



**LEGAL DOCKET  
FALL 2023**

*The ACLU of Michigan’s legal docket is published annually. This year’s docket summarizes the cases with activity in 2022 and 2023.*

Criminal Law Reform .....	1
Disability Rights .....	6
Education .....	7
Environmental Justice.....	8
Freedom of Speech .....	9
Freedom of Religion .....	11
Immigrants’ Rights .....	13
LGBTQ Rights.....	15
Open Government.....	18
Poverty .....	20
Prisoners’ Rights.....	21
Privacy and Technology .....	23
Racial Justice .....	24
Reproductive Freedom.....	31
Sex Discrimination.....	33
Voting Rights .....	33

## **CRIMINAL LAW REFORM**

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**Bail Reform.** Tens of thousands of people in Michigan are locked up in jail, before being tried or convicted of any crime, because of cash bail. Throughout the state, it is common for judges to require people who have been arrested to post cash for their release—in other words, to buy their freedom—or else remain incarcerated while they await trial, even for very minor charges. In 2019 the ACLU filed a federal class action lawsuit against the 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 July 2022, after years of negotiations, we announced a historic settlement agreement with the 36th District Court that will overhaul the bail system in Detroit. The agreement is designed to drastically reduce pretrial detention, limiting cash bail to cases where a judge finds, based on evidence specific to a particular individual, that the individual would present a flight risk or danger to the public if released. The agreement will last between three and five years, involves regular reporting of data, and is expected to be a model for reforming bail systems in Michigan and around the country. Following a trial period, the agreement was fully implemented beginning in May 2023. Significant improvement in bail practices have already occurred, and we continue to work with the 36th District Court to reduce pretrial detention in Detroit. (*Ross v. Chief Judge of the 36th District Court*; ACLU of Michigan Attorneys Phil Mayor and Dan Korobkin, with investigator Giancarlo Guzman; National ACLU Attorneys Brandon Buskey and Trisha Triglio; co-counsel Twyla Carter of the Legal Aid Society, Amia Trigg of the NAACP Legal Defense Fund, and Aaron Lewis of Covington & Burling.)

**Police Taking Photographs and Fingerprints Without Probable Cause.** Keyon Harrison, an African American 16-year-old, was walking home from school when he saw another youth with a model truck and paused to look at it. Grand Rapids police, who later claimed that two youth looking at a toy truck is so suspicious that it justifies a police investigation, stopped Keyon, took his picture, and fingerprinted him. Even though Keyon did nothing more than admire a toy, his picture and fingerprints 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 Michigan Court of Appeals issued a decision holding that the City of Grand Rapids could not be held liable because its policy only allowed, but did not require, the police to take photographs and fingerprints—a decision that would make it much harder to hold municipalities accountable for civil rights violations in state court. The ACLU of Michigan took over direct representation in the case and appealed to the Michigan Supreme Court. In 2018 the Supreme Court issued a major decision on municipal liability in favor of our clients, holding that cities can be held liable for authorizing unconstitutional conduct by their employees. The case was then remanded, and in 2019 the Court

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

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

**Retroactive Punishment Under Registration Law.** For over a decade, the ACLU of Michigan has been challenging Michigan's sex offender registration law which has barred people with past offenses from living and working in large portions of the state, and has subjected them to ongoing supervision and reporting requirements, in most cases for life, all without any consideration of individual circumstances. In 2012 the ACLU of Michigan, working with the University of Michigan's clinical law program, challenged the law in federal court on behalf of six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens, one of whom he has since married. In 2016 the Sixth Circuit issued a groundbreaking decision ruling that the retroactive application of the amendments to those convicted before 2011 violates the United States Constitution's rule against ex post facto laws. But despite the Sixth Circuit's ruling, Michigan failed to bring its registry into compliance, leaving tens of thousands of other registrants at risk of prosecution unless they complied with the law's onerous and unconstitutional requirements. Therefore, in 2018 we filed a class action lawsuit to ensure that all Michigan registrants obtain the benefit of the rulings in the earlier case. In 2020 Judge Robert Cleland ruled in favor of the class. Judge Cleland further ruled that the statute's exclusion zones and certain reporting requirements are unconstitutionally vague for all registrants, and that strict liability prosecutions under the law are impermissible. In 2021 the Michigan Supreme Court, in a case where we filed friend-of-the-court briefs, also ruled

that retroactive application of the statute is unconstitutional. Unable to enforce the old law, the legislature passed a new version which made only minor tweaks. In February 2022 we filed another class action challenging the revised law. (*John Does #1-5 v. Snyder; John Does #1-6 v. Snyder; John Does A-H v. Whitmer, People v. Betts*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, Elaine Lewis, Rohit Rajan, and Dayja Tillman; Cooperating Attorneys Paul Reingold of U-M Law School and Roshna Bala Keen and Imani Franklin of Loevy & Loevy; co-counsel Alyson Oliver and Cameron Bell of Oliver Law Group.)

**Coerced Plea Bargains in Kent County.** As part of the ACLU of Michigan’s ongoing bail reform efforts throughout the state, we learned that Kent County Chief Judge Mark Trusock 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. Unfortunately, Judge Trusock has continued the practice, and in August 2022 we were forced to file another appeal documenting the ongoing pattern. The Court of Appeals denied relief, but we appealed to the Michigan Supreme Court which ruled in our favor. (*People v. Forbes; People v. Contreras-Reyes; People v. Majeed*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Brett Stevenson, Bruce Block, and Matthew Berry).

**Probation Program Without Due Process.** Like many jurisdictions, Oakland County operates probation-style diversionary programs that allow individuals who are convicted of low-level offenses to serve their sentence in the community, subject to drug screening and other conditions, rather than serve jail time. However, in its aptly named “zero tolerance program,” the Oakland County Sheriff’s Office had appointed itself judge, jury, and executioner by unilaterally sending participants directly to jail, without even a court hearing, if they were accused of violating the program’s rules and conditions. In March 2022 the ACLU of Michigan filed an appeal on behalf of Marvin Kennedy, who was sent to jail for a year without a court hearing, challenging this blatant denial of due process. Shortly after we filed our appeal, Oakland County’s attorneys notified us that as a result of our appeal they were overhauling the rules of their program so that all participants suspected of violating the program’s rules will now be entitled to a court hearing to determine whether they did commit a violation and, if so, whether the violation should result in a jail sentence. In May 2022 the appeal was dismissed as moot. (*People v. Kennedy*; ACLU Attorneys Syeda Davidson, Phil Mayor, and Dan Korobkin; Cooperating Attorney Will Nahikian.)

**The Right to Federal Postconviction Review.** Anyone who is in state custody pursuant to a state-court conviction has the right to file a petition for habeas corpus in federal court to review the constitutionality of their conviction or sentence. Traditionally, federal courts have ruled that someone who faces significant restraints on their freedom is “in custody” for purposes of being able to seek federal court review. However, in the case of Frank Corridore, a federal district court ruled that his sentence of lifetime electronic/GPS monitoring and sex offender registration do not satisfy the “in custody” requirement because the restraints on his freedom were not significant. In April 2022 the ACLU filed an appeal on behalf of Mr. Corridore in the Sixth Circuit, arguing that lifetime monitoring and registration sentences are significant enough

restraints on liberty to qualify a case for federal review. Mr. Corridore has his every movement tracked by state officials, must report in person four times a year, cannot travel anywhere that lacks good GPS reception or electricity, and is subject to public humiliation because he must wear an ankle monitor for the rest of his life. Unfortunately, in June 2023 the Sixth Circuit held in a 2-1 decision that Mr. Corridore was not “in custody.” Judge Karen Nelson Moore, dissenting, wrote that “the result of the majority’s opinion is that an individual subject to highly invasive lifetime supervision resulting from a constitutionally defective conviction or sentence will have no recourse to vindicate their rights in federal court.” (*Corridore v. Washington*; ACLU of Michigan Attorneys Rohit Rajan, Dan Korobkin, Miriam Aukerman, and Dayja Tillman; National ACLU Attorneys Yazmine Nichols, Allison Frankel, and Trisha Trigilio.)

