ACLU OF MICHIGAN LEGAL DOCKET

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The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2012 and 2013

EDUCATION

The Right to Read. If the right to a public education means anything, it means that students should be taught to read. In a groundbreaking case that has garnered national attention, the ACLU of Michigan filed a class action in July 2012 on behalf of students in the Highland Park Public Schools who are the victims of outrageously poor oversight, management and teaching controls on both the state and local levels. This failure on the part of state and local actors has left a generation of children reading as many as five grade levels below where they should be performing. Many students were rendered functionally illiterate while still being passed along from one grade to the next. The ACLU is arguing that both the State of Michigan and the Highland Park School District are violating state law and the Michigan Constitution by allowing students to fall so far behind in basic literacy skills and reading proficiency. In July 2013 Wayne County Circuit Court Judge Marvin Stempien denied all defendants' motions to dismiss the case and wrote in his opinion that there is a "broad compelling state interest in the provision of an education to all children." Part of Judge Stempien's ruling is now on appeal. (*S.S. v. State of Michigan*; ACLU Attorneys Kary Moss, Shana Schoem, Rick Haberman, Mark Fancher, and Michael J. Steinberg, and Law Student Intern Jackie Perlow; Cooperating Attorneys Mark Rosenbaum of the University of Michigan Law School, Steve Guggenheim, Doru Gavril and Joni Ostler of Wilson Sonsini, and Jennifer Salvatore, Edward Macey and Nakisha Chaney of Nacht Law.)

Keeping Public Schools Tuition-Free. With the economic downturn and the failure of Michigan's legislature to increase funding for public education, many school districts in the state are facing financial challenges. In 2013 the Ann Arbor Board of Education attempted to address a potential budget shortfall by charging students tuition for public schools. While the traditional high school day consists of six hours of instruction, Ann Arbor's public schools have offered seven hours for at least a decade. Ann Arbor's proposed policy would charge students a fee to take a seventh hour of class, with one board member quoted as saying that in future years the school district would "go to a more robust tuition-based model." Based on the guarantee of a "system of free public education" in Michigan's Constitution, the ACLU of Michigan wrote a letter strongly discouraging the Board from adopting the policy. However, the Board failed to respond to the letter and the measure was approved for the fall semester. In August 2013 the ACLU filed a lawsuit on behalf of two students in the Ann Arbor public schools challenging the new tuition policy. Within a week of filing the case, the Board agreed to rescind the policy and keep public education free for all students. (*Coombe v. Ann Arbor Public Schools*; ACLU Attorneys Kary Moss, Shana Schoem, Brooke Tucker, and Michael J. Steinberg, and Law Student Intern Jackie Perlow; Cooperating Attorney Matthew Krichbaum.)

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, the ACLU discovered through a two-year court watching effort that numerous judges throughout Michigan are jailing poor people on "pay or stay" sentences—sentences where individuals who

plead guilty to misdemeanors are given the "choice" of immediately paying their fines and costs or going to jail. In order to draw attention to this problem, the ACLU successfully represented seven indigent individuals in appealing their pay-or-stay sentences during the summer of 2011. One unemployed client who was charged with catching a fish out of season was sent to jail because he could not pay $215 in fees at the time of sentencing. Another was sent to jail for 41 days because he could not immediately pay $415 in costs and fees for driving without a license. None of the judges held a hearing to determine whether our clients could afford to pay the fines and they refused to allow our clients to set up a payment plan or do community service. While these cases highlighted the problem, unfortunately unconstitutional "pay or stay" sentencing continues throughout Michigan. The ACLU is now building support for a new court rule that would ban the practice and is engaging in renewed court-watching. In August 2013 the ACLU also filed a friend-of-the-court brief urging the Michigan Court of Appeals to address the constitutionality of incarcerating the poor based on their inability to pay. (*People v. DeWitt, People v. Smith, People v. Preston, People v. Bellinger, People v. Clark, People v. Bell*, and *People v. Bailey*; ACLU of Michigan Attorneys Miriam Aukerman, Dan Korobkin, and Michael J. Steinberg; National ACLU Attorney Elora Mukherjee; Cooperating Attorneys Julie North, Patrick Meagher, Justine Beyda and Yelena Konanova of Cravath Swaine & Moore, Joshua Rogaczewski and Emre Ilter of McDermott Will & Emery, Ken Mogill, Glenn Simmington, Anthony Greene, Peter Walsh, Martin Meade, Val Newman, Frank Eaman, Melissa El, Penny Beardslee and Elizabeth Geary.)

Anti-Begging Law Struck Down. In these difficult economic times, one would hope that the government would take measures to assist the poor and homeless. In Grand Rapids, however, the ACLU of Michigan discovered that police officers were arresting, prosecuting and jailing individuals for asking for financial assistance. In fact, between 2008 and 2011, Grand Rapids made almost 400 arrests under an archaic Michigan law that makes it a crime to "beg" in public. In 2011 the ACLU filed a federal lawsuit challenging the law as a violation of the free speech rights of two men. One man was arrested for holding up a sign on a sidewalk saying, "Need a Job. God Bless." The other, a veteran, was arrested for asking a stranger for bus fare. Other people, including firefighters, regularly raise funds on the streets and sidewalks of Grand Rapids for charitable causes without being charged with a crime. In a victory for free speech and the rights of the poor, Judge Robert Jonker ruled in August 2012 that the Michigan law is unconstitutional and enjoined its enforcement throughout the state. In August 2013 the U.S. Court of Appeals for the Sixth Circuit affirmed, ruling that begging is protected speech. Unfortunately, it appears that a number of municipalities continue to enforce local anti-begging ordinances that are identical to the state law. In October 2013 the ACLU sent letters to 84 municipalities across the state notifying them that, in light of the Sixth Circuit's ruling, their anti-begging ordinances are unconstitutional and should be repealed. (*Speet v. Schuette*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, and Michael J. Steinberg, and Legal Fellow Sofia Rahman.)

Food Assistance Cut Off Without Due Process. The Michigan Department of Human Services (DHS) 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

DHS 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 warrants unless the state first determines that the person receiving benefits is in fact fleeing from justice. In July 2013 the ACLU and the Center for Civil Justice filed a class action seeking to ensure that individuals like Mr. Barry do not go hungry due to the state's unlawful policy. (*Barry v. Corrigan*; ACLU Attorney Miriam Aukerman and Legal Fellow Sofia Nelson; Jacqueline Doig, Terri Stangl, and Elan Nichols of the Center for Civil Justice.)

Reforming the Broken Indigent Defense System. For decades, leaders in the state have recognized that Michigan's system of representing poor individuals accused of crimes is broken. In 2007, the ACLU filed a critically important class action against the state to fix this longstanding problem. The state responded by asking the court to dismiss the case, contending that the counties, not the state, were responsible for any deficiencies in the system. Judge Laura Baird rejected the state's argument. She ruled that the state is responsible for ensuring constitutionally adequate criminal defense and simply because Michigan has delegated its responsibility to the counties, it is not "off the hook" when the system fails. Judge Baird also granted the ACLU's request to certify the case as a class action. The state appealed and the Michigan Court of Appeals ruled in favor of the ACLU. In December 2010 the Michigan Supreme Court finally ruled in favor of the ACLU and sent the case back to the trial court. The state filed another motion to dismiss, which Judge Baird denied. However, while the parties prepared for discovery and trial, the state filed yet another appeal challenging the plaintiffs' standing and the class certification order. The Court of Appeals agreed to hear the second appeal and again ruled in favor of the ACLU in April 2013. Two months later, the Michigan legislature enacted a bill to implement statewide reform that the ACLU and its coalition partners had been advocating for years. The new law establishes a permanent indigent defense commission to set minimum standards, train criminal defense attorneys, monitor their performance, and ensure that competent legal representation is being provided throughout the state. Because the new law puts in place many of the reforms the lawsuit called for, the ACLU voluntarily dismissed the case in July 2013. (*Duncan v. Michigan*; ACLU of Michigan Attorneys Mark Fancher, Jessie Rossman, Sarah Mehta, and Michael J. Steinberg; National ACLU Attorneys Robin Dahlberg and Elora Mukherjee; Cooperating Attorneys Julie North, Sarita Prabu and Justine Beyda of Cravath Swaine & Moore, Mark Granzotto, and Frank Eaman.)

Detroit Police Abducting the Homeless. After a yearlong investigation, in April 2013 the ACLU of Michigan sent a letter to the Detroit Police Department and filed a complaint with the Department of Justice in April demanding an end to the Detroit police's illegal practice of forcibly taking homeless individuals off the street in tourist areas of the city and dumping them in other cities or remote areas of the city. In some cases, after taking homeless people "for a ride," the officers ordered them to throw any money in their pockets down the drain. As a result, the men had no option but to walk—often several miles and sometimes in the middle of winter nights through unlit and potentially dangerous neighborhoods—back to downtown Detroit where many of their shelters, warming centers, and churches are located. The ACLU

letter and accompanying video received nationwide attention, which led to an internal investigation. The Detroit police deny that they engage in the practice anymore, but the ACLU continues to receive some complaints that the practice persists. (ACLU Attorney Sarah Mehta and Legal Director Michael J. Steinberg.)

Debtor's Prison for Mother with Disability. Selesa Likine has a mental disability that caused her to lose her job, her husband and then custody of her children. When her kids were taken from her, the court ordered her to pay $1,100 per month in child support to her affluent husband by imputing money to her that she did not have. In fact, her only source of income was the $637 she received per month in social security benefits. Ms. Likine was hospitalized to treat her schizophrenia for a period of time. Upon her release from the hospital, she was promptly arrested and placed in jail for failure to pay child support. At trial, the judge refused to allow her to present evidence of her inability to pay and she was convicted of a felony. The ACLU of Michigan and the U-M Law School's Innocence Clinic represented Ms. Likine in the Michigan Supreme Court and argued that it is unconstitutional to convict a person for being too poor to make court-ordered payments. In July 2012 the Michigan Supreme Court ruled in Likine's favor, ruling that she should have been permitted to argue that it was "impossible" for her to pay child support. (*People v. Likine*; Legal Director Michael J. Steinberg; Cooperating Attorney Mark Kriger; Professors David Moran and Bridget McCormack of the U-M Innocence Clinic.)

It's Not a Crime to Be Homeless. Caleb Poirier is a homeless man in Ann Arbor who lived on public property near a highway in a self-governing encampment for homeless persons called "Camp Take Notice." In early 2010 Poirier was arrested during a police sweep of the area and charged with trespassing. The ACLU of Michigan filed a friend-of-the-court brief arguing that it is unconstitutional to arrest a person for sleeping on public land when there is no other place for him to sleep. Soon after the brief was filed, the prosecutor dismissed the criminal charges. Subsequently, the ACLU met with local and state police representatives and government officials to discuss the constitutional issues about arresting members of Camp Take Notice for being on public land when there are no other options. As a result, several committees were formed to address both the short- and long-term issues surrounding these homeless individuals, and Camp Take Notice survived in Ann Arbor for two more years. However, in June 2012 the Michigan Department of Transportation (which owns the land) announced that it was evicting the campers, giving them 30 days to leave. The state did provide the campers with temporary housing assistance, and the ACLU continued to work with religious and social services organizations to secure legal support as they search for an alternative plot of land where the camp can be reinstated. (*People v. Poirier*; ACLU Attorneys Jessie Rossman, Sarah Mehta, and Michael J. Steinberg; Cooperating Attorney David Blanchard.)

RACIAL JUSTICE

Fighting to Save Race-Conscious Admissions. A coalition of civil rights organizations led by the ACLU filed a federal lawsuit in December 2006 to preserve affirmative action in university admissions in the wake of Proposal 2. The ACLU represents 19 African American, Latino, and

white applicants and current students and faculty who want to ensure that they are able to learn and teach within a diverse environment. We have successfully argued that Proposal 2 violates equal protection by making it more difficult for people of color to affect the admissions process than nearly any other group. In other words, nearly any group wanting a characteristic to be considered as a plus factor in university admissions—whether it be legacy status, athletic ability or living in an obscure part of the state—need only lobby the university. In contrast, in order for underrepresented racial minorities to urge a university to employ affirmative action, they must first amend the Michigan Constitution through a ballot initiative. The U.S. Supreme Court has struck down similar voter initiatives that make it more difficult for people of color and for the gay community to seek change than others. In July 2011 the U.S. Court of Appeals for the Sixth Circuit ruled in our favor in a 2-1 decision, and in November 2012 the entire Sixth Circuit ruled "en banc" in our favor by a vote of 8-7. The U.S. Supreme Court then agreed to hear the case, and it was argued in October 2013. (*Cantrell v. Schuette*; attorneys include Mark Rosenbaum, Dennis Parker, Mark Fancher and Michael J. Steinberg of the ACLU; Melvin Butch Hollowell of the Detroit NAACP; Joshua Civin of the NAACP Legal Defense Fund; Karen DeMasi of Cravath Swaine & Moore; and Professors Erwin Chemerinsky and Lawrence Tribe.)

