



American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidated Financial Report
March 31, 2017

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RSM US LLP

Independent Auditor's Report

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

Report on the Financial Statements

We have audited the accompanying consolidated financial statements of American Civil Liberties Union Foundation, Inc. and Subsidiary (collectively, the Foundation), which comprise the consolidated statement of financial position as of March 31, 2017, 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 (collectively, the financial statements).

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these 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 the 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 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 financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the 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 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 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 financial statements referred to above present fairly, in all material respects, the financial position of the Foundation as of March 31, 2017, 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 Foundation's 2016 consolidated financial statements, and we expressed an unmodified audit opinion on those audited consolidated financial statements in our report dated September 14, 2016. In our opinion, the summarized comparative information presented herein as of and for the year ended March 31, 2016 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 financial statements as a whole. The consolidating information is presented for purposes of additional analysis rather than to present the financial position and changes in net assets of the individual entities, and is not a required part of the 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 financial statements. The consolidating information has been subjected to the auditing procedures applied in the audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the 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 financial statements as a whole.

RSM US LLP

New York, New York
September 28, 2017

American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidated Statements of Financial Position

March 31, 2017 and 2016

	2017	2016
Assets		
Cash and cash equivalents	\$ 10,658,698	\$ 21,135,095
Pledges and contributions receivable, net	31,674,829	39,142,992
Investments	318,554,405	244,382,377
Other assets	5,367,130	1,653,184
Due from affiliates	3,318,802	4,500,673
Beneficial interest in trusts	1,599,841	1,620,520
Property and equipment, net of accumulated depreciation and amortization	29,200,572	29,247,326
	29,200,572	29,247,326
Total assets	\$ 400,374,277	\$ 341,682,167
Liabilities and Net Assets		
Liabilities:		
Accounts payable and accrued expenses	\$ 5,758,784	\$ 3,698,663
Due to American Civil Liberties Union, Inc.		
Accrued pension liability	2,184,720	2,016,168
Allocated share of pension liability	10,282,836	14,417,954
Others	7,660,162	13,025,361
Due to affiliates	32,116,572	7,619,309
Liabilities under split-interest agreements	14,934,675	14,259,287
IDA bond	-	14,220,000
Bill of Rights Trust held for affiliates	30,210,580	26,776,638
	103,148,329	96,033,380
Total liabilities	103,148,329	96,033,380
Commitments and Contingencies		
Net assets:		
Unrestricted:		
Board-designated	136,873,621	112,164,050
Undesignated	47,225,059	24,905,063
	184,098,680	137,069,113
Total unrestricted	184,098,680	137,069,113
Temporarily restricted:		
Bill of Rights Trust and other endowments	19,579,749	12,382,636
Other time and purpose restrictions	43,533,492	49,736,166
	63,113,241	62,118,802
Total temporarily restricted	63,113,241	62,118,802
Permanently restricted - Bill of Rights Trust and other endowments	50,014,027	46,460,872
	297,225,948	245,648,787
Total net assets	297,225,948	245,648,787
Total liabilities and net assets	\$ 400,374,277	\$ 341,682,167

See notes to consolidated financial statements.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidated Statement of Activities

Year Ended March 31, 2017

(with summarized comparative information for the year ended March 31, 2016)

	2017			2016	
	Unrestricted	Temporarily Restricted	Permanently Restricted	Total	Total
Support and revenue:					
Support:					
Grants and contributions	\$100,521,258	\$ 25,255,540	\$ 19,946	\$125,796,744	\$ 69,755,137
Donated legal services	2,202,732	-	-	2,202,732	5,604,509
Bequests	9,195,739	1,527,953	3,533,209	14,256,901	19,716,904
Total support	111,919,729	26,783,493	3,553,155	142,256,377	95,076,550
Revenue:					
Rental income	1,106,258	-	-	1,106,258	1,131,082
Merchandise and book sales	1,169,918	-	-	1,169,918	83,746
Other income	23,995	-	-	23,995	11,876
Total revenue	2,300,171	-	-	2,300,171	1,226,704
Net assets released from restrictions	33,155,430	(33,155,430)	-	-	-
Total support and revenue	147,375,330	(6,371,937)	3,553,155	144,556,548	96,303,254
Expenses:					
Program services:					
Legislative	764,868	-	-	764,868	457,640
Legal	36,415,387	-	-	36,415,387	36,239,655
Public education	11,890,802	-	-	11,890,802	10,079,664
Civil liberties policy formulation	593,724	-	-	593,724	483,170
Affiliate support	60,011,761	-	-	60,011,761	31,298,070
Total program services	109,676,542	-	-	109,676,542	78,558,199
Supporting services:					
Management and general	4,266,984	-	-	4,266,984	3,849,319
Fund-raising	9,220,671	-	-	9,220,671	7,293,913
Total supporting services	13,487,655	-	-	13,487,655	11,143,232
Total expenses	123,164,197	-	-	123,164,197	89,701,431
Change in net assets before other changes	24,211,133	(6,371,937)	3,553,155	21,392,351	6,601,823
Other changes in net assets:					
Legal expenses awarded, net	4,139,323	-	-	4,139,323	5,422,660
Net investment income, gains and losses	15,765,431	7,497,207	-	23,262,638	(6,508,583)
Changes in value of split-interest agreements	(1,221,439)	(130,831)	-	(1,352,270)	(1,024,006)
Recognition of affiliates' share of minimum pension liability adjustment	4,135,119	-	-	4,135,119	(576,980)
Total other changes in net assets	22,818,434	7,366,376	-	30,184,810	(2,686,909)
Change in net assets	47,029,567	994,439	3,553,155	51,577,161	3,914,914
Net assets:					
Beginning	137,069,113	62,118,802	46,460,872	245,648,787	241,733,873
Ending	\$184,098,680	\$ 63,113,241	\$ 50,014,027	\$297,225,948	\$245,648,787

See notes to consolidated financial statements.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidated Statement of Functional Expenses

Year Ended March 31, 2017

(with summarized comparative information for the year ended March 31, 2016)

