



ACLU OF MICHIGAN LEGAL DOCKET

FALL 2015

The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2014 and 2015.

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EDUCATION

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

Public School Requiring Poor Families to Pay for Mandatory AP Tests. Arbor Preparatory High School, a public charter school, requires all students to take Advanced Placement (AP) courses as a condition of graduation. Although there is nothing wrong with that requirement, the ACLU of Michigan was notified that that Arbor Prep was also requiring students' families to pay for AP exams. In August 2014 we wrote Arbor Prep a letter informing them that under clearly established state law, the constitutional right to "a system of free public schools" means that schools may not require students to pay for mandatory services and activities such as tuition, books, and examinations. The school promptly revised its policy to clarify that students who completed AP course work could still graduate even if they did not take an AP exam. (ACLU Attorneys Shana Schoem, Kary Moss and Michael J. Steinberg.)

POVERTY

Modern-Day Debtors' Prisons. The Supreme Court ruled decades ago that it is unconstitutional to jail a person for failure to pay a debt that she or he cannot afford. However, the ACLU of Michigan has documented through repeated court watching efforts that numerous judges throughout Michigan are jailing poor people on "pay or stay" sentences—sentences where individuals who are found guilty of a crime are sent to jail if they cannot immediately pay large fines and costs levied by the court. In order to draw attention to this problem, the ACLU has represented indigent individuals throughout the state in appealing their pay-or-stay sentences in select cases that typify the problem. For example, in September 2014 the ACLU represented

Jenna Palmer, a Port Huron woman who was unable to pay fines related to driving without a license. The court did not hold a hearing to see if Ms. Palmer had the ability to pay. Instead, when Ms. Palmer went to the emergency room after fleeing an abusive relationship, she was arrested and jailed for the unpaid fines. After the ACLU intervened, she was released from jail, moved to a domestic violence shelter, and placed on a workable payment plan. We have also represented numerous individuals in appealing their unconstitutional “pay or stay” sentences in Eastpointe. In March 2015 the Macomb County Circuit Court issued a ruling declaring “pay or stay” sentencing in Eastpointe unconstitutional, but despite this decision the practice continued. Therefore in July 2015 we filed a lawsuit asking the circuit court to take “superintending control” of the district court and directly order the judge there to cease his practice of imposing unconstitutional pay-or-stay sentences. (*People v. Palmer, People v. Rockett, People v. Milton*, and *In re Anderson*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Brooke Tucker and Michael J. Steinberg, Legal Fellow Sofia Nelson, Civil Liberties Fellow Charlotte Berschback, and Law Student Intern Andrew Sullivan.)

Food Assistance Cut Off Without Due Process. The Michigan Department of Health and Human Services (DHHS) cut off food assistance to Walter Barry, a low-income, developmentally disabled adult, because Mr. Barry’s identity had been used by someone else who committed a crime. Under a DHHS policy that automatically denies food assistance to anyone with an outstanding felony warrant, Mr. Barry’s benefits were terminated, even after he proved at an administrative hearing that the warrant was based on a crime that was committed by someone else. Under federal food assistance law, states cannot terminate assistance based on outstanding warrants unless the state first determines that the person receiving benefits is in fact fleeing from justice. In 2013 the Center for Civil Justice and the ACLU of Michigan filed a class action lawsuit seeking to ensure that individuals like Mr. Barry do not go hungry due to the state’s unlawful policy. In January 2015 Judge Judith Levy issued a decision finding that DHHS could not deny benefits to people like Mr. Barry. Judge Levy also certified a class of approximately 20,000 people who are eligible for retroactive or future assistance as a result of the case. DHHS appealed to the Sixth Circuit, and has failed to implement the court’s orders. In July 2015 Judge Levy found the state in contempt. (*Barry v. Corrigan*; ACLU Attorney Miriam Aukerman and Legal Fellow Sofia Nelson; Jacqueline Doig, Katie Linehan and Elan Nichols of the Center for Civil Justice.)

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

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

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

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

RACIAL JUSTICE

Holding Wall Street Accountable for Predatory Mortgages in Detroit. In 2012 the ACLU filed a groundbreaking class action on behalf of African American Detroit homeowners against the Wall Street bank Morgan Stanley for its role in shaping the high-risk predatory loans that contributed to the foreclosure crisis and the collapse of once-vibrant Detroit neighborhoods. The ACLU represents five African American homeowners who are facing foreclosure due to the risky and abusive loan terms they received through the now-bankrupt subprime lender New Century. Between 2004 and 2007, Morgan Stanley purchased loans from New Century and, as its most significant customer, shaped New Century's lending irresponsible and destructive practices. By 2007, Detroit was number one of the hundred largest metropolitan areas with the highest foreclosure rates. Nearly 45,000 homes stood vacant by 2008, creating virtual wastelands in Detroit. Moreover, this devastation had a clear racial character: New Century's African American customers in the Detroit area were 70 percent more likely to get a subprime loan than white borrowers with similar financial characteristics. The lawsuit is the first of its kind, brought on behalf of homeowners, seeking to hold a Wall Street bank accountable under the Fair Housing Act for the devastation to communities of color. In July 2013 Morgan Stanley's motion to dismiss the case was denied, allowing the ACLU to proceed with our claim under the Fair Housing Act. After engaging in extensive discovery, the ACLU filed a motion in June 2014 to certify a class of approximately 6,000 African American homeowners in Detroit who obtained predatory New Century Mortgages. In May 2015 the trial court denied the motion for class certification, but the Second Circuit has granted our petition to immediately appeal. (*Adkins v. Morgan Stanley*; attorneys include Brooke Tucker, Sarah Mehta and Michael J. Steinberg of the ACLU of Michigan; Larry Schwartztol, Dennis Parker and Rachel Goodman of the National ACLU; Stuart Rossman of the National Consumer Law Center; and Elizabeth Cabraser of Leif Cabraser Heimann & Bernstein.)

Challenging the Water Shutoffs in Detroit. In June 2014 the Detroit Water and Sewage Department (DWSD) commenced the largest residential water shutoff in U.S. history and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents' health needs or ability to pay. DWSD's internal documents revealed that due to its sloppy billing practices, it had not charged many customers for sewer service for several years. In January 2014 DWSD demanded a lump sum payment from its customers for those sewer charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residential customers with delinquent accounts were frequently billed for charges incurred by previous tenants. Due to the lack of notice provided to these customers before the shutoffs, as well as the fact that DWSD's commercial customers with delinquent accounts were not similarly targeted for service termination, the ACLU and NAACP Legal Defense Fund (LDF) wrote a joint letter to DWSD in July 2014 that outlined why the shutoffs violated the residents' constitutional rights to due process and equal protection. The ACLU and LDF have served as expert consultants in a lawsuit filed in bankruptcy court on behalf of civil rights organizations and residents without water that seeks to restore water service to the city's residents and stop future shutoffs. In September 2014 Bankruptcy Judge Steven Rhodes dismissed the lawsuit. Judge Rhodes' decision is currently being appealed, and the ACLU of Michigan has signed on to the legal team handling the appeal. (*Lyda v. City of Detroit*; ACLU Attorneys Kary Moss, Mark Fancher and Brooke Tucker; Monique Lin-Luse and

Veronica Joice of the NAACP Legal Defense Fund; and Alice Jennings, Jerry Goldberg, Kurt Thornbladh, Julie Hurwitz and John Philo.)

Fighting To Save Race-Conscious Admissions. A coalition of civil rights organizations led by the ACLU filed a federal lawsuit in December 2006 to preserve affirmative action in university admissions in the wake of Proposal 2. The ACLU represented 19 African American, Latino, and white applicants, students and faculty who wanted to ensure that they were able to learn and teach within a diverse environment. We argued that Proposal 2 violates equal protection by making it more difficult for people of color to affect the admissions process than nearly any other group. In other words, nearly any group wanting a characteristic to be considered as a plus factor in university admissions—whether it be legacy status, athletic ability or living in an obscure part of the state—need only lobby the university. In contrast, in order for underrepresented racial minorities to urge a university to employ affirmative action, they must first amend the Michigan Constitution through a ballot initiative. In 2011 the U.S. Court of Appeals for the Sixth Circuit ruled in our favor in a 2-1 decision, and in 2012 the entire Sixth Circuit ruled “en banc” in our favor by a vote of 8-7. Unfortunately, in April 2014 the U.S. Supreme Court reversed the Sixth Circuit’s decision, ruling that while affirmative action is still a lawful means to achieve racial diversity on campus in most states, voters may choose to abolish affirmative action through a ballot initiative. (*Cantrell v. Schuette*; attorneys include Mark Rosenbaum, Dennis Parker, Mark Fancher and Michael J. Steinberg of the ACLU; Melvin Butch Hollowell of the Detroit NAACP; Joshua Civin of the NAACP Legal Defense Fund; Karen DeMasi of Cravath Swaine & Moore; and Professors Erwin Chemerinsky and Lawrence Tribe.)

Racial Profiling by Immigration Officers. The ACLU represented two Latino residents of Grand Rapids, Telma and Luis Valdez, who were detained and assaulted by agents from U.S. Immigration and Customs Enforcement (ICE) even though Luis is a U.S. citizen and Telma is a lawful permanent resident. The mother and son drove to a relative’s house to show their six-year-old cousin their new puppy when ICE agents pulled into the driveway demanding ID. Even though they both produced a Michigan driver’s license, they were handcuffed at gunpoint. One agent banged Telma’s head against the car while yelling at her to admit that she was someone else. The ACLU of Michigan filed a federal lawsuit on behalf of the Valdezes against the federal government and the six ICE agents responsible. In November 2014 Judge Robert Jonker dismissed part of the case in a summary judgment ruling. Telma’s claim against the ICE agents for using excessive force against her was settled. (*Valdez v. United States*; ACLU Attorney Miriam Aukerman and Legal Fellows Marc Allen and Sofia Rahman; Cooperating Attorneys Rhett Pinsky and Maura Hagen; Susan Reed, Katie D’Adamo and Anna Hill of the Michigan Immigrant Rights Center.)

