



## ACLU National Legal Director Headlines Annual Meeting *Join Us March 10 in Billings*

A keynote presentation by American Civil Liberties Union Legal Director Steve Shapiro will be the highlight of our annual meeting March 10 in Billings at the Hilton Garden Inn.

### About the Meeting

At the meeting, we will celebrate 40 Years of Freedom for the ACLU of Montana over lunch, panel discussions, and more.

Shapiro's presentation will feature an insider's view of the Roberts Supreme Court. Shapiro directs a staff of approximately 90 full-time lawyers who maintain a large and active docket of civil liberties cases around the country. Those cases cover a broad range of issues, including: free speech, racial justice, religious freedom, due process, privacy, reproductive and women's rights, immigrants' rights, gay rights, voting rights, prisoners' rights, and the death penalty.



*Members turned out for a day of information and inspiration at the 2011 annual meeting in Helena. Join us this year in Billings on March 10.*

Shapiro has been the ACLU's legal director since 1993 and served as associate legal director from 1987–1993. He has appeared as counsel or co-counsel on more than 200 ACLU briefs submitted to the United States Supreme Court.

Shapiro is also an adjunct professor of constitutional law at Columbia Law School, and a frequent speaker and writer on civil liberties issues. He is a graduate of Harvard Law School.

Our annual meeting will also feature our popular roundtable discussions, updates on our legal and public policy programs and what is sure to be a lively and informative panel on campaign finance in the wake of the Citizens United and Western Tradition Partnership cases.

**We will celebrate 40 Years of Freedom for the ACLU of Montana over lunch, panel discussions and more.**

### ISSUE HIGHLIGHTS

|  |  |
|--|--|
| <i>Traveling Hopefully</i> ..... 2                                     | <i>Transitions in Development Program</i> .....7                   |
| <i>Fair is Fair for Montana</i> ..... 3                                | <i>We Couldn't Do It Without You</i> ..... 8–9                     |
| <i>Electing Judges by District Would only Create Injustice</i> ..... 4 | <i>Volunteer Legal Interns</i> ..... 10                            |
| <i>Jon Ellingson New Legal Director</i> .....5                         | <i>Digital Privacy Topic of Conference in Great Falls</i> ..... 11 |

### Please Attend

Please join us and your fellow civil libertarians on March 10 in Billings for lunch, enlightening presentations and conversation and to renew your commitment to justice. Register online at [www.aclumontana.org](http://www.aclumontana.org) or call 406-443-8590.

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This newsletter is published  
three times a year.

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**Political? Yes. Partisan? No.**

I'm always kind of surprised when people make contributions to multiple electoral campaigns but don't see the importance of plopping down a comparable amount to help the ACLU. We take seriously our obligation to help educate whoever gets elected (regardless of their political persuasion) to better understand the constitutional nuances of the day. Your membership dues make that happen.

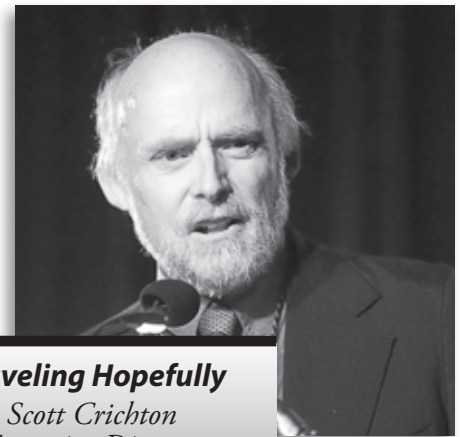
It need not be "either or." It makes good sense to help people get elected who appeal to your core values. It's also a sound investment to support an organization dedicated to the principled defense of liberty. You can do that with both your time and your money. Sign up for our e-alerts, which give you opportunities to weigh in with your opinions to key political leaders. Keep your membership dues current, or become a monthly Union supporter as a Guardian of Liberty. Or, buy gift memberships for those in your circle of friends and family who share your passion for liberty and justice.

**ACLU's Nonpartisan Stance**

It might be helpful to better understand ACLU's non-partisan policies and candidates' positions on key issues and their relevance to civil liberties.

