

# ACLU Montana

SUMMER 2022

LGBTQ+ Equality Indigenous Justice  
RACIAL JUSTICE LITIGATING PRIVACY & DIGNITY  
DEMOCRACY FREEDOM REPRODUCTIVE FREEDOM  
ADVOCACY Act Education Equity Free Speech  
Decriminalization of Poverty  
Building Community Power  
FAIR LIBERTY Privacy INFLUENCING LEGAL CASE RIGHTS  
RESPECT FILED

## IN THIS ISSUE

50 YEARS  
OF LITIGATION

by Alex Rate

A LONG FIGHT  
FOR PRISONERS  
SUFFERING FROM  
MENTAL ILLNESS

by Krystel Pickens

A LOOK BACK AT THE  
INDIGENOUS JUSTICE  
PROGRAM

by Sharen Kickingwoman  
and Keegan Medrano

## STAFF

### **Britta Blödorn**

Director of Finance and Operations

### **Caitlin Borgmann**

Executive Director

### **Michelle Cares**

Operations Manager

### **Angeline Cheek**

Indigenous Justice Organizer

### **Alyssa Kelly**

Donor Engagement Manager

### **Sharen Kickingwoman**

Indigenous Justice Program Manager

### **Akilah Lane**

Staff Attorney

### **Kileen Marshall**

Director of Philanthropy  
and Strategic Initiatives

### **Keegan Medrano**

Policy Director

### **Krystel Pickens**

Paralegal / Intake Coordinator

### **Alex Rate**

Legal Director

### **Willian Schenck**

Development Associate

### **Gujari Singh**

Communications Director

## BOARD

### **Paul McKean, Billings**

President & National  
Affiliate Representative

### **TW Bradley, Bozeman**

Vice President

### **Heather Corson, Billings**

Treasurer

### **Zeke Campfield, Missoula**

Board Secretary

### **Alexander Dreussi, Missoula**

Law School Rep

### **Vacant,**

Affiliate Equity Officer

## BOARD MEMBERS

### **Sheila Bonnand, Bozeman**

### **Vickie Christie, Missoula**

### **Bridget Kevane, Bozeman**

### **Annita Lucchesi, Colstrip**

### **Anthony Shields, Poplar**

### **Jane Smilie, Helena**

### **Dan Snedigar, Billings**

### **Erick Valencia, Missoula**

### **Marthe VanSickle, Missoula**

# TABLE OF CONTENTS

<b>A Note from Our Executive Director</b> <i>by Caitlin Borgmann</i>	<b>04</b>
---	-----------

---

<b>New Staff Announcements</b>	<b>06</b>
--------------------------------	-----------

---

<b>50 Years of Litigation</b> <i>by Alex Rate</i>	<b>08</b>
--	-----------

---

<b>Highlights from 50 Years of the ACLU of Montana</b>	<b>10</b>
--	-----------

---

<b>A Long Fight for Prisoners Suffering from Mental Illness</b> <i>by Krystel Pickens</i>	<b>12</b>
--	-----------

---

<b>A Look Back at the Indigenous Justice Program</b> <i>by Sharen Kickingwoman and Keegan Medrano</i>	<b>18</b>
--	-----------

---



 @aclumontana

 @aclu\_montana

 @aclumt

Sign up for our emails at [aclumontana.org](https://aclumontana.org)

# A MESSAGE FROM OUR EXECUTIVE DIRECTOR

*Dear Supporters,*

This year, we celebrate 50 years of fighting for Montanans through litigation, policy reform, advocacy, organizing, and storytelling. With the variety of cases, policies, and stories comes a rich history of wins and losses, success and failure. But the journey along the way is where we find the special stories and moments that remind us why this work is so important.

Since the formation of ACLU of Montana and the adoption of our state Constitution in 1972, it has been our mission to defend the rights of all Montanans. The ACLU of Montana's battle for Montanans' constitutional and civil rights began on all fronts with organizing, advocacy, and litigation. One of our first important cases was *Windy Boy v. Big Horn County*, brought with the National ACLU Voting Rights Project. *Windy Boy* was the first case in the country to invoke the national Voting Rights Act to protect Indigenous people's right to vote. This case became one of the building blocks for what would become integrated advocacy. As



the ACLU of Montana's legal work moved forward, we were also increasingly active in the legislative and policy arena. The policy and advocacy department not only waged defensive fights but took on proactive priorities such as criminal legal reform, LGBTQ, voting, and privacy.

