ACLU Michigan

LEGAL DOCKET
FALL 2024

The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2023 and 2024.

CRIMINAL LAW REFORM

Bail Reform. Tens of thousands of people in Michigan are locked up in jail, before being tried or convicted of any crime, because of cash bail. Throughout the state, it is common for judges to require people who have been arrested to post cash for their release—in other words, to buy their freedom—or else remain incarcerated while they await trial, even for very minor charges. In 2019 the ACLU filed a federal class action lawsuit against the 36th District Court in Detroit, arguing that this practice is unconstitutional because it creates a two-tiered legal system in which the freedom of a person who is presumed innocent depends entirely on their ability to afford bail, a clear violation of due process and equal protection. Locking people up while they await trial inflicts devastating harm on the lives of people who are arrested and their families, including job loss, child custody issues, eviction, and missed medical or educational commitments. This practice also coerces many defendants accused of lesser crimes to plead guilty just to get out of jail. And the harm caused by using cash bail falls disproportionately on people of color, who already bear the brunt of overpolicing and racism in the criminal legal system. In July 2022, after years of negotiations, we announced a historic settlement agreement with the 36th District Court that will overhaul the bail system in Detroit. The agreement is designed to drastically reduce pretrial detention, limiting cash bail to cases where a judge finds, based on evidence specific to a particular individual, that the individual would present a flight risk or danger to the public if released. The agreement will last between three and five years, involves regular reporting of data, and is expected to be a model for reforming bail systems in Michigan and around the country. Following a trial period, the agreement was fully implemented beginning in May 2023. Significant improvement in bail practices have already occurred, and we continue to work with the 36th District Court to reduce pretrial detention in Detroit. During the time that the agreement has been in place, violent crime rates have significantly declined in Detroit, consistent with academic studies showing that bail reform improves public safety. (*Ross v. Chief Judge of the 36th District Court*; ACLU of Michigan Attorneys Phil Mayor and Dan Korobkin, with investigator Giancarlo Guzman; National ACLU Attorneys Brandon Buskey and Trisha Triglio; co-counsel Twyla Carter of the Legal Aid Society, Amia Trigg of the Legal Defense Fund, and Aaron Lewis, Kathryn Irwin Bronstein, Mariah Watson, and Rachel Favors of Covington & Burling.)

Police Taking Photographs and Fingerprints Without Probable Cause. Keyon Harrison, an African American 16-year-old, was walking home from school when he saw another youth with a model truck and paused to look at it. Grand Rapids police, who later claimed that two youth looking at a toy truck is so suspicious that it justifies a police investigation, stopped Keyon, took his picture, and fingerprinted him. Even though Keyon did nothing more than admire a toy, his picture and fingerprints were placed in a police database. The Grand Rapids police used this "photograph and print" procedure on about 1,000 people per year, many of whom are African American youth. Keyon and Denishio Johnson, another African American youth who was similarly printed and photographed, sued to end the practice. In 2017 the Michigan Court of Appeals issued a decision holding that the City of Grand Rapids could not be held liable because its policy only allowed, but did not require, the police to take photographs and fingerprints—a decision that would make it much harder to hold municipalities accountable for civil rights violations in state court. The ACLU of Michigan took over direct representation in the case and appealed to the Michigan Supreme Court. In 2018 the Supreme Court issued a major decision on municipal liability in favor of our clients, holding that cities can be held liable for authorizing

unconstitutional conduct by their employees. The case was then remanded, and in 2019 the Court of Appeals ruled that forcing someone to provide their fingerprints is not a search under the Fourth Amendment. We appealed again, and in July 2022 the Michigan Supreme Court reversed, holding that fingerprinting is a search and the Grand Rapids policy violated the Fourth Amendment. The remainder of the case settled for damages and attorneys' fees in January 2023. (*Johnson v. VanderKooi*; ACLU of Michigan Attorneys Miriam Aukerman and Dan Korobkin; National ACLU Attorneys Nathan Freed Wessler and Ezekiel Edwards; Cooperating Attorneys Margaret Hannon, Ted Becker, and David Moran of U-M Law School.)

Youth Sentenced to Die in Prison. For over a decade, the ACLU has fought against Michigan's cruel policy of allowing youth to be sentenced to life in prison without the possibility of parole. In 2010 we filed a class action lawsuit in federal court challenging the practice as unconstitutionally cruel and unusual punishment, resulting in a 2018 victory allowing hundreds of youth to be considered for early release and an eventual settlement in 2020. In 2021 and 2022 we joined the Juvenile Law Center in filing friend-of-the-court briefs in multiple cases that had reached the Michigan Supreme Court. In a series of opinions released in July 2022, the Michigan Supreme Court agreed with our position that the Michigan Constitution provides greater protections to youth facing life sentences. The Court held that a life sentence cannot be automatic for 18-year-olds, and judges must consider their youth at sentencing like they would for those under 18. The Court also held that for children charged with lesser, second-degree offenses, a life sentence (including with the possibility of parole) is categorically unconstitutional and cannot be imposed. Finally, in cases where prosecutors are still allowed to seek life-without-parole sentences for youth, the Court held that they must meet a "clear and convincing evidence" burden of proof. Hundreds of youth will now be eligible for resentencing based on these new, more protective, constitutional rules. In November 2023 we filed another friend-of-the-court brief in the Michigan Supreme Court urging the court to eliminate life without the possibility of parole sentences for juveniles once and for all. (*Hill v. Snyder*; *People v. Poole*; *People v. Stovall*; *People v. Taylor*; *People v. Paredes*; ACLU of Michigan Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; National ACLU Attorneys Steven Watt and Brandon Buskey; co-counsel Marsha Levick and Riya Saha Shah of the Juvenile Law Center, Tessa Bialek and Sarah Russell of Quinnipiac University School of Law, and Deborah LaBelle.)

Retroactive Punishment Under Registration Law. For over a decade, the ACLU of Michigan has been challenging Michigan's sex offender registration law which has barred people with past offenses from living and working in large portions of the state, and has subjected them to ongoing supervision and reporting requirements, in many cases for life, all without any consideration of individual circumstances. In 2012 the ACLU of Michigan, working with the University of Michigan's clinical law program, challenged the law in federal court on behalf of six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens, one of whom he has since married. In 2016 the Sixth Circuit issued a groundbreaking decision ruling that the retroactive application of the amendments to those convicted before 2011 violates the United States Constitution's rule against ex post facto laws. But despite the Sixth Circuit's ruling, Michigan failed to bring its registry into compliance, leaving tens of thousands of other registrants at risk of prosecution unless they complied with the law's onerous and unconstitutional requirements. Therefore, in 2018 we filed a class action lawsuit to ensure that all Michigan registrants obtain the benefit of the rulings in the earlier case. In 2020 Judge Robert Cleland ruled in favor of the class. Judge Cleland further

ruled that the statute's exclusion zones and certain reporting requirements are unconstitutionally vague for all registrants, and that strict liability prosecutions under the law are impermissible. In 2021 the Michigan Supreme Court, in a case where we filed friend-of-the-court briefs, also ruled that retroactive application of the statute is unconstitutional. Unable to enforce the old law, the legislature passed a new version which made only minor tweaks. In February 2022 we filed another class action challenging the revised law. Cross-motions for summary judgment were filed in late 2023. Meanwhile, the Michigan Supreme Court, in another case where we filed friend-of-the-court briefs, held in July 2024 that the revised law is cruel or unusual punishment when applied to people who were not convicted of sex offenses. (*John Does #1-5 v. Snyder*; *John Does #1-6 v. Snyder*; *John Does A-H v. Whitmer*, *People v. Betts*; *People v. Lymon*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Syeda Davidson, Monica Andrade, Elaine Lewis, Rohit Rajan, and Dayja Tillman; Cooperating Attorneys Paul Reingold of U-M Law School and Roshna Bala Keen, Lauren Carbajal, and Imani Franklin of Loevy & Loevy; co-counsel Alyson Oliver and Cameron Bell of Oliver Law Group.)

The Right to Federal Postconviction Review. Anyone who is in state custody pursuant to a state-court conviction has the right to file a petition for habeas corpus in federal court to review the constitutionality of their conviction or sentence. Traditionally, federal courts have ruled that someone who faces significant restraints on their freedom is "in custody" for purposes of being able to seek federal court review. However, in the case of Frank Corridore, a federal district court ruled that his sentence of lifetime electronic/GPS monitoring and sex offender registration do not satisfy the "in custody" requirement because the restraints on his freedom were not significant. In 2022 the ACLU filed an appeal on behalf of Mr. Corridore in the Sixth Circuit, arguing that lifetime monitoring and registration sentences are significant enough restraints on liberty to qualify a case for federal review. Mr. Corridore has his every movement tracked by state officials, must report in person four times a year, cannot travel anywhere that lacks good GPS reception or electricity, and is subject to public humiliation because he must wear an ankle monitor for the rest of his life. Unfortunately, in June 2023 the Sixth Circuit held in a 2-1 decision that Mr. Corridore was not "in custody." Judge Karen Nelson Moore, dissenting, wrote that "the result of the majority's opinion is that an individual subject to highly invasive lifetime supervision resulting from a constitutionally defective conviction or sentence will have no recourse to vindicate their rights in federal court." (*Corridore v. Washington*; ACLU of Michigan Attorneys Rohit Rajan, Dan Korobkin, Miriam Aukerman, and Dayja Tillman; National ACLU Attorneys Yazmine Nichols, Allison Frankel, and Trisha Trigilio.)

Funding Michigan's Court System. Unlike most public services, which are financed by taxes, our court system relies heavily on collecting crippling fines, fees, and costs from low-income criminal defendants to operate. This unjust system disproportionately impacts people of color, who are overpoliced and overcharged in our criminal legal system. It also undermines the perception that judges are impartial arbiters, as they have an incentive to find defendants guilty and impose high fines and fees because the money is needed to operate the court system. Working with the Detroit Justice Center and Street Democracy, in 2021 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals in a case challenging this practice as unconstitutional because it violates the due process right to a fair and impartial judiciary. In May 2021 the Court of Appeals rejected our argument. However, in October 2021 the Michigan Supreme Court requested briefing in another case raising similar issues, and we filed another friend-of-the-court brief and participated in oral argument, this time arguing that

separation-of-powers principles prohibit judges from raising revenue for the courts because it is the legislature's job to fund the government. In June 2022 the Court announced it would set the case for additional briefing and reargument, and we filed another friend-of-the-court brief in January 2023. Unfortunately, in July 2023 the Court dismissed the appeal without ruling on the merits. Two justices dissented, stating that the Court should have reached our arguments and ruled in our favor. Three justices, concurring in the dismissal, declined to say whether the funding scheme at issue was constitutional, but opined that the legislature should be given an opportunity to amend the statute. If the legislature retains this constitutionally suspect funding structure beyond 2024, the Court left the door open to revisiting the issue in a similar case. (*People v. Lewis*; *People v. Johnson*; *People v. Edwards*; ACLU Attorneys Phil Mayor, Bonsitu Kitaba-Gaviglio, and Dan Korobkin; co-counsel Rubina Mustafa of the Detroit Justice Center, Jayesh Patel of Street Democracy, Angela Tripp and Robert Gillett of the Michigan State Planning Body, and Ann Routt of Legal Services Association of Michigan.)

Detaining People Based on the Smell of Marijuana. Now that marijuana is legal in Michigan, smelling like marijuana is no longer a bona fide indication that you recently committed a crime. However, Detroit police officers nonetheless detained a driver and her passenger after allegedly smelling marijuana coming from their parked car. After detaining them, the officers found a gun under the passenger's seat. The passenger filed a motion to exclude evidence of the gun in the trial court, arguing that the mere smell of marijuana, a lawful substance, did not justify his detention in the first place. The trial court agreed, the Court of Appeals affirmed that decision, and the Michigan Supreme Court agreed to hear the case. In May 2024 the ACLU of Michigan, joined by the Legal Defense Fund and the Michigan NAACP, filed a friend-of-the-court brief explaining that the mere smell of marijuana cannot give rise to probable cause or reasonable suspicion to conduct a police stop or detention. We were granted special permission to participate in oral argument scheduled for September 2024. (*People v. Armstrong*; ACLU Attorneys Ramis Wadood, Phil Mayor, and Dan Korobkin; co-counsel Jin Hee Lee, Christopher Kemmitt, Kacey Mordecai, Molly Cain, and Kimberly Saltz of the Legal Defense Fund.)

The Junk Science Behind Drug Recognition Experts. Now that marijuana is legal in Michigan, it is illegal for drivers to be impaired by marijuana use, but it is not illegal for unimpaired drivers to merely have some marijuana left over in their system. Responding to this change in the law, some law enforcement agencies are sending its officers to testify against drivers in court as so-called "drug recognition experts" claiming special expertise in detecting drug impairment. In 2022 the Michigan Court of Appeals invited the ACLU of Michigan to file a friend-of-the-court brief addressing whether such testimony is admissible. We filed a brief surveying the scientific literature and arguing that such testimony should not be admissible under the rules of evidence. We explained that the techniques being used have not been rigorously tested or subjected to peer review by scientific experts, the available evidence shows that the techniques often falsely detect drug impairment, and the vast majority of scientific experts have rejected it as a reliable tool. Our arguments were successful; in November 2022 the Court of Appeals held in a 2-1 decision that drug recognition experts are not qualified to give expert testimony regarding drug intoxication. In September 2023 the Michigan Supreme Court declined the prosecutor's request to review the Court of Appeals' decision. (*People v. Bowden*; ACLU Attorneys Ramis Wadood, Rohit Rajan, Phil Mayor, and Dan Korobkin; co-counsel Jessica Zimbelman of the State Appellate Defender Office.)

