

ACLU OF IDAHO

2010 LEGISLATIVE SESSION IN REVIEW

The 2010 legislative session has been heavily interlaced with the effects of budget cuts and the presence of an election year. As I write this article, the legislature is just a day or two from adjourning for the year and the common themes this session were similar to 2009, including budget shortfalls, gun legislation, and a new popular issue, state sovereignty. In an attempt to avoid sounding like a broken record, I will highlight the bills most relevant to the ACLU this session as well as inform you of our proactive advocacy efforts and drafting of legislation.

As you are likely well aware, federal health care reform has been a hot topic in national news and also here in Idaho. State sovereignty is of utmost importance to the current leadership of the Idaho Legislature as well as to Governor Otter. The combination of these two issues sparked much debate at the statehouse this session. The legislature considered many proposals dealing with state sovereignty – 14 pieces of legislation at last count. These proposals were considered, and some passed, with the goal of telling the federal government that the state of Idaho is a sovereign state and that the federal government should not be telling the state of Idaho and Idahoans what to do with their guns, forests, health care/insurance decisions, and more.

Unfortunately, the Idaho legislature does not have a good track record when it comes to prohibiting government intrusion in health care decisions of the individual, especially when women and pregnancy are involved. One such bill dealing with this issue was Senate Bill 1353, also known as the conscience refusal bill. This piece of legislation, which passed both the House and Senate and became law without the Governor's signature, allows any health care provider to refuse to provide health care services to any Idahoan based on their religious, moral, or ethical objections. This means that a doctor, nurse, pharmacist, or physician's assistant, among others, are permitted to refuse to counsel, give information, or even refer to a willing health care provider for the health care service needed. One of the goals of this law is to allow for conscience refusals for pharmacists in order to make it more difficult for women to access emergency contraception – yet another proposal from the Idaho legislature aimed at stripping away a woman's right to choose. The ACLU of Idaho values both individual religious freedom as well as protecting the safety and access to health care for all Idahoans. Unfortunately, this law does not strike a proper balance and may leave many Idahoans, especially those in rural areas, without much needed health care services.

Another area that received a significant amount of attention during the 2010 legislative session was immigration. Although immigration law and immigration reform are federal issues that only the federal government can truly address, the Idaho State Legislature did not see that as a problem when introducing three pieces of legislation aimed at punishing undocumented workers

and those that employ them. The three measures introduced, Senate Bills 1271 and 1303 and House Bill 497, each attempted to deal with the issue in different ways but all three were very tough on immigrants. These measures, while claiming to crack down on those that employ undocumented immigrants, were drafted in a way that essentially gives the employer a pass while criminalizing undocumented immigrants and making it very difficult for many to work and care for their families during tough economic times. Fortunately, not one of these bills made it through the legislature – two died in committee and the third was sent to the Senate amending order but remained there through the end of the session. There is much anti-immigrant sentiment in the Idaho legislature so it was a major success to work with a broad coalition and kill these proposals. However, we will likely see similar proposals next session and we will continue to see these bills until the federal government takes up immigration reform at the national level.

Although it seems like we are always on the defense at the Idaho statehouse, we do also advocate for proactive measures. Leading up to the 2010 session we worked with coalition partners and our national office to draft legislation that would prohibit the use of restraints on incarcerated pregnant women during childbirth. Most of the conversations we had with legislators, lobbyists, health care providers, and members of the public were positive – no one could believe that correctional facilities and officials were even permitted to restrain women during labor and delivery. This seemed like a bill that legislators on both sides of the aisle would be willing to support. It also seemed like a good opportunity to work with anti-choice organizations and individuals that we don't usually get to work with. When the session began things looked good. We had a conservative member of the House as our sponsor and we were working with the Idaho Sheriffs' Association to agree on the language of the bill.

