

# IDAHO LIBERTY



## IN THIS ISSUE:

BY THE NUMBERS (PAGE 2)

KNOW YOUR RIGHTS CORNER (PAGE 3)

LANDMARK WIN... (PAGE 3)

WHAT KIND OF COUNTRY... (PAGE 4)

SPRING / SUMMER 2016

## 2016 LEGISLATIVE SESSION – THE GOOD, THE BAD, AND THE UGLY

BY: KATHY GRIESMYER, PUBLIC POLICY STRATEGIST

We entered the 2016 Legislative Session with an impressive docket of priorities we planned to advance throughout the eleven week session. Some bills left us celebrating our victories and others – well no amount of head shaking or questioning “why?” was going to make them go away. In short, we bring you: the good, the bad, and the ugly.



### THE GOOD

Let’s start by celebrating our two largest victories: the passage of a landmark public defense reform bill and Governor Otter’s veto on the Bible in schools bill.

#### Public Defense (HB 504)

This bill was in the making for over half a decade and thanks to the ACLU’s multi-year lobbying efforts, Idaho’s public defense systems will see the first set of foundational reforms enacted in the history of the state. This legislation outlines standards to assist public defenders in their day-to-day work, grants additional dollars to counties to supplement their funding options for public defense, and grants the Public Defense Commission enforcement authority to hold counties accountable for providing a constitutional level of public defense. This legislation, with its partner appropriations bill, will also secure state funding for public defense in Idaho, the first time the legislature has provided sorely needed funding for on-the-ground trial level public defense.

#### Bible in Schools Bill (SB 1342a)

This blatantly unconstitutional bill would have authorized the use of the Bible in science classes if a teacher believes it “may be useful or relevant,” despite that courts have resoundingly said teaching creationism or “intelligent design” in science classes is unconstitutional. Even with our efforts lobbying members of the House and Senate about our legal concerns with bill, and a disapproving Attorney General opinion claiming violations of Idaho’s Constitutional prohibition on the use of any religious texts in public schools, the bill passed both houses and was sent to Governor Otter’s desk for his signature. We immediately acted,



sending Gov. Otter a letter requesting his veto and initiating an online veto campaign encouraging our supporters to contact the Governor and share their concerns. On April 5th, Governor Otter vetoed SB 1342a citing the bills unconstitutional nature and his interest in protecting schools and teachers from ongoing liability.

### THE BAD

Every year we expect a slew of bills that cause us to play defense, and this year was no different thanks to continued efforts to restrict access to abortion care and the nightmare that is Real ID.

#### Restrictions on Women’s Reproductive Healthcare

2016 brought three anti-abortion bills. First up, HB 516 which intends to shame women after they’ve made a decision to terminate their pregnancy by requiring physicians to inform their patients where they can get a free ultrasound to see an image of their fetus and listen to a fetal heartbeat. Many of the clinics that

CONTINUED ON PAGE 2

provide free ultrasounds are “crisis pregnancy clinics” – facilities known for shaming women out of their abortion decisions, who may not even have the appropriate medical trained staff on site to interpret the ultrasounds. Then came SB 1386, which attempts to restrict a very common second trimester abortion procedure, despite courts in Oklahoma and Kansas questioning the constitutionality of such restrictive measures. And finally there’s SB 1404 which, upon its passage, now bans the selling of fetal tissue in Idaho – an act that no organization or medical facility was conducting in Idaho.

### Real ID (HB 513)

This bill reverses Idaho’s 2009 ban on implementing the Real ID Act of 2005, jeopardizing the privacy rights of Idahoans. HB 513 requires the State to comply with Title II of the Real ID, which authorizes the Department of Motor Vehicles to scan and store copies of our primary source documents to then be shared in a 50-state database. Those documents include items such as one’s social security number, birth certificate, home address and other personal identifying information, making it a one-stop-shop for identity thieves. Despite raising our concerns and working with legislators to introduce amendments that would have prevented the storing, databasing, and sharing of Idahoan’s personal information, the bill was passed out of both houses and signed into law by Governor Otter.

### THE UGLY

How else can we say it? HB 568 was just that bad.

### Anti-Sharia Law (HB 568)

HB 568 was introduced in the final weeks of the session due to an unfounded concern that so-called “Sharia law” is overtaking Idaho courts. The bill attempted to prevent Idaho courts and judges from considering court rulings from other countries unless that country provided its citizens the *exact same fundamental liberties* as the U.S. and Idaho Constitutions – a feat difficult to meet even with our most democratic allies. Our legislative staff took quick action, informing legislators that the bill would create significant unintended consequences in the everyday lives of Idahoans who marry

abroad, file for divorce, adopt children from overseas, or conduct other family matters that involve foreign or international law. After a public hearing, the bill was held to add amendments, but was never reconsidered, effectively dying. We remain committed to fighting any legislation that attempts to undermine the religious diversity we value in our state and will actively work stop intolerance directed at those who practice the Muslim faith.

