

# ACLU Montana

## IN THIS ISSUE

- Legal Department Updates
- Advocacy and Policy Updates
- New Year Hopes & Wishes
- FAQs



WINTER 2021

Photographer: Jose Antonio Ibarra Olivares

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# TABLE OF CONTENTS

<b>A Message from our Executive Director</b> <i>by Caitlin Borgmann</i>	<b>4</b>
<b>Legal Updates</b> <i>by Alex Rate, ACLU Montana Legal Department</i>	<b>5</b>
<b>Advocacy and Policy Update</b>	<b>10</b>
<b>Hopes and Wishes For the New Year</b>	<b>13</b>
<b>Frequently Asked Questions</b>	<b>18</b>
<b>New Staff Introductions</b>	<b>20</b>
<b>A Huge Thank You</b>	<b>22</b>

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# A MESSAGE FROM OUR EXECUTIVE DIRECTOR



Dear ACLU of Montana Supporters,

As we close out 2021, we reflect on a difficult legislative session, and another year of a global pandemic, both of which exacerbated economic, racial, and other injustices. In this past year, we have seen a rapid uprising of policies and laws that undermine voting rights. We have seen attacks on transgender Montanans. Students are being denied the right to an inclusive education that honestly and meaningfully addresses Montana's indigenous history and present. This year has been difficult, to say the least.

Despite the poignancy of this challenging year, we are reminded that through resilience and hard work, we will continue to get through this together. Before the ink had dried on many of these disastrous laws, our legal team was ready to get to work dismantling the harms that were done in the 2021 legislative session, two of which addressed bills passed in 2021. We filed three major cases within the first four months of the close of the session: *Marquez v. State* (pg. 5), *Western Native Voice v. Jacobsen* (pg. 6), and *Yellow Kidney v. Office of Public Instruction* (pg. 8). These cases fight for transgender rights, voting rights, and the right to an equitable education. In our policy and advocacy work, we are preparing major initiatives to fight the criminalization of poverty and support Indigenous communities seeking justice in education, policing, and more.

During these urgent times, we need our members and supporters more than ever. In this new year, let us all commit to working together to take back the rights of all Montanans. Let the lessons of this past year inform and inspire us to make 2022 a year in which Montana tips back toward justice and freedom for all.

In solidarity,

A handwritten signature in black ink, appearing to read 'CAB', written over a thin horizontal line.

Caitlin Borgmann

## LEGAL UPDATES

### Alex Rate

ACLU Montana Legal Department

The 2021 Montana Legislative Session saw wave after wave of attempts to roll back the rights of Montanans across the state. While our lobbyists and policy experts fought valiantly, many of these initiatives ultimately became law. More often than not, the parting words of our advocacy team during legislative testimony were, "This law is unconstitutional, and we will see you in court."

Just as in 2017, when the ACLU mobilized to fight then-President Donald Trump in the courts, in 2021 the ACLU-MT and its allies immediately launched into action to hold Governor Gianforte, Attorney General Knudsen, and the Montana Legislature accountable for their discriminatory, perverse, and ultimately unconstitutional legislative attacks on vulnerable communities.

Montana courts are well positioned to serve as a bulwark against the legislature's actions. Our modern state constitution – passed in 1972 – contains explicit protections for the right to privacy and individual dignity. Moreover, Montana's courts have repeatedly interpreted the constitution to provide greater protections for individuals than the U.S. Constitution.

**"Montana courts are well positioned to serve as a bulwark against the legislature's actions."**

### TRANSGENDER EQUALITY

*Marquez et al. v. State* (Montana 13th Judicial District Court)

Co-counsel: ACLU's National LGBTQ & HIV Project, Nixon Peabody, LLC

We filed a lawsuit on behalf of Amelia Marquez, a transgender woman, and John Doe, a transgender man, challenging a new law that makes it difficult, if not impossible, to correct the sex designation on their birth certificates. Marquez and Doe's case asserts that Senate Bill 280 violates their constitutional right to privacy, equal protection of the law, and due process.