There are several key elements to our national policy on political non-partisanship.

- The ACLU does not endorse or oppose candidates for elective or appointive office. We are happy, however, to visit with any candidate who wishes to be better informed about the constitutional implications of policy and legislation.
- Because the U.S. Supreme Court has a unique and special role under the Constitution in protecting civil liberties, whenever a Supreme Court nomination is sent to the Senate the ACLU will prepare a report for use by the Senate, the press and the public evaluating the nominee. On only two occasions in our 91-year history, has the National ACLU Board opposed a Supreme Court nominee. In 1987, the



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

ACLU called on the Senate to refuse consent to the nomination of Judge Robert Bork and in 2006, they voted to oppose the confirmation of Judge Samuel Alito.

- The ACLU and its affiliates do not make our membership lists available to candidates or to organizations for use on behalf of, or in opposition to, candidates for elective or appointive office, or to organizations whose primary activity involves the election of candidates for political office.

We adhere to these policies for good reason. Popularity and political horse-trading often obscure principled, constitutionally based policy making. To be consistent with our mission of defending the Constitution and the Bill of Rights, we need to be uncompromising in our advocacy, oftentimes finding ourselves with unusual allies along the way.

But that doesn't mean that we don't pay attention to what the candidates say on the campaign trail.

**Liberty Watch**

That's why National ACLU has introduced Liberty Watch – a new way to track the civil rights records of national candidates. You can find it at [www.acluliberty-watch.org](http://www.acluliberty-watch.org). It is funded and operated solely by our political Union arm.

Its sole focus is on how candidates discuss the Constitution and the fundamental laws and liberties of our country.

*Traveling Hopefully, cont. on page 6*

## Fair is Fair for Montana

The ACLU of Montana has been working on a number of fronts to advance the rights of lesbian, gay, bisexual and transgender people, including through litigation, public policy and public education. Here are updates on those efforts:

### Donaldson Appeal and Faith Leaders Amicus Brief

On November 14, 2011, the ACLU of Montana filed its appeal of a Montana District Court decision dismissing the same-sex domestic partnership case, *Donaldson and Guggenheim v. State of Montana*, to the Montana Supreme Court. The appeal argued that the Montana Constitution guarantees fair and equal treatment to all people, including gay and lesbian couples.

Sixty-six Montana clergy representing 10 religious traditions submitted a friend of the court brief in support of domestic partnerships. These clergy lead their congregations through good times and bad, and have a deep and personal understanding of the pain experienced by couples whose relationships cannot be legally recognized. Their legal brief explains that the state's failure to recognize gay and lesbian relationships harms loving, committed couples because it leaves them vulnerable to being treated as legal strangers during times of illness, emergency, or death.

### Fair is Fair Website

Please visit the new Fair is Fair website ([www.fairisfairmontana.org](http://www.fairisfairmontana.org)).

org). Whether you are an LGBT person, a committed ally, or simply someone seeking more information about fairness for all Montanans regardless of sexual orientation or gender identity, we welcome you. Most people in Montana support same-sex domestic partnerships. As we reported in our last newsletter, a recent poll by Greenberg Quinlan Rosner Research found that 53 percent of Montana voters favor allowing gay and lesbian couples to enter into domestic partnerships.

We hope that as we provide more Montanans with the opportunity to understand why relationship recognition is so essential to family security, that majority will grow.

This website is designed to give you the information, tools and motivation you need to help spread the message that fairness is a central Montana value.



*Wills Pitcher and Katie Kemmick celebrate fairness at a Queer-Straight Association meeting at Billings High School.*

### Helena Non-discrimination Ordinance Campaign

The ACLU of Montana was a very active partner in the successful effort to end discrimination in the areas of housing, employment and public accommodations in the city of Missoula, and we are now working closely with the Montana Human Rights Network to pass a similar measure in Helena. The city is working on the ordinance now, and we will actively support those efforts to ensure the passage of an ordinance in Helena to protect LGBT people from discrimination.

