

LEGISLANNEREPORT

The 2021 Legislative Session was yet another session for the history books.

Not only did this year present the longest legislative session in Idaho history– it also marked one of the most hostile sessions for civil rights and liberties in decades.

The session began with the ACLU of Idaho joining community partners to call on the Idaho Legislature to ensure safe and equitable participation in the legislative process amidst an ongoing pandemic. We called on leadership to defer the session or

By the Numbers

- **122** days in the 2021 legislative session
- 105 legislators in both the House and Senate
- 2 ACLU lobbyists present in the Statehouse
- 61 bills tracked
- 4 Lobbying 101 Trainings

adopt containment measures and clear and equitable guidelines for remote participation. While the legislature did ultimately adopt guidelines for remote participation, the legislature failed to adopt containment measures and were forced to take an unprecedented 18day recess due to a COVID-19 outbreak.

Due to the lack of containment measures at the statehouse,

our calls for community engagement looked a bit different this year. In collaboration with community partners, we hosted a variety of Lobbying 101 Trainings to ensure that community members felt confident to testify and lobby their legislators remotely. Substantively, there were numerous losses for civil rights and liberties this session. Three anti-choice bills were signed into law. We also saw the Idaho legislature draft and introduce a series of bills attacking Critical Race Theory and weaponizing the education budget to chill conversations about systemic sexism and racism in Idaho schools. Idaho also passed SB 1110, a bill that significantly compromises Idahoans' ability to exercise their initiative and referendum rights guaranteed by the Idaho Constitution.

While there were many losses at the statehouse this session, there were a few notable victories as well. The Wrongful Conviction Compensation Act was signed into law with unanimous support from the House and Senate. The Act will provide critically important compensation to those who were wrongfully imprisoned by the state. The ACLU of Idaho also claimed victory in preserving ballot access this session. We fought against legislation that would have imposed felony liability on any person who assists a non-family member in casting their ballot. We also successfully fought legislation that would have imposed stricter voter ID and sameday voter registration requirements- legislation that would have fallen most heavily on indigenous, elderly, houseless, and disabled voters.

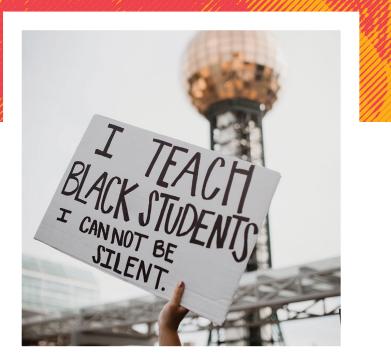
The issues noted above just scratch the surface. We invite you to read on to learn more about our 2021 legislative work– and don't forget to review our scorecard so you can track how your elected officials voted on civil rights and liberty issues.

FREE SPEECH

Academic Freedom, Boycotts, and Residential Picketing

Idaho led the charge in weaponizing the education budget in an effort to censor and stifle conversations about systemic racism and sexism in Idaho classrooms. The Idaho Legislature cut the higher education budget to "send a message" of their disapproval of social justice education. Idaho was also the first state legislature in the country to pass an anti-critical race theory bill (HB 377). The bill raises significant vagueness and academic freedom concerns. Far right discourse that mischaracterizes Critical Race Theory is distracting government officials from more important values of ensuring Idaho kids learn about America's troubled and continuing history of race and racism. Systemic racism and implicit bias are real. We will continue to resist any attempt to ban discussions on these topics.

The anti-critical race theory bill was not the only bill that raised First Amendment concerns. Governor Little signed SB 1086 into law, a bill that prohibits the state of Idaho from contracting with companies who are participating in the Boycott, Divest, and Sanction (BDS) movement.¹



ACLU affiliates across the country have successfully challenged these laws, with courts noting that anti-boycott laws violate the First Amendment. Although an Idaho Attorney General opinion cited various constitutional concerns about the legislation, Governor Little signed the bill into law.

Despite these losses, there was one victory on the frontier of free speech. HB 195 would have jailed Idahoans for up to a year for exercising their constitutional right to peacefully assemble outside of a person's residence. The bill language went beyond the very limited restrictions on residential picketing that may be constitutional. The bill died in a close vote on the House floor.

