ACLU Michigan

LEGAL DOCKET
FALL 2021

The ACLU of Michigan's legal docket is published annually. This year's docket summarizes the cases with activity in 2020 and 2021.

CRIMINAL LAW REFORM

Bail Reform. Tens of thousands of people in Michigan are locked up in jail, before being tried or convicted of any crime, because of cash bail. Throughout the state, it is common for judges to require people who have been arrested to post cash for their release—in other words, to buy their freedom—or else remain incarcerated while they await trial, even for very minor charges. In April 2019 the ACLU filed a federal class action lawsuit against the judges of the 36th District Court in Detroit, arguing that this practice is unconstitutional because it creates a two-tiered legal system in which the freedom of a person who is presumed innocent depends entirely on their ability to afford bail, a clear violation of due process and equal protection. Locking people up while they await trial inflicts devastating harm on the lives of people who are arrested and their families, including job loss, child custody issues, eviction, and missed medical or educational commitments. This practice also coerces many defendants accused of lesser crimes to plead guilty just to get out of jail. And the harm caused by using cash bail falls disproportionately on people of color, who already bear the brunt of overpolicing and racism in the criminal legal system. In response to our lawsuit, the judges filed a motion to dismiss. In August 2019 briefing was put on hold to allow the parties to engage in settlement talks that will hopefully result in reform without the need for further litigation. (*Ross v. Chief Judge of the 36th District Court*; ACLU of Michigan Attorneys Phil Mayor, Dan Korobkin, and Michael J. Steinberg; National ACLU Attorneys Brandon Buskey and Trisha Triglio; Twyla Carter of the Bail Project; Amia Trigg of the NAACP Legal Defense Fund; and Aaron Lewis, Marta Cook, and Laura Beth Cohen of Covington & Burling.)

Coerced Plea Bargains in Kent County. As part of the ACLU of Michigan's ongoing bail reform efforts throughout the state, we learned that the chief judge in Kent County was abusing the cash bail system to coerce criminal defendants into pleading guilty by raising their bail to unaffordable amounts, resulting in their immediate incarceration, if they rejected a plea offer and insisted on exercising their constitutional right to be tried by a jury of their peers. We partnered with local criminal defense attorneys to make a record of these coercive and unconstitutional conditions and challenged them on appeal. In June and July 2021 the Michigan Court of Appeals ruled in favor of our clients, finding that the judge had abused his discretion in each case. We continue to monitor the situation to determine whether the judge will change his practices. (*People v. Forbes*; *People v. Contreras-Reyes*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Brett Stevenson and Bruce Block).

Pretrial Release During the COVID-19 Pandemic. As the COVID-19 pandemic swept through Michigan, jails and prisons became epicenters of contagion, and public health experts urged officials to decarcerate as much possible. As soon as the crisis began, the ACLU of Michigan created a template motion that could be used by criminal defendants and their attorneys to argue in court for pretrial release. The template was used by defense attorneys around the state to get their clients out of jail, and in several cases we provided direct representation on appeal. In March 2020 we won an appeal in the Michigan Court of Appeals on behalf of Moneasha Ferguson, a single mother who was sent to jail by a trial judge because she was 20 minutes late to court due to public transportation delays. And in May 2020 we won an appeal in the Michigan Supreme Court on behalf of Donald Chandler, who had been denied

pretrial release despite suffering from serious medical conditions. But in a third case, filed in April 2020 on behalf of a man in his sixties with no criminal history who could not afford to pay his bail, our appeal was denied. (*People v. Ferguson*; *People v. Chandler*; *People v. Tesfai*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Will Nahikian, Michael L. Steinberg, and Marcus Chmiel.)

County Refuses to Return Bail Money to Families and Friends. People who are accused of a crime must often rely on their family or friends to put up the money to bail them out. As part of our bail reform work, the ACLU of Michigan learned that courts in Grand Traverse County were keeping the money that friends and family paid to get people out of jail rather than returning it at the end of the case. Such a policy was unconstitutional, contrary to Michigan law, and needlessly led to people being incarcerated because it discouraged family and friends from helping bail people out of jail. In February 2020 we wrote a letter to the chief judge and sheriff demanding that the county abandon its illegal policy. The letter was widely covered in local media, and the county abandoned its policy within the week. (ACLU Attorney Phil Mayor.)

Police Taking Photographs and Fingerprints Without Probable Cause. Keyon Harrison, an African American 16-year-old, was walking home from school when he saw another youth with a model truck and paused to look at it. Grand Rapids police, who later claimed that two youth looking at a toy truck is so suspicious that it justifies a police investigation, stopped Keyon, took his picture, and fingerprinted him. Even though Keyon did nothing more than admire a toy, his picture and fingerprints are now in a police database. The Grand Rapids police have used this "photograph and print" procedure on about 1,000 people per year, many of whom are African American youth. Keyon and Denishio Johnson, another African American youth who was similarly printed and photographed, sued to end the practice. In 2017 the Court of Appeals issued a decision holding that the City of Grand Rapids could not be held liable because its policy only allowed, but did not require, the police to take photographs and fingerprints—a decision that would make it much harder to hold municipalities accountable for civil rights violations in state court. The ACLU of Michigan took over direct representation in the case and appealed to the Michigan Supreme Court. In 2018 the Supreme Court issued a major decision on municipal liability in favor of our clients, holding that cities can be held liable for authorizing unconstitutional conduct by their employees. The case was then remanded, and in 2019 the Court of Appeals ruled that forcing someone to provide their fingerprints is not a search under the Fourth Amendment. We appealed again, and in February 2021 the Michigan Supreme Court announced that they would hear the case. Oral argument is scheduled for November 2021. (*Johnson v. VanderKooi*; ACLU of Michigan Attorneys Miriam Aukerman and Dan Korobkin; National ACLU Attorneys Nathan Freed Wessler and Ezekiel Edwards; Cooperating Attorneys Margaret Hannon, Ted Becker, and David Moran of U-M Law School.)

Kids Sentenced to Die in Prison. In Michigan, over 360 children have been sentenced to life without the possibility of parole. In 2011 the ACLU filed a class action lawsuit in federal court challenging the practice as unconstitutional cruel and unusual punishment. In 2013 Judge John Corbett O'Meara agreed and ruled that all juveniles serving mandatory life sentences in Michigan must be given parole hearings. The state appealed. While the appeal was pending, the United States Supreme Court ruled in a different case that juveniles serving life without parole must be resentenced. The Michigan legislature enacted a new law that would allow some youth to be resentenced to life without the possibility of parole, and set a harsh mandatory sentencing

range for everyone else. In light of these new developments, in 2017 the Sixth Circuit ruled that we could no longer bring a categorical challenge to all life-without-parole sentences. However, in 2018 Judge Mark Goldsmith ruled that the new law's harsh sentencing regime was an unconstitutional ex post facto law because it retroactively took away good-time credits that hundreds of class members had earned while serving their unconstitutional life sentences. The Sixth Circuit affirmed, giving hundreds an earlier opportunity for release saving taxpayers millions of dollars. Meanwhile, we continued to litigate claims that the state was unreasonably delaying constitutionally required resentencings and denying access to the rehabilitative programming that is critical to parole. The case finally settled in November 2020 when the state agreed to give the remaining class members access to prison programming on equal terms with other prisoners to prepare them for parole, and to instruct all prosecutors to move forward with the remaining resentencings within approximately six months. (*Hill v. Whitmer*; ACLU of Michigan Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio; National ACLU Attorneys Steven Watt and Brandon Buskey; co-counsel Deborah LaBelle.)

Juveniles With "Parolable" Life Sentences. For over a decade, the ACLU of Michigan has fought against Michigan's cruel policy of allowing children to be sentenced to life in prison without the possibility of parole. There is a second group that is often overlooked: children who were sentenced to life with the theoretical possibility of parole, but who are not given meaningful hearings, fair consideration, or a realistic shot at release when they become parole-eligible. In December 2018 we joined the Juvenile Law Center in filing a friend-of-the-court brief in the Michigan Supreme Court on behalf of Montez Stovall, who pled guilty when he was 17 years old to second-degree murder in order to avoid a first-degree conviction and sentence of life without parole. Ironically, had Stovall received the harsher sentence, he would now be eligible for resentencing to a shorter term because of the Supreme Court's subsequent rulings. In June 2019 the Michigan Supreme Court remanded the case to the Court of Appeals for further consideration, but in November 2020 the Court of Appeals again denied relief. Stovall appealed again, and we filed another brief in support. In April 2021 the Michigan Supreme Court agreed to hear Mr. Stovall's case and will be determining whether his sentence of life with the theoretical possibility of parole is constitutional. (*People v. Stovall*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Marsha Levick of the Juvenile Law Center, Tessa Bialek of Quinnipiac University School of Law, and Deborah LaBelle.)

Retroactive Punishment Under Registration Law. In 2006 and 2011 the Michigan legislature amended Michigan's sex offender registration law by barring current and future registrants from living and working in a large portion of the state, restricting use of the internet, requiring compliance with onerous reporting requirements, and extending the amount of time they remained on the registry. In 2012 the ACLU of Michigan, working with the University of Michigan's clinical law program, challenged the law in federal court on behalf of six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens, one of whom he has since married. In 2016 the Sixth Circuit issued a groundbreaking decision ruling that the retroactive application of the amendments to those convicted before 2011 violates the United States Constitution's rule against ex post facto laws. But despite the Sixth Circuit's ruling, the State of Michigan failed to bring Michigan's registry into compliance, leaving the state's 44,000 registrants at risk of prosecution unless they comply with the law's onerous and unconstitutional requirements. Therefore, in 2018 we filed a class action lawsuit to ensure that all Michigan registrants obtain the benefit of

the rulings in the earlier case. In February 2020 Judge Robert Cleland ruled in favor of the class. Judge Cleland further ruled that the statute's exclusion zones and certain reporting requirements are unconstitutionally vague for all registrants, and that strict liability prosecutions under the law are impermissible. After deferring entry of the judgment to allow the legislature time to pass a new law and due to the COVID-19 pandemic, the court entered a final judgment in August 2021. Meanwhile, in July 2021 the Michigan Supreme Court, in a case where we filed friend-of-the-court briefs, also ruled that retroactive application of the statute is unconstitutional. (*John Does #1-5 v. Snyder*; *John Does #1-6 v. Snyder*; *People v. Betts*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Michael J. Steinberg, Sofia Nelson, Marc Allen, Juan Caballero, Monica Andrade, Elaine Lewis, and Rohit Rajan; U-M Clinical Law Professor Paul Reingold; co-counsel Alyson Oliver and Cameron Bell.)

Wrongful Conviction for Failure to Register. As a result of amendments to Michigan's sex offender registration law, some people who were previously required to register are no longer required to do so. Unfortunately, the Michigan State Police failed to remove some people from the registry after these amendments despite the change in the law. In a terrible miscarriage of justice, Anthony Hart was arrested, convicted of failing to register, and sent to prison for over a year even though he should not have been on the registry in the first place. After the mistake was discovered, he was released from prison, and he sued the State of Michigan for failing to remove him from the registry. The Michigan Court of Appeals ruled against him, holding that the Michigan State Police could not have foreseen that their failure to remove people from the registry could result in their wrongful conviction and imprisonment. The Michigan Supreme Court granted review of Mr. Hart's case, and the ACLU of Michigan filed a friend-of-the-court brief on his behalf, detailing the history of the registration law and explaining why it was entirely foreseeable that the state's errors would lead to wrongful arrests and convictions. Unfortunately, in July 2020 the Michigan Supreme Court dismissed the appeal, thus allowing the Court of Appeals decision to stand. (*Hart v. State of Michigan*; ACLU Attorneys Phil Mayor and Dan Korobkin.)

Retroactivity of New Marijuana Law. Even though Michigan voters legalized marijuana in 2018, not all marijuana cases that were pending at the time were dropped. One such case involves Tierra Posey, who was prosecuted by the City of Troy for misdemeanor possession of marijuana. While her case was pending, the drug was legalized, but Troy refused to drop the charges. In October 2020 the ACLU of Michigan filed an appeal in Oakland County Circuit Court on Ms. Posey's behalf. We are arguing that legalization of marijuana is retroactive as to all cases that were not yet final at the time the new law took effect. The case is scheduled for a hearing in October 2021. (*City of Troy v. Posey*; ACLU Attorneys Phil Mayor and Dan Korobkin; Cooperating Attorneys Robin Wagner and Robert Palmer of Pitt McGehee Palmer & Rivers; co-counsel Jayesh Patel and Charles Hobbs of Street Democracy.)