**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 2020 the ACLU of Michigan filed an appeal in Oakland County Circuit Court on Ms. Posey’s behalf. We argued that legalization of marijuana is retroactive as to all cases that were not yet final at the time the new law took effect. In January 2022 Oakland Circuit Judge Rae Lee Chabot ruled in our favor and held that Troy could not punish Ms. Posey for conduct that was perfectly lawful at the time of her sentencing. The city did not appeal and dismissed the charges. (*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 to operate. This unjust system disproportionately impacts people of color, who are overpoliced and overcharged in our criminal legal system. It also undermines the perception that judges are impartial arbiters, as they have an incentive to find defendants guilty and impose high fines and fees because the money is needed to operate the court system. Working with the Detroit Justice Center and Street Democracy, in 2021 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals in a case challenging this practice as unconstitutional because it violates the due process right to a fair and impartial judiciary. In May 2021 the Court of Appeals rejected our argument. However, in October 2021 the Michigan Supreme Court requested briefing in another case raising similar issues, and we filed another friend-of-the-court brief and participated in oral argument, this time arguing that separation-of-powers principles prohibit judges from raising revenue for the courts because it is the legislature’s job to fund the government. In June 2022 the Court announced it would set the case for additional briefing and reargument, and we filed another friend-of-the-court brief in January 2023. Unfortunately, in July 2023 the Court dismissed the appeal without ruling on the merits. Two justices dissented, stating that the Court should have reached our arguments and ruled in our favor. Three justices, concurring in the dismissal, declined to say whether the funding scheme at issue was constitutional, but opined that the legislature should be given an opportunity to amend the statute. If the legislature retains this constitutionally suspect funding structure beyond 2024, the Court left the door open to revisiting the issue in a similar case. (*People v. Lewis*; *People v. Johnson*; *People v. Edwards*; ACLU Attorneys Phil Mayor, Bonsitu Kitaba-Gaviglio, and Dan Korobkin; co-counsel Rubina Mustafa of the Detroit Justice Center,

Jayesh Patel of Street Democracy, Angela Tripp and Robert Gillett of the Michigan State Planning Body, and Ann Routt of Legal Services Association of Michigan.)

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

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

**Removing Barriers for People with Criminal Records.** About 2.8 million people in Michigan have criminal records—records that affect their ability to get employment, housing, and an education, as well as to be involved in their children’s lives. Expungement, a legal process where the court can set aside a past conviction, provides a path to a new life without the stigma and obstacles of a criminal record. After the Michigan Supreme Court announced that it would consider a case that will determine the legal standard for granting expungements, the ACLU of Michigan joined other advocacy groups in filing a friend-of-the-court brief in June 2023. The expungement statute requires that setting aside the conviction must be “consistent with the public welfare.” The brief argues that this requires balancing the benefits to society of expungement against any possible costs, and explains that those benefits include improved employment and housing opportunities for people whose records are set aside. (*People v. Butka*; ACLU Attorneys

Miriam Aukerman and Dan Korobkin; co-counsel Mira Edmonds and student attorney Gabe Chess of U-M Law School, and Kimberly Crawford of the Michigan Advocacy Project.)

## **DISABILITY RIGHTS**

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

**Right to Counsel in Civil Commitment Hearings.** When the state seeks to have someone involuntarily committed for inpatient mental-health treatment, that individual is entitled to a hearing, and the state will appoint an attorney to represent them. However, courts have not decided whether the right to counsel in such circumstances is a constitutional right, and if ineffective assistance of counsel violates such a right. In 2021 the Michigan Court of Appeals invited the ACLU of Michigan to file a friend-of-the-court brief addressing these questions. We filed a brief arguing that people facing civil commitment have a constitutional right to effective representation, noting that the hearings often result in the deprivation of a person’s liberty and there is a significant risk of wrongful imprisonment absent effective assistance from an attorney. In February 2022 the Court of Appeals issue a published opinion adopting our position and setting precedent for the entire state. (*In re Londowski*; ACLU Attorneys Rohit Rajan and Dan Korobkin.)

**Retroactivity of Changes to No-Fault Law.** In 2019 the legislature enacted major changes to Michigan’s no-fault auto insurance law, capping the benefits that can be provided to seriously injured car accident survivors. Thousands of people with lifelong impairments lost access to critical care. In 2023 the Michigan Supreme Court took up a case about whether those limits can be imposed retroactively on people who were injured before the effective date of the act. The ACLU of Michigan led a coalition of organizations in filing a friend-of-the-court brief arguing that the case has constitutional significance because it would impact the ability of people with

disabilities to remain independent, exercise their civil rights, and participate as full and equal citizens in our democracy. In our brief, which was joined by multiple organizations dedicated to disability rights and social services, we argued that when important services or benefits are being taken away from a historically disadvantaged group, courts must closely scrutinize whether the legislature clearly intended that to be the case. Since there is no clear statement of the legislature's intent to do so here, the no-fault amendments are not retroactive. In July 2023 the Michigan Supreme Court agreed and ruled that the legislative changes are not retroactive. (*Andary v. USAA Casualty Insurance Co.*; ACLU Attorneys Dan Korobkin and Miriam Aukerman; Cooperating Attorney Leah Litman of U-M Law School; co-counsel Ann Routt of Legal Services Association of Michigan, Angela Tripp of the Michigan State Planning Body, and Kyle Williams and Nicholas Gable of Disability Rights Michigan.)

**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 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. The complaint remains pending. (ACLU Attorney Jay Kaplan.)

## **EDUCATION**

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**Special Education in Flint.** In 2016 the ACLU of Michigan and the Education Law Center filed a class action lawsuit against the State of Michigan and local school districts over the systemic failure to provide an adequate education for children with disabilities in Flint. In the wake of the Flint water crisis, in which the population of an entire city (including approximately 30,000 children) was exposed to lead, our investigation revealed that the public school system lacked the resources, support and expertise needed to properly screen children for disabilities, to address the educational needs of children who have or are at risk of developing disabilities, and to ensure that students with disabilities are not unfairly disciplined, restrained, or excluded from public education. In 2017 Judge Arthur Tarnow denied the defendants' motions to dismiss, and the Sixth Circuit rejected the defendants' attempt to bring an interlocutory appeal. In 2018 the state agreed to settle a portion of the case by funding a first-of-its-kind initiative that 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 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, Bonsitu Kitaba-Gaviglio, Kristin Totten, and Dan Korobkin, with investigator Giancarlo Guzman; co-counsel Greg Little, Jessica Levin, Elizabeth Athos, and David Sciarra of the Education Law Center, and Lindsay Heck, Michael Jaoude, and Greg Starner of White & Case.)

**Public Funding for Private Schools.** For over 50 years, Michigan’s Constitution has strictly prohibited public aid to and taxpayer funding of private and religious schools. However, in 2016 the legislature appropriated \$2.5 million to “reimburse” private and parochial schools for complying with legal requirements that apply to all schools in Michigan. In 2017 the ACLU of Michigan formed a coalition with public school administrators, teachers, and parents to file a lawsuit challenging the constitutionality of the funding, arguing that the appropriation should be struck down because it violates the state constitutional requirement that reserves public education funding exclusively for public schools. In 2018 Michigan Court of Claims Judge Cynthia Diane Stephens ruled in our favor, declared the statute unconstitutional, and issued a permanent injunction prohibiting the state from funding private schools. But the state appealed, and the Michigan Court of Appeals reversed by a vote of 2-1. We then appealed to the Michigan Supreme Court, which affirmed the Court of Appeals ruling in 2020 by an equally divided vote. The case was then remanded to the Court of Claims for consideration of our additional arguments as to why some or all of the funding is unconstitutional. In February 2022 Judge Stephens entered a final judgment allowing some of the reimbursements but not others. Meanwhile, in September 2021 a new lawsuit was filed in federal court by right-wing groups, challenging the restrictions of Michigan’s Constitution as a violation of the United States Constitution, arguing that the restriction is motivated by anti-religious animus. In January 2022 we led the coalition of public school supporters in filing a friend-of-the-court brief in which we argued that Michigan’s restriction is constitutional because its purpose and effect is to reserve limited public funds for public schools, not to discriminate against religion. In September 2022 Judge Robert Jonker dismissed the federal lawsuit, but without reaching the merits; he ruled that because the suit was brought in the specific context of a dispute over state tax deductions, it should have been brought in state court. The plaintiffs appealed, and in March 2023 we filed another friend-of-the-court brief in the Sixth Circuit. (*Council of Organizations & Others for Education About Parochialism (CAP) v. State of Michigan*; *Hile 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.)

