

# ACLU Montana

## IN THIS ISSUE

DISCIPLINE AND POLICING IN MONTANA'S SCHOOLS

ACLU LAWSUIT GOES AFTER \$2 BILLION BAIL BOND INDUSTRY

PREPARING FOR KEYSTONE XL



FALL/WINTER 2019

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# TABLE OF CONTENTS

**A Message from our Executive Director**

*by Caitlin Borgmann*

**4**

**The Government Wants to Suppress Protests Before They Even Begin**

*by Lillian Alvernaz & Angeline Cheek*

**5**

**From Our Docket: Legal Updates**

*by Alex Rate*

**6**

**Discipline and Policing in Montana's Schools**

*by Kirsten Bokenkamp*

**8**

**Reforming the Harmful and Profit-Driven Bail Bond Industry**

*by Alex Rate & Andrea Woods*

**10**

**Donor Spotlight: Meg McKean**

*by Kileen Marshall*

**12**

**Ending the Criminalization of Poverty**

*by SK Rossi*

**13**

**Thank You for Laughing with Us**

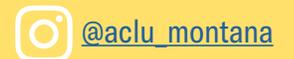
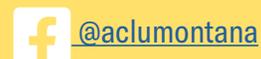
**14**

**Meet Our New Staff**

**15**

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# A Message from Caitlin Our Executive Director



Dear ACLU of Montana supporter,

As always, there's been a lot of exciting work going on at the ACLU of Montana since our last newsletter. I hope these stories give you a window into some of that work. One particular event that I'd like to share with you is the powerful symposium that ACLU staff recently were part of.

On October 11 & 12, I and five other ACLU of Montana staff members traveled to Fort Peck to attend the Oceti Sakowin Environmental Symposium that Angeline Cheek, our Indigenous Justice Organizer, coordinated. Connecting with community members and advocates throughout the weekend was a powerful reminder about the importance of organizing and building relationships. Our work in Fort Peck is premised on the idea that real and lasting change comes from within communities.

While in Wolf Point and Poplar (at the Fort Peck Community College), I gained many insights from individual conversations with community members - from Terry Martinez, the medicine man who offered opening prayers each day, to the Valley County Sheriff, who spoke of wanting to bridge the trust gap between community members and law enforcement, to Chief Judge Stacie Smith of the Fort Peck Tribal Court, who is engaged in exciting initiatives to improve the educational experience of Indigenous students on Fort Peck. (Speaking of education - learn about our newest report on page 8.)

ACLU staff presented one panel on the unique role of legal observing in a protest scenario and another panel about protestors' First and Fourth Amendment rights. They also talked about the ACLU's public records requests (read more about this on the facing page.)

More than 50 people attended workshops or discussions over the course of the summit. These people will be instrumental in preparing for expected protests as big and significant as those at Standing Rock. The summit left no doubt how important the fight against the KXL pipeline is to Fort Peck community members and other Indigenous nations and communities. The ACLU is ready to protect protestors' constitutional rights when construction in Montana begins.

Thank you, as always, for your support.

Caitlin Borgmann

It's the time of year **for giving.**

**Gifts of all sizes make a difference in our important work.**

**Give the gift of freedom and liberty! It's quick and easy at [aclumontana.org/donate](http://aclumontana.org/donate). Thank you!**

# Keystone XL Pipeline: The Government Wants to Suppress Protests Before They Even Begin



By Lillian Alvernaz & Angeline Cheek  
*Indigenous Justice Legal Fellow* *Indigenous Justice Organizer*

In 2016 and 2017, the U.S. government and private security firms hired by oil companies monitored peaceful water protectors opposing construction of the Dakota Access Pipeline on the Standing Rock Reservation. Law enforcement agencies used water cannons, dogs, tear gas, rubber bullets, mace, and concussion grenades on Indigenous protesters and their allies. Journalists were also blocked from covering the protests.

With construction plans for the Keystone XL oil pipeline underway, we're concerned that the extreme, violent, military-style actions used on peaceful Standing Rock water protectors could happen again - this time on and around tribal lands in Montana, South Dakota, and Nebraska.