Holding Wall Street Accountable for Predatory Mortgages in Detroit. In October 2012 the ACLU filed a groundbreaking class action on behalf of African American Detroit homeowners against the Wall Street bank Morgan Stanley for its role in shaping the high-risk predatory loans that contributed to the foreclosure crisis and the collapse of once-vibrant Detroit neighborhoods. The ACLU represents five African American homeowners who are facing foreclosure due to the risky and abusive loan terms they received through the now-bankrupt subprime lender New Century. Between 2004 and 2007, Morgan Stanley purchased loans from New Century and, as its most significant customer, shaped New Century's lending irresponsible and destructive practices. By 2007, Detroit was number one of the hundred largest metropolitan areas with the highest foreclosure rates. Nearly 45,000 homes stood vacant by 2008, creating virtual wastelands in Detroit. Moreover, this devastation had a clear racial character: New Century's African American customers in the Detroit area were 70 percent more likely to get a subprime loan than white borrowers with similar financial characteristics. The lawsuit is the first of its kind, brought on behalf of homeowners, seeking to hold a Wall Street bank accountable under the Fair Housing Act for the devastation to communities of color. In July 2013 Judge Harold Baer denied Morgan Stanley's motion to dismiss the case, allowing the ACLU to proceed with its claim under the Fair Housing Act. (*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.)

Racial Profiling in Saginaw. In September 2013 the ACLU filed a complaint with the U.S. Department of Justice against law enforcement agencies operating in Saginaw. The complaint identified racial profiling practices that appear to be systematic and broad-based. They include so-called "jump-out" stops, which involve teams of officers roving communities of color and descending upon individuals who commit minor infractions such as jay walking and littering.

During these intimidating encounters the police often search the individual, ask for identification and ask questions about other crimes in the area. The ACLU complaint also identified pretext stops of people of color for purported noise ordinance violations. The ACLU specifically documented the experience of one Saginaw resident, Kevin Jones, who was stopped by police and asked if he consented to a search of his car. When he declined, police officers reportedly arrested him and then searched and impounded his car for playing loud music. One of the officers also added: "I'm not trying to be racial or anything but what y'all do over there"—gesturing across the bridge toward a predominantly black neighborhood—"I don't care, but over here if we hear it we are going to take your vehicle and arrest you." Charges were later dropped against Mr. Jones. A public records request revealed that during a one-year period the same officers who stopped Mr. Jones had arrested nine individuals for noise violations. Four of the individuals who were stopped were identified as black, two have Spanish-language surnames, and the remaining three were not identified by race. The Civil Rights Division of the Justice Department reviewed the ACLU's complaint and has opened an investigation. (ACLU Attorney Mark Fancher.)

Lawsuit Against the FBI for Its Records on Racial Mapping. According to an FBI operations guide acquired by the ACLU, the FBI has the authority to collect information about, and create maps of, so-called racial and ethnic "behaviors" and "lifestyle characteristics" in communities with concentrated ethnic populations. Concerned that such information would be used for racial profiling, the ACLU requested documents related to this practice in Michigan under the Freedom of Information Act (FOIA). After the FBI refused to turn over the documents in a timely manner, a FOIA lawsuit was filed in July 2011. The ACLU was then able to confirm that the FBI has been collecting data on Middle Eastern and Muslim populations, but the FBI continued to refuse to release documents describing the details. In October 2011 Judge Lawrence Zatkoff ruled in favor of the FBI. Unfortunately, in August 2013 Judge Zatkoff's ruling was affirmed on appeal. (*ACLU of Michigan v. FBI*; ACLU of Michigan Attorney Mark Fancher; National ACLU Attorneys Hina Shamsi and Nusrat Choudhury; Cooperating Attorney Stephen Borgsdorf of Dykema.)

Using Restorative Justice to Combat Mass Incarceration. African Americans constitute 13 percent of the U.S. population, but 40 percent of U.S. prisoners. Black males are jailed at a rate of more than 6.5 times that of white males. In order to address the problem of over-incarceration, the ACLU of Michigan is working with Wayne County judges, prosecutors and defense attorneys to establish a restorative justice program for the Wayne County criminal courts. Restorative justice is an effective alternative to incarceration that provides opportunities for offenders and victims to learn from each other, to acknowledge the seriousness of the offenses that have been committed, and to participate in a process of repairing damage and restoring relationships. (ACLU Attorney Mark Fancher and Jeffrey L. Edison of the National Conference of Black Lawyers-Michigan Chapter.)

Extracting Student Athletes from the School-to-Prison Pipeline. After cross-town rivals Huron High School and Pioneer High School squared off in an Ann Arbor football game in October 2012, the traditional mid-field handshake turned into a brawl. Coaches started it, scores of

players and others participated, but in the end there were only three people arrested, all of them black. The ACLU has been at the forefront of efforts to eliminate what has come to be known as the "school-to-prison pipeline." The term refers to a distinct correlation between the exclusion of students of color from school and their eventual involvement with the criminal justice system. After the three students were charged with crimes, the ACLU of Michigan sent a letter to the prosecutor in March 2013 requesting that he consider the school-to-prison concerns. The letter further urged that the prosecutor consider alternative methods of disposing of criminal matters such as restorative justice (see above paragraph). Although initially charged with serious crimes, the three Ann Arbor students eventually received offers from the prosecutor that would, over time, result in expungement of the charges. (ACLU Attorney Mark Fancher.)

Lawsuit Needed to Get Suspension and Expulsion Data. As part of its school-to-prison pipeline work (see above paragraph), the ACLU of Michigan filed a public records request with the Detroit 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, the we filed a lawsuit in August 2013 in Wayne County Circuit Court alleging a violation 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. (*Monts v. Detroit Public Schools*; Cooperating Attorney Ralph Simpson.)

Reforming the Foster Care System for American Indians. According to documents obtained by the ACLU of Michigan through a public records request, the Michigan Department of Human Services (DHS) denies foster care licenses to more than half of American Indian grandparents who take care of their grandchildren. Because only foster care parents who are licensed receive financial assistance, scores of Indian grandparents are being denied the resources they need to support the children entrusted to their care. To address the problem, in 2012 the ACLU initiated a series of meetings with DHS officials that resulted in the agency's full review of application documents; an ongoing process of cultural education of DHS personnel; a special foster parent orientation session for Indian grandmothers; and the designation of individuals to assist Indian applicants navigate the application process. (ACLU Attorney Mark Fancher.)

U.S. Citizen Racially Profiled, Threatened with Deportation by State Police. Tiburcio Briceno is a United States citizen of Mexican origin who works as a truck driver. In 2011 Mr. Briceno was pulled over by a state police officer, allegedly for a traffic violation (although no ticket was written). Based on Mr. Briceno's lack of fluency in English, the officer immediately asked about Mr. Briceno's legal status (ignoring his valid driver's license) and threatened him with deportation if he didn't admit to being unlawfully present in the United States. The police officer then called Customs and Border Patrol (CBP) and had Mr. Briceno's company van impounded. When CBP arrived, they realized that Mr. Briceno was in fact a U.S. citizen and released him. In March 2012 the ACLU of Michigan wrote a letter to the Michigan State Police (MSP) regarding this incident of racial profiling and attempted immigration enforcement by state police. In response to the letter and media attention, the MSP launched an investigation

into the incident. In November 2012 the MSP investigators concluded that Mr. Briceno's charges were true and indicated that appropriate discipline would be imposed on the responsible officer. The ACLU is following up with the MSP to ensure that systemic changes are also made so that other motorists do not suffer similar mistreatment. (ACLU Attorneys Miriam Aukerman and Sarah Mehta.)

LGBT RIGHTS

Same-Sex Partners Can Keep Health Insurance. In December 2011 the Michigan legislature passed, and Governor Snyder signed, a mean-spirited bill that made it illegal for most public employers to voluntarily provide health insurance coverage to same-sex domestic partners of employees. The ACLU challenged the law in federal court on behalf of several couples, arguing that it denied them equal treatment under the law. In June 2013 Judge David Lawson granted a preliminary injunction, stopping the law from going into effect. In his 51-page opinion, Judge Lawson concluded the legislature, in passage the law, appears to have been motivated primarily by discriminatory animus against gays and lesbians. (*Bassett v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg; National ACLU Attorneys John Knight and Amanda Goad; Cooperating Attorney Amy Crawford of Kirkland & Ellis.)

Federal Court Asked to Rule on Same-Sex Adoption, Marriage. A non-ACLU lawsuit was filed in federal court on behalf of two lesbian mothers who were denied the ability to jointly adopt their three special-needs children. The suit alleges that to deny gay parents the right to jointly adopt children violates the equal protection rights of both parents and children. After Judge Bernard Friedman suggested that the case is really about same-sex marriage equality, the plaintiffs amended their complaint to challenge the denial of their right to marry as well. The ACLU has filed a friend-of-the-court brief in support of the plaintiffs, arguing that the equal protection clause protects the rights of same-sex couples both to adopt and to marry. In October 2013 Judge Friedman denied the state's motion to dismiss the case. Trial has been scheduled for February 2014, and the ACLU is providing assistance to the plaintiffs' counsel with regards to expert testimony and depositions. (*DeBoer v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg; National ACLU Attorney Rose Saxe.)

Equitable Parenthood. In December 2013 ACLU of Michigan filed a friend-of-the-court brief urging the Michigan Supreme Court to revisit the issue of equitable parenthood. Jennifer Milliron co-parented her son with her same-sex partner, who was the biological parent. After Milliron and her partner ended their relationship, she continued to spend time with their son until the biological mom denied her all further contact with him. Milliron then sought custody and visitation from the court, but her case was dismissed on grounds that Milliron lacked legal standing to bring the case because she was not the child's biological parent. Milliron appealed, but the trial court's decision to dismiss her case was affirmed. Although the Court of Appeals acknowledged that the "equitable parent" doctrine allows non-biological parents to petition for custody and visitation, the court held that equitable parenthood could only exist when the non-biological parent is legally married to the biological parent. The ACLU has urged the Michigan Supreme Court to take the case and rule that equitable parenthood can arise out of committed

same-sex relationships. (*Stankevich v. Milliron*; ACLU Attorneys Jay Kaplan and Michael J. Steinberg.)

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 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 is representing Ms. Stephens before 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. Ms. Stephens filed the EEOC complaint in September 2013. (*Stephens v. Harris Funeral Home*; ACLU Attorney Jay Kaplan.)

Changing Gender Markers on Driver's Licenses. In Michigan, a transgender person cannot get the gender marker on their driver's license changed unless they have undergone sexual reassignment surgery. In October 2013 the ACLU wrote to the Secretary of State's office to explain that this policy is irrational, violates the privacy and dignity of transgender persons by "outing" them whenever they are required to show their driver's license, and is 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. (ACLU of Michigan Attorney Jay Kaplan and National ACLU Attorney Chase Strangio.)

Anti-Bullying Policies Are Constitutional. The mother of two students at Howell High School filed a lawsuit alleging that the school district's anti-bullying policies violate her children's rights to freedom of speech and religion because they were raised to believe that homosexuality is wrong. In November 2012 the ACLU filed a friend-of-the-court brief in the case, arguing that both anti-bullying policies and the First Amendment can co-exist, and that Howell's policy does not impinge on religious students' First Amendment rights. In June 2013 Judge Patrick Duggan agreed with the ACLU and rejected the challenge to Howell's anti-bullying policy. (*Glowacki v. Howell Public School District*; ACLU of Michigan Attorneys Jay Kaplan, Dan Korobkin, and Michael J. Steinberg; National ACLU Attorney Rose Saxe.)