American Woman Profiled, Removed from Plane and Strip Searched. On September 11, 2011, a woman of Middle Eastern and Jewish descent named Shoshana Hebshi was sitting in the same row as two men of Indian descent on a Frontier Airlines flight from Denver to Detroit. When the Indian men got up to use the bathroom, someone reported their behavior as suspicious. After the plane landed in Detroit, armed federal officials took not only the two men, but also Ms. Hebshi into custody at the airport jail. Although she had never met the two men and had done nothing to arouse suspicion, Hebshi was strip-searched in the jail and held for four hours before being interrogated and released. In 2013 the ACLU filed a federal lawsuit against Frontier Airlines, the Wayne County Airport Authority (WCAA), the United States, and various

individual officers alleging that the detention and search violated Hebshi's constitutional rights. In 2014 Judge Terrence Berg denied the airline and government's motions to dismiss the case, stating that there is no "suspected terrorist activity exception" to the Constitution. Judge Berg ruled that if the facts alleged in the lawsuit are true, Ms. Hebshi's rights to be free from racial discrimination and her right to be free of unreasonable searches were clearly violated. The case settled in 2015. Under the settlement terms that can be disclosed, the federal government paid damages to Ms. Hebshi and Frontier amended the discrimination provisions of its handbook and instituted training. During the course of the litigation, the WCAA independently implemented changes to its policies and training that addressed many of Hebshi's concerns. (*Hebshi v. United States*; ACLU of Michigan Attorneys Michael J. Steinberg and Sarah Mehta; National ACLU Attorneys Rachel Goodman and Dennis Parker; Cooperating Attorneys Shelli Calland, Arjun Sethi and Sarah Tremont of Covington & Burling, and Bill Goodman, Julie Hurwitz and Miriam Nemeth of Goodman & Hurwitz.)

Employment Discrimination Against Felons. Many employers require job applicants to disclose past convictions on their job applications. Although this information may sometimes be relevant to a job qualification, some employers refuse to even consider an applicant with a felony conviction even if the offense took place in the distant past and is not relevant to job performance. Such a practice can have particularly devastating consequences for communities of color, who are overrepresented in the criminal justice system as a result of racial profiling, the misguided War on Drugs, and other biases. The Equal Employment Opportunity Commission (EEOC), the federal agency responsible for enforcing employment discrimination laws, has warned that when employers categorically refuse to consider applicants with felony convictions, such a practice likely runs afoul of the federal Civil Rights Act because of its disparate impact on people of color. The ACLU of Michigan is representing two African American men whose job applications were rejected by a large corporation in Detroit because of their felony convictions. In both cases, their convictions occurred in the distant past and would not compromise their ability to perform the job for which they applied. In 2015 we filed complaints on their behalf with the EEOC, and their cases are under investigation by that agency. (ACLU Attorneys Mark Fancher, Brooke Tucker, Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellow Sofia Nelson.)

Saginaw Homeless Man Faces Death By Police Firing Squad. In a brutal execution-style killing captured on video in July 2012, eight Saginaw police officers took the life of Milton Hall, a 49-year-old, African American, mentally ill homeless man. Mr. Hall found himself alone in the middle of an empty parking lot after a verbal altercation with a store clerk. Police were summoned to respond to his erratic behavior. After the officers formed a semi-circle around Mr. Hall, they continued to give him a very wide berth—far beyond Hall's reach. Six officers raised rifles and aimed them in Mr. Hall's direction. Another officer held the leash of a police dog that was allowed to bark and snap at Hall. When Mr. Hall displayed and waved a small pen knife, the officers shot 46 bullets at him, continuing to shoot even after he had collapsed. The entire incident was captured by the officers' dashboard cameras and by video footage taken by civilians. After the Saginaw County prosecutor's office declined to bring criminal charges against the police officers, the U.S. Department of Justice launched an investigation. However, in February 2014, the Justice Department stated that there was not enough evidence of criminal wrongdoing by the officers to warrant a prosecution under federal civil rights laws. Deeply disappointed with the decision, the ACLU of Michigan wrote a letter to the Justice Department

asking that they reconsider, but this request was unsuccessful. In October 2014 the ACLU appeared before the Organization of American States' Inter-American Commission on Human Rights to provide oral testimony and written information about the Hall killing. Produced in connection with that appearance was a video featuring the footage of the killing as well as an interview with Mr. Hall's mother. (ACLU of Michigan Attorneys Mark Fancher and Michael J. Steinberg; National ACLU Attorney Jamil Dakwar.)

Fatal Police Shooting in Ann Arbor. Late one evening in November 2014, Ann Arbor police officers were summoned to the home of Aura Rosser, a 40-year-old African American woman. According to police, she had been engaged in a protracted argument with her boyfriend, and when two officers entered the house, Ms. Rosser approached them with a knife. One of the officers fired a taser, but the other officer confronting the same threat fired his gun, killing Ms. Rosser. After reviewing the results of a state police investigation, the county prosecutor announced that no charges would be brought against the officer who shot Ms. Rosser, concluding that he fired his gun in self-defense. After conducting our own analysis of the incident based on the available facts and documents, the ACLU of Michigan issued a report in March 2015 that sets forth concerns about the prosecutor's analysis and how the police officers responded. The report includes recommendations for reform, including review by independent prosecutors who do not work closely with the local police whose conduct they are investigating, and new training protocols for police officers on the use of force and dealing with citizens who suffer from mental illness. (ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

Racially Disproportionate Traffic Stops in Ferndale. After receiving multiple complaints from African American motorists who felt that they had been the targets of racial profiling by police officers conducting traffic stops in Ferndale, the ACLU of Michigan requested traffic stop data from the Ferndale Police Department pursuant to the Freedom of Information Act. The documentation we received showed that black motorists are being issued traffic citations in numbers grossly disproportionate to their presence in the local population. Although blacks are less than 10 percent of the Ferndale population, African American motorists received 60 percent of traffic citations written during an 18-month period in 2013 and 2014. Alarmed by these statistics, the ACLU wrote a letter to Ferndale's chief of police in September 2014, asking that the department hire independent experts to investigate the racial disparities and recommend reforms. Although Ferndale's police chief and city manager emphatically denied that their officers engage in racial profiling, they agreed to meet with the ACLU and consider a process for reviewing policies and practices. Unfortunately, it is unclear whether, or to what extent, the Ferndale police have committed to implementing reforms, and the most recent traffic stop data in Ferndale shows no significant changes. (ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Gillian Talwar and Lisa Schmidt.)

Racial Profiling on Campus. Dr. Glennard Smith is a 50-year-old African American obstetrician-gynecologist who practically grew up on the campus of Michigan State University because his mother is a long-time professor there. In June 2015 he chose one of the university buildings as a study venue as he prepared for professional recertification. Late one evening, university police officers made a bee-line to the place where he was seated and began to interrogate him, claiming that he fit the description of a homeless man who had been stealing electronic devices. Dr. Smith was dressed in fashionable clothing and was working on an expensive laptop computer. He asked whether the officers were profiling him. One responded

by asking, “What is profiling?” Later in the encounter, the officers were heard laughing about Dr. Smith’s profiling inquiry. In July 2015 the ACLU of Michigan wrote a letter to the chief of police at MSU expressing serious concern about this disturbing incident, but the letter was not answered and a follow-up e-mail prompted only a short, dismissive response from the chief. In August 2015 we submitted requests under Freedom of Information Act seeking documents about Dr. Smith’s encounter as well as any other allegations of racial profiling by MSU police within recent years. (ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

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

Hostile Educational Environment in Bloomfield Hills. In March 2015 students at the University of Oklahoma captured the country’s attention when they were caught on video singing racist songs on a bus. Among those who saw and were affected by these antics were a few white students at Bloomfield Hills Middle School who were inspired to search out and repeat racist jokes and slurs on their own school bus. The target of their harassment was a 13-year-old African American student who had the presence of mind to record their behavior on his phone. When his experience was reported in the media, other families of color stepped forward to complain of what they described as pervasive racism in the school district. After the ACLU of Michigan met with some of these families and then with school administrators, in July 2015 we wrote a letter to the school district recommending a series of reforms, including training for staff, monitoring and tracking of student behavior, curriculum changes, and increasing diversity of personnel. (ACLU Attorney Mark Fancher.)

Racist School Mascot. In response to community concerns, Eastern Michigan University wisely abandoned its offensive use of a Native American “Huron” as a mascot for the school in 1991. However, in 2012 the Huron logo reappeared on the school’s marching band uniforms, hidden beneath a flap on the jackets. Members of the Native American Student Organization (NASO) complained repeatedly to former University President Susan Martin to no avail. Meanwhile, the controversy sparked a series of related incidents of racial harassment on campus. One of the more serious involved the ridicule and assault of an older Native American man by students

dressed in “red-face” and feathers who claimed to be Hurons. In June 2015 the ACLU of Michigan and representatives from the U.S. Department of Justice attended a meeting with NASO and President Martin. The meeting was tense and the ACLU urged removal of the logo from the band uniforms, but there was steadfast refusal to yield. The ACLU followed up with a Freedom of Information Act request for all documents related to the decision to return the logo to the uniforms, as well as documents related to other incidents of harassment. After President Martin left EMU to assume a new position at a university in California, EMU’s interim president announced in August 2015 that the logo would be removed from the uniforms and the Huron mascot permanently retired. (ACLU Attorney Mark Fancher.)

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

Using Restorative Justice To Combat Mass Incarceration. African Americans constitute 13 percent of the U.S. population, but 40 percent of U.S. prisoners. Black males are jailed at a rate of more than 6.5 times that of white males. In order to address the problem of over-incarceration, the ACLU of Michigan worked with Wayne County judges, prosecutors and defense attorneys to establish a restorative justice program for the Wayne County criminal courts. Restorative justice is an effective alternative to incarceration that provides opportunities for offenders and victims to learn from each other, to acknowledge the seriousness of the offenses that have been committed, and to participate in a process of repairing damage and restoring relationships. The program was formally launched as a pilot project in June 2014. Youthful offenders who are charged with auto theft are currently eligible to participate. (ACLU Attorney Mark Fancher; Jeffrey Edison of the National Conference of Black Lawyers-Michigan Chapter.)