REPRODUCTIVE RIGHTS

Defunding, Gagging, and Banning

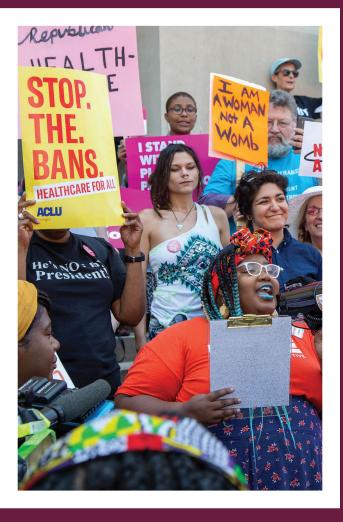
The number of abortion restrictions introduced and enacted in state legislative sessions this year has been unprecedented. According to the Guttmacher Institute, "If this trend continues, 2021 will end up as the most damaging anti-abortion state legislative session in a decade-and perhaps ever."² Idaho is no exception. This legislative session, we saw a host of attacks on reproductive freedom.

HB 366 seeks to ban abortion services at 6-weekslong before many people even know they are pregnant. This legislation is a blatant attempt to chip away at Roe v. Wade. In clear acknowledgment that this legislation spits in the face of existing precedent, lawmakers included a "trigger" provision in the bill, which makes it so the law would not go into effect unless a similar 6-week abortion ban were to be upheld in another circuit court. To date, no such ban has survived judicial scrutiny.

Governor Little also signed HB 220a into law. HB 220a prohibits public contracting and participation in any commercial transaction with an abortion provider or their affiliate. It also creates a "gag rule," which prohibits public employees- like school counselors and nurses- from counseling in favor of abortion, or from offering a referral to an abortion provider. Idaho law already prevents taxpayer funds from going towards abortion care. HB 220a will ultimately strip state funding from providers who offer abortions as part of a spectrum of healthcare. The consequence is that Idahoans will lose access to cancer screenings, birth control, HIV and STI testing, and other essential and preventative care.

¹ BDS is most frequently used to express disapproval of, and a desire to affect, Israeli policy regarding Palestinian territories, Israeli military tactics or campaigns, or other aspects of Israeli government policy.

er.org/article/2021/04/2021-track-become-most-devastating-antiabortion-state-legislative-session-decades



In the same breath, the Idaho Legislature rejected policies that would actually support families and prevent unintended pregnancies. Lawmakers rejected funding for Pre-K education and killed a bill that would have authorized Idaho health insurance companies to provide up to 12-months of contraception.

CRIMINAL LEGAL SYSTEM

Fair Chance Employment, Wrongful Conviction Compensation, & Legislative Attempts to Preempt Marijuana Legalization

PRISONS. Coming into the 2021 Legislative Session, we partnered with our legislative bill sponsor, Rep. SMA Lauren Necochea (D-19) to reintroduce the Fair Chance Employment Act (HB 196) for the fourth time at the Idaho Legislature. Fair Chance Employment is an opportunity for the state of Idaho to begin Lastly, we saw legislative efforts to constitutionalize to address its high recidivism rates by expanding the criminalization of marijuana in Idaho. The 2020 employment opportunities to people who were formerly election resulted in successful state initiatives to incarcerated and are seeking to reintegrate back into legalize marijuana in red and blue states across the the workforce after release from prison. The Act would country. This year, Idaho legislators sought to prohibit ensure that employers fairly consider job applicants similar initiatives from making it on the ballot in with a record by delaying when an employer can ask Idaho by proposing a constitutional amendment about an applicant's conviction history. prohibiting legalization of certain controlled substances (See SJR 101 and HJR 4). If passed, This year, the bill was introduced in the House the amendment would effectively close the door for Judiciary, Rules & Administration Committee, with marijuana legalization via ballot initiative in Idaho.

This year, the bill was introduced in the House Judiciary, Rules & Administration Committee, with a powerful showing from carceral involved people and their loved ones. Though the majority of those who testified before the committee supported the bill, legislators ultimately voted to hold the bill in committee, citing to some of the bill's exemptions and the legal consequences for non-compliance.

While we were disappointed with the outcome on Fair Chance Employment, we did celebrate the signing of SB 1027, the Wrongful Conviction Compensation Act. The ACLU of Idaho supported a previous iteration of this bill during the 2020 Legislative Session, which was ultimately vetoed by Governor Brad Little. This year, with some slight changes to the bill language, Governor Little supported the legislation and the Act was signed into law.

While the State cannot give back years of deprived freedom— this legislation will provide critical compensation to Idaho's wrongfully convicted, and mitigate some of the harm and collateral consequences that inevitably flow from a person's wrongful imprisonment.

⁴ACLU. (2020). A Tale of Two Countries: Racially Targeted Arrests in the Era of Mar na-reform. ⁵Id.

