



#### 2022: Another Session of Relentless Attacks on Idahoans' Civil Rights and Civil Liberties

The Idaho Legislature continues to be a hostile environment for rights we hold dear. Idaho was the second state in the country, following Texas, to pass a vigilante 6-week abortion ban (SB 1309) that allows family members to sue abortion providers for a minimum of \$20,000 if they perform an abortion after 6-weeks of pregnancy. The bill was signed into law, despite Governor Little's own fear that the novel civil enforcement mechanism would prove to be "both unconstitutional and unwise."<sup>1</sup>

The Idaho Department of Corrections was also successful in ushering through legislation that shrouds the death penalty in a veil of secrecy—denying the public, the courts, and counsel for the condemned from getting critical information about the source and suppliers for execution drugs.

Despite these significant losses, with your help, we defeated a host of other harmful bills. While an onslaught of voter restriction bills passed the House, including bills that would eliminate ballot drop boxes and criminalize ballot assistance—the bills were defeated in the Senate. We also worked alongside partners to defeat HB 675, Idaho's anti-trans legislation that would criminalize medical providers who offer life-saving care to trans youth. The victory would not have been possible without the voices of medical providers, parents, and youth who spoke out in strong opposition against the bill.

The issues noted above just scratch the surface. We invite you to read on to learn more about our 2022 legislative work- and don't forget to review our scorecard so you can track how your elected officials voted on civil rights and civil liberty issues you care about.

#### **BY THE NUMBERS**

- **81** days in the 2022 legislative session
- **105** legislators in both the House and Senate
- 1 ACLU lobbyists present in the Statehouse
- **4** online community advocacy trainings
- 58 total bills tracked

 $<sup>^1</sup>$  Office of Governor Brad Little. (2022, March 23). Transmittal Letter: S 1309 and S 1358 – Fetal Heartbeat Preborn Child Protection Act. https://gov.idaho.gov/wp-content/uploads/2022/03/transmittal\_s1309\_s1358\_2022-1.pdf

# **REAL LEADERS INVEST IN PEOPLE. NOT PRISONS**

# **CRIMINAL LEGAL**

#### **Minimizing Idaho's Carceral Imprint: Raising the Grand Theft Statutory Threshold**

In the state of Idaho, if someone steals an item that is valued at over one thousand dollars, they can be charged with a felony. HB 543, sponsored by Rep. Chris Mathias (D-19), would have raised the dollar amount of felony theft from \$1,000 to \$2,500 for those without a record of theft in the past 7 years. Idaho's felony grand theft threshold has not been raised in decades, making the penalty more punitive each year as inflation rises. Simply put, one thousand dollars is not the same as what it was in the 1990s. By raising the grand theft threshold, Idaho could reduce the number of people serving time in prison for low-level offenses and decrease the number of people impacted by the collateral consequences of a felony conviction.

The punishment associated with theft varies greatly across the country. For example, if a person steals a new iPhone in Idaho, they may face up to 14 years in prison at sentencing. That same offense, however, would only be a misdemeanor if committed in a neighboring state like Utah or Montana. The collateral consequences associated with a felony conviction should not be taken lightly. A felony conviction subjects people to a lifetime of barriers to employment, education, housing, and other basic needs.

This was the first year that a bill raising the threshold has been introduced since the 1990s. It was printed and granted a hearing in the House Judiciary, Rules, and Administration Committee, where it faced opposition from the Idaho Retailers Association, the Idaho Prosecuting Attorneys Association, the Fraternal Order of Police, and the Idaho Freedom Foundation.

Those who spoke in opposition to the bill relied on fear-based narratives, asserting that raising the threshold would result in an increase in property crimes and organized retail theft. These arguments, however, are unsupported. Of the 37 states that increased their felony threshold, not a single state saw a subsequent increase in theft offenses.<sup>2</sup>

Despite a lack of evidence supporting opponents' claims, the bill was held in committee on a party-line vote. While the bill failed to advance, it did reinvigorate critical conversations around mass-incarceration, non-violent offenses, and smart justice policy solutions that could alleviate Idaho's ballooning prison population without compromising public safety. We will continue to work closely with community and coalition partners to advance this legislation come 2023.