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**Disapproval of homosexuality cannot justify invading the houses, hearts and minds of citizens who choose to live their lives differently.**

— Harry A. Blackmun,  
U.S Supreme Court Justice 1970-1994

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## Electing Justices by District Would Only Create Injustice

by Niki Zupanic, ACLU of Montana Public Policy Director



**Niki Zupanic**  
ACLU of Montana  
Public Policy Director

The races for various elected offices this year have already begun to take center stage in Montana voters' minds, but Montanans will also face five measures sent to the voters by the 2011 Legislature. In an end-run around the Governor's veto pen, the Legislature approved five bills that place referenda on the June and November ballots. The ACLU of Montana opposes three of these measures, including a June referendum that would drastically change how we elect Montana Supreme Court justices.

Legislative Referendum 119 would require that Montana Supreme Court justices be elected from seven regional districts instead of statewide.

This would take away Montanans' right to vote for all seven justices, and, instead, voters would only be able to vote for the one justice from their district. And instead of voting for one or more justices every two years, voters would have to wait eight years to vote again on their district's justice. Additionally, the referenda would take away voters' current right to elect the Chief Justice, as under this measure, the justices would select the Chief Justice from among themselves.

So why the changes? Why would Montanans want to give up their ability to vote on the entire slate of justices? Legislators who support the measure claim that voters will be better served by judges who come from small regional districts, just as state legislators do. Call us skeptical, but we believe that the more that we try to make the judiciary resemble the legislative branch, the more likely we are to lose the independence and strength that Montanans need from our judges.

Time and again we have seen that our state's highest court is the backstop against unconstitutional laws and

practices that violate civil liberties and civil rights. Montanans rely on the judiciary to be fair and impartial arbiters of the law who will uphold our constitutional rights with integrity and courage. Every seat on that bench carries with it the responsibility to protect every Montanan's liberties, not just the liberties of the voters in one particular district.

Last November a group of Montanans filed a lawsuit seeking to keep this measure off of the June ballot. The lawsuit cites several flaws, including the fact that it changes the residency requirements for justices in violation of our state constitution. While our state constitution requires that justices reside in the state, this measure would add the extra requirement that justices live in the district from which they are elected. You can't make that kind of a change without amending our state constitution, but proponents decided not to make this referendum a constitutional amendment so that the bill would be easier to pass and place on the ballot.

The lawsuit opposing the referendum also highlights the possibility that candidates selected at the June primary election—on the same ballot as this measure—could then be ineligible for the very seat for which they qualified to run in the general election in November. What a logistical nightmare!

And did we mention the cost? If this measure stays on the June ballot, Montana taxpayers will have to pay an additional \$130,000 to create an extra voter information pamphlet just for this measure.

We look forward to that lawsuit getting a fair hearing in our courts—while they still represent all of Montana—but will be ready to fight this measure at the ballot box, too. Please join us in getting out the word against this dangerous measure.

## Settlement Near in Prison Correspondence Policy Lawsuit

Montana State Prison (MSP) has changed its policy on inmate correspondence in a foreign language in response to an ACLU of Montana lawsuit, and we are close to a settlement.

The ACLU of Montana's Montana Prison Project filed a complaint in summer 2011 on behalf of an inmate who was denied the right to correspond with his family and friends in Spanish, in violation of his 1<sup>st</sup> Amendment right to free speech and his 14<sup>th</sup> Amendment Right to equal protection.

William Diaz-Wassmer has been serving a life term at MSP since 2007. For the first two years of his incarceration, he was able to correspond with his parents, family and friends in Spanish, their native language. But starting in May 2010, he was prohibited from receiving mail in any language but English.

Appeals through the prison's grievance procedure were denied. Prison officials first said that the letters from Diaz-Wassmer's family could not be delivered because the employee who previously translated the letters had left. Later, prison

officials said they had made an exception for Diaz-Wassmer, and all future letters in Spanish would not be delivered to him.

Inmates do not give up their constitutional rights when they enter prison. They still have the 1<sup>st</sup> Amendment right to free expression, and correspondence is part of that right.

Since our lawsuit, prison officials changed their policy to allow letters in foreign languages and are committing to hiring an outside interpreter. We continue to negotiate with Montana State Prison.

## Jon Ellingson Takes the Helm as Legal Director

The American Civil Liberties Union of Montana has a new legal director and Jean Anderson chair—Missoula attorney and former Montana Representative and Senator Jon Ellingson.