SB 280 requires a transgender person to receive a certified copy of an order from a court indicating that the sex of the person has been changed by "surgical procedure." The court order must then be provided to the Department of Public Health and Human Services (DPHHS). For many transgender Montanans, surgical procedures

are either unnecessary or cost-prohibitive. Moreover, even for individuals who have received the surgery, requiring this certification from a court is an inhumane violation of the right to privacy.

## VOTING RIGHTS

Western Native Voice v. Jacobsen (Montana 13th Judicial District Court)

Co-counsel: Native American Rights Fund (NARF)

The 2021 Montana Legislature engaged in a relentless attack on the right to vote in Montana. Despite no evidence of voter fraud in our State, the Legislature enacted HB 176, which ends same-day voter registration, and HB 530, which blocks organized ballot collection on rural reservations.

HB 530, in particular, is offensive because just last year the ACLU and NARF persuaded the courts to strike down a similar law that restricted organized ballot collection. The only logical explanation for the legislature once again passing such a restriction is animus and discrimination towards Indigenous voters in Montana and an attempt to disenfranchise them.

The lawsuit against HB 176 and HB 530 was brought on behalf of Western Native Voice and Montana Native Vote, Native American-led organizations focused on getting out the vote and increasing civic participation in the Native American community; and the Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Fort Belknap Indian Community, and Northern Cheyenne Tribe.

## REPRODUCTIVE RIGHTS

Weems v. State (Montana 1st Judicial District Court)

Co-counsel: The Center for Reproductive Rights

In 2021 Montana joined numerous states in enacting draconian restrictions on abortion care that are patently unconstitutional under *Roe v. Wade* and *Planned Parenthood v. Casey*. The Montana Legislature is betting that the United States Supreme Court will further weaken these precedents, eroding or eliminating abortion rights under the U.S. Constitution.

What the Legislature should have known is that the right to privacy is an explicit and fundamental right under the Montana Constitution, and thus no matter what happens to abortion protections under the federal constitution, the right to abortion will persist in Montana. We and our allies made this clear in legislative testimony, but the Legislature paid no heed.

We are grateful that our friends at Planned Parenthood swiftly filed suit to challenge the laundry list of abortion restrictions passed by the Montana Legislature. While those cases are about striking down patently unconstitutional laws, we are hard at work expanding access to abortion care in Montana. *Weems v. State* was filed on behalf of two advanced practice registered nurses (APRNs), including Helen Weems, a certified nurse practitioner, and their patients. The lawsuit asks the court to block an older Montana law that prohibits APRNs from providing abortion care, despite the demonstrated safety of abortion and the proven ability of APRNs to provide early abortion as safely as physicians and physician assistants.

Ultimately, if *Roe* and *Casey* are overturned by the U.S. Supreme Court, it will become even more important to expand access to abortion care in Montana. Indeed, individuals seeking reproductive health care may well be traveling to Montana from the Dakotas, Wyoming and Idaho. The *Weems* case is thus more important than ever.



## EDUCATION

Yellow Kidney et al. v. Office of Public Instruction (Montana 8th Judicial District Court)

As a result of powerful organizing by Native American communities, the Montana Constitution in 1972 adopted a provision that made a promise to all public school students that “Indian education” would be incorporated across all grades, subjects, and curricula. More than two decades later, in 1999, the Montana State Legislature passed the Indian Education for All Act (IEFA), which underscored the state’s constitutional mandate to preserve the cultural integrity of Native Americans through education. The IEFA intended to make good on Montana’s unique constitutional promise after years of failing to deliver.

Now the ACLU, the ACLU of Montana, and the Native American Rights Fund are suing the state of Montana for violating its legal obligation to ensure that all public school students have access to education about Native American culture and history. Equal access to learning about Native American heritage and culture in our education institutions is a racial justice issue.



# ACLU

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 **Alyssa Kelly**, Development Associate, at [kellya@aclumontana.org](mailto:kellya@aclumontana.org) for more details.