Children Forced to Register as Sex Offenders for Life. Michigan has required children as young as 14 to register as sex offenders if they are adjudicated of having committed a sexual offense, even though such offenses often reflect children's immaturity and even though social science research conclusively shows that children with past sex offenses are highly unlikely to reoffend. The ACLU of Michigan, together with the Juvenile Law Center, filed a friend-of-the-court brief in February 2023 urging the Michigan Supreme Court to overturn a ruling of the Court of Appeals that registration of children does not violate the Michigan Constitution's prohibition against cruel or unusual punishment. Our brief argued that youth registration has devasting consequences and that it undermines public safety. In April 2023 the Michigan Supreme Court vacated the opinion of the Court of Appeals and remanded for that court to consider whether, in light of amendments to the registration statute, the youth involved in the case was no longer required to register. (*In re M.D.*; ACLU Attorneys Miriam Aukerman and Dan Korobkin; co-counsel Marsha Levick, Riya Saha Shah, and Vic Wiener of the Juvenile Law Center.)

Removing Barriers for People with Criminal Records. About 2.8 million people in Michigan have criminal records—records that affect their ability to get employment, housing, and an education, as well as to be involved in their children's lives. Expungement, a legal process where the court can set aside a past conviction, provides a path to a new life without the stigma and obstacles of a criminal record. After the Michigan Supreme Court announced that it would consider a case that will determine the legal standard for granting expungements, the ACLU of Michigan joined other advocacy groups in filing a friend-of-the-court brief in June 2023. The expungement statute requires that setting aside the conviction must be "consistent with the public welfare." Our brief argues that this requires balancing the benefits to society of expungement against any possible costs, and explains that those benefits include improved employment and housing opportunities for people whose records are set aside. In July 2024 the Supreme Court issued an opinion agreeing that "public welfare" requires considering the benefit to the public as a whole, and that an expungement cannot be denied simply because the victims in a case opposed it. (*People v. Butka*; ACLU Attorneys Miriam Aukerman and Dan Korobkin; co-counsel Mira Edmonds and student attorney Gabe Chess of U-M Law School, and Kimberly Crawford of the Michigan Advocacy Project.)

Harsh Mandatory-Minimum Sentencing Laws. In 2018 Congress passed a law known as the First Step Act, which reduced some of the most egregiously harsh mandatory-minimum sentences under federal law. There is now a circuit split on whether those reductions should apply to someone who was originally sentenced before the law took effect but whose sentence was later vacated and remanded for resentencing on some other ground. In December 2023 the ACLU filed a friend-of-the-court brief in the U.S. Supreme Court asking the Court to take the case of Timothy Carpenter, a former ACLU client who is serving a 105-year sentence for committing a series of robberies in which no one was physically harmed, and whose sentence would be reduced to 25 years under the new law. Unfortunately, in February 2024 the Supreme Court denied Carpenter's petition. (*Carpenter v. United States*; ACLU of Michigan Attorney Dan Korobkin; National ACLU Attorneys Emma Andersson, Nathan Freed Wessler, Evelyn Danforth-Scott, Yasmin Cader, Cecillia Wang, and David Cole; co-counsel Clark Neily of the Cato Institute and Shana Tara-O'Toole of the Due Process Institute.)

DISABILITY RIGHTS

Police Take Dog After Owner Calls for Help. Dale Bryant, a Black man and double amputee who uses a wheelchair and lives alone in Taylor, is the loving owner of a German Shepherd puppy named King whom he adopted for companionship and to eventually train as a service animal. One day when King's leg became entangled in his crate and Mr. Bryant was unable to free the dog, he called 911 to make sure the situation did not worsen and lead to an injury. But instead of sending help, the city sent police officers who made derogatory comments about Mr. Bryant's disability, accused him of mistreating King, took King into city custody, and filed criminal charges against Mr. Bryant. After the ACLU of Michigan helped Mr. Bryant retain a pro bono criminal defense attorney, it took nearly four months for charges to be dropped and for King to be returned home. We then discovered that Taylor maintained offensive policies warning its police officers that "persons with disabilities often rely on their disability to attempt to manipulate and control their environment," and that individuals they encounter "may be handicapped, but they are not stupid, and expect you to empathize with their overt condition." Unfortunately, Taylor is only one of many cities where emergency response personnel consist mostly of armed police officers who are trained to charge someone with a crime rather than social service providers equipped to address the needs of people with disabilities. In 2022 we filed a federal lawsuit seeking damages for Mr. Bryant and new training and policies for Taylor police officers. In March 2024 the case was settled after Taylor rescinded its policies, agreed to train its officers on new policies, and paid Mr. Bryant damages. (*Bryant v. City of Taylor*; ACLU Attorneys Syeda Davidson, Mark P. Fancher, and Dan Korobkin; Cooperating Attorney Jennifer Grieco of Altior Law; defense attorney Allison Kriger.)

Retroactivity of Changes to No-Fault Law. In 2019 the legislature enacted major changes to Michigan's no-fault auto insurance law, capping the benefits that can be provided to seriously injured car accident survivors. Thousands of people with lifelong impairments lost access to critical care. In 2023 the Michigan Supreme Court took up a case about whether those limits can be imposed retroactively on people who were injured before the effective date of the act. The ACLU of Michigan led a coalition of organizations in filing a friend-of-the-court brief arguing that the case has constitutional significance because it would impact the ability of people with disabilities to remain independent, exercise their civil rights, and participate as full and equal citizens in our democracy. In our brief, which was joined by multiple organizations dedicated to disability rights and social services, we argued that when important services or benefits are being taken away from a historically disadvantaged group, courts must closely scrutinize whether the legislature clearly intended that to be the case. Since there is no clear statement of the legislature's intent to do so here, the no-fault amendments are not retroactive. In July 2023 the Michigan Supreme Court agreed and ruled that the legislative changes are not retroactive. (*Andary v. USAA Casualty Insurance Co.*; ACLU Attorneys Dan Korobkin and Miriam Aukerman; Cooperating Attorney Leah Litman of U-M Law School; co-counsel Ann Routt of Legal Services Association of Michigan, Angela Tripp of the Michigan State Planning Body, and Kyle Williams and Nicholas Gable of Disability Rights Michigan.)

EDUCATION

Special Education in Flint. In 2016 the ACLU of Michigan and the Education Law Center filed a class action lawsuit against the State of Michigan and local school districts over the systemic failure to provide an adequate education for children with disabilities in Flint. In the wake of the Flint water crisis, in which the population of an entire city (including approximately 30,000 children) was exposed to lead, our investigation revealed that the public school system lacked the resources, support and expertise needed to properly screen children for disabilities, to address the educational needs of children who have or are at risk of developing disabilities, and to ensure that students with disabilities are not unfairly disciplined, restrained, or excluded from public education. In 2017 Judge Arthur Tarnow denied the defendants' motions to dismiss, and the Sixth Circuit rejected the defendants' attempt to bring an interlocutory appeal. In 2018 the state agreed to settle a portion of the case by funding a first-of-its-kind initiative that provided every child in Flint access to an independently run, state-of-the-art screening program designed to detect disabilities associated with lead exposure. Following additional discovery and negotiations, in 2020 we settled the remaining claims in the case. In May 2024 the parties reached an additional agreement regarding the parameters, timing, and other criteria for the use of the settlement funds, allowing the case to be closed in August 2024. The settlement includes $9.69 million from the state to establish a fund for special education services for students impacted by the water crisis, $2 million in additional funding from the county, and a commitment to undertake a comprehensive assessment and modification of Flint-area special education plans and policies. The special education fund will assist with the creation of a pipeline program at the University of Michigan-Flint to educate new special education teachers and social workers with incentives to work in Flint and Genesee County schools after graduation. Additional behavioral and literacy specialists will be hired and available to all children in Flint and Genesee County. The fund will also create an education benefit review board to evaluate and recommend improvements to Flint and other schools' special education programs and will provide support and additional training to teachers. The fund will also be used to conduct a comprehensive independent review of Flint's special education program and provide recommendations for improvements. (*D.R. v. Michigan Department of Education*; ACLU Attorneys Syeda Davidson, Bonsitu Kitaba-Gaviglio, Kristin Totten, and Dan Korobkin, with investigator Giancarlo Guzman; co-counsel Greg Little, Jessica Levin, Elizabeth Athos, and David Sciarra of the Education Law Center, and Lindsay Heck, Michael Jaoude, and Greg Starner of White & Case.)

Public Funding for Private Schools. For over 50 years, Michigan's Constitution has strictly prohibited public aid to and taxpayer funding of private and religious schools. However, in 2016 the legislature appropriated $2.5 million to "reimburse" private and parochial schools for complying with legal requirements that apply to all schools in Michigan. In 2017 the ACLU of Michigan formed a coalition with public school administrators, teachers, and parents to file a lawsuit challenging the constitutionality of the funding, arguing that the appropriation should be struck down because it violates the state constitutional requirement that reserves public education funding exclusively for public schools. In 2018 Michigan Court of Claims Judge Cynthia Diane Stephens ruled in our favor, declared the statute unconstitutional, and issued a permanent injunction prohibiting the state from funding private schools. But the state appealed, and the Michigan Court of Appeals reversed by a vote of 2-1. We then appealed to the Michigan Supreme Court, which affirmed the Court of Appeals ruling in 2020 by an equally divided vote.

The case was then remanded to the Court of Claims for consideration of our additional arguments as to why some or all of the funding is unconstitutional. In February 2022 Judge Stephens entered a final judgment allowing some of the reimbursements but not others. Meanwhile, in September 2021 a new lawsuit was filed in federal court by right-wing groups, challenging the restrictions of Michigan's Constitution as a violation of the United States Constitution, arguing that the restriction is motivated by anti-religious animus. In January 2022 we led the coalition of public school supporters in filing a friend-of-the-court brief in which we argued that Michigan's restriction is constitutional because its purpose and effect is to reserve limited public funds for public schools, not to discriminate against religion. In September 2022 Judge Robert Jonker dismissed the federal lawsuit, but without reaching the merits; he ruled that because the suit was brought in the specific context of a dispute over state tax deductions, it should have been brought in state court. The plaintiffs appealed, and in March 2023 we filed another friend-of-the-court brief in the Sixth Circuit. In November 2023 the Sixth Circuit issued an excellent published opinion agreeing with our position and affirming dismissal of the case. In April 2024 the plaintiffs filed a cert petition with the United States Supreme Court. (*Council of Organizations & Others for Education About Parochiaid (CAP) v. State of Michigan*; *Hile v. State of Michigan*; ACLU of Michigan Attorney Dan Korobkin; National ACLU Attorney Dan Mach; co-counsel Jeffrey Donahue of White Schneider and Brandon Hubbard, Phillip DeRosier, and Ariana Pellegrino of Dickinson Wright, and Alex Luchenitser of Americans United for Separation of Church and State.)

ENVIRONMENTAL JUSTICE

Safe Water for the People of Flint. After the State of Michigan stripped the residents of Flint of their ability to elect local representatives, state-appointed officials decided to use the Flint River as a water source without adding corrosion controls. As a result, lead leached from the water pipes and poisoned the drinking water, causing untold harm to the people of Flint. The ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a federal lawsuit against state and city officials seeking a court order requiring them to comply with the Safe Drinking Water Act. The goal of the lawsuit, filed in 2016, was to require the state and the city to replace the lead pipes and, in the meantime, ensure that officials deliver safe drinking water. Judge David Lawson granted our request for door-to-door bottled water delivery and filter installation, and soon after recommended that the parties enter mediation. In 2017 we reached an unprecedented settlement for $97 million requiring the state and city to replace all lead and galvanized pipes throughout Flint, allocate resources for health and wellness programs, continue door-to-door filter installation and education, and extensively monitor Flint's tap water for lead. We continue to monitor compliance and, when necessary, file motions to enforce the settlement agreement's requirements that Flint complete excavations and replacements of lead pipes at all remaining homes. In February 2023 the court ordered Flint to complete its work by August 2023, but Flint failed to meet the deadline. We consequently filed a motion to hold the city and its mayor in contempt for repeatedly violating the settlement agreement and court orders. In March 2024 the court granted the motion for contempt against the city, ordered the city to set new deadlines for final completion of the work, and awarded attorneys' fees to plaintiffs' counsel. In July 2024 the State of Michigan agreed to take over and complete all remaining pipe replacement and repair work in Flint. (*Concerned Pastors for Social Action v. Khouri*; ACLU Attorneys

Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Sarah Tallman, Dimple Chaudhary, Adeline Rolnick, Jolie McLaughlin, and Jared Knicley of NRDC, and Glenn Simmington.)

