

# **American Civil Liberties Union Foundation, Inc. and Subsidiary**

Consolidated Financial Report

March 31, 2013



Assurance ■ Tax ■ Consulting

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## Independent Auditor's Report

To the Board of Directors  
American Civil Liberties Union Foundation, Inc.  
New York, New York

### Report on the Consolidated Financial Statements

We have audited the accompanying consolidated financial statements of American Civil Liberties Union Foundation, Inc. and Subsidiary (collectively, the "Foundation") (an organization that is consolidated into the financial statements of the American Civil Liberties Union, Inc. and Consolidated Entities for accounting purposes), which comprise the consolidated statement of financial position as of March 31, 2013, and the related consolidated statements of activities, functional expenses and cash flows for the year then ended and the related notes to the consolidated financial statements.

### Management's Responsibility for the Consolidated Financial Statements

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### Auditor's Responsibility

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

## **Opinion**

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the American Civil Liberties Union Foundation, Inc. and Subsidiary as of March 31, 2013 and the changes in their net assets and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

## **Report on Summarized Comparative Information**

We have previously audited the consolidated financial statements of the American Civil Liberties Union Foundation, Inc. and Subsidiary as of and for the year ended March 31, 2012, and we expressed an unmodified audit opinion on those audited financial statements in our report dated September 28, 2012. In our opinion, the summarized comparative information presented herein as of and for the year ended March 31, 2012 is consistent, in all material respects, with the audited consolidated financial statements from which it has been derived.

## **Other Matter**

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidating information is presented for purposes of additional analysis rather than to present the financial position, changes in net assets, and cash flows of the individual entities, and is not a required part of the consolidated financial statements. Such information is the responsibility of management and was derived from and relates directly to the underlying accounting and other records used to prepare the consolidated financial statements. The consolidating information has been subjected to the auditing procedures applied in the audit of the consolidated financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the consolidated financial statements or to the consolidated financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America. In our opinion, the information is fairly stated, in all material respects, in relation to the consolidated financial statements as a whole.

*McGladrey LLP*

New York, New York  
September 30, 2013

**American Civil Liberties Union Foundation, Inc. and Subsidiary**

**Consolidated Statements of Financial Position  
March 31, 2013 and 2012**

	2013	2012
<b>ASSETS</b>		
Cash and Cash Equivalents (including cash and cash equivalents restricted for the Bill of Rights Trust of \$2,489,153 and \$1,938,993 at March 31, 2013 and 2012, respectively)	\$ 12,283,997	\$ 22,673,191
Pledges and Contributions Receivable, net	11,115,503	14,379,873
Investments	274,652,666	263,742,852
Other Assets	1,405,180	1,829,640
Due From Affiliates	7,163,415	5,316,637
Beneficial Interest in Trusts	536,563	545,490
Office Buildings, Furniture, Fixtures and Office Equipment, net of accumulated depreciation	<u>30,628,076</u>	<u>32,576,710</u>
<b>Total assets</b>	<b><u>\$ 337,785,400</u></b>	<b><u>\$ 341,064,393</u></b>
<b>LIABILITIES AND NET ASSETS</b>		
Liabilities:		
Accounts payable and accrued expenses	\$ 3,610,777	\$ 2,848,315
Due to American Civil Liberties Union, Inc.:		
Accrued pension liability	1,656,104	1,401,251
Other	7,005,531	5,879,412
Due to affiliates	4,908,587	5,887,442
Liabilities under split-interest agreements	12,350,901	11,895,316
IDA bond	15,710,000	16,170,000
Bill of Rights Trust held for affiliates	<u>25,396,610</u>	<u>24,109,829</u>
<b>Total liabilities</b>	<b><u>70,638,510</u></b>	<b><u>68,191,565</u></b>
Commitments and Contingency		
Net Assets:		
Unrestricted:		
Board-designated	127,107,942	125,528,433
Undesignated	<u>47,475,536</u>	<u>47,281,821</u>
<b>Total unrestricted</b>	<b><u>174,583,478</u></b>	<b><u>172,810,254</u></b>
Temporarily restricted:		
Bill of Rights Trust and other endowments	15,226,487	12,667,820
Other time and purpose restrictions	<u>36,771,670</u>	<u>47,041,419</u>
<b>Total temporarily restricted</b>	<b><u>51,998,157</u></b>	<b><u>59,709,239</u></b>
Permanently restricted - Bill of Rights Trust and other endowments	<u>40,565,255</u>	<u>40,353,335</u>
<b>Total net assets</b>	<b><u>267,146,890</u></b>	<b><u>272,872,828</u></b>
<b>Total liabilities and net assets</b>	<b><u>\$ 337,785,400</u></b>	<b><u>\$ 341,064,393</u></b>

See Notes to Consolidated Financial Statements.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidated Statement of Activities

Year Ended March 31, 2013

(with summarized comparative information for the year ended March 31, 2012)

	2013			2012	
	Unrestricted	Temporarily Restricted	Permanently Restricted	Total	Total
Support and Revenue:					
Support:					
Grants and contributions	\$ 24,080,716	\$ 15,066,601	\$ 211,920	\$ 39,359,237	\$ 46,566,459
Donated legal services	16,135,081	-	-	16,135,081	7,960,818
Bequests	12,037,798	646,390	-	12,684,188	11,508,114
<b>Total support</b>	<b>52,253,595</b>	<b>15,712,991</b>	<b>211,920</b>	<b>68,178,506</b>	<b>66,035,391</b>
Revenue:					
Rental income	1,594,722	-	-	1,594,722	1,643,309
Pamphlet and book sales	28,490	-	-	28,490	8,482
Other income	71,410	-	-	71,410	40,224
<b>Total revenue</b>	<b>1,694,622</b>	<b>-</b>	<b>-</b>	<b>1,694,622</b>	<b>1,692,015</b>
Net Assets Released From Restrictions	27,821,685	(27,821,685)	-	-	-
<b>Total support and revenue</b>	<b>81,769,902</b>	<b>(12,108,694)</b>	<b>211,920</b>	<b>69,873,128</b>	<b>67,727,406</b>
Expenses:					
Program services:					
Legislative	3,706,770	-	-	3,706,770	3,204,850
Legal	44,724,101	-	-	44,724,101	31,398,046
Public education	6,373,051	-	-	6,373,051	7,114,989
Civil liberties policy formulation	490,966	-	-	490,966	550,751
Affiliate support	24,506,775	-	-	24,506,775	25,909,717
<b>Total program services</b>	<b>79,801,663</b>	<b>-</b>	<b>-</b>	<b>79,801,663</b>	<b>68,178,353</b>
Supporting services:					
Management and general	3,773,342	-	-	3,773,342	4,265,069
Fund-raising	6,774,034	-	-	6,774,034	7,052,902
<b>Total supporting services</b>	<b>10,547,376</b>	<b>-</b>	<b>-</b>	<b>10,547,376</b>	<b>11,317,971</b>
<b>Total expenses</b>	<b>90,349,039</b>	<b>-</b>	<b>-</b>	<b>90,349,039</b>	<b>79,496,324</b>
<b>Change in net assets before other changes</b>	<b>(8,579,137)</b>	<b>(12,108,694)</b>	<b>211,920</b>	<b>(20,475,911)</b>	<b>(11,768,918)</b>
Other Changes in Net Assets:					
Legal expenses awarded, net	2,333,073	-	-	2,333,073	2,374,888
Net investment income, gains and losses	8,749,185	4,543,100	-	13,292,285	(5,652,379)
Changes in value of split-interest agreements	(729,897)	(145,488)	-	(875,385)	(917,736)
<b>Total other changes in net assets</b>	<b>10,352,361</b>	<b>4,397,612</b>	<b>-</b>	<b>14,749,973</b>	<b>(4,195,227)</b>
<b>Change in net assets</b>	<b>1,773,224</b>	<b>(7,711,082)</b>	<b>211,920</b>	<b>(5,725,938)</b>	<b>(15,964,145)</b>
Net Assets:					
Beginning	172,810,254	59,709,239	40,353,335	272,872,828	288,836,973
Ending	\$ 174,583,478	\$ 51,998,157	\$ 40,565,255	\$ 267,146,890	\$ 272,872,828

See Notes to Consolidated Financial Statements.