# ADVOCACY AND POLICY UPDATE

## BUILDING BACK MONTANA AFTER AN ONSLAUGHT OF HARMFUL LEGISLATION

By Keegan Medrano

In the aftermath of the 2021 Legislative Session, where Montanans saw an onslaught of government overreach and attacks on the civil liberties, rights, and foundational personhood, the Advocacy and Policy Department (APD) of the ACLU of Montana has plotted an aggressive counterattack to restore the rights taken away from us.

Over the last few months, APD has worked at the local, state, and tribal levels to organize community members, advocate for policy solutions, and continue to be at the forefront of politics and policy in Montana. We have grappled with the political dynamics and realities of the post-2020 election and post-2021 legislative session Montana by:

- Maintaining and expanding coalitions of non-profits and other community members on criminal legal reform
- Tracking and providing support, oversight, and recommendations for the few pieces of progressive legislation that did pass
- Supporting and collaborating with the ACLU of Montana's Legal Department as they litigate on some of the profoundly cruel and violent legislation that passed
- Emphasizing the role of local politics and began collaborating on and advocating for policy solutions
- Developing proactive, policy platforms to unify and excite Montanans on the possibilities for a more fair and just Montana

## DATA TRANSPARENCY

The APD at ACLU of Montana remains committed to ensuring the thoughtful and equitable implementation of legislation we supported. The majority of our policy wins in criminal legal reform came from our work with the Coalition for Public Safety, a broad-based coalition of organizations across the political spectrum, working towards stemming the flow of people into our carceral systems and ensuring that those that do have opportunities after they have exited.

The Coalition for Public Safety successfully advocated for a series of “study bills” or state government investigations of current practices, research and assessment of best practices, panels of experts, and report writing. One of the most important study bills to come out of the 2021 Legislative Session was SJ 31 - Data Transparency, an in-depth review of Montana’s current mysterious and haphazard system for collecting, maintaining, and utilizing criminal legal related data.

## VOTING

APD alongside the Communication Department and other organizations used Get Out the Vote efforts to alert Montanans that their local municipal judges were elected officials and that they had the opportunity to have a say in how the criminal justice system impacts their fellow community members through the local courts. We did this through informing Montanans of their ability to elect Municipal Court Judges, giving the community an exciting opportunity to build the future we all want.

## OFFICE OF THE PUBLIC DEFENDER (OPD)

The Office of the Public Defender has been chronically underfunded and understaffed. Moreover, the housing affordability and access crisis, cost of living increases, and expanded efforts to criminalize Montanans has placed intense strain on our public defenders and the short-term contract hires brought in to address these issues. An underfunded and struggling OPD means that this critical body - intended to ensure the Sixth Amendment Right to an attorney is implemented - is understaffed, relying on outside contracts, and ultimately struggling to meet the needs of people. APD alongside the Legal Department have continued to work with elected officials, policymakers, and the media to keep the public informed, to support creative efforts by the Executive Branch to provide short-term funding, and to ensure OPD funding remains an issue for the 2023 Legislative Session in Helena.

**“The Office of the Public Defender has been chronically underfunded and understaffed.”**

## INDIGENOUS JUSTICE

The Indigenous people of Montana saw an onslaught of bills that stripped them of their voting rights. APD is working alongside the legal team to ensure that these rights are returned to them. HB 176, ended same-day registration which reservation voters have relied upon to cast votes in Montana since 2005. The other new law HB 530 attempts to block organized ballot collection on rural reservations.

## PRISON AND JAIL CONDITIONS

APD, Communications, and Legal Department continued the ACLU of Montana's opposition to mass incarceration, private prisons, and the conditions within these carceral centers. In the summer of 2021, CoreCivic, an out-of-state private prison company, which oversees a facility in Shelby, participated in an exchange of incarcerated individuals with the Great Falls Regional Prison. The transfer was made in response to President Biden's Executive Order to forbid the federal government from contracting with private prisons. In response to President Biden's Executive Order, a sort of "shell game" was played where federal and state incarcerated individuals were exchanged, leading to an increase in the population of CoreCivic's Shelby facility to the financial benefit of CoreCivic's executives and shareholders and the detriment of incarcerated individuals.

