



Wielding religion as a license to discriminate

Opponents of LGBT rights and reproductive liberty say it's religious liberty; courts don't buy it

Claiming a religious right to discriminate is nothing new. Most recently we've been seeing the cry of "religious freedom" being used by businesses that don't want to provide contraception to their employees and don't want to serve or employ gay, lesbian and transgender people.

Here in Montana, the argument is being used by those who oppose nondiscrimination ordinances that would prohibit discrimination based on sexual orientation and gender identity in housing, employment and public accommodations.

But just as courts have repeatedly ruled that religion can't be used as a reason to permit racial discrimination, it is also an unconstitutional justification for discrimination against LGBT people.

"The Biblical card has been used to support every kind of discrimination – racial discrimination, against the right of women to vote – but the courts have agreed we are done with this kind of discrimination," says former Montana Supreme Court Justice James Nelson.

The First Amendment provides two protections for religious freedom.; it prohibits government from imposing religion and provides the



Photo Courtesy of Collen Crinion

Demonstrators make their point in front of the U.S. Supreme Court the day of oral arguments in the Hobby Lobby contraception case: Discrimination disguised as 'Religious Liberty' is still discrimination.

freedom to worship (or not).

But this freedom to worship does not extend to businesses, Nelson says. "Businesses are different from churches. They are commercial enterprises."

All generally applicable laws apply to businesses, including laws prohibiting discrimination.

The claim of religious discrimination being espoused by the Montana Family Foundation and other anti-gay groups and businesses is a false one. "Religious discrimina-

tion" suggests that some businesses are being treated differently from other businesses, but that is not the case. They are being held to the same standard as everybody else. If it's "on the menu" at a public business, all protected classes must have equal access to that accommodation.

Anyone who opens a business in Montana knows that they are required to provide their goods and services to the public without discriminating on the basis of race, sex, disability or religion. For instance, a child care provider can't refuse a child because his parents are Hindu; a car dealer can't refuse to sell a car to a woman because he believes women shouldn't drive; and an obstetrician can't refuse to see a single woman because she believes premarital sex is a sin. The nondiscrimina-

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Religion a poor fit in the workplace

When I first learned of a local business owner's plans for a free Good Friday luncheon to examine the idea of discussing religion in the workplace, I thought, "You've got to be kidding me. Really?"

But my colleague from the United Way insisted I should be there, and so I went, along with several dozen Missoulians, to hear more. I've been ruminating about it ever since.

Our host, a youngish, handsome evangelical, welcomed us and explained that to be true to his Christian beliefs he wants to be able to carry over into the workplace free expression of his religious ideas and encourages others to do the same.

He invited three people of faith to address us – a Jewish businesswoman, his pastor, and a young leader from the University of Montana Islamic community. The trio offered a range of viewpoints on why they believe discussion of religion in the workplace could be helpful, from addressing discrimination and bigotry to advancing their religious views.

Audience members were not offered an opportunity to share their views, but here are mine.

First, there is no shortage of religiosity in our lives. We live in a religiously diverse community with many faiths and innumerable houses of worship. Religion permeates domestic politics. A Pew study estimates the religious right makes up 17 percent of the population but accounts for 23 percent of the vote, holding many state legislatures hostage on issues of bodily autonomy and contributing mightily to Congressional gridlock.

Second, and most fundamentally, religion is a private matter between a person and his or her own conscience. It is no one else's business what they believe or

whether they believe at all.

Third, we come together in the workplace for entirely different reasons than we come together in a religious community. We need jobs to provide for our families. We devote a large portion of our lives to a common economic endeavor but, at the

end of the day, we retain our own identities and return to our private lives, families and beliefs. In the private sector, power relationships between employers and employees vary from place to place but it is widely understood who has the ability to hire and fire, perhaps nailing the point of why the boss encouraging discussion of religion in the workplace is a bad idea. What a boss sees as free expression could readily become coercion if promotions and bonuses (or even the perception of them) enter the equation.

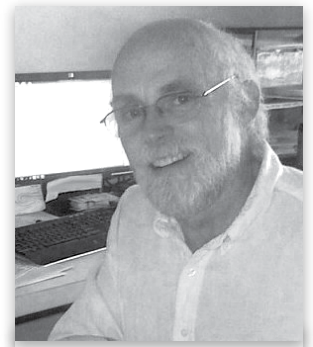
The ACLU supports everyone's free exercise of religion. The First Amendment's protections, as with the rest of the Bill of Rights, are specifically designed to insulate the individual from the government either establishing a religion or limiting an individual's free exercise of religion.

