

ACLU OF IDAHO

2009 LEGISLATIVE SESSION IN REVIEW

We hope that many of you were able to make it to one of our end of session events – *Blues, Brews, and Bills* – held this year in Boise, Moscow, Coeur d’Alene, Sandpoint, and Ketchum where we gave a wrap-up of the 2009 Idaho Legislative Session. In June we will travel to Eastern Idaho to host this same event. This is the first year we have hosted this event and is something we plan on doing every year across the state. If you missed the *Blues, Brews, and Bills* events this year, or we didn’t make it to a town near you, look out for next year’s events!

General Observations

The 2009 Idaho Legislative Session was the second longest session in the state’s history as legislators stayed in town through the first part of May. The session started out slow as legislators and the public waited to hear if Governor Otter was going to accept the stimulus money offered to states by the federal government. Awaiting the governor’s decision, legislators tackled budget cuts and funding shortfalls. For the first half of the session, it seemed as if they were playing the hurry up and wait game.

Some of the trends this session were major financial concerns, strange memorials and resolutions, and gun legislation. Because money is tight, legislation with large fiscal impacts had a tough time making it through the process. Many of these bills, like bills requiring mandatory minimum sentencing, stalled before ever getting a public hearing.

Because legislators couldn’t get many of the bills they wanted through committee, they resorted to introducing some rather strange bills, memorials, and resolutions. One such resolution was House Joint Memorial 4, a memorial created to send a message to the federal government that Idaho is a sovereign state and not an agent of the federal government. Ironically, on the same day the Senate State Affairs Committee considered HJM4, they also considered legislation asking the federal government for money to establish a medical school in Idaho.

In addition to the budget and Idaho’s relationship with the federal government, the legislature also considered a handful of bills dealing with the right to bear arms. One bill limited liability on shooting ranges, one reaffirmed the right to bear arms, another allowed employees to keep guns in their cars while at work, and another ensured that Idahoans would have access to their firearms in a state of martial law.

While it seems that the legislature considered and passed many unnecessary bills in the 2009 session, the budget crisis did take up much of their time. With the main focus this session on the budget, it seems for once, the legislature decided to leave civil liberties, for the most part, intact.

Bad Bills and what happened to them.

As is the case with every session of the Idaho Legislature, we saw many proposals that would have threatened civil liberties. Fortunately, because there were more pressing issues to deal with, not one of these bills was signed into law.

Some of the most dangerous proposals introduced in 2009 include an internet harassment bill (HB82), a bill prohibiting certain actions for lobbyists (HB237), voter id requirements (HB285), anti-immigrant proposals (SB1155 & 1196), and a pharmacy refusal bill (HB216).

House Bill 82 and House Bill 237 both posed a threat to free speech. HB82 attempted to prohibit certain actions, including "annoying" another, over the internet. HB237 attempted to prohibit certain speech for lobbyists. Because both of these proposals would have a chilling effect on free speech, the ACLU of Idaho opposed both HB82 and HB237. Both bills were held in committee.

As has been the case for the past few sessions, bills were introduced that attempted to address the issue of immigration and undocumented workers. Senate Bills 1155 and 1196 called for sanctioning employers who hire undocumented workers to use the flawed E-verify (employment verification) system, which makes it much harder for immigrants to obtain driver's licenses. Fortunately both bills were held in committee this year, but we can expect to see them again in 2010.

Another bill that would adversely affect immigrants, in addition to students and the elderly, was House Bill 285. HB285 attempted to prohibit mail in voter registration and mail in voting and would require photo identification in order to vote. There is no proof of a voter fraud problem in the state of Idaho but we do know that legislation such as HB285 will have a negative impact on voter turnout. While it is important to make sure only eligible individuals are able to vote, it is important to make sure that barriers to voting are not created. The ACLU of Idaho opposed HB285 because it would make it harder for Idahoans to vote and because it does not address any real problem.

House Bill 216, the pharmacy refusal bill, was introduced early in the session and seemed as if it was going to sail through both the House and Senate. However, through our lobbying efforts with various coalition partners, we were able to stop the bill before it was ever given a hearing in the Senate. If enacted, HB216 would have allowed a pharmacist to refuse to provide any drug or pharmaceutical care to a customer based on the pharmacist's religious, moral, or ethical principles. While the ACLU vigorously defends the freedom of religion protected by the First Amendment to the United States Constitution, that freedom must be balanced in this case, with the interests of the patient and the public health. Unfortunately, HB216 offered no patient protections and would put the patient's health at risk. Because HB216 failed to strike a proper balance between the rights of the pharmacist and the rights of the patient, we opposed HB216.

Where did all the good bills go?

Though things were tough this year for many facing cuts in social services, things weren't all bad on the civil liberties front. There were a few bills introduced in 2009 that the ACLU actively supported, although not all were signed into law.

House Concurrent Resolution 23, which was adopted by the legislature, proclaimed April 28, 2009 as Equal Pay Day and recognized the existence of pay inequity in Idaho between men and women performing the same jobs. While HCR23 did not require any action to rectify the pay inequity that exists, it was a step in the right direction.