FREEDOM OF SPEECH

Free Speech on TikTok. Amanda Carravallah was a TikTok influencer who was outraged by the Supreme Court's decision overruling *Roe v. Wade*. To document her dissent, she created yard signs with provocative language which she placed on her front lawn in Livonia, and filmed herself on TikTok dancing in front of her house in a swimsuit as an assertion of control over her own body. Several neighbors, including a Wayne County family court judge, took umbrage at Ms. Carravallah's protests and called the police. One of the neighbors then sought, and was able to obtain, a personal protection order (PPO) from another judge on the Wayne County family court. The order was issued "ex parte"—without a hearing allowing Ms. Carravallah to be heard or present evidence—and it prohibited her from appearing "in sight" of her neighbor, essentially placing her under house arrest, given that the neighbor lives across the street. In July 2022 the ACLU of Michigan filed a motion to terminate the PPO, explaining that Ms. Carravallah's activities were fully protected by the First Amendment. Because one of the neighbors involved in the matter was a Wayne County judge, the case was transferred to Oakland County Circuit Court. After holding three hearings in the matter, in September 2022 Judge Kameshia Gant agreed with our arguments and terminated the PPO. In January 2023 Judge Gant denied our motion for attorneys' fees but required the neighbor to reimburse us for litigation costs. (*Gordon v. Caravallah*; ACLU Attorneys Phil Mayor and Dan Korobkin; Cooperating Attorneys Allison Kriger and Mark Kriger.)

Landlord Retaliates Against Housing Rights Activists. Moratorium NOW! Coalition is a grassroots activist organization in Detroit that focuses on economic justice issues such as foreclosures, evictions, and utility shutoffs. In 2022 the organization began to call public attention to what it perceived to be extremely poor conditions in low-income housing owned by local landlord Gaston Munoz, whose company has been cited for city violations. Munoz responded by suing Moratorium NOW! and its members, accusing them of defamation and interfering with his business interests. This is a classic case of what's known as a "Strategic Lawsuit Against Public Participation," or SLAPP suit, where a lawsuit is used to retaliate against people who speak out on issues of public concern and deter others from joining them for fear of also being sued. In March 2023 the ACLU of Michigan stepped up to represent Moratorium NOW! and its members to fight back against this abuse of the legal system. Our defense included filing counterclaims against the landlord seeking damages. In August 2024 we reached a favorable settlement agreement that did not require Moratorium NOW! or its members to pay any money or relinquish their First Amendment rights, and in fact required the landlord to pay our clients. (*Munoz Realty v. Flores*; ACLU Attorneys Syeda Davidson, Mark P. Fancher, and Dan Korobkin; co-counsel Kathryn James, Julie Hurwitz, Bill Goodman, and Holland Locklear; defense attorney Allison Kriger.)

Book Banning Is Back. Beginning in 2022 a new wave of hostility to freedom of thought and inquiry erupted throughout the country, including in Michigan, as right-wing organizations and parents intensified efforts to ban books and materials they disfavored from public libraries and public schools. Many of the books targeted are those that feature LGBTQ+ characters and

themes, as well as issues involving race, poverty, disadvantage, and difference. In November 2022 the ACLU of Michigan sent a letter to superintendents and school board presidents throughout the state, warning that banning books from school libraries based on the ideas expressed in those books would violate the First Amendment, and urging all educators to take a stand in favor of inclusivity, openness, and free inquiry for our youth. In March 2023 a controversy erupted in Lapeer regarding the availability of the award-winning book *Gender Queer: A Memoir* in that town's public library; most troubling were public statements by the county prosecutor suggesting that he would consider bringing criminal charges against the librarian if the book was not removed. The librarian retained us as her criminal defense attorneys, and we wrote the prosecutor a letter condemning his statements and warning him that any effort to take action against the librarian would violate the First Amendment. Fortunately, in May 2023 the library's board of directors voted unanimously to keep the book in its collection, and the prosecutor took no action. Meanwhile, in June 2023 we wrote to the Forest Hills Public Schools condemning the superintendent's unilateral removal of books from the school library based on parents' complaints, and also urging the school district to reverse a decision to remove books from the first-grade curriculum because the books included a fictional character who was being raised by two moms. Although the library books were returned to the shelves, the curriculum decision has not been reversed. (ACLU attorneys Jay Kaplan and Dan Korobkin; Cooperating Attorneys John Shea and Charissa Huang.)

Public Officials on Social Media. Social media is the new town square, where public officials and constituents meet to engage in matters large and small. A single social media profile can contain multitudes of posts, supplying everything from official news about a public health crisis, government meetings and elections, to highly personal matters like birthdays, pet photos and home improvement projects. When public officials act in their private capacity to communicate through these tools, the First Amendment protects their freedom of speech. When public officials act under color of law, however, the First Amendment's restrictions on government censorship and retaliation also constrain their ability to block constituents and delete their comments. In August 2023 the ACLU filed a friend-of-the-court brief in the United States Supreme Court in a case that arose out of Michigan which raised the core issue of how to distinguish between a government official's private-capacity use of these tools, which is entitled to First Amendment protections, and his official-capacity use of these tools, which is subject to First Amendment prohibitions. Our brief urged the Court to adopt a test which looks at whether the public official was engaged in official duties and whether a reasonable observer would think he was cloaked in the authority of his office with respect to the action at issue. In March 2024 the U.S. Supreme Court ruled that social media deletions and blocking are subject to First Amendment scrutiny when the official who operates the account has the authority to speak on the state's behalf and purports to exercise that authority through their relevant social media presence. (*Lindke v. Freed*; National ACLU Attorneys David Cole, Evelyn Danforth-Scott, Vera Eidelman, and Esha Bhandari; ACLU of Michigan Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio.)

Campus Protests Over the War in Gaza. The war and humanitarian crisis in Gaza has sparked a wave of protests on college campuses across the country. At the University of Michigan, administrators have responded to political speech and protests with increasingly repressive policies and actions, including shutting down email listservs on which the war was being discussed, removing anti-war posters from graduate students' office windows, canceling a student election on competing resolutions about the crisis, and heavy-handed police responses to

organized protests. In December 2023 the ACLU of Michigan sent a public letter to the University of Michigan expressing its concern about an escalating pattern of the university stifling its students' speech and advocacy. In April 2024 we sent a follow-up letter opposing the University of Michigan's proposed "disruptive activities policy," which would have threatened to impose sanctions on a broad range of speech and protest simply because of its potentially disruptive nature. The University of Michigan abandoned that policy proposal by the end of the summer. In June 2024 we sent a letter to Wayne State University urging them to adopt a policy governing how to responsibly disperse protests that disrupt university operations; the letter came after students staged a protest at an April 2024 meeting of the university's board of governors, only to be quickly removed from the meeting by police officers. (ACLU Attorneys Ramis Wadood, Phil Mayor, and Dan Korobkin).

FREEDOM OF RELIGION

County Threatens to Demolish Amish Homes. When a community of "old order" Amish families moved to a rural area of Lenawee County, many from neighboring communities where they had lived in peace for generations, county officials insisted that they must use running water and modern sewage systems that conflict with the order's religious practice of rejecting the use of modern technology. Despite efforts to educate local officials about the religious practices of the Amish, the county posted notices on Amish homes calling them "unfit for human habitation." In 2019 Lenawee County filed lawsuits against every Amish family in the county asking a court to kick the Amish off their own property and demolish their homes. The ACLU of Michigan stepped in to represent the Amish families and defend their right to adhere to their religious beliefs while not harming anyone else. As part of our defense, we filed counterclaims for violating the Amish families' constitutional rights to religious liberty as well as federal law. Extensive discovery followed, and both Lenawee County and the Amish filed motions for summary disposition in November 2022. In August 2023 the county agreed to a consent judgment that grants essentially all the relief the Amish sought; the Amish will be allowed to continue their traditional ways of life and will not pose any threat to public health or the environment. In addition to providing relief to the Amish, the consent judgment required Lenawee County to pay attorneys' fees to the ACLU and our co-counsel. (*Lenawee County Health Department v. Eicher*; ACLU Attorneys Phil Mayor, Ramis Wadood, and Dan Korobkin; Cooperating Attorney John Shea; co-counsel Rick Schulte, Steve Behnke, Dennis Mulvihill, and Jacob Bender.)

IMMIGRANTS' RIGHTS

Vulnerable Immigrants Freed from Jail During the COVID-19 Crisis. Immigration and Customs Enforcement (ICE) warehouses many immigrants in Michigan jails while seeking to deport them from the country. During a pandemic, this practice was not just inhumane, it could be deadly, particularly for people who are older or have medical vulnerabilities. People in jails were crowded together in unsanitary conditions with no ability to socially distance or protect themselves from the virus, and medical care in jails is notoriously inadequate for people with chronic conditions. In 2020 the ACLU sued ICE, arguing that keeping immigrants with vulnerabilities locked up during the pandemic violates their constitutional right to safe conditions

of confinement. Judge Judith Levy agreed, certified a class of immigration detainees held at the Calhoun County Jail, and adopted a bail application process to decide whether vulnerable class members should remain locked up there. In 2020 and 2021, over 50 medically frail people were freed through the case. Efforts to settle the case in 2022 and 2023 were unsuccessful, and active litigation in the case resumed in April 2024. ICE is now taking the position that it should be allowed to redetain the medically frail people who were ordered release during the pandemic, even though Calhoun has not provided the COVID-19 vaccine to any immigration detainee since May 2023 and those who have been released have been living safely in the community for years. We plan to argue that medical care in the jail remains unconstitutionally inadequate, and that because immigration detention is permissible only to prevent flight or protect the public, people whom the court has individually determined not to be a flight risk or danger and who have been living in the community for years cannot be redetained without a hearing. (*Malam v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, Syeda Davidson, Elaine Lewis, Rohit Rajan, and Ramis Wadood; National ACLU Attorneys Anand Balakrishnan, My Khanh Ngo, Eunice Cho, and Michael Tan; Cooperating Attorneys Jeannie Rhee, Mark Mendelson, Johan Tatoy, and Tanaz Moghadam of Paul Weiss.)

Iraqis Face Torture or Death if Deported. In 2017 hundreds of Iraqis in Michigan and throughout the country were arrested by Immigration and Customs Enforcement (ICE), which intended to deport them immediately to Iraq. Most had been living in the United States for decades, but were previously ordered deported, either for technical immigration violations or for past convictions. Because the Iraqi government had long refused to issue travel documents for potential deportees, the United States has been unable to deport them. But when Iraq agreed to accept some U.S. deportees, suddenly all 1400 Iraqis with an old deportation order were targets. The ACLU filed a class action lawsuit in federal court to stop the deportations on the grounds that they would likely result in persecution, torture or death for those deported. In 2017 Judge Mark Goldsmith issued a preliminary injunction barring deportation of Iraqis while they access the immigration court system, giving them time to file motions to reopen their immigration cases based on the changed country conditions or legal developments in the decades since their cases were decided. Subsequent orders in 2018 required the government to provide Iraqis with bond hearings and release those who had been detained longer than six months, freeing hundreds of people from detention. The government appealed, and in decisions in December 2018 and January 2020 the Sixth Circuit reversed, each time by a vote of 2-1. Despite the legal setbacks in the Sixth Circuit, the case allowed hundreds of Iraqis to access the immigration court system, as well as to fight their immigration case from home, rather than in detention. Many are winning their immigration cases, and some have even become citizens. But a few have been deported, and one of our clients, Jimmy Al Dauod, died in Iraq. After several years of negotiations, the case settled and the court approved the settlement at a July 2024 fairness hearing. The settlement limits when and for how long class members can be detained, and provides other important protections like ensuring that seeking to adjust one's immigration status is not a basis for detention. (*Hamama v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Bonsitu Kitaba-Gaviglio, Dan Korobkin, Monica Andrade, and Elaine Lewis; National ACLU Attorneys Lee Gelernt, Judy Rabinowitz, and Anand Balakrishnan; Cooperating Attorneys Margo Schlanger of U-M Law School, Kimberly Scott, Wendy Richards, Sarah Reasoner and Erika Giroux of Miller Canfield, with support from Katie Witowski and Kacey O'Neill, David Johnson, Linda Goldberg, and William Swor; and co-counsel Nadine Yousif and Nora Youkhana

of CODE Legal Aid, Susan Reed and Ruby Robinson of the Michigan Immigrant Rights Center, and Mariko Hirose of the International Refugee Assistance Project.)

U.S. Citizen Turned Over to ICE for Deportation. The ACLU of Michigan took up the case of Jilmar Ramos-Gomez, a United States citizen and Marine Corps veteran who was wrongfully turned over to Immigration and Customs Enforcement (ICE) for deportation proceedings. Mr. Ramos-Gomez, who suffers from PTSD as a result of his military service in Afghanistan, was arrested by the Grand Rapids police in 2018 after trespassing at a local hospital. An off-duty police captain named Curt VanderKooi saw Mr. Ramos-Gomez's picture on the news and asked ICE to check his "status," despite having no reason to think he was undocumented other than his name and Latino appearance. ICE then issued an immigration detainer request for Mr. Ramos-Gomez, resulting in the Kent County Jail placing him in federal custody until his family could prove he was a U.S. citizen and get him released. An ACLU of Michigan investigation revealed that VanderKooi, who is supposed to have no role in immigration enforcement, had contacted ICE on over 80 occasions, each time asking them to check the immigration status of a person of color. In 2019 VanderKooi was suspended without pay, the Grand Rapids police announced a new policy that prohibits officers from inquiring about a person's immigration status or contacting ICE for civil immigration enforcement, and the City of Grand Rapids settled Mr. Ramos-Gomez's claim for $190,000. Similarly, Kent County adopted a new policy requiring a judicial warrant before turning someone over to ICE. ICE, however, refused to accept responsibility, and we filed suit to hold the officers involved accountable. Judge Robert Jonker dismissed that lawsuit in January 2022 on various grounds, including qualified immunity. In May 2022 we filed a second lawsuit against the United States under the Federal Tort Claims Act seeking damages for Mr. Ramos-Gomez, and that case settled in November 2022. Related lawsuits to obtain public records were settled in February 2024. (*Ramos-Gomez v. Adducci*; *Ramos-Gomez v. United States*; *ACLU of Michigan v. Department of Homeland Security*; *ACLU of Michigan v. Calhoun County Sheriff's Office*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, Elaine Lewis, and Ramis Wadood; Cooperating Attorneys Anand Swaminathan, Joshua Burday, Merrick Wayne, Megan Pierce, and Matthew Topic of Loevy & Loevy; additional attorneys include Julia Kelly, Richard Kessler, and Hillary Scholten.)