The workplace need not be a religion-free zone, but there are limits that have evolved from abuses and subsequent court challenges:

Employers can't discriminate on the basis of faith, or lack thereof (with an exception for religious nonprofit employers, which can discriminate based on religion, but not any other basis).

Employers must accommodate their employees' faith unless the requested religious accommodation would cause an undue hardship to the employer. For example, an employer need not accommodate an employee's request to proselytize, if the employer reasonably believes it will hurt the business or won't be well-received by the customers or fellow employees.

I agree we would all be better off if there was a deeper understanding of and respect for the diverse religious beliefs in our culture. How to generate such a discussion is a good question, but I don't think the answer is in the workplace.



Traveling Hopefully

Scott Crichton
Executive Director

Without the ACLU, who would look out for prisoners' rights?

We were sorry to cancel our annual meeting in early March due to the blizzard in Missoula. You know that the weather usually doesn't keep Montanans from doing much, so this weather was extreme. The board always looks forward to meeting with members and engaging in discussions on a variety of current topics. Our keynote speaker, whose topic was criminal justice reform, would have been very informative; this is a topic in which we are actively engaged.

We have recently finished a survey of almost all the county jails in the state of Montana. This survey included many on-site visits, interviews with jail administrators, and surveys completed by those incarcerated. This helped to identify facilities and practices that need attention and change.

The ACLU has always defended the civil liberties of all of us, especially those who might not have much of a voice or a seat at the table. By advocating for humane treatment for those in our jails, we are bringing these issues to the public notice, and we are making a difference. Recent actions related to criminal justice reform that have happened or are in process to date are as follows:

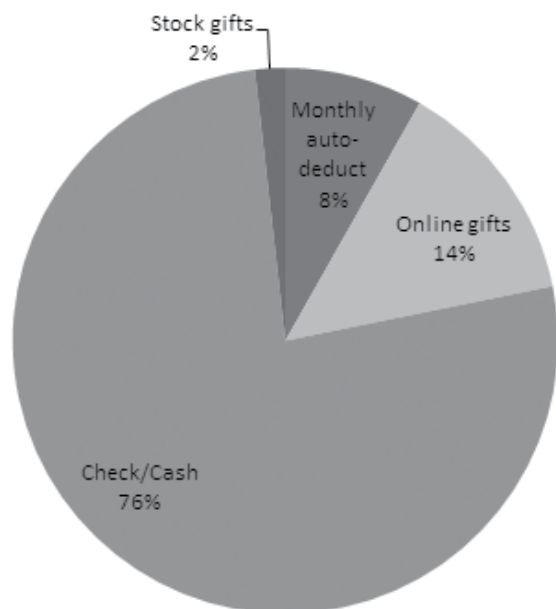
- Women and juveniles at the Missoula County Detention Center are now able to go outside for fresh air and sunshine just as the men have for years.
- The boot camp program for women was created after our settlement with the Montana Women's Prison and the first two women will be graduating this spring.
- Our demand letter to Custer County prompted construction of a new Custer County Detention Center due to begin this spring.
- We, along with Disability Rights Montana, brought a lawsuit advocating for appropriate treatment for prisoners with mental illness in the Montana State Prison system and at Montana State Hospital.

We will continue to work with and monitor changes at all of our detention facilities. As ACLU members, you can feel good about being a part of these changes.



President's Column
Nancy Nicholson
President of the Board

Many ways to give to the ACLU of Montana Foundation



Many generous people donate to the ACLU of Montana Foundation each year. It's these donations that sustain our litigation and public education work to protect civil liberties in Montana and across the United States through the National ACLU.

While the bulk of our benefactors contribute via cash or check, others give in different ways.

Some choose the convenience of donating online with a credit card at our website www.aclumontana.org.

Others find that they can afford to make a larger annual gift by spreading contributions out through monthly contributions automatically deducted from their checking account.

And some find it advantageous to donate stock.

All contributions to the ACLU of Montana Foundation are tax-deductible.

For more information about ways you can financially support the ACLU of Montana's work, visit our website, www.aclumontana.org or contact Development Director Kileen Marshall by email at kileenm@aclumontana.org or by phone at 406-443-8590.

Nondiscrimination ordinances

Protecting LGBT people in Bozeman and Billings

by Liz Welch, LGBT Advocacy Coordinator

Protecting the constitutional rights of all people across Montana comes into sharp focus as we work on nondiscrimination ordinances in Billings and Bozeman this summer.

