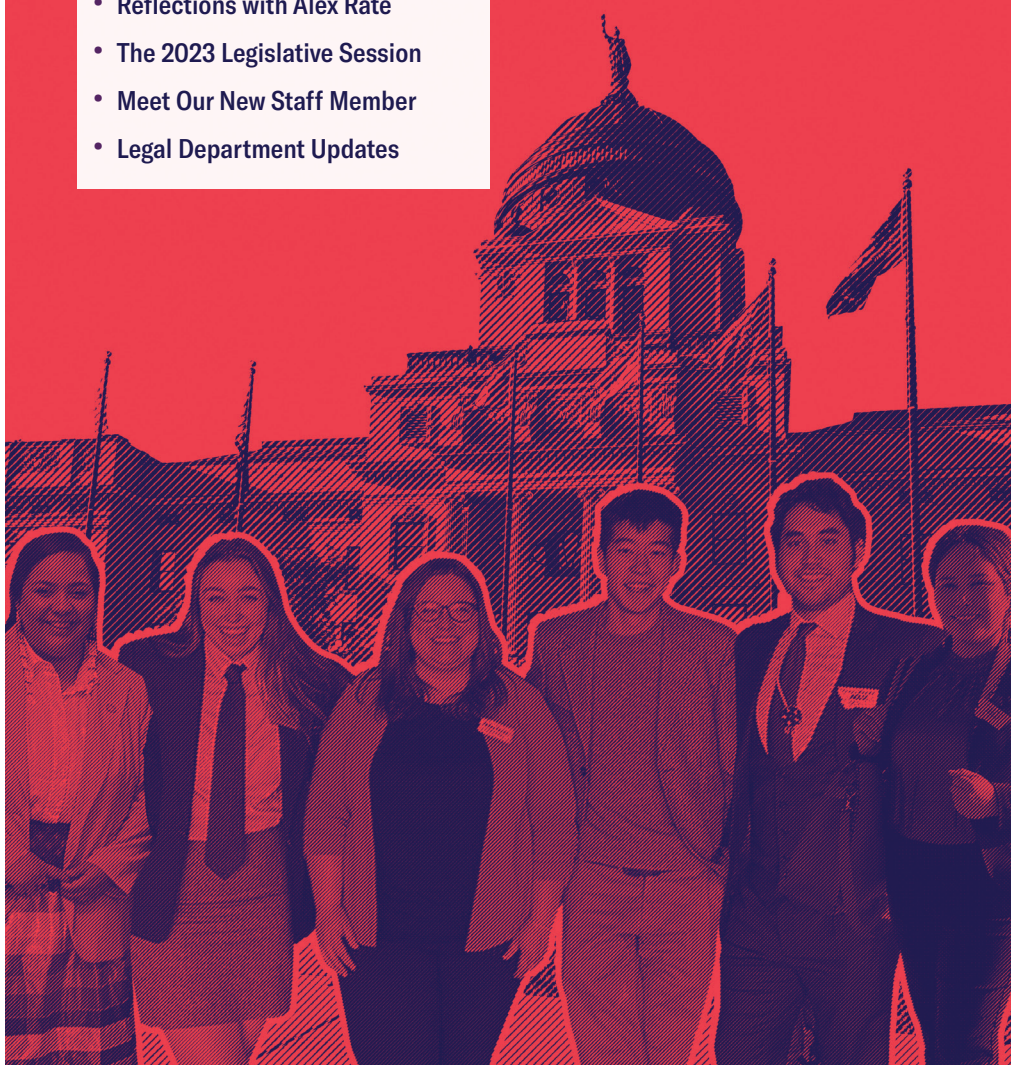


ACLU Montana

SUMMER 2023

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REFLECTIONS OF AN INTERIM EXECUTIVE DIRECTOR

As we emerge from a bruising, brutal and, frankly violent 2023 legislative session, we now have an opportunity to reflect on the way that the ACLU of Montana approaches our work. In this newsletter, you will have the opportunity to read about our legislative accomplishments, spearheaded by our amazing and resolute Advocacy, Policy and Organizing Department. Our lobbyists endured an extremely hostile environment in Helena as an ultra-conservative supermajority flexed its muscles to target marginalized communities across the State, from transgender Montanans to criminal defendants, from indigent people seeking reproductive healthcare to immigrants. Nonetheless, in the face of this darkness, we have an opportunity to lead with hope, kindness and yes, even joy.


We believe that this dark moment in Montana's history calls for us to be our better selves. We believe now is the time to ensure that our actions and words align with a vision of creating a fair, equitable and free Montana that welcomes and celebrates diversity of all kinds. We often describe the work we do as a "fight" or a "struggle." While those might be apt descriptions of lobbying efforts or lawsuits, we must



ALEX RATE | Interim Executive
Director & Legal Director

remember that this work requires more than constant battling. For our own longevity and for that of the movement, we must build space to uplift and inspire each other and those new to the cause.

And I, for one, am inspired. I am inspired by my colleagues, whose unflagging energy lights the way in dark spaces. Many of my colleagues have the very intersectional identities that are under attack by politicians in Montana. The ability to respond with grace, dignity and even humor in the face of existential threats is awe-inspiring.



“...now is the time to ensure that our actions and words align with a vision of creating a fair, equitable and free Montana that welcomes and celebrates diversity of all kinds.

I am inspired by our clients and the communities we represent in public spaces. From transgender kids to health care providers to public school students seeking to cement the right to Indian education, they are living breathing pillars of courage and moral fortitude. I am inspired by Montana’s first openly transgender Representative, standing up for herself and her constituents and speaking truth to power. And the families supporting their trans children who seek nothing more than to live free from government oppression and stigma. And the health care providers who tirelessly provide reproductive healthcare in the face of abuse, threats and hate.