	2017									2016	
	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	\$ 388,110	\$ 14,660,975	\$ 3,570,725	\$ 304,742	\$ 5,344,893	\$ 24,269,445	\$ 2,001,262	\$ 4,087,148	\$ 6,088,410	\$ 30,357,855	\$ 27,066,317
Employee benefits	208,570	4,768,112	824,534	70,672	2,254,344	8,126,232	308,037	1,234,702	1,542,739	9,668,971	8,976,919
Rent and occupancy	-	1,369,915	539,435	15,854	488,904	2,414,108	400,038	279,879	679,917	3,094,025	2,333,507
Books	14,532	204,589	20,606	766	90,282	330,775	3,035	79,414	82,449	413,224	379,039
Building depreciation	123,407	739,617	413,973	17,208	235,047	1,529,252	149,830	302,895	452,725	1,981,977	2,525,650
Other depreciation and amortization	20,579	987,732	308,666	20,578	308,666	1,646,221	123,466	288,088	411,554	2,057,775	1,499,464
Equipment rental and maintenance	-	968,986	353,108	28,926	354,140	1,705,160	236,381	511,356	747,737	2,452,897	1,982,220
Grants to affiliates	-	211,700	-	-	6,507,182	6,718,882	-	-	-	6,718,882	4,437,314
Shared portion of contributions	-	5,419,252	-	-	36,526,616	41,945,868	-	-	-	41,945,868	13,335,930
Shared portion of bequest	3,998	409,714	59,963	-	1,139,730	1,613,405	-	-	-	1,613,405	3,664,216
Meetings/conferences	3,003	44,600	44,258	12,527	97,988	202,376	60,481	35,986	96,467	298,843	437,196
Legal fees	151	6,654	9,260	5,648	34,732	56,445	71,785	65,285	137,070	193,515	188,302
Donated legal services	-	2,202,732	-	-	-	2,202,732	-	-	-	2,202,732	5,604,509
Accounting fees	-	-	-	-	-	-	160,172	-	160,172	160,172	168,903
Professional fundraising services	-	-	-	-	-	-	-	311,031	311,031	311,031	264,514
Other professional services	-	2,196,327	3,969,166	45,395	720,544	6,931,432	351,600	604,328	955,928	7,887,360	6,210,912
Interest expense	1,961	86,299	29,420	1,961	27,459	147,100	13,729	35,304	49,033	196,133	91,616
Postage and supplies	500	24,181	190,798	1,537	12,437	229,453	12,155	166,606	178,761	408,214	461,595
Publishing, printing and outreach	2	29,095	809,487	4	1,735	840,323	13	162,766	162,779	1,003,102	383,055
Special affiliate subsidies	-	-	-	-	5,226,911	5,226,911	-	-	-	5,226,911	5,298,817
Telephone	-	383,530	117,306	7,845	120,636	629,317	47,237	109,485	156,722	786,039	676,770
Telemarketing	-	-	24,327	-	-	24,327	-	-	-	24,327	83,775
Travel	55	855,705	138,992	39,750	214,436	1,248,938	125,412	185,399	310,811	1,559,749	1,863,526
Other grants and awards	-	50,000	-	-	25,000	75,000	-	-	-	75,000	365,000
Other expenses	-	795,672	466,778	20,311	280,079	1,562,840	202,351	760,999	963,350	2,526,190	1,402,365
Total - 2017	\$ 764,868	\$ 36,415,387	\$ 11,890,802	\$ 593,724	\$ 60,011,761	\$ 109,676,542	\$ 4,266,984	\$ 9,220,671	\$ 13,487,655	\$ 123,164,197	
Total - 2016	\$ 457,640	\$ 36,239,655	\$ 10,079,664	\$ 483,170	\$ 31,298,070	\$ 78,558,199	\$ 3,849,319	\$ 7,293,913	\$ 11,143,232		\$ 89,701,431

See notes to consolidated financial statements.

American Civil Liberties Union Foundation, Inc. and Subsidiary

**Consolidated Statements of Cash Flows
Years Ended March 31, 2017 and 2016**

	2017	2016
Cash flows from operating activities:		
Change in net assets	\$ 51,577,161	\$ 3,914,914
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	4,039,752	4,025,114
Discount on pledges receivable	(701,689)	667,394
Changes in value of split-interest agreements	1,352,270	1,024,006
Net realized and unrealized (gains) losses on investments, net of adjustments for affiliate holdings	(18,004,125)	11,537,639
Affiliates' allocated share of pension liability adjustment	(4,135,119)	576,980
Cash received on contributions restricted for endowment	(4,455,829)	(3,352,705)
Contributions subject to split-interest agreements	(668,776)	(1,010,069)
Changes in operating assets and liabilities:		
Due from/to affiliates	25,679,134	910,789
Pledges and contributions receivable	8,169,852	(15,888,846)
Other assets	(3,713,946)	(524,461)
Accounts payable and accrued expenses	2,060,121	58,138
Due to American Civil Liberties Union, Inc. - accrued pension liability	168,552	691,709
Due to American Civil Liberties Union, Inc. - other	(5,365,199)	9,445,776
Bill of Rights Trust held for affiliates	928,724	284,505
Net cash provided by operating activities	56,930,883	12,360,883
Cash flows from investing activities:		
Proceeds from sale of investments	103,215,245	82,180,697
Purchase of investments	(156,877,928)	(87,560,067)
Purchase of property and equipment	(3,992,998)	(4,533,532)
Net cash used in investing activities	(57,655,681)	(9,912,902)
Cash flows from financing activities:		
Cash received on contributions restricted for endowment	4,455,829	3,352,705
Contributions subject to split-interest agreements	668,776	1,010,069
Payments on split-interest agreements	(1,584,026)	(1,534,461)
New annuities	927,822	1,387,617
Principal payments on IDA bond	(14,220,000)	(515,000)
Net cash (used in) provided by financing activities	(9,751,599)	3,700,930
Net change in cash and cash equivalents	(10,476,397)	6,148,911
Cash and cash equivalents:		
Beginning	21,135,095	14,986,184
Ending	\$ 10,658,698	\$ 21,135,095
Supplemental disclosures of cash flow information		
Interest paid	\$ 196,133	\$ 91,616
Change in investments for Bill of Rights Trust held for affiliates	\$ 2,505,218	\$ (1,871,025)

See notes to consolidated financial statements.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 1. Organization

The American Civil Liberties Union Foundation, Inc. (the ACLU Foundation) was established as nonprofit corporation to preserve and promote individual civil rights and civil liberties as guaranteed by the United States Constitution and the nation's civil rights laws.

