

In this issue, we're talking about

# DISMANTLING BARRIERS TO REPRODUCTIVE JUSTICE



● Whitefish

● Great Falls

● Missoula

● Helena

● Billings

*\* Abortion services are only available in these five Montana cities. In 2018, we expanded access to Whitefish.*

**ACLU** of Montana

Spring 2018

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*Thank you for your  
support of the ACLU  
of Montana!*

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The ACLU of Montana  
team.

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*Congratulations to the 2018 Jeannette Rankin Civil Liberties Awardees!*

Left to right: Judith Heilman, Denise Juneau, and Carol Juneau.



## ICE Unleashed

**By Alex Rate**  
*Legal Director*

Over the past sixteen months, many Americans have grown used to the Trump administration's racist and xenophobic immigration policies. After all, Trump's presidential campaign was built on the promise of an unnecessary southern border wall. In Montana, we may feel insulated from those anti-immigrant policies. Nothing could be further from the truth.

On January 25, 2017, President Trump ordered the federal government's deportation force be increased in size and scope. The order prioritizes detention and removal. This is made possible by adding 10,000 new Immigration and Customs Enforcement (ICE) officers and 5,500 Customs and Border Patrol (CBP) agents and officers.



**You have rights!** Learn what to do when interacting with ICE (in multiple languages) at: [www.aclumontana.org/know-your-rights](http://www.aclumontana.org/know-your-rights)

Along with this massive hiring increase, the Trump administration has “take[n] the shackles off” ICE officers and given them expansive and often unreviewed discretion to target people for detention and deportation. Two recent ICE actions illustrate the impacts of Trump's bigoted policies on Montana's immigrant community.

Last fall, Arturo Valerio-Gonzales was arrested in Gallatin County. When he was booked, local law enforcement noted the color of his skin and his inability to speak fluent English, and contacted ICE. “ICE then faxed back a form placing a 48-hour detainer (or hold) on Arturo.” This meant that although Arturo was capable of posting bail, local officials would not release him. These ICE detainees are not issued by a judge and are not supported by the belief that a crime was committed. Instead, they are issued by federal agents who simply run identifying information through an immigration database.

An immigrant's unauthorized presence in Montana is not a crime. Nevertheless, local law enforcement have routinely re-arrested and jailed people for no reason other than their suspected immigration status. Law enforcement base those suspicions on skin color and language.

In December, 2017 the ACLU of Montana worked with the Office of the Public Defender to ask the Supreme Court to declare that Arturo's arrest at ICE's bidding was unlawful. Unfortunately, before the Supreme Court could rule on the case, Arturo was suddenly transferred to federal custody. He is now going through deportation proceedings. The ACLU of Montana will continue to fight the unlawful arrest and incarceration of Montana's immigrant community.

Early this year, the ACLU of Montana also learned that ICE is regularly issuing subpoenas to the Department of Labor and Industry (DOLI). These orders demand employment information from private businesses that ICE assumes employ immigrants, such as Mexican restaurants. Last February, DOLI legal secretary Jordan Dyrdaahl-Roberts resigned from his position in protest over the subpoenas. Jordan explained in a Washington Post article, "I loved my work at the Labor Department, but I can't be part of breaking up families."



### *ICE Unleashed*

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The Trump administration has 'take[n] the shackles off' ICE officers and given them expansive and often unreviewed discretion to target people for detention and deportation.

These ICE subpoenas are unabashed fishing expeditions that disregard the right to privacy. The ACLU of Montana has requested that DOLI and other state agencies refuse to cooperate with ICE's demands. Montana is well within its legal rights to refuse to share the requested information. We remain hopeful that the state will push back against federal attempts to commandeer local resources.

In the event it does not, the ACLU of Montana stands ready to defend the rights of our immigrant neighbors—in the courts, at the legislature, and wherever President Trump's "unleashed" federal agents choose to strike next. President Trump's anti-immigration agenda has hit Montana. Now, more than ever, the ACLU of Montana and our allies must stand with the immigrant community and fight back against ICE's aggressive tactics.



## Montana's LGBTQ Community and Allies Are Ready to Fight for Trans and Non-Binary Montanans' Rights

By SK Rossi  
*Advocacy and Policy Director*

While anti-LGBTQ extremists continue to push for signatures to get I-183 on the November ballot, the Free and Fair Montana coalition is steadily working to raise the voices of transgender and non-binary Montanans.

