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**AMERICAN CIVIL LIBERTIES UNION
125 BROAD STREET
NEW YORK, N.Y. 10004**

May 19, 2006

MEMORANDUM

TO: National Board
FROM: [Karen Delince](#)
RE: **Committee on Rights and Responsibilities of Board Members Report and Proposal**

Attached are the following materials:

- Summary Sheet
- Committee on Rights and Responsibilities of Board Members Report
- Committee's Proposed Policy
- Alison Steiner's Minority Report

SUMMARY SHEET

- Committee:** Committee on Rights and Responsibilities of Board Members
- Members:** Larry Hamermesh (chair), Robert Chester, Roger Fonseca, Fred Neal, Calien Lewis, Stephen Lee, Ralph Simpson, Alison Steiner, Philippa Strum, Joseph Sweat, Vivian Weisman
- Appointed:** January 22, 2005
- Mandate:** The Committee was asked to consider the rights and responsibilities of Board members, including fiduciary responsibilities, confidentiality, and governance, and to propose appropriate written guidelines if necessary or appropriate beginning with fiduciary responsibilities.
- Procedural Posture:** The Committee presents its report, proposal and minority report to the Board for the first time for consideration.

COMMITTEE ON RIGHTS AND RESPONSIBILITIES OF BOARD MEMBERS

May 18, 2006

Background and Purpose of the Committee

At its meeting on January 22, 2005, the Board of Directors approved the formation of a committee the stated purpose of which was “to consider the rights and responsibilities of Board members, including fiduciary responsibilities, confidentiality, and governance, and to propose appropriate written guidelines if necessary or appropriate.” The committee was also instructed to “focus initially on fiduciary responsibilities.”

In attempting to fulfill this mandate, the Committee necessarily first confronted the question of whether and in what form such “guidelines” would be “necessary or appropriate.” At the time the Committee was formed, at least some Board members felt that such guidelines could provide standards for determining whether a board member’s conduct violated her or his fiduciary duties to the organization, such that it would be appropriate for the Board to remove or suspend that director pursuant to Article IV Section 7 of the ACLU’s bylaws (which provide for such removal or suspension by the Board “for violations of fiduciary responsibilities”).

The Committee has rejected that rationale, however, as a guiding purpose of its efforts. While the guidelines proposed by the Committee do stem from, and to some extent articulate, the fiduciary duties of the members of the Board, the Committee believes that its proposed guidelines are more in the nature of a statement of best practices of directors. It is the Committee’s intention that the guidelines it has drafted be used to help directors – especially new members of the National Board – understand and conform to the Board’s shared understanding of the responsibilities of its members.

The Committee developed the proposed guidelines through a series of meetings, in person and by conference call, over the course of the past year. In response to its invitation to submit descriptions of director responsibilities, the Committee received a number of such documents from ACLU affiliates as well as other state and national nonprofit organizations. The Committee also reviewed statements from candidates for election as at large members of the Board on the subject of the rights and responsibilities of National Board members. The Committee and its proposals have been particularly influenced by the description of board member responsibilities published by the Charities Bureau of the Office of the New York State Attorney General.¹ The Committee also considered a wide variety of published material on the subject of director responsibilities (a brief bibliography is attached to this report).

¹ *Right From the Start: Responsibilities of Directors and Officers of Not-for-Profit Corporations*, (revised January 2005), available at www.oag.state.ny.us/charities/charities.html.

Recommendations and Proposed Draft Orientation Material

The primary product of the Committee's efforts is the accompanying draft entitled "An Introduction To The Responsibilities And Rights Of Members Of The Board Of Directors." The function of this draft is twofold. First, it is intended to present proposed guidelines defining the responsibilities of Board members. Second, if adopted by the Board, the accompanying document will be a central element of the Committee's other recommendation: namely, that the Board develop a coherent program of orientation for board members, especially new board members, so that they can more effectively carry out their responsibilities as directors.

With regard to this second recommendation, the Committee concluded that the Board should institute a formal program of orientation, both for new members and for "old" members who would find it useful. That program would consist of much more than review of the accompanying "Introduction." In the Committee's view, a meaningful orientation program should include (i) an in-person review of that Introduction, conducted by an experienced member of the Board, (ii) development of a guide to the financial statements of the ACLU and the Foundation, and (iii) in-person review of that guide, conducted by the Treasurer or member of the BAI Committee.