LGBT RIGHTS

Supreme Court Rules in Favor of Marriage Equality. A non-ACLU lawsuit was filed in federal court on behalf of two lesbian mothers who were denied the ability to jointly adopt their three special-needs children. The suit alleged that to deny gay parents the right to jointly adopt children violates the equal protection rights of both parents and children. After Judge Bernard

Friedman suggested that the case is really about same-sex marriage equality, the plaintiffs amended their complaint to challenge the denial of their right to marry as well. The ACLU filed a friend-of-the-court brief in support of the plaintiffs, arguing that the Constitution's guarantee of equal protection under the law protects the rights of same-sex couples both to adopt and to marry. The case went to trial in February 2014, and the ACLU provided assistance to the plaintiffs' counsel in cross-examining the state's expert witnesses. In March 2014 Judge Friedman held that Michigan's ban on same-sex couples marrying was unconstitutional. On appeal to the Sixth Circuit, however, a conservative panel reversed Judge Friedman's decision by a vote of 2-1 in November 2014. The Supreme Court took the case and ruled in June 2015 that it is unconstitutional for states to deny same-sex couples the right to marry. (*DeBoer v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg; National ACLU Attorneys Rose Saxe and Leslie Cooper.)

Defending Michigan Marriages. On March 21, 2014, Judge Bernard Friedman entered a final judgment in *DeBoer v. Snyder* (see above paragraph), declaring Michigan's ban on marriage for same-sex couples unconstitutional and enjoining the state from prohibiting such marriages. The following day, approximately 300 same-sex couples got married in Michigan before the Sixth Circuit Court of Appeals issued an order staying Judge Friedman's decision. Because Michigan's marriage ban had been enjoined and the injunction had not yet been stayed, the federal government recognizes that these 300 marriages as completely legal under Michigan law. Governor Snyder, however, announced that Michigan will not recognize the validity of these marriages or provide these couples with any of the legal benefits associated with marriage. In April 2014 the ACLU filed suit in federal court on behalf of eight of the 300 couples, arguing that the Sixth Circuit's stay of the *DeBoer* decision does not allow the state to retroactively cancel the 300 marriages that were legal when entered into, and that these 300 couples are constitutionally entitled to remain legally married regardless of the ultimate outcome of the *DeBoer* appeal. In January 2015 Judge Mark Goldsmith ruled in our favor, holding that it was unconstitutional for Michigan to deny recognition to the 300 couples who were legally married in Michigan. The state chose not to appeal and agreed to a permanent consent judgment in February 2015. (*Caspar v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan, Dan Korobkin, Brooke Tucker and Michael J. Steinberg, and Legal Fellows Sofia Nelson, Sofia Rahman and Marc Allen; National ACLU Attorneys John Knight and Joshua Block; Cooperating Attorney Julian Davis Mortenson.)

Same-Sex Partners Can Keep Health Insurance. In 2011 the Michigan legislature passed, and Governor Snyder signed, a mean-spirited bill that made it illegal for most public employers to voluntarily provide health insurance coverage to same-sex domestic partners of employees. The ACLU challenged the law in federal court on behalf of several couples, arguing that it denied them equal treatment under the law. In June 2013 Judge David Lawson granted a preliminary injunction stopping the law from going into effect. In his 51-page opinion, Judge Lawson concluded that the legislature, in passage the law, was motivated primarily by discriminatory animus against gays and lesbians. In November 2014 Judge Lawson issued a final judgment striking down the law, declaring that it unconstitutionally discriminates against same-sex couples in violation of their rights to equal protection under the law. The state decided not to appeal. (*Bassett v. Snyder*; ACLU of Michigan Attorneys Jay Kaplan and Michael J. Steinberg; National ACLU Attorneys John Knight and Amanda Goad; Cooperating Attorney Amy Crawford of Kirkland & Ellis.)

Changing Gender Markers on Driver's Licenses. In Michigan, a transgender person cannot get the gender marker on their driver's license changed unless they can produce an amended birth certificate showing the correct gender. For persons born in Michigan, changing the birth certificate requires "sexual reassignment surgery," which many transgender people either choose not to undergo, or cannot undergo due to its high costs or possible medical complications. For persons born in other states where birth certificates cannot be amended, changing their Michigan driver's license is impossible. In 2013 the ACLU wrote to the Secretary of State's office to explain that this policy is irrational, violates the privacy and dignity of transgender persons by "outing" them whenever they are required to show their driver's license, and is out of step with the majority of states and federal agencies, most of which allow a change of gender marker based on an affidavit that a person is being treated or has been treated for gender dysphoria. Attempts to reach a resolution with the Secretary of State's office proved unsuccessful, and in May 2015 the ACLU filed a federal lawsuit challenging the policy. The state has filed a motion to dismiss the lawsuit, which will be argued before Judge Nancy Edmunds in October 2015. (*Love v. Johnson*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight and Chase Strangio; Cooperating Attorneys Steven Gilford, Michael Derksen and Jacki Anderson of Proskauer Rose.)

Funeral Home Director Fired for Being Transgender. Aimee Stephens worked as director of a Detroit-area funeral home for six years, responsible for preparing and embalming bodies. Although she is transgender, she hid her female appearance and identity from her employer during her employment, presenting as male. When Ms. Stephens informed her employer that she had been diagnosed with gender dysphoria and would begin presenting as female at work, she was fired. The ACLU of Michigan represented Ms. Stephens in filing a complaint with the Equal Employment Opportunity Commission (EEOC), arguing that the funeral home, by firing her for presenting as female, engaged in unlawful gender stereotyping in violation of Title VII of the Civil Rights Act. After investigating the case, the EEOC concluded that Ms. Stephens' employer had violated her rights under Title VII and in September 2014 filed a lawsuit on her behalf in federal court. This case, along with another filed the same day in Florida, is the first time the EEOC has challenged discrimination against transgender employees under Title VII. The funeral home is now being represented by the Alliance Defense Fund, a right-wing organization that says it is defending the funeral home's "religious freedom." In April 2015 Judge Sean Cox denied the funeral home's motion to dismiss the lawsuit. (*Stephens v. Harris Funeral Home*; ACLU Attorney Jay Kaplan.)

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

We have since filed another friend-of-the-court brief in a similar case in Kent County, and directly represented a non-biological parent in an equitable parenthood case in Washtenaw County. In the Kent County case, the court issued a ruling in October 2014 that agreed with the ACLU and applied the equitable parenthood doctrine. In the Washtenaw County case, a hearing is scheduled for September 2015. Milliron's Supreme Court appeal remains pending. (*Stankevich v. Milliron, Stiles v. Flowers, and Lake v. Putnam*; ACLU Attorney Jay Kaplan; Cooperating Attorneys Sarah Zearfoss and Naomi Waloshin.)

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

Spousal Benefits Denied by Private Employer. Karen Hannant and her partner were one of the 300 couples legally married in Michigan on March 21, 2014, when Michigan's ban on same-sex marriage was ruled unconstitutional (see above). Hannant's employer Heritage Academies provides spousal benefits for its married employees, including health insurance coverage. When Hannant requested that her spouse be covered, Heritage told her that they would only recognize marriages between opposite-sex couples. In March 2015 the ACLU of Michigan filed a complaint on behalf of Hannant with the Equal Employment Opportunity Commission (EEOC), arguing that Heritage's refusal to provide benefits to Hannant's spouse was unlawful sex discrimination by an employer in violation of Title VII of the Civil Rights Act. After the U.S. Supreme Court ruled in favor of marriage equality in June 2015, Heritage agreed to provide benefits to the same-sex spouses of its employees. (*Hannant v. Heritage Academies*; ACLU Attorney Jay Kaplan.)

Transgender Health Insurance Discrimination. Jenna Sehl, a transgender woman, has health insurance coverage with Priority Health, which participates in the health insurance marketplace under the federal Patient Protection and Affordable Care Act (ACA). Although the ACA prohibits discrimination on the basis of sex and gender identity, Priority Health has a policy of not covering any transgender health-related services, including hormone replacement therapy and gender confirmation surgery, even though Jenna's physician has determined that they are medically necessary treatments for her diagnosis of gender dysphoria. In April 2015 the ACLU of Michigan filed a complaint with the Michigan Department of Insurance and Financial Services (DIFS), challenging Priority Health's policy as discriminatory, but DIFS upheld the denial of coverage. In July 2015 we filed a complaint with the Office for Civil Rights of the

United States Department of Health and Human Services (HHS), alleging that Priority Health's denial of coverage is unlawful discrimination in violation of federal regulations governing the ACA. We are awaiting a determination by HHS. (*Sell v. Priority Health*; ACLU Attorney Jay Kaplan.)

WOMEN'S RIGHTS

Pregnant Woman Denied Medical Treatment Based on Hospital's Religious Affiliation. In 2013 the ACLU filed a first-of-its-kind lawsuit against the U.S. Conference of Catholic Bishops (USCCB) after a Catholic hospital in Muskegon refused to provide Tamesha Means with necessary treatment or information as she was suffering a miscarriage. The hospital adheres to the bishops' Ethical and Religious Directives for Catholic Health Care Services, which prohibit the majority of pregnancy termination procedures, even when a woman's health or life is at risk. In Ms. Means' situation, after her water broke at 18 weeks of pregnancy, the safest course of treatment was an immediate termination of the pregnancy. Because the hospital refused to provide treatment and information about the safest available treatment options, Ms. Means suffered extreme pain and emotional trauma and contracted two significant infections. Our lawsuit claims that the USCCB and other affiliated persons were negligent in promulgating directives that increased the risk of patient harm. The lawsuit aims to eradicate a nationwide problem of women being denied necessary treatment and information in the area of reproductive health as a wave of hospital mergers has resulted in one in six hospital beds being Catholic-affiliated and many health care facilities adhering to the bishops' Directives. Unfortunately, in June 2015 Judge Robert Holmes Bell dismissed the lawsuit. We have filed an appeal with the Sixth Circuit. (*Means v. U.S. Conference of Catholic Bishops*; ACLU of Michigan Attorneys Brooke Tucker, Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Louise Melling, Jennifer Dalven, Brigitte Amiri and Alexa Kolbi-Molinas; Cooperating Attorneys Don Ferris and Heidi Salter.)

