

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

Consolidated Financial Report  
March 31, 2022

## Contents

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Independent auditor's report	1-2
<hr/>	
Financial statements	
Consolidated statements of financial position	3
Consolidated statements of activities	4
Consolidated statements of functional expenses	5
Consolidated statements of cash flows	6
Notes to consolidated financial statements	7-24
Supplementary information	
Consolidating statement of financial position	25
Consolidating statement of activities	26

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## Independent Auditor's Report

RSM US LLP

Audit Committee  
American Civil Liberties Union Foundation, Inc.

### Report on the Audit of the Financial Statements

#### **Opinion**

We have audited the consolidated financial statements of American Civil Liberties Union Foundation, Inc. and its subsidiary (collectively, the Foundation), which comprise the consolidated statement of financial position as of March 31, 2022, 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).

In our opinion, the accompanying financial statements present fairly, in all material respects, the financial position of the Foundation as of March 31, 2022, and the changes in its net assets and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

#### **Basis for Opinion**

We conducted our audit in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audit of the Financial Statements section of our report. We are required to be independent of the Foundation and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audit. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

#### **Responsibilities of Management for the Financial Statements**

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

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the Foundation's ability to continue as a going concern within one year after the date that the financial statements are issued or available to be issued.

#### **Auditor's Responsibilities for the Audit of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audit.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audit 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 Foundation's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about the Foundation's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit, significant audit findings, and certain internal control-related matters that we identified during the audit.

#### **Report on Summarized Comparative Information**

We have previously audited the Foundation's 2021 financial statements, and we expressed an unmodified audit opinion on those audited financial statements in our report dated October 21, 2021. In our opinion, the summarized comparative information presented herein as of and for the year ended March 31, 2021, is consistent, in all material respects, with the audited financial statements from which it has been derived.

#### **Supplementary Information**

Our audit was conducted for the purpose of forming an opinion on the consolidated financial statements as a whole. The consolidating statement of financial position and consolidating statement of activities are 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 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.

*RSM US LLP*

New York, New York  
October 3, 2022

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

**Consolidated Statements of Financial Position**

**March 31, 2022**

**(With Summarized Comparative Information as of March 31, 2021)**

	2022	2021
<b>Assets</b>		
Cash and cash equivalents	\$ 143,608,870	\$ 132,798,919
Pledges, bequests and contributions receivable, net	61,254,434	43,016,870
Investments	590,619,973	530,796,655
Other assets	1,485,562	1,031,614
Due from affiliates	1,095,240	364,607
Beneficial interest in trusts	1,336,698	2,525,898
Property and equipment, net of accumulated depreciation and amortization	25,411,741	24,610,585
<b>Total assets</b>	<b>\$ 824,812,518</b>	<b>\$ 735,145,148</b>
<b>Liabilities and Net Assets</b>		
Liabilities:		
Accounts payable and accrued expenses	\$ 6,441,165	\$ 9,001,197
Grants payable	3,866,567	-
Funds received in advance	2,000,000	-
Due to the American Civil Liberties Union, Inc:		
Accrued pension liability	803,047	2,252,535
Allocated share of pension liability	6,933,760	8,632,440
Due to the American Civil Liberties Union, Inc.—Others	38,550,737	17,766,438
Due to affiliates	36,213,917	48,531,048
Liabilities under split-interest agreements	20,422,939	20,621,687
Bill of Rights Trust held for affiliates	50,816,350	41,525,702
<b>Total liabilities</b>	<b>166,048,482</b>	<b>148,331,047</b>
Commitments and contingencies		
Net assets:		
Net assets without donor restrictions:		
Board-designated	259,816,579	250,890,208
Undesignated	150,995,027	129,013,020
<b>Net assets without donor restrictions</b>	<b>410,811,606</b>	<b>379,903,228</b>
Net assets with donor restrictions	247,952,430	206,910,873
<b>Total net assets</b>	<b>658,764,036</b>	<b>586,814,101</b>
<b>Total liabilities and net assets</b>	<b>\$ 824,812,518</b>	<b>\$ 735,145,148</b>

See notes to consolidated financial statements.

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

**Consolidated Statements of Activities**

**Year Ended March 31, 2022**

**(With Summarized Comparative Information for the Year Ended March 31, 2021)**

	2022		2021	
	Without Donor Restrictions	With Donor Restrictions	Total	Total
Support and revenue:				
Support:				
Grants, bequests and contributions	\$ 132,582,892	\$ 81,099,307	\$ 213,682,199	\$ 227,368,352
Donated legal services	25,253,603	-	25,253,603	23,748,513
<b>Total support</b>	<b>157,836,495</b>	<b>81,099,307</b>	<b>238,935,802</b>	<b>251,116,865</b>
Revenue:				
Rental income	1,092,684	-	1,092,684	1,083,221
Merchandise and book sales	827,203	-	827,203	1,192,193
Other income	1,239,815	-	1,239,815	11,800
<b>Total revenue</b>	<b>3,159,702</b>	<b>-</b>	<b>3,159,702</b>	<b>2,287,214</b>
Net assets released from restrictions	51,821,154	(51,821,154)	-	-
<b>Total support and revenue</b>	<b>212,817,351</b>	<b>29,278,153</b>	<b>242,095,504</b>	<b>253,404,079</b>
Expenses:				
Program services:				
Legislative	2,887,869	-	2,887,869	3,159,555
Legal	88,583,414	-	88,583,414	102,084,322
Public education	14,144,639	-	14,144,639	13,834,514
Civil liberties policy formulation	1,148,131	-	1,148,131	900,781
Affiliate support	62,408,477	-	62,408,477	48,781,087
<b>Total program services</b>	<b>169,172,530</b>	<b>-</b>	<b>169,172,530</b>	<b>168,760,259</b>
Supporting services:				
Management and general	10,568,293	-	10,568,293	9,904,484
Fundraising	15,790,315	-	15,790,315	18,166,328
<b>Total supporting services</b>	<b>26,358,608</b>	<b>-</b>	<b>26,358,608</b>	<b>28,070,812</b>
<b>Total expenses</b>	<b>195,531,138</b>	<b>-</b>	<b>195,531,138</b>	<b>196,831,071</b>
<b>Change in net assets before other changes</b>	<b>17,286,213</b>	<b>29,278,153</b>	<b>46,564,366</b>	<b>56,573,008</b>
Other changes in net assets:				
Legal revenue awarded, net	2,459,308	-	2,459,308	3,046,610
Net investment income, net	7,681,347	11,975,785	19,657,132	128,414,039
Changes in value of split interest agreements	-	(212,381)	(212,381)	1,564,290
Other components of postretirement benefit cost	3,481,510	-	3,481,510	7,687,766
<b>Total other changes in net assets</b>	<b>13,622,165</b>	<b>11,763,404</b>	<b>25,385,569</b>	<b>140,712,705</b>
<b>Change in net assets</b>	<b>30,908,378</b>	<b>41,041,557</b>	<b>71,949,935</b>	<b>197,285,713</b>
Net assets:				
Beginning	379,903,228	206,910,873	586,814,101	389,528,388
Ending	\$ 410,811,606	\$ 247,952,430	\$ 658,764,036	\$ 586,814,101

