



# ACLU

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## AMERICAN CIVIL LIBERTIES UNION of MICHIGAN

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## LIVINGSTON COUNTY JAIL LAWSUIT SETTLED

**I**n a victory for women prisoners, the American Civil Liberties Union of Michigan finally reached a settlement agreement in a class-action lawsuit to remedy Livingston County's refusal to allow women in the jail to use the work release program and remedy the mistreatment of women prisoners.

"This settlement is a real victory for women inmates who were denied access to the jail's work release program and who were victims of extreme privacy violations by male guards," said Kary Moss, ACLU of Michigan Executive Director.

Michael Pitt, one of the ACLU cooperating attorneys involved in the case, added, "This settlement not only benefits the 131 women who are currently part of this class-action lawsuit, but will have enormous impact on any

women who are in the Livingston County Jail in the future."

### The settlement includes:

- \$850,000 settlement for privacy violations and denial of access to the work release program;
- The building of a six-bed dormitory-style unit to accommodate work release inmates, similar to the existing unit for men, for women charged with lesser offenses;
- Shower curtains to ensure privacy in the shower area;

- A privacy wall surrounding the toilet area in the holding area;
- Prohibition on cross-gender pat-downs when a same gender corrections officer is on shift;
- Pads or mattresses consistent with health and safety concerns for inmates housed overnight in the holding area;
- Trustee assignments for qualified female inmates, similar to those assignments given to male inmates;

- Sensitivity training for new personnel pursuant to the standards of the Michigan Department of Corrections.

The case, *Cox v. Horman*, was filed in 2000 only after significant efforts were made to get jail authorities to improve treatment without a lawsuit.

Deborah LaBelle, a nationally known expert on women in prison was a cooperating attorney in addition to Michael and Peggy Pitt of Pitt, Dowty, McGehee, Mirer and Palmer.

## U.S. SUPREME COURT TO DECIDE IF MICHIGAN CAN LIMIT LEGAL COUNSEL FOR THE POOR

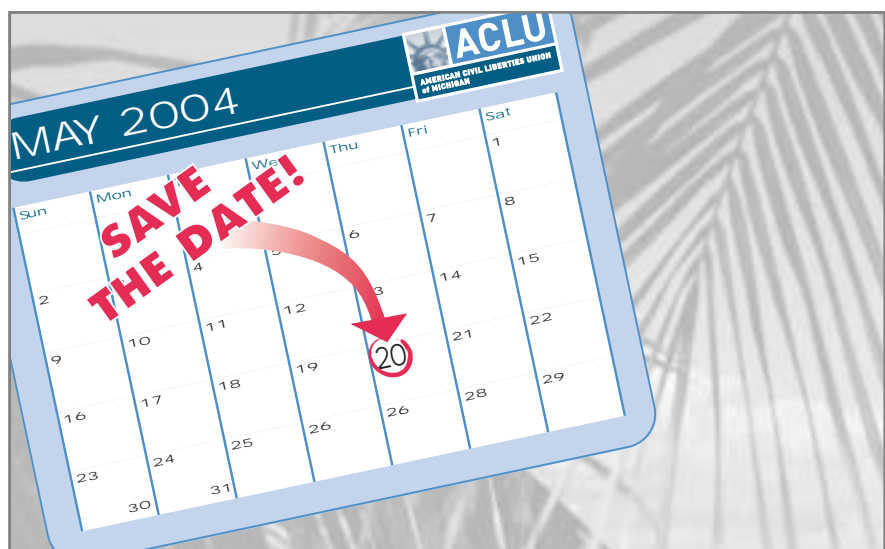
**O**n January 20, the U.S. Supreme Court announced that it will hear arguments in a case brought by the American Civil Liberties Union of Michigan in a constitutional challenge to a Michigan law that limits court-appointed lawyers for the poor.

The case, *Tesmer v. Granholm*, will decide whether Michigan can deny an indigent person who has pled guilty to a crime the right to have an attorney assist with his or her appeal from the sentence that the judge imposes after the plea. Since 1963, the United States Supreme Court has repeatedly held that the poor have the same right as the wealthy to the assistance of an attorney for a first appeal from any criminal conviction, and no State had attempted to take away that right.

"What's at stake here is whether Michigan will be required to give a fair shot at the appellate process to those who cannot afford their own attorney," said David Moran, the ACLU cooperating attorney who will argue the case before the Supreme Court.

In 1999, the Michigan Legislature passed a statute prohibiting the appointment of counsel in guilty plea cases except in limited circumstances. The statute has never taken effect because the federal district court in Bay City struck it down in 2000. In June, 2003 the entire Sixth Circuit upheld the District Court decision.

The case is likely to be heard in October 2004.