I am likewise inspired by our allies and collaborators, from attorneys to lobbyists to organizers. Creating

and implementing a vision for a more just, equitable and tolerant Montana cannot be achieved alone. And I am grateful for the belly-laughs, hugs and mutual support that our friends so freely give.

I fervently believe that these difficult times call for positive leadership and vision. When presented with a choice of adopting the same tactics that the ultra-conservative patriarchy utilizes, we have an opportunity, and even a responsibility, to reject that approach and instead lead with light, compassion and love.

In solidarity,

Alex Rate

Interim Executive Director
& Legal Director

ACLU OF MONTANA & THE **LEGISLATIVE** SESSION

Keegan Medrano

Policy Director

The 2023 Legislative Session remains seared in the minds of Montanans committed to fairness, empathy, and justice. This session bore witness to an onslaught of unpopular and unconstitutional bills. In total, 1,698 bills were introduced - the most in forty years. Many of those bills were characterized by bigoted, mean rhetoric, tone-policing, and the mobilization of police against protesters - undeniably a low point for Montana and its politics. The session felt both uniquely harmful and inextricably linked to Montana's settler colonial history built upon the genocide of Indian peoples and the theft of Indigenous land.

It is likewise undeniable that through this session we saw a burgeoning demand for a movement to build a stronger, more united Montana with its foundation in collective liberation. We rose to the occasion and managed to respond to more bills across more civil rights issues than ever before. Remarkably, and in defiance of the grueling environment, we also managed to champion critical pieces of proactive legislation in priority issue areas, ensuring that the Montana we envision remains within reach. In spite of efforts to carry on a legacy of exclusion, our collective flame was lit and our collective spirit is inextinguishable.



Signs in support of Representative Zooey Zephyr

Photo credit: Rebecca Stumpf

Our collective liberation movement offers a new path forward; one that leads us away from bigotry and misinformation and towards love and mutual understanding. The new movement we are building includes all Montanans who are willing to work towards a more equitable and just Montana. We aim to unite individuals across all ages, races, classes, genders, sexualities, and even regions. Young queer Montanans standing alongside those who have been fighting for decades all recognizing that we cannot let this current political moment poison the very unit of our liberation- community- tear us apart. A community shows up for one another, does not trade votes or values, but remains steadfast and resolute.

With expanded capacity, the ACLU of Montana responded to about 15% of all bills introduced during the session - an immense increase from previous sessions. This effort was made possible in part because of the support we received from YOU. Our team including myself, Robin Turner, a contracted

lobbyist from Turner Strategies PLLC, and Maggie Bornstein, a Staff Lobbyist hired for the Legislative Session, spent 87 legislative days, 120 total days, working long hours, sleepless nights, and early mornings dedicated to fighting for truth, liberty, and justice for all. We were joined by Sharen Kickingwoman, Alyssa Kelly, and Paul Kim who participated in the session by providing public testimony, organizing community members, working with journalists, and supporting the “in-building” team, all while continuing to advance non-session related advocacy projects. Because of this team, Montana is safer, more just, and more inclusive.

The ACLU of Montana, spearheaded by our three person team in the Helena Capitol, responded to 15 different issue areas and nearly 260 bills. The following, therefore, is not an exhaustive list focusing on only 31 bills to highlight some of the crucial work our team engaged in.

CRIMINAL LEGAL REFORM & POLICING - Lobbyist: Maggie Bornstein

Against the backdrop of Montana’s already inequitable society coupled with racist and regressive policing culture, and the impacts of the COVID-19 pandemic, the Montana Legislature nonetheless attempted to expand the criminalization of Montanans. Relying on recycled rhetoric to spread fear and stigmatize low-income communities and cherry-picked national data and news stories about crime rate, the legislature upped its efforts to infringe upon the constitutional rights of some of the most vulnerable Montanans and undo criminal justice reforms previously adopted.

OPPOSED - HB301 sponsored by Rep. Denise Baum (D - Billings) would have permitted harsher sentences (2 to 10 years of imprisonment) be applied to individuals based upon the broad and vague offense of possessing or using “dangerous weapons”. This bill would have dramatically increased incarceration terms and been broadly applied to severely punish Montanans which would further burden our carceral system and extend separation from family and community.

- *Died on 2nd Reading 15-35 in the Senate*

OPPOSED - HB614 sponsored by Rep. Bill Mercer (R - Billings) would have allowed children as young as 12 to be prosecuted as adults in Montana and generally impaired the constitutional rights of young Montanans in contact with the juvenile system.

- *Died on reconsidered 3rd Reading 22-27 in the Senate*

OPPOSED - SB19 sponsored by Sen. Keith Regier (R - Kalispell) repeals reforms in 2017 by adding jail time for “disorderly conduct” an offense that cover multiple types of behaviors including “making unusual noises” and “rendering [traffic] impassable”. This anti-homeless bill also has potential implications for protests and civil disobedience and regardless, any jail time has potentially serious implications for child-rearing, housing, employment, and other crucial aspects of life.

- *Passed and awaiting signature from Governor Gianforte*

JAIL & PRISON CONDITIONS - Lobbyist: Maggie Bornstein

Montana's incarceration rate of 789 people per 100,000 means that Montana imprisons more individuals than most countries in the world. Montana's incarceration rate is seven times higher than Canada and three times higher than Eswatini, the South African country with a similar population size. Montana's carceral practices causes individuals to lose family, community, employment, and housing opportunities. Meanwhile, the system is overburdened and over-capacity leading to deplorable conditions in Montana's jails and prisons. The ACLU of Montana fought to alleviate the harm experienced by Montanans within these cruel and inhumane detention centers.