Want to get involved in our work to advance smart criminal legal reform at the statehouse?

Scan the QR code to sign up as a volunteer and to learn more about advocacy opportunities during the legislative session.



#### HB 658: Shrouding Idaho's **Death Penalty in a Veil of Secrecy**

Idaho's lethal injection secrecy bill (HB 658) was co-sponsored by Rep. Greg Chaney (R-10) and Sen. Todd Lakey (R-12). The legislation was pushed through the Legislature by the Idaho Attorney General's Office and the Idaho Department of Corrections. The bill shrouds the death penalty in a veil of secrecy, providing complete confidentiality to those involved in compounding, synthesizing, testing, supplying, storing, or transporting chemicals used in an execution. The legislation purports to prevent even the courts from obtaining information through discovery.

HB 658 was printed and quickly rushed through the House Judiciary, Rules, and Administration Committee. It advanced to the House floor with a "do pass" recommendation. Unfortunately, the bill narrowly passed the House, despite opposition on both sides of the aisle.

In the Senate Judiciary and Rules Committee, criminal defense attorneys, the Press Corps, and the Death Penalty Information Center all joined the ACLU, raising the vast constitutional concerns present in the legislation. We also heard incredibly powerful testimony from retired U.S. Magistrate Judge Ron Bush, who highlighted the need for transparency, noting surreptitious actions the Idaho Department of Corrections took to obtain lethal drugs for two previous executions.

With Senator Lodge absent, the bill stalled in the committee on a tied 4-4 vote. Opponents of the bill cautiously celebratedhoping that the bill was effectively dead for the session. However, within a week, the bill reappeared on the Senate Judiciary and Rules agenda. Without having benefited from public testimony, Senator Lodge (R-11) voted with the bill's proponents, sending the bill to the Senate floor with a "do pass" recommendation on a close 5-4 vote. The bill provoked sharp debate from both Republicans and Democrats who

<sup>2</sup> The effects of changing felony theft thresholds. The Pew Charitable Trusts. (2017, April 12). Retrieved May 13, 2022, from https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2017/04/the-effects-of-changing-felony-theft-thresholds.

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#### " I trust the government to take out my trash, I don't trust them to kill people in secret processes."

Rep. Colin Nash (D-16) voting against HB 658

opposed the legislation, but ultimately, it passed the Senate 21-14.

The bill was delivered to the Governor on a Wednesday morning and signed into law that same afternoon. The ACLU of Idaho attempted to coordinate a meeting between the Governor's Office and members of Idaho's Capital Habeas team, but the Governor's Office denied the opportunity and proceeded with signing the legislation absent key stakeholder input.

Idahoans deserve transparency, especially when the State is exercising one of its greatest powers-the power to end someone's life. Prisoners should be able to access critical information about their execution so that they can raise legitimate challenges to execution methods that may subject them to horrific pain. It was a heart breaking loss. There is no question that the law will be the subject of future legal challenges.



# TRANS **RIGHTS**

## **Trans Youth Belong: Defeating HB 675**

HB 675, sponsored by Rep. Skaug (R-12), would criminalize medical professionals who provide treatment and care for transgender youth. Medical care for trans youth is in accordance with prevailing standards of care. Every major medical association-including the American Psychiatric Association, the American Medical Association, and the American Academy of Pediatrics - opposes healthcare bans like HB 675. That's because healthcare bans are not grounded in evidence-based clinical guidelines. They disrupt medically necessary care and result in negative health outcomes for youth, including anxiety, depression and suicidality. Research shows that transgender youth who have supportive families and communities, and access to affirming medical and mental health care, have significantly more positive health outcomes than those who lack that support and care.