Funding Michigan's Court System. Unlike most public services, which are financed by taxes, our court system relies heavily on collecting crippling fines, fees, and costs from low-income criminal defendants in order to operate. This unjust system disproportionately impacts people of color, who are overpoliced and overcharged in our criminal legal system. It also undermines the perception that judges are impartial arbiters, as they have an incentive to find defendants guilty and impose high fines and fees because they money is needed to operate the court system. Working with the Detroit Justice Center and Street Democracy, in March 2021 the ACLU of

Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals challenging this practice as unconstitutional because it violates the due process right to a fair and impartial judiciary. Unfortunately, in May 2021 the Court of Appeals rejected our argument. (*People v. Lewis*; ACLU Attorneys Bonsitu Kitaba-Gaviglio, Phil Mayor, and Dan Korobkin; Rubina Mustafa and Geoffrey Leonard of the Detroit Justice Center; Jayesh Patel of Street Democracy.)

Legal Hurdles to Holding Law Enforcement Accountable. College student James King was walking down the street in Grand Rapids when two men stopped him, demanded to know his name, and took his wallet. Thinking he was being mugged, Mr. King ran. The men followed him, pinned him to the ground, beat him, and choked him until he was unconscious. The men were not actually muggers, but rather officers from a federal-state task force who had mistaken Mr. King for a fugitive. King sued both the officers and the United States Government in federal court, and the case is now before the United States Supreme Court to decide whether a ruling that King cannot sue the federal government will also bar him from suing the officers individually. In August 2020 the ACLU filed a friend-of-the-court brief arguing that the so-called "judgment bar" of the Federal Torts Claims Act does not prevent individual federal law enforcement officers from being held accountable for misconduct. Unfortunately, in a February 2021 decision the Supreme Court disagreed, creating yet another obstacle to holding federal officials accountable for misconduct. (*Brownback v. King*; National ACLU Attorneys David Cole and Jennesa Calvo-Friedman; ACLU of Michigan Attorney Miriam Aukerman.)

DISABILITY RIGHTS

Seven-Year-Old Handcuffed at School. In 2015 a Flint police officer assigned to work at an elementary school handcuffed Cameron McCadden, a seven-year-old child with a disability, when he did not immediately respond to the officer's instruction. Cameron was not a threat to himself or others and was handcuffed for nearly an hour solely on account of his disability-related behavior. The ACLU made extensive attempts to work with Flint to enact policy changes to ensure that no other schoolchildren with disabilities were subjected to abusive treatment Cameron experienced, and we established an alliance with community groups calling for police officers to withdraw from elementary schools. In 2018, after negotiations with the city proved unsuccessful, we filed a federal lawsuit against the City of Flint and the local chamber of commerce that operated the after-school program where the handcuffing occurred. In 2019 Judge Denise Page Hood denied the city's motion to dismiss. In August 2020 the case was settled. In addition to a trust for funds to address Cameron's needs, policy changes were adopted that include, among other things, no use of restraints on children when there is no danger or threat; avoidance of use of police officers in school disciplinary matters; use of the lowest level of enforcement for elementary school-aged children; and special training in de-escalation, implicit bias, disabilities and other subjects relevant to proper responses in child disciplinary matters. (*McCadden v. City of Flint*; ACLU of Michigan Attorneys Mark P. Fancher and Michael J. Steinberg; Cooperating Attorneys Jonathan Marko, Mark Finnegan, and Denise Heberle; National ACLU Attorneys Susan Mizner, West Resendes, and Claudia Center.)

Performance Cancelled Because Actors Have Down Syndrome. DisArt is a disability arts and culture organization that scheduled a series of public performances in Grand Rapids during the Art Prize festival. One of the events was a drag show performed by local actors alongside

Drag Syndrome, a group of performers from the U.K. who are living with Down Syndrome. The owner of the performance venue, local business and political figure Peter Meijer, cancelled the drag show performance, questioning whether the performers had the capacity to make their own decisions and stating that persons with disabilities are "special souls" and "should be protected." DisArt then presented Meijer with assurances that the performers did have the capacity to understand and consent to their performances, but Meijer refused to reconsider his position. In September 2019 the ACLU of Michigan filed a complaint on DisArt's behalf with the Michigan Department of Civil Rights, alleging discrimination on the basis of disability and sex. (ACLU Attorney Jay Kaplan.)

EDUCATION

Special Education in Flint. In 2016 the ACLU of Michigan and the Education Law Center filed a class action lawsuit against the State of Michigan and local school districts over the systemic failure to provide an adequate education for children with disabilities in Flint. In the wake of the Flint water crisis, in which the population of an entire city (including approximately 30,000 children) was exposed to lead, our investigation revealed that the public school system lacks the resources, support and expertise needed to properly screen children for disabilities, to address the educational needs of children who have or are at risk of developing disabilities, and to ensure that students with disabilities are not unfairly disciplined, restrained, or excluded from public education. In 2017 Judge Arthur Tarnow denied the defendants' motions to dismiss, and the Sixth Circuit rejected the defendants' attempt to bring an interlocutory appeal. In 2018 the state agreed to settle a portion of the case by funding a first-of-its-kind initiative that will provide every child in Flint access to an independently run, state-of-the-art screening program designed to detect disabilities associated with lead exposure. Following additional discovery and negotiations, in August 2020 we settled the remaining claims in the case. The settlement includes at least $9 million from the state to establish a fund for special education services for students impacted by the water crisis, $2 million in additional funding from the county, and a commitment to undertake a comprehensive assessment and modification of Flint-area special education plans and policies over the next year. The settlement was approved by the court in May 2021, and the parties continue to negotiate the parameters, timing, and other criteria for the use of the settlement funds. (*D.R. v. Michigan Department of Education*; ACLU Attorneys Syeda Davidson, Kristin Totten, Bonsitu Kitaba-Gaviglio, and Dan Korobkin, with investigator Giancarlo Guzman; Greg Little, Jessica Levin, Elizabeth Athos, and David Sciarra of the Education Law Center; Lindsay Heck and Greg Starner of White & Case.)

Taxpayer Money Appropriated for Private Schools. For fifty years, Michigan's Constitution has strictly prohibited taxpayer funding of private and religious schools. However, in 2016 the legislature appropriated $2.5 million to "reimburse" private and parochial schools for complying with legal requirements that apply to all schools in Michigan. In 2017 the ACLU of Michigan formed a coalition with public school administrators, teachers, and parents to file a lawsuit challenging the constitutionality of the funding, arguing that the appropriation should be struck down because it violates the state constitutional requirement that reserves public education funding exclusively for public schools. In 2018 the Michigan Court of Claims ruled in our favor, declared the statute unconstitutional, and issued a permanent injunction prohibiting the state from funding private schools. But the state appealed, and the Michigan Court of Appeals

reversed by a vote of 2-1. We then appealed to the Michigan Supreme Court, which affirmed the Court of Appeals ruling in December 2020 by an equally divided vote. The case has been remanded to the Court of Claims for consideration of our additional arguments as to why some or all of the funding is unconstitutional. (*Council of Organizations & Others for Education About Parochiaid (CAP) v. State of Michigan*; ACLU Attorney Dan Korobkin; co-counsel Jeffrey Donahue of White Schneider and Brandon Hubbard, Phillip DeRosier, and Ariana Pellegrino of Dickinson Wright.)

The Right to Literacy. In 2018 the ACLU of Michigan filed a friend-of-the-court brief in the Sixth Circuit Court of Appeals supporting a group of students in Detroit who sued the state over its lack of support for literacy in the public schools. Several years ago, we were unsuccessful in seeking a ruling in state court that the Michigan Constitution guarantees a right to an adequate public education, including the right to read. This case sought a similar ruling, except in federal court and under the United States Constitution. In April 2020 the Sixth Circuit issued a stunning ruling recognizing a fundamental right to literacy under the United States Constitution. Unfortunately the full Sixth Circuit then voted to rehear the case and vacated the opinion. The case eventually settled. (*Gary B. v. Snyder*; ACLU Attorney Dan Korobkin; Cooperating Attorney Peter Hammer of Wayne State Law School.)

Benton Harbor Struggles to Save Its High School. Benton Harbor, Michigan has a population that is 85 percent African American, and the poverty rate is 48 percent. By 2011 the school district's debt had ballooned to $18 million. In 2018 Dr. Robert Herrera was appointed as the district's "CEO" and he was given four years to turn the district around. However, Dr. Herrera resigned in 2019 and newly elected Governor Gretchen Whitmer proposed closing the district's high school, igniting a storm of controversy across the state. In August 2019 the ACLU of Michigan sent a letter warning the governor that closing the school would eliminate one of the only remaining educational, cultural and civic centers in a community that has endured decades of discrimination, marginalization and poverty. The letter also urged the governor not to appoint an emergency manager, as doing so would deny the people of Benton Harbor the right to democratic self-government. Subsequently, Governor Whitmer initiated a working committee made up of diverse interests in the Benton Harbor community to examine options for preserving the high school. In January 2020 the ACLU met with the committee and provided recommendations. (ACLU Attorney Mark P. Fancher.)

ENVIRONMENTAL JUSTICE

Safe Water for the People of Flint. After the State of Michigan stripped the residents of Flint of their ability to elect local representatives, state-appointed officials decided to use the Flint River as a water source without adding corrosion controls. As a result, lead leached from the water pipes and poisoned the drinking water, causing untold harm to the people of Flint. ACLU of Michigan investigative journalist Curt Guyette helped to expose the water crisis, and the ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a federal lawsuit against state and city officials seeking a court order requiring them to comply with the Safe Drinking Water Act. The goal of the lawsuit, filed in 2016, was to require the state and the city to replace the lead pipes and, in the meantime, ensure that officials deliver safe drinking water. Judge David Lawson granted our request for door-to-door bottled water delivery and filter

installation, and soon after recommended that the parties enter mediation. In 2017 we reached an unprecedented settlement for $97 million requiring the state and city to replace all lead and galvanized pipes throughout Flint, allocate resources for health and wellness programs, continue door-to-door filter installation and education, and extensively monitor Flint's tap water for lead. We continue to monitor compliance and, when necessary, file motions to enforce aspects of the settlement. The city plans to complete excavations and replacements at all remaining homes in Flint by the end of 2021. (*Concerned Pastors for Social Action v. Khouri*; ACLU Attorneys Bonsitu Kitaba-Gaviglio, Michael J. Steinberg, and Dan Korobkin; Dimple Chaudhary, Sarah Tallman, and Jared Knicley of NRDC; co-counsel Glenn Simmington.)

Flint Residents May Sue for Constitutional Violations. Flint residents filed class action lawsuits in both federal and state court for damages caused by the water crisis. In federal court, they brought claims that the malfeasance of government officials violated their rights under the United States Constitution. The district judge dismissed the federal lawsuit, ruling that the residents' constitutional claims were preempted by the federal Safe Drinking Water Act (SDWA). On appeal, the ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a friend-of-the-court brief in the Sixth Circuit arguing that Congress never intended to strip citizens of the right to seek a remedy under the Constitution when it enacted the SDWA. In 2017 the Sixth Circuit agreed and reinstated the federal damages claims. Meanwhile, in state court, the plaintiffs brought claims arguing that the state violated their right to bodily integrity in violation of the Michigan Constitution by switching the city's water source to the Flint River and deceiving the public about its toxicity. The state sought dismissal of the lawsuit, arguing that there is no constitutional right to bodily integrity, that the state was immune from suit, and that damages were not available for violations of the state constitution. When the case reached the Michigan Supreme Court, we again joined NRDC in filing a friend-of-the-court brief supporting the plaintiffs. In July 2020 the Supreme Court ruled that the plaintiffs' claims could go forward. A $600 million settlement soon followed. (*Mays v. Snyder*; *Mays v. Governor*; ACLU Attorneys Bonsitu Kitaba-Gaviglio, Michael J. Steinberg, and Dan Korobkin; Dimple Chaudhary, Kaitlin Morrison, Sarah Tallman, Jared Knicley, and Jared Orr of NRDC, and Nicholas Leonard of the Great Lakes Environmental Law Center.)

FREEDOM OF SPEECH

Free Speech on Facebook. Charles Blackwell is on a mission to hold public officials accountable. In early 2021 the Inkster Police Department launched an investigation into allegations that the city's parks and recreation director had embezzled public funds. Mr. Blackwell, who has followed Inkster politics for several years, took to Facebook to express his disappointment in the city's handling of the investigation. He posted critical comments about the chief of police on the Inkster Police Department's Facebook page, and exposed the mayor's delinquent property taxes on the mayor's official Facebook page. The police and mayor promptly deleted Mr. Blackwell's critical comments, and blocked him from being able to post, comment, share, or send them direct messages. Mr. Blackwell then filed a federal lawsuit against them to vindicate his First Amendment right to be free from government censorship on city-run Facebook pages. In June 2021 the ACLU of Michigan joined the case to represent Mr. Blackwell, arguing that when the city intentionally created public spaces on their official Facebook pages where any member of the public could engage in dialogue with city officials and

with one another, it created public forums for private speech and is therefore prohibited from censoring or deleting Mr. Blackwell's comments simply because they disagree with his political message. (*Blackwell v. City of Inkster*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; Cooperating Attorney Bill Burdett.)