We're demanding answers about what the government is planning this time around. To find out if the government plans to surveil and undermine protests from Indigenous and environmental activists who oppose Keystone XL, we filed open records requests with the state of Montana. We also partnered with the national ACLU's Speech, Privacy, and Technology Project, which filed similar requests with federal agencies.

The federal agencies more or less ignored our requests for more information. So we sued. As a result of our lawsuit, we were able to learn more.

Sure enough, it appears that the government is working to suppress protests before they even begin. We now know that federal and

state authorities have met dozens of times, and an interagency task team has already convened to plan for KXL protests. In response to some of our questions, the FBI said they can "neither confirm nor deny" what they may be preparing in response to KXL protests - treating potential protests like a top national security secret.

Meanwhile, tribes in Montana, South Dakota, and Nebraska are rightfully worried about the U.S. government violating treaties, and the harms of KXL pipeline construction on tribal lands, sacred sites, and water sources. Treaties signed with the U.S. government are meant to protect the natural resources on tribal lands, but the federal government and corporations are not following them as what they are - the law of the land.

In October, ACLU staff from across the country were part of a first-of-its-kind environmental symposium on Fort Peck where more than 50 people convened to discuss tribal cultures and history, sacred areas, the importance of treaties, the potential harms of the KXL pipeline, and the right to protest.

We will keep fighting to learn what the government may have in store in response to potential protests, and we will continue to support the efforts of tribes and environmental activists in exercising their First Amendment rights.

# From Our Docket: Legal Updates

By Alex Rate  
Legal Director



In addition to our work to reform the harmful profit-driven bail bond industry (see page 10), and protect the rights of Indigenous and other protesters opposed to the construction of the Keystone XL Pipeline (see the previous page), here's the latest from our legal docket.

## Racial Justice/Immigrants' Rights

### Suda and Hernandez v. U.S. Customs and Border Protection

Ana and Mimi, two U.S. citizens, were unlawfully detained by a U.S. Customs and Border Protection Agent in Havre for speaking Spanish. We sued the federal government on their behalf. The CBP must be held accountable. We will continue to fight against racial profiling and unlawful detention.

## Immigrants' Rights

### Ramon v. Lincoln County

Immigration and Customs Enforcement holds - commonly called "ICE detainers" - are requests from ICE to a local jail or law enforcement agency to detain an individual suspected of being in the U.S. without adequate paperwork for an additional 48 hours after their release date. ICE detainers are not only illegal in Montana, they are a form of racial profiling, make our communities less safe, and waste taxpayer dollars. We have two active lawsuits to end these illegal and unconstitutional detainers in Montana.

Our client Augustin Ramon, a dual citizen of France and Mexico, attempted to post bail in order to be released from jail. However, when the bondsman arrived to bail out Ramon, Lincoln County refused to release him because of an ICE detainer. The case

is currently pending before the Montana Supreme Court.

There is no legal requirement that local officers must cooperate with an ICE detainer request - in fact doing so is unlawful. This case seeks a declaration, once and for all, that local law enforcement cannot "re-arrest" an individual and hold them in jail at the request of federal immigration authorities.

## Criminal Justice Reform

### Keefe v. Kirkegard

Steven Keefe was just seventeen years old when he was sentenced to life without parole. Since he was convicted, the U.S. Supreme Court has ruled that life without parole sentences for juveniles are unconstitutional. We filed a petition for habeas corpus relief for Steven asking a district judge to reconsider his sentence. Unfortunately, the judge upheld Mr. Keefe's original sentence. We appealed, and the case is currently pending before the Montana Supreme Court. When sentencing juveniles, our society must consider their social development at the time of their crime.

### Disability Rights Montana v. Batista

In 2014, we filed a case challenging the treatment of mentally ill incarcerated people at the Montana State Prison. Subjecting seriously mentally ill people to solitary confinement as a means of treatment violates the Eighth Amendment. These individuals are also routinely denied access to medical care for their mental health needs and are disciplined for behavior that is a manifestation of their mental illness. This summer the Ninth Circuit Court of Appeals ruled in our favor and sent the case back to

federal district court for a trial. Our goal is to ensure that prisoners who are already suffering as a result of mental health issues are not relegated to solitary confinement, where their condition will only further deteriorate.