“As the Montana ACLU begins its 40th year defending the Bill of Rights, the need for our aggressive advocacy has never been greater,” says ACLU of Montana Executive Director Scott Crichton. “Jon Ellingson has a distinguished career as a lawyer and a policy maker, and we believe he is the ideal person to help propel us into the next decade of our fight for individual rights and liberty. We are delighted to have him join our team and look forward to his help in building and expanding our organization here in Montana.”

Ellingson began his private law practice in Missoula in 1975. From 2004-2010 he worked as an assistant attorney general under Attorney General Mike McGrath and then Attorney General Steve Bullock. He has a bachelor’s degree in economics from Harvard University, a master’s degree in political science from the University of Montana, and his juris doctor degree from the University of California, Hastings College of Law.

He served two terms in the Montana House of Representatives (1994-1998) and then was elected to the state senate where he concluded his legislative career in 2006 serving as majority leader. Term limits prevented him from running for reelection.

During his time in the Montana Legislature, Ellingson was dedicated to protecting civil liberties. He sponsored bills to extend protections in the Montana Human Rights Act to gay, lesbian, bi-sexual and transgender people and worked hard to protect and expand voting rights, includ-

ing sponsoring successful legislation for the same-day voter registration we now enjoy.

“The Bill of Rights of the United States Constitution and the Declaration of Rights of the Montana Constitution articulate not only protections of our individual freedoms but also expressions of our highest ideals and goals for civilized society,” said Ellingson. “During my public career in the Montana legislature I worked to realize these goals and fulfill these ideals. I am delighted to continue this pursuit as legal director of the ACLU of Montana.”

Ellingson inherits, and will expand, the ACLU of Montana’s extensive legal program, including the same-sex domestic partnership case, *Donaldson and Guggenheim v. State of Montana*, the Montana Prison Project’s work to protect the rights of those incarcerated, the voting rights and independent party candidate case *Kelly v. McCulloch* and our work to challenge the state’s lethal injection protocol in the case *Smith v. Ferriter*.

“The ACLU of Montana has been at the forefront of the struggle to advance and protect our civil rights and liberties. Today its work is more important than ever as these rights and liberties are assaulted by a combination of advancing technologies; big government and business, and extreme ideologues,” Ellingson said. “It is a privilege for me to now be able to work with the ACLU as it continues this work for the benefit of all of us.”



**Jon Ellinson**  
ACLU of Montana's  
New Legal Director

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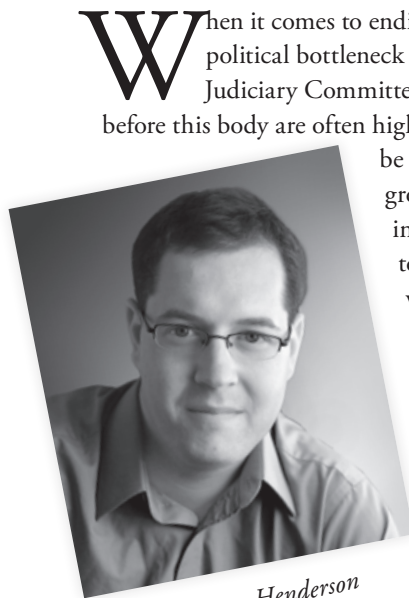
## Jeannette Rankin Civil Liberties Award

About 75 people turned out in November 2011 to honor Helena attorney Ron Waterman with the Jeannette Rankin Award. Not only does Ron (pictured here with his wife, Mignon, and ACLU Executive Director Scott Crichton) defend civil liberties in his private practice, but he has been a valued ACLU of Montana cooperating attorney on cases involving lethal injection, public defense and more. Thank you, Ron.



# Montana Churches Show Unprecedented Support for Abolition

by Denver Henderson, ACLU of Montana Death Penalty Abolition Organizer



*Denver Henderson*

When it comes to ending the death penalty the political bottleneck has always been the House Judiciary Committee. The bills that come before this body are often highly ideological, and it can be difficult to find common ground. Last session we made impressive headway in a very tough environment, but it was not enough. The message is clear; if we are going to get a positive vote out of this committee next session, it is critically important that we build support for abolition at a community level.

