



## Session Marks Victories for LGBT Montanans and Privacy

by Niki Zupanic, Public Policy Director

The 2013 legislative session was full of partisan fireworks, with the tension among legislators at times spilling out in very public ways. The ACLU of Montana, however, has always been a non-partisan organization, and our dedication to focusing on the issues garnered us respect and productive relationships this session. Our efforts resulted in the passage of bills limiting government surveillance, protecting Montanans' informational privacy, and advancing equality for lesbian and gay Montanans. In collaboration with our coalition partners, we also successfully advocated for vetoes of anti-choice and anti-immigrant measures. ACLU of Montana staff testified nearly 100 times on more than 70 bills this session. For more information on each of the bills we took a position on, and for our full end-of-session report, visit [aclumontana.org](http://aclumontana.org).

### Solitary Confinement

We were proud to partner with Rep. Franke Wilmer (D-Bozeman) to bring forward HB 536, the first bill in Montana to prohibit the use of solitary confinement on juveniles or inmates with serious mental illness. The bill also established minimum requirements before any inmate could be placed in solitary confinement.



*It took 16 years, but the Montana Legislature finally passed a bill to remove same-sex relations from the state's definition of "deviate sexual conduct." Here Governor Steve Bullock signs SB 107 into law during a special ceremony in the Capitol Rotunda. Surrounding the Governor are legislators and activists who have worked long and hard to achieve this milestone.*

While the bill died in committee, legislators heard powerful stories and compelling information making it clear that there is no valid reason to subject juveniles or those with mental illness to solitary confinement. The bill's hearing was our first statement in what we hope will be a robust conversation with the legislature about the excessive and inhumane use of solitary confinement.

### Strip Searches

We scored a victory with the passage and signing of SB 194 to restrict the use of strip and body cavity searches. We saw the need for this law last year when the U.S. Supreme Court ruled in *Florence v. Burlington* that law enforcement can strip search any arrestee, regardless of the offense. SB 194, sponsored by Sen. Anders Blewett (D-Great Falls), responds to this disappointing decision by prohibiting law enforcement in Montana from strip or body cavity searching anyone arrested for anything other than a felony unless they have reasonable suspicion the person is concealing a weapon, contraband, or evidence of the commission of a crime.

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**Session Offered Highlights & Disappointments**

To me the most memorable moment of the 2013 Montana Legislative Session was a speech delivered on the House floor on April 8.

Normally I don't spend my time in the galleries watching the debates, but this day I was there to watch the effort to blast SB 107—a bill to strike Montana's unconstitutional law criminalizing gay sex. A "blast motion" requires 60 votes from the House floor to reconsider a bill that has been tabled in committee.

I happened to be perched right above Rep. Duane Ankney from Colstrip when he rose to speak. Ankney, a retired crushing superintendent for Westmoreland Coal Company, served as the chair of the House Appropriations Committee.

"I haven't heard a lot of discussion about rights. This is about rights. These are individuals, they have rights. I raised five kids, oldest is a daughter, and I've got four sons, three of them are veterans. Them four sons would give their last breath for my daughter to live her life in the way she chooses. To say she is any less of a person or to say she is a criminal for her lifestyle, really upsets me. For anybody to feel that way upsets me. I consider myself a good Christian. Because of my belief in God, he dug me out of the days of drunkenness and all sorts of things, so I know the power of prayer and the power of God. I don't think God thinks any less of my daughter than he does of any one of you in here. This bill, the law is an embarrassment on the good people of Montana. It should go away and it should go away as quietly as it can."

With that speech, the dam holding back decriminalizing consensual, adult same-sex relations for 16 years finally broke. But as significant as that victory is, we still have a long way to go in extending the equal treatment and human dignity protections our Constitu-

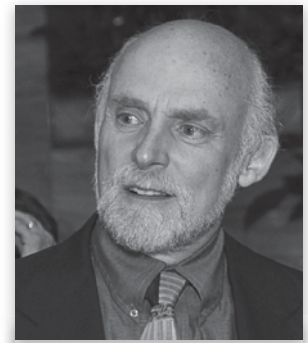
tion provides for all Montanans.

