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 2013 and 2014.

EDUCATION

The Right To Read. If the right to a public education means anything, it means that students should be taught to read. In a groundbreaking case that has garnered national attention, the ACLU of Michigan filed a class action in 2012 on behalf of students in the Highland Park Public Schools who 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 the levels to which they should have progressed. Many students were rendered functionally illiterate while still being passed along from one grade to the next. The ACLU has argued that both the State of Michigan and the Highland Park School District are violating state law and the Michigan Constitution by allowing students to fall far behind in basic literacy skills and reading proficiency. In 2013 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." In November 2014, however, the Michigan Court of Appeals reversed by a vote of 2-1. The majority held that the Michigan Constitution "merely 'encourages' education, but does not mandate it." In dissent, Judge Douglas Shapiro rejected as "miserly" the majority's view of the education constitutionally due Michigan's children, writing that the state is legally required "to provide some baseline level of adequacy of education." In December 2014 the ACLU asked the Michigan Supreme Court to review the case. (*S.S. v. State of Michigan*; ACLU Attorneys Kary Moss, Shana Schoem, Rick Haberman, Mark Fancher, Amy Senier and Michael J. Steinberg, and Law Student Intern Jackie Perlow; Cooperating Attorneys Mark Rosenbaum of U-M Law School, Steve Guggenheim, Doru Gavril and Joni Ostler of Wilson Sonsini, and Jennifer Salvatore, Edward Macey and Nakisha Chaney of Nacht Law.)

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." In August 2013 the ACLU of Michigan filed a lawsuit on behalf of two students challenging the new tuition policy under the Michgian Constitution's guarantee of a "system of free public education." 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.)

Public School Requiring Poor Families to Pay for Mandatory AP Tests. Arbor Preparatory High School, a public charter school, requires all students to take Advanced Placement (AP) courses as a condition of graduation. Although there is nothing wrong with that requirement, the ACLU of Michigan was notified that that Arbor Prep was also requiring students' families to pay for AP exams. In August 2014 we wrote Arbor Prep a letter informing them that under clearly established state law, the constitutional right to "a system of free public schools" means that schools may not require students to pay for mandatory services and activities such as tuition,

books, and examinations. The school promptly revised its policy to clarify that students who completed AP course work could still graduate even if they did not take an AP exam. (ACLU Attorneys Shana Schoem, Kary Moss and Michael J. Steinberg.)

POVERTY

Anti-Begging Law Struck Down. In 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 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. (*Speet v. Schuette*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg.)

Panhandling Banned in Waterford Township. Despite the courts being clear that it is unconstitutional to prohibit panhandling on a public sidewalk (see above paragraph), a number of municipalities continue to enforce local anti-begging ordinances. 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. In Waterford Township, Tiffany Cuthrell and her boyfriend were hoping to visit family out of state, but they were short on funds, so Tiffany stood on a sidewalk with a sign that said "In Love, Out of Gas," while her boyfriend played guitar. Although soliciting donations has long been recognized as a form of speech protected by the First Amendment, a police officer ticketed Tiffany and charged her with a crime for "begging in public." The ACLU of Michigan, in conjunction with the Wayne State Civil Rights and Civil Liberties Clinic, filed a federal lawsuit in February 2014 to ensure that local anti-begging ordinances are declared unconstitutional. The case settled after township agreed to pay damages and attorneys' fees and amend its ordinance so that begging is no longer illegal in Waterford. (*Cuthrell v. Waterford Township*; ACLU Legal Director Michael J. Steinberg and Clinic Law Student Carrie Floyd.)

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 of Michigan has documented through repeated court watching efforts since 2011 that numerous judges throughout Michigan are jailing poor people on "pay or stay" sentences—sentences where individuals who are found guilty of a crime 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 has represented indigent individuals throughout the state in appealing their pay-or-stay sentences in select cases that typify the problem. For example, in September 2014 the ACLU represented a Jenna Palmer, a Port Huron woman who was unable to pay fines related

to driving without a license. The court did not hold a hearing to see if Ms. Palmer had the ability to pay. Instead, when Ms. Palmer went to the emergency room after fleeing an abusive relationship, she was arrested and jailed for the unpaid fines. After the ACLU intervened, she released from jail, moved to a domestic violence shelter, and placed on a workable payment plan. We have also worked with local and national media outlets to expose the practice, resulting in a widely-heard NPR series profiling several ACLU clients. In August 2013 we 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. The ACLU is now building support for a new court rule that would ban the practice. (*People v. Palmer* and *People v. Bailey*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Brooke Tucker and Michael J. Steinberg, and Legal Fellow Sofia Nelson; Cooperating Attorney Elizabeth Geary.)

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 outstanding warrants unless the state first determines that the person receiving benefits is in fact fleeing from justice. In 2013 the Center for Civil Justice and the ACLU of Michigan filed a class action seeking to ensure that individuals like Mr. Barry do not go hungry due to the state's unlawful policy. At a hearing in November 2014, Judge Judith Levy indicated that she believed both a preliminary injunction and class certification are warranted; a written decision is pending. (*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 ACLU then defeated a second motion to dismiss in the trial court and, in June 2013, won a second time in the Michigan Court of Appeals. 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. State of 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 Mark Granzotto, Frank Eaman, and Julie North, Sarita Prabu and Justine Beyda of Cravath Swaine & Moore.)

Judge Refuses To Appoint Counsel to Jailed Defendant. The Sixth Amendment guarantees that poor people who are accused of a crime and facing jail time have the right to court-appointed counsel. In February 2014 Derek Carlson was in jail facing charges of assault and battery and he could not afford to post bail. When he appeared in court for his arraignment he asked for court-appointed counsel, but the judge denied his request and sent him back to his jail cell. Several weeks after he was denied counsel, he pleaded guilty because the prosecutor told him that doing so was the fastest way to get out of jail and go home. No one told Mr. Carlson that he could lose his housing and other public benefits as a result of his guilty plea. In April 2014 the ACLU filed an appeal on Mr. Carlson's behalf claiming that his guilty plea was invalid because the judge had violated his Sixth Amendment right to counsel. If Mr. Carlson had been appointed counsel, his lawyer could have argued for a more affordable bail and could have helped Mr. Carlson negotiate with the prosecutor. In June 2014 our appeal was granted and we negotiated an agreement with the prosecutor that will result in the charges being dismissed. (*People v. Carlson*; ACLU Attorneys Dan Korobkin and Miriam Aukerman; Cooperating Attorney Katie Clark.)

Funding the Criminal Justice System By Charging the Poor. When Frederick Cunningham was convicted of a drug offense, he was also charged $1000 in unspecified court costs. Allegan County used the money it collected from people like Cunningham for general operating costs, such as courthouse maintenance and an employee fitness center. The ACLU of Michigan, along with the Criminal Defense Attorneys of Michigan (CDAM), filed a friend-of-the-court brief in the Michigan Supreme Court in March 2014, arguing that imposing costs on indigents to fund general court operating expenses is illegal and unfairly burdens those least able to pay. In a unanimous decision in June 2014, the Supreme Court held that imposing such costs was not authorized under Michigan law. Unfortunately, the legislature then passed a bill to negate the court decision and authorize such costs. However, the ACLU was able to successfully advocate for a provision prohibiting individuals from being incarcerated for inability to pay such costs. (*People v. Cunningham*; ACLU Attorney Miriam Aukerman and Legal Fellow Sofia Nelson; Christopher Smith for CDAM).