See notes to consolidated financial statements.

American Civil Liberties Union, Foundation Inc. and Subsidiary

Consolidated Statements of Functional Expenses  
Year Ended March 31, 2022

(With Summarized Comparative Information for the Year Ended March 31, 2021)

	2022						2021					
	Program Services					Supporting Services					Summarized Comparative Information	
	Legislative	Legal	Public Education	Civil Liberties Policy Formulation	Affiliate Support	Total Program Services	Management and General	Fundraising	Total Supporting Services	Total Expenses		
Salaries	\$ 1,094,604	\$ 24,224,922	\$ 5,185,495	\$ 593,276	\$ 6,414,834	\$ 37,513,131	\$ 4,899,174	\$ 7,670,150	\$ 12,569,324	\$ 50,082,455	\$ 47,992,159	
Employee benefits	287,168	6,710,747	1,254,471	221,974	2,408,581	10,882,941	2,412,695	2,157,999	4,570,694	15,453,635	14,632,211	
Rent and occupancy	21,042	2,099,222	307,724	1,021	364,907	2,793,916	12,031	582,329	594,360	3,388,276	3,486,903	
Books	2,245	310,188	25,647	350	6,914	345,344	4,228	109,604	113,832	459,176	410,261	
Building depreciation	-	952,505	159,383	-	132,796	1,244,684	-	318,776	318,776	1,563,460	1,426,406	
Depreciation and amortization	-	289,033	94,829	-	53,030	436,892	-	502,988	502,988	939,880	3,718,612	
Equipment rental and maintenance	348,215	1,193,371	469,583	77,925	725,945	2,815,039	562,378	801,354	1,363,732	4,178,771	4,103,727	
Grants to affiliates	109,975	9,444,021	-	-	9,774,516	19,328,512	-	-	-	19,328,512	14,568,660	
Shared portion of contributions	342,583	10,746,988	-	-	30,489,951	41,579,522	-	-	-	41,579,522	49,751,627	
Shared portion of bequests	38,390	873,339	-	-	3,416,658	4,328,387	-	-	-	4,328,387	6,547,095	
Meetings/conferences	4,267	61,854	10,340	2,376	205,188	284,025	19,759	75,560	95,319	379,344	35,668	
Legal fees	1	1,531,407	60,663	10,924	125,652	1,728,647	141,997	158,656	300,653	2,029,300	324,189	
Donated legal services	-	25,253,603	-	-	-	25,253,603	-	-	-	25,253,603	23,748,513	
Accounting fees	-	-	-	-	-	-	255,191	-	255,191	255,191	231,901	
Professional fundraising Services	-	-	-	-	-	-	-	-	-	-	364,210	
Other professional services	329,515	1,863,311	4,367,927	175,888	1,143,304	7,879,945	1,716,939	758,573	2,475,512	10,355,457	12,108,856	
Postage and supplies	11,765	28,991	457,011	659	10,634	509,060	6,632	1,226,852	1,233,484	1,742,544	1,629,831	
Publishing, printing and outreach	621	19,213	1,177,943	-	3,408	1,201,185	36,429	567,132	603,561	1,804,746	1,390,749	
Special affiliate subsidies	67,930	679,300	-	-	6,045,770	6,793,000	-	-	-	6,793,000	5,419,300	
Telephone	73,536	273,079	80,824	10,997	86,251	524,687	54,429	82,363	136,792	661,479	641,567	
Telemarketing	-	-	17,597	-	-	17,597	-	158,370	158,370	175,967	156,459	
Travel	26,195	324,220	52,650	5,225	39,847	448,137	21,543	33,136	54,679	502,816	280,474	
Other grants and awards	-	150,000	4,833	-	-	154,833	537	-	537	155,370	405,145	
Other expenses	129,817	1,554,100	417,719	47,516	960,291	3,109,443	424,331	586,473	1,010,804	4,120,247	3,456,548	
<b>Total expenses per statement of activities</b>	<b>2,887,869</b>	<b>88,583,414</b>	<b>14,144,639</b>	<b>1,148,131</b>	<b>62,408,477</b>	<b>169,172,530</b>	<b>10,568,293</b>	<b>15,790,315</b>	<b>26,358,608</b>	<b>195,531,138</b>		
Net periodic cost other than service cost	(14,611)	(447,204)	(71,375)	(5,825)	(315,116)	(854,131)	(53,309)	(79,766)	(133,075)	(987,206)		
<b>Total expenses—2022</b>	<b>\$ 2,873,258</b>	<b>\$ 88,136,210</b>	<b>\$ 14,073,264</b>	<b>\$ 1,142,306</b>	<b>\$ 62,093,361</b>	<b>\$ 168,318,399</b>	<b>\$ 10,514,984</b>	<b>\$ 15,710,549</b>	<b>\$ 26,225,533</b>	<b>\$ 194,543,932</b>		
<b>Total—2021</b>	<b>\$ 3,159,555</b>	<b>\$ 102,084,322</b>	<b>\$ 13,834,514</b>	<b>\$ 900,781</b>	<b>\$ 48,781,087</b>	<b>\$ 168,760,259</b>	<b>\$ 9,904,484</b>	<b>\$ 18,166,328</b>	<b>\$ 28,070,812</b>	<b>\$ 196,831,071</b>		

See notes to consolidated financial statements.