OPPOSED - Amendment to Section D of HB2 and HB817 sponsored by Rep. John Fitzpatrick (R - Anaconda) attempted to amend \$3.9 million into "Section D" the part of the budget bill (HB2) concerning the judicial branch, law enforcement, and justice to forcibly relocate 120 incarcerated Montanans to a private prison in Arizona. CoreCivic, the private prison company identified in the amendment currently runs a facility in Shelby, Montana and also has an extensive track record of inhumane conditions including crowded cells and issues with water, temperature, and air quality. Maggie Bornstein led the effort to defeat the amendment in the Senate, but ultimately the money was amended into another bill, HB817.

- *Passed and signed into law by Governor Gianforte*

SUPPORTED - HB29 sponsored by Rep. Jennifer Carlson (R - Manhattan) would have ended the practice of admitting patients to Montana State Hospital, recently marred by cases of death resulting in lost federal funding, with dementia, Alzheimer's or traumatic brain injury. The bill would have also created a commission to assess and oversee the transfer of current residents.

- *Passed, vetoed, but overridden by Legislature and became law*

CHILD & FAMILY REGULATION SYSTEMS - Lobbyist: Maggie Bornstein

In the buildup to the 2023 Legislative Session, politicians in Montana identified enduring and pervasive problems with the state's child welfare system, including unfair child removal practices and an unsafe and insufficient foster care system, requiring policy changes. Montana removes children from their families at exceedingly high rates, resulting in some of the highest numbers of children in the foster care system in the Country. Indeed, Montana's child welfare system ranks among the worst in the United States. During the session, the ACLU of Montana advocated for crucial and foundational changes to our Child & Family Regulation Systems to align with the US and Montana Constitution and national best practices.

SUPPORTED - HB16 sponsored by Rep. Jennifer Carlson (R - Manhattan) amended existing code concerning Child & Family Regulation Systems by expanding notification to impacted parties and legal counsel, the role of the Office of the Public Defender, and specific timelines for child removal hearings. The bill places further guardrails on the Department of Public

Health and Human Services (DPHHS) and strengthens communication and support for families in contact with and navigating Montana's Child & Family Regulation Systems.

- *Passed and signed into law by Governor Gianforte*

SUPPORTED - HB37 sponsored by Rep. Jennifer Carlson (R - Manhattan) attempted to align Montana with case law, including the 9th Circuit, concerning warrants for child removal. Montana, as well as other states, continue to exercise policies and procedures that subvert individual constitutional rights including, but not limited to the 4th and 14th amendments, by not obtaining a warrant for child removal in non-emergency cases.

- *Passed, vetoed, Legislature override failed*

SUPPORTED - HB218 sponsored by Rep. Laura Smith (D - Helena) buoyed by celebrity endorsement and the cruel, difficult experience of Paris Hilton, HB218 expands state regulations of private alternative youth residential programs also known as therapeutic boarding schools for youth confronting substance use, mental health, or contact with the criminal legal system. Some of these therapeutic boarding schools have seen instances of malnourishment, abuse, sexual violence, and suicide.

- *Passed and signed into law by Governor Gianforte*

2S-LGBTQIA+ Rights - Lobbyist: Keegan Medrano



Keegan Medrano

The session saw concerted, aggressive, and vile attacks on 2S-LGBTQIA+ Montanans. These attacks often targeted queer and trans children, in an effort to control and force them to deny their truth and live a life of lies. This rhetoric occurred while Montana has the 3rd highest suicide rate in the country. 2S-LGBTQIA+ people, including youth, are disproportionately likely to idealize or commit suicide to their non-LGBTQ counterparts. The ACLU of Montana valiantly joined our partner organizations, speaking plainly and passionately about the immense

harm and cruelty these bills would cause. These efforts are critical so that 2S-LGBTQIA+ Montanans, and all Montanans, know our community exists and will persist regardless of these legislative attacks.

OPPOSED - SB99 sponsored by Sen. John Fuller (R - Kalispell) bans gender-affirming care for minors, also prohibiting health care professionals, school staff, and state employees from promoting "social transitioning" and medically approved care, while also punishing health care professionals with licensure penalties and insurance companies. The bill's hearings and floor debates were contentious, full of misinformation, and ignorance and unfortunately, the Montana Republican Party remained largely unified in supporting and passing the bill.

- *Passed and signed into law by Governor Gianforte*

OPPOSED - HB359 sponsored by Rep. Braxton Mitchell (R- Columbia Falls) tries to ban minors from attending “drag shows” including on public property, in schools and libraries. The bill went through a tortured process, with fifteen proposed amendments considered, as even proponents struggled to define “drag shows”, identify human body parts, and describe how the bill would not infringe on Montanans’ First Amendment rights. After the House rejected amendments from the Senate, which focused on prohibiting sexually explicit performances for children regardless of gender, sexuality, or performance style, the committee established to reconcile the bill crafted a broad, vague, and expansive definition that would include performances by Dolly Parton or Elton John by defining drag as “flamboyant or parodic ... persona” with “glamorous and exaggerated costumes and makeup”.

- *Passed and signed into law by Governor Gianforte*

VOTING - Lobbyist: Keegan Medrano

While politicians continued to promote the “Big Lie” that the 2020 Presidential Election was stolen from former President Donald Trump and broadly decry Montana’s free and fair elections, there was little appetite in the legislature for actually advancing new restrictions on voting rights. Many of the worst anti-voting and anti-democratic policies passed in 2021 are currently tied up in the courts, and thus many of 2023’s anti-voting bills veered into the land of absurdity and ridiculousness. We swatted down many of the silliest, but nevertheless harmful attempts to impair access to the ballot box or meddle in vote counting.