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

Defending Victims of Domestic Violence. In December 2013 the Inkster Housing Commission attempted to evict Allison Ben, who was nine months pregnant, because her abuser caused a disturbance when he attacked Ms. Ben in her apartment. Working with Legal Aid and the Fair

Housing Center, the ACLU of Michigan wrote a letter to the housing commission warning that the eviction of a domestic violence survivor under these circumstances violated the Fair Housing Act and the Violence Against Women Act. Fortunately for Ms. Ben and her family, we were able to halt the eviction. We also helped Ms. Ben in 2014 and 2015 with subsequent criminal and restraining order proceedings involving the abuser and his girlfriend. (*Inkster Housing Commission v. Ben*; ACLU Legal Director Michael J. Steinberg and Wayne Law Clinic Student Pamela Wall; Cooperating Attorneys Christine Hopkins and Haralambos Mihos; Pamela Kisch of the Fair Housing Center of Southeastern Michigan; Robert Day of the Legal Aid & Defender Association.)

Pregnancy Discrimination at Work. In 2009 the ACLU of Michigan successfully lobbied for an amendment to Michigan's Elliot-Larsen Civil Rights Act that prevents employers from treating pregnant employees differently from other employees who are similarly situated in their ability or inability to work. Despite this provision, Hope Healthcare Center refused to accommodate Asia Myers, a pregnant employee with physician-imposed temporary restrictions due to pregnancy complications, even though it routinely provides accommodations to non-pregnant employees with similar restrictions. Due to Hope Healthcare's failure to provide reasonable accommodations, Ms. Myers was forced to take leave for thirty days, without pay or health benefits, until her physician lifted the restrictions. In October 2013 the ACLU filed a lawsuit on behalf of Ms. Myers alleging the employer's conduct violated the Elliot-Larsen Civil Rights Act as well as the federal Pregnancy Discrimination Act and the Americans with Disabilities Act. In August 2015 we reached a favorable settlement that included an agreement by Hope Healthcare Center to change its policy to treat pregnant employees the same as other employees who are similar in their ability or inability to work. (*Myers v. Hope Healthcare Center*; ACLU of Michigan Attorney Brooke Tucker; National ACLU Attorney Ariela Migdal; Cooperating Attorney Cary McGehee of Pitt McGehee.)

Attacks on Women's Reproductive Health in the Name of Religion. In several federal lawsuits filed in Michigan, private employers challenged the new requirement under the Patient Protection and Affordable Care Act (or "Obamacare") that all employee health insurance plans include birth control prescription coverage. These employers argued that the contraceptive mandate violated their right to religious liberty. Congress added the contraception prescription requirement to address discrimination against women, who have historically paid much higher out-of-pocket costs than men for reproductive health care. The ACLU filed friend-of-the-court briefs in these cases in 2012 and 2013, arguing that just as employers cannot rely on religion to discriminate against racial and religious minorities, they cannot rely on religion to ignore civil rights laws protecting women. In one of the cases, the U.S. Court of Appeals for the Sixth Circuit held that corporations cannot exercise religion in the same way individuals can. However, in June 2014 a 5-4 majority of the Supreme Court ruled in *Burwell v. Hobby Lobby Stores* that owners of closely-held, profit-making corporations can deny employees certain kinds of contraceptives based on the employers' religious beliefs. (*Autocam Corp. v. Sebelius*, *Domino's Farms Corp. v. Sebelius*, *Eden Foods, Inc. v. Sebelius*, *Legatus v. Sebelius*, *M.K. Chambers Co. v. Sebelius*, and *Mersino Management Co. v. Sebelius*; ACLU of Michigan Attorneys Miriam Aukerman, Sarah Mehta and Michael J. Steinberg; National ACLU Attorneys Brigitte Amiri and Daniel Mach.)

Breastfeeding Accommodations at the Bar Exam. Taking the bar exam is stressful for everyone. But it can be physically painful for women who are breastfeeding. Without the opportunity to express breast milk, many breastfeeding women taking the test will likely experience extreme pain and discomfort, causing serious distraction that could negatively impact their test results, and posing a risk to their health. In July 2015 the ACLU of Michigan wrote to the Michigan State Board of Law Examiners asking them to revise their public information and policies to make clear that nursing moms can seek breastfeeding accommodations while taking the bar exam. The Board of Law Examiners has agreed to do so, and is also considering our request to allow breastfeeding test-takers “stop the clock” break time, so that they can pump during the exam if medically necessary. (ACLU of Michigan Attorney Miriam Aukerman; National ACLU Attorneys Galen Sherwin and Lenora Lapidus; Sabrina Andrus of Law Students for Reproductive Justice.)

The Right to Wear Dress Pants at Graduation. Paula Shea, a senior at Oakridge High School in Muskegon, wanted to wear dress pants to her high school graduation. When she was told she couldn't, she did some research, found that requiring girls to wear dresses violates federal civil rights laws and the Constitution, and convinced her principal that she has a right to wear pants. Paula asked the ACLU of Michigan to help other young people like her who don't want to be forced to choose their clothes based on outdated stereotypes about what is right for girls and what is right for boys. So in May 2015 we released a student toolkit, which includes a legal memo and sample letter students can use to challenge antiquated dress codes. (ACLU Attorney Miriam Aukerman and Legal Fellow Linda Jordan.)

FREE SPEECH

The Juggalos Are Not a Gang. In 2014 the ACLU of Michigan filed a federal lawsuit against the FBI for stigmatizing all fans of a popular hip hop and rap group as a “gang.” Dedicated fans of the music group Insane Clown Posse (ICP) refer to themselves as “Juggalos,” much like dedicated fans of the Grateful Dead are known as “Deadheads.” At concerts and week-long gatherings during the summer, Juggalos from all over the country come together to bond over their shared interest in ICP's music and a nonconformist counter-culture that has developed around this group. Many Juggalos also proudly display ICP logos and symbols on their clothing, jewelry, bumper stickers, and as tattoos. Based on a few criminal incidents involving Juggalos, the federal government has officially designated the Juggalos as a “gang.” As a result, completely innocent Juggalos who are not involved in criminal activity are being harassed by police, denied employment, and otherwise stigmatized because of the clothing and tattoos that they use to identify themselves. Among the supporters of almost any group—whether it be a band, sports team, university, political organization, or religion—there will always be some people who violate the law. But that does not mean the government can designate the entire group as a criminal enterprise. In June 2014 Judge Robert Cleland dismissed our case on standing grounds, and we appealed. The Sixth Circuit heard argument in June 2015. (*Parsons v. U.S. Department of Justice*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Saura Sahu, James Boufides and Emily Palacios of Miller Canfield; Howard Hertz and Farris Haddad.)

Free Speech Rights in Privately Managed Public Spaces. Originally created in the early 1800s, Campus Martius is a public park in downtown Detroit that advertises itself as “Detroit’s Gathering Place.” However, the city has outsourced management of this space to a private organization that does not allow citizens to engage in classic First Amendment activity such as silent marches to protest war, handing out leaflets about political events, and collecting signatures on petitions. When the anti-foreclosure group Moratorium Now! attempted to circulate a petition and distribute political leaflets in Campus Martius criticizing the Detroit bankruptcy, they were prevented from doing so by private security guards and the Detroit police. Similarly, when the anti-war group Women in Black attempted to march silently through Campus Martius and distribute leaflets describing their anti-war principles, they were stopped by a private security guard who had been hired to patrol the area. In January 2015 the ACLU of Michigan filed suit, arguing that the First Amendment applies in all publicly owned parks regardless of whether they are managed by a private entity and patrolled by private security guards. In April 2015 the city agreed that the First Amendment applies and promulgated interim rules that allow the exercise of free speech rights in all of the city’s public parks, including Campus Martius. We are currently working with the city to develop permanent rules to protect free speech in public parks. (*Moratorium Now! v. Detroit 300 Conservancy*; ACLU Attorneys Brooke Tucker and Michael J. Steinberg; Cooperating Attorney Christine Hopkins.)

Busking Is a First Amendment Right. College students Chris Waechter and Gabe Novak were told by Saugatuck police officers and other city officials that they are prohibited from playing music, or “busking,” on public sidewalks. When Gabe told police in July 2014 that he believed his activity was protected by the First Amendment, he was arrested, hauled off to jail for the weekend, and charged with a felony. Although Chris and Gabe have both performed on sidewalks in a handful of Michigan cities without incident, Saugatuck officials insist that they must obtain a “license” to play their music. The local licensing ordinance, which normally applies to established businesses that provide public entertainment, would require Chris and Gabe to apply for a license at least 60 days before performing, pay a licensing fee, obtain liability insurance and a corporate surety bond, and even provide toilet facilities and off-street parking for those who wish to listen to their music. In December 2014 the ACLU of Michigan filed a lawsuit on behalf of these musicians, claiming that requiring them to obtain licenses before performing on a public sidewalk is an unconstitutional prior restraint in violation of the First Amendment. In March 2015 the city agreed to a consent judgment prohibiting Saugatuck from enforcing its ordinance against buskers. We then sent a letter to ten other Michigan cities who have similar laws, advising them that busking is a First Amendment right. (*Waechter v. City of Saugatuck*; ACLU Attorneys Michael J. Steinberg and Miriam Aukerman, and Legal Fellow Marc Allen.)

Complete Ban on Truthful Advertising. Psychologists with master’s degrees in Michigan are “limited licensed psychologists,” which means they may provide therapy under the supervision of a fully licensed psychologist. Like nearly all providers of services available to the general public, they need to advertise in order to maintain a client base that will support their work. However, a Michigan statute and administrative rule completely banned limited license psychologists from advertising their services. This ban contravened the long-standing recognition that the First Amendment protects truthful, non-misleading advertising, and the ACLU’s position that the public has a right to know about important services that are available to them. In February 2015 the ACLU of Michigan filed suit on behalf of two therapists who were

forced by state officials to take down their ads and were in danger of losing their practice because of their inability to advertise. The case was settled in August 2015 after the state agreed to issue an administrative ruling allowing advertising. (*Seldin v. Zimmer*; ACLU Legal Director Michael J. Steinberg and Legal Fellow Linda Jordan; Cooperating Attorney Andrew Nickelhoff of Sachs Waldman.)