Racial Justice Protests in Chelsea. In the summer of 2020 a group of high school students formed a group called Anti-Racist Chelsea Youth and held a non-disruptive march in downtown Chelsea to support the Black Lives Matter movement. The Chelsea police, rather than directing traffic and allowing the students to march, ticketed them for impeding traffic. In November 2020 the ACLU of Michigan joined the University of Michigan's civil rights clinic in defending the youth in state court, filing a motion to dismiss the citations on grounds that the impeding-traffic statute violates the First Amendment because it makes exceptions for charitable solicitations but not political protests. In March 2021 Judge Anna Frushour agreed and dismissed all citations. The city did not appeal. (*City of Chelsea v. King*; ACLU Attorney Dan Korobkin; Cooperating Attorneys John Shea, David Blanchard, John Minock, Paul Reingold, and Delphia Simpson; co-counsel Michael J. Steinberg of U-M Law School, with student attorneys Diane Kee, Laila Kassis, and Jeremy Shur.)

Detroit Police Countersue Protesters. In the wake of the murders of George Floyd and Breonna Taylor, demonstrators took to the streets of Detroit in the summer of 2020 to protest police violence and systemic racism. Although the protesters were largely peaceful, police officers responded with mass arrests and violence, deploying tear gas, pepper spray and rubber bullets; in some instances they physically beat protesters or battered them with their police vehicles. Detroit Will Breathe, an organization central to the protests, filed a federal civil rights lawsuit against the police, alleging an excessive use of force and unlawful arrests. The City of Detroit then filed a counterclaim, seeking to hold Detroit Will Breathe and its organizers personally liable for property damage and injuries to police officers that were allegedly perpetrated by different protesters. The ACLU filed a friend-of-the-court brief arguing that the counterclaim should be dismissed, as it was barred by well-established First Amendment principles holding that protesters cannot be held liable for the actions of others unless they have directly and immediately instigated those actions. Our brief explained that the city's litigation tactics were reminiscent of those used by cities in the Deep South that resisted desegregation and abused protesters during the Civil Rights Movement. In March 2021 the court granted Detroit Will Breathe's motion and dismissed the city's counterclaim. (*Detroit Will Breathe v. City of Detroit*; ACLU of Michigan Attorneys Phil Mayor and Dan Korobkin; National ACLU Attorneys Vera Edelman and Brian Hauss.)

Flint Town Hall Arrests. In 2017 the City of Flint invited members of the public to a town hall at House of Prayer Missionary Baptist Church to discuss the city's response to the continuing water crisis. Upon arrival, the public encountered several police officers and bodyguards who demanded that no hats be worn in the sanctuary as required by church rules and policy. Those who objected were denied entry into the public meeting, and some were arrested for complaining about the public meeting being held in a religious institution where religious rules were enforced by the police. In 2018 the ACLU of Michigan filed suit against the city and its police in federal court for violations of the arrestees' constitutional rights. In March 2020 the case settled after the city agreed not to impose church rules at town hall-style meetings, require its police officers to undergo First Amendment and de-escalation training, clear the plaintiffs' arrest records, and

pay damages and attorneys' fees. (*Palladeno v. City of Flint*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Michael J. Steinberg; Cooperating Attorneys Greg Gibbs, Muna Jondy, Glenn Simmington, Ann Gibbs, and Alec Gibbs.)

Lawyer's Right to Hold Press Conference. Law enforcement officers representing a task force that included federal and state officers entered the Detroit home of 20-year-old Terrance Kellom to arrest him. By the end of the encounter, Kellom had been shot ten times by an ICE officer who had a record of violence. Civil rights lawyer Nabih Ayad filed a federal lawsuit on behalf of Kellom's survivors, and as part of his advocacy he conducted a press conference to share damning evidence of police misconduct with the public. The court sanctioned Ayad for speaking to the press about materials produced in discovery because they were allegedly subject to a court order that protected the documents from public disclosure. However, the documents could not be considered secret because they had already been filed on the court's docket by the defendant officer's own attorney and were freely available to the public. In October 2020 the ACLU of Michigan, along with the Detroit Branch of the NAACP and the Arab American Civil Rights League (ACRL), filed a friend-of-the-court brief in the Sixth Circuit Court of Appeals on behalf of Ayad, arguing that longstanding principles of common law and First Amendment jurisprudence protected attorneys' public comment on publicly filed discovery materials. In September 2021 the Sixth Circuit vacated the sanctions order and remanded the case for additional factfinding regarding the documents that had been disclosed. (*Kellom v. United States*; ACLU Attorneys Mark P. Fancher and Dan Korobkin; co-counsel Chui Karega of the Detroit NAACP and Rula Aoun of ACRL.)

Synagogue Protesters. For over 15 years, a small group of anti-Israel activists have been protesting in front of a synagogue in Ann Arbor. Although the protests are peaceful and quiet, and the participants stay on a public sidewalk, they are very controversial and are viewed by many as anti-Semitic. In 2019 a member of the synagogue filed a federal lawsuit against the protesters, seeking a court-ordered injunction to stop the protests and damages for emotional distress. In March 2020 the ACLU of Michigan filed a friend-of-the-court brief condemning the protesters' speech and tactics but arguing that the speech is nonetheless protected by the First Amendment. We pointed out that if the lawsuit against these protesters is allowed to proceed, activists who peacefully protest on public sidewalks about a wide range of issues, including abortion rights, animal welfare, and the environment, could be targets of litigation, which would have an overall chilling effect on speech and political activity for ordinary citizens. In August 2020 Judge Victoria Roberts dismissed the lawsuit, ruling that the protests are protected by the First Amendment. The plaintiffs appealed, and in January 2021 we filed our friend-of-the-court brief in the Sixth Circuit. (*Gerber v. Herskovitz*; ACLU of Michigan Attorney Dan Korobkin; National ACLU Attorneys Brian Hauss, Ben Wizner, Dan Mach, and David Cole.)

Jury Nullification Pamphlets. Jury nullification refers to the controversial decision of a jury to acquit a criminal defendant even when the evidence supports a conviction, typically when the jury believes that the law itself is unjust or being applied unjustly. Judges themselves do not inform juries about this power, and attorneys are not permitted to discuss it in the courtroom. However, there is nothing illegal about individual citizens and advocacy groups informing the general public about jury nullification through websites, pamphlets, and other forms of communication. In 2015 Keith Wood stood on a public sidewalk near a courthouse in Big Rapids offering pamphlets about jury nullification to passersby. Based on this conduct he was

arrested, tried, and convicted of jury tampering, a crime that is typically prosecuted when an advocate attempts to influence individual jurors in a particular case. Mr. Wood's conviction was affirmed through multiple levels of appeal. But in 2019 the Michigan Supreme Court agreed to review the case. The ACLU of Michigan filed a friend-of-the-court brief arguing that handing out informational pamphlets on a public sidewalk is entitled to the highest level of First Amendment protection, and the state had alternative ways to prevent jury tampering that are less restrictive of Mr. Wood's First Amendment rights. In July 2020 the Michigan Supreme Court overturned Mr. Wood's conviction on statutory grounds. (*People v. Wood*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Gautam Hans of U-M Law School.)

Unconstitutional Restrictions on Political Signs. Every election season the ACLU of Michigan learns about local officials ordering homeowners to remove political signs from their yard, and this year was no different. In September 2020 a man in West Branch who had a sign on his own property that said "Trump 2020: Fuck Your Feelings" was charged with violating a criminal statute that prohibits "exhibiting obscene matter within view of children." We wrote a letter to the prosecutor explaining that the charges were a blatant violation of the First Amendment. Within days the prosecution was dropped. Then, following the acrimonious 2020 presidential election in which President Trump and his supporters continued to contest the results for months after the election was over, many homeowners who displayed political signs in their yard before the election decided to keep them up. Some cities and townships, however, threatened to enforce local ordinances that require political signs to be removed within a few days after an election. In November 2020 we wrote letters to city officials in Berkley, Bloomfield Hills, and Grosse Pointe Farms, advising them that their ordinances are unconstitutional because they treat political speech less favorably than non-political signs that do not have such restrictions. In response, the cities agreed to stop enforcing their ordinances and plan to revise them. (ACLU Attorneys Dan Korobkin, Bonsitu Kitaba-Gaviglio, and Syeda Davidson; Cooperating Attorney Jennifer Grieco of Altior Law.)

FREEDOM OF RELIGION

County Threatens to Demolish Amish Homes. When a community of "old order" Amish families moved to a rural area of Lenawee County, many from neighboring communities where they had lived in peace for generations, county officials insisted that they must use running water and modern sewage systems that conflict with the order's religious practice of rejecting the use of modern technology. Despite efforts to educate local officials about the religious practices of the Amish, the county posted notices on Amish homes calling them "unfit for human habitation." In October 2019 Lenawee County filed lawsuits against every Amish family in the county asking a court to kick the Amish off their own property and demolish their homes. The ACLU of Michigan is representing the Amish families to defend their right to adhere to their religious beliefs while not harming anyone else. In December 2019 we filed counterclaims for violating the Amish families' constitutional rights to religious liberty as well as the Fair Housing Act. (*Lenawee County Health Department v. Eicher*; ACLU Attorneys Phil Mayor and Dan Korobkin; Cooperating Attorney John Shea; co-counsel Rick Schulte, Steve Behnke, Dennis Mulvihill, and Jacob Bender.)

Religious Prisoners Deprived of Halal and Kosher Food. In 2013 the ACLU of Michigan won a class action lawsuit against the Michigan Department of Corrections (MDOC) on behalf of Muslim prisoners whose meals did not comply with the halal requirements of Islam. Soon after this important religious freedom victory for Muslim prisoners, we learned that MDOC had stopped ordering pre-packaged kosher meals for Jewish prisoners. Instead, it adopted a "one size fits all" vegan diet that it claimed met the religious requirements of all religions. However, the vegan food was prepared in the same kitchen as non-kosher food and is served using the same utensils that are used for non-kosher food. This "cross-contamination" violates kosher laws. In 2016 the ACLU of Michigan and the MSU Civil Rights Clinic agreed to represent a Jewish prisoner who was challenging the denial of a kosher diet as a violation of his religious freedom. In 2018 Judge Linda Parker denied MDOC's motion to dismiss, and in January 2020 approved a settlement agreement in which MDOC is required to provide certified kosher meals to Jewish prisoners who request them. Additional disputes have arisen regarding MDOC's compliance with the settlement agreement, but in March 2021 the court denied further relief. (*Dowdy-El v. Caruso*; *Ackerman v. Washington*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Daniel Quick of Dickinson Wright; co-counsel Daniel Manville of the MSU Civil Rights Clinic.)

IMMIGRANTS' RIGHTS

Vulnerable Immigrants Freed from Jail During the COVID-19 Crisis. Immigration and Customs Enforcement (ICE) warehouses many immigrants in Michigan jails while seeking to deport them from the country. During a pandemic, this practice is not just inhumane, it can be deadly, particularly for people who are older or have medical vulnerabilities. People in jails are crowded together in unsanitary conditions with no ability to socially distance or protect themselves from the virus. In April 2020 the ACLU sued ICE, arguing that keeping immigrants with vulnerabilities locked up during the pandemic violates their constitutional right to safe conditions of confinement. Judge Judith Levy agreed, certified a class of immigration detainees held at the Calhoun County Jail, and adopted a bail application process to decide whether vulnerable class members should remain locked up there. As of August 2021, over 50 medically frail people have been freed through the case. In addition, under pressure from the litigation, ICE and the Calhoun County Jail made significant improvements in conditions, including providing personal protective equipment and offering vaccines. The case is now in settlement negotiations. In April 2020 we also brought a lawsuit on behalf of five immigrants detained in St. Clair and Monroe County, but there Judge Stephen Murphy denied release. (*Malam v. Adducci*; *Albino-Martinez v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, Syeda Davidson, Elaine Lewis, and Rohit Rajan; additional attorneys include Anand Balakrishnan, My Khanh Ngo, Eunice Cho, and Michael Tan of the National ACLU and Jeannie Rhee, Mark Mendelson, and associates and counsel from Paul Weiss.)