As exemplified by cases like *Windy Boy* and *Knows His Gun v. Crossroads Correctional Center*, the ACLU of Montana has repeatedly engaged in legal fights for Indigenous justice, including voting rights and religious freedom. In 2016, we began the work of truly integrating Indigenous justice as a priority throughout the organization to ensure that our work reflected goals set by Tribal community members in Montana. We created the Indigenous Justice Program, led by an Indigenous

Justice Program Manager, within our Advocacy and Policy Department. The Indigenous Justice Program was the first of its kind for the ACLU nationwide, a long-overlooked area of civil rights both here in Montana and the United States generally.

For the past 50 years, the ACLU of Montana has committed to protecting and expanding civil rights and ensuring justice is accessible to all, and we are in this fight for the long haul. Many of our cases can take years, policy change can be painstaking, and the vigilance needed to protect the rights of Montanans is constant. It took almost eight years to achieve our most recent win in *Disabilities Rights Montana v. Gootkin* (see page 12), a case where we fought for the fair and humane treatment of people with severe disabilities in Montana State Prisons. We strive to take on work that will create systemic change and build a more equitable Montana. That kind of work takes time and change is slow, but along with our supporters, we remain steadfast and we take the long view.

We have embarked on a plan to grow our organization substantially so that we can forge the systematic change necessary to create a more equitable and racially just Montana. We envision a state where accountability for the colonization and genocide of Indigenous People is translated

into action. We envision a reimagined criminal legal system and expanded systems of care and support to end the criminalization of poverty.

We know that we have a tough fight ahead of us. We continue to innovate and pivot to support the needs of the many communities that continue to be under attack.

“ We know that we have a tough fight ahead of us. ”

Voting rights of Indigenous communities are continually targeted, laws like Indian Education for all are not being adequately enforced, and the right to privacy that is so embedded in Montana’s culture is on the chopping block by politicians. With this much at stake, we know our work has never been more crucial.

We need you more now than ever to keep momentum and innovation alive. Your continued support is what has made the incredible work of the last 50 years possible. Join us in building from this foundation to ensure that generations of Montanans to come will live in a state that values each and every human.

***Here’s to the next 50 years!***

**Caitlin Borgmann**  
*Executive Director*

# ACLU Montana

## 50<sup>TH</sup> ANNIVERSARY EVENT

---

**Join us for a free event on Friday,  
September 16, 2022 at the Wilma  
Theatre in Missoula, MT**

For updates on this event  
check out our website, or  
social media!

## MEET OUR NEW STAFF



**William Schenck** *he / him*  
DEVELOPMENT ASSOCIATE

Born and raised in St. Louis, Missouri, William's personal and professional passion for antiracist systems change work led him to the ACLU of Montana in February 2022, joining the team as a development associate.

In his previous role as a senior communications fellow at an organization called Forward Through Ferguson, William helped to manage and support regional storytelling campaigns centering Black and Brown folx experiences within the areas of education inequity and state violence. His work also highlighted the impact of emerging Justice Philanthropy initiatives for the St. Louis region, such as the nationally-recognized Racial Healing + Justice Fund.

William is currently working towards an undergraduate degree in International Human Rights from Webster University. He enjoys reading, photography, travel, and spending time with his cat, Tortilla.



**Erica Thomas** *she / her*  
SUMMER 2022 LEGAL PROGRAM INTERN

Erica Thomas is a law student at the University of California – Davis School of Law. In law school, she volunteered in the Workers' Rights Clinic counseling low-income workers on employment issues. Before law school, she worked as a legal assistant in Montana and Georgia on projects for agricultural worker rights, health justice and deportation defense for detained immigrants. She was born and raised in North Carolina, and received her undergraduate degree in International Studies and Economics from American University in Washington D.C.

Erica turned to legal work after seeing friends navigate legal issues in immigration, education, and incarceration systems. She is passionate about equal access to justice for people most affected and harmed by the law.

In her free time, Erica enjoys being outdoors, laughing with her partner, and virtual hugs from her goddaughter and family.



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Montana

## Make a gift using your IRA to support the ACLU's work today!

Federal law allows people age 70½ or older to make direct transfers to charitable organizations from their IRA, without the withdrawal being treated as taxable income. This will count towards your Required Minimum Distribution.

Contact your IRA custodian and follow their procedures to request a "Qualified Charitable Distribution."

The check must be accompanied by your name and address information in order for you to receive a written acknowledgment from us. You will need this information:

**ACLU of Montana Foundation, Inc.**

**Tax ID# 81-0445339**

**Mail to: ACLU-MT**

**PO Box 1968, Missoula, MT 59806**

Questions? Contact **William Schenck**, Development Associate, at [schenckw@aclumontana.org](mailto:schenckw@aclumontana.org) for more details.