Legal Hotline for Immigrant Victims of Police Misconduct. After years of racist rhetoric, anti-immigrant policies and over-policing, immigrants often fall victim to abuse, discrimination, and other forms of misconduct at the hands of police officers and immigration agents. To address this problem and promote accountability, in 2022 the ACLU of Michigan launched a project dedicated to representing immigrant victims of police mistreatment in seeking relief for abuse and harassment they have faced. As a part of this project, we set up the Immigrant Police Misconduct Hotline (313-208-7048) that is available to anyone in Michigan who wants to report instances of police violence, discrimination or surveillance on the basis of their immigration status to the ACLU in a confidential manner. We have received numerous reports of anti-immigrant policing and have assisted multiple callers in seeking accountability. (ACLU Attorneys Ramis Wadood, Monica Andrade, and Phil Mayor.)

LGBTQ RIGHTS

Protection for LGBTQ People Under Michigan Civil Rights Law. In 2019 the Michigan Department of Civil Rights (MDCR) began investigating two companies that refused to provide their services to LGBTQ people. The companies sued MDCR in state court, arguing that Michigan's Elliott-Larsen Civil Rights Act (ELCRA) prohibits discrimination based on sex but not based on sexual orientation or gender identity. The Michigan Court of Claims ruled that ELCRA does prohibit discrimination based on gender identity, but that it was bound by a 1993 Michigan Court of Appeals decision to rule that ELCRA does not prohibit discrimination based on sexual orientation. On appeal, the ACLU of Michigan, joined by national and state LGBTQ organizations, filed a friend-of-the-court brief with the Michigan Supreme Court, urging the Court to bypass the Court of Appeals and take up the case immediately to overrule the 1993 decision and hold that discrimination based on sexual orientation and gender identity are both forms of discrimination based on sex prohibited by ELCRA. The Supreme Court granted the request and allowed the ACLU to participate in oral argument in March 2022. In July 2022 the Court agreed with us and ruled that discrimination on the basis of sexual orientation is sex discrimination in violation of ELCRA. As a result of this decision, LGBTQ people in Michigan have some of the most comprehensive civil rights protections in the country against discrimination in employment, housing, education and public services and accommodations. In March 2023 the legislature codified the decision into law, amending ELCRA's language to explicitly add the protected categories of sexual orientation and gender identity and expression. (*Rouch World LLC v. Michigan Department of Civil Rights*; ACLU Attorneys Jay Kaplan and Dan Korobkin; Cooperating Attorneys Leah Litman and Daniel Deacon of U-M Law School.)

LGBTQ Parents Cut Off From Their Children. Carrie Pueblo and her same-sex partner, Rachel Haas, decided to have a child together by artificial insemination, with Ms. Haas serving as the parent who would carry the child. At the time, Michigan law made it illegal for the couple to marry. The child, born in 2008, was raised by both mothers, but after the parents' relationship fell apart, Ms. Haas denied Ms. Pueblo all contact with their child. Ms. Pueblo filed suit in family court seeking shared custody and parenting time, but both the trial court and Michigan Court of Appeals held that because she is not the child's biological mother, she did not have standing. In May 2022 the ACLU of Michigan led a coalition of organizations in filing a friend-of-the-court brief urging the Michigan Supreme Court to hear the case, arguing that parents who were unconstitutionally denied the right to marry should be able to invoke a judicial doctrine known as "equitable parenthood" to seek custody and parenting time, and that when a same-sex couple uses assisted reproduction, legal parentage can be established for the non-birth parent under Michigan's assisted reproduction statute. The Court agreed to hear the case and allowed us to participate in oral argument in April 2023. In July 2023 the Court issued a ruling agreeing with our position, ruling that parents who were in a same-sex relationship and who would have married but for Michigan's unconstitutional prohibition on their marriage have standing to seek custody and parenting time. Importantly, the Court also said that Michigan's family law statutes must be read in a gender-neutral manner, which will protect both married and unmarried LGBTQ+ parents. In April 2024 the legislature codified much of the decision into law, passing a series of laws that provide for a presumption of parenthood for same-sex couples, regardless of marital status, which will provide greater acknowledgment of parent-child relationships in LGBTQ+ families. (*Pueblo v. Haas*; ACLU Attorneys Miriam Aukerman, Jay Kaplan, Dayja Tillman, and Dan Korobkin.)

Insurance Coverage for Medically Necessary Health Care. Michigan's Medicaid program contracts with private insurance companies to provide government-funded Medicaid services, and some companies have long resisted transgender patients' efforts to obtain coverage for gender dysphoria-related treatments even when their medical providers have determined the treatments to be medically necessary. Beginning in 2018 the ACLU of Michigan represented transgender women in multiple administrative appeals challenging denials of coverage for gender confirmation surgery. Following our advocacy efforts, in September 2018 the Michigan Department of Health and Human Services (MDHHS) instructed Michigan Medicaid insurance programs to remove blanket exclusions of gender confirmation surgery from their policies, citing the nondiscrimination requirements of the Affordable Care Act, and our clients' administrative claims settled. Since then we have continued to represent transgender women in administrative appeals challenging the denial of coverage for facial feminization surgeries. The Michigan Department of Insurance and Financial Services (DIFS), Michigan's insurance regulatory agency, has resolved the vast majority of these appeals in favor of the patients, holding that insurance companies must apply the standard of care established by the World Professional Association for Transgender Health (WPATH), and under those standards facial feminization surgery was medically necessary for treatment of gender dysphoria. In April 2021 we appealed a contrary DIFS decision involving Molina Healthcare to the Ingham County Circuit Court, and the case quickly settled. In November 2021, following continuing advocacy efforts, MDHHS issued an official policy directive requiring Medicaid providers to use WPATH standards to determine coverage for gender-confirming treatments and procedures. Despite this directive in September 2022 we were forced to appeal an adverse DIFS ruling involving Blue Cross Blue Shield, and the case settled in July 2023. (*Hudson v. Molina Healthcare of Michigan*; *Wismer v. Blue Cross Blue Shield of Michigan*; ACLU Attorneys Jay Kaplan and Dan Korobkin; Cooperating Attorney Gerald Aben of Dykema.)

Custody Dispute Involving Transgender Child. In Lapeer County, a child custody dispute arose involving an 11-year-old child who is transgender. The father did not accept his transgender daughter's gender identity, wouldn't use her new name or pronouns, wouldn't allow her to dress as a girl in his presence, and wouldn't consent to puberty-blocker medication even if recommended by a physician. This contributed to serious mental-health consequences for the child, including suicidal ideation and in-patient psychiatric care. The mother asked the court to award her full legal custody so that she can make decisions regarding her daughter's medical care, and so her daughter does not have to spend time with her father. The trial court denied the request, and the mother appealed. In December 2023 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals, joined by the Ruth Ellis Center and Stand With Trans. Our brief provided the court with an overview of the latest studies, best practices, and understandings among professionals regarding treatment and support for transgender youth. Specifically, we noted that parental and medical support for children who are transgender results in more positive health outcomes, whereas a lack of such support results in mental health decline, suicide, substance abuse, and other negative consequences. In April 2024 the Court of Appeals ruled that the trial court erred in failing to grant the mother's motion for sole legal custody so that she could make medical decisions in the best interest of the child, and also held that during parenting time the father must be prohibited from using the wrong name or pronouns, cutting his child's hair, forcing her to wear masculine clothes, or restricting the child's access to activities on the basis that they are perceived as feminine. The father did not appeal. (*Riley v Graves*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin).

Transgender Student Denied Access to School Bathrooms. An elementary school student in mid-Michigan came out as transgender when she was ten years old and began treatment for gender dysphoria. Although her name and pronouns were respected by her teachers and her peers, the school district prohibited her from using female restrooms that align with her gender identity, requiring her to use a single-user restroom in the school office. In April 2023 the ACLU of Michigan wrote to the school district on the student's behalf, notifying the district that prohibiting transgender students from using the restrooms that align with their gender identity and forcing them to use separate restrooms from everyone else is stigmatizing, degrading, and a violation of state and federal law. The district refused to change its position, however, and in September 2023 we filed a civil rights complaint on the student's behalf with the Michigan Department of Civil Rights. After a civil rights investigation of our complaint in which it was determined that the school district was violating Michigan's Elliott-Larsen Civil Rights Act, we advised the school district in July 2024 that we planned to file a lawsuit unless the student was permitted to use the restrooms that correspond with her gender identity when she returned to school in the fall. The day before we planned to file suit the school district relented. (ACLU of Michigan Attorneys Syeda Davidson, Jay Kaplan, and Dan Korobkin, and legal intern Alex Jarecki; National ACLU Attorney Leslie Cooper; Cooperating Attorney Bryan Waldman of Sinas Dramis.)

Sperm Donor Sued by State for Child Support. Many LGBTQ families rely upon artificial reproductive technology to have children, including artificial insemination as a result of sperm donation. In some cases, sperm donations are provided anonymously at sperm banks, and these donations are used in expensive procedures that financially well-off couples can afford. But when a lesbian couple knows their sperm donor and the artificial insemination process takes place at home, even without sexual intercourse, the policy of the Michigan Department of Health and Human Services (MDHHS) was to treat that sperm donor as an "absentee father" who may owe child support if the biological mother ever applies for or receives public assistance. In June 2021 the ACLU of Michigan was contacted by a mother who had fallen on hard times and applied for public assistance for herself and her eight-year-old child. Because the mother acknowledged that she knew the identity of the sperm donor who helped her conceive, her case was referred to the Wayne County Prosecutor's Office, which then filed a lawsuit against the sperm donor, in the mother's name, to collect child support payments. In October 2021 we wrote letters to the prosecutor and MDHHS urging them to dismiss the child support action and for MDHHS to change its policy regarding sperm donors. In response, the prosecutor dismissed the child support action in May 2022. MDHHS then worked with us to draft a new policy that would no longer regard a sperm donor as a father for purposes of child support. The new policy was adopted and implemented in December 2023. (ACLU Attorney Jay Kaplan.)

Pronouns in the Courts. In December 2021 a Michigan Court of Appeals judge published an opinion in which he insulted transgender people and declared his refusal to "conform to the wokeness of the day" by respecting the pronouns with which they identify. Leading a coalition of organizations, the ACLU of Michigan wrote a letter to the Michigan Supreme Court in January 2022 urging the Court to take action to educate judges and ensure that our courts treat transgender people fairly and with respect. In January 2023 the Court published for public comment a proposed amendment to the Michigan Court Rules that would allow litigants and their attorneys to identify their pronouns in court papers and would require judges and other court personnel to use the correct pronouns, designated salutation, or name when addressing or

referring to them. In March 2023 we submitted a detailed public comment urging the Court to adopt the new rule and testified in favor of the rule at a public hearing in June 2023. In September 2023 the Court adopted the rule, which took effect in January 2024. (ACLU Attorneys Jay Kaplan and Dan Korobkin.)

OPEN GOVERNMENT

Secret Video of Prisoner's Death. In 2016 a Michigan prisoner died under suspicious circumstances; he was allegedly involved in an altercation with another prisoner, and prison guards shocked him with a taser. Spencer Woodman, an independent journalist who reports nationally on criminal justice issues, learned that the entire incident was captured on video and requested a copy of the footage under the Freedom of Information Act (FOIA). The Michigan Department of Corrections (MDOC) refused to release the video, claiming that its disclosure would somehow undermine prison security. In 2017 the ACLU of Michigan filed a lawsuit on Woodman's behalf, arguing that the state had no legitimate justification for keeping the video secret. During discovery, we learned that the MDOC staff has a policy of automatically denying all FOIA requests for videos, without even viewing the video in question to determine whether or how its disclosure would threaten security. In 2019 Michigan Court of Claims Judge Cynthia Diane Stephens ruled that MDOC's policy was illegal and ordered the state to turn over the video footage. However, the judge then slashed the ACLU cooperating attorneys' fees by 90% because the work was being done pro bono (i.e., without payment from the client), and we appealed. In 2021 the Court of Appeals ruled that we had only partially prevailed in the lawsuit. We appealed to the Michigan Supreme Court, which agreed to hear the case and in July 2023 ruled in our favor. By a vote of 5-2, the Court held that we had prevailed completely, and that attorneys' fees cannot be reduced based on the pro bono nature of the work. The case was then remanded for recalculation of attorneys' fees, and we settled for over $300,000. Despite this victory, MDOC continued to deny similar FOIA requests for video footage. Another independent journalist, Daniel Moritz-Rabson, was denied access to footage of an incident in which a prisoner was allegedly mistreated by a prison guard in retaliation for having published an article about poor prison conditions. Even after Moritz-Rabson brought the previous case to MDOC's attention, MDOC refused to release the video. In April 2024 we filed another FOIA lawsuit, MDOC turned over the video, and the case settled in September 2024 for attorneys' fees. (*Woodman v. Michigan Department of Corrections*; *Moritz-Rabson v. Michigan Department of Corrections*; ACLU Attorney Dan Korobkin; Cooperating Attorneys Robert Riley, Rian Dawson, Anna Transit, Marie Greenman, and Olivia Vizachero of Honigman.)