## **ENVIRONMENTAL JUSTICE**

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

and soon after recommended that the parties enter mediation. In 2017 we reached an unprecedented settlement for \$97 million requiring the state and city to replace all lead and galvanized pipes throughout Flint, allocate resources for health and wellness programs, continue door-to-door filter installation and education, and extensively monitor Flint's tap water for lead. We continue to monitor compliance and, when necessary, file motions to enforce the settlement agreement's requirements that Flint complete excavations and replacements of lead pipes at all remaining homes. In February 2023 the court ordered Flint to complete its work by August 2023, but Flint failed to meet the deadline. We consequently filed a motion to hold the city and its mayor in contempt for repeatedly violating the settlement agreement and court orders. The court held an evidentiary hearing on the motion in June 2023. (*Concerned Pastors for Social Action v. Khouri*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Dimple Chaudhary, Sarah Tallman, Adeline Rolnick, Jolie McLaughlin, and Jared Knicley of NRDC, and Glenn Simmington.)

## **FREEDOM OF SPEECH**

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**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. In March 2022 Judge Terrence Berg agreed with our position and denied Inkster's motion to dismiss. In August 2022 the case settled when the city agreed to adopt a First Amendment-friendly social media policy, regularly train all relevant city employees and council members on the policy, and to pay damages and attorneys' fees. (*Blackwell v. City of Inkster*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; Cooperating Attorney Bill Burdett.)

**Free Speech on TikTok.** Amanda Carravallah is a TikTok influencer who is outraged by the Supreme Court's decision overruling *Roe v. Wade*. To document her dissent, she created yard signs with provocative language which she placed on her front lawn in Livonia, and filmed herself on TikTok dancing in front of her house in a swimsuit as an assertion of control over her own body. Several neighbors, including a Wayne County family court judge, took umbrage at Ms. Carravallah's protests and called the police. One of the neighbors then sought, and was able to obtain, a personal protection order (PPO) from another judge on the Wayne County family court. The order was issued "ex parte"—without a hearing allowing Ms. Carravallah to be heard

or present evidence—and it prohibited her from appearing “in sight” of her neighbor, essentially placing her under house arrest, given that the neighbor lives across the street. In July 2022 the ACLU of Michigan filed a motion to terminate the PPO, explaining that Ms. Carravallah’s activities were fully protected by the First Amendment. Because one of the neighbors involved in the matter was a Wayne County judge, the case was transferred to Oakland County Circuit Court. After holding three hearings in the matter, in September 2022 Judge Kameshia Gant agreed with our arguments and terminated the PPO. In January 2023 Judge Gant denied our motion for attorneys’ fees but required the neighbor to reimburse us for litigation costs. (*Gordon v. Caravallah*; ACLU Attorneys Phil Mayor and Dan Korobkin; Cooperating Attorneys Allison Kriger and Mark Kriger.)

**Landlord Retaliates Against Housing Rights Activists.** Moratorium NOW! Coalition is a grassroots activist organization in Detroit that focuses on economic justice issues such as foreclosures, evictions, and utility shutoffs. In 2022 the organization began to call public attention to what it perceived to be extremely poor conditions in low-income housing owned by local landlord Gaston Munoz, whose company has been cited for city violations. Munoz responded by suing Moratorium NOW! and its members, accusing them of defamation and interfering with his business interests. This is a classic case of what’s known as a “Strategic Lawsuit Against Public Participation,” or SLAPP suit, where a lawsuit is used to retaliate against people who speak out on issues of public concern and deter others from joining them for fear of also being sued. In March 2023 the ACLU of Michigan stepped up to represent Moratorium NOW! and its members to fight back against this abuse of the legal system. In June 2023 Judge Dana Hathaway denied our motion to dismiss, so the case is proceeding to discovery. (*Munoz Realty v. Flores*; ACLU Attorneys Syeda Davidson, Mark P. Fancher, and Dan Korobkin; co-counsel Julie Hurwitz, Bill Goodman, and Holland Locklear; defense attorney Allison Kriger.)

**Book Banning Is Back.** Beginning in 2022 a new wave of hostility to freedom of thought and inquiry erupted throughout the country, including in Michigan, as right-wing organizations and parents intensified efforts to ban books and materials they disfavored from public libraries and public schools. Many of the books targeted are those that feature LGBTQ+ characters and themes, as well as issues involving race, poverty, disadvantage, and difference. In November 2022 the ACLU of Michigan sent a letter to superintendents and school board presidents throughout the state, warning that banning books from school libraries based on the ideas expressed in those books would violate the First Amendment, and urging all educators to take a stand in favor of inclusivity, openness, and free inquiry for our youth. In March 2023 a controversy erupted in Lapeer regarding the availability of the award-winning book *Gender Queer: A Memoir* in that town’s public library; most troubling were public statements by the county prosecutor suggesting that he would consider bringing criminal charges against the librarian if the book was not removed. The librarian retained us as her criminal defense attorneys, and we wrote the prosecutor a letter condemning his statements and warning him that any effort to take action against the librarian would violate the First Amendment. Fortunately, in May 2023 the library’s board of directors voted unanimously to keep the book in its collection, and the prosecutor took no action. Meanwhile, in June 2023 we wrote to the Forest Hills Public Schools condemning the superintendent’s unilateral removal of books from the school library based on parents’ complaints, and also urging the school district to reverse a decision to remove books from the first-grade curriculum because the books included a fictional character who was being raised by two moms. Although the library books were returned to the shelves, the

curriculum decision has not been reversed. (ACLU attorneys Jay Kaplan and Dan Korobkin; Cooperating Attorneys John Shea and Charissa Huang.)

**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. Following the dismissal of the counterclaim, Detroit settled the case in October 2022, paying over \$1,000,000 to the victims of the police brutality. (*Detroit Will Breathe v. City of Detroit*; ACLU of Michigan Attorneys Phil Mayor and Dan Korobkin; National ACLU Attorneys Vera Edelman and Brian Hauss.)

**Public Officials on Social Media.** Social media is the new town square, where public officials and constituents meet to engage in matters large and small. A single social media profile can contain multitudes of posts, supplying everything from official news about a public health crisis, government meetings and elections, to highly personal matters like birthdays, pet photos and home improvement projects. The First Amendment guarantees public officials’ freedom to speak through these new tools in their private capacities. When public officials act under color of law, however, constitutional and statutory provisions constrain their behavior, including the First Amendment’s restrictions on government censorship. In August 2023 the ACLU filed a friend-of-the-court brief in the United States Supreme Court in a case that arose out of Michigan which raised the core issue of how to distinguish between a government official’s private-capacity use of these tools, which is entitled to First Amendment protections, and his private-capacity use of these tools, which is subject to First Amendment prohibitions. Our brief urged the Court to adopt a test which looks at whether the public official was engaged in official duties and whether a reasonable observer would think he was cloaked in the authority of his office with respect to the action at issue. (*Lindke v. Freed*; National ACLU Attorneys David Cole, Evelyn Danforth-Scott, Vera Edelman, and Esha Bhandari; ACLU of Michigan Attorneys Dan Korobkin and Bonsitu Kitaba-Gaviglio.)

## **FREEDOM OF RELIGION**

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**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 stepped in to represent the Amish families and 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 federal law. Extensive discovery followed, and both Lenawee County and the Amish filed motions for summary disposition in November 2022. In August 2023 the county agreed to a consent judgment that grants essentially all the relief the Amish sought; the Amish will be allowed to continue their traditional ways of life and will not pose any threat to public health or the environment. In addition to providing relief to the Amish, the consent judgment requires Lenawee County to pay \$425,000 in attorneys' fees to the ACLU and our co-counsel. (*Lenawee County Health Department v. Eicher*; ACLU Attorneys Phil Mayor, Ramis Wadood, and Dan Korobkin; Cooperating Attorney John Shea; co-counsel Rick Schulte, Steve Behnke, Dennis Mulvihill, and Jacob Bender.)