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 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 Detroit. 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. (ACLU Attorneys Sarah Mehta and Michael J. Steinberg.)

Kicked Out of Public Housing for an Old Conviction. Public housing for people in need is financed by the federal government and administered by the state through the Section 8 voucher program. Federal law currently prohibits certain individuals who are registered on a state's sex offender registry from being newly admitted to Section 8 housing. However, state agencies and landlords are not authorized to kick a tenant out of the Section 8 program if they are already living in public housing and a new registration requirement goes into effect. In 2011, Michigan changed its sex offender registry law to retroactively require lifetime registration by individuals who were not required to register at the time they were convicted, resulting in many people being placed on the registry for the first time based on an old conviction. Misapplying federal law, Michigan housing authorities began terminating people from public housing based on these old convictions. After the ACLU of Michigan intervened on behalf of two public housing tenants whose Section 8 vouchers had been wrongfully terminated, their public housing assistance was restored. In June 2014 we wrote a letter urging the Michigan State Housing Development Authority to provide clear guidance to landlords and public housing agencies that public housing assistance cannot be terminated just because someone is placed on the sex offender registry. (ACLU Attorney Miriam Aukerman and Legal Fellow Sofia Nelson; Jim Schaafsma of the Michigan Poverty Law Program.)

RACIAL JUSTICE

Holding Wall Street Accountable for Predatory Mortgages in Detroit. In 2012 the ACLU filed a groundbreaking class action on behalf of African American Detroit homeowners against the Wall Street bank Morgan Stanley for its role in shaping the high-risk predatory loans that contributed to the foreclosure crisis and the collapse of once-vibrant Detroit neighborhoods. The ACLU represents five African American homeowners who are facing foreclosure due to the risky and abusive loan terms they received through the now-bankrupt subprime lender New Century. Between 2004 and 2007, Morgan Stanley purchased loans from New Century and, as its most significant customer, shaped New Century's lending irresponsible and destructive practices. By 2007, Detroit was number one of the hundred largest metropolitan areas with the highest foreclosure rates. Nearly 45,000 homes stood vacant by 2008, creating virtual wastelands in Detroit. Moreover, this devastation had a clear racial character: New Century's African American customers in the Detroit area were 70 percent more likely to get a subprime loan than white borrowers with similar financial characteristics. The lawsuit is the first of its kind, brought on behalf of homeowners, seeking to hold a Wall Street bank accountable under the Fair Housing Act for the devastation to communities of color. In July 2013 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. After engaging in extensive discovery, the ACLU filed a motion in June 2014 to certify a class of approximately 6,000 African American homeowners in Detroit who obtained predatory New Century Mortgages. (*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.)

Challenging the Water Shutoffs in Detroit. In June 2014 the Detroit Water and Sewage Department (DWSD) commenced the largest residential water shutoff in U.S. history and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to

residents' health needs or ability to pay. DWSD's internal documents revealed that due to its sloppy billing practices, it had not charged many customers for sewer service for several years. In January 2014 DWSD demanded a lump sum payment from its customers for those sewer charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residential customers with delinquent accounts were frequently billed for charges incurred by previous tenants. Due to the lack of notice provided to these customers before the shutoffs, as well as the fact that DWSD's commercial customers with delinquent accounts were not similarly targeted for service termination, the ACLU and NAACP Legal Defense Fund (LDF) wrote a joint letter to DWSD in July 2014 that outlined why the shutoffs violated the residents' constitutional rights to due process and equal protection. The ACLU and LDF are also serving as expert consultants to a lawsuit filed in bankruptcy court on behalf of civil rights organizations and residents without water that seeks to restore water service to the city's residents and stop future shutoffs. In September 2014 Bankruptcy Judge Steven Rhodes dismissed the lawsuit. On a motion for reconsideration, Judge Rhodes upheld the dismissal but conceded there may be a property interest in continued water service entitled to due process protections. Judge Rhodes' decision is currently being appealed. (*Lyda v. City of Detroit*; ACLU Attorneys Kary Moss, Mark Fancher and Brooke Tucker, and Legal Fellow Sofia Nelson; Monique Lin-Luse and Veronica Joice of the NAACP Legal Defense Fund.)

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 represented 19 African American, Latino, and white applicants, students and faculty who wanted to ensure that they were able to learn and teach within a diverse environment. We 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. In 2011 the U.S. Court of Appeals for the Sixth Circuit ruled in our favor in a 2-1 decision, and in 2012 the entire Sixth Circuit ruled "en banc" in our favor by a vote of 8-7. Unfortunately, in April 2014 the U.S. Supreme Court reversed the Sixth Circuit's decision, ruling that while affirmative action is still a lawful means to achieve racial diversity on campus in most states, voters may choose to abolish affirmative action through a ballot initiative. (*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.)

Saginaw Homeless Man Faces Death By Police Firing Squad. In a brutal execution-style killing captured on video in July 2012, eight Saginaw police officers took the life of Milton Hall, a 49-year-old, African American, mentally ill homeless man. Mr. Hall found himself alone in the middle of an empty parking lot after a verbal altercation with a store clerk. Police were summoned to respond to his erratic behavior. After the officers formed a semi-circle around Mr. Hall, they continued to give him a very wide berth—far beyond Hall's reach. Six officers raised rifles and aimed them in Mr. Hall's direction. Another officer held the leash of a police dog that was allowed to bark and snap at Hall. When Mr. Hall displayed and waved a small pen knife,

the officers shot 46 bullets at him, continuing to shoot even after he had collapsed. The entire incident was captured by the officers' dashboard cameras and by video footage taken by civilians. After the Saginaw County prosecutor's office declined to bring criminal charges against the police officers, the U.S. Department of Justice launched an investigation. However, in February 2014, the Justice Department stated that there was not enough evidence of criminal wrongdoing by the officers to warrant a prosecution under federal civil rights laws. Deeply disappointed with the decision, the ACLU of Michigan wrote a letter to the Justice Department asking that they reconsider, but this request was unsuccessful. In October 2014 the ACLU appeared before the Organization of American States' Inter-American Commission on Human Rights to provide oral testimony and written information about the Hall killing. Produced in connection with that appearance was a video featuring the footage of the killing as well as an interview with Mr. Hall's mother. (ACLU of Michigan Attorneys Mark Fancher and Michael J. Steinberg; National ACLU Attorney Jamil Dakwar.)

Racially Disproportionate Traffic Stops in Ferndale. After receiving multiple complaints from African American motorists who felt that they had been the targets of racial profiling by police officers conducting traffic stops in Ferndale, the ACLU of Michigan requested traffic stop data from the Ferndale Police Department pursuant to the Freedom of Information Act. The documentation we received showed that black motorists are being issued traffic citations in numbers grossly disproportionate to their presence in the local population. Although blacks are less than 10 percent of the Ferndale population, African American motorists received 60 percent of traffic citations written during an 18-month period in 2013 and 2014. Alarmed by these statistics, the ACLU wrote a letter to Ferndale's chief of police in September 2014, asking that the department hire independent experts to investigate the racial disparities and recommend reforms. Although Ferndale's police chief and city manager emphatically denied that their officers engage in racial profiling, they agreed to meet with the ACLU and consider a process for reviewing policies and practices. (ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Gillian Talwar and Lisa Schmidt.)