The Good, the Bad, and the Ugly is your quick snapshot into the highlights, and lows, of the 2016 Legislative Session. To read our full legislative report, visit our website at: <https://acluidaho.org/our-work/in-the-legislature/>

## 2016 LEGISLATIVE SESSION BY THE NUMBERS

**77**

# of days in the 2015 legislative session

**105**

# of legislators in the House & Senate

**1**

# of ACLU lobbyists present in the Statehouse

**44**

# of bills tracked

**14**

# of hearings where ACLU staff testified

**15**

# of bills ACLU supported

**17**

# of bills ACLU opposed

**5**

# of years DMV has been scanning, storing, and databasing Idahoan’s private information as a part of Real ID despite statutory prohibition from doing so

**544,666**

# of estimated Idahoans who would be unable to afford a private attorney if they were charged with a criminal offense



### STAFF

**Leo Morales**  
*Executive Director*

**Ritchie Eppink**  
*Legal Director*

**Kathy Griesmyer**  
*Public Policy Strategist*

**Jess McCafferty**  
*Communications and Outreach Coordinator*

**Ingrid Andrusis**  
*Paralegal*

**Amy Collins**  
*Office Manager*

### BOARD

**Michael Bartlett**, Boise  
*President*

**Don Reading**, Boise  
*Vice President*

**Shaakirrah Sanders**, Boise  
*Secretary*

**Kim Beswick**, Boise  
*Treasurer*

**Marty Durand**, Boise  
*Affirmative Action Officer*

**Sara Shepard**, Boise  
*National Board Representative*

**Stacey Donohue**, Boise

**Casey Bender**, Boise

**Dan Henry**, Idaho Falls

**Lindy High**, Boise

**Bill Killen**, Boise

**Geoff McConnell**, Boise

**Monica Salazar**, Nampa

**Michael Palmer**, Coeur d’Alene

### CONTACT INFORMATION

ACLU of Idaho & ACLU of Idaho Foundation  
PO Box 1897, Boise, ID 83701  
Phone (208) 344-9750  
Fax (208) 344-7201  
admin@acluidaho.org  
www.acluidaho.org

## Know Your Rights Corner!

Welcome to the Know Your Rights Corner! This is a new, quick way to learn about your rights in a variety of situations. **THIS NEWSLETTER'S TOPIC IS:**

### Knowing your rights going to VOTE!

#### 1- CHECK YOUR ELIGIBILITY

- ✓ 18 or older at the date of the election.
- ✓ Lived in the district you intend to vote in for at least 30 days.
- ✓ Are a US citizen.
- ✓ Finished parole and probation for a felony.

#### 2- REGISTER TO VOTE

- ✓ Go to the county elections office and fill out a form, or fill it out on their website and send it in.
- ✓ You can also register to vote at the polls.

#### 3- ON ELECTION DAY, VOTE!

- ✓ Find your polling place and vote for any of the elections you wish.
- ✓ You do not need to show your ID if you have pre-registered.  
You may request an affidavit to sign stating you are who you say you are.

\*\*Can't make it to the polls on Election Day? Request an absentee ballot or vote early. More information regarding voting in Idaho is at [www.idahovotes.gov](http://www.idahovotes.gov)\*\*



**KEEP  
CALM  
AND  
KNOW YOUR  
RIGHTS**

If you have suggestions about other topics to cover, please call or email Jess McCafferty, Communication and Outreach Coordinator, at 208.344.9750 x1206 or [jmccafferty@acluidaho.org](mailto:jmccafferty@acluidaho.org)

## LANDMARK WIN IN MEDICAID CLASS ACTION: COURT ORDERS STRONG PROTECTIONS FOR CORE CONSTITUTIONAL RIGHTS

BY RITCHIE EPPINK, LEGAL DIRECTOR

To read this article, you need to change your mind. My clients are invisible. People can walk right past my clients and not even see them. My clients are thousands of Idahoans with developmental disabilities. They want to live happy lives and have the freedom to make their own choices. For decades, our society shoved them out of view, warehousing them in brutal institutions. Now, our society instead often just ignores them.

Like them, our ACLU of Idaho class action filed in defense of their most basic constitutional rights to due process and a fair chance remains ignored by many. You probably heard about it before but already forgot. So to keep reading, you have to change your mind. You have to decide that you will start to see our clients. Maybe they are sitting beside you in the stands at a football game, or maybe in the supermarket bagging your groceries for you, or maybe they are your coworker's 20-something child living at home. You have to decide that you will say hi (even if you feel awkward the first time) and start a conversation. You will have to decide to see vibrant, imaginative human beings in those who our society has dehumanized.

