2019 LEGISLATIVE

The 2019 legislative session was one of the longest in recent legislative history, lasting 95 days.

It was the first session for newly elected Governor Brad Little and the legislature welcomed numerous new lawmakers from around the state. And with several contentious issues making their way through the House and Senate, it was a session full of several highs and many lows, public outcry, and the need to consistently hold lawmakers accountable to the will of their constituents.

As the session wrapped up on April 11, 2019, we're happy to report that despite the obstacles the Idaho Legislature tried to place before us in protecting civil liberties, the ACLU defended another successful slate of legislative priorities aimed at ensuring the constitutional rights of all Idahoans was protected. We invite you to read more about our top victories for the year, and to check out our 2019 Legislative Scorecard where you can see how your elected officials voted on issues of priority for the ACLU.





The most contentious issue that overtook the statehouse this year was the introduction of six – yes SIX – bills all aimed at significantly reducing the public's access to the ballot initiative process provided in our Federal and Idaho Constitutions. The most problematic bill was SB 1159, sponsored by Sen. C. Scott Grow (R - 14, Eagle), that would have placed several new restrictions on how policy issues could be placed on the ballot through the signature petition process. The most problematic parts were the reduction of time provided to collect signatures – from 18 months to six months, the increased signature threshold – from six percent to ten percent of registered voters, and the geographic distribution requirement - from 18 legislative districts to 32 (out of a possible 35). With the enhanced geographic distribution requirement, we felt strongly that SB 1159 was unconstitutional because it violated the Fourteenth Amendment's Equal Protection provision regarding the "one person, one vote" principle. The key – in order to remain constitutionally sound in requiring a geographic distribution requirement, each legislative district needed to be divided equally among population numbers and registered voters. However, according to public data from the Secretary of State's website, we know that there's a large disparity between those numbers amongst each of Idaho's 35 legislative districts. For example – District 14 has the highest number of registered voters at roughly 38,000 people while District 27 has the lowest number at roughly 17,000 people. Despite ample meetings with legislative leadership, committee members and hours spent in public hearings with overwhelming opposition to the bill, SB 1159

passed both houses and ultimately made it to Governor Little's desk.

In an interesting twist, the House sponsor of SB 1159, Rep. Sage Dixon (R - 1, Ponderay)introduced a trailer bill, HB 296, to try and soothe over public outcry on the original bill, despite never engaging any of the organizations opposed to the ballot initiative changes. The proposed "fixes" to SB 1159 included changing the signature collection timeframe from six to nine months and the geographic distribution requirements from 32 out of 35 legislative districts to two-thirds of all districts. After blocking a public hearing on HB 296, the bill was rushed through the legislative process and it too ended up on the governor's desk. Thankfully, on Friday, April 5, Governor Little issued a veto on SB 1159, which effectively killed HB 296 as well, citing legal concerns that if the bill became law, it would subject the state to unnecessary lawsuits.

However – the House bill sponsor wasn't done attempting to revoke our access to the ballot initiative process. No less than five hours after Governor Little's veto on SB 1159, notice was circulated that Rep. Dixon intended to introduce a new bill to circumvent the Governor's veto. Yet, during the introductory hearing, he introduced not one, but FOUR new bills – essentially breaking down each of the components in SB 1159 and HB 296 into four separate bills. However, only HB 303, requiring a fiscal note and funding source to be included in the ballot initiative petition made it out of the House where it was killed promptly by the Senate, which refused to grant the bill a public hearing or floor vote. Without a doubt, this was one of the most prolonged battles of the 2019 session that used secret meetings, uncommon procedural moves, and denials of public hearings to advance these bills forward despite overwhelming public opposition from across the state. Be sure to stay vigilant – as we approach a presidential election in 2020 and reapportionment in 2021, we're sure that this isn't the last time we'll have to defend our constitutional right to the ballot initiative process.