Minority Report

Committee member Alison Steiner objects to certain aspects of the Committee's proposed guidelines, as explained more fully in the Minority Report accompanying this Report.

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A.C.L.U., INC. NATIONAL BOARD OF DIRECTORS

AN INTRODUCTION TO THE RESPONSIBILITIES AND RIGHTS OF MEMBERS OF THE BOARD OF DIRECTORS

This Introduction to the Responsibilities and Rights of Members of the Board of Directors explains the basic structure and functions of the Board of Directors and outlines what is expected of you in your role as a director.

This Introduction is just that: an introduction. It is not an organizational handbook, containing all procedures and policies applicable to participants in the ACLU. It does not explore applicable legal principles either, although its articulation of director responsibilities flows from and expresses the Board’s collective understanding of those principles of fiduciary duty.

There is extensive information about the ACLU and its policies on the organization’s public web site (www.aclu.org) and on the internal web site available to Board members (www.oursybil.org), including the bylaws of A.C.L.U., Inc. (available in the form of Policy #501).

This Introduction addresses the following topics:

1. The ACLU organization.
2. Functions of the Board of Directors and of the individual director.
3. Committees of the Board of Directors, and their functions.
4. Conduct of meetings of the Board of Directors.
5. Preparation for participation in board meetings and ongoing supervisory responsibilities.
6. Conflicts of interest.
7. Other organizational information.

30 **1. THE ACLU ORGANIZATION**

31 **A. Formal Legal Status**

32 A.C.L.U., Inc. (the ACLU) is a nonprofit tax-exempt (501(c)(4)) corporation
33 established under the laws of the District of Columbia. Its members include general
34 members (dues-paying members who vote in the election of affiliate boards of directors)
35 and voting members (members of affiliate boards of directors and directors of the
36 ACLU).

37 The bylaws of the ACLU establish the core elements of its formal structure and
38 processes. They are short, and you should familiarize yourself with them. Have them
39 handy at all board meetings. Other important elements of the organization's formal
40 structure and processes are contained in the numerous formal policies adopted over the
41 years by the Board of Directors (particularly in Policies #501-531a).

42 **B. Primary Organizational Components**

43 Within the ACLU, the Board of Directors – comprised of 83 members, including
44 representatives of each of the 51 affiliates, 30 members elected at large, and two *ex*
45 *officio* members – has ultimate authority over the conduct of the organization. As
46 discussed further below, the Board exercises that authority directly as a body, or through
47 its committees. Other bodies and individuals, however, also have important roles and
48 responsibilities:

- 49 • The Biennial Conference (Bylaws Article VIII), which may make policy
50 recommendations to the Board.
- 51 • The officers of the ACLU, elected by the Board (Article V), including (1) the
52 President (who presides over Board meetings), (2) the Executive Director (the
53 principal operational manager of the ACLU, and supervisor of the ACLU's staff),
54 (3) the Vice Presidents, (4) the Secretary, (5) the Treasurer (who is primarily
55 responsible for the funds and accounts of the ACLU), and (6) the general counsel,

56 who work closely with the National Legal Department to shape the organization’s
57 litigation agenda.

- 58 • The ACLU senior staff, including the director of the ACLU’s Washington
59 National (legislative) Office, the National Legal Director, the directors of national
60 projects (National Drug Law Reform Project, Women’s Rights Project,
61 Immigrants’ Rights Project, *etc.*), Director of Administration and Finance, *etc.*,
62 and the other staff members who work with them.
- 63 • The National Advisory Council, chosen by the Board, which serves a largely
64 advisory function (Article VII).

65

66 The ACLU is affiliated with the American Civil Liberties Foundation, a nonprofit
67 501(c)(3) organization formed under the laws of New York, whose members are the
68 members of the ACLU Board of Directors and whose directors are the members of the
69 Executive Committee of the ACLU Board.

70 The ACLU also has 51 affiliates (listed in an attachment to this document)
71 organized under the laws of the states in which they are based. The members of these
72 affiliates are the general (dues paying) members of the ACLU in their respective
73 jurisdictions. Those members elect the members of the boards of directors of the
74 affiliates (affiliate boards), each of which in turn ordinarily selects its affiliate
75 representative to the Board of the ACLU. The affiliates are largely autonomous in their
76 governance and policy setting, subject to limited exceptions that are beyond the scope of
77 this document.