Our biggest effort this session, and our biggest effort over the last few years, was to amend the Idaho Human Rights Act (IHRA) to include protections against discrimination based on sexual orientation and gender identity. 2009 marked the third year in which we have worked with a broad coalition of organizational and individual partners to amend the IHRA. Unfortunately this year we faced some setbacks first with a more conservative make-up of a key committee, the Senate State Affairs Committee, and second with the decision of the Idaho Human Rights Commission to vote against supporting the amendment. Although we faced these setbacks we still took the amendment to the Senate State Affairs committee for a print hearing but the committee voted in favor of discrimination when they voted not to print the bill.

Although the vote against printing the IHRA amendment was a setback, we are continuing with very exciting work towards equality. In response to the committee's vote, with our partners, we formed the Idahoans for Fairness campaign to support amending the IHRA. On April 4, 2009 Idahoans for Fairness held a rally in front of City Hall where about 400 people attended to show their support for the amendment. In addition, we launched the "We are Idaho" photo booth to allow Idahoans to get their pictures taken and send a message to their legislators that Idahoans support human rights and fairness. We have taken photos in Boise and Pocatello and will continue to do so in other parts of the state throughout the year.

What can we expect next year?

The good news is that we survived the 2009 Legislative Session with our civil liberties in place. The bad news is that some of the proposals that threaten our individual rights will be back next year. We can be sure to see voter id legislation and anti-immigrant legislation introduced early in 2010. In addition, it is likely that the pharmacy refusal bill we also be back next year.

Fortunately, the ACLU of Idaho will also be back at the Statehouse next year with our own proposals. As we have been for the last three years, we will attempt to amend the Idaho Human Rights Act. In addition, we are working on a project to address the practice of shackling pregnant women who are in custody during childbirth. We hope to introduce legislation prohibiting this practice in Idaho. And as always, the ACLU of Idaho will continue to have a permanent presence at the Idaho Legislature fighting to protect and preserve civil liberties.

The following list highlights some of the bills the ACLU of Idaho took positions on or monitored during the 2009 Legislative Session.

REPRODUCTIVE RIGHTS AND HEALTH

FAILED

HB 214 – Early Fetal Death Certificates. Amends and adds to existing law relating to early fetal death to provide a public records exception; and to provide for certificates of early fetal death in cases of miscarriage or abortion before 20 weeks. *Failed in the House (31-Y, 32-N, 7-A). The ACLU of Idaho opposed this bill.*

HB 216 – Pharmacy refusals. Amends and adds to existing law to provide freedom of conscience for pharmacists, pharmacies and institutions and that no person shall be required to provide for any pharmaceutical care or drug that violates his or her conscience. *Passed the House (48-Y, 21-N, 1-A). Held in Senate Health and Welfare. The ACLU of Idaho opposed this bill.*

IMMIGRATION/IMMIGRANTS' RIGHTS

PASSED

SB1110 – Public Benefits for Asylees and Refugees. Amends existing law relating to restrictions on public benefits to revise the documentation that may be used to verify lawful presence in the United States. *Passed the Senate (34-Y, 0-N, 1-A) and passed the Senate (64-Y, 0-N, 6-A). The ACLU of Idaho supported this bill.*

FAILED

SB 1155 – Immigration, employer enforcement, e-verify, changes to driver's license requirements, ending "sanctuary policy." Amends and adds to existing law relating to employment of unauthorized aliens to revise the amount of a fine and to provide for a misdemeanor; to prohibit employment of unauthorized aliens, to provide provisions relating to the filing and investigation of a complaint, to provide for certain notice, to provide provisions relating to actions against certain employers, to provide for penalties, to provide that the attorney general shall maintain a database of certain court orders, to provide for application of federal law, to provide for exceptions and an affirmative defense, to require political subdivisions to verify employment authorizations, to provide provisions relating to the award of certain contracts; and to provide provisions relating to notice from the state tax commission to certain employers. *Held in Senate State Affairs. The ACLU of Idaho opposed this bill.*

SB 1196 – Employment enforcement, unauthorized aliens. Amends and adds to existing law relating to employment of unauthorized aliens to revise the amount of a fine and to provide for a misdemeanor; to prohibit employment of unauthorized aliens, to provide provisions relating to

the filing and investigation of a complaint, to provide for certain notice, to provide provisions relating to actions against certain employers, to provide for penalties, to provide that the Attorney General shall maintain a database of certain court orders, to provide for application of federal law, to provide for exceptions and an affirmative defense, to require political subdivisions to verify employment authorizations, to provide provisions relating to the award of certain contracts; and to provide provisions relating to notice from the state tax commission to certain employers. *Held in the Senate State Affairs. The ACLU of Idaho opposed this bill.*

CRIMINAL JUSTICE, SEX OFFENDERS, AND DUE PROCESS

PASSED

HB107 – Death Penalty Amendments. Amends existing law relating to execution to revise provisions relating to the infliction of the death penalty. *Passed the House (64-Y, 0-N, 6-A) and the Senate (33-Y, 2-N, 0-A). The ACLU of Idaho monitored this bill.*

