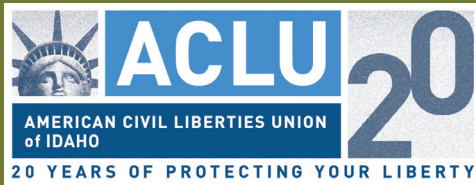


IDAHO LIBERTY



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SPRING / SUMMER 2013

THE 2013 LEGISLATIVE SESSION WRAP UP: NEW FACES, NEW DISCUSSIONS, SAME VALUES

BY MONICA HOPKINS, CFRE, EXECUTIVE DIRECTOR

From a civil liberties perspective, the 2013 Legislative Session can be defined by the new faces that graced the statehouse and some new discussions.

We enjoyed meeting most of the 35 new legislators and learning about their priorities – and sharing ours. This session highlighted our strength as an issue based organization that is nonpartisan. Being this way allows us to forge connections based on shared values and principles – the same values and principles we have had for over 90 years.



THE ACLU REMAINED VIGILANT AND BUSY, WORKING ON NEARLY 75 BILLS THAT IMPACT CIVIL LIBERTIES IN OUR STATE.

The ACLU remained vigilant and busy, working on nearly 75 bills that impact civil liberties in our state. What follows is a brief highlight of some of the issues we covered during the session. You can find a complete bill tracker from the session and a deeper analysis on our website at www.acluidaho.org

PRIVACY

Drones

In April Governor Otter signed into law the first bill in the nation protecting individuals from unfettered surveillance by unmanned aerial vehicles. Idaho's new law, which will go into effect on July 1, prohibits law enforcement from using drones to conduct investigations absent a probable cause warrant, ensuring that the police can only use drones to watch Idahoans who are suspected of wrongdoing and can't keep an eye on everyone in the Gem State just in case they do something wrong.

Idaho's law also pretty significantly restricts the private use of drones. Although it carves out exceptions for model airplanes and rockets, as

well as for use in "mapping or resource management," the bill prohibits anyone from using a drone to take photographs or make recordings of private property absent the property owner's written permission. It further restricts drone photography or recording of any individual for the purpose of publishing or disseminating the image or data. As

the technology unfolds there may be situations where it is reasonable to restrict private use of drones, but Idaho's restrictions are so broad that they would likely prohibit a news station from using a drone to gather information for their traffic report absent written consent of everyone on the road. They would prevent an aerial photographer from using a drone to take pictures of the Idaho Capitol Building or the Idaho Potato Museum for publication in her upcoming book if there happened to be individuals caught in the frame.

Technology advances rapidly – and we must work rapidly to ensure privacy rights are protected. We will continue working with the legislature to ensure drone legislation protects privacy but also safeguards First Amendment rights.

LGBT EQUALITY

IHRA

This year Senator Cheri Buckner-Webb and Representative Grant Burgoyne drafted a bill to amend the **Idaho Human Rights Act** to include "sexual orientation and gender identity" in the enumerated classes. While the bill was similar to the one offered in the past - for

CONTINUES ON PAGE 2

LEGISLATIVE SESSION CONTINUED FROM PG 1

the first time in seven years both the Senate and House State Affairs Committees heard a presentation about amending The Human Rights Act, which drew over 300 attendees, featured speakers from the faith, business and law enforcement communities. This array of perspectives helped inform legislators of the necessity of an amendment and was well received by members of the committees.

Several new legislators and some legislators in leadership indicated the need to have ongoing conversations and become better educated on the issue. If you care about this issue we encourage you to contact your legislators while they are home in your district, have open conversations about why this issue matters to you and call our office to get involved.

CRIMINAL JUSTICE

Indigent Defense Reform

The occasion of the 50th year since a prisoner’s handwritten petition resulted in the landmark *Gideon v Wainwright* decision was a solemn opportunity to reflect on whether what the Supreme Court called an “obvious truth” — that “any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him” — had been honored in Idaho.