U.S. Citizen Turned Over to ICE for Deportation. We are representing Jilmar Ramos-Gomez, a United States citizen and Marine Corps veteran who was wrongfully turned over to Immigration and Customs Enforcement (ICE) for deportation proceedings. Mr. Ramos-Gomez, who suffers from PTSD as a result of his military service in Afghanistan, was arrested by the Grand Rapids police in 2018 after trespassing at a local hospital. An off-duty police captain

named Curt VanderKooi saw Mr. Ramos-Gomez's picture on the news and asked ICE to check his "status," despite having no reason to think he was undocumented other than his name and Latino appearance. ICE then issued an immigration detainer request for Mr. Ramos-Gomez, resulting in the Kent County Jail placing him in federal custody until his family could prove he was a U.S. citizen and get him released. An ACLU of Michigan investigation revealed that Captain VanderKooi, who is supposed to have no role in immigration enforcement, has contacted ICE on over 80 occasions, each time asking them to check the immigration status of a person of color. In 2019 Captain VanderKooi was suspended without pay, the Grand Rapids police announced a new policy that prohibits officers from inquiring about a person's immigration status or contacting ICE for civil immigration enforcement, and the City of Grand Rapids settled Mr. Ramos-Gomez's claim for $190,000. Similarly, Kent County adopted a new policy requiring a judicial warrant before turning someone over to ICE. ICE, however, refused to accept responsibility, and in November 2019 we filed suit. We also sued Calhoun County under the Freedom of Information Act to obtain records about Mr. Ramos-Gomez's detention in their jail. The trial court dismissed our lawsuit based on an obscure federal regulation that the county says prohibits the public from seeing all local records about people held for ICE, and in March 2021 the Court of Appeals affirmed. In July 2021 we filed an application for leave to appeal with the Michigan Supreme Court. (*Ramos-Gomez v. Adducci*; *ACLU of Michigan v. Department of Homeland Security*; *ACLU of Michigan v. Calhoun County*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, and Elaine Lewis; Cooperating Attorneys Anand Swaminathan, Matthew Topic, Joshua Burday, Merrick Wayne, Megan Pierce, and Matthew Topic of Loevy & Loevy; additional attorneys include Julia Kelly, Richard Kessler, and Hillary Scholten.)

Iraqis Face Torture or Death if Deported. In 2017 hundreds of Iraqis in Michigan and throughout the country were arrested by Immigration and Customs Enforcement (ICE), which intended to deport them immediately to Iraq. Most have been living in the United States for decades, but were previously ordered deported, either for technical immigration violations or for past convictions. Because the Iraqi government had long refused to issue travel documents for potential deportees, the United States has been unable to deport them. But when Iraq agreed to accept some U.S. deportees, suddenly all 1400 Iraqis with an old deportation order were targets. The ACLU filed a class action lawsuit in federal court to stop the deportations on the grounds that they would likely result in persecution, torture or death for those deported. In 2017 Judge Mark Goldsmith issued a preliminary injunction barring deportation of Iraqis while they access the immigration court system, giving them time to file motions to reopen their immigration cases based on the changed country conditions or legal developments in the decades since their cases were decided. Subsequent orders in 2018 required the government to provide Iraqis with bond hearings and release those who had been detained longer than six months, freeing hundreds of people from detention. But the government appealed, and in decisions in December 2018 and January 2020 the Sixth Circuit reversed, each time by a vote of 2-1. Despite the legal setbacks in the Sixth Circuit, the case has allowed hundreds of Iraqis to access the immigration court system, as well as to fight their immigration case from home, rather than in detention. Many are winning their immigration cases, and some have even become citizens. But a few have been deported, and one of our clients, Jimmy Al Dauod, died in Iraq. The case is now back before the district court on remand. (*Hamama v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Bonsitu Kitaba-Gaviglio, Dan Korobkin, Michael J. Steinberg, Monica Andrade, Juan Caballero, and Elaine Lewis; additional attorneys include Lee Gelernt, Judy Rabinowitz, and Anand

Balakrishnan of the National ACLU; ACLU of Michigan Cooperating Attorneys Margo Schlanger of U-M Law School, Kimberly Scott, Wendy Richards, Andrew Blum, Erika Giroux, and Russel Bucher of Miller Canfield, with support from James Angyan and Katie Witowski; David Johnson, Linda Goldberg, and William Swor; and co-counsel Nadine Yousif and Nora Youkhana of CODE Legal Aid; Susan Reed and Ruby Robinson of the Michigan Immigrant Rights Center; and Mariko Hirose of the International Refugee Assistance Project.)

Donald Trump's Muslim Ban. When campaigning for president, Donald Trump called for a ban on Muslims entering the United States. In January 2017, one week after his inauguration, President Trump banned travel for immigrants from seven Muslim-majority countries and halted the refugee resettlement program. His executive order was almost immediately halted by federal courts in lawsuits filed across the country, including by Judge Victoria Roberts in Detroit who enjoined portions of the executive order that prevented lawful permanent residents from the barred countries from returning to the United States. The ACLU of Michigan joined with the Arab American Civil Rights League (ACRL) in challenging the order in the Detroit case. In 2018 the U.S. Supreme Court ruled that the lower courts erred in granting a preliminary injunction against the ban because they applied the wrong legal standard, but in July 2019 Judge Roberts ruled that our case can proceed under the standard the Supreme Court set. In November 2019 the government sought and obtained permission to appeal to the Sixth Circuit. After President Biden took office, he rescinded the Muslim Ban, and in February 2021 the case was dismissed as moot. (*Arab American Civil Rights League v. Trump*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Michael J. Steinberg, Monica Andrade, and Elaine Lewis; Cooperating Attorneys Jason Raofield, Nishchay Maskay, and Alyson Sandler of Covington & Burling, Julian Mortenson of Miller Canfield, and Margo Schlanger and Samuel Bagenstos of U-M Law School; co-counsel Nabih Ayad, Rula Aoun, Kassem Dakhlallah, Mona Fadlallah, Ali Hammoud, and Natalie Qandah.)

Is All of Michigan a Warrantless Border Zone? Customs and Border Protection (CBP), the parent agency of Border Patrol, claims authority under a federal statute to conduct warrantless searches within a "reasonable distance" of the border. Those outdated regulations define "reasonable distance" to be "100 air miles" from any external boundary, including coastal boundaries, unless an agency official sets a shorter distance. In Michigan, the agency considers the entire state of Michigan as falling within the 100-mile zone. The ACLU of Michigan and coalition partners filed a Freedom of Information Act (FOIA) request for more information about these warrantless searches, but CBP failed to respond, so in 2016 we sued in federal court to obtain the records. Although CBP provided some information in response to our lawsuit, it redacted all geographic information from the records, making it impossible to determine where in Michigan CBP is operating and how far from the actual border the agency is conducting warrantless searches. In 2018 we reached a settlement agreement that required CBP to provide city/township-level geographic information, and in March 2020 we finally received the last of the documents. Our analysis of those records showed disturbing patterns of racial profiling and abuse, as well as extensive and damaging entanglement between local law enforcement and CBP. In March 2021 we published our findings in a report entitled *The Border's Long Shadow: How Border Patrol Uses Racial Profiling and Local and State Police to Instill Fear in Michigan's Immigrant Communities*, a first-of-its-kind investigation of CBP's Michigan operations. Following the release of our report, the Michigan State Police, who were responsible for initiating the detention of the most people who are transferred into CBP custody, adopted

policy changes to better safeguard against violations of immigrants' rights, and members of Congress have asked the Department of Homeland Security for briefing and information regarding the report's findings. (*Michigan Immigrant Rights Center v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman, Monica Andrade, and Juan Caballero; Cooperating Attorneys Samuel Damren, Dante Stella, Nina Gavrilovic, and Corey Wheaton of Dykema.)

Immigration Agents Searching Greyhound Buses. The Greyhound bus company allows federal agents from Customs and Border Protection (CBP) to board its buses and ask passengers for their "papers" even when CBP has no warrant, no probable cause, and no specific person they're looking for. In one widely publicized incident, CBP boarded a Greyhound bus in Detroit, questioned two passengers about their immigration status, demanded that they produce documentation, and took one of them into custody. Similar incidents were reported throughout the country. When questioned about the incidents by the media, Greyhound claimed that it was required to cooperate with CBP. In March 2018 the ACLU of Michigan along with ACLU affiliates in nine other states wrote a letter to Greyhound explaining that, as a private company, it is not required to allow government agents to board its buses unless they have a warrant or probable cause. We urged Greyhound to assert its Fourth Amendment rights, and those of its passengers, to be free from unreasonable searches and seizures by government agents. ACLU volunteers also distributed "know your rights" materials at the Greyhound bus station in Detroit to provide passengers with information about what to do if CBP boarded their bus. In February 2020 Greyhound announced that it would no longer allow CBP agents on its buses to conduct routine immigration checks without a warrant. (ACLU of Michigan Attorneys Monica Andrade, Abril Valdes, and Michael J. Steinberg.)

Immigrant Justice Partnership. When President Trump was elected, he unleashed a deportation force, terrorizing immigrant communities and ripping families apart. In 2017 the ACLU and the Michigan Immigrant Rights Center (MIRC) created the Immigrant Justice Partnership (IJP) to document these abuses, identify systemic problems, and hold the government accountable. IJP sends trained lawyers to assist immigrants who have been arrested, offers "know your rights" trainings to affected communities, and promotes city policies that welcome immigrants. In June 2017 we wrote a letter signed by nearly 300 attorneys and organizations demanding that ICE stop arresting individuals at courthouses, which undermines immigrants' willingness to report crimes and limits their access to the justice system. In March and December 2018 we trained approximately 150 attorneys to represent detained immigrants in habeas corpus proceedings and bond hearings. In August 2018 we sent a letter to law enforcement agencies to clarify that, despite the Trump administration's recent decision to deny asylum to survivors of domestic violence in other countries, immigrants who are survivors of domestic violence in the United States remain eligible for legal protections and special visas. In September 2018 we filed a civil rights complaint with the Department of Homeland Security regarding the Calhoun County Jail's decision to deny in-person visits with immigration detainees. In June 2019 we provided extensive recommendations to the Michigan State Police (MSP) about policy changes to ensure impartial policing and prevent entanglement between the MSP and federal immigration authorities, which resulted in policy changes issued in 2021. In August 2019 we wrote to county sheriffs, prosecutors and police chiefs urging them to stop detaining people in local jails at the request of ICE without a court order. In 2020 and 2021, we worked together on issues regarding the heightened dangers of immigration detention during the

COVID-19 pandemic, as well as developing resource materials to help immigrants seek relief from detention or deportation under new enforcement priorities adopted by the Biden administration. (ACLU Attorneys Miriam Aukerman, Michael J. Steinberg, Abril Valdes, Monica Andrade, and Juan Caballero; MIRC Attorneys Susan Reed, Ruby Robinson, Anna Hill, Eva Alvarez, and Ana Devereaux.)

LGBTQ RIGHTS

Supreme Court Victory for Transgender Rights. 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 initially 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 2014 filed a lawsuit on her behalf in federal court. In 2016 Judge Sean Cox ruled in favor of the funeral home. On appeal, the ACLU intervened on behalf of Ms. Stephens and participated in briefing and oral argument. In 2018 the Sixth Circuit reversed the trial court's decision, holding that Title VII protects transgender employees from discrimination. The United States Supreme Court then agreed to hear the case along with two others regarding discrimination based on sexual orientation. In June 2020 we won a stunning victory in the Supreme Court, which ruled that discrimination against LGBT employees is illegal under Title VII. On remand, the parties entered a consent decree in November 2020 for injunctive relief, damages, and attorneys' fees. (*EEOC v. Harris Funeral Homes*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight, James Esseks, Gabriel Arkles, Chase Strangio, and David Cole.)

Discrimination by Foster Care and Adoption Agencies. In 2017 the ACLU filed a federal lawsuit challenging Michigan's practice of permitting state-funded child placement agencies to reject qualified same-sex couples based on the agencies' religious beliefs. The State of Michigan is responsible for approximately 13,000 children who are in the state's foster care system, usually because they were removed from their families due to abuse or neglect. Even though adoption and foster care placement is a public function, the state allowed publicly funded agencies, some of which are faith-based, to discriminate against same-sex couples. In 2018 Judge Paul Borman denied the state's motion to dismiss our lawsuit. In February 2019 the case settled when Governor Whitmer's new administration agreed to a non-discrimination policy for all contracts with adoption and foster care agencies. However, in March 2019 two faith-based agencies filed new lawsuits against the state, claiming that the non-discrimination policies violated their right to religious liberty. In September 2019 Judge Robert Jonker granted a preliminary injunction in one of the cases, preventing the state from enforcing its non-discrimination policy pending further review. We filed motions to intervene in the new cases in order to defend the settlement agreement from our previous case. Judge Jonker denied our motion to intervene in one of the cases, but in May 2020 the Sixth Circuit reversed. (*Dumont v.*

Lyon; *Buck v. Gordon*; *Catholic Charities West Michigan v. Michigan Department of Health & Human Services*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys Leslie Cooper and Dan Mach; and Garrard Beeney, Ann-Elizabeth Ostrager and Elizabeth Storey of Sullivan & Cromwell.)

