

ACLU *of* MONTANA

FALL 2016

Extremists Targeting Children for 2017 Legislative Session

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A Significant Victory Against Xenophobia

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Judy Hart, Board President

PRESIDENT'S CORNER

Another splendid Montana summer has come to a close, and as I reflect upon and highlight some of the work, activities and events of ACLU-MT over the past six months, I am so appreciative of the unflagging dedication of our talented staff and Board and of your continued support.

Following the annual membership meeting in March, ACLU-MT was pleased to host a Montana Supreme Court Candidate Forum. Rarely are we afforded an opportunity to meet candidates for certain offices, and the Montana Supreme Court is one of them. Professor Kristen Juras, Chief Justice Mike McGrath, District Judge Dirk Sandefur and Justice James Shea participated in the forum moderated by Paul Kirgis, Dean of the UM Law School. In addition to learning more about each candidate in order to make a more informed decision, the audience gained a better understanding of the issues facing Montana's Supreme Court.

We were honored to welcome ACLU Executive Director Anthony Romero to Montana in April. It was a marathon two-day visit indeed! A number of events were held in Missoula and Bozeman featuring Romero, including a breakfast with students and faculty at the UM Law School, and, as part of the University of Montana's Presidential Lecture Series, an afternoon seminar and evening forum focusing on civil liberties in America today. In Bozeman, we partnered with The Burton K. Wheeler Center for Public Policy to sponsor a reception and evening forum. In a moving presentation, Romero highlighted failures in the criminal justice system that exist across the country and the important work ahead.

The ACLU-MT Board and staff met for a Strategic Planning retreat in June. Facilitated by Jake Endres, National ACLU Director of Affiliate Organizational Advancement, Affiliate Support & Nationwide Initiatives, the retreat included a discussion of major turning points for ACLU-MT,

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Indigenous Justice Outreach Coordinator
Meg Singer

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including events, trends, successes and challenges, as well as a review of the strategic planning proposal and prioritization of key initiatives. The meeting also included an in-depth overview of the growing concern over digital privacy and the ever changing world of technological innovation that negatively impacts our right to privacy.



Caitlin Borgmann and Anthony Romero

Montana has been at the forefront of privacy legislation, and ACLU-MT has had a seat at the table throughout. Montana was recently selected as one of the ACLU affiliates to host a free advance screening of the new film "Snowden," directed by Oliver Stone. Edward Snowden, a computer analyst and former NSA contractor, triggered a national debate after exposing shocking illegal surveillance activities by the NSA that included monitoring the calls, emails and web activity of millions of Americans and others. The screening was held on September 13 at the Myrna Loy Center for the Performing Arts in Helena and included a panel discussion focusing on First Amendment, privacy rights and whistleblowers. The panel featured our own ACLU-MT Executive Director Caitlin Borgmann, Montana State Representative Daniel Zolnikov (R-Billings), and former reporter and current Helena School Board Trustee Sanjay Talwani.

ACLU-MT has had such a wide-spread, influential and successful civil liberties presence across Montana, and that presence will continue as Montana moves toward another legislative session. At the September meeting, the Board heard about ongoing legislative interim work and legislative planning for the upcoming session. In conjunction with our work on the Racial Justice Project, the Board participated in a diversity and implicit bias training.

In closing, a fond farewell and thanks to Tamara Miller for her years of service on the Board. Tam served us well as ACLU Board Treasurer and Chair of the Finance and Audit Committee. We also welcome our newest Board members, longtime ACLU member and supporter David Nimick from Helena and Erick Valencia, the University of Montana Law School Representative.





SPEAKING FREELY

by Caitlin Borgmann, Executive Director

Racial equity is a topic that has been in the national spotlight, due in large part to the advocacy of the Black Lives Matter movement. The topic may not seem salient to many Montanans, but in fact it is a major issue in Montana, and one the ACLU-MT is prioritizing in our work.