The ACLU 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 ACLU 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). The affiliates also operate 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 fundraise and work together on certain programs and the ACLU, through either the Union or the ACLU 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 (U.S. GAAP).

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 ACLU 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 consolidated financial statements in conformity with U.S. GAAP 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. Cash and cash equivalents held temporarily in the investments portfolio are included in investments.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 2. Summary of Significant Accounting Policies (Continued)

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 include 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.

Fair value measurements: Assets and liabilities recorded at fair value in the consolidated statements 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, and where transactions occur with sufficient frequency and volume to provide pricing information on an ongoing basis. The types of investments in Level 1 generally include listed equities, mutual funds and exchange-traded funds.
- Level 2:** Inputs other than quoted prices within Level 1 that are observable for the asset or liability, either directly or indirectly. Inputs include quoted market prices for similar assets or liabilities in markets that are not active, markets in which there are few transactions, prices are not current, or prices vary substantially over time. Investments in this category generally include corporate debt, U.S. government debt, and less liquid securities such as securities traded on certain foreign exchanges, as well as alternative investments that can be redeemed in the near term. 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 and real estate and ownership interests in alternative investments that cannot be redeemed in the near term.

The availability of observable inputs can vary from security to security and is affected by a wide variety of factors, including, for example, the type of security, whether the security is new and not yet established in the marketplace, the liquidity of markets and other characteristics particular to the security. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. Accordingly, the degree of judgment exercised in determining fair value is greatest for instruments categorized in Level 3.

Fair value of financial instruments: The following methods and assumptions were used in estimating the fair values of significant financial instruments:

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.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 2. Summary of Significant Accounting Policies (Continued)

Pledges and contributions receivable: The carrying amount is based on estimated present value of the anticipated cash inflows and allowances for doubtful accounts on contributions receivable, if any, 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 reflects market conditions.

There have been no changes in the methodologies used for estimating fair values of significant financial instruments as of March 31, 2017 and 2016.

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, 2017, 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.

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 held approximately 100% of the total portfolio at March 31, 2017.

Property and equipment: Property and equipment (consisting of office buildings, furniture, fixtures, office equipment and intangible assets) are carried at cost, less accumulated depreciation or amortization. Depreciation and amortization are 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.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 2. Summary of Significant Accounting Policies (Continued)

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 to be held in perpetuity.

Endowment: When the ACLU Foundation receives a contribution and the donor restricts the ACLU Foundation from spending the principal, the contribution is classified as an endowment, with the amount of the gift recorded as permanently restricted. The majority of the ACLU Foundation's endowment funds are held pursuant to the terms of the agreement for the establishment of the Bill of Rights Trust.

The ACLU Foundation is subject to the New York 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 ACLU Foundation in a manner consistent with the standard of prudence prescribed by NYPMIFA.

Contributions and related receivables: The ACLU 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 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 ACLU Foundation's experience with the donors and their ability to pay.

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 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 ACLU 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 among the ACLU Foundation and the affiliates. Shared revenues are reported at gross amounts and the affiliates' share of the revenues are included as affiliate support expense in the consolidated statement of activities. The ACLU Foundation reports the affiliates' share of revenues as expenses when cash is received from the donor.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 2. Summary of Significant Accounting Policies (Continued)

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 ACLU Foundation's civil liberties litigation, in-kind professional legal 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 ACLU 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 ACLU Foundation is a beneficiary under various wills and trust agreements, the total realizable amounts of which are not determinable at present. The ACLU 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 9% of the total grants, contributions and bequests revenue for the year ended March 31, 2017 were provided by three donors and approximately 23% were due by three donors for the year ended March 31, 2016. In addition, approximately 61% of the gross pledges and contributions receivable at March 31, 2017 were due from three donors and approximately 65% were due from three donors at March 31, 2016.

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.

Grants to affiliates: The ACLU Foundation recognizes grants to affiliates as expense when a formal agreement has been signed by both the ACLU Foundation and the affiliate, and any conditions set forth are met by the affiliate.

Legal awards: Pursuant to the Civil Rights Attorneys Fee Awards Act of 1976 and similar laws, 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 ACLU 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 ACLU Foundation's accounting policy is to accrue an award only when, in management's judgment, the amount appears relatively certain of collection.

Income taxes: The ACLU 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, as applicable. The LLC is treated as a disregarded (tax) entity.

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

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 2. Summary of Significant Accounting Policies (Continued)

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 2013, 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 U.S. GAAP. Accordingly, such information should be read in conjunction with the Foundation's consolidated financial statements as of and for the year ended March 31, 2016, from which the summarized information was derived.

Evaluation of subsequent events: The Foundation evaluates events occurring after the date of the consolidated financial statements to consider whether or not the impact of such events needs to be reflected and/or disclosed in the consolidated financial statements. Such evaluation is performed through the date the consolidated financial statements are issued, which is September 28, 2017.

Recently issued accounting pronouncements: In March 2017, the FASB issued Accounting Standards Update (ASU) 2017-07, *Compensation – Retirement Benefits (Topic 715): Improving the Presentation of Net Periodic Pension Cost and Net Periodic Postretirement Benefit Cost*. ASU 2017-07 addresses how employers that sponsor defined benefit pension and/or other postretirement benefit plans present the net periodic benefit cost in the income statement. Employers will be required to present the service cost component of net periodic benefit cost in the same income statement line item as other employee compensation costs arising from services rendered during the period. Employers will present the other components of the net periodic benefit cost separately from the line item that includes the service cost and outside of any subtotal of operating income, if one is presented. The standard is effective for the Foundation for annual periods beginning after December 15, 2018, and interim periods within annual periods beginning after December 15, 2019. Adoption of ASU 2017-07 will require the Foundation to include the service cost component of net periodic benefit cost related to its defined benefit plan and other postretirement benefit plan within salaries and wages expense on the consolidated statements of activities and to present all other components in a separate line item excluded from the subtotal for other changes in net assets.