CRIMINAL JUSTICE

Public Defense Commission Rules

The Idaho Public Defense Commission (PDC) once again sent proposed rules to the legislature aimed at improving our subpar, statewide public defense system. The PDC has been actively creating rules for the agency in response to legislation enacted in 2015 that aimed to reform the broken public defense delivery system. This year the PDC proposed new workload standards that begin to place restrictions on the number of cases a public defender can reasonably take during the year. However – the proposed numerical standards were created with flawed data from an incomplete 2018 PDC workload study and data from only one county - Ada County - which does not reflect the practices of the state as a whole. The result? A rule that will perpetuate the already excessively high workload standards that many public defenders face, which in turn will result in continued violations of their client's constitutional right to representation in court. Despite ongoing participation in the rulemaking process and educating lawmakers about the constitutional problem inherent in the proposed rule, the House and Senate Judiciary and Rules Committee approved the workload standards, which are now in effect.

Mandatory Minimum Reform

For the third year in a row, we partnered with our legislative bill sponsors Reps. Ilana Rubel (D – 18, Boise) and Bryan Zollinger (R – 33, Idaho Falls), the Idaho Association of Criminal Defense Lawyers and the Idaho Freedom Foundation to introduce HB 99 to bring common sense reform to Idaho's antiquated mandatory minimum laws related to drug trafficking. HB 99 would essentially end mandatory minimum sentences in Idaho, removing unchecked power from the prosecutor's hands and restoring

judicial discretion in sentencing. After emotional testimony in support of the bill during the House Judiciary, Rules, and Administration Committee hearing, HB 99 was ultimately voted out of committee and off the House floor to the Senate Judiciary and Rules Committee. However – the bill ultimately died in the Senate committee because the chair, Sen. Todd Lakey (R – 12, Nampa) refused to give the bill a hearing at the request of law enforcement agencies, despite overwhelming public support for the bill. While year three was not the lucky year we had intended, we are committed to working with our legislative champions to once again bring sentencing reform to the Idaho Legislature.

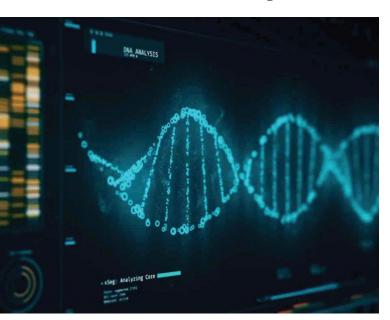
60,000,000 dollars that could be reinvested in community treatment options if mandatory minimum sentences for drug related offenses were reformed



CRIMINAL JUSTICE CONTINUED

Pre-Trial Risk Assessment Algorithmic Tools

Pre-trial reform is slowly making its way into Idaho, and this year we helped oversee the successful passage of HB 118, sponsored by Rep. Greg Chaney (R - 10, Caldwell), that would require significant transparency in the use of pre-trial risk assessment algorithmic tools. These tools have come under scrutiny across the country because when adopted by government agencies without adequate transparency, accountability, and oversight, their use can threaten civil liberties and exacerbate existing issues within



