

ACLU Montana



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Updates from our Legal Department
New Public Safety Coalition

FALL/WINTER 2020

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A MESSAGE FROM CAITLIN

OUR EXECUTIVE DIRECTOR



Dear ACLU of Montana Supporter:

For ACLU staff and those who share our values on numerous civil rights and civil liberties issues, the election of Greg Gianforte as Montana's next governor is sobering. We know his track record when it comes to reproductive freedom, LGBTQ equality, immigrants' rights, and services and treatment for Montanans with mental health issues or substance use disorders. We've heard his disparaging and racist remarks about Indigenous people. We've seen the hundreds of thousands of dollars he's sent to anti-LGBTQ hate group Alliance Defending Freedom.

Governor-elect Gianforte's stances on many issues are not aligned with the ideals that many Montanans hold dear. But now is not a time to give up. Indeed, our resolve to help realize a freer, fairer, and more compassionate Montana is stronger than it ever was. In the short-term, we will work with our members and partners to hold current lawmakers and Governor-elect Gianforte accountable to the people who live in Montana. Check out page 10 to learn what is on our legislative agenda for the upcoming session.

Political processes have never been adequate to protect people's rights. That is why the ACLU was formed and that is why this organization remains more important than ever. Our work protecting civil rights and civil liberties and moving Montana towards the ideals of social and racial justice goes far beyond one election or one legislative session. In the long-term, regardless of who holds power, the ACLU will continue our work to create a Montana in which everybody is treated with dignity and respect and has equal access to rights and freedoms. We've had some recent successes, highlighted in our legal update on the following page.

Our work isn't about one person. It isn't about one party. It's not about taking sides. It's about all of us, coming together to make change happen. We will never back down until We the People means just that.

Thanks for sticking with us and supporting our work.

In solidarity,

A handwritten signature in black ink, appearing to read 'Caitlin', written in a cursive style.

UPDATES FROM OUR LEGAL DEPARTMENT

By Alex Rate
Legal Director



Indigenous Voting Rights

About a month before the election, in a victory for Indigenous voting rights, a Montana court permanently struck down a state law that severely restricted the right to vote for Indigenous people living on rural reservations.

We filed *Western Native Voice v. Stapleton* back in March, together with the Native American Rights Fund (NARF) and the national ACLU, on behalf of Western Native Voice and Montana Native Vote; and the Assiniboine & Sioux Tribes of Fort Peck, Blackfeet Nation, Confederated Salish and Kootenai Tribes of the Flathead Reservation, Crow Tribe, and Fort Belknap Indian Community.

Indigenous people have historically been and continue to be disenfranchised. The Ballot Interference Prevention Act (BIPA) was yet another barrier standing in the way of Indigenous people exercising their fundamental right to vote and fully participating in our democracy.

Here's why: BIPA imposed severe restrictions on ballot collection efforts that are critical to voters living on rural reservations. In a state where the majority of individuals vote by mail, rural tribal communities work with get-out-the-vote organizers. These organizers collect and transport ballots to election offices that would otherwise

"Ensuring that all voters have access to the polls is a foundational component to our democracy, and we are pleased that our organizers can continue their get-out-the-vote and ballot collection efforts on every reservation in Montana. The excellent result in this lawsuit shows what can happen when organizations, individuals, organizers and tribal governments come together."

**Marci McLean, Executive Director,
Western Native Voice**

be inaccessible because of distance, lack of access to transportation, or other socio-economic barriers.

Want to learn more? Head over to

INDIGENOUS VOTING RIGHTS

VICTORY!



our YouTube, [youtu.be/
FZKYBCC0b3w](https://youtu.be/FZKYBCC0b3w), to hear from
Western Native Voice organizers!

• • •

More recently, less than a month
before the election, we partnered
with NARF once again to protect
Blackfeet tribal members' right to
vote.

After Pondera County refused to set
up a satellite office on the Blackfeet
Reservation, NARF and the ACLU of
Montana brought a federal lawsuit
against the county.

Pondera county's failure to establish
a satellite office discriminated
against Blackfeet tribal members
because there would have been less
opportunities for tribal members
than white citizens to vote and elect
candidates for federal, state, and

county offices. The county did not
have a compelling reason to deny
a satellite office on the Blackfeet
Reservation in Heart Butte, which
is 93.7% Native American. In fact,
the county already had established
an in-person satellite office in
Conrad, which is 95.1% white, off
the reservation, and nearly 80 miles
from some Blackfeet tribal members.

Days after the lawsuit was filed,
Pondera County agreed to set up a
satellite office on the reservation.