I-183 is a ballot initiative that would open state and local governments to lawsuits by forcing them to ensure no one uses a bathroom or locker room in a public space that doesn't coincide with the gender on their original birth certificate. In order for this measure to qualify in November, proponents must gather over 25,000 signatures by mid-June.

The ACLU of Montana has filed a complaint with the district court in Cascade County, asking the court to block this discriminatory measure from ever appearing on the ballot. At the same time, organizations and individuals from across the state are taking advantage of the conversation spurred by I-183 to educate communities and would-be allies on the importance of equality, the valuable contributions of transgender and non-binary Montanans, and what we can all do to support the transgender and non-binary community.

Most importantly, we are working to build up and support transgender and non-binary leaders across Montana and raise the voices of those most impacted by terrible policies like I-183.



**Transgender** refers to a person whose gender identity does not match the sex assigned to them at birth.

**Non-binary** refers to individuals whose gender identity is neither exclusively male or exclusively female; their gender identity is outside of the traditional gender binary.

Free and Fair Montana coalition members and leaders of Trans Visible have been leading conversations all across Montana and the response has been nothing short of inspirational.

Montanans know I-183 will cost their schools and cities money and leave community members to foot the bill. Montanans know that I-183 is unnecessary and is nothing but a thinly veiled attempt to hurt transgender and non-binary community members. We will continue to spread that message and hope that you, ACLU members and supporters, will assist us as we continue the fight for LGBTQ equality.



Here are some quick and easy steps you can take to get involved:

- ✔ Go to the Free and Fair Montana website and sign the pledge opposing I-183: <https://noi183.org>
- ✔ On the same website, sign up for volunteer opportunities with the campaign: <https://noi183.org/volunteer/>
- ✔ Follow Trans Visible on Facebook to hear stories from trans Montanans and watch for upcoming public education events: [www.facebook.com/TransVisibleMontana/](http://www.facebook.com/TransVisibleMontana/)



## Notes from Volunteer Orientation Training: The Importance of Showing Up

By **Zuri Moreno**  
*Advocacy and Policy Assistant*

At the beginning of the Volunteer Orientation training, a din of voices fills the room. The discussion prompt: pair up with someone in the room you haven't met before and chat about what civil liberties mean to you. Individuals begin to share personal stories and talk about challenges they or their loved ones have faced. No matter what town our trainings have been in, we've seen that civil liberties hold great importance in peoples' lives.

**Whose job is it to ensure that our civil liberties are protected?** As the discussion continues, people often mention the lawsuits that ACLU of Montana takes on to protect civil liberties. ACLU of Montana is the civil liberties watch dog, said one attendee. It's true that the ACLU of Montana is active in the courts, yet some of our greatest work occurs through community education and engagement. That is when voices are uplifted and space is created for stories to be shared. As the discussion continues, each community concludes that the responsibility to ensure that civil liberties endure and advance lies with all of us. In fact, so many of the ACLU of Montana's success stories happen when communities come together and individuals step up and volunteer their voices, skills, and time.

**What does it look like to show up in our community?** We all need to show up in support and solidarity for others in our community. To many, this sounds daunting. What does it mean to show up? Does it look like holding a sign and exercising our First Amendment rights? For some, yes. It also looks like using our voices and actions in other ways. This may include completing data entry to update supporters' contact information. Or when someone provides one hour of time to design an Indigenous justice pamphlet.

Showing up means moving past just believing that civil liberties are important. It means moving into a space of action, however small.



A single action can ripple through our social groups and throughout our communities. Because if an issue impacts one person in our community, it affects us all. Our communities are strong and resilient because we are interconnected and interdependent. There is space for everyone to show up within their capacity. How will you show up?

**Who belongs in our ranks of volunteers?** Everyone. When I talk about what it looks like to be a volunteer, I explain first that the ACLU of Montana wants to ensure all participants' success. We want to connect volunteers to share information, provide trainings, bridge connections between community members and partner groups, and uplift individual voices and passions.



*Thank you to our incredible volunteers!*

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Photo by Marissa Rivera.

