

IDAHO LIBERTY



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FALL / WINTER 2015



...AND JUSTICE FOR ALL! MY SECOND INTRODUCTION.

BY LEO MORALES, EXECUTIVE DIRECTOR

Four years ago I made my introduction to the ACLU of Idaho membership and general public through this newsletter. In that article I expressed my sincere joy and humbleness to be hired on as the ACLU of Idaho's Public Education and Communications Coordinator. Today, I am honored to announce to our membership that I am now the Executive Director of this amazing organization.

My admiration, loyalty and commitment to the ACLU have only grown during my time at the ACLU of Idaho. During the last four years, I have worked alongside my colleagues to champion for the rights of Idahoans as government or private institutions have relentlessly continued to deny or water down constitutional rights. I have been involved in an array of issues from our work on holding the for profit behemoth, Corrections Corporation of America (CCA) accountable for its actions, to ensuring that a young high school female student's experience of gender and religious discrimination is not lost in the halls of her local school in Declo, Idaho.

During the last four years, we have been involved in several critical lawsuits. In 2014 for example, we championed for the rights of residents in Boise with no shelter, but have found refuge on the streets or under a bridge. The City of Boise's continued effort to criminalize what has been deemed as "life sustaining" activities by the U.S. Department of Justice has been troubling.

Through integrated advocacy we have stood alongside community members who are homeless to challenge the City as they crafted policy apparently aimed at removing them from the city. After repeated warnings, we ultimately filed a lawsuit and prevailed in court to affirm the rights, not just for those who are homeless, but all Boise residents to have the availability to solicit or give in Boise.

In 2015 we won our "Ag-gag" lawsuit and restored Idahoan's ability to film or audio record agricultural operations. This victory was very significant because it affirmed our constitutional right to speech, it also helped protect our agricultural animals, the rights of workers and keeps our food supply process more transparent.

This year we filed a lawsuit to protect the fundamental right to a lawyer. Every month hundreds of Idahoans who are charged with a crime are hauled into court, but only to be caught in an unsustainable and disastrous criminal justice system with a bleak public

defender system where public defenders are over worked and under resourced. The quality of representation faces serious challenges and the right to competent counsel is comprised.

The above cases are but a glimpse of the hard work done daily by the staff of the ACLU in Idaho. We receive over one thousand complaints a year and regrettably are not able to do even one fourth of what is needed. Yet, I remain hopeful that with the work that we do, we are making a significant difference in the lives of Idahoans. As the newest executive director to take helm of the Idaho office, I am moved by the commitment, tenacity and inspiration I glean from the work we do, the staff we have and our ever generous members and financial supporters who help this amazing organization stick to its mission of protecting those fundamental rights that make this country great.

Today, I invite you to join me as we work eternally to protect freedom and justice for all. Thank you.

DRIVING A SPOKE INTO THE WHEEL ITSELF: Our Newest Lawsuit Demands Real Criminal Justice in Idaho

BY RITCHIE EPPINK

Idaho has had over half a century to comply with the Constitution's guarantees of real justice in criminal court. It has had more than half a century since the U.S. Supreme Court's landmark decision in *Gideon v. Wainwright* to ensure that the "vast sums of money" that state governments spend to prosecute those accused of crimes are balanced by an equally zealous commitment to protect individual liberty and defend the presumption of innocence.

In 2010, Governor Butch Otter's own Criminal Justice Commission authorized the National Legal Aid and Defender Association to conduct a study of Idaho's public defense system. The NLADA came back with a report that put the State on clear notice that Idaho "fails to provide the level of representation required by our Constitution for those who cannot afford counsel in its criminal and juvenile courts." Yet, following five years of persistent, patient requests by the ACLU since then, the State of Idaho has done little besides rearrange the deck chairs on a ship that is already half underwater.

After the NLADA report five years ago, the Governor's Criminal Justice Commission created a public defense subcommittee, which in turn recommended creating a legislative committee, which then passed the buck to the new "Public Defense Commission." And now, this fall, the Public Defense Commission has returned to the legislature, not with the recommendations that a new law required it to produce, but instead to tell lawmakers that the Commission simply lacks the power to fix anything.

How could we keep waiting like this while the system trundles over thousands

of families, employers, and youths day after day? How could we let Idaho's most courageous and industrious lawyers—our public defenders—continue to struggle against impossible odds, without access to the basic resources they need? We couldn't, and we won't. In June, we launched a massive class action lawsuit against the State of Idaho, its Governor, and the Public Defense Commission—which, more than a year after its creation, has yet even to fulfill its statutory duty to produce recommendations and rules for improving the system. Joined by the ACLU's national office and the global law firm Hogan Lovells US LLP, we filed a 54-page legal complaint that spells out some of the most grievous deficiencies with criminal justice in Idaho, among them:

- Utter failure in nearly every Idaho county to provide any public defender at all when indigent defendants are first brought to court. This results in thousands pleading guilty and being sentenced right on the spot, without the advice of counsel, just so they can avoid languishing in jail, being separated from their children, and losing their jobs. Innocent people can feel forced to plead guilty, and sentences can be far harsher than what these defendants deserve.
- Newly charged defendants waiting weeks before they can speak with their lawyers. The consequences of this unnecessary and extended imprisonment are severe. Productive community members are removed from the workforce, offered no programming in jail, and housed alongside those convicted of serious and violent crimes.
- Public defenders are shouldered with more than double the workload that any lawyer should ever be expected to handle, usually without adequate support staff, investigators, and other resources essential to effective criminal defense. As a result, despite their best efforts and intentions, many public defenders are forced to meet with their clients just minutes before court appearances, often in open court within earshot of the prosecutors and law enforcement officials working against them.