VOTING RIGHTS

A Brutal Loss for Idahoans' Initiative and Referendum Rights, but some Victories in Preserving Ballot Access

We saw various attacks on ballot access and Idahoans' initiative and referendum rights this session. SB 1110 restricts the ballot initiative and referendum process by requiring signatures from 6% of eligible voters from all 35 legislative districts, as opposed to the previous requirement of obtaining 6% of voter signatures from 18 of Idaho's 35 districts. Idaho already has one of the most onerous ballot initiative processes in the country. This change to the initiative process will make it nearly impossible for grass roots initiative sponsors to collect the required signatures in the allotted time period. Governor Little signed the bill into law, despite overwhelming opposition from the public.

In addition to attacks on Idahoans' initiative and referendum rights, there were no shortage of attacks on ballot access this session. HB 223 would have imposed felony liability on non-family members who assist in the collection or conveyance of another person's absentee ballot. The bill was also particularly harmful to indigenous voters, voters with disabilities, and elderly voters who rely on third-party assistance to collect and cast their ballot. While the bill passed the House, it was held on the Amending Order in the Senate. A win for preserving ballot access in Idaho.

The ACLU of Idaho also worked to defeat HB 344, which would have burdened individuals' access to the ballot by imposing stricter same-day voting registration requirements. These stricter requirements would have fallen most heavily on students, the elderly, jobless and Public records requests show vast majority of constituents asked Governor Little to veto SB 1110. Out of **4,000** phone calls and **2,200** emails, only **150** were in favor of SB 1110.³

houseless people, and those who are in nursing homes or institutional facilities. The bill was also problematic because conflicting addresses would result in a voter potentially being removed from the list of registered electors without adequate notice. While HB 344 passed the House, it did not receive a hearing in the Senate another victory for preserving access to the ballot in Idaho.

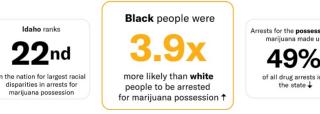
³Mosely-Morris, K. (2021, April 23). Public records show vast majority of constituents asked governor to veto initiatives bill. https://idahocapitalsun.com/2021/04/23/public-records-show-vast-majority-of-constituents-asked-governor-to-veto-initiatives-bill/

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Enforcement of marijuana laws generates some of the criminal legal system's starkest racial disparities. "A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform," a landmark report from the ACLU, details the staggering racial bias and financial waste of our country's counterproductive fight against a drug widely considered less harmful than alcohol.⁴

Marijuana: Racial Disparities in Idaho⁵



SJR 101 was not granted a hearing in the House, and HJR 4 failed on the House floor- leaving the window open for Idaho to decriminalize marijuana via ballot initiative.

⁴ACLU. (2020). A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform. https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijua-

IMMIGRANT RIGHTS

Driver Authorization Cards (DAC)

For more than two decades, immigrant rights leaders, allies, and community members have advocated for driver's licenses for the undocumented community. This session, legislation was finally introduced that would give those without a social security number an avenue to obtain a license and drive legally.

The legislation, SB 1132, was sponsored by Sen. Jim Guthrie (R-28) and was led by the Idaho Dairymen Association. This bill would allow all Idaho residents to obtain driving privileges, regardless of their immigration status. To obtain the Driver Authorization Card, applicants would be required to pass the requisite written and driving exams, pay licensing fees, and provide proof of identity and Idaho residency. The Driver Authorization Cards could also serve as an alternative for those who do not want, cannot afford, or do not have access to documents

1,423 = Number of signatures gathered in support of granting driving privileges to Idaho's undocumented community.

to obtain a license in compliance with the federal **REAL ID Act.**

In partnership with PODER of Idaho, a local immigrant rights group that had previously launched the Manejando Sin Miedo (Driving without Fear) campaign, we developed a petition in support of the legislation, which received 1,423 signatures. We also

collaborated with Latinx leaders and monolingual Spanish speakers to engage in the legislative process, and hosted bi-weekly informational webinars to community members.

There was tremendous community turnout for the Senate committee hearing on SB 1132. Many people who testified or submitted testimony in favor of the bill shared their firsthand experience as a child of immigrant parents, and spoke to the considerable impact of their parents not being able to legally drive. Others discussed the rich contributions of immigrants to Idaho's economy and agricultural industry.

Despite studies showing that expanding driver's licenses to undocumented community members increases road safety, the main source of opposition against this bill came from sheriff's offices throughout Idaho.

Ultimately, committee members voted to hold SB 1132 in committee, noting a need for more research and input from stakeholders. Sen. Pro Tempore, Chuck Winder (R-20), however, made the commitment to form an interim committee to better explore concerns held by some of the committee members.