ACLU Stops Attempt to Void Same-Sex Second-Parent Adoption. About ten years ago Julianna Usitalo and Melissa Landon fell in love, entered into a committed partnership, and decided to have a child together. In 2003 Melissa had a child through artificial insemination, and in 2005 the couple jointly petitioned the family court to grant a second-parent adoption so that Julianna could also become a legal parent. In 2008 Julianna and Melissa split up, but entered into a custody and visitation agreement so both parents could continue to raise the child. However, in 2010 Melissa decided that she wanted to cut Julianna out of their daughter's life completely, and she asked the judge to void the second-parent adoption—arguing that such adoptions are illegal in Michigan. The ACLU successfully represented Julianna in the trial court and on appeal. In December 2012 the Michigan Court of Appeals ruled that the family court had jurisdiction to grant a second-parent adoption and therefore Melissa could not nullify

Julianna's legal relationship with her child. (*Usitalo v. Landon*; ACLU Attorneys Jay Kaplan and Michael J. Steinberg; Cooperating Attorney Sarah Zearfoss.)

South Lyon Teacher Suspended for Playing Pro-Gay Song in Class. A performing arts teacher in South Lyon was suspended without pay after she permitted one of her students to play a recording of "Same Love," a popular song in support of LGBT equality, and another student complained. In the teacher's write-up the principal maintains that the subject matter in the song was "controversial," "politically charged" and contained "obscenities" (the word "damn" is said once), and that the teacher violated a policy that requires instructors to get prior approval from administrators before playing recorded material in class. In December 2012 the ACLU sent a public records request to the school district asking for information regarding how other alleged similar violations of the policy have been handled, expressing concern that the school district may have been citing the policy as a pretext to punish the teacher and censor the song's message regarding tolerance and acceptance of LGBT people. Thanks to the advocacy efforts of the ACLU and hundreds of supporters, the teacher's suspension was subsequently lifted by the superintendent and her pay was restored. (ACLU Attorney Jay Kaplan.)

Sperm Donors Are Not Absentee Fathers. Pamela Maxey and her same-sex partner, Judi Stilson, had a child together in 2006 through artificial insemination with a known sperm donor. The sperm donation was based on a standard written agreement that the donor would play no parental role nor have any financial responsibility for the child. When the economy crashed, the child's parents fell on hard times and sought public assistance such as health care for the child and food stamps for their family. The Department of Human Services (DHS), which administers public assistance programs, then sued the sperm donor for child support, arguing that he had been an "absentee father" for the past five years. If DHS had been successful, the sperm donor would have become a legal parent with custody and visitation rights—despite the explicit agreement between him and the child's parents that he was only donating sperm so that they could have a child. The ACLU of Michigan represented Pamela, the child's biological mother, and asked the court to dismiss DHS's child support action. In July 2012 Judge George Jay Quist agreed with the ACLU and dismissed the case. (*Maxey v Fitch*; ACLU of Michigan Attorneys Miriam Aukerman and Jay Kaplan; National ACLU Attorney Rose Saxe; Cooperating Attorney Mark Haslem.)

ACLU Wins Sexual Orientation Discrimination Case in Federal Appeals Court. A state prisoner filed an employment discrimination case on his own, claiming that he was removed from his public works job because he is gay. A federal judge, without the benefit of any briefing, dismissed the lawsuit, ruling that there is no protection whatsoever for discrimination based on one's sexual orientation. The ACLU represented the inmate on appeal, arguing that under the Equal Protection Clause of the Fourteenth Amendment, the government cannot discriminate against gay men and lesbians when there is no rational basis for the adverse treatment. In May 2012 the U.S. Court of Appeals for the Sixth Circuit agreed with the ACLU and reversed the dismissal of the lawsuit, holding that Davis alleged sufficient facts regarding anti-gay bias to allow the case to go forward. (*Davis v. Prisoner Health Services*; ACLU of Michigan Attorneys Miriam Aukerman and Jay Kaplan; National ACLU Attorney Joshua Block.)

Arrested for Flirting in Kent County. In 2010 the Kent County Sheriff's Department implemented an undercover sting operation in public parks to address reports of sexual activity. Undercover officers, pretending to be gay, approached male visitors to the parks and attempted to engage them in conversations regarding sexual activity. A number of men were arrested for flirting with the officers and/or responding to invitations to meet for sexual encounters at a later date or time and in a private location. Although there were no conversations about exchanging money for sex, several men were charged with solicitation and/or criminal sexual conduct. Those persons arrested were also issued a "trespass" order, prohibiting them from entering any Kent County parks for the rest of their lives. The ACLU of Michigan reviewed the police reports and sent a letter to the Kent County Sheriff's Department in June 2011, expressing concerns about the constitutionality of the stings and some of the arrests. Almost a year later, we finally met with the Sheriff and his staff, where they indicated that they are no longer arresting men in the park for flirting behavior and agreed to provide LGBT sensitivity training to its staff. The ACLU sent a follow-up letter in May 2012 continuing to protest the lifetime bans from entering the park for men who were arrested as part of the sting. (ACLU Attorneys Jay Kaplan and Miriam Aukerman; Cooperating Attorney Robert Eleveld.)

Grad Student Studying Counseling Refuses to Help LGBT Clients. The ACLU filed a friend-of-the-court brief in the U.S. Court of Appeals supporting Eastern Michigan University's right to remove from its counseling program a graduate student who refused to counsel lesbian, gay and bisexual clients during her clinical training on any issues relating to same-sex relationships. The ACLU argued that while counselors are entitled to their own religious beliefs, EMU properly took steps to prevent the graduate student from imposing those beliefs on her clients and discriminating against them in the university's training program. EMU's counseling program requires its graduate students to adhere to the American Counseling Association's Code of Ethics, which prohibits counselors from discriminating on the basis of sexual orientation or imposing their personal beliefs on clients. In January 2012 the Court of Appeals remanded the case for a factual finding of whether the graduate student's refusal to counsel LGBT clients would violate the American Association of Counseling Code of Ethics, and the case ultimately settled. (*Ward v. Polite*; ACLU of Michigan Legal Director Michael J. Steinberg; National ACLU Attorneys Rose Saxe and Daniel Mach.)

IMMIGRANTS' RIGHTS

Driver's Licenses for DREAMers. In 2012 the Obama Administration announced that young immigrants who were brought by their parents to the United States as children and who attended American schools are now eligible to remain in the country and work here under a program called Deferred Action for Childhood Arrivals (DACA). Even though Michigan law says that all immigrants who are "legally present" are eligible for driver's licenses, Secretary of State Ruth Johnson refused to issue licenses to DACA recipients. In December 2012 the ACLU and the National Immigration Law Center sued Johnson to compel her to follow the law. In February 2013 the Secretary of State backed down and announced that she would begin issuing driver's licenses to DACA recipients. (*One Michigan v. Johnson*; ACLU of Michigan Attorneys Miriam

Aukerman, Sarah Mehta, and Michael J. Steinberg; National ACLU Attorneys Jennifer Chang Newell and Michael Tan; Cooperating Attorneys Jason Raofield and Anthony Lopez of Covington & Burling; Tanya Broder of the National Immigration Law Center.)

Racial Profiling by ICE. The ACLU is representing two Latino residents of Grand Rapids, Thelma and Luis Valdez, who were detained and assaulted by agents from U.S. Immigration and Customs Enforcement (ICE) even though Luis is a U.S. citizen and Thelma is a lawful permanent resident. The mother and son drove to a relative's house to show their six-year-old cousin their new puppy when ICE agents pulled into the driveway demanding ID. Even though they both produced a Michigan driver's license, they were handcuffed at gunpoint. One agent banged Thelma's head against the car while yelling at her to admit that she was someone else. The ACLU of Michigan filed a federal lawsuit on behalf of the Valdezes against the United States and the six ICE agents responsible. In November 2012 Judge Robert Jonker denied the defendants' motions for summary judgment, ruling that the case could go forward. (*Valdez v. United States*; ACLU Attorney Miriam Aukerman and Legal Fellows Marc Allen and Sofia Rahman; Cooperating Attorneys Rhett Pinsky and Maura Hagen; Susan Reed and Katie D'Adamo of the Michigan Immigrant Rights Center.)

Tuition Equality for Undocumented Students. Until recently, undocumented students who were admitted to the University of Michigan were required to pay out-of-state tuition, even if they grew up in Michigan and attended the public schools. A student-led group called the Coalition for Tuition Equality had been lobbying the University of Michigan since 2011 to fix this injustice. Although there was support for tuition equality on the Board of Regents, some university officials expressed concern that federal law did not permit such a thing. In March 2013 the ACLU, working with the Coalition, sent a letter to the Board of Regents explaining how numerous state universities across the country had extended in-state tuition to undocumented residents of the state and that U-M could, consistent with federal law, carefully craft a policy to do the same. Shortly after receiving the letter, the Regents adopted a tuition equality policy and at least one Regent credited the ACLU analysis as influential. Wayne State University, Grand Valley University and Eastern Michigan University then followed U-M's example and adopted similar policies. (Legal Director Michael J. Steinberg and Legal Fellow Christina Thacker.)

Marriage Rights for Immigrants. The Kent County Clerk's office refuses to issue marriage licenses to individuals who do not have social security numbers unless the individual appears in person to sign an affidavit. In July 2013 a young Kent County woman tried to get a license to marry her fiancé, who was being held in immigration detention, and the clerk's office refused to allow the marriage because the prospective husband could not physically appear in the clerk's office to sign the affidavit. The ACLU of Michigan intervened, informing the clerk that marriage is a fundamental right which is not lost simply because a person is incarcerated. The clerk agreed to issue the license, and the couple were able to marry. (ACLU Attorney Miriam Aukerman.)

Deporting Crime Victims on Thanksgiving. In November 2011, after a stranger threatened Lazaro Mendoza and stole his property, Mr. Mendoza asked a neighbor to call the police. Antrim County Sheriff's deputies came to Mr. Mendoza's home the next day as he was about to sit down to Thanksgiving dinner with his wife and guests. Rather than investigating the crime, the deputies began interrogating Mr. Mendoza, a farmworker from Mexico who has lived in the United States for approximately ten years, about his immigration status. Although Mr. Mendoza had never committed a crime, the deputies took him and a guest away in handcuffs and turned them over to immigration authorities, who began deportation proceedings. The ACLU of Michigan sent a letter to Immigration and Customs Enforcement (ICE) on behalf of the two men, arguing that it violated ICE's own policies to deport crime victims, since public safety is undermined when people do not trust law enforcement and are reluctant to report crimes. The ACLU also emphasized that ICE should end the deportation proceedings because the men only came to ICE's attention because of the illegal conduct by local police, who have no authority to detain noncitizens solely for immigration law violations. The day after receiving the ACLU letter, ICE released the two men. In January 2012 the ACLU wrote to the sheriff's office to remind them that they are not authorized to enforce federal immigration laws. After ACLU representatives met with county officials, they agreed to immigration training for law enforcement. (ACLU Attorneys Sarah Mehta and Miriam Aukerman; Cooperating Attorney Steve Morse; Marian Kromkowski of Citizens for Immigrants' Rights; Susan Reed of the Michigan Immigrant Rights Center.)

WOMEN'S RIGHTS

Pregnant Woman Denied Medical Treatment Due to Hospital's Religious Affiliation. In November 2013 the ACLU filed a first-of-its-kind lawsuit against the U.S. Conference of Catholic Bishops after a Catholic hospital in Muskegon refused to provide Tamesha Means with necessary treatment or information as she was suffering a miscarriage. The hospital adheres to the U.S. Conference of Catholic Bishops' *Ethical and Religious Directives for Catholic Health Care Services*, which prohibit 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 the U.S. Conference of Catholic Bishops and other affiliated persons were negligent in drafting and promulgating directives that increased the risk of patient harm. The lawsuit aims to eradicate a nationwide 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 and many health care facilities adhering to the bishops' Directives. (*Means v. United States Conference of Catholic Bishops*; ACLU of Michigan Attorneys Brooke Tucker, Dan Korobkin, and Michal J. Steinberg; National ACLU Attorneys Louise Melling, Jennifer Dalven, and Alexa Kolbi-Molinas; Cooperating Attorneys Don Ferris and Heidi Salter.)

