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FALL / WINTER 2014

SMART JUSTICE, FAIR JUSTICE

BY KATHY GRIESMYER, PUBLIC POLICY STRATEGIST

It's been 43 years since President Nixon announced that there would be a nationwide crackdown on the production, consumption, and selling of illegal drugs in the United States.

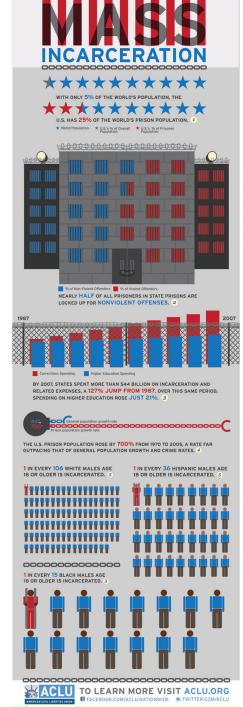
Fast forward to 2014, and the overzealous War on Drugs has left communities devastated across the country.

Taxpayers incur the financial burden in funding ballooning corrections and law enforcement budgets that often lead to more harm than a visible increase in community safety. Communities see families torn apart as their loved ones face years, and even decades incarcerated thanks to laws like mandatory minimums and three-strike rules. The inherent racism tied to enforcing these new drug laws leads to over policing of diverse communities and the criminalization of those who suffer from substance addictions and mental illness. Add in the pervasiveness of this new "tough on crime" mentality and it's easy to ignore a 50% decrease in crime rate since the 1990's and yet continue incarcerating people - enough people in fact that the United States now accounts for 25% of the world's prison population, despite only being 5% of the total world population.

Four decades later, federal and state government groups are realizing the disturbing effects of a war gone terribly wrong. And Idaho is one of those states leading the pack to bring about genuine reform to our broken criminal justice system.

Let's flashback to the 2014 Idaho Legislative Session - Governor Otter signed Senate Bill 1357 into law aimed at effectively reducing Idaho's high rate of recidivism while better prioritizing limited prison space. In 2012, Idaho's incarceration rate was the eight highest in the nation and Idaho inmates served prison sentences twice the national average. The Council of State Governments released a 2014 report titled Justice Reinvestment in Idaho: Analyses & Policy Framework leading legislators (and the public) to become alarmingly aware of the crisis on hand in Idaho. The report helped identify three major issues contributing to Idaho's over incarceration epidemic:

1. A revolving door between the community and corrections facilities, leading to high recidivism rates. To ensure more parole-released individuals face higher rates of success post-incarceration, SB 1357 looks to improve and increase community



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treatment options, while also engaging in more clearly defined "swift and certain sanctions" to respond promptly to parole violations.

- 2. Insufficient use of prison space where parole eligible individuals are incarcerated longer than necessary. Now, prison space will be prioritized for those guilty of violent offenses and assessments will be completed to identify those who are at a low-risk of reoffending and equipped to be released on parole.
- 3. Inefficient tracking systems to measure outcomes and quality of treatment programs. New data collection processes will be implemented to allow Department of Correction officials to assess the quality of current programs, tailor changes to improve results and identify inefficiencies that could lead to cost savings.

These parole reforms are an exciting first step at bringing much needed improvement to Idaho's outdated system for managing crime in the state. But the key to ridding ourselves of our addiction to incarceration must start by dealing with why we send people to prison in the first place. Sentencing reform is the natural next step Idaho lawmakers must take in order to see the most potential in terms of cost savings to the state and taxpayers, as well as reducing the number of Idahoans who must walk through the gates of our prisons.

We must stop prison sentences that are out of proportion with the crime and restore judges' ability to determine an appropriate sentence that matches the offense. Take drug crimes for instance. In Idaho, simple possession charge for marijuana over three ounces can result in a mandatory minimum prison sentence for up to five years. If you're prosecuted and convicted twice for over three ounces of marijuana, you could face a double mandatory minimum that can result in 10 years behind bars. And because the mandatory minimums are required by Idaho code, judge's hands are tied and unable to defer individuals to rehabilitation or probation, solutions that decrease the burden on our prison system and result in lower rates of recidivism.