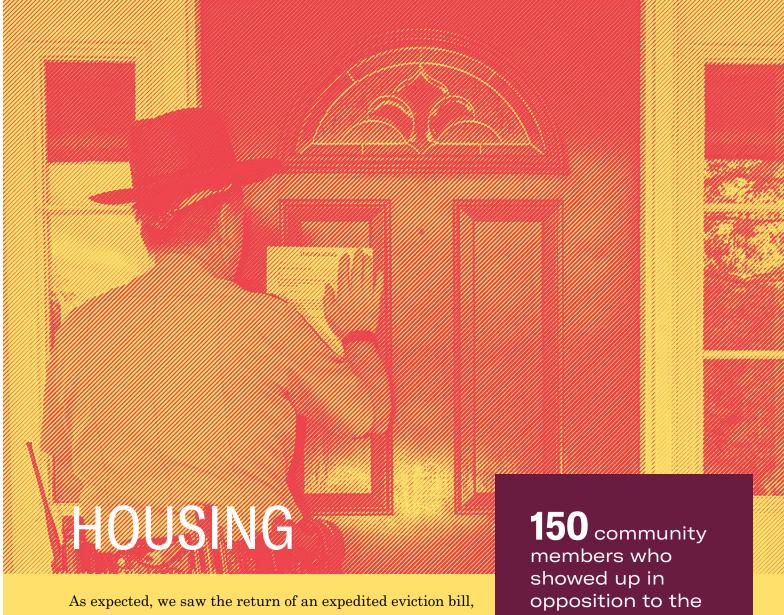
government agencies such as racial bias, inefficiencies, and opacity regarding decisionmaking. Commonly, pre-trial risk tools are used to determine what risk an individual charged with a crime poses from a failure to appear standpoint, as well as their risk to commit a new crime prior to trial. These tools are then used to determine the level of pre-trial supervision, if any, that individual should be subject to prior to their trial, such as their ability to be released on their own recognizance, to post bond, or to be subject to pre-trial detention in jail. HB 118 instead adopts sideboards that would require the data used to build the tool be open to public inspection, auditing and testing, as well as prevents the tool's creator from asserting trade secret protections to ensure further transparency in how said tool

is designed, built and used. While the bill was amended between the House and Senate Judiciary and Rules Committees, we were able to provide language suggestions to ensure best practices were included in the final bill language, resulting in a win for transparency in our criminal justice system.

Marsy's Law

Despite a well-funded, highly organized, and heavily lobbied campaign, we were able to defeat the California proposal known as Marsy's Law for the third year in a row. SJR 102, sponsored by Sen. Todd Lakey (R - 12, Nampa) attempts to amend Idaho's constitution to expand the rights of crime victims. However, these expanded rights are intended to come into direct conflict with the state and federal constitutional rights afforded to criminal defendants who are innocent until proven guilty – like the right to due process, the right to a speedy trial, and the right to be informed of and question the evidence against him or her. Even more, SJR 102 failed to include any recommendations from a 2015 Boise State University study pertaining to crime victims that encouraged the legislature to allocate state funding for victim service programs and to create an ombudsman position to ensure their current constitutional rights are met. This year, SJR 102 began its path in the Senate State Affairs committee where it was moved forward to the Senate floor for a vote, yet it ultimately died due to a bipartisan vote in opposition. With all of the resources continuing to back the Marsy's Law campaign here in Idaho, we fully expect to work again in 2020 to stop this concerning legislation and preserve our due process rights.

3 years the ACLU of Idaho has defeated the well-funded California campaign known as "Marsy's Law"



HB 138 sponsored by Rep. Caroline Troy (R - 5, Genesee), at the request of the Idaho Apartment Association (IAA). During the interim months before the start of the legislative session, the ACLU and its housing partners met with representatives from the IAA to attempt to address due process concerns from the 2018 version of the expedited eviction bill hearing

bill. Unfortunately, no such compromise was able to be struck, and so we entered the 2019 session fully prepared to stop this likely unconstitutional bill. Ultimately, HB 138 attempted to expedite all eviction proceedings in Idaho, regardless of the underlying reason for said eviction. This would have resulted in eviction hearings being scheduled for court within 12 days, leaving tenants scrambling to identify legal counsel, collecting evidence, contacting witnesses and adequately preparing their defense within such a short timeframe. And given the current state of Idaho's lack of affordable housing, this legislation could have resulted in mass evictions leading to greater increases in the state's homeless population. After a long and contentious hearing in the House Judiciary, Rules and Administration Committee, HB 138 ultimately died on the House floor by a 34-36 vote, ensuring that due process in eviction proceedings will remain intact. Unfortunately, we do expect the IAA to bring their unconstitutional bill back next year, where we will work to defend our housing victory once again.