Forcing Blackfeet voters to travel to
Conrad for the only in-person voting
option was an assault on tribal
members' right to vote and would
have disenfranchised an entire tribal
community. It's shameful that it took
a lawsuit for Pondera County to do
the right thing, but we are glad that
Blackfeet tribal members had an

opportunity to register and vote.

We are proud to have partnered with NARF on these important cases. Even as we celebrate these victories, we recognize that Indigenous people are systematically disenfranchised. We will continue our work to ensure that the state of Montana moves toward a reality in which all eligible voters have the opportunity to cast their ballot.

Gender Identity is Protected by the Montana Human Rights Act

This summer we received a victorious ruling: the Montana Human Rights Act clearly and unequivocally protects transgender, non-binary, and two-spirit Montanans against discrimination.

In 2018, we filed a complaint with

the Montana Human Rights Bureau on behalf of Eleanor Andersen Maloney, a transgender woman who was denied health care coverage for medically necessary gender affirming care under Yellowstone County's Health Insurance Plan.

In August, an Administrative Law Judge with the Montana Department of Labor and Industry found that in denying Eleanor health care coverage, Yellowstone County unlawfully discriminated against her. This ruling clarifies that people who are transgender belong to a protected class on the basis of their sex.

There's more good news: Building on the U.S. Supreme Court's recent ruling in the ACLU case, *Stephens v. Harris Funeral Home*, this ruling means that transgender and non-binary Montanans are protected



A crowd peacefully demonstrates in front of the U.S. Supreme Court on October 8, 2019 at the start of the Stephens oral arguments.



Eugene Mitchell stands in front of the Ravalli County Adult Detention Center where he was unlawfully detained.

against discrimination not only in access to health care, but also in employment, public accommodations, housing, education, and finance.

This victory is a long-awaited step towards achieving equality for LGBTQ people. Transgender, non-binary, and two-spirit Montanans are an integral part of our communities and must be protected from discrimination. We are grateful to have worked with Eleanor on this complaint, and we salute her courage, tenacity and fortitude.

ACLU Clients Receive Financial Payout From Bail Companies

Our clients Eugene Mitchell and Shayleen Meuchell – who were stalked, hunted down, and held at gunpoint in their home by bounty hunters in 2017 after Mitchell missed

a court date – have settled a lawsuit after receiving a sizable financial payout from the insurance companies that make bounty hunting possible and profitable.

In a groundbreaking lawsuit, Mr. Mitchell and Ms. Meuchell sued not only the bounty hunters, but the bail bondsman and insurance companies under the federal Racketeer Influenced and Corrupt Organizations Act (RICO).

This settlement will help our clients rebuild their lives after they were traumatized by bounty hunters who took the law into their own hands. It also sends a signal to other for-profit bail companies: You can and will be held accountable for your exploitative actions.

Another important piece of this case

is that the court found that the bail contracts were unenforceable. We expect other courts will see it similarly in Montana and in other states where the outdated cash bail system persists.

Our client's case is indicative of a much larger problem. Using the promise of freedom, the bail bond industry profits billions of dollars a year by preying on poor people who are desperate to return home to their families, jobs, and responsibilities. Across the U.S., roughly 470,000 people – about 70 percent of people incarcerated in jail at any given time – sit in jail pretrial, without having been convicted of a crime, often because they can't afford to pay a bail requirement set for their freedom. This wealth-based system is not just and disproportionately exploits Black and Brown people, further fortifying systemic racism.

Only the United States and the Philippines allow a commercial bail industry to exist. Our stance: End cash bail and the for-profit bail industry.

ACLU of Montana Files Amicus Brief in Stolen Valor Case

You may have seen in the news last year that a Montana judge sentenced two men who lied about serving in the U.S. Military to a humiliating punishment designed to dehumanize them. The punishment included standing at the Montana Veterans

Memorial for eight hours on each Memorial and Veterans Day until the end of their sentences, wearing placards that read, "I am a liar. I am not a veteran. I stole valor. I have dishonored all veterans."

In October, we filed a friend-of-the-court brief with the Montana Supreme Court in this case. While there is no doubt that what the men did was wrong, the punishment they received is not only degrading and humiliating, it's also unconstitutional. Specifically, the punishment imposed violates the men's fundamental right to human dignity and their right against forced speech under the Montana constitution. We have urged the Montana Supreme Court to strike the public shaming components of the punishment these men received.

Federal Government Pays ACLU Clients in Settlement

Our clients Ana Suda and Mimi Hernandez, two American citizens detained by U.S. Customs and Border Protection for speaking Spanish while shopping at a local convenience store in Havre, Montana, have settled their lawsuit against the federal government. This is a big win for our clients, but the work isn't over. Under the Biden administration, the ACLU will continue to hold the federal government and the Department of Homeland Security accountable to the people.