We must stop the practice of turning our corrections facilities into debtor prisons to incarcerate people who are unable to afford their financial obligations. Case in point, Idaho's driving without privileges law. Cases related to license issues makes up a large portion of the misdemeanor caseload statewide, and it's often for one's inability to pay infraction fines and fees. According to information provided by the Idaho Division of Motor Vehicles in 2010, almost 24,000 Idahoans had their license suspended due to non-driving related incidents. Instead of removing an individual's ability to maintain employment and imposing jail time, the state should reduce driving without privileges from a misdemeanor to an infraction, and work with individuals to establish a payment plan without putting their license in jeopardy.

We must stop treating problems like mental illness, substance addiction and homelessness as criminal behavior and instead address these complicated issues outside the criminal justice system altogether. In 2013, 20.8% of all incarcerated individuals currently housed in an Idaho correctional facility were due to drug crimes, whereas in states like Nevada or Utah, the percentage of individuals incarcerated due to drug crimes was 12.5% and 4.8% respectively. With regional comparisons, it's clear to see that Idaho is illequipped to deal with substance addictions as a community health issue, and instead looks to its correctional programs to offer less than substantial treatment.

Come January, lawmakers will have the opportunity to further invest in reforming Idaho's outdated criminal justice system, and from it, bring about lasting change. Being smart on crime means paying for law enforcement for crimes connected to public safety. And study after study shows that more money for law enforcement, prosecution, and corrections is not correlated to an increase in community safety. The task before the legislature isn't easy, but our conviction in principles like fairness and justice depend on it. Just as bad policies can be made, so too can bad policies be changed.



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CIVIL RIGHTS AFFIRMED IN IDAHO, BUT A REMINDER THAT RIGHTS ARE NEVER GUARANTEED

BY LEO MORALES, INTERIM EXECUTIVE DIRECTOR

DOZENS OF LOVING AND COMMITTED SAME-SEX COUPLES LINED-UP AT COURTHOUSES ACROSS THE STATE ON TUESDAY, MAY 13, 2014, READY TO TIE THE KNOT WITH THEIR LIFE PARTNER IN MATRIMONY.

Federal District Magistrate Judge Candy W. Dale had just handed down a historic ruling that day: declaring Idaho's constitutional ban on same-sex marriage to be illegal and in violation of equal protection that forced same-sex couples into a "second-class status." In her 57 page decision Judge Dale declared:

...Idaho's marriage laws deny same-sex couples the economic, practical, emotional, and spiritual benefits of marriage, relegating each couple to a stigmatized, second-class status. Plaintiffs suffer these injuries not because they are unqualified to marry, start a family, or grow old together, but because of who they are and whom they love.

The decision affirmed our fundamental value that all persons should be treated equally before the law. Idaho now joined the ranks of other federal court districts that declared the bans on same-sex marriage to be unconstitutional. The national message was becoming clear: the freedom to marry should be available to everyone—it's a core part of American equality.

Soon after the Tuesday court decision, the long process of appeals and stays took over, preventing marriages from happening in Idaho until an entire summer passed. The joy of summer weddings faded away as Idaho's Governor Butch Otter stayed true to his promise to uphold marriage between a man and a woman. Backed by a one

million dollar account established by the legislature earlier in the year, he mounted a legal campaign to deny the freedom to marry to loving and committed samesex couples.

The Ninth Circuit Court of Appeals, to which Idaho belongs, accepted Governor Otter's appeal and held oral arguments on September 8th. The State argued that allowing same-sex marriage would be worse than divorces of heterosexual couples, and allowing same-sex marriages would "send a message to society that promotes fatherlessness and motherlessness for Idaho children." The Court was not persuaded by Idaho's outdated arguments and on Tuesday, October 7th, it affirmed Judge Dale's decision to declare Idaho's ban to be unconstitutional.

Finally, on Wednesday, October 15, 2014, at 10 A.M. after court procedures once again delayed marriages, Idaho county clerks started granting marriage licenses. We witnessed a historic moment where fundamental civil rights were acknowledged for individuals to whom this right was denied for so long.

Civil rights, however, are never guaranteed and we must be eternally vigilant to ensure these promised rights are respected. In the case of marriage equality in Idaho, just two days after it went into effect, a national anti-marriage equality organization made national headlines by filing a lawsuit on behalf of owners of a wedding chapel in North



Idaho. Just a month before, the chapel was open to both religious and civil marriages; seeing the trends in rulings on cases like Idaho's, they amended their business structure to offer wedding ceremonies strictly religious in nature by ordained ministers. Taking the owners belief at face value, we must protect their right as clergy to choose which religious marriages they will and will not perform.