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

High-Achieving Student Needlessly Threatened With Expulsion. High school senior Atiya Haynes was in advanced placement classes, she was active in numerous extra-curricular school activities, she volunteered in the community, she held part-time employment, and she had been in trouble only for arguing with her girlfriend on one occasion, and on another occasion when her cell phone rang during class. Yet when a school employee pulled a long-forgotten pocketknife from Atiya's purse, the school district's first impulse was to expel her for having a weapon on school premises. The ACLU of Michigan represented Atiya during expulsion hearings in October 2014 so the school board would know that Michigan's "zero tolerance" rules actually allow school officials to forgo expulsion if it is demonstrated that the student had no knowledge that a weapon was in her possession. In Atiya's case, she had been given the knife months earlier by her grandfather who worried for her safety as she rode her bike to work through dangerous areas. She never used it and, unbeknownst to her, the knife had remained buried beneath the ample contents of her purse. After a series of hearings, the school board voted not to expel Atiya, but to suspend her the balance of the school year. Because she was not expelled, she was allowed to enroll in another school district where she is completing her requirements for graduation. (ACLU Attorney Mark Fancher.)

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 worked 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. The program was formally launched as a pilot project in June 2014. Youthful offenders who are charged with auto theft are currently eligible to participate. (ACLU Attorney Mark Fancher; Jeffrey 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 Against the FBI for Racial Mapping Records. 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, we filed a FOIA lawsuit. 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. Unfortunately, Judge Lawrence Zatkoff ruled in favor of the FBI and 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.)

Racial Profiling in Saginaw. In September 2013 the ACLU of Michigan 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 systemic 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. An investigation by the Civil Rights Division of the Justice Department is pending. (ACLU Attorney Mark Fancher.)

LGBT RIGHTS

Same-Sex Partners Can Keep Health Insurance. In 2011 the Michigan legislature passed, and Governor Snyder signed, a mean-spirited bill that made it illegal for most public employers to voluntarily provide health insurance coverage to same-sex domestic partners of employees. The ACLU challenged the law in federal court on behalf of several couples, arguing that it denied them equal treatment under the law. In a major victory for LGBT equality, in June 2013 Judge David Lawson granted a preliminary injunction stopping the law from going into effect. In his 51-page opinion, Judge Lawson concluded that the legislature, in passage the law, was motivated primarily by discriminatory animus against gays and lesbians. In November 2014 Judge Lawson issued a final judgment striking down the law, declaring that it unconstitutionally discriminates against same-sex couples in violation of their rights to equal protection under the law. The State of Michigan has decided not to appeal. (*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.)

Marriage Equality Lawsuit Heads to the Supreme Court. 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 filed a friend-of-the-court brief in support of the plaintiffs, arguing that the Constitution's guarantee of equal protection under the law protects the rights of same-sex couples both to adopt and to marry. The case went to trial in February 2014, and the ACLU provided assistance to the plaintiffs' counsel in cross-examining the state's expert witnesses. In March 2014 Judge Friedman held that Michigan's ban on same-sex couples marrying was unconstitutional. On appeal to the Sixth Circuit, however, a conservative panel reversed Judge Friedman's decision by a vote of 2-1 in November 2014. The Supreme Court is considering whether to take the case. (*DeBoer v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg; National ACLU Attorneys Rose Saxe and Leslie Cooper.)

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

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 represented Ms. Stephens in filing a complaint with the Equal Employment Opportunity Commission (EEOC), arguing that the funeral home, by firing her for presenting as female, engaged in unlawful gender stereotyping in violation of Title VII of the Civil Rights Act. After investigating the case, the EEOC concluded that Ms. Stephens' employer had violated her rights under Title VII and in September 2014 filed a lawsuit on her behalf in federal court. This case, along with another filed the same day in Florida, is the first

time the EEOC has challenged discrimination against transgender employees under Title VII. (*Stephens v. Harris Funeral Home*; ACLU Attorney Jay Kaplan.)

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. In December 2013 the ACLU of Michigan filed a friend-of-the-court brief urging the Michigan Supreme Court to reverse based on the doctrine of "equitable parenthood." The "equitable parent" doctrine allows non-biological parents to petition for custody and visitation when they have a parenting relationship to the child. The lower courts had ruled that equitable parenthood can exist only when the non-biological parent is legally married to the biological parent. The ACLU has argued that equitable parenthood can arise out of committed same-sex relationships. While Milliron's case was pending, we filed another friend-of-the-court brief in a similar case in Kent County. In that case, Laura Stiles co-parented a son with her long-term partner, and after the relationship ended she was seeking shared custody and parenting time. In October 2014 Judge Patrick Hillary agreed with the ACLU and applied the equitable parent doctrine to the same-sex couple in that case. Milliron's Michigan Supreme Court appeal remains pending. (*Stankevich v. Milliron* and *Stiles v. Flowers*; ACLU Attorney Jay Kaplan.)

Social Security Benefits for Legally Adopted Child. Although same-sex couples often have difficulty jointly adopting children in Michigan, some judges have allowed second-parent adoptions, where a non-biological parent joins with a biological parent to adopt a child they are raising together. T.J. McCant adopted the biological child of her same-sex partner in this way in 2005, receiving a valid order of adoption from a Shiawassee County judge. Recently, T.J. became disabled and applied for Social Security benefits that any disabled parent can receive to help raise his or her legal child. An administrative law judge in the Social Security Administration denied benefits, stating that T.J.'s adoption is invalid because unmarried couples are not permitted to jointly adopt children under Michigan law. The ACLU of Michigan represented T.J. in appealing this decision to the Social Security Appeals Council in January 2014. We argued that unmarried couples are allowed to adopt, and in any event once a valid adoption order is issued by a state judge, the child is entitled to the same benefits that would be due to a legally adopted child in any other family. In November 2014 the Appeals Council remanded the case to the local field office for reconsideration of its initial decision. (*In re McCant*; 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. Attempts to reach a resolution with the Secretary of State's office regarding the current policy proved unsuccessful and the ACLU is exploring possible legal options to challenge the current policy.

(ACLU of Michigan Attorney Jay Kaplan; National ACLU Attorneys Chase Strangio and John Knight.)

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 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.)

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.)

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 of Michigan, 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. (ACLU Legal Director Michael J. Steinberg and Legal Fellow Christina Thacker.)

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 federal government and the six ICE agents responsible. In November 2014 Judge Robert Jonker dismissed part of the case in a summary judgment ruling. Thelma's claim against the ICE agents for using excessive force against her is scheduled for trial in 2015. (*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.)

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.)

WOMEN'S RIGHTS

Pregnant Woman Denied Medical Treatment Based on Hospital's Religious Affiliation. In 2013 the ACLU filed a first-of-its-kind lawsuit against the U.S. Conference of Catholic Bishops (USCCB) after a Catholic hospital in Muskegon refused to provide Tamesha Means with necessary treatment or information as she was suffering a miscarriage. The hospital adheres to the 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 that the USCCB and other affiliated persons were negligent in 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. The bishops have filed a motion to dismiss the lawsuit on procedural grounds; the motion was argued in May 2014 and we are awaiting a decision from Judge Denise Page Hood. (*Means v. U.S. Conference of Catholic Bishops*; ACLU of Michigan Attorneys Brooke Tucker, Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Louise Melling, Jennifer Dalven and Alexa Kolbi-Molinas; Cooperating Attorneys Don Ferris and Heidi Salter.)