With leadership from Sen. Winder and sponsor Sen. Guthrie, Senate Concurrent Resolution 107 (SCR 107) was drafted and introduced. SCR 107 would request the formation of an interim committee to study the issuance of Driver Authorization Cards. The resolution was introduced to the Senate on March 19th and passed the Senate floor. It was then assigned to the House Transportation & Defense Committee. We, along with PODER of Idaho, Idaho Dairymen Association, and other partner organizations pushed for community letters and phone calls to the Chair and members of the committee in support of SCR 107. Unfortunately, the Committee Chair, Rep. Palmer (R-20), did not have much appetite to move the resolution forward, and ended up holding the resolution without granting it a hearing.

While SCR 107 and SB 1132 were not ultimately passed, we saw robust community participation and support from significant stakeholders. The ACLU of Idaho remains steadfast in its commitment to supporting Idaho's immigrant communities. Undocumented people should be able to take their children to school, drive to the doctor's office, and get to work without fear of criminalization.





WHAT IS THE LEGISLATIVE **REPORT CARD?**

The ACLU of Idaho Legislative Report Card documents the voting patterns of your Idaho representatives over the 2021 Legislative Session. At a glance, you'll see how your legislators voted on policies impacting social justice, equity, and civil rights.

The votes presented in the Legislative Report Card are those considered by the full House or full Senate. You will notice that this year, some bills received votes from the full House, but did not get out of committee to be voted on by the full Senate. This is why there are less bills listed on the Senate Report card. Please also note that committee votes are not indicated in the report card.

WHY THE SCORECARD **IS CREATED:**

The report card is a crucial accountability tool. We encourage you to use this scorecard to give your elected officials feedback on their votes during the 2021 Legislative Session. Direct communication with your elected officials is a valuable way to encourage them to stand up for freedom and protect our constitutional rights.





Voting Rights HB 223 - Criminalizing Ballot Assistance Sponsor: Rep. Mike Moyle (R)

- **KEY POINTS:**
- Imposes felony liability on non-family members who assist in the collection or conveyance of a voter's absentee ballot.
- Disenfranchises indigenous voters, elderly voters, and voters with disabilities who rely on ballot assistance but do not have family members nearby to help them cast their ballot.



ACLU opposed **Passed the House Held in Senate** amending order

Free Speech HB 377 - Academic Censorship Sponsor: Rep. Wendy Horman (R) and Rep. Julianne Young (R) KEY POINTS:

- Chills classroom conversations about systemic racism, sexism, white privilege, and implicit bias.
- Fails to accurately define Critical Race Theory.
- Establishes a state orthodoxy in opposition to an entire academic discipline that examines systemic racism.

Voting Rights SB 1110 - Stripping Idahoans' Initiative and **Referendum Rights** Sponsor: Sen. Steve Vick (R) **KEY POINTS:**

- Hampers the ballot initiative and referendum process by requiring signatures from 6% of eligible voters from all 35 legislative districts, as opposed to the previous process, which required 6% of voter signatures from 18 districts.
- Significantly burdens initiative sponsors' ability to collect the required signatures in the allotted time period.
- Implicates constitutional concerns under the Idaho State Constitution and the First and Fourteenth Amendments.

LOSS **ACLU** opposed Signed by **Governor Little**

Free Speech SB 1086 - Anti-Boycott Sponsor: Sen. Pattie Anne Lodge (R), and Rep. Brent Crane (R) KEY POINTS:

- Bars the state of Idaho and any of its political subdivisions from entering into a contract with a company engaged in a boycott of Israel.
- Infringes upon the First Amendment rights of freedom of expression, assembly, and association guaranteed by the Fourteenth Amendment of the U.S. Constitution
- Ignores precedent establishing that boycotts to achieve political goals are a form of expression protected by the First Amendment. See NAACP v. Claiborne Hardware Co, 458 U.S. 886, 932-933 (1982).



Voting Rights HB 344 - Ballot Restrictions Sponsor: Rep. Brandon Mitchell (R) **KEY POINTS:**

- Prohibits high school student IDs as an acceptable form of identification and no longer accepts post-secondary ID cards without a birth date.
- Narrows acceptable forms of address verification to exclude forms of valid address verification within the precinct, such as a cell phone bill.



ACLU opposed **Passed House**

Not granted a committee hearing in **Senate State Affairs**

Free Speech HB 195 - Criminalizing Targeted Picketing Sponsor: Representative Brooke Green (D) and Representative Greg Chaney (R) KEY POINTS:

- Jails Idahoans for up to a year for exercising their First Amendment rights.
- Impedes Idahoans' inalienable rights to assemble peacefully and to instruct their representatives.
- Goes beyond the very limited restrictions on residential picketing that may be constitutional.