**Religious Probation Program.** In January 2022 the ACLU of Michigan learned that the Wayne County Prosecutor's Office was developing a new program called the "Faith Project." The program would have allowed some people accused of crimes to receive deferred sentences in exchange for agreeing to be supervised by a religious leader who would be assigned to them by the prosecutor's office. If the religious leader determined that the individual was non-compliant, the individual could be sent to jail or prison. All but one of the religious leaders who were listed as participating in the program led Protestant Christian churches, and no alternative was offered to participate in a secular program. In February 2022 we sent a letter to Wayne County Prosecutor Kym Worthy warning her that the program would violate the Establishment Clause of the United States Constitution because it allowed individuals to avoid incarceration by entering into a program supervised by religious authorities while providing no comparable non-religious alternative, and because it provided religious authorities with unconstrained discretion to determine whether an individual was compliant with their programming. In response to our letter, the prosecutor's office put its development of the program on hold. (ACLU Attorneys Phil Mayor, Ramis Wadood, and Dan Korobkin.)

**Religious Rights of Indigenous People.** In February 2022 the Detroit Police Department sent 14 armed officers to Rouge Park to shut down a religious ceremony known as the Detroit Sugarbush that commemorates the harvesting and processing of maple syrup and sugar. The activity is considered a sacred rite in various indigenous communities and had been conducted for several years without controversy. The police officers on the scene, purportedly responding to concerns about whether an open fire was authorized, were unwilling to discuss whether the participants had the right to be there. In consultation with Sugarbush organizers, the ACLU of Michigan sent a letter to Detroit's chief of police explaining that under federal and state constitutions and statutes, the Sugarbush ceremony should be accommodated as a legally protected religious practice. We also urged the police department to arrange for its officers to participate in restorative practices with the Sugarbush participants and undergo training. The chief responded

by expressing a willingness to engage with the Sugarbush participants. (ACLU Attorneys Bonsitu Kitaba-Gaviglio and Mark P. Fancher.)

## **IMMIGRANTS' RIGHTS**

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**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, and medical care in jails is notoriously inadequate for people with chronic conditions. In 2020 the ACLU sued ICE, arguing that keeping immigrants with vulnerabilities locked up during the pandemic violates their constitutional right to safe conditions of confinement. Judge Judith Levy agreed, certified a class of immigration detainees held at the Calhoun County Jail, and adopted a bail application process to decide whether vulnerable class members should remain locked up there. Over 50 medically frail people were 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. However, in February 2021 a class member died in the jail after his repeated pleas for medical attention were ignored. Although the death was not caused by COVID-19, the records we reviewed revealed that his tragic death was likely preventable had he been provided with proper medical attention. Along with coalition partners we have called for an independent inquiry into medical care at the Calhoun County Jail, and for Calhoun County and ICE to end immigration detention there once and for all. The case against ICE is in settlement negotiations. (*Malam v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, Syeda Davidson, Elaine Lewis, Rohit Rajan, and Ramis Wadood; 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 of 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 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 VanderKooi was suspended without pay, the Grand Rapids police announced a new policy that prohibits officers from inquiring about a person's immigration status or contacting ICE for civil immigration enforcement, and the City of Grand Rapids settled Mr. Ramos-Gomez's claim for \$190,000. Similarly, Kent County adopted a new policy requiring a judicial warrant before turning someone over to ICE. ICE, however, refused to accept responsibility, and we filed suit to

hold the officers involved accountable. Judge Robert Jonker dismissed that lawsuit in January 2022 on various grounds, including qualified immunity. In May 2022 we filed a second lawsuit against the United States under the Federal Tort Claims Act seeking damages for Mr. Ramos-Gomez, and that case settled in November 2022. (*Ramos-Gomez v. Adducci*; *ACLU of Michigan v. Department of Homeland Security*; *Ramos-Gomez v. United States*; ACLU Attorneys Miriam Aukerman, Dan Korobkin, Monica Andrade, Elaine Lewis, and Ramis Wadood; Cooperating Attorneys Anand Swaminathan, Joshua Burday, Merrick Wayne, Megan Pierce, and Matthew Topic of Loevy & Loevy; additional attorneys include Julia Kelly, Richard Kessler, and Hillary Scholten.)

**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 in settlement negotiations. (*Hamama v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Bonsitu Kitaba-Gaviglio, Dan Korobkin, Monica Andrade, and Elaine Lewis; additional attorneys include Lee Gelernt, Judy Rabinowitz, and Anand Balakrishnan of the National ACLU; 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.)

**Legal Hotline for Immigrant Victims of Police Misconduct.** After years of racist rhetoric, anti-immigrant policies and over-policing, immigrants often fall victim to abuse, discrimination, and other forms of misconduct at the hands of police officers and immigration agents. To address this problem and promote accountability, in May 2022 the ACLU of Michigan launched a project dedicated to representing immigrant victims of police mistreatment in seeking relief for abuse and harassment they have faced. As a part of this project, we have set up the Immigrant Police Misconduct Hotline (313-208-7048) that is available to anyone in Michigan who wants to

report instances of police violence, discrimination, or surveillance on the basis of their immigration status to the ACLU in a confidential manner. In connection with this hotline, we have received numerous reports of anti-immigrant policing and have assisted multiple callers in seeking accountability. (ACLU of Michigan Attorneys Ramis Wadood, Monica Andrade, and Phil Mayor.)

## **LGBTQ RIGHTS**

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**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. 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 to defend the settlement agreement from our previous case. Judge Jonker denied our motion to intervene in one of the cases, but the Sixth Circuit reversed. However, in 2021 the U.S. Supreme Court decided a similar case in favor of faith-based agencies, significantly changing the law in this area. Following that ruling, in January 2022 Michigan entered into a consent judgment that will allow the faith-based agencies to refuse to work with same-sex couples under some circumstances, and in May 2022 we withdrew from the case. (*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; co-counsel 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 refused to provide their services to LGBTQ people. The companies sued MDCR in state court, arguing that Michigan’s Elliott-Larsen Civil Rights Act (ELCRA) prohibits discrimination based on sex but not based on sexual orientation or gender identity. The Michigan Court of Claims ruled that ELCRA does prohibit discrimination based on gender identity, but that it was bound by a 1993 Michigan Court of Appeals decision to rule that ELCRA does not prohibit discrimination based on sexual orientation. On appeal, the ACLU of Michigan, joined by national and state LGBTQ organizations, filed a friend-of-the-court brief with the Michigan Supreme Court, urging the Court to bypass the Court of Appeals and take up the case immediately to overrule the 1993 decision and hold that discrimination based on sexual orientation and gender identity are both forms of discrimination based on sex prohibited by ELCRA. The Supreme Court granted the request and allowed the ACLU to participate in oral argument in March 2022. In July 2022 the Court ruled that discrimination on the basis of sexual orientation is sex discrimination in



violation of ELCRA. As a result of this decision, LGBTQ people in Michigan have some of the most comprehensive civil rights protections in the country against discrimination in employment, housing, education and public services and accommodations. (*Rouch World LLC v. Michigan Department of Civil Rights*; ACLU Attorneys Jay Kaplan and Dan Korobkin; Cooperating Attorneys Leah Litman and Daniel Deacon of U-M Law School.)

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

**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 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 2021 we submitted an additional friend-of-the-court brief reaffirming our support of allowing voir dire to include inquiries regarding anti-gay bias. In April 2022, however, the Court of Appeals issued a 2-1 decision affirming the judge's denial of the voir dire request. Mr. Six did not appeal. (*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.** Michigan's Medicaid program contracts with private insurance companies to provide government-funded Medicaid services, and some companies have long resisted transgender patients' efforts to obtain coverage for

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

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

**Pronouns in the Courts.** In December 2021 a Michigan Court of Appeals judge published an opinion in which he insulted transgender people and declared his refusal to "conform to the wokeness of the day" by respecting the pronouns with which they identify. Leading a coalition of organizations, the ACLU of Michigan wrote a letter to the Michigan Supreme Court in January 2022 urging the Court to take action to educate judges and ensure that our courts treat

transgender people fairly and with respect. In January 2023 the Court published for public comment a proposed amendment to the Michigan Court Rules that would allow litigants and their attorneys to identify their pronouns in court papers and would require judges to use the correct pronouns when addressing or referring to them. In March 2023 we submitted a detailed public comment urging the Court to adopt the new rule and testified in favor of the rule at a public hearing in June 2023. (ACLU Attorneys Jay Kaplan and Dan Korobkin.)