The healthcare ban was introduced in the House State Affairs Committee and was opposed by medical providers, trans youth, parents, and civil rights advocates alike. Proponents of the bill did not appear to be swayed by the heart-felt testimony of Idaho residents and the information presented by Idaho medical professionals who work closely on this issue, and instead repeated fear-based narratives and debunked medical information. The bill advanced out of the House State Affairs Committee with a "do pass" recommendation and subsequently passed out of the full House on a near party line vote.

The bill drew tremendous public outcry. Hundreds of Idahoans emailed legislators, noting their opposition to the bill. Trans youth shared their stories. Youth organized rallies. Parents and allies wrote op-eds decrying the legislation. Counselors and medical providers met with lawmakers to correct debunked medical information. It was a true testament to the collective power of community. In short order, Senate Republican Leadership released a statement in opposition to HB 675, noting that the bill "undermines parental rights and allows the government to interfere in parents' medical decision-making authority for their children."3 The bill was not granted a hearing in the Senate State Affairs Committee.

We remain vigilant in our opposition to legislative attacks against trans youth and stand in solidarity with trans loved ones across the country who are facing similar attacks in their home states. Trans youth shouldn't have to fight this hard for basic rights.

#### **1,623** people used the ACLU-ID email tool to contact their senators and urge them to oppose HB 675.

<sup>3</sup> Idaho Senate Republicans. (2022). Idaho Senate Republicans Statement on House Bill 675.

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The only reason that I am still alive today is because I was able to get the care that I needed. I started testosterone blockers two and a half years ago and estrogen almost exactly two years ago. My mental state has improved astronomically since then, and I have become more comfortable with myself and my own body.

> - Eve, High School student testifying in opposition to HB 675 in the Idaho House State Affairs Committee.

# **VOTING RIGHTS**

#### **2022 Legislative Victories** in Preserving Ballot Access

Voting rights are under attack nationwide as state legislatures pass voter suppression laws under the pretext of preventing voter fraud and safeguarding election integrity. Despite Idaho's election process being safe and secure, Idaho politicians continue to introduce legislation that would lead to significant barriers for eligible voters trying to exercise their most fundamental constitutional right.

Rep. Dorothy Moon (R-8 and 2022 Secretary of State candidate introduced an election overhaul bill that would have eliminated same-day voter registration. She eventually brought a different version of the bill (HB 761) that required proof of citizenship, and would have eliminated student-IDs as a valid form of identification at the polls. While the bill passed the House, it was not granted a hearing in Senate State Affairs.

We saw a host of other attacks on Idahoans' voting rights, including a bill sponsored by Rep. Priscilla Giddings (R-7) that would eliminate ballot drop boxes and a bill sponsored by Rep. Mike Moyle (R- 14) that would criminalize those who assist a neighbor or loved one in casting their vote. While both bills passed the house, neither of those bills were granted a hearing in the Senate State Affairs Committee.

The House also overwhelmingly supported a bill that would have changed the party affiliation deadline for unaffiliated voters. HB 439 would have required voters to change their party affiliation no later than the last day that a candidate filed to run for office, stripping unaffiliated voters of their ability to research all of the candidates and thoughtfully exercise their right to vote. Thankfully, the bill was not granted a hearing in the Senate.

Holding the line on voting access this session was a testament of the power of community members' voices. County clerks and poll workers spoke out against the bills, and we witnessed real political leadership from Republicans and Democrats in the Senate who affirmed their commitment to "let Idahoans vote." While we don't anticipate these attacks on voting access to go away anytime soon, this year's victories proved crucial as the 2022 election cycle approaches.

Eager to learn more about our efforts to preserve ballot access? Scan the OR code to watch our voting rights webinar in partnership with Conservation Voters for Idaho, where we take an in-depth look at the voter restriction bills introduced in the 2022 legislative session and discuss the significance of their defeat.



