



**LEGAL DOCKET
FALL 2019**

The ACLU of Michigan’s legal docket is published annually. This year’s docket summarizes the cases with activity in 2018 and 2019.

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CRIMINAL LAW REFORM

Bail Reform. Tens of thousands of people in Michigan are locked up in jail, before being tried or convicted of any crime, because of cash bail. Throughout the state, it is common for judges to require people who have been arrested to post cash for their release—in other words, to buy their freedom—or else remain incarcerated while they await trial, even for very minor charges. In April 2019 the ACLU filed a federal class action lawsuit against 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. The judges filed a motion to dismiss in June 2019, and in August 2019 briefing was put on hold to allow the parties to engage in settlement talks that will hopefully result in reform without the need for further litigation. (*Ross v. Blount*; ACLU of Michigan Attorneys Phil Mayor, Dan Korobkin, and Michael J. Steinberg; National ACLU Attorneys Brandon Buskey and Twyla Carter; and Aaron Lewis, James Garland, Mitch Kamin, Amia Trigg, Wesley Wintermyer, Marta Cook, Julia Brower, and Laura Beth Cohen at Covington & Burling.)

Kids Sentenced To Die in Prison. In Michigan, over 360 children have been sentenced to life without the possibility of parole. In 2011 the ACLU filed a class action lawsuit in federal court challenging the practice as unconstitutional cruel and unusual punishment. In 2013 Judge John Corbett O'Meara agreed with the ACLU and ruled that all juveniles serving mandatory life sentences in Michigan must be given parole hearings. The state appealed. While the appeal was pending, the U.S. Supreme Court ruled in a different case that juveniles serving life without parole must be resentenced. The Michigan legislature enacted a new law that would allow some youth to be resentenced to life without the possibility of parole, and set a harsh mandatory sentencing range for everyone else. In light of these new developments, in 2017 the Sixth Circuit ruled that we could no longer bring a categorical challenge to all life-without-parole sentences. However, in April 2018 Judge Mark Goldsmith ruled that the new law's harsh sentencing regime was an unconstitutional ex post facto law because it retroactively took away good-time credits that hundreds of class members had earned while serving their unconstitutional life sentences. In August 2018 the Sixth Circuit affirmed Judge Goldsmith's ruling, which will give hundreds of prisoners an earlier opportunity for release and will save taxpayers millions of dollars. (*Hill v. Whitmer*; ACLU of Michigan Attorney Dan Korobkin; National ACLU Attorneys Steven Watt and Brandon Buskey; co-counsel Deborah LaBelle.)

Retroactive Punishment Under Registration Law. In a groundbreaking ruling, the Sixth Circuit Court of Appeals ruled that it is unconstitutional to impose new severe restrictions on people with past sex offenses long after they were convicted. In 2006 and 2011 the Michigan legislature amended Michigan's sex offender registration law by barring current and future registrants from living and working in a large portion of the state, restricting use of the internet,

forbidding attendance of church if children were present, requiring compliance with onerous reporting requirements, and extending the amount of time they remained on the registry. In 2012 the ACLU of Michigan, working with the University of Michigan's clinical law program, challenged the law in federal court on behalf of six registrants—including a man who was never convicted of a sex offense and several men convicted of consensual sex with younger teens, one of whom he has since married. In 2016 the Sixth Circuit ruled that the retroactive application of all of the amendments to those convicted before 2006 violates the U.S. Constitution's rule against ex post facto laws. But despite the Sixth Circuit's ruling, the State of Michigan has failed to bring Michigan's registry into compliance, leaving the state's 44,000 registrants at risk of prosecution unless they comply with the law's onerous and now unconstitutional requirements. Therefore, in June 2018 we filed a class action lawsuit to ensure that all Michigan registrants obtain the benefit of the rulings in the earlier case. (*John Does #1-5 v. Snyder*; *John Does #1-6 v. Snyder*; ACLU Attorneys Miriam Aukerman, Dan Korobkin and Michael J. Steinberg, and Legal Fellows Sofia Nelson, Marc Allen, Juan Caballero, Monica Andrade and Elaine Lewis; U-M Clinical Law Professor Paul Reingold; co-counsel Alyson Oliver and Cameron Bell.)

Police Taking Photographs and Fingerprints Without Probable Cause. Keyon Harrison, an African American 16-year-old, was walking home from school when he saw another youth with a model truck and paused to look at it. Grand Rapids police, who later claimed that two youth looking at a toy truck is so suspicious that it justifies a police investigation, stopped Keyon, took his picture, and fingerprinted him. Even though Keyon did nothing more than admire a toy, his picture and fingerprints are now in a police database. The Grand Rapids police have used this “photograph and print” procedure on about 1,000 people per year, many of whom are African American youth. Keyon and Denishio Johnson, another African American youth who was similarly printed and photographed, sued to end the practice. In 2017 the Court of Appeals issued a decision holding that the City of Grand Rapids could not be held liable because its policy only allowed, but did not require, the police to take photographs and fingerprints—a decision that could 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 July 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 is now back before the Court of Appeals to decide whether police may seize biometric data like fingerprints without probable cause. (*Johnson v. VanderKooi*; ACLU Attorneys Miriam Aukerman and Dan Korobkin; Cooperating Attorneys Margaret Hannon and Ted Becker of U-M Law School.)

Police Arresting Innocent People for Trespassing. For years, the Grand Rapids Police Department solicited business owners to sign “Letters of Intent to Prosecute Trespassers.” These letters did not articulate a business owner's desire to keep a specific person off their property and were not directed at any particular person. Instead, police officers used these generalized letters to decide for themselves who does not “belong” on premises that are generally open to the public. In many cases, the police arrested people who did nothing wrong, including patrons of the business. In 2013 the ACLU brought a federal lawsuit to challenge the use of these letters to make arrests without the individualized probable cause required by the Fourth Amendment. The plaintiffs include Jacob Manyong, who allegedly “trespassed” when his vehicle entered a business parking lot for several seconds as he pulled out of an adjacent public parking lot, and

Kirk McConer, who was arrested for “trespassing” when he stopped to chat with a friend as he exited a store after buying a soda. An expert retained by the ACLU for the case found that African Americans are more than twice as likely to be arrested for trespassing than whites. In October 2018 Judge Paul Maloney also ruled in our favor in the federal case. The city paid our clients damages in April 2019, and our request for attorneys’ fees is pending. (*Hightower v. City of Grand Rapids*; *People v. Maggit*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg, and Legal Fellow Marc Allen; National ACLU Attorney Jason Williamson; Cooperating Attorneys Julia Kelly and Bryan Waldman.)

Sex Offender Registration for Dismissed Charges. In 1993, when Boban Temelkoski was 19 years old, he touched the breasts of an underage girl. He was permitted to plead guilty under the Holmes Youthful Trainee Act (HYTA), a diversion program for young offenders that promises youth who successfully complete probation that their cases will be dismissed without a conviction and their records sealed. Although Mr. Temelkoski held up his end of the bargain, the Michigan legislature later amended the Sex Offender Registry Act requiring him to register as a sex offender more than a decade after his criminal case was dismissed and his records sealed. In 2012 Mr. Temelkoski filed a motion in state court to be removed from the registry. The trial judge granted the motion, but in 2014 the Michigan Court of Appeals reversed, ordering Mr. Temelkoski back on the registry. The ACLU of Michigan co-counseled his appeal in the Michigan Supreme Court, which decided in January 2018 that requiring Mr. Temelkoski to register violates his right to due process because the state has broken the promises it made to him when he pleaded guilty as a teenager decades ago. (*People v. Temelkoski*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; co-counsel David Herskovic.)

Forfeiture Reform. Police abuse of forfeiture laws are legend. For years, police in Michigan were able to confiscate cars for suspected “vice” activity based on only a “preponderance of the evidence” that a crime was committed. After intense lobbying efforts, the legislature strengthened due process protections by elevating the government’s burden of proof to “clear and convincing evidence.” However, in Wayne County, car forfeitures continued to be prosecuted under the more relaxed standard. The ACLU of Michigan provided direct representation on appeal to John Knoelk, a lifelong resident of Detroit, whose car was confiscated based on the accusation that he used it to pick up a prostitute. Mr. Knoelk was never arrested or charged with a crime, and at his forfeiture trial the primary evidence against him was the testimony of a police officer who saw a woman she “believed” to be a prostitute get into his car. At the end of the trial the judge said the government had proved its case by a preponderance, even though the law had been changed to require proof by clear and convincing evidence. In November 2018 the Michigan Court of Appeals reversed and remanded the case for a new trial using the correct legal standard. When the correct legal standard was applied, the government failed to prove its case and was ordered to return Mr. Knoelk’s car. (*In re Forfeiture of 2006 Dodge Charger*; ACLU Attorney Dan Korobkin.)

Police Shoot Dogs When Searching Home. In January 2016 Detroit police officers arrived at the home of Nikita Smith with a search warrant. Ms. Smith told the police that she owned three dogs and offered to put them in a separate room so they would not get in the way of the search. When the officers entered her home, they handcuffed Ms. Smith and immediately shot all three dogs to death. Smith sued the police for violating her Fourth Amendment rights when they killed her dogs without reason to believe they posed a threat, but the district court dismissed her

lawsuit on the grounds that she did not have a “license” to keep the dogs under Michigan law. When the case was appealed to the Sixth Circuit, the ACLU of Michigan filed a friend-of-the-court brief explaining that the lower court improperly equated compliance with licensing requirements under state law with legitimate property interests under the Fourth Amendment. Property not properly licensed might be subject to lawful seizure, but the manner of that seizure must be reasonable because the owner still has a Fourth Amendment interest in the property. Shooting a dog when it poses no threat is not reasonable, regardless of whether the dogs are licensed. In October 2018 the Sixth Circuit agreed with us and reversed the lower court’s dismissal of Ms. Smith’s lawsuit. (*Smith v. City of Detroit*; ACLU Attorney Dan Korobkin; Cooperating Attorney David Moran of U-M Law School.)