Abortion Complications and Opt-In Sex Education

Another legislative session means another opportunity for the Idaho Legislature to further restrict women's access to constitutionally protected reproductive healthcare. And the legislature got started early with the introduction and passage of HB 64, the Abortion Complications Reporting Act sponsored by Rep. Greg Chaney (R - 10, Caldwell). HB 64, a follow up to last year's bill (HB 638), requires medical practitioners to report to the Department of Health and Welfare regarding any suspected complications a woman is experiencing that they believe is connected to a previous abortion. At the end of the 2018 legislative session, HB 638 was challenged in federal court by the ACLU and partners at Planned Parenthood and the law firm of Ferguson Durham, LLC in the case Planned Parenthood v. Wasden. The lawsuit contends that abortion complications reporting requirements violate constitutional guarantees of due process and equal protection by arbitrarily singling out one particular medical procedure and requiring invasive reporting that has nothing to do with protecting patient health care. With the introduction of HB 64, there was no attempt to address the clear misinformation provided in the initial legislation, such as requiring hospitals, medical facilities and independent medical

32 number of suspected abortion "complications" medical practitioners are required to report to the state under the revised Abortion Complications Reporting Act

practitioners to report "complications" of medical conditions that have no scientific or medical link to abortion, like breast cancer, or medically broad terms like heavy bleeding and fever. Unfortunately, HB 64 passed along party line votes and was signed into law by Governor Little.

This session also saw attempts to drastically change the way sex education classes are offered in Idaho's public schools. HB 120, sponsored by Rep. Barbara Ehardt (R – 33, Idaho Falls), would have required that all sex education classes were provided on an opt-in basis with parental consent. This change in access, despite being deemed unnecessary by public school officials and educators, would have placed significant barriers before students who may not otherwise have access to critically needed school curriculum that examines such subjects as human development, relationships, personal skills, sexual behavior and health, and society and culture. After overwhelming testimony in opposition to the bill during its hearing in the House Education Committee, the bill was thankfully stopped in the Senate Education Committee where it was held, meaning it was effectively killed for the session.

FIRST AMENDMENT

The 2019 legislative session saw the introduction and movement of several bills related to free speech, but none were more concerning than SB 1114 regarding electioneering communication. This bill, sponsored by Sen. Patti Anne Lodge (R -11, Huston) and Rep. Fred Wood (R – 27, Burley) was the byproduct of an interim working committee regarding campaign finance reform and the legislature's intent to bring further transparency to elections. While we share the legislature's interest in transparency, SB 1114 would have significantly impacted the free speech rights of Idahoans and Idaho non-profit organizations and jeopardized the privacy rights of Idahoans who choose to contribute financial support to non-profits of their choice. The requirements outlined under SB 1114 would have required any entity making a reference to a candidate or issue on the ballot to file an electioneering communication report if the expense to make said reference cost the entity \$1,000 to produce. If that \$1,000 threshold were met, then the entity would be required by law to disclose any donor in the past calendar year who donated \$250 or more within that time frame. This proposal, while intending to shine a light on "dark money" that may influence election outcomes, clearly disregards the free speech rights of non-profit entities whose mission requires them to engage in strict policy discussions while also bearing

the responsibility of protecting the privacy rights of their donors. If SB 1114 were to pass, it would have required non-profit entities to rethink their priorities - do they carry out the mission of their organization and engage in policy work or do they remain silent on issues of interest to protect who financially supports their organization? Ultimately SB 1114 was held in the Senate State Affairs Committee, and the second iteration of the bill, SB 1183, was also not given a public hearing, effectively killing the issue for the year. We remain committed to working with lawmakers to identify a balanced solution to ensure that transparency and free speech in elections can both remain protected in future electioneering communications legislation.