The ACLU of Montana opposed this effort. Though the contract was renewed and the transfer initiated, the contract was only extended by two years, providing an opportunity for future advocacy and policy change. Moreover, the CoreCivic transfer highlighted an ongoing issue at the Shelby facility and many state-run facilities across the state: our carceral centers are overcrowded and failing to meet the basic needs of food, water, sewage, and safety during the COVID pandemic. Our staff have toured facilities, catalogued the failures, and brought many of them to the public spotlight. We remain steadfast in our efforts to protect those who society has failed.

**While continuing to respond to the political crises brought by the abhorrent bills passed, the legal fallout, and the toxic rhetoric seeping into our everyday from political leaders, APD has begun developing aggressive policy platforms around our two main strategic areas: Indigenous justice and criminal legal reform. It is our belief that the ACLU of MT must be at the vanguard of politics and policy in this state. We must be able to offer all Montanans a now and a future worth fighting for, organizing for, and maintaining. These policy platforms are currently being developed within the organization before extensive conversations and collaboration will occur with the communities we organize in. From this work, we look forward to presenting comprehensive and thoughtful policies to begin building the Montana and the world we deserve, one that will empower, heal, and unite us all.**

# WHAT IS YOUR HOPE/WISH FOR THE NEW YEAR?



**Alex**

I am hopeful that our courts will continue to be a bulwark against vitriolic attacks on marginalized communities and individuals. And, I am hopeful that I never again have to talk with my kids about why a public health issue is suddenly political.

**Akilah**

I am hopeful that people will continue to dedicate themselves to examining and working to eradicate structures and systems steeped in colonialism and racism. Additionally, I hope that COVID can be controlled to the point that hospitals are no longer overwhelmed and people are no longer dying. I also sincerely hope that we can build community based on reciprocity, care, and cultural competency.



**Sharen**

Watching my daughter grow and hit exciting milestones!

**Michelle**

I'm hopeful for and looking forward to children 2 yo+ being able to be vaccinated!



**Krystel**

Fun adventures and creating new memories with family, friends, and colleagues!

## Gujari

I am hopeful that I will finally be able to get through the growing pile of books I want to read. I am also hopeful that one-day divisive rhetoric will disappear and people will work collectively and respectfully to tackle the mounting issues that this country faces.



## Kileen

Crossing more things off my bucket list, including driving larger construction equipment!



## Angeline

Indigenous voices of have been silenced for many years and ACLU of MT gave me the opportunity to sit at the table where decisions and positive change happen. I am hopeful for all Indigenous nations to unite and create a better future for our future generations to have a clean environment and education equality. I am hopeful that my favorite coffee drink will help me live long healthy life to work on current/future Indigenous issues.



## Alyssa

In the new year I am hopeful to safely rejoin a community gathering with my tribal people and celebrate our traditional way of life.

## Keegan

I'm looking forward to the opportunity to work with recently locally elected officials on protecting LGBTQ2+ people, specifically youth, and stopping efforts to criminalize and incarcerate our fellow community members and looking forward to Montanans across the state voting in the 2022 election.