Knock and Talk. When the police don’t have enough evidence to get a search warrant, they sometimes employ a procedure they have nicknamed “knock and talk” to investigate further. Courts have ruled that a police officer has the same right as an everyday citizen (for example, a girl scout selling cookies) to visit your house, knock on your front door, and ask to speak with you. Unfortunately, abuses of the “knock and talk” technique became rampant. In 2016 we filed a friend-of-the-court brief in the Michigan Supreme Court, arguing that a so-called “knock and talk” violates the Fourth Amendment when it is conducted in the middle of the night. In June 2017 the Michigan Supreme Court agreed with us and held that the police were trespassing, and therefore violating the Fourth Amendment, when they woke up suspects and their families in the middle of the night to interrogate them in their homes. Following additional proceedings on remand, in June 2019 the prosecutor asked the U.S. Supreme Court to review the Michigan Supreme Court’s ruling. (*People v. Frederick*; ACLU Attorney Dan Korobkin; Cooperating Attorney David Moran of U-M Law School; John Minock and Brad Hall of CDAM.)

Juveniles With “Parolable” Life Sentences. For over a decade, the ACLU of Michigan has fought against Michigan’s cruel policy of allowing children to be sentenced to life in prison without the possibility of parole. There is a second group that is often overlooked: children who were sentenced to life with the theoretical possibility of parole, but are not given meaningful hearings, fair consideration, or a realistic shot at release when they become parole eligible. In December 2018, we joined the Juvenile Law Center in filing a friend-of-the-court brief in the Michigan Supreme Court on behalf of Montez Stovall, who pled guilty when he was 17 years old to second-degree murder in order to receive a parolable life sentence rather than face life with no possibility of parole. Our brief argues that Michigan must employ fair procedures for parole consideration that give him a realistic opportunity for release if he can demonstrate that he is rehabilitated and not a threat to society. In June 2019 the Michigan Supreme Court remanded the case to the Court of Appeals for further consideration. (*People v. Stovall*; ACLU Attorney Dan Korobkin; co-counsel Marsha Levick of the Juvenile Law Center and Tessa Bialek of Quinnipiac University School of Law.)

Funding Michigan’s Court System. Although the court system is a public service, like schools, roads and libraries, the costs of the court system fall disproportionately on those least able to afford it: low-income criminal defendants. Typically public services are funded through taxes, reflecting the fact that the state provides those services for everyone’s benefit. Courts, however, are treated differently from other public services: they obtain much of their funding from the fines, fees and costs they impose on people who are indigent. As a result, even the smallest of offenses can result in an enormous and financially crippling bill. In March 2018 the

Michigan Supreme Court agreed to hear a case about whether certain court costs are unlawfully imposed because they are a tax. The ACLU of Michigan joined the Criminal Defense Attorneys of Michigan (CDAM) and the Legal Services Association of Michigan (LSAM) in filing a friend-of-the-court brief, arguing that the costs are an impermissible tax and emphasizing the inequity of the current system for court funding. In November 2019 the Supreme Court dismissed the case without issuing a decision. Chief Justice Bridget McCormack, in a separate opinion, highlighted the conflicts created when the budgets of lower courts are determined by how much revenue they raise through imposing costs. She urged the legislature to act on the recommendations of a trial court funding commission “before the pressure placed on local courts causes the system to boil over.” (*People v. Cameron*; ACLU Attorney Miriam Aukerman; Anne Yantus of CDAM and Robert Gillett of LSAM.)

DISABILITY RIGHTS

Supreme Court Victory for Right To Bring Service Dog to School. In a sweeping decision that should tear down barriers to justice for students with disabilities across the country, the ACLU of Michigan won a unanimous victory in the U.S. Supreme Court on behalf of Ehlena Fry, a young girl with cerebral palsy who was barred from bringing her service dog to school. Because of her disability, Ehlena needs assistance with many of her daily tasks. Thanks in part to the contributions of parents at Ehlena’s elementary school, Ehlena’s family raised \$13,000 to acquire a trained, hypoallergenic service dog named Wonder. Wonder performed several tasks for Ehlena, assisted her with balance and mobility, and facilitated her independence. Nonetheless, her school district refused to allow Wonder in the school. In 2012 we filed a federal lawsuit. Judge Lawrence Zatkoff dismissed the case, reasoning that the Frys could not bring a lawsuit because they did not first exhaust administrative remedies, and in 2015 the Sixth Circuit affirmed. The Supreme Court agreed to hear our appeal, and in February 2017 the Supreme Court reversed, ruling 8-0 in favor of Ehlena. The case has been remanded to the trial court for further proceedings. In August 2018 Judge Sean Cox denied both parties’ motions for summary judgment and referred the case to mediation. (*Fry v. Napoleon Community Schools*; Cooperating Attorney Samuel Bagenstos of U-M Law School; ACLU of Michigan Legal Director Michael J. Steinberg; National ACLU Attorneys Susan Mizner and Claudia Center; Cooperating Attorneys Peter Kellett, James Hermon, Jill Wheaton, Ryan VanOver and Brandon Blazo of Dykema, and Gayle Rosen and Denise Heberle.)

Seven-Year-Old Handcuffed at School. In 2015 a Flint police officer assigned to work at an elementary school handcuffed Cameron McCadden, a seven-year-old child with a disability, when he did not immediately respond to the officer’s instruction. Cameron was not a threat to himself or others and was handcuffed for nearly an hour solely on account of his disability-related behavior. The ACLU made extensive attempts to work with Flint to enact policy changes to ensure that no other schoolchildren with disabilities were subjected to abusive treatment Cameron experienced, and we established an alliance with community groups calling for police officers to withdraw from elementary schools. In July 2018, after negotiations with the city proved unsuccessful, we filed a federal lawsuit against the City of Flint and the local chamber of commerce that operated the after-school program where the handcuffing occurred. In April 2019 Judge Denise Page Hood denied the city’s motion to dismiss. (*McCadden v. City of Flint*; ACLU of Michigan Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorneys

Jonathan Marko, Mark Finnegan and Denise Heberle; National ACLU Attorneys Susan Mizner and Claudia Center.)

Performance Cancelled Because Actors Have Down Syndrome. DisArt a disability arts and culture organization that scheduled a series of public performances in Grand Rapids during the Art Prize festival. One of the events was a drag show performed by local actors alongside Drag Syndrome, a group of performers from the U.K. who are living with Down Syndrome. The owner of the performance venue, local business and political figure Peter Meijer, cancelled the drag show performance, questioning whether the performers had the capacity to make their own decisions and stating that persons with disabilities are “special souls” and “should be protected.” DisArt then presented Meijer with assurances that the performers did have the capacity to understand and consent to their performances, but Meijer refused to reconsider his position. In September 2019 the ACLU of Michigan filed a complaint on DisArt’s behalf with the Michigan Department of Civil Rights, alleging discrimination on the basis of disability and sex. (ACLU Attorney Jay Kaplan.)

EDUCATION

Special Education in Flint. In October 2016 we filed a major class action lawsuit against the State of Michigan and local school districts over the systemic failure to provide an adequate education for children with disabilities in Flint. In the wake of the Flint water crisis, in which the population of an entire city (including approximately 30,000 children) was exposed to lead, our investigation revealed that the public school system lacks the resources, support and expertise needed to properly screen children for disabilities, to address the educational needs of children who have or are at risk of developing disabilities, and to ensure that students with disabilities are not unfairly disciplined, restrained, or excluded from public education. The lawsuit seeks broad systemic reform to make sure that the children in Flint’s public schools are not left behind as the city struggles to recover from lead poisoning. In September 2017 Judge Arthur Tarnow denied the defendants’ motions to dismiss. We then filed a motion for a preliminary injunction to require the state to provide comprehensive neuropsychological screening for all children who had been exposed to lead. In April 2018 the state agreed to settle that part of the case by funding a first-of-its-kind initiative that will provide every child in Flint with access to an independently-run, state-of-the-art screening program designed to detect disabilities associated with lead exposure. The case remains pending on two additional claims: the need to provide adequate special education services to children who are identified as having a disability, and reform of the system by which children are unfairly disciplined for behavior caused by their disabilities. (*D.R. v. Michigan Department of Education*; ACLU Attorneys Kristin Totten and Dan Korobkin; Greg Little, Jessica Levin, and David Sciarra of the Education Law Center; Lindsay Heck and Greg Starner of White & Case.)

Taxpayer Money Appropriated for Private Schools. For nearly fifty years, Michigan’s Constitution has strictly prohibited taxpayer funding of private and religious schools. However, in 2016 the legislature appropriated \$2.5 million to “reimburse” private and parochial schools for complying with mandates that all schools in Michigan must abide by. In 2017 we 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 April 2018 the Michigan Court of Claims ruled in our favor, declared the statute unconstitutional, and issued a permanent injunction prohibiting the state from funding private schools. The state appealed, and in October 2018 the Michigan Court of Appeals reversed by a vote of 2-1. We then appealed to the Michigan Supreme Court, which announced in June 2019 that it would take the case. (*Council of Organizations & Others for Education About Parochial (CAP) v. Michigan*; ACLU Attorney Dan Korobkin; Jeffrey Donahue and Andrew Gordon of White Schneider; Brandon Hubbard, Phillip DeRosier and Ariana Pellegrino of Dickinson Wright.)

The Right to Literacy. In November 2018 the ACLU of Michigan filed a friend-of-the-court brief in the Sixth Circuit supporting a group of students in Detroit who are suing the state over its lack of support for literacy in the public schools. Several years ago, we were unsuccessful in seeking a ruling in state court that the Michigan Constitution guarantees a right to an adequate public education, including the right to read. This case seeks a similar ruling, except in federal court and under the United States Constitution. (*Gary B. v. Snyder*; ACLU Attorney Dan Korobkin; Cooperating Attorney Peter Hammer of Wayne State Law School.)

