

ACLU Montana

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PROTECTING THE RIGHTS OF RURAL INDIGENOUS VOTERS

OUR RESPONSE TO COVID-19

ARE YOU A CIVIL RIGHTS VOTER?

IMMIGRANTS' RIGHTS VICTORY!



SPRING/SUMMER 2020

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A MESSAGE FROM CAITLIN

OUR EXECUTIVE DIRECTOR



Dear ACLU of Montana supporter,

These are challenging times, and first and foremost, I hope that you and your loved ones are staying well. On behalf of the entire ACLU of Montana team, I wish you the very best as we all navigate the COVID-19 public health crisis.

Like many others, our staff has temporarily moved to remote offices and are doing their best to be flexible, balancing family and work. Our operations continue unhindered, and our work hasn't slowed down. I have never been more proud to work with such a dedicated and talented group of people.

In response to COVID-19, we've immediately shifted some of our work to ensure that the most vulnerable people in Montana are not ignored. The burdens of the outbreak cannot unfairly fall on our most vulnerable communities, including people incarcerated in our prisons and jails. Read more about our response on page 15.

Indigenous people, among other marginalized communities, are disproportionately harmed in this pandemic. We cannot disconnect this from the brutal history of colonialism in this country. We're working with allies and Indigenous communities to learn how we can best support tribes and Indigenous people, both in the short-term response to COVID-19, and also to proactively change the systems that perpetuate the inequality and racism in our society.

Even as we are responding to COVID-19, our other work continues. In March, we filed a lawsuit to protect the rights of rural Indigenous voters. With the 2020 election around the corner, we are also educating voters about some of the most pressing civil rights and civil liberties issues.

A huge thank you for being part of our work. Whether you give money, volunteer, advocate for positions, or engage with us on social media, you are part of what makes us one of the most powerful vehicles for change in Montana. Thank you.


In solidarity,

A handwritten signature in black ink, appearing to read 'CAB'.

Caitlin Borgmann

JEANNETTE RANKIN CIVIL LIBERTIES AWARDS

POSTPONED



**2020 HONOREES
IVAN & IVY
MACDONALD**

See page 9 to learn about our Awardees and the event.

MAJOR VICTORY FOR IMMIGRANTS ENDING ICE DETAINERS

By Alex Rate
Legal Director



In March, the Montana Supreme Court ruled in favor of our client Agustin Ramon in a major victory for immigrants across the state. The ruling effectively ends the ability of state and local police and sheriffs in Montana to hold people in jail based on federal immigration detainers.

An immigration detainer is a written request from the Department of Homeland Security (the parent agency for ICE and Customs and Border Protection) that a local jail or other law enforcement agency detain an individual for an additional 48 hours after their release date. As the Montana Supreme Court underlined in its decision, these requests are not a judicial warrant -- and the continued detention they seek is unlawful under Montana law.

Ramon had been wrongfully jailed for more than two months in the Lincoln County Jail at the request of federal immigration officials. With our colleagues at the national ACLU and the Border Crossing Law firm, we sued Lincoln County Sheriff Roby

Bowe for violating Montana law by honoring a federal Immigration and Customs Enforcement (ICE) detainer to hold Ramon.

On August 3, 2018, Ramon was booked in the Lincoln County Jail. The court set his bond for \$25,000. But when Ramon tried to pay his bond to secure his release from jail pending trial, he was informed that because of an ICE detainer, the jail could not release him.

Being present in the United States without authorization is a civil matter and not a crime. Further, depriving people of their liberty for a civil violation of federal immigration law is overreach by state and local authorities.

The Montana Supreme Court agreed with us that immigration detainers are unlawful under Montana law. The court concluded that “neither federal law nor Montana law provide state or local Montana law enforcement officers with the authority to arrest individuals based on federal civil immigration violations.”

ACROSS THE STATE,

The victory at the Montana Supreme Court will have important effects across the state, but perhaps most importantly in Gallatin County, where the immigrant population is rapidly growing and where we brought another detainer challenge on behalf of Luis Soto Lopez.

Immigrants throughout Montana must be treated the same as every other individual who is charged with a crime. They should now enjoy the presumption of innocence, have the right to post bail and be free pending trial, and step out from underneath the boot of over-aggressive federal immigration officials.

Montana now joins a growing list of states, including Minnesota,

Massachusetts, and New York, whose courts have come to the same conclusion. The federal government cannot force local authorities to do their bidding.