OPPOSED - HB402 sponsored by Rep. David Bedey (R - Hamilton) attempted to create a citizen verification system for future voting registrations that would utilize data from the Department of Justice and Secretary of State. Similarly bills in Texas and Florida have failed dramatically as verifying citizenship proves cumbersome creating an expansive bureaucracy that is often inaccurate. The bill was killed in the House, revived, and then ultimately died on the Senate floor as the far-right Montana Freedom Caucus attempted to bar individuals from voting until their citizenship was verified patently unconstitutional and discordant with federal law. When the far-right failed to amend the bill to include this, they voted to defeat the bill.

- *Died on 3rd Reading 24-25 in the Senate*

OPPOSED - SB435 sponsored by Sen. Theresa Manzella (R - Hamilton) attempted to compel Montana’s 56 counties to hand count every ballot cast, over 612,000 in 2020, in all elections. Fueled by ignorance of the vote counting process and lies about “stolen elections”, SB435’s imposition of hand counting would have potentially increased tabulation errors and would have definitely increased the time necessary to count ballots - thereby delaying results further.

- *Died in Senate State Administration Committee 10-0*

ENVIRONMENTAL JUSTICE - Lobbyist: Keegan Medrano

Alongside leaders in the environmental justice community, the ACLU of Montana invested in fighting for the earth, addressing climate change and calling out dirty extractive industries. We repeatedly emphasized the importance of recognizing and uplifting Article 9, Section 1 of Montana's constitutional provision providing for a clean and healthful environment.

OPPOSED - HB557 & HB971 sponsored by Sen. Mark Noland (R - Bigfork) and Rep. Josh Kassmier (R - Fort Benton) respectively, which sought to impair Montana's environmental agencies' regulatory power and the effectiveness of the Montana Environmental Protection Act including, but not limited to greenhouse gas emissions. Disregarding current federal law and in an attempt to exploit the recent anti-environmental U.S. Supreme Court *West Virginia v. EPA*, HB557 and HB971 were introduced late, required a suspension of rules, and passed through committee with limited time for debate. These two bills empower Montana's dirtiest industries to continue polluting and damaging the land, water, and air.

- *Both passed and signed into law by Governor Gianforte*

OPPOSED - SB524 sponsored by Sen. Greg Hertz (R - Polson) would have altered tax code to target Environmental and other nonprofits suing the state for breaches of federal environmental protection laws by opening up litigation costs to taxation as an "unrelated business expense". This bill would have stymied crucial litigation that seeks to protect the environment and hold polluting industries and the state accountable

- *Died in House Taxation Committee 21-0*

FREE SPEECH - Lobbyist: Keegan Medrano

The fundamental rights to free speech and free association are core to the mission of the ACLU of Montana. In the face of expanding governmental overreach, we played a critical role in pushing for robust First Amendment protections.

OPPOSED - HB608 sponsored by Rep. Fred Anderson (R - Great Falls) attempted to direct the Montana Board of Investments, who offer investment management of state and local government funds, to identify and divest from any companies engaging in boycotts and the Boycott, Divestment, and Sanction Movement against Israel for its ongoing violent oppression of Palestinians and their dispossession of land. The bill has been introduced in every session since at least 2017, the ACLU of Montana remains committed to ensuring this bill never becomes law.

- *Died in House State Administration Committee 14-4*

OPPOSED - SB419 sponsored by Sen. Shelley Vance (R - Belgrade) targets and fines Tik Tok for permitting operation in Montana and seeks to prohibit its download through mobile app stores. However, SB419 provides exemptions for internet service providers, virtual private networks, and does not apply

to individual users effectively nullifying the bill's impact and enabling Montanans to still access and use Tik Tok. Nevertheless, SB419 unduly targets and seeks to infringe on Montanans' First Amendment rights in the name of sinophobia and 'red scare' rhetoric as the Governor and Attorney General jockey for national relevance.

- *Passed and signed into law by Governor Gianforte*

OPPOSED - SB222 sponsored by Sen. Jeremy Trebas (R - Great Falls) sought to bar trainings for state employees that addressed discrimination, privilege, oppression, racism and other forms of bigotry reflective of an individual and their community's role. The bill, relying on anti-Critical Race Theory (CRT) rhetoric, initially targeted contractors and state employees and effectively tried to end crucial education about the history of oppression and violence in this country and its influence in modern life.

- *Died in House State Administration Committee 18-0; Failed Blast 40-56*

RELIGIOUS FREEDOM & ESTABLISHMENT CLAUSE - Lobbyist: Keegan Medrano

The First Amendment of the United States Constitution also ensures Montanans the freedom to practice their faiths and belief systems and live under a secular government that does not adopt a national faith. The ACLU of Montana supports balancing people's personal beliefs with the collective good, while protecting historically marginalized and attacked faiths and belief systems.

OPPOSED - HB303 sponsored by Rep. Amy Regier (R - Kalispell) provides health care providers broad latitude to deny care based on "conscience". With HB303, health care providers are able to circumvent their Hippocratic Oath and deny care with impunity depending on if the individual is trans, a single mom, or a substance user if it troubles the provider's conscience. While not applicable to emergency care, conscience-based abstentions from care disproportionately impact marginalized and rural communities seeking safe, supportive medically necessary care. Health care providers cannot have a religious-based right to fail their patients.

- *Passed and signed into law by Governor Gianforte*

OPPOSED - HB745 sponsored by Rep. Greg Kmetz (R - Miles City) emphasizes and protects Bible reading in K-12 schools, an already constitutionally protected right, and attempts to expand protections for prayer after the U.S. Supreme Court's decision in *Kennedy v. Bremerton School District* by misrepresenting the applicability of the case. The bill transgresses the Establishment Clause of the United States Constitution by privileging Christian faith, texts, and prayers in the Montana school system.