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80 **2. FUNCTIONS OF THE BOARD AND OF THE INDIVIDUAL DIRECTOR**

81 **A. The Role of the Board of Directors**

82 The affairs of the ACLU are managed “by or under the direction of” the Board of
83 Directors. In giving effect to this broad and necessarily flexible mandate, the ACLU
84 Board exercises responsibility for various matters – some directly, and others by
85 delegation to board committees – including the following:

- 86 • Developing and adopting policy and long range goals.
- 87 • Approving committee proposals for ACLU policies.
- 88 • Establishing committees of the board not established in the bylaws, and approving the
89 President’s appointment of their members.
- 90 • Approving or rejecting binding Biennial Conference resolutions, subject to vote of the
91 affiliate board members in the case of rejection by the Board.
- 92 • Addressing issues of compliance with policy that are presented by the Executive
93 Director or the Executive Committee.

- 94 • Electing the officers, Executive Committee members and members of the National
95 Advisory Council.
- 96 • Approving an annual National budget and annual program objectives that can be
97 accomplished within the constraints of that budget.
- 98 • Approving expenditures (including hiring) outside the budget.
- 99 • Addressing issues relating to fundraising efforts at the National level that are
100 presented by the Executive Director or the Executive Committee.
- 101 • Addressing issues presented in the annual audit of the ACLU's financial statements,
102 as identified by the BAI Committee (described below).
- 103 • Selecting the Executive Director and addressing issues relating to the evaluation and
104 compensation of the Executive Director, as presented by the Executive Committee.
- 105 • Recruiting candidates for at-large Board memberships.
- 106 • Disciplining and removing Board members to the extent provided in the bylaws.
- 107 • Overseeing the relationship between National and the affiliates, and addressing issues
108 relating to the provision of resources and support to the affiliates, as presented by the
109 Executive Director or the Executive Committee.
- 110 • Amending the bylaws, as provided in Article IX of the bylaws.

111 The authority of the Executive Committee extends generally to matters that require
112 disposition in intervals between Board meetings. Such interim dispositions must be
113 reported to the Board promptly. The Executive Committee also performs a variety of
114 specific delegated responsibilities (see generally Policy #509), including:

- 115 • Setting agendas for meetings of the Board, subject to modification by the Board.
- 116 • Monitoring mandates and progress of Board committees.
- 117 • Receiving and reviewing a budget report at each of its meetings.
- 118 • Reviewing and making necessary interim adjustments to the budget.
- 119 • Conducting a periodic review of the Executive Director's performance and
120 compensation, thereby exercising responsibility delegated by the Board for the
121 ongoing evaluation of the performance of the Executive Director.
- 122 • Reviewing complaints by Board members about or on behalf of an employee, where
123 the Board members consider the Executive Director's response inadequate (*see* Policy
124 #527(IV)(G)).
- 125 • Helping troubled affiliates and, where necessary, administering proceedings involving
126 disciplinary actions against affiliates (*see* Policy ##505(IV)(F), 523a (III)).
- 127 • Reviewing the Executive Director's appointment and removal of senior staff (*see*
128 Policy #527(I)(B)).

129
130 The content of these Board supervisory responsibilities is clarified by an
131 understanding of the functions of the staff of the ACLU, which, in contrast, are directly
132 operational. Those staff functions include:

- 133 • Proposing long-range goals, National budgets and annual program objectives.
- 134 • Preparing performance evaluations of long-range goals and annual program
- 135 objectives.
- 136 • Interpreting policy and applying it to specific situations (subject to review by the
- 137 Executive Committee and the Board).
- 138 • Providing materials and support for Board and committee meetings, and
- 139 implementing Board and committee decisions.
- 140 • Facilitating at-large Board elections.
- 141 • Assessing client (*i.e.*, civil liberties) threats and needs.
- 142 • Communicating the organization’s programs and mission to its members and to the
- 143 general public (a function also frequently performed by officers, particularly the
- 144 President, and other Board members).
- 145 • Preparing and maintaining reports and records.
- 146 • Providing support and resources to the affiliates and, to the extent permitted by the
- 147 bylaws or policy and consistent with the prescribed role of the Board and the
- 148 Executive Committee, overseeing or disciplining troubled affiliates.
- 149 • Organizing and implementing National fundraising efforts.
- 150 • Preparing preliminary budgets.
- 151 • Employing, directing, evaluating, disciplining and dismissing employees (within
- 152 constraints of budgets, contracts and bargaining agreements).
- 153 • Executing contracts.
- 154 • Otherwise carrying out the day-to-day operations of the organization.