Protection for LGBTQ People Under Michigan Civil Rights Law. In 2019 the Michigan Department of Civil Rights (MDCR) began investigating two companies that were refusing to provide their services to LGBTQ people. The companies sued MDCR in state court, arguing that Michigan's Elliott-Larsen Civil Rights Act (ELCRA) prohibits discrimination based on sex but not based on sexual orientation or gender identity. The Michigan Court of Claims ruled that ELCRA does prohibit discrimination based on gender identity, but that it was bound by a 1993 Michigan Court of Appeals decision to rule that ELCRA does not prohibit discrimination based on sexual orientation. On appeal, the ACLU of Michigan, joined by national and state LGBTQ organizations, filed a friend-of-the-court brief with the Michigan Supreme Court, urging the court to bypass the Court of Appeals and take up the case immediately to overrule the 1993 decision and hold that discrimination based on sexual orientation and gender identity are both forms of discrimination based on sex prohibited by ELCRA. The Supreme Court granted the request and will hear the case in late 2021 or early 2022. (*Rouch World v. Michigan Department of Civil Rights*; ACLU Attorneys Jay Kaplan and Dan Korobkin; Cooperating Attorneys Leah Litman and Daniel Deacon of U-M Law School.)

Protection for Transgender People Under Hate Crimes Statute. Michigan has a statute that enhances punishment for assaults that are motivated by race, religion, national origin, or gender. Although the ACLU generally opposes statutes that enhance punishments, there are many civil rights laws that prohibit discrimination on the basis of sex or gender and the ACLU believes that they should be interpreted as protecting LGBTQ people from discrimination. In 2018 a woman named Kimora Steuball was shot and seriously injured by a man who was harassing her for being transgender. The assailant was prosecuted under Michigan's hate crimes law, but the Michigan Court of Appeals ruled that the law does not cover crimes motivated by animus against transgender people. Such a decision would likely affect whether people who are fired from their jobs or denied services in stores and restaurants based on their gender identity will be protected by any of Michigan's civil rights laws. In July 2020 the ACLU filed a friend-of-the-court brief asking the Michigan Supreme Court to take the case and rule that assaulting someone because they are transgender is an assault motivated by gender in violation of state law. The Supreme Court ordered the Court of Appeals to reconsider its decision, and in August 2021 the Court of Appeals reversed itself, agreeing with our position and holding that violence motivated by a person's gender identity is an assault based on that person's gender and therefore violates Michigan's hate crimes statute. (*People v. Rogers*; National ACLU Attorney John Knight and Liman Fellow Joshua Blecher-Cohen; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin.)

Defending School District's LGBT-Friendly Policies. In 2017 the school board in Williamston did the right thing by enacting policies that support the rights of LGBT students to be free from discrimination and bullying. A right-wing group representing a few parents then sued the school district, claiming that the LGBTQ-inclusive policies violate the religious liberty of Christian families who don't want their children to be exposed to "alternative sexual lifestyles." In 2018 the ACLU filed a motion to intervene in the case on behalf of Stand With

Trans, an organization that provides support to transgender youth and their families, and the Gay Straight Alliance (GSA) student group at Williamston High School. We also argued that the lawsuit should be dismissed, as LGBTQ students will be at risk of discrimination if school districts are not permitted to have LGBTQ-inclusive non-discrimination policies. In July 2019 the court granted our motion to intervene on behalf of the GSA. In October 2020 Judge Hala Jarbou dismissed the parents' complaint for lack of jurisdiction and failure to state a claim. The plaintiffs did not appeal. (*Reynolds v. Talberg*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys Shayna Medley-Warsoff and John Knight; Cooperating Attorneys Deborah Kovsky-Apap and Matthew Lund of Pepper Hamilton.)

Assisted Reproductive Technology. For many lesbian couples, assisted reproductive technology allows one mom to be the genetic parent and the other mom to carry and give birth to the child. Kyresha LeFever and Lanesha Matthews were one such couple. However, when the couple split up and their custody case went to court, a trial judge in Wayne County ruled that Ms. Matthews, the carrying/birth mom, was not a legal parent and had no rights to custody or parenting time. In September 2020 the ACLU filed a friend-of-the-court brief in the Michigan Court of Appeals in support of Ms. Matthews, arguing that both mothers are natural parents with equal legal rights. In April 2021 the Court of Appeals issued a decision agreeing with our position, reversed the trail court's decision, and remanded for a new custody hearing in which both mothers must be considered parents. (*LeFever v. Matthews*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys Taylor Brown and Leslie Cooper.)

Voir Dire on LGBT Bias. Before potential jurors can be selected for a trial, a question-and-answer process known as "voir dire" is used to test whether they can be impartial, unbiased, and don't have any conflicts of interest. In Wayne County, Jeffrey Six was put on trial for criminal financial fraud. As part of his defense he alleged that his former domestic partner, a man, was the one who actually engaged in the fraudulent transaction. Because this defense would require jurors to learn that he is gay, his attorneys requested that the jury voir dire include an inquiry into the jurors' attitudes regarding gay relationships. The judge denied the request and Mr. Six was convicted. In 2018 the ACLU of Michigan joined Lambda Legal in filing a friend-of-the-court brief in the Michigan Court of Appeals arguing that the right to a fair trial and an impartial jury requires voir dire regarding anti-gay bias when the fact of an LGBT relationship is inextricably bound up with the issues to be decided at trial. In January 2020 the Court of Appeals remanded the case back to the trial court for an explanation as to why the voir dire was not allowed. Following proceedings on remand, in January 2021 we submitted an additional friend-of-the-court brief reaffirming our support of allowing voir dire to include inquiries regarding anti-gay bias. (*People v. Six*; ACLU Attorney Jay Kaplan; co-counsel Ethan Rice, Richard Saenz, and Max Isaacs of Lambda Legal.)

Insurance Coverage for Medically Necessary Health Care. Jasmine Glenn and Jamie O'Brien are transgender women who have insurance coverage through Michigan's Medicaid program, which contracts with private insurance companies, Priority Health and Meridian Health, to provide Medicaid services. Although Ms. Glenn and Ms. O'Brien's medical providers determined that gender confirmation surgery was medically necessary, Priority and Meridian denied coverage, pointing to their policies that had blanket exclusions for gender confirmation surgery. The ACLU of Michigan represented both claimants in administrative proceedings, arguing that the blanket exclusions were unlawful. In 2018 the Michigan Department of Health

and Human Services (MDHHS) instructed Michigan Medicaid insurance programs to remove blanket exclusions from their policies, citing the nondiscrimination requirements of the Affordable Care Act. Meridian settled with Ms. O'Brien by reimbursing her for the expenses associated with her surgery. In November 2018 we filed a complaint with the Michigan Department of Civil Rights against Priority Health regarding its discriminatory policy. The complaint was settled in December 2020, resulting in Ms. Glenn having her surgery covered as well. Since then we have continued to represent transgender women in their administrative appeals challenging the denial of coverage for facial feminization surgeries by their Medicaid insurers. The Michigan Department of Insurance and Financial Services (DIFS), Michigan's insurance regulatory agency, has repeatedly resolved these appeals in favor of the patients, holding that the insurance companies' eligibility criteria for coverage of facial feminization surgeries were inappropriate, that the insurance companies must apply the standard of care established by the World Professional Association for Transgender Health (WPATH), and under those standards facial feminization surgery was medically necessary for treatment of gender dysphoria. In August 2021 MDHHS issued an official policy directive requiring Medicaid providers to use WPATH standards to determine coverage for gender-confirming treatments and procedures. (ACLU Attorney Jay Kaplan.)

Surgery Requirement to Correct Birth Certificate. Appropriate treatment for gender dysphoria includes obtaining accurate identity documents that reflect a transgender person's authentic life. A Michigan statute, however, prohibits transgender people from changing the gender on their birth certificate unless they undergo sex reassignment surgery. This prevents transgender persons born in Michigan from correcting their birth certificates if they are unable to undergo surgery for medical or financial reasons, or simply do not want it. In February 2021 the Director of the Michigan Department of Health and Human Services (MDHHS) requested an opinion from Attorney General Dana Nessel as to the constitutionality of the surgery requirement in Michigan's birth certificate law. In March 2021 we submitted a letter, joined by Michigan LGBTQ organizations, urging the Attorney General to find that the surgery requirement was unconstitutional. The letter explained that the statute violated the right to equal protection under the law, the due process right to privacy, the due process right to refuse medical treatment, and the right to freedom of expression. In July 2021 the Attorney General issued an opinion agreeing with our position and declaring that the gender reassignment surgery requirement to correct a birth certificate violated both the equal protection and privacy rights of transgender people born in Michigan. In response, MDHHS immediately stopped enforcing the requirement. (ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorney John Knight.)

Transgender Inmate Held in Solitary Confinement. Claire Mercer is a transgender woman who was sentenced to serve time in the Mason County Jail in March 2019. When jail officials learned she was transgender, they immediately placed her in solitary confinement, not because there had been threats to her safety, but because the jail had never dealt with a transgender inmate before. Solitary confinement meant that Ms. Mercer was confined to a cell 23 hours per day and denied opportunities that other inmates had, like programming, exercise, and spending some time outdoors. The jail also refused to provide her medically prescribed hormone medication. In July 2019 the ACLU of Michigan sent a letter to the county sheriff, complaining that Ms. Mercer's treatment violated the Eighth Amendment and equal protection. After receiving our letter, the jail agreed to provide Ms. Mercer with her hormone medication and allowed her to participate in some program activities with the general jail population and to

receive mental health counseling. In August 2019 we asked the Michigan Department of Civil Rights to conduct a formal investigation. (ACLU Attorney Jay Kaplan).

NATIONAL SECURITY

Stuck on the No Fly List. Ahmed Chebli is a United States citizen of Lebanese descent and father of two young children who lives in Dearborn. In 2018 FBI agents approached him, suggested that he knew people who were involved in terrorist activity, and demanded that he become a government informant against people in his community. Mr. Chebli had no such knowledge and refused to cooperate. He and his family were then placed on the TSA's infamous "No Fly" list, and his exhaustive efforts to get off the list or even find out why he is on it were unsuccessful. In April 2021 the ACLU filed a lawsuit on Mr. Chebli's behalf. Just ten days after we filed the lawsuit, the government removed Mr. Chebli from the list and admitted that there is no basis for him to be on the list. In May 2021 we voluntarily dismissed the lawsuit as moot. (*Chebli v. Kable*; National ACLU Attorneys Hina Shamsi, Sana Mayat, and Hugh Handeyside; ACLU of Michigan Attorney Dan Korobkin.)

OPEN GOVERNMENT

Secret Video of Prisoner's Death. In 2016 a Michigan prisoner named Dustin Szot died under suspicious circumstances. He was allegedly involved in an altercation with another prisoner, and prison guards shocked him with a taser. Spencer Woodman, an independent journalist who reports nationally on criminal justice issues, learned that the entire incident was captured on video and requested a copy of the footage under the Freedom of Information Act (FOIA). The Michigan Department of Corrections (MDOC) refused to release the video, claiming that its disclosure would somehow undermine prison security. In 2017 the ACLU of Michigan filed a lawsuit on Woodman's behalf, arguing that the state had no legitimate justification for keeping the video secret. During discovery, we learned that the MDOC staff has a policy of automatically denying all FOIA requests for videos, without even viewing the video in question to determine whether or how its disclosure would threaten security. In June 2019 the Michigan Court of Claims ruled that MDOC's policy was illegal and ordered the state to turn over the video footage. However, the Court of Claims then slashed the ACLU cooperating attorneys' fees by 90% because the work was being done pro bono, and we appealed. In June 2021 the Court of Appeals ruled that we had only partially prevailed in the lawsuit. In August 2021 we filed an application for leave to appeal with the Michigan Supreme Court. (*Woodman v. Michigan Department of Corrections*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Robert Riley, Marie Greenman, Olivia Vizachero, and Rian Dawson of Honigman.)

POVERTY

State Constitutional Violations by Unemployment Agency. Michigan's Unemployment Insurance Agency relied on a flawed computer program to falsely accuse thousands of citizens of insurance fraud and wrongfully eliminate their unemployment benefits, all the while providing little recourse for them to challenge these determinations and sending some into bankruptcy and

financial ruin. A group of affected citizens are suing the state for violating their rights under the Michigan Constitution, but the state is arguing that there is no remedy in state court for this violation. In fact, it has long been an unsettled question whether Michigan law allows the recovery of damages from governmental officials who violate their rights under our state constitution. As our federal courts become more conservative in their interpretation of the United States Constitution, it is increasingly important that we look to vindicate constitutional rights in state court. In May 2021 the ACLU of Michigan, along with the National Lawyers Guild, filed a friend-of-the-court brief urging the Michigan Supreme Court to once and for all hold that in almost all cases, people whose state constitutional rights are violated can recover money damages. (*Bauserman v. Unemployment Insurance Agency*; ACLU Attorneys Phil Mayor and Dan Korobkin; National Lawyers Guild Attorney Julie Hurwitz.)