The ACLU-MT's Board of Directors approved the formation of a Racial Justice Project three years ago. The first few years were primarily spent as a "listening tour," hearing from tribal leaders and other members of the Native American community in Montana about civil liberties issues affecting their communities. We have been proud to collaborate with an Advisory Group that includes the UM Law School Indian Law Clinic, Rocky Mountain Tribal Leaders Council, Western Native Voice, and Montana Racial Equity Project, among others. Some of the Project's early work included trainings our Legal Director, Jim Taylor, conducted with Maylinn Smith (UM Law) on all seven reservations to educate parents about their rights and responsibilities under federal education funding for American Indian students. A video of these trainings is available on our website, www.aclumontana.org. We also worked alongside Western Native Voice to get satellite voting offices or polling places established on reservations during the primary season.

One of the new issues we are addressing is access to reproductive health care in Indian Country. We were thrilled when the CSKT Tribal Health Department adopted a new policy in August to offer emergency contraception without a prescription to women and girls of all ages. More recently, we've expanded our work beyond the Native American community, recognizing that – although their numbers may be small – other people of color in Montana face serious issues of discrimination, bias, and harassment.

Jim Taylor and I were accepted to participate in the 2016 cohort of the Shriver Center on Poverty Law's Racial Justice Training Institute (RJTI) this year. We are part of a team from Montana that includes Mike Black of the Montana Legal Services Association. RJTI is an intensive national program that includes monthly online webinars and a week of on-site training in Chicago. Jim and I have learned much about structural racialization, implicit bias, and how to incorporate a racial equity agenda into our litigation and policy advocacy. As part of this training, we have committed to a project that will address racial disparities in discipline in Montana schools.

In July, we were delighted to have SK Rossi join the ACLU-MT as our new Director of Advocacy and Policy (see p. 15). Rossi will play an integral role in expanding the work of our Racial Justice Project. Rossi's work for the ACLU of Missouri included a project on racial disparity in school discipline. Rossi also previously worked with Native American communities at the Montana Coalition Against Domestic and Sexual Violence. We are also thrilled to welcome Meg Singer, our new Indigenous Justice Outreach Coordinator, (see p. 16) who will be focusing exclusively on our Native American advocacy. Like Rossi, Meg brings a wealth of relevant experience, including as an academic advisor at Salish Kootenai College and a volunteer for the Montana Racial Equity Project. Among other projects, Meg will facilitate the formation of a statewide racial justice coalition, with many of our advisory committee members and others.

We were invited to participate in two important events this summer addressing racial justice in Montana. I presented on August 29th at a hearing in Billings of the Montana State Advisory Committee to the United States Commission on Civil Rights. The hearing addressed the issue of race discrimination in border towns in Montana. I spoke about the importance of recognizing implicit racial bias and incorporating implicit bias trainings at all levels of government, among other topics. On August 31st, I presented on panels addressing voting rights, criminal justice reform, and "Why Can't I Say 'All Lives Matter?'" at a community forum in Bozeman on Race in Montana, hosted by the Montana Racial Equity Project.

We are proud of our Racial Justice Project, both because of what it means for Montanans and because we are one of only a few ACLU affiliates who have dedicated projects focusing on Native Americans' civil rights. American Indians face some of the most significant civil rights violations and challenges of any racial group in this country. The ACLU-MT is proud to establish a model for other ACLU affiliates who want to begin doing more of this crucial work. I hope you'll check out our website for more information about the exciting work of our Racial Justice Project (aclumontana.org/advocacy/racial-justice-project).





EXTREMISTS TARGETING CHILDREN for 2017 LEGISLATIVE SESSION

by SK Rossi, Director of Advocacy and Policy

The 2017 Montana Legislative Session is around the corner, and opponents of constitutional rights, social equality, and civil liberties have already begun making their priorities known. Unlike years previous, though, an uncommon group of vulnerable Montanans is being targeted for discriminatory and harmful legislation – kids.

More specifically, anti-equality extremists are targeting transgender kids – young boys and girls whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth. In simple terms, it means that these kids have come to terms with, and embraced, the very difficult and complicated reality that who they are on the outside must change to conform with the gender identity they know to be true on the inside.

In May of this year, Rep. Eric Moore (R-Billings) vowed that that one of the first bills drafted for the 2017 session will be legislation opposing protections for transgender children. And last month, the Montana Family Foundation (MFF) sent a letter targeting transgender students in Montana public schools to all current office holders and candidates. The falsities are almost too numerous to count.