The ACLU testified that the State of Idaho can no longer ignore the public defense crisis in this state, and should immediately take heed to the National Legal Aid and Defenders Association’s finding that “none of the public defender systems in the sample counties are constitutionally adequate.” We supported the establishment of an interim committee to study public defense reform in Idaho. Indeed this is a laudable step – one that takes seriously the Constitutional requirements beholden to the state and we will be carefully monitoring recommendations for reform.

See article “50 Years after *Gideon v. Wainwright*” page 5.

RELIGIOUS LIBERTY

The ACLU opposed **SB1078, Religious Students – Campus Access** because it perverts religious liberty by allowing religion to be used as a basis for discrimination.

Publicly funded universities have a financial, historical, and legal imperative to ensure that tuition-paying students are not discriminated against in the pursuit of any educational opportunity

household. And just 40 years ago, a restaurant owner in South Carolina argued that his religious beliefs about segregation exempted him from having to serve African-American customers, regardless of what the civil rights laws said. Fortunately, those claims did not prevail. Unfortunately this bill was signed into law by Governor Otter.



– including an opportunity to participate in student groups - but also allowed to operate under First Amendment rights of freedom of association and expression. This bill allows religious student organizations to receive state funding without adhering to ANY policy that would violate its beliefs. This may go beyond what is constitutionally allowed, perhaps allowing a religious student organization to discriminate against black, Hispanic, older students or students with disabilities.

There is a distinct difference between upholding religious liberty and using religion as a reason to justify discrimination. Religious beliefs have been offered as an excuse to justify discrimination based on race, gender, disability and national origin. In fact, just over 20 years ago, a religious school claimed that it was justified in refusing women the health benefits it provided male employees because of its religious view that men are the heads of the

STAY ENGAGED

We hope you stay engaged – and stay involved because the 2014 session is right around the corner.

BY THE NUMBERS

- 73 **BILLS TRACKED AND ACTIVELY LOBBIED FOR OR AGAINST**
- 4 **ANTI-CIVIL LIBERTIES BILLS STOPPED OR NEUTRALIZED**
- 1 **CITIZEN LOBBY DAY TRAINING**
- 2 **KNOW YOUR RIGHTS AT THE STATEHOUSE TRAININGS**
- 1 **PROTESTER HOTLINE ESTABLISHED**
- 45 **ATTENDEES AT LOBBY DAY**
- 26 **BILLS TESTIFIED IN SUPPORT OR AGAINST**



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IMMIGRANT RIGHTS ARE CIVIL RIGHTS

BY LEO MORALES
PUBLIC EDUCATION/COMMUNICATIONS COORDINATOR

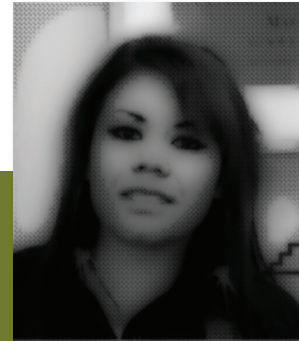
FOR OVER A DECADE NOW CONGRESS HAS NEGLECTED TO RESOLVE THE OUTDATED AND BROKEN IMMIGRATION SYSTEM. MEANWHILE, OUR NATION'S MOST FUNDAMENTAL PRINCIPLES OF FAIRNESS, JUSTICE, OPPORTUNITY, AND THE RULE OF LAW HAVE BEEN SET ASIDE AS THE POLITICS OF DIVISION HAS HALTED PROGRESS ON WHAT IS ONE OF THE MOST IMPORTANT CIVIL RIGHTS ISSUES OF OUR TIME.

As protectors of freedom, liberty and the Constitution, this issue is at the core of who we are at the ACLU. Our founder, Roger Baldwin, risked his life to defend the rights of immigrants who were being targeted by the FBI during the infamous Palmer raids of the 1920s—a period when homes were easily and consistently ransacked without warrants.