## **OPEN GOVERNMENT**

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

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

**FOIA Delayed Is FOIA Denied.** The purpose of Michigan’s Freedom of Information Act (FOIA) is to provide transparency in government, so that the people of Michigan have can fully participate in the democratic process. But that purpose is thwarted if government officials do not produce requested documents in a timely manner. In Grand Rapids in particular, FOIA requests have been known to take over a year to fulfill, even when the amount of staff time needed to fulfill the request is only a few hours. In March 2023 the ACLU of Michigan submitted a FOIA request to the Grand Rapids Police Department that the department estimated would take only 2.25 hours to fulfill, but would not be processed for 8-10 months. After attempts to speed up the city’s response time were unsuccessful, in September 2023 we filed a lawsuit seeking a ruling that the city’s practices violated FOIA and that the excessive delay amounted to a constructive denial of our FOIA request. (*ACLU of Michigan v. City of Grand Rapids*; ACLU Attorneys Miriam Aukerman and Dan Korobkin; Cooperating Attorney Brad Springer.)

**Police Department’s Use-of-Force Policies.** After George Floyd was killed by police, Amy Hjerstedt, on behalf of the Eastern Upper Peninsula League of Women Voters, requested a copy of the local police department’s use-of-force policy to see if improvements could be made. The City of Sault Ste. Marie refused to disclose the full policy, redacting major portions. Ms. Hjerstedt filed suit under Michigan’s Freedom of Information Act (FOIA) to get an unredacted copy. Even though many police departments post their use-of-force policies online, the trial court agreed with the city’s claim that the reacted sections could be withheld. In August 2022 the ACLU of Michigan filed a friend-of-the-court brief in Ms. Hjerstedt’s appeal to the Court of Appeals, arguing that public access to use-of-force policies is critical to robust debate about policing, and that FOIA was intended to make precisely this type of information available. In February 2023 the Court of Appeals agreed, holding in a published decision that the City’s claimed exemptions did not apply, and that it must produce the unredacted use-of-force policy. The City has sought leave to appeal in the Michigan Supreme Court. (*Hjerstedt v. City of Sault Ste. Marie*; ACLU Attorneys Miriam Aukerman, Mark P. Fancher, and Dan Korobkin; Cooperating Attorneys Stephen van Stempvoort, Alise Hildreth, and Joslin Monahan of Miller Johnson.)

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

**Wrongful Termination from Community Mental Health Authority.** Under Michigan law, multi-county mental health authorities can be created to provide regional mental health services. Board members of such authorities are nominated by their respective county commissions, but then are expected to advocate for the mental health of the entire community, and are removable

only for misconduct in office or neglect of duty. In July 2022 the Grand Traverse County Commission voted to remove two of its representatives on the multi-county Northern Lakes Community Mental Health Authority, spuriously accusing them of misconduct or neglect of duty, when the only thing they did “wrong” was to vote to extend a job offer to a new CEO to lead the mental health commission—a vote that some county commissioners disagreed with. In January 2023 the ACLU of Michigan sent a letter to Attorney General Dana Nessel, asking her to exercise her authority to file a “quo warranto” action against the county to reinstate the wrongfully dismissed members of the authority. Unfortunately, later that month the Attorney General declined to take action. (ACLU Attorney Phil Mayor; Cooperating Attorneys Michael Naughton, Maura Brennan, Blake Ringsmuth, and Deyar Jamil of the ACLU’s Northwest Michigan Lawyers Committee.)

## **POVERTY**

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**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 sued the state for violating their rights under the Michigan Constitution, but the state argued 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 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. In July 2022 the Michigan Supreme Court issued an important decision agreeing with our arguments and broadly establishing that in most circumstances, someone whose rights under the Michigan Constitution are violated by a state officer may sue the state and receive monetary compensation for their injuries. (*Bauserman v. Unemployment Insurance Agency*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Julie Hurwitz of the National Lawyers Guild.)

**Right to Representation in Eviction Cases.** Detroit’s eviction court, the largest district court in the state and one of the busiest in the country, hears approximately 30,000 eviction cases per year, but almost none of the tenants are represented by lawyers in court. Legal aid groups serving low-income tenants in their eviction cases can only cover a fraction of the legal need, and Detroit is facing an eviction crisis now that rental housing aid and supports from the COVID-19 pandemic are ending. In 2020 the ACLU of Michigan began working with a coalition to provide the legal support and analysis needed to craft a city ordinance that would address this problem. In May 2022 these efforts paid off when the Detroit City Council passed a comprehensive right-to-counsel ordinance guaranteeing full legal representation to all indigent tenants facing eviction in the 36th District Court in Detroit. (ACLU Attorney Bonsitu Kitaba-Gaviglio.)

## **PRISONERS' RIGHTS**

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**Jail Refuses to Provide Medication for Opioid Use Disorder.** Jails and prisons are legally required to provide medical care to all who come into their custody, but many refuse to provide medication for opioid use disorder, the medical condition commonly referred to as opioid addiction. More than 20% of people incarcerated in Michigan suffer from this condition, which can be safely and effectively treated with FDA-approved medications but can be extremely painful and even deadly if not treated. In October 2021 the ACLU of Michigan filed a federal lawsuit against the Grand Traverse County on behalf of Cyrus Patson, a young man who battles opioid use disorder and treats it with physician-prescribed Suboxone. Mr. Patson was about to be sentenced to serve time in the county jail, which had a policy of not allowing inmates to take medication for opioid use disorder, and had in fact withheld medication from Mr. Patson during a previous jail sentence, causing him to suffer extremely painful withdraw symptoms and even contemplate suicide. Soon after we filed our lawsuit, Judge Robert Jonker issued an order strongly suggesting that the jail's policy violated the Eighth Amendment and/or the Americans with Disabilities Act, and encouraging the parties to negotiate. In January 2022 the case settled after the jail agreed to provide Mr. Patson his medication and pay our attorneys' fees. (*Patson v. Grand Traverse County*, ACLU Attorneys Syeda Davidson, Phil Mayor, and Dan Korobkin; co-counsel Alexandra Valenti, Amelie Hopkins, and Christine Armellino of Goodwin Procter.)

**Access to Courts for Incarcerated People.** For nearly 30 years, a federal statute called the Prison Litigation Reform Act (PLRA) has impaired incarcerated people's ability to seek relief from the courts when their constitutional rights are violated. One recent example is a lawsuit filed on behalf of a Wayne County pretrial detainee with mental disabilities, who alleged she was physically assaulted by jail guards when she was pregnant, resulting in a miscarriage. Her lawsuit was dismissed because she did not "exhaust her administrative remedies" by filing internal grievances in the jail before filing a federal lawsuit. In November 2022 the ACLU filed a friend-of-the-court brief in the Sixth Circuit arguing that when someone is not able to understand and access a jail's grievance procedure as a result of mental illness or disability, their lawsuit should not be dismissed under the PLRA's exhaustion requirement. In July 2022 the Sixth Circuit reversed the dismissal of the case, ruling that the jail's internal grievance process was not properly made available to her. (*Coopwood v. Wayne County*; National ACLU Attorney Jennifer Wedekind; ACLU of Michigan Attorney Dan Korobkin.)