2021 LEGISLATIVE PRIORITIES



By Caitlin Borgmann
Executive Director

The 2021 legislative session is around the corner, and we want you to know what issues we'll be prioritizing this year. It's a full slate of ACLU of Montana priorities, as always, but we continue to put special focus on reforming the criminal legal system and ending the criminalization of poverty.

Here's what to expect for the upcoming session:

Criminal Legal Reform

As part of our work with the Montana Public Safety Coalition (learn more about the coalition on page 14), we'll be asking legislators to pass bills that:

- Ensure Montanans have access to data. Every data point tells a story and represents a person. To better understand and create lasting solutions to the problems surrounding the criminal legal system, the public needs access to data that is robust, uniform, and comparable across the state. This information should be easy to access so Montanans know what is happening in their communities. We're asking the legislature to pass a bill that establishes a comprehensive and transparent data collection process, and to make that data available to the public in an electronic format.

- Ensure that employment opportunities are available for people who are re-entering their communities. When people find meaningful jobs, they can more successfully return to their communities and families. Right now, it is very difficult for people who have been convicted of a crime to successfully re-enter their communities because of stigma and collateral consequences. This session, we will ask legislators to pass Clean Slate Legislation that will help people who have been convicted access jobs.

- Rethink pre-trial detention. We believe that the money bail system should be eliminated. Money bail discriminates based on wealth, intensifies racial disparities, results in over-incarceration, and costs significant tax dollars without producing positive outcomes. The only winners in the bail bond

industry are the massive billion dollar companies that profit off of the system. Profit shouldn't come before people. We will introduce a bill this session that starts to chip away at the harmful money bail system. Specifically, we will seek to end fees for pre-trial monitoring, like ankle monitors or other devices. That way, more people can be released while awaiting their trial without being driven further into poverty.

- Expand access to mental health and substance use disorder treatment. Many people in Montana with mental health or substance use disorders do not have access to the care they so desperately need. This lack of access to care harms both individuals and our communities because it results in too many people needlessly being pushed into homelessness or the criminal legal system. Expanding access to treatment and support would be a big step in creating a healthier and safer Montana.

“The ACLU of Montana’s work isn’t about one person. It isn’t about one party. It’s not about taking sides. It’s about all of us, coming together to make change happen. The 2021 legislative session is around the corner, and we’re ready to keep up the fight for equality and justice for all Montanans.”

Indigenous Justice - Missing and Murdered Indigenous Women

Collectively, we must confront the violence against Indigenous women and girls. After a valiant effort from Indigenous leaders and advocacy groups, during the 2019 session Hanna’s Act passed with the teeth it needed to be effective. Hanna’s Act authorized Montana’s Justice Department to assist in investigations of missing persons cases and employed a specialist to

coordinate searches for missing Montanans. The Looping in Native Communities Act also passed, which created a missing Indigenous persons taskforce and created a small funding stream to support it. In 2021, there is still more that the state can do, and we will continue to support Indigenous advocates as they push forward legislation to bring more funding and accountability to the crisis of Missing and Murdered Indigenous Women. On the federal level, Savanna's Act and Not Invisible Act passed the U.S. Congress and were signed into law last year, and so we move forward with momentum on our side.

End the Death Penalty

The death penalty should be abolished. We know that while capital punishment is irreversible, riddled with errors, applied arbitrarily, and is expensive for tax payers, it does nothing to make our communities safer. We will ask the Montana legislature to abolish this cruel and unusual punishment.

Equality for LGBTQ Montanans

LGBTQ Montanans deserve to be safe and feel welcome everywhere. Thanks to the advocacy of our client Eleanor Maloney, a ruling earlier in 2020 made it clear that gender identity is indeed protected by Montana's Human Rights Act. This session, let's add it to the books by passing legislation explicitly writing this protection into the statute.

Protecting Reproductive Freedom and More

In addition to our proactive agenda, we are ready to fight against a host of bills that will harm Montanans and run counter to our values. We will oppose bills that:

- ban abortions or create barriers for those seeking an abortion.
- threaten the dignity and freedom of trans and non-binary Montanans—including bills that target trans kids who need healthcare or want to participate on a sports team.
- harm immigrants and the communities where they live.
- send even more Montanans to jails and prisons under the guise of public safety.
- infringe on the rights of Montanans to protest.

It's going to be a busy few months, and the above issues and bills don't cover everything. With sessions only every two years in Montana, this is our time to make a difference through the legislative process.