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

**Consolidated Statements of Cash Flows**

**Year Ended March 31, 2022**

**(With Summarized Comparative Information for the Year Ended March 31, 2021)**

	2022	2021
Cash flows from operating activities:		
Change in net assets	\$ 71,949,935	\$ 197,285,713
Adjustments to reconcile change in net assets to net cash provided by operating activities:		
Depreciation and amortization	2,503,340	5,145,018
Discount on pledges receivable	440,190	1,480,050
Changes in value of split interest agreements	212,381	(1,564,290)
Net realized and unrealized gains on investments, net of adjustments for affiliate holdings	(23,613,575)	(128,554,025)
Changes in benefit obligations other than net periodic cost	(2,494,304)	(7,687,766)
Cash received on contributions restricted for endowment	(728,564)	(752,669)
Contributions subject to split-interest agreements	(1,101,424)	(2,702,306)
Changes in operating assets and liabilities:		
(Decrease) increase in due from/to affiliates	(13,047,764)	11,311,380
Increase in pledges, bequests and contributions receivable	(18,677,754)	(16,167,072)
(Increase) decrease other assets	(453,948)	674,970
(Decrease) increase in accounts payable and accrued expenses	(2,560,032)	2,146,022
Increase in grants payable	3,866,567	-
Increase in funds received in advance	2,000,000	-
(Decrease) increase in due to American Civil Liberties Union, Inc.—accrued pension liability	(653,864)	479,142
Increase in due to American Civil Liberties Union, Inc.—other	20,784,299	17,185,894
Increase (decrease) in Bill of Rights Trust held for affiliates, net of unrealized gains/ losses	7,881,250	(2,170,685)
<b>Net cash provided by operating activities</b>	<b>46,306,733</b>	<b>76,109,376</b>
Cash flows from investing activities:		
Proceeds from sale of investments	288,279,666	170,344,630
Purchase of investments	(323,080,011)	(244,923,171)
Purchase of property and equipment	(3,304,496)	(1,143,361)
<b>Net cash used in investing activities</b>	<b>(38,104,841)</b>	<b>(75,721,902)</b>
Cash flows from financing activities:		
Cash received on contributions restricted for endowment	728,564	752,669
Contributions subject to split-interest agreements	1,101,424	2,702,306
Payments on split-interest agreements	(2,186,411)	(1,817,715)
New annuities	2,964,482	7,049,073
<b>Net cash provided by financing activities</b>	<b>2,608,059</b>	<b>8,686,333</b>
<b>Net change in cash and cash equivalents</b>	<b>10,809,951</b>	<b>9,073,807</b>
Cash and cash equivalents:		
Beginning cash and cash equivalents	132,798,919	123,725,112
Ending cash and cash equivalents	\$ 143,608,870	\$ 132,798,919
Supplemental disclosures of cash flow information:		
Donated legal services	\$ 25,253,603	\$ 23,748,513
Change in investments for Bill of Rights Trust held for affiliates	\$ 1,409,398	\$ 12,625,694

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 ACLU Foundation or the Foundation) was established as a 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 (IRC).

The ACLU Foundation and the Union 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 ACLU 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 investment portfolio are included in investments.

## 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)

**Investments and related income, gains and losses:** Investments are reported at fair value in the consolidated statement 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. The Foundation's policy is to sell donated securities immediately, and accordingly, for purposes of the consolidated statements of cash flows, donated securities and the proceeds generated from their sale are included within operating activities. For the years ended March 31, 2022 and 2021, net investment income, gains and losses, is reported net of direct investment expenses of \$2,240,777 and \$1,643,798, respectively.

**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 ACLU Foundation has the ability to access at the measurement date. 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, 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.

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

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

**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, 2022, 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 three financial institutions that held approximately 92% and 93% of the total portfolio at March 31, 2022 and 2021, respectively.

**Property and equipment:** Property and equipment (consisting of office buildings, furniture, fixtures, office equipment and software) 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:** Management evaluates the recoverability of the investment in long-lived assets on an ongoing basis and recognizes any impairment in the year of determination. There were no triggering events during fiscal years 2022 or 2021 requiring management to test for impairment that would require any adjustments to property and equipment. However, it is reasonably possible that relevant conditions could change in the near term and necessitate a change in management's estimate of the recoverability of these assets.

**Net assets:** The Foundation reports information regarding its financial position and activities in two classes of net assets: with donor restrictions and without donor restrictions. Net assets without donor restrictions consist of amounts that can be spent at the discretion of the Foundation and have no donor restrictions associated with them. A portion of net assets without donor restrictions has been designated by the board of directors for certain purposes. Net assets with donor restrictions consist of contributions that are restricted by donors for a specific time period and/or purpose. Generally, the donors of these assets permit the use of all or part of the income earned related investments for general or specific purpose.

**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 with donor restrictions. 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.

## 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)

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 held in perpetuity are classified as net assets with donor restrictions 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 without donor restrictions or with donor restrictions 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 and contributions 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. No allowance for doubtful accounts was deemed necessary as of March 31, 2022 and 2021.

Contributions of cash and other assets are reported as with donor restrictions 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, net assets with donor restrictions are reclassified to net assets without donor restrictions 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 with donor restrictions 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.

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.

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. For the years ended March 31, 2022 and 2021, bequest contributions amounted to \$27,751,385 and \$20,942,555, respectively.

## 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)

**Donor concentration:** Approximately 22% of the total grants, contributions and bequests revenue of \$213,682,199 and \$227,368,352 were provided by four and five donors for the years ended March 31, 2022 and 2021, respectively. In addition, approximately 46% and 51% of the gross pledges and contributions receivable of \$62,987,839 and \$45,190,465 were due from two donors at March 31, 2022, and 2021, respectively.