First, MFF calls the recent guidance released by the Department of Education on accommodating transgender students a “directive.” It isn’t. The federal government has been very clear that the guidance was released in response to questions from teachers and school administrators about their obligations under Title IX. It is not binding and seeks only to provide public schools with the information they need in order to comply with law that already exists.

Second, MFF asserts that the guidance raises “too many unanswered questions” about the privacy and equality of girls under Title IX. It doesn’t. The DOE guidance does the opposite, giving helpful models to schools for ways to ensure the privacy and equality of all students, regardless of gender.





Third, and insultingly, MFF implies that being transgender is the same as driving a car or smoking a cigarette. It isn't. To compare the very core of someone's identity to the choice or privilege of driving a car or smoking a cigarette not only shows a complete ignorance of who transgender people are, but also a serious lack of empathy for the struggles of transgender kids in Montana.

Last, MFF asserts that the guidance provided by the DOE "jeopardizes local control and negates protections for girls' sports under Title IX." It doesn't. The guidance specifically recognizes that "Title IX regulations permit a school to operate or sponsor sex-segregated athletics teams when selection for such teams is based upon competitive skill or when the activity involved is a contact sport." Consistent with this, the NCAA allows transgender students to play on the sports teams of the gender with which they identify. High schools, middle schools, and grammar schools across the country have allowed transgender students to play sports and participate in extracurricular activities with no adverse consequences for girls or boys teams. In fact, the NCAA recently pulled 7 events from North Carolina because of its discriminatory HB 2 law, which forces transgender people into bathrooms that match their assigned sex at birth, not their gender identity – a move that shows anti-trans discrimination is actually what harms sporting culture.

Perhaps most concerning, though, is what followed the letter – a proposed pledge to "do everything within my power as an elected official to stop the federal Transgender Schools Directive and block its implementation in Montana." There is no directive to be implemented, but opponents of transgender inclusion and equality have made their goal clear – they will use fear, falsities, and our state legislative process to make the already complicated and fraught lives of transgender kids even harder.

But there is good news. The ACLU and our partner organizations are also educating legislators, teachers, and school administrators about what this guidance really is - a helpful tool to support the equality and privacy of all students, regardless of gender identity. We need more voices to spread that truth. Call your legislators, call the candidates in your district, and let them know that you support policies that seek to include all students, not exclude the most vulnerable.





A SIGNIFICANT VICTORY AGAINST XENOPHOBIA

by Jon Ellingson, Staff Attorney

On April 19th we received an unusual request from a Montana resident with a name that some might consider foreign.

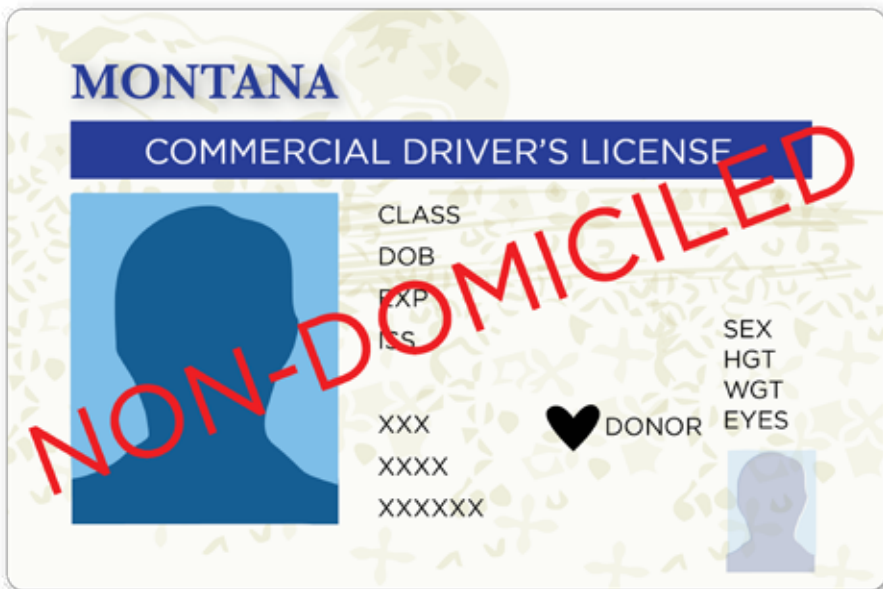
This gentleman is a legal permanent resident of the United States, who has made Montana his home for almost three years. A commercial driver by trade, Montana issued a commercial driver's license (CDL) when he first moved to the state in 2013. This year, when he renewed his license, the new CDL had a label attached to it that wasn't on his old one. In bright red letters, the label read "Non-Domiciled."