American Civil Liberties Union, Foundation Inc. and Subsidiary

Consolidated Statement of Functional Expenses

Year Ended March 31, 2013

(with summarized comparative information for the year ended March 31, 2012)

	2013						2012				
	Program Services					Supporting Services					Summarized Comparative Information
	Legislative	Legal	Public Education	Civil Liberties Policy Formulation	Affiliate Support	Total Program Services	Management and General	Fund-raising	Total Supporting Services	Total Expenses	
Salaries	\$ 1,891,610	\$ 12,853,888	\$ 2,660,422	\$ 253,715	\$ 2,973,670	\$ 20,633,305	\$ 1,618,001	\$ 3,350,984	\$ 4,968,985	\$ 25,602,290	\$ 23,034,753
Employee benefits	540,757	4,132,968	729,628	73,274	907,955	6,384,582	532,112	927,636	1,459,748	7,844,330	7,988,553
Rent and occupancy	431,740	1,533,009	264,228	11,516	150,703	2,391,196	294,375	190,247	484,622	2,875,818	2,460,169
Books	60,598	154,547	75,253	827	9,481	300,706	3,187	30,124	33,311	334,017	298,790
Building depreciation	264,406	1,567,434	207,409	13,591	214,208	2,267,048	237,724	273,204	510,928	2,777,976	2,761,652
Equipment depreciation	45,085	378,316	46,133	3,690	58,170	531,394	29,022	74,190	103,212	634,606	717,438
Equipment rental and maintenance	60,206	323,189	32,853	2,072	30,988	449,308	17,478	40,347	57,825	507,133	456,736
Grants to affiliates	-	1,328,989	-	-	3,706,605	5,035,594	-	-	-	5,035,594	5,460,514
Shared portion of contributions	-	509,577	-	-	6,529,925	7,039,502	-	-	-	7,039,502	7,214,134
Shared portion of bequest	-	51,020	-	-	3,999,862	4,050,882	-	-	-	4,050,882	5,399,053
Meetings/conferences	20,615	141,816	23,974	6,713	221,609	414,727	21,989	35,931	57,920	472,647	421,136
Legal fees	-	-	17,672	29,278	56,524	103,474	142,326	27,957	170,283	273,757	273,000
Donated legal services	-	16,135,081	-	-	-	16,135,081	-	-	-	16,135,081	7,960,818
Accounting fees	-	-	-	-	-	-	295,835	-	295,835	295,835	164,991
Professional fund-raising services	-	-	-	-	-	-	-	664,252	664,252	664,252	722,147
Other professional services	127,833	2,848,159	1,425,018	42,258	390,091	4,833,359	356,497	143,548	500,045	5,333,404	3,731,463
Interest expense	12,000	100,693	12,279	982	15,482	141,436	7,724	19,747	27,471	168,907	161,093
Postage and supplies	20,368	144,601	266,503	2,682	23,115	457,269	21,232	239,375	260,607	717,876	691,831
Publishing, printing and outreach	2,342	437,843	301,117	112	276	741,690	337	399,093	399,430	1,141,120	843,056
Special affiliate subsidies	-	-	-	-	4,772,356	4,772,356	-	-	-	4,772,356	5,087,340
Telephone	96,645	452,332	76,301	3,399	57,795	686,472	23,185	61,726	84,911	771,383	750,220
Telemarketing	-	10,444	3,287	-	-	13,731	-	29,583	29,583	43,314	45,773
Travel	87,071	1,014,446	168,783	40,514	196,798	1,507,612	132,297	185,016	317,313	1,824,925	1,659,912
Other expenses	45,494	605,749	62,191	6,343	191,162	910,939	40,021	81,074	121,095	1,032,034	1,191,750
<b>Total - 2013</b>	<b>\$ 3,706,770</b>	<b>\$ 44,724,101</b>	<b>\$ 6,373,051</b>	<b>\$ 490,966</b>	<b>\$ 24,506,775</b>	<b>\$ 79,801,663</b>	<b>\$ 3,773,342</b>	<b>\$ 6,774,034</b>	<b>\$ 10,547,376</b>	<b>\$ 90,349,039</b>	
<b>Total - 2012</b>	<b>\$ 3,204,850</b>	<b>\$ 31,398,046</b>	<b>\$ 7,114,989</b>	<b>\$ 550,751</b>	<b>\$ 25,909,717</b>	<b>\$ 68,178,353</b>	<b>\$ 4,265,069</b>	<b>\$ 7,052,902</b>	<b>\$ 11,317,971</b>		<b>\$ 79,496,324</b>

See Notes to Consolidated Financial Statements.

**American Civil Liberties Union Foundation, Inc. and Subsidiary**

**Consolidated Statements of Cash Flows  
Years Ended March 31, 2013 and 2012**

	2013	2012
<b>Cash Flows From Operating Activities:</b>		
Change in net assets	\$ (5,725,938)	\$ (15,964,145)
Adjustments to reconcile change in net assets to net cash (used in) provided by operating activities:		
Depreciation	3,412,582	3,479,090
Discount on pledges receivable	(75,530)	(51,886)
Changes in value of split-interest agreements	1,195,753	1,036,437
Net realized and unrealized loss (gains) on investments, net of adjustments for affiliate holdings	(8,192,437)	11,760,249
Contributions restricted for endowment	(211,920)	(151,126)
Contributions subject to split-interest agreements	(1,089,264)	(857,595)
Changes in operating assets and liabilities:		
Due from/to affiliates	(2,825,633)	(8,247,072)
Pledges and contributions receivable	3,339,900	21,479,389
Other assets	424,460	(89,854)
Beneficial interest in trusts	8,927	9,684
Accounts payable and accrued expenses	762,462	357,828
Due to American Civil Liberties Union, Inc. - accrued pension liability	254,853	(245,399)
Due to American Civil Liberties Union, Inc. - other	1,126,119	(7,107,557)
Bill of Rights Trust held for affiliates	29,062	(283,810)
	<u>(7,566,604)</u>	<u>5,124,233</u>
<b>Net cash (used in) provided by operating activities</b>		
<b>Cash Flows From Investing Activities:</b>		
Proceeds from sale of investments	126,488,284	432,806,344
Purchase of investments	(127,947,942)	(433,396,071)
Purchase of office buildings, furniture, fixtures and office equipment	(1,463,948)	(1,405,167)
	<u>(2,923,606)</u>	<u>(1,994,894)</u>
<b>Net cash used in investing activities</b>		
<b>Cash Flows From Financing Activities:</b>		
Contributions restricted for endowment	211,920	151,126
Contributions subject to split-interest agreements	1,089,264	857,595
Payments on split-interest agreements	(1,574,587)	(1,533,673)
New annuities	1,163,714	1,317,678
Terminated split-interest agreements	(329,295)	(128,385)
Mortgage payments	-	(3,908,089)
Principal payments on IDA bonds	(460,000)	(1,695,000)
	<u>101,016</u>	<u>(4,938,748)</u>
<b>Net cash provided by (used in) financing activities</b>		
<b>Net change in cash and cash equivalents</b>		
	<u>(10,389,194)</u>	<u>(1,809,409)</u>
<b>Cash and Cash Equivalents:</b>		
Beginning	<u>22,673,191</u>	<u>24,482,600</u>
Ending	<u>\$ 12,283,997</u>	<u>\$ 22,673,191</u>
<b>Supplemental Disclosures of Cash Flow Information:</b>		
Interest paid	<u>\$ 234,594</u>	<u>\$ 161,093</u>
Change in investments for Bill of Rights Trust held for affiliates	<u>\$ 1,257,719</u>	<u>\$ (127,497)</u>

See Notes to Consolidated Financial Statements.



## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 1. Organization

The American Civil Liberties Union Foundation, Inc. (the "Foundation") was established as nonprofit corporation to preserve and promote individual civil rights and civil liberties as guaranteed by the United States Constitution. The Foundation is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

The Foundation is affiliated with the American Civil Liberties Union, Inc. (the "Union"), an organization that is exempt from federal income tax under Section 501(c)(4) of the Internal Revenue Code.

The American Civil Liberties Union Foundation, Inc. and the American Civil Liberties Union, Inc. are collectively referred to as the "ACLU."

Both the Foundation and the Union are affiliated with 50 nonprofit, tax-exempt organizations in every state in the United States, the District of Columbia and Puerto Rico. All affiliates include reference to the "American Civil Liberties Union" or some variation thereof in their names (the "affiliates"). Each affiliate also operates through related Section 501(c)(3) and Section 501(c)(4) organizations. The affiliates share the same overall mission and purpose as the ACLU, but their programs focus more on local or regional issues, while the ACLU's program activities are focused on overarching civil liberties issues and initiatives. Although the ACLU plays no direct role in the governance of and, except in very limited instances, does not share employees with, the affiliates, the organizations jointly fund-raise and work together on certain programs, and the ACLU, through either the Union or Foundation, as appropriate, at its sole discretion provides targeted financial and other support to the affiliates.