## Reproductive Freedom

### Weems et al. v. State

Our clients, Helen Weems and Jane Doe, are challenging a Montana law that prohibits their right to practice abortion care as Advanced Practice Registered Nurses. The state district court ruled in our favor, preventing the law from being applied to our clients while the lawsuit is ongoing. The Montana Supreme Court affirmed this ruling. Significantly, the Montana Board of Nursing recently reiterated its position that it is up to each APRN to determine what is in the scope of their practice based on their individual training and experience. The Board of Nursing thereby reaffirmed that qualified APRNs can competently and safely perform abortion procedures. The case now proceeds in district court, and our goal is to ensure that all Montanans have access to safe and effective abortion procedures from a health care provider of their choice.

## LGBTQ Rights

### Maloney v. Yellowstone County

Eleanor Anderson Maloney was denied gender affirming healthcare by her employer,

Yellowstone County, because she is trans. We filed a sex discrimination complaint under the Montana Human Rights Act and received a preliminary ruling in her favor. The ruling found "reasonable cause" to believe that Yellowstone County discriminated against Eleanor. We expect the Human Rights Bureau to hear the case in March 2020. If Eleanor wins, this would be a step forward to protecting trans and non-binary people against discrimination in the workplace under Montana state law.

## Freedom of Religion

### Espinoza v. Montana Department of Revenue

In 2015, the Montana legislature passed a bill allowing families to claim a tax credit for sending their children to private religious schools. The Montana Constitution explicitly prohibits public aid to religious schools. We filed a friend-of-the-court brief in support of the Montana Department of Revenue in its case in front of the Montana Supreme Court. In a victory for the separation of church and state, the Montana Supreme Court held that the no-aid provision of the Montana Constitution bars this diversion of public funds to support private religious education. The United States Supreme Court will consider the case this term. Once again, we will file a friend-of-the-court brief in an effort to convince the Court that it should prevent excessive entanglement between church and state.



# Discipline and Policing in Montana's Schools

## Indigenous Students Disproportionately Pushed Out

By Kirsten Bokenkamp  
Communications Director



Faith, an Indigenous student, was 13 years old when she received her first out-of-school suspension. This was the first of 20 suspensions for minor incidents she received as a student. Once, it was for hugging her boyfriend too long. Another time, because she was eating crackers in the hallway.

Montana's public-school system denied Faith's fundamental right to an education by removing her from the academic setting for typical adolescent behavior. Unfortunately, Faith's experience is not unique.

In our new report, *Empty Desks: Discipline & Policing in Montana's Public Schools*, we document school-based referrals to law enforcement, arrests, and the "days lost" due to out-of-school suspensions. These practices harm students, our communities, and our state. Students across Montana – in elementary, middle, and high schools – lost more than 18,000 days of instruction due to out-of-school suspensions during 2015-16 alone. They were referred to law enforcement more than 1,100 times and were arrested 326 times.

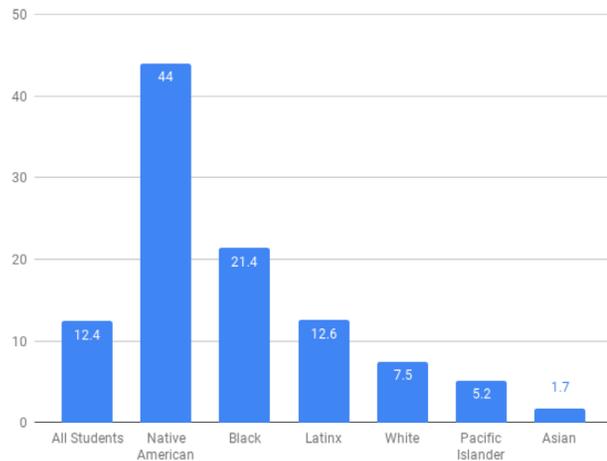
### Disparities in Discipline and Interactions With Police

- Indigenous students experienced the highest disparities: they lost nearly six times the days of instruction as white students and were arrested more than six times as often as white students.
- Black students lost nearly three times the days of instruction as white students.
- Latinx students lost 1.5 times the days

of instruction as white students.