Our client was justifiably upset. He shows his CDL to several people every day, and he felt that the designation had "great potential for stigma and discrimination" everywhere he uses it, particularly in business settings. He called it a "state-sanctioned vehicle for discrimination against me for anyone who I have to show" my driver's license to, including people who would otherwise have "no business knowing my immigration status." He stated his concern was not just for himself but for all who are similarly situated: "In this time of increasing anti-immigrant sentiments, I feel it is especially important that equal protection be granted to all Montana taxpayers."

Before coming to the ACLU, our client raised the issue with officials at the Montana Department of Justice. He was told that this was the "new policy" of the Department when processing license applications from non-citizens.

The ACLU of Montana agreed to investigate and quickly concluded that the Driver License Bureau of the Department of Justice has no right to imprint "Non-Domiciled" on a CDL under the facts of the case.

First, the designation misrepresented the facts of our client's connection to our state. Under Montana law, one's domicile is where an individual establishes his residence. Having lived in Montana for about three years and having every intention of making his home in the state into the foreseeable future, our client resides in and is domiciled in Montana.



His citizenship status cannot change this fact. Moreover, federal law preempts conflicting state regulations. Federal law makes clear that the word “Non-Domiciled” may be placed on a CDL only in two circumstances, neither one of which applies to this case. Finally, Montana statutes themselves provide absolutely no authority for the designation.

In short, the Department of Justice had it wrong.

Our summer intern researched the law for us and created the first draft of a demand letter directed to the Driver License Bureau Chief at the Department of Justice. The demand letter went out on July 6. Less than one month later, the Department changed its policy, removed the “non-domiciled” designation from our client’s license, and apologized for the error.

Some may say that this is only a small victory. We look at it differently. Each victory that we have against policies inspired by xenophobia is significant. We have protected not just this client, but others as well. Moreover, we have sent a message to the Department of Justice that we are watching them and will not allow our state government to be used as a tool for this type of discrimination. Finally, this victory should hearten our fellow warriors in this battle, encouraging them to believe that this country will not give in to the discriminatory impulses that are being called forth during this election season.



PHILANTHROPY



FOLLOW the MONEY

Frequently Asked Questions about
Donating to the ACLU

by Kileen Marshall, Director of
Philanthropy and Strategic Initiatives

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

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 quarter of our annual budget comes from National ACLU, just for being a small affiliate. This would not be possible without the cadre of nationwide ACLU supporters.

And, unlike our local foodbanks or pet shelters, the business of defending and advocating for civil liberties is truly a nationwide endeavor. The National 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 National ACLU and fellow ACLU affiliates.

Q: What’s the difference between being a “card-carrying member” of the ACLU and donating to the ACLU Foundation? Which does the ACLU prefer?

A: Membership dues, which go to the ACLU's 501c4 organization, are not tax-deductible. Membership dues and other donations to our 501c4 entity help fund our lobbying and legislative advocacy – activities that non-profit, 501c3 foundations can engage in only in limited ways. Foundation gifts to the 501c3 ACLU Foundation are tax-deductible.



These gifts support our legal program, educational activities, and much of our policy advocacy, which make up over 90% of our work. Making a gift to the ACLU Foundation, however, does not make the donor a member of the ACLU – the 501c3 (Foundation) and the 501c4 (Union) are two separate legal entities. For some supporters, also being a “card-carrying member” of the Union is incredibly important because it evokes a certain pride of belonging to an organization that has fought for equality, liberty, democracy, and freedom for nearly 100 years.

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.

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 argue for systemic change.