This comes on the heels of passage of such an ordinance in Butte-Silver Bow County in February. Butte was the third Montana city to pass a nondiscrimination ordinance, following Helena and Missoula.

Nondiscrimination ordinances are about extending to the LGBT community the same protections already in place based on race, age, sex, disability, and national origin. Such ordinances protect people from discrimination based on sexual orientation, gender identity and gender expression in regards to housing, employment or access to public services and accommodations.

In the cities that have passed them, nondiscrimination ordinances also offer important protections to faith communities as well. Every city has included religious exemptions that safeguard the separation between church and state. It affirms that within the walls of religious institutions, organizations with the goal of sustaining and advancing faith have a long established First Amendment ability to operate according to their own beliefs.

However, that does not extend to commercial enterprises. When providing a service to the public, businesses cannot pick and choose whom to serve and whom to deny. This is basic discrimination and it has nothing to do with religious freedom.

Local churches, businesses and individuals are invested in creating communities that are vibrant, diverse and welcoming to all. Civic leaders and public opinion leaders are speaking out in favor of fairness.

In Bozeman, the largest employers in the city all have LGBT inclusive language in place. More than 110 local businesses have affirmed their support for an NDO. Local faith leaders are engaging their congregations in support. The student government at MSU is asking the city to recognize its support for this important community standard. And LGBT community members are sharing their stories of discrimination to illustrate just why these protections are needed.



Celebrating Earth Day at Good Earth Market includes celebrating fairness for all.

Billings's own history of standing up and declaring that discrimination does not have a place in "our town" is once again at the forefront of the community discussion. Even prior to the NDO language being presented, opposition turned out in full force and demonstrated just how necessary the NDO is in Billings. In response, businesses, faith communities, students and public opinion leaders are saying Billings cannot be publicly commended for saying "Not in Our Town" to discrimination based on race, religion, and national origin if the city does not also include protections for sexual orientation, gender identity and gender expression.

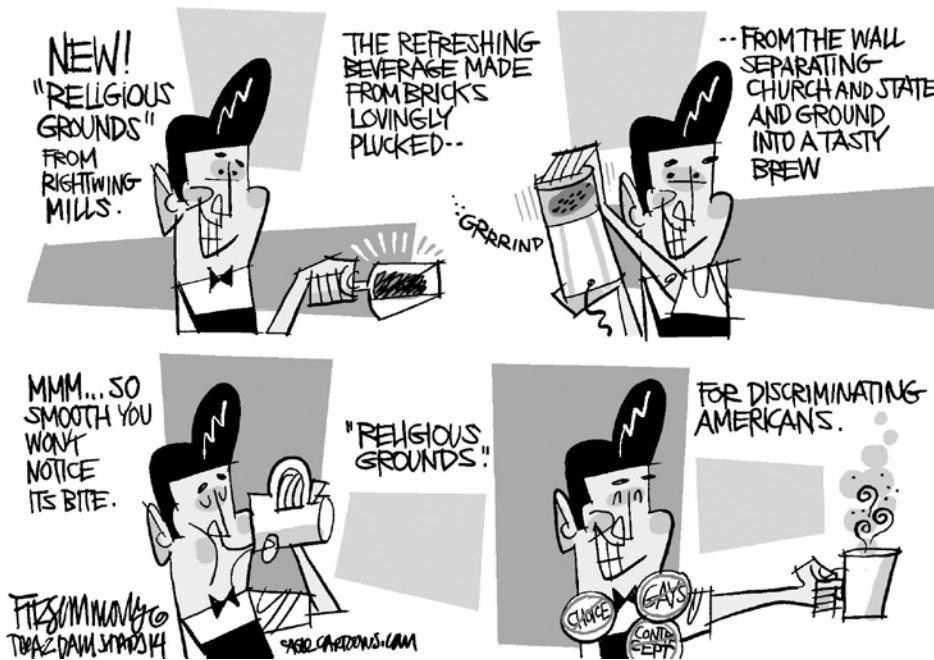
There is much work to be done in both cities to pass these important ordinances. Community members are encouraged to sign petitions and write letters to both their city councils and to the editor of the local newspaper supporting nondiscrimination ordinances. Take advantage of the opportunity for public comment at city meetings, and attend rallies in support of fairness.

Together we can make Bozeman, Billings and other cities across Montana safe and welcoming to all people.