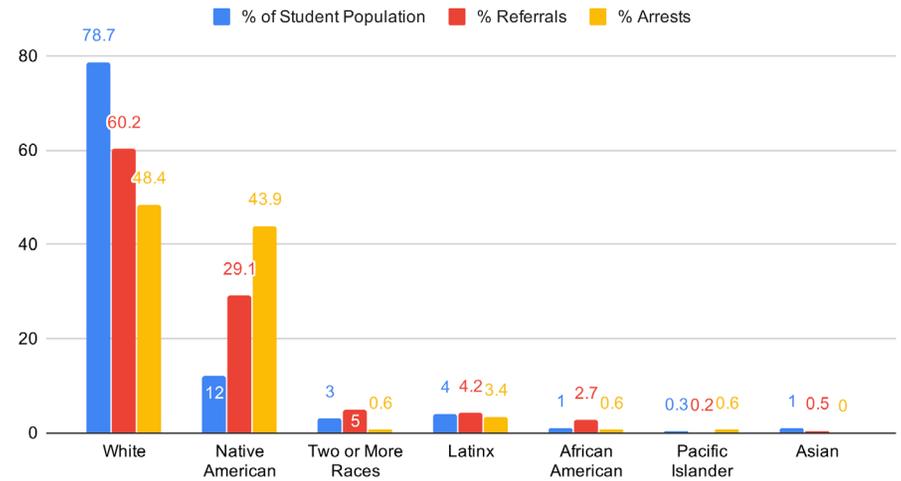
- Students with disabilities lost more than twice the days of instruction as students without disabilities and were arrested twice as often as students without disabilities.
- Students on reservations and students who attended schools with the regular presence of law enforcement officers lost more days of instruction than their peers.

Days Lost/100 Students



While the data doesn't show the stated reason for the out-of-school suspensions, referrals, and arrests, the numbers – and the disparities – are clear and troubling.

Percent of Student Population, Referrals and Arrests



Schools should be a supportive and safe space for all students to learn. Too often, however, students are forced out of school. This matters: students who experience exclusionary discipline are less likely to graduate from high school and more likely to be unemployed and ensnared in the criminal justice system. When students are forced out of school, it's costly to our communities and state, but more importantly it robs students of their right to an education.

### The Harm to Indigenous Students is Compounded by the Legacy of Colonialism

Exclusionary discipline and interaction with law enforcement harm all students. That harm is compounded for Indigenous students. Indigenous communities continue to endure historical trauma and economic and social disparities from a long history of discrimination and brutality under colonization. We must bear this history in mind when examining how exclusionary discipline and over-reliance on police in schools affect Indigenous students.

### Montana's Schools Lack Mental Health Staff

Nationwide data show that schools that employ school counselors, social workers, nurses, and psychologists see improved attendance rates, lower rates of exclusionary

discipline, improved graduation rates, and improved school safety. However, as you can read in our report, many Montana schools do not meet the recommended ratio of school-based mental health staff, including nurses, social workers, psychologists, or social workers. About 12 percent of Montana's schools do not have any support staff at all.

### Montana Must Move Away From These Harmful Practices

In better news, about half of Montana's public schools did not give students out-of-school suspensions. Just 33 schools accounted for all of the arrests that occurred in Montana's schools. This suggests arrests and suspensions are not necessary components of managing student behavior.

Many schools in Montana have already implemented programs that help students stay in the classroom, and ultimately succeed. All of Montana's schools should use evidence-based practices that create better outcomes for all students. Our report includes detailed recommendations for state lawmakers, school administrators, educators, school boards, and students and guardians. Check out the report on our website and learn how the schools in your area are doing when it comes to discipline and law enforcement.

# Legal Spotlight:

## Reforming the Harmful and Profit-Driven Bail Bond Industry

By Alex Rate & Andrea Woods  
Legal Director & ACLU Staff Attorney

On Sunday, April 23, 2017, around 9:20 p.m., Eugene Mitchell, Shayleen Meuchell, and their four-year-old daughter were in bed at their home in Lolo, Montana, when they heard a violent crash.

“It sounded like a truck had driven straight into our house,” Mitchell said.