#### Note 2. Summary of Significant Accounting Policies

Basis of Presentation: The accompanying consolidated financial statements have been prepared on the accrual basis of accounting in conformity with accounting principles generally accepted in the United States of America.

Principles of Consolidation: The accompanying consolidated financial statements include the accounts and activities of the American Civil Liberties Union Foundation, Inc. and its subsidiary, 915 15th Street, LLC (the "LLC") (collectively referred to as the "Foundation"). The LLC is a single-member limited liability company of which the Foundation is the sole member. All significant inter-organizational accounts and transactions have been eliminated in consolidation.

The accounts and activities of the Union and the affiliates are not included in these consolidated financial statements.

Use of Estimates: The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

Cash and Cash Equivalents: The Foundation considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

Investments and Related Income, Gains and Losses: Investments are reported at fair value in the consolidated statements of financial position. The consolidated statement of activities includes net investment income consisting of interest and dividend income, realized and unrealized gains and losses. Interest income is recorded on the accrual basis. Dividends are recorded on the ex-dividend date. Realized gains and losses on sale of investments are calculated on the basis of specific identification of the securities sold. Purchases and sales of securities are recognized on a trade-date basis.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

Fair Value Measurements: Assets and liabilities recorded at fair value in the consolidated statement of financial position are categorized based upon the level of judgment associated with the inputs used to measure their fair value. Pursuant to Financial Accounting Standards Board ("FASB"), Accounting Standards Codification ("ASC") 820, *Fair Value Measurement*, level inputs are defined as follows:

Level 1: Inputs that reflect unadjusted quoted market prices in active markets for identical assets or liabilities that the Foundation has the ability to access at the measurement date. The types of investments in Level 1 generally include listed equities.

Level 2: Inputs other than quoted prices within Level 1 that are observable for the asset or liability, either directly or indirectly, including inputs in markets that are not considered to be active. Investments in this category generally include corporate debt, U.S. government debt, and less liquid securities such as securities traded on certain foreign exchanges. A significant adjustment to a Level 2 input could result in the Level 2 measurement becoming a Level 3 measurement.

Level 3: Inputs that are unobservable for the asset or liability and that include situations where there is little, if any, market activity for the asset or liability. The inputs into the determination of fair value are based upon the best information in the circumstances and may require significant management judgment or estimates. Investments in this category generally include equity and debt positions in private companies.

Fair Value of Financial Instruments: The estimated fair values of the Foundation's consolidated financial instruments, including receivables and payables arising in the ordinary course of business, approximate their individual carrying amounts. The following methods and assumptions were used in estimating the fair values of significant financial instruments at March 31, 2013:

Cash and cash equivalents - The carrying amount approximates fair value because the instruments are liquid in nature and have short-term maturities.

Investments - The fair value is determined as described in Note 5.

Pledges and contributions receivable - The carrying amount is based on estimated present value of the anticipated cash inflows and approximates fair value.

Other assets, due to/from affiliates, and accounts payable and accrued expenses - The carrying amounts approximate fair values because of the short-term nature of the instruments.

Beneficial interest in trusts - The carrying amount is based on estimated present value of the anticipated cash inflows and approximates fair value.

Liabilities under split-interest agreements - The carrying amount is based on estimated present value of the expected payments to beneficiaries and approximates fair value.

Industrial Development Agency ("IDA") bond - The carrying amount approximates fair value because the interest rate is variable and reflect market conditions.

Concentration of Market and Credit Risk: The Foundation's financial instruments that are potentially exposed to concentrations of credit risk consist primarily of cash and cash equivalents and investments. Exposure to credit risk is reduced by the placement of such funds in high credit quality financial institutions and financial instruments. At March 31, 2013, the majority of the Foundation's money market accounts were in funds that invest in short-term direct government obligations, such as U.S. Treasury Bills, that are backed by the full faith and credit of the U.S. government.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

In order to control market risk, the Foundation has an investment committee that reviews and updates investment policy statements for the organization's various investment portfolios, oversees its investment portfolio and engages the services of investment advisors and managers to invest and manage the assets within the guidelines of the respective investment policy statements and perform ongoing due diligence and reporting. The Foundation monitors the market risk of its investment portfolio via ongoing review of asset allocation formulas and analysis of investment values as reported by investment custodians and managers.

The clearing and depository operations for the Foundation's portfolio of investments held in managed accounts are provided principally by two financial institutions that hold approximately 99% of the total portfolio at March 31, 2013.

Office Buildings, Furniture, Fixtures and Office Equipment: Office buildings, furniture, fixtures and office equipment are carried at cost, less accumulated depreciation. Depreciation is provided for using the straight-line method over the estimated useful lives of the respective assets.

Impairment of Long-Lived Assets: The Foundation reviews long-lived assets for impairment whenever events or circumstances indicate that the carrying amount of any asset may not be recoverable and, if so, the carrying value is reduced to the estimated fair value.

Net Assets: The Foundation reports information regarding its financial position and activities in three classes of net assets: unrestricted, temporarily restricted and permanently restricted. Unrestricted net assets consist of amounts that can be spent at the discretion of the Foundation and have no donor restrictions associated with them. A portion of unrestricted net assets has been designated by the board of directors for certain purposes. Temporarily restricted net assets consist of contributions that are restricted by donors for a specific time period and/or purpose. Permanently restricted net assets consist of endowment funds.

Endowment: When the Foundation receives a contribution and the donor restricts the Foundation from spending the principal, the contribution is classified as an endowment, with the amount of the gift recorded as permanently restricted. The Foundation historically recorded investment returns as temporarily restricted or unrestricted based on the purpose for which the endowment was created. The majority of the Foundation's endowment funds are held pursuant to the terms of the agreement for the establishment of the Bill of Rights Trust

The Foundation is subject to the New York Uniform Prudent Management of Institutional Funds Act ("NYPMIFA"), and has interpreted NYPMIFA as requiring the preservation of the fair value of the original gift as of the gift date of the donor-restricted endowment funds absent explicit donor stipulations to the contrary. The remaining portion of the endowment fund that is not classified as permanently restricted net assets are classified as temporarily restricted net assets until those amounts are appropriated for expenditure by the Foundation in a manner consistent with the standard of prudence prescribed by NYPMIFA.

Contributions and Related Receivables: The Foundation reports contributions as unrestricted, temporarily restricted or permanently restricted depending on the existence and/or nature of any donor restrictions.

Unconditional promises to give are recorded as pledges and contributions revenue and receivable in the period the promise is received. Payments received in subsequent periods on unconditional promises to give, such as payments on multi-year gifts, are not recognized as revenue; rather, these are recorded as decreases in the corresponding pledges receivable balance. Pledges and contributions receivable due within one year are recorded at their net realizable value. Pledges and contributions receivable due in more than one year are recorded at the present value of their net realizable value, using applicable risk-adjusted interest rates to discount the amounts. Allowances for doubtful pledges and contributions receivable are provided by management based on the Foundation's experience with the donors and their ability to pay.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

Contributions of cash and other assets are reported as temporarily restricted support if they are received with donor stipulations that limit the use of the donated assets. When a donor restriction expires, that is, when a stipulated time restriction ends or purpose restriction is accomplished, temporarily restricted net assets are reclassified to unrestricted net assets and reported in the consolidated statement of activities as net assets released from restrictions.

Contributions that are to be maintained in perpetuity by the Foundation are recorded as permanently restricted support.

Contributions of noncash assets are recorded at fair value in the period received.

Certain contributions and bequests revenue are subject to revenue sharing agreements with affiliates. The Foundation's sharing rules specify the circumstances under which revenue shall be shared and the methodology for determining the specific portion of various categories of revenue that will be shared by the Foundation and the affiliates. Shared revenues are reported at gross amounts and the affiliates' share of the revenues as affiliate support in the consolidated statement of activities.

Donated services are reported as contributions at their fair value if such services create or enhance nonfinancial assets or would have been purchased if not provided by donation, require specialized skills, and are provided by individuals possessing such specialized skills.

Due to the nature of the Foundation's operations, in-kind professional services are from time to time provided on a pro bono basis by outside attorneys. These services are recorded as revenue and expenses at fair value based on the attorneys' records of time spent and applicable billing rates.

