there is much confusion about this law, which differs from laws in some other states with strict voter ID laws. Each election, we receive complaints about false or misleading notices or posters at polling places stating or implying that people cannot vote in Michigan without picture ID. Shortly before the November 2016 election, the ACLU of Michigan, along with the Michigan State Conference NAACP and the Brennan Center for Justice, wrote a letter to hundreds of city clerks urging them to post accurate signs and educate their poll workers about the ability to vote without photo ID. Although most of the clerks complied and distributed accurate information, a few clerks still spread misleading information about photo ID. Among them was Detroit City Clerk Janice Winfrey whose jurisdiction has the most eligible voters without photo ID in the state. Ms. Winfrey actually gave TV interviews and produced a TV commercial suggesting that people without photo ID could not vote—which drew a sharply worded follow-up letter from the ACLU about how she was suppressing the vote in Detroit. (ACLU Attorneys Michael J. Steinberg and Dan Korobkin; NAACP Attorney Khalilah Spencer; Brennan Center Attorney Adam Gitlin.)

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 dismissed the case, ruling that the plaintiffs had to wait until after they are resentenced and then raise their claims on direct appeal of their new sentences in state court. We appealed Judge O'Meara's ruling, and oral argument in the Sixth Circuit is scheduled for September 2017. (*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.)

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.)

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 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 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.)

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. In December 2016 the State of Michigan asked the U.S. Supreme Court to take the case, and its petition remains pending. Meanwhile, in September 2016 the ACLU filed a second case seeking to enforce the earlier Sixth Circuit decision on behalf of a woman who was being forced to quit her job at a homeless shelter, where she had worked for eight years, because she is on the registry for a consensual teenage sex offense. In March 2017 Judge Mark Goldsmith granted a preliminary injunction in her favor, ruling that the law restricting where registrants can work could not be retroactively applied to her. That case, too, is now on appeal, but has been stayed pending a decision in the Supreme Court in the prior case. (*John Does #1-5 v. Snyder*; *Roe 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 2014 the Michigan Court of Appeals reversed, ordering Mr. Temelkoski back on the registry. The ACLU of Michigan is co-counseling his appeal in the Michigan Supreme Court, which heard oral argument in December 2016. The ACLU argued 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. After the case was argued, one of the Justices retired and the court did not issue a decision at the end of its term. Instead, the Court ordered supplemental briefing and reargument in October 2017. (*People v. Temelkoski*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; co-counsel David Herskovic.)

OPEN GOVERNMENT

Secret Video of Prisoner's Death. In 2016 a Michigan prisoner named Dustin Szot died under suspicious circumstances. He was allegedly involved in an altercation with another inmate, and prison guards shocked him with a Taser. Spencer Woodman, an independent journalist who reports nationally on criminal justice issues, learned that the entire incident was captured on video and requested a copy of the footage under the Freedom of Information Act. The Michigan Department of Corrections refused to release the video, claiming that its disclosure would somehow undermine prison security. In April 2017 the ACLU of Michigan filed a lawsuit on Woodman's behalf, arguing that the state had no legitimate justification for keeping the video secret. The state's motion to dismiss the case is pending before the Michigan Court of Claims. (*Woodman v. Michigan Department of Corrections*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Robert Riley and Marie Greenman of Honigman.)

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. The case was settled in May 2016 when 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.)