This ruling comes at an important time. Across the U.S., the Trump administration continues to push draconian policies towards immigrant communities and neglects to care for people currently detained during the COVID-19 pandemic. During the COVID-19 public health crisis, the ACLU has been urging the release of those in ICE custody. The ACLU has filed more than a dozen lawsuits across the country, and ICE has begun to slowly release the most vulnerable.



ACLU argues Ramon case in front of Montana Supreme Court this January.

UPDATES FROM OUR LEGAL DEPARTMENT

By Alex Rate
Legal Director



Bail Reform Lawsuit

The unjust bail system imprisons poor people simply because they cannot afford their freedom. One way we're working to reform the system is through our lawsuit on behalf of Eugene Mitchell. In April of 2017, Eugene Mitchell and his wife Shayleen Meuchell were in bed with their four-year-old daughter when a party of six armed bounty hunters broke down their front door because he had missed a court date. We sued the bounty hunters and the for-profit bail industry that profits off this harmful practice.

In a major preliminary victory, in December 2019 the court declared two provisions of a contract used by the insurance companies we sued void against public policy.

This is a big deal.

For years, in the name of profit, large bail insurers and their agents have forced people stuck in jail cells into lopsided contracts filled with fine print. One piece of fine print essentially prevents consumers like our clients from taking the bail industry to court. Another provision requires consumers to outright surrender their legal rights. *Per the order in our case, those provisions are void and unenforceable.* This is a breakthrough in our work reforming the criminal legal system and combating the for-profit bail industry.

Keystone XL Pipeline lawsuit

We support the rights of Indigenous communities and tribal governments in their fight against construction of the Keystone XL Pipeline. We remain particularly concerned about a militarized response to constitutionally protected speech. Federal, state, and county officials have been engaged in protest planning for months, but when we asked for publicly available information to learn more, they didn't sufficiently reply. So, we sued. Two ACLU cases (one against federal agencies, another against state agencies), seek documents related to those preparations so that potential protestors can learn what the government has planned.

In late fall 2019, we provided a Know-Your-Rights training on the Fort Peck Reservation. Indigenous communities have the right to protest without fear of government retribution. There are reports that even during the COVID-19 public health crisis, construction plans are moving forward. Designation of work camps and pipeline construction as "essential" during this crisis is harmful and seems completely arbitrary. We will continue to monitor the situation and share information that protestors have the right to know.

HONORING IVAN & IVY MACDONALD, THE 2020 RANKIN AWARDEES

By Brooke Swaney
Communications Associate

The 2020 Jeannette Rankin Civil Liberties Awards go to Ivan and Ivy MacDonald. We're honoring these filmmaker/activist siblings because of their profound commitment to Indigenous justice.

Missing and Murdered Indigenous Women (MMIW) has been a part of their lives since they first remember. In the early eighties, their 8 year-old cousin, Monica Still Smoking, was kidnapped and murdered. Her loss had an acute effect on their family.

This loss also put them on a powerful trajectory: to tell the heart wrenching stories of MMIW through their film *When They Were Here*, to raise awareness of MMIW, and to push

for legislative change.

For more on their project, go to: whentheywerehere.com.

Ivan also works with Indigenous people entangled in the criminal legal system and works to get people mental health care and legal support. Ivy was recently named a Native American Filmmaker Fellow at the 2019 Big Sky Documentary Film Festival as well as a Fourth World Media Fellow at the Seattle International Film Festival.

In 2018, we were honored to have Ivan and Ivy present their work at the ACLU National Conference in Washington D.C.

Because of their unwavering commitment to Indigenous justice, and their work to lift up the voices of the communities in which they work, we honor these exceptional Montanans.

Stay tuned for a new date to celebrate Ivan and Ivy with us!



THE RIGHTS OF RURAL INDIGENOUS VOTERS ARE BEING TRAMPLED. WE SUED.

By Lillian Alvernaz
Indigenous Justice Legal Fellow



The fundamental right to vote is a cornerstone of our democracy and is protected by the U.S. and Montana constitutions.

All eligible voters in Montana who want to cast a ballot should be able to do so without any barriers to participation.

It is an unfortunate reality, however, that these guarantees have merely been words on paper for many Indigenous people in Montana.

Montana courts have recognized that “there has been a history of official discrimination in Montana that has touched the right of Native Americans to participate in the democratic process.”

For years, the ACLU of Montana has worked with our allies around the state to ensure free and fair access to the ballot box for Indigenous people. In our newest lawsuit – filed with Native American Rights Fund

So, What Exactly is BIPA?