- *Passed and signed into law by Governor Gianforte*

PRIVACY - Lobbyist: Robin Turner

While Facial Recognition Technology, the collection of an individual's face

and verification with a database, dominated much of the 2023 Legislative Session, the ACLU of Montana responded to bills on other forms of data impacting students, people accessing their smart-phones, and seeking medical care.

SUPPORTED - SB351 sponsored by Sen. Daniel Zolnikov (R - Billings) creates a framework in Montana code protecting Montanans' biometric data including genetic data and self-reported health information. The bill asserts that government agencies and private corporations create and disseminate standardized information on the collection, use and disclosure of genetic data.

- *Passed and signed into law by Governor Gianforte*

MONITORED - SB397 sponsored by Sen. Kenneth Bogner (R - Miles City) provides sideboards for the use of Facial Recognition Technology in Montana. An ever-growing technology and industry within the state, the ACLU of Montana advocated for a full ban of Facial Recognition Technology citing privacy concerns, racist application of human-made technology, and transparency on information collected and use. Unfortunately, the bill sponsor and supporters allowed carve outs for law enforcement and in schools that we feel does not appropriately protect all Montanans

- *Passed and awaiting signature from Governor Gianforte*

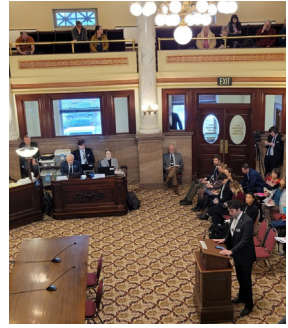
OPPOSED - SB154 sponsored by Sen. Keith Regier (R - Kalispell) asserts that, where the separate judicial branch has interpreted privacy to include abortion, the legislature can override their rulings that the right to privacy does not provide a right to abortion. The legislature makes laws. The judicial branch interprets the constitution, legal precedent, and the laws before them. SB154 disregards the foundational government structure and philosophy of the United States by rewriting law in their effort to restrict and prohibit abortion in Montana.

- *Passed and signed into law by Governor Gianforte*

DEATH PENALTY - Lobbyist: Robin Turner

Since 2015, as a result of a District Court decision in *Smith v. Batista*, Montana has a de facto moratorium on the death penalty. In response, in nearly every legislative session, proponents have attempted to circumvent the court's decision. The ACLU of Montana will always make sure this unjust and barbaric government policy never returns.

OPPOSED - HB713 sponsored by Rep. Bill Mercer (R - Billings) would have brought the Attorney General into every prosecuted offense punishable by



Keegan Medrano testifies in opposition to Senate Bill 99

Photo credit: Guest contributor

death in Montana compelling local prosecutors to work with the pro-Death Penalty Attorney General. The bill would have greatly expanded the role of the Attorney General in local prosecution and elevated the issue of the death penalty, currently halted in the state, in these proceedings.

- *Died in House Judiciary Committee 19-0*

OPPOSED - SB439 - sponsored by Sen. Barry Usher (R - Billings) attempted to circumvent the Smith decision by amending language that would permit the death penalty again in Montana. The bill removes that the substance used must be an ultra fast-acting barbituate and replaces it with substance/substances “sufficient to cause death”.

- *Died on 2nd Reading in the Senate 25-25*

REPRODUCTIVE JUSTICE - Lobbyist: Robin Turner

Abortion is legal in Montana. This makes us a regional outlier, a vital access point to safe and necessary medical care for not only Montanans, but those in the immediate Mountain West and Plains states. During the 2023 Legislative Session, legislators attempted to dismantle the 1999 decision *Armstrong v. State* through attacks on the judicial branch and with the sheer volume of bills on the issue. Similarly to 2S-LGBTQIA+ Rights, debates on reproductive and sexual health often devolved into abhorrent, medically inaccurate misinformation and demeaning rhetoric to enable government attacks on our bodily autonomy.

OPPOSED - HB625 sponsored by Rep. Kerri Seekins-Crowe (R - Billings) compels health care providers, under threat of criminal penalties to provide palliative care to dying infants. Removing the infants from their parents to perform futile, invasive procedures under the auspices of being pro-life. Existing laws and the duty of health care providers is to administer necessary and appropriate care to their patients including infants rendering HB625 redundant and cruel. Furthermore, in November 2022, Montana voters rejected LR-131, a nearly similar bill, by 52.5% to 47.5%.

- *Passed and signed into law by Governor Gianforte*

SUPPORTED - HB302 sponsored by Rep. Alice Buckley (D - Bozeman) requires private insurance companies cover a 12 month supply of prescription birth control ensuring continuous and consistent access and use especially for rural communities and those struggling to access care.

- *Passed and signed into law by Governor Gianforte*

OPPOSED - HB721 sponsored by Rep. Matt Regier (R - Kalispell) bans Dilation & Evacuation abortion procedures, a safe and common method of abortion, using medically inappropriate and incendiary language.

- *Passed and signed into law by Governor Gianforte*

AID IN DYING - Lobbyist: Robin Turner

For nearly fourteen years, physician assisted suicide has been permitted in Montana through the decision in *Baxter v. Montana*. Montana joins ten other states, and the District of Columbia, in offering freedom in choice and medically appropriate end of life care that reflects an individual's beliefs, wishes, and desire for peace. As with the death penalty, politicians have attempted to criminalize physician assisted suicide since 2009 and every session since we have collaborated to defeat their efforts.

OPPOSED - SB210 sponsored by Sen. Carl Glimm (R - Kila) prohibited consent to physician aid in dying as a defense to homicide charge effectively reversing the *Baxter* decision and outlawing aid in dying. Sen. Glimm introduced similar bills in 2019 and 2021 that the ACLU of Montana collaborated on defeating.