## **REPRODUCTIVE RIGHTS**

## Idaho's Vigilante Abortion Ban, Roe, and the Fight Ahead

Following Texas's lead, Idaho became the second state in the country to pass a vigilante abortion ban. SB 1309 allows family members of both the patient and the "father" of the pregnancy to bring a civil suit against abortion providers. Idaho's Attorney General issued an opinion that the bill would prohibit almost all abortions in Idaho and would likely be found unconstitutional. Nonetheless, Governor Little signed SB 1309 into law while noting concerns that the bill would prove to be both "unconstitutional and unwise."<sup>4</sup>

Meanwhile, abortion access hangs in the balance as we await the Supreme Court decision in Dobbs v. Jackson Women's Health Organization. In that case, Mississippi asked the Court to overturn Roe v. Wade, the landmark U.S. Supreme Court decision which ruled that a person's ability to get an abortion is protected by the Constitution. The Supreme Court decision is expected to be released in June of 2022. However, on May 2, 2022, the news outlet Politico released a draft Supreme Court majority opinion in the pending case.

<sup>4</sup> As of May 13, 2022, the vigilante abortion ban is temporarily stayed while litigation is pending. Roe and Casey are still the law of the land and abortion is still legal in the state of Idaho

# TAKE ACTION

The ACLU of Idaho, through its public education program, works in partnership with communities across the state to ensure that all Idahoans are educated and informed about their civil rights. We believe that it is important for communities to know which civil liberties issues affect them locally, and how they can take action to create change.

Visit www.acluidaho.org to stay up to date with all things ACLU of Idaho and follow us on:



@acluidaho



The leaked draft opinion confirmed fears that the Supreme Court is prepared to overturn *Roe* and take away our ability to control if and when to have a child.



If the Supreme Court does issue a majority opinion along the lines of the leaked draft authored by Justice Alito, then nearly half the states are poised to ban or severely restrict abortion access, including Idaho. If abortion is going to be left to the political process, those of us who care about reproductive freedom have to get engaged. It's incumbent on all of us to show up at the polls, to show up at the statehouse, to show up in the streets- to fight for our rights and bodily autonomy. The right to decide if or when to have a child is essential to a person's ability to make highly personal decisions about their bodies and their futures. We can't stop fighting. We won't stop fighting. Join us.





# EGISLATIVE SCORECARD

#### What is the Legislative Scorecard?

The ACLU of Idaho Legislative Scorecard documents the voting patterns of your state Senator and Representatives during the 2022 Legislative Session. At a glance, you'll see how your legislators voted on issues like voting access, free speech, LGBTQ equality, reproductive freedom, and criminal legal reform. The votes presented in the Legislative Scorecard are those considered by either the full House or the full Senate. 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 fewer bills listed on the Senate Scorecard

#### Why is the Scorecard Created?

The Legislative Scorecard is a crucial accountability tool. We encourage you to use this scorecard to give your elected officials feedback on their votes during the 2022 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.

### **Reproductive Rights** SB 1309 – TX Style 6-Week Abortion Ban

Sponsored by Sen. Patti Anne Lodge (R-11), Rep. Steven Harris (R-21), Rep. Barbara Ehardt (R-33)

#### KEY POINTS

- Deputizes private citizens to bring lawsuits against health care providers who perform an abortion after six weeks of pregnancy. Each relative of the patient or "father" would be able to collect \$20,000 for each abortion, paid by the abortion provider.
- Falls disproportionately on low-income, rural Idahoans who cannot afford to travel out of state for abortion care. Requiring Idahoans to travel out of state for care needlessly pushes abortions later into term.
- The private enforcement mechanism threatens all constitutional rights. Lawmakers do not deny that Roe and Casey are still currently the law of the land. Instead, they describe the bill as a "clever" way to evade judicial review and undermine Idahoans' existing constitutional right to obtain an abortion pre-viability.