FOIA Delayed Is FOIA Denied. The purpose of Michigan's Freedom of Information Act (FOIA) is to provide transparency in government so that the people of Michigan can fully participate in the democratic process. But that purpose is thwarted if government officials do not produce requested documents in a timely manner. In Grand Rapids in particular, FOIA requests have been known to take over a year to fulfill, even when the amount of staff time needed to fulfill the request is only a few hours. In March 2023 the ACLU of Michigan submitted a FOIA request to the Grand Rapids Police Department that the department estimated would take only 2.25 hours to fulfill, but would not be processed for 8-10 months. After attempts to speed up the city's response time were unsuccessful, in September 2023 we filed a lawsuit seeking a ruling that the city's practices violated FOIA. In June 2024 the parties filed cross-motions for summary

disposition. (*ACLU of Michigan v. City of Grand Rapids*; ACLU Attorneys Miriam Aukerman, Dayja Tillman, and Dan Korobkin; Cooperating Attorney Brad Springer.)

Access to Records About Immigration Detention. In 2019 the ACLU of Michigan brought a lawsuit under the Michigan Freedom of Information Act after Calhoun County refused to respond to a request for records about the detention of Jilmar Ramos-Gomez, a U.S. citizen who was held illegally in immigration detention at the Calhoun County Jail. The trial court dismissed the case based on an obscure federal regulation that the county said prohibited the public from seeing all local records about people held for ICE. The Michigan Court of Appeals affirmed in a ruling that would have made it almost impossible to obtain information about immigration detention in Michigan. In February 2022 a unanimous Michigan Supreme Court reversed, holding that immigration detention records are not exempt from disclosure under Michigan's Freedom of Information Act. The case was then remanded to the trial court for further proceedings, Calhoun County produced the requested records, and the remainder of the case settled in February 2024 after an agreement was reached to pay our attorneys' fees. (*ACLU of Michigan v. Calhoun County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, Elaine Lewis, and Ramis Wadood; Cooperating Attorneys Merrick Wayne, Joshua Burday, and Matthew Topic of Loevy & Loevy.)

FOIA Requests by Email. Michigan's Freedom of Information Act (FOIA) was updated many years ago to clarify that FOIA requests may be submitted by email, and most FOIA requests are now submitted and processed in electronic form. In April 2024 the ACLU of Michigan emailed a standard FOIA request to Westphalia Township after receiving credible information that certain groups may have attempted to challenge the registrations of voters there. In response to our email, rather than providing the public records we had requested, the township clerk directed us to a dated FOIA policy, posted on the township's website, which purports to require that FOIA requests be submitted in a written, "nonelectronic" form. We advised the clerk that it would be illegal under state law to ignore or deny a FOIA request merely because it is submitted over email, but the clerk failed to respond. Westphalia's policy also contravenes the pro-disclosure purpose of FOIA by making it more difficult for people to get access to public records. In July 2024 we filed a lawsuit seeking both responsive documents and a declaratory judgment that the township's policy of rejecting electronic FOIA requests is unlawful. (*ACLU of Michigan v. Westphalia Township*; ACLU Attorneys Delaney A. Barker, Phil Mayor, and Dan Korobkin.)

Access to Records About Medication for Opioid Use Disorder in Jails. Medication for opioid use disorder (MOUD) is a medically necessary, lifesaving treatment. Unfortunately, jails frequently refuse to provide it to people who are incarcerated. Following a successful lawsuit against the Grand Traverse County Jail for this very failure, in February 2022 the ACLU of Michigan sent a letter to every county in Michigan advising them that a refusal to provide this medication would violate the Eighth Amendment and the Americans with Disabilities Act. After receiving reports that the medication continues to be unavailable or restricted in the Macomb County Jail, in June 2022 we sent a request under the Freedom of Information Act (FOIA) for its policies related to MOUD. The county failed to provide the requested records, so in October 2022 we filed suit. In November 2022 the county finally turned over the policies, and in February 2023 the case was settled when the county agreed to pay our attorneys' fees. (*ACLU of Michigan v. Macomb County*; ACLU Attorneys Syeda Davidson and Dan Korobkin.)

Police Department's Use-of-Force Policies. After George Floyd was killed by police in Minnesota, Amy Hjerstedt, on behalf of the Eastern Upper Peninsula League of Women Voters, requested a copy of the local police department's use-of-force policy to see if improvements could be made at the local level. The City of Sault Ste. Marie refused to disclose the full policy, redacting major portions. Ms. Hjerstedt filed suit under Michigan's Freedom of Information Act (FOIA) to get an unredacted copy. Even though many police departments post their use-of-force policies online, the trial court agreed with the city's argument that the reacted sections could be withheld. Ms. Hjerstedt appealed, and in August 2022 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals, arguing that public access to use-of-force policies is critical to robust debate about policing, and that FOIA was intended to make precisely this type of information available. In February 2023 the Court of Appeals agreed, holding in a published decision that the city's claimed exemptions did not apply, and that it must produce the unredacted use-of-force policy. The city sought leave to appeal in the Michigan Supreme Court, which in December 2023, in lieu of granting leave, reversed and remanded to the Court of Appeals with respect to one issue: whether use of force policies fall under the "staff manual" exemption of FOIA. In April 2024 we filed an additional friend-of-the-court brief arguing that simply including a document in a staff manual cannot be the basis for an exemption, and that in any event the public's interest in disclosure outweighs any interest the city has in not disclosing its use-of-force policy. In August 2024 the Court of Appeals issued another published opinion agreeing with our argument, reaffirming its previous decision, and ordering the police department to publicly disclose its use-of-force policy. (*Hjerstedt v. City of Sault Ste. Marie*; ACLU Attorneys Miriam Aukerman, Mark P. Fancher, and Dan Korobkin; Cooperating Attorneys Stephen van Stempvoort, Alise Hildreth, and Joslin Monahan of Miller Johnson.)

Wrongful Termination from Community Mental Health Authority. Under Michigan law, multi-county mental health authorities can be created to provide regional mental health services. Board members of such authorities are nominated by their respective county commissions, but then are expected to advocate for the mental health of the entire community, and are removable only for misconduct in office or neglect of duty. In July 2022 the Grand Traverse County Commission voted to remove two of its representatives on the multi-county Northern Lakes Community Mental Health Authority, spuriously accusing them of misconduct or neglect of duty, when the only thing they did "wrong" was to vote to extend a job offer to a new CEO to lead the mental health commission—a vote that some county commissioners disagreed with. In January 2023 the ACLU of Michigan sent a letter to Attorney General Dana Nessel, asking her to exercise her authority to file a "quo warranto" action against the county to reinstate the wrongfully dismissed members of the authority. Unfortunately, later that month the Attorney General declined to take action. (ACLU Attorney Phil Mayor; Cooperating Attorneys Michael Naughton, Maura Brennan, Blake Ringsmuth, and Deyar Jamil of the ACLU's Northwest Michigan Lawyers Committee.)

PARENTAL RIGHTS

Termination of Parental Rights. The United States Supreme Court has long recognized that the right to family integrity is a fundamental liberty interest protected by the Constitution. For decades, experts in Michigan and elsewhere have bemoaned the frequency with which the state asks courts to permanently terminate parental rights in cases involving neglect and abuse. There

are significant racial disparities in termination cases, and courts do not follow a consistent standard or always treat termination as the last resort, to be used only when there is little hope of restoring and maintaining a healthy parent-child relationship. In January 2024 the Michigan Supreme Court agreed to take up two cases examining the legal standards for these situations, and the ACLU of Michigan joined the Juvenile Law Center in filing friend-of-the-court briefs asking the court to hold that strict scrutiny should apply; courts may not terminate parental rights unless doing so is the least restrictive means of furthering a compelling governmental interest in the welfare of the child. Unfortunately, in July 2024 the Court changed its mind and decided not to issue any rulings in the cases. (*In re Bates*; *In re Dailey*; ACLU Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio; co-counsel Riya Saha Shah, Courtney Alexander, and Marsha Levick of the Juvenile Law Center.)

PRISONERS' RIGHTS

Prisoner's Accommodations Revoked for Refusing Hormone Therapy. Bruce Parker, who is incarcerated by the Michigan Department of Corrections (MDOC), has been diagnosed with gender dysphoria and identifies as non-binary. Under MDOC policy, a special gender dysphoria review committee is required to assess each case and recommend treatment and accommodations to address medical needs and personal safety. It was initially decided that Parker would be housed only with other people who have gender dysphoria and would be permitted to shower in relative privacy, accommodations that reduce safety risks for people in prison who are gender non-conforming. Parker's accommodations were implemented successfully for six months but were then abruptly removed due to the fact that Parker does not wish to undergo feminizing hormone treatment—a treatment that is common for people with gender dysphoria but by no means universal or medically required. In January 2024 Parker filed a lawsuit seeking to restore the accommodations, and in May 2024 the ACLU of Michigan joined other attorneys in volunteering to provide representation pro bono. We are arguing that it violates Parker's constitutional rights to condition health and safety accommodations on their willingness to take hormone therapy. (*Parker v. State of Michigan*; ACLU Attorneys Syeda Davidson, Jay Kaplan, and Dan Korobkin and legal intern Madeline Ile; co-counsel Debra Freid of Freid, Gallagher, Taylor & Associates, and John Philo, Tony Paris and Elizabeth Jacob of the Sugar Law Center for Economic and Social Justice.)

Protecting Minors in Adult Jails. Federal and state laws require jails and prisons to protect minors from physical and sexual abuse, including by keeping minors physically separate from adults. Despite that legal requirement, in July 2021 a Michigan judge refused to intervene when a minor was housed with adults after being sent to an adult jail, citing a provision of the Michigan Court Rules which stated that minors who have been waived into the adult criminal system are *not* required to be kept separate from adults. In October 2021 the ACLU of Michigan wrote a letter to the Michigan Supreme Court asking them to change this rule to align with federal and state law, and also take additional measures to prevent jails from using solitary confinement as a convenient tool for keeping minors separate from adults. In December 2021 the Court amended the court rules in line with our request and simultaneously invited public comments on the new amendment. In February 2022 we submitted a public comment to once again emphasize the importance of keeping minors separate from adults without resorting to throwing kids into solitary confinement. In May 2022 the Supreme Court affirmed its amendment and also opened a

new file to consider our proposal to reduce the use of solitary confinement. Then, in January 2023 the ACLU of Michigan was alerted to a disturbing situation involving a 16-year-old who had been confined in the Berrien County Jail for nearly a year after being charged as an adult for an offense that occurred when he was only 14. When he was first lodged in the jail, he was assaulted by an adult inmate despite the federal and state laws that require youth to be fully separated from adults in all detention facilities. He was then placed in solitary confinement for months on end, resulting in the deterioration of his mental health. We immediately wrote a letter to local officials as well as the U.S. Department of Justice insisting that action was urgently needed to address the suffering of this young person. Within a week of our letter being sent, federal and state officials responded, and the teen was removed from solitary confinement and provided with needed programming and services. In September 2023 the Michigan Supreme Court issued new proposed amendments to the court rules to emphasize that best efforts must be taken to avoid using solitary confinement as a method of separating minors from adults. (ACLU of Michigan Attorneys Ramis Wadood, Phil Mayor, and Dan Korobkin.)

Book Bans in State Prisons. In June 2022 news broke that the Michigan Department of Corrections (MDOC) was preventing foreign-language dictionaries from being sent to people in state prisons. After further investigation through Freedom of Information Act requests, it was revealed that MDOC had also banned other foreign-language books and educational materials. In September 2022 the ACLU of Michigan sent a letter to MDOC explaining the legal and constitutional concerns with depriving people in state prisons of foreign-language publications and other educational materials. In August 2023 MDOC changed its policy to allow people in state prisons to receive foreign-language dictionaries, phrasebooks, and other learning materials, and established a committee to review MDOC's full list of banned publications and recommend which publications should be removed from the list. (ACLU Attorneys Ramis Wadood, Phil Mayor, and Dan Korobkin; co-counsel Mira Edmonds of U-M Law School.)

Food Quality in Oakland County Jail. In 2022 the ACLU of Michigan received reports from Muslims housed in Oakland County Jail that jail officials were not providing adequate accommodations to Muslims who fasted during the Islamic holy month of Ramadan. After investigating further through Freedom of Information Act requests, we found that the jail was not providing enough food to Muslims fasting during Ramadan; moreover, much of the food they did provide was spoiled. In addition, we found broader issues involving delays in approving religious accommodations, penalties for seeking medical exemptions to religious diets, and potential disparities in caloric content across religious diets. In October 2022 we worked with the Michigan chapter of the Council on American-Islamic Relations (CAIR) to send a letter to the Oakland County Jail explaining the constitutional issues posed by the jail's failure to provide prompt and proper accommodations to Muslims. After a series of conversations, the Oakland County Jail changed its practices by improving the food offered during Ramadan, adding more flexibility to their Ramadan program to account for individuals who may need to temporarily abstain from fasting for medical reasons, and streamlining the process of reviewing and approving religious accommodations requests more generally. In addition, the jail agreed to allow the ACLU to monitor its Ramadan program in 2023 by providing us with a weekly disclosure of complaints related to food quality and quantity. A review of those complaints showed a noticeable improvement in Ramadan accommodations. (ACLU Attorneys Ramis Wadood and Phil Mayor; co-counsel Amy Doukoure and Nour Ali of CAIR Michigan.)