As an equal opportunity organization, the ACLU of Montana values a diverse volunteer force, as well as an inclusive culture. We encourage members of Indigenous communities, LGBTQ individuals, formerly incarcerated community members, people of color, immigrants, veterans, and individuals with disabilities to sign up to volunteer. Your voices are key for the civil liberties work within Montana.

Often, I hear from people that they'd like to be involved but don't have enough extra time in their schedules, lack the skills to be a volunteer, or don't want to directly interact with the community by canvassing or phone banking. While these are some of the characteristics we seek in our volunteers, they are not the only ones. All you need is passion for civil liberties and a keenness to be involved.

The volunteer program is built on connections. ACLU of Montana staff will ask our volunteers for support on the issues we are addressing. We will also be hearing the concerns of local community members and

helping support the civil liberties issues they care about through direct action, public education, and community engagement.

Since January, I have met with so many amazing people to discuss civil liberties and the importance of showing up to ensure that civil liberties are a reality for all.

*Here are a few things people around Montana are saying about the volunteer events:*

- “ **The issues and details [presented] made it easier for me to understand how the community can improve. The [facilitators] helped me understand that people need to come from all sides to support these issues.**”
  
- “ **I would definitely recommend everyone attend the ACLU volunteer orientation. The presenters are respectful of everyone’s background, very welcoming, and do not want people to morph into cookie-cutter volunteers. They’re counting on people who want to be involved and contribute their own skills.**”
  
- “ **I learned that there are ways that I can help now. I have been hesitant to volunteer in the past whether because I did not have a phenomenal typing speed or simply had scheduling conflicts. I learned that it’s okay if I didn’t or couldn’t do everything on the list. There were a few things that I can do and that is okay.**”



**If we weren’t able to meet with you at a volunteer orientation training, we want to hear from you!**

Please fill out our volunteer form on our website ([www.aclumontana.org/act](http://www.aclumontana.org/act)) and we will be in touch!



## Building an Education System for All

By Meg Singer

*Indigenous Justice Program Manager*

The ACLU of Montana's Indigenous Justice Program focuses on the education Native students receive in Montana. We work to ensure education is a path to justice. This occurs when Native students not only get the same education as non-Natives, but when true educational equity provides tools that historically marginalized groups can use to end their own oppression.

In attempting to right the wrongs that I experienced as a Native student in public schools, I ask, "With all that I know now, what could've helped me then?"

Looking back on my experiences as an urban Indian growing up in Salt Lake City, Utah, I see the same injustices and civil rights violations that happened to me fifteen years ago happening to Native students in Montana today.

Although my parents instilled in me and my siblings a great thirst for knowledge, the public education system could never connect with us. For example, after years of reading National Geographic, geography was my favorite class. I was an outstanding student, able to get my work done in minutes and then just chill. Getting my work done quickly led to my being labeled "disruptive," further alienating me from my education.

One day, my eighth grade geography teacher asked me to stay after class. He spread all my tests and assignments out in front of me and accused me of cheating. I told my mom and we made an appointment to speak with him. My mom asked what evidence he had against me. Again, he brought out my tests and assignments, each marked with red "100s." My perfect assignments, he said, were enough proof. I was hurt. I turned to him and said, "I am not a cheater. I am an honest person." My teacher then began screaming at me. Luckily, my mom yelled back – I love her for that.

I always appreciate how fiercely my mom loved me in that moment, but I knew I never wanted to have her go through something like that again. So, I chose to drop the class.

After this incident, my English teacher, who was taking a graduate course on multi-ethnic education, asked if I would speak to her class about my experience as a Native student. The graduate students asked what it was like for me to grow up on Salt Lake City's west side where poverty, violence, over-policing, and stereotypes reigned. They asked how it felt to be accused of cheating. They told me to "hang in there." But I wonder why these students who were preparing to become teachers didn't tell me and my mom that we should and could go to the school board with these challenges and issues. I wish that exchange would have happened differently.

**“ The educational system did not engage with my needs and goals. It did not prioritize my future.”**

In high school, my white peers—who grew up on the same street as I did and went to the same church—knew their immediate futures, and that was college. They knew how they were going to pay for college. I remember when everyone in my class went to their guidance counselors to make plans for college. I asked if I should go, and my teacher told me it was only for people who were going to college, implying I was not one of them. So I skipped it and hung out with friends.