**PULITZER PRIZE WINNING GAY CUBAN PLAYWRIGHT, NILO CRUZ, WHOSE PLAY "ANA IN THE TROPICS" WAS PERFORMED ON BROADWAY THIS YEAR, WILL APPEAR IN DETROIT AND PRESENT READINGS FROM HIS PLAYS TO BENEFIT ACLU'S LGBT PROJECT. THE EVENT WILL BE AT THE ART EXCHANGE GALLERY IN DETROIT. THE RECEPTION WILL BEGIN AT 5:30 P.M., READING TO BEGIN AT 6:30 P.M. TICKETS PRICES ARE \$25-\$50. WATCH THE WEBSITE FOR MORE INFORMATION OR CALL JAY KAPLAN AT (313) 578-6812.**

## CREATE A LEGACY OF LIBERTY: SUPPORT THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION

Nearly four generations ago, a handful of Americans established the American Civil Liberties Union, in the conviction that patriotism requires a vigilant defense of the Bill of Rights. Today, more than 330,000 individuals support that purpose through their membership in the ACLU. But as Albert DeSilver, one of the founders, realized long ago, it takes more than inspired leaders and mailing lists to sustain a vision through decades of war, crises and inconceivable change. It takes a commitment to the future defense of civil liberties far beyond your own lifetime. DeSilver (1988-1924) was the first person to leave the ACLU a financial legacy upon his death. Today, more than 1,700 have joined him by including the ACLU Foundation in a bequest, retirement plan, beneficiary designation or other legacy gift. Members of the DeSilver Society, as this special group of supporters is known, discover that they can make substantially larger gifts than they ever thought possible, while taking steps to secure the Bill of Rights for future generations. There are tax and financial benefits to legacy gifts. You may choose from a number of options to find a planned giving arrangement best suited to your wishes and individual financial situation. You may even establish a gift that provides you or your loved ones with income for life, or for a term of years. To learn more about becoming a member of the DeSilver Society and the many tax and financial benefits of making a legacy gift to the ACLU Foundation, please contact:

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# WHO'S SPYING NOW?

NOEL SALEH, SAFE AND FREE PROJECT STAFF ATTORNEY



Last September, Congress voted to close down the Pentagon's Total Information Awareness (TIA) program. TIA would have allowed the federal government to search and combine the vast amount of data that currently exists in government with commercial databases to create individual profiles of each of us. The program was then renamed Terrorist Information Awareness. Congress shut down that program as well. Unfortunately, the same data mining ideas that inspired TIA have appeared again in the guise of the MATRIX (Multi State Anti Terrorism Information Exchange). MATRIX, which is already up and running, is a "data surveillance" program every bit as dangerous as Total Information Awareness.

### WHAT IS MATRIX?

MATRIX is a program that ties together government and commercial databases in order to allow the state and local police to conduct detailed searches on particular individuals, and to search for patterns in this data that can identify individuals possibly involved in terrorist or other criminal activity. The program's creators have refused to describe the contents of their database, except to concede that it includes both government and commercial data.

According to congressional testimony and news reports, MATRIX creates dossiers about individuals from government databases and private-sector information companies. The databases would include credit information, driver's license photographs, marriage and divorce records, past addresses and telephone numbers, names and addresses of family members, neighbors' addresses and telephone numbers, business associates, the make, model and color of registered vehicles, speeding tickets, arrests, social security numbers and dates of birth.

The ACLU of Michigan, along with the ACLU national office, has become involved in an effort to disclose a new threat to Americans' privacy rights. The Michigan State Police are doing their best to keep its participation in an insidious new program a secret. We need to ask "Why?"

It then makes those dossiers available for search by federal and state law enforcement officers. In addition, MATRIX computer programs comb through the millions of files in a search for "anomalies" that may be indicative of terrorist or other criminal activity.

"It's scary," Florida's candid intelligence chief Phil Ramer told the Washington Post. "It could be abused. I mean, I can call up everything

detectives or law enforcement personnel. MATRIX allows for the instantaneous search of dozens of records relating to ordinary citizens on a massive scale. With a keystroke, the government would be able to compile so much information about us that it could reconstruct our daily lives. It wouldn't need to send a detective to trail us, or put a video camera at our side, because data will be used to reconstruct our movements.

It is unclear when law enforcement will have access to MATRIX records. But even more important, what triggers the creation of an individual's electronic dossier? If history teaches us anything, it is that once the government has such expansive power it can abuse it.

In addition to the serious privacy concerns, there is a substantial risk of so-called false positives. The MATRIX web site states that "[t]his system will ensure that state and local law enforcement officers – the individuals most likely to come into direct contact with terrorists or other criminals – have the best information (accurate and complete) available to them in a timely manner." Despite the promise of accuracy, it does not have an error correction system, and it does not make clear how, if at all, it will protect privacy.

All of these problems with the MATRIX are very serious ones. And there may be others of which we are not yet aware. Until – and unless – the ACLU gets full responses to its Freedom Of Information Act requests, we still will not know exactly what data that will be collected; how such information will be used; and who can access it.

To read about MATRIX and the TIA program, go to:  
<http://www.aclu.org/Privacy/Privacy.cfm?ID=14254&c=130>

Civil Liberties Resolution Task Forces are active throughout the State of Michigan. Our ACLU branches in Kalamazoo, Lansing, Grand Rapids, Oakland County, Detroit, Flint, Saginaw and Traverse City all have established committees to sponsor resolutions within their communities. If your community is not yet "Safe and Free" contact your branch ACLU chair or call me at (313) 578-6810.

about you, your pictures and pictures of your neighbors."

Supporters of data mining claim it is innocuous because it is simply a faster way of gathering data that already exists. They note that police personnel, and even private detectives, can already trail suspects and search records to compile a profile of a person. Data mining, they say, is just the same process accelerated and automated. But as with TIA, this kind of "data mining" presents a substantial threat to all of our privacy rights and may well be totally ineffective.