Food Assistance Cut Off Without Due Process. The Michigan Department of Health and Human Services (MDHHS) 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 MDHHS 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 2015 Judge Judith Levy issued a decision ruling that MDHHS could not deny benefits to people like Mr. Barry and certifying a class of approximately 20,000 people who are eligible for retroactive or future assistance as a result of the case. The state appealed, and in 2016 the Sixth Circuit affirmed Judge Levy's decision, clearing the way to restore an estimated $60 million in retroactive food assistance benefits owed to low-income households. In 2017 and 2018 we negotiated with the state to ensure that the retroactive benefits were properly paid, and in 2019, 2020 and 2021 we have continued to monitor payouts and to negotiate with DHHS to ensure that the new policies they are developing comply with federal law and due process. (*Barry v. Lyon*; ACLU Attorneys Miriam Aukerman and Sofia Nelson; Jacqueline Doig, Katie Linehan, Elan Nichols, Mario Azzi, and Linda Jordan of the Center for Civil Justice.)

Homeless Encampment Evictions in Detroit. In June 2020, after learning that the City of Detroit displaced more than 40 unhoused individuals from encampments around the city, the ACLU of Michigan along with the National Law Center on Homeless and Poverty, Street Democracy, and students from Street Medicine units at Wayne State University and Michigan State University wrote a letter to the city urging an immediate cessation to all homeless encampment evictions during the COVID-19 pandemic unless the city could offer individual housing units to people living at those locations. The letter asked the city to adopt a policy that protected the unhoused population and their property based on guidance from the Centers of Disease Control and Prevention and the Michigan Department of Health and Human Services. In July 2021 the city approved a new policy that requires any removal of an encampment to be conducted according to CDC guidelines. (ACLU Attorney Bonsitu Kitaba-Gaviglio; Tristia Bauman of the National Law Center on Homelessness and Poverty.)

PRISONERS' RIGHTS

COVID-19 in County Jails. During the COVID-19 crisis, jails and prisons failed to take basic measures to protect incarcerated people from catching the deadly coronavirus. Social distancing in jail is impossible, quarantining and contact tracing procedures were lax or non-existent, and jails failed to take simple hygiene measures like ensuring that people had sufficient soap and cleaning supplies. In April 2020 the ACLU of Michigan and coalition partners filed a federal class action lawsuit against the Oakland County Jail for violating the constitutional rights of detainees by exposing them to an unacceptable risk of contagion. Judge Linda Parker granted our motions for a temporary restraining order and preliminary injunction, ordered the jail to improve its conditions and policies, and established a process for medically vulnerable inmates to seek release on bail. Unfortunately, in July 2020 the Sixth Circuit Court of Appeals reversed the decision by a vote of 2-1. The case then returned to the district court, where the jail filed a motion to dismiss the lawsuit. In December 2020 Judge Parker denied the motion to dismiss. In June 2021 we reached a settlement agreement that would require the jail to offer vaccines to all inmates, promote the vaccine using videos and literature attesting to its safety and efficacy, and undertake other strong measures recommended by the CDC to promote health and safety in the jail. The settlement was approved in July 2021 and we will monitor its implementation through the end of October. In a separate lawsuit by other organizations against the Wayne County Jail, we filed friend-of-the-court briefs asking the Michigan Court of Appeals and Michigan Supreme Court to review a lower court's decision denying relief, but the appellate courts refused to act. (*Cameron v. Bouchard*; *Wayne County Inmates v. Wayne County Sheriff*; ACLU Attorneys Phil Mayor, Syeda Davidson, and Dan Korobkin; Marques Banks, Thomas Harvey and Krithika Santhanam of the Advancement Project; Alex Twinem and Alec Karakatsanis of Civil Rights Corps; Cary McGehee and Kevin Carlson of Pitt McGehee Palmer & Rivers; Allison Kriger of LaRene & Kriger; ACLU Cooperating Attorney Margo Schlanger.)

Prioritizing COVID-19 Vaccines for People in Prison. COVID-19 ravaged jail and prison populations across the country, and Michigan's prisons were among the hardest hit, with more than 25,000 cases and more than 120 deaths. The development of safe and COVID-19 vaccines in late 2020 provided hope that there was an end in sight. However, when Michigan released its statewide vaccination plan prioritizing vulnerable populations that lived and worked in congregate settings, incarcerated people were conspicuously absent from the list. After months of working with other advocacy groups urging state officials to revise their vaccine prioritization plan to include incarcerated people, the ACLU of Michigan informed the governor's office in March 2021 that we planned to go to court within days if the state's policy did not immediately change. In response, the state revised its policy, prioritized incarcerated people along with other vulnerable groups living in congregate settings, and offered all 30,000 state prisoners access to a COVID-19 vaccine. (ACLU Attorneys Syeda Davidson, Dan Korobkin, and Phil Mayor; Cooperating Attorneys Andrew Dulberg, Julia Prochazka, Chaz Kelsh, and Ivan Panchenko of WilmerHale.)

Executive Orders to Decarcerate. As the COVID-19 pandemic swept through Michigan, it presented a dire threat to the tens of thousands of people incarcerated in Michigan's overcrowded and unhygienic jails and prisons, many of whom are medically vulnerable. The ACLU of Michigan, along with partners around the state, rapidly mobilized to urge the governor to issue executive orders to facilitate speedy and safe reduction of population in our jails and prisons. In

March 2020 Governor Whitmer issued an executive order, reflecting a number of specific recommendations made by the ACLU and our partners, and instructing local sheriffs and courts to take aggressive measures to reduce the population levels in Michigan's county jails. Unfortunately, the governor did not issue a similar order to facilitate the safe release of medically vulnerable inmates from Michigan's prisons, which have experienced some of the highest infection and death rates in the country. (ACLU Attorneys Phil Mayor and Dan Korobkin; Margo Schlanger of U-M Law School and Jonathan Sacks of the State Appellate Defender Office.)

PRIVACY AND TECHNOLOGY

Facial Recognition Technology Leads to False Arrest. The use of facial recognition surveillance technology has been shown to be inaccurate, racially biased, and a threat to personal privacy. In August 2019 the ACLU of Michigan and a coalition of civil rights organizations sent a letter urging the Detroit Police Department to end the use of this dangerous technology, but they refused to do so. A miscarriage of justice of the kind we had warned about then came to light. In January 2020, Detroit police officers arrested Robert Williams on his front lawn, in front of his wife and two young daughters, on charges that he had stolen watches from a Shinola store in Detroit. The arrest was based almost entirely on a facial recognition scan from security footage at the Shinola store, but it was dead wrong: Mr. Williams was not the man in the security footage and was nowhere near the store at the time of the theft. In April 2021 the ACLU filed a federal lawsuit against the Detroit Police Department, alleging that the officers involved violated Mr. Williams' rights under the Fourth Amendment and the Elliott-Larsen Civil Rights Act by arresting him on the basis of this flawed technology. (*Williams v. City of Detroit*; ACLU of Michigan Attorneys Phil Mayor and Dan Korobkin; National ACLU Attorney Nathan Freed Wessler; co-counsel Michael J. Steinberg of U-M Law School, with student attorneys Eilidh Jenness, Ben Mordechai-Strongin, Jeremy Shur, and Deborah Won.)

Search Warrants for Cell Phone Data. When police obtain a search warrant, the Fourth Amendment requires that the scope of the search be limited to a particular place and for evidence of the particular crime being investigated. In the modern era, a person's electronic devices hold vast amounts of data, and a warrant to search a person's cell phone can dangerously circumvent these constitutional protections by opening up a person's private life to intrusive snooping by law enforcement. In 2016, police from the Oakland County Sheriff's Department obtained a warrant to search Kristopher Hughes's cell phone for evidence of drug trafficking. To carry out the search, they downloaded the entire contents of his phone, but did not file charges. Then, months later, they went back to the download and searched the data for evidence of a completely separate criminal act, a robbery. In July 2020 the ACLU filed a friend-of-the-court brief in the Michigan Supreme Court arguing that the second search violated the Fourth Amendment because the police did not get a new warrant. Without a requirement for the second warrant, we argued, a search of someone's electronic device will too quickly turn into a fishing expedition, allowing law enforcement to rummage through all the details of a person's entire life. In December 2020 the Michigan Supreme Court agreed with our position, reversing the rulings of the trial court and the Court of Appeals and establishing a more protective standard for cell phone searches in Michigan. (*People v. Hughes*; National ACLU Attorneys Jennifer Granick and Brett Kaufman;

ACLU of Michigan Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio; co-counsel Stuart Friedman of the Criminal Defense Attorneys of Michigan.)

RACIAL JUSTICE

Home Purchase Scheme Targeting Black Homebuyers. In the wake of the housing crash of 2008, Black communities have been targeted by predatory "land contract" schemes that promise the dream of home ownership but are structured to fail. One company, Vision Property Management, engaged in predatory lending schemes across the United States by tricking consumers into signing rent-to-own contracts carrying the promise of homeownership but none of the rights. Vision purchased over 1,000 dilapidated properties in Michigan and sold them to unsuspecting homebuyers. Vision's contracts obscured the true cost of buying and repairing the home, the interest rate, and the term of the loan; made it nearly impossible for buyers to achieve homeownership; and allowed Vision to avoid responsibility for upkeep. Vision also marketed its product primarily to low-income Black consumers. In September 2020 the ACLU of Michigan, NAACP Legal Defense Fund (LDF), National Consumer Law Center (NCLC), and Michigan Poverty Law Program (MPLP) filed a federal class action lawsuit against Vision and its main funder Atalaya on behalf of lower-income and Black Michigan consumers who were the primary targets of Vision's predatory home purchase scheme. The lawsuit sets forth claims under the Federal Fair Housing Act, Truth in Lending Act, Equal Credit Opportunity Act, and various state laws. In August 2021 Judge Sean Cox denied Atalaya's motion to dismiss, allowing the case to proceed. (*Henderson v. Vision Property Management*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Coty Montag and Jennifer Holmes of LDF; Stuart Rossman and Sarah Mancini of NCLC; and Lorray Brown of MPLP.)

Racial Profiling by the Michigan State Police. In 2016 the Michigan State Police (MSP) disclosed that troopers are evaluated in part on how many traffic stops they make. The ACLU of Michigan wrote to MSP's director urging that this policy be terminated because of the risk that it would lead to racial profiling. Because of the policy, troopers with an insufficient number of stops are more likely to target for groundless or arbitrary stops individuals whom they perceive to be powerless to effectively complain, which disproportionately includes people of color. Additionally, we inquired about whether troopers record the racial identities of drivers stopped, and whether there are procedures in place to monitor racial patterns of stops and to remedy practices that are racially discriminatory. In response to the ACLU's concerns, MSP acknowledged that it lacked reliable information about the race of the drivers it stops, and in 2017 revised its policies to require that state troopers record that information. Following the change in policy, we used Freedom of Information Act requests to obtain records reflecting the racial identities of drivers stopped. These records revealed disturbing racial patterns of stops made by certain members of a unit charged with the task of drug interdiction. After efforts to persuade the MSP to engage in various reform efforts proved unsuccessful, in June 2021 we filed a federal lawsuit on behalf of Camara Sankofa and Shanelle Thomas, an African American couple who were racially profiled by MSP troopers, stopped without cause, made to exit their vehicle, subjected to K-9 and manual searches, and interrogated about narcotics. After 90 minutes of the unconstitutional detention, they were allowed to leave without a ticket or even a warning. (*Sankofa v. Rose*; ACLU Attorneys Mark P. Fancher and Dan Korobkin; Cooperating Attorney Nakisha Chaney.)