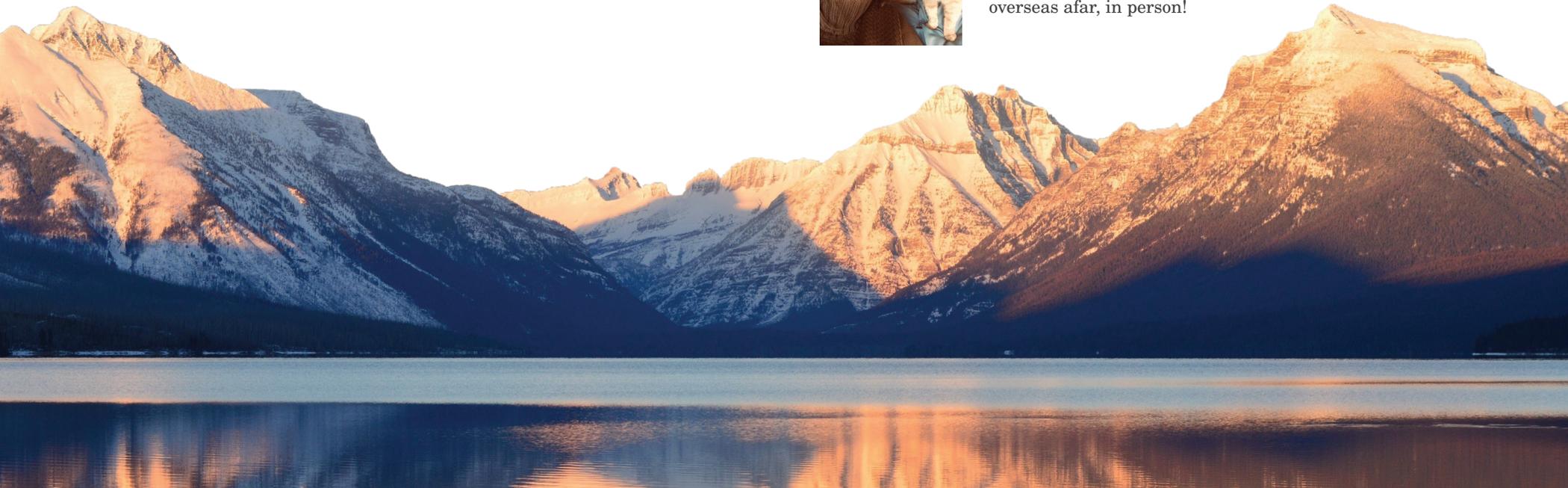
## Caitlin

Taking my sabbatical (postponed for a year due to COVID) and being able to visit my kids in Colorado and Utah, and family in Germany. Working with our team to continue to make Montana a more just place.



## Britta

To connect with and see friends and family from close and overseas afar, in person!





# FREQUENTLY ASKED QUESTIONS ABOUT DONATING TO THE ACLU

## Kileen Marshall

Director of Philanthropy and Strategic Initiatives

### **Q: I want to make a year-end gift to the ACLU. How can I do that?**

**A:** Thank you! To make a tax-deductible gift, you can make a donation using the enclosed Foundation envelope, online at [www.aclumontana.org/donate](http://www.aclumontana.org/donate), or via your required minimum distribution from your IRA, if you are 70.5 or older (see page 9 for more details). And, if you are re-doing your estate plans, or making one for the first time, consider adding the ACLU. Visit [www.aclu.org/legacy](http://www.aclu.org/legacy) for more information.

### **Q: What's the difference between being a "member" and making a donation to the ACLU Foundation?**

**A:** Membership dues are not tax-deductible and go to our 501c4 entity to help fund our lobbying and legislative advocacy, activities that 501c3 foundations can engage in only in limited ways. Foundation gifts go to our 501c3 entity and are tax-deductible. These gifts support our legal program, educational activities, and much of our policy advocacy, which make up the majority of our work. For some supporters, being a "card-carrying member" of the ACLU is incredibly important because it reflects the pride of belonging to an organization that has fought for equality, liberty, democracy, and freedom for over 100 years. Any gift that allows you to make the most generous donation is what's most helpful.

### **Q: I like to see the impact of my giving in my local community. Does my gift to the ACLU really make a difference in Montana?**

**A:** Yes. We are one ACLU, regardless of where you send your gift. Unlike many other national/state-based organizations, the ACLU shares donations, and so it truly does not matter whether your gift is "banked" at National or here in Montana. In a sparsely populated state like Montana, we benefit from this sharing formula, similar to federal transportation dollars. In fact, roughly one-fifth of our annual budget comes from National ACLU, because we are a small affiliate. This would not be possible without the cadre of nationwide ACLU supporters.