In reality, MATRIX is so much more powerful than the work of individual

## SAFE & FREE SCORECARD

MICHIGAN NOW HAS 9 SAFE & FREE COMMUNITIES.  
MANY MORE ARE CURRENTLY WORKING TO JOIN THE LIST. IS YOURS?

**SAFE & FREE COMMUNITIES IN MICHIGAN:**  
ANN ARBOR, AUBURN HILLS, DETROIT, FERNDALE, INGHAM COUNTY,  
KALAMAZOO, LANSING, MERIDIAN TOWNSHIP AND SOUTHFIELD

# FROM THE CAPITOL

SHELLI WEISBERG

**T**hough November seems so far away, we must already concern ourselves with several ballot initiatives that are being considered to amend the state Constitution. Two in particular are damaging and divisive. First is an anti-civil rights petition initiative being bankrolled by Ward Connerly, the university regent behind

Proposition 209 in California and Proposition 200 in Oregon, (see page 5) and, second, an amendment denying gays and lesbians the right to marry.

**IF THERE IS ANY GOOD NEWS** to be found in the movement to deny gays and lesbians the right to marry, it is that recent studies in Michigan and nationwide indicate that, although a majority of citizens oppose same-sex marriage, an even greater number oppose amending the constitution to enforce discrimination. Nonetheless, identical resolutions, HJR U (Rep. Newell-Saranac) in the House and SJR E (Sen. Cropsey-DeWitt) in the Senate, are seeing great activity in the Michigan legislation. (See page 6 for an update on this issue written by our staff attorney for the LGBT project, Jay Kaplan.)

**IN OUR ON-GOING STRUGGLE** to maintain the separation of church and state, the ACLU of Michigan opposed a series of Senate bills (SB 625, 626, 627, 628, 629, 661 and 662) that completely disregard Michigan's Constitution and will improperly entangle government with religion. Like many other states, Michigan goes further than the Federal Constitution and explicitly prohibits state funding of religious training under Section 4 of Article 1 of the Michigan Constitution. This legislation, opposed only by Sen. Jacobs (D-Huntington Woods) and Sen. Brater (D-Ann Arbor), allows public funding of religious training in higher education.

**THE U.S. SUPREME COURT** bolstered our argument when, in late February, they rendered an opinion in *Locke v. Davey*, a case remarkably similar to the case in Michigan where a student was denied a state scholarship to pursue a degree in theology or divinity. In the *Locke* case, the student was denied state funds to pursue a degree in pastoral ministry in the

state of Washington. Like Michigan, Washington's constitution prohibits using state funds for religious training. The court's 7-2 ruling held that the state of Washington was within its rights to deny the scholarship to a college student studying to be a minister.

Michigan's Constitution includes strong language prohibiting the use of taxpayer funds for religious education, and in 2000 the voters soundly rejected using vouchers to funnel state funds to religious educational institutions. The Supreme Court ruling represents another authoritative voice for the continued strict separation of church and state in terms of taxpayer monies. Nonetheless, the bills are awaiting a hearing in the House Committee on Higher Education before going to the floor of the House of Representatives for a vote. **Please call and urge your Representative to vote against allowing taxpayer funded scholarship and grant money to be used for religious training in higher education.**

**IN A VICTORY FOR REPRODUCTIVE FREEDOM**, Governor Granholm vetoed HB 4478, the parental rights restoration act, stating in her veto message, "House Bill 4478 is not about protecting our children. Instead it would place many minors at risk. The bill would shield child abusers, including the worst kind of sexual predator—a parent or guardian who rapes his own child—behind legal presumptions." HB 4478 fails to provide sufficient protection for minors tragically living in abusive families and would have made it more difficult for a minor to waive the required parental consent notice to receive an abortion. It would have established unreasonable standards for family court judges to use in granting waivers and therefore limited access to safe and legal abortions. The House failed in their attempt to override the Governor's veto, which required 2/3 of



the representatives affirmative votes for passage. **Please contact your representatives in Lansing and thank them for upholding the rights and needs of our most vulnerable young women in Michigan.**

Unfortunately, the attempt to ban safe and legal abortions in Michigan persists as Right to Life and the Catholic Conference continue to collect petition signatures for a citizen's initiative making SB 395, the live birth definition act, a veto-proof law. A citizen's initiative only requires that a majority of legislators in the House and Senate support the law for passage. The Michigan Legislature has an anti-choice majority so there is little doubt that, if this petition drive is successful, the live birth definition act will become law. For the purposes of this initiative, a signature on a petition is like a vote for the law. We urge our members to tell your friends and neighbors: "Decline to Sign."

In the last eight years alone, Michigan has enacted numerous measures restricting reproductive freedom. These restrictions curtail access to not only abortion but also to contraceptives, sexuality education, and other essential reproductive health care services. Come and be counted among the majority: Pro-Choice Americans. Show lawmakers that they must stop chipping away at reproductive freedom and stop playing politics with women's health and lives. For more information please e-mail: [sweisberg@aclumich.org](mailto:sweisberg@aclumich.org).

**THE MARCH FOR CHOICE** will be Sunday, April 25, 2004 in Washington D.C. Please join the ACLU of Michigan as we participate in this historic march for abortion rights and reproductive freedom. There is still available space on busses traveling to the march from several Michigan locations. Please call visit: <http://www.marchforwomen.org/> or call for registration and more information.