Water Shutoffs in Detroit. In 2014 the Detroit Water and Sewage Department (DWSD) commenced the largest residential water shutoff in U.S. history and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents' health needs or ability to pay. DWSD's internal documents revealed that due to its sloppy billing practices, it had not charged many customers for sewer service for several years. DWSD demanded a lump sum payment from customers for those charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residents with delinquent accounts were billed for charges incurred by previous tenants. The ACLU of Michigan joined a lawsuit that sought to restore water service to the city's residents and stop future shutoffs, but in 2016 the Sixth Circuit affirmed the lower courts' dismissal of the case. Advocacy resumed in 2018 in response to media reports of plans to shut off the water of 17,000 households. In 2019 the ACLU and a coalition of attorneys unsuccessfully petitioned the Michigan Department of Health and Human Services, and then Governor Whitmer, to declare a public health emergency and impose a moratorium on shutoffs to prevent the spread of disease. Then, an investigation by our partners at the NAACP Legal Defense Fund (LDF) revealed dramatic racial disparities in water shutoffs, as they are far more likely to occur in majority-Black neighborhoods than in neighborhoods where Blacks are less than 50% of the population. In July 2020 the coalition filed a new lawsuit alleging that the water shutoffs violate due process, equal protection, the Fair Housing Act, and state law. The city's motion to dismiss our lawsuit is pending. (*Lyda v. City of Detroit*; *Taylor v. City of Detroit*; ACLU Attorneys Mark P. Fancher, Bonsitu Kitaba-Gaviglio, and Dan Korobkin; additional attorneys include Alice Jennings of Edwards & Jennings, Coty Montag and Monique Lin-Luse of LDF, Lorray Brown, Melissa El-Johnson, Kurt Thornbladh, John Philo, Jerry Goldberg, Desiree Ferguson, Anthony Adams, and Erin Mette.)

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

Discriminatory Tax Foreclosures. Homeowners in Detroit are experiencing a severe tax foreclosure crisis, with many losing their homes based on their inability to pay taxes that never should have been assessed in the first place. Even though taxes in Michigan must be based on the true cash value of a home, the City of Detroit failed to reduce the tax assessments to match plummeting property values following the Great Recession. Also, although homeowners who meet the federal poverty guidelines are excused from paying property taxes, Detroit's process for obtaining the poverty exemption became so convoluted that few people who qualify could actually receive the benefit. These policies have a grossly disparate impact on African American homeowners, who are ten times more likely to lose their homes than non-African Americans. In 2016 the ACLU of Michigan, NAACP Legal Defense Fund (LDF), and the Covington & Burling law firm filed a lawsuit asserting violations of the Fair Housing Act and due process. In July 2018 we reached a historic settlement agreement with Detroit that has the potential to save the homes of thousands of low-income residents. Under the terms of the settlement, homeowners who qualify for a poverty exemption can buy their homes back for $1000, and Detroit created a streamlined, user-friendly poverty exemption application process. Detroit also paid damages to the named plaintiffs and contributed $275,000 to a fund that will help low-income homeowners. In 2019 and 2020 we continued to work with the city and community partner organizations to make sure that the settlement is properly implemented through a three-year enforcement period. In July 2021 we joined LDF in filing a friend-of-the-court brief in a case raising similar claims in the Sixth Circuit. (*MorningSide Community Organization v. Wayne County Treasurer*; *Howard v. City of Detroit*; ACLU Attorneys Michael J. Steinberg, Bonsitu Kitaba-Gaviglio, Dan Korobkin, and Mark P. Fancher; Coty Montag and Ajmel Quereshi of LDF; and Shankar Duraiswamy, Amia Trigg, Donald Ridings, Wesley Wintermyer, Sarah Tremont, and Jason Grimes of Covington & Burling.)

Water Shutoffs in Saginaw. When a statewide moratorium on water shutoffs that was imposed in response to the COVID-19 pandemic expired, Saginaw city officials decided to resume water shutoffs for families that had unpaid water bills. Those affected included 250 families whose water service was terminated immediately and 750 additional families at risk of having their water shut off. In July 2021 the ACLU of Michigan wrote to city officials on behalf of 19 concerned organizations. The letter pointed out that, given Saginaw's racial and economic circumstances, these shutoff practices may violate the Elliott-Larsen Civil Rights Act, Title VI of the federal Civil Rights Act, and the Fair Housing Act. It also explained that as a practical matter, disconnecting water access in a home during the ongoing COVID-19 pandemic created imminent health risks, exacerbated housing instability, and could threaten parents' rights to keep their children in their homes. The letter urged an end to shutoffs, the adoption of a water affordability plan, and an end to civil penalties related to water utility status. In response, the city initiated a shutoff moratorium for an indefinite period. (ACLU Attorneys Mark P. Fancher and Bonsitu Kitaba-Gaviglio, and legal intern Rihan Issa.)

Business Owners' Duty to Respond to Racist Violence. Edward Tyson is an African American man who was the victim of violence outside a bar in a small town in Cheboygan County. His assailant, widely known as a belligerent racist, repeatedly called Mr. Tyson the N word and punched him in the head until he lay on the ground bleeding. The operators of the bar knew about the assault but took no action to protect Tyson, did not ask the assailant to leave, and did not even call the police. Tyson sued both his assailant and the owners of the bar in state court, but the trial court dismissed his case against the bar, ruling that they had no duty to protect

or help him. On appeal, the ACLU of Michigan filed a friend-of-the-court brief, arguing that due to the history of private acts of racial violence at places of public accommodation and the constitutional requirement that courts provide equal protection under the law, Michigan law should be understood to require that merchants make their premises equally safe for members of all races. In April 2021 the Michigan Court of Appeals reversed the trial court's dismissal of Tyson's lawsuit, ruling that business owners have a duty to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties, and a jury in Tyson's case could find that the operators of the bar had a duty to call the police. (*Tyson v. Dawkins*; ACLU Attorneys Mark P. Fancher and Dan Korobkin; Cooperating Attorney Samuel Bagenstos.)

Racism in Paw Paw Public Schools. Until recently the public high school in Paw Paw, Michigan still used the racial slur "Redskin" and offensive imagery of a Native American as a mascot for its athletic program. Advocacy by Native Americans in the area to change the mascot was beaten back with excessive hostility, aggression, and racial animus. After receiving multiple complaints about this controversy and other signs of racial discrimination and harassment in the Paw Paw Public Schools, the ACLU of Michigan investigated and uncovered a pattern of extremely disturbing incidents, including the display of swastika, hostile use of the N word and other racial slurs, and students being told to "go back to Mexico." When we approached the school district with an offer to collaborate in attempting to improve the environment, we were ignored. In January 2019 we formally filed a complaint with the United States Department of Education's Office for Civil Rights, charging that the school district's deliberate indifference to a racially hostile educational environment violates Title VI of the Civil Rights Act of 1964. In December 2019 the Department of Education announced that it would investigate the school district's treatment of Native Americans. In March 2020 the school district finally acknowledged the harm caused by its offensive Native American branding and discontinued its use. (ACLU Attorney Mark P. Fancher.)

Racial Insensitivity in Brighton Public Schools. The ACLU of Michigan is representing a white mother and her adopted African American son in a challenge to racial insensitivity in the Brighton school district. When her child was in second grade and the only black child in his class, he decided to grow dreadlocks. In response to inquiries about his hair by classmates, his teacher placed a knit cap with artificial dreadlocks attached to the inside band on the child's head and told the class the child's hair would resemble the artificial locks when fully grown. When the child was told to look at himself in the bathroom mirror, the other students laughed at him. The child's mother complained that the teacher humiliated her son by using him as an involuntary prop, but the principal dismissively claimed that the child was given advance notice of the demonstration and welcomed it. The principal also refused the mother's request to arrange cultural competence training for the staff. In February 2019 we filed a complaint asking the Michigan Department of Civil Rights to investigate. In 2021 racial problems in Brighton surfaced again when white Brighton High School students' racist and homophobic social media posts went public. In response to the posts and community reactions, the ACLU wrote to the interim director of MDCR reminding him of the second grader's pending complaint and explaining the racial hazards of maintaining a school district like Brighton's which is racially homogeneous. The letter requested that MDCR use its resources to urge the district to take affirmative steps to ensure that Brighton students have opportunities to interact with students of diverse backgrounds, and suggested specific strategies for cross-racial learning and curriculum

that would provide students with a greater appreciation for the lives, histories and cultures of communities different from their own. (ACLU Attorney Mark P. Fancher.)

Police Shooting in Detroit. In July 2020 a squadron of Detroit Police Department officers approached a young African American man to make an arrest on a residential street. Hakim Littleton, the arrestee's companion, apparently drew a pistol and fired a shot in the direction of the officers, who returned fire in a hail of bullets, killing Littleton. In the immediate aftermath of the incident, Police Chief James Craig released video footage of the event along with narrative commentary of what occurred. The ACLU of Michigan joined in coalition with other legal and community organizations to question the account given by the police after our review of the video footage revealed factual inconsistencies and contradictions in the police account. Most notably, the video appears to show that Littleton had been fully subdued by officers and was alive on the ground when one officer fired a shot into Littleton's head at close range. The coalition called for an independent investigation and also produced its own narrated video of the killing. Meanwhile, an investigation by the Wayne County Prosecutor's Office exonerated the officers involved. In 2021, the coalition's work has expanded to explore prospects for investigation of the entire Detroit Police Department in light of numerous additional incidents of police violence that have come to light since the Littleton killing. (ACLU Attorney Mark P. Fancher; coalition partners include the Black Legacy Coalition, National Lawyers Guild, Detroit Council of Elders, Detroit Justice Center, East Michigan Environmental Action Coalition, Hush House Black Community Museum, James and Grace Lee Boggs Center, Michigan Coalition for Human Rights, Michigan Liberation, Moratorium Now Coalition, National Conference of Black Lawyers, Neighborhood Defender Service of Detroit, Riverwise Magazine, Wayne County Criminal Defense Bar Association, and We the People of Detroit.)

Excessive Force by Police in Washtenaw County. In May 2020 Washtenaw County Sheriff's deputies responded to a call concerning gunshots and related disturbances in Ypsilanti Township. In the course of the deputies' investigation, one officer encountered Sha'teina Grady El, an African American woman who was on the scene because of concerns that her daughter was involved in the incident under investigation. A video recording of the encounter appears to show the deputy striking Ms. Grady El three times with force with his fist in or about her head. She was then placed under arrest. Given the factual complexity of the events, sensitivity to then recent tragic events related to the relationship of law enforcement to communities of African descent, and the very disturbing video images of a police officer violently pummeling Ms. Grady El, the ACLU of Michigan sent a letter to the county prosecutor and the Michigan attorney general requesting that charges not be brought against Ms. Grady El. The social harm of prosecuting Ms. Grady El, we wrote, would outweigh any benefits given pre-existing tensions between police and the black community and questions that would be raised about the violent circumstances of the arrest. The Michigan attorney general's office proceeded with filing charges. (ACLU Attorney Mark P. Fancher; Cooperating Attorney Gayle Rosen.)

Call for De-escalation Reforms in Jackson. In January 2019 police officers in Jackson killed a 29-year-old Black/Latino man named Joey Ramirez. According to reports, police officers responded to a complaint that Mr. Ramirez was attempting to break into someone's home. When officers arrived, Mr. Ramirez fled, and officers gave chase and eventually shot him, acting in what the prosecutor later concluded was self-defense. In January 2020, on the first anniversary of the incident, the ACLU of Michigan sent a set of recommendations to Jackson County Sheriff

and the city's chief of police regarding methods to diminish the potential for injury and loss of life. Our recommendations noted that, before Ramirez was fatally wounded by police gunfire, he and the police were engaged in a protracted foot chase, which is often standard policy when a suspect flees. But we explained that police departments across the country are examining their policies on foot pursuit and in some cases revising them to protect their officers and the public. Some departments have adopted policies of non-pursuit, particularly in cases where the identity and residence of the suspect are known and a later arrest can be made. Other de-escalation techniques were also recommended. (ACLU Attorney Mark P. Fancher.)

Black Power Activist Targeted by Police. Darnell Summers was a black power and black liberation activist in the 1960s, when law enforcement agencies were known to engage in systematic political repression of such movements and even frame key activists for crimes they did not commit. In 1968 he was charged with murdering a Michigan State Police (MSP) detective, but charges were dismissed when the sole eyewitness recanted his testimony. Charges were re-filed against Summers in 1982, but these charges were also dismissed because a second witness recanted her testimony as well. Summers then relocated to Germany, but when he recently visited Michigan he and his family were targeted by MSP for interrogation and a search warrant. In January 2021 the ACLU of Michigan wrote to MSP, stating that if MSP had proper legal cause to persist in the investigation and interrogation of Mr. Summers, then it should, in the spirit of transparency and accountability, share details with the public. We further stated that if the encounters with Mr. Summers were baseless and vindictive, then such conduct should cease immediately. We also sought records related to the investigation through a Freedom of Information Act request, but the records we received were heavily redacted. (ACLU Attorney Mark P. Fancher.)