HB145 – Involuntary sterilization. Amends existing law relating to sterilization to revise a definition. *Passed the House (68-Y, 0-N, 2-A) and passed the Senate (35-Y, 0-N). The ACLU of Idaho supported this bill.*

FAILED

HB71 – No expungement upon discharge of defendant. Amends existing law relating to criminal history records and crime information to provide that the discharge of a defendant shall not result in the expungement of the defendant's criminal history record. *Failed in the House (33-Y, 34-N, 3-A). The ACLU of Idaho opposed this bill.*

HB82 – Internet harassment. Amends existing law to provide for the crime of using emails, text messages, or posts on the internet to annoy, terrify, threaten, intimidate, harass or offend, to provide for prima facie evidence, to provide application and to provide when the offense is deemed to have been committed in the state of Idaho. *Held in House Judiciary and Rules. The ACLU of Idaho opposed this bill.*

HB178 – Sex offender registration. Amends existing law relating to the Sexual Offender Registration Act to provide that the act applies to persons convicted of certain crimes and to clarify that an offender is not required to comply with the sex offender registration requirements while incarcerated; and to require electronic monitoring of violent sexual predators. *Passed the House (69-Y, 0-N, 1-A) and passed the Senate (34-Y, 0-N, 1-A). The ACLU of Idaho monitored this bill.*

HB180 – Prohibiting sale of alcohol to individuals convicted of DUI. Amends and adds to existing law relating to alcoholic beverages and motor vehicles to provide additional penalties; to provide requirements relating to driver's licenses and identification cards issued to interdicted persons; to prohibit certain persons from selling alcoholic liquor to interdicted persons; to provide that interdicted persons are prohibited from purchasing, consuming or possessing alcoholic beverages and to provide a penalty; to provide that interdicted persons are not allowed to purchase, possess, serve, dispense or consume beer, wine or other alcoholic liquor and to provide a penalty; to provide that it is a misdemeanor for interdicted persons to make certain false representations or omissions relating to the selling, serving or dispensing of beer. *Held in House Judiciary and Rules. The ACLU of Idaho monitored this bill.*

HB183 – Expungement of criminal records for innocent persons. Adds to existing law relating to criminal procedure to provide for the expungement of the criminal records of innocent persons. *Held in House Judiciary and Rules. The ACLU of Idaho supported this bill.*

HB237 – Prohibited Actions for Lobbyists. Amends existing law relating to lobbyists to correct code references; to revise prohibited actions of a person required to register as a lobbyist; and to provide that a certain subsequent violation shall be a felony. *Held in House State Affairs. The ACLU of Idaho opposed this bill.*

SB1034 – Mandatory minimum sentencing for sex crimes when victim is under twelve years of age. Amends existing law relating to mandatory minimum sentencing to provide an exception relating to the term of imprisonment for certain sex offenders; to revise provisions relating to the sentencing of certain sex offenders and to provide mandatory minimum sentencing for certain offenders. *Held in Senate Judiciary and Rules. The ACLU of Idaho monitored this bill.*

ELECTIONS, VOTING, AND ACCESS TO GOVERNMENT

PASSED

SB1142 – Open Meetings Law amendment. Amends existing law relating to open public meetings to amend provisions relating to notice requirements for meetings and agendas; to revise provisions relating to the written minutes of meetings; to revise provisions relating to executive sessions; and to revise provisions relating to violations. *Passed the Senate (34-Y, 0-N, 1-A) and passed the House (59-Y, 10-N, 1-A). The ACLU of Idaho monitored this bill.*

FAILED

HB285 – Voter Identification. Amends, adds to and repeals existing law relating to elections to provide for proof of identity and residence relating to procedures for registration, to provide for proof of identity relating to election day registration and to revise provisions relating to proof of

residence; to provide for proof of identity relating to absent electors' polling places; to provide that electors desiring to vote shall provide proof of identity, to define "proof of identity," to provide for a felony; and to provide for a voter identification card. *Held in House State Affairs. The ACLU of Idaho opposed this bill.*

SB1156 – Sunshine Law. Adds to existing law to provide for a financial disclosure statement for public officers and candidates for public office to be filed with the Secretary of State, to provide a duty to file, to provide the contents of the statement and to provide penalties. *Passed the Senate (34-Y, 0-N, 1-A) but was held at the desk of the Speaker of the House. The ACLU of Idaho supported this bill.*

HUMAN RIGHTS

PASSED

HCR23 – Women’s Pay Equity. Stating findings of the Legislature and recognizing the importance of women's pay equity and recognizing equal pay day. *Adopted by the House by voice vote and adopted by the Senate (33-Y, 0-N, 2-A). The ACLU of Idaho supported this resolution.*

FAILED

SB1118 – Health Care Coverage for Domestic Partners. Amends and adds to existing law relating to health care policies to provide certain coverage under certain specified health care policies to unmarried domestic partners. *Held in Senate State Affairs. The ACLU of Idaho supported this bill.*

Idaho Human Rights Act Amendment. Amends existing law to provide protection against discrimination based on sexual orientation and gender identity in the areas of employment, housing, education, and public accommodation. *Held in Senate State Affairs. The ACLU of Idaho supported this proposal.*