In a surreal flash, armed bounty hunters kicked in the front door, broke into the bedroom, pointed assault rifles and pistols at the family, and shouted at them not to move.

The bounty hunters terrorized the family. But the trauma and harm did not end there.

The bounty hunters arrested Mitchell, drove him to another county about an hour away in handcuffs, and eventually surrendered him to

the jail, all despite not having a valid warrant for his arrest. The entire family remains shaken by the experience, and the damage to their property—which they cannot afford to fix—has caused a dramatic increase in their utility bills.

**“The bounty hunters terrorized the family. But the trauma and harm did not end there.”**

The bounty hunters were sent to arrest Mitchell not by police; they were hired by a bail bondsman. That past January, Mitchell was in jail related to a charge of driving with a suspended license. He could not afford his \$1,670 bail, so he used a commercial bail



Pictured left to right, Brooklynn Mitchell, Shayleen Meuchell, and Eugene Mitchell

## The Bail Bond Industry Has Got to Go

Only the United States and the Philippines allow a commercial bail industry to exist. The commercial bail industry profits off people faced with the impossible choice between sitting in jail or entering coercive contracts with bond agents. Furthermore, the industry fortifies structural racism. People of color—particularly women of color—suffer the worst financial harms. And these companies are a roadblock to positive change: they employ lobbying groups to spread fear-mongering misinformation, attempt to stymie reform, and to preserve their fiscal bottom line.

The for-profit bail industry harms millions of people across the country while large corporations rake in the dough. The most recognizable presence of the industry is the estimated 25,000 local bail agents around the country going to jails, entering contracts with arrested individuals, and bailing them out. But, the large insurance companies (nine primary corporations) are the ones that make an estimated \$2 billion in annual profits by keeping

bondsmen to secure his release, return to his family, and return to work to support them. When Mitchell accidentally missed a court date that April, his bail bondsman immediately activated a network of bounty hunters to search for and apprehend him.

**“All this was over a small bail bond related to minor misdemeanor charges.”**

The bounty hunters staked out the family’s home for two days prior to the attack while Mitchell was out of town doing construction work. During that time they frightened Meuchell—who was home alone with their two small children—and held a friend and her daughter up at gunpoint when they stopped by the house.

All this was over a small bail bond related to minor misdemeanor charges.

Unfortunately, Mitchell’s story is far from

just one percent of the total bail bonds backed across the country. These huge companies face little to no financial risk to themselves. Rather, they require bail bonds businesses to shoulder any costs or losses. This means that even a single forfeiture—where the court keeps the full amount of bail deposited, usually because an individual missed a court date—could put a bail bonds agent out of business. These high stakes from insurance companies push bail bondsmen to resort to extreme measures, including using bounty hunters to protect against financial losses.

The exploitation insurance companies perpetuate depends on our abusive money bail system. And our punitive, dysfunctional bail system is the key driver of our mass incarceration crisis. We don’t need profit motives to ensure a fair and safe pretrial justice system. In fact, actual “fugitive” status is incredibly rare, and the majority of people present no threat of violence if released pretrial.

isolated. In fact, it is common. The use of for-profit bail for release from jail has skyrocketed over the last 30 years. Across the U.S. today, roughly 440,000 people—70 percent of people incarcerated in jail at any given time—are there pre-trial, often because they can’t afford to pay for their freedom. Predatory and exploitative behavior on the part of bail bond agents is not only widespread throughout the country, but is directly incentivized by the for-profit bail industry.

As part of our work to end mass incarceration and the criminalization of poverty, and to fight racism in the criminal justice system, the ACLU envisions a pretrial justice system that ensures speedy—and free—release to nearly everyone. There is no room for predatory profit motives in the world we’re working towards. That’s why we are fighting to eliminate the for-profit bail industry and suing to hold companies accountable for what they did to Mr. Mitchell and his family. They deserve justice, and the system needs to change before it harms even more people.