Evicted for Being a Victim of Domestic Violence. The ACLU of Michigan is working to prevent Allison Ben, a survivor of domestic violence, from being evicted from her apartment because of the disturbance caused by her abuser when he attacks Ms. Ben. Although Ms. Ben secured a personal protection order against the father of her daughter, the man has beaten her on multiple occasions in her Inkster apartment. Rather than working with Ms. Ben to keep her safe, the Inkster Housing Commission started eviction proceedings around Christmas, when Ms. Ben was nine months pregnant. Joined by the Fair Housing Center of Southeastern Michigan, we wrote a letter to the housing commission in December 2013 warning that the eviction violated the Fair Housing Act and the Violence Against Women Act. (*Inkster Housing Commission v. Ben*; Legal Director Michael J. Steinberg; Pamela Kisch of the Fair Housing Center of Southeastern Michigan; Robert Day of Legal Aid & Defender.)

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

Attacks on Women's Reproductive Health in the Name of Religion. In several federal lawsuits filed in Michigan, private employers have challenged on religious grounds the new requirement under the Affordable Care Act (or "Obamacare") that all employee health insurance plans include birth control prescription coverage. Congress added the contraception prescription requirement to address discrimination against women, who have historically paid much higher out-of-pocket costs than men for reproductive health care. The ACLU filed friend-of-the-court briefs in these cases in 2012 and 2013, arguing that just as employers cannot rely on religion to discriminate against racial and religious minorities, they cannot rely on religion to ignore civil rights laws protecting women. In one of the cases, the U.S. Court of Appeals for the Sixth Circuit held that corporations cannot exercise religion in the same way individuals can. The U.S. Supreme Court has granted certiorari in two other cases that raise the same issue. (*Autocam Corp. v. Sebelius, Domino's Farms Corp. v. Sebelius, Eden Foods, Inc. v. Sebelius, Legatus v. Sibelius*, *M.K. Chambers Co. v. Sebelius, and Mersino Mgmt. Co. v. Sebelius*; ACLU of Michigan Attorneys Miriam Aukerman, Sarah Mehta, and Michael J. Steinberg; National ACLU Attorneys Brigitte Amiri and Daniel Mach.)

Woman Cannot Be Ordered To Have Baby During Divorce. A survivor of domestic violence who was leaving her husband decided to seek an abortion. Her ex sued for divorce, and as part

of the case sought a court order forcing her to complete the pregnancy. In January 2013 the ACLU of Michigan represented the woman in opposing the husband's motion. The court agreed with the ACLU's argument that the woman's former partner had no right to control her body or prevent her from terminating the pregnancy. (ACLU Attorney Miriam Aukerman and Cooperating Attorney Namita Sharma.)

Class Action Sex Discrimination Case. In 2010 the ACLU filed a friend-of-the-court brief in the U.S. Court of Appeals for the Sixth Circuit on the question of whether women who claimed that they were facing sex discrimination at work could file a class action. Unfortunately, after the case was briefed the U.S. Supreme Court decided *Wal-Mart Stores, Inc. v. Dukes*, which placed substantial restrictions on large class actions of this type. Based on *Wal-Mart*, in May 2013 the Sixth Circuit affirmed the district court's denial of class certification. (*Davis v. Cintas Corporation*; ACLU of Michigan Attorney Jessie Rossman; National ACLU Attorney Ariela Migdal; Jocelyn Larkin of the Impact Fund.)

FREE SPEECH

Fur Protester Arrested for Standing on Public Sidewalk. During the 2012 holiday season, Beth Delaney was standing outside a fur store and holding a sign that said "Fur Kills; Don't Buy It." Although Delaney was standing peacefully on a city sidewalk and was not interfering with anyone who chose to shop at the store, an employee of the store called the police to complain. The police soon arrived and told Delaney that she would have to leave because she was violating a local ordinance against loitering. When Delaney told the police she had a constitutional right to be there, she was arrested. The ACLU of Michigan represented her in state court, where all criminal charges were dismissed in January 2013. We then filed a federal lawsuit on her behalf in July 2013 to stop the Birmingham police from continuing to violate the First Amendment in this way. In August 2013 Birmingham agreed to a consent judgment, the terms of which include a new policy clarifying that the loitering ordinance cannot be used against protesters who peacefully stand on public sidewalks, and retraining for police officers. (*Delaney v. City of Birmingham*; ACLU Attorney Dan Korobkin and Legal Fellow Christina Thacker; Cooperating Attorneys Christine Hopkins and Raymond Sterling of Sterling Attorneys at Law, and Lisa Schmidt.)

Jailed Over Christmas for Swearing. In December 2012 LaRue Ford, a social worker with no criminal record, attempted to take care of an unpaid traffic ticket from Berrien County so she could obtain an Indiana driver's license. After getting the run-around for weeks over the phone, she drove to the district clerk's office in Niles only to learn that she had to pay yet another fee. As she left the clerk's office to go to an ATM, she swore to herself. Although LaRue had done nothing to disrupt the proceedings of the court, when she returned to pay her fine, a court officer escorted into the courtroom and Judge Dennis Wiley charged her with "contempt of court" for uttering a profanity. Judge Wiley set the bond at $5000, which was more than her family could afford. Consequently, she spent more than a week in jail, including Christmas, until the ACLU got involved and filed a successful emergency appeal to release Ms. Ford from jail. In January 2013 an appellate court dismissed the criminal charges against her.

(*People v. Ford*; ACLU Attorney Miriam Aukerman; Cooperating Attorneys Megan Reynolds and John Targowski.)

Standing Up for Peaceful Puppy Mill Protesters. Pam Sordyl leads "Puppy Mill Awareness," a group of concerned citizens who peacefully demonstrate on public property near pet stores that do business with abusive puppy mills. In April 2012, after Sordyl and her group began exercising their First Amendment rights to picket on public sidewalks near Westland Dog Food, she was charged with a misdemeanor for "posting signs" in violation of a city ordinance. When she went to court, she learned that the city attorney who was prosecuting her worked for the same law firm that represented the dog food store. The ACLU stepped in to represent Sordyl, successfully moved to have the prosecutor disqualified for a conflict of interest, and in September 2012 persuaded the replacement prosecutor to dismiss the case. In September 2013 another pet store owner tried to take out a personal protection order against Sordyl the week before she planned a peaceful protest on public property, alleging that the protest would interfere with her business. The ACLU again went to court to defend Sordyl to ensure that the judicial process would not be abused to squelch peaceful free speech. (*City of Westland v. Sordyl*; *Meyers v. Sordyl*; ACLU Attorney Dan Korobkin; Cooperating Attorneys Susan Kornfield and Jonathan Young of Bodman, Bill Wertheimer, and Jill Schinske.)

Vanity Plates Censored. For an extra fee, drivers in Michigan are allowed to come up with their own personalized letter/number configurations for their license plates. Although only a few characters long, "vanity plates" are often used to convey a meaningful expression of the driver's personal identity, values, or sense of humor. Unfortunately, state officials who issue license plates have been given the discretion to censor the messages on these plates whenever they are deemed "offensive to good taste and decency." In one case, an Iraq War veteran who lives in the Upper Peninsula was told that he could not have a license plate that says "INF1DL" because some people might find it offensive. In another, a political activist from Ann Arbor was told that his request for a license plate that says "WAR SUX" was being denied because that, too, might offend someone. Meanwhile, other potentially offensive license plates such as "HERETIC" and "SN1PER" have been allowed. The ACLU of Michigan filed suit in federal court in September 2013 to challenge the vagueness and overbreadth of the "offensive to good taste and decency" law. Although no one likes to be offended, the ACLU believes that it is dangerous to allow the government to decide which speech is allowed and which should be censored. (*Matwyuk v. Johnson*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg and Law Student Interns Michael El-Zein and Eric Merron.)

Ann Arbor Bus System Censors Controversial Ad. For years the Ann Arbor Transportation Authority (AATA) allowed advocacy organizations, churches and political candidates to advertise on the outside panels of the bus. However, when a local Palestinian rights activist submitted a "Boycott Israel" ad, the AATA refused to run it. The ACLU of Michigan wrote a letter to the AATA stating that once a government agency creates a forum for advocacy ads, it cannot deny an ad simply because it is controversial or because some might find it offensive. When the AATA still refused to run the ad, the ACLU filed a free speech case in federal court. In November 2012 Judge Mark Goldsmith ruled that AATA's advertising policy was

unconstitutional and that AATA had violated the activist's First Amendment rights by rejecting his ad. The case settled in July 2013 after AATA adopted a new advertising policy. (*Coleman v. Ann Arbor Transportation Authority*; ACLU Attorneys Dan Korobkin, Rick Haberman, and Michael J. Steinberg.)

Political Speech in Bars and Restaurants. During the 2012 election year the ACLU began to receive complaints that the Michigan Liquor Control Commission was enforcing an old administrative regulation that prohibits bars and restaurants that serve alcohol from posting political ads anywhere on their property. Signs about sports teams and beer were allowed, but a sign that said "Vote for Mitt Romney" or "Re-elect Barack Obama" were prohibited. In October 2012 the ACLU of Michigan filed a First Amendment lawsuit on behalf of the owners of Ann Arbor's popular Aut Bar, who wanted to post a sign encouraging patrons to vote for a progressive candidate in a local judicial race. After the lawsuit was filed, the Liquor Commission agreed to immediately stop enforcing the rule, and it was formally rescinded in March 2013. (*Contreras v. Deloney*; Legal Director Michael J. Steinberg and Cooperating Attorney Genevieve Scott.)

Free Speech on Campus. College campuses are traditionally a place where young adults can become citizens, exchanging ideas and engaging in political activism. But in April 2013 Northwestern Michigan College in Traverse City adopted a "campus expression" policy that threatened to severely restrict free speech. According to the new policy, all "expressive activity" on campus was relegated to special free speech zones, and even within those zones such activity was prohibited unless the college administration first granted a permit. In August 2013 the ACLU of Michigan wrote the college a letter explaining that such restrictions were a clear violation of the First Amendment. The college's board of trustees put the policy on hold while it studies the matter. (ACLU Attorney Dan Korobkin and Law Student Intern Andrew Goddeeris; Cooperating Attorney Steve Morse.)

Prosecuted for Protesting with Bicycle Horn. When Sean Crawford, Chris Lamere and Robert Mabbit decided to participate in a peaceful protest in Benton Harbor against Public Act 4, the emergency manager law, they did not expect to end up facing jail time. But all three were charged with violating a noise ordinance because they tooted horns during the demonstration, which was held in a public park in the middle of the afternoon. The ACLU of Michigan filed motions to dismiss the criminal charges, arguing that the ordinance unconstitutionally violates the protestors' rights to free speech and assembly. Judge Alfred Butzbaugh agreed with the ACLU and ordered the charges dismissed in December 2012. (*City of Benton Harbor v. Crawford*; ACLU Attorney Miriam Aukerman; Cooperating Attorneys John Targowski and Erin Archerd.)

Farmer's Right to Criticize Obama. After a Gaines Charter Township farmer was cited under the town's sign ordinance for placing large signs on his property that are critical of socialism and of President Barack Obama, the ACLU filed a friend-of-the-court brief in support of the farmer in March 2013. The ACLU argued that the signs, which read "Marxism/Socialism = Poverty & Hunger," and "Obama's 'Mission Accomplished' 8% Unemployment 16 Trillion Debt,"

were core political speech protected by the First Amendment, and that the township could not allow large commercial signs while banning large political signs. The court agreed and dismissed the citation in April 2013. (*Gaines Township v. Verduin*; ACLU Attorney Miriam Aukerman and Law Student Intern Michael El-Zein.)

Anonymous Bloggers Sued by Law School. After several anonymous Internet bloggers who used to attend Cooley Law School complained online that Cooley misled and mistreated students, Cooley sued the bloggers for defamation. Because Cooley didn't know the identity of the bloggers, it tried to use the court's subpoena power to force the web company that hosted the blogs to reveal the bloggers' identities. 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 therefore filed a friend-of-the-court brief in the Court of Appeals supporting the bloggers' right to remain anonymous unless and until Cooley can prove that their speech is not protected by the First Amendment. In April 2013 the Court of Appeals issued a decision agreeing with the ACLU that bloggers have a First Amendment interest in anonymity and reversing the trial court's denial of the bloggers' motion for a protective order against the public disclosure of their identities. (*Thomas Cooley Law School v. Doe*; ACLU Attorney Dan Korobkin and Cooperating Attorney Bill Burdett.)

