

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

MORATORIUM NOW!, a Non-Profit  
Organization; CHERYL LABASH;  
THOMAS MICHALAK; JOAN MANDELL;  
and WALLIS ANDERSEN,

Plaintiffs,

v.

DETROIT 300 CONSERVANCY,  
a Michigan Non-Profit Corporation,  
ROBERT F. GREGORY, in his official  
capacity as President of Detroit 300 Conservancy;  
HEATHER BADRAK, in her individual capacity;  
GUARDSMARK, a Delaware limited liability  
company; GENE DOE, a Guardsmark security guard,  
in his individual capacity; JOHN DOE, a Guardsmark  
security guard, in his individual capacity; and  
SERGEANT THOMAS TAYLOR, a City of Detroit  
police officer, in his individual capacity.

Case No. \_\_\_\_\_

Hon. \_\_\_\_\_

Defendants.

\_\_\_\_\_/

Brooke A. Merriweather-Tucker (P79136)  
Michael J. Steinberg (P43085)  
Kary Moss (P49759)  
American Civil Liberties Union Fund  
of Michigan  
2966 Woodward Avenue  
Detroit, Michigan 48201  
(313) 578-6823  
btucker@aclumich.org  
msteinberg@aclumich.org  
Attorneys for Plaintiffs

Raymond J. Sterling (P34456)  
Christine A. Hopkins (P76264)  
Cooperating Attorneys, ACLU Fund  
of Michigan  
Sterling Attorneys at Law  
33 Bloomfield Hills Parkway, Suite 250  
Bloomfield Hills, MI 48304  
(248) 644-1500  
chopkins@sterlingattorneys.com  
rsterling@sterlingattorneys.com

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**COMPLAINT**

## INTRODUCTION

1. Throughout our nation's history, public parks have been the quintessential traditional public forum – a place where the protection of freedom of speech and expression is at its zenith.

2. Self-advertised as “Detroit’s Gathering Place,” downtown Detroit’s Campus Martius is a public park that was created for all individuals to use and enjoy.

3. Although Campus Martius Park is publically owned, the management of the park has been outsourced to a private entity, Detroit 300 Conservancy. Because managing a public park is a public function, Detroit 300 Conservancy must perform its duties in a constitutional manner.

4. The Conservancy, however, has unconstitutionally banned core First Amendment activities such as passing out flyers and petitioning in the park. It has also unconstitutionally barred small groups of protestors from walking through the park and distributing leaflets in a non-disruptive manner at times when there are no other organized activities.

5. To enforce its unconstitutional ban, Detroit 300 Conservancy has hired Defendant Guardsmark to provide private security guards to patrol Campus Martius Park. Working jointly with Detroit 300 Conservancy to carry out the public function of managing the park, Guardsmark and its employees have

deprived Michiganders of their ability to exercise their First Amendment freedoms in a public forum. Specifically, Guardsmark security guards have prevented Plaintiffs from distributing political literature, seeking signatures on political petitions and marching silently through Campus Martius.

6. Members of the Detroit Police Department have also enforced the unconstitutional restrictions on First Amendment rights at Campus Martius. For example, Defendant Thomas Taylor, a sergeant with the Detroit Police Department, told Plaintiffs that while Campus Martius is a public park where they ordinarily have the right to petition and distribute political literature, they must stop when instructed to do so by Detroit 300 Conservancy and its agents.

7. Because of Defendants' actions, Plaintiffs have ceased exercising their rights to engage in political discourse in Campus Martius Park. However, Plaintiffs would like to return to "Detroit's Gathering Place" to exercise their First Amendment freedoms.

8. Plaintiffs therefore bring this civil rights action under the First and Fourteenth Amendments to the United States Constitution, as enforceable through 42 U.S.C. § 1983, seeking a declaratory judgment, an injunction and other relief.

### **JURISDICTION AND VENUE**

9. Jurisdiction is proper under 28 U.S.C. §§ 1331 and 1343 because this is a civil action seeking relief for the deprivation of rights secured by the United

States Constitution.

10. Venue is proper in the Eastern District of Michigan pursuant to 28 U.S.C. § 1391(b), because it is the judicial district where Plaintiffs and Defendants are located or reside, and where the majority of the events and omissions giving rise to this action occurred.