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

Academic Freedom Threatened by Subpoena in Defamation Case. PubPeer.com is an online forum for scientific discussion and critique of published research. Many of its participants comment anonymously so that they need not fear professional retribution if they criticize the scholarship of their peers, colleagues and future potential employers. Based on that anonymity, PubPeer’s users have highlighted problems with important research papers, often leading to corrections or retractions to the benefit of the scientific community. In October 2014 a prominent scientist at Wayne State University filed a defamation lawsuit against anonymous commenters who had criticized his research on PubPeer’s website. Using the court’s subpoena power, he demanded that PubPeer disclose any information it had that could help identify the commenters. Since the days of the *Federalist Papers* and *Common Sense*, anonymous speech has been recognized as central to the free-speech tradition. Although truly defamatory speech is not protected by the First Amendment, negative opinions and rhetorical commentary are not defamatory and are entitled to First Amendment protection. The ACLU is representing PubPeer in arguing that the website has a First Amendment right not to disclose the identity of its anonymous users unless and until it can be proved that their speech is not constitutionally protected. We filed a motion to quash the subpoena in December 2014. In March 2015 the Wayne County Circuit Court granted our motion in part, but ordered PubPeer to disclose identifying information about one of the online comments. We have appealed. (*Sarkar v. Doe*; National ACLU Attorney Alex Abdo and Brennan Fellow Samia Hossain; ACLU of Michigan Attorney Dan Korobkin.)

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

Vanity Plates Censored. For an extra fee, drivers in Michigan are allowed to come up with their own personalized letter/number configurations for their license plates. Although only a few characters long, "vanity plates" are often used to convey a meaningful expression of the driver's personal identity, values, or sense of humor. Unfortunately, state officials who issue license plates were given the discretion to censor the messages on these plates whenever they are deemed "offensive to good taste and decency." In one case, an Iraq War veteran who lives in the Upper Peninsula was told that he could not have a license plate that says "INF1DL" because some people might find it offensive. In another, a political activist from Ann Arbor was told that his request for a license plate that says "WAR SUX" was being denied because that, too, might offend someone. The ACLU of Michigan filed suit in federal court in 2013 to challenge the vagueness and overbreadth of the "offensive to good taste and decency" law. Although no one likes to be offended, the ACLU believes that it is dangerous to allow the government to decide which speech is allowed and which should be censored. In May 2014 Judge Gordon Quist denied the state's motion to dismiss and ruled that the law was facially unconstitutional. The state then agreed to a consent judgment permanently striking down the law. The "INF1DL" and "WAR SUX" license plates were issued to our clients and can be spotted on Michigan roadways. (*Matwyuk v. Johnson*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg and Law Student Intern Michael El-Zein.)

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

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

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

Political Speech and Youth Curfews on the Detroit RiverWalk. The public walkway and parkland along the Detroit River in Detroit is managed by a private non-profit called the Detroit RiverFront Conservancy. However, until recently, the Conservancy was treating the land as private property. In September 2013 the ACLU of Michigan wrote a letter explaining that because the Conservancy is performing a public function in running a public park, it is bound by the First Amendment. In response, the Conservancy allowed a peace and justice group called Women in Black to march and claimed that it would amend its policies. However, in 2015 the Conservancy denied several individuals and small groups the right to petition, walk with signs or gather on public grounds without a permit. Additionally, it instituted a year-round 6 p.m. curfew for all minors unaccompanied by parents or guardians. The ACLU wrote another demand letter and, in response, the Conservancy has lifted its youth curfew and adopted better free speech policies. (ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Syeda Davidson.)

The Right to Pass Out “Know Your Rights” Leaflets. In June 2013 Joe Marogil was passing out leaflets at the Fulton Street Farmers Market in Grand Rapids about upcoming ACLU “Know Your Rights” events. The market director told him to leave and threatened to have him arrested if he continued. The ACLU of Michigan contacted city officials and asked to meet with them regarding the First Amendment right to distribute non-commercial flyers in public areas. After lengthy negotiations, in February 2015 the city agreed to change its policies and allow petitioning, leafleting and other free speech activities in designated areas of the market. (ACLU Attorney Miriam Aukerman, Legal Fellow Marc Allen, and Legal Intern Allie Freed; Cooperating Attorneys Joe Marogil and Alex Gallucci.)

RELIGIOUS FREEDOM

Religious Restrictions in Prison. In 2009 the ACLU of Michigan agreed to represent Muslim prisoners in a religious freedom class action in federal court. Although the Michigan Department of Corrections (MDOC) accommodates Jewish inmates by providing kosher meals and allows them to congregate for a Passover meal, it denied Muslim inmates halal meals and the opportunity to have the religious Eid meal at the end of Ramadan. Further, although inmates are excused from their prison jobs for many reasons—including doctor appointments, therapy and visitation—MDOC would not release them from work on their Sabbath. In August 2013 Judge Avern Cohn ruled that MDOC was violating the religious freedom rights of Muslim inmates by not allowing them to attend Eid meals and refusing to accommodate their need to attend weekly prayer services. In November 2013 a court-ordered settlement was reached requiring MDOC to provide halal meals. The ACLU continues to monitor compliance with the settlement and has intervened in 2014 and 2015 to ensure that Eid meals have been provided as required. (*Dowdy-El v. Caruso*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Daniel Quick, Doron Yitzchaki, Trent Collier and Michael Cook of Dickinson Wright.)

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

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

Public School District Seeks Christian Superintendent. Approximately a year after dealing with the “Christian setting” ad posted by the EAA (see above paragraph), in March 2015 the ACLU of Michigan received a complaint that the McBain public school system in northern Michigan was seeking to hire a new superintendent with a “strong Christian background and philosophy.” This requirement was listed among the job criteria in an official job announcement posted online, and the board of education had approved the language of the ad before it was posted. The job announcement, moreover, had been written by a professional consultant with over thirty years of experience working in public schools. We wrote a letter to the school board explaining that the job posting, in addition to being unconstitutional and violating numerous federal and state laws, sent the wrong message to students and their families, as well as teachers and staff, about religious tolerance and inclusiveness. The school board immediately confessed that it had made a mistake and removed the Christianity requirement from its job posting. (ACLU Attorney Dan Korobkin and Legal Fellow Marc Allen; Cooperating Attorney Steve Morse.)

Christian Prayer at Public School Graduation Ceremony. In 2014 the ACLU of Michigan received several complaints that the graduation ceremony at a public high school in Zeeland featured Christian prayers approved by school officials. We wrote a letter to the superintendent and principal explaining that the constitutional prohibition on school-sponsored prayer at graduation is a vital safeguard of individual religious freedom. In February 2015 the school district informed us that prayer during the graduation ceremony would be discontinued. (ACLU Legal Fellow Marc Allen; Cooperating Attorney Peter Armstrong.)

VOTING RIGHTS

Petitioning Rights for Non-Michigan Residents. To place an initiative or referendum on the ballot in Michigan, advocacy groups must collect thousands of signatures using volunteers or paid professionals who circulate petitions. The Supreme Court has recognized that the right to collect petition signatures is a form of political speech entitled to maximum protection under the First Amendment. Until 2014, however, only Michigan residents were allowed to circulate these petitions. Similar “resident only” laws in other states have been struck down as unconstitutional by federal courts all over the country. In 2013 the ACLU of Michigan wrote a letter to the Secretary of State’s office asking state election officials to end this unconstitutional discrimination against out-of-state petitioners, but no action was taken. In February 2014 we filed a lawsuit on behalf of the Humane Society and several other organizations challenging Michigan’s state residency requirement for petition circulators. Soon after the lawsuit was filed and just a few days before our motion for a preliminary injunction was scheduled to be heard by Judge Robert Cleland, the Michigan legislature rushed through a bill repealing the residency requirement with immediate effect. We therefore voluntarily dismissed the case in April 2014. (*Humane Society Legislative Fund v. Johnson*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Bill Burdett.)

John Conyers Restored to the Primary Ballot. Inexplicably, when the Michigan legislature repealed the residency requirement for collecting petition signatures for voter initiatives and referenda (see above paragraph), it left in place a requirement that individuals collecting signatures for political candidates be registered voters in this state. In May 2014 the Wayne

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

Democratic Rights Stolen in Benton Harbor. Residents of Benton Harbor who claimed the city's mayor was unresponsive to their needs circulated a petition to have him recalled from office. The county clerk certified the petition in February 2014 and scheduled a recall election for May. However, just before the election the clerk sought an injunction to postpone the election based on unproven allegations that some petition signers may have signed more than once and the dates for some of the signatures may have been altered. The ACLU of Michigan filed a friend-of-the-court brief arguing that the election should proceed. We argued that once a recall petition is certified, the election should not be cancelled based on late-breaking unproven allegations of wrongdoing; rather, any disputes about the validity of the election should be handled in court after it takes place. The court disagreed with the ACLU and canceled the May election pending a full trial on the merits. After all the evidence was presented, the question of whether the recall petitions were sufficient turned on how a signature should be treated when the same person signed a petition more than once, typically on different occasions separated by many weeks or months. The court then ruled that because the signing of petitions is core political speech, even those citizens whose signatures appeared multiple times have a First Amendment right to be heard. He ordered that the first of each signer's multiple signatures be counted and the rest discarded. Even with the loss of the duplicate signatures there were enough signatures remaining to make the petition valid, so the court ordered that the recall be placed on the ballot for the November 2014 election. The county clerk then filed an emergency appeal, arguing that if someone's signature appeared more than once on a petition, that person's signature should not be counted at all. The ACLU of Michigan filed another friend-of-the-court brief, this time arguing that the First Amendment required the clerk to count each person who signed as one valid signature, and simply disregard duplicates. Our brief explained that the signature gathering process causes some people to inadvertently sign the same petition more than once, but this was no reason to exclude those people entirely from the political process. Unfortunately, in September 2014 the Michigan Court of Appeals summarily reversed the trial court's decision without explanation and ordered the ballot recall question removed from the ballot. The Michigan Supreme Court declined an emergency request to consider the case. (*In re City of Benton Harbor Mayoral Recall Election*; ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Mark Brewer.)