For more information, visit www.FairIsFairMontana.org



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Discrimination, continued from page 1

tion ordinances in place in Missoula, Helena and Butte, and in the works in Bozeman and Billings, simply add gender identity and sexual orientation to the list of protected classes.

That's why it is deeply troubling that some states are facing attempts to pass laws to allow this kind of discrimination in the name of "religious freedom." Arizona Gov. Jan Brewer vetoed one such law, but they remain in the works in other states. Oregon will vote on a similar law this fall.

Whether these laws could stand up in court, however, is questionable. "You have to serve everyone, and that's the way it should be," says Nelson. "That's equal protection."

Just as some business owners are using religion as a reason to discriminate against LGBT people, others are trying to use it to discriminate against their female employees by refusing to provide contraception coverage in their health insurance policies despite the federal mandate that contraception must be included.

That is the case with the craft store chain Hobby Lobby, whose case

on the issue is now being considered by the U.S. Supreme Court. A ruling is expected at the end of June.

This isn't the first time religion has been used to justify denying access to reproductive care, says Brigitte Amiri, senior attorney for the National ACLU Reproductive Freedom Project. Such arguments were recently used by pharmacists who wanted to refuse dispensing contraceptives.

Amiri wrote the ACLU's amicus brief in the Hobby Lobby case. It provides an excellent history of the use of religion to discriminate in the United States, how courts once ruled in favor of such arguments and how they have since firmly denied the constitutionality of such opinions.

One key case in that history is *Newman v. Piggie Park Enterprises*.

"A barbecue owner said 'I refuse to serve Blacks. It's against my religious beliefs,'" Amiri says. "The 4th Circuit Court of Appeals ruled against him. Your religious beliefs don't get to trump anti-discrimination laws."



ACLU Reproductive Freedom Project Attorney Brigitte Amiri

Businesses must follow all laws that protect their employees and the public, she adds.

"If Hobby Lobby were to win, what kind of slippery slope do we go down? Could employers refuse to provide insurance coverage for vaccinations or blood transfusions?" says Amiri. "A loss for Hobby Lobby will send the message that the courts won't tolerate the use of religion to discriminate."

ACLU takes stand for prisoners with mental illness

The ACLU of Montana, on behalf of its client, Disability Rights Montana, is challenging the treatment of prisoners with mental illness at Montana State Prison and the Montana State Hospital.

A year-long investigation revealed a pattern at Montana State Prison of withholding medication, misdiagnosing prisoners with a long history of mental illness, and punishing them for behavior caused by their mental illness.

Prisoners with mental illness are routinely subjected to months or years of solitary confinement and “behavior modification plans” that deprive them of clothing, working toilets, bedding and proper food. This serves only to worsen their illness and cause needless suffering.

In addition, people sentenced “Guilty But Mentally Ill,” and sent to the Montana State Hospital for treatment are routinely transferred to Montana State Prison because Montana State Hospital staff do not want to treat problem patients or they need beds for other patients. These very ill patients have no real opportunity to challenge these transfers from a hospital setting to the prison where mental health care is virtually nonexistent and they are punished for their mental illness.

Making prisoners sicker

“This is about a prison mental health system that is making prisoners sicker,” said Anna Conley, ACLU of Montana staff attorney. “What is happening at Montana State Prison and Montana State Hospital is not only illegal; it goes against common sense. We should be providing mental health care that helps prisoners rather than treating them in ways that exacerbate their condition.”

Constitutional violations and poor mental health practices at Montana State Prison include:

- A pattern of the prison psychiatrist meeting for just minutes with prisoners with mental illness before finding that they are “faking it,” in spite of significant histories of mental illness;
- Refusing to provide prisoners with necessary psychiatric medications;
- Routine imposition of solitary confinement and/or “behavior modification plans” depriving prisoners of clothing, bedding, human contact, a working toilet and proper food as punishment for



Prisoners with mental illness at Montana State Prison are being denied the care they need and treated in ways that worsen their conditions.

- behaviors caused by mental illness;
- “Wellness checks” in solitary confinement that consist of a weekly knock at the cell door where any conversation can be overheard by guards and other prisoners;
- Inadequate mental health staff and training; and
- Providing just 12 mental health beds in a prison with more than 275 prisoners with mental illness.

“It was readily apparent during the investigation that these problems were not isolated incidents. They were part of a pattern of unconstitutional and abusive treatment of prisoners with mental illness,” said Jeff Simmons, an attorney with Foley & Lardner LLP who is assisting the ACLU of Montana. “These people have a right to receive appropriate mental health care and to be free from abusive solitary confinement and ‘behavior modification plans.’”