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash (a consensus of the FASB Emerging Issues Task Force)*, which provides guidance on the presentation of restricted cash or restricted cash equivalents in the statement of cash flows. These amendments are effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2018. ASU 2016-18 will be effective for the Foundation for the year ending March 31, 2020. ASU 2016-18 must be applied using a retrospective transition method with early adoption permitted. The Foundation has not evaluated the impact that adoption will have on the consolidated statements of cash flows.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230), Classification of Certain Cash Receipts and Cash Payments*. ASU 2016-15 provides guidance on how certain cash receipts and cash payments should be presented and classified in the statement of cash flows with the objective of reducing existing diversity in practice with respect to these items. ASU 2016-15 is effective for annual periods beginning after December 15, 2018 and, therefore, is expected to be adopted by the Foundation for the year ending March 31, 2020. Early adoption is permitted. The Foundation has not evaluated the impact that adoption will have on the consolidated statements of cash flows.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 2. Summary of Significant Accounting Policies (Continued)

In August 2016, FASB issued ASU 2016-14, *Not-for-Profit Entities (Topic 958): Presentation of Financial Statements of Not-for-Profit Entities*. The amendments in this ASU make improvements to the information provided in financial statements and accompanying notes of not-for-profit entities. The amendments set forth the FASB's improvements to net asset classification requirements and the information presented about a not-for-profit entity's liquidity, financial performance, and cash flows. The ASU will be effective for fiscal years beginning after December 15, 2017. Earlier application is permitted. The changes in this ASU should generally be applied on a retrospective basis in the year that the ASU is first applied. Management has not evaluated the impact of this ASU on the consolidated financial statements.

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. The guidance in this ASU supersedes the leasing guidance in Topic 840, *Leases*. Under the new guidance, lessees are required to recognize lease assets and lease liabilities on the statement of financial position for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expenses recognition in the statement of activities. The new standard is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. The Foundation is currently evaluating the impact of the adoption of the new standard on its consolidated financial statements.

In January 2016, FASB issued ASU 2016-1, *Financial Instruments – Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*. ASU 2016-1 includes a number of amendments that address certain aspects of recognition, measurement, presentation, and disclosure of financial instruments. One of the amendments eliminates the requirements to disclose the fair value of financial instruments measured at amortized cost for entities that are not public business entities. The amendments in this update are effective for the Foundation for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019. The Foundation has not yet determined the effect on the consolidated financial statements of adopting the other amendments included in ASU 2016-1.

In May 2014, the FASB issued ASU 2014-09, *Revenue from Contracts with Customers (Topic 606)*, requiring an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The updated standard will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective and permits the use of either a full retrospective or retrospective with cumulative effect transition method. In August 2015, the FASB issued ASU 2015-14 which defers the effective date of ASU 2014-09 one year making it effective for annual reporting periods beginning after December 15, 2018. The Foundation has not yet selected a transition method and is currently evaluating the effect that the standard will have on the consolidated financial statements.

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 of \$75,000 at March 31, 2016 due from certain affiliates, which were fully repaid during the year ended March 31, 2017.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 3. Related Party Transactions (Continued)

During the years ended March 31, 2017 and 2016, the Foundation received approximately \$346,000 and \$252,000, 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 cleaning and other customary services.

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 and recognized in the accompanying consolidated financial statements amounted to \$9,780,337 and \$8,552,091 during the years ended March 31, 2017 and 2016, respectively. The Foundation also recognized rental income from the Union of approximately \$469,000 and \$387,000 for the years ended March 31, 2017 and 2016, respectively.

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 2.71% to 4.10% 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:

	2017	2016
Receivable due within one year or less	\$ 14,680,984	\$ 15,482,464
Receivable due in more than one year to five years	18,132,222	24,900,440
Receivable due in over five years	500,000	1,000,000
	<u>33,313,206</u>	<u>41,382,904</u>
Less provision for uncollectable accounts	(251,120)	(150,966)
Less discount to present value	(1,387,257)	(2,088,946)
	<u>\$ 31,674,829</u>	<u>\$ 39,142,992</u>

The provision for uncollectible pledges and contributions receivable is recognized in the accompanying consolidated financial statements.

Approximately \$13,600,000 and \$16,900,000 of pledges and contributions receivable as of March 31, 2017 and 2016, respectively, are the affiliates' share of these revenues which are based on the ACLU Foundation's revenue sharing rules. These amounts will be recognized as expenses by the ACLU Foundation upon the receipt of cash from donors.

In addition to the pledges and contributions receivable recognized in the consolidated financial statements, in fiscal year 2016 a certain donor confirmed his intention of contributing \$5,000,000 over a period of five years from a donor-advised fund. Through March 31, 2017, the ACLU Foundation has received \$2,000,000 in contributions (from donor-advised fund) towards the intention. The ACLU Foundation recognized as revenue for the year ended March 31, 2017 the \$1,000,000 received during the year. The remaining 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 U.S. GAAP until payments from the donor-advised fund are received.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 4. Pledges and Contributions Receivable (Continued)

As of March 31, 2017, the ACLU Foundation has received approximately \$1,300,000 of conditional commitments to make matching grants and contributions that have not been recognized in these consolidated financial statements. Approximately \$323,000 of these conditions have been met and recognized as support during the year ended March 31, 2017. Revenues on these grants and contributions will be recognized by the ACLU Foundation in future periods as the matching requirements are met.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 5. Investments and Fair Value Measurements