**Accrued vacation:** Accrued vacation represents the ACLU Foundation's obligation for the cost of unused employee vacation time that would be payable in the event that all employees leave the ACLU Foundation. As of March 31, 2022 and 2021, the accrued vacation obligation was approximately \$2,957,000 and \$3,523,000, respectively, and is reported as part of accounts payable and accrued expenses in the consolidated statement of financial position.

**Functional expenses:** The costs of providing various program and supporting services of the ACLU Foundation have been summarized on a functional basis in the accompanying consolidated financial statements. Each department within the ACLU Foundation will be allocated to its programmatic or supporting services based on a total analysis of their respective FTE's and a determination of what functions they perform. Certain departments, such as legal department expenses are determined to be 100% programmatic and are reflected, therefore, under legal programs. Other departments, such as executive or administrative/finance are largely supportive in nature and reflected largely under management and general. Each year, the functional allocations are reviewed and modified based on initiatives and organizational changes to best reflect the activities within the ACLU Foundation for a specified year.

**Grants and awards:** Unconditional grants and awards are recognized as expenses in the consolidated financial statements at the time of approval. Unconditional grants and awards approved, but not yet paid are recognized as grants payable at each year-end. As of March 31, 2022, grants payable amounted to approximately \$3,867,000. There were no grants payable amounts during the year ended March 31, 2021.

**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. IRC 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 (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 2019, which is the standard statute of limitations look-back period.

## 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)

**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, 2021, 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 October 3, 2022.

The spread of COVID-19, a novel strain of coronavirus, is altering the behavior of society throughout the world. The continued spread of COVID-19 may adversely impact the local, regional, national and world economies. The extent to which COVID-19 impacts the Foundation's activities will depend on future developments, which are highly uncertain and cannot be predicted. Although to date, COVID-19 has not had a material impact on the Foundation, management cannot presently estimate the overall long-term operational and financial impact to the Foundation.

**Recently issued accounting pronouncements:** In February 2016, the FASB issued Accounting Standards Update (ASU) 2016-02, *Leases (Topic 842)*, as amended, which supersedes the current leasing guidance and upon adoption, will require lessees to recognize right-of-use assets and lease liabilities on the statement of consolidated 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 expense recognition in the consolidated statement of activities. Leases with a term of 12 months or less will be accounted for similar to existing guidance for operating leases today. The new standard is effective for the Foundation for the annual period beginning after December 15, 2021 and can be early adopted. Upon the adoption of the guidance, operating leases are capitalized on the consolidated statement of financial position at the present value of lease payments. The consolidated statement of financial position amount recorded for existing leases at the date of adoption of ASU 2016-02 will be calculated using the applicable incremental borrowing rate at the date of adoption. The impact on the Foundation's consolidated financial statements is currently being evaluated. The ACLU Foundation is currently evaluating the impact of the adoption of the new standard on the consolidated financial statements.

In September 2020, the FASB issued ASU 2020-07, *Not-for-Profit Entities (Topic 958): Presentation and Disclosures by Not-for-Profit Entities for Contributed Nonfinancial Assets* intended to improve transparency in the reporting of contributed nonfinancial assets, also known as gifts in-kind, for not-for-profit organizations. The ASU requires a not-for-profit organization to present contributed nonfinancial assets as a separate line item in the statements of activities, apart from contributions of cash or other financial assets. For each category of contributed nonfinancial assets recognized, not-for-profit organization will need to disclose: (i) qualitative information about whether the contributed nonfinancial assets were either monetized or utilized during the reporting period, if utilized, a description of the programs or other activities in which those assets were used; (ii) the not-for-profit's policy (if any) about monetizing rather than utilizing contributed nonfinancial assets; (iii) a description of any donor-imposed restrictions associated with the contributed nonfinancial assets; (iv) the valuation techniques and inputs used to arrive at a fair value measure, in accordance with the requirements in Topic 820, *Fair Value Measurement*, at initial recognition; and (v) the principal market (or most advantageous market) used to arrive at a fair value measure, if it is a market in which the recipient entity is prohibited by a donor-imposed restriction from selling or using the contributed nonfinancial assets. The amendments in this ASU will be applied on a retrospective basis and are effective for annual reporting periods beginning after June 15, 2021. The ACLU Foundation is currently evaluating the impact of the adoption of the new standard on the consolidated financial statements.

## 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)

**Reclassification:** Certain information in the prior-year's consolidated financial statements has been reclassified to conform to the current-year's consolidated financial statement presentation.

#### 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. During the years ended March 31, 2022 and 2021, the Foundation had expenses to affiliates for grants to affiliates, the shared portion of contributions and bequests and the special affiliate subsidies of \$72,029,421 and \$76,286,682, respectively.

During the years ended March 31, 2022 and 2021, the Foundation received approximately \$351,000 and \$293,000, 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 \$22,875,525 and \$23,614,150 during the years ended March 31, 2022 and 2021, respectively. The Foundation also recognized rental income from the Union of approximately \$351,000 and \$293,285 for the years ended March 31, 2022 and 2021, respectively.

#### Note 4. Pledges, Bequests and Contributions Receivable

Pledges, bequests and contributions receivable which are expected to be collected after one year have been discounted to net present value at rates ranging from 3.02% to 4.10% and are reflected in the consolidated financial statements at their net realizable value.

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

	2022	2021
Receivable due within one year or less	\$ 31,894,165	\$ 21,954,630
Receivable due in more than one year to five years	31,093,674	23,235,835
	<u>62,987,839</u>	<u>45,190,465</u>
Less discount to present value	(1,733,405)	(2,173,595)
	<u>\$ 61,254,434</u>	<u>\$ 43,016,870</u>

Approximately \$22,542,917 and \$13,600,000 of pledges, bequests and contributions receivable as of March 31, 2022 and 2021, 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.

For the year ended March 31, 2022, the Foundation did not receive any new conditional contributions. For the year ended March 31, 2022, the Foundation recognized approximately \$125,000 in revenue from conditional contributions as barriers were met. At March 31, 2022, there is approximately \$2,500,000 in conditional contributions which have not met the barriers to be recognized as revenue. Revenues on these grants and contributions will be recognized by the Foundation in future periods as the barriers 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.