Working on solutions

We filed a complaint in federal court in March 2014, but would prefer to resolve the issue in a cooperative manner. These are serious constitutional issues, so we are encouraged by the fact that officials at the Department of Corrections have shown a willingness to work with us on solutions. We are in active negotiations with them to make sure that prisoners with mental illness are not subjected to conditions that exacerbate their illness and that they are given the treatment they need to manage their condition and to succeed in prison and the community upon release.

Unfortunately, we have still not heard back from the Department of Public Health and Human Services regarding our concerns about the number of patients declared “Guilty but Mentally Ill” who are being transferred to Montana State Prison, and the manner in which these decisions are made without the input of anyone representing the patients’ interests.

Conservatives: The new frontier in death penalty abolition

In March, I had the privilege of traveling to the Washington, DC-area for the Conservative Political Action Conference (CPAC).

CPAC is an annual political conference attended by conservative activists and elected officials from across the United States. It attracts speakers and authors, including Senators Ted Cruz and Rand Paul; Governors Chris Christie, Bobby Jindal, and Rick Perry; and panels that included Grover Norquist of anti-tax pledge fame.

Conservatives are concerned about costs of the death penalty, over-reaching government making life and death decisions, and the sanctity of life. In states like Montana, abolition won't happen without support from right-leaning legislators and volunteers. That's where Conservatives Concerned About the Death Penalty comes in. Founded in Montana in 2009, CCADP has become a national movement that works to recruit and educate conservative lawmakers, volunteers, and other stakeholders.

I was honored to be shoulder-to-shoulder with fellow Montana Conservatives Concerned About the Death Penalty founder and former State Senator Roy Brown; the founder of the National CCADP movement, Heather Beaudoin; as well as conservatives from Texas, North Carolina, and Georgia. Together, we made up a delega-

tion ready to represent the growing number of conservatives around the country who question the alignment of capital punishment with conservative principles and values.

I was surprised and delighted by the number of people who approached our booth and immediately showed their support and gratitude for speaking up with our concerns with the death penalty. Those who weren't immediately with us spent a couple of minutes talking through fiscal, safety and moral arguments related to the issue. Many began to change their de facto "hard on crime, hard on criminals" thought process and began looking at the death penalty through a skeptical, small government lens. Happily, there were only a handful of hard-lined naysayers. (There will always be those who refuse to have an engaging conversation and just want to do a "drive by rant.")

The more conservatives we bring into the abolition fold, the closer we get to abolishing the death penalty.



Montana Abolition Coalition
Steve Dogiakos
Organizer



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Voting rights victory for Wolf Point

The history of suffrage in the United States, and in Montana, is not a proud one.

Until the ratification of the 15th Amendment to the United States Constitution in 1870, there were no

constitutional prohibitions against denying the right to vote based on race. Even the enactment of the 15th and 19th Amendments did not grant the right to vote to Montana's Indian peoples. Under a decision of the US Supreme Court in 1884, *Elk v. Wilkins*, these indigenous residents were not considered citizens. Indian people in Montana did not achieve the right to

vote until Congress passed the Indian Citizenship Act of 1924.

The State of Montana responded by amending the Montana Constitution to try and disenfranchise Indian Voters, limiting voting privileges to taxpayers. Since most Indians in Montana were still living on reser-

ventions, they were not considered taxpayers and were denied the right to vote.

One of the voting rights that has been frequently denied or diluted for Indian voters is the right to vote in school board elections. These elections are especially critical for Indian Country. The right to a public education is an important civil right under Article X of the Montana Constitution. Article X also recognizes the "distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity."

One of the schools on the Fort Peck Reservation is Wolf Point High School, a school that was created by combining two elementary school systems. Because of the way the high school district was designed, the white minority of voters was disproportionately over-represented on the high school board. The problem was brought to our attention by Ron Jackson, Ruth Jackson, Robert Manning, Patricia McGeshick, Lawrence Wetsit, Lanette Clark, and Bill

Whitehead, all enrolled tribal members living on the Ft. Peck Reservation, and within the boundaries of the Wolf Point High School District.

The ACLU of Montana and the ACLU Voting Rights Project filed suit on their behalf last year in federal district court in Great Falls against the Wolf Point High School Board and the Roosevelt County Superintendent of Schools for violating the 14th Amendment principles of one person-one vote, and we have now been successful in that case.