Q: I want to make a year-end gift to the ACLU. What’s the easiest way to do that?

A: Lots of ways are the easiest way! To make a tax-deductible gift, you can make a donation using the enclosed Foundation envelope, or online at www.aclumontana.org, or transfer stock (see details on p. 17). Additionally, if you are redoing your will, or making one for the first time, consider adding the ACLU to your plans. Visit www.aclu.org/legacy for more information.





Erick looking down on a lake in Switzerland near Interlaken

in his **OWN WORDS**

by Erick Valencia, Legal Intern, Summer 2016

My name is Erick Valencia, and I am a third-year law student at Alexander Blewett III School of Law at the University of Montana. I joined the ACLU of Montana this past summer as an intern because I want to advocate for immigrant rights.

During my ACLU internship, I worked on various issues such as looking for a way to challenge capital punishment under recent U.S. Supreme Court precedent and determining how immigrants might enforce their rights against abusive Border Patrol practices. Working on these extraordinarily important issues was certainly fulfilling. Yet, during the summer I was reminded that often the most rewarding work involves problems that at first glance seem small and inconsequential -- like figuring out why a particular word was placed on someone's driver's license.

My summer internship with the ACLU taught me many things in areas of the law that are familiar to me as well as those that I knew virtually nothing about. More importantly, it helped me to remember that I am in law school not just because I believe in the often nebulous ideas of effecting positive social change and leaving the world a better place. I am also here because to help others with their seemingly small and inconsequential problems is itself social change that makes the world a better place.



WELCOME, NEW STAFF!

SK ROSSI Director of Advocacy and Policy

Rossi moved back to Helena, MT, from Kansas City, MO, and started work with the ACLU of Montana in late July. Rossi is responsible for advancing the organization's policy agenda by planning and implementing legislative and advocacy campaigns, including - in conjunction with the ACLU's new Indigenous Justice Outreach Coordinator - the ACLU of Montana's Racial Justice Project.



SK Rossi

Rossi most recently held a similar position at the ACLU of Missouri, where they helped launch a racial and criminal justice project and substantially built the ACLU's reputation in the Missouri Capitol, among other significant accomplishments. A graduate of the University of Montana School of Law, Rossi previously worked at the Montana Coalition Against Domestic and Sexual Violence (MCADSV) for four years, including as its Legal and Public Policy Director. In this capacity, Rossi helped advance LGBT equality, women's rights, and immigrants' rights across Montana, and led MCADSV's Tribal Advocacy Project.

Rossi - along with their partner, Kylie, and two dogs (Pasta and Catfish) - is excited to be back in Montana among friends and family and to continue working with the ACLU in a place they love so much.

"I always told my colleagues in Missouri that the only thing that could make me leave ACLU-MO was the same job, but back in the mountains of Montana. I couldn't be happier to be back here and to join such a strong, dedicated team. There are big things ahead for the ACLU of Montana, and I am thrilled to be a part of it."





Meg Singer

MEG SINGER

Indigenous Justice Outreach Coordinator

Meg started as our new Indigenous Justice Outreach Coordinator, based in the Helena office, on September 6. Meg is a native of Salt Lake City, UT, and a member of the Navajo Nation. After graduating from Westminster College with a Bachelor of Arts degree in English Literature,

Meg moved to Polson, MT, to work as a student advisor for Salish Kootenai College. Meg's passion for indigenous justice and the rights of Native American and Alaskan Native people took her to Bozeman, MT, to earn her Master of Arts degree in Native American Studies.

While in Bozeman, Meg co-led the campaign to change Columbus Day to Indigenous Peoples' Day for the city of Bozeman and Montana State University. She also brought "The Sun Dance Opera," a 1913 opera written by Yankton Dakota activist Zitkala-sa, to the President's Fine Arts series. Singing is a family tradition for the Singers, and both Meg's sister and her brother performed in the opera.

Though Navajo tradition dictates humbleness and refraining from speaking about oneself, we cannot help but say how excited we are to have Meg on board. Her open and welcoming personality, sense of humor, and enthusiasm for the hard work of bringing racial justice to Montana will be an important and game-changing presence in the ACLU.