Hospital Policy Banning Tubal Sterilizations Based on Religion. In October 2014 a woman who was nine months pregnant and scheduled to give birth by C-section at Genesys Hospital in Grand Blanc was suddenly told that due to a new hospital policy she would not be able to obtain a tubal sterilization at the time of her C-section. Tubal sterilization is the most common form of permanent birth control in the world, and it is most safely administered during a C-section. However, because Genesys is a Catholic-affiliated hospital, its policies were being driven by religious directives (see above paragraph) rather than what is safest and medically appropriate for women. Due to Genesys's ban on this medical procedure, women who give birth at this hospital may now be forced to wait until they are healed from their C-section and then find another facility where they will undergo a second surgery that involves more risks and more healing time. In December 2014 the ACLU of Michigan wrote a letter to the Michigan Department of Licensing and Regulatory Affairs urging state authorities to take action against Genesys because its policy violates the standard of care required of licensed health care providers under state and federal law. (ACLU Attorney Brooke Tucker.)

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

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 differently from other employees who are similarly situated in their ability or inability to work. Despite this provision, Hope Healthcare Center refused to accommodate Asia Myers, a pregnant employee with physician-imposed temporary restrictions due to pregnancy complications, even thought it routinely provides accommodations to non-pregnant employees with similar restrictions. Due to Hope Healthcare's failure to provide reasonable accommodations, Ms. Myers was forced to take leave for thirty days, without pay or health benefits, until her physician lifted the restrictions. In October 2013 the ACLU filed a lawsuit on behalf of Ms. Myers alleging the employer's conduct violated the Elliot-Larsen Civil Rights Act as well as the federal Pregnancy Discrimination Act and the Americans with Disabilities Act. The parties are engaged in discovery and a trial is scheduled for September 2015. (*Myers v. Hope Healthcare Center*; ACLU of Michigan Attorney Brooke Tucker; National ACLU Attorney Ariela Migdal; Cooperating Attorney Cary McGehee of Pitt McGehee.)

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; Cooperating Attorney Namita Sharma.)

Attacks on Women's Reproductive Health in the Name of Religion. In several federal lawsuits filed in Michigan, private employers challenged the new requirement under the Affordable Care Act (or "Obamacare") that all employee health insurance plans include birth control prescription coverage. These employers argued that the contraceptive mandate violated their right to religious liberty. 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. However, in June 2014 a 5-4 majority of the Supreme Court ruled in *Burwell v. Hobby Lobby Stores* that owners of closely-held, profit-making corporations can deny employees certain kinds of contraceptives based on the employers' religious beliefs. (*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 Management Co. v. Sebelius*; ACLU of Michigan Attorneys Miriam Aukerman, Sarah Mehta and Michael J. Steinberg; National ACLU Attorneys Brigitte Amiri and Daniel Mach.)

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 Corp.*; ACLU of Michigan Attorney Jessie Rossman; National ACLU Attorney Ariela Migdal; Jocelyn Larkin of the Impact Fund.)

FREE SPEECH

The Juggalos Are Not a Gang. In 2014 the ACLU of Michigan filed a federal lawsuit against the FBI for stigmatizing all fans of a popular hip hop and rap group as a "gang." Dedicated fans of the music group Insane Clown Posse (ICP) refer to themselves as "Juggalos," much like dedicated fans of the Grateful Dead are known as "Deadheads." At concerts and week-long gatherings during the summer, Juggalos from all over the country come together to bond over their shared interest in ICP's music and a nonconformist counter-culture that has developed around this group. Many Juggalos also proudly display ICP logos and symbols on their clothing, jewelry, bumper stickers, and as tattoos. Based on a few criminal incidents involving Juggalos, the federal government has officially designated the Juggalos as a "gang." As a result, completely innocent Juggalos who are not involved in criminal activity are being harassed by police, denied employment, and otherwise stigmatized because of the clothing and tattoos that they use to identify themselves. Among the supporters of almost any group—whether it be a

band, sports team, university, political organization, or religion—there will always be some people who violate the law. But that does not mean the government can designate the entire group as a criminal enterprise. In June 2014 Judge Robert Cleland dismissed our case on standing grounds, and we have appealed. (*Parsons v. U.S. Department of Justice*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Saura Sahu, James Boufides and Emily Palacios of Miller Canfield; Howard Hertz and Farris Haddad.)

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

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

Academic Freedom Threatened by Subpoena in Defamation Case. PubPeer.com is an online forum for scientific discussion and critique of published research. Many of its participants comment anonymously so that they need not fear professional retribution if they criticize the scholarship of their peers, colleagues and future potential employers. Based on that anonymity,

PubPeer's users have highlighted problems with important research papers, often leading to corrections or retractions to the benefit of the scientific community. In October 2014 a prominent scientist at Wayne State University filed a defamation lawsuit against anonymous commenters who had criticized his research on PubPeer's website. Using the court's subpoena power, he demanded that PubPeer disclose any information it had that could help identify the commenters. Since the days of the *Federalist Papers* and *Common Sense*, anonymous speech has been recognized as central to the free-speech tradition. Although truly defamatory speech is not protected by the First Amendment, negative opinions and rhetorical commentary are not defamatory and are entitled to First Amendment protection. The ACLU is representing PubPeer in arguing that the website has a First Amendment right not to disclose the identity of its anonymous users unless and until it can be proved that their speech is not constitutionally protected. We filed a motion to quash the subpoena in December 2013. (*Sarkar v. Doe*; National ACLU Attorney Alex Abdo; ACLU of Michigan Attorney Dan Korobkin.)

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

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 were 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. The ACLU of Michigan filed suit in federal court in 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. In May 2014 Judge Gordon Quist denied the state's motion to dismiss and ruled that the law was facially unconstitutional. The

state then agreed to a consent judgment permanently striking down the law. The "INF1DL" and "WAR SUX" license plates were issued to our clients and can be spotted on Michigan roadways. (*Matwyuk v. Johnson*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg and Law Student Intern Michael El-Zein.)

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. Birmingham immediately 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, Raymond Sterling and Lisa Schmidt.)

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 First Amendment lawsuit in federal court. In 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.)

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 and changed its policies. (*City of Ann Arbor v. Jones*; Cooperating Attorney John Shea.)

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. The ACLU of Michigan filed a friend-of-the-court brief in the Court of Appeals supporting the bloggers' right to remain anonymous unless and until Cooley could prove that their speech was not protected. 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; Cooperating Attorney Bill Burdett.)

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 President Barack Obama, the ACLU of Michigan 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.)

Gag Order in Chicken McNuggets Class Action. Attorneys from Dearborn filed a class action 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. 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*.; ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Genevieve Scott.)

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 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 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*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Genevieve Scott.)

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 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 of Michigan intervened 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.)