## UPCOMING STAFF SPEAKING ENGAGEMENTS AND IMPORTANT DATES:

**March 9th.** Noel Saleh, New Detroit Immigration Coalition @ACCESS. Dearborn.

**March 11th.** Noel Saleh, Polish Bar Association @ Eagle Rest, 7pm.

**March 14.** Kary Moss, Michigan Talk Radio, Sex Offender Registry (2:15)

**March 13.** Jay Kaplan, Detroit Safe Schools Summit: Presentation on LGBT Students and the Law. Detroit.

**March 16.** Kary Moss, speaking on affirmative action to the American Jewish Committee, Detroit.

**March 18.** Jay Kaplan, OPEIU presentation to UAW regarding Domestic Partner Benefits. Detroit.

**March 22.** Kary Moss, WKAR, Michigan at Risk with Tim Skubik (Patriot Act) (airs March 24 on all seven stations). Lansing.

**March 22.** Wendy Wagenheim, Same-Sex Marriage, Debate with Oakland County Commissioner Tom McMillan, Oakland University.

**March 23.** Jay Kaplan, presentation to MSU Social Work graduate class on LGBT Legal issues. East Lansing.

**March 23.** Kara Jennings, Transgender Clinic at Affirmations. Southfield.

**March 31.** Jay Kaplan, Wayne State University, LGBT Student issues. Detroit.

**April 6.** Wendy Wagenheim, Journalism and the Law, Michigan State University, E. Lansing.

**April 15.** Jay Kaplan, ACLU Lansing Branch Board debate with Senator Alan Cropsey on Marriage Amendment. Lansing.

**April 17.** State Board Meeting, Lansing Public Library, 10-2pm. Lansing.

**April 18.** Mike Steinberg, ACLU Southwest Branch Dinner. Kalamazoo.

**April 18.** Jay Kaplan, ACLU Central Branch Board, "Same-Sex Marriage." Mt. Pleasant.

**April 20.** Jay Kaplan, University of Detroit Law School- HIV Issues. Detroit.

**April 21.** Jay Kaplan, Washtenaw County Branch Board, "Same-Sex Marriage." Ann Arbor.

**April 27.** Kara Jennings. Transgender Legal Clinic. Kalamazoo.

**April 28.** Jay Kaplan, "Get Equal" presentation. Kalamazoo.

**April 29.** Kary Moss, Genesee County Bar Association, Law Day, Flint.

**For more information, contact Carmetta Jones at 313-578-6802.**

**T**he ACLU of Michigan is a powerful voice in the legislature because of our passionate and articulate members. We can harness even greater strength by working together as part of a finely tuned Grassroots Legislative Network. *If you haven't already done so, sign up at the [www.aclumich.org](http://www.aclumich.org) to receive Action Alerts on breaking legislative issues. Talk to your legislators, in their districts and in Lansing. If you're interested in becoming more active in the Network, please contact me at [sweisberg@aclumich.org](mailto:sweisberg@aclumich.org).*



**T**hank you to our 2003 Annual Donors. ACLU fund of Michigan donors give throughout the year to our annual gift campaigns in the spring and in the fall. Thank you to all who gave to this very important part of our fundraising program!

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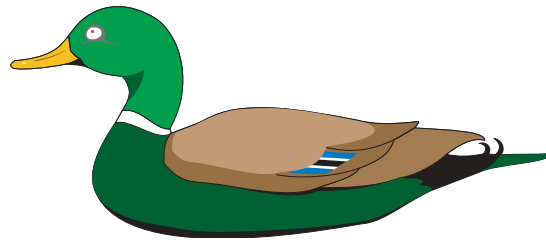
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# IF IT LOOKS LIKE A DUCK...



BY KARY MOSS, EXECUTIVE DIRECTOR

Following the U.S. Supreme Court decision in the University of Michigan affirmative action case, Ward Connerly stated that he would target four states, including Michigan, with measures to outlaw affirmative action. He and his supporters dishonestly characterize their effort by cloaking it in the name of “civil rights.” As a southern friend of mine has said: “If it looks like, acts like and quacks like a duck, darlin’, it’s not a pony.”

Supporters of Connerly are now collecting signatures to put a proposal on the November ballot to change Michigan’s Constitution and eliminate affirmative action programs that ensure equal access to colleges, universities and jobs for people with strong qualifications who might not otherwise have doors open to them.

Your help is needed in order to defeat this extremely dangerous and divisive ballot proposal which will have devastating consequences and is much broader than proponents admit.

Eliminating affirmative action programs will harm recruitment for community services, such as police and fire departments; immediately end programs that have helped women and people of color get better jobs and education; negatively affect women-owned and minority-owned businesses; result in reduction of programs that encourage women and girls to enter non-traditional professions; and may eliminate diversity-based scholarships.

To defeat this ballot proposal, a dynamic group of civil rights, civic, religious, education and community organizations has emerged to organize a statewide campaign. Citizens for a United Michigan (CUM) is a broad based coalition that includes the ACLU, NAACP, Detroit Renaissance, and the Michigan Catholic Conference. CUM needs your support and active involvement. To learn more, go to their website at:

[www.oneunitedmichigan.org](http://www.oneunitedmichigan.org).