Today, in absence of immigration reform millions of undocumented immigrants and U.S. Citizen family members live in the shadow of society where opportunity and justice are denied based on the color of skin, accent, or a nine digit social security number. Our sense of fairness tells us this is wrong and it is. Our concept of liberty and freedom rests on the notion that people should be judged by the content of their character, and not by their immigration status or where they were born. As Congress tackles immigration reform this summer, the ACLU of Idaho will work diligently to ensure we have an overhaul of our nation's immigration system that is consistent with our tradition and historical identity as a nation of immigrants. We will urge our members of Congress to craft a policy that ensures a path to citizenship for aspiring Americans, protects due process, bans racial profiling and reduces the family backlog that has kept families separated for years. Family unity must also include the protection of same-sex couples wanting to call the U.S. their permanent home.

Congress must act this year. We can't afford to have 11 million community members living on the outskirts of society, which is akin to having the population of Idaho, Montana, Wyoming, Utah, Nevada and Oregon all living outside of the bounds of a regulated and protected society. The sacrifice of civil liberties for one group is a watering down of rights for all people who call this country home.

Be a champion of freedom and connect with the ACLU of Idaho's immigrant rights work by visiting our website or calling our office.



I am an immigrant. I am 29 years old and I am proud to call Idaho my home. I was only five years old when I left Mexico, but to this day the memory of when I said goodbye to my grandmother is very vivid. I remember I had mixed emotions that day, happy at the fact that my mother had purchased brand new shoes and clothing for me to wear on the trip to the United States and sad that I would never see my grandmother again. My mother said, "say goodbye because I don't know when or if you will ever see each other again." That was 24 years ago, and I never did see my grandmother again as she recently passed away and I could not go back to pay my respects because I am undocumented.

– Maria, Caldwell, ID

THE SOUL OF A SOCIETY: ENFORCING LIBERTY AND JUSTICE IN OUR SCHOOLS

BY RITCHIE EPPINK, LEGAL DIRECTOR

WHEN THE GOVERNMENT TEACHES OUR CHILDREN, THE SCHOOLS BECOME FISHBOWLS WHERE WE CAN INSPECT THE WATER OF OUR COLLECTIVE VALUES.



The NAACP's decision to focus a quarter-century of landmark litigation on desegregating school systems was not an accident. It was a deeply strategic choice to probe the places where communities cast their visions for the future, and where the bedrock norms of society are passed down from one generation to another. The NAACP's Litigation Director, Charles Houston, explained it to ACLU founder Roger Baldwin during the thick of the school desegregation campaign: "we used the courts as dissecting laboratories to extract from hostile officials the true machinations of their prejudices." The target, public education, was what the U.S. Supreme Court ultimately held to be "perhaps the most important function of state and local governments . . . the very foundation of good citizenship." *Brown v. Board of Education*, 347 U.S. 483, 493 (1954).

Advancing liberty and equality in public education is also a core priority in today's work at the ACLU of Idaho. Our Idaho state Constitution echoes the Supreme Court's holding in *Brown*, stating dogmatically that "[t]he stability

of a republican form of government depend[s] mainly upon the intelligence of the people." Accordingly, the state Constitution makes it the "duty of the legislature of Idaho, to establish and maintain a general, uniform and thorough system of public, free common schools." Whether this duty actually means anything is the question at the heart of a new case, called *Joki v. State of Idaho*, where the ACLU of Idaho is defending the Constitution as a friend of the court (*amicus curiae*). Despite the Idaho Supreme Court's ruling in 2005 that the public education funding system in Idaho is unconstitutional, and that it is the Idaho Legislature's responsibility to fix it, the State is now arguing in *Joki v. State* that it cannot be held accountable for the continuing deterioration in education funding since then. The case is still at the trial court now, but it is practically certain to reach the Idaho Supreme Court eventually. The ACLU of Idaho is in on the ground floor of this case and we will hopefully be a part of clarifying inconsistent court precedent and fixing a broken school funding system.