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

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

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

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

## **PRIVACY AND TECHNOLOGY**

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**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 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. Discovery in the case has exposed systemic and comprehensive failures to use facial recognition technology responsibly and to train detectives in basic investigatory techniques and legal requirements. Meanwhile, in a second lawsuit brought by private counsel on behalf of another man falsely arrested under similar circumstances, we filed a friend-of-the-court brief in April 2023 highlighting the dangers of facial recognition technology and the failures we had uncovered during discovery. In August 2023 we learned of yet another facial-recognition driven false arrest in Detroit following a nearly identical pattern—this time resulting in the arrest of an 8-month pregnant woman in front of her children for a carjacking crime she did not commit. Following publicity over this third incident, Detroit announced that it would make policy changes regarding its use of facial recognition and lineups. In September 2023 we entered into settlement discussions in Mr. Williams' case. (*Williams v. City of Detroit*; *Oliver v. City of Detroit*; ACLU of Michigan Attorneys Phil Mayor, Ramis Wadood and Dan Korobkin, and interns Arshi Baig and Simon Roennecke; National ACLU Attorney Nathan Freed Wessler; co-counsel Michael J. Steinberg of U-M Law School, with student attorneys Eilidh Jenness, Ben Mordechai-Strongin, Jeremy Shur, Deborah Won, Rihan Issa, Camelia Metwally, Seth Mayer, Jonathan Barnett, Lauren Yu, Will Ellis, Mickey Terlep, Brendan Jackson, Keenan McMurray, Julia Kahn, and Lacie Melasi.)

**Eyes in the Skies.** The United States Supreme Court has repeatedly warned that as surveillance technologies become more advanced and invasive, and cheaper to use, the Fourth Amendment must continue to protect our personal privacy from unreasonable searches by government officials. In recent years, law enforcement agencies have increasingly relied on small, unmanned drones to hover above private property and spy on us from above. In Long Lake Township, local officials hired a drone operator to repeatedly fly over a private home and collect photographic evidence that its residents were violating a zoning ordinance. The trial court allowed the photographs to be admitted into evidence against the homeowners, ruling that the drone surveillance was not a search within the meaning of the Fourth Amendment, and the Michigan Court of Appeals affirmed. In May 2023 Michigan Supreme Court announced it would hear arguments in the case. In September 2023 the ACLU, along with the Mackinac Center for Public Policy, filed a friend-of-the-court brief arguing that repeated and targeted low-flying drone surveillance of a private home and its surroundings violates the Fourth Amendment when conducted without a warrant, and that the evidence collected should be suppressed. (*Long Lake Township v. Maxon*; ACLU of Michigan Attorneys Phil Mayor and Dan Korobkin; National



ACLU Attorneys Brett Kaufman and Nathan Freed Wessler; co-counsel Patrick Wright of the Mackinac Center for Public Policy.)

## **RACIAL JUSTICE**

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**Home Purchase Scheme Targeting Black Homebuyers.** In the wake of the housing crash of 2008, Black communities have been targeted by predatory “land contract” schemes that advertise the dream of home ownership but are structured to fail. One company, Vision Property Management, engaged in predatory lending schemes across the United States by tricking consumers into signing rent-to-own contracts carrying the promise of homeownership but none of the rights. Vision purchased over 1,000 dilapidated properties in Michigan and sold them to unsuspecting homebuyers. Vision’s contracts obscured the true cost of buying and repairing the home, the interest rate, and the term of the loan; made it nearly impossible for buyers to achieve homeownership; and allowed Vision to avoid responsibility for upkeep. Vision also marketed its product primarily to low-income Black consumers. In September 2020 the ACLU of Michigan, 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. Following extensive discovery, in August 2022 Atalaya filed a motion for summary judgment. Meanwhile, upon learning that a new Vision lender had entered the picture and was selling off homes occupied by prospective class members, in December 2022 we filed a motion for a preliminary injunction asking the court to prohibit the sales without court approval. (*Henderson v. Vision Property Management*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Coty Montag, Jennifer Holmes, Alexandra Thompson and Tiffani Burgess of LDF, Stuart Rossman, Sarah Mancini, and Shennan Kavanagh of NCLC, and Lorry Brown of MPLP.)

**Racial Profiling by the Michigan State Police.** In 2016 the Michigan State Police (MSP) disclosed that troopers are evaluated in part on how many traffic stops they make. The ACLU of Michigan wrote to MSP’s director urging that this policy be terminated because of the risk that it would lead to racial profiling. Because of the policy, troopers with an insufficient number of stops are more likely to target for groundless or arbitrary stops individuals whom they perceive to be powerless to effectively complain, which disproportionately includes people of color. Additionally, we inquired about whether troopers record the racial identities of drivers stopped, and whether there are procedures in place to monitor racial patterns of stops and to remedy practices that are racially discriminatory. In response to the ACLU’s concerns, MSP acknowledged that it lacked reliable information about the race of the drivers it stops, and in 2017 revised its policies to require that state troopers record that information. Following the change in policy, we used Freedom of Information Act requests to obtain records reflecting the racial identities of drivers stopped. These records revealed disturbing racial patterns of stops made by certain members of a unit charged with the task of drug interdiction. Extensive efforts to persuade MSP to engage an expert to diagnose the reasons for the racial disparities resulted only in the agency engaging consultants to document the existence of already known disparities.

Consequently, in June 2021 we filed a federal lawsuit on behalf of Camara Sankofa and Shanelle Thomas, an African American couple stopped by MSP troopers without cause, made to exit their vehicle, subjected to K-9 and manual searches, and interrogated about narcotics. After 90 minutes of the unconstitutional detention, they were allowed to leave without a ticket or even a warning. In October 2022 the lawsuit was settled after MSP finally engaged an independent expert to inquire into the reasons for racial disparities in traffic stops. The settlement agreement allows the ACLU to communicate with the experts and receive a copy of their analysis, and will also pay damages to Sankofa and Thomas and attorneys' fees to the ACLU. (*Sankofa v. Rose*; ACLU Attorneys Mark P. Fancher and Dan Korobkin; Cooperating Attorney Nakisha Chaney of Salvatore Prescott.)

**Water Shutoffs in Detroit.** In 2014 the Detroit Water and Sewage Department (DWSD) commenced the largest residential water shutoff in U.S. history and terminated water service to over 20,000 Detroit residents for lack of payment, without regard to residents' health needs or ability to pay. DWSD's internal documents revealed that due to its sloppy billing practices, it had not charged many customers for sewer service for several years. DWSD demanded a lump sum payment from customers for those charges which many of the city's impoverished residents could not afford to pay. Other documents also revealed that residents with delinquent accounts were billed for charges incurred by previous tenants. The ACLU of Michigan joined a lawsuit that sought to restore water service to the city's residents and stop future shutoffs, but in 2016 the Sixth Circuit affirmed the lower courts' dismissal of the case. Advocacy resumed in 2018 in response to media reports of plans to shut off the water of 17,000 households. In 2019 the ACLU and a coalition of attorneys unsuccessfully petitioned the Michigan Department of Health and Human Services, and then Governor Whitmer, to declare a public health emergency and impose a moratorium on shutoffs to prevent the spread of disease. Then, an investigation by our partners at the 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 against the Governor and the City of Detroit alleging that the water shutoffs violate due process, equal protection, the Fair Housing Act, and state law. In August 2020 the defendants filed motions to dismiss, which remain pending. Meanwhile, in a purported response to the Covid-19 pandemic, the city initiated a self-imposed moratorium on water shutoffs. In December 2022, as the moratorium was set to expire, the ACLU and its partners filed a motion for a preliminary injunction against resumption of shutoffs. While a decision is pending, the city has refrained from resumption of shutoffs as it has negotiated with the ACLU revisions to its new income-based affordability plan, which is a response to long-time demands by the ACLU and other water affordability advocates. The plan has encouraging features that include, among other things, forgiveness of unpaid debts. (*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, Monique Lin-Luse, Santiago Coleman and Jason Bailey of LDF, Lorry Brown, Melissa El-Johnson, and Kurt Thornbladh.)