We filed a class action case to stop some of the ongoing dehumanization of those with developmental disabilities in Idaho. Although modernization of the Medicaid program during the 1980s eventually allowed many adults with developmental disabilities to live in their communities, rather than in state-run institutions, Idaho's Medicaid program was still treating them as third-class citizens when we filed the case in 2012. When we started the case, the Idaho Department of Health and Welfare refused to explain to them how it determined the amount of Medicaid services they were entitled to, claiming the formulas it used were "trade secrets." Even those with the wherewithal to file appeals with the agency when their services were slashed encountered hearing officers who, beholden to government contracts, ruled that they would defer to the Department's calculations. And although the Department established a process to increase services beyond its computer-generated caps set for each person, it would not publish the criteria it used to decide who would get more.

The litigation has been very hard fought. Despite winning an injunction at the outset

of the case, the Department refused to apply the court's ruling program-wide. We had to file another motion to finally get that, and when we did, the Department appealed it. We had to go to Portland to argue before the Ninth Circuit, where we won again last summer.

This spring, we won yet again. And won big. In a landmark decision, the federal district court in Idaho agreed with us that this kind of outrageous decision making violates fundamental constitutional guarantees of due process. The Department's system arbitrarily deprives our clients of their rights, the court ruled. To address these violations, the court ordered the Department to file remedial plans by the end of June 2016. The plans must outline how the Department will fix its arbitrary automated formulas, define the criteria it uses to decide who can exceed the automated caps, and—maybe most importantly—guarantee that all participants in the program have an advocate who can help them get the service levels they need and navigate through the Department's appeals process. We also won the go-ahead for a permanent order that will ensure the

CONTINUED ON PAGE 4

CONTINUED FROM PAGE 3

Department can never again hide its decision-making formulas by claiming they are “trade secrets.” In the meantime, our existing injunction will remain in place, restoring some \$30 million annually in Medicaid funding for our clients.

In the decision issuing these orders, the court called our case “immensely complex” and hailed our work for “prevailing at every turn.” Although there is still a lot to do in the case, including close examination of the Department’s remedial plans and monitoring their implementation, this decision is long deserved vindication for a

marginalized, invisibilized, and too often voiceless group of everyday people. There is still a lot to do beyond the case as well: though some with developmental disabilities have made it out of the institutions, in many ways they are still in the shadows. It will take more than a court order to bring them the equality, dignity, and freedom that our society pretends that all people can enjoy. You will have to take action yourself to make that happen. You will have to change your mind: you will have to decide to see the people who society have made invisible, and to talk to the people who have had no voice.

Read more about this case, *K.W. v. Armstrong*, and stay up to date on our Legal Department throughout the winter by visiting the “In the Courts” page at [www.acluidaho.org](http://www.acluidaho.org).

## WHAT KIND OF COUNTRY DO WE WANT THIS TO BE?

A question we often ask ourselves at the ACLU is, “What kind of country do we want this to be?”

Our answer to this question is likely similar to the one you may have. We want a country where women control their own healthcare; you can marry whom you love; where our prisons are not warehouses for people of color and the mentally disabled; and where we have easy access to vote. That vision is made possible and real with your partnership and financial support. Please consider making a gift that is significant to you.

### Here are some ways:

- Become a monthly donor
- Make a one-time leadership gift to the ACLU of Idaho in the amount of \$1,000 or more
- Establish a planned gift by naming the ACLU of Idaho in your will.

Your financial support makes it possible for the ACLU to stand up against egregious attacks on civil liberties, right here in Idaho. Make your support count by contacting our office and make your pledge today! Because freedom can’t defend itself!

## WILL YOU HELP DEFEND CIVIL LIBERTIES?

Support the ACLU of Idaho by becoming a member today!

Yes! I want to help protect and expand civil liberties in Idaho. Enclosed is a check for my membership donation in the amount of:

- \$5 Student       \$20 Individual  
 \$35 Joint       Other \$ \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Zip: \_\_\_\_\_

Home phone: \_\_\_\_\_

Work phone: \_\_\_\_\_

Email: \_\_\_\_\_

Make check payable to the **ACLU of Idaho** and mail to:  
**ACLU of Idaho**  
**P.O. Box 1897**  
**Boise, ID 83701**

For more information or to charge your contribution on a credit card, contact the Office Manager at (208) 344-9750 x 1200 or at [admin@acluidaho.org](mailto:admin@acluidaho.org).

You can also become a member through the ACLU of Idaho’s secure website at [www.acluidaho.org](http://www.acluidaho.org).