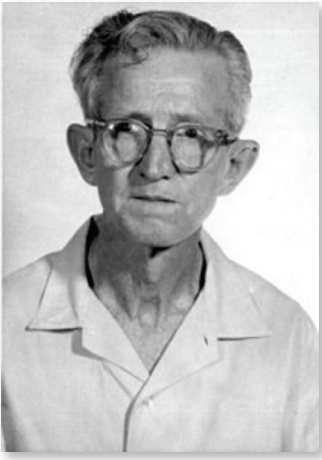
"WE USED THE COURTS AS DISSECTING LABORATORIES TO EXTRACT FROM HOSTILE OFFICIALS THE TRUE MACHINATIONS OF THEIR PREJUDICES."

One victory in the schools has already come in 2013, with improvements to the Boise Independent Schools District's civil rights policies that the ACLU of Idaho won through negotiations on behalf of student and parent clients. The Boise School Board, already a state leader on bullying and harassment policies, voted in February to make powerful amendments to its civil rights grievance procedures, making clear that bullying and harassment policies apply

on school busses and giving officials discretion when notifying parents about sexual orientation harassment. The policies also now plainly protect those who report harassment from being retaliated against by teachers, administrators, and other students—a huge victory, as most students who complain to the ACLU of Idaho about discrimination in school are too afraid to report it.

Outside of Boise, school district practices are not all as progressive. When we learned that the public elementary school in Middleton, Idaho, segregates boys from girls during classtime, we quickly launched an investigation. Through public records requests and a meeting with the principal, we learned that the single-sex education system there—where boys are physically separated into different classrooms and taught differently than girls—was based on fad science that has been discredited in major journals and successfully attacked in the courts by the ACLU in other states. Joining with the national ACLU office, we made a formal complaint to the Office for Civil Rights in the U.S. Department of Education about the Middleton Heights Elementary program. In response, the Education Department announced in January that it would begin its own investigation into possible Title IX violations occurring in the Middleton School District. We await the results and will report them in this newsletter as soon as the federal investigation concludes.

Protecting civil liberties and equity in our schools is an important part, but only one part, of the ACLU of Idaho's bustling legal docket. From anywhere, stay up to date on our Legal Department by visiting the "In the Courts" page at www.acluidaho.org.



50 YEARS AFTER *GIDEON V. WAINWRIGHT*, YOUR RIGHT TO A LAWYER NEEDS YOU TO PAY ATTENTION

BY LEO MORALES
PUBLIC EDUCATION/COMMUNICATIONS COORDINATOR

In June 1961, a burglary occurred at the Bay Harbor Pool Room in Panama City, FL. Police arrested Clarence Earl Gideon after he was found nearby with a pint of wine and some change in his pockets. But as history would reveal, Clarence was innocent. Yet he spent nearly 3 out of the 5 years in prison before he was given a new trial.

Clarence, too poor to afford a private attorney to defend him of the charges, asked the Florida Circuit Court judge to appoint him a lawyer. The judge denied his request and Clarence was forced to defend himself against a well trained prosecutor, resulting in Clarence being convicted and sentenced to prison.

From prison, he petitioned the U.S. Supreme Court to review his case. The Court accepted his hand-written letter from jail, appointed a well known attorney to argue the case, and the Supreme Court in *Gideon v. Wainwright* declared that the Sixth Amendment right

to counsel applied to state courts via the 14th Amendment. Clarence was entitled to an attorney to aid him when he asked for one.

Idaho, a leader on indigent defense at that time filed an *amicus* brief on Gideon’s behalf, but that is history. Today, Idaho has one of the most outdated and crumbling public defense systems in the country. A 2010 National Legal Aid and Defenders Association Report on Idaho’s trial-level courts found that among the counties studied, not a single county had a “constitutionally adequate” system. The report further concluded that Idaho has “sewn a patchwork quilt of underfunded, inconsistent systems that vary greatly in defining who qualifies for services and in the level of competency services rendered.”