Elimination of University's Track and Field Program. A 2021 announcement that the men's track and field program at Central Michigan University has been eliminated for fiscal reasons sparked a movement by students, alumni and others to have the program reinstated. Of great concern is the fact that nationally, there are more African American male athletes in men's NCAA track than in all other minor sports combined. Because CMU's student body is 73% white, 11% African American, and 5% Latino, eliminating the track program also eliminates a program that impacts the racial demographics of a university that is underserving people of color in the broader community. In April 2021 the ACLU of Michigan sent a letter to the president of the university urging him to reinstate the track program, explaining that for decades such programs have offered many Black students a way out of oppressive poverty, allowing to flourish as student athletes in what has become one of the American public university's most significant contributions to social mobility. (ACLU Attorney Mark P. Fancher.)

VOTING RIGHTS

Absentee Voting Rights in Flint and Detroit. Michigan voters overwhelmingly passed Proposal 3 in 2018, which enshrined in Michigan's Constitution the right to vote an absentee ballot in the 40 days before an election, either at home by mail or in person at the voter's local clerk's office. In the weeks leading up to the August 2020 primary election, however, the city clerk's office in Flint remained closed to the public, preventing voters from exercising their constitutional right to obtain and cast their absentee ballots in person. And Flint voters who had

requested their absentee ballots by mail were not receiving them, despite a state-law requirement that clerks issue absentee ballots immediately upon receiving a voter's request. In July 2020 the ACLU of Michigan filed an emergency lawsuit against the Flint city clerk to prevent the disenfranchisement of thousands of Flint voters. Following a two-day hearing, Judge Celeste Bell ruled that the city clerk was violating her clear legal duties under the Michigan Constitution and state election law, and ordered the clerk to have her office open to the public every day until the election and to process all applications for absentee ballots within 24 hours of receipt. In September 2020 Judge Bell issued a declaratory ruling that the same requirements applied to the general election in November, allowing us to continue monitoring Flint's compliance. Meanwhile, similar problems arose with the Detroit city clerk's office in the weeks leading up to the November election; tens of thousands of absentee voters who requested their absentee ballots by mail were not receiving them due to a backlog in responding to requests, and voters' calls to the clerk's voter hotline seeking an explanation were going unanswered. In October 2020 we filed an emergency lawsuit against the Detroit city clerk seeking a court order requiring her office to process all applications for absentee ballots within 24 hours of receipt. We were able to settle the case within a week later, with the city clerk committing to promptly process the backlog of applications and increase the hours and staffing for the city's voter hotline. (*Barkey v. Brown*; *Ganik v. Winfrey*; ACLU Attorneys Dan Korobkin, Sharon Dolente, and Phil Mayor; Cooperating Attorneys Alec Gibbs and Muna Jondy, Jennifer Grieco of Altior Law, and Shankar Duraiswamy, Sarah Suwanda, and Shadman Zaman of Covington & Burling.)

Protecting the Vote in the 2020 Election. Following the general election in November 2020, then-President Donald Trump and numerous state and local actors raised false allegations about the counting of votes in Wayne County, particularly at the TCF Center in Detroit, in an effort to undermine public confidence in the election results. To combat the false narratives that were circulating, ACLU attorneys compiled 27 affidavits from election challengers who were present at TCF Center, documenting that the counting of ballots at TCF Center was conducted in a professional and orderly manner despite poll workers being targeted for abuse and harassment by poll watchers affiliated with organizations propagating false conspiracy theories about the election. The affidavits were then filed with the Wayne County Board of Canvassers as they proceeded to certify the vote, and with the Michigan legislature as it held hearings regarding the election. Throughout the post-election period, ACLU voting rights attorneys continued to monitor the vote certification process to ensure that state officials honored the will of the voters. (ACLU of Michigan Attorneys Phil Mayor, Syeda Davidson, Sharon Dolente, and Dan Korobkin; National ACLU Attorney Theresa Lee.)

Deadline for Absentee Ballots. When Michigan voters approved Proposal 3 in 2018, the Michigan Constitution was amended to provide a constitutional right to vote by mail at any point during the 40 days before an election. The legislature, however, has refused to repeal a statute that requires all mailed-in ballots to arrive in the clerk's office no later than election day. In May 2020 the ACLU filed a lawsuit challenging the old statute, arguing that Proposal 3 now provides a right to have your vote counted if your ballot is postmarked by election day. The lawsuit took on heightened importance as mail-in voting has skyrocketed during the COVID-19 pandemic just as the ability of the Postal Service to timely process and deliver mail has plummeted. Unfortunately, in July 2020 the Court of Appeals, by a vote of 2-1, rejected our claims, and the Michigan Supreme Court, by a vote of 4-3, refused to consider our appeal. We sought reconsideration but in September 2020 our motion was denied. (*League of Women Voters of*

Michigan v. Secretary of State; ACLU of Michigan Attorneys Dan Korobkin and Sharon Dolente; National ACLU Attorneys Theresa Lee and Dale Ho; Stanton Jones, Elizabeth Theodore, Daniel Jacobson, Kolya Glick, and Samuel Callahan of Arnold & Porter; co-counsel Mark Brewer.)

Unsolicited Absent Voter Applications. In May 2020 Secretary of State Jocelyn Benson mailed every registered voter in Michigan an application to vote by mail in the August and November elections. After the ACLU and coalition partners successfully advocated for the passage of Proposal 3 in 2018, it is now a constitutional right to vote by mail in Michigan. And in the midst of a pandemic it was especially important to encourage voters to cast their ballot without crowding into polling places on election day. Opponents, however, brought a series of lawsuits challenging Secretary Benson's authority to mail the applications. In June 2020 the ACLU of Michigan joined the League of Women Voters in filing a friend-of-the-court brief arguing that the Secretary of State has that authority as part of her constitutional duty to ensure that all voters have an equal opportunity to vote by mail. In August 2020 Judge Cynthia Diane Stephens agreed with our analysis and dismissed the lawsuits. Appeals were unsuccessful. (*Black v. Secretary of State*; ACLU Attorneys Dan Korobkin and Sharon Dolente; Cooperating Attorneys Shankar Duraiswamy and Tarek Austin of Covington & Burling; co-counsel Mark Brewer.)

Open Carry in the Polls. In October 2020 Secretary of State Jocelyn Benson issued a directive prohibiting the open carrying of firearms in and within 100 feet of a polling place. Gun rights groups sued, and a Michigan state court issued a preliminary injunction preventing the directive from going into effect. On appeal, the ACLU of Michigan joined the NAACP Legal Defense Fund (LDF) in filing a friend-of-the-court brief supporting ban on openly carrying guns into a polling place. The brief argued that, in weighing whether to strike down a directive on such short notice, the court is required to consider the high risk of unlawful voter intimidation, particularly targeting voters of color, if people bring guns to the polls, and recent events indicating that open-carry laws will be used to do just that. The Michigan Court of Appeals and Supreme Court, however, declined to reinstate the ban. (*Davis v. Secretary of State*; ACLU Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio; Mahogane Reed and Monique Lin-Luse of LDF.)

Local Control Over the Detroit City Charter. For two years the democratically elected commission to revise Detroit's city charter worked with community groups to adopt more progressive policies for the city, and they presented their proposed charter to Governor Whitmer in March 2021 with the intent that it be placed on the ballot for approval or rejection by Detroit's voters in the August 2021 election. However, the governor raised objections to parts of the proposed charter, and opponents of the charter took the position that it could not go on the ballot without the governor's approval. A trial-court judge in Wayne County and the Michigan Court of Appeals agreed, ordering the charter removed from the ballot. The dispute then went before the Michigan Supreme Court, and in June 2021 the ACLU of Michigan joined the Sugar Law Center in filing a friend-of-the-court brief on behalf of Wayne State law professors who argued that the Michigan Constitution allows the charter to be put before the voters regardless of whether the Governor has approved. In July 2021 the Supreme Court agreed with our position and reversed the decisions of the lower court. Detroit voters ended up choosing not to approve

the new charter. (*Sheffield v. Detroit City Clerk*; ACLU Attorneys Mark P. Fancher and Dan Korobkin; co-counsel John Philo of Sugar Law Center.)

Signature Gathering for Ballot Initiatives. In 2018 the legislature enacted a mean-spirited anti-petitioning law that will make it more difficult to collect enough signatures to place new initiatives on the ballot. The new law will put a cap on the number of signatures that can be collected from any one congressional district (thereby diluting the ability of African American voters to place initiatives on the ballot), and will require paid petition circulators to register with the state before they can start collecting signatures. Attorney General Dana Nessel announced that she would consider issuing an attorney general's opinion regarding the constitutionality of the new statute and invited interested parties to submit legal memos to assist her office. In February 2019 the ACLU of Michigan submitted a 12-page letter arguing that the new law violates the Michigan Constitution, the First Amendment, and the Voting Rights Act. In May 2019 Nessel issued a formal attorney general's opinion adopting our analysis and declaring the new statute unconstitutional. The case was then taken up in court, and in February 2020 the ACLU filed a friend-of-the-court brief in the Michigan Supreme Court again arguing that the new law is unconstitutional. In December 2020, however, the Supreme Court declined to rule on the merits of the case, dismissing it as moot because the plaintiff organization that had filed the lawsuit was no longer seeking to have an initiative placed on the ballot. (*League of Women Voters of Michigan v. Secretary of State*; ACLU Attorneys Sharon Dolente and Dan Korobkin; Cooperating Attorneys Sam Bagenstos and Eli Savit of U-M Law School.)

Collecting Petition Signatures During a Pandemic. Hundreds of candidates and ballot question committees were stymied in their efforts to collect petition signatures during the COVID-19 shutdown and stay-at-home orders. Although many states eliminated or eased their rules for collecting signatures to accommodate candidates and advocates during the crisis, Michigan made no changes to its signature collection requirements. In April 2020 the ACLU of Michigan filed friend-of-the-court brief in federal court arguing that, in the midst of a pandemic, Michigan's signature collection rules imposed a severe burden on the First Amendment rights of candidates and voters. Judge Terrence Berg agreed with us and ordered the state to make accommodations for candidates seeking ballot access. (*Esshaki v. Whitmer*; ACLU Attorney Dan Korobkin; Cooperating Attorney Michael J. Steinberg of U-M Law School, with student attorneys Katie Chan, Diane Kee, and Brian Remlinger.)

WOMEN'S RIGHTS

Denial of Healthcare Based on Religious Policies. Providers at Catholic-run hospitals, which are becoming increasingly prevalent in our healthcare system, are required to abide by the Ethical and Religious Directives for Catholic Health Care Services—a set of policies promulgated by the United States Conference of Catholic Bishops that use religious principles, rather than medical science, to govern care. At Ascension Providence Hospital in Southfield, a 38-year-old patient who is pregnant with her third child and preparing to deliver by Cesarean section was advised by her longtime OB/GYN that this pregnancy should be her last, as her bladder and uterus had fused together, which would make it dangerous for her to become pregnant. Ordinarily, the doctor performing her C-section would offer to also perform a tubal ligation (commonly known as having one's tubes tied). However, the OB/GYN who had been

treating her for years was prohibited from performing a tubal ligation at Ascension Providence because the religious directives prohibit sterilization. In July 2021 the ACLU sent a letter urging Ascension to provide an exemption from the religious directive in this case of medically recommended care, and filed an administrative complaint with Michigan's Department of Licensing and Regulatory Affairs. In August 2021, after receiving no response from Ascension, we also filed a complaint with the Office for Civil Rights at the United States Department of Health and Human Services. (ACLU of Michigan Attorneys Syeda Davidson and Bonsitu Kitaba-Gaviglio; National ACLU Attorneys Brigitte Amiri and Lindsey Kaley.)

Cross-Examination in University Sexual Assault Misconduct Hearings. A federal civil rights law known as Title IX requires universities to protect students from sexual harassment and assault in campus, including taking effective measures to investigate complaints. Public universities are also required to provide due process to students who are accused of wrongdoing. In a new policy established by the University of Michigan in January 2019, a student accused of sexual assault was permitted to personally cross-examine their alleged victim at a hearing. The new policy was established after a federal court ruled that some form of cross-examination is required by due process in some cases. However, the court was careful to state that cross-examination could be carried out by an attorney or advocate, rather than by the student who is accused of the assault. In September 2019 the ACLU wrote a letter urging the university to rescind its new policy. We explained that the ACLU supports the right to cross-examination, but allowing the accused to personally conduct the cross-examination is traumatic to survivors, would deter students from reporting sexual assaults on campus, and is not required to comply with due process. We asked the university to create a new policy that provides attorneys or advocates to conduct cross-examination if needed for both sides. In May 2020 the United States Department of Education issued new federal regulations that prohibit the kind of one-on-one cross-examination that we objected to in our letter. In August 2020 the university changed its policy to conform with the new federal requirements. (ACLU of Michigan Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin, with civil liberties fellow Katie Bart; Cooperating Attorney John Shea; National ACLU Attorneys Sandra Park and Emma Roth.)