# Donor Spotlight: Meg McKean

**Our Director of Philanthropy and Strategic Initiatives, Kileen Marshall, sat down with donor Meg McKean to learn more about who she is and why she gives.**



## Tell us about yourself.

I grew up in Naples, Florida, and Billings, Montana. I graduated from college this past May. The combined small, liberal arts schools of Hobart and Williams Smith Colleges are in upstate New York and the schools' mission statement is "leading a life of consequence." The past four years have shaped my ideas of being engaged in the world and thinking through a global lens. During college I studied abroad in Senegal and Ireland, which further sparked my interest in learning about women's experiences, connection, conflict resolution, and more. In my free time, I love to read, travel, cook, and eat - and generally learn about people and different cultures.

## What do you feel passionately about?

*Compassion. Tolerance. Fairness. Freedom.* It's so important to really listen to people who we don't necessarily agree with. Of course it's challenging sometimes, but part of debate is not always agreeing. Beyond this, I believe listening is the only way to spark lasting change for the better.

## I hear you have developed a mission statement for your life. Want to share it with world (or at least ACLU readers in Montana)?

I developed a mission statement to help me

think through the values I want to live by. I strongly believe in caring for each other and the environment. I hope to create change in how we treat our planet and one another and build a better future for generations to come. My principal mission is to support non-profit organizations focused on human rights, women's rights and health, and the environment. So for me, these three topics (especially in a time when climate change is real, but not always acknowledged) are what drive me. It helped me decide what to study, what organizations to get involved with, and where to donate my charitable giving dollars.

## When did you first hear about the ACLU?

I think I probably heard about the ACLU at some point during high school, but I didn't know more until after the 2016 elections. The ACLU's response to the Trump Administration over the past several years - with the Muslim Ban, family separation at the border, constant assaults on abortion access, and more - really caught my attention. It took the current presidency and surrounding cultural trends to spark my feeling of "no more sitting on my hands, I really have to do something."

## Why do you donate time and money?

Donating time and being present with boots on the ground is important; and money is also important. I truly believe that if everyone donates what they are able to, that it adds up really fast. It's not always going to support the glamorous, shiny new project; sometimes it might just go towards keeping the lights on. Nonprofits are organizations that pool expertise, resources, and people to make a change in society - and they rely on monetary donations to exist and function. I also firmly believe that where you put your money says a lot about what you value. Donating money is not the only way to help, but it is certainly a powerful way.

## What's next, Meg?

I'm moving to Portland! I'm currently on the job market and am excited to see how I can put my interests and passions to work.

# Ending the Criminalization of Poverty

By SK Rossi

*Advocacy and Policy Director*

In 2018, the ACLU of Montana published *Set Up to Fail*, an in-depth look at Montana's probation and parole system. Our work to end the criminalization of poverty is informed by the findings in that report and our ongoing conversations with formerly incarcerated Montanans. While we expected some of the findings - racial bias in the system, apathetic probation officers - we did not expect to hear so clearly from formerly incarcerated people that mental health and substance use disorder treatment would have made the greatest difference in their ability to succeed on supervision and avoid recidivism. Montana must start thinking creatively about the gaps that exist and the state's obligation to fill them.

Creating a continuum of services will relieve the strain on local governments, reduce recidivism, lower jail and prison entry rates, and make our communities and families healthier and more stable. While Montana does have a number of in-patient mental health and substance use treatment options and a variety of low-intensity outpatient treatment options, those services must be expanded for people who are poor or who are involved in the criminal justice system. Perhaps most concerning is something we have heard time and again from stakeholders including judges, prosecutors, defense attorneys, and social workers: there are too few services in place between inpatient treatment and low-intensity outpatient treatment. Intensive, out-patient treatment should be combined with peer support, housing assistance, employment counseling, and other social services to ensure that people who have completed inpatient treatment do not fall through the



cracks as they try to re-enter their communities and stabilize their lives.

This investment would reduce the number of people in our criminal justice system and reduce homelessness - many people are homeless because their criminal history and untreated disorders don't leave them another option. The ACLU of Montana has been working with the law and justice interim committee in an effort to expand mental health and addiction treatment for formerly incarcerated people. We've been connecting directly impacted community members with the lawmakers who need to hear their stories and who can make a difference. And we're working with key stakeholders and coalition partners who see the connections between

**"...mental health and substance use disorder treatment would have made the greatest difference in their ability to succeed..."**

the criminalization of poverty, ending mass incarceration, creating accessible services, and building healthy, safe communities.