	Fair Value Measurements at March 31, 2022			
	Total	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds	\$ 12,028,201	\$ 12,028,201	\$ -	\$ -
Equities	123,705,395	123,705,395	-	-
Corporate bonds (by S&P rating):				
AAA—A-	21,410,950	-	21,410,950	-
BBB—BBB+	202,326	-	202,326	-
Total corporate bonds	21,613,276	-	21,613,276	-
U.S. Treasury Notes, agency and related	3,120,691	-	3,120,691	-
Mutual funds:				
Large-cap U.S. equity	2,978,101	2,978,101	-	-
Small-/mid-cap U.S. equity	322,850	322,850	-	-
International equity	1,567,960	1,567,960	-	-
Short-term bond	10,525,111	10,525,111	-	-
Intermediate-term bond	3,886,934	3,886,934	-	-
High-yield bond	214,506	214,506	-	-
International fixed income	1,548,311	1,548,311	-	-
Other bond	799,953	799,953	-	-
Total mutual funds	21,843,726	21,843,726	-	-
Common trust funds <sup>(1)</sup> :				
Large-cap U.S. equity	6,118,656	-	-	-
Small-/mid-cap U.S. equity	2,395,060	-	-	-
International equity	5,588,811	-	-	-
Intermediate-term bond	1,410,609	-	-	-
High-yield and other bonds	2,654,823	-	-	-
Real estate and hard assets (commodities)	2,206,905	-	-	-
Total common trust funds	20,374,864	-	-	-
Exchange-traded funds:				
Large-cap U.S. equity	1,819,658	1,819,658	-	-
Small-/mid-cap U.S. equity	1,975,657	1,975,657	-	-
International equity	1,653,693	1,653,693	-	-
Short-term, long-term and intermediate-term bonds	25,667,383	25,667,383	-	-
Real estate and hard assets (commodities)	15,235,436	15,235,436	-	-
Total exchange-traded funds	46,351,827	46,351,827	-	-
Private equity funds—multi strategy <sup>(1)</sup>	108,481,460	-	-	-
Proprietary equity funds—multi strategy <sup>(1)</sup>	233,100,533	-	-	-
Total investments	590,619,973	203,929,149	24,733,967	-
Beneficial interest in Trust	1,336,698	-	-	1,336,698
Total	\$ 591,956,671	\$ 203,929,149	\$ 24,733,967	\$ 1,336,698

## 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, 2021			
	Total	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Money market funds	\$ 5,651,711	\$ 5,651,711	\$ -	\$ -
Equities	140,280,325	140,280,325	-	-
Corporate bonds (by S&P rating):				
AAA—A-	19,255,752	-	19,255,752	-
BBB—BBB+	546,572	-	546,572	-
Total corporate bonds	19,802,324	-	19,802,324	-
U.S. Treasury Notes, agency and related	3,735,345	-	3,735,345	-
Mutual funds:				
Large-cap U.S. equity	3,017,451	3,017,451	-	-
Small-/mid-cap U.S. equity	415,680	415,680	-	-
International equity	1,744,442	1,744,442	-	-
Short-term bond	9,187,428	9,187,428	-	-
Intermediate-term bond	3,678,996	3,678,996	-	-
High-yield bond	429,478	429,478	-	-
International fixed income	1,440,979	1,440,979	-	-
Other bond	662,972	662,972	-	-
Total mutual funds	20,577,426	20,577,426	-	-
Common trust funds <sup>(1)</sup> :				
Large-cap U.S. equity	6,686,251	-	-	-
Small-/mid-cap U.S. equity	2,672,528	-	-	-
International equity	6,034,401	-	-	-
Intermediate-term bond	1,567,151	-	-	-
High-yield and other bonds	2,823,217	-	-	-
Real estate and hard assets (commodities)	1,525,022	-	-	-
Total common trust funds	21,308,570	-	-	-
Exchange-traded funds:				
Large-cap U.S. equity	1,970,553	1,970,553	-	-
Small-/mid-cap U.S. equity	1,295,729	1,295,729	-	-
International equity	2,196,477	2,196,477	-	-
Short-term, long-term and intermediate-term bonds	11,939,743	11,939,743	-	-
Real estate and hard assets (commodities)	585,837	585,837	-	-
Total exchange-traded funds	17,988,339	17,988,339	-	-
Private equity funds—multi strategy <sup>(1)</sup>	66,624,408	-	-	-
Proprietary equity funds—multi strategy <sup>(1)</sup>	234,828,207	-	-	-
Total investments	530,796,655	184,497,801	23,537,669	-
Beneficial interest in Trust	2,525,898	-	-	2,525,898
Total	\$ 533,322,553	\$ 184,497,801	\$ 23,537,669	\$ 2,525,898

In accordance with the Fair Value measurements topic, certain investments that are measured at fair value using the net asset value (NAV) 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 statement of financial position.

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

### Notes to Consolidated Financial Statements

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#### 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 NAV. 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 proprietary equity 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 NAV or equivalent provided by the fund managers (NAV of funds). The underlying common trust funds and proprietary equity 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 proprietary equity 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 proprietary equity 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 years 2022 or 2021.

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 Mid-Cap 400 Index
International equity	MSCI EAFE Index, MSCI Emerging Markets, JP Morgan CEMBI Broad Diversified Index
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, Bloomberg Global High Yield Index, S&P/LSTA Leverage Loan 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 private equity funds which the Foundation does not have the ability to redeem the investments on March 31, 2022, or in the near term, which is defined as 90 days or less from March 31, 2022. The investment objective of the private equity funds are 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 following table summarizes the investment strategies and liquidity provision of investments in the private equity and proprietary equity funds valued at the NAV as provided by the fund managers as of March 31, 2022 and 2021, respectively:

	Fair Value at March 31, 2022	Unfunded Commitments	Redemption Frequency	Redemption Notice Period	Remaining Lock Up Period
Private equity:					
Sequoia	\$ 44,831,657	\$ -	Annual	NA	NA*
SRA III	27,401,095	6,342,982	None	NA	NA
SRA IV	27,438,389	10,740,563	None	NA	NA
SRA V	8,810,319	41,196,285	None	NA	NA
Common trust	20,374,864	-	Daily	NA	NA
Multi strategy	211,185,191	-	Monthly	7 business days	None
Multi strategy	21,915,342	-	Monthly	15 business days	None
	<u>\$ 361,956,857</u>	<u>\$ 58,279,830</u>			

	Fair Value at March 31, 2021	Unfunded Commitments	Redemption Frequency	Redemption Notice Period	Remaining Lock Up Period
Private equity:					
Sequoia	\$ 37,162,341	\$ -	Annual	NA	NA*
SRA III	18,197,860	8,820,518	None	NA	NA
SRA IV	11,264,207	21,326,333	None	NA	NA
Common trust	21,308,570	-	Daily	NA	NA
Multi strategy	234,828,207	-	Monthly	7 business days	None
	<u>\$ 322,761,185</u>	<u>\$ 30,146,851</u>			

\*While 5% can be drawn down annually, full amount cannot be transferred until donor stipulation met.

The investments are held for the following purpose:

	2022	2021
Bill of Rights Trust, inclusive of endowments held in perpetuity of \$51,490,569 and \$50,762,005 at March 31, 2022 and 2021, respectively (Note 9)	\$ 131,061,392	\$ 119,827,517
Split-interest agreements (Note 7)	39,139,728	38,651,923
Other endowment, special projects, program support and operating reserves	420,418,853	372,317,215
	<u>\$ 590,619,973</u>	<u>\$ 530,796,655</u>

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

### Notes to Consolidated Financial Statements

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#### Note 6. Property and Equipment

Property and equipment consist of the following:

	2022	2021	Range of Estimated Useful Life
Land, office buildings and office condominium	\$ 61,395,786	\$ 58,298,383	10 to 50 years
Furniture, fixtures and office equipment	4,703,311	4,700,784	3 to 5 years
Software	16,332,410	16,169,960	3 to 15 years
	<u>82,431,507</u>	<u>79,169,127</u>	
Less accumulated depreciation and amortization	<u>(57,019,766)</u>	<u>(54,558,542)</u>	
	<u>\$ 25,411,741</u>	<u>\$ 24,610,585</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 \$2,186,411 and \$2,093,953 in accordance with the agreements as of March 31, 2022 and 2021, respectively.

In addition, the ACLU Foundation has nine 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:

	2022	2021
Assets—investments	\$ 39,139,728	\$ 38,651,923
Liabilities under split-interest agreements	20,422,939	20,621,687
	<u>\$ 18,716,789</u>	<u>\$ 18,030,236</u>

Asset balances at March 31, 2022 and 2021, 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 statement of financial position.

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

### Notes to Consolidated Financial Statements

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

The present value of obligations under split-interest agreements was calculated using interest rates ranging from 1.25% to 8.25% 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. Liquidity and Availability of Resources

The ACLU Foundation regularly monitors liquidity required to meet its annual operating needs and other contractual commitments. As of the balance sheet date, the ACLU Foundation holds approximately 15 months of operating expenses in cash, cash equivalents and liquid investment assets. The following chart reflects the ACLU Foundation's financial assets available as of the balance sheet date for general expenditures over the next 12 months.

	2022	2021
Financial assets at year-end:		
Cash, cash equivalents, investment assets and pledges without donor restrictions	\$ 750,946,975	\$ 675,792,205
Less investments unavailable within one year due to restrictions on funds by the board, donors or other commitments	(569,520,817)	(469,680,482)
Financial assets available to meet cash needs for general expenditures within one year	<u>\$ 181,426,158</u>	<u>\$ 206,111,723</u>

The ACLU Foundation has a board designated funds totaling \$259,816,579 and \$250,890,208 as of March 31, 2022 and 2021, respectively. Although the ACLU Foundation does not intend to spend from its board designated funds other than amounts appropriated for general expenditures as part of its annual budget approval and appropriation process, amounts from its board designated funds could be made available if necessary.

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

### Notes to Consolidated Financial Statements

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#### 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, 2022 and 2021, 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, 2021 and 2020, 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. In the years ended March 31, 2022 and 2021, there was a distribution of \$1,090,000 and \$770,000, respectively.

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.

At March 31, 2022 and 2021, BORT comprised the following accounts and amounts that are included in the consolidated statement of financial position:

	2022	2021
Assets:		
Investments	\$ 131,061,392	\$ 119,827,517
Pledge receivable	20,000,000	-
Other assets	284,751	155,205
	<u>\$ 151,346,143</u>	<u>\$ 119,982,722</u>
Liabilities and net assets:		
Held for affiliate foundations	\$ 50,816,350	\$ 41,525,702
Net assets with donor restrictions	29,039,224	27,695,015
Net assets with donor restrictions—held in perpetuity	71,490,569	50,762,005
	<u>\$ 151,346,143</u>	<u>\$ 119,982,722</u>

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

### Notes to Consolidated Financial Statements

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

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

	2022			2021		
	With Donor Restrictions	Held in Perpetuity	Total With Donor Restrictions	With Donor Restrictions	Held in Perpetuity	Total With Donor Restrictions
Endowment net assets, beginning of year	\$ 46,792,540	\$ 72,157,005	\$ 118,949,545	\$ 20,092,017	\$ 71,404,336	\$ 91,496,353
Investment return:						
Interest and dividends	528,542	-	528,542	523,050	-	523,050
Net realized and unrealized gains on investments	12,059,672	-	12,059,672	27,736,244	-	27,736,244
Investment fees and expenses	(696,550)	-	(696,550)	(678,771)	-	(678,771)
Net investment return	11,891,664	-	11,891,664	27,580,523	-	27,580,523
Other changes during the year:						
Contributions	-	20,728,564	20,728,564	-	752,669	752,669
Appropriation of endowment assets for expenditures	(2,348,259)	-	(2,348,259)	(880,000)	-	(880,000)
Total	(2,348,259)	20,728,564	18,380,305	(880,000)	752,669	(127,331)
Endowment net assets, end of year	\$ 56,335,945	\$ 92,885,569	\$ 149,221,514	\$ 46,792,540	\$ 72,157,005	\$ 118,949,545

#### Note 10. Commitments and Contingencies

The Foundation entered into a long-term lease for a new office space in October 2017. This lease agreement expires on July 31, 2025, with four months' rent credit provided. Below is the future aggregate minimum commitment under the lease.