PRIVACY AND TECHNOLOGY

Facial Recognition Technology Leads to False Arrest. The use of facial recognition surveillance technology has been shown to be inaccurate, racially biased, and a threat to personal privacy. In 2020 Detroit police officers arrested Robert Williams on his front lawn, in front of his wife and two young daughters, on charges that he had stolen watches from a Shinola store in Detroit. The arrest was based almost entirely on a facial recognition scan from security footage at the Shinola store, but it was dead wrong: Mr. Williams was not the man in the security footage and was nowhere near the store at the time of the theft. In 2021 the ACLU filed a federal lawsuit against the Detroit Police Department, alleging that the officers involved violated Mr. Williams' rights under the Fourth Amendment and the Elliott-Larsen Civil Rights Act by arresting him on the basis of this flawed technology. Discovery in the case exposed systemic and comprehensive failures to use facial recognition technology responsibly and to train detectives in basic investigatory techniques and legal requirements. Meanwhile, in a second lawsuit brought by private counsel on behalf of another man falsely arrested under similar circumstances, we filed a friend-of-the-court brief in April 2023 highlighting the dangers of facial recognition technology and the failures we had uncovered during discovery. In August 2023 we learned of yet another facial-recognition driven false arrest in Detroit following a nearly identical pattern—this time resulting in the arrest of an 8-month pregnant woman in front of her children for a carjacking crime she did not commit. Following that third incident, settlement discussions accelerated, and in June 2024 we entered into a settlement agreement, enforceable by the federal court for four years, that converts the Detroit Police Department from one of the nation's worst abusers of facial recognition technology into a leader in imposing guardrails that limit possible abuses. Under the settlement, the police are prohibited from conducting lineups based solely on facial recognition leads, a procedure that creates a rigged lineup and lies behind each wrongful arrest using this technology in Detroit. The settlement also requires facial recognition examiners to disclose critical information about their searches (and the factors rendering them less reliable) to detectives, courts, and attorneys—information that can ensure each of those actors are aware of, and can act upon, exculpatory information arising from such searches. The settlement also requires training for police officers, including on how the technology misidentifies people of color at higher rates than other people. (*Williams v. City of Detroit*; *Oliver v. City of Detroit*; ACLU of Michigan Attorneys Phil Mayor, Ramis Wadood and Dan Korobkin, and legal interns Arshi Baig and Simon Roennecke; National ACLU Attorney Nathan Freed Wessler; co-counsel Michael J. Steinberg of U-M Law School, with student attorneys Eilidh Jenness, Ben Mordechai-Strongin, Jeremy Shur, Deborah Won, Rihan Issa, Camelia Metwally, Seth Mayer, Jonathan Barnett, Lauren Yu, Will Ellis, Mickey Terlep, Brendan Jackson, Keenan McMurray, Julia Kahn, Lacie Melasi, Collin Christner, Ewurama Appiagyei-Dankah, and Nethra Raman.)

Eyes in the Skies. The United States Supreme Court has repeatedly warned that as surveillance technologies become more advanced and invasive, and cheaper to use, the Fourth Amendment must continue to protect our personal privacy from unreasonable searches by government officials. In recent years, law enforcement agencies have increasingly relied on small, unmanned drones to hover above private property and spy on us from above. In Long Lake Township, local officials hired a drone operator to repeatedly fly over a private home and collect photographic evidence that its residents were violating a zoning ordinance. The trial court allowed the photographs to be admitted into evidence against the homeowners, ruling that the drone surveillance was not a search within the meaning of the Fourth Amendment, and the Michigan

Court of Appeals affirmed. In May 2023 the Michigan Supreme Court announced it would hear arguments in the case. In September 2023 the ACLU, along with the Mackinac Center for Public Policy, filed a friend-of-the-court brief arguing that repeated and targeted low-flying drone surveillance of a private home and its surroundings violates the Fourth Amendment when conducted without a warrant, and that the evidence collected should be suppressed. Unfortunately, in May 2024 the Court decided that the exclusionary rule does not apply in civil cases, and declined to reach the merits of the Fourt Amendment question. (*Long Lake Township v. Maxon*; ACLU of Michigan Attorneys Phil Mayor and Dan Korobkin; National ACLU Attorneys Brett Kaufman and Nathan Freed Wessler; co-counsel Patrick Wright of the Mackinac Center for Public Policy.)

RACIAL JUSTICE

Home Purchase Scheme Targeting Black Homebuyers. In the wake of the housing crash of 2008, Black communities have been targeted by predatory "land contract" schemes that advertise the dream of home ownership but are structured to fail. One company, Vision Property Management, engaged in predatory lending schemes across the United States by tricking consumers into signing rent-to-own contracts carrying the promise of homeownership but none of the rights. Vision purchased over 1,000 dilapidated properties in Michigan and sold them to unsuspecting homebuyers. Vision's contracts obscured the true cost of buying and repairing the home, the interest rate, and the term of the loan; made it nearly impossible for buyers to achieve homeownership; and allowed Vision to avoid responsibility for upkeep. Vision also marketed its product primarily to low-income Black consumers. In September 2020 the ACLU of Michigan, Legal Defense Fund (LDF), National Consumer Law Center (NCLC), and Michigan Poverty Law Program (MPLP) filed a federal class action lawsuit against Vision and its main funder Atalaya on behalf of lower-income and Black Michigan consumers who were the primary targets of Vision's predatory home purchase scheme. The lawsuit sets forth claims under the Federal Fair Housing Act, Truth in Lending Act, Equal Credit Opportunity Act, and various state laws. In August 2021 Judge Sean Cox denied Atalaya's motion to dismiss, allowing the case to proceed. Following extensive discovery, in August 2022 Atalaya filed a motion for summary judgment. Meanwhile, upon learning that a new Vision lender had entered the picture and was selling off homes occupied by prospective class members, in December 2022 we filed a motion for a preliminary injunction asking the court to prohibit the sales without court approval. In October 2023 Judge Shalina Kumar granted Atalaya's motion for summary judgment, dismissing the race-based discrimination claims. But in April 2024 the court partially granted Plaintiffs' motion for reconsideration, reinstating the homeowners' intentional discrimination claims. (*Henderson v. Vision Property Management*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Coty Montag, Jennifer Holmes, Alexandra Thompson, Tiffani Burgess, and Pilar Whitaker of LDF, Stuart Rossman, Sarah Mancini, and Shennan Kavanagh of NCLC, and Lorray Brown of MPLP.)

Racial Profiling by the Michigan State Police. In 2016 the Michigan State Police (MSP) disclosed that troopers are evaluated in part on how many traffic stops they make. The ACLU of Michigan wrote to MSP's director urging that this policy be terminated because of the risk that it would lead to racial profiling. Because of the policy, troopers with an insufficient number of stops are more likely to target for groundless or arbitrary stops individuals whom they perceive

to be powerless to effectively complain, which disproportionately includes people of color. Additionally, we inquired about whether troopers record the racial identities of drivers stopped, and whether there are procedures in place to monitor racial patterns of stops and to remedy practices that are racially discriminatory. In response to the ACLU's concerns, MSP acknowledged that it lacked reliable information about the race of the drivers it stops, and in 2017 revised its policies to require that state troopers record that information. Following the change in policy, we used Freedom of Information Act requests to obtain records reflecting the racial identities of drivers stopped. These records revealed disturbing racial patterns of stops made by certain members of a unit charged with the task of drug interdiction. Extensive efforts to persuade MSP to engage an expert to diagnose the reasons for the racial disparities resulted only in the agency engaging consultants to document the existence of already known disparities. Consequently, in June 2021 we filed a federal lawsuit on behalf of Camara Sankofa and Shanelle Thomas, an African American couple stopped by MSP troopers without cause, made to exit their vehicle, subjected to K-9 and manual searches, and interrogated about narcotics. After 90 minutes of the unconstitutional detention, they were allowed to leave without a ticket or even a warning. In October 2022 the lawsuit was settled after MSP finally engaged an independent expert to inquire into the reasons for racial disparities in traffic stops. The settlement agreement allowed the ACLU to communicate with the experts and receive a copy of their analysis. Damages were paid to Sankofa and Thomas, and attorneys' fees were paid to the ACLU. In December 2023 the final report of the experts was issued, and it included a wide range of damning conclusions about MSP practices including, among other things, that agency policies encourage unconstitutional extended detention of stopped drivers, inadequate supervision leads to disproportionate patrolling of areas with high minority populations, traffic stops are often used as the primary form of crime prevention, and various policies contribute to racial disparities in traffic enforcement. (*Sankofa v. Rose*; ACLU Attorneys Mark P. Fancher and Dan Korobkin; Cooperating Attorney Nakisha Chaney of Salvatore Prescott.)

Water Shutoffs in Detroit. In 2014 the Detroit Water and Sewage Department (DWSD) commenced the largest residential water shutoff in U.S. history and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents' health needs or ability to pay. DWSD's internal documents revealed that due to its sloppy billing practices, it had not charged many customers for sewer service for several years. DWSD demanded a lump sum payment from customers for those charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residents with delinquent accounts were billed for charges incurred by previous tenants. The ACLU of Michigan joined a lawsuit that sought to restore water service to the city's residents and stop future shutoffs, but in 2016 the Sixth Circuit affirmed the lower courts' dismissal of the case. Advocacy resumed in 2018 in response to media reports of plans to shut off the water of 17,000 households. In 2019 the ACLU and a coalition of attorneys unsuccessfully petitioned the Michigan Department of Health and Human Services, and then Governor Whitmer, to declare a public health emergency and impose a moratorium on shutoffs to prevent the spread of disease. Then, an investigation by our partners at the Legal Defense Fund (LDF) revealed dramatic racial disparities in water shutoffs, as they are far more likely to occur in majority-Black neighborhoods than in neighborhoods where Blacks are less than 50% of the population. In July 2020 the coalition filed a new lawsuit against the Governor and the City of Detroit alleging that the water shutoffs violate due process, equal protection, the Fair Housing Act, and state law. In August 2020 the defendants filed motions to dismiss, which remain pending. Meanwhile, in a purported response to the Covid-19 pandemic,

the city initiated a self-imposed moratorium on water shutoffs. In December 2022, as the moratorium was set to expire, the ACLU and its partners filed a motion for a preliminary injunction against resumption of shutoffs. While a decision is pending, the city has refrained from resumption of shutoffs as it has negotiated with the ACLU revisions to its new income-based affordability plan, which is a response to long-time demands by the ACLU and other water affordability advocates. The plan has encouraging features that include, among other things, forgiveness of unpaid debts. In January 2024 a tentative agreement for settlement of the case was reached, and the parties are awaiting final approval. (*Lyda v. City of Detroit*; *Taylor v. City of Detroit*; ACLU Attorneys Mark P. Fancher and Dan Korobkin; additional attorneys include Alice Jennings of Edwards & Jennings, Coty Montag, Monique Lin-Luse, Santiago Coleman and Jason Bailey of LDF, Lorray Brown, Melissa El-Johnson, and Kurt Thornbladh.)

Racially Hostile Work Environment in the Detroit Police Department. In 2017 Detroit Police Chief James Craig was provided with the report of the Committee on Race and Equality (CORE), a special investigative committee he had established in response to complaints of discrimination within the department. The report found that high-ranking command staff had engaged in racial discrimination, intimidation, and retaliation, that the department had a "racial problem," and that racism was directed from command staff to the rank and file. Chief Craig rejected the findings of the report, however, and suspended CORE's work. Just days later, Johnny Strickland, an African American police officer who had been with the department for ten years, was confronted, accosted, handcuffed and detained without cause by several white officers. Officer Strickland was off duty and inadvertently entered a suspected crime scene under investigation. Although Strickland identified himself as a police officer, one white officer continually screamed profanities in Strickland's face and sarcastically ridiculed his tenure on the police force, calling him "stupid," "dumb," and an "idiot." Another white officer purposely tightened handcuffs in order to cause injury, and still another conducted an unauthorized, unjustified K-9 search of Strickland's vehicle. In 2018 the ACLU of Michigan filed a federal lawsuit on Officer Strickland's behalf, alleging racial discrimination, a racially hostile work environment, and retaliation. As part of our discovery in the case, the court ordered Chief Craig to sit for a deposition. In 2019 Judge Nancy Edmunds dismissed the lawsuit, ruling that there was not enough evidence of discrimination, racial hostility, and retaliation to proceed with the case. In 2021 the Sixth Circuit reversed, ruling that the retaliation and excessive force claims should proceed to trial. The case went to trial in December 2022, and the jury returned a verdict in Strickland's favor, awarding him damages in the amount of $150,000. In November 2023 the court denied the city's motion to set aside the verdict, and in December 2023 the city appealed to the Sixth Circuit. (*Strickland v. City of Detroit*; ACLU Attorneys Mark P. Fancher, Dan Korobkin, and Syeda Davidson; Cooperating Attorney Leonard Mungo.)