California and Washington have already encountered Connerly’s initiatives. He was successful in getting voters to pass affirmative action bans in those states, but the tide turned this past year with the defeat of California’s Proposition 54, a so-called “Racial Privacy Initiative.” Connerly has carved out a career as a national leader of anti-racial justice measures, and Prop 54 was to be one more feather in his cap. But a small group of civil rights leaders came together with a clear goal - to forge a winning strategy to defeat this measure and to put an end to the cascading cut-backs on civil rights that have been enacted since the Reagan era.

Central to that successful strategy was the creation of a broad-based, bi-partisan coalition of people and organizations equally committed to ensuring affirmative action as a way to take positive steps to end discrimination and create opportunities for qualified minorities and women. We must do the same in Michigan. Betsy DeVos, chair of the Michigan Republican Party, has come out in opposition to Connerly’s efforts. *The Detroit News* is opposing as well, writing in a recent editorial that “Affirmative Action is an established practice in corporate America. And for good reason. Most businesses are seeking a diverse workforce that can help them appeal to a diverse marketplace.” And let us not forget the outstanding brief submitted by the military in the University of Michigan case where they said that they cannot achieve a highly qualified and racial diverse group if limited race-conscious recruiting and admission policies are not used.

This attempt to dismantle affirmative action in Michigan is a distortion of the legacy of the historic civil rights movement. Don’t be fooled.

TO JOIN CITIZENS UNITED,  
VISIT THE WEBSITE AT  
[www.oneunitedmichigan.org](http://www.oneunitedmichigan.org)

## DONOR PROFILE CAROLYN MACADAM

Carolyn MacAdam first became involved with the ACLU when she discovered that all the issues she cares about—reproductive rights, freedom of choice, equal human rights for women and girls, separation of church and state, privacy—are protected by the ACLU. She stays involved because she believes the work never stops and “Eternal vigilance is the price of freedom.”

Carolyn is vigilant and committed to the ACLU of Michigan in many ways. She not only gives of her financial resources to the organization, she gives a great deal of time as well. She has successfully served as the Chair of both the Spring and Fall ACLU of Michigan fundraising campaigns. She says she donates and volunteers as a fundraiser because, “I have always believed that volunteering is a part of my commitment to my fellow humans on the planet. And, if I am raising funds from others, how can I keep my own giving at a paltry level when the needs are still so overwhelming? Being the Chair of the Spring and Fall Campaigns gives me a chance to talk

to our volunteers and donors. It’s fun, and the conversations are stimulating and intelligent. The ACLU always pays atten-

**The work  
never stops...  
“Eternal  
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freedom.”**

tion to the violation of citizens’ rights and therefore educates the public about the rights they are about to surrender. This costs a lot of time and money, so I try to

return my thanks to the organization.”

Carolyn is inspired to do all that she does by her fellow supporters and donors. She also points to the ACLU staff that she calls “brilliant and devoted.” She also says her grandmother, a suffragette, was an important inspiration in her life.

Other organizations in our community are also fortunate enough to have Carolyn hard at work for them. She has served as Chair of the Board of the Oakland Livingston Human Service Agency (OLHSA), Chair of Oakland County United Community Services Planning Division (UCS-Oakland), Treasurer of the Junior League of Birmingham MI, President of the MI Abortion Rights Action League (MARAL) and recipient of the United Way Heart of Gold Award.

When she is not tirelessly working for the ACLU and these other worthy organizations, Carolyn is a Vice President at Raymond James and Associates. She is an avid reader who enjoys traveling and spending time with friends.

## JUDGE DISMISSES “OBSCENE” PHONE CALL CHARGE AGAINST FRUSTRATED FARMER

Free speech and the ACLU were again victorious when Ingham County Circuit Judge Paula J.M. Manderfied dismissed the “obscene” phone call charges against Gerald Henning, an 82-year farmer who left voicemail messages on the Michigan Department of Agriculture’s complaint line complaining about a sickening smell emanating from a nearby agribusiness.

“The judge’s ruling sends a message to the state officials that they cannot charge a citizen with a crime simply because they are not polite when criticizing the government,” said Michael J. Steinberg, Legal Director of the ACLU of Michigan. “This is especially true since the complaint hotline was established for the sole purpose of receiving complaints.”

The court ruled on February 19 that Mr. Henning could not be prosecuted for the voicemail messages under the First Amendment. She held that while Mr. Henning was “disgruntled” and his language was “somewhat feisty” and contained some profanity, the complaints were not threatening or obscene and did not constitute “fighting words.” Judge Manderfied’s ruling reverses the refusal of a lower court to dismiss the charges.

“The only reason I called the hotline was to get the farm bureau to enforce the law and stop the stench coming from next door,” said Henning. “It’s good to know that I am free to speak my mind.”



In an effort to obtain the help of the Michigan Department of Agriculture (MDA), Henning, who lives in Hudson Township, Lenawee County, began calling an MDA complaint hotline, leaving numerous voicemail messages. The MDA’s failure to respond resulted in increasing frustration on the part of Mr. Henning, leading him to use increasingly strong language.

Mr. Henning’s farm is surrounded on three sides by an enormous agribusiness. Mr. Henning says that the agribusiness has sprayed liquid manure for more than two years without incorporating it into the soil in violation of state law. The liquid manure emits a putrid smell that can cause serious health consequences.

According to Mr. Henning, state investigators have observed the infractions of Michigan law, yet not fulfilled their responsibility to ensure compliance on the part of the agribusiness, and to protect Mr. Henning and his family.