We negotiated a consent decree that will restore balance to the Wolf Point High School Board, and it was recently approved by the Hon. Brian Morris. Under the terms of the Decree, over the next two years the high school district will be reorganized into five single member districts, with one at-large district. The new district boundaries will allow for fair representation for both Indians and non-Indians on the Wolf Point High School Board.

The ACLU also received a \$137,000 award of fees and costs because we prevailed in the case.



Legal Notes

Jim Taylor
Legal Director

NATION

ACLU

Voting Rights

The ACLU is working to protect voting rights across the country.

In 2011 the Wisconsin Legislature passed one of the strictest voter ID laws in the country, requiring a "License to Vote" (driver's license or state-issued ID), something that a disproportionate number of low-income voters do not have or do not have the resources to easily obtain.

The ACLU and the ACLU of Wisconsin challenged the law in federal court last year, and recently the court declared that the voter ID law violated the federal Voting Rights Act and the Fourteenth Amendment of the Constitution. It found that Wisconsin's voter ID law made it substantially harder for lower-income people to

vote than their wealthier counterparts. The court also concluded that the voter ID law disproportionately harms voters of color.

In one example, Eddie Lee Holloway Jr., an African-American voter could not obtain an ID card from the DMV unless he amended his birth certificate. He went on multiple 12-hour bus rides to and from his birthplace of Decatur, Illinois, to fetch documents needed to amend his birth certificate, which he was told would cost \$400 to \$600 dollars to fix.

The ACLU and ACLU of Ohio are battling the elimination of early voting in the state in the case *NAACP v. Husted*.

State officials forced all 88 Ohio

counties to cut early voting hours down to the lowest common denominator in the name of "uniformity." They eliminated the first week of early voting – the only time Ohioans could register and vote at the same time – and all evening hours, Sundays, and the Monday before Election Day.

A disproportionately high percentage of those who used the early voting opportunities are low-income voters, many of whom are also African American. The ACLU contends that if Ohio is truly interested in "uniformity," they should allow same-day registration, Sunday voting, and evening voting in all counties, but they cannot make it harder to vote.

Erin Espeland

DONOR PROFILE

Dr. Erin Espeland gives to only one nonprofit organization consistently – the ACLU. Why?

“The ACLU is the organization that best reflects my beliefs and my morality,” says Erin.

A long-time member of the ACLU, Erin became particularly perturbed when religious groups mobilized to pass Proposition 8, a ballot initiative opposed by the ACLU that took equal marriage rights away from same-sex couples in California. As the ACLU said at the time, “Religions and their believers are free to define marriage as they please; they are free to consider homosexuality a sin. But they are not free to impose their definitions of morality on the state.”

Erin agreed, and she came up with a creative and principled plan for expressing her own values. She knew that religious groups were often able to shape policy because their

members practiced tithing, providing some churches with the financial means to influence policy. As an atheist, Erin did not belong to a congregation that embodied her values, but she realized, “The ACLU reflects my beliefs 100 percent.” She began giving a portion of her income to the ACLU each year, with a goal of getting up to 10 percent.

Last year, Erin went even further, including the ACLU in her estate plans. “It was super easy to take one of my retirement assets and designate the ACLU as the beneficiary,” she says. “I feel great about this because I have always been impressed by how effective the ACLU is. It is such a principled organization, I support it



Erin Espeland prepares to plant a tree as part of a riparian restoration project along the Yellowstone River.

whole-heartedly and I never feel that I have to compromise my values. It’s good to know that my support is helping the ACLU do even more to affect policy.”

Erin holds a doctorate in ecology and works for the federal government. She lives in Miles City.

MYTHBUSTER: “The ACLU only works with Democrats”

The ACLU is a nonpartisan organization. It does not belong to or endorse any political party or candidate. We support the democratic (little ‘d’) process and every person’s right to be affiliated with any political party of their choosing or to remain independent. Our members are Democrat, Republican, Green Party, Libertarian, and Socialist – from any party or none at all.

During the 2013 Montana Legislative Session we worked with members of both the Republican and Democratic Parties on civil liberties legislation. For example, we worked with both Democrats and Republicans on abolishing the death penalty. We helped Republican Sen. Matt Rosendale draft and secure passage of a bill requiring state and local law

enforcement to have a warrant to use aerial drone footage. And we worked with Democratic Sen. Anders Blewett to get a bill passed to limit strip and body cavity searches.