BIPA disproportionately restricts access to the polls for rural Indigenous voters, violating their constitutional rights. About 70,000 people live on the seven reservations in Montana. Rural tribal communities often work with get-out-the vote organizers who collect and transport ballots to election offices that would otherwise be inaccessible due to distance or lack of transportation. These ballot collection efforts are often the only way many people can access the vote. BIPA effectively ends the practice of ballot collection by a third party, disenfranchising Indigenous voters en masse. The law includes constitutionally vague exceptions for acquaintances, caregivers, household members, postal service workers, election officials, or family members to collect and convey a maximum of six ballots. But, the language about exceptions and enforcement of BIPA is so vague that it conveys no objective meaning, and creates the possibility for arbitrary enforcement, which violates the constitutional due process rights of people engaged in ballot collection.

Montana Native Vote, and five tribal governments (the Assiniboiné & Sioux Tribes of Fort Peck, Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Crow Tribe, and Fort Belknap Indian Community) – we sued the state of Montana.

In our lawsuit, we asked the court to overturn a Montana law implemented in 2018 that has effectively ended the practice of ballot collection, thus disenfranchising many Indigenous people living on rural reservations.

The law that we seek to overturn, the Ballot Interference Prevention Act (BIPA), prohibits organizations like Western Native Voice and Montana Native Vote from collecting ballots. Here's how that disenfranchises entire Indigenous communities: Indigenous people living in geographically isolated places on rural reservations often face multiple barriers to voting. The post office and polling place are often dozens of miles away from where people live, and transportation isn't always available. And as we all know, the weather in October and November can be unpredictable.

Because of the many barriers Indigenous voters on reservations can face, organizations like Western

A Short History of the Ballot Interference Prevention Act (BIPA)

In 2017, state Senator Albert Olszewski introduced LR 129, or BIPA. During testimony on this bill, several voting rights advocates and election administrators testified that if passed, BIPA would hinder the ability for many people to vote. But, Senator Olszewski and other legislators passed the bill to apparently protect people who felt intimidated when those collecting ballots knocked on their door, and to prevent so-called voter fraud. For the record, numerous studies show that voter fraud is extremely rare. In 2018, LR 129 passed through Legislative Referendum and became law.

Native Voice and Montana Native Vote have historically stepped in to fill the gap. These organizations employ ballot collectors who travel to individuals' homes to collect and hand deliver ballots to the polling places. On average these groups collect over 85 ballots per organizer, or many hundreds per election cycle. This service has been instrumental in helping people on reservations exercise their fundamental right to vote. But, under BIPA, this service is no longer legal.

BIPA must be overturned.

The state should be doing everything it can to expand access to the ballot

box, not restrict it. Indigenous voters have been disenfranchised throughout U.S. history. Montana has a constitutional responsibility to ensure political equality and fair access to the polls for Indigenous communities. We're here to hold the state to that commitment.

A Look Back at Other ACLU of Montana Voting Rights Work

In 2014 the ACLU of Montana participated as a friend of the court in the case of *Wandering Medicine v. McCulloch*. That case resulted in the establishment of voting offices on three reservations. The creation of these voting offices in Indian Country meant that Indigenous people would no longer have to travel great distances (in some cases hundreds of miles) to exercise their constitutional rights to vote. In the wake of the *Wandering Medicine* settlement, then Secretary of State Linda McCulloch issued a directive advising county elections administrators to guarantee voting access to tribal members by opening "satellite" voting offices on each reservation. Even with satellite offices, however, organizers still play a very important role in ensuring those living on rural reservations can access the ballot.



VOTE LIKE YOUR RIGHTS DEPEND ON IT

ACLU Voter

ARE YOU A CIVIL RIGHTS AND CIVIL LIBERTIES VOTER?

By SK Rossi
Advocacy and Policy Director



We envision a Montana that is fair, equitable, and free. A Montana that welcomes and celebrates diversity of all kinds. A Montana in which everybody is treated with dignity and respect and has equal access to rights and freedoms.

The ACLU of Montana is non-partisan and we do not endorse or oppose candidates for office. We believe in educating voters about the issues at stake in elections, and we believe that voters should be fully informed about each candidate's civil liberties record and stance before casting a ballot. Elections matter.

Issues like criminal law reform, Indigenous justice, LGBTQ rights, and reproductive freedom matter to Montanans. We hope our next governor is committed to protecting and advancing the civil liberties and civil rights guaranteed to all Montanans.