In addition to Steinberg, Henning was represented by ACLU Cooperating Attorney Sarah Zearfoss.

**PUT A HUMAN  
FACE ON LGBT  
ISSUES...  
BE PART OF  
THE STORY  
PROJECT.  
SEND US YOUR  
STORY!**

Identifying information will be kept anonymous upon request. The ACLU of Michigan's LGBT Project is collecting stories from individuals who have experienced bias because of their sexual orientation or gender identity.

The stories will be used to help educate both the straight and LGBT communities about the ways in which Michigan's laws put same-gender-loving and LGBT families at risk and to help create a broad-based alliance of community members who can help secure fundamental legal protections for all Michigan residents. Stories, poems, oral histories, and other forms of expression will be compiled for inclusion in an educational publication.

You may complete a confidential and secure on-line form ([http://www.aclumich.org/modules.php?name=LGBT\\_Form](http://www.aclumich.org/modules.php?name=LGBT_Form)), or contact Kara Jennings, Project Staff Attorney (Tom Steel Fellow), if you'd prefer to share your story by telephone at 313.578.6817.

Please include information about the ways in which your experiences have been influenced by your race, ethnic identity, sex, religion, economic status, ability, age, or immigration status.

# LGBT PROJECT UPDATE

JAY KAPLAN

It's impossible to turn on the television set or open a newspaper without seeing something on the issue of same-sex marriage. With the recent decision from the Massachusetts Supreme Judicial Court telling the legislature that to provide anything



less than full marriage rights to gay and lesbian couples is discriminatory, to the recent decision of the City of San Francisco and New Paltz, NY to issue marriage licenses to same-sex couples, there is cautious optimism that equitable treatment of LGBT partners and their families will become a reality.

Keeping pace with this progress is the continued anti-gay marriage backlash, spearheaded by right wing political groups and encouraged by the current administration in Washington. Proposed amendments to both our federal and state constitution would not only prohibit same-sex marriage, but any form of governmental recognition of unmarried couples, both hetero and homosexual. These amendments if passed would prohibit civil unions and the provision of domestic partner benefits at all levels of government. What is radical about both is that they would amend federal and state constitutions to specifically discriminate against LGBT people, something that goes against our constitutional history. Rather than expanding the rights of people, these amendments would codify unfair treatment of our relationships and our families, for now and forever.

The LGBT Project has been working tirelessly with other LGBT organizations, including the Coalition for Fair Michigan, Triangle Foundation and Michigan Equality to defeat Michigan's proposed marriage amendment.

The amendment would not affect religious marriage. In accordance with the First Amendment of the United States Constitution, religious entities are free to celebrate and solemnize whatever relationships they choose.

The amendment would affect civil legal marriage, which provides more than 1,000 federal and state benefits and protections to heterosexual couples and their families. Without marriage, gay and lesbian couples cannot inherit property without a will, make funeral and burial decisions for their partner without a will, visit their partner in the hospital, jointly adopt children, be recognized at law as the legal parents of their children, gain custody and visitation in the event of the death of one parent or the break-up of a relationship, access dependent health insurance benefits, obtain United States citizenship by virtue of their relationship, name each other as beneficiaries on governmental pensions, or access social security spousal benefits, to name only a few examples.

The issue of same-sex marriage is about equity. Despite the love and commitment that LGBT couples have for one another, they and their families are denied these benefits and protections. As the Massachusetts Supreme Judicial Court stated in *Goodridge*: "That same-sex couples are willing to embrace marriage's solemn obligations of exclusivity, mutual

support, and commitment to one another, is a testament to the enduring place of marriage in our laws and in the human spirit."

We need our members to get involved with the issue of the proposed Michigan amendment. We need you to contact your state representatives and senators and urge them to oppose writing discrimination into the constitution. LGBT marriage is no threat to heterosexual marriage, but the unequal treatment given to LGBT relationships is a threat to the stability of LGBT families and their children. Check out our website at [www.aclumich.org](http://www.aclumich.org) to see how you can you do your part.

We are pleased to announce that the LGBT Project will be holding transgender law clinics throughout Michigan, beginning March 2004. Coordinated by Kara Jennings, the Thomas Steel Fellow attorney with our project, the clinics will provide much needed legal information, advice and referrals to transgender communities throughout Michigan. Collaborating with organizations such as TransGender Michigan, Affirmations, Triangle, the Ruth Ellis Center, Michigan State University, and the Washtenaw Rainbow Action Project, the clinics will be the first time that transgender legal issues have been formally and comprehensively addressed in Michigan's LGBT community.

## USE YOUR FIRST AMENDMENT RIGHT

**Talk up the ACLU to your friends, neighbors, co-workers and acquaintances**

Recruiting new members is the best way to ensure that the ACLU of Michigan will continue to be here to defend the Bill of Rights. Clip this ad and use it to sign up a friend. Then mail it to the ACLU of Michigan,

60 W. Hancock, Detroit, MI 48201  
or go to [www.aclumich.org](http://www.aclumich.org)

**Join with nearly 300,000 Americans who contribute to the defense of liberty through an ACLU membership!**

Enclosed is a check for:

- Basic \$20                       Contributing \$35  
 Supporting \$75                 Sustaining \$125

I do not wish to join the ACLU, but enclosed is my contribution of \$\_\_\_\_\_.