# 50 YEARS OF LITIGATION

by Alex Rate

ACLU OF MONTANA LEGAL DIRECTOR

The ACLU of Montana was incorporated in 1972, the same year that the new Montana constitution was created. With explicit rights to privacy and individual dignity, our modern constitution stands out as a model document protecting the civil rights of the most vulnerable members of our society. But before the ink had dried on this important document, it came under attack by those who wished to restrict the rights and liberties of Montanans. Time and time again, ACLU-MT's legal department has been tasked with fighting back against these attacks and ensuring the rights of Montanans are not stripped away.

The cases we have filed - whether related to voting rights, Indigenous rights, LGBTQ rights,

abortion rights, or privacy rights - have been historic because they are focused on systemic change. These cases are guided by an overarching goal and plan that is based on protecting fundamental rights and incorporating integrated advocacy.

Over the past 50 years we have litigated over 60 cases and supported many more as "friends of the court." These cases can take years to litigate and have been proven to provide systemic change.

On the next spread you will find a few case and campaign highlights from the past 50 years.





PHOTO BY  
ANTONIO IBARRA OLIVARES

“

There is a reason that certain cases stand out in history — **they are the ones that created real and lasting change in Montana.**

”



# HIGHLIGHTS FROM 50 YEARS OF THE



Won a lawsuit that increased voting strength for Indigenous voters.

## **Windy Boy v. Big Horn County**

1986



Filed a human rights complaint on behalf of Indigenous prisoners who were being denied the right to practice their religions.

## **Knows His Gun v. Crossroads**

2002



Launched the Fair is Fair campaign to secure the dignity and legal recognition of same sex couples and their families.

## **Fair is Fair Campaign**

2010

Settled a lawsuit against the Montana Department of Corrections resulting in comprehensive changes in the management, care and treatment of people incarcerated at the State Prison who suffer from serious mental illness.

## **Disability Rights Montana v. Glueckert**

2013



## **White et al. v. Martz**

Settled a lawsuit that established the Montana Public Defender system.



## **Donaldson Guggenheim v. State of Montana**

Won a lawsuit that ensured same-sex couples are able to protect their families with the same kind of legal protections that opposite-sex couples would be offered through marriage.



## **Smith v. Batista**

Challenged the legality of Montana's lethal injection protocol and obtained an injunction against the death penalty.

# ACLU Montana



Settled a lawsuit against bounty hunters, bail bondsmen and bail insurance companies for assault, trespassing, false imprisonment, and violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) and the Montana Consumer Protection Act. The case achieved a first-of-its-kind ruling when the court denied a motion to dismiss and allowed the RICO claims to move forward against the insurance companies.



Won a lawsuit on behalf of two advanced practice registered nurses blocking a Montana law that would have prohibited APRNs from providing abortion care.



Filed a lawsuit challenging a new law that makes it difficult, if not impossible, for transgender Montanans to correct the sex designation on their birth certificates. This case is still active.



Filed a class-action lawsuit challenging the state of Montana's failure to fulfill its constitutional mandate to teach public school students the history and culture of the first peoples of Montana in consultation with local tribes. This case is still active.

**Mitchell et al v. First Call Bail & Surety, Inc. et al**

**Weems et al. v. State**

**Marquez v. State of Montana**

**Yellow Kidney, et al. v. Montana Office of Public Instruction, et al.**

**2017**

**2018**

**2021**

**Free and Fair Coalition**

Launched the Free and Fair coalition to protect transgender Montanans from being unable to use public facilities that correspond with their gender identity.

**Eleanor Maloney v. Yellowstone County**

Won a lawsuit that sought to definitively establish protections under the Montana Human Rights Act for transgender and nonbinary Montanans.

**Western Native Voice v. Jacobsen**

Filed a lawsuit that challenges two new Montana laws that hinder Native American participation in the state's electoral process. This case is still active.

# A LONG FIGHT FOR PRISONERS SUFFERING FROM MENTAL ILLNESS

*by* Krystel Pickens

ACLU OF MONTANA PARALEGAL



## INTRODUCTION

Eight years ago, the ACLU of Montana and Disability Rights Montana embarked on a massive federal lawsuit seeking to end solitary confinement of mentally ill people incarcerated at the Montana State Prison. In the wake of a landmark settlement reached on March 10, 2022, I want to tell a story that provides a window into a complicated and difficult case involving many people along the way - some that are still here, some that have moved on, and some that have passed away. I want to acknowledge those that have participated and been critical in getting to where we are today.