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

ENVIRONMENTAL JUSTICE

Safe Water for the People of Flint. After the State of Michigan stripped the residents of Flint of their ability to elect local representatives, state-appointed officials decided to use the Flint River as a water source without adding corrosion controls. As a result, lead leached from the water pipes and poisoned the drinking water, causing untold harm to the people of Flint. ACLU of Michigan investigative journalist Curt Guyette helped to expose the water crisis, and the ACLU of Michigan and the Natural Resources Defense Council (NRDC) filed a federal lawsuit against state and city officials seeking a court order requiring them to comply with the Safe Drinking Water Act. The goal of the lawsuit, filed in 2016, was to require the state and the city to replace the lead pipes and, in the meantime, ensure that officials deliver safe drinking water. Judge David Lawson granted our request for door-to-door bottled water delivery and filter installation, and soon after recommended that the parties enter mediation. In March 2017 we reached an unprecedented settlement for \$97 million requiring the state and city to replace all

lead and galvanized pipes throughout Flint in the next three years, allocate resources for health and wellness programs, continue door-to-door filter installation and education, and extensively monitor Flint's tap water for lead. We continue to monitor compliance and, when necessary, file motions to enforce aspects of the settlement. The city has hired a new project management company and is now on track to complete excavations and replacements at all remaining homes in Flint by the end of 2019. (*Concerned Pastors for Social Action v. Khoury*; ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Dimple Chaudhary, Sarah Tallman, and Jared Knicley of NRDC; co-counsel Glenn Simmington.)

Paying for Poisoned Water. The people of Flint are charged the highest water rates in the country even though the water flowing through their pipes was unsafe to drink and 40% of residents live below the poverty line. Compounding the trauma, in April 2017 the City of Flint sent approximately 8,000 notices to residents stating that liens would be placed on their homes if water fees from 2015—during the height of the water crisis—were not paid. Eventually, if the liens were not lifted, they could be used to foreclose on the residents' homes. Although the mayor said that the city was merely following state law regarding tax liens for unpaid water bills, in fact the city is under no such legal obligation. In May 2017 the ACLU of Michigan and the NAACP Legal Defense and Educational Fund (LDF) wrote a letter to Flint's mayor and city council, calling for a moratorium on liens for unpaid water bills. The letter argued that since the city did not fulfill its duty to provide water fit for drinking, Flint residents should not have to pay for it—much less lose their homes over it. Flint's city council passed a moratorium on the liens, and the county treasurer announced that she would not foreclose on any homes in Flint over unpaid water bills. However, in April 2019 the city again mailed out over 20,000 notices stating that liens will issue for unpaid water bills. The ACLU and LDF wrote again to the mayor and the county treasurer, condemning the city's actions, arguing that there are alternative means of collecting unpaid fees, and requesting that no liens be placed on Flint homes. (ACLU Attorneys Kary Moss, Michael J. Steinberg and Bonsitu Kitaba-Gaviglio; Sherrilyn Ifil, Coty Montag, Sparky Abraham, and Ajmel Quereshi of LDF.)

FREEDOM OF SPEECH

Ban on Political Canvassing in Wixom Neighborhoods. For citizens who want to advocate for political change at the local level, the First Amendment right to neighborhood canvassing is crucial. The Supreme Court has long afforded the highest level of constitutional protection to those who walk door to door for the purpose of speaking with willing and interested residents about political ideas. But in Wixom, the city council enacted an ordinance that allows entire neighborhoods to erect signs prohibiting door-to-door political canvassing, such as asking residents whether they are registered to vote. One local political activist was canvassing in support of Democratic candidates a few weeks before the November 2018 midterm elections when a resident threatened to call the police if he did not immediately leave the neighborhood. Attempts to persuade the city to repeal their ordinance were unsuccessful, so in April 2019 the ACLU of Michigan filed a federal lawsuit against the city and neighborhood association. After we filed a motion for preliminary injunction, Wixom's city council repealed the ordinance and the neighborhood association removed its anti-canvassing signs. The case settled in September 2019. (*Action for Liberation v. City of Wixom*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Michael J. Steinberg; Cooperating Attorneys Heather Cummings and Sheila Cummings.)

Candidate Charged With Crime for Political Speech. Anuja Rajendra came in third place last summer in the Democratic primary for a state senate seat. Just a few months later, she was facing criminal charges in Washtenaw County, and potentially up to 90 days in jail, for stating in a campaign mailer, “As a mom of four and as your State Senator, I want my kids and all kids in Michigan to have the same opportunity for quality education and success.” Ms. Rajendra was charged under a state law that makes it a crime to “give the impression that a candidate for public office is the incumbent” when he or she is not. The ACLU of Michigan represented Ms. Rajendra, arguing that any law making political speech a crime is a blatant violation of the First Amendment, and that charging Ms. Rajendra under these circumstances was an outrageous abuse of prosecutorial discretion. In January 2019 Judge Elizabeth Hines granted our motion to dismiss, ruling that the statute is unconstitutional on its face. When Judge Hines announced her ruling from the bench, the entire courtroom burst into applause. (*People v. Rajendra*; ACLU Attorneys Michael J. Steinberg and Dan Korobkin; Cooperating Attorneys John Shea, David Blanchard, and Frances Hollander.)

Flint Town Hall Arrests. In 2017 the City of Flint invited members of the public to a town hall at House of Prayer Missionary Baptist Church to discuss the city’s response to the continuing water crisis. Upon arrival, the public encountered several police officers and bodyguards who demanded that no hats be worn in the sanctuary as required by church rules and policy. Those who objected were denied entry into the public meeting, and some were arrested for complaining about the public meeting being held in a religious institution where religious rules were enforced by the police. In March 2018 the ACLU of Michigan filed suit against the city and its police for violations of the arrestees’ constitutional rights. (*Palladeno v. City of Flint*; ACLU Attorneys Bonsitu Kitaba-Gaviglio and Michael J. Steinberg; Cooperating Attorneys Greg Gibbs, Muna Jondy, Glenn Simmington, Ann Gibbs, and Alec Gibbs.)

“True Threats” Case. Under the First Amendment, the “true threats” doctrine holds that allegedly threatening speech cannot be punished unless the government can prove that the speaker meant to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual. In July 2016 racial tension over police violence against young black men was at an apex following a series of fatal police shootings and subsequent citizen protests. In a moment of anger, an African American man named Nheru Littleton, a military veteran and factory worker in Detroit, posted the following statement on his Facebook page: “All lives won’t matter until black lives matter! Kill all white cops!” When the police investigated, Mr. Littleton apologized, explained that he had been drinking when he posted the statement, and had no intent to harm anyone. Wayne County Prosecutor Kym Worthy declined to press charges, explaining that the statement was very offensive but was protected by the First Amendment. However, Attorney General Bill Schuette overruled Worthy and directed his office to prosecute Littleton for “terrorist threats,” a felony offense that carries up to 20 years in prison. In 2017 the ACLU of Michigan filed a friend-of-the-court brief in support of Littleton’s motion to dismiss the criminal prosecution. We argued that although Mr. Littleton’s statement was offensive and upsetting, it was political speech and was not a “true threat.” After receiving our brief, the Michigan Supreme Court put Littleton’s trial on hold while it considered our First Amendment arguments. However, in October 2017 the Supreme Court declined to take further action on the case. In February 2018 Mr. Littleton pleaded guilty and was sentenced to ten months in jail. (*People v. Littleton*; ACLU Attorney Dan Korobkin.)

Jury Nullification Pamphlets. Jury nullification refers to the controversial decision of a jury to acquit a criminal defendant even when the evidence supports a conviction, typically when the jury believes that the law itself is unjust or being applied unjustly. Judges themselves do not inform juries about this power, and attorneys are not permitted to discuss it in the courtroom. However, there is nothing illegal about individual citizens and advocacy groups informing the general public about jury nullification through websites, pamphlets, and other forms of communication. In 2015 Keith Wood stood on a public sidewalk near a courthouse in Big Rapids offering pamphlets about jury nullification to passersby. Based on this conduct he was arrested, tried, and convicted of jury tampering, a crime that is typically prosecuted when an advocate attempts to influence individual jurors in a particular case. In April 2018 the ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals supporting Mr. Wood. Our brief argued that handing out informational pamphlets on a public sidewalk is entitled to the highest level of First Amendment protection, and the state has alternative ways to prevent jury tampering that are less restrictive of Mr. Wood's First Amendment rights. Unfortunately, in December 2018 the Court of Appeals affirmed the conviction, rejecting our First Amendment argument. Mr. Wood is asking the Michigan Supreme Court to take his case. (*People v. Wood*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Gautam Hans of U-M Law School.)

Facebook Censorship in Newaygo County. Lori Shepler is an animal welfare advocate who opposes the practice of declawing cats and operates a website and Facebook page dedicated to that purpose. Cheryl McCloud operates a non-profit animal rescue shelter in Newaygo County. Shepler contacted McCloud, expressed her opposition to McCloud's practice of declawing cats, and posted references to McCloud's cat declawing activities on Facebook. There was no allegation that Shepler threatened McCloud or her animal shelter. But other persons, some of whom follow Shepler's web site and Facebook page, contacted McCloud and her associates and expressed their opposition to declawing cats, sometimes with inflammatory rhetoric. McCloud persuaded a judge in Newaygo County to issue a personal protection order prohibiting Shepler from continuing to post online about McCloud or her shelter. In March 2018 the ACLU of Michigan filed a friend-of-the-court brief in support of Shepler's motion to vacate the order, explaining that the First Amendment protects Shepler's speech, and the speech of others cannot justify censoring Shepler. The case settled. (*McCloud v. Shepler*; ACLU Attorney Miriam Aukerman; Cooperating Attorney Michael Nelson.)

Students Suspended for "Unapproved" Political Speech. Following the mass school shooting in Parkland, Florida in February 2018, hundreds of thousands of high school students across the country planned a nationwide walkout for 17 minutes in an effort to urge lawmakers to institute gun reform measures. In preparation for the walkout, the Utica Academy for International Studies (UAIS) created a set of rules dictating what students could say during their political protest. The rules required the students to stick to "pre-identified chants" as they marched outside the school, and any posters they wished to carry during their walkout would need to be submitted to administrators for advance approval. Incredibly, the rules also provided that no "political messages" would be permitted. Several students who refused to be silenced by school administrators were suspended for peacefully participating in the walkout and holding up signs with political messages. In April 2018 the ACLU of Michigan wrote a letter to the school demanding that the suspensions be rescinded because UAIS's rules against political speech during a demonstration were a blatant violation of the students' clearly established constitutional

rights to express their opinions on the critically important issue of gun control. UAIS responded promptly stating that it had removed the suspensions from the students' permanent records, issued a public statement confirming its commitment to free speech rights of all its students, and promised to respect students' First Amendment rights in the future. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio.)