However, a person's religious belief doesn't give anyone the right to harm other people. Religious freedom is a fundamental value enjoyed by Americans since the birth of our country. But when discrimination is thinly veiled as exercising religious beliefs, we must work to ensure that communities are protected and that one's beliefs are not imposed on others.

When a business enters the public marketplace, and offers other public services, it must do so without discrimination based on gender identity or sexual orientation. In Idaho however, the right to discriminate based on sexual orientation or gender identity is not protected statewide. The upcoming legislative session offers opportunities, as well challenges, to advancing civil rights by amending the Idaho Human Rights Act. Because civil rights are not guaranteed, it will take protecting what we have gained while working diligently to affirm equal protection under the law for all.



#SHUTDOWNARTESIA

BY MARIA E. ANDRADE, PRINCIPLE ATTORNEY AT ANDRADE LEGAL, IMMIGRATION LAW

In August of 2014, immigration attorneys Maria E. Andrade, Nathaniel Damren, Benjamin Stein and former legal assistant Yadira Juarez, traveled to Artesia, NM to provide free legal services to women and children who arrived at the southern U.S. border seeking asylum. The facility houses up to 672 women and children. A similar facility is in Karnes City, Texas which houses 572 people. In November an over 2000 bed facility is expected to open in Dilly, Texas.

My heart just dropped a bit and my chest tightened as I scrolled through to many unorganized files in my "Artesia" desktop folder: "docket report" "passed CFI protocol," "Flores v. Meesesettlement," "Pamela's Declaration." The files relate to women and children who are detained at an immigration detention facility in the small town of Artesia, New Mexico.

The detainees are overwhelmingly from Honduras, El Salvador and Guatemala, who arrived at the US - Mexico border with Texas in June this year. After initial processing by Customs and Border Protection, the women and children were sent to the prison-trailer-village that was built only a few weeks earlier on the grounds of the Federal Law Enforcement Training Center (FLETC) in Artesia. There are no immigration attorneys who regularly work in Artesia, a small town about a three-hour drive from El Paso, Texas, where the nearest city is Roswell, New Mexico. It is literally in the middle of nowhere.

As more and more people were shipped to Artesia, immigration attorneys learned that detainees were being denied the chance to apply for asylum at rates far beyond the national average. If the applicant convinces the officer that they have a chance at winning an asylum claim, the individual is allowed to present their asylum case before an immigration

judge who will decide whether to grant asylum or not. If the person fails to convince the officer, the person can ask for a judge to overturn the decision. If that fails, the individual is ordered removed without further recourse. The law requires an asylum officer to determine if someone who arrives at a U.S. border declaring a fear of returning to their home country has a "significant possibility" of proving a valid asylum claim. Nationally, 77% of people who say they fear persecution manage to pass this first procedural hurdle; in Artesia, the rate was 38%.

Other blatant due process problems included the failure of asylum officers to use appropriate translators, rushing clients through their interviews and officers cutting off testimony or attorney advocacy. There were also infrastructure problems that complicated attorney representation such as lack of phones in the attorney trailer, no private cubicles for attorney meetings that recounted horrific, private facts and a lack of child care such that all kids had to be with their mothers 100% of the time - even when telling about the violence, threats, beatings and other persecution they suffered.

THE LAW REQUIRES AN ASYLUM OFFICER TO DETERMINE IF SOMEONE WHO ARRIVES AT A U.S. BORDER DECLARING A FEAR OF RETURNING TO THEIR HOME COUNTRY HAS A "SIGNIFICANT POSSIBILITY" OF PROVING A VALID ASYLUM CLAIM. NATIONALLY, 77% OF PEOPLE WHO SAY THEY FEAR PERSECUTION MANAGE TO PASS THIS FIRST PROCEDURAL HURDLE; IN ARTESIA, THE RATE WAS 38%.

People were being ordered deported quickly after arriving at Artesia. Attorneys who arrived at Artesia in July reported widespread due process violations, many of which my staff and I experienced while in Artesia. Attorney Ben Stein and I each had a case where an asylum officer called our client into an interview, without notice to the attorney and pressured the client to go forward alone. In my case, the client was an indigenous woman from Guatemala who did not speak Spanish; in Ben's case the client had experienced multiple sexual assaults - many of which she had told nobody about besides Ben.