By early March we had a draft agreed upon by the ACLU of Idaho, the Idaho Sheriffs' Association, and the bill sponsor. The legislation was scheduled for a print hearing and by a unanimous vote the bill was printed in the House State Affairs Committee – not usually the friendliest committee to ACLU issues – and given a bill number, House Bill 635. We were cautiously optimistic about the bill, but knew that we faced an uphill battle without full support from the Idaho Department of Corrections (IDOC). Just a few days after the bill was printed, IDOC sent a letter to the sponsor of the bill outlining their objections and concerns. Based on their objections, the sponsor decided to pull the bill before it was scheduled for a public hearing. We were very disappointed that the bill did not receive the hearing it deserved as we were fully capable of speaking to all of the concerns raised by IDOC. Although the legislature did not pass HB 635 this session we will continue working on this issue in hopes of future legislation that would prohibit the barbaric practice of shackling pregnant incarcerated women during childbirth.

Though this has been another year focused tightly on the budget with an added concern of states' rights, the ACLU worked diligently to monitor and advocate for civil rights. The Legislative Program will continue to conduct outreach and work with coalition members to prepare for our 2011 session goals throughout the coming months. In addition to the bills discussed above, you may find online a list and brief explanation of other bills, though not exhaustive, the ACLU

followed during the 2010 legislative session. Please visit www.acluidaho.org to read more about 2010 legislation in Idaho.

REPRODUCTIVE RIGHTS AND ACCESS TO HEALTH CARE

PASSED

HB 391 – Idaho Health Freedom Act. Codifies as state policy that every person in the state of Idaho is and shall continue to be free from government compulsion in the selection of health insurance options, and that such liberty is protected by the Constitutions of the United States and the State of Idaho. The bill removes the authority of any state official or employee from enforcing any penalty which violates the policy. It also tasks the office of the Attorney General with seeking injunctive or other appropriate relief, or defending the state of Idaho and its officials and employees against laws, enacted by any government, which violate the policy. *Passed by the House (52-Y, 18-N, 0-A) and passed by the Senate (24-Y, 10-N, 1-A) and signed by the Governor. The ACLU of Idaho monitored this bill.*

SB-1353 – Conscience Refusals. Adds to existing law relating to abortion and end of life care to provide for freedom of conscience for health care professionals; allows health care professionals to refuse to provide, counsel or refer to another health care provider for health care services that violate their religious, moral, or ethical principles. *Passed the Senate (21-Y, 13-N, 1-A) and passed the House (51-Y, 18-N, 1-A) and became law without the Governor's signature. The ACLU of Idaho opposed this bill.*

SJM 106 – US Constitutional Amendment, Health Insurance. States findings of the Legislature urging Congress to take action forthwith to amend the United States Constitution by adding a Twenty-eighth Amendment to provide that Congress shall make no law requiring citizens of the United States to enroll in, participate in or secure health care insurance, or to penalize any citizen who declines to purchase or participate in any health care insurance program. *The Senate adopted SJM 106 by voice vote and the House passed the House (43-Y, 26-N, 1-A). The ACLU of Idaho monitored this bill.*

FAILED

HB 693 – Abortion on Basis of Race/Gender, Felony. Amends existing law to provide that a person who performs an abortion knowing it is sought based on sex or race, uses force or threatens force, or solicits or accepts funds for such an abortion is guilty of a felony. The bill would also allow the attorney general to seek an injunction and prohibit a woman from accessing abortion services if it is suspected that the abortion is sought based on sex or race of the fetus.

Overall the bill creates even more barriers to a women's access to reproductive health care. *Held in House State Affairs. The ACLU of Idaho opposed this bill.*

SB 1270 – Conscience Refusals. See SB 1353 above. Although the language of the two bills was distinct, the intent and outcome are similar. *Held in Senate State Affairs. The ACLU of Idaho opposed this bill.*

IMMIGRATION/IMMIGRANTS' RIGHTS

FAILED

HB 497 – Employment of Unauthorized Aliens. Amends and adds to existing law to provide for business license suspensions for employers who knowingly employ undocumented workers; misdemeanor penalties for false impersonation and falsifying public documents. *Held in House State Affairs. The ACLU of Idaho opposed this bill.*