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

	<u>Fair Value Measurements at March 31, 2017 Using</u>			
	Total	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds	\$ 24,106,316	\$ 24,106,316	\$ -	\$ -
Equities	21,810,217	21,810,217	-	-
Corporate Bonds (by S&P rating):				
AAA - A-	15,154,405	-	15,154,405	-
BBB+ - B-	10,643,876	-	10,643,876	-
Total corporate bonds	25,798,281	-	25,798,281	-
U.S. Treasury Notes, agency and related	8,014,952	-	8,014,952	-
Mutual funds				
Large-cap U.S. equity	20,788,894	20,788,894	-	-
Small-/mid-cap U.S. equity	12,708,547	12,708,547	-	-
International equity	43,523,767	43,523,767	-	-
Short-term bond	33,096,918	33,096,918	-	-
Intermediate-term bond	21,156,494	21,156,494	-	-
High-yield bond	10,986,946	10,986,946	-	-
International fixed income	917,763	917,763	-	-
Other bond	7,774,958	7,774,958	-	-
Real estate and commodities	1,961,710	1,961,710	-	-
Total mutual funds	152,915,997	152,915,997	-	-
Common trust funds ⁽¹⁾				
Large-cap U.S. equity	3,904,470	-	-	-
Small-/mid-cap U.S. equity	1,718,779	-	-	-
International equity	3,586,594	-	-	-
Intermediate-term bond	1,463,469	-	-	-
High-yield and other bonds	1,578,233	-	-	-
Real estate and hard assets (commodities)	1,235,270	-	-	-
Total common trust funds	13,486,815	-	-	-
Exchange-traded funds				
Large-cap U.S. equity	20,109,165	20,109,165	-	-
Small-/mid-cap U.S. equity	7,906,364	7,906,364	-	-
International equity	8,977,830	8,977,830	-	-
Short-term, long-term and intermediate-term bonds	5,740,058	5,740,058	-	-
Real estate and hard assets (commodities)	10,765,950	10,765,950	-	-
Total exchange-traded funds	53,499,367	53,499,367	-	-
Hedge Funds ⁽¹⁾	18,922,460	-	-	-
	<u>\$ 318,554,405</u>	<u>\$ 252,331,897</u>	<u>\$ 33,813,233</u>	<u>\$ -</u>

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 5. Investments and Fair Value Measurements (Continued)

	Fair Value Measurements at March 31, 2016 Using			
	Total	Quoted Prices in Active Markets (Level 1)	Significant Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds	\$ 4,067,511	\$ 4,067,511	\$ -	\$ -
Equities	19,413,584	19,413,584	-	-
Corporate Bonds (by S&P rating):				
AAA - A-	11,310,077	-	11,310,077	-
BBB+ - B-	10,437,622	-	10,437,622	-
CCC	89,050	-	89,050	-
Total corporate bonds	21,836,749	-	21,836,749	-
U.S. Treasury Notes, agency and related	4,304,750	-	4,304,750	-
Mutual funds				
Large-cap U.S. equity	23,649,357	23,649,357	-	-
Small-/mid-cap U.S. equity	7,104,484	7,104,484	-	-
International equity	37,359,189	37,359,189	-	-
Short-term bond	17,519,005	17,519,005	-	-
Intermediate-term bond	22,048,059	22,048,059	-	-
High-yield bond	12,215,186	12,215,186	-	-
International fixed income	526,050	526,050	-	-
Other bond	5,544,199	5,544,199	-	-
Real estate and commodities	3,559,563	3,559,563	-	-
Total mutual funds	129,525,092	129,525,092	-	-
Common trust funds ⁽¹⁾				
Large-cap U.S. equity	3,462,281	-	-	-
Small-/mid-cap U.S. equity	1,548,976	-	-	-
International equity	2,974,964	-	-	-
Intermediate-term bond	2,351,420	-	-	-
High-yield and other bonds	1,173,924	-	-	-
Real estate and hard assets (commodities)	967,409	-	-	-
Total common trust funds	12,478,974	-	-	-
Exchange-traded funds				
Large-cap U.S. equity	12,400,666	12,400,666	-	-
Small-/mid-cap U.S. equity	7,531,521	7,531,521	-	-
International equity	7,127,916	7,127,916	-	-
Short-term, long-term and intermediate-term bonds	66,766	66,766	-	-
Real estate and hard assets (commodities)	7,610,489	7,610,489	-	-
Total exchange-traded funds	34,737,358	34,737,358	-	-
Hedge Funds ⁽¹⁾	18,018,359	-	-	-
	<u>\$ 244,382,377</u>	<u>\$ 187,743,545</u>	<u>\$ 26,141,499</u>	<u>\$ -</u>

(1) In accordance with the guidance provided by FASB ASU 2015-07, Subtopic 820-10, certain investments that are measured at fair value using the net asset value per share (or its equivalent) practical expedient have not been classified in the fair value hierarchy. The fair value amounts presented in this table are intended to permit reconciliation of the fair value hierarchy to the amounts presented in the consolidated statements of financial position.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 5. Investments and Fair Value Measurements (Continued)

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 or reported on the Nasdaq global market 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 and corporate bonds 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 or net asset value. To the extent these securities are actively traded and valuation adjustments are not applied, they are classified as Level 1 in the fair value hierarchy.

Investments in common trust funds and hedge funds are valued at fair value based on the applicable percentage ownership of the underlying net assets on the measurement date. In determining fair value, the Foundation utilizes, as a practical expedient, the net asset value (NAV) (or equivalent) provided by the fund managers (NAV of funds). The underlying common trust funds and hedge funds value securities and other financial instruments on a fair value. The estimated fair values of certain investments of the underlying common trust funds or hedge 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 or sponsor of the hedge 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.

Investments that use the practical expedient are not classified within the fair value hierarchy.

The Foundation assesses the fair value hierarchy 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 2017 or 2016.

The Foundation has the ability to redeem its investments in common trust funds on a daily or monthly basis. The objectives of the investments in common trust funds are to approximate as closely as practicable or to provide total investment returns that are in excess of the performance of the following benchmarks over time with certain risk parameters:

	Benchmark
Large-cap U.S. Equity	S&P 500 Index
Small-/mid-cap U.S. equity	Russell 2000 Index, S&P MidCap 400 Index
International equity	MSCI EAFE Index, MSCI Emerging Markets
Intermediate-term bond	Barclays U.S. Aggregate Bond Index, Barclays U.S. Intermediate Bond Index
High-yield and other bonds	Barclays U.S. Treasury Inflation Protected Securities Index, Barclays Corporate High Yield 2% Issuer Cap Index
Real estate and hard assets (commodities)	Dow Jones U.S. Select REIT Index, Dow Jones-UBS Commodity Total Return Index

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 5. Investments and Fair Value Measurements (Continued)

The investment in hedge funds include two funds for which the Foundation does not have the ability to redeem the investments on March 31, 2017 or in the near term, which is defined as 90 days or less from March 31, 2017. The investment objective of the hedge fund is to generate consistent capital appreciation over the long term, with relatively low volatility and a low correlation with traditional equity and fixed income markets. The Foundation has no unfunded commitments on these investments as of March 31, 2017.