Gag Order in Chicken McNuggets Class Action. Attorneys from Dearborn filed a class action lawsuit against McDonald's for falsely advertising halal Chicken McNuggets when they were, in fact, not halal. The plaintiffs' attorneys entered into a proposed settlement with the restaurant. Notice was then posted and sent to the potential class members. Local attorney Majed Moughni, who opposed the settlement because none of the proceeds went to the victims who had consumed the food, set up a Facebook page urging people to opt out of the class or object to the settlement. The plaintiffs' attorneys, joined by counsel for McDonald's, filed an "emergency motion" in January 2013 to enjoin Mr. Moughni from speaking out about the case and to have the Facebook page shut down. Judge Kathleen Macdonald granted the motion and issued a gag order prohibiting Mr. Moughni from saying anything about the case, including why he thought the settlement was unjust. In February 2013 the ACLU of Michigan filed a friend-of-the-court brief in support of Moughni, arguing that the court's interest in seeing the class action settled did not give the judge authority to prevent others from speaking out against what they thought was an unfair settlement. In March 2013 the parties and the judge agreed to lift the gag order. (*Ahmend v. McDonald's Corp*.; Legal Director Michael J. Steinberg and Cooperating Attorney Genevieve Scott.)

No Leafleting on Mackinac Island. During the annual Mackinac Conference on Mackinac Island in May 2013, a police officer ordered a progressive education activist standing on a public sidewalk to stop passing out flyers critical of the privatization of public education. The police officer relied on a former ordinance banning the distribution of flyers on any public streets or parks on the island. The ACLU of Michigan immediately sent a letter to city officials explaining

that that the island is not a Constitution-free zone, and the city's attorney assured us that it would not happen again. (Legal Director Michael J. Steinberg.)

Free Speech 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. Until recently, the Conservancy was treating the land as private property and denied the group Women in Black the ability to walk silently along the sidewalk with signs opposing war and violence in the Middle East. In September 2013 the ACLU of Michigan wrote a letter explaining that because the Conversancy is performing a public function in running a public park, it is bound by the First Amendment. In response, the Conservancy allowed a Women in Black demonstration later that month and claimed that would amend its policies. (Legal Director Michael J. Steinberg; Cooperating Attorney Syeda Davidson.)

Arrested for Not Having Protest Insurance. In May 2013 Kristen Jones helped organize a peaceful "March Against Monsanto" in a public park in Ann Arbor to protest genetically modified foods. She was told by Ann Arbor officials that she would have to pay about $1500 in fees for a permit and obtain an insurance policy. Although she raised the permit fee, she was unable to obtain insurance. When the food activists arrived at the park and a speaker used a hand-held megaphone, Ann Arbor police officers handcuffed Ms. Jones and arrested her for using "amplified sound without a permit." The ACLU of Michigan agreed to represent Ms. Jones because the insurance requirement is unconstitutional. After the ACLU intervened, the city dropped the charges. (*City of Ann Arbor v. Jones*; Cooperating Attorney John Shea.)

Banned Books in the Public Schools. In January 2012 parents and teachers at the Plymouth-Canton Schools reached out to the ACLU when the school superintendent removed the Pulitzer-prize-winning novel *Beloved* by Toni Morrison, and award-finalist *Waterland* by Graham Swift, from the AP English curriculum. We wrote to the superintendent and the school board, urging them to reject censorship and allow students enrolled in the AP English class access to the "marketplace of ideas." The school district subsequently reinstated both books in the curriculum. (ACLU Attorney Sarah Mehta and Cooperating Attorney Loren Khogali).

Funeral Protest Law Struck Down. In 2007 army veteran Lewis Lowden and his wife Jean attended the funeral of a close friend who was killed in action in Iraq. By invitation of the soldier's family, they drove in the funeral procession from the church to the cemetery. Although the Lowdens had done nothing to disrupt the procession, Clare County police pulled them over solely because the van they were driving had signs on it critical of then-President Bush and his policies. The police then placed them under arrest and brought them to jail for violating the Michigan funeral protest law, which made it a felony to "adversely affect" a funeral. The ACLU filed a federal lawsuit challenging the law on behalf of the Lowdens. In 2010 Judge Thomas Ludington ruled that arresting a person for displaying anti-government signs in a car on a public street—even near a funeral—violated a person's free speech rights. The Michigan attorney general intervened to defend the validity of Michigan's funeral protest statute, but in 2011 Judge Ludington ruled that the "adversely affect" provision of the Michigan law was unconstitutional on its face. The attorney general did not appeal, and in 2012 the

legislature fixed the law to conform with the judge's ruling. (*Lowden v. Clare County*; ACLU Attorneys Dan Korobkin and Michigan J. Steinberg; Co-Counsel Hugh Davis and Cynthia Heenan.)

RELIGIOUS FREEDOM

Religious Restrictions in Prison. 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) accommodates Jewish inmates by providing kosher meals and allows them to congregate for a Passover meal, it denied Muslim inmates halal meals and the opportunity to have a 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 were 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. (*Dowdy-El v. Caruso*; Legal Director Michael J. Steinberg; Cooperating Attorneys Daniel Quick, Doron Yitzchaki, Trent Collier and Michael Cook of Dickinson Wright.)

Liquor Commission Delegating Licensing Authority to Churches. In April 2012 the ACLU of Michigan was contacted by the Detroit Waldorf School, which was preparing its annual fundraiser to be held at the Gleaners Food Bank. Part of the proceeds of the event is given to Gleaners, a charity that provides food to the hungry in Detroit. That year, however, the school was informed that it could not get its one-day special liquor license for the event unless churches within 500 feet of the venue agreed. Because a nearby church felt it could not sign off on the school's liquor license application due to the church's religious beliefs regarding alcohol consumption, the Michigan Liquor Control Commission rejected the school's application for a special license. The ACLU wrote to the alcohol enforcement division of the Attorney General's office, explaining that the Establishment Clause of the First Amendment does not allow the state to give a church veto power over the granting of liquor licenses. The Liquor Control Commission has said it will promulgate new polices that meet constitutional standards, but the policies have yet to be implemented. (ACLU Attorney Sarah Mehta and Legal Director Michael J. Steinberg.)

City Clerk Leads Mandatory Prayer for Poll Workers. Detroit poll workers contacted the ACLU of Michigan to complain that Detroit City Clerk Janice Winfrey was leading denominational prayers during mandatory training sessions before the August 2013 primary and that she had done the same in past elections. We wrote to Ms. Winfrey to explain that such official prayer violated the First Amendment because it promoted one religion over another, and religion over non-religion. Ms. Winfrey wrote back assuring that it would not happen again. (Legal Director Michael J. Steinberg and Law Student Intern Karley Abramson.)

Coach-Led Prayer in Bloomfield Hills. In late 2012 the ACLU of Michigan learned that the football coach at a public school was leading students in Christian prayer on the field at the end of football games. Because prayer under such circumstances has an inherently coercive effect on students who are not Christian or not religious, the law is clear that it is unconstitutional. In February 2013 the ACLU wrote a letter to the school district explaining that there was nothing wrong with having a coach who is deeply religious, but at a public school he could not lead the football team in prayer. The school district promptly instructed the coach that the team prayer would need to stop. The district also revised its written policies on prayer to clarify, correctly, that students have the constitutional right to pray on their own, but teachers and coaches have a constitutional obligation not to include prayer as part of official school events and meetings. (ACLU Attorney Dan Korobkin; Cooperating Attorneys Gillian Talwar and Beth Applebaum.)

Pizza with the Priest at Public Middle School. In February 2013 the ACLU became aware that for the past several years Harbor Springs School District has allowed religious individuals and groups into the school during the day to proselytize young students. One such practice was the "pizza with the priest" program. Without getting permission from parents, school officials allowed clergy to meet with sixth graders in the cafeteria during the lunch hour and lecture them about God. To entice students to the meeting, the priests offered them pizza and soda, but they could only eat the pizza after saying a Christian prayer. After the ACLU intervened, the school district put a stop to "pizza with the priest" and similar practices, adopted new policies to comply with the First Amendment, and agreed to train its teachers about religious freedom. (ACLU of Michigan Legal Director Michael J. Steinberg and National ACLU Attorney Heather Weaver.)

Warren Mayor Allows Nativity Scene But Rejects Atheist Display. During the holiday season the City of Warren allows the Rotary Club to display its nativity scene in the public atrium of city hall. When an atheist group wrote to the city asking them to remove the display, the city's mayor refused to do so but wrote in a letter that "all religions are welcome to celebrate their religious seasons with a display in city hall." The atheist group then asked to place its own display in the same area, but their request was denied. In rejecting the display, the mayor told the atheists that they were not a "recognized religion" and their display's statement of atheism was "highly offensive." The atheist group sued the city, seeking the same access given to the Rotary Club. The ACLU of Michigan filed a friend-of-the-court brief in the U.S. Court of Appeals for the Sixth Circuit supporting the atheists' First Amendment rights. Unfortunately, in February 2013 the Sixth Circuit ruled in favor of the city. Without mentioning the fact that the mayor had invited all religions to place a display in city hall, the appeals court held that the nativity scene represented "government speech" and the city was not required to accommodate the private speech of the atheist group. The court further held that because the nativity scene was accompanied by secular symbols such as reindeer and snowmen, it did not amount to an unconstitutional endorsement of religion. (*Freedom from Religion Foundation v. City of Warren*; ACLU Attorney Dan Korobkin and Cooperating Attorney Christopher Lund.)

U.S. Supreme Court Case on Religious Exceptions to Anti-Discrimination Laws. The ACLU filed a friend-of-the-court brief in the U.S. Supreme Court on behalf of a teacher at a church-run

school in Redford who sued the church for disability discrimination. The church has taken the position that the judge should dismiss the civil rights case because courts should not interfere in church matters. The ACLU argues that while faith communities clearly have the right to set their own religious doctrine free from government intrusion, they cannot break civil rights laws and discriminate against their employees for reasons unrelated to church doctrine. Because there is ample evidence in this case that the teacher, who primarily taught secular subjects, was fired because of her disability, and not for any religious reason, she should have her day in court. Unfortunately, in January 2012 the U.S. Supreme Court ruled against the teacher, recognizing a broad "ministerial" exception to federal anti-discrimination laws. (*Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*; ACLU of Michigan Legal Director Michael J. Steinberg and National ACLU Attorney Daniel Mach.)

VOTING RIGHTS

The Right to a Popular Referendum on the Emergency Manager Law. Public Act 4 granted unelected "emergency managers" sweeping, far-reaching powers to displace or in some cases even dissolve local governments and school districts. Alarmed by this threat to local decisionmaking and representative democracy, opponents of the law collected more than 200,000 signatures from Michigan residents to place it on the ballot for a referendum. However, the referendum was then blocked by a party-line vote of the State Board of Canvassers, ostensibly due to a technical defect in the way the petitions had been printed. The ACLU of Michigan filed friend-of-the-court briefs in both the Michigan Court of Appeals and the Michigan Supreme Court arguing that the Board of Canvassers' failure to certify the petition for the ballot violated the people's right to a referendum guaranteed by the Michigan Constitution. In August 2012 the Michigan Supreme Court ruled that the referendum must be placed on the ballot. To ensure that voters were fully informed about the practical experiences of those who have been directly impacted by the emergency manager law, the ACLU solicited and collected the observations, thoughts and ideas of elected officials, public employees, community activists, everyday citizens and even emergency managers themselves. Their comments became the text of a special ACLU report, *Unelected & Unaccountable: Emergency Managers and Public Act 4's Threat to Representative Democracy*. Public Act 4 was ultimately rejected by the voters in the November 2012 election. The legislature, however, responded by passing new legislation that essentially replicated Public Act 4 and also contained provisions that rendered it referendum-proof. The new law, Public Act 436, is the subject of pending litigation challenges. (*Stand Up for Democracy v. Board of State Canvassers*; ACLU Attorney Mark P. Fancher.)

Emergency Managers Violate International Law. Public Act 436, the new emergency manager law, is being challenged in federal court. In June 2013 the ACLU of Michigan filed a friend-of-the-court brief in the case explaining that under international law, the declaration of a state of emergency allowing the suspension of political rights is permissible only under very specific circumstances. The International Covenant on Civil and Political Rights as well as other treaties provide that suspension of the right to participate in public affairs individually and through freely-chosen representatives can occur 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. (*Phillips v. Snyder*; ACLU Attorney Mark Fancher.)