I'm already an ACLU member; here's an extra contribution of \$\_\_\_\_\_.

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY / STATE / ZIP \_\_\_\_\_

PHONE \_\_\_\_\_

Your dues make you part of the National, Michigan and local organizations and are not tax-deductible.

# FROM THE LEGAL DIRECTOR

MICHAEL J. STEINBERG



**T**he American Civil Liberties Union is so successful in large part because it is a grassroots organization. In Michigan, there are nine branches of the ACLU, numerous student chapters and nearly 11,000 members doing important work throughout the state. The grassroots nature of the ACLU has obvious benefits for our public education, activist and lobbying missions. It is critical to the legal work that we do.

Most of the cases we file spring from the branches. Each branch has its own Lawyers Committee and volunteers who field dozens of requests for assistance every month and help dozens of individuals. This month has been no different.

For instance, Henry Silverman, president of the **LANSING ACLU BRANCH**, has been meeting with representatives of the Lansing Police Department along with a volunteer attorney to address complaints we have received from officers regarding discriminatory treatment.

**IN TRAVERSE CITY**, Steve Morse, Al Quick and others have addressed a growing problem “up north” by developing a poster and a flyer that informs individuals of their right to refuse a police officer’s demand to take Breathalyzer test while in a restaurant or bar. The posters and flyers will be printed and distributed throughout the state by the Michigan Licensed Beverage Association.

**IN OAKLAND COUNTY**, Jan Leventer and Elsa Shartsis recently consulted with a family whose high school son was suspended from school for non-threatening comments about a teacher that he made from his home computer on his online diary (called a “blog”) that was intended to be shared only with his peers. Armed with advice about the student’s rights, the family was able to resolve the problem satisfactorily.

**IN WASHTENAW COUNTY**, the Lawyers Committee, led by John Shea and Gayle Rosen, are addressing a variety of important civil liberties issues ranging from community college officials prohibiting the endorsement of candidates in local elections in an independent student newspaper, to complaints about sexual orientation discrimination at a local bar.

**LIKEWISE, THE METROPOLITAN DETROIT LAWYERS COMMITTEE**, led by Penny Beardslee, Sheila Cummings and Ralph Simpson, are addressing numerous issues ranging from a racial profiling incident at a downriver school to the failure of judges to appoint appellate counsel to poor misdemeanants.

**IN SOUTHWESTERN MICHIGAN**, Jim Rodbard is writing a letter to a school district where the high school administration forbid a candidate for student counsel to criticize any of the school rules during his election speech to the student body.

Peter Armstrong and Gary Gershon, of the **WESTERN MICHIGAN ACLU**, are fighting for the free speech rights of a Grand Rapids resident who was criminally prosecuted for his show on community access television because some people found it offensive.

**THE GREATER FLINT ACLU**, with the help of Greg Gibbs and Glen Simmington, are working on a particularly egregious case where a person was punished for his Catholic beliefs. The individual was kicked out of a drug court diversion program and convicted of a crime because he asked to be moved to a different halfway house than the one to which he was originally assigned. The staff at the original halfway house criticized Catholicism, forbid him from keeping rosaries or seeing a priest and demanded that he participate in evangelical prayer.

**THE CENTRAL MICHIGAN BRANCH** has been busy addressing civil liberties issues in schools. David Smith and John Scalise recently wrote a critical letter to an area school district that decided to install cameras inside the high school with direct, real time links to the local police station. The branch has also received complaints about a principal and superintendent at another high school who have suspended students for wearing t-shirts and sweatshirts with political messages and messages criticizing the school.

**I AM GRATEFUL** to have the opportunity to work with so many dedicated attorneys and volunteers throughout the state. Their commitment to advancing civil liberties is inspiring and energizing.

Following are descriptions of a few new cases and updates from the state legal program that are not discussed elsewhere in the newsletter. A full listing of our docket may be found at [www.aclumich.org](http://www.aclumich.org) under “legal documents.”

## **Banning Endorsements of Political Candidates.**

The student government at Michigan State University enacted a rule prohibiting student groups from endorsing a candidate for student government unless the candidate first consented in writing to the endorsement. Violators of the rule would be referred to the university’s internal judicial system and could conceivably be suspended or expelled from school for making unauthorized endorsements. Both the campus Republicans and the campus Democrats asked the ACLU to represent them in a lawsuit to protect their free speech rights. After discussions with the ACLU, the student government agreed to rescind the regulation without the need for litigation. Cooperating attorney: Mary Ellen Gurewitz, with assistance from MSU/DCL law student Andrew Banyai.

## **Stopping Seizure of Property for Private Interests.**

In 1981, the Michigan Supreme Court issued a decision allowing Detroit to condemn an entire low-income neighborhood called Poletown and transfer it to General Motors at a discounted rate. The ACLU, along with an unusual ally, the conservative Pacific Foundation, recently filed a joint friend-of-the-court brief in the Michigan Supreme Court asking it to overturn the Poletown decision. The brief argued that the Poletown decision has created an inequitable policy of corporate welfare allowing wealthy and powerful interests to take other people’s land for their own profit usually at the expense of the poor and unrepresented. *County of Wayne v. Hathcock*. ACLU Attorney: Kary Moss.