We are thrilled that Rachel Pauli has joined the ACLU of Montana to lead our voter education work leading up to the 2020 elections. Rachel has

nearly a decade of experience in issue and advocacy campaigns working to advance and protect reproductive rights, health care, and freedom. Rachel will work with us through November.

For a one-stop reading shop, we have created an ACLU of Montana policy guide. In it, we break down some of the issues that are important to us: reforming the criminal legal system, indigenous justice, LGBTQ freedom, and reproductive freedom. You will be able to find more on our website, www.aclumontana.org.



COVID-19 UPDATE FOR JUNE PRIMARY

Due to Covid-19, all active registered voters in Montana will be able to vote by mail in the June 2 primaries. Ballots will be mailed on May 8th. Postage is prepaid, so voters will not have to pay for a stamp. Polling places will be closed on Election Day, but each county's election office is required to accommodate some form of early, in-person voting.

These issues are among some of the most crucial facing Montanans. This work is not new to us, and we will also continue long after the upcoming elections have come and gone towards creating the Montana that we know is possible.

Criminal Legal System

We envision a Montana where people feel safe in their communities, the legal system doesn't favor the rich over the poor, there is adequate access to mental health and substance use disorder services, and having a criminal record does not prevent people from accessing meaningful employment with a living wage.

Indigenous Justice

We envision a Montana in which Indigenous children have access to a fair and inclusive education system, Indigenous people have full and equitable access to the ballot, treaty rights and tribal consultation are valued, and First Amendment rights

are respected across issues and identities.

LGBTQ Equality

We envision a Montana where people can live openly; where gender identity, relationships, and families are respected; and where there is fair treatment on the job and in schools, housing, public places, and health care.

Reproductive Freedom

We envision a Montana that respects each person's right to form intimate relationships and to decide whether and when to have children.

Four things you can do:

- 1. Get informed!** Research each candidate to learn more about their policy positions and how it impacts civil rights and liberties.
- 2. Check your voter registration status** at app.mt.gov/voterinfo. You can see if you are registered to vote, what your voting address is, where your polling place is, or if you are registered to vote by mail! (For the primaries, see update above).
- 3. Vote** all the way down your ballot.
- 4. Spread the word** about our voter education campaign. Share informational resources with your network. Civil rights and civil liberties issues will impact our collective future.



OUR RESPONSE TO COVID-19

By Caitlin Borgmann
Executive Director

In the face of a public health crisis more serious than any of us have seen in our lifetime, we're all vulnerable and doing our best to keep ourselves and others healthy. In an attempt to stop the spread of COVID-19, we've listened to public health experts and closed schools, canceled events and practiced social distancing, staying home except for the most essential needs. It's vital advice coming from public health experts to flatten the curve, ensure that health-care systems function, and save lives. So far the research shows that it's working.

During times like these, we cannot forget about the most vulnerable people among us. Among the populations most vulnerable to the COVID-19 outbreak are those in Montana's criminal legal system. It is impossible for people in prisons and jails to follow the advice from public health experts. As such, those

experts have recommended that law enforcement and state governments should take whatever steps they can to reduce the number of people in custody to prevent the virus from spreading in prisons and jails.

Without swift action, too many people in our prisons and jails could be serving death sentences. Moreover, research shows that jails contribute to infectious disease deaths in the broader community - as medical staff and correctional officers go back and forth between their work and their communities.

This is not theoretical. A Yellowstone County jail worker and somebody at Gallatin County detention center had already tested positive for COVID-19, as this newsletter went to print. What is happening on Rikers Island, where cases have spiked and people have died, could easily happen in Montana's prisons and jails. Our

government cannot turn the other cheek to those in its custody: it is immoral and it is unconstitutional.

To protect people in prisons and jails and public health in general, we have been working every angle.

With Disability Rights Montana and the Beck, Amsden and Stalpes law firm, we filed an emergency petition to the Montana Supreme Court to use its authority to

We are not giving up on the people who are incarcerated.

immediately reduce the number of incarcerated people in Montana in these extraordinary circumstances. Doing so would mitigate the mortal harm to incarcerated people with disabilities while also protecting other incarcerated people from undue harm, public health, and public safety. Before our lawsuit, the Montana Supreme Court had already asked judges in municipal and county justice courts to limit in-person appearances and to release people who are incarcerated when possible. We are disappointed that our petition was denied, but we are not giving up on the people who are incarcerated.