### **PARTIES**

11. Moratorium Now! is a Detroit-based organization dedicated to ending foreclosures, evictions, and utility shutoffs.

12. Plaintiff Cheryl LaBash is a resident of Detroit, Michigan.

13. Plaintiff Thomas Michalak is a resident of Redford Township, Michigan.

14. Plaintiff Joan Mandell is a resident of Royal Oak, Michigan.

15. Plaintiff Wallis Andersen is a resident of Royal Oak, Michigan.

16. Defendant Detroit 300 Conservancy is a registered 501(c)(3) non-profit corporation located in Detroit, Michigan.

17. Defendant Robert F. Gregory is sued in his official capacity as President of Detroit 300 Conservancy. Upon information and belief, Mr. Gregory resides within the Eastern District of Michigan.

18. Defendant Heather Badrak is the Business and Operations Manager of Detroit 300 Conservancy. She is sued in her individual capacity. Upon

information and belief, Ms. Badrak resides within the Eastern District of Michigan.

19. Defendant Guardsmark is a company headquartered in New York with offices located in the Eastern District of Michigan.

20. Defendant Gene Doe is a security guard employed by Defendants Guardsmark and Detroit 300 Conservancy. While he identified himself as “Gene” to Plaintiffs, Plaintiffs do not yet know his last name and “Doe” is a pseudonym. When his last name is learned through discovery, Plaintiffs will seek to amend this complaint to list his full name. Gene Doe is sued in his individual capacity.

21. Defendant John Doe is a security guard employed by Defendants Guardsmark and Detroit 300 Conservancy. Plaintiffs do not yet know his actual name and “John Doe” is a pseudonym. Plaintiffs will seek to amend this complaint to list his actual name when it is learned through discovery. John Doe is sued in his individual capacity.

22. Defendant Thomas Taylor is a police officer employed by the City of Detroit. He is sued in his individual capacity.

### **FACTUAL ALLEGATIONS**

#### **Campus Martius Park is a Publicly Owned Park that is Managed by a Private Entity**

23. Public parks are traditional public forums.

24. Campus Martius is a municipally owned public park located in the

center of downtown Detroit at the intersection of Woodward Avenue, Michigan Avenue, Fort Street, Monroe Street and Cadillac Square.

25. Originally built in the early 1800s, Campus Martius is the point of origin for the state's mile road system so that, for example, Eight Mile Road is exactly eight miles from the park and Nine Mile Road is exactly nine miles from the park.

26. The Campus Martius district and the surrounding area has a rich history of being a focal point of political expression in Detroit and in Michigan.

27. Due to its central location and layout, pedestrians often walk through Campus Martius Park on its sidewalks when walking to their downtown destination.

28. The sidewalk around the perimeter of Campus Martius Park is also a publicly owned area that looks and feels like a typical public sidewalk.

29. This sidewalk is used for general pedestrian passage and seamlessly connects to the nearby publicly managed sidewalk through a public crosswalk.

30. There are no barriers or other physical boundaries that indicate the sidewalk surrounding Campus Martius Park has a different legal status than other nearby sidewalks.

31. On July 23, 2003, Detroit 300 Conservancy entered into a "Professional Services Agreement" (PSA) for the management, maintenance, and

operation of Campus Martius Park.

32. In the PSA, Campus Martius Park is characterized as “a public space owned by the City” and a “Town Square.”

33. In addition, the PSA provides that Detroit 300 Conservancy “shall comply with and shall require its Associates to comply with all applicable federal, state and local laws pertaining to the performance of the Services.”

34. The PSA also states, “The City and the Conservancy shall develop and mutually agreed upon a system of rules and regulations for the operation and use of the Park.”

35. The PSA further provides, “The City shall provide police presence in and around the Park. The number of police officers and the manner of patrol will be determined solely by the Detroit Police Department. It is expressly acknowledged by the parties that the Conservancy shall have no responsibility for security within the Park.”

36. On its website, Detroit 300 Conservancy describes Campus Martius Park as a “public space in the heart of Downtown Detroit” and states that Campus Martius Park is “the most active pedestrian place in downtown Detroit year-round” and will be “a showcase for the City’s diverse culture,” “an active space like other great urban parks and plazas, dedicated to bringing people together,” a “community gathering place,” and a “place where everybody comes and is

welcome.”

37. Because the management and operation of a public park is a public function, state and federal constitutional requirements apply to Detroit 300 Conservancy, as well as its officers and employees, when managing, maintaining and/or operating Campus Martius Park.