Remaining Seated During the Pledge to Protest Racial Injustice. In December 2014 an honor student at West Bloomfield High School decided to remain seated during the Pledge of Allegiance to protest the numerous police killings of unarmed black men. Although the student had never been in trouble before, her civics teacher punished her by sending her to detention. The principal then told the student that she had to report to the office every morning while her classmates recited the pledge. After the ACLU of Michigan emailed a letter to the principal, the superintendent and the school board, the principal immediately apologized to the student, saying that she may, if she wishes, exercise her right to remain seated in silent protest. (ACLU Legal Director Michael J. Steinberg.)

The Right To Predict the Future. Kalamazoo has an old ordinance that makes it illegal to engage in the business of "phrenology, palmistry, or the telling of fortunes." In December 2014 Kalamazoo police officers threatened to enforce this ordinance against Rev. Mark Hassett, a self-described spiritualist minister and practicing pagan, who was planning to perform a spiritual reading with a client at a local bookstore. The ACLU of Michigan wrote a letter to Kalamazoo officials warning that the ordinance is unconstitutional restriction of freedom of speech because the government has no business deciding which spiritual beliefs are "correct" and which are "fraudulent." The city attorney immediately responded and said he was instructing police not to enforce the ordinance, and that he would recommend that the city repeal the ordinance in 2015. (ACLU Attorney Miriam Aukerman and Legal Fellow Marc Allen.)

More Unconstitutional Political Sign Ordinances. Although the law on this issue could not be more clear, every few years another municipality adopts an unconstitutional sign ordinance that places special restrictions on the right to place a political sign in your own front yard. Recently the problem arose in Macomb Township, which passed a new ordinance in March 2014 barring residents from placing political signs on their own property more than thirty days before an election and requiring their removal within seven days after an election. The township imposed no such limitations on signs advertising non-political events; political speech was singled out for disfavored treatment. In June 2014 the ACLU of Michigan wrote a letter notifying the township that if they did not immediately repeal the ordinance, the ACLU would likely go to court to enforce the First Amendment rights of a township resident. After we met with the township's attorney, the ordinance was repealed. In October 2014, Ypsilanti Township stopped enforcing a

similar ordinance in response to an ACLU letter. (ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys David Radtke and Gayle Rosen.)

Political 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. (ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Syeda Davidson.)

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 so it could consider the matter further. (ACLU Attorney Dan Korobkin and Law Student Intern Andrew Goddeeris; Cooperating Attorney Steve Morse.)

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 street or park 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. (ACLU Legal Director Michael J. Steinberg.)

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 the religious Eid meal at the end of Ramadan. Further, although inmates are excused from their prison jobs for many reasons—including doctor appointments, therapy and visitation—MDOC would not release them from work on their Sabbath. In August 2013 Judge Avern Cohn ruled that MDOC was violating the religious freedom rights of Muslim inmates by not allowing them to attend Eid meals and refusing to accommodate their need to attend weekly prayer services. In November 2013 a court-ordered settlement was reached requiring MDOC to provide halal meals. (*Dowdy-El v. Caruso*; ACLU Legal Director Michael J. Steinberg;

Cooperating Attorneys Daniel Quick, Doron Yitzchaki, Trent Collier and Michael Cook of Dickinson Wright.)

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; Cooperating Attorney Christopher Lund.)

"Prayer Station" in Warren City Hall. Unfortunately, the outcome of the nativity scene case (see above paragraph) emboldened Warren to continue favoring religious speech over non-religious speech in violation of the First Amendment. Since 2009, a church group has been using space in the public atrium of Warren's city hall to operate a "prayer station." Volunteers at the prayer station distribute religious literature, discuss their religious beliefs with passersby, and offer to pray with interested members of the public. In order to provide visitors with an alternative point of view to the prayer station, Warren resident Douglas Marshall has asked for a small space in the atrium to set up what he calls a "reason station," where he would distribute atheist literature and offer to discuss his philosophical beliefs with members of the public who wish to learn more about freethought. Mr. Marshall's request was rejected because, according to a letter signed by Warren's mayor, Mr. Marshall's belief system "is not a religion" and is not entitled to the constitutional protections guaranteed for religious belief. The ACLU filed a lawsuit on Mr. Marshall's behalf in August 2014, arguing that expressions of religious belief and non-belief must be treated equally under the First Amendment. In December 2014 Judge Marianne Battani denied the city's motion to dismiss, ordered expedited discovery, and scheduled the case for trial in March 2015. (*Marshall v. City of Warren*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg, and Legal Fellow Marc Allen; National ACLU Attorney Dan Mach; Cooperating Attorney Bill Wertheimer; Alex Luchenitser and Ayesha Khan of Americans United for Separation of Church and State; and Patrick Elliott and Rebecca Markert of Freedom From Religion Foundation.)

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. (ACLU 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 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; National ACLU Attorney Heather Weaver.)

Public School Seeks Teachers for "Christian Setting." Governor Snyder and the Michigan legislature created the Educational Achievement Authority (EAA) to educate students in the lowest performing schools in the state. In February 2014 the EAA publicized a job announcement in Detroit for a pre-school teacher responsible for teaching "early childhood education curriculum in a Christian setting." After the ACLU of Michigan wrote a letter to the EAA Chancellor reminding him of the constitutional prohibition on religious discrimination in public schools, the EAA immediately removed the posting. (ACLU Legal Director Michael J. Steinberg).

VOTING RIGHTS

Petitioning Rights for Non-Michigan Residents. To place an initiative or referendum on the ballot in Michigan, advocacy groups must collect thousands of signatures using volunteers or paid professionals who circulate petitions. The Supreme Court has recognized that the right to collect petition signatures is a form of political speech entitled to maximum protection under the First Amendment. Until 2014, however, only Michigan residents were allowed to circulate these petitions. Similar "resident only" laws in other states have been struck down as unconstitutional by federal courts all over the country. In 2013 the ACLU of Michigan wrote a letter to the Secretary of State's office asking state election officials to end this unconstitutional discrimination against out-of-state petitioners, but no action was taken. In February 2014 we

filed a lawsuit on behalf of the Humane Society and several other organizations challenging Michigan's state residency requirement for petition circulators. Soon after the lawsuit was filed and just a few days before our motion for a preliminary injunction was scheduled to be heard by Judge Robert Cleland, the Michigan legislature rushed through a bill repealing the residency requirement with immediate effect. We therefore voluntarily dismissed the case in April 2014. (*Humane Society Legislative Fund v. Johnson*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Bill Burdett.)

John Conyers Restored to the Primary Ballot. Inexplicably, when the Michigan legislature repealed the residency requirement for collecting petition signatures for voter initiatives and referenda (see above paragraph), it left in place a requirement that individuals collecting signatures for political candidates be registered voters in this state. In May 2014 the Wayne County Clerk and the Secretary of State announced that Congressman John Conyers, who has represented parts of Detroit and surrounding areas in Congress for nearly 50 years, was not eligible for the August 2014 primary ballot because of an error in the voter signature petitions he submitted. Although more than enough valid voter signatures were turned in, some of the individuals who actually circulated the petitions and collected the signatures were not registered to vote. The ACLU of Michigan filed a federal lawsuit to challenge this decision, noting that the U.S. Supreme Court and the Sixth Circuit have already ruled that requiring petition circulators to be registered voters violates the First Amendment right to political speech and association. We represented two of the petition circulators and a resident of Conyers' district who wanted to be able to vote for him in the August primary. After an emergency hearing, Judge Matthew Leitman ruled in our favor and ordered the Secretary of State to put Conyers on the ballot. (*Moore v. Johnson*; ACLU Attorneys Michael J. Steinberg, Dan Korobkin and Brooke Tucker; Cooperating Attorney Mary Ellen Gurewitz of Sachs Waldman; John Pirich and Andrea Hansen of Honigman.)