LOSS

ACLU opposed Signed by **Governor Little**

LOSS

ACLU opposed Signed by **Governor Little**



ACLU opposed **Failed on House Floor**

Criminal Justice SB 1027 - Wrongful Conviction Compensation Act

Sponsor: Sen. Doug Ricks (R)

- Establishes a payment system to financially compensate Idahoans who are wrongfully convicted of a crime they did not commit.
- Mitigates the harm and collateral consequences that inevitably flow from years of wrongful imprisonment at the hands of the state.

Criminal Justice HJR 4 and SJR 101 - Preempt Marijuana Legalization

Sponsor: HJR 4- Rep. Brent Crane (R) and Sen. Scott Grow (R); SJR 101- Sen. Scott Grow **KEY POINTS:**

- Proposes an amendment to the Idaho State Constitution that would prohibit the production, manufacture, transportation, sale, or delivery of "psychoactive drugs" unless the drug is: approved by the FDA, lawfully prescribed, and lawfully dispensed. Because it is a constitutional amendment, the resolution would go before Idaho voters on the general election ballot.
- If passed, the amendment would effectively close the door for marijuana legalization or decriminalization via ballot initiative.



ACLU supported

Signed by **Governor Little**



ACLU opposed

HJR 4 died on the **House floor**

SJR 101 passed the Senate but was not granted a hearing in **House State Affairs**

Reproductive Rights HB 220a - Defund and Gag Abortion Care

Sponsor: Rep. Bruce D. Skaug (R), Rep. Brent J. Crane (R) **KEY POINTS:**

- Prohibits public contracting and participation in any commercial transaction with an abortion provider or their affiliate.
- Creates a "gag rule," which prohibits public employees- like school counselors and nurses- from counseling in favor of abortion, or from offering a referral to an abortion provider.
- Strips state funding from providers who offer abortions as part of a spectrum of reproductive healthcare.

Reproductive Rights HB 366 - 6-week Abortion Ban Sponsor: Rep. Steven Harris (R) and Brent Crane (R) KEY POINTS:

- Bans abortion long before the point of viability and would undermine a pregnant person's ability to make personal and private decisions that should be left to the pregnant person, their family, and their doctor.
- Requires survivors of rape and incest to have a police report in hand in order to qualify for an exemption.
- Provides a person two weeks, at most, after a missed period to decide whether to have an abortion and to seek and obtain abortion care including raising the money, getting permission for time off work, securing transportation, setting up child care if needed, and complying with Idaho's mandatory waiting period.
- Includes a "trigger" provision that makes it so the law does not go into effect unless a similar 6-week abortion ban is upheld in another circuit court. To date, no such ban has survived judicial scrutiny.

Immigrant Rights SCR 107 - Driver Authorization Card Interim Committee Sponsor: Sen. Jim Guthrie (R)

KEY POINTS:

• Authorizes the legislative council to establish an interim committee to undertake studies of the issuance of Driver Authorization Card.

Reproductive Rights

HB 302 - Abortion Stigmatization Sponsor: Rep. Kevin Andrus (R) KEY POINTS:

- Expands the abortion informed consent statute to require individuals seeking an abortion to receive information from the Department of Health and Welfare concerning resources available in the public and private sectors to assist parents of children with Down syndrome with "delivery and care of a child born with Down syndrome."
- Provides information at the time a pregnant person is seeking an abortion, but not at the time of fetal diagnosis.

LOSS

ACLU opposed

Signed by Governor Little

LOSS

ACLU opposed Signed by **Governor Little**

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ACLU opposed Signed by **Governor Little**

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ACLU supported **Passed the Senate** Held in House **Transportation & Defense Committee**



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3	Voting Rights HB 344 Ballot Restrictions	R Greg
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4	Free Speech HB 377	R Chad
4	Academic Censorship	R Lanc
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5	Anti-Boycott	\square Muff
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6	Free Speech HB 195 Criminalizing Targeted	R Sage
	Picketing	R Barb
7	Criminal Justice SB 1027	R Marc
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		R Rod Ⅰ
8	Criminal Justice HJR 4 Preempt Marijuana Legalization	R Codi
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9	Reproductive Rights HB 302 Abortion	R Terry
	Stigmatization	R Marc
10	Reproductive Rights	R Prisc
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11	Reproductive Rights HB 366 6-week Abortion Ban	R Steve

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