By the Numbers

- 95 days in the 2019 legislative session
- 105 legislators in both the House and Senate
- 2 ACLU lobbyists present in the Statehouse
- **65** bills tracked
- 19 hearings where ACLU staff testified or submitted written testimony
- 14 bills ACLU supported
- 23 bills ACLU opposed
- 3 trainings held to encourage the public to engage in the legislative process
- 45 attendees at the first-ever ACLU Criminal **Justice Lobby Day**



LGBTQ RIGHTS

Fourteen years have come and gone and Idaho has still refused to amend the Human Rights Act to prohibit discrimination based on gender identity and sexual orientation in employment, housing and public accommodations. The session started off with high hopes that a Senate bill may be introduced and given a hearing this year, thanks to the convening of a bipartisan working group led by Sen. Brent Hill (R – 34, Rexburg). However, hopes were soon dashed upon realizing that the working group could not agree on a "compromise" solution primarily due to differences regarding expanding religious exemptions at the expense of enacting true non-discrimination protections for all LGBTQ

Idahoans. Despite the lack of legislative movement on the issue, the Add the Words coalition was very active this session, kicking off our efforts with a well-attended lobby training, numerous statehouse demonstrations, and an end-of-session press conference highlighting the numerous religious freedoms already enshrined in federal and state law to further demonstrate to the legislature and to the public that religion cannot be used as a shield for inaction on enhancing our state civil rights law. As we do every year, we'll continue to work throughout the interim with our legislative allies and community partners to work towards legislative progress during the 2020 session.

ACLU OF IDAHO 2019

LEGISLATIVE SCORECARD

WHY THE SCORECARD IS CREATED

We created our legislative scorecard to let you know where your legislators stand on a number of civil liberties issues. We encourage you to use this scorecard to give your state Representative and Senator feedback on their votes during the 2019 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.

HOW THE SCORECARD IS CREATED

We make sure that all legislators know our position prior to voting on important civil liberties issues by distributing a floor statement explaining our position. We then select a range of key civil liberties issues to include in our scorecard. This year, many bills that originated in the House and voted off the House floor were ultimately held in Senate committees, effectively killing the bill, thus resulting in us scoring the House on more bills than the Senate.

2018 LEGISLATIVE SCORECARD ACLU OF IDA

1

Reproductive Healthcare HB 64 Abortion Complications Reporting Act

Sponsor: Rep. Greg Chaney (R - 10, Caldwell) KEY POINTS:

- Requires medical practitioners to document suspected patient complications they believe are connected to a previous abortion
- Mandates that the list of reported complications be compiled into an annual report provided to the legislature each year
- Includes suspected complications that have no link to abortion, like breast cancer, or are medically broad terms like heavy bleeding and fever

LOSS

ACLU opposed
Passed House
& Senate
Signed by
Governor Little

2

Criminal Justice HB 99 Mandatory Minimum

Sentencing Reform

Sponsors: Reps. Bryan Zollinger (R - 33, Idaho Falls) and Ilana Rubel (D - 18, Boise) KEY POINTS:

- Strikes mandatory minimum sentences imposed for drug trafficking related offenses
- Restores judicial discretion in sentencing, allowing judges to determine an appropriate sentence based on the facts of the crime

LOSS

ACLU supported Passed House

Died in Senate Judiciary & Rules Committee

3

Criminal Justice HB 118 Pretrial Risk Assessment Algorithms Sponsor: Rep. Greg Chaney (R - 10, Caldwell)

KEY POINTS:

- Requires that data used in the creation of a pretrial risk assessment algorithm be publicly available for inspection and review
- Prevents algorithm creators from asserting "trade secrets" as a means to prevent disclosure of data used in the creation of a pretrial risk assessment algorithm
- Restores transparency in decision making regarding the use of pretrial risk assessment tools, which can be integral in preventing racial bias and further systemic inefficiencies

WIN

ACLU supported
Passed House
& Senate
Signed by
Governor Little

4

Reproductive Healthcare HB 120 Opt-in Sex Education

Sponsor: Rep. Barbara Ehardt (R – 33, Idaho Falls)