- *Died on 3rd Reading in the Senate 24-26*

OPPOSED - SB284 sponsored by Sen. Carl Glimm (R - Kila) initially attempted to create an expansive and invasive directory of reported drugs used by an individual officially declared dead from suicide. Incredibly difficult, especially in the 2nd worst state for suicide, the bill strove to collect and share personal health information concerning an individual's death attempting to subvert aid in dying. Robin Turner, our Contract Lobbyist, worked to amend heavily the most problematic and misguided portions of the bill.

- *Passed and signed into law by Governor Gianforte*

IMMIGRATION - Lobbyist: Robin Turner

In 2021, the ACLU of Montana responded to two major anti-immigrant bills, HB200 which punishes local governments for not enforcing immigration detainers, and HB223 which enabled Montana policing agents to act with similar enforcement powers as federal immigration officers. For the 2023 Legislative Session, while legislators often deployed "secure the border" taglines and other racist attacks, actually legislation was limited in this issue area.

OPPOSED - HB712 sponsored by Rep. Zachary Wirth (R - Wolf Creek) added ten words to Montana code explicitly stating "illegal aliens" are prohibited from voting in Montana. Non-citizens are already legally not allowed to vote in federal and state elections pursuant to federal law. Furthermore, in *Montana Immigrant Justice Alliance v. Bullock* (2016), the Montana Supreme Court unequivocally rejected LR-121, which attempted to define "illegal aliens" a vague, legally inappropriate, and morally bankrupt term and bar them from accessing state services. The court rejected the term "illegal aliens" as unclear and incomplete, while also noting that regulating citizenship is a role for the federal government. HB712 is unconstitutional and unnecessary.

- *Passed and signed into law by Governor Gianforte*

INDIGENOUS JUSTICE AT THE 2023 LEGISLATIVE SESSION

This session, we made historic investments in our Indigenous Justice priority area by amping up our lobbying, through Keegan Medrano, and organizing efforts, Sharen Kickingwoman and Alyssa Kelly, to work proactively and responsively on bills impacting Indigenous Montanans and tribal communities. Despite many barriers, we were able to make strong coalitions and collaborate successfully. This kind of organizational investment was essential to ensuring that we were equipped to address the unique challenges and needs faced by Indigenous communities in Montana.



**Protect Native Children
graphic sent to our IJ
action network**

*Photo credit: Sharen
Kickingwoman*

The ACLU of Montana responded to a record 36 Indigenous Justice bills introduced this legislative session. These bills covered a wide range of issues affecting Indigenous communities, including environmental protection, taxation, tribal languages, healthcare, education, and more.

We also took a unique approach to our response this session, examining how bills in all areas impact Indigenous communities. An intersectional approach was critical for ensuring that the needs and concerns of Indigenous people were addressed in all aspects of society, and that policies and programs are designed with their perspectives and experiences in mind.

For example, HB313 sponsored by Rep. Jodee Etchart (R - Billings) supports the independent practice of Physician Assistants. The bill has the potential to provide more options for healthcare for Indigenous people living in rural reservation areas, which can be a significant challenge.

Unfortunately, anti-tribal sentiment and rhetoric continued to be a pervasive and harmful issue, as evidenced by Sen. Keith Regier's (R - Kalispell) withdrawn proposal LC1964 to "investigate alternatives to the American Indian reservation system," and the legislature also tabled bills that would replace Columbus Day with Indigenous People's Day - SB141 and educate legislators on Indian law and state-tribal relations - SB233 both sponsored by Sen. Shane Morigeau (D - Missoula). These bills represent an enduring desire to end Tribal Nations and wilful ignorance of the historical and ongoing injustices faced by Indigenous peoples.

As a non-Indigenous-led organization, with multiple Indigenous staff members, our team collaborated closely with the American Indian Caucus composed of 11 bipartisan Indigenous lawmakers. We were guided by and sought to amplify the work of the caucus ensuring we pursued the best approach in responding on issues impacting Indigenous people in Montana.

SUPPORTED - HB317 sponsored by Rep. Jonathan Windy Boy (D - Box Elder) codified the Montana Indian Child Welfare Act crafted in collaboration with experts, advocates, and families. MICWA is designed to protect Indigenous children who are disproportionately removed from their families and overrepresented in the state's foster care system from being unnecessarily removed from their families and communities. By prioritizing placement in Indian homes, the role of the Tribe, and Tribal cultural services and education. After a tireless fight, MICWA passed the House and Senate with amendments that weakened the bill and added a sunset date. We will be back in 2025 ready to fight for the rights of Indigenous children and families to expand these protections in perpetuity.

SUPPORTED - HB338 sponsored by Rep. Jonathan Windy Boy (D - Box Elder) establishes reporting and monitoring requirements for Indian Education for All (IEFA), a state constitutional mandate that ensures that in consultation with tribes, all children in Montana public schools learn about the unique histories, cultures, and heritages of Indigenous people. Over \$1 million is allocated to schools annually to implement IEFA but there is no monitoring or reporting requirements for how the funds are spent, what curriculum is being taught, or whether schools are in fact consulting with tribes. This bill is an important step towards ensuring that IEFA is being implemented effectively. By establishing reporting and monitoring mandates, this bill will help to hold schools accountable for meeting these requirements and ensure that progress is being made towards achieving this important goal. It's essential that education systems prioritize Indigenous perspectives and histories in their curriculums, and that efforts are made to ensure that this content is being delivered effectively to all students.