A number of individuals have made a contribution of their time to serve on the Foundation's board. The value of their contributed time is not reflected in these consolidated financial statements inasmuch as those services would not typically be purchased had they not been provided by donation.

Bequests: The Foundation is a beneficiary under various wills and trust agreements, the total realizable amounts of which are not determinable at present. The Foundation's share of such bequests is recorded when the probate courts declare the testamentary instrument valid and the proceeds are measurable.

Donor Concentration: Approximately 22% of the total grants, contributions and bequests revenue for the year ended March 31, 2013 were provided by five donors. In addition, approximately 32% of the pledges and contributions receivable at March 31, 2013 were due from three donors.

Functional Expenses: The cost of providing the various program and supporting services of the Foundation have been summarized on a functional basis in the accompanying consolidated financial statements. Certain costs and expenses have been allocated between program services and supporting services on a reasonable basis as determined by management.

In addition, certain expenses, predominantly salaries and employee benefits, are shared between the Union and the Foundation. Expenses paid by the Union and allocated to the Foundation during the years ended March 31, 2013 and 2012 amounted to \$10,704,362 and \$5,225,480, respectively.

Legal Awards: Pursuant to the Civil Rights Attorneys Fee Awards Act of 1976, legal fees and expenses may be awarded in certain legal actions. The amounts of these awards are the result of court determinations and/or negotiations between the parties to the matters. Management anticipates that the Foundation will be the recipient of legal awards of a substantial amount, but is unable to determine the amounts receivable with any degree of accuracy. Accordingly, the Foundation's accounting policy is to accrue an award only when, in management's judgment, the amount appears relatively certain of collection.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

Income Taxes: The Foundation is exempt from income taxes under Section 501(c)(3) of the U.S. Internal Revenue Code and is subject to taxes on unrelated business income. The LLC is treated as a disregarded (tax) entity.

The Foundation files tax and information returns with the Internal Revenue Service (the "IRS") and with various states.

Management evaluated the Foundation's tax positions and concluded that the organization had taken no uncertain tax positions that require additional adjustment or disclosure to the accompanying consolidated financial statements. Generally, the Foundation is no longer subject to income tax examinations by U.S. federal, state or local tax authorities for tax years before 2009, which is the standard statute of limitations look-back period.

Prior-Year Summarized Comparative Information: The consolidated financial statements include certain prior-year summarized comparative information in total but not by net asset or by functional expense classifications. Such information does not include sufficient detail to constitute a presentation in accordance with accounting principles generally accepted in the United States of America. Accordingly, such information should be read in conjunction with the Foundation's consolidated financial statements as of and for the year ended March 31, 2012, from which the summarized information was derived.

Evaluation of Subsequent Events: The Foundation evaluates events occurring after the date of the financial statements to consider whether or not the impact of such events needs to be reflected and/or disclosed in the financial statements. Such evaluation is performed through the date the consolidated financial statements are available for issuance, which was September 30, 2013.

Reclassifications: Certain 2012 amounts have been reclassified to conform with the 2013 consolidated financial statement presentation. The reclassifications have no impact on the 2012 reported total consolidated assets, liabilities, net assets, revenues, expenses and changes in net assets of the Foundation.

Recently Issued Accounting Pronouncements: In October 2012, FASB issued Accounting Standards Update ("ASU") 2012-04, *Technical Corrections and Improvements*. The amendments in this update cover a wide range of topics including technical corrections and improvements to the ASC and conforming amendments related to fair value measurements. The amendments in this update will generally be effective for fiscal periods beginning after December 15, 2013 for nonpublic entities, except for amendments in this update where there was no transition guidance and which were immediately effective upon issuance. The impact of adopting ASU 2012-04 on the Foundation's consolidated financial statements for subsequent periods has not yet been determined.

In October 2012, the FASB issued ASU 2012-05, *Not-for-Profit Entities: Classification of the Sale Proceeds of Donated Financial Assets in the Statement of Cash Flows*. The amendments in this update require a not-for-profit entity to classify cash receipts from the sale of donated financial assets consistently with cash donations received in the statement of cash flows if those cash receipts were from the sale of donated financial assets that upon receipt were directed without any not-for-profit imposed limitations for sale and were converted nearly immediately into cash. Accordingly, the cash receipts from the sale of those financial assets should be classified as cash inflows from operating activities, unless the donor restricted the use of the contributed resources to long-term purposes, in which case those cash receipts should be classified as cash flows from financing activities. Otherwise, cash receipts from the sale of donated financial assets should be classified as cash flows from investing activities by the not-for-profit entity. ASU 2012-05 has been adopted by the Foundation. There were no changes to the Foundation's consolidated financial statements resulting from the adoption of this ASU.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 2. Summary of Significant Accounting Policies (Continued)

In April 2013, the FASB issued ASU 2013-06, *Services Received from Personnel of an Affiliate*. The amendments in this update require a recipient not-for-profit entity to recognize all services received from personnel of an affiliate that directly benefit the recipient not-for-profit entity. The amendments in this update will generally be effective for fiscal periods beginning after June 15, 2014. The impact of adopting ASU 2013-06 on the Foundation's consolidated financial statements for subsequent periods has not yet been determined.

#### Note 3. Related Party Transactions

Amounts due from and to affiliates represent receivables and payables related to affiliate support and revenue sharing. Amounts due to affiliates include the portion of contributions that are shared in accordance with the Foundation's sharing rules and payments related to certain affiliate subsidy programs.

Also included in the amounts due from affiliates are notes receivable and accrued interest of \$1,989,674 at March 31, 2013 and \$1,605,308 at March 31, 2012 due from certain affiliates. The notes mature on December 31, 2017 and accrue interest at the prime rate.

During the years ended March 31, 2013 and 2012, the Foundation received approximately \$193,000 and \$256,000, respectively, from the New York Civil Liberties Union, Inc. and the New York Civil Liberties Union Foundation, Inc. in payments for the use of space occupied at the Foundation's offices at 125 Broad Street; these payments include charges for the use of certain building services, such as issuance of one-time visitor passes and acceptance of deliveries.

#### Note 4. Pledges and Contributions Receivable

Pledges and contributions receivable which are expected to be collected after one year have been discounted to net present value at rates ranging from 2.7% to 4.4% and are reflected in the consolidated financial statements at their net realizable value.

Pledges and contributions receivable are comprised of the following at March 31:

	<u>2013</u>	<u>2012</u>
Receivable in less than one year	\$ 6,412,641	\$ 9,935,796
Receivable in one to five years	<u>4,969,255</u>	<u>4,786,000</u>
	11,381,896	14,721,796
Less discount to present value	<u>(266,393)</u>	<u>(341,923)</u>
<b>Total</b>	<b><u>\$ 11,115,503</u></b>	<b><u>\$ 14,379,873</u></b>

Management believes that pledges and contributions receivable will be collected in full when due. Accordingly, no provision for uncollectible pledges and contributions receivable is recognized in the accompanying consolidated financial statements.

In addition to the contributions receivable noted above, a certain donor confirmed, in fiscal year 2011, his intentions to recommend annual contributions aggregating approximately \$10,000,000 over a period of two to eight years from donor-advised funds. These anticipated contributions have not been recognized in the accompanying consolidated financial statements as they do not meet the criteria for recognition of contributions revenue under FASB ASC 958-605. As of the year ended March 31, 2013, the Foundation has received \$4,000,000 in contributions (from donor-advised funds) towards this commitment of support.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 5. Investments and Cash Equivalents

The following tables present the Foundation's investments and cash equivalents that are measured at fair value on a recurring basis.