155 **B. The Role of the Individual Director**

156 The Board of Directors acts collectively; directors acting in their individual
157 capacity do not make ACLU policy. Nevertheless, individual directors have significant
158 responsibilities and functions. Individual directors contribute to the formulation of
159 ACLU policy in a variety of ways, including (1) working on committees, (2) proposing
160 resolutions for approval by the Board, including the adoption of agenda items at Board
161 meetings, and (3) voting as directors. In order to carry out their responsibilities,
162 individual directors are entitled to obtain organizational information that is relevant to the
163 discharge of those responsibilities, subject to procedures established by the Board
164 concerning appropriate channels for such requests, limitations on staff time, and the
165 availability of resources to compile the data sought. Groups of directors working for the
166 Board in a formal capacity – as members of a committee or of the body of general

167 counsels, for example - are entitled to ask staff directly for information in connection
168 with their responsibilities. Another appropriate request might come from a Board member
169 who needs a relatively small amount of material for a speech or article. Individual
170 directors who seek larger amounts of material that would put serious burdens on staff
171 resources, however, should follow established procedures.

172 Individual directors also perform important informal functions. Directors who are
173 representatives of affiliates have a somewhat complex role, especially if they are also
174 members of the affiliate board of directors, with fiduciary responsibilities to the state
175 affiliate. In their capacity as directors of the National ACLU, such directors have
176 obligations to that organization. In the rare event that those obligations conflict with
177 obligations owed to the affiliate, the director must disclose that conflict. Ordinarily,
178 however, those obligations are not in conflict. To the contrary, affiliate representatives
179 on the National ACLU Board are in a unique position to promote communication
180 between the affiliate and the National ACLU, thereby fostering better understanding and
181 coordination of the goals and needs of the respective organizations. Such directors are
182 also in a unique position to advocate the principles and policies of the ACLU in their
183 respective communities, and to encourage support – financial and otherwise – for the
184 activities of the ACLU and the affiliate.

185 The principle that the Board acts only collectively places important limitations
186 upon the role and responsibilities of individual directors. Unless authorized by the
187 Board, the Executive Committee, the President, or a staff member with relevant authority,
188 for example, individual directors do not and may not speak on behalf of the ACLU,

189 except that they are free to publicize and explain ACLU civil liberties policies. Directors
190 shall not, acting individually, seek to direct the staff.

191

192 **3. COMMITTEES OF THE BOARD, AND THEIR FUNCTIONS**

193 Much of the Board’s work is carried out through the committees it establishes.

194 Committees other than those identified in the bylaws are created by Board resolution, and

195 their members are appointed by the President, subject to Board approval. Many of the

196 Board’s committees are *ad hoc*, created to address specific policy issues. Other

197 committees are standing committees, including:

- 198 • The Nominating Committee, which nominates candidates for election to the Board
199 and to the National Advisory Council.
- 200 • The Special Nominating Committee, which nominates candidates for election as
201 officers of the ACLU and as members of the Executive Committee.
- 202 • The Budget/Audit/Investment (BAI) Committee, which reviews the financial
203 performance of the ACLU, including its financial statements, and proposed budgets.
- 204 • The Pension Committee, which oversees the ACLU retirement plans.
- 205 • The Executive Committee, the responsibilities of which are described above.
206

207 **4. CONDUCT OF BOARD MEETINGS AND DISSENT**

208 The Board of Directors meets four times a year, on dates announced well in

209 advance. Before each meeting the directors are sent one or more packages of information

210 related to the meeting, which usually include (1) minutes of the previous Board and

211 Executive Committee meetings, (2) an agenda for the meeting, proposed by the Executive

212 Committee, (3) draft policies for consideration and adoption at the meeting, and (4)

213 reports of organizational activities. The package may include financial information as

214 well.

215 At the outset of a meeting, the Board of Directors adopts an agenda for the
216 meeting, either as originally proposed by the Executive Committee, or as amended at the
217 meeting upon motion. The agenda time allotted to a matter may be extended or reduced
218 by motion, but such a motion must include a proposal for a corresponding reduction of
219 time devoted to one or more other agenda items.