Democratic Rights Stolen in Benton Harbor. Residents of Benton Harbor who claimed the city's mayor was unresponsive to their needs circulated a petition to have him recalled from office. The county clerk certified the petition in February 2014 and scheduled a recall election for May. However, just before the election the clerk sought an injunction from a judge to postpone the election based on unproven allegations that some petition signers may have signed more than once and the dates for some of the signatures may have been altered. The ACLU of Michigan filed a friend-of-the-court brief arguing that the election should proceed. We argued that once a recall petition is certified, the election should not be cancelled based on late-breaking unproven allegations of wrongdoing; rather, any disputes about the validity of the election should be handled in court after it takes place. Judge John Dewane disagreed with the ACLU and canceled the May election pending a full trial on the merits. After all the evidence was presented, the question of whether the recall petitions were sufficient turned on how a signature should be treated when the same person signed a petition more than once, typically on different occasions separated by many weeks or months. Judge Dewane ruled that because the signing of petitions is core political speech, even those citizens whose signatures appeared multiple times have a First Amendment right to be heard. He ordered that the first of each signer's multiple signatures be counted and the rest discarded. Even with the loss of the duplicate signatures there were enough signatures remaining to make the petition valid, so Judge Dewane ordered that the recall be placed on the ballot for the November 2014 election. The county clerk then filed an emergency appeal, arguing that if someone's signature appeared more than once on a petition,

that person's signature should not be counted at all. The ACLU of Michigan filed a friend-of-the-court brief arguing that the First Amendment required the clerk to count each person who signed as one valid signature, and simply disregard duplicates. Our brief explained that the signature gathering process causes some people to inadvertently sign the same petition more than once, but this was no reason to exclude those people entirely from the political process. Unfortunately, in September 2014 the Michigan Court of Appeals summarily reversed the trial court's decision without explanation and ordered the ballot recall question removed from the ballot. The Michigan Supreme Court declined an emergency request to consider the case. (*In re City of Benton Harbor Mayoral Recall Election*; ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Mark Brewer.)

Emergency Managers Violate International Law. Public Act 436 gives unelected "emergency managers" sweeping, far-reaching powers to displace or in some cases even dissolve local governments and school districts. A coalition of civil rights groups challenged the law in federal court, and the state filed a motion to dismiss. In 2013 the ACLU of Michigan filed a friend-of-the-court brief explaining that under international law, the declaration of a state of emergency allowing the suspension of political rights is permissible only when there is an emergency that "threatens the life of the nation." In other countries where that standard has been met, there have been terrorist activities, general strikes, natural disasters, economic anarchy, civil war and other events on a comparable scale that have essentially shut down the government or the economy. Notwithstanding their economic challenges, Detroit and other Michigan cities under emergency management continue to function; the nature and quality of the "emergencies" in those cities pale in comparison to those that justify the suspension of political rights under international law. Additionally, the implementation of the emergency manager law runs afoul of international law's prohibition of practices that have the "purpose or effect" of racial discrimination. The installation of emergency managers in cities like Pontiac, Flint, Benton Harbor, River Rouge, Highland Park, and of course Detroit disproportionately impact the political rights of people of color. On this latter point, Judge George Caram Steeh denied the state's motion to dismiss. In his November 2014 decision Judge Steeh ruled that the gross disparate impact the emergency manager law has had on African Americans was sufficient to allow plaintiffs the opportuntity to prove that the state intentionally discriminated against them, thereby violating their right to equal protection under the law. (*Phillips v. Snyder*; ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

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, but will not require voters to check a special box for U.S. citizenship. Based on the new law, the ACLU and its coalition partners voluntarily dismissed the lawsuit in May 2013. (*Bryanton v. Johnson*; ACLU Attorney Dan Korobkin; Andrew Nickelhoff and Mary Ellen Gurewitz of Sachs Waldman; Maryann Parker of the SEIU.)

PRISONERS' RIGHTS

Abhorrent Conditions of Confinement 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 are denied feminine hygiene products, so that they bleed into their clothes. In addition, the jail suffers from such extreme overcrowding that large groups of inmates are routinely held for days in tiny holding cells, without a bed or shower. The jail is infested with insects and mice, and sewage backs up into cells. Women inmates are rarely if ever allowed any exercise outside of their cells. After attempting for almost two years to work with Muskegon County to resolve these systemic problems, in December 2014 the ACLU of Michigan filed a class action to bring the jail into compliance with constitutional standards. (*Semelbauer v. Muskegon County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellow Marc Allen; Cooperating Attorneys Kevin Carlson, Andrea Johnson and Beth Rivers 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 postcard. Although most jails say they are trying to prevent contraband, few have documented any serious contraband problems with the mail system because they are already allowed to open and search all envelopes and packages that enter or exit the jail. Such severe restrictions on inmates' ability to communicate with their families and loved ones is also counterproductive to public safety since studies have shown that prisoners are less likely to re-offend when they are able to maintain close ties with families and other support networks in the community. In 2012 the ACLU of Michigan filed a friend-of-the-court brief in a federal lawsuit challenging the Livingston County Jail's postcard-only policy. The case remains pending before Judge Denise Page Hood. (*Prison Legal News v. Bezotte*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Nakisha Chaney.)

Jail Won't Let ACLU Send Letters to Inmates. The Livingston County Jail has a postcard-only policy (see above paragraph), but there is supposed to be an exception for legal mail. In February 2014 the ACLU of Michigan wrote letters to several inmates at the Livingston County Jail advising them of their legal options regarding the postcard-only policy and encouraging them to contact the ACLU about a possible court challenge. Although the ACLU's letters were marked as legal mail and sent by an attorney, the jail refused to deliver them—and did not even inform the ACLU that our letters were being rejected. In March 2014 we filed a federal lawsuit against the jail, and in May 2014 Judge Denise Page Hood issued a preliminary injunction ordering the jail to deliver the ACLU's mail to inmates. Livingston County has filed an appeal which is currently being briefed in the U.S. Court of Appeals for the Sixth Circuit. (*ACLU Fund*

of Michigan v. Livingston County; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Tara Mahoney and John Rolecki of Honigman.)

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

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 the 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 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. We are awaiting a decision from the trial court. (*Hadix v. Caruso*; ACLU Attorney Dan Korobkin; Elizabeth Alexander and Patricia Streeter.)

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 after a court official testified that the judge had a policy of pre-signing child removal orders and instructing the on-duty clerk to simply fill in the blanks in the order based on police allegations. Judge Avern Cohn ruled that the case against the family court judge could proceed because it was unconstitutional for the judge to allow the government to take a child from his parents without any judicial scrutiny, and that portion of the case was settled in April 2014. (*Ratté v. Corrigan*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Amy Sankaran and Matthew Lund, Adam Wolfe and Alice Rhee of Pepper Hamilton.)