Police Brutality Downriver. In October 2021 the ACLU of Michigan filed a complaint with the U.S. Department of Justice, urging its Civil Rights Division to investigate the Taylor Police Department for racially biased policing and its excessive use of force. Our complaint followed years of investigating reports from multiple sources that the police department had become one of the most violent and lawless in the state. Taylor is in what is referred to as the "downriver" region near Detroit. It is 78 percent white and 16 percent Black; nearly 25 percent of the population is under the age of 18, and 11 percent are below the poverty line. Taylor's police department employs 75 officers, but the first African American officer was not hired until 2012. Our complaint highlighted 20 instances of excessive force, punishment of citizens for what is

sometimes called "contempt of cop," unlawful use of tasers to force compliance with police orders, racially disparate hostile conduct, waivers of liability induced by blackmail over criminal charges, and hostile, incompetent leadership. We were notified that our petition was referred to the Criminal Section of the Justice Department's Civil Rights Division for review. In July 2023 we directed a Freedom of Information Act request to Taylor to obtain records that might shed light on the police department's conduct since 2021 when it was reported to the Department of Justice, but the city refused to turn over any of the requested records. In October 2023 we filed a lawsuit to enforce the provisions of the Freedom of Information Act that require the disclosure of requested documents. In September 2024 Wayne County Circuit Judge Dana Hathaway dismissed our lawsuit, and we plan to appeal. (*ACLU of Michigan v. City of Taylor*; ACLU Attorneys Mark P. Fancher and Dan Korobkin.)

Jaywalking While Latino. In 2019 the ACLU of Michigan filed a complaint with the Michigan Department of Civil Rights (MDCR) based on the discriminatory treatment by the Grand Rapids Police Department (GRPD) of Jesus Yanez, a then 15-year-old Latino youth. The teen and his friend were walking on a quiet residential street in Grand Rapids when a police officer approached them with his hand on his holstered gun, told them to put their hands on their heads while he checked if they had warrants, and then, when the teens tried to leave, drew his gun on the youths. Our complaint coincided with several other high-profile incidents of racial profiling by GRPD officers, and community outrage over such selective enforcement of jaywalking laws against children of color helped spur demands for police reform. MDCR, after holding several listening sessions in Grand Rapids, announced an official investigation into systemic racism by the GRPD. The case filed by Yanez remains unresolved, and in July 2023 MDCR initiated litigation against Grand Rapids to compel the city to respond to requests for information needed for the agency's investigation. In response, the City of Grand Rapids initiated its own lawsuit against MDCR seeking a ruling that a three-year statute of limitations governs MDCR investigations, and therefore the Yanez investigation along with others must be terminated. In August 2023 we filed a friend-of-the-court brief arguing that Grand Rapids' statute-of-limitations theory is invalid. The brief explains that MDCR decisions about whether to issue charges of discrimination are made after the agency has conducted independent investigations that include consideration of information provided by parties accused of civil rights violations. The practical implications are that a three-year limitation on charging decisions as urged by Grand Rapids would be impractical, if not unworkable—particularly in cases where the accused party is uncooperative and deliberately delays the investigation until the limitations period has run. The brief also notes the challenges faced by marginalized individuals who lack the resources needed to vindicate their rights, and that MDCR provides such individuals opportunities to have their complaints fully investigated and often resolved in ways that they regard as just. In April 2024 the trial court dismissed Grand Rapids' lawsuit on jurisdictional grounds, and Grand Rapids appealed. We plan to file another friend-of-the-court brief limited to the statute-of-limitations issue. (*Michigan Department of Civil Rights ex rel. Ayala v. City of Grand Rapids; City of Grand Rapids v. Michigan Department of Civil Rights*; ACLU Attorneys Mark P. Fancher, Dayja Tillman, Miriam Aukerman, Elaine Lewis, and Dan Korobkin; Cooperating Attorney Anthony Greene.)

Racial Harassment in Croswell-Lexington Schools. Under Title VI of the Civil Rights Act of 1964, schools receiving federal funds may not engage in racial discrimination in their programs or services, which includes racial harassment of students by their peers if the school knows of the

harassment and fails to take adequate measures to stop it. C.M., a student in the Croswell-Lexington School District, faced egregious racial harassment from her peers, and she sued the school district for failing to properly address the problem. The district court dismissed her lawsuit, ruling that the school district was not liable for the harassment because it suspended the wrongdoers. In August 2024 the ACLU of Michigan filed a friend-of-the-court brief in the Sixth Circuit arguing that schools should be required to consider responses other than disciplinary measures to satisfy their Title VI obligations. In this case, although the school district had ample tools at its disposal to address and combat the racially hostile environment C.M. experienced, the district failed to try those remedies and instead relied on suspensions that they knew were ineffective at stopping the harassment. Our brief laid out in detail various options the school district could have employed, including trainings, restorative interventions, victim-support measures, culturally relevant curriculum changes, and systems to track the effectiveness of their policies and practices. (*Malick v. Croswell-Lexington District Schools*, ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin.)

Discriminatory Questioning by Border Patrol. In February 2024 a Michigan-based doctor who is Muslim who was returning to Detroit from an emergency medical mission in Gaza was detained by border patrol officers at the airport for nearly five hours and interrogated extensively about the purpose of his trip. They asked him numerous inappropriate questions that appeared to be motivated by his religious and racial background, such as questions about his personal opinion of the Israeli military's operation in Gaza, his political affiliations and beliefs, and his personal background and relationships. The officers also seized and searched the doctor's phone under false pretenses. The doctor was eventually released from custody, but he was removed from the TSA's Global Entry program without explanation. In June 2024 the ACLU of Michigan, joined by the Michigan chapter of the Council on American-Islamic Relations (CAIR), filed a request for U.S. Customs & Border Protection to reconsider the removal and a civil rights complaint with the U.S. Department of Homeland Security to seek accountability for the doctor's treatment. (ACLU Attorney Ramis Wadood; co-counsel Amy Doukoure of CAIR Michigan).

Racial Disparities in Discipline of Black Judges. For many years, a cloud of controversy has hovered above the Judicial Tenure Commission—the agency responsible for investigating wayward judges—because of perceptions and suspicion that Black judges are more likely to be targeted for investigation and recommended penalties than white judges. Although most of the agency's records and work are secret, those records that are made public reflect that Black judges are far more likely to be targeted by the Commission than their white colleagues. In early 2023 the Association of Black Judges of Michigan, the Black Women Lawyers Association of Michigan, and the Detroit Branch NAACP requested that the Michigan Supreme Court arrange for an audit of the Commission. In April 2023 the ACLU of Michigan wrote to the Supreme Court to express its support for such an inquiry. The letter stated in part: "Our interest in an examination of the Commission is not based on independent knowledge of discrimination in specific cases. Rather, we are aware of continuing questions, concerns, accusations and anecdotes about race and the Commission that have been voiced over the course of many years. The confidentiality of the Commission's records and the general inaccessibility of the body's proceedings make it difficult for concerned individuals and organizations like ours to verify or investigate the allegations that we receive." The letter urged that the audit be conducted by persons with expertise in institutional racism and implicit bias because if members of the

Commission are not engaging in conscious, purposeful racial discrimination, there may be institutional culture and unconscious biases that contribute to discriminatory outcomes. In June 2023 the Judicial Tenure Commission denied any wrongdoing but announced that it would seek an independent audit in light of the controversy and requests. (ACLU Attorneys Mark P. Fancher and Dan Korobkin.)

Racist School Mascot. The Camden-Frontier School District had the dubious distinction of being the only school district in Michigan that retained a name and imagery associated with indigenous people by using the name "Redskins" as the brand for its sports program. In March 2023 the ACLU of Michigan wrote to the school board explaining that Title VI of the Civil Rights Act of 1964 prohibits discrimination by any program (including a school district) that receives federal funding, and Michigan's Elliott-Larsen Civil Rights Act likewise prohibits discrimination. The ACLU's letter stated: "We are well aware of the racial demographics of the school district, and the fact that there are few students of color who ae currently susceptible to acts of racial animus. Nevertheless, school administrators should be mindful of this country's ongoing demographic changes and shifting residential patterns that may result in an increase in the number of students of color in the district in the near future. What will be the racial climate in the schools when these students arrive? Will they be welcomed by students and teachers who are sensitive to both the impact of racial slurs and the extent to which their own racial perspectives may have been negatively distorted by lives in an insular, racially homogeneous community? Or will these students of color instead encounter resentful opposition to their arrival that manifests in unlawful harassment and discrimination?" We followed up with two oral presentations to the board, and in April 2023 the board voted to retire the racial slur. (ACLU Attorney Mark P. Fancher.)

Police Encounters with Mental Illness. In October 2022 Detroit police officers fired a reported 38 rounds at 20-year-old Porter Burks after he moved in their direction while carrying a knife. Mr. Burks was challenged by schizophrenia, and police had been summoned by his brother who expected the police to transport the young man for mental health assistance. Instead, the officers positioned themselves an estimated 50 feet away, and attempted to engage Mr. Burks in a dialogue before they unleashed a volley of rounds. Shortly after the shooting, the ACLU of Michigan wrote to the police chief raising questions about whether the officers fully employed measures that might have allowed the encounter to end peacefully. Although officers used language that on its face suggested an intent to deescalate a tense encounter, implicit in their approach was an urgency—an expectation that Mr. Burks would comply immediately with their demands that he drop his knife and surrender. Law enforcement culture that gives highest priority to the establishment of the officers' authority and unquestioning compliance with officers' orders may have value in some situations, but it is a poor fit in others—most notably in cases like this one where a subject may lack the capacity to comply. The letter included a Freedom of Information Act request for policies and personnel records. After policies were provided, the ACLU wrote again to the police chief in May 2023 with an analysis of the department guidelines with recommendations for revisions, and a suggestion that encounters with persons with mental health challenges will likely have best results if mental health specialists are present, in the same way that the presence of drug treatment specialists will increase chances of success when dealing with individuals who have bad experiences with narcotics. (ACLU Attorney Mark P. Fancher.)

Multicultural Curriculum as Remedy for Hostile Environment. In April 2021 high school students in Traverse City created a racist Snapchat group titled "Slave Trade" in which the students exchanged photos of Black students while others placed bids for them. The group chat also became a platform for abhorrent discussions about killing a member of the LGBTQ+ community and calls for the genocide of Black and Jewish people. In response, the school board for the Traverse City Area Public Schools (TCAPS) fast-tracked an antiracism resolution that acknowledged, in addition to other things, the need for multicultural education in the district. After a draft of this resolution was presented to the board in May 2021, there was a strong, negative reaction to the draft by elements of the community, and it is suspected that individuals from outside of the community who are part of the national right-wing crusade to remove "critical race theory" from the schools reacted as well. Succumbing to the pressure, the board revised the antiracism resolution, and the resulting resolution in July 2021 eliminated the most important provisions concerning school curriculum and other features that might have a remedial impact on the school district's racial climate. In the aftermath of the controversy, the ACLU of Michigan has monitored and investigated the racial environment in the school district. While a school board has authority to use discretion in the adoption of resolutions and policies, the manner in which that discretion is exercised can expose the district to liability for violation of federal and state antidiscrimination laws. Specifically, while a school district will not be liable for students' spontaneous, unanticipated racial misconduct regardless of how egregious it might be, if school officials have actual knowledge of an ongoing pattern of severe and pervasive racial harassment, and they are "deliberately indifferent" to that conduct and do nothing to address it, they may be liable. In addition, if school officials adopt effective remedial measures, and then make conscious decisions to discontinue them, courts might construe such as evidence of intent to discriminate. Following the ACLU's investigation which included a review of records received from the school district pursuant to the Freedom of Information Act, it was determined that the school district continues to experience significant racial tensions highlighted by documented incidents of racial bullying and harassment. In August 2024 we sent a letter to the superintendent advising of facts and circumstances that might be regarded as grounds for liability, and encouraging the district to address its ongoing problems by adopting or modifying a multicultural curriculum that will allow students to gain knowledge of different geographical histories, cultures, languages, religions, politics, norms, and values that in turn will increase respect among the student population. The superintendent responded favorably to the letter and is assessing the curriculum with the ACLU's partner organizations, the North Star Alliance for Justice and MI ALMA. (ACLU Attorneys Mark P. Fancher and Delaney Barker.)