Not surprisingly, at the ACLU of Idaho office we have received dozens of letters from community members across the state expressing grave concerns over the

public defender system. Many are from people already housed in jail or are in the process of being defended by a public defender. But public defenders are overburdened by a faulty system that is desperately calling for repair.

The task is now in the legislature’s hand, an interim committee was approved by the 2013 legislature to study the issue over the summer and make recommendations. The ACLU will be an active participant to ensure that not only will there be policy recommendations, but the Committee takes a hard look at what the monetary obligations the state has to bring the public defense system up to date. When Idahoans are accused of a crime and the government wants to take someone’s liberty away, it is the public defender’s role to counter the tremendous power and resources the government has. Through resource parity and other reforms Idaho can once again become a leader on indigent defense.

UPCOMING VOLUNTEER NEEDS

Central Bench Spring Festival –
TBD, Boise

Boise Pride Festival –
June 15, Ann Morrison Park, Boise

UVI Progressive Day –
June 29, Ann Morrison Park, Boise

Boise Music Festival –
July 26-27, Expo Idaho, Garden City

Pocatello Pride – TBD, Pocatello

Palouse Pride –
August 9 & 10, East City Park, Moscow

Hyde Park Street Fair –
September 13-15, Camels Back Park, Boise

VOLUNTEER WITH US! – BECOME AN ACLU AMBASSADOR

Summer is almost here and we are gearing up for another busy summer tabling season with our ACLU Ambassador team! Our volunteer ambassadors help staff our booth at various community festivals across the state, talking to the public about the ACLU of Idaho and how we work to defend Idahoan’s civil rights. This is an important part of our education program, as we aim to outreach to communities and help strengthen our network of civil rights defenders in Idaho.

If you’re interested in becoming a volunteer and are ready to create change now, then contact Kathy Griesmyer, Volunteer Coordinator at 208-344-9750 x 201 or by email at kgriesmyer@acluidaho.org.

CITY ORDINANCE WORK IN IDAHO IN FULL SWING

BY JESS MCCAFFERTY, LGBT FELLOW

Since idyllic Sandpoint, ID passed their nondiscrimination ordinance in 2011 to ban discrimination based on sexual orientation or gender identity, communities from all across the state have followed their leadership and have either passed or have started to explore passing an all-inclusive non-discrimination city ordinance.

In the fall of 2012, with help from the ACLU of Idaho, Boise became the second city in the state to pass an all-inclusive city ordinance. The city of Ketchum passed a similar ordinance in January of 2013 and Moscow in March. City officials recognized that these ordinances are a step towards equality across the state.

Work continues in other communities. Pocatello has been working on an ordinance to fit their city for several months now and on April 18th, before a full hearing room the Council took a vote on a proposed ordinance. After hours of testimony, with most in support, the Council reached a tied vote. Mayor Blad broke the tied by voting NO. However, the Council tasked the City Attorney to draft a new ordinance.

For a city like Pocatello with such a vibrant and involved community, this process has frustrated some, but awareness of the issue has been at an all time high. Prior to the city council vote, there was a panel discussion that occurred and was well attended.

Looking ahead, the cities of Idaho Falls, Coeur d' Alene, Lewiston and McCall are considering an ordinance. We applaud this move. Discrimination against gay and transgender Americans is still a serious problem. Study after study show that significant numbers of LGBT people continue to be fired, denied housing, or excluded from public accommodations. If you know of a city interested to adopt an inclusive ordinance, call the ACLU of Idaho.