HB 541 – Driver's License Requirements. Amends existing law to require an individual to prove lawful presence before obtaining a driver's license and to prohibit the state from using three dimensional photographs and from incorporating any type of transmitting device that would allow the information on a driver's license to be read from a distance. *Passed the House (58-Y, 10-N, 2-A) and was held in Senate State Affairs Committee. The ACLU of Idaho monitored this legislation.*

SB 1271 – False Impersonation for Employment Purposes Act. This legislation prohibits the manufacturing of false identification and the use of false identification by all persons to obtain employment and provides criminal sanctions for employers who knowingly employ persons using false identification. *The bill died on the Senate's 14th (amending) Order. The ACLU of Idaho opposed this legislation.*

SB 1303 – Employment of Unauthorized Aliens. This legislation allows for Idaho employers to be fined and have their state, county or city licenses suspended for knowingly employing illegal aliens; defines, prohibits and classifies as a felony the trafficking and harboring of illegal aliens by individuals and employers; prohibits the issuance of a driver's license to an illegal alien who has been issued a driver's license from another state, nor provides for the honoring of a drivers license issued to an illegal alien by another state; compels the written portion of the test required to obtain an Idaho state drivers license to be administered solely in the English language without benefit of translators; makes the E Verify online computer program operated by the Department of Homeland Security mandatory for use by all Idaho employers during the hiring process of all new employees; defines a "Sanctuary City" as a city that does not enforce the provisions of this legislation and any city determined to be a "Sanctuary City" will be ineligible to receive moneys provided through grants administered by the state. *Held in Senate State Affairs. The ACLU of Idaho opposed this legislation.*

CRIMINAL JUSTICE AND DUE PROCESS

PASSED

HB 498 – Post Conviction Procedure/DNA. This legislation amends Idaho Code 194902 by deleting the one year time limitation for filing a post-conviction petition for fingerprint or DNA testing; by adding language to provide the right to petition for testing to those inmates who made either pleas or confessions that may have been involuntary. This bill adds language to provide for DNA testing at an accredited DNA testing laboratory at the petitioner's expense. *Passed the House (68-Y, 0-N, 2-A) and passed the Senate (32-Y, 2-N, 1-A) and signed by the Governor. The ACLU of Idaho supported this legislation.*

SB 1383 – Retained Jurisdiction after Judgment and Sentence. Amends existing law relating to the suspension of judgment and sentence to extend the period of time the court retains jurisdiction over a prisoner, to provide that the State Board of Correction shall be responsible for determining the appropriate placement, education, programming and treatment of prisoners during the period of retained jurisdiction; and to revise provisions relating to the amendment of judgment. *Passed the Senate (34-Y, 0-N, 1-A) and passed the House (64-Y, 0-N, 6-A) and is awaiting the Governor's signature. The ACLU of Idaho monitored this legislation.*

SB 1384 – IDOC Authority/Responsibility in Private Prisons. This legislation clarifies the Department of Correction's role in the event of an emergency at a privately operated facility that is under contract to house offenders for the Department of Correction. Currently, the Department's authority to suppress a riot or other serious disturbance at a private facility is not expressly stated in statute. This legislation proposes to amend Idaho Code §§ 20111, 20209B and 20241A to make clear the Department's authority to intervene in the event of an emergency. It also proposes to amend Idaho Code §20241A to provide that any contract between the Department and a private prison contractor to house Idaho offenders must contain provisions to facilitate cooperation and provide for payment of expenses in the event of an emergency at the private facility. *Passed the Senate (34-Y, 0-N, 1-A) and passed the House (62-Y, 0-N, 8-A) and is awaiting the Governor's signature. The ACLU of Idaho monitored this bill.*

SB 1385 – Amendments to Statutory Rape statutes. This legislation changes the definition of what is commonly known as "statutory rape." Under current law, sexual relations (as defined) with a girl who has not reached the age of 18 is considered rape, even if both parties participate willingly. This bill amends the definition of statutory rape to include such acts when the offender is age 18 or older and the victim is under age 16 (rather than 18), or the victim is 16 or 17 and the offender is 3 or more years older than the victim. Changes are also made to the male rape statute to bring it into conformity with the provisions of the female rape statute. *Passed the Senate (35-Y, 0-N, 0-A) and passed the House (54-Y, 14-N, 2-A) and is awaiting the Governor's signature. The ACLU of Idaho supported this legislation.*