REPRODUCTIVE FREEDOM

Abortion Rights in Michigan. Following the U.S. Supreme Court's decision overturning *Roe v. Wade*, Michigan faced an imminent threat to reproductive freedom and access to abortion: an archaic state law from 1931 that criminalized all abortions except those necessary to save the life of the mother, was poised to automatically spring into effect when *Roe* was overturned. Anticipating in advance that *Roe* would fall and the 1931 law could end abortion access throughout the state, in March 2022 the ACLU of Michigan worked in coalition to file a lawsuit on behalf of Planned Parenthood of Michigan challenging the 1931 law as a violation of the Michigan Constitution and asking for an immediate statewide injunction against its enforcement. In April 2022 Court of Claims Judge Elizabeth Gleicher agreed with us and issued a preliminary

injunction so that abortion access could continue in Michigan. In September 2022 Judge Gleicher issued a final judgment and permanent injunction, ruling that the Michigan Constitution's right to bodily integrity protects access to abortion, and that the 1931 law violates that right as well as the Michigan Constitution's right to equal protection under the law. The Michigan legislature intervened in the lawsuit and filed an appeal. Meanwhile, in May 2022 anti-abortion prosecutors and organizations filed a separate lawsuit challenging Judge Gleicher's authority to issue her rulings. In August 2022 the Court of Appeals dismissed their lawsuit, and they sought leave to appeal in the Michigan Supreme Court. In June 2022 we also filed a friend-of-the-court brief in a similar case filed by Governor Whitmer encouraging the Michigan Supreme Court to rule on the state constitutional questions as soon as possible. In February 2023 the legislature repealed the 1931 abortion ban, rendering the appeals and attempts to overturn Judge Gleicher's rulings moot, and leaving her rulings intact. In January 2023 the Governor withdrew her lawsuit, and in May 2023 the Michigan Supreme Court declined to hear all remaining appeals in the matter, bringing the litigation to an end. (*Planned Parenthood of Michigan v. Attorney General*; *In re Jarzynka*; *Whitmer v. Linderman*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin and legal interns Cali Winslow and Maya Lorey; co-counsel Deborah LaBelle and Mark Brewer; Hannah Swanson, Susan Lambiase and Peter Im of Planned Parenthood Federation of America; and Michael J. Steinberg of U-M Law School, with student attorneys Hannah Shilling, Ruby Emberling, Audrey Hertzberg, Hannah Juge and Emma Mertens.)

Medicaid Ban on Abortion Care. After voters passed Proposal 3 in 2022, enshrining the fundamental right to reproductive freedom in the Michigan Constitution, the state legislature repealed some anti-abortion laws but left others in place. Among the laws that legislators failed to repeal is a 1980s-era ban on the use of state funds for abortion. As a result, hundreds of thousands of Michiganders with Medicaid insurance are unable to use their insurance to cover the cost of an abortion or any related care. The Medicaid ban creates a two-tiered system: people with higher incomes and private insurance are able to use their plans to cover the cost of an abortion, while Medicaid-eligible patients—who by definition are lower-income—are forced to come up with the funds themselves, which they may not have. The law also puts lower-income patients in harm's way, delaying or denying their access to care and in some cases forcing them to carry a pregnancy to term. In June 2024 the ACLU filed a lawsuit challenging Michigan's ban on Medicaid coverage for abortion care on behalf of YWCA Kalamazoo, an organization that operates a fund to help people pay for abortion care. We are arguing that the ban is unconstitutional under Michigan's new constitutional amendment guaranteeing the right to reproductive freedom. (*YWCA Kalamazoo v. State of Michigan*; ACLU of Michigan Attorneys Bonsitu Kitaba-Gaviglio, Phil Mayor, and Dan Korobkin; National ACLU Attorneys Brigitte Amiri and Ryan Mendias; Cooperating Attorneys Katherine Cheng, Jessica Huang, Jennifer Briggs Fisher and Jamie Santos of Goodwin Procter.)

Employer's "No Pumping" Policy. When Elizabeth Burke returned to her job as a flight attendant for Spirit Airlines after giving birth to her child, she was told by her employer that she would not be allowed to pump breastmilk on the aircraft. As a result, Ms. Burke was forced to reduce the number of flights and hours she worked, which in turn made her ineligible for medical leave time under the Family and Medical Leave Act. Then, when Ms. Burke experienced other childbirth-related conditions such as postpartum depression and migraines, she was terminated from her employment under the airline's strict "no fault" attendance policy. In December 2023 the ACLU of Michigan filed an administrative complaint with the Equal Employment

Opportunity Commission on Ms. Burke's behalf, contending that Spirit's policies as applied to Ms. Burke discriminated on the basis of sex, pregnancy, and disability in violation of federal law. Spirit responded to the complaint in March 2024 and we filed a reply in May 2024. (ACLU Attorneys Syeda Davidson and Bonsitu Kitaba-Gaviglio.)

SEX DISCRIMINATION

Domestic Violence Eviction. In February 2023 a survivor of domestic violence in Charlotte, Michigan received notice that she was being evicted from her home because she had repeatedly called 911 to get help during incidents of violence against her. Investigation revealed that the City of Charlotte had sent a letter to the woman's landlord requiring him to evict her because the city considered her repeated calls for police services to be a violation of its nuisance ordinance. The tenant retained us to represent her, and we wrote a letter to the city explaining that its enforcement of a nuisance ordinance against a survivor of domestic violence for calls for help violate state and federal law, including the First Amendment right to petition the government, the right to due process, the Fair Housing Act, and the Violence Against Women Act. The city responded that they will not pursue enforcement action against our client. (ACLU of Michigan Attorney Bonsitu Kitaba-Gaviglio; National ACLU Attorney Sandra Park.)

Sexual Harassment in Public Schools. All students have a right to learn in an educational environment free from sexual harassment and other forms of discrimination by their peers. Although a federal law known as Title IX allows students who are sexually harassed by peers to enforce this right, precedent established by the U.S. Supreme Court and the Sixth Circuit have watered down Title IX's protections and make it difficult to plaintiffs to prevail in such litigation. In June 2023 the Michigan Supreme Court announced that it would consider a case involving peer-on-peer sexual harassment in the Alpena Public Schools. Working with Public Justice and A Better Balance, the ACLU of Michigan filed a friend-of-the-court brief in September 2023 arguing that the Supreme Court should construe our state's civil rights law, the Elliott-Larsen Civil Rights Act, more expansively than Title IX, so as to provide greater legal protections and a better legal standard for students who are sexually harassed by peers in Michigan schools. In August 2024 the Michigan Supreme Court held that a school district cannot be held vicariously liable for harassment by students as suggested by the court below, and remanded the case for a determination of whether the school district can be directly liable for its own action or inaction to stop or address peer harassment. (*Doe v. Alpena Public School District*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Alexandra Brodsky of Public Justice and Dana Bolger of A Better Balance.)

VOTING RIGHTS

Protecting Democracy Against Election Denialism. In Michigan, and throughout the nation, a rise in election denialism has resulted in a movement for members of boards of canvassers to refuse to certify election results. Such refusals are plainly unconstitutional and contrary to Michigan law, but that has not stopped canvassing board members in Michigan from 2020 onwards from occasionally refusing to certify election results, even though their job is supposed to be a simple clerical and ministerial one of adding up the votes that were cast in their

jurisdiction as indicated by the election returns. In August 2024 a member of the Kalamazoo County Board of Canvassers reportedly told *The Detroit News* that the 2020 election was "definitely" stolen from Donald Trump, and that he would refuse to certify the November 2024 election if it unfolded in the same manner as 2020. In order to prevent disruptions following the election, in September 2024 the ACLU filed a lawsuit seeking a judicial declaration that such an act by the canvassing board member would be unlawful. Less than a week later, the canvasser signed a public affidavit recognizing his legal obligation to certify the election and committing to do so. As a result, we agreed to voluntarily dismiss the lawsuit, and will be using the successful results of this suit to warn other county canvassers elsewhere in Michigan that they will be subject to swift and decisive legal action if they refuse to perform their legal duties. (*ACLU of Michigan v. Froman;* ACLU of Michigan Attorneys Phil Mayor, Delaney Barker and Dan Korobkin; National ACLU Attorney Theresa Lee.)

"Adopt and Amend" Legislative Maneuver Guts Ballot Initiatives. In 2018 citizens collected enough signatures to place initiatives on the ballot that would raise the minimum wage and guarantee paid sick leave. But instead of allowing citizens to vote on these important measures at the November 2018 election, the state legislature adopted them into law in order to keep them off the ballot—and then proceeded to gut them as soon as the election was over. This cynical move, which is unprecedented in Michigan history, was challenged in the Michigan Supreme Court through a request by the legislature for an advisory opinion about whether the "adopt and amend" strategy is constitutional. In 2019 the ACLU of Michigan led a coalition of organizations in filing a friend-of-the-court brief arguing that it is not. Unfortunately, the Supreme Court issued an order dismissing the case and declining to issue a ruling. However, the case returned to court a few years later, and in 2022 we filed another friend-of-the-court brief, this time in the Michigan Court of Appeals. In January 2023 the Court of Appeals ruled that the "adopt and amend" strategy is constitutional. We then filed a friend-of-the-court brief yet again in April 2023 urging the Michigan Supreme Court to review the decision. In June 2023 the Court agreed to hear the case, and we supplemented our briefing in October 2023. In July 2024 the Court finally issued a decision agreeing with our position, ruling that "adopt and amend" is unconstitutional. The legislative initiatives as originally passed were ordered to take effect beginning in 2025. (*In re Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369*; *Mothering Justice v. Attorney General*; ACLU Attorneys Dan Korobkin and Sharon Dolente; Cooperating Attorney Eli Savit of U-M Law School; co-counsel Andy Nickelhoff for the Michigan AFL-CIO.)

Robocalls Attempt to Disenfranchise Black Voters. In the 2020 election two individuals orchestrated a scheme to direct fake "robocalls" to minority neighborhoods across the nation, including in Michigan. With an obvious intent to disenfranchise Black voters, the robocalls falsely stated, in the midst of the pandemic, that information about people who voted by mail could be used to pursue open warrants, debt collection, and mandatory vaccination. The Attorney General of Michigan is now prosecuting the robocallers, and the robocallers are arguing that their calls were protected by the First Amendment's right to freedom of speech. The trial court and the Court of Appeals both held that the speech was not protected, and in November 2022 the Michigan Supreme Court agreed to hear the case. The ACLU of Michigan agrees that the First Amendment does not prohibits the state from prosecuting these robocallers for attempting to disenfranchise voters, but we were concerned that the Attorney General's legal theory in the case is dangerously overbroad and could result in allowing the speech of voting rights advocates and

political activists to be criminalized in the future. Therefore, in June 2023 the ACLU of Michigan worked with Promote the Vote to file a friend-of-the-court brief urging the Michigan Supreme Court to issue a ruling that would not chill important political speech during elections, while also providing a legal path for the Court to rule that the prosecution of the robocallers in this case can proceed. In November 2023 we participated in oral argument with special permission from the Court. In June 2024 the Court issued a decision that agreed with our position on virtually every issue in this case. Specifically, the Court rejected the Attorney General's overbroad legal theories that could have also allowed the criminalization of normal political speech, and also adopted a test very similar to the one we urged that ought to allow for prohibiting a limited range of speech such as that engaged in by the robocallers that deliberately seeks to trick voters out of voting by lying to them about how the election process works. (*People v. Burkman*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Mark Brewer for Promote the Vote.)

Keeping Polling Places Safe and Orderly. The 2020 elections in Michigan were smoothly run, but were nonetheless marred by rude, uninformed, and disruptive conduct by election challengers, many of whom embraced false beliefs about our electoral system. In response, in 2022 the Secretary of State issued a manual providing guidance to election officials and challengers as to how challengers could and should conduct themselves in polling places and instructing election officials that they could eject challengers who refuse to follow the law. The Michigan Republican Party, the Republican National Committee, and other individuals then sued the Secretary of State, arguing that several aspects of the guidance exceeded the Secretary's legal powers. In October 2022 the Court of Claims invalidated many provisions of the Secretary's manual, and in October 2023 the Court of Appeals affirmed the ruling of the Court of Claims. The Secretary filed an application seeking leave to appeal in the Michigan Supreme Court, and in March 2024 the ACLU of Michigan filed a friend-of-the-court brief, joined by Promote the Vote, urging the Michigan Supreme Court to consider the appeal and emphasizing, in particular, that election officials have the power to eject from the polling places any challenger who refuses to follow the law. Our brief emphasized that if the lower courts' opinions were allowed to stand, election officials could be powerless to prevent challengers who embrace election denialism from engaging in disruptive and unlawful activity in the 2024 election. In August 2024 the Supreme Court issued a decision agreeing with our position, reversing the decisions below, and upholding most of the Secretary of State's guidance manual. (*O'Halloran v. Secretary of State*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Mark Brewer and Rowan Conybeare for Promote the Vote.)

Reversing Illegal Purges of Voting Rolls. In the runup to the 2024 election, various groups who distrust the 2020 election results embarked on campaigns to send mass challenges to election officials asking them to remove from the voter rolls thousands of valid voter registrations out of a misguided belief that the voter rolls are improperly swollen. These activities threatened to purge (and thus potentially disenfranchise) many properly registered Michigan voters, especially students, snow birds, overseas voters, and military voters. The purge attempts relied on an antiquated Michigan statute that has been superseded by both the federal National Voter Registration Act (NVRA) and by Michigan statutes implementing the NVRA. In response to these activities, the ACLU of Michigan issued Freedom of Information Act requests in multiple jurisdictions to detect where voters were susceptible to being purged, and in so doing came to learn that the clerk in Genoa Township had illegally purged hundreds of voters. In January 2024

we sent a letter to the Secretary of State, joined by Promote the Vote, urging her to issue binding guidance to all clerks statewide making clear that voters cannot be purged in response to mass challenges, and that when clerks receive information that a voter has moved they must follow the NVRA by issuing a letter to the challenged voter and waiting for two federal elections before permanently removing them from the voter rolls. In February 2024 the Secretary of State issued the guidance we had requested. We then sent a letter to the Genoa Township clerk demanding reinstatement of wrongfully purged voters, and all properly registered voters were reinstated by April 2024. (ACLU Attorneys Delaney Barker and Phil Mayor; Cooperating Attorneys Robert Fram, Pierre Anquetil, and August Gweon of Covington and Burling; co-counsel Sharon Dolente of Promote the Vote.)