On my last day in Artesia, the ACLU Immigrant's Rights Project with the National Immigration Project of the National Lawyer's Guild, the American Immigration Council and the National Immigration Law Center filed a lawsuit to challenging the procedural obstacles the government has used to deny asylum applicants a chance to apply for asylum and makes the case that asylum officers are imposing a higher legal standard to these applicants. The case is titled M.S.P.C. v. Johnson, and for more information, you can visit http://bit.ly/12UIJOV.

IDAHO ATTORNEYS JOIN FIGHT TO ENSURE DUE PROCESS FOR CENTRAL AMERICANS SEEKING ASYLUM.

Ben just got back from his second trip to Artesia in early October. Though there are now at least some private cubicles for attorney meetings and a phone in the "law library," he returned with cases which presented some of the worst due process violations and stories of persecution we have heard about to date. One client had twice tried to escape violence she faced due to being the member of a non-dominant tribe but her pleas for protection were denied. She was twice deported without ever being given the chance to tell her story to an asylum officer. After the first return, she was sexually violated. After the second return, her child was kidnapped and she was assaulted on her journey. On this third attempt, she was finally referred to an asylum officer. However, because she was deported at the border before, her

case is complicated and much more difficult than others seeking asylum.

The use of summary deportation procedures, without a judge or a lawyer, now make up the most frequent type of deportation order issued today. Almost 75% of all removal orders are now the result of some sort of expedited process. Often, expedited removal orders are issued by immigration officers who make the arrest, file the charges and sign the order. While non-citizens have never had the right to a court appointed lawyer, non-citizens used to at least have their day in court. Not anymore.

Since I was last in Artesia, each asylum applicant whose case has reached a final hearing with an immigration judge was granted. By granting asylum, the immigration judge has determined that

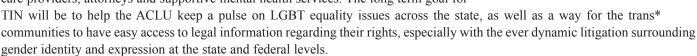
the applicants meets the definition of "refugee" set out in international and U.S. law – directly contrasting the claims made by the Executive and antiimmigrant voices alike. The women and children in Artesia, and the other facilities fled to the United States to avoid death threats, extreme violence and persecution in their home countries. They managed to make it to the U.S. border after dangerous travels. United States immigration law not only provides the woman and children a way to apply for asylum even if arriving at a border without documents, the law contemplates this situation. The women and children are asking for nothing more than access to the U.S. procedures for applying for asylum law and that their lawyers who are not paid for by the government – be permitted to help them.

ACLU OF IDAHO LAUNCHES TRANS*GENDER NETWORK

BY: JESS MCCAFFERTY, EDUCATION & OUTREACH COORDINATOR

The ACLU of Idaho hosted Dianne Piggott, a summer Pride Foundation fellow, and with her help, we are launching a statewide Trans*gender Idaho Network, affectionately coined "TIN." TIN will serve as a statewide network of trans* and gender nonconforming individuals from five regions in the state (the Treasure Valley, Eastern Idaho, Central Idaho, North Central Idaho and North Idaho) who can update the ACLU of Idaho on the happenings in those regions, as well as disseminate information to people in those areas.

Two representatives from each region are committed to a once a month conference call where co-chairs will set the agenda. The group has already decided on creating a list of providers for trans* specific issues including health care providers, attorneys and supportive mental health services. The long term goal for



Dianne, our Pride Foundation Fellow, was excited to work on the project and continues to be an active volunteer for the ACLU of Idaho and our work with LGBTQ Equality. If you are interested in joining the Transgender Idaho Network, you can contact our office at 208-344-9750 x1206 or at <code>jmccafferty@acluidaho.org</code>. More information is also available online at <code>http://www.fairisfairidaho.com/our-work/transgender-rights/tin/</code>.