	Total	Fair Value Measurements at March 31, 2013 Using		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Equities	\$ 14,615,733	\$ 14,615,733	\$ -	\$ -
Corporate Bonds (by S&P rating):				
AAA - A-	22,864,816	-	22,864,816	-
BBB+ - B-	10,852,501	-	10,852,501	-
<b>Total corporate bonds</b>	<b>33,717,317</b>	<b>-</b>	<b>33,717,317</b>	<b>-</b>
U.S. Treasury Notes, agency and related	9,551,270	-	9,551,270	-
Mutual Funds:				
Large-cap U.S. equity	23,011,852	23,011,852	-	-
Small-/mid-cap U.S. equity	8,173,331	8,173,331	-	-
International equity	16,510,400	16,510,400	-	-
Short-term bond	55,215,678	55,215,678	-	-
Intermediate-term bond	17,357,540	17,357,540	-	-
High-yield bond	11,777,173	11,777,173	-	-
International fixed income	24,979,170	24,979,170	-	-
Other bond	15,672,503	15,672,503	-	-
Real estate	2,049,819	2,049,819	-	-
<b>Total mutual funds</b>	<b>174,747,466</b>	<b>174,747,466</b>	<b>-</b>	<b>-</b>
Common Trust Funds:				
Large-cap U.S. equity	3,625,173	-	3,625,173	-
Small-/mid-cap U.S. equity	2,033,353	-	2,033,353	-
International equity	4,007,236	-	4,007,236	-
Intermediate-term bond	1,849,916	-	1,849,916	-
High-yield and other bonds	1,214,791	-	1,214,791	-
Real estate and commodities	824,673	-	824,673	-
<b>Total common trust funds</b>	<b>13,555,142</b>	<b>-</b>	<b>13,555,142</b>	<b>-</b>
Exchange-Traded Funds:				
Large-cap U.S. equity	536,908	536,908	-	-
Small-/mid-cap U.S. equity	5,744,545	5,744,545	-	-
International equity	3,859,067	3,859,067	-	-
Short-term, long-term and intermediate-term bonds	5,366,434	5,366,434	-	-
Real estate	2,094,429	2,094,429	-	-
Hard assets (commodities)	3,787,495	3,787,495	-	-
<b>Total exchange-traded funds</b>	<b>21,388,878</b>	<b>21,388,878</b>	<b>-</b>	<b>-</b>
Structured Notes:				
Large-cap U.S. equity	2,286,400	-	2,286,400	-
International equity	2,764,182	-	2,764,182	-
International fixed income	1,471,028	-	1,471,028	-
Hard assets (commodities)	555,250	-	555,250	-
<b>Total structured notes</b>	<b>7,076,860</b>	<b>-</b>	<b>7,076,860</b>	<b>-</b>
<b>Total investments</b>	<b>274,652,666</b>	<b>210,752,077</b>	<b>63,900,589</b>	<b>-</b>
Money market accounts held in investment accounts and reported as cash and cash equivalents	5,669,433	5,669,433	-	-
<b>Total</b>	<b>\$ 280,322,099</b>	<b>\$ 216,421,510</b>	<b>\$ 63,900,589</b>	<b>\$ -</b>

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 5. Investments and Cash Equivalents (Continued)

	Total	Fair Value Measurements at March 31, 2012 Using		
		Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Equities	\$ 10,745,304	\$ 10,745,304	\$ -	\$ -
Corporate Bonds (by S&P rating):				
AAA - A-	18,623,485	-	18,623,485	-
BBB+ - B-	9,095,961	-	9,095,961	-
<b>Total corporate bonds</b>	<b>27,719,446</b>	<b>-</b>	<b>27,719,446</b>	<b>-</b>
U.S. Treasury Notes, agency and related	9,436,793	-	9,436,793	-
Mutual Funds:				
Large-cap U.S. equity	25,126,376	25,126,376	-	-
Small-/mid-cap U.S. equity	643,692	643,692	-	-
International equity	11,145,687	11,145,687	-	-
Balanced fund	2,025,831	2,025,831	-	-
Short-term bond	66,623,693	66,623,693	-	-
Intermediate-term bond	41,490,335	41,490,335	-	-
U.S. bond fund	3,008,166	3,008,166	-	-
High-yield bond	4,349,346	4,349,346	-	-
International fixed income	14,363,333	14,363,333	-	-
Other bond	4,884,531	4,884,531	-	-
Real estate	510,913	510,913	-	-
<b>Total mutual funds</b>	<b>174,171,903</b>	<b>174,171,903</b>	<b>-</b>	<b>-</b>
Common Trust Funds:				
Large-cap U.S. equity	6,327,169	-	6,327,169	-
Small-/mid-cap U.S. equity	1,368,225	-	1,368,225	-
International equity	1,390,017	-	1,390,017	-
Intermediate-term bond	4,654,344	-	4,654,344	-
<b>Total common trust funds</b>	<b>13,739,755</b>	<b>-</b>	<b>13,739,755</b>	<b>-</b>
Exchange-Traded Funds:				
Large-cap U.S. equity	991,901	991,901	-	-
Small-/mid-cap U.S. equity	2,232,659	2,232,659	-	-
International equity	1,772,848	1,772,848	-	-
Short-term bond	19,693,732	19,693,732	-	-
Hard assets (commodities)	986,636	986,636	-	-
<b>Total exchange-traded funds</b>	<b>25,677,776</b>	<b>25,677,776</b>	<b>-</b>	<b>-</b>
Structured Notes	2,251,875	-	2,251,875	-
<b>Total investments</b>	<b>263,742,852</b>	<b>210,594,983</b>	<b>53,147,869</b>	<b>-</b>
Money market accounts held in investment accounts and reported as cash and cash equivalents	5,521,934	5,521,934	-	-
<b>Total</b>	<b>\$ 269,264,786</b>	<b>\$ 216,116,917</b>	<b>\$ 53,147,869</b>	<b>\$ -</b>



## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 5. Investments and Cash Equivalents (Continued)

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, an investment's level within the fair value hierarchy is based on the lowest level of input that is significant to the fair value measurement. The Foundation's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and considers factors specific to the investment. The Foundation assesses the levels of the investments at each measurement date, and transfers between levels are recognized on the actual date of the event or change in circumstances that caused the transfer. There were no significant transfers among Levels 1, 2 and 3 during fiscal 2013 or 2012.

Below are the valuation techniques used by the Foundation to measure different financial instruments at fair value and the level within the fair value hierarchy in which the financial instrument is categorized.

Equities, money market funds, and exchange-traded funds listed on a national securities exchange are stated at the last reported sales or trade price on the day of valuation. These financial instruments are classified as Level 1 in the fair value hierarchy.

U.S. government debt, corporate bonds and structured notes are valued based on the last reported bid price provided by broker-dealers, and are reported as Level 2 in the fair value hierarchy.

Investments in mutual funds are stated at fair value based on the last quoted evaluation price and are classified as Level 1 in the fair value hierarchy.

Investments in common trust funds are valued at fair value based on the applicable percentage ownership of the underlying net assets as of the measurement date, as determined by the Foundation. In determining fair value, the Foundation utilizes valuations provided by the underlying common trust funds. The underlying common trust funds value securities and other financial instruments on a fair value basis of accounting. The estimated fair values of certain investments of the underlying common trust funds, which may include private placements and other securities for which prices are not readily available, are determined by the trustee of the common trust funds and may not reflect amounts that could be realized upon immediate sale, nor amounts that ultimately may be realized. Accordingly, the estimated fair values may differ significantly from the values that would have been used had a ready market existed for these investments. The fair value of the Foundation's investments in common trust funds generally represents the amount the Foundation would expect to receive if it were to liquidate its investment in the common trust fund excluding any redemption charges that may apply. The Foundation categorizes its investments in common trust funds as a Level 2 fair value measurement because the Foundation had the ability to redeem the investments daily or monthly.

The investments and cash equivalents are held for the following purposes:

	<u>2013</u>	<u>2012</u>
Bill of Rights Trust, inclusive of endowments held in perpetuity of \$39,295,255 and \$39,153,335 at March 31, 2013 and 2012, respectively (Note 9)	<b>\$ 79,118,632</b>	\$ 75,314,042
Split-interest agreements (Note 7)	<b>20,613,505</b>	18,736,298
Other endowment, special projects, program support and operating reserves	<b><u>180,589,962</u></b>	<u>175,214,446</u>
	<b><u>\$ 280,322,099</u></b>	<b><u>\$ 269,264,786</u></b>

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 5. Investments and Cash Equivalents (Continued)

Net investment income, gains and losses reported in the accompanying consolidated statements of activities consist of the following:

	<u>2013</u>	<u>2012</u>
Interest and dividends	\$ 5,730,675	\$ 6,472,282
Net realized and unrealized gains (losses) on investments	<u>9,455,664</u>	<u>(11,919,212)</u>
Total	15,186,339	(5,446,930)
Adjustment for allocation to affiliates holding units in the Trust for the Bill of Rights	<u>(1,894,054)</u>	<u>(205,449)</u>
Net investment income, gains and losses	<u>\$ 13,292,285</u>	<u>\$ (5,652,379)</u>

Investment management and custodial fees amounted to approximately \$398,800 for 2013 and \$305,500 for 2012, and are included as professional fees in the consolidated statement of functional expenses.