**Racially Hostile Work Environment in the Detroit Police Department.** In 2017 Detroit Police Chief James Craig was provided with the report of the Committee on Race and Equality (CORE), a special investigative committee he had established in response to complaints of discrimination within the department. The report found that high-ranking command staff had engaged in racial discrimination, intimidation, and retaliation, that the department had a "racial

problem,” and that racism was directed from command staff to the rank and file. Chief Craig rejected the findings of the report, however, and suspended CORE’s work. Just days later, Johnny Strickland, an African American police officer who had been with the department for ten years, was confronted, accosted, handcuffed and detained without cause by several white officers. Officer Strickland was off duty and inadvertently entered a suspected crime scene under investigation. Although Strickland identified himself as a police officer, one white officer continually screamed profanities in Strickland’s face and sarcastically ridiculed his tenure on the police force, calling him “stupid,” “dumb,” and an “idiot.” Another white officer purposely tightened handcuffs in order to cause injury, and still another conducted an unauthorized, unjustified K-9 search of Strickland’s vehicle. In 2018 the ACLU of Michigan filed a federal lawsuit on Officer Strickland’s behalf, alleging racial discrimination, a racially hostile work environment, and retaliation. As part of our discovery in the case, the court ordered Chief Craig to sit for a deposition. In 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. The case went to trial in December 2022, and the jury returned a verdict in Strickland’s favor, awarding him damages in the amount of \$150,000. (*Strickland v. City of Detroit*; ACLU Attorneys Mark P. Fancher, 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, this time seeking damages on behalf of homeowners who had been harmed by the overassessments before new policies were put in place. In July 2022 the Sixth Circuit agreed with our position that the state’s process for addressing a retroactive problem with tax assessment notices had been so convoluted and dysfunctional that homeowners can seek relief in federal court. (*MorningSide Community Organization v. Wayne County Treasurer*; *Howard v. City of Detroit*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Coty Montag and Ajmel Quereshi of LDF, and Shankar Duraiswamy, Amia Trigg, Donald Ridings, Wesley Wintermyer, Sarah Tremont, and Jason Grimes of Covington & Burling.)

**Police in the Schools.** A lawsuit was filed against the Detroit Public School District over an incident in which a public school police officer and an assistant superintendent used excessive force against a 14-year-old student, breaking his jaw. After the district court refused to dismiss the lawsuit, the school district appealed. In the Sixth Circuit, the ACLU filed a friend-of-the-court brief highlighting the well-documented dangers of overpolicing our schools. Instead of improving safety, police in schools exacerbate the school-to-prison pipeline, disproportionately use force on students of color, and cause physical injury and emotional trauma that deprives students of their right to a public education. In March 2022 the Sixth Circuit agreed with our legal position and affirmed the trial court’s denial of the motion to dismiss. (*E.W. v. Detroit Public School District*; National ACLU Attorneys Amreeta Mathai, Sarah Hinger, and Alexis Agathocleous; ACLU of Michigan Attorney Dan Korobkin; co-counsel Corrine Irish and Colter Paulson of Squire Patton Boggs.)

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

**Police Brutality Downriver.** In October 2021 the ACLU of Michigan filed a complaint with the U.S. Department of Justice, urging its Civil Rights Division to investigate the Taylor Police Department for racially biased policing and its excessive use of force. Our complaint followed years of investigating reports from multiple sources that the police department had become one of the most violent and lawless in the state. Taylor is in what is referred to as the “downriver”

region near Detroit. It is 78 percent white and 16 percent Black; nearly 25 percent of the population is under the age of 18, and 11 percent are below the poverty line. Taylor's police department employs 75 officers, but the first African American officer was not hired until 2012. Our complaint highlighted 20 instances of excessive force, punishment of citizens for what is sometimes called "contempt of cop," unlawful use of tasers to force compliance with police orders, racially disparate hostile conduct, waivers of liability induced by blackmail over criminal charges, and hostile, incompetent leadership. We were notified that our petition was referred to the Criminal Section of the Justice Department's Civil Rights Division for review. In July 2023 we directed a Freedom of Information Act request to Taylor to obtain records that might shed light on the police department's conduct since 2021 when it was reported to the Department of Justice, but the city is refusing to turn over any of the requested records. Meanwhile, we are following a pending federal lawsuit by one of the taser victims highlighted in the report to the Department of Justice and anticipate filing a friend-of-the-court brief in his case. (ACLU Attorney Mark P. Fancher.)

**Police Shootings 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. An investigation by the Wayne County Prosecutor's Office, however, exonerated the officers involved. In 2021 the coalition's work expanded due to an escalating pattern of violence by Detroit police officers. In May 2022 the coalition submitted to the U.S. Department of Justice a comprehensive memorandum that detailed a long history of abuse, racial discrimination, and corruption in the Detroit Police Department along with a request that the Justice Department open an investigation and intervene in Detroit police operations. The Department of Justice spent 13 years monitoring the police department's compliance with a consent decree before departing in 2016, but the coalition's memo requested that they return because of escalating uses of force, hundreds of unresolved citizen complaints, poor leadership, racially targeted prosecutions for carrying concealed weapons, and a repressive police culture. (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 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. In 2022 the MDCR investigator assigned to the case reported that she would be recommending to the agency's legal department that they make a finding of discrimination. In 2023, however, MDCR's legal department declined to follow the investigator's recommendation, and a charge of discrimination was not filed in this case. (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 was being 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. The president did not respond, and in September 2021 we followed up with a letter to the university's trustees that expressed heightened and more specific concerns. In April 2022 the U.S. Department of Education's Office for Civil Rights announced that it would investigate CMU for racial discrimination (ACLU Attorney Mark P. Fancher.)

**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 resumed moratorium on shutoffs. The moratorium ended in July 2022. (ACLU Attorneys Mark P. Fancher and Bonsitu Kitaba-Gaviglio, and legal intern Rihan Issa.)

**Pictures of Black Men at Police Department Firing Range.** During a boy scout field trip to the Farmington Hills Police Department, it was discovered that police officers were using enlarged photographs of Black men as target practice on their firing range. A substantial public outcry followed. In July 2022 the ACLU of Michigan wrote to the mayor, city council, and police chief to express concern and emphasize that even if some photographs used for target practice were of white individuals, the police department’s use of *any* shooting targets that depicted Black individuals was problematic. The letter recommended that the targets in controversy be discarded, that professionals interview police personnel to assess their racial attitudes, and that officers undergo training that helps them appreciate the reasons for community alarm. The police chief announced that the targets would be removed pending a review and third-party investigation. (ACLU Attorney Mark P. Fancher; Cooperating Attorney Gillian Talwar.)

**Racial Disparities in Discipline of Black Judges.** For many years, a cloud of controversy has hovered above the Judicial Tenure Commission—the agency responsible for investigating wayward judges—because of perceptions and suspicion that Black judges are more likely to be targeted for investigation and recommended penalties than white judges. Although most of the agency’s records and work are secret, those records that are made public reflect that Black judges are far more likely to be targeted by the Commission than their white colleagues. In early 2023 the Association of Black Judges of Michigan, the Black Women Lawyers Association of Michigan, and the Detroit Branch NAACP requested that the Michigan Supreme Court arrange for an audit of the Commission. In April 2023 the ACLU of Michigan wrote to the Supreme Court to express its support for such an inquiry. The letter stated: “Our interest in an examination of the Commission is not based on independent knowledge of discrimination in specific cases. Rather, we are aware of continuing questions, concerns, accusations and anecdotes about race and the Commission that have been voiced over the course of many years. The confidentiality of the Commission’s records and the general inaccessibility of the body’s proceedings make it difficult for concerned individuals and organizations like ours to verify or investigate the allegations that we receive.” The letter urged that the audit be conducted by persons with expertise in institutional racism and implicit bias because if members of the Commission are not engaging in conscious, purposeful racial discrimination, there may be institutional culture and unconscious biases that contribute to discriminatory outcomes. In June 2023 the Judicial Tenure Commission denied any wrongdoing but announced that it would seek an independent audit in light of the controversy and requests. (ACLU Attorneys Mark P. Fancher and Dan Korobkin.)

**Racist School Mascot.** The Camden-Frontier School District had the dubious distinction of being the only school district in Michigan that retained a name and imagery associated with indigenous people by using the name “Redskins” as the brand for its sports program. In March 2023 the ACLU of Michigan wrote to the school board explaining that Title VI of the Civil Rights Act of 1964 prohibits discrimination by any program (including a school district) that receives federal funding, and Michigan’s Elliott-Larsen Civil Rights Act likewise prohibits discrimination. The ACLU’s letter stated: “We are well aware of the racial demographics of the school district, and the fact that there are few students of color who are currently susceptible to acts of racial animus. Nevertheless, school administrators should be mindful of this country’s ongoing demographic changes and shifting residential patterns that may result in an increase in the number of students of color in the district in the near future. What will be the racial climate in the schools when these students arrive? Will they be welcomed by students and teachers who are sensitive to both the impact of racial slurs and the extent to which their own racial perspectives

may have been negatively distorted by lives in an insular, racially homogeneous community? Or will these students of color instead encounter resentful opposition to their arrival that manifests in unlawful harassment and discrimination?” We followed up with two oral presentations to the board, and in April 2023 the board voted to retire the racial slur. (ACLU Attorney Mark P. Fancher.)