Governor Bullock also has authority to act. Hundreds of Montanans have joined us in asking him to take swift action to reduce prison and jail populations and lessen the spread of COVID-19. We asked him to coordinate the release of people including those with a short amount of time left in their sentence, those older than 55, and those with health issues that make them exceptionally vulnerable. *As this newsletter went to print, Governor Bullock has issued an executive order, but it did not go far enough. We continue to ask him to do more.*

It has been heartening to see some jurisdictions across the state take immediate steps to protect people's lives. But, the state must do more to protect incarcerated people, medical staff in jails and prisons, and correctional officers. Time is running out.

If you'd like to stay informed about our COVID-19 response, please see our website, www.aclumontana.org.

With a Single Sentence, You Can Defend Freedom Now and Forever

Right now, by adding the ACLU to your will, you can leave a legacy of liberty for generations to come and defend our freedom today.

Through the Legacy Challenge, **simply including a gift in your future plans can qualify the ACLU to receive a 10% cash matching donation today** from our generous challenge donor.

For simple bequest language to include in your will and for information on other gifts that qualify for the Legacy Challenge, visit www.aclu.org/legacy or call toll-free **877-867-1025**.

MEET OUR NEW STAFF

INTRODUCING OUR NEWEST MEMBER

Sharen Kickingwoman

Indigenous Justice Program Manager



This winter we welcomed Sharen Kickingwoman as the ACLU of Montana's Indigenous Justice Program Manager. Sharen is a scholar, activist, advocate, and policy professional who is passionate about Indigenous rights, equity, and education. Born and raised in Montana, Sharen is a proud member of the Gros Ventre and Blackfeet nations. She believes in enhancing tribal nations' inherent sovereignty and that the best work for Native people is by Native people, by honoring our cultures and centering Indigenous ways of knowing. In all she does, she hopes to put Indigenous people at the forefront, and empower youth to use their voices to create change.

Sharen's personal, professional, and academic interests are within higher education and advocacy. A former Senate Page, White House Intern, and Legislative Assistant on Indian Affairs, she cares deeply about the many ways policies impact Indigenous communities.

Sharen has travelled throughout Indian Country and worked extensively in tribal communities working with tribal leaders and Native youth. She has served as an Upward Bound Counselor, trainer for the Native Wellness Institute, Native

Vote organizer, and held many positions related to her activism. She has also served as an Admission Counselor for Diversity Outreach at Stanford University where she managed Indigenous Outreach, ultimately increasing Indigenous representation in higher education.

Sharen earned her Master degree in Policy, Organization, and Leadership studies from Stanford University's Graduate School of Education, where she focused on Native student access to higher education and models for success. She also holds a Bachelor degree from Stanford University in Sociology and Education. She has received numerous awards and has been recognized for her leadership on social justice issues such as NODAPL, MMIW, and issues of representation for Native people. She currently serves on the board of the Stanford Indigenous Alumni Association and The Chapter House, an Indigenous exhibition and community space.

Sharen is the only girl in a family of boys and draws her inspiration and motivation from her parents and family. She is especially thankful to the matriarchs and women in her

life who have paved the way since time immemorial in their relentless advocacy and leadership for Native people. In her free time, you can catch her on the powwow trail, basketball court, in the mountains, or hopefully on the beach.

Welcome to Our Summer Legal Interns!

ACLU of Montana interns provide critical support to our legal team. A warm welcome to the next generation of leaders who dare to create a Montana that is fair, equitable, and free for all.

Leonard Mukosi is a Zimbabwean student pursuing a doctoral degree in law at the University of Arizona. He also holds a master of laws (LLM) degree from Michigan State University, and a Bachelor of Social Sciences and Bachelor of laws from Rhodes University, South Africa. Leo's area of interest is international law and Indigenous people's rights. He has worked with different organizations including the Center for World Indigenous Studies and the Michigan Indian Legal Services in promoting the rights of Indigenous people both in Africa and the Americas.



Liliana Elliott is a first year law student in the Indian Legal Program at the Sandra Day O'Connor College of Law. Liliana graduated from the University of Colorado, Boulder with a Bachelor of Arts in History and Religious Studies and a certificate in Native American and Indigenous Studies. Throughout her undergraduate career she worked as the Research and Digitization Assistant at the Native American Rights Fund. Liliana also worked at the Museum of Boulder and co-founded Inclusipedia, a program that teaches women how to write Wikipedia pages in order to further the representation of women and peoples of color on Wikipedia. Liliana decided to attend law school to further Native American religious and land rights. She is also interested in environmental law and looks forward to finding a career in Indian Country after graduating from law school. Outside of her studies, Liliana loves to bake, hike, and take photos with her film camera.