38. After entering into the PSA, Detroit 300 Conservancy developed and implemented a set of rules for visitors of Campus Martius Park that it posts on its website and inside the park.

39. As President of Detroit 300 Conservancy, Defendant Robert Gregory is responsible for the development and implementation of the park rules.

40. Detroit 300 Conservancy employs the private security company Guardsmark to enforce these rules.

41. Detroit 300 Conservancy also relies upon City of Detroit police officers to enforce these rules.

42. When enacting and enforcing these rules for the facilities and spaces in and around Campus Martius Park, Detroit 300 Conservancy and its officers and employees are state actors performing a function that has traditionally been the exclusive prerogative of the government.

43. When enforcing the park rules, Guardsmark and its officers and employees are state actors and performing a function that has traditionally been the



exclusive prerogative of the government.

**Defendants Prohibited Plaintiffs Moratorium Now!, LaBash and Michalak from Passing Out Political Handbills and Petitioning in Campus Martius Park**

44. Formed in 2007, Moratorium Now! is an organization of grassroots activists and organizations that works to stop foreclosures, evictions, and utility shutoffs in and around Detroit.

45. Members of Moratorium Now! frequently distribute flyers to raise awareness about the political issues in which they are involved.

46. Members of Moratorium Now! also frequently gather signatures for petitions and attend town hall meetings in an effort to influence public policy.

47. Plaintiffs Cheryl LaBash and Thomas Michalak are members of Moratorium Now!.

48. On the evening of February 13, 2014, Mr. Michalak posted a “tweet” on the social media site Twitter encouraging activists to come to Campus Martius the following day for a demonstration about the Detroit bankruptcy. The same evening, Ms. LaBash, under the auspice of Moratorium Now!, posted a “tweet” on Twitter explaining that supporters were going to meet at Campus Martius on February 14, 2014, to distribute flyers and circulate a political petition.

49. The flyer advertised a town hall meeting on March 2, 2014, to discuss the Detroit bankruptcy and was entitled: Defend Detroit City Pensions and

Services -- Make the Banks Pay.

50. The petition was titled, “Investigate and Prosecute the Banks Now! Make the Banks Pay for Destroying Our Neighborhoods!”

51. Ms. LaBash is a retired employee with the City of Detroit.

52. During her employment with the City of Detroit, Ms. LaBash assisted in the renovations of downtown Detroit that allowed the current configuration of Campus Martius Park to be built.

53. As a result of Detroit’s bankruptcy, Ms. LaBash’s pension and benefits from her employment with the City of Detroit will be significantly reduced.

54. Moratorium Now! also created a Facebook event page for this flyering and petitioning event.

55. On Friday, February 14, 2014, Ms. LaBash, Mr. Michalak, and two other Moratorium Now! supporters went to Campus Martius Park on behalf of Moratorium Now! to participate in the flyering and petitioning event.

56. Upon arrival, Ms. LaBash and Mr. Michalak noticed several police cars parked at Campus Martius Park.

57. LaBash, Michalak and the other Moratorium Now! supporters began to petition and distribute political handbills on the sidewalk in the southern end of the park, on the sidewalk next to the historic Soldiers’ and Sailors’ Monument.

58. Soon after these activists began petitioning and leafleting, a Guardsmark security guard who identified himself only as “Gene,” asked them to leave the park.

59. Gene, referenced as “Defendant Gene Doe” in this complaint, informed Michalak and the Moratorium Now! supporters that he worked for Detroit 300 Conservancy.

60. Gene Doe then told Michalak and the Moratorium Now! supporters that they were prohibited from any political flyering or petition gathering because Campus Martius was private property.

61. Gene Doe also stated that pursuant to the park rules, the group risked arrest if they continued to pass out flyers and gather signatures.

62. The park rules completely prohibit soliciting and the distribution of handbills.

63. The distribution of political handbills and circulation of political petitions are activities protected by the First Amendment of the United States Constitution.

64. The park rules also state that “Patrons of Campus Martius Park are subject to the rules of the City of Detroit Department of Parks and Recreation.”

65. One of the Moratorium Now! supporters explained to Gene Doe that she believed she could pass out leaflets in Campus Martius because it was a public

park.

66. Gene Doe informed the group that leafleting was a form of solicitation prohibited by park rules.

67. Gene Doe also stated that the park rules could be imposed because Campus Martius Park was “open to the public but privately owned.”