We don’t care what party you belong to as long as we are working toward the same goal – protecting civil liberties and the Constitution.

The ACLU also fights for the rights of independent and third-party candidates to have equal access to the ballot. Here in Montana, in 2012 we won a key case, *Kelly v. McCulloch*, which struck down the March filing deadline for independent candidates.

We filed the case on behalf of Steve Kelly of Gallatin County, who sought to run as an independent candidate for the U.S. Senate, and Clarice Dreyer, a Gallatin County

resident who wanted to vote for Kelly but was unable to because of his inability to qualify for the ballot.

The federal court ruled that the March deadline was unconstitutional because it cut off independent candidates’ opportunity to run for office 7-1/2 months before the general election, when major party candidates are undecided and before “issues begin to coalesce such that independent candidates with opposing or different views may emerge.”

The decision is important because it helps ensure that our democracy is inclusive and that the electoral process can accommodate all voices – not just those of our two major parties.

The ACLU will always be a non-partisan organization.

Making a difference in people's lives

Victory is sweet, but nothing beats seeing tangible changes arising out of victories. We are happy to see how two cases we settled in 2013; and work from the early part of this year, are helping real people.

Women's Prison

We brought *Fish v. Acton, et al* on behalf of female prisoners denied access to boot camp, a favorable sentencing alternative to incarceration available to men that provides intense programming and substantially shortens incarceration time.

This spring I went to the boot camp and met with the first two female "booters." They both expressed gratitude for the ability to participate in the program and talked about how much they were getting out of it. The boot camp staff told me how happy they were to have female participants, and how well they were doing. The result of hundreds of hours of factual investigation, legal research, drafting pleadings, and settlement negotiations was manifested right before my eyes.

Missoula County Detention Center

In *Chief Goes Out v. Missoula County, et al*, we sued on behalf of juvenile and female prisoners and prisoners in solitary confinement incarcerated at the Missoula County Detention Center. Despite obvious equal protection deprivations, these prisoners were not given access to outside exercise, while mentally-well adult males received it daily. We settled this case to obtain outdoor exercise for the prisoners who were denied it.

This spring we went to the jail to take a look at the new outdoor areas built for juveniles, females and prison-

ers in solitary confinement. A group of women were outside playing basketball in the newly-built open-air recreation yards. When they started to go back inside, several of them turned to us and said "Thank you!" I was filled with the same feeling of deep happiness in seeing the result of hard work that I experienced at boot camp. It says something positive about humanity (and the ACLU of Montana) that a group of people can use their time and money to help others, and succeed in improving real people's lives in real ways.

Downtown Missoula

Government intrusion into our lives has gone too far when cities ban the simple act of sitting on a public sidewalk in a non-obstructive or unintrusive way. Similarly, when cities dictate who can say what and where they can say it, an important line is crossed.

In December 2013, the Missoula City Council passed sweeping amendments to a panhandling ordinance that banned almost everything but shopping in downtown Missoula. After the ACLU of Montana raised constitutional concerns with the amendments and entered into negotiations with the city, the City Council changed its tune. The final ordinance adopted early this year repealed many of the most problematic provisions of the ordinance, including bans on:

- Sitting on a public sidewalk anywhere downtown from 6 a.m.-11 p.m.
- Solicitation after dark
- Solicitation of motorists
- Sitting or lying in tunnels

The City Council also reduced the prohibition on solicitation and sitting near an entrance, vendor, parking lot or sidewalk café from 20 feet to 10 feet.



Anna Conley
Staff Attorney

NATION

ACLU

Clemency

The ACLU has been working for decades on sentencing reform and on obtaining clemency for prisoners unfairly sentenced due to draconian mandatory minimums.

In April we got some great news when the Justice Department and White House announced a new set of criteria for considering clemency petitions from federal prisoners.

"Our federal sentencing laws have shattered families and wasted millions of dollars," said Vanita Gupta, ACLU deputy legal director. "Too many people—particularly people of color—have been locked up for far too long for nonviolent offenses. The President now has a momentous opportunity to correct these injustices in individual cases. If we're ever going to see truly systemic and smart reform of the

federal criminal justice, however, we need Congress to step up and pass the Smarter Sentencing Act."

Clemency Project 2014, a working group composed of the Federal Defenders, the American Civil Liberties Union, Families Against Mandatory Minimums, the American Bar Association, and the National Association of Criminal Defense Lawyers, supports plans to restore integrity to the clemency process.