KEY POINTS:

- Requires all Idaho students to opt-in to sex education classes offered in public schools
- Places unnecessary barriers before students who may have no other opportunity to access comprehensive sex education curriculum beyond what's offered in the public school setting
- Prevents access to critically needed education that is key to reducing unwanted teenage pregnancy and the transmission of sexuallyrelated illnesses

WIN

ACLU opposed
Passed House
Died Senate
Education
Committee

5

Due Process HB 138 Expedited Evictions

Sponsor: Rep. Caroline Troy (R - 5, Genesee)

KEY POINTS:

- Requires that all evictions in Idaho proceed along an expedited timeframe, regardless of the reason for said eviction meaning notice to vacate would be served within three days and a court hearing scheduled within twelve days
- Severely restricts access to due process. The shortened timeframe for an expedited hearing means Idaho renters would have very little time to secure legal counsel, collect evidence and prepare their defense before going to court.
- Prevents landlords from resolving repair demands unless tenants are in 100% compliance with all terms of their lease, jeopardizing public health and safety in shared housing spaces

WIN

ACLU opposed

Passed House
Judiciary, Rules
& Administration
Committee

Died on House Floor

6

Free speech HB 194 Public Library Wi-Fi Filtering

Sponsor: Rep. Lance Clow (R - 24, Twin Falls)

KEY POINTS:

- Mandates that all public libraries require filtering of adult content on private, personal devices such as cell phones, laptops, and tablets
- Blocking content, particularly if it is occurring in a viewpoint based way, could restrict access to important ideas and concepts that should be available to all who use publicly accessible wireless internet or publicly accessible computers with internet access
- Allows for internet filtering to be turned off upon request, which
 effectively creates a government list of those who want to view adult
 speech online both invading the privacy of a law-abiding citizen who
 requests deactivation and chilling others from seeking it

LOSS

ACLU opposed

Passed House & Senate

Signed by Governor Little

7

Voting Rights HB 296 Ballot Initiative Trailer Bill

Sponsor: Rep. Sage Dixon (R - 1, Ponderay)

- Trailer bill to SB 1159 (meaning HB 296 only exists if SB 1159 moves through the legislative process and becomes law) deemed as a "compromise" bill despite being designed behind closed doors and without stakeholder input
- Changed the ballot initiative requirements in SB 1159 from requiring signatures in 32 out of 35 legislative districts to two-thirds of all legislative districts, as well as changing the signature gathering timeframe from six to nine months

WIN

ACLU opposed

Passed House & Senate

Vetoed by Governor Little

ENSURING THE CONSTITUTIONAL RIGHTS OF ALL IDAHOANS.

8

Voting Rights HB 303 Changes to Ballot Initiative

Requirements, Part Two Sponsor: Rep. Sage Dixon (R - 1, Ponderay)

KEY POINTS:

- Follow up bill to the veto of SB 1159/HB 296
- Requires that ballot initiative campaigns be limited to a single subject, that they create a fiscal note for implementation of their proposed policy change in partnership with the Division of Financial Management and that the campaign propose a funding source

WIN

ACLU opposed
Passed House
Died Senate State
Affairs Committee

9

Religious Discrimination H.R. 6 Christian Persecution

Sponsor: Rep. Priscilla Giddings (R - 7, White Bird)

KEY POINTS:

- House resolution that specifically referenced the persecution of Christians over those in other minority and non-dominant faith groups, in violation of the First Amendment's protection of religious neutrality
- Failed to recognize the discrimination that Jews and Muslims have recently faced in Idaho at the hands of state agencies and the legislature, further demonstrating the resolution's inherent preference for Christians over those of other faiths

WIN

ACLU opposed
Passed House
State Affairs
Died House Floor

10

Voting Rights SB 1159 Changes to Ballot Initiative Requirements

Sponsor: Sen. C. Scott Grow (R – 14, Eagle)