The investments are held for the following purposes:

	<u>2017</u>	<u>2016</u>
Bill of Rights Trust, inclusive of endowments held in perpetuity of \$48,543,730 and \$44,087,901 at March 31, 2017 and 2016, respectively (Note 9)	\$ 97,313,992	\$ 82,425,964
Split-interest agreements (Note 7)	22,354,025	20,349,545
Other endowment, special projects, program support and operating reserves	198,886,388	141,606,868
	<u>\$ 318,554,405</u>	<u>\$ 244,382,377</u>

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

	<u>2017</u>	<u>2016</u>
Interest and dividends	\$ 5,961,473	\$ 5,801,738
Net realized and unrealized gains (losses) on investments	20,509,343	(13,408,664)
Total	26,470,816	(7,606,926)
Adjustment for allocation to affiliates holding units in the Trust for the Bill of Rights	(3,208,178)	1,098,343
Net investment income, gains and losses	<u>\$ 23,262,638</u>	<u>\$ (6,508,583)</u>

Investment management and custodial fees amounted to approximately \$611,000 for 2017 and \$701,000 for 2016, and are included as other professional services in the consolidated statement of functional expenses.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 6. Property and Equipment

Property and equipment consist of the following:

	2017	2016	Range of Estimated Useful Life
Land, office buildings and office condominium	\$ 52,477,749	\$ 52,087,444	10 to 50 years
Furniture, fixtures and office equipment	4,588,073	4,487,351	3 to 5 years
Software	5,536,045	3,187,563	3 to 15 years
Software, work-in-process	4,429,277	3,275,788	N/A
	<u>67,031,144</u>	<u>63,038,146</u>	
Less accumulated depreciation and amortization	<u>(37,830,572)</u>	<u>(33,790,820)</u>	
	<u>\$ 29,200,572</u>	<u>\$ 29,247,326</u>	

Note 7. Split-Interest Agreements

The ACLU Foundation receives contributions through its charitable gift annuity program whereby in exchange for gifts of cash or securities, the ACLU 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, any balance of the amount in the split-interest account reverts to the ACLU Foundation.

The ACLU Foundation has received gifts under this program on which it is obligated to make annual annuity payments of approximately \$1,606,000 in accordance with the agreements as of March 31, 2017.

In addition, the ACLU Foundation has 8 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 ACLU Foundation for its general purposes.

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

	2017	2016
Assets - investments	\$ 22,354,025	\$ 20,349,545
Liabilities under split-interest agreements	14,934,674	14,259,287
	<u>\$ 7,419,351</u>	<u>\$ 6,090,258</u>

Asset balances at March 31, 2017 and 2016 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 ACLU Foundation issues gift annuities. Reserves are included in liabilities under split-interest agreements on the accompanying consolidated statements of financial position.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 7. Split-Interest Agreements (Continued)

The present value of obligations under split-interest agreements was calculated using interest rates ranging from 2.5% to 8.5% and applicable Annuity Mortality Tables (either 1983A, 2000 or 2012AR).

Beneficial interests in trusts (BITs) are recorded based on the present value of the estimated future receipts from the trusts, using discount rates ranging from 1.32% to 5.34%. These rates approximate the rates of return on the assets held in the trusts, and are commensurate with the risks that management associates with the ultimate collection of the trusts. 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 ACLU 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.

Note 8. IDA Bond Financing

In June 1997, the ACLU 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 ACLU Foundation in order for the ACLU 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. In November 2011, the ACLU Foundation redeemed \$1,250,000 of IDA bonds.

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 interest on the 2005 IDA bonds on the scheduled due dates and on redemption, and to provide a facility for payment of the purchase price of the bonds upon the mandatory or optional tender thereof. Among other agreements, the ACLU Foundation also entered into a remarketing agreement with a certain financial institution to act as exclusive remarketing agent in connection with the offering and sale from time to time of the bonds in the secondary market after the initial offering, issuance and sale of the bonds.

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 8. IDA Bond Financing (Continued)

Interest on the bonds is variable, and 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. On December 1, 2013, the letter of credit was amended for certain financial reporting requirements and covenants. On May 26, 2016, the letter of credit was amended and restated to terminate on the earlier of July 1, 2018 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 including letter of credit charges related to the 2005 IDA bonds were approximately \$245,000 and \$115,000 for the years ended March 31, 2017 and 2016, respectively.

In March 2017, the Foundation paid off the remaining balance on the 2005 IDA bonds, which terminated the letter of credit requirements and agreements.

Note 9. The Bill of Rights Trust and Other Endowments

In 1997, the ACLU Foundation and the Section 501(c)(3) arms of the affiliates (the Affiliate Foundations) established the Bill of Rights Trust (BORT). The purpose of BORT, a portion of which is an endowment fund of the ACLU 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. BORT has 100,000,000 authorized units, which are issued to or among the ACLU Foundation and Affiliate Foundations based upon their respective interests in BORT. Unit shares have a unit value based upon the fair value of the net assets of BORT divided by the total number of unit shares outstanding. BORT permits for annual distributions to the ACLU Foundation and Affiliate Foundations in accordance with the ACLU 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, 2017 and 2016, BORT allowed 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, 2016 and 2015, respectively. Each unit holder, including the ACLU Foundation and the participating Affiliate Foundations, must establish that it has determined the appropriation to be prudent before the distribution is disbursed. There were no actual distributions during the year ended March 31, 2017. Actual distributions during the year ended March 31, 2016 amounted to \$2,142,655.