Probably the most disappointing moment of the session for me came when the House Judiciary Committee tabled HB 370—the bill to abolish the death penalty and replace it with life in prison without parole.

House Judiciary was a killing field, stacked with the most conservative members of the House. Despite a very powerful hearing, the committee refused to let the bill advance to the floor for a full debate.

The ACLU and our Montana Abolition Coalition allies worked long and hard over the interim to build significant grassroots support for repeal. We saw a swelling of Republican support in the House, with 12 Republicans signing a letter asking the Judiciary Committee to allow a full and fair floor debate. But with a 61-39 partisan divide, we could not muster the 60 votes needed for a blast, even though we had a majority of the House in our camp to abolish the death penalty in Montana.

Thankfully, the Montana Legislature reconvenes every two years. Next session we'll have more opportunities for victories like the one we saw for lesbian and gay Montanans, and for new victories, like repealing the death penalty.



**Traveling Hopefully**  
*Scott Crichton*  
Executive Director

**RICHARD GILLETTE  
& SUSAN HINKINS**

**DONOR PROFILE**



**We included the ACLU in our future plans because it is now obvious that civil liberties are always threatened by the powers-that-be and that the ACLU is, and will be, necessary forever.**

## Board Service Offers Opportunity to Learn and Give Back

When I first joined the ACLU Board there were several issues I felt strongly about, and board service was a way I could learn, participate, and give back in support of civil liberties. I was interested to learn about the range of issues that both the Montana and the National ACLU support.

Hearing the stories of so many people who have had civil liberty challenges in their lives and knowing that the ACLU has been involved in defending their rights has been an uplifting experience. When we stand up for the civil rights of each of us, we are protecting the rights of all of us in the communities, the states, and the country that we care about.

Through my service on the ACLU Board of Directors, I've had the opportunity to meet a network of committed people from all over the state—many of whom have also joined our board. I am impressed by how they use their talents in multiple ways to make a difference.

As we've held board meetings at various locations around the state, I have met ACLU members who also share our concerns and commitment to upholding civil liberties. Our ACLU staff is an inspiration as they are dedicated and determined in defending the constitutionally guaranteed rights of all of us.

Through my experience on the board, I can see how important the ACLU is now and will continue to be. No matter who is in charge, there will always be times when someone steps over the line, infringing on the Bill of Rights.

We will always need a staunch defender of our civil liberties. However, many U.S. citizens still do not have an accurate idea of what the ACLU is all about. We need to continue our efforts to provide education on our role and the constitutional issues involved.



**From the Board**  
Nancy Nicholson  
President of the Board

## DONOR PROFILE

JUDY HART



**I included the ACLU in my future because I feel that the individual rights and civil liberties of members of my family, my community and those of individuals across the country are being challenged as never before. The ACLU works tirelessly both at the national and local level to defend American rights for everyone; reproductive freedom, racial justice, LGBT rights, women's rights, fair treatment of immigrants, and fighting voter suppression tactics to name a few. As a librarian, I support the ACLU's long-standing history of fighting censorship and protecting intellectual freedom, privacy, and uninhibited access to information. My gift will support all of these efforts for future generations.**

### Montana Law School LGBT Event

Former Montana Supreme Court Justice James Nelson and Constitutional Law Professor Anthony Johnstone led a discussion on April 25 at the University of Montana School of Law about the future for same-sex couples, domestic partnerships and marriage equality in Montana and across the nation. About 50 students and community members attended this lively and informative event, sponsored by the ACLU of Montana Law School Chapter, the OUTlaws student group, the American Constitution Society and the Federalist Society. Pictured left to right: Outgoing Law School Chapter President Nick Hyde, Johnstone, Nelson, Law School ACLU Board Rep Rachel Wanderscheid, incoming Chapter President Selene Christman.