THE VIGILANT ACLU

BY MICHAEL BARTLETT, ACLU OF IDAHO BOARD PRESIDENT

In a stairwell at the base of the Statute of Liberty visitors can find a simple plaque with a phrase which is critically important in today's world of terror attacks, school shootings and unmanned drones. It reads, "They that can give up essential liberty to obtain a little safety deserves neither liberty nor safety." It is not surprising given the

state of things that many people crave a sense of security, nor is it difficult to understand that they look to the government, our leaders, for answers. But we should be vigilant when evaluating the solutions offered to these troubling problems. Answers which grant increased powers to government, which encroach little by little upon our right to privacy and which ask increasingly for us to trust that government knows best, should be rejected in favor of the fundamental principles which have made our nation strong. As I begin my presidency of the ACLU of Idaho, I am so proud to be a member of an organization asking the tough questions, challenging the proposed solutions which infringe upon the rights which we have held dear for so long. I also want to thank each and every one of you who offer your support, financial and otherwise. You are so important to preserving those aspects of our country that make it great.

ACLU MAKES PROGRESS ON TRANSGENDER RIGHTS IN IDAHO

MONICA HOPKINS, EXECUTIVE DIRECTOR

This year we celebrated a huge success for transgender Idahoans – the ability to have their gender marker on their drivers' licenses accurately reflect their lived gender identity.

Starting in April 2011, the Idaho Transportation Department (ITD) required "complete surgical change of gender" which forced transgender Idahoans to carry a driver's license or state ID that lists their wrong sex designation or undergo risky and expensive surgery that is unnecessary for, and unwanted by, many transgender people.

Two transgender Idahoans, Erika Falls a transgender woman and Andrew Geske a transgender man, had previously updated their driver's licenses to match their gender identity, but then ITD cancelled their licenses upon realizing later that they had not submitted proof of surgery. Erika and Andrew contacted the ACLU of Idaho to keep the state from violating their privacy and dictating medical care.

Through a series of conversations the ACLU had with ITD, officials recognized the important and legitimate needs of transgender Idahoans and amended its policy. The new policy allows transgender individuals to correct the gender markers on their licenses without a surgical requirement. Similar to best practices in several states, the new policy requires a court order or an affidavit from a licensed medical doctor indicating the individual has undergone a change of gender.

Our hope is that this change makes it possible for other transgender Idahoans to carry a license that matches their gender expression and ends the risks they currently face from being forced to carry an inaccurate license or state ID — possible harassment, embarrassing questions, and even physical injury.

More information, including a copy of the ITD policy and a sample affidavit for change of gender is included on our website at www.acluidaho.org.

WHAT'S BEEN HAPPENING: 2013 IN REVIEW

BY KATHY GRIESMYER, PROGRAM COORDINATOR

At the ACLU of Idaho, we work tirelessly in the courts and legislature, as well as in the community to defend your civil rights across the state. Here are just some examples of our work:

Know Your Rights at the Statehouse

To start the New Year and to welcome legislators and citizens alike to the Statehouse, the ACLU conducted two 'know your rights' session at the Statehouse. Every year thousands of community members take to the Statehouse to present ideas as well as present grievances to their legislators charged with making law and policy. The ACLU also established a hotline for protesters to use if they believe their civil liberties were being violated.

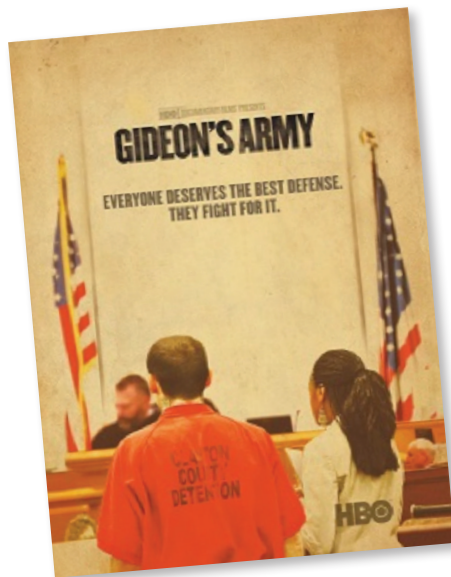
20th Anniversary Bill of Rights Celebration