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

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 9. The Bill of Rights Trust and Other Endowments (Continued)

At March 31, 2017 and 2016, BORT comprised the following accounts and amounts that are included in the consolidated statements of financial position:

	2017	2016
Assets:		
Investments	\$ 97,313,992	\$ 82,425,964
Other assets	209,023	100,461
	<u>\$ 97,523,015</u>	<u>\$ 82,526,425</u>
Liabilities and net assets:		
Held for Affiliate Foundations	\$ 30,210,580	\$ 26,776,638
Temporarily restricted net assets	18,768,705	11,661,886
Permanently restricted net assets	48,543,730	44,087,901
	<u>\$ 97,523,015</u>	<u>\$ 82,526,425</u>

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

	2017			2016		
	Temporarily Restricted	Permanently Restricted	Total	Temporarily Restricted	Permanently Restricted	Total
Endowment net assets, beginning of year	\$ 12,382,636	\$ 45,457,901	\$ 57,840,537	\$ 17,801,954	\$ 42,105,196	\$ 59,907,150
Investment return						
Interest and dividends	1,557,662	-	1,557,662	1,439,116	-	1,439,116
Net realized and unrealized (losses) gains on investments	5,723,565	-	5,723,565	(4,468,840)	-	(4,468,840)
Investment fees and expenses	(14,114)	-	(14,114)	(156,939)	-	(156,939)
Net investment (loss) return	<u>7,267,113</u>	<u>-</u>	<u>7,267,113</u>	<u>(3,186,663)</u>	<u>-</u>	<u>(3,186,663)</u>
Other changes during the year						
Contributions	-	4,455,829	4,455,829	-	3,352,705	3,352,705
Appropriation of endowment assets for expenditures	(70,000)	-	(70,000)	(2,232,655)	-	(2,232,655)
Total	<u>(70,000)</u>	<u>4,455,829</u>	<u>4,385,829</u>	<u>(2,232,655)</u>	<u>3,352,705</u>	<u>1,120,050</u>
Endowment net assets, end of year	<u>\$ 19,579,749</u>	<u>\$ 49,913,730</u>	<u>\$ 69,493,479</u>	<u>\$ 12,382,636</u>	<u>\$ 45,457,901</u>	<u>\$ 57,840,537</u>

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 10. Commitments and Contingencies

The Foundation leases office space in various locations under various short-term operating leases.

The Foundation is involved in other 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 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 Union'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). The Union charges the Foundation its share of the net periodic pension costs. For the years ended March 31, 2017 and 2016, the cost incurred by the Foundation in connection with the Pension Plan amounted to \$2,184,720 and \$2,016,168, respectively.

On January 1, 2015, the Pension Plan was amended and restated to include, among other things, a provision for additional contribution due on withdrawal or freezing of benefits by an employer. The liability attributed to the employer or former employer is determined based upon the sum of the present value of the accrued benefits for each of the participants associated with the employer or former employer determined as of the last day of the plan year preceding the date as of which the withdrawal contribution is calculated. Accordingly, as of March 31, 2017 and 2016, the Foundation recognized \$8,098,116 and \$14,417,954, respectively, of withdrawal contribution liability due to the Union. Disclosures on the funded status and other information on the Pension Plan are included in the consolidated financial statements of the ACLU.

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 new DC plan includes an employer contribution of 2% and an employer match of 100% of the first 1% of the employee's contribution and 50% of the next 5% of an employee's contribution, for a total match of 3.5% and a total employer contribution of 5.5%. 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 \$800,742 in 2017 and \$684,009 in 2016.

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

Note 12. Net Assets

Net assets comprise the following as of March 31:

	2017	2016
Unrestricted:		
Undesignated	\$ 47,225,059	\$ 24,905,063
Board-designated:		
Litigation Fund	14,471,526	10,332,203
California Annuity Fund	887,728	544,246
Annuity Reserve	5,901,053	4,903,274
Organizational Fund	20,554,975	15,974,698
Jacobs Affiliate Development Fund	6,402,699	4,273,914
Dividend Distribution Fund	80,263,128	67,022,088
John Adams Fund	8,392,512	9,113,627
Total board-designated	<u>136,873,621</u>	<u>112,164,050</u>
Total unrestricted	<u>184,098,680</u>	<u>137,069,113</u>
Temporarily restricted:		
Bill of Rights Trust and other endowments	19,579,749	12,382,636
Trusts	2,833,158	2,738,898
Other time and purpose restrictions	40,700,334	46,997,268
Total temporarily restricted	<u>63,113,241</u>	<u>62,118,802</u>
Permanently restricted - Bill of Rights Trust and other endowments	50,014,027	46,460,872
	<u>\$ 297,225,948</u>	<u>\$ 245,648,787</u>

American Civil Liberties Union Foundation, Inc. and Subsidiary

Notes to Consolidated Financial Statements

Note 13. Net Assets Released From Restrictions

Net assets were released from donor restrictions during the year ended March 31, 2017 by incurring expenses satisfying restricted purposes, or by the occurrence of other events specified by donors as follows:

	<u>2017</u>
Special projects:	
Speech, Privacy and Technology and National Security	\$ 1,840,144
Prisoners' Rights and Smart Justice	1,016,229
Immigrants' Rights	5,515,936
Reproductive Freedom	2,468,199
Women's Rights	682,360
Criminal Law Reform	231,736
LGBT/Marriage Equality	2,691,690
Voting Rights	1,939,462
Racial Justice	842,450
Other special projects	<u>11,090,623</u>
Total special projects	28,318,829
Bill of Rights Trust and other endowments	70,000
Time-restricted gifts	<u>4,766,601</u>
Total released from restrictions	<u><u>\$ 33,155,430</u></u>

American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidating Statement of Financial Position