Citizenship Checkbox at the Polls. In 2012 the Michigan legislature passed a bill that would have required voters to check a box affirming their United States citizenship before they can receive a ballot. The measure made little sense because you must already be a U.S. citizen in order to register to vote. Voting rights advocates opposed the law, arguing that it was unnecessary, redundant, and could be used to intimidate some voters on the basis of race or language proficiency. Wisely, Governor Snyder vetoed the legislation. Then, in spite of the veto, Secretary of State Ruth Johnson unilaterally announced that she would require voters to check a citizenship box anyway before receiving a ballot. Alarmed that the Secretary of State was imposing new and potentially dangerous voting requirements that were not authorized by any law, the ACLU of Michigan joined a nonpartisan coalition of voting rights advocates in filing a federal lawsuit. In October 2012 Judge Paul Borman ruled that the checkbox was likely unconstitutional and issued a preliminary injunction ordering the Secretary of State to remove it from the voter application forms for the November 2012 election. After the election, the legislature enacted (and the governor signed) a new law that will require voters to confirm that they are citizens before receiving a ballot. The ACLU plans to monitor how the new law is implemented to ensure it is not used as a pretext for discrimination. (*Bryanton v. Johnson*; ACLU Attorney Dan Korobkin; Andrew Nickelhoff and Mary Ellen Gurewitz of Sachs Waldman; Maryann Parker of the SEIU.)

Voting Rights for the Poor. The National Voter Registration Act requires all public assistance offices to help applicants register to vote. In recent years, the Michigan Department of Human Services has failed to comply with this law. Working with Demos and other national voting rights advocates, the ACLU identified potential plaintiffs for a major voting rights lawsuit and prepared to file suit in early 2012. Under pressure, the DHS and Michigan Secretary of State voluntarily agreed to change its practices to comply with federal law. (ACLU Attorneys Dan Korobkin and Michael J. Steinberg, and Legal Fellow Alexandra Brennan; Lisa Danetz of Demos; Mark Posner of the Lawyers Committee for Civil Rights.)

PRISONERS' RIGHTS

Overcrowded Conditions and Sex Discrimination at Isabella County Jail. In 2012 the ACLU of Michigan was shocked to learn that at the Isabella County Jail in Mount Pleasant, inmates spent many months and sometimes over a year in overcrowded cells where they are virtually on lockdown 24 hours a day, 7 days a week. Inmates ate, slept, showered and spent virtually all their time in small cells, some of which are housing twice the number of people they were designed for. Meanwhile inmates had no opportunity to exercise outside their cell, regardless of how many months they are detained. Some inmates have the chance to leave the cell for classes or other programming, but female inmates are excluded from joining the community service program or the trustee program, which allows inmates to work time off their sentence by performing maintenance, cooking, laundry and other services in the facility. Women were told that this is "a man's jail" and they would not be allowed to participate in those programs. In October 2012 the ACLU filed a class action challenging the conditions of confinement and sex discrimination at the jail. In August 2013 Judge David Lawson approved a settlement that requires the jail to provide exercise space and out-of-cell time to all inmates, and to treat men and women equally with regard to work assignments. (*Dunmire v. Isabella County*; ACLU Attorneys Sarah Mehta, Dan Korobkin, and Michael J. Steinberg; Cooperating Attorney Daniel Manville of MSU School of Law Civil Rights Clinic.)

Prison Health Care on Trial. In a longstanding ACLU lawsuit against the Michigan Department of Corrections (MDOC), a federal judge strongly criticized its failure to provide adequate medical and mental health care. In 2006, following the death from dehydration of a mentally ill prisoner who had been chained naked to a concrete slab for four days in an unventilated cell, Judge Richard Enslen ruled that MDOC was practicing torture in violation of the Eighth Amendment. The judge appointed an independent medical monitor and threatened a fine of one million dollars plus $10,000 per day if the MDOC did not fill staff vacancies to provide basic medical and mental-health care to prisoners. However, the case was then assigned to another judge who decided that prison officials were not "deliberately indifferent" to prisoners' serious medical and mental-health needs. In March 2011 the U.S. Court of Appeals upheld the decision, effectively putting an end to federal oversight of mental health care in Michigan's prisons. The district court then resumed jurisdiction over the case and in June 2013 held a trial on the state's motion to terminate the case in its entirety. Over the course of a two-week trial the plaintiffs presented chilling evidence of what life is like in prison for the ever-expanding population of sick and elderly prisoners who need prescription medications and multiple appointments with nurses and doctors, suffer from chronic health conditions, are facing end-of-life care, and are otherwise dealing with extremely grave and complex medical conditions that a prison system is generally ill-equipped to handle. (*Hadix v. Caruso*; ACLU Attorney Dan Korobkin; Co-Counsel Elizabeth Alexander and Patricia Streeter.)

Female Inmates Viewed Naked by Male Guards at the Muskegon County Jail. At the Muskegon County Jail, male guards routinely view naked or partially naked female inmates while they are showering, dressing, or using the toilet. Moreover, women inmates must wear one-piece jump suits, and as a result they must disrobe and expose their upper bodies as well

as their genital area when they use the toilet. In addition, the jail suffers from extreme overcrowding, outbreaks of communicable diseases, and sewage backups into cells. Moreover, inmates report that they are rarely if ever allowed any exercise. The ACLU of Michigan wrote to the jail in August 2013 about the deplorable and unconstitutional conditions there. ACLU attorneys then toured the jail with a correctional expert, who is writing a report on the steps need to bring the jail into compliance with constitutional standards. (ACLU Attorney Miriam Aukerman; Cooperating Attorney Kevin Carlson of Pitt, McGehee.)

Challenging "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, 3" x 5" 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 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 February 2012 the ACLU of Michigan filed a friend-of-the-court brief in a federal lawsuit challenging the Livingston County Jail's postcard-only policy. That case remains pending. In August 2012, after the ACLU provided assistance to Lenawee County inmates, the Lenawee County Jail modified its policy to allow outgoing mail in envelopes, although unfortunately most incoming mail must still be on a postcard. (*Prison Legal News v. Bezotte*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Nakisha Chaney, Ron Rose, Kim Easter, Bob Davidow, and Bryan Anderson.)

Paying for the Costs of One's Own Incarceration. In March 2012, after the Kalamazoo Sheriff announced that he planned to start a program charging prisoners for staying in the jail, the ACLU of Michigan wrote to the sheriff explaining that such programs undermine prisoners' chances of successfully reentering the community upon release, and that such programs are often cost more than any revenue they generate. The ACLU also met with the sheriff to discuss the legal and policy reasons why the program should not be adopted. To date, Kalamazoo has not moved forward with the proposed jail fee program. (ACLU Attorney Miriam Aukerman; Cooperating Attorneys Megan Reynolds, Jim Rodbard, and John Targowski.)

Degrading and Unnecessary Strip Searches of Female Prisoners. For several years, women incarcerated at the Women's Huron Valley Prison, the only state prison housing women in Michigan, were subject to an invasive and degrading visual body cavity search on a routine basis. After every in-person visit with their family or lawyer, or when going to their prison job, women were forced to remove all their clothes, sit on a chair and spread their labia for inspection by a correctional officer. Some women had to go through this spread-labia visual cavity search on a daily basis even though the prison could offer no evidence that this search was necessary for or successful at finding weapons or contraband. Women—particularly those with histories of sexual abuse—told the ACLU that undergoing this search was both humiliating and deeply harmful; one woman described it as having to relive her past experiences of sexual assault and abuse. There were no exceptions to this search based on health conditions or age,

and many women chose to forfeit visits with their children or attorneys rather than go through the search. In April 2012, in response to a letter from the ACLU and related media attention, the Michigan Department of Corrections changed its policy so that these intrusive searches can only be used in exceptional circumstances, with the warden's permission, and where there is evidence that a particular woman may be concealing weapons or other contraband. (ACLU of Michigan Attorney Sarah Mehta and National ACLU Attorney Mie Lewis.)

Unconstitutional Conditions in the Eaton County Jail. David Bogle, who has Crohn's Disease, was convicted of a misdemeanor and sentenced to the Eaton County Jail. Although he brought his doctor's notes about the need for narcotic prescriptions to treat the excruciating pain caused by the disease, the jail told him it had a no-narcotic prescription drug policy. The jail also refused to allow him to speak privately with his attorney over the phone, telling him that they recorded all telephone conversations and made no exceptions for attorney-client calls. In 2009 the ACLU of Michigan filed a lawsuit challenging both policies. Bogle was forced to drop his medication claim, but in February 2012 a federal magistrate judge ruled that the jail's telephone policy was unconstitutional. The case settled when the Eaton County Sheriff agreed to change the policy and allow confidential attorney-client telephone calls. (*Bogle v. Raines*; ACLU Attorney Dan Korobkin; Cooperating Attorneys Daniel Manville, Patricia Selby, and Elizabeth Geary.)

DUE PROCESS

Mike's Hard Lemonade Case. Christopher Ratté, a University of Michigan professor, took his 7-year-old son, Leo, to a Detroit Tigers game in Comerica Park. Before they took their seats, Christopher purchased what he thought was lemonade from a stand advertising "Mike's Lemonade," and, not knowing that it contained alcohol, gave it to his son. During the ninth inning, a security guard saw Leo with a Mike's Hard Lemonade and alerted the police. Although a blood test revealed that Leo had no alcohol in his system and the police recognized that Christopher had made an honest mistake, they turned Leo over to Child Protective Services. The agency then refused to release Leo to either his mother, who was not even at the game, or to Leo's aunt, who was a social worker and licensed foster parent. Rather, Leo was placed in a foster home for three days until attorneys from the University of Michigan were able to intervene. The ACLU of Michigan filed a lawsuit in 2011 on behalf of the family to challenge the constitutionality of Michigan's child removal law, which permits the government to take custody of children without having to prove that the child is in immediate danger. In 2012 the Michigan legislature passed "Leo's Law" that addressed some, but not all, of the problems that led to this case. In addition to suing city and state officials, we sued the chief judge of the Wayne County Family Court when it was discovered that the judge had a policy of pre-signing child removal orders and instructing the on-duty clerk to simply fill in the blanks in the order based on police allegations. In November 2013 Judge Avern Cohn ruled that the case against the family court judge could proceed because it was unconstitutional for the judge to allow the government to take a child from his parents without any judicial scrutiny. (*Ratté v. Corrigan*;

Legal Director Michael J. Steinberg; Cooperating Attorneys Matthew Lund, Adam Wolfe and Alice Rhee of Pepper Hamilton, and Amy Sankaran.)

Registered as a Child Abuser Without a Hearing. Michigan's Central Registry for Child Abuse and Neglect is supposed to protect children by ensuring that individuals who are a threat to children do not work with kids or serve as foster parents. But accused individuals are placed on the registry for life without a prior hearing. Some do not even get notice that they are listed. Others remain on the registry even if a court later finds that they never engaged in abuse or neglect. In July 2012 the ACLU submitted a friend-of-the-court brief in the Michigan Court of Appeals arguing that individuals who are listed on the registry deserve basic due process before lifetime registration as a child abuser. In September 2013 the Court of Appeals remanded the case back to the trial court, ruling that the wrong standard had been applied in reviewing the evidence. (*Nicastro v. Michigan Dep't of Human Services*; ACLU Attorney Miriam Aukerman; Cooperating Attorneys Brock Swartzle and Beth Kerwin of Honigman Miller.)

Protecting Children from Unnecessary Expulsions. Michigan's so-called "zero tolerance" law for student expulsions is widely misunderstood, including by school administrators. After hearing from several parents whose young sons were expelled by the Grand Rapids Public Schools for inadvertently bringing knives to school, the ACLU of Michigan wrote to the school district in April 2013 and explained that expulsion for such conduct is not mandated under state law; rather, school administrators have discretion to consider factors like whether the student intended to use the knife as a weapon. In June 2013 the school district agreed to start informing students facing expulsion about the discretionary factors, to develop standards to guide hearing officers in making such discretionary decisions, and to allow students to be represented by counsel in expulsion proceedings. (ACLU Attorney Miriam Aukerman; Cooperating Attorney Elizabeth Geary; Pamela Hoekwater of Legal Aid of Western Michigan.)

