

Art Gallery, Theater, and Acclaimed Artist File Lawsuit Challenging Restrictions on Live Performance
Idaho Alcohol Laws Violate Free Speech, ACLU and Co-Counsel Lawsuit Contend

For Immediate Release:

Thursday, September 15th 2016

Contact:

Jess McCafferty jmccafferty@acluidaho.org, 208.344.9750 x1206, 503.709.8915

BOISE, Idaho: The American Civil Liberties Union (ACLU) of Idaho, along with Co-counsel Deborah Ferguson and Craig Durham, of Ferguson Durham, PLLC and Jack Van Valkenburgh of Van Valkenburgh Law, PLLC, filed a lawsuit today against Idaho State Police officials on behalf of the Visual Arts Collective, Alley Repertory Theater, and Boise performance artist Anne McDonald. The lawsuit challenges an Idaho statute that censors artistic expression in venues licensed to serve alcohol. The lawsuit contends the statute violates constitutional rights to free expression, equal protection and due process.

“Idaho’s alcoholic beverage laws are unconstitutional because of the limits placed on free speech and artistic expression in Idaho. We are asking the court to strike down the statute so that Idahoans have the opportunity to enjoy the arts without government censorship,” Deborah Ferguson of Ferguson Durham, the Boise law firm that prevailed in striking down Idaho’s same-sex marriage ban in 2014.

The statute being challenged, Idaho Code section 23-614, regulates the clothing that performers and patrons can wear as well as the gestures and movements used in live performances—including plays, ballets, operas and other performances—where alcohol is served. This summer, the Idaho State Police enforced the law against the Visual Arts Collective, a mixed-use contemporary fine art gallery in Garden City, over a performance featuring McDonald. The lawsuit filed today challenges the broadness of Idaho’s statute, which restricts all forms of art, including award-winning plays, acclaimed ballets, and some of the most significant theater productions in American culture.

“The Idaho State Police have been enforcing a law that unnecessarily interferes with artists’ expression. No one has been harmed by the work of the artists or by the Visual Arts Collective, yet local theater companies, artists and small businesses in Idaho face severe sanctions, including the revocation of their alcoholic beverage license, by enforcement of a law that mandates censorship. The government should have no place in regulating the artistic expression of consenting adults,” said Jack Van Valkenburgh of Van Valkenburgh Law, PLLC.

In January, the operator of the Village Cinema in Meridian filed a lawsuit challenging the same statute, after the Idaho State Police enforced the law against the movie theater for showing *Fifty Shades of Grey*. The Idaho legislature amended the law this spring, but left the restrictions on live performance intact. The law continues to ban keyhole dresses and much swimwear, most touching, and simulated sex scenes in plays and other live performances. Violation of the statute can be punished by up to six months in jail.

“For eleven years VAC has strived to encourage artists and the community to continue in the discovery of artistic expression. This antiquated law runs afoul of everything we have worked to achieve and asks us as a business to violate the first amendment and civil rights of not only the artists and non-profits we serve but also our patrons,” –Sam Stimpert, Visual Arts Collective co-owner.

The lawsuit is filed in federal court, and seeks an urgent injunction to prevent the law from being enforced against the Alley Repertory Theater's fall season, which opens on October 13 with a play called *The Totalitarians*.

"The censorship of theater erases historic truths, ignores culture conversations, and leaves stories untold. Alley Repertory Theater believes deeply in our mission to be a bold, risk-taking cultural leader and to produce theater that is bursting with humanity. Idaho Code 23-614 violates artistic expression at its core by denying theater audiences the chance to see human connections that nurture insight and empathy," Alley Repertory Theater.

"My breasts are being made into political objects. They are part of my body and the discretion on how they are shown within the context of performance should be mine. Stand up comedians can address their audience in a sexually explicit manor or referencing sexual deviance, but as a female performance artist whose discipline is primarily movement based, I am forbidden by law to broach similar issues with my audience. The current Idaho law not only discriminates against artists, specifically who are women, and choices they make with their bodies, it discriminates against artistic expression and by doing so makes a general comment as to what art is and what our society should recognize as art," said Anne McDonald, who was a recipient of a grant from the Idaho Commission on the Arts.

"What century do we live in? You can have the above mentioned artistic expressions (ex: partial nudity, sexual gestures, adult dialogue etc...) in a contemporary theater setting or movie theater that is all ages but cannot when it is over 21 and alcohol is served? Anyone can see that this is just an antiquated way of thinking. The Idaho State Police upholds the laws the way they are written which is fine but the laws are dating back to the mid seventies and read like the laws of the prohibition era and desperately need to be changed," said Steve Fulton, Visual Arts Collective co-owner.

"The ACLU of Idaho and Co-counsel are representing these small businesses and individuals who seek to better Idaho residents' lives with their performances and artistic expression. Our steadfast commitment to defending the Constitution will continue to lead our work in Idaho. When people are subject to laws where men and women are treated differently, where the law as written is vague and where Idaho residents' freedoms under the First Amendment are stifled, we are proud when we can stand with them, challenging the laws which have chilled their freedoms given by the Constitution," said Leo Morales, Executive Director of the ACLU of Idaho.

###