220 Discussion at Board meetings proceeds largely in accordance with rules of
221 parliamentary procedure. Board members' questions and comments are normally limited
222 to three minutes each, and if time is short and many directors wish to be heard, the Chair
223 may impose a one- or two-minute rule restricting comments to those shorter time limits.

224 Many significant actions of the Board of Directors result from a less than
225 unanimous vote. Dissent and active discourse in the course of deliberations of the Board
226 is not only permissible but of critical importance. Dissent within Board deliberations,
227 however, is a different matter than public criticism of Board actions.

228 Members of the governing body of voluntary organizations such as the ACLU are
229 ordinarily expected to refrain from making public their (or another director's) dissent
230 from or criticism of a decision by that body. The ACLU Board follows that rule with
231 respect to matters of internal organizational governance. Members who disagree with a
232 Board decision about matters of internal organizational stewardship (such as decisions
233 involving staff, allocation of resources, fundraising, internal procedures) should not make
234 their dissent or criticism public. The only exception is for actions or omissions that
235 involve activity that is illegal or that threatens serious and imminent harm to the ACLU;
236 and even in that situation the dissenting director must first make all reasonably practical
237 efforts to bring the matter to the attention of, and seek remedial action by, the Board.

238 Where an individual director disagrees with a Board position on matters of civil
239 liberties policy, the director should refrain from publicly highlighting the fact of such
240 disagreement, particularly where the purpose or principal effect of such publicity is to
241 call into question the integrity of the process in arriving at the Board’s decision. An
242 ACLU director is not prohibited, however, from publicly advocating a substantive policy
243 position that is different from a policy adopted by the Board. In other words, a director
244 may publicly disagree with an ACLU policy position, but may not criticize the ACLU
245 Board or staff. In any such public statement, moreover, the director should make clear
246 that he or she does not purport to speak on behalf of the ACLU (see policy #528), and
247 should never report which other Board members hold which position on the matter.
248 Directors should remember that there is always a material prospect that public airing of
249 the disagreement will affect the ACLU adversely in terms of public support and
250 fundraising.

251

252 **5. BOARD MEETING PARTICIPATION AND SUPERVISORY**
253 **RESPONSIBILITIES**

254
255 Members of the ACLU Board of Directors have responsibilities that require
256 significant time and attention. In general, those responsibilities include a duty to exercise
257 reasonable care to be familiar with the organization's finances and activities and to
258 participate regularly in its governance. More specifically, the director’s responsibilities
259 include the obligation to:

- 260 • Attend board and committee meetings and participate actively in discussions and
261 decision-making. Directors must carefully read the material prepared for board
262 and committee meetings, including the minutes of prior meetings and financial
263 statements, prior to the meetings and note any questions they raise.

- 264 • Make sure one’s vote against a particular proposal is completely and accurately
265 recorded. Directors should not hesitate to suggest corrections, clarification and
266 additions to the minutes or other formal documents.
- 267 • Read the minutes of any missed committee or board meeting and, at the earliest
268 opportunity, suggest any changes that may be appropriate.
- 269 • Encourage diversity among board members. Diversity will help insure a board
270 committed to serve the organization’s mission with a range of appropriate skills
271 and interests.
- 272 • Be involved in the selection of the Executive Director.
- 273 • Make sure there is a clear process for approval of major obligations such as
274 fundraising, professional fees (including auditors), compensation arrangements
275 and real estate contracts.
- 276 • Assure that annual and quarterly financial charts of accounts and financial reports
277 prepared for management are available to the board or the BAI committee, and
278 that they are clear and communicate proper information for stewardship. Directors
279 should make sure that there is an ongoing actual-to-budget comparison, with
280 discrepancies explained.
- 281 • Participate in risk assessment and strategic planning discussions for the future of
282 the ACLU.
- 283 • Take steps to assure that the ACLU has addressed the sufficiency of its written
284 internal financial controls and written policies that safeguard, promote and protect
285 the organization’s assets and that they are updated regularly. Directors should
286 satisfy themselves that the organization has a policy regarding disclosure and
287 identification of fraud (whether or not material), as well as a policy for records
288 retention and whistleblower protection.
- 289 • Become familiar with the terms on which the ACLU indemnifies its officers and
290 directors from liability and provides directors’ and officers’ liability insurance.
- 291 • Bring to the attention of the President or the Executive Committee information
292 calling into question whether the ACLU is acting in compliance with state and
293 federal statutes and regulations relating to nonprofit corporations and charitable
294 solicitations, and whether its resources are being devoted to its organizational
295 mandate.
296

297 **6. CONFLICTS OF INTEREST**

298 A director should avoid any transaction with the ACLU that financially benefits
299 that director or that director’s family. If such a transaction is unavoidable, it must be
300 disclosed fully and completely to the Board. If the Board of Directors becomes aware of
301 a proposal to enter into such a transaction, the Board must exercise particular care to

302 satisfy itself that the transaction is fair and reasonable, and a conflicted board member
303 may not participate in the Board vote.