Terminating the Rights of Parents Without a Finding of Unfitness. In 2013 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Supreme Court on behalf of Lance Laird, who was denied custody of his children even though there was no adjudication establishing that he was an unfit parent. Mr. Laird was separated from the mother of his young children, who pleaded no contest to neglect and abuse. Although Mr. Laird was not found to have done anything wrong, the court ordered that he attend parenting classes and counseling and

submit to drug testing order to obtain custody of his children. The trial court's ruling was based on the "one-parent doctrine," which provided that once the court assumed jurisdiction over a child based on the wrongdoing of one parent, it had authority to deprive the other parent of his or her rights as well, even if the parents were separated and only one parent was accused of wrongdoing. Joining with a coalition of family advocacy organizations, the ACLU brief argued that it violates due process for the state to take away a parent's right to care for his or her children without a formal adjudication that the parent is unfit. In June 2014 the Michigan Supreme Court agreed and declared that the one-parent doctrine was unconstitutional. (*In re Sanders*; Cooperating Attorney Amy Sankaran; Beth Kerwin and Brock Swartzle of Honigman.)

Retroactive Application of Registration Law. Major changes to Michigan's sex offender registration law that went into effect in 2011 were applied retroactively to individuals who were convicted years or even decades before the 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 of Michigan 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 challenging the new law. In 2013 Judge Robert Cleland dismissed some claims, including the claim that it is unconstitutional to apply the law to individuals who were convicted prior to passage of the new law. However, the judge allowed other claims to go forward, including claims 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. Final proofs and briefing were submitted to the court in August 2014 and we are awaiting a decision. In addition to providing direct representation in the federal case, in November 2014 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals on behalf of a man who was retroactively required to register for an offense committed in 1990 due to a conviction for a non-sexual offense committed in 2013. (*Doe v. Snyder* and *People v. Tucker*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Sofia Nelson and Marc Allen; Cooperating Attorney William Swor; U-M Clinical Law Professor Paul Reingold.)

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 included 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 2013 the Michigan Supreme Court announced that it would consider overruling *Bender*. 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. Unfortunately, in June 2014 the Michigan Supreme Court overruled *Bender*, diminishing the constitutional protections provided to suspects accused of crimes. (*People v. Tanner*; ACLU Attorney Dan Korobkin and Law Student Intern Eliza Perez Facio; Eve Brensike Primus for CDAM.)

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 of Michigan filed a federal lawsuit so that R.V. could return to work. We argued that the state reneged on the plea agreement it made with R.V., and that R.V. was being denied equal protection of the laws because she was barred 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.)

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." 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 2013 the Michigan Supreme Court agreed to hear a case that implicated this question. 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.)

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 2012 the ACLU of Michigan 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.)

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.)

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 of Michigan, 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 were 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 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.)

SEARCH AND SEIZURE

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 2013 the ACLU brought a federal lawsuit to enjoin the practice of using these letters to make arrests without the individualized probable cause required by the Fourth Amendment. The plaintiffs include Jacob Manyong, who allegedly "trespassed" when his vehicle entered a business parking lot for several seconds as he pulled out of an adjacent public parking lot, and Kirk McConer, who was arrested for "trespassing" when he stopped to chat with a friend as he exited a store after buying a soda. An expert commissioned by the ACLU to analyze trespass incidents in Grand Rapids found that African Americans are more than twice as likely to be arrested for trespassing than whites. Both parties filed motions for summary judgment in October 2014 and we are awaiting a decision from Judge Paul Maloney. (*Hightower v. City of Grand Rapids*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg, Legal Fellow Marc Allen, and Civil Liberties Fellow Joe

Granzotto; National ACLU Attorney Jason Williamson; Cooperating Attorneys Bryan Waldman and Julia Kelley.)

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 of Detroit filed for bankruptcy. (*Mobley v. City of Detroit*; ACLU Attorneys Dan Korobkin, Sarah Mehta and Michael J. Steinberg; Cooperating Attorneys Bill Goodman, Julie Hurwitz and Kathryn James of Goodman & Hurwitz.)

Impossible Bond Requirement in Forfeiture Case. When police officers in Alpena searched Carmen Villeneuve's house in August 2014 because they believed she was selling marijuana, they seized all of Ms. Villeneuve's money—every last penny. Although forfeiture laws allow the government to confiscate assets that are tied to illegal activity, Ms. Villeneuve says the money in question came from her disability payments and a car accident settlement, not drug activity. The problem is that under Michigan law, Ms. Villeneuve cannot even make this argument in court unless she first posts a bond equal to 10 percent of the value of the seized property. Because the state is currently in possession of all her assets, she was unable to post the bond, and the court ordered her property forfeited to the state without ever considering whether the government could prove that the money it had taken was tied to illegal activities. In November 2014 the ACLU of Michigan entered the case and filed a motion for reconsideration on Ms. Villeneuve's behalf, arguing that the mandatory bond requirement is unconstitutional because it deprives indigent individuals of their property without due process of law. (*In re Forfeiture of $19,940*; ACLU Attorneys Miriam Aukerman and Dan Korobkin.)

Detroit Police Hire Architects of NYPD's Unconstitutional Stop-and-Frisk Program. The ACLU of Michigan was troubled by news reports that the Detroit Police Department 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. In 2013 the ACLU sent a letter outlining its concerns to Detroit's police chief. The letter included a Freedom of Information Act request for documents concerning stop-and-frisk policies as well as details regarding the relationship between the police department and the consultants. The documents we eventually received indicated that the Manhattan Institute had been paid more than $600,000 for a six-month contract. Additionally, we learned that the consultants advised community members that because dirty gasoline stations owned by Chaldeans are sites of carjackings and other crimes, the neighborhoods of these business owners should be picketed. Our investigation prompted a second ACLU letter in April 2014, this time directed to Governor Snyder, the only elected official with supervisory powers over the emergency manager in charge of Detroit. The letter warned that Detroit is unable to afford to pay hundreds of thousands of dollars for racially divisive consulting services, and pointed out that such an imprudent use of public funds may have been avoided had a democratically accountable city council been required

to sign off on the contract. When the consulting contract expired it was not renewed. (ACLU Attorney Mark Fancher; Cooperating Attorney Ralph Simpson.)

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 a 2013 ACLU of Michigan 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.)

DRUG LAW REFORM

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 sued each of these cities, arguing that their ordinances violate state law, but the cities argued that they don't have to follow state law because marijuana is still illegal under federal law. In a unanimous 8-0 decision and a victory for medical marijuana patients throughout the state, the Michigan Supreme Court ruled in February 2014 that Michigan cities cannot ban medical marijuana through a local ordinance, nor can they use federal law as an excuse to disregard the MMMA. (*Ter Beek v. City of Wyoming, Lott v. City of Livonia, Lott v. City of Birmingham*; ACLU Attorneys Dan Korobkin, Miriam Aukerman and Michael J. Steinberg, and Legal Fellow Zainab Akbar; Cooperating Attorneys Michael Nelson, Andrew Nickelhoff and Jerold Lax.)

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

J. Steinberg; Rick McHugh from the National Employment Law Project and Steve Grey from the Michigan Unemployment Insurance Project.)