Censorship of Classic Book on Racism. The 1952 book *Black Skin, White Masks* by Frantz Fanon is a political and psychological critique explaining the reason people of color sometimes experience feelings of dependency and inadequacy by virtue of living in colonial societies or countries dominated by white culture. Although the book is widely acclaimed and relevant today, the Michigan Department of Corrections (MDOC) has placed this classic on its “banned book” list, meaning that prisoners cannot obtain or read it. In June 2019 the ACLU of Michigan joined with the Thurgood Marshall Civil Rights Center at Howard Law School in writing a letter to the MDOC explaining how the censorship violates inmates' free speech rights and urging that the book be removed from the list of prohibited publications. (ACLU Legal Director Michael J. Steinberg; Professor Justin Hansford of Howard University Law School.)

FREEDOM OF RELIGION

Religious Prisoners Deprived of Halal and Kosher Food. In 2013 the ACLU of Michigan won a class action lawsuit against the Michigan Department of Corrections (MDOC) on behalf of Muslim prisoners whose meals did not comply with the halal requirements of Islam. Soon after this important religious freedom victory for Muslim inmates, we learned that MDOC had stopped ordering pre-packaged kosher meals for Jewish inmates. Instead, it adopted a “one size fits all” vegan diet that it claimed met the religious requirements of all religions. However, the vegan food is prepared in the same kitchen as non-kosher food and is served using the same utensils that are used for non-kosher food. This “cross-contamination” violates kosher laws. In 2016 the ACLU of Michigan and the MSU Civil Rights Clinic agreed to represent a Jewish prisoner who was challenging the denial of a kosher diet as a violation of his religious freedom. In March 2018 Judge Linda Parker denied MDOC's motion to dismiss and in August 2018 granted the prisoners' motion for class certification. (*Dowdy-El v. Caruso; Ackerman v. Washington*; ACLU Legal Director Michael J. Steinberg; Cooperating Attorney Daniel Quick of Dickinson Wright; MSU Civil Rights Clinic Director Daniel Manville.)

Only Christians May Own Homes in Northern Michigan Community. Bay View Association near Petoskey owns more than 300 acres of land on Lake Michigan with 30 public buildings, 450 cottages, and two inns. Under Michigan law, Bay View is a unit of government vested with governmental powers, including the power to levy and collect taxes, the power to deputize law enforcement officials, and the power to make and enforce civil and criminal laws. But Bay View allows only practicing Christians to own the cottages—thereby excluding Jews, Muslims and all those not active in a church. In 2017 the ACLU of Michigan wrote to Bay View explaining that its discriminatory housing policy is unconstitutional and urged it, consistent with the will of the majority of Bay View residents, to open up home ownership to all. The Association refused and the residents sued. In April 2018 the ACLU filed a friend-of-the-court brief in support of the residents, explaining how the blatant discrimination at Bay View harkens back to a shameful period of housing discrimination in our country against Catholics, Jews and

people of color. In July 2019 Bay View finally backed down, and the court approved a consent decree with federal oversight to ensure an end to religion-based housing discrimination in the community. (*Bay View Chautauqua Inclusiveness Group v. Bay View Association*; National ACLU Attorneys Heather Weaver and Daniel Mach; ACLU of Michigan Legal Director Michael J. Steinberg.)

Legislative Prayer. The Jackson County Board of Commissioners opens its public meetings with an invocation delivered by one of its nine commissioners. The commissioners all deliver overtly Christian prayers, often in the name of Jesus Christ, and do not allow members of other faiths to lead the prayer. Citizens who attend the meetings have little choice but to participate, even if doing so violates their conscience. When Peter Bormuth rose during the public-comment period at a board meeting and asked the commission to alter its prayer practice, at least one commissioner turned his back on him. After Bormuth filed suit, arguing that this prayer practice violated the Establishment Clause, one of the commissioners publicly referred to him as a “nitwit.” Another warned against allowing invited guests to give invocations for fear that they would express non-Christian religious beliefs. The trial court dismissed his lawsuit, a split panel of the Sixth Circuit reversed, and the full Sixth Circuit agreed to re-hear the case “en banc.” In 2017 the ACLU joined a friend-of-the-court brief filed in the Sixth Circuit, arguing that the Jackson County Commission’s practice of opening all its meetings with exclusively Christian prayers violates the Establishment Clause. Unfortunately, the full Sixth Circuit ruled against Bormuth and upheld the commission’s legislative prayer practice. In 2018 the U.S. Supreme Court declined to review the case. (*Bormuth v. Jackson County*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Dan Mach and Heather Weaver; Richard Katskee and Bradley Girard of Americans United for Separation of Church and State.)

Air Force JAG Officer’s Right to Wear Hijab. Maysaa Ouza, as a daughter of immigrants in Dearborn, always knew she wanted to give back to her country. Upon graduating from law school, she applied for and was accepted into the competitive Air Force JAG Corps. However, she later learned that in order to enter basic training, she would have to remove her hijab, even though wearing the traditional Muslim head covering was a central tenet of her religion. In November 2017 the ACLU intervened on behalf of Lieutenant Ouza, arguing that the government did not have a compelling interest in preventing her from wearing the hijab. In response, the JAG Corps reversed its decision and granted a request for a religious accommodation to wear a hijab for basic training. In May 2018 she became the first Air Force JAG Corps officer authorized to wear hijab. (ACLU Attorneys Heather Weaver, Daniel Mach, Art Spitzer, and Michael J. Steinberg; Cooperating Attorney Kassem Dakhllallah.)

IMMIGRANTS’ RIGHTS

Iraqis Face Torture or Death if Deported. In June 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. In 2017, however, 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 July 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. He also ordered the government to provide Iraqis with bond hearings and release those who had been detained longer than six months. But the government appealed, and in December 2018 the Sixth Circuit reversed by a vote of 2-1. In August 2019 we asked the U.S. Supreme Court to review the Sixth Circuit's decision. Despite the legal setback in the Sixth Circuit, the case has allowed hundreds of Iraqis to access the immigration court system. Many are winning their immigration cases, and some have even become citizens. But others have been deported, and one of our clients, Jimmy Al Dauod, died in Iraq. In addition to the litigation, we are working to support bipartisan legislation to protect Iraqis. (*Hamama v. Adducci*; ACLU of Michigan Attorneys Miriam Aukerman, Bonsitu Kitaba-Gaviglio and Michael J. Steinberg, and Legal Fellows Monica Andrade, Juan Caballero and Elaine Lewis; additional attorneys include Lee Gelernt, Judy Rabinowitz and Anand Balakrishnan of the National ACLU; ACLU of Michigan Cooperating Attorneys Margo Schlanger of U-M Law School, Kimberly Scott, Wendy Richards, Andrew Blum, Erika Giroux and Russel Bucher of Miller Canfield, with paralegal James Angyan; David Johnson, Linda Goldberg and William Swor; and co-counsel Nadine Yousif and Nora Youkhana of CODE Legal Aid; Susan Reed and Ruby Robinson of the Michigan Immigrant Rights Center; and Mariko Hirose of the International Refugee Assistance Project.)

Donald Trump's Muslim Ban. When campaigning for president, Donald Trump called for a ban on Muslims entering the United States. In January 2017, one week after his inauguration, President Trump banned travel for immigrants from seven Muslim-majority countries and halted the refugee resettlement program. His executive order was almost immediately halted by federal courts in lawsuits filed across the country, including by Judge Victoria Roberts in Detroit who enjoined portions of the executive order that prevented lawful permanent residents from the barred countries from returning to the United States. The ACLU of Michigan joined with the Arab American Civil Rights League (ACRL) in challenging the order in the Detroit case. In June 2018 the Supreme Court ruled that the lower courts erred in granting a preliminary injunction against the ban because they applied the wrong legal standard, but in July 2019 Judge Roberts ruled that our case can proceed under the standard the Supreme Court set. We are now asking the court to order production of documents that the government has refused to disclose, including a memo by Rudy Giuliani that apparently advises then-candidate Trump how to implement a Muslim ban without interference from the courts. The government is seeking permission to appeal and has asked for a stay of all discovery. (*Arab American Civil Rights League v. Trump*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg; Cooperating Attorneys Jason Raofield and Nishchay Maskay of Covington & Burling and Margo Schlanger and Samuel Bagenstos of U-M Law School; co-counsel Nabih Ayad, Rula Aoun, Kassem Dakhallah, Mona Fadlallah, Ali Hammoud, and Natalie Qandah.)

Lawsuit for Muslim Ban Records. When President Trump announced his Muslim ban, chaos erupted at airports and border crossings nationwide. People flying home to their families were detained at airports, lawful permanent residents were stranded outside the country, and the

government's interpretation of who was banned kept changing. After multiple federal courts across the country issued injunctions suspending the ban, reports surfaced that the government was flouting the court orders. In February 2017 the ACLU of Michigan, along with 49 other ACLU affiliates, filed Freedom of Information Act (FOIA) requests with local U.S. Customs and Border Protection (CBP) offices to expose how Trump administration officials interpreted and executed the president's Muslim ban at over 55 international airports across the country, acting in violation of federal courts that ordered a stay on the ban's implementation. After the government failed to respond to our FOIA requests, ACLU affiliates across the country, including in Michigan, brought 13 federal lawsuits to obtain the requested records. Under a production schedule ordered by Judge Judith Levy, CBP has produced documents in our case that paint a detailed picture of the chaos and cruelty of the ban. The case settled in August 2019 when the government agreed to pay our attorneys' fees. (*ACLU of Michigan v. U.S. Department of Homeland Security*; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg and Legal Fellow Juan Caballero; Cooperating Attorneys Gabriel Bedoya, Andrew Pauwels, and Andrew Goddeeris of Honigman.)