Retaliatory Election Fraud Prosecution. Rev. Edward Pinkney is a longtime community activist in Benton Harbor who has waged crusades against gentrification and what he regards as abuses of power by the Whirlpool Corporation and emergency managers assigned to the city. His activities have earned him the animosity of the local power structure, and he has been the target of criminal prosecutions for acts alleged to have occurred while engaged in politics. Several years ago, for example, the ACLU of Michigan represented Rev. Pinkney when he was sent to prison for writing a newspaper editorial that criticized a local judge and condemned the criminal justice system as racist. Most recently, Rev. Pinkney helped coordinate a campaign to recall the city's mayor, whom Rev. Pinkney and others believed to be a stooge of the emergency manager and the other forces Rev. Pinkney has challenged through the years. Although enough signatures were collected on recall petitions to put the issue on the ballot, the election was cancelled based on allegations that the dates next to the petitions' signatures were illegally changed (see above paragraph). The finger was pointed at Rev. Pinkney, and in 2014 he was tried and convicted of election fraud by an all-white jury that was permitted to hear irrelevant and inflammatory evidence of Rev. Pinkney's political activities. In 2015 the ACLU of Michigan filed a friend-of-the-court brief in the Court of Appeals arguing that Rev. Pinkney should be immediately released from prison while he appeals his conviction. We argued that Rev. Pinkney was charged with engaging in conduct that was never clearly defined by the law as constituting a felony offense. The Court of Appeals voted 2-1 to deny Rev. Pinkney's motion to be released on bond, but the merits of his appeal remain pending. (*People v. Pinkney*; ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

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

additional co-counsel include the Sugar Law Center, the Center for Constitutional Rights, Constitutional Litigation Associates, Herbert Sanders, Goodman & Hurwitz, and Miller Cohen.)

PRISONERS' RIGHTS

Abhorrent Conditions of Confinement at the Muskegon County Jail. At the Muskegon County Jail, male guards routinely view naked or partially naked female inmates while they are showering, dressing, or using the toilet. Moreover, women inmates are denied feminine hygiene products, so that they bleed into their clothes. In addition, the jail suffers from such extreme overcrowding that large groups of inmates are routinely held for days in tiny holding cells, without a bed or shower. The jail is infested with insects and mice, and sewage backs up into cells. Women inmates are rarely if ever allowed any exercise outside of their cells. After attempting for almost two years to work with Muskegon County to resolve these systemic problems, in December 2014 the ACLU of Michigan filed a class action to bring the jail into compliance with constitutional standards. The case is pending before Judge Janet Neff. (*Semelbauer v. Muskegon County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellow Marc Allen; Cooperating Attorneys Kevin Carlson, Andrea Johnson and Beth Rivers of Pitt McGehee.)

Challenging “Postcard-Only” Mail Policies. In a disturbing new trend that has been sweeping the country, some jails are prohibiting inmates from sending or receiving any mail unless it is written on one side of a small postcard. Although most jails say they are trying to prevent contraband, few have documented any serious contraband problems with the mail system because they are already allowed to open and search all envelopes and packages that enter or exit the jail. Such severe restrictions on inmates’ ability to communicate with their families and loved ones is also counterproductive to public safety since studies have shown that prisoners are less likely to re-offend when they are able to maintain close ties with families and other support networks in the community. In 2012 the ACLU of Michigan filed a friend-of-the-court brief in a federal lawsuit challenging the Livingston County Jail’s postcard-only policy. The case remains pending before Judge Denise Page Hood. (*Prison Legal News v. Bezotte*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Nakisha Chaney.)

Jail Won’t Let ACLU Send Letters to Inmates. The Livingston County Jail has a postcard-only policy (see above paragraph), but there is supposed to be an exception for legal mail. In February 2014 the ACLU of Michigan wrote letters to several inmates at the Livingston County Jail advising them of their legal options regarding the postcard-only policy and encouraging them to contact the ACLU about a possible court challenge. Although the ACLU’s letters were marked as legal mail and sent by an attorney, the jail refused to deliver them—and did not even inform the ACLU that our letters were being rejected. In March 2014 we filed a federal lawsuit against the jail, and in May 2014 Judge Denise Page Hood issued a preliminary injunction ordering the jail to deliver the ACLU’s mail to inmates. In August 2015 the injunction was upheld on appeal by the Sixth Circuit, which ruled in a published opinion that the ACLU’s letters to inmates were legal mail. (*ACLU Fund of Michigan v. Livingston County*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Tara Mahoney and John Rolecki of Honigman.)

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

Prison Health Care on Trial. In a longstanding ACLU lawsuit against the Michigan Department of Corrections (MDOC), a federal judge has strongly criticized its failure to provide adequate medical and mental health care. In 2006, following the death from dehydration of a mentally ill prisoner who had been chained naked to a concrete slab for four days in an unventilated cell, Judge Richard Enslen ruled that MDOC was practicing torture in violation of the Eighth Amendment. The judge appointed an independent medical monitor and threatened a fine of one million dollars plus \$10,000 per day if the MDOC did not fill staff vacancies to provide basic medical and mental-health care to prisoners. After Judge Enslen retired, the case was reassigned to Judge Robert Jonker, who ruled in 2009 that prison officials were no longer “deliberately indifferent” to prisoners’ serious medical and mental-health needs. In 2011 the Sixth Circuit upheld the decision, effectively putting an end to federal oversight of mental health care in Michigan’s prisons. The district court then resumed jurisdiction over the case and in June 2013 held a trial on the state’s motion to terminate the case in its entirety. Over the course of a two-week trial the plaintiffs presented chilling evidence of what life is like in prison for the ever-expanding population of sick and elderly prisoners who need prescription medications and multiple appointments with nurses and doctors, suffer from chronic health conditions, are facing end-of-life care, and are otherwise dealing with extremely grave and complex medical conditions that a prison system is generally ill-equipped to handle. We are awaiting a decision from Judge Jonker. (*Hadix v. Caruso*; ACLU Attorney Dan Korobkin; Elizabeth Alexander and Patricia Streeter.)

DUE PROCESS

Mike’s Hard Lemonade Case. Christopher Ratté, a University of Michigan professor, took his 7-year-old son, Leo, to a Detroit Tigers game in Comerica Park. Before they took their seats, Christopher purchased what he thought was lemonade from a stand advertising “Mike’s Lemonade,” and, not knowing that it contained alcohol, gave it to his son. During the ninth

inning, a security guard saw Leo with a Mike's Hard Lemonade and alerted the police. Although a blood test revealed that Leo had no alcohol in his system and the police recognized that Christopher had made an honest mistake, they turned Leo over to Child Protective Services. The agency then refused to release Leo to either his mother, who was not even at the game, or to Leo's aunt, who was a social worker and licensed foster parent. Rather, Leo was placed in a foster home for three days until attorneys from the University of Michigan were able to intervene. The ACLU of Michigan filed a lawsuit in 2011 on behalf of the family to challenge the constitutionality of Michigan's child removal law, which permits the government to take custody of children without having to prove that the child is in immediate danger. In 2012 the Michigan legislature passed "Leo's Law" that addressed some, but not all, of the problems that led to this case. In addition to suing city and state officials, we sued the chief judge of the Wayne County Family Court after a court official testified that the judge had a policy of pre-signing child removal orders and instructing the on-duty clerk to simply fill in the blanks in the order based on police allegations. Judge Avern Cohn ruled that the case against the family court judge could proceed because it was unconstitutional for the judge to allow the government to take a child from his parents without any judicial scrutiny, and that portion of the case was settled in April 2014. In 2015 the family settled with the City of Detroit. (*Ratté v. Corrigan*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Amy Sankaran and Matthew Lund, Adam Wolfe and Alice Rhee of Pepper Hamilton.)

Terminating the Rights of Parents Without a Finding of Unfitness. In 2013 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Supreme Court on behalf of Lance Laird, who was denied custody of his children even though there was no adjudication establishing that he was an unfit parent. Mr. Laird was separated from the mother of his young children, who pleaded no contest to neglect and abuse. Although Mr. Laird was not found to have done anything wrong, the court ordered that he attend parenting classes and counseling and submit to drug testing order to obtain custody of his children. The trial court's ruling was based on the "one-parent doctrine," which provided that once the court assumed jurisdiction over a child based on the wrongdoing of one parent, it had authority to deprive the other parent of his or her rights as well, even if the parents were separated and only one parent was accused of wrongdoing. Joining with a coalition of family advocacy organizations, the ACLU brief argued that it violates due process for the state to take away a parent's right to care for his or her children without a formal adjudication that the parent is unfit. In June 2014 the Michigan Supreme Court agreed and declared that the one-parent doctrine was unconstitutional. (*In re Sanders*; Cooperating Attorney Amy Sankaran; Beth Kerwin and Brock Swartzle of Honigman.)

Unconstitutionally Vague Sex Offender Law. Major changes to Michigan's sex offender registration law that went into effect in 2011 were applied retroactively to individuals who were convicted years or even decades before the law was passed. Registrants are barred from living or working in many parts of the state, but the state does not tell them what areas are off limits. The ACLU of Michigan represents six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens, one of whom he has since married—in a federal lawsuit challenging the law. In March 2015 Judge Cleland ruled that the geographic exclusion zones imposed by the law are unconstitutional because neither registrants nor law enforcement know where they are. The law's ill-defined "loitering" prohibition and several reporting requirements were also held to be unconstitutionally vague. The case is currently on appeal in the Sixth Circuit. (*Doe v. Snyder*; ACLU Attorneys Miriam

Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Sofia Nelson and Marc Allen; Cooperating Attorney William Swor; U-M Clinical Law Professor Paul Reingold.)