The 2021 legislative session might seem far away, but some of the most important work is happening now. As always, we appreciate your support and need your help. Interested in volunteering? Sign up on our website ([aclumontana.org/volunteer](http://aclumontana.org/volunteer)) to learn more.

Thank You  
for Laughing with Us



You came, you saw, you *Dared to Laugh!*  
And we thank you for it.

In September, we teamed up and toured around the state with the award winning Broad Comedy troupe and local comedian extraordinaire Lenny Peppers to bring awareness to the important issues the ACLU of Montana works on, and to bring some comic relief in these challenging times.

Lenny Peppers performed a provocative stand-up set that made people squirm and giggle in equal measure. Katie Goodman's Broad Comedy troupe did not fail to impress. Whether singing about anti-gay attitudes, reproductive rights, intersectionality, or the environment – the Broads took on heavy topics with levity and humor. And, wow, we heard you laugh!

Thank you for packing the house in Whitefish, Missoula, and Bozeman. Your support means everything to us.



## Meet Our New Staff Introducing the Newest Member of the ACLU of Montana Team

Angeline Cheek • *Indigenous Justice Organizer*

*Han Mitakuyepi chante washte napechiyuzapi, Angeline Cheek emachiyapi na lakhol chaze mithawa kin Tate Ska Washte Win. Ina waye kin Angela Snell-Cheek emchiyap na ate waye kin Clifton Cheek emachiyap. Wahcina oyate ematahan.*

My relatives I greet you with a heartfelt handshake. My name is Angeline Cheek and my Lakota name is White Wind Good Woman. My mom's name is Angela Snell-Cheek and my dad's name is Clifton Cheek. I'm from the Fort Peck Reservation.

Angeline Cheek is a Hunkpapa Lakota and Oglala Sioux activist and community organizer living on the Fort Peck Reservation.

Angeline has been a social justice activist since she was a teenager. Prior to joining us in 2019, Angeline's track record of fighting against injustice and civil rights violations in her community includes organizing prayer walks across the reservation and in the surrounding area, community walks in opposition of drugs/alcohol, and suicide prevention. She is passionately opposed to the Keystone XL Pipeline, after the boom of the Bakken oilfield brought meth, crime, and missing persons cases to her community in its wake. Aside from the negative environmental impact that a pipeline would bring to her homelands, she warns against the effects of "man camps," the temporary housing facilities that accompany resource development projects – like oil pipelines. Man camps often bring unwanted drug and human trafficking to rural communities and directly contribute to a rise in violence and

the epidemic of Missing and Murdered Indigenous Women. She helped develop a community safety plan, including an Early Warning System, on her reservation – one of only two in the nation – that benefits people of all ages, not just juveniles.

Angeline also works to address the education inequality Native students face. She formerly worked as a Native Student Advocate in Wolf Point Schools. As a student in Brockton schools, she organized to help students get new clothes and school supplies.

She is an alumna of Fort Peck Community College where she graduated with honors earning an Associates of General Studies/Elementary Education degree. She attended Montana State University - Bozeman and Black Hills State University pursuing a Bachelors of Education degree. With just Student Teaching left, she took a break from college after her grandmother passed away. She is currently pursuing a Bachelor's degree in Criminal Justice. Among other positions, Angeline has previously worked with Indian People's Action, Ft. Peck Tribes Education Department, the Fort Peck Juvenile Detention Center, Native HOPE, and was a Be Under Your Own Influence Campaign Board Member.

In all of her work, Angeline relies upon foundational Lakota cultural teachings and ways of knowing. In her journey, she thanks and appreciates everyone who has come together in a good way for the people.



# GIVE THE GIFT OF FREEDOM & LIBERTY

The ACLU of Montana works in the courts, the legislature, and communities to defend and preserve individual rights and liberties. Your generous donation helps us stand up for the principles of equality, justice, liberty, and democracy.

**Make a gift today!** You can send us your tax-deductible gift by using the envelope provided or by going to: [aclumontana.org/donate](https://aclumontana.org/donate).

Thank you!