Retroactive Application of Registration Laws. Major changes to Michigan's sex offender registration law, which went into effect in July 2011, were applied retroactively to individuals who were convicted years or even decades before that law was passed. Registrants are barred from living or working in many parts of the state, cannot travel without notifying the police, and are required to report in person within three days when they do something as simple as create an email account. The ACLU represents six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens—in a federal lawsuit, arguing that the extensive burdens associated with registration are a form of punishment and therefore cannot be retroactively imposed on individuals who were convicted prior to passage of the new law. The suit also argues that the reporting requirements and geographic exclusion zones imposed by the law are so vague that it is difficult or impossible for registrants to comply. In March 2013 Judge Robert Cleland dismissed some claims, including the retroactivity challenges, but allowed other claims, including the vagueness challenge, to go forward. (*Doe v. Snyder*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg, and legal fellows Sofia Nelson and Marc Allen; Cooperating Attorney William Swor; U-M Clinical Law Professor Paul Reingold.)

Unfairly Barred for Life from Working as a Nurse. R.V. is a certified nurse aid who worked in a nursing home from 2001 until 2009. In 2009 the Department of Community Health informed R.V. that she was barred for the rest of her life from working in long-term care, thereby forcing R.V. to give up her career. The reason given was that almost a decade earlier R.V. had participated in a diversion program for youthful offenders after altering the quantity on a prescription for painkillers she was receiving for tooth pain. R.V. had completed the diversion program, under which she had been promised that if she completed probation, her record would be sealed and she would not have any other consequences. In 2012 the ACLU filed a federal lawsuit so that R.V. could return to work. The suit argued that the state reneged on the plea agreement it made with R.V., and that it violated equal protection to bar R.V. from her profession for life, while other individuals with much more serious convictions (such as homicide, torture or criminal sexual conduct) are not barred, or are barred for much shorter periods. The case settled in March 2013 after the state agreed to allow R.V. and others like her to return to nursing. (*R.V. v. Hilfinger*; ACLU Attorney Miriam Aukerman.)

Terminating the Rights of Parents Without a Finding of Unfitness. The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court on behalf of Wali Phillips, whose parental rights were terminated even though there was no court finding that he had ever neglected or abused his children. When Mr. Phillips was legally separated from the mother of his young children, the mother left the kids at home alone. Although Phillips had done nothing wrong, the court ordered that both he and the mother comply with a "service plan." Phillips generally complied with the plan and went to parenting classes. However, because he missed a couple of counseling sessions due to a conflict with a class, the court terminated his parental rights. The ACLU brief argues that it is unconstitutional for the state to take away a parent's right to care for his or her children without a court finding that the parent is unfit. In January 2012 the court ruled in Mr. Phillips' favor. (*In re Mays*; Cooperating Attorneys Timothy Pinto and Amy Sankaran.)

Actual Innocence. Once a criminal defendant loses an appeal, there are certain circumstances under which he or she can invoke to go back to the trial court and seek relief by filing a "motion for relief from judgment." This procedure is the state equivalent to filing a petition for habeas corpus in federal court and is sometimes referred to as a "state habeas" case. There are severe limitations on filing motions for relief from judgment: typically, a defendant will lose unless she or he can demonstrate that an issue was not previously raised, "good cause" for why it was not raised, and how the error was prejudicial to the outcome of the trial. However, there is a question about whether these strict requirements apply in a case where the defendant asserts that the evidence demonstrates a significant possibility of "actual innocence." In April 2013 the Michigan Supreme Court agreed to hear a case that implicated this question. In October 2013 the ACLU of Michigan joined the Innocence Clinic of the University of Michigan Law School in filing a friend-of-the-court brief arguing that under such circumstances a motion for relief for judgment should be allowed. In December 2013 the Michigan Supreme Court affirmed the denial of relief by summary order without reaching the merits of the actual innocence issue. (*People v. Garrett*; ACLU Attorney Dan Korobkin and Law Student Intern Eric Merron; David Moran of the U-M Innocence Clinic.)

Chipping Away at the Right to Counsel. Before courts recognized that abusive interrogation techniques could easily lead to a false confession and a miscarriage of justice, police routinely administered the "third degree" on suspects they thought were guilty until a confession was obtained. One form of abuse was to interrogate a suspect incommunicado, which including withholding information that the suspect's attorney was trying to contact the suspect and was currently available to provide assistance. In *People v. Bender*, the Michigan Supreme Court held that withholding such information violates the Michigan Constitution. In April 2013 the Michigan Supreme Court announced that it would consider overruling *Bender*. In October 2013 the ACLU of Michigan joined the Criminal Defense Attorneys of Michigan (CDAM) in filing an amicus brief that urges the court not to strip suspects of this important constitutional protection. (*People v. Tanner*; ACLU Attorney Dan Korobkin and Law Student Intern Eliza Perez Facio; Professor Eve Brensike Primus for CDAM.)

Lifetime Electronic Monitoring Without Notice. When David Cole pleaded guilty, he was informed about the maximum prison sentence he faced. But he was never told that he was also subject to a mandatory penalty of lifetime electronic monitoring. The ACLU filed a friend-of-the-court brief in the Michigan Supreme Court arguing that a defendant's plea is not valid if the defendant does not know that the punishment of electronic monitoring will be imposed. In May 2012 a unanimous Michigan Supreme Court agreed, holding that due process is violated if a defendant is not informed that his or her sentence will include lifetime electronic monitoring. (*People v. Cole*; ACLU Attorney Miriam Aukerman and Cooperating Attorney J.J. Prescott.)

Parolees Barred from Seeing Kids, Marrying, and Going to Church. The Michigan Parole Board sometimes imposes automatic conditions of parole on inmates leaving prison that deny them fundamental constitutional rights, even though there are no individual determinations of whether the conditions are necessary to protect the community. In 2009 the ACLU, working with Legal Aid of Western Michigan and the University of Michigan Clinical Law Program, filed a lawsuit on behalf of two men who were convicted for having sexual contact with young women who were just under of the age of consent. The men, having finished their prison terms, were now barred from seeing their own children even though psychological experts have determined that the children of these men would benefit from maintaining relationships with their fathers and the fathers pose no danger to their children. The men are also barred from going to church and marrying women who have children. In 2010 the case was successfully settled when the Michigan Department of Corrections (MDOC) changed the parole conditions for our clients. Pending systemic changes, the MDOC also set up a system to resolve additional cases, in which some 70 parolees had participated by December 2012. The Parole Board modified conditions for 90% of the parolees who completed this individual review process. In 2012 the MDOC finally agreed to end the practice of automatically imposing complete bans on parent-child contact, and the ACLU continues to advocate for additional systemic changes to the process of assigning parole conditions that restrict parolees' fundamental rights. (*Houle v. Sampson*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; U-M Clinical Law Professors Paul Reingold, Kimberly Thomas, Joshua Kay, and Vivek Sankaran.)

Parents Unable to Volunteer in Kids' School. Like many parents, Wendy Cross wants to be active in her kids' school by chaperoning field trips, organizing holiday parties, and helping in the classroom. But because Ms. Cross had a 2001 conviction for writing a bad check, the Grand Rapids Public Schools (GRPS) barred her, and other parents with criminal records, from being involved. In a two-year effort involving legal correspondence, community organizing, presentations to the School Board, meetings with the GRPS leadership, and coordination of a community sign-on letter supported by over 70 community leaders, the ACLU worked to change this practice. In 2012 GRPS agreed to consider parents' criminal histories on a case-by-case basis before deciding whether they may volunteer in the schools and to create a new process for parents to appeal if they are told they cannot do so. (ACLU Attorney Miriam Aukerman.)

Attorney Jailed for Asserting Client's Rights. When attorney Scott Millard appeared at an arraignment for a client charged with being a minor in possession of alcohol, Millard advised his client of his constitutional right to remain silent. However, Ottawa County District Court Judge Kenneth Post insisted that the client answer questions about drug use. When Millard continued to assert his client's constitutional rights, the judge held attorney Millard in contempt and sent him to jail. The ACLU, joined by the Ottawa County Bar Association and the Criminal Defense Attorneys of Michigan, filed a friend-of-the-court brief in the attorney's contempt proceeding, arguing that defense attorneys should not be thrown in jail simply for doing their jobs. In January 2012 Ottawa Circuit Court Chief Judge Edward Post (no relation to District Judge Kenneth Post) reversed the contempt finding against attorney Millard. The Judicial Tenure Commission also filed a complaint against the judge, and the Michigan Supreme Court imposed a 30-day suspension. (*In re Millard*; ACLU Attorney Miriam Aukerman; Cooperating Attorneys Nakisha Chaney and Ken Mogill.)

SEARCH AND SEIZURE

Criminal Charges and Cars Seized for Going to an Art Gallery. In 2010 the ACLU of Michigan filed a federal lawsuit challenging the Detroit Police Department's 2008 raid of a fundraising event at the Contemporary Art Institute of Detroit. During the raid more than a hundred innocent people were detained, searched, and charged with loitering because, unbeknownst to them, the gallery did not have the proper license for the late-night event. In addition, more than 40 legally parked cars were seized and not released until their owners paid nearly $1000. In December 2012 Judge Victoria Roberts ruled that the detention of the CAID's patrons and seizure of their cars was unconstitutional. The city appealed, and the appeal was placed on hold in July 2013 when the city filed for bankruptcy. Before filing the federal case, we had already won dismissal of the criminal cases of over 120 people charged with "loitering" at the art gallery. (*Mobley v. City of Detroit and City of Detroit v. White*; ACLU Attorneys Dan Korobkin, Sarah Mehta, and Michael J. Steinberg; Cooperating Attorneys Bill Goodman, Julie Hurwitz, Kathryn James, and Ken Mogill.)

Grand Rapids 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 February 2013 the ACLU wrote to Grand Rapids, asking the city to stop using these generalized letters as a substitute for probable cause of criminal wrongdoing. After the city refused to change its policies, we brought a federal lawsuit to enjoin the practice of using these letters to make arrests without the individualized probable cause required by the Fourth Amendment. An initial analysis of incident reports produced in discovery shows disturbing racial disparities, with African-Americans much more likely to be unlawfully arrested under the program. (*Weber v. City of Grand Rapids*, ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg, and legal fellow Marc Allen; National ACLU Attorney Jason Williamson; Cooperating Attorneys Bryan Waldman and Julia Kelley.)

Detroit Police Hire Architects of NYPD's Unconstitutional Stop-and-Frisk Program. The ACLU of Michigan was deeply troubled by news reports that the Detroit Police Department has hired the Manhattan Institute and Bratton Group as consultants, as these were the firms that helped the New York City Police Department devise its unconstitutional stop-and-frisk program. Under the Fourth Amendment, police officers are not allowed to stop and frisk a pedestrian unless they have reasonable suspicion that the individual is engaged in criminal activity and is armed and dangerous. In New York, a federal judge found that there was a widespread failure to comply with these basic constitutional requirements, that blacks and Latinos were far more likely to be stopped and frisked than whites, and that these problems were the result of deficient and irresponsible training materials provided to officers. The ACLU sent a letter outlining its concerns to the Detroit police chief in August 2013 and intends to monitor stop-and-frisk practices in Detroit for signs of abuse. (ACLU Attorney Mark Fancher.)

Taser Reform. Using the Freedom of Information Act, the ACLU of Michigan obtained police reports from law enforcement agencies across the state that include narratives of incidents involving the use of tasers on civilians. These documents were summarized in February 2013 ACLU report titled *Standards for Stun Guns: A Call for Uniform Regulations for Tasers in Michigan*. The report documented inconsistent departmental standards for use of tasers, non-compliance with departmental standards, non-compliance with industry standards, and perceived racial discrimination in the use of tasers. The report also included summaries of several incidents that involved the use of tasers on handcuffed suspects. Because three of the summaries involved the East Lansing Police Department, representatives from the ACLU met with East Lansing officials in May 2013, and the city attorney prepared a memorandum for the police department on the limitations on the use of tasers on individuals in handcuffs. (ACLU Attorney Mark Fancher.)

Police Use of Cell Phone Data Extraction Devices. For more than three years the ACLU of Michigan tried to obtain public records from the Michigan State Police (MSP) under the Freedom of Information Act about the MSP's troubling use of electronic devices that can

extract the contents of cell phones within moments. The requests were prompted by concerns that there were insufficient safeguards against use of these devices to violate privacy rights. A request for public records documenting use of five of the cell phone extraction devices resulted in an outrageous demand by MSP for the ACLU to pay a $544,680 fee in order to obtain the documents. Through extensive efforts some documents suggesting questionable practices were obtained for a far more reasonable cost, but the MSP did not turn over any documents suggesting that it had developed an explicit policy for when, how and under what circumstances the cell phone data extraction devices would be used. In February 2012 the MSP finally adopted an official policy placing restrictions on who may use the devices and under what circumstances. (ACLU Attorney Mark Fancher and Executive Director Kary Moss.)