Supporters and people who lobbied for the legislation, surround Governor Steve Bullock as he signs two bills. Left: SB 194 (Sen. Anders Blewett and Niki Zupanic) Right: SB 306 (From left to right—Kim Abbott, Sen. Alan Olsen, Sarah Rossi, Jamee Greer, Kelsen Young, Sen. Mary Caferro, Nichole Griffith, Kim Leighton, Niki Zupanic, and Melissa Barcroft)

**Session Recap, continued from page 1**

**Indigent Defense**

The ACLU of Montana worked tirelessly to persuade lawmakers to provide additional funding for the over-stretched statewide Office of the Public Defender.

OPD attorneys routinely carry more cases than recommended by the American Bar Association, they are paid well below what other state-employed attorneys earn, and they lack the investigative and expert witness resources available to prosecutors. All of this contributes to high attorney turnover and sub-optimal representation of poor defendants.

Despite this year being the 50<sup>th</sup> anniversary of the case *Gideon v. Wainwright*, in which the U.S. Supreme Court ruled defendants unable to afford an attorney must be appointed one, we were not able to convince lawmakers to add funding to OPD’s budget for additional staff attorneys. Instead legislators allocated funding for additional contract attorneys, which we believe will not solve the problem.

**Death Penalty**

As a primary partner in the Montana Abolition Coalition, the ACLU of Montana strongly supported HB 370 to repeal capital punishment and replace it with life in prison without the possibility of parole. Despite being a truly bipartisan bill, the House Judiciary Committee once again ignored the will of Montanans and voted 11-9 to block our effort to repeal the death penalty.

This defeat belies the unprecedented bipartisan support that this session’s bill had. Rep. Doug Kary (R-Billings), Rep. Margie MacDonald (D-Billings), Sen. Dave Wanzonried (D-Missoula), and Sen. Matt Rosendale (R-Glendive) offered courageous leadership as the bill’s primary sponsors. A dozen Republicans and most Democrats publicly supported abolition. Few other issues at the 2013 Legislature generated that kind of bipartisan support.

The diverse voices that spoke out for abolition were encouraging—from murder victims’ family members, corrections workers, faith leaders, a former Supreme Court Justice, and everyday Montanans—and indicated the growing strength of the abolition movement in Montana.

**Immigrants’ Rights**

This session did not see as many anti-immigrant bills as 2011, but two bills did take the wrong approach for Montana.

HB 50 would have prohibited local governments from directing local law enforcement to not spend local resources on federal immigration enforcement above and beyond what they are required to do by law. We also opposed HB 297, which encouraged employers to use an error-filled federal database to check all new hires. The Governor vetoed both of these bills.

**Voting Rights**

Legislators introduced a handful of bills to make it harder for Montanans

to vote this session. Fortunately most failed to pass or were vetoed.

The first, to restrict the acceptable forms of identification a voter can show (HB 108), died in committee. The second, to eliminate Election-Day voter registration and make the last day to register the Friday before the election (HB 30), passed but was vetoed by the Governor. Unfortunately this bill was given new life as a legislative referendum that will appear on the November 2014 ballot.

The ACLU supported HB 397 to revise the filing deadline for independent and minor party candidates. This bill would have addressed a problem identified in our successful case, *Kelly v. McCulloch*, by giving candidates more time to collect the signatures necessary to appear on the ballot. Sadly, the bill died in committee.

On a more positive note, we helped defeat HB 428, which would have allowed counties to require all-mail ballots for all elections. We opposed this bill because it did not provide enough opportunities for those who desire to or need to cast a ballot in person on Election Day due to physical or other limitations.

**Reproductive Freedom under assault**

Legislators introduced companion legislative referenda to several anti-choice bills this year in an attempt to circumvent the Governor’s veto authority. For example, a bill to mandate parental consent for a minor to obtain

an abortion (HB 391) was also introduced as a ballot measure (HB 521).