#### **Reproductive Rights** SB 1260 – 6-Months Contraception Sponsored by Sen. Melissa Wintrow (D-19)

#### **KEY POINTS**

- Would authorize insurance companies to reimburse for up to a six-month supply of prescription contraception, allowing individuals to receive multi-month supplies of birth control as opposed to obtaining packets monthly.
- Would decrease transportation and financial barriers experienced by low-income, rural Idahoans who must often travel considerable distances to a pharmacy to obtain their monthly supply of birth control.



#### **Criminal Legal System** HB 658 – Execution Secrecy Sponsored by Rep. Greg Chaney (R-10), Sen. Todd Lakey (R-12)

#### **KEY POINTS**

- Shrouds the death penalty in secrecy by concealing the identity of all entities or persons supplying, manufacturing, dispensing, or prescribing chemicals or substances used in an execution.
- Makes it impossible for both the courts and the public to know whether executions will be carried out humanely and in compliance with state and federal laws, and the U.S. Constitution.
- Hinders open, meaningful and robust public discourse about the death penalty, the most extreme and irreversible punishment that can be carried out by the State.



Signed by Governor Little



**ACLU Supported** 

Passed out of the Senate

Passed out of the House Health & Welfare Committee

Died on the House Floor



ACLU Opposed Signed by Govenor Little



#### Voting Rights HB 527 – Increasing Barriers for State-Issued IDs Sponsored by Rep. Brandon Mitchell (R-5)

#### KEY POINTS

- Requires Idahoans to show proof of "citizenship status" to the Idaho Department of Transportation in order to obtain an Identification Card or standard Idaho License.
- · Even when it is possible to procure citizenship documents, it is an expensive and timeconsuming process. A replacement birth certificate can exceed \$40, and a passport costs \$97. For naturalized Americans, replacement citizenship documents cost \$220. Potential voters must also navigate cumbersome government agencies, which often involves taking time from work in order to travel to a specific office, fill out forms, and stand in line.
- There is no epidemic of non-citizen voting that justifies a documentation policy likely to exclude people from having necessary documentation to obtain licenses and identification cards.



ACLU Opposed

Signed by Governor Little

#### Voting Rights HB 761 – Voter Registration and ID Restrictions Sponsored by Sen. Regina M. Bayer (R-21) and Rep. Dorothy Moon (R-8)

**KEY POINTS** 

- Would require voters to bring additional documentation of U.S. citizenship to register to vote on Election Day at the polls.
- Proof of citizenship requirements do not address any serious or widespread problem and official citizenship documents are expensive and time-consuming to obtain.
- Would prohibit the use of student ID cards as a valid form of voter identification.



#### Free Speech HB 666 – Criminalizing Librarians

#### Sponsored by Rep. Gayann DeMordaunt (R-14)

#### **KEY POINTS**

- Would subject librarians and museum employees to misdemeanor liability if they distribute material deemed "harmful" to minors.
- Materials deemed "harmful" by the bill's proponents included sex education books and stories with LGBTQIA+ characters.



ACLU Opposed

Passed out of the House

Not granted a committee hearing in Senate State Affairs



#### **Voting Rights** HB 439 – Unaffiliated Voter Registration Sponsored by Rep. Caroline Nilsson Troy (R-5) and Sen. Mary Souza (R-4)

**KEY POINTS** 

- Would change the deadline for unaffiliated voters to declare a political party. The bill's emergency clause failed to give voters adequate notice of the changed deadline prior to the 2022 primary election.
- Would force unaffiliated voters to choose their affiliation prior to having all the relevant information. The bill would require voters to change their affiliation no later than the last day that a candidate files to run for office. This strips unaffiliated voters of their ability to research all of the candidates and thoughtfully exercise their right to vote.