68. Gene Doe then explained that Defendant Heather Badrak, the business and operations manager of Detroit 300 Conservancy, was responsible for determining what activities were permissible at the park.

69. At the urging of the Moratorium Now supporters, Gene Doe contacted Ms. Badrak.

70. Ms. Badrak reiterated that LaBash, Michalak and the Moratorium Now! supporters were not allowed to distribute literature or gather signatures in Campus Martius Park.

71. Gene Doe further informed Mr. Michalak that Detroit police officers were parked nearby because “a little bird” had informed Defendant Guardsmark that there would be political activists in the park.

72. Gene Doe stated that the officers were stationed there to ensure that Plaintiffs and others did not engage in advocacy prohibited by Detroit 300 Conservancy.

73. Upon information and belief, Gene Doe knew that political activists

were going to be at the park because of a formal or informal arrangement between Defendant Detroit 300 Conservancy, Defendant Guardsmark and a surveillance center operated by Rock Ventures LLC or one of its subsidiaries to monitor activities at Campus Martius and other places downtown.

74. On information and belief, Rock Ventures LLC or one of its subsidiaries operates a surveillance center in downtown Detroit where individuals monitor the social media of local activist organizations and monitor the video from the dozens of private security cameras around downtown Detroit.

75. On information and belief, the surveillance center alerted Defendants Detroit 300 Conservancy and Guardsmark that supporters of Moratorium Now! would be attempting to distribute political literature about the Detroit bankruptcy in Campus Martius Park on February 14, 2014.

76. On information and belief, Defendants planned and worked in concert to have a Guardsmark security guard and officers from the Detroit Police Department patrol Campus Martius Park at the time of the political event in order to help prevent Moratorium Now! and their supporters from engaging in political activity at Campus Martius.

77. Gene Doe informed Michalak and the Moratorium Now! supporters that they could discuss their concerns with nearby Detroit Police Department officers.

78. Michalak and the Moratorium Now! supporters then moved across the street to speak with a City of Detroit police officer in his vehicle.

79. The City of Detroit police officer stated that the security guard was correct and that they could not distribute flyers or gather petition signatures in the park.

80. The same police officer further stated that he was stationed there in order to ensure that Moratorium Now! did not engage in these types of political activities.

81. This police officer then called his supervisor, Defendant Thomas Taylor, a sergeant in the Detroit Police Department, who subsequently came to Campus Martius Park.

82. Sergeant Taylor told LaBash, Michalak and the Moratorium Now! supporters that the police were near Campus Martius Park because they had received “intel” about the nature of Moratorium Now’s flyers.

83. Sergeant Taylor further stated that although the park is public, it is privately managed and therefore members of the group could not be in the park if prohibited by Detroit 300 Conservancy.

84. Sergeant Taylor recommended that the activists pursue their activities on the traffic median across the street from Campus Martius.

85. In making these statements, Sergeant Taylor made a deliberate choice

to affirmatively support the unconstitutional policy imposed by Detroit 300 Conservancy.

86. LaBash, Michalak and the other Moratorium Now! supporters complied with Defendants' orders to stop petitioning and distributing flyers at Campus Martius.

87. Rather than face arrest, the group ceased their First Amendment activities and left Campus Martius Park.

88. Defendants' actions injured Moratorium Now!, Ms. LaBash and Mr. Michalak by preventing them from exercising their First Amendment political speech rights in Campus Martius Park.

89. Defendants Detroit 300 Conservancy, Gregory, and Guardsmark have a policy, practice or custom of banning individuals from distributing political flyers in the park.

90. Defendants Detroit 300 Conservancy, Gregory, and Guardsmark have a policy, practice or custom of banning petitioners from asking individuals to sign petitions in the park.

91. Because of these policies, Ms. LaBash and Mr. Michalak no longer distribute flyers or gather petition signatures in Campus Martius Park.

92. Ms. LaBash and Mr. Michalak no longer distribute flyers or gather petition signatures in Campus Martius Park because they fear arrest if they engage

in this expressive activity.

93. As an organization, Moratorium Now! also does not distribute flyers or circulate petitions in Campus Martius Park because of fear that its members will be arrested.

94. If not for Defendants' policies, practices, or customs regulating petitioning and flyer distribution, Plaintiffs Moratorium Now!, Ms. LaBash, and Mr. Michalak would begin to distribute flyers and gather petition signatures in Campus Martius Park again.