#### Note 6. Office Buildings, Furniture, Fixtures and Office Equipment

Office buildings, furniture, fixtures and office equipment consist of the following:

	<u>2013</u>	<u>2012</u>	<u>Range of Estimated Useful Life</u>
Office buildings and office condominium	\$ 48,442,645	\$ 47,908,200	10 to 50 years
Furniture, fixtures and office equipment	<u>4,097,724</u>	<u>3,168,221</u>	3 to 15 years
	52,540,369	51,076,421	
Less accumulated depreciation	<u>(21,912,293)</u>	<u>(18,499,711)</u>	
	<u>\$ 30,628,076</u>	<u>\$ 32,576,710</u>	

#### Note 7. Split-Interest Agreements

The Foundation receives contributions through its charitable gift annuity program whereby in exchange for gifts of cash or securities, the Foundation promises to pay a fixed annual amount for life to the annuitant.

The difference between the fair value of the assets received and the present value of the future distributions to the annuitant is recognized as contribution revenue.

Upon the death of the annuitant, the balance of the amount in the split-interest account reverts to the Foundation.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 7. Split-Interest Agreements (Continued)

The Foundation has received gifts under this program on which it is obligated to make annual annuity payments of approximately \$1,563,000 in accordance with the agreements.

In addition, the Foundation has 12 unitrust agreements, on which the income is paid to the donor for life. Upon the death of the donor, the balance in the trust account shall be distributed to the Foundation for its general purposes.

Assets and liabilities related to the Foundation's split-interest agreements are as follows:

	<u>2013</u>	<u>2012</u>
Cash and cash equivalents	\$ 193,680	\$ 233,666
Investments	<u>20,419,825</u>	<u>18,502,632</u>
<b>Total assets</b>	<b>20,613,505</b>	18,736,298
Liabilities under split-interest agreements	<u>12,350,901</u>	<u>11,895,316</u>
<b>Net assets</b>	<b><u>\$ 8,262,604</u></b>	<b><u>\$ 6,840,982</u></b>

Asset balances at March 31, 2013 and 2012 exceeded the reserve requirements of the New York State Insurance Commission as well as the reserve requirements of the relevant regulatory bodies in all other states that require a reserve fund and in which the Foundation issues gift annuities. Reserves are included in liabilities under split-interest agreements on the accompanying consolidated statements of financial position.

The present value of obligations under split-interest agreements was calculated using interest rates ranging from 2.5% to 9.50% and the 1983A and 2000 Annuity Mortality Tables.

Beneficial interests in trusts ("BITs") are recorded based on the present value of the estimated future receipts from the trust discounted at 5%. This rate approximates the rates of return on U.S. government securities of similar duration and is commensurate with the risk that management associates with the ultimate collection of the trust. The initial gift and any subsequent adjustments to the non-perpetual BITs' carrying value are recognized as temporarily restricted contributions. The temporary restriction relates to the extended time period over which the gift is expected to be received and may also include purpose restrictions to benefit specific Foundation programs.

Adjustments to reflect revaluations of the present value of estimated future payments and changes in actuarial assumptions are recognized in the consolidated statement of activities as changes in value of split-interest agreements.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 8. IDA Bond Financing

In June 1997, the Foundation received financing of \$6,000,000 as a result of the New York City Industrial Development Agency's ("IDA") issuance of bonds in that amount, which money was used to finance a portion of the cost of the acquisition, renovation, improvement, equipping and furnishing of its office building condominium units constituting the 17th and 18th floors of 125 Broad Street, New York, New York which units are collateral for the debt (the "1997 IDA bonds"). On January 5, 2005, the 1997 IDA bonds were redeemed and new bonds in the amount of \$20,000,000 were issued by the IDA, the proceeds of which were delivered to the Foundation in order for the Foundation to pay for the redemption of the 1997 bonds, to purchase the 19th floor condominium unit and a proportional common interest in the land associated with the 17th, 18th and 19th floor condominium units at 125 Broad Street, New York, New York (together with the 17th and 18th floor condominium units, the "Realty") and to finance renovation, improvements, equipping and furnishing of the 19th floor condominium unit (the Realty and all property financed with the 2005 IDA bonds are referred to herein as the "Premises"). The 2005 IDA bonds mature on June 1, 2035.

Pursuant to the 2005 IDA bond agreements, an irrevocable direct pay letter of credit was established with a bank in order to secure payments of principal and a portion of the interest on the 2005 IDA bonds. Interest on the bonds is variable, is computed based on predetermined factors set forth in the 2005 IDA bond agreements, and may not exceed a maximum rate of 10% per annum. The letter of credit was amended March 1, 2010 to terminate on the earlier of January 4, 2013 or upon the occurrence of certain events set forth in the letter of credit agreement, including redemption of the 2005 IDA bonds. On July 1, 2013, the letter of credit was amended and restated to terminate on the earlier of July 4, 2016 or upon the occurrence of certain events set forth in the letter of credit agreement, including the redemption of the 2005 IDA bonds. Interest and other charges related to the 2005 IDA bonds were approximately \$235,000 and \$164,000 for the years ended March 31, 2013 and 2012, respectively.

The letter of credit agreement, as amended and restated, includes various covenants which, among other matters, require the Foundation to maintain a specified debt service coverage ratio, maintain a specified level of unrestricted net assets, maintain a specified ratio of cash and cash equivalents to total commitment, and not incur any new indebtedness except as defined. The Foundation has agreed to various additional covenants and entered into various guarantees and pledges in connection with the issuance of the 2005 IDA bonds and the letter of credit. The Foundation is currently in compliance with these covenants.

In connection with the issuance of the 2005 IDA bonds, the Foundation entered into a lease agreement to lease the Premises to the IDA. Concurrently with the execution of the lease agreement, the IDA agreed to sell and assign its leasehold interest in the Premises to the Foundation on an installment basis as the Foundation makes payments due on the bonds. A failure by the Foundation to pay principal and interest as due under the terms of the 2005 IDA bonds and to pay amounts due under the letter of credit could lead to the Foundation being required to surrender the Premises.

In November 2011, the Foundation redeemed \$1,250,000 of IDA bonds outstanding to implement a settlement with the IRS and to ensure that the portion of the Premises used to conduct Section 501(c)(4) activities, including spaces occupied by the Union and the New York Civil Liberties Union, that are in excess of permissible limits are not financed by tax-exempt bond proceeds. The settlement also involved the payment of a penalty in the amount of approximately \$19,000, the estimated value of taxes that the IRS would have collected from bondholders over a three-year period in connection with the impermissible use of the premises for non-tax exempt purposes. The value of the IDA bonds redeemed exceed the minimum amount required to address the current use of space in support of Section 501(c)(4) activities and was intended to ensure that the Foundation would remain in full compliance with rules and bond covenants in the event that the use of space in connection with Section 501(c)(4) activities were to increase.

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### Note 8. IDA Bond Financing (Continued)

Principal payments under the above obligation in each of the five years subsequent to March 31, 2013 and thereafter are as follows:

<u>Year ending March 31,</u>	<u>Amount</u>
2014	\$ 480,000
2015	495,000
2016	515,000
2017	530,000
2018	555,000
Thereafter	<u>13,135,000</u>
	<u>\$ 15,710,000</u>

#### Note 9. The Bill of Rights Trust Endowment

In 1997, the Foundation and the Section 501(c)(3) arms of the affiliates (the "Affiliate Foundations") established the Bill of Rights Trust (the "Trust"). The purpose of the Trust, a portion of which is an endowment fund of the Foundation, is to build an enduring endowment to carry out the work of the ACLU and its affiliates in protecting, preserving and expanding the civil liberties of all persons in the United States of America. The Trust has 100,000,000 authorized units, which are issued to or among the Foundation and Affiliate Foundations based upon their respective interests in the Trust. Unit shares held by the affiliates have a unit value based upon the fair value of the net assets of the Trust divided by the total number of unit shares outstanding. The Trust provides for annual distributions to the Foundation and Affiliate Foundations in accordance with the Foundation's approved spending policy, prorated in accordance with the percentage of the fair value of each unit share. For the years ended March 31, 2013 and 2012, the Trust allows for a potential distribution amount equal to 4% of the average month-end value of total funds over the preceding 36 months through December 31, 2012 and 2011, respectively. Each unit holder, including the Foundation and the participating Affiliate Foundations, must certify that it has determined the appropriation to be prudent before the distribution is disbursed.

The investment goal of the endowment fund is to invest assets in a prudent manner that will balance reasonable annual distributions to the Foundation and Affiliate Foundations with long-term growth in the value of the assets of the Trust.