BELOW THE SURFACE:

HOW WE'RE WINNING CASES YOU MIGHT NOT HAVE HEARD OF

BY: RITCHIE EPPINK, LEGAL DIRECTOR

When the ACLU of Idaho talks, people listen. Throughout 2014, our cases grabbed big headlines both in Idaho and across the country. But beneath those high-profile stories are the dozens upon dozens of civil liberties complaints that the ACLU of Idaho Legal Department investigates every month. Thanks to your contributions, our small legal staff (one lawyer and one paralegal) nip some of these in the bud, without litigation or fanfare. Although that work often doesn't get the sensational attention that our lawsuits do, the impact it has is just as big. Best of all, when we can protect civil liberties somewhere in Idaho without going to court, it means we save everybody time and money—resources that the ACLU and the government can put to better use. Here are just a few of those stories:

KEEPING FREE SPEECH FREE ON THE BOISE STATE UNIVERSITY CAMPUS

When a new student group called Young Americans for Liberty brought the plaintiff from a famous Second Amendment case to speak at Boise State University, they didn't expect to get a lesson in the First Amendment. But after the University tried to impose a \$465 fee on the group—which had no funds at all-based on an unspecified security risk, the students turned to the ACLU of Idaho and the Idaho Freedom Foundation to defend their rights. We reviewed the policies governing events and expression on campus and found that many of them were unconstitutional. After alerting the University's administration through letters and phone calls, BSU agreed to immediately suspend these policies and start meeting regularly with the ACLU and IFF to improve them. From the saga of our

mutli-year litigation against State officials over similarly unconstitutional policies governing the grounds around the Statehouse, we know that Boise State's cooperation has saved students and taxpayers a bundle of money. Some of the improved policies we've hashed out with the University have already taken effect, and we look forward to announcing even bigger policy improvements later this year.

ADVANCING RELIGIOUS FREEDOM EVERYWHERE

"It does me no injury for my neighbour to say there are twenty gods, or no god," Thomas Jefferson said. "It neither picks my pocket nor breaks my leg Reason and free enquiry are the only effectual agents against error." When a prisoner wrote us this summer because the Kootenai County Jail was denying him religious materials, we launched an investigation right away. It didn't take long for us to confirm that the jail's chaplain and mailroom were censoring the prisoner's religious mail. Friends from the outside were trying to send him religious self-study materials that they printed out from the Internet. The jail, however, had an across-the-board ban on material printed from the Internet. But federal courts ruled more than a decade ago that there is no legitimate reason for jails to discriminate against Internet material. Working amicably with jail officials and the Idaho Counties Risk Management Program, we were able to get the unconstitutional policy changed after a brief meeting and just a few emails. Freedom of faith and thought belong everywhere—even in the cages where our governments lock up our neighbors.

BRINGING FAIRNESS AND EQUALITY TO A RURAL HIGH SCHOOL

Since she was little, Sierra Norman has had her sights set on two big honors: high school student body president and valedictorian of her class. When she turned in her petition to run in the election for Declo High School student body president this spring, she was surprised to get a phone call the next morning from the school, telling her she could not be on the ballot. It wasn't because she turned in her petition late, or didn't have enough signatures. It was

because she wasn't male, and wasn't Mormon. Although the official reason school officials gave Sierra was that only "full time" students could run for major office in the student government, by the school district's own admission, Sierra was a full time student. Forced to explain, the Principal said that Sierra wasn't qualified to run because she was taking online classes through the Idaho Digital Learning Academy: AP and college credit classes that weren't otherwise available in Declo. But the other candidate—who did get to run, and win—was taking those classes too. The difference? He was also signed up for "religious release" to attend LDS seminary during school hours. And he is a boy. We've filed a civil rights complaint with the school district on Sierra's behalf, and in the coming months we will be working with her and her new grassroots campaign, Idaho Students for Equal Education, to bring policy change statewide and ensure this can't happen again in Idaho. We're hopeful that we can start in Declo itself by sitting down with school district officials there soon.

Cases like these keep us optimistic that all our work builds on itself, and that with each victory the next becomes a little easier. Still we know, as Emma Goldman admonished, that "Liberty will not descend to a people; a people must raise themselves to liberty." Our resources remain drastically limited. For every inspiring case like the three described above, there are hundreds of heart-wrenching, important cases we must turn away—not because they are meritless, but simply because there are just 168 hours in a week and the two of us in your ACLU of Idaho Legal Department are currently wringing each one of them dry. When you write out your next contribution to us, think first of how proud you are of the ACLU's work, and then think how much prouder you could be.

Stay up to date on our Legal Department throughout the winter by visiting the "In the Courts" page at www.acluidaho.org.