- Some counties still use "fixed fee" contracts to provide public defense in their jurisdictions—despite that Idaho law explicitly bans these sorts of arrangements. These contracts pay private attorneys a lump sum to defend however many people are charged with a crime in a whole year in that county, creating perverse incentives for those public defenders to spend as little money and time as possible on each case in order to maximize the time they can spend on their paying clients.

Predictably, the State has responded to our lawsuit with strategies that will stall meaningful reform. The State is not claiming that the problems are not serious or that the system is constitutional, but instead is asking the Court to prohibit the ACLU from getting more information about the system's problems and seeking to dismiss the case entirely on the grounds that nobody at the State level can be held accountable for violating the Sixth Amendment at all. Those who read this newsletter regularly, however, will not be surprised by the State of Idaho's stubborn reluctance to actually fulfill—rather than just invoke—the Constitution.

All of Idaho suffers while this unjust system rolls on. Your ACLU of Idaho staff hears daily from the many victims of it: the communities of color whose youth are snatched from their schools to be held in jail on charges, the ailing mothers and fathers whose sons and daughters cannot care for them while locked away awaiting trial, and the children whose parents' sentences in turn sentence the next generation to poverty and uncertainty. Our job, together with all of the public defenders throughout our state, is an epic one. As Dietrich Bonhoeffer explained it before the collapsing Nazi regime executed him for his politics: "We are not to simply bandage the wounds of victims beneath the wheels of injustice, we are to drive a spoke into the wheel itself." If we can count on your sustaining support, we are up to the task.

Read more about this case, *Tucker v. State of Idaho*, and stay up to date on our legal program throughout the winter by visiting the "In the Courts" page at www.acluidaho.org.



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Know Your Rights Corner!

Hi ACLUers! 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 when encountering law enforcement on the street.

- If you are stopped by an officer, stay calm and be respectful
- Verbally state that you wish to remain silent
- If the officer continues to question you, ask if you are free to go
- If the officer does not say "no," calmly walk away
- As soon as possible, document the situation with the time and any details you can remember
- If you see someone else being stopped by an officer, you may record the situation as long as you don't interfere with the officer(s)



KEEP CALM AND KNOW YOUR RIGHTS

If you have suggestions about other topics to cover, please call or email Jess McCafferty, Education and Outreach Coordinator, at 208.344.9750 x1206 or jmccafferty@acluidaho.org



WILD WEST

BY CASEY BENDER, BOARD MEMBER

Idaho is still the Wild West. When the Legislature convenes each year, a sense of dread descends over the state. Idahoans wonder what could possibly be next: how will legislators attack women and their right to govern their own bodies, insert their personal beliefs into our homes and families, or undermine our criminal justice system, prioritizing tax cuts over funding our constitutional right to an attorney? Each year, we're sure it can't be as outrageous as the last. But the Legislature doesn't disappoint.

In Idaho, our democracy is tipped far out of balance. So far out of balance that legislators continually pass unconstitutional legislation, even when their legal advisors and legislative advocates instruct them not to. Sadly, it would appear that these legislators need a refresher course on the U.S. and Idaho Constitution.

By adding the missing checks and balances in our legislature, the ACLU of Idaho has become almost another branch of government for those of us who truly value freedom. In the past five years, the ACLU has been a part of several successful lawsuits against the State of Idaho and its agencies for their continued efforts to violate individual rights guaranteed by the Constitution. I know they'll keep fighting for me, for my daughter, and for our friends and neighbors.

What the Legislature says and does makes me worried for me and my family's future, but I'm comforted to know that many of the laws they pass will never be enforced. That's why I support the ACLU, and I hope you will, too.

To make a donation, visit the ACLU ID website at: <http://acluidaho.org/get-involved/support-us/donationoptions>

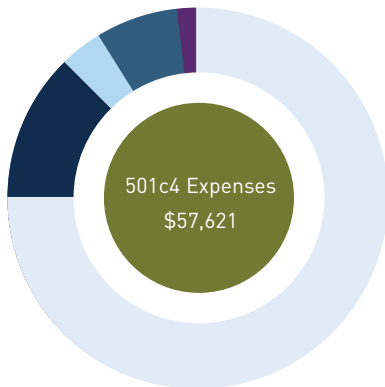
BOARD OF DIRECTORS ELECTIONS

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.

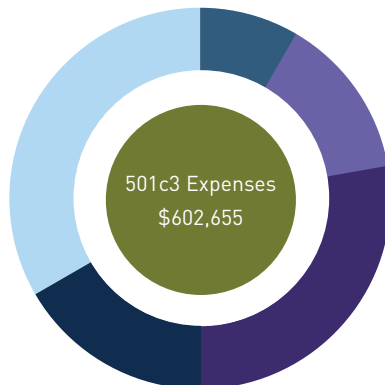
Nominations may also be submitted by petition. Nomination petitions must include a statement of interest with a short statement of petitioner's background and qualifications and be signed by ten (10) current ACLU of Idaho members that includes the name and address of the nominee. The submissions must be received in the ACLU of Idaho office at PO Box 1897, Boise, ID 83701 by December 1, 2015. 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 21, 2016.

FINANCIALS – Total Expenses \$660,227



- Wages & Admin \$95,482
- Office Operations \$8,257
- Communications \$1,932
- Board \$3,279
- Legislative \$956



- Education \$158,695
- Admin/Finance \$98,889
- Legal \$202,518
- State Equality Fund \$47,071
- Development \$95,482

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.

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