#### Voting Rights HB 547 – Criminalizing Ballot Assistance Sponsored by Rep. Mike Moyle (R-14)

#### **KEY POINTS**

- Would criminalize good Samaritans who assist their friends or neighbors with the collection or conveyance of their absentee ballot and would impose misdemeanor liability on Idahoans who are carrying more than 6 of their own family members' ballots.
- · Would subject even caretakers and legal guardians with criminal liability for offering ballot assistance to those who are elderly or who have a disability.
- Would unnecessarily expand the criminal code. Ballot tampering and ballot fraud are • already illegal in the State of Idaho



#### ACLU Opposed

Passed out of the House

Not granted a committee hearing in Senate State Affairs

#### LGBTQ Equality HB 675 – Criminalizing Gender Affirming Care Sponsored by Rep. Bruce Skaug (R-12)

#### **KEY POINTS**

- . Would make it a felony for doctors to provide gender affirming care to trans youth, undermining the prevailing recommendations of every major medical association.
- Would deny best practice care for transgender youth, resulting in youth experiencing an increased likelihood of life-threatening conditions such as depression, isolation, eating disorders, self-harm, and suicide



ACLU Opposed

Passed out of the House

Not granted a committee hearing in Senate State Affairs



ACLU Opposed

Passed out of the House

Not granted a committee hearing in Senate State Affairs



ACLU Opposed

Passed out of the House

Not granted a committee hearing in Senate State Affairs



#### **Voting Rights** HB 693 – Ballot Drop Box Ban Sponsored by Rep. Priscilla Giddings (R-7)

#### KEY POINTS

- Would present barriers for Idahoans to exercise their fundamental right to vote, including those who are aging, live in rural areas, and those who have limited access to transportation.
- Idaho is a rural state and many of its counties are geographically large. Drop boxes offer a method for eligible voters to return their absentee ballots without having to travel long distances.



# LEGISLATIVE BILL TRACKER

The ACLU of Idaho tracks dozens of pieces of legislation. We want to demystify the legislative process and empower Idahoans to get involved in issues they care about.

Our bill tracker (powered by Fast Democracy) enables supporters of the ACLU of Idaho to track legislation that implicates civil rights and civil liberties. By subscribing to our tracker, you can get daily or weekly email updates on where a bill is at in the legislative process. Scan the QR code to subscribe!



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ACLU Opposed

Passed out of the House

Not granted a committee hearing in Senate State

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	2	<b>Reproductive Rights SB 1260</b> 6-Months Contraception
	3	Criminal Legal System HB 658 Execution Secrecy
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## **SENATE**

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🕞 John Gannon	÷	÷	ŧ	ŧ	÷	÷	÷	÷	<b>+</b>	ŧ	100%	R Scott Syme					÷			÷	A	ŧ	33%
R Terry Gestrin											0%	□ Sally J. Toone	ŧ	÷	÷	÷	÷	÷	÷	÷	÷	÷	100%
R Marc Gibbs	A	÷				Ť	÷	+		÷	56%	$\ensuremath{\mathbb{R}}$ Caroline Nilsson Troy	A	ŧ					÷	÷		ŧ	44%
R Priscilla Giddings			÷	A	÷	A		A			17%	${ m R}$ Jon O. Weber								ŧ		<b>♦</b>	20%
□ Brooke Green	÷	÷		ŧ	÷	÷	÷	ŧ	ŧ	÷	90%	R Tony Wisniewski	÷		ŧ								20%
R Karey Hanks			÷								10%	R Fred Wood	÷	÷			÷	÷	÷	÷		÷	70%
R Steven C. Harris			ŧ								10%	${ m R}$ John Vander Woude		ŧ									10%
R Linda Wright Hartgen		÷			÷		+	÷		÷	<b>50</b> %	R Julie Yamamoto									A		0%
R James Holtzclaw											0%	R Julianne Young											0%
${\sf R}$ Wendy Horman										÷	10%	${\sf R}$ Rick D. Youngblood		÷,					÷	÷			30%

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