Chipping Away at the Right to Counsel. Before courts recognized that abusive interrogation techniques could easily lead to a false confession and a miscarriage of justice, police routinely administered the “third degree” on suspects they thought were guilty until a confession was obtained. One form of abuse was to interrogate a suspect incommunicado, which included withholding information that the suspect’s attorney was trying to contact the suspect and was currently available to provide assistance. In *People v. Bender*, the Michigan Supreme Court held that withholding such information violates the Michigan Constitution. In 2013 the Michigan Supreme Court announced that it would consider overruling *Bender*. The ACLU of Michigan joined the Criminal Defense Attorneys of Michigan (CDAM) in filing an amicus brief that urges the court not to strip suspects of this important constitutional protection. Unfortunately, in June 2014 the Michigan Supreme Court overruled *Bender*, diminishing the constitutional protections provided to suspects accused of crimes. (*People v. Tanner*; ACLU Attorney Dan Korobkin and Law Student Intern Eliza Perez Facio; Eve Brensike Primus for CDAM.)

Access to Police Reports. The Supreme Court has ruled that just as the Constitution guarantees the right to an attorney, the Constitution also guarantees the right to represent yourself if you do not want an attorney. If you are representing yourself in a criminal case, the most basic document you need to prepare your defense is a police report, which is a public record in all but the most unusual circumstances. In Grand Rapids, the ACLU of Michigan received repeated complaints that the city was routinely denying defendants who were representing themselves the ability to see police reports in their own cases, even though criminal defense attorneys were freely given access to police reports about their clients. In March 2015 we wrote a letter to the Grand Rapids City Attorney asking her to ensure that unrepresented defendants have access to police reports on the same terms as criminal defense attorneys. The city eventually agreed and changed its policy. (ACLU Attorney Miriam Aukerman and Legal Fellow Marc Allen; Cooperating Attorney Pete Walsh.)

SEARCH AND SEIZURE

Grand Rapids Police Arresting Innocent People for Trespassing. For years, the Grand Rapids Police Department has solicited business owners to sign “Letters of Intent to Prosecute Trespassers.” These letters do not articulate a business owner’s desire to keep a specific person off their property and are not directed at any particular person. Instead, police officers use these generalized letters to decide for themselves who does not “belong” on premises that are generally open to the public. In many cases, the police arrest people who have done nothing wrong, including patrons of the business. In 2013 the ACLU brought a federal lawsuit to enjoin the practice of using these letters to make arrests without the individualized probable cause required by the Fourth Amendment. The plaintiffs include Jacob Manyong, who allegedly “trespassed” when his vehicle entered a business parking lot for several seconds as he pulled out of an adjacent public parking lot, and Kirk McConer, who was arrested for “trespassing” when he stopped to chat with a friend as he exited a store after buying a soda. An expert commissioned by the ACLU to analyze trespass incidents in Grand Rapids found that African Americans are more than twice as likely to be arrested for trespassing than whites. Both parties filed motions

for summary judgment in October 2014 and we are awaiting a decision from Judge Paul Maloney. (*Hightower v. City of Grand Rapids*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg, Legal Fellow Marc Allen, and Civil Liberties Fellow Joe Granzotto; National ACLU Attorney Jason Williamson; Cooperating Attorneys Bryan Waldman and Julia Kelley.)

Criminal Charges and Cars Seized for Going to an Art Gallery. In 2010 the ACLU of Michigan filed a federal lawsuit challenging the Detroit Police Department's 2008 raid of a fundraising event at the Contemporary Art Institute of Detroit. During the raid more than a hundred innocent people were detained, searched, and charged with loitering because, unbeknownst to them, the gallery did not have the proper license for the late-night event. In addition, more than 40 legally parked cars were seized and not released until their owners paid nearly \$1000. In December 2012 Judge Victoria Roberts ruled that the detention of the CAID's patrons and seizure of their cars was unconstitutional. The city appealed, and the appeal was placed on hold in July 2013 when the City of Detroit filed for bankruptcy. In March 2015 the remainder of the case was settled for damages and attorneys' fees. (*Mobley v. City of Detroit*; ACLU Attorneys Dan Korobkin, Sarah Mehta and Michael J. Steinberg; Cooperating Attorneys Bill Goodman, Julie Hurwitz and Kathryn James of Goodman & Hurwitz.)

Impossible Bond Requirement in Forfeiture Case. When police officers in Alpena searched Carmen Villeneuve's house in August 2014 because they believed she was selling marijuana, they seized all of Ms. Villeneuve's money—every last penny. Although forfeiture laws allow the government to confiscate assets that are tied to illegal activity, Ms. Villeneuve says the money in question came from her disability payments and a car accident settlement, not drug activity. The problem is that under Michigan law, Ms. Villeneuve cannot even make this argument in court unless she first posts a bond equal to 10 percent of the value of the seized property. Because the state is currently in possession of all her assets, she was unable to post the bond, and the court ordered her property forfeited to the state without ever considering whether the government could prove that the money it had taken was tied to illegal activities. In November 2014 the ACLU of Michigan entered the case on Ms. Villeneuve's behalf, arguing that the mandatory bond requirement is unconstitutional because it deprives indigent individuals of their property without due process of law. In February 2015 the Alpena County Circuit Court rejected the ACLU's arguments, but after the ACLU appealed the prosecutor agreed that Ms. Villeneuve could have a hearing. (*In re Forfeiture of \$19,940*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg.)

Lawsuit for Information About Multi-Agency Task Force Raid. The ACLU of Michigan has worked to expose and address the abuses of raids by inter-agency police task forces and police raids. In October 2014 we learned that a task force involving the Highland Park police and federal immigration agents raided a late-night dance and music event in Detroit, resulting in numerous arrests, forfeitures and allegations of mental and physical abuse by law enforcement officers. When we sent the Highland Park Police Department a public records request in an attempt to learn more about the incident, they failed to provide the requested documents. In July 2015 we filed a lawsuit based on this violation of the Freedom of Information Act. (*ACLU of Michigan v. City of Highland Park*; ACLU Legal Director Michael J. Steinberg and Legal Fellow Linda Jordan; Cooperating Attorney Ralph Simpson.)

Detroit Police Hire Architects of NYPD’s Unconstitutional Stop-and-Frisk Program. The ACLU of Michigan was troubled by news reports that the Detroit Police Department hired the Manhattan Institute and Bratton Group as consultants, as these were the firms that helped the New York City Police Department devise its unconstitutional stop-and-frisk program. In 2013 the ACLU sent a letter outlining its concerns to Detroit’s police chief. The letter included a Freedom of Information Act request for documents concerning stop-and-frisk policies as well as details regarding the relationship between the police department and the consultants. The documents we eventually received indicated that the Manhattan Institute had been paid more than \$600,000 for a six-month contract. Additionally, we learned that the consultants advised community members that because dirty gasoline stations owned by Chaldeans are sites of carjackings and other crimes, the neighborhoods of these business owners should be picketed. Our investigation prompted a second ACLU letter in April 2014, this time directed to Governor Snyder, the only elected official with supervisory powers over the emergency manager in charge of Detroit. The letter warned that Detroit is unable to afford to pay hundreds of thousands of dollars for racially divisive consulting services, and pointed out that such an imprudent use of public funds may have been avoided had a democratically accountable city council been required to sign off on the contract. When the consulting contract expired it was not renewed. (ACLU Attorney Mark Fancher; Cooperating Attorney Ralph Simpson.)

DRUG LAW REFORM

Michigan Cities Cannot Ban Medical Marijuana. In 2008 the Michigan Medical Marijuana Act (MMMA) was approved by an overwhelming majority of Michigan voters, including significant majorities in Birmingham, Bloomfield Hills, Livonia and Wyoming. Although the law bars officials from arresting, prosecuting or in any way penalizing registered patients and caregivers who comply with the MMMA, all four cities enacted ordinances that completely ban medical marijuana. The ACLU of Michigan sued each of these cities, arguing that their ordinances violate state law, but the cities argued that they don’t have to follow state law because marijuana is still illegal under federal law. In a unanimous 7-0 decision and a victory for medical marijuana patients throughout the state, the Michigan Supreme Court ruled in February 2014 that Michigan cities cannot ban medical marijuana through a local ordinance, nor can they use federal law as an excuse to disregard the MMMA. (*Ter Beek v. City of Wyoming, Lott v. City of Livonia, Lott v. City of Birmingham*; ACLU Attorneys Dan Korobkin, Miriam Aukerman and Michael J. Steinberg, and Legal Fellow Zainab Akbar; Cooperating Attorneys Michael Nelson, Andrew Nickelhoff and Jerold Lax.)

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

presented the same issue. The state has asked the Michigan Supreme Court to take the case on appeal. (*Braska v. Challenge Manufacturing Co.*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Rick McHugh from the National Employment Law Project and Steve Grey from the Michigan Unemployment Insurance Project.)

Decriminalizing Grand Rapids. In 2012 Grand Rapids became one of several cities in Michigan where the voters have chosen to decriminalize the possession and use of marijuana. The drug remains illegal under state law, but decriminalization at the local level allows local police agencies to focus their resources on combating more serious crime. In response to the decriminalization initiative in Grand Rapids, the Kent County Prosecuting Attorney filed a lawsuit to have the measure struck down, claiming that it is preempted by state law. The trial court rejected the prosecutor's claims and dismissed the lawsuit, but the prosecutor appealed. The ACLU of Michigan filed a friend-of-the-court brief with the Michigan Court of Appeals in 2013, arguing that the decriminalization measure is not preempted because localities have discretion to allocate their limited law enforcement resources as they see fit. The ACLU also directed the court's attention to new data showing that racial disparities in marijuana arrests are higher in Kent County than almost anywhere else in the country, thereby providing voters in Grand Rapids with another good reason to place reasonable restrictions on local law enforcement. In January 2015 the Court of Appeals agreed with us and affirmed the dismissal of the prosecutor's lawsuit. The prosecutor has asked the Michigan Supreme Court to review the case. (*Kent County Prosecuting Attorney v. City of Grand Rapids*; ACLU Attorneys Dan Korobkin and Miriam Aukerman; Cooperating Attorney Joslin Monahan.)