My experiences reflect an education system informed by stereotypes and racism. It was seeing my stories erased in history class, it was wishing to be seen as more than a stereotype, and it was watching all the non-Native kids go to their guidance counselors to learn how to get into college. The educational system did not engage with my needs and goals. It did not prioritize my future.

And this is what Native students experience in Montana. There are so many instances of great learning happening, but they seem to happen in spite of the current educational system, but in spite of it.

***Here are the things I wish I'd known so that I could've fought for myself, my parents and my community:***

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## **You Have Power through the School Board**

School boards have a lot of power. They can set the tone and standard of how education is taught. They are elected to address the education needs, find community-based solutions, and ensure communities have a voice. When students, parents and the community know that school boards are supposed to work for them, incredible change is possible.

## **Curriculum Matters**

Indian Education for All (IEFA) is one of the most inspired steps toward educational equity I've known. IEFA, which was prioritized in Montana's Constitution and finally implemented in 1999, teaches all Montana K-12 students Native history and contemporary tribal issues. Students need Indian Education for All in math, science, languages, and all other subjects. Community members can demand culturally relevant curriculum that not only teaches Montanans who Native people are but also the value of Native knowledges in our education systems. Many of the issues of society can be resolved if Native ways of *knowing and being* are valued and implemented in school curriculum.

## **The Entire Community Must Show Up**

Even if every Native person in Montana carried the banner of educational equity, it still wouldn't be enough to move the 93% non-Native population to commit to educational equity. Native people live all over the state, which means Native youth are part of every community. We need every Montanan to step up and show up for their community, and especially for their youth.

## **The World is Ours**

White Montanans never talk about Native kids changing the world and must recognize their role to make educational equity a reality. We need our Native students to know that the world is theirs and they are powerful.

To do this work, every single one of us has to face facts: civil rights violations are common in our schools; education will continue as a tool of oppression if the chain of colonialism continues into another generation. It is our responsibility—yours and mine—to create a system of education based on justice.



## Protecting the Right to Decide the Outcome of a Pregnancy

**By Caitlin Borgmann**  
*Executive Director*

The ACLU of Montana is involved in two reproductive rights cases this quarter. I've found that especially gratifying, as reproductive justice is near and dear to me. I worked in the national ACLU's Reproductive Freedom Project for six years. And as a law professor for eleven years after that, I taught, researched, and wrote about reproductive rights. So I'm excited that we've been able to pursue justice for Montanans facing decisions about when or whether to become parents.

Recently, a supporter asked me what I mean by "reproductive rights." I explained that the ACLU of Montana fights to protect the right of all Montanans to make the best decision for themselves and their family about whether and when to have a child. We work to ensure that those decisions are free of political interference. That includes protecting access to contraception and abortion for those who seek to prevent or end a pregnancy. It also includes protecting the rights of Montanans who choose to have children. Both decisions are sides of the same coin: the right to decide whether and when to become a parent. And our recent work touches on both.

Our federal and state constitutions guarantee the individual right to bodily autonomy, which means the right to make intimate decisions about what happens to our bodies. There can hardly be a more private decision than whether a person should become pregnant and have a child. These decisions are shaped by one's moral convictions, religious beliefs, consultations with loved ones, economic circumstances, health, whether one already has children, and many other, deeply personal factors.

Unfortunately, some governmental policies and laws are threatening Montanans' right to make these decisions. For example, the ACLU of Montana and the Center for Reproductive Rights are challenging one law that has been on the books in Montana since 2005. Under this law, only physicians and physician assistants can legally provide abortions.

If you are like a lot of Montanans, your primary health care provider is an advanced practice clinician, not a doctor. That clinician may be an Advanced Practice Registered Nurse (APRN) who provides all of your basic health care needs. But under Montana law, that same APRN cannot provide an abortion, a safe and common medical procedure. This is the only medical procedure that APRNs are expressly forbidden by Montana law to perform.



*\* Abortion services are only available in these five Montana cities. In 2018, we expanded access to Whitefish.*

APRNs have a clear track record of providing early abortions as safely and competently as doctors and physician assistants. Leading medical and public health authorities, including the World Health Organization and FDA, agree on this point. APRNs regularly provide procedures comparable to or riskier than early abortion, such as endometrial biopsies or dilation and curettage for the management of miscarriage. There is simply no medical basis for prohibiting APRNs from providing abortion services to their patients.