Mass Detention of Asylum Seekers. In March 2018 the ACLU filed a class action lawsuit challenging the Trump administration's mass detention of asylum seekers fleeing persecution, torture, or death in their countries of origin. Ordinarily, immigrants who present themselves at the border, request asylum, and are determined during an initial interview to have a credible asylum claim are eligible for "parole" into the community while they wait for a hearing to determine their immigration status. But immigration field offices throughout the country, including in Detroit, stopped granting parole in almost all cases and instead detained nearly all immigrants seeking asylum. In July 2018 a federal judge in Washington, D.C. granted our motion for a preliminary injunction, ruling that the Fifth Amendment's Due Process Clause requires immigration judges to grant release on bond to immigrants who are not a flight risk or danger to public safety. In September 2018 we filed a habeas petition in federal court in Detroit for the release of Ansly Damus, an asylum applicant whom the Detroit field office of ICE refused to release for nearly two years despite no evidence that he is a flight risk or danger to the community. Following a hearing on our petition in November 2018, the government agreed to release him. (*Damus v. Nielsen*; National ACLU Attorneys include Judy Rabinovitz, Michael Tan and Stephen Kang; ACLU of Michigan Attorneys Michael J. Steinberg and Abril Valdes.)

Is All of Michigan a Warrantless Border Zone? Federal law permits United States Border Patrol officers to search vehicles without a warrant within a "reasonable distance" of the border, which outdated regulations define at 100 miles. Border Patrol, by treating the Great Lakes as an international boundary, considers the entire State of Michigan to be within the warrantless 100-mile zone. The ACLU of Michigan and coalition partners filed a Freedom of Information Act (FOIA) request for more information about these warrantless searches, but Border Patrol failed to respond. In 2016 we sued in federal court to obtain the records. Although CBP provided some information in response to our lawsuit, it redacted all geographic information from the records, making it impossible to determine where in Michigan CBP is operating and how far from the actual border the agency is conducting warrantless searches. In September 2018 we reached a settlement that requires Border Patrol to provide city/township-level geographic information. We are currently analyzing the hundreds of documents being produced to understand where and how Border Patrol operates in Michigan, and to identify what policy reforms are needed to curb their abusive practices. (*Michigan Immigrant Rights Center v. U.S.*

Department of Homeland Security; ACLU Attorneys Miriam Aukerman and Michael J. Steinberg and Legal Fellows Monica Andrade and Juan Caballero; Cooperating Attorneys Samuel Damren, Dante Stella, Nina Gavrilovic, and Corey Wheaton of Dykema.)

U.S. Citizen Turned Over to ICE for Deportation. We are representing Jilmar Ramos-Gomez, a U.S. 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 Department (GRPD) in November 2018 after trespassing at a local hospital. An off-duty police captain named Curt VanderKooi saw Mr. Ramos-Gomez's picture on the news and asked ICE to check his "status," despite having no reason to think he was undocumented other than his name and Latino appearance. ICE then issued an immigration detainer request for Mr. Ramos-Gomez, resulting in the Kent County Jail placing him in federal custody until his family could prove he was a U.S. citizen and get him released. An ACLU of Michigan investigation revealed that Captain VanderKooi, who has 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 August 2019 Captain VanderKooi was suspended without pay, and the GRPD announced a new policy that prohibits police officers from inquiring about a person's immigration status or contacting ICE for civil immigration enforcement. Similarly, Kent County adopted a new policy requiring a judicial warrant before turning someone over to ICE. In July 2019 we sued the Calhoun County Jail under the Freedom of Information Act to obtain records about Mr. Ramos-Gomez's detention. (*ACLU of Michigan v. Calhoun County*; ACLU Attorney Miriam Aukerman and Legal Fellows Monica Andrade and Elaine Lewis; Cooperating Attorneys Anand Swaminathan, Matthew Topic, Joshua Burday, Merrick Wayne, Megan Pierce, and Matthew Topic of Loevy & Loevy).

Asylum Seeker Gets His Day in Court. Due to the Trump administration's hostility to immigration, refugees who seek asylum under the laws of the United States are being threatened with deportation without the ability to present their asylum claims in court. Estuardo Calvo, an immigrant from Guatemala, filed an emergency petition for habeas corpus in federal court in Detroit to stay his deportation, and the government argued that the court had no jurisdiction over the case. The case was assigned to Judge Arthur Tarnow, who invited the ACLU to file a friend-of-the-court brief. We filed our brief in January 2019, arguing that the denial of federal courts' jurisdiction would violate the provision of the United States Constitution that prohibits the suspension of habeas corpus. After we filed our brief, the government agreed to stay the deportation until judicial review was complete. (*Calvo v. Whitaker*; ACLU of Michigan Attorneys Miriam Aukerman and Michael J. Steinberg; National ACLU Attorneys Anand Balakrishnan and Lee Gelernt.)

Family Separation. In May 2018 Attorney General Jeff Sessions announced a new "zero tolerance" immigration policy that resulted in the forced separation of thousands of young children from their families when they crossed the border. The ACLU filed a federal lawsuit to stop family separation, and in June 2018 a federal judge issued a nationwide injunction, ordering the government to reunite all children with their parents. Three fathers from Central America who were separated from their toddlers at the Texas border after seeking asylum in the United States were transferred to Michigan to reunite with their children. One of the fathers had been sleeping on the floor of a cell alongside his 3-year-old son in a Texas detention center when he

was awakened and told to leave the cell for processing; he did not see his son again for three months. In July 2018 the ACLU of Michigan represented two of the fathers in the reunification process and immigration court proceedings. They were reunited with their respective three-year-old sons and are now living with relatives in other states. (ACLU of Michigan Attorney Abril Valdes).

Public School Requires Applicants to Disclose Immigration Status. Over 35 years ago, the Supreme Court ruled that all children have a constitutional right to attend public schools regardless of their immigration status. Despite this clear rule of law, the Creative Montessori Academy in Southgate, which is a public charter school, required families who want to enroll their children there to disclose their immigration status. Their online enrollment form included a drop-down menu that required parents to identify their undocumented children as an “illegal alien.” Parents were also required to produce a driver’s license or state ID, which are not available to undocumented residents. In April 2019 the ACLU of Michigan wrote a letter to the school explaining that their enrollment process unconstitutionally prevents undocumented children from attending the school. After receiving our letter, the school responded that it plans to change its enrollment form so that all students can attend. (ACLU Attorneys Abril Valdes and Michael J. Steinberg.)

Immigration Agents Searching Greyhound Buses. The Greyhound bus company allows federal agents from Customs and Border Protection (CBP) to board its buses and ask passengers for their “papers” even when CBP has no warrant, no probable cause, and no specific person they’re looking for. In January 2018 CBP boarded a Greyhound bus in Detroit, questioned two passengers about their immigration status, demanded that they produce documentation, and took one of them into custody. Similar incidents were reported throughout the country. When questioned about the incidents by the media, Greyhound claimed that it was required to cooperate with CBP. In March 2018 the ACLU of Michigan along with ACLU affiliates in nine other states wrote a letter to Greyhound explaining that, as a private company, it is not required to allow government agents to board its buses unless they have a warrant or probable cause. We urged Greyhound to assert its Fourth Amendment rights, and those of its passengers, to be free from unreasonable searches and seizures by government agents. ACLU volunteers also distributed “know your rights” materials at the Greyhound bus station in Detroit to provide passengers with information about what to do if CBP boarded their bus. (ACLU of Michigan Attorneys Abril Valdes and Michael J. Steinberg, and Legal Fellow Monica Andrade.)

Immigrant Justice Partnership. President Trump has unleashed a deportation force, terrorizing immigrant communities and ripping families apart. In February 2017 the ACLU and the Michigan Immigrant Rights Center (MIRC) created the Immigrant Justice Partnership (IJP) to document these abuses, identify systemic problems, and hold the government accountable. IJP sends trained lawyers to assist immigrants who have been arrested, offers “know your rights” trainings to affected communities, and promotes city policies that welcome immigrants. In June 2017 we wrote a letter signed by nearly 300 attorneys and organizations demanding that ICE stop arresting individuals at courthouses, which undermines immigrants’ willingness to report crimes and limits their access to the justice system. In March and December 2018 we trained approximately 150 attorneys to represent detained immigrants in habeas corpus proceedings and bond hearings. In August 2018 we sent a letter to law enforcement agencies to clarify that, despite the Trump administration’s recent decision to deny asylum to survivors of domestic

violence in other countries, immigrants who are survivors of domestic violence in the United States remain eligible for legal protections and special visas. In September 2018 we filed a civil rights complaint with the Department of Homeland Security regarding the Calhoun County Jail's decision to deny in-person visits with immigration detainees. In June 2019 we provided extensive recommendations to the Michigan State Police (MSP) about policy changes to ensure impartial policing and prevent entanglement between the MSP and federal immigration authorities. And in August 2019 we wrote to county sheriffs, prosecutors and police chiefs urging them to stop detaining people in local jails at the request of ICE without a court order. (ACLU Attorneys Abril Valdes, Miriam Aukerman and Michael J. Steinberg, and Legal Fellows Monica Andrade and Juan Caballero; MIRC Attorneys Susan Reed, Ruby Robinson, Anna Hill and Ana Devereaux.)

LGBT RIGHTS

Transgender Rights Case Headed to the Supreme Court. Aimee Stephens worked as director of a Detroit-area funeral home for six years, responsible for preparing and embalming bodies. Although she is transgender, she initially hid her female appearance and identity from her employer during her employment, presenting as male. When Ms. Stephens informed her employer that she had been diagnosed with gender dysphoria and would begin presenting as female at work, she was fired. The ACLU of Michigan represented Ms. Stephens in filing a complaint with the Equal Employment Opportunity Commission (EEOC), arguing that the funeral home, by firing her for presenting as female, engaged in unlawful gender stereotyping in violation of Title VII of the Civil Rights Act. After investigating the case, the EEOC concluded that Ms. Stephens' employer had violated her rights under Title VII and in 2014 filed a lawsuit on her behalf in federal court. In 2016 Judge Sean Cox ruled in favor of the funeral home. On appeal, the ACLU intervened on behalf of Ms. Stephens and participated in briefing and oral argument. In March 2018 the Sixth Circuit reversed the trial court's decision, holding that Title VII protects transgender employees from discrimination. The U.S. Supreme Court has announced that it will hear the case, and argument is scheduled for October 2019. (*EEOC v. Harris Funeral Homes*; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys John Knight, James Esseks, Gabriel Arkles, Chase Strangio, and David Cole.)