**American Civil Liberties Union Foundation, Inc. and Subsidiary**

**Notes to Consolidated Financial Statements**

**Note 9. The Bill of Rights Trust Endowment (Continued)**

At March 31, 2013 and 2012, the Trust was comprised of the following accounts and amounts that are included in the consolidated statements of financial position:

	<u>2013</u>	<u>2012</u>
Assets:		
Cash and cash equivalents	\$ 2,489,153	\$ 1,938,993
Investments	76,629,479	73,375,049
Other assets	<u>178,836</u>	<u>112,416</u>
	<u>\$ 79,297,468</u>	<u>\$ 75,426,458</u>
Liabilities and Net Assets:		
Held for Affiliate Foundations	\$ 25,396,610	\$ 24,109,829
Temporarily restricted net assets	14,605,603	12,163,294
Permanently restricted net assets	<u>39,295,255</u>	<u>39,153,335</u>
	<u>\$ 79,297,468</u>	<u>\$ 75,426,458</u>

The endowment-related activities of the Foundation, which are comprised principally of the endowment-related activities of the Trust, are summarized below.

	<u>2013</u>			<u>2012</u>		
	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>	<u>Temporarily Restricted</u>	<u>Permanently Restricted</u>	<u>Total</u>
Endowment net assets, beginning of year	<u>\$ 12,667,820</u>	<u>\$ 40,353,335</u>	<u>\$ 53,021,155</u>	<u>\$ 14,002,225</u>	<u>\$ 39,002,209</u>	<u>\$ 53,004,434</u>
Investment Return:						
Interest and dividends	1,607,205	-	1,607,205	1,438,404	-	1,438,404
Net realized and unrealized gains (losses) on investments	2,709,240	-	2,709,240	(1,307,416)	-	(1,307,416)
Investment fees and expenses	<u>(109,691)</u>	<u>-</u>	<u>(109,691)</u>	<u>(151,712)</u>	<u>-</u>	<u>(151,712)</u>
Net investment return	<u>4,206,754</u>	<u>-</u>	<u>4,206,754</u>	<u>(20,724)</u>	<u>-</u>	<u>(20,724)</u>
Other changes during the year:						
Contributions	-	211,920	211,920	-	151,126	151,126
Transfer from non-endowment net assets	-	-	-	532,888	1,200,000	1,732,888
Appropriation of endowment assets for expenditures	<u>(1,648,087)</u>	<u>-</u>	<u>(1,648,087)</u>	<u>(1,846,569)</u>	<u>-</u>	<u>(1,846,569)</u>
Total	<u>(1,648,087)</u>	<u>211,920</u>	<u>(1,436,167)</u>	<u>(1,313,681)</u>	<u>1,351,126</u>	<u>37,445</u>
Endowment net assets, end of year	<u>\$ 15,226,487</u>	<u>\$ 40,565,255</u>	<u>\$ 55,791,742</u>	<u>\$ 12,667,820</u>	<u>\$ 40,353,335</u>	<u>\$ 53,021,155</u>

## American Civil Liberties Union Foundation, Inc. and Subsidiary

### Notes to Consolidated Financial Statements

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#### **Note 10. Commitments and Contingency**

The Foundation leases office space in various locations under various operating leases.

The Foundation either itself or by the condominium board on its behalf is currently in discussions with the insurers, building management and other condominium owners at its 125 Broad Street offices in connection with the damages caused to the building by Hurricane Sandy in October 2012. The amounts recoverable from insurance cannot be determined at present. The amounts that are not covered by the insurance and will have to be paid by the Foundation are not expected to have a material effect on the Foundation's consolidated financial statements.

The Foundation is involved in legal actions arising in the ordinary course of business. Management is of the opinion that the ultimate outcome of these matters would not have a material adverse impact on the consolidated financial position of the Foundation or the consolidated results of its activities.

#### **Note 11. Retirement Plans**

The Foundation participates in the American Civil Liberties Union Retirement Plan (the "Pension Plan"), a retirement plan covering eligible employees of the Union, the Foundation and their affiliates. The Foundation records expense related to the Pension Plan when the contribution is due.

The Pension Plan is a defined benefit plan covering those employees who have at least one year of service, or at least 1,000 hours worked per year, and are at least 21 years of age. Benefits are based on service to date on an average of career earnings. The Foundation's policy is to fund pension costs by contributing at least the minimum amount required by the Employee Retirement Income Security Act of 1974 ("ERISA").

For the years ended March 31, 2013 and 2012, the cost incurred by the Foundation in connection with the Pension Plan amounted to \$1,656,104 and \$1,401,251, respectively.

The Union implemented a "soft freeze" of the Pension Plan effective March 31, 2009. Employees hired on or after April 1, 2009 enrolled in a new Defined Contribution ("DC") 401(k) plan. The soft freeze applies only to employees hired on or after April 1, 2009, and does not affect current plan participants, or employees hired before March 31, 2009 but not yet in the plan. The Foundation contributed \$440,605 in 2013 and \$273,606 in 2012.

Eligible Foundation employees may also participate in the ACLU 401(k) plan (the "401(k) Plan"), which is a 401(k) salary-reduction plan covering substantially all employees of the Union, the Foundation, and their affiliates, hired on or before March 31, 2009. Under the 401(k) Plan, employees may voluntarily contribute up to 80% of their pre-tax compensation to the 401(k) Plan subject to IRS dollar limits. There is no employer match or other contributions.

Effective April 8, 2011, eligible employees of the Foundation can participate in the unfunded, nonqualified 457(b) plan maintained by the Union.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

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**Note 12. Net Assets**

Net assets are comprised of the following:

	<u>2013</u>	<u>2012</u>
Unrestricted:		
Undesignated	<u>\$ 47,475,536</u>	<u>\$ 47,281,821</u>
Board-designated:		
Litigation Fund	10,953,439	13,251,800
California Annuity Fund	653,821	494,131
Annuity Reserve	6,482,279	5,359,561
Development Fund	20,941,249	20,612,122
Jacobs Affiliate Development Fund	10,046,749	12,326,718
Dividend Distribution Fund	66,754,755	62,125,195
John Adams Fund	<u>11,275,650</u>	<u>11,358,906</u>
<b>Total board-designated</b>	<u>127,107,942</u>	<u>125,528,433</u>
<b>Total unrestricted</b>	<u>174,583,478</u>	<u>172,810,254</u>
Temporarily Restricted:		
Bill of Rights Trust and other endowments	15,226,487	12,667,820
Trusts	1,661,959	1,532,779
Other time and purpose restrictions	<u>35,109,711</u>	<u>45,508,640</u>
<b>Total temporarily restricted</b>	<u>51,998,157</u>	<u>59,709,239</u>
Permanently Restricted - Bill of Rights Trust and other endowments	<u>40,565,255</u>	<u>40,353,335</u>
<b>Total net assets</b>	<u><u>\$ 267,146,890</u></u>	<u><u>\$ 272,872,828</u></u>



**American Civil Liberties Union Foundation, Inc. and Subsidiary**

**Notes to Consolidated Financial Statements**

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**Note 13. Net Assets Released From Restrictions**

Net assets were released from donor restrictions during the year ended March 31, 2013 by incurring expenses satisfying restricted purposes or by the occurrence of other events specified by donors as follows:

Special Projects:	
Capital Punishment Project	\$ 35,921
Prisoners' Rights	1,099,163
Immigrants' Rights	2,157,881
Reproductive Freedom	2,403,498
Women's Rights	131,739
Drug Litigation Reform	579,972
LGBT	2,528,577
Voting Rights	8,689
Other special projects	<u>7,535,158</u>
<b>Total special projects</b>	16,480,598
Bill of Rights Trust	1,697,778
Time-Restricted Gifts	<u>9,643,309</u>
<b>Total released from restrictions</b>	<u><u>\$ 27,821,685</u></u>

