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December 18, 2018

Corey Stapleton
Montana Secretary of State
Montana Capitol Building, Rm 260
P.O. Box 202801
Helena, MT 59620-2801

Montana County Election Administrators

Re: 2018 Election Day Follow-Up

Dear Secretary of State Stapleton and Election Administrators:

Now that the dust has settled from the 2018 elections, I am writing to follow up on various elections irregularities and barriers to access that occurred during the 2018 election and must be addressed in advance of 2020. I first want to emphasize that I understand the enormous amount of work that goes into preparing for an election cycle. Especially in light of the surge in voter enthusiasm and 2018's high voter turnout, your offices deserve a great deal of credit for the services you provide to the electorate.

Free and fair elections are the foundation of our democracy. The ACLU of Montana is dedicated to ensuring that the ballot box is accessible to all qualified electors. Unfortunately, in the days leading up to Election Day and on Election Day itself we fielded multiple complaints from voters across the state. Those include:

1) Inadequate staffing at polling places in major metropolitan areas

We received reports from multiple metropolitan areas across the state that voters were redirected into lines to cast provisional ballots when in fact they were qualified to register in-person and cast a same-day ballot. It appears the primary reason for the diversion was the length of lines for same-day voters and inadequate staffing for those services. Directing voters to cast a provisional ballot should only be used as a last resort in instances where voting eligibility cannot be conclusively established. In the event that a voter wishes to late-register, your offices should be adequately staffed to provide those services and ensure late-registering voters are not subjected to substantially longer wait times than pre-registered voters. I also encourage you to provide adequate signage identifying the eligibility requirements for voting and distinguishing between casting a provisional ballot and late-registration. Placing these signs outside polling places would go a long way towards educating voters and eliminating complaints.



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2) Voter intimidation

We received numerous reports, particularly from Indigenous individuals, people of color, and LGBTQ Montanans, that elections administrators were rude or disrespectful. Providing great “customer service” goes with the territory of serving the Montana electorate. We should expect that every Montanan exercising their fundamental right to vote should receive respectful, compassionate, and educated service. We encourage your offices to undergo implicit bias and cultural sensitivity training in advance of the 2020 election in order to preemptively eliminate unfortunate instances of intimidation and poor customer service.

3) Equipment issues

We were heartened that Montana avoided many of the equipment problems that appeared to plague other parts of the country during the 2018 election. We did, however, receive a handful of reports related to equipment failure, including voting machines that appeared to break down, resulting in increased wait times for voters. We encourage you to modernize your equipment to minimize these issues in the 2020 election.

4) Absentee ballots

We have received reports from organizers working to assist voters on the Rocky Boy’s Reservation that numerous voters never received their mail-in ballots. The reports indicate that over one-hundred voters were affected. It is unclear why these qualified voters did not receive ballots. Some reports suggest that the United States Postal Service refused to deliver the ballots because various addresses were not recognized. I encourage you to work with the USPS to ensure that absentee ballots are actually delivered to recipients.

5) Satellite voting offices

Montana should be proud of its satellite voting offices located on Reservations. These satellite offices remove important geographic barriers for Indigenous voters. However, we are concerned that state and local elections administrators are not complying with the Secretary of State’s 2014 elections advisory and the *Wandering Medicine* settlement. In particular, we have received reports regarding voter misinformation and intimidation, insufficient supplies of ballots, limited hours of operation, and polling places closing early or for an extended period of time over the lunch hour. We encourage you to work with tribal partners to ensure that satellite voting offices are adequately equipped and staffed to provide necessary voter services.

6) Line support



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Numerous nonprofit organizations – not affiliated with a party, candidate, or ballot measure – attempted to provide “line support” for voters during the 2018 election. This support typically comes in the form of providing water, coffee, and food to voters who are waiting in line to cast a ballot. We received reports from numerous polling places that line support was denied on the basis that it constitutes “electioneering,” which cannot occur within 100 feet of any entrance to a building in which a polling place is located. Mont. Code Ann. § 13-35-211. Line support by individuals who are unaffiliated with a party, candidate, or ballot measure does not constitute electioneering. The aforementioned organizations and individuals providing line support are not advocates for anything other than free and fair elections. They should be permitted to provide food and drink to voters (voters who are often forced to wait in line for a period of hours). Please provide adequate education to your elections officials regarding what does and does not constitute electioneering.

It goes without saying that the 2020 election will be marked by high turnout and significant enthusiasm. We have a little less than two years to prepare. I encourage you to proactively address the issues identified above to ensure that every qualified elector has access to the ballot box. Thank you for your attention to these matters, and for your commitment to free and fair elections.

Please don't hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Alex Rate". The signature is fluid and cursive, written over the printed name.

Alex Rate
Legal Director
ACLU of Montana