KEY POINTS:

- Requires that ballot initiative campaigns be limited to a single subject, that they create a fiscal note for implementation of their proposed policy change in partnership with the Division of Financial Management and that the campaign propose a funding source
- \bullet Changes the signature collection threshold from 6% of registered voters to 10% of registered voters
- Shortens the signature gathering time frame from 18 months to six months
- Requires that petition gatherers collect signatures from 32 out of 35 legislative districts, increased from the current 18 legislative district requirement in Idaho Code

WIN

ACLU opposed
Passed Senate
& House
Vetoed by
Governor Little

11

Criminal Justice S.J.R. 102 Marsy's Law Victims Right Constitutional Amendment

Sponsor: Sen. Todd Lakey (R - 12, Nampa)

KEY POINTS:

- California campaign aimed at expanding crime victim rights at the expense of creating chaos in our broader criminal justice system
- Creates unintended consequences such as violating criminal defendants' right to due process and right to a speedy trial
- Establishes new state responsibility to provide victims legal representatives all while providing no funding to improve current victim rights programs
- Ignores recommendations of Boise State University study of victim experiences accessing Idaho specific victim programs

WIN

ACLU opposed
Passed Senate State
Affairs Committee
Died Senate floor

2019 LEGISLATIVE SCORECARD

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 the ACLU
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 impact score
- Reproductive Healthcare
- **2** Criminal Justice
- **3** Criminal Justice
- Reproductive Healthcare
- **5** Due Process
- 6 Free Speech
- **7** Voting Rights
- **8** Voting Rights
- 9 Religious Discrimination
- 10 Voting Rights
- 11 Criminal Justice

S	ENATE	1	3	6	7	10	11	ACLU %
R	Jeff Agenbroad		+			6		33
R	Kelly Anthon		A					0
R	Steven "Steve" Bair		+					17
R	Regina Bayer		•			+	+	50
R	Bert Brackett		+	+	6	<u>•</u>	6	83
D	Cherie Buckner-Webb	\	\\		\	\\\\\\\		67
D	Grant Burgoyne	<u>•</u>	+		6	<u>•</u>		67
R	Van T. Burtenshaw	A	\\					20
R	Don Cheatham		\\ \\ \				+	33
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R	Lori Den Hartog		\$			\$	\$	50
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R	Lee Heider		\$					17
R	Brent Hill		+					17
R	Dan Johnson	+	A		6	+	\(\bar{\pi} \)	80
D	Maryanne Jordan	\(\bar{\pi} \)	+	+	\	+		83
R	Todd Lakey		+					17
R	Abby Lee		+	+			+	50
R	Dave Lent		+			6		33
R	Patti Anne Lodge		+	+			+	50
R	Fred Martin		+		+	+		50
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D	David Nelson	\\\\\\	+	\\\\\\	+	\\\\\\\		83
D	Mark Nye	\\	+		+	+		67
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R	Mary Souza		•		+			33
D	Michelle Stennett	\	•	\(\)	\$	+		83
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R	Jim Woodward		*	6	+	\$	+	83

2018 LEGISLATIVE REPORT ACLU OF ID/

2019 LEGISLATIVE SCORECARD



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"A" indicate absent
for vote, does not
impact score

Reproductive Healthcare

2 Criminal Justice

3 Criminal Justice

Reproductive Healthcare

5 Due Process

6 Free Speech

7 Voting Rights

8 Voting Rights

9 Religious Discrimination

10 Voting Rights

11 Criminal Justice

HOUSE	1	2	3	4	5	6	7	8	9	10	ACLU %		1	2	3	4	5	6	7	8	9	10	ACLU %
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R Scott Bedke			+						+		20	□ John McCrostie	6	+	+	+	6		+	+	6	6	90
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R Pricilla Giddings		\	+			\$	+	\\		+	60	R Tony Wisniewski		+	*		\$						30
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