In that case, the ACLU and other members of the Montana Reproductive Rights Coalition asked Governor Steve Bullock to allow the parental consent bill to become law without his signature, rather than vetoing it. The ACLU and other opponents decided it would be better to challenge the law in court and resolve the issue as quickly as possible rather than running both a referendum campaign against the bill and the legal challenge.

By allowing the bill to become law, the Governor prevented the measure from being placed on the ballot and allowed advocates to file litigation immediately. Given the fact that a less onerous measure was ruled unconstitutional in 1999, we remain confident that this law will be struck down and never enforced.

In better news, a bill to require school districts to obtain parents' permission before teaching sex education (HB 239) was vetoed by the Governor and its companion referendum (HB 423) failed on the Senate floor.

### Keeping Montanans free from digital surveillance

Montanans' right to be free from unreasonable warrantless searches received overwhelming bi-partisan support this session with two ACLU-backed bills becoming law.

SB 196, sponsored by Sen. Matt Rosendale (R-Glendive) will prevent an emerging privacy issue from becoming a problem in Montana by restricting the use of evidence collected by unmanned aerial vehicles. Drones have become much cheaper and much smaller, making them more attractive to state and local law enforcement. To make sure that drones aren't used to spy on Montanans, this law generally requires law enforcement to obtain a warrant before using drone evidence. SB 196 passed in both the Senate and House and was signed into law by Governor Bullock.

We also supported HB 603 by Rep. Daniel Zolnikov (R-Billings), which limits law enforcement access to location tracking information from cell phones and other electronic devices. It passed and was signed into law.

### A historic session for LGBT Montanans

It took 16 years, but the Montana Legislature finally passed a bill this session to remove same-sex relations from the state's definition of "deviate sexual conduct." No one should be declared criminal simply for being who they are, but that's exactly what the old law did—even calling for penalties of up to five years in prison and \$50,000 in fines. The law has been unenforceable since 1997, when the Montana Supreme Court ruled it unconstitutional in the case *Gryczan v. State*, but, session after session, legislators refused to strike it from the books.

It could have been the same this

session if not for the hard work of a coalition of activists, including the ACLU, and overwhelming support from the public. After it passed the Senate, the House Judiciary Committee tabled SB 107. But the ACLU and other supporters did not give up. The bill was resurrected in the House on a procedural motion and ultimately passed 64-35. The signing ceremony was attended by hundreds of supporters celebrating this long-sought victory.

The Legislature also passed SB 306 to include same-sex partners in the state's partner family member assault law. Until now, the law only applied to opposite-sex partners, causing it to be invalidated in state district court last year as a violation of equal protection.

Unfortunately, a bill to add gender identity and sexual orientation to the Montana Human Rights Act (HB 481) did not pass this year. It was killed in the House Judiciary Committee.

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- This gift works with or without a will.
- You can set aside all or a percentage of your account to be distributed as a contribution to the ACLU upon your death. Your gift is only made when you no longer rely on the account for your retirement income.
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## Fair is Fair Steps Up Billings Outreach

The past few months have seen many milestones for supporters of lesbian, gay, bisexual and transgender rights. The Supreme Court heard oral arguments challenging the Defense of Marriage Act and supporting same-sex marriage. Delaware, Minnesota, and Rhode Island both legalized gay marriage. And here in Montana, the law criminalizing gay sex was finally stricken from the books.

But it's been a long road to get here. Fair is Fair is part of both the Montana and nationwide momentum moving gay rights forward. It's a movement that strives to, and must, incorporate people from all walks of life to be successful.

Fair is Fair spring events in Billings incorporated faith, fairness and families and offered opportunities for one-on-one conversations about relationship recognition and nondiscrimination.

We rallied with friends from the local faith community, ally organiza-

tions and local residents on the steps of the Batten Federal Courthouse in support of the repeal of DOMA on March 27 as the case was heard in front of the United States Supreme Court. Holding colorful banners and signs supporting legal recognition of LGBT couples, 60 supporters held a peaceful vigil as cars, buses and bicyclists yelled and honked their support.