In early February, over 200 ACLU members, supporters, and allies gathered at the Powerhouse Event Center to attend our speakeasy-themed 20th Anniversary Bill of Rights Celebration. Guests came dressed in their best flapper attire, ready to help commemorate our 20 year history of defending civil rights in Idaho. We honored Betty Richardson with the inaugural Dave Judy Civil Rights Service Award. This award was given in memory

of our long-time volunteer Dave Judy, who passed away in 2012. The award honors those whose passion, genuine concern for others, and devotion to civil rights helps preserve liberty, justice, and equality for all Idahoans.

Lobby Day 2013

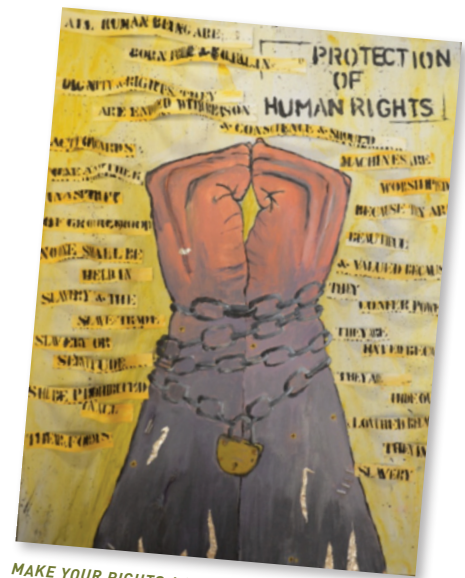
On Presidents Day weekend, the ACLU and coalition partners took to the Statehouse for our 2013 Lobby Day. Training included how the legislative process works, our issue priority areas, and offered tips on how to communicate effectively with legislators. Well over 50 participants attended and many spoke directly with their representatives on an array of issues important to them.



50th Anniversary of Gideon

March marked the 50th Anniversary of the Supreme Court case *Gideon v. Wainwright*, which upholds the 6th Amendment's promise to counsel if an individual cannot afford to hire an attorney. To commemorate this landmark case, we organized a series of educational state-wide events including: City Club of Boise Luncheon titled *Addressing Deficiencies in Idaho's Public Defender System*, screened award-winning HBO documentary, "*Gideon's Army*," followed by a film discussion with film Director Dawn Porter and

Sara Thomas, State Appellate Public Defender. In mid April we traveled to north Idaho to screen the film in Moscow and Coeur d'Alene. During the month of March and April we reached thousands of Idahoans across the state to remind them of the importance of public defense in our legal system.



MAKE YOUR RIGHTS A REALITY -
1st Place, Erika Hunt, Borah High School

Youth Scholarship Event: Make Your Rights a Reality

In April we inaugurated a youth scholarship contest titled "Make Your Rights a Reality". Students submitting entries were asked to creatively demonstrate how the U.S. Constitution, and more specifically, the Bill of Rights is reflected in their life. Contestants submitted their entries through a variety of artistic methods including drawing, painting, photography, and mixed materials composition. Three recipients were selected and honored at a reception in Boise.

**READ MORE ABOUT
OUR LGBT, IMMIGRANT
RIGHTS AND CRIMINAL
JUSTICE REFORM WORK
ON OUR WEBSITE,
WWW.ACLUIDAHO.ORG.**



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HOW DOES IT WORK?

The ACLU's Gift Planning staff can personally and expertly assist you with all the information you need:

Toll free: 877-867-1025

Email: legacy@aclu.org

You may also visit our website at www.aclu.org/legacy for estate planning checklists, gift calculators, how-to's and more information on the Legacy Challenge.

If you prefer to meet with someone face-to-face to discuss your planned giving options, please contact:

Monica Hopkins, Executive Director

(208) 344-9750 ext 203

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