Discrimination by Foster Care and Adoption Agencies. In 2017 the ACLU filed a federal lawsuit challenging Michigan's practice of permitting state-funded child placement agencies to reject qualified same-sex couples based on the agencies' religious beliefs. The State of Michigan is responsible for approximately 13,000 children who are in the state's foster care system, usually because they were removed from their families due to abuse or neglect. Even though adoption and foster care placement is a public function, the state allowed publicly funded agencies, some of which are faith-based, to discriminate against same-sex couples. In 2018 Judge Paul Borman denied the state's motion to dismiss our lawsuit. In February 2019 the case settled when the new Whitmer 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. We filed motions to intervene in both cases in order to defend the settlement agreement from our previous case. In July 2019 Judge Robert Jonker denied our motion to intervene in one of the cases, and we are appealing. (*Dumont v. Lyon*;

Buck v. Gordon; Catholic Charities West Michigan v. Mich. Dep't of Health & Human Services; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys Leslie Cooper and Dan Mach; Cooperating Attorneys Garrard Beeney, Ann-Elizabeth Ostrager, Jason Schnier, Hannah Lonky, and James Mandilk of Sullivan & Cromwell.)

Defending School District's LGBT-Friendly Policies. In 2017 the school board in Williamston did the right thing by enacting policies that support the rights of LGBT students to be free from discrimination and bullying. A right-wing group representing a few parents then sued the school district, claiming that the LGBT-inclusive policies violate the religious liberty of Christian families who don't want their children to be exposed to "alternative sexual lifestyles." In March 2018 the ACLU filed a motion to intervene in the case on behalf of Stand With Trans, an organization that provides support to transgender youth and their families, and the Gay Straight Alliance (GSA) student group at Williamston High School. We also argued that the lawsuit should be dismissed, as LGBT students will be at risk for discrimination if school districts are not permitted to have LGBT-inclusive non-discrimination policies. In July 2019 the court granted our motion to intervene on behalf of the GSA. Our motion to dismiss remains pending. (*Reynolds v. Talberg; ACLU of Michigan Attorneys Jay Kaplan and Dan Korobkin; National ACLU Attorneys Shayna Medley-Warsoff and John Knight; Cooperating Attorneys Deborah Kovsky-Apap and Matthew Lund of Pepper Hamilton.*)

Judge Refuses to Grant Legal Name Change. Sophia Lothamer, a transgender woman, filed a petition for a legal name change in Hillsdale County Circuit Court. She complied with all the requirements of Michigan's name change statute, including being fingerprinted, having a criminal background check, and publishing notice of her hearing in the local legal news. However, when she arrived at court for what should have been a routine hearing, Chief Judge Michael Smith refused to grant her petition for a legal name change, stating she would have to come back when she completed gender confirmation surgery, which is not required under Michigan law. In May 2018 the ACLU of Michigan sent a letter to Judge Smith explaining that he had no legal authority to impose a surgical requirement for a legal name change and doing so would be unconstitutional. In response Judge Smith ordered Ms. Lothamer's case reassigned to a different judge, stating in his order his "religious convictions" precluded him from granting her relief. We represented her at a hearing before a different judge, and Ms. Lothamer was able to obtain her legal name change. (*In re Lothamer; ACLU Attorney Jay Kaplan.*)

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 July 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. (*People v. Six; ACLU Attorney Jay Kaplan; Ethan Rice, Richard Saenz, and Max Isaacs of Lambda Legal.*)

Discriminatory Health Care. The Affordable Care Act contains a provision that prohibits healthcare providers who receive federal funds from discriminating against patients because they are transgender or because they seek reproductive care. A group of religiously affiliated healthcare organizations, including a healthcare center in Alma, Michigan, is suing the federal government to challenge this provision. The healthcare organizations claim that the anti-discrimination provision of ACA is itself discriminatory because it violates their religious beliefs. In 2016 the ACLU filed a friend-of-the-court brief arguing that everyone is entitled to their religious beliefs, but healthcare providers who receive federal funds are not entitled to discriminate against patients. In August 2017 the case was stayed while the Trump Administration considers whether and how it intends to enforce the antidiscrimination provisions at issue. (*Religious Sisters of Mercy v. Azar*; ACLU of Michigan Attorneys Michael J. Steinberg, Dan Korobkin, and Jay Kaplan; National ACLU Attorneys Brian Hauss, Louise Melling, Brigitte Amiri, Josh Block, James Esseks, and Dan Mach.)

Insurance Coverage for Medically Necessary Health Care. Jasmine Glenn and Jamie O'Brien are transgender women who have insurance coverage through Michigan's Medicaid program, which contracts with private insurance companies, Priority Health and Meridian Health, to provide Medicaid services. Although Ms. Glenn and Ms. O'Brien's medical providers determined that gender confirmation surgery was medically necessary, Priority and Meridian denied coverage, pointing to their policies that had blanket exclusions for gender confirmation surgery. The ACLU of Michigan represented both claimants in administrative proceedings, arguing that the blanket exclusions were unlawful. In September 2018 the Michigan Department of Health and Human Services instructed Michigan Medicaid insurance programs to remove blanket exclusions from their policies, citing the nondiscrimination requirements of the Affordable Care Act. Meridian settled with Ms. O'Brien by reimbursing her for the expenses associated with her surgery. In November 2018 we filed a complaint with the Michigan Department of Civil Rights against Priority Health regarding its discriminatory policy. (ACLU Attorney Jay Kaplan.)

Hormone Therapy for Transgender Prisoner. Josie Mills is a prisoner in the custody of the Michigan Department of Corrections (MDOC). Although classified by MDOC as male, she has identified as female since she was a child. Prior to her incarceration she was diagnosed with gender dysphoria and was prescribed estrogen. When Ms. Mills entered Michigan's prison system, however, her hormone therapy was abruptly terminated. MDOC's own doctors confirmed her gender dysphoria diagnosis, but MDOC refused to authorize continued female hormone therapy for Ms. Mills even though that is the widely accepted standard treatment for gender dysphoria within the medical community. This failure to provide appropriate treatment took a serious toll on Ms. Mills' medical and mental health, and in 2015 she castrated herself in prison and had to be hospitalized. Even after this terrible incident, MDOC continued to refuse estrogen treatment, at one point even offering testosterone therapy instead, which is clearly contrary to accepted medical standards. Beginning in 2016 the ACLU of Michigan began advocating on Ms. Mills's behalf, urging MDOC to undertake a comprehensive review and reconsideration of its treatment of Ms. Mills. MDOC responded by eventually reversing its position, and Ms. Mills was able to begin female hormone therapy. In 2017 MDOC issued a new policy improving transgender health care. Under the new policy, hormone therapy may be made available to prisoners based on an evaluation by an MDOC medical team with expertise in

gender dysphoria. In 2018 we advocated on Ms. Mills' behalf have her estrogen dosage increased to levels appropriate to her female gender identity. (ACLU Attorney Jay Kaplan.)

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

Social Security Benefits for Legally Adopted Child. Before same-sex marriage was made legal in Michigan, unmarried same-sex couples often had difficulty jointly adopting children in Michigan. Some judges, however, allowed second-parent adoptions, where a non-biological parent joins with a biological parent to adopt a child they are raising together. T.J. McCant adopted in this way in 2005, receiving a valid order of adoption from a Shiawassee County judge. Later, McCant became disabled and applied for Social Security benefits that any disabled parent can receive to help raise his or her legal child. An administrative law judge in the Social Security Administration denied benefits, stating that McCant's adoption is invalid because unmarried couples are not permitted to jointly adopt children under Michigan law. The ACLU of Michigan represented McCant in appealing this decision to the Social Security Appeals Council in 2014. We argued that unmarried couples are allowed to adopt, and in any event once a valid adoption order is issued by a state judge, the child is entitled to the same benefits that would be due to a legally adopted child in any other family. The Appeals Council remanded the case to the local field office for reconsideration of its initial decision, and in 2018 an administrative law judge issued a decision in McCant's favor, awarding back benefits from 2011 through the present. (ACLU Attorney Jay Kaplan.)

OPEN GOVERNMENT

Public Access to Citizen Complaints. Some police departments in Michigan refuse to disclose citizen complaints about police misconduct, asserting that these complaints are "personnel records" exempt from disclosure under the Freedom of Information Act. The ACLU of Michigan sued the East Lansing Police Department over this issue in 2016 and obtained a consent judgment requiring disclosure. Recently, a similar case surfaced involving the Norton Shores Police Department. The ACLU of Michigan filed a friend-of-the-court brief in the Michigan Court of Appeals arguing that all citizen complaints should be disclosed, and we were granted permission to argue the case as well. In July 2019 the Court of Appeals issued a decision agreeing with our position. (*Rudd v. City of Norton Shores*; ACLU Attorney Dan Korobkin.)

POVERTY

Food Assistance Cut Off Without Due Process. The Michigan Department of Health and Human Services (DHHS) cut off food assistance to Walter Barry, a low-income, developmentally disabled adult, because Mr. Barry's identity had been used by someone else who committed a crime. Under a DHHS policy that automatically denies food assistance to anyone with an outstanding felony warrant, Mr. Barry's benefits were terminated, even after he proved at an administrative hearing that the warrant was based on a crime that was committed by someone else. Under federal food assistance law, states cannot terminate assistance based on outstanding warrants unless the state first determines that the person receiving benefits is in fact fleeing from justice. In 2013 the Center for Civil Justice and the ACLU of Michigan filed a class action lawsuit seeking to ensure that individuals like Mr. Barry do not go hungry due to the state's unlawful policy. In 2015 Judge Judith Levy issued a decision ruling that DHHS could not deny benefits to people like Mr. Barry and certifying a class of approximately 20,000 people who are eligible for retroactive or future assistance as a result of the case. The state appealed, and in 2016 the Sixth Circuit affirmed Judge Levy's decision, clearing the way to restore an estimated \$60 million in retroactive food assistance benefits owed to low-income households. In 2017 and 2018 we negotiated with the state over how retroactive benefits would be paid, and we are continuing to monitor DHHS to ensure that the new policies they are developing comply with federal law and due process. (*Barry v. Lyon*; ACLU Attorney Miriam Aukerman and Legal Fellow Sofia Nelson; Jacqueline Doig, Katie Linehan, Elan Nichols, and Mario Azzi of the Center for Civil Justice.)