304 If an opportunity of potential financial benefit to the ACLU comes to a director's
305 attention, the director should present that opportunity to the Board for consideration.
306 Directors should not exploit such opportunities for their own benefit, or for the benefit of
307 other organizations with which they may be affiliated, without a prior determination by
308 the Board of the ACLU that such exploitation is appropriate.

309 Avoidance of conflicts of interest, however, does not preclude reimbursement for
310 expenses as a director in accordance with established policy (such as transportation
311 expenses associated with attending board meetings), or indemnification against expenses
312 in defending (or judgments entered in) a suit brought against a director (Bylaws Article
313 XI).

314

315 **7. ORGANIZATIONAL INFORMATION**

316 Members of the ACLU Board of Directors encounter a wealth of information
317 about the ACLU – its activities, past and planned; its financial resources; its policies;
318 pending and potential litigation; personnel issues; and internal deliberations on such
319 matters, among many other subjects.

320 This information is an important resource of the organization, and should be
321 treated as such. As deeply as we are committed as an organization to freedoms of speech
322 and expression, the information belonging to the ACLU is not the property of any
323 individual director to use, disclose or comment on as the director deems fit.

324 A director's responsibility with respect to ACLU information varies according to
325 the nature of the information and the persons to whom the information may be disclosed.
326 Information about internal organizational stewardship (*e.g.*, staffing, fundraising,
327 resource allocation) is presumptively proprietary and should not be disclosed publicly.
328 Such information may normally be shared with affiliate boards and staff, unless it is
329 acquired in executive session. Disclosure of some information – such as nonpublic
330 information about pending or potential litigation, or about personnel evaluation – may
331 injuriously impair important ACLU interests, such as preservation of the attorney-client
332 privilege or the privacy concerns of its employees. (See Policy #504(b)(3)).

333 In contrast, disclosure of information about the status and content of Board
334 consideration of civil liberties policy is ordinarily appropriate and desirable, if directed to
335 affiliate board members and officers who themselves have stewardship responsibility
336 within the family of ACLU affiliates. Similarly, Board-adopted civil liberties policies
337 may normally be disclosed to any person. On the other hand, the interest in free and
338 frank debate in ACLU Board and committee meetings counsels against disclosure by a
339 director of the details of such debate (who said what, for instance), and the tapes and
340 minutes of such meetings should not be disclosed to persons not present or entitled to be
341 present at such meetings.

342 One overarching guideline governs the director's handling of ACLU information:
343 namely, the principle of basic prudence. When disclosure will clearly benefit the ACLU,
344 and have no materially adverse side effects, it is permitted. When no such benefit is
345 apparent, and disclosure will clearly impair the interest of the ACLU, it is not permitted.
346 Where the impact of disclosure is uncertain, and recognizing that responsibility for

347 ACLU information ultimately belongs to the Board and not to the individual director,
348 uncertainty on the part of an individual director about the appropriateness or
349 permissibility of disclosure should ordinarily be raised with and resolved by the
350 President, the Executive Committee or the full Board.

ATTACHMENT – LIST OF AFFILIATES

Alabama	Texas
Alaska	Utah
Arizona	Vermont
Arkansas	Virginia
Northern California	Washington
Southern California	West Virginia
San Diego California	Wisconsin
Colorado	
Connecticut	
Delaware	
National Capital Area (D. C.)	
Florida	
Georgia	
Hawai'i	
Idaho	
Illinois	
Indiana	
Iowa	
Kansas/Western Missouri	
Kentucky	
Louisiana	
Maine	
Maryland	
Massachusetts	
Michigan	
Minnesota	
Mississippi	
Missouri	
Montana	
Nebraska	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
New York	
North Carolina	
Ohio	
Oklahoma	
Oregon	
Pennsylvania	
Philadelphia	
Rhode Island	
South Carolina	
Tennessee	