One way that we are doing that is by organizing within churches. The ACLU of Montana has long had a good working relationship with the Montana Association of Churches. The state-wide leaders of these traditional, mainstream churches support ending the death penalty (and their general assemblies passed resolutions to that effect), but it also takes an active effort to reach individual members within those congregations.

Last fall we began a pilot program in Methodist churches across the state in hopes of connecting with existing supporters and changing hearts and minds. Utilizing top down support from statewide church leaders and

bottom up support from members within congregations we contacted pastors and encouraged them to host an Abolition Sunday -- a specific date dedicated to educating members about the reality of the death penalty and starting a dialogue in their community. We held events in 18 communities across the state and added more than 50 new contacts to our supporter list. Many of these participating churches were in far-flung rural communities where the political climate is overwhelmingly conservative, but we found the reality in these churches was quite different from what you might assume looking at an electoral map. Montanans of all stripes are receptive to our message.

This spring we are replicating this program in other churches within the MAC family. From Lutherans to Presbyterians to the United Church of Christ and many more, we are organizing a variety of events in these churches. This work will provide a cornerstone for the 2013 push to get the Montana Legislature to end the broken death penalty system.

This is a wonderful organizing opportunity to strengthen relationships with church leaders, and you can help. If you belong to a faith community and are interested in helping us reach your congregation, please contact me. We can tailor our events to meet the specific needs of your community. If your church is already participating, thank your pastor. If not, encourage your church to do so.

*You can reach Denver Henderson at 406-239-3421 or [denverh@mtabolitionco.org](mailto:denverh@mtabolitionco.org)*

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**We take seriously our obligation to help educate whoever gets elected (regardless of their political persuasion) to better understand the constitutional nuances of the day. Your membership dues make that happen.**

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## Traveling Hopefully

*continued from page 2*

By the time you read this, the South Carolina and Florida primaries will be history and more candidates will have dropped by the wayside in the quest for the White House. Still, every day from now until November, candidates will engage in debates about the fundamental principles and policies that guide our country forward.

There's no question that the Constitution will be bent, twisted and misconstrued to fit a candidate's personal views. It has already happened

and it will happen again.

At the Liberty Watch site, the ACLU tracks where each candidate stands on the issues and where their rhetoric doesn't match the facts. The ACLU is determined to make sure civil liberties are at the heart of those debates and that they are represented fairly and accurately.

Please bookmark the site and stay informed and involved in the politics of the day.

Thanks for all you do to protect liberty.

## Transitions in our Development Program

Come early April, we will be saying goodbye to Development Director Claudia Montagne and hello to Kileen Marshall as new development director of the ACLU of Montana.

### Claudia Montagne

Montagne joined the staff in 2007 and has been instrumental in building a vibrant fundraising program that has enabled the ACLU to expand its reach.

“These past five years have been extraordinary for me and for the ACLU of Montana,” said Montagne. “It has been an exciting opportunity for me to experience first-hand the impact of the Strategic Affiliate Initiative on a small affiliate and to create a new development program. I enjoyed the challenge of shepherding our staff and board through broad changes in our fund development practices.

“Most gratifying of all was the chance to get to know so many of our supporters—as board members, donors, and members. If I had to choose

will spend some time helping our new development director, Kileen, transition into her new position.

### Kileen Marshall

Marshall comes to us from the ACLU of Florida, where she headed up the organization’s annual and planned giving program after serving as a field organizer. She is a graduate of the University of Miami.

She will be based in our Missoula office.

“I’m thrilled to be joining the team in Montana,” says Marshall. “After just shy of seven years at the ACLU of Florida, I’m looking forward to the challenge of continuing to grow the Montana development program



**“Since I am not retiring my ACLU membership card, I know that ACLU of Montana will bring us together during the years to come.”**

**—Claudia Montagne**

**“I’m looking forward to working with Montana’s brilliant staff, dedicated board of directors and passionate supporters to continue protecting and advancing civil liberties in the Big Sky state.”**

**—Kileen Marshall**

one peer group with which to spend my time, civil libertarians would be at the top of my list. And since I am not retiring my ACLU membership card, I know that ACLU of Montana will bring us together during the years to come,” she said.