FALL/WINTER 2014

UNITING IDAHO

BY JAIME HANSEN. DEVELOPMENT DIRECTOR

What a historic year! Idaho has seen many milestones, from kicking Corrections Corporation of America out of our state to seeing marriage equality achieved; we really are living in a monumental time. These types of civil liberty celebrations leave us with a lot to be thankful for and, of course, this is the time of year we most often reflect upon our gratitude. I want to emphasize the UNION in the American Civil Liberties Union. We need to stand together to finance Idaho's revolutionary changes. Without the residents of Idaho, we do not have the brave plaintiffs needed to fight against large institutions, we no longer have the voices united in testimony during the legislature, and we most certainly are not able to have the human capital required to push for justice and freedom. This is where your impact is most needed.

Through your investment, the ACLU of Idaho can continue our vigilance of the government, fight for privacy in the 21st century and continue representing the most vulnerable populations in our state. Visit our website (www.acluidaho. org) to look through our investment programs. It is from community members like you that we are able to pull Idaho's rocky history into a more equal and just society.

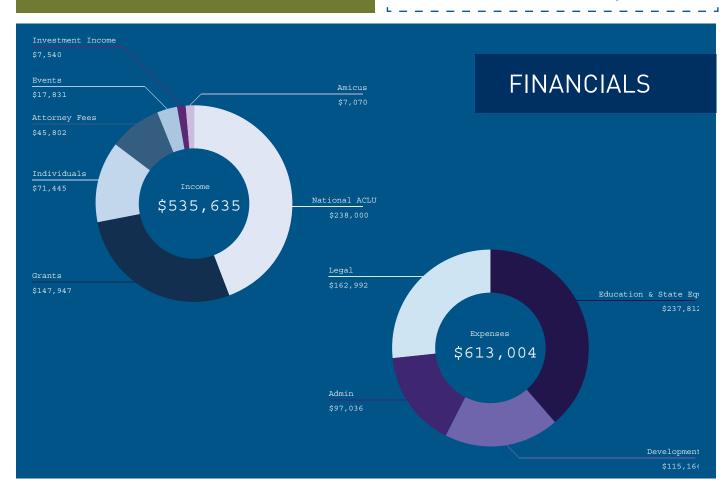
WILL YOU HELP DEFEND CIVIL LIBERTIES?

Support the ACLU of Idaho by becoming a member today!

$\hfill \square$ Yes! I want to help protect and expand civil liberties in Idaho. Enclosed is a check for my membership donation in the amount of:	
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For more information or to charge your contribution on a credit card, contact Development Director Jaime Hansen at [208] 344-9750 x 1207 or at jhansen@acluidaho.org.

You can also become a member through the ACLU of Idaho's secure website at www.acluidaho.org.



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BOARD OF DIRECTORS ELECTIONS

Each year our Board Development Committee carefully considers the applications of potential board members to join the group of people who govern and direct the Idaho affiliate of the ACLU. If you would like to be considered for nomination by the Board Development Committee, you must be a member in good standing and submit a brief statement of interest.

Nominations may also be submitted by petition. Nomination petitions must include a statement of interest with a short statement of petitioner's background and qualifications and be signed by ten (10) current ACLU of Idaho members that includes the name and address of the nominee. The submissions must be received in the ACLU of Idaho office at PO Box 1897, Boise, ID 83701 by November 26, 2014. This information shall be summarized and included on or with the ballot to the same extent as is such information of persons nominated by the nominating committee.

Members of the ACLU of Idaho Board of Directors serve three year terms and are voted in by the membership. All ACLU of Idaho members will receive their ballots and voting instructions by mail in December with the election results being announced at the Annual Membership Meeting on January 22, 2015.

Do you cherish your constitutional right to vote but are not a member? Become a member of the ACLU of Idaho today, and we will make sure you get to make your voice heard in the next Board of Directors election.

For more information, how to become a member, or if you do not receive your ballot by the end of December, please contact our offices at (208) 344-9750 ext. 1200 or at admin@acluidaho.org.

SAVE THE DATE

MAKE SURE TO MARK YOUR CALENDAR FOR THESE UPCOMING ACLU EVENTS!

DECEMBER 3: "THE HOUSE I LIVE IN" FILM SCREENING, BOISE STATE UNIVERSITY SPECIAL EVENTS CENTER

JANUARY 10: KNOW YOUR RIGHTS AT THE CAPITOL TRAINING, BOISE

JANUARY 22: ANNUAL MEMBERSHIP MEETING, BOISE

MORE EVENT INFORMATION CAN BE FOUND ON OUR WEBSITE AT HTTP://ACLUIDAHO.ORG/ACLUEVENTS