The business of defending and advocating for civil liberties is truly a nationwide endeavor. The National ACLU helps ensure that we have experts on staff that specialize in specific arenas, whether it is reproductive freedom or privacy issues. Also, we need to fight battles the first time they spring up in a state legislature, so we do not get copycat legislation spreading like wildfire across the country. The ACLU of Montana benefits greatly from all this in-kind support from the nationwide ACLU family.

### **Q: You get government grants, right?**

**A:** No. We sue the government, so we do not receive any grants from them. We occasionally receive funds from private foundations, but the amount of philanthropic dollars available in Montana is small compared to other states.

### **Q: You have a lot of resources from winning attorneys' fees, right?**

**A:** Lol! While it is true that we sometimes win attorneys' fees when we win a lawsuit, it is rare, and the dollar amount we receive is never equal to the resources we put into the case. We never file lawsuits expecting to get money back; rather we file lawsuits to seek systemic change.

### **Q: When I donate to the ACLU will my name will be published like when I make a political donation?**

**A:** No. Just like most other non-profits, the ACLU Foundation is a 501c3 organization and the Union is a 501c4 organization. Gifts to such organizations are in a different category than political donations and do not need to be reported. In fact, the ACLU has very strict confidentiality protocols in place. To sum up these protocols, the ACLU will follow standards of professional practice and codes of ethical principles, including but not limited to: handling donor information with respect and confidentiality; recording data accurately; recording only information that is relevant for fundraising purposes; and using security measures to protect donor information.

# MEET OUR NEW STAFF



## **Keegan Medrano**

Policy Director

Keegan Medrano, a queer Indigenous (Mvskoke) mixed race person, joined the ACLU of Montana as Policy Director in June 2021.

Born in the Sacramento area of California, Keegan spent their first year living in the back of a car before being taken in by their maternal grandparents. Throughout their childhood and adolescence, the impacts of incarceration, substance use, homelessness, and failures of the U.S. health care system were ever-present. Raised in a working-class household, labor, class, and the role of union activism were also at the forefront.

Upon going to college, Keegan committed to confronting these power structures by earning a BA in History with Honors focused on settler colonial states, race, and gender at San Francisco State University. At the same time, they began working at the university on education equity issues. Upon completion, Keegan began a master's on whiteness, masculinities, and the body and expanded their work to include advocacy on food and housing insecurity for college students.

After working in instruction at an elementary school, high school, and college, Keegan left academia to serve as the Policy, Advocacy, and Communications Director for the Coalition on Homelessness San Francisco working on housing, homelessness, harm reduction, community alternatives to policing, and other related policy work in the Bay Area.

In their free time, Keegan enjoys watching and playing soccer, spending time with their dog, Riley, and making Spotify playlists. They also love diners, reading, and watching movies.



## **Kaylee Hafer**

Legal Program Intern

Kaylee Hafer is the legal intern for the ACLU of Montana and a third-year law student at the Alexander Blewett III School of Law of the University of Montana. As a lifelong Montanan, growing up in Butte and spending the past seven years in Missoula, Kaylee is passionate about pursuing a career in public interest law in Montana. When she first found out that she had been placed with the ACLU of Montana for her law school clinic placement, she was absolutely ecstatic because it was her number one choice. Now after a semester as the legal intern, Kaylee has found it to be immensely gratifying to play a small part in the impressive list of cases the ACLU of Montana is undertaking to make Montana a better place to live.

# A HUGE THANK YOU

## to MARIA IBARBIA and MARIAH WELCH!

Maria joined ACLU of Montana this past summer as the Temporary Administrative Assistant. In this role she was charged with supporting operations while a key staff member was on sabbatical. Maria was critical in ensuring that operations over the summer ran smoothly and was delightful to have as part of the team.