Candidates eligible for clemency must be:

- serving a federal sentence;
- serving a sentence that, if imposed today, would be substantially shorter;
- have a non-violent history with no significant ties to organized crime, gangs or cartels;

Privacy: The “new black”

Over the decades, the ACLU has become known for taking positions that may be unpopular at the time, but eventually gather more and more support as time goes on. That’s not a surprise, considering that our positions are based on enduring principles that resonate with and are respected by most people, such as government transparency, the right to be left alone, and the freedom to be ourselves without fear of unwarranted surveillance.

These were some of the principles at issue when the national ACLU challenged the federal government’s warrantless domestic surveillance program back in 2008. At the time, very few people knew the extent of the country’s warrantless spying program – in fact, ironically, the United States Supreme Court eventually upheld a dismissal of our lawsuit because the plaintiffs could not prove they were being spied on. Just months after that decision, however, Edward Snowden revealed informa-

At the top of our list are measures to protect electronic communications such as email and internet searches.

tion about the National Security Agency’s surveillance programs that showed our plaintiffs likely were the targets of unwarranted surveillance, along with millions of other Americans.

Here in Montana, that revelation was a bittersweet validation of the work our affiliate has been doing for years to make sure Montana is a leader on protecting privacy. Montana led the way on rejecting REAL ID and the Patriot Act. We pushed back against localities install-

ing cameras to monitor people in public venues without adequate safeguards. And, as the world was learning of the unprecedented reach of the NSA’s surveillance programs, Montanans were still celebrating being the first state in the nation to limit unwarranted law enforcement access to cell phone location tracking data and the second state to limit the use of evidence collected by drones.

Over the last year, support for restricting government surveillance has swelled. We have seen our pro-privacy positions embraced by people all along the political spectrum. Our entire congressional delegation has signed on to the ACLU-supported USA FREEDOM Act to curb domestic spying, candidates of all parties are campaigning on a pro-privacy platform, and requests for us to speak about this issue have come from both sides of the political aisle.

We’re happy to have privacy be the “new black,” so to speak. Over the next year we will be working to update state and federal laws related to consumer privacy and unwarranted surveillance. At the top of our list are measures to protect electronic communications such as email and internet searches, to restrict and safeguard information collected by automated license plate readers and vehicle event data recorders, and to ensure that Montana consumers are informed and in control of how their personal data is collected and used. Look for us around the state this fall as we continue conversations about how Montana can continue to be a national leader on these issues and prepare to pass more pro-privacy measures in the next legislative session.



Policy Update

Niki Zupanic
Public Policy Director

- have served at least 10 years;
- have no significant prior convictions;
- and have demonstrated good conduct.

Digital Privacy

The ACLU is one of over 70 organizations urging President Obama to support an update to our online privacy laws.

Reform of the Electronic Communications Privacy Act (ECPA) is needed to guarantee every American has full constitutional and statutory protections for the emails, photos, text messages, and other documents they send and share online.

ECPA, the main statute protecting privacy online, was written in 1986, and despite Congress’s best intentions, its privacy safeguards have become outdated. The Email Privacy Act would update ECPA by protecting all online communications with a warrant.

Pushback is not coming from law enforcement, but from civil agencies such as the Securities and Exchange Commission (SEC) and the Internal Revenue Service (IRS), who would like to use the bill to enhance their own authority. They’re arguing for a huge loophole that could allow non-criminal investigations into our inbox from everyone from the IRS to the local health inspector.

If you’d like to add your voice to those supporting reform, please visit: www.NotWithoutaWarrant.com.



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Summer 2014

Upcoming ACLU of Montana Events

BILLINGS MEMBER RECEPTION

Friday, May 31

6-7:30 p.m.

1024 N. 31st

Enjoy free beverages, hors d’oeuvres and the opportunity to connect with like-minded civil liberties advocates.

RSVP by May 23

to katyl@aclumontana.org

FAIRNESS FOR ALL FAMILIES RALLY

Saturday, June 7

1-3 p.m.

St Andrew’s

**Presbyterian Church
180 24th St. W, Billings**

Show your support for fairness, dignity and security for all.

Face painting, kite flying, hula hooping and sign making to support the Billings Nondiscrimination Ordinance.

INTERCHANGE PARADE & RALLY

Saturday, June 28

11 a.m.

Downtown Bozeman

Join the ACLU and other LGBT advocates for a parade through downtown Bozeman, followed by a rally and celebration.

Fun and entertainment for the entire family, including Chicks with Sticks and more.