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

## **REPRODUCTIVE FREEDOM**

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**Abortion Rights in Michigan.** Following the U.S. Supreme Court’s decision overturning *Roe v. Wade*, Michigan faced an imminent threat to reproductive freedom and access to abortion: an archaic state law from 1931 that criminalized all abortions except those necessary to save the life of the mother, was poised to automatically spring into effect when *Roe* was overturned. Anticipating in advance that *Roe* would fall and the 1931 law could end abortion access throughout the state, in March 2022 the ACLU of Michigan worked in coalition to file a lawsuit on behalf of Planned Parenthood of Michigan challenging the 1931 law as a violation of the Michigan Constitution and asking for an immediate statewide injunction against its enforcement. In April 2022 Court of Claims Judge Elizabeth Gleicher agreed with us and issued a preliminary injunction so that abortion access could continue in Michigan. In September 2022 Judge Gleicher issued a final judgment and permanent injunction, ruling that the Michigan Constitution’s right to bodily integrity protects access to abortion, and that the 1931 law violates that right as well as the Michigan Constitution’s right to equal protection under the law. The Michigan legislature intervened in the lawsuit and filed an appeal. Meanwhile, in May 2022 anti-abortion prosecutors and organizations filed a separate lawsuit challenging Judge Gleicher’s authority to issue her rulings. In August 2022 the Court of Appeals dismissed their lawsuit, and they sought leave to



appeal in the Michigan Supreme Court. In June 2022 we also filed a friend-of-the-court brief in a similar case filed by Governor Whitmer encouraging the Michigan Supreme Court to rule on the state constitutional questions as soon as possible. In February 2023 the legislature repealed the 1931 abortion ban, rendering the appeals and attempts to overturn Judge Gleicher’s rulings moot, and leaving her rulings intact. In January 2023 the Governor withdrew her lawsuit, and in May 2023 the Michigan Supreme Court declined to hear all remaining appeals in the matter, bringing the litigation to an end. (*Planned Parenthood of Michigan v. Attorney General; In re Jarzynka; Whitmer v. Linderman*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin and legal interns Cali Winslow and Maya Lorey; co-counsel Deborah LaBelle and Mark Brewer; Hannah Swanson, Susan Lambiase and Peter Im of Planned Parenthood Federation of America; and Michael J. Steinberg of U-M Law School, with student attorneys Hannah Shilling, Ruby Emberling, Audrey Hertzberg, Hannah Juge and Emma Mertens.)

**Reproductive Freedom for All.** In March 2022 the ACLU of Michigan, Michigan Voices and Planned Parenthood Advocates of Michigan launched the Reproductive Freedom for All (RFFA) campaign. The campaign was a citizen-led ballot initiative to amend the Michigan Constitution to explicitly affirm that every individual has a fundamental right to reproductive freedom, which includes the right to make and effectuate all decisions related to their pregnancy, including contraception, sterilization, miscarriage management, prenatal and postnatal care, abortion and infertility. ACLU attorneys led the collaborative process to draft the unique constitutional amendment and seek feedback from local and national stakeholders and impacted individuals. By July 2022, the coalition and volunteers collected over 730,000 signatures from registered Michigan voters to put the measure on the November 2022 ballot. Despite submitting over 400,000 more signatures than state law requires and having those signatures validated, the partisan Board of State Canvassers deadlocked and refused to qualify RFFA for the ballot. The RFFA campaign sought emergency relief in the Michigan Supreme Court, asking for an order compelling the Board to adhere to its legal duty and qualify the proposal for the ballot. We succeeded and in September 2022, days before the qualification deadline, the Court ordered RFFA placed on the ballot as Proposal 3 for the November 2022 general election. Proposal 3 then passed by an overwhelming majority and the Michigan Constitution was formally amended to include a fundamental right to reproductive freedom. (*Reproductive Freedom For All v. Board of State Canvassers*; ACLU of Michigan Attorney Bonsitu Kitaba-Gaviglio; National ACLU Attorney Jessica Arons; Steven Liedel of Dykema.)

**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 was 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 (LARA). 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 (HHS). In December 2021 LARA declined to take any action on the complaint. The HHS complaint remains open, but unfortunately the client was forced to seek out a new practitioner in a different healthcare system to have the necessary medical procedure. (ACLU of Michigan Attorneys Syeda Davidson and Bonsitu Kitaba-Gaviglio; National ACLU Attorneys Brigitte Amiri and Lindsey Kaley.)

## **SEX DISCRIMINATION**

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

**Sexual Harassment in Public Schools.** All students have a right to learn in an educational environment free from sexual harassment and other forms of discrimination by their peers. Although a federal law known as Title IX allows students who are sexually harassed by peers to enforce this right, precedent established by the U.S. Supreme Court and the Sixth Circuit have watered down Title IX’s protections and make it difficult to plaintiffs to prevail in such litigation. In June 2023 the Michigan Supreme Court announced that it would consider a case involving peer-on-peer sexual harassment in the Alpena Public Schools. Working with Public Justice and A Better Balance, the ACLU of Michigan filed a friend-of-the-court brief in September 2023 arguing that the Supreme Court should construe our state’s civil rights law, the Elliott-Larsen Civil Rights Act, more expansively than Title IX, so as to provide greater legal protections and a better legal standard for students who are sexually harassed by peers in Michigan schools. (*Doe v. Alpena Public School District*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin; co-counsel Alexandra Brodsky of Public Justice and Dana Bolger of A Better Balance.)

## **VOTING RIGHTS**

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**Signature Gathering for Ballot Initiatives.** In 2018 the legislature enacted a mean-spirited anti-petitioning law designed to make it more difficult to collect enough signatures to place new initiatives on the ballot. The new law 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 required 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 we 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. The case returned to court the following year, and in October 2021 we filed another friend-of-the-court brief in the Michigan Court of Appeals. The court issued a ruling agreeing with our position regarding the 15% cap and the registration requirement, but upholding the disclosure requirement. In January 2022 the Michigan Supreme Court affirmed. (*League of Women Voters of Michigan v. Secretary of State*; ACLU Attorneys Dan Korobkin and Sharon Dolente; Cooperating Attorneys Sam Bagenstos and Eli Savit of U-M Law School.)

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

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

disenfranchise voters, but we are concerned that the Attorney General's legal theory in the case is dangerously overbroad and could result in allowing the speech of voting rights advocates and political activists to be criminalized in the future. Therefore, in June 2023 the ACLU of Michigan worked with Promote the Vote to file a friend-of-the-court brief urging the Michigan Supreme Court to issue a ruling that would not chill important political speech during elections, while also providing a legal path for the Court to rule that the prosecution of the robocallers in this case can proceed. In August 2023 the Court granted us permission to participate in oral argument when the case is heard later this year. (*People v. Burkman*; ACLU Attorneys Phil Mayor and Dan Korobkin; co-counsel Mark Brewer of Promote the Vote.)

**City Clerk Closes Office One Week Before Election.** Thanks to the passage of Proposal 3 in 2018, Michigan's Constitution guarantees that during the 40 days before an election, voters have the right to apply for, receive, and submit an absentee ballot either by mail or in person. And by state law, city and township clerks are required to be available to assist voters during regular business hours within that time period. In July 2022 the city clerk in Benton Harbor posted notices that her office would be closed for five full days just a week and a half before the upcoming primary election. The ACLU of Michigan immediately sent a letter to the clerk and the mayor, warning that closing the clerk's office during this 40-day period was unconstitutional. In response, the clerk made arrangements for her staff to assist voters in city hall while she was away, took down the notices that her office would be closed, and replaced them with notices directing people to city hall if they wished to vote. (ACLU Attorney Syeda Davidson.)