Chief Earl Old Person Memorial Highway Signing Ceremony

Photo credit: Photo courtesy of Governor's Office

Our team also successfully testified in support of formal recognition of Indigenous Boarding School survivors, SJ6, and the establishment of the Chief Earl Old Person Memorial Highway, SB120, sponsored by Sen. Susan Webber (D - Browning) in honor of the late Blackfeet leader and dignitary, which has already been signed by the Governor. Our team also successfully defeated two bills that would impair tribal treaty rights to hunting and water, HB372 and HB726 sponsored by Rep. Paul Fielder (R - Thompson Falls) and Rep. Joe Read (R - Ronan).

Responding to these bills is a step in the right direction, but there is still much work to be done to address the historical injustices faced by Indigenous communities. We must continue to listen to and amplify Indigenous voices in the legislative process to ensure that their needs and concerns are being addressed.

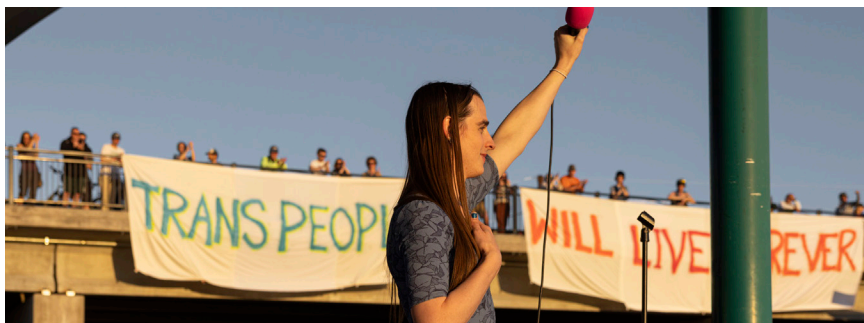
LEGAL UPDATES

Let Her Speak!: Standing up for Alongside Rep. Zoey Zephyr and her 11,000 Constituents

This May, the ACLU Montana, in partnership with the Beck, Amsden, and Stalpes law firm and Mike Black, Esq., filed an emergency lawsuit challenging the censure of State Representative Zoey Zephyr (HD 100). The lawsuit arose from the Montana House of Representatives' vote to ban Rep. Zephyr from in-person debates and voting for the remainder of the session in response to her criticism of a bill aimed at banning gender-affirming healthcare for transgender youth in Montana.

Throughout Montana's 68th Legislative Session countless bills attacking the 2S-LGBTQIA community, with particular focus on transgender individuals, were introduced. During the final floor debate over SB 99, a bill aimed at stripping transgender minors access to potentially life-saving, evidence-based and medically necessary care for gender dysphoria, Rep. Zephyr voiced her opposition to the bill, by stating that if her counterparts voted to pass the bill, they would have "blood" on their hands. Soon after, Rep. Zephyr was told that her words had violated decorum and at countless hearings that followed, she was not allowed to speak.

A formal decision as to whether to allow Rep. Zephyr to speak was scheduled for debate on the House floor. Montana citizens responded to the silencing of Rep. Zephyr by organizing a rally at the State Capitol. After the House voted to disallow Rep. Zephyr to speak, some of the citizens at the Capitol began chanting, "let her speak." Seven of those citizens were swiftly arrested for their protest and the House of Representatives took up a motion to Censure Rep. Zephyr for the protestors' comments.



Representative Zephyr addresses constituents in Missoula during the Pride and Determination rally.

Photo Credit: Rebecca Stumpf

We promptly condemned the Montana House of Representatives' anti-democratic efforts to silence Representative Zoë Zephyr and, by doing so, denying her constituents their right to representation. The retaliatory censure violated Representative Zephyr and her constituents' constitutional rights to free speech, equal protection, self-government, freedom of assembly and the right to petition for redress. We filed a temporary restraining order in Montana's First Judicial District Court County of Lewis and Clark asking the Court to protect Plaintiffs' rights by immediately restoring all of Representative Zephyr's legislative privileges. Although the temporary restraining order was denied, we will continue to do everything in our power to ensure that Rep. Zephyr's voice - and the voices of her constituents - are heard within the walls of the Capitol.

VICTORY! The Indian Education For All Challenge Legal Battle Continues

After a hearing this April in Great Falls District Court, in collaboration with the Native American Rights Fund and ACLU National we scored a preliminary victory in *Yellow Kidney, et al. v. Montana Office of Public Instruction et al.* At the hearing the Court ruled in favor of the Plaintiffs and denied the Defendants' (state agency and officials responsible for implementing Indian Education for All (IEFA) provisions) motion to dismiss the case. The Court made it clear that Defendants' arguments that the case should be dismissed because they lack authority or responsibility to enforce the IEFA requirements were unfounded and ludicrous. At the hearing, the Court noted, "[i]t's shocking to me that we are this many decades down the road, with this many court challenges, this many legislative enactments. . . that this is where we sit in 2023."



ACLU-MT attorneys argue in support of Indian Education.

Photo credit: Akilah Deernose

The Court's written opinion held that "[t]he individual Plaintiffs have sufficiently alleged a past, present and threatened injury to the distinct and unique heritage in a culturally responsive manner. The tribal Plaintiffs have sufficiently alleged a past, present and future injury to their ability to work cooperatively with educational agencies and personnel in developing and providing Indian education. The Plaintiffs have alleged these injuries have or will result in racism, bullying, stereotyping, prejudice, a dangerous school environment, mental and emotional harm, and loss of cultural heritage. These injuries are not abstract, conjectural or hypothetical."

The *Yellow Kidney* case was initially filed in July 2021 by ACLU National Racial Justice Project, the Native American Rights Fund, and ACLU Montana on behalf of Plaintiffs consisting of six Tribes across Montana and

eighteen individual families with students attending public schools across the state against the State officials and agencies responsible for administering IEFA in Montana consistent with the state's unique constitutional mandate. In the complaint, Plaintiffs argue that Defendants have consistently failed their duty to create minimum compliance standards and implement, monitor, and enforce those standards to ensure that, in cooperation with Tribes, all students receive the Indian education owed to them.