DRUG LAW REFORM

Appeals Court Rules That Michigan Cities Cannot Ban Medical Marijuana. In 2008, the Michigan Medical Marijuana Act (MMMA) was approved by an overwhelming majority of Michigan voters, including significant majorities in Birmingham, Bloomfield Hills, Livonia and Wyoming. Although the law bars officials from arresting, prosecuting or in any way penalizing registered patients and caregivers who comply with the MMMA, all four cities enacted ordinances that completely ban medical marijuana. The ACLU of Michigan has sued each of these cities arguing that their ordinances violate state law, but the cities contend that they don't have to follow state law because marijuana is still illegal under federal law. In a unanimous decision and a victory for medical marijuana patients throughout the state, the Michigan Court of Appeals ruled in July 2012 that Michigan cities cannot ban medical marijuana through a local ordinance, nor can they use federal law as an excuse to disregard the MMMA. The Michigan Supreme Court agreed to review the decision and heard argument in October 2013. (*Ter Beek v. City of Wyoming*, *Lott v. City of Livonia,* and *Lott of City of Birmingham*; ACLU Attorneys Dan Korobkin, Miriam Aukerman, and Michael J. Steinberg; Cooperating Attorneys Michael Nelson, Andrew Nickelhoff, and Jerold Lax.)

Decriminalizing Grand Rapids. In November 2012 Grand Rapids became one of several cities in Michigan where the voters have chosen to decriminalize the possession and use of marijuana. The drug remains illegal under state law, but decriminalization at the local level allows local police agencies to focus their resources on combating more serious crime. In response to the decriminalization initiative in Grand Rapids, the Kent County Prosecuting Attorney immediately filed a lawsuit to have the measure struck down, claiming that it is preempted by state law. The ACLU of Michigan filed a friend-of-the-court brief in January 2013, arguing that the local measure is not preempted because localities have discretion to allocate their limited law enforcement resources as they see fit. The trial court agreed with the ACLU, denied the prosecutor's motion for a preliminary injunction, and eventually dismissed the prosecutor's case in September 2013. The prosecutor then appealed, and in November 2013 the ACLU filed a friend-of-court brief in the Michigan Court of Appeals. In the appellate brief, the ACLU has directed the court's attention to new data showing that racial disparities in marijuana arrests are higher in Kent County than almost anywhere else in the country, thereby providing voters in

Grand Rapids with another good reason to place reasonable restrictions on local law enforcement. (*Kent County Prosecuting Attorney v. City of Grand Rapids*; ACLU Attorneys Dan Korobkin and Miriam Aukerman; Cooperating Attorney Joslin Monahan.)

ACLU Victory in Michigan Supreme Court's First Medical Marijuana Case. The ACLU of Michigan represented a man with severe and chronic back pain in the first case before the Michigan Supreme Court to address medical marijuana. The Michigan Medical Marijuana Act (MMMA) allows individuals with a doctor's recommendation to obtain a state-issued card and grow up to 12 marijuana plants in an "enclosed, locked facility." Larry King, after receiving a medical marijuana card, grew his plants in an enclosed, locked, six-foot-high dog kennel. Nonetheless, he was charged with drug possession because the locked kennel did not have a roof. The ACLU argued that King was following the MMMA, but even if he was not in strict compliance, the charges must be dismissed under the "affirmative defense" provision that protects people against criminal prosecution if they are using marijuana on the advice of a physician. In a unanimous decision issued in May 2012, the Michigan Supreme Court agreed with the ACLU and ruled that King was entitled to the MMMA's legal protections for medical marijuana patients. (*People v. King*; ACLU Attorney Dan Korobkin and Cooperating Attorney John Minock.)

Wal-Mart Fires Employee of the Year for Positive Drug Test. After suffering for over ten years from chronic pain and nausea due to sinus cancer and a brain tumor, Joseph Casias finally found relief when he registered as a medical marijuana patient with the Michigan Department of Community Health based on the recommendation of his oncologist. Joseph worked at the Wal-Mart in Battle Creek, where he was praised for his hard work and recognized as employee of the year. In accordance with the law, he never smoked marijuana at work or came to work under its influence. Wal-Mart nonetheless fired him for using "illegal drugs" after a drug test came up positive for marijuana. Because the ACLU believes that even a corporation as large and powerful as Wal-Mart should not be permitted to ignore Michigan law when doing business in Battle Creek, we filed a lawsuit in June 2010 to get Joseph's job back. Unfortunately, in September 2012 the U.S. Court of Appeals ruled that Michigan's medical marijuana law does not protect workers from being fired for being a medical marijuana patient, even when they do not bring marijuana to the workplace or allow the drug to interfere with their job. (*Casias v. Wal-Mart Stores, Inc.*; ACLU of Michigan Attorney Dan Korobkin; National ACLU Attorney Scott Michelman; Co-Counsel Daniel Grow.)

Marijuana Patient Denied Parenting Time. An Oakland County judge terminated a mother's unsupervised parenting time solely because she was a state-approved medical marijuana patient. The judge acted under the mistaken impression that the Michigan Medical Marijuana Act only protects patients against criminal prosecution. In fact, the law specifically provides, "A person shall not be denied custody or visitation of a minor for acting in accordance with this act, unless the person's behavior is such that it creates an unreasonable danger to the minor that can be clearly articulated and substantiated." The ACLU of Michigan represented the mother in a delayed appeal, but unfortunately the Michigan Court of Appeals decided in March

2012 not to take her case. (*Snowden v. Kivari*; ACLU Attorney Dan Korobkin and Legal Fellow Zainab Akbar; Cooperating Attorney Marjory Cohen.)

SAFE AND FREE

American Woman Removed from Plane and Strip Searched. On September 11, 2011, an Ohio woman of Middle Eastern and Jewish descent named Shoshana Hebshi was sitting in the same row as two men of Indian descent on a Frontier Airlines flight from Denver to Detroit. When the Indian men got up to use the bathroom at the same time, someone reported their behavior as suspicious. After the plane landed in Detroit, armed federal officials took not only the two men, but also Ms. Hebshi into custody at the airport jail. Although she had never met the two men and had done nothing to arouse suspicion, Hebshi was strip-searched in the jail and held for four hours before being interrogated and released. After filing a Freedom of Information Act request with the airport police to learn more about the incident, the ACLU filed an administrative claim under the Federal Tort Claims Act against the federal agencies that were involved. In July 2012 the government rejected the administrative claim. In January 2013 the ACLU filed a federal lawsuit against Frontier Airlines, the Wayne County Airport Authority, the United States, and various individual officers alleging that the detention and search violated Hebshi's constitutional rights. (*Hebshi v. United States*; ACLU of Michigan Attorneys Sarah Mehta, Brooke Tucker, and Michael J. Steinberg; National ACLU Attorneys Rachel Goodman and Dennis Parker; Cooperating Attorneys Shelli Calland, Arjun Sethi and Sarah Tremont of Convington & Burling, William Goodman, and Julie Hurwitz.)

CIA Spies on U-M Professor/Bush Critic in Attempt to Discredit Him. *The New York Times* printed a front-page story in June 2011 about a former CIA agent who claimed that the Bush administration asked the CIA to collect damaging information on University of Michigan Professor Juan Cole, a prominent critic of the Iraq War. When the CIA refused to respond to the ACLU request for documents about the spying, the ACLU filed a lawsuit in federal court under the Freedom of Information Act. The case settled in July 2013 after the government released numerous documents and agreed to pay attorneys' fees. (*ACLU v. CIA*; National ACLU Attorneys Zachary Katznelson and Hina Shamsi; ACLU of Michigan Legal Director Michael J. Steinberg.)

OPEN GOVERNMENT

Legislating Behind Closed Doors. Senior Judge and Detroit legend Damon Keith once wrote, "Democracy dies behind closed doors." In an event that is believed to be unprecedented in Michigan history, public access to the Capitol building was closed off on December 6, 2012 just as the highly controversial right-to-work law was being introduced. For over four hours, members of the public—including union members, journalists, lobbyists, and other concerned citizens—were prevented from going inside as debates were occurring and votes were cast. Although law enforcement claimed that protesters had caused overcrowding, video and photographic evidence showed that there was plenty of room inside. It was later discovered

that Republican legislative staffers were ordered to occupy seats in the public galleries to make sure that union members and other interested citizens could not attend. Working with a coalition of labor unions, the ACLU of Michigan filed a lawsuit in January 2013 based on the legislature's violation of the Open Meetings Act, which requires all public bodies in Michigan to deliberate and cast votes in open sessions that are accessible to the public. If the ACLU proves that the Open Meetings Act was violated, the court would have the discretion to invalidate the right-to-work law. In April 2013 Judge William Collette denied the state's motion to dismiss the case, and in August 2013 the Michigan Court of Appeals rejected the state's application for an immediate appeal, allowing the ACLU's claims to go forward. (*Cook v. State of Michigan*; ACLU Attorneys Kary Moss, Michael J. Steinberg, and Dan Korobkin, and Legal Fellow Christina Thacker; Cooperating Attorneys Michael Pitt and Kevin Carlson of Pitt McGehee, Bryan Waldman, and Genevieve Scott; Co-Counsel include Art Przybylowicz, Jeff Donahue, Michael Shoudy, John Canzano, and Andrew Nickelhoff.)

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. Beginning in 2011, the ACLU brought a series of cases in state and federal court arguing that the practice violates the constitutional ban on cruel and unusual punishment. In June 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 attorney general has refused to apply this 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. Therefore the ACLU is continuing to pursue justice on behalf of hundreds of juveniles who were sentenced unconstitutionally and are now seeking the opportunity to have their cases reviewed by a judge or parole board. In January 2013 Judge John Corbett O'Meara agreed with the ACLU and ruled that all juveniles serving mandatory life sentences must be given parole hearings. His decision is being appealed. The ACLU has also filed friend-of-the-court briefs with the Michigan Court of Appeals and the Michigan Supreme Court arguing that *Miller* must be applied retroactively and that judges must have discretion to give sentences other than life. (*Hill v. Snyder*, *People v. Hawkins*, *People v. Jones*, *People v. McCloud*, *People v. Carp*, *People v. Eliason*, and *People v. Davis*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Steven Watt, Ezekiel Edwards, and Brandon Buskey; Co-Counsel include Deborah LaBelle and U-M Clinical Law Professor Kimberly Thomas.)

DISABILITY RIGHTS

Five-Year-Old Denied Right to Bring Service Dog to School. Ehlena Fry is a young girl with cerebral palsy who 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. It even refused to recognize Wonder as a service dog. The ACLU then filed a complaint with the U.S. Department of Education's Office for Civil Rights, which, following an investigation, issued a ruling in May 2012 that Ehlena's civil rights under the Americans with Disabilities Act were being violated. Ehlena's family ultimately made the difficult decision to transfer to a new school where Wonder would be welcome. In December 2012 the ACLU filed a federal lawsuit against her former school district. (*Fry v. Napoleon Community Schools*; Legal Director Michael J. Steinberg; Cooperating Attorneys Peter Kellett, James Hermon and Brandon Blazo of Dykema, Gayle Rosen, and Denise Heberle.)

COLLECTIVE BARGAINING

Emergency Manager Cuts Retirees' Health Care Benefits. The ACLU believes that the rights of public employees to organize and bargain collectively are important aspects of the First Amendment right to freedom of association. The value of collective bargaining, however, would be seriously diminished if the state were free to abandon its obligations under a collective bargaining agreement. Public Act 4 gives Michigan's "emergency managers" unchecked authority to cancel or modify collective bargaining agreements, even when there are other alternatives for dealing with local budget shortfalls. In 2011 and 2012, the state-appointed emergency manager for the City of Pontiac drastically cut the lifetime health care benefits that had been promised to city retirees, many of whom are living on fixed incomes and can't afford to continue health coverage on their own. The retirees' motion for a preliminary injunction against the cuts was denied. In December 2013 the ACLU of Michigan filed a friend-of-the-court brief in the U.S. Court of Appeals for the Sixth Circuit, which is hearing the retirees' case in an "en banc" appeal. The ACLU's brief argues that the emergency manager's actions violate the provision of the U.S. Constitution that prohibits the impairment of contracts. (*City of Pontiac Retired Employees Ass'n v. Schimmel*; ACLU Attorney Dan Korobkin and Cooperating Attorney Avani Bhatt.)