JUVENILE JUSTICE

Kids Sentenced To Die in Prison. The United States is the only country in the world that sentences juveniles to life in prison without the possibility of parole. This inhumane practice is condemned throughout the world and is prohibited by international law. Yet, in Michigan, there are over 360 prisoners serving life without parole for offenses committed before the age of 18, including some who were as young as 14. Beginning in 2011, the ACLU brought a series of cases in state and federal court arguing that the practice violates the constitutional ban on cruel and unusual punishment. In 2012 the U.S. Supreme Court ruled in *Miller v. Alabama* that mandatory laws that impose automatic life-without-parole punishments on juveniles are unconstitutional. In Michigan, however, the state has refused to apply the *Miller* ruling to juveniles who are already in prison, insisting that they are not entitled to resentencing and must never even have their cases reviewed by a parole board. Therefore the ACLU is continuing to pursue justice on behalf of hundreds of juveniles who were sentenced unconstitutionally and are now seeking the opportunity to have their cases reviewed by a judge or parole board. In 2013 Judge John Corbett O'Meara agreed with the ACLU and ruled that all juveniles serving mandatory life sentences must be given parole hearings. The state's appeal of his decision is pending before the U.S. Court of Appeals for the Sixth Circuit, which heard arguments in January 2015. The ACLU also filed a friend-of-the-court brief with the Michigan Supreme Court in 2014 arguing that *Miller* must be applied retroactively. In July 2014 the Michigan Supreme Court refused to give *Miller* retroactive effect, but in March 2015 the U.S. Supreme Court agreed to decide the issue in an appeal arising from Louisiana. (*Hill v. Snyder* and *People v. Carp*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU

Attorneys Steven Watt, Ezekiel Edwards and Brandon Buskey; Deborah LaBelle and U-M Clinical Law Professor Kimberly Thomas.)

6 p.m. Curfew for Minors. Each year since 2012, the Detroit City Council had passed “emergency” ordinances making it a crime for minors to leave their homes without their parents after 6 p.m. on the annual Fireworks Night in late June. Although the ordinances had been adopted to prevent problems during the Independence Day celebration on the Detroit River, the curfew applied everywhere within Detroit’s 139 square miles. Further, there were no exceptions for minors engaging in First Amendment-protected activities such as attending church or attending youth group meetings, and parents could not even give their 17-year-old permission to walk down the block to visit friends or relatives or go to the fireworks with a grandparent. The ACLU of Michigan sent a letter in 2014 advising the city that the curfew was overbroad and unconstitutional, yet the city was poised to re-enact the ordinance in 2015 for not only the night of the fireworks, but also during the three days leading up to Fireworks Night. We mobilized a successful lobbying campaign in June 2015, meeting with city council members, community leaders and the press, and encouraging dozens of youth and community members to speak at a council meeting. The council voted down the expanded curfew, limited the curfew to just the riverfront area after 8 p.m. on Fireworks Night, and added numerous favorable exceptions to the general 11 p.m. curfew ordinance for such things as youth exercising First Amendment freedoms and youth accompanied by adults other than their parents. (ACLU Legal Director Michael J. Steinberg, Legal Interns Aadika Singh and Jessica Frisina, and Wayne State Law School Civil Rights Clinic Students Joshua Zeman and Zainab Sabbagh.)

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

PRIVACY AND TECHNOLOGY

Cell Phone Location Tracking Without a Warrant. In the age of smart phones, information that is automatically collected by cell phone towers has the potential to reveal an enormous amount of personal information about our whereabouts, including the types of doctors we see, how often we attend church, and whose houses we sleep in at night. In March 2015 the ACLU led a coalition of public interest groups in filing a friend-of-the-court brief in the Sixth Circuit Court of Appeals arguing that such information should not be available to law enforcement unless it is obtained through a search warrant signed by a judge. The case will be argued in October 2015. (*United States v. Carpenter*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Nathan Wessler and Ben Wizner; Rachel Levinson-Waldman and Michael Price of the Brennan Center; Gregory Nojeim of the Center for

Democracy and Technology; Hanni Fakhoury of the Electronic Frontier Foundation; Kristina Supler of the National Association of Criminal Defense Lawyers.)

Local Government Transparency on Surveillance. Given the rapid pace of technological change, it can be hard for citizens to know what surveillance equipment is being used by their local governments, particularly police departments. Too often, new surveillance technologies are purchased and used without adequate consideration of the privacy implications, leaving policymakers scrambling to retroactively design limits when abuses come to light. To address these issues, the ACLU's West Michigan Lawyers Committee worked with the City of Grand Rapids to develop a proactive city privacy policy. The policy, which was adopted in March 2015, requires city departments that acquire new surveillance equipment to obtain prior City Commission approval and to develop operational and data management protocols that spell out why the surveillance technology is needed, how it will be used, what the privacy implications are, and for how long data will be retained. (ACLU Attorney Miriam Aukerman and Legal Fellow Marc Allen; Cooperating Attorneys Peter Armstrong, Joe Marogil and Diann Landers.)

DISABILITY RIGHTS

Five-Year-Old Denied Right To Bring Service Dog to School. The ACLU is appealing to the U.S. Supreme Court on behalf of Ehlena Fry, a young girl with cerebral palsy who needs assistance with many of her daily tasks. Thanks in part to the contributions of parents at Ehlena's elementary school, Ehlena's family raised \$13,000 to acquire a trained, hypoallergenic service dog named Wonder. Wonder performed several tasks for Ehlena, assisted her with balance and mobility, and facilitated her independence. Nonetheless, her school district refused to allow Wonder in the school. The ACLU of Michigan initially negotiated an agreement with the district to allow Ehlena to bring Wonder to school on a trial period for a couple of months; however, the district required Wonder to sit in the back of the classroom away from Ehlena and was not allowed to accompany Ehlena to recess, lunch, library time, and other activities. It even refused to recognize Wonder as a service dog. The ACLU then filed a complaint with the U.S. Department of Education's Office for Civil Rights, which ruled that the school district violated Ehlena's rights under the Americans with Disabilities Act. Ehlena's family ultimately made the difficult decision to transfer to a new school where Wonder would be welcome. In December 2012 the ACLU filed a federal lawsuit against her former school district. Judge Lawrence Zatkoff dismissed the case, reasoning that the Frys could not bring a lawsuit because they did not first exhaust administrative remedies. We appealed and in July 2015 the U.S. Court of Appeals for the Sixth Circuit again ruled against the family in a 2-1 decision. We are now preparing an appeal to the U.S. Supreme Court. (*Fry v. Napoleon Community Schools*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorneys Sam Bagenstos of U-M Law School, Peter Kellett, James Hermon, Jill Wheaton and Brandon Blazo of Dykema, and Gayle Rosen and Denise Heberle.)

Lawsuit for Special Education Records. Ever since the State of Michigan created the controversial Education Achievement Authority (EAA) to take over failing schools in Detroit, there have been complaints that students with disabilities are not receiving adequate special education services. The EAA outsourced special education services to a for-profit company called Futures Education of Michigan, paying the company millions of taxpayer dollars to serve

our most vulnerable children. Details regarding this private company’s actual services, however, have remained elusive. After the EAA failed to provide public records regarding its contract with and oversight over Futures, the ACLU of Michigan filed a lawsuit under the Freedom of Information Act in April 2015 to obtain the documents. (*Tolbert v. Michigan Education Achievement Authority*; ACLU Legal Director Michigan J. Steinberg; Cooperating Attorney Ralph Simpson.)

OPEN GOVERNMENT

Legislating Behind Closed Doors. Senior Judge and Detroit legend Damon Keith once wrote, “Democracy dies behind closed doors.” In an event that is believed to be unprecedented in Michigan history, public access to the Capitol building was closed off on December 6, 2012 just as a highly controversial right-to-work law was being introduced. For over four hours, members of the public—including union members, journalists, lobbyists, and other concerned citizens—were prevented from going inside as debates were occurring and votes were cast. Although law enforcement claimed that protesters had caused overcrowding, video and photographic evidence showed that there was plenty of room inside. It was later discovered that Republican legislative staffers were ordered to occupy seats in the public galleries to make sure that union members and other interested citizens could not attend. Working with a coalition of labor unions, the ACLU of Michigan filed a lawsuit in January 2013 based on the legislature’s violation of the Open Meetings Act, which requires all public bodies in Michigan to deliberate and cast votes in open sessions that are accessible to the public. The Ingham County Circuit Court denied the state’s motion to dismiss the case in 2013, and the Michigan Court of Appeals rejected the state’s application for an immediate appeal, allowing the ACLU’s claims to go forward. Unfortunately, after the case was transferred to the Michigan Court of Claims, the court granted summary disposition to the state in February 2015, ruling that there was not enough evidence of an Open Meetings Act violation for the case to proceed to trial. (*Cook v. State of Michigan*; ACLU Attorneys Kary Moss, Michael J. Steinberg and Dan Korobkin, and Legal Fellow Christina Thacker; Cooperating Attorneys Bryan Waldman, Genevieve Scott, and Michael Pitt and Kevin Carlson of Pitt McGehee; Art Przybylowicz, Jeff Donahue, Michael Shoudy, John Canzano and Andrew Nickelhoff.)

COLLECTIVE BARGAINING

Emergency Manager Cuts Retirees’ Health Care Benefits. The ACLU believes that the rights of public employees to organize and bargain collectively are important aspects of the First Amendment right to freedom of association. The value of collective bargaining, however, would be seriously diminished if the state were free to abandon its obligations under a collective bargaining agreement. Public Act 4 gives Michigan’s “emergency managers” unchecked authority to cancel or modify collective bargaining agreements, even when there are other alternatives for dealing with local budget shortfalls. In 2011 and 2012, the state-appointed emergency manager for the City of Pontiac drastically cut the lifetime health care benefits that had been promised to city retirees, many of whom are living on fixed incomes and can’t afford to continue health coverage on their own. The retirees’ motion for a preliminary injunction against the cuts was denied. In 2013 the ACLU of Michigan filed a friend-of-the-court brief in the U.S.

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