Montana Supreme Court Affirms District Court Ruling in *Weems*: Abortion Rights Remain Robust in Montana

The Montana Supreme Court, in a unanimous decision, upheld our District Court win in the *Weems et. al v. State* case. In *Weems*, the District Court ruled that Montana's constitutional right to privacy includes an individual's right to obtain an abortion from a qualified provider of their choice. At issue in *Weems* was whether a law limiting provision of abortion care to physician and physician assistants unconstitutionally infringed on the individual right to privacy where other care providers, such as our client, advanced nurse practitioner Helen Weems, was licensed and competent to provide such care. The Supreme Court's unanimous decision means that Montanans will continue to have a strongly protected right to access safe abortion healthcare in Montana.

CHALLENGING THE TRANSGENDER HEALTH CARE BAN:

This May, in collaboration with Lambda Legal, ACLU LGBTQ & HIV Project, and Perkins Coie, we filed a lawsuit challenging Senate Bill 99 (SB 99). SB 99 is a wide sweeping law banning gender-affirming care for transgender minors suffering from gender dysphoria. SB 99 bans evidence-based and medically necessary care for treating gender dysphoria in transgender youth. The same exact care, however, is still available to cisgender youth to treat any condition.



Signs in support of Representative Zooey Zephyr

Photo credit: Rebecca Stumpf

This law cruelly, without scientific or medical justification, aims to strip transgender minors of potentially lifesaving care. According to a report from the William's Institute, transgender youth aged 13-17 make up less than one percent of Montana's population. Nationally, the rate of suicide for transgender minors is far greater than that for their cisgender counterparts. In fact, an American Academy of Pediatrics study found that more than 85% of transgender youth reported having seriously considered suicide. Providing transgender youth access to gender-affirming care is proven to lower suicidality rates. This law not only violates the constitutional rights of young transgender Montanans and their families, but it also jeopardizes their health, safety, and lives.

We will not let this stand and will keep fighting to defend the rights of transgender youth and their families in the courts. The lawsuit, *van Garderen v. State*, was filed in Montana 4th Judicial District of Missoula County.

GET TO KNOW THE ACLU MONTANA **STAFF**

IF YOU WERE TO WRITE A MEMOIR ABOUT YOUR LIFE, WHAT WOULD YOU TITLE IT?

Alex Rate

Are We Where Yet?

Michelle Cares

See Her at Twelve

Alyssa Kelly

All the Places I've Lost My Handbag

Sharen Kickingwoman

Bless This Mess

Akilah Deernose

Rooted in Care

Krystel Pickens

Highlights and Hiccups: a memoir of navigating the ups and downs, and leading with kindness and love

Keegan Medrano

Shot Into the Sun: How one guy finally got his wish of being thrust into a nearly perfect ball of hot plasma



Sapphire Carter

A Rez Girl's Life

Paul Kim

Five Hour Layover at the Denver Airport

Lisa Smith

No Longer Immortal

MEET OUR NEWEST MEMBER



Sapphire Carter

Summer Legal Intern

SAPPHIRE CARTER is a Chippewa Cree tribal citizen from the Rocky Boy's Reservation. She attends University of Montana Alexander Blewett III School of Law. In 2016, Sapphire graduated from Carroll College with a Bachelor of Arts in International Relations. Before law school, Sapphire served in AmeriCorps at Montana Legal Services Association and managed the GEAR Up grant at Rocky Boy High School. With a law degree, Sapphire plans to serve tribal nations and Indigenous people.

ACLU-MT AROUND THE STATE



Rally in support of trans rights.

Photo credit: Rebecca Stumpf



Rally in support of trans rights.

Photo credit: Rebecca Stumpf



**Plaintiff Shauna Yellow Kidney
(third from left) and her legal team**

Photo credit: Guest contributor

THANK YOU TO ROBIN & MAGGIE

With indescribable gratitude and graciousness, we want to write on behalf of myself, the ACLU of Montana, and Montana a thank you to Robin Turner and Maggie Bornstein.



ROBIN TURNER, a long-standing champion for women, children, and families including those facing domestic and sexual violence, offered grace, patience, kindness, and a willingness to share her knowledge and experience with the entire team. Robin was contracted to work on Privacy, Aid in Dying, Death Penalty, Immigration, and Reproductive Justice, an incredibly difficult portfolio of issues that required a thoughtful, assured

approach to influence Republicans and Democrats. She withstood, alongside our partners, an onslaught of vicious and disgusting anti-abortion rhetoric-fueled bills attacking our constitutionally secured right to an abortion. She worked tirelessly to ensure that the Death Penalty did not return in Montana and that Aid in Dying is still accessible. She did that and we should be grateful that she gave everything for Montana. The state she was born in and believes in.

MAGGIE BORNSTEIN immediately entered the Helena capitol and spoke unflinchingly and with care about the horrific impacts of Montana's criminal legal system. The human and moral cost of our current criminalization practices, policing practices, and incarceration is incalculable and reflective of our collective failure, but Maggie stood out as a light against these dark realities. Maggie's portfolio included Criminal Legal Reform, Jail & Prison conditions, and Policing, which required an ability to foster relationships across the political parties and share plainly the qualitative and quantitative stories of those impacted by these systems. Because of Maggie, Montana's youth impacted by the criminal legal system will not be tried as adults or have their constitutional rights further impaired. Because of Maggie, Montanans will not be burdened by aggressive, damagingly punitive mandatory sentences. Because of Maggie, we will live in more connected and unified communities as we seek to invest in our communities instead of punishing.



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