This eight-year journey has not been easy. Scars are engrained on the psyche of all those involved. And, most importantly, the lengthy process took a devastating and unnecessary toll on those who were locked behind bars and unable to access the mental health care they so desperately need and lawfully deserve.

Mental illness is pervasive in carceral systems. Roughly 1 in 4 people experience “serious psychological distress” while incarcerated and 66% of people reported not receiving mental health care while incarcerated. There is still a long road ahead, but this settlement is a first step that will ensure that some of these folks will get the care and attention they need.

## THE CASE

When we first realized the severity and depth of the Montana State Prison’s refusal to recognize and treat people with a mental illness – and the rampant use of solitary confinement to warehouse these vulnerable individuals - we knew we had to act. It was imperative to help people with mental illnesses get access to adequate mental health services in the least restrictive environment possible. Eight years later, after dozens of visits to the Montana State Prison (MSP) by experts, ACLU staff, and lawyers, after multiple court dates,

after drafting, filing and reading hundreds of documents, we are finally seeing that change.

It all started around 2012 when Anna Conley, a former ACLU of Montana staff attorney and

I started to hear complaints from incarcerated people with mental illness. The incarcerated people with mental illness were routinely subjected to extended periods of solitary confinement and “behavior modification plans” that deprived them of clothing, working toilets, bedding, and proper food. These conditions worsened the individuals’ illness.

“

***Roughly 1 in 4 people experience “serious psychological distress” while incarcerated***

”



We heard multiple disturbing and distressing complaints about people not receiving mental health medication, including medication that the person had been on for years. It became clear that the psychiatrist at MSP was frequently misdiagnosing people as malingering, or he would not prescribe the correct medication that these individuals would need to get through life outside of prison, let alone the extremely stressful conditions within MSP. Many of the people had a documented mental health diagnosis from an outside provider or even from other MSP and Montana State Hospitals (MSH) providers. Regardless, this long, documented history was ignored and discounted. Eggregiously, these people were then disciplined for behavior that was manifestation of their mental illness— and there was no support or recourse for them.

Our client in this case was Disability Rights Montana (DRM). DRM is the federally mandated protection and advocacy organization for mentally ill people in Montana. DRM protects and advocates for the human, legal, and civil rights of Montanans with disabilities while advancing dignity, equality, and self-determination. DRM's complaint alleged that the treatment at MSP was



cruel and unusual punishment and in violation of the Eighth Amendment to the U.S. Constitution. Throughout this case and in conjunction with our client, we continuously spoke with impacted individuals – people incarcerated at MSP.

While conducting numerous visits over the years, it became abundantly clear that these individuals were needlessly struggling as a result of receiving inadequate mental health care and services. We would hear, “I don’t want this to be my life; I was young and did not have the tools.” “I need to be seen as a person.” It appeared there was no focus on rehabilitation and preparing people to successfully discharge

from MSP and reintegrate into communities. People were merely inserted into a system of punishment that lacked resources for them to successfully complete their time. As one can imagine, I could share many troubling and quite frankly horrific stories that we heard over the past several years. While these experiences need to be told, validated, and acknowledged, my purpose of this piece is to give a glimpse into this case. With that in mind, I will share the following example that encapsulates an experience that wasn't unique to one person. Although aspects may be individualized, as a whole, this example demonstrates the inadequate system, policies, practices, and staff culture that were in place.

John Doe, one of the individuals we interviewed at MSP, had a history of mental illness, which included self-harm, but received inadequate or no mental health services and care. From when I first met him to the last image I saw of him, not only did he become unrecognizable as himself but as a man. After years of spending significant time in and out of locked housing, or in a single cell without access to a window and without any meaningful human contact, he became severely withdrawn. Sometimes he was not even capable of getting out

of bed to meet with us. He was at times not allowed to shower or brush his teeth, taking away all aspects of humanity. As the hopelessness of the situation took all the life from him, he fell deeper and deeper into a dark depression. Ultimately, he died by suicide. Rehabilitation is not something that comes to my mind when reflecting on his experience. Long after this settlement agreement is implemented, I will still hold onto what-ifs. If the changes we are now seeing were in place, would he be here? We will never know.



## SETTLEMENT

The settlement that we facilitated between DRM and the state represents an important step forward in addressing the issues raised in DRM's complaint, including inadequate mental health services and the inhumane practice of punishing incarcerated individuals for behavior caused by their mental illness.

With the recent settlement, there is hope that MSP staff, such as administrators and correctional officers, will recognize when people need treatment and those people will receive appropriate mental health care, services, and positive interaction. Ideally, people will be asked before they are incarcerated about their mental health needs, and intervention resources will be identified and exhausted before a mentally ill person is placed in prison. With this settlement agreement, if a person is placed in MSP, the hope is that the previous cycle will be disrupted and the person will receive mental health care that promotes rehabilitation efforts.