In a state as large and sparsely populated as Montana, it's common sense to expand access to abortion by allowing APRNs to provide this much-needed health care service. Although abortion is basic health care and is constitutionally protected, it can be hard to obtain abortion services in Montana. Before April 2018, only four out of 56 Montana counties had an abortion provider and 55% of Montana women live in those counties. Some Montanans have to travel more than 180 miles to reach an abortion clinic.



*Helen Weems and  
Susan Cahill at All  
Families Healthcare*

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Photo by Nick Hudak.

Our plaintiffs, including APRN Helen Weems from Whitefish, have courageously stepped forward to challenge this restriction on abortion access. The law is not only bad health policy but is also unconstitutional. Two decades ago, the Montana Supreme Court ruled that Montana could not prohibit physician assistants from providing abortions. But the court's reasoning was not limited to physician assistants. Rather, the court made it clear that patients have the constitutional right to obtain an abortion from the qualified provider of their choice. Our lawsuit aims to correct the nonsensical and harmful disparity in Montana's abortion law that prevents APRNs from providing this essential health-care service. Increasing the pool of qualified abortion providers will help ease the considerable burdens Montanans face accessing these services.

The ACLU of Montana is also defending reproductive rights in a case involving individuals who are carrying a pregnancy to term. This January, Big Horn County Attorney Jay Harris announced a "crackdown" on pregnant women who use alcohol or drugs. Harris announced that his office will seek a legal document called an order of protection to restrain pregnant Montanans in his county from using any non-medically prescribed drugs or alcohol. Further, Harris declared if a person is



found to be in violation of such an order, prosecutors will seek to incarcerate that individual.

This punitive policy not only shows a disturbing lack of compassion but is counterproductive. Threatening to punish drug or alcohol dependency – a medical condition and public health issue – with criminal charges and jail will only undermine maternal and fetal health by driving pregnant individuals away from the treatment they need.

**“ This punitive policy not only shows a disturbing lack of compassion but is counterproductive.”**

For these reasons, every major medical group that focuses on the problems associated with drug and alcohol use during pregnancy—including the American Medical Association, the American College of Obstetricians and Gynecologists, the American Academy of Pediatrics, the American Nurses Association, and the March of Dimes—opposes the filing of criminal or civil charges against pregnant women.

Harris’s policy is also an abuse of his authority and violates Montana law. Montana law is clear that a county attorney may not restrain or incarcerate pregnant women based on alleged harm to the embryo or fetus. In 2014, a court threw out a Ravalli County prosecutor’s criminal charges against a pregnant woman who tested positive for drugs. The ACLU of Montana has outlined in a demand letter to the Big Horn County Attorney’s office how Harris’s policy violates multiple provisions of the Montana Constitution and the Montana Human Rights Act. We continue to monitor the situation, and if Harris attempts to enforce his policy, we are prepared to challenge his actions in court.

The decision of whether to carry a pregnancy to term is rightfully made by individuals, in consultation with their health care providers and families – not by prosecutors or politicians. The ACLU of Montana will fight to make sure that no government official takes that right away from Montanans.

### **BREAKING UPDATE:**

*On April 9th, we won a victory in the Weems lawsuit. The court granted our request to block the state from prosecuting our clients while the case proceeds. This means that our client, Helen Weems of All Families Healthcare in Whitefish, can immediately complete her training and begin providing safe and compassionate abortion care.*



## **Meet Helen Weems: Nurse Practitioner, Plaintiff, and Abortion Rights Advocate**

**By Samantha Weber**  
*Communications Intern*

As a college student, Helen Weems studied in Costa Rica and lived with a host family in a small village. There, her life was redirected when she witnessed her host mother deal with her third pregnancy.

The woman's family was incredibly poor, the children were malnourished, and the mother was depressed about the idea of trying to support another child. But she had no control to prevent a pregnancy or determine what would happen if she became pregnant. Helen realized that helping families plan their pregnancies was her calling.

She went on to work in an abortion clinic, and later became a certified nurse practitioner working at a primary care center in Seattle. She devoted herself to pregnancy prevention and maintained her passion for abortion access.

In 2016, Helen and her family moved to Whitefish. Before moving to Montana, Helen called Susan Cahill, a longtime abortion provider in Kalispell.