In mid-April, we screened the movie "Love Free or Die," a Sundance Film Festival award-winning documentary chronicling Bishop Gene Robinson's 2003 ordination as an Episcopal bishop in New Hampshire. Robinson is the first openly gay member of a mainstream Christian religion to become a bishop. After the movie, he spoke to a packed house at St. Luke's Episcopal Church about the importance

of being an advocate for LGBT rights as a person of faith. During his rousing call to volunteer with our campaign, Bishop Robinson said the reward of working with the ACLU of Montana on this issue was "you get to meet God. The work of social justice is God's work." His presentation in its entirety can be seen on the Advocacy page at [FairIsFairMontana.org](http://FairIsFairMontana.org).

That same weekend, local actors and activists presented a staged reading of "Diversity Day" at Grace United Methodist Church. This original play, written by Gregory Hinton, provides an oral history of the testimony in Missoula's Nondiscrimination Ordinance hearing – an ordinance that the ACLU of Montana was pleased to write and support. At times alternately insightful, humorous, and often painful to listen to, "Diversity Day" gave Billings a look at the harms LGBTQ Montanans face daily and what fairness should look like in our hometowns. Reverend Susan Otey closed the presentation with healing words of reconciliation for the LGBT community.

To wrap up the weekend we invited families to gather for a day of arts and crafts with our allies at Bethlehem Lutheran Church. Volunteers assisted with face painting, creating posters and hula hooping. Kelly Gibson and Denise Boettcher, a plaintiff couple in the ACLU's domestic partnership case, brought their young son and participated with Reverend Eric Thorson, his family and other parishioners.

Two weeks later, Fair is Fair Montana benefited from the musical talents of Eden Atwood, Jeni Fleming, MJ Williams (another plaintiff in the *Donaldson* case) and Craig Hall for a first of its kind musical event in Billings. As a 'friendraiser' for fairness work in the Billings community, the performers provided an intimate evening of music at First Congregational Church.

In addition to gathering signatures of support and gaining many new ACLU members during these public events, we were also able to sign up volunteers for the

upcoming one-on-one conversations we'll be having in Billings during our door-to-door canvassing and phone banking project.

If you would like to be part of our exciting work, please check the volunteer opportunity page at [FairIsFairMontana.org](http://FairIsFairMontana.org). While there, you can sign a statement of support, check for local events, join the ACLU or make a donation to assist us in our outreach across the state.



*Reverend Susan Otey holds a sign during the Fair is Fair rally on the steps of the Batten Federal Courthouse.*



*Bishop Gene Robinson (center) surrounded by local clergy members after speaking at St. Luke's Episcopal Church in Billings.*



## Making Montana Jails Safer

by Anna Conley, Staff Attorney

The Montana Prison and Jails Project continues to work for the safety and civil liberties of prisoners across the state.

We are currently in settlement negotiations in both *Chief Goes Out, et al v. Missoula County, et al.* and *Fish v. Montana Department of Corrections*, two class action lawsuits regarding prison and jail conditions with an emphasis on disparate treatment of female prisoners compared to male prisoners.

In *Chief Goes Out*, the case involves Missoula County's failure to provide outdoor recreation to women and juvenile prisoners. The jail provides that recreation to male prisoners. The *Fish* case challenges Montana Women's Prison's policy of forcing all prisoners to participate in the "Right Living Community" program, which includes forced hierarchies among prisoners and forced participation in daily meetings. No similar programming is required for male prisoners at any facility in Montana. Additionally, female prisoners are denied the opportunity to attend boot camp, a voluntary intensive military-style treatment program that emphasizes education and psychological rehabilitation, and can result in a sentence reduction.

We are gearing up for a second round of summary judgment briefings in *Smith v. Ferriter*, our case challenging the constitutionality of Montana's lethal injection protocol. In the case *In re MSP Conditions (Langford)*, party-appointed experts have found that Montana State Prison is not in compliance with the Americans with Disabilities Act, and we are analyzing our next steps.