She plans to enjoy retirement traveling, gardening, teaching yoga and paddling rivers.

Montagne will be at our annual meeting in Billings in March, and

others began.

“And on a personal note, the allure of the West, as well as the opportunity to mountain bike, climb, and snowboard is like icing on the cake,” she says. “I’m looking forward to working with Montana’s brilliant staff, dedicated board of directors and passionate supporters to continue protecting and advancing civil liberties in the Big Sky state.”

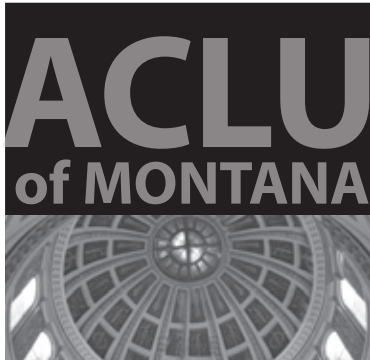


*Kileen Marshall pauses beside the Jeannette Rankin statue in the Montana State Capitol Building.*

## Volunteer Legal Interns Making a Difference

The ACLU of Montana’s legal staff moves mountains protecting civil liberties, but they are able to accomplish so much more thanks to the volunteer support of legal interns.

Two interns are currently working hard to provide legal research, conduct interviews and assist in many other ways – Philip Frandsen and Kristin Bailey. Both attend the University of Montana.



protecting  
civil liberties  
in the state

### Philip Frandsen:

Why did I apply to be a volunteer at ACLU of Montana? There are, of course, the obvious reasons: I am a paralegal student and wanted to experience the practical application of knowledge learned in my classes and wanted to be able to put volunteer experience on my resume.

The ACLU of Montana is both a defender and a bulwark of rights. Examples include defending the right of people to be free from religious intrusion by the state and working for the abolition of the death penalty. I proudly volunteer because we all have rights—and those rights must be defended.



### Kristin Bailey:

As a volunteer paralegal I know that I can help and am excited to support the organization and its mission of protecting personal freedoms.

The advantage of volunteering for the ACLU of Montana is in gaining knowledge and experience with the American and Montana legal systems in which

I hope to work. I am encouraged by the high ethical standards and general activism of the organization’s staff and hope to uphold the same values myself.





## Digital Privacy Topic of April Conference in Great Falls

Ever wonder how much information is collected about you when you cruise the Internet or use your mobile phone? Or what you can do to protect your privacy?

The ACLU of Montana is hosting a conference on digital privacy in Great Falls April 26 and 28 at Montana State University-Great Falls.

Thursday evening's presentation will feature Christopher Calabrese, project counsel for the American Civil Liberties Union's Technology & Liberty Project since 2004.

Calabrese is a graduate of Georgetown University Law School and Harvard University. He has presented on technology and privacy issues to a variety of audiences including regulatory agencies, bar associations, librarians and the public, and has appeared on radio and television programs including CBS Evening News, Fox News and National Public Radio and in stories in the New York Times, Washington Post and Associated Press.



*Christopher Calabrese*

In addition to his communications outreach, Calabrese oversees ACLU legislative and public education campaigns and provides legal guidance on the impact of new technologies on civil liberties. The Technology & Liberty Project is

focused on cutting edge technologies including large-scale databases, communication technology, biometrics, video surveillance, wiretapping, genetics and the Internet.

More details will be announced soon.





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Winter 2012

# 40 Years of Fighting for Freedom

**2012 Annual Meeting  
Saturday, March 10, 2012**

**11:30 a.m. to 6 p.m.  
Hilton Garden Inn  
2465 Grant Road • Billings, MT**

*Keynote Speaker—Steve Shapiro  
Cost —\$25, includes buffet lunch,  
workshops, and one beer/wine ticket for  
cocktail hour*

**Register at [www.aclumontana.org](http://www.aclumontana.org)**

*(See Story on Page 1)*



ACLU National Legal Director Steve Shapiro  
ACLU of Montana 2012 Annual Meeting Key Note Speaker