In 2014, Susan's clinic was violently vandalized, forcing her to close her doors and eliminate a vital healthcare option for scores of Montanans. The clinic's closure also meant patients had to travel much further to obtain abortion care, an added strain for families with meager incomes.

"You can't pay for gas, you can't pay for childcare, you can't pay for a night or two in a hotel," explained Helen. "The barriers to care are all just so much greater when you're of lower financial means."

On that phone call, Helen asked Susan to leave retirement, reopen the clinic, and mentor her. Susan agreed, and this February, Helen and Susan reopened All Families Healthcare in Whitefish. The new clinic has been providing a wide spectrum of healthcare, including abortions,

to a growing client base. When Susan decides to retire once again, Helen hopes to take over their clinic and provide abortion care for patients.

**“ We have a shortage and we have a need. But we also have the people. Let’s do the work.”**

That’s why Helen has decided to become a plaintiff in a Center for Reproductive Rights and ACLU of Montana lawsuit. The lawsuit is challenging an outdated and unconstitutional Montana law that restricts abortion access. This law prohibits qualified clinicians like Helen from providing abortion care services and limits access to abortion care.

Rural areas are increasingly drained of primary care providers, and advanced practice nurse practitioners are ready and able to fill that growing healthcare gap.

“We have a shortage and we have a need,” Helen said. “But we also have the people. Let’s do the work.”



***Helen Weems helped reopen the All Families Healthcare clinic with Susan Cahill.***

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The clinic’s mission is “to provide care with open arms to ALL people—rich, poor, brown, white, men, women, children, teens, gay, straight, trans, and anyone else who may feel in some way other or marginalized.”



## The Next Standing Rock: Protecting First Amendment Rights

By Elizabeth Ehret  
*Legal Fellow*

As TransCanada prepares to build the Keystone XL Pipeline in Montana, tribes are preparing to defend their precious water supplies from the risks oil exploitation poses. At Standing Rock, we saw how far governments and Big Oil will go to silence Indigenous people who peacefully protest to protect their water. This included attacking protesters with dogs, concussion grenades, and water cannons in freezing temperatures, surveilling civilians, and censoring news through media blackouts.

When people protest the installation of the Keystone XL Pipeline, we anticipate that the government, law enforcement officials, and TransCanada will attempt to prevent them from peacefully speaking out against the degradation of land and water.

**“ ...stand with protesters and proclaim,  
‘Water is life!’”**

In the wake of Standing Rock, First Amendment rights were further targeted as many states passed laws designed to suppress protests and criminalize protesters. ACLU affiliates across the country have worked diligently to combat these laws, including in Montana where we successfully defeated an anti-protest bill during the 2017 session. We are ready to challenge any efforts to suppress speech in Montana, whether in the legislature, at government offices, or on the streets.

In March, we submitted Freedom of Information Act (FOIA) requests seeking information related to government surveillance of potential protesters and others opposed to the Keystone XL Pipeline. The requests also seek to uncover possible plans to suppress protesters’ free speech.

Peaceful protesters in Montana must not become the victims of violence

by law enforcement and private security. We have seen this in Standing Rock, Ferguson, and other communities where people of color have used their freedom of speech to demand change.

The Montana Constitution expressly guarantees the right of the people to peaceably assemble or protest governmental action. Montanans are free to gather in traditional “public forums” such as streets, sidewalks, and parks, and the government may not place unreasonable restrictions on the exercise of Free Speech rights.



*Protesters oppose the North Dakota Access Pipeline during a blizzard.*

However, Ferguson, Baltimore, Standing Rock, and other recent protest movements showed us that government and law enforcement officials will not hesitate to criminalize protesters and use intimidation, illegal use of force, mass arrests, and militarized surveillance to chill and silence free speech. We call on all our supporters and allies to know your rights, use them, and stand with protesters and proclaim, “Water is life!”



*The ACLU of Montana’s Meg Singer and SK Rossi with other legal observers at Standing Rock.*



## The State of Solitary Confinement

By SK Rossi  
*Advocacy and Policy Director*

The Montana Department of Corrections (DOC) claims they don't use "solitary confinement" in any state facilities. But, when viewed through the generally accepted definition of the term, DOC facilities regularly rely on solitary confinement. Under that definition, solitary confinement is placing a person in isolation without any consistent or meaningful contact with other people. In Deer Lodge Men's Prison alone, there are at least 80 cells that fall within this definition. In the women's prison, at least two floors have their own pod of cells that should be considered "solitary confinement."