**Defendants Prohibited Plaintiffs Mandell and Andersen from Walking Through Campus Martius Park in Political Protest and Distributing Political Handbills**

95. Every month, individuals associated with Women in Black-Detroit hold an hour-long silent vigil and march in a public area to protest domestic and world-wide violence sanctioned by policies of the United States.

96. Plaintiffs Joan Mandell and Wallis Andersen are part of Women in Black-Detroit and regularly participate in these vigils throughout the metropolitan Detroit community.

97. On June 8, 2013, Ms. Mandell, Dr. Andersen and approximately 15-20 other individuals associated with Women in Black-Detroit, participated in a vigil in downtown Detroit.

98. During this vigil, the Women in Black supporters met in downtown



Detroit at the Central United Methodist Church and silently walked in black clothing single-file southbound on the sidewalks of Woodward Avenue towards the Detroit River. Their plan was to walk on the sidewalks of Woodward Avenue through the center of Detroit and then turn around and walk back to their meeting place.

99. Because the participants typically do not speak throughout their demonstration, they distribute small flyers to passersby explaining the purpose of the vigil and march.

100. The first five sentences of the flyer state: “Please Join Women in Black, Detroit, in a silent protest against war and violence at home and abroad. We protest U.S.–sanctioned violence around the world and mourn all victims of war, violence, and occupation. Everyone welcome. Please wear black. Please walk single file and in silence.”

101. Given that Woodward Avenue runs directly into Campus Martius, the vigil participants planned to walk silently on the sidewalk through Campus Martius and to pass out handbills explaining the purpose of their vigil to individuals in the park as they walked through.

102. However, upon entering Campus Martius Park, the Women in Black participants were confronted by a uniformed security guard employed by Guardsmark, Defendant John Doe.

103. The security guard explained to the Women in Black vigil participants that they were not allowed to march through Campus Martius Park.

104. There were no other commercial or non-commercial organized events happening at Campus Martius at the time.

105. The Women in Black vigil participants, including Ms. Mandell and Dr. Andersen, were forced to leave Campus Martius and re-route their march outside the park.

106. None of the vigil participants, including Ms. Mandell and Dr. Andersen, were able to distribute flyers in Campus Martius or spread their political message inside the park.

107. The Women in Black vigil participants then continued to march southbound for another block on Woodward Avenue and then, as planned, turned around to walk back up Woodward Avenue northbound.

108. As the Women in Black vigil participants marched northbound on Woodward, Ms. Mandell hurried ahead of the group and asked security guard John Doe why the Women in Black vigil participants were forbidden from walking through Campus Martius Park.

109. Ms. Mandell told the security guard that she believed she could walk through the park because it was city-owned.

110. The security guard informed Ms. Mandell that he was hired by the

management company for the park which made the rules.

111. Ms. Mandell eventually convinced the security guard to allow her and the Women in Black vigil participants to walk through the park on the way back, but he forbade them from passing out literature.

112. Ms. Mandell, Dr. Andersen and the other vigil participants then walked north through the park but did not distribute any literature.

113. The political activities that Ms. Mandell, Dr. Andersen, and the Women in Black vigil participants were forbidden from carrying out in Campus Martius Park on June 8, 2013, are protected by the First Amendment of the United States Constitution.

114. Since the incident on June 8, 2013, Ms. Mandell, Dr. Andersen and other Women in Black vigil participants have not attempted to walk in or through Campus Martius Park as part of their silent protest for fear of harassment and penalty.

115. In June of 2014, Women in Black had another vigil in downtown Detroit along Woodward Avenue. Because they were forbidden from distributing literature in Campus Martius Park in June 2013, and because they feared that they would not be allowed to march through Campus Martius Park or pass out literature, the Women in Black vigil participants intentionally took a detour around Campus Martius Park and marched on the other side of the street.

116. Defendants Detroit 300 Conservancy, Gregory, and Guardsmark maintain a policy, practice or custom that prevents small groups of individuals from walking single-file through the park.

117. Defendants Detroit 300 Conservancy, Gregory and Guardsmark maintain a policy, practice or custom of prohibiting individuals or small groups of people from distributing political flyers in the park.

118. If not for Defendants' policies, practices or customs regulating flyer distribution and small, peaceful marches, Plaintiffs Ms. Mandell and Dr. Andersen would continue to participate in vigils and distribute flyers in Campus Martius Park.