American Civil Liberties Union, Foundation Inc. and Subsidiary

Consolidating Statement of Financial Position

March 31, 2013

See Independent Auditor's Report

	American Civil Liberties Union Foundation, Inc.	915 15th Street, LLC	Eliminations	Consolidated
<b>ASSETS</b>				
Cash and Cash Equivalents (including cash and cash equivalents restricted for the Bill of Rights Trust of \$2,489,153)	\$ 12,141,057	\$ 142,940	\$ -	\$ 12,283,997
Pledges and Contributions Receivable, net	11,115,503	-	-	11,115,503
Investments	274,652,666	-	-	274,652,666
Other Assets	1,405,180	-	-	1,405,180
Due From Affiliates	7,163,415	-	-	7,163,415
Due to the ACLU Foundation From the LLC	9,457,682	-	(9,457,682)	-
Investment in 915 15th Street, LLC	(947,539)	-	947,539	-
Beneficial Interest in Trusts	536,563	-	-	536,563
Office Buildings, Furniture, Fixtures and Office Equipment, net of accumulated depreciation	22,186,763	8,441,313	-	30,628,076
<b>Total assets</b>	<b>\$ 337,711,290</b>	<b>\$ 8,584,253</b>	<b>\$ (8,510,143)</b>	<b>\$ 337,785,400</b>
<b>LIABILITIES AND NET ASSETS</b>				
Liabilities:				
Accounts payable and accrued expenses	\$ 3,536,667	\$ 74,110	\$ -	\$ 3,610,777
Due from the LLC to the ACLU Foundation	-	9,457,682	(9,457,682)	-
Due to the American Civil Liberties Union, Inc.				
Accrued pension liability	1,656,104	-	-	1,656,104
Other	7,005,531	-	-	7,005,531
Due to affiliates	4,908,587	-	-	4,908,587
Liabilities under split-interest agreements	12,350,901	-	-	12,350,901
IDA bond	15,710,000	-	-	15,710,000
Bill of Rights Trust held for affiliates	25,396,610	-	-	25,396,610
<b>Total liabilities</b>	<b>70,564,400</b>	<b>9,531,792</b>	<b>(9,457,682)</b>	<b>70,638,510</b>
Commitments and Contingency				
Net Assets:				
Unrestricted:				
Board-designated	127,107,942	-	-	127,107,942
Undesignated	47,475,536	(947,539)	947,539	47,475,536
<b>Total unrestricted</b>	<b>174,583,478</b>	<b>(947,539)</b>	<b>947,539</b>	<b>174,583,478</b>
Temporarily restricted:				
Bill of Rights Trust and other endowments	15,226,487	-	-	15,226,487
Other time and purpose restrictions	36,771,670	-	-	36,771,670
<b>Total temporarily restricted</b>	<b>51,998,157</b>	<b>-</b>	<b>-</b>	<b>51,998,157</b>
Permanently restricted - Bill of Rights Trust and other endowments	40,565,255	-	-	40,565,255
<b>Total net assets</b>	<b>267,146,890</b>	<b>(947,539)</b>	<b>947,539</b>	<b>267,146,890</b>
<b>Total liabilities and net assets</b>	<b>\$ 337,711,290</b>	<b>\$ 8,584,253</b>	<b>\$ (8,510,143)</b>	<b>\$ 337,785,400</b>

American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidating Statement of Activities  
Year Ended March 31, 2013  
See Independent Auditor's Report

	American Civil Liberties Union Foundation, Inc.				915 15th Street, LLC		Consolidated			
	Unrestricted	Temporarily Restricted	Permanently Restricted	Total	Unrestricted	Eliminations	Unrestricted	Temporarily Restricted	Permanently Restricted	Total
Support and Revenue:										
Support:										
Grants and contributions	\$ 24,080,716	\$ 15,066,601	\$ 211,920	\$ 39,359,237	\$ -	\$ -	\$ 24,080,716	\$ 15,066,601	\$ 211,920	\$ 39,359,237
Donated legal services	16,135,081	-	-	16,135,081	-	-	16,135,081	-	-	16,135,081
Bequests	12,037,798	646,390	-	12,684,188	-	-	12,037,798	646,390	-	12,684,188
<b>Total support</b>	<b>52,253,595</b>	<b>15,712,991</b>	<b>211,920</b>	<b>68,178,506</b>	<b>-</b>	<b>-</b>	<b>52,253,595</b>	<b>15,712,991</b>	<b>211,920</b>	<b>68,178,506</b>
Revenue:										
Rental income	1,093,741	-	-	1,093,741	791,161	(290,180)	1,594,722	-	-	1,594,722
Pamphlet and book sales	28,490	-	-	28,490	-	-	28,490	-	-	28,490
Other income	71,410	-	-	71,410	-	-	71,410	-	-	71,410
<b>Total revenue</b>	<b>1,193,641</b>	<b>-</b>	<b>-</b>	<b>1,193,641</b>	<b>791,161</b>	<b>(290,180)</b>	<b>1,694,622</b>	<b>-</b>	<b>-</b>	<b>1,694,622</b>
Net Assets Released From Restrictions	27,821,685	(27,821,685)	-	-	-	-	27,821,685	(27,821,685)	-	-
<b>Total support and revenue</b>	<b>81,268,921</b>	<b>(12,108,694)</b>	<b>211,920</b>	<b>69,372,147</b>	<b>791,161</b>	<b>(290,180)</b>	<b>81,769,902</b>	<b>(12,108,694)</b>	<b>211,920</b>	<b>69,873,128</b>
Expenses:										
Program services:										
Legislative	3,750,637	-	-	3,750,637	-	(43,867)	3,706,770	-	-	3,706,770
Legal	44,825,985	-	-	44,825,985	-	(101,884)	44,724,101	-	-	44,724,101
Public education	6,432,031	-	-	6,432,031	-	(58,980)	6,373,051	-	-	6,373,051
Civil liberties policy formulation	493,836	-	-	493,836	-	(2,870)	490,966	-	-	490,966
Affiliate support	24,524,069	-	-	24,524,069	-	(17,294)	24,506,775	-	-	24,506,775
<b>Total program services</b>	<b>80,026,558</b>	<b>-</b>	<b>-</b>	<b>80,026,558</b>	<b>-</b>	<b>(224,895)</b>	<b>79,801,663</b>	<b>-</b>	<b>-</b>	<b>79,801,663</b>
Supporting services:										
Management and general	2,626,978	-	-	2,626,978	1,182,538	(36,174)	3,773,342	-	-	3,773,342
Fund-raising	6,803,145	-	-	6,803,145	-	(29,111)	6,774,034	-	-	6,774,034
<b>Total supporting services</b>	<b>9,430,123</b>	<b>-</b>	<b>-</b>	<b>9,430,123</b>	<b>1,182,538</b>	<b>(65,285)</b>	<b>10,547,376</b>	<b>-</b>	<b>-</b>	<b>10,547,376</b>
<b>Total expenses</b>	<b>89,456,681</b>	<b>-</b>	<b>-</b>	<b>89,456,681</b>	<b>1,182,538</b>	<b>(290,180)</b>	<b>90,349,039</b>	<b>-</b>	<b>-</b>	<b>90,349,039</b>
<b>Change in net assets before other changes</b>	<b>(8,187,760)</b>	<b>(12,108,694)</b>	<b>211,920</b>	<b>(20,084,534)</b>	<b>(391,377)</b>	<b>-</b>	<b>(8,579,137)</b>	<b>(12,108,694)</b>	<b>211,920</b>	<b>(20,475,911)</b>
Other Changes in Net Assets:										
Legal expenses awarded, net	2,333,073	-	-	2,333,073	-	-	2,333,073	-	-	2,333,073
Net investment income, gains and losses	8,749,185	4,543,100	-	13,292,285	-	-	8,749,185	4,543,100	-	13,292,285
Changes in value of split-interest agreements	(729,897)	(145,488)	-	(875,385)	-	-	(729,897)	(145,488)	-	(875,385)
Net loss on investment in 915 15th Street, LLC	(391,377)	-	-	(391,377)	-	391,377	-	-	-	-
<b>Total other changes in net assets</b>	<b>9,960,984</b>	<b>4,397,612</b>	<b>-</b>	<b>14,358,596</b>	<b>-</b>	<b>391,377</b>	<b>10,352,361</b>	<b>4,397,612</b>	<b>-</b>	<b>14,749,973</b>
<b>Change in net assets</b>	<b>1,773,224</b>	<b>(7,711,082)</b>	<b>211,920</b>	<b>(5,725,938)</b>	<b>(391,377)</b>	<b>391,377</b>	<b>1,773,224</b>	<b>(7,711,082)</b>	<b>211,920</b>	<b>(5,725,938)</b>
Net Assets:										
Beginning	172,810,254	59,709,239	40,353,335	272,872,828	(556,162)	556,162	172,810,254	59,709,239	40,353,335	272,872,828
Ending	\$ 174,583,478	\$ 51,998,157	\$ 40,565,255	\$ 267,146,890	\$ (947,539)	\$ 947,539	\$ 174,583,478	\$ 51,998,157	\$ 40,565,255	\$ 267,146,890