Unfortunately, state governments have found numerous creative ways to cover up their use of solitary. The simplest and most common tactic is to rename it. The Montana DOC has re-branded solitary confinement "administrative segregation" or "locked housing." But the practice is the same. Prisoners are kept in separate housing for 23 hours a day with no human contact for up to 30 days at a time. At that point they might be placed in a different unit for 24 hours and then returned to the isolation cell.

The purpose of solitary confinement, if there ever was a legitimate one, was to keep violent prisoners out of the general population and ensure the safety of staff and inmates. But, like many other criminal justice practices and processes, the original purpose has been lost. Now, solitary confinement is used as a punishment. Instead of being used in extreme circumstances, it has become a routine practice used to teach prisoners a lesson about acting out. Solitary confinement is no longer a last resort – it is a common practice.

Solitary confinement's detrimental impacts have been widely known since the 19th century. As early as 1890, the United States Supreme Court acknowledged concerns that "a considerable number of prisoners fell, after even a short confinement, into a semi-fatuous condition, from



which it was next to impossible to arouse them, and others became violently insane; others still, committed suicide. Those concerns remain identical today and are even greater for prisoners who are young or mentally ill.



The Montana DOC has rebranded solitary confinement “administrative segregation” or “locked housing.” Prisoners are kept in separate housing for 23 hours a day with no human contact for up to 30 days at a time.

The fight against solitary confinement is a perfect example of the ACLU of Montana’s multi-pronged approach to criminal justice reforms. Over the last ten years, we have participated in both courtroom and legislative battles to either completely do away with or substantially reform the practice of isolating prisoners.

The ACLU of Montana is currently representing prisoners suffering from mental health illnesses in a lawsuit against the Montana Department of Corrections. The lawsuit seeks to end DOC’s practice of placing mentally ill prisoners in solitary confinement, where their psychological conditions inevitably worsen. Rather than provide treatment and care to prisoners with mental health illnesses, DOC simply relegates them to an isolation cell. Needless to say, many prisoners who endure solitary confinement engage in self harm, including suicide. DOC’s pattern and practice of relying on solitary to deal with mentally ill prisoners constitutes cruel and unusual punishment in violation of the 8th Amendment.

On the legislative front, an interim committee of the Montana Legislature is currently studying the use of solitary confinement pursuant to a bill passed in the 2017 legislative session. Thus far, the bipartisan

committee has heard from DOC officials and county officials who oversee jails. All of these officials have asserted that solitary confinement is not used in their facilities. On paper this may be true, but in practice, each facility's use of isolation under the re-branded synonyms of "admin seg" and "locked housing" should be considered solitary confinement by the committee.

## “ Across the country, states similar to Montana have successfully implemented reforms.

Proponents of solitary confinement claim that the ACLU of Montana wants to completely ban the use of isolation. That is not the case. We are only asking the committee to consider legislation to limit the use of isolation. Instead of 23 hours a day for 30 days with no human contact and little to no evaluation by health professionals, we are seeking reasonable reforms. Such reforms would limit the number of consecutive hours and days allowed and increase periodic evaluations by mental and other health professionals.

Across the country, states similar to Montana have successfully implemented reforms. The Colorado Department of Corrections, after evaluation by a third party, implemented reforms that led to a nearly 37% decrease in the use of solitary. Colorado's reforms included closing a 316 bed "admin seg" facility, which saved the state more than \$18 million over two years. In North Dakota, corrections officials implemented a simple, highly impactful reform to decrease the use of "admin seg" in the prison. This dropped the use of solitary confinement by 30%. After two years, the average number of "admin seg" cells in North Dakota has gone from 80 to a maximum of 30.

It is yet to be seen what will come of the ACLU of Montana's lawsuit against the Montana DOC. Each side is currently attempting to negotiate policy changes that would substantially reform DOC's use of solitary confinement. It is also hard to predict if the Law and Justice Interim Committee will propose meaningful changes to the use of isolation during the 2019 legislative session.

One thing is clear – it is time for Montana to modernize the way it treats prisoners and stop using the cruel and unusual punishment of solitary confinement.





## Expanding Voting Access in Indian Country

By Alex Rate  
*Legal Director*

Montana's Constitution guarantees that "All elections shall be free and open, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage."