### **CAUSE OF ACTION**

#### **First Amendment Right to Free Speech And 42 U.S.C. § 1983**

119. The First Amendment of the United States Constitution prohibits abridgment of the freedom of speech. The First Amendment applies to the states pursuant to the Fourteenth Amendment. Government officials or private persons acting under color of state law who violate the freedoms guaranteed individuals by the United States Constitution are liable at law and in equity under 42 U.S.C. § 1983.

120. At all times relevant to this complaint, Defendants were acting under color of state law because:

a. They were performing the public function of managing a public park.

b. They were performing the public function of regulating the public's access to, and use of, a traditional public forum.

c. They conspired, acted in concert with, and acted in joint participation with, each other and with City of Detroit officials to manage a public park and public sidewalk, and regulate the public's access to, and use of, a traditional public forum.

d. They had a symbiotic relationship or close nexus with the City of Detroit with respect to managing a public park and public sidewalk, and controlling the public's access to, and use of, a traditional public forum.

121. The First Amendment protects the right of individuals to collect signatures on petitions in traditional public forums such as parks, and on traditional public forums such as sidewalks.

122. The First Amendment to the United States Constitution protects the right of individuals to distribute political flyers in traditional public forums such as parks, and on traditional public forums such as sidewalks.

123. The First Amendment to the United States Constitution protects the right of individuals to organize into small groups and walk through a public park.

124. Even if Defendants instituted a permit process for petitioning,

leafleting and small, non-disruptive marches at Campus Martius, such a process would violate the First Amendment because it would constitute an unlawful prior restraint on speech.

125. Defendants Detroit 300 Conservancy, Gregory, Badrak, Guardsmark, Gene Doe, and Taylor violated the clearly established First Amendment rights of Moratorium Now!, Cheryl LaBash, and Thomas Michalak when they prohibited Moratorium Now! and its supporters from circulating political petitions and distributing political literature on the sidewalk surrounding Campus Martius on February 14, 2014.

126. Defendants Detroit 300 Conservancy, Gregory, Badrak, Guardsmark and John Doe violated the clearly established First Amendment rights of Joan Mandell, and Wallis Andersen on June 8, 2013, when they refused to allow the Women in Black vigil participants to march through Campus Martius and distribute political literature.

127. Defendants continue to violate the First Amendment rights of Plaintiffs by chilling constitutionally protected speech.

**RELIEF REQUESTED**

For the reasons set forth above, Plaintiffs respectfully request that this court:

- A. Enter judgment in favor of Plaintiffs and against Defendants;
- B. Declare that Defendants violated Plaintiffs' First Amendment rights in

denying Plaintiffs access to Campus Martius to:

1. Circulate political petitions;
2. Distribute political literature; and
3. Walk through the park as part of a small, non-disruptive protest.

C. Enter preliminary and permanent injunctions that prevent Defendants from unconstitutionally barring Plaintiffs and other visitors to Campus Martius from:

1. Circulating political petitions;
2. Distributing political literature; and
3. Walking through the park as part of a small, non-disruptive

protest;

D. Award Plaintiffs compensatory damages and punitive damages, or, in the alternative, nominal damages, for violations of their First Amendment rights;

E. Award Plaintiffs costs and attorneys' fees pursuant to 42 U.S.C. § 1988; and

F. Grant or award such other relief as the Court may deem just, equitable or appropriate under the circumstances.

Respectfully submitted,

/s/ Brooke A. Merriweather-Tucker  
Brooke A. Merriweather-Tucker (P79136)  
Michael J. Steinberg (P43085)  
Kary Moss (P49759)  
American Civil Liberties Union Fund  
of Michigan  
2966 Woodward Ave.  
Detroit, MI 48201  
(313) 578-6823  
btucker@aclumich.org  
msteinberg@aclumich.org

/s/ Christine A. Hopkins  
Christine A. Hopkins (P76264)  
Raymond J. Sterling (P34456)  
Cooperating Attorneys, ACLU Fund  
of Michigan  
Sterling Attorneys at Law  
33 Bloomfield Hills Parkway, Suite 250  
Bloomfield Hills, MI 48304  
(248) 644-1500  
chopkins@sterlingattorneys.com  
rsterling@sterlingattorneys.com

Attorneys for Plaintiffs

January 28, 2015