In March, we filed an amicus brief in *State v. Madson*, supporting the State of Montana in an important Supreme Court appeal defining the word "prisoner." In that brief, we argue for a broad definition of the term that includes arrestees and pre-trial detainees, both juvenile and adult, and ask that all these groups have equal statutory protection from prisoner assault by police officers and guards.

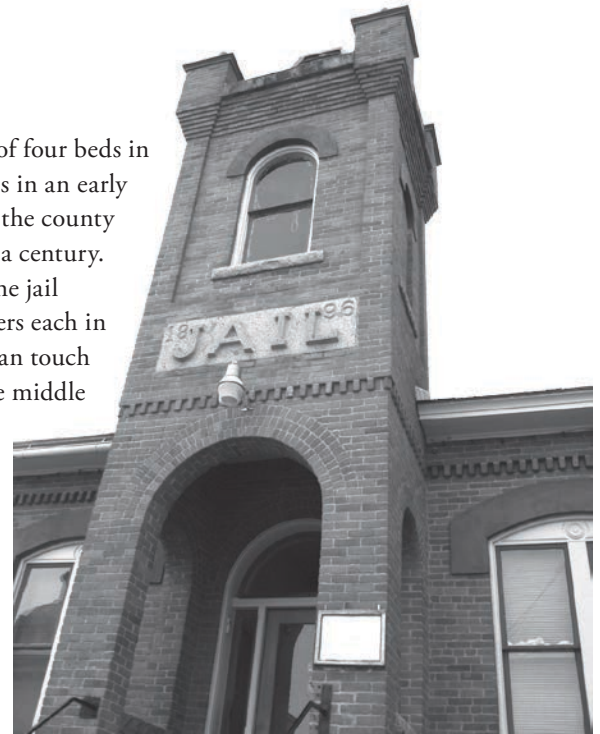
We are continuing to gather information regarding county jails statewide as part of our Rural Jail Initiative. We sent hundreds of questionnaires to prisoners throughout our state, interviewed many prisoners, and toured 17 jails.

A clearer picture of conditions in county jails is emerging, and conditions have improved in many counties we visited. Roosevelt County and Fergus County sheriffs have voiced a willingness to substantially improve conditions.

For example, just prior to our visit, Roosevelt County's jail population went from 32 to 17 when they

removed three out of four beds in each of the five cells in an early 1900s warship brig the county has used for nearly a century. During that time the jail housed four prisoners each in cells so small you can touch both walls from the middle of the cell.

Other counties have made many small fixes that cumulatively will make the lives of prisoners throughout Montana better. Mile by mile, we're making progress.



*The Granite County Jail is one of many ACLU of Montana legal staff toured over the past few months.*

## Native American Voting Rights

by Legal Director Jon Ellingson

The ACLU of Montana has a proud history of fighting for the voting rights of the first peoples of our state with the assistance of the ACLU's National Voting Rights Project, and that work continues today.

Wandering Medicine and his co-plaintiffs filed suit last year against three Montana counties and their election officers asking the court to order each county to establish a satellite election office near main Native American population centers. The county seat of Rosebud County is more than 55 miles from the Native American town of Lame Deer. The Blaine County seat is 21 miles from Fort Belknap and the Big Horn County seat is 13 miles from Crow Agency – both the Native American population centers in those counties.

These distances impose a significant burden on Native Americans as they attempt to exercise their right to vote. The time, effort and expense are facts that cannot be dismissed when compared to the relative ease with which the typical white resident can vote and register in these counties. Same-day registration and voting provisions of our law allow anyone who is eligible to vote, but who has not yet registered, to do both on Election Day, or in the days leading up to Election if they travel to the county election office.

The ACLU submitted an amicus brief in support of the plaintiffs. While one ruling in the case is now on appeal to the U.S. Ninth Circuit Court of Appeals, the remainder of the case will be tried in Federal District Court in Billings. Brief available at [aclumontana.org](http://aclumontana.org).



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Summer 2013

## Pride 2013

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(at the Original Mine)

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