## **Forced Breath Test Case Resolved.**

We reported in the last newsletter that a federal judge had issued a published opinion striking down a Bay City ordinance that forced pedestrians under age 21 to submit to Breathalyzer tests if the police suspected them of drinking alcohol. The judge held that the ordinance, which is identical to a state law, was unconstitutional because it required people to submit to a search without the government first obtaining a search warrant. The ACLU emailed or mailed over 400 letters to city attorneys and general counsel at universities throughout Michigan alerting them to the decision and urging them to instruct their police chiefs to stop

administering unconstitutional breath tests to pedestrians. Many, but not all, municipalities in Michigan have stopped administering warrantless breath tests. However, it may take another lawsuit to halt the practice altogether. In the meantime, Bay City has agreed to resolve its case by paying the sober woman who was forced to give a breath test without a warrant \$4500 plus her attorneys fees and costs. *Spencer v. Bay City*. Cooperating Attorneys: David A. Moran and William T. Street.

## **Judge Dismisses Case Because of Pretrial Publicity.**

A Wayne County judge dismissed a sexual harassment lawsuit against Ford Motor Company because the plaintiff and her attorneys made public statements about the case before trial. The judge took the drastic measure of dismissing the lawsuit even though he never issued a “gag order” or attempted to determine whether an impartial jury could be seated to hear the case. The ACLU, which is very concerned about both the right to a fair trial and free speech, filed a friend-of-the-court brief in the Michigan Court of Appeals, arguing that dismissal of the case was extreme, that the plaintiff and her attorneys’ free speech rights were violated, and that there were other measures short of dismissing the case that the judge could have employed to ensure a fair trial. *Maldonado v. Ford Motor Company*. Cooperating Attorney: Christine Chabot.

## **“Unnatural” Hair Color in School.**

The ACLU, in conjunction with the Student Advocacy Center (SAC), has intervened on behalf of a student at Flushing Community Elementary School near Flint and a student at Oak Valley Middle School in Oakland County. Both were being threatened with punishment for having “unnatural” hair color. The Flushing student had dyed his hair blue and the Oak Valley student, with the help of her mother, put fuchsia highlights in her hair. After the ACLU and the SAC sent letters to both districts, the Flushing Schools agreed to re-write its policy to prohibit punishment unless the hair causes a material disruption to the school. The middle school has agreed to allow the 7th-grader to continue to attend school despite her fuchsia highlights. ACLU Cooperating Attorneys: Greg Gibbs and Elsa Shartsis.

# FROM THE EXECUTIVE DIRECTOR

KARY L. MOSS, ESQ.



We sure are hearing a lot about marriage these days. From legislation introduced recently in Michigan about marriage license requirements, including mandatory pre-marital counseling, to the attempt by Michigan Senator Alan Cropsy to prohibit “gay marriages,” the institution of marriage has become central to every debate in state leg-

islatures, presidential primaries, and State of the Union speech.

One Michigan bill prescribes a ‘qualifying marriage preservation program’ provided by counselors, including ‘a representative of a religious institution,’ and entitles participants to an income tax credit upon completion of the program. Another would establish ‘premarital education or counseling programs’ as a condition for a marriage license; those unwilling to comply would have to wait 27 days, instead of 3, for a license. A third bill would require that the ‘friend of the court’ file a determination of the interests of the minor child and the public good before granting a judgment of divorce. One criteria required in determining the “best interests of the minor” turns on whether religious education will be ‘improved, maintained or diminished.’

The “marriage movement” is nothing new. Who can forget then Vice-President Dan Quayle’s speech condemning television character Murphy Brown for having and raising a child alone? In reports, op-ed articles, and policy initiatives, the religious right has blamed divorce (and feminists) for every social ill, offering up payments to teen moth-

# WHAT’S ALL THE FUSS ABOUT MARRIAGE?

ers to wed, fatherhood intervention programs, or faith-based marriage preparation courses, to name just a few.

Marriage as we know it today is a civil, not religious, institution. Government has the right to favor policies that support the family unit, but government does not have the right to dictate the religious terms of those unions or to pick and choose who can marry.

I have never understood how marriage is a panacea for women living in poverty; marriage may be a cure if it is to someone who is not poor, has income to share, or can help with child-care allowing for work or attend school. Nor have I ever understood how anyone could believe that divorce would be blindly sought when divorced mothers are often not awarded enough child support to cover the costs of raising a child or cannot ever collect child support awards. (One California Study, for example, found that one year after legal divorce, men experience a 42% improvement in their standard of living while women experience a 73% decline.)

This whole “marriage movement” ignores history. Before the advent of the feminist movement, marriage laws strongly

avored men, depriving women of all rights, giving the husband ownership of the wife’s property, including her wages, and full guardianship in case of divorce. Divorce proceedings were often staunchly adversarial and divorce laws strongly disfavored women who had stayed at home to raise the children, often leaving them in poverty because they had no career or little education.

Rather than focus on who can and who cannot marry, and when and how someone can divorce, lawmakers should focus their energies on solutions to poverty and joblessness. They should focus on the estimated 330,000 battered women who seek emergency shelter each year, but can find none. They should support pay equity proposals, enforcement of equal opportunity laws, and support bills that would improve child care and aid for children.

I do not believe that people either choose marriage or divorce on a whim. Whether you are talking about same-sex unions, or about heterosexual divorce, the centerpiece is the very private question of whether love is or remains the cornerstone of the relationship.



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