Years ending March 31:	
2023	\$ 683,698
2024	683,698
2025	683,698
2026 and thereafter	227,899
	<u>\$ 2,278,993</u>

Deferred rent consists of the excess of the rental expenses on a straight-line basis over the payments required by the lease. As of March 31, 2022 and 2021, there was \$96,977 and \$126,071, respectively, of deferred rent included in accounts payable and accrued expenses.

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.

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

### Notes to Consolidated Financial Statements

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#### Note 10. Commitments and Contingencies (Continued)

On October 1, 2020, the American Civil Liberties Union Foundation, Inc. entered into a revolving line of credit agreement with JPMorgan Chase Bank for a secured committed line in the amount of \$30,000,000 secured by a blanket lien on all assets. The facility can be drawn and paid down at any time until February 14, 2023, when it matures and any amounts outstanding will be payable. The facility has a variable interest rate of LIBOR plus 175 basis points for LIBOR-based loans or prime rate for CB Floating Rate Advance rate-based loans. There were no loans outstanding under this facility at March 31, 2022.

The credit facility requires that the organization maintain unrestricted cash and investments to funded debt of a least 2.0 to 1.0. The organization is not aware of any instances of noncompliance with financial and non-financial covenants as of March 31, 2022.

#### 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, 2022 and 2021, the cost incurred by the Foundation in connection with the Pension Plan amounted to \$803,047 and \$2,252,535, 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, 2022 and 2021, the Foundation recognized \$6,933,760 and \$8,632,440, 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 \$2,056,835 in 2022 and \$1,819,500 in 2021.

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:

	2022	2021
Without donor restrictions:		
Undesignated	\$150,995,027	\$ 129,013,020
Board-designated:		
Litigation Fund	32,684,390	30,237,809
California Annuity Fund	3,447,397	3,538,186
Annuity Reserve	12,855,860	12,221,652
Organizational Fund	36,863,089	36,049,412
Jacobs Affiliate Development Fund	12,541,055	14,863,636
Dividend Distribution Fund	156,394,654	148,172,761
Presidential Prize temp	-	-
John Adams Fund	5,030,134	5,806,752
Total board-designated	<u>259,816,579</u>	<u>250,890,208</u>
Total without donor restrictions	<u>410,811,606</u>	<u>379,903,228</u>
With donor restrictions:		
Bill of Rights Trust and other endowments	56,335,945	46,792,540
Trusts	4,413,867	5,508,945
Other time and purpose restrictions	94,317,049	82,452,383
Bill of Rights Trust—unconditional promise to give—held in perpetuity	20,000,000	-
Bill of Rights Trust and other endowments—held in perpetuity	72,885,569	72,157,005
Total with donor restrictions	<u>247,952,430</u>	<u>206,910,873</u>
	<u>\$658,764,036</u>	<u>\$ 586,814,101</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, 2022, by incurring expenses satisfying restricted purposes, or by the occurrence of other events specified by donors as follows:

	2022	2021
Special projects:		
Voting Rights	\$ 8,029,750	8,245,416
Capital Punishment	1,195,852	1,679,897
National Prison	2,420,795	2,103,026
Disability Rights	522,837	54,403
Criminal Law Reform and Smart Justice	2,966,287	3,405,651
Immigrants' Rights	8,505,679	8,265,072
Reproductive Freedom	3,383,901	3,340,600
Women's Rights	1,845,517	1,896,732
National Security	450,000	571,894
LGBT/Marriage Equality	5,584,431	3,930,398
Racial Justice	4,065,013	3,729,296
Other special projects	4,122,423	2,279,455
Total special projects	43,092,485	39,501,840
Bill of Rights Trust and other endowments	2,348,259	880,000
Time-restricted gifts	6,380,410	5,126,500
Total released from restrictions	<u>\$ 51,821,154</u>	<u>45,508,340</u>

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

**Consolidating Statement of Financial Position**

**March 31, 2022**

**See Independent Auditor's Report**

	American Civil Liberties Union Foundation, Inc.	915 15th Street, LLC	Eliminations	Consolidated
<b>Assets</b>				
Cash and cash equivalents	\$ 143,597,066	\$ 11,804	\$ -	\$ 143,608,870
Pledges, bequests and contributions receivable, net	61,254,434	-	-	61,254,434
Investments	590,619,973	-	-	590,619,973
Other assets	1,485,562	-	-	1,485,562
Due from affiliates	1,095,240	-	-	1,095,240
Due to the ACLU Foundation from the LLC	10,199,367	-	(10,199,367)	-
Investment in 915 15th Street, LLC	(2,909,513)	-	2,909,513	-
Beneficial interest in trusts	1,336,698	-	-	1,336,698
Property and equipment, net of accumulated depreciation and amortization	18,067,780	7,343,961	-	25,411,741
<b>Total assets</b>	<b>\$ 824,746,607</b>	<b>\$ 7,355,765</b>	<b>\$ (7,289,854)</b>	<b>\$ 824,812,518</b>
<b>Liabilities and Net Assets</b>				
Liabilities:				
Accounts payable and accrued expenses	\$ 6,375,254	\$ 65,911	\$ -	\$ 6,441,165
Grants payable	3,866,567	-	-	3,866,567
Funds received in advance	2,000,000	-	-	2,000,000
Due to the ACLU Foundation	-	10,199,368	(10,199,368)	-
Due to the American Civil Liberties Union, Inc.				
Accrued pension liability	803,047	-	-	803,047
Allocated share of pension liability	6,933,760	-	-	6,933,760
Other	38,550,737	-	-	38,550,737
Due to affiliates	36,213,917	-	-	36,213,917
Liabilities under split-interest agreements	20,422,939	-	-	20,422,939
Bill of Rights Trust held for affiliates	50,816,350	-	-	50,816,350
<b>Total liabilities</b>	<b>165,982,571</b>	<b>10,265,279</b>	<b>(10,199,368)</b>	<b>166,048,482</b>
Commitments and contingencies				
Net assets:				
Net assets without donor restrictions:				
Board-designated	259,816,579	-	-	259,816,579
Undesignated	150,995,027	(2,909,514)	2,909,514	150,995,027
<b>Net assets without donor restrictions</b>	<b>410,811,606</b>	<b>(2,909,514)</b>	<b>2,909,514</b>	<b>410,811,606</b>
Net assets with donor restrictions	247,952,430	-	-	247,952,430
<b>Total net assets</b>	<b>658,764,036</b>	<b>(2,909,514)</b>	<b>2,909,514</b>	<b>658,764,036</b>
<b>Total liabilities and net assets</b>	<b>\$ 824,746,607</b>	<b>\$ 7,355,765</b>	<b>\$ (7,289,854)</b>	<b>\$ 824,812,518</b>