PRISONERS' RIGHTS

Retaliation for Reporting Abuse and Neglect. Sharee Miller, a prisoner at Huron Valley Women's Prison, was fired from her job at the prison for seeking help for mentally ill women prisoners who were being abused and neglected by the guards. Ms. Miller's job at the prison was to keep watch over prisoners who were at risk of suicide or self-harm. On multiple occasions she saw guards abuse mentally ill women by leaving them hogtied and naked for hours, depriving them of water, and refusing to advise medical authorities even when a prisoner was foaming at the mouth. Ms. Miller's internal complaints within the prison were ignored, so she ultimately alerted outside organizations such as the Department of Justice and advocacy groups. When she did so, she was punished for violating "confidentiality" rules. In 2015 the ACLU of Michigan filed a lawsuit to prevent the prison from punishing prisoners who report abuse and neglect. In March 2019 Judge Sean Cox denied the state's motion for summary judgment and scheduled the case for trial. The Michigan Department of Corrections then agreed to settle the case by changing its policy to allow prisoners to report mistreatment to an outside government oversight agency or state-designated protection and advocacy organization. Ms. Miller was also reinstated to her position, compensated for her lost wages, and had her record cleared of having been terminated for violating prison rules. (*Miller v. Stewart*; ACLU Attorney Dan Korobkin; Cooperating Attorneys Daniel Quick, Jerome Crawford, Chelsea Smialek, Kathleen Cieslik, Emily Burdick, Lina Irvine, and Alma Sobo of Dickinson Wright.)

Secret Video of Prisoner's Death. In 2016 a Michigan prisoner named Dustin Szot died under suspicious circumstances. He was allegedly involved in an altercation with another inmate, and

prison guards shocked him with a taser. Spencer Woodman, an independent journalist who reports nationally on criminal justice issues, learned that the entire incident was captured on video and requested a copy of the footage under the Freedom of Information Act (FOIA). The Michigan Department of Corrections (MDOC) refused to release the video, claiming that its disclosure would somehow undermine prison security. In 2017 the ACLU of Michigan filed a lawsuit on Woodman's behalf, arguing that the state had no legitimate justification for keeping the video secret. During discovery, we learned that the MDOC staff has a policy of automatically denying all FOIA requests for videos, without even viewing the video in question to determine whether or how its disclosure would threaten security. In June 2019 the Michigan Court of Claims ruled that MDOC's policy was illegal and ordered the state to turn over the video footage. (*Woodman v. Michigan Department of Corrections*; ACLU Attorneys Dan Korobkin and Michael J. Steinberg; Cooperating Attorneys Robert Riley, Marie Greenman, and Olivia Vizachero of Honigman.)

Prisoners' Access to the Courts. The Michigan Court of Appeals invited the ACLU of Michigan to file a friend-of-the-court brief in a case involving a state law that prohibits indigent prisoners from filing lawsuits if they cannot afford the filing fee and still owe court fees from a previous case. We filed a brief arguing that the statute is unconstitutional because it violates prisoners' fundamental right of access to the courts. In December 2018 the Court of Appeals ruled that the statute was unconstitutional as applied to prisoner litigation related to criminal proceedings. The court declined to decide whether the statute would be unconstitutional as applied to all prisoner lawsuits. (*In re Jackson*; ACLU Attorney Dan Korobkin; Cooperating Attorney Gabriel Bedoya of Honigman.)

PRIVACY AND TECHNOLOGY

Supreme Court Victory in Cell Phone Tracking Case. In the age of smart phones, information that is automatically collected by cell phone towers has the potential to reveal an enormous amount of personal information about our whereabouts, including the types of doctors we see, how often we attend church, and whose houses we sleep in at night. In 2015 the ACLU led a coalition of public interest groups in filing a friend-of-the-court brief in the Sixth Circuit, arguing that such information should not be available to law enforcement unless it is obtained through a search warrant signed by a judge. In 2016 the Sixth Circuit issued a split decision rejecting our argument, holding that the government did not conduct a "search" for Fourth Amendment purposes when it obtained cell phone location information from wireless carriers, and therefore did not need a warrant. We then assumed direct representation of the defendant and asked the U.S. Supreme Court to take the case. In June 2018 the Supreme Court reversed, holding for the first time that citizens have a reasonable expectation of privacy in the data that tracks their cell phone location over time. This pathbreaking decision will finally help usher the Fourth Amendment into the 21st century. (*Carpenter v. United States*; ACLU of Michigan Attorneys Dan Korobkin and Michael J. Steinberg; National ACLU Attorneys Nathan Freed Wessler, Ben Wizner, Brett Kaufman, Cecillia Wang, Jennifer Granick, and David Cole; co-counsel Harold Gurewitz.)

Facial Recognition. Michigan has the sad distinction of being a leader in the use of facial recognition surveillance technology. The Secretary of State is collaborating with the Michigan

State Police (MSP) to create a massive database of photographs that includes every Michigan driver's license or state ID photo taken in the last 20 years. MSP is now expanding the database by adding photos from Facebook and other online sources, so that it now includes approximately 50 million photos. In 2016 the Detroit police department purchased facial recognition software and has been using it without approval from the Board of Police Commissioners. The technology can identify people on livestream video feeds, known as "Project Green Light," that are set up around Detroit in over 500 locations, and can be used on mobile devices carried in the field by individual police officers. In August 2019 the ACLU of Michigan and a coalition of civil rights organizations sent a letter to the Detroit Board of Police Commissioners urging them to end the use of facial recognition technology, explaining that it is racially biased and poses an unprecedented threat to personal privacy. We are also working with legislators to prohibit law enforcement's use of this technology statewide, and we are filing Freedom of Information Act requests with MSP and the Secretary of State for information about their use of facial recognition technology and their massive database of photographs. (ACLU Attorney Phil Mayor with community outreach coordinator Rodd Monts; Cooperating Attorney Eric Williams of the Detroit Justice Center.)

RACIAL JUSTICE

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. (*MorningSide Community Organization v. Wayne County Treasurer*; ACLU Attorneys Michael J. Steinberg, Bonsitu Kitaba-Gaviglio, Dan Korobkin, and Mark Fancher; Coty Montag and Ajmel Quereshi of LDF; and Shankar Duraiswamy, Amia Trigg, Donald Ridings, Wesley Wintermyer, Sarah Tremont, and Jason Grimes of Covington & Burling.)

Water Shutoffs in 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 and NAACP Legal Defense Fund (LDF) wrote a joint letter to DWSD that outlined why the shutoffs violated the residents' constitutional rights to due process and equal protection. The ACLU then 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. In 2018, after media reports of plans to shut off the water of 17,000 households, the ACLU wrote to DWSD and the Detroit Health Department on behalf of a coalition of attorneys, warning that shutoffs on that scale could create a public health emergency. In July 2019 we worked with the coalition to file a petition asking the Michigan Department of Health and Human Services to declare a public health emergency as a result of the shutoffs. (*Lyda v. City of Detroit*; ACLU Attorneys Mark Fancher and Bonsitu Kitaba-Gaviglio; Monique Lin-Luse and Veronica Joice of LDF; co-counsel Alice Jennings, Jerry Goldberg, Kurt Thornbladh, Julie Hurwitz, John Philo, Sofia Nelson, Lori Lutz, Desiree Ferguson, Lorrain Brown, Hugh Davis, Cynthia Heenan, Marilyn Mullane, Anthony Adams, and Matthew Erard.)

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 the Chief Craig to sit for a deposition. In July 2019 the city filed a motion for summary judgment, and we are awaiting a ruling from the court. (*Strickland v. City of Detroit*; ACLU Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorney Leonard Mungo.)

Housing Discrimination in Hamtramck. In 1971 legendary federal judge Damon Keith held that the City of Hamtramck had "intentionally planned and implemented a series of urban renewal projects and other government programs designed to remove a substantial portion of Black citizens from the city, in violation of plaintiffs' federal statutory and constitutional rights." The litigation that generated that ruling has had a long life span, and in 2017 the case found its way before the court again when some of Hamtramck's African American residents filed a motion requesting a court order enforcing a decades-old consent judgment in the case. In their motion, the residents complained that Hamtramck's current tax assessment practices are purposeful efforts to purge African American homeowners from the city. Specifically, they alleged that homes owned by black families have been assessed at elevated rates multiple times

during an assessment cycle, making it unreasonably difficult for homeowners to satisfy resulting tax requirements. In 2017 the ACLU of Michigan filed a friend-of-the-court brief pointing out that historically, taxation has been a convenient tool for placing a special burden on minority populations—particularly when there are efforts to impact a city’s racial demographics. We further argued that the alleged tax assessment practices in Hamtramck, if true, are consistent with a pattern of racial exclusion and discrimination occurring in other regions of the country. The residents’ motion to enforce the consent judgment remains pending. (*Garrett v. City of Hamtramck*; ACLU Attorneys Mark Fancher and Michael J. Steinberg.)

Traffic Stop Quotas Create Racial Profiling Hazard. In 2016 the Michigan State Police (MSP) disclosed that troopers are evaluated in part on whether they make at least 70 percent of the collective average number of traffic stops made at the post to which they are assigned. 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. In June 2018 we wrote a letter to MSP highlighting these problems and requesting that the agency hire an expert qualified to determine whether the agency is engaged in racial profiling. When a new MSP director was appointed in 2019, we renewed our request for an independent study. (ACLU Attorney Mark Fancher.)

Police Failure to De-escalate. In September 2017 an Ann Arbor police officer unnecessarily grabbed and slapped handcuffs on Ciaem Slaton, a 16-year-old African American student, at the Ann Arbor Transit Center. In response, concerned community members staged a protest about the incident and asked the ACLU of Michigan to investigate. After reviewing a video of the incident and the police report, we sent a letter to the Ann Arbor police department in January 2018 raising questions and concerns about whether the confrontation between Ciaem and the officer could have been avoided altogether if the officer had proper de-escalation training. The letter requested that the department review its de-escalation and use-of-force policies in light of the incident. An Ann Arbor police official and the city attorney then met with the Washtenaw County ACLU Lawyers Committee to discuss the incident and explain the new policy and training on de-escalation techniques that the city was implementing. (ACLU Attorneys Mark Fancher and Michael J. Steinberg; Cooperating Attorneys John Shea, Nick Roumel, and Gayle Rosen.)