March 31, 2017

	American Civil Liberties Union Foundation, Inc.	915 15th Street, LLC	Eliminations	Consolidated
Assets				
Cash and cash equivalents	\$ 10,320,598	\$ 338,100	\$ -	\$ 10,658,698
Pledges and contributions receivable, net	31,674,829	-	-	31,674,829
Investments	318,554,405	-	-	318,554,405
Other assets	5,367,130	-	-	5,367,130
Due from affiliates	3,318,802	-	-	3,318,802
Due to the ACLU Foundation from the LLC	10,121,409	-	(10,121,409)	-
Investment in 915 15th Street, LLC	(2,193,563)	-	2,193,563	-
Beneficial interest in trusts	1,599,841	-	-	1,599,841
Property and equipment, net of accumulated depreciation and amortization	21,544,913	7,655,659	-	29,200,572
Total assets	\$ 400,308,364	\$ 7,993,759	\$ (7,927,846)	\$ 400,374,277
Liabilities and Net Assets				
Liabilities:				
Accounts payable and accrued expenses	\$ 5,692,871	\$ 65,913	\$ -	\$ 5,758,784
Due from the LLC to the ACLU Foundation	-	10,121,409	(10,121,409)	-
Due to the American Civil Liberties Union, Inc.				
Accrued pension liability	2,184,720	-	-	2,184,720
Allocated share of pension liability	10,282,836	-	-	10,282,836
Others	7,660,162	-	-	7,660,162
Due to affiliates	32,116,572	-	-	32,116,572
Liabilities under split-interest agreements	14,934,675	-	-	14,934,675
IDA bond	-	-	-	-
Bill of Rights Trust held for affiliates	30,210,580	-	-	30,210,580
Total liabilities	103,082,416	10,187,322	(10,121,409)	103,148,329
Commitments and Contingencies				
Net assets:				
Unrestricted:				
Board-designated	136,873,621	-	-	136,873,621
Undesignated	47,225,059	(2,193,563)	2,193,563	47,225,059
Total unrestricted	184,098,680	(2,193,563)	2,193,563	184,098,680
Temporarily restricted:				
Bill of Rights Trust and other endowments	19,579,749	-	-	19,579,749
Other time and purpose restrictions	43,533,492	-	-	43,533,492
Total temporarily restricted	63,113,241	-	-	63,113,241
Permanently restricted - Bill of Rights Trust and other endowments				
	50,014,027	-	-	50,014,027
Total net assets	297,225,948	(2,193,563)	2,193,563	297,225,948
Total liabilities and net assets	\$ 400,308,364	\$ 7,993,759	\$ (7,927,846)	\$ 400,374,277

American Civil Liberties Union Foundation, Inc. and Subsidiary

Consolidating Statement of Activities
Year Ended March 31, 2017

	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	\$ 100,521,258	\$ 25,255,540	\$ 19,946	\$ 125,796,744	\$ -	\$ -	\$ 100,521,258	\$ 25,255,540	\$ 19,946	\$ 125,796,744
Donated legal services	2,202,732	-	-	2,202,732	-	-	2,202,732	-	-	2,202,732
Bequests	9,195,739	1,527,953	3,533,209	14,256,901	-	-	9,195,739	1,527,953	3,533,209	14,256,901
Total support	111,919,729	26,783,493	3,553,155	142,256,377	-	-	111,919,729	26,783,493	3,553,155	142,256,377
Revenue:										
Rental income	591,802	-	-	591,802	865,870	(351,414)	1,106,258	-	-	1,106,258
Merchandise and book sales	1,169,918	-	-	1,169,918	-	-	1,169,918	-	-	1,169,918
Other income	23,995	-	-	23,995	-	-	23,995	-	-	23,995
Total revenue	1,785,715	-	-	1,785,715	865,870	(351,414)	2,300,171	-	-	2,300,171
Net assets released from restrictions	33,155,430	(33,155,430)	-	-	-	-	33,155,430	(33,155,430)	-	-
Total support and revenue	146,860,874	(6,371,937)	3,553,155	144,042,092	865,870	(351,414)	147,375,330	(6,371,937)	3,553,155	144,556,548
Expenses:										
Program services:										
Legislative	764,868	-	-	764,868	-	-	764,868	-	-	764,868
Legal	36,766,801	-	-	36,766,801	-	(351,414)	36,415,387	-	-	36,415,387
Public education	11,890,802	-	-	11,890,802	-	-	11,890,802	-	-	11,890,802
Civil liberties policy formulation	593,724	-	-	593,724	-	-	593,724	-	-	593,724
Affiliate support	60,011,761	-	-	60,011,761	-	-	60,011,761	-	-	60,011,761
Total program services	110,027,956	-	-	110,027,956	-	(351,414)	109,676,542	-	-	109,676,542
Supporting services:										
Management and general	3,037,586	-	-	3,037,586	1,229,398	-	4,266,984	-	-	4,266,984
Fund-raising	9,220,671	-	-	9,220,671	-	-	9,220,671	-	-	9,220,671
Total supporting services	12,258,257	-	-	12,258,257	1,229,398	-	13,487,655	-	-	13,487,655
Total expenses	122,286,213	-	-	122,286,213	1,229,398	(351,414)	123,164,197	-	-	123,164,197
Change in net assets before other changes	24,574,661	(6,371,937)	3,553,155	21,755,879	(363,528)	-	24,211,133	(6,371,937)	3,553,155	21,392,351
Other changes in net assets:										
Legal expenses awarded, net	4,139,323	-	-	4,139,323	-	-	4,139,323	-	-	4,139,323
Net investment income, gains and losses	15,765,431	7,497,207	-	23,262,638	-	-	15,765,431	7,497,207	-	23,262,638
Changes in value of split-interest agreements	(1,221,439)	(130,831)	-	(1,352,270)	-	-	(1,221,439)	(130,831)	-	(1,352,270)
Net loss on investment in 915 15th Street, LLC	(363,528)	-	-	(363,528)	-	363,528	-	-	-	-
Affiliates' allocation share of pension liability adjustment	4,135,119	-	-	4,135,119	-	-	4,135,119	-	-	4,135,119
Total other changes in net assets	22,454,906	7,366,376	-	29,821,282	-	363,528	22,818,434	7,366,376	-	30,184,810
Change in net assets	47,029,567	994,439	3,553,155	51,577,161	(363,528)	363,528	47,029,567	994,439	3,553,155	51,577,161
Net assets:										
Beginning	137,069,113	62,118,802	46,460,872	245,648,787	(1,830,035)	1,830,035	137,069,113	62,118,802	46,460,872	245,648,787
Ending	\$ 184,098,680	\$ 63,113,241	\$ 50,014,027	\$ 297,225,948	\$ (2,193,563)	\$ 2,193,563	\$ 184,098,680	\$ 63,113,241	\$ 50,014,027	\$ 297,225,948