Thanks in advance for your commitment and advocacy. We're successful in our work only because people like you are engaged and ask your representatives in the state house to listen to their constituents. Don't miss out - sign up for emails and action alerts! Head over to aclumontana.org. Near the top of the page where you see "Stay Informed," enter your email and zip code.

SPOTLIGHT ON EDUCATION EQUITY



By Sharen Kickingwoman
Indigenous Justice Program Manager

Our Education Equity report, published late last year, detailed disparate rates of discipline and policing for Indigenous students in Montana's Public Schools. Since the report's release, we have been committed to working with school districts across the state. Through a summer equity summit and participation in an ongoing working group, we have engaged with Great Falls Public Schools to consider the role of SROs in their schools and ways to better support Indigenous students.

Additionally, in the aftermath of George Floyd's murder by Minneapolis police, some school districts across the country have recognized the unintended consequences of having police in schools and have made a commitment to phase out local police from schools. This summer, together with community members and other advocacy groups, we asked Helena Public Schools to reconsider having police as a permanent part of schools. The Helena City Commission held a series of meetings in which numerous community members participated. The Commission ultimately voted (by 3-2) to keep police this year, and to continue the conversation.

Responding to student misbehavior by criminalizing it only harms students, their families, and our communities. Police in schools do not actually make students safer. When police are in schools, the studies -- including our report -- show that students, disproportionately those who are Black and Indigenous, are more likely to be suspended, referred to law enforcement, or arrested. Police don't belong in schools. Instead, students need access to teachers and well-trained mental health professionals.

We look forward to continuing our work to achieve educational equity in Montana. Montana's education system must address discrimination against Indigenous people and other people of color, and create a fair and inclusive learning environment in which all cultures are valued and all students have support and access to equal learning opportunities. Ending policing in schools is one piece of that work. Looking forward to 2021, we will continue to engage with more school districts across the state on how they can best support students in their communities.

ANNOUNCING THE MONTANA PUBLIC SAFETY COALITION



By Kirsten Bokenkamp
Communications Director

Together with a diverse group of public interest and grassroots organizations, we've formed the Montana Coalition for Public Safety. The coalition's goal is to build a just, fair, and accurate criminal legal system that ensures a safer Montana for everyone.

Public safety is about investing in people. Too many people, disproportionately Indigenous people, are trapped in Montana's criminal legal system. Too many people facing the challenges of poverty, mental illness, and substance use disorders are criminalized instead of being provided with treatment and care. Montana needs change. With more accountability and transparency, the state has numerous opportunities to invest in the lives of Montanans, which will in turn create vibrant and safe communities.

The coalition will work to move Montana forward in a number of areas, including expanding mental health and substance use disorder treatment,

rethinking pre-trial detention and decreasing the use of money bail, ensuring uniform data gathering and transparency, and reforming the re-entry system for people returning to work and their communities after being incarcerated.

Members include the ACLU of Montana, Americans for Prosperity-Montana, the Montana Chamber of Commerce, the Montana Innocence Project, Western Native Voice, Frontier Institute, Montana Budget & Policy Center, the Montana Coalition Against Domestic and Sexual Violence, the Montana Human Rights Network, The Montana Racial Equity Project, Montana Women Vote, Rural Justice Initiative, and Disability Rights Montana.



MONTANA
COALITION
FOR PUBLIC SAFETY

ACLU

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Montana

Share your Appreciation with a Gift of Stock

You can make a gift of appreciated stock to the ACLU of Montana Foundation while avoiding capital gains tax on transfers of securities held for at least one year and one day. You can also generally receive an income tax deduction for the current fair market value of the securities.

To make a gift of stock share the following information with your broker:

DTC: 0361

Account Name: ACLU of Montana Foundation

Account Number: 11249080

Brokerage: DA Davidson, Helena MT

Then, contact us with your name and the number and type of shares being transferred.

ACLU Contact: Development Department

Phone: 406.204.0292 Email: montana@aclumontana.org

We will be happy to answer any questions you may have.

FREQUENTLY ASKED QUESTIONS ABOUT DONATING TO THE ACLU



By Kileen Marshall
Director of Philanthropy and Strategic Initiatives

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

A: Thank you! To make a tax-deductible gift, you can make a donation using the enclosed Foundation envelope, online at www.aclumontana.org, or via stock transfer (see the previous page for more details). Additionally, if you are re-doing your estate plans, or making one for the first time, consider adding the ACLU. Visit www.aclu.org/donate for more information.