Decriminalizing Grand Rapids. In 2012 Grand Rapids became one of several cities in Michigan where the voters have chosen to decriminalize the possession and use of marijuana. 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 filed a lawsuit to have the measure struck down, claiming that it is preempted by state law. The trial court rejected the prosecutor's claims and dismissed the lawsuit, but the prosecutor appealed. The ACLU of Michigan filed a friend-of-the-court brief with the Michigan Court of Appeals in 2013, arguing that the decriminalization measure is not preempted because localities have discretion to allocate their limited law enforcement resources as they see fit. The ACLU also directed the court's attention to new data showing that racial disparities in marijuana arrests are higher in Kent County than almost anywhere else in the country, thereby providing voters in Grand Rapids with another good reason to place reasonable restrictions on local law enforcement. The case was argued in November 2014 and we are awaiting a decision. (*Kent County Prosecuting Attorney v. City of Grand Rapids*; ACLU Attorneys Dan Korobkin and Miriam Aukerman; Cooperating Attorney Joslin Monahan.)

SAFE AND FREE

American Woman Removed from Plane and Strip Searched. On September 11, 2011, a woman of Middle Eastern and Jewish descent named Shoshana Hebshi was sitting in the same row as two men of Indian descent on a Frontier Airlines flight from Denver to Detroit. When the Indian men got up to use the bathroom 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. In 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. In 2014 Judge Terrence Berg denied the airline and government's motions to dismiss the case, stating that there is no "suspected terrorist activity exception" to the Constitution. Judge Berg ruled that if the facts alleged in the lawsuit are true, Ms. Hebshi's rights to be free from racial discrimination and her right to be free of unreasonable searches were clearly violated. (*Hebshi v. United States*; ACLU of Michigan Attorneys Michael J. Steinberg and Sarah Mehta; National ACLU Attorneys Rachel Goodman and Dennis Parker; Cooperating Attorneys Shelli Calland, Arjun Sethi and Sarah Tremont of Covington & Burling, and Bill Goodman, Julie Hurwitz and Miriam Nemeth of Goodman & Hurwitz.)

CIA Spies on U-M Professor/Bush Critic in Attempt To Discredit Him. *The New York Times* printed a front-page story in 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.)

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 2012 the U.S. Supreme Court ruled in *Miller v. Alabama* that mandatory laws that impose automatic life-without-parole punishments on juveniles are unconstitutional. In Michigan, however, the state has refused to apply the *Miller* ruling to juveniles who are already in prison, insisting that they are not entitled to resentencing and must never even have their cases reviewed by a parole board. 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 2013 Judge John Corbett O'Meara agreed with the ACLU and ruled that all juveniles serving mandatory life sentences must be given parole hearings. The state's appeal of his decision is pending before the U.S. Court of Appeals for the Sixth Circuit, which will hear argument in January 2015. The ACLU also filed a friend-of-the-court brief with the Michigan Supreme Court in 2014 arguing that *Miller* must be applied retroactively. In July 2014 the Michigan Supreme Court refused to give *Miller* retroactive effect, but in December 2014 the U.S. Supreme Court agreed to decide the issue in an appeal arising from Louisiana. (*Hill v. Snyder*; *People v. Carp*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Steven Watt, Ezekiel Edwards and Brandon Buskey; Deborah LaBelle and U-M Clinical Law Professor Kimberly Thomas.)

Lawsuit Needed To Get Suspension and Expulsion Data. As part of our school-to-prison pipeline work, the ACLU of Michigan filed a public records request with the Detroit Public Schools seeking, among other things, data about student suspensions and expulsions, referrals of students to law enforcement, and policies and procedures for disciplinary hearings. After the school district refused to provide numerous documents and demanded excessive fees for the documents it did agree to provide, we filed a lawsuit in August 2013 based on this 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, and in December 2014 the court ordered the district to pay our attorneys' fees. (*Monts v. Detroit Public Schools*; Cooperating Attorney Ralph Simpson.)

Challenging 6 P.M. Curfew for Minors. Each year the Detroit City Council passes an "emergency" curfew making it a crime for minors to leave their homes without their parents after 6 p.m. on fireworks night in late June. Although the ordinance is adopted to prevent problems during the Independence Day celebration on the Detroit River, the curfew applies anywhere

within Detroit's 139 square miles. Further, there are no exceptions for minors engaging in First Amendment-protected activities such as attending church or attending youth group meeting, and parents cannot even give their 17-year-old permission to walk down the block to visit friends or relatives or go to the fireworks with a grandparent. The ACLU sent a letter in June 2014 advising the city that the curfew was overbroad and unconstitutional, yet the city persisted in arresting numerous minors for violating the curfew. It remains unclear whether the city will enact another emergency curfew ordinance in 2015. (ACLU Legal Director Michael J. Steinberg,Wayne State Law School Civil Rights Clinic Students Joshua Zeman and Zainab Sabbagh, and Legal Intern Jessica Frisina.)

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. Judge Lawrence Zatkoff dismissed the case, reasoning that the Frys could not bring a lawsuit because they did not first exhaust administrative remedies. We appealed, and the case was argued in October 2014 in the U.S. Court of Appeals for the Sixth Circuit. (*Fry v. Napoleon Community Schools*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Gayle Rosen, Denise Heberle, and Peter Kellett, James Hermon and Brandon Blazo of Dykema.)

OPEN GOVERNMENT

Legislating Behind Closed Doors. Senior Judge and Detroit legend Damon Keith once wrote, "Democracy dies behind closed doors." In an event that is believed to be unprecedented in Michigan history, public access to the Capitol building was closed off on December 6, 2012 just as a highly controversial right-to-work law was being introduced. For over four hours, members of the public—including union members, journalists, lobbyists, and other concerned citizens—were prevented from going inside as debates were occurring and votes were cast. Although law enforcement claimed that protesters had caused overcrowding, video and photographic evidence showed that there was plenty of room inside. It was later discovered that Republican legislative staffers were ordered to occupy seats in the public galleries to make sure that union members and other interested citizens could not attend. Working with a coalition of labor unions, the ACLU

of Michigan filed a lawsuit in January 2013 based on the legislature's violation of the Open Meetings Act, which requires all public bodies in Michigan to deliberate and cast votes in open sessions that are accessible to the public. If the ACLU proves that the Open Meetings Act was violated, the court would have the discretion to invalidate the right-to-work law. Judge William Collette denied the state's motion to dismiss the case in 2013, and the Michigan Court of Appeals rejected the state's application for an immediate appeal, allowing the ACLU's claims to go forward. The case was then transferred to the Michigan Court of Claims, where we are awaiting a final ruling from Judge Deborah Servitto. (*Cook v. State of Michigan*; ACLU Attorneys Kary Moss, Michael J. Steinberg and Dan Korobkin, and Legal Fellow Christina Thacker; Cooperating Attorneys Bryan Waldman, Genevieve Scott, and Michael Pitt and Kevin Carlson of Pitt McGehee; Art Przybylowicz, Jeff Donahue, Michael Shoudy, John Canzano and Andrew Nickelhoff.)

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 2013 the ACLU of Michigan filed a friend-of-the-court brief in the U.S. Court of Appeals for the Sixth Circuit, which heard the retirees' case in an "en banc" appeal. The ACLU's brief argued that the emergency manager's actions violate the provision of the U.S. Constitution that prohibits the impairment of contracts. In May 2014 the Sixth Circuit remanded the case to the district court for additional fact-finding and analysis on the contracts claim and other issues. (*City of Pontiac Retired Employees Ass'n v. Schimmel*; ACLU Attorney Dan Korobkin; Cooperating Attorney Avani Bhatt.)