LEAH SMITH

Communications Strategist

Leah started in our new position of Communications Strategist in September and is based in the Missoula office. She graduated from the University of Utah with a B.S. in Political Science and Peace & Conflict Studies in December 2015. Leah has amassed a significant amount of political experience for a recent college grad. She worked as a Field Organizer for the Iowa Democratic Party for six months during the 2014 election cycle; was an intern with



Leah Smith

the Voter Expansion Department in the Democratic National Committee in Washington D.C., where she worked on several activities related to the 50th Anniversary of the Voting Rights Act; and she has volunteered for over four years with the Planned Parenthood Action Council in Utah, most recently working as a Citizen Lobby Leader which involved training citizen lobbyists and the Planned Parenthood Teen Council on how to tell their own story to lawmakers.

Working with the whole staff, Leah will manage our communications work, including handling everything from traditional media relations, our online presence, and newsletters to newer platforms like podcasts or video as a way to amplify the impact of our legal, policy, and community organizing work.

In her spare time, Leah plays ultimate frisbee and lacrosse. When not found in the office, she is usually at home listening to political podcasts and looking at cute dogs on Instagram. She's excited to start exploring the great Montana wilderness and helping to protect civil liberties across the state.

VOLUNTEER HIGHLIGHTS

Here's a "shout-out" to a few outstanding volunteers over the past year. Our work (and sanity) wouldn't be possible without their contributions!

Isobel Buck - Master Newsletter Designer (Fall 2016)

Nancy Cooper - Facebook Guru (Summer 2016)

Susan "Super Sue" Hawthorne - Daily Mail Triage and Office Furniture Craigslist Expert (Winter 2015-16)

MZ Morgan - Grant Searching Specialist (Summer 2016 – ongoing)

THANK YOU, LIZ WELCH!



Liz Welch

LIZ WELCH ACLU National Regional Field Consultant

After five years of working for the ACLU of Montana, we could not be more excited for Liz as she transitioned into a full time gig with National ACLU this summer. Continuing to work on LGBT issues, Liz works as a Regional Field Consultant and Faith Coordinator -- which means she parachutes into states

like South Dakota, Tennessee, North Carolina, Florida and others when their legislatures are up to no good on LGBT issues. Liz works with the local ACLU affiliates and activists to amplify the voices of LGBTQ folks and transgender youth, LGBT supportive clergy and people of faith, and businesses who believe that it is better to be inclusive, kind and fair.

Liz was first hired by the ACLU of Montana in 2011 as a Field Organizer to work on the Fair is Fair Campaign, a public education campaign to support our litigation in the Donaldson case for domestic partnership. It seems like a lifetime ago, but due to the political landscape in Montana at the time, domestic partnership was the best chance for securing legal relationship recognition for same sex couples. Clearly, so much has happened in five years and Liz is a huge part of our success. But our work for the LGBTQ community is not finished – lesbian, gay, bisexual, and especially members of the transgender community are not safe in schools or our communities. We'll continue to work on these issues here in Montana, while Liz and others do so across the country.



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You can make a gift of appreciated stock to the ACLU of Montana Foundation while generally avoiding capital gains tax on the securities that you donate. You will also receive an income tax deduction for the current fair market value of the securities.

To make a gift of stock, share the following with your financial advisor and contact Kileen Marshall at kileenm@aclumontana.org with your name and details of the gift.

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If you have any questions, call [Kileen Marshall at \(406\) 204-0292](tel:4062040292) or email her at kileenm@aclumontana.org.



Jeannette Rankin CIVIL LIBERTIES AWARD

CALLING ALL IDEAS!

Know of a committed civil libertarian who has defended or advanced civil liberties in their local community or statewide? Email aclu@aclumontana.org with a brief description of who you'd like to nominate and why. **Nominations accepted until November 15, 2016.**

The Jeannette Rankin Civil Liberties Award honors the memory of Jeannette Rankin, founding Vice President of the American Civil Liberties Union. The award acknowledges the significant contributions of individuals and organizations who demonstrate the strength of character and commitment to principles exemplified by Ms. Rankin and embodied in the ACLU's mission and vision.

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