The settlement additionally provides oversight by a third party other than our client Disability Rights Montana; we hope that the watchful eye of the third party and DRM will hold Montana State Prison accountable for providing care and services to those with severe mental illness.







## LOOKING FORWARD

While the settlement is a step forward to getting better care for those with severe mental illness, there is still more to be done. Funding needs to be secured for expanded mental health services. The culture of punishment in prisons needs to change to systems of care. Most importantly, the Department of Corrections and the Montana State Prison must recognize that when an individual's behavior is a result of a mental health issue, mental health care is the appropriate response. I want people to understand that change takes time and we hope that this settlement is just the beginning of positive change within the prison system. We still have a long way to go. We still need to actualize rehabilitation of those that are incarcerated and understand that mental illness – long ignored by politicians, administrators and even the public – is pervasive in carceral facilities.

**“ The culture of punishment in prisons needs to change to systems of care. ”**

# A LOOK BACK AT THE INDIGENOUS JUSTICE PROGRAM

*by* Sharen Kickingwoman

ACLU OF MONTANA INDIGENOUS JUSTICE PROGRAM MANAGER

*and* Keegan Medrano

ACLU OF MONTANA ADVOCACY AND POLICY DIRECTOR

Over the past 50 years, the ACLU of Montana has shared many victories alongside Indigenous people fighting for their rights through campaigns, lawsuits, and political advocacy. It was not until 2016 that we took a historic and unprecedented step to formalize our work in Indigenous communities through an Indigenous Justice (IJ) program. The IJ program recognized the unique needs of Indigenous people, and strove to center and uplift Indigenous voices through a coordinated approach across all departments—legal, policy, communications, development, finance, operations, and HR. Our IJ program has since become a model and North Star for other ACLU affiliates to follow, where all departments engage in IJ work and values, and together uphold an integrated approach in our advocacy.

Indigenous people in Montana make up the fastest-growing minority population, comprising

over 6.5% of the population. In addition, Montana is home to 12 tribal nations and 8 reservations. As such, the ACLU has a responsibility to engage in efforts to protect and enhance the sovereignty of Indigenous people in our state on any civil liberties issue.

Our Indigenous Justice program centers community-organizing, relationships with tribal governments and leaders to collaborate alongside Native people. Our program fights for education equity against the disproportionate policing and disciplining of Indigenous students in Montana and the dearth of resources available to support their education outlined in our 2019 report, *Empty Desks: Discipline & Policing in Montana's Public Schools*. Staff also work on issues regarding tribal sovereignty, environmental justice, voting rights, murdered and missing Indigenous women (MMIW), and more.

The IJ Program has also featured voting rights campaigns in Indigenous languages, voting rights lawsuits on behalf of tribal nations, education programming, know-your-rights trainings for water protectors, uplifting Native voices to the New York Times, advocating at the state legislature, and more. Over the past 5 years alone, we have seen IJ grow across ACLU affiliates from Alaska to Maine. We are proud to highlight our work at the ACLU of Montana as the origin story for this growing movement.

As we celebrate 50 years of advocacy, we also look forward to the next 50 years in creating a more inclusive and freer Montana. A Montana that honors the first people of this place we call home. We strive to work alongside and build a future that celebrates and advocates for the rights of Indigenous people, culture, and worldview.




## ADVOCACY

We have prioritized organizing in Indian Country to build power in Indigenous communities and promote social change by centering the inherent sovereignty of tribal nations and enhancing the self-determination of individuals, families, and communities. Since 2018, the ACLU of Montana has hosted an Indigenous Justice Organizer on the Fort Peck Indian Reservation after strategically assessing the viability of community organizing and community-led change to education issues in the region. Over the last four years, the Indigenous Justice Organizer has facilitated community and cultural events, as well as meetings with youth, elders, activists, and other community members on education issues, environmental justice, and other issue areas. The Indigenous Justice Program facilitated with community members, the University of Montana, academics, and school administrators in the creation of a report on the state of education in Montana and its disproportionate policing and punishing of Indigenous students, a wide-reaching get-out-the-vote campaign in the 2020 election, and directly support community members seeking justice from harm by non-Indigenous community members and state and federal governments.

 @aclumontana

 @aclu\_montana

 @aclumt

**ACLU**  
Montana

PO Box 1968  
Missoula, MT 59806  
406.443.8590  
[aclu@aclumontana.org](mailto:aclu@aclumontana.org)  
**[aclumontana.org](http://aclumontana.org)**