Racism in Paw Paw Public Schools. The public high school in Paw Paw, Michigan still uses the racial slur “Redskin” and offensive imagery of a Native American as a mascot for its athletic program. Advocacy by Native Americans in the area to change the mascot was beaten back with excessive hostility, aggression, and racial animus. After receiving multiple complaints about this

controversy and other signs of racial discrimination and harassment in the Paw Paw Public Schools, the ACLU of Michigan investigated and uncovered a pattern of extremely disturbing incidents, including the display of swastika, hostile use of the N word and other racial slurs, and students being told to “go back to Mexico.” When we approached the school district with an offer to collaborate in attempting to improve the environment, we were ignored. In January 2019 we formally filed a complaint with the United States Department of Education’s Office for Civil Rights, charging that the school district’s deliberate indifference to a racially hostile educational environment violates Title VI of the Civil Rights Act of 1964. (ACLU Attorney Mark 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. At the time of the incident, the child was in the second grade. He was the only black child in his class which was not helpful to his race-related psychological and emotional challenges that were caused by traumatic experiences in foster care. To address his internalized racial inferiority and to raise his racial self-esteem he decided in consultation with his mother 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. The teacher told the class the child’s hair would resemble the artificial locks when fully grown. When the child was told to look at himself in the bathroom mirror, the other students laughed at him. The child’s mother complained that the teacher humiliated her son by using him as an involuntary prop, but the principal dismissively claimed that the child was given advance notice of the demonstration and welcomed it. The principal also refused the mother’s request to arrange cultural competence training for the staff. In February 2019 we filed a complaint asking the Michigan Department of Civil Rights to investigate. (ACLU Attorney Mark Fancher.)

VOTING RIGHTS

Promote the Vote. The ACLU of Michigan was the leading proponent of Promote the Vote, a proposed constitutional amendment to strengthen voting rights and modernize our election system in Michigan with no-reason absentee voting, same-day voter registration, and other important reforms. We helped collect over 430,000 petition signatures which is more than enough to guarantee a spot on the ballot in November 2018. However, when reviewing the petitions, the Bureau of Elections refused to count any signatures that its staff perceived to be different from the digitized signatures in the state’s qualified voter file (QVF), even though QVF signatures could be decades old and voters who are signing a petition are often in a rush and have no idea that their signatures are supposed to match. Moreover, experts recognize that unless multiple handwriting samples and specialized training are provided, signature comparisons are virtually standardless, highly unreliable, and should not be used in elections. In August 2018 the ACLU of Michigan filed an emergency lawsuit in federal court to stop the standardless signature comparison process and certify Promote the Vote for the ballot. After we filed our lawsuit, the Bureau of Elections recommended that Promote the Vote be placed on the ballot. It was then approved by the voters in the November 2018 election, and we voluntarily dismissed the case. (*Promote the Vote v. Johnson*; ACLU of Michigan Attorneys Sharon Dolente, Dan Korobkin, and Michael J. Steinberg; National ACLU Attorneys Julie Eberstein and Emily Zhang; co-counsel Andrew Nickelhoff and Mary Ellen Gurewitz of Sachs Waldman.)

Legislature Undermines Right to Vote on Ballot Initiatives. In 2018 citizens collected enough signatures to place initiatives on the ballot that would raise the minimum wage and guarantee paid sick time. 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 filed a friend-of-the-court brief arguing that it is not. We were joined on the brief by the League of Women Voters of Michigan and the American Association of University Women of Michigan. The Supreme Court heard oral arguments in July 2019. (*In re Request for Advisory Opinion Regarding Constitutionality of 2018 PA 368 & 369*; ACLU Attorneys Sharon Dolente and Dan Korobkin; Cooperating Attorney Eli Savit of U-M Law School.)

Ballot Access for Redistricting Proposal. In an effort to end the extreme partisan gerrymandering that threatens to undermine the legitimacy of our system of representative government, the ballot committee Voters Not Politicians submitted more than 425,000 signatures to put a constitutional amendment on the November 2018 ballot. The purpose of the initiative was to give responsibility for drawing legislative districts to an independent citizens redistricting committee. In May 2018 an organization funded by the Michigan Chamber of Commerce filed a lawsuit to prevent the initiative from going on the ballot, arguing that the proposed constitutional amendment was a “revision” of Michigan’s Constitution rather than an amendment. When the case reached the Michigan Supreme Court, the ACLU of Michigan filed a friend-of-the-court brief in favor of ballot access. In July 2018 the Michigan Supreme Court agreed and, by a vote of 4-3, ordered the state to put the initiative on the November 2018 ballot. The initiative passed. (*Citizens Protecting Michigan’s Constitution v. Secretary of State*; ACLU Attorney Sharon Dolente; Cooperating Attorney Andrew Nickelhoff of Sachs Waldman.)

Retaliatory Election Fraud Prosecution. Rev. Edward Pinkney is a longtime community activist in Benton Harbor who has waged crusades against gentrification and what he regards as abuses of power by the Whirlpool Corporation and emergency managers assigned to the city. His activities have earned him the animosity of the local power structure, and he has been the target of criminal prosecutions for acts alleged to have occurred while engaged in politics. Most recently, Rev. Pinkney helped coordinate a campaign to recall the city’s mayor. Although enough signatures were collected to put the issue on the ballot, the election was cancelled based on allegations that the dates next to the petitions’ signatures were illegally changed. The finger was pointed at Rev. Pinkney, and in 2014 he was tried and convicted of election fraud by an all-white jury that was permitted to hear irrelevant and inflammatory evidence of Rev. Pinkney’s political activities. In 2015 the ACLU of Michigan filed a friend-of-the-court brief arguing that Rev. Pinkney’s conviction should be reversed. We argued that that allowing the jury to hear irrelevant evidence about Rev. Pinkney’s controversial but legal political activism violated the First Amendment and due process, and that Rev. Pinkney was charged with engaging in conduct that was never clearly defined by the law as a felony offense. In 2016 the Michigan Supreme Court agreed to review the case and specifically ordered additional briefing on the two issues that we had advanced. In May 2018 the Michigan Supreme Court unanimously reversed Pinkney’s conviction on grounds that it was based on a statute that did not establish a substantive

crime. (*People v. Pinkney*; ACLU Attorneys Mark Fancher, Dan Korobkin and Michael J. Steinberg; Cooperating Attorney Richard Friedman of U-M Law School.)

Signature Gathering for Ballot Initiatives. In December 2018 the legislature enacted a mean-spirited anti-petitioning law that will make it more difficult to collect enough signatures to place new initiatives on the ballot. The new law will put a cap on the number of signatures that can be collected from any one congressional district (thereby diluting the ability of African American voters to place initiatives on the ballot), and will require paid petition circulators to register with the state before they can start collecting signatures. Attorney General Dana Nessel announced that she would consider issuing an attorney general’s opinion regarding the constitutionality of the new statute and invited interested parties to submit legal memos to assist her office. In February 2019 the ACLU of Michigan submitted a 12-page letter arguing that the new law violates the Michigan Constitution, the First Amendment, and the Voting Rights Act. In May 2019 Nessel issued a formal attorney general’s opinion adopting our analysis and declaring the new statute unconstitutional. (ACLU Attorneys Sharon Dolente and Dan Korobkin; Cooperating Attorneys Samuel Bagenstos and Eli Savit of U-M Law School, and Andrew Nickelhoff and Mary Ellen Gurewitz of Nickelhoff & Widick.)

WOMEN’S RIGHTS

Religious Refusal at Meijer Pharmacy. Rachel Peterson was about 11 weeks into her pregnancy when she had a miscarriage. Her doctor prescribed a medication to treat the miscarriage and reduce the risk of infection. But the pharmacist on duty at a Meijer pharmacy in Petoskey refused to fill her prescription, saying that “as a good Catholic male,” he could not “in good conscience” provide her with the medicine because he believed it was her intention to use it to end a pregnancy. He also refused to allow Ms. Peterson to speak with another pharmacist or transfer her prescription to another pharmacy. In October 2018 we wrote a letter to Meijer on Ms. Peterson’s behalf, stating what the pharmacist did was discriminatory and violated the state’s public accommodation laws. After receiving the letter, Meijer agreed to change its policy to ensure that customers will receive their prescriptions without undue delay or interference. Under the new policy, if a pharmacist has a religious objection to filling any prescription, a second pharmacist must take over immediately and fill the prescription. In the very rare instance when a second pharmacist is not on site, Meijer must have the prescription delivered from another location within 30 minutes. Customers must receive their prescriptions seamlessly without knowing that a pharmacist objected, and no Meijer employee may “shame” customers for taking a medication prescribed by their doctor. Meijer trained all pharmacy staff on the new policy, and new employees will be trained as part of their orientation. (ACLU Attorneys Michael J. Steinberg and Bonsitu Kitaba-Gaviglio, with Policy Strategist Merissa Kovach.)

Cross-Examination in University Sexual Assault Misconduct Hearings. A federal civil rights law known as Title IX requires universities to protect students from sexual harassment and assault in campus, including taking effective measures to investigate complaints. Public universities are also required to provide due process to students who are accused of wrongdoing. In a new policy established by the University of Michigan in January 2019, a student accused of sexual assault is permitted to personally cross-examine their alleged victim at a hearing. The new policy was established after a federal court ruled that some form of cross-examination is

required by due process in some cases. However, the court was careful to state that cross-examination could be carried out by an attorney or advocate, rather than by the student who is accused of the assault. In September 2019 the ACLU wrote a letter urging the university to rescind its new policy. We explained that the ACLU supports the right to cross-examination, but allowing the accused to personally conduct the cross-examination is highly traumatic to survivors, would deter students from reporting sexual assaults on campus, and is not required to comply with due process. We asked the university to create a new policy that provides attorneys or advocates to each side to conduct any cross-examination required by law. (ACLU of Michigan Attorneys Bonsitu Kitaba-Gaviglio and Dan Korobkin, with Civil Liberties Fellow Katie Bart; Cooperating Attorney John Shea; National ACLU Attorneys Sandra Park and Emma Roth.)