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

A: Membership dues are not tax-deductible. Membership dues and other donations to our 501c4 entity help fund our lobbying and legislative advocacy – activities that 501c3 foundations can engage in only in limited ways. ***Foundation gifts are tax-deductible.*** These gifts support our legal program, educational activities, and much of our policy

advocacy, which make up the majority of our work. For some supporters, being a "card-carrying member" of the ACLU is incredibly important because it reflects the pride of belonging to an organization that has fought for equality, liberty, democracy, and freedom for over 100 years. Really, any way that allows you to make the most generous donation is what's most helpful.

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

A: Yes. We are one ACLU, regardless of where you send your gift. Unlike many other national/state-based organizations, the ACLU shares donations, and so it truly does not matter whether your gift is "banked" at National or here in Montana. In a sparsely populated state like Montana, we benefit from this sharing formula, similar to federal transportation dollars. In fact, roughly one-fifth of our annual budget comes from National ACLU,

because we are a small affiliate. This would not be possible without the cadre of nationwide ACLU supporters.

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

What's the impact you want to see in Montana?

Q: You get government grants, right?

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

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

A: No. While it is true that we sometimes win attorneys' fees when we win a lawsuit, it is rare and the dollar amount we receive is never equal to the resources we put into the case. We never file lawsuits expecting to get money back; rather we file lawsuits to seek systemic change.

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

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

PROBATION & PAROLE STORIES: TOO MANY PEOPLE ARE SET UP TO FAIL

By Brooke Swaney
Communications Associate



Probation and parole too often set people up to fail. In theory, probation and parole are meant to help people return to their communities. In practice, they are significant feeders of mass incarceration. We reached out to directly impacted individuals for their stories.

Bob Price: without transportation and with a suspended license, Bob struggles to get off probation. “They’ll tell you that you need to have a job in order to not violate probation, and that you need to get to your treatment appointment,” Bob said. “Yet they give you no alternative for how you might get there. The only thing I’ve gotten from probation and parole officers is: ‘It’s really not our problem. You have to follow the rules, that’s all.’”

I had not been convicted of a crime since 1985. I kept thinking, ‘How is it 2001 and I’m still on probation?’

Andre Linwood: After more than 15 years of being on parole and probation stemming from a charge

when he was 17, the broken system kept setting Andre back. “It is mind blowing, I had not been convicted of a crime since 1985. I kept thinking, ‘How is it 2001 and I’m still on probation?’”

Sabrina Smith Philp: Under the probation and parole system, Sabrina thought she’d get at least a little bit of support with drug addiction and her mental health, but she has experienced the opposite. “I’ve lived a hard and fast life, but probation and parole has pushed me to more dangerous options – suicide.” she said. “I’m backed into a corner. I feel trapped.”

Audra Fisher: Audra’s problems with the criminal legal system started when she was “caught” with a few doses of a prescription drug for which she had a prescription. Nearly 20 years later, she still doesn’t have her life back. “I believed in the system. I used to believe that if you had your name in the paper, you were guilty,” said Audra. “Now, I know different.”

For more, head over to our website: aclumontana.org/too-many-people.

MEET OUR NEW STAFF

Alyssa Kelly
Development Associate

This summer we welcomed Alyssa Kelly as our newest staff member. Alyssa is a proud member of the Confederated Salish (Selis), Kootenai (Ktunaxa), and Pend d'Oreille (Qlispe) tribes. She was born and raised on the Flathead Reservation in Montana and descends from the Red Horn and Chief Eagle families.

As the Development Associate, she provides behind-the-scenes strategy and support for the development department to support the ACLU of Montana's work. Before joining ACLU of Montana, Alyssa served over ten years as a journalist focused on Indigenous issues. She is a published author of Salish language children's books and illustrated Salish language curriculum. She has served on the Nk'usm Immersion School Board of Directors and was a Salish language apprentice at the Selis Qlispe Culture Committee.

Alyssa attended the University of Montana School of Journalism and Salish Kootenai College majoring in Native American Studies. She has been active in supporting social and environmental justice work.

"I wanted to join the ACLU of Montana team because I respect the



organization's work in fighting for equality. I come from a marginalized tribal community in Montana so I know how it feels to be disregarded by the judicial and government systems at be. When I saw that the ACLU had started working in Indigenous Justice, I knew I wanted to be a part of that mission. I wanted to be a part of the solution.

Working at the ACLU of Montana during the 2020 Election has given me a greater respect for the organization. Regardless of the political or social climate, this organization continues to fight for equality and to me, that's the best part about this work."

Alyssa was raised by her grandmother (Yaya) the late Rose Red Horn Tanner, her mother the late Andrea Kelly, and her aunt Juliana Tanner. She has two children and loves engaging in her culture with family and friends. Alyssa enjoys being outdoors, traveling, staying active, visiting, and learning.

Welcome Alyssa!



JOIN US!