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

### Consolidating Statement of Activities Year Ended March 31, 2022

	American Civil Liberties Union Foundation, Inc.			915 15th Street, LLC		Consolidated		
	Without Donor Restrictions	With Donor Restrictions	Total	Without Donor Restrictions	Eliminations	Without Donor Restrictions	With Donor Restrictions	Total
Support and revenue:								
Support:								
Grants, bequests and contributions	\$ 132,582,892	\$ 81,099,307	\$ 213,682,199	\$ -	\$ -	\$ 132,582,892	\$ 81,099,307	\$ 213,682,199
Donated legal services	25,253,603	-	25,253,603	-	-	25,253,603	-	25,253,603
<b>Total support</b>	<b>157,836,495</b>	<b>81,099,307</b>	<b>238,935,802</b>	<b>-</b>	<b>-</b>	<b>157,836,495</b>	<b>81,099,307</b>	<b>238,935,802</b>
Revenue:								
Rental income	351,353	-	351,353	888,133	(146,802)	1,092,684	-	1,092,684
Merchandise and book sales	827,203	-	827,203	-	-	827,203	-	827,203
Other income	1,239,815	-	1,239,815	-	-	1,239,815	-	1,239,815
<b>Total revenue</b>	<b>2,418,371</b>	<b>-</b>	<b>2,418,371</b>	<b>888,133</b>	<b>(146,802)</b>	<b>3,159,702</b>	<b>-</b>	<b>3,159,702</b>
Net assets released from restrictions	51,821,154	(51,821,154)	-	-	-	51,821,154	(51,821,154)	-
<b>Total support and revenue</b>	<b>212,076,020</b>	<b>29,278,153</b>	<b>241,354,173</b>	<b>888,133</b>	<b>(146,802)</b>	<b>212,817,351</b>	<b>29,278,153</b>	<b>242,095,504</b>
Expenses:								
Program services:								
Legislative	2,888,781	-	2,888,781	-	(912)	2,887,869	-	2,887,869
Legal	88,674,366	-	88,674,366	-	(90,952)	88,583,414	-	88,583,414
Public education	14,157,969	-	14,157,969	-	(13,330)	14,144,639	-	14,144,639
Civil liberties policy formulation	1,148,175	-	1,148,175	-	(44)	1,148,131	-	1,148,131
Affiliate support	62,424,291	-	62,424,291	-	(15,814)	62,408,477	-	62,408,477
<b>Total program services</b>	<b>169,293,582</b>	<b>-</b>	<b>169,293,582</b>	<b>-</b>	<b>(121,052)</b>	<b>169,172,530</b>	<b>-</b>	<b>169,172,530</b>
Supporting services:								
Management and general	9,426,034	-	9,426,034	1,142,782	(523)	10,568,293	-	10,568,293
Fundraising	15,815,542	-	15,815,542	-	(25,227)	15,790,315	-	15,790,315
<b>Total supporting services</b>	<b>25,241,576</b>	<b>-</b>	<b>25,241,576</b>	<b>1,142,782</b>	<b>(25,750)</b>	<b>26,358,608</b>	<b>-</b>	<b>26,358,608</b>
<b>Total expenses</b>	<b>194,535,158</b>	<b>-</b>	<b>194,535,158</b>	<b>1,142,782</b>	<b>(146,802)</b>	<b>195,531,138</b>	<b>-</b>	<b>195,531,138</b>
<b>Change in net assets before other changes</b>	<b>17,540,862</b>	<b>29,278,153</b>	<b>46,819,015</b>	<b>(254,649)</b>	<b>-</b>	<b>17,286,213</b>	<b>29,278,153</b>	<b>46,564,366</b>
Other changes in net assets:								
Legal revenue awarded, net	2,459,308	-	2,459,308	-	-	2,459,308	-	2,459,308
Net investment income, net	7,681,347	11,975,785	19,657,132	-	-	7,681,347	11,975,785	19,657,132
Changes in value of split interest agreements	-	(212,381)	(212,381)	-	-	-	(212,381)	(212,381)
Net loss on investment in 915 15th Street, LLC	(254,649)	-	(254,649)	-	254,649	-	-	-
Other components of postretirement benefit cost	3,481,510	-	3,481,510	-	-	3,481,510	-	3,481,510
<b>Total other changes in net assets</b>	<b>13,367,516</b>	<b>11,763,404</b>	<b>25,130,920</b>	<b>-</b>	<b>254,649</b>	<b>13,622,165</b>	<b>11,763,404</b>	<b>25,385,569</b>
<b>Change in net assets</b>	<b>30,908,378</b>	<b>41,041,557</b>	<b>71,949,935</b>	<b>(254,649)</b>	<b>254,649</b>	<b>30,908,378</b>	<b>41,041,557</b>	<b>71,949,935</b>
Net assets:								
Beginning	379,903,228	206,910,873	586,814,101	(2,654,865)	2,654,865	379,903,228	206,910,873	586,814,101
Ending	\$ 410,811,606	\$ 247,952,430	\$ 658,764,036	\$ (2,909,514)	\$ 2,909,514	\$ 410,811,606	\$ 247,952,430	\$ 658,764,036