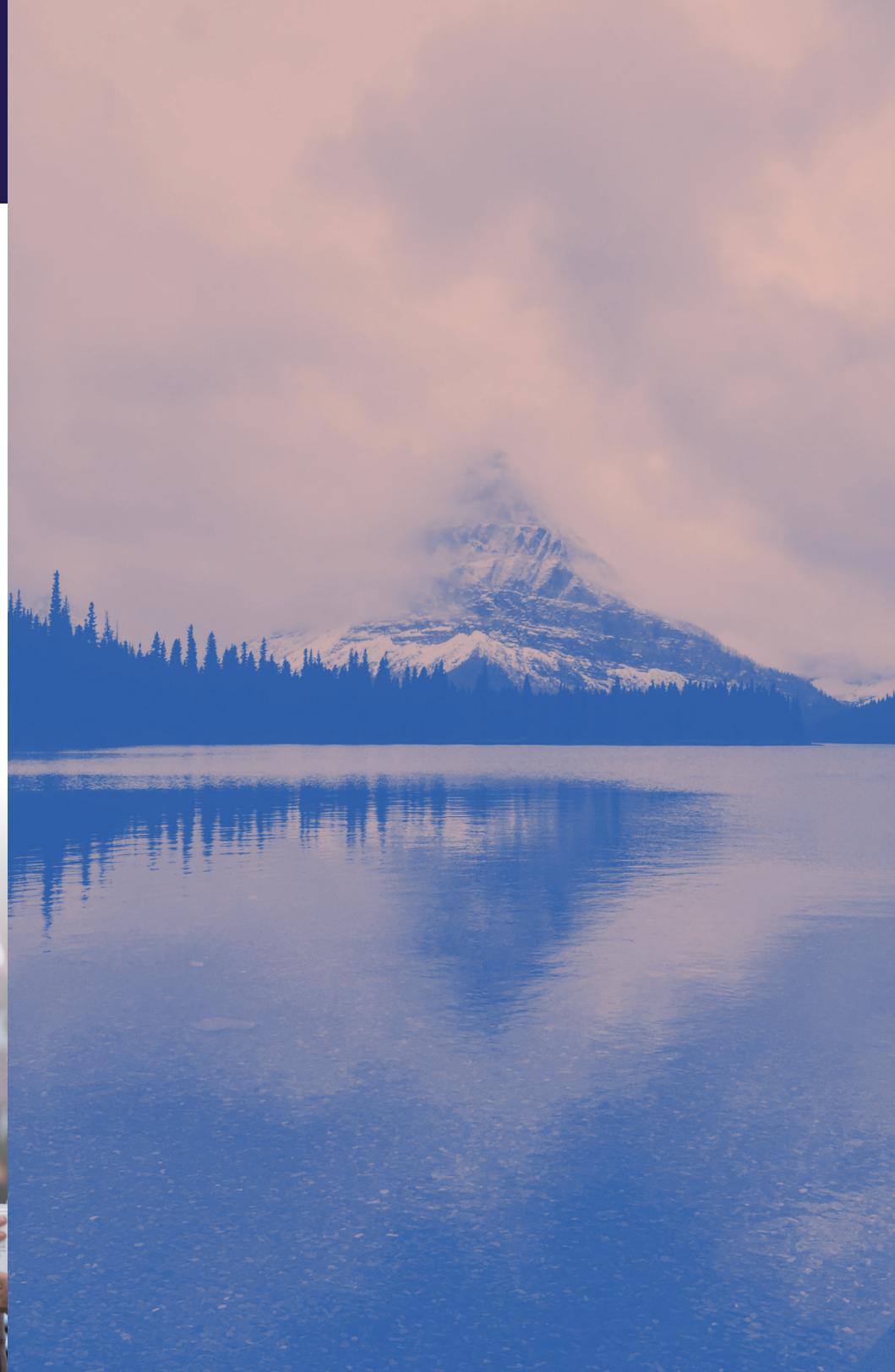
Thank you, Maria, for your time with us to provide crucial administrative support.

Mariah joined ACLU of Montana this past summer as the Summer Legal Intern. Mariah supported the legal team in filing multiple cases this past summer and went beyond her duties as a legal intern by providing insight and support to our Indigenous Justice program.

Thank you, Mariah, for your time with us this past summer. We look forward to watching you grow professionally and seeing what great things you do in the future.



*Photographer: Jose Antonio Ibarra Olivares*





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