ELECTIONS, VOTING, AND GOVERNMENT

PASSED

HB 496 – Voter Identification Requirements. Amends and adds to existing law relating to elections to provide that each elector shall show a photo identification or personal identification

affidavit, to provide that all voters shall be required to provide certain personal identification at the polls or at the absent elector polling places; and to provide for an affidavit in lieu of personal identification. The key difference between this year's voter identification legislation and a similar bill introduced last year is the allowance for a personal identification affidavit in the event an individual does not have photo identification. *Passed the House (64-Y, 6-N, 0-A) and passed the Senate (27-Y, 6-N, 2-A) and is awaiting the Governor's signature. The ACLU of Idaho monitored this bill.*

HCR 44 – 10th Amendment, State's Rights, and Presence of God in the Public Domain.

This legislative proposal deals with the scope and power defined by the Tenth Amendment of the United States, providing that the Federal Government was created by the States specifically to be an agent of the States and that Congress is urged to pass legislation implementing the findings provided for this resolution. Those findings include balancing the Federal budget, extinguishing the public debt, providing for government transparency, maintaining the growth of the Federal government, preventing unfunded mandates, prohibiting government from taking ownership of private sector enterprise and providing for the presence of "God" in the public domain. *Passed the House (50-Y, 17-N, 3-A) and passed the Senate by voice vote. The ACLU of Idaho monitored this legislation.*

HCR 55 – Study of Random Drug Testing Program for Welfare Recipients. States findings of the Legislature and requests the Department of Health and Welfare to undertake a study of the cost of implementing a random drug testing program of adults receiving public assistance and requests the department to report its findings to the Legislature. *Passed the House (55-Y, 11-N, 4-A) and passed the Senate (19-Y, 16-N, 0-A). The ACLU of Idaho monitored this legislation, however if legislation is introduced next year to implement a random drug testing program the ACLU of Idaho would likely have various concerns.*

HCR 64 – 10th Amendment of the US Constitution and States' Rights. This concurrent resolution urges Congress to initiate the Article V amendment process to amend the Tenth Amendment of the U.S. Constitution and the interstate commerce clause of the U.S. Constitution in order to limit the role of the federal government as it relates to the States. *Passed the House (46-Y, 16-N, 8-A) and passed the Senate by voice vote. The ACLU of Idaho monitored this legislation.*

SB 1346 – Public Records Exemption for Nutrient Management Plans of Confined Animal Feed Operations (CAFO). Amends existing law relating to beef cattle animal feeding operations to provide that the Idaho Department of Agriculture shall have authority to administer water quality laws in regard to certain beef cattle animal feeding operations, and to provide that the nutrient management plan and certain information generated as a result of the plan shall be confidential. *Passed the Senate (26-Y, 6-N, 3-A) and passed the House (54-Y, 13-N, 3-A) and is awaiting signature of the Governor. The ACLU of Idaho opposed this legislation.*

FAILED

HB 442 – Popular Vote for Presidential Elections. This legislation provides that upon enactment, Idaho will join an interstate compact awarding the state's electoral votes to the Presidential and Vice Presidential candidates who win the most popular votes in all fifty states.

The legislation preserves the Electoral College and Idaho's exclusive state power to allocate electors. *Held in House State Affairs. The ACLU of Idaho monitored this bill.*

HB 589 – No Federal Jurisdiction Over Firearms Made in Idaho. This bill states that firearms and ammunition manufactured in the state of Idaho using parts manufactured in the state of Idaho will be exempt from federal law or federal regulations, including registration, firearms accessories, or ammunition that is manufactured in Idaho and remains in Idaho under the authority of the United States Congress to regulate interstate commerce. *Passed the House (52-Y, 17-N, 1-A) and was amended in and passed the Senate (27-Y, 7-N, 1-A) but died as the House did not have time to concur with Senate amendments before Legislature adjourned sine die. The ACLU of Idaho monitored this bill.*