MINORITY REPORT

I submit this minority report because I wholeheartedly concur in everything said in the Background Report about the aims and process of this committee – including its resounding rejection of any notion—expressed by many members of the board who spoke in favor of establishing our committee – that what we are putting forth should, or could, “provide standards for determining whether a board member’s conduct violated her or his fiduciary duties to the organization, such that it would be appropriate for the Board to remove or suspend that director pursuant to Article IV Section 7 of the ACLU’s bylaws (which provide for such removal or suspension by the Board “for violations of fiduciary responsibilities”).” I believe that the need to be specific about what directors do and how we expect them to do it, and for a formal training beyond lunch with the President, is very much in order.

For the most part, the document proposed for adoption fulfills the task as we as a committee conceived it and I am comfortable with and urge the adoption by the board of the document that is presented to it, including all portions of Sections 4 and 7 which I do not specifically propose alternative language for.

However, certain portions of Sections 4 (in particular, lines 226- 250 of the committee’s proposal) and 7 (in particular, lines 328-341 of the committee’s proposal) as proposed by the committee, are, in my view, inimicable to the organizational—particularly the affiliate structure of the organization and the obligations that particularly affiliate representatives have in their capacity as members of affiliate boards – and civil liberties policies of the ACLU applicable directly to members of the ACLU – and particularly to our rights as individual directors, and as spokespersons for our affiliates, which likewise have a right to do so – to publically disagree with policies adopted by the National ACLU so long as we make it clear that we are not speaking as representatives of or on behalf of the National ACLU in doing so.

In those respects, I believe the proposed language simply does not accurately state the actual duties of board members under the existing affiliate structure – and in fact could force an affiliate representative to breach his or her fiduciary obligations to the affiliate in order to comply with the policy, which nothing in our organizational structure permits or requires -- or comply with our rather unique freedom of conscience policies. I also strongly believe it cannot serve any purpose at all by being there other than to do what we specifically state we rejected doing – creating detailed “must nots” which can be used to remove or suspend directors under Article IV Section 7 provided only that the requisite number of votes can be obtained to carry an Article IV Section 7 motion.

My proposals, I believe, do everything that the committee has agreed must be done with respect to imparting to ACLU directors a sense of their fiduciary responsibilities, but do so without running afoul of our policies. I would recommend their adoption in lieu of the language at those line numbers proposed by the committee.

Alison Steiner, Committee Member

ALTERNATIVE LANGUAGE AT LINES 226-250 [last portion of 4. CONDUCT OF BOARD MEETINGS AND DISSENT]

[commencing after the period on l. 226] . . . Dissent within Board deliberations, however, is a different matter than public criticism of Board actions, and the principles of general prudence articulated in the closing paragraph of this policy should guide individual director's decisions with respect to doing the latter.

Of course, nothing prevents a director from reporting or taking corrective steps where there are actions or omissions that involve activity that is illegal or that threatens serious and imminent harm to the ACLU . However, even in that situation the dissenting director must first make all reasonably practical efforts to bring the matter to the attention of, and seek remedial action by, the Board.

Where an individual director disagrees with a Board position on matters of civil liberties policy an ACLU director is not prohibited from publicly advocating a substantive policy position that is different from a policy adopted by the Board. In any such public statement the director must make clear that he or she does not purport to speak on behalf of the ACLU (see policy #528). In exercising this right, however, directors should remember that there is always the possibility that public airing of the disagreement will affect the ACLU adversely in terms of public support and fundraising and the principle of general prudence is applicable here, too.

ALTERNATIVE LANGUAGE AT LINES 328-341: [last portion of **5. ORGANIZATIONAL INFORMATION**]

Such information may normally be shared with affiliate boards and staff so long as comparable provisions for confidentiality are observed by the affiliate board and staff as is imposed upon the director in connection with receipt of the information. (See Policy #504(b)(3)). In rare instances, the director may be instructed at the time he or she is provided with information as to further restrictions on disclosure, even to his or her affiliate board or staff.

In contrast, disclosure of information about the status and content of Board consideration of civil liberties policy is ordinarily appropriate and desirable, if directed to affiliate board members and officers who themselves have stewardship responsibility within the family of ACLU affiliates. Similarly, Board-adopted civil liberties policies, which are adopted specifically in order to guide the organization in its public activities, are ordinarily not considered proprietary or limited in its disclosure.

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