Unfortunately, for many decades these guarantees have only been words on paper for Indigenous people in Montana. Montana courts have recognized that there has been a history of official discrimination in Montana that has touched the right of Native Americans to participate in the democratic process.

The ACLU of Montana is working with Indigenous communities and allies across the state to guarantee Indigenous people have free and fair voting access. In 2014, the ACLU of Montana participated as a friend of the court in the case of *Wandering Medicine v. McCulloch*. That case brought about new voting offices on three reservations. These voting offices meant that Indigenous people would no longer have to travel great distances (in some cases hundreds of miles) to vote.

After the *Wandering Medicine* settlement, then Secretary of State Linda McCulloch issued a directive advising county elections administrators to open "satellite" voting offices on reservations when needed to guarantee voting access. Decades of discrimination against Indigenous people at the ballot box won't be reversed overnight, and there is still much more work to be done. However, through legal challenges and community organizing by organizations such as Western Native Voice, progress has begun.

With 2018 mid-term elections only a few months away, the ACLU of Montana will be working with tribes to ensure that "all elections shall be free and open," and that Indigenous people no longer face barriers to the ballot box.

## MEET OUR NEW STAFF

We are excited to introduce the newest staff members who joined the ACLU of Montana team at different points in 2017.



### Elizabeth Ehret • *Legal Fellow*

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Before joining the ACLU of Montana, Elizabeth served as an Equal Justice Works AmeriCorps Legal Fellow at Whitman-Walker Health in Washington, D.C., where she oversaw the Name and Gender Change Project. She also clerked in the New Jersey Superior Court-Appellate Division.

Elizabeth first started engaging in LGBTQ rights work as a student at The College of New Jersey, where she majored in Music Performance and Women's and Gender Studies. She then worked as a grant writer and volunteered for multiple LGBTQ political campaigns throughout the Northeast. She graduated from Rutgers School of Law-Newark, and as a law student she interned with the National LGBTQ Task Force, Lambda Legal's Transgender Rights Project, the New Jersey Office of the Public Defender, the National Center for Lesbian Rights, and the ACLU of New Jersey.

Elizabeth grew up on the New Jersey shore and loves kayaking, swimming, and all things water. She also enjoys making music, reading, baking, and going on adventures in new places.



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### **Greg Kolwicz • Grants Coordinator**

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Originally from Philadelphia, Pennsylvania, Greg graduated from Temple University with degrees in Sociology and Business. The early part of his career was spent in Juneau, Alaska, serving with a handful of nonprofit organizations doing work in a variety of fields, including wilderness therapy and domestic violence prevention. After moving to Missoula in

2012, Greg spent several years advocating for victims of child neglect and sexual abuse. He is excited and gratified by the opportunity to continue to fight for social justice by supporting the work of the ACLU.



### **Zuri Moreno • Advocacy & Policy Assistant**

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Zuri's passion for public education and community empowerment began with environmental nonprofits. In their early work, Zuri focused on environmental education and advocacy, community-based conservation, and sustainable trails development. After years of public lands advocacy, Zuri is excited to expand the ACLU of Montana's volunteer outreach and

engagement and support public education and policy work. Throughout their career, they've recognized that challenges to racial equity, gender equality, and socioeconomic disparities impact what opportunities are available to a person.

Zuri brings a passion to create inclusive opportunities for every community. When not mobilizing community members for projects or events, Zuri spends time exploring Montana outdoors where they enjoy finding places to set up a hammock to read and take a nap in the sun.



**Let's stay in touch!** Connect with us for updates and ways to take action.

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- 28¢** **Empower Montanans to know and exercise their rights**  
Gives a student a “Know Your Rights” card that explains their college’s responsibilities with Title IX and Sexual Assault.
- \$200** **Build relationships to influence change**  
Funds a lobbyist to monitor the legislature in Helena for a day or covers the daily costs (rental car, gas, and hotel) to have our Indigenous Justice Program Manager on the road in Indian country.
- \$500** **Create transparency in our government**  
Send one Freedom of Information Act (FOIA) request to government agencies to discover information about civil liberties violations.
- \$5,000** **Defend civil liberties in the courts**  
Hires a mediator to settle a legal complaint to help an Indigenous student group remedy discriminatory policies at their school.