HB 730 – Public Testimony, Minutes, and Intent Language Required for Joint Finance and Appropriations Committee Meetings. Amends existing law to provide transparency and open access to the Joint Finance Appropriations Committee on any proposed budget prior to the Committee setting an agency budget by allowing public testimony at JFAC hearings and requiring minutes of those meetings. *The bill was held at the Speaker's desk after being printed by the House Education Committee. The ACLU of Idaho monitored this legislation.*

HJM 12 – Campaign Contributions by Corporations. This memorial would direct a message from the Idaho Legislature to the United States Congress, and particularly the congressional delegation representing the State of Idaho in the United States Congress, concerning our opposition to the U.S. Supreme Court's decision in Citizens United v. Federal Elections Commission. The memorial would also urge the United States Congress to, in keeping with more than a century of social tradition and case law, reestablish limits on independent expenditures by corporations and labor organizations and to affirm the powers of the states to set limits on all types of contributions and expenditures by corporations and labor organizations. *Held in House State Affairs Committee. The ACLU of Idaho monitored this legislation.*

SB 1261 – Restrictions on Lobbying. Amends and adds to existing law to prohibit lobbying and registration as lobbyists by executive officials or legislators for a period of one year from termination of office; and to provide penalties for violating the prohibition of lobbying and registration as lobbyists by executive officials or legislators for a period of one year from termination of office. *Held in Senate State Affairs Committee. The ACLU of Idaho monitored this legislation.*

SB 1262 – Cooling off Period. Amends and adds to existing law to provide a cooling-off period of one year under certain conditions for public officials when they leave public office; and to provide a civil penalty for violating the cooling-off period by former public officials. *Held in Senate State Affairs Committee. The ACLU of Idaho monitored this legislation.*

SB 1263 – Campaign Finance. This bill prohibits campaign contributions to legislators, the Lieutenant Governor, and the Governor while the legislature is in session. *Held in Senate State Affairs Committee. The ACLU of Idaho monitored this legislation.*

PRIVACY AND TECHNOLOGY

PASSED

HB 636 – School District Internet Use Policy Required. This legislation requires each local school district in the state to adopt and file an internet use policy with the state superintendent of public instruction. The policy, approved by the local board of trustees, shall require filtering technology that blocks internet materials that are harmful to minors, establish disciplinary measures for violators, and provide a component of internet safety to be integrated into the schools instructional program. *Passed the House (67-Y, 0-N, 3-A) and passed the Senate (34-Y, 0-N, 1-A) and is awaiting Governor's signature. The ACLU of Idaho monitored this legislation.*

FAILED

HB 573 – Limits on the Use of Whole-body Imaging Technology. Adds to existing law relating to homeland security to provide for limitations on whole-body imaging; to provide for findings and reporting by the Chief of the Bureau of Homeland Security for the state of Idaho. *Passed the House (58-Y, 9-N, 3-A) and was held in Senate State Affairs Committee. The ACLU of Idaho monitored this legislation.*

HUMAN RIGHTS

FAILED

HB 547 – Equal Pay Day, Women's Pay Equity. This bill acknowledges that pay disparity in Idaho is genuine and to reaffirm that women deserve equal pay for equal work, and to demonstrate that Idaho families will benefit greatly by closing the pay gap. This bill also calls for an annual day to be proclaimed as Equal Pay Day. *Held in House State Affairs Committee. The ACLU of Idaho supported this bill.*

HB 635 – Limitations on the Use of Restraints on Pregnant and Birthing Incarcerated women. This bill would prohibit the use of restraints on pregnant incarcerated women during childbirth except under extraordinary circumstances. *Held in House Judiciary, Rules and Administration Committee. The ACLU of Idaho drafted and supported this legislation.*

Idaho Human Rights Act Amendment. Amends existing law to provide protection against discrimination based on sexual orientation and gender identity in the areas of employment, housing, education, and public accommodation. *The ACLU of Idaho monitored the progress of this legislation as it was never given a print hearing.*